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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

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UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No. CC-13-1042-PaDKi
)	
JAMES CHARLES CHARALAMBOUS,)	Bankr. No. 11-40184-RK
)	
Debtor.)	Adv. Proc. 11-02796-RK
_____)	
)	
SHARON HAMILTON,)	
)	
Appellant,)	
)	
v.)	M E M O R A N D U M ¹
)	
JAMES CHARALAMBOUS,)	
)	
Appellee.)	
_____)	

Argued and Submitted on June 20, 2013
at Pasadena, California

Filed - July 3, 2013

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

Honorable Gregg W. Zive, U.S. Bankruptcy Judge, Presiding²

Appearances: Sidney Lanier of Ayscough & Marar argued for
appellant Sharon Hamilton; Andrew James Thomas of
Thomas & Thomas, LLP argued for appellee James
Charles Charalambous.

Before: PAPPAS, DUNN and KIRSCHER, Bankruptcy Judges.

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

² The Hon. Robert Kwan is the presiding judge in this
bankruptcy case and adversary proceeding. The Hon. Gregg W. Zive
was designated to preside over the trial in this adversary
proceeding and he entered the order on appeal.

1 Creditor Sharon Hamilton ("Hamilton") appeals the order of
2 the bankruptcy court denying her request for attorney's fees in
3 connection with an adversary proceeding. We VACATE and REMAND.

4 **FACTS**

5 In April 2007, Hamilton first contacted chapter 7³ debtor
6 James Charles Charalambous ("Charalambous"), a home design
7 consultant, to discuss a project to remodel her home. Four or
8 five meetings between the parties occurred though July 2007. At
9 some point, Charalambous gave Hamilton a brochure describing his
10 services, which contained the following:

11 **Attorney Fees**

12 In any litigation, arbitration, or other proceeding by
13 which one party either seeks to enforce its rights under
14 this Agreement (whether in contract, tort, or both) or
15 seeks a declaration of any rights or obligations under
16 this Agreement, the prevailing party shall be awarded
17 reasonable attorney fees, together with any costs and
18 expenses, to resolve the dispute and to enforce the
19 final judgment.

20 On July 1, 2007, Hamilton made her first payment to
21 Charalambous, a check for \$10,000. Over the next two years,
22 Hamilton would give thirteen checks to Charalambous totaling
23 \$224,517.34.

24 Charalambous obtained plans, city permits, and referred a
25 contractor, JLJ Construction, Inc. ("JLJ") to Hamilton, which
26 began work on the project in 2008. There was no written agreement
27 between Hamilton and JLJ, or between JLJ and Charalambous.

28 The relationship between Hamilton and Charalambous ended in

³ Unless otherwise indicated, all chapter and section
references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All
rule references are to the Federal Rules of Bankruptcy Procedure,
Rules 1001-9037.

1 December 2009. On January 29, 2010, Hamilton sued Charalambous in
2 state court, alleging breach of contract and fraud; Charalambous
3 asserted a cross-complaint against Hamilton for defamation and
4 emotional distress. Hamilton v. Charalambous, case no. LASC YC
5 061580 (Los Angeles Superior Court).

6 Trial in the state court was scheduled to begin on July 26,
7 2011. However, Charalambous filed a petition for bankruptcy
8 relief under chapter 7 on July 14, 2011.

9 Hamilton commenced an adversary proceeding against
10 Charalambous in the bankruptcy court on September 21, 2011. In
11 the complaint she sought an exception to discharge under
12 § 523(a)(2)(A), alleging that Charalambous had engaged in
13 intentional fraud in his dealings with Hamilton, including his
14 representation to her that he was "fully licensed." Hamilton also
15 sought an exception to discharge under § 523(a)(4) for breach of
16 fiduciary duty, and under § 523(a)(6) for willful and malicious
17 injury to Hamilton. Before trial, Charalambous placed the
18 remaining funds in his possession provided to him by Hamilton,
19 \$126,663.00, in a separate account on the advice of his attorney.

20 The trial in the adversary proceeding occurred on October 9,
21 10 and 11, 2011. Hamilton and Charalambous were present and
22 represented by counsel. Witnesses testified, including Hamilton
23 and Charalambous; the parties also submitted declaratory evidence.

