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NOT FOR PUBLICATION

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. AK-13-1157-JuKuPa
)
 GEORGE ELLIOTT DOCKWEILER,) Bk. No. 12-00694
)
 Debtor.)
)
 _____)
 DONALD RAY GASKIN)
)
 Appellant,)
)
 v.) M E M O R A N D U M *
)
 WILLIAM M. BARSTOW, III,)
 TRUSTEE; UNITED STATES)
 TRUSTEE; GEORGE ELLIOTT)
 DOCKWEILER,)
)
 Appellees.)
 _____)

Argued and Submitted on March 20, 2014
at Pasadena, California

Filed - March 28, 2014

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

Honorable Herbert A. Ross, Bankruptcy Judge, Presiding

Appearances: Appellant Donald Ray Gaskin argued pro se; Harold
 Francis Cahill, III argued for appellee George
 Elliot Dockweiler.

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

* 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 California judgment creditors Donald and Mary Joan Gaskin
2 (Gaskin)¹ appeal from the bankruptcy court's order denying their
3 application to sell real property in Alaska owned by chapter 7²
4 debtor, George Elliot Dockweiler.³ For the reasons stated
5 below, we conclude that the appeal is moot and therefore DISMISS
6 for lack of jurisdiction.

7 **I. FACTS**

8 In April 2006, Gaskin loaned \$50,000 to debtor. Debtor
9 evidently signed a promissory note which was allegedly secured
10 by a deed of trust on a twenty-acre parcel of land in Kern
11 County, California. The note bore interest at the rate of 14%,
12 compounded, and was due and payable in April 2008. The
13 documents evidencing the loan and security are not included in
14 the record on appeal. Debtor never repaid the loan.

15 Gaskin asserts that debtor fraudulently sold the Kern
16 County property in 2008 without disclosing Gaskin's lien and
17 pocketed \$120,000 in profit. Gaskin further alleges that around
18 the same time, debtor moved to Alaska, maintaining a dual-
19 residency status with California.

20 In June 2009, Gaskin filed a lawsuit against debtor in the
21

22 ¹ Although Mary Gaskin is also a judgment creditor, our use
23 of "Gaskin" refers to Donald since he filed the bulk of the
24 pleadings in the bankruptcy court.

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

³ The chapter 7 trustee, William Barstow, III, and the U.S.
Trustee have not participated in this appeal.

1 Los Angeles Superior Court, alleging causes of action for breach
2 of contract, bad faith and fraud. Gaskin obtained a judgment
3 against debtor by default in the amount of \$77,114.93 and
4 recorded the judgment as a lien against debtor's real property
5 located in Los Angeles County.⁴ At the time of this appeal,
6 Gaskin contends that debtor owes him more than \$140,000 on the
7 judgment.

8 At some point, debtor purchased real property in Port
9 Protection, Alaska, which he co-owned with his brother. They
10 used the property to operate a water and land touring company
11 called Port Protection Adventures LLC. Debtor also owned a
12 five-acre lot in Delta Junction, Alaska. Gaskin recorded the
13 California judgment in the Petersburg Recording District where
14 the Port Protection property was located on January 18, 2011.
15 As a result, Gaskin asserts a judgment lien against the Port
16 Protection property.

17 In a September 2012 letter from debtor to Gaskin, debtor
18 acknowledged Gaskin's judgment lien and gave him "once chance"
19 to settle the matter. Debtor proposed that Gaskin pay him an
20 additional \$10,000 and in exchange, debtor would transfer to
21 Gaskin his 50% share of the Port Protection property or Gaskin
22 could have debtor's brother buy him out. Debtor told Gaskin
23 that he did not live on the Port Protection property anymore,
24 did not get along with his brother, and would be filing a
25 chapter 7 bankruptcy in October. No settlement was reached.

27
28 ⁴ It is unclear what property debtor owned in California at
that time.

1 On November 21, 2013, debtor filed his chapter 7 petition.
2 William Barstow, III, was appointed the trustee. Debtor listed
3 Gaskin and his wife as unsecured creditors owed \$93,296 in
4 Schedule F. He also listed Gaskin and his wife as secured
5 creditors holding a judgment lien against his real property in
6 Port Protection in the amount of \$93,296 in Schedule D. Debtor
7 valued his one-half interest in the Port Protection property at
8 \$75,000. Finally, debtor listed Gaskin and his wife as secured
9 creditors holding a judgment lien against his real property in
10 Delta Junction in the amount of \$93,296. Debtor valued the
11 Delta Junction property at \$10,000. Debtor did not dispute
12 Gaskin's debt listed in his schedules.

