

JUN 07 2017

NOT FOR PUBLICATION

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

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

5	In re:	)	BAP No. CC-16-1284-TaKuF
6	YAN SUI,	)	BAP No. CC-16-1310-TaKuF
7	Debtor.	)	(consolidated appeals)
		)	BAP No. CC-16-1252-TaKuF
		)	(related appeal)
8	_____	)	
9	YAN SUI; PEI-YU YANG,	)	Bk. No. 8:11-bk-20448-CB
10	Appellants,	)	Adv. No. 8:13-AP-01246-CB
11	v.	)	
12	RICHARD A. MARSHACK,	)	<b>MEMORANDUM*</b>
13	Appellee.	)	
	_____	)	

Argued and Submitted on May 18, 2017  
at Pasadena, California

Filed - June 7, 2017

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

Honorable Catherine E. Bauer, Bankruptcy Judge, Presiding

Appearances: Appellant Yan Sui argued pro se; Edward Hays  
argued for appellee.

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

\* This disposition is not appropriate for publication.  
Although it may be cited for whatever persuasive value it may  
have (see Fed. R. App. P. 32.1), it has no precedential value.  
See 9th Cir. BAP Rule 8024-1(c)(2).

1 **INTRODUCTION**

2 Appellants Yan Sui and Pei-Yu Yang appeal from: an amended  
3 bankruptcy court order finding them in civil contempt and  
4 imposing sanctions; an order to show cause why they should not  
5 be sanctioned under the court's inherent authority; and the  
6 resulting order sanctioning them. They fail to adequately  
7 challenge the orders; they also failed to provide us with a  
8 critical transcript. We AFFIRM the bankruptcy court.

9 **FACTS<sup>1</sup>**

10 These three appeals stem from an earlier decision by this  
11 Panel. In it, the Panel reversed in part, affirmed in part, and  
12 then vacated and remanded a sanctions order so the bankruptcy  
13 court could modify the amount of sanctions. Sui v. Marshack  
14 (In re Sui), BAP No. CC-15-1352-TaLKi, 2016 WL 3361646 (9th Cir.  
15 BAP June 6, 2016). We borrow liberally from that decision.

16 **Events leading to the earlier appeal** Prepetition,  
17 chapter 7<sup>2</sup> debtor Yan Sui transferred his interest in real  
18 property located in Costa Mesa, California (the "Property") to  
19 Pei-Yu Yang. Although the record is not clear, it appears that  
20 Ms. Yang was Debtor's wife, ex-wife, or domestic partner.

21 The Trustee promptly commenced an adversary proceeding  
22 solely against Ms. Yang and successfully obtained an order (the  
23

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24 <sup>1</sup> We exercise our discretion to take judicial notice of  
25 documents electronically filed in the adversary proceeding, the  
26 underlying bankruptcy case, and various appeals. See Atwood v.  
Chase Manhattan Mortg. Co. (In re Atwood), 293 B.R. 227, 233 n.9  
(9th Cir. BAP 2003).

27 <sup>2</sup> Unless otherwise indicated, all chapter and section  
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

1 "Avoidance Order") avoiding the transfer as a fraudulent  
2 conveyance pursuant to § 544 and California Civil Code § 3439.  
3 The Avoidance Order is now final.<sup>3</sup>

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

14 Appellants then undertook a vigorous campaign to stymie the  
15 Trustee's efforts to market and sell the Property. First, they  
16 commenced an action in federal district court against the  
17 Trustee, his law firm, attorneys at his law firm, his special  
18 litigation counsel, the bankruptcy judge, the real estate  
19 company, and the real estate agent, among others; the complaint  
20 asserted 26 claims for relief. The district court action was

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

26 <sup>4</sup> Ms. Yang appealed from the Default Order, but the Panel  
27 dismissed this appeal as moot. See BAP No. 14-1498 Dkt. No. 33.  
28 The Ninth Circuit affirmed. Yang v. Marshack (In re Sui), ---  
F. App'x ---, 2017 WL 2199003 (9th Cir. May 18, 2017).

