

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NOT FOR PUBLICATION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.)	MEMORANDUM¹
)	
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.

¹ 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, 2006.² Menaldi signed Laurel
23 Canyon's Schedules and Statement of Financial Affairs as

24
25 ² 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.³

24 ³ 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

³(...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.⁴ 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

26
27
28 ⁴ 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).⁵

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 9.⁶

16
17 ⁵ 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 ⁶ 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

22 ⁶(...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.⁷ 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 ⁷ 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.⁸

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.

25
26 ⁸ 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.