

MAY 30 2013

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

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UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	CC-12-1584-KiClD
)		
GAREGIN PAPAZOV,)	Bk. No.	2:10-38924-RN
)		
Debtor.)		
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ELIZABETH GOLDENBERG, TRUSTEE)		
OF THE GOLDENBERG FAMILY)		
TRUST,)		
)		
Appellant,)		
)		
v.)		
)		
DEUTSCHE BANK NATIONAL TRUST)		
COMPANY,)		
)		
Appellee.)		
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MEMORANDUM¹

Argued and Submitted on May 16, 2013,
at Pasadena, California

Filed - May 30, 2013

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

Honorable Richard M. Neiter, Bankruptcy Judge, Presiding

Appearances: Russell F. Behjatnia, Esq. of Law Office of Russell F. Behjatnia argued for appellant, Elizabeth Goldenberg, Trustee of the Goldenberg Family Trust; Robert J. Jackson, Esq. of Robert J. Jackson & Associates, Inc. argued for appellee, Deutsche Bank National Trust Company.

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 Before: KIRSCHER, CLEMENT² and DUNN, Bankruptcy Judges.

2

3 Appellant, Elizabeth Goldenberg ("Goldenberg"), trustee of
4 the Goldenberg Family Trust ("Trust"), appeals two orders from the
5 bankruptcy court denying her motion to reopen debtor's chapter 7³
6 bankruptcy case and denying her injunctive relief. Because
7 Goldenberg lacked standing to reopen the case and file this
8 appeal, we DISMISS. Alternatively, we AFFIRM.⁴

9

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

10 **A. Events leading to the motion to reopen and request for**
11 **injunctive relief**

12 On November 17, 2006, Irina Lukashin ("Lukashin") obtained a
13 loan for \$1,680,000 from Money Warehouse, Inc. for real property
14 located on Grand View Drive in Los Angeles, California ("Grand
15 View Property"). As security for the loan, Lukashin executed a
16 promissory note ("Note") and first deed of trust ("DOT") in favor
17 of the lender.

18 On June 27, 2008, Lukashin, without the consent of the lender
19 and without the payment of any consideration, executed a quitclaim
20

21

22 ² Hon. Fredrick E. Clement, Bankruptcy Judge for the Eastern
District of California, sitting by designation.

23 ³ Unless specified otherwise, all chapter, code and rule
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
25 Federal Rules of Civil Procedure are referred to as "Civil Rules."

26 ⁴ To fully understand the background of this appeal, we have
27 reviewed certain items on the bankruptcy court's electronic docket
of which we take judicial notice. See O'Rourke v. Seaboard Sur.
28 Co. (In re E.R. Fegert, Inc.), 887 F.2d 955, 957-58 (9th Cir.
1989)(appellate court can take judicial notice of documents filed
with the bankruptcy court).

1 deed purporting to convey a 100% ownership interest in the Grand
2 View Property to the Trust. The quitclaim deed was recorded on
3 July 8, 2008. Nothing in the record suggests that the Trust did
4 not take the Grand View Property subject to the debt.

5 Despite Lukashin's transfer of her interest in the Grand View
6 Property, she subsequently executed a deed of trust and assignment
7 of rents on October 18, 2009, to Garegin Papazov ("Papazov") for
8 the purpose of securing payment of a loan in the amount of \$30,000
9 ("Papazov DOT"). The Papazov DOT was recorded on July 13, 2010.

10 Prior to Lukashin's purported transfer and assignment to
11 Papazov, neither Lukashin, Goldenberg nor the Trust (nor anyone
12 else) made any further payments on the Note after July 2, 2008. A
13 notice of default was recorded on September 2, 2008. A notice of
14 sale was recorded on January 13, 2010, with an initial foreclosure
15 date set for February 1, 2010.

16 On May 24, 2010, the Note and DOT were assigned to appellee,
17 Deutsche Bank National Trust Company as Trustee ("Deutsche Bank").
18 The assignment was recorded on July 8, 2010.

19 The day after the Papazov DOT was recorded, Papazov filed a
20 chapter 7 bankruptcy case on July 14, 2010. In his Schedule B,
21 Papazov identified a personal property interest in a "Real Estate
22 Promissory Note" in the amount of \$30,000, which appears to
23 reflect his purported security interest in the Grand View
24 Property.

25 On November 22, 2010, Deutsche Bank moved for relief from
26 stay in Papazov's bankruptcy case to proceed with its foreclosure
27 rights on the Grand View Property. Deutsche Bank requested relief
28

1 under § 362(d)(1), (d)(2) and (d)(4).⁵ In support of the motion,
2 Deutsche Bank offered copies of the Note, the DOT, the assignment,
3 the Papazov DOT and a broker's appraisal.

