NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE TENTH CIRCUIT

IN RE PATRICIA FRANCINE SARACINO, Debtor.	BAP No. CO-13-031
PATRICIA FRANCINE SARACINO, Appellant, v. NORTHPARK EAST ASSOCIATION and JAMES M. HARM, Appellees.	Bankr. No. 12-12780 Chapter 7 OPINION*

Appeal from the United States Bankruptcy Court
for the District of Colorado

Before MICHAEL, NUGENT, and SOMERS, Bankruptcy Judges.

MICHAEL, Bankruptcy Judge.

The Chapter 7 debtor appeals dismissal of her motion to hold a creditor and its attorney in contempt for alleged willful violations of the automatic stay. Having reviewed the record and applicable law, we conclude that the bankruptcy court did not abuse its discretion in dismissing debtor's motion for contempt and affirm its order.

* This unpublished opinion may be cited for its persuasive value, but is not precedential, except under the doctrines of law of the case, claim preclusion, and issue preclusion. 10th Cir. BAP L.R. 8018-6.

I. BACKGROUND

Appellant Patricia Francine Saracino ("Saracino") filed her Chapter 7 bankruptcy petition in February 2012. On May 20, 2012, the Chapter 7 trustee filed a report of no distribution. Saracino received her discharge on May 21, 2012. On June 27, 2012, the bankruptcy court, having received no objections, accepted the Chapter 7 trustee's report and closed Saracino's case.

About three weeks later, Saracino filed a motion to reopen her bankruptcy case, followed by a motion to hold appellees Northpark East Association, Saracino's homeowners' association (the "Association"), and its attorney, James M. Harm ("Harm"), in contempt for alleged willful violations of the automatic stay (the "Contempt Motion"). The Contempt Motion sought actual and punitive damages, as well as costs and attorneys' fees, as permitted by 11 U.S.C. § 362(k).[1] Saracino alleged the Association and Harm violated the stay when they sent her a letter in April 2012 demanding payment in full of her homeowner dues arrearage, most of which related to pre-petition periods.[2] Saracino also alleged that the Association and Harm violated the stay in June 2012 when they filed a complaint for damages and foreclosure of assessment lien in Colorado state court.[3]

In November 2012, the bankruptcy court held a non-evidentiary hearing and ordered the parties to discuss settlement of the Contempt Motion. In the event the matter could not be settled, the bankruptcy court scheduled the Contempt Motion for an evidentiary hearing on March 12, 2013, and set the following deadlines:

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[1] Unless otherwise indicated, all future statutory references in text are to the Bankruptcy Code, Title 11 of the United States Code.

[2] *Contempt Motion* at 1, ¶ 6, *in* Appellees' App. at 21.

[3] *Id.* at 2, ¶ 9, *in* Appellees' App. at 22. Technically, if the Association was attempting to collect pre-petition dues in the state court lawsuit filed in June 2012, such action would be a violation of the discharge injunction imposed by § 524(a), but the distinction is of no consequence in this appeal.

1) discovery to be completed by January 25, 2013; 2) joint statement concerning the facts and issues to be filed on or before February 1, 2013; and 3) witness and exhibit lists to be filed and exchanged by March 1, 2013.[4] Saracino's non-compliance with these deadlines led to the eventual dismissal of her Contempt Motion.

On January 9, 2013, Saracino's counsel filed motions to withdraw from representation,[5] which the bankruptcy court granted on January 31, 2013.[6] In the meantime, Harm and the Association deposed Saracino on January 25, 2013, during which they claim to have reminded her of the February 1, 2013, due date for the joint statement. Thereafter, they sent her a draft of their proposed statement by overnight mail that was delivered on January 30, 2013. Saracino failed to respond prior to the February 1, 2013, deadline.[7] On February 1, 2013, Harm and the Association filed the "joint statement,"[8] as an exhibit to a status report and requested that the bankruptcy court enter an order accepting the joint statement, or alternatively, grant an extension of time to obtain Saracino's agreement and signature on the joint statement.[9] On February 10, 2012, the bankruptcy court entered an order accepting the "joint statement" as filed (the "Joint Statement").[10]

Harm and the Association filed their witness and exhibit lists several days

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4 *Minutes of Electronically Recorded Proceeding held on November 8, 2012*, *in* Appellees' App. at 33-34.

