

MAR 20 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: AVON TOWNHOMES
VENTURE,

Debtor.

JOE GUERRA,

Appellant,

v.

ROBERT JARAMILLO; MOHAMED
POONJA,

Appellees.

No. 12-60024

BAP No. 11-1068

MEMORANDUM*

In re: AVON TOWNHOMES
VENTURE,

Debtor.

RAYMUNDO LUJANO,

Appellant,

No. 12-60025

BAP No. 11-1069

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

v.

ROBERT JARAMILLO; MOHAMED
POONJA,

Appellees.

Appeals from the Ninth Circuit
Bankruptcy Appellate Panel
Hollowell, Donovan, and Dunn, Bankruptcy Judges, Presiding

Submitted February 6, 2014**

Before: LEAVY, GRABER, and W. FLETCHER, Circuit Judges.

Appellants Joe Guerra and Raymundo Lujano appeal the Ninth Circuit Bankruptcy Appellate Panel's ("BAP") affirmance of the bankruptcy court's order sanctioning them for bad faith under the bankruptcy court's inherent authority. Reviewing the sanctions order for abuse of discretion, Miller v. Cardinale (In re Deville), 361 F.3d 539, 547 (9th Cir. 2004), we affirm.

1. Appellants received appropriate notice and process, and the bankruptcy court did not violate their due process rights. The BAP correctly held that the sanctions here were civil in nature because they were compensatory. See Lasar v.

** The panel unanimously concludes this case is suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

Ford Motor Co., 399 F.3d 1101, 1111 (9th Cir. 2005) ("It is well-established that compensatory fines are civil sanctions in the context of contempt proceedings.").

2. The BAP correctly held that Appellants failed to show prejudice from the alleged ex parte communication. See Ludwig v. Astrue, 681 F.3d 1047, 1055 (9th Cir. 2012) (holding that prejudice must be shown from an ex parte communication). Given the nature of the communication at issue here, we reject Appellants' contention that the alleged ex parte communication required the bankruptcy judge to recuse himself. See, e.g., Blixseth v. Yellowstone Mountain Club, No. 12-35986, 2014 WL 606707, *2 (9th Cir. Feb. 18, 2014) (per curiam) ("While ex parte communications are discouraged, they . . . don't necessarily call for recusal." (citation omitted)).

3. The bankruptcy court did not clearly err in either its "bad faith" determination or its findings concerning Curtis Guerra's role. See Willms v. Sanderson, 723 F.3d 1094, 1099 (9th Cir. 2013) (holding that we review for clear error the bankruptcy court's factual findings).

4. Appellants waived their argument concerning the relevant factors that the bankruptcy court should have considered by failing to raise the argument before the bankruptcy court. See O'Guinn v. Lovelock Corr. Ctr., 502 F.3d 1056, 1063 n.3 (9th Cir. 2007) (holding that arguments not raised before the trial court are

waived). Although the BAP declined review on the ground of waiver and Appellee raised the issue of waiver in his brief, Appellants did not address the issue. In these circumstances, we decline to exercise our discretion to reach the issue.

AFFIRMED.