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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NOT FOR PUBLICATION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-11-1625-PaDH
)	
SERRON INVESTMENTS, INC.,)	Bankr. No. 11-12566-MT
)	
Debtor.)	
_____)	
SERRON INVESTMENTS, INC.,)	
)	
Appellant,)	
)	
v.)	M E M O R A N D U M ¹
)	
PACIFICA L 22, LLC,)	
)	
Appellee.)	
_____)	

Argued and Submitted on May 17, 2012
at Pasadena, California

Filed - June 8, 2012

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

Honorable Maureen Tighe, Bankruptcy Judge, Presiding

Appearances: _____
 Moises Saul Bardavid argued for appellant Serron
 Investments, Inc.; Martin Phillips argued for
 appellee Pacific L 22, LLC.

Before: PAPPAS, DUNN 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 Chapter 11² debtor Serron Investments, Inc. ("Serron")
2 appeals the bankruptcy court's order dismissing its bankruptcy
3 case. We AFFIRM.

4 **FACTS**

5 Unless noted, the material facts in this case are undisputed.

6 Serron, a Delaware corporation engaged in the business of
7 acquiring and selling interests in real property, acquired title
8 to a property on Tryon Road in Los Angeles (the "Property") from
9 Alejandro Elias Weissman ("Weissman") on January 26, 2009. At
10 that time, the Property was already encumbered by a first deed of
11 trust in the amount of \$1,320,000, dated January 22, 2009, in
12 favor of East-West Bank. The beneficial interest in this deed of
13 trust was assigned to appellee Pacifica L 22, LLC ("Pacifica") on
14 September 15, 2010.

15 Serron executed two other trust deeds on the Property: a
16 second deed of trust for \$265,000 in favor of First Yorkshire
17 Holdings, Inc. ("First Yorkshire"); and a third deed of trust for
18 \$245,000 in favor of Durham Development Company, Inc. ("Durham
19 Development").³ Both the second and third trust deeds were dated
20 April 9, 2010, executed April 13, 2010, and recorded on
21 November 30, 2010.

22 On December 22, 2010, Serron executed a Grant Deed
23 transferring a 25 percent interest in the Property to Weissman.

24
25 ² Unless otherwise indicated, all chapter, section and rule
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

27 ³ The bankruptcy court would later determine, as to Serron,
28 First Yorkshire and Durham Development, that "they're all the same
people." Tr. Hr'g 6:7, September 22, 2011.

1 The Grant Deed bears the notation, "This is a bonafide gift and
2 the grantor received nothing in return."

3 The next day, December 23, 2010, First Yorkshire, the
4 beneficiary of the second deed of trust, filed a petition for
5 relief under chapter 11. Bankr. C.D. Cal. Case no. 10-26058-AA.
6 At that time, the monthly payments on the Pacifica first deed of
7 trust were in default for seven payments totaling \$9,116.92.
8 Neither Serron nor First Yorkshire made any payments on the first
9 trust deed after First Yorkshire filed for bankruptcy, so Pacifica
10 filed a motion for stay relief on January 31, 2011. After a
11 hearing on March 2, 2011, the motion for relief from stay was
12 granted under § 362(d)(2) and (d)(4) by order entered on March 28,
13 2011, in which the First Yorkshire bankruptcy court noted that
14 "the filing of the [First Yorkshire] petition was part of a scheme
15 to delay, hinder and defraud creditors that involved either []
16 transfer of all or part ownership of, or other interest in the
17 Property without the consent of the secured creditor or court
18 approval." First Yorkshire appealed the stay relief to the Panel,
19 and on May 10, 2012, the Panel entered its Opinion vacating the
20 stay relief order. First Yorkshire Holdings, Inc. v. Pacifica L
21 22, LLC (In re First Yorkshire Holdings, Inc.), ___ B.R. ___, 2012
22 WL 1658250 (9th Cir. BAP 2012).⁴

23 The day before the stay relief hearing in the First Yorkshire
24 bankruptcy case, on March 1, 2011, Serron filed a chapter 11

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26 ⁴ The Panel in First Yorkshire vacated the stay relief order
27 granted under § 362(d)(2) and (d)(4), because the bankruptcy court
28 had not made adequate findings of fact under Civil Rule 52(a) to
support its orders. The Panel remanded the matter to the
bankruptcy court to provide those findings. However, the Panel's
decision in First Yorkshire is not relevant in the current appeal.

