

DEC 06 2016

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

ORDERED PUBLISHED

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

5	In re:)	BAP No.	HI-16-1170-JuTaKu
)		
6	ONENOA FAAVEVELA FAITALIA and)	Bk. No.	15-00698-RJF
	SOI FAITALIA,)		
7)		
	Debtors.)		
8	_____)		
)		
9	VILLAGE PARK COMMUNITY)		
	ASSOCIATION,)		
10)		
	Appellant,)		
11	v.)	O P I N I O N	
)		
12	ONENOA FAAVEVELA FAITALIA;)		
	SOI FAITALIA,)		
13)		
	Appellees.)		
14	_____)		

Argued and Submitted on November 17, 2016
at Pasadena, California

Filed - December 6, 2016

Appeal from the United States Bankruptcy Court
for the District of Hawaii

Honorable Robert J. Faris, Bankruptcy Judge, Presiding

Appearances: John Winnicki, Deeley King Pang & Van Etten,
argued for appellant Village Park Community
Association; Jean Christensen and Edward Maguaran
argued for appellees Onenoa Faavevela Faitalia
and Soi Faitalia.

Before: JURY, TAYLOR, and KURTZ, Bankruptcy Judges.

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1 JURY, Bankruptcy Judge:
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3 Onenoa Faavevela Faitalia and Soi Faitalia (collectively,
4 Debtors) filed a motion to value their real property for the
5 purpose of stripping off the asserted secured claim of Village
6 Park Community Association (Association) in their chapter 13¹
7 case. The bankruptcy court found that the Association's lien
8 was wholly unsecured and entered an order granting Debtors'
9 motion. The court also held that Debtors were entitled to their
10 attorney's fees and costs under Hawaii law.

11 Debtors then filed a motion and supporting declarations
12 seeking attorney's fees and costs under Hawaii Revised Statutes
13 (HRS) § 514B-157, which is a reciprocal attorney fee statute
14 pertaining to certain actions between a condominium association
15 and its owner-members. After a hearing, the bankruptcy court
16 found that Debtors were entitled to their fees and costs under
17 HRS § 421J-10(a) – an analogous statute pertaining to planned
18 community associations – and entered an order awarding Debtors
19 \$27,397.89 in attorney's fees and costs against the Association.
20 This appeal followed. For the reasons explained below, we
21 REVERSE.

22 I. FACTS

23 A. Prepetition Events

24 The Association consists of the unit owners of a planned
25 residential community known as the Village Park Community,
26

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

1 established and governed by the Declaration of Protective
2 Covenants for Village Park Community, dated March 13, 1979
3 (Covenants), and located in Honolulu, Hawaii. Debtors are
4 members of the Association based on their ownership of a home
5 located within the Village Park Community.

6 The Covenants authorize and require the Association to
7 assess and collect from its members annual membership fees and
8 other assessments, which are personal debts and obligations of
9 the member against whom they are assessed. If a member fails to
10 pay the assessments of the Association when due, the Association
11 may obtain a lien on the unit or unit owned by the member by
12 recording a notice of lien in the Bureau of Conveyances. The
13 lien secures the member's obligation for unpaid assessments
14 arising before or after recordation of the lien, annual interest
15 at twelve percent, and costs of collection including reasonable
16 attorney's fees.

17 Debtors failed to pay the Association's annual membership
18 fees for several years, which resulted in the assessment by the
19 Association of late fees against them which also remained
20 unpaid.²

21 In 2009, the Association assigned Debtors' debt for the
22 delinquent assessments to the law firm of Deeley King Pang & Van
23 Etten for collection. The law firm's collection efforts
24 included demand letters, payment plans, and the recordation of a
25 notice of lien. Ultimately, in October 2010, the law firm
26 commenced a foreclosure action in the state court against

27
28 ² The Association's appraisal which is part of the record
shows that the monthly assessment is \$11.67.

1 Debtors' property. In August 2011, J.P. Morgan Mortgage
2 Acquisition (J.P. Morgan), the first trust deed holder, also
3 commenced a foreclosure action against Debtors' property. A few
4 months later, the state court granted the Association's motion
5 to consolidate the foreclosure lawsuits against Debtors. J.P.
6 Morgan did not further pursue foreclosure because it entered
7 into a loan modification with Debtors.

