

MAR 03 2008

HAROLD S. MARENUS, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:	)	BAP No. CC-07-1267-DMkMo
	)	
LAUREL CANYON, INC.,	)	Bk. No. LA 06-10831-ER
	)	
Debtor.	)	
_____	)	
ARTHUR MENALDI,	)	
	)	
Appellant,	)	
	)	
v.	)	<b>MEMORANDUM<sup>1</sup></b>
	)	
EDWARD M. WOLKOWITZ, Chapter 7	)	
Trustee,	)	
	)	
Appellee.	)	
_____	)	

Submitted Without Oral Argument  
on February 21, 2008

Filed - March 3, 2008

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

Honorable Ernest M. Robles, Bankruptcy Judge, Presiding

\_\_\_\_\_  
Before: DUNN, MARKELL and MONTALI, Bankruptcy Judges.

\_\_\_\_\_  
<sup>1</sup> This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have, FRAP 32.1, it has no precedential value. See 9th Cir. BAP Rule 8013-1.

1 The appellant, Arthur Menaldi ("Menaldi"), appeals the  
2 bankruptcy court's order disallowing his claim. We AFFIRM.

3  
4 **I. FACTUAL BACKGROUND**

5 Driving this appeal in large part is Menaldi's continuing  
6 dissatisfaction with the sale by the trustee in bankruptcy of the  
7 real property that was the only substantial asset of the Laurel  
8 Canyon, Inc. ("Laurel Canyon") bankruptcy estate. Therefore, it  
9 makes sense to provide some general background with respect to  
10 the Laurel Canyon bankruptcy.

11  
12 **A. Laurel Canyon and the Property**

13 The subject real property ("Property") consists of 11.95  
14 acres located in the vicinity of Laurel Canyon Boulevard in Los  
15 Angeles, California. The Property was acquired in February 2004,  
16 as a tenancy in common by Joseph Menaldi, as to an undivided  
17 fifty percent interest, Dominic Menaldi, as to an undivided  
18 twenty-five percent interest, and Frank D'Errico, as Trustee of  
19 the Frank D'Errico Living Trust Dated January 15, 1998  
20 ("D'Errico"), as to an undivided twenty-five percent interest.  
21 Dominic and Joseph Menaldi are Menaldi's brothers.

22 D'Errico subsequently commenced an action to partition the  
23 Property in the Los Angeles County Superior Court ("Superior  
24 Court"), Case No. BC 325918 (the "State Court Action"). On  
25 December 17, 2004, D'Errico caused a notice of pending action  
26 ("Lis Pendens") to be recorded against the Property. On or about  
27 December 6, 2005, the Superior Court entered an interlocutory  
28 judgment directing the partition by sale of the Property,

1 appointing a referee to sell the Property, and determining and  
2 directing the distribution of net sale proceeds from the Property  
3 among D'Errico, and Dominic and Joseph Menaldi. On or about  
4 January 31, 2006, the Superior Court entered an order authorizing  
5 the referee to retain an auctioneer to conduct the sale of the  
6 Property.

7 On February 2, 2006, Dominic and Joseph Menaldi quitclaimed  
8 their respective interests in the Property, along with two other  
9 parcels of real property, to Menaldi Hills, Inc., a California  
10 corporation ("Menaldi Hills"). On March 13, 2006, a deed of  
11 trust was recorded, pursuant to which Menaldi Hills purported to  
12 grant to Dominic Menaldi a lien against the Property to secure  
13 indebtedness of \$180,000 ("Dominic Trust Deed"). On the same  
14 date, a deed of trust was recorded, pursuant to which Menaldi  
15 Hills purported to grant Joseph Menaldi a lien against the  
16 Property to secure indebtedness of \$380,000 ("Joseph Trust  
17 Deed").

