NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. AZ-11-1142-DKiMy
OASIS AT WILD HORSE RANCH, LLC,	Bk. No. 11-01124-JMM
Debtor.	
OASIS AT WILD HORSE RANCH, LLC,	
Appellant,	
v.	**M E M O R A N D U M**[1]
RUSSELL SHOLES; MARY SHOLES,	
Appellees.	

Argued and Submitted on July 22, 2011
at Phoenix, Arizona

Filed - August 26, 2011

Appeal from the United States Bankruptcy Court
for the District of Arizona

Honorable James M. Marlar, Chief Bankruptcy Judge, Presiding

Appearances: Kasey Nye of Quarles & Brady, LLP argued for the Appellant. Carolyn J. Johnsen of Jennings, Strouss & Salmon, PLC argued for the Appellees.

[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.

Before: DUNN, KIRSCHER, and MYERS[2] Bankruptcy Judges.

The bankruptcy court dismissed the debtor's Chapter 11[3] case on the ground that it had been filed in bad faith. We AFFIRM.

I. FACTS

The players in this drama are Raynu Fernando ("Raynu"), his sister, Judy Fernando ("Judy"), Judy's husband, Bruce Sholes ("Bruce"), and Bruce's parents, Russell and Mary Sholes (collectively "the Sholes"). Judy and Raynu's parents, Joseph and Eleanor Fernando ("the Fernando Parents"), played a limited role but no longer are parties to the dispute.

Raynu is a hospitality professional. The Wild Horse Ranch (the "Ranch") is a twenty-acre guest ranch in Northwest Tucson, operated as an event center for weddings and corporate events. In 1999, Raynu proposed that the parties purchase the Ranch as a hospitality venue. Oasis at Wild Horse Ranch, LLC ("Oasis"), is an Arizona limited liability company formed October 29, 1999, for the purpose of acquiring, owning, and operating the Ranch.

An operating agreement was drafted by Bruce. The operating agreement was signed by the proposed members as follows: Judy, on

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[2] Hon. Terry Myers, Chief Bankruptcy Judge for the District of Idaho, sitting by designation.

[3] Unless otherwise specified, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and all "Rule" references are to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

October 29, 1999; Raynu, on November 2, 1999; and the Sholes, on November 5, 1999. Although included for signature as members, the Fernando Parents never signed the operating agreement.

Articles of Organization for Oasis dated October 29, 1999, were signed by Judy, Raynu, the Sholes, and the Fernando Parents. Paragraph 3 of the Articles of Organization appointed Bruce as Oasis's statutory agent. Paragraph 5.a. of the Articles of Organization specified that "[m]anagement of the [debtor] is vested in the Manager," identified as Raynu, the Fernando Parents, Judy, the Sholes, and Tony Ramani. Paragraph 5.b. of the Articles of Organization identified the initial members who owned at least a 20% interest in the capital or profits of Oasis as Judy, the Sholes (collectively), the Fernando Parents (collectively), and Raynu. Paragraph 7 of the Articles of Organization provided that new members could be admitted only upon written agreement of the existing members.

In April 2006, Judy initiated dissolution proceedings against Bruce ("Dissolution Litigation"). On June 8, 2006, the Sholes executed amended articles of organization ("Sholes Amended Articles") for Oasis. Paragraph 3 of the Sholes Amended Articles appointed Bruce as the statutory agent for Oasis. Paragraph 5 of the Sholes Amended Articles vested management of Oasis in the Sholes and the Fernando Parents. Paragraph 6 of the Sholes Amended Articles identified the Sholes and the Fernando Parents as the sole members of Oasis, and assigned each individual a 25% ownership interest. In response to the Sholes Amended Articles, on September

15, 2006, the Fernando Parents executed further amended articles of organization ("Fernando Amended Articles"). Paragraph 3 of the Fernando Amended Articles identifies Raynu as the statutory agent for Oasis based upon a "Statement of Change" that had been filed with the Arizona Corporation Commission on August 15, 2006. Paragraph 5 of the Fernando Amended Articles vested management of Oasis in Raynu, Judy, the Sholes and the Fernando Parents. Paragraph 6 of the Fernando Amended Articles identified as members: Raynu, Judy, the Sholes (collectively) and the Fernando Parents (collectively), with each member unit holding at least a 20% ownership interest.

On June 27, 2006, Bruce and the Sholes filed a complaint in the Pima County (Arizona) Superior Court ("State Court") against Raynu, Judy, and the Fernando Parents ("Ownership Litigation") for mismanagement of Oasis. The Sholes parties' primary claims against the Fernando parties alleged conversion, tortious interference with business relations, and breach of contract. The Fernando parties' primary counterclaims against the Sholes parties alleged breach of contract, unjust enrichment, tortious interference with business relations, and violations of civil RICO. All parties sought a declaratory judgment with respect to ownership interests in Oasis, which was the only claim that remained at the commencement of the trial on January 26, 2010.

