

OCT 09 2008

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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NOT FOR PUBLICATION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

In re:)	BAP No.	NC-08-1069-DJuT
)		
BAY VOLTEX CORPORATION,)	Bk. No.	03-42684
)		
Debtor.)		
<hr/>			
JOHN G. WARNER,)		
)		
Appellant,)		
)		
v.)	M E M O R A N D U M ¹	
)		
DAVID E. PEASE,)		
)		
Appellee.)		
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Argued and Submitted on September 17, 2008
at San Francisco, California

Filed - October 9, 2008

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

Hon. Edward D. Jellen, Bankruptcy Judge, Presiding

Before: DUNN, JURY and TAYLOR,² 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. Laura S. Taylor, Bankruptcy Judge for the Southern District of California, sitting by designation.

1 John G. Warner, counsel for the former chapter 11 debtor,
2 Bay Voltex Corporation ("Bay Voltex"), initiated a state court
3 action against Bay Voltex, David E. Pease, the former principal
4 of Bay Voltex, and BV Thermal Systems, Inc. ("BV Thermal") to
5 recover fees incurred for services rendered in Bay Voltex's
6 behalf in its bankruptcy case following the appointment of the
7 chapter 11 trustee.³ Warner appeals the bankruptcy court's order
8 interpreting the terms of its earlier orders which effectively
9 prevented Warner from seeking recovery of fees from Bay Voltex,
10 Pease and BV Thermal in the state court action. Warner also
11 appeals the bankruptcy court's order sanctioning him for
12 initiating the state court action in violation of the terms of
13 Warner's employment as counsel for Bay Voltex. We AFFIRM.

14 15 **I. FACTS**

16 On May 7, 2003, Bay Voltex filed a voluntary chapter 11
17 petition. Warner filed an application for employment as Bay
18 Voltex's chapter 11 counsel ("Employment Application"). The
19 Employment Application explicitly stated that Warner had "no
20 previous or present connection with any creditor or with any
21 interested party herein" and that he "represent[ed] no interest
22 adverse to the estate or to [Bay Voltex]" Application
23 for Leave to Employ Attorney for Debtor-in-Possession, 2:4-6.

24
25 ³ Unless otherwise indicated, all chapter, section and rule
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and
27 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037, as
28 enacted and promulgated prior to 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, April 20,
2005, 119 Stat. 23.

1 The Employment Application provided that Warner's
2 compensation "would be such as the [bankruptcy] court would
3 allow." Id., 2:13. The Employment Application also disclosed
4 that Warner received a \$15,000 retainer from Bay Voltex
5 prepetition. In a declaration accompanying the Employment
6 Application, Warner stated that he would apply \$7,500 of the
7 retainer to future fee applications.

8 The Employment Application included a copy of the fee
9 agreement between Bay Voltex and Warner ("Fee Agreement"). Pease
10 signed the Fee Agreement as president of Bay Voltex.

11 Under the Fee Agreement, Bay Voltex employed Warner "to
12 provide legal services in connection with . . . [the] [h]andling
13 of [the] Chapter 11 case." Application for Leave to Employ
14 Attorney for Debtor-in-Possession, Exh. A, Attorney-Client Fee
15 Agreement at 1. The Fee Agreement provided "any fees or
16 reimbursement of expenses claimed by [Warner] shall require prior
17 approval of the bankruptcy court." Application for Leave to
18 Employ Attorney for Debtor-in-Possession, Exh. A, Attorney-Client
19 Fee Agreement at 3. The Fee Agreement further provided that Bay
20 Voltex agreed to pay Warner's fees; the Fee Agreement did not
21 list any other party liable for the payment of Warner's fees.

22 Warner also filed a verified statement as required under
23 Rule 2014 ("Rule 2014 Statement"). Per the Rule 2014 Statement,
24 Warner represented, under penalty of perjury, that he had "no
25 connection past or present with [Bay Voltex] . . . with any
26 creditor of [Bay Voltex], [or] with any other party in interest .
27 . . ." Verified Statement of Nominated Attorney, 1:24-25. He
28 asserted that, to the best of his knowledge, he had no interest

1 adverse to Bay Voltex. Id., 1:28.

