

**AUG 15 2006**

**NOT FOR PUBLICATION**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-05-1401-PaBK
	)		
PATRICK MBABA; LYNETTE MBABA,	)	Bk. No.	LA 01-42025-EC
	)		
Debtors.	)		
_____	)		
PATRICK MBABA; LYNETTE MBABA,	)		
	)		
Appellants,	)		
	)		
v.	)	<b>MEMORANDUM<sup>1</sup></b>	
	)		
CLARK FERGUS & ASSOCIATES;	)		
AMERICAN CONTRACTORS INDEMNITY	)		
COMPANY,	)		
	)		
Appellees.	)		
_____	)		

Argued and Submitted on May 18, 2006  
at Pasadena, California

Filed - August 15, 2006

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

Honorable Ellen Carroll, Bankruptcy Judge, Presiding.

\_\_\_\_\_  
Before: PAPPAS, BRANDT and KLEIN, Bankruptcy Judges.

\_\_\_\_\_  
<sup>1</sup> This disposition is not appropriate for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of res judicata, including issue and claim preclusion. See 9th Cir. BAP Rule 8013-1.

1 Appellants Patrick Mbaba and Lynette Mbaba ("Mbabas") appeal  
2 the decision of the bankruptcy court denying their Motion to Avoid  
3 Liens under 11 U.S.C. § 522(f) of Clark Fergus & Associates Profit  
4 Sharing Trust ("Fergus") and American Contractors Indemnity  
5 Company ("ACIC"). We VACATE the order of the bankruptcy court and  
6 REMAND the case to the bankruptcy court to conduct an evidentiary  
7 hearing.

8 **FACTS**

9 Mbabas filed for protection under chapter 7 of the Bankruptcy  
10 Code<sup>2</sup> on October 24, 2001. In their Schedule C, they claimed a  
11 homestead exemption for a residence located in Bakersfield, CA  
12 (the "Exempt Property"), of \$22,284.78, pursuant to Cal. Code Civ.  
13 Proc. § 704.730. No timely objection was made to this exemption  
14 claim. The chapter 7 trustee filed a report indicating that this  
15 was a "no asset" bankruptcy case on December 13, 2001. Mbabas  
16 were granted a discharge on February 4, 2002, and the bankruptcy  
17 case was closed on February 22, 2002.

18 About three years later, on March 25, 2005, Mbabas moved to  
19 reopen the bankruptcy case to allow them to pursue a motion to  
20 avoid certain judgment liens on the Exempt Property under § 522(f)  
21 and/or § 506. One of the judgment lien creditors, Fergus,  
22 objected to reopening the case, primarily because Mbabas were no  
23 longer the owners of the Exempt Property, which they had allegedly  
24 transferred to Margret Effion Mbaba on August 27, 2002.

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26 <sup>2</sup> Unless otherwise indicated, all chapter, section, and  
27 rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-  
28 1330 and to the Federal Rules of Bankruptcy Procedure, Rules  
1001-9036, in effect prior to the effective date of the Bankruptcy  
Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"),  
Pub.L. 109-8, 119 Stat. 23 (Apr. 20, 2005).

1           The bankruptcy court held its first hearing on the motion to  
2 reopen on March 30, 2005.<sup>3</sup> The hearing was ordered continued  
3 because one of the lien creditors had not been given notice.  
4 However, a transcript indicates that, prior to the hearing, the  
5 court had issued a tentative ruling on the motion to reopen.  
6 While the tentative ruling is not part of the record, it was  
7 discussed by Mbabas' counsel and the court at the hearing on March  
8 30. One aspect of that tentative ruling concerned whether the  
9 chapter 7 petition had been properly filed in Los Angeles.  
10 Mbabas' counsel argued that the petition had been correctly filed  
11 in Los Angeles because the debtor's principal place of business,  
12 an engineering company, was located there, and thus venue was  
13 appropriate under 28 U.S.C. § 1408. The bankruptcy court asked  
14 whether Mbabas' business was a separate entity from their personal  
15 affairs and was apparently satisfied when Mbabas' counsel said  
16 "no."

17           After two continuances, another hearing on the motion to  
18 reopen was held on June 14, 2005. The bankruptcy court announced  
19 its tentative ruling on the record that it would grant the motion.  
20 Counsel for Mbabas and a creditor<sup>4</sup> were present at the June 14  
21 hearing and agreed to entry of an order consistent with the  
22 court's tentative decision. An order granting the motion to  
23 reopen was entered on June 23, 2005.