24 The bankruptcy court entered Findings of Fact and Conclusions
25 of Law on November 19, 2012. The court determined "after
26 considering the facts and credibility of the witnesses, the court
27 is not persuaded that plaintiffs have shown defendant acted with
28 an intent to deceive." As to Hamilton's § 523(a)(6) claim, the

1 court found that "plaintiff has not proved by a preponderance of
2 the evidence that defendant deliberately or intentionally injured
3 plaintiff."

4 However, the bankruptcy court held in Hamilton's favor on her
5 claim for an exception to discharge under § 523(a)(4). The court
6 determined that an express trust existed between Hamilton and
7 Charalambous; that Charalambous was in a fiduciary relationship
8 with Hamilton; and that Charalambous committed defalcation. Since
9 Hamilton established by a preponderance of the evidence all of the
10 elements required by § 523(a)(4), the court concluded that
11 "plaintiff is entitled to a judgment that \$126,663.00 is a
12 nondischargeable debt pursuant to 11 U.S.C. § 523(a)(4)." A
13 judgment incorporating these findings was entered on November 29,
14 2012. That judgment was not appealed.

15 Hamilton filed a motion for an award of prejudgment interest
16 on November 28, 2012. The same day, Hamilton also filed a motion
17 for an award of attorney's fees (the "Fee Motion").⁴ Charalambous
18 did not oppose either motion in the bankruptcy court.

19 In the Fee Motion, Hamilton asserted that she was entitled to
20 recover her attorney's fee incurred in the discharge litigation
21 under the provision in the brochure given to her by Charalambous.
22 Relying upon Cal. Code Civ. P. § 1021, which allows recovery of
23 attorney's fees by a prevailing party, Hamilton submitted time
24 records indicating a total of \$254,291.25 in charges, which she
25 sought to recover from Charalambous.

26 Since Charalambous did not oppose the Fee Motion, the court

27

28 ⁴ Hamilton did not request costs as part of the Fee Motion,
only fees based on attorney time records.

1 did not hold a hearing. Instead, on January 22, 2013, it entered
2 a Memorandum of Decision disposing of both of Hamilton's motions.
3 While it granted Hamilton's request for prejudgment interest, the
4 bankruptcy court denied Hamilton's motion for an award of
5 attorney's fees.

6 In the Memorandum of Decision, the bankruptcy court did not
7 discuss the application of Cal. Code Civ. P. § 1021 to Hamilton's
8 fee request. Instead, the court analyzed Hamilton's request under
9 Cal. Civ. Code § 1717, which provides, in pertinent part, "where
10 the contract specifically provides that attorney's fees . . . ,
11 which are incurred to enforce that contract, shall be awarded
12 . . . to the prevailing party, then the [prevailing] party . . .
13 shall be entitled to reasonable attorney's fees" Under
14 Cal. Civ. Code § 1717(d)(1), "the prevailing party on the contract
15 shall be the party who recovered a greater relief in the action on
16 the contract. The trial court may also determine that there is no
17 party prevailing on the contract for purposes of this section."
18 Because the bankruptcy court ruled in Charalambous' favor on
19 Hamilton's claims under §§ 523(a)(2)(A) and (a)(6), and because
20 the bankruptcy court did not rely upon the existence of a contract
21 to grant Hamilton relief under § 523()(4), the bankruptcy court
22 declined to award Hamilton attorney's fees under the California
23 statute.

24 Hamilton filed a timely appeal of the denial of attorney's
25 fees in the Memorandum of Decision on February 1, 2012.

26 JURISDICTION

27 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
28 and 157(b)(2)(B) and (I). We have jurisdiction under 28 U.S.C.

1 § 158.

2 **ISSUES**

- 3 1. Whether Charalambous has standing to appear in this appeal.
4 2. Whether the bankruptcy court abused its discretion in denying
5 an award of attorney's fees and costs to Hamilton under state
6 law.

7 **STANDARD OF REVIEW**

8 Whether an appellee has standing to appear in an appeal is
9 reviewed de novo. Caudill v. N.C. Machinery, Inc. (In re Am.
10 Eagle Machinery, Inc.), 231 B.R. 320 (9th Cir. 1999).

