

APR 15 2013

SUSAN M SPRAY, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

5	In re:)	BAP No. EC-11-1700-DJuMk
6	RAJ SINGH,)	Bk. No. 10-28544-RHS
7	Debtor.)	Adv. No. 11-02118-RHS
8	RAJ SINGH,)	
9	Appellant,)	
10	v.)	M E M O R A N D U M ¹
11	DAVID PAUL CUSICK, Trustee;)	
12	STEPHEN LIPWORTH; FRANCHISE TAX)	
13	BOARD; EMPLOYMENT DEVELOPMENT)	
14	DEPARTMENT; UNITED STATES)	
15	TRUSTEE,)	
	Appellees.)	

Argued and Submitted on March 22, 2013
at Sacramento, California

Filed - April 15, 2013

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

Honorable Ronald H. Sargis, Bankruptcy Judge, Presiding

Appearances: Appellant Raj Singh argued in pro per; Steven C. Finley of Hennefer, Finley & Wood, LLP, argued for Appellee, Stephen Lipworth; Robert E. Asperger, Deputy Attorney General of California, argued for Appellees, Franchise Tax Board and Employment Development Department.

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

1 Before: DUNN, JURY and MARKELL, Bankruptcy Judges.

2 After debtor Raj Singh ("Mr. Singh") denied an interest in a
3 2009 tax refund check ("Tax Refund") issued in his name by the State
4 of California Franchise Tax Board ("Tax Board"), the chapter 13²
5 trustee ("Trustee") filed an interpleader action ("Interpleader
6 Action") to determine who among other claimants was entitled to the
7 proceeds ("Proceeds") of the Tax Refund. Mr. Singh filed an answer
8 denying he had any interest in the Proceeds, but asserting that the
9 Proceeds belonged to his former spouse, Karen Singh ("Ms. Singh").
10 Ms. Singh failed to file an answer, and default was entered against
11 her. The bankruptcy court ruled that Mr. Singh had no standing to
12 assert Ms. Singh's claim and denied his motion to vacate the default
13 entered against Ms. Singh. In light of Mr. Singh's answer denying
14 any interest in the Proceeds, the bankruptcy court approved a
15 settlement between the remaining parties who did claim an interest
16 in the Proceeds and entered judgment ("Judgment") awarding the
17 Proceeds as stated in the settlement. Mr. Singh appealed the
18 Judgment. We AFFIRM.

19 I. FACTS

20 A. Prior Appeals.

21 Mr. Singh is no stranger to this Panel. Over the past three
22 years he has filed the following appeals:

23
24 ² Unless otherwise indicated, all chapter and section
25 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
26 all rule references are to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9037. The Federal Rules of Civil Procedure
are referred to as Civil Rules.

1 BAP No. EC-10-1116 - Raj Singh v. Lawrence Loheit, et al.

2 Mr. Singh filed this appeal April 15, 2010 in a prior
3 bankruptcy case. The appeal was from the dismissal of the case on
4 the trustee's motion for unreasonable delay prejudicial to
5 creditors. The appeal itself was dismissed after Mr. Singh failed
6 to file his opening brief. Mr. Singh's motion to reopen the appeal
7 was denied by the motions panel upon a finding that Mr. Singh had
8 "not provided any good reason why the brief was not filed earlier or
9 why this appeal should be reinstated."

10 BAP No. EC-10-1290 - Raj Singh v. Lawrence Loheit, et al.

11 Mr. Singh filed a declaratory judgment action against Karen
12 Singh (his ex-wife) seeking a declaration that he was not Kaus Singh
13 or Suman Mehta. The bankruptcy court held an evidentiary hearing on
14 Mr. Singh's motion for default judgment and denied all relief
15 sought. Mr. Singh filed his Notice of Appeal on August 5, 2010.
16 Prior to the November 2011 argument, the merits panel issued an
17 order: "This appeal is set for oral argument on November 16, 2011 in
18 Sacramento, California. Without a transcript of [the evidentiary]
19 hearing, it does not appear that the Panel will be able to consider
20 whether the bankruptcy court erred in entering the judgment on
21 appeal. Accordingly, appellant shall have until Friday, November 4,
22 2011 to file a copy of the July 13, 2010 transcript with the BAP
23 Clerk's Office." Mr. Singh responded that no transcript was
24 necessary. He appeared at argument. The Panel issued a decision on
25 the merits via a memorandum dismissing the appeal based on a
26 deficient record. Mr. Singh appealed to the 9th Circuit, which

1 denied his request to proceed in forma pauperis. When Mr. Singh
2 failed to meet the deadline to pay the filing fee, the circuit
3 dismissed his appeal.

