

OCT 27 2016

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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NOT FOR PUBLICATION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. EC-16-1065-JuKuMa
)	BAP No. EC-16-1117-JuKuMa
LISA MARIE AHRENS,)	(consolidated)
)	
Debtor.)	Bk. No. 14-bk-29813-MSM
)	
THE GOLDEN 1 CREDIT UNION,)	
)	
Appellant,)	
v.)	M E M O R A N D U M*
)	
J. MICHAEL HOPPER, Chapter 7)	
Trustee,)	
)	
Appellee.)	

Argued and Submitted on October 20, 2016
at Sacramento, California**

Filed - October 27, 2016

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

Honorable Michael S. McManus, Bankruptcy Judge, Presiding.

Appearances: Valerie A. Bantner Peo of Buchalter Nemer argued
for appellant The Golden 1 Credit Union; Kristen
Renfrow argued for appellee J. Michael Hopper,
chapter 7 trustee.

* 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.

** The Panel consolidated BAP Nos. EC-16-1065 and EC-16-1117
by order entered on May 19, 2016.

1 Before: JURY, KURTZ, and MARTIN,*** Bankruptcy Judges.

2
3 Appellant, The Golden 1 Credit Union (Golden 1), filed a
4 proof of claim (POC) in the underlying chapter 7¹ bankruptcy
5 case of Lisa Marie Ahrens (Debtor) for \$17,282.29, which
6 represented the balance owed to Golden 1 under a contract for
7 the purchase of a Mazda. Using the amounts shown on Debtor's
8 schedules, Golden 1 bifurcated its claim showing \$13,907 as
9 secured and \$3,375.29 as unsecured.

10 Debtor indicated her intent to reaffirm the entire debt
11 owed to Golden 1, but she never did. She continued to make
12 timely installment payments which were accepted by Golden 1
13 throughout her bankruptcy case and received her discharge.
14 Golden 1 has never declared the contract to be in default.

15 Appellee, chapter 7 trustee J. Michael Hopper (Trustee),
16 objected to the unsecured portion of the POC, contending that
17 there was insufficient evidence regarding the amount of the
18 deficiency in light of the on-going payments and lack of
19 default. Trustee also asserted that he was entitled to
20 attorney's fees and costs based on the attorney fee clause in
21 the underlying sale contract and Cal. Civ. Code § 1717 which
22 made the clause reciprocal.

23
24 *** Honorable Brenda K. Martin, United States Bankruptcy
25 Judge for the District of Arizona, sitting by designation.

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

1 After multiple hearings, the bankruptcy court found that
2 Golden 1 had no unsecured deficiency claim because it had not
3 declared a default, continued to accept payments from Debtor,
4 and neither Debtor nor Golden 1 could "strip down" the lien on
5 the car under the holding in Dewsnup v. Timm, 502 U.S. 410
6 (1992). Alternatively, the bankruptcy court concluded that
7 Golden 1's deficiency claim was contingent or unliquidated and
8 estimated the claim at \$0. The bankruptcy court entered civil
9 minutes sustaining Trustee's objection and closed the record as
10 to all issues except for allowing Trustee to amend his request
11 for attorney's fees and allowing Golden 1 to challenge the
12 reasonableness of all fees and costs. Golden 1 filed a notice
13 of appeal from this ruling, commencing BAP No. EC-16-1065.

14 Thereafter Trustee submitted pleadings relating to his
15 additional request for attorney's fees and costs which Golden 1
16 challenged on reasonableness and other grounds. After a
17 hearing, the bankruptcy court entered an order (1) sustaining
18 Trustee's objection; (2) disallowing the unsecured portion of
19 Golden 1's POC; and (3) awarding attorney's fees and costs in
20 favor of Trustee and against Golden 1 in the amount of
21 \$14,436.60. Golden 1 filed a notice of appeal from that order,
22 commencing BAP No. EC-16-1117.

23 Golden 1 obtained a stay pending appeal from the bankruptcy
24 court as to the payment of the attorney's fees and costs. On
25 May 19, 2016, the Panel entered an order consolidating the two
26 appeals. For the reasons set forth below, we AFFIRM.

27 I. FACTS

28 In January 2013, Debtor bought a Mazda with a dealer

1 financed loan in the amount of \$23,813.99 under a retail
2 installment sale contract (Sale Contract), which was secured by
3 the car. The dealer assigned the Sale Contract to Golden 1 and
4 Golden 1 perfected its lien on the car.

