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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NOT FOR PUBLICATION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

In re:)	BAP No.	AZ-11-1444-JuPaD
)		
CHRISTINE E. SPRINGER,)	Bk. No.	09-15521
)		
Debtor.)		
)		
<hr/> CHRISTINE E. SPRINGER,)		
)		
Appellant.)	M E M O R A N D U M*	
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Submitted Without Oral Argument
February 24, 2012

Filed - March 9, 2012

Appeal from the United States Bankruptcy Court
for the District of Arizona

Honorable Randolph J. Haines, Bankruptcy Judge, Presiding

Appearances: Christine E. Springer appeared pro se.

Before: JURY, PAPPAS, and DUNN, Bankruptcy Judges.

Chapter 7¹ debtor, Christine E. Springer, appeals the
bankruptcy court's order denying her motion to reopen her case.

We AFFIRM.

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

1 **I. FACTS**

2 Debtor's motion to reopen her bankruptcy case related to
3 the alleged wrongful foreclosure of her condominium located in
4 Phoenix, Arizona, which occurred after she received her
5 chapter 7 discharge and her case closed. The facts leading up
6 to this appeal are as follows.

7 In 2007, debtor borrowed \$192,845 from Countrywide Bank FSB
8 ("Countrywide") to purchase her property. Two notes and deeds
9 of trust evidenced and secured the loan. Debtor fell into
10 default and her property was scheduled for sale at a nonjudicial
11 trustee's sale on July 9, 2009.

12 Three days before the sale, on July 6, 2009, debtor filed
13 her chapter 7 petition. Upon the filing of her petition, and on
14 the advice of her attorney, debtor moved out of the property.
15 Debtor listed the property in Schedule D and listed Bank of
16 America Corporation Home Loans Servicing ("BAC") as holding a
17 claim against the property in an amount over \$154,000. In her
18 Statement of Intention, debtor indicated that she surrendered
19 her real property and did not claim it as exempt. At no time
20 during debtor's case did BAC or any other entity seek relief
21 from stay to sell her property. The bankruptcy court granted
22 debtor a discharge on February 11, 2010 and on February 22,
23 2010, her case was closed.

24 After her discharge, in April 2010, BAC sent debtor a
25 letter indicating that her mortgage loan was assigned, sold or
26 transferred to Countrywide Home Loans, Inc. The letter
27 reflected that BAC was debtor's loan servicer.

28 On August 4, 2010, debtor filed a complaint about BAC with

1 the Arizona Attorney General's Office. Debtor's complaint was
2 that she contacted BAC to ask it to foreclose on her property,
3 which was still in her name. Although debtor was not living in
4 the property, her homeowners' association fees and other
5 expenses associated with the property continued to accrue.
6 Debtor complained that she got the "runaround" from different
7 departments within BAC.²

8 BAC responded to her complaint, stating that the
9 foreclosure sale on debtor's property was scheduled for
10 August 23, 2010. The letter further stated that debtor had
11 declined a loan modification offer on May 19, 2009. Rather than
12 a loan modification, debtor wanted to have the debt completely
13 forgiven, which BAC said was not an option. BAC also stated
14 that they offered debtor a deed in lieu of foreclosure to sign,
15 which debtor did not accept.

16 Debtor responded by writing directly to BAC. She claimed
17 no deed in lieu of foreclosure was ever offered to her. Debtor
18 maintained that her bankruptcy attorney attempted to negotiate
19 with Countrywide prior to her bankruptcy, but Countrywide would
20 not reduce the principal on the second mortgage. Debtor stated
21 that she had no intention of reaffirming the debt and that she
22 continued to receive monthly statements even though she was not
23 personally liable for the debt on her property. Debtor also
24 alleged that she was receiving phone calls from "debt
25 collectors." Finally, debtor stated that unless the loan

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27 ² Debtor's complaint to the Attorney General epitomizes her
28 frustration with BAC and the runaround she alleges she received
during her quest to have BAC foreclose on her property.

1 modification could provide for a \$15,000 note at 4.5% interest
2 for thirty years, she wanted BAC to foreclose on her property.

3 From what we can tell, the foreclosure sale scheduled in
4 late August 2010 did not take place.

5 In September 2010, debtor's homeowners' association ("HOA")
6 sent her a letter for past due amounts on her association fees,
7 which totaled \$6,783.77. The letter further stated that the HOA
8 would commence collection against her unless she brought her
9 dues current.

10 On December 26, 2010, since the property was vacant and
11 falling into disrepair, and faced with a lawsuit by the HOA,
12 debtor moved back into the property.

13 By February 2011 debtor was still receiving information
14 from BAC about modifying her loan. In addition BAC continued
15 sending debtor notices about her account. The notice stated
16 that it was "For Information Purposes" and acknowledged that
17 because debtor had received her discharge, she had no personal
18 obligation to repay her debt. The notice further stated that
19 "this communication is from a debt collector."

