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4 UNITED STATES DISTRICT COURT  
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
6 OAKLAND DIVISION

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8 In re PAUL AND MELODY DEN BESTE,  
9 Debtors.

Case No: C 12-06189 SBA

**ORDER AFFIRMING  
BANKRUPTCY COURT  
ORDER AND DENYING  
MOTION FOR SANCTIONS**

10 PAUL DEN BESTE,

11 Plaintiff/Appellant,

12 vs.

13 EDITH MAZZAFERRI,

14 Defendant/Appellee/Respondent.

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16 Pro se Appellant and debtor Paul Den Beste ("Den Beste") appeals the United States  
17 Bankruptcy Judge Alan Jaroslovsky's November 13, 2012 order denying his motion to  
18 vacate award of attorneys' fees. Also before the Court is Den Beste's motion for sanctions.  
19 Having read and considered the papers filed in connection with these matters and being  
20 fully informed, the Court hereby AFFIRMS the bankruptcy court's order, and DENIES Den  
21 Beste's motion for sanctions, for the reasons stated below. The Court, in its discretion,  
22 finds these matters suitable for resolution without oral argument. See Fed.R.Civ.P. 78(b);  
23 N.D. Cal. Civ. L.R. 7-1(b).

24 **I. BACKGROUND**

25 **A. Underlying State Court Action**

26 The facts in this section are taken from a complaint filed on June 3, 2010 in San  
27 Francisco Superior Court against, among others, Den Beste. See Mazzaferri v. Mazzaferro,  
28 et al., Case No. CGC 10-500462. In January 2000, Anna and Luciano Fiorani created the

1 Fiorani Living Trust to provide for their developmentally disabled daughter, Lucia Fiorani  
2 ("Lucia"). Anna and Luciano Fiorani were the sole trustors and grantors of the Fiorani  
3 Living Trust as well as the initial co-trustees. The Fiorani Living Trust named Lucia as the  
4 sole beneficiary of a special needs trust to care for Lucia for her lifetime. The Fiorani  
5 Living Trust named Ronald Mazzaferro ("Mazzaferro") as successor trustee and remainder  
6 beneficiary, and Mazzaferro's mother, Edith Mazzaferri ("Mazzaferri"), as second successor  
7 trustee.

8 In April 2000, Mazzaferro became the trustee of the Fiorani Living Trust after both  
9 Anna and Luciano died.<sup>1</sup> At that time, the Fiorani Living Trust's property consisted of  
10 significant cash accounts and real property located at 1072-1074 Filbert Street, San  
11 Francisco, California ("Filbert Street property"). Lucia was 53 years old and homeless in  
12 April 2000, suffering from emotional, psychiatric, and medical disorders.

13 After Mazzaferro became the trustee of the Fiorani Living Trust, he allegedly  
14 converted the trust's assets to his own benefit and did not provide care for Lucia. On June  
15 23, 2004, an allegedly fraudulent deed of trust was executed which encumbered the Filbert  
16 Street property for the amount of \$2,980,000. The deed of trust named Den Beste as the  
17 trustee, even though Den Beste has never been a trustee of the Fiorani Living Trust.

18 In June and July 2004, Lucia requested information from Mazzaferro about her  
19 parents' estate but received no response. In February 2005, Lucia petitioned the probate  
20 division of the San Francisco Superior Court for an order requiring Mazzaferro to provide  
21 an accounting of the Fiorani Living Trust and requiring him to petition the court for  
22 settlement of the account.

23 On March 15, 2005, Den Beste allegedly executed a fraudulent deed as trustee of the  
24 Fiorani Living Trust, granting the Filbert Street property to the Lotchk Corporation. This  
25 transfer was allegedly made for about \$108,000, even though the property was allegedly  
26 valued at about \$1,621,000.

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28 <sup>1</sup> Anna Fiorani died in March 2000, and Luciano Fiorani died in April 2000.

1 In May 2005, the superior court ordered Mazzaferro to provide an accounting of his  
2 administration of the Fiorani Living Trust, which he failed to do. In January 2006, the  
3 superior court issued a warrant of attachment of the body of Mazzaferro for contempt, and  
4 issued a second such warrant in January 2007. In September 2009, Lucia petitioned the  
5 superior court to remove Mazzaferro as trustee, and to appoint Mazzaferri as successor  
6 trustee. In October 2009, the Lotchk Corporation allegedly executed a fraudulent deed,  
7 transferring title of the Filbert Street property to Great Sunset Ventures, Inc.

