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NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re: ) BAP No. EC-14-1219-JuKuPa  
 )  
 6 YOUSIF H. HALLOUM, ) Bk. No. 12-21477-CMK  
 )  
 7 Debtor. )  
 )  
 8 \_\_\_\_\_ )  
 )  
 9 YOUSIF H. HALLOUM, )  
 )  
 10 Appellant, )  
 )  
 11 v. ) M E M O R A N D U M \*  
 )  
 12 MCCORMICK, BARSTOW, SHEPPARD, )  
 13 WAYTE & CARRUTH LLP; HILTON )  
 14 A. RYDER; MICHAEL G. KASOLAS, )  
 15 Trustee, )  
 )  
 16 Appellees. )  
 )  
 17 \_\_\_\_\_ )

Submitted Without Oral Argument  
on May 14, 2015

Filed - May 19, 2015

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

Honorable Christopher M. Klein, Chief Bankruptcy Judge,  
Presiding

Appearances: Yousif H. Halloum on brief pro se; Scott M.  
 Reddie and Hilton A. Ryder of McCormick  
 Barstow LLP on brief for appellees McCormick,  
 Barstow, Sheppard, Wayte & Carruth LLP and Hilton  
 A. Ryder.\*\*

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\* 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 8024-1.

\*\* Michael G. Kasolas, Trustee did not file a brief.

1 Before: JURY, KURTZ, and PAPPAS, Bankruptcy Judges.  
2

3 Chapter 7<sup>1</sup> debtor, Yousif H. Halloum,<sup>2</sup> appeals from an order  
4 granting the motion for chapter 11 administrative expenses filed  
5 by his former attorney, Hilton A. Ryder (Ryder). We VACATE and  
6 REMAND for lack of adequate findings under Rule 7052.

7 **I. FACTS<sup>3</sup>**

8 **A. Prepetition Events**

9 Beginning in 2005, the predecessor-in-interest to Midwest  
10 Bank N.A. (Bank) made secured loans to debtor. The loans were  
11 secured by debtor's real and personal property. Debtor operated  
12 an ARCO gas station and convenience store on the real property  
13 located in Lodi, California (Real Property). Debtor also had  
14 his business checking account with Bank.

15 In late 2010 and thereafter, debtor overdrew his checking  
16 account with Bank. Although debtor said the overdrafts would be  
17 repaid in the near term and Bank prodded him to do so, the  
18 amount due increased over time. In October 2011, Bank advised  
19 debtor he had ten days to establish alternative banking  
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21 <sup>1</sup> Unless otherwise indicated, all chapter and section  
22 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.  
23 "Rule" references are to the Federal Rules of Bankruptcy  
24 Procedure and "Civil Rule" references are to the Federal Rules of  
25 Civil Procedure.

25 <sup>2</sup> Debtor is also known as Joe Halloum.

26 <sup>3</sup> To the extent needed, we take judicial notice of various  
27 pleadings which were docketed and imaged by the bankruptcy court  
28 in the underlying bankruptcy case. Atwood v. Chase Manhattan  
Mortg. Co. (In re Atwood), 293 B.R. 227, 233 n.9 (9th Cir. BAP  
2003).

1 relationships for his business, no further overdrafts would be  
2 honored after the ten days, and that no overdraft would be  
3 honored in the interim if the cumulative total exceeded  
4 \$300,000. During this ten-day cautionary period, debtor took  
5 advantage of Bank's accommodation to boost the overdrafts from  
6 approximately \$190,000 to \$297,372.49.

7       Around this time, debtor also defaulted under the loans.  
8 On October 12, 2011, Bank recorded a notice of default that  
9 commenced nonjudicial foreclosure as to the Real Property. On  
10 January 20, 2012, a notice of trustee's sale under the trust  
11 deed was recorded.

12       Bank also sued debtor and his wife in the San Joaquin  
13 County Superior Court to recover on the \$297,372.49 overdraft.  
14 Debtor and his wife cross-complained against Bank, alleging  
15 breach of a contract to transform the overdraft into some  
16 unspecified term loan. The Bank's demurrer to the cross  
17 complaint was stayed by the bankruptcy filing.

#### 18 **B. Bankruptcy Events**

19       Debtor filed a chapter 11 petition on January 26, 2012.  
20 The Disclosure of Compensation of Attorney for Debtor form  
21 attached to the petition stated in relevant part:

22       For legal services, I have agreed to accept  
23       \$38,954.00.

24       Prior to the filing of this statement I have received  
25       \$38,954.00.

26 The form goes on to state that in return for the above-disclosed  
27 fee, "I have agreed to render legal service for all aspects of  
28 the bankruptcy case, including: representation of the debtor in  
adversary proceedings and other contested bankruptcy matters."