In its ruling dated April 2, 2010 ("April 2010 Ruling"), the State Court commented on the behavior of the parties in the various transactions:

> This Court finds that the difficulty in identifying ownership in this case is confounded by the failure of [Bruce], acting as an attorney for [the debtor] and husband to Judy, to adequately advise the parties, to obtain written agreements, and to prepare and file documentation to properly establish ownership interests in [Oasis]. Such difficulty is exacerbated by Bruce's conduct of seeking to remain judgment-proof by managing significant portions of his assets through at least five Phoenix area checking accounts in the names of his parents, either Russell or Russell and Mary Sholes, "ITF Bruce Sholes Power of Attorney," and of having property in which he had an interest placed in the names of others, notably his parents. The Court finds that [Judy's] actions further complicate the truth, for example, by her signing documents reflecting the apparent ownership of [Oasis] to include her father, [Joseph Fernando], without his authority or knowledge. Mary Sholes' testimony is similarly suspect due to her complicity and bias in favor of the actions of her son, Bruce, and also her lack of awareness of the details of the Sholes' five checking accounts management by Bruce and about transfer of funds by Bruce. This Court has significant concerns about whether an L.L.C. was ever properly formed by any cash contribution and whether the principals, Bruce, Judy, [and the Sholes] come to the Court with clean hands.

Although the evidence did not establish that Raynu contributed cash to Oasis, the State Court found that Raynu had been the one interested in purchasing property to establish a business serving as a venue for weddings, and that he expected to be an owner of the Ranch with Judy. The State Court also found that Raynu was convincing when he testified that "he thought he was an owner and if he thought he was not an owner of [Oasis] he would not have contributed the many hours he did to improve the facilities and coordinate functions conducted there."

Ultimately, the State Court exercised its equity power to determine the ownership of Oasis, and four years after its commencement, the Ownership Litigation concluded on June 3, 2010,

with the entry of a judgment ("Judgment") which determined the ownership interests of Oasis based, inter alia, on contributions that had been made. As determined by the State Court, Raynu holds a 25% interest in Oasis based on the services he provided to Oasis, which the State Court valued at $85,000. Similarly, Judy holds a 25% interest in Oasis based on the services she provided to Oasis, which the State Court also valued at $85,000. Bruce has asserted in the Dissolution Litigation pending since 2006 that he is entitled to one-half of Judy's interest in Oasis. The remaining 50% ownership interest in Oasis is held by the Sholes based on their capital contributions in the amount of $170,000. The Judgment is on appeal to the Arizona Court of Appeals.

The Ownership Litigation left open two major disputes between the parties. The first involves management of Oasis. After the April 2010 Ruling, Raynu and Judy issued a meeting notice for the members ("Member Meeting") to discuss, inter alia, management of Oasis after the Receivership Order[4] terminated, which would occur upon the entry of the Judgment in the Ownership Litigation.

The transcript of the Member Meeting reflects that neither the Sholes nor the Fernando parties accepted the April 2010 Ruling as a complete resolution of ownership and management issues. Despite the April 2010 Ruling, the Sholes continued to assert that their family owned 62.5% of Oasis; 50% recognized by the State Court

[4] The State Court appointed a receiver to manage Oasis pending a determination of the ownership interests of its members.

in the April 2010 Ruling and 12.5% represented by Bruce's one-half of Judy's 25% interest, which Bruce expected to receive in the Dissolution Litigation. As a consequence, the Sholes objected to any action proposed at the Member Meeting, on the basis that it was premature and designed by Raynu and Judy to force a dissolution of Oasis prior to the time when Bruce would be entitled to a member interest in Oasis.

Raynu and Judy were not deterred in their efforts to assert the right to manage Oasis by the 50:50 split of member interests in the April 2010 Ruling. At the Member Meeting, Raynu and Judy took the position that as a result of the April 2010 Ruling, Oasis had no effective operating agreement. They then asserted that because the April 2010 Ruling assigned a collective 50% member interest to the Sholes, the Sholes held only one member interest in contrast to the two member interests held separately by Judy and Raynu. Citing to Ariz. Rev. Stat. § 29-681.E.,[5] Judy and Raynu asserted they had two votes to the Sholes' single vote, with the effect that Judy and

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[5] Ariz. Rev. Stat. § 29-681.E. provides:

> For purposes of B and D of this section, a majority consists of more than one-half of the members or managers, as the case may be, except that if an operating agreement provides for allocation of voting rights among different members or managers or classes of members or managers on any basis other than a per capita basis, a majority consists of one or more members or managers, as the case may be, who control more than one-half of the votes entitled to be cast with respect to general business decisions as provided in an operating agreement.