1 petition. Serron's schedules listed the first deed of trust in
2 favor of Pacifica as a disputed debt for \$1,386,326.00, and
3 undisputed deeds of trust in favor of First Yorkshire for \$265,000
4 and Durham Development for \$245,000. The only asset listed in
5 Serron's schedules was the Property, other than an unknown amount
6 of cash.⁵

7 The bankruptcy court entered an Order Setting Scheduling and
8 Case Management Conference on March 15, 2011. That order informed
9 Serron and other interested parties "that based upon the Court's
10 records and evidence presented at the status conference, the Court
11 may take any of the following actions at the status conference (or
12 at any continued hearing) without further notice: 1. Dismiss the
13 case[.]" A copy of that order was electronically served on the
14 attorney for Serron.

15 The U.S. Trustee ("UST") moved to dismiss, or to convert the
16 Serron chapter 11 case to a chapter 7 case, on June 13, 2011. The
17 UST alleged that Serron had failed to file a variety of documents,
18 including monthly reports, tax returns, and sales receipts, among
19 others. After Serron substantially complied with the UST's
20 demands, the UST withdrew its motion to dismiss or convert on
21 July 15, 2011.

22 Pacifica filed a motion for relief from stay in the Serron
23 bankruptcy case on August 26, 2011. Pacifica alleged cause for
24 relief existed under § 362(d)(1) (alleging as "cause," lack of an
25 adequate equity cushion, declining fair market value, and lack of

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27 ⁵ Later, in response to the U.S. Trustee's motion to dismiss,
28 Serron admitted that the only cash asset listed in the schedules
was the \$500 its principal had deposited in the bank at the time
of the petition filing to fund a DIP account.

1 payments), § 362(d)(2)(A) (alleging that Serron lacked equity in
2 the Property), § 362(d)(3) (alleging that Serron had failed to
3 file a confirmable plan in the single asset real estate case, or
4 to commence payments, within 90 days of the bankruptcy filing),
5 and § 362(d)(4) (alleging that the bankruptcy filing was part of
6 scheme to defraud creditors). At that time, the payments on the
7 Pacifica first deed of trust had been in default for fifteen
8 months.

9 The bankruptcy court conducted a continuing status conference
10 and hearing on Pacifica's motion for relief from stay on
11 September 22, 2011. Tr. Hr'g I-ii, September 22, 2011. Counsel
12 for Serron, Pacifica, and the UST were present and heard. After
13 reviewing the evidence and hearing from counsel, the bankruptcy
14 court granted relief from stay to Pacifica. As to § 362(d)(2),
15 the court ruled that the appraisals submitted into evidence "are
16 insufficient to show adequate value or any equity to protect
17 [Pacifica]." Tr. Hr'g 10:8-10, September 22, 2010. As to
18 § 362(d)(4), the court ruled "the transfer of [a] fractional
19 interest [by Serron to Weissman] prepetition indicates that this
20 is an abusive case solely for delay purposes in bad faith." Tr.
21 Hr'g 10:21-23.

22 And as to § 362(d)(3), the bankruptcy court observed that
23 Serron had failed to contest that cause for stay relief existed
24 under this Code provision in its opposition or briefing. The
25 court presumed that Serron's case was a single asset real estate
26 case, and thus, its failure to submit a plan within 90 days, or
27 begin payments to Pacifica, was grounds for relief from stay under
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1 § 362(d)(3).⁶ But the court went on to note that "even if that
2 were not the case," Serron had presented "absolutely no plan and
3 [made] no progress towards reorganization in nine months[.]" Tr.
4 Hr'g 9:17-19. Finally, the bankruptcy court noted that the UST
5 had advised the court that Serron was again failing to provide
6 requested documents, and the court expressed concern that if
7 relief from the stay were granted to Pacifica concerning Serron's
8 only asset, there would be nothing to reorganize and the
9 bankruptcy case should not go forward. For these reasons, the
10 bankruptcy court therefore granted Pacifica relief from stay under
11 § 362(d)(2),(3) and (4). However, it also decided that the
12 bankruptcy case should be dismissed.

