

MAY 28 2015

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

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In re:)	BAP No. EC-14-1390-PaJuKu
)	
BRIAN COLIN WARREN and)	Bankr. No. 08-31697
PATRICIA WARREN,)	
)	
Debtors.)	
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BRIAN COLIN WARREN;)	
PATRICIA WARREN,)	
)	
Appllants,)	
)	
v.)	MEMORANDUM ¹
)	
JIM YOUNG; CAROL YOUNG,)	
)	
Appellees.)	
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Argued and Submitted on May 14, 2015
at Sacramento, California

Filed - May 28, 2015

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

Honorable Robert S. Bardwil, Bankruptcy Judge, Presiding

Appearances: William Steven Shumway of Law Office of W. Steven Shumway, argued for appellants Brian and Patricia Warren; Walter R. Dahl of Dahl Law, argued for appellees Jim and Carol Young.

Before: PAPPAS, JURY, and KURTZ, Bankruptcy Judges.

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 Chapter 11² debtors Brian and Patricia Warren ("Debtors")
2 appeal the order of the bankruptcy court dismissing their
3 bankruptcy case pursuant to § 1112(b). We AFFIRM.

4 **I. FACTS**

5 On August 21, 2008, Debtors filed a chapter 11 petition. In
6 their schedule D, Debtors listed appellees Jim and Carol Young
7 (the "Youngs") as creditors holding a fully secured claim in the
8 amount of \$40,000. Debtors did not indicate what collateral
9 secured the Youngs' claim.

10 On October 8, 2008, Debtors filed an amended schedule D that
11 listed the Youngs' claim in the same amount, but Debtors now
12 indicated that the claim was unsecured. Debtors also stated in
13 the amended schedule that the Youngs' claim was secured by a
14 "third deed of trust" on seventy-one acres of "raw land" in
15 Auburn, California (the "Real Property"). Neither the original
16 nor amended schedule D Debtors filed listed the claim as
17 contingent, unliquidated, or disputed.

18 On August 20, 2009, Debtors filed their proposed disclosure
19 statement. In it, Debtors explained that they were sole
20 proprietors who intended to develop the Real Property, but due to
21 the downturn of the real estate market, as well as cost overruns
22 and delays, the development failed. In addition, as is relevant
23 in this appeal, Debtors' disclosure statement indicated that, in
24 their proposed chapter 11 plan (the "Plan"), the Youngs and other
25 creditors claiming a secured interest in the Real Property would

26
27 ² Unless otherwise indicated, all chapter, section and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 be deemed to be unsecured creditors and would be paid along with
2 the other general unsecured creditors. The disclosure statement
3 explained that plan payments to unsecured creditors would begin
4 "one month after [the Plan] is confirmed and will end when the
5 creditor has received 9.0% of its allowed claim." A copy of the
6 Plan was attached to the disclosure statement. It provided that
7 Debtors "will make a \$1,000 payment per month to [unsecured]
8 creditors . . . until the creditor has received 9% of its allowed
9 claim. Debtor[s] will distribute pro-rata payments to these
10 creditors from [their] operations on a monthly basis beginning one
11 month after the [P]lan is confirmed."

12 The bankruptcy court approved Debtors' disclosure statement
13 on December 5, 2009, and it confirmed the Plan on February 6,
14 2010. The bankruptcy court closed the bankruptcy case on
15 October 5, 2012.

16 On May 23, 2014, the bankruptcy court granted a motion by
17 Highland Crofters, LLC, another creditor of Debtors, to reopen the
18 bankruptcy case.³ Then, on June 10, 2014, the Youngs filed a
19 motion to convert Debtors' case to chapter 7. To support the
20 motion, the Youngs' declaration represented that they had received
21 no payments from Debtors after confirmation even though the Plan

22
23 ³ The parties did not provide the Panel with a copy of the
24 motion to reopen the bankruptcy case. We have reviewed it in the
25 bankruptcy court's docket, and it explains that Highland Crofters,
26 LLC, is the "current holder of the promissory note, previously
27 held by Samuel R. Spencer, secured by a first deed of trust on
28 [the Real Property.]" Bankr. Dkt. No. 386. The creditor asked
the bankruptcy court to reopen the bankruptcy case for a
"clarification of [the] terms of [the] order confirming the plan."
Id. We exercise our discretion to consider pleadings appearing on
the docket in the underlying bankruptcy case. Fed. R. Evid. 201;
O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d
955, 957-58 (9th Cir. 1989).

