

2015 WL 5805954

Only the Westlaw citation is currently available.

United States Court of Appeals,
Second Circuit.

SHAO KE, Defendant–Appellant,

v.

JIANRONG WANG, Plaintiff–Appellee.

No. 14–3824. | Oct. 6, 2015.

Appeal from a judgment of the United States District Court
for the Northern District of New York ([Suddaby, J.](#)).

Attorneys and Law Firms

[Edward E. Kopko](#), Edward E. Kopko Lawyer, P.C., Ithaca,
NY, for Appellant.

[DWARD Y. CROSSMORE](#), The Crossmore Law Office,
Ithaca, NY, for Appellee.

Present [DENNIS JACOBS](#), [PIERRE N. LEVAL](#), Circuit
Judges and [GEOFFREY W. CRAWFORD](#),* District Judge.

SUMMARY ORDER

***1 UPON DUE CONSIDERATION, IT IS HEREBY
ORDERED, ADJUDGED AND DECREED** that the
judgment of the district court be **AFFIRMED**.

Shao Ke appeals from a judgment of the United States District
Court for the Northern District of New York ([Suddaby, J.](#)), which affirmed an earlier judgment of the United
States Bankruptcy Court for the Northern District of New
York ([Davis, J.](#)) (“bankruptcy court”), that a debt owed by
Ke to his one-time business partner, Jianrong Wang, was
nondischargeable in personal bankruptcy. *See also* 11 U.S.C.
§ 523(a)(4). The bankruptcy court and the district court held
that Ke's debt was nondischargeable because it was incurred
by intentional or extremely reckless conduct constituting
fraud or defalcation of Peace Food Inc. (“Peace Food”), a
business Ke co-owned with Wang between 2004 and 2006.

“Our review of a district court decision affirming a
bankruptcy court order is plenary ... We therefore
independently review the factual findings and legal
conclusions of the bankruptcy court ... We must accept the

bankruptcy court's findings of fact unless clearly erroneous;
conclusions of law are reviewed *de novo*.” *In re Petrie Retail,
Inc.*, 304 F.3d 223, 228 (2d Cir.2002).

1. Ke argues that the bankruptcy court should have been
precluded from deciding the issue of Ke's intent because
Wang failed to raise that issue in a prior litigation in the New
York State Supreme Court (“state court”).

Collateral estoppel applies to findings only if [i] they were
“actually determined” and necessary to support judgment in a
prior action, *Bobby v. Bies*, 556 U.S. 825, 834 (2009); and [ii]
the party opposing preclusion had a “full and fair opportunity”
to litigate the identical issue in the prior action. *In re Hyman*,
502 F.3d 61, 65 (2d Cir.2007). Neither consideration supports
preclusion here. The issue decided in the state court was
whether Ke breached his fiduciary duty when he failed to
account for Peace Food's corporate revenue during his tenure
as a fiduciary of that business. As construed under New
York state law, breach of fiduciary duty does not require
proof of a particular mental state. *See Hyman*, 502 F.3d
at 69 (“[M]isappropriation and breach of fiduciary duties
apparently do not, under New York law, consistently require
proof of a culpable mental state.”). By contrast, defalcation
under 11 U.S.C. § 523(a)(4) requires a showing that the
faithless fiduciary committed an “intentional wrong,” which
incorporates a standard of conscious misbehavior or extreme
recklessness. *Bullock v. BankChampaign N.A.*, 133 S.Ct. 1754,
1759 (2013). The state court therefore had no occasion or
necessity to make a finding as to Ke's mental state or intent.

2. Ke argues that the New York Supreme Court, Appellate
Division's (“state appellate court”) decision to restore Ke's
ownership stake in Peace Food implies a finding that Ke did
not intentionally breach his fiduciary duty. We disagree. *See
Bacon v. Texas*, 163 U.S. 207, 226 (1896) (“This particular
finding is in no way dependent upon the others, and they
are all entirely separate and distinct from one another.”).
Ke has conflated two distinct issues. The state appellate
court's modification in no way inhibits a separate and distinct
conclusion that Ke also breached his fiduciary duty to that
business. The “finding on which [Ke] seek[s] to ... appeal
involves issues entirely separate and distinct from the ...
analysis at issue” before the bankruptcy court and on appeal
before this Court. *Jones v. Parmley*, 465 F.3d 46, 65 (2d
Cir.2006).

*2 3. We further reject Ke's arguments addressing the bankruptcy court's fact finding and the sufficiency of the evidence; they are without merit.

All Citations

--- Fed.Appx. ----, 2015 WL 5805954

For the foregoing reasons, and finding no merit in Ke's other arguments, we hereby **AFFIRM** the judgment of the district court.

Footnotes

* The Honorable [Geoffrey W. Crawford](#), United States District Judge for the District of Vermont, sitting by designation.

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.