

FEB 22 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NOT FOR PUBLICATION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

5	In re:	)	BAP No. NC-10-1294-DHDO
6	SACRAMENTO APARTMENT HOLDINGS, LLC,	)	Bk. No. 10-40200
7		)	
8	Debtor.	)	
9	TIMOTHY A. WILSON,	)	
10	Appellant,	)	
11	v.	)	<b>M E M O R A N D U M<sup>1</sup></b>
12	LB-RPR REO HOLDINGS, LLC;	)	
13	UNITED STATES TRUSTEE,	)	
14	Appellees.	)	

Argued and Submitted on January 20, 2012  
at San Francisco, California

Filed - February 22, 2012

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

Honorable Leslie Tchaikovsky, Bankruptcy Judge, Presiding

Appearances: Neither appellant nor appellee LB-RPR REO Holdings, LLC appeared. Matthew Kretzer, Esq., appeared for the United States Trustee and submitted on the briefs.

<sup>1</sup> 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: DUNN, HOLLOWELL and DONOVAN,<sup>2</sup> Bankruptcy Judges.

2  
3 Timothy A. Wilson ("Wilson"), counsel for the debtor,  
4 Sacramento Apartment Holdings, LLC ("Sacramento Apartments"),  
5 appeals the following orders of the bankruptcy court: (1) order  
6 granting the United States Trustee's ("UST") motion for sanctions  
7 against Wilson under Rule 9011;<sup>3</sup> (2) order regarding payment of  
8 sanctions to the UST; (3) order regarding payment of sanctions to  
9 LB-RPR REO Holdings, LLC ("LB"); and (4) order holding Wilson in  
10 civil contempt and imposing coercive and compensatory sanctions.  
11 We DISMISS the appeal of the UST sanctions order for lack of  
12 jurisdiction, and otherwise, we AFFIRM.

13 **FACTS**

14 A. Gold River Apartments, LLC's chapter 11 case

15 Gold River Apartments, LLC ("Gold River") owned an apartment  
16 complex located in Sacramento, California. Brian Baniqued  
17 ("Baniqued") and Roderick Farmer ("Farmer") were the members of  
18 Gold River. LB held the sole trust deed on the apartment complex  
19 securing repayment of a \$2.7 million loan made to Gold River.<sup>4</sup>

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21  
22 <sup>2</sup> Hon. Thomas B. Donovan, United States Bankruptcy Judge for  
the Central District of California, sitting by designation.

23  
24 <sup>3</sup> Unless otherwise indicated, all chapter, section and rule  
25 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

26  
27 <sup>4</sup> JPMCC 2002-C1 Tuolumne Drive Limited Partnership ("JPMCC")  
originally held the trust deed on the apartment complex securing  
28 repayment of the Gold River loan. JPMCC assigned its right,  
title and interest in the loan on the apartment complex to German  
American Capital Corporation, which in turn assigned its right,  
title and interest to LB.

1 After Gold River defaulted on its loan payments to LB, LB  
2 recorded a notice of default and sought judicial foreclosure and  
3 the appointment of a receiver in state court in February 2009.

4 Shortly thereafter, on March 2, 2009, Gold River filed its  
5 chapter 11 petition (09-41589) in the Oakland Division of the  
6 United States Bankruptcy Court for the Northern District of  
7 California.<sup>5</sup> Gold River scheduled the apartment complex as its  
8 only asset.

9 Wilson represented Gold River in its chapter 11 case.<sup>6</sup> Gold  
10 River was unable to obtain approval of a disclosure statement  
11 while Wilson acted as its counsel.<sup>7</sup>

12 On October 22, 2009, LB filed a motion for relief from stay  
13

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14 <sup>5</sup> Judge Leslie Tchaikovsky presided over Gold River's  
15 chapter 11 bankruptcy case.

16 <sup>6</sup> Patrick Calhoun initially represented Gold River in its  
17 bankruptcy case. Wilson substituted in as counsel for Gold River  
18 on October 29, 2009. The bankruptcy court entered an order  
19 approving Wilson's employment as counsel for Gold River on  
November 13, 2009.

20 <sup>7</sup> After denying approval of Gold River's amended disclosure  
21 statement, the bankruptcy court gave Gold River one last  
22 opportunity to amend and obtain approval of its disclosure  
23 statement. The bankruptcy court warned in an order to show cause  
24 ("OSC") that if Gold River failed to obtain approval of its  
disclosure statement, the bankruptcy court might convert the  
chapter 11 case to chapter 7 or dismiss it.

25 Gold River filed three iterations of a second amended  
26 disclosure statement. The bankruptcy court held two hearings on  
27 the OSC based on its doubts, formed after a cursory review of the  
second amended disclosure statement, that Gold River would  
succeed in obtaining approval of a disclosure statement.

28 Following the second OSC hearing, the bankruptcy court  
entered an order on February 17, 2010, dismissing Gold River's  
chapter 11 case.

1 seeking to foreclose its lien on the apartment complex.  
2 Following a hearing, the bankruptcy court granted LB's motion,  
3 entering an order on December 2, 2009. Before the order was  
4 entered, Gold River filed two motions for reconsideration.<sup>8</sup> The  
5 bankruptcy court denied both motions to reconsider relief from  
6 stay in an order entered on December 15, 2009.

7 Gold River appealed the Gold River relief from stay order to  
8 this Panel (NC-09-1403).<sup>9</sup> The Gold River appeal was dismissed by  
9 stipulation on February 23, 2010.

10 B. Sacramento Apartments chapter 11 case

11 After it obtained the Gold River relief from stay order, LB  
12 again sought in state court the appointment of a receiver to  
13 market and sell the apartment complex. A hearing on the  
14 appointment of a receiver was set for December 18, 2009.