13 Gaskin appeared and questioned debtor at the § 341(a)
14 meeting of creditors. He also sent a letter to the trustee
15 dated January 2, 2013, asserting that debtor's case should be
16 dismissed on the grounds that debtor had undisclosed or
17 under-reported assets.⁵ After investigating, the trustee
18 apparently concluded that any assets debtor owned had no
19 recoverable value for the estate. On January 4, 2013, the
20 trustee filed a report of no distribution and indicated his
21 intent to abandon the assets and close the case.

22 Shortly thereafter, Gaskin sought relief from the automatic
23 stay so that he could enforce his lien rights against debtor's
24 real property. The bankruptcy court granted the unopposed
25 motion on March 1, 2013.

27
28 ⁵ The letter did not ask the trustee to sell the Port
Protection property as Gaskin asserted at oral argument.

1 On March 11, 2012, Gaskin filed an application to sell
2 debtor's Port Protection property in order to satisfy his lien.
3 The next day, debtor received his \$ 727 discharge.

4 On March 13, 2013, the bankruptcy court denied Gaskin's
5 application to sell debtor's real property. In the order, the
6 bankruptcy court reasoned:

7 When the court lifted the stay on March 1, 2013, it
8 realized the stay was soon about to be lifted in any
9 event, when the debtor was granted a discharge, which
10 happened on March 12, 2013, and the case is closed,
11 which should happen almost immediately since the
12 trustee said there were no assets to liquidate.

13 Mr. Gaskin's application to sell is being denied
14 because it is not the function of bankruptcy court to
15 liquidate property which is being abandoned by the
16 trustee, solely to enforce the claim of a secured
17 creditor. This is now a private matter between
18 Mr. Gaskin and the debtor. Nor does the matter
19 currently involve the debtor's discharge (subject to
20 the comments in the following bullet point, cautioning
21 Mr. Gaskin about not violating the discharge
22 injunction).

23 Parenthetically, if Mr. Gaskin does not currently have
24 a valid judgment lien, he is probably barred from
25 asserting one at this time due to the discharge
26 injunction, which takes the place of the automatic
27 stay, post-discharge. I do not rule that his
28 purported judgment lien is (or, is not) defective. A
copy of the California judgment is attached to the
motion for relief from stay. It was recorded in the
Petersburg Recording District. AS 09.30.010
contemplates only the judgments of Alaskan or
federal courts can become judgment liens. It is
possible that Mr. Gaskin should have first
domesticated the California judgment under AS
09.30.200, et. seq. I am uncertain if Mr. Gaskin
properly domesticated the California judgment. If
not, it may now be too late to get a valid judgment
lien due to Mr. Dockweiler's bankruptcy discharge.

Two days later, on March 15, 2013, a Final Decree was
entered and the case closed.

On March 26, 2013, Gaskin filed an application for
appellate review in which he sought review of the bankruptcy

1 court's order denying his application to sell debtor's real
2 property. On April 1, 2013, the bankruptcy court entered an
3 order treating Gaskin's March 26, 2013 application as a notice
4 of appeal. Therefore, Gaskin's appeal of the order was timely.⁶

5 **II. JURISDICTION**

6 The bankruptcy court had jurisdiction over this proceeding
7 under 28 U.S.C. §§ 1334 and 157(b)(2)(A). We address our
8 jurisdiction under 28 U.S.C. § 158 below.

9 **III. ISSUES**

10 Is this appeal moot? If not, did the bankruptcy court err
11 in denying Gaskin's application to sell debtor's real property?

12 **IV. STANDARDS OF REVIEW**

13 We lack jurisdiction to hear moot appeals. I.R.S. v.
14 Pattullo (In re Pattullo), 271 F.3d 898, 901 (9th Cir. 2001).
15 If an appeal becomes moot while it is pending before us, we must
16 dismiss it. Id.

17 The bankruptcy court's findings of fact are reviewed under
18 the clearly erroneous standard, and its conclusions of law are
19 reviewed de novo. Ragsdale v. Haller, 780 F.2d 794, 795 (9th
20 Cir. 1986).

21 **V. DISCUSSION**

22 **A. The Limited Scope Of Our Review**

23 Gaskin's March 26, 2013 application for appellate review,
24 which was treated as a notice of appeal, refers only to the
25 bankruptcy court's March 13, 2013 order denying his application

26
27 ⁶ On June 19, 2013, the Clerk's office issued an Order Re
28 Mootness and Oral Argument which requested the parties to address
the issue of mootness in their briefs.