Raynu appeared to view the Sholes as having been disenfranchised by the April 2010 Ruling.

The Receiver attended the Member Meeting, and expressed his concern that because the April 2010 Ruling divided the ownership 50:50, he had no ability to "manage" Oasis where the Sholes and Raynu and Judy were never in agreement on any issue. The Receiver's frustration over the ongoing "stalemate" with respect to operating Oasis is reflected in the transcript of the Member Meeting: "[F]or as long as I've been involved, which is over a year now, we haven't gotten one step closer to resolving the ownership issue."

Of particular interest to the Receiver at the time of the Member Meeting was the need to ensure the continued availability of a liquor license for operation of the Ranch. In 2009, Bruce and Russell Sholes had filed a complaint with the liquor board, asserting they had invested millions of dollars in Oasis. Because the Articles of Organization did not reflect that Bruce was a member, an investigation was opened with respect to the propriety of continuing Oasis's liquor license. In particular, the liquor board was requiring, based upon the April 2010 Ruling, that the Sholes be added to the liquor license as managers of Oasis. When the parties could not resolve through the Member Meeting how to address satisfying the liquor board, the Receiver requested a hearing in the State Court. At that hearing, held June 1, 2010, the State Court authorized the Receiver to report to the liquor board that Raynu and Judy were the "managers" of Oasis because they operated the Ranch.

In fact, following the Member Meeting, on May 11, 2010, Judy

had filed Articles of Amendment ("May 2010 Amended Articles") to amend the Articles of Organization to designate Raynu and Judy as managers of Oasis, and reflected member interests as found by the State Court in the April 2010 Ruling, ostensibly based upon the "voting" that took place at the Member Meeting. The Receiver also signed the May 2010 Amended Articles. The May 2010 Amended Articles were discussed at the June 1, 2010 Hearing. In connection with the Sholes concern that the May 2010 Amended Articles be construed to reflect only the "day-to-day management" for purposes of the liquor board and not the management of Oasis for purposes of corporate governance matters, the State Court was clear that the determination that Raynu and Judy were the "day-to-day managers" was not intended to be binding in any sense with respect to any LLC management issues between and among the parties.

The second dispute left open after the Judgment in the Ownership Litigation was entered involves a note ("Note") dated February 15, 2005, in the original principal amount of $600,000, payable from Oasis to Russell and secured by a deed of trust ("Trust Deed") on the Ranch. The Note and Trust Deed were signed by Mary and Bruce on behalf of Oasis. Raynu and Judy dispute the validity of the Note and Trust Deed, inter alia, because Mary and Bruce did not have authority to bind Oasis to the obligation and because Russell never loaned Oasis $600,000. The State Court enjoined the Sholes from recording the Trust Deed during the pendency of the Ownership Litigation. Ultimately the State Court declined to reach the issue of the validity of the Note because Oasis was not a party

to the litigation, and the injunction was lifted.[6]

On June 22, 2010, the Sholes recorded the Trust Deed. In July 2010, the trustee of the Trust Deed made demand for the payment of $15 million to cure an alleged default under the Note. When cure was not made, the trustee noticed a trustee's sale of the Ranch. The trustee's sale was set for January 19, 2011.

On January 14, 2011, Raynu filed a voluntary Chapter 11 petition ("Petition") in Oasis's name. Attached to the Petition was a "Unanimous Written Consent of Managing Members of Oasis at Wild Horse Ranch, LLC" executed by Raynu and Judy.

On January 17, 2011, the Sholes executed, as members and managers, further amended articles of organization ("Sholes Postpetition Amended Articles"). Paragraph 2 designated Bruce as the statutory agent, and provided that management of Oasis was vested in the Sholes, Raynu and Judy, all of whom are managers who are also members.[7] The Sholes Postpetition Amended Articles were filed with the Arizona Corporation Commission on January 18, 2011.[8]

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[6] Although the State Court declined to rule on the issue of the alleged $600,000 loan the Sholes made to Oasis, the State Court did observe that the loan "is suspect in part because [Bruce] signed the Note for that amount to his parents when nearly all the money 'loaned' came from accounts controlled by Bruce. The evidence is not persuasive that [Oasis] owes the Sholes loans totaling $600,000."

[7] The change to the management provision is made by interlineation initialed by Mary only and is not dated.

[8] There are two Arizona Corporation Commission filing stamps (continued...)

On March 10, 2011, Oasis filed its proposed plan of reorganization ("Plan"). The Plan provided for the cash sale of Oasis's assets at fair market value to a company controlled by Raynu and Judy. The purchase price was to be determined by an expert witness to be appointed by the bankruptcy court pursuant to Rule 706 of the Federal Rules of Evidence. Oasis also filed, ex parte, an application for accelerated adjudication of the Plan, which the bankruptcy court granted by its order entered on March 15, 2011.