1 provided that monthly payments would be made to them beginning in
2 March 2010. Other declarations accompanying the motion, authored
3 by creditors Marilyn Peters of Peter's Drilling, Paul Ferreira of
4 Don Robinson Sand and Gravel, and Howard Anderson of Anderson
5 Sierra Pipe Company; each averred that the creditors held allowed
6 general unsecured claims under the Plan, but had received no
7 payments after confirmation of the Plan.

8 On June 17, 2014, Debtors filed an objection to the Youngs'
9 proof of claim. Debtors asked the bankruptcy court to disallow
10 Youngs' claim because the proof of claim was filed one day after
11 the claims bar date. On July 8, 2014, Debtors filed an amended
12 schedule F that now listed the Youngs' claim, as well as the
13 claims of every other creditor on the amended schedule (except for
14 Jack and Laura Warren), as unsecured, nonpriority claims that
15 Debtors disputed.

16 On July 8, 2014, Debtors filed an opposition to the Youngs'
17 motion to convert. In the opposition, Debtors now conceded that,
18 even though the Youngs' proof of claim had been filed after the
19 deadline, the claim was "deemed filed" under § 1111(a)⁴ because
20 they had listed it in their original and amended schedules and had
21 not alleged the claim was disputed, contingent, or unliquidated.
22 Because of this, Debtors offered to pay the Youngs the full amount
23 they were owed under the Plan provided the bankruptcy court denied
24 the Youngs' motion to convert. Debtors further argued that they

26 ⁴ Section 1111(a) provides: "A proof of claim or interest is
27 deemed filed under section 501 of this title for any claim or
28 interest that appears in the schedules filed under section
521(a)(1) or 1106(a)(2) of this title, except a claim or interest
that is scheduled as disputed, contingent, or unliquidated."

1 had paid a total of \$52,000 to various other unsecured creditors
2 under the Plan and, therefore, they had substantially complied
3 with the payment terms of the Plan. Debtors did not dispute that
4 they had not paid the Youngs, Don Robinson Sand and Gravel, and
5 several other general unsecured creditors as required by the Plan.

6 Before the July 23, 2014 hearing on the Youngs' motion to
7 convert, the bankruptcy court issued a tentative decision. In it,
8 the bankruptcy court found that the Youngs had shown cause existed
9 under § 1112(b)(1) to dismiss or convert Debtors' case because
10 Debtors were "in material default of the terms of the confirmed
11 plan" with respect to their obligation to pay unsecured creditors.
12 Specifically, the bankruptcy court found and concluded:

13 [Debtors] have failed to make any payments to
14 the Youngs or Don Robinson Sand & Gravel, a
15 fact the Youngs have demonstrated by way of
16 admissible evidence and which [Debtors] do not
17 dispute. Further, [Debtors] do not dispute
18 that they have made no payments on any claims
19 of creditors who did not file timely proofs of
20 claim The fact that [Debtors] have
21 opposed [the Youngs' motion] without proposing
22 to pay any of the 15 creditors who did not
23 file claims or who filed late claims **except**
24 the Youngs, despite [Debtors'] asserted
25 newfound awareness of § 1111(a), leads the
26 court to conclude that [Debtors] do not intend
27 to comply with the terms of the [P]lan.

28 (emphasis in original) (footnote omitted).

29 In the tentative decision, the bankruptcy court next
30 addressed whether conversion or dismissal was in the best interest
31 of creditors and the estate under § 1112(b)(1). The court noted
32 that the Youngs' motion had requested conversion of the case to
33 chapter 7, rather than dismissal, because Debtors' interest in the
34 Real Property should be revested in the bankruptcy estate and
35 administered for the benefit of Debtors' creditors. Concerning

1 this argument, the court observed that it "ha[d] no evidence of
2 the current value of the [Real Property] or the amount of the
3 senior lien against it, or of other assets that might be available
4 to provide [a] distribution to creditors." The court further
5 stated that, assuming the case was converted, it was "not
6 convinced the language of the [P]lan and disclosure statement was
7 sufficient to allow the [Real Property] to be revested in the
8 estate under applicable law. See Pioneer Liquidating Corp. v.
9 United States Trustee (In re Consolidated Pioneer Mortgage
10 Entities), 264 F.3d 803, 807-08 (9th Cir. 2001)." The court
11 advised the parties that it would consider whether conversion or
12 dismissal would be in the best interest of creditors and the
13 estate at the hearing.

