

JAN 31 2012

SUSAN M SPRAUL, 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NOT FOR PUBLICATION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-11-1428-PaMkLa
 6 SHMUEL ERDE,)
) Bk. No. LA 09-25942-PC
 7 Debtor.)
) Adv. No. LA 09-01829-PC
 8)
 9 SHMUEL ERDE,)
)
 10 Appellant,)
)
 11 v.) **MEMORANDUM**¹
)
 12 RUSSELL SINGER; ADOBE OIL)
 13 DEVELOPMENT CORPORATION; PORT)
 14 PROPERTIES, INC.; CAROLYN A.)
 15 DYE, Chapter 7 Trustee,)
)
 16 Appellees.)
)

Submitted Without Oral Argument
on January 20, 2012

Filed - January 31, 2012

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

Honorable Peter H. Carroll, Chief Bankruptcy Judge, Presiding

Appearances: Appellant Shmuel Erde pro se on brief; James A.
 Dumas of Dumas & Associates on brief for Appellee
 Carolyn A. Dye, Chapter 7 Trustee; John B. Taylor
 of the Law Offices of John B. Taylor on brief for
 Appellees Russell Singer, Adobe Oil Development
 Corporation, and Port Properties, Inc.

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 Before: PAPPAS, MARKELL and LAFFERTY,² Bankruptcy Judges.
2

3 In this appeal, appellant chapter 7³ debtor Shmuel Erde
4 ("Erde") appeals the bankruptcy court's orders denying his two
5 Civil Rule 59(e)⁴ motions. We AFFIRM.

6 **FACTS**

7 The disputes in this appeal go back to 1999, when Erde lent
8 money to Wallace P. Moriarty ("Moriarty"). Moriarty defaulted on
9 the loan, Erde sued him in state court, and, in 2002, recovered
10 two money judgments against Moriarty totaling \$450,000 (the
11 "Moriarty Judgments"). Also in 1999, Erde guaranteed a loan to
12 Moriarty made by Russell Singer, Adobe Oil Development Corp., and
13 Port Properties, Inc. (the "Singer Parties"). When Moriarty
14 defaulted on these loans from the Singer Parties, Erde alleged
15 that he paid the Singer Parties \$350,000 under terms of his
16 guaranty. Erde also alleged that Moriarty had paid Singer \$1.5
17 million, overpaying Singer by \$1.1 million, thereby "parking"
18 those assets with Singer, beyond the reach of Erde, who was
19 attempting to collect from Moriarty. We refer to these 1999
20 transactions involving Moriarty as the "Moriarty Transactions."
21

22 ² The Honorable William J. Lafferty, III, U.S. Bankruptcy
23 Judge for the Northern District of California, sitting by
24 designation.

25 ³ Unless otherwise indicated, all chapter, section and rule
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, or
27 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.
28 The Federal Rules of Civil Procedure are designated as "Civil
Rules."

⁴ Civil Rule 59(e) is made applicable in bankruptcy
proceedings by Rule 9023.

1 Between 2002 and 2007, there were several lawsuits among the
2 parties. In addition to Erde's suits against Moriarty, the
3 parties were also involved in Wieselmann v. Moriarty, no. SC074205
4 (Los Angeles Superior Court October 2002), an action in which the
5 parties attempted to litigate their respective liabilities
6 regarding the 1999 Moriarty Transactions.

7 After substantial litigation efforts, on May 16, 2007, Erde
8 and the Singer Parties entered into a settlement agreement to
9 resolve the disputes among them relating to the 1999 Moriarty
10 Transactions (the "2007 Settlement Agreement"). The key terms of
11 that settlement included:

12 5c. It is specifically understood that Shmuel Erde and
13 Rohelle Erde hereby release [the Singer Parties] from
14 any and all claims, whether arising as a result of the
[Moriarty Transactions] or any other potential cause of
action.

15 7a. In full and complete consideration for Shmuel
16 Erde's and Rohelle Erde's release, promises and
17 undertakings as set forth in this Agreement, the Singer
18 defendants agree to pay to Shmuel and Rohelle Erde the
total sum of One Hundred Thousand (\$100,000.00) Dollars
as the Settlement Sum.

19 2007 Settlement Agreement at 4-5. The Singer Parties paid the
20 \$100,000 settlement sum to the Erdes on May 15, 2007.

