

OCT 10 2017

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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re: ) BAP No. CC-16-1319-LSTa  
 )  
 6 GLORIA DEAN WELLS, ) Bk. No. 2:15-bk-27834-BB  
 )  
 7 Debtors. )  
 )  
 8 MICHAEL GRIFFITH, )  
 )  
 9 Appellant, )  
 )  
 10 v. ) **AMENDED MEMORANDUM\***  
 )  
 11 GLORIA DEAN WELLS, )  
 )  
 12 Appellee. )  
 )

Argued and Submitted on September 29, 2017  
at Pasadena, California

Filed - October 10, 2017

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

Honorable Sheri Bluebond, Chief Bankruptcy Judge, Presiding

Appearances: Appellant Michael Griffith appeared pro se; Barry  
R. Wegman argued for Appellee.

Before: LAFFERTY, SPRAKER, and TAYLOR, Bankruptcy Judges.

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

1 **INTRODUCTION**

2 After an evidentiary hearing to determine the fair market  
3 value of Debtor's residence for purposes of avoiding Appellant  
4 Michael Griffith's judgment lien, the bankruptcy court found that  
5 the residence was worth \$360,000 as of the petition date. On the  
6 basis of that valuation, and after deducting consensual liens and  
7 Debtor's homestead exemption, the court found that Mr. Griffith's  
8 lien impaired Debtor's homestead exemption and entered an order  
9 avoiding the lien. On appeal, Mr. Griffith argues that he was  
10 denied due process and challenges the bankruptcy court's  
11 valuation finding. Having thoroughly reviewed the record, we  
12 find no denial of due process or clear error in the bankruptcy  
13 court's valuation finding. Accordingly, we AFFIRM.

14 **FACTS**

15 Debtor Gloria Dean Wells filed her chapter 7<sup>1</sup> petition on  
16 November 20, 2015. On Schedule A, Debtor listed her residence on  
17 Cherrywood Avenue in Los Angeles (the "Property") with a value of  
18 \$325,000. On Schedule D, Debtor listed a consensual lien in  
19 favor of Chase Bank in the amount of \$250,313.99. And on  
20 Schedule C, Debtor claimed a homestead exemption of \$175,000  
21 under Cal. Civ. Proc. Code § 704.730(a)(3).

22 About a month later, Debtor filed a motion under  
23 § 522(f)(1)(A) (the "Motion") to avoid Mr. Griffith's judgment  
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26 <sup>1</sup>Unless specified otherwise, all chapter and section  
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all  
28 "Rule" references are to the Federal Rules of Bankruptcy  
Procedure, and all "Civil Rule" references are to the Federal  
Rules of Civil Procedure.

1 lien in the amount of \$40,527.14.<sup>2</sup> Debtor's declaration in  
2 support of the Motion contained a calculation showing that  
3 deducting the consensual lien and homestead exemption from the  
4 fair market value of \$325,000 left no available non-exempt equity  
5 to secure Mr. Griffith's judgment lien. As evidence of value,  
6 Debtor attached to her motion the declaration of appraiser Todd  
7 Turner, which authenticated a May 26, 2015 appraisal establishing  
8 a fair market value of \$325,000.

9 Mr. Griffith filed an opposition, arguing that the May 26  
10 appraisal was outdated and requesting that a "third party  
11 appraisal" be performed before the court ruled on the motion.  
12 Mr. Griffith attached to his opposition a comparative market  
13 analysis dated January 7, 2016, which estimated the value of the  
14 Property at between \$617,000 and \$645,000.

15 At the initial hearing, the bankruptcy court, after noting  
16 that Mr. Griffith had initially been served at the wrong address,  
17 gave him additional time to hire an appraiser to value the  
18 Property. The court continued the matter for a status  
19 conference. Mr. Griffith thereafter filed a declaration and an  
20 appraisal performed by Lawrence Walsh dated April 13, 2016, which  
21 reflected a fair market value of \$505,000. At the subsequent  
22 status conference, the bankruptcy court pointed out to the  
23 parties that neither's appraisal was adequate for the court to  
24 determine the fair market value of the Property as of the  
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26 <sup>2</sup>Debtor filed three additional motions to avoid judgment  
27 liens against her residence. None of those lienholders objected  
28 to the requested relief, and the court entered orders avoiding  
those liens.