14 Finally, the bankruptcy court stated it intended to strike,
15 as being filed in bad faith, Debtors' amended schedule F wherein
16 Debtors claimed, more than six years after their case was filed
17 and four years after the Plan was confirmed, that most of their
18 general unsecured creditors' claims were disputed.

19 At the hearing, after argument by the parties, the bankruptcy
20 court announced it would adopt its tentative decision that
21 adequate cause existed to dismiss or convert Debtors' case under
22 § 1112(b)(1). The court then addressed whether the case should be
23 converted or dismissed. Despite the relief sought in their
24 motion, the Youngs now requested dismissal as opposed to
25 conversion of the case to chapter 7. Debtors also requested that
26 the case be dismissed. The bankruptcy court concluded it would
27 dismiss the case for the reasons stated in its tentative
28

1 decision.⁵

2 An order dismissing the chapter 11 case was entered on
3 July 25, 2014. Debtors filed a timely appeal on August 6, 2014.

4 **II. JURISDICTION**

5 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
6 and 157(b)(2)(A). We have jurisdiction under 28 U.S.C. § 158.

7 **III. ISSUE**

8 Whether the bankruptcy court erred in dismissing the
9 bankruptcy case.

10 **IV. STANDARD OF REVIEW**

11 "We review de novo whether the cause for dismissal of a
12 Chapter 11 case under [] § 1112(b) is within the contemplation of
13 that section of the Code." Marsch v. Marsch (In re Marsch),
14 36 F.3d 825, 828 (9th Cir. 1994).

15 Upon a finding of "cause" under § 1112(b)(1), "[w]e review
16 the bankruptcy court's decision to dismiss a case under an abuse
17 of discretion standard." Sullivan v. Harnisch (In re Sullivan),
18 522 B.R. 604, 611 (9th Cir. BAP 2014) (citing Leavitt v. Soto
19 (In re Leavitt), 171 F.3d 1219, 1223 (9th Cir. 1999)). A two-step
20 analysis is used to determine whether the bankruptcy court abused
21 its discretion: (1) we review de novo whether the bankruptcy court
22 applied the correct legal standard to the relief requested; and
23 (2) we review the bankruptcy court's findings of fact for clear
24 error. In re Sullivan, 522 B.R. at 611-12 (citing United States
25 v. Hinkson, 585 F.3d 1247, 1261-62 (9th Cir. 2009) (en banc)).
26 "We must affirm the bankruptcy court's fact findings unless we

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28 ⁵ The bankruptcy court also dismissed, as moot, Debtors' objection to the Youngs' proof of claim.

1 conclude that they are illogical, implausible, or without support
2 in the record.” In re Sullivan, 522 B.R. at 612 (citing Hinkson,
3 585 F.3d at 1262).

4 V. DISCUSSION

5 A. Debtors’ arguments on appeal.

6 Debtors argue that the bankruptcy court erred when it found
7 that cause existed to dismiss their case under § 1112(b)(1).
8 Debtors allege that they had made fifty-two, \$1,000 monthly
9 payments under the Plan, but paid only those creditors who had
10 filed “timely” proofs of claim. Debtors assert that they intended
11 to pay the other creditors who were listed in their schedules who
12 had not filed a proof of claim, or had filed tardy claims, at some
13 later time, and would have done so had the bankruptcy court not
14 dismissed the bankruptcy case. Because of this, Debtors argue
15 that they had substantially complied with the terms of the Plan,
16 and that dismissal of the case under these circumstances was
17 inappropriate.

18 In addition, Debtors argue that, as provided in § 1112(b)(2),
19 unusual circumstances existed allowing them to avoid dismissal of
20 their case, even if they were in default under the Plan. Debtors
21 point out that they were making payments under the Plan to most
22 creditors, and that they could have cured any default in payments
23 to the other creditors. Debtors insist that “[i]n liquidation, []
24 creditors would have received nothing. The continuation of the
25 [P]lan was in the best interest of creditors.” Appellants’ Op.
26 Br. at 7.

