NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP Nos. CC-08-1175-MoMkH
	CC-08-1200-MoMkH
MICHELLE EARDLEY,	(Related Appeals)
	Bk. No. LA 08-14524 VK
Debtor.	
MICHELLE EARDLEY,	
Appellant,	
v.	**M E M O R A N D U M**[1]
U.S. BANK NATIONAL ASSN., successor-in-interest to FEDERAL DEPOSIT INSURANCE CORP., as receiver for DOWNEY SAVINGS & LOAN ASSN., F.A.,	
Appellee.	

Argued and Submitted on March 18, 2009
at Pasadena, California

Filed - May 11, 2009

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

Hon. Victoria S. Kaufman, Bankruptcy Judge, Presiding.

Before: MONTALI, MARKELL and HOLLOWELL, Bankruptcy Judges.

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[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.

The debtor appeals two orders: (1) an order dismissing her chapter 13[2] case and imposing a permanent bar on refiling and (2) an order granting in rem relief from the stay pursuant to section 362(d)(4). We AFFIRM in part and REVERSE in part the dismissal order, and we DISMISS as moot the order granting in rem relief from the automatic stay.

I. FACTS

A. Procedural History Relating to Dismissal

On April 7, 2008, appellant Michelle Eardley ("Debtor") filed her chapter 13 petition, five days after the bankruptcy court dismissed (with a 180-day bar to refiling) the bankruptcy case of her mother, Thelma Spirtos ("Spirtos"). In their respective schedules, Debtor and Spirtos listed ownership interests in certain real property in Whittier, California (the "Property").

On April 7, 2008, the bankruptcy court issued a notice of Debtor's bankruptcy, setting a hearing on confirmation of Debtor's plan for June 25, 2008, and a section 341 meeting for May 22, 2008; the notice was served on April 9, 2008. On April 23, 2008, Debtor filed her chapter 13 plan but did not serve it on creditors. According to Debtor's opening brief, the chapter 13 trustee ("Trustee"), Nancy K. Curry, suggested at the section

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[2]Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037, as enacted and promulgated after the effective date of The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23 ("BAPCPA"), because the case from which this appeal arises was filed after its effective date (generally October 17, 2005).

341 meeting that the confirmation hearing would be continued to August 6, 2008, because Debtor had not served the plan on all creditors.

Neither the court nor any party issued a notice continuing the confirmation hearing. To the contrary, on June 17, 2008, the clerk of the bankruptcy court filed and served a notice stating that the "initial chapter 13 confirmation hearing will go forward on June 25, 2008, at 1:30 p.m. as set forth in the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines served on April 9, 2008."

On May 14, 2008, Downey Savings and Loan Association, F.A., ("Downey")[3] filed "Objections to Confirmation of Proposed Plan (A) Bad Faith, (B) Multiple Bankruptcy Cases," showing the hearing date as June 25, 2008. On page 4 of the objection, after arguing that the case had not been filed in good faith, Downey requested that confirmation be denied "and the within case dismissed with a 180 day bar to refiling." In the last sentence of the objection, Downey repeated its request that confirmation be denied and the case be dismissed "with a bar to refiling." No separate motion to dismiss was filed, nor was additional notice given that Downey was seeking dismissal of the case or a bar order.

On or about June 20, 2008, the bankruptcy court issued a tentative decision indicating that it would deny confirmation and

[3]On February 17, 2009, this panel granted a motion of U.S. Bank, N.A., as successor-in-interest to the FDIC as receiver for Downey, to be substituted as appellee in place of Downey. For convenience, we will still continue to refer to Downey regardless of the substitution.

dismiss Debtor's case with a bar on refiling.[4] In response to this tentative decision, Debtor filed a 26-page (plus exhibits) request for continuance which addressed the merits of the tentative decision. In addition, responding to the court's observation that Debtor seemingly had not complied with the filing requirements of section 521(a) (and that her case might therefore be subject to automatic dismissal under section 521(i)), Debtor filed a certification that she was self-employed for the entire 60-day period prior to the petition date and received no payment advices from any other employer.

On June 24, 2008, the bankruptcy court entered an order denying Debtor's request to continue the confirmation hearing. The court also issued a revised tentative decision adding italicized language specifically addressing arguments made in Debtor's request for continuance. On June 25, 2008, the bankruptcy court entered an order denying confirmation and dismissing Debtor's case with a permanent bar to refiling.[5]

The order states that the relief is based on the court's findings and conclusions "as stated on the record" and as set forth in the tentative decision. Debtor has not provided a copy

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[4]A copy of this June 20 tentative decision is not in the record, although Debtor concedes on pages 12-13 of her Opening Brief in CC-08-1175 that she read the tentative decision on June 21, 2008.

