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OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re: JONATHAN ALAN STEIN, Debtor.	BAP No. CC-25-1204-GNS Bk. No. 9:23-bk-10174-RC
JONATHAN ALAN STEIN, Appellant, v. GABRIELINO-TONGVA TRIBE, Appellee.	Adv. No. 9:23-ap-01023-RC **MEMORANDUM**[*]

Appeal from the United States Bankruptcy Court
for the Central District of California
Ronald A. Clifford, Bankruptcy Judge, Presiding

Before: GAN, NIEMANN, and SPRAKER, Bankruptcy Judges.

INTRODUCTION

Chapter 7[1] debtor Jonathan Alan Stein appeals the bankruptcy court's order granting summary judgment and holding nondischargeable a debt held by creditor Gabrielino-Tongva Tribe (the "Tribe"). The bankruptcy

[*] This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have, *see* Fed. R. App. P. 32.1, it has no precedential value, *see* 9th Cir. BAP Rule 8024-1.

[1] Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532, all "Rule" references are to the Federal Rules of Bankruptcy Procedure, and all "Civil Rule" references are to the Federal Rules of Civil Procedure.

court applied issue preclusion and held that the Tribe's state-court judgment established the requisite elements of nondischargeability under § 523(a)(2), (4), and (6).

Stein does not contest the court's application of issue preclusion to establish nondischargeability. Instead, he argues that whether the Tribe has capacity[2] to sue under Civil Rule 17, made applicable by Rule 7017, is a disputed question of material fact. He contends the Tribe was suspended by the California Franchise Tax Board ("CFTB") and thus, it lacked capacity to sue under state law. But Stein fails to explain how state law provisions, which expressly apply only to domestic corporations, could cause an unincorporated association like the Tribe to be suspended. The state-court jury also specifically found that the Tribe had standing and capacity to sue.

Moreover, Civil Rule 17 specifically authorizes unincorporated associations who lack capacity under state law to nevertheless sue or be sued in federal court to enforce a substantive right existing under federal law. Thus, even if the Tribe somehow lacked capacity under state law, it unequivocally has standing to enforce substantive rights under federal law. The Tribe is entitled to judgment as a matter of law on the issue of its capacity. Accordingly, we AFFIRM.

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[2] "Capacity has been defined as a party's personal right to come into court, and should not be confused with the question of whether a party has an enforceable right or interest or is the real party in interest." *In re Hashim*, 188 B.R 633, 643 (Bankr. D. Ariz. 1995) (quoting C. Wright & A. Miller, 6 FEDERAL PRACTICE AND PROCEDURE, CIVIL, § 1559).

FACTS

A. Prepetition events

Since 1994, the indigenous Tongva people—known as "Gabrielinos" because of their association with the San Gabriel Mission—have been recognized by the State of California as the aboriginal tribe of the Los Angeles Basin. There are several associations of descendants of Tongva people in California.

In 2000, Stein, who held himself out as a sophisticated transactional lawyer experienced in tribal gaming and financing, met with the Tribal Council of a faction of Gabrielinos which was the predecessor to the Tribe, about obtaining federal recognition and developing a casino in Los Angeles County. Stein formed St. Monica Development Company, LLC ("SMDC"), with himself as its sole member, and drafted an agreement between SMDC and the Tribe. Under the agreement, SMDC would receive $25,000 per month in deferred guaranteed compensation, a share of casino earnings, and an ownership interest in any future casino gaming by the Tribe. Stein did not inform the Tribe that federal recognition would preclude his ownership interest in gaming operations.

The Tribe adopted the agreement through a resolution drafted by Stein and signed by several Tribal Council members on behalf of the "Gabrielino-Tongva Tribe." The Tribal Council members signed the agreement under duress, without the benefit of counsel, and without understanding the agreement.

Although the agreement stated that Stein was not the Tribe's attorney, he provided legal services and acted as the Tribe's general counsel. He hired attorneys, drafted several other resolutions for the Tribe, and held himself out as the Tribal Development Officer of the Tribe and the Chief Executive Officer of the Gabrielino Tribal Gaming Authority—an entity formed within the Tribe to be responsible for the casino project. Stein kept the Tribe's books and records at his law office.

