

JUN 6 2016

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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	CC-15-1352-TaLKi
)		
YAN SUI,)	Bk. No.	8:11-bk-20448-CB
)		
Debtor.)	Adv. No.	8:13-ap-01246-CB
)		
_____)		
YAN SUI; PEI-YU YANG,)		
)		
Appellants,)		
)		
v.)	MEMORANDUM*	
)		
RICHARD A. MARSHACK, CHAPTER)		
7 TRUSTEE,)		
)		
Appellee.)		
_____)		

Submitted Without Oral Argument** on May 19, 2016

Filed - June 6, 2016

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

Honorable Catherine E. Bauer, Bankruptcy Judge, Presiding

Appearances: Yan Sui and Pei-Yu Yang, pro se, on brief; David Edward Hays and Chad V. Haes of Marshack Hays LLP on brief for appellee.

* 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).

** The Panel unanimously determined that the appeal was suitable for submission on the briefs and the record pursuant to Rule 8019(b)(3).

1 Before: TAYLOR, LANDIS,^{***} and KIRSCHER, Bankruptcy Judges.
2

3 **INTRODUCTION**

4 Yan Sui and Pei-Yu Yang (jointly, the "Appellants") appeal
5 from a bankruptcy court order finding them in civil contempt
6 pursuant to § 105(a)¹ and imposing sanctions against them. We
7 AFFIRM in part, REVERSE in part, VACATE the order, and REMAND to
8 the bankruptcy court for further proceedings consistent with
9 this decision.

10 **FACTS²**

11 Prepetition, chapter 7 debtor Yan Sui transferred his
12 interest in real property located in Costa Mesa, California (the
13 "Property") to Pei-Yu Yang. Although the record is not clear,
14 it appears that Yang was the Debtor's wife, ex-wife, or domestic
15 partner.

16 _____
17 ^{***} The Honorable August B. Landis, United States
18 Bankruptcy Judge for the District of Nevada, sitting by
19 designation.

20 ¹ Unless otherwise indicated, all chapter and section
21 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

22 ² Appellants filed three requests for judicial notice.
23 After the first request was filed, a BAP motions panel deferred
24 the request for judicial notice to the merits panel.

25 Having reviewed the documents, we determine that many are
26 documents required by Rule 8009(a)(4) as part of the record on
27 appeal. Thus, judicial notice of those documents is
28 appropriate.

29 To the extent that pertinent documents are not available in
30 the Trustee's excerpts of record or Appellants' documents, we
31 exercise our discretion to take judicial notice of documents
32 electronically filed in the several case dockets. See Atwood v.
33 Chase Manhattan Mortg. Co. (In re Atwood), 293 B.R. 227, 233 n.9
34 (9th Cir. BAP 2003).

1 The Trustee promptly commenced an adversary proceeding
2 solely against Yang and successfully obtained an order (the
3 "Avoidance Order") avoiding the transfer as a fraudulent
4 conveyance pursuant to § 544 and California Civil Code § 3439.
5 The Avoidance Order is now final.³

6 The Trustee then commenced a second adversary proceeding
7 solely against Yang seeking to compel turnover, to allow a § 363
8 sale, and to surcharge Yang's interest in the Property (the
9 "Property Administration Proceeding"). The Trustee again
10 prevailed and obtained a default judgment. The resulting order
11 (the "Default Order") required immediate turnover of the
12 Property by Yang and authorized the Trustee to sell the
13 Property, including any interest held by Yang, free and clear of
14 all interests.⁴ Appellants were subsequently evicted from the
15 Property pursuant to a writ of assistance issued by the
16 bankruptcy court.

17 Appellants then undertook a vigorous campaign to stymie the
18 Trustee's efforts to market and sell the Property. First, they
19 commenced an action in federal district court against the
20 Trustee, his law firm, attorneys at his law firm, his special
21 litigation counsel, the bankruptcy judge, the real estate
22

23 ³ After Yang appealed from the Avoidance Order, the Ninth
24 Circuit affirmed. See Marshack v. Yang (In re Sui), 582 F.
25 App'x 740 (9th Cir. June 14, 2014), cert. denied sub nom. Yang
v. Marshack, 135 S. Ct. 869 (2014).

