

FEB 03 2016

NOT FOR PUBLICATION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.	CC-15-1205-FCTa
)		
BRUCE DWAIN COPELAND,)	Bk. No.	05-11844-RN
DBA Copeland & Company,)		
DBA Copeland Enterprises,)	Adv. No.	07-01071-RN
DBA West American)		
Construction,)		
)		
Debtor.)		
<hr/>			
BRUCE DWAIN COPELAND,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM*	
)		
LEROY HART; LORNA HART,)		
)		
Appellees.)		
<hr/>			

Argued and Submitted on January 21, 2016
at Pasadena, California

Filed - February 3, 2016

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

Honorable Richard M. Neiter, Bankruptcy Judge, Presiding

Appearances: Appellant Bruce Dwain Copeland argued pro se;
Leslie J. Hedges argued on behalf of Appellees
Leroy Hart and Lorna Hart.

* 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.

1 Before: FARIS, CORBIT**, and TAYLOR, Bankruptcy Judges.

2 Memorandum by Judge Faris
3 Concurrence by Judge Corbit

4 **INTRODUCTION**

5 Appellant Bruce Dwain Copeland faces some serious problems.

6 First, two courts (a California state court and the
7 bankruptcy court) have entered judgments against him in favor of
8 the same parties (Appellees Leroy and Lorna Hart), arising out of
9 a single transaction, and for the same amount of money. The only
10 apparent difference between the two judgments is that the
11 bankruptcy court ruled that the state court's judgment is not
12 dischargeable under §§ 523(a)(2)(A), 523(a)(4), and 523(a)(6).¹

13 Second, the California state court's judgment is very old,
14 having been entered in 1997. This raises a question of the
15 continuing vitality of that judgment. The bankruptcy court's
16 judgment is of somewhat more recent vintage; it "only" dates back
17 to 2008.

18 Third, the Harts have taken action to collect one or both of
19 the judgments in Oklahoma, where Mr. Copeland now lives.

20 Fourth, Mr. Copeland lacks counsel today. (Because both
21 judgments were taken by default, he probably lacked counsel then
22

23
24 ** Honorable Frederick P. Corbit, Chief United States
25 Bankruptcy Judge for the Eastern District of Washington, sitting
by designation.

26 ¹ Unless specified otherwise, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
28 all "Rule" references are to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9037.

1 as well.²) This means that he is attempting to address important
2 legal issues without professional legal assistance. We have read
3 his briefs and the record with due regard for the fact that he
4 was and is unrepresented, but we cannot rule on issues that he
5 did not adequately raise, and we surely cannot suggest how he
6 might attempt to solve his problems.

7 Mr. Copeland appeals the bankruptcy court's denial of his
8 request to vacate that court's 2008 judgment. For the reasons
9 that follow, we hold that the bankruptcy court did not err in
10 denying that specific request. That is the only question
11 properly before us. Accordingly, we AFFIRM. We express no
12 opinion about whether either judgment is enforceable against
13 Mr. Copeland.

14 **FACTUAL BACKGROUND³**

15 In 1995, the Harts sued Mr. Copeland, his construction
16 company, and his business partner in California state court,
17 essentially alleging that the defendants fraudulently and
18 negligently failed to perform agreed-upon repairs and
19 improvements to the Harts' home. In 1997, the Harts obtained a
20 default judgment against Mr. Copeland and his company in the

21
22 ² At oral argument, Mr. Copeland said that he and his then
23 counsel had a falling out before the judgments were taken, but
the record is silent on that score.

24 ³ Mr. Copeland failed to include all relevant documents in
25 his excerpts of record. We have exercised our discretion to
26 review the bankruptcy court's docket, as appropriate. See Woods
27 & Erickson, LLP v. Leonard (In re AVI, Inc.), 389 B.R. 721, 725
28 n.2 (9th Cir. BAP 2008). We are unable, however, to review
certain key documents filed in Mr. Copeland's main bankruptcy
case, because electronic images of those documents were
apparently never converted to the CM/ECF system.

1 total amount of \$446,552.30.

