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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

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

In re:)	BAP Nos.	CC-15-1032-KuKiTa
)		CC-15-1353-KuKiTa
RUBEN GONZALEZ CUEVAS,)	Bk. No.	2:14-bk-32359-NB
Debtor.)		
_____)		
RUBEN GONZALEZ CUEVAS)		
Appellant.)		
_____)		
RUBEN GONZALEZ CUEVAS; PHILIP)		
E. KOEBEL,)		
Appellants,)		
v.)		
STEVAN CHANDLER, Trustee of the)		
Juliana Cuevas Living Trust;)		
HEIDE KURTZ, Chapter 7 Trustee,)		
Appellees.)		
_____)		

MEMORANDUM*

Argued and Submitted on September 22, 2016
at Pasadena, California

Filed - October 5, 2016

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Neil W. Bason, Bankruptcy Judge, Presiding

*This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8024-1.

1 Appearances: Philip E. Koebel argued for appellants.**

2
3 Before: KURTZ, KIRSCHER and TAYLOR, Bankruptcy Judges.

4 **INTRODUCTION**

5 Former chapter 13¹ debtor Ruben Gonzalez Cuevas appeals from
6 the dismissal of his chapter 13 case based on the bankruptcy
7 court's finding of bad faith. Cuevas and his counsel, Philip E.
8 Koebel, also appeal from sanctions orders entered against Koebel
9 under Rule 9011 and under the bankruptcy court's inherent
10 authority. None of Cuevas' arguments challenging the dismissal
11 order justify reversal. In addition, appellants failed to set
12 forth in their second amended joint appeal brief any arguments
13 specifically and distinctly challenging the sanctions orders.

14 Accordingly, we AFFIRM.

15 **FACTS**

16 Cuevas is more than 70 years old and survives on a small
17 military pension and Social Security benefits totaling, in
18 aggregate, roughly \$1,070 per month. For many years, Cuevas
19 lived in a house on Mariposa Street in Altadena, California.
20 Title to the house was held by the Juliana Cuevas Living Trust.

21
22
23 **Chandler and Kurtz only are appellees in the appeal from
24 the sanctions orders. As stated in this Panel's order entered
25 June 2, 2015, there is no appellee in the appeal from the
26 bankruptcy court's dismissal order. Neither appellee actively
27 participated in the sanctions appeal.

28 ¹Unless specified otherwise, all chapter and section
references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
all "Rule" references are to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9037. All "Civil Rule" references are to
the Federal Rules of Civil Procedure.

1 Juliana was Cuevas' mother. The house is the trust's only
2 significant asset, and Cuevas' sister Grace Dibble was named in
3 the trust to serve as the trustee. Upon Juliana's death in 2005,
4 the trust provided for the division of the trust's beneficial
5 interest into three equal shares, with Cuevas, Dibble and Cuevas'
6 brother Daniel each to receive one share.

7 In 2006, Dibble obtained an order from the probate court
8 confirming the trust's ownership of the house, and in 2007 Dibble
9 obtained an order from the Los Angeles County Superior Court
10 entitling Dibble to recover possession of the house. However,
11 two days before the scheduled eviction, Cuevas filed his
12 chapter 7 bankruptcy case, which has been pending since
13 October 2, 2007. Almost immediately, Dibble sought and obtained
14 relief from the automatic stay; the order permitted her to
15 proceed with the state court litigation over ownership of the
16 house but did not permit her to evict Cuevas absent further order
17 of court.

18 At first, the chapter 7 trustee seemed content to rely upon
19 Dibble's efforts to evict Cuevas and sell the house. By the end
20 of 2009, however, the chapter 7 trustee had lost confidence in
21 Dibble's efforts, so he moved the probate court to remove her and
22 to appoint a successor probate trustee. Even though it was later
23 discovered that Dibble (apparently without notice or probate
24 court approval) had transferred title to the house from the
25 probate trust to a trust in her own name, it took the chapter 7
26 trustee until December 2012 to obtain a probate court order
27 permanently removing Dibble and appointing a successor probate
28 trustee - Stevan Chandler.