On March 17, 2011, the Sholes filed a motion to dismiss ("Dismissal Motion") the bankruptcy case on the basis that Raynu and Judy lacked the requisite corporate authority to file the Petition on behalf of Oasis and that the Petition had been filed in bad faith. They also filed a motion for an expedited hearing on the Dismissal Motion, which the bankruptcy court granted on March 28, 2011. On March 18, 2011, Oasis filed both an objection to the motion for expedited hearing and an objection to the Dismissal Motion which consisted of 13 pages of argument and 66 pages of exhibits.

The bankruptcy court heard argument on the Dismissal Motion at a hearing held March 30, 2011 ("Dismissal Motion Hearing"). Thereafter, on March 31, 2011, the bankruptcy court issued its Memorandum Decision and entered its order granting the Dismissal

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[8](...continued)
on the Postpetition Amended Articles, suggesting it was filed twice. The second filing stamp reflects the date of March 21, 2011. It is unknown how the two filings might differ, if in fact they do.

Motion. The text of the Memorandum Decision is brief:

> A motion is before the court which seeks dismissal of the Chapter 11 case, on the grounds that it was a bad faith filing (ECF No. 51). Precedent authorizes this remedy. See, e.g., In re Landmark Capital, 27 B.R. 273 (D. Ariz. 1983); Little Creek Dev. Co. v. Commonwealth Mortgage Corp. (In re Little Creek Development Co.), 779 F.2d 1068 (5th Cir. 1986). Another ground is that the filing was unauthorized.
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> This case is, reduced to its essence, nothing more than a continuation of an internal business dispute between co-owners, brought here from state court. In state court, all or most of the critical governance decisions had been made, after years of contentious litigation.
>
> Faced with the final consequences of all that legal activity, the scraps from that case have now been transported to the federal bankruptcy court.
>
> The position of the moving parties, Russell and Mary Sholes, expressed in the motion to dismiss, has persuaded this court that the motion should be granted. The court finds that the case was filed in bad faith. Any remaining ownership-related matters should be decided by the Pima County Superior Court.
>
> As to some of the Debtor's principals' assertion that the existing Deed of Trust is "bogus," and should not be enforced, a remedy exists under state law to press that claim. They should file a lawsuit in state court and seek an injunction against the trustee's sale, pending ultimate resolution, by the state court, of their legal claim. Such a legal effort is certainly less expensive, in a two-party setting such as this, than a full-blown, overly litigated, expensive and cumbersome federal Chapter 11 proceeding.
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> A separate order dismissing this case will be entered simultaneously with this Memorandum Decision.
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> Any appeal must be taken within 14 days. In such event, the parties are placed on notice that this court will not entertain any stay motions, filed pursuant to [Rule] 8005.

Oasis filed a timely notice of appeal.

II. JURISDICTION

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

III. ISSUES

Whether the bankruptcy court abused its discretion in failing to hold an evidentiary hearing on the Dismissal Motion.

Whether the bankruptcy court abused its discretion when it dismissed the bankruptcy case.

IV. STANDARDS OF REVIEW

We review a bankruptcy court's decision whether to hold an evidentiary hearing for an abuse of discretion. Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.), 503 F.3d 933, 939 (9th Cir. 2007); Murphy v. Schneider Nat'l, Inc., 362 F.3d 1133, 1139 (9th Cir. 2004).

We review the bankruptcy court's decision to dismiss a case under an abuse of discretion standard. Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1223 (9th Cir. 1999). We apply a two-part test to determine whether the bankruptcy court abused its discretion. United States v. Hinkson, 585 F.3d 1247, 1261-62 (9th Cir. 2009)(en banc). First, we consider de novo whether the bankruptcy court applied the correct legal standard to the relief requested. Id. Then, we review the bankruptcy court's fact findings for clear error. Id. at 1262 & n.20. See also Eisen v. Curry (In re Eisen), 14 F.3d 469, 470 (9th Cir. 1994)(the bankruptcy court's finding of "bad faith" is reviewed for clear error); St. Paul Self Storage Ltd. P'ship v. Port Auth. of the City of St. Paul (In re St. Paul Self Storage Ltd. P'ship), 185 B.R. 580, 582 (9th Cir. BAP 1995) (same). We must affirm the bankruptcy court's

fact findings unless we conclude that they are "(1) 'illogical,' (2) 'implausible,' or (3) without 'support in inferences that may be drawn from the facts in the record.'" Hinkson, 585 F.3d at 1262. We may view a factual determination as clearly erroneous if it was without adequate evidentiary support or was induced by an erroneous view of the law. Wall St. Plaza, LLC v. JSJF Corp. (In re JSJF Corp.), 344 B.R. 94, 99 (9th Cir. BAP 2006).

