

MAY 29 2015

SUSAN M. SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re: ) BAP No. EC-14-1067-KuPaJu  
 )  
 6 GLENN GREGO, ) Bk. No. 14-20064  
 )  
 7 Debtor. )  
 )  
 8 \_\_\_\_\_ )  
 )  
 9 GLENN GREGO, )  
 )  
 10 Appellant, )  
 )  
 11 v. ) **MEMORANDUM\***  
 )  
 12 UNITED STATES TRUSTEE, )  
 )  
 13 Appellee. )  
 \_\_\_\_\_ )

Argued and Submitted on May 14, 2015  
at Sacramento, California

Filed - May 29, 2015

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

Honorable Robert S. Bardwil, Bankruptcy Judge, Presiding

Appearances: \_\_\_\_\_  
 Wiley Peteet Ramey, Jr. argued for appellant Glenn  
 Grego; Robert Joseph Schneider, Jr. argued for  
 appellee United States Trustee.

Before: KURTZ, PAPPAS and JURY, Bankruptcy Judges.

\_\_\_\_\_  
 \*This disposition is not appropriate for publication.  
 Although it may be cited for whatever persuasive value it may  
 have (see Fed. R. App. P. 32.1), it has no precedential value.  
See 9th Cir. BAP Rule 8024-1.

1 **INTRODUCTION**

2 Glenn Grego appeals from the bankruptcy court's order sua  
3 sponte converting Grego's chapter 11<sup>1</sup> case to chapter 7. While  
4 we do not perceive any reversible error in the bankruptcy court's  
5 determination that Grego filed his petition in bad faith, the  
6 bankruptcy court should have considered dismissal of the  
7 chapter 11 case as an alternative to conversion.

8 Accordingly, we will VACATE the bankruptcy court's  
9 conversion order and will REMAND for consideration of dismissal  
10 as an alternative to conversion.

11 **FACTS**

12 Anxious about an impending foreclosure sale, Grego commenced  
13 a personal chapter 11 bankruptcy case on January 3, 2014. At the  
14 time of that bankruptcy filing, another related bankruptcy case  
15 already was pending in the Eastern District of California, a case  
16 filed by Grego as trustee for a trust formed by his father, who  
17 is deceased. The trust apparently owned 50% of the subject  
18 parcels of real property and Grego personally owned the other  
19 50%. As Grego puts it, he needed to personally file bankruptcy  
20 because the trust's case was subject to dismissal based on an  
21 eligibility issue. Rather than contest the United States  
22 Trustee's motion to dismiss in the trust case, Grego decided that  
23 the better course of action was for him to commence a personal  
24 chapter 11 case.

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25  
26 <sup>1</sup>Unless specified otherwise, all chapter and section  
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
28 all "Rule" references are to the Federal Rules of Bankruptcy  
Procedure, Rules 1001-9037.

1 This was not Grego's first personal bankruptcy case. In  
2 January 2011, he filed a personal chapter 11 case in the Central  
3 District of California. In April 2011, a chapter 11 trustee was  
4 appointed, and in February 2012 that case was converted to  
5 chapter 7. He ultimately received a chapter 7 discharge in the  
6 Central District case in September 2013. According to Grego, his  
7 interest in the real property never was administered in the  
8 Central District case.

9 Grego states that he felt pressured to commence his new  
10 chapter 11 case as soon as possible because the foreclosure sale  
11 was scheduled for one hour after the January 8, 2014 hearing on  
12 the United States Trustee's motion to dismiss the trust case.  
13 The trust case was dismissed by court order entered January 13,  
14 2014, but Grego's new personal bankruptcy case already was  
15 pending.