20 In June 2011, debtor alleges she learned through a real
21 estate agent that Mortgage Electronic Registration Systems, Inc.
22 ("MERS") had acquired her property in a nonjudicial foreclosure
23 sale on May 27, 2011. Debtor claimed that she had no notice of
24 this sale. Upon investigation, debtor learned that BAC had
25 never owned the loans on her property. Debtor contacted the
26 real estate agent to let her know that debtor would be filing a
27 lawsuit due to the problems she discovered. Later, the same
28 real estate agent, on behalf of BAC, offered debtor cash to move

1 out of the property.

2 On June 14, 2011, debtor filed a lawsuit against BAC, MERS
3 and others in the Maricopa County Superior Court. Debtor sought
4 to invalidate the trustee's sale, conducted by Recontrust, and
5 establish quiet title in her name. Debtor alleged that none of
6 the documents showed that the defendants had standing to claim
7 or sell her home.³ Debtor includes numerous documents in the
8 record to support her position.

9 On June 20, 2011, debtor moved for a temporary restraining
10 order in the state court. The state court scheduled a show
11 cause hearing for July 1, 2011. On June 29, 2011, the
12 defendants removed the lawsuit to the United States District
13 Court for the District of Arizona on diversity grounds. BAC
14 then moved to dismiss debtor's complaint. In a thirteen page
15 order, the district court found, among other things, that debtor
16 had waived all her claims concerning the trustee's sale under
17 Arizona law because she did not move for relief prior to the
18 sale taking place. In addition, the court addressed debtor's
19 claim that the communications she was receiving violated the
20 discharge injunction. The district court found that the
21 communications were for informational purposes only and thus
22 there was no violation of the discharge injunction pursuant to
23 the holding in Garske v. Arcadia Fin., Ltd. (In re Garske),
24 287 B.R. 537, 542 (9th Cir. BAP 2002). Relying on Bisch v.
25 United States (In re Bisch), 159 B.R. 546, 549 (9th Cir. BAP

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27
28 ³ Also on July 14, 2011, debtor filed a notice of lis pendens with the Maricopa County Recorder's office.

1 1993), the district court further found that, contrary to
2 debtor's belief, a secured creditor did not have to file a proof
3 of claim in order for it to enforce its lien. In the end, the
4 court dismissed debtor's complaint with prejudice by order filed
5 on September 13, 2011.

6 Prior to the dismissal of her district court case, on
7 July 19, 2011, debtor moved to reopen her bankruptcy case, but
8 did not pay the required fee. In her motion, debtor maintained
9 that the bankruptcy court was the only court that should or
10 could answer questions relating to the defendants' right to sell
11 her home because none of the defendants (1) moved for relief
12 from stay during her case or (2) preserved their right to the
13 property in the bankruptcy proceeding by filing a proof of
14 claim. In essence, debtor maintained that the defendants had no
15 claim to her property and that the bankruptcy court should quiet
16 title in her name. Our review of the docket shows that debtor
17 did not serve any of the defendants named in her district court
18 complaint with her motion to reopen.

19 On July 20, 2011, the bankruptcy court sent a notice to
20 debtor's bankruptcy attorney for nonpayment of the filing fee.
21 The notice stated that no further action would be taken on
22 debtor's motion to reopen until the filing fee was paid.
23 Debtor's attorney contacted debtor regarding the notice.
24 According to debtor, she called the clerk's office and was told
25 that no further action would be taken until she paid the fee.

26 On July 28, 2011, the bankruptcy court denied debtor's
27 motion on two grounds: first, her failure to pay the filing fee
28 and second, debtor's request did not reveal any asset that could

1 be administered for the benefit of her estate. This timely
2 appeal followed.⁴

3 On August 11, 2011, debtor paid the filing fee.

4 **II. JURISDICTION**

5 The bankruptcy court had jurisdiction to reopen the case
6 under 28 U.S.C. § 1334 and § 157(b)(2)(A). We have jurisdiction
7 under 28 U.S.C. § 158(a)(1) because we view the order on appeal
8 as final.

9 **III. ISSUE**

10 Whether the bankruptcy court abused its discretion by
11 denying debtor's motion to reopen her case.

12 **IV. STANDARDS OF REVIEW**

13 The bankruptcy court's decision whether or not to reopen a
14 bankruptcy case under § 350 is reviewed for an abuse of
15 discretion. Cisneros v. United States (In re Cisneros),
16 994 F.2d 1462, 1464-65 (9th Cir. 1993). We apply a two-part
17 test to determine whether the bankruptcy court abused its
18 discretion: (1) we review de novo whether the bankruptcy court
19 "identified the correct legal rule to apply to the relief
20 requested" and (2) if it did, whether the bankruptcy court's
21 application of the legal standard was illogical, implausible or
22 "without support in inferences that may be drawn from the facts
23 in the record." United States v. Hinkson, 585 F.3d 1247,
24 1261-63 (9th Cir. 2009) (en banc).

