

AUG 26 2014

NOT FOR PUBLICATION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

5	In re:	)	BAP No.	NC-13-1558-KuDJu
6	MARIA RIVERA BARRAGAN,	)	Bk. No.	None
7	Debtor.	)	Adv. No.	13-05143
8	_____	)		
9	MARIA RIVERA BARRAGAN,	)		
10	Appellant,	)		
11	v.	)	<b>MEMORANDUM*</b>	
12	PETER BRAZIL; COMINOS LAW	)		
13	OFFICE; MALIBU RECONVEYANCE;	)		
14	SIBONRY A. MONGE; LPS AGENCY	)		
15	SALES AND POSTING; JOSEFINA	)		
	MORALES; JUAN MORALES,	)		
	Appellees.	)		
	_____	)		

Argued and Submitted on July 24, 2014  
at San Francisco, California

Filed - August 26, 2014

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

Honorable Charles D. Novack, Bankruptcy Judge, Presiding

Appearances: Appellant Maria Rivera Barragan argued pro se.\*\*

Before: KURTZ, DUNN and JURY, 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.

\*\*While appellant named a number of parties as appellees herein, none of them filed a responsive brief or otherwise participated in this appeal.

1 **INTRODUCTION**

2 Chapter 13<sup>1</sup> debtor Maria Rivera Barragan appeals from an  
3 order dismissing her adversary proceeding against Juan Morales,  
4 Josefina Morales, and others. The bankruptcy court concluded  
5 that it lacked subject matter jurisdiction over the adversary  
6 proceeding because, at the time Barragan filed her complaint, the  
7 adversary proceeding did not arise in, arise under or relate to a  
8 bankruptcy case, as required under 28 U.S.C. § 1334(b). Barragan  
9 did not commence her chapter 13 bankruptcy case until several  
10 weeks after she filed her complaint.

11 Even though the bankruptcy court was aware of Barragan's  
12 newly-filed case at the time it ordered her adversary proceeding  
13 dismissed, the court was not obliged to sua sponte grant Barragan  
14 leave to file a supplemental complaint to cure the jurisdictional  
15 defect, especially when the court made it clear at the dismissal  
16 hearing and in its dismissal order that the dismissal was without  
17 prejudice to Barragan's claims and that Barragan was free to seek  
18 appropriate relief in her newly-filed bankruptcy case.

19 Accordingly, we AFFIRM.

20 **FACTS**

21 In 2006, Barragan purchased a residence from the Moraleses  
22 for \$650,000. Barragan's purchase of the residence was partly  
23 financed by the Moraleses providing Barragan with a loan secured  
24 by a junior deed of trust against the residence.

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25  
26 <sup>1</sup>Unless specified otherwise, 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. All "Civil Rule" references are to  
the Federal Rules of Civil Procedure.

1           Within roughly a year, Barragan refinanced her residence.  
2 To facilitate her refinancing, the Moraleses apparently agreed to  
3 temporarily release their junior lien against the residence until  
4 the refinancing was complete. In furtherance of this goal, the  
5 Moraleses executed a deed of reconveyance in favor of Barragan.

6           After Barragan completed her refinancing, she signed what  
7 she believed was a new deed of trust in favor of the Moraleses to  
8 secure the remaining loan balance owed to them in the amount of  
9 \$155,000. In reality, in 2007 she signed a grant deed in favor  
10 of the Moraleses. Barragan claims that the Moraleses  
11 intentionally tricked her into signing a grant deed instead of a  
12 deed of trust. According to Barragan, in 2008 she discovered the  
13 Moraleses' fraud and hence stopped making payments on the Morales  
14 loan.

15           In 2010, the Moraleses sued Barragan in the Monterey County  
16 Superior Court (Case No. M 105511). In their complaint, the  
17 Moraleses alleged that the mistake regarding Barragan's execution  
18 of the grant deed was inadvertent on the part of both parties but  
19 that Barragan still owed them roughly \$155,000 plus interest.  
20 They further alleged that this amount should be secured by a  
21 junior deed of trust against the residence. They requested,  
22 among other things, equitable reformation of the grant deed into  
23 a deed of trust to conform to the parties' actual agreement.

