

JAN 14 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NOT FOR PUBLICATION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

In re:)	BAP No. CC-07-1004-MoDBa
)	
HUNSDON CARY STEWART,)	Bk. No. LA 06-12402-VK
)	
Debtor.)	
_____)	
)	
HUNSDON CARY STEWART,)	
)	
Appellant,)	
)	
v.)	M E M O R A N D U M ¹
)	
ROYA BATMANGHELICH,)	
)	
Appellee.)	
_____)	

Argued and Submitted on November 28, 2007
at Pasadena, California

Filed - January 14, 2008

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

Honorable Victoria S. Kaufman, Bankruptcy Judge, Presiding

Before: MONTALI, DUNN and BAUM,² 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.

² Hon. Redfield T. Baum, Sr., Chief Judge of the U.S. Bankruptcy Court for the District of Arizona, sitting by designation.

1 Debtor Hunsdon Cary Stewart ("Debtor") appeals from the
2 bankruptcy court's order overruling his objections to the claim
3 of his former wife, Roya Batmanghelich ("Creditor"). Debtor
4 argues that the state court order on which Creditor bases her
5 claim is either void or interlocutory and is not entitled to any
6 weight in this bankruptcy case, that her renewal of judgment
7 approximately ten years later was forged, and that her claim is
8 barred by the doctrines of unclean hands, laches, and setoff.
9 The bankruptcy court rejected these arguments. We AFFIRM.

10 I. FACTS

11 Debtor and Creditor were divorced in 1993 (Batmanghelich v.
12 Stewart, Superior Court, County of Los Angeles, Case No. SD 000
13 192). The judgment of dissolution is not in the excerpts of
14 record. According to a subsequent minute order, Debtor approved
15 the judgment of dissolution as to both form and substance, the
16 judgment states that Debtor shall repay funds that he borrowed
17 from Creditor's relatives, and the Superior Court reserved
18 jurisdiction to determine the dollar amounts of the borrowed
19 funds and any offsets.

20 A. The 1995 Order

21 In 1995, the Superior Court issued a Finding of Referee and
22 Order Thereon (the "1995 Order"). The 1995 Order finds that
23 Debtor owes Creditor a total of approximately \$200,000.³

25 ³ There is some confusion regarding the date of the 1995
26 Order. It bears a file stamp of March 9, 1995, but a date stamp
27 of March 9, 1994, next to the referee's and judge's signature
28 lines. Debtor and the Superior Court sometimes refer to it as
the order of March 9, 1994, but the Superior Court later found
(and Debtor does not contest) that this date stamp was in error.

1 Debtor argues that the 1995 Order is void for lack of proper
2 notice to him. His specific arguments are not entirely clear but
3 he appears to claim that he did not receive adequate notice
4 (a) that the referee had been appointed as such, as opposed to
5 being a mediator, (b) that he would not have a trial or
6 arbitration, (c) that the Superior Court would act on the
7 referee's recommendation without further notice, or (d) that the
8 1995 Order would be treated as final despite not being captioned
9 as a judgment. Debtor claims that this lack of notice violated a
10 host of California procedural requirements, and that as a result
11 the 1995 Order is void, or at least interlocutory and not
12 entitled to any weight in this bankruptcy case.

13 Debtor, who formerly practiced law, also argues that he has
14 setoffs for legal services rendered to Creditor's family, as well
15 as other claims that allegedly were not included in the 1995
16 Order (the "Additional Setoffs"). Specifically, he claims:
17 \$150,000 plus interest "for attorney services and costs advanced
18 to about April, 1990," \$50,000 for tort damages for interference
19 with "my civil rights and parent rights, to conceal my son after
20 September, 1996, and to fabricate my state court family law
21 file," and over \$100,000 for "[p]ersonal property taken from my
22 residence in early October, 1998," which he alleges was stolen by
23 Creditor's "collaborators."

24 Debtor also argues that the doctrine of laches should bar
25 Creditor's claim. He alleges that Creditor took no steps to
26 enforce the 1995 Order and that her inaction confirmed in his
27 mind that the 1995 Order was void or otherwise ineffective. In
28 reliance on this inaction, he claims, he made gifts to his two

1 daughters that Creditor now claims are fraudulent transfers.

2 B. The Renewal of Judgment

3 Approximately ten years after the 1995 Order, Creditor
4 obtained a document that purports to be a renewal of judgment.
5 Debtor has not included a copy of that document in the excerpts
6 of record.

