

DEC 20 2005

NOT FOR PUBLICATION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**

In re:)	
)	BAP No. CC-04-1594-BKPa
MANUEL SANTOS and)	
ROSARIO SANTOS,)	
)	Bk. No. LA 03-25686-SB
Debtors.)	
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MANUEL SANTOS and)	
ROSARIO SANTOS,)	
)	
Appellants,)	
)	
v.)	MEMORANDUM¹
)	
ROLANDO PIAD; EMELITA PIAD;)	
MIGUEL CHAVEZ; SUSAN CHAVEZ;)	
LAW OFFICES OF ROBERT RONNE,)	
APC,)	
)	
Appellees.)	
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Argued and Submitted on November 17, 2005 at
Los Angeles, California

Filed - December 20, 2005

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

Honorable Samuel L. Bufford, Bankruptcy Judge, Presiding

Before: BRANDT, KLEIN and PAPPAS, Bankruptcy Judges.

¹ This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except when relevant under the doctrines of law of the case, res judicata or collateral estoppel. See 9th Cir. BAP Rule 8013-1.

1 Debtors/appellants Santos filed a joint chapter 13² petition,
2 scheduling the claims of four former employees. The employees filed
3 proofs of claim totaling more than \$500,000 in unpaid wages and
4 penalties, and their counsel filed a proof of claim to recover statutory
5 attorney's fees. Debtors objected. Concluding that an evidentiary
6 hearing was unnecessary because there was no genuine factual issue, the
7 bankruptcy court, sua sponte, overruled Debtors' objection and allowed
8 the claims in full.

9 Debtors appealed. We REVERSE and REMAND.
10

11 I. FACTS

12 Appellants Manuel and Rosario Santos (jointly, "Santos") were doing
13 business as the Santos Family Home ("SFH"), which provides housing and
14 residential care and supervision for six developmentally disabled
15 adults. Emelita and Rolando Piad, SFH employees from 1999-2001, and
16 Miguel and Susan Chavez, employees from 2001-2002 (collectively,
17 "Employees"), lived on-site and were hired to perform various tasks
18 relating to the care of SFH and its residents.

19 In May 2002 the Employees filed a state court civil action, Piad
20 et al v. Santos, Los Angeles, California Superior Court No. BC 273511,
21 for unpaid minimum wages and overtime. On 11 June 2003, just before the
22 first day of trial, Santos filed their chapter 13 petition, scheduling
23 the Employees' combined claims as contingent, unliquidated, and
24 disputed, in the amount of \$100,000.

25
26 ² Absent contrary indication, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330. All
28 "Rule" references are to the Federal Rules of Bankruptcy Procedure,
all "FRCP" references are to the Federal Rules of Civil Procedure, and
"CLC" references are to the California Labor Code.

1 The Employees filed proofs of claim for unpaid wages and overtime,
2 liquidated damages, employer's failure to keep records (CLC §§ 203, 226,
3 510, and 1194.2), penalties for missed meal periods, and prejudgment
4 interest, and their counsel, Robert Ronne, filed a proof of claim for
5 attorney fees and costs incurred by the Employees:³

6	Claimant	Amount of Claim
7	Rolando Piad	\$223,478.00
8	Emelita Piad	238,383.70
8	Miguel Chavez	32,356.94
9	Susan Chavez	39,074.34
9	Robert Ronne	<u>99,338.60</u>
10	Total	\$632,631.58.

11 Debtors objected to all five claims. After continuing the claims
12 objection hearing several times, the court set a pretrial conference on
13 18 November 2004, and trial for 9 December 2004.

14 The parties filed a joint pre-trial stipulation identifying as
15 factual issues: whether Employees were employed by Santos/SFH during
16 the periods claimed; nature of the duties performed; estimated days and
17 hours of work; amounts and date of payments; whether overtime
18 compensation was due and whether Debtors willfully failed to pay wages.
19 Debtors do not dispute that there was no written employment agreement
20 between the Employees and Santos/SFH. In addition to their declarations
21 supporting each proof of claim, Employees filed the deposition

22 _____

23 ³ CLC § 1194 provides:
24 Notwithstanding any agreement to work for a lesser wage, any
25 employee receiving less than the legal minimum wage or the
26 legal overtime compensation applicable to the employee is
27 entitled to recover in a civil action the unpaid balance of
28 the full amount of this minimum wage or overtime
compensation, including interest thereon, reasonable
attorney's fees, and costs of suit.

(Emphasis added).

1 transcript of Rosario Santos, taken in the state court action, in which
2 she had testified she had no knowledge of any agreement between
3 Employees and SFH and kept no records of Employees' hours or work
4 schedules. In support of their objections, Debtors filed several
5 declarations.

6 At the 18 November hearing, Employees' counsel argued that debtors
7 would not be able to produce evidence to sustain their objections to the
8 claims. Debtors offered to introduce Santos' oral testimony to oppose
9 the claims. Considering this argument, together with the evidence
10 before it, the bankruptcy court, apparently concluding that Santos could
11 not raise a genuine contested issue of fact and that an evidentiary
12 hearing was not needed to rule on the merits, ruled:

13 The Claimants are entitled to judgment. That's not the law,
14 and the Court finds that - that's not the law, that they are
15 entitled to be paid for hours actually worked. This is a case
16 about hours actually worked. There is no defense that they
17 didn't actually work the hours they claimed to, and that
18 disposes of the claim.

19 Transcript, 18 November 2004 at 68.

20 The court entered a minute order indicating only "Jgmt for
21 Claimants." Debtors timely appealed. A final order was entered 27 June
22 2005, following our order directing appellants to seek entry of a final
23 order, making appellants' premature notice of appeal effective. Rule
24 8002(a). The final order allows all five claims, and awards costs to
25 Employees.

