

SEP 29 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NOT FOR PUBLICATION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

In re:) AP No. CC-13-1571-DTasp
MICHAEL T. MEEHAN,)
Debtor.) Bk. No. 13-10054-ES
Adv. Proc. No. 13-01208-ES

MICHAEL T. MEEHAN,
Appellant,

v.

MEMORANDUM¹

OCWEN LOAN SERVICING, LLC;
WELLS FARGO BANK N.A., as
Trustee for Option One
Mortgage Loan Trust 2007-3
Asset Back Certificates,
Series 2007-3,
Appellees.

Submitted Without Argument²
on September 18, 2014

Filed - September 29, 2014

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

Honorable Erithe A. Smith, Bankruptcy Judge, Presiding

Appearances: Appellant Michael T. Meehan, pro se, on brief;
T. Robert Finlay, Nichole Glowin and Kathryn A.

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.

² On June 5, 2014, this Panel entered an order deeming this appeal suitable for submission on the briefs.

1 Moorer of Wright Finlay & Zak, LLP, on brief for
2 appellees.

3 Before: DUNN, TAYLOR, and SPRAKER³, Bankruptcy Judges.

4 Appellant Michael T. Meehan, in his capacities as debtor and
5 as creditor and agent for himself ("Mr. Meehan"), appeals the
6 bankruptcy court's dismissal of his adversary proceeding
7 ("Adversary Proceeding") against Ocwen Loan Servicing, LLC, Wells
8 Fargo Bank, N.A., and others (collectively, "Appellees"). For
9 the reasons stated herein, we AFFIRM.

10 **I. FACTUAL BACKGROUND**

11 Mr. Meehan and the Appellees both have filed excerpts of
12 record, but their excerpts unfortunately are underinclusive in
13 terms of documents necessary to our review in considering the
14 merits of this appeal. We note that neither party provided us
15 with a copy of the bankruptcy court's Order on Motion to Dismiss
16 ("Dismissal Order"), which is the order on appeal. We located
17 and reviewed the Dismissal Order and other relevant documents in
18 exercising our discretion to review the bankruptcy court's
19 electronic dockets in the Adversary Proceeding and in
20 Mr. Meehan's main chapter 7 case in the Bankruptcy Court for the
21 Central District of California ("Main Case"), and documents on
22 record therein.⁴ See O'Rourke v. Seaboard Sur. Co. (In re E.R.

23 _____
24 ³ Hon. Gary A. Spraker, Chief Bankruptcy Judge for the
25 District of Alaska, sitting by designation.

26 ⁴ Unless otherwise indicated, all chapter and section
27 references are to the federal Bankruptcy Code, 11 U.S.C. §§ 101-
28 1532, and all "Rule" references are to the Federal Rules of
Bankruptcy Procedure, Rules 1001-9037. All "Civil Rule"

continue...

1 Fegert, Inc.), 887 F.2d 955, 957-58 (9th Cir. 1989); Atwood v.
2 Chase Manhattan Mortg. Co. (In re Atwood), 293 B.R. 227, 233 n.9
3 (9th Cir. BAP 2003).

4 Although in his opening and reply briefs, Mr. Meehan
5 discusses a lengthy history of events in relation to the
6 substantive disputes between him and his wife on the one hand and
7 the Appellees and their agents on the other, we limit the factual
8 narrative in this memorandum decision to facts relevant to
9 disposition of this appeal.

10 A. Background of the Dispute

11 On December 20, 2006, Pamela D. Lawson ("Ms. Lawson")
12 obtained a loan in the amount of \$582,250 ("Loan") from Option
13 One Mortgage Corporation. The Loan was documented by a
14 promissory note ("Note"). Repayment of the Loan was secured by a
15 deed of trust ("Trust Deed") on residential property ("Property")
16 located in Costa Mesa, California. In the Trust Deed, the
17 Property is described as the "sole and separate property" of
18 Ms. Lawson. However, on December 29, 2006, Ms. Lawson
19 transferred the Property by Grant Deed to herself and Mr. Meehan
20 as joint tenants. Mr. Meehan is Ms. Lawson's husband.
21 Mr. Meehan never assumed any obligation to pay the Loan.