24           In August 2011, the state court entered a default judgment  
25 against Barragan effectively granting the Moraleses' request to  
26 reform the grant deed into a deed of trust securing the Morales  
27 loan in the amount of \$155,000. A new deed of trust was recorded  
28 in the Monterey County Recorder's Office on August 25, 2011.

1 Barragan appealed the August 2011 default judgment (Case  
2 No. H037387), but the California Court of Appeal, Sixth District,  
3 affirmed the judgment in an opinion issued in October 2012.<sup>2</sup>

4 For reasons that are not explained, the Moraleses apparently  
5 executed a quitclaim deed in September 2011 in favor of Barragan,  
6 which quitclaim deed was recorded in October 2011 in the Monterey  
7 County Recorder's Office. In her appeal brief to this Panel,  
8 Barragan asserts that the Moraleses were compelled to do so by  
9 court order, but she has not submitted a copy of that court  
10 order, nor did she even identify the court that entered this  
11 order. Presumably, the purpose of the quitclaim deed was to  
12 reverse the effect on title of the 2007 grant deed inadvertently  
13 executed by Barragan in favor of the Moraleses. We further  
14 presume, for background purposes only, that the October 2011  
15 quitclaim deed was not meant to affect the August 2011 deed of  
16 trust.

17 In November 2011, Barragan filed a complaint against the  
18 Moraleses and their counsel in the United States District Court  
19 for the Northern District of California (Case No. CV11-05463).  
20 In September 2012, the district court entered an order dismissing  
21 the case for lack of subject matter jurisdiction. Barragan  
22 appealed, but the Ninth Circuit disposed of Barragan's appeal by  
23 summary affirmance in December 2012.

24 In October 2013, Barragan filed an adversary complaint  
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26 <sup>2</sup>We have ascertained the status of Barragan's state court  
27 appeal by accessing the California Court of Appeal's electronic  
28 docket. We can and do take judicial notice of its contents. See  
Estate of Blue v. County of Los Angeles, 120 F.3d 982, 984 (9th  
Cir. 1997).

1 against the Moraleses and others in the United States Bankruptcy  
2 Court for the Northern District of California. Oddly, Barragan  
3 did not file a bankruptcy case before she commenced her adversary  
4 proceeding. Several days later, the bankruptcy court issued an  
5 order to show cause why the adversary proceeding should not be  
6 dismissed for lack of subject matter jurisdiction in light of the  
7 fact that Barragan had not filed a bankruptcy case and hence her  
8 adversary proceeding did not arise in, arise under or relate to  
9 any bankruptcy case. Plaintiff responded to the order to show  
10 cause, in part, by filing a chapter 13 bankruptcy case on  
11 October 28, 2013 (Case No. 13-55661).

12 At the hearing on the order to show cause, the bankruptcy  
13 court acknowledged Barragan's belated commencement of a  
14 bankruptcy case but in essence held that the commencement of the  
15 case did not, by itself, permit the bankruptcy court to exercise  
16 subject matter jurisdiction over the adversary proceeding. The  
17 bankruptcy court attempted several times during the hearing to  
18 convey to Barragan that a jurisdictional dismissal would not bar  
19 her from seeking the same relief by refile for such relief in  
20 her bankruptcy case. For example, the court stated at the  
21 hearing:

22 . . . Ms. Barragan, if you want to refile - now that  
23 you've filed a 13, and if you and your lawyer believe I  
24 have jurisdiction and the constitutional authority to  
25 enter a [final] judgment, then you should proceed. But  
26 I don't have jurisdiction over this case because it was  
27 filed before you filed any Chapter 13, and I'm not  
going to consider it. I'm not going to consider this -  
this litigation. And [you] should talk to [your  
bankruptcy counsel] about whether [you] should file and  
where [you] should file any other piece of litigation  
[you] may have.

28 Hr'g Tr. (November 5, 2013) at 5:17-6:1.

1 The bankruptcy court later on at the same hearing stated:

2 Okay. Then I'm dismissing this adversary proceeding  
3 for lack of jurisdiction as set forth in my order to  
4 show cause. And it's without prejudice for [you] . . .  
5 asserting these claims in an appropriate court.

