

FEB 12 2008

NOT FOR PUBLICATION

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

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

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In re:)	BAP No.	CC-07-1311-PaDMo
)		
HOUSHANG DARDASHTI,)	Bk. No.	LA 99-36522 BR
)		
Debtor.)		
_____)		
HOUSHANG DARDASHTI,)		
)		
Appellant,)		
)		
v.)		
)		
JEFFREY I. GOLDEN, Chapter 7)		
Trustee,)		
)		
Appellee.)		
_____)		

M E M O R A N D U M¹

Argued and Submitted on January 25, 2008
at Orange, California

Filed - February 12, 2008

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

Hon. Barry Russell, Bankruptcy Judge, Presiding.

Before: PAPPAS, DUNN and MONTALI, Bankruptcy Judges.

¹ This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8013-1.

1 This is an appeal of an order of the bankruptcy court holding
2 debtor Houshang Dardashti ("Dardashti") in contempt for failure to
3 comply with the court's turnover order, and directing that
4 Dardashti be incarcerated until he complies with a provision of
5 the turnover order, imposing monetary sanctions, and awarding
6 damages to the trustee. We AFFIRM.

7
8 **FACTS**

9 This is the Panel's second encounter with the dispute between
10 these parties.

11 Dardashti filed a chapter 7² petition on July 15, 1999, and
12 Jeffrey I. Golden ("Trustee") was appointed trustee. On November
13 2, 1999, the case was closed as a "no asset" bankruptcy.

14 Then, on November 14, 1999, some 122 days after Dardashti
15 filed his bankruptcy petition, Dardashti's father, Loghman
16 Dardashti ("Loghman"), died. Loghman's will, which was probated
17 in the Family Court of Israel, devised to Dardashti a 40 percent
18 interest in two parcels of real property in Israel (the
19 "Properties"). Loghman's probate estate was approved for
20 distribution on April 13, 2000.

21 Dardashti did not supplement or amend his bankruptcy
22 schedules to reflect his inheritance. When Trustee finally became
23 aware of these events, he moved to reopen Dardashti's bankruptcy

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² Unless otherwise indicated, all chapter, section and rule
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, as
27 enacted and promulgated prior to the effective date (October 17,
28 2005) of the relevant provisions of the Bankruptcy Abuse
Prevention and Consumer Protection Act of 2005, Pub. L. 109-8,
April 20, 2005, 119 Stat. 23, and to the Federal Rules of
Bankruptcy Procedure, Rules 1001-9037.

1 case to assert the bankruptcy estate's interest in the Properties.
2 The bankruptcy court granted the motion on September 27, 2005.

3 On November 18, 2005, Trustee filed a motion requesting that
4 Dardashti's interest in the Properties be turned over to Trustee
5 pursuant to § 521(a)(3) and (4) (the "Turnover Motion"). Trustee
6 argued that, under § 541(a)(5)(A), Dardashti's interest in the
7 Properties was property of the estate because he acquired it, or
8 became entitled to acquire it, by bequeath, devise or inheritance
9 within 180 days of the filing of his bankruptcy petition.

10 Dardashti did not respond to the Turnover Motion. After
11 conducting a hearing on the Turnover Motion on December 6, 2005,
12 at which Dardashti did not appear,³ the bankruptcy court entered
13 an order granting the Turnover Motion on December 28, 2005 (the
14 "Turnover Order"). The Turnover Order provides, in relevant part,
15 that:

16 (2) The Debtor shall immediately, upon receipt
17 from the Trustee, execute and return to the
18 Trustee a power of attorney form . . . and
19 convey his interests in the [Properties] to the
20 Trustee (or an assignee of the Trustee) and
21 . . . execute all other appropriate documents
22 necessary to effect the turnover of the
23 [Properties] to Trustee.

21 The Turnover Order also directed Dardashti to provide a copy of
22 Loghman's will to Trustee, turn over any other property bequeathed
23 or devised in the will, amend his bankruptcy schedules to reflect
24 the Properties inherited from Loghman, and cooperate with Trustee

26 ³ Although it was sent to the address in his petition,
27 Dardashti would later argue that he did not receive notice of the
28 hearing. In his brief and at oral argument, Trustee's counsel
represents that Dardashti still has not updated his mailing
address in the records of the bankruptcy court.