18 Laurel Canyon was formed on or about February 7, 2006 to  
19 engage in real estate development. On March 10, 2006, Menaldi  
20 Hills quitclaimed its interest in the Property to Laurel Canyon.  
21 Laurel Canyon filed its petition for relief under chapter 7 of  
22 the Bankruptcy Code on March 15, 2006.<sup>2</sup> Menaldi signed Laurel  
23 Canyon's Schedules and Statement of Financial Affairs as

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24  
25 <sup>2</sup> Unless otherwise indicated, all chapter, section and rule  
26 references are to the federal Bankruptcy Code, 11 U.S.C. §§ 101-  
27 1532, and to the Federal Rules of Bankruptcy Procedure, Rules  
28 1001-9037, as enacted and promulgated as of October 17, 2005, the  
effective date of most of the provisions of the Bankruptcy Abuse  
Prevention and Consumer Protection Act of 2005, Pub. L. 109-8,  
119 Stat. 23.

1 President of Laurel Canyon.

2 Edward M. Wolkowitz was duly appointed as the chapter 7  
3 trustee ("Trustee") in Laurel Canyon's bankruptcy case. Pursuant  
4 to orders of the bankruptcy court entered on May 18 and July 14,  
5 2006, the Trustee sold the Property as of September 1, 2006,  
6 including the interests of D'Errico and Laurel Canyon, free and  
7 clear of liens, including the liens of the Dominic Trust Deed and  
8 the Joseph Trust Deed, with liens attaching to the sale proceeds.  
9 Laurel Canyon appealed the sale of the Property to this Panel,  
10 but that appeal was dismissed on Laurel Canyon's motion on  
11 August 29, 2006.

12 By order entered on April 19, 2007, the Trustee was  
13 authorized to satisfy the Dominic Trust Deed and Joseph Trust  
14 Deed liens for a total payment of \$100,000. Currently, the  
15 balance of proceeds from the sale of the Property is being held  
16 by the estate pending determinations as to the allowance of  
17 professional fees and disputed liens and claims.

18  
19 B. Menaldi's Claim

20 Menaldi filed a proof of claim (the "Claim") in the Laurel  
21 Canyon bankruptcy on July 6, 2006. The amount of the Claim is  
22 not clear from the number scrawled on the proof of claim form,  
23 but further pleadings and documents in the record indicate that  
24 Menaldi claimed \$198,000. Although the proof of claim form  
25 indicates real property valued at \$10,000,000 as security, no  
26 documentation was attached to the proof of claim filed with the  
27 court.

1 The Trustee moved (the "Motion") to disallow the Claim on or  
2 about May 15, 2007, and noticed the Motion for hearing on  
3 June 14, 2007. In the Motion, the Trustee asserted four grounds  
4 for disallowing the Claim:

5 1) The Claim asserted an obligation owed by third parties  
6 that arose before Laurel Canyon was formed.

7 2) The Claim was not supported by sufficient documentation  
8 pursuant to Rules 3001(c) and (f).

9 3) Laurel Canyon was not liable on the Claim.

10 4) To the extent the Claim related to the Debtor at all, it  
11 represented a capital contribution.

12 The Motion was supported by the declaration (the "Declaration")  
13 of the Trustee's counsel.

14 In the Declaration, Trustee's counsel stated that on or  
15 about January 25, 2007, the bankruptcy court entered an order for  
16 a Rule 2004 examination of Menaldi (the "2004 Examination") and  
17 production of documents. The 2004 Examination originally was  
18 scheduled to take place on February 8, 2007, but was rescheduled  
19 to March 14, 2007, due to a scheduling conflict of Menaldi's  
20 counsel. Menaldi failed to appear at the rescheduled 2004  
21 Examination. Menaldi further failed to produce any documents in  
22 response to the Trustee's subpoena.

23 However, on October 13, 2006, in conjunction with a  
24 substitution of counsel, Menaldi filed certain documents with the  
25 bankruptcy court, including:

26 a) a letter dated September 29, 2006, in which Menaldi  
27 purportedly states that he is seeking \$198,000 that he claims he  
28 was to receive based upon an order in the State Court Action; and

1           b) a subsequent letter in which Menaldi purportedly  
2 characterized the amount claimed as capital contributions made  
3 through a corporation other than Laurel Canyon.

