

OCT 31 2012

NOT FOR PUBLICATION

SUSAN M SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No. 12-1108-JuKiD
)	
MICHAEL WOOD,)	Bk. No. 10-49032
)	
Debtor.)	Adv. No. 11-02775
_____)	
)	
MICHAEL WOOD,)	
)	
Appellant,)	
)	
v.)	M E M O R A N D U M *
)	
JOSE GOULART; MARIA GOULART;)	
UNITED STATES TRUSTEE,)	
)	
Appellees.)	
_____)	

Submitted Without Oral Argument
on October 19, 2012**

Filed - October 31, 2012

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

Honorable Robert S. Bardwil, Bankruptcy Judge, Presiding

Appearances: Appellant Michael Wood on brief pro se.

Before: JURY, KIRSCHER, and DUNN Bankruptcy Judges.

* 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 8013-1.

** Pursuant to Rule 8012, after notice to appellant, the Panel unanimously determined after examination of the brief and record that oral argument was not needed by order entered on September 18, 2012.

1 Debtor Michael Wood appeals from the bankruptcy court's
2 order remanding to state court (the "Remand Order") an unlawful
3 detainer action against him. We AFFIRM.

4 **I. FACTS**

5 On October 2, 2010, Michael Wood entered into a residential
6 lease with Corral Hollow Property Management as landlord/agent
7 for the owners/appellees Jose and Maria Goulart¹ of real
8 property located in Tracy, California. The lease was month to
9 month with a monthly rental rate of \$1,175.

10 Approximately one month later, on November 1, 2010, Wood
11 filed his second chapter 11² petition. Shortly after, the
12 bankruptcy court entered a minute order on December 3, 2010,
13 dismissing Wood's case. Wood appealed the order dismissing his
14 case (Dismissal Order), along with other orders, to this Panel.
15 The Panel affirmed the bankruptcy court's decision to dismiss
16 his case in Wood v. Johnson (In re Wood), 2011 WL 7145617 (9th
17 Cir. BAP 2011). Wood appealed the Panel's decision to the Ninth
18 Circuit.

19 On August 27, 2011, over eight months after Wood's second
20 bankruptcy case was dismissed, the Goularts served Wood with a
21 thirty-day notice to quit. On November 10, 2011, the Goularts
22 filed an unlawful detainer action against Wood in the California
23 Superior Court, County of San Joaquin (Cal. Sup. Ct. Case
24

25 ¹ The appellees have not responded to this appeal.

26 ² Unless otherwise indicated, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
28 "Rule" references are to the Federal Rules of Bankruptcy
Procedure.

1 No. 272261).

2 Over a year after his chapter 11 case was dismissed, on
3 December 15, 2011, Wood removed the unlawful detainer action to
4 the bankruptcy court (Adv. Case No. 11-02775).

5 On February 15, 2012, Wood filed a status conference report
6 with respect to the adversary. In the report, Wood asserted
7 that the bankruptcy court had jurisdiction over the matter
8 because he was a party to all claims that were removed and,
9 therefore, the adversary related to his bankruptcy case that was
10 "pending."

11 On February 16, 2012, the bankruptcy court held a status
12 conference on the matter. At the hearing, the bankruptcy court
13 observed that there was no stay pending appeal regarding the
14 Dismissal Order. On February 17, 2012, the bankruptcy court
15 issued the Remand Order finding that it did not have
16 jurisdiction over the removed case because the underlying
17 chapter 11 case was dismissed prior to the removal. Wood timely
18 appealed.

19 **II. JURISDICTION**

20 The bankruptcy court's jurisdiction to issue the Remand
21 Order is at issue in this appeal and will be discussed below.
22 We have jurisdiction under 28 U.S.C. § 158.

23 **III. ISSUE**

24 Did debtor's appeal of the Dismissal Order to the Ninth
25 Circuit divest the bankruptcy court of jurisdiction to issue the
26 Remand Order?

27 **IV. STANDARD OF REVIEW**

28 We review de novo issues regarding a bankruptcy court's

1 jurisdiction. See Mantz v. Cal. Bd. Of Equalization (In re
2 Mantz), 343 F.3d 1207, 1211 (9th Cir. 2003).

3 **V. DISCUSSION**

4 On appeal, debtor contends that the Remand Order is void as
5 a matter of law because his appeal of the Dismissal Order
6 divested the bankruptcy court of jurisdiction over all matters
7 regardless of whether they pertain to the order on appeal.
8 Debtor is mistaken.

9 A timely filed notice of appeal divests a bankruptcy court
10 of jurisdiction "over those aspects of the case involved in the
11 appeal." Sherman v. SEC (In re Sherman), 491 F.3d 948, 967 (9th
12 Cir. 2007). The bankruptcy court retains jurisdiction over all
13 other matters in the case. The only caveat is that the court
14 "'may not alter or expand upon the judgment.'" Id.

15 "If a party wants to stay all of the proceedings in
16 bankruptcy court while an appeal is pending, it must file a
17 motion for a stay." Id. (citing Rule 8005). Wood neither
18 sought nor obtained a stay under Rule 8005 of the bankruptcy
19 court's Dismissal Order. Therefore, the bankruptcy court had
20 jurisdiction to consider whether the removed case was properly
21 before it.

22 The bankruptcy court was "required to consider the presence
23 or absence of subject matter jurisdiction sua sponte." Moldo v.
24 Ash (In re Thomas), 428 F.3d 1266, 1268 (9th Cir. 2005).

25 Although the dismissal of Wood's case would not automatically
26 terminate the bankruptcy court's jurisdiction over a "related
27 to" state court action that was pending at the time of
28 dismissal, In re Wood, 2011 WL 7145617, at *8 (citing Carraher

1 v. Morgan Elec., Inc. (In re Carraher), 971 F.2d 327, 328 (9th
2 Cir. 1992)), a bankruptcy court may not exercise its discretion
3 to retain jurisdiction over a "related to" proceeding initiated
4 subsequent to the dismissal of the bankruptcy case. See Sea
5 Hawk Seafoods, Inc. v. State of Alaska (In re Valdez Fisheries
6 Dev. Ass'n, Inc.), 439 F.3d 545, 548-49 (9th Cir. 2006). The
7 outcome of such a proceeding could not conceivably have any
8 effect on the estate being administered since there was no
9 estate under administration after the chapter 11 was dismissed.
10 Therefore, remand of the removed action was required.

11 **VI. CONCLUSION**

12 For the reasons stated, we AFFIRM.

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