1 in identifying and recovering any property of the bankruptcy
2 estate.

3 Dardashti did not seek reconsideration or a stay of
4 enforcement of the Turnover Order, nor did he appeal. Trustee
5 alleges that Dardashti has refused to comply with the Turnover
6 Order, and, in particular, that he has not executed the power of
7 attorney so that Trustee may exercise control over, or be
8 conveyed, the bankruptcy estate's interest in the Properties.

9 On July 19, 2006, approximately ten months after the Turnover
10 Order became final, Dardashti commenced an adversary proceeding
11 against Trustee. In his complaint, Dardashti sought a declaratory
12 judgment from the bankruptcy court determining that his interest
13 in the Properties is not property of the bankruptcy estate.
14 Dardashti alleged that because the Properties are located in
15 Israel, that nation's real property and probate laws apply.
16 According to Israeli law, Dardashti suggested, the operative date
17 for purposes of § 541(a)(5)(A) (i.e., the date he "acquired, or
18 became entitled to acquire" an interest in the Properties) is the
19 date a probate order is entered by the Israeli court giving him,
20 as a devisee, the right to possession of property, not the date of
21 Loghman's death.

22 Trustee moved to dismiss the complaint on November 27, 2006.
23 Trustee argued that Dardashti's complaint was both an
24 impermissible collateral attack on the Turnover Order, and that
25 his arguments regarding the effective date under § 541(a)(5)(A)
26 were incorrect as a matter of law.

27 The bankruptcy court heard oral argument from counsel for
28 both parties on January 17, 2007, and ruled orally on the record.

1 The court stated that because it had previously decided that
2 Dardashti's interest in the Properties was property of the
3 bankruptcy estate in connection with granting the Turnover Order,
4 Dardashti was precluded from further litigating that issue. The
5 bankruptcy court therefore dismissed the adversary proceeding with
6 prejudice by order entered on February 6, 2007 (the "Dismissal
7 Order"). Tr. Hr'g 7:18 - 8:1 (January 17, 2007).

8 Dardashti appealed the Dismissal Order to this Panel. In its
9 October 31, 2007, decision in the appeal, the Panel concluded that
10 the bankruptcy court erred in dismissing the complaint on the
11 grounds of preclusion. However, because the Panel could affirm
12 for any reason supported by the record that was raised
13 sufficiently for the bankruptcy court to rule, see In re E.R.
14 Fegert, Inc., 887 F.2d 955 (9th Cir. 1989), it ruled that
15 Dardashti's interest in the Properties was property of the estate
16 as a matter of law:

17 [B]ecause [Dardashti] acquired rights in the
18 Interest as of the Testator's death within 180
19 days of the filing of his bankruptcy petition,
20 which rights he could renounce, transfer and
encumber and which rights creditors could reach,
these rights were property of his bankruptcy
estate under § 541(a)(5)(A).

21 Memorandum at 16, Dardashti v. Golden (In re Dardashti), No. CC-
22 07-1066 TPaMk (9th Cir. BAP, October 31, 2007). The Panel
23 therefore affirmed the Dismissal Order. The Panel's decision was
24 not appealed.

25 In the meantime, Trustee took action in Israel to enforce the
26 Turnover Order (the "Israeli Proceedings"). At Trustee's request,
27 on July 4, 2007, the Israeli court entered a preliminary
28 injunction enjoining Dardashti from transferring his interest in

1 the Properties while the Israeli Proceedings were pending (the
2 "Israeli Injunction"). In the Israeli Injunction, the Israeli
3 court reasoned:

4 It could be that the foreign law, in accordance
5 with which the proceedings were renewed due to
6 the discovery of assets that came into
7 [Dardashti's] hands after he was discharged from
8 his debts and the bankruptcy case was closed,
9 does not resemble the bankruptcy laws that apply
10 in this regard in Israel. However, even if the
11 foreign law varies from the law in Israel as
12 [Dardashti] claims, the content of the Foreign
Judgment [the Turnover Order] that was intended
to realize the obligation and consent of
[Dardashti] to hand over his assets to the
bankruptcy fund in return for being discharged
from his debts to his creditors, does not harm
basic social values in Israel. It therefore
seems that the [Turnover Order] is not contrary
to the public order.

