NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	) BAP Nos. AZ-08-1290-PaDJu) 08-1300-PaDJu
BRET JAMES HAMEL,	) (cross-appeals)
Debtor.	) Bk. No. 03-05432
JAMES HAMEL and DIANE HAMEL,	) Adv. No. 07-00517
Appellants/Cross-Appellees,	)
v.	) **M E M O R A N D U M**[1]
LINDA LALLISS, fka LINDA HAMEL,	)
Appellee/Cross-Appellant.	)

Argued by Video Conference
and Submitted on March 18, 2009

Filed - April 16, 2009

Appeal from the United States Bankruptcy Court
for the District of Arizona

Hon. Randolph Haines, United States Bankruptcy Judge, Presiding

Before: PAPPAS, DUNN and JURY, Bankruptcy Judges.

[1] 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.

Because we are unable to ascertain and review the bankruptcy court's reasons for granting summary judgment based on its apparent interpretation of its own orders, we summarily affirm the court's entry of summary judgments holding that appellants have no right to recover certain real and personal property from appellee. In the cross-appeal, we reverse the bankruptcy court's imposition of sanctions against appellants and dismiss appellee's request that additional sanctions be awarded.

FACTS

Bret James Hamel ("Bret" or "Debtor") filed a chapter 7[2] bankruptcy petition on April 2, 2003. At the time Debtor was married to Linda Lalliss ("Lalliss"), who did not join the bankruptcy petition. The couple was involved in divorce proceedings in Maricopa County, Arizona, Superior Court. The other interested parties in this appeal are Debtor's parents, James ("James") and Diane Hamel (collectively "Parents"), and the chapter 7 trustee in Debtor's bankruptcy case, Charles L. Riley ("Trustee").

Debtor's schedules listed an ownership interest in a house (the "Residence") valued at $196,000, subject to a mortgage balance of $96,000. Debtor claimed the Residence exempt as his homestead in the amount of $100,000. The schedules also listed his interests in various family corporations and partnerships, valued by Debtor at approximately $25,000 as of 2001, and

[2] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, as enacted and promulgated prior to the effective date (October 17, 2005) of the relevant provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, April 20, 2005, 119 Stat. 23, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

household goods, owned jointly with Lalliss, worth $8,070, for which he claimed an exemption of $8,000. Among the household goods, Debtor listed a "piano."

The initial disputes in the bankruptcy case involved Debtor's exemption claims. Trustee objected to the total amount of exemptions Debtor had claimed for the household goods. The bankruptcy court sustained Trustee's objection to the household goods exemptions in an order entered on July 15, 2003, limiting Debtor's overall household goods exemption to $4,000 and the exemption for the piano to $250.

On May 30, 2003, Trustee moved to assume certain executory contracts as to which Debtor was a party, consisting principally of the family partnership interests. Trustee's motion was granted by the bankruptcy court as to the partnership interests on July 3, 2003. Trustee then filed a Notice of Sale proposing to sell two of the partnership interests to Alan Travis. However, James provided certain information to Travis about the partnership interests causing him to withdraw his bid. The bankruptcy court approved the rescission of this sale on September 16, 2003.

Trustee next apparently commenced negotiations with Ascending Star, LLC, to sell it "the remaining non-exempt, noncash assets of the bankruptcy estate." The agreement between Trustee and Ascending Star provided that: "the estate will sell a 65% interest in the remaining assets to Ascending Star, LLC ("ASL") in exchange for a payment of $5,000.00. ASL will then take the steps necessary to liquidate and/or recover funds in connection with the assets and the estate will receive 35% of any recovery after the payment of related attorneys' fees and expenses."

Parents objected to this sale, arguing that they held liens on all the family-related businesses and that Debtor's interests in those businesses were valueless. Because Parents wished to avoid litigation, they instead offered $10,000 to Trustee for the purchase of these assets.

The bankruptcy court conducted a hearing concerning the proposed sale to ALS on December 17, 2003. Debtor, Trustee, ALS and Parents were represented by counsel at the hearing. Parents indicated to the court that they were seeking to purchase 100 percent of Debtor's interests in the family businesses and were prepared to increase their $10,000 offer, if necessary. ALS also offered to increase its bid. The court granted a continuance to allow the parties to continue negotiations. Hr'g Tr. 31: 23-24 (December 17, 2003).

At the February 17, 2004 continued hearing, Debtor, Trustee, ALS, and Parents again appeared. Trustee recommended that the bankruptcy court accept the increased bid of Parents for $60,000 for purchase of the assets of the estate, together with an additional $10,000 to be paid by Parents as consideration for Trustee's agreement to dismiss an adversary proceeding he had filed against Debtor and Parents concerning the family business interests. Hr'g Tr. 3:3-8 (February 17, 2004).