4 Deutsche Bank also offered the declaration of Paul Lacombe
5 ("Lacombe"), employee of loan servicer American Home Mortgage
6 Servicing, Inc. ("AHMSI"). Lacombe stated that Papazov was the
7 "sole owner" of the Grand View Property and that he had acquired
8 this interest by "grant deed" on July 13, 2010.⁶ Lacombe further
9 stated that prepetition arrears on the Note totaled \$143,442.36,
10 postpetition arrears totaled \$11,054.94, and that Deutsche Bank's
11 claim as of September 21, 2010, was \$2,110,488.44 (not including
12 costs of sale), which exceeded the property's fair market value of
13 \$1,800,000 to \$2,000,000. In an attached "continuation sheet,"
14 Lacombe stated that Papazov's bankruptcy case had been filed in
15 bad faith to delay, hinder, or defraud movant based on the
16 following:

17 Unauthorized Transfers: On or about July 13, 2010, an
18 unauthorized Grant Deed in violation of the Mortgagor's
19 original Deed of Trust was recorded in the LOS ANGELES
20 County Recorder's office whereby Mortgagor Irina
21 Lukashin purported to transfer a 100% interest in the
22 property to Garegin Papazov as a gift for no
23 consideration or for nominal consideration. The Grant
24 Deed was executed on July 13, 2010 without the
25 knowledge or consent of the Movant. A true and correct
26 copy of the unauthorized Grant Deed is attached hereto
27 as Exhibit "5" and incorporated herein by reference.

24 ⁵ Although the box for § 362(d)(4) on page 4 of motion Form
25 4001-1M.RP was not checked, Deutsche Bank contended that the
26 transfer to Papazov was unauthorized and done in bad faith to
27 delay, hinder or defraud, as explained further in the supporting
28 declaration from Paul Lacombe.

27 ⁶ In actuality, Papazov held only a purported security
28 interest against the Grand View Property. No such "grant deed"
exists.

1 Attached to the motion was also Deutsche Bank's request for
2 "extraordinary relief," motion Form 4001-1M.ER. Deutsche Bank
3 checked the boxes requesting the following extraordinary relief:

- 4 1. That the Order be binding and effective in any bankruptcy
5 case commenced by or against the above-named Debtor(s)
6 for a period of 180 days, so that no further automatic
7 stay shall arise in that case as to the Property.
- 8 2. That the Order be binding and effective in any bankruptcy
9 case commenced by or against any successors, transferees,
10 or assignees of the above-named Debtor(s) for a period of
11 180 days from the hearing of this Motion upon recording
12 of a copy of this Order or giving appropriate notice of
13 its entry in compliance with applicable nonbankruptcy
14 law.
- 15 3. That the Order be binding and effective in any bankruptcy
16 case commenced by or against any Debtor(s) who claim(s)
17 any interest in the Property for a period of 180 days
18 from the hearing of this Motion upon recording of a copy
19 of this Order or giving appropriate notice of its entry
20 in compliance with applicable nonbankruptcy law.
- 21 4. That the Order be binding and effective in any future
22 bankruptcy case, no matter who the Debtor(s) may be upon
23 recording of a copy of this Order or giving appropriate
24 notice of its entry in compliance with applicable
25 nonbankruptcy law.
- 26 7. Other (specify): If recorded in compliance with
27 applicable state laws governing notices of interests or
28 liens in the Property, this Order is binding and
effective under 11 U.S.C. § 362(d)(4)(A) and (B) in any
other bankruptcy case purporting to affect the Property
filed not later than two (2) years after the date of
entry of this Order, except that a debtor in a subsequent
bankruptcy case may move for relief from this Order based
upon changed circumstances or for good cause shown, after
notice and a hearing. Any federal, state or local
governmental unit that accepts notices of interests or
liens in real property shall accept a certified copy of
this Order for indexing and recording.

24 A hearing was held on Deutsche Bank's stay relief motion on
25 December 14, 2010. It was unopposed.

26 On December 21, 2010, the bankruptcy court entered an order
27 granting Deutsche Bank relief from stay under § 362(d)(1) and
28 (d)(2), and for in rem relief under § 362(d)(4) ("Stay Relief

1 Order"). Despite Deutsche Bank's extensive request for
2 extraordinary relief, the bankruptcy court granted it only as to
3 Papazov and any of his "successors, transferees or assignees" for
4 180 days from the hearing on the motion and upon recording of the
5 order - i.e., extraordinary relief nos. 1 & 2. The Stay Relief
6 Order was not binding in "any future bankruptcy case" involving
7 "any debtor" who claimed any interest in the Grand View Property.
8 Deutsche Bank recorded the Stay Relief Order on January 7, 2011.

9 Upon the chapter 7 trustee's motion to dismiss filed on
10 September 28, 2010, Papazov's bankruptcy case was dismissed a year
11 later on October 18, 2011, for failing to appear at multiple
12 § 341(a) meetings of creditors. The dismissal order was not
13 appealed. Papazov's case was closed on January 18, 2012.⁷

14 Meanwhile, on January 11, 2011, Lukashin filed a chapter 7
15 bankruptcy case in the Central District of California, case no.
16 2:11:11269.⁸ Her case was dismissed on March 29, 2011, for
17 failure to attend three § 341(a) meetings of creditors.

18 About three weeks after that dismissal, Lukashin filed a
19 chapter 13 bankruptcy case in the Central District of California
20

21 ⁷ The January 18, 2012 Order Closing Case states:

22 Order dismissing the case of the Debtor(s) named above was
23 entered on 10/18/2011, and notice was provided to parties in
24 interest. Since it appears that no further matters are
25 required and that this case remain open, or that the
jurisdiction of this Court continue, it is ordered that the
Trustee is discharged from his/her duties in this case,
his/her bond is exonerated, and the case is closed.

26 ⁸ Prior to this case, Lukashin had filed a chapter 7
27 bankruptcy case in the Central District of California on July 8,
2009, case no. 2:09-27405, which was dismissed on October 16,
2009, for failing to appear at three § 341(a) meetings of
28 creditors.