7 Debtor alleges that the renewal of judgment was forged.
8 Debtor's evidence is that (a) the date stamp next to the deputy
9 clerk's signature on a Notice of Renewal of Judgment is March 7,
10 2004, which was a Sunday, "and California Superior Courts are
11 closed on Sundays, suggesting that the 'renewal' of judgment was
12 a forgery," (b) the Superior Court's docket does not reflect an
13 Application for and Renewal of Judgment, (c) Creditor allegedly
14 told Debtor in 1996 that she had used "bribery" and had "power
15 over" the court, and (d) thereafter a series of events allegedly
16 confirmed those statements, including "fabricated" documents and
17 pleadings that "disappeared" from the court files.

18 Debtor appears to argue that if the 1995 Order is not
19 interlocutory then it has expired because it was not renewed
20 within ten years. Alternatively, even if the 1995 Order did not
21 need to be renewed, Debtor argues that "filing a [proof of claim]
22 based on a forged document is unclean hands invalidating the
23 proof of claim"

24 C. Debtor's arguments in Superior Court

25 After the Renewal of Judgment was issued, Debtor filed
26 various motions and other documents in the Superior Court seeking
27 to vacate, quash, stay enforcement of, or otherwise contest the
28 1995 Order, the Renewal of Judgment, or both. No copies of those

1 documents are in the excerpts of record, but a Case History
2 Report and various Minutes summarize the proceedings.

3 In response to Debtor's initial papers, the Superior Court
4 directed the parties on October 3, 2005, to submit briefs on the
5 following issues:

6 Is the order of 3/9/2005 [sic] a void order or
7 voidable order[?] Is renewal required on a family
8 law judgment[?] [A]nd was application on renewal
timely and properly served with [an] accurate
dollar amount[?]

9 On November 22, 2005, the Superior Court issued the
10 following minute order:

11 [Debtor's] petition to "vacate the sham renewal of
12 judgment, as served on July 2, 2005" is denied.
13 Family law monetary judgments and/or orders need
14 not be renewed every ten years. See California
15 Code of Civil Procedure section 683.310; Family
16 Code section 290 and 291; see also Irmo Wilcox
17 (2004) 124 Cal.App.4th 492. To the extent
[Debtor] seeks to attack the underlying order
entered on or about March 9, 1994, [sic] said
motion is not properly before the court, this
court not having entered the order of March 9,
1994 [sic].

18 On December 15, 2005, in response to numerous additional
19 documents filed by Debtor, the Superior Court issued another
20 minute order (collectively, these orders are referred to herein
21 as the "2005 Minute Orders"). It once again rejected Debtor's
22 arguments. Among other things it found that, with both Debtor
23 and Creditor present in court, their claims and offsets were
24 referred to a referee, they presented evidence, the matter stood
25 submitted, the 1995 Order was issued, and Debtor actually
26 received notice of that order. The Superior Court then ruled:

27 [Debtor] argues that the [Superior] [C]ourt
28 lacked personal jurisdiction because [he] was not
given notice of trial at least fifteen days before

1 trial, as required by Code of Civil Procedure
2 section 594(a). [Debtor] has not provided the
3 court with any authority that would permit one who
4 appears and participates in a hearing to
collaterally attack the results, more than ten
years later, on the grounds that insufficient
notice of the hearing had been given.

5 * * *

6 [Debtor] also argues that [the 1995 Order]
7 was never reduced to a judgment, as required by
California Rules of Court section [sic] 232.
8 Without addressing the merits of [his] argument,
[he] provides no authority for the proposition
9 that he can collaterally attack [the 1995 Order]
on this ground.

10 Debtor apparently appealed from one or both of the 2005
11 Minute Orders and according to his Statement of Financial Affairs
12 the appeal or appeals are still pending.

13 D. This bankruptcy case

14 On June 5, 2006, Debtor filed his Chapter 13 petition
15 commencing this case. Creditor filed a timely proof of claim
16 asserting an unsecured nonpriority claim of \$212,309.39 based on
17 the 1995 Order and the renewal of judgment. Debtor filed what he
18 called a "motion" objecting to Creditor's claim (the "Claim
19 Objection") which seeks to disallow Creditor's claim because:

20 it is (1) based upon a forged "renewal of
21 judgment" purporting to have been entered in 2004,
22 (2) the original 1995 interim order is void due
[to] lack of notice to [Debtor], [and] (3) the
23 original 1995 interim order is no longer
enforceable due to laches by [Creditor], and due
24 to [Creditor's] inequitable conduct (forging
"renewal" order).

25 In his reply brief Debtor for the first time added a fourth
26 argument to the bankruptcy court: (4) that the Additional
27 Setoffs must be applied to reduce the amount of Creditor's claim.
28 Creditor filed a response to the Claim Objection and her

1 supporting declaration states that she never forged any
2 documents. Debtor's reply argues that Creditor does not
3 specifically deny that someone else forged the renewal of
4 judgment on her behalf.