13 The Israeli judge also wrote in the Israeli Injunction, "I was
14 convinced that [Trustee] has a good chance of winning the
15 [proceedings to enforce the Turnover Order]."

16 In addition, on April 13, 2007, Trustee filed a motion in the
17 bankruptcy court for an order to show cause requiring Dardashti to
18 appear and show why he should not be held in contempt of court and
19 sanctioned for violating the Turnover Order. Trustee asserted
20 that Dardashti had willfully ignored the bankruptcy court's
21 instructions in the Turnover Order to execute a power of attorney
22 in favor of Trustee, to amend his schedules, and to cooperate with
23 the Trustee in his efforts to recover and administer the
24 Properties. Trustee requested that Dardashti be held in civil
25 contempt, that he be incarcerated and fined \$500 per day until he
26 complied with the Turnover Order, and that he pay Trustee's
27 damages, attorney's fees, and costs incurred in enforcing the
28 Turnover Order.

1 Dardashti responded to this motion on April 20, 2007. Among
2 his arguments were (1) that there had never been a final
3 determination that his interest in the Properties was property of
4 the bankruptcy estate; (2) that the issue was before the Panel on
5 appeal; and (3) that Dardashti had no further interest in the
6 Properties because he had executed an irrevocable power of
7 attorney to his brother, Albert, "to do all things related to
8 their Israeli property" on March 8, 2001, and later executed an
9 irrevocable power of attorney conveying his interest in the
10 Properties to his sister, Paridokht, on May 12, 2002.

11 The bankruptcy court issued an order to show cause ("OSC") to
12 Dardashti on April 16, 2007. He responded to the OSC, adding the
13 following to his previous arguments against contempt: (1) the
14 contempt motion violates the restraining orders sought and
15 obtained by the Trustee in the Israeli Proceedings; (2) the motion
16 attempts to circumvent Israeli rights to administer properties
17 within its borders; (3) the issue whether Dardashti's interest in
18 the Properties is property of the estate is on appeal before the
19 Panel; (4) the motion is premature; and (5) the contempt motion
20 places Dardashti in an untenable position concerning violation of
21 Israeli law.

22 On June 12, 2007, the bankruptcy court conducted the hearing
23 on the OSC, at which the parties appeared through counsel. In its
24 ruling in favor of Trustee, the court reaffirmed its decision that
25 Dardashti's interest in the Properties was property of the
26 bankruptcy estate. Tr. Hr'g 10:20-21 (June 12, 2007).
27 Additionally, the court ruled that his execution of the powers of
28 attorney in favor of his siblings did not prevent Dardashti from

1 signing the power of attorney in favor of Trustee. In particular,
2 the court first reasoned that, via the power of attorney,
3 Dardashti was only required by the Turnover Order to turn over
4 whatever interest he may have in the Properties, and Dardashti
5 conceded that he had some interest. Second, the court noted that
6 the agreements between Dardashti and his siblings did not prevent
7 Dardashti from complying with the Turnover Order because

8 The Properties were not scheduled and the
9 automatic stay has applied to the Properties
10 continuously since the Petition Date of July 15,
11 1999, including while the case was closed. The
12 automatic stay enjoins, inter alia, "any act to
13 obtain possession of property of the estate or
14 of property from the estate, or to exercise
15 control over property of the estate." 11 U.S.C.
16 § 362(a)(3). All of the Agreements were
17 executed after the Petition Date and, therefore,
18 are null, void, and not enforceable with respect
19 to the estate.

20 Memorandum, Conclusion of Law 7.

21 The bankruptcy court entered an order finding Dardashti was
22 in contempt of the Turnover Order (the "Contempt Order") on August
23 14, 2007. It issued a warrant for Dardashti's civil arrest and
24 ordered that he be incarcerated⁴ until he complied with the
25 Turnover Order by signing the power of attorney; that he pay \$500
26 per day until he complied with the Turnover Order's provision
27 requiring him to execute the power of attorney; and that he pay
28 Trustee \$202,603.16 for damages resulting from his contempt.

