

OCT 26 2007

NOT FOR PUBLICATION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-06-1387-PaMkT
	)		
WILLIAM EISEN,	)	Bk. No.	SA 06-10372-ES
	)		
Debtor.	)		
_____	)		
WILLIAM EISEN; THE ALLEN GROUP	)		
PARTNERS; JAMES A. LAW,	)		
	)		
Appellants,	)		
	)		
v.	)	<b>MEMORANDUM<sup>1</sup></b>	
	)		
JEFFREY I. GOLDEN, Chapter 7	)		
Trustee,	)		
	)		
Appellee.	)		
_____	)		

Argued and Submitted on September 21, 2007  
at Pasadena, California

Filed - October 26, 2007

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

Honorable Erithe A. Smith, Bankruptcy Judge, Presiding

\_\_\_\_\_  
Before: PAPPAS, MARKELL and TCHAIKOVSKY,<sup>2</sup> Bankruptcy Judges.

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

<sup>2</sup> Hon. Leslie J. Tchaikovsky, United States Bankruptcy Judge for the Northern District of California, sitting by designation.

1 This is an appeal of an order disallowing the claims of James  
2 A. Law in the debtor's chapter 7<sup>3</sup> bankruptcy case. We AFFIRM the  
3 decision of the bankruptcy court.

4 **FACTS<sup>4</sup>**

5 Eisen filed a voluntary petition for relief under chapter 11  
6 on December 3, 1993, in the Southern District of California.<sup>5</sup> The  
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8 <sup>3</sup> Unless otherwise indicated, all chapter, section and rule  
9 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and  
10 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as  
11 enacted and promulgated prior to the effective date (October 17,  
2005) of the relevant provisions of the Bankruptcy Abuse  
Prevention and Consumer Protection Act of 2005, Pub. L. 109-08,  
April 20, 2005, 119 Stat. 23.

12 <sup>4</sup> There are currently four appeals before this Panel in  
13 Eisen's bankruptcy case. We present here only the facts relevant  
14 to this appeal (CC-06-1387) concerning the disallowance of Law's  
15 claims. For the background in the dispute concerning sanctions,  
please see CC-06-1313; for the compromise with DFL see CC-06-1385;  
for the rehearing/reconsideration see CC-06-1433.

16 <sup>5</sup> A note about the many procedural irregularities in  
17 Appellants' submissions is appropriate here. For example, the  
18 excerpts of record begin with page "521." 9th Cir. BAP Rule  
19 8009(b)-1(b)(2) requires only that the excerpts be continuously  
20 paginated; it does not dictate that the pagination begin with page  
21 one. Apparently, Appellants begin the excerpts on page 521 to  
22 allow for inclusion in the record on appeal of the 520 pages  
23 submitted to this Panel in a previous appeal. In the table of  
24 contents, Appellants begin with "Matters for which this court is  
25 requested to take judicial notice." Appellants then list the 520  
26 pages of the excerpts of record in an earlier BAP appeal, CC-05-  
27 1333, as well as over 640 pages in an appeal taken to the United  
28 States District Court for the Central District of California.  
Appellants have not provided copies of any of those documents from  
the other appeals, and we are not obligated to examine portions of  
the record not submitted in the excerpts of record. In re Kritt,  
190 B.R. 382, 386-87 (9th Cir. BAP 1995). Because Appellants did  
not file a separate request for judicial notice, and have given us  
neither copies of those 1,160+ pages of documents nor any reasons  
why we should take judicial notice of them, Appellants' request  
that we take judicial notice of those documents is DENIED.

Appellants' citations in the opening brief to documents not  
submitted in the excerpts of record violate Rule 8010(a)(1)(D).

Finally, we note that Appellants' decision to submit a single  
set of excerpts of record for all four appeals currently before

(continued...)

1 case was converted to one under chapter 7 on August 24, 1994.<sup>6</sup>

2 On or about May 1, 1995, the case was transferred to the  
3 Bankruptcy Court of the Central District of California, and  
4 Gilbert R. Vasquez was appointed chapter 7 trustee (the "Initial  
5 Trustee"). On January 4, 2002, Vasquez resigned, and Jeffrey I.  
6 Golden was appointed successor trustee (the "Trustee") on January  
7 29, 2002.

8 Eisen's Schedule A listed as an asset certain real property  
9 (the "Crest Drive Property") "subject to unperfected foreclosure  
10 sale." Allen Group Partners ("Allen") claims to be the owner of  
11 the Crest Drive Property via a purchase at that foreclosure sale  
12 in 1990. In January 2005, the Trustee filed an application to  
13 employ real estate brokers to sell the Crest Drive Property.  
14 Eisen opposed the application and attached to his opposition a  
15 trustee's deed transferring the Crest Drive Property to Allen.  
16 That trustee's deed was not recorded until January 11, 2005, some  
17 fifteen years after the purported foreclosure sale, and just after

18 \_\_\_\_\_  
19 <sup>5</sup>(...continued)

20 the Panel, without leave of the Panel, significantly complicates  
21 the parties' and the Panel's ability to examine the record.  
22 Opposing parties and the Panel are not obliged to search the  
entire record unaided for error. Dela Rosa v. Scottsdale Mem'l  
Health Sys., Inc., 136 F.3d 1241 (9th Cir. 1998).

23 <sup>6</sup> Eisen had filed at least four prior personal bankruptcy  
24 cases between 1984 and 1992 in the Central District of California.  
25 In 1994, the Ninth Circuit affirmed the dismissal of one case as a  
26 bad faith filing and imposed sanctions against Eisen for  
27 prosecuting a frivolous appeal. Eisen v. Curry (In re Eisen), 14  
28 F.3d 469 (9th Cir. 1994). After the bankruptcy court in the  
Central District dismissed most of the cases, Eisen filed chapter  
13 and chapter 11 petitions in the Southern District of  
California; the Southern District bankruptcy court dismissed the  
chapter 13 case in 1993, converted the chapter 11 case to chapter  
7 in 1994 (the instant case) and transferred it to the Central  
District in 1995.

1 Trustee filed the application to employ the real estate brokers.  
2 The dispute concerning ownership of the Crest Drive Property is at  
3 the heart of this bankruptcy case. However, it is not directly  
4 implicated in the appeal of the Law claims.

5 In June 1998, the Initial Trustee filed a notification of  
6 asset case and the bankruptcy court established a bar date for  
7 filing claims of April 21, 1999. Two proofs of claim were timely  
8 filed: one by Rosky Landau & Stahl ("Landau") for \$169,250.02, and  
9 one by William Kengel ("Kengel") for \$250,261.00. In his final  
10 report, which was set to be heard on April 20, 2000, the Initial  
11 Trustee indicated his intention to pay a dividend to both Landau  
12 and Kengel.

