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NOT FOR PUBLICATION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

5	In re:)	BAP Nos. CC-13-1345-DKiKu
)	CC-13-1538-DKiKu
6	NAZIE AZAM,)	CC-14-1136-DKiKu
)	
7	Debtor.)	Bk. No. 13-14339-TA
)	
8	NAZIE AZAM,)	Adv. Nos. 13-01229-TA
)	13-01243-TA
9	Appellant,)	
10	v.)	
11	US BANK NATIONAL ASSOCIATION, as)	M E M O R A N D U M ¹
12	Trustee Successor in Interest to)	
13	Bank of America as Successor by)	
14	merger to Lasalle Bank NA as)	
15	Trustee for WaMu Mortgage Pass-)	
16	Through Certificate Series)	
17	2006-AR12 Trust; BANK OF AMERICA)	
18	NATIONAL ASSOCIATION as Successor)	
19	by merger to Lasalle Bank NA as)	
20	Trustee for WaMu Mortgage Pass-)	
	Through Certificate Series)	
	2006-AR12 Trust; BANK OF AMERICA,)	
	NATIONAL ASSOCIATION; RUZICKA &)	
	WALLACE LLP; RICHARD S. SONTAG,)	
	ESQ.; DESS RICHARDSON, ESQ.,)	
	Appellees.)	

Argued and Submitted on February 19, 2015
at Los Angeles, California

Filed - May 8, 2015

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

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 8024-1.

1 Honorable Theodor C. Albert, Bankruptcy Judge, Presiding

2
3 Appearances: Nina R. Ringgold argued for Appellant Nazie Azam;
4 Kerry Ann Moynihan of Bryan Cave LLP argued for
5 Appellee Bank of America National Association;
6 David D. Piper of Keesal, Young & Logan argued for
7 Appellees US Bank National Association, as Trustee
8 Successor in Interest to Bank of America as
9 Successor by merger to LaSalle Bank NA as Trustee
10 for WaMu Mortgage Pass-Through Certificates Series
2006-AR12 Trust and Bank of America as Successor
by merger to LaSalle Bank NA as Trustee for WaMu
Mortgage Pass-Through Certificates Series 2006-
AR12 Trust; Richard S. Sontag of Ruzicka &
Wallace, LLP on brief for Appellees Ruzicka &
Wallace LLP, Richard S. Sontag, Esq. and Dess
Richardson, Esq. ("Attorney Defendants").

11 Before: DUNN, KIRSCHER, and KURTZ, Bankruptcy Judges.

12 These three related appeals constitute but a small sample of
13 Appellant Nazie Azam's litigation efforts to retain real property
14 long after she stopped making payments on the underlying debt.
15 The following orders, currently before this Panel for review,
16 stem from two adversary proceedings Ms. Azam filed in her most
17 recent bankruptcy² case:

- 18 (1) the bankruptcy court's order denying motion for temporary
19 restraining order ("TRO Denial Order") (BAP No. CC-13-1345);
20 (2) the bankruptcy court's order dismissing Ms. Azam's adversary
21 proceeding ("Abstention/Dismissal Order") (BAP No. CC-14-1136);
22 and

23
24
25 ² Unless otherwise indicated, all chapter and section
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
27 all "Rule" references are to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9037. The Federal Rules of Civil Procedure
are referred to as "Civil Rules."

1 (3) the bankruptcy court's order remanding a state court unlawful
2 detainer action Ms. Azam had removed to the bankruptcy court
3 ("Remand Order") (BAP No. CC-13-1358).

4 For the reasons set forth in this Memorandum, we DISMISS the
5 appeal of the TRO Denial Order as moot and we AFFIRM the
6 Abstention/Dismissal Order and the Remand Order.

7 **I. FACTUAL BACKGROUND**

8 Distilled to their essence, the common underlying facts
9 relevant to each pending appeal are as follows.

10 A. Events Leading to Foreclosure

11 In August 2006, Ms. Azam borrowed \$1.4 million ("Azam Loan")
12 from Washington Mutual Bank, N.A. ("WaMu"). The Azam Loan was
13 secured by a deed of trust ("DOT") against real property
14 ("Property") in Laguna Niguel, California. The named Trustee in
15 the DOT was California Reconveyance Company ("CRC").

16 After WaMu failed, on January 14, 2009, JP Morgan Chase
17 Bank, N.A. ("Chase") purchased the Azam Loan from the Federal
18 Deposit Insurance Corporation ("FDIC") and executed an assignment
19 of the DOT to LaSalle Bank, N.A. ("LaSalle Bank").³

20 Also on January 14, 2009, CRC as the Trustee of the DOT
21 recorded a Notice of Default which stated that the Azam Loan was
22 more than \$42,000 in arrears. CRC thereafter recorded, on
23 April 17, 2009, a Notice of Sale which noticed a foreclosure sale
24 ("Trustee's Sale") of the Property for May 6, 2009.

25
26 ³ The full name of the assignee was LaSalle Bank, N.A., as
27 trustee for WaMu Pass-Through Certificates Series 2006-AR12
("WaMu Trust").

1 Ultimately, the Trustee's Sale ("Foreclosure") took place on
2 December 8, 2009, and the Trustee's Deed Upon Sale ("Trustee's
3 Deed") was recorded on December 21, 2009. The Trustee's Deed
4 transferred title to the Property to Bank of America, N.A., as
5 successor by merger to LaSalle Bank ("BANA Trustee"). In
6 February 2011, Bank of America, N.A. ("BANA") sold its
7 securitization trust administration business to US Bank National
8 Association ("US Bank").

9 B. Events after Foreclosure

10 After the Foreclosure, Ms. Azam began a broad and vigorous
11 campaign to challenge the Foreclosure and to prevent BANA, and
12 later US Bank, from exercising its rights with respect to the
13 Property.

14 Between April 2, 2010 and July 10, 2010, four bankruptcy
15 cases were filed in the Bankruptcy Court for the Central District
16 of California which listed the Property as the address of the
17 putative debtor:

18 (1) April 10, 2010 - an involuntary chapter 7 petition was filed
19 against Mike Parris (Case No. 1-10-bk-13850-GM); this case was
20 dismissed April 15, 2010. Attorney Defendants' Brief, p. 4.