2 In 2005, Mr. Copeland filed for chapter 11 bankruptcy. His
3 case was later converted to chapter 7. The Harts initiated an
4 adversary proceeding against Mr. Copeland and requested that "the
5 judgment entered on October 21, 1997 in the Superior Court of the
6 State of California Case No. BC139655 in the amount of
7 \$446,652.30 plus the accrued legal interest of \$324,036.06
8 through defendant's bankruptcy petition filing on January 31,
9 2005 . . . be declared a non-dischargeable debt under 11 U.S.C.
10 §§ 523(a)(2)(A), 523(a)(4), and 523(a)(6)[.]" In 2008, the
11 bankruptcy court entered default judgment against Mr. Copeland
12 for fraud, embezzlement, and willful and malicious injury,
13 holding him liable for "\$405,242 plus interest @ 10% on \$383,242
14 from October 24, 1997 until paid."

15 Six years later, in 2014, Mr. Copeland filed a motion in the
16 state court to vacate the original judgment on the basis that,
17 under California Code of Civil Procedure § 683.020⁴, the 1997

18
19 ⁴ Section 683.020 states:

20 Except as otherwise provided by statute, upon the
21 expiration of 10 years after the date of entry of a
22 money judgment or a judgment for possession or sale of
property:

23 (a) The judgment may not be enforced.

24 (b) All enforcement procedures pursuant to the
25 judgment or to a writ or order issued pursuant to
the judgment shall cease.

26 (c) Any lien created by an enforcement procedure
27 pursuant to the judgment is extinguished.

28 (continued...)

1 judgment expired ten years after entry and the Harts failed to
2 renew it. The state court denied Mr. Copeland's motion. The
3 court "state[d] no opinion as to whether Plaintiffs in fact
4 failed to renew the judgment." It held that, even if the Harts
5 did not renew the judgment, "CCP § 683.120 would only bar
6 enforcement of the judgment. The statute does not permit the
7 Court to void or vacate the judgment." It further noted that
8 "[t]here are a number of reasons that the judgment could remain
9 enforceable even if Plaintiffs did not renew it, including
10 tolling or enforcement of bankruptcy proceedings." Finally,
11 although the court denied Mr. Copeland's motion, it stated that
12 he "may renew his arguments in response to any enforcement
13 proceedings brought by [the Harts] before this Court."

14 Having lost in state court, Mr. Copeland moved to the
15 bankruptcy court. In 2015, Mr. Copeland filed his motion to
16 vacate the 2008 judgment ("Motion to Vacate"). Mr. Copeland
17 argued that the 2008 bankruptcy court judgment was merely a
18 "continuing" judgment of the original 1997 judgment and thus
19 expired ten years after the entry of the original judgment. The
20 Harts argued that the 2008 bankruptcy court judgment was still
21 valid.⁵ The court's task was not easy because Mr. Copeland's

22
23 ⁴(...continued)
24 Cal. Civ. Proc. Code § 683.020. However, section 683.120 permits
25 the creditor to renew the judgment: "The judgment creditor may
26 renew a judgment by filing an application for renewal of the
27 judgment with the court in which the judgment was entered." Cal.
28 Civ. Proc. Code § 683.120(a).

⁵ Likely taking advantage of the bankruptcy court's
confusion over Mr. Copeland's requested relief, counsel for the
(continued...)

1 motion was deficient.⁶ The court held that Mr. Copeland did not
2 appeal or otherwise move to overturn the 2008 judgment, so it was
3 still valid, notwithstanding the actions of the state court. It
4 orally denied the Motion to Vacate with prejudice.

5 Mr. Copeland filed a timely motion for reconsideration
6 ("Motion for Reconsideration"). Mr. Copeland largely repeated
7 the same arguments he raised in the Motion to Vacate. He also
8 argued that "this Court removed that judgment in 2007, and
9 allowed Bank of America to place a lien on my property, which I'm
10 under the impression . . . [that] removing that judgment
11 acknowledges that 683.120 applies. This Court has already did
12 [sic] it for Bank of America." He represented that "the Court
13 issued an order granting Bank of America to do post-petition
14 financing and remove Mr. Hedges' [sic] lien of 2007, based on

15
16 ⁵(...continued)

17 Harts falsely represented to the bankruptcy court that the state
18 court judgment did not exist. He stated, "[f]irst of all, if
19 there's such a judgment, it would be before this Court; it would
20 have been presented. So obviously no such judgment exists." He
21 later stated, "Your Honor, once again, whatever this judgment
22 that he's referring to in the State Court, doesn't exist. It's
23 not been brought to Court. It's not before this Court. You
24 can't take judicial notice of his statements about what might
25 exist. But nonetheless that's not important." Counsel must have
26 known that these statements were false because he represented the
27 Harts before the state court when they filed their complaint
28 against Mr. Copeland and when they later obtained the 1997
judgment.

