

MAR 13 2018

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NOT FOR PUBLICATION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

5	In re:	)	BAP No.	CC-17-1171-FSTa
		)		CC-17-1172-FSTa
6	SHELLIE MELISSA HALPER,	)		(Related)
)		
7	Debtor.	)	Bk. No.	1:09-bk-23807-GM
)		
8	_____)		
)		
9	SHELLIE MELISSA HALPER,	)	Adv. No.	1:11-ap-01319-GM
)		
10	Appellant,)		
)		
11	v.)		
)		
12	TWIN PALMS LENDING GROUP, LLC,)		
)		
13	Appellee.)		
)		
14	_____)		
)		
15	SHELLIE MELISSA HALPER,	)	Adv. Pro.	1:11-ap-01317-GM
)		
16	Appellant,)		
)		
17	v.	)	MEMORANDUM*	
)		
18	SOLOMON M. COHEN,)		
)		
19	Appellee.)		
)		

Argued and Submitted on February 22, 2018
at Pasadena, California

Filed - March 13, 2018

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

Honorable Geraldine Mund, Bankruptcy Judge, Presiding

* 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 Appearances: Michael D. Franco argued for appellant Shellie
2 Melissa Halper; Allan D. Sarver argued for
appellees Twin Palms Lending Group, LLC and
3 Solomon M. Cohen.

4 Before: FARIS, SPRAKER, and TAYLOR, Bankruptcy Judges.
5

6 **INTRODUCTION**

7 Chapter 7¹ debtor Shellie Melissa Halper refused to sit for
8 her deposition in two related adversary proceedings for over five
9 years, first invoking her Fifth Amendment privilege against self-
10 incrimination, then citing a family illness, then claiming her
11 own illness, and finally reasserting her (by then inapplicable)
12 Fifth Amendment privilege. Appellees Twin Palms Lending Group,
13 LLC ("Twin Palms") and Solomon M. Cohen (collectively, "Lenders")
14 sought terminating sanctions for her discovery abuses. The
15 bankruptcy court gave her a final chance to comply, ordering her
16 to pay \$40,000 (a portion of her adversaries' attorneys' fees)
17 and appear for her deposition. When she failed to comply, the
18 bankruptcy court granted default judgment in favor of Twin Palms
19 and Mr. Cohen and awarded them nondischargeable judgments of
20 \$2.38 million and \$9.44 million, respectively.

21 On appeal, Ms. Halper argues that the bankruptcy court erred
22 in granting the Lenders default judgment. We AFFIRM.
23
24

25
26 ¹ Unless specified otherwise, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all
"Rule" references are to the Federal Rules of Bankruptcy
28 Procedure, and all "Civil Rule" references are to the Federal
Rules of Civil Procedure.

1 **FACTUAL BACKGROUND²**

2 **A. Prepetition events**

3 In or around 2007, Ms. Halper and her business partner
4 Ronald Stover, through various entities, solicited loans from
5 dozens of lenders allegedly to fund the purchase and development
6 of real property located in Mexico (the "Mexico Investment").
7 Two of those lenders were Mr. Cohen and Twin Palms.

8 Mr. Cohen alleged that, beginning in February 2007, he made
9 a total of ten loans to Ms. Halper totaling \$2.9 million.
10 Initially, the loans were intended to fund the Mexico Investment.
11 In the summer of 2007, Ms. Halper and Mr. Stover told Mr. Cohen
12 that they needed money to fund litigation against Larry Flynt
13 (the "Flynt Litigation"), the settlement of which was expected to
14 generate over \$15 million. Mr. Cohen agreed to release the
15 collateral securing some of the loans, extend the maturity date
16 on some of the loans, and lend additional funds, based on the
17 representation that Ms. Halper and Mr. Stover would repay him in
18 full out of the settlement funds received in the Flynt
19 Litigation. Ms. Halper further represented that they would
20 record a replacement mortgage on the Mexico property in favor of
21 Mr. Cohen. But despite settlement of the Flynt Litigation in
22 January 2009, Ms. Halper never repaid Mr. Cohen or recorded a
23 replacement mortgage.

24 Twin Palms similarly alleged that Ms. Halper and Mr. Stover
25

26 ² We exercise our discretion to review the documents on the
27 bankruptcy court's electronic docket, as appropriate. See Woods
28 & Erickson, LLP v. Leonard (In re AVI, Inc.), 389 B.R. 721, 725
n.2 (9th Cir. BAP 2008).

