

OCT 22 2008

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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

|                          |   |  |
|--------------------------|---|--|
| In re:                   | ) | BAP No. NC-08-1086-TaDJu               |
|                          | ) |  |
| MARIA O. SEGOVIA,        | ) | Bk. No. 06-30387                       |
|                          | ) |  |
| Debtor.                  | ) | Adv. No. 06-03180                      |
|                          | ) |  |
| _____                    | ) |  |
| VICTOR A. SEGOVIA,       | ) |  |
|                          | ) |  |
| Appellant,               | ) |  |
|                          | ) |  |
| v.                       | ) | <b>M E M O R A N D U M<sup>1</sup></b> |
|                          | ) |  |
| BACH CONSTRUCTION, INC., | ) |  |
|                          | ) |  |
| Appellee.                | ) |  |
| _____                    | ) |  |

Argued and Submitted on September 17, 2008  
at San Francisco, California

Filed - October 22, 2008

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

Honorable Thomas E. Carlson, Bankruptcy Judge, Presiding

\_\_\_\_\_  
Before: TAYLOR,<sup>2</sup> DUNN, JURY, 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 9<sup>th</sup> Cir. BAP Rule 8013-1.

<sup>2</sup>Hon. Laura S. Taylor, Judge of the U.S. Bankruptcy Court for the Southern District of California, sitting by designation.

1           The chapter 7 trustee in the bankruptcy case of Maria O.  
2 Segovia ("Debtor") filed this adversary proceeding to avoid  
3 alleged preferential transfers. Two of the defendants filed  
4 cross-complaints against each other. This is an appeal from the  
5 judgment entered by the bankruptcy court after a three-day trial  
6 on the cross-complaints. The appellant, Victor Segovia  
7 ("Segovia"), appeals pro se<sup>3</sup> the bankruptcy court's judgment:  
8 (1) denying in its entirety Segovia's objection to appellee Bach  
9 Construction, Inc.'s ("BCI") claim based on its state court  
10 judgment; and (2) sustaining, in part, BCI's objection to  
11 Segovia's secured claim for prepetition services as attorney for  
12 Debtor and others in the state court litigation with BCI (the  
13 "State Court Action").

14           The bankruptcy court dismissed Segovia's cross-claim  
15 against BCI, summarily overruling Segovia's objection to BCI's  
16 claim because BCI's claim arose from a final state court  
17 judgment. Segovia contends that the bankruptcy court erred by  
18 applying the Rooker-Feldman doctrine so as to bar consideration  
19 of the merits of his objection to the BCI claim.

20           As to BCI's cross-complaint, the bankruptcy court found  
21 unreasonable Segovia's claim for \$726,000 in prepetition  
22 attorney's fees.<sup>4</sup> The bankruptcy court allowed the claim in the  
23

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24           <sup>3</sup>Although Segovia represented himself at trial and appeals  
25 pro se, he is an attorney licensed in California and the claim at  
26 issue is his attorney's fees claim in connection with his  
27 prepetition representation of the Debtor, and others, in the  
State Court Action.

28           <sup>4</sup>The total claim was filed in the amount of \$820,830, which  
included interest at 10%.

1 reduced amount of \$50,000, pursuant to section 502(b)(4) of the  
2 Bankruptcy Code,<sup>5</sup> and did not grant it secured status because  
3 the bankruptcy court found that the "voluntary attorney's lien"  
4 recorded against Debtor's real property ("Property") was  
5 unenforceable under California law.

6 Segovia contends that the bankruptcy court erred in its  
7 application of federal law to his state-law contractual  
8 attorney's fee claim and in its factual conclusion as to  
9 reasonableness. He further contends that it misinterpreted and  
10 misapplied Rule 3-300 of the California Rules of Professional  
11 Conduct to invalidate his lien. On appeal, Segovia also now  
12 accuses the bankruptcy court of violating his constitutional  
13 rights to due process, equal protection, freedom from forced  
14 labor, and freedom of association.<sup>6</sup>

15 After careful consideration of the parties' briefs,  
16 conscientious review of the record that has been provided, and  
17 independent analysis and application of the law, we discern no  
18 reversible error. Accordingly, we affirm.

19 **FACTS<sup>7</sup>**

20 In early 2000, approximately six years before filing her  
21 voluntary chapter 7 petition, Debtor entered into a written

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22 <sup>5</sup>Unless otherwise indicated, all chapter, section and rule  
23 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
24 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

25 <sup>6</sup>Segovia also accuses the bankruptcy court of discriminating  
26 against him, apparently based on ethnicity, but does not include  
this allegation among his grounds for reversal.

27 <sup>7</sup>This Memorandum necessarily relies on the facts set forth  
28 in the Memorandum Decision of the bankruptcy court filed March  
20, 2008, published at 387 B.R. 773.

1 contract ("Remodel Contract") with BCI providing for a remodel  
2 of residential real property she owned jointly with her mother  
3 ("Olga") and her sister ("Patricia"). The Remodel Contract  
4 contained an attorney's fee provision providing that the  
5 prevailing party in litigation thereunder shall be entitled to  
6 reasonable attorney's fees and expenses. BCI performed work  
7 under the Remodel Contract to Debtor's complete satisfaction,  
8 and the Debtor paid BCI as agreed.

9       Shortly thereafter (spring 2001), Debtor and BCI entered  
10 into an oral contract to remodel another residential property  
11 owned by Debtor with Olga and Patricia.<sup>8</sup> The work on this  
12 project progressed throughout 2001 and most of 2002 without any  
13 dispute as to BCI's bills or work. Problems arose, however, in  
14 November of 2002 when Debtor was unable to refinance existing  
15 obligations secured by the Property.

16       Debtor began to question certain costs that exceeded BCI's  
17 original estimates. BCI responded and promptly agreed to  
18 prepare a list of the additional work as Debtor had requested.  
19 Despite BCI's efforts, Debtor continued to question BCI about a  
20 limited portion of the charges for the second remodel.  
21 Notwithstanding, and although Debtor was behind in payments, BCI  
22 did not stop work or charge interest or late payments on the  
23 outstanding invoices at that time.

24       BCI issued invoices showing outstanding amounts due twice  
25 in 2003. The first invoice, issued in March, showed the amount  
26

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27       <sup>8</sup>The properties may have been contiguous, but it is not  
28 clear from the Record. The term "Property" herein refers to both  
properties jointly.

1 due as \$15,613, BCI having waived \$6,123 in normal charges for  
2 labor, profit, and overhead. The second invoice, issued in  
3 November, showed \$24,425 as the principal amount owed. This  
4 amount included additional fees for outside subcontractors plus  
5 a 20% charge for overhead and profit. The second invoice also  
6 requested payment of \$25,011 in accrued interest. Debtor did  
7 not pay either the March or November invoice.