1 petition date of November 20, 2015. The court continued the  
2 matter again to give the parties time either to hire an agreed-  
3 upon independent appraiser or to have their respective appraisers  
4 adjust their numbers to reflect the value as of the petition  
5 date.

6 Thereafter, Debtor filed a new declaration from Mr. Turner  
7 and a new appraisal as of the petition date, which opined that  
8 the Property's value as of that date was \$360,000. Mr. Griffith  
9 also filed an updated appraisal, supported by Mr. Walsh's  
10 declaration, reflecting a petition date value of \$470,000.

11 The bankruptcy court set an evidentiary hearing. At that  
12 hearing, both appraisers testified as to their credentials and  
13 methodology and were examined by Debtor's counsel, Mr. Griffith,  
14 and the court. Both appraisers testified that the Property  
15 needed repairs as a result of deferred maintenance. The  
16 difference in their respective appraisals appeared to be  
17 primarily due to differences in the deductions made for that  
18 deferred maintenance. Mr. Turner concluded, based upon a May  
19 2015 inspection, that the Property was in "fair to poor"  
20 condition and estimated a cost of \$50,000-\$100,000 for needed  
21 repairs. Mr. Walsh, on the other hand, based on an inspection  
22 performed on June 23, 2016, concluded that the Property was in  
23 average to fair condition and estimated costs to repair totaling  
24 \$8,000. Mr. Walsh testified that he did not see all of the  
25 damage noted by Mr. Turner and displayed in the color photographs  
26 included in Mr. Turner's appraisal: termite damage, dry rot,  
27 holes in the ceiling, damage to the kitchen, and leaking pipes.

28 At the conclusion of testimony, the bankruptcy court found

1 that the evidentiary record was sufficient to support  
2 Mr. Turner's appraisal and that the Property was worth \$360,000  
3 as of the petition date. On the basis of that value, the  
4 bankruptcy court concluded that it was appropriate to avoid  
5 Mr. Griffith's judicial lien against the Property as impairing  
6 Debtor's homestead exemption.

7 Mr. Griffith timely appealed.

#### 8 **JURISDICTION**

9 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
10 §§ 1334 and 157(b) (2) (K). We have jurisdiction under 28 U.S.C.  
11 § 158.

#### 12 **ISSUES**

13 Whether the bankruptcy court denied Mr. Griffith due  
14 process.

15 Whether the bankruptcy court erred in granting Debtor's  
16 motion to avoid Mr. Griffith's judgment lien under  
17 § 522(f) (1) (A).

#### 18 **STANDARDS OF REVIEW**

19 Whether an appellant's due process rights were violated is a  
20 question of law that we review de novo. DeLuca v. Seare  
21 (In re Seare), 515 B.R. 599, 615 (9th Cir. BAP 2014); see HSBC  
22 Bank USA, Nat'l Ass'n v. Blendheim (In re Blendheim), 803 F.3d  
23 477, 497 (9th Cir. 2015) ("Whether adequate notice has been given  
24 for the purposes of due process is a mixed question of law and  
25 fact that we review de novo.").

26 A fair market value determination is a finding of fact that  
27 we review for clear error. Arnold & Baker Farms v. United States  
28 (In re Arnold & Baker Farms), 85 F.3d 1415, 1421 (9th Cir. 1996).

1 A factual finding is clearly erroneous only if it is illogical,  
2 implausible or without support in the record. Retz v. Samson  
3 (In re Retz), 606 F.3d 1189, 1196 (9th Cir. 2010). Where there  
4 are two permissible views of the evidence, the factfinder's  
5 choice between them cannot be clearly erroneous. Anderson v.  
6 City of Bessemer City, N.C., 470 U.S. 564, 574 (1985).

