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NOT FOR PUBLICATION

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

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

|                            |   |                          |
|----------------------------|---|--------------------------|
| In re:                     | ) | BAP No. WW-14-1119-JuKiF |
|                            | ) |                          |
| HENRY D. ZEGZULA,          | ) | Bk. No. 13-47541-BDL     |
|                            | ) |                          |
| Debtor.                    | ) | Adv. No. 14-04005-BDL    |
|                            | ) |                          |
| <hr/>                      |   |                          |
| HENRY D. ZEGZULA,          | ) |                          |
|                            | ) |                          |
| Appellant,                 | ) |                          |
|                            | ) | M E M O R A N D U M *    |
| v.                         | ) |                          |
|                            | ) |                          |
| JPMORGAN CHASE BANK, N.A., | ) |                          |
|                            | ) |                          |
| Appellee.                  | ) |                          |
|                            | ) |                          |

Submitted Without Oral Argument  
on September 25, 2015\*\*

Filed - October 2, 2015

Appeal from the United States Bankruptcy Court  
for the Western District of Washington

Honorable Brian D. Lynch, Chief Bankruptcy Judge, Presiding

Appearances: Appellant Henry D. Zegzula on brief pro se;  
Philip R. Lempriere and Daniel J. Park of  
Keesal, Young & Logan on brief for appellee,  
JPMorgan Chase Bank, N.A.

Before: JURY, KIRSCHER, and FARIS, 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.

\*\* By order entered on August 15, 2014, a motions panel  
determined that this appeal is suitable for submission on the  
briefs and record without oral argument pursuant to Rule 8012.

1 Chapter 7<sup>1</sup> debtor Henry D. Zegula appeals from the  
2 bankruptcy court's order dismissing his adversary proceeding  
3 against JPMorgan Chase Bank, N.A. (Chase). We AFFIRM.

4 **I. FACTS<sup>2</sup>**

5 Debtor filed his chapter 7 petition pro se on December 11,  
6 2013. The chapter 7 trustee (Trustee) moved to dismiss his case  
7 under § 707(a) and (b) with a two year bar to refileing. Trustee  
8 noted that debtor failed to file schedules I and J, a summary of  
9 schedules, or Form B22A in his case, and argued that dismissal  
10 was appropriate for abuse since debtor had repeatedly filed  
11 bankruptcy petitions and failed to file schedules or comply with  
12 other requirements. Trustee further asserted that dismissal  
13 with prejudice was warranted due to debtor's pattern of willful  
14 abuse of the bankruptcy system – debtor had filed seven cases  
15 since May 2008 and had not properly prosecuted those cases or  
16 otherwise fulfilled his obligations under the Bankruptcy Code.

17 After Trustee filed her motion to dismiss, but before it  
18 was heard, debtor filed pro se this adversary proceeding against  
19 Chase seeking to quiet title. At the same time, he filed a  
20 motion for a preliminary injunction to enjoin a foreclosure on  
21 his property pursuant to a deed of trust.

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22  
23 <sup>1</sup> Unless otherwise indicated, all chapter and section  
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.  
25 "Rule" references are to the Federal Rules of Bankruptcy  
26 Procedure and "Civil Rule" references are to the Federal Rules of  
27 Civil Procedure.

28 <sup>2</sup> To the extent necessary, we take judicial notice of the  
29 pleadings docketed in the underlying bankruptcy case and the  
30 adversary proceeding. Atwood v. Chase Manhattan Mortg. Co.  
(In re Atwood), 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

1 The bankruptcy court dismissed the underlying bankruptcy  
2 case for abuse on January 30, 2014, and imposed a two year bar  
3 to refiling. A few weeks later, debtor's case was closed.

4 On February 7, 2014, Chase filed a motion to dismiss the  
5 adversary proceeding with prejudice on two grounds. First, the  
6 underlying bankruptcy case had been dismissed and none of the  
7 factors set forth in Carraher v. Morgan Electric, Inc.  
8 (In re Carraher), 971 F.2d 327, 328 (9th Cir. 1992) for  
9 discretionary retention of jurisdiction over the adversary  
10 proceeding weighed in favor of retaining it. Second, the  
11 complaint failed to state a claim upon which relief could be  
12 granted under Civil Rule 12(b)(6).

13 On March 12, 2014, the bankruptcy court heard the matter.  
14 The court found that considerations of judicial economy and  
15 fairness did not support the court's retention of jurisdiction  
16 over the adversary proceeding following the dismissal of the  
17 underlying bankruptcy case. In addition, the court found that  
18 debtor's complaint failed to state a claim for which relief can  
19 be granted as the allegations were "legally incomprehensible and  
20 there is no theory, no legal theory to support [his] argument  
21 regarding quiet title." In the end, the court decided that  
22 dismissal without prejudice of the adversary complaint was  
23 appropriate.

24 On March 14, 2014, the bankruptcy court entered the order  
25 consistent with its decision. Debtor timely filed a notice of  
26 appeal.