[5]The order states that "[s]hould Debtor wish to file a voluntary petition, [she] may file a motion seeking leave of the Court to do so. Leave will only be granted upon payment of a full filing fee, presentation of complete schedules and statement of financial affairs and a determination by the Court that the case is being filed in good faith."

of a transcript of the June 25 hearing at which the court apparently announced findings and conclusions "on the record."[6] Debtor filed a timely notice of appeal on July 3, 2008, commencing BAP No. CC-08-1175.

B. Procedural History of the Section 362(d)(4) Motion

On May 19, 2008, Downey filed a motion seeking relief from the automatic stay pursuant to section 362(d)(1) and (d)(4). In seeking in rem relief from the stay under section 362(d)(4), Downey alleged that Debtor's filing of her petition was part of a scheme to delay, hinder, and defraud creditors involving (1) the transfer of ownership of the Property without Downey's consent or court approval or (2) multiple bankruptcy filings affecting the Property.

As noted above, the court dismissed Debtor's case on June 25, 2008. It did not reserve jurisdiction over the pending motion for relief from stay. On June 30, 2008, Downey filed a supplement to its motion for relief from stay stating (incorrectly) that the "Court has retained jurisdiction to hear the Motion."[7]

On July 7, 2008, the bankruptcy court held a hearing on the motion for relief from stay. Before the hearing, the court issued a tentative decision denying relief under section 362(d)(1) as moot, but granting in rem relief under section 362(d)(4). On July 23, 2008, the court entered its order holding

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[6]We learned at oral argument that Debtor did not appear at the June 25 hearing.

[7]Counsel for Downey conceded at oral argument that the bankruptcy court made no express reservation of jurisdiction.

that the filing of the petition was part of a scheme to delay, hinder, and defraud creditors involving multiple bankruptcies affecting the Property. The order provided that it was binding and effective in any bankruptcy case purporting to affect the Property filed within two years. Debtor filed a timely notice of appeal on August 1, 2008, giving rise to BAP No. CC-08-1200.[8]

On February 19, 2009, Downey filed a motion with this panel to supplement the record to include a trustee's deed resulting from the nonjudicial foreclosure sale of the Property to Pacifica.[9] By separate order, we are granting the motion.[10] The sale occurred on August 8, 2008. As a result of this sale, Downey contends that the appeal of the order granting it relief from the stay is moot.

C. Underlying Substantive Facts

On August 10, 1999, Spirtos executed a promissory note in the amount of $500,000 in favor of Downey. To secure repayment of the note, she executed a deed of trust against the Property.

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[8]The notice of appeal also referred to a separate order dated July 21, 2008, granting relief from the automatic stay to Pacifica First National, Inc. ("Pacifica"). On October 21, 2008, this panel entered an order stating that the appeal of the Pacifica order was untimely and that the appeal would be dismissed as to that order unless Debtor filed a response no later than October 29, 2008. No response was filed

The July 21 order grants Pacifica in rem relief under section 362(d)(4) as to the Property.

[9]The legal description of the property contained in the Pacifica trustee's deed is identical to the property description contained in Downey's motion for relief from stay.

[10]We will also grant Debtor's request for judicial notice filed on March 24, 2009.

On March 14, 2005, Spirtos executed a quitclaim deed transferring her interest in the Property to Debtor and herself as joint tenants. On September 26, 2006, Spirtos and Debtor executed a quitclaim deed transferring their interests in the Property to themselves and Jon Eardley ("Mr. Eardley") as joint tenants. Mr. Eardley is Debtor's husband, although he and Debtor have separated. Both quitclaim deeds reflect that "[t]his is a bonafide gift and the grantor received nothing in return."

On May 29, 2007, the bankruptcy court granted Downey relief from the automatic stay in Spirtos' 1984 bankruptcy case (84-13757) to allow it to pursue its remedies against the Property. Mr. Eardley and Spirtos filed a state court action to halt the foreclosure (Spirtos I). On October 22, 2007, Debtor commenced a state court action against Downey and Pacifica (Spirtos II), seeking injunctive and declaratory relief with respect to the Property.