#### 7 **DISCUSSION**

8 Mr. Griffith argues that (i) the bankruptcy court should  
9 have dismissed Debtor's case for failure to serve notice of the  
10 commencement of the case on Mr. Griffith at his correct address;  
11 (ii) the court should have denied Debtor's Motion for the same  
12 reason; (iii) the court should have denied the Motion because  
13 Debtor's appraisal was outdated; (iv) the court erred in not  
14 permitting Debtor to present evidence showing that property  
15 values in the relevant neighborhood were increasing; and (v) the  
16 court erred in "allowing" a \$125,000 adjustment to the value of  
17 the Property for costs of rehabilitation.

18 We make reasonable allowance for pro se litigants and  
19 construe their papers liberally. Ozenne v. Bendon  
20 (In re Ozenne), 337 B.R. 214, 218 (9th Cir. BAP 2006). At the  
21 same time, we do not ordinarily consider arguments not raised in  
22 the trial court sufficiently for the court to have ruled on it.  
23 O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d  
24 955, 957 (9th Cir. 1989). In balancing these principles, we  
25 interpret Mr. Griffith's arguments as falling into two categories  
26 and will address both of them: first, that Mr. Griffith was  
27 denied due process; and second, that the bankruptcy court clearly  
28 erred in finding that the Property was worth \$360,000.

1 **A. The bankruptcy court did not deny Mr. Griffith due process.**

2 Generally speaking, a party must receive sufficient notice  
3 of any potentially adverse action and the opportunity to be  
4 heard. See Tennant v. Rojas (In re Tennant), 318 B.R. 860, 870  
5 (9th Cir. BAP 2004). Here, although the Motion and supporting  
6 documents were initially served on Mr. Griffith at an incorrect  
7 address, Mr. Griffith learned of the bankruptcy filing and  
8 Debtor's Motion, filed an opposition to the Motion, and  
9 thereafter actively participated in the proceedings. The record  
10 does not reflect that he ever raised inadequate notice as a  
11 ground for either dismissal of the bankruptcy case or denial of  
12 the Motion.

13 **1. Improper notice of bankruptcy filing**

14 Mr. Griffith argues that the bankruptcy court should have  
15 dismissed Debtor's bankruptcy case because Debtor had listed the  
16 wrong address for Mr. Griffith on the master mailing matrix.<sup>3</sup>  
17 Mr. Griffith alleges that because of this error, he was not  
18 notified timely of the § 341 meeting of creditors or the  
19 pertinent deadlines and was thus "unable to exercise his  
20 fundamental rights in regard to deadlines, timing to seek legal  
21 advice, raise objections and . . . obtain competent counsel."  
22 Mr. Griffith states that he learned of the bankruptcy filing in  
23 early January 2016.

24 The only matter before us in this appeal is the bankruptcy  
25 court's ruling on Debtor's Motion. As noted, Mr. Griffith did  
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27 <sup>3</sup>As pointed out by Debtor, the address used for service on  
28 Mr. Griffith was the address listed on the abstract of judgment.

1 not seek relief in the bankruptcy court on grounds of inadequate  
2 notice of the bankruptcy case. If Mr. Griffith believed he was  
3 prejudiced by the lack of this notice, he should have raised the  
4 issue before the bankruptcy court. Because he failed to do so,  
5 we cannot consider this due process argument on appeal.<sup>4</sup>

## 6 **2. Improper notice of the Motion**

7 Mr. Griffith also argues that because the Motion was  
8 initially served at an incorrect address the bankruptcy court  
9 should have denied it; he contends that the bankruptcy court  
10 lacked personal jurisdiction over him. Again, Mr. Griffith did  
11 not raise this issue in the bankruptcy court, and a general  
12 appearance or responsive pleading that fails to dispute personal  
13 jurisdiction waives any defect in service. Benny v. Pipes,  
14 799 F.2d 489, 492 (9th Cir. 1986), opinion amended, 807 F.2d 1514  
15 (9th Cir. 1987) (citing Civil Rule 12(h), applicable in  
16 bankruptcy via Rule 7012). A defendant may also waive the  
17 defense as a result of his course of conduct during litigation.  
18 Peterson v. Highland Music, Inc., 140 F.3d 1313, 1318 (9th Cir.  
19 1998). Here, Mr. Griffith filed an opposition and appeared and  
20 participated in all of the hearings on the Motion without raising  
21 the issue of personal jurisdiction; he thus waived the issue.