 Dardashti filed a timely notice of appeal of the Contempt
Order on August 17, 2007.

⁴ We were informed at oral argument that Dardashti remains
in Israel and has not been incarcerated at any time for his
violation of the Turnover Order.

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JURISDICTION

Dardashti questions the jurisdiction of the bankruptcy court to enter the Contempt Order. We consider his arguments below and determine that the bankruptcy court had jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(b) (2) (A). We have jurisdiction pursuant to 28 U.S.C. § 158.

ISSUES

Whether the bankruptcy court lacked jurisdiction to enter the Contempt Order.

Whether the bankruptcy court abused its discretion in finding Dardashti in contempt of the Turnover Order and in imposing incarceration and monetary sanctions.

STANDARDS OF REVIEW

We review the jurisdiction of the bankruptcy court de novo. Johnson v. TRE Holdings (In re Johnson), 346 B.R. 190, 193 (9th Cir. BAP 2006).

We review a bankruptcy court's civil contempt order for abuse of discretion. Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1191 (9th Cir. 2003). A trial court's decision to impose coercive sanctions for contempt is also reviewed for abuse of discretion. Hansbrough v. Birdsell (In re Hercules Enters., Inc.), 387 F.3d 1024, 1027 (9th Cir. 2004); Hook v. Ariz. Dep't of Corrections, 107 F.3d 1397, 1403 (9th Cir. 1997). An award of attorney's fees in a civil contempt proceeding is within the discretion of the trial court. Birdsell, 387 F.3d at 1027; Harcourt Brace Jovanovich Legal & Prof. Publ'n, Inc. v. Multistate Legal Studies,

1 Inc., 26 F.3d 948, 953 (9th Cir. 1994). Underlying factual
2 findings made in connection with a civil contempt order are
3 reviewed for clear error. Irwin v. Mascott, 370 F.3d 924, 931
4 (9th Cir. 2004).

6 DISCUSSION

- 7 1. The bankruptcy court had jurisdiction to enter the
8 Contempt Order.

9 Dardashti attempts to render this issue unnecessarily
10 complicated by reference to irrelevant facts and misleading
11 arguments. But to determine whether the bankruptcy court had
12 jurisdiction to enter the Contempt Order, we need only focus on a
13 few essential events and considerations.

14 Dardashti inherited an interest in the Properties within 180
15 days of his bankruptcy filing, but did not inform Trustee or amend
16 his schedules. The bankruptcy court entered the Turnover Order
17 compelling Dardashti to cooperate with Trustee in his efforts to
18 administer the bankruptcy estate's interest in the Properties. To
19 accomplish this, the Turnover Order required Dardashti, among
20 other things, to execute a power of attorney in favor of Trustee
21 so that he could exercise whatever rights Dardashti had in the
22 Properties. Dardashti did not oppose the Turnover Motion, nor did
23 he appeal or request a stay of the Turnover Order.

24 Trustee attempted to communicate with Dardashti on numerous
25 occasions over a period of sixteen months to demand that he comply
26 with the Turnover Order; Dardashti ignored these demands. Trustee
27 then asked the bankruptcy court to hold Dardashti in civil
28 contempt for his willful failure to obey the Turnover Order.

1 After a hearing at which Dardashti was represented by counsel, the
2 bankruptcy court found Dardashti had willfully failed to comply
3 with the Turnover Order, and was in contempt. The court directed
4 that Dardashti be incarcerated and imposed a daily fine until he
5 complied with one element of the Turnover Order (that Dardashti
6 execute the power of attorney), and ordered that Dardashti pay the
7 estate's expenses, attorney's fees and costs incurred in enforcing
8 the Turnover Order. Dardashti has appealed the Contempt Order,
9 but has not requested a stay pending appeal.