We may affirm on any basis supported by the record. See, e.g., Heilman v. Heilman (In re Heilman), 430 B.R. 213, 216 (9th Cir. BAP 2010); FDIC v. Kipperman (In re Commercial Money Ctr., Inc.), 392 B.R. 814, 826-27 (9th Cir. BAP 2008); see also McSherry v. City of Long Beach, 584 F.3d 1129, 1135 (9th Cir. 2009).

V. DISCUSSION

I. The Bankruptcy Court Did Not Abuse Its Discretion In Not Hearing Testimony Prior To Ruling On The Dismissal Motion.

Raynu and Judy, through Oasis, assert that the bankruptcy court deprived them of a meaningful opportunity to be heard, in violation of their constitutional due process rights, by (1) setting the emergency hearing on the Dismissal Motion on two days' notice, (2) announcing it was ready to rule on the pleadings "unless [the parties] have anything to add," (3) hearing less than an hour of argument, and (4) ruling without hearing any testimony or admitting any exhibits.

Rule 9014 provides that contested matters in a bankruptcy case are to be brought by motion. In reality, "[m]otions . . .

usually are decided on the papers rather than after oral testimony of witnesses." 9A Wright& Miller Fed. Practice & Proc. § 2416 (3d ed. 2011). Fed. R. Civ. P. 43(c) provides that "[w]hen a motion relies on facts outside the record, the court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions." (Emphasis added.) Rule 9017 provides that Fed. R. Civ. P. 43 applies in bankruptcy cases.

We previously have stated that when a bankruptcy court operates within its local rules, there is no abuse of discretion in the application of those rules. See, e.g., In re Nguyen, 447 B.R. 268, 281 (9th Cir. BAP 2011)(en banc).

Local Rule 9014-2 sets out the procedures governing hearings on contested matters in the bankruptcy court for the District of Arizona. Local Rule 9014-2(a) expressly provides that all hearings on contested matters will be conducted without live testimony unless the bankruptcy court orders otherwise, and contemplates that live testimony will be taken on a contested matter only if the bankruptcy court first "determines that there is a material factual dispute." Alternatively, Local Rule 9014-2(b)[9] sets forth the procedure for a

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[9] Local Rule 9014-2(b) provides:

> (b) Request for Live Testimony.
> (1) Any party filing a motion, application, or objection who reasonably anticipates that its resolution will require live testimony may file an accompanying motion for an evidentiary hearing, stating:
> (A) The estimated time required for receipt of all evidence, including live testimony;

(continued...)

party to request that the court take live testimony.

Oasis made no request for the bankruptcy court to take live testimony in the manner specified by Local Rule 9014-2(b). Oasis did not invoke the procedures available to it under Local Rule 9014-2(b) to request that it be allowed to present live testimony at the hearing on the Dismissal Motion. Nor did it assert at the hearing on the Dismissal Motion that it had live testimony to present to the bankruptcy court. "[W]e are not presented with a situation in which the judge refused to consider evidence that was actually proffered by the objecting party. Rather, appellant did not avail herself of the opportunity that was afforded." Garner v. Shier (In re Garner), 246 B.R. 617, 625 (9th Cir. BAP 2000).

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[9](...continued)

(B) When the parties will be ready to present such evidence;
(C) The estimated time required to complete all formal and informal discovery;
(D) Whether a Bankruptcy Rule 7016 Scheduling Conference should be held; and,
(E) Whether any party who may participate at the evidentiary hearing is appearing pro se.

(2) The party requesting an evidentiary hearing shall accompany the motion with a form of order.
(3) Any response to a motion for an evidentiary hearing shall be served and filed within seven days of service of the motion. The time computation and enlargement provisions of Rule 9006 shall not apply to the response deadline, except that the responding party shall have an additional 3 days to respond if the motion is served by mail.
(4) Based upon the motion and any responses, the court will either finalize the order setting the matter for hearing or request that the parties appear for a Bankruptcy Rule 7016 Scheduling Conference.

We are not persuaded by Oasis's assertion on appeal that it requested an evidentiary hearing by virtue of filing its objection to an expedited hearing on the Dismissal Motion. First, that objection does not comport with the specific requirements of Local Rule 9014-2(b). Second, based on review of the record before us, we conclude that the objection to the expedited hearing was made only to object to the bankruptcy court hearing the Dismissal Motion prior to the scheduled confirmation hearing on Oasis's proposed plan of reorganization.

