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NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. AZ-12-1376-DPaKu
)
 JOHN LEE CHRISTAKIS,) Bk. No. 10-18167-GBN
)
 Debtor.)
 _____)
)
 JOHN LEE CHRISTAKIS,)
)
 Appellant,)
)
 v.) **M E M O R A N D U M**¹
)
 U.S. BANK, N.A.,)
)
 Appellee.)
 _____)

Argued and Submitted
at Tempe, Arizona on January 23, 2014

Filed - February 4, 2014

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

Honorable George B. Nielsen, Jr., Bankruptcy Judge, Presiding

Appearances: _____
 Appellant John Lee Christakis argued pro se;
 Michael D. Curran, Esq., of Jaynard Cronin
 Erickson Curran & Reiter, PLC, argued for
 appellee, U.S. Bank. N.A.

Before: DUNN, PAPPAS and KURTZ, 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 The pro se debtor, John Lee Christakis, entered into a
2 stipulation with the appellee, U.S. Bank, N.A. ("U.S. Bank"), to
3 value certain residential real property located in Mesa, Arizona
4 ("Mesa Property") for purposes of chapter 11² plan confirmation.
5 The stipulation provided that, for purposes of chapter 11 plan
6 confirmation and chapter 11 plan treatment, the Mesa Property had
7 a value of \$37,500 ("stipulated value") as of the chapter 11
8 plan's effective date. The stipulation further provided that
9 U.S. Bank had a secured claim in the amount of \$37,500, and an
10 unsecured claim for the balance of its proof of claim in excess
11 of its secured claim.

12 The debtor filed a disclosure statement which noted that he
13 and U.S. Bank had agreed to the stipulated value. Shortly after
14 the bankruptcy court approved the disclosure statement, U.S. Bank
15 filed a motion for an election under § 1111(b), seeking to have
16 its claim treated as fully secured for purposes of the chapter 11
17 plan. Under its interpretation of the stipulation, the
18 bankruptcy court found that U.S. Bank did not intend to waive its
19 right to make an election under § 1111(b).

20 On appeal, the debtor contests the bankruptcy court's
21 interpretation of the stipulation. We DISMISS this appeal as
22 moot because: 1) the debtor and U.S. Bank later entered into a
23 second stipulation that supersedes the first stipulation, and
24

25
26 ² Unless otherwise indicated, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
28 all "Rule" references are to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9037. The Federal Rules of Civil Procedure
are referred to as "Civil Rules."

1 2) the plan has been substantially consummated and a final decree
2 has been entered.

3
4 **FACTS**³

5 Four years before he filed his chapter 11 bankruptcy
6 petition on June 10, 2010, the debtor purchased the Mesa
7 Property. The debtor funded the purchase of the Mesa Property
8 through a loan with U.S. Bank's predecessor in interest.⁴ The
9 loan was secured by the Mesa Property with a trust deed.

10 On his Schedule A, he listed the value of the Mesa Property
11 at \$50,000. But on his Schedule D, he claimed the value of the
12 Mesa Property was "unknown."

13 On September 17, 2010, U.S. Bank filed a proof of claim in
14 the amount of \$127,305.90, all of which was secured by the Mesa
15 Property. The debtor did not object to the proof of claim.

16
17
18 ³ Neither the debtor nor U.S. Bank provided us with a number
19 of documents relevant to this appeal. We therefore obtained
20 access to and took judicial notice of these documents from the
21 bankruptcy court's electronic docket. See O'Rourke v. Seaboard
22 Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d 955, 957-58 (9th
23 Cir. 1988); Atwood v. Chase Manhattan Mortg. Co. (In re Atwood),
24 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

25 ⁴ According to U.S. Bank, Corstar Financial, Inc. was the
26 original lender. Appellee's Opening Brief at 2. The trust deed
27 was specially indorsed to Bank of America, N.A. ("Bank of
28 America"), as trustee successor by merger to LaSalle Bank, N.A.
("LaSalle Bank"). Id. U.S. Bank later acquired the trust deed
from Bank of America. Id.

