

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

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In re:	)	BAP No. CC-10-1145-PaDKi
	)	
SHANEL ANN STASZ,	)	Bk. No. LA 05-43980 AA
	)	
Debtor.	)	
_____	)	
SHANEL ANN STASZ,	)	
	)	
Appellant,	)	
	)	<b>M E M O R A N D U M</b> <sup>1</sup>
v.	)	
	)	
ROSENDO GONZALEZ, Chapter 7	)	
Trustee,	)	
	)	
Appellee.	)	
_____	)	

Argued and submitted on March 16, 2011  
at Pasadena, California

Filed - April 5, 2011

Appeal from the United States Bankruptcy Court  
for the Central District of California

Hon. Alan Ahart, Bankruptcy Judge, Presiding.

Appearances: Shanel Stasz appeared pro se.  
Appellee waived appearance at oral argument and  
submitted on his brief.

Before: PAPPAS, DUNN and KIRSCHER, Bankruptcy Judges.

<sup>1</sup> This disposition is not appropriate for publication.  
Although it may be cited for whatever persuasive value it may have  
(see Fed. R. App. P. 32.1), it has no precedential value. See 9th  
Cir. BAP Rule 8013-1.

1 Chapter 7<sup>2</sup> debtor Shanel Stasz ("Stasz") appeals the  
2 bankruptcy court's Order Compelling Turnover of Estate Property.  
3 We AFFIRM.

#### 4 **FACTS**

5 On October 13, 2005, Stasz filed a petition for relief under  
6 chapter 7. Rosendo Gonzalez ("Gonzalez") was appointed trustee.  
7 Gonzalez has spent the past five years attempting to collect and  
8 reduce to money the property of the bankruptcy estate given  
9 resolute opposition by Stasz.<sup>3</sup> Because of the parties'  
10 familiarity with the circumstances, only those facts necessary to  
11 understand the current appeal are recited here.

12 On July 10, 2001, two trusts were allegedly created: the  
13 Alta Loma Ultra Trust (the "Alta Loma Trust"), and the West  
14 Hollywood Domestic Non Grantor Trust (the "West Hollywood Trust").  
15 Stasz signed the trust instrument as Settlor of the Alta Loma  
16 Trust, and Allen Spaulding ("Spaulding"), an employee of Stasz'  
17 attorney, Carl E. Lovell, Jr. ("Lovell"), signed the trust

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19 <sup>2</sup> Unless otherwise indicated, all chapter, section and rule  
20 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and  
21 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as  
22 enacted and promulgated prior to the effective date of The  
23 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,  
24 Pub. L. 109-8, 119 Stat. 23. The Federal Rules of Civil Procedure  
25 are referred to as "Civil Rules."

26 <sup>3</sup> For background of the many and various disputes in the  
27 bankruptcy case between Stasz and Gonzalez, reference may be made  
28 to the following decisions: Stasz v. Gonzalez (In re Stasz), 387  
B.R. 287 (9th Cir. BAP 2008), dismissed 348 Fed. Appx. 234 (9th  
Cir. 2009), cert. denied, 131 S.Ct. 209 (2010); Stasz v. Gonzalez  
(In re Stasz), 2007 Bankr. LEXIS 4830 (9th Cir. BAP Aug. 9, 2007),  
aff'd sub nom. Stasz v. Eisenberg (In re Stasz), 353 Fed. Appx.  
154 (9th Cir. 2009), cert. denied, 130 S.Ct. 3293 (2010); Stasz v.  
Quackenbush (In re Stasz), 2007 Bankr. LEXIS 4917 (9th Cir. BAP  
Feb. 28, 2007), dismissed 348 Fed. Appx. 234 (9th Cir. 2009),  
cert. denied, 131 S.Ct. 209 (2010).

1 instrument as Settlor of the West Hollywood Trust. Lovell was  
2 named as trustee of both trusts. Attached to the West Hollywood  
3 Trust as Schedule A is the statement, "The amount of corpus  
4 originally contributed by the Settlor is One Thousand Dollars  
5 (\$1,000.00 US)."

