

FEB 03 2012

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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NOT FOR PUBLICATION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

| | | | | |
|----|--------------------------------|---|--------------------|-------------------|
| 5 | In re: |) | BAP No. | CC-11-1274-MkCaPa |
| | |) | | |
| 6 | CARLOS MAGANA LOPEZ and |) | Bk. No. | RS 10-50387-SC |
| | ROSE M. ZUNIGA, |) | | |
| 7 | |) | Adv. No. | RS 11-01170-SC |
| | Debtors. |) | | |
| 8 | _____ |) | | |
| | |) | | |
| 9 | CARLOS MAGANA LOPEZ; |) | | |
| | ROSA M. ZUNIGA, |) | | |
| 10 | |) | | |
| | Appellants, |) | | |
| 11 | |) | | |
| | v. |) | MEMORANDUM* | |
| 12 | |) | | |
| | JPMORGAN CHASE BANK, N.A.; |) | | |
| 13 | RANCHO HORIZON L.L.C.; QUALITY |) | | |
| | LOAN SERVICE CORP., |) | | |
| 14 | |) | | |
| | Appellees. |) | | |
| 15 | _____ |) | | |

Argued and Submitted on January 19, 2012
at Pasadena, California

Filed - February 3, 2012

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

Honorable Scott Clarkson, Bankruptcy Judge, Presiding

Appearances: Appellants Carlos Lopez and Rosa Zuniga, in
 propria persona, argued on their own behalf;
 Thomas S. Van of Adorno Yoss Alvarado & Smith
 argued on behalf of Appellee JPMorgan Chase Bank,
 N.A.

* 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: MARKELL, CASE** and PAPPAS, Bankruptcy Judges.

2 **INTRODUCTION**

3 Carlos Lopez and Rosa Zuniga (jointly, "Debtors") commenced
4 an adversary proceeding challenging the prepetition nonjudicial
5 foreclosure of their residence located in Riverside, California
6 ("Property"). They also sought damages and injunctive relief.
7 Two of the defendants filed motions to dismiss, which the
8 bankruptcy court granted. Because the Debtors did not establish
9 that they had standing to prosecute the claims they set forth in
10 their complaint, we VACATE the bankruptcy court's order
11 dismissing the adversary proceeding with prejudice, and REMAND
12 for further proceedings.

13 **FACTS**

14 In December 2007, the Debtors borrowed \$215,000 ("Loan")
15 from Washington Mutual Bank, FA ("WAMU"). In connection with the
16 Loan, the Debtors executed a promissory note ("Note") and a deed
17 of trust ("Deed of Trust"). The Deed of Trust identified WAMU as
18 the lender and beneficiary and California Reconveyance Company
19 ("CRC") as the trustee. It conveyed the Property to CRC as
20 trustee, for security purposes.

21 As established by evidence to which to Debtors did not
22 object, JPMorgan Chase Bank ("Chase") acquired most of WAMU's
23 assets and liabilities in 2008 pursuant to a purchase and
24 assumption agreement between Chase and the Federal Deposit
25 Insurance Corporation.

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27
28 **Hon. Charles G. Case II, U.S. Bankruptcy Judge for
the District of Arizona, sitting by designation.

1 December 16, 2010, and Karl T. Anderson ("Trustee") was appointed
2 to serve as chapter 7 trustee. The Debtors listed the Property
3 on their Schedule A of real property, but stated that the value
4 of their interest therein was "\$0.00" and that it had been
5 foreclosed upon a month before, on November 16, 2010. The
6 Debtors listed Chase on their Schedule D of secured creditors,
7 and stated the amount of Chase's claim as \$215,000, the full
8 principal amount of the Loan. Debtors did not list or give any
9 indication in their schedules or statement of financial affairs
10 that they held any claims against Chase, QLS or Rancho.²

11 In March 2011, the Debtors commenced their adversary
12 proceeding against Chase, QLS and Rancho. The Debtors asserted a
13 claim for relief for wrongful foreclosure, two claims for
14 declaratory relief, a quiet title claim, and a claim for
15 injunctive relief. Among other things, Debtors alleged that
16 Chase, QLS and WAMU did not have any of the requisite legal
17 rights, authority or interests that would have entitled any of
18 them to conduct foreclosure proceedings under California law.
19 Consequently, the Debtors claimed, the foreclosure sale and the

21 ¹(...continued)
22 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
23 all "Rule" references are to the Federal Rules of Bankruptcy
24 Procedure, Rules 1001-9037. All "Civil Rule" references are to
the Federal Rules of Civil Procedure.