Although Bank of America had participated in the debtor's
chapter 11 bankruptcy case before U.S. Bank acquired the trust
deed, we attribute to U.S. Bank all actions taken by Bank of
America.

1 Three months later, the debtor filed a motion to determine
2 the value of the Mesa Property ("Mesa Property Valuation Motion")
3 "for the purposes of completing his Chapter 11 Plan." He
4 contended that the Mesa Property had a value of \$38,000.
5 U.S. Bank opposed the Mesa Property Valuation Motion, arguing
6 that the Mesa Property had a value of \$55,700.

7 The debtor and U.S. Bank eventually entered into a
8 stipulation ("First Stipulation"), agreeing to value the Mesa
9 Property at \$37,500 ("stipulated value"). The debtor filed the
10 First Stipulation with the bankruptcy court on November 29, 2011.
11 Both the debtor and counsel for U.S. Bank signed the First
12 Stipulation.

13 The First Stipulation contained the following relevant
14 provisions:

- 15 3. For purposes of confirmation and plan treatment,
16 the parties agree that the value of the [Mesa
17 Property], as of the effective date of
18 confirmation, shall be set at \$37,500. In
19 addition to its secured claim of \$37,500, [U.S.
20 Bank] shall have an unsecured claim for the
21 balance of its Proof of Claim in excess of its
22 secured claim.
- 23 4. This Stipulation, which shall be subject to
24 Bankruptcy Court approval, shall be incorporated
25 into Debtors' [sic] confirmed Chapter 11 Plan and
26 may not be altered in any way by subsequently
27 amending it and/or by filing an Amended Chapter 11
28 Plan or an Amended Disclosure Statement, unless
agreed [to] by the [p]arties in writing.

23 The bankruptcy court entered an order approving the First
24 Stipulation ("First Stipulation Order") on December 21, 2011.
25 The First Stipulation Order simply provided:

26 The parties having agreed to the terms set forth in the
27 [First Stipulation], at docket #365, are bound, subject
28 to the confirmation of [the] debtor's Chapter 11 Plan,
by the terms of their stipulation which shall be the
Order of this Court.

1 Two months following the entry of the First Stipulation
2 Order, the debtor submitted a disclosure statement. In the
3 disclosure statement, he described the Mesa Property as follows:

4 The Debtor owns a single-family residence located [in
5 Mesa, Arizona]. The Debtor and Bank of America have
6 stipulated to a property value of \$37,500. [The] Debtor
7 believes that [U.S. Bank] owns the loan and lien held
8 against the property and is the creditor and Chase Bank
9 is the loan servicer. [U.S. Bank] filed a secured proof
of claim in the amount of \$127,305.90. When possible
costs of sale are factored in, the Debtor does not
believe that any equity exists in the property for the
benefit of the estate.

10 U.S. Bank did not object to the disclosure statement. The
11 bankruptcy court entered an order approving the disclosure
12 statement on March 27, 2012.

13 Two days later, U.S. Bank filed a motion under § 1111(b)
14 ("Section 1111(b) Motion"), seeking to have its claim treated as
15 fully secured for purposes of the debtor's chapter 11 plan.
16 U.S. Bank acknowledged that it filed the Section 1111(b) Motion
17 untimely. U.S. Bank explained that it tried to file the
18 Section 1111(b) Motion on February 16, 2012, but it improperly
19 submitted the Section 1111(b) Motion due to an electronic filing
20 error. U.S. Bank requested that the bankruptcy court allow the
21 Section 1111(b) Motion using its equitable powers under § 105.
22 Alternatively, U.S. Bank asked that its untimely filing of the
23 Section 1111(b) Motion be deemed excusable neglect under Civil
24 Rule 60(b)(1).