24           On June 20, 2005, Mbabas filed a Motion to Avoid Lien under  
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26           <sup>3</sup> Although Fergus objected to reopening the case, it was not  
27 represented at any of the hearings on the motion to reopen.

28           <sup>4</sup> It does not appear that this creditor, Lloyd Plank, took  
any further active role in the case.

1 § 522(f) (the "Avoidance Motion"). In the Avoidance Motion,  
2 Mbabas allege that judgment liens held by Fergus and ACIC impair  
3 their exemption in the Exempt Property and should, therefore, be  
4 avoided pursuant to § 522(f).

5 On June 29, 2005, Fergus filed an Opposition to Motion to  
6 Avoid Lien (the "Fergus Opposition"). The gist of the Fergus  
7 Opposition is that Mbabas did not own the Exempt Property and that  
8 it had been transferred to Margret Effiong Mbaba by deed executed  
9 on August 27, 2002. Therefore, Fergus argued, Mbabas could not  
10 utilize § 522(f) to avoid its lien.

11 The bankruptcy court held its first hearing on the Avoidance  
12 Motion on August 3, 2005. The court addressed the Fergus  
13 Opposition, noting that the relevant date for determining the  
14 debtors' ownership of the Exempt Property was the petition filing  
15 date, and that Mbabas' subsequent transfer of the property to a  
16 new owner did not affect the exemption on the filing date.  
17 However, the bankruptcy court continued the hearing and required  
18 that Mbabas submit an appraisal of the Exempt Property, together  
19 with evidence of the debt owed on each of the liens, as of the  
20 petition date.

21 On September 14, 2005, Fergus filed a further response to the  
22 Avoidance Motion (the "Fergus Response") alleging that Patrick  
23 Mbaba's declaration concerning the value of the Exempt Property  
24 did not consider the "reasonable current value" of the Exempt  
25 Property. The Fergus Response acknowledges Mbabas' claim of  
26 exemption of \$22,284.78, and admits: "The homestead exemption was  
27 not objected to by any creditor within the time constraints of the  
28 Bankruptcy Code."

1           On September 15, 2005, ACIC filed a Joinder to the Fergus  
2 Response. ACIC repeated Fergus' allegation that Mbabas' Avoidance  
3 Motion did not comply with the court's order of June 24, 2005,  
4 that "any motion under 11 U.S.C. § 506 will be based on current  
5 value of the real property." Further, ACIC argued that Mbabas had  
6 failed to prove that the Exempt Property was their principal  
7 residence. ACIC attached a copy of Mbabas' petition in support of  
8 its argument that the Exempt Property was not Mbabas' homestead  
9 and therefore, if the Exempt Property was not a homestead, ACIC's  
10 lien was not subject to avoidance under § 522(f).

11           The final hearing on the Avoidance Motion occurred on  
12 September 26, 2005. Counsel for Mbabas, Fergus and ACIC  
13 participated. The court began by noting that ACIC had brought to  
14 the court's attention that Mbabas may not have resided at the  
15 Exempt Property when they filed the bankruptcy petition.  
16 Apparently agreeing with ACIC, the bankruptcy judge stated that  
17 "it seems pretty clear to me that the debtors didn't reside in  
18 Bakersfield when they filed the petition."

19           In addition to the court's concern about Mbabas' residence  
20 when they filed the petition, the court found that:

21           In addition to that being an issue I think I  
22 have to deny this motion because I don't have  
23 any information. . . . I don't have any  
24 information regarding the amount of the  
25 lien[s] as of the petition date. I don't  
26 have any information regarding the amount of  
27 the tax lien - mortgage lien or tax lien as of  
28 the petition date. So I can't do an analysis  
to determine to what extent, if any, these  
other liens impair a homestead exemption  
because I don't know . . . the amount of the  
underlying liens as of the petition date. . .  
. I don't have enough information. . . . I  
thought at prior meetings . . . I made it  
clear I needed information as of the filing

1 date. . . . I still don't have it. I'm going  
2 to deny this motion.

3 Tr. Hr'g 4:25 - 6:7 (September 26, 2005).

4 On October 1, 2005, the bankruptcy court entered an order  
5 denying the Avoidance Motion. Mbabas filed a notice of appeal of  
6 this order on October 6, 2005.<sup>5</sup>

7 **ISSUES ON APPEAL**

8 1. Whether the bankruptcy court made adequate findings of  
9 fact concerning Mbabas' place of residence in relation to their  
10 claim of a homestead exemption.