11 A bankruptcy court's denial of attorney's fees is reviewed
12 for abuse of discretion. Renwick v. Bennett (In re Bennett),
13 298 F.3d 1059, 1063 (9th Cir. 2002). Whether a state statute
14 permits an award of attorney's fees is reviewed de novo. Kona
15 Entm't, Inc. v. Estate of Bishop, 229 F.3d 877, 883 (9th Cir.
16 2000).

17 A bankruptcy court abuses its discretion if it applies the
18 wrong legal standard or its factual findings are illogical,
19 implausible or without support in the record. TrafficSchool.com
20 v. Edriver Inc., 653 F.3d 820, 832 (9th Cir. 2011).

21 **DISCUSSION**

22 **I.**

23 **Charalambous has standing to appear in this appeal.**

24 Hamilton argued in her Reply Brief that because Charalambous
25 did not oppose the motion for attorney's fees in the bankruptcy
26 court, his positions should not be considered on appeal. We
27 disagree.

28 The Panel has previously decided this question in a case

1 precisely on point. Caudill v. N.C. Mach., Inc., (In re Am. Eagle
2 Mach., Inc.), 231 B.R. at 320 (9th Cir BAP 1999). In that case,
3 the appellant argued that since the appellee had not opposed or
4 participated in the proceedings leading to entry of the order on
5 appeal, the appellee should not be allowed to argue its position
6 or participate in the appeal. The BAP ruled that opposition in
7 the bankruptcy court to the issue on appeal was not a prerequisite
8 to the appellee's participation on appeal. Instead, the Panel
9 noted that the only requirement for appellee standing in that case
10 was whether that appellee was "directly and adversely affected
11 pecuniarily by an order of the bankruptcy court"
12 In re Am. Eagle Mach., Inc. 231 B.R. at 238, citing
13 In re Fondiller, 707 F.2d 441, 442-43 (9th Cir. 1983).

14 Although Charalambous did not oppose Hamilton's motion for an
15 award of attorney's fees in the bankruptcy court, he would
16 obviously hold a direct pecuniary interest in the outcome of this
17 appeal. Thus, Charalambous has standing to appear in this appeal
18 and we have considered his arguments in resolving the issues.

19 II.

20 **The bankruptcy court abused its discretion because**
21 **it applied the incorrect statute in its decision**
22 **concerning Hamilton's motion for attorney's fees.**

23 Hamilton argues that she was entitled to recover attorney's
24 fees incurred in the litigation in the bankruptcy court. As
25 instructed by the Supreme Court in Traveler's Cas. & Sur. Co. of
26 Am. v. Pac. Gas & Elec. Co., 549 U.S. 443 (2007), in bankruptcy
27 cases,

28 The American rule that "the prevailing litigant is
ordinarily not entitled to collect a reasonable
attorney's fees from the loser, Alyeska Pipe Line Serv.

1 Co. v. Wilderness Soc'y, 421 U.S. 240 . . . may be
2 overcome by, inter alia, an "enforceable contract"
3 allocating such fees, Fleishchman Distilling Corp. v.
4 Maier Brewing Co., 386 U.S. 714 A contract
5 allocating attorney's fees that is enforceable under
6 substantive, nonbankruptcy law is allowable in
7 bankruptcy except where the Bankruptcy Code provides
8 otherwise.

9 Id. at 443.

10 Here, the applicable "substantive, nonbankruptcy law" is
11 California state law. S. Cal. Permanente Med. Grp. v. Ehrenberg
12 (In re Moses), 215 B.R. 27, 32 (9th Cir. BAP 1997). California
13 law allows enforcement of agreements for attorney's fees in Civil
14 Code § 1717 ("CC § 1717")⁵ and Code of Civil Procedure § 1021
15 ("CCP § 1021")⁶. Although the parties do not dispute that these
16 provisions of the California codes govern attorney's fees, they
17 contest which of these two provisions should be applied in this
18 case. As we discuss below, CCP § 1021 applies in tort as well as
19 contract disputes, but CC § 1717 applies only in contract
20 disputes. The dispute between Hamilton and Charalambous that
21 resulted in a decision in favor of Hamilton under § 523(a)(4) for
22 defalcation was, at bottom, a tort dispute. Thus, the bankruptcy

23 ⁵ CC § 1717 provides that:

24 (a) "In any action on a contract, where the contract
25 specifically provides that attorney's fees and costs, which
26 are incurred to enforce that contract, shall be awarded to
27 . . . the prevailing party, . . . the party prevailing on the
28 contract . . . shall be entitled to reasonable attorney's
29 fees in addition to other costs."