5 On September 30, 2014, Debtor filed a chapter 7 petition.
6 Debtor showed in her schedules that she owed \$17,282.29 to
7 Golden 1 under the Sale Contract and listed the car's value as
8 \$13,907. Debtor's Statement of Intention indicated that she
9 intended to reaffirm the debt owed to Golden 1. Her time to
10 reaffirm the debt expired on December 6, 2014,² without her
11 doing so. As a result, the car was no longer property of her
12 estate and the automatic stay terminated, allowing Golden 1 to
13 take any action with respect to the car permitted under
14 California law.³

15 Debtor continued to pay the current installments to
16 Golden 1 and Golden 1 never objected to Debtor's failure to
17 reaffirm.⁴ In January 2015, Debtor obtained her § 727
18 discharge.

19 Relying on Debtor's schedules, Golden 1 filed a POC in the
20 total amount of \$17,282.29, composed of a \$13,907 secured claim
21 and a \$3,375.29 unsecured balance, Claim No. 1-1. Golden 1 thus
22

23 ² See § 521(6) (requiring the debtor to reaffirm secured
24 debt within 45 days of the first § 341(a) meeting of creditors).

25 ³ See §§ 521(a)(7); 362(h)(1).

26 ⁴ "[N]othing in BAPCPA prevents debtors and secured
27 creditors from engaging in what scholars have variously described
28 as 'voluntary ride-through,' 'creditor acquiescence,' or
'informal reaffirmations.'" In re Jensen, 407 B.R. 378, 389-90
(Bankr. C.D. Cal. 2009).

1 sought to share pro rata on its unsecured claim in any
2 distribution to unsecured creditors.⁵

3 Trustee informally objected to the unsecured portion of
4 Golden 1's POC and, through a series of emails, attempted to
5 convince Golden 1 to reduce its unsecured claim to \$0. Trustee
6 maintained that Golden 1 was not entitled to an unsecured
7 deficiency claim because Debtor intended to reaffirm the debt,
8 had not defaulted on the loan, and continued to make payments.
9 Further, Trustee explained to Golden 1 that by giving up its
10 unsecured claim, it would receive about \$300 less:

11 The trustee has about \$4,000 on hand. After
12 compensation, there will be about \$3,000 to
13 distribute. The 3 unsecured claims on file aggregate
14 \$10,646.77: (1-1) Golden 1 \$3,375.29; (2-1) Golden 1
15 \$4,912.03; and (4-1) American Express \$2,359.45. If
16 POC 1-1 is withdrawn, then Golden 1 would receive
17 about 68% (2,040) instead of 78% (\$2,340), a
18 difference of \$300.

19 Trustee later filed a formal objection to Golden 1's
20 unsecured claim but, apparently still hoping the matter would
21 resolve, did not notice a hearing. There, Trustee argued for
22 disallowance of the unsecured portion of Golden 1's claim
23 because (1) it was based on an obligation that was contingent
24 and not in default and (2) there was insufficient evidence
25 proving the amount of the alleged deficiency, such as fair
26 market value of the car and the present balance owed under the
27 Sale Contract.

28 Since the matter did not resolve, on October 23, 2015,

⁵ There were three proofs of claim filed in the case, two by Golden 1 and one by American Express.

1 Trustee filed his amended objection, including supporting
2 documents and a notice of hearing. Trustee argued that the
3 unsecured portion of Golden 1's claim should be disallowed
4 because the documents in support of the claim were insufficient
5 under Rule 3001(c) and Golden 1 was oversecured by \$3,000.
6 Trustee also sought attorney's fees and costs under the attorney
7 fee provision in the Sale Contract, contending that it was
8 reciprocally enforceable under Cal. Civ. Code § 1717.

9 In support of his objection, Trustee submitted an appraisal
10 showing the car's value at \$16,708 as of October 16, 2015.
11 Trustee also submitted his declaration, stating that the balance
12 owed on the car was \$13,736.28⁶ as of September 29, 2015, the
13 car appraised at \$16,708 as of October 16, 2015, and Debtor was
14 current on the loan. Trustee also informed the court about his
15 efforts to informally resolve the dispute.

16 In his memorandum of points and authorities, Trustee argued
17 that since Golden 1 was oversecured, the unsecured portion of
18 its claim should be disallowed in total. Trustee also
19 maintained that the bankruptcy court had discretion to determine
20 the date for valuation. He argued that since the purpose of the
21 valuation was for a general unsecured distribution not yet made,
22 the value should be determined as of the date of the hearing on
23 Trustee's objection - October 16, 2015. Trustee finally argued
24 that he was entitled to attorney's fees and costs under the

25
26 ⁶ This balance evidently reflected the on-going payments
27 made by Debtor on the loan. The balance was \$18.72 less than
28 what Trustee previously asserted the balance was as of
September 15, 2015. It is unclear where the discrepancy came
from.

1 holding and reasoning in Americredit Fin. Servs., Inc. v. Penrod
2 (In re Penrod), 611 F.3d 1158 (9th Cir. 2015).

