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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

In re:

Case No. 22-20832-A-7

IN RE DANIEL STEWART,

Debtor.

MELANIE J. DECKER et al.,

Adv. No. 22-2046-A
CLH-2

Plaintiff,

MEMORANDUM

v.

DANIEL STEWART, JR.

Defendant.

Argued and submitted on November 21, 2023

at Sacramento, California

Honorable Fredrick E. Clement, Bankruptcy Judge Presiding

Appearances: Charles L. Hastings, Natalie A. Ron and
 Karen J. Calderon, Law Offices of Hastings
 and Ron and A. Peter Rausch, Jr., Law
 Offices of A. Peter Rausch, Jr. for the
 plaintiffs; Daniel Stewart, Jr. Pro se.

1 Issue preclusion bars a party from re-litigating an *identical*
2 issue previously decided between them. Plaintiff trust beneficiaries
3 obtained a state court judgment against defendant for \$1.6 million for
4 intentional breach of his fiduciary duties and for self-dealing. They
5 now seek to except that debt from discharge under 523(a)(4) based on
6 the bad faith or immoral conduct language in *Bullock v. BankChampaign,*
7 *N.A.*, 569 U.S. 267, 273-274, (2013). Are the issues in the two
8 actions identical?

9 **I. FACTS**

10 This action arises out of the administration of the testamentary
11 trust of Russell H. Decker, Jr., and Lynda J. Decker ("the settlors
12 Decker"). The disputants are: (1) four of the settlors Deckers'
13 grandchildren and the now trustee of the Deckers' trust (collectively
14 "the plaintiffs"); and (2) the settlors Deckers' son-in-law and the
15 plaintiffs' father and stepfather, Daniel J. Stewart Jr. ("the
16 defendant").

17 **A. The Decker Trust**

18 In 2008, Russell H. Decker, Jr. and Lynda J. Decker executed a
19 joint revocable living trust. Second Amended TEDRA¹ Petition for
20 Removal of Trustee, Recovery of Decedent's Assets, Damages, and
21 Attorney's Fees at Pls. Trial Ex. G ¶ 3.1, *Decker v. Stewart*, No. 20-
22 4-00041-16 (Superior Court Dec. 9, 2020).² Kimberly Decker Stewart,

23
24 ¹ "TEDRA" is an acronym for the Trust and Estate Resolution Act. Wash. Rev. Code 11.96A.010 et seq. (1999).

25 ² The facts are taken from the trial documents. Excepting objections for
26 hearsay and relevance, the parties stipulated to the admissibility of all
27 lodged trial documents. Stipulation, ECF No. 70, October 10, 2023. The
28 plaintiffs' arguments in favor of issue preclusion are supported, if at all,
by the trial exhibits (including the underlying state court judgment rendered
in the State of Washington). At oral argument, the defendant objected to the
court's consideration of the Washington State Court judgment as hearsay.
That objection is overruled. Fed. R. Evid. 801(c); *U.S. v. Boulware*, 384
F.3d 794, 805-806 (9th 2004) ("A prior judgment is not hearsay, however, to

1 their daughter, was the sole beneficiary. *Id.* at ¶ 3.2. The trust
2 provided that if Kimberly Decker Stewart died prior to the
3 distribution of the assets held in trust that the remaining trust
4 assets be distributed to her issue per stirpes. *Id.* at ¶ 3.3.
5 Kimberly Decker Stewart was the trustee of the settlors Decker' trust.
6 *Id.* at § 3.8.

7 The trust provided that if Kimberly Decker Stewart died prior to
8 distribution of trust assets that any undistributed trust assets would
9 be distributed to her children.

10 In the event of the death of Kimberly Dawn Decker before
11 the complete distribution of her trust share, the trust
12 shall terminate, and our Trustee shall distribute and
13 deliver the remaining balance of her trust share pursuant
14 to Kimberly Dawn Decker's limited power of appointment
15 under Section 3 of this Article [Eleven]. If such limited
16 power of appointment is unexercised, our Trustee shall
17 distribute and deliver the remaining balance of her trust
18 for the benefit of Kimberly Dawn Decker's descendants, if
19 any, per stirpes, in accordance with the provisions of the
20 paragraph immediately following...