8 Instead, in December 2003, Debtor, Olga, and Patricia,  
9 retained Segovia, Debtor's brother and a licensed attorney, to  
10 represent them in their dispute with BCI pursuant to a written  
11 fee agreement ("Fee Agreement"). The Fee Agreement contained  
12 the following provision:

13  
14 Clients grant Attorney a lien on all their claims  
15 and causes of action that are the subject of the  
16 representation of Clients under this Agreement, on all  
17 proceeds of any recovery obtained (whether by  
18 settlement, arbitration award, or court judgment) and  
19 on all real property for attorney's fees and costs  
20 advanced. . . . If there is no settlement or no  
recovery or the recovery is insufficient to reimburse  
Attorney in full for outstanding attorneys [sic] fees  
earned and costs advanced, Clients grant Attorney  
permission to file a notice of lien upon their real  
property in substantially the same form as shown in  
Attachment 2.<sup>9</sup>

21 Upon retention, Segovia immediately wrote to BCI's counsel  
22 disputing the March and November invoices. BCI's counsel  
23 responded with two written settlement offers, one agreeing to  
24 settle for the principal amount of \$24,425 and a second offering  
25

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26  
27 <sup>9</sup>The Fee Agreement informed the Debtor, Olga and Patricia of  
28 the right to seek independent counsel for advice regarding the  
Fee Agreement, and waiver of same. It is not clear whether  
Attachment 2 was attached to the Fee Agreement.

1 a reduced settlement of \$21,425. BCI gave Debtor notice that  
2 absent immediate resolution it would file, and then submitted  
3 the matter for arbitration.

4 Segovia challenged arbitration by letter dated February 16,  
5 2004 and, without advance notice, filed a complaint the  
6 following day and initiated the State Court Action. The first  
7 amended complaint filed by Segovia nine days later sought  
8 recovery of \$973,000 (the total amount paid for remodeling the  
9 Property) based on nine claims consisting of fraud,  
10 reformation-of-contract, violations of Bus. & Prof. Code § 7159,  
11 breach of the covenants of good faith and fair dealing,  
12 negligence, and unspecified common counts. BCI filed a  
13 cross-complaint seeking to recover the amount owing under the  
14 November invoice.

15 Almost two years later, in September and October of 2005,  
16 the State Court Action went to trial before a jury.<sup>10</sup> The jury  
17 returned a verdict against Debtor, Olga, and Patricia on all  
18 claims (except 17200, which was to be tried to the court<sup>11</sup>); and  
19 an award of \$15,189 to BCI for the reasonable value of its  
20 services. The final judgment entered in favor of BCI in early  
21 2006 included 10% post-judgment interest and attorneys' fees and  
22 costs in a final stipulated amount of \$511,076. BCI recorded an  
23 abstract of judgment on March 8, 2006.

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24  
25  
26 <sup>10</sup>Segovia had filed two summary judgment motions that were  
denied in toto.

27  
28 <sup>11</sup>The state court denied the 17200 claim after hearing held  
in January 2006.

1           Meanwhile, on December 16, 2005, Debtor, Olga, and Patricia  
2 signed a form entitled California Voluntary Attorney's Lien (the  
3 "Lien"), specifying fees to be secured in the amount of  
4 \$726,000. Segovia recorded the Lien against the Property the  
5 same day.

6           On May 17, 2006 (less than 90 days after BCI filed its  
7 abstract and less than 1 year after Segovia recorded the Lien),  
8 Debtor filed her chapter 7 petition.<sup>12</sup> Thereafter, Segovia filed  
9 a secured claim seeking recovery of \$820,830 for legal services  
10 he provided to Debtor commencing on December 1, 2003. BCI also  
11 filed a claim seeking recovery of its judgment in the State  
12 Court Action. Eventually, the chapter 7 trustee sold the  
13 Property for \$2,240,000 free and clear of liens, including those  
14 asserted by BCI and Segovia, and then filed the subject  
15 adversary proceeding against BCI, Segovia, and Wells Fargo Bank  
16 seeking to avoid liens filed prepetition against the Property  
17 within the relevant preference periods.<sup>13</sup>

18           In BCI's answer in the adversary proceeding, BCI asserted a  
19 cross-claim against Segovia seeking to have Segovia's claim  
20 disallowed or reduced on multiple grounds. First, BCI sought  
21 disallowance under section 502(b)(1) on the basis that the Lien<sup>14</sup>

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23           <sup>12</sup>Olga and Patricia likewise each filed chapter 7 petitions.

24           <sup>13</sup>The applicable preference periods are 90 days for BCI and  
25 Wells Fargo Bank, but one year for Segovia based on his status as  
26 an insider.

27           <sup>14</sup>The cross-complaint initially sought total disallowance of  
28 the claim under state law theories, but the arguments finally  
advanced under state law theories ultimately took issue only with  
the Lien and the claim's secured status.

1 was unenforceable under state law as Segovia failed to comply  
2 with applicable state law and California State Bar requirements  
3 for written fee agreements and disclosures. BCI then raised  
4 objections under section 502(b)(4) asserting that Segovia's fee  
5 request was overstated, over-billed, and grossly exceeded the  
6 reasonable value of the services provided. Finally, BCI sought  
7 equitable subordination of Segovia's claim under section  
8 510(c)(1) on the grounds that the claim and the Lien, in  
9 particular, had been filed solely and improperly to reduce BCI's  
10 recovery on its judgment-based claim.<sup>15</sup>

11 Segovia answered BCI's cross-complaint and filed his own  
12 cross-complaint objecting to BCI's claim, first as unenforceable  
13 under state law pursuant to section 502(b)(1) on the grounds  
14 that BCI had violated the California Unfair Practices Act and  
15 section 7159, et seq. of the California Business and Professions  
16 Code in connection with the Remodel Contract, and second,  
17 pursuant to section 502(b)(4), alleging that the fee recovery  
18 portion of BCI's claim exceeded the reasonable value for the  
19 services.

20 Trial on BCI's and Segovia's cross-claims was held before  
21 the bankruptcy court on December 3-5, 2007, and the bankruptcy  
22 court issued its Memorandum Decision and separate Judgment on  
23 the Cross-Complaints and Rule 54(b) Certification on March 20,  
24 2008. Segovia timely appealed.

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25  
26 <sup>15</sup>BCI also sought declaratory relief, but this cause of  
27 action was dismissed prior to trial. The bankruptcy court held  
28 that the section 510(c)(1) claim was rendered moot because the  
court's allowance of Segovia's claim in the amount of \$50,000  
leaves the estate solvent.



1 **JURISDICTION**

2 The bankruptcy court had jurisdiction under 28 U.S.C.  
3 §§ 1334 and 157(b)(2)(O). The judgment was entered on all the  
4 claims in the two cross-complaints, but less than all the claims  
5 in the adversary proceeding. Ordinarily, an appeal from such a  
6 judgment could be considered interlocutory. In this case,  
7 however, the bankruptcy court certified that the judgment was  
8 final pursuant to Rule 7054 (incorporating Federal Rule of Civil  
9 Procedure ("FRCP") 54(b)). In actions involving multiple claims  
10 or multiple parties, FRCP 54(b) permits a court to direct entry  
11 of a final judgment as to one or more (but fewer than all) of  
12 the claims or parties, but "only if the court expressly  
13 determines there is no just reason for delay." FRCP 54(b).

14 The bankruptcy court appropriately certified the judgment  
15 on the cross-complaints filed by BCI and Segovia as final as the  
16 judgment fully and finally disposed of BCI's objection to  
17 Segovia's claim and Segovia's objection to BCI's claim. The  
18 legal and factual issues raised in conjunction with these  
19 parties' objections to each other's claim are different from  
20 those related to the trustee's avoidance and recovery of  
21 preferential transfers. Because the judgment underlying  
22 Segovia's appeal is final, we have jurisdiction pursuant to  
23 28 U.S.C. § 158.

