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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NOT FOR PUBLICATION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.	WW-11-1378-KiJuH
)		
MICAH SCHNALL,)	Bk. No.	11-11420-MLB
)		
Debtor.)		
_____)		
)		
MICAH SCHNALL,)		
)		
Appellant,)		
)		
v.)	M E M O R A N D U M¹	
)		
K. MICHAEL FITZGERALD,)		
Chapter 13 Trustee,)		
)		
Appellee.)		
_____)		

Argued and Submitted on March 23, 2012
at Seattle, Washington

Filed - May 24, 2012

Appeal from the United States Bankruptcy Court
for the Western District of Washington

Honorable Marc L. Barreca, Bankruptcy Judge, Presiding

Appearances: Appellant Micha Schnall argued pro se;
Jason Wilson-Aguilar of the Office of K. Michael
Fitzgerald, Chapter 13 Trustee, argued for
appellee, K. Michael Fitzgerald, Chapter 13
Trustee.

Before: KIRSCHER, JURY, 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.

1 Appellant, chapter 13² debtor Micah Schnall ("Schnall"),
2 appeals the bankruptcy court orders (1) denying confirmation of
3 his plan and dismissing his case and (2) denying his motion for
4 reconsideration. We AFFIRM.³

5 **I. FACTUAL AND PROCEDURAL BACKGROUND**

6 Schnall filed a skeletal chapter 13 bankruptcy petition on
7 February 10, 2011. All other required documents, including
8 schedules and a proposed plan, were due by February 24, 2011. The
9 claims bar date was set for July 11, 2011.

10 Schnall, appearing pro se, filed his schedules, Form B22C,
11 and a proposed chapter 13 plan on March 3, 2011. In his
12 Schedule A, Schnall claimed a fee interest in real property
13 located in Redmond, Washington, valued at \$440,000 and subject to
14 \$0 in secured claims. The property is Schnall's primary
15 residence. Schnall did not claim a homestead exemption for the
16 residence in his Schedule C. His Schedule D was left blank.
17 Schnall's Schedule F listed a mortgage held by BAC Home Loans
18 Servicing LP ("BAC") with an unsecured claim of \$133,000 and a
19 mortgage held by One West Bank ("One West") with an unsecured
20 claim of \$527,000. Schnall listed both mortgage debts as

23
24 ² Unless specified otherwise, all chapter and code references
25 are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and the Federal
Rules of Bankruptcy Procedure, Rules 1001-9037. The Federal Rules
of Civil Procedure are referred to as "FRCP."

26 ³ The order dismissing Schnall's case was effective
27 immediately because he was unable to obtain a stay of the order
28 from both the bankruptcy court (denied 9/27/11) and the BAP
(denied 11/23/11), and the automatic stay terminated by operation
of law under § 362(c).

1 "disputed."⁴ In his Schedule J, Schnall listed no amount for
2 rent/home mortgage or real estate taxes. His monthly net income
3 (Schedule I minus Schedule J) was listed as \$1,930. Schnall's
4 Form B22C reflected a monthly disposable income of 369.88, or
5 \$22,192.80 over the 60-month plan.

6 Schnall's chapter 13 plan provided for payments of \$1,015.44
7 every two weeks for 60 months, or \$2,200.12 per month, or
8 approximately \$132,000 over the term of the plan. The liquidation
9 value was listed as \$11,692.24. The plan did not provide for any
10 payments on Schnall's mortgages or for the prepetition arrears.

11 On March 24, 2011, BAC filed a proof of secured claim
12 regarding the residence for \$132,495.91, including a prepetition
13 arrearage of \$19,474.80 for payments not made between July 2009
14 and February 2011. Attached to the claim was a note in the amount
15 of \$115,000 and a deed of trust, both dated October 30, 2006, both
16 signed by Schnall, and both executed in favor of Quicken Loans
17 Inc.