2 On June 2, 2003, the bankruptcy court entered an order
3 approving the Employment Application ("Employment Order"). The
4 Employment Order provided that "[n]o fees shall be paid to
5 [Warner] post-petition" without prior approval of the bankruptcy
6 court. Order Approving Employment of Attorney for Debtor-in-
7 Possession, 1:24-25. The Employment Order also stated that
8 "[a]ny compensation paid to [Warner] shall be fixed by the
9 [bankruptcy] court pursuant to applicable bankruptcy law"
10 Id., 2:1-3.

11 Approximately one year later, the bankruptcy court appointed
12 a chapter 11 trustee. The trustee employed other counsel to
13 represent her.

14 Warner continued to represent Bay Voltex as its chapter 11
15 counsel. He filed papers in behalf of Bay Voltex, including a
16 plan and disclosure statement, which the bankruptcy court did not
17 approve.

18 The trustee and Pease later entered into an agreement to
19 settle the estate's claims against Pease ("Settlement
20 Agreement"). Pease employed Iain A. Macdonald as counsel to
21 represent him in negotiating the Settlement Agreement with the
22 trustee. The Settlement Agreement provided that the bankruptcy
23 court retained jurisdiction over any disputes arising out of the
24 Settlement Agreement.

25 Under the Settlement Agreement, Pease agreed to pay the
26 trustee \$100,000 for the trustee's release of all claims against
27 him. The trustee intended to disburse these funds pro rata to
28 the administrative claimants, whose claims totaled approximately

1 \$175,000.

2 Additionally, BV Thermal, an entity wholly owned by Pease,
3 agreed to pay the trustee \$25,000 for the debtor's assets. BV
4 Thermal further agreed to assume liability for and indemnify Bay
5 Voltex from all postpetition accounts payable, which totaled
6 approximately \$40,000.⁴ Pease guaranteed the obligation.

7 Warner filed an opposition in behalf of Bay Voltex. He
8 opposed the Settlement Agreement on the grounds that the
9 administrative claimants would receive only 30% of their allowed
10 claims. Warner later withdrew the objection, and the bankruptcy
11 court entered an order on October 5, 2006 ("Settlement Order"),
12 approving the Settlement Agreement.

13 On October 31, 2006, Warner filed an application for fees
14 and reimbursement of expenses as Bay Voltex's chapter 11 counsel
15 ("Fee Application"). Warner sought fees in the amount of
16 \$58,152.50 for services rendered to Bay Voltex, which included
17 his attempts to sell Bay Voltex's business and the preparation of
18 the disclosure statement and plan.⁵ Warner also filed a proof of
19 claim for these fees and expenses.

20
21 ⁴ Paragraph 4 of the Settlement Agreement provided:

22 BV Thermal shall assume liability for and indemnify Bay
23 Voltex from all postpetition accounts payable liability
24 through the sale closing date; on such date it shall
25 either produce releases from all such claimants or
26 deposit funds in a trust account, which shall be
27 earmarked for payment to such claimants who do not
28 release the estate from all postpetition claims. Pease
will guarantee BV Thermal's performance of this
paragraph.

29 ⁵ Warner also requested \$916.05 in expenses, to which the
trustee did not object. The bankruptcy court allowed the
expenses in full.

1 The trustee objected to Warner's fees to the extent that the
2 services rendered by Warner following the trustee's appointment
3 were unnecessary and did not benefit the estate. In response,
4 Warner contended that, contrary to the trustee's assertions, his
5 services provided an identifiable benefit to the estate. After
6 the December 7, 2006 hearing on the Fee Application, the
7 bankruptcy court took the matter under submission.

8 The following day, Warner wrote a letter to Macdonald
9 regarding the issue of Warner's fees. Declaration of Iain A.
10 Macdonald in Support of Motion for Order Interpreting Order and
11 for Other Relief ("Macdonald Declaration"), Exh. A. In the
12 letter, Warner contended that the Settlement Agreement provided
13 that BV Thermal was liable for any fees not paid by the estate
14 and that Pease personally guaranteed the obligation. In another
15 letter, dated January 23, 2007, Warner advised Macdonald that any
16 attorney's fees paid out of the bankruptcy estate "would become a
17 credit against [his attorney's fees]." Macdonald Declaration,
18 Exh. C.