4 BAP No. EC-10-1471 - Raj Singh v. Lawrence Loheit, et al.

5 On November 30, 2010, Mr. Singh filed a notice of appeal from
6 the alleged dismissal of his second bankruptcy case. The clerk's
7 notice when the documents were forwarded to the BAP indicated that
8 no dismissal order had been signed. The BAP clerk issued an order
9 advising Mr. Singh that unless he obtained a signed order from the
10 bankruptcy court, the appeal would be dismissed for lack of
11 jurisdiction. No order was entered, and this appeal was dismissed.

12 BAP No. EC-12-1036 - Raj Singh v. David Cusick, et al.³

13 The bankruptcy court ultimately entered its order on the
14 Trustee's 2010 motion to dismiss on December 21, 2011. Mr. Singh
15 filed his notice of appeal from that order on January 13, 2012. The
16 appeal was dismissed as untimely on March 30, 2012. The BAP later
17 denied Mr. Singh's motion for reconsideration. His further appeal
18 to the 9th Circuit was dismissed after Mr. Singh again failed to pay
19 his filing fee.

20 B. The Current Appeal.

21 On June 22, 2010, the Trustee received a check from the Tax
22 Board in the amount of \$13,881.68, representing a refund due and
23 owing to Rhaghvendra Singh for overpayment of 2009 taxes. On
24

25 ³ This appeal actually was filed subsequent to the current
26 appeal.

1 February 22, 2011, the Trustee filed the Interpleader Action seeking
2 a determination from the bankruptcy court as to whom the Proceeds
3 should be disbursed. The Complaint alleged that Mr. Singh did not
4 schedule a property interest in the Tax Refund in his bankruptcy
5 case. The Complaint named as potential claimants: Mr. Singh, based
6 upon his claim or demand on the Trustee; Ms. Singh, based on
7 Mr. Singh's representations that the Proceeds may belong to her; the
8 Tax Board, based on its claim that the Tax Refund was paid to the
9 Trustee in error; appellee Employment Development Department
10 ("EDD"), pursuant to a February 11, 2011 levy for an outstanding
11 obligation owed by Mr. Singh; and appellee Stephen Lipworth
12 ("Mr. Lipworth"), pursuant to a July 28, 2010 levy based on
13 Mr. Lipworth's prepetition judgment against Mr. Singh.

14 The Tax Board filed an answer, asserting that pursuant to Cal.
15 Civ. Code § 2223 or § 2224, the Trustee was a constructive trustee
16 of the Proceeds for the benefit of the Tax Board. The Tax Board
17 requested that the bankruptcy court direct the Trustee to pay the
18 Proceeds to the Tax Board. [Docket #10⁴].

19 The EDD filed an answer, also asserting that pursuant to Cal.

20
21 ⁴ A relatively limited record was provided by the parties.
22 We reviewed documents on the bankruptcy court docket which would
23 elucidate the facts. See O'Rourke v. Seaboard Sur. Co. (In re E.R.
24 Fegert, Inc.), 887 F.2d 955, 957-58 (9th Cir. 1988)(providing that
25 the BAP may take judicial notice of the underlying bankruptcy
26 records with respect to an appeal); Atwood v. Chase Manhattan
Mortgage Co. (In re Atwood), 293 B.R. 227, 233, n.9 (9th Cir. BAP
2003)("We have obtained copies [of the relevant documents] from the
clerk of the bankruptcy court, and take judicial notice of them."),
citing Fegert, 887 F.2d at 957-58.

1 Civ. Code § 2223 or § 2224, the Trustee was a constructive trustee
2 of the Proceeds for the benefit of the Tax Board. The EDD further
3 asserted that California's Interagency Intercept Collection Program
4 (Cal. Gov. Code § 12419.5) required the Tax Board to pay the
5 Proceeds to EDD to satisfy Mr. Singh's unpaid debt for unemployment
6 insurance contributions. The EDD's answer admitted that the Tax
7 Refund issued in the name of Rhaghvendra Singh belonged to
8 Mr. Singh. [Docket #9].