Although Debtor did not serve Downey or Pacifica with the Spirtos II complaint and did not provide them with correct notice of the hearing on it,[11] Debtor obtained an order from state court on October 26, 2007, staying all nonjudicial foreclosure proceedings against the Property. On October 29, 2007, Downey and Pacifica obtained a ruling from the state court vacating the

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[11]Mr. Eardley contacted a secretary at Downey and indicated that he would be seeking ex parte relief in state court, but did not say when or where. He also left a voicemail message with Downey's outside state court counsel stating that he was "moving ex parte for an order stopping all non-judicial foreclosure proceedings" on June 24, but did not say in which court. Counsel for Downey and Pacifica appeared in state court on October 24, but Mr. Eardley and Debtor did not appear.

October 26 stay. The state court found that "the application for a stay contained intentionally false representations."[12]

On the same day that the state court vacated the stay against the foreclosure proceedings (October 29), Spirtos filed a chapter 13 case. On November 29, 2007, Downey filed a motion to dismiss Spirtos II (commenced by Debtor, not Spirtos), alleging that Debtor had filed the complaint without obtaining prefiling authorization as required by a vexatious litigant order previously entered against her.

Spirtos filed a notice and petition of removal of both actions (Spirtos I and II) to bankruptcy court. On March 3, 2008, the bankruptcy court denied a motion to remand Spirtos II to state court, holding that the action was automatically dismissed when Debtor failed to obtain prefiling authorization in

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[12]Mr. Eardley, acting on behalf of himself even though he was not a party to the Spirtos II action, filed a notice of appeal of this interlocutory order. Debtor has introduced no evidence that she or Mr. Eardley posted a bond or obtained a stay pending appeal. Under California law, the order vacating the stay order is self-executing and is not stayed pending appeal. See Bulmash v. Davis, 24 Cal. 3d 691, 697-99, 597 P.2d 469, 157 Cal. Rptr. 66 (1979) (an order vacating a judgment was not stayed, as the order was self-executing; the vacated judgment was not reinstated merely because a party appealed the order vacating the judgment); see also 4 Cal. Jur. 3d Appellate Review § 408 (updated 2009) (California law grants stay pending appeal only on judgments or order commanding or forbidding some act; when a judgment or order is self-executing or has intrinsic effect, no stay goes into effect unless a writ of supersedeas is issued by the appellate court); 9 B.E. Witkin, California Procedure, Appeal § 276 ("It is a fundamental principle that a stay of enforcement can only operate on a judgment commanding or permitting some act to be done. Where the judgment is effective by itself, without any additional act, it is said to be 'self-executing,' and there is nothing to restrain. Hence, no stay can be obtained except in rare cases when a writ of supersedeas will issue.").

accordance with the vexatious-litigant order.[13]

On April 2, 2008, the bankruptcy court entered an order dismissing Spirtos' chapter 13 case with a 180-day bar to refiling. Five days later, Debtor filed her chapter 13 case. She scheduled the Property as an asset of the estate, but did not show that Downey or Pacifica held a security interest (albeit disputed) in the Property. Her plan did not provide for any treatment of Downey, Pacifica or creditors holding judgment liens.

On June 5, 2008, Debtor filed a motion for postpetition financing seeking approval of a "reverse mortgage" to secure a "priming" loan in the amount of $797,000 to be used to "pay off" creditors holding liens against the Property. The court noted, however, that the secured creditors had filed claims in her case and in Spirtos' case in an amount exceeding $950,000 (plus an additional claim in the amount of $19,000 to Irene Moreno as reflected in the financing motion). For this and other reasons, the court denied the financing motion.

In its tentative decisions (initial and revised) regarding confirmation and dismissal, the bankruptcy court stated that Debtor had not filed her case in good faith and had not proposed

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[13]Notwithstanding the removal (which was filed by Spirtos even though she was not a party in Spirtos II), the state court entered an order on December 18, 2007, dismissing Spirtos II retroactive to November 25, 2007, holding that the action was automatically dismissed under California Code of Civil Procedure section 391.7(c) because of Debtor's non-compliance with the vexatious litigant order. Therefore, both the state court and the bankruptcy court dismissed the Spirtos II action, and Debtor did not appeal those dismissals.

her plan in good faith.[14] The court noted the litigation history of Debtor, Mr. Eardley and Spirtos, described in detail various inconsistencies and misstatements in Debtor's schedules, and discussed how the plan was defective.