30 ⁶ CCP § 1021 provides that:

31 "Except as attorney's fees are specifically provided for by
32 statute, the measure and mode of compensation of attorneys
33 and counselors at law is left to the agreement, express or
34 implied, of the parties. . . ."

1 court's reliance on CC § 1717 to dispose of Hamilton's request for
2 attorney's fees was misplaced and an abuse of discretion.

3 **A. There was an agreement between Hamilton and Charalambous**
4 **providing for an award of attorney's fees to the prevailing**
5 **party in a tort dispute.**

6 Under either CC § 1717 or CCP § 1021, an agreement or
7 contract must exist between the parties that provides for an award
8 of attorney's fees to the prevailing party in any litigation
9 between them. Such an agreement existed in this case.

10 In their pretrial order, the parties stipulated as an agreed
11 fact that:

12 9. Charalambous gave Hamilton a brochure which
13 contained names of prior clients who would recommend
14 him. The brochure is the written part of the agreement
15 with Charalambous.

16 Joint Pretrial Order at 3, July 31, 2012 (emphasis added).

17 The bankruptcy court accepted this stipulated fact and
18 incorporated it verbatim as a finding of fact in its Findings of
19 Fact and Conclusions of Law entered on November 19, 2012. Finding
20 of Fact 16 additionally noted that the brochure had been admitted
21 into evidence. Elsewhere in the Findings/Conclusions, the court
22 referred to this brochure as part of the "contract" between the
23 parties:

24 Finding of Fact 46: "The court finds that there is no
25 indication that defendant was attempting to fraudulently
26 induce plaintiff to enter into the contract (Exhibit 1)
27 with defendant."

28 * * *

Conclusion of Law 59: "Defendant denied stating he was
fully licensed and qualified. The contract (Exhibit 1)
does not contain any reference or assertion that
defendant or JCD was a licensed contractor. The scope of
the work described in Exhibit 1 does not describe the
work of a general contractor but states the contractor

1 will have to be selected"

2 As noted above, the brochure included a broad attorney's fee
3 provision:

4 **Attorney Fees**

5 In any litigation, arbitration, or other proceeding by
6 which one party either seeks to enforce its rights under
7 this Agreement (whether in contract, tort, or both) or
8 seeks a declaration of any rights or obligations under
9 this Agreement, the prevailing party shall be awarded
reasonable attorney fees, together with any costs and
expenses, to resolve the dispute and to enforce the
final judgment.

10 The parties do not dispute that this clause in the brochure was
11 part of their agreement, or that its meaning is plain. Therefore,
12 on this record, we conclude that there was a contract between
13 Hamilton and Charalambous concerning the remodeling project, and
14 that the contract (the written part of which was the brochure)
15 provided for recovery of attorney's fees by the prevailing party
16 in any tort or contract dispute between the parties.⁷

17 The parties also do not dispute that Hamilton prevailed on
18 one of her claims in the bankruptcy court, that Charalambous' debt
19 to her should be excepted from discharge under § 523(a)(4) for
20 defalcation. Defalcation in California law is a tort. Brown v.
21 Kenney, 2012 Bankr. LEXIS 4127, 2012 WL 3867425 (Bankr. N.D. Cal.
22 September 4, 2012) (agreeing with an arbitrator's finding that,

23
24 ⁷ In the Memorandum of Decision, the bankruptcy court stated
25 that it "did not address the validity or existence of a contract
26 between the parties. The court's Findings of Fact and Conclusions
27 of Law are explicitly silent on that issue." This observation is
28 somewhat perplexing. In granting relief to Hamilton under
§ 523(a)(4), the bankruptcy court determined that an "express
trust" existed between the parties. The court's insistence that
it did not rule explicitly on the existence or validity of the
parties' contract is also seemingly at odds with its Findings 16,
46 and Conclusion 59 quoted above.