3 Golden 1 opposed, asserting that its POC was supported by
4 documentation sufficient to allow the unsecured claim in full.
5 Golden 1 further argued that the valuation date for the car
6 should be the petition date and not the date of the claim
7 objection. Golden 1 requested an opportunity to submit its own
8 appraisal. Finally, Golden 1 contended that Trustee could not
9 avail himself of the attorney fee provision in the Sale Contract
10 because Trustee was not a party to the contract and the Sale
11 Contract was no longer property of the estate under § 362(h).
12 Golden 1 maintained that the attorney fee request was
13 unreasonable and that Trustee had breached his fiduciary duty by
14 spending over \$8,600 in objecting to Golden 1's unsecured claim
15 when the estate had only \$4,000 for distribution.

16 On December 7, 2015, the bankruptcy court entered civil
17 minutes continuing the hearing on the claim objection to
18 January 19, 2016, to allow Trustee to submit evidence of his
19 attorney's fees and costs in litigating the claim objection and
20 to allow Golden 1 to obtain an appraisal of the vehicle.

21 Two weeks later, Trustee submitted evidence that his
22 counsel spent 24.3 hours on the matter for a total of \$8,640 in
23 attorney's fees and that he incurred \$338.67 in costs.

24 Golden 1 then submitted an appraisal showing the car's
25 value at \$13,833.29 as of January 22, 2016. Golden 1 also
26 argued that Trustee's claim objection essentially rendered the
27 estate insolvent and maintained that the fees requested were
28 unreasonable. According to Golden 1, since the estate had only

1 \$4,000 on hand at the outset of the dispute, spending
2 24.3 attorney hours to prepare the claim objection was
3 excessive.

4 Prior to the February 29, 2016 hearing on the claim
5 objection, the bankruptcy court issued a tentative ruling
6 sustaining Trustee's objection and reclassifying Golden 1's
7 claim as fully secured. In reaching its decision, the court
8 noted the following: Based upon Golden 1's January 21, 2016
9 appraisal, the car's value was \$13,833.29. The loan balance was
10 less than that amount - \$13,736.28 - as of September 29, 2015,
11 and Debtor was current on the loan. Based on these facts, the
12 bankruptcy court concluded that the loan balance as of
13 January 21, 2016, was less than \$13,736.28, and "still clearly
14 less than \$13,833.29," and thus Golden 1 was an oversecured
15 creditor. Accordingly, the court found Golden 1 had no basis
16 for asserting an unsecured claim against the estate.

17 Alternatively, the bankruptcy court found Golden 1's
18 deficiency claim was "at best" contingent or unliquidated and
19 estimated Golden 1's unsecured claim against the estate at \$0
20 based upon the following undisputed facts: (1) Golden 1 agreed
21 to accept voluntary payments from Debtor; (2) Golden 1 had not
22 proceeded against the collateral; and (3) Debtor had made all
23 installment payments due under the loan both before and after
24 the bankruptcy. Accordingly, the court concluded that Debtor is
25 "likely to pay Golden 1 in full without resort to its
26 collateral."

27 The bankruptcy court finally concluded that Trustee's
28 attorney's fees and costs were reasonable, subject to some

1 adjustments. In its ruling, the court observed that Golden 1
2 had sufficient time to resolve the matter and prevent the fees
3 and costs from accruing. The bankruptcy court ordered Golden 1
4 to pay Trustee the fees and expenses no later than seven days
5 after the entry of the order on the objection.

6 At the February 29, 2016 hearing, Golden 1's counsel sought
7 to clarify some points. First, she argued that Golden 1 was not
8 obligated to reduce the amount of the claim to account for post-
9 petition payments received by Debtor based on the Supreme
10 Court's ruling in Ivanhoe Bldg. & Loan Assn. v. Orr, 295 U.S.
11 243, 246 (1935). The court was not persuaded, finding the case
12 distinguishable on the facts.⁷ In addition, during the course
13 of the argument, the bankruptcy court also determined that
14 Golden 1 had waived its right to assert an unsecured claim
15 against the bankruptcy estate by not declaring a default.⁸

16 On February 29, 2016, the bankruptcy court issued its civil
17

18 ⁷ In Ivanhoe the claim was reduced by a non-debtor third
19 party who was also liable on the claim. The Ivanhoe court held
20 that where a claim is subject to reduction under state law
21 because it was partially paid by a non-debtor co-obligor, the
22 amount of the proof of claim need not be reduced for distribution
23 purposes unless the claim was going to be paid in full. The
24 bankruptcy court distinguished the case by noting that here
25 Debtor was paying on the loan even though she had no obligation
26 to pay whereas in Ivanhoe there was nothing voluntary about the
27 third party paying on a claim which it was legally obligated to
28 pay. In essence, the bankruptcy court determined that the
voluntary payments by the original obligor - Debtor - were not
similar to the required payments by the non-debtor co-obligor in
Ivanhoe. The Panel has no issue with that analysis.

