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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NOT FOR PUBLICATION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 No. NC-11-1174-HSaD
)	
SAMAN HASNAIN,)	Bk. No. 10-58064
)	
Debtor.)	Adv. No. 10-05380
)	
_____)	
SAMAN HASNAIN,)	
)	
Appellant,)	
)	
v.)	MEMORANDUM ¹
)	
MICHAEL CHADD, AUDREY HARRIS,)	
Chapter 7 Trustee,)	
)	
Appellees.)	
_____)	

Submitted on January 19, 2012
at San Francisco, California

Filed - February 6, 2012

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

Hon. Stephen L. Johnson, Bankruptcy Judge, Presiding.

Appearances: Both parties argued pro se. The Trustee did
not appear.

¹ 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.

1 Before: HOLLOWELL, SALTZMAN² and DUNN, Bankruptcy Judges.
2

3 Creditor Michael Chadd (Chadd) sought relief under
4 § 362(d)³ seeking to have a previously rendered final arbitration
5 award against the debtor confirmed and entered as a judgment in
6 state court. Although the chapter 7 debtor had already received
7 a discharge, Chadd had a timely nondischargeability complaint
8 pending when he filed for § 362(d) relief. Nevertheless, the
9 debtor argued that the discharge injunction of § 524 barred Chadd
10 from seeking confirmation of the arbitration award. The
11 bankruptcy court disagreed and granted relief from the stay or
12 the discharge injunction, to the extent either applied, to have
13 the award confirmed. For the reasons set forth below, we DISMISS
14 this appeal as moot.

15 **I. FACTUAL BACKGROUND**

16 Sometime in 2008, Chadd bought securities from Jawad Hasnain
17 (Hasnain), which were sold as membership interests in Hasnain's
18 company. However, the securities were not authorized by the
19 California Department of Corporations. Chadd filed a complaint
20 against Hasnain, his company, and his wife, Saman Hasnain (the
21 Debtor), in California state court, alleging they violated
22 California and Federal securities laws by selling the securities.
23

24 ² The Hon. Deborah J. Saltzman, Bankruptcy Judge for the
25 Central District of California, sitting by designation.

26 ³ Unless otherwise indicated, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.
28 All Rule references are to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9037.

1 Chadd sought damages for fraud and breach of fiduciary duty.

2 The matter was heard by an arbitrator. The arbitration took
3 place over two days in early 2010. On July 6, 2010, after
4 considering the evidence offered by the parties, the arbitrator
5 found that Hasnain and the Debtor had violated California
6 securities laws, sold the securities by means of
7 misrepresentation, and breached their fiduciary duties by using
8 investor funds for their personal use. The arbitrator determined
9 that Chadd was entitled to a damage award of \$683,000
10 (Arbitration Award).

11 On August 4, 2010, before the Arbitration Award was
12 confirmed⁴ against the Debtor, she filed a voluntary chapter 7
13 bankruptcy petition. On November 5, 2010, Chadd filed an
14 adversary proceeding contending that the Arbitration Award was a
15 nondischargeable debt pursuant to § 523(a)(2), (a)(4), (a)(6) and
16 (a)(19) (Nondischargeability Proceeding).

17 On January 27, 2011, while the Nondischargeability
18 Proceeding was still pending, the Debtor received a bankruptcy
19 discharge. The discharge order specified that not all types of
20 debts were discharged. It provided specific examples of debts
21 not subject to the discharge, including: "Debts that the
22 bankruptcy court specifically has decided or will decide in [a
23 debtor's] bankruptcy case are not discharged."

24
25 ⁴ Under California law, a party to an arbitration, in which
26 an award has been made, may petition the court to confirm,
27 correct, or vacate the award. Cal. Civ. Proc. Code §§ 1285-
28 1287.6. If an arbitration award is confirmed, a conforming
judgment is entered. The judgment then has the same force and
effect as any other civil judgment. Id. at § 1287.4.

1 On March 8, 2011, Chadd filed a motion for relief from stay
2 (MRS) under § 362(d)(1). He sought stay relief in order to
3 proceed in state court to confirm the Arbitration Award and have
4 it entered as a judgment. Chadd contended that doing so would
5 promote judicial economy because it would allow him to use the
6 state court judgment preclusively in the Nondischargeability
7 Proceeding. The Debtor filed a response to the MRS asserting
8 that the discharge injunction of § 524 barred Chadd from having
9 the Arbitration Award confirmed. The Debtor alleged that Chadd
10 was attempting to improperly perfect an award for a discharged
11 prepetition debt.

12 On March 29, 2011, the bankruptcy court held a hearing on
13 the MRS. The bankruptcy court and the Debtor agreed that the
14 automatic stay was not in effect since the Debtor's discharge had
15 been entered. However, the bankruptcy court disagreed with the
16 Debtor's argument that the discharge injunction prevented Chadd
17 from returning to the state court to confirm the Arbitration
18 Award. The bankruptcy court subsequently entered an order on
19 April 5, 2011, granting Chadd relief from stay under § 362, to
20 the extent the stay applied, and § 524(a)(2)⁵ to proceed in state
21 court to obtain confirmation of the Arbitration Award (Stay
22 Relief Order). The Stay Relief Order emphasized that Chadd could
23 not undertake collection actions as a result of the issuance of
24

25
26 ⁵ Section 524(a)(2) provides that a discharge "operates as
27 an injunction against the commencement or continuation of an
28 action, the employment of process, or an act, to collect, recover
or offset any such debt as a personal liability of the debtor,
whether or not discharge of such debt is waived."

1 any state court judgment he obtained. The Debtor timely
2 appealed.

