

MAR 31 2008

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

6	In re:)	BAP No.	WW-07-1391-JuPaD
)		
7	BRADLEY DAVID HASLAM and)	Bk. No.	07-10112
	TAMMIE KAY HASLAM,)		
8)		
	Debtors.)		
9	_____)		
)		
10	M3 HOLDINGS LLC,)		
)		
11	Appellant,)		
)		
12	v.)	MEMORANDUM¹	
)		
13	BRADLEY DAVID HASLAM and)		
	TAMMIE KAY HASLAM,)		
14)		
	Appellees.)		
15	_____)		

Argued and Submitted on March 18, 2008
at Helena, Montana

Filed - March 31, 2008

Appeal from the United States Bankruptcy Court
for the Western District of Washington

Honorable Thomas T. Glover, Bankruptcy Judge, Presiding

Before: JURY, PAPPAS and DUNN, 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.

1 Appellant M3 Holdings LLC ("M3 Holdings"), which had not
2 filed a timely proof of claim or a complaint objecting to the
3 debtors' discharge of its claim, objected to confirmation of the
4 debtors' chapter 13 plan² on good faith grounds. The bankruptcy
5 court confirmed the debtors' plan without analysis of M3
6 Holdings' objection on the basis that it lacked standing and
7 awarded debtors sanctions pursuant to Rule 9011 in the amount of
8 \$2000. M3 Holdings moved for reconsideration, which the
9 bankruptcy court denied.

10 M3 Holdings appeals the bankruptcy court's order confirming
11 debtors' plan, overruling its objection and awarding sanctions,
12 and the order denying its motion for reconsideration.

13 We conclude M3 Holdings had standing to object to
14 confirmation of debtors' plan on good faith grounds. We REVERSE
15 and REMAND the case for the good faith determination.

16 I. FACTS

17 On January 10, 2007, debtors filed their voluntary chapter
18 13 petition. Debtors listed M3 Holdings as an unsecured
19 creditor in their Schedule F. M3 Holdings' claim against
20 debtors arose out of a state court lawsuit which it filed
21 against debtors prepetition.

22 M3 Holdings was the assignee-in-interest of all rights of
23 collection and suit for claims of Peterson Hardware, Inc.,
24 arising out of the theft of goods from its Oak Harbor,
25 Washington Ace Hardware Store ("Ace Hardware"). The state court

26
27 ² Unless otherwise indicated, all chapter, section and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 complaint alleged causes of action against debtors for
2 conversion, constructive trust, unjust enrichment and violation
3 of the Criminal Profiteering Act pursuant to Wash. Rev. Code
4 § 9A.82, and sought over \$600,000 in money damages.³
5 Specifically, the complaint alleged debtor Bradley Haslam
6 wrongfully obtained firearms and other general merchandise from
7 Ace Hardware through an illicit enterprise with Gary Barnes, an
8 Ace Hardware employee, without payment.

9 On April 10, 2007, debtors removed the state court lawsuit
10 to the bankruptcy court. On June 20, 2007, the bankruptcy court
11 remanded the lawsuit to the state court for the purpose of
12 liquidating M3 Holdings' claim against debtors. It also entered
13 an order awarding M3 Holdings \$2000 in attorneys' fees for the
14 improper removal, payable by debtors within thirty days.

15 On July 2, 2007, debtors moved for reconsideration of the
16 remand order because M3 Holdings did not file a timely proof of
17 claim or timely complaint objecting to discharge of its claim.
18 They also requested to pay the \$2000 owed to M3 Holdings in
19 attorneys' fees through their plan as an administrative claim
20 instead of within thirty days. The bankruptcy court clarified
21 its previous holding regarding the remand, finding M3 Holdings'
22 failure to file a timely claim precluded it from
23 sharing in any payment under debtors' plan. It also found that
24 if M3 Holdings was unsuccessful in a nondischargeability action

25
26 ³ Other defendants were also named. The state court amended
27 complaint was not included in the record on appeal. We take
28 judicial notice of the complaint which was docketed and imaged by
the bankruptcy court in Adversary No. 07-01106 at Dkt. no. 1.
Atwood v. Chase Manhattan Mortgage Co. (In re Atwood), 293 B.R.
227, 233 n.9 (9th Cir. BAP 2003).