9 Mr. Lipworth filed an answer, admitting that the Tax Refund
10 issued in the name of Rhaghvendra Singh belonged to Mr. Singh,
11 averring that the Proceeds were subject to levy by Mr. Singh's
12 creditors, and requesting judgment in Mr. Lipworth's favor requiring
13 the Trustee to disburse the Proceeds to him as a creditor. [Docket
14 #13].

15 Mr. Singh filed an answer, stating "Debtor did not contribute
16 anything to this check and accordingly, this check does not belong
17 to debtor." Mr. Singh's answer also denied that the bankruptcy
18 court had jurisdiction over the Interpleader Action where it
19 previously had announced that Mr. Singh's chapter 13 bankruptcy case
20 would be dismissed. Mr. Singh's answer alternatively asserted that
21 if the bankruptcy court did have jurisdiction, and if any part of
22 the Tax Refund belonged to Mr. Singh, then all parties to the
23 Interpleader Action, except for Mr. Singh and Ms. Singh, were
24 violating the automatic stay in trying to "collect" the Proceeds.
25 Mr. Singh then filed a motion ("Stay Violation Motion") based on
26 these same grounds in which he requested that the bankruptcy court

1 (1) direct that the Proceeds be "returned" to "Karen Singh/Raj
2 Singh" and (2) award Mr. Singh sanctions, including punitive
3 damages, for violation of the automatic stay, "against every
4 violator and violator's attorney."

5 Ms. Singh filed no answer to the Complaint.

6 On April 28, 2011, the bankruptcy court held a hearing on the
7 Stay Violation Motion. Because it addresses every issue Mr. Singh
8 raises in the appeal currently before the Panel, we quote in detail
9 the substance of the bankruptcy court's civil minutes of the
10 hearing.

11 [Debtor's] principal argument seems to be that the court
12 does not have jurisdiction in this matter because the main
13 bankruptcy case has been dismissed. While the court has
14 announced its decision to dismiss the main bankruptcy
15 case, the court has not yet entered an order actually
16 dismissing the case. The delay relates to the extensive
17 findings of fact and conclusions of law in this case: the
18 court currently [is] preparing the final revision of this
19 important document that outlines the court's reasoning.
20 See generally, Fed. R. Civ. P. 52.

21 In any event, the court has jurisdiction over this core
22 proceeding which [arose] in and is related to [Singh's]
23 bankruptcy case. 28 U.S.C. §§ 157(b)(2)(O), 1334(a);
24 E.D. Cal. Gen. Order 223 (Oct. 22, 1987). Even if the
25 parent bankruptcy case had been dismissed, the court could
26 retain jurisdiction to decide the matter. In re Carraher,
971 F.2d 327, 328 (9th Cir. 1992). In doing so, the court
must consider economy, convenience, fairness and
comity Id. As this issue has not been fully
briefed by the parties, and the [Tax Board] expressed at
the [court's] hearing considering an order to show cause
in the main bankruptcy case its strong opinion that this
was the proper forum to resolve this dispute, the court
declines to decide this issue at this juncture. The
motion to return the funds and for a declaration is
denied.

[Debtor's] motion for sanctions for violations of the
automatic stay is also denied. As the court has
previously and repeatedly addressed, there was no

1 automatic stay in this case for any party to violate.
2 11 U.S.C. § 362(c)(4). Debtor is cautioned that unless he
3 can show that:

4 1. the filing of the motion is not being
5 presented for any improper purpose, such as to
6 harass or to cause unnecessary delay or
7 [needlessly] increase . . . the cost of
8 litigation, and

9 2. the claims, defenses, and other legal
10 contentions therein are warranted by existing
11 law or by a nonfrivolous argument for the
12 extension, modification, or reversal of existing
13 law or the establishment of new law,

14 then he may be subject to sanctions. See Fed. R. Bankr.
15 P. 9011. Repeated filing of a motion that the court has
16 already resolved against Debtor does not meet his
17 obligations under the law. Id.