During this hearing, the discussion of what assets were to be sold, with one exception, dealt solely with the business interests of Debtor. The only reference during the hearing to the Residence or household goods was a comment by the attorney representing both Debtor and Parents:

> The Debtor, in this case, Your Honor, has absolutely no assets whatsoever as a result of the divorce action. Any assets the Trustee has not been interested in, and frankly, Your Honor, the[y] are considerable, remain in the custody of Linda Hamel. For example, there is substantial equity in the former community home; she has that. There's a very expensive piano; she has that.

Hr'g Tr. 20:20-24 (February 17, 2004) (emphasis added).

After listening to the parties' presentations, the bankruptcy court approved the sale to Parents, summarizing:

> This is the Trustee's motion for authority to sell estate assets. Basically, the standard for the Court's approval of such a motion is the business judgment rule, whether the Trustee properly exercised his business judgment and whether the result[] of the exercise of that judgment is within a range of reasonableness. I understand the nature of the asset; it's much more akin to settling litigation than simply selling an asset. That's inherent in the nature of any asset that's in a partnership, because all you really get when you acquire a partner's interest is a charging lien, which is effectively an invitation to litigation. . . . I find that Trustee has properly exercised his business judgment and that the sale as recommended by the Trustee is a reasonable result for the sale of these assets, based on all the facts and circumstances known to the Trustee and this Court. On that basis, I'll approve the sale to [Parents] on the terms set forth on the record.

Hr'g Tr. 26:16—27:13 (February 17, 2004) (emphasis added).

The bankruptcy court entered an order approving the sale to Parents on February 17, 2004. The order does not individually list any particular assets included in the sale, but rather refers to a sale by Trustee of "all of the remaining non-cash, non-exempt assets of the estate to James and Linda Hamel for a payment of $60,000 [which were to be] conveyed 'as is, where is' and are subject to any and all liens, claims and adverse interests."

On June 4, 2004, Lalliss filed a motion for an order deeming any exempt assets remaining in the bankruptcy estate abandoned so that the state divorce court could distribute them between Lalliss

and Debtor. Parents objected to this motion on two grounds, contending that: (1) Lalliss' motion did not specify the assets to be abandoned; and (2) Lalliss' motion implied that the assets were to be abandoned to her, rather than jointly with Debtor.

The hearing on Lalliss' motion to abandon was held on October 26, 2004. A transcript of this hearing is not in the excerpts of record, nor could we locate one in the bankruptcy court's docket. According to the order entered by the bankruptcy court October 26, 2004, Debtor, Parents and Lalliss were present at the hearing. The bankruptcy court granted the abandonment motion. Its order included, inter alia, the following terms:

- "Any property sold to [Parents] shall be excepted from this order."

- "The property listed by the Debtor in his schedules shall be the only property subject to this order: to wit:

"Household goods and furnishings, including audio, video, and computer equipment"	ARS § 33-125	$8,000	$8,070
"Residence"	ARS § 33-1101	$100,000	$196,000

- "The above listed property shall be abandoned to the Debtor and to [Lalliss] to the extent that any of the property is

community property under the laws of the State of Arizona."[3] The order granting the Lalliss motion to abandon property was not appealed.

On December 8, 2004, Lalliss filed her own chapter 7 petition. Her schedule A listed the current market value of the Residence as $210,000, and her schedule C listed the value of household goods in her possession as $1,350. The bankruptcy court in the Lalliss bankruptcy case would later grant her trustee's motion to abandon to Lalliss all the non-exempt property in her bankruptcy estate on December 10, 2004.

Almost three years later, on September 24, 2007, Parents commenced an adversary proceeding against Lalliss in connection with Debtor's bankruptcy case. In their complaint, Parents sought an order directing Lalliss to turn over the household goods Parents allege they purchased from Debtors' estate on February 17, 2004. Parents also requested the right to sell the Residence and to retain any equity in excess of liens and the homestead exemption.

On January 17, 2008, Lalliss filed her First Summary Judgment Motion in the adversary proceeding. In it, Lalliss argued that the sole issue in the adversary proceeding was whether Parents had purchased any equity in the Residence from the estate. According to Lalliss, any equity in the Residence was fully exempt in Debtor's bankruptcy case, and as a result, that equity had been

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[3] There were other exempt items listed in the bankruptcy court's order which are not implicated in this appeal. Parents suggest, and we agree, that it appears that this list was cut-and-pasted directly from Debtor's schedule C by Lalliss' counsel, who apparently prepared the order.

abandoned to Debtor and Lalliss via the abandonment order. Lalliss argued that Parents were fully aware that Trustee never claimed that there was any excess equity interest in the Residence, and that Parents' purchase of the assets of the estate did not include any such interest. Because of this, Lalliss argued, Parents' prosecution of the adversary proceeding against her was frivolous, and Lalliss should be awarded attorneys fees against Parents as a sanction.