1 **B. The bankruptcy court did not err in finding cause to**
2 **dismiss Debtors' case pursuant to § 1112(b) (1) .**

3 Section 1112(b) (1) provides:

4 Except as provided in paragraph (2) and
5 subsection (c), on request of a party in
6 interest, and after notice and a hearing, the
7 court shall convert a case under this chapter
8 to a case under chapter 7 or dismiss a case
9 under this chapter, whichever is in the best
 interests of creditors and the estate, for
 cause unless the court determines that the
 appointment under section 1104(a) of a trustee
 or an examiner is in the best interests of
 creditors and the estate.

10 Section 1112(b) (4) sets forth a nonexhaustive list of what
11 constitutes "cause" to convert or dismiss a case under
12 § 1112(b) (1). In re Consol. Pioneer Mortg. Entities, 248 B.R. at
13 375. Included in the list of items constituting "cause" to
14 convert or dismiss is a "material default by the debtor with
15 respect to a confirmed plan." § 1112(b) (4) (N). "The movant bears
16 the burden of establishing by preponderance of the evidence that
17 cause exists." In re Sullivan, 522 B.R. at 614 (citing StellarOne
18 Bank v. Lakewatch, LLC (In re Park), 436 B.R. 811, 815 (Bankr.
19 W.D. Va. 2010)).

20 If the bankruptcy court finds that cause exists to grant
21 relief under § 1112(b) (1), it must then: "(1) decide whether
22 dismissal, conversion, or the appointment of a trustee or examiner
23 is in the best interest of creditors and the estate; and
24 (2) identify whether there are unusual circumstances that
25 establish that dismissal or conversion is not in the best interest
26 of creditors and the estate." In re Sullivan, 522 B.R. at 612
27 (citing § 1112(b) (1), (b) (2), and Shulkin Hutton, Inc., P.S. v.
28 Treiger (In re Owens), 552 F.3d 958, 961 (9th Cir. 2009)). In

1 choosing between dismissal or conversion, a bankruptcy court must
2 consider the interests of all creditors. Id. (citing In re Owens,
3 552 F.3d at 961). “If cause is established, the decision whether
4 to convert or dismiss the case falls within the sound discretion
5 of the court.” Id. (citing Mitan v. Duval (In re Mitan), 573 F.3d
6 237, 247 (6th Cir. 2009) and Nelson v. Meyer (In re Nelson),
7 343 B.R. 671, 675 (9th Cir. BAP 2006)).

8 Even if cause exists, § 1112(b)(2) provides an exception to
9 the requirement that a chapter 11 case be converted or dismissed.
10 For the exception to apply: (1) the debtor must prove and the
11 bankruptcy court must “find and specifically identify” that
12 “unusual circumstances” exist to show that conversion or dismissal
13 is not in the best interest of creditors and the estate; and (2)
14 the debtor must prove that the cause for conversion or dismissal
15 was reasonably justified, and that basis for dismissal or
16 conversion can be “cured” within a reasonable time.⁶ As noted,

17

18 ⁶ More precisely, § 1112(b)(2) provides:

19 The court may not convert a case under this
20 chapter to a case under chapter 7 or dismiss a
21 case under this chapter if the court finds and
22 specifically identifies unusual circumstances
23 establishing that converting or dismissing the
24 case is not in the best interests of creditors
25 and the estate, and the debtor or any other
26 party in interest establishes that –

24 (A) there is a reasonable likelihood that a
25 plan will be confirmed within the time frames
26 established in sections 1121(e) and 1129(e) of
27 this title, or if such sections do not apply,
28 within a reasonable period of time; and

27 (B) the grounds for converting or dismissing
28 the case include an act or omission of the
debtor other than under paragraph (4)(A)–

(continued...)

1 the debtor bears the burden of proving the unusual circumstances
2 are present in the case that render dismissal or conversion not in
3 the best interest of creditors or the estate. Sanders v. United
4 States Tr. (In re Sanders), No. CC-12-1398, 2013 WL 1490971, at *7
5 (9th Cir. BAP Apr. 11, 2013) (citing In re Orbit Petroleum, Inc.,
6 395 B.R. 145, 148 (Bankr. D.N.M 2008)); see also 7 COLLIER ON
7 BANKRUPTCY ¶ 1112.05[2] (Alan N. Resnick & Henry J. Sommers eds.,
8 16th ed.) (“Once the movant has established cause, the burden
9 shifts to the respondent to demonstrate by evidence the unusual
10 circumstances that establish that dismissal or conversion is not
11 in the best interests of creditors and the estate.”).

