

JUL 10 2008

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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NOT FOR PUBLICATION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

6	In re:	)	BAP No.	WW-07-1395-JuKuK
7	NEIL MARTIN ROSE,	)	Bk. No.	01-49703
8	Debtor.	)	Adv. No.	07-04091
9	_____	)		
10	NEIL MARTIN ROSE,	)		
11	Appellant,	)		
12	v.	)	<b>MEMORANDUM<sup>1</sup></b>	
13	RICHARD M. RUGGERIO; BEVERLY	)		
14	A. RUGGERIO; and KATHRYN	)		
15	ELLIS, Chapter 7 Trustee,	)		
15	Appellees.	)		
16	_____	)		

Argued and Submitted on June 18, 2008  
at Seattle, Washington

Filed - July 10, 2008

Appeal from the United States Bankruptcy Court  
for the Western District of Washington

Honorable Paul B. Snyder, Bankruptcy Judge, Presiding

Before: JURY, KURTZ<sup>2</sup> and KLEIN, Bankruptcy Judges.

<sup>1</sup> 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.

<sup>2</sup> Frank L. Kurtz, Chief Bankruptcy Judge for the Eastern District of Washington, sitting by designation.

1 This appeal arises out of an involuntary chapter 7 case  
2 filed against appellant-debtor on October 12, 2001, in the  
3 Western District of Washington, and a voluntary chapter 7 case  
4 commenced by debtor on June 2, 2003, in the District of Arizona.<sup>3</sup>  
5 Pursuant to Rule 1014(b), the bankruptcy court for the Western  
6 District of Washington determined that the cases should proceed  
7 in Washington. Debtor's voluntary case was ordered transferred  
8 to Washington and substantively consolidated with his  
9 involuntary case, Bankruptcy Case No. 01-49703.

10 Debtor appeals pro se<sup>4</sup> the bankruptcy court's order granting  
11 summary judgment in favor of appellees Richard M. Ruggiero and  
12 Beverly A. Ruggiero (the "Ruggieros"). The order was the result  
13 of debtor improperly recording a lis pendens against real  
14 property five months after it was sold by the chapter 7 trustee  
15 to the Ruggieros through a court-approved § 363 sale. The  
16 Ruggieros filed a complaint for injunctive relief against  
17 debtor, seeking to enjoin him from recording further documents  
18 against the property and to remove the improperly filed lis  
19 pendens. Debtor filed an answer raising the defense that his  
20 entire bankruptcy proceeding was void. Subsequently, debtor

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21  
22 <sup>3</sup> Unless otherwise indicated, all chapter, section and rule  
23 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and  
24 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as  
25 enacted and promulgated prior to the effective date of The  
26 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,  
Pub. L. 109-8, 119 Stat. 23, because the case from which this  
appeal arises was filed before its effective date (generally  
October 17, 2005).

27 <sup>4</sup> Because of debtor's pro se status, we liberally construe  
28 his pleadings. Kashani v. Fulton (In re Kashani), 190 B.R. 875,  
883 (9th Cir. BAP 1995).

1 filed a counterclaim against the Ruggieros, the bankruptcy  
2 judge, the chapter 7 trustee and others alleging that his  
3 bankruptcy proceeding was void from the beginning.

4 The Ruggieros moved for summary judgment, contending that  
5 there was no genuine issue of material fact regarding the  
6 improperly filed lis pendens. The bankruptcy court granted  
7 their motion.

8 Debtor's primary claim of error in this appeal is based  
9 upon his view that the involuntary bankruptcy proceeding  
10 commenced against him was void, and, therefore, the bankruptcy  
11 court never had jurisdiction over him or his property. We hold,  
12 as a matter of law, that the issue preclusion doctrine prevents  
13 debtor from relitigating the issue whether the bankruptcy court  
14 had jurisdiction over him or his property.

15 We further conclude, after a thorough review of the record,  
16 no genuine issues of material fact were raised in the Ruggieros'  
17 motion for summary judgment and thus the bankruptcy court  
18 correctly ruled in their favor.