24  
25 **ISSUES**

26 1. Whether the bankruptcy court abused its discretion in  
27 disallowing as unreasonable all but \$50,000 of Segovia's claim  
28 for prepetition attorney's fees for services provided to Debtor

1 in the State Court Action.

2 2. Whether the bankruptcy court erred by finding the Lien  
3 to be unenforceable under state law.

4 3. Whether the bankruptcy court violated Segovia's  
5 constitutional rights by disallowing all but \$50,000 of  
6 Segovia's claim for prepetition attorney's fees and/or by  
7 disallowing the Lien.

8 4. Whether the bankruptcy court erred by declining to  
9 review alleged state law defenses to BCI's judgment-based claim  
10 and/or the reasonableness of the attorney's fees awarded to BCI  
11 as prevailing party, all of which had been fully litigated by  
12 the Debtor in the State Court Action.

13  
14 **STANDARDS OF REVIEW**

15 We review "the bankruptcy court's conclusions of law and  
16 questions of statutory interpretation de novo, and factual  
17 findings for clear error." Clear Channel Outdoor, Inc. v.  
18 Knupfer (In re PW, LLC), 391 B.R. 25, 32 (9<sup>th</sup> Cir. BAP 2008),  
19 quoting Village Nurseries v. Gould (In re Baldwin Builders), 232  
20 B.R. 406, 410 (9<sup>th</sup> Cir. BAP 1999) (citations omitted). "A court  
21 abuses its discretion if it does not apply the correct law or if  
22 it rests its decision on a clearly erroneous finding of material  
23 fact." Ho v. Dowell (In re Ho), 274 B.R. 867, 871 (9<sup>th</sup> Cir. BAP  
24 2002) (citing United States v. Sprague, 135 F.3d 1301, 1304 (9<sup>th</sup>  
25 Cir. 1998)).<sup>16</sup> A factual determination is clearly erroneous if

26 \_\_\_\_\_  
27 <sup>16</sup>We were unable to locate a reported decision that  
28 specifically addresses the standard of review for an order  
disallowing as unreasonable claims for prepetition attorneys  
(continued...)

1 the appellate court, after reviewing the record, has a definite  
2 and firm conviction that a mistake has been committed. Anderson  
3 v. Bessemer City, 470 U.S. 564, 573 (1985). We review the  
4 application of the Rooker-Feldman doctrine de novo. Carmona v.  
5 Carmona, 2008 U.S. App. LEXIS 19724 (9<sup>th</sup> Cir.).

## 7 DISCUSSION

### 8 I. State of the Record and Procedures

9 We first address the problematic state of the record in  
10 this appeal.<sup>17</sup> Segovia provided only a partial transcript of the  
11 trial proceedings below, consisting of twenty pages of testimony  
12 of his sister, Patricia. Thus, Segovia failed to provide  
13 sufficient trial transcripts to enable precise review of all  
14 testimony and argument. Similarly, he did not submit as part of  
15 the record on appeal the exhibits admitted at trial.<sup>18</sup> An

16 \_\_\_\_\_  
17 <sup>16</sup>(...continued)  
18 fees/insider payments under 11 U.S.C. § 502(b)(4). We have no  
19 reason, however, to believe the standard of review should be  
anything other than abuse of discretion.

20 <sup>17</sup>Appellate procedures before this Panel are set forth in  
21 Part VIII of the Federal Rules of Bankruptcy Procedure and the  
22 Ninth Circuit BAP Rules of Procedure. Segovia, a licensed  
23 attorney representing himself, not only failed to provide an  
24 adequate record of the trial, he has also failed to fully adhere  
25 to the briefing and format requirements. Segovia failed to  
include a table of contents in Appellant's Reply Brief and has  
included a significant portion of his brief in single-spacing.  
Fed. R. Bankr. P. 8010; 9<sup>th</sup> Cir. BAP R. 8010(a)-1.

26 <sup>18</sup>The Excerpts of Record are contained in 8 volumes totaling  
27 762 pages, without benefit of tabs (failing to comply with  
28 9<sup>th</sup> Cir. BAP R. 8009(b)-1), and include pleadings unrelated to  
the claim objections tried by the bankruptcy court. As identified  
in Appellee's Brief, Segovia included in the record two

(continued...)

1 appellant has the burden of providing an adequate record. See  
2 Drysdale v. Educ. Credit Mgmt. Corp. (In re Drysdale), 248 B.R.  
3 386, 388 (9<sup>th</sup> Cir. BAP 2000). This requirement is mandatory and  
4 failure to comply may result in dismissal or in the appellate  
5 panel simply looking "for any plausible basis upon which the  
6 bankruptcy court might have exercised its discretion to do what  
7 it did." McCarthy v. Prince (In re McCarthy), 230 B.R. 414, 417  
8 (9<sup>th</sup> Cir. BAP 1999).

9 Here, we have conscientiously reviewed the record that has  
10 been provided and, as discussed below in connection with the  
11 issues, cannot say that the trial court's careful and detailed  
12 findings of fact were clearly erroneous. We do not have a  
13 definite and firm conviction that a mistake has been committed  
14 with regard to factual findings. Hence, we perceive no clear  
15 error on the record before us.

## 17 **II. Reasonableness of Prepetition Attorney's Fees.**

### 18 **A. The Bankruptcy Court Applied the Correct Law.**

19 Segovia seeks allowance of his proof of claim in the full  
20 filed amount and enforcement of an alleged contractual right  
21 under state law to full compensation under the Fee Agreement.

22 \_\_\_\_\_  
23 <sup>18</sup>(...continued)  
24 deposition transcripts not included in the designation of the  
25 record. It is not possible for the Panel to determine if any of  
26 the deposition testimony was used in the trial based on the  
27 partial transcript in the record, and therefore, the Panel has  
28 not reviewed the deposition transcripts in connection with this  
appeal. Segovia's cavalier offer in an addendum to the Reply  
Brief to allow the appellee additional time to augment the record  
and provide the full transcript of the trial (at appellee's  
expense), does not negate the fact that he has failed to meet his  
burden.

1 There is a general presumption that: "claims enforceable under  
2 applicable state law will be allowed in bankruptcy unless they  
3 are expressly disallowed." Travelers Casualty & Surety Co. v.  
4 Pacific Gas & Elec. Co., 549 U.S. 443, \_\_\_; 127 S. Ct. 1199, 1206  
5 (2007). However, while state law governs Segovia's rights under  
6 his contract with the Debtor, bankruptcy law governs the  
7 allowance of Segovia's claim against the Debtor's estate. See  
8 Butner v. United States, 440 U.S. 48 (1979). The bankruptcy  
9 court did not err by finding that Segovia's claim for his  
10 services, both as an insider and attorney of the Debtor, falls  
11 squarely under section 502(b)(4) of the Bankruptcy Code and that  
12 the claim may be disallowed to the extent it exceeds the  
13 reasonable value of such services. Travelers Casualty & Surety,  
14 127 S. Ct. at 1206 (section 502(b)(4) "expressly disallows  
15 claims for a particular category of attorney's fees—those 'for  
16 services of an . . . attorney of the debtor,' to the extent the  
17 claimed fees 'excee[d] the reasonable value of such services'").  
18 Section 502(b)(4): ". . . was designed to 'prevent[]  
19 overreaching by the debtor's attorneys and [the] concealing of  
20 assets by debtors.'" Joseph F. Sanson Investment Co. v.  
21 268 Limited (In re 268 Limited), 789 F.2d 674, 677 (9<sup>th</sup> Cir.  
22 1986) (citation omitted).