⁸ The waiver ruling was not incorporated into the court's
February 29, 2016 civil minute order. The Panel's decision is
not predicated on waiver.

1 minutes sustaining Trustee's claim objection and scheduling a
2 further hearing on Trustee's request for additional fees. The
3 civil minutes largely incorporated the court's tentative ruling,
4 stating in relevant part:

5 Golden 1 has no deficiency claim against the estate as
6 it has elected not to declare a default under the loan
7 agreement with the debtor, not to repossess the
8 subject vehicle, and it has continued to accept
9 payments from the debtor on account of its
10 claim. . . .

11 The failure of the debtor to reaffirm Golden 1's debt
12 does not have the effect of making 'the Sale Contract
13 . . . no longer property of the estate.' [Section]
14 362(h) says nothing about the loan agreement giving
15 rise to the secured creditor's claim. That provision
16 references only the 'personal property of the estate
17 or of the debtor securing in whole or in part a
18 claim.' It is only the collateral securing the
19 secured creditor's claim - i.e., the vehicle - that is
20 'no longer . . . property of the estate.' 11 U.S.C.
21 § 362(h)(1).

22 The bankruptcy court also rejected Golden 1's argument that
23 Trustee had breached his fiduciary duty to unsecured creditors.
24 Finally, in its ruling, the bankruptcy court reopened the record
25 so that Trustee could amend his request for attorney's fees and
26 costs and for Golden 1 to challenge the reasonableness of the
27 fees and costs, but noted: "The record is closed as to all
28 other issues."

On March 1, 2016, Golden 1 filed a notice of appeal from
this ruling, commencing BAP No. EC-16-1065.

On March 7, 2016, Trustee filed a pleading requesting
\$12,579.60 in attorney's fees and costs. In response, Golden 1
argued that Trustee was not entitled to invoke the attorney fee
provision in the Sales Contract based upon Cal. Civ. Code § 1717
and again contended that the requested fees were unreasonable.

1 Golden 1 asserted that under Penrod, there was no reciprocity
2 granted to Trustee because the bankruptcy court had concluded
3 that Golden 1 had no claim against the estate and thus could not
4 enforce its rights under the Sale Contract. If Golden 1 could
5 not enforce its rights it argued, then Trustee likewise could
6 not enforce his. Trustee filed a reply requesting an additional
7 \$2,025 in fees.

8 In advance of the continued hearing on the claim objection,
9 the bankruptcy court issued a tentative ruling to sustain the
10 claim objection. The court's tentative ruling indicated that
11 Golden 1's challenge to Trustee's ability to utilize the
12 attorney fee provision in the Sales Contract based on
13 reciprocity and Penrod was untimely. The court further
14 indicated that with the exception of certain fees
15 inappropriately included in Trustee's request, the bankruptcy
16 court would allow the requested fees.

17 On April 11, 2016, the bankruptcy court heard the matter.
18 Again, Golden 1's counsel sought clarification on a number of
19 points set forth in the court's tentative ruling. Among other
20 things, she maintained that Golden 1 preserved its arguments
21 regarding the applicability of Penrod and Trustee's request for
22 attorney's fees. The bankruptcy court responded: "Oh, I think
23 it did."

24 On the same date, the bankruptcy court entered its civil
25 minutes in support of its determination to sustain Trustee's
26 claim objection and award of attorney's fees and costs to
27 Trustee.

28 On April 19, 2016, the bankruptcy court entered an order

1 sustaining the claim objection, disallowing the unsecured
2 portion of the claim, and awarding Trustee \$14,092.50 in
3 attorney's fees and \$343.10 in costs. In that ruling, the court
4 discussed Golden 1's untimely argument regarding the reciprocity
5 of the attorney fee clause:

6 [E]ven if the court were to address the reciprocity
7 argument, Golden 1 has missed the point. Golden 1
8 mischaracterizes the court's ruling. If the court has
9 ruled 'that Golden 1 cannot enforce its rights under
10 the sale contract against the estate,' Golden 1 cannot
11 assert even its secured claim against the estate,
12 clearing the way for the estate to sell the debtor's
13 vehicle free and clear of Golden 1's secured claim.
14 Obviously, Golden 1 still holds its secured claim
15 against the estate, and that claim is based on Golden
16 1's rights under the contract.

17 . . .

18 In short, the action initiated by Golden 1 filing an
19 unsecured proof of claim is an action on the contract.
20 The trustee is prevailing. See Penrod v. AmeriCredit
21 Financial Services, Inc. (In re Penrod), 802 F.3d
22 1084, 1087-88 (9th Cir. 2015). This is an adequate
23 basis for applying the reciprocity rule of Cal. Civ.
24 Code § 1717(a).