21 (2) May 14, 2010 - an involuntary chapter 7 petition was filed
22 against Linda Parris (Case No. 1-10-bk-15763-GM); this case was
23 dismissed July 9, 2010. On June 30, 2010, during the pendency of
24 the case, the bankruptcy court entered, on BANA's motion, an in
25 rem order granting relief from the automatic stay as to the
26 Property. Id.

27 (3) May 28, 2010 - Ms. Azam filed a voluntary chapter 7 petition

1 (Case No. 8-10-bk-17236-TA) ("First Azam Bankruptcy), in which
2 Ms. Azam received a chapter 7 discharge on September 15, 2010.
3 On July 21, 2010, during the pendency of the First Azam
4 Bankruptcy, the bankruptcy court entered an in rem order granting
5 relief from the automatic stay as to the Property. This in rem
6 order was entered on BANA Trustee's motion and over Ms. Azam's
7 opposition.

8 (4) July 7, 2010 - Ms. Azam filed a voluntary chapter 13 petition
9 (Case No. 8-10-19287-TA) ("Second Azam Bankruptcy"), while the
10 First Azam Bankruptcy was still pending. The Second Azam
11 Bankruptcy was dismissed on July 30, 2010. Attorney Defendants'
12 Brief, pp. 4-5.

13 The litigation field widened to include the Orange County
14 (California) Superior Court ("State Court") on July 2, 2010, when
15 Ms. Azam filed an action against BANA in which she challenged the
16 Foreclosure.⁴ That action was dismissed on October 20, 2011. On
17 May 16, 2011, Ms. Azam filed a second action against BANA in
18 State Court, again challenging the Foreclosure.⁵ The second
19 action was dismissed on September 20, 2011.

20 C. Unlawful Detainer Action

21 BANA Trustee commenced an Unlawful Detainer Action on
22 February 15, 2012. Ms. Azam, through counsel, filed an answer to
23 the complaint on February 24, 2012. On March 15, 2012, the State
24

25 ⁴ Azam v. Bank of America, N.A., Orange County Superior
26 Court Case No. 30-2010-00387022.

27 ⁵ Azam v. Bank of America, N.A., Orange County Superior
Court Case No. 30-2010-00475258.

1 Court granted BANA Trustee's motion for summary judgment, and
2 entered judgment for restitution of the Property ("Restitution
3 Judgment") in favor of BANA Trustee and against Ms. Azam and all
4 unnamed occupants.

5 Ms. Azam immediately moved for reconsideration of the order
6 granting the summary judgment motion; she also filed an ex parte
7 application for a stay of lockout under the Restitution Judgment.
8 The state court denied both requests for relief on April 5, 2012.

9 Sometime thereafter, the Orange County Sheriff's Department
10 posted the property with a notice to vacate, which led to the
11 filing by Ms. Azam of yet another chapter 13 bankruptcy case
12 ("Third Azam Bankruptcy") (Case No. 8:12-bk-20322-TA) on
13 August 30, 2012. The Third Azam Bankruptcy also was short-lived.
14 On October 9, 2012, the bankruptcy court granted BANA Trustee's
15 motion for relief from stay, effective also as to successors,
16 transferees and assigns, over Ms. Azam's opposition. The
17 bankruptcy court then dismissed the Third Azam Bankruptcy on
18 November 28, 2012.

19 After BANA Trustee had obtained relief from stay in the
20 Third Azam Bankruptcy, Ms. Azam filed an action in the United
21 States District Court for the Central District of California
22 ("District Court") against BANA, BANA Trustee, and others
23 regarding the Foreclosure. The District Court denied Ms. Azam's
24 motion for a restraining order through which she sought
25 protection from her upcoming eviction from the Property.
26 Ms. Azam appealed the order of the District Court to the Ninth
27 Circuit Court of Appeals, which affirmed.

1 Meanwhile, back in the Unlawful Detainer Action, the State
2 Court granted US Bank's motion to substitute US Bank as plaintiff
3 in place of BANA Trustee. A new writ for possession of the
4 Property thereafter was issued in the name of US Bank by the
5 Orange County Superior Court Clerk's office. This sparked, inter
6 alia, Ms. Azam's motion in the Unlawful Detainer Action to vacate
7 the Restitution Judgment and for other relief. Attorney
8 Defendants' Brief at p. 5. Ms. Azam's April 4, 2013, appeal from
9 the State Court's denial of this requested relief was still
10 pending at the time the briefs in the appeals before this Panel
11 were filed. Id. at pp. 5-6.

12 On April 17, 2013, the State Court entered a stay of
13 execution of the Restitution Judgment pending appeal in favor of
14 Ms. Azam, conditioned upon Ms. Azam posting by May 8, 2013 a bond
15 in the amount of \$58,790.32. Id. at p. 6. Rather than post the
16 required bond, Ms. Azam removed the Unlawful Detainer Action to
17 the District Court, which on April 30, 2013, summarily remanded
18 the proceeding back to the State Court on the basis that removal
19 had been improper. Id. In the inevitable appeal, on July 4,
20 2014, the Ninth Circuit Court of Appeals issued an order
21 affirming the District Court's remand. Id.

22 On May 14, 2013, the State Court dissolved the stay pending
23 appeal. Id. at p. 7. Ms. Azam appealed both that action and the
24 order denying her subsequent re-application to vacate the
25 Restitution Judgment. Id.

26 Having apparently used all of the State Court avenues she
27 could think of, Ms. Azam again turned to the bankruptcy court. On

1 May 16, 2013, Ms. Azam filed a new chapter 13 case (Case No.
2 8:13-bk-14339-TA) ("Fourth Azam Bankruptcy"). An order granting
3 US Bank's motion for relief from the automatic stay to allow
4 eviction proceedings to continue in the State Court was entered
5 July 22, 2013. Ms. Azam's appeal of that order is pending before
6 the District Court.

7 D. The Orders on Appeal Before the Panel

8 All of the orders that are the subject of the appeals
9 pending before the Panel were entered in connection with the
10 Fourth Azam Bankruptcy.

