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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NOT FOR PUBLICATION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.	SC-12-1272-BaPaJu
6	ANTONIO GALINDO,)	Bk. No.	10-12794-MM7
7	Debtor.)	Adv. No.	10-90473
8	_____)		
9	ANTONIO GALINDO,)		
10	Appellant,)		
11	v.)	MEMORANDUM¹	
12	JARRED WHITED,)		
13	Appellee.)		
	_____)		

Argued and Submitted on May 15, 2013
at Pasadena, California

Filed - July 8, 2013

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

Honorable Margaret M. Mann, Bankruptcy Judge, Presiding

Appearances: Daniel Marshall, Esq. argued for Appellant;
Ellen Ezelle Turnage, Esq. of McCoy, Turnage &
Robertson LLP argued for Appellee.

Before: BASON,² PAPPAS, and JURY, 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 Hon. Neil W. Bason, Bankruptcy Judge for the Central District of California, sitting by designation.

1 Chapter 7³ debtor Antonio Galindo ("Galindo") appeals from
2 the bankruptcy court's judgment awarding \$78,075.07 in attorney
3 fees and costs against him on a nondischargeability judgment of
4 \$1,648.29. Galindo's principal arguments are that the fees and
5 costs are excessive, disproportionate to actual damages, and
6 should not include compensation for prosecution of a state court
7 action that was commenced before this adversary proceeding. We
8 AFFIRM.

9 I. FACTS

10 In December 2009, appellee Jarred L. Whited ("Whited"), a
11 twenty-year-old Navy sailor, together with his eighteen-year-old
12 wife visited Galindo's used car dealership, National KARS, Inc.
13 dba Southbay Preowned ("Southbay"). The Whiteds became
14 interested in a 2006 Hyundai Sonata (the "Sonata") that they saw
15 on the lot.

16 Whited offered his wife's Ford Focus (the "Focus") as a
17 trade-in on the sale. At Galindo's suggestion, the Whiteds
18 transferred the Focus to Southbay for a \$1,500 credit on the
19 sale.

20 A. Galindo's Wrongful Acts

21 Whited financed the \$12,100 balance under a Retail
22 Installment Sales Contract (the "Contract") that listed Southbay
23 as the secured creditor and seller of the Sonata. The Contract
24 stated that Southbay had ten days after the sale of the Sonata to
25 sell the Contract to a financing company or else Southbay would

26
27 ³ Unless otherwise indicated, all chapter and section
28 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 carry the financing itself.

2 Galindo told Whited that Security National Automotive
3 Acceptance Corporation ("SNAAC") had agreed to finance the sale,
4 and Galindo arranged an automatic debit to SNAAC from Whited's
5 bank account. On December 31, 2009, SNAAC received the first
6 payment on the Contract from Whited's bank account, although the
7 payment was not actually due until January 17, 2010.

8 In fact, SNAAC had not committed to purchase the Contract.
9 When Whited discovered that fact and other misrepresentations by
10 Galindo, he sought either to rescind the Contract or to clarify
11 that the purchase was being financed by Southbay. Whited offered
12 to set up another allotment from his military pay for Southbay's
13 benefit for the February payment, and he asked for a payment plan
14 or invoice to reflect the status of the payments that he had
15 already made on the Contract.

16 Galindo refused these requests. Instead he insisted that
17 Whited make the January payment a second time - this time to
18 Southbay instead of SNAAC - and stated that otherwise Southbay
19 would repossess the Sonata.

20 On January 31, 2010, at Galindo's direction, a tow company
21 repossessed the Sonata. Whited retained counsel, who wrote to
22 Galindo on February 2, 2010, asserting numerous violations of
23 California law and demanding that Galindo rescind the deal and
24 return Mrs. Whited's Focus. Instead, Southbay foreclosed on the
25 Sonata (and sold it to another customer on March 19, 2010 for
26 slightly more than the sale price to Whited). At the end of May,
27 2010, Southbay sold the Focus to a related dealership owned by
28

1 Galindo (which resold it for \$5,495).⁴ Southbay then closed its
2 business.

3 **B. Whited's Actions Against Galindo**

4 Whited sued Galindo and Southbay in state court. Galindo
5 did not respond but, before Whited could obtain a default
6 judgment, Galindo filed a voluntary petition under Chapter 7 of
7 the Bankruptcy Code on July 21, 2010 (the "Petition Date").