23 Here, the bankruptcy court acknowledged Segovia's  
24 contractual right to attorney's fees under the Fee Agreement,<sup>19</sup>  
25 but then, as is appropriate, analyzed the reasonableness of the

---

26  
27 <sup>19</sup>The bankruptcy court's analysis started with Segovia's  
28 proof of claim, implicitly acknowledging its prima facie validity  
under section 501, and then proceeded immediately to review  
reasonableness under section 502(b)(4).

1 attorney's fees under section 502(b)(4). The bankruptcy court  
2 did not commit error by conducting the section 502(b)(4) review  
3 expressly mandated by the Bankruptcy Code.

4  
5 **B. The Bankruptcy Court Properly Analyzed the Reasonableness of**  
6 **Segovia's Fees.**

7 Appellant takes issue with the bankruptcy court's alleged  
8 lack of attention to his "accounting of his labor",<sup>20</sup> and seeks  
9 reversal of the bankruptcy court's holding that only \$50,000 of  
10 his attorney's fee claim is reasonable. He argues that the full  
11 amount of his fees must be allowed, because the bankruptcy court  
12 failed to make factual findings that Segovia's fees exceeded the  
13 value of such services, that charges were overstated or  
14 overbilled, or that charges were made for work not performed, and  
15 improperly relied on legal authority outside section 502(b)(4)  
16 cases.

17 The reasonableness of attorney's fees under  
18 section 502(b)(4) is a question of federal law. Landsing  
19 Diversified Properties-II v. First Nat'l Bank & Trust Co. of  
20 Tulsa (In re Western Real Estate Fund, Inc.), 922 F.2d 592, 597  
21 (10<sup>th</sup> Cir. 1991). "[A]ppellate courts generally defer to fee  
22 determinations by the bankruptcy court. . . ." Id. at 598  
23 (citations omitted). Bankruptcy courts have wide discretion in  
24 making the determination of reasonableness of fees, and the  
25 appellate court will not overturn the bankruptcy court's decision  
26 unless the lower court abused its discretion. Eliapo v. Devin

27  
28 <sup>20</sup>Appellant's Opening Brief 15.

1 Derham-Burk (In re Eliapo), 468 F.3d 592, 596 (9<sup>th</sup> Cir. 2006).

2 Based on the record here, we find no abuse of the bankruptcy  
3 court's discretion in its reduction of Segovia's claim to  
4 \$50,000.

5 Contrary to Segovia's contention, the bankruptcy court found  
6 that Segovia's fees exceeded the value of the services. In the  
7 Memorandum Decision, the bankruptcy court clearly set forth its  
8 review of the State Court Action, including analysis of whether  
9 Segovia exercised appropriate billing judgment. This review  
10 included careful analysis of the reasonably expected level of  
11 recovery in the State Court Action, which included a detailed  
12 analysis of the claims litigated and a careful comparison of the  
13 likelihood of success and the risk of loss. Based on an analysis  
14 that was thorough and detailed, the bankruptcy court concluded  
15 that Segovia's clients had a "reasonable possibility of  
16 recovering less than \$150,000."<sup>21</sup> Segovia, 387 B.R. at 782

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17  
18 <sup>21</sup>In reaching this conclusion, the bankruptcy court relied  
19 on an unpublished state court decision that the bankruptcy court  
20 felt provides some limited justification for this level of  
21 recovery. Mallery-Feiner Co. v. Tersol, 2002 Cal. App. Unpub.  
22 LEXIS 11874 (Cal. App. 6<sup>th</sup> Dist. 2002). In Appellant's Opening  
23 Brief, Segovia criticized the bankruptcy court for its reliance  
24 on this unpublished decision. Tersol, however, was the only  
25 written decision the bankruptcy court could find that addressed  
26 "whether a violation of section 7159 was an unfair business  
27 practice under section 17200" [as claimed in the State Court  
28 Action]. Segovia, 387 B.R. at 781 n. 19. Ironically, review of  
the Tersol unpublished opinion was entirely in Segovia's favor as  
it enabled the bankruptcy court's determination that Segovia's  
clients had at least a colorable claim in the State Court Action.  
Segovia, thus failing to recognize a gift when given, fails to  
recognize that: (1) the bankruptcy court "relies" on this  
decision only in the sense that it exists and, therefor, that  
Segovia might have reasonably felt he had a chance for a similar  
(continued...)

1 (emphasis in original). As a result, it then found that the  
2 \$726,000 fee sought by Segovia "is grossly disproportionate to  
3 the amount realistically at stake in the litigation." Id. The  
4 bankruptcy court then proceeded to calculate a reasonable fee  
5 without use of the lodestar method. In doing so, the Court  
6 clearly stated the facts and circumstances on which it relied.<sup>22</sup>

7 Segovia does not attempt to cite to specific error in the  
8 bankruptcy court's findings, but, instead, contends that the  
9 bankruptcy court improperly relied on case law determining the  
10 reasonableness of fees under other bankruptcy code sections and  
11 other federal law. We cannot assign error to the bankruptcy  
12 court's review of and reliance on published decisions by courts  
13 that considered the reasonableness of attorney's fees under  
14 sections 330 and 506 of the Bankruptcy Code, especially in light  
15 of the relative paucity of published opinions considering section  
16 502(b)(4) reasonableness. In looking to such decisions, the  
17 bankruptcy court aptly followed one of the basic canons of  
18 statutory construction: "words and phrases in the Bankruptcy Code  
19 should presumptively receive the same construction, even if found  
20 in different parts of the code." PW, LLC, 391 B.R. at 28. The

21 \_\_\_\_\_  
22 <sup>21</sup>(...continued)  
23 recovery; and (2) that if the bankruptcy court ignored this  
24 unpublished decision, the range of possible recovery diminishes  
and with this diminution the level of fees awarded might decline  
as well.

25 <sup>22</sup>These facts included that: (1) Segovia had reason to know  
26 that his clients might lose and be required to pay BCI's fees;  
27 (2) Segovia has already been reimbursed by his clients for  
28 \$150,000 costs; and (3) Segovia's clients ended up owing BCI  
\$526,625 when BCI had earlier offered to accept \$21,425 in full  
satisfaction.



1 bankruptcy court, thus, reasonably assumed that a determination  
2 of the "reasonable" value for services of an attorney under  
3 section 502(b)(4), has the same meaning as "reasonable"  
4 compensation under section 330 and "reasonable" fees under  
5 section 506(b).

6       The bankruptcy court conducted a "close examination" of  
7 Segovia's billing judgment as an important component of the  
8 analysis. Segovia, 387 B.R. at 780. As discussed earlier, the  
9 court found that Segovia's clients had a reasonable possibility  
10 of recovering less than \$150,000 and that Segovia's fee claim of  
11 \$726,000 was grossly disproportionate. In light of the level of  
12 possible recovery we find no error in the bankruptcy court's  
13 allowance of \$50,000, or one third of the highest possible  
14 recovery amount, as reasonable attorney's fees.