16 Within days of Grego's new bankruptcy filing, the bankruptcy  
17 court issued what appears to be a routine order scheduling a  
18 chapter 11 status conference for roughly one month into the new  
19 bankruptcy case. A few days before the status conference, the  
20 bankruptcy court issued a three-page tentative ruling that was  
21 anything but routine. The court announced that it had a number  
22 of concerns about Grego's latest bankruptcy filing. The  
23 tentative ruling pointed out that there were a number of  
24 significant omissions and obvious inaccuracies in Grego's  
25 schedules. For instance, in Grego's Schedule A, he listed five  
26 parcels of real property and identified himself as "co-owner" but  
27 did not identify who else held an ownership interest in these  
28 properties. In a related problem, even though he identified each

1 of the properties as encumbered by deeds of trust, he did not  
2 identify the co-owner as a co-debtor on his Schedule H.  
3 Meanwhile, for every single category of personal property listed  
4 on his Schedule B, Grego checked the box stating "none," thereby  
5 indicating that he had no personal property at all. As for the  
6 declaration certifying the accuracy of all of Grego's "foregoing"  
7 bankruptcy schedules, the declaration was attached before rather  
8 than after the schedules, and the number of pages of schedules  
9 included was left blank, so Grego failed to properly certify the  
10 accuracy of any of his schedules.

11 Grego also filed Schedules I and J listing total monthly  
12 expenses of more than \$17,000 and total monthly income of less  
13 than \$4,000 - all derived from his four rental properties. The  
14 bankruptcy court noted that, assuming the accuracy of the income  
15 and expense schedules and the accuracy of Grego's representation  
16 that he did not expect either his income or his expenses to  
17 change in the next year, Grego did not have anywhere close to  
18 enough cash flow to cover the \$8,300 in monthly living expenses  
19 incurred by him and his dependent daughter, let alone enough to  
20 fund a chapter 11 plan.

21 Grego also filed a statement of financial affairs, but the  
22 bankruptcy court once again was concerned about obvious  
23 inaccuracies and omissions. With the exception of rental income  
24 from Grego's four rental properties, which he listed in his  
25 answer to question one on his statement, Grego answered "none" to  
26 every other question in the statement. In addition, there were  
27 mathematical errors in Grego's current monthly income statement,  
28 and his credit counseling statement alleged that he had completed

1 the required credit counseling course but failed to attach the  
2 required credit counseling certificate.

3 The bankruptcy court also expressed concern about Grego's  
4 status conference report, in which he stated that he hoped to  
5 survive on his rental income while he litigated with his secured  
6 lender in state court over the lender's alleged predatory lending  
7 practices - a lawsuit he indicated that he recently had  
8 commenced. Among other things, the court noted that Grego's  
9 status conference report referenced his intent to use his  
10 lender's cash collateral and to seek compensation for managing  
11 his rental properties but that Grego had not yet filed any motion  
12 seeking court approval for either activity.

13 Based on these and other concerns, the tentative ruling  
14 stated that the court was inclined to continue the chapter 11  
15 status conference but that the court was "not likely to permit  
16 [Grego] to delay the prosecution of this chapter 11 case for any  
17 significant length of time." Tent. Ruling. (February 2014) at  
18 pp. 1-3.

19 After issuance of the tentative ruling but before the status  
20 conference, Grego filed amended schedules and an amended  
21 statement of financial affairs. In his amended Schedule B, Grego  
22 now listed at least some personal property, including  
23 miscellaneous jewelry of \$1,500 and a 2014 Ford Focus with a  
24 value of \$27,000. Whereas his initial Schedule F listed no  
25 unsecured creditors, his amended Schedule F listed roughly fifty  
26 unsecured creditors holding in aggregate over \$3 million in

1 claims.<sup>2</sup> In addition, whereas his initial Schedule G listed no  
2 executory contracts or unexpired leases, his amended Schedule G  
3 disclosed his car lease (for the Ford Focus) as well as the four  
4 tenants who were leasing his rental properties. In his amended  
5 Schedule H, Grego disclosed for the first time the trust as co-  
6 debtor. As for his amended statement of financial affairs, Grego  
7 still answered "none" for most of the questions. He did disclose  
8 four lawsuits in which he was involved in answer to question 4,  
9 but his lawsuit against his lender for predatory lending  
10 practices was not listed among them.

11 At the February 5, 2014 status conference, the bankruptcy  
12 court reiterated many of the same concerns stated in its  
13 tentative ruling and indicated that the filing of the amended  
14 schedules only increased rather than decreased those concerns.  
15 The court further pointed out that Grego did not disclose with  
16 his initial schedules his Central District bankruptcy case or the  
17 trust's bankruptcy case.<sup>3</sup> The court also noted that there was no  
18 change to Grego's income and expense schedules showing negative  
19 net income of over \$13,700 per month.