1 subsequently dismissed.<sup>5</sup>

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

16 In spite of Appellants' efforts to derail any sale, the  
17 Trustee obtained an order (the "Sale Order") approving a sale of  
18 the Property free and clear of all liens, claims, and interests  
19 pursuant to § 363(b) and (m). The Sale Order is now final.<sup>6</sup>

20 Understandably, given Appellants' antics, the Trustee moved  
21 for an order to show cause ("OSC") requiring Appellants to  
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23 <sup>5</sup> See 8:15-cv-00059-JAK-AJW (C.D. Cal.) Dkt. No. 50.  
24 Appellants appealed the dismissal to the Ninth Circuit, which  
25 affirmed. Sui v. Marshack, --- F. App'x ---, 2017 WL 2218992  
(9th Cir. May 18, 2017).

26 <sup>6</sup> Debtor appealed from the Sale Order, which the Panel  
27 dismissed as moot. See BAP No. 15-1200 Dkt. No. 16. The Ninth  
28 Circuit affirmed. Sui v. Marshack (In re Sui), --- F. App'x  
---, 2017 WL 2199001 (9th Cir. May 18, 2017).

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

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

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

25 Only the Trustee appeared at the OSC and Motion to Disobey  
26 hearings. The bankruptcy court stated on the record that it  
27 denied Appellants' Motion to Disobey and found Appellants in  
28 civil contempt. In its subsequent order (the "Contempt Order"),

1 the bankruptcy court reiterated its finding of civil contempt  
2 and imposed sanctions against Appellants in the collective  
3 amount of \$93,832.72; the calculated sanctions included fees  
4 incurred by the Trustee's special litigation counsel in the  
5 district court action. Appellants appealed.

6       **The Panel's decision in the earlier appeal** The Panel  
7 affirmed in part, reversed in part, vacated the order, and  
8 remanded to the bankruptcy court for further proceedings.  
9 First, the Panel reversed the bankruptcy court's determination  
10 of civil contempt based on the Default Order because it did not  
11 require any action from Appellants and thus could not warn them  
12 of any consequences for violating the order. It also concluded  
13 that the Default Order was directed solely to Ms. Yang; thus,  
14 Debtor could not violate it. Second, the Panel affirmed the  
15 civil contempt determination based on the Sale Order. That  
16 order, it reasoned, expressly directed Appellants to not take  
17 actions against the Property; and "[t]here also is no doubt that  
18 actions in violation of this order occurred." Third, because  
19 "the majority of the sanctions awarded to the Trustee did not  
20 flow from the Sale Order," the Panel vacated the Contempt Order  
21 and remanded so the bankruptcy court could recalculate the  
22 sanction amount: "The Trustee is entitled to compensatory  
23 damages solely for fees and costs incurred in relation to  
24 Appellants' civil contempt after the entry of the Sale Order."  
25 Nevertheless, the Panel recognized "that Appellants' efforts to  
26 thwart the sale of the Property were egregious." And it listed  
27 three possible sanctions theories and noted that the decision  
28 was "without prejudice to the Trustee's ability to seek

1 sanctions under another sanctions theory.”

2       **Post-decision proceedings** The Trustee moved promptly and  
3 filed a new motion requesting: (1) entry of an amended order  
4 deeming Appellants in contempt; and (2) issuance of a new order  
5 to show cause why Appellants should not be sanctioned. He  
6 recalculated the amount of attorneys’ fees to reflect those  
7 incurred after the Sale Order was entered: \$31,174. Next, he  
8 argued that Appellants could be sanctioned under the bankruptcy  
9 court’s inherent authority. The hearing was set for July 26,  
10 2016.

11 Appellants opposed the Trustee’s motion; the Trustee  
12 replied; and Appellants filed a sur-reply. The bankruptcy court  
13 heard the matter; Appellants did not appear.