8 In December 2009, the superior court issued an order removing Mazzaferro as  
9 trustee and appointing Mazzaferri as trustee. The order required Mazzaferro to turn over all  
10 assets, books and records of the Fiorani Living Trust. Upon assuming the role of trustee,  
11 Mazzaferri discovered that the Fiorani Living Trust's assets had been depleted by  
12 Mazzaferro and others.

13 On June 3, 2010, Mazzaferri filed an action against Mazzaferro, Den Beste, and  
14 several others in San Francisco Superior Court, alleging claims for breach of trust, breach  
15 of contract, breach of fiduciary duty, intentional misrepresentation, negligent  
16 misrepresentation, conversion, conspiracy, negligence, unjust enrichment, and quiet title.  
17 See Mazzaferri v. Mazzaferro, et al., Case No. CGC 10-500462. The suit alleges that the  
18 defendants depleted the Fiorani Living Trust's cash assets and severely clouded the title of  
19 the Filbert Street property. Specifically, as to Den Beste, the suit alleges that on March 15,  
20 2005, Den Beste fraudulently executed a deed as "Trustee" of the Fiorani Living Trust,  
21 transferring the Filbert Street property to the Lotchk Corporation for \$108,000, far below  
22 the property's alleged value.

### 23 **B. Bankruptcy Proceedings and State Court Proceedings**

24 In September 2010, Den Beste filed a Chapter 13 petition for bankruptcy, which was  
25 converted to a Chapter 7 bankruptcy in October 2010. In or around this same time, Den  
26 Beste and several other defendants filed motions to strike the complaint in the San  
27 Francisco Superior Court action under the anti-SLAPP (strategic lawsuit against public  
28 participation) statute. On December 10, 2010, the superior court denied Den Beste's

1 motion to strike, finding that the motion was frivolous and solely intended to cause delay.  
2 As a consequence, the superior court ordered Den Beste and his co-defendants to pay  
3 Mazzaferri fees and costs in the amount of \$11,150 as a sanction. On January 7, 2011, the  
4 superior court ordered Den Beste and his co-defendants to pay Mazzaferri an additional  
5 \$4,150 in fees and costs incurred in enforcing the December 10, 2010 order as a sanction.  
6 Den Beste and his co-defendants appealed the orders awarding sanctions.

7 On November 9, 2011, the Court of Appeal reversed the orders awarding sanctions,  
8 finding that the superior court did not specify the reasons for the fees and costs it awarded  
9 as sanctions and erred in using a summary procedure to impose further sanctions. The  
10 Court of Appeal also issued an order declaring Den Beste and his co-defendants vexatious  
11 litigants, and prohibited them from filing any new litigation in the state courts appearing in  
12 propria persona without first obtaining leave of the presiding judge of the court where the  
13 litigation would be filed.

14 On February 11, 2011, Den Beste filed an adversary proceeding against Mazzaferri  
15 alleging that she violated the automatic bankruptcy stay. This action was dismissed by the  
16 bankruptcy court for lack of prosecution. On December 1, 2011, the bankruptcy court  
17 denied Den Beste's motion for relief from the order dismissing the action.

18 On November 30, 2011, Den Beste commenced the underlying adversary proceeding  
19 against Mazzaferri and others. In this proceeding, Den Beste alleges that defendants  
20 knowingly violated the bankruptcy court's automatic stay by seeking to collect the award of  
21 sanctions imposed against him in the San Francisco Superior Court action. On April 24,  
22 2012, Mazzaferri filed a motion for summary judgment. On June 18, 2012, the bankruptcy  
23 court granted Mazzaferri's motion for summary judgment and denied Den Beste's  
24 countermotion for summary judgment. On that same day, judgment was entered in favor of  
25 Mazzaferri and the other defendants in the adversary proceeding.

