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NOT FOR PUBLICATION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. EC-13-1378-JuTaKu
)	
KHAMLA SIHABOUTH and)	Bk. No. 10-52564
MANYSAY SIHABOUTH,)	
)	Adv. No. 13-02016
Debtors.)	
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KHAMLA SIHABOUTH;)	
MANYSAY SIHABOUTH,)	
)	
Appellants,)	
v.)	M E M O R A N D U M*
)	
THE BANK OF NEW YORK MELON,)	
)	
Appellee.)	
<hr/>		

Argued and Submitted on May 15, 2014
at Sacramento, California

Filed - July 2, 2014

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

Honorable Michael S. McManus, Bankruptcy Judge, Presiding

Appearances: Clark Dwayne Nicholas, Esq. argued for appellants
Khamla and Manysay Sihabouth; Bernard Kornberg,
Esq., of Severson & Werson, argued for appellee
The Bank of New York Mellon.

Before: JURY, TAYLOR, and KURTZ, 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 Chapter 13¹ debtors Khamla and Manysay Sihabouth appeal
2 from the bankruptcy court's order dismissing their adversary
3 proceeding in favor of appellee, the Bank of New York Mellon
4 (BONY). We AFFIRM.

5 **I. FACTS AND PROCEDURAL HISTORY**

6 Debtors obtained two loans from Decision One Mortgage
7 Company, LLC. The first loan for \$164,000 was secured by a
8 first deed of trust encumbering debtor's property on Blue View
9 Street in Redding, California. The deed of trust named Mortgage
10 Electronic Registration Systems, Inc. (MERS) as beneficiary,
11 solely as nominee for Decision One and its successors and
12 assigns. Decision One later assigned its interest in debtors'
13 loan and deed of trust to BONY, but debtors contend the
14 assignment was invalid. The other loan was for \$41,000 and was
15 secured by a second deed of trust against debtor's property on
16 Blue View. Decision One evidently assigned this loan to Saxon
17 Mortgage Services, Inc. Only the first loan is at issue in this
18 appeal.

19 **A. Debtors' Bankruptcy And Confirmation Of Their Plan**

20 Debtors filed their chapter 13 petition on December 13,
21 2010. In Schedule A, they listed their real property on Blue
22 View Street. In Schedule F, they listed the \$164,000 loan owed
23 to Decision One as unsecured and disputed. The claims bar date
24 was April 13, 2011.

25
26 ¹ Unless otherwise indicated, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.
28 "Rule" references are to the Federal Rules of Bankruptcy
Procedure and "Civil Rule" references are to the Federal Rules of
Civil Procedure.

1 Debtors' chapter 13 plan filed with their petition did not
2 mention or provide for BONY's secured claim. BONY objected to
3 confirmation of the plan on the grounds that it did not provide
4 for \$19,640.99 in arrearages owed to BONY, was infeasible, and
5 was not filed in good faith. Attached to the objection was a
6 copy of the note for the \$41,000 loan. On February 14, 2011,
7 the court denied confirmation of debtors' plan and a few days
8 later dismissed BONY's objection as moot.

9 Debtors filed a first amended plan (FAP) on February 21,
10 2011, which again did not provide for BONY's secured claim.
11 Regardless of whether BONY had a valid lien against debtors'
12 property, neither of debtors' plans provided for payment of
13 arrearages on the loan secured by the first deed of trust.
14 Moreover, at the hearing on this matter, debtors' counsel
15 acknowledged that they were not making any payments on the loan.
16 In connection with their FAP, debtors filed a motion to modify
17 their plan and have it confirmed. The chapter 13 trustee
18 objected to confirmation because the FAP did not provide for the
19 secured proof of claim (POC) filed by Saxon in the amount of
20 \$45,718.66. The trustee acknowledged that debtors had objected
21 to Saxon's POC and that the hearing on the objection was
22 scheduled for the same day as plan confirmation.