The court also noted that although Debtor stated she had a monthly income of $7,000 and monthly disposable income of $709, she was proposing to pay only $610 a month under her plan. Even though her plan stated that she would be paying unsecured nonpriority creditors in full, the aggregate payments to unsecured creditors under the plan totaled only $19,965 although Debtor's Schedule F reflected that she owed $244,772 in undisputed, unsecured debt. Based on this tentative decision and on findings in the unsupplied record, the court entered an order denying confirmation and dismissing Debtor's case with a permanent bar to refiling.

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[14]In the revised tentative decision, the court observed that in her Schedule I and Form B22C, the Debtor represented that she had a monthly income of $7000 (with a projected disposable monthly income of $709.50). Debtor had indicated in her Statement of Financial Affairs that she had not been self-employed for the six months prior to the petition date, but she did not file any payment advices showing that she had received an income from any other employer. The bankruptcy court noted that if Debtor had received income from an employer within 60 days prior to the petition date but had failed to file payment advices within 45 days after the petition date, the case was subject to automatic dismissal under section 521(i)(1).

In response to this observation, Debtor filed a certification that she had been self-employed for the six months prior to the petition date and had received no income from any other employer. In its revised tentative decision, the bankruptcy court acknowledged receving the certification and noted the conflict between it and Debtor's response to Question 18 of her statement of financial affairs.

II. ISSUES

1. Is the appeal of the section 362(d)(4) order moot?

2. Did the bankruptcy court provide Debtor with meaningful notice and opportunity to respond before dismissing her chapter 13 case with a permanent bar to refiling?

3. If so, did the bankruptcy court err in dismissing her case with a bar to refiling?

III. JURISDICTION

The bankruptcy court had jurisdiction to enter the order denying confirmation of the chapter 13 plan and dismissing the case under 28 U.S.C. § 157(b)(2)(A) and (L) and § 1334. We have jurisdiction over the appeal of that order under 28 U.S.C. § 158.

We do not have jurisdiction over the appeal of the order granting in rem relief from the automatic stay as that appeal is moot. As Pacifica has already foreclosed on the Property, reversal of the section 362(d)(4) order as to Downey would not enable Debtor to obtain the relief she seeks: retention of the Property.

We lack jurisdiction over appeals that are moot. Baker & Drake, Inc. v. Pub. Serv. Comm'n of Nev. (In re Baker & Drake, Inc.), 35 F.3d 1348, 1351 (9th Cir. 1994). As the Ninth Circuit noted in Focus Media, Inc. v. Natl. Broad. Co. Inc. (In re Focus Media, Inc.), 378 F.3d 916, 922 (9th Cir. 2004), bankruptcy appeals become moot when events occur that make it impossible for the appellate court to fashion effective relief. Here, Debtor did not timely appeal the order granting relief from the automatic stay to Pacifica, resulting in a nonjudicial foreclosure sale stripping Debtor of any interest in the

Property.[15] Because of that foreclosure sale, reversing the order granting Downey relief from the automatic stay would not alter the outcome: Debtor no longer holds an interest in the Property to protect.[16] Inasmuch as we cannot fashion effective relief, the appeal of the section 362(d)(4) order is moot. We therefore will dismiss BAP No. 08-1200 for lack of jurisdiction.

IV. STANDARDS OF REVIEW

We review a bankruptcy court's decision to dismiss the bankruptcy case for abuse of discretion. Leavitt v. Soto (In re Leavitt), 171 F.3d 1219, 1223 (9th Cir. 1999). We review findings of bad faith for clear error. Id. We review questions regarding due process de novo. Molski v. Gleich, 318 F.3d 937,

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[15]Because the foreclosure sale was non-judicial, Debtor retained no post-sale redemption rights in the Property. Vista Del Mar Assocs., Inc. v. West Coast Land Fund (In re Vista Del Mar Assocs., Inc.), 181 B.R. 422, 425 (9th Cir. BAP 1995).

[16]At oral argument, Mr. Eardley appeared on behalf of Debtor and argued that the Pacifica foreclosure sale was void because of the October 27, 2007, order in Spirtos II staying all non-judicial foreclosures with respect to the Property. As previously noted, however, the state court vacated the October 27 order on October 29, 2007, holding that "the application for a stay contained intentionally false representations." Mr. Eardley, a non-party to the Spirtos II action, filed a notice of appeal of the order vacating the October 27 order. He did not obtain a stay pending appeal or post a bond. As we discuss in footnote 12, supra, California law does not automatically impose a stay on self-executing orders such as the order vacating the October 27 order. Mr. Eardley's appeal of the October 29 order did not reinstate the October 27 order. Bulmash, 24 Cal. 3d at 697-99.