8 On May 19, 2015, the Association filed and served a motion
9 for default judgment, summary judgment, and for interlocutory
10 decree of foreclosure in the circuit court foreclosure action.
11 A declaration of indebtedness attached to the motion for summary
12 judgment shows that Debtors owed the Association \$1,168.51 as of
13 May 11, 2015. Debtors did not respond to the motion.

14 **B. Bankruptcy Events**

15 Instead, on June 8, 2015, Debtors filed their chapter 13
16 petition. In Schedule A, they listed the value of their real
17 property at \$540,000. In Schedule D, Debtors showed a secured
18 claim against their property for \$609,000 and listed \$7,000
19 owed to the Association as disputed. Their chapter 13 plan
20 provided for monthly payments of \$380 over three years with an
21 estimated 6.6% return to unsecured creditors.

22 On July 29, 2015, the Association filed a proof of claim
23 showing a secured claim for \$11,579.79, consisting of Debtors'
24 delinquent assessments and various fees owed to the Association.
25 The next day, the Association objected to Debtors' chapter 13
26 plan on the grounds that it failed to provide for payment of the
27 Association's claim and was filed in bad faith.

28 One day later, Debtors filed an amended plan and a motion

1 to value their real property which sought to modify or strip off
2 the Association's lien because the amount of the first priority
3 mortgage encumbering their residence exceeded the value of the
4 property.

5 The Association objected to the amended plan and motion to
6 value on several grounds: (1) the value of the property was not
7 supported by admissible evidence; (2) the plan was not filed in
8 good faith; (3) the plan failed to provide for payments on the
9 Association's claim; (4) Debtors failed to provide for payment
10 of post-petition assessments; and (5) Debtors failed to commit
11 all of their disposable income to plan payments.

12 At the confirmation hearing on September 17, 2015, the
13 bankruptcy court scheduled the confirmation of Debtors' plan and
14 their valuation motion for an evidentiary hearing on March 1,
15 2016.

16 In January 2016, Debtors filed a motion for summary
17 judgment contending that the mortgage on their property
18 (\$613,419.89) exceeded the appraised value of the property
19 (\$530,000).

20 The Association filed an opposition to Debtors' motion and
21 a counter motion for summary judgment. The Association
22 requested the court to deny confirmation and dismiss Debtors'
23 case based on bad faith. The Association further asserted that
24 the modification of Debtors' mortgage loan was invalid and
25 resulted in the lender's claim exceeding the value of Debtors'
26 property. Due to the invalid modification, the Association
27 maintained that its lien was senior to the \$164,000 debt
28 incurred through the modification and thus there was

1 approximately \$100,000 of equity after deducting the first loan
2 from the appraised value of \$545,000. According to this
3 argument, the Association's lien could not be stripped off.
4 Attached to the counter motion for summary judgment was the
5 Association's appraisal of the property showing a value of
6 \$545,000.

7 In opposition to the Association's counter motion, Mr.
8 Faitalia submitted a declaration stating that Debtors had acted
9 in good faith in filing the bankruptcy petition. He explained
10 that the relationship with the Association had been frustrating
11 to him since he did not understand how an annual fee of \$100-
12 \$130 could turn into more than \$11,000. He also declared that
13 the stripping off of the Association's lien was permitted by law
14 so he did not understand how that could be bad faith. Finally,
15 in a separate pleading, Debtors maintained that the loan
16 modification was permitted by the original mortgage documents
17 and was not a new loan as no new money had been loaned. Rather,
18 the additional sum of \$164,000 was added to the principal and
19 the term of the note was extended to fifty years. According to
20 Debtors, the full amount of the principal retained priority over
21 the Association's junior lien.

22 On February 16, 2016, the bankruptcy court heard the
23 parties' cross motions for summary judgment and confirmation of
24 Debtors' plan. Ultimately the bankruptcy accepted the
25 Association's appraisal of \$545,000 as the value of the
26 property. The court also found that the modification of
27 Debtors' loan (actually two modifications) added interest and
28 unpaid monthly payments back to the mortgage and that no further

1 money was loaned. Accordingly, the court found that this was
2 not the kind of modification which would allow the junior
3 lienholder to jump up in the priority schedule.

4 As a result of these conclusions, the bankruptcy court
5 granted Debtors' motion for summary judgment because there was
6 no equity in the property after deducting amounts owed to the
7 first trust deed holder. The court held that it was proper to
8 treat the Association's claim as wholly unsecured. The
9 bankruptcy court also held that Debtors, as the prevailing
10 parties, were entitled to their attorney's fees and costs under
11 Hawaii statutory law. Finally, the bankruptcy court concluded
12 that under a totality of circumstances analysis, Debtors acted
13 in good faith and thus confirmed their chapter 13 plan.