23 BONY objected to confirmation of the FAP on the same
24 grounds as its first objection. In the objection, BONY states:
25 "As set forth in Creditor's Proof of Claim, the pre-petition
26 arrears due total \$19,640.99," although BONY had not yet filed a
27 formal POC. Attached to the objection was the note related to
28 the \$41,000 loan and the adjustable rate note and deed of trust

1 relating to the \$164,000 loan.

2 On April 5, 2011, the day of the confirmation hearing, the
3 bankruptcy court issued a civil minute order in connection with
4 BONY's objection which stated: "The matter was improperly
5 calendared as a stand-alone objection to plan confirmation, and
6 is therefore dropped from calendar. The court will consider the
7 merits elsewhere on this calendar." At the confirmation hearing
8 the court continued the matter to September.

9 The bankruptcy court granted debtor's motion to modify and
10 confirmed their FAP on September 9, 2011. The court overruled
11 the trustee's objection on the ground that Saxon had voluntarily
12 withdrawn its POC on August 5, 2011. BONY's objection to plan
13 confirmation was never addressed.

14 Almost a year after confirmation, on September 4, 2012,
15 BONY, through its servicer Bank of America, N.A., filed a formal
16 POC. The POC listed the amount of the secured claim as
17 \$183,287.66 and showed arrearages of \$19,826.99. The POC
18 attached supporting documents including the note relating to the
19 \$164,000 loan, the deed of trust showing MERS as beneficiary,
20 and the assignment of deed of trust. The trustee objected to
21 the POC asserting that it was untimely. In response, BONY
22 argued that the POC was a timely amendment of its informal POC
23 that arose when it objected to confirmation of debtors' plans
24 prior to the bar date. The bankruptcy court agreed with BONY,
25 finding that its objections to confirmation of debtors' plan
26 constituted informal proofs of claim filed before the bar date
27 and thus the formal POC related back. The court thus overruled
28 the trustee's objection based on untimeliness.

1 Although they were not a party to trustee's objection,
2 debtors moved for reconsideration of the court's ruling. The
3 court denied the motion, finding that the issues raised by
4 debtors could be raised in an independent objection to the POC,
5 but could not be considered in the context of a motion for
6 reconsideration.

7 Debtors then filed an objection to the claim alleging BONY
8 did not have standing to enforce the note, the assignment was
9 invalid, and that BONY's objections to confirmation of debtors'
10 plan should not be considered as an informal POC. Debtors
11 requested the court to disallow the claim. The bankruptcy court
12 issued a civil minute order denying the objection without
13 prejudice. In its findings of fact and conclusions of law
14 (FFCL), the court observed that the confirmed plan revested
15 debtors' home in debtors and thus it was no longer property of
16 the bankruptcy estate. Because BONY's claim was not being paid
17 by the plan and the security for the claim was no longer
18 property of the bankruptcy estate, the bankruptcy court
19 concluded that if there were some dispute regarding the validity
20 of the claim, it would have to be resolved in a nonbankruptcy
21 forum. The court entered the order overruling the objection
22 without prejudice on January 14, 2013.

23 **B. The Adversary Proceeding**

24 Four days before the bankruptcy court's ruling on debtors'
25 objection to BONY's POC, debtors filed an adversary complaint to
26 determine the nature and extent of BONY's lien and to object to
27 BONY's POC. Debtors' complaint essentially alleged that BONY
28 lacked standing to enforce the note or deed of trust because it

1 offered no proof of its ownership of the debt.

2 BONY moved to dismiss the complaint for failure to state a
3 claim or, alternatively, requested the bankruptcy court to
4 abstain as the complaint raised only state law claims. BONY
5 requested that the bankruptcy court take judicial notice of,
6 among other things, the docket report for debtors' chapter 13
7 case, its POC, and the docket report for debtors' adversary
8 proceeding.

