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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NOT FOR PUBLICATION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. EC-07-1349-DCMo
)
 JAMES LEON RANDLE and) Bk. No. 07-12273
 JANIE MAE RANDLE,)
)
 Debtors.)
)
)
 JAMES LEON RANDLE and)
 JANIE MAE RANDLE,)
)
 Appellants,)
)
 v.) **MEMORANDUM¹**
)
 M. NELSON ENMARK, Chapter 13)
 Trustee; U.S. TRUSTEE,)
)
 Appellees.)

Argued and Submitted on June 20, 2008
at Pasadena, California

Filed - June 30, 2008

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

Honorable W. Richard Lee, Bankruptcy Judge, Presiding

Before: DUNN, CARROLL² and MONTALI, Bankruptcy Judges.

¹This 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.

²Hon. Peter H. Carroll, U.S. Bankruptcy Judge for the Central District of California, sitting by designation.

1 Chapter 13³ debtors appeal the dismissal of their case for
2 failure timely to file a master address list of creditors in
3 proper form as required by Rule 1007(a)(1). We AFFIRM.

4
5 **I. FACTS⁴**

6 James Leon Randle and Janie Mae Randle ("the Randles"),
7 without the assistance of counsel, filed a joint chapter 13
8 petition ("Petition") on July 30, 2007, in order to prevent the
9 scheduled foreclosure sale of their residence. The Petition
10 itself was incomplete, and there were numerous additional
11 deficiencies in the Randles' efforts to initiate and prosecute
12 their case. The only creditor information the Randles provided
13 with their Petition was the handwritten name and address of their
14 mortgage servicing company, American Service Co. ("ASC").

15 The Randles were provided notice of each deficiency in the
16 form of the Clerk's "Notice of Incomplete Filing" ("Deficiency
17 Notice") entered July 30, 2007. The Deficiency Notice was given
18

19 ³Unless otherwise indicated, all chapter, section and rule
20 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
21 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as
22 enacted and promulgated as of October 17, 2005, the effective
23 date of the relevant provisions of the Bankruptcy Abuse
Prevention and Consumer Protection Act of 2005, Pub. L. 109-8,
119 Stat. 23.

24 ⁴Many of the facts set forth in this Memorandum are taken
25 from the Memorandum Opinion ("Memorandum Opinion") filed by the
26 bankruptcy court in conjunction with its ruling on the Randles'
27 motion to vacate the dismissal. Because of the paucity of the
28 record supplied by the Randles, we have exercised our discretion
to examine the bankruptcy court's docket and imaged documents in
Case No. 07-12273. See Atwood v. Chase Manhattan Mortgage Co.
(In re Atwood), 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003); Omoto
v. Ruggera (In re Omoto), 85 B.R. 98, 100 (9th Cir. BAP 1988).

1 to the Randles at the time their Petition was filed, and a copy
2 was mailed to the Randles. In due course, the bankruptcy court
3 issued no fewer than four orders that the Randles show cause why
4 their case should not be dismissed as a result of their failures
5 to comply with the Deficiency Notice.

6 The first of these orders to show cause ("First Show Cause
7 Order") was based upon the Randles' failure to file a master
8 address list ("MAL") in compliance with LBR⁵ 1007-1(b) and Rule
9 1007(a)(1). The Deficiency Notice informed the Randles of their
10 need to file the MAL not later than August 6, 2007. When the
11 Randles failed to meet that deadline, the First Show Cause Order
12 was entered August 9, 2007. The hearing on the First Show Cause
13 Order was scheduled for September 5, 2007.⁶

14 On August 20, 2007, the Randles filed a motion for
15 continuance ("Continuance Motion"), which appeared to be
16 addressed to documents due to be filed by August 14, 2007. The
17 Continuance Motion requested an extension to August 31 of the
18 August 14 deadline on the basis that Mr. Randle had been
19 hospitalized between August 9, 2007 and August 12, 2007, and had
20 been unable to assist Ms. Randle in preparing the case documents.
21 The bankruptcy court never ruled on the Continuance Motion.

22
23
24 ⁵"LBR" refers to the Local Rules of Practice for the United
States Bankruptcy Court for the Eastern District of California.