4           Menaldi apparently filed a number of documents (the  
5 "Documents") pro se in support of his Claim that are not  
6 identified in the record before us (see Docket Nos. 92, 93, 95  
7 and 96), and Menaldi's counsel filed an opposition (the  
8 "Opposition") to the Motion, with a number of documents attached  
9 as exhibits, but without any authenticating declaration. The  
10 Trustee filed a reply to the Opposition, supported by a further  
11 declaration of Trustee's counsel. In addition, the Trustee  
12 objected to the documents submitted as exhibits to the Opposition  
13 as not supported by a declaration and further "objectionable and  
14 inadmissible on grounds of lack of personal knowledge, hearsay,  
15 lack of foundation and/or improper opinion testimony by a lay  
16 witness," pursuant to Federal Rules of Evidence 602, 701 and 802.

17           In the meantime, the bankruptcy court considered and ruled  
18 on what it interpreted to be a motion by Menaldi for a  
19 continuance of the hearing (the "Hearing") on the Motion. What  
20 the bankruptcy court characterized as Menaldi's "Apparent Motion"  
21 stated, "I can't make 14th June working England do by phone 909-  
22 844-2886?" To the extent the Apparent Motion requested a  
23 continuance of the Hearing, the bankruptcy court denied the  
24 request. However, the bankruptcy court authorized Menaldi to  
25 appear by telephone. Menaldi's "Apparent Motion" for continuance  
26 of the Hearing or leave to appear by telephone is not included in  
27 the record on appeal and does not appear on the bankruptcy  
28 court's docket.

1 On June 12, 2007, the bankruptcy court posted a tentative  
2 written ruling (the "Tentative Ruling") granting the Motion and  
3 disallowing the Claim.

4  
5 C. The Hearing

6 At the Hearing, counsel for the Trustee was in court and  
7 Menaldi appeared by telephone. In addition, two witnesses in  
8 behalf of Menaldi, David Gibson ("Gibson") and Diane Glenbocki  
9 ("Glenbocki"), appeared by telephone.

10 At the outset of the Hearing, the bankruptcy judge noted  
11 that, just before taking the bench, he received a copy of a  
12 letter from Menaldi's counsel, signed by counsel's paralegal and  
13 directed to counsel for the Trustee, advising that she would not  
14 be able to appear at the Hearing due to a trial conflict. The  
15 bankruptcy judge further noted that no request for a continuance  
16 of the Hearing was included in the letter, and "In any event, it  
17 would have been too late to request that . . . ." Transcript of  
18 June 14, 2007 Hearing at 2. Counsel's letter is not included in  
19 the record on appeal, and no such letter is reflected in the  
20 bankruptcy court's docket. Menaldi objected and requested a  
21 continuance, but the bankruptcy judge overruled his objection and  
22 proceeded to conduct the Hearing.

23 The bankruptcy judge noted that he had not authorized any  
24 appearances by witnesses at the Hearing, and he did not listen to  
25 testimony from Gibson and Glenbocki. From the transcript of the  
26 Hearing, and as argued in Menaldi's Opening Brief (Appellant's  
27 Opening Brief at 16), Menaldi's witnesses were present to testify  
28 with respect to alleged defects in the sale process for the

1 Property, not in support of his Claim.

2 The bankruptcy court did give Menaldi the opportunity to  
3 state his position, and Menaldi stated the following:

4 Menaldi: On case number BC325918 (indiscernible),  
5 she--the judge originally said that the money should be  
6 disbursed to people who put money into the deal first.  
7 [Trustee's counsel] released money to (indiscernible)  
8 over the phone before reimbursing the people with the  
9 costs. I had \$290,000 of my personal money in this  
10 deal. I haven't received a penny.

11 The Court: All right. Well-

12 Menaldi: The other lawsuits (indiscernible.) I gave  
13 him all his money. And these other people know that.  
14 The auctioneer said he spent \$14,000. If he spent more  
15 than \$100,000 [sic] advertisement, I would be shocked.