14 On August 4, 2016, the bankruptcy court entered two orders.  
15 First, it entered an amended order finding Appellants in  
16 contempt and imposing sanctions against them in the collective  
17 amount of \$31,174 (the “Amended Contempt Order”). Second, it  
18 issued another order to show cause why Appellants should not be  
19 sanctioned (the “Amended OSC”). In particular, the Amended OSC  
20 stated that Appellants’ “pattern of obstructive and harassing  
21 conduct” has interfered with the Trustee’s sale of the Property.  
22 AP Dkt. No. 259 at 2. This included: “continuously rehashing  
23 the same arguments in numerous pleadings filed with several  
24 courts”; “filing multiple, District Court lawsuits”; and  
25 “engaging in willful and vexatious conduct, including improper  
26 litigation tactics, resulting in substantial damage to the  
27 Estate . . . .” Id. Accordingly, the court ordered Appellants  
28 to personally appear at an August 30, 2016 hearing and show

1 cause "why they should not be sanctioned in the minimum amount  
2 of \$62,251 under the Court's inherent authority for their  
3 efforts to thwart the sale of the Property." Id.

4 Appellants filed a written reply to the Amended OSC.  
5 Later, they timely appealed the Amended Contempt Order; they  
6 also appealed the Amended OSC.

7 The Trustee filed an opposition to Appellants' written  
8 reply. The bankruptcy court held a hearing on the Amended OSC;  
9 Appellants did not appear.

10 The bankruptcy court subsequently entered an order  
11 sanctioning Appellants (the "Second Sanctions Order"). As  
12 relevant here, the Second Sanctions Order states:

13 After considering the Motion, the notice of Motion,  
14 all pleadings filed in response to the Motion, all  
15 pleadings filed in response to the OSC, all other  
16 pleadings and papers filed in this case, the  
17 Bankruptcy Appellate Panel for the Ninth Circuit Court  
18 of Appeal's memorandum of decision in Appeal No. CC-  
15-1352-TaLKi, the arguments of counsel on the record,  
and for the reasons set forth in the moving papers and  
as stated on the record, and with good cause shown  
. . . .

19 AP Dkt. No. 280 at 2. It found that Appellants' efforts to  
20 thwart the Trustee's sale of the Property constituted "bad  
21 faith, willful misconduct, vexatious conduct, and abuse of  
22 process." Id. And it imposed \$62,251 in sanctions.

23 Appellants timely appealed the Second Sanctions Order.  
24 Later, the bankruptcy court would enter an amended sanctions  
25 order.

26 **Post-appeal proceedings** To clarify, Appellants appealed  
27 three orders with two notices of appeal: first, the Amended  
28 Sanctions Order and the Amended OSC; second, the Second



1 Sanctions Order. The BAP separated the first notice of appeal  
2 into two appeals: CC-1252 (Amended Sanctions Order); and CC-1284  
3 (Amended OSC). Appellants' appeal of the Second Sanctions Order  
4 became CC-1310. On Appellants' motion, the BAP consolidated  
5 briefing for CC-1284 (Amended OSC) and CC-1310 (Second Sanctions  
6 Order). Because the three appeals stem from the Panel's earlier  
7 decision, we address them jointly.

8 On November 2, 2016, a BAP motions panel issued an order  
9 directing Appellants to provide transcripts of the July 26, 2016  
10 and August 30, 2016 hearings. CC-16-1284, Dkt. No. 6 at 2. On  
11 November 15, 2016, Appellants filed a response stating that they  
12 attempted to obtain the necessary transcripts. Id. Dkt. No. 7.

#### 13 JURISDICTION

14 The bankruptcy court had jurisdiction under 28 U.S.C.  
15 §§ 1334 and 157(b)(2)(A) and (O). We have jurisdiction under  
16 28 U.S.C. § 158.

#### 17 ISSUES

18 Whether the bankruptcy court abused its discretion in  
19 finding Appellants in civil contempt and imposing sanctions.

