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NOT FOR PUBLICATION

SUSAN M SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. EC-10-1264-HPaJu
)
OCCMEDS BILLING SERVICES,) Bk. No. 07-28444
INC.,)
) Adv. No. 09-2576
Debtor.)
_____)

MICRO MEDICAL MANAGEMENT)
CONSULTING, INC.; LIFE)
PHARMACEUTICAL MANAGEMENT)
GROUP, INC.,)
)
Appellants,)

v.) **M E M O R A N D U M**¹
)

OCCMEDS BILLING SERVICES,)
INC.,)
)
Appellee.)
_____)

Argued and Submitted on June 16, 2011
at San Francisco, California

Filed - June 29, 2011

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

Honorable David E. Russell, Bankruptcy Judge, Presiding

Appearances: Celia R. Bernal, Attorney at Law, argued for the
Appellants. Daniel L. Egan of Wilke, Fleury,
Hoffelt, Gould & Birney, LLP, argued for the
Appellee.

Before: HOLLOWELL, PAPPAS, and JURY, Bankruptcy Judges.

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

1 Micro Medical Management Consulting, Inc. (Micro Medical)
2 and Life Pharmaceutical Management Group, Inc. (Life
3 Pharmaceutical) (collectively, the Appellants) appeal the
4 bankruptcy court's denial of their request to continue a trial on
5 whether certain transfers made to the Appellants by OccMeds
6 Billing Services, Inc. (OccMeds) could be recovered as fraudulent
7 transfers. Additionally, they argue the bankruptcy court erred
8 in allowing two of OccMeds' exhibits into evidence during the
9 trial. We AFFIRM.

10 **I. FACTS²**

11 In 2006, OccMeds was in the business of purchasing medical
12 workers' compensation claims from Micro Medical and Life
13 Pharmaceutical. Under a July 2006 contract, Life Pharmaceutical
14 sold OccMeds certain insurance claims. OccMeds immediately paid
15 Life Pharmaceutical approximately 50% of the value of the sold
16 claims and then billed the insurance company for the claims and
17 kept the remaining collections. OccMeds and Micro Medical
18 executed a similar contract in August 2006.

19 Over the next several months, the contracts were re-
20 negotiated twice due to issues that arose between the parties
21 regarding the exchange of information, documentation, and
22 payments. The renegotiated contracts (Contracts) continued the
23 same agreement whereby OccMeds paid a percentage of the claims
24

25 ² The record on appeal is scant. Therefore, the "facts" in
26 this section are largely taken from the parties' opening briefs
27 on appeal and documents we retrieved from the bankruptcy court's
28 electronic docket. See O'Rourke v. Seaboard Sur. Co. (In re E.R.
Fegert, Inc.), 887 F.2d 955, 957-58 (9th Cir. 1989) (noting that
the appellate court may take judicial notice of items of record).

1 and retained whatever it collected on the claim; however, the
2 parties altered the percentages paid and the procedures for
3 transferring and paying the claims. At some point in 2007,
4 OccMeds did not make payments to Micro Medical or Life
5 Pharmaceutical under the Contracts. Micro Medical filed a state
6 court action, alleging breach of contract for OccMeds' failure to
7 pay more than \$500,000 on transferred claims (the State Action).

8 On October 10, 2007, OccMeds filed for chapter 11³ relief.
9 On September 11, 2009, OccMeds filed a complaint against the
10 Appellants for the avoidance and recovery of fraudulent transfers
11 pursuant to §§ 544, 548 and 550 (the Complaint). OccMeds alleged
12 that within the two years before OccMeds filed its bankruptcy
13 case, and during a period when OccMeds was insolvent, OccMeds
14 paid the Appellants for medical claims that turned out to be
15 invalid, uncollectible and worthless. The Appellants filed an
16 Answer to the Complaint denying the allegations and asserting
17 various affirmative defenses including the failure to mitigate,
18 that the payments were made in the ordinary course of business
19 and with reasonable business justification, unclean hands, and
20 estoppel.