18 On April 26, 2011, appellee, chapter 13 trustee K. Michael
19 Fitzgerald ("Trustee"), filed an objection to confirmation and
20 motion to dismiss. Trustee contended that Schnall's plan was not
21 feasible because it failed to provide for treatment of secured
22 claims of his two mortgage lien creditors and it failed to set
23 forth any arrearage amounts or propose a cure for the arrears.
24 Trustee also contended that section IV.E.2.b. of Schnall's plan
25

26 ⁴ Presuming these debts were unsecured, Schnall would be
27 ineligible for chapter 13 due to exceeding the unsecured debt
28 limit of \$360,475. Even "disputed" debts are included in the
§ 109(e) jurisdictional calculation. Nicholes v. Johnny Appleseed
(In re Nicholes), 184 B.R. 82, 89 (9th Cir. BAP 1995).

1 failed to reflect the disposable income amount of \$22,192.80 set
2 forth in his Form B22C.⁵ A hearing on Trustee's motion was set
3 for May 19, 2011.

4 On May 2, 2011, Deutsche Bank National Trust Company
5 ("Deutsche") filed an entry of appearance and request for special
6 notice identifying itself as creditor appearing through its
7 servicing agent, One West.

8 On May 12, 2011, Schnall moved to continue the hearing on
9 Trustee's plan objection and motion to dismiss. In his supporting
10 declaration, Schnall contended that a continuance on Trustee's
11 motion was warranted because he believed that "the party who
12 invoked Washington's Deed of Trust Act (attempted the foreclosure
13 proceedings) is simply not the proper or legal party specified in
14 the aforementioned statutory scheme; therefore, making the
15 invocation of statutorily authorized foreclosure illegal."⁶

16 On that same date, Schnall also filed his response to
17 Trustee's motion. Schnall asserted that "based on sound law and
18 fact" the mortgage debts were unsecured and that Trustee's motion
19 should be denied so he could proceed to challenge BAC's proof of
20 claim. Schnall failed to explain why the mortgage debts were
21 "unsecured" or explain why his plan failed to provide for any
22 monthly payments or the amounts in arrears. Attached to his
23 response was an April 6, 2010 appraisal of the residence for

24

25

26 ⁵ Trustee also objected to Schnall's Schedule J claimed
27 expense of \$1,100 for monthly home maintenance as excessive and
unreasonable.

27

28 ⁶ Schnall set the hearing for his motion to continue on
May 19, 2011 - the same day as Trustee's motion.

1 \$440,000, receipts for some pet expenses, and print-outs from the
2 Internet regarding guidelines for yearly home maintenance and
3 repair costs.

4 Also on May 12, 2011, Schnall filed an objection to the proof
5 of secured claim filed by "MERS." Notably, MERS never filed a
6 proof of secured claim in Schnall's bankruptcy case. Although the
7 objection purported to set a hearing on the matter for May 19,
8 2011, no notice of hearing was filed, and nothing indicates that
9 Schnall served any party with notice of the claim objection.

10 On May 13, 2011, Deutsche filed an objection to confirmation
11 of Schnall's chapter 13 plan for failing to provide any payments
12 on its secured claim. Deutsche contended that Schnall had
13 executed a \$460,000 note and a deed of trust to secure the note in
14 favor of Quicken Loans on October 30, 2006. Deutsche claimed to
15 be the holder of the note and asserted that the principal balance
16 due was approximately \$460,000, with prepetition arrears of
17 \$71,933.69 and an ongoing monthly payment of \$3,417.92. Deutsche
18 did not include any supporting documents or affidavits with its
19 objection.

20 The hearing on Trustee's motion proceeded on May 19, 2011.
21 Trustee contended that even if Schnall was able to strip off BAC's
22 second lien due to the residence's value being less than the
23 amount of Deutsche's first lien, the monthly payment on the
24 Deutsche loan alone was \$3,417.92. When added to its prepetition
25 arrearage of approximately \$72,000 and the projected disposable
26 income figure of \$22,192.80, Trustee contended that Schnall's plan
27 required a payment of about \$5,500 per month. Thus, Schnall's
28 plan proposing payments of only \$2,200 per month was not feasible.

1 Counsel for Deutsche briefly noted its objection to confirmation
2 for the plan's failure to propose any monthly payments on its
3 claim or to cure the arrearages.

