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NOT FOR PUBLICATION

HAROLD S. MARENUS, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP Nos.	CC-07-1403-KPaMk
)		CC-07-1435-KPaMk
RAMONA G. FONTAINE,)		
)	Bk. No.	LA 07-16464 VK
Debtor.)		
_____)		
)		
RAMONA G. FONTAINE,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM*	
)		
ROBERT L. CONN,)		
)		
Appellee.)		
_____)		

Submitted without oral argument on July 25, 2008**
at Pasadena, California

Filed - August 1, 2008

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

Honorable Victoria S. Kaufman, Bankruptcy Judge, Presiding

Before: KLEIN, PAPPAS and MARKELL, Bankruptcy Judges.

* 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.

** We unanimously determine that oral argument should not be allowed. Fed. R. Bankr. P. 8012(1)-(3).

1 Pro se debtor Ramona Fontaine appeals two orders. In No.
2 CC-07-1403, she questions an order declining to prevent a
3 creditor holding a joint money judgment against her and three of
4 her relatives from pursuing judgment-enforcement actions against
5 the relatives. We AFFIRM that order because 11 U.S.C. § 1301
6 does not impede judgment-enforcement on nonconsumer debts against
7 joint judgment debtors who are not themselves bankruptcy debtors,
8 and the court did not otherwise abuse its discretion.

9 We DISMISS No. CC-07-1435, for three independent reasons:
10 mootness, failure to prosecute, and nonpayment of the filing fee.
11 Although the debtor contends it was error to dismiss her chapter
12 13 case instead of converting to chapter 7, the bankruptcy court
13 later granted the debtor's motion for permission to file a
14 chapter 7 case, which she filed. The debtor did not respond to
15 our ensuing order to show cause why we should not dismiss the
16 appeal as moot or for not paying the filing fee.

18 FACTS

19 Appellee, Robert Conn, obtained a state court judgment in
20 2004 against Ramona Fontaine, her son, Marcus Fontaine, and her
21 nieces, Laura Ortiz and Norma Ruiz. Conn v. Marcus A. Fontaine,
22 et al., No. BC 291117, Los Angeles County Super. Ct. (Mar. 29,
23 2004). The judgment awarded \$185,000 in damages, plus \$100,000
24 in punitive damages, resulting from three fraudulent transfers
25 involving the same residence at 3986 Astaire Ave., Culver City,
26 California ("3986 Astaire") and a pattern by defendants of filing
27 forged Acknowledgment of Satisfaction of Judgment forms to evade
28 enforcement of a \$65,672 judgment rendered in 1991. All four

1 defendants were jointly and severally liable for the \$185,000
2 damage award, and all except Ortiz were jointly and severally
3 liable for the \$100,000 in punitive damages.¹

4
5 ¹ The backstory, derived from the two judgments rendered by
6 the state superior court is as follows. The 1991 judgment on
7 proceedings to confirm an arbitration award in favor of
8 plaintiff, Morris Fox, who was represented by Conn, established
9 that: (1) Marcus Fontaine breached a contract with Fox as of
10 November 20, 1985; (2) Marcus Fontaine libeled Fox with malicious
11 intent to injure, vex, and annoy; (3) the purchase of 3986
12 Astaire in the names of Ramona Fontaine and Barbara Fontaine on
13 February 3, 1986, was done with the actual intent by Marcus
14 Fontaine to hinder or delay Fox in recovery of claims and
15 constituted a fraudulent transfer. Damages of \$63,672 in favor
16 of Fox were awarded jointly against Marcus, Ramona, and Barbara
17 Fontaine, together with \$1,745 in costs (total = \$65,417). Order
18 & J. Confirming Arb. Award, Fox v. Marcus A. Fontaine, et al.,
19 No. WEC 099510, Los Angeles County Super. Ct. (Jan. 9, 1991).

20 The rest of the backstory is established by the 2004
21 judgment. Amended J., Conn v. Marcus A. Fontaine, et al., No. BC
22 291117, Los Angeles County Super. Ct. (Mar. 29, 2004).

