

FEB 24 2015

NOT FOR PUBLICATION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-14-1237-TaPaJu
6	RODOLFO VELASQUEZ,)	Bk. No.	14-30344
7	Debtor.)	Adv. No.	14-03031
8	_____)		
9	RODOLFO VELASQUEZ,)		
10	Appellant,)		
11	v.)	MEMORANDUM*	
12	BANK OF AMERICA, N.A,)		
13	Appellee.)		
	_____)		

Submitted Without Oral Argument**
on February 19, 2015

Filed - February 24, 2015

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

Honorable Dennis Montali, Bankruptcy Judge, Presiding

Appearances: Rodolfo Velasquez, pro se, on brief; Andrea M. Hicks, Monique Jewett-Brewster and Katherine Keating of Bryan Cave LLP on brief for appellee Bank of America, N.A.

* 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 8024-1(c) (2).

** After examination of the briefs and record, and after notice to the parties, in an order entered October 30, 2014, the Panel unanimously determined that oral argument was not needed for this appeal. See Fed. R. Bankr. P. 8019(b); 9th Cir. BAP Rule 8019-1.

1 Before: TAYLOR, PAPPAS, and JURY, Bankruptcy Judges.
2

3 Chapter 13¹ debtor Rodolfo Velasquez appeals from the
4 bankruptcy court's dismissal of his adversary proceeding against
5 Bank of America N.A. We AFFIRM.

6 **FACTS**

7 The Debtor filed a chapter 13 petition and his schedules.²
8 The Debtor, however, did not file a Statement of Current Monthly
9 Income and Means Test Calculation ("B22 Form"). As a result,
10 the bankruptcy court issued an order ("Order") providing for
11 automatic case dismissal unless on or before April 21, 2014, the
12 Debtor filed the B22 Form or obtained either a filing extension
13 or an order excusing the filing.

14 The Debtor's schedules reflected ownership of real property
15 located in San Francisco, California (the "Property"). Bank of
16 America N.A. ("BOFA") holds obligations secured by deeds of
17 trust against the Property.

18 Notwithstanding the Order, the Debtor did not focus
19 exclusively on filing his B22 Form and complying with the Order;
20 instead, he also commenced an adversary proceeding against BOFA,
21 alleging a number of California state law claims. It was the
22 Debtor's fourth action against BOFA. BOFA promptly moved to
23

24 ¹ Unless otherwise indicated, all chapter and section
25 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

26 ² We exercise our discretion to take judicial notice of
27 documents electronically filed in the bankruptcy case. See
28 Atwood v. Chase Manhattan Mortg. Co. (In re Atwood), 293 B.R.
227, 233 n.9 (9th Cir. BAP 2003).

1 dismiss the adversary proceeding under Civil Rule 12(b)(6).

2 The "drop dead date" under the Order came and went without
3 further action by the Debtor. As a result, the bankruptcy court
4 dismissed the chapter 13 case on April 22, 2014. Following
5 dismissal of the bankruptcy case, the bankruptcy court sua
6 sponte dismissed the adversary proceeding ("Adversary Dismissal
7 Order"). It determined, based on the chapter 13 dismissal, that
8 the interests of economy, convenience, fairness, and equity
9 weighed in favor of declining to exercise jurisdiction over the
10 adversary proceeding. While it expressly made no determination
11 on the merits of the motion to dismiss, the bankruptcy court
12 also noted that BOFA's motion to dismiss appeared well taken.
13 The Debtor timely appealed from the Adversary Dismissal Order.

14 The Debtor subsequently filed the B22 Form in the chapter
15 13 case and moved for reconsideration of the chapter 13 case
16 dismissal; he asserted that he complied with the Order by
17 mailing the B22 Form in mid-April. While the bankruptcy court
18 did not agree that the mailing date was dispositive, it
19 ultimately granted the Debtor's motion and vacated the chapter
20 13 case dismissal order. To the Panel's knowledge, the chapter
21 13 case remains pending.

22 **JURISDICTION**

23 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
24 §§ 1334 and 157(b)(2)(B) and (K). We have jurisdiction under
25 28 U.S.C. § 158.

26 **ISSUE**

27 Whether the bankruptcy court abused its discretion in
28 declining to exercise jurisdiction over the adversary

1 proceeding.

2 **STANDARD OF REVIEW**

3 We review the bankruptcy court's decision to decline to
4 exercise jurisdiction over an adversary proceeding for an abuse
5 of discretion. Carraher v. Morgan Elec., Inc. (In re Carraher),
6 971 F.2d 327, 328 (9th Cir. 1992). A bankruptcy court abuses
7 its discretion if it applies the wrong legal standard,
8 misapplies the correct legal standard, or if its factual
9 findings are illogical, implausible, or without support in
10 inferences that may be drawn from the facts in the record. See
11 TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d 820, 832
12 (9th Cir. 2011) (citing United States v. Hinkson, 585 F.3d 1247,
13 1262 (9th Cir. 2009) (en banc)).

14 **DISCUSSION**

15 Dismissal of an underlying bankruptcy case does not
16 automatically divest the bankruptcy court of jurisdiction over a
17 related adversary proceeding seeking recovery on state law
18 theories. In re Carraher, 971 F.2d at 328. In deciding whether
19 to retain jurisdiction, the bankruptcy court must consider
20 economy, convenience, fairness, and comity. Id.

21 The record shows that the bankruptcy court appropriately
22 applied the correct legal standard. Citing In re Carraher, it
23 considered and weighed the pertinent interests in the context of
24 a dismissed bankruptcy case and an adversary proceeding
25 consisting solely of state law claims.³ In particular, the

26
27 ³ To the extent the bankruptcy court opined that issue
28 preclusion possibly barred the Debtor's claims, such observation
(continued...)

1 bankruptcy court noted that the adversary proceeding was then
2 pending for only one month and determined that dismissal would
3 not cause undue delay. Nothing in the record suggests an abuse
4 of discretion.

5 All of the Debtor's arguments on appeal relate to the
6 allegations in the adversary complaint; that is, BOFA's alleged
7 improper conduct and the United States Trustee's alleged
8 obligation to prosecute the adversary proceeding. These
9 arguments concern the merits of the adversary proceeding and,
10 thus, are beyond the scope of this appeal. Therefore, we do not
11 address them.

12 To the extent the Debtor argues that the bankruptcy court
13 was required to sua sponte vacate the Adversary Dismissal Order
14 after reinstating the chapter 13 case, we reject the argument.
15 As a litigant, the Debtor was responsible for prosecuting and
16 defending his position in the adversary proceeding. The Debtor
17 bore the burden of moving for reconsideration of the Adversary
18 Dismissal Order; he did not do so. His successful
19 reconsideration motion reinstating the chapter 13 case was not
20 filed in the adversary proceeding and did not specifically
21 request reinstatement of the adversary proceeding. The
22 bankruptcy court was not required to vacate the Adversary
23 Dismissal Order in the absence of a motion from the Debtor.

24 **CONCLUSION**

25 Based on the foregoing, we AFFIRM.

26 _____
27 ³ (...continued)
28 was dicta, as it expressly stated that it made no determination
on the merits of BOFA's motion to dismiss.