18 Additionally, the Debtor has stated numerous times in a
19 number of pleadings . . . that he has no interest in the
20 monies which have been deposited with the court. In his
21 motion the Debtor erroneously states that the court has
22 determined that the Debtor has no interest in the check.
23 Rather, since the Debtor has repeatedly disavowed any
24 right to the monies, notwithstanding the State of
25 California having determined that he was [owed] the
26 refund, the court would not allow the Debtor to claim
millions of dollars in sanctions for alleged violations of
the automatic stay with respect to these monies. In this
latest motion, the Debtor now requests that the money
should be given either to Karen Singh, whom is identified
as his ex-wife, or the Debtor, who contends he has no
right to the monies. Karen Singh has not brought this
motion, nor has she asserted any rights in the
interpleader action to claim an interest in the monies.

Though he is a very experienced litigant having filed
multiple California Superior Court cases, multiple appeals
before the California District Court of Appeal, multiple
requests for certiorari from the California Supreme Court;
multiple bankruptcy cases, adversary proceedings, and
contested matters in this court; multiple appeals . . . to
the Bankruptcy Appellate Panel, [an] appeal to the Third
Circuit Court of Appeal, [an] appeal to the United States
District Court for the District of Delaware, and
prosecution of [a] claim in the United States Bankruptcy
Court for the District of Delaware, the Debtor has not
offered any evidence in support of his current motion.

1 The court cannot and will not grant relief merely because
2 a pleading is filed asking to get paid money.

3 The motion is denied.

4 [Docket #22]. The bankruptcy court entered a civil minute order on
5 May 4, 2011, denying the Stay Violation Motion. No appeal was taken
6 from that order.

7 On June 1, 2011, Mr. Singh filed a motion ("Show Cause Motion")
8 for an order to show cause and to refer the case for investigation
9 by the California State Bar and the American Bar Association.
10 Through the Show Cause Motion, Mr. Singh sought an order requiring
11 Mr. Lipworth and his attorney to show cause why they "did not have
12 the determination of the owner of the subject property and why they
13 misrepresented to this court in their declarations that Raj Singh
14 filed Chapter 7 bankruptcies." The bankruptcy court denied the Show
15 Cause Motion by Civil Minute Order entered July 5, 2011.

16 On August 5, 2011, Mr. Lipworth requested ("First Default
17 Request") that the bankruptcy court enter default against Ms. Singh
18 based on her failure to file an answer. [Docket #44]. On
19 August 25, 2011, the EDD, the Tax Board and Mr. Lipworth jointly
20 filed a motion (1) to approve a settlement agreement they had
21 reached with the Trustee and (2) for entry of judgment in the
22 Interpleader Action ("First Request for Judgment").

23 Mr. Singh opposed the First Request for Judgment, alleging
24 (1) the case was moot because Mr. Loheit no longer was the case
25
26

1 Trustee;⁵ (2) the bankruptcy court had no jurisdiction over the
2 Interpleader Action because the Tax Refund had been issued in
3 error;⁶ (3) that the check was written to Mr. Singh, so it belonged
4 to him; (4) the pleadings of the Tax Board, the EDD, and
5 Mr. Lipworth all state that the Proceeds belonged to Mr. Singh, so
6 the bankruptcy court could not award the Proceeds to anyone else;
7 and (5) as a chapter 13 debtor, Mr. Singh was entitled to "handle"
8 the Proceeds. Mr. Singh also stated that awarding the Proceeds to
9 Mr. Lipworth and the EDD would result in multiple lawsuits, and
10 asserted there is no proof that Ms. Singh had been served.
11 Mr. Singh concluded by restating his belief that the bankruptcy
12 court should penalize the Tax Board, the EDD, and Mr. Lipworth for
13 attempting to collect the Proceeds in violation of the automatic
14 stay. Mr. Singh made each of these arguments in his opposition to
15 Mr. Lipworth's motion for entry of default against Ms. Singh,
16 together with the following arguments: a co-defendant had no
17 standing to request entry of default against another co-defendant,
18 the allegations in the motion for default judgment were incorrect,
19 Ms. Singh does not appear to have been served, and finally, because
20 the allegations in the Complaint and the Tax Refund both state that
21 the money belongs only to Mr. Singh, Ms. Singh did not need to
22 answer the complaint.

23
24 ⁵ David Cusick had been appointed successor trustee in
Mr. Singh's bankruptcy case.

25 ⁶ Mr. Singh also asserted that the bankruptcy court had no
26 jurisdiction to award the Proceeds to anyone other than Mr. Singh.