1 against debtors and debtors completed their plan, its claim
2 would be discharged.⁴ The court granted debtors' request
3 regarding the \$2000 payment as an administrative claim.

4 On August 3, 2007, M3 Holdings objected to confirmation of
5 debtors' plan as not being proposed in good faith in violation
6 of § 1325(a)(3).⁵ It alleged that debtors misrepresented to the
7 bankruptcy court their assets and liabilities and the amount of
8 their unsecured debts, which exceeded the maximum limit for
9 eligibility under chapter 13. M3 Holdings also argued that
10 debtors were retaining "luxury goods," which constituted their
11 largest asset, without proposing to pay for them. M3 Holdings
12 maintained that it alone held a \$600,000 unsecured claim and
13 described the "luxury goods" as firearms in debtors' possession
14 that belonged to it.

15 On August 6, 2007, debtors' counsel sent a letter to M3
16 Holdings' attorney requesting withdrawal of M3 Holdings'
17 objection to the debtors' plan, citing the bankruptcy court's
18 observation in its clarification of the remand order that M3
19 Holdings had not filed a timely proof of claim or
20 nondischargeability complaint. Debtors also filed a response to
21 M3 Holdings' objection asserting it lacked standing to object to
22 confirmation of their plan and requested Rule 9011 sanctions in
23 the same pleading.

24
25 ⁴ Although M3 Holdings' nondischargeability complaint was
26 untimely filed, the bankruptcy court dismissed it on July 30,
2007, for failure to pay the filing fee.

27 ⁵ This section provides that the court shall confirm a plan
28 if the plan has been proposed in good faith and not by any means
forbidden by law.

1 On September 12, 2007, the bankruptcy court signed the
2 order confirming debtors' plan, overruling M3 Holdings'
3 objection and revoking the \$2000 sanction awarded to M3 Holdings
4 as attorneys' fees for the improper removal, directing that
5 debtors should instead pay that amount to their attorney rather
6 than M3 Holdings.⁶ The order was entered on September 14, 2007.

7 M3 Holdings moved for reconsideration on the grounds that
8 it was a party in interest with standing to object to
9 confirmation of debtors' plan based on its continued title
10 interest in the firearms and its administrative claim. It
11 further asserted that the bankruptcy court had an independent
12 duty to determine whether the plan was proposed in good faith.
13 Lastly, M3 Holdings contended that the award of sanctions was
14 improper because debtors did not file a separate motion as
15 required by Rule 9011, and it had a reasonable basis in law to
16 assert its standing.

17 On October 1, 2007, the bankruptcy court entered an order
18 denying M3 Holdings' motion for reconsideration on the ground
19 that its motion was not ripe for reconsideration since neither
20 of the parties had submitted an order on the court's former
21 ruling on the merits.

22 M3 Holdings timely appealed.

23 **II. JURISDICTION**

24 The bankruptcy court had subject matter jurisdiction
25 pursuant to 28 U.S.C. § 1334 over this core proceeding under
26

27 ⁶ The order did not direct M3 Holdings to pay debtors'
28 attorney's fees as a sanction.

1 § 157(b) (2) (A) and (L). We have jurisdiction under 28 U.S.C.
2 § 158.

3 **III. ISSUES**

4 A. Whether Appellant had standing to object to confirmation of
5 debtors' chapter 13 plan.

6 B. Whether the bankruptcy court erred in awarding Rule 9011
7 sanctions against Appellant.

8 **IV. STANDARDS OF REVIEW**

9 We review the bankruptcy court's determination of standing
10 de novo. Brown v. Sobczak (In re Sobczak), 369 B.R. 512, 516
11 (9th Cir. BAP 2007), citing Arakaki v. Lingle, 477 F.3d 1048,
12 1056 (9th Cir. 2007).