26 On July 2, 2012, Mazzaferri filed a motion under 11 U.S.C. § 105 and Chambers v.  
27 NASCO, Inc., 501 U.S. 32 (1991) (i.e., the court's inherent authority) seeking attorneys'  
28 fees in the amount of \$21,274 as a sanction for Den Beste's bad faith and harassing conduct

1 in filing meritless adversary proceedings for alleged violations of the automatic stay. On  
2 August 27, 2012, the bankruptcy court issued a "Memorandum on Motion for Attorneys'  
3 Fees," finding that Den Beste's adversary proceeding, like his other adversary proceedings,  
4 was filed in bad faith for the "sole purpose of harassing his enemies and was based on  
5 improper action Den Beste himself took in state court." In so finding, the bankruptcy court  
6 noted that Den Beste has used the automatic stay as "a club," filing five meritless adversary  
7 proceedings for alleged violations of the stay.<sup>2</sup> The bankruptcy court noted that had the  
8 motion for attorneys' fees been brought under Rule 9011 of the Federal Rules of  
9 Bankruptcy Procedure, which would have provided Den Beste an opportunity to "exercise  
10 some wisdom and drop [the adversary proceeding]," the court would have awarded the full  
11 amount of the fees sought. However, because the motion for attorneys' fees was brought  
12 under the court's inherent power to sanction, the court concluded that Den Beste "should  
13 compensate [Mazzaferri] for most of [her] attorneys' fees because of his bad faith conduct,  
14 but that the amount of compensation should be less than the full amount the court would  
15 have awarded if defendants had made their motion under Rule 9011 after giving Den Beste  
16 the benefit of its safe harbor provisions."

17 On September 5, 2012, the bankruptcy court issued an order awarding Mazzaferri  
18 attorneys' fees in the amount of \$15,000. On November 13, 2012, the bankruptcy court  
19 denied Den Beste's motion to vacate the award of attorneys' fees. On November 26, 2012,  
20 Den Beste filed a notice of appeal of the order denying his motion to vacate the award of  
21 attorneys' fees. On March 5, 2013, Den Beste filed his opening brief. On March 26, 2013,  
22 Mazzaferri filed a responsive brief.

23 On April 8, 2013, Den Beste filed a motion for sanctions against Mazzaferri and her  
24 attorney, Russell Stanaland ("Stanaland"), based on their "premeditated, knowing, willful,  
25 deliberate violation of 11 U.S.C. § 362." Mazzaferri filed an opposition on April 22, 2013.

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28 <sup>2</sup> In its memorandum, the bankruptcy court noted that it has previously found Den Beste to be a vexatious litigant and has assessed sanctions against him.

1 **II. LEGAL STANDARD**

2 A district court has jurisdiction over appeals from bankruptcy courts in its district.  
3 28 U.S.C.A. § 158(a). An award of sanctions entered by a bankruptcy court is reviewed for  
4 abuse of discretion. In re Lehtinen, 564 F.3d 1052, 1058 (9th Cir. 2009). A court abuses  
5 its discretion if its decision is based on "an erroneous view of the law or on a clearly  
6 erroneous assessment of the evidence." Holgate v. Baldwin, 425 F.3d 671, 675 (9th Cir.  
7 2005).

8 **III. DISCUSSION**

9 **A. Bankruptcy Court's Award of Attorneys' Fees as a Sanction**

10 Pursuant to its inherent authority, the bankruptcy court imposed sanctions against  
11 Den Beste in the form of attorneys' fees based on Den Beste's bad faith conduct in filing the  
12 underlying adversary proceeding. On appeal, Den Beste argues that the bankruptcy court  
13 lacked jurisdiction to do so because bankruptcy courts do not have the inherent power to  
14 sanction parties for bad faith conduct. Den Beste's argument is meritless. Bankruptcy  
15 courts, like district courts, have the inherent power to impose sanctions on a party for  
16 improper litigation tactics, including bad faith or willful misconduct. See In re Rainbow  
17 Magazine, Inc., 77 F.3d 278, 284 (9th Cir. 1996) (By granting bankruptcy courts authority  
18 to "issue orders necessary 'to prevent an abuse of process,' Congress impliedly recognized  
19 that bankruptcy courts have the inherent power to sanction that . . . exists within Article III  
20 courts."); see also In re Dyer, 322 F.3d 1178, 1196 (9th Cir. 2003). This power "allows a  
21 bankruptcy court to deter and provide compensation for a broad range of improper  
22 litigation tactics." In re Lehtinen, 564 F.3d at 1058.