1 The bankruptcy court denied the First Request for Judgment on
2 the basis that unless and until a default judgment had been entered
3 against Ms. Singh, she remained a claimant to the Proceeds.⁷
4 [Docket #57].

5 On October 7, 2011, Mr. Lipworth renewed his request for entry
6 of default, based upon which the Clerk entered Ms. Singh's default
7 on October 18, 2011, and directed that an application for a default
8 judgment should be filed within 30 days of the date the default was
9 entered, which should be set for a "prove-up" hearing consistent
10 with the court's local rules. [Docket #61]. On October 27, 2011,
11 Mr. Singh filed a motion to set aside the default, asserting that
12 the Clerk could enter default only on the request of Plaintiff.
13 Mr. Singh said if the Clerk can in fact enter default based on the
14 request of a co-defendant (Mr. Lipworth), then the Clerk also could
15 set aside the default on the request of another co-defendant
16 (Mr. Singh). Substantively, Mr. Singh asserted that the default
17 against Ms. Singh was prejudicial not only to her, but also to him
18 and other defendants. On November 3, 2011, the EDD and the Tax
19 Board jointly filed a motion for a default judgment against
20 Ms. Singh ("Motion for Default Judgment"). Also on November 3,
21

22 ⁷ It appears that the Clerk denied the initial request for
23 entry of Ms. Singh's default, believing that only the Trustee, as
24 plaintiff, could make that request. The bankruptcy court made clear
25 at the hearing that any party could request default and default
26 judgment be entered against any other party. Mr. Singh construes
the bankruptcy court's procedural discussions as improperly helping
Mr. Lipworth.

1 2011, the EDD, the Tax Board, and Mr. Lipworth jointly filed a
2 renewed motion ("Second Request for Judgment") (1) to approve a
3 settlement agreement they had reached with the Trustee and (2) for
4 entry of judgment in the Interpleader Action. [Docket #68].
5 Finally, on November 3, 2011, Mr. Lipworth filed an application for
6 judgment on the pleadings ("Motion for Judgment Against Mr. Singh"),
7 requesting that judgment be entered against Mr. Singh in the
8 Interpleader Action, where Mr. Singh had made no claim to the
9 Proceeds and that any claim Mr. Singh might have in the Proceeds was
10 part of his bankruptcy estate available for distribution to
11 creditors. [Docket #73]. The bankruptcy court held the ultimate
12 hearing in the Interpleader Action on December 1, 2011 ("December 1
13 Hearing"), at which time all of these pending motions were
14 considered.

15 At the December 1 Hearing, the bankruptcy court recounted that
16 the Interpleader Action was filed after Mr. Singh had disavowed an
17 interest in the Tax Refund. The Interpleader Action provided the
18 opportunity for anyone, including Mr. Singh, who claimed an interest
19 in the Proceeds to step forward and make that claim. Mr. Singh did
20 not. Instead, Mr. Singh took the view that the other parties were
21 required to prove that the funds affirmatively belonged to
22 Mr. Singh. If they failed to do that, they could not have the
23 Proceeds; if they succeeded, they were not entitled to the Proceeds
24 because the automatic stay would preclude them from reaching
25 Mr. Singh's property. The bankruptcy court ruled that because
26 Mr. Singh did not make a claim to the Proceeds in his own behalf,

1 the other co-defendants were entitled to judgment against Mr. Singh
2 to preclude him from sharing in any distribution of the Proceeds.
3 On that basis, the bankruptcy court granted Mr. Lipworth's motion on
4 the pleadings.

5 The bankruptcy court next addressed the default entered against
6 Ms. Singh, noting that Ms. Singh had not challenged entry of default
7 against her. The bankruptcy court found significant Ms. Singh's
8 failure to assert a claim to the Proceeds by either filing an answer
9 or seeking relief from the default entered against her. The
10 bankruptcy court explained that a default judgment against Ms. Singh
11 had no impact on Mr. Singh's rights, notwithstanding his contention
12 that it did, such that he had no standing to seek to set aside the
13 default entered against Ms. Singh.