10 Dardashti argues that the bankruptcy court lacked
11 jurisdiction to enter the Contempt Order because another order,
12 the Dismissal Order, was pending on appeal before the Panel.
13 Because in that appeal Dardashti raised the issue of whether his
14 interest in the Properties was property of the bankruptcy estate,
15 and because the Turnover Order's provision that Dardashti execute
16 a power of attorney to Trustee presumed that the bankruptcy estate
17 held an interest in the Properties, Dardashti argues that the
18 Contempt Order enforcing the Turnover Order was affected by the
19 appeal of the Dismissal Order. Because it affected the appeal,
20 Dardashti suggests the bankruptcy court could not enforce the
21 Turnover Order pending resolution of that appeal. This argument
22 lacks merit for at least two reasons.

23 Dardashti cites Bialac v. Harsh Inv. Corp. (In re Bialac),
24 694 F.2d 625, 627 (9th Cir. 1982), for the proposition that the
25 appeal of the Dismissal Order "deprive[d] the bankruptcy court of
26 jurisdiction to enter orders that would affect or modify [our
27 emphasis] any issue or matter on appeal." Dardashti also cites a
28 bankruptcy court decision noting that the trial court has no

1 jurisdiction to do anything that impacts on [an] issue or matter
2 under appeal. In re Commodore Corp., 87 B.R. 62, 63 (Bankr. N.D.
3 Ind. 1987).

4 However, Dardashti misstates the holdings in both Bialac and
5 Commodore. The court of appeals in Bialac does not use the words
6 "affect or modify any issue or matter on appeal." Instead, the
7 court held that "a bankruptcy court may [not] vacate or modify an
8 order while on appeal." Bialac, 694 F.2d at 627 (emphasis added).
9 In other words, under Bialic, a bankruptcy court lacks
10 jurisdiction to modify or vacate an order that is under review on
11 appeal; the Bialac decision does not prohibit the bankruptcy court
12 from taking any steps that may "affect" the appeal. Moreover,
13 while announcing its belief that it had no jurisdiction to impact
14 the issue or matter under appeal, the Commodore court went on to
15 make changes in an appealed order that it believed did not
16 significantly impact the appeal. Commodore, 87 B.R. at 64. In
17 short, the case law upon which Dardashti relies does not support
18 the argument that an appeal divests the bankruptcy court of
19 jurisdiction to issue any order that might affect an order on
20 appeal.

21 Instead, this Panel has explained that, when there is no stay
22 pending appeal, the bankruptcy court retains jurisdiction to
23 enforce an order that is on appeal, on condition that in doing so,
24 the bankruptcy court does not significantly alter or expand upon
25 the terms of that order. The Panel stated,

26 While an appeal of an order is pending, the
27 trial court retains jurisdiction to implement or
28 enforce the order. This is true because in
 implementing an appealed order, the court does
 not disrupt the appellate process so long as its

1 decision remains intact for the appellate court
2 to review. Accordingly, courts have recognized
3 a distinction between acts undertaken to enforce
4 the judgment, which are permissible, and acts
5 which expand upon or alter it, which are
6 prohibited.

5 Hagel v. Drummond (In re Hagel), 184 B.R. 793, 798 (9th Cir. BAP
6 1995); see also Rains v. Flinn (In re Rains), 428 F.3d 893, 904
7 (9th Cir. 2005) ("Absent a stay or supersedeas, the trial court
8 retains jurisdiction to implement or enforce the judgment or order
9 but may not alter or expand upon the judgment."). Under this
10 approach, we need only inquire whether the Contempt Order
11 significantly altered, amended or expanded the Dismissal Order
12 while that order was on appeal.

13 In this instance, the bankruptcy court's Contempt Order did
14 none of these things. Indeed, the bankruptcy court did not alter,
15 amend or expand the Dismissal Order at all. The only change in
16 the status quo brought about by the Contempt Order was to enforce
17 a single provision of the Turnover Order, the one compelling
18 Dardashti to sign a power of attorney in favor of Trustee so that
19 Trustee could exercise whatever rights Dardashti had in the
20 Properties. In requiring Dardashti to sign a power of attorney,
21 the bankruptcy court did nothing to modify, alter, or change any
22 of the rulings it had made in the Dismissal Order. Nor did the
23 Contempt Order impair Dardashti's ability to seek review of the
24 Dismissal Order on appeal.