4 Before allowing the parties to proceed further, the
5 bankruptcy court denied Schnall's motion to continue Trustee's
6 motion for failing to set forth any grounds for continuance. Hr'g
7 Tr. (May 19, 2011) at 4:18-5:4. Simply needing more time due to
8 his pro se status was insufficient. Id. The court then addressed
9 Schnall's claim objection, ruling that it was not being heard that
10 day since it was not properly noticed. The court further
11 explained to Schnall that MERS's potential involvement with one or
12 both loans did not make the secured liens disappear:

13 So you would still need to deal with -- and I don't know
14 if this is a case where we have any confusion over who the
15 right lender is or not. But whoever it is, you're going
16 to have to deal with the full amount of your secured debt,
17 unless the value of the property is such that you're
18 entitled to start an action to strip a junior lien off.
19 And it's not clear to me what you've got right now
20 regarding that.

21 So if you're going to keep the house, if that's the whole
22 point of filing the Chapter 13, then you need to have
23 enough income to make enough payments to make the secured
24 payments or at least make the payments or at least make
25 the payment on the first if you think you have grounds to
26 strip the second. So that's what I need to hear about.

27 Id. at 5:14-6:2.

28 Schnall asserted that he had good cause to list the mortgage
debts as unsecured. Schnall further contended that he did not
acquiesce to the validity of the mortgage claims and to require
him to do so as a condition of bankruptcy protection denied him
the opportunity to contest the claims as secured and deprived him
of due process. In light of the first lien's value at \$460,000,
Schnall observed that he could strip off the second lien due to

1 the residence's value of \$440,000. Schnall also explained that a
2 prior attempt to modify the first mortgage with One West was
3 unsuccessful. Schnall then requested that he be allowed to
4 continue making the plan payments as proposed, and that the court
5 allow him to commence an "adversary proceeding" against the two
6 mortgage creditors in state court. Schnall made note of
7 Deutsche's failure to file a proof of claim. The bankruptcy court
8 explained to Schnall that it was more concerned with Trustee's
9 objection to the plan, as opposed to Deutsche's, even though the
10 two raised some similar objections.

11 In a colloquy with the court, Schnall admitted the monthly
12 payment on the first mortgage was about \$3,500 per month. Id. at
13 10:5-10. Schnall then admitted that his monthly income was
14 \$5,000. Id. at 10:11-13. Trustee informed the court that
15 Schnall's Schedules I and J (which did not include any rent or
16 home mortgage payments) reflected figures of \$4,815 and \$2,885
17 respectively, thus leaving a monthly net income figure of \$1,980.
18 Id. at 10:20-23. Determining that Schnall lacked sufficient
19 income to even cover payments on the first mortgage, and that no
20 loan modifications were pending or approved, the bankruptcy court
21 concluded that Schnall's proposed plan was inherently infeasible
22 and it dismissed the case. Id. at 10:24-11:7.

23 Before the dismissal order was entered, Schnall filed a
24 motion for reconsideration on May 31, 2011. Although difficult to
25 discern, the basis of Schnall's motion was that Trustee
26 erroneously accepted Deutsche's contention, without any proof,
27 that it was owed \$3,417 per month on the first mortgage, and
28 therefore the bankruptcy court in turn erred by relying on this

1 information to dismiss the case. Schnall contended that he had a
2 valid basis to list the mortgage claims as unsecured, and because
3 Deutsche failed to file a proof of claim or any other evidence to
4 establish its claim, then it was subject to the proposed plan. In
5 other words, Schnall asserted that because he listed the mortgage
6 claims as unsecured, and because Deutsche never filed a proof of
7 claim, the mortgage claims were unsecured.

8 Schnall's motion argued extensively about how he was denied
9 due process and equal protection for not being allowed to
10 challenge Deutsche's Notice of Default ("NOD") and its pending
11 foreclosure proceeding. Specifically, Schnall took issue with the
12 fact that the deeds of trust reflected MERS as the original
13 beneficiary, but the NOD reflected Deutsche as the beneficiary.
14 Therefore, according to Schnall, Deutsche had failed to establish
15 standing to conduct the foreclosure sale, which was set for
16 June 10, 2011. Attached to Schnall's motion for reconsideration
17 were copies of the first and second deeds of trust, the executed
18 \$460,000 note securing the first deed of trust, the NOD, and the
19 mortgage modification offer faxed to Schnall by One West on
20 July 28, 2010. The NOD, filed by Regional Trustee Services
21 Corporation on behalf of Deutsche and dated August 24, 2010,
22 reflects Deutsche as One West's successor in interest to the first
23 deed of trust. According to the NOD, no payments had been made on
24 the Deutsche note since August 2009, and the payments due on the
25 note were, depending on the interest rate applied, \$3,451.69 or
26 \$3,487.24 per month.