19 On December 29, 2006, the bankruptcy court issued its
20 memorandum decision, ruling that Warner's services rendered after
21 the trustee's appointment were not compensable out of estate
22 funds. Relying on Lamie v. U.S. Trustee, 540 U.S. 526 (2004),
23 the bankruptcy court determined that § 330(a) did not provide for
24 compensation from estate funds to a professional employed by a
25 debtor who is not the representative of the estate. The
26 bankruptcy court approved Warner's fees in the reduced amount of
27 \$40,122.50. The bankruptcy court further required Warner to
28 apply the \$15,000 retainer to the allowed fees. The bankruptcy

1 court concluded that any excess fees would be disallowed.

2 The bankruptcy court entered its order on the Fee
3 Application on the same day ("Fee Order"). Warner did not appeal
4 the Fee Order.

5 Three months later, on the trustee's motion, the bankruptcy
6 court authorized the trustee to pay administrative claimants from
7 estate funds and dismissed the case. The case closed on March
8 12, 2007.

9 Warner subsequently commenced a state court action against
10 Bay Voltex, Pease and BV Thermal, seeking to recover \$46,115.50
11 in fees and expenses allegedly owed by Bay Voltex, Pease and BV
12 Thermal under the Fee Agreement.⁶ Warner attached a copy of the
13 Fee Agreement to the complaint.

14 Warner asserted breach of contract and common counts as the
15 bases for the state court action. Under the common counts cause
16 of action, Warner alleged that Bay Voltex, Pease and BV Thermal
17 became indebted to him for services "rendered at the special
18 instance and request of [Bay Voltex, Pease and BV Thermal] and
19 for which [they] promised to pay [Warner]." Request for Judicial
20 Notice in Support of Motion for Order Interpreting Order and for
21 Other Relief, Exh. J, Complaint at 4.

22 In response, Pease filed a motion for an order interpreting
23 the Settlement Order ("Motion to Interpret") in the bankruptcy
24
25
26

27 ⁶ We recognize that the fee amounts requested by Warner in
28 the underlying bankruptcy case and in the state court action
differ. However, there is not adequate information in the record
to explain the differences.

1 court.⁷ Specifically, Pease asked that the bankruptcy court
2 interpret the Settlement Agreement to exclude professional fees
3 from the term "accounts payable," and to limit the term to Bay
4 Voltex's postpetition trade debt. Pease also requested that the
5 bankruptcy court award him attorney's fees and costs incurred in
6 bringing the Motion to Interpret on the ground that Warner filed
7 the state court action in bad faith.⁸

8 Warner opposed, arguing that the bankruptcy court lacked
9 jurisdiction to resolve the fee dispute and should remand the
10 matter to state court. He contended that Lamie did not prohibit
11 him from seeking recovery of his attorney's fees from Bay Voltex,
12 Pease and BV Thermal. According to Warner, Lamie prohibited
13 professionals employed under § 327 from recovering from the
14 estate fees for services rendered after conversion of a chapter
15 11 case to chapter 7. Unlike the debtor's attorney in Lamie,
16 Warner asserted that he was seeking payment, not from the estate,
17 but from Pease, BV Thermal, and Bay Voltex directly, for fees
18 incurred working in their behalf after he ceased serving as a
19 professional under § 327.

20 Warner also claimed that, under the Settlement Agreement, BV
21

22
23 ⁷ Pease did not file a motion to reopen the case when he
24 filed the Motion to Interpret. On May 21, 2008, the bankruptcy
25 court entered an order reopening the case in light of Warner's
26 filing of the instant appeal. Order to Reopen Case, Docket #219.

27 ⁸ Pease also sought to enjoin Warner from proceeding with
28 the state court action. At the hearing on the Motion to
Interpret, the bankruptcy court noted that Pease needed to
initiate an adversary proceeding to obtain an injunction against
Warner. Tr. of January 31, 2008 Hr'g, 4:16-18, 4:25, 5:1, Docket
#216. The bankruptcy court stated that it would not issue an
injunction absent an adversary proceeding. Tr. of January 31,
2008 Hr'g, 10:10-11, Docket #216.