25 In this regard, two statements in Dardashti's Brief are
26 puzzling. First, he states: "The OSC Proceedings by the Chapter
27 7 Trustee clearly affected the [appeal of the Dismissal Order], in
28 that had Debtor complied with the Trustee's request, as opposed to

1 filing the [appeal of the Dismissal Order,] no Opposition OSC re:
2 Contempt would have been filed." Dardashti Opening Br. at 11.
3 This is, of course, true: Had Dardashti complied with the
4 Turnover Order, there presumably would have been no need for the
5 contempt motion. But Dardashti then goes on: "Reversal of the
6 Court's [Dismissal Order] would make the Chapter 7 Trustee's OSC
7 proceedings impossible." Id. This statement is not necessarily
8 true. Since the Dismissal Order granted Trustee's motion to
9 dismiss, one possible result would have been our remand to the
10 bankruptcy court to conduct further proceedings in the action.
11 Only had the Panel reversed the Dismissal Order and ruled that
12 Dardashti's interest in the Properties was not property of the
13 estate, would grounds have existed to vacate both the Turnover
14 Order and the Contempt Order.

15 But, of course, the Panel did not reverse the Dismissal
16 Order, and instead affirmed the bankruptcy court's decision by
17 ruling that Dardashti's interest in the Properties was indeed
18 property of the estate as a matter of law. Under these facts, it
19 cannot be said that the Contempt Order had any appreciable effect
20 on the Panel's consideration of the Dismissal Order.

21 Because no stay was in place, the bankruptcy court was free
22 to enforce the Turnover Order. The Contempt Order did not
23 significantly alter, amend, or expand the Dismissal Order on
24 appeal. Thus, the bankruptcy court had jurisdiction to enter the
25 Contempt Order pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(A).

26
27 2. The bankruptcy court did not abuse its discretion in
28 finding Dardashti in contempt, in imposing incarceration
and monetary sanctions, and awarding damages.

1 Congress has granted broad powers to the bankruptcy courts to
2 implement the bankruptcy code. Section 105(a) provides:

3 The court may issue any order, process or
4 judgment that is necessary or appropriate to
5 carry out the provisions of this title. No
6 provision of this title providing for the
7 raising of an issue by a party in interest shall
8 be construed to preclude the court from, sua
9 sponte, taking any action or making any
10 determination necessary or appropriate to
11 enforce or implement court orders or rules, or
12 to prevent an abuse of process.

13 The Ninth Circuit has held that § 105(a) grants bankruptcy
14 courts the power to hold parties in civil contempt. Birdsell, 387
15 F.3d at 1027; Dyer, 322 F.3d at 1191; Caldwell v. Unified Capital
16 Corp. (In re Rainbow Magazine, Inc.), 77 F.3d 278, 285 (9th Cir.
17 1996).⁵ In the exercise of the civil contempt power, courts in
18 this circuit may incarcerate an individual for failure to obey an
19 order of the court until such time as the offender complies with
20 the order. Dyer, 322 F.3d at 1193; Conn. Gen. Life Ins. Co. v.
21 New Images of Beverly Hills, 321 F.3d 878, 880 (9th Cir. 2002);
22 see also Hicks v. Feiock, 485 U.S. 624, 635 (1988) (Incarceration
23 is an appropriate coercive sanction for civil contempt so long as
24 "the contemnor can avoid the sentence imposed on him, or purge
25 himself of it, by complying with the terms of the original
26 order."); Shilitani v. United States, 384 U.S. 364, 368 (1966).
27 In addition, civil contempt powers include the ability to award
28 attorney's fees and assess fines. Birdsell, 387 F.3d at 1027;

26 ⁵ The bankruptcy court did not cite any particular legal
27 authority for its Contempt Order. However, the court of appeals
28 suggests that § 105(a) is the appropriate authority for contempt
for violation of a particular, identifiable order of a bankruptcy
court, as in this case. Dyer, 322 F.3d at 1191.