1 Dibble and Cuevas resisted Chandler's efforts to,
2 respectively, return title to the probate trust and to evict
3 Cuevas and liquidate the house. Meanwhile, after several years
4 as a chapter 7 debtor, Cuevas filed a series of motions - all
5 unsuccessful - seeking either to dismiss his chapter 7 case or to
6 convert it to chapter 13. He also sought to claim a homestead
7 exemption in the house, but the bankruptcy court overruled
8 Cuevas' homestead exemption claim. Because the house was owned
9 by the probate trust and not by Cuevas, the court explained, he
10 did not have any interest in the house to exempt.

11 After recovering title to the house on behalf of the probate
12 trust in 2014, Chandler commenced an unlawful detainer action
13 against Cuevas, which was scheduled for trial in January 2015.
14 Even though Cuevas' 2007 chapter 7 bankruptcy case was still
15 pending, Cuevas filed his chapter 13 petition in December 2014,
16 which effectively stayed the unlawful detainer trial.

17 Soon thereafter, the bankruptcy court sua sponte entered an
18 order to show cause why the new chapter 13 case should not be
19 dismissed. In response, Cuevas argued that there was no per se
20 rule against him filing a chapter 13 case after receiving his
21 chapter 7 discharge but before his chapter 7 case had been fully
22 administered and closed. Cuevas further argued that his
23 chapter 13 case had been filed in good faith and for a legitimate
24 purpose, but the bankruptcy court disagreed. The bankruptcy
25 court explained that there was little or no post-chapter 7 debt
26 to deal with in the chapter 13 case, no prospect of Cuevas
27 receiving a discharge and no real source of income or assets
28 available permitting Cuevas to pay any debts, so there was no

1 legitimate bankruptcy purpose behind the filing of Cuevas'
2 chapter 13 case. The court further noted that the assumptions
3 underlying Cuevas' chapter 13 plan ignored the reality of the
4 bankruptcy court's relief from stay and homestead exemption
5 rulings in Cuevas' chapter 7 case. Based thereon, the bankruptcy
6 court concluded that the chapter 13 case should be dismissed and
7 the debtor should be barred for a period of two years from filing
8 a new bankruptcy case.

9 On the same day the bankruptcy court entered its chapter 13
10 case dismissal order (January 16, 2015), the court also issued an
11 order to show cause why Cuevas' counsel Koebel should not be
12 sanctioned "under . . . §§ 105(a) or 329, Fed. R. Bankr. P. 9011,
13 L.B.R. 2090-1 and 2090-2, this court's General Order 96-05, this
14 court's inherent sanctioning authority, or any other applicable
15 law or rule." According to the court, Koebel's filing of Cuevas'
16 chapter 13 petition and the positions Koebel took in attempting
17 to prevent dismissal of the chapter 13 case tended to demonstrate
18 that sanctions against Koebel were warranted.

19 Both Koebel and Chandler filed responses to the sanctions
20 show cause order. In addition, the court permitted Chandler an
21 opportunity to file his own motion under Rule 9011 seeking
22 attorney's fees awards against Koebel and in favor of Chandler
23 and the chapter 7 trustee. The court also convened multiple
24 hearings and permitted supplemental briefing by both sides.

25 Cuevas also filed a motion to "correct" the bankruptcy
26 court's chapter 13 case dismissal order and a notice of appeal
27 from that order. While Cuevas cited Civil Rule 60(a) as the
28 basis for his motion to correct, many of the issues raised in the

1 motion actually sought supplemental, clarifying, and amended
2 findings of fact and conclusions of law.