8 On September 28, 2010, Whited timely filed his
9 nondischargeability complaint in the bankruptcy case. On
10 January 3, 2012, the bankruptcy court conducted a trial regarding
11 Whited's claims under Sections 523(a)(2)(A) and 523(a)(6).⁵

12 After a trial the bankruptcy court issued a memorandum
13 decision finding that Galindo made false statements to Whited
14 with regard to the condition of the vehicle and financing, and
15 concluding that Galindo was liable to Whited for statutory and
16 common law fraud and conversion, including under the California
17 Consumers Legal Remedies Act (the "Consumer Remedies Act"). Cal.
18 Civ. Code § 1770 et seq. The bankruptcy court ruled that the
19 debt was nondischargeable under Section 523(a)(2)(A), and that
20 because Galindo's acts were willful and malicious, the debt was
21 also nondischargeable under Section 523(a)(6).

22 **C. Attorney fees and costs**

23 The bankruptcy court ruled that Galindo was liable for
24

25 ⁴ The bankruptcy court did not evaluate any claims relating
26 to the trade-in of the Focus because that was Mrs. Whited's
separate property and she was not designated as a co-plaintiff.

27 ⁵ The Complaint also asserted a claim for denial of
28 discharge under Section 727(a)(2). But Whited abandoned that
claim before trial.

1 Whited's legal expenses under California Civil Code § 1780(e).
2 In post-trial proceedings the parties filed briefs addressing the
3 dollar amount of fees and costs to be awarded.

4 Whited sought \$91,600.00 in attorney fees and \$2,785.07 in
5 costs. The bankruptcy court issued a tentative ruling (the
6 "Tentative Ruling") allowing \$75,440.00 in fees and \$2,635.07 in
7 costs. After hearing oral argument the bankruptcy court adopted
8 the Tentative Ruling and included the fees and costs in its
9 judgment. Galindo timely filed a notice of appeal. He does not
10 challenge the underlying nondischargeability judgment of
11 \$1,648.29, but he does challenge the award of legal fees and
12 costs.

13 II. ISSUE

14 Whether the bankruptcy court abused its discretion in its
15 award of attorney fees and costs to Whited.⁶

16 III. JURISDICTION AND AUTHORITY

17 We have jurisdiction under 28 U.S.C. § 158. The bankruptcy
18 court had both the jurisdiction and authority to hear Whited's
19 claims, including any award of attorney fees. Deitz v. Ford
20 (In re Deitz), 469 B.R. 11 (9th Cir. BAP 2012) (interpreting
21 Stern v. Marshall, 131 S.Ct. 2594 (2011)). See also 28 U.S.C.
22 §§ 157(b)(2)(I) & 1334(b).

23 IV. STANDARD OF REVIEW

24 We review the bankruptcy court's award of attorney fees for
25 an abuse of discretion. Feder v. Lazar (In re Lazar), 83 F.3d

26
27 ⁶ In his brief, Whited also requests that this Panel award
28 Whited his attorney fees for litigating this appeal. Whited may
seek such fees by appropriate post-judgment proceedings before
the Bankruptcy Court.

1 306, 308 (9th Cir. 1996). A bankruptcy court abuses its
2 discretion if it bases its decision on an incorrect legal rule or
3 if its application of the correct legal standard was "illogical,
4 implausible, or without support in inferences that may be drawn
5 from the facts in the record." Ellsworth v. Lifescape Med.
6 Assoc., P.C. (In re Ellsworth), 455 B.R. 904, 914 (9th Cir. BAP
7 2011) (quoting United States v. Hinkson, 585 F.3d 1247, 1261-62 &
8 n.21 (9th Cir. 2009) (en banc)).

9 V. DISCUSSION

10 On appeal, Galindo argues that the bankruptcy court did not
11 have authority to award attorney fees under California Civil Code
12 § 1780(e). Alternatively, Galindo argues that Whited was not the
13 prevailing party, or that the fees and costs awarded were not
14 reasonable.

