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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NOT FOR PUBLICATION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. OR-08-1189-MoJuMk  
7 )  
7 CHRISTOS MANDALIDES, ) Bk. No. 08-32091  
8 )  
8 Debtor. )  
9 )  
9 )  
10 CHRISTOS MANDALIDES, )  
11 )  
11 Appellant, )  
12 )  
12 v. ) **MEMORANDUM**<sup>1</sup>  
13 )  
13 WEST COAST BANK; BRIAN D. )  
14 LYNCH, Chapter 13 Trustee; )  
14 UNITED STATES TRUSTEE, )  
15 )  
15 Appellees. )

Argued and Submitted on February 19, 2009  
at Pasadena, California

Filed - March 2, 2009

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

Honorable Trish M. Brown, Bankruptcy Judge, Presiding

Before: MONTALI, JURY, and MARKELL, 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 After conducting a full evidentiary hearing, the bankruptcy  
2 court entered an order granting a creditor relief from the  
3 automatic stay of 11 U.S.C. § 362.<sup>2</sup> Debtor appealed and we  
4 AFFIRM.

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6 **I. FACTS**

7 On May 5, 2008, appellant Christos Mandalides ("Debtor")  
8 filed a petition for relief under chapter 13. On May 27, 2008,  
9 appellee West Coast Bank (the "Bank") filed a proof of claim  
10 alleging that as of the petition date, Debtor owed \$191,784.03 on  
11 a promissory note executed to the order of the Bank. The Bank  
12 further alleged that a deed of trust on certain real property  
13 located on Fern Hill Road in Rainier, Oregon (the "Property")  
14 secured repayment of the promissory note.

15 On May 28, 2008, the Bank filed a motion for relief from  
16 stay in order to pursue its foreclosure remedies against the  
17 Property. The Bank asserted the value of the Property to be  
18 \$205,500.00, its claim to be \$191,784.03, and unpaid taxes on the  
19 Property to be \$2,751.88 (for total encumbrances of \$194,535.91).  
20 The Bank estimated the cost of liquidating the Property to be  
21 \$10,964.09.

22 Debtor objected to the proof of claim because the Bank had  
23 not attached the original promissory note. Debtor also filed a  
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26 <sup>2</sup>Unless otherwise indicated, all chapter, section and rule  
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
28 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037, as  
revised by The Bankruptcy Abuse Prevention and Consumer  
Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23.

1 response to the motion for relief from stay, repeatedly asserting  
2 that "this is not a secured debt." On July 22, 2008, the  
3 bankruptcy court held an evidentiary hearing on both the motion  
4 for relief from stay and Debtor's objection to the Bank's proof  
5 of claim. Debtor did not order a copy of the transcript of this  
6 hearing.

7 On July 25, 2008, the bankruptcy court entered its findings  
8 and facts and conclusions of law based on the evidence presented  
9 at the hearing. The court specifically found that (1) Debtor had  
10 executed a promissory note in favor of the Bank in the amount of  
11 \$172,700.00; (2) Debtor had executed a deed of trust pledging  
12 title to the Property as security for repayment of the Note; (3)  
13 the deed of trust was recorded in the official county records on  
14 May 30, 2006; (4) Debtor had defaulted on his obligations under  
15 the note; (5) total encumbrances against the Property as of the  
16 petition date totaled \$186,296.78; (6) the value of the Property  
17 was \$205,500.00; (7) given the estimated costs of sale, no  
18 unencumbered equity existed in the Property; and (8) Debtor  
19 provided no evidence that the Property was necessary for an  
20 effective reorganization.

21 Based on the foregoing findings of fact, the bankruptcy  
22 court granted relief from the automatic stay under section  
23 362(d)(1) for cause, as Debtor was not providing adequate  
24 protection to the Bank. The court also concluded that relief was  
25 appropriate under section 362(d)(2) because the Debtor did not  
26 have equity in the Property and the Property was not necessary  
27 for an effective reorganization.

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1 On July 29, 2008, the bankruptcy court entered an order  
2 granting the Bank relief from the automatic stay. On August 1,  
3 2008, Debtor filed an "Objection and Appeal of Court's Approval  
4 of [Bank's] Motion for Relief from Automatic Stay and Petition to  
5 Strike [Bank's] Motion for Relief from Stay" ("the Motion for  
6 Reconsideration").<sup>3</sup> On September 17, 2008, this panel entered an  
7 order treating the Motion for Reconsideration as a notice of  
8 appeal from a final order not requiring leave to appeal. The  
9 panel declined to proceed on the merits of the appeal, however,  
10 as the balance of the Motion for Reconsideration constituted a  
11 timely motion for relief from judgment to be decided by the  
12 bankruptcy court.