11 2. Whether the bankruptcy court erred in denying Mbabas'  
12 Avoidance Motion because Mbabas failed to provide information  
13 concerning the amount due on the liens as of the petition date.

14 **STANDARD OF REVIEW**

15 Whether a creditor's judicial lien is avoidable pursuant to  
16 § 522(f) is a question of law that the Panel reviews de novo. Law  
17 Offices of Moore v. Stoneking (In re Stoneking), 225 B.R. 690, 691  
18 (9th Cir. BAP 1998); Yerrington v. Yerrington (In re Yerrington),  
19 144 B.R. 96, 98 (9th Cir. BAP 1992), aff'd, 19 F.3d 32 (9th Cir.  
20 1994).

21 "The standard for adequacy of factual findings in the Ninth  
22 Circuit is 'whether they are explicit enough on the ultimate  
23 issues to give the appellate court a clear understanding of the  
24 basis of the decision and to enable it to determine the grounds on

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25 <sup>5</sup> On September 29, 2005, after the court announced its  
26 decision, but before entry of its order, Mbabas filed a Motion for  
27 Reconsideration concerning the court's decision to deny their  
28 Avoidance Motion. The bankruptcy court entered an order denying  
reconsideration on October 25, 2005. Mbabas did not appeal this  
order.

1 which the trial court reached its decision.'" Leavitt v. Soto (In  
2 re Leavitt), 171 F.3d 1219, 1223 (9th Cir. 1999), citing Amick v.  
3 Bradford (In re Bradford), 112 B.R. 347, 353 (9th Cir. BAP 1990)  
4 and quoting Louie v. United States, 776 F.2d 819, 822-23 (9th Cir.  
5 1985).

#### 6 DISCUSSION

- 7 1. The bankruptcy court did not make adequate findings of  
8 fact concerning Mbabas' place of residence in relation  
9 to their homestead exemption claim.

10 Mbabas argue that the bankruptcy court improperly based its  
11 decision to deny the Avoidance Motion in part upon a finding that  
12 Mbabas did not reside at the Exempt Property when they filed the  
13 bankruptcy petition. Indeed, the bankruptcy court commented at  
14 the hearing that "it seems pretty clear to me that the debtors  
15 didn't reside in Bakersfield when they filed the petition," Tr.  
16 Hr'g 3:17-18. And the court again referred to the residence  
17 question as an "issue:" "I still . . . have an issue regarding  
18 what was the debtor's residence as of the time of filing of the  
19 petition." Tr. Hr'g 3:14-16.

20 The parties attribute different interpretations to the  
21 court's statements concerning Mbabas' residence when the  
22 bankruptcy case was commenced. In their Opening Brief, Mbabas  
23 argue that the court viewed the residence issue as a venue matter,  
24 and they question "whether the venue of Mbabas which was unopposed  
25 in the bankruptcy filing can be used as a reason to deny the  
26 Avoidance Motion." Fergus, on the other hand, regards the court's  
27 comments as a ruling concerning the validity of Mbabas' homestead  
28 exemption: "Debtors do not qualify for a homestead exemption on

1 the Bakersfield property because they can not show continuous  
2 residence until the filing of the petition in bankruptcy and the  
3 date of the recording of the lien. It was obvious to the trial  
4 court that debtors had been residing in Los Angeles and not in  
5 Bakersfield at the time they filed their petition in bankruptcy.”

6 Arguably, the bankruptcy court based its decision to deny the  
7 Avoidance Motion, at least in part, on the “residence issue.”  
8 But the court provided no explicit findings concerning Mbabas’  
9 residence at the time of filing, nor did it explain the importance  
10 it assigned to the residence issue in its decision to deny the  
11 Avoidance Motion.

12 The determination of entitlement to a California homestead is  
13 a multi-faceted and intensely factual process, which, in part,  
14 focuses upon the debtor’s intent. See, e.g., Kelley v. Locke (In  
15 re Kelley), 300 B.R. 11, 21 (9th Cir. BAP 2003), citing Ellsworth  
16 v. Marshall, 196 Cal. App.2d 471, 474 (Ct. App. 1961). And where  
17 a debtor resides for purposes of the homestead exemption law under  
18 Cal. Code Civ. P. § 704.730 is not always obvious. See, e.g.,  
19 Arrol v. Broach (In re Arrol), 170 F.3d 934 (9th Cir.  
20 1999) (California homestead exemption can apply to out-of-state  
21 domicile); Redwood Empire Prod. Credit Ass’n v. Anderson (In re  
22 Anderson), 824 F.2d 754 (9th Cir. 1987) (extended absence from  
23 homestead to attend college may defeat homestead exemption); In  
24 re Pham, 177 B.R. 914 (Bankr. C.D. Ca. 1994) (six-month absence  
25 from residence on petition date did not defeat California  
26 homestead exemption when debtor occupied residence on weekends).  
27 The burden of proof as to substantive entitlement to a homestead  
28 is regulated by statute. CAL. CODE CIV. PROC. § 704.780(a)(1); see



