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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NOT FOR PUBLICATION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: NEIL MARTIN ROSE, Debtor.	BAP No. WW-07-1395-JuKuK Bk. No. 01-49703 Adv. No. 07-04091
NEIL MARTIN ROSE, Appellant, v. RICHARD M. RUGGERIO; BEVERLY A. RUGGERIO; and KATHRYN ELLIS, Chapter 7 Trustee, Appellees.	**M E M O R A N D U M**[1]

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[2] and KLEIN, 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.

[2] Frank L. Kurtz, Chief Bankruptcy Judge for the Eastern District of Washington, sitting by designation.

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

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

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[3] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as enacted and promulgated prior to the effective date of The 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).

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

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

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

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

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

Accordingly, we AFFIRM.

I. FACTS

Debtor has been involved in bankruptcy proceedings both in the Western District of Washington and the District of Arizona for years.[5]

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[5] Given the bankruptcy court's reference to numerous rulings in its Memorandum Decision, we have exercised our discretion to examine the bankruptcy court's docket and imaged papers in 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...)

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

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

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

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

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

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[5](...continued)
n.9 (9th Cir. BAP 2003); Omoto v. Ruggera (In re Ruggera), 85 B.R. 98, 100 (9th Cir. BAP 1988).

[6] Both petitioning creditors obtained their judgments against debtor and his companies in Clark County, Washington Superior Court, Case No. 97-2-04777-7.

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

On November 5, 2003, the Washington bankruptcy court entered an order that determined the proper venue of debtor's Arizona case was the Western District of Washington.[7] Debtor's voluntary chapter 7 Arizona case was transferred to the United States Bankruptcy Court for the Western District of Washington and substantively consolidated with his individual involuntary petition. Debtor did not appeal that order.

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

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

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[7] Rule 1014(b) sets forth the procedure when petitions involving the same debtor are filed in different courts. Pursuant to the Rule, "on motion filed in the district in which the petition filed first is pending and after hearing on notice to the petitioners ... the court may determine, in the interest of justice or for the convenience of the parties, the district or districts in which the case ... should proceed."

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

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

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

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

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

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

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

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

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

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

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

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

Debtor timely appealed.

II. JURISDICTION

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

III. ISSUES

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

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

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

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

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

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

IV. STANDARDS OF REVIEW

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

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

V. DISCUSSION

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

We disagree for the reasons set forth below.

A. The Scope of this Appeal

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

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[8] Fed. R. Civ. P. 56(c), made applicable to cases under the Code pursuant to Rule 7056, provides in relevant part: "The judgment should be rendered if the pleadings, the discovery and 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."

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

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

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[9] We are mindful that the appellant made allegations in his briefs and during oral argument that called into question the integrity of the bankruptcy judge and other officers of 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.

B. Issue Preclusion

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

Debtor has asserted this argument numerous times in his bankruptcy proceedings in Washington and in Arizona.[6] Debtor

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[5] Specifically, debtor alleges that the state court did not comply with the standing visiting judge statute by not strictly following the procedures for appointing a visiting judge and that the visiting judge did not follow the procedure for expense reimbursement. See WASH. REV. CODE § 2.08.140 through 2.08.170. WASH. REV. CODE § 2.08.140 allows a judge, via the governor, to "request and direct a judge of the superior court of some other county, making such selection as the governor shall deem to be most consistent with the state of judicial business in other counties, to hold a session of the superior court." WASH. REV. CODE § 2.08.160 provides that judgments, orders, and decrees of a visiting judge are "equally effectual as if all the judges of such court presided at such session." Finally, WASH. REV. CODE § 2.08.170 provides that visiting judges shall be reimbursed "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.

[6] 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...)

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

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

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

[7] The bankruptcy court also observed in its Memorandum Decision that debtor filed multiple motions to vacate all prior judgments and rulings in these matters, motions for reconsideration, motions to stay proceedings, and several 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.

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

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

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

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

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

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[8] Substantive consolidation results in a combination of the individual estates to create a single pool of assets out of which to pay claims. The result is as if there were only one debtor. See generally Bonham v. Comptom (In re Bonham), 229 F.3d 750, 764 (9th Cir. 2000).

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

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

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

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

Moreover, whether the prior ruling was erroneous, or the "charges swept under the rug" as alleged by debtor, is of no moment since debtor did not appeal any of these rulings. Paine, 283 B.R. at 39 ("Application of principles of res judicata is not defeated by error in the original judgment.")

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

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

C. The Merits: No Genuine Issues of Material Fact

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

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[9] In Lopez, this Panel observed that equitable circumstances may justify not applying the doctrine. Such circumstances may occur when there is a change in applicable legal context, to 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.

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

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

1. Cause Existed to Cancel the Lis Pendens

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

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[10] Since the filing of his reply brief, debtor has filed additional briefs not authorized by the Panel and in violation of Rule 8009. Rule 8009(a)(3) provides that once appellant filed his reply brief, "[n]o further briefs may be filed except with leave of ... the bankruptcy appellate panel." While debtor is 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.

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

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

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

2. Injunction Prohibiting Further Filings Was Proper

We conclude as a matter of law that the injunction prohibiting debtor from filing further documents against the property was proper and in compliance with the standards set

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[12] This section provides that: "[t]he reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization 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."

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

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

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

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

3. Dismissal of Debtor's Counterclaim

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

jurisdiction. As noted, debtor is barred from relitigating that issue. Consequently, the bankruptcy court's dismissal of debtor's untimely counterclaim was not in error.[13]

VI. CONCLUSION

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

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