27 The bankruptcy court subsequently entered an order denying
28 confirmation of the plan and dismissing Schnall's case on June 1,

1 2011. On June 28, 2011, the bankruptcy court entered an order
2 denying Schnall's motion for reconsideration, which it construed
3 as a motion under Rule 9023. The court rejected Schnall's
4 suggestion that its ruling to deny confirmation and dismiss the
5 case relied on misinformation provided by Trustee or Deutsche; its
6 ruling was based on information provided in Schnall's own
7 Schedules I and J and on statements he made on the record. The
8 court also found that Schnall's due process rights were not
9 violated because he received proper and timely notice of Trustee's
10 motion, he was given an opportunity to present his arguments at
11 the May 19 hearing, and no issues other than confirmation and
12 dismissal were before the court on that date. The court noted
13 that Schnall was free to pursue any causes of action he may have
14 regarding his mortgages in an appropriate forum. Schnall timely
15 appealed.⁷

16 **II. JURISDICTION**

17 The bankruptcy court had jurisdiction under 28 U.S.C.
18 §§ 157(b)(2)(L) and 1334. We have jurisdiction under 28 U.S.C.
19 § 158.

20 **III. ISSUES**

21 1. Did the bankruptcy court abuse its discretion when it denied
22

23 ⁷ Trustee contends that Schnall's notice of appeal of the
24 June 1, 2011 dismissal order was untimely. We disagree. Under
25 Rule 8002(b), if any party makes a timely motion under Rule 9023
26 (and others), the time for appeal for all parties runs from the
27 entry of the order disposing of that motion. Here, Schnall filed
28 a timely (even though premature) motion for reconsideration of the
June 1 dismissal order on May 31, 2011. The bankruptcy court did
not enter the order denying Schnall's motion for reconsideration
until June 28, 2011. Schnall filed his notice of appeal on July
12, 2011. Thus, Schnall's appeal was within the 14-day period
specified under Rule 8002(a).

1 confirmation of Schnall's chapter 13 plan and dismissed his case?
2 2. Did the bankruptcy court abuse its discretion when it denied
3 Schnall's motion for reconsideration?

4 IV. STANDARDS OF REVIEW

5 We review the bankruptcy court's ultimate decision to confirm
6 or not to confirm a reorganization plan for an abuse of
7 discretion. Computer Task Group, Inc. v. Brotby (In re Brotby),
8 303 B.R. 177, 184 (9th Cir. BAP 2003). We also review for abuse
9 of discretion a bankruptcy court's decision to deny a motion for
10 reconsideration. Arrow Elecs., Inc. v. Justus (In re Kaypro),
11 218 F.3d 1070, 1073 (9th Cir. 2000).

12 To determine whether the bankruptcy court abused its
13 discretion, we conduct a two-step inquiry: (1) we review de novo
14 whether the bankruptcy court "identified the correct legal rule
15 to apply to the relief requested" and, (2) if it did, whether the
16 bankruptcy court's application of the legal standard was
17 illogical, implausible or "without support in inferences that may
18 be drawn from the facts in the record." United States v.
19 Hinkson, 585 F.3d 1247, 1261-62 (9th Cir. 2009)(en banc).

20 We may affirm on any ground supported by the record. Shanks
21 v. Dressel, 540 F.3d 1082, 1086 (9th Cir. 2008).

22 V. DISCUSSION

23 **A. The bankruptcy court did not abuse its discretion when it**
24 **denied confirmation of Schnall's chapter 13 plan and**
dismissed his case.

25 Schnall raises several arguments on appeal. He primarily
26 argues that the bankruptcy court abused its discretion in denying
27 confirmation of the plan and dismissing his case without first
28 determining the validity of the mortgage creditors' claims.

