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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

PETER BEAGLE, Plaintiff and Respondent, v. CONNOR COCHRAN, Defendant and Appellant.	A158551 (Alameda County Super. Ct. No. RG15794528)

Connor Cochran appeals from a judgment against him on claims of financial elder abuse, fraud, breach of fiduciary duty, and defamation. He contends that the judgment is legally and factually unsupported in a number of respects, and that he was prejudiced by several of the court's pretrial rulings.

We conclude the appeal must be dismissed as moot due to the post-appeal entry of an order of discharge in Cochran's bankruptcy case.

BACKGROUND

Peter Beagle, 79 years of age at the time of trial, is an award-winning author of fantasy fiction, most famously The Last Unicorn, published in 1968 and made into a film in 1982. Cochran, who described himself as a writer, artist, businessman, and longtime fan of Beagle's work, met Beagle in 2001. The two became friends, and Cochran helped Beagle in various ways, personally and professionally, and became Beagle's business manager.

In 2008, Cochran and Beagle formed Avicenna Development Corporation (Avicenna) to hold Beagle's and Cochran's intellectual property. The articles of incorporation for Avicenna were signed by both Cochran and Beagle, and divided ownership equally between them. The bylaws, however, were signed only by Cochran, with no signature line for Beagle, and gave Cochran all voting rights and all operational control. The bylaws named Beagle "chief creative officer," a position given no power in the organization.

On the same day Avicenna was incorporated Cochran also incorporated Conlan Press, owned solely by Cochran, and Connor Cochran, Inc. Conlan Press sold products based on Avicenna's rights, as well as other things. Connor Cochran, Inc., was intended "to do things that were not going to be done by either Avicenna or Conlan Press," but did not end up doing any business and was used as Cochran's personal bank account.

Steve Morang, an expert in fraud investigation and detection, testified that seniors are often targeted by fraudsters, and that the allegation Cochran was Beagle's business manager suggested a high risk for fraud because such relationships often lack controls to ensure the representative is acting in the best interest of the represented party, such as having an independent person review financial records. Morang testified that the fact Avicenna's articles of incorporation, which split ownership between Beagle and Cochran, were signed by both parties but the bylaws, which gave all voting rights and all operational control to Cochran, were signed only by Cochran caused him to "expect" fraud and suggested the bylaws "were done with a different purpose in mind." Morang testified that Cochran assigned all responsibility to himself "apparently without the knowledge of Mr. Beagle," as the documents were dated the same date, but the bylaws were signed only by Cochran and

did not have a signature line for Beagle.[1] He opined that the reason Beagle did not sign the bylaws was that "if he would have seen that document it would have been clear to him what Mr. Cochran organized," and that Cochran intentionally misled Beagle.

Various other documents Morang reviewed also caused him to question Cochran's intentions. One was an email written by Cochran in 2006 that stated, "Avicenna Development currently controls nearly all of Peter's creative works. What it does not control it is in a position to acquire at costs which are extremely low compared to likely return." This raised a red flag to Morang because it referred to Avicenna, which was not formed until 2008, as a "Connor Cochran venture," and the reference to Avicenna "controlling all of Beagle's creative works" was false because at that time, there was no agreement between Avicenna and Beagle. Also, the email gave the impression Cochran intended to acquire Beagle's creative works at very low cost when "he's purporting that these intellectual properties are worth tens of millions of dollars." Morang acknowledged on cross-examination that he had no experience with Hollywood pitches and that the 2006 email did not say Avicenna was an existing company, but testified, "it was my understanding this was a pitch to investors, but the impression that it gave me when I read

[1] Morang testified that both the articles of incorporation and the bylaws were dated January 14, 2008. Trial exhibit 1010, a copy of the bylaws, is consistent with this testimony. Trial exhibit 1009, the articles of incorporation, bears a stamp indicating the document was filed with the Secretary of State on January 14, 2008, but the date printed above the signature lines on the document is January 9, 2008.

it is that Avicenna Development is something that currently exists, because it currently controls something."[2]

A March 2016 operating agreement between Avicenna and Conlan Press, signed only by Cochran on behalf of each entity, gave Conlan Press rights to use intellectual property belonging to Avicenna (which included Beagle's intellectual property) "as it deems necessary." Morang testified this "might seem to be at the disadvantage of Avicenna" and nothing in the document gave any indication Beagle was aware of or consented to it.

Asked about correspondence in which one Brian Consantine told Beagle's attorney that royalties for The Last Unicorn were paid to Conlan Press rather than Avicenna at Cochran's instruction, Morang testified this seemed unusual because "it doesn't seem right that the payment would go to a company that wasn't responsible for the contract."

Morang concluded from the documents he reviewed that Cochran "had the intention of misusing the trust of Mr. Beagle to take away his intellectual property for his own personal gain." There was "no doubt" in Morang's mind that Cochran's intent was "to do exactly what he did, which was to basically get control of Mr. Beagle's intellectual property at almost zero cost." In Morang's opinion, Beagle was harmed in that he "handed over his rights to his intellectual property to Mr. Cochran who could then decide if and how much he would in return get for his properties, regardless of what the value or the income was coming into Mr. Cochran."

When Cochran asked Morang whether he would give authority to bind a corporation to a person he knew to be a spendthrift and lifelong "financial

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[2] Cochran told the witness he was missing context as the document was "a conceptual document, a pitch," that was the beginning of a two-year process before Avicenna was actually formed.

disaster" with "negative business sense," Morang responded, "Probably not." Morang testified on redirect, however, that in this situation he would have the person acknowledge what was being done; the problem here was that one person was making the decision without it being clear the other was informed of it. Morang would also expect both people who formed a company together to sign the bylaws.

Michael Heard, a film producer and certified public accountant, testified as a financial expert in the entertainment industry. He had a business relationship with Beagle and Cochran, but not a personal friendship.

Heard reviewed bank statements for the years 2007 to 2017 for Avicenna, Conlan Press, Connor Cochran, Inc., CFC Beagle (a joint account held by Beagle and Cochran), and Cochran's personal account to identify expenditures that were likely, unlikely, or highly unlikely legitimate business expenses. The expenses he placed in the highly unlikely category included massages, acupuncture, gym memberships, pet food, veterinarians, Hawaiian vacations, scuba diving, horseback riding, and local grocery store purchases. Heard found expenditures on behalf of both parties that he believed were not legitimate business expenses, but over $800,000 were on behalf of Cochran and just over one-fifth that amount were on behalf of Beagle.

