

DEC 19 2011

SUSAN M SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:	)	BAP No. CC-11-1121-PePaH
	)	
BAY VISTA APARTMENTS, LLC,	)	Bk. No. 10-51176-BB
	)	
Debtor.	)	
<hr/>		
BAY VISTA APARTMENTS, LLC,	)	
	)	
Appellant,	)	
	)	
v.	)	
	)	
FEDERAL NATIONAL MORTGAGE	)	<b>MEMORANDUM<sup>1</sup></b>
ASSOCIATION,	)	
	)	
Appellee.	)	
<hr/>		

Argued and Submitted on  
November 16, 2011 at Pasadena, California

Filed -December 19, 2011

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

Honorable Sheri Bluebond, Bankruptcy Judge, Presiding

Appearances: Phillip D. Dapeer, Esq. on brief for Appellant;  
Anthony Jude Napolitano, Esq. of Buchalter Nemer, PC  
argued for the Appellee.

Before: PERRIS,<sup>2</sup> PAPPAS, and HOLLOWELL, Bankruptcy Judges.

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

<sup>2</sup> Hon. Elizabeth L. Perris, Bankruptcy Judge for the District of Oregon, sitting by designation.

1 Debtor, Bay Vista Apartments ("debtor"), seeks reversal of the  
2 bankruptcy court's order granting relief from stay to Federal  
3 National Mortgage Association ("FNMA") under 11 U.S.C. § 362(d)(2).<sup>3</sup>  
4 During the pendency of this appeal, an order of dismissal was  
5 entered in the bankruptcy case. Consequently, we DISMISS this appeal  
6 as moot.

7 FACTS

8 On September 27, 2010, debtor filed its chapter 11 single-asset  
9 real estate bankruptcy case. Debtor's real estate is an apartment  
10 complex ("the Property").

11 FNMA held a first priority lien on the Property. FNMA filed a  
12 motion for relief from stay, which the bankruptcy court granted  
13 under § 362(d)(2) after extensive briefing and a hearing.

14 Debtor timely filed its notice of appeal from the order and  
15 filed an emergency motion in the bankruptcy court for stay pending  
16 appeal that the court denied.<sup>4</sup> Debtor then filed a motion for stay  
17 pending appeal with this panel, which also denied debtor's motion.  
18 FNMA subsequently conducted a foreclosure sale of the property at  
19 which FNMA purchased the property.

20 On November 14, 2011, on a motion from the United States  
21

---

22 <sup>3</sup> Unless otherwise indicated, all chapter, section, and rule  
23 references are to the Bankruptcy Code, 11 U.S.C. § 101 et seq. and  
24 the Federal Rules of Bankruptcy Procedure.

25 <sup>4</sup> The motion for stay pending appeal also sought amendment  
26 of the order granting relief from stay, which originally reflected,  
erroneously, that the motion was unopposed. That portion of the  
motion was granted and an amended order granting relief from stay  
was entered on March 21, 2011.

1 Trustee, the bankruptcy court dismissed the bankruptcy case. Debtor  
2 did not file a notice of appeal from the order of dismissal.

3 JURISDICTION

4 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334  
5 and 157(b)(2)(A). We have jurisdiction over final orders under  
6 28 U.S.C. § 158, but lack jurisdiction to hear moot appeals. United  
7 States v. Pattullo (In re Pattullo), 271 F.3d 898, 900 (9th Cir.  
8 2001). If an appeal becomes moot while it is pending before us, we  
9 must dismiss it. Id. This panel has jurisdiction to determine our  
10 jurisdiction. Hupp v. Educ. Credit Mgmt. Corp. (In re Hupp),  
11 383 B.R. 476, 478 (9th Cir. BAP 2008).

12 ISSUE

13 Whether the bankruptcy court's dismissal of the bankruptcy case  
14 rendered this appeal moot.

15 DISCUSSION

16 It is well established that we lack jurisdiction to hear moot  
17 appeals. In re Pattullo, 271 F.3d at 900 (9th Cir. 2001)(quoting  
18 Koppers Indus., Inc. v. U.S. E.P.A., 902 F.2d 756, 758 (9th Cir.  
19 1990).

20 Dismissal of the bankruptcy case raises the question of whether  
21 this appeal is now moot.

22 In the bankruptcy context the determination of whether a case  
23 becomes moot on the dismissal of the bankruptcy hinges on the  
24 question of how closely the issue in the case is connected to  
25 the underlying bankruptcy. When the issue being litigated  
26 directly involves the debtor's reorganization, the case is  
mooted by dismissal of the bankruptcy.

Spacek v. Thomen (In re Universal Farming Indus.), 873 F.2d 1334,

1 1335 (9th Cir. 1989)(internal citations omitted).

2 In Armel Laminates, Inc. v. Lomas & Nettleton Co. (In re Income  
3 Prop. Builders, Inc.), 699 F.2d 963, 964 (9th Cir. 1983), the Ninth  
4 Circuit held that

5 the automatic stay provided in 11 U.S.C. § 362(a) was dependent  
6 on the operation of the bankruptcy law, and that law was  
7 pertinent only because of the existence of the proceeding in  
8 bankruptcy. The order granting the stay was made in the  
9 exercise of a power conferred by bankruptcy law. Any power  
10 that we have with respect to the stay is derived from our  
11 appellate power in bankruptcy matters. Once the bankruptcy was  
12 dismissed, a bankruptcy court no longer had power to order the  
13 stay . . . . A remand by us to the bankruptcy court would  
14 therefore be useless.

11 The facts of Income Prop. Builders are similar to those in the  
12 present case. Appellants in Income Prop. Builders sought  
13 reinstatement of the automatic stay, 699 F.2d at 964, as debtor  
14 effectively does in the present case. In Income Prop. Builders, the  
15 underlying bankruptcy case was dismissed. 699 F.2d at 964. In this  
16 case, the bankruptcy court entered its order dismissing the case on  
17 November 14, 2011.

18 As in Income Prop. Builders, in this case the time allowed for  
19 appeal of the order dismissing the case has expired. Under Rule  
20 8002(a), a notice of appeal must be filed "within 14 days of the  
21 date of the entry of the judgment, order, or decree appealed from."  
22 Debtor failed to file such notice. The court in Income Prop.  
23 Builders noted that, if it "had some power to restore the bankruptcy  
24 proceeding, the situation would be different, but there is no appeal  
25 from the order dismissing [the bankruptcy proceeding.]" 699 F.2d at  
26 964. The same logic applies in this case. The bankruptcy case is

1 beyond "restoration" because debtor did not appeal the order of  
2 dismissal.

3 CONCLUSION

4 This appeal is moot. As in Income Prop. Builders, debtor's  
5 appeal seeks reinstatement of the automatic stay after the  
6 bankruptcy case has been dismissed. A stay requires the existence  
7 of a bankruptcy case, and this Panel cannot reinstate the stay once  
8 the bankruptcy case has been dismissed. Accordingly, we DISMISS  
9 this appeal as moot.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26