25 On April 22, 2016, Golden 1 filed its notice of appeal from
26 that order, commencing EC-16-1117.

27 Golden 1 sought a stay pending appeal from the bankruptcy
28 court as to the payment of attorney's fees and costs, which the
bankruptcy court granted. In its ruling granting the stay, the
bankruptcy court reiterated that Golden 1 had waived its
argument that Penrod did not apply to Trustee's request for
attorney's fees because Golden 1 failed to raise the argument in
its initial opposition to Trustee's objection. The court went
on to say that if it indicated Golden 1 had not waived the
argument (meaning at the April 11, 2016 hearing), it was
unintended.

1 **II. JURISDICTION**

2 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
3 §§ 1334 and 157(b) (2) (A) and (B). We have jurisdiction under
4 28 U.S.C. § 158.

5 **III. ISSUES**

6 Did the bankruptcy court abuse its discretion in estimating
7 Golden 1's claim at \$0?

8 Did the bankruptcy court err by awarding attorney's fees
9 and costs in favor of Trustee and against Golden 1 based upon
10 the attorney fee provision in the Sale Contract and Cal. Civ.
11 Code § 1717?

12 **IV. STANDARDS OF REVIEW**

13 Orders resolving claims objections can raise both legal
14 issues and factual issues. We review the legal issues de novo
15 and the factual issues under the clearly erroneous standard.
16 Veal v. Am. Home Mortg. Servicing, Inc. (In re Veal), 450 B.R.
17 897, 918 (9th Cir. BAP 2011).

18 We review a bankruptcy court's estimation of a claim for
19 abuse of discretion. Ryan v. Loui (In re Corey), 892 F.2d 829,
20 832 (9th Cir. 1989).

21 We will not disturb the bankruptcy court's award of
22 attorney's fees and costs unless the court erroneously applied
23 the law or abused its discretion. Renfrow v. Draper, 232 F.3d
24 688, 693 (9th Cir. 2000); Fry v. Dinan (In re Dinan), 448 B.R.
25 775, 783 (9th Cir. BAP 2011).

26 Review of an abuse of discretion determination involves a
27 two-pronged test; first, we determine de novo whether the
28 bankruptcy court identified the correct legal rule for

1 application. See United States v. Hinkson, 585 F.3d 1247,
2 1261-62 (9th Cir. 2009) (en banc). If not, then the bankruptcy
3 court necessarily abused its discretion. Id. at 1262.

4 Otherwise, we next review whether the bankruptcy court's
5 application of the correct legal rule was clearly erroneous; we
6 will affirm unless its findings were illogical, implausible, or
7 without support in inferences that may be drawn from the facts
8 in the record. Id.

9 V. DISCUSSION

10 The bankruptcy court disallowed Golden 1's unsecured
11 deficiency claim on several bases and, in the alternative, found
12 the claim contingent or unliquidated and estimated it for
13 purposes of allowance at \$0. Although Golden 1 raises numerous
14 issues on appeal relating to both decisions, we need not discuss
15 or decide if every basis for the court's decision was correct.
16 Rather, we may affirm the bankruptcy court's decision on any
17 ground fairly supported by the record. Wirum v. Warren
18 (In re Warren), 568 F.3d 1113, 1116 (9th Cir. 2009).

19 A. Estimation of Claims

20 We agree with the bankruptcy court's assessment that since
21 Golden 1 had not declared a default, its unsecured deficiency
22 claim was "at best" contingent or unliquidated. Golden 1 does
23 not argue otherwise on appeal. Indeed, at the February 29, 2016
24 hearing, Golden 1's counsel admitted that the deficiency claim
25 was contingent and agreed that the court could estimate the
26 claim.

27 THE COURT: All right. But this is an unliquidated
28 contingent claim. Couldn't I just as easily say I'm
estimating your claim at zero?

1 MS. PEO: You could. You could.

2 THE COURT: I mean, isn't that -
MS. PEO: And -- and I -

3 THE COURT: -- what we're doing here?

4 MS. PEO: -- and that's the purpose of -- of -- of my
5 citing to both 506(a) and 502(c) to just, you know,
6 the Code contemplates that this can be liquidated
7 without need of foreclosure. And here I think that
8 the relevant figures are the value of the collateral,
9 which we've submitted evidence to, and the amount of
10 the claim, which I believe under Ivanhoe is -

11 THE COURT: but you keep -

12 MS. PEO: -- 17,000.

13 THE COURT: -- leaving out one thing. The debtor's
14 paying. And you seem to be -- your client seems to be
15 perfectly happy with that. So you're getting payment,
16 and you've got collateral. All right? Any claim
17 against the estate is dependent on liquidation of your
18 collateral and declaration to default, which isn't
19 going to happen from what I can tell.