25 The bankruptcy court agreed that U.S. Bank "did not timely
26 make that [§ 1111(b)] election." Tr. of June 4, 2012 hr'g,
27 13:3-4. However, it decided to "utilize excusable neglect [under
28 Civil Rule 60(b)] to disregard the fact that [U.S. Bank] didn't

1 timely file the [Section 1111(b) Motion] like it should have."
2 Tr. of June 4, 2012 hr'g, 14:2-4. The bankruptcy court based its
3 determination on the belief that "there's, very frankly, little
4 to suggest that the few extra days in filing the [Section 1111(b)
5 Motion] would be - would be prejudicial [to the debtor]." Tr. of
6 June 4, 2012 hr'g, 13:21-23. It also believed that U.S. Bank did
7 not act in bad faith in filing the Section 1111(b) Motion
8 untimely. Tr. of June 4, 2012 hr'g, 13:25, 14:1.

9 On appeal, the debtor does not raise any issue as to the
10 timeliness of the Section 1111(b) Motion, and accordingly, any
11 such issue on appeal is waived. Sanchez v. Pac. Powder Co.,
12 147 F.3d 1097, 1100 (9th Cir. 1998) ("Ordinarily, a party's
13 failure to raise an issue in the opening brief constitutes a
14 waiver of that issue."). We therefore do not address it further.

15 U.S. Bank explained that it made the § 1111(b) election
16 because it believed that, under the disclosure statement, the
17 debtor intended to reduce its secured claim to the stipulated
18 value. It contended that the First Stipulation only operated as
19 a motion under § 506(a) because it focused on the Mesa Property's
20 value. It pointed out that the parties did not agree to any
21 other necessary terms, such as the interest rate or the term of a
22 modified loan, in the First Stipulation.

23 U.S. Bank further claimed that the First Stipulation did not
24 explicitly bar its right to make a § 1111(b) election. U.S. Bank
25 argued that the parties entered into the First Stipulation
26 because it was necessary to determine the Mesa Property's value
27 before they could negotiate the treatment of U.S. Bank's claim
28 under the debtor's chapter 11 plan.

1 The debtor responded that U.S. Bank was bound by the terms
2 of the First Stipulation for purposes of chapter 11 plan
3 confirmation and chapter 11 plan treatment.

4 Meanwhile, on April 2, 2012, the debtor filed his chapter 11
5 plan. Under the chapter 11 plan, he placed U.S. Bank and two
6 other secured creditors, OneWest Bank, FSB and HSBC Bank, into
7 Class 3. The Class 3 creditors each held liens secured by
8 different real properties.

9 With respect to U.S. Bank, the debtor characterized its
10 claim as disputed. He proposed that U.S. Bank's secured claim be
11 considered an allowed secured claim at \$37,500, to be
12 re-amortized with a variable interest rate. The debtor then
13 proposed that the unsecured portion of U.S. Bank's claim
14 (i.e., the amount beyond the stipulated value) be treated as an
15 unsecured claim.

16 U.S. Bank objected to confirmation of the debtor's
17 chapter 11 plan ("Initial Plan Objection"). It argued that if
18 its Section 1111(b) Motion were approved, it would be entitled to
19 a fully secured claim in the amount stated in its proof of claim.
20 U.S. Bank again stressed that it was not objecting to the
21 stipulated value but rather was asserting its right to make an
22 election under § 1111(b). It also argued that the debtor's
23 chapter 11 plan did not provide adequate means for its
24 implementation, did not provide an appropriate interest rate, was
25 not feasible and violated the absolute priority rule.

26 The debtor responded by again asserting that U.S. Bank was
27 bound by the terms of the First Stipulation. He further
28 contended that U.S. Bank was barred from making a § 1111(b)

1 election because the other members of Class 3 did not move to
2 make the same election. Because Class 3 had not elected
3 § 1111(b) treatment by two-thirds in amount and more than half in
4 number, U.S. Bank failed to meet the criteria necessary for a
5 § 1111(b) election.

6 On June 4, 2012, the bankruptcy court held a hearing on
7 confirmation of the chapter 11 plan ("Plan Confirmation
8 Hearing"). At the Plan Confirmation Hearing, U.S. Bank argued
9 for the first time, that the chapter 11 plan violated § 1122(a)
10 in that it improperly placed secured creditors with unrelated
11 claims into one class. Specifically, U.S. Bank claimed that the
12 debtor had grouped into Class 3 three different creditors with
13 secured claims against three different real properties.