1 on April 22, 2011, case no. 2:11:27570. Her address of record was
2 the Grand View Property. In her Schedule A, Lukashin identified a
3 fee interest in a "house" valued at \$1,000,000 subject to a
4 secured claim of \$1,000,000. In her Schedule D, she identified
5 AHMSI as holding a \$1,200,000 claim (of which \$200,000 was
6 unsecured) against this presumed same house. Lukashin stated in
7 her Schedule F that she owed AHMSI \$66,879.00 in "defaulted
8 mortgage payments." Based on these numbers, the "house" does not
9 appear to be the Grand View Property. Lukashin's chapter 13 case
10 was dismissed a few weeks later on May 12, 2011, for failure to
11 file all required documents. The dismissal order prohibited her
12 from filing another bankruptcy case for 180 days.⁹

13 Meanwhile, Deutsche Bank proceeded with its foreclosure of
14 the Grand View Property on April 27, 2011, while Lukashin's
15 chapter 13 case was pending. Deutsche Bank was the successful
16 bidder at the foreclosure sale with a bid of \$1,530,000, far less
17 than the value of its first lien. Shortly after the sale,
18 Lukashin's bankruptcy attorney sent a letter to AHMSI asserting
19 that the Stay Relief Order obtained by Deutsche Bank in

21 ⁹ After the 180 days had expired, Lukashin filed yet another
22 chapter 7 bankruptcy case in the Central District of California on
23 December 8, 2011, case no. 2:11-60015. The schedules filed were
24 identical to those filed in the prior chapter 13 case. This case
was dismissed on March 26, 2012, for failure to attend three
§ 341(a) meetings of creditors. It was closed on April 24, 2012.

25 Notably, before this fourth case was dismissed, Lukashin had
26 filed an adversary complaint against Deutsche Bank and AHMSI for
27 violating the automatic stay based on the foreclosure, the same
28 claims Goldenberg wishes to pursue in Papazov's case. See
Adv. No. 12-1330. Deutsche Bank had filed a motion to dismiss the
complaint, but, before it could be decided, the adversary
proceeding was dismissed due to the dismissal of Lukashin's
underlying bankruptcy case.

1 the Papazov case was void because he did not own the Grand View
2 Property. Her counsel advised AHMSI that the foreclosure sale had
3 violated the automatic stay and that AHMSI needed to set it aside
4 and cancel the trustee's deed. Deutsche Bank proceeded to record
5 its trustee's deed on November 29, 2011. Lukashin was identified
6 as the "Trustor" in the trustee's deed.

7 On July 23, 2012, Goldenberg filed a personal chapter 7
8 bankruptcy case in the Central District of California, case no.
9 2:12-35204. She identified the Grand View Property as her place
10 of residence, but in her Schedule A she represented that she had
11 no interest in any real property. Goldenberg did not disclose any
12 interest in the Trust or property she was holding for the Trust as
13 trustee. Her case was dismissed on November 2, 2012, for failing
14 to appear at three § 341(a) meetings of creditors. It was closed
15 on March 20, 2013, after this appeal had been filed.

16 At some point not clear from the record, Deutsche Bank filed
17 an unlawful detainer action ("UD Action") against Lukashin and
18 Goldenberg in state court to evict them from the Grand View
19 Property. On August 3, 2012, Deutsche Bank filed a "Notice of No
20 Stay" with respect to Goldenberg's then-pending bankruptcy case,
21 asserting that her bankruptcy did not stay the UD Action in light
22 of the Stay Relief Order. According to Deutsche Bank, because the
23 Stay Relief Order had granted relief under § 362(d)(4), upon its
24 recording it became binding in any other bankruptcy case
25 purporting to affect the Grand View Property for two years from
26 the date of the entry of the order, which it asserted was until
27 December 21, 2012. On September 20, 2012, pursuant to a
28 terminating sanctions motion filed by Deutsche Bank for

1 Goldenberg's and Lukashin's failures to respond to discovery
2 requests as ordered, the state court entered a default judgment in
3 favor of Deutsche Bank. A writ of possession was to be issued to
4 evict the two women.

5 On September 24, 2012, Goldenberg, as trustee of the Trust,
6 and Lukashin filed a wrongful foreclosure action against Deutsche
7 Bank and AHMSI in state court, alleging the foreclosure was
8 improper because it was based on the false Stay Relief Order and
9 was done in violation of the stay in either Goldenberg's or
10 Lukashin's bankruptcy cases.

11 On October 10, 2012, with their current counsel, Goldenberg
12 and Lukashin filed an ex parte motion to set aside the UD Action
13 judgment and to recall and stay all writs of possession. In
14 short, they argued that the state court incorrectly determined
15 that the automatic stays in either Lukashin's or Goldenberg's
16 bankruptcy cases were not in effect in relation to the Grand View
17 Property. They further asserted that the automatic stays in their
18 cases precluded them from defending themselves in the UD Action,
19 which led to their default, and their due process rights were
20 violated when the court entered judgment against them.

21 In response, the state court issued an order staying the
22 execution of the writ of possession for 30 days until November 9,
23 2012, with no lockout to occur until then. The stay was granted,
24 apparently, to give Goldenberg time to pursue any necessary relief
25 in the bankruptcy court. Goldenberg and Lukashin were required to
26 post a bond of \$8,750.00 by October 12, 2012, for the stay to take
27 effect.