22 As for due process generally, at the initial hearing, the  
23 bankruptcy court acknowledged that Mr. Griffith had not been  
24 served at the correct address and continued the hearing to give  
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26 <sup>4</sup>Mr. Griffith's reply brief in this appeal focuses almost  
27 entirely on an argument that Debtor filed her bankruptcy in bad  
28 faith, an issue that was never raised before the bankruptcy  
court.

1 him time to hire an appraiser. The court continued the hearing  
2 two more times to permit the parties to obtain appropriately  
3 dated appraisals, after which the court scheduled an evidentiary  
4 hearing. At that hearing, Mr. Griffith presented evidence and  
5 examined the witnesses. Accordingly, even if we consider the  
6 merits of his relevant due process argument, we cannot conclude  
7 that Mr. Griffith was deprived of a meaningful opportunity to be  
8 heard on the issues relating to the Motion; he was not denied due  
9 process or otherwise prejudiced by any error in service. See  
10 Matthews v. Eldridge, 424 U.S. 319, 333 (1976) (fundamental  
11 requirement of due process is the opportunity to be heard at a  
12 meaningful time and in a meaningful manner).

13 **B. The bankruptcy court did not clearly err in finding that**  
14 **Debtor's Property was worth \$360,000 and consequently**  
**granting the Motion.**

15 **1. The bankruptcy court did not abuse its discretion in**  
16 **not denying the Motion due to Debtor's submission of an**  
**outdated appraisal.**

17 At the initial status conference on the Motion, the court  
18 set a deadline for Mr. Griffith to file an appraisal of the  
19 Property and a further status conference. Mr. Griffith was  
20 unable to meet the deadline, and two days before it expired, he  
21 moved to extend it. He filed his appraisal a few days before the  
22 continued status conference, and, at that hearing, the bankruptcy  
23 court stated that it intended to continue the hearing to give the  
24 court and Debtor's counsel time to review the late-filed  
25 appraisal. And noting that neither Debtor's nor Mr. Griffith's  
26 appraisal was dated as of the petition date, the court instructed  
27 both parties to obtain appraisals as of that date with the hope  
28 that the appraisers or the parties could reach an agreement on

1 value. The court then commented: "But as we sit here today, I  
2 don't have a number from either party as of the operative date.  
3 So . . . burden of proof is on the debtor[.] [A]s the . . .  
4 evidentiary record is now, debtor loses because I don't know what  
5 the value was as of November 20."

6 Mr. Griffith agreed to the continuance without objection.  
7 On appeal, however, Mr. Griffith argues that the bankruptcy court  
8 abused its discretion in failing to deny the Motion based on  
9 Debtor's submission of an outdated appraisal. Again, we need not  
10 consider arguments not raised in the trial court. In any event,  
11 the decision to continue the matter was within the sound  
12 discretion of the bankruptcy court. See Khachikyan v. Hahn  
13 (In re Khachikyan), 335 B.R. 121, 125 (9th Cir. BAP 2005)  
14 (decisions regarding continuances are reviewed for abuse of  
15 discretion). Mr. Griffith has not persuaded us that the court  
16 abused this discretion.

17 **2. The bankruptcy court did not err in denying**  
18 **Mr. Griffith's request to present exhibits to establish**  
19 **that Debtor's appraiser relied on comparable properties**  
20 **outside the relevant area.**

21 Mr. Griffith argues that the bankruptcy court erred by  
22 denying him the opportunity to present certain exhibits at the  
23 evidentiary hearing. Mr. Griffith contends that the exhibits  
24 showed that property values in the Leimert Park neighborhood,  
25 where the Property was located, were increasing but that Turner's  
26 appraisal had used one comparable property outside that  
27 neighborhood in determining the value of the Property.