14 On March 9, 2016, the bankruptcy court entered the order
15 granting Debtors' motion for summary judgment, finding the claim
16 of the Association wholly unsecured. On March 15, 2016, the
17 bankruptcy court entered an order granting Debtors' motion to
18 value collateral and a separate order confirming Debtors'
19 chapter 13 plan.

20 On April 7, 2016, Debtors filed a motion for attorney's
21 fees and costs from the Association. Debtors' request was based
22 on HRS § 514B-157, which gives unit owners the reciprocal right
23 to collect fees and costs from an association if the claim
24 asserted by the association was not substantiated. Debtors
25 maintained that the sweep of the statute's reciprocity provision
26 was broad. They further argued that their fee request was
27 supported under the holdings in Travelers Cas. & Sur. Co. v.
28 Pac. Gas & Elec. Co., 549 U.S. 443, 445 (2007) and Hoopai v.

1 Countrywide Home Loans, Inc. (In re Hoopai), 369 B.R. 506, 510
2 (9th Cir. BAP 2007), aff'd in part & rev'd in part on other
3 grounds, 581 F.3d 1090 (9th Cir. 2009).

4 Finally, Debtors relied upon the bankruptcy court's
5 decision in In re Beck, 2014 WL 6606577 (Bankr. D. Haw. Nov. 5,
6 2014). In Beck, the debtor filed a motion to determine value
7 for the purpose of stripping off the lien of the association.
8 The bankruptcy court applied HRS § 514B-157 and awarded the
9 debtor his attorney's fees and costs. The court reasoned that
10 the association's proof of claim was the equivalent of an effort
11 to collect the delinquent assessments owed by the debtor, to
12 preserve the right to foreclose its lien, and to enforce the
13 provisions of the condominium declaration and bylaws. Since the
14 debtor prevailed on the lien strip motion, the bankruptcy court
15 held that the association's lien rights were not substantiated
16 within the meaning of the statute.

17 The Association opposed Debtors' request for fees,
18 contending that the bankruptcy court wrongly decided Beck. In
19 that regard, the Association maintained that the court
20 incorrectly started its analysis from the premise that the
21 association's filing of a proof of claim asserting a lien
22 against the debtor's apartment was in effect an attempt to
23 collect delinquent assessments within the meaning of HRS § 514B-
24 157(a). According to the Association, even if the filing of a
25 proof of claim could be deemed to be a collection effort, the
26 proof of claim here was allowed – Debtors did not object to the
27 Association's proof of claim and the Association remained
28 entitled to collect the delinquent fees. The Association

1 further pointed out that its lien was not found to be invalid
2 under state law or the provisions of the Association's lien
3 declaration and bylaws. In short, the Association maintained
4 that clearly there was no action to foreclose on its lien.
5 The Association also pointed out that this proceeding, like
6 Beck, involved the debtor's motion to value collateral and to
7 modify the Association's lien rights under bankruptcy law.
8 Therefore, it did not involve any claims by the Association to
9 which HRS § 514B-157(a) applied.

10 Finally, the Association relied on Schmidt v. Bd. of Dirs.,
11 836 P.2d 479 (Haw. 1992), where the Supreme Court of Hawaii
12 declined to interpret the predecessor statute to HRS § 514B-157
13 so broadly. There, in interpreting the term "enforce", the
14 court held that the statute only permitted an award of fees in
15 an action to impose an affirmative course of action on an
16 association by compelling obedience to any provision of its
17 declaration, by-laws, house rules, or any enumerated provision
18 of chapter 514A.

19 On May 10, 2016, the bankruptcy court heard the matter.
20 Initially, the Association contended that HRS § 514B-157(a) and
21 Beck did not apply because the Association was governed by HRS
22 Chapter 241J which applied to planned communities. The
23 Association conceded that the statutes at issue were analogous,
24 but argued that there was a difference in the language, and on
25 that basis asked that the case be rebriefed to address the
26 correct section. The court declined to continue the matter and
27 ruled at the hearing.