15 Sacramento Apartments was formed the day of the receiver  
16 appointment hearing. Wilson appeared at the receiver appointment  
17 hearing requesting that it be continued so that he could file an  
18 opposition on Gold River's behalf. The state court agreed to  
19 continue the receiver appointment hearing to December 22, 2009.  
20 Hours before the continued receiver appointment hearing, Gold  
21 River transferred the apartment complex to Sacramento Apartments,  
22 without authorization from the bankruptcy court.

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24 <sup>8</sup> Gold River actually filed two motions for leave to file  
25 motions for reconsideration. The bankruptcy court construed Gold  
26 River's motions for leave in their substance as motions for  
reconsideration.

27 <sup>9</sup> Notably, before filing its motions to reconsider, Gold  
28 River filed two notices of appeal of the Gold River relief from  
stay order on December 11, 2009, and December 14, 2009.

1 On the same day, Sacramento Apartments filed a chapter 11  
2 petition (09-34054) in the San Francisco Division of the United  
3 States Bankruptcy Court for the Northern District of California.  
4 Sacramento Apartments filed its schedules, statement of financial  
5 affairs and list of 20 largest unsecured creditors, as well as an  
6 amended petition, on January 4, 2010, listing the apartment  
7 complex as its only asset. Wilson represented Sacramento  
8 Apartments in its chapter 11 case, but he did not seek the  
9 bankruptcy court's approval of his employment as Sacramento  
10 Apartments' counsel.

11 LB filed an ex parte motion to transfer venue of Sacramento  
12 Apartments' chapter 11 case from the San Francisco Division to  
13 the Oakland Division of the bankruptcy court.<sup>10</sup> Sacramento  
14 Apartments opposed the transfer venue motion; however, it  
15 admitted in its opposition to the transfer venue motion that it  
16 filed the chapter 11 case to stop the appointment of a receiver.

17 The bankruptcy court granted LB's transfer venue motion.<sup>11</sup>  
18 A day later, LB filed a motion for relief from stay seeking in  
19 rem relief as to the apartment complex under § 362(d)(4)(A) and  
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21  
22  
23 <sup>10</sup> Judge Thomas Carlson presided over the Sacramento  
24 Apartments chapter 11 case while it was in the San Francisco  
25 Division of the bankruptcy court. When LB moved to transfer  
26 venue of the Sacramento Apartments chapter 11 case to the Oakland  
27 Division of the bankruptcy court, LB also asked that Judge Leslie  
28 Tchaikovsky be assigned to preside over the chapter 11 case.  
LB's transfer venue motion was granted in its entirety.

<sup>11</sup> Once it was transferred to the Oakland Division of the  
bankruptcy court, the Sacramento Apartments chapter 11 case was  
assigned the following new case number: 10-40020.

1 (B).<sup>12</sup> Following several hearings, the bankruptcy court granted  
2 LB's relief from stay motion, entering an order on February 18,  
3 2010.

4 1. UST's Rule 9011 motion for sanctions

5 The UST meanwhile filed a motion for sanctions against  
6 Wilson under Rule 9011.<sup>13</sup> LB joined in the UST's sanctions

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8 <sup>12</sup> Section 362 provides, in relevant part:

9  
10 (d) On request of a party in interest and after notice  
11 and a hearing, the court shall grant relief from the  
12 stay provided under subsection (a) of this section,  
13 such as by terminating, annulling, modifying, or  
14 conditioning such stay -

15 . . . .

16 (4) with respect to a stay of an act against  
17 real property under subsection (a), by a  
18 creditor whose claim is secured by an  
19 interest in such real property, if the court  
20 finds that the filing of the petition was  
21 part of a scheme to delay, hinder, and  
22 defraud creditors that involved either -

23 (A) transfer of all or part ownership  
24 of, or other interest in, such real  
25 property without the consent of the  
26 secured creditor or court approval;  
27 or

28 (B) multiple bankruptcy filings  
affecting such real property.

LB specifically contended that Sacramento Apartments filed its chapter 11 petition to delay or hinder LB after Gold River transferred to Sacramento Apartments the apartment complex without LB's consent or court approval. Alternatively, LB argued, Sacramento Apartments filed its chapter 11 petition to delay or hinder LB by participating in filing multiple bankruptcy petitions affecting the apartment complex.

<sup>13</sup> The UST did not specify in the sanctions motion the particular subsection of Rule 9011 on which it relied. Based on our reading, we conclude that the UST sought sanctions against Wilson under Rule 9011(b)(1).

1 motion.

2       The UST asserted in its sanctions motion that Wilson filed  
3 the Sacramento Apartments chapter 11 case to circumvent the Gold  
4 River relief from stay order. Specifically, the UST contended  
5 that Wilson abused the bankruptcy system by: (1) aiding in the  
6 creation of Sacramento Apartments and the apartment complex  
7 transfer and (2) filing the Sacramento Apartments chapter 11 case  
8 as a way to hinder and delay LB from foreclosing on the apartment  
9 complex after LB obtained relief from stay. The UST contended  
10 that Wilson's actions as Sacramento Apartments' counsel  
11 demonstrated bad faith, warranting sanctions against him to deter  
12 him from repeating such conduct in the future.

13       The UST requested that the bankruptcy court require Wilson  
14 to pay as sanctions: (1) a penalty to the bankruptcy court;  
15 (2) the UST's reasonable attorney's fees and costs incurred in  
16 bringing the sanctions motion; and (3) LB's reasonable attorney's  
17 fees and costs incurred in dealing with Sacramento Apartments'  
18 chapter 11 case.

