

MAY 30 2012

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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NOT FOR PUBLICATION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-11-1477-JuKiJo
)	
BRIAN SCOTT CARPENTER,)	Bk. No. 11-44904
)	
Debtor.)	
_____)	
)	
BRIAN SCOTT CARPENTER,)	
)	
Appellant,)	
)	
v.)	M E M O R A N D U M*
)	
MARTHA G. BRONITSKY;)	
UNITED STATES TRUSTEE,)	
OAKLAND; BAC HOME LOANS)	
SERVICING, LP,)	
)	
Appellees.)	
_____)	

Argued and Submitted on May 17, 2012
at San Francisco, California

Filed - May 30, 2012

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

Honorable Roger L. Efremsky, Bankruptcy Judge, Presiding

Appearances: Jim G. Price, Esq. argued for Appellant Brian
Scott Carpenter. No appellee participated in
this appeal.

* 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 Before: JURY, KIRSCHER, and JOHNSON** Bankruptcy Judges.
2

3 Debtor Brian Scott Carpenter appeals the decisions of the
4 bankruptcy court denying without hearings his motion to value
5 real property and motion for reconsideration. Because the
6 motions were not supported by evidence and the Local Rules do
7 not compel a hearing, we AFFIRM.

8 **I. BACKGROUND FACTS AND PROCEDURAL HISTORY**

9 On May 4, 2011, debtor filed a petition for bankruptcy
10 under chapter 13¹. On June 6, 2011, debtor filed a motion to
11 value real property under § 506(a). The motion was filed
12 pursuant to the bankruptcy court's Local Rule 9014-1, which
13 provides for a hearing only after a party objects. Debtor's
14 motion sought to reclassify as unsecured the claim based on BAC
15 Home Loans Servicing, LP's ("BAC Home Loans") second deed of
16 trust ("Second DOT"). In support of the motion, debtor declared
17 the value of his real property was \$275,000 and the balance on
18 his first deed of trust ("First DOT"), also with BAC Home Loans,
19 was \$280,000. Debtor did not support his declaration as to the
20 balance on his First DOT with any documentary evidence.

21 On June 16, 2011, BAC Home Loans filed a proof of claim
22 ("POC") for the First DOT stating the amount owed was
23

24 ** The Honorable Wayne E. Johnson, Bankruptcy Judge, Central
25 District of California, sitting by designation.

26 ¹ Unless otherwise indicated, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.
28 "Rule" references are to the Federal Rules of Bankruptcy
Procedure and "Civil Rule" references are to the Federal Rules of
Civil Procedure.

1 \$272,922.96.

2 On June 28, 2011, debtor filed a request for default on the
3 grounds that no party opposed the motion to value. On July 8,
4 2011, the bankruptcy court denied the request. The bankruptcy
5 court, relying on evidence in BAC Homes Loans' POC, found
6 debtor's property held equity above the First DOT in the amount
7 of \$2,077. Accordingly, the Second DOT remained secured.

8 On July 15, 2011, debtor filed a motion for
9 reconsideration. In the motion, debtor asserted the amount
10 stated in BAC Home Loans' POC was incorrect because it did not
11 account for costs incurred by publication of a notice of default
12 and a notice of trustee's sale. Debtor further alleged BAC Home
13 Loans had informed him that the total principal and arrears was
14 \$282,272.27. Debtor's motion was supported by a declaration
15 from the debtor but no mortgage statement from BAC Home Loans or
16 any other documentation. On August 9, 2011, debtor again
17 submitted a request for default.²

18 The bankruptcy court denied the request. The bankruptcy
19 court rejected debtor's unsubstantiated assertions regarding the
20 amount owed on the First DOT. The bankruptcy court again relied
21 on BAC Home Loans' POC. The bankruptcy court determined BAC
22 Home Loans' POC was the best evidence before the court.
23 Finally, the bankruptcy court noted that its denial was without
24 prejudice and invited the debtor to refile the motion with

25
26 ² The second motion was denominated "Motion for
27 Reconsideration", so the request for default seems procedurally
28 improper. However, as noted below, it really was a renewed
motion to value and, in that context, the request for default
follows.

1 additional evidence. On August 23, 2011, debtor filed a notice
2 of appeal.

3 II. JURISDICTION

4 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
5 §§ 1334 and 157(b)(1). This Panel has jurisdiction under
6 28 U.S.C. § 158.

7 III. ISSUE

8 Whether the bankruptcy court abused its discretion by
9 denying debtor a hearing on his motion to value and motion for
10 reconsideration.³

11 IV. STANDARD OF REVIEW

12 We review a bankruptcy court's compliance with non-
13 jurisdictional bankruptcy rules for an abuse of discretion.
14 Fitzsimmons v. Nolden (In re Fitzsimmons), 920 F.2d 1468, 1471
15 (9th Cir. 1990). We apply a two-part test to determine whether
16 the bankruptcy court abused its discretion: (1) we review de
17 novo whether the bankruptcy court "identified the correct legal
18 rule to apply to the relief requested" and (2) if it did,
19 whether the bankruptcy court's application of the legal standard
20 was illogical, implausible or "without support in inferences
21 that may be drawn from the facts in the record." United States
22 v. Hinkson, 585 F.3d 1247, 1261-63 (9th Cir. 2009).

