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NOT FOR PUBLICATION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

In re:)	BAP No.	NC-17-1140-TaFB
)		
FARIBA S. EVJENTH,)	Bk. No.	3:16-bk-30329-HLB
)		
Debtor.)		
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FAREED SEPEHRY-FARD,)		
)		
Appellant,)		
v.)	MEMORANDUM*	
)		
SELECT PORTFOLIO SERVICING,)		
INC.; DAVID BURCHARD,)		
Chapter 13 Trustee,)		
)		
Appellees.)		
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Submitted Without Argument on May 25, 2018

Filed - June 4, 2018

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

Honorable Hannah L. Blumenstiel, Bankruptcy Judge, Presiding

Appearances: Appellant Fareed Sepehry-Fard, pro se, on brief;
 Nichole Glowin of Wright, Finlay & Zak, LLP on
 brief for appellee Select Portfolio Servicing,
 Inc.; Lilian G. Tsang on brief for appellee David
 Burchard, Chapter 13 Trustee.

Before: TAYLOR, FARIS, and BRAND, 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 Fareed Sepehry-Fard (here, "Appellant") appeals from the
3 bankruptcy court's order denying his motion seeking an
4 evidentiary hearing and sanctions. While Appellant argues that
5 Select Portfolio Servicing, Inc. ("SPS") and the chapter 13¹
6 trustee, David Burchard, (collectively, "Appellees") wronged
7 him, the bankruptcy court denied the motion based on a
8 determination that it lacked jurisdiction to consider the merits
9 of his claims. On appeal, Appellant never establishes – much
10 less argues – that the bankruptcy court erred in so deciding.
11 We also discern no error. As a result, we AFFIRM the bankruptcy
12 court.

13 **FACTS²**

14 Appellant claims that Appellees stole from him. His theory
15 of theft turns in part on SPS's receipt of proceeds from the
16 unopposed sale of real property in Saratoga, California (the
17 "Property"). Although neither we nor the bankruptcy court have
18 jurisdiction to resolve the dispute, we relay the following
19 facts to provide context for this appeal.
20

21
22 ¹ Unless otherwise indicated, all chapter and section
23 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.
24 All "Rule" references are to the Federal Rules of Bankruptcy
25 Procedure. All "Civil Rule" references are to the Federal Rules
of Civil Procedure.

26 ² We exercise our discretion to take judicial notice of
27 documents electronically filed in the adversary proceeding and
28 in the underlying bankruptcy case. See Atwood v. Chase
Manhattan Mortg. Co. (In re Atwood), 293 B.R. 227, 233 n.9 (9th
Cir. BAP 2003).

1 **Fariba Evjenth ("Debtor") files bankruptcy, sells the**
2 **Property, and confirms a chapter 13 plan.** Debtor filed a
3 chapter 13 petition, scheduled an interest in the Property, and
4 identified Appellant as a co-owner. She promptly moved to sell
5 the Property for \$1,450,000. Her supporting documents estimated
6 that \$820,885 would be used to pay off the first mortgage and
7 that unsecured creditors would be paid in full from the
8 remaining sale proceeds. The bankruptcy court approved the sale
9 through an order noting a lack of opposition. Escrow closed.

10 Thereafter, the bankruptcy court confirmed Debtor's
11 chapter 13 plan. It provided for a 100% distribution to
12 unsecured claimants from Property sale proceeds.

13 **The bankruptcy court denies Appellant's post-sale**
14 **questioning of the secured parties' legitimacy.** The Bank of New
15 York Mellon, through SPS, filed a proof of claim; Appellant
16 objected and shortly thereafter filed two motions: first, a
17 "Motion for Alleged Attorneys' Proof of Authority to Represent
18 Alleged Creditors"; and, second, a motion to "compel the
19 verification of the amount of the alleged debt under oath, for
20 evidentiary hearing"

21 Both motions were opposed; the bankruptcy court separately
22 denied both. It concluded that Appellant lacked statutory,
23 constitutional, and prudential standing and was not a real party
24 in interest. It then reasoned, as to each motion, that even if
25 Appellant had standing, it would deny them as without merit – in
26 part because Appellant did not object to the claim until after
27 the Bank of New York Mellon was paid in full.