Heard testified that the various bank accounts were comingled and the companies were used as personal holdings for Cochran. There were a lot of transfers between the accounts and to accounts Heard did not have records for, as well as cash withdrawals and checks made out to Cochran. One pattern Heard noticed was a "high number of transactions" in which money that came into the CFC Beagle account was immediately transferred to Cochran's personal account. Indications such as "Unicorn" written on the

memo section of checks led Heard to believe revenue related to Beagle's properties was received into non-Avicenna accounts. Cochran "pierced the corporate veil. [He] took Avicenna business and [he] mingled it with other businesses, [he] mingled it with Conlan Press, [he] mingled it with Connor Cochran, Inc, [he] mingled it with the bank account that [he] and Peter held together."

Heard concluded that Cochran substantially interfered with Beagle's rightful property by knowingly or intentionally taking possession of income that was rightfully Beagle's. He testified that charging a corporation for expenses such as scuba diving and others mentioned above goes beyond any grey area between business and personal expenses and indicates a lack of good faith. Cochran did not act in Beagle's best interest with regard to finances and knew or should have known he was harming Beagle by expending company resources in self-serving ways.

On cross-examination, Heard acknowledged that the records he reviewed were incomplete, there were transactions for which he could not determine legitimacy and others for which reasonable explanations might be possible, but stated that the "preponderance of the quantity, the breadth, the nature of those expenses lead me to render an opinion regarding their legitimacy." Some of Heard's assumptions were contradicted by other evidence, such as $300,000 counted as revenue for Avicenna that Cochran testified was actually a loan, and a payment of $17,801 to "Fountain International," which Heard believed was a private school in the Philippines and therefore not a legitimate business expense, but David Roudebush testified was actually a company he owned through which he had helped resolve a dispute over rights to The Last Unicorn.

Avicenna was suspended by the Secretary of State in 2011; it never filed a federal tax return, and its annual state tax returns from 2008 on were all filed in 2016, during the pendency of this lawsuit, to bring the company out of suspension.[3] Heard testified this was the first time he had come across a corporation that remained suspended for over four years while still doing business.

Elizabeth Soloway, licensed fiduciary who had been Beagle's power of attorney for finances since September 2015, testified that Beagle "[p]robably" could pay his own bills if he wanted to; she had not observed cognitive or mental issues that would prevent him from doing so, but she did not think he enjoyed paying bills and bookkeeping. To Soloway's knowledge, Cochran did not send any money or share of income to Beagle in 2016 or 2017, and Beagle did not have direct access to money or finances for Avicenna. She saw a red flag for elder abuse in that when she first met Beagle, he was fearful and anxious about his finances and whether he was "going to be on the street," his finances were being handled by someone else, and he did not know how much money he would be getting or "have any access to records of the company he was supposedly a part of." She no longer saw this fear and anxiety in him.

Dr. Brian Charles Richardson, a neurologist, testified as an expert witness. Richardson examined Beagle in 2015 and found he had "some very mild cognitive impairment," but was "entirely competent" and able to make

[3] Heard testified that certain revenues were not included in Avicenna's tax returns for the years 2008 through 2015, and certain other information was not accurate.

personal, business, and health decisions "without any limitation."[4] He continued to see Beagle over the three years between 2015 and the trial in 2018, and did not see any evidence of alcohol abuse or confabulation.[5]

Heard testified that a couple of years prior to trial, he received a call from Cochran "out of the blue" saying that Beagle was suffering from health issues: Cochran "described a man who was beginning to make very bad decisions, a man who was not in charge of his mental faculties, a man who could not be trusted or entrusted with decision-making," and said Beagle was suffering from "some sort of dementia, early onset Alzheimer's, or something of that nature." Heard was surprised because in his experience Beagle was "sharp and very personable" and did not seem to exhibit signs of dementia. Worried because he had approached companies about financing a project to get The Last Unicorn produced with Beagle as the screenwriter, Heard contacted his producing partner and learned she had been given the same information by Cochran.

Several witnesses called by the defense also testified that Cochran told them he believed Beagle had problems with dementia and/or alcohol. Marilyn Abbey, a writer and editor, testified that Cochran told her Beagle had an "alcohol problem," a "depression problem," and "possibly a dementia

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[4] Richardson's evaluation was documented in a letter dated September 9, 2015, stating, "I saw Mr. Peter S. Beagle today regarding a cognitive evaluation. I found him to be fully competent to make personal and business decisions at this time. He is by no means demented at this time."

[5] Richardson described "confabulation" as someone filling in a memory deficit with "things that have not really happened, but might be made up by the individual either on the spot or before." He testified that most people with mild cognitive impairment would not have sufficient memory deficit to cause confabulation, while a person without any memory disorder might confabulate when especially tired or after drinking.

problem." Cindy Lee Hutchins, a business acquaintance, testified that Cochran told her Beagle was suing him for fraud because Cochran thought Beagle "was having the beginnings of dementia" and Beagle "did not like that."

Beagle testified that he made Cochran his business manager because he trusted him "completely," Cochran "seemed to want to take care of so much" and, although he did not have credentials, appeared to have a "good deal of business background." At trial, Beagle could not remember exactly why Cochran said a corporation was a good idea, but he knew other writers had done this "to control their own rights" and reduce their tax burdens, and believed he needed it to make better deals in Hollywood.

Beagle testified that when he signed the articles of incorporation for Avicenna, he believed he would be an equal partner with Cochran and an officer of the corporation. He did not see the bylaws before filing the complaint in this lawsuit and would not have formed the corporation if he had, because it left him with no control and with his intellectual property rights "completely out of my hands in perpetuity." Beagle also had not seen the operating agreement between Avicenna and Conlan Press and would not have agreed to it if he had seen it. Beagle understood Conlan Press would be able to make money from his work without paying full value for it.