In 2006, disputes arose between the Tribal Council and Stein. In September 2006, Stein demanded that the Tribe fire its assistant general counsel, and when it refused, he quit. Stein then sent an email to the Tribal Council and the major investor in the casino project stating that the project was "dead in the water." The Tribe directed Stein to immediately suspend his activities on behalf of the Tribe, and it notified him that it accepted his resignation or otherwise terminated him.

In October 2006, Stein demanded payment of $2,464,535.96 plus additional amounts, and he used the Tribe's confidential membership list to contact tribal members. He terminated the Tribal Council's cell phones, email, and website access and refused to return records to the Tribe. Stein sent a letter on Tribal Council letterhead to each member of the Tribe, touting his achievements and seeking their support.

The Tribe filed suit against Stein in November 2006, alleging conversion, breach of fiduciary duty, breach of contract, fraud, and several other causes of action. The same day, SMDC filed suit against the Tribe, the

Gabrielino Tribal Gaming Authority, each of the Tribal Council members, and others. The cases, and a third complaint filed by The Crane Group—a company hired to lobby on behalf of the Tribe—were eventually consolidated by the state court.

In December 2006, at Stein's direction, a member of the Tribe named Linda Candelaria filed with the California Secretary of State a statement of unincorporated association under the name "Gabrielino-Tongva Tribe.[3]" Subsequently, Stein and SMDC entered into an agreement purporting to settle the Tribe's claims against them for $1,000. Candelaria signed the agreement on behalf of the "Gabrielino-Tongva Tribe" and represented that her group (the "Candelaria Group") had authority to settle the Tribe's claims. The state court entered judgment as to the settling entity but noted there was little evidence regarding the continuity between the various unincorporated associations purporting to conduct affairs for the Tribe. Stein and SMDC then obtained a default against "Gabrielino/Tongva Nation, a California unincorporated association, a successor in interest to Gabrielino-Tongva Tribe, aka Doe No. 1."

Stein and SMDC filed a motion for summary judgment of the Tribe's claims based on the settlement agreement. Stein and SMDC argued that they had settled all claims with the "Gabrielino-Tongva Tribe" and the

[3] Pursuant to California Corporations Code § 18200, an unincorporated association may file a statement of unincorporated association with the Secretary of State to designate an agent for service of process. There is no evidence in the record of any other statement of unincorporated association filed on behalf of the Tribe.

remaining entity was a breakaway group called "GT Nation." The Tribal Council denied it was a breakaway group and attested it was the entity that contracted with SMDC, hired and fired Stein, filed the lawsuit against them, and had sole authority to prosecute or settle the Tribe's claims. The state court granted Stein's motion for summary judgment, but the Court of Appeal reversed.

On remand, the trial court rejected Stein's claim that the Tribal Council had authority only to act for "Gabrielino/Tongva Nation." The Tribe maintained that its identity was "Gabrielino-Tongva Tribe," the name under which it had commenced the litigation, and the Tribal Council refused to relinquish its name to the Candelaria Group. The state court concluded that the default was inoperative against the Tribe and triable issues of fact remained regarding the identity of the real party in interest and the purported settlement.

Beginning in June 2016, the court conducted a three-phase trial. In phase one, the jury rejected Stein's contention that the Candelaria Group, and not the plaintiff Tribe, was the "real Tribe," and it determined the plaintiff Tribe had standing and capacity to sue.

Stein requested a bench trial for the remainder of the trial, and in 2018, the court concluded the second phase, finding Stein and SMDC liable to the Tribe on all causes of action.[4] The court found that Stein acted with

[4] The causes of action in the Fourth Amended Complaint were: (1) conversion; (2) breach of fiduciary duty; (3) misappropriation of trade secrets; (4) breach of

malice, oppression, and fraud, and it conducted the third phase of the trial on the issue of punitive damages.

In 2019, the court issued a statement of decision and judgment in favor of the Tribe and against Stein, his law offices, and SMDC. The state court found that Stein had committed multiple acts of fraud against the Tribe, he converted the Tribe's property, and he created and registered the entity for the Candelaria Group, using the Tribe's exact name, "for the sole reason of attempting to deceive the Tribal members and the public about the true identity of the Tribe, and to take all of the Tribe's legal rights and obligations." It held that "Stein is a recidivist in targeting Native Americans for exploitation" and that he "preyed upon Native American groups."