13 The day before the hearing on the Initial Trustee's final  
14 report, a proof of claim was purportedly filed by Law for  
15 \$350,000, and was assigned claim no. 3 by the bankruptcy clerk  
16 ("Claim 3"). Although Law appears to have signed the claim, he  
17 lists his address for correspondence in care of Lewis Amack, Esq.  
18 Attached to Claim 3 was a Declaration of James A. Law (the "First  
19 Law Declaration"), which states, "at no time during the pendency  
20 of this bankruptcy case did I ever receive notice of the case or  
21 of a claims bar date." The First Law Declaration asserts a right  
22 to priority over the Kengel and Landau claims under § 726(a)(3).

23 On May 18, 2000, the Initial Trustee filed an objection to  
24 Claim 3, asking that it be disallowed as a timely claim and  
25 allowed as a tardily filed claim. Oppositions were filed by Eisen  
26 and by Law, purportedly through Amack.

27 The bankruptcy court conducted a hearing on the Initial  
28 Trustee's objection to Claim 3 on October 17, 2000. Eisen

1 appeared pro se; Landau and Kengel were represented by their  
2 regular counsel; Law was represented by Marie Frankel, purportedly  
3 substituting for Amack. All parties were given the opportunity to  
4 present their positions. The bankruptcy court sustained the  
5 Trustee's objection, disallowed Claim 3 as a timely filed claim,  
6 but allowed it as a late-filed claim.

7 On the same day that Law purportedly filed Claim 3, April 19,  
8 2000, he also allegedly filed objections to Landau's and Kengel's  
9 claims. These objections were ostensibly filed by Amack acting as  
10 Law's attorney. In his Supplemental Brief opposing Law's  
11 objection to his claim, Kengel brought to the bankruptcy court's  
12 attention several discoveries concerning Amack, including:

- 13 • Eisen's telephone number was listed on the state bar website  
14 as Amack's business phone number, and
- 15 • Amack's business address, where he has allegedly maintained  
16 an ongoing law practice, was a private mailbox drop in a  
17 strip mall.

18 In a declaration attached to his Second Supplemental Brief in  
19 opposition to Law's objections dated October 11, 2000, Kengel  
20 stated that he went to Law's residence and spoke with him  
21 regarding Amack. Law allegedly told Kengel that Amack was not his  
22 attorney and that he had never met or spoken with Amack.

23 Also on October 11, 2000, Kengel's attorney submitted a  
24 Declaration of James A. Law (the "Second Law Declaration"). In  
25 that declaration, Law states:

26 I have never met nor have I ever spoken with  
27 or hired an attorney by the name of Lewis O.  
28 Amack. I do not know Lewis O. Amack.

On September 17, 2000, I received a visit from

1 a woman named Kathy James, who stated that she  
2 was trying to locate an attorney named Lewis  
3 Amack. This was the first I heard of Lewis  
4 Amack. Even after this visit from Ms. James,  
5 I never spoke with anyone named Lewis Amack.

6 I have also reviewed a document called the  
7 claim of James A. Law and accompanying  
8 declaration [the First Law Declaration]. I  
9 have no knowledge of submitting a claim in any  
10 bankruptcy of William Eisen during the  
11 calendar year of 2000. If a claim were  
12 submitted in my name, it was done without my  
13 knowledge or approval, and without my  
14 signature.

15 At the October 17, 2000 hearing, in addition to allowing  
16 Law's Claim 3 as a late-filed claim, the bankruptcy court allowed  
17 Kengel's claim, and deferred action on Landau's claim to a hearing  
18 on November 22, 2000. However, the bankruptcy court ordered that  
19 Law and Amack personally attend the hearing on November 22.

20 On November 21, 2000, a declaration was purportedly filed by  
21 Amack (the "Amack Declaration"). The Amack Declaration included  
22 the following statements:

- 23 • He is the attorney of record for Law.
- 24 • He was retained by Law to prosecute a creditor's claim in  
25 Eisen's bankruptcy case.
- 26 • After receiving a copy of the Second Law Declaration, he sent  
27 a substitution of attorney form to Law, and informed Law  
28 that, if he did not hear anything further from him, he would  
make no more appearances for Law.

Despite the court's order requiring Amack to attend the  
November 22, 2000, hearing, Amack did not appear. However, Law  
attended the November 22, 2000, hearing, along with his attorney  
Fruchter. Law was sworn as a witness and confirmed under oath the  
statements he made in the Second Law Declaration, including that

1 he never made the First Law Declaration or filed or authorized  
2 anyone to file a proof of claim, that Amack was not and never had  
3 been his attorney and, indeed, that he did not know Amack.

4 Although it may not have been known to the bankruptcy court  
5 at the November 22, 2000, hearing, on November 21, 2000, Eisen had  
6 filed a claim on behalf of Law, which was assigned claim number 5  
7 by the clerk ("Claim 5"). Then, on November 22, 2000, Eisen filed  
8 another claim on behalf of Law ("Claim 4").<sup>7</sup> Along with the  
9 claims Eisen filed a declaration stating that he was submitting  
10 the claims pursuant to 11 U.S.C. § 501(c).

11 The Initial Trustee filed an objection to Claims 4 and 5 on  
12 November 5, 2001. He later amended that objection in light of  
13 Law's November 22 testimony to include a new objection to Claim 3  
14 alleging it was a forged document. Law did not file any  
15 opposition to the Initial Trustee's objections to his claim.  
16 However, Eisen filed an opposition on November 19, 2001.

17 On January 4, 2002, the Initial Trustee resigned. He was  
18 succeeded by the Trustee on January 29, 2002. The Trustee  
19 informed the bankruptcy court that he would proceed with the  
20 objections to claims 3, 4, and 5.

21 The bankruptcy court conducted a hearing on February 12,  
22 2002, concerning what was now the Trustee's objections to claims  
23 3, 4, and 5. In addition to the arguments at the hearing and the  
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25 <sup>7</sup> It is not clear from the record why the clerk would assign  
26 claim number 5 before claim number 4. We note that claim 5 filed  
27 on November 21 used an outdated form, although the content of  
28 Claims 4 and 5 are identical. There is one entry that  
distinguishes Claims 4 and 5 from the earlier and later Law  
claims. These claims list Eisen and his address for all  
correspondence regarding the Law claims.

1 pleadings submitted in connection with the objections, the  
2 bankruptcy court also took note of the testimony of Law at the  
3 November 22, 2000, hearing.