As Debtor has not presented us with any order by a state court invalidating the Pacifica foreclosure sale, it remains valid for the purposes of determining mootness. The appeal of the section 362(d)(4) order is therefore moot.

951 (9th Cir. 2003).

V. DISCUSSION

A. Sufficiency of Notice

Section 1307(c) permits a bankruptcy court "upon request of a party in interest" and "after notice and a hearing" to dismiss a chapter 13 case for cause. Rule 1017(f)(1) provides that the contested matter provisions of Rule 9014 apply to section 1307(c) requests for dismissal. Rule 9014(a) requires relief in a contested matter to be requested by motion and "reasonable notice and opportunity for hearing" to be afforded the party against whom relief is sought. Here, Downey did not file a motion for dismissal and did not set such a motion for hearing in accordance with Local Rule 9013-1 of the bankruptcy court. By itself, the insertion of two sentences requesting dismissal (with a bar on refiling) into an objection to confirmation does not provide the notice and opportunity for hearing contemplated by the federal and local rules.[17] But the case must be considered in the context of what happened after that: the court's issuance of a detailed tentative ruling to which Debtor had sufficient opportunity to respond at length.

A bankruptcy court has the power to dismiss a case sua sponte under section 105(a). Tennant v. Rojas (In re Tennant), 318 B.R. 860, 869 (9th Cir. 2004). Rule 1017(c) does not apply to such sua sponte dismissals. Id. at 869-70. Nonetheless,

[17]We are not deciding today whether incorporating a request for dismissal into an objection to confirmation satisfies Rule 1017 and 9014. We do note, however, that burying the request in the text and not even referring to a request for dismissal in the title of the objection is insufficient.

notice and an opportunity for hearing must be provided with respect to a sua sponte dismissal. Id. at 870.

The Ninth Circuit has held that a court must give the party against whom relief is directed "'a meaningful opportunity to be heard.'" Rosson v. Fitzgerald (In re Rosson), 545 F.3d 764, 775 (9th Cir. 2008) (emphasis in original), quoting Law Offices of David A. Boone v. Derham-Burk (In re Eliapo), 468 F.3d 592, 603 (9th Cir. 2006).[18] As we observed in Tennant, a dismissal based on a determination of substantive issues (such as bad faith), requires more notice than a dismissal based on narrow procedural grounds (such as failure to file requisite documents).

In this case, Debtor learned about the bankruptcy court's intent to dismiss her case on the bad faith grounds approximately five days prior to the hearing, which she believed had been continued. Nonetheless, Debtor was given sufficient notice to enable her to file a 26-page response (plus exhibits) and to correct some of the deficiencies noted by the court (such as the failure to file payment advices).

In addition, on April 7, the court set the June 25 confirmation hearing; while the chapter 13 trustee may have discussed continuing the June 25 hearing, no notice or order

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[18]Rosson upheld a one-hour notice by the bankruptcy court to the debtor that his case would be converted to chapter 7. While the Ninth Circuit criticized the short notice given, it observed that the debtor had sufficient time to seek reconsideration. When he did, he was unable to make a sufficient showing why conversion was improper. Here, as explained, Debtor had ample time to respond to the threatened dismissal and did so. She then failed to attend the hearing that led to the dismissal, even though her request for a continuance did not mention any conflict or other reason why she would be unable to attend.

continuing the hearing was filed. Debtor should have known that the bankruptcy court could conceivably deny confirmation at that hearing.

While courts ordinarily must afford a debtor an opportunity to amend a plan before dismissing a chapter 13 case for "cause," (Nelson v. Meyer (In re Nelson), 343 B.R. 671, 676 (9th Cir. BAP 2006)), an amendment of the plan would have been futile here as the court found that the case itself had been filed in bad faith. Section 1325(a)(7) requires a court to find that a case was filed in good faith in order to confirm a chapter 13 plan. Even if the Debtor had revised her plan drastically, a revision would not mitigate any bad faith in the filing of the petition itself.[19]

We believe that the Debtor had a meaningful opportunity to be heard on the court's proposed dismissal of her case. The hearing date had been set for at least two months and the court had not issued any notice or order changing that date. In May, Downey requested a dismissal in its objection to confirmation of Debtor's plan. Debtor had sufficient notice of the court's intent to dismiss the case to enable her to file a lengthy response addressing the substance of the tentative ruling; the