19 Accordingly, we AFFIRM.

## 20 I. FACTS

21 Debtor has been involved in bankruptcy proceedings both in  
22 the Western District of Washington and the District of Arizona  
23 for years.<sup>5</sup>

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24  
25 <sup>5</sup> Given the bankruptcy court's reference to numerous rulings  
26 in its Memorandum Decision, we have exercised our discretion to  
27 examine the bankruptcy court's docket and imaged papers in  
28 Bankruptcy Case Nos. WW-01-49703, WW-01-49934, WW-01-49935, AZ-  
03-09444, AZ-07-00516, and related adversary proceedings. Atwood  
v. Chase Manhattan Mortgage Co. (In re Atwood), 293 B.R. 227, 233

(continued...)

1 The first of the proceedings began in Washington in 2001  
2 when attorney Craig Miller, on behalf of judgment creditors  
3 Clyde Corporation and Evans Deakin Industries, Ltd.<sup>6</sup>, commenced  
4 involuntary chapter 7 bankruptcy petitions against debtor (Case  
5 No. 01-49703) and his companies, Impact Alloys Foundry, Inc.  
6 (Case No. 01-49934) and Impact Alloys Corporation (Case No. 01-  
7 49935), on October 5, 2001 and October 12, 2001, respectively.  
8 An order for relief was entered on November 30, 2001, in all  
9 three cases.

10 Kathryn Ellis was appointed the chapter 7 trustee on May  
11 24, 2002. Thereafter, the trustee sought to employ Miller as  
12 her counsel. The court approved Miller's employment by order  
13 entered on November 12, 2002.

14 On January 6, 2003, the court ordered the joint  
15 administration of the three cases pursuant to § 302 and  
16 designated the lead case as 01-49703.

17 On February 5, 2003, the trustee commenced an adversary  
18 proceeding against debtor, his sons and his personal residence  
19 trust, alleging the fraudulent transfer of real property located  
20 at 2110 SE 105th Court, Vancouver, Washington. Ellis v. Rose,  
21 et al. (Adv. Case No. 03-4027).

22 On June 2, 2003, debtor filed a voluntary chapter 7  
23 petition for relief in the United States Bankruptcy Court for  
24 \_\_\_\_\_

25 <sup>5</sup>(...continued)  
26 n.9 (9th Cir. BAP 2003); Omoto v. Ruggera (In re Ruggera), 85  
B.R. 98, 100 (9th Cir. BAP 1988).

27 <sup>6</sup> Both petitioning creditors obtained their judgments  
28 against debtor and his companies in Clark County, Washington  
Superior Court, Case No. 97-2-04777-7.

1 the District of Arizona, Case No. AZ-03-09444. Soon thereafter,  
2 debtor filed a motion in the Washington bankruptcy court to  
3 dismiss his involuntary proceeding for lack of jurisdiction.  
4 Subsequently, the United States Trustee moved in the Washington  
5 bankruptcy court for a determination of the proper venue and  
6 consolidation of debtor's individual cases. Debtor opposed the  
7 relief, claiming due to the insufficiency of service in his  
8 involuntary proceeding, the Washington bankruptcy court lacked  
9 jurisdiction.

10 On November 5, 2003, the Washington bankruptcy court  
11 entered an order that determined the proper venue of debtor's  
12 Arizona case was the Western District of Washington.<sup>7</sup> Debtor's  
13 voluntary chapter 7 Arizona case was transferred to the United  
14 States Bankruptcy Court for the Western District of Washington  
15 and substantively consolidated with his individual involuntary  
16 petition. Debtor did not appeal that order.

17 The court denied debtor's motion to dismiss the involuntary  
18 proceeding on the same date.

19 After a trial in the fraudulent transfer adversary  
20 proceeding, on November 8, 2005 the bankruptcy court ordered  
21 debtor to turn over the property located at 2110 SE 105th Court,  
22 Vancouver, Washington to the trustee. Debtor appealed and  
23 thereafter refused to give the trustee and her realtor access to

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24  
25 <sup>7</sup> Rule 1014(b) sets forth the procedure when petitions  
26 involving the same debtor are filed in different courts.  
27 Pursuant to the Rule, "on motion filed in the district in which  
28 the petition filed first is pending and after hearing on notice  
of justice or for the convenience of the parties, the district or  
districts in which the case ... should proceed."

1 the property. Both the bankruptcy court and this Panel denied  
2 debtor's requests for a stay pending his appeal. Debtor's  
3 appeal was ultimately dismissed on May 24, 2006, for lack of  
4 prosecution.