20 Based on all of the concerns expressed in the tentative  
21 ruling and at the hearing, the court stated numerous times that

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22  
23 <sup>2</sup>At the chapter 11 status conference, Grego indicated that,  
24 out of an abundance of caution, he had listed in his amended  
25 Schedule F all of the unsecured creditors from the Central  
26 District case, even though their claims presumably were  
27 discharged in that case.

28 <sup>3</sup>While Grego did not disclose the Central District case or  
the trust case when he filed his initial schedules on January 3,  
2014, he did disclose both cases when he filed his statement of  
related cases on January 14, 2014.

1 Grego's chapter 11 petition either was filed in bad faith or as  
2 the result of gross incompetence. In his defense, Grego argued  
3 that it was inadvertent that he did not list any personal  
4 property and that he did not see the tentative ruling before  
5 filing the amended schedules. In response, the bankruptcy court  
6 clarified that the lynchpin for its bad faith or gross  
7 incompetence finding was the discrepancy between the schedules  
8 and Grego's egregious and complete disregard of the requirement  
9 to file accurate and complete schedules under oath. The  
10 following statement by the court sums up the court's comments at  
11 the status conference:

12 All right. I listened to what you said. Nothing  
13 dissuades me. The fact that there was the threat of a  
14 foreclosure, it's done on a very, very routine basis  
15 where a petition is filed and schedules are not filed  
16 for two weeks, or even [longer] if an application to  
17 extend time is given.

18 But the discrepancy between the initial petition and  
19 the amended schedules, which were filed after the court  
20 issued its tentative ruling identifying all of the  
21 faults and problems is, in the court's eye, one of two  
22 things. It's either a complete disregard for the  
23 requirements to file documents under oath and bad  
24 faith, or alternatively, the result of gross  
25 incompetence.

26 Either way, . . . with those considerations, coupled  
27 with the prior bankruptcy that was not listed on this  
28 petition, and the prior Chapter 11 that was dismissed  
very recently, that you say is almost the same as the  
debtor here, leads me to conclude that there is  
absolutely sufficient cause to either appoint a  
Chapter 7, excuse me, a Chapter 11 trustee or convert  
the case to Chapter 7.

Hr'g Tr. (Feb 5, 2014) at 7:10-8:4.

In addition to announcing that its tentative ruling would  
become its final ruling, the bankruptcy court asked counsel for  
the United States Trustee whether the best interest of creditors

1 would be better served by the appointment of a chapter 11 trustee  
2 or the conversion of the case to chapter 7. Counsel for the  
3 United States Trustee responded that, given his familiarity with  
4 the trust case, and given that there appeared to be nothing to  
5 reorganize, conversion to chapter 7 likely was the better choice.  
6 According to counsel, all of Grego's parcels of real property  
7 were "under water." It is unclear exactly what the United States  
8 Trustee's counsel was basing this assessment on. Indeed, Grego's  
9 schedules were consistent on one point if nothing else: the value  
10 of his real property and the amount of debt secured thereby. At  
11 all times, the schedules indicated that there was at least some  
12 equity in at least some of the parcels of real property. Even  
13 more strangely, the bankruptcy court apparently did not consider  
14 the option of dismissing the case even though there did not  
15 appear to be much in the way of unencumbered nonexempt assets to  
16 administer under either set of schedules.

17 On February 6, 2014, the bankruptcy court entered its order  
18 converting the case to chapter 7. Grego timely filed his notice  
19 of appeal on February 7, 2014.

#### 20 **JURISDICTION**

21 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
22 §§ 1334 and 157(b) (2) (A). We have jurisdiction under 28 U.S.C.  
23 § 158.

#### 24 **ISSUE**

25 Did the bankruptcy court abuse its discretion when it  
26 converted Grego's chapter 11 bankruptcy case to chapter 7?

#### 27 **STANDARDS OF REVIEW**

28 We review the bankruptcy court's order converting Grego's



1 chapter 11 case to chapter 7 for an abuse of discretion.

2 Pioneer Liquidating Corp. v. U.S. Trustee (In re Consol. Pioneer  
3 Mortg. Entities), 264 F.3d 803, 806 (9th Cir. 2001).