3 The Debtor immediately sought a stay pending appeal from the
4 bankruptcy court; however, the bankruptcy court denied the
5 Debtor's motion. Thereafter, the Debtor sought a stay pending
6 appeal from the Bankruptcy Appellate Panel (BAP). The BAP denied
7 the Debtor's motion for stay pending appeal on May 3, 2011.

8 The state court scheduled a hearing on the confirmation of
9 the Arbitration Award for May 10, 2011. On May 9, 2011, the
10 state court issued a tentative ruling to confirm the Arbitration
11 Award. That afternoon, the Debtor filed a chapter 11 bankruptcy
12 petition (the Second Bankruptcy Case) and sent a letter to Chadd
13 stating that the automatic stay prevented Chadd from following
14 through with the hearing to have the confirmation entered as a
15 judgment.

16 Chadd then filed a motion for stay relief in the Second
17 Bankruptcy Case.⁶ It was granted on July 7, 2011. That order
18 was not appealed. On August 25, 2011, the state court confirmed
19 the Arbitration Award and entered a judgment against the Debtor,
20 Hasnain, and his company, jointly and severally, in the amount of
21 \$751,250.11. Chadd then filed a motion for summary judgment in
22 the Nondischargeability Proceeding asserting that the state court
23 judgment was preclusive as to the § 523(a) issues. On October
24 27, 2011, the bankruptcy court granted Chadd's motion for summary
25

26
27 ⁶ The Hon. Arthur S. Weissbrodt presided over the Second
28 Bankruptcy Case. The Debtor's Second Bankruptcy Case was
dismissed on September 13, 2011, and closed December 13, 2011.

1 judgment and declared Chadd's claim nondischargeable. The Debtor
2 has separately appealed that ruling (BAP No. NC-11-1631).

3 On December 12, 2011, Chadd filed with the BAP a Notice of
4 Mootness contending that because the judgment had been entered,
5 the appeal was now moot.⁷ The Debtor filed a response on
6 December 29, 2011.

7 **II. JURISDICTION**

8 The bankruptcy court had jurisdiction under 28 U.S.C. § 1334
9 and 28 U.S.C. § 157(b)(2)(A) and (G). We address our
10 jurisdiction under 28 U.S.C. § 158 below.

11 **III. ISSUES**

12 Is the appeal moot?

13 If the appeal is not moot, did the bankruptcy court err in
14 entering the Stay Relief Order allowing Chadd to confirm the
15 Arbitration Award in state court?

16 **IV. STANDARDS OF REVIEW**

17 Mootness is a jurisdictional issue that we review de novo.
18 Paulman v. Gateway Venture Partners III, L.P. (In re Filtercorp,
19 Inc.), 163 F.3d 570, 577 (9th Cir. 1998). We lack jurisdiction
20 to hear moot appeals. I.R.S. v. Pattullo (In re Pattullo), 271
21 F.3d 898, 901 (9th Cir. 2001). If an appeal becomes moot while
22 it is pending before us, we must dismiss it. Id.

23 **V. DISCUSSION**

24 Constitutional mootness is derived from Article III of the
25 U.S. Constitution, which provides that the exercise of judicial

26
27 ⁷ Chadd had previously sought to have the appeal dismissed
28 as interlocutory. However, the BAP denied that motion on May 12,
2011.

1 power depends on the existence of a case or controversy. DeFunis
2 v. Odegaard, 416 U.S. 312, 316 (1974); Clear Channel Outdoor,
3 Inc. v. Knupfer (In re PW, LLC), 391 B.R. 25, 33 (9th Cir. BAP
4 2008). The mootness doctrine applies when events occur during
5 the pendency of the appeal that make it impossible for the
6 appellate court to grant effective relief. Id. The determining
7 issue is "whether there exists a 'present controversy as to which
8 effective relief can be granted.'" People of Village of Gambell
9 v. Babbitt, 999 F.2d 403, 406 (9th Cir. 1993) (quoting NW Env'tl.
10 v. Gordon, 849 F.2d 1241, 1244 (9th Cir. 1988)). If no effective
11 relief is possible, we must dismiss for lack of jurisdiction.
12 United States v. Arkison (In re Cascade Rds., Inc.), 34 F.3d 756,
13 759 (9th Cir. 1994).

14 Our review of the record leads us to conclude that this
15 appeal is moot. If the bankruptcy court had erred and the state
16 court judgment was consequently entered in violation of the
17 automatic stay or the discharge injunction, it would be void.
18 Lone Star Sec. & Video, Inc. v. Gurrola (In re Gurrola), 328 B.R.
19 158, 171 (9th Cir. BAP 2005). As a result, Chadd could not have
20 relied on its preclusive effect in the Nondischargeability
21 Proceeding, and consequently, the appeal would not be moot.

22 However, here, the bankruptcy court in the Second Bankruptcy
23 Case authorized stay relief to allow Chadd to confirm the
24 Arbitration Award. That decision has not been appealed and is
25 final. Therefore, a reversal of this appeal would not change the
26 outcome. Without a stay pending appeal, subsequent events
27 allowed Chadd to confirm the Arbitration Award and obtain a state
28 court judgment against the Debtor that is not subject to being

1 declared void. As a result, a reversal of the Stay Relief Order
2 could not provide relief to the Debtor, and therefore, the appeal
3 is moot.

4 **VI. CONCLUSION**

5 Because Chadd was granted stay relief in the Second
6 Bankruptcy Case, a reversal here would not provide effect relief
7 to the Debtor. Therefore, the appeal is moot and we do not reach
8 its merits. Accordingly, the appeal is DISMISSED.