5 In April 2006, the trustee filed a Motion to Compel Debtor  
6 to Vacate Property and Directing U.S. Marshal to Remove Debtor.  
7 Her motion was followed by debtor's Motion to Vacate All Prior  
8 Judgments and Rulings in This Matter due to lack of  
9 jurisdiction. The court heard both matters on June 6, 2006, and  
10 granted debtor time to provide additional case law to support  
11 his position. Debtor filed a supplemental brief on June 14,  
12 2006. On June 23, 2006, the court entered an Amended Order  
13 Denying Debtor's Motion to Vacate and Granting Trustee's Motion  
14 to Compel. Debtor did not appeal that order.

15 On September 9, 2006, the trustee noticed a sale of the  
16 property free and clear of liens. Debtor opposed the sale,  
17 alleging that the involuntary proceeding against him was void,  
18 unlawful and a sham. On November 7, 2006, Richard Ruggiero  
19 purchased the property. The court approved the sale by order  
20 entered on the same date. Debtor did not appeal that order.  
21 Ruggiero recorded the Trustee's Quitclaim Deed and the transfer  
22 of the property on November 20, 2006.

23 On February 9, 2007, debtor commenced a voluntary chapter  
24 11 proceeding in the Arizona bankruptcy court, Case No. AZ-07-  
25 00516.

26 On March 30, 2007, the trustee moved to make an interim  
27 distribution to creditors in the Washington court. Debtor  
28 opposed the motion, contending that the automatic stay

1 instigated by his Arizona bankruptcy petition prevented the  
2 trustee from making distributions. The bankruptcy court granted  
3 the trustee's motion by order entered on June 7, 2007, ruling  
4 that the assets of debtor's estate in this case did not become  
5 part of his Arizona chapter 11 case. Debtor did not appeal that  
6 order.

7 On April 5, 2007, debtor recorded a "Lis Pendens Affecting  
8 Real Property Under RCW 4.28.30", wherein debtor stated that he  
9 filed a voluntary Chapter 11 Plan of Reorganization in the  
10 Arizona bankruptcy court and intended to recover "unlawfully  
11 seized property" in those proceedings, one of which debtor  
12 claimed was the Ruggieros' property.

13 Debtor filed an adversary proceeding against numerous  
14 defendants, including debtor's former attorneys, in the Arizona  
15 bankruptcy court on April 16, 2007. Rose v. Woolard (Adv. No.  
16 07-ap-00245). The complaint alleged multiple improprieties in  
17 Washington Superior Court Case No. 97-2-04777-7 that resulted  
18 in void judgments obtained by the creditors which had commenced  
19 the involuntary bankruptcy proceedings against debtor and his  
20 two companies in Washington. Debtor requested a judgment in the  
21 amount of \$72,615,099, jointly and severally against the  
22 defendants.

23 The Arizona bankruptcy court dismissed the action on August  
24 1, 2007. Debtor appealed to the United States District Court,  
25 District of Arizona, Case No. 07-01908. The district court  
26 dismissed his appeal on February 20, 2008 for lack of  
27 prosecution. Debtor did not further pursue the action.

28

1           On July 13, 2007, the Ruggieros filed an adversary  
2 proceeding against debtor in the Washington bankruptcy court,  
3 seeking cancellation of the lis pendens and an injunction  
4 restraining debtor from recording any further documents against  
5 the property. Debtor filed an answer to their complaint on July  
6 30, 2007, contending that he had put the Ruggieros on notice  
7 that his bankruptcy proceedings were void and that everything  
8 that resulted from them was void. Debtor also alleged that he  
9 was evicted from the property pursuant to an "unlawful and void  
10 order" issued by the bankruptcy judge and that the Ruggieros  
11 were "willing 'confederates' in this scheme." Debtor concluded  
12 his answer "Enjoy your ill gotten gains while you can because  
13 the law will not allow you to keep them. Keep those criminal  
14 acts coming at your own peril."

15           Debtor filed a counterclaim against the Ruggieros,  
16 bankruptcy Judge Paul B. Snyder, chapter 7 trustee Kathryn  
17 Ellis, Craig W. Miller and Timothy W. Dore (the trustee's new  
18 counsel) on August 24, 2007. He alleged that all of the actions  
19 against him are void and that he is entitled to judgment in his  
20 favor in the amount of \$193,527,015.