4 The bankruptcy court abuses its discretion when it applies  
5 an incorrect legal standard or when its findings are illogical,  
6 implausible or without support in the record. See United States  
7 v. Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

### 8 DISCUSSION

9 Under § 1112(b)(1), when the court finds "cause" to dismiss  
10 or convert a chapter 11 case, the court must decide which of  
11 several court actions will best serve the estate's creditors. It  
12 must:

13 (1) decide whether dismissal, conversion, or the  
14 appointment of a trustee or examiner is in the best  
15 interests of creditors and the estate; and (2) identify  
16 whether there are unusual circumstances that establish  
17 that dismissal or conversion is not in the best  
18 interests of creditors and the estate.

17 Sullivan v. Harnisch (In re Sullivan), 522 B.R. 604, 612 (9th  
18 Cir. BAP 2014).

19 Here, the bankruptcy court found that there was cause to  
20 convert on two alternate grounds: (1) gross incompetence, or  
21 (2) Grego's petition was filed in bad faith. Section 1112(b)(4)  
22 enumerates sixteen non-exclusive grounds that constitute cause  
23 for dismissal. Gross incompetence is not among them, but gross  
24 mismanagement of the estate is. See § 1112(b)(4)(B). On appeal,  
25 the United States Trustee contends that, by stating that Grego  
26 (or his counsel) had been grossly incompetent, the court meant to  
27 find that cause existed under § 1112(b)(4)(F): "[an] unexcused  
28 failure to satisfy timely any filing or reporting requirement

1 established by this title or by any rule applicable to a case  
2 under this chapter.” We are not persuaded by the United States  
3 Trustee’s contention. The bankruptcy case was not much more than  
4 one month old, and the bankruptcy court did not identify any  
5 filing or reporting requirement Grego had failed to timely comply  
6 with. To the contrary, the court suggested that, instead of  
7 filing inaccurate and incomplete schedules, Grego should have  
8 held off on filing any schedules until he could have provided  
9 correct and substantially complete information. Thus, we  
10 conclude that the bankruptcy court’s finding of cause was not  
11 meant to invoke § 1112(b)(4)(F).

12 While the bankruptcy court used the term gross incompetence  
13 instead of gross mismanagement, we believe that the court meant  
14 to invoke § 1112(b)(4)(B). None of the other enumerated types of  
15 cause comes closer to fitting the court’s comments, and if the  
16 court had meant to identify its own unique category of cause for  
17 dismissal or conversion, we presume the court would have  
18 elaborated on the new category it was articulating. The court  
19 did not attempt to offer any such elaboration.

20 The bankruptcy court’s finding of cause under  
21 § 1112(b)(4)(B) is problematic. The § 1112(b)(4)(B) inquiry  
22 typically focuses on how the debtor or the debtor’s agents have  
23 managed the estate’s assets or business during the pendency of  
24 the chapter 11 proceeding and how they have reported and handled,  
25 postpetition, income and expenses derived from the  
26 assets/business. See, e.g., In re McTiernan, 519 B.R. 860,  
27 866-67 (Bankr. D. Wyo. 2014); In re Fall, 405 B.R. 863, 868  
28 (Bankr. N.D. Ohio 2009) aff'd sub nom. Fall v. Farmers &

1 Merchants State Bank, 2009 WL 974538 (N.D. Ohio Apr. 9, 2009);  
2 see also In re Prods. Int'l Co., 395 B.R. 101, 111 (Bankr. D.  
3 Ariz. 2008) (listing additional cases).

4 Here, there is no evidence in the record regarding Grego's  
5 postpetition management of his bankruptcy estate's real property  
6 assets, nor did the court identify postpetition management or  
7 postpetition reporting of income and expenses as one of its  
8 concerns. In fact, given that the bankruptcy case was roughly  
9 one month old, and given the complete absence of any evidence in  
10 the record, the bankruptcy court was in a poor position to make  
11 any material findings regarding postpetition management and  
12 reporting.

13 We do not mean to imply that the term "gross mismanagement  
14 of estate assets" as used in § 1112(b)(4)(B) should be given a  
15 narrow or limited meaning. As the cases cited above indicate,  
16 the term covers a broad range of postpetition activity affecting  
17 the estate's assets, income, expenses and reporting.  
18 Nonetheless, no matter how broad the term is construed, we think  
19 it requires more than a finding that the debtor initially filed  
20 inaccurate and incomplete schedules and an inaccurate and  
21 incomplete statement of financial affairs.