9 After hearing, the bankruptcy court issued civil minutes
10 setting forth its reasoning. In its ruling, the court
11 considered its post-confirmation jurisdiction under the "close
12 nexus" test set forth in Montana v. Goldin (In re Pegasus Gold
13 Corp.), 394 F.3d 1189, 1193 (9th Cir. 2005). In applying the
14 standards set forth in that case, the bankruptcy court found no
15 "close nexus" between the claims asserted in the adversary
16 proceeding and the plan or bankruptcy proceeding for essentially
17 the same reasons that it had denied debtors' objection to BONY's
18 POC. Accordingly, the court concluded it did not have
19 post-confirmation subject matter jurisdiction over the complaint
20 challenging BONY's interest in the note and its collateral. The
21 court also found it did not have subject matter jurisdiction
22 when upon confirmation, all estate property, including the
23 property purportedly securing the promissory note, revested in
24 debtors. See 28 U.S.C. § 1334; Black v. United States Postal
25 Serv. (In re Heath), 115 F.3d 521, 524 (9th Cir. 1997)
26 (bankruptcy court is without jurisdiction to control disposition
27 of chapter 13 debtor's property that is not property of the
28 bankruptcy estate unless the property is related to the

1 bankruptcy proceedings of the Code); see also Cal. Franchise Tax
2 Bd. v. Jones (In re Jones), 420, 506, 514-15 (9th Cir. 2009)
3 (confirmation of chapter 13 plan changes estate property to
4 property of the debtor unless the plan or confirmation order
5 specifically states otherwise). The bankruptcy court entered
6 the order dismissing the adversary proceeding on July 24, 2013.
7 This appeal followed.

8 **II. JURISDICTION**

9 As discussed below, the bankruptcy court did not have
10 subject matter jurisdiction over debtors' adversary proceeding
11 under 28 U.S.C. § 1334. However, we have jurisdiction to review
12 the court's dismissal order under 28 U.S.C. § 158.

13 **III. ISSUE**

14 Whether the bankruptcy court erred by dismissing debtors'
15 adversary proceeding for lack of subject matter jurisdiction.²

16 **IV. STANDARDS OF REVIEW**

17 We review de novo questions of subject matter jurisdiction.
18 In re Pegasus Gold Corp., 394 F.3d at 1193; Davis v. Courington
19 (In re Davis), 177 B.R. 907, 910 (9th Cir. BAP 1995) (dismissal
20 of a complaint for lack of subject matter jurisdiction).

21 We also review de novo dismissal of a complaint for failure
22 to state a claim under Civil Rule 12(b)(6). Ta Chong Bank Ltd.
23 v. Hitachi High Techs. Am., Inc., 610 F.3d 1063, 1066 (9th Cir.

24
25 ² The orders upholding BONY's POC as an amendment to a
26 timely filed informal POC were not referenced in debtors' notice
27 of appeal. Whether the bankruptcy court erred in ruling that
28 BONY's objections to confirmation of debtors' plan constituted an
informal POC is not properly before us and, therefore, we do not
address debtors' arguments on this issue.

1 2010).

2 **V. DISCUSSION**

3 **A. Standards Applicable to Motions to Dismiss**

4 In considering a motion to dismiss for failure to state a
5 claim under Civil Rule 12(b)(6), incorporated by Rule 7012, the
6 court generally accepts as true the allegations in the
7 complaint, construes the pleading in the light most favorable to
8 the party opposing the motion, and resolves all doubts in the
9 pleader's favor. Lazy Y Ranch Ltd. v. Behrens, 546 F.3d 580,
10 588 (9th Cir. 2008). "On a motion to dismiss . . ., a court may
11 take judicial notice of facts outside the pleadings." Mack v.
12 S. Bay Beer Distrib., Inc., 798 F.2d 1279, 1282 (9th Cir. 1986).

13 "Consideration of a motion for abstention³ is akin to a
14 motion to dismiss for lack of subject matter jurisdiction [under
15 Civil Rule 12(b)(1)], in which the court may review affidavits
16 and other evidence to resolve factual disputes concerning its
17 jurisdiction to hear the action." DeLoreto v. Ment, 944 F.Supp.
18 1023, 1028-29 (D. Conn. 1996); see also McCarthy v. United
19 States, 850 F.2d 558, 560 (9th Cir. 1988). The burden of
20 establishing subject matter jurisdiction rests on the party
21 asserting that the court has jurisdiction. McNutt v. GM
22 Acceptance Corp., 298 U.S. 178, 182-83 (1936); Luckett v. Bure,
23 290 F.3d 493, 497 (2d Cir. 2002).