20 Whether the bankruptcy court abused its discretion in  
21 sanctioning Appellants under its inherent authority.

#### 22 STANDARD OF REVIEW

23 We review an award of sanctions for an abuse of discretion.  
24 Price v. Lehtinen (In re Lehtinen), 564 F.3d 1052, 1061 (9th  
25 Cir. 2009), abrogated on other grounds Gugliuzza v. FTC  
26 (In re Gugliuzza), 852 F.3d 884, 898 (9th Cir. 2017); Knupfer v.  
27 Lindblade (In re Dyer), 322 F.3d 1178, 1191 (9th Cir. 2003);  
28 Rediger Inv. Servs. v. H. Granados Commc'ns, Inc.

1 (In re H Granados Commc'ns, Inc.), 503 B.R. 726, 731 (9th Cir.  
2 BAP 2013).

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

#### 10 DISCUSSION

11 The previous Panel concluded that the Trustee could not  
12 recover the entirety of his fees based solely on a theory of  
13 civil contempt; on remand, the bankruptcy court awarded the  
14 Trustee the entirety of his fees, in part based on civil  
15 contempt and in part based on its inherent authority.

16 **A. CC-16-1252: The bankruptcy court properly recalculated**  
17 **the amount of sanctions.**

18 Under § 105(a), the bankruptcy court may hold a party in  
19 civil contempt and impose compensatory or coercive sanctions.  
20 In re Dyer, 322 F.3d at 1189-90; Renwick v. Bennett  
21 (In re Bennett), 298 F.3d 1059, 1069 (9th Cir. 2002); Walls v.  
22 Wells Fargo Bank, N.A., 276 F.3d 502, 506-07 (9th Cir. 2002);  
23 Nash v. Clark Cnty. Dist. Attorney's Office (In re Nash),  
24 464 B.R. 874, 880 (9th Cir. BAP 2012). To find a party in civil  
25 contempt, the movant must prove "by clear and convincing  
26 evidence that the contemnor[] violated a specific and definite  
27 order of the court." In re Dyer, 322 F.3d at 1190-91. The  
28 bankruptcy court must also find that the contemnor "had

1 sufficient notice of [the order's] terms and the fact that he  
2 would be sanctioned if he did not comply." Hansbrough v.  
3 Birdsell (In re Hercules Enters., Inc.), 387 F.3d 1024, 1028  
4 (9th Cir. 2004). Whether the contemnor violated a court order  
5 is not based on subjective beliefs or intent in complying with  
6 the order, "but [based on] whether in fact [the] conduct  
7 complied with the order at issue." In re Dyer, 322 F.3d at 1191  
8 (citation omitted).

9 We affirmed the bankruptcy court's finding of contempt  
10 based on the Sale Order and remanded so it could calculate the  
11 amount of fees attributable to that contempt. On remand, the  
12 bankruptcy court imposed \$31,174 in sanctions - the amount of  
13 the Trustee's attorneys' fees after entry of the Sale Order.

14 On appeal, Appellants raise a panoply of irrelevant issues.  
15 For instance, they contend that the Trustee is not entitled to  
16 be compensated; but the Panel already determined that  
17 compensatory sanctions were warranted. The only question for  
18 this appeal, then, is whether the bankruptcy court properly  
19 calculated the amount of the sanction. Appellants rightly  
20 observe that the fees must have been incurred after entry of the  
21 Sale Order. Appellants do not, however, identify particular  
22 billing line items that they disagree with; they did not include  
23 the Trustee's billing records in their excerpts of record. The  
24 Trustee did, and the \$31,174 was all incurred after entry of the  
25 Sale Order. Appellants also argue that the Trustee is not  
26 entitled to fees until the appeals are concluded; but Appellants  
27 did not obtain a stay pending appeal.