20 It is generally settled that "if all events giving rise to
21 liability occurred prior to the filing of the bankruptcy
22 petition", the claim is not contingent. Nicholes v. Johnny
23 Appleseed of Wash. (In re Nicholes), 184 B.R. 82, 88 (9th Cir.
24 BAP 1995) (citing Fostvedt v. Dow (In re Fostvedt), 823 F.2d
25 305, 306 (9th Cir. 1987) ([T]he rule is clear that a contingent
26 debt is "one which the debtor will be called upon to pay only
27 upon the occurrence or happening of an extrinsic event which
28 will trigger the liability of the debtor to the alleged
creditor.")). The bankruptcy court correctly observed that
Golden 1's deficiency claim under California law was dependent
upon its first declaring a default. See Cal. Civ. Code
§ 2983.3(a) ("In the absence of default in the performance of
any of the buyer's obligations under the contract, the seller or

1 holder may not accelerate the maturity of any part or all of the
2 amount due thereunder or repossess the motor vehicle.”).

3 Therefore, “at best” the deficiency claim was a contingent one.

4 Moreover, a debt is liquidated if it is capable of “ready
5 determination and precision in computation of the amount due.”

6 In re Fostvedt, 823 F.2d at 306. “The test for ‘ready
7 determination’ is whether the amount due is fixed or certain or
8 otherwise ascertainable by reference to an agreement or by a
9 simple computation.” In re Nicholes, 184 B.R. at 88. Here, the
10 amount of the deficiency was not readily ascertainable by
11 reference to the Sale Contract or by a simple computation.

12 Indeed, the parties focused on valuation of the car by
13 submitting appraisals, but the date for such valuation was
14 contested. In addition, the actual amount of the deficiency
15 depended upon a number of factors due to the fact that Debtor
16 was timely making the installment payments and was current on
17 the loan. As a result, it may be that the value of the car
18 would exceed the amount due under the loan due to the ongoing
19 payments.

20 Under § 502(c)(1), a bankruptcy court may estimate for
21 purposes of allowance “any contingent or unliquidated claim, the
22 fixing or liquidation of which . . . would unduly delay the
23 administration of the case.” Section 502(c) was enacted to
24 “further the requirement that all claims against a debtor be
25 converted into dollar amounts.” Interco Inc. v. ILGWU Nat’l
26 Ret. Fund (In re Interco Inc.), 137 B.R. 993, 997 (Bankr. E.D.
27 Mo. 1992). Courts use estimation “to facilitate the speedy
28 resolution of claims in bankruptcy courts.” Id. Such a claim

1 is "allowed," meaning that the Bankruptcy Code expressly
2 authorizes the trustee to pay it, as if it was not contingent or
3 unliquidated.

4 Neither the Code nor the Rules prescribe any method for
5 estimating a contingent or unliquidated claim. The bankruptcy
6 court should use "whatever method is best suited to the
7 circumstances" in estimating a claim. Bittner v. Borne Chem.
8 Co., 691 F.2d 134, 135 (3d Cir. 1982). Therefore, a court has
9 broad discretion when estimating the value of an unliquidated
10 claim.⁹ In re Corey, 892 F.2d at 834.

11 In deciding whether to estimate the deficiency claim, the
12 bankruptcy court observed that Golden 1 had not proceeded
13 against its collateral because Debtor was current on the loan.
14 Therefore, the court found that waiting for Golden 1 to seize
15 and sell its collateral in order to liquidate its deficiency
16 claim would unduly delay the administration of the case. The
17 court further found that because (1) Golden 1 had agreed to
18 accept voluntary payments from Debtor; (2) the value of the
19 vehicle was at least \$13,907; and (3) Debtor had made all
20 installment payments due under the loan both before and after
21 the bankruptcy, Debtor was "likely" to pay Golden 1 in full

22
23 ⁹ A party in interest generally brings a motion for
24 estimation of a claim. In the informal email exchange between
25 the parties, Trustee's counsel early on stated that he was asked
26 to prepare an objection to the \$3,375 unsecured portion of
27 Golden 1's POC and a motion to estimate the claim for
28 distribution purposes. Trustee did not file a motion for
estimation, but did file the claim objection. Nonetheless, an
objection to claim and motion to estimate claim are both brought
pursuant to Rule 3007 and are contested matters within the
meaning of Rule 9014.

1 without resort to its collateral. Based on these facts, the
2 court estimated Golden 1's claim as \$0.

3 Golden 1 asserts that these findings are not supported by
4 the record. Golden 1 maintains no reaffirmation agreement was
5 entered into and Debtor was discharged from personal liability
6 on the debt. According to Golden 1, the bankruptcy court gave
7 no weight to the fact that Debtor was absolved of personal
8 liability, and it failed to consider that there was a very real
9 possibility that Debtor may refuse to make voluntary payments if
10 the vehicle broke down or was involved in an accident.

