

OCT 27 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In the Matter of: HAWAIIAN AIRLINES,  
INC., Chapter 11 bankruptcy,

Debtor.

ROBERT C. KONOP,

Appellant,

v.

HAWAIIAN AIRLINES, INC., a Hawaii  
Corporation,

Appellee.

No. 09-16079

D.C. No. 1:09-cv-00012-HG-LEK

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Hawaii  
Helen Gillmor, District Judge, Presiding

Submitted October 19, 2010\*\*

Before: O'SCANNLAIN, TALLMAN, and BEA, Circuit Judges.

\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Accordingly, Konop's motion to have oral argument held in Pasadena, California, is denied.

Robert C. Konop appeals pro se from the district court's judgment affirming the bankruptcy court's order sustaining Hawaiian Airlines' Second Supplemental Objection to Claim No. 72. We have jurisdiction under 28 U.S.C. §158(d). We review decisions of the bankruptcy court independently without deference to the district court's determinations. *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 857 (9th Cir. 2004). We affirm.

The bankruptcy court did not err in determining that it had jurisdiction to decide the Second Supplemental Objection to Claim No. 72. *See Rains v. Flinn (In re Rains)*, 428 F.3d 893, 904 (9th Cir. 2005) (bankruptcy court retains jurisdiction as long as it does not expand or alter the prior order that is on appeal).

Further, the bankruptcy court did not err in determining that James Gardner was a "user" under the Stored Communications Act ("SCA"), who authorized James Davis to access Konop's website. *See* 18 U.S.C. § 2510(13). Because liability is not triggered by "conduct authorized" by a "user" under the SCA, the bankruptcy court did not err by disallowing damages alleged in Claim No. 72 based on Davis's access to Konop's website using Gardner's password. *See* 18 U.S.C. § 2701(c)(2).

Konop's remaining contentions are unpersuasive.

Konop's request for judicial notice is denied.

**AFFIRMED.**