⁶ The court thought that Mr. Copeland was requesting that
the bankruptcy court invalidate the state court judgment and said
that it would not rule "on any Superior Court motion whether
that's valid or invalid." In any event, it found the motion
procedurally deficient because Mr. Copeland only filed an
incomplete notice without a motion, supporting declaration, or
supporting memorandum.

1 that very issue.” In support of this argument, he showed a copy
2 of Bank of America’s assignment and deed of trust.

3 At the initial hearing on the Motion for Reconsideration,
4 the court decided that it wanted to review the submissions more
5 closely. The court set a continued hearing and invited both
6 parties to file a list of additional pleadings that they thought
7 the court should review. Neither party accepted this invitation.

8 At the continued hearing, the court stated that Mr. Copeland
9 had failed to provide it with any new arguments that would cause
10 it to reconsider its ruling on the Motion to Vacate.
11 Accordingly, the court denied Mr. Copeland’s Motion for
12 Reconsideration.

13 Mr. Copeland timely filed his appeal of the bankruptcy
14 court’s denial of the Motion to Vacate and the Motion for
15 Reconsideration.

16 JURISDICTION

17 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
18 §§ 1334, 157(b)(1), and 157(b)(2)(I). We have jurisdiction under
19 28 U.S.C. § 158.

20 ISSUE

21 Whether the bankruptcy court erred in refusing to vacate the
22 2008 default judgment in favor of the Harts.

23 STANDARDS OF REVIEW

24 We review for an abuse of discretion the bankruptcy court’s
25 decision on a motion to vacate its judgment. United Student
26 Funds, Inc. v. Wylie (In re Wylie), 349 B.R. 204, 208 (9th Cir.
27 BAP 2006) (citing Hammer v. Drago (In re Hammer), 112 B.R. 341,
28 345 (9th Cir. BAP 1990), aff’d, 940 F.2d 524 (9th Cir. 1991)).

1 We apply a two-part test to determine objectively whether the
2 bankruptcy court abused its discretion, first determining de novo
3 whether the court identified the correct legal rule, and second
4 examining the court's factual findings under the clearly
5 erroneous standard. Beal Bank USA v. Windmill Durango Office,
6 LLC (In re Windmill Durango Office, LLC), 481 B.R. 51, 64 (9th
7 Cir. BAP 2012) (citing United States v. Hinkson, 585 F.3d 1247,
8 1261-62 (9th Cir. 2009) (en banc)). A bankruptcy court abuses
9 its discretion if it applied the wrong legal standard or its
10 findings were illogical, implausible, or without support in the
11 record. See TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d
12 820, 832 (9th Cir. 2011).

13 Similarly, we review the bankruptcy court's denial of a
14 motion for reconsideration for abuse of discretion. Cruz v.
15 Stein Strauss Tr. # 1361, PDQ Invs., LLC (In re Cruz), 516 B.R.
16 594, 601 (9th Cir. BAP 2014) (citing Tracht Gut, LLC v. Cty. of
17 L.A. Treasurer & Tax Collector (In re Tracht Gut, LLC), 503 B.R.
18 804, 810 (9th Cir. BAP 2014)).

19 DISCUSSION

20 **A. The bankruptcy court did not err in declining to vacate the** 21 **2008 default judgment against Mr. Copeland.**

22 Mr. Copeland's primary argument is that (1) the state court
23 held that the 1997 judgment is void or unenforceable, (2) the
24 bankruptcy court's judgment is a "continuation" of the state
25 court's judgment, and (3) therefore the bankruptcy court should
26 have vacated its 2008 judgment. Mr. Copeland's premise is wrong
27 and, even if the premise were correct, the conclusion would not
28 follow.