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25
26 ³ "Abstention can exist only where there is a parallel
27 proceeding in state court." Sec. Farms v. Int'l Bhd. of
28 Teamsters, Chauffers, Warehousemen & Helpers, 124 F.3d 999, 1009
(9th Cir. 1997). Here, there was no state court action pending.

1 **B. Overview of the Bankruptcy Court's Jurisdiction**

2 Because subject matter jurisdiction goes to the power of
3 the court to hear a case, it is a threshold issue and may be
4 raised at any time and by any party. See Civil Rule 12(b)(1),
5 incorporated by Rule 7012. Even if the parties do not address
6 the question of subject matter jurisdiction, bankruptcy courts
7 still have a duty to satisfy jurisdictional questions. United
8 Investors Life Ins. Co. v. Waddell & Reed Inc., 360 F.3d 960,
9 967 (9th Cir. 2004) ([bankruptcy] court's duty to establish
10 subject matter jurisdiction is not contingent upon the parties'
11 arguments).

12 The bankruptcy court's subject matter jurisdiction is
13 defined by statute. Under 28 U.S.C. § 1334(b), a bankruptcy
14 court has jurisdiction over "all civil proceedings arising under
15 title 11, or arising in or related to cases under title 11."
16 "Arising under title 11" describes those proceedings that
17 involve a cause of action created or determined by a statutory
18 provision in the bankruptcy code. Harris v. Wittman (In re
19 Harris), 590 F.3d 730, 737 (9th Cir. 2009). "Proceedings
20 'arising in' a bankruptcy are generally referred to as 'core'
21 proceedings, and essentially are proceedings that would not
22 exist outside of bankruptcy. . . ." In re Pegasus Gold Corp.,
23 394 F.3d at 1193.

24 The bankruptcy court also has jurisdiction over "those
25 proceedings that are 'related to' a bankruptcy case." Id.
26 Under the Pacor test, a bankruptcy court has "related to"
27 jurisdiction over a matter if:

28 the outcome of the proceeding could conceivably have

1 any effect on the estate being administered in
2 bankruptcy. Thus, the proceeding need not necessarily
3 be against the debtor or against the debtor's
4 property. An action is related to bankruptcy if the
5 outcome could alter the debtor's rights, liabilities,
options, or freedom of action (either positively or
negatively) and which in any way impacts upon the
handling and administration of the bankrupt estate.

6 Fietz v. Great W. Savings (In re Fietz), 852 F.2d 455, 457 (9th
7 Cir. 1988) (citing Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d
8 Cir. 1984). The United States Supreme Court endorsed Pacor's
9 conceivability standard with the caveats that "related to"
10 jurisdiction "cannot be limitless," and that the critical
11 component of the Pacor test is that "bankruptcy courts have no
12 jurisdiction over proceedings that have no effect on the estate
13 of the debtor." Celotex Corp. v. Edwards, 514 U.S. 300, 308 &
14 n.6 (1995).

15 Since Fietz, the Ninth Circuit decided that the bankruptcy
16 court's post-confirmation "related to" jurisdiction is not as
17 broad as the Pacor standards. In re Pegasus Gold Corp.,
18 394 F.3d at 1194. Instead, the court adopted the "close nexus"
19 test for "related to" post-confirmation jurisdiction because
20 that test more closely aligned with the limited nature of
21 post-confirmation jurisdiction and, at the same time, retained a
22 certain flexibility. Under the "close nexus" test, the
23 essential inquiry is whether "there is a close nexus to the
24 bankruptcy plan or proceeding sufficient to uphold bankruptcy
25 jurisdiction over the matter." Id. "[M]atters affecting 'the
26 interpretation, implementation, consummation, execution, or
27 administration of the confirmed plan will typically have the
28 requisite close nexus.'" Id.

