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OF THE NINTH CIRCUIT

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UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP Nos.	CC-12-1223-KiPaD
)		CC-12-1366-KiPaD
YAN SUI,)		CC-12-1367-KiPaD
)		(related appeals)
Debtor.)		
_____)	Bk. No.	8:11-20448-CB
YAN SUI,)		
)		
Appellant,)		
)		
v.)		
)		
RICHARD A. MARSHACK, Chapter 7)		
Trustee; AMRANE COHEN,)		
Chapter 13 Trustee,)		
)		
Appellees.)		
_____)		

MEMORANDUM¹

Argued and Submitted on February 22, 2013,
at Pasadena, California

Filed - April 4, 2013

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

Honorable Catherine E. Bauer, Bankruptcy Judge, Presiding

Appearances: Appellant Yan Sui argued pro se; D. Edward Hays,
Esq. argued for Appellee Richard A. Marshack,
Chapter 7 Trustee.

Before: KIRSCHER, PAPPAS and DUNN, Bankruptcy Judges.

¹ This disposition is not appropriate for publication.
Although it may be cited for whatever persuasive value it may have
(see Fed. R. App. P. 32.1), it has no precedential value. See 9th
Cir. BAP Rule 8013-1.

1 In these related appeals, debtor Yan Sui ("Sui") appeals
2 three orders from the bankruptcy court: (1) the order allowing the
3 former chapter 7² trustee's administrative claim for fees and
4 expenses incurred while Sui's case was in chapter 7; (2) the order
5 allowing the Goodrich Law Corporation's ("GLC") administrative
6 claim for fees and expenses incurred while Sui's case was in
7 chapter 7; and (3) the order reconverting Sui's chapter 13
8 bankruptcy case to chapter 7. We AFFIRM the order reconverting
9 Sui's case to chapter 7. However, we DISMISS for lack of
10 jurisdiction the appeal of the interlocutory orders allowing the
11 administrative claims of the former trustee and GLC.

12 **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

13 **A. Prepetition facts**

14 In 2000, Sui and his non-debtor wife, Pei-Yu Yang ("Yang"),
15 acquired a fee simple interest in a residence in Costa Mesa,
16 California ("Residence"). In 2003, Sui and Yang executed a
17 \$207,000 promissory note and first deed of trust in favor of World
18 Savings Bank against the Residence.

19 In July 2007, Sui sued his former attorney, Kenny K. Tan
20 ("Tan"), for professional negligence. Tan prevailed against Sui
21 in arbitration and, in October 2008, was awarded \$7,329.40. After
22 a hearing on June 10, 2009, the state court confirmed the
23 arbitration award and awarded Tan an additional \$2,365.00 for
24 sanctions and costs of \$40.00, for a total judgment against Sui of
25 \$9,734.40. The judgment was entered on June 25, 2009 ("Tan

26
27 ² Unless specified otherwise, all chapter, code and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 Judgment"). Within minutes of the June 10 hearing, Sui filed and
2 recorded a quitclaim deed conveying his entire interest in the
3 Residence to Yang for little or no consideration.

4 Sui exhausted all of his appeals, and the Tan Judgment is
5 final. As of the filing of his bankruptcy case, the Tan Judgment
6 remained unpaid.

7 **B. Sui's chapter 7 bankruptcy filing**

8 Sui, pro se, filed a chapter 7 bankruptcy case on July 27,
9 2011. Richard A. Marshack was appointed to serve as trustee for
10 Sui's chapter 7 bankruptcy estate ("Trustee" or "former Trustee").
11 Sui did not list any real property in his Schedule A or list any
12 secured debts in his Schedule D. Sui claimed in his Schedule I
13 that he was "separated" from Yang.

14 On August 22, 2011, Trustee sought an order approving the
15 employment of GLC as his general counsel. According to the
16 application, Trustee wished to employ GLC to pursue and recover
17 what he believed was a fraudulent transfer by Sui of the Residence
18 to Yang in 2009. Trustee believed that a substantial amount of
19 equity was available to pay creditors based on a valuation of the
20 Residence of at least \$410,000 and a secured debt held by World
21 Savings Bank of \$220,000. Other services to be performed by GLC
22 included (1) representing Trustee in any action where the rights
23 of the estate or Trustee may be affected, (2) conducting
24 examinations of Sui, witnesses, claimants or adverse parties and
25 preparing and assisting in the preparation of reports, accounts,
26 applications, motions, complaints and orders, and (3) performing
27 any and all other legal services incident and necessary for the
28 administration of the bankruptcy case. David M. Goodrich

1 ("Goodrich") of GLC agreed to perform legal services at the hourly
2 rate of \$250.00. The application stated that GLC's compensation
3 was subject to court approval under § 328, and that GLC would be
4 paid for its legal services only if it recovered any money or
5 property.