28 The bankruptcy court distinguished Schmidt, stating that it

1 had nothing to do with the monetary rights of the parties to
2 collect maintenance fees or the secured status of maintenance
3 fees, but involved a damage claim based on the condition of the
4 property. In the end, the bankruptcy court followed its
5 previous analysis in Beck. The court found that by filing a
6 proof of claim the Association was taking an action to collect
7 delinquent assessments and, in effect, to foreclose its lien,
8 because the Association filed as a secured claimant and the
9 Association did not have a secured claim. The bankruptcy court
10 found that Debtors were the prevailing parties in the matter and
11 therefore they were entitled to reasonable attorney's fees.³
12 The court granted Debtors' motion and directed them to submit
13 declarations on the amount of the attorney's fees and costs.

14 Thereafter, Debtors filed a declaration showing that they
15 had paid \$1,047.12 for the appraisal. Debtors' attorney also
16 submitted a declaration and supporting time records requesting
17 an award of attorney's fees and costs in the total amount of
18 \$27,571.89.

19 The Association opposed, arguing that (1) Debtors failed to
20 establish that they agreed to pay their attorney the amounts
21 claimed in the request; (2) the hourly rate charged by Debtors'
22 attorney was not reasonable; (3) the amount of time expended was
23 not reasonable; (4) the printing costs were unjustified;

25 ³ At the hearing, the Association's counsel asked the
26 bankruptcy court to certify the decision to the Hawaii Supreme
27 Court if it ruled that attorney's fees and costs were authorized
28 under the statute. The bankruptcy court declined the request,
concluding that it was not a "difficult" question and thus
certification was unnecessary.

1 (5) expert witness fees were not an allowable cost; and (6) the
2 attorney's fees and costs claimed by Debtors against the
3 Association should be offset by the non-dischargeable, post-
4 petition assessments for the Association's dues and fees owed by
5 Debtors.

6 In a Memorandum Decision, the bankruptcy court awarded
7 Debtors fees and costs under HRS § 421J-10, the statute applying
8 to planned communities. The court found that the fee request
9 was reasonable both as to the hourly rate and the time expended.
10 The bankruptcy court disallowed the printing costs, but allowed
11 Debtors their appraiser's fee. Finally, the bankruptcy court
12 denied the offset request.

13 On May 25, 2016, the bankruptcy court entered an order
14 granting Debtors' motion awarding \$26,350.77 for attorney's fees
15 and \$1,047.00 for the appraisal as an expense. The Association
16 filed a timely notice of appeal from that order.

17 On August 4, 2016, the bankruptcy court denied the
18 Association's request for stay pending appeal without prejudice
19 to a possible proposal for a stay pending appeal on a secured
20 basis. The Association then sought a stay from the Panel. On
21 August 19, 2016, the Panel denied the Association's request for
22 a stay pending appeal without prejudice on a secured basis. On
23 September 7, 2016, the bankruptcy court granted the
24 Association's motion for a stay pending appeal on the condition
25 that it post a supersedeas bond in the amount of \$45,000 within
26 one week from the date of the order. The bond was evidently
27 posted.

28

1 **II. JURISDICTION**

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

5 **III. ISSUE**

6 Did the bankruptcy court err as a matter of law when it
7 awarded Debtors attorney's fees and costs under HRS § 421J-10?

8 **IV. STANDARD OF REVIEW**

9 We review the bankruptcy court's interpretation and
10 application of a state statute governing the award of attorney's
11 fees de novo. Kona Enters. v. Estate of Bishop, 229 F.3d 877,
12 883 (9th Cir. 2000).

13 **V. DISCUSSION**

14 Under the "American Rule," prevailing parties in federal
15 court are not ordinarily entitled to attorney's fees unless
16 authorized by contract or statute. Alyeska Pipeline Serv. Co.
17 v. Wilderness Soc'y, 421 U.S. 240, 257 (1975). This default
18 rule applies to bankruptcy litigation, but "can, of course, be
19 overcome by statute." Travelers, 549 U.S. at 448. Following
20 Travelers, the question of whether parties to a bankruptcy
21 proceeding are entitled to attorney's fees under Hawaii law is
22 purely a question of state law. See Americredit Fin. Servs.,
23 Inc. v. Penrod (In re Penrod), 611 F.3d 1158 (9th Cir. 2015).