22 On March 25, 2009, a Notice of Default was recorded against
23 the Property. On April 30, 2009, American Home Mortgage
24 Servicing, Inc., as successor in interest to Option One Mortgage
25 Corporation, recorded an Assignment transferring the Loan and

27 ⁴...continue
28 references are to the Federal Rules of Civil Procedure.

1 Trust Deed to Wells Fargo Bank, N.A., as Trustee for Option One
2 Mortgage Loan Trust 2007-3 Asset Backed Certificates, Series
3 2007-3 (the "Trust"). On June 26, 2009, a Notice of Trustee's
4 Sale was recorded, noticing a July 22, 2009 sale date for the
5 Property. Further complications ensued.

6 On April 13, 2010, Power Default Services, Inc. recorded a
7 Notice of Rescission of the March 25, 2009 Notice of Default.
8 A new Notice of Default was recorded on January 12, 2011,
9 alleging that Ms. Lawson had accrued \$12,607.41 in arrears on the
10 Loan. On April 13, 2011, a Substitution of Trustee under the
11 Trust Deed was recorded, naming Power Default Services, Inc., as
12 trustee. On the same date, a new Notice of Trustee's Sale of the
13 Property was recorded, setting May 4, 2011 as the foreclosure
14 sale date for the Property. There is no indication in the record
15 that a foreclosure sale of the Property actually took place on
16 that date.

17 On January 31, 2012, Ms. Lawson and Mr. Meehan filed a
18 complaint in the Orange County, California Superior Court for
19 declaratory and injunctive relief and to quiet title to the
20 Property based, in part, on allegations of fraudulent mortgage
21 documents ("State Court Lawsuit"). The defendants removed the
22 State Court Lawsuit to the United States District Court for the
23 Central District of California ("District Court") on February 14,
24 2012. The defendants subsequently filed a motion to dismiss the
25 State Court Lawsuit under Civil Rules 8, 9(b), 12(b)(1) and
26 12(b)(6). Apparently, Ms. Lawson and Mr. Meehan did not file an
27 opposition to the defendants' motion to dismiss.

28 On March 27, 2012, the District Court granted the

1 defendants' motion to dismiss with leave to amend. However, in
2 the dismissal order, the District Court cautioned Ms. Lawson and
3 Mr. Meehan that if they did not file an amended complaint by the
4 April 9, 2012 deadline set by the District Court, the State Court
5 Lawsuit would be dismissed with prejudice.

6 When no amended complaint was filed by the deadline, the
7 District Court dismissed the State Court Lawsuit with prejudice
8 by order entered on April 24, 2012. A judgment dismissing the
9 State Court Lawsuit with prejudice as to all defendants was
10 entered by the District Court on May 2, 2012. There is no
11 indication in the record, and the parties do not assert, that any
12 appeal was taken from the dismissal of the State Court Lawsuit.

13 Another Notice of Trustee's Sale for the Property, setting a
14 foreclosure sale date of November 19, 2012, was recorded on
15 October 17, 2012. However, there is no indication in the record
16 that the Property in fact has been sold at a foreclosure sale at
17 any time.⁵

18 B. Mr. Meehan's Chapter 7 Case

19 Mr. Meehan filed a petition for relief under chapter 7 on
20 January 3, 2013. His § 341(a) meeting was held on March 6, 2013,
21 and the chapter 7 trustee filed a "no asset" report on that same
22 day.

23 On November 25, 2013, Mr. Meehan filed a Motion to Compel
24 Abandonment of [the Property] ("Motion to Abandon") and a Notice
25 of Motion for Order Without Hearing with respect to the Motion to

26
27 ⁵ In addition, Ms. Lawson apparently filed her own
28 chapter 7 case, but whatever occurred in her bankruptcy did not
resolve the issues that Mr. Meehan is raising before us.

1 Abandon. Our review of the Main Case docket indicates that no
2 hearing has been set on the Motion to Abandon, and no action has
3 been taken on the Motion to Abandon by the bankruptcy court.
4 Mr. Meehan has not yet received a discharge, and the Main Case
5 has not been closed.