16 Transcript of June 14, 2007 Hearing at 6-7.

17 After hearing the presentations of Menaldi and Trustee's  
18 counsel, the bankruptcy judge stated that he would rule  
19 consistent with his Tentative Ruling, and Trustee's counsel  
20 advised that he would submit an order with the bankruptcy court's  
21 tentative ruling attached. The bankruptcy court entered a  
22 corresponding order disallowing the Claim on June 28, 2007.  
23 Menaldi appealed.<sup>3</sup>

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24 <sup>3</sup> Oral argument in this appeal was scheduled for February  
25 21, 2008 in Pasadena, California. At the time scheduled for oral  
26 argument, counsel for the Trustee appeared, but Menaldi did not,  
27 and without opposition from the Trustee's counsel, we took this  
28 appeal as submitted on the briefs and the record. However, on  
February 20, 2008, Menaldi filed with this Panel a document  
entitled, "Art Menaldi's Notice of Appeal Filed on 6/26/07  
Regarding the the [sic] Opposition to Trustee's Opposition to  
Trustee's Motion to Disallow Art Menaldi's Claim" (the "2/20/08  
Document"). On page 3 of the 2/20/08 Document, hand written  
following the printed matter on the page, is the statement, "I  
ask for oral Argument in March 2008." No certificate or other

(continued...)

1 **II. JURISDICTION**

2 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
3 §§ 1334 and 157(b) (2) (B). We have jurisdiction pursuant to 28  
4 U.S.C. § 158.

5  
6 **III. ISSUES**

7 1) Whether the bankruptcy court abused its discretion in  
8 denying Menaldi's request for a continuance of the Hearing.

9 2) Whether the bankruptcy court committed reversible error  
10 in disallowing the Claim.

11  
12 **IV. STANDARDS OF REVIEW**

13 A decision to deny a request for continuance is reviewed for  
14 abuse of discretion. Orr v. Bank of America, 285 F.3d 764, 783  
15 (9th Cir. 2002). To reverse for abuse of discretion, we must  
16 have a definite and firm conviction that the bankruptcy court  
17 committed a clear error of judgment in the decision it made.  
18 Hansen v. Moore (In re Hansen), 368 B.R. 868, 875 (9th Cir. BAP  
19 2007).

20 A bankruptcy court's conclusions of law are reviewed de  
21 novo. Miller v. United States, 363 F.3d 999, 1003 (9th Cir.  
22 2004). We review the bankruptcy court's findings of fact for  
23

24 

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<sup>3</sup>(...continued)

25 evidence of service of the 2/20/08 Document was included with it  
26 or subsequently filed by Menaldi. Counsel for the Trustee did  
27 not mention having received a copy of the 2/20/08 Document at the  
28 oral argument. We have interpreted the quoted statement from the  
2/20/08 Document as a request for a continuance of the oral  
argument, and by separate order, entered on March 3, 2008, we  
denied Menaldi's request.

1 clear error. Poonja v. Alleghany Properties (In re Los Gatos  
2 Lodge Inc.), 278 F.3d 890, 893 (9th Cir. 2002). Clear error will  
3 only be found if we are "left with the definite and firm  
4 conviction that a mistake has been committed." Easley v.  
5 Cromartie, 532 U.S. 234, 242 (2001).

## 6 7 **V. DISCUSSION**

8 1. The bankruptcy court did not abuse its discretion in denying  
9 Menaldi's request for a continuance at the Hearing

10 Menaldi argues that the bankruptcy court committed  
11 reversible error in denying his request for a continuance at the  
12 Hearing in light of his counsel's inability to appear due to a  
13 trial conflict. He asserts that his attorney should have been  
14 able to present his evidence before the bankruptcy court.

15 The grant or denial of a motion for continuance is a  
16 discretionary case management matter, and our review for abuse of  
17 discretion depends upon the facts of each case before us.