3 Ultimately, the bankruptcy court issued a detailed and
4 thorough memorandum decision disposing of Cuevas' motion to
5 correct as well as all outstanding sanctions issues. The
6 bankruptcy court granted in part Cuevas' motion to correct. The
7 bankruptcy court agreed that a couple of inadvertent errors and
8 omissions in the dismissal order needed to be corrected. The
9 bankruptcy court's memorandum decision also elaborated on the
10 findings and reasoning supporting dismissal of Cuevas' chapter 13
11 case. In summary, the court explained, Cuevas only filed his
12 chapter 13 case to delay his eviction and to increase the
13 litigation costs of Chandler and the chapter 7 trustee. The
14 court described as "nonsense" Cuevas' various assertions as to
15 why he needed to pursue chapter 13 relief. According to the
16 court, Cuevas' claim that he needed to address in chapter 13 debt
17 that arose after the filing of his chapter 7 petition was a sham.
18 The court similarly characterized as shams Cuevas' alternate
19 theories about how he could fund his chapter 13 plan - either
20 from non-existent disposable income or from a wholly-speculative
21 and overly-optimistic expectation of a distribution from his
22 chapter 7 case.

23 The court denied all other relief requested in Cuevas'
24 motion to correct.

25 With respect to sanctions, the bankruptcy court ordered the
26 following sanctions against Koebel: (1) a sanctions award of
27 \$15,346.30 in fees and costs to be paid to Chandler; (2) a
28 sanctions award of \$2,110.60 in fees and costs to be paid to the

1 chapter 7 trustee; and (3) a referral to the Central District of
2 California disciplinary panel, with a recommendation that Koebel
3 be referred to the California state bar, be suspended from
4 practice for a period of no less than six months and be subject
5 to a probationary period of practice of four and one-half years.

6 The bankruptcy court reasoned that Koebel's subjective bad
7 faith and objectively unreasonable conduct in filing Cuevas'
8 chapter 13 petition and in opposing dismissal of the case (as
9 identified in its original January 2015 dismissal order and as
10 elaborated on in the memorandum decision) constituted ample
11 grounds for the imposition of sanctions under Rule 9011 and under
12 the court's inherent powers.

13 The bankruptcy court entered its amended order dismissing
14 Cuevas' chapter 13 case on September 30, 2015, and its sanctions
15 orders on October 28, 2015, and Cuevas and Koebel timely
16 appealed.

17 **JURISDICTION**

18 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
19 §§ 1334 and 157(b) (2) (A). We have jurisdiction under 28 U.S.C.
20 § 158.

21 **ISSUES**

- 22 1. Has Cuevas raised any meritorious arguments for reversal of
23 the chapter 13 case dismissal order?
- 24 2. Has Koebel raised any meritorious arguments for reversal of
25 the sanctions orders?

26 **STANDARDS OF REVIEW**

27 While a bankruptcy court's finding of bad faith is reviewed
28 under the clearly erroneous standard, the dismissal of a

1 bankruptcy case for cause based on a finding of bad faith is
2 reviewed for an abuse of discretion. Leavitt v. Soto (In re
3 Leavitt), 171 F.3d 1219, 1222-23 (9th Cir. 1999).

4 We also review for an abuse of discretion all aspects of the
5 bankruptcy court's imposition of sanctions under both Rule 9011
6 and under its inherent sanctioning authority. Price v. Lehtinen
7 (In re Lehtinen), 564 F.3d 1052, 1058 (9th Cir. 2009); Shalaby v.
8 Mansdorf (In re Nakhuda), 544 B.R. 886, 898 (9th Cir. BAP 2016);
9 DeLuca v. Seare (In re Seare), 515 B.R. 599, 614 (9th Cir. BAP
10 2014).

11 The bankruptcy court abuses its discretion if it applies an
12 incorrect legal rule or its factual findings are illogical,
13 implausible or without support in the record. See U.S. v.
14 Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

15 We review de novo whether an appellant's due process rights
16 have been violated. In re Seare, 515 B.R. 615.

17 **DISCUSSION**

18 Under § 1307(c), the bankruptcy court may dismiss a
19 chapter 13 bankruptcy case "for cause". Bad faith of the debtor
20 in filing his or her bankruptcy petition is one type of cause for
21 dismissal. In re Leavitt, 171 F.3d at 1224. The bankruptcy
22 court, here, articulated and applied the correct legal standard
23 - the totality of the circumstances. Additionally, the
24 bankruptcy court either explicitly or implicitly considered the
25 four factors set forth in In re Leavitt that bankruptcy courts
26 are supposed to consider before dismissing a case based on bad
27 faith. The four Leavitt factors are:

28 (1) whether the debtor misrepresented facts in his

1 petition or plan, unfairly manipulated the Code, or
2 otherwise filed his petition or plan in an
3 inequitable manner; (2) the debtor's history of filings
4 and dismissals; (3) whether the debtor intended to
5 defeat state court litigation; and (4) whether
6 egregious behavior is present.