Parents responded to this motion on January 25, 2008. Principally, Parents argued that, at the time Debtor filed his petition, based upon appraisals, the Residence was not "fully exempt," because the value of the Residence exceeded the balance due on the mortgage and Debtor's homestead exemption. As a result, Parents argued, they purchased this nonexempt equity in the Residence on February 17, 2004. Parents submitted affidavits of the Debtor, their counsel, and the appraisals to support their opposition to the First Summary Judgment Motion.

The bankruptcy court conducted a hearing on the First Summary Judgment Motion on February 26, 2008. No transcript of this hearing was included in the excerpts of record in this appeal, nor does it appear on the adversary proceeding docket. The Minute Entry in the adversary proceeding docket for this hearing indicates that Parents and Lalliss were present and represented by counsel. According to that Minute Entry, "Findings of Fact and Conclusions of Law were stated on the record. It is ordered granting Summary Judgment in Favor of Defendant [Lalliss]." There was no further explanation in the Minute Entry of the bankruptcy court's reasons for granting summary judgment.

Regarding Lalliss' motion for sanctions, the Minute Entry indicates that:

> The court [next] addressed the motion for attorney's fees. The only basis for any kind of sanctions or attorney's fees is under Bankruptcy Rule 9011(c)(1)(B) on the court's initiative. On that basis,
>
> It is ordered directing James and Diane Hamel and their law firm Collins & Collins to show cause why subdivision B has not been violated and in particular subdivision B2. The conduct the court finds particularly to violate it is [Parents'] failure to address the effect of the ruling of October 26, 2004 and to in effect make an argument that the court finds is directly contrary to both the letter and the intent of that order.

Parents responded to the bankruptcy court's ruling in a motion for reconsideration filed on April 2, 2008. Perceiving that the bankruptcy court had ruled that the abandonment order entered October 26, 2004, had effectively settled the value of the Residence at $196,000, and that the Residence was therefore of inconsequential value to the estate and abandoned to the Debtor and Lalliss, Parents disagreed with the court. Parents argued that the October 26, 2004 abandonment order included incorrect values for the assets because they had been copied out of Debtor's schedules and that the order only dealt with exempt assets of the estate and made no reference to non-exempt assets. As they had argued in their original opposition to the motion, Parents noted that, under Ninth Circuit precedent, any post-petition appreciation in the value of the Residence inured to the bankruptcy estate and that the abandonment was irrelevant in setting asset values. In addition, Parents contended that since there was a legitimate difference of legal opinion concerning the issues, Rule 9011 sanctions should not be imposed.

In Lalliss' response to this motion, she argued that the

October 26 abandonment order was indeed controlling because Trustee abandoned the assets, including the Residence, as exempt assets. According to Lalliss, since there was no merit in Parents' position, Rule 9011 sanctions were justified.

The bankruptcy court held a hearing on Parents' reconsideration motion and its order to show cause concerning sanctions on April 22, 2008. Again, there is no transcript of this hearing in the excerpts of record or in the adversary proceeding docket. According to the Minute Entry, although Parents and Lalliss were represented by counsel, they submitted the issues for decision based on the pleadings. Parents however did point out to the bankruptcy court that its consideration of the First Summary Judgment Motion seemed to be restricted to the question of the Residence and did not address the household goods.

The bankruptcy court denied Parent's motion for reconsideration as to the Residence but granted it as to the household goods. The bankruptcy court awarded sanctions against Parents in the form of attorney's fees of $2,959.00 plus costs of $99.00.

Lalliss then filed a Second Summary Judgment Motion concerning the household goods on June 27, 2008. In it, she argued that the piano had been listed with the other household goods in Debtor's schedules, was thus fully exempt, and was not sold to Parents on February 14, 2004. Instead, Lalliss argued, the piano was abandoned with the other household goods in the October 26, 2004 order. Lalliss argued for imposition of additional Rule 9011 sanctions against Parents on the same grounds asserted in the First Summary Judgment Motion.

Parents responded on July 23, 2008, generally arguing that the order of February 17, 2004, sold all the non-exempt non-cash assets, including the household goods and the piano, to Parents. Since there was a disputed fact about what was sold, Parents argued that summary judgment should not be granted. Further, Parents insisted that attorney's fees should not have been granted in connection with the First Summary Judgment Motion, nor should sanctions be awarded for their position on this motion, because Lalliss was represented by her father and thus she was under no legal obligation to pay him for his services. Additionally, Parents contended it would be unjust to assess sanctions against them regarding the Second Summary Judgment Motion when Lalliss was at fault for not addressing the household goods in her First Motion.