1 The Ninth Circuit later warned against any mechanical
2 application of the test, noting that “[t]he Pegasus Gold ‘close
3 nexus’ test requires particularized consideration of the facts
4 and posture of each case, as the test contemplates a broad set
5 of sufficient conditions and ‘retains a certain flexibility.’”
6 Wilshire Courtyard v. Cal. Franchise Tax Bd. (In re Wilshire
7 Courtyard), 729 F.3d 1279, 1289 (9th Cir. 2013). “Such a test
8 can only be properly applied by looking at the whole picture.”
9 Id. Bankruptcy courts have applied the “close nexus” test to
10 post-confirmation matters in the context of chapter 13. See
11 Uber v. Nelnet, Inc. (In re Uber), 443 B.R. 500, 507 (Bankr.
12 S.D. Ohio 2011); In re Janssen, 396 B.R. 624, 632-33 (Bankr.
13 E.D. Pa. 2008).

14 Finally, besides defining the bankruptcy court’s
15 jurisdiction over civil proceedings, 28 U.S.C. § 1334 further
16 expands bankruptcy jurisdiction by granting exclusive
17 jurisdiction “of all the property, wherever located, of the
18 debtor as of the commencement of such case, and of property of
19 the estate” in subsection (e)(1). The bankruptcy court’s
20 jurisdiction over property, however, is temporal. When property
21 is no longer “property of the estate” the court’s jurisdiction
22 ends. Gardner v. United States (In re Gardner), 913 F.2d 1515,
23 1518 (10th Cir. 1990).

24 [T]here are two dimensions on which to assess ‘related
25 to’ jurisdiction: substantive and temporal. A matter
26 may be unrelated to a bankruptcy estate because it
27 substantively has no impact on that estate, or it may
28 be unrelated because the estate does not exist
anymore. Either way, if a given dispute is unrelated
to a bankruptcy estate, a bankruptcy court . . . has
no subject-matter jurisdiction over that dispute.

1 United States v. Fleet Nat'l Bank (In re Calore Express Co.,
2 Inc.), 288 B.R. 167, 169-70 (D. Mass. 2002).

3 **C. Analysis**

4 There is no doubt that the allegations in debtors'
5 adversary complaint are intertwined with the claims allowance
6 and disallowance process. Generally, bankruptcy courts have
7 jurisdiction over the allowance or disallowance of claims
8 against the estate under 28 U.S.C. § 1334(b) because such
9 matters are core proceedings under 28 U.S.C. § 157(b) (1) (B).
10 However, the jurisdictional analysis shifts where, as here,
11 debtors initiated the civil proceeding after confirmation of
12 their bankruptcy plan.

13 The bankruptcy court did not have jurisdiction over the
14 claim-objection adversary proceeding under 28 U.S.C. §§ 157(b)
15 or (c) (establishing core and non-core bankruptcy court
16 jurisdiction) because debtors' challenge to BONY's ownership of
17 the debt came after confirmation of their FAP. At that point,
18 pursuant to the terms of their confirmed plan, the real property
19 allegedly subject to BONY's lien revested in debtors. The
20 bankruptcy court's exclusive jurisdiction over a debtor's
21 property under 28 U.S.C. § 1334(e) (1) is for a limited period of
22 time – until confirmation and the property vests in the debtor.
23 See § 1327(b) ("Except as otherwise provided in the [chapter 13]
24 plan or the order confirming the plan, the confirmation of a
25 plan vests all of the property of the estate in the debtor.").
26 Therefore, unless the plan provides otherwise, upon
27 confirmation, all property of the estate reverts in the debtor
28 and the estate is terminated. In re Jones, 420 B.R. 506 (9th

1 Cir. BAP 2009), aff'd, 657 F.3d 921 (9th Cir. 2011). Because
2 debtors elected to have the property revest, BONY's claim was
3 not against the bankruptcy estate, and thus the claim-objection
4 adversary proceeding did not involve a right created by
5 bankruptcy law or arising only in bankruptcy.