28

1 **B. The motion to reopen and the request for injunctive relief**

2 On October 24, 2012, Goldenberg, as trustee of the Trust,
3 filed an ex parte motion to reopen the Papazov bankruptcy case
4 ("Motion to Reopen") and to stay the execution of any writs of
5 possession regarding the Grand View Property ("Motion for
6 Injunctive Relief"). Goldenberg wanted to reopen the Papazov case
7 to: (1) set aside what she contended was a fraudulently acquired
8 Stay Relief Order used to perpetrate the wrongful foreclosure;
9 (2) prosecute an adversary proceeding against Deutsche Bank and
10 AHMSI for violating the automatic stay; and (3) seek an order
11 revoking the Stay Relief Order and staying all actions and
12 proceedings which had occurred as a result.

13 Specifically, Goldenberg contended that upon Lukashin's
14 execution and recording of the quitclaim deed on June 27, 2008,
15 Lukashin had "no interest, whatsoever, in the Grand View
16 Property." As a result, contended Goldenberg, because Lukashin
17 "did not own or possess any interest in the Grand View Property,"
18 the Papazov DOT had no effect. Goldenberg further contended that
19 Deutsche Bank knew when it sought relief from stay in Papazov's
20 case that he had no ownership interest in the Grand View Property,
21 and Lacombe's statements to the contrary were false. Goldenberg
22 argued that Lukashin's bankruptcy case filed on April 22, 2011,
23 invoked the automatic stay with respect to the Grand View
24 Property, which was subject to a foreclosure at the time, and
25 therefore the trustee's sale on April 27, 2011, had violated the
26 stay.

27 Deutsche Bank opposed the Motion to Reopen, contending that
28 Goldenberg was not a "party in interest" with standing to reopen a

1 case under § 350(b) as she was not the debtor, a creditor, or the
2 trustee in Papazov's case. Deutsche Bank countered Goldenberg's
3 assertion that the Stay Relief Order was obtained by fraud,
4 contending that it had established a colorable claim to the Grand
5 View Property based on the Note, the DOT, Deutsche Bank's
6 assignment, the broker's appraisal and the Papazov DOT.¹⁰ In a
7 supporting declaration, counsel for Deutsche Bank (again,
8 incorrectly) stated that the Papazov DOT purported to transfer
9 100% of Lukashin's interest in the Grand View Property to Papazov
10 for little or no consideration.¹¹

11 Without a hearing, the bankruptcy court entered two orders on
12 November 5, 2012, denying the Motion to Reopen and the Motion for
13 Injunctive Relief. The bankruptcy court denied the Motion to
14 Reopen, "finding that no good cause existed to reopen the case
15 that would accord relief to the Debtors under 11 USC § 350(b)[.]"
16 Goldenberg timely appealed both orders.

17 On December 14, 2012, the motions panel entered an order
18 denying Goldenberg's emergency motion for injunctive relief to
19 stay the execution of any writs as to the Grand View Property.
20 The motions panel found that because the Stay Relief Order did not
21

22 ¹⁰ Deutsche Bank had also objected to the improper scope of
23 relief sought in Goldenberg's motion because it requested to set
24 aside judgments and stay execution of writs, which violated Local
25 Bankruptcy Rule 5010-1. Goldenberg cured this defect by
subsequently filing a separate ex parte motion requesting that
relief.

26 ¹¹ Deutsche Bank also argued that the Motion to Reopen should
27 be denied because Goldenberg had failed to give notice to the
28 former chapter 7 trustee and the United States Trustee in
violation of local rule. In light of that objection, Goldenberg
served the former chapter 7 trustee and the United States Trustee
with her moving papers. No response was filed by either party.

1 contain a determination that Papazov's "filing of the petition was
2 part of a scheme to delay, hinder, and defraud creditors under
3 11 U.S.C. § 362(d)(4)," it had expired 180 days after the
4 December 14, 2010 hearing on the motion for relief from stay,
5 which would have been May 17, 2011. Because Goldenberg had not
6 filed a bankruptcy case before May 17, 2011, the motions panel
7 determined that the Stay Relief Order could not possibly have had
8 any effect on an automatic stay where she was the debtor entitled
9 to such protection.

10 II. JURISDICTION

11 Subject to the standing discussion set forth below, the
12 bankruptcy court had jurisdiction under 28 U.S.C. §§ 157(b)(2)(A)
13 and 1334. An order denying a motion to reopen is a final order.
14 Riazuddin v. Schindler Elevator Corp. (In re Riazuddin), 363 B.R.
15 177, 182 (10th Cir. BAP 2007).¹² We address our jurisdiction under
16 28 U.S.C. § 158 below.

17 III. ISSUE

18 Did the bankruptcy court abuse its discretion in denying the
19 Motion to Reopen?¹³

20 _____
21 ¹² Deutsche Bank argues in its brief and at oral argument that
22 the order denying the Motion to Reopen is interlocutory. Deutsche
23 Bank cites Mass Dep't of Revenue v. Crocker (In re Crocker),
24 362 B.R. 49, 53 (1st Cir. BAP 2007)(citing Paine v. Dickey
25 (In re Paine), 250 B.R. 99, 103 n.4 (9th Cir. BAP 2000)), for the
26 proposition that an order on a motion to reopen is "interlocutory
because [it does] not resolve" the ultimate issue before the
bankruptcy court, "but merely constitute[s] a preliminary step in
the . . . process." These cases are inapposite as they involve
orders granting motions to reopen instead of orders denying
motions to reopen.