6 Also on August 22, 2011, Trustee filed an adversary
7 proceeding against Yang seeking to avoid the alleged fraudulent
8 transfer of Sui's interest in the Residence.

9 In a letter dated August 23, 2011, Goodrich informed Sui that
10 Trustee had learned of Sui's involvement as plaintiff in a number
11 of lawsuits pending before the state and federal court, and that
12 Sui had filed pleadings in some of these cases postpetition.
13 Goodrich informed Sui that Trustee had assumed all rights in any
14 of Sui's litigation once his bankruptcy was filed, and that Sui
15 was not authorized to file any further pleadings without Trustee's
16 permission.

17 On September 1, 2011, Sui filed a combined opposition to
18 GLC's employment application and a notice of dismissal. Sui
19 contended that GLC was not a "disinterested" party because the
20 firm rented an office in a building owned by Trustee. No action
21 was taken on Sui's notice of dismissal.

22 On September 8, 2011, Trustee filed an amended application
23 for the employment of GLC to disclose that GLC was a tenant of
24 Marshack Hays, LLP, a law firm in which Trustee was a partner.
25 Other than this disclosure, the terms of GLC's employment remained
26 the same.

27 On September 19, 2011, Sui moved to dismiss his chapter 7
28 bankruptcy case. Sui contended that he was a party to four

1 lawsuits (three in state court and one in federal court) against
2 the homeowners association for the community in which the
3 Residence is located ("HOA"), as well as one federal court lawsuit
4 against a party named Southside Towing, and he wanted to prosecute
5 these cases without Trustee's interference. Sui also contended
6 that he had voluntarily paid in full his two unsecured creditors,
7 Capital One and American Express. Finally, Sui contended that
8 Tan, a judgment creditor, did not meet the definition of
9 "creditor" for the purpose of his bankruptcy case, and that Tan
10 was mistakenly added to Sui's schedules. Therefore, argued Sui,
11 dismissal was appropriate because his two creditors were now paid,
12 and Tan was not technically a creditor. The bankruptcy court
13 denied Sui's dismissal motion for failure to show cause, and
14 because the motion was not properly noticed and set for hearing.

15 Sui filed a second motion to dismiss his chapter 7 case on
16 October 11, 2011. This dismissal motion was essentially identical
17 to the first. Trustee opposed dismissal, contending that Sui had
18 failed to demonstrate cause, and that the best interests of
19 creditors would be served by allowing Trustee to administer the
20 case. Specifically, Trustee opposed dismissal because:

- 21 • Sui and Yang held at least \$300,000 in equity in the
22 Residence;
- 23 • Sui failed to disclose several pending lawsuits in his
24 bankruptcy petition, including those filed against the HOA;
- 25 • Sui lived in the Residence with Yang despite his claim that
26 he was separated;
- 27 • Sui failed to list any of Yang's assets as assets of the
28 bankruptcy estate;
- Sui continued to prosecute disclosed and undisclosed
litigation despite Goodrich's demands to cease such activity;

- 1 • after filing the chapter 7 case, Sui filed a new civil
lawsuit for a potential claim that was not scheduled;
- 2 • Yang had filed a petition for dissolution of marriage, but no
3 decree of separation or divorce had been entered;
- 4 • Sui claimed at the § 341(a) meeting of creditors that he was
never legally married to Yang yet his tax returns indicated
5 he was married to Yang, he affirmed his marriage to Yang in a
recently filed lawsuit, and he was the respondent in Yang's
6 petition for dissolution;
- 7 • Sui had allegedly paid over \$8,000 in prepetition debt to two
creditors after he filed his chapter 7 case;
- 8 • three cars were regularly seen at the Residence, but Sui had
9 not scheduled any vehicles;
- 10 • Sui had paid the HOA \$10,000 within 90 days of the bankruptcy
filing, but this payment was not scheduled;
- 11 • one of Sui's creditors had obtained an order from the state
12 court determining Sui to be a vexatious litigant;
- 13 • at least two creditors did not consent to dismissal and
neither of these creditors were listed in Sui's schedules;
14 and
- 15 • an undisclosed ownership interest in real property located in
Manteca, California was transferred to Sui on July 5, 2011 -
16 twenty-two days before he filed his chapter 7 case.³