28 Appellant sought reconsideration and raised various

1 arguments, alleging that all state court judges have been
2 bribed, that failure to enforce his "non-judicial judgment" is
3 "nothing but mutiny[,] " and that the Property is part of a land
4 patent and protected by the Treaty of Guadalupe Hidalgo.

5 At the hearing on his reconsideration motion, Appellant
6 conceded that he did not object to the sale of the Property.
7 And the bankruptcy court reiterated that Appellant lacked
8 standing because he was not Debtor, had no claim against Debtor,
9 signed off on the plan, signed off on the escrow instructions,
10 and signed off on the motion to sell. The bankruptcy court then
11 denied the motion on the record; it also entered a separate
12 order denying the motion.

13 Appellant appealed, but, because he did not pay the
14 required fee, the appeal was dismissed.

15 **Appellant unsuccessfully requests an evidentiary hearing**
16 **and sanctions and files the present appeal.** A month and a half
17 later, Appellant filed a motion for an evidentiary hearing and
18 for sanctions (the "Third Motion"). He wanted the court to
19 "**finally** verify and validate the amount of the alleged debt that
20 was allegedly owed to the alleged 'creditor', if there is any or
21 there was any, under Oath"

22 At the hearing, the bankruptcy judge denied the Third
23 Motion because "this is not a dispute I can adjudicate." Hr'g
24 Tr. (Apr. 19, 2017) 7:15-16. She characterized Appellant's
25 request as "the same request that you've made to me before . . .
26 you want somebody -- you want the lender whose loan has been
27 paid off to provide you with an accounting of some kind"
28 Id. at 3:14-18. Appellant disagreed and said that the present

1 motion was different: he also wanted a return of "his" note or
2 its proceeds.

3 The bankruptcy judge, yet again, detailed how Appellant no
4 longer had a connection with the bankruptcy case:

5 So, Mr. Fard, you're not a creditor in this case, and
6 you're not the debtor in this case, and your dispute
7 is with a lender whose note has been paid off, and is
8 therefore no longer a party in interest in this
9 bankruptcy case. That's not a dispute that I can
10 adjudicate, and we've been over this territory several
11 times before. I understand that you have had bad
12 experiences with State Court judges and that you don't
13 necessarily want to proceed [with] your claims against
14 the lender in State Court, but I think that's where
15 you have to be because I can't adjudicate disputes
16 between parties who are not involved in cases before
17 me.

18 Id. at 4:13-24.

19 Appellant stated that he was a creditor because "they have
20 taken my promissory note and resold it to unknown parties.
21 Those monies belong to me, which makes me a creditor, Judge."

22 Id. at 5:7-9.

23 Seeing the disconnect, the bankruptcy judge explained how
24 being a creditor of someone, generally, was insufficient to
25 establish a connection with the present bankruptcy case:

26 [Y]ou're a creditor then of somebody who's not before
27 me. You're not a creditor of this Debtor. The note
28 has been paid off, and really I don't see any
29 difference in what you're asking me to do today,
30 consent to what you've asked me to do twice before,
31 and I've tried to explain, Mr. Fard, that I can't
32 really help you, and I'm really sorry for that.

33 Id. at 5:10-16.

34 Appellant then suggested that the chapter 13 trustee had a
35 duty to "take that note from the alleged creditors and give it
36 back to me" Id. at 6:1-3. The bankruptcy judge
37 disagreed and informed Appellant that "that's not the Chapter 13
38

1 Trustee's job." Id. at 6:10-11. To the extent Appellant had a
2 dispute or was otherwise entitled to something from the secured
3 lender, the bankruptcy judge again emphasized that it lacked
4 jurisdiction: "[T]hat's a dispute that doesn't involve this
5 bankruptcy case. And those are the only kinds of disputes that
6 I can adjudicate, and so I'm sorry, but I'm going to have to
7 deny this motion." Id. at 6:15-18. In short, the bankruptcy
8 court patiently listened to Appellant's arguments, addressed his
9 concerns, and then denied the motion.³

10 The bankruptcy court entered a separate order denying the
11 Third Motion for the reasons stated on the record.

12 Appellant timely filed a notice of appeal.

13 JURISDICTION

14 The bankruptcy court concluded that it lacked jurisdiction,
15 which we discuss below. We have jurisdiction over this appeal
16 under 28 U.S.C. § 158.