19       Wilson filed a motion to recuse the bankruptcy judge in the  
20 Sacramento Apartments chapter 11 case. He also filed an  
21 opposition to the UST's sanctions motion. Wilson claimed in his  
22 opposition that Sacramento Apartments was formed not to delay or  
23 hinder LB from foreclosing on the apartment complex, but to  
24 implement part of a settlement agreement between Gold River's  
25 members, Baniqued and Farmer. According to Wilson, Baniqued and  
26 Farmer disagreed as to whether to try to retain the apartment  
27 complex, so Baniqued withdrew from Gold River. Farmer then  
28 transferred the apartment complex from Gold River to Sacramento

1 Apartments and authorized Wilson to file Sacramento Apartments'  
2 chapter 11 case as a way for Farmer to "start over."

3         Wilson further contended that Sacramento Apartments filed  
4 its chapter 11 case in good faith, seeking to pay LB and other  
5 creditors. Wilson moreover contended that he was not required to  
6 obtain LB's consent for the apartment complex transfer, but he  
7 knew that LB never would have consented to the apartment complex  
8 transfer.

9         Wilson also stated his belief that Sacramento Apartments did  
10 not need to obtain the bankruptcy court's approval of the  
11 apartment complex transfer because the bankruptcy court had no  
12 jurisdiction over the apartment complex once it granted LB relief  
13 from stay.

14         The bankruptcy court held a hearing on February 16, 2010, on  
15 Sacramento Apartments' recusal motion and the UST's sanctions  
16 motion. At the sanctions motion hearing, Wilson advised the  
17 bankruptcy court that Sacramento Apartments wished to withdraw  
18 its recusal motion. He further informed the bankruptcy court  
19 that Sacramento Apartments agreed to turn over the apartment  
20 complex to LB.

21         Wilson apologized "for some [actions] that [he had] taken,  
22 that [he was] really trying to figure out a way - and didn't do a  
23 very good job of it - to try to help [Sacramento Apartments] save  
24 an asset . . . ." Tr. of February 16, 2010 hr'g, 6:1-4. He  
25 asked the bankruptcy court "to accept [his] apology for the kind  
26 of mess that [he had] created, but [he was] doing what he [could]  
27 to mitigate it . . . ." Tr. of February 16, 2010 hr'g, 7:6-9.

28         The bankruptcy court declined to issue an order on the



1 recusal motion as Wilson had withdrawn it on Sacramento  
2 Apartments' behalf.

3 As to the motion for sanctions, the bankruptcy court  
4 concluded that, because Sacramento Apartments' counsel had  
5 "conceded everything that [was] being requested," the only  
6 remaining issue concerned the amount of the sanctions sought by  
7 the UST and LB. Tr. of February 16, 2010 hr'g, 8:3-6.

8 The bankruptcy court then advised the moving parties to  
9 submit declarations stating the fees and costs they incurred due  
10 to Wilson's conduct. When Wilson informed the bankruptcy court  
11 that he operated a small boutique firm with limited means to pay  
12 any sanctions, the bankruptcy court advised Wilson that he would  
13 be provided the opportunity to oppose the fee declarations based  
14 on their reasonableness and his ability to pay the fee amounts.  
15 The bankruptcy court declined to impose a penalty beyond the fees  
16 requested by the UST and LB, concluding that the amount of the  
17 fees alone would be "sufficiently substantial" for the purpose of  
18 deterring future bad acts. On March 1, 2010, the bankruptcy  
19 court entered an order granting the UST's sanctions motion.

20 a. UST's fee declaration

21 Both the UST and LB's counsel timely filed their fee  
22 declarations. The UST requested \$2,850 in total fees incurred by  
23 two of its trial attorneys. The UST based the hourly rates of  
24 its trial attorneys on their respective backgrounds and  
25 experience.

26 Wilson did not oppose the UST's fee declaration, and the  
27 bankruptcy court entered an order on April 1, 2010, requiring  
28 Wilson to pay the UST's attorney's fees.

1           b.    LB's fee declaration

2           LB's counsel sought \$68,018 in fees and \$1,177.88 in costs,  
3 for a total of \$69,195.88. LB's counsel claimed that it incurred  
4 its fees and costs from the following matters: (1) the continued  
5 receiver appointment hearing; (2) its investigation into  
6 postpetition transactions regarding the apartment complex;  
7 (3) Sacramento Apartments' chapter 11 case; and (4) Gold River's  
8 chapter 11 case, including the appeal of the Gold River relief  
9 from stay order. LB's counsel did not provide a task-by-task  
10 itemization of the work performed and the time spent on each  
11 individual matter. Rather, LB's fee declaration simply set forth  
12 the total time spent and described the work it performed for each  
13 matter.

14           Wilson opposed LB's fee declaration. He again argued the  
15 merits of the motion for sanctions and also contended that the  
16 fees incurred by LB's counsel were excessive and unreasonable; he  
17 charged that LB's counsel overreached and ran up fees by  
18 liberally using attorneys and other staff over a short period of  
19 time. Wilson further asked the bankruptcy court to consider  
20 mitigating factors in determining the appropriate amount of  
21 sanctions. Wilson pointed out that he dismissed the Gold River  
22 appeal and complied with LB's request to turn over the apartment  
23 complex. He again stressed that he operated a small law firm  
24 with limited means to pay any sanctions award. Any sanctions  
25 amount, Wilson claimed, "would adversely affect [his firm's]  
26 ability to continue operating." Opposition to LB's fee  
27 declaration, 4:19-20.

28           After reviewing LB's fee declaration and Wilson's

1 opposition, the bankruptcy court entered an order on March 22,  
2 2010, requiring Wilson to pay LB \$50,000, payable in ten equal  
3 monthly installments of \$5,000.