13 An order granting Pacifica relief from stay was entered on
14 October 19, 2011. An order dismissing the bankruptcy case was
15 entered a few days later, on October 24, 2011. In the dismissal
16 order, the bankruptcy court amplified its grounds: "The Debtor has
17 failed to confirm a plan of reorganization and it appeared as if
18 the Debtor was not going to be able to reorganize its debts based
19 on the fact that the Court granted relief to the secured creditor
20 to pursue its state court remedies against the Debtor's sole
21 asset. In addition, the Debtor was not in compliance with the

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23 ⁶ At oral argument before the Panel, Serron insisted that
24 § 362(d)(3) was inapplicable in its bankruptcy case, and that the
25 bankruptcy court had erred by assuming that Serron's case was a
26 single asset real estate case. See § 101(51B) (defining "single
27 asset real estate" to exclude "residential real property with
28 fewer than 4 residential units . . ."). However, the bankruptcy
court's stay relief order is not before the Panel in this appeal.
In making its decision on dismissal, the bankruptcy court did not
rely on the conclusion that Serron's case was a single asset real
estate case, but instead concluded that Serron had not confirmed a
plan, could not confirm a plan, and had failed to comply with the
UST Guidelines.

1 United States Trustee Chapter 11 Notices and Guides.”

2 Serron filed a notice of appeal regarding the order to
3 dismiss the bankruptcy case on November 7, 2011. This is the
4 appeal now before the Panel, No. CC-11-1625. On the same day,
5 Serron filed a notice of appeal concerning the order granting stay
6 relief to Pacifica, No. CC-11-1626. This was nineteen days after
7 entry of the stay relief order. Because Rule 8002(a) requires
8 that a notice of appeal be filed within fourteen days of entry of
9 the order on appeal, Serron’s failure to timely appeal the stay
10 relief order divested the Panel of jurisdiction to hear the
11 appeal. Preblich v. Battley, 181 F.3d 1048, 1056 (9th Cir. 1999).
12 See also Disabled Rights Action Comm. v. Las Vegas Events, Inc.,
13 375 F.3d 861, 869 (9th Cir. 2004)(filing of effective notice of
14 appeal is a nonwaivable jurisdictional requirement). After notice
15 to Serron, on April 26, 2012, the Panel entered an order
16 dismissing the stay relief appeal as untimely. As a result, this
17 decision addresses only the bankruptcy court’s order dismissing
18 Serron’s bankruptcy case.

19 **JURISDICTION**

20 The bankruptcy court had subject matter jurisdiction under
21 28 U.S.C. §§ 1334 and 157(b)(2)(A). The Panel has jurisdiction
22 under 28 U.S.C. § 158.

23 **ISSUE**

24 Whether the bankruptcy court abused its discretion in
25 dismissing Serron’s bankruptcy case.

26 **STANDARD OF REVIEW**

27 We review the bankruptcy court’s order dismissing a
28 chapter 11 case under § 1112(b) for abuse of discretion. Marsch

1 v. Marsch (In re Marsch), 36 F.3d 825, 828 (9th Cir. 1994); St.
2 Paul Self Storage Ltd. P'ship v. The Port Authority of the City of
3 St. Paul (In re St. Paul Self Storage), 185 B.R. 580, 582 (9th
4 Cir. BAP 1995).

5 In applying an abuse of discretion test, we first "determine
6 de novo whether the [bankruptcy] court identified the correct
7 legal rule to apply to the relief requested." United States v.
8 Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc). If the
9 bankruptcy court identified the correct legal rule, we then
10 determine whether its "application of the correct legal standard
11 [to the facts] was (1) illogical, (2) implausible, or (3) without
12 support in inferences that may be drawn from the facts in the
13 record." Id. (internal quotation marks omitted). If the
14 bankruptcy court did not identify the correct legal rule, or its
15 application of the correct legal standard to the facts was
16 illogical, implausible, or without support in inferences that may
17 be drawn from the facts in the record, then the bankruptcy court
18 has abused its discretion. Id.

19 DISCUSSION

20 As discussed above, this appeal focuses solely on the
21 bankruptcy court's order dismissing Serron's bankruptcy case. In
22 that respect, the procedural status of this appeal is problematic
23 for Serron.

24 Although, with the Panel's permission, the parties filed
25 joint briefs in Serron's two appeals of the stay relief and
26 dismissal orders, Serron's briefs address only its position
27 concerning the order granting Pacifica relief from stay. Except
28 for a cryptic reference to the order dismissing the case in its

1 statement of issues in its opening brief, Serron's Op. Br. at 2,
2 Serron's briefs offer no discussion or analysis of its position
3 that the bankruptcy court erred in dismissing its chapter 11 case.