Cochran handled all Beagle's money aside from his pension and social security, including paying his rent. A December 2011 email from Beagle to Cochran about an "alarming" call from his landlord concerning unpaid rent and potential eviction was an example of Beagle occasionally having to contact Cochran when rent went unpaid or the phone was suddenly cut off for nonpayment. Cochran would make Beagle feel that each confusion, misunderstanding, or mistake was Beagle's fault.

Beagle testified that when an eight-and-a-half-year conflict with ITV over rights to his work reached settlement in 2011, he got nothing and it all went to Avicenna or Cochran. Cochran told him it "wasn't anything very much" and all went straight to bills and expenses. At the time Beagle filed the present lawsuit, Cochran had told him three "very large deals" were being negotiated regarding The Last Unicorn, including film rights and a Broadway musical project. Asked why he filed a lawsuit that would interrupt these deals, Beagle responded that he believed they were not going to happen and, if they did, he would be cut out of them, because he no longer trusted Cochran.

In June 2015, four days after Beagle asked Cochran to allow a neutral third party to review Avicenna's accounts, Cochran wrote an email to Beagle's children and friends stating Beagle was in a serious situation and needed help because his mental condition was compromised. When he saw the email, Beagle felt betrayed and depressed.

Subsequently, Beagle's daughter Kalisa filed a petition to establish a conservatorship for him. Beagle was "deeply sad and profoundly angry," but not "terribly surprised," because he had spoken with her and "listened to her endless defense of [Cochran]." The case never came to court, Beagle said, because Kalisa's lawyer advised her to drop it and, when she did not, asked to be removed from the case. At the time he testified, Beagle had not spoken to his children for two years.

Cochran's Case

Cochran testified that Beagle was deeply in debt when they first met, "living on rice and beans and loans from friends," and very stressed. Perceiving Beagle to be a "spendthrift," Cochran took actions to protect him and ensure his bills were paid. He became Beagle's manager after a year or

two of solving Beagle's "easy problems," because he needed some sort of official status to "make headway on any big problems," such as "three decades of unpaid royalties from The Last Unicorn." According to Cochran, however, he was not acting in the usual manner of Hollywood managers, who have "draconian authority" and get "a huge amount of the income"; he was only making suggestions, which Beagle did not always follow. Beagle knew he had problems with money management, so they set up a joint account that was intended to cover his basic monthly budget, and they would look together at expected monthly income and expenses. Cochran did not have any say in how Beagle handled his other finances and Beagle continued to create serious problems for himself, which he would then ask Cochran to fix.

Cochran testified that he had always done his utmost to try to help Beagle. Working on Beagle's "career and issues" became a "personal cause" that "pretty much swallowed up [his] life" and he was earning far less than the going industry rate, but it was worth it because he made "serious progress"—Beagle's writing was "reinvigorated" and there were "lots of new stories appearing in all kinds of places." Cochran recovered all the rights Beagle had lost (except for film rights to one short story) with "nice settlement payments," and improved Beagle's social media presence. Beagle sometimes had trouble finishing on deadline and Cochran, with Beagle's approval, sometimes wrote as much as 50 to 80 percent of the final text without taking credit. In the 10 years this lawsuit claimed Beagle was living in poverty, Cochran said, Beagle was actually spending, or having spent on his behalf, $70,000 to $100,000 annually.

Cochran testified that in 2011, he convinced ITV, the company that owned the film rights to The Last Unicorn, to agree to a "big payout"—"a permanent five percent piece of gross and a path towards reunifying all the

rights"; in 2012, he found a lender to back a screen tour that launched in 2015; and he convinced ITV to go ahead with the "reunification plan we started discussing in 2014, and put Avicenna in charge of making The Last Unicorn franchise deal in Hollywood when the rights became available again in 2015." According to Cochran, the reunification deal would have put Beagle in the "unprecedented" position of being co-owner of "everything ever made from anything he'd written," as well as "all the intellectual property that we developed out of spin-offs" and "other intellectual property that he never made any contribution to at all."[6] Since the lawsuit was filed, Beagle and Cochran "no longer own anything we ever created," and it was all in the hands of the bankruptcy court.

Asked if Beagle received any benefit from $277,000 Avicenna received in the settlement from ITV (other than $48,000 spent on dental implants),[7] Cochran testified there were "other payments being made to support him such as his rent and other things. [¶] [I]t wasn't like money came into Avicenna and it was handed out to me and him automatically. There was a plan in place to move things forward and companies have expenses to do

[6] Cochran testified that Beagle's "position in these deals was unprecedented. Even J.K Rowling, the author of the Harry Potter books, is not a co-owner of the Harry Potter movies."

[7] Cochran believed Beagle's dental implants were a proper business expense and provided a benefit to Beagle, as did payment of his rent and other expenses. Cochran stated, with respect to Heard's testimony, that this was not a legitimate business expense because health care expenses are only reimbursable if a corporation has a healthcare policy in effect, that Beagle had lost all but three teeth, and got the implants to improve his appearance prior to a two-year promotional tour for The Last Unicorn.

things."[8] There were no written records of this plan: "It was what we talked about together and decided to do together."

Cochran testified that at the time Avicenna was formed, Beagle's intellectual property had "very little" value because the only property then making significant money was the Last Unicorn, which was making money for the owners of the film rights, not Beagle. Beagle was earning at most $20,000 a year in royalties from all his works combined, and Conlan Press was paying him $40,000 to 70,000 annually for sales of his works. The value of Cochran's intellectual property at the time Avicenna was formed was greater because "there was more of it, and, more of it had more recently been attracted to Hollywood," but it was not bringing in any money because Cochran was focusing all his time on developing Beagle's intellectual property.[9]

Cochran testified that the 2006 document stating Avicenna controlled nearly all of Beagle's intellectual property was "trying to bring in investors to help us buy back things that [Beagle] had lost over the years in various ways," such as trying to raise money to buy back the rights to The Last Unicorn from ITV. He testified that Beagle was given the Avicenna bylaws and they were discussed with him. As to why Beagle did not sign the bylaws, Cochran testified, "I honestly can't tell you, sitting here today, why. My faint memory is it had something to do with the scheduling involved in filing the

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[8] Rent and utilities were paid for both Cochran and Beagle by Avicenna, Conlan Press, or Cochran personally.