7 Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth),
8 455 B.R. 904, 917-18 (9th Cir. BAP 2011) (quoting In re Leavitt,
9 171 F.3d at 1224). These same four factors can be critical when
10 the bankruptcy court is considering imposing restrictions on the
11 debtor's future bankruptcy filings. See In re Leavitt, 171 F.3d
12 at 1224 ("a finding of bad faith based on egregious behavior can
13 justify dismissal with prejudice"); see also In re Ellsworth,
14 455 B.R. at 922 (instructing courts to consider alternatives to
15 dismissal with prejudice, including "barring the debtor from
16 refiling for 180 days pursuant to § 109(g), or for some other
17 length of time.").

18 Cuevas contends that the bankruptcy court did not consider
19 the totality of the circumstances and ignored evidence that,
20 according to Cuevas, tends to show his good faith in filing the
21 petition. Cuevas claims that the contents of his chapter 13
22 schedules and his plan demonstrate good faith, but the bankruptcy
23 court found otherwise. After reviewing (among other things)
24 Cuevas' schedules, his plan and the orders issued by the
25 bankruptcy court in Cuevas' chapter 7 case, the bankruptcy court
26 found that Cuevas did not have any genuine prospect of addressing
27 (or any genuine need to address) any post-chapter 7 indebtedness
28 at the time he filed his chapter 13 petition. The bankruptcy
court further found that Cuevas actually filed his chapter 13
petition for the improper purpose of impeding Chandler's upcoming

1 unlawful detainer trial and to increase the expense and delay
2 associated with Chandler's actions on behalf of the probate trust
3 and the chapter 7 trustee's actions on behalf of the chapter 7
4 bankruptcy estate.

5 Cuevas insists that there were post-chapter 7 tax debts that
6 needed to be addressed. Even if we were to assume that this is
7 true, Cuevas has not pointed us to anything in the record which
8 persuades us that the bankruptcy court committed clear error when
9 it determined that, at the time Cuevas filed his chapter 13
10 petition, he had no genuine ability to address (pay) any portion
11 of these debts by way of a chapter 13 plan.

12 Cuevas' claim that he potentially will obtain in the future
13 an (exemptible) ownership interest in the house currently owned
14 by the trust is an example of the dubious nature of Cuevas'
15 claims regarding plan funding. Cuevas does not dispute that the
16 trust owns the house and that Chandler, as trustee, has been
17 attempting for years to sell the house pursuant to the trust's
18 terms so that the sale proceeds can be used to pay the costs of
19 trust administration and so that any remaining proceeds can be
20 distributed to the trust's beneficiaries. Cuevas also has
21 conceded that the bankruptcy court in the chapter 7 case entered
22 a final and non-appealable order disallowing Cuevas' homestead
23 exemption claim because the trust - not Cuevas - owned the house.
24 Cf. In re Barnes, 275 B.R. 889, 896-97 (Bankr. E.D. Cal. 2002)
25 (debtor/beneficiary of self-settled irrevocable trust was not
26 owner of trust assets and hence could not exempt trust assets).
27 And yet Cuevas argued in his chapter 13 case that he somehow
28 still could end up with an ownership interest in the house that

1 could be exempted. Cuevas, himself, admitted in his opening
2 appeal brief that the only way this homestead exemption could
3 arise was "in the unlikely event that the Chapter 7 trustee
4 administers the Chapter 7 bankruptcy estate by awarding the
5 Debtor his home." Aplt. Opn Br. (April 18, 2016) at pp. 24-25.
6 Furthermore, Cuevas has not explained how, if this unlikely event
7 (home ownership) were to occur in the future, it would have
8 affected his exemption rights in bankruptcy, when such rights
9 ordinarily are fixed on the date the petition is filed. See
10 Wolfe v. Jacobson (In re Jacobson), 676 F.3d 1193, 1199 (9th Cir.
11 2012).