25 ³ Debtor's statement of issues on appeal challenged the
26 bankruptcy court's reliance on BAC Home Loans' POC. However,
27 debtor did not argue the issue in his brief. Therefore, debtor
28 has waived the issue for purposes of this appeal. See Wake v.
Sedona Inst. (In re Sedona Inst.), 220 B.R. 74, 76 (9th Cir.
1998) (an issue not briefed is deemed waived).

1 **V. DISCUSSION**

2 Debtor focuses his appeal on the failure of the bankruptcy
3 court to set a hearing before denying the motions. This focus
4 is misguided.

5 Debtor's motion to value asserted the balance on his First
6 DOT with BAC Home Loans was \$280,000 and the value of his real
7 property was \$275,000. BAC Home Loans filed a POC with
8 supporting documentation that contradicted Debtor's declaration.
9 The bankruptcy court denied the motion stating:

10 The evidence in support of Debtor's Motion shows that
11 there is equity for the benefit of BAC Home Loans
12 Servicing, LP. Specifically, the appraisal submitted
13 by Debtor values the property at \$275,000. Further,
14 the Proof of Claim filed by the 1st lienholder values
15 its claim at \$272,922.96, leaving \$2,077 in equity for
16 the benefit of BAC Home Loans Servicing, LP.

17 In response, debtor filed a motion for reconsideration.
18 We note that the motion for reconsideration did not state any
19 grounds for reconsideration under Rule 9024. For this reason,
20 we do not analyze the motion under Rule 9024, but instead
21 consider the motion as a resubmission of the motion to value.

22 Debtor's motion for reconsideration contested the
23 bankruptcy court's reliance on BAC Home Loans' POC. Debtor
24 argued that BAC Home Loans' POC was inaccurate because it did
25 not account for costs accrued by BAC Home Loans relating to
26 recording and publishing a notice of default and notice of
27 trustee sale.

28 In denying the motion for reconsideration, the bankruptcy
court reaffirmed its prior decision, stating, "the Motion did
not attach the proof of claim, the note and deed of trust, or a
statement setting forth the outstanding balance at or about the

1 time the petition was filed for either the senior or the junior
2 lienholder." Notably, the bankruptcy court denied the motion
3 for reconsideration without prejudice and invited debtor to
4 refile the motion with supporting documentation.

5 The procedural framework for valuing collateral pursuant to
6 § 506(a) is set forth in Rule 3012, which states as follows:

7 The court may determine the value of a claim secured by
8 a lien on property in which the estate has an interest
9 on motion of any party in interest and after a hearing
on notice to the holder of the secured claim and any
other entity as the court may direct.

10 Section 102(1)(A) defines "after notice and a hearing" and
11 similar phrases to mean "after such notice as is appropriate in
12 the particular circumstances, and such opportunity for hearing
13 as is appropriate in the particular circumstances[.]" See
14 United States v. Yochum (In re Yochum), 89 F.3d 661, 672 (9th
15 Cir. 1996). Section 102(1)(B) authorizes an act without an
16 actual hearing if notice is proper and a hearing is not
17 requested by a party in interest.

18 The Northern District of California has adopted guidelines
19 for notice and hearing on motions to value. Pursuant to those
20 guidelines, the moving party is not required to schedule a
21 hearing but, if there is an objection, a hearing shall be set.
22 The guidelines do not set forth a procedure if the bankruptcy
23 court raises an issue of fact.

24 Debtor's motion for reconsideration, and brief in this
25 appeal, assert the bankruptcy court was required to set the
26 motion to value debtor's real property for hearing. Debtor is
27 incorrect; nothing in the Northern District of California
28 guidelines or Local Rules require a bankruptcy court to set a

1 motion to value for hearing, nor would such a requirement make
2 sense when, as here, the only relevant evidence is
3 documentation.

4 At oral argument, debtor's counsel argued that a hearing
5 was necessary to obtain documentation through discovery. While
6 we agree that discovery may be necessary, a hearing is not.
7 This Panel notes three methods by which debtor's counsel may
8 conduct discovery without a hearing. First, because a motion to
9 value is a contested matter under Rule 9014, debtor's counsel
10 may request production of documents from BAC Home Loans pursuant
11 to Rule 7034.⁴ Second, debtor's counsel may seek production of
12 documents by motion and subpoena pursuant to Rule 2004(c).
13 Finally, debtor's counsel may object to BAC Home Loans' POC,
14 creating again the discovery rights which arise in a contested
15 matter.

16 Accordingly, the bankruptcy court did not abuse its
17 discretion by denying debtor a hearing.

18 VI. CONCLUSION

19 Having determined the bankruptcy court did not abuse its
20 discretion when denying debtor's motion to value and motion for
21 reconsideration, we AFFIRM.

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28 ⁴ The Panel acknowledges that a court may under Rule 9014(c)
direct that not all Part VII Rules apply to contested matters.