15 A. The bankruptcy court had authority to award attorney 16 fees to Whited under California law.

17 The "American Rule" is that attorney fees generally are not
18 recoverable by a prevailing party unless specifically allowed by
19 contract or statute. Alyeska Pipeline Serv. Co. V. Wilderness
20 Soc'y, 421 U.S. 240, 257-58 (1975); Heritage Ford v. Baroff
21 (In re Baroff), 105 F.3d 439, 441 (9th Cir. 1997). In a
22 nondischargeability action, attorney fees can be included if the
23 fees are recoverable under a state statute. Bertola v. N. Wis.
24 Prod. Co. (In re Bertola), 317 B.R. 95, 99-100 (9th Cir. BAP
25 2004); see also Deitz, 469 B.R. 11.

26 Under the Consumers Remedies Act, representations "that a
27 transaction confers or involves rights, remedies, or obligations
28 which it does not have or involve" constitute unlawful, unfair

1 practices. Cal. Civ. Code § 1770(a)(2) and (14). "Any consumer
2 who suffers any damage as a result of the use or employment by a
3 person of [an unlawful practice] may bring an action against that
4 person . . ." Cal. Civ. Code § 1780(a). Upon a final
5 determination, "[t]he court shall award court costs and
6 attorney's fees to a prevailing plaintiff . . ." Cal. Civ. Code
7 § 1780(e) (emphasis added).

8 The bankruptcy court concluded, and Galindo does not
9 contest, that Whited's claims come within the Consumer Remedies
10 Act, which mandates attorney fees to a prevailing plaintiff.
11 Therefore, if Whited is properly characterized as the prevailing
12 party, the bankruptcy court was both authorized and required to
13 award attorney fees and costs against Galindo.

14 **B. Galindo misstates the facts.**

15 Before addressing the merits of Galindo's arguments, we must
16 clarify a number of factual matters that Galindo misstates.
17 Galindo assumes that approximately \$27,210 of the bankruptcy
18 court's judgment is attributable to the state court litigation.
19 Galindo challenges these fees and costs on several grounds: he
20 claims that Whited was not the prevailing party in that
21 litigation; he argues that the state court proceedings were
22 duplicative of work done in the bankruptcy court; and he claims
23 that it is virtually impossible to separate the attorney fees and
24 costs incurred in pursuing Southbay from those incurred in
25 pursuing Galindo himself.

26 It is true that according to Whited's nondischargeability
27 complaint he had incurred attorney fees and costs of \$27,210 as
28 of September 27, 2010. But Whited included only a portion of

1 those fees and costs in his total request to the bankruptcy
2 court. At oral argument before us Whited's counsel confirmed
3 that Whited had omitted from his fee request any state court
4 litigation that might be duplicative and any fees incurred in
5 pursuing Southbay. We calculate, based on the daily time and fee
6 records submitted to the bankruptcy court, that the fees
7 requested through September 27, 2010 add up to an aggregate of
8 \$14,080, not \$27,210.

9 Moreover, most of that \$14,080 involves nondischargeability
10 research and other matters that appear to be bankruptcy-related.
11 Only the initial, one-page invoice appears to include any
12 nonbankruptcy matters. That invoice is for \$6,040, and after
13 deducting the one bankruptcy matter on that invoice - \$1,120 to
14 "[d]raft motion to lift stay" - it appears that the dollar amount
15 sought by Whited in connection with the state court litigation
16 was only \$4,920 ($\$6,040 - \$1,120 = \$4,920$).

17 As for Galindo's assertion that Whited was not the
18 prevailing party in the state court litigation, it is true that
19 Whited's claims against Galindo eventually were dismissed by the
20 state court. But that appears to be because the litigation was
21 pursued in the bankruptcy court rather than the state court.
22 Galindo has not shown how the state court dismissal in any way
23 reflects negatively against Whited.

24 Galindo asserts that the fees and costs incurred in
25 connection with the state court litigation must have been
26 duplicative, but he has not pointed us to anything in the
27 excerpts of record to support that assertion. We are not
28 required to scour the record to find support for his arguments.