5 *Docket ## 49, 50, 52, 53*, *in* Appellees' App. at 13.

6 *Docket ## 68, 69*, *in* Appellees' App. at 10.

7 *Status Concerning Joint Motion [sic]*, *in* Appellees' App. at 35.

8 *Joint Statement*, *in* Appellees' App. at 37.

9 *Status Concerning Joint Motion [sic]*, *in* Appellees' App. at 35.

10 *Order on Status Report (Docket # 70)*, *in* Appellees' App. at 42.

prior to the March 1, 2013 deadline,[11] and provided copies of the same to Saracino. As illustrated by the bankruptcy court's docket sheet, one day prior to the evidentiary hearing scheduled for March 12, 2013, Saracino filed a "Petition and Status Concerning Joint Motion" ("Objection to Joint Statement").[12] When the parties appeared on March 12, 2013, the bankruptcy court, for scheduling reasons, found it necessary to continue the hearing to April 9, 2013.[13]

On March 25, 2013, Saracino filed a proposed list of witnesses and exhibits.[14] Harm and the Association promptly filed a motion to strike those documents ("Motion to Strike").[15] After Saracino responded,[16] the bankruptcy court granted the motion at the April 9, 2013, evidentiary hearing.[17] A written order and judgment to that effect was entered the same day (collectively the "Order Striking Documents").[18]

Also at the April 9, 2013 hearing, based on documents in the record, the bankruptcy court concluded that the Association intended to collect only post-petition and not pre-petition dues.[19] The bankruptcy court made oral findings and

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[11] *Docket # 85*, *in* Appellees' App. at 8.

[12] *Docket # 87*, *in* Appellees' App. at 8.

[13] *Docket # 88*, *in* Appellees' App. at 8.

[14] *Docket # 90*, *in* Appellees' App. at 7.

[15] *Docket # 91*, *in* Appellees' App. at 7.

[16] *Notice of Objection to Respondents' Motion to Strike Debtor's Submission of Evidence, Witness Lists, and Exhibits, and Legal Brief*, *in* Appellees' App. at 53.

[17] *Minutes of Electronically Recorded Proceeding Held April 9, 2013*, *in* Appellees' App. at 56.

[18] *Court's Order Granting Respondents' Motion to Strike Debtor's Submission of Documents Filed on March 27, 2013 at Docket # 90*, *in* Appellees' App. at 57; *Judgment*, *in* Appellees' App. at 59.

[19] *Transcript ("Tr.") of Proceedings held on April 9, 2013, at 5, ll. 7-10*, *in*

(continued...)

conclusions on the record,[20] and dismissed Saracino's Contempt Motion, describing it as "groundless" and "borderline frivolous."[21] A written order and judgment were entered by the bankruptcy court on the same day (collectively the "Dismissal Order").[22] Saracino timely filed her notice appealing the bankruptcy court's Order Striking Documents and Dismissal Order to this Court on April 22, 2013.

II. APPELLATE JURISDICTION

This Court has jurisdiction to hear timely filed appeals from "final judgments, orders, and decrees" of bankruptcy courts within the Tenth Circuit, unless one of the parties elects to have the district court hear the appeal.[23] Neither party elected to have this appeal heard by the United States District Court for the District of Colorado. The parties have therefore consented to appellate review by this Court.

A decision is considered final "if it 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'"[24] Not all civil contempt orders are final appealable orders.[25] However, the Tenth Circuit has held that a contempt order may be final when it is a matter in the post-judgment

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[19] (...continued)
Appellee's App. at 74.