4 c. Wilson's motion to reconsider the fee orders

5 Wilson filed a motion to reconsider both the UST fee order  
6 and the LB fee order on March 31, 2010. Wilson restated the  
7 objections raised in his opposition to LB's fee declaration  
8 nearly word-for-word. Wilson particularly noted that both the  
9 UST and LB had failed to provide itemized bills for his review  
10 and argued that the failure to do so constituted a violation of  
11 his rights to due process. Wilson also complained that the court  
12 had not accounted for his limited ability to pay. Without  
13 proffering any supporting evidence, Wilson argued that his firm  
14 was a recent startup that had never topped a gross income of  
15 \$5,000 per month. He stated that, to avoid jeopardizing his  
16 firm's survival, he could not afford to pay more than \$1,000 per  
17 month in sanctions. However, Wilson did not proffer any evidence  
18 of his or his firm's finances to support his contentions.

19 The bankruptcy court denied Wilson's motion for  
20 reconsideration without a hearing and issued a memorandum  
21 decision to that effect. In its decision, the bankruptcy court  
22 found that LB's declaration was sufficiently detailed to allow  
23 Wilson to challenge the reasonableness of specific tasks  
24 performed, which he had failed to do in his opposition. The  
25 bankruptcy court further found that Wilson's tardy demand for an  
26 itemization of these tasks constituted an effort to delay  
27 enforcement of the court's order. The bankruptcy court concluded  
28 with the observation that Wilson's motion reflected a lack of

1 recognition that his conduct was unacceptable. In a footnote,  
2 the court suggested that Wilson confer with LB to work out a  
3 reasonable payment plan, in light of Wilson's financial  
4 situation.

5 Wilson filed three more motions for reconsideration in late  
6 April and June of 2010. The bankruptcy court did not address  
7 these additional motions to reconsider.<sup>14</sup>

8 2. LB's motion for civil contempt order

9 A month after entry of the order denying reconsideration, LB  
10 filed a motion for entry of an order holding Wilson in civil  
11 contempt for failing to comply with the bankruptcy court's fee  
12 order and imposing coercive and compensatory sanctions on Wilson.  
13 LB asserted that Wilson had not made any payments under the LB  
14 fee order. It further mentioned that Wilson had not contacted it  
15 to work out a payment plan as recommended by the bankruptcy  
16 court.

17 LB requested coercive sanctions of \$200 per day until Wilson  
18 paid LB all sums due, and compensatory sanctions of \$2,614.50,  
19 for LB's expenses incurred in preparing the civil contempt motion  
20 and in attending the hearing on it.

21 The court held a hearing on the civil contempt motion at  
22 which Wilson and LB's counsel appeared. At the hearing, Wilson  
23 was reprimanded for his improper and belligerent attempts to  
24 argue his multiple motions for reconsideration, which were not  
25 before the bankruptcy court. The bankruptcy court further noted  
26

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27 <sup>14</sup> We presume the bankruptcy court declined to address these  
28 additional motions to reconsider because they were filed late.  
See Rule 9023.

1 Wilson's failure to meet with opposing counsel to work out a  
2 payment plan, as recommended in the bankruptcy court's prior  
3 memorandum decision. The bankruptcy court then granted LB's  
4 civil contempt motion in its entirety, including in the order a  
5 direction for LB's counsel to file and serve on Wilson an  
6 itemized statement of all payments due under the sanctions and  
7 contempt orders.

8 Wilson moved to amend or alter the civil contempt order  
9 under Rules 9023 and 7052, though, in fact, he sought further  
10 reconsideration of the fee orders along with the civil contempt  
11 order. Wilson claimed that the bankruptcy court overlooked his  
12 sworn statements that it was impossible for him to pay the  
13 sanctions awarded in the fee orders because he lacked sufficient  
14 funds. He requested that the bankruptcy court make additional  
15 findings regarding his financial inability to pay the sanctions.  
16 In support of his motion to amend, he submitted various bank  
17 statements and bills as evidence of his financial circumstances.

18 The bankruptcy court denied Wilson's motion to amend. It  
19 pointed out that it had fully set forth its findings in its  
20 memorandum decision on Wilson's motion to reconsider the fee  
21 orders. The bankruptcy court further noted that Wilson had  
22 appealed its rulings, so any errors of law or fact or any abuse  
23 of discretion by the bankruptcy court presumably would be  
24 corrected on appeal.

25 3. LB's ex parte application for entry of an enforceable  
26 sanctions order

27 On January 12, 2011, LB submitted an ex parte application  
28 for entry of an enforceable sanctions order against Wilson

1 pursuant to the civil contempt order. LB claimed that Wilson  
2 owed a total of \$87,014.50, consisting of: (1) the \$50,000  
3 sanctions award under the LB fee order; (2) \$2,614.50 in  
4 compensatory sanctions under the civil contempt order; and  
5 (3) \$34,400 in per diem sanctions under the civil contempt  
6 order.<sup>15</sup>

7 The bankruptcy court entered an order approving the  
8 application, and an abstract of judgment in the amount of  
9 \$87,014.50 against Wilson was entered on January 21, 2011.

10 Wilson appeals the sanctions order, the UST fee order, the  
11 LB fee order and the civil contempt order.

#### 12 JURISDICTION

13 Before we begin our analysis, we first must address two  
14 jurisdictional questions, one raised by the UST, and the other by  
15 Wilson. We review de novo our own jurisdiction. Silver Sage  
16 Partners, Ltd. v. City of Desert Hot Springs (In re City of  
17 Desert Hot Springs), 339 F.3d 782, 788 (9th Cir. 2003). We  
18 review de novo the timeliness of a notice of a appeal, as it is a  
19 question of law. Delaney v. Alexander (In re Delaney), 29 F.3d  
20 516, 517 (9th Cir. 1994).

