

DEC 17 2013

NOT FOR PUBLICATION

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No. CC-13-1297-DPaTa
)	
TAHSEENA KHAN,)	Bk. No. 11-57609-BB
)	
Debtor.)	
_____)	
)	
TAHSEENA KHAN,)	
)	
Appellant.)	
_____)	
)	M E M O R A N D U M¹

Submitted without Oral Argument
on November 22, 2013

Filed - December 17, 2013

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

Honorable Sheri Bluebond, Bankruptcy Judge, Presiding

Appearance: Appellant Tahseena Khan pro se on brief.

Before: DUNN, PAPPAS and TAYLOR, Bankruptcy Judges.

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

1 The pro se debtor, Tahseena Khan, appeals the bankruptcy
2 court's order denying her request to expunge her bankruptcy
3 filing or to place her bankruptcy documents under seal. We
4 AFFIRM.

5
6 **FACTS**

7 The debtor filed a chapter 7² bankruptcy petition on
8 November 18, 2011. She filed her petition, her Schedule I and
9 Schedule J, her statement of financial affairs and Form B22A.
10 The debtor did not file her remaining schedules or her
11 certificate of credit counseling briefing ("credit counseling
12 certificate").

13 On the same day, the bankruptcy court issued two orders, one
14 titled, "Order to Comply with Bankruptcy Rule 1007 and Notice of
15 Intent to Dismiss Case" ("Missing Schedules Order"), and the
16 other titled, "Case Commencement Deficiency Notice" ("Credit
17 Counseling Certificate Order")(collectively, "Document Deficiency
18 Orders"). The Missing Schedules Order required the debtor to
19 file Schedule A through Schedule G. The Credit Counseling
20 Certificate Order required the debtor to file a credit counseling
21 certificate as required under §§ 109(h)(1) and 521(b)(1). The
22 Document Deficiency Orders required the debtor to file the
23 missing bankruptcy documents within fourteen days of the petition
24

25
26 _____
27 ² Unless otherwise indicated, all chapter and section
28 references are to the federal Bankruptcy Code, 11 U.S.C.
§§ 101-1532, and all "Rule" references are to the Federal Rules
of Bankruptcy Procedure, Rules 1001-9037.

1 date; otherwise her bankruptcy case would be dismissed.³

2 The debtor filed her missing schedules on November 23, 2011.
3 She did not file the credit counseling certificate, however.

4 On January 4, 2012, the bankruptcy court entered an order to
5 show cause why the debtor's bankruptcy case should not be
6 dismissed ("OSC") based on her failure to file her credit
7 counseling certificate. Docket no. 20. The bankruptcy court
8 ordered her to appear at a hearing on the OSC set for January 30,
9 2012 ("OSC hearing").

10 A few days before the OSC hearing, the debtor filed a
11 document titled, "Declaration of Inability to Take Pre-Filing
12 Credit Counseling" ("OSC Response"). Docket no. 22. She
13 explained that she "tried to find a credit counseling class for
14 free, but that free class was not for California and asked for a
15 \$5 fee for the certification." Id. She managed to obtain a
16 waiver of the fee. The debtor also stated that she assumed that
17 she did not have to file the credit counseling certificate
18 because it was not mentioned in "the list of deficiencies"⁴ given
19 to her when she filed her bankruptcy petition in person at the
20 bankruptcy court's intake office.

21 The debtor attached to her OSC Response a copy of her credit
22 counseling certificate, dated November 30, 2011.⁵ She also

24 ³ The deadline to file the missing bankruptcy documents fell
25 on December 3, 2012.

26 ⁴ We presume the debtor was referring to the Missing
27 Schedules Order.

28 ⁵ We note that the debtor was required to obtain credit
(continued...)

1 attached copies of various emails between her and the credit
2 counseling agency, dated between November 27, 2011 and
3 November 30, 2011.

4 The bankruptcy court held the hearing on January 30, 2012,
5 but continued it to February 20, 2012 ("OSC hearing"). Two weeks
6 after the continued OSC hearing, it entered an order dismissing
7 the debtor's bankruptcy case. The bankruptcy court entered an
8 order closing her bankruptcy case on May 3, 2012.

9 Three days later, the debtor filed a document titled,
10 "Application to Remove Debtor's Name from the Bankruptcy Database
11 and the Credit Report" ("Motion to Expunge Bankruptcy Filing").⁶
12 She urged the bankruptcy court to expunge her bankruptcy filing
13 so that it would no longer appear on her credit reports.
14 According to the debtor, these negative credit reports impacted
15 her employment prospects in the field of energy efficiency.
16 Specifically, she needed "clean" credit reports because federal
17 and state agencies required project managers to have excellent
18 credit before employing them.