1 People v. Morse, 24 Cal. Rptr. 2nd 816, 822-23 (Cal. Ct. App.  
2 1993), rev. denied, (Cal. March 17, 1994), cert. denied, 513 U.S.  
3 821 (1994).

4 In this case, Mbabas' bankruptcy petition represents that  
5 theirs is a "business case" and lists a street and mailing address  
6 in Los Angeles. However, Mbabas' schedules A and C show their  
7 "personal residence" is located in Bakersfield. In addition,  
8 Mbaba's declaration accompanying the Motion to Reopen represents  
9 that Mbabas' residence is the Bakersfield property.

10 It is conceivable that someone may reside in Bakersfield, but  
11 commute to a place of business in Los Angeles. The objecting  
12 creditors submitted no contrary evidence to show Mbabas did not  
13 reside at the Bakersfield house when the petition was filed,  
14 electing instead to rely upon vague argument and surmise. While  
15 the information in the bankruptcy court's file was arguably  
16 equivocal, unless Mbabas' representations are disbelieved, it was  
17 adequate to support Mbabas' homestead exemption claim. No  
18 evidentiary hearing was conducted, and therefore, the bankruptcy  
19 judge was not entitled to make credibility determinations, or to  
20 simply disregard Mbabas' representations. Khachikyan v. Hahn (In  
21 re Khachikyan), 335 B.R. 121, 126 (9th Cir. BAP 2005) ("The trial  
22 of a contested matter under Rule 9014 . . . requires trial  
23 testimony in open court with respect to disputed material factual  
24 issues in the same manner as an adversary proceeding.").

25 In conducting our review, we are unable to determine whether  
26 the bankruptcy court denied Mbabas' Avoidance Motion because they  
27 did not reside at the Exempt Property when they filed their  
28 bankruptcy petition, and if it did, the basis upon which the

1 bankruptcy court made that determination of fact. As a result, we  
2 must vacate its decision and remand the case to the bankruptcy  
3 court for entry of more detailed findings of fact on this issue.  
4 FED. R. CIV. P. 52(a), made applicable in bankruptcy contested  
5 matters by FED. R. BANKR. P. 9014 and 7052. See, In re Leavitt,  
6 171 F.3d at 1223, supra. Upon remand, if it appears there is any  
7 evidence tending to dispute Mbabas' showing regarding their place  
8 of residence, the bankruptcy court may not simply rely upon the  
9 parties' written submissions, but must convene an evidentiary  
10 hearing, and take witness testimony and other evidence in the same  
11 manner as an adversary proceeding. FED. R. BANKR. P. 9014(d).

12

13 2. The bankruptcy court erred in denying Mbabas' Avoidance  
14 Motion because Mbabas failed to provide any information  
15 concerning the amount due on the liens on the Exempt  
16 Property as of the petition date.

17 Under § 522(f)(1), a debtor may avoid a creditor's judgment  
18 lien on property "to the extent that such lien impairs an  
19 exemption to which the debtor would have been entitled . . . ."  
20 For these purposes, § 522(f)(2) provides that a judgment lien  
21 "impairs" an exemption to the extent that the sum of that lien,  
22 all other liens on the exempt property, and the amount of the  
23 applicable exemption exceed the value of the property. Assuming,  
24 without deciding, that Mbabas' homestead exemption was valid, in  
25 order for the bankruptcy court to conclude that the judgment liens  
26 in this case impaired Mbabas' exemption on the Exempt Property, it  
27 must determine the amount due on the judgment liens, other liens  
28 on the Exempt Property, and the value of the Exempt Property.