[20] *Minutes of Electronically Recorded Proceeding Held April 9, 2013*, *in* Appellees' App. at 56.

[21] *Tr. of Proceedings held on April 9, 2013*, at 5-6, *ll.* 33-35, 1-2, *in* Appellee's App. at 74-75.

[22] *Order*, *in* Appellees' App. at 58; *Judgment, in* Appellees' App. at 61.

[23] 28 U.S.C. § 158(a)(1), (b)(1), and (c)(1); Fed. R. Bankr. P. 8002; 10th Cir. BAP L.R. 8001-3.

[24] *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712 (1996) (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)).

[25] *O'Connor v. Midwest Pipe Fabrications, Inc.*, 972 F.2d 1204, 1208 (10th Cir. 1992).

phase of a case,[26] or there is no ongoing underlying action other than the general bankruptcy proceeding.[27] Here, the underlying bankruptcy proceeding had been concluded. The Chapter 7 trustee filed his report of no distribution, Saracino received her discharge, and the case was closed. Upon reopening, the only matter before the bankruptcy court was Saracino's Motion for Contempt, which has now been dismissed. Thus, the bankruptcy court's Dismissal Order is a final order subject to appeal under 28 U.S.C. § 158(a)(1).

III. STANDARD OF REVIEW

"For purposes of standard of review, decisions by judges are traditionally divided into three categories, denominated questions of law (reviewable *de novo*), questions of fact (reviewable for clear error), and matters of discretion (reviewable for 'abuse of discretion')."[28] We review a bankruptcy court's civil contempt determination for abuse of discretion.[29] Under the abuse of discretion standard, a trial court's decision will not be disturbed unless the appellate court has a definite and firm conviction that the lower court made a clear error of judgment or exceeded the bounds of permissible choice in the circumstances.[30] "Abuse of discretion is established if the [bankruptcy] court's adjudication of the contempt proceedings is based upon an error of law or a clearly erroneous finding of fact."[31]

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26 *Id.*

27 *In re Steele Cattle, Inc.*, No. 94-3036, 1994 WL 596627, at *1 (10th Cir. Nov. 1, 1994).

28 *Pierce v. Underwood*, 487 U.S. 552, 558 (1988); *see* Fed. R. Bankr. P. 8013; *Fowler Bros. v. Young (In re Young)*, 91 F.3d 1367, 1370 (10th Cir. 1996).

29 *Reliance Ins. Co. v. Mast Constr. Co.*, 84 F.3d 372, 375 (10th Cir. 1996).

30 *Moothart v. Bell*, 21 F.3d 1499, 1504 (10th Cir. 1994).

31 *Reliance Ins. Co.*, 84 F.3d at 375-76.

IV. ANALYSIS

Saracino argues that the bankruptcy court: 1) erred in allowing her counsel to withdraw;[32] 2) violated her due process rights by not hearing her Objection to Joint Statement;[33] 3) erred in granting the Association and Harm's Motion to Strike documents she filed on March 25, 2013;[34] and 4) was biased against her as a pro se litigant.[35] We address each of her assertions of error on appeal in turn below.

A. The Bankruptcy Court's Orders Allowing Counsel to Withdraw Are Not Appealable

Saracino's argument that the bankruptcy court should not have permitted her counsel to withdraw does not constitute reviewable error. Saracino's counsel filed motions to withdraw from representation on January 9, 2013.[36] Saracino did not object or otherwise respond to those motions. As a result, on January 29, 2013, counsel filed certificates of non-contested matter,[37] and the bankruptcy court entered orders permitting withdrawal on January 31, 2013.[38]

Saracino neither filed post-judgment motions for reconsideration with the bankruptcy court, nor appealed the orders permitting counsel to withdraw. The time for appealing those orders has long since expired. Saracino may not raise those issues in this appeal.

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[32] Opening Brief at 4, 28. All page number references to the Opening Brief are to the page number of the ECF file stamp at the top of the page because the brief was not consecutively paginated by Saracino.