23 Fox assigned his \$65,417 judgment to Conn, who renewed the
24 judgment in 1999.

25 On at least four occasions between 1994 and 2002, there were
26 recorded forged Acknowledgment of Satisfaction of Judgment forms
27 purporting to extinguish the 1991 judgment. The last such form
28 was recorded February 22, 2002.

On March 4, 2002, Ramona Fontaine deeded 3986 Astaire to her
niece Ruiz, and there was recorded a deed of trust executed by
Ruiz as trustor on February 25, 2002, securing a promissory note
in favor of SIB Mortgage Corp. On March 10, 2002, there was also
recorded a deed of trust for \$425,000 executed by Ruiz as trustor
in favor of Ramona Fontaine's niece Ortiz.

The 2004 judgment decreed that the forged Acknowledgment of
Satisfaction of Judgment forms were invalid, but that the SIB
Mortgage deed of trust was valid and senior to the 1991 judgment
lien. It also established that the transfer from Ramona Fontaine
to Ruiz and the related deed of trust in favor of Ortiz
constituted two fraudulent transfers by Marcus and Ramona
Fontaine, Ruiz, and Ortiz "done in combination with the recording
of a forged Acknowledgment of Satisfaction of Judgment on
February 25, 2002, [recording citation omitted] with the actual
intent of said defendants to hinder, delay and defraud" Conn.

(continued...)

1 Conn obtained a writ of execution on June 27, 2006, under
2 which the Los Angeles County Sheriff levied on 3986 Astaire on
3 June 22, 2007, and set an auction date of August 1, 2007.

4 On July 30, 2007, Ramona Fontaine filed a chapter 13 case.
5 In Schedule I, she averred that she had monthly income of \$8,782,
6 consisting of \$751 in Social Security income and \$8,031 from
7 "Contribution of Family."

8 On September 4, 2007, Conn filed what he styled as a motion
9 for relief from the codebtor stay under § 1301 to proceed with
10 judgment-enforcement of the state court action. Conn contended
11 that relief should be granted for the following reasons: (1) the
12 state court judgment was not for a "consumer debt" within the
13 terms of § 1301; (2) Ramona Fontaine was not eligible for chapter
14 13 because her unsecured debts exceeded \$336,900; (3) Ramona
15 Fontaine was not eligible for chapter 13 because she was not "an
16 individual with regular income"; and (4) the chapter 13 case was
17 filed in bad faith.

18 On October 11, 2007, Ramona Fontaine's attorney, Lester
19 Blanchard, filed a Notice of Non-Opposition to Conn's motion,
20 supported by a declaration stating that he received no response
21 from his client to his repeated correspondence regarding the
22 motion and response deadline, even though other communications
23 with family members indicated that it had been received.

24 At the hearing on October 17, 2007, the bankruptcy court

25 _____
26 ¹(...continued)

27 Hence, \$185,000 in damages was awarded jointly and severally
28 against Marcus and Ramona Fontaine, Ruiz, and Ortiz, together
with joint and several punitive damages of \$100,000 against all
except Ortiz.

1 made findings of fact and conclusions of law orally on the record
2 regarding Conn's motion. The actual findings, however, were not
3 made part of the appellate record because the appellant did not
4 provide a transcript of those findings. Reciting in the order
5 that it was acting based on its oral findings, the bankruptcy
6 court entered an order declaring that Conn was free to take
7 judgment-enforcement actions necessary against the nondebtor co-
8 obligors on the state court judgment.

9 Ramona Fontaine filed a timely notice of appeal on October
10 24, 2007, which became No. CC-07-1403. The filing fee has still
11 not been paid for the appeal, despite Notices of Deficiency and
12 of possible dismissal issued October 30 and November 19, 2007.

13 The order dismissing Ramona Fontaine's chapter 13 case with
14 a 180-day bar to refileing without prior permission of the court
15 was entered on November 1, 2007. Ramona Fontaine filed a timely
16 notice of appeal on November 9, 2007, which became No. CC-07-
17 1435. The filing fee has still not been paid for this appeal
18 despite notices of possible dismissal on that account issued
19 November 26, 2007, and June 13, 2008.