17 The HOA, who Sui did not list as a creditor in his schedules, also
18 opposed dismissal, contending that Sui owed the HOA approximately
19 \$18,000 in attorney's fees incurred in defending Sui's frivolous
20 and duplicative lawsuits.

21
22 ³ According to a motion for relief from stay filed by Wells
23 Fargo Bank on October 14, 2011, borrowers Alberto and Patricia
Valencia had defaulted under the terms of a note and deed of trust
24 regarding certain property in Manteca, California. A trustee's
sale was scheduled for August 10, 2011. On July 5, 2011, the
25 Valencias purportedly conveyed an ownership interest in the
property to Yan Sui, "a single woman," by grant deed. According
26 to Wells Fargo, this "Yan Sui" was the debtor Yan Sui. Sui did
not disclose an ownership interest in this property in his
27 schedules. Wells Fargo contended that cause existed to terminate
the stay because Sui's bankruptcy case was being used for an
28 improper purpose to frustrate its efforts to foreclose upon the
property.

1 After a hearing on Sui's second motion to dismiss and GLC's
2 employment application, the bankruptcy court entered an order
3 approving GLC's employment under § 327, stating that any
4 compensation or reimbursement of costs would "only be paid upon
5 application to and approval of the Court pursuant to 11 U.S.C.
6 § 330." The bankruptcy court denied Sui's second motion to
7 dismiss his chapter 7 case for failing to show cause to grant it.⁴

8 **C. Sui's conversion to chapter 13, Trustee's and GLC's**
9 **administrative claims and Sui's motion to dismiss the**
10 **chapter 13 bankruptcy case**

11 On January 9, 2012, Sui moved to convert his chapter 7 case
12 to chapter 13. No opposition was filed. The bankruptcy court
13 entered an order on January 30, 2012, converting Sui's case to
14 chapter 13 under § 706(a).

15 Sui filed his chapter 13 plan on February 14, 2012. The plan
16 proposed payments of \$402.00 per month for 24 months, which would
17 pay the Tan Judgment, Sui's alleged sole debt, in full. The plan
18 proposed to pay \$0.00 for fees of either the chapter 13 trustee or
19 the former Trustee.⁵ A confirmation hearing was set for April 12,
20 2012.

21 On February 28, 2012, GLC moved for an order allowing its
22 administrative claim (claim #2) for fees and expenses incurred in
23 Sui's chapter 7 case prior to the conversion. GLC contended that

24 ⁴ Sui appealed the order approving GLC's employment and the
25 order denying his second motion to dismiss his chapter 7 case on
26 November 8, 2011. The Panel denied Sui's motion for leave to
27 appeal the interlocutory orders and dismissed the appeal.

28 ⁵ Trustee and GLC filed a combined objection to Sui's
chapter 13 plan on March 5, 2012. They opposed confirmation
because the plan failed to provide for their administrative claims
for preconversion fees and expenses.

1 its fees and expenses were directly related to the protracted
2 investigation of a variety of undisclosed assets and avoidable
3 fraudulent transfers. GLC contended that all of its services were
4 necessary and benefitted the estate by proving significant assets
5 existed that could be liquidated and/or recovered and liquidated
6 to pay creditors. GLC further contended that its uncovering of
7 assets forced Sui into chapter 13, whereby most, if not all, of
8 his unsecured debt would now be paid. Therefore, argued GLC, its
9 fees of \$14,987.50 and expenses of \$37.70 should be allowed as an
10 administrative expense under § 503(b)(1)(A). GLC attached copies
11 of detailed time and expense records for preconversion services
12 provided in Sui's chapter 7 case between August 17, 2011 and
13 December 27, 2011.

