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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
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8 In re:)
9 ANJANI PRAKASH,) Case No. 98-35105-B-7
10 Debtor.)
11)
12 ANJANI PRAKASH,)
13 Plaintiff) Adv. No. 06-2195-B
14 vs.)
15 MAHENDRA PRAKASH,) Docket Control No. JPG-1
16 Defendant.) Date: October 11, 2006
17) Time: 9:30 a.m.

18 On or after the calendar set forth above, the court issued
19 the following ruling. The official record of the ruling is
appended to the minutes of the hearing.

20 Because the ruling constitutes a "reasoned explanation" of
21 the court's decision under the E-Government Act of 2002 (the
22 "Act"), a copy of the ruling is hereby posted on the court's
Internet site, www.caeb.uscourts.gov, in a text-searchable
23 format, as required by the Act. However, this posting does not
constitute the official record, which is always the ruling
appended to the minutes of the hearing.

24 **DISPOSITION AFTER ORAL ARGUMENT**

25 The failure of any party in interest to file timely written
26 opposition as required by this local rule may be considered consent to
27 the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th
28 Cir. 1995); LBR 9014-1(f)(1). Therefore, this matter is resolved

1 without oral argument.

2 Federal Rule of Civil Procedure 56, made applicable to this
3 proceeding by Bankruptcy Rule 7056, provides that summary judgment is
4 appropriate if the pleadings, depositions, answers to interrogatories,
5 admissions on file, and declarations, if any, show that there is "no
6 genuine issue of fact and that the moving party is entitled to
7 judgment as a matter of law."

8 A court cannot grant summary judgment simply upon the fact of
9 non-opposition by the other party in the adversary action. Henry v.
10 Gill Industries, Inc., 983 F.2d 943, 950 (9th Cir. 1993) (summary
11 judgment cannot be granted based upon the failure to file opposition
12 under a local rule); In re Lenard, 140 B.R. 550, 555 (D. Colorado
13 1992) (discussing the advisory notes to F.R.C.P. 56(e) which provide
14 "Where the evidentiary matter in support of the motion does not
15 establish the absence of a genuine issue, summary judgment must be
16 denied even if no opposing evidentiary matter is presented."). Thus,
17 even with no response filed by the plaintiff, this court must
18 "independently determine from the record whether summary judgment is
19 proper." Lenard, 140 B.R. at 555.

20 The defendant, Mahendra Prakash, filed this motion for summary
21 judgment against plaintiff Anjani Prakash on her one-count complaint.
22 The plaintiff's complaint seeks declaratory relief that the debt owed
23 to plaintiff was discharged in 1999. Assuming plaintiff prevailed on
24 that issue, the complaint also seeks a mandatory injunction requiring
25 defendant to re-convey to plaintiff her interest in certain real
26 property located on South Avenue in Sacramento California or
27 alternatively judgment for the value of plaintiffs interest. Finally,
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1 the complaint sought damages for violation of the discharge
2 injunction, interest, attorney's fees and costs. The defendant argues
3 that summary judgment is appropriate because the undisputed facts
4 before the court entitle the defendant to judgment as a matter of law.
5 The defendant is entitled to such judgment, and the motion for summary
6 judgment is granted.

7 The following facts are undisputed: Plaintiff and defendant were
8 married November 7, 1985. They separated December 18, 1996 and the
9 marriage was dissolved by order of the Sacramento County Superior
10 Court filed March 9, 1998. The judgment approved and incorporated a
11 Marital Settlement Agreement between the parties. The Judgment
12 included a term requiring defendant to pay plaintiff \$3,700 for her
13 interest in the South Avenue property and requiring plaintiff to
14 convey her interest on receipt of said payment. On February 4, 1998,
15 defendant filed a bankruptcy case under chapter 7: 98-21584.
16 Defendant received a discharge May 12, 1998. On July 30, 1998,
17 plaintiff filed a bankruptcy case under chapter 7: 98-35105.
18 Plaintiff received a discharge December 31, 1998.