[33] *Id.* at 27-28.

[34] *Id.* at 5, 27-28.

[35] *Id.* at 2, 18, 27-28.

[36] *Docket ## 49, 50, 52, 53*, *in* Appellees' App. at 13.

[37] *Docket ## 65, 66*, *in* Appellees' App. at 11.

[38] *Docket ## 68, 69*, *in* Appellees' App. at 10.

B. The Bankruptcy Court Did Not Violate Saracino's Due Process Rights

Saracino alleges the bankruptcy court violated her due process rights because it did not hold a hearing on her Objection to Joint Statement prepared and filed by the Association and Harm. We disagree.

At its November 2012 status hearing, the bankruptcy court set an evidentiary hearing on Saracino's Contempt Motion for March 12, 2013, and ordered that a joint statement of facts and issues be filed on or before February 1, 2012. The Association and Harm mailed a draft of the Joint Statement to Saracino by overnight mail on January 29, 2013, and received no response. Therefore, on February 1, 2013, they filed the Joint Statement in the form of an exhibit to a status report, requesting that the bankruptcy court accept it as filed, or alternatively, grant an extension of time to get Saracino's approval.[39] A week later, in absence of a response by Saracino, the bankruptcy court entered an order accepting the Association and Harm's exhibit as the Joint Statement.[40]

In her brief on appeal, Saracino admits she received the draft of the Joint Statement from the Association and Harm on January 30, 2013. However, she argues there was insufficient time for her to review and sign the document before the deadline, and therefore she filed an objection.[41] Saracino neglects to inform this Court that she did not file her Objection to Joint Statement until March 11, 2012, or almost six weeks after it was filed by the Association and Harm, and only one day prior to the scheduled evidentiary hearing. She offers no explanation for her delayed response.[42]

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39 *Docket # 70*, *in* Appellees' App. at 10.

40 *Docket # 79*, *in* Appellees' App. at 9.

41 Opening Brief at 11, 18.

42 A review of the bankruptcy court's docket reveals that on February 4, 2012, (continued...)

The United States Supreme Court has stated that "due process is flexible and calls for such procedural protections as the particular situation demands."[43] Due process requires notice and a meaningful opportunity to be heard.[44] An actual hearing is not required, just an opportunity to be heard.[45] An opportunity to fully brief the issue satisfies the due process requirements.[46]

Generally, courts are obliged to construe pro se pleadings liberally.[47] However, Saracino's pro se status does not relieve her obligation to comply with fundamental procedural requirements that govern other litigants.[48] The Joint Statement was due February 1, 2013. Saracino did not respond to the Association or Harm after receiving their draft on January 30, 2013, nor did she timely respond to the Joint Statement once it had been filed. Further, Saracino took no timely action after the bankruptcy court accepted the Joint Statement as filed. It was not until five weeks after the bankruptcy court's order was entered, and only one day prior the scheduled evidentiary hearing, that she filed her Objection to

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[42] (...continued)
Saracino filed an objection and motion to continue hearing with respect to another creditor's motion for stay relief, *see Docket ## 62, 73, 74*, *in* Appellees' App. at 10-11, so at the very least, we know Saracino was not unavailable or indisposed around the time the Joint Statement was filed.

[43] *Morrissey v. Brewer,* 408 U.S. 471, 481 (1972).

[44] *LaChance v. Erickson*, 522 U.S. 262, 266 (1998).

[45] *In re C.W. Mining Co.*, 625 F.3d 1240, 1244-45 (10th Cir. 2010).

[46] *See Braley v. Campbell*, 832 F.2d 1504, 1515 (10th Cir. 1987) (en banc).

[47] *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). In light of this requirement, this Court has taken a very generous view of Saracino's assertions of error and arguments in support thereof in her Opening Brief.

[48] *See Nielsen v. Price*, 17 F.3d 1276, 1277 (10th Cir. 1994); *Green v. Dorrell*, 969 F.2d 915, 917 (10th Cir. 1992).