1 In the first place, the state court did not hold that its
2 1997 judgment was invalid or unenforceable. To the contrary, the
3 state court expressly refused to make those rulings:

4 **Even assuming *arguendo* that Plaintiffs did not**
5 **timely renew the judgment, CCP § 683.120 would only bar**
6 **enforcement of the judgment.** The statute does not
7 permit the Court to void or vacate the judgment.
8 Defendant has not cited authorities that would support
9 the relief requested in the motion. There are a number
10 of reasons that the judgment could remain enforceable
11 even if Plaintiffs did not renew it, including tolling
12 or **enforcement of bankruptcy proceedings.** The Court
13 states **no opinion as to whether Plaintiffs in fact**
14 **failed to renew the judgment.** The Court also does not
15 reach, as unnecessary, Plaintiffs' arguments in
16 opposition that the bankruptcy court has jurisdiction
17 over the matter. However, **Defendant has not**
18 **persuasively asserted any reason for the Court to void**
19 **or vacate the judgment** at this time.

20 (Emphases added.)

21 Put simply, Mr. Copeland's characterization of the state
22 court's order is the exact opposite of what that order actually
23 says.

24 Mr. Copeland latches on to the order's concluding statement
25 that "Defendant may renew his arguments in response to any
26 enforcement proceedings brought by Plaintiffs before this Court."
27 He argues that the state court "deemed the judgment
28 'unenforceable[,]' " as evidenced by its direction to "return to
its Court if Appellees continue with their collection efforts."
Once again, Mr. Copeland mischaracterizes the state court's
decision. While the state court did allow for a renewed motion,
it did not deem the judgment unenforceable at the present time.
Rather, it explicitly held that it was **not** ruling on whether the
Harts had failed to renew the judgment.

We have a piece of information that the state court lacked.

1 At oral argument, the Harts' counsel acknowledged that the Harts
2 have not renewed the state court's 1997 judgment. Thus, the
3 limitations period of California Code of Civil Procedure
4 § 683.020 has probably run.

5 That fact does not, however, change the result.
6 Section 683.020 does not require a court to vacate a judgment
7 after the ten-year period runs. Rather, the statute simply
8 provides that the judgment "may not be enforced." Thus, assuming
9 (without deciding) that the bankruptcy court's 2008 judgment was
10 a "continuation" of the state court's 1997 judgment, such that
11 the bankruptcy court's judgment had the same lifespan as the
12 state court's judgment, the bankruptcy court did not err in
13 refusing to vacate the 2008 judgment.

14 **B. The bankruptcy court did not err in rejecting Mr. Copeland's**
15 **argument that a deed of trust evidences a voided judgment.**

16 Mr. Copeland argues that the bankruptcy court erred and
17 violated his constitutional rights by denying his requests for a
18 ruling concerning the deed of trust and alleged post-petition
19 financing.⁷ We disagree.

20 **1. The parties' failure to file additional documents did**
21 **not mean that Mr. Copeland proved his case and was**
22 **entitled to summary judgment.**

23 First, he argues that the bankruptcy court "issued a
24 directive to both parties to provide pleadings in the record that
25 relate to the post-petition financing. Neither party provided
26 any information. Therefore the proposed Reason [sic] for the

27 ⁷ Curiously, Mr. Copeland argues that the court "refused to
28 address the matter" regarding the deed of trust, even though the
court clearly considered and rejected his arguments.

1 removal in 2006 stated in Appellant Copeland's motion for
2 reconsideration should have been upheld by the court."

3 Mr. Copeland misapprehends the court's ruling. The
4 bankruptcy court invited both parties, but did not require either
5 party, to provide additional information. The bankruptcy court
6 had no basis to draw any inferences against the Harts based on
7 their decision not to provide any more information, especially
8 since Mr. Copeland also failed to provide additional information.

9 As the moving party, Mr. Copeland had the burden of
10 establishing that there are sufficient grounds for the court to
11 reconsider its previous ruling and vacate its prior judgment.
12 See United States v. Westlands Water Dist., 134 F. Supp. 2d 1111,
13 1131 (E.D. Cal. 2001) ("A party seeking reconsideration must show
14 more than a disagreement with the Court's decision, and
15 recapitulation of the cases and arguments considered by the court
16 before rendering its original decision fails to carry the moving
17 party's burden. To succeed, a party must set forth facts or law
18 of a strongly convincing nature to induce the court to reverse
19 its prior decision." (citations and quotation marks omitted)).
20 There is no reason to think that the bankruptcy court intended to
21 shift the burden from Mr. Copeland to the Harts.

22 The court correctly concluded that the mere existence of the
23 deed of trust did not establish that the court previously vacated
24 either the 1997 judgment or 2008 judgment. It correctly noted
25 that the deed of trust presented by Mr. Copeland is not a court
26 order vacating any judgment.