1 Essentially, Schnall contends that without addressing the
2 creditors' "standing" to conduct the pending foreclosure sale, the
3 court's denial of the plan, a plan based on invalid claims, was
4 improper and denied Schnall due process. We reject Schnall's
5 arguments.

6 **1. Standing and proof of claim.**

7 Despite his belief to the contrary, Schnall's attempt to turn
8 the mortgage creditors' secured liens into unsecured ones by
9 scheduling them as unsecured and "disputed" in his Schedule F was
10 ineffective. Merely scheduling claims as unsecured or filing
11 claim objections did not "avoid" the liens. Schnall had to take
12 affirmative steps under § 506(d)(2) to avoid the mortgage liens,
13 at least BAC's lien, which he did not do. Therefore, the liens
14 remained secured for purposes of Schnall's chapter 13 plan.

15 An unsecured creditor is required to file a proof claim for
16 its claim to be allowed, but filing is not mandatory for a secured
17 creditor. See FRBP 3002(a). A secured creditor may bypass the
18 debtor's bankruptcy proceeding and look to its lien for
19 satisfaction of the debt. Brawders v. Cnty. of Ventura (In re
20 Brawders), 503 F.3d 856, 872 (9th Cir. 2007). This is the
21 principle that secured liens pass through bankruptcy unaffected.
22 Long v. Bullard, 117 U.S. 617, 620-21 (1886); Dewsnup v. Timm,
23 502 U.S. 410, 418 (1992); In re Brawders, 503 F.3d at 872.
24 Contrary to Schnall's contention, Deutsche did not have to file a
25 proof of claim to preserve its secured lien against his residence.
26 In re Brawders, 503 F.3d at 872; Cen-Pen Corp. v. Hanson, 58 F.3d
27 89, 93 (4th Cir. 1995)(interpreting § 506(d)(2) to conclude that
28 failure of secured creditor to file a proof of claim is not a

1 basis for avoiding its lien); Meadowbrook Estates v. McElvany,
2 Inc. (In re Meadowbrook Estates), 246 B.R. 898, 902 (Bankr. E.D.
3 Cal. 2000)("A secured creditor is not required to file a proof of
4 claim. And if it chooses not to file a claim, its lien will pass
5 through the bankruptcy and remain in place."). Therefore, despite
6 not filing a proof of claim or challenging Schnall's scheduling of
7 its debt as unsecured, Deutsche's right to foreclose on the
8 residence survived the bankruptcy.

9 In this case, BAC chose to file a proof of claim presumably
10 because it knew its lien was entirely underwater and that Schnall
11 had the ability to strip it off. Although Schnall had the right
12 to object to BAC's claim under § 502(b), his objection was not
13 properly noticed or served, so it was not heard by the court.⁸ In
14 any event, Schnall made no effort to strip off BAC's lien prior to
15 confirmation. Thus, Schnall was required to treat BAC's claim as
16 secured in the plan. See de la Salle v. U.S. Bank, N.A. (In re de
17 la Salle), 461 B.R. 593, 602 (9th Cir. BAP 2011)(the claim

18 _____
19 ⁸ Under LBR 9013-1(d)(2)(C), objections to claims shall be
20 filed and served at least 30 days preceding the date fixed for
21 hearing. See also FRBP 3007. Schnall filed his objection to
22 "MERS's" proof of claim on May 12, 2011. MERS did not file a
23 proof of claim. Presumably, Schnall was objecting to BAC's filed
24 claim and Deutsche's claim (even though it did not file one) since
25 the objection mentioned "MERS and other parties mortgage
26 claim(s)." Although the objection referenced a hearing date of
27 May 19, 2011, Schnall failed to file a notice of hearing. The
28 lack of a proof of service also indicates the objection was never
properly served. Even if Schnall had filed and properly served
the required documents, his objection could not have been heard on
May 19, only seven days after filing the objection.

We further observe that Schnall's claim objection was
premiered solely on his assertion that BAC and/or Deutsche lacked
standing to enforce the note. Schnall has never disputed
receiving the loans or signing the notes and deeds of trust.
Moreover, no party other than Deutsche had commenced foreclosure
proceedings on the residence.