6 \* \* \*

7 Now I'm not saying this Court isn't the appropriate  
8 court, but that is something [you] should discuss with  
9 [your bankruptcy counsel]. I'm not making any decision  
10 about where the case should be filed. That's between  
11 [your attorney and you]. Okay?

12 Hr'g Tr. (November 5, 2013) at 6:8-16.

13 The bankruptcy court entered an order on November 12, 2013,  
14 dismissing the adversary proceeding without prejudice for lack of  
15 jurisdiction. Barragan timely filed a notice of appeal on  
16 November 15, 2013.

#### 17 **JURISDICTION**

18 Subject to the mootness and standing discussions set forth  
19 below, we have jurisdiction over this appeal pursuant to  
20 28 U.S.C. § 158. We also discuss below the bankruptcy court's  
21 jurisdiction.

#### 22 **ISSUE**

23 Did the bankruptcy court err when it dismissed Barragan's  
24 adversary proceeding for lack of jurisdiction?

#### 25 **STANDARDS OF REVIEW**

26 We review jurisdictional issues de novo. See Wilshire  
27 Courtyard v. Cal. Franchise Tax Bd. (In re Wilshire Courtyard),  
28 729 F.3d 1279, 1284 (9th Cir. 2013). "The burden of establishing  
subject matter jurisdiction rests on the party asserting that the  
court has jurisdiction." Id.

1 **DISCUSSION**

2 We have an independent duty to consider sua sponte whether  
3 an appeal is moot. Pilate v. Burrell (In re Burrell), 415 F.3d  
4 994, 997 (9th Cir. 2005). An appeal is moot when it would be  
5 impossible for us to grant meaningful relief even if the  
6 appellant were to prevail. Id. at 998; I.R.S. v. Pattullo  
7 (In re Pattullo), 271 F.3d 898, 901 (9th Cir. 2001).

8 In this appeal, we question whether we could grant any  
9 meaningful relief because we do not understand why Barragan did  
10 not simply re-file her adversary proceeding in her bankruptcy  
11 case. While not directly on point, we have held that appeals  
12 from orders temporarily barring a debtor from re-filing a  
13 dismissed bankruptcy case become moot when the impediment to  
14 re-filing has terminated by its own terms. See, e.g., Tennant v.  
15 Rojas (In re Tennant), 318 B.R. 860, 867 (9th Cir. 2004);  
16 Fernandez v. GE Capital Mortg. Servs., Inc. (In re Fernandez),  
17 227 B.R. 174, 178 (9th Cir. BAP 1998). Such appeals become moot  
18 when the impediment no longer exists because the appellant-debtor  
19 no longer needs any relief from the appellate court to set aside  
20 the impediment.

21 Here, as best as we can tell, there was and is no huge  
22 impediment to Barragan re-filing her complaint. On the other  
23 hand, Barragan would be required to pay a new filing fee. The  
24 bankruptcy court's adversary proceeding docket indicates that  
25 Barragan paid a \$293 filing fee when she filed her complaint, and  
26 she would need to pay another \$293 fee if she were to re-file.  
27 If we were to reverse or vacate the bankruptcy court's  
28 jurisdictional dismissal, Barragan would be able to resume the

1 prosecution of her adversary proceeding without paying another  
2 \$293. While this is a slender reed on which to conclude that  
3 this appeal is not moot, our potential ability to save Barragan,  
4 a debtor in a bankruptcy case, \$293 constitutes "meaningful  
5 relief" for purposes of determining the mootness of this appeal.

6       Additionally, it is conceivable that, sometime after her  
7 adversary proceeding was dismissed, the limitation period may  
8 have run on one or more of the claims Barragan attempted to  
9 allege in her adversary proceeding. If we were to reverse or  
10 vacate the jurisdictional dismissal, the original adversary  
11 proceeding would be reinstated and any such time-barred claims  
12 would be preserved. While Barragan has not identified any  
13 potentially time-barred claims, Barragan does not bear the burden  
14 of proof to establish that her appeal is not moot. The burden  
15 regarding mootness is borne by the party (if any) advocating in  
16 favor of mootness. See Focus Media, Inc. v. Nat'l Broad. Co.  
17 Inc. (In re Focus Media, Inc.), 378 F.3d 916, 923 (9th Cir.  
18 2004).