27 Mr. Copeland argues that the bankruptcy court denied him due
28 process. We perceive no such violation.

1 Thus, we discern no error or violation of due process rights
2 concerning the deed of trust.

3 **2. The deficient record on appeal does not support**
4 **Mr. Copeland's arguments.**

5 As the appellant, Mr. Copeland has the responsibility on
6 appeal to provide the Panel with a sufficient record in support
7 of his arguments, such that we can understand what transpired
8 before the lower court. He "bears the burden of presenting a
9 complete record, and we need not look beyond the excerpts
10 provided." Welther v. Donell (In re Oakmore Ranch Mgmt.),
11 337 B.R. 222, 226 (9th Cir. BAP 2006) (citing Kritt v. Kritt
12 (In re Kritt), 190 B.R. 382, 387 (9th Cir. BAP 1995); Kyle v. Dye
13 (In re Kyle), 317 B.R. 390, 394 (9th Cir. BAP 2004)). "The
14 settled rule on appellate records in general is that failure to
15 provide a sufficient record to support informed review of
16 trial-court determinations may, but need not, lead either to
17 dismissal of the appeal or to affirmance for inability to
18 demonstrate error." Id. (quoting In re Kritt, 317 B.R. at 393).

19 Mr. Copeland has failed to provide us with any order of the
20 bankruptcy court that invalidated the 1997 judgment. His failure
21 to provide an adequate record would justify affirmance on this
22 issue. We have exercised our discretion, however, to review the
23 bankruptcy court's docket in the underlying bankruptcy case
24 dating back to 2005.

25 According to the docket, Mr. Copeland filed a motion for
26 approval of a stipulation for use of cash collateral in May 2005.
27 Over the Harts' objections, the court granted the motion on
28 June 28, 2005. An electronic image of the order is available on

1 the bankruptcy court's docket, but it merely states that it
2 grants a motion and approves a stipulation, and neither of those
3 documents is available on the electronic docket. As a result, we
4 are unable to discern the substance and significance of the
5 order.

6 Therefore, we have no basis to hold that the bankruptcy
7 court invalidated the state court's 1997 judgment.

8 **CONCLUSION**

9 For the reasons set forth above, we conclude that the
10 bankruptcy court did not err in refusing to vacate the 2008
11 default judgment in favor of the Harts. We explicitly do not
12 decide whether either of the judgments is enforceable, as that
13 issue is not before us on appeal. Accordingly, we AFFIRM.

14
15
16
17
18
19 Concurrence begins on next page.
20
21
22
23
24
25
26
27
28

1 Corbit, Bankruptcy Judge, concurring:

2 I concur with the reasoning and result, but I am compelled
3 to say more because the parties' court battles will likely
4 continue. The issue presented to this Panel was whether the
5 bankruptcy court was correct in refusing to vacate its 2008
6 default judgment obtained by the Harts, and on this issue the
7 judges on this panel are unanimous - we affirm the bankruptcy
8 court's decision. However, the parties' primary issue of concern
9 appears to be whether there is a monetary judgment that is still
10 enforceable. Importantly, the continuing enforceability of the
11 Harts' judgment has yet to be decided by any court.

12 Although enforceability was not at issue on appeal, there
13 are two admissions made by the Harts' attorney at oral argument
14 that will be important to any other court that has to grapple
15 with the enforceability issue. First, as pointed out in the
16 foregoing opinion, Harts' counsel affirmed that the state
17 judgment was not renewed within 10 years as required by
18 California law. See Cal.Code Civ. Proc. §6.83.020. Second, the
19 Harts' attorney acknowledged that the bankruptcy court judgment
20 is not independent of the California court judgment.¹

21 _____
22 ¹ The acknowledgment that the bankruptcy court judgment is
23 not independent from the state court judgment is consistent with
24 the relief the Harts requested in the bankruptcy court. In the
25 bankruptcy court complaint, the only relief prayed for by the
26 Harts was:

27 1. That the judgment entered on October 21, 1997 in the
28 Superior Court of the State of California Case No. BC139655 in
the amount of \$446,652.30 plus the accrued legal interest of
\$324,036.06 through defendant's bankruptcy petition filing on
January 31, 2005 be declared a non-dischargeable debt under
(continued...)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

¹(...continued)

11 U.S.C. § 523(a)(2)(A), 523(a)(4), and 523(a)(6); and

2. For such other and further relief as this Court deems just.