An evidentiary hearing is appropriate if the bankruptcy court cannot readily determine from the record any disputed and material factual issues, but "[w]here the parties do not request an evidentiary hearing or the core facts are not disputed, the bankruptcy court is authorized to determine contested matters . . . on the pleadings and arguments of the parties, drawing necessary inferences from the record." Tyner v. Nicholson (In re Nicholson), 435 B.R. 622, 636 (9th Cir. BAP 2010)(quoting Gonzalez-Ruiz v. Doral Fin. Corp. (In re Gonzalez-Ruiz), 341 B.R 371, 381 (1st Cir. BAP 2006)). Here, the parties did not request an evidentiary hearing, and the record was sufficient to set forth the disputed and material factual issues. All that was necessary was for the bankruptcy court to decide the Dismissal Motion.

We previously have recognized that procedural due process requires "notice reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

Credit Alliance Corp. v. Dunning-Ray Ins. Agency, Inc. (In re Blumer), 66 B.R. 109, 114 (9th Cir. BAP 1986)(quoting Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)), aff'd 826 F.2d 1069 (9th Cir. 1987). The Ninth Circuit has determined that due process rights are not violated where the bankruptcy court has (1) read and considered a motion that initiates a contested matter, the opposition to that motion, all papers and pleadings filed with the court, and (2) considered the argument of counsel. See Lowenschuss v. Sun Int'l N. Am., Inc. (In re Lowenschuss), 170 F.3d 923, 929 (9th Cir. 1999).

The Dismissal Motion was filed March 17, 2011. By March 18, 2011, Oasis had filed a comprehensive response to the Dismissal Motion as well as an objection to the Sholes' request for an expedited hearing on the Dismissal Motion. The Dismissal Motion was not heard until March 30, 2011.

The record reflects that the bankruptcy court read and considered the Dismissal Motion, Oasis's opposition to the Dismissal Motion, and all papers and pleadings filed with the bankruptcy court. In short, the bankruptcy court was fully informed with respect to the contested matter represented by the Dismissal Motion. Further, the bankruptcy court heard and considered the arguments of counsel. Oasis was deprived of no opportunity to be heard on the Dismissal Motion.

On the record before us, the bankruptcy court did not abuse its discretion when it failed to hold an evidentiary hearing on the Dismissal Motion.

II. The Bankruptcy Court Did Not Abuse Its Discretion When It Dismissed the Bankruptcy Case.

We do not agree with Oasis's assertion that the failure to take evidence somehow transmuted the motion to dismiss governed by Fed. R. Civ. P. 43 to a motion for summary judgment governed by Fed. R. Civ. P. 56. As stated above, Fed. R. Civ. P. 43(c) authorizes the bankruptcy court to decide a motion without an evidentiary hearing so long as it can readily determine from the record any disputed and material factual issues. This process recognizes that the bankruptcy court will be resolving disputed and material issues of fact when it rules on the contested matter. By contrast, summary judgment proceedings are appropriate when no genuine issue as to any material fact exists. We therefore review the bankruptcy court's decision to grant the Dismissal Motion for an abuse of discretion, not de novo as requested by Oasis.

The bankruptcy court's "findings" as contained in the Memorandum Decision are less than precise. The Sholes contend that the bankruptcy court dismissed the case based both on a lack of good faith in the filing and because the case had been filed without the requisite corporate authority. Oasis asserts the sole reference to a lack of corporate authority in the Memorandum Decision was in the nature of an observation that it was a ground for dismissal raised in the Dismissal Motion. Oasis contends that the bankruptcy court dismissed the case as having been filed in bad faith for the sole reason that the bankruptcy court believed it to be a two-party dispute. Oasis asserts on appeal that this determination was error

because (1) the case involved more that a two-party dispute, and (2) the bankruptcy court did not correctly apply the standards for a bad faith dismissal. Because we may affirm on any basis supported by the record, any ambiguity in the Memorandum Decision as to the specific basis on which the case was dismissed is not fatal.

A. Oasis Did Not Meet Its Burden To Establish That The Filing of the Petition Was Authorized.

"It is generally accepted that a bankruptcy case filed on behalf of an entity by one without authority under state law to so act for that entity is improper and must be dismissed." In re Real Homes, LLC, 352 B.R. 221, 225 (Bankr. D. Id. 2005). State law and the terms of the organizational documents and operating agreements control the question of whether the filing of a bankruptcy petition by an LLC was authorized. Id.; see also In re Corporate & Leisure Event Prods., Inc., 351 B.R 724, 731 (Bankr. D. Ariz. 2006); In re Avalon Hotel Partners, LLC, 302 B.R. 377 (Bankr. D. Or. 2003).

The Dismissal Motion clearly presented the issue of whether Oasis was properly authorized to file the Petition. Oasis bore the burden of proving that the filing of the Petition was "authorized and proper." In re Real Homes, 352 B.R at 227-28.