4 On August 19, 2002, the bankruptcy court entered its order  
5 sustaining the Trustee's objections to Claims 3, 4 and 5 (the  
6 "2002 Order"). The court ruled that:

7 Claim no. 3 in the amount of \$350,000 filed by  
8 the debtor on behalf of James A. Law is  
9 disallowed in its entirety. The court is  
10 convinced that Mr. Law is not asserting such a  
11 claim against the estate, but in any event the  
12 claim must be disallowed as untimely and not  
13 subject to subordination under 11 U.S.C.  
14 § 726(a)(2)(C) and 726(a)(3) because 501(c)  
15 is not incorporated thereunder.

16 The court disallowed Claims 4 and 5 for the same reasons and  
17 because they were duplicates.

18 Eisen appealed the 2002 Order to the District Court. On  
19 March 14, 2003, the District Court dismissed the Debtor's appeal  
20 on the grounds of failure to prosecute, Eisen's lack of standing,  
21 and mootness, and denied Eisen's motion for reconsideration on  
22 July 29, 2003. In an unpublished memorandum decision, Eisen v.  
23 Golden, Case no. 03-55643 (9th Cir. Apr. 7, 2004), the Court of  
24 Appeals affirmed the District Court's dismissal of the appeal.  
25 Two comments made by the Court of Appeals in this memorandum  
26 decision deserve special mention. Regarding Eisen's failure to  
27 prosecute the appeal by neglecting to timely file materials  
28 required to perfect the appeal, the Ninth Circuit recognized that  
dismissal of an appeal for failure to meet a deadline was a  
"drastic" sanction. However, in the Court of Appeals' words,

Although there may have been less drastic  
alternatives available to the district court,  
prior sanctions imposed upon Eisen apparently  
have not deterred his litigious nature.



1 And concerning Eisen's standing to appeal, the appeals court  
2 observed,

3 As we explained in one of Eisen's earlier  
4 appeals, "Eisen, as a debtor, has no standing  
5 because . . . [the] trustee is the  
6 representative of Eisen's estate." In re  
7 Eisen, 31 F.3d 1447, 1451 n.2 (9th Cir. 1994).

8 On July 15, 2005, the Trustee initiated an adversary  
9 proceeding in Eisen's bankruptcy case against Allen and DFL  
10 Partnership ("DFL")<sup>8</sup>. The complaint sought, among other things,  
11 to establish the bankruptcy estate's right, title and interest to  
12 the Crest Drive Property. The bankruptcy court approved the  
13 Trustee's application to engage special counsel to represent the  
14 estate in disputes regarding the Crest Drive Property on July 25,  
15 2005. Eisen, Law (again, purportedly acting via his attorney,  
16 Amack) and Allen appealed the order to employ counsel to this  
17 Panel.

18 The Panel ordered the appellants in that appeal to file a  
19 motion for leave to appeal the interlocutory order on October 11,  
20 2005. Such a motion was filed on October 21, 2005, by Eisen and  
21 Amack (on behalf of Law and Allen). The Trustee opposed the  
22 motion for leave to appeal arguing, among other things, that Law  
23 lacked standing.<sup>9</sup>

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24 <sup>8</sup> DFL is successor in interest to Judith Day, who claims to  
25 have had an agreement with Eisen to purchase the Crest Drive  
26 Property. The claims of Allen, Day, and DFL are examined in  
27 detail in appeal CC-05-1385.

28 <sup>9</sup> Although we have been handicapped in these appeals by the  
poor quality of (and sometimes nonexistent) excerpts of record  
provided by Appellants, the Trustee's approach is also not without  
its faults. The Trustee provided us with 1,400+ pages of  
documents in his Supplemental Excerpts. However, he does not  
include numerous critical documents; for example, he does not

(continued...)

1 The Panel then ordered the Appellants to submit briefs  
2 explaining how they had standing to appeal, to be filed on  
3 December 20, 2005, with replies due by December 27, 2005.  
4 Appellants requested a three-day extension, which was granted, and  
5 the time for filing their brief related to standing was extended  
6 to December 30, 2005.<sup>10</sup>

7 On December 29, 2005, yet another proof of claim was filed in  
8 the bankruptcy court with Law's signature ("Claim 6"). Claim 6  
9 indicated that it replaced Claim 4 (which had been disallowed).  
10 Claim 6 also indicated that all correspondence regarding Claim 6  
11 was to be sent in care of Amack.

12 On December 30, 2005, Eisen, Law and Allen filed a brief on  
13 the standing issue. Regarding Law, they argued that he had  
14 standing as a creditor as evidenced by the filing of Claim 6. The  
15 brief was purportedly signed by Amack.

16 The Panel denied the motion for leave to appeal on February  
17 8, 2006. A joint motion for rehearing was also denied. The Ninth  
18 Circuit dismissed an appeal from that order for lack of

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21 <sup>9</sup>(...continued)  
22 include his opposition to Law's standing on appeal. Further, the  
23 Trustee provides an unacceptable table of contents for this large  
24 mass of material. The table only lists seven entries, each  
labeled a "compendium of exhibits." This is a violation of 9th  
Cir. BAP Rule 8009(b)-1(b)(3), which requires a complete list of  
all documents, with page and tab numbers.

25 <sup>10</sup> The reason for the extension was a statement, allegedly  
from Amack, that

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I have been unable to complete the papers to  
be filed . . . by the December 27 due date  
because I have been ill during the last 4 days  
with the stomach flu. A 3 day extension of  
time, to December 30, is, therefore,  
requested.

1 jurisdiction. Eisen v. Golden, case no. 06-55486 (9th Cir.  
2 September 26, 2006).

3 A status conference was held by the bankruptcy court  
4 concerning the adversary proceeding on October 16, 2005. Amack  
5 was ordered to appear, and this time did so. Based on several  
6 representations made by Amack that appeared to contradict other  
7 information available to the court, the court issued an Order to  
8 Show Cause why Amack should not be subject to various disciplinary  
9 procedures, including Rule 9011 sanctions, and referral to the  
10 court disciplinary panel, the California state bar, and the U.S.  
11 Attorney (the "Amack OSC").

12 A hearing on the Amack OSC was held on February 16, 2006.  
13 Amack was sworn and testified to the following points:

- 14 • The address on Crenshaw Blvd. which was listed as his address  
15 on pleadings to the court and on Claim 6 was not his address.  
16 It is Eisen's post office box. Tr. Hr'g 9:7-9 (February 16,  
17 2006).
- 18 • Eisen had been "systematically withholding opposing  
19 part[y's]" pleadings from Amack. Tr. Hr'g 17:17-18.  
20 Although he "apparently" had been representing Law, it was a  
21 "situation where Mr. Eisen is pulling all the strings[.]" Tr.  
22 Hr'g 19:11.
- 23 • Amack's only personal contact with Law was a one-minute  
24 social phone call. Tr. Hr'g 22:2-4.
- 25 • Amack did not file Claim 6. Tr. Hr'g 21:7.
- 26 • "I can say with almost absolute certainty that I did not sign  
27 any pleading involving Mr. Law within the past few years."  
28 Tr. Hr'g 23:10-12.