1 under California law, defalcation was the tort of constructive
2 fraud). See also Cal. Civ. Code § 1573 ("Constructive Fraud: In
3 any breach of duty which, without an actually fraudulent intent,
4 gains an advantage to the person in fault, or any one claiming
5 under him, by misleading another to his prejudice, or to the
6 prejudice of any one claiming under him[.]" Accordingly, the
7 dispute between Hamilton and Charalambous resulting in exception
8 to discharge of Charalambous' debt to Hamilton was a tort, not a
9 contract, dispute.⁸

10 **B. CC § 1717 only applies in contract disputes. In this case,**
11 **CCP § 1021 is applicable to determine whether Hamilton may**
12 **recover attorneys fees.**

12 In the bankruptcy court, Hamilton sought an award of
13 attorney's fees under CCP § 1021. The bankruptcy court did not
14 consider Hamilton's request under CCP § 1021, but rather analyzed
15 the request under CC § 1717. Since CC § 1717 is only implicated
16 in contract disputes, the bankruptcy court abused its discretion
17 by applying an incorrect rule of law to resolve Hamilton's motion.

18 CC § 1717(a) provides:

19 In any action on a contract, where the contract
20 specifically provides that attorney's fees and costs,
21 which are incurred to enforce that contract, shall be
22 awarded either to one of the parties or to the
23 prevailing party, then the party who is determined to be
24 the party prevailing on the contract, whether he or she
25 is the party specified in the contract or not, shall be
26 entitled to reasonable attorney's fees in addition to
27 other costs.

24 By its terms, then, CC § 1717 only applies in an "action on a
25 contract, where the contract specifically provides that attorney's

27 ⁸ In fact, although Hamilton asserted a cause of action for
28 breach of contract in the state lawsuit, she dropped that claim in
this adversary proceeding.

1 fees and costs, which are incurred to enforce that contract . . .
2 .” California courts have uniformly ruled that CC § 1717 is to be
3 narrowly applied, and is available to a party only if the dispute
4 involves litigation of a contract claim. Santisas v. Goodin,
5 951 P.2d 399, 409 (Cal. 1998) (“[S]ection 1717 applies only to
6 attorney fees incurred to litigate contract claims.”). The BAP
7 has previously relied upon Santisas on this specific issue.
8 Redwood Theaters, Inc. v. Davison (In re Davison), 289 B.R. 716,
9 723 (9th Cir. BAP 2003) (“[W]e will follow [Santisas]’ holding and
10 narrowly apply CCC § 1717 and approve attorney’s fees only if the
11 action involves a contract claim.”). Therefore, under both
12 California controlling law and BAP authority,⁹ we must hold that
13 CC § 1717 can only be applied to attorney’s fees disputes based on
14 contract claims.

15 The California Supreme Court has been equally clear that
16 CC § 1717 is inapplicable in actions involving tort claims.
17 Santisas, 951 P.2d at 409 (tort claims are “outside the ambit of
18 section 1717”); accord Redwood Theaters, Inc., 289 B.R. at 724
19 (attorney’s fees for tort claims are not recoverable under
20 CC § 1717). Our decision in Redwoods Theaters provides additional
21 guidance on the dispute in this appeal. After noting that
22 CC § 1717 only applies in contract disputes, the panel noted that,
23 “CCP § 1021 does not limit the recovery of attorney’s fees to
24 [contract] claims. . . . [A]ttorney’s fees may be recoverable

25
26 ⁹ Ordinarily, published BAP decisions are binding on future
27 panels. However, the Ninth Circuit instructs that interpretations
28 of state law are not binding precedent. In re Complaint of
McLinn, 739 F.2d 1395, 1401 (9th Cir. 1984). Nevertheless, a BAP
opinion founded upon a California Supreme Court decision is
persuasive authority in resolving a question of California law.

1 under CCP § 1021 even though they are not recoverable under
2 CC § 1717. . . . California law permits recovery of attorney's
3 fees by agreement, for tort as well as contract actions." Id. at
4 724.

5 Hamilton requested an award of attorney's fees under
6 CCP § 1021. That statute provides:

7 Except as attorney's fees are specifically provided for
8 by statute, the measure and mode of compensation of
9 attorneys and counselors at law is left to the
agreement, express or implied, of the parties. . . ."