1 solicited three loans from Twin Palms totaling \$455,000 for the
2 Mexico Investment. When Ms. Halper defaulted on the loans and
3 subsequent loan modification agreements, she told Twin Palms that
4 she would receive fifty percent of the settlement proceeds of the
5 Flynt Litigation and would use that money to repay Twin Palms.
6 To date, Ms. Halper has not followed through on her promise.

7 **B. The bankruptcy case and adversary proceedings**

8 On October 19, 2009, Ms. Halper filed her chapter 11
9 bankruptcy petition, which was later converted to chapter 7.

10 Mr. Cohen and Twin Palms filed their respective adversary
11 proceedings against Ms. Halper in April 2011. The Lenders each
12 alleged that Ms. Halper had fraudulently induced them to loan
13 money for the Mexico Investment. Mr. Cohen alleged that he had
14 been damaged in the amount of \$6.2 million plus punitive damages,
15 attorneys' fees, and costs, and Twin Palms sought damages
16 totaling \$455,000 plus interest, penalties, punitive damages,
17 attorneys' fees, and costs. The Lenders requested a
18 determination that the debts were nondischargeable under
19 § 523(a)(2)(A).

20 **C. The Fifth Amendment stay and other delays**

21 On September 28, 2011, Ms. Halper filed a motion to stay the
22 adversary proceedings, citing her Fifth Amendment privilege
23 against self-incrimination. She alleged that she recently
24 discovered that the Federal Bureau of Investigation and the U.S.
25 Attorney's Office were investigating her for possible criminal
26 activity relating to the alleged fraud and that her counsel
27 advised her to assert her Fifth Amendment rights in anticipation
28 of an impending indictment.

1 The Lenders did not oppose the stay motion and entered into
2 a stipulation with Ms. Halper to stay the adversary proceedings
3 for one year. The bankruptcy court entered an order granting the
4 stay motion and setting a status conference one year out.

5 Over the next three years, the parties requested six
6 continuances for various reasons including Ms. Halper's continued
7 assertion of her Fifth Amendment privilege and the pending
8 resolution of the state court claims against Mr. Stover.

9 By May 2015, the Lenders wanted to move forward with
10 discovery. In their joint status report, the Lenders stated:
11 "The matter is ready to proceed. There is no pending
12 investigation by the FBI. Plaintiff obtained a \$23 million fraud
13 judgment against Defendant's partner. Case is ready to move
14 forward." In contrast, Ms. Halper contended: "Defense counsel is
15 unaware of any determination by the FBI that there is no pending
16 investigation. . . . This case is not ready to move forward as
17 the Defendant still has her 5th Amendment rights against self
18 incrimination to protect."

19 Following a hearing in May, the bankruptcy court terminated
20 the stay of the adversary proceedings because the statute of
21 limitations on the supposed criminal charges had run. It
22 ordered that the parties "may recommence litigation in the
23 Adversary Proceeding, and discovery may immediately proceed[.]"

24 The bankruptcy court held another hearing in June to reset
25 Ms. Halper's deposition. The Lenders' counsel represented that
26 he had contacted the U.S. Attorney's Office, which informed him
27 that "there was no formal proceeding ever pursued by the federal
28 prosecutor." Counsel argued (and the bankruptcy court agreed)

1 that the statute of limitations on any claims against Ms. Halper
2 had run. The bankruptcy court told Ms. Halper's counsel that she
3 would have to show a good-faith basis for further assertion of
4 the Fifth Amendment protections. The bankruptcy court continued
5 the status conference, and the parties represented that
6 Ms. Halper's deposition was scheduled for August 20, 2015.

7 The Lenders noticed Ms. Halper's deposition and propounded
8 interrogatories, requests for admissions, and requests for
9 production of documents. But shortly before her deposition,
10 Ms. Halper retained new counsel and requested an extension of
11 time to respond to the discovery requests. The parties
12 stipulated to continue her deposition until September and then
13 October. Ms. Halper, however, delayed in producing documents, so
14 the parties agreed to continue her deposition until January 2016.

15 The parties continued the deposition again until March due
16 to developments in the main bankruptcy case. However, shortly
17 before the deposition, Mr. Cohen fell ill, so the parties agreed
18 to another continuance.

19 Thereafter, the parties could not agree on a deposition
20 date. At a status conference in April, the bankruptcy court
21 ordered Ms. Halper's deposition to take place in May.