15       Segovia, in effect, contends that as long as the clients did  
16 not object to the amount of the attorney's fees, the amount was  
17 "unassailable." Appellant's Opening Brief 15-16. Thus, although  
18 he argues that the bankruptcy court used the incorrect legal  
19 standards when reviewing his fees, what he really wants is no  
20 review at all. The bankruptcy court acted in accordance with the  
21 correct law and within its discretion in disallowing Segovia's  
22 attorney's fees claim to the extent it exceeds the reasonable  
23 amount of \$50,000. Because the bankruptcy court clearly  
24 articulated the well-reasoned basis for its decision, we find no  
25 error on this record.

26

27                                   **III. Invalidation of the Lien.**

28       Segovia also claims that the bankruptcy court erred when it

1 found his lien invalid. This issue may be moot because we affirm  
2 the bankruptcy court's judgment allowing Segovia's claim in the  
3 reduced amount of \$50,000, and the bankruptcy court found the  
4 estate to be solvent when Segovia's claim was reduced to this  
5 amount. Thus, Segovia may be paid in full whether or not his  
6 claim is secured, and the validity of his lien may be irrelevant.  
7 If that is the case, there is no longer a live controversy as  
8 regards the Lien. See PWC, LLC, 391 B.R. at 33 (federal courts  
9 are limited to adjudication of only "actual cases and live  
10 controversies").

11 Notwithstanding the strong possibility that this issue may  
12 be moot, we cannot make such a conclusion with certainty based on  
13 this limited record. As a result, we consider Segovia's claims  
14 of error with respect to disallowance of the Lien.

15 Segovia claims that the bankruptcy court erroneously found  
16 that Segovia's attorney's lien was executed in two separate  
17 stages two years apart and that it then erred as a matter of law  
18 by sustaining BCI's objection for non-compliance with California  
19 Rule of Professional Conduct 3-300.

20 "California recognizes the parties to an attorney retainer  
21 agreement can create a lien in favor of the attorney upon the  
22 proceeds of the client's prospective recovery in a lawsuit."  
23 Saltarelli & Steponovich v. Douglas, 40 Cal. App. 4th 1, 7  
24 (1995). "When an attorney wishes to secure payment of hourly  
25 legal fees and costs of litigation by obtaining a charging lien  
26 against client's future recovery, . . . *rule 3-300 of the Rules*  
27 *of Professional Conduct* of the State Bar of California [], which  
28 requires the client's informed written consent to the attorney's

1 acquisition of an interest adverse to the client, applies . . . .”  
2 Fletcher v. Davis, 33 Cal. 4th 61, 64 (2004) (emphasis in  
3 original). Rule 3-300 requires that an attorney who takes any  
4 lien in his client’s property to secure payment of attorney’s  
5 fees may only take the lien under the following circumstances:

6 (A) The transaction or acquisition and its terms  
7 are fair and reasonable to the client and are fully  
8 disclosed and transmitted in writing to the client in a  
9 manner which should reasonably have been understood by  
10 the client;

11 (B) The client is advised in writing that the  
12 client may seek the advice of an independent lawyer of  
13 the client’s choice and is given a reasonable  
14 opportunity to seek that advice; and

15 (C) The client thereafter consents in writing to  
16 the terms of the transaction or the terms of the  
17 acquisition.

18 Cal. R. Prof. Conduct 3-300.

19 Segovia argues that the Lien is a charging lien and that it  
20 was created and automatically effective as a secured claim  
21 against the Property as of December 2003 when Debtor executed the  
22 Fee Agreement and initialed certain waivers contained therein.  
23 He argues the document filed and recorded in December 2005 was  
24 merely a notice of lien, which was not required to be filed in  
25 order to validate the Lien under state law. He also argues that  
26 to the extent Rule 3-300 were applicable to the Lien, he had  
27 satisfied its requirements by specific disclosures and client  
28 waivers contained in the Fee Agreement.<sup>23</sup> In particular, Segovia

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29 <sup>23</sup>Segovia improperly refers the Panel to certain deposition  
30 testimony of Patricia not included in the Designation of the  
31 Record to support his contention that his clients understood the  
32 effects of granting him a lien. The very limited portion of the  
33 (continued...)

1 quotes the following text from the Fee Agreement:

2 Attorney advises you to seek other competent legal  
3 counsel with respect to the lien rights you are  
4 granting Attorney here. By initialing below you are  
5 acknowledging full and complete understanding that you  
6 grant Attorney by this Agreement a lien interest in  
your real property and you have received, or you waive  
seeking, other legal counsel concerning the lien  
interest you grant Attorney herein: [Initialed by all  
three clients.]

7 [Appellant's Opening Brief 31]

8  
9 The bankruptcy court disagreed, finding that although the  
10 Fee Agreement informed Segovia's clients that they could obtain  
11 independent counsel at their own expense to advise them regarding  
12 the Fee Agreement, it was otherwise deficient.

13 It is unclear whether a blank attorney lien form was  
14 actually attached to the Fee Agreement that was  
15 submitted to the clients. There is no evidence that  
16 the attorney lien form was completed and signed by the  
17 clients before December 2005 (two years after execution  
of the Fee Agreement). It is also unclear how much  
time the clients were afforded to consult independent  
counsel between the time they were presented with the  
Fee Agreement and the time they signed that Agreement.

18 Segovia, 387 B.R. 773, 783 (Bankr. N.D. Cal. 2008).

19  
20 On the record before us, there is no basis to question these  
21 findings, much less to find them clearly erroneous.

22 The bankruptcy court further found from evidence at trial  
23 that: the lien form signed by Debtor in December 2005 and  
24 recorded the same day does not inform her of the right to consult  
25 independent counsel; it was not clear to the bankruptcy court how

26  
27 <sup>23</sup>(...continued)  
28 trial transcript included in the record, Patricia's testimony,  
actually contradicts Segovia's contention.

1 much time Debtor was allowed to consult other counsel; Segovia  
2 did not explain the effect of recordation of the Lien on Debtor's  
3 ability to sell or borrow against the Property without getting  
4 consent or providing for payment of the Lien or that he could  
5 force a sale of the Property without Debtor's consent; and none  
6 of Segovia's clients actually obtained independent legal advice.

7       Based on the bankruptcy court's factual findings, it  
8 concluded first, that the Fee Agreement did not create an  
9 enforceable lien against the Property because it did not  
10 adequately describe the property to be encumbered,<sup>24</sup> and second,  
11 that the Lien was unenforceable for failure to comply with the  
12 requirements of Rule 3-300, which requires full disclosure and  
13 that the transaction be fair and reasonable.

14       Interpretation of a contract is a question of law, which we  
15 review de novo. In re Bennett, 298 F.3d 1059, 1064 (9<sup>th</sup> Cir.  
16 2002); Litton Loan Servicing, LP v. Garvida (In re Garvida), 347  
17

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18       <sup>24</sup>In Segovia's Reply Brief he argues that the bankruptcy  
19 court erred when it stated that the "asserted attorney lien is  
20 technically a mortgage, . . ." Segovia, 387 B.R. at 784. Based  
21 on the poor state of the record, we cannot know the full quantum  
22 of evidence on which the bankruptcy court based this statement.  
23 If the statement is error, it is harmless error. A mortgage  
24 conveys legal title, a charging lien does not - however we know  
25 from the Memorandum Decision that the bankruptcy court found that  
26 the attorney's lien is not a charging lien, and we found no case  
27 law to support Segovia's contention that a charging lien can be  
28 taken on any property other than litigation recovery or proceeds  
thereof. To the extent the bankruptcy court looked to the formal  
requirements necessary to create a mortgage lien as more relevant  
to the identification of the nature and validity of the Lien than  
the provisions governing charging liens, we cannot disagree.  
Regardless, as discussed herein, even if the Lien were assumed to  
be a charging lien, under California law it is void due to  
Segovia's failure to comply with the requirements of Rule 3-300.