1 objection procedure, which is separate and apart from plan
2 confirmation, does not authorize debtors to reclassify a debt in
3 their chapter 13 plan which was set forth in a properly filed
4 proof of claim).

5 As for Deutsche, even if Schnall could show that someone
6 other than Deutsche owns the debt secured by the first deed of
7 trust, he was still required to make payments to Trustee and
8 propose a plan complying with §§ 1322 and 1326 for the benefit of
9 the proper creditor. The rights of the holder of the debt secured
10 by a deed of trust on the debtor's primary residence cannot be
11 modified in the plan. § 1322(b)(2).

12 Schnall's desire to litigate Deutsche's or BAC's "standing"
13 did not excuse his obligation to make any payments to Trustee on
14 account of the secured loans, or to propose a plan providing for
15 any payments on the secured loans. Because Schnall intended to
16 retain his residence, he was required under § 1322(b)(5) to
17 provide for the cure of the prepetition arrearages within a
18 reasonable time (in this case five years) and maintain his ongoing
19 mortgage payments, subject to a later determination as to which
20 entity actually held the note(s).⁹ See §§ 1322(b)(5) and 1322(d).
21 See also Alonso v. Summerville (In re Summerville), 361 B.R. 133
22 (9th Cir. BAP 2007)(where chapter 13 plan did not affect or
23 address the validity of a note or deed of trust debtor was not
24 precluded from challenging the validity of the note and deed of
25 trust in subsequent state court action).

26

27 ⁹ We note that under Local Rule 3015-1(j), all plan payments
28 Schnall would have made regarding the mortgage liens would have
been paid directly to the chapter 13 trustee.

1 Section 1325(a)(5) requires debtors to provide for the
2 payment of their secured claims in an amount equal to the claims
3 absent consent of the secured creditors or surrender of the
4 creditors' collateral. The record shows that Schnall did not have
5 sufficient income to cover even the ongoing monthly payments to
6 Deutsche on its debt, much less provide for the collective
7 prepetition arrearages of nearly \$90,000. Even if the mortgage
8 debts were somehow deemed unsecured, thereby leaving Schnall with
9 \$440,000 of equity in his residence, Schnall failed to provide in
10 his proposed plan for liquidation of the residence and to provide
11 funds to pay his unsecured creditors. Apparently Schnall's plan
12 was to simply keep his residence without making any payments on
13 his loans and without liquidating the asset for the benefit of
14 creditors. Clearly, this does not comply with the good faith
15 provision of § 1325(a)(3). Accordingly, we conclude the
16 bankruptcy court properly denied confirmation of his plan.

17 **2. Due process.**

18 Schnall argues his due process rights were violated when the
19 bankruptcy court denied his continuance request and issued its
20 "premature" decision to deny confirmation and dismiss his case
21 without determining the validity of the mortgage creditors'
22 claims. We disagree.

23 "The fundamental requisite of due process of law is the
24 opportunity to be heard at a meaningful time and in a meaningful
25 manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976). We have
26 already determined that resolution of whether BAC and/or Deutsche
27 were the proper parties entitled to enforce the notes was not
28 necessary for plan confirmation purposes. Schnall's purpose for

1 continuing the Trustee's motion was to dispute the mortgage
2 creditors' standing to foreclose on the residence and to avoid
3 making any payments on the secured debt; it was not so he could in
4 good faith amend his plan to include any mortgage payments or cure
5 the prepetition arrearages as required.

6 Here, Schnall received notice of the hearing on Trustee's
7 objection to his plan and motion to dismiss. Schnall timely filed
8 a written response and included several exhibits. He also
9 appeared at the May 19 hearing and presented oral argument. No
10 other matters were being heard that day. Therefore, on this
11 record, we conclude the bankruptcy court gave Schnall his full due
12 process rights before it dismissed his case.

13 **3. Dismissal under § 1307(c).**

14 Although the dismissal order does not state the statutory
15 basis for dismissing Schnall's case, we believe cause existed for
16 dismissal under § 1307(c)(5). That section provides in
17 relevant part:

18 (c) . . . on request of a party in interest or the United
19 States trustee and after notice and a hearing, the court
20 may convert a case under this chapter to a case under
21 chapter 7 of this title, or may dismiss a case under this
22 chapter, whichever is in the best interests of creditors
23 and the estate, for cause, including -
24 . . .