The bankruptcy court conducted a hearing on the Second Summary Judgment Motion on September 8, 2008. There is no transcript of this hearing in the excerpts of record or in the bankruptcy court docket. According to the Minute Entry, Parents and Lalliss were present and their counsel were heard. As stated in the Minute Entry: "Findings of Fact and Conclusions of Law were stated on the record. It is ordered granting the motion for summary judgment." Again, the Minute Entry contains no discussion by the court of its views on the substance of the motion nor of the reasons for its decision. The Minute Entry makes no reference to Lalliss' request for attorney's fees and costs in connection with the Second Summary Judgment Motion.

On November 4, 2008, the bankruptcy court entered a Final Order and Judgment in favor of Lalliss and against Parents. The

judgment confirmed the granting of the two summary judgment motions and ordered Parents to pay Lalliss attorney's fees of $2,959.00 plus costs of $99.00, consistent with the bankruptcy court's decision on April 22, 2008.

Parents filed a timely appeal of the Final Order and Judgment; Lalliss filed a timely cross-appeal concerning the bankruptcy court's failure to award additional sanctions on the Second Summary Judgment Motion.

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(A) and (O). The Panel has jurisdiction over these appeals under 28 U.S.C. § 158.

ISSUES

1. Whether the bankruptcy court erred in granting the two summary judgment motions.
2. Whether the bankruptcy court abused its discretion in awarding attorney's fees and costs against Parents.

STANDARDS OF REVIEW

We review de novo a bankruptcy court's decision to grant summary judgment. Wood v. Stratos Product Dev. (In re Ahaza Sys., Inc.), 482 F.3d 1118, 1123 (9th Cir. 2007) (stating that both the Court of Appeals and the BAP apply de novo review to a bankruptcy court's grant of summary judgment).

It is within the discretion of the Bankruptcy Appellate Panel to summarily affirm a bankruptcy court's grant of summary judgment

for non-compliance with its procedural rules. Ehrenberg v. Cal. St. Univ. (In re Beachport Entm't), 396 F.3d 1083, 1086 (9th Cir. 2005).

A bankruptcy court's decision to impose sanctions under Rule 9011 is reviewed for abuse of discretion. In re Brooks-Hamilton, 400 B.R. 238 (9th Cir. BAP 2009).

DISCUSSION

I.

Because Parents have not provided an adequate record on appeal to allow the Panel to conclude otherwise, the bankruptcy court's summary judgments, presumably based upon its interpretation of its own orders, must be affirmed.

A.

Parents argue in their appeal that the bankruptcy court erred in granting the two summary judgment motions filed by Lalliss.

As noted above, we review summary judgments de novo. In particular, our duty as an appellate court reviewing the bankruptcy court's grant of summary judgment is to view the evidence in the light most favorable to Parents and to determine whether the bankruptcy court correctly concluded that there were no genuine issues of material fact and that Lalliss was entitled to judgment as a matter of law. Centre Ins. Co. v. SNTL Corp. (In re SNTL Corp.), 380 B.R. 204, 211 (9th Cir. BAP 2007).

An appellant bears the burden of filing an adequate record to allow review of a judgment on appeal. Drysdale v. Educ. Credit Mgmt. Corp. (In re Drysdale), 248 B.R. 386, 388 (9th Cir. BAP 2000); Abrams v. Sea Palms Assocs., Ltd. (In re Abrams), 229 B.R. 784, 789 (9th Cir BAP 1999). To assist us in performing this

task, the Rules specify the items that Parents, as appellants, must provide the Panel. Rule 8009(b) specifies that,

> [T]he appellant shall serve and file with the appellant's brief excerpts of the record as an appendix, which shall include the following:
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> . . .
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> (5) The opinion, findings of fact, or conclusions of law filed or delivered orally by the court and citations of the opinion if published; . . .
>
> (9) The transcript or portion thereof, if so required by a rule of the bankruptcy appellate panel.

Rule 8009(b)(5) and (9). This Panel's rules mandate that an appellant provide transcripts of the important proceedings occurring in the bankruptcy court:

> The excerpts of the record shall include the transcripts necessary for adequate review in light of the standard of review to be applied to the issues before the Panel. The Panel is required to consider only those portions of the transcript included in the excerpts of the record.

9th Cir. BAP R. 8006-1.