21 Pls. Trial Ex. A 11-2.

22 The "power of appointment" described in § 3 of the trust contains
23 specific provisions limiting its exercise; it may be exercised by a
24 beneficiary's last will and testament but only: (1) by "specifically
25 referring to and exercising this power of appointment"; (2) in favor
26 of "our [the settlors Decker] then living descendants"; and (3) as
27 applied to that beneficiary's "separate share [of trust assets] as it
28 exists at the death of such beneficiary." Pls. Trial Ex. A 11-6-11-7.

29 **B. The Kimberly Decker Stewart Will**

30 Kimberly Decker Stewart was married to defendant Stewart. During

31 the extent it is offered as legally operative verbal conduct that determined
32 the rights and duties of the parties"); *U.S. v. Sine*, 493 F.3d 1021, 1036
33 (9th 2007).

1 her lifetime, she executed a will. *Id.* at § 3.7. Her will named her
2 spouse as her executor and left her property to her spouse, and her
3 children. *Id.* at ¶¶ 3.9-3.10; Pls. Trial Ex. B Art. IV, VIII, IV.

4 Her will provided:

5 Article III

6 I intend to devise and bequeath all property of which I may
7 be seized or possessed at the time of my death, including
8 property acquired before or after the execution of this
9 Will, and any property over which at the time of my decease
I have the power of disposition.

...

10 Article IV

11 I nominate, constitute[,] and appoint my husband, Daniel
12 Stewart, Jr., as my Executor of this, my LAST WILL AND
13 TESTAMENT, to serve without requirement of bond or other
security.

...

14 Article VII

15 I give said Executor or his alternates the fullest power
16 and authority in all matters and questions and to do all
17 acts which I might or could do if living, including, but
18 without limitation, complete power and authority to invest,
19 sell, mortgage, lease, and dispose of and distribute in
kind, all property, real and personal, at such times and
upon such terms and conditions as she or he may deem
advisable.

20 Article VIII

21 All of my property, real and person, wherever located and
22 whatever nature, in which at that date I have an interest
23 [,] or which stands in my name or in my name and the name
24 of my husband, including property held of record in joint
25 tenancy, is our community property, except as outlined in
more specificity below in Article IX. I hereby confirm to
my husband his vested interest in and to our community
property.

26 Article IX

27 The residue of my property, real and personal, wherever
28 located and of whatever nature, which I now own or
hereafter acquire, I give, devise[,] and bequeath as
follows:

1 I am the Trustee of The Decker Living Trust, Dated July 31,
2 2008. In the event that my death occurs before
3 distribution of The Decker Living Trust, the entirety of my
4 estate whether community or separate in nature, shall be
5 distributed to my husband. In the event of my death after
6 the distribution of the Decker Living Trust, all of my
7 community property and separate property acquired prior to
8 the distribution of the Decker Living Trust shall be
9 distributed to my husband and all property or interest
10 acquired by me from The Decker Living Trust, shall be
11 distributed to my adoptive children as follows: Melanie
12 Juliene Decker: 35%; Stephen Ramiro Decker: 25%; Lauren
13 Marie Decker: 25%; [and] Cassandra Raylene Decker: 15%...

8 Pls. Trial Ex. B 2-4.

9 Kimberly Decker Stewart died and her husband, defendant Stewart,
10 was appointed the personal representative of her estate. Second
11 Amended TEDRA Petition for Removal of Trustee, Recovery of Decedent's
12 Assets, Damages, and Attorney's Fees at Pls. Trial Ex. G at ¶¶ 3.11-
13 3.12. Since Kimberly Decker Stewart was unable to act as the trustee
14 of her parents' trust, defendant Stewart appointed himself trustee of
15 the settlors Deckers' trust. *Id.* at ¶ 3.15. Having wrongfully taken
16 control of the settlors Deckers' trust, he then engaged in a series of
17 self-dealing transactions with the trust, all to the detriment of the
18 plaintiffs herein. *Id.* at ¶¶ 3.16-3.35.