12 Cuevas' alternate plan funding claim that he can expect
13 close to a \$200,000 distribution from the trust is even more
14 doubtful. The projected \$200,000 payout is based on Cuevas'
15 belief that he will receive one-third of the fair market value of
16 the house, which he alleges to be \$600,000. Cuevas' calculation
17 did not account for any costs of sale or for Chandler's
18 reasonable expenses in administering the probate trust, which
19 have ballooned as a result of the actions taken by Cuevas and his
20 sister Dibble in the state court and in the bankruptcy court over
21 the course of the last decade. Nor did Cuevas' calculation
22 account for the fact that any net distribution Cuevas otherwise
23 might be entitled to receive from the probate trust presumably
24 will be property of his chapter 7 bankruptcy estate and that the
25 allowed claims of his chapter 7 creditors and the allowed
26 administrative claims of the chapter 7 trustee presumably will
27 need to be paid in full before Cuevas can receive any payout as
28 the chapter 7 debtor. See § 726.

1 After considering these facts and all of the other relevant
2 circumstances, the bankruptcy court found that, by filing his
3 chapter 13 petition, Cuevas improperly and in bad faith sought to
4 obstruct Chandler's pending unlawful detainer proceedings and to
5 cause Chandler and the chapter 7 trustee to incur additional
6 expense and delay in carrying out their duties. Had the members
7 of this panel presided over Cuevas' chapter 13 case, it is
8 possible that one or more of us might have made a different
9 finding. Even so, on this record, we cannot say that the
10 bankruptcy court's bad faith finding was illogical, implausible
11 or not supported by the record. See Retz v. Samson (In re Retz),
12 606 F.3d 1189, 1196 (9th Cir. 2010) ("A bankruptcy court's
13 factual determination is clearly erroneous if it is illogical,
14 implausible, or without support in the record.").

15 On appeal, Cuevas raised six other issues that also lack
16 merit. According to Cuevas, the bankruptcy court lacked
17 authority to dismiss the chapter 13 bankruptcy case on its own
18 motion. This is simply wrong. Section 105(a) explicitly
19 provides the bankruptcy court with this authority. In relevant
20 part, § 105(a) states: "No provision of this title providing for
21 the raising of an issue by a party in interest shall be construed
22 to preclude the court from, sua sponte, taking any action or
23 making any determination necessary or appropriate to enforce or
24 implement court orders or rules, or to prevent an abuse of
25 process." See also Tennant v. Rojas (In re Tennant), 318 B.R.
26 860, 869 (9th Cir. BAP 2004) (holding that bankruptcy court may
27 sua sponte dismiss a chapter 13 case under §§ 1307 and 105(a)).

28 Cuevas further argued that the bankruptcy court adopted a

1 per se rule against commencing a chapter 13 case after the debtor
2 has received his discharge but before full administration of the
3 debtor's pending chapter 7 case. But the bankruptcy court did
4 not adopt any per se rule. The bankruptcy court looked at the
5 history of Cuevas' chapter 7 case, and the commencement of the
6 chapter 13 case while the chapter 7 case was still pending, as
7 one of the many circumstances that ultimately led the bankruptcy
8 court to conclude that the chapter 13 case had been filed in bad
9 faith. It was appropriate for the bankruptcy court to consider
10 the history, the status and the interrelationship of the two
11 cases in rendering its bad faith determination. In re Ellsworth,
12 455 B.R. at 917-18 (identifying "the debtor's history of
13 bankruptcy filings" as one of the factors the bankruptcy court
14 should consider in determining bad faith).

15 Cuevas next claimed that the bankruptcy court erroneously
16 imposed the burden of proof to establish good faith on the
17 debtor. The bankruptcy court's memorandum decision establishes
18 that this claim is false. The bankruptcy court, in essence,
19 stated that there were sufficient undisputed facts regarding
20 Cuevas' conduct to establish a prima facie case that the
21 chapter 13 petition was filed in bad faith and that Cuevas did
22 not present evidence sufficient to rebut this prima facie case.
23 See Memorandum Decision (Sept. 30, 2015) at 6:4-10.