21 Erde originally filed for relief under chapter 11 on
22 June 23, 2009. On July 2, 2009, Erde, now acting as debtor in
23 possession, commenced an adversary proceeding against the Singer
24 Parties. The original complaint, which was not in traditional
25 form, included a "cause of action" alleging:

26 Moriarty borrowed less than \$300,000 from Singer, but
27 paid back over \$1,500,000, overpaying Singer by
28 \$1,100,000. As part of settling with [Erde], Moriarty
assigned his rights against Singer to [Erde]. Erde
sued Singer to collect the \$1,100,000 and the case was

1 in trial when [Erde] filed the Bankruptcy Petition
2 herein.

3 Thereafter, Erde filed two other adversary proceedings
4 against the Singer Parties (Nos. 09-1832 and 09-1875) both
5 alleging a similar claim. On October 15, 2009, Erde filed an
6 Amended Complaint in the original action, consolidating the three
7 complaints. The relief sought in the Amended Complaint was: "To
8 declare the \$2,000,000 Moriarty paid to Singer as a preference,
9 deduct \$450,000 from it, which Singer earned for funding the
10 Singer's loans to Moriarty, and order Singer to turn over the
11 balance as Property of the Estate."⁵

12 In response to the Amended Complaint, the Singer Parties
13 filed a counterclaim against Erde on November 19, 2009, alleging
14 that the three adversary proceedings had been filed in breach of
15 the 2007 Settlement Agreement.

16 In June 2010, the bankruptcy court granted a summary
17 judgment against Erde in favor of the Singer Parties. The
18 bankruptcy court held that Erde could not assert a preference
19 claim against the Singer Parties because the property transferred
20 was not property of the debtor before the transfer.

21 Additionally, the court determined the transaction could not be
22 considered a fraudulent transfer as to Erde because it involved
23 Moriarty's alleged overpayment of a debt owed to Singer, and
24 under California law, only a third-party creditor can assert such

25
26 ⁵ Although Erde filed the Amended Complaint in AP 09-1875,
27 the parties and the court considered it the operative complaint
28 in 09-1829. After the filing of the Amended Complaint, most of
 the pleadings and papers were filed in 09-1829.

1 a claim. Additionally, even if Erde could assert the claim, it
2 would be barred by the three-year statute of limitations
3 applicable to contract disputes in California.

4 Erde filed a motion asking the bankruptcy court to
5 reconsider the summary judgment order on June 30, 2010. After
6 denial of the reconsideration motion, on July 27, 2010, Erde next
7 filed a motion for new trial under Civil Rule 59. The bankruptcy
8 court held a hearing on the motion for new trial on September 14,
9 2010, at which Erde appeared pro se and the Singer Parties were
10 represented by counsel.⁶ The bankruptcy court denied that motion
11 based on findings of fact and conclusions of law stated by the
12 court on the record at the hearing. A transcript of that hearing
13 is not available.

14 Erde appealed the denial of the motion for a new trial to
15 the BAP on November 29, 2010. The Panel dismissed that appeal as
16 interlocutory on May 20, 2011. Erde v. Singer, BAP no. 10-1475
17 (9th Cir. BAP May 20, 2011).

18 On January 18, 2011, Erde's chapter 11 case was converted to
19 chapter 7. Carolyn A. Dye was appointed chapter 7 trustee
20 ("Trustee").

21 Also in early 2011, Moriarty filed for protection under
22 chapter 7 in the Bankruptcy Court for the Northern District of
23 California. In re Wallace P. Moriarty, Case no. 11-10019-RR. In
24 response to Trustee's apparent disinterest in pursuing Erde's
25 claims against Moriarty in Moriarty's bankruptcy case, at his

26
27 ⁶ On August 23, 2010, this bankruptcy case and adversary
28 proceedings were reassigned from retiring Judge Samuel Bufford to
Chief Judge Peter Carroll.

1 request, the bankruptcy court in the Erde case ordered that the
2 Moriarty Judgments be abandoned to Erde by Trustee.

3 ORDERED, that in the event the Trustee fails to file
4 either a complaint objecting to the non-
5 dischargeability of the Moriarty Judgments or a motion
6 for extension of the deadline to object to the non-
7 dischargeability of the Moriarty Judgments in the
8 Moriarty Bankruptcy by April 21, 2011, then the
9 Moriarty Judgments shall be deemed abandoned by the
10 Trustee under 11 U.S.C. § 554(b) on April 21, 2011[.]