1 The form was signed by Ryder, a partner with the law firm  
2 McCormick, Barstow, Sheppard, Wayte & Carruth LLP (MBSWC).

3 On February 10, 2012, debtor filed an application to employ  
4 MBSWC as bankruptcy counsel. The application did not mention a  
5 flat fee arrangement. A few days later, the bankruptcy court  
6 approved MBSWC's employment by entering an order which stated in  
7 relevant part:

8 Compensation will be at the 'lodestar rate' at the  
9 time that services are rendered in accordance with the  
10 Ninth Circuit decision in In re Manoa Fin. Co., 853  
11 F.2d 687 (9th Cir. 1988). No hourly rate referred to  
in the application is approved unless unambiguously so  
stated in this order or in a subsequent order of this  
court.

12 MBSWC submitted applications for payment of interim fees  
13 and expenses on May 2, June 27, September 6, 2012, and  
14 January 31 and May 28, 2013. Each fee application was  
15 accompanied by a declaration signed by debtor declaring that he  
16 had reviewed the application and that he approved the fees and  
17 expenses as set forth in the application and attached exhibits.  
18 By the time MBSWC submitted the May 28, 2013 application, debtor  
19 had approved fees incurred by MBSWC totaling \$116,067.

20 MBSWC also submitted an application for payment of interim  
21 fees and expenses on October 8, 2013. Debtor refused to provide  
22 a declaration approving the fees, contending that Ryder agreed  
23 to represent him in the chapter 11 case for a flat fee of  
24 \$40,000. MBSWC later withdrew this application.

25 On November 7, 2013, the bankruptcy court issued an Order  
26 To Show Cause Why a Chapter 11 Trustee Should Not Be Appointed.  
27 Apparently, debtor was unable to negotiate a consensual plan  
28 with Bank and had also used Bank's cash collateral without

1 making adequate protection payments. On November 22, 2013, the  
2 bankruptcy court appointed Michael G. Kasolas as the chapter 11  
3 trustee (Trustee) to assist the court in evaluating the  
4 feasibility of plan confirmation and related issues.

5 Bank then filed a motion to convert the case to chapter 7.  
6 Bank noted that, although it attempted a constructive global  
7 resolution with debtor, it would not agree to an ongoing  
8 business relationship with him for various reasons and that it  
9 would vote against any plan.

10 On January 17, 2014, Trustee's counsel sent an e-mail to  
11 MBSWC stating:

12 The Trustee will support a plan that contains the  
13 following. Other issues may develop, but these are  
the essentials for the Trustee's support.

14 First, Joe [Halloum] must have deposited \$200,000 to  
15 cover the accrued administrative fees at the time of  
the confirmation hearing. These funds can be held in  
16 your trust account or held by the Trustee. These  
funds cannot be held by Joe.

17 Second, Joe must acknowledge your fees and waive any  
18 objection to your fees. You have done an excellent  
job, and Joe only raises this issue when he feels it  
19 essential to create more available funds for his  
business. Joe cannot attack his own lawyer at the  
20 same time he wants that same lawyer to commit himself  
100% to confirming a plan of reorganization. This  
21 behavior is irrational, upsets the Judge and must  
stop.

22 On February 7, 2014, MBSWC substituted out of the  
23 chapter 11 case. On the same date, Trustee filed a status  
24 report. There, Trustee opined that debtor would not be able to  
25 confirm a plan over the objection of Bank and further said:

26 Moreover, the Trustee is at a complete loss to  
27 understand the Debtor's actions. Mr. Ryder has done  
an extraordinary job of representing the Debtor in  
28 this case, including negotiating exceptionally  
debtor-friendly treatment under the proposed Plan:

1 eliminating more than \$1 million in unsecured claims  
2 and stretching out the payment terms for Arco and the  
3 taxing authorities. Mr. Ryder was also integral to  
4 the efforts to seek a solution with the Bank, which  
5 not long ago was simply insisting that the case be  
6 converted because they refused to continue to deal  
7 with the Debtor. Notwithstanding these efforts, the  
8 Debtor has sought an eleventh-hour substitution of  
9 counsel raising the entirely specious claim that the  
10 initial disclosure of compensation in the case amounts  
11 to Mr. Ryder's agreement to perform all services  
12 required in the case in exchange for the retainer and  
13 nothing more. These mystifying claims have been  
14 raised before and completely ignore the fact that the  
15 Court has awarded additional compensation on multiple  
16 occasions in the case.