1 to sell debtor's real property. Yet, Gaskin's opening appeal
2 brief suggests that he is now seeking appellate review of
3 numerous other issues; he also raises arguments not addressed to
4 the bankruptcy court in the first instance.⁷ He further seeks
5 new relief beyond the sale order. For example, Gaskin requests
6 that we remand the case to the bankruptcy court, reopen the
7 bankruptcy case, and revoke debtor's discharge. This relief has
8 nothing to do with the court's denial of Gaskin's application to
9 sell debtor's real property to satisfy his asserted lien.

10 The scope of our review is limited to the issues directly
11 on appeal and other issues either "inextricably intertwined"
12 with the issues on appeal or those issues essential to
13 resolution of the order on appeal. See Swint v. Chambers Cnty.
14 Comm'n, 514 U.S. 35, 45 (1995). Here, the sole issue on appeal
15 is whether the bankruptcy court's denial of the application to
16 sell real property was in error. In turn, the closing of
17 debtor's bankruptcy case and simultaneous abandonment of
18 debtor's real property under § 554(c) raises a mootness issue.
19 Gaskin's claims regarding the trustee's alleged negligence and
20 debtor's alleged fraud⁸ are neither "inextricably intertwined"

22 ⁷ Based on Gaskin's pro se status, we liberally construe
23 his pleadings and other documents. See Nilsen v. Nielson
24 (In re Cedar Funding, Inc.), 419 B.R. 807, 816 (9th Cir. BAP
2009).

25 ⁸ The bankruptcy court sent a notice to creditors that the
26 last day to file a complaint objecting to debtor's discharge
27 under §§ 523 or 727 was February 25, 2013. Although Gaskin was
28 served with the notice, at no time did Gaskin file a
nondischargeability complaint against debtor, or an objection to
debtor's discharge.

1 with the issues on appeal nor essential to resolution of the
2 order on appeal. Likewise, whether his California judgment is
3 entitled to full faith and credit in Alaska or was properly
4 domesticated are issues not before us. Accordingly, we do not
5 address or consider many of Gaskin's arguments in this
6 memorandum.

7 **B. The Appeal is Moot**

8 The United States Supreme Court has instructed that a case
9 becomes moot when it is "impossible for the court to grant 'any
10 effectual relief whatever' to a prevailing party." Church of
11 Scientology of Cal. v. United States, 506 U.S. 9, 12 (1992); see
12 also Felton Pilate v. Burrell (In re Burrell), 415 F.3d 994, 998
13 (9th Cir. 2005) ("The test for mootness of an appeal is whether
14 the appellate court can give the appellant any effective relief
15 in the event that it decide the matter on the merits in his
16 favor."). We conclude that, under these circumstances, we
17 cannot provide "any effectual relief whatever" to Gaskin even if
18 we were to decide the matter in his favor.

19 **1. Statutory Consequences of Closing**

20 Gaskin's appeal was rendered moot by the closing of the
21 case and the simultaneous technical abandonment of debtor's
22 property under § 554(c) by operation of law. On March 15, 2013,
23 two days after the bankruptcy court denied Gaskin's motion to
24 sell, the case closed. Relying on § 554(a), Gaskin complains
25 that he did not get notice or an opportunity to be heard before
26 the trustee abandoned debtor's real property. However, the
27 trustee in this case did not file a motion to abandon the
28 property under § 554(a), instead choosing simply to not

1 administer the asset and leaving the abandonment to occur at the
2 closing of the case under § 554(c). Upon closing, and in the
3 absence of a court order to the contrary, property of the estate
4 that was scheduled is abandoned to the debtor by operation of
5 law under § 554(c) and ceases to be property of the estate. See
6 Diamond Z Trailer, Inc. v. JZ L.L.C. (In re JZ L.L.C.), 371 B.R.
7 412, 418 (9th Cir. BAP 2007); see also Hopkins v. Idaho State
8 Univ. Credit Union (In re Herter), 456 B.R. 455, 467 (Bankr. D.
9 Idaho 2011) (“When a property is abandoned, it reverts to the
10 debtor as if no bankruptcy petition had been filed.”) (citing
11 Dewsnup v. Timm, 908 F.2d 588, 590 (10th Cir. 1990)). Even if
12 we were to reverse the bankruptcy court’s order, we are unable
13 to fashion any effective relief for Gaskin when the property is
14 no longer property of the estate and has reverted to debtor.