6 C. The Adversary Proceeding

7 Mr. Meehan filed his complaint ("Complaint") in the
8 Adversary Proceeding on June 18, 2013. In the prolix Complaint,
9 Mr. Meehan essentially seeks injunctive relief and to quiet title
10 to the Property against the claims of the defendants, including
11 the Appellees, compensatory damages in excess of \$600,000,
12 punitive damages and attorneys fees. Appellees argue that the
13 Complaint asserts claims against them that are "similar - if not
14 identical" to the claims asserted by Ms. Lawson and Mr. Meehan in
15 the dismissed State Court Lawsuit. Appellees' Brief, at 4-5.
16 Whether that assertion is true or not ultimately is not material
17 to our disposition in this appeal.

18 On July 22, 2013, Appellees filed a motion to dismiss
19 ("Motion to Dismiss") the Adversary Proceeding on the ground,
20 among other things, that Mr. Meehan did not have standing to
21 pursue the claims stated in the Complaint. Mr. Meehan filed his
22 opposition ("Opposition") to the Motion to Dismiss on August 29,
23 2013.⁶ In his Opposition, among other arguments, Mr. Meehan
24

25 ⁶ Perhaps not understanding the import of the Motion to
26 Dismiss, on August 21, 2013, Mr. Meehan filed a request for entry
27 of default that ultimately was overruled by an order of the
28 bankruptcy court entered on November 5, 2013. Since no issue is
before us in this appeal with respect to Mr. Meehan's efforts to
continue...

1 argued that his title interest in the Property gave him standing
2 to pursue the claims in the Adversary Proceeding and that the
3 chapter 7 trustee had abandoned any interest in the Property.
4 Appellees filed a reply ("Reply") to the Opposition on
5 September 5, 2013, arguing that the estate had not abandoned
6 either the Property or the related claims asserted in the
7 Complaint.

8 A hearing ("Hearing") was conducted by the bankruptcy court
9 on the Motion to Dismiss on November 14, 2013.⁷ Since Mr. Meehan
10 appeared pro se at the Hearing, the bankruptcy court went to
11 considerable pains to explain the basis for its ruling to him.
12 First, the claims asserted in the Complaint arose prior to
13 Mr. Meehan's chapter 7 filing; so, they were property of his
14 bankruptcy estate. "In other words, they belong to the
15 bankruptcy case or the bankruptcy estate." Tr. of Nov. 14, 2013
16 hr'g, 2:9-10. "[U]nder the Bankruptcy Code, the Chapter 7
17 Trustee is the bankruptcy estate's sole representative. It is
18 the Chapter 7 Trustee that prosecutes claims that belong to the
19 bankruptcy estate." Id. at 2:19-22.

20 The bankruptcy court went on to explain how claims could be
21 abandoned by the estate so that the debtor could prosecute them,
22 but in Mr. Meehan's case, the claims in the Adversary Proceeding
23

24 ⁶...continue
25 obtain a default judgment against the defendants in the Adversary
26 Proceeding, we do not address this matter further.

27 ⁷ Apparently, the bankruptcy court posted a tentative
28 ruling on the motion prior to the Hearing, but it is not included
on the Adversary Proceeding docket, and the parties have not
included it in their excerpts of record for our review.

1 had not been formally abandoned.

2 So where we are right now, there has not been a formal
3 abandonment. Because the only way you can abandon
4 claims is either by a motion and an order by the Court
5 or closing of the case. Even if the Trustee, which the
6 Trustee I believe did in this case, files the report -
7 basically we call it a no-asset report where the
Trustee says there are no assets that I'm going to
administer in the case. Even that's not sufficient to
constitute an abandonment. There either has to be a
motion and a hearing and an order or the case is
closed.

8 Tr. of Nov. 14, 2013 hr'g, 4:20-25 - 5:1-4.

9 The bankruptcy court went on to advise Mr. Meehan that, "If
10 the claims are abandoned back to you and they no longer belong to
11 the estate, in my view, this Court loses jurisdiction over those
12 claims because they no longer can [affect] the administration of
13 the case." Tr. of Nov. 14, 2013 hr'g, 5:9-12. In moving to a
14 conclusion at the Hearing, the bankruptcy court emphasized that
15 it only was granting the Motion to Dismiss based on Mr. Meehan's
16 lack of standing "because this is a Chapter 7, and the Chapter 7
17 Trustee is the only person who has standing to bring these
18 claims." Tr. of Nov. 14, 2013 hr'g, 18:25 - 19:1-2.