6 "Related to" jurisdiction also does not exist for
7 essentially the same reasons. At the time debtors objected to
8 BONY's POC there was no longer a plan to be confirmed, the
9 underlying property subject to BONY's alleged lien was not
10 property of the estate, and BONY's lien passed through the
11 bankruptcy unaffected. Therefore, whether or not the bankruptcy
12 court allowed or disallowed BONY's POC based on the claims
13 asserted in the adversary, the outcome could not conceivably
14 have had an affect on debtors' estate. In short, there was no
15 administrative bankruptcy purpose to be served by adjudicating
16 the claims.

17 Debtors fare no better upon application of the "close
18 nexus" test. The state law claims raised in debtors' adversary
19 proceeding did not involve matters affecting the interpretation,
20 implementation, consummation, execution, or administration of
21 debtors' confirmed plan because debtors did not "provide for"
22 BONY's claim in their confirmed FAP. Contrary to debtors'
23 assertion, their attempt to turn BONY's secured claim into an
24 unsecured claim by scheduling it as unsecured and disputed was
25 ineffective. Merely scheduling the claim as unsecured did not
26 avoid or in any way impact BONY's lien. See Schnall v.
27 Fitzgerald (In re Schnall), 2012 WL 1888144, at *5 (9th Cir. BAP
28 2012). Therefore, BONY's secured claim was not "provided for"

1 in debtors' FAP along with the other unsecured claims as debtors
2 contend.

3 If a debtor's plan does not provide for a secured
4 creditor's lien, the creditor may look to the lien for
5 satisfaction of the debt, including arrearages. Brawders v.
6 Cnty. of Ventura (In re Brawders), 503 F.3d 856, 872 (9th Cir.
7 2007). Secured liens pass through bankruptcy unaffected,
8 regardless whether the creditor holding that lien ignores the
9 bankruptcy case, or files an unsecured claim when it meant to
10 file a secured claim, or files an untimely claim after the bar
11 date has passed. See Bisch v. United States (In re Bisch),
12 159 B.R. 546, 550 (9th Cir. BAP 1993) ("there is no duty on the
13 part of the secured party to object to the confirmation of the
14 [Chapter 13] plan, and failure to do so does not somehow
15 constitute a waiver of the party's secured claim"). Thus,
16 BONY's lien – to the extent it exists – survives the bankruptcy
17 discharge of debtors. Accordingly, debtors' adversary
18 proceeding cannot possibly affect the consummation of their FAP.
19 For all these reasons, the standards under the "close nexus"
20 have not been satisfied. In sum, debtors did not meet their
21 burden of establishing subject matter jurisdiction in the
22 bankruptcy court.

23 On appeal debtors expressed concern that the bankruptcy
24 court's ruling would have a preclusive effect on litigation over
25 the validity of BONY's secured claim in the state court. Based
26 on Ninth Circuit authority, generally "a claim is not barred by
27 res judicata [claim preclusion] if the forum in which the first
28 action was brought lacked subject matter jurisdiction to

1 adjudicate that claim.'" Clark v. Bear Stearns & Co., 966 F.2d
2 1318, 1320-21 (9th Cir. 1992). Indeed, the bankruptcy court
3 found that it lacked subject matter jurisdiction because no
4 bankruptcy purpose would be served by a ruling that either
5 allowed or disallowed BONY's POC.⁴

6 **VI. CONCLUSION**

7 For the reasons stated, we discern no error with the
8 dismissal order and AFFIRM.

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12 Concurring decision begins on next page.
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26 _____
27 ⁴ At oral argument, BONY's counsel conceded that the
28 bankruptcy court's dismissal order would have no preclusive
effect on litigation between the parties in the state court.