21           Ruggieros moved for summary judgment on September 7, 2007  
22 claiming that no genuine issue of material fact could be  
23 asserted against them, that the lis pendens should be cancelled  
24 due to its improper filing as a matter of law, debtor should be  
25 enjoined from filing any further documents against the property,  
26 and his counterclaims should be dismissed. The court granted  
27 the Ruggieros' motion, filed its Memorandum Decision on October  
28 11, 2007, and entered the related order on the same date.



1 Debtor timely appealed.

2 **II. JURISDICTION**

3 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
4 §§ 1334 over this core proceeding under § 157(b)(2)(A) and (N).  
5 We have jurisdiction under 28 U.S.C. § 158.

6 **III. ISSUES**

7 A. Whether we have appellate jurisdiction to consider prior  
8 orders in this case, and related proceedings, which have become  
9 final.

10 B. Whether we have appellate jurisdiction to consider orders  
11 which were not entered at the time debtor filed his notice of  
12 appeal.

13 C. Whether the doctrine of issue preclusion bars debtor from  
14 litigating whether the bankruptcy court had jurisdiction over  
15 him and his property from October 5, 2001, to the present, when  
16 the bankruptcy court had already decided it had jurisdiction.

17 D. Whether the bankruptcy court erred in ordering the  
18 cancellation of the lis pendens.

19 E. Whether the bankruptcy court erred in enjoining debtor from  
20 filing further documents against the Ruggieros' property.

21 F. Whether the bankruptcy court erred in dismissing debtor's  
22 counterclaims.

23 **IV. STANDARDS OF REVIEW**

24 Our standard in reviewing the bankruptcy court's decision  
25 to grant a motion for summary judgment is de novo. Sigma Micro  
26 Corp. v. Healthcentral.com (In re Healthcentral.com), 504 F.3d  
27 775, 783 (9th Cir. 2007). Summary judgment is appropriate where  
28 the pleadings and the evidence show that there is no genuine

1 issue of any material fact and that the moving party is entitled  
2 to a judgment as a matter of law. See Fed. R. Civ. P. 56(c).<sup>8</sup>  
3 In evaluating the motion, we view all facts and inferences in  
4 the light most favorable to the non-moving party. Anderson v.  
5 Liberty Lobby, Inc., 477 U.S. 242, 250 (1986).

## 6 **V. DISCUSSION**

7 Debtor asserts a litany of complaints in his pro se brief,  
8 beginning with his assertion that this appeal "transcends" the  
9 order appealed such that this Panel should declare the entire  
10 proceeding and the cases associated with it void from the  
11 beginning. Based upon his premise that the involuntary  
12 bankruptcy proceeding commenced against him is void, debtor  
13 contends that he has a continuing interest in the property and,  
14 therefore, the lis pendens was proper. Debtor thus maintains  
15 that the bankruptcy court's order granting the Ruggieros'  
16 summary judgment should be reversed and all issues adjudicated  
17 in his favor.

18 We disagree for the reasons set forth below.

### 19 **A. The Scope of this Appeal**

20 Initially we address debtor's contention that this appeal  
21 "transcends" the order appealed from. Debtor maintains in his  
22 opening brief that this appeal begins with the court's  
23 Memorandum Decision and Order Granting Plaintiffs' Motion for  
24

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25 <sup>8</sup> Fed. R. Civ. P. 56(c), made applicable to cases under the  
26 Code pursuant to Rule 7056, provides in relevant part: "The  
27 judgment should be rendered if the pleadings, the discovery and  
28 disclosure materials on file, and any affidavits show that there  
is no genuine issue as to any material fact and that the movant  
is entitled to judgment as a matter of law."

1 Summary Judgment entered October 11, 2007, the Order Allowing  
2 Withdrawal by Trustee's Counsel entered January 10, 2008, the  
3 Order Denying Debtor's Motion for Reconsideration of the Order  
4 Allowing Withdrawal by Trustee's Counsel entered January 18,  
5 2008, and going back to the commencement of the case, October 5,  
6 2001. (emphasis added).