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[19]Debtor argues that the bankruptcy court did not provide sufficient notice of its intent to dismiss her case for failing to file payment advices as required section 521(a)(1)(B)(iv). The bankruptcy court did not dismiss her case for that reason; to the extent Debtor was self-employed and received no income from any other employers during the six months preceding the petition date, she was not required to file such payment advices. The court merely observed in its June 24 tentative decision that if Debtor had indeed received such income from other employers and failed to file the payment advices, her case would have been automatically dismissed by section 521(i) on the 45th day following the date of her petition.

court took that response into account in its ultimate disposition. For these reasons, we believe that the court's dismissal satisfied the standards for notice set forth in Rosson and Tennant.

That said, we do not believe that the bankruptcy court provided sufficient notice of its intent to impose a lifetime bar on refiling. Downey did not request a lifetime bar, and we could find no published cases imposing such a bar.[20] The Bankruptcy Code does not contain a provision specifically permitting such a drastic measure. An imposition of such a significant sanction requires more than the notice given here. While the Debtor could have anticipated dismissal as a consequence of an inability to confirm a plan, she had no warning before the court's first tentative decision that a lifetime bar was possible. We therefore reverse the dismissal order to the extent that it imposes a lifetime bar on refiling.

B. Substance of the Dismissal

The court can determine that a debtor filed a case in bad faith based on a pattern of conduct, and may impute bad faith from the timing and circumstances of the filing. Eisen v. Curry (In re Eisen), 14 F.3d 469 (9th Cir. 1994). The court can also consider the filings and acts of family members and other real property titleholders when determining the bad faith of a debtor.

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[20]Furthermore, most courts imposing refiling bans do so for a limited period of time and in cases where the debtor had filed multiple petitions. See, e.g., In re Craighead, 377 B.R. 648, 656 (Bankr. N.D. Cal. 2007) (court imposed three-year bar on refiling where debtor had filed six cases and family members had filed 22 cases). This case was Debtor's first case.

Craighead, 377 B.R. at 655.

In Leavitt, the Ninth Circuit affirmed a dismissal "with prejudice" of a chapter 13 case. "A dismissal with prejudice bars further bankruptcy proceedings between the parties and is a complete adjudication of the issues." Leavitt, 171 F.2d at 1223-24. A dismissal with prejudice, therefore, is not unlike a bar on refiling; both are extraordinary remedies. In order to dismiss a chapter 13 bankruptcy case with prejudice for bad faith, a court must consider the "totality of the circumstances" and should consider the following factors:

> (1) whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed his Chapter 13 petition or plan in an inequitable manner;
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> (2) the debtor's history of filings and dismissals;
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> (3) whether the debtor only intended to defeat state court litigation; [and]
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> (4) whether egregious behavior is present[.]

Id. at 1224 (internal quotations and citations omitted). The bankruptcy court here took into account each of these factors when it dismissed the case. It considered the misrepresentations by Debtor in her schedules,[21] the inadequacies of her plan, the history of litigation in state court and bankruptcy court, and

[21]Debtor contended that she did not schedule the Downey and Pacifica as entities holding security interests in the Property because she was not the obligor on the promissory note secured by the deeds of trust on the Property. Schedule D requires a debtor to disclose all encumbrances on real property in which the debtor claims an ownership interest, whether disputed or not. Debtor is an attorney; she should understand the significance of the deeds of trust against the Property and her explanation for omitting them is unavailing.

the timing of the petition (within days of dismissal of Spirtos' case for bad faith). These factors favored dismissal.

In light of the litigation history involving Debtor, Mr. Eardley and Spirtos over the Property, and in light of the multiple filings affecting the Property, the bankruptcy court did not clearly err in finding that Debtor acted in bad faith when she filed her petition, particularly when that filing occurred five days after Spirtos' case was dismissed for bad faith. In light of that finding, Debtor cannot propose any plan that will satisfy section 1325(a)(7) (requiring a finding that the petition was filed in good faith before a plan can be confirmed). Under such circumstances, dismissal of the case was not an abuse of discretion. Leavitt, 171 F.3d at 1223-25.

VI. CONCLUSION

For the foregoing reasons, we DISMISS the appeal of the section 362(d)(4) order (BAP No. 08-1200) as moot and AFFIRM the dismissal order but REVERSE that portion of the dismissal order imposing a lifetime ban on refiling.