12 In this case, we conclude that the bankruptcy court did not
13 err in finding “cause” under § 1112(b)(4)(N), nor did it abuse its
14 discretion in dismissing Debtors’ case. First, the bankruptcy
15 court found that, as provided in § 1112(b)(4)(N), cause existed
16 because Debtors were in material default under the Plan. Debtors
17 had failed to make the required payments to the Youngs and several
18 other unsecured creditors for over four years. The Plan clearly
19 required that Debtors begin making payments to all of their
20 unsecured creditors in March 2010. The Youngs offered undisputed
21 evidence to show that they, along with several other unsecured
22 creditors that held allowed unsecured claims, had received no
23 payments after confirmation of the Plan. As the bankruptcy court

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⁶(...continued)

26

(i) for which there exists a reasonable
justification for the act or omission; and

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(ii) that will be cured within a reasonable
period of time fixed by the court.

28

1 observed:

2 [Debtors] do not dispute that they have made
3 no payments on any claims of creditors who did
4 not file timely proofs of claim The
5 fact that [Debtors] have opposed [the Youngs'
6 motion] without proposing to pay any of the
7 15 creditors who did not file claims or who
8 filed late claims except the Youngs, despite
9 [Debtors'] asserted newfound awareness of
10 § 1111(a), leads the court to conclude that
11 [Debtors] do not intend to comply with the
12 terms of the [P]lan.

13 The bankruptcy court's factual findings are clearly supported
14 by the record. And it correctly concluded that Debtors' failure
15 to make any payments to several unsecured creditors for more than
16 four years in contravention of the Plan amounted to a material
17 default and constituted cause to convert or dismiss the bankruptcy
18 case under § 1112(b)(1) and (b)(4)(N). See Kenny G. Enters., LLC
19 v. Casy (In re Kenny G. Enters.), No. BAP CC-13-1527, 2014 WL
20 4100429, at *14 (9th BAP Cir. Aug. 20, 2014) (noting that failure
21 to pay creditors as required by a confirmed plan is a material
22 default and cause for conversion or dismissal of a debtor's case)
23 (citing AMC Mortg. Co. v. Tenn. Dep't of Revenue (In re AMC Mortg.
24 Co.), 213 F.3d 917, 921 (6th Cir.2000)); see also State of Ohio,
25 Dept. of Taxation v. H.R.P. Auto Center, Inc (In re H.R.P. Auto
26 Center, Inc.), 130 B.R. 247, 256 (Bankr. N.D. Ohio 1991) (holding
27 three missed payments to a single creditor over the course of a
28 year was a material default of a confirmed chapter 11 plan);
29 7 COLLIER ON BANKRUPTCY ¶ 1112.04[6][n] ("Although the Code does not
30 define the term material, certainly the failure to make payments
31 when due under the plan would constitute a material default.").

32 In arguing that cause did not exist to convert or dismiss
33 their case, Debtors remind us that they paid fifty-two \$1,000

1 payments to "other" unsecured creditors under the Plan, and thus
2 they had "substantially complied" with the terms of the Plan.
3 While there is no evidence in the record to show that Debtors
4 actually made these payments, even if they did, Debtors were not
5 absolved from the material default they committed under the terms
6 of the Plan obligating them to pay all allowed unsecured claims,
7 including those that the bankruptcy court determined had not been
8 paid since March 2010. In this context, whether Debtors had
9 "substantially complied" in paying other creditors under the Plan
10 is of no moment because that is not the applicable standard under
11 § 1112(b) (1). Cf. Greenfield Drive Storage Park v. Cal.
12 Para-Prof'l Servs., Inc. (In re Greenfield Drive Storage Park),
13 207 B.R. 913, 917 (9th Cir. BAP 1997) ("Whether the plan has been
14 'substantially consummated' is not determinative as to whether
15 there has been a material default in the performance of the
16 plan."). Simply put, the bankruptcy court did not err in finding
17 that adequate cause existed under § 1112(b) (4) (N) to require
18 either conversion or dismissal of Debtors' case.