25 (5) denial of confirmation of a plan under section 1325
26 of this title and denial of a request made for additional
27 time for filing another plan or a modification of a
28 plan[.]

29 Section 1307(c) establishes a two-step analysis for dealing with
30 questions of conversion and dismissal. "First, it must be
31 determined that there is 'cause' to act. Second, once a
32 determination of 'cause' has been made, a choice must be made

1 between conversion and dismissal based on the 'best interests of
2 the creditors and the estate.'" Nelson v. Meyer (In re Nelson),
3 343 B.R. 671, 675 (9th Cir. BAP 2006)(citations omitted).

4 The record supports the bankruptcy court's decision to deny
5 confirmation of Schnall's plan because he could not (and
6 apparently refused to) submit a confirmable plan: (1) his income
7 failed to cover the monthly payment on the first mortgage, much
8 less the second, irrespective of the identity of the party with
9 standing to enforce the note; (2) the plan impermissibly modified
10 the rights of Schnall's secured creditors under § 1322(b)(2); and
11 (3) the plan did not provide for monthly payments or for
12 arrearages to be cured within a reasonable time in violation of
13 § 1322(b)(5). Thus, Schnall's plan was not confirmable as a
14 matter of law.

15 Second, the record shows that dismissal was in the best
16 interests of the creditors and the estate. The only creditors
17 that participated in the case were the two mortgage lien creditors
18 and Schnall was in default by at least \$90,000 between them.
19 Schnall has had the benefit of occupying the residence without
20 making any payments since July 2009. Therefore, the element of
21 best interests of creditors resolves itself primarily to the
22 interest of Deutsche and BAC, which are by far Schnall's largest
23 creditors. Goodrich v. Lines, 284 F.2d 874, 877 (9th Cir. 1960)
24 (in determining the best interests of creditors, the interest of a
25 single creditor with a large enough claim will suffice). Schnall
26 has not cited any authority that requires the bankruptcy court to
27 rule on the merits of a mortgage lien creditor's standing before
28 dismissing the bankruptcy case for other reasons. Schnall never

1 requested that his case be converted to chapter 7, and he does not
2 challenge on appeal the court's decision to dismiss rather than
3 convert. Accordingly, we conclude the bankruptcy court properly
4 dismissed Schnall's case for cause under § 1307(c)(5).

5 **B. The bankruptcy court did not abuse its discretion when it**
6 **denied Schnall's motion for reconsideration.**

7 Schnall offers no argument for how the bankruptcy court
8 abused its discretion in denying his motion for reconsideration,
9 other than simply contending in the conclusion of his opening
10 brief that we should reverse the bankruptcy court's order. He
11 also failed to present the matter as an issue on appeal. As a
12 result, this issue is waived. Wake v. Sedona Inst. (In re Sedona
13 Inst.), 220 B.R. 74, 76 (9th Cir. BAP 1998)(matters on appeal not
14 specifically and distinctly argued in appellant's opening brief
15 are waived). However, even if we did consider it, Schnall's
16 motion did not present newly discovered evidence, demonstrate
17 clear error, or show an intervening change in controlling law.
18 See 389 Orange St. Partners v. Arnold, 179 F.3d 656, 665 (9th Cir.
19 1999)(setting forth grounds for reconsideration under FRCP 59(e),
20 incorporated by Rule 9023). Instead, the motion impermissibly
21 rehashed the same arguments already raised in his opposition to
22 Trustee's objection to confirmation and motion to dismiss.
23 Motions for reconsideration are not for rehashing the same
24 arguments made the first time, or to assert new legal theories or
25 new facts that could have been raised at the initial hearing.
26 In re Greco, 113 B.R. 658, 664 (D. Haw. 1990), aff'd and remanded,
27 Greco v. Troy Corp., 952 F.2d 406 (9th Cir. 1991). Thus, we
28 conclude the bankruptcy court did not abuse its discretion in

1 denying Schnall's motion for reconsideration.

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VI. CONCLUSION

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Based on the foregoing reasons, we AFFIRM.

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