22 Because the bankruptcy court's findings of cause did not  
23 correctly invoke § 1112(b)(4)(B), we turn to the bankruptcy  
24 court's alternate grounds for finding cause - its determination  
25 that Grego filed his petition in bad faith.

26 While not enumerated in § 1112(b)(4), the bad faith filing  
27 of a bankruptcy petition is recognized as cause for dismissal or  
28 conversion. Marsch v. Marsch (In re Marsch), 36 F.3d 825, 828

1 (9th Cir. 1994); In re Sullivan, 522 B.R. at 614. In seeking to  
2 determine whether the petition was filed in good faith, "the  
3 debtor's subjective intent is not determinative." In re Marsch,  
4 36 F.3d at 828. Rather, the good faith inquiry focuses on the  
5 manifest purpose of the petition filing and whether the debtor is  
6 seeking to achieve thereby "objectives outside the legitimate  
7 scope of the bankruptcy laws." Id.

8 Put another way, a bankruptcy court making a finding  
9 regarding whether a chapter 11 petition was filed in good faith  
10 must ascertain "whether [the] debtor is attempting to  
11 unreasonably deter and harass creditors or attempting to effect a  
12 speedy, efficient reorganization on a feasible basis." Id.  
13 (citing Idaho Dep't of Lands v. Arnold (In re Arnold), 806 F.2d  
14 937, 939 (9th Cir. 1986)).

15 In making the good faith determination, the bankruptcy court  
16 typically must consider an amalgam of factors, instead of relying  
17 on a single dispositive fact. Id. At the same time, the  
18 determination is to be made on a case by case basis, and there is  
19 no talismanic list of factors that must be present in each case  
20 in order to find bad faith; the weight given to any particular  
21 factor depends on all of the circumstances of the individual  
22 case. Laguna Assocs. Ltd. P'ship v. Aetna Casualty & Sur. Co.  
23 (In re Laguna Assocs. Ltd. P'ship), 30 F.3d 734, 738 (6th Cir.  
24 1994); see also de la Salle v. U.S. Bank, N.A. (In re de la  
25 Salle), 461 B.R. 593, 605 (9th Cir. BAP 2011) (holding that, in  
26 chapter 13 cases, bankruptcy courts must consider the "totality  
27 of the circumstances" before making a bad faith determination).

28 That being said, bankruptcy courts typically look for and

1 find more than one of the following factors before making a  
2 finding of bad faith in a chapter 11 case:

- 3 (1) the debtor has one asset;
- 4 (2) the pre-petition conduct of the debtor has been improper;
- 5 (3) there are only a few unsecured creditors;
- 6 (4) the debtor's property has been posted for foreclosure, and the debtor has been unsuccessful in
- 7 defending against the foreclosure in state court;
- 8 (5) the debtor and one creditor have proceeded to a standstill in state court litigation, and the debtor
- 9 has lost or has been required to post a bond which it cannot afford;
- 10 (6) the filing of the petition effectively allows the debtor to evade court orders;
- 11 (7) the debtor has no ongoing business or employees; and
- 12 (8) the lack of possibility of reorganization.

13 In re Laguna Assocs. Ltd. P'ship, 30 F.3d at 738 (citing Little  
14 Creek Dev. Co. v. Commonwealth Mortg. Corp. (In re Little Creek  
15 Dev. Co.), 779 F.2d 1068, 1072 (5th Cir. 1986)). Accord,  
16 Can-Alta Props., Ltd. v. State Sav. Mortg. Co. (In re Can-Alta  
17 Props., Ltd.), 87 B.R. 89, 91 (9th Cir. BAP 1988).

18 In addition, the factors typically found in bad faith  
19 chapter 13 bankruptcy filings can be instructive in assessing  
20 good faith in personal chapter 11 bankruptcy cases.<sup>4</sup> In  
21 chapter 13 cases, the bankruptcy courts typically look for the  
22 following:

- 23 (1) whether the debtor misrepresented facts in his  
24 petition or plan, unfairly manipulated the Code, or  
25 otherwise filed his petition or plan in an inequitable  
26 manner; (2) the debtor's history of filings and  
27 dismissals; (3) whether the debtor intended to defeat

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28 <sup>4</sup>We have observed that, because the provisions governing  
dismissal or conversion of chapter 13 and chapter 11 cases are  
similar, cases under one chapter often are helpful in resolving  
cases under the other chapter. See Nelson v. Meyer  
(In re Nelson), 343 B.R. 671, 674-75 (9th Cir. BAP 2006).