[9] Cochran testified that he put three properties into Avicenna that had been "in play" in Hollywood: "Big Bang Blue," developed at Fox Family Films; "Prodigal Sons," worked on with an HBO executive; and "D'arc Tangent," a comic book Cochran was trying to have made into a movie, as to which Cochran was in a dispute with his co-creator over ownership.

paperwork. It's not anything more than that. [¶] It certainly wasn't anything insidious, and the content of the bylaws was discussed with Mr. Beagle." According to Cochran, during the two-year process of forming the corporation, he and Beagle "spoke at length about every element of this."

Cochran testified that Avicenna went into suspension in 2011 because it paid distributions and benefits to Beagle rather than paying its taxes, a choice to prioritize Beagle's needs that was made with Beagle's awareness and agreement. None of the emails produced in discovery reflected Cochran's discussions with Beagle about this choice, Cochran stated, because the subject was always discussed in person.

Cochran testified that the first sign "something unusual" was going on with Beagle was in the fall of 2010, when during an interview, Beagle spontaneously told a detailed story about his observations of and interactions with Angela Lansbury at a recording session that were not true: The producers subsequently told Cochran that Beagle was not present at the recording session, and the details he described were incorrect. Other issues included Beagle taking clothes that did not belong to him when he packed to leave a house they were staying in, and not recognizing that a meal he was served was not what he had ordered.

Cochran acknowledged receiving an email in which Beagle asked him to stop discussing his concerns about Beagle's health with others and testified that he stopped discussing Beagle's situation with "the general world," but not with people Cochran felt had reason to be concerned, including Beagle's family and business associates with whom they were "in the middle of . . . multimillion dollar deals." Cochran copied his response to Beagle's email to a number of individuals, including Beagle's children and a close friend of Beagle's, because Cochran wanted them to be "witnesses": Cochran "didn't

feel anything I said was being heard or understood" and hoped the people close to Beagle would help him understand Cochran "wasn't saying what [Beagle] thought I was saying." Cochran testified that what he said about Beagle's mental health was his opinion, not fact, and if he said it was fact in an email, "it was probably hyperbole."

On July 20, 2015, around the same time Cochran learned Beagle was discussing filing a lawsuit against him, Cochran wrote in an email to Beagle's attorney (copied to Beagle's family and friend), " 'It is no longer debatable that something is wrong with his physical/mental health. First, his personality has changed too much and too fast in recent days. [¶] Second, he is having memory and comprehension problems that go well beyond anything that can be ascribed just to age. [¶] Third, his ability to write, the foundation of his self image during the 14 years I have known him, is in tatters. The only time he can now muster anything faintly like his old ability appears to be in short bursts or misdirected anger."

Asked about Dr. Richardson's testimony that Beagle was fully competent in the fall of 2015 and beginning of 2016, Cochran said he respected Richardson's opinion, but Richardson was not aware of things Cochran had witnessed and acknowledged on cross-examination that such things could warrant further investigation.

Beagle's son Daniel and daughter Kalisa both testified that Cochran had not influenced their opinion of their father "other than by sharing basic information about his business or his behavior." Kalisa did not recall Cochran saying Beagle was "a drunk" or "senile" and she herself stated that Beagle "completely embroiders and confabulates." Asked by Cochran if she thought he said the "appalling things" Beagle attributed to him, Kalisa replied, "[i]t's not the way you speak, not your intent. Your intent is

concern . . . ." Daniel testified that prior to 2015, he had not heard Cochran say anything negative about Beagle or say Beagle was an alcoholic, a drunk, or senile.

Beagle's children filed the conservatorship action in part due to concerns about Beagle's girlfriend, Peggy Carlisle; Kalisa testified that Carlisle was "coursing through" Beagle's money, resulting in Beagle continually asking Cochran for more, and that she and her siblings felt Beagle was in a "very stressful and abusive situation" that was not healthy for him. Kalisa further testified that they were concerned about Beagle's health, particularly nutrition, and wanted to ensure he would get a thorough medical evaluation. They dropped the conservatorship action, she testified, because their lawyer was incompetent, it was going to be "tremendously expensive," some pressure was removed when they learned that Beagle had a fiduciary, and another lawyer advised them there was no guarantee they would be able to separate Beagle from Carlisle.

David Roudebush, who had worked with Cochran on marketing and advertising projects for 25 years, met Beagle in 2001 and assisted in Cochran's efforts to help Beagle. Roudebush observed financial mismanagement by Beagle in that Beagle asked to borrow money shortly after they met, his house was in foreclosure, he seemed chronically in need of money, and his contracts were "badly set up." He felt Beagle had "negative business sense."

Cochran also presented several witnesses who described incidents in which Beagle enthusiastically recommended Cochran for the help he had provided, personally benefitted from Cochran's attention to a faltering career, and displayed or discussed having memory issues.

The Lawsuit

Beagle filed a complaint against Cochran, Avicenna, and Conlan Press in November 2015, alleging causes of action for elder abuse (financial), elder abuse (constructive fraud), elder abuse (intentional infliction of emotional distress), elder abuse (physical), fraud, defamation (libel), defamation (slander), breach of fiduciary duty, breach of contract, accounting, constructive trust, conversion, involuntary dissolution of corporation, breach of the covenant of good faith and fair dealing, and violation of Business and Professions Code section 17200. Seven of these causes of action were alleged against Cochran alone; the others were alleged against Cochran and one or both of the corporate defendants. Prior to trial, the court granted a motion for judgment on the pleadings as to the cause of action for physical elder abuse, and Beagle dismissed the cause of action for involuntary dissolution of the corporations.

By the time the bench trial began in October 2018, Avicenna, Conlan Press, and Cochran had all filed bankruptcy petitions. The bankruptcy court had initially granted Beagle's motion for relief from the automatic bankruptcy stay to allow him to litigate his claims in the present case. After the corporate cases were converted from Chapter 11 to Chapter 7 proceedings, the bankruptcy court granted the bankruptcy trustees' motions for relief and reinstated the stay as to Avicenna and Conlan Press. The bankruptcy court did not reinstate the stay in Cochran's individual bankruptcy and, at a hearing on June 19, 2018, the bankruptcy judge told Beagle's attorney, "Your client is free to proceed against him."[10] The trial

[10] The transcript of the bankruptcy court hearing indicates that if Cochran's case had been converted from Chapter 11 to Chapter 7, the judge would have reinstated the stay as it did in the corporate cases: "[H]ad the

court bifurcated the present case to allow Beagle to try the six causes of action alleged solely against Cochran as an individual without adjudication of claims against Avicenna or Conlan Press.

