

MAY 22 2015

NOT FOR PUBLICATION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

5	In re:)	BAP No.	NC-14-1030-TaDKi
6	NORTH OXFORD BRIGHT HORIZONS)	Bk. No.	11-33749
7	GROUP LLC,)		
	Debtor.)		
8	_____)		
9	MONICA HUJAZI,)		
10	Appellant,)		
11	v.)	MEMORANDUM*	
12	ANDREA A. WIRUM, Chapter 7)		
13	Trustee,)		
14	Appellee.)		
	_____)		

Argued and Submitted on May 14, 2015
at San Francisco, California

Filed - May 22, 2015

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

Honorable Hannah L. Blumenstiel, Bankruptcy Judge, Presiding

Appearances: Bradley Kass of Kass & Kass Law Offices argued
for appellant Monica Hujazi; Charles Patrick
Maher of McKenna Long & Alridge LLP argued for
appellee Andrea A. Wirum, Chapter 7 Trustee.

Before: TAYLOR, DUNN, and KIRSCHER, Bankruptcy Judges.

* 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(c)(2).

1 Monica Hujazi appeals from the entry of the final decree
2 discharging the chapter 7¹ trustee and closing the chapter 7
3 case of North Oxford Bright Horizons Group, LLC.

4 We AFFIRM the bankruptcy court.

5 **FACTS**

6 **Background**

7 The Debtor, a California LLC, was formed in September of
8 2011. The Zuercher Trust of 1999 (the "Zuercher Trust")² is the
9 sole member of the Debtor; at all relevant times, Hujazi, as
10 Trustee of the Zuercher Trust, was an affiliate of the Debtor.

11 A month after the Debtor's formation, the Zuercher Trust
12 conveyed a 32-unit apartment building (the "Property") to the
13 Debtor. Four days later, on October 17, 2011, the Debtor
14 commenced a chapter 7 case through a skeletal filing that
15 included neither schedules nor the other documents required by
16 Rule 1007. Andrea A. Wirum became the chapter 7 trustee. It is
17 uncontested that the Property was the Debtor's sole asset.

18 The Debtor's lack of Rule 1007 documents prompted a
19 bankruptcy court order requiring the filing of required

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21 ¹ 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.

25 ² The Zuercher Trust is currently in chapter 7 bankruptcy
26 (converted from chapter 11 in December 2014), also filed in the
27 Northern District of California. See 12-32747-HLB. In its own
28 case, the Zuercher Trust appealed from an order approving two
§ 363 sales as to different real properties; the BAP affirmed.
See The Zuercher Trust of 1999 v. Kravitz, Chapter 11 Trustee
(In re Zuercher Trust of 1999), 2014 WL 7191348 (9th Cir. BAP
Dec. 17, 2014).

1 documents and allowing for case dismissal if the filing did not
2 occur. The Debtor filed nothing in response, but the Trustee
3 successfully obtained a reprieve. Over the Zuercher Trust's
4 opposition, she also obtained authorization to attempt a sale of
5 the Property.

6 The Trustee eventually received an offer in the amount of
7 \$2,350,000, gave Hujazi appropriate notice of her intent to sell
8 at this amount, and moved for an order authorizing the sale.
9 Neither Hujazi nor the Debtor (nor anyone else) objected to the
10 sale. As a result, the bankruptcy court entered an order that
11 authorized the sale of the Property and payment from the sale
12 proceeds to the secured trust deed holder, three judgment lien
13 creditors, and the parties' brokers. No one objected to the
14 form of order or appealed from that decision.

15 Thereafter, in June of 2012, the Debtor finally filed its
16 schedules and other Rule 1007 documents. Both the newly filed
17 schedules and the Trustee's prior due diligence confirmed that
18 the sale of the Property yielded proceeds in excess of pre-
19 petition and administrative claims. The Trustee, thus, obtained
20 authorization, pursuant to § 726(a)(6), to distribute \$1,000,000
21 to Hujazi, as trustee of the Zuercher Trust.