Under Arizona law, "[e]xcept as provided in an operating agreement, the affirmative vote, approval or consent of all members is required to . . . [a]dopt, amend, amend and restate or revoke an operating agreement." (Emphasis added.) Ariz. Rev. Stat. § 29-681(c)(1). From its inception, the validity of the Oasis operating agreement was subject to question. Among the members identified in

the operating agreement were the Fernando Parents, who did not sign it. The State Court determined that the Fernando Parents never were members of Oasis. However, the State Court did not determine the implication of this ruling on the validity of the operating agreement.

For purposes of the Dismissal Motion, if the operating agreement was not valid, Raynu and Judy could not rely upon it to provide any authority for the filing of the Petition. If the operating agreement was valid, paragraph 2.7 required that, in formal actions by members, "[v]oting on a particular issue will be in accordance with percentage of equity ownership in the company." The record before the bankruptcy court reflected that at the time the Fernando Amended Articles were filed (1) the Sholes' held 50% of the member interests in Oasis and (2) the Sholes voted against Judy's motion to file the Fernando Amended Articles to reflect Judy and Raynu as the sole managers of Oasis. Raynu and Judy assert that because the Sholes collectively owned 50% of member interests in Oasis, it constitutes a single member interest, and that Raynu and Judy each held a member interest, with the result that the May 2010 Amended Articles were properly authorized by a majority in number of the member interests. Thus, it is not clear that the May 2010 Amended Articles, under which authority the Petition was filed, ever were effective.

In the end, for purposes of this appeal, it does not matter that the effectiveness of the operating agreement and/or the May 2010 Amended Articles have not been determined. It is enough that

Oasis has not established by a preponderance of the evidence that it was in fact properly authorized to file the Petition. Therefore, the record supports dismissal of Oasis's bankruptcy case on the basis that it was filed without authority under Arizona law.

B. The Bankruptcy Court's Finding That The Petition Was Filed in Bad Faith Was Not Clearly Erroneous.

Pursuant to § 1112(b), the bankruptcy court may dismiss a chapter 11 case for "cause." The lack of good faith in filing a chapter 11 petition constitutes "cause" for dismissal. Marsh v. Marsh (In re Marsh), 36 F.3d 825, 828 (9th Cir. 1994).

> Determining whether the debtor's filing for relief is in good faith depends largely upon the bankruptcy court's on-the-spot evaluation of the debtor's financial condition, motives, and the local financial realities.

Little Creek Dev. Co. v. Commonwealth Mortg. Corp. (In re Little Creek Dev. Co.), 779 F.2d 1068, 1072 (5th Cir. 1986).

A chapter 11 reorganization case has been filed in bad faith when it is an apparent two-party dispute that can be resolved outside of the Bankruptcy Court's jurisdiction. N. Cent. Dev. Co. v. Landmark Capital Co. (In re Landmark Capital Co.), 27 B.R. 273, 279 (D. Ariz. 1983).

Oasis contends that, in reaching its conclusion that the bankruptcy case was filed in bad faith, the bankruptcy court only found that the case involved a two-party dispute. Oasis asserts this was error (1) because that one finding is insufficient to constitute bad faith, and (2) Oasis had other creditors, which

precluded a finding that the case was a two-party dispute.

The transcript of the Dismissal Motion Hearing reflects that the bankruptcy court considered Oasis's financial condition and motives. The bankruptcy court's colloquy with counsel addressed in depth the existence and status of other creditors in the case. Other than the Note and Trust Deed, those debts, as reflected by the schedules on file, consisted primarily of priority wage claims, event deposits from customers, and an Internal Revenue Service ("IRS") obligation in the estimated amount of $60,000. The bankruptcy court observed that the wage claimants had been paid pursuant to a wage order previously entered in the case, and that many of the customer deposit claims had been or would be satisfied through the continued operation of the business. The court also noted that Oasis had sufficient funds to pay its bankruptcy counsel a $50,000 retainer, an amount very close to what would have paid the IRS Obligation.[10]

There is no question that the filing of the Petition was precipitated by the imminent trustee's sale under the Trust Deed. The bankruptcy court expressly determined that Oasis had a remedy under state law to press its claim that the Trust Deed was unenforceable.

We agree that it is clear from this record that the issues relating to the Trust Deed and the filing of the Petition itself

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[10] Although counsel for Oasis conceded this point at the Dismissal Motion Hearing, Oasis contends on appeal that the amount of the IRS obligation actually was much greater than $60,000.

reflect the persistent LLC governance issues with which the State Court is familiar as the result of the Ownership Litigation. As such, it is an "apparent two-party dispute that can be resolved outside of the Bankruptcy Court's jurisdiction." Accordingly, the bankruptcy court's finding that the Petition was filed in bad faith is well-supported by the record.