26 **II. ISSUE**

27 Whether the bankruptcy court erred in sua sponte granting summary
28 judgment allowing the claims of Employees and Ronne.

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III. JURISDICTION

The bankruptcy court had jurisdiction via 28 U.S.C. § 1334 and § 157(a), (b) (1), and (2). We do under 28 U.S.C. § 158(c).

IV. STANDARDS OF REVIEW

Conclusions of law and questions of statutory interpretation, including construction of the Code, are reviewed de novo. Rule 8013; In re Mednet, 251 B.R. 103, 106 (9th Cir. BAP 2000).

Whether a particular procedure comports with basic requirements of due process is a question of law that is reviewed de novo. In re Garner, 246 B.R. 617, 619 (9th Cir. BAP 2000).

We review the granting of summary judgment de novo. In re Baldwin, 245 B.R. 131, 134 (9th Cir. BAP 2000), aff'd, 249 F.3d 912 (9th Cir. 2001).

V. DISCUSSION

This appeal focuses on Debtors' contention that the bankruptcy court erred in sua sponte determining that there was no disputed issue of material fact and allowing the claims without an evidentiary hearing.

An objection to claim requires notice and a hearing, § 502(b), and, if an objection to a claim is made, then the court, with exceptions not here applicable, determines the claim. See 4 Keith M. Lundin, Chapter 13 Bankruptcy 3d, § 287.1 (2000 and Supp. 2004); Garner, 246 B.R. at 623-24 (objection to claims is a contested matter governed by Rule 9014); and In re Heath, 331 B.R. 424, 434-36 (9th Cir. BAP 2005) (discussing procedure for claims objections).

1 We have recently noted that a contested matter, governed by Rule
2 9014, has unique features as compared to an adversary proceeding:
3 "pleading rules are relaxed, counterclaims and third-party practice do
4 not apply, and much pre-trial procedure is either foreshortened or
5 dispensed with in the interest of time and simplicity." In re
6 Khachikyan, __ B.R. __ , 2005 WL 3116003, at *2 (9th Cir. BAP 2 November
7 2005).

8 Rule 9014(d) and (e) provide:

9 (d) Testimony of witnesses with respect to disputed
10 material factual issues shall be taken in the same manner as
11 testimony in an adversary proceeding.

12 (e) The court shall provide procedures that enable
13 parties to ascertain at a reasonable time before any scheduled
14 hearing whether the hearing will be an evidentiary hearing at
15 which witnesses may testify.

16 (Emphasis added).

17 Thus, while trial of a contested matter ordinarily requires
18 testimony, that requirement applies only when there is a genuine factual
19 dispute. "[T]estimony regarding contested material factual disputes must
20 be taken in the same manner as in an adversary proceeding, and the court
21 must make findings of fact and conclusions of law before entering an
22 order that has the status of a judgment." Khachikyan, 2005 WL 3116003,
23 at *2. Moreover, FRCP 56 applies in contested matters, without the
24 summary judgment becoming a separate contested matter. Rules 7056 and
25 9014(c).

26 When a contested matter unfolds as a sua sponte summary judgment,
27 the court must give the parties "a reasonable opportunity to present
28 material that would be pertinent under the summary judgment motion." In
re Fernandez, 227 B.R. 174, 180 (9th Cir. BAP 1988), aff'd, 208 F.3d 220
(9th Cir. 2000) (table)) (discussing conversion of a Rule 7012(b)(6)

1 motion to a Rule 7056 motion, citing In re Rothery, 143 F.3d 546, 549
2 (9th Cir. 1998)). Sua sponte summary judgment is proper "without notice
3 if the losing party has had a full and fair opportunity to ventilate the
4 issues involved in the motion." Id. (citation omitted).

5 Here, there was no notice that the 18 November hearing was to be
6 anything but a pretrial conference,⁴ although the court had indicated on
7 19 October that "[w]ith respect to the health care facility
8 [issue] . . . [t]his is looking like a summary judgment on that issue."
9 Transcript, 19 October 2004 at 40 (emphasis added). The parties had
10 stipulated that there were factual issues relating, generally, to the
11 terms of employment and hours worked, and Debtors' counsel had expressed
12 an intention to introduce Santos' live testimony to rebut the disputed
13 employment claims. The docket reflects no determination that those are
14 no longer issues of fact, or that they are not material.

15 Because the order allowing claims was entered sua sponte, without
16 advance notice to the Santos that factual issues beyond whether or not
17 their business was a health care facility might be decided summarily,
18 they were denied an adequate opportunity to "ventilate" their claims
19 objection issues. See Portsmouth Square, Inc. v. Shareholders Protective
20 Comm., 770 F.2d 866, 869 (9th Cir. 1985) (federal rule and due process
21 considerations apply where court enters summary judgment sua sponte).

22 Accordingly, we must reverse the allowance of the Employees'
23 claims. Because Ronne's claim is dependent on allowance of the
24 Employees' claims, its allowance must also be reversed.

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26 ⁴ Two contested motions in limine were also argued at the
27 hearing: Debtors' motion on applicability of Wage Order No. 5, the
28 healthcare industry exception to CLC and definition of hours worked
and evidence of terms of employment, and Employees' motion to exclude
written agreements or statements between Employees and debtors. The
bankruptcy court did not explicitly rule on the motions, apparently
viewing them as mooted by the allowance of claims.

1 **VI. CONCLUSION**

2 The bankruptcy court erred in summarily allowing the claims sua
3 sponte. We REVERSE and REMAND.

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