25
26 ⁶The other show cause orders related to the following
27 deficiencies: failure to submit social security numbers; failure
28 to file schedules, statement of financial affairs, and chapter 13
plan; and failure to pay first installment of filing fee. The
hearing on each of these orders to show cause was set for
September 27, 2007.

1 Also, on August 20, 2007, perhaps to hedge their bets in the
2 event the Continuation Motion was not granted, the Randles filed
3 their schedules, statement of financial affairs, chapter 13 plan,
4 and a "Master List." The residence was the only asset included
5 in the schedules, and ASC was the only creditor included in the
6 schedules and on the "Master List." The statement of financial
7 affairs contained the Randles' case name and case number, but
8 otherwise had not been completed.

9 Only Ms. Randle appeared at the September 5th hearing on the
10 First Show Cause Order, at which time she advised the bankruptcy
11 court that she was "getting an attorney tomorrow." The
12 bankruptcy court ordered that the case would be dismissed because
13 it had been pending for a month and a half with no list of
14 creditors filed, with the result that creditors had not received
15 notice of the bankruptcy case. The bankruptcy court advised Ms.
16 Randle that it would make the dismissal effective September 10,
17 2007, to give her attorney an opportunity to file a new case
18 before a foreclosure sale was completed. The dismissal order
19 entered by the court on September 7, 2007, did provide that the
20 dismissal would be effective September 10, 2007. It does not
21 appear from the record that the Randles ever hired an attorney.

22 On September 13, 2007, the Randles filed a motion seeking
23 leave to amend the "Master Matrix List." Appended to this motion
24 was a handwritten list titled "Master Matrix List," which
25 included the names and addresses of the following creditors:
26 ASC, Wells Fargo Bank (fax number only; no address), Check
27 Processing Bureau, West Asset Management, and HSBC Card Services.
28

1 On September 17, 2007, the Randles filed their "Notice of
2 Appeal and Motion to Set Aside Judgement Vacate and to Reinstate
3 Bankruptcy Proceeding." The Clerk processed the pleading only as
4 a Notice of Appeal. We remanded to the bankruptcy court for the
5 limited purpose of allowing the bankruptcy court to enter an
6 order on the motion to vacate dismissal. The bankruptcy court's
7 Memorandum Opinion and order denying the motion to vacate
8 dismissal were entered November 15, 2007. The Randles did not
9 seek or obtain a stay pending appeal.

11 II. JURISDICTION

12 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
13 §§ 1334 and 157(b) (2) (A).

14 We cannot exercise jurisdiction over a moot appeal. I.R.S.
15 v. Patullo (In re Patullo), 271 F.3d 898, 900 (9th Cir. 2001).
16 The test for mootness is whether we still can grant effective
17 relief to the appealing party if we decide the merits in his or
18 her favor. Pilate v. Burrell (In re Burrell), 415 F.3d 994, 998
19 (9th Cir. 2005). If a case becomes moot while an appeal is
20 pending, we must dismiss the appeal. Patullo, 271 F.3d at 900.

21 Examples of situations where we cannot grant effective
22 relief to an appealing party are when funds have been disbursed
23 to non-parties or when subject property has been sold to a good
24 faith purchaser. See Beatty v. Traub (In re Beatty), 162 B.R.
25 853, 856 (9th Cir. BAP 1994).

26 In this case, the excerpts of record filed by the Randles
27 alerted us to the fact that an unlawful detainer action was
28 pending against them in California state superior court, tending

1 to indicate that a foreclosure sale of their residence had
2 occurred. We issued an Order Re Mootness on June 10, 2008,
3 asking the Randles to file a written response telling us whether
4 their residence in fact had been sold at a foreclosure sale; if
5 so, what date the foreclosure sale occurred; and advising us why
6 their appeal should not be dismissed as moot. The Randles filed
7 a response on June 17, 2008, stating that their residence had
8 been sold at a foreclosure sale on August 8, 2007, while their
9 chapter 13 case was still pending. The Randles did not submit
10 any documentation in support of their assertion that the
11 foreclosure sale took place on August 8, 2007. At the hearing on
12 the First Show Cause Order, in response to the bankruptcy court's
13 question, "Do you know what day the foreclosure is set for?" Ms.
14 Randle responded that "it was set for the 26th."