24 Here, the bankruptcy court based its award of fees and
25 costs to Debtors on HRS § 421J-10(a), which applies to planned
26 community associations and not, as requested by Debtors, HRS
27 § 514B-157 which applies to condominium property. Because the
28 Association is a planned community association, our resolution

1 of this case turns on the interpretation of HRS § 421J-10(a),
2 which states:

3 (a) All costs and expenses, including reasonable
4 attorneys' fees, incurred by or on behalf of the
association for:

5 (1) Collecting any delinquent assessments against any
6 unit or the owner of any unit;

7 (2) Foreclosing any lien on any unit; or

8 (3) Enforcing any provision of the association
documents or this chapter;

9 against a member, occupant, tenant, employee of a
10 member, or any other person who in any manner may use
the property, shall be promptly paid on demand to the
11 association by such person or persons; **provided that**
if the association is not the prevailing party, all
costs and expenses, including reasonable attorneys'
fees, incurred by any such person or persons as a
result of the action of the association, shall be
promptly paid on demand to the person by the
association. The reasonableness of any attorney's
14 fees paid by a person or by an association as a result
of an action pursuant to paragraph (2) shall be
15 determined by the court. . . . (Emphasis added.)

16 HRS § 421J-1.5 states that chapter 421J "shall be liberally
17 construed to facilitate the operation of the planned community
18 operation."

19 In awarding Debtors their attorney's fees and costs, the
20 bankruptcy court reasoned that by filing a proof of claim in the
21 bankruptcy case the Association was in essence seeking to
22 collect its delinquent assessments or assert its right to
23 foreclose on its lien within the meaning of HRS § 421J-10(a).
24 From that proposition, the bankruptcy court concluded that
25 Debtors were the prevailing parties in the valuation contest and
26 thus were entitled to their fees and costs under the Hawaii
27 statute. We are not persuaded by this reasoning.

28 As with all questions of statutory interpretation, we begin

1 with the plain language of the statute. Lamie v. U.S. Trustee,
2 540 U.S. 526, 534 (2004); Ariz. Health Care Cost Containment
3 Sys. v. McClellan, 508 F.3d 1243, 1249 (9th Cir. 2007); State v.
4 Wheeler, 219 P.3d 1170, 1177 (Haw. 2009). If the statute is
5 clear, the inquiry is at its end, and we enforce the statute on
6 its terms. United States v. Ron Pair Enters., Inc., 489 U.S.
7 235, 241 (1989). In construing the statute, we also keep in
8 mind that we must apply the law as we believe the Hawaii Supreme
9 Court would apply it. Gravquick A/S v. Trimble Navigation Int'l
10 Ltd., 323 F.3d 1219, 1222 (9th Cir. 2003).

11 HRS § 421J-10(a) permits fees and expenses incurred by the
12 Association only if the Association was "collecting" delinquent
13 assessments, "foreclosing" on its lien, or "enforcing" its
14 covenants. While these terms are not defined in HRS Chapter
15 421J, the use of these active verbs denotes some type of
16 affirmative conduct relating to those described acts.

17 In Schmidt v. Bd. of Dirs., the Hawaii Supreme Court was
18 called upon to interpret the meaning of the word "enforce" in
19 HRS § 514A-94(b), the predecessor statute to HRS § 514B-157 and
20 the statutory counterpart to HRS § 421J-10, applicable to
21 condominium associations. 836 P.2d 479. There, the court
22 adopted the plain meaning of the word "enforce" and stated that
23 the "plain and obvious" application of HRS § 514A-94(b) is to an
24 owner's substantiated claim against an association or its board
25 to impose an **affirmative** course of action upon the association
26 to put into execution - or compel obedience to - any provision
27 of its declaration, by-laws, house rules, or any enumerated
28 provision of HRS chapter 514A. Id. at 483.

1 The court noted that the Schmidts did not seek to enforce
2 any affirmative action on the part of the Association to comply
3 with any provision of the Association's declaration, by-laws,
4 house rules, or HRS Chapter 514A. Rather, in their own words,
5 they were seeking damages for the Association's failure to
6 comply with its by-laws and declaration. Since the Schmidts did
7 not seek to compel obedience to the Association's by-laws and
8 declaration, the court found that HRS § 514A-94(b) did not apply
9 to their action and reversed the award of attorney's fees.

10 The holding in Schmidt reinforces the conclusion that the
11 correct interpretation of the statutory terms "collecting"
12 (delinquent assessments) or "foreclosing" (a lien) requires some
13 affirmative conduct against Debtors or their property. However,
14 due to the automatic stay, once Debtors filed their petition,
15 the Association was prohibited from affirmatively pursuing the
16 very acts described in the statute. See § 362(a)(1), (4), and
17 (6).