1 Thermal and Pease were liable for all postpetition accounts
2 payable, which included his attorney's fees and costs. Moreover,
3 Warner argued, the Fee Agreement required Bay Voltex to pay all
4 of his postpetition fees, including fees incurred for legal
5 services rendered after the trustee's appointment.

6 Following the January 31, 2008 hearing on the Motion to
7 Interpret, the bankruptcy court issued its findings of fact and
8 conclusions of law. At the outset, the bankruptcy court
9 determined that it had jurisdiction to enforce and interpret the
10 Employment Order and the Settlement Agreement under 28 U.S.C.
11 § 1334(a) and (b).

12 The bankruptcy court found that the term "accounts payable"
13 in the Settlement Agreement did not include administrative
14 expenses, as the Settlement Agreement expressly distinguished
15 between accounts payable and administrative expenses. The
16 bankruptcy court further noted that at the time it approved the
17 Settlement Agreement, the bankruptcy court had not allowed Warner
18 any fees. Thus, the bankruptcy court concluded, Warner's fees
19 were not a liability or an account payable of the estate. The
20 bankruptcy court also found that, in approving the Settlement
21 Agreement, it did not intend to require BV Thermal or Pease to
22 pay administrative expenses.

23 The bankruptcy court determined that, in initiating the
24 state court action, Warner was in violation of the terms of his
25 employment, as approved by the bankruptcy court. Relying on its
26 inherent sanctions authority and its authority under § 105(a),
27 the bankruptcy court imposed sanctions against Warner for his
28 misconduct in the amount of \$6,500 in attorney's fees incurred by

1 Pease in bringing the Motion to Interpret.

2 On February 20, 2008, the bankruptcy court entered its order
3 granting the Motion to Interpret.

4 Warner appeals.

6 II. JURISDICTION

7 Warner contends that the bankruptcy court lacked
8 jurisdiction to decide his fee dispute with Bay Voltex, Pease and
9 BV Thermal because the fees at issue do not concern the estate.
10 Thus, as a threshold matter, we must determine whether the
11 bankruptcy court had jurisdiction to adjudicate the fee dispute
12 and whether we, in turn, have jurisdiction to review the order on
13 appeal. See Krasnoff v. Marshack (In re General Carriers Corp.),
14 258 B.R. 181, 188-89 (9th Cir. BAP 2001). We review de novo the
15 bankruptcy court's assertion of jurisdiction. See McGhan v. Rutz
16 (In re McGhan), 288 F.3d 1172, 1178 (9th Cir. 2002).

17
18 A. The bankruptcy court had jurisdiction over Warner's fee
19 dispute with Bay Voltex

20 Warner cites to Hines v. Gordon (In re Hines), 147 F.3d 1185
21 (9th Cir. 1998), for the proposition that the bankruptcy court
22 lacked jurisdiction to adjudicate his fees for services rendered
23 after the trustee's appointment. According to Warner, under
24 Hines, an attorney may seek from the debtor fees incurred in the
25 debtor's behalf following the trustee's appointment, though the
26 attorney cannot look to the estate for payment of those fees once
27 disallowed by the bankruptcy court.

28 We agree with the bankruptcy court that Hines is not

1 dispositive here.⁹ Hines holds that attorney's fees for services
2 rendered postpetition can constitute a nondischargeable debt that
3 the attorney may seek to recover during the pendency of the
4 bankruptcy case without violating the automatic stay. Id. at
5 1191. Accord Sanchez v. Gordon (In re Sanchez), 241 F.3d 1148,
6 1150-51 (9th Cir. 2001). Nothing in Hines divests the bankruptcy
7 court of jurisdiction over fee disputes arising with respect to
8 the bankruptcy case.

9 Warner tries to bypass the bankruptcy court's jurisdiction
10 by distinguishing the services he performed in behalf of Bay
11 Voltex when it no longer was debtor-in-possession. Warner argues
12 that the Employment Order contemplated his employment as Bay
13 Voltex's attorney under § 327 while Bay Voltex still was debtor-
14 in-possession. Once Bay Voltex's status as debtor-in-possession
15 was terminated, Warner claims he ceased serving as a professional
16 under § 327. Thus, Warner asserts, the procedures for
17 compensation under § 327 have no bearing on his claim for
18 compensation for services rendered after the appointment of the
19 chapter 11 trustee.