#### 21 A. UST's question regarding this Panel's jurisdiction

22 On January 26, 2011, we entered an order stating that the  
23

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24 <sup>15</sup> The civil contempt order provided for a \$200/day coercive  
25 sanction until Wilson paid in full all sums due and owing under  
26 the LB fee order. According to LB's counsel, 172 days had passed  
27 between July 16, 2010, the first day following entry of the civil  
28 contempt order, and January 3, 2011, the date when the final  
installment payment under the LB fee order came due. LB's  
counsel thus calculated \$34,400 in total coercive sanctions due  
and owing by Wilson.

1 UST fee order appeared to be a final order from which no timely  
2 notice of appeal was filed. We mentioned that the parties could  
3 raise in their briefs the issue of whether Wilson's appeal was  
4 timely as to the sanctions awarded to the UST.

5 The UST contends on appeal that we lack jurisdiction to  
6 decide Wilson's appeal of the UST fee order because he filed his  
7 notice of appeal late. Wilson had fourteen days in which to file  
8 his notice of appeal of the UST fee order once it became final.  
9 See 28 U.S.C. § 158(c)(2), Rule 8002(a).

10 Although the UST fee order was entered on April 1, 2010, it  
11 did not become final until after the order denying Wilson's  
12 motion for reconsideration was entered on April 21, 2010. As the  
13 UST points out, Wilson's motion for reconsideration tolled the  
14 appeal period. See Rule 8002(b)(2). Once the bankruptcy court  
15 entered the order denying reconsideration, Wilson had fourteen  
16 days from April 21, 2010 in which to file a notice of appeal of  
17 the order. Wilson's three additional motions to reconsider did  
18 not toll the appeal period for the UST fee order. See Ysais v.  
19 Richardson, 603 F.3d 1175, 1178 (10th Cir. 2010)(holding that  
20 second motion for reconsideration tolled time to appeal district  
21 court's denial of first motion for reconsideration, but did not  
22 extend time for filing notice of appeal from underlying amended  
23 final judgment). Wilson thus had to file his notice of appeal of  
24 the UST fee order by May 5, 2010. Wilson did not file his notice  
25 of appeal of the UST fee order until July 29, 2010.

26 We agree with the UST that Wilson's notice of appeal of the  
27 UST fee order was untimely. A notice of appeal must be filed  
28 within fourteen days of the date of the entry of the order

1 appealed from. See Rule 8002(a). "The provisions of Bankruptcy  
2 Rule 8002 are jurisdictional; the untimely filing of a notice of  
3 appeal deprives the appellate court of jurisdiction to review the  
4 bankruptcy court's order." Delaney, 29 F.3d at 518 (quoting  
5 Anderson v. Mouradick (In re Mouradick), 13 F.3d 326, 327 (9th  
6 Cir. 1994))(internal quotation marks omitted). Although there is  
7 some flexibility in Rule 8002, "we strictly enforce its time  
8 provisions." Id. (quoting Slimick v. Silva (In re Slimick),  
9 928 F.2d 304, 306 (9th Cir. 1990)). Here, Wilson filed his  
10 notice of appeal of the UST fee order more than three months  
11 after the order was entered. Accordingly, we dismiss Wilson's  
12 appeal of the UST fee order, as we lack jurisdiction to consider  
13 it.

14 B. Wilson's question regarding the bankruptcy court's  
15 jurisdiction

16 Wilson contends that the bankruptcy court should not have  
17 imposed sanctions against him for his involvement in the  
18 apartment complex transfer because it had no jurisdiction over  
19 the apartment complex once it granted LB relief from stay. He  
20 argues that when the bankruptcy court lost its jurisdiction over  
21 the apartment complex, it could not enter any orders or make any  
22 rulings, including imposing sanctions, regarding Wilson's actions  
23 concerning the apartment complex.

24 We disagree. Simply because the bankruptcy court entered  
25 the Gold River relief from stay order does not mean it lost  
26 jurisdiction over Wilson and his conduct concerning the apartment  
27 complex. Bankruptcy courts have "the inherent authority to  
28 regulate the practice of attorneys who appear before them."



1 In re Nguyen, 447 B.R. 268, 280 (9th Cir. BAP 2011)(en banc).  
2 Under its inherent authority, a bankruptcy court may sanction an  
3 attorney to deter and provide compensation for a broad range of  
4 improper litigation tactics. Knupfer v. Lindblade (In re Dyer),  
5 322 F.3d 1178, 1196 (9th Cir. 2003). See also In re Brooks-  
6 Hamilton, 400 B.R. 238, 246-47 (9th Cir. BAP 2009). It also has  
7 express authority under the Bankruptcy Code and the Rules to  
8 sanction attorneys. Nguyen, 447 B.R. at 281. The bankruptcy  
9 court therefore had the authority to sanction Wilson for his  
10 abuse of the bankruptcy system by filing Sacramento Apartments'  
11 chapter 11 case.

12 Because the bankruptcy court had jurisdiction to adjudicate  
13 the sanctions motion under 28 U.S.C. § 157(b)(1) and (b)(2)(A),  
14 we have jurisdiction to review the appeal under 28 U.S.C. § 158.

#### 15 **ISSUES**

16 (1) Did the bankruptcy court abuse its discretion in  
17 sanctioning Wilson?

18 (2) Did the bankruptcy court abuse its discretion in  
19 determining the amount of sanctions to be paid to LB?

20 (3) Did the bankruptcy court abuse its discretion in holding  
21 Wilson in civil contempt?