11 Order at 1, April 19, 2011.

12 The bankruptcy court's summary judgment against Erde
13 effectively doomed his claims against the Singer Parties in the
14 bankruptcy court. However, the summary judgment did not dispose
15 of the Singer Parties' counterclaim for Erde's contractual
16 violation of the 2007 Settlement Agreement.

17 Trustee entered into negotiations with the Singer Parties.
18 The Singer Parties had been subjected to six different lawsuits
19 with Erde between 2002 and 2010, and they apparently desired a
20 "definitive conclusion" to the existing, and any potential,
21 litigation between themselves and Erde. The parties therefore
22 entered into a settlement agreement (the "2011 Settlement
23 Agreement") that they announced to the bankruptcy court at a
24 hearing on May 26, 2011. Trustee and the Singer Parties agreed
25 in material part that the adversary proceedings would all be
26 dismissed with prejudice, the Singer Parties would not receive
27 any monetary damages for their counterclaim, and would pay
28 Trustee \$5,000 in cash; and that "[t]he Trustee and [the Singer
Parties] shall execute a mutual and general release of claims
. . . which, inter alia, shall release any and all claims which
the Debtor has been asserting or could potentially assert against

1 the [Singer Parties], including any and all claims arising out of
2 the Debtor's alleged status as a creditor or assignee from
3 Defendant Moriarty."

4 Trustee and the Singer Parties filed a Stipulation for
5 Settlement and Entry of Judgment on June 3, 2011. Trustee filed
6 a motion for approval of the 2011 Settlement Agreement, subject
7 to negative notice, on June 3, 2011. Erde received notice of
8 Trustee's motion by mail. Neither Erde nor any other party filed
9 any opposition or objection to the motion to approve the 2011
10 Settlement Agreement, and on June 23, 2011, an order approving
11 the settlement was entered by the bankruptcy court (the "Singer
12 Order").

13 On July 5, 2011, Erde filed a motion under Civil Rule 59 to
14 amend the Singer Order to remove all references therein to the
15 Moriarty Judgment. Erde's motion argued that because the
16 Moriarty Judgments had been abandoned by Trustee prior to entry
17 of the Singer Settlement, Trustee had no right to settle any
18 claims associated with the Moriarty Judgments. Both the Singer
19 Parties and Trustee opposed Erde's motion. The bankruptcy court
20 denied the motion to amend on July 26, 2011, in an order
21 indicating it was based on "findings of fact and conclusions of
22 law stated orally and recorded in open court[.]" A transcript of
23 the July 26, 2011 hearing is not in the record or in the
24 bankruptcy court docket.

25 On July 11, 2011, the bankruptcy court entered a judgment in
26 the adversary proceeding (the "Singer Judgment") implementing the
27 2011 Settlement Agreement. It granted a money judgment in favor
28 of the bankruptcy estate and against the Singer Parties for

1 \$5,000, and decreed that the Singer Parties would receive no
2 monetary damages on their counterclaim. A critical feature of
3 the Singer Judgment is the following prohibitory language:

4 The trustee, Carolyn Dye, and defendants Shmuel Erde
5 and Rohelle Erde are hereby enjoined and prohibited
6 from filing suit against cross-claimants Russell
7 Singer, Adobe Oil Development Corp., and Port
8 Properties, Inc. on account of any and all sums of
9 money, accounts, claims, rights, damages, demands,
10 expenses (including but not limited to attorneys' fees
11 and costs), actions and causes of action, of whatsoever
12 kind or nature, whether known or unknown, suspected or
13 unsuspected, which the Trustee, on behalf of the
14 Estate, now owns, holds, has or claims to have, or at
15 any time theretofore owned, held, had or claimed to
16 have, including without limitation any claim arising
17 out of litigation previously or now pending between []
18 Shmuel Erde and his non-debtor spouse, Rohelle Erde and
19 Russell Singer, Adobe Oil Development Corp. and Port
20 Properties, Inc. and any claim arising out of the
21 alleged status of either Shmuel Erde or Rohelle Erde as
22 a creditor or assignee of a certain Wallace P.
23 Moriarty.