28 More relevantly, Appellants first argue that many of the

1 Trustee's fees were incurred in opposing Debtor's motion to hold  
2 him in contempt of the discharge injunction. But as the Trustee  
3 points out, this opposition related directly to an attack on the  
4 sale of the property. Appellants indirectly admit as much in  
5 both their opening brief and in the underlying opposition to the  
6 Trustee's request for amended sanctions. In their opening  
7 brief, Appellants argue: the "BC sale order dishonored the  
8 discharge injunction"; and the "resultant sale order dishonors  
9 the discharge injunction as a logical result." Appellants'  
10 Opening Br. at 21, 24; id. at 21-24. In their underlying  
11 opposition, Appellants explained: "Sui's motion to hold Marshack  
12 et al[.] in contempt of the discharge injunction related to the  
13 eviction and not sale of the Property." AP Dkt. No. 247 at 17.  
14 The Sale Order, however, stated: "Neither Yan Sui nor Pei-yu  
15 Yang shall assert any lien, claim, or interest in the Property  
16 in violation of the free and clear provisions of this order."  
17 Debtor's contempt motion, then, was a collateral attack on the  
18 Sale Order. An appropriate compensatory sanction may include  
19 fees incurred in defending against this attack.

20 Second, Appellants argue that the fees were unnecessary  
21 because after June 4, 2015, "Sui/Yang did nothing at BC as to  
22 the sale order." Appellants' Opening Br. at 11. This is not  
23 persuasive; the Sale Order is enforceable beyond actions  
24 docketed with the bankruptcy court: Appellants' actions, even if  
25 not directly arising in the bankruptcy case, can subject them to  
26 contempt and form an appropriate basis for a compensatory  
27 sanction.

28 Third, Appellants also question Dentons US LLP's fees:

1 (1) they contend that the bankruptcy court did not address "the  
2 issue of the duplicative awarding after Dentons was awarded by  
3 DC for such fees[,]” id. at 11; (2) they argue that the Trustee  
4 has no standing to request Dentons’ fees and that Dentons did  
5 not authorize him to request them, id. at 16-17; and (3) they  
6 urge that because Dentons was not involved in the adversary  
7 proceeding, the fees could not have been related to the Sale  
8 Order, id. at 17. These arguments are not convincing.

9 Dentons did not need to participate in the bankruptcy court  
10 proceedings for its work to be in furtherance of the Sale Order.  
11 The Trustee hired Dentons as special litigation counsel; the  
12 Trustee, the representative of the bankruptcy estate responsible  
13 for paying Dentons, could seek compensation for those fees as  
14 part of an appropriate compensatory sanction.

15 Also, although we acknowledge that the Panel’s earlier  
16 decision stated that the bankruptcy court could address on  
17 remand Appellants’ concern about duplicative fees, it is unclear  
18 what the bankruptcy court did in this regard. Appellants did  
19 not provide us a transcript of the relevant hearing on the  
20 matter. But, as the Trustee suggests, the relevant district  
21 court order awarding Dentons’ fees to the Trustee provides that  
22 any payment on it should be applied “as a credit to what is  
23 determined in the Bankruptcy Proceedings to have been a parallel  
24 fee award made in the Bankruptcy Proceedings.” 8:13-cv-01607-  
25 JAK-AJW, (C.D. Cal.) Dkt. No. 184 at 2. We cannot identify any  
26 duplication in payment on this record.

27 Fourth, Appellants contend that the imposed sanctions are  
28 not compensatory but are intended to punish; they also urge that

1 the sanction and contempt order were criminal in nature. They  
2 argue that the sanctions order "is a Joke" because bankruptcy  
3 sanctions "must follow the statute." Appellants' Opening Br.  
4 at 25. The Panel, however, already determined that the Trustee  
5 was entitled to compensatory fees and costs for Appellants'  
6 civil contempt of the Sale Order. On this record, we see no  
7 error; fees were awarded as an appropriate compensatory  
8 sanction.

9 Appellants' remaining arguments stray beyond the scope of  
10 the appeal. They seek to attack the underlying order despite  
11 the "long-standing rule that a contempt proceeding does not open  
12 to reconsideration the legal or factual basis of the order  
13 alleged to have been disobeyed . . . ." United States v.  
14 Rylander, 460 U.S. 752, 756 (1983) (quoting Maggio v. Zeitz,  
15 333 U.S. 56, 69 (1948)).