1 See Mitchel v. Gen. Elec. Co., 689 F.2d 877, 878-79 (9th Cir.
2 1982).

3 In any event we have thoroughly reviewed the daily time
4 records and they do not show any duplication. To the contrary,
5 they reflect non-duplicative tasks that are equally necessary to
6 litigation in either state court or bankruptcy court. For
7 example, the daily time records include an initial meeting
8 between the Whiteds and their attorney, drafting damage
9 calculations, drafting a notice to the dealership, reviewing
10 documents from the Department of Motor Vehicles, drafting a time
11 line of events, and researching the statutes and case law
12 relevant to the claims against Galindo. All of those tasks would
13 have been properly undertaken in contemplation of filing a
14 nondischargeability complaint if they had not already been done
15 in connection with the state court litigation. Likewise, the
16 minimal time billed for initial drafting of the state court
17 complaint is not duplicative because the same claims had to be
18 litigated in the nondischargeability action. In other words,
19 Galindo has not supported his factual assertions that any charges
20 were duplicative or unnecessary.

21 With these factual clarifications, we turn to the legal
22 merits of Galindo's arguments.

23 **C. The bankruptcy court did not abuse its discretion in**
24 **determining that Whited was the prevailing party on**
most issues.

25 Galindo argues that Whited's prosecution of the state court
26 action did not "directly contribute" to resolution of the
27 nondischargeability litigation. Therefore, he claims, Whited was
28 not the prevailing party for purposes of any fees relating to the

1 state action.

2 Galindo has not established that legal fees and costs are
3 only recoverable if they "directly contribute[d]" to the
4 bankruptcy litigation. Fees for preparing a demand letter to
5 Galindo, for example, would appear to be recoverable under the
6 Consumer Remedies Act regardless of whether that letter directly
7 contributed to the bankruptcy litigation.

8 Galindo relies on a case that involved parallel efforts by
9 both a private individual and an attorney general, each on behalf
10 of a government entity. Ciani v. San Diego Trust & Sav. Bank,
11 25 Cal. App. 4th 563 (1994). Unlike the parties in Ciani, Whited
12 was not a party to two matters that proceeded in parallel.
13 Rather, Whited commenced his claims against Galindo in state
14 court; that action was stayed by the automatic stay of
15 Section 362(a) when Galindo filed his chapter 7 petition; and
16 Whited successfully concluded his litigation in the bankruptcy
17 court by obtaining a judgment against Galindo.

18 It is true that Whited did not prevail on every issue in the
19 state court and the bankruptcy court. But the bankruptcy court
20 had broad discretion in determining whether to recognize Whited
21 as the prevailing party based on "equitable considerations" when
22 it was "clear that [he] has otherwise achieved [his] main
23 litigation objective." Graciano v. Robinson Ford Sales, Inc.,
24 144 Cal. App.4th 140, 151 (2006) (quoting Castro v. Super. Ct.,
25 116 Cal. App.4th 1010, 1019-20 (2004)).

26 Moreover, as discussed below, the bankruptcy court did
27 disallow some fees for issues on which it found that Whited was
28 not the prevailing party. For all of these reasons, Galindo has

1 not shown any abuse of discretion in the bankruptcy court's
2 treatment of Whited as the prevailing party on most issues.

3 **D. The award should not be limited as if it were a default**
4 **judgment in San Diego Superior Court.**

5 Galindo asserts a frivolous argument that the attorney fee
6 award should be limited by analogy to a San Diego Superior Court
7 local rule regarding default judgments, apparently because the
8 state court action only advanced to the point at which Whited
9 requested a default judgment. The Superior Court's local rule
10 provides that "[w]henever the obligation sued upon provides for
11 the recovery of a reasonable attorney fee, the fee in each
12 default case may be fixed pursuant to [a] schedule." San Diego
13 Super. Ct. R. 2.5.10 (emphasis added).⁷

14 First, as shown by the emphasized text, the Superior Court's
15 local rule is discretionary. Second, a local Superior Court rule
16 does not have the force of California law and is not binding on
17 the federal bankruptcy court. Third, the adversary proceeding in
18 the bankruptcy court did not result in a default judgment, so by
19 its own terms the rule is inapplicable.