14 The bankruptcy court addressed both the Section 1111(b)
15 Motion and the Initial Plan Objection at the Plan Confirmation
16 Hearing. With respect to the Section 1111(b) Motion, the
17 bankruptcy court advised the parties that it did not read the
18 First Stipulation as establishing only the Mesa Property's value.
19 Rather, it noted that "[t]here was also an important provision
20 [in the First Stipulation] that established the amount of
21 [U.S. Bank's] unsecured claim." Tr. of June 4, 2012 hr'g,
22 9:19-21. It mentioned that "[Section] 506 play[ed] no role in a
23 successful [§] 1111(b) election" Tr. of June 4, 2012
24 hr'g, 10:1-2.

25 Having questioned both the debtor and counsel for U.S. Bank,
26 the bankruptcy court determined that "the parties did not have
27 [§] 1111(b) in mind" when they entered into the First
28 Stipulation. Tr. of June 4, 2012 hr'g, 14:15. The bankruptcy

1 court "[got] the impression [that] the parties, frankly, missed
2 this particular issue [of a §1111(b)] election . . . [given]
3 there's nothing in the stipulation that expressly waive[d] the
4 [§] 1111(b) election." Tr. of June 4, 2012 hr'g, 14:20-22.

5 However, it acknowledged that the First Stipulation was
6 problematic because it "expressly provid[ed] for an unsecured
7 claim for the balance [of U.S. Bank's claim]." Tr. of June 4,
8 2012 hr'g, 14:7-8. The bankruptcy court noted that U.S. Bank's
9 "proof of claim beyond \$37,500 would be totally irrelevant in an
10 1111(b) election." Tr. of June 4, 2012 hr'g, 14:8-10. It
11 confessed that "it's tempting to find that this was a waiver of
12 that provision," but it was uncomfortable coming to such a
13 determination as neither U.S. Bank nor the debtor considered
14 § 1111(b) when entering the First Stipulation. Tr. of June 4,
15 2012 hr'g, 14:10-11.

16 The bankruptcy court further expressed concern as to whether
17 the requisite majority of the creditor class made the § 1111(b)
18 election. It wondered "[i]f the [§ 1111(b)] election is not made
19 by the class as a whole, then [would] the nonelection bind[] all
20 class members[?]" Tr. of June 4, 2012 hr'g, 15:24-25, 16:1.

21 In the end, the bankruptcy court denied U.S. Bank's
22 Section 1111(b) Motion and overruled its Initial Plan Objection.
23 However, it informed the parties that its decision would "be
24 subject to reconsideration." Tr. of June 4, 2012 hr'g, 16:11.
25 It told U.S. Bank that

26 if [it could] be convinced that class composition is
27 wrong and is in violation of Section 1122 and that
28 there are grounds to allow that objection at this point
to confirmation of the plan, then - then that would
destroy the argument that the class can elect not to

1 elect.

2 Tr. of June 4, 2012 hr'g, 15-21. The bankruptcy court continued
3 the Plan Confirmation Hearing to June 15, 2012 ("Continued Plan
4 Confirmation Hearing").

5 U.S. Bank filed an amended objection to confirmation
6 ("Amended Plan Objection"), repeating all of its arguments in the
7 Initial Plan Objection. But U.S. Bank added an argument that the
8 debtor's chapter 11 plan violated § 1122(a) by placing U.S. Bank
9 in a class composed of secured creditors with substantially
10 dissimilar claims.

11 On June 13, 2012, the debtor filed a response titled,
12 "Emergency Response to Creditor's Amended Objection to
13 Confirmation of Chapter 11 Plan of Reorganization, and/or, in the
14 Alternative, Motion to Reconsider the Reversing of the Court's
15 Order at Docket Entry #369 [i.e., Stipulated Order]" ("Emergency
16 Response")(docket no. 433). He alleged that U.S. Bank was trying
17 to "reverse" the Stipulated Order, even though he and U.S. Bank
18 had agreed to cram down its claim.