13 A bankruptcy court's award of sanctions is reviewed for an
14 abuse of discretion. Miller v. Cardinale (In re DeVille), 361
15 F.3d 539, 547 (9th Cir. 2004). A bankruptcy court abuses its
16 discretion if it bases its decision on an erroneous view of the
17 law or clearly erroneous factual findings. Smyth v. City of
18 Oakland (In re Brooks-Hamilton), 329 B.R. 270, 277 (9th Cir. BAP
19 2005). We can reverse only if we have a definite and firm
20 conviction that there was a clear error of judgment in the
21 conclusion reached. Bartee v. Ainsworth (In re Bartee), 317
22 B.R. 362, 365 (9th Cir. BAP 2004).

23 We review the denial of a motion for reconsideration for
24 abuse of discretion. Weiner v. Perry, Settles & Lawson, Inc.
25 (In re Weiner), 161 F.3d 1216, 1217 (9th Cir. 1998).

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1 **V. DISCUSSION**

2 **A. Standing**

3 M3 Holdings asserts three possible bases upon which to find
4 that it is a party in interest with standing to object to
5 confirmation of debtors' plan, two of which relate to the claims
6 it asserted against debtors in the state court lawsuit. M3
7 Holdings contends that its title interest in the firearms in
8 debtors' possession, although disputed, gives it standing to
9 object. Next, it asserts that its status as an unsecured
10 creditor due to its asserted causes of action for money damages
11 gives it standing. M3 Holdings' third basis for standing is as
12 an administrative claimant.

13 M3 Holdings argues that the term "party in interest" as
14 used in § 1324(a) should be broadly construed to mean any person
15 substantially impacted by the case. Debtors argue for a narrow
16 construction of the term that would deny party in interest
17 standing to unsecured creditors like M3 Holdings who did not
18 file a proof of claim or timely complaint to except its claim
19 from discharge. For this proposition, debtors primarily rely
20 upon In re Stewart, 46 B.R. 73, 77 (Bankr. D. Or. 1985) (finding
21 creditor who did not have allowed claim lacked standing to
22 object to debtor's plan on ground debtor did not commit
23 additional funds that could be used to pay its claim).⁷

24 _____
25 ⁷ Debtors also cite Fondiller v. Robertson (In re
26 Fondiller), 707 F.2d 441, 443 (9th Cir. 1983) and Yates v. Forker
27 (In re Patriot Co.), 303 B.R. 811, 815 (8th Cir. BAP 2004) for
28 the proposition that M3 Holdings does not meet the "aggrieved
person" test because it does not have a direct pecuniary interest
in the case, presumably because it did not file a proof of claim.

(continued...)

1 Section 1324(a) provides that “[a] party in interest may
2 object to confirmation of the plan.” The term party in interest
3 is not defined by the Code. In determining congressional
4 intent, we start by application of the plain meaning rule. If
5 the statutory language is clear, we must apply it by its terms
6 unless to do so would lead to absurd results. United States v.
7 Ron Pair Enters., Inc., 489 U.S. 235, 240-41 (1989). We not
8 only look to the language of the statute, but also to “the
9 specific context in which the language is used, and the broader
10 context of the statute as a whole.” Hough v. Fry (In re
11 Hough), 239 B.R. 412, 414 (9th Cir. BAP 1999).

12 The plain language of § 1324(a) shows that Congress
13 employed a broad term for a party in interest, rather than a
14 more limiting term such as “holder of an allowed claim” or
15 “holder of a filed proof of claim” or even “creditor.”⁸ Jensen
16 v. Froio (In re Jensen), 369 B.R. 210, 230 (Bankr. E.D. Pa.

17 _____
18 ⁷(...continued)

19 Although the standard in Fondiller and Patriot Co. is similar, it
20 is not dispositive here in that it addresses appellate standing
21 rather than standing at the trial level. The “aggrieved person”
22 test is a more restrictive standing test applicable to appellants
23 created to prevent unreasonable delay. Duckor Spradling &
24 Metzger v. Baum Trust (In re P.R.T.C., Inc.), 177 F.3d 774, 777
(9th Cir. 1999). Generally, a party in interest has a broad
right to participate in a bankruptcy case. The standards for
evaluating party in interest standing are pertinent to determine
who may object to debtors’ plan.