18 In reviewing a denial of a motion to continue, we  
19 consider four factors: diligence of the requesting  
20 party, usefulness of the continuance, inconvenience to  
the court and other side, and prejudice from the  
denial.

21 Hasso v. Mozsgai (In re La Sierra Fin. Serv., Inc.), 290 B.R.  
22 718, 726 (9th Cir. BAP 2002) (citing United States v. Pope, 841  
23 F.2d 954, 956 (9th Cir. 1988); and United States v. 2.61 Acres of  
24 Land, 791 F.2d 666, 671 (9th Cir. 1985)).

25 In this case, the Motion was noticed on May 15, 2007 for the  
26 Hearing on June 14, 2007. Thereafter, the bankruptcy court  
27 considered Menaldi's pro se question, "I can't make 14th June  
28 working England do by phone 909-844-2886?" in the "Apparent

1 Motion" as 1) a request for a continuance of the Hearing, or 2)  
2 in the alternative, a request to appear by telephone at the  
3 Hearing. By order entered on June 1, 2007, the bankruptcy court  
4 denied Menaldi's request to continue the Hearing, but granted his  
5 request to appear by telephone. Menaldi in fact appeared and  
6 participated by telephone at the Hearing.

7       Apparently, the day before the Hearing, Menaldi's counsel  
8 sent a letter to counsel for the Trustee, signed by her  
9 paralegal, advising that she would not be able to attend the  
10 Hearing due to a trial conflict. Contrary to the assertion in  
11 Menaldi's Opening Brief (Appellant's Opening Brief at 15), the  
12 letter was not directed to or received by the bankruptcy court  
13 from Menaldi's counsel. See Transcript of June 14, 2007 Hearing  
14 at 2. The bankruptcy court was given a copy of the letter just  
15 before taking the bench for the Hearing and noted that the letter  
16 did not request a continuance of the Hearing. Accordingly, the  
17 bankruptcy court announced that the Hearing would proceed.

18       Menaldi objected and requested that the hearing be  
19 continued. The bankruptcy court overruled his objection and  
20 proceeded with the Hearing.

21       Menaldi had two witnesses, Gibson and Glenbocki, present on  
22 the telephone for the Hearing. However, as reflected from the  
23 transcript of the Hearing (Transcript of June 14, 2007 Hearing at  
24 5 and 7) and confirmed in Menaldi's Opening Brief (Appellant's  
25 Opening Brief at 16), Menaldi's witnesses were prepared to  
26 testify with regard to alleged improprieties concerning the sale  
27 of the Property and had nothing to add concerning the validity of  
28

1 Menaldi's Claim.<sup>4</sup> The sale of the Property was final and had  
2 nothing to do with the subject matter of the Motion before the  
3 bankruptcy court at the Hearing. The bankruptcy court had not  
4 authorized witness testimony at the Hearing and did not allow  
5 Menaldi's witnesses to testify.

6 However, again contrary to Menaldi's assertion in his  
7 Opening Brief (Appellant's Opening Brief at 16), the bankruptcy  
8 court did allow Menaldi to tell him whatever he wanted to in  
9 support of his Claim. Transcript of June 14, 2007 Hearing at 6-  
10 7.

11 The merits of the Motion had been fully briefed by the  
12 parties in advance of the Hearing, and the bankruptcy court had  
13 posted the Tentative Ruling two days in advance, so that the  
14 parties could comment on it at the Hearing. Presumably,  
15 Menaldi's counsel presented Menaldi's arguments and evidence in  
16 support of his Claim as effectively as she could in the  
17 Opposition. The Tentative Ruling reflects that the bankruptcy  
18 court had read and considered the Opposition along with the  
19 Documents Menaldi filed pro se. The bankruptcy court had dealt  
20 with Menaldi's timely request for a continuance or to be allowed  
21 to appear by telephone, and Menaldi appeared by telephone at the  
22 Hearing. The last minute letter from Menaldi's counsel advising  
23 counsel for the Trustee of her inability to appear at the Hearing  
24 did not include a request for a continuance of the Hearing.  
25 Nothing in the record indicates that a continuance of the Hearing

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26  
27  
28 <sup>4</sup> Attached to the 2/20/08 Document is a purported affidavit  
of Glenbocki that discusses issues relating to the sale of the  
Property but states nothing with regard to Menaldi's Claim.