20 Galindo appears to acknowledge all of these things but he
21 suggests that the Superior Court rule should be used as a
22 guideline because the Superior Court action was dismissed and, he
23 asserts, it did not contribute to the resolution of the adversary
24 proceeding. He provides no analysis or citations to the excerpts
25 of record and, as explained above, our own analysis contradicts
26

27 ⁷ The local rule includes a schedule in which a court may
28 award \$375 in attorney fees for a default judgment in the amount
of \$1,501 to \$2,000.

1 Galindo's factual assertions. He has not established any reason
2 why this inapplicable, discretionary Superior Court rule should
3 limit in any way the fee award in this case.

4 **E. Galindo has not established that the award of actual
5 and reasonable fees and costs was an abuse of
6 discretion simply because of the relatively small
7 amount of actual damages.**

7 Galindo's most appealing argument is that the award of fees
8 and costs is very large in proportion to actual damages. He
9 cites various cases in which fees were reduced because the number
10 of hours spent were not reasonable in comparison with the results
11 obtained. See Winiger v. SI Mgmt, LP, 301 F.3d 1115, 1125 (9th
12 Cir. 2002); Abouab v. San Francisco, 141 Cal. App. 4th 643
13 (2006); Choate v. Cnty. of Orange, 86 Cal. App. 4th 312, 324
14 (2000); Sarah Morrison v. Vineyard Creek, 193 Cal. App. 4th 1254
15 (2011).⁸

16 Despite its initial appeal, this argument fails for two
17 alternative reasons. First, Galindo has not established that the
18

19 ⁸ Galindo also cites to a California Supreme Court case for
20 the proposition that attorney fees should be denied based on a
21 plaintiff's minimal success. Serrano v. Unruh, 32 Cal.3d 621,
22 635-36 (1982). The court in Serrano did not address this issue
and Galindo appears to have simply made up an alleged quotation
from this case regarding a "grossly inflated attorney fee
request."

23 Our own research reveals that the quoted language appears in
24 a different case - Chavez v. Los Angeles, 47 Cal.4th 970, 976
25 (2010) - but that case is likewise distinguishable. In Chavez
26 the California Supreme Court affirmed the trial court's exercise
of its discretion in denying a fee request of \$870,935.50 on a
27 jury verdict of \$1,500 in economic damages and \$10,000 in
noneconomic damages, which was "minimal success" in view of the
28 claims asserted in that case. In this case, in contrast,
(a) Whited's success was not "minimal" in relation to the claims
at issue, (b) the bankruptcy court exercised its discretion to
award, not deny, most of the requested fees, and (c) the total
fees are a fraction of the dollar amount sought in Chavez.

1 ratio of damages to fees is relevant under the applicable
2 statute. The Consumers Remedies Act provides without any
3 qualification that “[t]he court shall award court costs and
4 attorney’s fees to the prevailing plaintiff.” Cal. Civ. Code
5 § 1780(e). The plain language of the statute does not include
6 any requirement that the fees be proportional to actual damages.

7 Second, assuming for the sake of argument that
8 proportionality were relevant under the statute, the bankruptcy
9 court already took that into consideration. It looked to an
10 analogous statute - one that, if anything, imposes more stringent
11 requirements than the Consumer Remedies Act to qualify for an
12 award of attorney fees and costs. The analogous statute provides
13 that a court may award attorney fees to a successful party “in
14 any action which has resulted in the enforcement of an important
15 right affecting the public interest” Cal. Civ. Proc.
16 Code § 1021.5 (emphasis added). The California Supreme Court
17 interpreted this statute in Graham v. DaimlerChrysler Corp.,
18 34 Cal. 4th 553 (2004). In that case the purchasers of the
19 defendant’s trucks brought an action for breach of warranty
20 alleging that the defendant’s marketing materials included false
21 statistics. Id. at 561. The California Supreme Court affirmed
22 an award of fees under California Civil Code § 1021.5 - a
23 codification of the “private attorney general” doctrine - on the
24 basis that the lawsuit implicated an issue of “public safety”
25 because the results of the suit would benefit thousands of
26 customers. Id. at 578.