19 On July 8, 2004 and June 28, 2005, defendant filed motions in the
20 state court seeking to enforce the terms of the Marital Settlement
21 Agreement regarding the South Avenue property. Plaintiff opposed the
22 requested relief. The state court, Judge Jerilyn L. Borack presiding,
23 held a hearing on the matter on October 20, 2005. On February 6,
24 2006, Judge Borack issued her findings and conclusions. The state
25 court specifically addressed the following six issues: (1) Whether
26 [defendant's] debt was discharged by tender of payment prior to
27 bankruptcy; (2) whether [defendant's] obligation was discharged in his
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1 bankruptcy; (3) whether [plaintiff's] obligation to transfer the
2 property was discharged in bankruptcy; (4) whether the Court has
3 jurisdiction to modify the judgment; (5) whether the Court has
4 equitable jurisdiction; and (6) entitlement to attorney's fees and
5 costs. The court issued specific findings on each issue and ordered
6 that plaintiff sign a deed transferring her interest in the South
7 Avenue property to defendant in exchange for the originally agreed
8 upon payment of \$3,700. Alternatively, if plaintiff refused to sign
9 the deed the clerk of the court would sign on plaintiffs behalf. The
10 state court ruling was not appealed and has become final. On May 1,
11 2006, plaintiff filed this adversary proceeding.

12 As an initial matter, the court notes that it may not and
13 specifically does not express any opinion as to the correctness of the
14 February 6, 2006 state court judgment. To do so would violate the
15 Rooker-Feldman Doctrine. Rooker v. Fidelity Trust Co., 263 U.S. 413,
16 44 S.Ct. 149, 68 L.Ed. 362 (1923); District of Columbia Court of
17 Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206
18 (1983); Exxon Mobil Corporation v Saudi Basic Industries Corporation,
19 544 U.S. 280, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005).

20 Defendant correctly notes that both state and federal courts have
21 concurrent jurisdiction to determine whether or not a debt was
22 discharged in bankruptcy. Menk v. Lapaglia (In re Menk), 241 B.R.
23 896, 904 (9th Cir. BAP 1999) *citing* Siragusa v. Siragusa (In re
24 Siragusa), 27 F.3d 406 (9th Cir. 1994). Defendant further argues that
25 the state court judgment is res judicata and thus this subsequent
26 adversary proceeding is precluded. Defendant is required to plead res
27 judicata as an affirmative defense. Blonder-Tongue Laboratories, Inc.

1 v. University of Ill. Found., 402 U.S. 313, 350, 91 S.Ct. 1434, 1453
2 (1971). While it is not a model of legal drafting, the court
3 construes defendant's fifth affirmative defense, "Anjani is barred or
4 estopped from claiming relief against Mahendra," as setting forth the
5 defense of *res judicata*. (Answer, Dkt. No. 6, p. 3).

6 Because the earlier decision is from a California court, that
7 state's rules for *res judicata* apply. Migra v. Warren City School
8 Dist. Bd. Of Ed., 465 U.S. 75, 81, 104 S.Ct. 892, 896 (1984). Under
9 California law, "a final judgment, rendered upon the merits by a court
10 having jurisdiction of the cause, is conclusive of the rights of the
11 parties and those in privity with them, and is a complete bar to a new
12 suit between them on the same cause of action" Goddard v. Security
13 Title Insurance & Gurarantee Co., 14 Cal.2d 47, 51, 92 P.2d 804, 806
14 (Cal. 1939). See also 7 Witkin, Cal. Proc. 4th Judgments, § 348 (1997
15 & Supp. 2006). It is undisputed that the February 6, 2006 state court
16 judgment is final. It was not appealed and the time to do so has long
17 since run. It is self-evident from the February 6, 2006 judgment
18 itself that the court ruled on the merits of six distinct issues. The
19 second issue decided in the February 6, 2006 judgment is identical to
20 the first issue pled in the instant complaint. As noted above, it is
21 further undisputed that the state court had concurrent jurisdiction
22 with this court to render a decision on the merits. Based on the
23 foregoing, the court finds that a decision on the merits of the first
24 cause of action in this complaint is barred under principles of *res*
25 *judicata*. Furthermore, all other requests for relief pled in the
26 complaint flow from the first cause of action. Plaintiff cannot obtain
27 damages, the requested mandatory injunction or any other relief unless

1 she prevails on the first issue. Defendant is therefore entitled to
2 judgment as a matter of law.

3 The court will issue a minute order granting this motion.
4 Defendant shall submit a separate form of judgment stating that
5 plaintiff shall take nothing by her complaint. Until a judgment is
6 entered, the adversary proceeding remains pending and active.

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