5 The Claim Objection came on for hearing on December 13,
6 2006. The bankruptcy court ruled that (1) family law judgments
7 need not be renewed, so the alleged forgery of the renewal of
8 judgment is irrelevant, and no forgery has been established
9 anyway so Debtor has not shown any unclean hands; (2) the 1995
10 Order is not void for lack of notice because the 2005 Minute
11 Orders so held, and they must be given full faith and credit;
12 (3) regarding Debtor's laches argument, he has shown neither lack
13 of diligence by Creditor nor cognizable prejudice to himself, and
14 alternatively he is barred by the doctrine of unclean hands from
15 invoking the doctrine of laches; and (4) Debtor's alleged
16 Additional Setoffs are belatedly asserted and, as to two of the
17 three Additional Setoffs, barred by claim preclusion and as a
18 collateral attack on the Superior Court's orders.

19 Debtor filed a timely notice of appeal after the bankruptcy
20 court announced its ruling but before it entered its written
21 order, as permitted by Fed. R. Bankr. P. 8002(a). On this
22 appeal, Creditor has elected not to file any brief nor appear for
23 oral argument.

24 **II. ISSUE**

25 Did the bankruptcy court err in overruling Debtor's Claim
26 Objection?

1 Turner), 204 B.R. 988, 992-93 (9th Cir. BAP 1997). We also
2 assume, solely for the sake of argument, that the 2005 Minute
3 Orders are not binding on any other ground, such as comity.⁴

4 That does not change the outcome. We can affirm on any
5 basis supported by the record. Fernandez v. GE Cap. Mortgage
6 Servs., Inc. (In re Fernandez), 227 B.R. 174, 177 (9th Cir. BAP
7 1998), aff'd 208 F.3d 220 (9th Cir. 2000) (table). Creditor's
8 proof of claim is prima facie evidence of the claim's validity
9 and amount. Fed. R. Bankr. P. 3001(f). Debtor has the burden of
10 producing evidence of equal or greater weight to that provided by
11 the proof of claim. Lundell v. Anchor Constr. Specialists, Inc.
12 (In re Lundell), 223 F.3d 1035, 1039 (9th Cir. 2000). None of
13 Debtor's arguments can meet that burden.

14 Attached to Creditor's proof of claim is a copy of the 1995
15 Order, as well as the notice of renewal of judgment. The 1995
16 Order establishes the validity and amount of Creditor's claim and
17 it is entitled to preclusive effect even if the 2005 Minute
18 Orders are not. Alternatively, the 1995 Order is entitled to
19 recognition on grounds of comity.

21
22 ⁴ California rules of claim and issue preclusion apply
23 because federal courts must give state judicial proceedings the
24 "same full faith and credit . . . as they have by law or usage in
25 the courts of [the] State . . . from which they are taken." 28
26 U.S.C. § 1738. See Haring v. Prosise, 462 U.S. 306, 313 n. 6;
27 103 S.Ct. 2368, 2373 n. 6 (1983) ("If the state courts would not
28 give preclusive effect to the [a state court's order], the courts
of the United States can accord it no greater efficacy under [28
U.S.C.] § 1738."). See also Matsushita Elec. Indus. Co., Ltd. v.
Epstein, 516 U.S. 367, 369; 116 S.Ct. 873, 876 (1996) ("a federal
court must give the judgment the same effect that it would have
in the courts of the State in which it was rendered").

1 four days before trial, and after a default was entered the
2 judgment debtor timely appealed. In contrast Debtor does not
3 contest that he was present in court when the dispute was
4 referred to a referee, he appeared before the referee, and he
5 participated in presenting evidence to the referee. In these
6 circumstances we believe that the burden is on Debtor to show
7 that he did not consent to proceeding without the 15 days'
8 notice. See Au-Yang v. Barton, 21 Cal.4th 958, 963; 987 P.2d
9 697, 699; 90 Cal.Rptr.2d 227, 230 (1999) (under CCP § 594(a),
10 party may consent to proceed to trial on less than 15 days'
11 notice). Debtor did not meet that burden. Not only did he
12 participate in proceedings before the referee but he does not
13 allege that he ever objected, filed a motion for relief from the
14 1995 Order, or took any other steps to complain about the alleged
15 lack of notice for over ten years. In the words of one of the
16 2005 Minute Orders (which are persuasive even if they are not
17 preclusive), Debtor has not "provided any authority that would
18 permit one who appears and participates in a hearing to
19 collaterally attack the results, more than ten years later, on
20 the grounds that insufficient notice of the hearing had been
21 given."