13 The Motion for Reconsideration alleged, inter alia, that the  
14 proof of claim was not signed under penalty of perjury by someone  
15 with personal knowledge of the claim, that no lawful document  
16 supported the claim, and that the Bank was not a holder in due  
17 course of a bona fide negotiable instrument. On September 23,  
18 2008, the bankruptcy court entered an order denying the Motion  
19 for Reconsideration. The court reviewed its records and files  
20 and made the following additional findings:

- 21 1. Bank's proof of claim was filed by an authorized  
22 agent in accordance with Fed. R. Bankr. P. 3001(b) on  
23 an official bankruptcy form that sets forth the penalty  
24 for filing a fraudulent claim. Further, the court held  
25 an evidentiary hearing on the Debtor's objection to  
Bank's proof of claim in conjunction with the hearing  
on the Bank's motion for relief from stay and the  
Debtor failed to raise any objections to the form of  
Bank's proof of claim at that hearing.

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27 <sup>3</sup>Debtor appealed only the order granting relief from stay  
28 and not the separate order denying Debtor's objection to Bank's  
claim.

1 2. Debtor presented no evidence that he was  
2 fraudulently induced to enter into the Note or the Deed  
of Trust with the Bank.

3 3. Debtor admitted that the Bank is in possession of  
4 the original Note and that he had been allowed to view  
the original Note.

5 4. The Bank is the holder of the Note and is entitled  
6 to enforce both the Note and the Deed of Trust.

7 5. The other issues raised in the Debtor's petition  
8 to strike [Motion for Reconsideration] were heard and  
determined by the court at the hearing on the Bank's  
9 motion for relief from stay.

## 10 **II. ISSUE**

11 Did the bankruptcy court err in granting relief from the  
12 automatic stay to the Bank?

## 13 **III. STANDARD OF REVIEW**

14 We review a bankruptcy court's order granting relief from  
15 the stay for abuse of discretion. Arneson v. Farmers Ins.  
16 Exchange (In re Arneson), 282 B.R. 883, 887 (9th Cir. BAP 2002);  
17 Duvar Apt., Inc. v. Fed. Dep. Ins. Corp. (In re Duvar Apt.,  
18 Inc.), 205 B.R. 196, 199 (9th Cir. BAP 1996). To reverse for  
19 abuse of discretion we must have a definite and firm conviction  
20 that the bankruptcy court committed a clear error of judgment in  
21 the conclusion it reached. S.E.C. v. Coldicutt, 258 F.3d 939,  
941 (9th Cir. 2001).

22 The bankruptcy court's findings of fact are reviewed for  
23 clear error, and conclusions of law are reviewed de novo.  
24 Padilla v. U.S. Trustee (In re Padilla), 214 B.R. 496, 498 (9th  
25 Cir. BAP 1997), aff'd, 222 F.3d 1184 (9th Cir. 2000).

## 26 **IV. JURISDICTION**

27 Our order dated September 17, 2008, stated that the order  
28 granting relief from the stay was final and appealable. See also

1 Nat'l Envtl. Waste Corp. v. City of Riverside (In re Nat'l Envtl.  
2 Waste Corp.), 129 F.3d 1052, 1054 (9th Cir. 1997) ("Orders  
3 granting or denying relief from the automatic stay are deemed to  
4 be final orders."). We therefore have jurisdiction under 28  
5 U.S.C. § 158(b) to review the bankruptcy court's order.

#### 6 **V. DISCUSSION**

7 As we held in Burkhart v. Fed. Dep. Ins. Corp. (In re  
8 Burkhart), 84 B.R. 658, 660 (9th Cir. BAP 1988), an appellant has  
9 the burden of showing a trial court's findings of fact are  
10 clearly erroneous. "The responsibility to file an adequate  
11 record also rests with the [appellant]." Id.; see also Kritt v.  
12 Kritt (In re Kritt), 190 B.R. 382, 387 (9th Cir. BAP 1995).  
13 "'Appellants should know that an attempt to reverse the trial  
14 court's findings of fact will require the entire record relied  
15 upon by the trial court be supplied for review.'" Kritt, 190  
16 B.R. at 387, quoting Burkhart, 84 B.R. at 661.

17 Here, Debtor has the burden of demonstrating that the  
18 bankruptcy court's precise and detailed findings regarding the  
19 promissory note, his obligations to the Bank, and other facts  
20 were clearly erroneous. To do so, he has to show how the  
21 findings were not supported by the record (i.e., the testimony  
22 and evidence upon which the court relied in issuing its ruling).  
23 Id.