19       Under these circumstances, this appeal is not moot.

20       For similar reasons, we also conclude that Barragan has  
21 standing to appeal. Bankruptcy appellate standing is a  
22 prudential standing doctrine requiring an appellant to  
23 demonstrate that he or she has been "directly and adversely  
24 affected pecuniarily" by the order on appeal. Palmdale Hills  
25 Prop., LLC v. Lehman Commercial Paper, Inc (In re Palmdale Hills  
26 Prop., LLC), 654 F.3d 868, 873 (9th Cir. 2011). To satisfy this  
27 requirement, Barragan needed to show that the order appealed  
28 diminished her property, increased her financial burdens, or



1 detrimentally affected her rights. Fondiller v. Robertson  
2 (In re Fondiller), 707 F.2d 441, 442 (9th Cir. 1983). The \$293  
3 fee that Barragan would need to pay to re-file and the potential  
4 that some of her claims might now be time-barred are sufficient  
5 to satisfy her appellate standing burden.

6 Having dispensed with the mootness and standing issues, we  
7 turn our attention to the issue of whether the bankruptcy court  
8 correctly determined that it lacked subject matter jurisdiction  
9 over the adversary proceeding.

10 It is beyond dispute that, in the absence of a bankruptcy  
11 case, the bankruptcy court lacked subject matter jurisdiction  
12 over Barragan's adversary proceeding. Bankruptcy court  
13 jurisdiction is created and circumscribed by statute. Under the  
14 relevant statutes, 28 U.S.C. § 1334(b) and 28 U.S.C. § 157(b)(1),  
15 bankruptcy court jurisdiction hinges on the existence of a case  
16 under Title 11 of the United States Code - more commonly known as  
17 the Bankruptcy Code. See generally In re Wilshire Courtyard,  
18 729 F.3d at 1284-85 ("Bankruptcy courts have subject matter  
19 jurisdiction over proceedings 'arising under title 11, or arising  
20 in or related to cases under title 11.'").

21 At the time Barragan filed her adversary complaint, she had  
22 not yet filed bankruptcy. Consequently, it is apparent here that  
23 the bankruptcy court lacked subject matter jurisdiction at that  
24 time.

25 However, within a few weeks of her commencement of the  
26 adversary proceeding and before the bankruptcy court dismissed  
27 her adversary proceeding, Barragan did file a chapter 13  
28 bankruptcy case. Thus, the real question we must resolve is

1 whether Barragan's bankruptcy filing, by itself, automatically  
2 cured the jurisdictional defect such that the bankruptcy court  
3 committed reversible error when it ruled, after the bankruptcy  
4 case was filed, that the adversary proceeding should be dismissed  
5 for lack of jurisdiction.

6 We begin our analysis with the proposition that a federal  
7 court's jurisdiction ordinarily is assessed as of the date the  
8 complaint is filed. Newman-Green, Inc. v. Alfonzo-Larrain,  
9 490 U.S. 826, 830 (1989) ("The existence of federal jurisdiction  
10 ordinarily depends on the facts as they exist when the complaint  
11 is filed"); see also Lujan v. Defenders of Wildlife, 504 U.S.  
12 555, 571 n.4 (1992). We know of no rationale or precedent  
13 indicating that this rule should not generally apply in the  
14 context of bankruptcy courts exercising jurisdiction under  
15 28 U.S.C. § 1334(b).

16 But what should happen when, as here, the facts pertinent to  
17 the court's jurisdiction change after the filing of the  
18 complaint, such that those facts support the exercise of  
19 bankruptcy court jurisdiction even though the bankruptcy court  
20 clearly did not have such jurisdiction at the time the complaint  
21 was filed?

22 The answer to this question is found in Civil Rule 15(d),  
23 which is made applicable in adversary proceedings by Rule 7015.  
24 Civil Rule 15(d) provides:

25 On motion and reasonable notice, the court may, on just  
26 terms, permit a party to serve a supplemental pleading  
27 setting out any transaction, occurrence, or event that  
28 happened after the date of the pleading to be  
supplemented. The court may permit supplementation  
even though the original pleading is defective in  
stating a claim or defense. The court may order that

1 the opposing party plead to the supplemental pleading  
2 within a specified time.