27 ¹³ Although Goldenberg appealed the bankruptcy court's order
28 denying her Motion for Injunctive Relief, she has not asserted any
(continued...)

1 IV. STANDARDS OF REVIEW

2 Deutsche Bank disputes Goldenberg's standing as a "party in
3 interest" to reopen Papazov's bankruptcy case. The issue of a
4 party's standing is subject to de novo review. Mayfield v. United
5 States, 599 F.3d 964, 970 (9th Cir. 2010); Veal v. Am. Home Mortg.
6 Servicing, Inc. (In re Veal), 450 B.R. 897, 906 (9th Cir. BAP
7 2011).

8 Denial of a motion to reopen a bankruptcy case is reviewed
9 for an abuse of discretion. Lopez v. Specialty Rest. Corp.
10 (In re Lopez), 283 B.R. 22, 26 (9th Cir. BAP 2002). A bankruptcy
11 court abuses its discretion if it applied the wrong legal standard
12 or its findings were illogical, implausible or without support in
13 the record. TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d
14 820, 832 (9th Cir. 2011).

15 We may affirm on any basis supported by the record, even
16 where the issue was not expressly considered by the bankruptcy
17 court. In re E.R. Fegert, Inc., 887 F.2d at 957.

18 V. DISCUSSION

19 **The bankruptcy court abused its discretion by applying a**
20 **wrong legal standard, but such error was harmless as**
Goldenberg was not entitled to the requested relief.

21 A motion to reopen a closed bankruptcy case is governed by
22 § 350(b) and Rule 5010. The bankruptcy court has discretion

23 _____
24 ¹³(...continued)
25 specific argument as to how the bankruptcy court abused its
26 discretion in denying it. As such, this issue has been waived.
27 Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 919 (9th
28 Cir. 2001)(issues not specifically and distinctly raised and
argued in opening brief are waived). In any event, in light of
our holding below, we conclude that the bankruptcy court did not
abuse its discretion in denying Goldenberg the requested
injunctive relief.

1 regarding whether it should reopen proceedings to reconsider its
2 prior orders. Elias v. Lisowski, 188 F.3d 1160, 1161 (9th Cir.
3 1999)(citing § 350(b)).

4 Under § 350(b), a case may be reopened to administer assets,
5 to accord relief to the debtor, or for other cause. The basis for
6 Goldenberg to reopen Papazov's case was not to administer assets
7 or to accord relief to Papazov. Hence, it had to be for "other
8 cause," which Goldenberg argued. The bankruptcy court's only
9 basis for denying the Motion to Reopen was because reopening the
10 case would not afford any relief to Papazov. We agree with
11 Goldenberg that the bankruptcy court applied a wrong standard of
12 law in reaching its decision. As we explain below, however, this
13 error was harmless as Goldenberg was not entitled to the requested
14 relief in any event.

15 **A. Goldenberg lacked standing to reopen Papazov's bankruptcy**
16 **case and to file this appeal.**

17 "Standing is a 'threshold question in every federal case,
18 determining the power of the court to entertain the suit.'" In re Veal,
19 450 B.R. at 906 (quoting Warth v. Seldin, 422 U.S.
20 490, 498 (1975)). Even though the bankruptcy court applied an
21 incorrect legal standard to the Motion to Reopen, Goldenberg's
22 failure to establish standing was sufficient grounds to deny it.
23 See Nintendo Co., Ltd. v. Patten (In re Alpex Computer Corp.),
24 71 F.3d 353, 356 (10th Cir. 1995)(standing is a "'prudential
25 requirement'")(quoting Travelers Ins. Co. v. H.K. Porter Co.,
26 45 F.3d 737, 741 (3rd Cir. 1995)).

27 Motions to reopen can be made by the debtor or any "party in
28 interest." Rule 5010. Whether a party is a party in interest is

1 determined on a case by case basis. In re D'Antignac, 2013 WL
2 1084214, at *2 (Bankr. S.D. Ga. Feb. 19, 2013)(slip copy)(citing
3 Peachtree Lane Assocs., Ltd. v. Grandader (In re Peachtree Lane
4 Assocs., Ltd.), 188 B.R. 815, 824 (N.D. Ill. 1995)). Goldenberg
5 contends she is a party in interest because she has a "stake" in
6 Papazov's bankruptcy case due to the improper inclusion of her
7 real property in his estate. Specifically, Goldenberg contends
8 that she should be permitted to rectify and void the very order
9 that wrongfully divested her of her right, title and interest in
10 the Grand View Property. Goldenberg had the burden of showing
11 that she had standing as a party in interest to seek the reopening
12 of Papazov's bankruptcy case. Summers v. Earth Island Inst.,
13 555 U.S. 488, 493 (2009)(movant bears the burden of showing that
14 she has standing for each type of relief sought).