23 Den Beste also argues, without elaboration or analysis, that the bankruptcy court  
24 should have denied Mazzaferri's motion for attorneys' fees because it did not comply with  
25 Rule 7(b)(1) of the Federal Rules of Civil Procedure. Rule 7(b)(1) provides that a request  
26 for a court order must be made by motion, and that motion must: (1) be in writing unless  
27 made during a hearing or trial; (2) state with particularity the grounds for seeking the order;  
28 and (3) state the relief sought. Fed.R.Civ.P. 7(b)(1). The Court rejects Den Beste's

1 undeveloped, conclusory argument. It is not the role of the Court to make the parties'  
2 arguments for them. See In re Morrissey, 349 F.3d 1187, 1189 (9th Cir. 2003); see also  
3 Indep. Towers of Wash. v. Wash., 350 F.3d 925, 929 (9th Cir. 2003). Moreover, a review  
4 of the record reveals that Mazzaferri's motion clearly complied with the requirements of  
5 Rule 7(b)(1). The motion was in writing, stated with particularity the grounds for seeking  
6 attorneys' fees (i.e., Den Beste acted in bad faith and abused his status as a debtor to harass  
7 Mazzaferri by filing meritless adversary proceedings), and requested attorneys' fees in the  
8 amount of \$21,274 as reimbursement for the fees she incurred in litigating the underlying  
9 adversary proceeding under 11 U.S.C. § 105 or the court's inherent authority.

10 Finally, Den Beste argues that the bankruptcy court erred by granting Mazzaferri's  
11 motion for attorneys' fees because a party may only recover fees under California law as  
12 provided by statute or agreement of the parties. This argument lacks merit. When a party  
13 has acted in bad faith, sanctions under the court's inherent authority may take the form of  
14 attorneys' fees. See Primus Auto. Fin. Servs., Inc. v. Batarse, 115 F.3d 644, 646, 648 (9th  
15 Cir. 1997). However, "[b]efore imposing sanctions under its inherent sanctioning authority,  
16 a court must make an explicit finding of bad faith or willful misconduct . . . [and]  
17 something more than mere negligence or recklessness." In re Dyer, 322 F.3d at 1196.

18 In this case, the bankruptcy court made an explicit finding that Den Beste acted in  
19 bad faith by filing a meritless adversary proceeding for the purpose of harassing Mazzaferri  
20 and the other defendants. In so finding, the bankruptcy court noted that Den Beste had used  
21 the automatic stay as "a club," filing five meritless adversary proceedings for alleged  
22 violations of the stay. While Den Beste does not specifically argue that his conduct did not  
23 rise to the level of bad faith sufficient to warrant the invocation of the bankruptcy court's  
24 inherent authority to sanction him, the Court finds that the record supports the bankruptcy  
25 court's conclusion that Den Beste commenced the underlying adversary proceedings in bad  
26 faith. Accordingly, because the Court finds that the bankruptcy court did not abuse its  
27 discretion in awarding Mazzaferri attorneys' fees in the amount of \$15,000 as a sanction for  
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1 Den Beste's bad faith conduct,<sup>3</sup> the bankruptcy court's order denying Den Beste's motion to  
2 vacate award of attorneys' fees is AFFIRMED.

3 **B. Bankruptcy Court's Summary Judgment Order**

4 Den Beste devotes a significant portion of his appellate brief to arguing that the  
5 bankruptcy court erred in granting Mazzaferri's motion for summary judgment and denying  
6 his countermotion for summary judgment. However, the Court lacks jurisdiction to review  
7 the propriety of the bankruptcy court's summary judgment order.

8 Rule 8002 of the Federal Rules of Bankruptcy Procedure provides that "[t]he notice  
9 of appeal shall be filed with the clerk within 14 days of the date of the entry of the  
10 judgment, order, or decree appealed from." Fed.R.Bankr.P. 8002(a). The statute further  
11 provides that "the time for appeal for all parties runs from the entry of the order disposing  
12 of the last . . . timely motion . . . to alter or amend the judgment under Rule 9023 . . . or . . .  
13 for relief under Rule 9024. . . ." Fed.R.Bankr.P. 8002(b). "The provisions of Bankruptcy  
14 Rule 8002 are jurisdictional; the untimely filing of a notice of appeal deprives the appellate  
15 court of jurisdiction to review the bankruptcy court's order." In re Mouradick, 13 F.3d 326,  
16 327 (9th Cir. 1994). The time limits provided in Rule 8002 are strictly construed  
17 "[b]ecause of the jurisdictional implications." See In re Souza, 795 F.2d 855, 857 (9th Cir.  
18 1986).