The trial court found Beagle proved by a preponderance of the evidence his claims against Cochran for financial elder abuse (also characterized as " 'elder abuse—constructive fraud' "), fraud, breach of fiduciary duty, and defamation, but did not prove his claims for elder abuse based on acts resulting in mental suffering or for conversion. The court found Cochran did not prove his affirmative defenses. It awarded Beagle $7,500 for defamation and $325,000 on the remaining claims, found Beagle did not prove his claims for punitive damages, and reserved jurisdiction over Beagle's request for attorney's fees. Judgment was filed on August 7, 2019.

On August 22, 2019, the bankruptcy court entered an order granting Cochran a discharge under title 11 United States Code section 727. Beagle sought an order of non-dischargeability to enable him to collect on his judgment in the present case, which the bankruptcy court denied. Cochran's individual bankruptcy case was closed in December 2019.

Cochran filed a notice of appeal on October 3, 2019.

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case been converted, I likely would have signed it [i.e., the order vacating the order for relief from stay]. . . . I'm just saying at this time, I'm denying it. We'll file that, and then if the case is converted on July 31st, assuming a motion is on file moving to convert or dismiss—and the court's intention would be likely to convert the case—then if someone wanted me to reconsider, I'll reconsider. Cochran's case was converted to Chapter 7 in August 2018. As far as we are aware, no further action was taken with respect to the bankruptcy court's order granting relief from the stay as to Cochran individually.

DISCUSSION

I.

Beagle contends we should dismiss this appeal as moot because, due to the bankruptcy court's discharge order, the trial court's judgment is void and cannot be enforced against Cochran. As a result, Beagle maintains, Cochran is not aggrieved by the judgment and there is no relief this court can afford him.[11]

Cochran argues the appeal is not moot because more than money is at stake, stating he seeks relief from "the very existence of the unsound judgment," which "besmirches [his] name by appearing to find [him] liable for misconduct parallel to criminal fraud."[12] Cochran argues that Beagle's efforts to have the appeal dismissed, and failure to dismiss "the remaining (purportedly moot) causes of action against [Cochran] in the Superior Court,"

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[11] Beagle filed a motion to dismiss prior to briefing, which we denied without prejudice to raising the issue in the briefs on the merits.

[12] Cochran argues that Beagle "and his allies" use the existence of the judgment to attack Cochran in public "as a convicted criminal," pointing to a press release describing Beagle having reclaimed rights to his intellectual property after legal battles against his "ex-manager" in state and bankruptcy court. The document refers to elder abuse as a "sinister crime." We declined Cochran's request to take judicial notice of the document (as well as one of the others included in his June 1, 2021 supplemental request for judicial notice), and have not considered it in resolving this appeal.

Cochran's supplemental request for judicial notice also included several court documents. As to these, we took the request under submission to be decided with the merits of the appeal. We had done the same with a request for judicial notice Cochran filed on August 18, 2020. Neither request was opposed.

We now take judicial notice of the court records in items 1 through 8 of the August 18, 2020 request for judicial notice, and items 3 through 6 of the June 1, 2021 supplemental request for judicial notice. We deny the request as to item 9 of the August 18, 2020 request for judicial notice.

demonstrate the judgment has value to Beagle independent of the financial award, and that the appeal involves several issues as to which this court has power to grant relief.

"A case is moot when the decision of the reviewing court can have no practical impact or provide the parties effectual relief." (*City of Riverside v. Horspool* (2014) 223 Cal.App.4th 670, 682 (*Horspool*); *Eye Dog Foundation v. State Board of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541; *Cucamongans United for Reasonable Expansion v. City of Rancho Cucamonga* (2000) 82 Cal.App.4th 473, 479.)[13]

"A discharge order under the Bankruptcy Code: extinguishes the debtor's personal liability with respect to his creditor's claims; voids any judgment to the extent of the debtor's personal liability for a discharged debt; and enjoins the commencement or continuation of civil suits against the debtor personally to recover any discharged debt. (11 U.S.C. § 524(a); *Johnson v. Home State Bank* (1991) 501 U.S. 78, 84, fn. 5; *Ortiz v. Workers' Comp. Appeals Bd.* (1992) 4 Cal.App.4th 392, 398; *Songer v. Cooney* (1989)

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[13] Cochran argues *Horspool* does not support finding the present case moot because its "facts and posture[]" are "inconsistent with this appeal." As relevant here, the appeal in *Horspool* challenged orders in a nuisance abatement action appointing a receiver and proceeding with the receiver's motion for authority to sell the property after a notice of appeal had been filed (without the appeal bond necessary to stay proceedings in the trial court). (*Horspool*, *supra,* 223 Cal.App.4th at pp. 681–682.) As Cochran points out, these issues were found moot because the appellant's failure to obtain a stay left the trial court free to grant the order permitting sale of the property, the property had been sold, and there was no relief the appellate court could grant. (*Id.* at pp. 682–683.) There is no inconsistency between the basis for mootness in *Horspool* and in the present case: *Horspool* is relevant not for its factual similarity but for its conclusion that an appeal is moot if post-appeal events leave the appellate court "unable to fashion any meaningful relief." (*Id.* at p. 682.)

214 Cal.App.3d 387, 391; 3 Collier on Bankruptcy (15th ed.1996) ¶ 524.01[2], p. 524–15; *id.,* ¶ 524.02[1], p. 524–17.)"[14] (*Hurley v. Bredehorn* (1996) 44 Cal.App.4th 1700, 1704 (*Hurley*).)