24 Cuevas additionally asserted that he was denied due process.
25 Cuevas' due process argument was two-fold. Cuevas first argued
26 on appeal that he did not know that the court's order to show
27 cause re dismissal raised the issue of bad faith. Cuevas
28 alternately argued on appeal that he was denied due process

1 because the bankruptcy court considered Chandler's response to
2 the order to show cause, and Cuevas had no time or opportunity to
3 respond to the factual contentions and legal arguments set forth
4 in Chandler's response, because Chandler's response was filed a
5 couple of days before the hearing on the order to show cause. We
6 are perplexed by Cuevas' claim that he was surprised by the bad
7 faith issue. The case cited in the dismissal order to show cause
8 - Grimes v. United States (In re Grimes), 117 B.R. 531 (9th Cir.
9 BAP 1990) - references and discusses bad faith as a pertinent
10 issue and so did Cuevas' response to the order to show cause.
11 Thus, we don't understand how Cuevas can claim he did not know
12 that his alleged bad faith was at issue. As for Chandler's
13 response, while Cuevas complained at the January 2015 dismissal
14 hearing about needing more time because he was surprised about
15 the bad faith issue, he did not argue that he needed more time
16 because of the response that Chandler filed. Indeed, before the
17 hearing occurred, Cuevas did file papers addressing some of the
18 points that Chandler argued, and the bankruptcy court considered
19 those papers.

20 In any event, even if we were to assume that there were some
21 sort of deficiency in the notice and opportunity to be heard
22 initially provided to Cuevas, the record does not reveal any
23 prejudice to Cuevas as a result of any such deficiency. We have
24 reviewed the entire record of the months of proceedings that took
25 place in the bankruptcy court in association with both the
26 dismissal of the case and the sanctions order to show cause.
27 These proceedings included, in relevant part, a limited remand
28 granted by this Panel to permit Cuevas the opportunity to file

1 whatever motion he deemed necessary to address any defects in the
2 bankruptcy court's initial dismissal order or in the proceedings
3 leading up to that dismissal, and Cuevas thereafter did file a
4 motion to "correct" the dismissal order. In its September 30,
5 2015 memorandum decision, the bankruptcy court carefully and
6 thoroughly addressed all of the points Cuevas raised in his
7 motion to correct. At no time during these supplemental
8 proceedings did Cuevas attempt to reference any new or different
9 facts that reasonably could have countered the bankruptcy court's
10 bad faith finding. Nor are any such facts evident in Cuevas'
11 appeal brief. Under these circumstances, we can and will reject
12 Cuevas' due process arguments because of the absence of
13 prejudice. See Rosson v. Fitzgerald (In re Rosson), 545 F.3d
14 764, 776 (9th Cir. 2008).

15 There are only two other arguments Cuevas raised on appeal
16 that we need to address. Cuevas argues on appeal that the
17 bankruptcy court erred because it did not consider the effect of
18 Law v. Siegel, 134 S.Ct. 1188 (2014) on Cuevas' homestead
19 exemption rights before dismissing his chapter 13 case for bad
20 faith. Cuevas similarly argues that the bankruptcy court should
21 have considered the effect of Frealy v. Reynolds, 779 F.3d 1028
22 (9th Cir. 2015) and Neuton v. Dannig (In re Neuton), 922 F.2d
23 1379 (9th Cir. 1990), both of which deal with the treatment in
24 bankruptcy of a debtor-beneficiary's interest in a spendthrift
25 trust. Cuevas did not raise Law, Frealy or Reynolds at any point
26 during the chapter 13 dismissal proceedings. Moreover, the
27 exemption arguments that Cuevas seeks to introduce by reference
28 to these three decisions in large part constitute an

1 impermissible collateral attack on the bankruptcy court's final
2 and non-appealable orders entered in Cuevas' chapter 7 case. The
3 bankruptcy court's December 21, 2012 order denying Cuevas'
4 homestead exemption claim and its March 9, 2012 summary judgment
5 explicitly rejecting Cuevas' spendthrift trust claims effectively
6 preclude Cuevas from raising the issues addressed in Law, Frealy
7 and Reynolds in the current appeals from unrelated orders. See
8 Valley Nat'l Bank of Ariz. v. Needler (In re Grantham Bros.),
9 922 F.2d 1438, 1442 (9th Cir. 1991) (rejecting as frivolous
10 appellant's attempted collateral attack on bankruptcy court's
11 final, non-appealable sale order).