14 On March 6, 2012, the former Trustee filed a similar motion
15 to allow his administrative claim (claim #3) for preconversion
16 fees and expenses under § 503(b)(1)(A). Trustee essentially set
17 forth the same basis for why his claim should be allowed as an
18 administrative expense, adding that his (and his staff's) services
19 were instrumental in the bankruptcy court's denials of Sui's
20 multiple motions to dismiss the case. Trustee requested fees of
21 \$5,890.00, which were based on an hourly rate and time spent, and
22 expenses of \$64.08. Attached were copies of detailed time and
23 expense records for services Trustee and his staff provided in
24 Sui's chapter 7 case.

25 Sui opposed both motions to allow the administrative claims
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27
28

1 for preconversion fees and expenses.⁶ In his thirty-one page
2 objection to GLC's fees, Sui contended the claim should be
3 disallowed in its entirety because: (1) the fees were unreasonable
4 in light of the debt; (2) the services were not reasonably likely
5 to benefit the estate; (3) the services were duplicative with that
6 of Trustee's or consisted of tasks that should have been performed
7 by Trustee; (4) any fees incurred before GLC filed its amended
8 employment application on September 8, 2011, were unauthorized;
9 (5) Trustee's adversary action against Yang had no merit and would
10 fail; and (6) GLC was not entitled to compensation because of
11 various false statements made by Goodrich during Sui's case, and
12 because GLC caused Sui and Yang to lose two favorable default
13 judgments against Southside Towing and the HOA. Sui virtually
14 went through each of GLC's time entries, contending that it was
15 either "unnecessary," "unfounded," "unconvincing," "groundless,"
16 "duplicative," or a "secretarial" function that was charged at an
17 attorney rate.

18 Sui contended that the former Trustee's claim for fees should
19 also be disallowed because: (1) the fees were unreasonable;
20 (2) Trustee failed to explain to Sui how his fees were calculated
21 and documented; (3) some of Trustee's services were duplicative
22 with those of GLC; (4) Trustee's staff members were not authorized
23 by the court to assist him; and (5) Trustee was not entitled to
24 any compensation because he had caused Sui, his estate and Yang
25 damages in the Southside Towing and HOA cases.

26
27 ⁶ Sui did not file a claim objection but rather an opposition
28 to the former Trustee's and GLC's motions to allow their
administrative claims. Presumably, the bankruptcy court construed
Sui's opposition to be an objection to their proofs of claim.

1 On March 21, 2012, Sui moved to dismiss his chapter 13 case.
2 Sui explained the reasons for why he quitclaimed his interest in
3 the Residence and why he indicated that he was "separated" in his
4 Schedule I. Sui contended that Trustee's actions or failures to
5 act regarding the pending lawsuits caused him and his creditors
6 damages. Sui also contended that Trustee and GLC were not
7 entitled to any fees because they caused their own damages.
8 Attached to Sui's motion were various court documents and emails
9 from Sui to Tan attempting to work out a payment plan for the Tan
10 Judgment.

11 The former Trustee and GLC opposed Sui's motion to dismiss,
12 asserting essentially the same bases for denial of the motion as
13 Trustee had asserted in his opposition to Sui's prior motions to
14 dismiss his then chapter 7 case. In short, Trustee and GLC
15 contended that Sui's acts had been in bad faith, and that it was
16 in the best interests of creditors to deny Sui's motion to dismiss
17 and reconvert his case to chapter 7. In his attached declaration,
18 Goodrich stated that Sui had testified at the initial § 341(a)
19 meeting of creditors in his chapter 13 case that his sole purpose
20 for conversion was to seek dismissal of his case.

21 The matters of Sui's plan confirmation and motion to dismiss
22 and the motions for allowance of Trustee's and GLC's
23 administrative claims were heard by the bankruptcy court on
24 April 12, 2012. At the outset, Goodrich, appearing for both GLC
25 and the former Trustee, moved to reconvert Sui's case to
26 chapter 7. Counsel for the chapter 13 trustee supported
27 reconversion, noting that Sui had failed to make any plan payments
28 or show any attempt to set forth a confirmable plan. After Sui

1 explained that he had paid his three creditors in full, the
2 bankruptcy court announced its decision to deny the motion to
3 dismiss and reconvert the case to chapter 7:

4 The problem is that you used the bankruptcy system
5 inappropriately. You filed documents that were untrue.
6 And we can't allow that. You misused the Bankruptcy
7 Court and all the people involved. That's why we can't
8 let you dismiss this case because you caused a lot of
9 people a lot of work. And you violated some federal
10 laws. That's why we're not going to dismiss this case.