25 ⁸ Furthermore, if Congress wanted to limit the term party
26 in interest to the holder of an allowed claim, it knew how to do
27 so, as demonstrated by the more limiting language it used in
28 § 1325(b)(1). That section provides that if a trustee or the
holder of an allowed unsecured claim objects to the confirmation
of the plan, then the court may not approve the plan unless
certain conditions in the statute are met. (emphasis added).

1 2007). Indeed, the term has been appropriately described as an
2 "expandable concept" that depends upon the factual context of
3 the case. Sobczak, 369 B.R. at 517-18 (noting that a party in
4 interest may be one who has an actual pecuniary interest in the
5 case, one who has a practical stake in the outcome of the case,
6 or one who will be impacted in any significant way in the
7 case).⁹

8 M3 Holdings' status as an unsecured creditor is undisputed.
9 As a creditor, M3 Holdings falls within the scope of a party in
10 interest as enumerated in § 1109(b).¹⁰

11 A "creditor" is defined as an entity that has a claim¹¹
12 against the debtor that arose at the time of or before the order
13 for relief. § 101(10)(A). The definition requires only that
14 the entity have a claim or right to payment. There is no
15 requirement that an entity have an "allowed" claim or a claim

16
17 ⁹ It is unclear how M3 Holdings' alleged title interest in
18 the firearms in debtors' possession gives it party in interest
19 standing to object to confirmation of debtors' plan. If the
20 state court ultimately concludes that M3 Holdings has title to
21 the firearms, the confirmation of debtors' plan will not impact
22 M3 Holdings because, based on that conclusion, the firearms are
23 not, and never were, property of the debtors or their bankruptcy
24 estate. Nonetheless, as set forth herein, M3 Holdings had
25 standing to object to confirmation of debtors' plan on good faith
26 grounds based upon its status as an unsecured creditor and
27 administrative claimant.

28 ¹⁰ Were this a chapter 11 case, M3 Holdings would clearly be
considered a party in interest under § 1109(b). This section
governs who has a right to be heard on issues in a chapter 11
reorganization and identifies as a party in interest, among
others, a creditor. § 1109(b).

¹¹ A "claim" is defined as a right to payment, whether or not
such right is reduced to judgment, liquidated, contingent,
disputed, or unsecured. See § 101(5)(A).

1 "proof of which has been filed." Johnston v. JEM Dev. Co. (In
2 re Johnston), 149 B.R. 158, 161 (9th Cir. BAP 1992) (noting that
3 a creditor is a party in interest regardless of the status of
4 its claim); Armstrong v. Rushton (In re Armstrong), 303 B.R.
5 213, 219 (10th Cir. BAP 2004) (noting that a person does not need
6 to have filed a proof of claim to be a party in interest); In re
7 Turpen, 218 B.R. 908, 911 (Bankr. N.D. Iowa 1998) (noting that a
8 creditor is not defined as an entity that has a claim against
9 the debtor, proof of which has been filed) (emphasis added); see
10 also Rule 3003(c) (2) (stating that failure to file proof of claim
11 eliminates creditor's right to distribution). Accordingly, we
12 conclude that an unsecured creditor such as M3 Holdings does not
13 lose its standing as a party in interest simply because it
14 failed to file a timely proof of claim or complaint objecting to
15 discharge of its claim.

16 A party's standing in a bankruptcy case, however, is not an
17 all-or-nothing proposition. Rather, it must be determined on a
18 particularized basis as to each theory raised. Lewis v. Casey,
19 518 U.S. 343, 358 n.6 (1996) (noting that standing is not
20 dispensed in gross, but rather is determined by the specific
21 claims presented); In re Ofty Corp., 44 B.R. 479, 481 (Bankr. D.
22 Del. 1984) (noting that "An entity may be [a] real party in
23 interest and have standing in one respect while he may lack
24 standing for another purpose."). Since an unsecured creditor
25 must hold an allowed claim to receive distributions under a
26 confirmed plan, M3 Holdings' failure to file a proof of claim or
27 complaint objecting to the discharge of its claim has an effect
28 on its standing to object to debtors' plan in at least one

1 respect. That is, because M3 Holdings does not have an allowed
2 claim, it could not object to confirmation of debtors' plan on
3 grounds related to the sufficiency of distributions.¹² Jensen,
4 369 B.R. at 231.