20 Regardless of whether Bay Voltex was or was not the debtor-
21

22
23 ⁹ In Hines, prior to conversion of her bankruptcy case from
24 chapter 13 to chapter 7, the debtor agreed to pay her attorney in
25 installments, supported by a promissory note and postdated checks
26 to be cashed postpetition. 147 F.3d at 1187. After conversion,
27 the attorney proceeded to act in the debtor's behalf postpetition
28 and cashed two of the checks. Id. The debtor later replaced the
attorney with another and moved for contempt against the attorney
for willful violation of the automatic stay. Id. at 1188. The
Ninth Circuit determined that the attorney's fees for
postpetition services were nondischargeable and that his attempt
to recover the fees in the course of the debtor's bankruptcy did
not violate the stay.

1 in-possession when Warner rendered legal services in its behalf,
2 in the end, Warner's services were rendered in connection with
3 Bay Voltex's bankruptcy. The bankruptcy court thus had
4 jurisdiction to decide the fee dispute. See DeRonde v. Shirley
5 (In re Shirley), 134 B.R. 940, 943 (9th Cir. BAP 1992) (stating
6 that the Bankruptcy Code provisions concerning employment of
7 professionals and payment of fees govern fee disputes with
8 respect to bankruptcy-related services).

9 We note that the Fee Agreement made no distinction as to the
10 legal services rendered to Bay Voltex in its capacity as the
11 debtor-in-possession or as the debtor. The Fee Agreement merely
12 stated that Bay Voltex employed Warner to provide legal services
13 in connection with the handling of the chapter 11 case.
14 Additionally, under the Employment Order, the bankruptcy court
15 had the authority to determine whether Warner would receive
16 compensation postpetition and to fix the allowed amount of his
17 fees. The change in Bay Voltex's debtor-in-possession status
18 does not affect the bankruptcy court's authority to adjudicate
19 the fee dispute.

20 Using another tack, Warner concedes that, under Elias v.
21 United States Trustee (In re Elias), 188 F.3d 1160 (9th Cir.
22 1999), the bankruptcy court may have had ancillary jurisdiction
23 to adjudicate his fee dispute with Bay Voltex. If the bankruptcy
24 court declines to exercise its ancillary jurisdiction, Warner
25 continues, he should have been allowed to proceed to litigate the
26 fee dispute in state court. Here, according to Warner, as the
27 bankruptcy court "expressly declined" to exercise its ancillary
28 jurisdiction over the fee dispute with Bay Voltex, he may proceed

1 with the state court action against Bay Voltex.

2 However, as a bottom line matter, the bankruptcy court
3 retains jurisdiction to interpret and enforce its own orders
4 entered prior to dismissal of the underlying bankruptcy case.
5 Tsafaroff v. Taylor (In re Taylor), 884 F.2d 478, 481 (9th Cir.
6 1989). The bankruptcy court's jurisdiction extends to ancillary
7 matters, such as fee disputes involving services rendered by an
8 attorney in connection with the underlying bankruptcy case. See
9 Elias, 188 F.3d at 1162. The bankruptcy court has discretion to
10 exercise its ancillary jurisdiction. Id.

11 We discern nothing in the record before us indicating that
12 the bankruptcy court "expressly declined" to exercise its
13 ancillary jurisdiction. To the contrary, the bankruptcy court
14 categorically exercised its jurisdiction by conducting a hearing,
15 issuing its memorandum of decision and its findings of fact and
16 conclusions of law, and entering its order thereon.

17 More importantly, Warner expressly agreed to subject his
18 fees and costs to review and approval by the bankruptcy court.
19 The Employment Application provided that Warner's compensation
20 "would be such as the [bankruptcy] court would allow."
21 Application for Leave to Employ Attorney for Debtor-in-
22 Possession, 2:13. The Fee Agreement stated that any fees or
23 expenses claimed by Warner required prior approval of the
24 bankruptcy court. The Employment Order provided that no fees
25 would be paid to Warner postpetition without the bankruptcy
26 court's approval. The Employment Order also provided that the
27 bankruptcy court would determine any compensation to be paid to
28 Warner pursuant to applicable bankruptcy law.