22 A week before the scheduled deposition, Ms. Halper's counsel
23 informed the Lenders' counsel that Ms. Halper would not attend
24 the deposition because she had to care for her father following
25 eye surgery. The parties agreed to reschedule the deposition for
26 June.

27 Two days prior to the June deposition, Ms. Halper's counsel
28 stated that Ms. Halper would again not attend her deposition

1 because she underwent surgery and was unable to participate in
2 "stressful activity" for at least two months. The Lenders agreed
3 to continue the deposition to September. The stipulation for the
4 continuance provided that the Lenders reserved their rights to
5 seek sanctions against Ms. Halper for discovery abuses and
6 refusal to sit for her deposition.

7 An hour before the scheduled start of Ms. Halper's
8 deposition in September, her counsel e-mailed the Lenders'
9 counsel, informing them that she would not appear. In the email,
10 Ms. Halper's counsel wrote that, in a telephone conversation the
11 preceding day, the Lenders' counsel had said that he intended to
12 prove that Ms. Halper "stole" millions of dollars. Interpreting
13 this as a threat of criminal prosecution (even though it was made
14 by counsel for private parties, not a prosecutor), Ms. Halper's
15 counsel claimed that she wanted additional criminal
16 representation and would invoke her Fifth Amendment privilege
17 against self-incrimination.

18 **D. The Lenders' motion for an order to show cause**

19 The Lenders responded to this last-minute derailment of the
20 deposition schedule with motions for an order to show cause why
21 Ms. Halper should not be held in contempt for her repeated
22 failure to sit for her deposition ("OSC Motion"). They requested
23 terminating sanctions under Civil Rule 37 and argued that "there
24 is no indication that the Defendant will ever appear for
25 deposition" They contended that terminating sanctions
26 were warranted under the Ninth Circuit's five-part test because:
27 (1) the matter should have been resolved expeditiously but had
28 dragged on for over five years; (2) Ms. Halper's tactics to

1 "delay, obstruct and obfuscate" had increased the time necessary
2 for the court to manage its docket; (3) the Lenders had been
3 prejudiced by their inability to go to trial and the legal costs
4 arising from the delay; (4) public policy favoring disposition on
5 the merits did not outweigh Ms. Halper's bad faith and willful
6 conduct; and (5) lesser sanctions were not appropriate because
7 they would not be effective in compelling Ms. Halper's
8 cooperation, as shown by her disregard for the court's previous
9 warnings. In the alternative, the Lenders requested monetary
10 sanctions but maintained that monetary sanctions alone would be
11 insufficient to compel Ms. Halper's compliance. They represented
12 that they had incurred a combined total of over \$87,000 in
13 attorneys' fees and costs attempting to compel Ms. Halper's
14 deposition.

15 Ms. Halper opposed the OSC Motion. She argued that there
16 were extenuating circumstances that caused her to decline to
17 appear on the most recently scheduled deposition date - namely,
18 her discovery that the Lenders would question her regarding
19 "certain alleged transfers of money" that "would go beyond the
20 issues that can be adjudicated within this adversary proceeding,
21 and extend into criminal law issues to be used to pursue criminal
22 liability against the Defendant." She stated that she wanted to
23 consult a criminal defense attorney and asked for a reasonable
24 continuance.

25 The court granted the OSC Motion and issued an order to show
26 cause ("OSC") why Ms. Halper should not be held in contempt for
27 her failure to attend her deposition and "all the asserted bad
28 faith delay tactics described in the Motion and failure to comply

1 with Court orders[.]” In response to the OSC, Ms. Halper
2 submitted a declaration in which her criminal defense counsel
3 attested that, because “a claim was made by counsel for the
4 moving party that he believes Ms. Halper was engaged in criminal
5 wrong-doing,” Ms. Halper had good cause to not appear for her
6 deposition in order to protect her Fifth Amendment rights.

7 The bankruptcy court held a hearing on the OSC on
8 December 6, 2016. The bankruptcy court indicated that it
9 disapproved of Ms. Halper’s “abusive” conduct but was not quite
10 ready to issue terminating sanctions. Instead, it required
11 Ms. Halper to pay monetary sanctions and to sit her for
12 deposition on January 31, 2017. The court thought that
13 “substantial monetary sanctions are worthwhile.” Although the
14 Lenders’ counsel contended that the Lenders had incurred over
15 \$100,000 in attorneys’ fees in connection with Ms. Halper’s
16 deposition, the court ordered Ms. Halper to pay the Lenders
17 \$40,000 in \$10,000 increments. The court told the parties to
18 agree to a payment plan, but the parties were unable to do so.
19 The Lenders’ counsel wanted payments every two weeks and
20 represented that Ms. Halper wanted to pay \$10,000 on December 20
21 and January 13, with a final \$20,000 payment on February 6.
22 Ms. Halper then stated that she did not have the means to pay
23 \$40,000 and offered to pay \$10,000 within 30 days. Ms. Halper
24 also informed the court that she would have to “figure this out”
25 and “liquidate something.” The court considered the Lenders’
26 desire to secure the money prior to the January 31 deposition and
27 ordered payments on December 20, January 13, January 27, but
28 extended the final payment to February 24 to afford Ms. Halper