6 In 2004, in a pleading filed in a Los Angeles County state  
7 court lawsuit filed by Stasz against Lovell, Stasz v. Lovell et  
8 al., case no. BC325059, Stasz purported to rescind both trusts:

9 On or about, November 24, 2004, pursuant to the  
10 provisions of Section 1689 of the California Civil Code,  
11 Plaintiff [Stasz] gave notice in writing of rescission  
12 to Defendant, Carl E. Lovell, Jr., as Trustee West  
13 Hollywood Domestic Grantor Inst. and to Carl E. Lovell,  
14 Jr., as Trustee of the Alta Loma Ultra Trust, of [] all  
15 transfers, including transfers involved in connection  
16 with Exhibits 2 through 5 inclusive attached hereto and  
17 Trusts involved in the Plan on the grounds that (1) the  
18 consideration for the obligation of the Plaintiff who is  
19 the rescinding party has failed, in whole or in part,  
through the fault of the Defendant, Carl E. Lovell, Jr.:  
the consideration for the obligations of the rescinding  
party, before it was rendered to her, failed in a  
material respect due to his negligence; and (3) the  
contract, including but not limited to the so-called  
PRIVATE ANNUITY AGREEMENTS contained in Exhibits 3 and 5  
attached hereto which are part of the Plan, are unlawful  
for causes which do not appear by their terms or  
conditions, and the parties are not equally at fault.

20 Later, in Adversary Proceeding No. 06-1481 in the bankruptcy case,  
21 the bankruptcy court found that Stasz had rescinded both trusts by  
22 this statement. Order re Statement of Uncontroverted Facts and  
23 Conclusions of Law at ¶ 23. This Order was appealed by Stasz to  
24 the BAP, which affirmed the bankruptcy court; the Court of Appeals  
25 affirmed the BAP, and the Supreme Court denied certiorari. See  
26 supra n.3, 2007 Bankr. LEXIS 4830.

27 When Stasz filed her bankruptcy petition and schedules in  
28 2005, she listed the West Hollywood Trust as an asset on her

1 Schedule B, valued at "\$0.00." She did not claim an exemption as  
2 to the trust in her original Schedule C, nor did she ever amend  
3 Schedule C later to claim any exemption for West Hollywood Trust.<sup>4</sup>

4 In 2009, Gonzalez became aware for the first time of the  
5 existence of an account at a branch office of Morgan Stanley Smith  
6 Barney ("Morgan Stanley") in the name of West Hollywood Trust.  
7 The account reportedly held approximately \$220,000. On June 22,  
8 2009, counsel for Gonzalez sent an email to Morgan Stanley,  
9 asserting that these funds were property of the bankruptcy estate  
10 and demanding that Morgan Stanley turn over these assets to  
11 Gonzalez. On June 25, 2009, Morgan Stanley issued a check to  
12 Gonzalez in the amount of \$220,889.15.

13 Stasz contacted Morgan Stanley, insisting that the funds in  
14 West Hollywood Trust were not property of the estate. At some  
15 time not clear in the record, Morgan Stanley contacted Gonzalez,  
16 instructing him not to disburse any of the funds from the West  
17 Hollywood Trust until the bankruptcy court could make a  
18 determination that they were estate property.

19 On January 27, 2010, Morgan Stanley filed a "Motion to Excuse  
20 Third-Party Morgan Stanley Smith Barney LLC's Compliance with 11  
21 U.S.C. § 542." In the motion, Morgan Stanley indicated that it  
22 was unable to determine who was entitled to the funds it had paid

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24 <sup>4</sup> At oral argument, Stasz was asked if she had ever amended  
25 her Schedule C to claim an exemption for the West Hollywood Trust,  
26 and she replied, "Yes." The Panel has examined the original  
27 Schedule C located in the bankruptcy court's docket dated October  
28 28, 2005, Dkt. No. 4, as well as the two amended Schedule Cs dated  
March 1, 2006, and December 21, 2007, respectively, Dkt. Nos. 23  
and 77. There were no other amended Schedule Cs. Stasz asserted  
no exemption claim for the West Hollywood Trust in any of these  
schedules.

1 to Gonzalez; it requested an order from the court confirming its  
2 rights and responsibilities with respect to the funds, and either  
3 (1) making a finding that the funds were not property of the  
4 bankruptcy estate and requiring Gonzalez to return the funds to  
5 Morgan Stanley, or (2) making a finding that the funds were  
6 property of the bankruptcy estate and confirming that Morgan  
7 Stanley's turnover under § 542 was proper.