11 I'm going to reconvert it to a Chapter 7. The Chapter 7
12 Trustee had to do a lot of work because of the
13 inconsistencies between your statements in writing and
14 orally. And had to do a lot of investigations to fine
15 [sic] out that, frankly, there were lies involved in your
16 bankruptcy case. And we can't run the system that way.
17 So I am going to reconvert it back to a Chapter 7.

18

19 So I'm not dismissing the bankruptcy case. That's denied.

20 Hr'g Tr. (Apr. 12, 2012) 2:10-23; 3:9-10.

21 The bankruptcy court then announced its decision to allow
22 GLC's and the former Trustee's administrative claims for
23 preconversion fees and expenses:

24 I am going to allow the administrative claim of the
25 Goodrich Law Firm because they had to do a lot of work on
26 this case because of the way you abused the system.

27

28 I am also going to allow the motion for the
29 administrative claim of the Chapter 7 Trustee, who also
30 had to do a lot of work because of your many inconsistent
31 statements.

32 Id. at 3:10-13; 16-19. After Sui contended that he had been
33 truthful in his bankruptcy case, the bankruptcy court further
34 found:

35 With all due respect I'm finding the opposite.
36 Therefore, you need to understand that this is the end of
37 the road. You can't keep coming here and trying to get
38 rid of this bankruptcy case. You came here seeking the
39 protection of the bankruptcy court, but you did not

1 follow the rules. Yes, you are getting penalized for
2 doing things you should not have done. That's where we
3 are at at this point. Because we have to protect the
4 integrity of this system.

5
6 You came here voluntarily, sir. You cannot leave when we
7 find out that you're abusing the system. And money has
8 been spent by various parties in the bankruptcy system to
9 bring out the fact that you have lied. They're entitled
10 to be paid.

11 Id. at 4:9-17; 4:24-5:3. Based on the court's ruling,
12 confirmation of the plan was denied. The court also denied Sui's
13 request to file a new plan.

14 On April 13, 2012, the bankruptcy court entered an order
15 allowing the former Trustee's administrative claim for
16 preconversion fees of \$5,980.00 and expenses of \$64.08. On
17 April 20, 2012, the bankruptcy court entered three more orders:
18 (1) the order allowing GLC's administrative claim for
19 preconversion fees of \$14,987.50 and expenses of \$37.70; (2) the
20 order denying Sui's motion to dismiss the chapter 13 case; and
21 (3) the order reconverting Sui's bankruptcy case to chapter 7.

22 Sui timely appealed the orders allowing the former Trustee's
23 and GLC's administrative claims and the order reconverting the
24 case to chapter 7.⁷

25 **II. JURISDICTION**

26 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
27 and 157(b)(2)(A), (B) and (L). We have jurisdiction over the

28 ⁷ Sui did not appeal the order denying his motion to dismiss
the chapter 13 case. As for the three orders that are on appeal,
although Sui filed only one notice of appeal for all of them, we
entered an order on July 18, 2012, assigning each order its own
appeal number: CC-12-1223 for the order allowing the former
Trustee's administrative claim; CC-12-1366 for the order allowing
GLC's administrative claim; and CC-12-1367 for the order
reconverting the bankruptcy case to chapter 7.

1 order reconvertng Sui's case to chapter 7 under 28 U.S.C. § 158.
2 We address below our jurisdiction over the orders allowing the
3 administrative claims of the former Trustee and GLC.

4 **III. ISSUES**

5 1. Did the bankruptcy court abuse its discretion when it
6 reconverted Sui's case to chapter 7?

7 2. Do we have jurisdiction over the appeal of the orders
8 allowing the former Trustee's and GLC's administrative claims for
9 preconversion fees and expenses?