17 ISSUE

18 Did the bankruptcy court err when it denied the Third
19 Motion for lack of jurisdiction?

20 STANDARD OF REVIEW

21 We review subject matter jurisdiction de novo. Wilshire
22 Courtyard v. Cal. Franchise Tax Bd. (In re Wilshire Courtyard),
23 729 F.3d 1279, 1284 (9th Cir. 2013). We review related findings
24 for clear error. Coyle v. P.T. Garuda Indonesia, 363 F.3d 979,
25

26 ³ Appellant filed several papers about the record on
27 appeal. He notes that the court reporter revised the April 19,
28 2017 transcript to add a line on page 7. To the extent there is
any confusion, we accept the corrected transcript

1 984 n.7 (9th Cir. 2004).

2 **DISCUSSION**

3 We start by clarifying the scope of this appeal. Appellant
4 did not appeal the sale order, and his appeal from the orders
5 denying his verification and reconsideration motions was
6 dismissed. This appeal concerns only the denial of the Third
7 Motion.

8 And while Appellant raises various arguments in his opening
9 brief, he never specifically and distinctly addresses the basis
10 for denial of the Third Motion, the bankruptcy court's
11 underlying conclusion that it lacked jurisdiction. He thus
12 waived the right to assert argument on the only question
13 relevant to this appeal. Padgett v. Wright, 587 F.3d 983, 986
14 n.2 (9th Cir. 2009) (per curiam) (appellate courts "will not
15 ordinarily consider matters on appeal that are not specifically
16 and distinctly raised and argued in appellant's opening brief").
17 We, accordingly, affirm.

18 Even when we consider Appellant's arguments, they are not
19 persuasive.

20 **A. The bankruptcy court's form of order is proper.**

21 Appellant asserts that the bankruptcy court's order
22 violates Civil Rule 54(a) by being replete with references to
23 the pleadings and record of other proceedings. He also invokes
24 Civil Rule 58 (the separate judgment rule) and Civil Rule 52 and
25 urges us to remand for entry of a judgment separate from the
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1 findings of fact and conclusions of law.⁴

2 We find no error related to the form of order under Civil
3 Rule 54(a). Compliance with Civil Rule 58's separate judgment
4 requirement was not required.⁵ And the bankruptcy court is
5 allowed to state its findings and conclusions on the record
6 orally, as it did here. Fed. R. Civ. P. 52(a)(1); Fed. R.
7 Bankr. P. 7052, 9014 (applying Civil Rule 52 in adversary
8 proceedings and contested matters).

9 **B. The bankruptcy court correctly determined that it lacked**
10 **jurisdiction.**

11 We also see no error in the bankruptcy court's conclusion
12 that it lacked jurisdiction over Appellant's dispute.

13 Bankruptcy court jurisdiction "is created and limited by
14 statute." In re Wilshire Courtyard, 729 F.3d at 1284 (citing
15 Celotex Corp. v. Edwards, 514 U.S. 300, 307 (1995)). Bankruptcy
16 courts have subject matter jurisdiction over proceedings
17 "arising under title 11, or arising in or related to cases under
18

19
20 ⁴ The order reads as follows:

21 On April 19, 2017, the court held a hearing on [the
22 Third Motion] filed by Fareed-Sepehry-Fard.
23 Appearances were as noted on the record. Upon due
24 consideration of the pleadings and argument of the
25 parties, and for the reasons stated on the record, the
court **DENIES** the [Third] Motion.

26 ⁵ As this was a contested matter, Rule 9014 applied many
27 of the Rules (and thus Civil Rules) to the proceeding. But
28 Rule 7058, which applies Civil Rule 58's separate judgment
requirement to adversary proceedings, does not apply in
contested matters. See Fed. R. Bankr. P. 9014(c).

1 title 11.” 28 U.S.C. § 1334(b);⁶ In re Wilshire Courtyard,
2 729 F.3d at 1285. A bankruptcy court also has jurisdiction over
3 all assets of the debtor and property of the estate. 28 U.S.C.
4 § 1334(e)(1); Cent. Va. Cmty. Coll. v. Katz, 546 U.S. 356, 369
5 (2006) (“Bankruptcy jurisdiction, as understood today and at the
6 time of the framing, is principally *in rem* jurisdiction.”).