The bankruptcy court conducted hearings concerning the two summary judgment motions on February 26, 2008 and September 8, 2008. The bankruptcy court rendered its rulings from the bench and apparently explained the basis for its decisions at those hearings, as is reflected in the clerk's hearing minutes indicating that, at each hearing, "Findings of Fact and Conclusions of Law were stated on the record. It is ordered granting the motion for summary judgment." There are no transcripts of those hearings included in the excerpts of record on appeal, nor do they appear in the bankruptcy court's docket.[4]

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[4] Even if not provided in the excerpts on appeal, we may consult the entries in the docket of the underlying bankruptcy case and adversary proceeding. O'Rourke v. Seabord Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d 955, 957 (9th Cir. 1989). However, neither the transcripts, nor any other documents

(continued...)

There is no other information contained in the Minute Entries, or anywhere else in the record or dockets, regarding the bankruptcy court's reasons or rationale for its decision to grant the summary judgments.

At oral argument before the Panel, counsel for Parents was asked to explain why the summary judgment hearing transcripts had not been included in the appellate record.[5] His response was that, in his opinion, the bankruptcy court's remarks made at the hearings about its reasons for its decisions were not necessary in order for the Panel to conduct an effective de novo review of the summary judgments. Counsel was then asked to recount his understanding of the bankruptcy court's reasons for granting summary judgment. He replied that it was his understanding that the bankruptcy court had "interpreted the February 17, 2004 order in conjunction with the October 26, 2004, order" and determined there were no nonexempt assets related to the Residence because the value of the Residence was no greater than the household exemption plus encumbrances on the Residence. When asked whether the Panel had access to anything in the record on appeal to confirm his understanding of the bankruptcy court's reasoning, counsel replied, "No, you don't." However, Counsel insisted that this deficiency was of no moment, because the Panel could simply look to the plain language of the sale and abandonment orders.

Parents' decision not to include the transcripts of the two summary judgment hearings, and their attorney's views concerning

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[4](...continued)
evidencing the reasons for the bankruptcy court's decisions appear in the dockets.

[5] Both Parents and Lalliss filed statements with the Clerk that they did not intend to submit transcripts of the summary judgment hearings in this appeal. See Adv. proc. dkt. nos. 35, 53.

the value of the Panel's understanding the bankruptcy court's reasons for granting the summary judgments, are incompatible with basic principles of appellate review. We acknowledge that, in the context of a de novo review of a summary judgment, the Panel may not "defer" to the bankruptcy court's decisions. United States v. Washington, 645 F.2d 749, 752 (9th Cir. 1981). But, equally important in our view, we should not be expected to ignore the bankruptcy court's rationale, either.

FED. R. CIV. P. 52(a), as incorporated by Rule 7052, does not require a bankruptcy court to state its reasons for granting summary judgment. Couveau v. Am. Airlines, Inc., 218 F.3d 1081, 1081 n.2 (9th Cir. 2000). However, "a summary judgment order that fails to disclose the [] court's reasons runs contrary to the interest of judicial efficiency by compelling the appellate court to scour the record in order to find evidence in support of the decision." Id. And where, as here, the bankruptcy court's "underlying holdings would otherwise be ambiguous or inascertainable, the reasons for entering summary judgment must be stated somewhere in the record" and be available for review. Van Bourg, Weinberg & Roger v. NLRB, 656 F.2d 1356, 1357 (9th Cir. 1981) (emphasis added; cited for this principle in Couveau, 218 F.3d at 1081); accord, Regalado v. City of Commerce City, 20 F.3d 1104, 1108 (10th Cir. 1994); Telectronics Pacing Sys., Inc. v. Ventritex, Inc., 982 F.2d 1520, 1526 (D.C. Cir. 1992); Clay v. Equifax, Inc., 762 F.2d 952, 958 (11th Cir. 1985); Hanson v. Aetna Life & Cas., 625 F.2d 573, 575 (5th Cir. 1981).

As discussed more fully below, the "underlying holdings" of the bankruptcy court in granting the two summary judgments are

"inascertainable" from a review of the summary judgment orders or the Final Order and Judgment. Consequently, by not providing the transcripts of the hearings on the two summary judgment motions at which the bankruptcy court explained the reasons for its orders, Parents have not satisfied their responsibility to assure that the Panel has an adequate record on appeal to allow it to effectively review the bankruptcy court's decisions.

B.

Before electing an option for dealing with an inadequate record on appeal, the case law requires that the Panel examine the record we do have, including the excerpts and appellate briefs, to attempt to discern the grounds on which the summary judgments were granted. In re Beachport Entm't, 396 F.3d at 1086; Hall v. Whitley, 935 F.2d 164, 165 (9th Cir. 1991); Ashley v. Church (In re Ashley), 903 F.2d 599, 605-06 (9th Cir. 1990). Having done so, we are unable to deduce with any precision the bankruptcy court's rationale for granting the summary judgments.