The court entered judgment against Stein for compensatory damages of $20,411,067.23, and because it found by clear and convincing evidence that Stein's conduct was "fraudulent, despicable, oppressive, and malicious," it awarded punitive damages of $7,000,000. Stein appealed and the Court of Appeal affirmed, but it modified the judgment to reduce compensatory damages to $19,161,067.23 because of a miscalculation by the

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confidence; (5) intentional interference with economic relationships; (6) negligent interference with economic relationships; (7) breach of contract; (8) breach of the implied covenant of good faith and fair dealing; (9) legal malpractice; (10) declaratory relief; (11) violation of Penal Code § 502(c); (12) unfair competition; (13) rescission per California Rules of Professional Conduct; (14) alter ego liability; and (15) fraud.

trial court. The California Supreme Court denied Stein's petition for review.

B. Stein's bankruptcy and the nondischargeability proceeding

In March 2023, Stein filed a chapter 7 petition. The Tribe filed a proof of claim for $37,065,922.66 based on the state-court judgment. In June 2023, the Tribe filed an adversary complaint to hold the debt nondischargeable under § 523(a)(2), (4), and (6) and to deny Stein's discharge under § 727(a)(3) and (4).

Stein filed an answer denying the allegations and raising, among others, the affirmative defense that the Tribe lacked the legal capacity to maintain an action in the bankruptcy court.

The Tribe filed a motion for partial summary judgment on its claims for nondischargeability.[5] It argued that no factual disputes existed because the state-court judgment established Stein's fraud, his fraud or defalcation while acting in a fiduciary capacity, and his willful and malicious injury to the Tribe. The Tribe attached the state-court judgment and statement of decision, the Court of Appeal decision affirming and modifying the judgment, and a declaration from its attorney.

In opposition, Stein argued that disputed facts existed about whether the Tribe lacked legal capacity to sue under Civil Rule 17. Stein claimed

[5] The court subsequently granted leave for the Tribe to amend its complaint to remove the causes of action to deny Stein's discharge under § 727(a). Because the Tribe sought leave only to remove the § 727(a) action, the bankruptcy court continued the hearing on the Tribe's summary judgment motion and reset other deadlines.

that the Tribe was suspended under state law for failure to pay taxes in 2006, and he provided a declaration from tax attorney Pietro Canestrelli, who opined that letters from CFTB demonstrated the Tribe was not in good standing in 2016 and was suspended by 2019.

Stein also asserted disputed facts about whether he "obtained" any money or property from the Tribe, whether funds were entrusted to him as a fiduciary, and whether he had a subjective intent to injure the Tribe and acted without just cause or excuse. According to Stein, the Tribe failed to pinpoint the exact issues litigated in state court, and it failed to demonstrate that the issues involved in the state-court judgment were "identical," as required by California's issue preclusion law. The Tribe filed a reply and an objection to the Canestrelli declaration because Stein had not produced it prior to his opposition to the motion.

C. The court's ruling

Stein did not appear for the hearing on the Tribe's motion for summary judgment, and the court granted the motion. The court sustained the Tribe's objection to the Canestrelli declaration but noted it was "of no import to the Court's ruling on the Motion."

The bankruptcy court held that issue preclusion was available because the issues in the state-court judgment were identical to those alleged in the nondischargeability complaint, the issues were actually litigated and necessarily decided, and the state-court judgment was final and on the merits. The court held the parties were identical, and

application of issue preclusion would be fair and consistent with public policy.

The bankruptcy court meticulously applied the state court's findings and held that they established Stein's fraud under § 523(a)(2)(A), his embezzlement and fraud or defalcation in a fiduciary capacity under § 523(a)(4), and his willful and malicious injury under § 523(a)(6).

The bankruptcy court rejected Stein's claim that the Tribe lacked capacity to sue because the state court specifically held, in a 2020 discovery order, that "the Candelaria Faction was the only entity that ever filed records with or paid fees to the State of California, using the name 'Gabrielino-Tongva Tribe,' [thus] any alleged 'suspension' or 'outstanding fees' is the direct result of [Stein's] fraud." The bankruptcy court entered summary judgment in favor of the Tribe.

Stein filed a motion to set aside the summary judgment under Civil Rule 60(b), made applicable by Rule 9024, and argued that his failure to appear at the hearing was excusable neglect due to a calendaring mistake. The bankruptcy court permitted Stein to make the oral argument he would have made at the hearing on the summary judgment motion, and after hearing the argument, it denied his motion for relief. This timely appeal followed.