22 Having sold the Debtor's only asset and after largely
23 distributing the sale proceeds, the Trustee began to conclude
24 the bankruptcy case. In compliance with 28 C.F.R. § 58.7, she
25 initially filed both a Trustee's Final Report ("Final Report")
26 and a Notice of Trustee's Final Report and Applications for
27 Compensation and Deadline to Object ("TFR Notice"). The Trustee
28 and her professionals also filed final fee applications. The

1 Debtor objected both to the payment of creditors and fees as
2 outlined in the Final Report and to the payment of fees as
3 requested in the final fee applications.

4 The bankruptcy court heard the matters on August 1, 2013,
5 and, after arguments were presented, approved the Final Report
6 and all of the fees as requested. It subsequently entered three
7 orders. No one appealed from these orders, and they are now
8 final.

9 On December 23, 2013, the Trustee filed the last document
10 required by 28 C.F.R. § 58.7, her Chapter 7 Trustee's Final
11 Account and Distribution Report Certification that Estate Has
12 Been Fully Administered and Application to be Discharged ("Final
13 Account"). Just four days later, the bankruptcy court entered
14 the final decree, which acknowledged full administration of the
15 estate, discharged the Trustee, and closed the case. Hujazi
16 timely appealed from the final decree.³

17 **JURISDICTION**

18 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
19 §§ 1334 and 157(b)(2)(A). We have jurisdiction under 28 U.S.C.
20 § 158.

21 **ISSUES**

- 22 1. Whether Hujazi has standing to appeal from the final
23 decree.
- 24 2. Whether the bankruptcy court erred in entering the final
25

26 ³ The Debtor and then Hujazi filed a motion to set aside
27 the final decree and then, to reopen the case, in early January
28 2014. Eventually, following an order from this Panel, the
bankruptcy court denied Hujazi's motions.

1 decree less than 30 days after the filing of the Final
2 Account.

3 STANDARD OF REVIEW

4 As legal questions, we review de novo interpretations of
5 statutes and rules. de la Salle v. U.S. Bank, N.A. (In re de la
6 Salle), 461 B.R. 593, 601 (9th Cir. BAP 2011). "Whether
7 compliance with a given statute or rule has been established is
8 generally a question of fact, which we review for clear error."
9 Id. A factual finding is clearly erroneous if illogical,
10 implausible, or without support in inferences that may be drawn
11 from the facts in the record. See TrafficSchool.com, Inc. v.
12 Edriver Inc., 653 F.3d 820, 832 (9th Cir. 2011) (citing United
13 States v. Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en
14 banc)).

15 DISCUSSION

16 A. Hujazi's standing to appeal.

17 The Trustee argues that Hujazi lacks standing to appeal
18 from the final decree because she is not a "person aggrieved" in
19 the Debtor's case and has not shown that the Zuercher Trust's
20 bankruptcy is a surplus case. Hujazi responds that, as the
21 principal of the Zuercher Trust, she is entitled to any surplus
22 funds from that estate. She, thus, avers that the final decree
23 "directly [affected] her rights to surplus monies out of the
24 [Zuercher Trust's] estate."

25 Whether a party has standing to appeal from a bankruptcy
26 court order is determined according to the "person aggrieved"
27 test. "An appellant is aggrieved if 'directly and adversely
28 affected pecuniarily by an order of the bankruptcy court'; in

1 other words, the order must diminish the appellant's property,
2 increase its burdens, or detrimentally affect its rights."
3 Duckor Spradling & Metzger v. Baum Trust (In re P.R.T.C., Inc.),
4 177 F.3d 774, 777 (9th Cir. 1999) (citing Fondiller v. Robertson
5 (In Matter of Fondiller), 707 F.2d 441, 442 (9th Cir. 1983)).
6 Generally, an appellant bears the burden of showing that
7 standing to appeal exists. See In Matter of Fondiller, 707 F.2d
8 at 443.