24 As he had done with the Singer Order, Erde filed a Civil
25 Rule 59 motion to amend the Singer Judgment on July 19, 2011, in
26 which he again requested removal of all references to the
27 Moriarty Judgments from the Singer Judgment. The bankruptcy
28 court also considered this motion at the July 26 hearing, and in
an order entered October 26, 2011, the court denied Erde's motion
to amend the Singer Judgment.

Erde filed a timely appeal of the orders denying the motions
to amend the Singer Order and Singer Judgment on August 5, 2011.

JURISDICTION

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

1 **ISSUES**

2 1. Whether the bankruptcy court abused its discretion in
3 approving the 2011 Settlement Agreement.

4 2. Whether the bankruptcy court abused its discretion by
5 denying Erde's motions under Rule 59 to amend the Singer Order
6 and the Singer Judgment.

7 **STANDARDS OF REVIEW**

8 We review the bankruptcy court's decision to approve a
9 compromise for an abuse of discretion. Goodwin v. Mickey
10 Thompson Entm't Group, Inc. (In re Mickey Thompson Entm't Group,
11 Inc.), 292 B.R. 415, 420 (9th Cir. BAP 2003).

12 We review the bankruptcy court's decision to deny a Civil
13 Rule 59 motion for abuse of discretion. Kole v. Carlson,
14 596 F.3d 608, 611 (9th Cir. 2010).

15 In applying the abuse of discretion standard, we first
16 "determine de novo whether the [bankruptcy] court identified the
17 correct legal rule to apply to the relief requested." United
18 States v. Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009). If the
19 correct legal rule was applied, we then consider whether its
20 "application of the correct legal standard was (1) illogical,
21 (2) implausible, or (3) without support in inferences that may be
22 drawn from the facts in the record." Id. Only in the event that
23 one of these three apply are we then able to find that the
24 bankruptcy court abused its discretion. Id.

25 ///

26 ///

27 ///

28 ///

1 DISCUSSION

2 I.

3 **The bankruptcy court did not abuse its discretion in**
4 **approving the 2011 Settlement Agreement.**

5 Although Erde objects in this appeal to the bankruptcy
6 court's denial of his motions to amend the Singer Order and
7 Singer Judgment, a fair reading of his briefs reveals that he is,
8 at bottom, challenging the bankruptcy court's approval of the
9 2011 Settlement Agreement. We therefore first review whether the
10 bankruptcy court erred in approving the compromise between
11 Trustee and the Singer Parties, before moving to Erde's specific
12 challenge, that Trustee had no authority to settle the Moriarty
13 Judgments.

14 Rule 9019(a) provides that, "On motion by the trustee and
15 after notice and a hearing, the court may approve a compromise or
16 settlement. . . ." The bankruptcy court is vested with
17 considerable discretion in approving compromises and settlements.
18 Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610,
19 620 (9th Cir. 1988). To approve a compromise, the bankruptcy
20 court must be satisfied that its terms are "fair, reasonable and
21 equitable." Martin v. Kane (In re A & C Props.), 784 F.2d 1377,
22 1382 (9th Cir. 1986). In assessing the reasonableness of a
23 compromise, the bankruptcy court should consider:

- 24 (a) The probability of success in the litigation;
25 (b) the difficulties, if any, to be encountered in the
26 matter of collection; (c) the complexity of the
27 litigation involved, and the expense, inconvenience and
28 delay necessarily attending it; (d) the paramount
interest of the creditors and a proper deference to
their reasonable views in the premises.

Id.

1 In this case, Trustee, in her motion to approve the
2 agreement, addressed the A&C Props. factors:

3 Probability of success in the litigation. Trustee noted
4 that Erde had filed six lawsuits against the Singer Parties that
5 would be resolved by the compromise. Four of the six had been
6 filed even after Erde had executed a broad, general release of
7 the Singer Parties in connection with the 2007 Settlement
8 Agreement, and had been paid \$100,000. It also appeared that
9 Erde had been declared a vexatious litigant in the state court
10 proceedings for his pursuit of the Singer Parties, and some of
11 the claims he made against Moriarty were barred by the statute of
12 limitations. And most importantly, the Singer Parties'
13 counterclaim against the bankruptcy estate appeared to be viable.

14 From these facts, the bankruptcy court could reasonably
15 conclude that continued litigation of the claims in the Amended
16 Complaint would be fruitless.