19 The bankruptcy court held a hearing on June 5, 2013 on the
20 debtor's Motion to Expunge ("Motion to Expunge Hearing"). Two
21 days later, the bankruptcy court entered an order denying the
22 Motion to Expunge. Docket no. 30.

23 The debtor timely appealed.

24
25 ⁵(...continued)
26 counseling by the chapter 7 petition date, November 18, 2011.
27 See § 109(h)(1).

28 ⁶ The debtor did not move to reopen her case, nor did the
bankruptcy court enter an order sua sponte reopening her case.

1 male-dominant field." Appellant's Opening Brief at 5. She also
2 worries about possible identity theft as her social security
3 number and other personal information "are accessible through the
4 electronic database [i.e., PACER]." Id. at 5.

5 Before we begin our analysis, we note that the debtor did
6 not provide an appendix containing excerpts of the record as
7 required under Rule 8009(b). We waived this requirement,
8 however, under an order filed on September 5, 2013. BAP docket
9 no. 24. Although we required the debtor to provide transcripts
10 of the relevant hearing(s) under this order, she did not do so.

11 Because we lack excerpts of record, we have exercised our
12 discretion to reach the merits on appeal by independently
13 reviewing the bankruptcy case's electronic docket and the imaged
14 documents attached thereto. See O'Rourke v. Seaboard Sur. Co.
15 (In re E.R. Fegert, Inc.), 887 F.2d 955, 957-58 (9th Cir. 1989).
16 We also have done our best to reconstruct what happened at the
17 relevant hearings without the benefit of the missing transcripts.
18 See Ehrenberg v. Cal. State Fullerton (In re Beachport Entm't),
19 396 F.3d 1083, 1087-88 (9th Cir. 2005). Even without the aid of
20 transcripts, we conclude that the bankruptcy court did not err in
21 declining to expunge records relating to the debtor's bankruptcy
22 filing.

23 A. Section 107

24 The debtor relies on § 107(b)(2) and (c)(1) in support of
25 her arguments.⁷ Unfortunately, § 107(b)(2) and (c)(1) do not

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27 ⁷ The debtor does not cite these particular subsections. We
28 infer her reliance on these subsections from her arguments in her
(continued...)

1 help her here.

2 Section 107(a) provides that papers filed in a bankruptcy
3 case and the bankruptcy court's docket are public records and
4 open to an entity's examination at reasonable times without
5 charge. Section 107(a) is broad as it covers "all papers filed
6 in a bankruptcy case." In re Roman Catholic Archbishop of
7 Portland in Oregon, 661 F.3d 417, 430 (9th Cir. 2011) ("Portland
8 Roman Catholic Archbishop").

9 Section 107(a) "establishes a general right of public access
10 to bankruptcy filings." Id. at 429. It is "rooted in the right
11 of public access to judicial proceedings, a principle long-
12 recognized in the common law and buttressed by the First
13 Amendment." Ferm v. U.S. Tr. (In re Crawford), 194 F.3d 954, 960
14 (9th Cir. 1999)(citations omitted).

15 This general rule is subject to very limited exceptions.
16 See Portland Roman Catholic Archbishop, 661 F.3d at 429.
17 Section 107 "has only three exceptions: confidential business
18 information, 11 U.S.C. § 107(b)(1), 'scandalous or defamatory
19 matter,' id. § 107(b)(2), and 'means of identification,' id.
20 § 107(c)(1)(A)." Id. at 430. We construe these exceptions
21 narrowly. See Crawford, 194 F.3d at 960 n.8.

22 1. Section 107(b)(2)

23 Section 107(b) "[makes] it mandatory for a [bankruptcy]
24 court to protect documents falling into one of the enumerated
25 exceptions." Portland Roman Catholic Archbishop, 661 F.3d at

26
27 _____
28 ⁷(...continued)
opening brief.

1 430. See also 2 Collier on Bankruptcy ¶ 107.03 (Alan N. Resnick
2 & Henry J. Sommer, eds., 17th ed. rev. 2013)(hereinafter cited as
3 Collier on Bankruptcy). Section 107(b) lists two exceptions,
4 only one of which the debtor raises here: § 107(b)(2).