11 The hearing on US Bank's motion for relief from stay in the
12 Fourth Azam Bankruptcy was held on July 9, 2013. At that
13 hearing, the bankruptcy court also addressed a motion Ms. Azam
14 had filed to impose an automatic stay. The transcript from that
15 hearing makes clear that Ms. Azam's motion to impose an automatic
16 stay was denied on the technical basis that it was not timely
17 made. Also at that hearing, counsel for Ms. Azam alluded to two
18 adversary proceedings filed or to be filed: one in which Ms. Azam
19 would seek a temporary restraining order with respect to the
20 Unlawful Detainer Action; and a second in which the Unlawful
21 Detainer Action would be removed to the bankruptcy court.

22 1. Adversary 13-1229

23 a. BAP No. CC-13-1345

24 On July 5, 2013, Ms. Azam filed Adversary Proceeding 13-1229
25 ("First Adversary Proceeding"). In the complaint ("Complaint")
26 filed in the First Adversary Proceeding, Ms. Azam asserted eleven
27 claims for relief, only one of which is based on bankruptcy law.

1 In her second claim for relief, Ms. Azam alleged that she is
2 entitled to damages pursuant to § 362(k) against, inter alia,
3 BANA and the Attorney Defendants that had pursued and/or were
4 pursuing the Foreclosure and the Restitution Judgment. As to
5 BANA, Ms. Azam alleged that although it was aware it was not
6 identified on the Trustee's Deed, it nevertheless pursued relief
7 from the automatic stay in the First Azam Bankruptcy and
8 thereafter the Unlawful Detainer Action. As to each of the
9 Attorney Defendants, Ms. Azam alleged that although they knew
10 prior to the filing of the Unlawful Detainer Action that BANA had
11 transferred all securitized trust business to US Bank, they
12 nevertheless filed the Unlawful Detainer Action and obtained the
13 Restitution Judgment in BANA Trustee's name.

14 The Complaint in the First Adversary Proceeding sets out
15 Ms. Azam's alleged theory that any assignment of the DOT was
16 fraudulent or not in compliance with various purchase and
17 assumption agreements. Other than the § 362(k) claim for relief,
18 the claims asserted in the First Adversary Proceeding Complaint
19 are:

20 - For Declaratory, Injunctive, and Equitable Relief, For
21 Cancellation of Void Instruments, To Determine Non-existence of
22 Lien or Amount, and For Instruction to FDIC to Deliver Release of
23 Lien Under § 2.5 of Purchase and Assumption Agreement

24 - Fraud (Concealment, Misrepresentation) and Negligent
25 Misrepresentation

26 - Violation of the Fair Debt Collection Practices Act
27 (15 U.S.C. § 1692 et seq.)

- 1 - Discrimination In Violation of the Fair Housing Act
- 2 (42 U.S.C. §§ 3601-3619)
- 3 - Violation of 42 U.S.C. §§ 1981, 1982, 1983, 1985, 1986,
- 4 Thirteenth and Fourteenth Amendments
- 5 - Wrongful Eviction
- 6 - Violation of California Business and Professions Code
- 7 § 17200 et seq.
- 8 - Abuse of Process
- 9 - Intentional Infliction of Emotional Distress
- 10 - Negligent Infliction of Emotional Distress

11 On July 10, 2013, the day after the hearing on the motion
12 for relief from stay in the main case, Ms. Azam filed in the
13 First Adversary Proceeding her application for a temporary
14 restraining order and continuation or reinstatement of the
15 automatic stay. On July 11, 2013, without a hearing, the
16 bankruptcy court entered the TRO Denial Order, denying the
17 application in its entirety:

18 This is plaintiff debtor Nazie Azam's ("debtor") motion
19 for issuance of a TRO and Order to Show Cause re
20 Preliminary Injunction. Debtor seeks to restrain the
21 defendants, which are a group of banks and mortgage
22 trusts, from proceeding with eviction under a judgment
23 in unlawful detainer and writ of possession obtained on
24 or about April 9, 2013 from the Superior Court.
25 Although the motion contains only sparse background
26 detail, the court gathers that at some point in the
27 recent past one or more of the defendant banks or
entities purported to obtain title to the subject real
property (never defined by address in the papers)
through foreclosure. To make matters more complicated,
this is not the first bankruptcy but rather the second,
the first 12-bk-20322TA, having been already dismissed
sometime in early 2013 or late 2012. A further
complication appears in that the unlawful detainer
judgment referenced is reportedly not the first but in
fact the second such judgment, the first one having

1 resulted in issuance of a writ of possession March 19,
2 2012 in favor of Bank of American NT&SA as successor to
3 LaSalle Bank as trustee for WaMu Mortgage Pass-Through
4 Certificates Series 2006-AR12 Trust. It should be
5 noted that there is no question of automatic stay since
6 relief of stay was granted in both the first and the
7 instant bankruptcy cases, and the court only within
8 this last week also denied the debtor's motion to
9 reinstate or continue the automatic stay in the instant
10 case based on 11 U.S.C. § 362(c)(3)(B), since the stay
11 already had lapsed and the reinstatement motion was
12 filed late.

13 Instead, debtor attempts to stall eviction through the
14 mechanism of a TRO. The problem is that there is very
15 little likelihood of debtor prevailing on the merits.
16 Debtor apparently does not deny having borrowed money
17 from someone, apparently Washington Mutual Bank, FA,
18 secured by a trust deed upon the subject property. She
19 now claims that at the time this loan was transacted
20 (no exact date is stated in the papers and no exhibits
21 are attached, but one presumes August 7, 2006 as
22 appears at ¶ 7 of debtor's declaration) that no entity
23 bearing this exact name actually existed in the United
24 States. From this premise she further contends that
25 the lender had no power to either assign the loan
26 and/or record a notice of default or otherwise to
27 transact any business respecting the loan, and that the
28 WaMu Mortgage Pass-Through Certificates Series 2006-
29 AR12 Trust, also identified as the beneficiary, was at
30 that time past its "cutoff" as reportedly expressed in
31 some unattached instrument. Debtor further contends
32 that successor entities, be they JP Morgan Chase Bank,
33 US Bank, or Bank of America, likewise are not properly
34 within any chain of title and so cannot have standing
35 now to prosecute an unlawful detainer action. Debtor
36 seems to place great significance in the fact that the
37 first unlawful detainer action was prosecuted by Bank
38 of America in a representative capacity, which was not
39 correct, and now the eviction is being prosecuted by
40 US Bank likewise in a representative capacity but also
41 incorrect (in debtor's estimation). The debtor also
42 raises vague arguments of some kind of entitlement to
43 rescue through some state or federal program, but she
44 does not articulate details. She also apparently
45 claims a right to negotiate directly with FDIC, the
46 successor to Washington Mutual Bank which was seized in
47 September 2008 and placed in receivership.