1 would have resulted in anything other than a delay in resolution  
2 of the Motion.

3 In these circumstances, we do not have a "clear and definite  
4 conviction" that the bankruptcy court abused its discretion in  
5 denying Menaldi's oral request at the Hearing for a continuance.

6  
7 2. The bankruptcy court did not err in disallowing Menaldi's  
8 Claim

9 As relevant to this appeal, a "claim" is defined in the  
10 Bankruptcy Code as a "right to payment, whether or not such right  
11 is reduced to judgment, liquidated, unliquidated, fixed,  
12 contingent, matured, unmatured, disputed, undisputed, legal,  
13 equitable, secured or unsecured." Section 101(5)(A). A creditor  
14 who wishes to establish a claim in a bankruptcy case files a  
15 proof of claim. Section 501(a). Where a proof of claim has  
16 been filed, the claim is deemed allowed unless an interested  
17 party, including the trustee in bankruptcy, objects. Section  
18 502(a); American Express Travel Related Serv. Co., Inc. v. Heath  
19 (In re Heath), 331 B.R. 424, 429 (9th Cir. BAP 2005).

20 The Ninth Circuit has described the claim allowance and  
21 objection process as follows:

22 A proof of claim is deemed allowed unless a party in  
23 interest objects under 11 U.S.C. § 502(a) and  
24 constitutes "*prima facie* evidence of the validity and  
25 amount of the claim" pursuant to Bankruptcy Rule  
26 3001(f). See also Fed. R. Bankr. P. 3007. The filing  
27 of an objection to a proof of claim "creates a dispute  
28 which is a contested matter" within the meaning of  
Bankruptcy Rule 9014 and must be resolved after notice  
and opportunity for hearing upon a motion for relief.  
See Adv. Comm. Notes to Fed. R. Bankr. P. 9014.

Upon objection, the proof of claim provides "some  
evidence as to its validity and amount" and is "strong  
enough to carry over a mere formal objection without  
more." Wright v. Holm (In re Holm), 931 F.2d 620, 623

1 (9th Cir. 1991) (quoting 3 L. King, Collier on  
2 Bankruptcy § 502.02, at 502-22 (15th ed. 1991); see  
3 also Ashford v. Consolidated Pioneer Mort. (In re  
4 Consol. Pioneer Mort.), 178 B.R. 222, 226 (9th Cir. BAP  
5 1995), aff'd, 91 F.3d 151, 1996 WL 393533 (9th Cir.  
6 1996). To defeat the claim, the objector must come  
7 forward with sufficient evidence and "show facts  
8 tending to defeat the claim by probative force equal to  
9 that of the allegations of the proofs of claim  
10 themselves." In re Holm, 931 F.2d at 623.

11 . . .  
12 "If the objector produces sufficient evidence to negate  
13 one or more of the sworn facts in the proof of claim,  
14 the burden reverts to the claimant to prove the  
15 validity of the claim by a preponderance of the  
16 evidence." In re Consol. Pioneer, 178 B.R. at 226  
17 (quoting In re Allegheny Int'l, Inc., 954 F.2d 167,  
18 173-74 (3d Cir. 1992)). The ultimate burden of  
19 persuasion remains at all times upon the claimant. See  
20 In re Holm, 931 F.2d at 623.

21 Lundell v. Anchor Const. Specialists, Inc., 223 F.3d 1035, 1039  
22 (9th Cir. 2000).

23 Under § 502(b)(1), a specific basis for disallowing a claim  
24 is "such claim is unenforceable against the debtor and property  
25 of the debtor, under any agreement or applicable law for a reason  
26 other than because such claim is contingent or unmatured."