- 1 • Amack never prepared or filed any pleadings with the BAP for  
2 Law. In response to the court's query whether he had ever  
3 filed pleadings for Law with the BAP, Amack replied: "No.  
4 That's a definite no[.]" Tr. Hr'g 22:18-21.
- 5 • He did not sign the Amack Declaration and his signature on  
6 that document was a forgery. Tr. Hr'g 39:4.

7 The bankruptcy court provided an opportunity to Amack to  
8 respond in a written brief to other accusations and questions.  
9 There is no indication in the record if the bankruptcy court has  
10 taken any action as of this date against Amack.

11 The Trustee filed an objection to Claim 6 on April 25, 2006.  
12 His objection alleged that: (1) Claim 6 was a duplicate of the  
13 other claims allegedly filed by Law, all of which were disallowed,  
14 and Law is barred under principles of res judicata from re-  
15 asserting these claims; (2) Amack was listed on Claim 6 as the  
16 attorney, although he testified that he had nothing to do with  
17 Claim 6; (3) the claim was a sham, prepared and filed to satisfy  
18 the BAP's concern that Law may lack appellate standing; (4) the  
19 claim was based upon a promissory note that was faulty on its  
20 face; and (5) even though the promissory note was allegedly signed  
21 three days before Eisen filed his petition in this bankruptcy  
22 case, his schedules failed to list Law as a creditor.

23 Eisen, as well as Law and Allen (represented by David  
24 Burkenroad ("Burkenroad")), filed a joint opposition to this  
25 objection supported by declarations from Eisen and (purportedly)  
26 from Law on May 10, 2006. Eisen's declaration supported the  
27 promissory note challenged by the Trustee, and Law's declaration  
28 allegedly contradicted some elements of the testimony of Amack.

1 Also on May 10, 2006, yet another proof of claim was filed,  
2 allegedly by Law (the "New Law Claim").<sup>11</sup> The New Law Claim is a  
3 duplicate of Claim 6. The Trustee filed a reply brief, explained  
4 that the New Law Claim was merely a duplicate of Claim 6, and  
5 requesting that it also be disallowed.

6 On May 24, 2006, the bankruptcy court held a hearing on the  
7 Trustee's objection to Claim 6 and the New Law Claim. Eisen  
8 appeared pro se and the Trustee, Allen and Law were represented by  
9 counsel; all parties were given the opportunity to be heard.

10 On July 11, 2006, the bankruptcy court entered its order  
11 disallowing Claim 6 and the New Law Claim (the "Disallowance  
12 Order"). At the same time, the bankruptcy court issued twenty-six  
13 Findings of Fact and eight Conclusions of Law in support of its  
14 Disallowance Order. None of the court's findings or conclusions  
15 have been appealed. Among those findings and conclusions are the  
16 following:

17 Finding no. 10: On November 22, 2000, Law personally  
18 appeared before the Bankruptcy Court and testified under  
19 oath. Law confirmed that the statements in [the Second  
20 Law Declaration] were true. Law also stated, among  
21 other things, that he had never met Amack, had never  
22 spoken to Amack, had never hired Amack, did not file a  
23 proof of claim, and did not authorize anyone to file a  
24 proof of claim on his behalf.

25 Finding no. 15: In February 2006, Amack personally  
26 appeared before the bankruptcy court and testified under  
27 oath. Amack testified, among other things, that he did  
28 not prepare and/or file Claim 6, that he was not  
retained by Law to represent Law in connection with  
Claim 6, and that the Debtor "did all of the work  
himself."

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26 <sup>11</sup> The parties use this term to avoid confusion in numbering.  
27 Between the filing of Claim 6 and the New Law Claim, the  
28 bankruptcy judge presiding over this case relocated from Los  
Angeles to Santa Ana, and responsibility for this file was  
apparently transferred to the Santa Ana divisional clerk's office.  
In the process, the New Law Claim was, for some reason, assigned  
claim number 1.

1 Finding no. 19: The Allen Group lacks any pecuniary  
2 interest in opposing the disallowance of Law's alleged  
3 claim against the Debtor's estate. If anything, it  
4 appears to be against the Allen Group's pecuniary  
5 interest to oppose disallowance of Law's alleged claim.

6 Finding no. 20: The Debtor lacks any pecuniary interest  
7 in opposing the disallowance of Law's alleged claim. If  
8 anything, it appears to be against the Debtor's  
9 pecuniary interest to oppose disallowance of Law's  
10 alleged claim.

11 Finding no. 21: The evidence submitted by the Trustee  
12 overwhelmingly demonstrated the fraudulent nature of the  
13 claims purportedly filed by Law throughout the course of  
14 the bankruptcy case, and raised questions as to the  
15 authenticity of Law's "declaration" filed in opposition  
16 to the objection (the "[Third] Law Declaration"). Among  
17 other things:

18 a. Law previously testified under oath, in  
19 writing and in person before the Bankruptcy  
20 Court, that he did not hire Amack to file any  
21 documents on his behalf in this case.

22 b. Amack has disavowed under oath any  
23 knowledge of the filing of Claim 6 or his  
24 representation of Law in connection with Claim  
25 6.

26 c. Amack has testified that all papers filed  
27 in this case in his name on behalf of Law were  
28 not actually filed by him.

d. Despite this prior testimony of Law and  
Amack, Law purportedly states in the [Third]  
Law Declaration that Amack represented Law in  
all matters pertaining to this case and that  
all papers filed by Amack on Law's behalf were  
filed with his knowledge and consent.

e. The [Third Law D]eclaration purportedly  
signed by Law was, at a minimum, prepared and  
typed by the debtor.

Finding no. 25: The mountain of evidence presented by  
the Successor Trustee, the highly suspicious  
circumstances relating to the filing of Claim 6, and the  
history of this case called into question the validity  
of Claim 6 and the New Law Claim.

Finding no. 26: Counsel representing Law at the hearing  
submitted on the Bankruptcy Court's tentative ruling,  
which tentative ruling was to sustain the objection.