8 Stasz filed an opposition to Morgan Stanley's motion on  
9 February 16, 2010, asserting three arguments: (1) Gonzalez'  
10 "seizure of the assets" was illegal because he was required to  
11 first file an adversary proceeding to require turnover; (2) there  
12 was a trustee of the West Hollywood Trust, Lovell, on the petition  
13 date, and therefore the trust funds were not property of the  
14 estate; and (3) the West Hollywood Trust was not rescinded.

15 Morgan Stanley's motion was heard on March 3, 2010. Before  
16 the hearing, the bankruptcy court posted a tentative ruling: "The  
17 'Account' is not property of the estate and the Trustee shall  
18 return the Account funds to [Morgan Stanley]." Morgan Stanley  
19 and Gonzalez were present at the hearing; Stasz did not attend. A  
20 transcript of that hearing is not included in the record.

21 However, as reflected in the transcript of the later hearing  
22 discussed below, the bankruptcy court noted at this hearing that  
23 it was requested not to make a finding regarding property of the  
24 estate, but simply to order the funds be returned to Morgan  
25 Stanley. Hr'g Tr. 2:3-5 (March 31, 2010). The bankruptcy court  
26 granted Morgan Stanley's motion on March 3, 2010. The court's  
27 order merely directed return of funds by Gonzalez to Morgan  
28 Stanley; it did not include a determination of whether the money

1 was property of the estate.

2       Gonzalez filed a Motion Compelling Turnover of Estate  
3 Property (the "Turnover Motion") on March 8, 2010 seeking to once  
4 again recover the funds in the Morgan Stanley account. In the  
5 Turnover Motion, he argued that the West Hollywood Trust was never  
6 a valid trust under Nevada law, and that the trust had been  
7 rescinded by Stasz in 2004 before she filed her bankruptcy  
8 petition. Attached to the motion was a declaration of Spaulding,  
9 in which he stated that he never intended to establish any trust  
10 for Stasz' benefit and that, contrary to the attachment to the  
11 West Hollywood Trust, he never paid \$1,000 to fund the trust.

12       Stasz responded to the motion on March 16, 2010. She argued  
13 that collateral estoppel applied to render the Gonzalez motion  
14 moot, because the bankruptcy court on March 3, 2010 had ruled that  
15 the funds were not property of the estate; that she listed the  
16 West Hollywood Trust on her schedules, Gonzalez had not timely  
17 objected, and thus the funds were exempt; and the West Hollywood  
18 Trust was a valid trust.

19       Gonzalez replied on March 22, 2010, noting that the  
20 bankruptcy court had never ruled on whether the funds were  
21 property of the estate, and pointing out that Stasz had never  
22 claimed an exemption in the West Hollywood Trust on her schedules.  
23 He also expanded on his earlier arguments that the West Hollywood  
24 Trust was a sham and was rescinded by Stasz before she filed her  
25 bankruptcy petition.

26       Two days before the hearing on the Turnover Motion, Stasz  
27 submitted a declaration purportedly describing a conversation she  
28 had with Spaulding, in which he allegedly disputed statements he

1 made earlier in his declaration.

2 The bankruptcy court conducted a hearing on the Turnover  
3 Motion on March 31, 2010. Gonzalez was represented by counsel and  
4 Stasz appeared pro se. When Stasz repeated her argument that the  
5 court had already ruled that the funds were not property of the  
6 estate, the court corrected her:

7 STASZ: You are now making a decision based on the  
8 validity of the trust. I asserted in my opposition to  
9 this motion that you had already decided that. . . .

10 THE COURT: Yeah, and I did not.

11 STASZ: Okay.

12 THE COURT: I clearly did not. I don't think you were at  
13 the hearing and I [] specifically was requested to make  
14 no finding. I remember this, and I didn't. So there  
15 was no such finding.

16 Hr'g Tr. 1:24-2:9 (March 31, 2010). Gonzalez then summarized his  
17 position that the arguments of Stasz were purely conclusory, and  
18 that the reported conversation between Stasz and Spaulding was, at  
19 best, inadmissible hearsay.