20 On November 1, 2007, a substitution of attorney dated
21 September 27, 2007, was filed indicating Ramona Fontaine would
22 thereafter represent herself pro se. On October 31, 2007, Marcus
23 Fontaine filed a notice of appearance announcing that he would be
24 representing Ramona Fontaine as "next friend."²

25
26 ² As a part of our denial of Ramona Fontaine's request for
27 stay pending appeal, on November 26, 2007, we also noted that we
28 did not express an opinion at that time as to the validity of
Marcus Fontaine's "apparently self-designated status" as "next
(continued...)

1 During the pendency of both appeals, various motions have
2 been filed in the name of Ramona Fontaine with the bankruptcy
3 court and with the BAP for stay pending appeal to maintain the
4 status quo as to 3986 Astaire. Her requests have been denied.

5 In our February 8, 2008, order denying Ramona Fontaine's
6 renewed request for a stay pending appeal as to her real property
7 (No. CC-07-1403) and denying her apparently additional request
8 for a stay of the order dismissing her bankruptcy case (No. CC-
9 07-1435), we explained that Ramona Fontaine had not established
10 she was entitled to a stay under the factors enunciated in Wymer
11 v. Wymer (In re Wymer), 5 B.R. 802, 806 (9th Cir. BAP 1980). We
12 determined that Ramona Fontaine did not establish that there was
13 sufficient likelihood of success on the merits to warrant a stay,
14 and, to the contrary, ruled that the balance of hardships tipped
15 in favor of Conn and the chapter 13 trustee. We further
16 determined that the order dismissing the chapter 13 case was not
17 an absolute bar to another bankruptcy filing, but merely required
18 that Ramona Fontaine obtain prior court permission before filing
19 another bankruptcy case.

20 In our February 20, 2008, order granting in part Conn's
21 request for extension of time to file his brief, we ordered that,
22 because Marcus Fontaine had not submitted any "proof of his
23 status as next friend or guardian ad litem under relevant law" to
24 allow him to proceed as such, all references to him as the

25 _____
26 ²(...continued)
27 friend" "or his standing to make motions in the bankruptcy case
28 or appeals." However, we informed Marcus Fontaine that "proof of
his status as next friend or guardian ad litem under relevant
law" was required before he could participate further.

1 appellant on and in the opening brief were to be stricken.

2 By order entered March 10, 2008, the bankruptcy court
3 granted Ramona Fontaine's motion for permission to file a chapter
4 7 case, which she filed the same day as No. LA 08-13012 BR.³

5 On June 13, 2008, we issued an order to show cause why No.
6 CC-07-1435 should not be dismissed as moot or for nonpayment of
7 the appeal filing fee. We noted that it appeared Ramona Fontaine
8 had achieved the goal of filing a chapter 7 case and that the
9 matter may be moot. She was instructed to file a response by
10 June 27, 2008, explaining why this appeal should not be dismissed
11 as moot and how the filing fee requirement was satisfied. No
12 response was filed.

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16 ³ The mootness analysis is informed by events in the new
chapter 7 case.

17 At a sheriff's sale on March 12, 2008, Conn purchased Ruiz's
18 alleged interest in 3986 Astaire for \$162,000.

19 Marcus Fontaine sent a letter to the sheriff alleging the
March 12 sale of Ruiz's interest violated the automatic stay.

20 Ramona Fontaine also filed adversary proceeding No. 08-01419
21 seeking a declaration that the March 12 sheriff's sale of Ruiz's
22 interest in 3986 Astaire is void in violation of the automatic
23 stay. On May 7, 2008, the court dismissed the action without
prejudice after Ramona Fontaine admitted on the record that she
did not sign her declaration attached to the complaint, but that
her son, Marcus Fontaine, signed her name to the pleadings.

24 On May 19, 2008, the court denied a motion to set aside the
25 March 12 sheriff's sale, making findings of fact and conclusions
26 of law that the sale was of the ownership interest of co-
defendant Ruiz in 3986 Astaire, rather than of any ownership
interest of Ramona Fontaine and that she did not actually sign
the motion - her name was signed by Marcus Fontaine.