1 additional time.

2 On December 19, the bankruptcy court entered its order
3 finding Ms. Halper in contempt of court ("Contempt Order"). The
4 court ordered monetary sanctions and ordered Ms. Halper to appear
5 for her deposition. It additionally stated:

6 If Debtor/Defendant fails to comply with any of the
7 above terms of this Order, then the Plaintiff's counsel
8 shall submit a Declaration attesting to the fact that
9 the Debtor/Defendant failed to comply with a provision
10 of this Order, and lodge an Order providing for entry
11 of terminating sanctions (which will be issued by this
12 Court against the Debtor/Defendant), which will include
13 the Court striking the Debtor/Defendant's Answer in the
14 above-captioned Adversary Proceeding and entering a
15 Default Judgment against the Debtor/Defendant.

16 The bankruptcy court continued the hearing on the OSC to follow
17 up on Ms. Halper's compliance.

18 Ms. Halper failed to comply with the Contempt Order. The
19 Lenders' counsel filed a declaration that Ms. Halper did not make
20 the second installment payment on January 13. On January 30, the
21 court entered an order finding her in contempt and awarding
22 sanctions. The court: (1) struck Ms. Halper's answer;
23 (2) directed the clerk of court to enter default against
24 Ms. Halper in the adversary proceedings under Civil Rule 55(a)
25 and Rule 7055; and (3) stated that the Lenders are entitled to
26 default judgment and directed them to file evidence in support of
27 damages.

28 The bankruptcy court entered default against Ms. Halper on
February 23, 2017.

E. The Lenders' Motion for Default Judgment

The Lenders moved for default judgment ("Motion for Default
Judgment"). They argued that, by virtue of the default, the

1 allegations in the adversary complaints were deemed admitted.
2 They also offered declarations which they argued proved the
3 elements of § 523(a)(2)(A): (1) Ms. Halper had made numerous
4 false representations regarding the loans and the Mexico
5 Investment to induce the Lenders to lend money; (2) Ms. Halper
6 made the representations with an intent to deceive the Lenders;
7 (3) Ms. Halper knew that the representations were false because
8 she had no intention to pay back the loans from the sources she
9 described and did not use any of the Flynt Litigation settlement
10 to repay the loans or record any new mortgage as promised to
11 Mr. Cohen; (4) the Lenders justifiably relied on Ms. Halper's
12 representations because she held herself out as a licensed real
13 estate professional and made numerous representations that she
14 would repay them; and (5) the Lenders sustained damages.

15 The bankruptcy court held a hearing on the Motion for
16 Default Judgment. Ms. Halper had not filed any written response
17 to the motion but orally requested additional time to pay off the
18 outstanding sanctions award. The court informed her that her
19 efforts were "too little, too late."

20 On May 30, 2017, the bankruptcy court entered default
21 judgment against Ms. Halper in the two adversary proceedings
22 ("Default Judgment"). It awarded Mr. Cohen damages totaling
23 \$9,558,241.06. Similarly, it awarded Twin Palms damages totaling
24 \$2,385,950.29. It held that the awards were nondischargeable
25 under § 523(a)(2)(A).

26 Ms. Halper timely appealed the Default Judgment.

27 **JURISDICTION**

28 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.

1 §§ 1334 and 157(b) (1) and (2) (I). We have jurisdiction under
2 28 U.S.C. § 158.

3 **ISSUE**

4 Whether the bankruptcy court erred in entering the Default
5 Judgment against Ms. Halper.

6 **STANDARD OF REVIEW**

7 "A terminating sanction, whether default judgment against a
8 defendant or dismissal of a plaintiff's action, is very severe.
9 We review discovery sanctions for abuse of discretion." Conn.
10 Gen. Life Ins. Co. v. New Images of Beverly Hills, 482 F.3d 1091,
11 1096 (9th Cir. 2007) (citing Jorgensen v. Cassidy, 320 F.3d 906,
12 912 (9th Cir. 2003)); see Ferm v. U.S. Tr. (In re Crowe),
13 243 B.R. 43, 47 (9th Cir. BAP), aff'd, 246 F.3d 673 (9th Cir.
14 2000) ("We will uphold the granting of a default judgment unless
15 there was an abuse of discretion.").