There are numerous and inconsistent statements in the excerpts and briefs where the parties endeavor to characterize or paraphrase the bankruptcy court's ruling, and its reasons for that ruling, on the First Summary Judgment Motion. For example, consider the following:

> Both parties focused on the value issue in arguing the [First Summary Judgment Motion]. The trial court, however, reviewed an order abandoning exempt property of the Debtor's estate after the [Parents"] purchase as dispositive on the issue of value, and, thus on the motion. The order relied on by the trial court was dated October 26, 2004, and dealt solely with exempt property. That order never abandoned any nonexempt property to the Debtor nor to Lalliss, but was made

> specifically subject to the Hamel's purchase of February 17, 2004.

Parents' Opening Br. at 7.

> The Court properly found, because there was no alternative finding available to the Court, that the house and its contents were abandoned to [Debtor] and Lalliss by the order prepared by [Parents' and Debtor's] counsel and signed on October 26, 2004.

Lalliss Reply Br. at 14.

> The trial court stated that since the Debtor made mistakes in his evaluations [in the schedules] those mistakes were binding on all who become involved in the case because of the doctrine of the "law of the case."

Parents' Opening Br. at 20.

> The Court expressed a concern at the oral argument on the Motion for Summary Judgment that the order of October 26, 2004, set the value of the home and, as a result, had become the "law of the case." . . . Had value been an issue in the October 26, 2004, order and was either agreed upon or decided by the Court when the order was entered, then the order would be relevant to the issues before the court in the Summary Judgment Motion, but because value was not an issue, was not decided, and was not relevant to entry of the October 26, 2004, order, it is not relevant and not law of the case.

Parents' Response to Court's Motion Re: Attorney's Fees and Motion for Reconsideration, April 2, 2008, pp. 10-12.

> [Parents] argue that the acknowledgment by the Trustee and the Court of [Lalliss's] contention in October 2004 that all equity in the real property and household goods was exempt, by entry of an order of exemption, is not binding on [Parents]. They appear to be contending that the exemption of the real property and the household goods by the Court is not law of the case as to [Parents], because they were not a party to that action.

Lalliss Reply Br. at 20-21.

The parties' perspectives reflected in these statements tend to indicate that, in granting Lalliss summary judgment, the

bankruptcy court apparently focused on whether there was any equity in the assets when purchased by Parents in February, 2004, or whether by virtue of the abandonment order entered in October, all equity in those assets was exempt, and therefore, was abandoned to Debtor and Lalliss for division by the divorce court. However, based upon this incomplete record, it is impossible for us to accurately discern what facts the bankruptcy court may have considered to be critical or its reasons for discounting Parents' claims that equity did exist in the subject assets.

The parties apparently agree that the bankruptcy court based its rulings on its construction of its own orders entered February 17 and October 26, 2004. Assuming the parties' assumptions about the basis of the bankruptcy court's decision are correct, even in the context of a de novo review, we should accord special consideration to a court's interpretation of its own orders. Officers for Justice v. Civil Serv. Comm'n of City and County of San Francisco, 934 F.2d 1092, 1094 (9th Cir. 1991) (citing the footnote in Brown v. Neeb, 644 F.2d 551, 558 n.12 (6th Cir. 1981) which states, "Few persons are in a better position to understand the meaning of an [order] than the [] judge who oversaw and approved it."); In re Shenango Group Inc., 501 F.3d 338, 346 (3d Cir. 2007) (holding that the court of appeals "accords great weight to the bankruptcy court's construction of an order with which it is familiar by virtue of its direct involvement in the proceedings"); Colonial Auto Ctr. v. Tomlin (In re Tomlin), 105 F.3d 933, 941 (4th Cir. 1997) (holding in an appeal of a summary judgment order, "The bankruptcy judge who has presided over a case from its inception is in the best position to clarify . . . the

court's rulings."); Graefenhain v. Pabst Brewing Co., 870 F.2d 1198, 1203 (7th Cir. 1989) (citing Brown v. Neeb); Tex. Nw. R. Co. v. The Atcheson, Topeka & Santa Fe R. Co. (In re Chicago, Rock Island & P.R. Co.), 860 F.2d 267, 272 (7th Cir. 1987) (stating in an appeal of a summary judgment order that the trial court "is in the best position to interpret its own orders").