17 The difficulties, if any, to be encountered in the matter of
18 collection. Any attempt to collect from Moriarty or the Singer
19 Parties would involve considerable challenges. Indeed, Moriarty
20 had already filed a chapter 7 case in the Northern District of
21 California, and claimed to have few reachable assets.

22 The complexity of the litigation involved, and the expense,
23 inconvenience and delay necessarily attending it. Although not
24 particularly complex, the claims by Erde against Moriarty, and
25 the continuation of the litigation against the Singer Parties,
26 would necessarily involve a "substantial amount of attorney's
27 fees," delays and inconvenience.

1 The paramount interest of the creditors and a proper
2 deference to their reasonable views. No creditor objected to the
3 2011 Settlement Agreement. Indeed, even Erde had not objected to
4 the merits of that compromise. The bankruptcy court could also
5 have noted that the compromise provided \$5,000 to creditors,
6 whereas it was uncertain if there would be any funds available
7 for creditors if the litigation continued.

8 In short, the bankruptcy court had before it sufficient
9 information to conclude that the A&C Props. criteria were
10 satisfied and, especially in view of no opposition from any
11 party, the 2011 Settlement Agreement was properly approved.

12 Erde did not address any of the A&C Props. criteria in his
13 briefs. Additionally, Erde conceded that Trustee had authority
14 to enter into a compromise. Instead, Erde's challenge focuses
15 upon the authority of Trustee, in connection with the 2011
16 Settlement Agreement, to restrict Erde from pursuing claims
17 against Moriarty through the Singer Parties.

18 Erde based his challenge on the bankruptcy court's decision
19 to order abandonment of the Moriarty Judgments. That order
20 included both the two Moriarty Judgments for \$450,000, as well as
21 the claim that the Singer Parties had possession of Moriarty's
22 assets and were shielding them from Moriarty's creditors,
23 including Erde.

24 Erde is correct that the Moriarty Judgments were abandoned
25 and he was free to pursue them. However, the flaw in his
26 argument is that he believed this allowed him to pursue a claim
27 against the Singer Parties. As the Singer Parties and Trustee
28 repeatedly reminded the bankruptcy court, Erde had released any

1 and all claims against the Singer Parties associated with the
2 Moriarty Judgments in the 2007 Settlement Agreement. Erde
3 received considerable compensation for that release, \$100,000.
4 In other words, the abandonment order indeed turned over to Erde
5 the Moriarty Judgments, and the theoretical claim against
6 Moriarty through the Singer Parties. However, Erde had
7 voluntarily and for compensation released the Singer Parties from
8 any and all claims, whether arising as a result of the Moriarty
9 Transactions or "any other potential cause of action." 2007
10 Settlement Agreement at ¶ 5c. In short, Erde could pursue his
11 claims against Moriarty through any channel, but he had
12 voluntarily relinquished any claim against and through the Singer
13 Parties.

14 Under these circumstances, the bankruptcy court did not
15 abuse its discretion in approving the 2011 Settlement Agreement
16 despite its earlier abandonment order.

17 II.

18 **The bankruptcy court did not abuse its discretion in denying** 19 **Erde's Civil Rule 59 motions to amend the Singer Order** 20 **and Singer Judgment.**

21 As discussed above, Erde basically challenges the 2011
22 Settlement Agreement. His sole rationale is that the Moriarty
23 Judgments had been abandoned to him by Order of the bankruptcy
24 court, and that Trustee had no authority to interfere with Erde's
25 pursuit of them. Erde chose to pursue this argument via an
26 amendment to the Singer Order and Singer Judgment through Civil
27 Rule 59 motions.

28 Civil Rule 59, made applicable in bankruptcy proceedings by
Rule 9023, permits a party to seek amendment of a judgment or a

1 new trial.⁷ Am. Ironworks & Erectors, Inc. v. N. Am. Constr.
2 Corp., 248 F.3d 892, 899 (9th Cir. 2001). Although Civil Rule
3 59(e) permits a court to reconsider and amend a previous order,
4 "the rule offers an extraordinary remedy, to be used sparingly in
5 the interests of finality and conservation of judicial
6 resources." Kona Enter., Inc. v. Bishop, 229 F.3d 877, 890
7 (9th Cir. 2000). "A Rule 59(e) motion may not be used to raise
8 arguments or present evidence for the first time when they could
9 reasonably have been raised earlier in the litigation." Id.