20 The bankruptcy court orally ruled on the record granting the  
21 Turnover Motion. The court entered its Order Compelling Turnover  
22 of Estate Property on April 8, 2010. Stasz filed a timely appeal  
23 on April 20, 2010.

#### 24 **JURISDICTION**

25 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334  
26 and 157(b)(2)(A) and (E). We have jurisdiction under 28 U.S.C.  
27 § 158.

#### 28 **ISSUE**

Whether the bankruptcy court erred in determining that the  
funds held on account of the West Hollywood Trust were property of

1 the bankruptcy estate and in ordering that they be turned over to  
2 Gonzalez.

3 **STANDARD OF REVIEW**

4 Whether property is property of the estate is a question of  
5 law reviewed de novo. Mwangi v. Wells Fargo Bank, N.A. (In re  
6 Mwangi), 432 B.R. 812, 818 (9th Cir. BAP 2010).

7 The bankruptcy court's findings of fact are reviewed under  
8 the clearly erroneous standard. Goodrich v. Briones (In re  
9 Schwarzkopf), 626 F.3d 1032 (9th Cir. 2010).

10 **DISCUSSION**

11 Upon the filing of a bankruptcy petition, an estate is  
12 created comprised of all of the debtor's interests, legal and  
13 equitable, in property wherever located and by whomever held.  
14 § 541(a). In a chapter 7 case, the trustee is duty-bound "to  
15 collect and reduce to money the property of the estate for which  
16 such trustee serves . . . ." § 704(a)(3). Section 542(a) provides  
17 the means for a trustee to compel another entity to turn over  
18 property of the estate:

19 (a) Except as provided in subsection (c) or (d) of this  
20 section, an entity, other than a custodian, in possession,  
21 custody, or control, during the case, of property that the  
22 trustee may use, sell, or lease under section 363 of this  
23 title, or that the debtor may exempt under section 522 of  
24 this title, shall deliver to the trustee, and account for,  
25 such property or the value of such property, unless such  
26 property is of inconsequential value or benefit to the  
27 estate.

28 Morgan Stanley never challenged in the bankruptcy court, and  
Stasz did not dispute, that it was in possession of funds in  
excess of \$200,000 held on account of the West Hollywood Trust.  
Under the circumstances, however, Morgan Stanley was unable to  
determine if the funds were property of Stasz' bankruptcy estate.



1 It responded to Gonzalez' demands by initially turning over the  
2 money to him, and then later, by filing a motion seeking an order  
3 from the bankruptcy court directing disposition of the funds.

4 Since the property in question represented, in effect, cash,  
5 if the funds were property of the bankruptcy estate, Gonzalez  
6 could compel the turnover of those funds to him under § 542(a).  
7 The only real dispute in this appeal concerns whether the funds in  
8 the West Hollywood Trust are property of the estate. Since it is  
9 uncontroverted that the funds in the trust account at Morgan  
10 Stanley came from Stasz,<sup>5</sup> if the West Hollywood Trust was either a  
11 sham or had been rescinded before her bankruptcy petition was  
12 filed, those funds constituted property of the estate and were  
13 subject to turnover.

14 In granting his motion and ordering that Morgan Stanley turn  
15 over the funds to Gonzalez, the bankruptcy court found that the  
16 trust was either a sham, or that it had been rescinded before the  
17 filing of Stasz' bankruptcy petition. Stasz raises a number of  
18 objections to the bankruptcy court's order, all of which lack  
19 merit and are discussed below.

20 A. Stasz contends that, under the facts of this case,  
21 Gonzalez was required by Rule 7001 to file an adversary proceeding  
22 to obtain turnover of the West Hollywood Trust funds. While the  
23 law Stasz relies upon is outdated, current Rule 7001(1) does  
24 provide that a proceeding to recover money, other than one to  
25 compel the debtor to deliver property to the trustee, is an  
26 adversary proceeding. However, as the Panel recently held, a

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28 <sup>5</sup> At oral argument, Stasz confirmed that she provided all  
funds in the West Hollywood Trust.