11 We are not convinced. Golden 1 cannot complain that it
12 will be precluded from collecting any deficiency from Debtor
13 personally which might arise in the future should it repossess
14 the car and sell it for less than the balance due. This is a
15 risk it chose when it did not pursue reaffirmation or
16 immediately seek stay relief so it could repossess and sell the
17 car as soon as the time to reaffirm expired. Had it done so,
18 the deficiency would be liquidated and it could share in the
19 estate distribution. "When a nondefaulting debtor is discharged
20 while retaining the collateral, the principal disadvantage to
21 the creditor is the possibility that the value of the collateral
22 will be less than the balance due on the secured debt. But this
23 is a risk in all installment loans, and presumably the creditor
24 has structured repayment to accommodate it." Home Owners
25 Funding Corp. v. Belanger (In re Belanger), 962 F.2d 345 (4th
26 Cir. 1992).

27 Further, Golden 1's arguments regarding other
28 possibilities, such as Debtor's refusal to make voluntary

1 payments, a vehicle breakdown or an accident, are nothing more
2 than possibilities. While anything is possible, the burden of
3 proof in claims estimation is preponderance of the evidence.
4 Under the circumstances in this case, we cannot say that the
5 bankruptcy court abused its discretion in concluding that it was
6 more likely than not Debtor would continue to pay Golden 1 on
7 the loan and Golden 1 would not have to look to its collateral.
8 See In re Corey, 892 F.2d 829, 834 (9th Cir. 1989) (estimating
9 claims at zero because of their "highly speculative nature");
10 In re Pac. Gas & Elec. Co., 295 B.R. 635, 675-76 (Bankr. N.D.
11 Cal. 2003) (estimating antitrust claims at zero where claimants
12 failed to make their case, the debtor asserted defenses that
13 appeared to have merit, and the claimants had not established
14 any meaningful measure of damages); In re Kaplan, 186 B.R. 871,
15 874, 878 (Bankr. D.N.J. 1995) (noting that "the court must
16 determine the value of the claim according to its best estimate
17 of the claimant's chances of ultimately succeeding in a state
18 court action" and estimating the claim at zero because the
19 claimant "most likely would not succeed on a state court
20 action").

21 Finally, Golden 1 argued that a claim is to be measured as
22 of the petition date and postpetition conduct such as the
23 voluntary payments should be disregarded. If we look at the
24 facts as known on the petition date, Debtor stated an intention
25 to reaffirm. Assuming she did that, there would be no
26 deficiency as to the estate and estimating the claim at zero

1 based on petition date facts is also appropriate.¹⁰

2 **B. Attorney's Fees**

3 The Bankruptcy Code does not provide a general right to
4 recover attorney's fees. Heritage Ford v. Baroff
5 (In re Baroff), 105 F.3d 439, 441 (9th Cir. 1997).

6 Nevertheless, a prevailing party on a bankruptcy law claim may
7 recover attorney's fees if recovery is permitted under a state
8 statute or contract. Cohen v. de la Cruz, 523 U.S. 213, 220-21
9 (1998); Cardenas v. Shannon (In re Shannon), 553 B.R.380, 2016
10 WL 4009673 at *11 (9th Cir. BAP 2016); Redwood Theaters, Inc. v.
11 Davison (In re Davison), 289 B.R. 716, 722 (9th Cir. BAP 2003).

12 The bankruptcy court awarded Trustee attorney's fees and
13 costs in the amount of \$14,436.60, based on an attorney fee
14 provision in the Sale Contract which stated: "You will pay our
15 reasonable costs to collect what you owe, including attorney
16 fees, court costs, collection agency fees, and fees paid for
17 other reasonable collection efforts." Under some circumstances,
18 Cal. Civ. Code § 1717 renders unilateral fee provisions such as
19 this one reciprocal. See Santisas v. Goodin, 17 Cal.4th 599,
20 610-11 (1998).

21 "Three conditions must be met before [section 1717]
22 applies." Bos v. Board of Trustees, 818 F.3d 486, 489 (9th Cir.
23 2016) (citing In re Penrod, 802 F.3d at 1087). "First, the
24 action generating the fees must have been an action 'on a
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26 ¹⁰ Since we conclude that the bankruptcy court did not abuse
27 its discretion in estimating Golden 1's unsecured deficiency
28 claim at \$0, it is unnecessary to address issues raised by
Golden 1 pertaining to § 506.

1 contract.' Second, the contract must provide that attorney's
2 fees incurred to enforce it shall be awarded either to one of
3 the parties or to the prevailing party. And third, the party
4 seeking fees must have prevailed in the underlying action." Id.
5 If all three conditions are met, Trustee may recover his
6 attorney's fees from Golden 1, "provided that [Golden 1] would
7 have been entitled to recover its fees had it prevailed."
8 In re Penrod, 802 F.2d at 1087.