Ultimately, whether the existing LLC ownership and governance disputes that drove Oasis's bankruptcy filing conveniently fit within the concept of a "bad faith" filing, the fact that said disputes are appropriately remedied in litigation in state court independent of the bankruptcy process provides separate "cause" supporting the bankruptcy court's dismissal of the case. We find no abuse of discretion in the bankruptcy court's order granting the Dismissal Motion.

III. Stay Pending Appeal.

On April 5, 2011, our motions panel granted Oasis's motion, based upon Rule 8005 and BAP Rule 8011(d)-1, for a stay pending the disposition of this appeal. Subsequent to oral argument, Oasis filed a motion ("Post-Argument Motion") seeking an "extension" of that stay in the event we affirm the bankruptcy court's dismissal of Oasis's bankruptcy case. Oasis requests that the existing stay continue for thirty (30) days "to allow the Debtor time to take actions to prevent a scheduled trustee's sale of its property, the Ranch." The motion asserts that after the July 22, 2011 oral argument in this appeal, the Sholes rescheduled their trustee's sale

of the Ranch for July 26, 2011, and plan to continue the trustee's sale for 24 hours each successive day until our disposition of this appeal is entered.

Pursuant to BAP Rule 8013-1(a), disposition of this appeal is to be by entry of an Opinion, Memorandum, or Order. Rule 8016(a) requires the BAP Clerk to enter a judgment following receipt of the disposition of an appeal from this panel.

Rule 8017(a) provides that this judgment is "stayed until the expiration of 14 days after entry, unless otherwise ordered by . . . the panel." The purpose of this 14-day "automatic stay" is "to provide the losing party with a period of time within which to decide whether to pursue available post-judgment motions or remedies, such as an appeal." 10 Collier on Bankruptcy ¶ 8017.02 (Alan N. Resnick & Henry J. Sommer, eds., 16th ed. 2010). Thus, even without the Post-Argument Stay Motion, Oasis has the benefit of a 14-day "automatic stay" of the effect of our judgment once it is entered.

The Sholes have filed a response to the Post-Argument Stay Motion in which they acknowledge that Rule 8017(a) applies in this matter. They assert that the Rule 8017(a) "automatic stay" gives Oasis sufficient time to seek relief from the state court with respect to the pending foreclosure, especially where counsel for Oasis stated at oral argument that the pleadings for injunctive relief in the state court had been prepared and were ready to be filed. In fact, the Sholes contend that Rule 8017(a) gives Oasis too much. They request, "given the circumstances, needless delay,

frustration, and expense caused by this bankruptcy proceeding," that we exercise our discretion implicit in the "unless otherwise ordered by . . . the panel" language of Rule 8017(a) to terminate the stay immediately upon entry of our judgment in this appeal. See Sun Valley Ranches, Inc. v. The Equitable Life Assur. Soc'y of the United States (In re Sun Valley Ranches, Inc.), 823 F.2d 1373 (9th Cir. 1987)(finding adequate support in the record for the district court's decision to make its order affirming the bankruptcy court order before it on appeal effective immediately).

We exercise our discretion to deny the Sholes's request that we terminate the Rule 8017(a) "automatic stay" of our judgment. The Sholes successfully asserted both in the bankruptcy court and before us that the state court was the proper forum to address the validity of the Note and Trust Deed. However, from Oasis's contentions in the Post-Argument Stay Motion, it appears that the Sholes have taken steps designed to eliminate Oasis's ability effectively to contest the validity of the Note and Trust Deed. Specifically, it appears that, except for the existence of Rule 8017(a)'s "automatic stay," the Sholes intend to foreclose at 9:00 a.m. on the day immediately following the entry of this disposition. Because both the bankruptcy court's dismissal of the bankruptcy case and our affirmance of that dismissal were premised upon Oasis having an alternative forum more appropriate for Oasis's challenge to the validity of the Note and Trust Deed, we will not act to deprive Oasis of its right to access that alternative forum.

Neither will we exercise our discretion to grant Oasis any

further stay beyond Rule 8017(a)'s 14-day "automatic stay." In light of our disposition of this appeal, fourteen days provides Oasis sufficient time to act to protect its rights; anything more merely serves to delay the ultimate resolution of the dispute between the parties.

VI. CONCLUSION

The bankruptcy court did not abuse its discretion when it decided the Dismissal Motion without taking oral testimony, nor when it granted the Dismissal Motion. Our stay pending appeal entered April 5, 2011, will expire by its own terms upon entry of this disposition. The 14-day 'automatic stay' provided by Rule 8017(a) applies upon entry of this disposition. Because this 14 days is sufficient time for Oasis to act to protect its rights, any further stay requested in the Post-Argument Stay Motion is denied.

We AFFIRM.