14 Finally, the bankruptcy court approved the settlement pursuant
15 to which Mr. Lipworth and the EDD would share the Proceeds and
16 granted judgment to Mr. Lipworth and the EDD based upon the terms of
17 the settlement. In approving the settlement, the bankruptcy court
18 stated it was fair as to Mr. Singh in that his debts were being paid
19 with the Proceeds. During the course of the discussion regarding
20 the settlement, Mr. Singh gave away his true motivation, which
21 clearly was to preclude any recovery by Mr. Lipworth on the judgment
22 he held against Mr. Singh: "I have no problem if [the Proceeds are]
23 given to EDD." Tr. of Dec. 1 Hearing at 19:19-20.

24 Mr. Singh filed his notice of appeal on December 8, 2011
25 [Docket #93], notwithstanding that no judgment yet had been entered.
26 Civil minute orders granting and denying the motions heard at the

1 December 1 Hearing were entered on the docket on December 19, 2011.
2 The Judgment was entered on December 22, 2011, perfecting the
3 appeal. [Docket #100]. The Judgment (1) determined that Mr. Singh,
4 Ms. Singh, and the Tax Board each had no right to receive payment of
5 the Proceeds, (2) awarded the EDD \$7,381.68 of the Proceeds,
6 (3) awarded Mr. Lipworth \$6,500.00 of the Proceeds, and (4) directed
7 the Clerk to disburse the interpled funds in accordance with the
8 Judgment.

9 II. JURISDICTION

10 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
11 and 157(b)(2)(O). We have jurisdiction under 28 U.S.C. § 158.

12 III. ISSUES

13 Whether the bankruptcy court erred in its award of the
14 Proceeds.

15 Whether the bankruptcy court erred when it determined that no
16 automatic stay existed in the bankruptcy case.

17 IV. STANDARDS OF REVIEW

18 A trial court's denial of a motion to set aside either default
19 under Rule 55(c) or default judgment under Rule 60(b)(1) is reviewed
20 for abuse of discretion. Brandt v. Am. Bankers Ins. Co. Of Fla.,
21 653 F.3d 1108, 1110 (9th Cir. 2011). We apply a two-part test to
22 determine whether the bankruptcy court abused its discretion.
23 United States v. Hinkson, 585 F.3d 1247, 1261-62 (9th Cir. 2009)
24 (en banc). First, we consider de novo whether the bankruptcy court
25 applied the correct legal standard to the relief requested. Id.
26 Then, we review the bankruptcy court's fact findings for clear

1 error. Id. at 1262 & n.20. We must affirm the bankruptcy court's
2 fact findings unless we conclude that they are "(1) 'illogical,'
3 (2) 'implausible,' or (3) without 'support in inferences that may be
4 drawn from the facts in the record.'" Id.

5 We review judgments on the pleadings made under Civil
6 Rule 12(c) de novo. Lyon v. Chase Bank USA, N.A., 656 F.3d 877
7 (9th Cir. 2011). De novo review is independent, with no deference
8 given to the trial court's conclusion. See First Ave. W. Bldg., LLC
9 v. James (In re Onecast Media, Inc.), 439 F.3d 558, 561 (9th Cir.
10 2006).

11 The scope or applicability of the automatic stay under § 362 is
12 a question of law, which is reviewed de novo. Salazar v. McDonald
13 (In re Salazar), 430 F.3d 992, 994 (9th Cir. 2005) ("We review the
14 [bankruptcy court's] interpretation of the bankruptcy code as a
15 question of law and, therefore, review it de novo.").

16 V. DISCUSSION

- 17 I. The Bankruptcy Court Did Not Err In Its Entry of the Judgment
18 A. Mr. Singh Had No Standing To Seek To Vacate the Default
19 Entered Against Ms. Singh

20 A prudential principle of standing is that "[i]n the
21 ordinary case, a party is denied standing to assert the
22 rights of third persons." Arlington Heights v. Metro.
23 Hous. Dev. Corp., 429 U.S. 252, 263, 97 S.Ct. 555, 50
24 L.Ed.2d 450 (1977). However, courts will allow an
25 exception to the third-party standing prohibition in
26 situations where (1) the litigant suffered some sort of
injury-in-fact, (2) there exists some sort of relationship
between the litigant and the person whose rights the
litigant seeks to assert, and (3) some obstacle hinders
the speaker's ability to assert personal rights. Powers
v. Ohio, 499 U.S. 400, 411, 111 S.Ct. 1364, 113 L.Ed.2d
411 (1991).