10 **IV. STANDARDS OF REVIEW**

11 We review for abuse of discretion the bankruptcy court's
12 decision to deny a request for dismissal of a chapter 13 case
13 under § 1307(b) and to convert a case from chapter 13 to
14 chapter 7. Rosson v. Fitzgerald (In re Rosson), 545 F.3d 764, 771
15 (9th Cir. 2008). A bankruptcy court abuses its discretion if it
16 applied the wrong legal standard or its findings were illogical,
17 implausible or without support in the record. TrafficSchool.com,
18 Inc. v. Edriver, Inc., 653 F.3d 820, 832 (9th Cir. 2011).

19 "Bad faith" is a finding of fact reviewed for clear error.
20 Id. at 774 (citing Leavitt v. Soto (In re Leavitt), 171 F.3d 1219,
21 1222-23 (9th Cir. 1999); and Eisen v. Curry (In re Eisen), 14 F.3d
22 469, 470 (9th Cir. 1994)(per curiam)). A bankruptcy court's
23 factual finding is clearly erroneous if it is illogical,
24 implausible, or without support in the record. Retz v. Samson
25 (In re Retz), 606 F.3d 1189, 1196 (9th Cir. 2010)(citing United
26 States v. Hinkson, 585 F.3d 1247, 1261-62 & n.21 (9th Cir.
27 2009)(en banc)).

28 When a question regarding our jurisdiction exists, we are

1 "entitled to raise [that issue] sua sponte and [address it] de
2 novo." Menk v. Lapaglia (In re Menk), 241 B.R. 896, 903 (9th Cir.
3 BAP 1999).

4 V. DISCUSSION

5 A. The bankruptcy court did not abuse its discretion when it 6 reconverted Sui's case to chapter 7.

7 Sui's brief on appeal spends a great deal of time discussing
8 the alleged wrongful acts of the former Trustee and GLC rather
9 than explaining how the bankruptcy court erred in its decision to
10 reconvert his case to chapter 7. However, Sui appears to contend
11 the bankruptcy court abused its discretion in reconvertng his
12 case to chapter 7 for abuse of process when his prepetition
13 creditors had been paid in full prior to the hearing. Sui also
14 appears to contend that his right to dismiss his chapter 13 case
15 was absolute under § 1307(b).

16 Sections 1307(b) and 1307(c) provide, in relevant part:

17 (b) On request of the debtor at any time, if the case has
18 not been converted under section 706, 1112, or 1208 of
19 this title, the court shall dismiss a case under this
20 chapter.

21 (c) [O]n request of a party in interest or the United
22 States trustee and after notice and a hearing, the court
23 may convert a case under [chapter 13] to a case under
24 chapter 7 of this title, or may dismiss a case under this
25 chapter, whichever is in the best interest of creditors
26 and the estate, for cause (Emphasis added).⁸

27 Section 1307(c) establishes a two-step analysis for dealing with
28 questions of conversion and dismissal. "First, it must be
determined that there is 'cause' to act. Second, once a

⁸ Section 1307(c) provides a non-exhaustive list of acts and omissions that constitute "cause," none of which is directly applicable here.

1 determination of 'cause' has been made, a choice must be made
2 between conversion and dismissal based on the 'best interests of
3 the creditors and the estate.'" Nelson v. Meyer (In re Nelson),
4 343 B.R. 671, 675 (9th Cir. BAP 2006)(citations omitted).

5 Because Sui's case had already been converted under § 706,⁹
6 the bankruptcy court was not required to dismiss Sui's case on his
7 request. Further, even if Sui had not previously converted his
8 case, the right to dismiss his chapter 13 case was not absolute.
9 In reviewing the U.S. Supreme Court's holding in Marrama v.
10 Citizens Bank of Mass. (In re Marrama), 549 U.S. 365 (2007), the
11 Ninth Circuit held in In re Rosson that a "debtor's right of
12 voluntary dismissal under § 1307(b) is not absolute, but is
13 qualified by the authority of a bankruptcy court to deny dismissal
14 on grounds of bad-faith conduct or 'to prevent an abuse of
15 process.'" 545 F.3d at 774 (citing § 105(a))(other citations
16 omitted). In other words, a bankruptcy court may dismiss or
17 convert a chapter 13 case to chapter 7 for "cause," which courts
18 have routinely interpreted to include bad faith conduct.
19 In re Marrama, 549 U.S. at 373; In re Rosson, 545 F.3d at 774-75;
20 In re Leavitt, 171 F.3d at 1224 (although not specifically listed,
21 bad faith is a "cause" for dismissal under § 1307(c));
22 In re Eisen, 14 F.3d at 470 (chapter 13 case filed in bad faith
23 may be dismissed "for cause").