19 Dissatisfied with Stewart's handling of the trust, the plaintiffs
20 herein brought a Trust and Estate Resolution Act petition against him.
21 Petition and Second Amended TEDRA Petition for Removal of Trustee,
22 Recovery of Decedent's Assets, Damages, and Attorney's Fees at Pls.
23 Trial Exs. C and G ¶ 3.1, *Decker v. Stewart*, No. 20-4-00041-16
24 (Superior Court Dec. 9, 2020). Ultimately, the state court removed
25 defendant Stewart as the trustee of the settlors Deckers' trust and
26 awarded the petitioners \$1.6 million in damages. *Id.* at Exs. O, P &
27 Q. In doing so, the Washington state court made very specific factual
28 findings:

1 ...

2 The four Petitioners [plaintiffs herein] are the rightful
3 beneficiaries of the Trust, and neither [Daniel] Stewart
4 [Jr.] nor [Beverly] Boss [Stewart's present spouse] are
5 beneficiaries of the Trust.

6 The Trust granted Kimberly Decker Stewart a limited power
7 of appointment, which prohibited her from designating
8 Daniel Stewart, Jr. as beneficiary under the Trust.

9 Kimberly Decker Stewart left a Last Will and Testament
10 which demonstrated her intent to preserve the Trust assets
11 for her children.

12 Stewart failed to perform an accounting of the Trust
13 assets.

14 Stewart failed to maintain financial records for the Trust.

15 Stewart engaged in self-dealing by using his power as
16 guardian of the minor children of Kimberly Decker Stewart
17 to appoint himself as Successor Trustee of the Trust and
18 Trustee of the four beneficiary trusts.

19 *Stewart engaged in self-dealing by residing in the Trust-*
20 *owned real estate in Port Hadlock.*

21 *Stewart engaged in self-dealing by utilizing Trust assets*
22 *for his own benefit, including transferring real property*
23 *located at 3526 and 3546 Oak Bay Road in Port Hadlock to*
24 *himself on March 10, 2020.*

25 *Stewart intentionally liquidated four annuities totaling*
26 *\$1,099,333.70, at a loss of \$373,683.80 which were owned by*
27 *the four irrevocable beneficiary trusts for the benefit of*
28 *the four Petitioners, and transferred the resulting funds*
29 *to his personal bank account on March 17, 2020 after he*
30 *learned that Petitioners intended to initiate this action.*

31 *OF the \$735,000 that was transferred from the Trust account*
32 *to Stewart's personal account, Stewart spent approximately*
33 *\$723,000 between March 17, 2020[,] and July 21, 2020.*

34 Stewart has not accounted for the location of any personal
35 property purchased with the Trust funds, nor any cash
36 withdraws [sic] of Trust funds, nor any sums allegedly
37 repudiated from Boss to Stewart.

38 Stewart is permanently removed as Trustee of the Trust or
39 [sic] any Beneficiary Trusts.

40 Stewart breached his fiduciary duties to the Trust and
41 Beneficiaries in his role as Trustee, and is personally
42 liable for damages to trust assets in the amount of

1 \$1,598,916.20.

2 Stewart is liable for attorney's fees and costs to the
3 Petitioners.

4 Pls. Trial Ex. O 2:1-3:6 (emphasis added).

5 **II. PROCEDURE**

6 Thereafter, the plaintiffs filed an involuntary Chapter 7
7 petition against defendant Stewart and this court ordered relief.

8 This adversary proceeding followed; it seeks to except the
9 plaintiff \$1.6 million judgment from discharge. 11 U.S.C. §
10 523(a)(4), (a)(6).

11 Discovery has closed and the adversary proceeding was set for
12 trial.

13 On the eve of trial, the plaintiffs filed a motion in limine to
14 preclude defendant Stewart from "re-litigating...the issue of
15 "defalcation while acting as a fiduciary," arguing issue preclusion.
16 Mot. Limine 2:12-16, ECF No. 43. Defendant Stewart opposes the
17 motion, arguing that no trust existed because a merger occurred since
18 Kimberly Decker Stewart was the sole beneficiary and sole trustee.
19 Resp. p. 1 ¶¶ 3-4, ECF No. 46.