7 Debtor's notice of appeal applies only to the Order  
8 Granting Plaintiffs' Motion for Summary Judgment entered on  
9 October 11, 2007, which was the order attached to his notice of  
10 appeal pursuant to Ninth Circuit Bankruptcy Appellate Rule  
11 8001(a)-1.<sup>9</sup> The notice of appeal would be untimely if construed  
12 to include all prior orders which have been allowed to become  
13 final. We lack jurisdiction to review these prior orders which  
14 debtor describes as "going back to the commencement of the  
15 case." Anderson v. Mouradick (In re Mouradick), 13 F.3d 326,  
16 327 (9th Cir. 1994) (provisions of Rule 8002 are jurisdictional).  
17 Moreover, the January 10 and January 18, 2008, orders debtor  
18 refers to are beyond the scope of this appeal since it is  
19 limited to orders which were in existence at the time debtor  
20 filed his notice of appeal on October 15, 2007, and those orders  
21 were not. Accordingly, we also lack jurisdiction to review  
22 those orders. Id.

23

24

25 <sup>9</sup> We are mindful that the appellant made allegations in his  
26 briefs and during oral argument that called into question the  
27 integrity of the bankruptcy judge and other officers of  
28 administration based on matters outside the appellate record.  
This appeal is not the appropriate forum for raising such matters  
because there are established procedures for review of the case  
by administrative officers.

1 **B. Issue Preclusion**

2 As we understand debtor's appeal, his main ground for  
3 reversal stems from the alleged fraud, which took place in state  
4 court Case No. 97-2-04777-7<sup>5</sup>. He contends that due to this  
5 fraud, the judgments obtained by the petitioning creditors who  
6 commenced this involuntary proceeding against him are void, and  
7 all acts that flow from that lawsuit, including this bankruptcy  
8 case, are void. Thus, debtor contends that the bankruptcy court  
9 has never had jurisdiction over him or his property since the  
10 commencement of the involuntary case on October 5, 2001.

11 Debtor has asserted this argument numerous times in his  
12 bankruptcy proceedings in Washington and in Arizona.<sup>6</sup> Debtor

13 \_\_\_\_\_  
14 <sup>5</sup> Specifically, debtor alleges that the state court did not  
15 comply with the standing visiting judge statute by not strictly  
16 following the procedures for appointing a visiting judge and that  
17 the visiting judge did not follow the procedure for expense  
18 reimbursement. See WASH. REV. CODE § 2.08.140 through 2.08.170.  
19 WASH. REV. CODE § 2.08.140 allows a judge, via the governor, to  
20 "request and direct a judge of the superior court of some other  
21 county, making such selection as the governor shall deem to be  
22 most consistent with the state of judicial business in other  
23 counties, to hold a session of the superior court." WASH. REV.  
24 CODE § 2.08.160 provides that judgments, orders, and decrees of a  
25 visiting judge are "equally effectual as if all the judges of  
26 such court presided at such session." Finally, WASH. REV. CODE  
27 § 2.08.170 provides that visiting judges shall be reimbursed  
28 "subsistence, lodging, and travel expenses in accordance with the  
rates applicable to state officers" upon issuance by the county  
clerk of a certificate stating that the judge is entitled to  
these expenses. According to debtor, the visiting judge's  
failure to comply with these statutes constitutes fraud and  
therefore deprived the visiting judge of jurisdiction, or more  
accurately the state court, and made any future proceedings void.

<sup>6</sup> On April 9, 2007, debtor filed a Motion to Vacate Void  
Orders Under Federal Rules of Civil Procedure 60(b)(4)(5) in  
Case No. AZ-07-00516. The Arizona bankruptcy court did not rule

(continued...)

1 admits to filing multiple pleadings that sought a ruling that  
2 his bankruptcy proceeding was void based upon fraud in the state  
3 court action, but debtor contends that the facts "brought to  
4 light" in all of his motions were ignored, never answered or  
5 countered, and every such motion "summarily denied and the  
6 charges swept under the rug."<sup>7</sup>

7 We need not address debtor's primary contention because we  
8 conclude that his attempt to relitigate whether the bankruptcy  
9 court had jurisdiction over him and his property is barred by  
10 the issue preclusion doctrine. While appellees did not brief  
11 this issue, we raise it sua sponte as an additional reason to  
12 affirm the bankruptcy court's summary judgment ruling in their  
13 favor. See U.S. v. Real Prop. Located in El Dorado County at  
14 6380 Little Canyon Road, El Dorado, Cal., 59 F.3d 974, 980 n. 3  
15 (9th Cir. 1995) (appellate court can raise issue of res judicata  
16 sua sponte); 18 Wright & Miller, Fed. Prac. & Proc. § 4405 n. 10  
17 (same).