1 Dyer, 322 F.3d at 1193; F.J. Hanshaw Enters. v. Emerald River
2 Dev., Inc., 244 F.3d 1128, 1136 (9th Cir. 2001). Compensatory
3 damages are appropriate when the "contumacious behavior
4 significantly contributed to the [harm] and 'such result was
5 foreseeable.'" In re Cent. Eur. Indus. Dev. Co., LLC, 356 B.R. 1,
6 5 (Bankr. N.D. Cal. 2006) (quoting In re Gen. Motors Corp., 110
7 F.3d 1003, 1018 (4th Cir. 1997)); see also Dyer, 322 F.3d at 1193;
8 Birdsell, 387 F.3d at 1027.

9 In reviewing a bankruptcy court's finding of contempt and
10 order imposing incarceration, fines and attorney's fees, the Ninth
11 Circuit consults a four-point checklist. The Panel should decide,
12 applying a restrained⁶ standard of review, whether the bankruptcy
13 court properly determined (1) that the contemnor violated a
14 particular court order, (2) beyond substantial compliance, (3) not
15 based on good faith or a reasonable interpretation of the order,
16 (4) by clear and convincing evidence. Go-Video, Inc. v. Motion
17 Picture Ass'n of Am. (In re Dual-Deck Video Cassette Recorder
18 Antitrust Litigation), 10 F.3d 693, 695 (9th Cir. 1993).

19 Trustee presented evidence to the bankruptcy court that
20 Dardashti violated the Turnover Order by not signing the power of
21 attorney form Trustee had provided to him; by not amending his
22 bankruptcy schedules to reflect the inheritance; by apparently
23

24 ⁶ The court of appeals has explained that, although a
25 finding of civil contempt is a serious matter, and thus the
26 proponent of the contempt is required to prove his assertions by
27 clear and convincing evidence, at the same time, the standard of
28 review of a contempt order is relaxed, an abuse of discretion,
such that the appellate court should not reverse unless it has a
definite and firm conviction that the trial court committed a
clear error of judgment after weighing the relevant factors. Go-
Video, 10 F.3d at 695.

1 entering into an agreement after the Turnover Order was in effect
2 to develop the Properties; and by not cooperating with Trustee in
3 the identification and recovery of all property of the estate.
4 Trustee also provided evidence that Dardashti's actions in
5 flouting the Turnover Order required Trustee to obtain appointment
6 of an Israeli estate administrator to commence Israeli enforcement
7 proceedings, and to incur substantial attorney's fees and costs.
8 The bankruptcy court entered formal Findings of Fact endorsing
9 each of these points in its decision. The bankruptcy court's
10 findings satisfy the elements on the Ninth Circuit's checklist.

11 Once Trustee had presented a prima facie case for contempt,
12 the burden shifted to Dardashti to demonstrate why he was unable
13 to comply with the Turnover Order. F.T.C. v. Affordable Media,
14 179 F.3d 1228, 1239 (9th Cir. 1999). Dardashti argued that he was
15 unable to comply with the order for two reasons: (1) that he had
16 granted irrevocable powers of attorney that stripped him of all
17 powers with respect to the Properties; and (2) that the Israeli
18 Injunction of July 4, 2007, issued by the Israeli District Court,
19 barred him from transferring any interest in the Properties.

20 The bankruptcy court correctly held that the agreements
21 Dardashti entered into, and the "irrevocable" powers of attorney
22 he executed, did not prevent him from complying with the Turnover
23 Order. The Properties were not listed in Dardashti's bankruptcy
24 schedules, and thus the automatic stay applied to the Properties.
25 Cheng v. K&S Diversified Invs., Inc. (In re Cheng), 308 B.R. 448,
26 461 (9th Cir. BAP 2004) ("Property of the estate that is not
27 scheduled or otherwise administered by the time the case is closed
28 remains property of the estate forever. The automatic stay

1 continues to protect property of the estate so long as it retains
2 that status."). The automatic stay forbids "any act to obtain
3 possession of the estate . . . or to exercise control over
4 property of the estate." § 362(a)(3). Because it was undisputed
5 that all the agreements and powers of attorney were executed after
6 the petition was filed, and that they purported to impact
7 Dardashti's rights in the Properties, the bankruptcy court
8 correctly ruled that any interests in favor of Dardashti's
9 siblings created by the agreements and powers of attorney were
10 void. 40235 Wash. St. Corp. v. Lusardi, 329 F.3d 1076, 1080 (9th
11 Cir. 2003) ("Transfers in violation of the automatic stay are
12 void.").