1 state court litigation; and (4) whether egregious  
2 behavior is present.

3 Ellsworth v. Lifescape Med. Assocs. (In re Ellsworth), 455 B.R.  
4 904, 917-18 (9th Cir. BAP 2011).

5 Here, in spite of the thin evidentiary record, Grego's prior  
6 and current filings patently demonstrate the existence of a  
7 number of the typical bad faith factors. Grego had virtually no  
8 personal property and only five parcels of real property, all of  
9 which were heavily encumbered. Prior to Grego's latest filing,  
10 in 2011, he had filed a personal chapter 11 case in which a  
11 chapter 11 trustee was appointed, and that case ultimately was  
12 converted to chapter 7. Meanwhile, he also filed a case on  
13 behalf of a trust established by his deceased father, which case  
14 was dismissed based on the trust's lack of eligibility to be a  
15 debtor. Grego listed in his amended schedules roughly fifty  
16 unsecured creditors holding millions of dollars in claims, but  
17 admitted at the chapter 11 status conference that most or all of  
18 these claims were discharged in his prior chapter 7 case, thereby  
19 leaving him with little or no unsecured debt. Grego also  
20 admitted at the status conference (and in his appeal brief) that  
21 he felt pressured to file his new bankruptcy case because of an  
22 imminent foreclosure sale. Other than his rental property, Grego  
23 has no ongoing business and no employees.

24 While the above factors, by themselves, might indicate a bad  
25 faith filing, there were three other factors evident that are of  
26 even greater concern. The prospects for reorganization appeared  
27 extremely slim at best given Grego's admission of over \$13,000 in  
28 negative monthly cash flow and in light of the history of Grego's

1 unsuccessful chapter 11 bankruptcy filings (both for himself and  
2 on behalf of the trust). Most importantly, the court found that  
3 Grego's initial schedules and statement of financial affairs  
4 contained many inaccuracies and omissions and that the filing of  
5 those documents under oath was egregious.

6 We cannot disagree with any of these findings. Grego argues  
7 that the omissions and inaccuracies in his initial filings can  
8 largely be explained (and perhaps excused) by the pressure he  
9 felt given the impending foreclosure proceedings and by the fact  
10 that he filed amended schedules and an amended statement of  
11 financial affairs within days of his filing the original  
12 documents. However, we agree with the bankruptcy court that  
13 there was no excuse for filing these documents under oath knowing  
14 that they were inaccurate and incomplete or with complete  
15 disregard for their accuracy and completeness. Grego knew by no  
16 later than December 23, 2013, when he filed a non-opposition to  
17 the United States Trustee's motion to dismiss his trust case,  
18 that he would be filing a new personal chapter 11 case. Grego  
19 never has offered any legitimate explanation why he could not  
20 have filed accurate and complete documents in support of his  
21 January 2014 chapter 11 bankruptcy filing either at the time of  
22 that filing or shortly thereafter.

23 Our bankruptcy system is dependent upon accurate, timely and  
24 complete self-reporting by debtors in their schedules, in their  
25 statements of financial affairs, and in their other filings. See  
26 Cusano v. Klein, 264 F.3d 936, 945-946 (9th Cir. 2001); Cheng v.  
27 K & S Diversified Invs., Inc. (In re Cheng), 308 B.R. 448, 458  
28 (9th Cir. BAP 2004). Consequently, Grego's filing of his initial

1 documents knowing them to be inaccurate and incomplete or without  
2 regard to their accuracy and completeness is of grave concern to  
3 us. In short, we perceive no reversible error in the bankruptcy  
4 court's bad faith findings.