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(I). We have jurisdiction under 28 U.S.C. § 158.

ISSUES

Did the bankruptcy court err by holding that the Tribe had legal capacity to assert nondischargeability claims?

Did the bankruptcy court err by granting summary judgment based on issue preclusion?

STANDARDS OF REVIEW

We review de novo the bankruptcy court's interpretation of Civil Rules. *Am. Sports Radio Network, Inc. v. Krause (In re Krause)*, 546 F.3d 1070, 1073 n.5 (9th Cir. 2008). We also review de novo the bankruptcy court's grant of summary judgment, *Plyam v. Precision Development, LLC (In re Plyam)*, 530 B.R. 456, 461 (9th Cir. BAP 2015), and its decision that issue preclusion is available, *Lopez v. Emergency Service Restoration, Inc. (In re Lopez)*, 367 B.R. 99, 103 (9th Cir. BAP 2007).

Under de novo review, "we consider a matter anew, as if no decision had been made previously." *Francis v. Wallace (In re Francis)*, 505 B.R. 914, 917 (9th Cir. BAP 2014).

If we determine that issue preclusion is available, we review the bankruptcy court's application for an abuse of discretion. *In re Plyam*, 530 B.R. at 461. A bankruptcy court abuses its discretion if it applies the wrong legal standard, or its findings of fact are illogical, implausible or without support in the record. *TrafficSchool.com, Inc. v. Edriver Inc.*, 653 F.3d 820, 832 (9th Cir. 2011).

DISCUSSION

Stein argues the bankruptcy court erred by granting summary judgment because there were disputed issues of material fact regarding whether the Tribe had legal capacity to assert nondischargeability. He contends the court improperly gave preclusive effect to the 2020 discovery order regarding the Tribe's capacity, ignored factual disputes regarding the Tribe's status under state law, and improperly excluded the Canestrelli declaration.

A. Legal standards

1. Summary judgment

Civil Rule 56(a), made applicable by Rule 7056, provides that summary judgment is appropriate where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." In reviewing summary judgment, we must view the evidence in the light most favorable to the nonmoving party and draw all justifiable inferences in its favor. *Fresno Motors, LLC v. Mercedes Benz USA, LLC*, 771 F.3d 1119, 1125 (9th Cir. 2014) (citing *Cnty. of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001) and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)).

Because the Tribe's motion for summary judgment was based on issue preclusion, the material facts are not in dispute. Thus, our only function is to determine whether the bankruptcy court correctly applied the law. *Universal Health Servs., Inc. v. Thompson*, 363 F.3d 1013, 1019 (9th

Cir. 2004). "And we may affirm on any ground fairly supported by the record." *Legal Serv. Bureau, Inc. v. Orange Cnty. Bail Bonds, Inc. (In re Orange Cnty. Bail Bonds, Inc.)*, 638 B.R. 137, 147 (9th Cir. BAP 2022).

2. Issue preclusion

The doctrine of issue preclusion applies to nondischargeability actions under § 523(a). *Grogan v. Garner*, 498 U.S. 279, 284 n.11 (1991). In applying issue preclusion, the bankruptcy court "must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984). The party asserting issue preclusion bears the burden of establishing the threshold elements. *Harmon v. Kobrin (In re Harmon)*, 250 F.3d 1240, 1245 (9th Cir. 2001).

To determine the preclusive effect of a California judgment, the bankruptcy court must apply California's issue preclusion law, which requires:

> (1) the issue sought to be precluded from relitigation is identical to that decided in a former proceeding; (2) the issue was actually litigated in the former proceeding; (3) the issue was necessarily decided in the former proceeding; (4) the decision in the former proceeding is final and on the merits; and (5) the party against whom preclusion is sought was the same as, or in privity with, the party to the former proceeding.

In re Plyam, 530 B.R. at 462 (citing *Lucido v. Super. Ct.*, 51 Cal. 3d 335, 341 (1990)). The court additionally must assess "whether imposition of issue

preclusion in the particular setting would be fair and consistent with sound public policy." *Khaligh v. Hadaegh (In re Khaligh)*, 338 B.R. 817, 824-25 (9th Cir. BAP 2006) (citing *Lucido*, 51 Cal. 3d at 341-43), *aff'd*, 506 F.3d 956 (9th Cir. 2007).