7 Here, the bankruptcy court approved the sale of the
8 Property. No one appealed that order. Accordingly, the sale
9 terminated 28 U.S.C. § 1334(e)(1) *in rem* jurisdiction over the
10 Property. See Stokes v. Duncan (In re Stokes), BAP No.
11 MT-13-1097-TaPaJu, 2013 WL 5313412, at *3 (9th Cir. BAP
12 Sept. 23, 2013) (“It is axiomatic that *in rem* jurisdiction over
13 an asset terminates once the bankruptcy estate relinquishes all
14 rights and interests in the asset.”) (citing cases). In
15 addition, as was true under the Bankruptcy Act of 1898, ch. 541,
16 30 Stat. 544 (1898), a bankruptcy court ordinarily lacks
17 jurisdiction to adjudicate ownership disputes involving former
18 property of the estate. Id. (citing sources). So the
19 bankruptcy court lacked *in rem* jurisdiction over the dispute.

20 Nor did the bankruptcy court have arising under, arising
21 in, or related to jurisdiction.

22 Appellant’s request did not “arise under” the Code because
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24 ⁶ Jurisdiction is initially conferred on the district
25 courts. 28 U.S.C. § 1334. The district courts, in turn, may
26 refer bankruptcy cases and proceedings to the bankruptcy courts.
27 28 U.S.C. § 157(a). “[E]ach district court has provided by rule
28 for automatic reference to bankruptcy judges.” 1 Collier on
Bankruptcy ¶ 3.02[1] (Alan N. Resnick and Henry J. Sommer, eds.,
16th ed.).

1 it did not depend "on a substantive provision of bankruptcy law"
2 – that is, it did not involve "a cause of action created or
3 determined by a statutory provision of the Bankruptcy Code."
4 Battleground Plaza, LLC v. Ray (In re Ray), 624 F.3d 1124, 1131
5 (9th Cir. 2010). To the contrary, Appellant asserts violations
6 of the Truth in Lending Act, refers to the California Commercial
7 Code, and alludes to the Fair Debt Collection Practices Act.

8 Appellant's dispute did not "arise in" the case; a matter
9 arises in a case when it is "an administrative matter unique to
10 the bankruptcy process that has no independent existence outside
11 of bankruptcy and could not be brought in another forum, but
12 whose cause of action is not expressly rooted in the Bankruptcy
13 Code." Id. Appellant can assert his claims in another forum.

14 The dispute was not "related to" the bankruptcy case
15 because its outcome cannot affect the administration of Debtor's
16 bankruptcy estate. Fietz v. Great W. Sav. (In re Fietz),
17 852 F.2d 455, 457 (9th Cir. 1988). Debtor used the sale
18 proceeds to pay off her plan and her secured obligations.
19 Appellant seeks relief for his sole benefit; he wants a "return
20 of all monies that Appellees have stolen from Appellant"
21 Appellant's Opening Br. at 23.

22 Finally, nothing suggests that ancillary jurisdiction
23 exists here. "Ancillary jurisdiction may rest on one of two
24 bases: (1) to permit disposition by a single court of factually
25 interdependent claims, and (2) to enable a court to vindicate
26 its authority and effectuate its decrees." In re Ray, 624 F.3d
27 at 1135 (citation and quotation marks omitted). The bankruptcy
28 court saw no need to vindicate its own authority nor were there

1 factually interdependent claims to resolve.

2 Accordingly, even after a de novo review, we affirm the
3 bankruptcy court's conclusion that it lacked jurisdiction.

4 **C. Debtor's remaining arguments lack merit.**

5 Debtor raises a variety of issues and arguments. He lists
6 nineteen issues on appeal, but then fails to discuss many of
7 them in his argument section; we deem them abandoned. Kohler v.
8 Inter-Tel Techs., 244 F.3d 1167, 1182 (9th Cir. 2001) ("Issues
9 raised in a brief which are not supported by argument are deemed
10 abandoned."); Fed. R. Bankr. P. 8014(a)(8). In the interest of
11 completeness, we discuss the issues that he argues.