22 Debtor argues that the 1995 Order has no preclusive effect
23 because it is interlocutory.⁶ He alleges that the 1995 Order
24

25 ⁶ We assume without deciding that if the 1995 Order were
26 interlocutory then it would have no claim preclusive or issue
27 preclusive effect under California law. But cf. Kulchar v.
28 Kulchar, 1 Cal.3d 467, 470; 462 P.2d 17, 19 (1969)
("Interlocutory divorce decree[s] are res judicata as to all
questions determined therein, including the property rights of
the parties.") (citations omitted).

1 itself "states it is an interim order," but that is simply wrong.
2 We have read the order and it contains no such statement. Debtor
3 adds, "[n]or were the issues 'reserved' in the 1995 interim order
4 ever completed -- or even scheduled" But we do not find
5 any issues "reserved" in the 1995 Order. To the contrary, it
6 appears on its face to be a final determination of the only
7 issues left unresolved by the judgment of dissolution, namely the
8 offsets. Its preamble states: "the Referee now makes the
9 following Findings and Order for the reserved issues of claims by
10 [Creditor] for reimbursements and claims by [Debtor] of offsets
11" In other words, Debtor has not established that the
12 1995 Order is not a final and preclusive determination of the
13 only remaining issues in the divorce. Compare In re Marriage of
14 Ellis, 101 Cal.App.4th 400, 403-04, 124 Cal.Rptr.2d 719, 721
15 (2002) (post-dissolution property division order was not
16 sufficiently final to be appealable, because although it
17 determined what was community property it did not resolve amount
18 to be distributed to each spouse).

19 For all of these reasons Debtor has not shown that the 1995
20 Order lacks preclusive effect. Alternatively, even if the 1995
21 Order is not preclusive it is still powerful evidence in support
22 of Creditor's claim. Debtor has not cited any authority that it
23 would be appropriate for the bankruptcy court to disallow
24 Creditor's claim based on alleged procedural deficiencies in the
25 Superior Court when the bankruptcy court would thereby decide the
26 very issues that are currently pending before the California
27 appellate courts. If nothing else, comity suggests otherwise.
28 See Wright, Miller & Cooper, Fed. Practice & Proc.: Juris. 2d.

1 § 4469, n. 33 (2002) ("Wright & Miller") (supporting deference to
2 state proceedings "on grounds other than preclusion" such as
3 "comity, federalism, and wise judicial administration"). For us
4 to second guess the state courts on this record would certainly
5 be unwise.

6 B. The renewal of judgment

7 Debtor argues that the renewal of judgment was ineffective,
8 but the bankruptcy court ruled that family court monetary
9 judgments need not be renewed every ten years under
10 CCP § 683.020, citing CCP § 683.310,⁷ California Family Code
11 § 291;⁸ In re Marriage of Wilcox, 124 Cal.App.4th 492, 499-500,
12 21 Cal.Rptr.3d 315, 319-20 (2004). Debtor has shown no error in
13 that ruling.

14 Debtor argues that the alleged forgery is nonetheless
15 relevant because it shows unclean hands, but the bankruptcy court
16 found that Creditor did not in fact procure a forged renewal of
17 judgment. There is more than adequate evidence to support that
18 finding. First, although the notice of renewal bears a date
19 stamp corresponding to a Sunday, that is not terribly significant
20 because on at least one other occasion the Superior Court
21

22 ⁷ "Except as otherwise provided in the Family Code, this
23 chapter does not apply to a judgment or order made or entered
24 pursuant to the Family Code." CCP § 683.310.

25 ⁸ "A money judgment or judgment for possession or sale of
26 property that is made or entered under this code, including a
27 judgment for child, family, or spousal support, is enforceable
28 until paid in full or otherwise satisfied" and "A judgment
described in this section is exempt from any requirement that a
judgment be renewed. Failure to renew a judgment described in
this section has no effect on the enforceability of the
judgment." Cal. Family Code § 291(a) and (b) (emphasis added).

1 incorrectly date stamped a document: the 1995 Order is date
2 stamped 1994 but file stamped 1995. One of the 2005 Minute
3 Orders acknowledges this error. Second, Debtor does not dispute
4 that the renewal was in fact obtained in 2005, not 2004. Third
5 and finally, the bankruptcy court believed Creditor's declaration
6 and read it fairly, in our view, as not only denying that
7 Creditor forged any documents herself but also denying that she
8 procured any forgery. Creditor's declaration states:

9 I never forged any documents. Because of my
10 [multiple sclerosis], I had a friend assist me in
11 preparing the Request for Renewal of Judgment.
12 . . . My friend took the papers to the clerks
13 [sic] office and the clerk stamped and filed the
papers and he brought back a stamped copy. I
cannot even imagine how someone would be able to
forge a court stamp or a clerks [sic] signature.
[Emphasis added.]