48 The court is not impressed. First, there is no other
49 bank or entity representing that **it** owns the paper, so
50 this is not a case where the debtor did not (or does
51 not) know legitimately whom to pay. Rather, apparently

1 debtor has failed to make any payments to anyone for a
2 considerable period of time. Second, whether there
3 might have been some infirmity in chain of title either
4 before or after foreclosure was an issue properly
5 raised before the unlawful detainer court. That final
6 judgment of possession obtained pre-petition is not
7 subject to being revisited by this court as some sort
8 of super appellate court. Under well-known principles
9 of collateral estoppel, all issues actually raised or
10 **that should have been raised** are now **res judicata**.
11 Third, whether there might have been some error in the
12 naming of the true party in interest either in the
13 first or the second unlawful detainer judgment or writs
14 of possession, is an issue that is remediable as a
15 matter of state law (see e.g. C.C.P. §§ 473(d) and
16 475). In this post Stern v. Marshall world, it is
17 simply not within the province of this court to intrude
18 itself into a re-litigation of those mostly state law
19 issues. If a correction is procedurally needed, it is
20 for the state court to undertake. In sum, the court
21 sees little or no likelihood of success on the merits
22 and so it is unnecessary to weigh the other issues.

23 **Deny.**

24 Ms. Azam filed a timely notice of appeal of the TRO Denial Order.

25 b. BAP No. CC-14-1126

26 Not long after it entered the TRO Denial Order, the
27 bankruptcy court considered confirmation of Ms. Azam's chapter 13
plan in the Fourth Azam Bankruptcy main case. At the
confirmation hearing, the bankruptcy court announced its decision
to dismiss the Fourth Azam Bankruptcy. The dismissal order was
entered September 11, 2013; that order was appealed to the
District Court, which since has affirmed.

In the meantime, on October 28, 2013, Ms. Azam objected to
the chapter 13 trustee's final report. The filing of the final
account and discharge of the trustee suggests this objection was
overruled. Also on October 28, 2013, Ms. Azam filed a motion to
vacate the dismissal order and reinstate the Fourth Azam

1 Bankruptcy. Following a hearing held on November 20, 2013, the
2 bankruptcy court denied that motion, and Ms. Azam promptly
3 appealed to the District Court.

4 Meanwhile in the First Adversary Proceeding, the parties
5 continued filing pleadings, including Ms. Azam's motion to
6 withdraw the reference which the District Court denied. BANA
7 Brief at p. 9 n.4. At a status conference held in the First
8 Adversary Proceeding on January 30, 2014, the bankruptcy court
9 observed that the Fourth Azam Bankruptcy had been dismissed and
10 on that basis (1) denied various motions by the defendants to
11 dismiss, and instead (2) dismissed the First Adversary Proceeding
12 after determining abstention was appropriate. Ms. Azam appealed
13 the entry of the six orders entered following the status hearing.
14 The order with which we are really concerned in BAP No. CC-14-
15 1136 is the Abstention/Dismissal Order entered on April 3, 2014.⁶

17 ⁶ The following additional orders were appealed by Ms. Azam
18 and are part of BAP No. CC-14-1136. Each of these orders
19 specified that it was being entered based upon the bankruptcy
20 court's abstention in the First Adversary Proceeding.

21 - March 10, 2014 order denying the motions to dismiss the First
22 Adversary Proceeding filed by the Attorney Defendants;

23 - March 10, 2014 order denying motions to dismiss the First
24 Adversary Proceeding filed by BANA (as Trustee) and US Bank;

25 - March 10, 2014 order denying motion to dismiss the First
26 Adversary Proceeding filed by BANA;

27 - March 10, 2014 order denying the motion of the Attorney
28 Defendants to strike;

(continued...)

1 2. Adversary 13-1243

2 a. BAP No. CC-13-1538

3 On July 23, 2013, Ms. Azam commenced Adversary Proceeding
4 13-1243 ("Second Adversary Proceeding"), by filing a notice of
5 removal of the Unlawful Detainer Action to the bankruptcy court.
6 Following the September 12, 2013 show cause hearing set by the
7 bankruptcy court to discuss remand or abstention, the bankruptcy
8 court entered the Remand Order and sent the Unlawful Detainer
9 Action back to State Court on October 24, 2013, because the
10 Fourth Azam Bankruptcy had been dismissed. Ms. Azam timely filed
11 a notice of appeal with respect to the Remand Order.

12 **II. JURISDICTION**

13 We discuss below the bankruptcy court's jurisdiction in
14 light of the dismissal of the Fourth Azam Bankruptcy. We have
15 jurisdiction to decide these appeals under 28 U.S.C. § 158.

16 **III. ISSUES**

17 Whether these appeals are moot based on the dismissal of the
18 Fourth Azam Bankruptcy.

19 Whether these appeals are moot based on Ms. Azam's removal
20 from the Property in October 2013.

21 Whether the bankruptcy court abused its discretion when it
22 abstained from exercising jurisdiction in the First Adversary
23 Proceeding.

24 _____
25 ⁶(...continued)

26 - February 6, 2014 order denying the motions filed by Coldwell
27 Banker and Bessie Blazejewski to dismiss the First Adversary
Proceeding.

1 Whether the bankruptcy court abused its discretion when it
2 remanded the Unlawful Detainer Action to the State Court from
3 which Ms. Azam had removed it.