4 As the Ninth Circuit recently pointed out, as an appellate
5 tribunal, "[w]e review only issues which are argued specifically
6 and distinctly in a party's opening brief." Leigh v. Salazar,
7 677 F.3d 892, 897 (9th Cir. 2012) (quoting Greenwood v. Fed.
8 Aviation Admin., 28 F.3d 971, 977 (9th Cir. 1994)). Moreover, an
9 argument will not be saved by a mere summary mention in a party's
10 opening brief. UMG Recordings, Inc. v. Shelter Capital Partners,
11 LLC, 667 F.3d 1022, 1031 (9th Cir. 2011).

12 After Pacifica observed in its brief that Serron had failed
13 to argue grounds for its appeal of the dismissal order, Serron
14 inexplicably compounded its error by failing to provide arguments
15 concerning the dismissal order in its reply brief, making but a
16 single conclusory observation: "Dismissal was plainly based on the
17 fact that the estate, after a finding for relief, had been
18 divested of its largest asset." Serron Reply Br. at 7. Simply
19 put, nowhere in Serron's briefs is there any developed argument or
20 authority that the bankruptcy court abused its discretion in
21 dismissing the bankruptcy case.

22 On the other hand, the record discloses the existence of
23 ample cause to justify the bankruptcy court's decision to dismiss.
24 In its comments on the record, and in its formal order, the
25 bankruptcy court expressed a variety of reasons why it should
26 exercise its discretion to dismiss – that Serron had failed to
27 propose a confirmable plan; that it appeared Serron would be
28 unable to reorganize because Pacifica had been given permission to

1 foreclose its trust deed on Serron's sole asset; and that Serron
2 had not complied with the UST's operating guidelines. The Code
3 and case law make clear that these concerns constitute adequate
4 cause for dismissal of a bankruptcy case.

5 The statutory authority for dismissal of a chapter 11 case,
6 § 1112(b), provides that "the court shall convert a case under
7 this chapter to a case under chapter 7 or dismiss a case under
8 this chapter, whichever is in the best interests of creditors and
9 the estate, for cause unless the court determines that the
10 appointment . . . of a trustee or examiner is in the best interest
11 of the creditors and the estate." § 1112(b)(1). Thus, if cause
12 is present, the court must grant relief and determine whether
13 dismissal, conversion, or appointment of a trustee or examiner is
14 in the best interest of creditors and the estate. Once cause has
15 been established, under § 1112(b)(2), the burden shifts to the
16 party opposing conversion, dismissal, or appointment of a trustee
17 or examiner. Explaining the operation of this provision, the
18 bankruptcy court in In re Orbit Petroleum, Inc., 395 B.R. 145, 148
19 (Bankr. D.N.M. 2008), noted:

20 Once "cause" has been demonstrated, the Court must
21 convert or dismiss, unless the Court specifically
22 identifies "unusual circumstances . . . that establish
23 that such relief is not in the best interest of
24 creditors and the estate." 11 U.S.C. § 1112(b)(1).
25 However, absent unusual circumstances, the court must
26 not convert or dismiss a case if (1) there is a
27 reasonable likelihood that a plan will be confirmed
28 within a reasonable time, (2) the "cause" for dismissal
or conversion is something other than a continuing loss
or diminution of the estate coupled with a lack of
reasonable likelihood of rehabilitation; and (3) there
is reasonable justification or excuse for a debtor's act
or omission and the act or omission will be cured in a
reasonable time.

"Cause" for dismissal is not defined in the Code; instead,

1 the Code contains a non-exclusive list of examples of cause in
2 § 1112(b)(4). In re Marsch, 36 F.3d at 828. Among the reasons
3 listed providing an adequate basis for dismissal of a chapter 11
4 case are: "substantial or continuing loss to or diminution of the
5 estate and the absence of a reasonable likelihood of
6 rehabilitation", § 1112(b)(4)(A); and "failure timely to provide
7 information or attend meetings reasonably requested by the United
8 States trustee (or the bankruptcy administrator, if any)," §
9 § 1112(b)(4)(H). Fairly interpreting the comments and order of
10 the bankruptcy court, the record demonstrates these two causes for
11 dismissal were present in Serron's case.