1 Taylor, Bankruptcy Judge, concurring:

2 I concur in the result reached by the Panel and also agree
3 with its § 1334 analysis. I write separately in order also to
4 evaluate whether ancillary jurisdiction existed as a result of
5 the bankruptcy court's orders overruling the Trustee's objection
6 to BONY's late filed claim (the "Relation Back Order") and
7 denying the Debtors' motion requesting reconsideration of that
8 order (the "Reconsideration Order"). As discussed below, I
9 conclude that it does not.

10 A bankruptcy court has "jurisdiction to interpret and
11 enforce its own prior orders." See Travelers Indem. Co. v.
12 Bailey, 557 U.S. 137, 151 (2009); see also Battle Ground Plaza,
13 LLC v. Ray (In re Ray), 624 F.3d 1124, 1130 (9th Cir. 2010)
14 (bankruptcy court has ancillary jurisdiction to vindicate its
15 authority and effectuate its decrees). Here, as a result of the
16 Relation Back Order, and as confirmed by the Reconsideration
17 Order, the bankruptcy court determined that BONY's late filed
18 claim ("Claim") was "deemed timely."

19 In Siegel v. Fed. Home Loan Mortgage Corp., 143 F. 3d 525
20 (9th Cir. 1998), the Ninth Circuit held that a proof of claim
21 can have claim preclusive effect where a proof of claim is
22 "deemed allowed." Deemed allowance occurs when a claim is
23 entitled to prima facie validity and in the absence of party in
24 interest objection. Id. at 530-31.

25 The Debtors' adversary proceeding complaint includes an
26 objection to the Claim. As the Debtors explain on appeal, they
27 initiated the adversary proceeding not only to obtain
28 substantive relief, but also to avoid any Siegel based claim

1 preclusive effect of the Relation Back Order. The adversary
2 proceeding, thus, could be deemed to request, albeit obliquely,
3 that the bankruptcy court interpret the Relation Back Order or
4 effectuate the Relation Back Order to the extent it opened the
5 door to an objection to the Claim, as it might if it otherwise
6 gave the Claim "deemed allowed" status.

7 Here, however, ancillary jurisdiction also fails. I
8 question whether the bankruptcy court had jurisdiction to enter
9 the Relation Back Order, but need not decide this question.¹ I
10 further question the applicability of Siegel based on the
11 procedural history and facts of this case, but similarly need
12 not make any determination in this regard.² Instead, I conclude
13 that the Relation Back Order, as clarified by the
14 Reconsideration Order, did not require interpretation or
15 additional action to effectuate its intent, vindicate its

17 ¹ Generally, a bankruptcy court has jurisdiction in a
18 chapter 13 case to consider a post-confirmation claim objection
19 and to make determinations regarding late filed claims. Here,
20 however, the § 1334 analysis, which clearly demonstrates a lack
21 of § 1334 jurisdiction over the Debtors' adversary proceeding,
22 also raises questions as to the bankruptcy court's jurisdiction
23 to enter the Relation Back Order. Jurisdictional issues may be
24 raised at any point in time and in front of any court. Attys.
25 Trust v. Videotape Computer Products, Inc., 93 F.3d 593, 595 (9th
26 Cir. 1996).

27 At the time of the claim objection that led to the Relation
28 Back Order, the bar date had passed and the Claim was untimely,
the Claim was filed as fully secured, the real property at issue
was no longer an asset of the chapter 13 estate, and the Debtors'
plan did not provide for the Claim in any respect.

² Siegel appears factually distinguishable in many respects.
Most significantly, it involved timely claims and a complete
failure of any attempt at objection.

1 directives, or in order to make clear that it is not entitled to
2 claim preclusive effect.

3 The bankruptcy court clearly stated that its Relation Back
4 Order was without prejudice to further consideration of the
5 merits of the Debtors' objection to the Claim. Thus, it decided
6 that the Claim was timely, but expressly left any decision on
7 the merits for another day and, as appropriately decided by the
8 bankruptcy court and the Panel, another court. Having reached
9 this conclusion I find no basis for ancillary jurisdiction.³

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³ Consistent with this view is the fact that BONY admitted
in argument before the Panel that claim preclusion was not
available based on the Relation Back Order.