15 The term "party in interest" is not defined in the Bankruptcy
16 Code or Rules, and the Ninth Circuit has not determined "who"
17 qualifies as a party in interest under Rule 5010. As guidance,
18 the definition of a party in interest is broadly defined in
19 § 1109(b) to include the debtor, the trustee, a creditor's
20 committee, an equity security holder's committee, a creditor, an
21 equity security holder, or any indenture trustee. The Tenth
22 Circuit has held that, however, notwithstanding the expansive
23 definition of "party in interest" in § 1109(b), for purposes of
24 reopening a bankruptcy case the concept of standing is "implicitly
25 confined to debtors, creditors, or trustees, each with a
26 particular and direct stake in reopening cognizable under the
27 Bankruptcy Code." In re Alpex Computer Corp., 71 F.3d at 356-57
28 (but also recognizing that certain circumstances may qualify a

1 "debtor of a debtor" as a party in interest with standing to
2 reopen).

3 Clearly, Goldenberg is not the debtor, not a creditor of
4 Papazov's and not the former chapter 7 trustee of his case. She
5 is also not any of the other parties referenced in § 1109(b).
6 Nonetheless, the Fourth Circuit has interpreted "party in
7 interest" to "include all persons whose pecuniary interests are
8 directly affected by the bankruptcy proceedings." Yadkin Valley
9 Bank & Trust Co. v. McGee (In re Hutchinson), 5 F.3d 750, 756 (4th
10 Cir. 1993)(citations omitted). This definition rings of the
11 standards set forth for Article III or "constitutional" standing.
12 See In re D'Antignac, 2013 WL 1084214, at *2 ("The 'party in
13 interest' analysis also is subject to the dictates of standing
14 conferred by Article III of the Constitution.")(citing
15 In re Phillips, 2012 WL 1232008, at *2 (Bankr. D.N.J. Apr. 12,
16 2012); In re Tarrer, 273 B.R. 724, 730-31 (Bankr. N.D. Ga. 2001)).

17 Under this broader doctrine of constitutional standing, a
18 plaintiff must adequately establish: (1) an injury in fact (i.e.,
19 a concrete and particularized invasion of a legally protected
20 interest); (2) causation (i.e., a fairly traceable connection
21 between the alleged injury in fact and the alleged conduct of the
22 defendant); and (3) redressability (i.e., it is likely and not
23 merely speculative that the plaintiff's injury will be remedied by
24 the relief plaintiff seeks in bringing suit). Sprint Commc'ns Co.
25 v. APCC Servs., Inc., 554 U.S. 269, 273-74 (2008)(citing Lujan v.
26 Defenders of Wildlife, 504 U.S. 555, 560-61 (1992))(internal
27 quotations omitted). A "particularized" injury means one that
28 affects the plaintiff in a personal and individual way. Lujan,

1 504 U.S. at 561 n.1.

2 Goldenberg has not established standing to reopen Papazov's
3 case even under this broad doctrine. At minimum, Goldenberg has
4 not established that she, personally, has an ownership interest in
5 the Grand View Property. According to the quitclaim deed, the
6 property is owned by the Trust. Notably, she never identified any
7 interest in the property (or in the Trust) in her bankruptcy
8 schedules. Further, the record does not establish whether the
9 Trust is revocable, irrevocable or something else. Thus, an
10 injury in fact is lacking.

11 Even assuming Goldenberg as trustee has a legally protected
12 ownership interest in the Grand View Property, she has not shown
13 "causation" or "redressability." Goldenberg contends that the
14 reason Deutsche Bank was able to foreclose on the Grand View
15 Property was because of its fraudulently obtained Stay Relief
16 Order in Papazov's case. This is not entirely true. In reviewing
17 this convoluted and dubious record, prior to Deutsche Bank's
18 motion for relief from stay, the Grand View Property had been in
19 foreclosure for two years based on Lukashin's, Goldenberg's or the
20 Trust's (or someone else's) severe default on the Note. Although
21 Deutsche Bank was careless to assert in its motion for relief from
22 stay that Papazov held a 100% ownership interest in the Grand View
23 Property by way of a "grant deed," the evidence submitted by
24 Deutsche Bank showed that Papazov held a purported junior lien in
25 the Grand View Property via the Papazov DOT. Therefore, it was
26 proper for Deutsche Bank to seek relief from stay in Papazov's
27 case to continue with the foreclosure because the Papazov DOT was,
28 at least on its face, property of his estate. See First Yorkshire

1 Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire
2 Holdings, Inc.), 470 B.R. 864, 869 (9th Cir. BAP 2012)(citing
3 First Fed. Bank of Cal. v. Coqar (In re Coqar), 210 B.R. 803, 809
4 (9th Cir. BAP 1997)(property of the estate is defined broadly
5 under § 541 and includes a lien held by the debtor on property of
6 a third party)). The evidence further showed that Deutsche Bank
7 established a "colorable claim" to the Grand View Property
8 entitling it to relief. In re Veal, 450 B.R. at 914-15.

9 Contrary to Deutsche Bank's position, however, the Stay
10 Relief Order was not effective for two years as to any future
11 debtor claiming an interest in the Grand View Property simply
12 because the bankruptcy court granted relief under § 362(d)(4).
13 Such in rem relief required affirmative findings by the bankruptcy
14 court that Papazov's bankruptcy filing was part of a scheme to
15 delay, hinder, and defraud creditors,¹⁴ and that the scheme
16 involved either the transfer of some interest in the Grand View
17 Property without the secured creditor's consent or court approval,
18 or that multiple bankruptcy filings existed affecting the Grand
19 View Property. In re First Yorkshire Holdings, Inc., 470 B.R. at
20 870-71. The bankruptcy court made no such findings.¹⁵

22 ¹⁴ Section 362(d)(4) was amended by the Bankruptcy Technical
23 Corrections Act of 2010, Pub. L. No. 111-327, 124 Stat. 3557
24 (2010) and became effective on December 22, 2010. The conjunctive
25 "and" in paragraph (4) was eliminated and replaced with the
26 disjunctive "or." Therefore, after December 22, 2010, a party
27 seeking relief from stay under § 362(d)(4) must show only a scheme
28 by debtor to delay, hinder or defraud. Contrary to Deutsche
Bank's assertion, because the Stay Relief Order was entered on
December 21, 2010, it was still subject to the former version - to
delay, hinder and defraud.