25 ²We obtained copies of Debtors' schedules and statement of
26 financial of affairs by accessing the bankruptcy court's
27 electronic docket available on PACER. We can take judicial
28 notice of the contents and filing of these documents. See Atwood
v. Chase Manhattan Mortg. Co. (In re Atwood), 293 B.R. 227, 233
n. 9 (9th Cir. BAP 2003) (citing O'Rourke v. Seaboard Sur. Co.
(In re E.R. Fegert, Inc.), 887 F.2d 955, 957-58 (9th Cir.1989)).

1 Trustee's Deed should be declared invalid, and the Debtors'
2 interest in the Property should be recognized over any claim or
3 interest of Chase, WAMU or Rancho.

4 Rancho and Chase filed separate motions to dismiss the
5 Debtors' adversary proceeding, and the Debtors opposed the
6 dismissal motions. The court granted Rancho's motion to dismiss
7 on May 11, 2009. At the hearing, the Debtors conceded that they
8 did not have enough money to tender the amount they owed in order
9 to redeem the Property. Nor did the Debtors dispute that the
10 foreclosure sale had occurred or that Rancho was the successful
11 bidder at the foreclosure sale. Based on the Trustee's Deed, the
12 court concluded that Rancho was a bona fide purchaser for value,
13 and the court dismissed all of the Debtors' claims for relief as
14 against Rancho with prejudice. According to the court, amendment
15 of the claims would have been futile because, in pertinent part,
16 the Debtors had not and could not allege tender of the full
17 amount of the debt owed. With respect to the declaratory relief
18 claims, the court concluded that they were redundant of the
19 Debtors' other, invalid claims for relief. Finally, with respect
20 to the claim for injunctive relief, the court pointed out that
21 the foreclosure proceedings already had been completed, so there
22 was no action for the court to enjoin.³

24 ³The court refused to let co-plaintiff Rosa Zuniga speak at
25 the hearing. The court based this refusal on the erroneous
26 belief that Ms. Zuniga was not a named plaintiff in the
27 complaint. To the contrary, the Debtors' complaint named both
28 Mr. Lopez and Ms. Zuniga as plaintiffs, and both signed the
appeal, we conclude that the Debtors have not been prejudiced by
the court's refusal.

1 The court heard Chase's motion to dismiss on May 18, 2011.
2 At that hearing, the court granted Chase's motion for essentially
3 the same reasons it had granted Rancho's dismissal motion. The
4 court further ruled that the entire adversary proceeding would be
5 dismissed with prejudice as to all named defendants (including
6 QLS) (collectively, "Defendants").

7 The court entered its dismissal order on May 20, 2001, and
8 the Debtors timely appealed.

9 JURISDICTION

10 The bankruptcy court had jurisdiction under 28 U.S.C.
11 §§ 1334 and 157(b)(2)(A), and we have jurisdiction under 28
12 U.S.C. § 158.

13 ISSUE

14 Did the bankruptcy court err when it considered the merits
15 of the Debtors' claims for relief without first considering
16 whether the Debtors had standing to prosecute those claims?

17 STANDARD OF REVIEW

18 Standing is a jurisdictional issue that we review de novo.
19 Palmdale Hills Prop., LLC v. Lehman Commercial Paper, Inc. (In re
20 Palmdale Hills Prop., LLC), 654 F.3d 868, 873 (9th Cir. 2011);
21 Veal v. Am. Home Mortg. Servicing, Inc. (In re Veal), 450 B.R.
22 897, 906 (9th Cir. BAP 2011).

23 DISCUSSION - THE DEBTORS' STANDING

24 Before any federal court considers the merits of a matter,
25 the court must first determine whether the plaintiff has
26 standing. "Standing is a 'threshold question in every federal
27 case, determining the power of the court to entertain the suit.'" In re Veal, 450 B.R. at 906 (quoting Warth v. Seldin, 422 U.S.