Joint Statement.[49] A litigant, pro se or otherwise, cannot simply ignore a bankruptcy court's procedural deadlines, fail to timely respond to documents filed and orders entered in her case, and then complain that her due process rights have been violated.

In her brief on appeal, Saracino describes the "un-joint" Joint Statement as "prima facie dirty,"[50] asserts "[n]othing that debtor felt was important was submitted by opposing counsel,"[51] and argues that it "absolutely tarnished" the evidentiary hearing.[52] However, it is unclear as to which specific parts of the Joint Statement she objects. Saracino did not include the Objection to Joint Statement in her record on appeal, and therefore, even if she had timely filed the objection, this Court is left with nothing to review.

C. The Bankruptcy Court Did Not Err in Striking Saracino's Documents

Saracino argues the bankruptcy court erred in granting the Association and Harm's Motion to Strike the documents she filed on March 25, 2013.[53] We see no error.

On November 8, 2012, when the bankruptcy court set a March 12, 2012 evidentiary hearing on the Contempt Motion, it set related deadlines for discovery and filing of pretrial documents. The bankruptcy court specifically ordered that witness and exhibit lists be filed and exchanged by March 1, 2013.[54] Further, the order provided:

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49 *Docket # 87*, *in* Appellees' App. at 8.

50 Opening Brief at 11.

51 *Id.* at 24.

52 *Id.* at 8.

53 *Id.* at 5, 27-28.

54 *Minutes of Electronically Recorded Proceeding held on November 8, 2012*, *in* Appellees' App. at 34.

> 7. Failure to comply: Any party intending to introduce any exhibits or call any witnesses at the scheduled hearing shall fully comply with Local Bankruptcy Rule 9070-1 and the deadlines set forth in this Notice. If a party fails to comply with L.B.R. 9070-1 and the deadlines set forth in this Notice, the Court may deny admission of the party's exhibits and/or the testimony of the party's witnesses.[55]

The Association and Harm filed their list of witnesses and exhibits on February 27, 2013.[56] As previously stated, the bankruptcy court found it necessary to continue the hearing until April 9, 2013. The bankruptcy court did not, however, extend any deadlines with respect to the filing and exchanging of witness and exhibit lists.

Saracino asserts that when the parties appeared on March 12, 2013, the bankruptcy court told her to "produce more evidence."[57] As a result, about two weeks later, Saracino filed, among other things, a proposed list of witnesses and exhibits.[58] Harm and the Association promptly filed their Motion to Strike, alleging Saracino's proposed list included witnesses they had never heard of before, and exhibits they had never seen.[59] The record on appeal does not contain copies of what Saracino filed with the bankruptcy court on March 25, 2013.[60]

Perhaps Saracino misinterpreted the bankruptcy court's March 12th comments. Before continuing the hearing to April 9, 2013, the bankruptcy court indicated it had reviewed the case file, and based on that review, there was not a

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55 *Id.* at ¶ 7, *in* Appellees' App. at 34.

56 *Docket # 85*, *in* Appellees' App. at 8.

57 Opening Brief at 4-5.

58 *Docket # 90*, *in* Appellees' App. at 7.

59 *Motion to Strike* at 2, ¶ 10, *in* Appellee's App. at 49.

60 For a description of the documents Saracino filed, *see id.* at 2, ¶ 8, *in* Appellees' App. at 49.

lot of evidence to support Saracino's Contempt Motion.[61] The bankruptcy court further explained that if the Association was guilty only of a single, accidental episode of wrongfully sending a notice of overdue pre-petition fees after discharge, then Saracino's claim lacked strength. The bankruptcy court advised Saracino that she needed to demonstrate there was a knowing and willful violation by the Association and Harm that resulted in damages.[62]