1 Because the fee dispute relates to services rendered in
2 connection with Bay Voltex's bankruptcy, and because the
3 Employment Application, Employment Order and Fee Agreement
4 authorize the bankruptcy court to adjudicate fee issues, we
5 conclude that the bankruptcy court had jurisdiction to determine
6 Warner's fee dispute with Bay Voltex.

7
8 B. The bankruptcy court had jurisdiction over Warner's fee
9 dispute with Pease and BV Thermal

10 Warner asserts that the bankruptcy court lacked jurisdiction
11 to adjudicate his fee dispute with Pease and BV Thermal because
12 neither Pease nor BV Thermal were debtors in the underlying
13 chapter 11 case.

14 As we noted earlier, the bankruptcy court has jurisdiction
15 to interpret and enforce its own orders entered prior to
16 dismissal of the bankruptcy case. See Taylor, 884 F.2d at 481.

17 Warner bases his right to recover fees from Pease and BV
18 Thermal on the terms of the Settlement Agreement and the Fee
19 Agreement. Warner contends that, under the Settlement Agreement,
20 Pease and BV Thermal were liable for the fees incurred for the
21 legal services he rendered in Bay Voltex's behalf following the
22 trustee's appointment. Warner also alleges in the state court
23 complaint that Pease and BV Thermal owed him fees under the Fee
24 Agreement.

25 The bankruptcy court approved the Settlement Agreement,
26 setting forth obligations of Pease and BV Thermal to the estate.
27 Under the Settlement Agreement, the bankruptcy court retained
28 jurisdiction to resolve disputes as to its terms. The bankruptcy

1 court further approved Warner's employment by Bay Voltex under
2 the Fee Agreement but subject to the terms of the Employment
3 Order. In these circumstances, the bankruptcy court had
4 jurisdiction to decide the fee dispute.

5 We conclude that the bankruptcy court had jurisdiction to
6 adjudicate Warner's fee dispute under 28 U.S.C. §§ 1334 and
7 157(b) (2) (A) and (O). We have jurisdiction under 28 U.S.C.
8 § 158.

9
10 **III. ISSUES**

11 (1) Whether the bankruptcy court properly determined that
12 Pease was not personally liable for the payment of Warner's fees
13 under the Settlement Agreement.

14 (2) Whether the bankruptcy court abused its discretion in
15 imposing sanctions on Warner.

16
17 **IV. STANDARDS FOR REVIEW**

18 We review a bankruptcy court's conclusions of law de novo
19 and findings of fact for clear error. Vacation Village, Inc. v.
20 Clark County, Nev., 497 F.3d 902, 910 (9th Cir. 2007). We accept
21 the bankruptcy court's findings of fact unless we have a definite
22 and firm conviction that the bankruptcy court committed a
23 mistake. Id.

24 "We review the bankruptcy court's award of sanctions,
25 including an award of attorney's fees, for an abuse of
26 discretion." Hansbrough v. Birdsell (In re Hercules Enters.),
27 387 F.3d 1024, 1027 (9th Cir. 2004). Under the abuse of
28 discretion standard, we will not reverse the bankruptcy court

1 unless we have a definite and firm conviction that it committed
2 clear error in the conclusion that it reached after weighing all
3 of the relevant factors. Law Offices of David A. Boone v.
4 Derham-Burk (In re Eliapo), 468 F.3d 592, 596 (9th Cir. 2006).

6 **V. DISCUSSION**

7 A. The bankruptcy court properly determined that Pease was not
8 personally liable for payment of Warner's fees under the
9 Settlement Agreement

10 Warner had argued before the bankruptcy court that he could
11 seek to recover his fees from Pease and BV Thermal because, under
12 the Settlement Agreement, Pease was liable for all postpetition
13 accounts payable, which included Warner's fees. Warner does not
14 advance this argument before us, however. He instead asserts his
15 right to recover fees from Pease and BV Thermal under the
16 equitable remedy of quantum meruit, which he did not raise before
17 the bankruptcy court.

18 As Warner acknowledges, absent exceptional circumstances, we
19 do not consider issues raised for the first time on appeal,
20 though we have discretion to do so. El Paso v. America West
21 Airlines, Inc. (In re America West Airlines), 217 F.3d 1161, 1165
22 (9th Cir. 2000).

