

October 15, 1998

Barbara A. Schermerhorn
Clerk

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE TENTH CIRCUIT**

IN RE MARIA MAYA, formerly
known as Hope Maya, formerly known
as Hope Grant,

Debtor.

BAP No. NM-98-013

MARIA MAYA, formerly known as
Hope Maya, formerly known as Hope
Grant,

Plaintiff–Counter-Claim-
Defendant–Appellant,

v.

LAS CRUCES TRUCK &
EQUIPMENT SERVICE and JERRY
MCCLURE,

Defendants–Counter-
Claimants–Appellees.

Bankr. No. 96-14997
Adv. No. 97-1035
Chapter 13

ORDER AND JUDGMENT*

Appeal from the United States Bankruptcy Court
for the District of New Mexico

Before BOHANON, ROBINSON, and MATHESON, Bankruptcy Judges.

MATHESON, Bankruptcy Judge.

After examining the briefs and appellate record, the Court has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. Bankr. P. 8012; 10th Cir. BAP L.R. 8012-1(a). The

* This order and judgment has no precedential value and may not be cited, except for the purposes of establishing the doctrines of law of the case, res judicata, or collateral estoppel. 10th Cir. BAP L.R. 8010-2.

case is therefore ordered submitted without oral argument.

This Court has before it for review the final judgment of the bankruptcy court dismissing the claims of the Plaintiff/Appellant. For the reasons set forth below, we affirm the judgment of the lower court.

BACKGROUND

Maya was engaged in the business of operating a trucking company. She filed a Chapter 13 in an effort to reorganize her affairs under the provisions of that chapter. In due course, a Chapter 13 plan was confirmed. However, Maya was unable to sustain the plan and the case was ultimately converted to Chapter 7.

Maya filed an adversary proceeding against the defendants, Las Cruces Truck & Equipment Service and Jerry McClure (collectively referred to as “McClure.”) The adversary was framed under the provisions of 11 U.S.C. § 362(h). The complaint alleged that, during the course of the Chapter 13, McClure disabled certain of Maya’s trucking equipment in an effort to collect an unpaid bill, that this was done in violation of the automatic stay and resulted in damage to Maya, effectively putting her out of business.

The adversary came on for trial before the bankruptcy court. At the close of Maya’s case, the court granted McClure’s motion for nonsuit or directed verdict. In entering judgment for McClure, the court found that Maya “has failed to prove that she sustained any damages as a result of any acts on the part of” McClure. Maya then filed this appeal from that judgment.

JURISDICTION AND STANDARD OF REVIEW

A Bankruptcy Appellate Panel, with the consent of the parties, has jurisdiction to hear appeals from final judgments, orders, and decrees of bankruptcy judges in this circuit. 28 U.S.C. §§ 158(a), (b)(1), (c)(1). As neither party has opted to have this appeal heard by the District Court for the District of

New Mexico, they are deemed to have consented to jurisdiction. 10th Cir. BAP L.R. 8001-1(d).

In reviewing an order on the bankruptcy court, this court “reviews the factual determinations of the bankruptcy court under the clearly erroneous standard, and reviews the bankruptcy court’s construction of [a statute] de novo.” *Taylor v. IRS*, 69 F.3d 411, 415 (10th Cir. 1995) (citations omitted).

A finding of fact is clearly erroneous only if the court has “the definite and firm conviction that a mistake has been committed.” *United States v. United States Gypsum Co.*, 333 U.S. 364, 395, 68 S. Ct. 525, 542, 92 L. Ed. 746 (1948). “It is the responsibility of an appellate court to accept the ultimate factual determination of the fact-finder unless that determination either (1) is completely devoid of minimum evidentiary support displaying some hue of credibility, or (2) bears no rational relationship to the supportive evidentiary data.” *Krasnov v. Dinan*, 465 F.2d 1298, 1302 (3d Cir. 1972).

Gillman v. Scientific Research Prods. (In re Mama D’Angelo, Inc.), 55 F.3d 552, 555 (10th Cir. 1995).

DISCUSSION

During the course of the adversary proceeding, Maya filed a motion for summary judgment directed only to the liability issue. The court set the matter for hearing and, after hearing, denied the motion for summary judgment. The only record of that order that is before this Court is the entry on the docket of a minute order denying the motion for summary judgment. Maya argues that the denial of the motion was error. However, the ultimate ruling by the bankruptcy court tacitly assumed that Maya had established McClure’s liability for violation of the stay but dismissed the case due to Maya’s failure to establish that any damages were incurred by the violation of the stay. Thus, no prejudicial error occurred by the court’s denial of the motion for summary judgment.

Maya’s real complaint in this appeal is that the bankruptcy court erred when it determined that Maya had failed to prove that she sustained any damages as a result of McClure’s activities. That is a factual determination that, as

explained above, the Court must review under the clearly erroneous standard. In order to effect such a review this Court must have before it the record of the evidence relied on by the bankruptcy court in making its finding.

In this appeal, Maya has elected to present only a partial record, consisting of only a portion of the transcript of the evidentiary hearing before the bankruptcy court and none of the exhibits. While that abbreviated record does, indeed, include at least some evidence of potential injury to Maya by reason of McClure's activities, this Court does not know what evidence lurks in the portions of the record that were not submitted. In particular, this Court does not know whether, in the omitted portions of the examinations of witnesses or in the missing exhibits, there is evidence of a more persuasive nature that contradicts the redacted record presented.

It is the obligation of Maya, as the appealing party, to present a record to this Court sufficient for a meaningful review. *United States v. Vasquez*, 985 F.2d 491, 495 (10th Cir. 1995); *Moore v. Subaru of America*, 891 F.2d 1445, 1448 (10th Cir. 1989); *United States v. Tedder*, 787 F.2d 540, 541 (10th Cir. 1986); Fed. R. Bankr. P. 8006; 10th Cir. BAP L.R. 8009-1(a). Because of the circumscribed record presented, the Court is unable to determine whether any error, much less clearly erroneous error, was committed by the bankruptcy court in concluding that Maya had "failed to prove that she sustained any damages."

Maya also complains that the bankruptcy court erred in failing to award her punitive damages. The award of punitive damages under 11 U.S.C. § 362(h) is a discretionary matter for the bankruptcy court and this Court reviews that decision on an abuse of discretion standard. Given the finding by the court that Maya had failed to prove that she sustained any damages and the abbreviated record presented, this Court is unable to conclude that the bankruptcy court abused its discretion in declining to award punitive damages.

Having considered the issues presented, and for the reasons stated, the judgment of the bankruptcy court is AFFIRMED.