18  
19  
20 <sup>6</sup>(...continued)

21 on debtor's motion as his chapter 11 case was eventually  
22 dismissed. Debtor's complaint in AZ-07-ap-00245 also alleges the  
23 improprieties in his state court action. The Arizona court did  
not reach the merits of the complaint as it too was dismissed.

24 <sup>7</sup> The bankruptcy court also observed in its Memorandum  
25 Decision that debtor filed multiple motions to vacate all prior  
26 judgments and rulings in these matters, motions for  
27 reconsideration, motions to stay proceedings, and several  
28 appeals. The court already ruled on these arguments and issued  
decisions and orders denying debtor's motions. The court's  
recitations in this regard were relevant to its decision to  
enjoin debtor from recording any other documents against the  
property.

1           The binding effect of former adjudication, often  
2 generically referred to as res judicata, can take two forms:  
3 issue preclusion and claim preclusion. Paine v. Griffin (In re  
4 Paine), 283 B.R. 33, 38-39 (9th Cir. BAP 2002). "Claim  
5 preclusion generally requires that there be: (1) parties either  
6 identical or in privity; (2) a judgment rendered by a court of  
7 competent jurisdiction; (3) a prior action concluded to final  
8 judgment on the merits; and (4) the same claim or cause of  
9 action involved in both actions. Id. at 39. Issue preclusion  
10 generally requires that there be: (1) the same issues; (2)  
11 actually litigated and determined; (3) by a valid and final  
12 judgment; (4) as to which the determination is essential to the  
13 judgment." Id.

14           We determine that issue preclusion has more applicability  
15 here because debtor has raised the same issue regarding the  
16 bankruptcy court's lack of jurisdiction over him in the  
17 bankruptcy court multiple times. We do not discuss each and  
18 every pleading in which debtor raised the issue of the  
19 bankruptcy court's jurisdiction because they are too numerous.  
20 An abbreviated summary will suffice here.

21           A crucial ruling regarding the bankruptcy court's  
22 jurisdiction over debtor and his property that was not related  
23 to debtor's assertion of fraud in the state court action was  
24 made on November 5, 2003. The United States Trustee moved in  
25 the Washington bankruptcy court for a determination of the  
26 proper venue and consolidation of debtor's individual cases  
27 which were then pending both in Washington and Arizona. Debtor  
28 opposed on the ground that the Washington bankruptcy court

1 lacked jurisdiction due to the insufficiency of service in his  
2 involuntary proceeding. The Washington bankruptcy court ruled  
3 that it had jurisdiction over debtor, that venue and service  
4 were proper and entered an order to that effect which debtor  
5 never appealed and therefore is final. As a result, the court  
6 ordered his voluntary chapter 7 case transferred from Arizona  
7 and substantively consolidated<sup>8</sup> with his involuntary proceeding  
8 in Washington.

9 Another ruling made by the bankruptcy court, on June 23,  
10 2006, directly addressed debtor's contention that the  
11 involuntary proceeding commenced against him was void due to the  
12 state court improprieties. In May 2006, debtor moved to have  
13 the court vacate all prior judgments and rulings as void for  
14 lack of subject matter and personal jurisdiction due to  
15 intrinsic and extrinsic fraud in Washington Superior Court Case  
16 No. 97-2-04777-7. The bankruptcy court denied debtor's motion  
17 for several reasons. First, the court found that it lacked  
18 authority to declare the state court judgment void based on the  
19 Rooker-Feldman doctrine. Next, the court ruled that even if it  
20 could overturn the state court judgment and declare it void,  
21 there was no requirement that the petitioning creditors in an  
22 involuntary case hold money judgments. See § 303. Further, the  
23 court noted that on November 5, 2003, it denied debtor's motion  
24 to dismiss the involuntary petition against him based on lack of

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25  
26 <sup>8</sup> Substantive consolidation results in a combination of the  
27 individual estates to create a single pool of assets out of which  
28 See generally Bonham v. Comptom (In re Bonham), 229 F.3d 750, 764  
(9th Cir. 2000).

1 jurisdiction. Finally, the court found that debtor had filed a  
2 voluntary petition in Arizona that was substantively  
3 consolidated with his involuntary case. Therefore, the court  
4 concluded that debtor's bankruptcy case could proceed due to the  
5 voluntary petition filed in Arizona. In other words, regardless  
6 whether the state court judgment was void, because debtor had  
7 filed a voluntary petition, the bankruptcy court had  
8 jurisdiction over debtor and his property, which became property  
9 of his estate.