26 ⁴ Yang appealed from the Default Order, but the Panel
27 dismissed this appeal as moot. See BAP No. 14-1498 Dkt. No. 33.
28 An appeal from this dismissal order is pending before the Ninth
Circuit. See 9th Cir. No. 15-60066.

1 company, and the real estate agent, among others; the complaint
2 asserted 26 claims for relief. The district court action was
3 subsequently dismissed.⁵

4 Second, Appellants leveled a harassment and smear campaign
5 against the estate's real estate professionals and the real
6 estate company charged with marketing and selling the Property.
7 This included a barrage of electronic messages sent to real
8 estate agents via various online real estate platforms. The
9 messages claimed that Appellants owned the Property and
10 threatened to add agents for buyers and any prospective buyers
11 to the district court action. Apparently, Appellants also filed
12 complaints against the estate's real estate professionals with
13 the California Commission of Real Estate, based on their
14 purported failure to disclose to potential buyers that the
15 Property was subject to litigation. And the Debtor posted
16 several negative reviews against the estate's real estate agent
17 and real estate company on Yelp.

18 In spite of Appellants' efforts to derail any sale, the
19 Trustee obtained an order (the "Sale Order") approving a sale of
20 the Property free and clear of all liens, claims, and interests
21 pursuant to § 363(b) and (m).⁶

22 Understandably frustrated with Appellants' antics, the
23

24 ⁵ See 8:15-cv-00059-JAK-AJW (C.D. Cal.) Dkt. No. 50.
25 Appellants appealed the dismissal to the Ninth Circuit, where it
26 remains pending. See 9th Cir. No. 15-56130.

27 ⁶ The Debtor appealed from the Sale Order, which the Panel
28 dismissed as moot. See BAP No. 15-1200 Dkt. No. 16. An appeal
of the dismissal order is currently pending before the Ninth
Circuit. See 9th Cir. No. 15-60065.

1 Trustee moved for an order to show cause ("OSC") requiring
2 Appellants to explain why they should not be held in civil
3 contempt for their actions. He asserted that Appellants had
4 violated the Default Order by filing the district court action,
5 representing in numerous electronic correspondence and internet
6 postings that they owned the Property, and actively threatening
7 to sue the real estate agent and the buyer in order to obstruct
8 the sale. The Trustee sought compensatory damages for fees and
9 costs incurred in defending the district court action,
10 addressing Appellants' electronic correspondence and internet
11 postings, and communicating with the buyer and his real estate
12 agents regarding concerns with the sale.

13 At the hearing, the bankruptcy court agreed that an OSC was
14 warranted and issued one; the OSC expanded the basis for civil
15 contempt so as to include violations of the Sale Order.

16 Before the OSC issued, Appellants filed a document titled
17 "Cause to Disobey and Appeal the Order Granting Motion of
18 Marshack for Default Judgment; Cause to Disobey and Appeal From
19 Order for Sale of The Property; Memorandum of P&A's in Support"
20 ("Motion to Disobey"). They argued that the contempt proceeding
21 lacked legitimacy because the bankruptcy court's orders -
22 presumably, the Avoidance Order, the Default Order, and the Sale
23 Order - were invalid. Appellants' Motion to Disobey was set for
24 hearing concurrently with the hearing on the OSC. Appellants,
25 however, never formally replied to the OSC.

26 Only the Trustee appeared at the OSC and Motion to Disobey
27 hearings. The bankruptcy court stated on the record that it
28 denied Appellants' Motion to Disobey and found Appellants in

1 civil contempt. In its subsequent order (the "Contempt Order"),
2 the bankruptcy court reiterated its finding of civil contempt
3 and imposed sanctions against Appellants in the collective
4 amount of \$93,832.72; the calculated sanctions included fees
5 incurred by the Trustee's special litigation counsel in the
6 district court action. Appellants timely appealed.⁷

7 **JURISDICTION**

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

11 **ISSUE**

12 Whether the bankruptcy court abused its discretion in
13 finding Appellants in civil contempt under § 105(a) and imposing
14 sanctions against them.