10 CCP § 1021(a). CCP § 1021 also implicates Cal. Code Civ. P.
11 §§ 1032 and 1033(5):

12 (a) As used in this section, unless the context clearly
13 requires otherwise: . . . (4) "Prevailing party"
14 includes the party with a net monetary recovery, a
15 defendant in whose favor a dismissal is entered, a
16 defendant where neither plaintiff nor defendant obtains
17 any relief, and a defendant as against those plaintiffs
18 who do not recover any relief against that defendant.
19 When any party recovers other than monetary relief and
in situations other than as specified, the "prevailing
party" shall be as determined by the court, and under
those circumstances, the court, in its discretion, may
allow costs or not. . . . (b) Except as otherwise
expressly provided by statute, a prevailing party is
entitled as a matter of right to recover costs in any
action or proceeding.

20 CC 1032(a) and (b). CCP 1033.5(a)(10)(A) provides:

21 (a) The following items are allowable as costs under
22 Section 1032: . . . (10) Attorney fees, when authorized
by any of the following: . . . (A) Contract.

23 Collectively, by their terms, CCP § 1021, and Cal. Code Civ.
24 P. §§ 1032 and 1033 make clear that attorney's fees may be sought
25 by a prevailing party in disputes sounding in either tort or
26 contract. Indeed, as the California courts have uniformly ruled,
27 CCP § 1021 and Cal. Code Civ. P. § 1032 are the only bases for
28 awards of attorney's fees in tort disputes when provided by

1 agreement of the parties. Xuereb v. Marcus & Millichap, Inc.,
2 3 Cal. App. 4th 1338, 1342 (1992); Maynard v. BTI Grp, Inc.,
3 ___ Cal. App.4th ___, slip op. at 1 (Cal. Ct. App. May 29, 2013).¹⁰

4 As discussed above, the bankruptcy court's ruling in favor of
5 Hamilton under § 523(a)(4) for defalcation in effect settled a
6 tort dispute. As such, CC § 1717 was not to be applied to resolve
7 Hamilton's motion for attorney's fees, and the bankruptcy court's
8 reliance on that statute constitutes an abuse of discretion. The
9 proper statute for consideration of Hamilton's request for
10 attorney's fees is CCP § 1021. We will therefore vacate the
11 bankruptcy court's order denying Hamilton's motion, and remand
12 this matter to the bankruptcy court for consideration of
13 Hamilton's request under CCP § 1021.¹¹

14 _____
15 ¹⁰ On May 30, 2013, Hamilton submitted a request that the
16 Panel take judicial notice of the recent Maynard decision. More
17 appropriately, we elect to treat this request as one to submit
18 supplemental authorities pursuant to Fed. R. App. P. 28(j).
19 Charalambous was given notice of Hamilton's request and has not
20 objected. In addition, we note that this new decision merely
21 restates existing case law, and would not in itself affect our
22 decision in this case. We therefore GRANT Hamilton's request.

23 ¹¹ On remand, the bankruptcy court must necessarily consider
24 whether Hamilton was a prevailing party in this litigation for
25 purposes of CCP § 1021. While the court apparently determined in
26 its Memorandum of Decision that Hamilton was not a prevailing
27 party under CC § 1717, largely because Charalambous successfully
28 defended against Hamilton's claims for exceptions to discharge
under §§ 523(a)(2)(A) and 523(a)(6), the legal standard for a
prevailing party under CCP § 1021 allows for the exercise of less
discretion by the trial court, and CCP § 1021, through Cal. Code
Civ. P. § 1032(a)(4), defines a prevailing party to include:
"(1) the party with a net monetary recovery, (2) a defendant in
whose favor a dismissal is entered, (3) a defendant where neither
plaintiff nor defendant obtains any relief, and (4) a defendant as
against those plaintiffs who do not recover any relief against
that defendant. See Michell v. Olick, 49 Cal. App.4th 1194, 1198
(Cal. Ct. App. 1996) (holding that a prevailing party under
CCP § 1021 is "entitled to costs as a matter of right; the trial
(continued...)

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CONCLUSION

We VACATE that portion of the bankruptcy court's decision denying Hamilton's motion for attorney's fees and REMAND this matter for further proceedings.

¹¹(...continued)
court has no discretion to order each party to bear his or her own costs.").