Apparently, Saracino understood the bankruptcy court's admonitions to mean that she needed to file more evidentiary documents prior to the rescheduled April 9, 2013 hearing.[63] Standing alone, we do not dispute that a pro se litigant could have interpreted the comments in such a manner. However, at the March 12, 2013, hearing, the following exchange took place between the bankruptcy judge and Saracino:

> Court: Okay. And I take it you've got more evidence than what I just eluded [sic] to?
>
> Saracino: Yes, Your Honor.
>
> Court: Okay. And – and you, uh, shared all of your documentation with [opposing counsel]?
>
> Saracino: Yes, Your Honor. I hand-delivered documentation to his office yesterday.
>
> Court: ***Okay. You realize any documents you haven't produced, are not going to be admissible?***
>
> Saracino: I – I also filed with the Court, Your Honor.[64]

The bankruptcy court did not extend the deadlines for filing the required pretrial

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[61] *Tr. of Proceedings held on March 12, 2013*, at 2, *ll.* 14-35, *in* Appellee's App. at 66.

[62] *Id.*

[63] *See Notice of Objection to Respondents' Motion to Strike Debtor's Submission of Evidence, Witness Lists, and Exhibits, and Legal Brief* at 2, *in* Appellees' App. at 54; Opening Brief at 4-5.

[64] *Tr. of Proceedings held on March 12, 2013*, at 3-4, *ll.* 20-26, 1-4, *in* Appellee's App. at 67-68 (emphasis added).

documents. The minutes of the November 8, 2012 proceedings make clear that all documents should have already been exchanged. Contrary to Saracino's assertion, there was no invitation by the bankruptcy court to produce and file more evidence following the parties' March 12, 2013 appearance during which the hearing was continued to April 9, 2013. Accordingly, the bankruptcy court was within its discretion to strike documents that were untimely filed.

Federal Rules of Civil Procedure 16, 26, and 37 give trial courts wide latitude in scheduling and managing discovery and pretrial procedures in their cases, as well as in sanctioning parties for failure to abide by the rules and deadlines set by the court.[65] Sanctions may include dismissal of claims and entry of default judgments, even if the party is a pro se litigant.[66] Matters relating to a trial court's case management and supervision of litigation are commonly reviewed by appellate courts for abuse of discretion,[67] and parties challenging sanctions "face[] an uphill climb in persuading a reviewing court that the trial court abused its discretion."[68]

In this case, the bankruptcy court granted the Motion to Strike documents Saracino filed more than three weeks late because they contained names of witnesses and exhibits with respect to which Harm and the Association had no notice and would be prejudiced. The bankruptcy court noted that the Contempt

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[65] These rules are made applicable to adversary proceedings in bankruptcy by Federal Rules of Bankruptcy Procedure 7016, 7026, and 7037.

[66] *Creative Gifts Inc. v. UFO*, 235 F.3d 540, 549 (10th Cir. 2000) (dismissal of pro se defendant's counterclaims was warranted for discovery violations); *Klein-Becker USA, LLC v. Englert*, 711 F.3d 1153, 1159 (10th Cir. 2013) (default judgment was appropriate sanction for pro se litigant's repeated failure to comply with discovery orders).

[67] *Woodworker's Supply, Inc. v. Principal Mut. Life Ins. Co.*, 170 F.3d 985, 993 (10th Cir. 1999); *Beaird v. Seagate Tech., Inc.*, 145 F.3d 1159, 1164 (10th Cir. 1998) (citing *Pierce v. Underwood*, 487 U.S. 552, 558-59 (1988)).

[68] *Mulero-Abreu v. P.R. Police Dep't*, 675 F.3d 88, 92 (1st Cir. 2012). *See also Lee v. Max Int'l, LLC*, 638 F.3d 1318, 1320-21 (10th Cir. 2011).