28 At the beginning of the evidentiary hearing, Mr. Griffith  
asked the court for time to "finish up a few exhibits." The

1 court refused Mr. Griffith's request, noting that the only  
2 exhibits that were to be presented were the appraisals. The  
3 court had so stated in its tentative ruling for the June 29  
4 status conference, and Mr. Griffith had not objected or asked to  
5 present additional evidence. Later, the court permitted  
6 Mr. Griffith to recall Mr. Walsh to the witness stand to ask  
7 about the locations of the comparable properties selected by  
8 Mr. Turner in his appraisal. Mr. Walsh initially testified that  
9 Mr. Turner's appraisal included two comparable properties that  
10 were in "inferior" neighborhoods. Further questioning, however,  
11 revealed that Mr. Walsh's statement referred to Mr. Turner's  
12 initial appraisal rather than the second appraisal dated  
13 November 20, 2015. As to the latter appraisal, Mr. Walsh  
14 testified that all of the comparables used by Mr. Walsh were  
15 located in the Leimert Park neighborhood.

16 On appeal, Mr. Griffith contends that during Mr. Walsh's  
17 testimony, when the court asked Mr. Walsh whether any of the  
18 comparables in Mr. Turner's second appraisal were outside the  
19 Leimert Park area, the court had covered with her thumb the  
20 comparable property that was 1.4 miles outside of the Leimert  
21 Park neighborhood. The record does not reflect anything to  
22 support Mr. Griffith's assertion, but even if this statement is  
23 accurate, Mr. Griffith did not object at the hearing. Moreover,  
24 after Mr. Walsh stepped down from the witness stand, the court  
25 recalled Mr. Turner for voir dire as to his opinion regarding  
26 market appreciation in the relevant area. Mr. Turner testified  
27 that while examination of a wide range of comparables in the  
28 Leimert Park neighborhood might show appreciation due to

1 investors "flipping" some of the homes, overall he believed that  
2 the market for homes comparable to the Property was generally  
3 stable during the relevant period.

4 To the extent Mr. Griffith's argument is that the bankruptcy  
5 court clearly erred in accepting Mr. Turner's valuation of the  
6 Property, Mr. Griffith has not demonstrated that the bankruptcy  
7 court's valuation finding is illogical, implausible, or without  
8 support in the record. To the contrary, Mr. Turner's appraisal  
9 and his explanations for how he reached his conclusions were  
10 logical and plausible. Under these circumstances, we cannot  
11 reverse the bankruptcy court's factual finding even if we would  
12 have decided the matter differently. See United States v.  
13 Hinkson, 585 F.3d 1247, 1261 (9th Cir. 2009) (en banc) ("[T]he  
14 scope of our review limits us to determining whether the trial  
15 court reached a decision that falls within any of the permissible  
16 choices the court could have made.").

17 **3. The bankruptcy court did not err in accepting**  
18 **Mr. Turner's adjustment to the Property's value.**

19 Mr. Griffith argues that Mr. Turner's \$125,000 deduction  
20 from the market value of the Property for deferred maintenance  
21 was excessive. We do not find this argument persuasive. First,  
22 the \$125,000 deduction was not entirely for deferred maintenance:  
23 Mr. Turner testified that he had taken a deduction for repairs,  
24 but he also took into account the quality of construction,  
25 styling, and details of the comparable properties in arriving at  
26 his final figure. And second, as discussed above, we are not at  
27 liberty to second guess the bankruptcy court's factual findings  
28 unless they are illogical, implausible, or without support in the

1 record. Mr. Turner's valuation is supported by the evidence, and  
2 Mr. Griffith has not convinced us that it was illogical or  
3 implausible. Accordingly, we find no error in the bankruptcy  
4 court's acceptance of Mr. Turner's opinion of value.

5 **CONCLUSION**

6 For the reasons discussed above, we AFFIRM.

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