19 The debtor included in the Emergency Response copies of
20 checks representing payments made pursuant to the First
21 Stipulation. He also provided copies of email communications
22 between himself and counsel for U.S. Bank in support of his
23 argument. In an email communication dated January 21, 2011,
24 counsel for U.S. Bank had stated in relevant part:

25 As for the treatment of the crammed-down claim, our
26 client will request an interest rate of 6.0% amortized
27 over a term of 30 years, with payments to begin
28 March 1, 2011. If you agree to this treatment, our
office will prepare a stipulation for your review and
execution. In addition to outlining the terms of the
loan, the stipulation will also include default

1 provisions and a provision stating that [U.S. Bank]
2 accepts your Plan.

3 In another email communication dated September 26, 2011, counsel
4 for U.S. Bank had asked that the debtor

5 insert a provision that states, "In addition to its
6 secured claim of \$37,500, Creditor shall have an
7 unsecured claim for the balance of its claim in excess
8 of its secured claim."

9 The debtor contended that, contrary to U.S. Bank's argument
10 on § 1122(a), claims secured by different real properties could
11 be placed in the same class. He relied on two out-of-circuit
12 bankruptcy decisions, In re Palisades-on-the-Desplaines, 89 F.2d
13 214 (7th Cir. 1937), and In re Sullivan, 26 B.R. 677 (Bankr.
14 W.D.N.Y. 1982), in support of his argument. According to the
15 debtor, these two cases established an exception to § 1122(a).
16 Under Palisades-on-the-Desplaines and Sullivan, a chapter 11 plan
17 may group secured creditors with dissimilar claims in the same
18 class as long as the different real properties "are in the same
19 location, purchased at approximately the same time, and thus
20 worth roughly the same amount."

21 He pointed out that in his chapter 11 plan, the three
22 creditors in Class 3 had real properties that bore the following
23 similarities: 1) they were secured by senior trust deeds; 2) the
24 debt owed is evidenced by a promissory note; 3) they were located
25 in Arizona; 4) they were all single-family residences; 5) they
26 were purchased by the debtor at approximately the same time;
27 6) the debts on the real properties matured at the same time; and
28 7) the remedy for each creditor on the promissory note was the
same.

Notably, although the debtor stated in the Emergency

1 Response's caption that the Emergency Response alternatively was
2 a "motion to reconsider the reversing of the [First Stipulation
3 Order]," the debtor did not specify any order or ruling by the
4 bankruptcy court reversing the First Stipulation Order. The
5 debtor simply alleged that U.S. Bank was attempting to overturn
6 the First Stipulation and the First Stipulation Order.

7 At the Continued Plan Confirmation Hearing, the bankruptcy
8 court emphasized that it approved the First Stipulation and that
9 the First Stipulation bound the debtor and U.S. Bank. But it
10 informed the debtor that it "[did not] read [the First
11 Stipulation] the same way [he] did." Tr. of June 15, 2012 hr'g,
12 6:22-23.

13 The bankruptcy court told the debtor and U.S. Bank that it
14 doubt[ed] that you . . . thought about 1111(b)
15 elections when you negotiated that stipulation
16 [But] it wasn't clear to [the court] that what was
17 intended was some type of bar to the later ability
18 [A]n unsecured claim we know would be mooted
19 out if somebody makes an 1111(b) election. But that is
20 such a - an important weapon in the arsenal of a
21 secured creditor, the election, that [it] wasn't
22 comfortable in agreeing that the general language of
23 the parties [sic] stipulation covered a waiver of the
24 1111(b) election. And another indication of that is
25 the creditor apparently didn't read the stipulation
26 that way either, because the creditor sure went forward
27 thereafter and made the [§ 1111(b)] election.

28 Tr. of June 15, 2012 hr'g, 6:4-19.

29 The debtor asked the bankruptcy court to issue a ruling on
30 the Amended Plan Objection in the event that U.S. Bank decided to
31 appeal. The bankruptcy court reminded him it had given him a
32 30-day extension to file a notice of appeal. It then continued
33 the hearing once more to July 16, 2012 ("Second Continued Plan
34 Confirmation Hearing"). The bankruptcy court did not make any

1 other determination nor issue any ruling or order on the debtor's
2 Emergency Response.