12 Section 1112(b)(4)(A) "provides the bankruptcy court with the
13 requisite authority to terminate a chapter 11 case based on a
14 showing of unreasonable delay, or continuing losses coupled with
15 the absence of a reasonable likelihood of rehabilitation, or
16 inability to effectuate a plan of reorganization." United Sav.
17 Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd. (In re
18 Timbers of Inwood Forest Assocs., Ltd.), 808 F.2d 363, 371 (5th
19 Cir. 1987) (en banc), aff'd 484 U.S. 365 (1988); Sun Valley
20 Newspapers v. Sun World Corp. (In re Sun Valley Newspapers),
21 171 B.R. 71, 74 (9th Cir. BAP 1994) (citing Timbers of Inwood
22 Forest Assocs. for the proposition that there must be "a
23 reasonable possibility of a successful reorganization within a
24 reasonable time."). In connection with this statutory provision,
25 the bankruptcy court must "evaluate each debtor's viability and
26 rate of progress in light of the 'best interest of creditors and
27 the estate.'" Timbers of Inwood Forest Assocs., 808 F.2d at 372.

28 Section 1112(b)(4) is often invoked by bankruptcy courts when

1 a chapter 11 debtor's assets are swiftly being reduced. Here,
2 however, in one stroke, the bankruptcy court potentially reduced
3 the assets of Serron's bankruptcy estate available for
4 reorganization to zero. Allowing the major secured creditor to
5 foreclose on Serron's one and only significant asset constitutes a
6 classic cause for dismissal of a reorganization case. In re
7 Jer/Jameson Mezz Borrower II, LLC, 461 B.R. 293, 302 (Bankr. D.
8 Del. 2011) (where chapter 11 debtor is not operating and sole
9 asset is fully encumbered, dismissal under § 1112(b)(4) is
10 mandatory); see Kenneth N. Klee, One Size Fits All: Single Asset
11 Real Estate Bankruptcy Cases, 87 CORNELL L. REV. 1285, 1308
12 (September 2002) ("If . . . the mortgage holder gets relief from
13 the automatic stay and the right to foreclose on the property
14 . . . the Chapter 11 case is over. Although this might be good
15 news for the mortgage holder, it is bad news for the property
16 owner who loses the opportunity to reorganize.").

17 Under the facts of this case, the bankruptcy court did not
18 abuse its discretion when it found that, because it had granted
19 stay relief to Pacifica, Serron's ability to propose and confirm a
20 plan of reorganization was lost. Continuing the bankruptcy case
21 where there is no possibility of reorganization cannot be in the
22 best interest of the creditors.

23 The UST had, earlier in the bankruptcy case, moved for
24 dismissal because Serron had failed to comply with its duty to
25 file documents and reports about its operations. The UST has a
26 statutory duty and authority to require, monitor and seek court
27 enforcement of a chapter 11 debtor's compliance with the UST's
28 guidelines and reports. 28 U.S.C. § 586(a)(3)(D). Although the

1 UST withdrew its motion when Serron complied with its demands, at
2 the hearing on September 22, 2011, the UST informed the bankruptcy
3 court that Serron again was in arrears on its obligations to
4 provide information. It is of no moment that there was no current
5 motion from the UST to dismiss the case. The Panel long ago
6 recognized that a bankruptcy court has the authority, sua sponte,
7 to dismiss a bankruptcy case for cause. Tennant v. Rojas (In re
8 Tennant), 318 B.R. 860, 869 (9th Cir. BAP 2004) ("Section 105(a)
9 makes 'crystal clear' the court's power to act sua sponte where no
10 party in interest or the United States trustee has filed a motion
11 to dismiss a bankruptcy case."); see also C-TC 9th Ave. P'ship v.
12 Norton Co. (In re C-TC 9th Ave. P'ship), 113 F.3d 1304, 1312 (2d
13 Cir. 1997) ("When the record is sufficiently well developed to
14 allow the bankruptcy court to draw the necessary inferences to
15 dismiss a Chapter 11 case for cause, the bankruptcy court may do
16 so."). Serron was offered an opportunity at the September 22,
17 2011 hearing to respond to the UST's allegation about its failure
18 to comply with reporting requirements, but did not challenge the
19 UST's assertion or request more time to comply. The bankruptcy
20 court could therefore properly conclude that, under
21 § 1112(b)(4)(H), cause also existed to dismiss the bankruptcy case
22 for Serron's failure to comply with the UST's information
23 requests.

24 In sum, Serron has not provided any argument or authority to
25 support its challenge to the bankruptcy court's order dismissing
26 the case. Moreover, the bankruptcy court's order is consistent
27 with the statutory provisions governing dismissals in chapter 11,
28 § 1112(b), and the court's findings and conclusions in this case

1 were not illogical, implausible, or without support in the
2 inferences that may be drawn from the facts in the record.

3 **CONCLUSION**

4 The bankruptcy court did not abuse its discretion in
5 dismissing Serron's chapter 11 bankruptcy case. We AFFIRM.

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