Traditionally, a failure to provide a sufficient record to support an informed review of the trial court's determinations may result in either dismissal of the appeal or summary affirmance of the trial court's judgment based upon the appellant's inability to demonstrate error. Cmty. Commerce Bank v. O'Brien (In re O'Brien), 312 F.3d 1135, 1136-37 (9th Cir. 2002); Everett v. Perez (In re Perez), 30 F.3d 1209, 1217-18 (9th Cir. 1994); Hall, 935 F.2d at 165; Ashley, 903 F.2d at 605-06. On the other hand, where appellant fails to provide a sufficient transcript, the appellate court has discretion to disregard the defect and decide the appeal on the merits. Hall, 935 F.2d at 165; Syncom Capital Corp. v. Wade, 924 F.2d 167, 169 (9th Cir. 1991); Ashley, 903 F.2d at 605-06; Portland Feminist Women's Health Ctr v. Advocates for Life, Inc., 877 F.2d 787, 789-90 (9th Cir. 1989) (court declined to review alleged error in contempt hearing where appellants did not provide a transcript of that hearing); Thomas v. Computax Corp., 631 F.2d 139, 143 (9th Cir. 1980) (dismissing a pro se appeal that failed to include relevant transcript); but see Kyle v. Kyle (In re Kyle), 317 B.R. 390, 393 (9th Cir. BAP 2004) (holding that a transcript was not necessary where the Panel could discern the reasoning of the bankruptcy court from other sources).

Morrissey v. Stuteville (In re Morrissey), 349 F.3d 1187,

1190 (9th Cir. 2003), instructs that, when faced with an inadequate record, the Panel should consider whether informed review is possible in light of the record on appeal. Morrissey distinguishes between an incomplete record that limits the appellate court's ability to understand the issues and, on the other hand, an incomplete record that does not contain enough to enable review. In the latter case, there is "little choice" but to affirm or dismiss. Id. at 1191.

In this appeal, in the exercise of our discretion,[6] we conclude the record is inadequate to allow us to perform an effective review of the bankruptcy court's decisions. We simply cannot discern the bankruptcy court's reasons for granting Lalliss the summary judgments. The only instructive items in the excerpts are the bankruptcy court's orders and the Minute Entries from the various hearings. As the parties seem to agree, under the circumstances, we can only assume that the bankruptcy court rejected Parents' claims based upon its interpretation of its own orders. Lacking other substantive information about the reasons for the bankruptcy court's decision, we accord great weight to the decision of the court that entered the orders. In short, under the circumstances, we believe the summary judgments should be summarily affirmed.

Beachport cautions us that summary affirmance is tantamount to dismissal of an appeal and, under some circumstances, may

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[6] A decision to summarily affirm the bankruptcy court because of an inadequate record on appeal is regarded by the Ninth Circuit as one based on noncompliance with non-jurisdictional procedural requirements. Rather than apply its usual de novo review to our decision, the court of appeals will apply an abuse of discretion standard. In re Morrissey, 349 F.3d at 1189-90.

constitute an inappropriately harsh sanction. Beachport therefore instructs that, even if we determine that we have an inadequate record on appeal, before we dismiss summarily for noncompliance with a procedural rule, the Panel must consider the impact of the sanction, alternative sanctions, and "the relative culpability of the appellant and his attorney, because dismissal may inappropriately punish the appellant for the neglect of his counsel." Id. at 1087. Beachport recognizes, however, that there may be some appeals where the inadequacy of the record is so "egregious" as to obviate the need for consideration of alternative sanctions.[7]

The record in this appeal contains no information of consequence concerning the bankruptcy court's reasons for granting the two summary judgment motions, other than a reference in the hearing minutes that the court's findings and conclusions were stated on the record. Parents elected not to submit the transcripts of the hearings on the two summary judgment motions, the only reliable source for understanding the bankruptcy court's rationale for granting the motions. As noted above, even in de novo review, the trial court's reasons for granting summary judgment must be given appropriate consideration. All things considered, we conclude that Parents' failure to supply an adequate record for review was, under these circumstances, an egregious omission. As a result, we summarily AFFIRM the Final

[7] Beachport cites Morrissey, where, among other deficiencies in its brief and the record, the appellant "egregiously violated" the requirements of the bankruptcy rules by failing to include the "crucial transcript" that addressed the controversy. In re Beachport Enters, 396 F.3d at 1086, quoting In re Morrissey, 349 F.3d at 1189.

Order and Judgment of the bankruptcy court as to its grants of the First and Second Summary Judgment Motions.

II.

The bankruptcy court abused its discretion in awarding sanctions against Parents for violation of Rule 9011(b)(2), and there is no basis for this Panel to award Lalliss additional sanctions.