3 Two weeks before the Second Continued Plan Confirmation
4 Hearing, the debtor submitted a second amended chapter 11 plan
5 ("Second Amended Plan"). The Second Amended Plan proposed to
6 place each secured creditor in its own separate class; it placed
7 U.S. Bank into Class 7. It provided that the debtor and
8 U.S. Bank were "working to reach a stipulation for treatment of
9 the Claim under the creditor's 1111(b) election." If they agreed
10 on treatment of U.S. Bank's claim, "then the terms of the
11 stipulation shall control the treatment of the Claim in the
12 Chapter 11 Plan." Moreover, if the debtor and U.S. Bank
13 "stipulate[d] for treatment under creditor's [§] 1111(b)
14 election, then the stipulation shall be specifically incorporated
15 herein, and, to the extent there are any inconsistencies between
16 the terms of the stipulation and the terms of the Plan, the terms
17 of the stipulation control."

18 The Second Amended Plan noted that the debtor was appealing
19 the bankruptcy court's decision "reversing . . . [its] Order
20 binding the parties to the stipulation and/or the Court's re-
21 interpretation of the words of the stipulation." It described
22 the bankruptcy court's decision as one "determining that the
23 stipulation . . . was only a valuation of the property and was
24 not an agreement to treat the property as having a principle
25 [sic] balance due of \$37,500."

26 It further explained that if the debtor did not prevail on
27 appeal, U.S. Bank's claim would be treated under its § 1111(b)
28 election. But if the debtor prevailed on appeal, then

1 U.S. Bank's claim, "as to the value and the principle [sic] loan
2 balance," would be treated pursuant to the First Stipulation's
3 terms.

4 On July 12, 2012, four days before the Second Continued Plan
5 Confirmation Hearing, the debtor and U.S. Bank filed a
6 stipulation ("Second Stipulation"). Both the debtor and
7 U.S. Bank signed the Second Stipulation. The bankruptcy court
8 entered an order ("Second Stipulation Order") approving the
9 Second Stipulation on July 16, 2012.

10 Under the Second Stipulation, U.S. Bank had a fully secured
11 claim to be paid over 360 months. The Second Stipulation did not
12 state the amount of U.S. Bank's claim. Instead, it set forth the
13 terms of payment on the claim: \$134.12 for the first 120 months
14 then \$530.45 for the remaining 240 months, for payments totaling
15 \$143,403.60. It provided that U.S. Bank's claim would be placed
16 in a separate class from other secured creditors in the
17 chapter 11 plan.

18 The Second Stipulation also provided that its
19 terms may not be modified, altered, or changed by the
20 Plan, any confirmation order thereon, any subsequently
21 filed Amended Chapter 11 Plan of Reorganization and
22 confirmation order thereon without the express written
23 consent of the [sic] U.S. Bank. The terms of this
24 Stipulation shall be incorporated into the Plan and/or
25 any subsequently filed Amended Chapter 11 Plan of
26 Reorganization.

27 The debtor neither sought reconsideration of the Second
28 Stipulation and the Second Stipulation Order nor appealed them.
The bankruptcy court entered an order confirming the debtor's
chapter 11 plan on July 20, 2012.

Shortly before the Second Continued Plan Confirmation

1 Hearing, the debtor filed a motion titled, "Emergency Request for
2 a Ruling on Debtor's Motion to Reconsider the Reversing
3 [Interpretation] of the Court's Order at Docket Entry #369"
4 ("Emergency Request"). In the Emergency Request, the debtor
5 asked the bankruptcy court to issue a ruling on the Emergency
6 Response. Specifically, he asked that the bankruptcy court rule
7 on his earlier "motion to reconsider the reversing of the court's
8 [First Stipulation Order]."