¹⁵ If the Stay Relief Order had been effective for two years
(continued...)

1 The Stay Relief Order was effective only until May 17, 2011,
2 and only against Papazov and his successors, transferees or
3 assignees. Lukashin and Goldenberg were not successors,
4 transferees or assignees of Papazov. As a result, the Stay Relief
5 Order never had any effect in either of their bankruptcy cases.
6 It clearly could never have had any effect in Goldenberg's case
7 because, as the motions panel observed, she never filed a
8 bankruptcy case before May 17, 2011. Thus, if the Stay Relief
9 Order had no effect in Goldenberg's case, she cannot show how she
10 was injured by it.

11 Despite Goldenberg's contention, the Stay Relief Order was
12 not what gave Deutsche Bank its authority to foreclose and, as she
13 claims, wrongfully divest her of all right, title and interest in
14 the Grand View Property. California nonjudicial foreclosure law
15 provided that authority. The Stay Relief Order was really a
16 "nothing" as to Goldenberg. If anything, Goldenberg benefitted
17 from Papazov's bankruptcy filing because it postponed the
18 foreclosure sale yet again. Therefore, Goldenberg has not
19 established how vacating the Stay Relief Order could provide her
20 any relief for her alleged and unsupported injury.

21 Goldenberg also cannot show how Deutsche Bank's alleged
22 violation of the stay in Lukashin's chapter 13 case injured

23
24 ¹⁵(...continued)
25 against any debtor in any future bankruptcy case claiming an
26 interest in the Grand View Property, the applicability of such
27 relief has been specifically upheld in the Ninth Circuit even if
28 the bankruptcy case in which the order was obtained did not
involve the borrower under the deed of trust and the borrower had
no notice of the entry of the order. See In re Fernandez,
212 B.R. 361 (Bankr. C.D. Cal. 1997), aff'd, 227 B.R. 174 (9th
Cir. BAP 1998), aff'd, 208 F.3d 200 (9th Cir. 2000).

1 Goldenberg. She has asserted, and the record reflects, that
2 Lukashin had no recorded ownership interest in the Grand View
3 Property when she filed her chapter 13 case on April 22, 2011.
4 Because Lukashin did not hold legal title when she filed her
5 petition, her nonexistent ownership of the property was not
6 protected by the stay. Under California law, nonjudicial
7 foreclosure affects only legal title, and not any possessory
8 right. Williams v. Levi (In re Williams), 323 B.R. 691, 699 (9th
9 Cir. BAP 2005)(citing In re Torrez, 132 B.R. 924, 939 (Bankr. E.D.
10 Cal. 1991)). At best, Lukashin may have had a possessory interest
11 in the Grand View Property protected by the stay, but that had no
12 effect on the foreclosure sale on April 27, 2011. Id. (citing
13 In re Butler, 271 B.R. 867, 876-77 (Bankr. C.D. Cal. 2002)).

14 In any event, regardless of who held legal title to the Grand
15 View Property, whether it was Lukashin or the Trust, no stay even
16 existed in Lukashin's chapter 13 case preventing the foreclosure
17 because she was not an eligible debtor under § 109(g).¹⁶ Prior to
18 the filing of her chapter 13 case on April 22, 2011, Lukashin's
19 chapter 7 case had been dismissed just a few weeks before on
20 March 29, 2011, for her willful failure to attend § 341(a)
21 meetings of creditors. That dismissal was clearly within the
22 180-days prescribed in § 109(g)(1), precluding her from

23 ¹⁶ Section 109(g) provides, in relevant part:
24

25 Notwithstanding any other provision of this section, no
26 individual or family farmer may be a debtor under this title
27 who has been a debtor in a case pending under this title at
28 any time in the preceding 180 days if ---
(1) the case was dismissed by the court for willful
failure of the debtor to abide by orders of the court,
or to appear before the court in proper prosecution of
the case[.]

1 eligibility as a debtor. And, because Goldenberg had no
2 bankruptcy case pending until July 23, 2012, which was long after
3 the foreclosure sale, no stay existed in her case that could have
4 been violated by Deutsche Bank's foreclosure causing her damages.
5 Besides, the Grand View Property is purportedly owned by the
6 Trust, so the stay in Goldenberg's personal bankruptcy would have
7 had no affect on it.