1 Doe No. 1 v. Reed, 697 F.3d 1235, 1245 n.3 (9th Cir. 2012)(Smith,
2 N.R., Circuit Judge, concurring).

3 The bankruptcy court probed Mr. Singh on the basis for his
4 standing. The burden was on Mr. Singh to establish an exception to
5 the general rule that a party cannot assert the rights of third
6 persons. We will not assume that former spouses have a sufficient
7 relationship to allow one to "advocate" on behalf of another.
8 Further, Mr. Singh did not provide evidence of any "obstacle" to
9 Ms. Singh's ability to assert her own rights. To the contrary, the
10 bankruptcy court recited on the record that Ms. Singh had
11 participated in her own behalf in an earlier proceeding.

12 Additionally, Civil Rule 55(c) provides a bankruptcy court with
13 discretion to set aside a default "for good cause." Mr. Singh did
14 not provide evidence of any cause based upon which Ms. Singh was
15 entitled to relief from entry of the default.

16 It is true that there is a preference for resolving disputes on
17 the merits rather than by default adjudications. However, setting
18 aside Ms. Singh's default would not have furthered this goal; Ms.
19 Singh did not file an answer and thereby did not make herself
20 available for participation in the proceedings. Mr. Singh's
21 concerns about prejudice to him notwithstanding, there was no way
22 for the Interpleader Action to move forward unless Ms. Singh either
23 appeared or was defaulted.⁸ Accordingly, without her presence and
24

25 ⁸ In fact, the only "prejudice" to Mr. Singh in not vacating
26 the default is that the Interpleader Action was allowed to reach

(continued...)

1 participation, default was appropriate.

2 The bankruptcy court did not abuse its discretion in not
3 setting aside the default against Ms. Singh in these circumstances.

4 B. Mr. Singh Waived His Right to Contest the Judgment

5 In his Opening Brief, Mr. Singh asserts as his first issue on
6 appeal only that the bankruptcy court erred when it entered the
7 Judgment dividing the Proceeds between the EDD and Mr. Lipworth.
8 However, the argument with respect to this issue on appeal is
9 couched with repeated statements that the Proceeds should have been
10 awarded to Mr. Singh, because:

11 1. Mr. Singh "controls the finances."

12 2. The bankruptcy court should have dismissed the underlying
13 bankruptcy case; because it did not, all proceedings after the
14 dismissal had been requested "should be voided."

15 3. The bankruptcy court had no jurisdiction to rule on the
16 disposition of the Proceeds, for the reason that the bankruptcy
17 court did dismiss the underlying bankruptcy case before the
18 Interpleader Action was filed,

19 4. At the time of "trial," Mr. Loheit no longer was Trustee
20 and no longer had the Proceeds.

21 5. The Judgment is a default judgment; as such, it was limited
22 to the relief requested. Because everyone asserted in their
23 pleadings that the Tax Refund was Mr. Singh's, the Proceeds should
24

25 ⁸(...continued)
26 resolution.

1 have been awarded to him.

2 6. The Tax Refund was issued in error; therefore, the
3 bankruptcy court had no jurisdiction over the Proceeds.

4 At oral argument, Mr. Singh asserted that the Bankruptcy Code
5 provided that the debtor was to remain in possession of all property
6 of the estate. As the Panel pointed out to Mr. Singh, such
7 possession is subject to supervision by the Trustee and the
8 bankruptcy court. Mr. Singh further appeared to argue that on
9 dismissal all funds held by the Trustee were to be paid to the
10 debtor. The problem for Mr. Singh in this regard is that the funds
11 no longer were held by the Trustee, they were in the court registry,
12 subject to the competing claims being litigated in the Interpleader
13 Action.