5 Grego has asserted, on appeal, that this Panel should  
6 reverse the bankruptcy court's ruling in its entirety because the  
7 bankruptcy court disregarded his due process rights by converting  
8 the case sua sponte at the status conference. We disagree. The  
9 bankruptcy court had the authority under § 105(a) to sua sponte  
10 consider dismissal or conversion. See Rosson v. Fitzgerald  
11 (In re Rosson), 545 F.3d 764, 774-75 (9th Cir. 2008); Tennant v.  
12 Rojas (In re Tennant), 318 B.R. 860, 869-70 (9th Cir. BAP 2004).  
13 Furthermore, if Grego truly believed that he needed a better  
14 opportunity to respond to the bankruptcy court's concerns, he  
15 should have raised the issue in the bankruptcy court, but he did  
16 not do so. See Rains v. Flinn (In re Rains), 428 F.3d 893, 902  
17 (9th Cir. 2005). Moreover, in this instance, any due process  
18 error was harmless. There is nothing in Grego's bankruptcy court  
19 papers or in his appeal papers indicating that, if given further  
20 opportunity, the factors pertinent to the bad faith determination  
21 could or would materially change. See In re Rosson, 545 F.3d at  
22 774-75.

23 The only other issue we must address is whether the court  
24 committed reversible error by not considering dismissal as an  
25 alternative to conversion. Recall that we noted at the outset of  
26 this discussion that a bankruptcy court finding "cause" within  
27 the meaning of § 1112(b) needs to consider whether to dismiss,  
28 convert, or appoint a trustee or examiner, or whether unusual



1 circumstances exist militating against any of the above-  
2 referenced court actions (from the perspective of the estate's  
3 creditors). In re Sullivan, 522 B.R. at 612. Here, the  
4 bankruptcy court did not consider dismissal. While we recently  
5 stated in an unpublished decision that the debtor may forfeit  
6 this issue by not raising it either in the bankruptcy court or on  
7 appeal, Kenny G Enters., LLC v. Casey (In re Kenny G Enters.,  
8 LLC), 2014 WL 4100429, at \*12 (9th Cir. BAP Aug. 20, 2014), we  
9 also have stated recently, in a published opinion:

10 [R]egardless of the parties' arguments, the bankruptcy  
11 court [has] an independent obligation under § 1112 to  
12 consider what would happen to all creditors on  
13 dismissal and, in light of its analysis, whether  
14 dismissal or conversion would be in the best interest  
15 of all creditors . . . .

14 In re Sullivan, 522 B.R. at 612-13.

15 That the bankruptcy court here did not consider whether  
16 dismissal was in the best interests of creditors troubles us for  
17 three reasons. First, Grego's secured creditor(s) received no  
18 advance warning that the court actually would consider  
19 conversion and/or dismissal at the status conference. As a  
20 result, the secured creditor(s) likely were deprived of any  
21 meaningful opportunity to appear and be heard on the issue.<sup>5</sup>  
22

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23 <sup>5</sup>The United States Trustee pointed out during oral argument  
24 that the status conference order, which was served on at least  
25 some of Grego's creditors on January 17, 2014, stated that the  
26 court might dismiss or convert the case if Grego did not comply  
27 with the status conference order. However, the bankruptcy docket  
28 reflects that Grego substantially complied with the status  
conference order, so the creditor(s) had no reason to suspect  
that the court had actual grounds to consider either dismissal or  
conversion at the status conference.

1 Second, the record suggests that Grego had almost no unsecured  
2 creditors and almost no unencumbered nonexempt assets, thus  
3 indicating that there would be little or no chapter 7 estate to  
4 administer and no unsecured creditor body to administer the  
5 estate on behalf of. And third, Grego did have one or more  
6 secured creditors, who might have preferred dismissal over  
7 conversion, so that they could proceed immediately with their  
8 state court remedies.

9 Under these circumstances, and in light of our holding in  
10 In re Sullivan, we must VACATE the bankruptcy court's conversion  
11 order and REMAND for consideration of whether conversion or  
12 dismissal is in the best interests of the estate's creditors, and  
13 whether there exist any unusual circumstances militating against  
14 both conversion and dismissal (from the perspective of the  
15 estate's creditors). We express no opinion regarding how, on  
16 remand, the bankruptcy court should address these issues, but we  
17 do note that the bankruptcy court, if it deems it appropriate,  
18 may require that notice be given to interested parties, and may  
19 decide either to reopen the record or to make additional findings  
20 based on the existing record.

#### 21 **CONCLUSION**

22 For the reasons set forth above, we VACATE the court's  
23 conversion order, and we REMAND for further proceedings  
24 consistent with this Panel's decision.