4 **IV. STANDARDS OF REVIEW**

5 "Mootness is a question of law reviewed de novo." Nelson v.
6 George Wong Pension Trust (In re Nelson), 391 B.R. 437, 442
7 (9th Cir. BAP 2008). See also Suter v. Goedert, 504 F.3d 982,
8 985 (9th Cir. 2007).

9 "We review a bankruptcy court's determination of its
10 jurisdiction de novo." In re G.I. Indus., Inc., 204 F.3d 1276,
11 1279 (9th Cir. 2000).

12 "Where bankruptcy jurisdiction can be exercised at the
13 discretion of the court, review is for abuse of discretion."
14 Sea Hawk Seafoods, Inc. v. State of Alaska (In re Valdez
15 Fisheries Dev. Ass'n, Inc.), 439 F.3d 545, 547 (9th Cir. 2006),
16 citing In re Castillo, 297 F.3d 940, 944-45 (9th Cir. 2002). "A
17 bankruptcy court's determination regarding discretionary
18 abstention is fundamentally a matter within the discretion of the
19 court to be reviewed for abuse of discretion." In re Bankruptcy
20 Petition Preparers Who Are Not Certified Pursuant to Requirements
21 of the Arizona Supreme Court, 307 B.R. 134, 140 (9th Cir. BAP
22 2004). "Discretionary abstention under § 1334(c) (1) and remand
23 on an equitable basis are reviewed for an abuse of discretion."
24 Nogah Bethlahmy, IRA v. Kuhlman (In re ACI-HDT Supply Co.),
25 205 B.R. 231 (9th Cir. BAP 1997).

26 Review of an abuse of discretion determination involves a
27 two-prong test; first, we determine de novo whether the

1 bankruptcy court identified the correct legal rule for
2 application. See United States v. Hinkson, 585 F.3d 1247,
3 1261-62 (9th Cir. 2009) (en banc). If not, then the bankruptcy
4 court necessarily abused its discretion. See id. at 1262.
5 Otherwise, we next review whether the bankruptcy court's
6 application of the correct legal rule was clearly erroneous. We
7 will affirm unless its findings were illogical, implausible, or
8 without support in inferences that may be drawn from the facts in
9 the record. See id.

10 We may affirm the decision of the bankruptcy court on any
11 basis supported by the record. See ASARCO, LLC v. Union Pac. R.
12 Co., 765 F.3d 999, 1004 (9th Cir. 2014); Shanks v. Dressel,
13 540 F.3d 1082, 1086 (9th Cir. 2008).

14 **V. DISCUSSION**

15 A. First Adversary Proceeding

16 1. The Appeal in BAP No. CC-13-1345 is Moot.

17 On July 11, 2013, the bankruptcy court entered the TRO
18 Denial Order in the First Adversary Proceeding. Ms. Azam had
19 sought the temporary restraining order so that she could remain
20 in the Property until her disputes relating to the Foreclosure
21 had been fully litigated. After BAP No. CC-13-1345 was filed,
22 Ms. Azam sought a stay pending appeal, which this Panel denied on
23 August 13, 2013.

24 Ms. Azam then moved the District Court to withdraw the
25 reference in the First Adversary Proceeding; in conjunction with
26 the motion to withdraw the reference, Ms. Azam also moved the
27 District Court for a stay until resolution of all pending

1 appeals. The District Court denied both motions on or about
2 November 1, 2013. In the meantime, on October 30, 2013, Ms. Azam
3 was evicted from the Property.

4 In light of the completed eviction, we are not in a position
5 to provide the relief sought via the appeal from the TRO Denial
6 Order. Accordingly, the appeal in BAP No. CC-13-1345 is
7 equitably moot.

8 Even if BAP No. CC-13-1345 was not moot because of the
9 completed eviction, it became moot when the Fourth Azam
10 Bankruptcy was dismissed.

11 Under the law of this circuit, the bankruptcy court
12 retains subject matter jurisdiction to interpret orders
13 entered prior to dismissal of the underlying bankruptcy
14 case, Beneficial Trust Deeds v. Franklin
15 (In re Franklin), 802 F.2d 324, 326-27 (9th Cir. 1986),
16 and to dispose of ancillary matters such as an
17 application for an award of attorney's fees for
18 services rendered in connection with the underlying
19 action, see USA Motel Corp. v. Danning, 521 F.2d 117
20 (9th Cir. 1975). The bankruptcy court does not have
21 jurisdiction, however, to grant new relief independent
of its prior rulings once the underlying action has
been dismissed. See Armel Laminates, Inc. v. Lomas &
Nettleton Co. (In re Income Property Builders, Inc.),
699 F.2d 963, 964 (9th Cir. 1982). See also Spacek v.
Thomen (In re Universal Farming Indus.), 873 F.2d 1334,
1335 (9th Cir. 1989) (dismissal of underlying
bankruptcy case moots all issues directly involving the
debtor's reorganization, but not those ancillary to the
bankruptcy).

22 Tsafaroff v. Taylor (In re Taylor), 884 F.2d 478, 481 (9th Cir.
23 1989). In Taylor, chapter 13 debtors sought to set aside a
24 foreclosure sale on the basis that it violated the automatic
25 stay. The Ninth Circuit ruled that the bankruptcy court no
26 longer had jurisdiction to grant a request for relief from stay
27 after the underlying chapter 13 case had been dismissed. It

1 follows that the bankruptcy court's authority to impose a
2 restraining order to be based on Ms. Azam's bankruptcy-related
3 claims also terminated once the Fourth Azam Bankruptcy was
4 dismissed.

5 The bankruptcy court's denial of the TRO based on the lack
6 of likelihood of success on the merits has been amply justified
7 based on subsequent events, as summarized in the Factual
8 Background discussion supra.

9 2. The Bankruptcy Court Had Discretion to Abstain From
10 Exercising Jurisdiction in the First Adversary
Proceeding (BAP No. CC-14-1136).