1 bankruptcy court's decision not to require an adversary proceeding  
2 is subject to a harmless error analysis, and under that standard,  
3 if the failure to commence an adversary proceeding did not cause  
4 prejudice, form should not be elevated over substance. Korneff v.  
5 Downey Reg'l Med. Ctr.-Hosp., Inc. (In re Downey Reg'l Med.  
6 Ctr.-Hosp, Inc.), 441 B.R. 120, 127-28 (9th Cir. BAP 2010), citing  
7 Austein v. Schwartz (In re Gerwer), 898 F.2d 730, 734 (9th Cir.  
8 1990). Here, Gonzalez as trustee employed a contested proceeding,  
9 via the the Turnover Motion, to obtain an order from the  
10 bankruptcy court that the account funds be paid over to him.  
11 Stasz has not shown that she was in any way prejudiced by this  
12 procedure. Indeed, it is clear that Stasz received notice of the  
13 motion, objected to it, and had a full and fair opportunity to  
14 present her arguments to the bankruptcy court. Under Rule 9014,  
15 Stasz could, but did not, seek discovery or access to a variety of  
16 other procedures available to her. On this record, all things  
17 considered, Stasz has not shown she suffered any disadvantage in  
18 this case because Gonzalez utilized a motion, instead of a  
19 complaint, to recover the funds from Morgan Stanley. We therefore  
20 decline to elevate form over substance by reversing the bankruptcy  
21 court's order on this procedural ground.

22 B. Stasz next argues that Gonzalez was precluded from  
23 seeking turnover under the doctrine of collateral estoppel because  
24 the bankruptcy court had previously determined that the funds were  
25 not property of the estate when it ordered that they be repaid by  
26 Gonzalez to Morgan Stanley. Of course, a close review of the  
27 record shows this argument is simply incorrect as a matter of  
28 fact. As discussed above, as the bankruptcy court later

1 explained, it did not rule at the March 3, 2010 hearing, a hearing  
2 that Stasz did not attend, that the funds at Morgan Stanley were  
3 not property of the estate. Indeed, the order entered by the  
4 bankruptcy court makes no such finding. If Stasz believed an  
5 error was made by the bankruptcy court, it was the obligation of  
6 Stasz to provide a transcript of the March 3 hearing to support  
7 her argument on appeal. Rule 8009(b)(9); Morrissey v. Stuteville  
8 (In re Morrissey), 349 F.3d 1187, 1188 (9th Cir. 2003). That  
9 Stasz made this argument in her briefs, and again at oral  
10 argument, is perplexing.

11 C. Stasz argued that because she listed the West Hollywood  
12 Trust in her schedules, they are exempt because Gonzalez failed to  
13 object to her exemption within the statutory period. But Stasz'  
14 position is, again, flawed.

15 Gonzalez presented evidence from the bankruptcy court's  
16 records that Stasz had never properly claimed the West Hollywood  
17 Trust exempt in either her original Schedule C or in any of the  
18 amended Schedule Cs she had filed. The Code requires the debtor  
19 to file a list of property that is claimed as exempt. § 522(1).  
20 Rule 4003(c) instructs a debtor to list exempt property on the  
21 schedule of assets required to be filed by Rule 1007. Rule 1007  
22 in turn requires the debtor to file schedules using the  
23 appropriate Official Forms. And Official Form 6 includes Schedule  
24 C, on which the debtor claims property as exempt, and requires the  
25 debtor to provide the following information for each item claimed  
26 exempt: (1) a description of the property; (2) the law authorizing  
27 the exemption; and (3) the value of the exemption along with the  
28 current market value of the property.

1           If she indeed intended to claim the alleged trust asset  
2 exempt, Stasz complied with none of these statutory or rule  
3 requirements to do so. Schwab v. Reilly, 130 S.Ct. 2652, 2669  
4 (2010) (“Where, as here, a debtor accurately describes an asset  
5 subject to an exempt interest and on Schedule C declares the  
6 ‘value of [the] claimed exemption’ as a dollar amount within the  
7 range the Code allows, interested parties are entitled to rely  
8 upon that value as evidence of the claim’s validity.”). Thus,  
9 Stasz’ argument that Gonzalez failed to object to her exemption  
10 within the statutory period misses the point: he was under no  
11 obligation to object to an exemption claim that Stasz never  
12 properly asserted.<sup>6</sup>