5 Nonetheless, its failure to file a proof of claim does not
6 preclude M3 Holdings from being a party in interest with
7 standing to object to confirmation of debtors' plan on good
8 faith grounds. M3 Holdings as an unsecured creditor has an
9 actual pecuniary interest in ensuring that its claims against
10 debtors are not discharged in a bankruptcy that it contends was
11 not filed in good faith. Jensen, 369 B.R. at 231. Accordingly,
12 the bankruptcy court should have considered M3 Holdings'
13 objections regarding the inaccuracy of debtors' schedules,
14 hidden assets, and eligibility, which are all issues related to
15 debtors' lack of good faith. See Guastella v. Hampton (In re
16 Guastella), 341 B.R. 908, 918 (9th Cir. BAP 2006) (addressing
17 eligibility in context of good faith objection); In re Johnson,
18 262 B.R. 831, 842 (Bankr. D. Idaho 2001) (addressing hidden
19 assets and accuracy of debtor's schedules in context of good
20 faith objection).

21 Likewise, M3 Holdings' administrative claim gave it the
22 necessary financial stake to be considered a party in interest
23

24 ¹² Debtors' reliance on Stewart for a narrow construction of
25 the term party in interest is inapposite. In Stewart, the court
26 found that because the creditor did not have an allowed claim, it
27 lacked standing to object to the debtor's plan based upon the
28 debtor's failure to commit additional funds which could be used
to pay its claim. 46 B.R. at 77. Thus, Stewart holds that a
creditor without an allowed claim lacks standing to object to the
distributions under a plan.

1 with standing to object to confirmation of debtors' plan on good
2 faith grounds. In re Barnes, 275 B.R. 889, 892-93 (Bankr. E.D.
3 Cal. 2002) (finding chapter 7 trustee, although not a creditor,
4 was an administrative claimant with necessary financial interest
5 to be considered party in interest with standing to object to
6 chapter 13 plan).

7 In sum, we conclude that the bankruptcy court erred in
8 overruling M3 Holdings' objection to confirmation of debtors'
9 plan on good faith grounds based upon its lack of standing. We
10 therefore remand the case to the bankruptcy court to evaluate
11 the good faith requirement in light of M3 Holdings' objection.

12 **B. Rule 9011 Sanctions**

13 We conclude that the bankruptcy court abused its discretion
14 in awarding sanctions on two separate grounds. First, M3
15 Holdings had standing to object to confirmation of debtors' plan
16 on good faith grounds. Next, Rule 9011(c)(1)(A) states that a
17 motion for sanctions should be made separately from other
18 motions or requests and shall describe the specific conduct
19 alleged to violate Rule 9011(b). Debtors' request for sanctions
20 set forth in their response to M3 Holdings' objection to their
21 plan unequivocally failed to meet the separate motion or
22 specificity requirements. M3 Holdings, therefore, never had the
23 opportunity to avail itself of the safe harbor provisions of the
24 rule. Nonetheless, the bankruptcy court awarded sanctions
25 without requiring debtors to comply with the procedure in Rule
26 9011(c)(1)(A). This clear legal error constitutes an abuse of
27 discretion.

1 **C. Motion for Reconsideration**

2 The bankruptcy court denied M3 Holdings' motion for
3 reconsideration on the ground that the order overruling M3
4 Holdings' objection to debtors' plan had not yet been submitted.
5 A review of the record shows that the order on the merits of M3
6 Holdings' objection was entered on September 14, 2007, before
7 the court signed the order denying M3 Holdings' motion for
8 reconsideration. In light of our prior determinations reversing
9 and remanding, we do not need to address M3 Holdings' appeal of
10 the bankruptcy court's denial of its motion for reconsideration
11 as the issue is moot.

12 **VI. CONCLUSION**

13 We REVERSE for the reasons stated herein and REMAND the
14 case to the bankruptcy court for a resolution of M3 Holdings'
15 good faith objection to confirmation.
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