11 In her opening brief filed with respect to BAP No.
12 CC-14-1136, Ms. Azam contends that the dismissal of the Fourth
13 Azam Bankruptcy did not automatically divest the bankruptcy court
14 of jurisdiction over the First Adversary Proceeding. Appellant's
15 Opening Brief at 18:5-6 and 18:15-17, citing In re Carraher,
16 971 F.2d 327 (9th Cir. 1992).

17 However, Ms. Azam then asserts that the bankruptcy court had
18 no jurisdiction to issue the Abstention/Dismissal Order,
19 dismissing the First Adversary Proceeding. In support of this
20 assertion she cites Griggs v. Provident Consumer Discount Co.,
21 459 U.S. 56 (1982). Ms. Azam correctly states the rule of law
22 posited by Griggs: "Once a notice of appeal is filed the court is
23 generally divested of jurisdiction over the matters being
24 appealed." (Emphasis added.) Ms. Azam then identifies six
25 pending appeals which she contends acted to divest the bankruptcy
26 court of jurisdiction over the First Adversary Proceeding:

- 27 (1) Her appeal No. 13-55729 pending in the Ninth Circuit

1 with respect to "civil rights removal";

2 (2) BAP No. CC-13-1345 - the appeal from the TRO Denial
3 Order;

4 (3) Her appeal before the District Court from the
5 bankruptcy court's order granting relief from the automatic stay
6 to US Bank in the Fourth Azam Bankruptcy;

7 (4) Her appeal No. 14-55523 pending in the Ninth Circuit
8 with respect to the dismissal of the Fourth Azam Bankruptcy;

9 (5) BAP No. CC-13-1358 - the appeal from the Remand Order
10 entered in the Second Adversary Proceeding; and

11 (6) Her appeal before the District Court from the
12 bankruptcy court's order denying reinstatement of the Fourth Azam
13 Bankruptcy.

14 The jurisdiction at issue, however, is the bankruptcy
15 court's jurisdiction over the First Adversary Proceeding. Only
16 the appeal in BAP No. CC-13-1345 is from an order entered in the
17 First Adversary Proceeding. Even if the appeal in BAP No.
18 CC-13-1345 could serve to divest the bankruptcy court of all
19 jurisdiction over the First Adversary Proceeding, we have already
20 determined that BAP No. CC-13-1345 is moot, and was at the time
21 the bankruptcy court issued the orders in the First Adversary
22 Proceeding that are the subject of BAP No. CC-14-1136. More
23 importantly, the filing of an appeal from the denial of
24 injunction relief does not preclude a trial court from proceeding
25 on the merits of litigation. See Britton v. Co-op Banking Group,
26 916 F.2d 1405, 1412 (9th Cir. 1990) ("Absent a stay, an appeal
27 seeking review of collateral orders does not deprive the trial

1 court of jurisdiction over other proceedings in the
2 case. . . .”). See also Martinez. v. Gonzales, 504 F. Supp. 2d
3 887, 892 (C.D. Cal. 2007). No appeal was pending sufficient to
4 deprive the bankruptcy court of jurisdiction to enter the
5 Abstention/Dismissal Order in the First Adversary Proceeding.

6 Ms. Azam next asserts that the bankruptcy court had no
7 “jurisdiction to abstain,” because the District Court had denied
8 her motion to withdraw the reference. In her view, the District
9 Court anticipated ongoing jurisdiction, which she appears to read
10 as the ongoing exercise of jurisdiction by the bankruptcy court,
11 when it refused to withdraw the reference. Ms. Azam interprets
12 the District Court’s order as providing that the bankruptcy court
13 could not, without District Court involvement, dismiss the First
14 Adversary Proceeding.

15 Ms. Azam is incorrect. In refusing to withdraw the
16 reference, all the District Court did was leave jurisdiction over
17 the First Adversary Proceeding with the bankruptcy court. The
18 bankruptcy court had discretion to determine whether it would
19 exercise that jurisdiction.

20 28 U.S.C. § 1334(a) provides: “Except as provided in
21 subsection (b) of this section, the district courts shall have
22 original and exclusive jurisdiction of all cases under title 11.”
23 An order of reference authorizes a bankruptcy court to exercise
24 title 11 jurisdiction. See 28 U.S.C. § 157(a). 28 U.S.C.
25 § 1334(c) (1) provides:

26 Except with respect to a case under chapter 15 of
27 title 11, nothing in this section prevents a district
court in the interest of justice, or in the interest of

1 comity with State courts or respect for State law, from
2 abstaining from hearing a particular proceeding arising
3 under title 11 or arising in or related to a case under
4 title 11.

5 Where matters have been referred to the bankruptcy court, the
6 bankruptcy court has the rights with respect to abstention
7 otherwise provided to the district court. Further, this Panel
8 has recognized the right of a bankruptcy court, sua sponte, to
9 abstain permissively from hearing any matter. Evoq Props., Inc.
10 v. Maddux (In re Meruelo Maddux Props., Inc.), 2013 WL 1615784 *7
11 (9th Cir. BAP, April 15, 2013).

12 It is well-settled in the Ninth Circuit which factors a
13 bankruptcy court should weigh when it considers whether to
14 permissively abstain from hearing a matter before it. See
15 Christiansen v. Tucson Estates, Inc. (In re Tucson Estates,
16 Inc.), 912 F.2d 1162, 1167 (9th Cir. 1990). Those factors
17 include:

18 (1) the effect or lack thereof on the efficient
19 administration of the estate if a Court recommends
20 abstention,

21 (2) the extent to which state law issues predominate
22 over bankruptcy issues,

23 (3) the difficulty or unsettled nature of the
24 applicable law,

25 (4) the presence of a related proceeding commenced in
26 state court or other nonbankruptcy court,

27 (5) the jurisdictional basis, if any, other than
28 U.S.C. § 1334,

(6) the degree of relatedness or remoteness of the
proceeding to the main bankruptcy case,

(7) the substance rather than form of an asserted core
proceeding,

1 (8) the feasibility of severing state law claims from
2 core bankruptcy matters to allow judgments to be
3 entered in state court with enforcement left to the
4 bankruptcy court,

5 (9) the burden of the bankruptcy court's docket,

6 (10) the likelihood that the commencement of the
7 proceeding in bankruptcy court involves forum shopping
8 by one of the parties,

9 (11) the existence of a right to a jury trial, and

10 (12) the presence in the proceeding of nondebtor
11 parties.