20 **III. JURISDICTION**

21 This court has jurisdiction. 28 U.S.C. §§ 1334(a)-(b), 157(b);
22 see also General Order No. 182 of the Eastern District of California.
23 Jurisdiction is core. 28 U.S.C. § 157(b)(2)(I); *Carpenters Pension*
24 *Trust Fund for Northern Calif. v. Moxley*, 734 F.3d 864, 868 (9th
25 2013); *In re Kennedy*, 108 F.3d 1015, 1017 (9th Cir. 1997). Plaintiffs
26 consent to the entry of final orders and judgments by this court; the
27 defendant does not so consent. 28 U.S.C. § 157(b)(3); *Wellness Int'l*
28 *Network, Ltd. v. Sharif*, 135 S.Ct. 1932, 1945-46 (2015). Scheduling

1 Order § 2.0, ECF No. 12.

2 **IV. LAW**

3 **A. Motions in Limine**

4 The law of motions in limine is well-known to this court.

5 A motion in limine is a request for guidance on an
6 evidentiary issue. *Hays v. Clark County*, 2008 WL 2372295 *
7 7 (Nev. 2008). Among the issues that may be raised is res
8 judicata. *Id.*; *Hamilton v. Wilms*, 2016 WL 1436407 (E.D.
9 Cal. 2016).

10 As one court summarized the law applicable to motions in
11 limine: 'A motion in limine is a request for the court's
12 guidance concerning an evidentiary question. Judges have
13 broad discretion when ruling on motions in limine. However,
14 a motion in limine should not be used to resolve factual
15 disputes or weigh evidence. To exclude evidence on a motion
16 in limine the evidence must be inadmissible on all
17 potential grounds. Unless evidence meets this high
18 standard, evidentiary rulings should be deferred until
19 trial so that questions of foundation, relevancy and
20 potential prejudice may be resolved in proper context.'
21 *Hays*, 2008 WL 2372295 at 7. internal citations and
22 quotation marks omitted).

23 *In re Patacsil*, No. 20-23457-A-7, 2023 WL 3964908, at *2 (Bankr.
24 E.D. Cal. June 9, 2023).

25 **B. Section 523(a) (4)**

26 "In most instances, Chapter 7 debtors are entitled to the
27 forgiveness—in bankruptcy parlance, discharge--of their pre-petition
28 debts. 11 U.S.C. 727. Some debts are excepted from discharge. 11
29 U.S.C. 523(a)." *In re Zhiry*, No. 21-22759-A-7, 2023 WL 2530252, at *1
30 (Bankr. E.D. Cal. Mar. 14, 2023).

31 Among the excepted debts are those described in § 523(a) (4). "A
32 discharge under section 727, 1141, 1192 1 1228(a), 1228(b), or 1328(b)
33 of this title does not discharge an individual debtor from any debt—
34 ... for fraud or defalcation *while acting in a fiduciary capacity*,
35 embezzlement, or larceny." 11 U.S.C. § 523(a) (4).

36 The sine qua non for application of § 523(a) (4) is that the debt

1 from the defendant to the plaintiff arose while the defendant was
2 acting in a fiduciary capacity. Even if a debt exists, in order to
3 prevail in a 523(a)(4) action, the aggrieved creditor must prove that
4 the debtor was acting in a fiduciary capacity and, while doing so,
5 committed fraud or defalcation. *In re Stanifer*, 236 B.R. 709, 713
6 (9th Cir. BAP 1999); *In re Honkanen*, 446 B.R. 373, 378 (9th Cir. BAP
7 2011).

8 Federal--not state--law defines whether a fiduciary relationship
9 exists. *In re Berman*, 629 F.3d 761, 767-768 (7th Cir. 2011); *In re*
10 *Nail*, 446 B.R. 292, 299-300 (8th Cir. BAP 2011). The definition of
11 fiduciary capacity in the context of § 523(a)(4) is narrow.