19 Next, the bankruptcy court did not abuse its discretion when
20 it decided to dismiss Debtors' case, as opposed to converting the
21 case to chapter 7, after considering which option was in the best
22 interest of creditors and the estate. The court addressed this
23 issue in its tentative decision and expressed doubt, based upon
24 the language of the Plan, and other reasons,⁷ whether under these

26 ⁷ The bankruptcy court stated it was "not convinced the
27 language of the [P]lan and disclosure statement was sufficient to
28 allow the [Real Property] to be revested in the estate under
applicable law. See Pioneer Liquidating Corp. v. United States

(continued...)

1 facts the Real Property, Debtors' primary asset, would "revest" in
2 the bankruptcy estate if the court converted the case to
3 chapter 7. After hearing from Debtors and the Youngs, who each
4 requested dismissal rather than conversion,⁸ and neither of whom
5 disputed the court's concern about the status of Real Property
6 upon conversion, the court determined the interests of the
7 creditors were best served by dismissal. We find no abuse of
8 discretion in this determination.

9 **C. Debtors' alternative argument under § 1112(b)(2) fails.**

10 Debtors note that they had paid their unsecured creditors
11 \$52,000, and that they would cure the balance owed to the other,
12 unpaid creditors, if given an opportunity. They assert that these
13 facts should allow them to avoid the harsh consequence of
14 dismissal of their chapter 11 case. However, Debtors never argued
15

16 _____
17 ⁷(...continued)

18 Trustee (In re Consolidated Pioneer Mortgage Entities), 264 F.3d
19 803, 807-08 (9th Cir. 2001)." In re Consol. Pioneer Mortg.
20 Entities notes that based upon § 1141(b) property of the estate
21 vests in the debtor upon plan confirmation unless the plan
22 provides otherwise. Id.

23 ⁸ The Youngs, who had previously requested conversion of
24 Debtors' case in their motion, were clearly persuaded by the
25 bankruptcy court's concerns regarding the status of the Real
26 Property in the event of a conversion. At the hearing, counsel
27 for the Youngs stated:

28 Your Honor, first, I would like to thank the
court for its lengthy tentative ruling. We
would not oppose dismissal at this time, aside
from conversion. I know, in our moving
papers, we ask for conversion, but with the
court's concern and notation in its tentative
ruling about the real property not reverting
in the Chapter 7 bankruptcy estate, we would
not oppose dismissal of the case.

Hr'g Tr. at 4:23-5:4, July 23, 2014.

1 in the bankruptcy court that these facts constituted the sort of
2 "unusual circumstances" that justify application of the exception
3 to dismissal codified in § 1112(b)(2). We do not consider
4 arguments of this type made for the first time on appeal. See
5 Mano-Y&M, Ltd. v. Field (In re Mortg. Store, Inc.), 773 F.3d 990,
6 998-99 (9th Cir. 2014) (stating issues not raised in the
7 bankruptcy court are waived); Barnes v. Belice (In re Belice),
8 461 B.R. 564, 569 n.4 (9th Cir. BAP 2011) (stating the BAP did not
9 need to decide arguments not raised in the bankruptcy court).

10 Even if Debtors had timely raised their argument, and even
11 were the bankruptcy court inclined to agree that unusual
12 circumstances were present, to satisfy § 1112(b)(2), Debtors would
13 have also had to show that there was a "reasonable justification"
14 for their failure to pay the Youngs and other unsecured creditors
15 for over four years, and that their failure to do so would be
16 cured within a reasonable amount of time fixed by the court. YBA
17 Nineteen, LLC v. IndyMac Venture, LLC (In re YBA Nineteen, LLC),
18 505 B.R. 289, 303 (S.D. Cal. 2014). The bankruptcy court found no
19 reasonable justification existed for their failure to make the
20 required Plan payments, however, and, in fact, stated Debtors'
21 conduct "leads the court to conclude that [Debtors] do not intend
22 to comply with the terms of the [P]lan." Given these findings,
23 all adequately supported by the record, Debtors can not rely upon
24 § 1112(b)(2).

25 VI. CONCLUSION

26 The bankruptcy court did not err when it concluded that
27 Debtors' failure to pay several creditors for four years amounted
28 to a material default under the confirmed plan, and that cause

1 existed under § 1112(b) (1) to grant Youngs' motion. It also did
2 not abuse its discretion when it ordered that Debtors' case be
3 dismissed as opposed to converted. We AFFIRM the order of the
4 bankruptcy court.

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