27 The bankruptcy court observed that Galindo’s situation
28 involves similar public interests:

1 Every customer that goes into a car
2 dealership has been given a plethora of
3 rights to insure that the transaction is
4 treated fairly between the dealer and the
5 consumer. And I found in numerous ways that
6 Mr. Galindo had overlooked or intentionally
7 violated those requirements. . . . this is
8 exactly the kind of case where a consumer
9 attorney basically needs the opportunity to
10 have the attorney's fees award be
11 disproportional to the amount of the loss,
12 because otherwise these kinds of cases would
13 never be brought.

14 Status Conf. Hr'g Tr. 7:16-8:5, March 1, 2012.

15 We agree. Nothing in the excerpts of record contradicts
16 Whited's assertions before the bankruptcy court that most
17 consumers lack the funds for this type of litigation. As
18 Whited's counsel argued, without fee awards the remedial purpose
19 of the Consumer Remedies Act will fail.

20 The bankruptcy court also analogized to Hayward v. Ventura
21 Volvo, 108 Cal. App. 4th 509 (2003) (award of attorney fees was
22 appropriate to deter unfair and deceptive business practices).
23 Galindo attempts to distinguish Hayward because it involved a
24 civil penalty, and fees and costs that were approximately double
25 the damages award, whereas he points out that the judgment on
26 this appeal awarded fees and costs that are approximately
27 47 times the actual damages. But Galindo reads too much into
28 these differences. Hayward illustrates that when public
interests are at stake it is appropriate to award substantial
attorney fees and costs notwithstanding relatively small actual
damages. Hayward supports the bankruptcy court's ruling.

In sum, Galindo has not established any abuse of discretion
in awarding legal fees and costs that are large in proportion to
the actual damages. As the bankruptcy court noted, the

1 California legislature has established a statutory scheme
2 intended to protect consumers when dealing with businesses such
3 as used car dealerships. Awarding actual, reasonable attorney
4 fees incurred in vindicating those consumer rights is entirely
5 appropriate.

6 **F. The bankruptcy court has already reduced Whited's legal**
7 **fees and costs as appropriate.**

8 Galindo argues that Whited was not successful on every issue
9 presented to the bankruptcy court, and therefore the award should
10 be reduced. The bankruptcy court already reduced the fees and
11 costs, and Galindo has not shown why any greater reduction would
12 be appropriate.

13 For example, the bankruptcy court's Tentative Ruling, which
14 it subsequently adopted in its Judgment, reduced fees "related to
15 the motion for relief from the automatic stay totaling \$5,240
16 (entries dated 8/15/10, 9/2/10, 9/9/10, 9/16/10, 11/2/10,
17 12/2/10, 12/15/10, 12/20/10) and costs of \$150 because Whited did
18 not prevail in that matter and it is not directly related to his
19 prevailing cause of action." Additionally, the bankruptcy court
20 reduced fees for the following reasons:

21 The Court also rejected the attorney fees
22 related to preparing fee declaration \$2,560
23 (entries dated 2/8/12, 2/9/12, 3/1/12). The
24 Court was provided no authority that these
25 fees are customarily included in the award.

26 The Court deducted attorneys fees for work
27 that appeared to be largely administrative
28 since it appeared the work could have been
done by clerical staff. The reductions
totaled \$3,360 for entries dated 4/8/11,
7/11/11, 11/3/11, 11/4/11, and 11/16/11.

Finally, the Court reduced the attorney fees
by \$5,000 because the Court believes that

1 some of the work that Whited's attorney
2 performed at a rate of \$400 per hour should
3 have been delegated to a less expensive
4 associate.

5 The bankruptcy court's careful review and adjustments to the
6 fees and costs are more than adequate to support its award.
7 Galindo has not established any abuse of discretion in not making
8 further reductions.

9 **VI. CONCLUSION**

10 Under California law, the bankruptcy court had both the
11 authority and the mandate to award attorney fees and costs to
12 Whited. Galindo has not established any abuse of discretion in
13 the amount awarded, particularly in view of the important public
14 interests in vindicating consumer rights.

15 The judgment is AFFIRMED.