#### 22 **STANDARDS OF REVIEW**

23 We review the bankruptcy court's factual findings for clear  
24 error and its legal conclusions de novo. Goodrich v. Briones  
25 (In re Schwarzkopf), 626 F.3d 1032, 1035 (9th Cir. 2010). "If  
26 [the bankruptcy court's] account of the evidence is plausible in  
27 light of the record viewed in its entirety," we may not reverse  
28 even though convinced that we might have weighed the evidence

1 differently. Anderson v. City of Bessemer City, N.C., 470 U.S.  
2 564, 573-74 (1985). "Where there are two permissible views of  
3 the evidence, the factfinder's choice between them cannot be  
4 clearly erroneous." Id. at 574.

5 "We review the bankruptcy court's award of sanctions,  
6 including an award of attorney's fees, for an abuse of  
7 discretion." Hansbrough v. Birdsell (In re Hercules Enters.,  
8 Inc.), 387 F.3d 1024, 1027 (9th Cir. 2004). We conduct the same  
9 review for an award of sanctions for civil contempt. Stasz v.  
10 Gonzalez (In re Stasz), 387 B.R. 271, 274 (9th Cir. BAP 2008),  
11 aff'd, 348 F. Appx. 233 (9th Cir. 2009), cert. denied, 131 S. Ct.  
12 161 (2010).

13 We follow a two-part test to determine whether the  
14 bankruptcy court abused its discretion. United States v.  
15 Hinkson, 585 F.3d 1247, 1261-62 (9th Cir. 2009)(en banc). First,  
16 we "determine de novo whether the bankruptcy court identified the  
17 correct legal rule to apply to the relief requested." Id.  
18 Second, we examine the bankruptcy court's factual findings under  
19 the clearly erroneous standard. Id. at 1262 & n.20. We must  
20 affirm the bankruptcy court's factual findings unless those  
21 findings are "(1) 'illogical,' (2) 'implausible,' or (3) without  
22 'support in inferences that may be drawn from the facts in the  
23 record.'" Id.

24 We may affirm on any ground supported by the record. Shanks  
25 v. Dressel, 540 F.3d 1082, 1086 (9th Cir. 2008).

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1 **DISCUSSION**

2 A. The bankruptcy court did not abuse its discretion in  
3 sanctioning Wilson

4 Wilson avers that he did not act in bad faith in aiding in  
5 the formation of Sacramento Apartments and in filing Sacramento  
6 Apartments' chapter 11 case. He argues that, contrary to the  
7 UST's assertion, Sacramento Apartments' chapter 11 case exhibits  
8 few indicia of bad faith under the "new debtor syndrome."  
9 Relying on In re Trust Deed Center, Inc., 36 B.R. 846 (Bankr.  
10 C.D. Cal. 1984), Wilson contends that a newly created entity has  
11 the "right" to file one bankruptcy petition to protect its  
12 assets, as long as there is a business purpose in creating the  
13 new entity and proceeding in bankruptcy. He claims that the  
14 business purpose in creating Sacramento Apartments was to settle  
15 a disagreement between Gold River's two members regarding the  
16 handling of the apartment complex. We disagree that the  
17 bankruptcy court clearly erred in its fact findings.

18 "Rule 9011(b) imposes on attorneys . . . the obligation to  
19 insure that all submissions to a bankruptcy court are truthful  
20 and for proper litigation purposes." Miller v. Cardinale  
21 (In re DeVille), 361 F.3d 539, 543 (9th Cir. 2004). Rule 9011  
22 calls for the imposition of sanctions on attorneys who file  
23 pleadings and papers in violation of this rule. Marsch v. Marsch  
24 (In re Marsch), 36 F.3d 825, 829 (9th Cir. 2004).

25 Relevant here is Rule 9011(b)(1), which provides that, by  
26 submitting a petition, an attorney is certifying to the best of  
27 his or her knowledge, information and belief, formed after  
28 reasonable inquiry, that such petition is not being presented for

1 any improper purpose, "such as to harass or to cause unnecessary  
2 delay or needless increase in the cost of litigation." Rule  
3 9011(b)(1) essentially has a two-fold requirement: (1) the signer  
4 of the pleading must certify that it is not frivolous - "that is,  
5 it is well-grounded in fact and is warranted by existing law or a  
6 good faith argument for the extension, modification, or reversal  
7 of existing law," and (2) "the signer must ensure that the paper  
8 or pleading is not interposed for any improper purpose, such as  
9 to harass or to cause unnecessary delay or needless increase in  
10 the cost of litigation." Id. Either frivolousness or improper  
11 purpose may serve as a basis for sanctions. Id. A bankruptcy  
12 court "must consider both frivolousness and improper purpose on a  
13 sliding scale, where the more compelling the showing as to one  
14 element, the less decisive need be the showing as to the other."  
15 Id. at 830.

16 Under Rule 9011(c), the bankruptcy court has the authority  
17 to impose sanctions on attorneys who violate Rule 9011(b).  
18 Sanctions are limited to "what is sufficient to deter repetition  
19 of such conduct or comparable conduct by others similarly  
20 situated." Rule 9011(c)(2). Sanctions may consist of, or  
21 include "an order to pay a penalty into court, or, if imposed on  
22 motion and warranted for effective deterrence, an order directing  
23 payment to the movant of some or all of the reasonable attorneys'  
24 fees and other expenses incurred as a direct result of the  
25 violation." Id. "[R]easonableness continues to require that the  
26 sanction imposed be within the scope of the bankruptcy court's  
27 authority and that the sanction be tailored to address the  
28 misconduct." Nguyen, 447 B.R. at 280.

1 Wilson cites Trust Deed Center, Inc. in support of his  
2 argument that the formation of Sacramento Apartments and the  
3 filing of its chapter 11 case were not abuses of the bankruptcy  
4 system. He misconstrues Trust Deed Center, Inc.