1 Based on these and other findings of fact, the bankruptcy  
2 court reached the following conclusions of law:

- 3 1. The Allen Group lacks standing to oppose the objection.
- 4 2. The debtor lacks standing to oppose the objection.
- 5 3. The 2002 Order constitutes a final judgment on the  
6 merits involving the same claim and the same claimant as  
7 Claim 6 and the New Law Claim.
- 8 4. Law is barred from relitigating issues that were or  
9 could have been raised in connection with the proceeding  
10 which resulted in entry of the 2002 Order.
- 11 5. Evidence submitted by the Successor Trustee in support  
12 of the objection was sufficient to shift the burden to  
13 Law to prove the validity and amount of his alleged  
14 claim by a preponderance of the evidence.
- 15 6. Evidence submitted by Law in opposition to the objection  
16 fails to satisfy his burden to prove the validity and  
17 amount of his alleged claim by a preponderance of the  
18 evidence.
- 19 7. The Trustee's objection to Claim 6 and the New Law Claim  
20 should be sustained.

21 Eisen, Law and Allen filed a timely motion for  
22 reconsideration of the Disallowance Order on July 21, 2006. The  
23 bankruptcy court orally denied reconsideration on October 5, 2006,  
24 and an order was entered on November 14, 2006. Eisen, Law and  
25 Allen filed a timely appeal of the Disallowance Order on October  
26 16, 2006.

#### 27 **JURISDICTION**

28 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
§§ 1334 and 157(b) (2) (A) and (O). We have jurisdiction pursuant  
to 28 U.S.C. § 158.

1 **ISSUES<sup>12</sup>**

- 2 1. Whether Allen and Eisen have standing to oppose Trustee's  
3 objection to Law's proof of claim, and to appeal the  
4 Disallowance Order.
- 5 2. Whether the bankruptcy court erred in sustaining the  
6 Trustee's objections to Claim 6 and the New Law Claim.

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8  
9 **STANDARD OF REVIEW**

10 Standing is a jurisdictional issue that we may raise sua  
11 sponte and that we address de novo. Menk v. Lapaglia (In Re  
12 Menk), 241 B.R. 896, 903 (9th Cir. BAP 1999).

13 We review a bankruptcy court's findings of fact under the  
14 "clearly erroneous" standard. Rule 8013. Special deference is  
15 given to a trial court's credibility findings. Id.; Anderson v.  
16 City of Bessemer, 470 U.S. 564 (1985). Conclusions of law are  
17 reviewed de novo. In re Olshan, 356 F.3d 1078, 1083 (9th Cir.  
18 2004).

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19  
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21 <sup>12</sup> In their opening brief, appellants include as an issue in  
22 this appeal whether the Trustee's adversary proceeding should be  
23 dismissed on grounds of laches and judicial estoppel. We note,  
24 first, that this appeal arises in the main bankruptcy case, not in  
25 the adversary proceeding. Whether Law's claims are allowed or not  
26 is immaterial to the outcome of the adversary proceeding, which  
27 was initiated to determine ownership rights in the Crest Drive  
28 Property. Second, laches and judicial estoppel were never argued  
in the bankruptcy court in either the main bankruptcy case or in  
the adversary proceeding. If an issue is not raised in the  
bankruptcy court, we need not consider it for the first time on  
appeal. Beck v. Pace Int'l Union, 427 F.3d 668, 674 (9th Cir.  
2005), rev'd on other grounds, 127 S.Ct. 2310 (2007). We decline  
to exercise our discretion to examine the laches or judicial  
estoppel argument in this appeal.



1 **DISCUSSION**

2 I.  
3 Eisen and Allen lack standing to  
4 appeal the disallowance of Law's claims.

5 The Trustee challenges the standing of Allen and Eisen to  
6 appeal the Disallowance Order. We agree that they lack the  
7 requisite standing before this Panel.

8 The bankruptcy court made two explicit findings of fact  
9 concerning the standing of Allen and Eisen to object to the  
10 disallowance of Law's claims:

11 Finding no. 19: The Allen Group lacks any pecuniary  
12 interest in opposing the disallowance of Law's alleged  
13 claim against the Debtor's estate. If anything, it  
14 appears to be against the Allen Group's pecuniary  
15 interest to oppose disallowance of Law's alleged claim.

16 Finding no. 20: The Debtor lacks any pecuniary interest  
17 in opposing the disallowance of Law's alleged claim. If  
18 anything, it appears to be against the Debtor's  
19 pecuniary interest to oppose disallowance of Law's  
20 alleged claim.

21 Although these findings were made in determining whether  
22 Allen and Eisen had standing in the bankruptcy court, they are  
23 equally relevant to our consideration of their standing in this  
24 appeal. Moreover, our independent review of the record confirms  
25 that there is no showing of how disallowance of Law's claims would  
26 adversely impact the rights of either Allen or Eisen in any  
27 pecuniary manner.

28 In this circuit, only "persons aggrieved" have standing to  
appeal an order of the bankruptcy court. In re Fondiller, 707  
F.2d 441, 442 (9th Cir. 1983). The test of an aggrieved person in  
a bankruptcy appeal is if that person is "directly and adversely  
affected pecuniarily by an order of the bankruptcy court." Duckor  
Spradling & Metzger v. Baum Trust (In re P.R.T.C., Inc.), 177 F.3d

1 774, 777 (9th Cir. 1999) (emphasis added).

2 We give special deference to the bankruptcy court's findings  
3 of fact. Rule 8013. Importantly, we note that neither Allen nor  
4 Eisen has in this appeal challenged the bankruptcy court's  
5 findings of fact that they lacked any pecuniary interest in the  
6 Disallowance Order. Issues not specifically and distinctly raised  
7 and argued in a party's opening brief<sup>13</sup> are deemed waived. Brown  
8 v. State Bar of Az. (In re Bankruptcy Petition Preparers Who Are  
9 Not Certified Pursuant to Requirements of the Az. Supreme Court),  
10 307 B.R. 134, 141 (9th Cir. BAP 2004).

11 The bankruptcy court did not clearly err in determining that  
12 neither Allen nor Eisen had a pecuniary interest in the  
13 Disallowance Order. Allen is a defendant in the adversary  
14 proceeding, and is not a creditor or party in interest in the main  
15 bankruptcy case where the Disallowance Order and this appeal  
16 arise. We can conceive of no financial injury that may inure to  
17 Allen as a result of the disallowance of Law's claims. We  
18 conclude that Allen has no adverse pecuniary interest in this  
19 appeal and, thus, he has no standing to appeal.

20 We have held that "debtors only have standing to object to  
21 claims where there is 'a sufficient possibility' of a surplus to  
22 give them a pecuniary interest." Heath v. Am. Express Travel  
23 Related Servs. Co. (In re Heath), 331 B.R. 424 , 429 (9th Cir. BAP  
24 2005). While Eisen insisted otherwise at oral argument, there is  
25 simply no evidence in the record to show a "sufficient  
26 possibility" that a surplus exists in this case to justify  
27 recognizing Eisen's standing.