21 On December 16, 2009, the bankruptcy court held a status
22 conference on the Complaint and set a trial date for June 7, 2010
23 (the Trial). Before the Trial, both OccMeds and the Appellants
24 filed exhibits and direct testimony of their witnesses

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

1 (Mr. Morrell and Mr. Brodie for OccMeds and Mr. Sorat for the
2 Appellants) through declarations pursuant to Local Rule 9017-1.
3 OccMeds filed objections to certain testimony of Mr. Sorat and
4 some of the Appellants' exhibits. The Appellants did not file
5 any objections to OccMeds' direct testimony or exhibits.

6 On the day of the Trial, the Appellants' counsel appeared
7 and requested a continuance on the basis that Mr. Sorat's son
8 recently had emergency surgery and Mr. Sorat could not attend the
9 Trial. The Appellants had alerted OccMeds of the situation the
10 Friday before the Monday Trial and asked OccMeds to stipulate to
11 continue the Trial. OccMeds requested verification of the
12 medical situation. The morning of the Trial, the Appellants
13 provided the verification in the form of an email ostensibly sent
14 by a physician affiliated with a Weight Loss Center who stated
15 "Mr. Sorat's child was temporarily disabled until June 9, and was
16 under the care of his parents."⁴ There was no indication from
17 the email (or from the Appellants) as to the nature of the
18 medical situation, the age of the child, or whether the child was
19 out of the city or state. While sympathetic, the bankruptcy
20 court found that the continuance was unwarranted because there
21 was "no indication . . . that there wasn't some alternative way
22 of handling the matter." Trial Tr. (June 7, 2010) at 4-7.

23 The bankruptcy court then addressed OccMeds' objections to
24 Mr. Sorat's testimony and the Appellants' exhibits as "beneficial
25 . . . to go through . . . because it might be possible still to
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27 ⁴ A copy of the doctor's email is not in the record. The
28 content of the email was read to the bankruptcy court.

1 take part of [Mr. Sorat's] direct testimony into evidence."
2 Trial Tr. at 8:1-6. The bankruptcy court subsequently sustained
3 OccMeds' objections to the Appellants' evidence. It also
4 ultimately admitted all of OccMeds' exhibits, including two
5 particular exhibits, K and L, which were computer spreadsheets
6 that summarized the uncollectible claims OccMeds bought from the
7 Appellants, and which were the subject of the Appellants'
8 repeated assertion that they were inadmissible because they
9 lacked proper foundation (Exhibits K and L are collectively
10 referred to as the Spreadsheets).⁵

11 The bankruptcy court made its ruling on the record at the
12 close of the Trial. It determined that the elements of
13 fraudulent transfer were satisfied because it found that the
14 Appellants received payment from OccMeds for claims that were
15 invalid and uncollectible during a period when OccMeds was
16 insolvent. Based on the figures and information presented by
17 OccMeds in the Spreadsheets, the bankruptcy court determined the
18 amount of the recovery to be \$204,873. A judgment was entered on
19 September 1, 2010, against Micro Medical for the avoidance and
20 recovery of fraudulent transfers in the amount of \$204,669, and
21 against Life Pharmaceutical in the amount of \$204 (the Judgment).
22 The Appellants timely appealed.

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26 ⁵ Exhibits K and L are not included in the record. The
27 description of the Spreadsheets had to be gleaned from the Trial
28 transcript, only excerpts of which were provided in the appellate
record.

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2 **V. DISCUSSION**

3 A. The Bankruptcy Court Did Not Abuse Its Discretion In Denying
4 The Request To Continue.

5 There is no mechanical test for determining when a denial of
6 a continuance is a clear abuse of discretion; it involves a case-
7 by-case analysis. United States v. Kloehn, 620 F.3d at 1127.

8 Four factors are considered when reviewing denials of requests
9 for continuances: (1) the extent of the appellant's diligence in
10 his efforts to ready his defense prior to the date set for
11 hearing; (2) how likely it is that the need for a continuance
12 could have been met if the continuance had been granted; (3) the
13 extent to which granting the continuance would have
14 inconvenienced the court and the opposing party, including its
15 witnesses; and (4) the extent to which the appellant might have
16 suffered harm as a result of the denial of the continuance.