Hurley considered what an appellate court should do when the judgment on appeal is discharged in bankruptcy. In that case, defendants who were awarded attorney fees in the trial court appealed from an order granting the plaintiff's motion to tax costs, arguing the fee award was improperly reduced. (*Hurley, supra,* 44 Cal.App.4th at p. 1702.) While the appeal was pending, the plaintiff filed a bankruptcy petition and obtained an order of discharge, which the defendants conceded included the judgment awarding attorney fees. (*Id.* at pp. 1702, 1704.) The court explained: "Under the clear and unambiguous language of [title 11 United States Code] section 524(a), that judgment, to the extent it determined plaintiff's personal liability, is void. (*Matter of Shondel* (7th Cir.1991) 950 F.2d 1301, 1306 ['On its face, the provision prevents suits and renders judgments void . . . with respect to the "personal liability" of the debtor . . . .']; *In re Levy* (N.D.Cal. 1988) 87 Bankr. 107, 108, 110 ['Section 524(a) was designed to void any judgment obtained before or after the discharge *without requiring the debtor to take any action at all.* [Citation.]']; *Matter of Gallagher* (W.D.Wis. 1985) 47 Bankr. 92, 97 [fraud judgment obtained in violation of discharge

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[14] As relevant, title 11 United States Code section 524(a) provides: "A discharge in a case under this title . . . [¶] (1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under . . . this title, whether or not discharge of such debt is waived; [¶] (2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived . . . ."

injunction was void]; *Armenta v. Edmonds* (1988) 201 Cal.App.3d 464, 466 [default judgment against real estate agent was abrogated by discharge in bankruptcy].) Furthermore, the discharge order acts as an injunction against the continuation of any action to hold the debtor personally liable on a discharged claim. (*In re Walker* (10th Cir.1991) 927 F.2d 1138, 1141; *Ortiz v. Worker's Comp. Appeals Bd., supra,* 4 Cal.App.4th at p. 398 [employer's discharge in bankruptcy enjoined continuation of worker's compensation case against employer].)" (*Hurley,* at p. 1704.) Since the appeal sought to hold the debtor liable on a discharged debt, "the 'continuation' of this appeal has been enjoined under the plain language of [title 11 United States Code] section 524(a)." (*Ibid.*)

Noting the dearth of authority as to what an appellate court should do when a discharge order is entered during the pendency of a state court appeal, *Hurley* court cited cases from Missouri and Wisconsin holding "an appeal from entry of a judgment on a debt which has been discharged in bankruptcy is moot and must be dismissed" because a decision on the merits "could not have any practical effect." (*Hurley, supra,* 44 Cal.App.4th at p. 1705, citing *Shore v. Ultimate Hair & Skin Care* (Mo.Ct.App. 1993) 850 S.W.2d 954, 956, *Horton v. Dahlman* (Mo.Ct.App. 1987) 723 S.W.2d 619, 620; *Lumby v. Lumby* (Wis.Ct.App. 1983) 341 N.W.2d 725, 725–727.) The defendants in *Hurley,* however, argued there were circumstances in which a decision on the merits of the appeal might become necessary— "*if* as yet undiscovered property of plaintiff's becomes available to his unsecured creditors in the bankruptcy case; *if* defendants file a proof of claim in the bankruptcy court which includes the attorney fee award which is the subject of this appeal; *if* plaintiff objects to that claim; and *if* the bankruptcy court abstains from deciding the allowability of that claim in favor of a decision by

us on the merits of the underlying dispute." (*Hurley,* at p. 1705.) Since only the bankruptcy court could decide whether there were circumstances warranting a modification of the discharge order, the *Hurley* court granted the defendants 60 days to secure a modification of the discharge order from the bankruptcy court allowing the appeal to proceed; absent such modification, the appeal would be dismissed as moot. (*Id.* at p. 1706.)

No similar circumstances exist in the present case to suggest the appeal may not be moot. Beagle sought an order from the bankruptcy court extending time to allow him to file a non-dischargeability complaint, which the bankruptcy court denied, and the bankruptcy case was closed. The trial court's judgment was discharged and neither party suggests any circumstance under which this could change.

Cochran's contention that his appeal raises several issues on which we have power to grant relief is mistaken. He lists four issues he believes we can consider and resolve with "practical, tangible impact on the parties' conduct and legal status." The first of these is the trial court's striking of his cross-claims against Beagle's attorney and against Peggy Carlisle. The trial court granted attorney Hunt's motion to strike Cochran's cross-claims against her pursuant to Code of Civil Procedure section 425.16 on July 26, 2016, and Cochran expressly acknowledges in his opening brief that he cannot challenge this order because he failed to timely appeal it. Cochran's cross-claims against Carlisle were dismissed on November 11, 2017, when the trial court granted Beagle's motion for terminating sanctions and dismissed Cochran's remaining cross-claims with prejudice, finding Cochran's conduct

in discovery "unusual and egregious."[15] The written, signed order dismissing the cross-complaint constituted a judgment (Code Civ. Proc., § 581d) and, as it resolved all claims involving Carlisle, was immediately appealable. (*Herrscher v. Herrscher* (1953) 41 Cal.2d 300, 303–304, *Paragon Real Estate Group of San Francisco, Inc. v. Hansen* (2009) 178 Cal.App.4th 177, 181, fn. 1; *County of Los Angeles v. Guerrero* (1989) 209 Cal.App.3d 1149, 1152, fn. 2; Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2021) ¶ 2:103.) Cochran did not appeal.

Cochran next points to "[e]videntiary rulings that affected both this action and the resulting bankruptcy proceedings," apparently referring to rulings pertaining to exclusion of evidence not produced in discovery and Cochran's attempts to explain why they were not produced. These are matters we would review in determining whether any prejudicial error by the trial court required reversal of the judgment. But Cochran does not explain how such evidentiary rulings could remain "open for consideration" when the judgment has been discharged by the bankruptcy court and cannot be enforced against him.

The third matter Cochran suggests we can still consider is the trial court's denial of his pretrial motion for sanctions against attorney Hunt pursuant to Code of Civil Procedure section 128.7. As Beagle has pointed out,

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[15] The court noted Cochran's failure to pay sanctions ordered in September 2017; failure to serve verified responses, without objection, to certain interrogatories; failure to serve responses to document requests and failure to produce responsive documents as ordered in April 2017; and production of emails for only the period January 1, 2010, to September 2011, many of which were non-responsive and included multiple drafts of works by Beagle and hundreds of Bates-stamped blank pages; production of audio files that were not responsive to any request; and production of amended responses containing the same improper objections the court had specifically disallowed.

the trial court's November 2017 order dismissing Cochran's cross-claims as a sanction for discovery misuse noted that the $24,915 sanction the defendants had been ordered to pay to Hunt had not been paid. Cochran does not suggest he has since paid this sanction and, assuming he has not, his obligation to do so has been eliminated by the bankruptcy court's discharge order. To the extent Cochran's concern is with the effect at trial of what he views as false factual allegations in the complaint (as argued in his opening brief), he again fails to explain what relief we could provide after the judgment has become unenforceable.