24 Debtor's opening appellate brief duplicates the grounds of  
25 error set forth in his Motion for Reconsideration, adding one  
26 argument: "The contracts attached to Proof of Claim lack 2  
27 essential components of any valid contract, namely: a) exchange  
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1 of consideration and b) full disclosure."<sup>4</sup> The bankruptcy court,  
2 relying on its initial and supplemental findings of fact,  
3 rejected each of the arguments asserted by Debtor in his Motion  
4 for Reconsideration. These findings of facts are based on  
5 testimony and evidence presented at the evidentiary hearing, but  
6 Debtor did not obtain a transcript of this hearing and has not  
7 provided the evidence and exhibits introduced at the hearing.<sup>5</sup>

8 Rule 8009(b) requires an appellant to provide the  
9 "transcript or portion thereof, if so required by a rule of the  
10 bankruptcy appellate panel." The rules of this panel mandate the  
11 inclusion of transcripts "necessary for adequate review":

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

18 9th Cir. BAP R. 8006-1.<sup>6</sup> In order for us to determine that the

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19 <sup>4</sup>We will not consider Debtor's extra argument regarding lack  
20 of consideration and full disclosure, as it was raised for the  
21 first time on appeal. O'Rourke v. Seaboard Sur. Co. (In re E.R.  
22 Fegert, Inc.), 887 F.2d 955, 957 (9th Cir. 1989) (appellate court  
23 will not consider argument raised for the first time on appeal);  
24 Concrete Equip. Co., Inc. v. Fox (In re Vigil Bros. Constr.,  
25 Inc.), 193 B.R. 513, 520 (9th Cir. BAP 1996).

26 <sup>5</sup>Although we have the option of reviewing the bankruptcy  
27 court's electronic docket if the parties' excerpts do not include  
28 relevant documents (see E.R. Fegert, 887 F.2d at 957-58; Atwood  
v. Chase Manhattan Mrtg. Co. (In re Atwood), 293 B.R. 227, 233  
n.9 (9th Cir. BAP 2003)), we cannot do so here because the  
bankruptcy court's electronic docket does not contain the  
transcript of the hearing or any of the evidence introduced at  
the hearing.

<sup>6</sup>Our rule is consistent with Federal Rule of Appellate  
Procedure 10(b)(2), which states that if "the appellant intends

(continued...)

1 bankruptcy court's findings were clearly erroneous, we must have  
2 access to the evidence and testimony relevant to those findings.  
3 Debtor, however, has not provided us with "the transcripts  
4 necessary for adequate review" of the bankruptcy court's findings  
5 and order. Absent a record demonstrating that the bankruptcy  
6 court abused its discretion in granting relief from the stay, we  
7 must affirm. Kritt, 190 B.R. at 387 (where appellant did not  
8 provide full transcript, it was "impossible" to review for clear  
9 error; panel therefore affirmed because debtor failed to show  
10 findings were clearly erroneous); Syncom Capital Corp. v. Wade,  
11 924 F.2d 167, 169 (9th Cir. 1991) (where appellant failed to  
12 provide a trial transcript, his contentions were "unreviewable"  
13 and "justifie[d] summary affirmance.")<sup>7</sup>

14 Such affirmance is particularly justified here, because the  
15 bankruptcy court made specific and detailed findings of fact  
16 tailored to Debtor's contentions in his Motion for  
17 Reconsideration and in his opening brief. Without viewing the  
18 promissory note, deed of trust, and testimony, we cannot see how  
19 any of the bankruptcy court's findings were clearly erroneous.

20 \_\_\_\_\_  
21 <sup>6</sup>(...continued)  
22 to urge on appeal that a finding or conclusion is unsupported by  
23 the evidence or is contrary to the evidence, the appellant must  
24 include in the record a transcript of all evidence relevant to  
25 that finding or conclusion."

26 <sup>7</sup>See also Portland Feminist Women's Health Ctr. v. Advocates  
27 for Life, Inc., 877 F.2d 787, 789-90 (9th Cir. 1989) (court  
28 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  
appellant's pro se appeal when she failed to include in the  
record a transcript to support her claim that the trial court's  
findings and judgment was unsupported by the evidence).

1 As we do not have a definite and firm conviction that the  
2 bankruptcy court erred in its findings and conclusions, we hold  
3 that it did not abuse its discretion in granting relief from the  
4 automatic stay.

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6 **VI. CONCLUSION**

7 For the foregoing reasons, we AFFIRM.  
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