27 Before the bankruptcy court and on appeal, Menaldi has  
28 focused on two arguments, both of which miss the mark. Relying  
heavily on this Panel's decision in In re Heath, Menaldi argues  
that "the failure to file copies of the writings upon which a  
claim is based is, by itself, an insufficient basis for the  
disallowance of an otherwise valid proof of claim." Appellant's  
Opening Brief at 8. That is a true enough statement of the law.  
See In re Heath, 331 B.R. at 433. And one of the bases argued by  
the Trustee in the Motion for disallowance of Menaldi's Claim was  
that Menaldi's proof of claim was not supported by sufficient

1 documentation pursuant to Rules 3001(c) and (f).<sup>5</sup>

2       However, by the time of the Hearing, that argument was no  
3 longer relevant. As set forth in the Tentative Ruling, the  
4 bankruptcy court had considered 1) the documents filed by Menaldi  
5 in conjunction with substitution of counsel on October 13, 2006,  
6 as described in the Declaration, 2) the Documents filed by  
7 Menaldi pro se, in opposition to the Motion, and 3) the  
8 documentary exhibits filed by Menaldi's counsel as part of the  
9 Opposition. In fact, as the bankruptcy court specifically  
10 stated:

11       In the instant case, it appears that the BAP's decision  
12 in In re Heath, 331 B.R. 424 (9th Cir. BAP 2005) is no  
13 longer applicable to the extent that Claimant has now  
14 provided documentation in support of [the Claim]. In  
short, the issue is no longer the lack of supporting  
documentation, but the sufficiency of such documents  
now that they have been provided.

15 Tentative Ruling at 9.<sup>6</sup>

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16  
17       <sup>5</sup> Rule 3001(c) provides:

18 CLAIM BASED ON A WRITING. When a claim, or an interest  
19 in property of the debtor securing the claim, is based  
20 on a writing, the original or a duplicate shall be  
21 filed with the proof of claim. If the writing has been  
lost or destroyed, a statement of the circumstances of  
the loss or destruction shall be filed with the claim.

22       Rule 3001(f) provides:

23 EVIDENTIARY EFFECT. A proof of claim executed and  
24 filed in accordance with these rules shall constitute  
25 prima facie evidence of the validity and amount of the  
26 claim.

27       <sup>6</sup> Attached as part of the 2/20/08 Document are some  
28 additional exhibits (the "Exhibits") that Menaldi proffers in  
support of his Claim. There is no indication that any of the  
Exhibits were submitted as evidence before the bankruptcy court

(continued...)

1 Menaldi further focuses on his argument that the sale of the  
2 Property was tainted by improper actions of the Trustee and his  
3 counsel. This argument in effect rakes old coals and has no real  
4 relevance to the disallowance of Menaldi's Claim. No matter how  
5 impassioned Menaldi is on the subject, the fact, as noted above,  
6 is that pursuant to the bankruptcy court's orders, the Property  
7 was sold as of September 1, 2006. Laurel Canyon appealed the  
8 sale to this Panel, but that appeal was dismissed on the  
9 appellant's motion on August 29, 2006. As the bankruptcy court  
10 noted in its Tentative Ruling, "The Court is well aware of  
11 Claimant's dissatisfaction with the sale. However, that matter  
12 is over." Tentative Ruling at 9.

13 The bankruptcy court ultimately disallowed the Claim for two  
14 reasons. First, Menaldi did not meet his ultimate burden of  
15 proof. The bankruptcy court interpreted the various documents  
16 submitted by Menaldi and his counsel as basing the Claim on the  
17 interlocutory judgment of the Superior Court, entered on or about  
18 December 6, 2005, ordering that "additional capital  
19 contributions" be paid from the proceeds from sale of the  
20  
21

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22 <sup>6</sup>(...continued)  
23 or included in Menaldi's excerpts of record in this appeal. We  
24 generally limit our review of the record to an examination of the  
25 excerpts of the record as provided by the parties. We further  
26 have no obligation to examine evidentiary material submitted by  
27 parties on appeal that are not included in the excerpts of  
28 record. See In re Kritt, 190 B.R. 382, 386-87 (9th Cir. BAP  
1995); In re Anderson, 69 B.R. 105, 109 (9th Cir. BAP 1986).  
However, we have reviewed the Exhibits as part of our review of  
the 2/20/08 Document, and nothing in the Exhibits alters our  
analyses or conclusions in this Memorandum.