17 United States v. Flynt, 756 F.2d at 1358-59 (internal citations
18 omitted). In order to obtain a reversal of the bankruptcy
19 court's denial of the request for continuance, the Appellants
20 must demonstrate that, at a minimum, they suffered prejudice as a
21 result of the denial. Id. at 1359.

22 The Appellants argue they were prejudiced by the denial of
23 the continuance because they were unable to have Mr. Sorat be
24 cross-examined or have components of his direct testimony
25 considered by the bankruptcy court. Additionally, they contend
26 their exhibits were not admitted because of Mr. Sorat's inability
27 to authenticate them. Finally, they contend they were unable,
28 without Mr. Sorat's presence, to present evidence in response to
OccMeds' testimony or exhibits.

1 The Appellants, however, do not provide specific examples of
2 how their exhibits or Mr. Sorat's testimony were critical to
3 their defense. See e.g., *id.* at 1359 n.7 (The showing a party
4 must make when seeking a continuance to obtain absent witnesses
5 includes the substance and relevance of the desired testimony).
6 They also did not provide in the record on appeal the direct
7 testimony declarations, Trial exhibits, or full transcript of the
8 Trial proceedings, which limits our ability to fully understand
9 the evidence submitted to the bankruptcy court.⁶

10 From the parties' appellate briefs and the Trial transcript,
11 it seems that the Appellants took the position that under the
12 terms of the Contracts, OccMeds should have notified them of any
13 invalid claims so that the Appellants could either attempt the
14 collection themselves or reimburse OccMeds on the claim. This
15 appears to form the basis of the Appellants' defense: "Without
16 evidence to support [OccMeds has] complied with the contractual
17 terms, OccMeds cannot prevail." Appellants' Opening Br. at 7.
18 However, because performance under the Contracts is not an
19 element to be considered when determining if a fraudulent
20 transfer has occurred, the bankruptcy court correctly found that
21 evidence related to the Contracts was irrelevant.

22 OccMeds' objections to the portions of Mr. Sorat's
23 declaration related to Micro Medical's State Action and its
24

25 ⁶ A review of the bankruptcy court's electronic docketing
26 system reveals that while the Appellants' Trial briefs and the
27 direct testimony of Mr. Sorat are available for review, the
28 exhibits are not. Additionally, OccMeds' declarations and
exhibits, apparently filed with the bankruptcy court on May 20,
2010, are not docketed.

1 breach of contract claim. The bankruptcy court sustained the
2 objections because it found (1) that the reasons for the
3 renegotiation of the Contracts were not relevant to the issue of
4 whether there was a fraudulent transfer and (2) Mr. Sorat's
5 declaration testimony regarding the nature of the State Action
6 could be "available to offset a claim if it turns out that
7 [OccMeds'] claim is not a fraudulent transfer," but that "the
8 existence of prepetition obligations just isn't relevant" to
9 whether fraudulent transfers were made. Trial Tr. (June 7, 2010)
10 at 9-10. It appears, however, that the balance of Mr. Sorat's
11 direct testimony was admitted.

12 OccMeds' objections to two of the Appellants' exhibits also
13 related to the State Action. The bankruptcy court found that one
14 of the exhibits was irrelevant as it was the complaint in the
15 State Action and the other exhibit (ostensibly listing the amount
16 of money that OccMeds owed Micro Medical as the basis for the
17 state court complaint) was illegible and irrelevant. Thus, the
18 two objectionable exhibits were excluded solely on relevancy
19 grounds and not due to Mr. Sorat's inability to authenticate
20 them.