1           At its first hearing on the Avoidance Motion on August 3,  
2 2005, the bankruptcy court directed Mbabas to submit an appraisal  
3 of the Exempt Property, together with evidence of debt owed on  
4 each of the liens, as of the petition date. The bankruptcy court  
5 correctly interpreted the law in focusing on the petition date,  
6 not the current date, in this regard: "It is well settled that the  
7 petition date is the operative date to value the debtor's  
8 residence and the homestead for section 522(f) purposes." B.F.P.  
9 v. Resolution Trust Corp., 511 U.S. 531, 537 (1994); In re  
10 Salanoa, 263 B.R. 120, 123 (Bankr. S.D. Cal. 2001) (explaining that  
11 this "approach is consistent with the Supreme Court's decision in  
12 [Dewsnup v. Timm] because it allows a lien creditor to enjoy the  
13 increase in value if the lien is not avoided. However, it also  
14 preserves the parties' rights as they existed on the petition date  
15 to the extent the lien is avoidable under section 522(f).") See  
16 also, Culver, LLC v. Chiu (In re Chiu), 304 F.3d 905, (9th Cir.  
17 2002) (holding that, under § 522(f), a debtor may avoid a judicial  
18 lien impairing an exemption on property no longer owned by  
19 debtor).

20           At the hearing on September 26, 2005, the bankruptcy court  
21 declined to accept the copies of the mortgage documents submitted  
22 by Mbabas as proof of the amount due on the mortgage lien: "The  
23 materials attached to the debtor's declaration regarding the  
24 mortgage talk about what the mortgage was as of the date it was  
25 entered into, not as of the date of the petition. . . . I made it  
26 clear I needed information as of the filing date. I still don't  
27 have it. I'm going to deny this motion."

28

1           In their Motion for Reconsideration, filed after the  
2 bankruptcy court's oral decision but before entry of its formal  
3 order denying the Avoidance Motion, Mbabas reminded the court that  
4 it already had access to information regarding the amounts due on  
5 mortgage and tax liens based on Mbabas' Schedule D, and in the  
6 materials submitted to the bankruptcy court by the mortgagor,  
7 HomeComings Financial Network ("HomeComings"), in support of its  
8 motion for relief from stay filed on December 3, 2001. Mbabas  
9 noted that the Declaration of Patrick Mbaba, which accompanied the  
10 Avoidance Motion, noted in paragraph c that HomeComings had filed  
11 a stay relief motion. In addition, Mbabas argued that they  
12 provided the court a "historical appraisal of the property in  
13 question based on the time of filing, October 24, 2001."  
14 Finally, they pointed out that Mbabas resubmitted their bankruptcy  
15 schedules A and D, supported by a letter from HomeComings dated  
16 October 9, 2001, indicating the principal balance on the mortgage  
17 was \$64,342.33. In the reconsideration motion, Mbabas described  
18 the circumstances surrounding the HomeComings letter, indicating  
19 that it could not be authenticated before the September 29, 2005,  
20 hearing, and thus constituted "new evidence."

21           The Panel has reviewed the documents submitted by Mbabas and  
22 we conclude that the bankruptcy court erred in finding that the  
23 Debtors failed to provide any credible evidence of the amount owed  
24 to HomeComings as of the date of the filing of Debtors' bankruptcy  
25 petition.

26           Mbabas did indeed submit some evidence regarding the amount  
27 of liens outstanding as of the petition date. Their Schedule D  
28 lists the HomeComings claim at \$63,342.33 as of the petition date.

1 Since a schedule is executed under penalty of perjury, it could be  
2 treated as an affidavit for any purpose permitted by the Federal  
3 Rules of Evidence. FED. R. CIV. PRO. 43(c); see 2 COLLIER ON  
4 BANKRUPTCY ¶ 301.09[6][b] (15th ed. rev. 2005). A debtor's  
5 testimony as to the amount owed to a creditor is admissible as a  
6 lay opinion "rationally based on the perception of the witness."  
7 FED. R. EVID. 701.

8 Mbabas' schedules showing the amount due under the mortgage  
9 had never been opposed or contradicted by any other evidence or  
10 party. As can be seen in Mbabas' motion for reconsideration, the  
11 amount contained in the schedules was also consistent with  
12 representations made to the bankruptcy court by the mortgage  
13 holder, HomeComings, in its stay relief motion on file with the  
14 court. In the absence of any proof tending to render the  
15 information in the schedules unreliable, the bankruptcy court  
16 erred in concluding that Mbabas had not presented "any  
17 information" regarding the amount of the mortgage lien.