1 490, 498 (1975)). Constitutional standing requires injury in
2 fact, causation, and redressability. We do not doubt that the
3 Debtors met the minimal standards for constitutional standing.
4 The Debtors alleged that they were injured by the Defendants'
5 foreclosure proceedings and related conduct, and that the
6 Defendants' failure to comply with applicable law caused them
7 injury. In addition, the relief the Debtors sought in their
8 complaint, if granted, would have remedied their alleged
9 injuries. Cf. In re Veal, 450 B.R. at 906.

10 However, in addition to constitutional standing, as one
11 aspect of the prudential limitations on federal court
12 jurisdiction, the Debtors also needed to demonstrate that they
13 were asserting their own legal rights and not those belonging to
14 others. Id. at 907 (citing Sprint Commc'ns Co., LP v. APCC
15 Servs., Inc., 554 U.S. 269, 289 (2008)).⁴

16 Here, the Debtors sought in their adversary proceeding to
17 pursue claims that accrued before they filed their bankruptcy
18 case. Even though the Debtors did not list their claims in their
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21 ⁴Another aspect of prudential standing potentially
22 implicated here is bankruptcy appellate standing, which requires
23 an appellant to show that he or she has been "directly and
24 adversely affected pecuniarily" by the bankruptcy court's
25 decision. See In re Palmdale Hills Prop., LLC, 654 F.3d at 874.
26 To meet this requirement, the appellant typically must
27 demonstrate that the order on appeal diminished its property,
28 increased its burdens, or detrimentally affected its rights. See
Fondiller v. Robertson (In re Fondiller), 707 F.2d 441, 442 (9th
Cir. 1983). On this record, the Debtors' potential residual
interest in the estate's assets appears sufficient to establish
that they were "persons aggrieved" by the bankruptcy court's
dismissal order. Accordingly, we will not dispose of this appeal
on bankruptcy appellate standing grounds.

1 bankruptcy schedules as assets, their claims became property of
2 their bankruptcy estate. See § 541(a); McGuire v. United States,
3 550 F.3d 903, 914 (9th Cir. 2008); Rosner v. Worcester (In re
4 Worcester), 811 F.2d 1224, 1228 (9th Cir. 1987); see also Goodwin
5 v. Mickey Thompson Entm't Grp., Inc. (In re Mickey Thompson
6 Entm't Grp., Inc.), 292 B.R. 415, 421 (9th Cir. BAP 2003)
7 (identifying trustee's settlement of debtor's prepetition causes
8 of action against third party as a sale of estate property).

9 The Trustee had the authority and duty to "collect and
10 reduce to money" all property of the estate, including the
11 Debtors' claims. § 704(a)(1). Furthermore, unless and until the
12 Trustee abandoned them, the Debtors' unscheduled claims continued
13 to be property of the estate. See § 554(c) & (d); Cusano v.
14 Klein, 264 F.3d 936, 945-46 (9th Cir. 2001). The Bankruptcy Code
15 designates the trustee as the estate's representative and
16 authorizes the trustee to sue and be sued in that capacity.
17 § 323; Spirtos v. One San Bernardino County Super. Ct. Case (In
18 re Spirtos), 443 F.3d 1172, 1175 (9th Cir. 2006). Thus,
19 generally speaking, only the trustee has standing to prosecute
20 claims for relief that are estate property. McGuire, 550 F.3d at
21 914; In re Spirtos, 443 F.3d at 1175-76; see also, Commodity
22 Futures Trading Comm'n v. Weintraub, 471 U.S. 343, 352-53 (1985);
23 Hansen v. Finn (In re Curry & Sorensen, Inc.), 57 B.R. 824,
24 828-29 & n. 4 (9th Cir. BAP 1986) (dismissing complaint without
25 prejudice based on plaintiff's lack of standing).

26 In sum, the bankruptcy court erred in addressing the merits
27 of the Debtors' claims for relief without first determining
28 whether the Debtors had standing to pursue those claims on behalf

1 of the estate. The Debtors did not schedule their claims against
2 the Defendants, so those claims remained property of the estate
3 and only could be prosecuted by the Trustee, unless the Trustee
4 abandoned them.

5 **CONCLUSION**

6 Because the bankruptcy court did not determine whether the
7 Debtors had standing to prosecute their adversary proceeding, we
8 VACATE the bankruptcy court's order dismissing the adversary
9 proceeding with prejudice, and REMAND for further proceedings.

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