21 On appeal, the Appellants argue that without Mr. Sorat's
22 presence, the "end result was a one-sided trial devoid of a fair
23 presentation of balanced evidence." However, the bankruptcy
24 court noted that it was "quite impressed with [the Appellants],
25 not having [their] client present and yet [they] did a good job
26 of attacking the plaintiff's case." Trial Tr. (June 7, 2010) at
27 103:7-11. The direct testimony of Mr. Sorat was largely
28 considered by the bankruptcy court, along with all but two of the

1 Appellants' exhibits. Furthermore, the Appellants had the
2 ability to cross-examine OccMeds' witnesses and make objections
3 to OccMeds' exhibits; it is not clear what benefit Mr. Sorat's
4 testimony would have provided in that endeavor. Thus, the Trial
5 was not one-sided. The Appellants were able to put forward an
6 adequate defense despite Mr. Sorat's absence. Consequently, the
7 Appellants have not been able to demonstrate that they were
8 prejudiced by the denial of the continuance and no reversal is
9 required.

10 Moreover, the bankruptcy court's reasons for not continuing
11 the Trial were not unreasonable under the circumstances. While
12 the Appellants appear to have sought the continuance as soon as
13 practicable, the nature of the alleged medical situation was not
14 established. The email from the physician merely stated that
15 Mr. Sorat's child was temporarily disabled and was under the care
16 of his parents. The bankruptcy court was ready for the Trial,
17 having spent time reviewing all the pretrial briefs,
18 declarations, and exhibits. OccMeds was also fully prepared for
19 the Trial, appearing with three witnesses. Therefore, it would
20 have been inconvenient to them and to the bankruptcy court to
21 continue the Trial, particularly because the bankruptcy court
22 found that, based on the email and representations made by the
23 Appellants' counsel, there was no indication that there was no
24 alternative method of handling the medical situation that could
25 have allowed Mr. Sorat to appear for Trial. As a result, we
26 conclude that the bankruptcy court did not abuse its discretion
27 in denying the continuance.

28

1 B. The Bankruptcy Court Did Not Abuse Its Discretion In
2 Admitting the Spreadsheets.

3 To reverse an evidentiary ruling, we must conclude that the
4 bankruptcy court both abused its discretion and that the error
5 was prejudicial. Latman v. Burdette, 366 F.3d 774, 786 (9th Cir.
6 2004); Fed. R. Evid. 103(a).

7 The Appellants argue that OccMeds failed to lay a proper
8 foundation for the Spreadsheets but do not cite to any legal
9 authority to support their contention that the Spreadsheets
10 failed to meet admissibility standards. They merely argue that
11 the Spreadsheets were manipulated and unreliable. The Appellants
12 assert that without the Spreadsheets, OccMeds had no basis for
13 recovery; however, they do not explain how the Spreadsheets
14 related to the fraudulent transfer claim. They make no argument
15 as to how they were prejudiced by the admission of the
16 Spreadsheets beyond a conclusory statement that "the outcome of
17 the Trial would be different" if OccMeds could not rely on the
18 Spreadsheets to support their fraudulent transfer claim.

19 Although the Appellants identified the Spreadsheets as "the
20 underpinning" of the judgment against them, the Spreadsheets
21 themselves are not included in the record. Based on the
22 testimony elicited at the Trial, they appear to be computer
23 printouts of claim information pulled from OccMeds' database that
24 summarized the amounts that OccMeds paid to Micro Medical
25 (Exhibit K) and Life Pharmaceutical (Exhibit L) for claims, which
26 OccMeds recorded as uncollectible. They support OccMeds'
27 fraudulent transfer claim by demonstrating the payments on claims
28 for which they did not receive reasonably equivalent value.

1 Business records may be introduced into evidence as long as
2 the proponent lays a foundation through testimony that the
3 documents were (1) made in the regular practice of business,
4 (2) prepared from a source or method that is trustworthy,
5 (3) kept in the regular course of business, (4) made by a person
6 with knowledge, and (5) made at or near the time of the event.⁷

7 Fed. R. Evid. 803(6); In re Vee Vinhnee, 336 B.R. at 444.

8 Furthermore, computer print-outs reflecting data stored in a
9 computer may qualify as an admissible business record if it is
10 established that the data stored in the computer is an accurate
11 account of admissible business records and the computer printout
12 accurately reflects the stored data.⁸ See U-Haul Int'l v.