Finally, Cochran maintains we have power to grant him relief as to "[e]ach issue on the merits that relates to any portion of [Beagle's] as-of-yet undismissed and untried claims that might provide relief other than a monetary award." Cochran offers no further elaboration of this point, explanation of what viable claims against him remain or suggestion what non-monetary relief we could provide.

As earlier stated, only the causes of action alleged solely against Cochran were tried, because the causes of action alleged against Cochran together with one or both corporations were viewed as subject to the stay in the corporate bankruptcy cases. Beagle dismissed his complaint as to Avicenna and Conlan Press on March 8, 2021. Cochran's present argument is based on the fact that Beagle did not request dismissal of the bifurcated, untried claims as to him personally. Cochran does not explain, however, how the untried claims against him personally can survive the bankruptcy court's discharge order any more than the trial court's judgment.

Cochran's primary argument is that the judgment is not moot because, although the monetary award cannot be enforced, the judgment can still be used to besmirch his name by "appearing to find [him] liable for misconduct

parallel to criminal fraud." Cochran cites cases standing for the proposition that appeals in criminal cases are not mooted by the defendants' satisfaction of their sentences because of their interest in clearing their names and avoiding the continuing collateral consequences of criminal convictions. (*People v. Delong* (2002) 101 Cal.App.4th 482, 488; *In re Dana J.* (1972) 26 Cal.App.3d 768, 771.) In these cases, a valid judgment of conviction would remain if the appeal was dismissed, and could impact the defendant in various ways in the future. In the present context, regardless of any decision we might make on the merits, the trial court judgment, which imposes personal liability for damages on Cochran, is void and cannot be enforced. (11 U.S.C. § 524(a)(1) ["(a) A discharge in a case under this title . . . [¶] (1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged"].) Any determination we might make on the merits would amount to an advisory opinion.

Cochran's analogy to criminal fraud and reliance upon his interest in clearing his name is more aptly directed to his argument that we should deal with the mootness of the appeal not by simply dismissing it but by reversing the judgment for the purpose of directing the trial court to vacate the underlying action as moot. (*Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 134–135 (*Paul*); *Coalition for a Sustainable Future in Yucaipa v. City of Yucaipa* (2011) 198 Cal.App.4th 939, 943–947.) "Ordinarily when a case becomes moot during the pendency of an appeal, the appellate court will not proceed to formal judgment, but will dismiss the appeal. (*Paul, supra,* 62 Cal.2d at p. 134.) In some instances, however, courts have concluded it is appropriate instead to reverse the judgment 'solely for the purpose of restoring the matter to the jurisdiction of the superior court, with directions

to the court to dismiss the proceeding.' (*Ibid*.) . . . When the basis for the trial court's judgment becomes nonexistent due to postjudgment acts or events, an appellate court should ' "dispose of the case, not merely of the appellate proceeding which brought it here." [Citation.] That result can be achieved by reversing the judgment solely for the purpose of restoring the matter to the jurisdiction of the superior court, with directions to the court to dismiss the proceeding. [Citations.] Such a reversal, of course, does not imply approval of a contrary judgment, but is merely a procedural step necessary to a proper disposition of th[e] case.' (*Paul*, at pp. 134–135.)" (*Delta Stewardship Council Cases* (2020) 48 Cal.App.5th 1014, 1054–1055 (*Delta*); *La Mirada Avenue Neighborhood Assn. of Hollywood v. City of Los Angeles* (2016) 2 Cal.App.5th 586, 590–591 (*La Miranda*) [*Paul* remedy appropriate "when subsequent legislative or administrative action renders an entire controversy moot"].)

Cases adopting the *Paul* remedy, rather than simply dismissing the moot appeal, involve situations in which "[t]he facts upon which the judgment was rendered no longer are operative." (*City of Los Angeles v. County of Los Angeles* (1983) 147 Cal.App.3d 952, 959 (*City of Los Angeles*).) In *Paul,* an appeal challenging the denial of an injunction and penalties for alleged violation of certain regulations was moot because the defendant lost its license, went into bankruptcy and ceased doing business, and the regulations were superseded by new ones that eliminated the basis for the alleged violation. (*Paul, supra,* 62 Cal.2d at pp. 130–132.) *City of Los Angeles,* at page 959, found the appeal from an injunction prohibiting a local taxation practice moot because the adoption of Proposition 13 "dismantled" the challenged practice. In *Delta, supra,* 48 Cal.App.5th at pages 1029–1030, certain challenges to a management plan for the Sacramento-San Joaquin

Delta were moot due to amendments of the plan during pendency of the appeal. In *Coalition for a Sustainable Future in Yucaipa v. City of Yucaipa* (2011) 198 Cal.App.4th 939, 941–942 (*City of Yucaipa*), the appeal from denial of a writ petition challenging the city's approval of a proposed shopping center was moot because, while the appeal was pending, the project was abandoned and the city rescinded its approval. In cases such as these, "the basis for the trial court's judgment becomes nonexistent due to postjudgment acts or events." (*Delta,* at p. 1055.)

Contrary to Cochran's characterization, the *Paul* procedure is not the one "ordinarily" employed when an appeal becomes moot; as the above cases explain, the *Paul* remedy is an alternative to the "ordinarily" followed course of simply dismissing a moot appeal. (*Delta, supra,* 48 Cal.App.5th at p. 1054; *La Mirada, supra,* 2 Cal.App.5th at p. 590.) The present case is *not* one in which "[t]he facts upon which the judgment was rendered no longer are operative" (*City of Los Angeles, supra,* 147 Cal.App.3d at p. 959) and "the basis for the trial court's judgment [has become] nonexistent" (*Delta,* at p. 1055). The facts underlying Beagle's claims against Cochran have not changed. The appeal is moot only because Cochran obtained an order of discharge from the bankruptcy court that rendered the judgment void and unenforceable.