14 From his argument, it is clear that Mr. Singh believes the
15 Judgment was entered in error only because the Proceeds were not
16 awarded to him. Unfortunately, in his effort to keep the Proceeds
17 from reaching Mr. Lipworth, Mr. Singh denied in his answer that he
18 had any property interest in the Proceeds. An interpleader action
19 is filed to sort out competing claims to property. See Civil
20 Rule 22. As pointed out by the bankruptcy court, the defendants in
21 the Interpleader Action were charged to present their claims to the
22 Proceeds. Mr. Singh, strategically, did not do so. "A judgment on
23 the pleadings is properly granted when, taking all the allegations
24 in the pleadings as true, [a] party is entitled to judgment as a
25 matter of law.'" Dunlap v. Credit Prot. Ass'n, L.P., 419 F.3d 1011,
26 1012 n.1 (9th Cir. 2005) (per curiam) (quoting Owens v. Kaiser

1 Found. Health Plan, Inc., 244 F.3d 708, 713 (9th Cir.2001)). By not
2 making a claim to the Proceeds in his Answer, Mr. Singh waived his
3 claim to the Proceeds, together with his right to appeal any
4 decision that did not award the Proceeds to him.

5 Left with only two claimants to the Proceeds, the bankruptcy
6 court did not err when it approved the settlement between them and
7 entered Judgment in accordance with that settlement.

8 II. The Issue of Whether the Appellees Violated the Automatic
9 Stay Is Not Properly Before the Panel

10 The Panel need not, in fact cannot, address Mr. Singh's issue
11 on appeal that the bankruptcy court erred in not determining that
12 the Appellees violated the automatic stay. In the Civil Minutes of
13 the Stay Relief Motion the bankruptcy court cautioned Mr. Singh for
14 bringing the motion in light of its prior finding in the main
15 bankruptcy case that no automatic stay existed in the case. That
16 determination is found in the Civil Minutes entered in the main case
17 on March 15, 2011, recited here:

18 **NO AUTOMATIC STAY IN EFFECT IN THE INSTANT BANKRUPTCY CASE**

19 Mr. Singh has filed multiple bankruptcy cases in this
20 court during a one-year period. The first case was filed
21 on November 9, 2009, with that case being dismissed on
22 November 25, 2009. Mr. Singh filed his second bankruptcy
23 case on November 24, 2009, which was dismissed by the
24 court on April 5, 2010. Mr. Singh filed the instant case
25 on April 2, 2010.

26 The Bankruptcy Code was amended by Congress in 2005. The
amendments included several provisions to address
perceived abuses arising from repeat bankruptcy filings by
debtors. 11 U.S.C. § 362(c)(4) provides that if two or
more bankruptcy cases for a debtor were pending within the
previous year, and had been dismissed, the automatic stay
shall not go into effect in the subsequent case.

1 11 U.S.C. § 362(c)(3) provides that if there was a single
2 other case pending for the debtor which was dismissed in
3 the year prior to the subsequent case, then the automatic
4 stay terminates thirty (30) days after the commencement of

5 the subsequent case, unless the debtor files a motion and
6 has a hearing within the 30-day period on a motion to
7 extend the stay.
8 For this Debtor, two prior cases were pending and
9 dismissed in the one year period preceding the April 2,
10 2010, commencement of the current case. No automatic stay
11 went into effect in this case. Additionally, the Debtor
12 has not sought and did not obtain an order to extend the
13 stay, to the extent he contends [only] one [prior case]
14 existed, as required under 11 U.S.C. § 362(c)(3).

9 **DECISION**

10

11 [T]here is no automatic stay in this case which could be
12 violated

13 [Main case Docket #177]. A Civil Minute Order was entered March 17,
14 2011 denying the relief sought in the motion for sanctions that had
15 initiated the Civil Minutes quoted above. [Main case Docket #178].
16 Mr. Singh did not appeal that order. He consequently waived his
17 right to assert in any future proceeding that the automatic stay
18 existed, and he could not legitimately claim any stay violation.

19 **VI. CONCLUSION**

20 Mr. Singh had no standing to seek to vacate the default entered
21 against Ms. Singh. Further, he failed to assert his claim to the
22 Proceeds in his answer, stating instead that the Proceeds belonged
23 to Ms. Singh. He waived his right to complain that the bankruptcy
24 court erred when it granted judgment against him based on his
25 answer. Having claimed no interest in the Proceeds, he cannot now
26 assert on appeal that the bankruptcy court erred by awarding the

1 Proceeds to Appellees.

2 Finally, Mr. Singh did not appeal the bankruptcy court's March
3 2011 determination that no automatic stay was in effect in his case.
4 That determination became final, such that Mr. Singh cannot now
5 complain that the bankruptcy judge relied on it when denying the
6 Stay Motion.

7 We AFFIRM the Judgment of the bankruptcy court.

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