27 On July 3, 2008, Ramona Fontaine moved to convert the case
28 from chapter 7 to chapter 13. Whether the requested conversion
occurs does not affect our analysis.

1 JURISDICTION

2 The bankruptcy court had jurisdiction via 28 U.S.C. § 1334.
3 We have jurisdiction under 28 U.S.C. § 158(a)(1).
4

5 ISSUES

6 (1) Whether the bankruptcy court abused its discretion in
7 dismissing Ramona Fontaine's chapter 13 case, instead of
8 converting to chapter 7.

9 (2) Whether the bankruptcy court erred in ruling that Conn
10 was free to pursue judgment-enforcement actions against nondebtor
11 co-obligors on a state court judgment.
12

13 STANDARDS OF REVIEW

14 We review an order dismissing a chapter 13 bankruptcy case
15 for abuse of discretion, Nelson v. Meyer (In re Nelson), 343 B.R.
16 671, 674 (9th Cir. BAP 2006), and also review the order regarding
17 § 1301 for abuse of discretion. See Duvar Apt., Inc. v. FDIC (In
18 re Duvar Apt., Inc.), 205 B.R. 196, 199 (9th Cir. BAP 1996) (11
19 U.S.C. § 362(d)).

20 A trial court abuses its discretion if it bases its ruling
21 on an erroneous view of the law or clearly erroneous factual
22 findings. Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 405
23 (1990). Otherwise, to reverse for abuse of discretion we must
24 have a definite and firm conviction that the bankruptcy court
25 committed a clear error of judgment in the conclusion it reached.
26 SEC v. Coldicutt, 258 F.3d 939, 941 (9th Cir. 2001); Hansen v.
27 Moore (In re Hansen), 368 B.R. 868, 874-75 (9th Cir. BAP 2007).
28

1 DISCUSSION

2 Before addressing the merits of whether error infected the
3 ruling that Conn was free to take judgment-enforcement actions
4 against the nondebtor co-obligors, we deal with the implications
5 of the subsequent chapter 7 case on the question whether it was
6 error to have dismissed, and not converted, the chapter 13 case.

7
8 I

9 The order dismissing the Ramona Fontaine chapter 13 case
10 with a 180-day bar to refileing without prior permission of the
11 court did not erect an absolute bar to another bankruptcy filing.
12 Rather, it merely required that Ramona Fontaine obtain prior
13 court permission before filing another bankruptcy case.

14 On March 10, 2008, the bankruptcy court granted Ramona
15 Fontaine's motion for permission to file a chapter 7 case, which
16 she filed on the same day.

17 Although there could be plausible reasons – such as loss of
18 avoiding actions and of the protection of the automatic stay –
19 why a later-filed chapter 7 case would not moot an issue about
20 whether a chapter 13 case should have been converted instead of
21 dismissed, no likely reason appeared to apply to Ramona Fontaine.
22 No avoiding actions appear to have been lost, and she refiled two
23 days before the March 12 sheriff's sale, with the consequence
24 that she had the benefit of the same automatic stay that she
25 would have had if the chapter 13 case had been converted to
26 chapter 7. Hence, we issued an order to show cause why BAP No.
27 CC-07-1435 should not be dismissed as moot.

28 We ordered Ramona Fontaine to show cause by June 27, 2008,

1 why the appeal should not be dismissed as moot or for nonpayment
2 of the filing fee. No response was received. The filing fee
3 remains unpaid.

4 Accordingly, BAP No. CC-07-1435 is ordered dismissed for
5 three reasons. First, it was mooted by the subsequent chapter 7
6 filing. Second, the appellant has failed to prosecute the
7 appeal. Third, the filing fee has not been paid. Each of these
8 reasons provides an adequate, independent reason to dismiss.

9
10 II

11 In addressing the question in BAP No. CC-07-1403 whether the
12 bankruptcy court erred in ruling that Conn was free to pursue
13 judgment-enforcement actions against Ramona Fontaine's fellow
14 judgment debtors with respect to the state court judgment, we
15 start with Marcus Fontaine's standing.