15 **2. There Is No Statutory Basis For The Sale**

16 Although Gaskin could seek to reopen the case, “[r]evoking
17 a technical abandonment requires more than a mere exercise of
18 the § 350(b) reopening power.” Menk v. LaPaglia (In re Menk),
19 241 B.R. 896, 913-14 (9th Cir. BAP 1999) (“Property that is
20 technically abandoned under § 554(c) is not automatically reeled
21 back [into the estate] by virtue of reopening.”). The standard
22 for relief from a technical abandonment is Civil Rule 60(b).⁹

24 ⁹ Civil Rule 60 is made applicable to bankruptcy cases by
25 incorporation through Rule 9024. Civil Rule 60(b) provides:

26 (b) Grounds for Relief from a Final Judgment, Order, or
27 Proceeding. On motion and just terms, the court may
28 relieve a party or its legal representative from a
final judgment, order, or proceeding for the following
continue...

1 Id. at 914.

2 Assuming that Gaskin could obtain relief from the technical
3 abandonment under Civil Rule 60(b) and the property brought
4 back into debtor's estate, Gaskin has pointed to no statutory
5 authority that would allow the bankruptcy court to order the
6 sale under these circumstances, nor could we find any. A
7 chapter 7 trustee may sell property under § 363,¹⁰ but such a
8 sale is generally for the benefit of unsecured creditors and not
9 for the benefit of secured creditors of the debtor.

10 In re Gallagher, 283 B.R. 342, 344 (Bankr. M.D. Fla. 2002);

11 In re Tobin, 202 B.R. 339, 340 (Bankr. D.R.I. 1996)

12 ("[A]dministration of assets by chapter 7 trustees, where the
13 property is clearly over-encumbered by valid liens, in no way

15 ⁹...continue
16 reasons:

- 17 (1) mistake, inadvertence, surprise, or
18 excusable neglect;
19 (2) newly discovered evidence that, with
20 reasonable diligence, could not have been
21 discovered in time to move for a new trial
22 under Rule 59(b);
23 (3) fraud (whether previously called
24 intrinsic or extrinsic), misrepresentation,
25 or misconduct by an opposing party;
26 (4) the judgment is void;
27 (5) the judgment has been satisfied, released
28 or discharged; it is based on an earlier
judgment that has been reversed or vacated;
or applying it prospectively is no longer
equitable; or
(6) any other reason that justifies relief.

¹⁰ Gaskin's motion requested the court to order the sale.
No statutory authority exists whereby a party, rather than the
case trustee, may request the court to sell the property.

1 comports with their obligation to enhance the estate for the
2 benefit of unsecured creditors and to expeditiously close the
3 estate.”). Moreover, when property has inconsequential value to
4 the estate, abandonment under § 554, rather than sale under
5 § 363, is the proper course. In re Ayer, 137 B.R. 397, 401
6 (Bankr. D. Mont. 1992) (“Numerous courts have recognized that
7 where the estate has no equity in a property, and the estate is
8 to be liquidated, abandonment will virtually always be
9 appropriate, because no unsecured creditor could benefit from
10 its administration.”) (citations omitted). Without statutory
11 authority to order the sale, we once again would not be able to
12 fashion effective relief for Gaskin even if we reversed the
13 bankruptcy court’s order and Gaskin were able to obtain relief
14 from the technical abandonment. Accordingly, this appeal is
15 moot.

16 **3. Gaskin Can Enforce Whatever Lien Rights He Has**

17 Our conclusion on mootness does not affect Gaskin’s alleged
18 lien or state law remedies. The automatic stay is not an
19 impediment to Gaskin’s efforts to enforce his judgment lien – to
20 the extent one exists against the real property – because the
21 stay terminated by operation of law under § 362(c)(2)(A) when
22 the case was closed (although Gaskin had already obtained relief
23 by court order). Moreover, Gaskin’s lien (again, to the extent
24 it exists) passed through debtor’s bankruptcy unaffected. See
25 Dewsnup v. Timm, 502 U.S. 410, 418 (1992). Simply put, the
26 bankruptcy court’s denial of his application for a sale did not
27 impair any substantive lien rights that Gaskin may have in the
28 property.

1 In sum, due to the abandonment of the property and
2 termination of the stay upon the closing of the case, Gaskin is
3 free to enforce any state law lien rights he may have against
4 the property (not the debtor)¹¹ as if the bankruptcy did not
5 exist. As the bankruptcy court recognized, the enforcement of
6 Gaskin's state law lien rights against debtor's property is now
7 a private matter between the parties.

8 **VI. CONCLUSION**

9 For the reasons stated, the appeal is moot. In this case,
10 we need not reach the merits and DISMISS for lack of
11 jurisdiction.

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25 ¹¹ To be clear, due to debtor's § 727 discharge, Gaskin
26 cannot hold debtor personally liable for the debt. In addition,
27 if for some reason Gaskin's California judgment lien was not
28 properly domesticated in Alaska and/or his lien found invalid for
other reasons, the discharge injunction under § 524 prevents
Gaskin from taking steps now to perfect his lien against debtor's
property.