5 In Trust Deed Center, Inc., 36 B.R. at 847-48, the general  
6 counsel of a corporation with an interest in a shopping center  
7 transferred an interest in the shopping center three times, to  
8 three different corporations, which filed three sequential  
9 chapter 11 petitions. These actions were taken for the admitted  
10 purpose of preventing the secured creditor from foreclosing on  
11 the shopping center. The bankruptcy court found that the first  
12 newly-created corporation receiving an interest had a legitimate  
13 business purpose in filing for bankruptcy.

14 However, the bankruptcy court also concluded that, in filing  
15 the chapter 11 cases for the other two entities, the attorney  
16 unreasonably and vexatiously multiplied the bankruptcy  
17 proceedings in trying to stop foreclosure on the shopping center.  
18 Id. at 849. The bankruptcy court imposed monetary sanctions  
19 against the attorney as a way to "protect the integrity of the  
20 Bankruptcy Code and the judicial process," to punish those who  
21 abuse the judicial process and to provide relief for the party  
22 contending with the sanctioned party's multiple legal  
23 proceedings. Id.

24 Contrary to Wilson's interpretation, Trust Deed Center, Inc.  
25 does not stand for the proposition that newly formed entities  
26 always have a right to file one bankruptcy case, as long as it is  
27 for a business purpose. The bankruptcy court in Trust Deed  
28 Center, Inc. only condoned the first bankruptcy filing. It

1 viewed the two subsequent bankruptcy filings by different  
2 entities as abuses of the bankruptcy system.

3         The bankruptcy court here concluded that Wilson's filing of  
4 a chapter 11 petition on behalf of Sacramento Apartments was an  
5 abuse of the bankruptcy system, done to preclude or further  
6 postpone LB foreclosing on the apartment complex. This finding  
7 was supported by ample evidence in the record, and was  
8 effectively conceded by Wilson in the February 16, 2010 hearing.  
9 Sacramento Apartments was formed on the day of the receiver  
10 appointment hearing. Gold River transferred the apartment  
11 complex to Sacramento Apartments on the day of the continued  
12 receiver appointment hearing. Sacramento Apartments filed its  
13 chapter 11 case on the same day, in a different division of the  
14 bankruptcy court.

15         Moreover, Wilson conceded at the sanctions motion hearing  
16 that he had created "a mess" and apologized for some of the  
17 actions he had taken in Sacramento Apartments' chapter 11 case.  
18 He told the bankruptcy court that he was "really trying to figure  
19 out a way - and didn't do a very good job of it - to try to help  
20 [Sacramento Apartments] save an asset . . . ."

21         These circumstances substantiate the bankruptcy court's view  
22 of the evidence. When there are two permissible views of the  
23 evidence, the bankruptcy court's choice between them cannot be  
24 clearly erroneous. See Anderson, 470 U.S. at 574.

25         Even if Wilson had not admitted to his misconduct at the  
26 sanctions motion hearing, there is ample evidence demonstrating  
27 that he filed Sacramento Apartments' chapter 11 petition in bad  
28 faith. He helped Farmer form Sacramento Apartments and filed a

1 chapter 11 petition on its behalf on the day of the continued  
2 receiver appointment hearing in San Francisco, rather than in  
3 Oakland, where Gold River's case was pending. Wilson admitted in  
4 the opposition to the transfer venue motion that he filed  
5 Sacramento Apartments' chapter 11 petition to stop the  
6 appointment of a receiver. He also indicated in his opposition  
7 to the UST's sanctions motion that he knew LB would not consent  
8 to the apartment complex transfer. Wilson's actions and  
9 statements demonstrate that he filed Sacramento Apartments'  
10 chapter 11 case to hinder and delay LB in its foreclosure  
11 efforts. Certainly, on this record, we cannot conclude that the  
12 bankruptcy court clearly erred in so finding. Because he  
13 violated Rule 9011(b)(1) by filing Sacramento Apartments'  
14 chapter 11 petition, the bankruptcy court had authority to  
15 sanction Wilson. The bankruptcy court did not abuse its  
16 discretion in sanctioning Wilson.

17 B. The bankruptcy court did not abuse its discretion in  
18 determining the amount of sanctions under the LB fee order

19 A bankruptcy court has significant discretion in determining  
20 what sanctions should be imposed for a violation of Rule 9011,  
21 "subject to the principle that the sanctions should not be more  
22 severe than reasonably necessary to deter repetition of the  
23 conduct by the offending person or comparable conduct by  
24 similarly situated persons." DeVille, 361 F.3d at 553 (quoting  
25 Fed. R. Civ. P. 11 advisory committee note (1993)). "A  
26 restitutionary award compensating the opposing party for  
27 unnecessary litigation expenses . . . is a particularly  
28 appropriate sanction in cases involving manipulative petitions

1 filed principally for purposes of delay and harassment." Marsch,  
2 36 F.3d at 831.

3 Wilson argues that, in determining the amount of sanctions  
4 awarded to LB, the bankruptcy court should have considered the  
5 following factors: (1) his efforts to mitigate the fees and costs  
6 of LB's counsel and (2) his financial circumstances.

7 Reviewing the record, we believe that Wilson did nothing to  
8 mitigate the fees and costs incurred to date by LB in making the  
9 concessions at the sanctions motion hearing. LB's counsel would  
10 not have incurred those fees and costs in the first place had  
11 Wilson not arranged the apartment complex transfer and filed  
12 Sacramento Apartments' chapter 11 petition. Had Wilson refrained  
13 from such conduct, LB simply would have proceeded with  
14 foreclosure on the apartment complex.