19 On June 18, 2012, the bankruptcy court issued an order granting Mazzaferri's motion  
20 for summary judgment and denying Den Beste's countermotion for summary judgment. On  
21 that same date, the bankruptcy court entered judgment in favor of Mazzaferri and the other  
22 defendants. On July 27, 2012, the bankruptcy court issued an order denying Den Beste's  
23 motion to vacate the summary judgment order. As such, Den Beste had until August 10,  
24 2012 to file an appeal of the bankruptcy court's summary judgment order. Den Beste failed  
25 to do so. Instead, on November 26, 2012, Den Beste filed the instant appeal, which states  
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27 <sup>3</sup> Den Beste does not challenge the reasonableness of the amount of attorneys' fees  
28 awarded to Mazzaferri. Instead, Den Beste argues that the bankruptcy court erred by  
failing to deny Mazzaferri's motion for attorneys' fees.



1 that Den Beste appeals the bankruptcy court's November 13, 2012 order denying his motion  
2 to vacate award of attorneys' fees. Den Beste's notice of appeal does not include an appeal  
3 of the bankruptcy court's summary judgment order or the bankruptcy court's order denying  
4 his motion to vacate the summary judgment order. But even if it did, the time for Den  
5 Beste to appeal the bankruptcy court's summary judgment order expired long before  
6 November 26, 2012. Accordingly, the Court lacks jurisdiction to review the bankruptcy  
7 court's decision to grant Mazzaferri's motion for summary judgment and deny Den Beste's  
8 countermotion for summary judgment.

9 **C. Motion for Sanctions**

10 Following the completion of briefing on the instant appeal, Den Beste filed a motion  
11 for sanctions, arguing that sanctions are warranted against Mazzaferri and Stanaland  
12 because they knowingly, willfully, and deliberately violated the automatic stay in another  
13 bankruptcy case involving Robert Van Zandt ("Van Zandt"). However, Den Beste has not  
14 provided any authority or legal analysis demonstrating that this Court has jurisdiction to  
15 consider his motion for sanctions.

16 Den Beste's motion is not a timely appeal of an order issued by the bankruptcy court.  
17 Further, Den Beste has not shown that he raised the issue of sanctions below or articulated  
18 any exceptional circumstances justifying the consideration of arguments raised for the first  
19 time on appeal. See In re Jan Weilert RV, Inc., 315 F.3d 1192, 1199 (9th Cir. 2003)  
20 (absent exceptional circumstances, arguments will not be considered for the first time on  
21 appeal). Moreover, even assuming arguendo that Den Beste raised the issue of sanctions  
22 below, he would lack standing to appeal a bankruptcy court order addressing this issue  
23 because he does not qualify as a "person aggrieved" by the decision. See In re P.R.T.C.,  
24 Inc., 177 F.3d 774, 777 (9th Cir. 1999) (to have standing to appeal a bankruptcy court  
25 order, a party must be a "person aggrieved," which means the party must be "directly and  
26 adversely affected pecuniarily" by the order). It is undisputed that Den Beste is not a party  
27 to the bankruptcy case involving Van Zandt. As such, it is clear that he would not be  
28 "directly and adversely affected pecuniarily" by a bankruptcy court order failing to sanction

1 Mazzaferri and Stanaland for violating the automatic stay in that case. Accordingly, Den  
2 Beste's motion for sanctions is DENIED.

3 **IV. CONCLUSION**

4 For the reasons stated above, IT IS HEREBY ORDERED THAT:

5 1. The bankruptcy court's order denying Den Beste's motion to vacate award of  
6 attorneys' fees is AFFIRMED.

7 2. Den Beste's motion for sanctions is DENIED.

8 3. The Clerk shall close the file and terminate all pending matters.

9 IT IS SO ORDERED.

10 Dated: 11/5/2013

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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