Motion had been pending since July 2012, and therefore Saracino was afforded more than ample time to prepare for the hearing.[69] Saracino offered no explanation for why she did not file the documents on or prior to the March 1, 2013 deadline. As a result, we cannot say the bankruptcy court abused its discretion when it entered its Order Striking Documents.[70]

Moreover, Saracino's allegations of a stay violation causing her damage are deficient. The Contempt Motion was predicated upon two alleged actions of the defendants: 1) the sending of a letter dated April 23, 2012, attempting to collect the pre-petition arrearage owed to the Association; and 2) the June 19, 2012 filing of state court litigation seeking to collect pre-petition and post-petition arrearage. The bankruptcy court, when ruling on the question of whether the defendants had wilfully violated the stay, found "[t]here is unqualified, unequivocal, unreserved statements - made on behalf of defendants - that collection of pre-petitioned dues or Homeowner Association financial obligations are not and were not intended to be collected. Only post petition dues were sought and/or are being sought to be recovered."[71] We agree.

The state court petition expressly sought only to foreclose the association's lien on Saracino's real property, not to enforce personal liability. That lien

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[69] *Tr. of Proceedings held on April 9, 2013*, at 4, *ll.* 16-24, *in* Appellee's App. at 73.

[70] It is not entirely clear whether the bankruptcy court dismissed the Contempt Motion as a sanction for failure to abide by the pre-trial order or dismissed it on the merits based on documents submitted by Harm and the Association. The bankruptcy court stated both 1) "I'm going to grant the Motion to Strike, further because Ms. Saracino did not meet the Court's deadline of March 1. The Court is going to dismiss the [Contempt Motion];" and 2) "[o]nly post-petition dues were sought . . . to be recovered. That is quite clear." *See id.* at 5, *ll.* 9-10, 17-19, *in* Appellee's App. at 74.

[71] *Id.* at 5, *ll.* 7-10, *in* Appellee's App. at 74.

survived the Chapter 7 case and the discharge of Saracino's personal liability.[72] As to the April 23, 2012 letter, the Association's letter soon thereafter[73] demonstrates it had no intention of collecting the pre-petition fees from Saracino.

Even if the sending of the April 23, 2012 letter evidences a willful stay violation, we are convinced that any error of the bankruptcy court in dismissing the Contempt Motion was harmless because Saracino did not fulfill her obligation to show actual compensable damages as a result of the letter. Saracino did not argue to the bankruptcy court or to this Panel, nor include in the record on appeal, any evidence that she suffered any remediable harm by the sending of the April 23, 2012 letter.[74] Only in the most unusual circumstances can an isolated event of mailing one letter cause actual damage, and there is nothing in the record to indicate that this is such a circumstance.

D. The Bankruptcy Court's Dismissal Order is not the Result of Bias

Saracino argues this Court should reverse the bankruptcy court's order because the bankruptcy judge was biased against her as a pro se litigant.[75] An

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[72] *Johnson v. Home State Bank*, 501 U.S. 78 (1991); *Horton v. Beaumont Place Homeowners Ass'n (In re Horton)*, 87 B.R. 650, 652 (Bankr. D. Colo. 1987).

[73] June 11, 2012 Letter, referred to in *Joint Statement* at 2, ¶ 17, *in* Appellee's App. at 37.

[74] At the March 12, 2013 hearing, the Court advised Saracino:

> I want to make sure you understand that if, indeed, the harm is absolutely *de minimus* [sic], and/or if the proof, uh, is persuasive and results of findings that there was no, uh, violation of the automatic stay other than a single episode and it was accidental, then that's not going to bode well for the strength or validity of your claim. If this is, uh, small thing and doesn't result in - in, uh, damages, um, then it doesn't speak well for your case.

Tr. of Proceedings held on March 12, 2013, at 2, *ll.* 21-26, *in* Appellee's App. at 66.