9 At the Second Continued Plan Confirmation Hearing, the
10 bankruptcy court asked the debtor if the Emergency Request was a
11 motion for reconsideration. The debtor explained that in the
12 Emergency Response, he had sought reconsideration of the
13 bankruptcy court's interpretation of the First Stipulation. He
14 merely was seeking confirmation of the bankruptcy court's denial
15 of the "request for reconsideration" made in the Emergency
16 Response. The debtor informed the bankruptcy court that the
17 Emergency Request simply was "a request for the ruling." Tr. of
18 July 16, 2012 hr'g, 2:8-9. He pointed out that U.S. Bank had not
19 submitted a proposed order on the Emergency Response.

20 The bankruptcy court granted the debtor's request to deny
21 the Emergency Response. It confirmed that he "could believe that
22 the motion to reconsider [i.e., the Emergency Response] was
23 denied." Tr. of July 16, 2012 hr'g, 3:10-11. No formal order
24 was forthcoming on the debtor's Emergency Response, however.

25 Consequently, on October 1, 2012, the debtor filed a
26 document titled, "Emergency Notice of Uploading an Order Denying
27 Debtor's Motion to Reconsider the Reversing/Interpretation of the
28 Court's Order at Docket Entry #369, or in the Alternative, Motion

1 for an Order Denying Debtor's Motion to Reconsider the
2 Reversing/Interpretation of the Court's Order at Docket Entry
3 #369 and Motion for an Accelerated Hearing" ("Request for
4 Emergency Response Order"). He asked that the bankruptcy court
5 enter an order on the Emergency Response. He also sought an
6 expedited hearing on the matter.

7 The bankruptcy court held a hearing on the Request for
8 Emergency Response Order on October 10, 2012 ("Request for
9 Emergency Response Order Hearing"). At the Request for Emergency
10 Response Order Hearing, the bankruptcy court repeated its
11 determination on the Section 1111(b) Motion. It also read into
12 the record portions of the transcripts of the Continued Plan
13 Confirmation Hearing and the Second Continued Plan Confirmation
14 Hearing.

15 The bankruptcy court again confirmed that it had denied the
16 debtor's request for reconsideration made in the Emergency
17 Response. It notified the debtor that it would sign the proposed
18 order he earlier had lodged with the bankruptcy court. The
19 bankruptcy court entered this order ("Emergency Response
20 Order")(docket no. 490) on October 11, 2012.

21 On October 18, 2012, the debtor moved for entry of a final
22 decree ("Final Decree Motion")(docket no. 492), as the Second
23 Amended Plan was "substantially consummated." He reported that
24 he would make monthly payments to secured creditors pursuant to
25 the Second Amended Plan, beginning on January 3, 2013.

26 He advised the bankruptcy court that he would seek to reopen
27 the bankruptcy case sometime in September 2013 to obtain entry of
28 a discharge once he completed payments on general unsecured

1 claims. To date, the debtor has not moved to reopen his
2 chapter 11 case. On November 16, 2012, the bankruptcy court
3 entered an order (docket no. 498) issuing the final decree and
4 closing the debtor's chapter 11 case.

5 The debtor appealed the Emergency Response Order.
6

7 JURISDICTION

8 We cannot review an appeal if the underlying subject matter
9 of the appeal is moot. Motor Vehicles Cas. Co. v. Thorpe
10 Insulation Co. (In re Thorpe Insulation Co.), 677 F.3d 869,
11 879-80 (9th Cir. 2012). Several circumstances have occurred in
12 the debtor's chapter 11 case that raise the issue of mootness.
13 Neither the debtor nor U.S. Bank have raised this issue, however.
14 We nonetheless have an independent duty to determine sua sponte
15 whether an appeal is moot. Demery v. Arpaio, 378 F.3d 1020, 1025
16 (9th Cir. 2004); United States v. Golden Valley Elec. Ass'n,
17 689 F.3d 1108, 1111 (9th Cir. 2012). We consider the issue of
18 mootness de novo. Demery, 378 F.3d at 1025; Golden Valley Elec.
19 Ass'n, 689 F.3d at 1111.