15 Based on the record before us, it simply is unclear whether
16 we would be precluded from granting any effective relief to the
17 Randles if they prevail in this appeal. Accordingly, we will
18 proceed to consider the merits of the Randles' appeal. We have
19 jurisdiction pursuant to 28 U.S.C. § 158.

20 21 **III. ISSUES**

22 Whether the bankruptcy court erred in dismissing the
23 Randles' chapter 13 case.

24 25 **IV. STANDARDS FOR REVIEW**

26 We review an order dismissing a chapter 13 bankruptcy case
27 for abuse of discretion. Brown v. Sobczak (In re Sobczak), 369
28 B.R. 512, 516 (9th Cir. BAP 2007). Under the abuse of discretion

1 standard, we must affirm the decision below unless (1) we have a
2 definite and firm conviction that the bankruptcy court committed
3 a clear error of judgment in the conclusion it reached upon
4 weighing the relevant factors, (2) the bankruptcy court applied
5 the wrong law, or (3) the bankruptcy court rested its decision on
6 clearly erroneous findings of material fact. Delay v. Gordon,
7 475 F.3d 1039, 1043 (9th Cir. 2007).

8
9 **V. DISCUSSION**

10 As the quid pro quo for relief in bankruptcy, the Bankruptcy
11 Code imposes certain absolute duties on a debtor. At issue in
12 this case is the requirement that the debtors satisfy their duty
13 to provide creditors with notice of the proceedings in the
14 bankruptcy case by filing a list of creditors in compliance with
15 § 521(a)(1)(A), and with Rule 1007(a) and LBR 1007-1(b), the
16 rules which implement the statutory provision.

17 Section 521(a)(1)(A) reads very simply that, “[T]he debtor
18 shall file a list of creditors.” Rule 1007(a)(1) requires that
19 debtors “file with the petition a list containing the name and
20 address of each entity included or to be included on Schedules D,
21 E, F, G, and H as prescribed by the Official Forms.” In the
22 Bankruptcy Court for the Eastern District of California, LBR
23 1007-1(b) sets out the technical requirements for filing the list
24 of creditors.

25
26 LOCAL RULE 1007-1 List of Creditors and Master
Address List

27 ...
28 (b) Master Address List. With every petition for
relief under the Bankruptcy Code presented for filing,

1 there shall be submitted concurrently a Master Address
2 List which includes the name, address, and zip code of
3 all of the debtor's known creditors. To accommodate
4 modern technology, the Master Address List shall be
5 prepared in strict compliance with instructions of the
6 Clerk in a format approved by the Court.

7 The instructions ("Instructions") of the Clerk in turn
8 require that any "hard-copy," i.e., non-electronic, list shall
9 contain no handwriting, stray marks, correction fluid or tape,
10 because these items may cause the entry of incorrect data; that
11 the hard-copy MAL must be submitted as a CLEAN, TOTALLY SEPARATE
12 document; and that every MAL shall be accompanied by a
13 verification by the debtor, stating that the MAL is a true,
14 correct, and complete listing of the required creditor
15 information to the best of the debtor's knowledge and belief.⁷
16 The Instructions further require that any MAL which does not
17 strictly comply with the guidelines is to be amended. Finally,
18 the Instructions provide notice that the failure to submit the
19 MAL concurrently with a petition may result in dismissal of the
20 debtor's case.

21 In this case, the Randles attached a single, untitled page
22 to the back of their Petition on which they hand wrote the
23 following:

24 America Service Co.
25 P.O. Box 10388
26 Des Moines, IA 50306-0388

27 The Clerk recognized that this was not a proper MAL, as evidenced
28 by the entry of the Deficiency Notice, which advised the Randles
both of the need to file the MAL not later than August 6, 2007,

⁷The Instructions were obtained from the bankruptcy court's website.

1 and that the consequence of failing to meet the deadline would be
2 the initiation of action to dismiss their case.

3 After the First Show Cause Order was entered, the Randles
4 filed their schedules, statement of financial affairs, chapter 13
5 plan, and a handwritten document entitled "Master List," which
6 again included ASC, though its address was less legible than the
7 one contained on the prior document filed by the Randles.