24
25 ⁹ Section 706(a) provides:

26 The debtor may convert a case under this chapter to a case
27 under chapter 11, 12, or 13 of this title at any time, if the
28 case has not been converted under section 1112, 1208, or 1307
of this title. Any waiver of the right to convert a case
under this subsection is unenforceable.

1 In determining whether a debtor has engaged in bad-faith
2 conduct, the bankruptcy court must review the "totality of the
3 circumstances." In re Eisen, 14 F.3d at 470 (quoting Goeb v. Heid
4 (In re Goeb), 675 F.2d 1386, 1391 (9th Cir. 1982)). A bankruptcy
5 court should consider:

6 (1) whether the debtor misrepresented facts in his or her
7 petition or plan, unfairly manipulated the Bankruptcy Code or
8 otherwise filed the chapter 13 petition or plan in an
9 inequitable manner;

10 (2) the debtor's history of filings and dismissals;

11 (3) whether the debtor's only purpose in filing for
12 chapter 13 protection is to defeat state court litigation;
13 and

14 (4) whether egregious behavior is present.

15 In re Leavitt, 171 F.3d at 1224. A finding of bad faith does not
16 require fraudulent intent by the debtor. Id.

17 It is undisputed that Sui failed to disclose several pending
18 lawsuits in his bankruptcy schedules, and that he unlawfully
19 continued to prosecute disclosed and undisclosed litigation in
20 other courts while his case was in chapter 7. See Moneymaker v.
21 CoBen (In re Eisen), 31 F.3d 1447, 1451 n.2 (9th Cir. 1994)
22 (debtor's prepetition causes of action become property of the
23 estate upon the bankruptcy filing and the trustee is the only
24 party with standing to prosecute those actions). Sui also
25 apparently owns or possesses at least three vehicles, none of
26 which was ever scheduled. Sui claimed at the § 341(a) meeting of
27 creditors that he was never legally married to Yang, yet in recent
28 tax returns and pleadings filed in other courts, Sui has
affirmatively represented that Yang is his wife. He also claimed
in his Schedule I that he is "separated" from Yang. Further, Sui

1 admitted at the initial § 341(a) meeting of creditors in his
2 chapter 13 case that his sole purpose for conversion was to seek
3 dismissal of his case. Finally, although he disputes it, Sui may
4 have obtained an ownership interest in real property located in
5 Manteca, California just days before his bankruptcy filing, but he
6 failed to disclose this interest in his schedules.

7 Based on these facts and more, the bankruptcy court found
8 that Sui had filed untrue documents, violated federal law and
9 abused the bankruptcy process. Therefore, under the totality of
10 the circumstances, the bankruptcy court found that "cause" to
11 convert had been established.

12 The bankruptcy court also determined that because of Sui's
13 conduct, converting the case to chapter 7 was preferred to
14 dismissing it. Although it did not expressly find that conversion
15 was in the best interest of creditors as opposed to dismissal, the
16 record supports the bankruptcy court's decision to reconvert the
17 case. See Shanks v. Dressel, 540 F.3d 1082, 1086 (9th Cir. 2008)
18 (we may affirm on any ground supported by the record). In their
19 opposition to dismissal, both the former Trustee and GLC suggested
20 conversion would be in the best interests of creditors because Sui
21 had shown a pattern of avoiding paying his creditors, particularly
22 Tan, and no assurances existed that he would pay his creditors
23 outside of bankruptcy. For example, just moments after the state
24 court announced its oral ruling in favor of Tan, Sui recorded a
25 quitclaim deed conveying his entire interest in the Residence to
26 Yang for little or no consideration. Sui also filed his chapter 7
27 bankruptcy case just one day before Tan was to conduct a scheduled
28 debtor's examination on July 28, 2011. Moreover, it was quite

1 possible, based on the multitude of omissions in his schedules,
2 that Sui had not listed all of his creditors. For certain, Sui
3 did not list the HOA, with whom he had been in litigation for
4 years prior to his bankruptcy filing.