12 Section 523(a)(4) excepts from discharge a debt "for fraud
13 or defalcation while acting in a fiduciary capacity." The
14 definition of "fiduciary capacity" under § 523(a)(4) is a
15 question of federal law. We have previously held that
16 "[t]he broad, general definition of fiduciary-a
17 relationship involving confidence, trust and good faith-is
18 inapplicable in the dischargeability context." As a result,
19 we have adopted a narrow definition of "fiduciary" for
20 purposes of § 523(a)(4): '*T]he fiduciary relationship must
21 be one arising from an express or technical trust that was
22 imposed before and without reference to the wrongdoing that
23 caused the debt.'*

19 *In re Cantrell*, 329 F.3d 1119, 1125 (9th Cir. 2003) (internal
20 citations omitted) (emphasis added).

21 **C. Issue Preclusion**

22 The law of issue preclusion is well-settled and well-known to
23 this court. "In federal courts, the preclusive effect of a state
24 court judgment is decided by the law of the state in which the
25 judgment was rendered." *In re Javahery*, No. 2:14-BK-33249-DS, 2017 WL
26 971780, at *5 (B.A.P. 9th Cir. Mar. 14, 2017), aff'd, 742 F. App'x 307
27 (9th Cir. 2018), citing *Garden v. Nourbakhsh (In re Nourbakhsh)*, 67
28 F.3d 798, 800 (9th Cir. 1995).

1 Since the underlying action occurred in the State of Washington,
2 that state's law provides the rule of decision. The State of
3 Washington has a well-developed body of authority regarding issue
4 preclusion:

5 We have developed a four-part test to determine whether a
6 previous litigation should be given collateral estoppel
7 effect in a subsequent litigation. The party asserting
8 collateral estoppel must prove: (1) the issue decided in
9 the prior adjudication is identical to the one presented in
10 the current action, (2) the prior adjudication must have
11 resulted in a final judgment on the merits, (3) the party
against whom collateral estoppel is asserted was a party or
in privity with a party to the prior adjudication, and (4)
precluding re[-]litigation of the issue will not work an
injustice on the party against whom collateral estoppel is
to be applied. A court may apply collateral estoppel only
if all four elements are met.

12 *Clark v. Baines*, 150 Wash.2d 905, 913 (2004) (internal citations
13 omitted).

14 Moreover, in determining whether to apply issue preclusion, the
15 party asserting its applicability shoulders a heavy burden.

16 The party seeking to employ issue preclusion bears the
17 burden of showing its applicability. *Vella v. Hudgins*, 20
18 Cal. 3d 251, 257 (1977). In deciding this issue, the court
19 may consider the entire record, including the rendering
20 court's Statement of Decision. Restatement (Second) of
Judgments § 27 cmt. f (1982); *In re Lopez*, 367 B.R. at 105
(statement of decision); *Grenier v. Roback (In re Grenier)*,
BAP No. NC-14-1396-KiTaD, 2015 WL 3622712, at *2-3, *7 (9th
Cir. BAP June 10, 2015) (same).

21 *In re Javahery*, 2017 WL 971780, at *5.

22 Even if the circumstances would support the application of the
23 doctrine of issue preclusion, "reasonable doubts about what was
24 decided in a prior judgment are resolved against applying issue
25 preclusion." *In re Lopez*, 367 B.R. 99, 108 (B.A.P. 9th Cir. 2007).

26 If available, the decision to apply issue preclusion falls
27 within the broad discretion of the trial court. *Parklane*
Hosiery Co. v. Shore, 439 U.S. 322, 331 & nn. 14-16 (1979);
28 *In re Lopez*, 367 B.R. at 107 (applying California law).
That decision always involves "a measure of discretion and

1 flexibility." *In re Lopez*, 367 B.R. at 107 (citing
2 Restatement (Second) of Judgments, Title E, Introductory
3 Note (1980)); Restatement (Second) Judgment § 28
(specifying circumstances where application may not be
appropriate).

4 *In re Javahery*, 2017 WL 971780, at *10.

