

DEC 19 2011

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

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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.)	
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BAY VISTA APARTMENTS, LLC,)	
)	
Appellant,)	
)	
v.)	
)	
FEDERAL NATIONAL MORTGAGE)	MEMORANDUM¹
ASSOCIATION,)	
)	
Appellee.)	
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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,² PAPPAS, and HOLLOWELL, 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.

² 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).³
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.⁴ 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 ³ 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 ⁴ 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.

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