16 We affirm the Amended Sanctions Order.

17 **B. CC-1284 & CC-1310: The bankruptcy court properly**  
18 **issued the Amended OSC and entered the Second**  
**Sanctions Order.**

19 The Amended OSC directed Appellants to show cause why they  
20 should not be sanctioned under the bankruptcy court's inherent  
21 authority. And bankruptcy courts have inherent authority to  
22 sanction bad faith or willful misconduct. In re Lehtinen,  
23 564 F.3d at 1061; In re Dyer, 322 F.3d at 1196; Caldwell v.  
24 Unified Capital Corp. (In re Rainbow Magazine, Inc.), 77 F.3d  
25 278, 284 (9th Cir. 1996). But, before the bankruptcy court  
26 imposes sanctions under its inherent authority, it must find  
27 "recklessness or bad faith." Barber v. Miller, 146 F.3d 707,  
28 711 (9th Cir. 1998).

1 Appellants' first notice of appeal included the Amended  
2 OSC. But the Amended OSC was not a final, appealable order; it  
3 was an interim step toward further proceedings. See Plata v.  
4 Schwarzenegger, 560 F.3d 976, 980 (9th Cir. 2009) ("We agree  
5 with the Receiver that the October 27 Order is not final, but is  
6 rather an interim step toward further proceedings."). "A civil  
7 contempt order is ordinarily not appealable until the district  
8 court has adjudicated the contempt motion and applied  
9 sanctions." Id. (citing SEC v. Hickey, 322 F.3d 1123, 1127 (9th  
10 Cir. 2003)).

11 And, despite Appellants' host of contentions, the scope of  
12 this appeal is limited. In their opening brief, Appellants  
13 never question or dispute the amount of fees; they thus waived  
14 that issue on appeal. See Padgett v. Wright, 587 F.3d 983, 986  
15 n.2 (9th Cir. 2009) (per curiam) (appellate courts "will not  
16 ordinarily consider matters on appeal that are not specifically  
17 and distinctly raised and argued in appellant's opening brief").

18 Also, the Second Sanctions Order and the amended second  
19 sanctions order both state:

20 After considering the Motion, the notice of Motion,  
21 all pleadings filed in response to the Motion, all  
22 pleadings and papers filed in this case, the  
23 Bankruptcy Appellate Panel for the Ninth Circuit Court  
24 of Appeal's memorandum of decision in Appeal No.  
25 CC-15-1352-TaLKi, the arguments of counsel on the  
26 record, and for the reasons set forth in the moving  
27 papers **and as stated on the record**, and with good  
28 cause shown . . . .

26 AP Dkt. No. 280 at 2; AP Dkt. No. 287 at 2. If a bankruptcy  
27 court makes its findings of facts and conclusions of law on the  
28 record, the appellant must include the transcript as part of the

1 excerpts of record. McCarthy v. Prince (In re McCarthy),  
2 230 B.R. 414, 416-17 (9th Cir. BAP 1999). Here, Appellants did  
3 not do so. Nor can we find a copy of the transcript on the  
4 bankruptcy court's docket. We thus cannot meaningfully review  
5 the substance of the Second Sanctions Order.<sup>7</sup> Ehrenberg v. Cal.  
6 State Univ., Fullerton Found. (In re Beachport Entm't), 396 F.3d  
7 1083, 1087-88 (9th Cir. 2005); Morrissey v. Stuteville  
8 (In re Morrissey), 349 F.3d 1187, 1189 (9th Cir. 2003) (failing  
9 to provide a critical transcript may result in summary  
10 affirmance). To the extent Appellants question the bankruptcy  
11 court's legal reasoning and factual findings, their failure to  
12 provide us with transcripts prevents us from reviewing it, and  
13 we summarily affirm in part.

14 In particular, Appellants contend that the fees have no  
15 legal or factual basis (e.g., the order failed to explicitly  
16 find bad faith, Sui/Yang's acts should not be deemed bad faith).  
17 Putting aside that the order **does** explicitly find bad faith, see  
18 AP Dkt. No. 287 at 2 ("The Sui Litigants' efforts . . .  
19 constitute bad faith . . . ."), we cannot meaningfully review  
20 this argument because Appellants failed to provide us with the  
21 relevant transcript.