20 As a federal tribunal, our jurisdiction is limited to actual
21 cases and controversies. Thorpe Insulation Co., 677 F.3d at 880;
22 Golden Valley Elec. Ass'n, 689 F.3d at 1112. A matter is moot
23 only if it is impossible for the appellate court to grant the
24 prevailing party any effective or meaningful relief. Thorpe
25 Insulation Co., 677 F.3d at 880; Golden Valley Elec. Ass'n,
26 689 F.3d at 1111. A matter is not moot so long as the parties
27 have a concrete interest, however small, in the outcome of the
28 litigation. Golden Valley Elec. Ass'n, 689 F.3d at 1112 (quoting

1 Knox v. Serv. Employees Int'l Union, 132 S.Ct. 2277, 2287 (2012)
2 (quotation marks omitted)). If the matter becomes moot while
3 pending on appeal, we must dismiss the appeal. I.R.S. v.
4 Pattullo (In re Pattullo), 271 F.3d 898, 900 (9th Cir. 2001).

5 Admittedly, we have had difficulty in sorting out the
6 factual record with regard to what the debtor is attempting to
7 appeal. In short, the record in this appeal is a confusing
8 muddle, and both parties and the bankruptcy court must share
9 responsibility for the resulting confusion. Based on our review
10 of the record and the debtor's briefs, we conclude that he
11 essentially is contesting the bankruptcy court's interpretation
12 of the First Stipulation.

13 As we recounted above, in his Emergency Response, the debtor
14 moved for reconsideration of the bankruptcy court's
15 interpretation of the First Stipulation. We thus focus on the
16 Emergency Response Order, which sets forth the bankruptcy court's
17 ruling on the debtor's motion for reconsideration.

18 The debtor claims that the bankruptcy court erred in
19 interpreting the First Stipulation to allow U.S. Bank to use
20 § 1111(b) to "back out" of its agreement to cramdown its secured
21 claim. Although we sympathize with the debtor, we cannot grant
22 him any effective relief for the following reasons.

23 First, the plan has been substantially consummated, and a
24 final decree has been entered. The debtor himself reported in
25 his Final Decree Motion that he would make monthly plan payments
26 to his secured creditors starting sometime in January 2013.
27 Presumably, the debtor has begun making payments to his secured
28 creditors (otherwise, he would risk default). Also presumably,

1 these payments to secured creditors included payments to
2 U.S. Bank in the amounts specified in the Second Stipulation. By
3 making payments to the secured creditors, including U.S. Bank,
4 the debtor has effectively submitted to U.S. Bank's assertion as
5 to its secured claim amount.

6 Second, the debtor and U.S. Bank entered into the Second
7 Stipulation which supplants the First Stipulation.⁵ The Second
8 Stipulation characterized U.S. Bank's claim as fully secured.
9 Although it did not list the amount of U.S. Bank's fully secured
10 claim, the Second Stipulation set forth payment terms; the
11 payments to be made under the chapter 11 plan totaled
12 \$143,403.60, far in excess of what would be paid to U.S. Bank on
13 its secured claim under the First Stipulation.

14 Moreover, the Second Stipulation expressly provided that its
15 terms were to be incorporated into the chapter 11 plan. It also
16 prohibited altering the terms of the Second Stipulation without
17 U.S. Bank's written consent. The debtor has not indicated that
18 he has obtained U.S. Bank's written consent to change the Second
19 Stipulation's terms concerning payment of U.S. Bank's secured
20 claim.

21 Because we cannot grant any effectual or meaningful relief
22 to the debtor, we determine that the debtor's appeal of the
23 Emergency Response Order is moot.

24 _____
25 ⁵ U.S. Bank earlier tried to dismiss the appeal on several
26 grounds, including the ground that the parties had entered into
27 the Second Stipulation. It failed to raise the issue of
28 mootness, however, when it argued for dismissal on this ground.
The Motions Panel denied U.S. Bank's motion to dismiss the
appeal.

CONCLUSION

For the foregoing reasons, we DISMISS this appeal as moot.

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