12 Cuevas and Koebel did not include in their appeal brief any
13 arguments specifically and distinctly addressing the bankruptcy
14 court's sanctions rulings. As a result, they forfeited their
15 right to raise these arguments on appeal. See Christian Legal
16 Soc'y v. Wu, 626 F.3d 483, 487-88 (9th Cir. 2010); Brownfield v.
17 City of Yakima, 612 F.3d 1140, 1149 n.4 (9th Cir. 2010) (citing
18 Greenwood v. FAA, 28 F.3d 971, 977 (9th Cir. 1994)).

19 Appellants might consider it unjust for this Panel to deem
20 any arguments challenging the sanctions orders forfeited. Given
21 the procedural history of the appellants' appeals, we disagree.
22 In the appeal from the sanctions orders (CC-15-1353), this Panel
23 originally set a deadline of November 30, 2015 for appellants'
24 opening brief. That deadline passed without Cuevas and Koebel
25 filing their opening brief. On February 29, 2016, this Panel
26 issued an order denying Cuevas' and Koebel's request to
27 consolidate the dismissal appeal and the sanctions appeal. In
28 that order, the Panel noted that the appellants' appeal brief for

1 the sanctions appeal was past due and granted appellants one
2 final chance to file their opening appeal brief for the sanctions
3 appeal. The order set a final due date of 28 days from the date
4 of the order (March 28, 2016) and specified that "[n]o further
5 extensions of time will be granted."

6 Instead of filing the opening brief for the sanctions appeal
7 or seeking prompt reconsideration of the scheduling aspects of
8 the Panel's February 29, 2016 order, appellants waited until
9 March 28, 2016 - the date the brief was due - and filed an
10 "emergency motion" to suspend the briefing schedule or in the
11 alternative for an additional thirty-day extension. Furthermore,
12 the contents of the so-called emergency motion indicate that all
13 of the factual allegations on which the motion was based were
14 known to appellant Koebel at the time the Panel entered its
15 February 29, 2016 order.

16 Then, on April 18, 2016, appellants filed what they
17 suggested was a second amended joint brief for both the dismissal
18 appeal and the sanctions appeal; but this brief still did not
19 include any arguments specifically and distinctly challenging the
20 sanctions orders. Instead, as part of their filing of this
21 brief, the appellants included a "preamble" renewing appellants'
22 request for suspension or extension of the briefing schedule for
23 the sanctions appeal and indicating that, if those requests
24 ultimately were denied, appellants anticipated filing a request
25 to supplement their second amended joint brief.

26 Finally, on May 25, 2016, the Panel issued an order in the
27 sanctions appeal denying suspension of briefing and stating that
28 "[a]ppellants must rest on the brief they have filed in this

1 appeal.”

2 By (not) prosecuting the sanctions appeal in this fashion,
3 appellants sought to substitute their judgment in place of the
4 Panel’s regarding when the sanctions appeal should be briefed.
5 They further attempted to undermine the Panel’s authority to
6 control its docket and the course of proceedings. See generally
7 Hernandez v. City of El Monte, 138 F.3d 393, 398 (9th Cir. 1998)
8 (acknowledging such authority); United States v. Oregon, 913 F.2d
9 576, 589 (9th Cir. 1990) (same). Consequently, it is not unjust
10 to deem all of appellants’ sanctions-related arguments forfeited
11 under Wu and Brownfield.

12 CONCLUSION

13 For the reasons set forth above, we AFFIRM the bankruptcy
14 court’s dismissal of Cuevas’ chapter 7 bankruptcy case and its
15 imposition of sanctions.
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