22 Appellants also point out some discrepancy between the  
23

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24 <sup>7</sup> The Trustee filed a motion to dismiss or for summary  
25 affirmance because Appellants failed to provide an adequate  
26 record. A BAP motions panel took the matter under advisement  
27 for determination by the merits panel. As discussed below, we  
28 are able to review the Amended OSC and Second Sanctions order in  
part; we thus **grant** the Trustee's motion in part and **deny** it in  
part.



1 Second OSC and the Second Sanctions Order. They do not,  
2 however, argue that the differences mean anything; instead, they  
3 argue that none of the descriptive labels applied to them  
4 (e.g., they have continuously rehashed the same arguments, have  
5 engaged in willful and vexatious conduct, have harassed the  
6 Trustee, have impeded the orderly and expeditious disposition of  
7 the bankruptcy case, etc.) "is supported by fact or law."  
8 Appellants' Opening Br. at 21. They then discuss each point in  
9 depth. But, again, their failure to provide a transcript is  
10 dispositive.

11 On appeal, to the extent we can address arguments without  
12 the need for a transcript, we discern no error.

13 Appellants first contend that the Trustee improperly seeks  
14 to request "those tossed out fees without legal and factual  
15 support. Court provided Marshack opportunity to recalculate the  
16 fees after the date of 6/4/2015. Such providing does not itself  
17 mean that Court opened up a back door for his irrelevant fees."  
18 Appellants' Opening Br. at 7; id. at 6-7. Appellants  
19 misunderstand the Panel's earlier decision: it affirmed  
20 imposition of sanctions for fees incurred after entry of the  
21 Sale Order on June 4, 2015, and vacated the award of fees  
22 incurred before that date but without prejudice to the Trustee's  
23 right to seek them under an alternate sanctions theory. The  
24 Panel thus explicitly authorized the Trustee's renewal of a  
25 request for "those tossed out fees."

26 Next, Appellants argue that the bankruptcy court lacked  
27 jurisdiction over Ms. Yang: she did not file a chapter 7  
28 bankruptcy; she did not file a claim; and the Trustee's first

1 adversary proceeding is invalid. We disagree. As discussed  
2 above, the Trustee commenced two adversary proceedings solely  
3 against Ms. Yang; he obtained orders against Ms. Yang; and at  
4 least one order has been affirmed on appeal. The bankruptcy  
5 court had sufficient jurisdiction to sanction Ms. Yang.

6 Appellants also suggest that their actions are not in bad  
7 faith because some of the bankruptcy court's other orders have  
8 been vacated, thus it "is more than likely that the Property  
9 should not have been sold . . . ." Id. at 30. But the Sale  
10 Order, which the Ninth Circuit recently affirmed, is not the  
11 subject of this appeal.

12 Appellants also repeat arguments from CC-16-1252 that we  
13 have already addressed: the Trustee's standing to seek Dentons'  
14 fees;<sup>8</sup> and the possibility of duplicative fees. And Appellants  
15 further contend that the fees should be "tossed out" for a  
16 variety of non-persuasive reasons.

17 Finally, Appellants argue that the sanction is punitive.  
18 Not so; the sanctions represent the Trustee's attorneys' fees.  
19 They are compensatory as is appropriate in the context of an  
20 inherent authority award of sanctions. See, e.g., Goodyear Tire  
21 & Rubber Co. v. Haeger, 137 S. Ct. 1178 (2017).

22 In sum, Appellants neither dispute the amount of fees nor  
23 provide us with the relevant transcript allowing appropriate  
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25 <sup>8</sup> Appellants move in this appeal to strike Dentons'  
26 joinder to the Trustee's reply brief; they repeat arguments that  
27 we have already addressed and raise new, perplexing assertions  
28 (e.g., "Dentons joinder is . . . . an aggravated robbery on top  
of the existing one."). Dentons has an interest in this appeal;  
we accordingly **deny** Appellants' motion.

1 review of the bankruptcy court's analysis nor assert any  
2 otherwise adequate basis for a determination of error.

3 **CONCLUSION**

4 We AFFIRM.

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