14 From all of this, the bankruptcy court found that "Creditor
15 did not procure a forged renewal of the [1995 Order]." Debtor
16 has not shown any error in this finding.

17 C. Laches

18 As the bankruptcy court held, the affirmative defense of
19 laches requires proof of (a) lack of diligence by the party
20 against whom the defense is asserted and (b) prejudice to the
21 party asserting the defense. Beaty, 306 F.3d at 926. There is
22 also "a strong presumption that a delay is reasonable for
23 purposes of laches when a specified statutory limitations period
24 has not yet elapsed." Id. As we have held above, Debtor has
25 shown no error in the bankruptcy court's conclusion that the 1995
26 Order is still enforceable and need not be renewed every ten
27 years. Debtor has not shown that any limitations period has
28 elapsed. We agree with the bankruptcy court that Debtor has not

1 shown a lack of diligence by Creditor.

2 The bankruptcy court held in the alternative that even if
3 the ten year period in CCP § 683.310 did apply, Creditor obtained
4 her renewal within that period. Again, Debtor has not shown that
5 this is error.

6 As another alternative basis for its ruling, the bankruptcy
7 court held that Debtor has not established prejudice. It stated,
8 "Given that Debtor commenced a lawsuit regarding the March 9,
9 1995 Order only one month before he gave \$160,000 to his
10 daughters, his contention that Creditor's alleged inaction to
11 enforce the Judgment [i.e., the 1995 Order] lulled him into
12 making those gifts lacks credibility." Debtor has shown no error
13 in this finding.

14 As yet another alternative basis for its ruling, the
15 bankruptcy court held that Debtor is not entitled to the benefit
16 of any laches defense because "debtors who have 'unclean hands'
17 may not invoke laches." Beaty, 306 F.3d at 925. The bankruptcy
18 court noted that Debtor was suspended from the practice of law,
19 placed on probation, and eventually disbarred for using his
20 client trust account to hide money from Creditor, among other
21 creditors. There is evidence in the excerpts of record to
22 support this finding and Debtor has not pointed to any contrary
23 evidence or legal authority.

24 For each of these alternative reasons, Debtor has shown no
25 error in the bankruptcy court's rejection of his laches defense.

26 D. The alleged Additional Setoffs

27 Debtor claims to be owed attorneys' fees and costs advanced
28 to Creditor or her family "to about April, 1990." The bankruptcy

1 court ruled that this claim was evaluated in connection with the
2 1995 Order and is therefore barred as an impermissible collateral
3 attack on that order. As the bankruptcy court pointed out, the
4 1995 Order specifically states that it is addressing Creditor's
5 claims for reimbursement and Debtor's claims for "offsets." The
6 bankruptcy court also ruled that even if Debtor did not actually
7 litigate this claim for attorneys' fees and costs, he could have
8 done so and therefore claim preclusion applies. We agree.⁹

9 The bankruptcy court rejected Debtor's claims for \$100,000
10 allegedly owed as of October 1998 for the same reasons. Again,
11 we agree.

12 The last of the Additional Setoffs is Debtor's claim for
13 \$50,000 in alleged tort damages for interference with "my civil
14 rights and parent rights, to conceal my son after September,
15 1996, and to fabricate my state court family law file." The
16 bankruptcy court rejected this claim (and the other two
17 Additional Setoffs as well) as untimely.

18 In his Reply, filed after Creditor had
19 submitted her opposition to the Claim Objection,
20 Debtor first raised his argument that the Court
21 should disallow Creditor's claim based on his
22 alleged offsets. The Court rejects this argument
as being belatedly asserted as to the Proof of
Claim

23 ⁹ The bankruptcy court also viewed some of the Additional
24 Setoffs as an impermissible collateral attack on the 2005 Minute
25 Orders. We have questioned the preclusive effect of those
26 orders. The 2005 Minute Orders may still be entitled to some
27 evidentiary weight or recognition based on comity or similar
28 doctrines, even if they are not preclusive, and therefore the
bankruptcy court may be correct that Debtor's collateral attack
on them is impermissible, but we need not reach that issue. It
is enough that Debtor's claim for attorneys' fees and costs is
barred as an impermissible collateral attack on the 1995 Order
and is also barred by the claim preclusive effect of that order.