3 Civil Rule 15(d) permits litigants to supplement their  
4 pleadings to allege a valid jurisdictional basis for their legal  
5 action when events occurring after the commencement of the action  
6 support that jurisdictional basis. See Mathews v. Diaz, 426 U.S.  
7 67, 75 (1976); Black v. Sec'y of Health and Human Servs., 93 F.3d  
8 781, 789-90 (Fed. Cir. 1996); Enesco Grp., Inc. v. Campanaro  
9 (In re Enesco Grp., Inc.), 2013 WL 4045756, at \*10 (Bankr. N.D.  
10 Ill. 2013).

11 Federal courts enjoy broad discretion to grant Civil  
12 Rule 15(d) motions to supplement, and the rule must be liberally  
13 interpreted and broadly applied to promote the interests of  
14 justice and judicial economy. See Keith v. Volpe, 858 F.2d 467,  
15 473-75 (9th Cir. 1988). Here, however, Barragan never asked for  
16 leave to supplement her complaint to reference her subsequent  
17 bankruptcy filing. While the bankruptcy court, if asked, would  
18 have needed to consider whether it should exercise its discretion  
19 to grant such a request, we are not aware of any authority  
20 compelling the bankruptcy court to sua sponte grant leave to  
21 supplement under these circumstances. To the contrary, we  
22 believe that it would be inappropriate to reverse on this basis.  
23 See James Cape & Sons Co. v. PCC Constr. Co., 453 F.3d 396,  
24 400-01 (7th Cir. 2006).

25 This is especially true here, because the bankruptcy court  
26 dismissed the adversary proceeding without prejudice and even  
27 suggested to Barragan that she might want to re-file her action  
28 in her newly-filed bankruptcy case. In response, Barragan never

1 articulated any reason why she could not do so, nor has she  
2 suggested on appeal that any real impediment exists.

3 We acknowledge that technical defects in pleading subject  
4 matter jurisdiction often are ignored in the federal courts when  
5 the entirety of the complaint demonstrates a valid basis for the  
6 courts to exercise jurisdiction. See, e.g., Gerritsen v. de la  
7 Madrid Hurtado, 819 F.2d 1511, 1515 (9th Cir. 1987); LeBlanc v.  
8 Salem (In re Mailman Steam Carpet Cleaning Corp.), 196 F.3d 1, 5  
9 (1st Cir. 1999). But this line of authority is inapposite here.  
10 The jurisdictional defect in Barragan's complaint may have been  
11 transitory, but it was not a merely technical one. Rather, it  
12 was genuine and significant, and nothing else in Barragan's  
13 complaint demonstrated a valid basis for jurisdiction.

14 We also acknowledge that Barragan filed her complaint in  
15 propria persona and that we must construe pro se pleadings  
16 liberally. See Balistreri v. Pacifica Police Dep't, 901 F.2d  
17 696, 699 (9th Cir. 1988). Nonetheless, even pro se litigants  
18 must follow procedural rules. See Clinton v. Deutsche Bank Nat'l  
19 Trust Co. (In re Clinton), 449 B.R. 79, 83 (9th Cir. BAP 2011);  
20 see also Briones v. Riviera Hotel & Casino, 116 F.3d 379, 382  
21 (9th Cir. 1997) (stating that "pro se litigants are not excused  
22 from following court rules."). In accordance with Civil  
23 Rules 8(a) and 15(d), there were simple steps Barragan could have  
24 taken on her own behalf to advance her litigation interests in  
25 the bankruptcy court. She did not do so. These missed  
26 opportunities ultimately proved fatal to her adversary  
27 proceeding. On this record, we will not reverse the bankruptcy  
28 court for not sua sponte initiating these steps on Barragan's

1 behalf.

2

**CONCLUSION**

3 For the reasons set forth above, we AFFIRM the bankruptcy  
4 court's jurisdictional dismissal of Barragan's adversary  
5 proceeding.

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