5 Section 107(b)(2) provides, in relevant part, that on the
6 request of a party in interest, the bankruptcy court must protect
7 a person with respect to defamatory matter contained in a paper
8 filed in a bankruptcy case.⁸ Within the Ninth Circuit, we
9 interpret the term, "defamatory," according to its common
10 meaning. See Portland Roman Catholic Archbishop, 661 F.3d at
11 432.

12 For matter in a document to be considered "defamatory," it
13 must "damage the reputation, character, or good name of by
14 slander or libel." The American Heritage Dictionary of the
15 English Language 476 (4th ed. 2000). "Libel" is "[a] false
16 publication, as in writing, print, signs, or pictures, that
17 damages a person's reputation" or "[t]he act of presenting such
18 material to the public." Id. at 1008. "Slander" is an "oral
19 communication of false statements injurious to a person's
20 reputation" or "[a] false and malicious statement or report about
21 someone." Id. at 1633.

22 The debtor claims that the bankruptcy filing has been
23 "defamatory to her reputation," but she fails to explain how it
24 has damaged her reputation by slander or libel. She also fails
25 to specify any documents in her bankruptcy filing that contain

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27 ⁸ The debtor does not contend that the papers in her
28 bankruptcy filing were "scandalous," so we will not address that
standard here.

1 any "defamatory" matter.

2 Because the debtor fails to show that the bankruptcy filing
3 documents are defamatory within the meaning of § 107(b)(2), we
4 determine the bankruptcy court did not err in declining to
5 expunge the bankruptcy filing records.

6 2. Section 107(c)(1)

7 Section 107(c) provides, in relevant part:

8 (1) The bankruptcy court, for cause, may protect an
9 individual, with respect to the following types of
10 information to the extent the court finds that
disclosure of such information would create undue risk
of identity theft or other unlawful injury to the
individual or the individual's property:

- 11 (A) Any means of identification (as defined in
12 section 1028(d) of title 18) contained in a paper
filed, or to be filed, in a case under this title.
13 (B) Other information contained in a paper
described in subparagraph (A).

14 Unlike § 107(b), § 107(c) gives the bankruptcy court broad
15 discretion to protect an individual facing the subject
16 circumstances. 2 Collier on Bankruptcy ¶ 107.04[1]. Moreover,
17 "[t]he types of information that can be protected by the court
18 are unlimited." Id. (citing § 107(c)(1)(B)).

19 The debtor frets that her social security number, bank
20 account number and other personal information have been exposed
21 to the public through her bankruptcy filing. But after reviewing
22 the bankruptcy court's electronic docket, the debtor's petition,
23 her original and amended schedules, her statement of financial
24 affairs and her Form B22A, we discovered no such information,
25 other than the last four digits of her social security number.
26 None of her bankruptcy documents contained any identifying
27 information that could create an undue risk of identity theft or
28 other unlawful injury to the debtor.

1 The debtor failed to show that the bankruptcy filing
2 contained identifying information that would place her at risk of
3 identity theft, as she has claimed. We therefore determine that
4 the bankruptcy court did not err in declining to expunge the
5 debtor's bankruptcy filing records.

6 B. Rule 9037

7 The debtor apparently invokes Rule 9037(c) and (d)(2) in one
8 last attempt to convince us to expunge her bankruptcy filing.
9 Based on the record before us, we are not persuaded to do so.

10 Section 107(b) "provides that certain information filed in a
11 bankruptcy case may, pursuant to court order, be exempt from the
12 general rule that all such papers are public records."

13 10 Collier on Bankruptcy ¶ 9037.04. Rule 9037(c) supplements
14 § 107(b) by allowing the bankruptcy court to order certain
15 documents filed in a bankruptcy case to be filed "under seal" -
16 that is, no longer available on the public record. See id.

17 Here, the debtor has not shown that the documents in her
18 bankruptcy filing contained any information that warrants placing
19 them under seal. She merely complains that the bankruptcy filing
20 has negatively affected her employment prospects. While we
21 sympathize with the debtor, recognizing that the bankruptcy
22 filing likely hampers her efforts in obtaining employment, such
23 information is not sensitive enough to convince us that it should
24 be placed under seal.

25 We also determine that Rule 9037(d)(2) does not apply.
26 Under Rule 9037(d), a bankruptcy court may limit or prohibit a
27 nonparty's remote electronic access to a document filed with it.
28 "Rule 9037(d) recognizes the [bankruptcy] court's inherent