1 B.R. 697, 703 (9<sup>th</sup> Cir. BAP 2006). We concur with the bankruptcy  
2 court's evaluation of the Fee Agreement's inadequacies.

3       The Fee Agreement is ambiguous as to when the attorney's  
4 lien actually arises and what it covers. The quoted Fee  
5 Agreement provision purportedly granting Segovia a lien "on all  
6 real property," followed by the conditional grant of permission  
7 to file a "notice of lien upon the real property," is vague and  
8 ambiguous on its face. Absent any description of the real  
9 property, and in light of the ambiguity in the text, it is not  
10 possible to discern whether Segovia's clients understood and  
11 intended this to be an immediate grant or one conditioned upon  
12 the failure of adequate litigation recovery or other payment, or  
13 what real property was to be affected. Generally, contracts and  
14 instruments affecting real property should describe the property  
15 with reasonable certainty. Witkin, Summ. of Calif. Law, Real  
16 Property §271 (10<sup>th</sup> ed. 2005). Moreover, it fails to disclose  
17 the consequences of such a blanket lien, including the possible  
18 inequity if one client owns or later obtains real estate not  
19 commonly owned. It is ambiguous as to Segovia's rights to  
20 proceed first against the real property and is unfair and  
21 unreasonable, as his characterization allows exactly this option.  
22 Further, it appears that formalities were otherwise not observed  
23 as discussed above. We find no error in the bankruptcy court's  
24 conclusions.

25       Segovia appears to argue now that the Lien was a charging  
26 lien against the Property because the Property was factually  
27 involved in the litigation. Therefore, the lien was  
28 automatically created and perfected by the terms of the Fee

1 Agreement and the filed notice of the Lien was an unnecessary  
2 formality under California law.<sup>25</sup> We can agree that the case law  
3 cited by Segovia might support his argument if the Lien were a  
4 lien on the recovery in the litigation. It is not. Segovia's  
5 attempt to bring it within the definition of a charging lien by  
6 identifying the Property as perhaps the subject of the litigation  
7 fails. Based on our review of the bankruptcy court's findings,  
8 such a characterization is not accurate. The State Court Action  
9 involved a dispute over BCI's performance of and charges for  
10 remodeling work at the Property. The ownership of the Property  
11 was never at issue in the State Court Action.

12       Regardless of whether the bankruptcy court considered and  
13 dismissed this argument at trial, it is not necessary for this  
14 Panel to decide the issue of whether a purported lien right  
15 granted in a Fee Agreement on property other than a recovery in  
16 the litigation is legally a charging lien. Even if we were to  
17 assume so, because Segovia failed to fully comply with Rule 3-  
18 300, the Lien is unenforceable under California law. Fletcher v.  
19 Davis, 33 Cal.4th at 71-72 (attorney's charging lien not  
20 enforceable where the attorney fails to comply with rule 3-300).

21       The bankruptcy court found Segovia failed to make the  
22 disclosures required under Rule 3-300 and could not find Debtor  
23 had been given adequate opportunity to consult with independent  
24 counsel either in December 2003 or December 2005. Based on the  
25 record, we can find no error in fact or law, and we affirm the

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26  
27       <sup>25</sup>Due to Segovia's failure to provide the full trial  
28 transcripts in the record, we are unable to determine whether  
this argument was considered by the trial court.

1 bankruptcy court's legal conclusion that the Lien is  
2 unenforceable against the estate.

3  
4 **IV. Constitutional Rights Not Violated.**

5 Next, Segovia contends that the bankruptcy court violated  
6 several of his constitutional rights. Nothing in the record  
7 indicates that he raised any of these constitutional challenges  
8 at trial. To the extent the challenges should have been, but  
9 were not, raised during the trial, they are waived on appeal.  
10 See In re E.R. Fegert, Inc., 887 F.2d 955, 957 (9<sup>th</sup> Cir. 1989)  
11 (appellate courts will not consider arguments that are not  
12 properly raised in the trial courts). Nonetheless, we will  
13 briefly address Segovia's constitutional claims.

14 Generally, Segovia claims that the bankruptcy court violated  
15 his rights when it considered case authority that analyzed  
16 attorney's fee claims outside the context of section 502(b)(4),  
17 ruled on the invalidity of the Lien, and disallowed a portion of  
18 his claim.<sup>26</sup>

19 First, Segovia argues that his right to due process was  
20 violated, because he was not given notice that the bankruptcy  
21 court would base judgment on section 506 and that it would  
22 address the validity of his lien. Whether notice satisfies due  
23 process requirements involves questions of law that this Panel  
24

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25 <sup>26</sup>The point heading for this section of Appellant's Opening  
26 Brief also refers to "imposition of new requirements" as  
27 violative of his constitutional rights. Appellant's Opening Brief  
28 24. He does not further develop this argument within the section  
or elsewhere in his brief, and it is therefore not addressed  
here.



1 reviews de novo. Owens-Corning Fiberglas Corp. v. Center  
2 Wholesale, Inc. (In re Center Wholesale, Inc.), 759 F.2d 1440,  
3 1445 (9<sup>th</sup> Cir. 1985); Alonso v. Summerville (In re Summerville),  
4 361 B.R. 133, 139 (9<sup>th</sup> Cir. BAP 2007); Garner v. Shier (In re  
5 Garner), 246 B.R. 617, 619 (9<sup>th</sup> Cir. BAP 2000). Our review of  
6 the record does not support Segovia's argument.

7         The bankruptcy court did not base its judgment on  
8 section 506, and Segovia's statement of the issue is thus  
9 factually incorrect. Instead, the bankruptcy court reviewed  
10 analogous case law assessing the reasonableness of fees under  
11 section 506. As discussed above, such analysis was appropriate.

12         Further, the bankruptcy court properly considered the  
13 validity of the Lien. BCI objected to the allowance of Segovia's  
14 claim in its entirety. Such an objection necessarily encompassed  
15 a challenge to the Lien. Again, the record is incomplete, but  
16 even in its truncated state<sup>27</sup> it evidences that challenges to the  
17 Lien were discussed before trial in at least two hearings held by  
18 the bankruptcy court, and it contains no evidence that Segovia  
19 sought to exclude this issue or to obtain additional time for  
20 discovery, preparation, or briefing in connection therewith.  
21 Thus, Segovia had appropriate notice that this issue would arise  
22 at a trial on the cross-complaint, the record does not indicate  
23 that Segovia raised any concerns regarding lack of notice at or  
24 before the trial, and his newly raised due process complaints  
25 must be disregarded.

26

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27         <sup>27</sup>The Excerpts of Record contain transcripts of a hearing on  
28 Segovia's Motion for Summary Judgment, held November 16, 2007,  
and regarding Motions in Limine, held November 30, 2007.