12 In weighing the above factors, the bankruptcy court made the
13 following findings. The Fourth Azam Bankruptcy had been
14 dismissed so there is no effect on administration of a bankruptcy
15 estate of abstention. Most of the claims asserted in the First
16 Adversary Proceeding involved issues of state law or
17 nonbankruptcy federal law. Ms. Azam had pending in District
18 Court an action with claims largely similar to those asserted in
19 the First Adversary Proceeding. The First Adversary Proceeding
20 appeared to be an exercise in forum shopping: "I see Ms. Azam
21 looking for some area, some jurisdiction where she can get some
22 traction and it's not here. . . ." Tr. of Jan. 30, 2014 H'rg at
23 20:10-13. In summary, the bankruptcy court stated:

24 [T]he narrow duties of the bankruptcy court . . . are
25 not implicated in this [Adversary Proceeding]. I find
26 that most of your case - in fact, maybe 100 percent of
27 it is arising either under federal law not involving
Title 11 or under state law. And for reasons of
comity, I just don't see this as being an appropriate
venue for you. So for those reasons - and that's the

1 only thing I'm prepared to say in the order^[7] - I'm
2 invoking my right under [28 U.S.C. § 1334(c)(1)] to
3 abstain.

4 Tr. of Jan. 30, 2014 H'rg at 22:4-12.

5 These findings reflect that the bankruptcy court applied the
6 appropriate law in considering abstention as set forth in Tucson
7 Estates. In our view, these findings were not "illogical,
8 implausible, or without support in inferences that may be drawn
9 from the facts in the record." Accordingly, the bankruptcy court
10 did not abuse its discretion when it abstained from exercising
11 jurisdiction over the First Adversary Proceeding or when it
12 entered the Abstention/Dismissal Order.

13 Ms. Azam argues otherwise. She contends that because the
14 First Adversary Proceeding asserted a matter arising in title 11,
15 *i.e.*, the alleged improper relief from stay order entered in the
16 Third Azam Bankruptcy, the bankruptcy court should not have
17 abstained. However, any challenge to an order entered in the
18 Third Azam Bankruptcy should have taken place in the Third Azam
19 Bankruptcy. Raising it in a proceeding filed in a new bankruptcy

20
21 ⁷ Ms. Azam's counsel had requested that the abstention
22 order contain specific language that would allow the claims to be
23 raised in the pending District Court litigation and that would
24 include tolling language so Ms. Azam's claims would not be barred
25 by any statute of limitations. The bankruptcy court refused on
26 the basis that, as to the first request, the bankruptcy court did
27 not need to tell the District Court what it could or could not
28 decide regarding any purported violation of Title 11, and as to
29 the second request, the question of tolling was not before the
30 bankruptcy court and it declined to issue any advisory opinion on
31 the question.

1 case was not proper. See In re Taylor, 884 F.2d at 480-81.

2 Ms. Azam also asserts that, procedurally, the bankruptcy
3 court erred when it sua sponte raised abstention as a basis for
4 dismissal. She contends Rule 5011(b) required a motion to be
5 served on the parties. She further contends that § 157(c)
6 precluded the bankruptcy court from exercising any jurisdiction
7 over a non-core matter, including a determination to abstain.
8 She asserts she was constitutionally entitled to proposed
9 findings of fact and conclusions of law, **after** a motion had been
10 filed, **and** to de novo review in the District Court once she had
11 had an opportunity to see the bankruptcy court's findings and
12 conclusions.

13 Ms. Azam cites to Holtzclaw v. State Farm Fire and Cas. Co.
14 (In re Holtzclaw), 131 B.R. 162 (E.D. Cal. 1991), to argue that
15 in abstention matters, bankruptcy courts are required to write a
16 report and recommendation to the District Court rather than to
17 act on their own. In her analysis, Ms. Azam overlooks the
18 inherent power of any court to determine its own jurisdiction.
19 Holtzclaw explained the basis for requiring a report and
20 recommendation to the District Court before a bankruptcy court
21 could exercise "mandatory" abstention under 28 U.S.C.
22 § 1334(c)(2) - specifically, because Congress recently had acted
23 to preclude appeals to the circuit courts in cases of mandatory
24 abstention. However, as the bankruptcy court clarified for
25 Ms. Azam's counsel several times in colloquy, the bankruptcy
26 court determined it was appropriate to abstain "permissively"
27 under 28 U.S.C. § 1334(c)(1). Holtzclaw clearly states that no

1 report and recommendation is required in permissive abstention
2 determinations.

3 Pursuant to 28 U.S.C. § 1334(c)(1), a district court
4 may in its discretion abstain from hearing a particular
5 proceeding arising under title 11 or arising in or
6 related to a case under title 11. Unlike mandatory
7 abstention which applies only to noncore matters,
8 discretionary abstention applies to both core and
9 noncore matters. Although bankruptcy rule 5011(b)
10 requires a bankruptcy judge to issue a report and
11 recommendation on discretionary abstention issues,
12 other courts that have considered the issue have found
13 the rule to be in direct conflict with 28 U.S.C.
14 § 1334(c)(1). These courts conclude that in the
15 absence of any statutory limitation on appellate
16 review, a bankruptcy judge may issue a final order with
17 regard to discretionary abstention.

18 The court agrees. This circuit has not interpreted
19 § 1334(c)(1) to curtail the availability of appellate
20 review in discretionary abstention cases.
21 . . . § 1334(c)(1) does not present a constitutional
22 impediment to the authority of bankruptcy judges to
23 enter final orders on questions involving discretionary
24 abstention.

25 Holtzclaw, 131 B.R. at 164 (internal citations omitted). Nor
26 does the Supreme Court's decision in Stern v. Marshall, 131 S.Ct.
27 2594 (2011), constitutionally preclude the bankruptcy court from
permissively abstaining without obtaining the approval of the
District Court, as Ms. Azam suggests.