5 **V. DISCUSSION**

6 **A. Debt**

7 The existence of a debt in an adversary proceeding under 11
8 U.S.C. 523(a) is, in most instances, proper. See e.g. *In re Patacsil*,
9 No. 20-23457-A-7, 2023 WL 2278596, at *4 (Bankr. E.D. Cal. Feb. 28,
10 2023), citing 2 *McCormick on Evidence* § 298 (8th July 2022). Here,
11 the debt has been reduced to judgment. That judgment is properly
12 before this court and satisfies all of the requirements for
13 application of Washington law on issue preclusion. *Clark v. Baines*,
14 150 Wash.2d 905, 913 (2004). That judgment is in favor of the
15 plaintiffs, and against the defendant Stewart in the amount of
16 \$1,631,266.10. Judgment at Pls. Trial Ex. Q, *Decker v. Stewart*, No.
17 20-4-00041-16 (Superior Court July 30, 2021). As a result, the
18 doctrine of issue preclusion bars re-litigation of the existence, and
19 amount, of the debt between the parties.

20 **B. Section 523(a) (4)**

21 The mere fact that another court issued a judgment that defendant
22 Stewart breached a fiduciary duty does not bind this court with
23 respect to 523(a) (4). *Brown v. Felsen*, 442 U.S. 127 (1979)
24 (settlement); *Archer v. Warner*, 538 U.S. 314 (2003) (settlement); *In*
25 *re Comer*, 723 F.2d 737, 740 (9th Cir. 1984) (claim preclusion is
26 inapplicable to discharge exception proceedings). In contrast, issue
27 preclusion is applicable in discharge exception proceedings. *Id.*

1 **1. Fiduciary capacity**

2 Section 523(a) (4) excepts from discharge, debt incurred by
3 embezzlement, larceny, or fraud or defalcation while acting in a
4 fiduciary capacity. 11 U.S.C. 523(a) (4). For actions prosecuted
5 under the third exception of 523(a) (4) the defendant must be "acting
6 in a fiduciary capacity." *In re Stanifer*, 236 B.R. 709, 713 (9th Cir.
7 BAP 1999) .

8 For the purposes of § 523(a) (4), the existence of an express or
9 technical trust gives rise to a fiduciary duty. *Double Bogey, L.P. v.*
10 *Enea*, 794 F.3d 1047, 1050 (9th Cir. 2015); *In re Cantrell*, 329 F.3d
11 1119, 1125 (9th Cir. 2003; *In re Lewis*, 97 F.3d 1182, 1185 (9th Cir.
12 1996) .

13 As applied to issue preclusion, the only issue is issue identity.
14 Here, the Washington state court specifically found the existence of
15 an express trust and that defendant Stewart was acting in a fiduciary
16 capacity. Pls. Trial Ex. O; Wash. Rev. Code § 11.96A.040(2) (2012).
17 Issue preclusion bars defendant Stewart from re-litigating whether an
18 express trust existed and whether he was acting in a fiduciary
19 capacity.³

20 **2. Defalcation**

21 Section 523(a) (4) requires either: (1) bad faith, moral turpitude
22 or other immoral conduct; or (2) an intentional wrong, i.e., knowledge
23 of the wrong or a conscious disregard by the defendant that he/she is
24 violating a fiduciary duty.

25 _____
26 ³ Defendant Stewart's merger argument was raised and rejected by the
27 Washington state court. Pls. Trial Ex. F 3:1-25, J 2:9-13, 2:10-24.
28 Moreover, such an argument is fallacious. Kimberly Decker Stewart was never
the sole trustee and sole beneficiary. The trust names her descendants as
contingent beneficiaries of the trust as to undistributed trust assets. Art.
11 § 1(a) (3) .

1 [W]here the conduct at issue does not involve bad faith,
2 moral turpitude, or other immoral conduct, [defalcation]
3 requires an intentional wrong. We include as intentional
4 not only conduct that the fiduciary knows is improper but
5 also reckless conduct of the kind that the criminal law
6 often treats as the equivalent. Thus, we include reckless
7 conduct of the kind set forth in the Model Penal Code.
8 Where actual knowledge of wrongdoing is lacking, we
9 consider conduct as equivalent if the fiduciary
10 'consciously disregards' (or is willfully blind to) 'a
11 substantial and unjustifiable risk' that his conduct will
12 turn out to violate a fiduciary duty.