1           Second, Segovia contends that he was denied equal  
2 protection. Although difficult to follow, his argument appears  
3 to be that he was placed at a disadvantage in the bankruptcy case  
4 because the bankruptcy court ruled against him on several matters  
5 in the bankruptcy case and in the adversary proceeding. In  
6 Appellant's Reply Brief, Segovia appears to attribute  
7 discriminatory motivation to the bankruptcy court's consideration  
8 of his familial relationship with the Debtor, calling it  
9 "subterfuge hinged on race." Appellant's Reply Brief 9. He  
10 further states that the court improperly "exploit[ed] the  
11 biological relationship", and imputed Debtor's litigation  
12 decisions to Segovia.<sup>28</sup> Appellant's Reply Brief 10. The record  
13 establishes that the bankruptcy court considered the familial  
14 relationship determinative of Segovia's insider status, status  
15 that is specifically defined in the Bankruptcy Code and that  
16 raises many issues to be given special attention in a bankruptcy  
17 case including those arising under section 502(b)(4). Nothing in  
18 the record, however, supports any equal protection clause  
19 argument in this case.

20           Third, Segovia apparently claims that the disallowance of  
21 any portion of the contractual attorney's fees claim is the  
22 equivalent of imposing involuntary servitude upon him and, thus,  
23 is prohibited under the Thirteenth Amendment and the California  
24 Constitution. Segovia bases his argument on the facts and law  
25 discussed in Cunningham v. Superior Court of Ventura County, 177  
26 Cal.App.3d 336 (1986), where the California Court of Appeal found

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27  
28           <sup>28</sup>Specifically, he alleges that "[w]ere Segovia Black,  
Asian, or Caucasian no such witting 'confusion' could ever be  
made." Appellant's Reply Brief 10.

1 that requiring an attorney to provide legal services without  
2 compensation through involuntary court appointment as counsel for  
3 the indigent denied the appointed attorney equal protection of  
4 the law.

5 In support of this argument, Segovia asserts that the  
6 bankruptcy court found that the Fee Agreement was in compliance  
7 with applicable state law and did not find any fault in Segovia's  
8 performance or billing records.<sup>29</sup> Segovia's factual and legal  
9 arguments are not well supported by the record. The bankruptcy  
10 court implicitly found the Fee Agreement enforceable under state  
11 law, because its analysis of the allowability of the claim  
12 focused entirely on reasonableness of the fees. Thereafter, the  
13 bankruptcy court did not directly address Segovia's performance  
14 under that contract, but focused instead on billing judgment and  
15 other facts and circumstances arising in the State Court Action.  
16 Moreover, the bankruptcy court noted that Segovia did not have  
17 contemporaneous time records, which was an additional  
18 justification for not calculating the fee to be allowed on the  
19 basis of time spent. The record, therefore, does not support  
20 Segovia's assertions.

21 \_\_\_\_\_  
22 <sup>29</sup>Segovia's citation to the record at ER v8:p705-61 refers  
23 to what appears to be reconstructed time records for the entire  
24 State Court Action. At oral argument before this Panel, Segovia  
25 did not agree that he lacked contemporaneous time records,  
26 stating that he had submitted them to the state court in  
27 connection with a motion therein seeking an award of the fees as  
28 prevailing party. He conceded, however, that BCI was determined  
to be the prevailing party in the State Court Action, not Debtor.  
It is not possible to determine from the partial transcript of  
the trial whether these time records were admitted into evidence  
at trial and, thus, they do not help this Panel in its review of  
the bankruptcy court's decision.

1 Nor is the bankruptcy court's decision an order to Segovia  
2 to perform legal services without compensation. The judgment is  
3 a determination of the debtor-creditor relationship, a matter  
4 that is a core proceeding in the bankruptcy case and as to which  
5 the bankruptcy court must apply relevant federal law. As  
6 discussed above, that law is set forth in section 502(b)(4) and  
7 we find no error in the bankruptcy court's application of that  
8 law.

9 Based on this record, we can assign no error to the  
10 bankruptcy court's findings of fact or conclusions of law with  
11 respect to Segovia's claim, and, further, we find no violation of  
12 constitutional rights in any of the bankruptcy court's rulings or  
13 actions.<sup>30</sup>

#### 14 15 **V. Dismissal of Objection to BCI's Claim.**

16 Segovia seeks reversal of the bankruptcy court's summary  
17 dismissal of his objection to BCI's claim. The bankruptcy court  
18 dismissed Segovia's cross-complaint "because that claim is based  
19 on a final state-court judgment in favor of BCI" and cites to  
20 Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280,  
21 284 (2005). Segovia, 387 B.R. at 779 n. 15. The Memorandum  
22 Decision contained minimal reference to the bankruptcy court's  
23

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24 <sup>30</sup>Without any reasoned attempt to relate the argument to the  
25 decision of the bankruptcy court, Segovia also adds an argument  
26 entitled "Right of Freedom of Association." Appellant's Opening  
27 Brief 27. Segovia cites no legal authority nor facts in the  
28 record, but nonetheless apparently feels the bankruptcy court  
discriminated against him and/or his family members, perhaps  
based on ethnicity. As noted above, Segovia did not raise this  
issue as a basis for reversal on appeal.

1 reasoning for its dismissal of Segovia's objections to BCI's  
2 claim. However, the parenthetical provided with the Exxon Mobil  
3 citation refers to the Rooker-Feldman doctrine. Stated in one  
4 sentence in Appellant's Opening Brief, Segovia argues only that  
5 the Rooker-Feldman doctrine is not applicable because he was not  
6 a party to the State Court Action.<sup>31</sup>

7 On the incomplete record filed by Segovia in this appeal, it  
8 is not possible for this Panel to review the full analysis  
9 performed by the bankruptcy court. The Memorandum Decision  
10 contained extensive discussion concerning the legal claims made  
11 on behalf of the Debtor in the State Court Action, the basis for  
12 the judgment on the merits after jury trial, the post-trial  
13 proceedings to determine prevailing party status, and the award  
14 of attorneys' fees and costs against Debtor. As discussed below,  
15 regardless of the reasoning most heavily relied upon by the  
16 bankruptcy court, the thoroughness of its discussion and review  
17 of the circumstances of the State Court Action provide ample  
18 grounds for this Panel to affirm the bankruptcy court's  
19 conclusion.

20 Segovia objected to BCI's claim on two grounds. First, he  
21 argued BCI's claim was unenforceable under state law because BCI  
22 allegedly "violated the Unfair Practices Act and other provisions

23

24

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25 <sup>31</sup>Segovia's objections to the claims filed against Debtor  
26 and/or Debtor's estate are necessarily made on behalf of the  
27 Debtor and/or Debtor's estate. Segovia did not argue nor cite  
28 any authority to the contrary. Therefore, we disregard as  
irrelevant, Segovia's argument for the inapplicability of the  
Rooker-Feldman doctrine.

1 of the California Business and Professions Code"<sup>32</sup> - the very  
2 issues litigated and finally adjudicated against Debtor in the  
3 State Court Action.<sup>33</sup> Second, he argued that the major portion  
4 of the judgment, for prevailing party's attorneys' fees, should  
5 be disallowed as unreasonable.