9 Here, we must sort through two bankruptcies in order to
10 determine whether appellate standing exists. If we look solely
11 at the Debtor's chapter 7 case, standing exists because it is a
12 surplus case. Hujazi's goal is to reduce claims payable by the
13 Debtor's bankruptcy estate. This has the natural consequence of
14 increasing money flowing to the Debtor and then to its sole
15 member, the Zuercher Trust, and then, perhaps, to Hujazi.

16 We, however, must also consider the fact that the Zuercher
17 Trust is a chapter 7 debtor. Thus, unless the Zuercher Trust
18 case is also a surplus case, Hujazi will receive nothing from
19 the Debtor's estate; consequently, she would lack standing.

20 Here, Hujazi offers only argument in support of her
21 position and, thus, we cannot conclusively determine whether the
22 Zuercher Trust estate will generate a surplus after payment of
23 administrative and pre-petition claims. The likelihood of a
24 surplus, however, is enhanced as the amount available from
25 liquidation of the Debtor increases. A cursory review of the
26 schedules and docket in the Zuercher Trust bankruptcy does not
27 establish the impossibility of a surplus. While it is a close
28 call, we conclude that Hujazi has standing to appeal from the

1 final decree.

2 **B. The bankruptcy court did not commit reversible error when**
3 **it entered the final decree.**

4 Hujazi argues that the bankruptcy court erred in entering
5 the final decree just four days after the Trustee's filing of
6 the Final Account. On this record, we disagree.

7 Rule 5009(a) supplies a conclusive evidentiary presumption
8 that the chapter 7 estate is fully administered in the absence
9 of an objection by the United States Trustee or any other party
10 in interest within 30 days of a trustee's filing of a final
11 account. Fed. R. Bankr. P. 5009(a). Rule 5009 is procedurally
12 implemented by 28 C.F.R. § 58.7.

13 Under 28 C.F.R. § 58.7, a chapter 7 trustee files the final
14 report in the bankruptcy case following review by the United
15 States Trustee. Id. § 58.7(a)-(b). To the extent the estate
16 realizes a certain amount in net proceeds,⁴ the chapter 7
17 trustee must then file and send to all creditors a notice of
18 final report. Id. § 58.7(b). The notice "must identify the
19 procedures for objecting to any fee application or to the
20 [trustee's final report]." Id. Then, after all of the estate
21 funds are distributed, the chapter 7 trustee is required to file
22 a final account. Id. § 58.7(c). The final account "must
23 contain the trustee's certification, under penalty of perjury,
24 that the estate has been fully administered and the trustee's
25 request to be discharged as trustee." Id.

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27 ⁴ The dollar amount is determined pursuant to
28 Rule 2002(f)(8).

1 Here, the Trustee followed the uniform procedures required
2 by 28 C.F.R. § 58.7 prior to entry of the final decree and case
3 closure. No one disputes that she properly filed and noticed
4 her Final Report and final fee applications for administrative
5 creditors. No one disputes that Debtor had an opportunity for
6 objection and, as a result, timely objected and raised many of
7 the same objections now before us on appeal. And no one
8 disputes that the bankruptcy court orally overruled all of the
9 objections, approved the Final Report, and entered orders
10 consistent with its oral ruling. No appeal was taken from those
11 orders, and they are now final and nonappealable.

12 Having successfully obtained approval of her Final Report,
13 the Trustee made the payments it detailed. Once these final
14 acts of administration were complete and after all estate funds
15 were distributed, she again complied with 28 C.F.R. § 58.7 and
16 filed the Final Account in the bankruptcy case. The Final
17 Account included the required certification under penalty of
18 perjury that the Debtor's estate was fully administered and the
19 required request that the Trustee be discharged.

20 Hujazi does not question the content of the Final Account
21 and, in particular, does not argue that case administration is
22 incomplete. Instead, she argues that entry of the final decree
23 was premature because she did not have 30 days in which to again
24 raise the objections asserted by the Debtor in connection with
25 the Final Report. Hujazi's position lacks merit for two
26 reasons.