28 \_\_\_\_\_  
<sup>13</sup> The Trustee argued this standing issue in his Opening  
Brief; Appellants filed no Reply Brief.

1 But even more important, here the bankruptcy court disallowed  
2 Law's claim - something which, if anything, would enhance Eisen's  
3 prospects for any surplus distribution. Indeed, the bankruptcy  
4 court's order seemingly works in Eisen's pecuniary favor.

5 The bankruptcy court did not clearly err in determining that  
6 neither Eisen nor Allen has a pecuniary interest in the  
7 Disallowance Order. Therefore, we conclude that neither Eisen nor  
8 Allen has standing in this appeal.

9  
10 II.

11 The bankruptcy court did not err in sustaining the  
12 Trustee's objection to Claim 6 and the New Law Claim.

13 The bankruptcy court did not err in ruling, as urged by the  
14 Trustee, that the principles of res judicata barred the allowance  
15 of Claim 6 and the New Law Claim because Claim 3, asserting an  
16 identical claim, had already been disallowed in a final order.  
17 Further, the bankruptcy court correctly determined that the  
18 "mountain of evidence" presented by the Trustee called into  
19 question the prima facie validity of Claim 6 and the New Law  
20 Claim, thus shifting the burden to Law to prove the validity and  
21 amount of his alleged claim by a preponderance of the evidence.  
22 Finally, the bankruptcy court determined that the evidence  
23 presented by Law in opposition to the Trustee's objection failed  
24 to satisfy his burden by a preponderance of the evidence.

25 Based on the evidence and record before it, the bankruptcy  
26 court reached two conclusions of law that the disallowance of  
27 Claim 3 in the 2002 Order operated to preclude allowance of Claim  
28 6 or the New Law Claim.

3. The 2002 Order constitutes a final judgment on the merits involving the same claim and the same claimant as Claim 6 and the New Law Claim.

1           4.    Law is barred from relitigating issues that were or  
2                    could have been raised in connection with the  
3                    proceeding which resulted in entry of the 2002  
4                    Order.

5            Again, Appellants did not challenge these conclusions of law  
6            of the bankruptcy court in their Opening Brief, and we thus deem  
7            waived any argument that the bankruptcy court erred in making  
8            these conclusions.

9            But even if Appellants had properly challenged the  
10           determination by the bankruptcy court that they were precluded  
11           from asserting Claim 6 and the New Law Claim, we would conclude  
12           that the record amply supports the bankruptcy court's ruling that  
13           these same claims were disallowed in the 2002 Order, an issue  
14           which can not now be relitigated.

15           In reviewing a trial court's determination that res judicata  
16           acts to prevent relitigation of claims, our court of appeals  
17           instructs us to consider whether there is:

- 18           (1) an identity of claims,
- 19           (2) a final judgment on the merits, and
- 20           (3) privity between parties.

21           Headwaters Inc. v. United States Forest Serv., 399 F.3d 1047, 1053  
22           (9th Cir. 2005) (quoting Tahoe-Sierra Pres. Council v. Tahoe Reg'l  
23           Planning Agency, 322 F.3d 1064, 1077 (9th Cir. 2003)).

24           Here, criterion one, the identity of claims, is clearly  
25           satisfied. Regarding the identity of claims, Claim 3 asserts a  
26           \$350,000 unsecured priority claim in favor of Law and against the  
27           Eisen bankruptcy estate for money loaned in 1993. This is  
28           identical to the basis of the claims made in Claim 6 and the New  
29           Law Claim. Also, as noted above, the court in Conclusion of Law 3

1 explicitly determined that Claims 3, 4, 5, 6, and the New Law  
2 Claim were identical, and this conclusion was not appealed.

3       Regarding the identity of parties, the court made an explicit  
4 determination that the claimant in Claim 3 was the same claimant  
5 in Claim 6 and the New Law Claim -- Law. The court made that  
6 determination in spite of contradictory evidence that Law may or  
7 may not have filed the claims. "Where there are two permissible  
8 views of the evidence, the factfinder's choice between them cannot  
9 be clearly erroneous. United States v. Elliott, 322 F.3d 710, 714  
10 (9th Cir. 2003). In fact, the bankruptcy court never ruled that  
11 Law did not file or authorize the claims, nor did the court  
12 disallow any claims on that basis.<sup>14</sup> In the 2002 Order, the court  
13 disallowed Claims 3, 4, and 5 because they were untimely and not  
14 subject to subordination under § 726(a).<sup>15</sup> The court disallowed  
15 Claim 6 and the New Law Claim on the grounds of res judicata, and  
16 that Law had failed to carry his burden of proof to establish the  
17 validity and amount of his claim. Again, we note that the court's  
18 conclusion that all claims had the same claimant was not  
19 challenged in this appeal.

20       Appellants have only attacked the second prong of the res  
21 judicata test, i.e., whether there was a final judgment on the  
22 merits. Appellants did not address, nor even mention, the res  
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24       <sup>14</sup> Even the Trustee conceded that it was possible that Law  
25 may have signed or authorized one or more of the claims. However,  
26 he suggested that, if Law did sign the claims, it was signed and  
filed for an improper purpose.

27       <sup>15</sup> In the 2002 Order, the court noted that it was convinced  
28 that Law was not asserting claims 3, 4 and 5 against the estate  
"but in any event the claim must be disallowed as untimely and not  
subject to subordination under 11 U.S.C. § 726(a)(2)(C) and  
726(a)(3) because 501(c) is not incorporated thereunder."

1 judicata argument in their Opening Brief. Instead, there was but  
2 a single off-handed reference in the bankruptcy court in a  
3 footnote to their opposition to the Trustee's objection to Claim  
4 6:

5           Although the prior disallowance of the claim  
6           was appealed the appeal was dismissed as moot  
7           because, as the trustee contended at the time,  
8           the estate had insufficient funds to pay  
9           unsecured [sic] claims. Thus, the issue is  
10           hardly res judicata.

11           Apparently, appellants were arguing that the second prong of  
12           the res judicata test is not met because the District Court and  
13           Court of Appeals did not consider the merits of their arguments on  
14           appeal.<sup>16</sup>

15           Appellants misunderstand the nature of finality of judgments  
16           and res judicata. The 2002 Order, as noted by the bankruptcy  
17           court in this appeal, was a final order in that it settled all  
18           aspects of the dispute between Law and the Trustee over Law's  
19           claims in the bankruptcy case. The 2002 Order was issued as a  
20           separate document along with separate findings of fact and

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21           <sup>16</sup> Eisen repeated a variation of this argument in his  
22           argument before the bankruptcy court at the hearing on objection  
23           to Claim 6 and the New Law Claim.