B. The bankruptcy court did not err by determining the Tribe had legal capacity to sue in bankruptcy court.

Stein argues that factual disputes existed about the Tribe's legal capacity to sue for nondischargeability. He maintains that letters from the CFTB and the Canestrelli declaration demonstrate that the Tribe was suspended as an unincorporated association under California law. And according to Stein, the court erred by giving preclusive effect to a statement made by the state court in a 2020 discovery order.

1. Under Civil Rule 17(b), the Tribe has capacity to assert nondischargeability as a matter of law.

Capacity to sue in federal court is governed by Civil Rule 17(b), which provides that an individual's capacity is determined by "the law of the individual's domicile," a corporation's capacity is determined by "the law under which it was organized," and the capacity of "all other parties" is determined by "the law of the state where the court is located."
Civil Rule 17(b)(3) further provides that "a partnership or other unincorporated association with no such capacity under that state's law may sue or be sued in its common name to enforce a substantive right existing under the United States Constitution or laws."

Because the Tribe is an unincorporated association seeking to enforce a substantive right under the Bankruptcy Code, it has capacity under Civil Rule 17(b)(3) regardless of whether it has capacity under state law. Consequently, there is no disputed material fact relevant to the Tribe's capacity to assert nondischargeability in federal bankruptcy court.

Stein argues that the exception in Civil Rule 17(b)(3)(A) applies only to "public interest citizen groups" acting in the public interest, but he identifies no authority to support his claim. Civil Rule 17(b)(3) plainly applies to unincorporated associations seeking to enforce substantive rights under federal law. A "substantive right" is defined as a "right that can be protected or enforced by law." *Right, Black's Law Dictionary* (12th ed. 2024); *see also id.* (quoting 1 MOORE'S FEDERAL PRACTICE-CIVIL § 1.05[2][b][iii], at 1-29 (3d ed. 2016) ("Substantive rights are rights established by law. The term 'substantive' does not mean rights that are 'important' or 'substantial,' but rather those that have been conferred by the Constitution, by statute, or by the common law.").

Contrary to the limitation Stein would have us impose, the exception under Civil Rule 17(b)(3) has been widely applied to unincorporated associations seeking to enforce an array of substantive rights in federal courts. *See* C. Wright & A. Miller, 6A FEDERAL PRACTICE AND PROCEDURE, CIVIL, § 1564 (3d ed. 2026) (noting the "provision has enabled a partnership or other unincorporated association to sue and be sued in a federal court" under numerous federal statutes).

A nondischargeability suit involves precisely the type of substantive right under federal law to which the exception applies. Thus, regardless of whether the Tribe had capacity to sue under California law, it has legal capacity in federal bankruptcy court to pursue the adversary proceeding to hold its judgment debt nondischargeable. *See Sierra Ass'n for Env't v. FERC*, 744 F.2d 661, 662 (9th Cir. 1984) ("[B]ecause this action arises under federal law, [plaintiff] had capacity to sue as an unincorporated association, and any incapacity under California law is accordingly irrelevant." (internal citation omitted)).

2. Stein did not demonstrate a disputed material fact regarding the Tribe's capacity to sue.

Stein argues that under California law, a corporation's rights, powers, and privileges may be suspended for nonpayment of taxes, and he cites *Bourhis v. Lord*, 56 Cal. 4th 320, 324 (2013), and *Reed v. Norman*, 48 Cal.2d 338, 343 (1957), for the proposition that a suspended corporation cannot bring or defend a legal action. *See also Grell v. Laci Le Beau Corp.*, 73 Cal. App. 4th 1300, 1306 (1999) ("Under [Cal. Rev. & Tax Code § 23301], the powers of a domestic corporation are 'suspended,' not dissolved, due to its failure to pay taxes"). Because § 101(9) of the Bankruptcy Code defines "corporation" to include unincorporated associations, Stein urges us to evaluate the Tribe's capacity to sue under state law as though it were a corporation.

But it does not follow that inclusion of "unincorporated associations" within the Bankruptcy Code's definition of corporation should mean that the terms are synonymous under state law—and California clearly makes a distinction. California law defines an unincorporated association as "an unincorporated group of two or more persons joined by mutual consent for a common lawful purpose, whether organized for profit or not." *Vosburg v. Cnty. of Fresno*, 54 Cal. App. 5th 439, 452 (2020) (quoting Cal. Corp. Code § 18035(a)). Under state law, "[a] partnership or other unincorporated association, whether organized for profit or not, may sue and be sued in the name it has assumed or by which it is known." Cal. Civ. Proc. Code § 369.5(a).