13 In addition, the bankruptcy court found that the agreements
14 and powers of attorney were known to Dardashti at the time the
15 Turnover Motion was filed and the Turnover Order entered.
16 Dardashti did not oppose the Turnover Motion, nor did he seek
17 reconsideration or appeal of the Turnover Order, based on these
18 alleged agreements or powers of attorney. He therefore cannot
19 rely upon the existence of these agreements or powers of attorney
20 to defend his failure to comply with the Turnover Order at this
21 late date.

22 Dardashti's argument that the Israeli Injunction prohibited
23 him from transferring his interest in the Properties, and
24 therefore cooperating with Trustee, is also unpersuasive. As the
25 bankruptcy court properly concluded, "The injunction obtained by
26 the Trustee in Israel does not prevent the Debtor from complying
27 with the Turnover Order (the purpose of the injunction is to
28 prevent the Debtor from taking any act that is contradictory to

1 his obligations pursuant to the Turnover Order).” Conclusion of
2 Law 11, Memorandum at 6.

3 Both the original Hebrew and a certified English translation
4 of the Israeli Injunction is included in the excerpts of record
5 before the Panel. A careful reading of this document supports the
6 bankruptcy court’s conclusion that the purpose of the Israeli
7 Injunction was to prevent Dardashti from thwarting the Turnover
8 Order. The Israeli court first noted that the purpose of
9 Trustee’s lawsuit was to seek enforcement of the Turnover Order in
10 Israel:

11 The Trustee and [his] Attorney Dror Vigdor . .
12 . sued for the enforcement of the [Turnover
13 Order] and to order [Dardashti] to transfer to
14 the Trustee his rights in the Land and to
prohibit the Debtor from executing any
transaction and/or taking any action regarding
his rights in the Land and the Companies.

15 The Israeli court then ruled that the Turnover Order, although
16 possibly inconsistent with Israeli law, was not contrary to the
17 basic social values and public order interests of Israeli law and
18 that the court was convinced that Trustee had a good chance of
19 prevailing in the proceedings to enforce the Turnover Order.

20 Dardashti cites one paragraph of the Israeli Injunction to
21 support his position that the Israeli Injunction insulates him
22 from Trustee’s efforts to enforce the Turnover Order:

23 The Debtor’s rights in the Land are interwoven
24 with the rights of other parties by virtue of
obligations that Logman [sic] Dardashti
25 undertook prior to his death and/or the
provisions of Logman Dardashti’s Will and/or
26 contracts made between Dardashti brothers and
Heftsiba. When the debtor does not own a
27 certain portion of the land, the significance of
the requested temporary relief is to negate any
28 possibility of exercising the respondent’s
rights in the land, and there is no

1 justification for this.

2 However, Dardashti's selection from the injunction deletes the
3 last two lines of this paragraph, which add:

4 Accordingly, it would be right to grant
5 temporary relief to ensure that [Dardashti's]
6 portion in the Land and/or in the proceeds
7 therefrom will reach the bankruptcy fund, should
8 [Trustee] be awarded his claim, without
9 prejudicing the rights of other holders of
10 rights in the land to do with their portion of
11 the Land as they please.

12 Moreover, the Israeli Injunction preserves the right of Trustee,
13 through Attorney Vigdor, to object to any transaction involving
14 the Properties. And under this provision, Trustee is the only
15 party with this authority. Therefore, the bankruptcy court could
16 properly conclude that the Israeli Injunction actually supports,
17 not prevents, enforcement of the Turnover Order.

18 Trustee presented ample evidence to show that Dardashti had
19 willfully violated the Turnover Order. Dardashti failed to
20 establish that he was unable to comply with the Turnover Order.
21 For all the above reasons, we conclude that the bankruptcy court
22 did not clearly err in finding that Dardashti's failure to obey
23 the Turnover Order was willful and not in good faith, and that the
24 bankruptcy court did not abuse its discretion in entering the
25 Contempt Order.

26

27

CONCLUSION

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32 The bankruptcy court's Contempt Order, including its
33 imposition of sanctions, is AFFIRMED.