27 First, Rule 5009(a) does not require a 30 day opportunity
28 for objection. It simply provides an evidentiary presumption as

1 to full estate administration. Here, the bankruptcy court
2 entered the final decree just four days after the Trustee filed
3 the Final Account; it did not permit the evidentiary presumption
4 to become conclusive. But, Rule 5009 did not bar the bankruptcy
5 court from entry of the final decree prior to the expiration of
6 30 days.

7 Second, Hujazi does not identify any unpaid creditor,
8 unadministered asset, or unperformed requirement for case
9 completion such that the bankruptcy court erroneously relied on
10 the Final Report's certification of full administration of the
11 case and erroneously entered the final decree. Hujazi does not
12 dispute that the estate was fully administered; instead, she
13 argues that the administration did not work out as she wished.
14 And that argument, in whole and in part, has already failed.
15 Thus, Hujazi's attack on the final decree is entirely off point.

16 The timing, also, makes no difference because even if we
17 vacated the final decree, Hujazi could not pursue what she truly
18 seeks on appeal: to collaterally attack the bankruptcy court
19 orders approving the fee applications and the Final Report.
20 Contrary to Hujazi's argument, these orders were not interim
21 orders subsumed into the final decree. These orders finally
22 resolved the Debtor's objections to the Final Report and the
23 contested final fee applications on the merits (to the extent
24 not already decided in earlier orders).

25 Each order following the Final Report contained reference
26 to the Debtor's objections to the Final Report, noted the
27 bankruptcy court's tentative ruling approving the Final Report,
28 and incorporated that tentative and its oral ruling consistent

1 with the tentative into the order generally. Each order then
2 overruled a single undefined "objection" and awarded fees to a
3 particular claimant. We have no doubt that the bankruptcy court
4 intended to incorporate its approval of the Final Report into
5 one or all of these orders, thus commencing the time for appeal
6 of those decisions.⁵ See, e.g., Carter v. Beverly Hills Sav. &
7 Loan Ass'n, 884 F.2d 1186, 1189 (9th Cir. 1989); see also
8 Fiataruolo v. United States, 8 F.3d 930, 937 (2d Cir. 1993).

9 The Trustee argued that the Final Report triggered the
10 Rule 5009 presumption period. This is incorrect. The Final
11 Report did not and could not do so because it did not "[certify]
12 that the estate has been fully administered." The Final Report
13 included an outline of intended, rather than completed,
14 distributions of estate assets. As the Trustee correctly points
15 out, her actions following the Final Report were entirely
16 ministerial, but they still constituted estate administration.
17 Only the Final Account certified that administration was
18 complete as the distributions outlined in the Final Report were
19 now complete.

20 Moreover, once a case is fully administered, the bankruptcy
21 court is required to close the case. See 11 U.S.C. § 350(a).
22 Accepting the Trustee's reasoning would result in illogical
23 consequences: the closing of the bankruptcy case prior to the
24 trustee's distribution of liquidated estate assets to creditors.

26 ⁵ In addition to the fee awards, Hujazi objects only to
27 the payment of liens secured by the Property. The propriety of
28 these payments was decided by the bankruptcy court under the
much earlier and unopposed order approving the Property sale.

1 It is clear that the 30 day period in Rule 5009 begins to run
2 only upon the filing of the trustee's final account.

3 Finally, Hujazi argues that the amount of fees awarded to
4 Trustee and Trustee's counsel are unconscionable and
5 unreasonable under § 330(a)(3)(A). Again, the bankruptcy court
6 entered the orders approving these fees months before entry of
7 the final decree and Hujazi's notice of appeal. Neither the
8 Debtor nor Hujazi appealed from those orders, and they are now
9 final and nonappealable.

10 **CONCLUSION**

11 Based on the foregoing, we AFFIRM the bankruptcy court.
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