Stein does not explain why Cal. Rev. & Tax. Code § 23301, which on its face applies only to domestic corporations, should also be applicable to unincorporated associations. Courts applying California law have rejected the contention. *See Am. Alt. Energy Partners II, v. Windridge, Inc.*, 42 Cal. App. 4th 551, 563 (1996) (holding that a plaintiff's capacity as a "general partnership or some other unincorporated association" was "distinguishable from that of a suspended corporation" and holding that the association "had capacity to sue in the name it had assumed or by which it was known" under Cal. Civ. Proc. Code § 369.5(a)); *see also Total Recall Techs. v. Luckey*, 818 F. App'x 642, 645 (9th Cir. June 15, 2020) (distinguishing a general partnership from a tax-delinquent corporation and holding inapposite the limitation to legal capacity for suspended

corporations). And the purpose underlying the corporation suspension provisions—to put pressure on delinquent corporations to pay taxes—is irrelevant to partnerships and unincorporated associations which have no separate tax liability. *See Am. Alt. Energy Partners II*, 42 Cal. App 4th at 563 (citing *Peacock Hill Ass'n v. Peacock Lagoon Constr. Co.*, 8 Cal. 3d 369, 371 (1972)).

Additionally, we find no error in the bankruptcy court's reliance on the state court's decisions in holding the Tribe had legal capacity. The purported evidence of incapacity offered by Stein was available to him before the state-court judgment was entered.[6] "Lack of capacity is not a jurisdictional defect and must be properly raised or the objection may be waived." *Am. Alt. Energy Partners II*, 42 Cal. App. 4th at 559. Therefore, to the extent Stein failed to raise an objection to the Tribe's legal capacity, he waived it. And, as the Court of Appeal noted, "the jury found that the Tribe had standing and the capacity to sue."

[6] Stein offered as evidence: (1) an undated demand from CFTB for a past due corporation tax return for the tax year ending in 2004, sent to "Gabielino-Tongva Tribe" [sic]; (2) a letter from CFTB dated July 19, 2016, stating that "Gabrielino-Tongva Tribe" was not in good standing; and (3) a letter from CFTB dated July 30, 2020, stating that it had no current information about "Gabrielino Tongva Tribe" [sic]. Stein also offered the Canestrelli declaration, which merely gave his opinion that the CFTB letters establish that the Tribe was suspended for failure to pay income taxes. We find no error by the bankruptcy court in excluding the Canestrelli declaration. Stein did not timely disclose the purported expert opinion, and as discussed above, Canestrelli's opinion is not relevant to the legal question of whether the Tribe has capacity to sue in federal court.

C. The court did not err by granting summary judgment.

On appeal, Stein does not contest the bankruptcy court's application of issue preclusion to the elements of the Tribe's nondischargeability claims. Accordingly, he has waived those issues, and we need not address them. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999). Instead, he argues the court erred by ruling on the motion for summary judgment after authorizing the amended complaint, and that it erred by denying his motion to set aside the judgment.

Stein contends that the first amended complaint became the operative complaint, thus rendering moot the Tribe's summary judgment motion. But he does not articulate how he was prejudiced by the bankruptcy court's decision to consider the Tribe's summary judgment motion after allowing it to amend its complaint for the sole purpose of removing the § 727(a) causes of action. Nor is there evidence in the record that he objected to the court's order allowing the partial summary judgment motion to be heard.

Pursuant to Civil Rule 61, made applicable by Rule 9005, "[a]t every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights." Stein had notice of the Tribe's motion for summary judgment on its § 523(a) claims, and his substantial rights were unaffected by the Tribe's removal of the § 727(a) claims. Stein does not demonstrate reversible error.

Finally, Stein argues the court erred by denying his motion to set aside the judgment, but he provides no additional argument relevant to that order, and we find no error in the court's denial of the motion.

CONCLUSION

Based on the foregoing, we AFFIRM the bankruptcy court's summary judgment in favor of the Tribe.[7]

[7] Stein and the Tribe each filed requests for judicial notice. Both requests are GRANTED, though we do not rely on any documents judicially noticed. Additionally, the Tribe moves to dismiss this appeal as frivolous. That motion is DENIED.