23 We note, however, that, generally, "the equitable remedy of
24 quantum meruit is not available where the fees are barred by law
25 under the [B]ankruptcy [Code and Bankruptcy] Rules." Law Offices
26 of Ivan W. Halperin v. Occidental Fin. Group, Inc. (In re
27 Occidental Fin. Group, Inc.), 40 F.3d 1059, 1063 (9th Cir.
28 1994) (citing DeRonde v. Shirley (In re Shirley), 134 B.R. at 944-
45). Accord McCutchen, Doyle, Brown & Enersen v. Official

1 Committee of Unsecured Creditors (In re Weibel, Inc.), 176 B.R.
2 209, 212 (9th Cir. BAP 1994).

3 To explain his demand for recovery of fees from Pease,
4 Warner states in his opening brief that he had rendered services
5 in behalf of both Bay Voltex and Pease, although Pease personally
6 was not a party to the Fee Agreement. At the time he submitted
7 his Employment Application, Warner sought employment as chapter
8 11 counsel for Bay Voltex only. Warner did not disclose that he
9 represented Pease personally in either his Employment Application
10 or Rule 2014 Statement; in fact, he claimed, under penalty of
11 perjury, that he had no connection with any creditor of Bay
12 Voltex or any other party in interest.

13 Rule 2014 states that a professional's application for
14 employment "shall be accompanied by a verified statement of the
15 person to be employed setting forth the person's connections with
16 the debtor, creditors, any other party in interest, their
17 respective attorneys and accountants, the United States trustee,
18 or any person employed in the office of the United States
19 trustee." Rule 2014 has been interpreted to impose an ongoing
20 duty to update information as circumstances change. I.G.
21 Petroleum, L.L.C. v. Fenasci and Butler (In re West Delta Oil
22 Co., Inc.), 432 F.3d 347, 355 (5th Cir. 2005); In re Metropolitan
23 Environmental, Inc., 293 B.R. 871, 887 (Bankr.N.D. Ohio 2003)
24 ("[C]ase law has uniformly held that under Rule 2014(a), (1) full
25 disclosure is a continuing responsibility, and (2) an attorney is
26 under a duty to promptly notify the court if any potential for
27 conflict arises.") (citations omitted). Warner never amended his
28 Rule 2014 statement to state that he was representing any party

1 other than Bay Voltex in its bankruptcy case, and as noted above,
2 Pease retained separate counsel for his negotiations with the
3 trustee.

4 As Warner failed to disclose his alleged representation of
5 Pease and thus, a substantial potential conflict of interest in
6 his Employment Application, and Rule 2014 Statement, he is in no
7 position to assert the equitable remedy of quantum meruit. See,
8 e.g., Occidental Fin. Group, Inc., 134 B.R. at 1063 (determining
9 that, because of an undisclosed conflict of interest, the
10 attorney could not recover fees under the equitable remedy of
11 quantum meruit). In fact, failure to disclose fully relevant
12 information, such as potential, likely or actual conflicts of
13 interest, may result in a denial of fees. See Nebben & Starrett,
14 Inc. v. Chartwell Fin. Corp. (In re Park-Helena Corp.), 63 F.3d
15 877, 882 (9th Cir. 1995).

16 In any event, notwithstanding Warner's assertion of a right
17 to a quantum meruit recovery, based on our review of the
18 Settlement Agreement, we agree with the bankruptcy court that
19 Pease is not personally liable for the payment of Warner's fees.

20 As the bankruptcy court pointed out, the term "accounts
21 payable" in the Settlement Agreement did not include
22 administrative expenses, as the amount of the accounts payable
23 was substantially less than the amount of the administrative
24 expenses. (In fact, the amount of Warner's fees alone exceeded
25 the amount of the accounts payable.) In addition, the bankruptcy
26 court had not allowed any of Warner's fees at the time it
27 approved the Settlement Agreement; the bankruptcy court entered
28 an order approving the Settlement Agreement more than 3 weeks

1 before Warner filed his Fee Application.