16 To determine whether the bankruptcy court has abused its
17 discretion, we conduct a two-step inquiry: (1) we review de novo
18 whether the bankruptcy court "identified the correct legal rule
19 to apply to the relief requested" and (2) if it did, whether the
20 bankruptcy court's application of the legal standard was
21 illogical, implausible, or without support in inferences that may
22 be drawn from the facts in the record. United States v. Hinkson,
23 585 F.3d 1247, 1262-63 & n.21 (9th Cir. 2009) (en banc).

24 **DISCUSSION**

25 **A. The bankruptcy court did not err in granting the Default**
26 **Judgment without an evidentiary hearing.**

27 Ms. Halper argues that the bankruptcy court erred when it
28 granted Default Judgment, because the court should have held an

1 evidentiary hearing regarding her intent. We reject this
2 argument for multiple reasons.

3 First, she never raised this issue before the bankruptcy
4 court or requested an evidentiary hearing. We have stated that,
5 “[o]rdinarily, federal appellate courts will not consider issues
6 not properly raised in the trial courts. . . . An issue only is
7 ‘properly raised’ if it is raised sufficiently to permit the
8 trial court to rule upon it.” Ezra v. Seror (In re Ezra),
9 537 B.R. 924, 932 (9th Cir. BAP 2015) (citations omitted); see
10 Moldo v. Matsco, Inc. (In re Cybernetic Servs., Inc.), 252 F.3d
11 1039, 1045 n.3 (9th Cir. 2001) (stating that appellate court
12 would not explore ramifications of argument because it was not
13 raised in the bankruptcy court); Levesque v. Shapiro (In re
14 Levesque), 473 B.R. 331, 335 (9th Cir. BAP 2012) (“Ordinarily, if
15 an issue is not raised before the trial court, it will not be
16 considered on appeal and will be deemed waived.”).

17 Ms. Halper did not challenge the allegations or evidence
18 concerning her fraudulent intent. Nor did she file a motion for
19 reconsideration. Accordingly, she waived this issue on appeal.³
20

21 ³ We have discretion to “consider an issue raised for the
22 first time on appeal if (1) there are exceptional circumstances
23 why the issue was not raised in the trial court, (2) the new
24 issue arises while the appeal is pending because of a change in
25 the law, or (3) the issue presented is purely one of law and the
26 opposing party will suffer no prejudice as a result of the
27 failure to raise the issue in the trial court.” In re Ezra,
28 537 B.R. at 932-33 (quoting Franchise Tax Bd. v. Roberts (In re
Roberts), 175 B.R. 339, 345 (9th Cir. BAP 1994)). Ms. Halper has
not identified any exceptional circumstances excusing her failure
to raise the issue of her intent below. She also does not
identify any change in law, assert that the issue is purely one
(continued...)

1 Second, her argument is meritless. A default judgment
2 specifically does away with the requirement of trial and is not
3 akin to summary judgment. "The general rule of law is that upon
4 default the factual allegations of the complaint, except those
5 relating to the amount of damages, will be taken as true."
6 TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th
7 Cir. 1987) (citation omitted). The Lenders' complaints alleged
8 all of the elements of a § 523(a)(2)(A) claim in detail. The
9 bankruptcy court properly accepted as true the claims in the
10 complaints.

11 Ms. Halper argues that a "trial is required for a Court to
12 determine Appellant's intent" because "just like a Motion for
13 Summary Judgment, the Court's function on a motion for default
14 judgment is issue-finding, not issue resolution."

15 Ms. Halper is patently wrong. Default judgment is governed
16 by Civil Rule 55; Civil Rule 56 is applicable only to summary
17 judgment; and the standards under the two rules are completely
18 different. When a party files a motion for summary judgment
19 under Civil Rule 56, the responding party may argue that there is
20 a dispute about the facts. But when a defendant is in default
21 and the plaintiff seeks a default judgment under Civil Rule 55,
22 the defendant has no right to challenge any of the facts properly
23 alleged in the complaint. See Sharma v. Salcido (In re Sharma),
24 BAP Nos. CC-12-1302-MkTaMo, CC-12-1520-MkTaMo, 2013 WL 1987351,
25 at *8 (9th Cir. BAP May 14, 2013), aff'd, 607 F. App'x 713 (9th

26 _____
27 ³(...continued)
28 of law, or discuss the prejudice that the Lenders may face. We
will not consider it in the first instance.