16
17 A

18 On November 26, 2007, in denying Ramona Fontaine's emergency
19 motion for a stay pending appeal, our motions panel noted that
20 the motion was signed by Marcus Fontaine as "next friend" to the
21 debtor-appellant. We advised that, if Marcus Fontaine were to
22 return to this Panel and if he wished to represent Ramona
23 Fontaine as "next friend," then we would require proof of his
24 status as next friend or guardian ad litem under relevant law.
25 See Fed. R. Bankr. P. 1004.1 & Fed. R. Bankr. P. 7017
26 (incorporating Fed. R. Civ. P. 17(c)).

27 On February 20, 2008, in a BAP order granting in part Conn's
28 request for an extension of time, we also noted that Marcus

1 Fontaine had not submitted the required proof of his status as
2 next friend or guardian ad litem before he proceeded as such on
3 behalf of Ramona Fontaine. As the appellant's brief appeared to
4 be on behalf of both Ramona Fontaine and her son Marcus Fontaine
5 "for himself and as next friend" for his mother, we ordered that
6 the appellant's brief applied only to Ramona Fontaine and ordered
7 stricken Marcus Fontaine's signature and all references to him as
8 the appellant on and in the brief.

9 We emphasize that the main issue here is whether the court
10 erred in ruling that Conn was free to pursue judgment-enforcement
11 actions against the co-obligors of Ramona Fontaine with respect
12 to the state court judgment. We disregard the grievances of
13 Marcus Fontaine. He has submitted no proof to us regarding his
14 status as his mother's next friend or guardian ad litem. Hence,
15 he lacks standing.⁴ Marcus Fontaine is not a party to this
16 appeal. He cannot hide behind someone else's bankruptcy.

17 We are also mindful that there is merit to Conn's
18 observation that Ramona Fontaine's alleged signatures in the
19 notice of appeal and in her opening brief (as well as multiple
20 other documents filed with the bankruptcy court during the
21 pendency of this appeal) do not match the multiple signatures for
22

23 ⁴ We note that, on May 5, 2008, in Ramona Fontaine's chapter
24 7 Case No. 08-13012 currently pending before the bankruptcy
25 court, Ramona Fontaine filed a document entitled, "Marcus A.
26 Fontaine's submission of 'Power of Attorney-General' and 'Durable
27 Power of Attorney' executed by Ramona G. Fontaine, appointing
28 Marcus A. Fontaine, as her true and lawful attorney in fact." On
May 7, 2008, the bankruptcy court ruled that, in spite of Marcus
Fontaine's statements in the above document filed with the court,
under federal law, Marcus Fontaine was not authorized to sign on
behalf of his mother any document filed with the court.

1 Ramona Fontaine on her original bankruptcy petition and do not
2 match the signature on her substitution of attorney.

3 Conn emphasizes the possibility of forgeries because the
4 state court judgment he holds relates to damages resulting from
5 Conn's own signature having been forged on multiple
6 Acknowledgment of Satisfaction of Judgment forms, which were then
7 recorded to make it appear that the judgment lien was satisfied.

8 We agree and are persuaded that Marcus Fontaine brought this
9 appeal for Ramona Fontaine without authority and forged Ramona
10 Fontaine's signature on the notice of appeal.

11 On such facts, we could dismiss, impose sanctions, and award
12 damages and costs for an illegitimate appeal. See Fed. R. Bankr.
13 P. 8020 & Fed. R. Bankr. P. 9011. Nevertheless, we recognize
14 that the court of appeals could disagree with us regarding such
15 measures and could grant in forma pauperis status so as to excuse
16 the unpaid filing fee. Hence, we will proceed to the merits.

17
18 B

19 Although the contentions of Ramona Fontaine via Marcus
20 Fontaine, as complicated by personal accusations about Conn, are
21 difficult to follow, the crux of Ramona Fontaine's position
22 appears to be that the interests of the other judgment debtors in
23 3986 Astaire are invulnerable to judgment-enforcement actions on
24 account of her bankruptcy case.