19 The bankruptcy court entered the Dismissal Order on
20 December 2, 2013, dismissing the Adversary Proceeding with
21 prejudice based on Mr. Meehan's lack of standing. Mr. Meehan
22 filed a premature notice of appeal on November 27, 2013 that we
23 have treated as timely.

24 **II. JURISDICTION**

25 The bankruptcy court had jurisdiction under 28 U.S.C.
26 §§ 1334 and 157(b)(2)(K) and (O). We have jurisdiction under
27 28 U.S.C. § 158.

28

1 The fact findings underlying a bankruptcy court's decision
2 on standing are reviewed for clear error. American-Arab Anti-
3 Discrimination Comm. v. Thornburgh, 970 F.2d 501, 506 (9th Cir.
4 1991). A bankruptcy court clearly errs in its fact findings if
5 they are illogical, implausible or without any support in the
6 evidentiary record before it. TrafficSchool.com, Inc. v. Edriver
7 Inc., 653 F.3d 820, 832 (9th Cir. 2011).

8 V. DISCUSSION

9 A party seeking to prosecute claims before a federal court
10 bears the burden to establish that it has standing to assert
11 those claims. Allen v. Wright, 468 U.S. 737, 750-51 (1984). In
12 order for a debtor in a chapter 7 bankruptcy case to have
13 standing to prosecute claims in an adversary proceeding, the
14 debtor, rather than the bankruptcy estate, must own the claims.
15 Cusano v. Klein, 264 F.3d 936, 945 (9th Cir. 2001). When a
16 bankruptcy case is filed, an estate is created that is comprised
17 of "all legal or equitable interests of the debtor in property as
18 of the commencement of the case." § 541(a)(1). "The scope of
19 section 541 is broad, and includes causes of action." Sierra
20 Switchboard Co. v. Westinghouse Elec. Corp., 789 F.2d 705, 707
21 (9th Cir. 1986) (citing United States v. Whiting Pools, Inc.,
22 462 U.S. 198, 205 & n.9 (1983)). As noted by the bankruptcy
23 court at the Hearing, the claims asserted by Mr. Meehan in the
24 Complaint all arose prior to his bankruptcy filing. Accordingly,
25 those claims became property of his bankruptcy estate when he
26 filed for relief under chapter 7.

27 Under § 323, the trustee, and not the debtor, is the
28 representative of the bankruptcy estate with the capacity to sue

1 and be sued. See § 323(a) and (b); and Stoll v. Quintanar
2 (In re Stoll), 252 B.R. 492, 495 (9th Cir. BAP 2000). "Only a
3 trustee may pursue a cause of action belonging to the bankruptcy
4 estate." Id. The debtor can pursue such claims only if they are
5 abandoned by the estate. See § 554; Carroll v. JP Morgan Chase
6 Bank, 2014 WL3361990 (5th Cir. July 10, 2014) (unpublished);
7 Hernandez v. Downey Sav. & Loan Assoc., 2009 WL 704381 at *4
8 (S.D. Cal. 2009); 3 Collier on Bankruptcy ¶ 323.03[1] (Alan N.
9 Resnick and Henry J. Sommer eds., 16th ed. 2014) ("After
10 appointment of a trustee, a debtor no longer has standing to
11 pursue a cause of action that existed at the time the order for
12 relief was entered.").

13 Under § 554, property of the estate can be abandoned in
14 three ways. Upon motion of the trustee, after notice and a
15 hearing, property that is burdensome to the estate or that is of
16 inconsequential value, can be abandoned. See § 554(a). The
17 Main Case docket reflects that although a "no asset" report was
18 filed reflecting the trustee's view that no assets were available
19 for administration, the trustee never moved to abandon any
20 assets, including the claims asserted by Mr. Meehan in the
21 Adversary Proceeding.

22 On motion or request of the debtor or any other party in
23 interest, after notice and a hearing, the court may order the
24 trustee to abandon property of the estate that is burdensome or
25 of inconsequential value. See § 554(b). As noted above,
26 Mr. Meehan filed in the Main Case the Motion to Abandon, that
27 arguably would apply with respect to the claims he asserted in
28 the Adversary Proceeding, and a Notice of Motion for Order

1 Without Hearing with respect to the Motion to Abandon. However,
2 the Main Case docket further reflects that no order has been
3 entered granting or otherwise considering the Motion to Abandon.⁹

4 Finally, property of the estate that is not administered at
5 the time that a bankruptcy case is closed is abandoned to the
6 debtor. See § 554(c). However, Mr. Meehan's chapter 7 case has
7 not been closed.