24           Well, I - could I just say that I don't think  
25           that the - the Court's previous ruling is res  
26           judicata because the ruling is not final  
27           because it was never heard on appeal.

28           Tr. Hr'g 8:12-15. [Footnote continues on next page.]

29           First, Eisen misstates the facts. The 2002 Order was indeed  
30           heard twice on appeal, and Eisen was the appellant. The court  
31           also corrected Eisen's misunderstanding of the finality of  
32           judgments in federal courts. "In Federal Court, an order is final  
33           on entry. This isn't State Court. . . . Under federal law, once  
34           an order is entered, it immediately becomes final, notwithstanding  
35           that it may be appealed and may be pending on appeal." Tr. Hr'g  
36           8:16-23.

1 conclusions of law. It thus satisfied the requirements of Rule  
2 9021. It was an appealable order, but the order was not appealed  
3 by Law. That Eisen took an appeal of the 2002 Order, which was  
4 dismissed by both the District Court and the Court of Appeals on  
5 procedural grounds,<sup>17</sup> is irrelevant to its res judicata effect.  
6 Unless reversed on appeal or otherwise vacated or modified, the  
7 final order of a court of competent jurisdiction is res judicata  
8 as to the parties. Montana v. United States, 440 U.S. 147, 153  
9 (1979).

10 Because the 2002 Order that disallowed Claim 3 was a final  
11 order that was not reversed on appeal or otherwise modified,  
12 because Claim 3 is identical with Claim 6 and the New Law Claim,  
13 and because the parties litigating Claim 3 are the same parties  
14 that are litigating Claim 6 and the New Law Claim, we conclude  
15 that principles of res judicata bar the allowance of Claim 6 and  
16 the New Law Claim. The bankruptcy court did not err in  
17 disallowing Claim 6 and the New Law Claim on the grounds of res  
18 judicata.<sup>18</sup>

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20 <sup>17</sup> Appellants' footnote does not present a truly accurate  
21 account of the grounds for dismissal of their appeal by the  
22 District Court and the Court of Appeals. The Court of Appeals  
23 memorandum decision described three grounds for its decision:  
mootness; that Eisen had no standing to appeal; and that he had  
failed to prosecute the appeal properly.

24 <sup>18</sup> We acknowledge that the Supreme Court encourages federal  
25 courts to divide res judicata into issue and claim preclusion. New  
26 Hampshire v. Maine, 532 U.S. 742, 748-49 (2001). We find it  
27 unnecessary here to make these distinctions, because (1) the  
28 bankruptcy court did not make the distinction in its conclusions  
and (2) the identity of parties and the exact identity of Claim 3  
disallowed in the 2002 Order and Claim 6 and the New Law Claim  
blur the distinctions between claim and issue preclusion. For a  
scholarly and comprehensive discussion of these distinctions, see  
Christopher Klein, Lawrence Ponoroff & Sarah Borrey, Principles of

(continued...)

1 Besides res judicata, the court also justified its  
2 disallowance of Claim 6 and the New Law Claim on a burden of proof  
3 analysis. Ordinarily, proofs of claim properly filed pursuant to  
4 Rule 3001 constitute prima facie evidence of the validity and  
5 amount of the claim. In re Holm, 931 F.2d 620, 623 (9th Cir.  
6 1991). A party objecting to the claim, here the Trustee, bears  
7 the burden of providing evidence to rebut the prima facie  
8 evidentiary presumption of the proof of claim. Spencer v. Pugh  
9 (In re Pugh), 157 B.R. 898, 901 (9th Cir. BAP 1993). The objector  
10 to the claim need only present evidence sufficient to meet the  
11 probative force of the proof of claim to defeat the presumption of  
12 prima facie validity of the claim. Ashford v. Consol. Pioneer  
13 Mortgage (In re Consol. Pioneer Mortgage), 178 B.R. 222, 226 (9th  
14 Cir. BAP 1995). Once the objector to the claim meets his burden,  
15 the burden shifts to the claimant to prove, by a preponderance of  
16 the evidence, the validity and amount of his claim. Pugh, 157  
17 B.R. at 901.

18 The bankruptcy court found that the Trustee had not merely  
19 met the probative force of the proof of claim, but had presented a  
20 "mountain of evidence" opposing the claim. The Trustee presented  
21 a detailed 27-page objection, well documented with appropriate  
22 statutory and case law, arguing that the Law claims had already  
23 been disallowed, provided a history of the forged documents and  
24 questionable pleadings, challenged the circumstances surrounding  
25 the alleged promissory note and brought to the court's attention  
26

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27  
28 <sup>18</sup>(...continued)  
Preclusion and Estoppel in Bankruptcy Cases, 79 AM. BANKR. L.J. 839  
(2005).



1 the facial inconsistencies in the note,<sup>19</sup> and suggested that, even  
2 if allowed, Law's claims were not entitled to priority.

3 Appellants provided a three-paragraph response. Regarding  
4 the Trustee's objection that the claims had been rejected,  
5 Appellants submitted yet another claim (the New Law Claim). Their  
6 only citation to case law was Bell v. Beckwith, 50 B.R. 422  
7 (Bankr. N.D. Ohio 1985) for the proposition that a claim may be  
8 filed at any time before a bankruptcy case is closed.<sup>20</sup> Their only  
9 challenge to the inconsistency in the promissory note was a  
10 declaration from Eisen that the parties intended the amount to be  
11 \$350,000, and the inconsistent numbers were Eisen's clerical  
12 errors.<sup>21</sup> Appellants also submitted the Second Law Declaration  
13 which attempted to answer the voluminous problems with Amack's  
14

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15 <sup>19</sup> The copy of a promissory note attached to Claim 6 by Eisen  
16 reads as follows:

17 \$350,000.00 November 30, 1993  
18 ON DEMAND, for value received, I promise to  
19 pay to the order of James A. Law Three Hundred  
20 Thousand and no/100 Dollars in lawful money of  
21 the United States of America at Torrance,  
22 California with interest at the rate of Ten  
(10) per cent per annum. Should suit be  
commenced to enforce payment of this note, I  
promise to pay such additional sum as the  
court may adjudge reasonable as attorney's  
fees in said suit.

23 William Eisen [handwritten signature]  
(emphasis added.)

24 <sup>20</sup> Which is, of course, true. However, claims filed after  
25 the bar date are considered tardily filed claims. Further, the  
26 citation is not relevant to the Trustee's objection that four (and  
now five) claims had been filed for improper purposes and that,  
even if allowed, Law was not entitled to priority.