17 In a declaration filed in support of an application to  
18 employ his new counsel, Daniel Weiss, debtor contended that  
19 MBSWC did not adequately represent him in the case and had  
20 agreed to handle the entire bankruptcy case for a flat fee of  
21 \$40,000. Debtor sought to recoup the fees over the \$40,000  
22 amount. MBSWC denied that there was any such flat fee  
23 agreement.

24 On February 12, 2014, debtor's case was converted to  
25 chapter 7. Kasolas was appointed the chapter 7 trustee.

26 On March 4, 2014, MBSWC filed a motion seeking final  
27 compensation for its work in the chapter 11 case. MBSWC  
28 requested final compensation in the amount of \$114,004.50 and  
expenses of \$2,892.56, and requested \$27,383.32 which had been  
held back in the prior five fee applications. In addition,  
MBSWC asserted that debtor's claim against it for recoupment was  
a compulsory counter-claim that belonged to Trustee.

On April 1, 2014, debtor filed an opposition to the motion,  
arguing that there was never any discussion between Ryder and  
himself about hourly rates and no written fee agreement was

1 presented or signed by him. Debtor maintained that under  
2 California law, Ryder must disclose the fees that he would be  
3 charging debtor and that if the total fee is over \$1,000, then  
4 there must be a written fee contract. Debtor also asserted that  
5 Ryder agreed to perform the services listed in the Disclosure Of  
6 Compensation for \$38,964 (\$40,000 less the filing fee). Debtor  
7 alleged that approximately three months post-petition, contrary  
8 to their agreement, Ryder began billing debtor on an hourly  
9 basis. According to debtor, after he confronted Ryder about  
10 their flat fee arrangement, Ryder warned him verbally and in  
11 writing that if he refused to pay the legal fees, Ryder would  
12 withdraw from the case and the case may be converted to  
13 chapter 7. Debtor maintained that he "had no choice" but to pay  
14 Ryder to avoid losing his business. Debtor also asserted that  
15 Ryder did not adequately represent debtor's interest in  
16 negotiating approval of a chapter 11 plan. Debtor attributed  
17 the conversion of the case and the loss of his business to  
18 Ryder's actions or inactions. In the end, debtor requested the  
19 court to hold an evidentiary hearing on his counterclaim for  
20 recoupment of fees.

21 In reply, MBSWC argued that debtor did not have standing to  
22 oppose the motion since if disgorgement were ordered the monies  
23 would be paid to the chapter 7 estate. MBSWC also noted that  
24 Trustee was made aware of the fee dispute and made a decision to  
25 not pursue disgorgement from MBSWC. MBSWC again denied that  
26 there was ever an agreement for a flat fee and argued that such  
27 an agreement was inconsistent with debtor's conduct throughout  
28 the case, i.e., debtor signed a total of five disclosure

1 statements, none of which ever mentioned the professional fees  
2 being subject to a flat fee of \$40,000 and debtor approved fee  
3 applications in excess of the initial retainer on five separate  
4 occasions in his capacity as debtor-in-possession. Finally,  
5 MBSWC asserted that under California law, even without a  
6 retention agreement, Ryder was entitled to fees and expenses on  
7 a quantum meruit basis. Accordingly, the bankruptcy court could  
8 decide the value of Ryder's services.

9 On April 15, 2014, the bankruptcy court heard the matter.

10 On April 16, 2014, the bankruptcy court entered the order  
11 granting the motion. The order did not contain any findings of  
12 fact or conclusions of law and simply noted that the amount  
13 requested was appropriate.

14 On April 28, 2014, debtor filed a timely notice of appeal.

15 On April 2, 2015, the Clerk's office issued an Order Re  
16 Transcript, which noted that the transcript for the April 15,  
17 2014 hearing on the motion for administrative fees was never  
18 prepared and filed with the bankruptcy court. The order gave  
19 debtor until Thursday, April 16, 2015, to file and serve a copy  
20 of the transcript and further stated:

21 If appellant does not provide the transcript, the  
22 Panel is entitled to assume that appellant does not  
23 believe there is anything in the transcript that will  
24 help appellant's appeal and may dismiss the appeal or  
25 summarily affirm the order on appeal. State of Cal.  
26 v. Yun (In re Yun), 476 B.R. 243 (9th Cir. BAP 2012).

27 Debtor filed the transcript almost a month after the due  
28 date, explaining that he had just received the Clerk's Order  
because he had moved and it was forwarded to his new address.  
Generally, "[a]lthough civil litigants who represent themselves



1 ("pro se") benefit from various procedural protections not  
2 otherwise afforded to the attorney-represented litigant . . .  
3 pro se litigants are not entitled to a general dispensation from  
4 the rules of procedure or court-imposed deadlines." Jones v.  
5 Phipps, 39 F.3d 158, 163 (7th Cir. 1994). Nonetheless, we  
6 exercise our discretion to consider the late-filed transcript.