10 Erde's argument in this case does not meet the requirements
11

12 ⁷ **Rule 59.** New Trial; Altering or Amending a Judgment

13 (a) In General.

14
15 (1) Grounds for New Trial. The court may, on motion, grant a
16 new trial on all or some of the issues--and to any party--as
17 follows: . . . (B) after a nonjury trial, for any reason for
18 which a rehearing has heretofore been granted in a suit in equity
19 in federal court.

20 (2) Further Action After a Nonjury Trial. After a nonjury
21 trial, the court may, on motion for a new trial, open the
22 judgment if one has been entered, take additional testimony,
23 amend findings of fact and conclusions of law or make new ones,
24 and direct the entry of a new judgment. . . .

25 (d) New Trial on the Court's Initiative or for Reasons Not in the
26 Motion. No later than 28 days after the entry of judgment, the
27 court, on its own, may order a new trial for any reason that
28 would justify granting one on a party's motion. After giving the
parties notice and an opportunity to be heard, the court may
grant a timely motion for a new trial for a reason not stated in
the motion. In either event, the court must specify the reasons
in its order.

(e) Motion to Alter or Amend a Judgment. A motion to alter or
amend a judgment must be filed no later than 28 days after the
entry of the judgment.

1 for application of Civil Rule 59. Simply put, Erde received
2 notice of Trustee's intent to seek approval of the 2011
3 Settlement Agreement, and the deadline for filing any objections.
4 Erde failed to object when he could "reasonably" have done so,
5 and instead waited another month to raise his objection through
6 his motions.

7 "A motion for reconsideration should not be granted, absent
8 highly unusual circumstances, unless the court is presented with
9 newly discovered evidence, committed clear error, or if there is
10 an intervening change in the controlling law." Kona Enters.,
11 229 F.3d at 890. Erde argues that the bankruptcy court committed
12 clear error by approving a settlement agreement which was
13 inconsistent with its earlier ruling on abandonment. However,
14 when an appellant argues that the bankruptcy court committed
15 clear error in its oral findings and conclusions, the Bankruptcy
16 Rules, the case law, and this Panel's Rules require that the
17 appellant provide a transcript of the hearing at which the
18 bankruptcy court recited those findings and conclusions.
19 Rule 8009(b)(9) (providing that excerpts of record shall include
20 transcripts, if required by BAP rule); 9th Cir. BAP R. 8006-1
21 ("The excerpts of the record shall include the transcripts
22 necessary for adequate review in light of the standard of review
23 to be applied to the issues before the Panel."); McCarthy v.
24 Prince (In re McCarthy), 230 B.R. 414, 416-17 (9th Cir BAP 1999).
25 Erde has not submitted a transcript of the July 26, 2011, hearing
26 so we cannot effectively review the bankruptcy court's findings
27 and conclusions.

28 In denying Erde's motion for amendment of the Singer Order,

1 the bankruptcy court stated in its written order, "having
2 considered the pleadings, evidentiary record, and argument of
3 counsel, and based upon findings of fact and conclusions of law
4 stated orally and recorded in open court." At the same hearing,
5 the court heard argument on Erde's motion to amend the Singer
6 Judgment. Its order denying that motion makes a similar
7 observation.

8 We lack a transcript of the hearing on July 26, 2011, where
9 the bankruptcy court announced its oral findings and conclusions.
10 A transcript is not available on the court's docket, nor is there
11 any other indication in the record where the bankruptcy court
12 explains its reasons for denying Erde's Civil Rule 59 motions.
13 When the inadequacy of the record provided to the Panel affords
14 little choice but to summarily affirm, we may do so. Ehrenberg
15 v. Cal. State Univ., Fullerton Found. (In re Beachport Entm't),
16 396 F.3d 1087-88 (9th Cir. 2005). Since the lack of a transcript
17 of the relevant hearing prevents us from effectively reviewing
18 the bankruptcy court's reasons for denying the motions, we cannot
19 say that the bankruptcy court abused its discretion in entering
20 those orders. We therefore AFFIRM the bankruptcy court's orders
21 denying Erde's motions to amend.

22 CONCLUSION

23 We AFFIRM the bankruptcy courts orders denying Erde's
24 motions to amend the Singer Order and Singer Judgment.
25
26
27
28