25 Generally speaking, we construe a pro se appellate brief
26 liberally even when it is difficult to ascertain the appellant's
27 contentions. See Balistreri v. Pacifica Police Dep't, 901 F.2d
28 696, 699 (9th Cir. 1988). Thus, we assess the arguments as

1 sympathetically as possible.

2 Nevertheless, assuming (solely for purposes of argument)
3 that the § 1301 codebtor stay would apply, the standard of review
4 for an order allowing judgment-enforcement actions to be taken
5 against Ramona Fontaine's fellow judgment debtors, the equivalent
6 of granting stay relief, is reviewed for abuse of discretion.

7 We would not reverse for abuse of discretion where the court
8 accurately assessed the standard of law and the facts, unless we
9 have a definite and firm conviction that the court committed a
10 clear error of judgment in the conclusion it reached. Coldicutt,
11 258 F.3d at 941.

12 Ramona Fontaine has the burden of providing a sufficient
13 record on appeal – including a transcript of relevant hearings –
14 and the omission to provide an adequate record is grounds for
15 affirming the bankruptcy court's decision. Abrams v. Sea Palms
16 Assocs. (In re Abrams), 229 B.R. 784, 789 (9th Cir. BAP 1999).
17 By not providing a transcript of the trial court's oral findings
18 of fact and conclusions of law as required by Federal Rules of
19 Bankruptcy Procedure 8006 and 8009(b)(5), the appellant
20 handicapped her ability to demonstrate error. McCarthy v. Prince
21 (In re McCarthy), 230 B.R. 414, 416 (9th Cir. BAP 1999).

22 The burden is on the appellant to demonstrate that the court
23 abused its discretion when it held that § 1301 did not impede
24 Conn from judgment-enforcement actions against the judgment
25 debtors who were not in bankruptcy. Ashley v. Church (In re
26 Ashley), 903 F.2d 599, 603 (9th Cir. 1990); United States v.
27 Mills, 597 F.2d 693, 698 (9th Cir. 1979); Gionis v. Wayne (In re
28 Gionis), 170 B.R. 675, 680-81 (9th Cir. BAP 1994), aff'd, 92 F.3d

1 1083 (9th Cir. 1996).

2 The face of the order on appeal reflects that the court made
3 findings of fact and conclusions of law orally on the record.
4 Ramona Fontaine chose to omit those findings and conclusions
5 notwithstanding the command of Rules 8006 and 8009(b)(5). We are
6 entitled to presume that she does not think including a copy of
7 the transcript of the findings would be helpful to carrying her
8 appellate burden. Gionis, 170 B.R. at 681.

9 In short, Ramona Fontaine has not met her appellate burden
10 to demonstrate error. We have conscientiously reviewed the
11 record and do not perceive an abuse of discretion.

12 As a matter of law, § 1301 does not apply to debts that are
13 not "consumer debts." See 11 U.S.C. § 1301. The fraud-based
14 judgment held by Conn does not constitute a debt "incurred by an
15 individual primarily for a personal, family, or household
16 purpose" within the meaning of the definition of "consumer debt"
17 of 11 U.S.C. § 101(8).

18 Thus, the bankruptcy court did not apply an incorrect legal
19 standard and did not otherwise err in ordering that Conn was free
20 to pursue judgment-enforcement actions against the co-obligors of
21 Ramona Fontaine regarding the state court judgment.

22
23 CONCLUSION

24 For the reasons set forth above, No. CC-07-1435, in which
25 Ramona Fontaine appeals the bankruptcy court order dismissing her
26 chapter 13 bankruptcy case, is DISMISSED for three adequate,
27 independent reasons: mootness; failure to prosecute; and
28 nonpayment of filing fee.

1 As to No. CC-07-1403, which is also eligible to be dismissed
2 for non-payment of filing fee, we hold that the bankruptcy court
3 did not err in ordering that Conn was free to pursue judgment-
4 enforcement actions against Ramona Fontaine's fellow judgment
5 debtors with respect to the state court judgment. We AFFIRM.

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