Cochran is correct that simply dismissing an appeal as moot generally implies affirmance of the judgment: "Normally the involuntary dismissal of an appeal leaves the judgment intact. (*Conservatorship of Oliver* (1961) 192 Cal.App.2d 832, 835–836." (*In re Jasmon O.* (1994) 8 Cal.4th 398, 413;

Paul, supra, 62 Cal.2d at p. 134.)[16] But here, as we have said, the trial court's judgment is not intact. Under the bankruptcy court's order of discharge, the judgment is void to the extent it imposes personal liability on Cochran and cannot be enforced against him. (11 U.S.C. § 524(a)(1).)

Cochran blames Beagle for any mootness of the appeal, arguing Beagle never filed a motion for non-dischargeability in the bankruptcy court. Beagle did attempt to avoid discharge of the judgment by successfully obtaining an order from the bankruptcy court extending the deadline for filing requests for nondischargeability until 14 days after the entry of judgment in the present case.[17] In the end, however, he did not take the necessary steps to avoid discharge, apparently due in part to confusion and misunderstandings arising from the facts that the judgment did not resolve all the claims alleged against Cochran and that the bankruptcy proceeding was closed without

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[16] Beagle attempts to avoid the proposition that dismissal of an appeal is an implied affirmance by arguing that *Paul,* the authority Cochran cited for the point, relied upon a statute that has since been repealed. (*Paul*, *supra*, 62 Cal.2d at p. 134.) Former Code of Civil Procedure section 955, repealed in 1968 (Stats. 1968, ch. 385, § 1), provided that " '[t]he dismissal of an appeal is in effect an affirmance of the judgment or order appealed from.' " (*Paul,* at p. 134.) Beagle overlooks the fact that, as *Jasmon O.* demonstrates, cases continue to follow the principle despite the repeal of former section 955. (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs, *supra*, ¶ 5:48; *County of Fresno v. Shelton* (1998) 66 Cal.App.4th 996, 1005.)

[17] Under the Federal Rules of Bankruptcy Procedure, a creditor's request for nondischargeability (11 U.S.C. § 523(c)) must be filed "no later than 60 days after the first date set for the meeting of creditors under § 341(a)," and a motion to extend this time "shall be filed before the time has expired." (Fed. Rules Bankr.Proc., rule 4007(c) 11 U.S.C. (rule 4007(c)).) After Cochran filed his bankruptcy petition, Beagle timely filed a motion to extend time, which the bankruptcy court granted in an order extending the rule 4007(c) deadline to "the date that is 14 days after entry of a final judgment in the State Court Action (as defined in the Motion), or until further order of the court, whichever shall be first to occur."

discharge shortly before the trial court's decision, but then reopened after the judgment was filed.[18] The day after the bankruptcy court entered the order of discharge, Beagle filed a motion seeking to confirm the rule 4007(c) deadline remained tolled, or to set aside that order and extend the time for objection, but the bankruptcy court denied this motion as unripe because Beagle had not filed a nondischargeability complaint.[19]

We are not convinced that Beagle's failure to properly challenge the order of discharge makes him responsible for the mootness of the present appeal so as to warrant vacating the entire case, as Cochran urges. It is Cochran, after all, who chose to file for bankruptcy and seek the discharge

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[18] Cochran's bankruptcy case was closed without discharge on July 25, 2019. After the trial court filed its statement of decision on July 30, and then its judgment on August 7, Cochran on August 22, 2019, filed an ex parte motion to reopen the bankruptcy proceeding. The bankruptcy court granted the motion the same day and entered the order of discharge.

[19] Beagle's motion asked the bankruptcy court to interpret its earlier order extending the rule 4007(c) time period to "14 days after entry of a final judgment in the State Court Action" as referring to a final judgment "as to all issues between the parties." Under this interpretation, the time period remained tolled because the judgment in the present case pertained only to certain claims against Cochran and others remained to be tried that could be the basis for a nondischargeability action (including financial elder abuse and libel). Beagle also pointed out that because Cochran's bankruptcy case had been closed without a discharge before the trial court filed its judgment in the present case, Beagle's counsel assumed Cochran was no longer seeking bankruptcy relief and was surprised when Cochran—on the 15th day after entry of the trial court judgment—filed his ex parte motion to reopen the bankruptcy and obtained the order of discharge.

The bankruptcy court, in denying the motion, suggested that Beagle file either a nondischargeability action or an action for declaratory relief. Apparently Beagle did not do so: The next entry on the docket is for the case being closed on December 12, 2019.

order that relieves him from personal liability for the judgment and prevents us from entertaining the merits of this appeal.

The remedy employed in *Paul* and its progeny has been viewed as inappropriate where the appeal becomes moot due to action of the appellant. (*La Miranda*, *supra,* 2 Cal.App.5th at p. 591.) In *La Miranda,* for example, the superior court halted construction of a Target store, finding the city had improperly granted certain exceptions to its specific plan. Target appealed, but also sought amendments to the specific plan that were subsequently approved by the city, thereby mooting the issues on appeal. (*Id.* at pp. 588–589.) Distinguishing *Paul, City of Yucaipa and City of Los Angeles* as cases in which "the events that mooted the underlying controversies were not initiated by the appellants," *La Miranda* held that because Target asked the city to amend the specific plan "for the very purpose of removing the question of the exceptions' validity from further litigation," the proper disposition was dismissal of the appeal rather than reversing and directing the superior court to dismiss the case. (*La Miranda,* at p. 591.)

Here, the *Paul* remedy is doubly inappropriate: This is not a case that has become moot due to post-appeal events having eliminated the factual basis for the trial court's judgment, and our inability to grant effective relief is due to Cochran's choice to pursue a discharge of debts in bankruptcy—even if Beagle *might* have been able to avoid the discharge if he had properly presented the question to the bankruptcy court and if that court had granted the request.

DISPOSITION

The appeal is dismissed as moot.

Each party shall bear his own costs.

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Kline, P.J.

We concur:

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Richman, J.

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Miller, J.

Beagle v. Cochran (A158551)