6

7 **A. The Rooker-Feldman Doctrine Bars Substantive Review of a**  
8 **State Court Judgment by the Bankruptcy Court.**

9 The Supreme Court of the United States has exclusive  
10 jurisdiction over appeals from final state-court judgments.  
11 Lance v. Dennis, 546 U.S. 459, 463 (2006). "Accordingly, under  
12 what has come to be known as the *Rooker-Feldman* doctrine, lower  
13 federal courts are precluded from exercising appellate  
14 jurisdiction over final state-court judgments." Id. The U.S.  
15 Supreme Court warned in Exxon Mobil, that "lower courts have at  
16 times extended *Rooker-Feldman* 'far beyond the contours of the  
17 *Rooker* and *Feldman* cases, overriding Congress' conferral of  
18 federal-court jurisdiction concurrent with jurisdiction exercised  
19 by state courts, and superseding the ordinary application of  
20 preclusion law pursuant to 28 U.S.C. § 1738'" (citations  
21 omitted). Exxon Mobil Corp. v. Saudi Basic Industries Corp.,  
22 544 U.S. 280 (2005); and see Lopez v. Emergency Service  
23 Restoration, Inc. (In re Lopez), 367 B.R. 99 (9<sup>th</sup> Cir. BAP 2007)

24

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<sup>32</sup>ER 22:12-13.

25

26 <sup>33</sup>The Panel notes that documents included in the Excerpts of  
27 Record contained inconsistencies regarding whether the state  
28 court judgment in favor of BCI was final; however, on appeal  
Segovia did not object to or argue against the bankruptcy court's  
finding that the judgment is now final.

1 (in context of non-dischargeability proceeding, Rooker-Feldman  
2 doctrine held to be inapplicable in bankruptcy court).

3 A suit brought in federal district court is a "de  
4 facto appeal" forbidden by *Rooker-Feldman* when "a  
5 federal plaintiff asserts as a legal wrong an allegedly  
6 erroneous decision by a state court, and seeks relief  
7 from a state court judgment based on that decision."  
8 [Citing *Noel v. Hall*, 341 F.3d 1148, 1164 (9<sup>th</sup> Cir.  
2003)]. In contrast, if a plaintiff "asserts as a  
9 legal wrong an allegedly illegal act or omission by an  
adverse party, *Rooker-Feldman* does not bar  
jurisdiction." *Id.*

9 *Carmona v. Carmona*, 2008 U.S. App. LEXIS 19724, \*10-11.

10 Segovia's objection to BCI's claim that is based on section  
11 502(b)(1) is essentially an assertion that the state court  
12 decision was wrong and therefore the judgment based thereon was  
13 unenforceable against the Debtor. The record does not show that  
14 Segovia asserted any wrongful acts by BCI against the Debtor that  
15 had not already been asserted and addressed in the State Court  
16 Action. Based on the limited record, the bankruptcy court  
17 appears to have believed that Segovia's first claim objecting to  
18 BCI's claim could not be addressed under the Rooker-Feldman  
19 doctrine because it was barred as a direct attack on the state  
20 court judgment.<sup>34</sup>

21 Under Segovia's second claim, he alleged that BCI had  
22 unnecessarily inflated its costs of litigation and that the claim  
23 exceeded the reasonable value of the services. He specifically  
24 asked the bankruptcy court to disallow the prevailing party's  
25

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26  
27 <sup>34</sup>The fact that it would be Segovia, not the Debtor, asking  
28 the bankruptcy court to improperly exercise jurisdiction held  
exclusively by the U.S. Supreme Court would not create  
jurisdiction otherwise barred under the Rooker-Feldman doctrine.

1 attorneys' fees as unreasonable under section 502(b)(4). It  
2 appears that the bankruptcy court believed this objection to fees  
3 on reasonableness grounds also constituted a direct attack on the  
4 state court judgment not permitted under the Rooker-Feldman  
5 doctrine.

6 Lacking the full and complete record, but informed by the  
7 bankruptcy court's in-depth investigation and apparently clear  
8 understanding of the State Court Action, this Panel cannot  
9 conclude that the bankruptcy court's reasoning was not sound.  
10 The bankruptcy court clearly has jurisdiction under the  
11 Bankruptcy Code to rule on objections to proofs of claim.  
12 However, it is possible that the bankruptcy court believed that  
13 it lacked jurisdiction to consider challenges that had been  
14 previously litigated in the State Court Action, based on the  
15 Rooker-Feldman doctrine. Even if such application of the narrow  
16 Rooker-Feldman doctrine were to be viewed as exceeding the limits  
17 of the doctrine, the bankruptcy court's dismissal of Segovia's  
18 objections to BCI's claim alternatively was proper under the  
19 issue preclusion laws of California.

20

21 **B. Summary Dismissal of Segovia's Cross-Complaint Is Affirmable**  
22 **Under Ordinary Preclusion Laws of California.**

23 Federal courts must give "full faith and credit" to  
24 judgments of state courts. 28 U.S.C. § 1738. "[T]he preclusive  
25 effect of a state court judgment in a subsequent bankruptcy  
26 proceeding is determined by the preclusion law of the state in  
27 which the judgment was issued." In re Harmon, 250 F.3d 1240,  
28 1245(9<sup>th</sup> Cir. 2001).



1 In California, "collateral estoppel precludes  
2 relitigation of issues argued and decided in prior  
3 proceedings." [] California courts will apply  
4 collateral estoppel only if certain threshold  
requirements are met, and then only if application of  
preclusion furthers the public policies underlying the  
doctrine. There are five threshold requirements:

5 First, the issue sought to be precluded from  
6 relitigation must be identical to that  
7 decided in a former proceeding. Second, this  
8 issue must have been actually litigated in  
9 the former proceeding. Third, it must have  
10 been necessarily decided in the former  
11 proceeding. Fourth, the decision in the  
former proceeding must be final and on the  
merits. Finally, the party against whom  
preclusion is sought must be the same as, or  
in privity with, the party to the former  
proceeding.

12 Id. (internal citations omitted).

13 The bankruptcy court overruled the objection to BCI's claim  
14 because the claim is "based on a final state-court judgment in  
15 favor of BCI". Segovia, 387 B.R. at 779 n. 15. BCI's claim is a  
16 claim that seeks enforcement against the Debtor's estate of a  
17 final state court judgment, which was entered against the Debtor,  
18 after jury trial on the merits, and included post-trial  
19 proceedings to determine prevailing party status and reasonable  
20 attorneys' fees. Enforcement of the Judgment in the bankruptcy  
21 case furthers the public policies in favor of finality of  
22 litigation and according full faith and credit to final state  
23 court judgments. It was within the bankruptcy court's discretion  
24 to apply preclusion law, and on this record, we can and do affirm  
25 the dismissal of Segovia's objection to BCI's claim on such  
26 alternate grounds. Tahoe-Sierra Pres. Council v. Tahoe Reg'l  
27 Planning Agency, 322 F.3d 1064, 1076-77 (9<sup>th</sup> Cir. 2003)  
28 (appellate courts may affirm the judgment on any ground supported

1 by the record).

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3 **C. BCI's Prevailing Party's Attorneys' Fees Are Not Reviewable**  
4 **Under Section 502(b)(4).**

5 Segovia's second claim sought review of BCI's prevailing  
6 party's attorneys' fee award for reasonableness under section  
7 502(b)(4). Based on a plain reading of the statute, BCI's  
8 attorneys' fee award does not fall within the claims subject to  
9 review under section 502(b)(4) because BCI was neither an insider  
10 of nor an attorney for the Debtor. Therefore, we can affirm the  
11 dismissal of Segovia's second claim on a third legal ground --  
12 the facial inapplicability of section 502(b)(4). Tahoe-Sierra  
13 Pres. Council v. Tahoe Reg'l Planning Agency, 322 F.3d at 1076-  
14 77.

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**CONCLUSION**

17 For the reasons stated above, we AFFIRM the bankruptcy  
18 court's judgment.

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