8 In the absence of any of the actions contemplated in
9 §§ 554(a), (b) or (c), "unless the court orders otherwise" (which
10 likewise has not occurred here), estate property is not abandoned
11 and remains property of the estate. See § 554(d). The
12 bankruptcy court so found, and we see no error in the bankruptcy
13 court's fact findings. In these circumstances, the trustee, as
14 representative of the bankruptcy estate, had standing to
15 prosecute the claims asserted in the Complaint as the real party
16 in interest, and Mr. Meehan, as the debtor, did not have
17 standing. See Civil Rule 17, particularly Civil Rule
18 17(a)(1)(G), applicable with respect to adversary proceedings in
19 bankruptcy under Rule 7017.

21 ⁹ Part of Mr. Meehan's problem in seeking relief in the
22 Motion to Abandon may have been his request to have the motion
23 granted without a hearing, contrary to the requirements of
24 § 554(b). In addition, the "Mailing List" for the Motion to
25 Abandon reflects that it was mailed to the Appellees and their
26 counsel and the chapter 7 trustee, but it does not reflect
27 service on all parties in interest in the Main Case. The Ninth
28 Circuit has held that "there is no abandonment without notice to
creditors." Sierra Switchboard Co. v. Westinghouse Elec. Corp.,
789 F.2d at 709 (citing 4 Collier on Bankruptcy ¶ 554.01 at 554-3
(15th ed. 1985), and In re Tucci, 47 B.R. 328, 331 (Bankr. E.D.
Va. 1985) (party proposing abandonment must give notice)).

1 But, Mr. Meehan argues that he has standing independent of
2 his position as debtor, as his own agent and/or as a creditor of
3 the estate. Appellant's Opening Brief at 7. Mr. Meehan's
4 argument is somewhat confusing in that he goes on to argue that
5 he has standing "as a natural person and UCC 1 holder" of all
6 property rights of himself as debtor and as appellant in this
7 appeal. Appellant's Opening Brief at 8. In any event, whatever
8 the merits of Mr. Meehan's arguments that he may have standing to
9 pursue claims in other contexts in his capacity as agent or
10 creditor for himself where he has no standing personally (and we
11 have our doubts), his argument does not work in this case.

12 An agent is no more than the representative of the
13 principal, and the principal here is Mr. Meehan, i.e., a
14 chapter 7 debtor. An agent is "[o]ne who represents and acts for
15 another under the contract or relation of agency." Black's
16 Online Legal Dictionary (2d ed.). Mr. Meehan as agent has no
17 more standing to assert the Adversary Proceeding claims than does
18 Mr. Meehan as debtor. Without abandonment of the claims pursuant
19 to § 554, Mr. Meehan has no standing to pursue them either as
20 principal or as agent.

21 Creditors in a bankruptcy case do not have standing to
22 assert claims based on an alleged injury that is common to all
23 creditors and is derivative from claims of the debtor.
24 In re Stoll, 252 B.R. at 495-96. In the Complaint, the only
25 basis for standing asserted by Mr. Meehan is his interest as "a
26 lawful title owner" of the Property. His status as a creditor is
27 not even mentioned. Based on the factual assertions and
28 arguments made in Mr. Meehan's briefs, we can only assume that

1 Mr. Meehan's alleged claims as a creditor are derivative from his
2 claims as a title owner of the Property, claims that belong to
3 his bankruptcy estate.

4 At its core, Mr. Meehan's argument is that because the
5 chapter 7 trustee has not adequately investigated his claims and
6 does not believe enough in the validity of his claims to pursue
7 them, his "verifiable and proven property rights" are adequate to
8 confer standing on him to prosecute the Complaint in the
9 Adversary Proceeding. As a matter of law, the bankruptcy court
10 determined otherwise, and we conclude that the bankruptcy court
11 did not err in determining that Mr. Meehan had no standing to
12 pursue the claims stated in the Complaint in the absence of
13 abandonment of the subject claims under § 554. We perceive no
14 error in the bankruptcy court's entry of the Dismissal Order on
15 that basis.

16 **VI. CONCLUSION**

17 For the foregoing reasons, we AFFIRM the Dismissal Order.
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