## 7 **II. JURISDICTION**

8 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
9 §§ 1334 and 157(b)(2)(A). We have jurisdiction under 28 U.S.C.  
10 § 158.

## 11 **III. ISSUE**

12 Whether the bankruptcy court made sufficient findings of  
13 fact and conclusions of law to allow for meaningful review of  
14 this appeal.

## 15 **IV. STANDARD OF REVIEW**

16 The bankruptcy court's approval of administrative expenses  
17 and award of attorney's fees is reviewed for abuse of  
18 discretion. Hale v. U.S. Tr., 509 F.3d 1139, 1146 (9th Cir.  
19 2007); Film Ventures Int'l, Inc. v. Asher (In re Film Ventures  
20 Int'l, Inc.), 75 B.R. 250, 253 (9th Cir. BAP 1987). The  
21 bankruptcy court abuses its discretion when it fails to identify  
22 and apply "the correct legal rule to the relief requested,"  
23 United States v. Hinkson, 585 F.3d 1247, 1263 (9th Cir.2009) (en  
24 banc), or if its application of the correct legal standard was  
25 "(1) 'illogical,' (2) 'implausible,' or (3) without 'support in  
26 inferences that may be drawn from the facts in the record.'" Id.  
27 at 1262.

1 **V. DISCUSSION**

2 Because it was opposed, MBSWC's motion seeking final  
3 compensation for its work was a contested matter subject to  
4 Rule 9014. As a contested matter, the bankruptcy court was  
5 required to make findings of fact, either orally on the record  
6 or in a written decision. See Rule 9014(c) (incorporating  
7 Rule 7052, which in turn incorporates Civil Rule 52); Harris v.  
8 U.S. Tr. (In re Harris), 279 B.R. 254, 260 (9th Cir. BAP 2002)  
9 (in contested matters the bankruptcy court is required to make  
10 findings on disputed issues of material fact). In an action  
11 tried on the facts without a jury, "the court must find the  
12 facts specially and state its conclusions of law separately."  
13 Civil Rule 52(a)(1), incorporated by Rule 7052. These findings  
14 must be sufficient to indicate the factual basis for the court's  
15 ultimate conclusion. Unt v. Aerospace Corp., 765 F.2d 1440,  
16 1444 (9th Cir. 1985). Moreover, the findings must be explicit  
17 enough to give the appellate court a clear understanding of the  
18 basis of the trial court's decision, and to enable it to  
19 determine the grounds on which the trial court reached its  
20 decision. Mattel, Inc. v. Walking Mountain Prods., 353 F.3d  
21 792, 815 (9th Cir. 2003); Unt, 765 F.2d at 1444; Veal v. Am.  
22 Home Mortg. Servicing, Inc. (In re Veal), 450 B.R. 897, 919 (9th  
23 Cir. BAP 2011).

24 Debtor raised a number of issues in the bankruptcy court  
25 related to the fee application, including his contention that  
26 Ryder agreed to represent him in his chapter 11 case for a flat  
27 fee of \$40,000. The alleged existence of such an agreement  
28 raised a factual question which the bankruptcy court would

1 resolve presumably by weighing the conflicting evidence and  
2 making credibility determinations.

3 A review of the transcript from the fee dispute hearing  
4 reflects that the bankruptcy court did not articulate any  
5 findings or conclusions on the record regarding the alleged  
6 agreement nor did it say that it was awarding the fees under  
7 § 330 or some other theory such as quantum meruit. See Hensley  
8 v. Eckerhart, 461 U.S. 525, 437 (1983) (trial court must provide  
9 a "concise but clear explanation of its reasons for the fee  
10 award."). Likewise, the order on appeal provides no inkling of  
11 how the bankruptcy court resolved the factual dispute regarding  
12 the flat fee agreement or why it determined that the fees  
13 requested were reasonable.

14 However, even when a bankruptcy court does not make formal  
15 findings, we may conduct appellate review "if a complete  
16 understanding of the issues may be obtained from the record as a  
17 whole or if there can be no genuine dispute about omitted  
18 findings." In re Veal, 450 B.R. at 919-20 (citations omitted).  
19 As there is a genuine dispute about the omitted findings, we  
20 have no basis for evaluating whether the bankruptcy court abused  
21 its discretion in awarding MBSWC the full amount requested in  
22 its final fee application.

## 23 VI. CONCLUSION

24 Accordingly, we VACATE the order and REMAND to the  
25 bankruptcy court to make the required findings. See United  
26 States v. Ameline, 409 F.3d 1073 (9th Cir. 2005).