5 Obviously, Sui's plan of filing a chapter 7 bankruptcy case
6 to shield himself from his prepetition creditors backfired. It
7 ended up, much to Sui's dismay, giving the former Trustee power
8 over his prepetition claims and litigation. It also allowed the
9 former Trustee to investigate Sui's undisclosed assets, as well as
10 pursue and recover what might have been a fraudulent transfer of
11 the Residence to Yang.

12 We see no clear error in the bankruptcy court's finding of
13 bad faith conduct. We also see no error in its apparent
14 determination that conversion, as opposed to dismissal, was in the
15 best interests of creditors. Accordingly, we conclude the
16 bankruptcy court did not abuse its discretion when it reconverted
17 Sui's case to chapter 7.¹⁰

18 **B. We lack jurisdiction over the appeal of the interlocutory**
19 **orders allowing the former Trustee's and GLC's administrative**
20 **claims for preconversion fees and expenses.**

21 We conclude, on this record, that the orders allowing the
22 former Trustee's and GLC's administrative claims for preconversion
23 fees and expenses are interlocutory. Counsel for the former

24 ¹⁰ Although Sui does not raise this issue, the former Trustee
25 had standing to suggest the case be reconverted instead of
26 dismissed. See In re Barnes, 275 B.R. 889, 892-93 (Bankr. E.D.
27 Cal. 2002). Even if Trustee somehow lacked standing, the
28 bankruptcy court had the authority to sua sponte convert Sui's
case. In re Rosson, 545 F.3d at 774 (bankruptcy court has
authority to sua sponte dismiss or convert a case on its own
motion under § 105(a) to prevent what it reasonably perceives as
an abuse of process).

1 Trustee conceded as much at oral argument. We also decline to
2 consider Sui's notice of appeal of these orders as a motion for
3 leave to appeal under Rule 8003(c). As such, we must DISMISS
4 these appeals for lack of jurisdiction.

5 Because Sui's case was reconverted to chapter 7, which the
6 former Trustee is again administering, and because Sui never
7 confirmed a chapter 13 plan allowing for the administrative claims
8 of the former Trustee and GLC for preconversion fees and expenses,
9 the orders at issue are, at best, interim fee awards under § 331.
10 Interim awards under § 331 are interlocutory and are always
11 subject to the court's reexamination and adjustment during the
12 course of the case. Leichty v. Neary (In re Strand), 375 F.3d
13 854, 858 (9th Cir. 2004)(citations omitted).

14 Although we believe that this case should run its course and
15 decline to exercise jurisdiction over the appeal of these orders
16 under Rule 8003(c), we perceive considerable issues with the
17 merits of the awarded fees and strongly suggest that the
18 bankruptcy court revisit the awards upon the parties' final fee
19 applications. We note, the bankruptcy court did not articulate
20 upon what legal standard it was awarding fees and expenses for
21 either the former Trustee or GLC, nor did it conduct any
22 reasonableness analysis, even when reasonableness was questioned
23 by Sui. The court also made no finding that Trustee's and GLC's
24 services were likely to benefit the estate at the time rendered.
25 Now that Sui's case has been reconverted to chapter 7, the former
26 Trustee's fees would presumably be subject to § 326. As counsel

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1 for Trustee employed under § 327(a),¹¹ GLC's fees were (and are)
2 subject to a reasonableness determination under § 330(a).

3 **VI. CONCLUSION**

4 Based on the foregoing, we AFFIRM the order reconverting
5 Sui's case to chapter 7. However, we DISMISS for lack of
6 jurisdiction the appeal of the interlocutory orders allowing the
7 former Trustee's and GLC's administrative claims for preconversion
8 fees and expenses.

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22 ¹¹ Although GLC's employment application expressly sought
23 employment under § 328, the bankruptcy court's order approving
24 GLC's employment, which was drafted by GLC, made no mention of
25 § 328, and instead stated that any compensation or reimbursement
26 was subject to court approval under § 330. Therefore, as GLC even
27 seems to concede on appeal, its fees were subject to a
28 reasonableness determination under § 330. See Appellee Response
Brief at 8. We further note that GLC agreed to accept fees only
if property or money is recovered. Other than the \$5,000 Trustee
recovered in a settlement with the HOA, we fail to see what other
assets had been recovered prior to GLC being awarded nearly
\$15,000 in fees.