18 We acknowledge that as a general rule, the automatic stay
19 does not apply to the filing of a proof of claim. See Arneson
20 v. Farmers Ins. Exch. (In re Arneson), 282 B.R. 883, 893 (9th
21 Cir. BAP 2002); Rein v. Providian Fin. Corp., 270 F.3d 895,
22 904-905 (9th Cir. 2001). Nonetheless, we are not persuaded that
23 a creditor's proof of claim in a bankruptcy case constitutes an
24 effort to "collect", "foreclose", or "enforce" within the
25 meaning of HRS § 421J-10(a). The plain language of HRS § 421J-
26 10(a) requires the "collecting" of delinquent assessments to be
27 against Debtors or their property and "foreclosing" a lien must
28 also be against Debtors' property. However, "the purpose for

1 filing a claim is not to affirmatively target [Debtors]
2 personally or their property, but to receive distributions from
3 the bankruptcy estate.” See Clayton v. Roundup Fundings, LLC
4 (In re Clayton), 2010 WL 4008335, at *3 (Bankr. E.D. Wash. Oct.
5 12, 2010) (explaining why the filing of a proof of claim did not
6 violate the automatic stay); See also Rule 3021 (requiring
7 distributions under plans to be made only to those creditors
8 whose pre-petition claims are “allowed.”).

9 We thus conclude that the mere filing of a proof of claim
10 does not entail the affirmative acts contemplated by HRS § 421J-
11 10(a) even under a liberal construction of the statute. It
12 follows that the statute has no applicability under these
13 circumstances.

14 Moreover, the bankruptcy court’s reasoning cannot withstand
15 scrutiny under a prevailing party analysis. “In determining
16 which party is the prevailing party in complex litigation,
17 Hawaiian courts focus on which party prevailed on the ‘disputed
18 main issue.’” In re Hoopai, 581 F.3d at 1102. There can be no
19 disagreement that the disputed main issue in Debtors’ valuation
20 motion was the value of Debtors’ property under § 506(a) and the
21 amount due on the senior secured lien. The valuation of real
22 property for purposes of lien stripping is unique to chapter 13
23 and federal bankruptcy law. Not surprisingly, nowhere in HRS
24 § 421J-10(a) or Chapter 421J is there any mention of valuation
25 for purposes of lien stripping. In short, the disputed issue
26 upon which the bankruptcy court found Debtors to be prevailing
27 parties is not covered by the statute.

28 Furthermore, Debtors never objected to the Association’s

1 proof of claim nor did the bankruptcy court ever find that the
2 Association's lien was invalid. Indeed, since the Association's
3 lien was stripped under § 506(a) for purposes of plan
4 confirmation, if Debtors fail to complete their plan the
5 Association's lien remains on their property under Hawaii law
6 unless later found invalid. In short, Debtors were not the
7 prevailing parties in any sense. Accordingly, the bankruptcy
8 court erred in awarding them fees and costs on this basis.

9 Finally, our conclusion does no harm to the policies
10 supporting the American Rule. If proofs of claim were construed
11 as the equivalent of collecting delinquent assessments or
12 foreclosing on a lien under HRS § 421J-10(a), creditors seeking
13 distributions from the estate would confront potential liability
14 for attorney's fees simply because a debtor enforced his or her
15 statutory rights under § 506(a) and successfully stripped the
16 creditor's lien from his or her property. One should not be
17 penalized under a state law statute for filing a proof of claim,
18 which is a requirement for distribution from the chapter 13
19 estate, nor should one be penalized for defending a valuation
20 motion filed by a debtor who is exercising his or her statutory
21 rights under the Bankruptcy Code. See Kaanapali Hillside
22 Homeowners' Ass'n, 145 P.3d at 907 (citing Fleischmann
23 Distilling Corp. v. Maier Brewing Co., 386 U.S. 714, 718 (1967)
24 ("[S]ince litigation is at best uncertain one should not be
25 penalized for merely defending or prosecuting a
26 lawsuit. . . .")). In short, a reciprocal compensatory remedy
27 to either party under these circumstances is inappropriate.

28 In sum, we conclude that the bankruptcy court erred in

1 awarding Debtors their attorney's fees and costs under HRS
2 § 421J-10(a). In light of our decision, it is unnecessary to
3 discuss the other issues raised by the Association.

4 **VI. CONCLUSION**

5 For the reasons stated, we REVERSE.

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