8 On this record, Goldenberg failed to establish standing to
9 reopen Papazov's bankruptcy case. She has not shown any pecuniary
10 interest or "stake" in his case that could be remedied by the
11 reopening. Accordingly, the bankruptcy court did not abuse its
12 discretion in denying her Motion to Reopen. Because Goldenberg
13 lacked standing to reopen, she also lacks standing to bring this
14 appeal. As a result, we must DISMISS for lack of jurisdiction.
15 See Abbott v. Daff (In re Abbott), 183 B.R. 198, 201 (9th Cir.
16 1995)("Neither the order setting aside the reopening, nor the
17 order reopening itself, diminished [a person's] property,
18 increased her burdens or detrimentally affected her rights. She
19 is not a 'person aggrieved' by either order. Consequently, she
20 lacks standing to bring this appeal.").

21 **B. Alternatively, Goldenberg could not seek to reopen Papazov's**
22 **case because it was not closed pursuant to § 350(a).**

23 Even if Goldenberg had standing to reopen Papazov's case, she
24 was statutorily precluded from doing so. Section 350(b)
25 immediately follows § 350(a), which provides that a case shall be
26 closed "[a]fter an estate is fully administered and the court had
27 discharged the trustee[.]" The Ninth Circuit has held that a
28 "dismissed" case cannot be reopened under § 350(b) because it was

1 not "closed" under § 350(a) following the administration of the
2 estate. In Armel Laminates, Inc. v. Lomas & Nettleton Co.
3 (In re Income Prop. Builders, Inc.), 699 F.2d 963, 965 (9th Cir.
4 1982) (per curiam), the Ninth Circuit observed that a dismissed
5 case is fundamentally different from a case that is closed:

6 11 U.S.C. § 349, treating the effects of a bankruptcy,
7 obviously contemplates that on dismissal a bankrupt is
8 reinvested with the estate, subject to all encumbrances
9 which existed prior to bankruptcy. After an order of
10 dismissal, the debtor's debts and property are subject to
the general laws, unaffected by bankruptcy concepts.
After dismissal a debtor may file another petition for
bankruptcy unless the initial petition was dismissed with
prejudice.

11 On the other hand, a bankruptcy is normally closed after
12 the bankruptcy proceedings are completed. At that time
13 the debts of the bankrupt are usually discharged and the
14 proceeds of debtor's nonexempt assets divided among
creditors. A bankruptcy is reopened under 11 U.S.C.
15 350(b), not to restore the prebankruptcy status, but to
16 continue the bankruptcy proceeding. The word 'reopened'
17 used in Section 350(b) obviously relates to the word
'closed' used in the same section. In our opinion a case
cannot be reopened unless it has been closed. An order
dismissing a bankruptcy case accomplishes a completely
different result than an order closing it would and is
not an order closing.

18 Id. (footnotes omitted).

19 Upon the chapter 7 trustee's motion, Papazov's bankruptcy
20 case was dismissed on October 18, 2011, for failing to appear for
21 § 341(a) meetings of creditors. The dismissal order was never
22 appealed. His case was later "closed" on January 18, 2012.
23 Notwithstanding this closure, we conclude that the holding of
24 Income Property Builders applies nonetheless because Papazov's
25 case was not closed for the reasons articulated in § 350(a) ---
26 after full administration of the estate. Neither the Bankruptcy
27 Code nor the Bankruptcy Rules define "fully administered," but
28 Rule 5009(a) provides, in part, that if a chapter 7 trustee files

1 a final report and final account and no objection has been filed
2 within 30 days, "there shall be a presumption that the estate has
3 been fully administered."

4 The chapter 7 trustee filed a "report of no distribution" in
5 Papazov's case on January 18, 2012, but no party was given 30 days
6 to object as the case was closed the day the trustee filed his
7 report and sought to be discharged. Further, the Closing Order
8 makes no reference that Papazov's case was fully administered,
9 stating only that it was dismissed. No Final Decree was filed
10 using any variation of procedural Form B 271, which generally
11 indicates the case is fully administered and discharges the
12 trustee. Papazov did not obtain a discharge, and no proceeds of
13 his nonexempt assets were divided among creditors. Thus, no
14 presumption arises that the estate had been fully administered to
15 satisfy § 350(a).

16 The closing in this case appears to have been more of an
17 administrative matter as opposed to a statutory closing under
18 § 350(a). Therefore, Papazov's case was not "closed" for purposes
19 of § 350(a), and Goldenberg could not seek to "reopen" it under
20 § 350(b). In re Income Prop. Builders, Inc., 699 F.2d at 965.
21 But see In re Ross, 278 B.R. 269, 273 (Bankr. M.D. Ga. 2001)
22 (disagreeing with Income Property Builders and holding that
23 because the court could reopen the case without any effect on the
24 dismissal order, a case that is dismissed and subsequently closed
25 may nevertheless be reopened in accordance with § 350(b)). The
26 dismissal order could have been appealed or undone by a motion
27 under Civil Rules 59(e) or 60(b), incorporated by Rules 9023 and
28 9024. In re Income Prop. Builders, Inc., 699 F.2d at 965.

1 Accordingly, because Goldenberg could not "reopen" a
2 bankruptcy case that was not "closed" for purposes of § 350(a),
3 the bankruptcy court did not abuse its discretion when it denied
4 her Motion to Reopen.

5 **VI. CONCLUSION**

6 Despite the bankruptcy court applying an incorrect legal
7 standard to the Motion to Reopen, but because Goldenberg lacked
8 standing to seek the reopening of Papazov's case, such error was
9 harmless, and we DISMISS her appeal for lack of jurisdiction.

10 Alternatively, because Papazov's bankruptcy case was dismissed and
11 not closed in accordance with § 350(a), we AFFIRM.