15 **STANDARDS OF REVIEW**

16 "We review the decision to impose contempt for an abuse of
17 discretion, and underlying factual findings for clear error."
18 Knupfer v. Lindblade (In re Dyer), 322 F.3d 1178, 1191 (9th Cir.
19 2003); see also Nash v. Clark Cty. Dist. Att'ys Office
20 (In re Nash), 464 B.R. 874, 878 (9th Cir. BAP 2012) ("An award
21 or denial of sanctions under § 105(a) is reviewed for abuse of
22 discretion.").

23 The bankruptcy court abuses its discretion if it applies

24
25 ⁷ Appellants appealed from the Trustee's lodged order,
26 which they asserted "merged" with the order denying their Motion
27 to Disobey. In their notice of appeal, Appellants expressly
28 state that the order denying Appellants' Motion to Disobey "is
not the subject of this appeal." Thus, we review only the
Contempt Order in this appeal.

1 the wrong legal standard, misapplies the correct legal standard,
2 or if its factual findings are clearly erroneous. See
3 TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d 820, 832
4 (9th Cir. 2011) (citing United States v. Hinkson, 585 F.3d 1247,
5 1262 (9th Cir. 2009) (en banc)). Factual findings are clearly
6 erroneous if illogical, implausible, or without support in
7 inferences that may be drawn from the facts in the record. See
8 id.

9 DISCUSSION

10 **A. Appellants' Motion Regarding the Trustee's Acknowledgment** 11 **of Satisfaction of Judgment.**

12 While this appeal was pending, the Trustee moved for
13 authorization to offset the sanctions awarded to him in the
14 Contempt Order against Yang's interest in the Property sale
15 proceeds. The bankruptcy court entered an order granting the
16 motion; accordingly, the Trustee thereafter took action and
17 filed an acknowledgment of satisfaction in the Property
18 Administration Proceeding. Appellants promptly appealed from
19 the offset order. See BAP No. 16-1053 (the "offset order
20 appeal").

21 Appellants now move in both this appeal and in their newest
22 appeal for an order instructing the Trustee to withdraw the
23 acknowledgment of satisfaction. They argue that the
24 acknowledgment may interfere with or hinder disposition of the
25 appeals. They also argue that the acknowledgment is unlawful,
26 based on Appellants' reiterated allegations that the avoidance
27 adversary proceeding was improper.

28 We lack jurisdiction to direct the Trustee to withdraw a

1 document filed in accordance with a valid and enforceable
2 bankruptcy court order that was issued after this appeal was
3 filed. While we recognize that the acknowledgment is related to
4 the sanctions awarded against Appellants, it neither deprives us
5 of jurisdiction nor impacts our decisional process. Appellants'
6 motion is instead subject to appropriate consideration in the
7 offset order appeal. Therefore, Appellants' motion in this
8 appeal is DENIED.

9 **B. The Contempt Order.**

10 The bankruptcy court is authorized under § 105(a) to hold a
11 party in civil contempt and impose compensatory or coercive
12 sanctions. In re Dyer, 322 F.3d at 1189-90; Renwick v. Bennett
13 (In re Bennett), 298 F.3d 1059, 1069 (9th Cir. 2002); Walls v.
14 Wells Fargo Bank, N.A., 276 F.3d 502, 506-07 (9th Cir. 2002);
15 In re Nash, 464 B.R. at 880. To find a party in civil contempt,
16 the movant must prove "by clear and convincing evidence that the
17 contemnor[] violated a specific and definite order of the
18 court." In re Dyer, 322 F.3d at 1190-91. The bankruptcy court
19 must also find that the contemnor "had sufficient notice of [the
20 order's] terms and the fact that he would be sanctioned if he
21 did not comply." Hansbrough v. Birdsell (In re Hercules
22 Enters., Inc.), 387 F.3d 1024, 1028 (9th Cir. 2004). Whether
23 the contemnor violated a court order is not based on subjective
24 beliefs or intent in complying with the order, "but whether in
25 fact [the] conduct complied with the order at issue."
26 In re Dyer, 322 F.3d at 1191 (citation omitted).