Parents argue that the bankruptcy court erred in imposing sanctions in the form of an award of attorneys fees against Parents for alleged violations of Rule 9011(b)(2). In the cross-appeal, Lalliss asks us to "transfer" those sanctions to the attorneys for Parents and, in addition, to order an increase in the amount of the sanctions.

The bankruptcy court's Minute Entry for February 26, 2008, provides that: "It is ordered directing James and Diane Hamel and their law firm Collins & Collins to show cause why subdivision B [of Rule 9011] has not been violated and in particular subdivision B2." The Minute Entry for the April 22 proceedings indicates that this was a hearing concerning "Order Directing James and Diane Hamel and Their Law Firm Collins & Collins to Show Cause Why Subdivision B(2) Has Not Been Violated." The final entry on the Minute Entry states that "It is ordered granting an award of attorney's fees in the amount of $2,959 plus costs of $99.00 against [Parents]."

The bankruptcy court committed an error of law when it awarded Lalliss attorney's fees and costs from Parents for alleged violations of Rule 9011(b)(2). Rule 9011(b)(2) prescribes that the presentation of a pleading to the court by "an attorney or unrepresented party" constitutes a representation that, as

relevant here, "the claims . . . therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. . . ." Rule 9011(c)(2)(A) provides that "Monetary sanctions may not be awarded against a represented party for violation of subdivision (b)(2)." Polo Bldg. Group, Inc. v. Rakita (In re Shubov), 253 B.R. 540, 546 (9th Cir. BAP 2000) (holding that "a represented party cannot be required to pay sanctions for violating Bankruptcy Rule 9011(b)(2)."). Without regard to whether Parents' position was frivolous, it was error for the bankruptcy court to impose a monetary sanction for violation of Rule 9011(b)(2) on Parents, because they were represented by counsel. We therefore REVERSE the bankruptcy court's award of attorney's fees and costs against Parents.

Lalliss' cross-appeal concerning sanctions lacks merit. Apparently recognizing the bankruptcy court's mistake, Lalliss asks the Panel to "substitute" Parents' law firm for Parents as the proper party against whom the bankruptcy court's Rule 9011 sanctions should have been imposed and to increase those sanctions to $6,854.00 for attorney's fees and $99.00 for costs. Lalliss provides neither authority, nor persuasive reasoning, for requesting this novel form of relief from this appellate body.

Even assuming the Panel could grant the sort of relief Lalliss seeks in her cross-appeal, the Panel declines to consider Lalliss' argument that we should "transfer" the sanction from Parents to their law firm because it was raised for the first time on appeal. In re E.R. Fegert, 887 F.2d at 957 (appellate court will not consider argument raised for the first time on appeal);

Concrete Equip. Co., Inc. v. Fox (In re Vigil Bros. Constr., Inc., 193 B.R. 513, 520 (9th Cir. BAP 1996).

We also decline to consider Lalliss's request that we increase the amount of the sanctions to take into account the additional attorneys fees she incurred in pursuing the Second Summary Judgment motion. The bankruptcy court's order and judgment is silent on this request, and we decline to consider it on appeal, especially without knowing whether the bankruptcy court would consider imposing sanctions against Parents' counsel.[8]

Therefore, Lalliss' cross-appeal is DISMISSED.

CONCLUSION

We summarily AFFIRM the Final Order and Judgment insofar as it grants the First and Second Summary Judgment Motions, because Parents have not provided us with an adequate record to effectively review the bankruptcy court's decision.

We REVERSE the bankruptcy court's award of attorney's fees

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[8] Although we have discretion to consider an issue raised for the first time on appeal, our discretion is not limitless. We may only consider a new issue if "(1) there are 'exceptional circumstances' why the issue was not raised in the trial court, (2) the new issue arises while the appeal is pending because of a change in the law, or (3) the issue presented is purely one of law and the opposing party will suffer no prejudice as a result of the failure to raise the issue in the trial court." United States v. Carlson, 900 F.2d 1346, 1349 (9th Cir. 1990). We find no exceptional circumstances, or even an argument, why the request to "transfer" the sanction from Parents to their attorneys was not first raised in the bankruptcy court. There has been no change in the law. And Parents would certainly be prejudiced by having to respond late in an appeal to the introduction of a novel, unsupported legal theory. And if Lalliss believes there is merit to her request for an award of Rule 9011 sanctions against Parents or their counsel as a result of the proceedings on the Second Summary Judgment motion, Lalliss may bring that issue to the attention of the bankruptcy court via a motion for relief from the court's Final Order and Judgment under Rule 9024, which incorporates FED. R. CIV. P. 60(b).

and costs pursuant to Rule 9011(b)(2) against Parents, and we DISMISS Lalliss' cross-appeal asking us to modify and increase that sanction award.