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26 ⁴ We observe that debtor's notice of appeal did not name any
27 appellees. Further, none of the defendants named in her district
28 court complaint, including BAC, were served with the notice of
appeal.

1 We may affirm on any ground supported by the record.
2 Stevens v. Nw. Nat'l Ins. Co. (In re Siriani), 967 F.2d 302, 304
3 (9th Cir. 1992).

4 V. DISCUSSION

5 Section 350(b) provides that a bankruptcy case "may be
6 reopened in the court in which such case was closed to
7 administer assets, to accord relief to the debtor, or for other
8 cause." Reopening a case generally involves "'only a narrow
9 range of issues: whether further administration appears to be
10 warranted; whether a trustee should be appointed; and whether
11 the circumstances of reopening necessitate payment of another
12 filing fee.'" Lopez v. Specialty Restaurants Corp. (In re
13 Lopez), 283 B.R. 22, 26 (9th Cir. BAP 2002) (quoting Menk v.
14 LaPaglia (In re Menk), 241 B.R. 896, 916-17 (9th Cir. BAP
15 1999)). In considering these narrow issues, the proper focus is
16 on the benefit to creditors. In re Lopez, 283 B.R. at 27. A
17 bankruptcy court may properly deny a motion to reopen where the
18 chance of any substantial recovery for creditors appears "'too
19 remote to make the effort worth the risk.'" Id.

20 Debtor's motion to reopen disclosed no asset that could be
21 administered for the benefit of her estate nor did it provide a
22 basis for according her relief. Instead, debtor's motion raised
23 numerous issues relating to the wrongful foreclosure of her
24 property, all of which were previously raised in her district
25 court complaint. That complaint was dismissed with prejudice,
26 and debtor states in her brief that she has appealed that order
27 to the Ninth Circuit. Consequently, we do not have jurisdiction
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1 over those issues in this appeal.⁵

2 The only remaining basis for reopening debtor's case would
3 be "for other cause." Debtor's motion alleged violations of the
4 discharge injunction and also alleged that the creditor holding
5 a lien on her property had waived its lien by not participating
6 in her case. The district court addressed these concerns in its
7 order. Moreover, Debtor misunderstands the treatment of secured
8 claims in a bankruptcy case vis-a-vis her discharge. A
9 lienholder's failure to file a secured proof of claim means only
10 that the lienholder will not receive a distribution from her
11 estate; it does not waive the lien. In re Bisch, 159 B.R. at
12 549. Therefore, although debtor's personal liability on the
13 note was discharged in her bankruptcy, the lien against her
14 property remained in force. Accordingly, her lien creditor
15 could enforce its lien against her property after debtor
16 received her discharge. See Johnson v. Home State Bank,
17 501 U.S. 78 (1991) ("[A] bankruptcy discharge extinguishes only
18 one mode of enforcing a claim - namely, an action against the
19 debtor in personam - while leaving intact another - namely, an
20 action against the debtor in rem.").

21
22 ⁵ Debtor requests us to review (1) whether Countrywide or
23 BAC could sell the property and collect on the promissory note
24 without proving they are the rightful owner of the note after the
25 closing of the bankruptcy case; (2) whether Countrywide or BAC
26 could sell debtor's home without giving her notice as required by
27 the foreclosure statutes of Arizona; (3) whether "appellees" have
28 violated the Fair Debt Collection Practices Act; and (4) whether
the sale can be set aside on grounds of lack of standing. Even
if we did have jurisdiction, debtor may be precluded from raising
these issues in the bankruptcy court. However, we need not make
that determination in light of the order on appeal.

1 Finally, debtor contends that the bankruptcy court abused
2 its discretion in denying her motion to reopen her case on the
3 grounds that she did not pay the filing fee. Debtor relies on
4 her pro se status and the clerk's office "confusion" over the
5 procedure for accepting debtor's pleadings. She states that
6 once she learned about the unpaid fee from her attorney, she
7 immediately called the court and was told that the court would
8 not act on her motion until the fee was paid. This advice was
9 incorrect since the court then denied the motion to reopen.
10 The record shows that debtor clearly had the means to pay the
11 fee because she eventually paid it, albeit after the court
12 issued its order. Under these circumstances, to the extent the
13 court erred in denying debtor's motion to reopen her case for
14 failing to pay the filing fee, we conclude that error was
15 harmless because we affirm the bankruptcy court's decision on
16 other grounds. See In re Siriani, 967 F.2d at 304 (the court
17 may affirm on any ground supported by the record).

18 **VI. CONCLUSION**

19 For the reasons stated, we AFFIRM.
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