18 A California homestead entitles a debtor to shield \$75,000 in  
19 equity from the reach of creditors in bankruptcy.<sup>6</sup> In schedule A,  
20 Mbabas estimate the value of their homestead on the petition date  
21 to be \$88,000. In schedule D, Mbabas show the balance due on the  
22 deed of trust on their home at \$64,342.22, and a county tax lien  
23 of \$1,372.89. While the bankruptcy court could require specific

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24  
25 <sup>6</sup> Mbabas claimed only \$22,284.78 exempt on their homestead  
26 in their schedule C, representing the difference between the value  
27 of the Exempt Property (\$88,000.00), and the amount due on the  
28 mortgage (\$64,342.33) and tax liens (\$1,372.89). However, a  
debtor is entitled to the full amount of exemption allowed by the  
applicable statute even if it is not initially claimed in the  
schedules. Toplitzky v. Hooten (In re Toplitzky), 227 B.R. 300,  
304 (9th Cir. BAP 1998).

1 evidence of these amounts beyond that contained in the schedules  
2 to resolve a dispute, in the absence of any contrary evidence, it  
3 is difficult to understand the purpose of such a demand in this  
4 context. Unless the bankruptcy court were given cause to suspect  
5 the property had been undervalued in Mbabas' schedules, requiring  
6 proof to the penny of the amount due on the mortgage debt under  
7 these circumstances would seem to be an unproductive exercise.  
8 The proof provided by Mbabas of the original amount of the  
9 mortgage, the balance due shown in the stay relief motion filed  
10 with the court,<sup>7</sup> and Mbabas' testimony concerning the current  
11 balance in the schedules, ought to have enabled the trier of fact  
12 to approximate the lien amounts sufficient to rule on the  
13 Avoidance Motion.

14 If, instead, the bankruptcy court considered Mbabas'  
15 uncontroverted evidence of the amounts due on the mortgage and tax  
16 liens, but decided it was not "credible," it also erred. In the  
17 absence of other evidence calling the reliability of this  
18 information into question, the credibility of Mbabas'  
19 representations in the schedules could not be determined outside

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21 <sup>7</sup> In its order denying Mbabas' reconsideration motion, the  
22 bankruptcy court criticized the suggestion that it should have  
23 considered the information in HomeComings' stay relief motion:  
24 "absent a request for judicial notice, the court is not required  
25 to search through four years of court records in order to locate  
26 information contained in [the stay relief motion] neither referred  
27 to in, nor attached to, the Motion to Avoid Liens." We agree it  
28 is the responsibility of the parties to properly present the  
evidence to the bankruptcy court to support their positions. But  
in this instance, we note that, while not mentioned in the  
Avoidance Motion, the HomeComings stay relief motion had been  
referenced by Mbabas in their recent motion to reopen the Chapter  
7 case. In addition, Mbabas attached the stay relief motion  
material to their reconsideration motion, such that the bankruptcy  
court was not required to "search through four years of court  
records" to locate the referenced material.

1 the context of an evidentiary hearing. At that hearing, Mbabas  
2 would have the opportunity to support their statements and provide  
3 additional foundation for their Schedule D, and the bankruptcy  
4 court could then determine the credibility of Mbabas as witnesses  
5 and the weight to attach to their statements. Anderson v.  
6 Bessemer City, 470 U.S. at 575 (credibility determinations based  
7 on trial judge's perception of witness' demeanor and tone of voice  
8 as well as documentary information and internal consistency and  
9 plausibility). See also In re Mohring, 142 B.R. 389, 393 n.10  
10 (Bankr. E.D. Ca. 1992) (noting that information in debtor's  
11 schedules may not be admissible without additional foundation).  
12 Unless waived, testimony of witnesses must be taken to determine  
13 disputed factual issues in a contested matter in the same manner  
14 as in an adversary proceeding. FED. R. BANKR. P. 9014(d).

15  
16 **CONCLUSION**

17 To the extent it decided Mbabas did not reside at the  
18 property claimed exempt in denying the Avoidance Motion, the  
19 bankruptcy court did not make adequate findings to allow the Panel  
20 to review that decision. The bankruptcy court erred in denying  
21 the Avoidance Motion because Mbabas' had not presented "any  
22 information" concerning the amount due on the liens.

23 The order of the bankruptcy court is VACATED and this case is  
24 REMANDED to the bankruptcy court for further proceedings. If  
25 disputed issues of fact remain to be determined, unless waived,  
26 the bankruptcy court must allow the parties the opportunity to  
27 present the testimony of witnesses and other evidence at an  
28 evidentiary hearing concerning the issues.