13           D. Contrary to Stasz’ arguments, Gonzalez presented  
14 sufficient evidence to show that the West Hollywood Trust was a  
15 sham. First, he established that the trust did not meet the  
16 threshold requirements under applicable Nevada law for  
17 establishing a trust. Under those statutes, “a trust is created  
18 only if: 1. The Settlor properly manifests an intention to create  
19 a trust; and 2. There is trust property, except as provided in NRS  
20 163.230.” NEV. REV. STAT. § 163.003. Gonzalez submitted the sworn  
21 declaration of Spaulding, the putative Settlor of the West  
22 Hollywood Trust, in which he testified he never manifested intent  
23 to create a trust for the benefit of Stasz, and in fact did not  
24 know her or the secondary beneficiaries under the trust.  
25 Spaulding recounted that he was an employee of Stasz’ attorney,

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27           <sup>6</sup> As noted above, Stasz continued to maintain at oral  
28 argument that she had amended her Schedule C to claim an exemption  
in the West Hollywood Trust, even though the evidence before the  
bankruptcy court and this Panel is that she did not.

1 and simply signed the trust documents at the direction of his  
2 employer. He further stated that he did not pay the \$1,000 that  
3 the West Hollywood Trust documents alleged that he did as Settlor.  
4 Thus, Gonzalez argued, there was no evidence of a manifested  
5 intent by the Settlor to create this trust nor the creation of a  
6 trust corpus at the time of forming the trust.

7 We have found no case law in Nevada interpreting Nev. Rev.  
8 Stat. § 163.003 or discussing the creation of inter vivos express  
9 trusts. However, in resolving trust questions, the Nevada Supreme  
10 Court has relied on the Restatements of the Law of Trusts. Pryor  
11 v. Pryor, 734 P.2d 718, 719 (Nev. 1987). Although there is some  
12 diversity in interpretations of "manifests an intention to create  
13 a trust," there is no dispute that transfer of property from the  
14 Settlor to the trust is required at the time of trust creation.  
15 RESTATEMENT (THIRD) OF TRUSTS § 16(1) ("If the property owner  
16 undertakes to make a donative inter vivos disposition in trust by  
17 transferring property to another as trustee, an express trust is  
18 not created if the property owner fails during life to complete  
19 the contemplated transfer of the property."). Comment a. to § 16  
20 of the Restatement simplifies that wording: "A transfer of the  
21 intended trust property is required for the creation of an express  
22 trust." Schedule "A" attached to the West Hollywood Trust states:  
23 "The amount of the corpus originally contributed by the Settlor is  
24 One Thousand Dollars (\$1,000 US)." The only evidence before the  
25 bankruptcy court was Spaulding's statement in his declaration: "I  
26 never contributed One Thousand Dollars, or any amount, to the West  
27 Hollywood Trust."

28 In short, the evidence before the bankruptcy court was

1 adequate to show that the Settlor did not manifest the intention  
2 to create the West Hollywood Trust, and did not transfer property  
3 to establish the trust corpus. Consequently, the bankruptcy court  
4 could properly conclude that the required elements for creation of  
5 a trust under Nevada law were not met.

6       Rather than challenging the legal sufficiency of Gonzalez'  
7 argument, Stasz instead attempted to impeach the Spaulding  
8 declaration. Two days before the March 31 hearing, she submitted  
9 her own declaration that she had spoken with Spaulding, and that  
10 he denied some of the statements he made in the declaration.  
11 Gonzalez objected to the late submission of the Stasz declaration  
12 and objected to any hearsay statements in that declaration. While  
13 the bankruptcy court did not expressly rule on Gonzalez'  
14 objection, it apparently gave little weight to Stasz' declaration.  
15 As the finder of fact, the court was not required to value Stasz'  
16 version of the facts over those reflected in the Spaulding  
17 declaration.<sup>7</sup> Where there are two permissible views of the  
18 evidence, the fact finder's choice between them cannot be clearly  
19 erroneous. Anderson v. City of Bessemer City, N.C., 470 U.S. 564,  
20 574 (1985); Rifino v. United States (In re Rifino), 245 F.3d 1083,  
21 1086 (9th Cir. 2001).