10 Debtor never appealed the June 23, 2006, order and he  
11 cannot do so now by piggybacking it onto the order granting  
12 Ruggieros' motion for summary judgment.

13 Finally, debtor again alleged that his bankruptcy  
14 proceeding was void in opposition to the trustee's motion to  
15 sell the property. The court approved the sale on November 6,  
16 2007 and debtor never appealed that order.

17 All the above-referenced decisions involve the same issue,  
18 parties, and subject matter. The issue regarding the court's  
19 jurisdiction over debtor was actually litigated and determined  
20 and incorporated into final orders in which the issue was an  
21 essential element. Debtor has repeatedly asserted that the  
22 bankruptcy court lacked jurisdiction over him and his property  
23 for one reason (improper service) or another (petitioning  
24 creditors held void judgments). Debtor failed to appeal these  
25 orders. His arguments regarding the court's lack of  
26 jurisdiction for those reasons are therefore foreclosed from  
27 further consideration.

28



1           Moreover, whether the prior ruling was erroneous, or the  
2 "charges swept under the rug" as alleged by debtor, is of no  
3 moment since debtor did not appeal any of these rulings.

4 Paine, 283 B.R. at 39 ("Application of principles of res  
5 judicata is not defeated by error in the original judgment.")

6           We are cognizant that a litigant generally may raise a  
7 court's lack of subject matter jurisdiction at any time, but  
8 even subject matter jurisdiction may not be attacked  
9 collaterally unless there is some reason why res judicata  
10 principles should not be applied. See Kontrick v. Ryan, 540  
11 U.S. 443, 456 n. 9 (2004); Restatement (Second) of Judgments  
12 § 12 (1982). We determine that no exceptions to issue  
13 preclusion apply under the circumstances presented here. See  
14 Lopez v. Emergency Serv. Restoration, Inc. (In re Lopez), 367  
15 B.R. 99, 107 (9th Cir. BAP 2007).<sup>9</sup>

16           In sum, we conclude the doctrine of issue preclusion  
17 prevents debtor from relitigating the issue whether the  
18 bankruptcy court had jurisdiction over him and his property.

19 **C.    The Merits:   No Genuine Issues of Material Fact**

20           Debtor failed to raise any other arguments that set forth  
21 grounds for reversal of the bankruptcy court's ruling in favor  
22  
23

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24  
25           <sup>9</sup> In Lopez, this Panel observed that equitable circumstances  
26 may justify not applying the doctrine. Such circumstances may  
27 occur when there is a change in applicable legal context, to  
28 avoid the inequitable administration of laws, when there are  
differences in the quality or extensiveness of procedures, or  
when there is an inadequate opportunity or incentive to obtain a  
full and fair adjudication in the initial action. Id. at 107.

1 of appellees.<sup>10</sup> While we liberally construe debtor's pleadings,  
2 debtor has waived these issues on appeal. Baldwin v. Kilpatrick  
3 (In re Baldwin), 245 B.R. 131, 134 n. 2 (9th Cir. BAP  
4 2000) (issues not raised and argued in opening brief are deemed  
5 waived).

6 Nonetheless, we conduct our de novo review of the court's  
7 ruling granting Ruggieros' motion for summary judgment.

8  
9 **1. Cause Existed to Cancel the Lis Pendens**

10 The purpose of a lis pendens under Washington law is  
11 to give notice of pending litigation affecting title to real  
12 property. United Sav. & Loan Bank v. Pallis, 107 Wash. App.  
13 398, 405, 27 P.3d 629, 632 (2001). Hence, a lis pendens may be  
14 considered properly filed when there is an action pending  
15 involving the real property covered by the notice. Wash.  
16 Dredging & Imp. Co. v. Kinnear, 24 Wash. 405, 406, 64 P. 522  
17 (1901). A court, however, may exercise discretion and cancel  
18 the lis pendens upon a showing of good cause by an aggrieved  
19 person. See WASH. REV. CODE § 4.28.325.<sup>11</sup>

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21 <sup>10</sup> Since the filing of his reply brief, debtor has filed  
22 additional briefs not authorized by the Panel and in violation of  
23 Rule 8009. Rule 8009(a)(3) provides that once appellant filed  
24 his reply brief, "[n]o further briefs may be filed except with  
25 leave of ... the bankruptcy appellate panel." While debtor is  
26 pro se, pro se litigants must follow the same rules of procedure  
that govern other litigants. King v. Atiyeh, 814 F.2d 565, 567  
(9th Cir. 1987). We therefore did not consider any of his  
additional filings.