1 Property.<sup>7</sup> In at least one fax letter, Menaldi asserted a total  
2 claim of "\$198,000 due WNBA, Inc, Arthur T. Menaldi, President,"  
3 set forth on a "Mechanic's Lien," and calculated from the  
4 following:

5 Soil Report	\$45,000
21 Loan Payments	\$48,300
6 Feasibility Study	\$10,000
Road Plans	\$25,000
7 Fence/Back Hoe	\$25,000
Dig Paths for Soil	\$25,000
8 Pay Back Broker	\$20,000
	<hr/>
9 Actual Total	\$198,300

10  
11 The bankruptcy court noted that the copy of the asserted  
12 "Mechanic's Lien" provided by Menaldi was undated and bore no  
13 evidence that it was recorded. Tentative Ruling at 10. In any  
14 event, since no such Mechanic's Lien was found in determining  
15 liens of record against the Property when it was sold, it  
16 reasonably can be assumed that Menaldi's alleged Mechanic's Lien  
17 was not recorded. See Declaration at 11-12. At the Hearing,  
18 Menaldi told the bankruptcy court that he had "\$290,000 of my  
19 personal money in this deal." Transcript of June 14, 2007  
20 Hearing at 7.

21 The bankruptcy court observed that Menaldi provided no  
22 evidence of payment of the amounts alleged, and even if they were  
23 paid, how they qualified as the "additional capital  
24 contributions" covered by the Superior Court's distribution order  
25 in the December 2005 interlocutory judgment in the State Court

26  
27 <sup>7</sup> In the 2/20/08 Document, Menaldi asserts that the  
28 Superior Court awarded him expenses which "totaled \$198,000" in  
an order, referencing the Exhibits. There is no such order in  
the Exhibits or anywhere else in the record before us.

1 Action. Tentative Ruling at 10.

2 Second, the bankruptcy court pointed out that Menaldi had  
3 provided no explanation as to why Laurel Canyon should be found  
4 liable for the Claim when it had no ownership interest in the  
5 Property, and indeed, had not yet been formed, when the  
6 interlocutory judgment was entered in the State Court Action.

7 Tentative Ruling at 10. Menaldi presented no evidence,  
8 documentary or otherwise, tending to establish that Laurel Canyon  
9 had assumed any liability to pay his Claim for § 502(b)(1)  
10 purposes. In Menaldi's Opening Brief (Appellant's Opening Brief  
11 at 18), he finally argues that his Claim should have been allowed  
12 because he was the president of Laurel Canyon and a former owner  
13 of the Property, in spite of the lack of any evidence in the  
14 record that he ever held a title interest in the Property.<sup>8</sup>

15 On the record before us, we conclude that the bankruptcy  
16 court committed no error in determining that Menaldi had not met  
17 his burden to establish his Claim by a preponderance of the  
18 evidence in light of the Trustee's objections and appropriately  
19 disallowed the Claim.

## 20 21 **VI. CONCLUSION**

22 Based on the foregoing analysis of the issues raised in this  
23 appeal, we AFFIRM the bankruptcy court's disallowance of  
24 Menaldi's Claim.

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25  
26 <sup>8</sup> In the 2/20/08 Document, Menaldi describes himself as the  
27 "100% shareholder" of Laurel Canyon, which would entitle him to  
28 an equity distribution but not an unsecured claim in the Laurel  
Canyon bankruptcy. He later describes himself as a "75% partner"  
with respect to the Property, ignoring the fact that it was the  
corporation, Laurel Canyon, that held title to the 75% ownership  
interest in the Property prior to its sale.