2 The Fee Agreement, the Employment Application and the
3 Employment Order uniformly provided that Warner would be paid
4 only such fees for representation of Bay Voltex in its chapter 11
5 case as the bankruptcy court approved. Warner's dissatisfaction
6 with the Fee Order is evident from his numerous attempts to
7 circumvent it. But if Warner disagreed with the Fee Order, he
8 should have appealed it. This he did not do. The Fee Order thus
9 became final as to the issue of Warner's allowed fees. See Rule
10 8002(a).

11
12 B. The bankruptcy court properly imposed sanctions on Warner in
13 the exercise of its sanctions authority

14 Bankruptcy courts have both inherent sanction powers and
15 civil contempt powers under § 105(a). See Caldwell v. Unified
16 Capital Corp. (In re Rainbow Magazine, Inc.), 77 F.3d 278, 284-85
17 (9th Cir. 1996). Under its civil contempt powers, the bankruptcy
18 court may remedy a violation of a specific order, such as a
19 violation of the automatic stay or the discharge injunction.
20 Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1196 (9th Cir.
21 2003). Under its inherent sanction powers, the bankruptcy court
22 may deter and provide compensation for a broad range of improper
23 litigation tactics. Id.

24 The inherent sanction powers differ from the civil contempt
25 powers in that before the bankruptcy court can impose sanctions
26 under its inherent sanctioning powers, it must make an explicit
27 finding of bad faith or willful misconduct. Id. With respect to
28 the inherent sanction powers, "bad faith or willful misconduct

1 consists of something more egregious than mere negligence or
2 recklessness.” Id. Specific intent or other conduct in bad
3 faith is necessary to impose sanctions under the bankruptcy
4 court’s inherent sanction powers. Id. (quoting Fink v. Gomez,
5 239 F.3d 989, 994 (9th Cir. 2001)).

6 Here, the bankruptcy court determined that Warner, in
7 initiating the state court action against Bay Voltex, Pease and
8 BV Thermal, violated the terms of the Employment Order and other
9 prior orders of the court. Relying on § 105 and its “inherent
10 authority to sanction misconduct,” the bankruptcy court awarded
11 compensatory sanctions against Warner in the form of attorney’s
12 fees incurred by Pease. Findings of Fact and Conclusions of Law,
13 7:5-9. After oral argument at the hearing on the Motion to
14 Interpret, the bankruptcy court directed counsel for Pease to
15 draft findings and conclusions incorporating findings that
16 “Warner’s behavior was totally unjustified as a matter of fact
17 and law, and in violation of court orders.” Tr. of January 31,
18 2008 Hr’g, 9:1-3.¹⁰

19 Accordingly, the bankruptcy court made an explicit finding
20 that Warner engaged in willful misconduct when it imposed
21 sanctions under its inherent sanctions power. That determination
22 was memorialized in the written findings that Warner’s conduct
23 “was unjustified as a matter of law and fact, and constitutes a
24 violation of the terms of his employment and a violation of this
25

26 ¹⁰ The transcript of the January 31, 2008 hearing was
27 designated as part of the record, but was not included in the
28 excerpts of record before us. We obtained a copy of the
transcript from the bankruptcy court’s electronic docket. See
Atwood v. Chase Manhattan Mortgage Co. (In re Atwood), 293 B.R.
227, 233 n.9 (9th Cir. BAP 2003).

1 court's prior orders in this case." Findings of Fact and
2 Conclusions of Law, 7:1-4. Based on our review of the entire
3 record in this appeal, we do not have any clear and definite
4 impression that the bankruptcy court abused its discretion in
5 imposing compensatory sanctions in the amount of Pease's
6 attorney's fees.

7
8 **VI. CONCLUSION**

9 Contrary to Warner's assertions, the bankruptcy court had
10 jurisdiction over Warner's fee dispute with Bay Voltex, Pease and
11 BV Thermal, as the fee dispute related directly to orders entered
12 by the bankruptcy court during the course of Bay Voltex's
13 bankruptcy.

14 The bankruptcy court properly determined that Pease was not
15 personally liable for payment of Warner's fees under the terms of
16 the Settlement Agreement, as well as the Fee Agreement and the
17 Employment Order. The bankruptcy court further did not abuse its
18 discretion in imposing sanctions on Warner under its inherent
19 sanction powers. Accordingly, we AFFIRM.

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