[75] Opening Brief at 2, 18, 27-28. We note that Saracino did not, however, move that the bankruptcy judge recuse himself. While failure to move for recusal (continued...)

individual asserting judicial bias has a heavy burden to meet and must "overcome a presumption of honesty and integrity in those serving as adjudicators."[76] Saracino's claim of bias appears to be predicated primarily on the facts that: 1) she was told "[the bankruptcy judge] does not like debtors;"[77] and 2) the bankruptcy judge repeatedly told her to obtain counsel, which she tried but she was unable to do.[78] Saracino offers nothing to support her claim of bias, nor explains how bias affected the bankruptcy court's decision.

Clearly, the bankruptcy court strongly advised Saracino to obtain counsel, but that alone does not demonstrate bias. As another court has remarked, a bankruptcy court's observations consistent with its duty to open a debtor's eyes to the reality of his lack of legal knowledge, and its further comment that proceeding pro se may lead to disaster is not necessarily indicative of bias.[79] Nor are a judge's comments expressing doubt on the merits of a case, standing alone, suggestive of bias.[80]

While the bankruptcy court may have treated Saracino in a direct manner, in *Liteky v. United States*, the Supreme Court explained that critical,

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[75] (...continued)
at the trial level does not preclude raising the issue on appeal, a party bears a greater burden in demonstrating that the judge erred in failing to grant recusal. *Noli v. Comm'r*, 860 F.2d 1521, 1527 (9th Cir. 1988).

[76] *Withrow v. Larkin*, 421 U.S. 35, 47 (1975).

[77] Opening Brief at 8.

[78] *Id.* at 8-9.

[79] *In re Labankoff*, 2010 WL 6259969, at *8 (9th Cir. BAP 2010). That court further opined, "To be clear, while the bankruptcy court was skeptical about Debtor's prospects for success without at least advice from a qualified [ ] attorney, the court never mandated that he engage counsel. Debtor was free, however unwise, to proceed pro se, which he obviously decided to do, albeit with poor results." *Id.* at *9 n.17. Such a sentiment seems equally applicable to Saracino's case.

[80] *Noli v. Comm'r*, 860 F.2d at 1527-28.

disapproving, or hostile judicial remarks do not support a bias or partiality challenge unless they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible.[81] The Supreme Court further opined:

> *Not* establishing bias or partiality, however, are expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display. A judge's ordinary efforts at courtroom administration–even a stern and short-tempered judge's ordinary efforts at courtroom administration–remain immune.[82]

Here, we cannot say that dismissal of Saracino's Contempt Motion was the result of bias against her on the part of the bankruptcy court. Instead, the dismissal was the result of Saracino's own failure to allege compensable harm and to abide by procedural rules and deadlines set by the bankruptcy court for litigating her claim. Although pro se litigants benefit from more generous treatment in some respects, they must nevertheless abide by the rules of procedure that govern other litigants. If they do not, then they must suffer the same consequences of their actions, which may include dismissal of their claims.[83]

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[81] 510 U.S. 540, 555 (1994).

[82] *Id.* at 555-56.

[83] *Creative Gifts Inc. v. UFO*, 235 F.3d 540, 549 (10th Cir. 2000) (citing *Okla. Federated Gold & Numismatics, Inc. v. Blodgett*, 24 F.3d 136, 139 (10th Cir. 1994)).

V. CONCLUSION

Saracino has not demonstrated error or bias by the bankruptcy court, and therefore its Dismissal Order is hereby AFFIRMED.[84]

[84] On May 21, 2013, the Association and Harm filed: 1) the Appellees' Objection to Appellant's Designation of Items to be Included in the Record on Appeal, *Docket No. 13-1*; and 2) the Appellees' Objection to Appellant's Statement of Issues to be Presented on Appeal, *Docket No. 13-2*. These items were referred to this merits panel by a motions panel order dated June 3, 2013, *Docket No. 16*. As we consider only issues addressed in an appellant's briefs and review only items included in the appendix and submitted by the appellant with the briefs, we deny the objections as unnecessary. Because of the nature of Saracino's arguments on appeal, if any items submitted in her appendix were evidence not presented to the bankruptcy court, they were not considered by this Court.