9 On appeal, Golden 1 argues that there was no reciprocity
10 with which to invoke Cal. Civ. Code § 1717. According to
11 Golden 1, the attorney fee provision in the Sale Contract does
12 not run both ways because the bankruptcy court's final order
13 held that it had no deficiency claim against the estate.
14 Golden 1 maintains that the bankruptcy court's decision
15 precludes it from enforcing its rights under the Sale Contract
16 against the estate. Thus, reciprocity is lacking.

17 We are not persuaded. First, at oral argument, counsel for
18 Golden 1 conceded that if Golden 1 had prevailed in the claim
19 objection, it would have a claim for attorney's fees under Cal.
20 Civ. Code § 1717. Thus, reciprocity was present. Next, the
21 bankruptcy court found that Golden 1's reciprocity argument -
22 the same one it makes on appeal - was untimely and waived
23 because Golden 1 did not make the argument in its initial
24 opposition to Trustee's objection. The bankruptcy court
25 reiterated its finding of waiver in its ruling regarding the
26 stay pending appeal. The record supports this ruling. See
27 Carroll v. Nakatani, 342 F.3d 934, 945 (9th Cir. 2003) (noting
28 that a motion for rehearing "may not be used to raise arguments

1 or present evidence for the first time when they could
2 reasonably have been raised earlier in the litigation").
3 Finally, even if the argument were not waived, as the bankruptcy
4 court explained, Golden 1 has missed the point. The court's
5 ruling on the deficiency claim did not prohibit Golden 1 from
6 enforcing its rights under the Sale Contract. As noted by the
7 court, Golden 1 still held a secured claim based on its rights
8 under the Sale Contract and Golden 1 continued to rely on the
9 contract to assert a secured claim against the estate.

10 In the end, the bankruptcy court concluded that by filing
11 an unsecured proof of claim, Golden 1 initiated an action on the
12 contract and Trustee was the prevailing party. Had Golden 1
13 prevailed on its deficiency claim against the estate it would
14 have had an entitlement to attorney's fees; the estate should
15 likewise be able to do so on a reciprocal basis. See Reynolds
16 Metals Co. v. Alperson, 25 Cal.3d 124, 127-128 (1979). In
17 short, all three conditions for application of Cal. Civ. Code
18 § 1717 were met.

19 Golden 1's final argument is that the fees arising out of
20 the claim objection are unreasonable under a cost-benefit
21 analysis. "When a cost benefit analysis indicates that the only
22 parties who will likely benefit from [a service] are the trustee
23 and his professionals," the service is unwarranted and a court
24 does not abuse its discretion in denying fees for those
25 services. Estes & Hoyt v. Crake (In re Riverside-Linden Inv.
26 Co.), 925 F.2d 320, 321 (9th Cir. 1991).

27 Clearly, bankruptcy proceedings are intended to benefit the
28 creditors and the estate, and not to benefit the attorneys.

1 However, there is no indication in the record that Trustee went
2 beyond what was necessary to defend his position or have his
3 attorney render services which would only benefit his attorney.
4 From the beginning, Trustee thought that the matter could be
5 resolved without resort to protracted proceedings. The
6 increased expense arose because Golden 1 continually chose to
7 litigate its positions to support a deficiency claim which would
8 reap \$300 from the bankruptcy estate. Nothing in the record
9 shows that Trustee could have foreseen this type of protracted
10 litigation or factored it into his initial cost-benefit analysis
11 when deciding to pursue the claim objection. Without following
12 through with the litigation to the end, there was little Trustee
13 could do short of conceding payment on the claim - a result that
14 would have been detrimental to the estate.

15 Fees allowable pursuant to Cal. Civ. Code § 1717 are
16 subject to a reasonableness requirement. The bankruptcy court
17 found that the attorney's fees incurred, with some exceptions,
18 were reasonable and necessary because (1) Trustee had to
19 litigate this objection extensively; (2) there were novel issues
20 presented by the objection; (3) expansive research was required;
21 (4) Golden 1 vehemently opposed; (5) there were extensive
22 communications among the parties; (6) there were numerous
23 pleadings filed by the Trustee; and (7) the protracted nature of
24 the proceedings (lasting nearly 10 months), warranted the fees
25 and costs requested by Trustee. These factual findings are
26 plausible and logical.

27 In sum, based on our examination of the record, we conclude
28 the bankruptcy court employed the appropriate standards to

1 determine the fees were reasonable and did not abuse its
2 discretion in determining the proper fee allowance.

3 **VI. CONCLUSION**

4 For the reasons set forth above, we AFFIRM.
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