15 With respect to the bankruptcy court's supposed failure to  
16 consider his financial circumstances, Wilson did not submit any  
17 evidence in the form of bank statements, declarations or other  
18 documents to show that he could not afford to pay sanctions in  
19 opposition to the LB fee declaration. He simply stated that he  
20 operated a small boutique law firm with limited means to pay any  
21 sanctions. The bankruptcy court could not have assessed Wilson's  
22 financial condition from that simple conclusory statement. In  
23 any event, the bankruptcy court did temper the impact of the  
24 sanctions award to LB by awarding only \$50,000.

25 Wilson also takes issue with the LB fee declaration. He  
26 first contends that the bankruptcy court did not allow him to  
27 review and object to the LB fee declaration. He then argues that  
28 LB's counsel did not specify the time spent on the work performed



1 for each task in the fee declaration, instead lumping its fees.

2 Contrary to his assertion, the bankruptcy court provided  
3 Wilson with the chance to review and object to the LB fee  
4 declaration. The bankruptcy court informed Wilson at the  
5 sanctions motion hearing that it would give him the opportunity  
6 to oppose the fee declarations, based on unreasonableness of the  
7 amount of fees or on his inability to pay the sanctions. The  
8 bankruptcy court also provided in the sanctions order a deadline  
9 by which Wilson could oppose the fee declarations.

10 As for his contention that the LB fee declaration should  
11 have provided a task-by-task itemization, the bankruptcy court  
12 found that the LB fee declaration was "sufficiently detailed" to  
13 provide Wilson a chance to challenge the reasonableness of the  
14 fees for the specific tasks performed by LB's counsel. The  
15 bankruptcy court also pointed out that Wilson raised no such  
16 objection in his opposition. Instead, he merely argued that LB's  
17 fees and costs were unreasonable and excessive because its  
18 counsel "ran up" its fees and costs unnecessarily.

19 Wilson apparently overlooks the fact that the bankruptcy  
20 court discounted approximately 30% of the fees and costs LB's  
21 counsel requested. LB's counsel initially requested  
22 approximately \$70,000 in fees and costs in its fee declaration,  
23 but the bankruptcy court reduced the total sanctions award to  
24 \$50,000.

25 We acknowledge that the sanctions award is large. But,  
26 based on the limited evidence before it, the bankruptcy court  
27 awarded an amount sufficient to provide a deterrent effect.  
28 Except for his general assertions, Wilson provided no evidence in

1 his opposition to LB's fee declaration demonstrating (1) that  
2 LB's counsel's services were unnecessary, (2) that LB's counsel  
3 overcharged for its services or that its fees and costs were  
4 unreasonable, or (3) that he could not pay the fees and costs  
5 requested.

6 We therefore conclude that the bankruptcy court did not  
7 abuse its discretion and properly determined an appropriate  
8 amount of sanctions to be awarded to LB.

9 C. The bankruptcy court did not abuse its discretion in holding  
10 Wilson in civil contempt

11 Wilson argues that the bankruptcy court should not have held  
12 him in civil contempt when it was impossible for him to comply  
13 with the sanctions order. He provided the bankruptcy court with  
14 evidence demonstrating his inability to pay the sanctions awarded  
15 in the LB fee order in his motion to amend the contempt order.  
16 According to Wilson, the bankruptcy court did not accord this  
17 evidence due weight when it imposed sanctions.

18 A bankruptcy court has the power to award civil sanctions  
19 for contempt. Stasz, 387 B.R. at 275. In order to hold a party  
20 in contempt, the bankruptcy court must find that the party  
21 "violated a specific and definite order of the court." Id.  
22 (quoting Dyer, 322 F.3d at 1191)(internal quotation marks  
23 omitted). "An alleged contemnor may defend against a finding of  
24 contempt by demonstrating a present inability to comply." United  
25 States v. Ayres, 166 F.3d 991, 994 (9th Cir. 1999). The ability  
26 to comply is "a crucial inquiry" for the bankruptcy court to  
27 conduct. Id. The bankruptcy court therefore "should weigh all  
28 the evidence properly before it determines whether or not there

1 is actually a present ability to obey." Id. A contempt  
2 proceeding does not open to reconsideration, however, the legal  
3 or factual basis of the order allegedly disobeyed by the  
4 contemnor. Id. at 995.

5 At the time the bankruptcy court considered LB's civil  
6 contempt motion, Wilson failed to demonstrate that he was  
7 financially unable to comply with the LB fee order. He did not  
8 provide any declarations, bank account statements or bills  
9 showing that he lacked the wherewithal to pay the sanctions.  
10 Wilson did not provide bank account statements until after the  
11 bankruptcy court ruled on the civil contempt motion; he only  
12 provided them with his motion to amend. The bankruptcy court  
13 therefore could not have weighed such evidence in determining  
14 whether he lacked the ability to comply with the LB fee order.  
15 It was Wilson's burden of proof to show that he could not comply  
16 with it. He failed to meet that burden. We therefore conclude  
17 that the bankruptcy court did not abuse its discretion in holding  
18 Wilson in civil contempt and in imposing coercive and  
19 compensatory sanctions against him.

#### 20 **CONCLUSION**

21 The bankruptcy court did not abuse its discretion in  
22 sanctioning Wilson for filing Sacramento Apartments' chapter 11  
23 case for the improper purpose of hindering and delaying LB in its  
24 efforts to foreclose on the apartment complex. The bankruptcy  
25 court also did not abuse its discretion either in determining the  
26 amount of sanctions awarded to LB or in holding Wilson in civil  
27 contempt for failing to pay LB the sanctions awarded.  
28 Accordingly, we DISMISS the appeal of the UST fee order for lack

1 of jurisdiction and otherwise AFFIRM.

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