Further, unlike the language of § 1334(c)(2), § 1334(c)(1)
makes no mention of a motion, rendering it impossible to construe
that a motion was "required" as Ms. Azam contends.

Next, Ms. Azam asserts the bankruptcy court's decision to
abstain runs afoul of the Supreme Court's recent pronouncement on
the doctrine of abstention in Sprint Communications, Inc. v.
Jacobs, 134 S.Ct. 584 (2013). Her interpretation of Sprint
Communications is that "federal courts are obliged to decide

1 cases within the scope of federal jurisdiction and abstention
2 [is] not warranted just because the state court proceeding
3 involves the same subject matter.” Opening Brief at 33:15-34:1.

4 Sprint Communications, and any standards set forth in that
5 decision, have no bearing on the bankruptcy court’s abstention
6 decision. Sprint Communications involved the exercise by a
7 federal district court of its broad federal question
8 jurisdiction. The statute at issue was 28 U.S.C. § 1331.
9 Bankruptcy jurisdiction is narrow and specific and arises under
10 28 U.S.C. § 1334.

11 Having determined that exercising jurisdiction was not
12 appropriate, the bankruptcy court properly denied each of the
13 dismissal and related motions and dismissed the adversary
14 proceeding based on its discretionary abstention determination.

15 B. Second Adversary Proceeding (BAP No. 13-1538)

16 The Second Adversary Proceeding was initiated by removal to
17 the bankruptcy court of the Unlawful Detainer Action then pending
18 in the State Court.

19 Removal of claims related to bankruptcy cases is governed by
20 28 U.S.C. § 1452, which provides

21 (a) A party may remove any claim or cause of action in
22 a civil action other than a proceeding before the
23 United States Tax Court or a civil action by a
24 governmental unit to enforce such governmental unit’s
25 police or regulatory power, to the district court for
the district where such civil action is pending, if
such district court has jurisdiction of such claim or
cause of action under section 1334 of this title.

26 (b) The court to which such claim or cause of action
27 is removed may remand such claim or cause of action on
any equitable ground. An order entered under this
subsection remanding a claim or cause of action or a

1 decision not to remand, is not reviewable by appeal or
2 otherwise by the court of appeals under section 158(d),
3 1291, or 1292 of this title or by the Supreme Court of
4 the United States under section 1254 of this title.

5 The Notice of Removal was filed on July 23, 2013. On
6 July 25, 2013, the bankruptcy court issued a show cause order,
7 scheduling a hearing to determine why it should not abstain
8 permissively or remand pursuant to 28 U.S.C. § 1452(b). The show
9 cause hearing was held September 12, 2013, the day after the
10 bankruptcy court had entered its order dismissing the Fourth Azam
11 Bankruptcy. The bankruptcy court's ruling at the show cause
12 hearing was succinct:

13 One thing is pretty clear. The bankruptcy court at
14 this point has no connection to this case whatsoever.
15 The case - the underlying bankruptcy is dismissed.
16 Even if that were not the case, an unlawful detainer is
17 purely a function of state law. After Stern v.
18 Marshall the bankruptcy courts have even less reason to
19 be intruded into state court matters, so this matter is
20 remanded to state court.

21 Tr. of September 12, 2013 H'rg at 9:4-11.

22 Ms. Azam disputes that dismissal of the bankruptcy case was
23 sufficient to support a remand of the Unlawful Detainer Action
24 where removal also was made pursuant to 28 U.S.C. § 1441 and
25 28 U.S.C. § 1443. In very general terms, 28 U.S.C. § 1441
26 authorizes removal from state court to the District Court any
27 civil action for which the District Court has original
jurisdiction. 28 U.S.C. § 1443 authorizes removal of civil
rights cases from state court to the District Court. Ms. Azam
also contends that the bankruptcy court made insufficient
findings to support remand in the face of removal under 28 U.S.C.
§§ 1441 and 1443.

1 We disagree. The primary basis for remand was dismissal of
2 the Fourth Azam Bankruptcy. However, the bankruptcy court also
3 found that the removed complaint, the Unlawful Detainer Action,
4 was purely a matter of state law. As such, removal pursuant to
5 28 U.S.C. § 1441 or 28 U.S.C. § 1443 would not have been proper
6 because the District Court did not have original jurisdiction
7 over a state law claim for unlawful detainer; nor did the removed
8 action constitute a civil rights case. There is no need to
9 remand to the bankruptcy court for further findings. Nor is
10 there a need for an explicit order with respect to any other
11 basis for removal.

12 Ms. Azam further contends that the bankruptcy court was
13 without jurisdiction to enter the Remand Order after her Notice
14 of Appeal of the dismissal order had been filed. While we
15 disagree with this premise generally, for purposes of this appeal
16 we note that, where the bankruptcy court already had ruled with
17 respect to remand, the entry of the order consistent with that
18 ruling was a ministerial act by the bankruptcy court. Ms. Azam
19 reasserts her general claims that the existence of various
20 appeals precluded the bankruptcy court from exercising any
21 jurisdiction over the removed Unlawful Detainer Action. We
22 already have addressed the argument as to the impact of
23 Ms. Azam's various appeals on matters pending before the
24 bankruptcy court and need not do so again in this context.

25 We do note that the sole claim for relief in the removed
26 Unlawful Detainer Action was eviction of Ms. Azam and others from
27 the Property. That has long since occurred. As a result, the

1 appeal from the Remand Order, BAP No. 13-1358, appears to be
2 moot.

3 **VI. CONCLUSION**

4 Once the Fourth Azam Bankruptcy was dismissed and/or
5 Ms. Azam was evicted from the Property, the appeal from the
6 bankruptcy court's TRO Denial Order became equitably moot.
7 Accordingly, we dismiss BAP No. CC-13-1345.

8 The dismissal of the Fourth Azam Bankruptcy case was
9 sufficient to support both the Abstention/Dismissal Order entered
10 in the First Adversary Proceeding and the Remand Order entered in
11 the Second Adversary Proceeding. Accordingly, we AFFIRM the
12 orders appealed in BAP Nos. CC-14-1136 and CC-13-1358.