27 <sup>21</sup> Interestingly, the Second Law Declaration, which was  
28 submitted at the same time as the response and Eisen's  
declaration, made no reference to the error in the promissory  
note.

1 representation by stating that Amack was indeed his attorney and  
2 all pleadings that Amack submitted in his name were with his  
3 consent.<sup>22</sup>

4 At the hearing on the allowance of Law's claims on May 24,  
5 2006, Kemmerer appeared as substitute attorney for Law and Allen  
6 and Eisen appeared pro se. Kemmerer submitted on the court's  
7 tentative ruling, which was to disallow the Law claims. Eisen was  
8 heard. The court ruled,

9 I think that the Trustee has more than met his  
10 burden here. . . . First of all, Mr. Law  
11 himself has never indicated that his claim is  
12 based on any promissory note. There's no  
13 declaration from Mr. Law to that effect. The  
14 promissory note that you [Eisen] submitted is  
15 facially inconsistent in that it includes both  
16 a \$350,000 and a \$300,000 number. Given that  
17 several of the claims filed on behalf of Mr.  
18 Law were filed under, if I can put it mildly,  
highly suspicious circumstances, and based on  
all of the circumstances, based on all of the  
historical facts of which this Court can take  
judicial notice of all pleadings filed in this  
case, the burden has clearly shifted to Mr.  
Law, Mr. Law to come up with the ultimate  
evidence of his claim and the validity of his  
claim. He has not done that.

19 Tr. Hr'g 11:1-15.

20 The bankruptcy court supported its determination that Law had  
21 not met his burden of proof with its Findings of Fact 21-26, which  
22 are presented above in the discussion of the factual background of  
23 this case. These findings support two Conclusions of Law  
24 regarding Law's failure to bear his burden of proof:

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26  
27 <sup>22</sup> As discussed earlier, the Second Law Declaration is  
28 inconsistent with Law's own sworn testimony as a witness in the  
presence of the court. It also contradicts the sworn testimony of  
Amack as a witness.

1           Conclusion of Law 5. Evidence submitted by  
2           the Trustee in support of the objection  
3           shifted the burden to Law to prove the  
          validity and amount of his claim by a  
          preponderance of the evidence.

4           Conclusion of Law 6. Evidence submitted by  
5           Law in opposition to the objection fails to  
6           satisfy his burden to prove the validity and  
          amount of his alleged claim by a preponderance  
          of the evidence.

7           Our independent review of the record reveals ample support  
8           for the bankruptcy court's findings and conclusions. The  
9           bankruptcy court agreed with the Trustee's challenge to the  
10          validity and amount of the claim based on inconsistent  
11          documentation provided by Appellants, the "highly suspicious"  
12          circumstances surrounding the filing of certain claims, and the  
13          long history of pleadings in this case. Law's written response  
14          failed to address most of the Trustee's challenges, cited  
15          inapposite authority, only increased the confusion by adding yet  
16          another identical claim to the stew, and provided a written Second  
17          Law Declaration that directly contradicted Law's own sworn  
18          testimony in the presence of the court. Law's attorney at the May  
19          24, 2006, hearing, Kemmerer, made no argument and submitted on the  
20          court's tentative ruling, which was to disallow the claims. For  
21          all these reasons, we conclude that the court did not err in  
22          ruling that the Appellants failed to prove the validity and amount  
23          of their claim by a preponderance of the evidence.

24          On appeal, Appellants make no reference to the res judicata  
25          issue. Their entire argument in this appeal of the disallowance  
26          of the Law claims is contained in one sentence on page 6 of their  
27          brief:

28                    Although the trustee cited Spencer v. Pugh  
                      (B.A.P. 9th Cir. 1993), 157 B.R. 898, 901 as

1 holding that the objecting party bears the  
2 burden of providing evidence sufficient to  
3 rebut the prima facie evidentiary effect  
4 afforded a proof of claim, the trustee,  
nevertheless fails to set forth any facts  
tending to show that Law's claim is not, in  
fact, valid.

5 Like most of Appellants' arguments in the bankruptcy court, this  
6 sentence in Appellants' brief is conclusory and provides no sound  
7 argument or citation to appropriate law. It certainly supplies no  
8 cause to reverse or modify the decision of the bankruptcy court.

9 We conclude that the bankruptcy court did not err in  
10 disallowing Claim 6 and the New Law Claim on the grounds of res  
11 judicata and because the Appellants did not carry their burden of  
12 proof in establishing the validity and amount of the claims.

#### 14 CONCLUSION

15 We AFFIRM the decision of the bankruptcy court.<sup>23</sup>

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17 <sup>23</sup> On page 23 of his Brief, Trustee refers to the  
18 "frivolousness" of this appeal. The Panel agrees that this is  
19 likely a frivolous appeal. As noted above, Eisen and Allen  
20 clearly lacked standing to appeal the bankruptcy court's orders  
21 regarding the Law claims, and Appellants' entire argument on  
22 appeal is presented in one sentence of their opening brief with no  
23 citation to authority. Appellants filed no reply brief. See  
24 Hamblen v. County of Los Angeles, 803 F.2d 462, 465 (9th Cir.  
25 1986) (appeal frivolous where entire argument consisted of bare  
26 legal conclusions and fragmented, unsupported assertions); Ernst  
27 Haas Studio, Inc. v. Palm Press, Inc., 164 F.3d 110, 112-13 (2d  
28 Cir. 1999) (appellant's main brief did not cite single relevant  
statute or court decision and did not present coherent legal  
theory - even without citation to authority - that would sustain  
its position); Coastal Transfers Co. v. Toyota Motor Sales,  
U.S.A., 833 F.2d 208, 212 (9th Cir. 1987) (sanctions for frivolous  
appeal appropriate where there is a history of meritless claims,  
needless expenditure of judicial time and the appellate court  
intends to deter future frivolous appeals). Although Rule 8020  
would allow us to initiate proceedings sua sponte for the  
imposition of sanctions on the Appellants, we are reluctant to  
involve the Trustee and bankruptcy estate in such proceedings in  
light of the limited resources available to them. Moreover, we

(continued...)

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<sup>23</sup> (...continued)  
are also mindful of the observation of our court of appeals that "prior sanctions imposed upon Eisen apparently have not deterred his litigious nature." Eisen v. Golden, case no. 03-55643 (9th Cir., April 7, 2004). If the Trustee, in the exercise of his discretion, determines it worthwhile and appropriate to pursue sanctions, he may request such by motion under Rule 8020.