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14 ⁷ Fed. R. Evid. 803(6) provides that the following is not
15 excluded from evidence under the hearsay rule:

16 A memorandum, report, record, or data compilation, in
17 any form, of acts, events, conditions, opinions, or
18 diagnoses, made at or near the time by, or from
19 information transmitted by, a person with knowledge, if
20 kept in the course of a regularly conducted business
21 activity, and if it was the regular practice of that
22 business activity to make the memorandum, report,
23 record or data compilation, all as shown by the
24 testimony of the custodian or other qualified witness
25 . . . unless the source of information or the method or
26 circumstances of preparation indicate lack of
27 trustworthiness.

28 ⁸ Eleven specific criteria have been identified as
satisfying a foundation for computer records:

1. The business uses a computer;
 2. The computer is reliable;
 3. The business has developed a procedure for inserting data onto the computer;
 4. The procedure has built-in safeguards to ensure accuracy and
- (continued...)

1 Lumbermens Mut. Cas. Co., 576 F.3d 1040, 1043-44 (9th Cir. 2009)
2 (printouts prepared for litigation from databases that were
3 compiled in the ordinary course of business are admissible as
4 business records to the same extent as if the printouts
5 themselves were prepared in the ordinary course of business).

6 During the Trial, the Appellants objected several times to
7 the Spreadsheets based on a lack of foundation--questioning how
8 they were prepared and how the data was entered in order to
9 understand their accuracy. The bankruptcy court repeatedly
10 sustained the objections but also allowed OccMeds and the
11 Appellants to continue examining Mr. Morrell regarding the
12 Spreadsheets. The bankruptcy court ultimately found that there
13 was sufficient "further explanation as to how [the Spreadsheets
14 were] prepared. I am now satisfied that [they] are reliable and
15 should be admitted." Trial Tr. at 73:1-7.

16 The bankruptcy court's determination that the Spreadsheets
17 were admissible was not illogical, implausible, or unsupported by
18 the record. Mr. Morrell testified that the Spreadsheets

19 _____
20 ⁸(...continued)

- 21 identify errors;
22 5. The business keeps the computer in a good state of repair;
23 6. The witness had the computer readout certain data;
24 7. The witness used the proper procedures to obtain the
25 readout;
26 8. The computer was in working order at the time the witness
27 obtained the readout
28 9. The witness recognizes the exhibit as the readout;
10. The witness explains how he or she recognizes the readout;
and,
11. If the readout contains symbols, the meaning of those
symbols are explained.

See In re Vee Vinhnee, 336 B.R. at 446.

1 contained data regarding the claims it purchased from the
2 Appellants, including the amount of money paid and the history of
3 collection (or non-collection) on the claim. The Spreadsheets
4 contained the data only for the claims that OccMeds was unable to
5 collect. Mr. Morrell's testimony revealed that the Spreadsheets
6 were a summary version of the entire claims report contained in
7 OccMeds' computer database and maintained in the ordinary course
8 of business. He testified that OccMeds' computer database
9 collects the historical data on each claim purchased, including
10 codes for the reason a claim is denied or paid by the insurance
11 company, and that he prepared the Spreadsheets based on queries
12 that sorted the billing records in the OccMeds' database by date,
13 provider, and uncollected claims.

14 Additionally, Mr. Morrell testified that the database was
15 specifically designed for OccMeds and was a secure system. He
16 testified that the system had been tested for bugs or blips and
17 that he had spot-checked the extracted data for accuracy. He
18 described how the claims were identified and extracted. Finally,
19 he testified that the information regarding the claims was
20 tracked as the information was received in the ordinary course of
21 business. Based upon this testimony, the bankruptcy court's
22 determination that a proper foundation was established and the
23 Spreadsheets satisfied the criteria for the admission of computer
24 business records was not an abuse of discretion.

25 VI. CONCLUSION

26 The Appellants did not demonstrate that they were prejudiced
27 by the bankruptcy court's rulings to deny a continuance of the
28 Trial or to admit the Spreadsheets. Furthermore, the bankruptcy

1 court's findings supporting its decisions were not illogical,
2 implausible, or unsupported by inferences from the evidentiary
3 record. Accordingly, we AFFIRM.

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