27 Here, two orders formed the basis for the OSC and the
28 resultant Contempt Order. Appellants do not raise or address on

1 appeal, and did not raise to the bankruptcy court, issues
2 directly relating to the merits of the sanctions process. Our
3 facial review of the Contempt Order, however, reveals issues we
4 cannot overlook.

5 **The Default Order.** On this record, we cannot affirm the
6 finding of civil contempt and the imposition of sanctions in
7 relation to the Default Order. The order granted relief in the
8 Trustee's favor. It, however, did not require any action from
9 Appellants; thus, it could not warn them of the consequences for
10 violating the order. Further, the order was entered solely
11 against Yang. The Debtor could not violate an order where he
12 was not named and neither the Debtor nor Yang could violate an
13 order that did not direct them to act or refrain from action.

14 Thus, we reverse the bankruptcy court's determination of
15 civil contempt based on the Default Order.

16 **The Sale Order.** Conversely, the Sale Order contained
17 specific requirements. It expressly stated that: "Neither Yan
18 Sui nor Pei-yu Yang shall assert any lien, claim, or interest in
19 the Property in violation of the free and clear provisions of
20 this order. Any actions taken in violation of this order may be
21 adjudicated to be contempt." There can be no doubt that this
22 provision directed Appellants to refrain from taking actions
23 against the Property that were inconsistent with the Sale Order
24 and provided Appellants with notice of the possible consequences
25 for non-compliance. There also is no doubt that actions in
26 violation of this order occurred.

27 Thus, we affirm the bankruptcy court's determination of
28 civil contempt based on the Sale Order.

1 **Sanctions Award.** The Sale Order was entered on June 4,
2 2015. It appears that the majority of Appellants' efforts to
3 thwart the sale of the Property occurred prior to that date.
4 Given that the majority of the sanctions awarded to the Trustee
5 did not flow from the Sale Order, we vacate the Contempt Order
6 and remand the matter to the bankruptcy court for a
7 recalculation of the amount of sanctions. The Trustee is
8 entitled to compensatory damages solely for fees and costs
9 incurred in relation to Appellants' civil contempt after the
10 entry of the Sale Order.⁸

11 We fully recognize that Appellants' efforts to thwart the
12 sale of the Property were egregious. Perhaps their actions were
13 tantamount to the type of bad faith or willful misconduct
14 necessary to sanction a party under the bankruptcy court's
15 inherent sanctions power, see Price v. Lehtinen
16 (In re Lehtinen), 564 F.3d 1052, 1061 (9th Cir. 2009);
17 In re Dyer, 322 F.3d at 1196, or as a result of vexatious
18 conduct preventing an orderly and expeditious disposition of the
19 Property Administration Proceeding and the bankruptcy case, see
20 Hale v. U.S. Tr., 509 F.3d 1139, 1148 (9th Cir. 2007); Caldwell
21 v. Unified Capital Corp. (In re Rainbow Magazine, Inc.), 77 F.3d
22 278, 284 (9th Cir. 1996), or perhaps they violate Rule 9011(b).
23 See Fed. R. Bankr. P. 9011(b)(1)-(4). Appellants' continued
24 efforts to rehash the same tired arguments before a litany of

25
26 ⁸ Thus, to the extent Appellants are concerned about the
27 Trustee recovering fees for special litigation counsel both as
28 part of Appellants' civil contempt and in the district court
action, the bankruptcy court can address those concerns on
remand.

1 courts clearly evidences an abuse of process. Our decision,
2 thus, is without prejudice to the Trustee's ability to seek
3 sanctions under another sanctions theory.

4 **CONCLUSION**

5 Based on the foregoing, we REVERSE the bankruptcy court's
6 determination of civil contempt as to the Default Order, we
7 AFFIRM its determination of civil contempt as to the Sale Order,
8 and we VACATE the Contempt Order and REMAND to the bankruptcy
9 court for a modification of the sanctions award.

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