1 Cir. 2015) ("Once [debtor] was in default, the only issue before
2 the bankruptcy court was whether the well-pleaded factual
3 allegations in the Complaint, deemed true, supported a claim
4 under Section 523(a)(2)(A), and, if not, whether additional proof
5 was necessary."). The Second Circuit case she cites in support
6 of the conflation of these rules, United States v. One Tintoretto
7 Painting Entitled "The Holy Family with Saint Catherine and
8 Honored Donor", 691 F.2d 603 (2d Cir. 1982), plainly does not
9 concern default judgment. Her contention that the court erred by
10 not applying a summary judgment standard is frivolous.

11 She further argues that the bankruptcy court should have
12 required the Lenders to prove up their claims. This argument is
13 also frivolous. While the court has discretion to require
14 further proceedings, the court need not do so. See Danning v.
15 Lavine, 572 F.2d 1386, 1388 (9th Cir. 1978); In re Sharma, 2013
16 WL 1987351, at *8 ("So long as the bankruptcy court found
17 sufficient evidence in the Complaint's allegations to support the
18 determination of liability under Section 523(a)(2)(A), its
19 decision survives. The bankruptcy court did not commit
20 reversible error when it determined the issue of liability
21 without a hearing."). The complaints, the Motion for Default
22 Judgment, and the Lenders' declarations attached thereto
23 adequately laid out the Lenders' claims and covered all of the
24 elements of § 523(a)(2)(A). It was not an error to accept the
25 allegations as true.⁴

26
27 ⁴ It is not clear that the bankruptcy court applied the test
28 for a default judgment laid out in Eitel v. McCool, 782 F.2d
(continued...)

1 **B. Terminating sanctions were appropriate.**

2 Ms. Halper apparently thinks that terminating sanctions were
3 unwarranted; some of her issues on appeal so state. But the body
4 of her brief contains only a handful of sentences on that topic,
5 and none of those sentences includes any citations to authority
6 or the record. She does not even mention the governing rule
7 (Civil Rule 37(b)(2), made applicable in bankruptcy by Rule 7037)
8 or any of the Ninth Circuit decisions construing it. See, e.g.,
9 Conn. Gen. Life Ins. Co., 482 F.3d at 1096. Thus, she has not
10 “specifically and distinctly raised and argued [these issues] in
11 [her] opening brief.” Hayes v. Idaho Corr. Ctr., 849 F.3d 1204,
12 1213 (9th Cir. 2017) (quoting Officers for Justice v. Civil Serv.
13 Comm’n of City & Cty. of S.F., 979 F.2d 721, 726 (9th Cir.
14 1992)). We may decline to address them. Id.

15 Even if she had properly raised these arguments, we would
16 reject them. Contrary to her assertion, the bankruptcy court did
17 consider a less severe sanction. The Lenders argued that the
18 court should immediately strike her answer. Instead, the court
19 gave Ms. Halper one more chance to sit for her deposition and
20 ordered her to pay a portion of the Lenders’ attorneys’ fees
21 caused by her prior abuses. The bankruptcy court acknowledged
22 Ms. Halper’s concerns by revising the proposed payment schedule.
23 (The bankruptcy court was not required to accept her unsworn and
24 uncorroborated statement that she could not afford to pay the
25 monetary sanctions on the prescribed schedule.) The combination

26
27 ⁴(...continued)
28 1470, 1471-72 (9th Cir. 1986). But Ms. Halper did not raise this
issue in the bankruptcy court and does not raise it on appeal.

1 of the monetary sanction and the order to sit for a deposition
2 was a "less drastic sanction" that gave Ms. Halper a chance to
3 avoid the terminating sanction. But when Ms. Halper failed to
4 make the second installment payment, the "less drastic sanction"
5 failed, and the court then imposed the terminating sanction that
6 the Lenders requested in the OSC Motion and that the court
7 threatened in the Contempt Order. We see no abuse of discretion.

8 Accordingly, the bankruptcy court did not err in awarding
9 terminating sanctions.

10 **CONCLUSION**

11 The bankruptcy court did not err in granting default
12 judgment. We AFFIRM.