8 Finally, on September 13, 2007, after their case had been
9 dismissed, the Randles filed a handwritten document entitled
10 "Matrix Master List." This document again included ASC, but also
11 added four additional creditors, providing addresses for three of
12 these creditors and a fax number for the fourth. The handwriting
13 on the "Matrix Master List" is not completely legible.

14 The purpose of the MAL is to enable the Clerk to provide
15 creditors due process by mailing notice, inter alia, of the order
16 for relief, the notice of the § 341(a) meeting of creditors, the
17 time fixed for filing proofs of claims, the time fixed for filing
18 objections to confirmation of a chapter 13 plan, and the time
19 fixed for a hearing on confirmation.⁸ See COLLIER ON BANKRUPTCY ¶
20 1007.02[1], at p. 1007-10 (15th rev. ed. 2008).

21 //

22 //

23
24 ⁸Notice of commencement of the case was mailed to ASC, but
25 not to any other creditor. However, notice of the dismissal was
26 mailed to Asset Acceptance, by virtue of its having filed proofs
27 of claim in the case, and to Wells Fargo Home Mortgage, Inc.
28 ("Wells Fargo"), based on its having filed a request for special
notice, signed by its attorney John Sorich, on September 6, 2007.
Mr. Sorich appears to be the attorney for the secured creditor in
the unlawful detainer action, although that creditor is Deutsche
Bank National Trust Company, not Wells Fargo or ASC.

1 Section 1307(c)(9)⁹ authorizes the bankruptcy court, after
2 notice and a hearing, to dismiss a bankruptcy case if a debtor
3 fails to file the list of creditors within fifteen days of the
4 petition date, or within such additional time as the court might
5 allow. Although § 1307(c)(9) speaks in terms of a dismissal on
6 this basis only upon motion by the U.S. Trustee, we previously
7 have held that in the absence of a motion by the U.S. Trustee,
8 § 105(a) authorizes the bankruptcy court to dismiss a case sua
9 sponte for failure to comply with § 521(1). Tennant v. Rojas (In
10 re Tennant), 318 B.R. 860, 869-70 (9th Cir. BAP 2004).

11 The bankruptcy court dismissed the Randles' bankruptcy case
12 "[b]ecause it didn't get filed with a list of creditors and no
13 creditors got notice of [the] bankruptcy," explaining that
14 without the list of creditors, when the Clerk mails a notice,
15 none of the creditors get the notice. [Tr. of September 5, 2007
16 Hearing, pp. 5:13-6:8]. The bankruptcy court explicitly informed
17 Ms. Randle that the Randles would need to file a new bankruptcy
18 case, and it delayed the effective date of the dismissal until
19 several days after the date Ms. Randle stated she would be
20 meeting with bankruptcy counsel.

21
22 ⁹Except as provided in subsection (e) of this section, on
23 request of a party in interest or the United States trustee and
24 after notice and a hearing, the court may convert a case under
25 this chapter to a case under chapter 7 of this title, or may
dismiss a case under this chapter, whichever is in the best
interests of creditors and the estate, for cause, including—

26 . . .
27 (9) only on request of the United States trustee, failure
28 of the debtor to file, within fifteen days, or such
additional time as the court may allow, after the filing of the
petition commencing such case, the information required by
paragraph (1) of section 521.

1 In this appeal, the Randles assert that Ms. Randle
2 misunderstood what the bankruptcy court said. While unfortunate,
3 the Randles' misunderstanding of the bankruptcy court's
4 statements does not establish an abuse of discretion on the part
5 of the bankruptcy court. Not only did the bankruptcy court not
6 abuse its discretion when it dismissed the Randles' case because
7 creditors had not received notice, the bankruptcy court did
8 everything possible to impress upon Ms. Randle the importance of
9 promptly filing a new bankruptcy petition to protect the Randles
10 from further actions of the foreclosing mortgage creditor.

11
12 **VI. CONCLUSION**

13 We do not have a definite and firm conviction that the
14 bankruptcy court committed a clear error of judgment when it
15 dismissed the Randles' chapter 13 case for failing to file a
16 proper MAL. The bankruptcy court neither applied the wrong law,
17 nor committed clear error in its factual findings. We AFFIRM.