12 **Appellant does not have a right to a jury trial.** Appellant
13 asserts entitlement to a jury trial under the Seventh Amendment
14 because the amount in controversy was over \$20. We take no
15 position on his entitlement to a jury trial in a non-bankruptcy
16 forum, but he had no such right in this bankruptcy case. He was
17 not entitled to a jury trial on his claim objection; a Seventh
18 Amendment right to a jury trial exists in bankruptcy proceedings
19 only if the party has not submitted to the bankruptcy court's
20 equitable power. Langenkamp v. Culp, 498 U.S. 42, 44-45 (1990);
21 Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 58 (1989);
22 Hickman v. Perlmutter (In re Hickman), 384 B.R. 832, 837-39
23 (9th Cir. BAP 2008). Here, Appellant submitted to the
24 bankruptcy court's equitable power; indeed, he wanted the
25 bankruptcy court, and not any other court, to resolve his
26 dispute. Further, he waived any such right as he never filed a
27 Civil Rule 38(b) jury trial demand. Fed. R. Civ. P. 38(d); Fed.
28 R. Bankr. P. 9015 (applying Civil Rule 38 in bankruptcy

1 proceedings).

2 **The bankruptcy court does not need to enter additional**
3 **findings.** Having failed to get an evidentiary hearing,
4 Appellant now seeks the same result by arguing that the
5 bankruptcy court did not enter sufficient findings and that we
6 should direct it to do so. He wants the bankruptcy court to
7 address his various claims under substantive non-bankruptcy law.
8 Appellant misunderstands the bankruptcy court's decision; it
9 correctly denied the motion because it lacked jurisdiction, and
10 it provided sufficient findings to support that conclusion.
11 Thus, not only is there no need for the bankruptcy court to
12 enter additional findings, the bankruptcy court has no authority
13 to do so.

14 **The bankruptcy court was not biased.** Last, Appellant
15 questions the bankruptcy court's integrity; he states that the
16 bankruptcy judge "appeared biased," and so he "did not get his
17 due process rights from the lower court[.]" Id. at 19
18 (capitalization removed).

19 We disagree. The transcript from the April 19, 2017
20 hearing does not reflect bias on the bankruptcy judge's part.
21 To the contrary, it evidences patient consideration of
22 Appellant's position, careful explanation of the infirmities in
23 his position, clear direction to the appropriate forum for
24 seeking redress of his concerns, and a polite and respectful
25 conduct of the hearing. Appellant got all that due process
26 requires and a judge who appropriately heard his case.

27 **D. We deny Appellant's remaining appellate motions.**

28 Appellant filed various appellate motions. Still pending

1 motions include: a motion for sanctions for filing of a
2 frivolous brief and making false statement, BAP Dkt. No. 31; a
3 "statement and joinder to" the motion for sanctions, BAP Dkt.
4 No. 32; a motion "enjoining" SPS to "Appellant's Informal Reply
5 Brief," BAP Dkt. No. 33; and a request to concurrently
6 adjudicate his appeal and motion for sanctions, BAP Dkt. No. 35.
7 All lack merit.

8 Appellant's motion for sanctions seeks sanctions against
9 the Trustee's counsel because she allegedly made
10 misrepresentations in her brief. We have reviewed the Trustee's
11 brief; it accurately represents and depicts the record. And
12 Appellant's suggestion that Trustee's counsel admitted to mutiny
13 and treason against the United States is specious. We deny the
14 motion.

15 We deduce that Appellant's "statement and joinder" motion
16 is his attempt to add SPS's counsel to his sanctions motion. We
17 have reviewed SPS's brief, as well, and it also accurately
18 represents and depicts the record. We deny this motion.

19 We deduce that Appellant's motion "enjoining" SPS "to
20 Appellant's informal reply brief," BAP Dkt No. 33 at 1
21 (capitalization removed), is his attempt to have his reply brief
22 apply to SPS's brief, as well. To the extent Appellant wants us
23 to treat his reply brief as a global reply, we grant the motion;
24 to the extent he seeks any other relief, we deny it.

25 We deny his request that we concurrently adjudicate "both
26 the appeal and motion to stay since Appellant is also filing his
27 reply brief with this request" BAP Dkt. No. 35 at 2.
28 Having concluded that sanctions are not appropriate, we need not

1 appoint a special master to investigate or stay Appellant's
2 deadline to file a reply brief.

3 **CONCLUSION**

4 Based on the foregoing, we AFFIRM.
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