13 *Bullock v. BankChampaign, N.A.*, 569 U.S. 267, 273-274, 133 S.Ct. 1754,
14 1759 (2013) (emphasis added).

15 Ninth Circuit law describes *Bullock* as a three-part test: (1) bad
16 faith, moral turpitude or other immoral conduct; (2) intentional
17 improper conduct and criminally reckless conduct; or (3) conscious
18 disregard or willfully blind to a substantial and unjustified risk.
19 *In re Heers*, 529 B.R. 734, 742-743 (9th Cir. 2015).

20 Washington state law defines a breach of fiduciary duty, at least
21 insofar as the duty of loyalty is concerned, this way:

22 (1) A trustee must administer the trust solely in the
23 interests of the beneficiaries.

24 (2) Subject to the rights of persons dealing with or
25 assisting the trustee as provided in RCW 11.98.105, a sale,
26 encumbrance, or other transaction involving the investment
27 or management of trust property entered into by the trustee
28 for the trustee's own personal account or which is
otherwise affected by a conflict between the trustee's
fiduciary and personal interests is voidable by a
beneficiary affected by the transaction unless:

(a) The transaction was authorized by the terms of the
trust;

(b) The transaction was approved by the court or
approved in a nonjudicial binding agreement in
compliance with RCW 11.96A.210 through 11.96A.250;

(c) The beneficiary did not commence a judicial
proceeding within the time allowed by RCW 11.96A.070;

(d) The beneficiary consented to the trustee's conduct,

1 ratified the transaction, or released the trustee in
2 compliance with RCW 11.98.108; or

3 (e) The transaction involves a contract entered into or
4 claim acquired by the trustee before the person became
5 or contemplated becoming trustee.

6 ...

7 (4) A sale, encumbrance, or other transaction involving the
8 investment or management of trust property entered into by
9 the trustee for the trustee's own personal account that is
10 voidable under subsection (2) of this section may be voided
11 by a beneficiary without further proof.

12 ...

13 Wash. Rev. Code § 11.98.078 (2012) (emphasis added).

14 Notably, Washington organic law requires no finding of moral
15 failure or knowledge that his actions violate his fiduciary duties to
16 find a breach of fiduciary duty. That the trustee acts in violation
17 of § 11.98.078 is sufficient.

18 Here, there is issue identity. The Washington state court found
19 the Stewart transactions with the Decker trust for this own personal
20 benefit. Wash. Rev. Code § 11.98.078(2),(4) (2012). It found that he
21 engaged in multiple acts of "self-dealing" and that he "intentionally"
22 liquidated assets and transferred them to his personal account.

23 Amended Order Granting Petition for Final Judgment at Pls. Trial Ex. O
24 2:10-25, *Decker v. Stewart*, No. 20-4-00041-16 (Superior Court Dec. 9,
25 2020) (describing "self-dealing"). Self-dealing, backed by a finding
26 of intent, has been found sufficient to satisfy the first prong, bad
27 faith and/or immoral conduct requirement of *Bullock*. *In re Tomasi*,
28 No. ADV 10-1446-MT, 2013 WL 4399229, at *10-11 (B.A.P. 9th Cir. Aug.
15, 2013). For these reasons, issue identity exists.

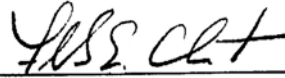
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30 /

1 **VI. CONCLUSION**

2 For each of these reasons, the motion in limine will be granted
3 in its entirety. The court will issue an order from chambers.

4
5 **Dated:** January 23, 2024

6 

7 _____
8 **Fredrick E. Clement**
9 **United States Bankruptcy Judge**

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Instructions to Clerk of Court
Service List - Not Part of Order/Judgment

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith *to the parties below*. The Clerk of Court will send the document via the BNC or, if checked , via the U.S. mail.

Attorneys for the Plaintiff(s)	Defendant(s)
Bankruptcy Trustee (if appointed in the case)	Office of the U.S. Trustee Robert T. Matsui United States Courthouse 501 I Street, Room 7-500 Sacramento, CA 95814

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