22       Gonzalez also submitted evidence that all funds in the West  
23 Hollywood Trust came from Stasz and that there had been no trustee  
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25       <sup>7</sup> It is also noteworthy that Stasz told the bankruptcy court  
26 that Spaulding was preparing a new declaration for filing with the  
27 court. Had he done so, presumably Stasz might have sought relief  
28 from the bankruptcy court's order under Rule 9024. However, while  
almost a year has passed since the hearing on Gonzalez' motion,  
our review of the bankruptcy court's docket shows no new  
declaration from Spaulding has been filed.

1 of that trust since 2006. Together with the evidence that the  
2 trust did not comply with the requirements of Nevada law to  
3 establish a trust and that Stasz had contributed all funds in the  
4 trust, we conclude that the bankruptcy court did not err in  
5 determining that the West Hollywood Trust was a sham.

6 E. The bankruptcy court determined that, even if the trust  
7 were not a sham, it had previously ruled that Stasz had rescinded  
8 the trust in 2004. Stasz alleges that she did not rescind the  
9 trust. However, she did not address this issue in her opening  
10 brief, and thus waived its consideration in this appeal.

11 Ghahremani v. Gonzales, 498 F.3d 993, 997-98 (9th Cir. 2007)  
12 (issues not raised and argued in the opening brief are deemed  
13 waived). Indeed, she made only one conclusory reference to the  
14 rescission in her reply brief that Gonzalez made "nonsensical  
15 arguments that Stasz had revoked the trust within a Complaint that  
16 was never served nor adjudicated in Los Angeles and was void for  
17 lack of jurisdiction." Stasz Reply Br. at 4. Stasz provided no  
18 explanation, argument or supporting authority for this statement.

19 Even were we to consider this issue, the bankruptcy court had  
20 an adequate basis to conclude that Stasz rescinded the West  
21 Hollywood Trust in 2004, before she filed her bankruptcy petition.  
22 In an earlier adversary proceeding, wherein the bankruptcy court  
23 set aside as a fraudulent conveyance the transfer of Stasz'  
24 condominium to the Alta Loma Ultra Trust, the bankruptcy court  
25 determined that both the Alta Loma Trust and the West Hollywood  
26 Trust had been rescinded by Stasz in 2004. The bankruptcy court  
27 made that specific finding of fact and incorporated it into a  
28 separate Order re Statement of Uncontroverted Facts and

1 Conclusions of Law at ¶ 23.<sup>8</sup> Stasz unsuccessfully challenged that  
2 order before this Panel and the Ninth Circuit, and was denied  
3 certiorari by the Supreme Court. We are therefore comfortable in  
4 concluding that the bankruptcy court's conclusion that Stasz  
5 rescinded the West Hollywood Trust is law of the case. Milgard  
6 Tempering v. Selas Corp. of Am., 902 F.2d 703, 715 (9th Cir. 1990)  
7 ("Under the doctrine [of law of the case], a court is generally  
8 precluded from reconsidering an issue previously decided by the  
9 same court, or a higher court in the identical case.); Richardson  
10 v. United States, 841 F.2d 993, 996 (9th Cir.), amended, 860 F.2d  
11 357 (9th Cir. 1988). For the doctrine to apply, the issue in  
12 question must have been "decided explicitly or by necessary  
13 implication in [the] previous disposition." Liberty Mutual Ins.  
14 Co. v. E.E.O.C., 691 F.2d 438, 441 (9th Cir. 1982). That the West  
15 Hollywood Trust was rescinded by Stasz in 2004 was "decided  
16 explicitly . . . in the previous disposition." Stasz is therefore  
17 precluded from arguing that she did not rescind the trust in  
18 connection with Gonzalez' motion in the same bankruptcy case, and  
19 the bankruptcy court was under no compulsion to revisit the  
20 question.

#### 21 **CONCLUSION**

22 We conclude that the bankruptcy court did not err in  
23 determining that the West Hollywood Trust was a sham, or that it  
24 had been rescinded. Therefore, the bankruptcy court correctly  
25 decided that the funds in the account at Morgan Stanley, which had  
26 been contributed by Stasz, were property of the bankruptcy estate

27 \_\_\_\_\_  
28 <sup>8</sup> See entry at dkt. no. 27 in adversary proceeding 06-1481.



1 which must be turned over to Gonzalez. We AFFIRM the Turnover  
2 Order of the bankruptcy court.

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