27 <sup>11</sup> This section provides that a lis pendens may be recorded  
28 when an action affects title to real property and gives the trial  
court discretion to cancel it upon showing of good cause.

1 Our review of the record shows that debtor had no action  
2 pending on appeal or otherwise affecting the property that would  
3 substantiate a lis pendens. We conclude, as a matter of law,  
4 debtor's lis pendens was effectively invalid and thus cause  
5 existed for its cancellation.

6 Debtor's contention that the appellees had knowledge of the  
7 litigation surrounding the property so they could not be  
8 considered "good faith" purchasers is a red herring and not at  
9 issue in this appeal. On October 5, 2006, debtor sent a letter  
10 to appellees stating that the "ORDER to sell [his] property is  
11 VOID, for fraud." The order approving the sale of the property  
12 to the Ruggieros stated that the protections of § 363(m)  
13 applied. The Ruggieros' good faith, however, was never at issue  
14 because debtor did not appeal the order approving the sale. See  
15 § 363(m);<sup>12</sup> see also Thomas v. Namba (In re Thomas), 287 B.R.  
16 782, 785 (9th Cir. BAP 2002) (bankruptcy courts are not obligated  
17 to find that the purchasers act in good faith when issuing an  
18 order for the sale of property).

## 19 **2. Injunction Prohibiting Further Filings Was Proper**

20 We conclude as a matter of law that the injunction  
21 prohibiting debtor from filing further documents against the  
22 property was proper and in compliance with the standards set  
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24 <sup>12</sup> This section provides that: "[t]he reversal or  
25 modification on appeal of an authorization under subsection (b)  
26 or (c) of this section of a sale or lease of property does not  
27 affect the validity of a sale or lease under such authorization  
28 to an entity that purchased or leased such property in good  
faith, whether or not such entity knew of the pendency of the  
appeal, unless such authorization and such sale or lease were  
stayed pending appeal."

1 forth in De Long v. Hennessey, 912 F.2d 1144, 1146-48 (9th Cir.  
2 1990) which required consideration of four factors: (1) the  
3 litigant must be given notice and opportunity to be heard before  
4 the order is entered; (2) the court must establish an adequate  
5 record for review; (3) the court must make substantive findings  
6 about the frivolous or harassing nature of the litigant's  
7 actions; and (4) the order must be narrowly tailored to deter  
8 the specific behavior complained of.

9 Debtor had notice and an opportunity to be heard. Further,  
10 the court provided an adequate record for review, which shows  
11 that there was no genuine issue of material fact regarding  
12 debtor's propensity to thwart the appellees' attempts to obtain  
13 clear title to the property. This is evident in his October 5,  
14 2006 letter to the appellees and his naming them as defendants  
15 in his counterclaim. The injunction was therefore proper.

16 In sum, the bankruptcy court ruled numerous times that it  
17 had jurisdiction over debtor and his property, rulings which  
18 debtor never appealed. Moreover, the property was sold through  
19 a court-approved sale and debtor never appealed the order  
20 approving the sale. Thus, debtor had no remaining rights in the  
21 property at the time he filed the improper lis pendens.

22 On this record, we conclude that the pleadings and the  
23 evidence show that there was no genuine issue of material fact  
24 and thus the bankruptcy court correctly granted the Ruggieros'  
25 motion for summary judgment.

### 26 **3. Dismissal of Debtor's Counterclaim**

27 A review of debtor's counterclaim shows that it too  
28 sought to relitigate the issue regarding the bankruptcy court's

1 jurisdiction. As noted, debtor is barred from relitigating that  
2 issue. Consequently, the bankruptcy court's dismissal of  
3 debtor's untimely counterclaim was not in error.<sup>13</sup>

4 **VI. CONCLUSION**

5 For these reasons, we AFFIRM the bankruptcy court's ruling  
6 that the Ruggieros were entitled to judgment on the issues  
7 raised as a matter of law.

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<sup>13</sup> Debtor did not address this issue in his briefs.  
Therefore, it was waived. Baldwin, 245 B.R. at 134 n.2.