## 27 **II. JURISDICTION**

28 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.

1 §§ 1334 and 157(c)(1). We have jurisdiction under 28 U.S.C.  
2 § 158.

3 **III. ISSUES**

4 Did the bankruptcy court abuse its discretion in declining  
5 to exercise jurisdiction over the adversary proceeding?

6 Did the bankruptcy court err by dismissing the adversary  
7 proceeding under Civil Rule 12(b)(6)?

8 **IV. STANDARDS OF REVIEW**

9 We review the bankruptcy court's decision to decline to  
10 exercise jurisdiction over an adversary proceeding for an abuse  
11 of discretion. In re Carraher, 971 F.2d at 328. A bankruptcy  
12 court abuses its discretion if it applies the wrong legal  
13 standard, misapplies the correct legal standard, or if its  
14 factual findings are illogical, implausible, or without support  
15 in inferences that may be drawn from the facts in the record.  
16 See TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d 820, 832  
17 (9th Cir. 2011) (citing United States v. Hinkson, 585 F.3d 1247,  
18 1262 (9th Cir. 2009) (en banc)).

19 We review de novo a bankruptcy court's decision to grant a  
20 motion to dismiss an adversary proceeding complaint under Civil  
21 Rule 12(b)(6). Barnes v. Belice (In re Belice), 461 B.R. 564,  
22 572 (9th Cir. BAP 2011).

23 We may affirm on any ground supported by the record.  
24 Vestar Dev. II, LLC v. Gen. Dynamics Corp., 249 F.3d 958, 960  
25 (9th Cir. 2001).

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27 //  
28 //

1 V. DISCUSSION

2 **A. The bankruptcy court did not abuse its discretion in**  
3 **dismissing the adversary proceeding under the factors set**  
4 **forth in Carraher.**

5 Dismissal of an underlying bankruptcy case does not  
6 automatically divest the bankruptcy court of jurisdiction over a  
7 related adversary proceeding seeking recovery on state law  
8 theories. In re Carraher, 971 F.2d at 328. In deciding whether  
9 to retain jurisdiction, the bankruptcy court must consider  
10 economy, convenience, fairness, and comity. Id. "The  
11 [bankruptcy] court's weighing of these factors is  
12 discretionary." Id. Although the bankruptcy court did not  
13 expressly articulate each of these factors on the record, its  
14 findings and the record support its decision not to retain  
15 jurisdiction over the adversary proceeding.

16 Judicial Economy: The adversary proceeding had not been  
17 pending for very long and Chase had not yet filed an answer.  
18 This factor weighs in favor of not retaining jurisdiction.  
19 Compare Linkway Inv. Co. v. Olsen (In re Casamont Inv'rs, Ltd.),  
20 196 B.R. 517, 521 (9th Cir. BAP 1996) (adversary proceeding  
21 pending two months at time of dismissal did not favor retention;  
22 retention of jurisdiction is improper when the initiation of the  
23 dispute is recent), with In re Carraher, 971 F.2d at 327  
24 (adversary proceeding pending six years at time of dismissal  
25 weighed in favor of retention).

26 Convenience: The adversary proceeding was pending only  
27 twenty-two days before debtor's case was dismissed. No answer  
28 had been filed. Further, the bankruptcy court dismissed the  
adversary proceeding without prejudice so nothing prevents

1 debtor from pursuing his claims in another court.<sup>3</sup>

2 In re Casamont Inv'rs, Ltd., 196 B.R. at 524.

3 Fairness: As the bankruptcy court correctly found, there  
4 are no fairness issues that would support retention of the  
5 adversary proceeding, and debtor does not articulate any such  
6 issues on appeal.

7 Comity: Although it is difficult to comprehend, the  
8 complaint on its face appears to seek only quiet title relief  
9 which would likely arise under Washington law and does not  
10 relate to bankruptcy issues. As only state-law claims are  
11 alleged, this factor weighs in favor of dismissal. Id.  
12 ("Needless decision of state law by federal courts should be  
13 avoided as a matter of comity and in order to procure for the  
14 litigants 'a surer-footed reading of applicable law.'").

15 Debtor does not point out any error in the court's decision  
16 with respect to any of these factors. Rather, most, if not all,  
17 of his arguments relate to the merits of the adversary  
18 proceeding and Chase's lack of standing to foreclose upon his  
19 property. Those arguments are beyond the scope of this appeal  
20 and we do not address them.

21 In sum, all of the above-mentioned factors weighed in favor  
22 of the bankruptcy court declining to retain jurisdiction over  
23 the adversary proceeding. Accordingly, we discern no abuse of  
24 discretion.

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27 <sup>3</sup> The bankruptcy court never determined whether the lawsuit  
28 could be saved by amendment.

1 **B. The bankruptcy court did not err by dismissing the**  
2 **adversary proceeding complaint without prejudice under**  
3 **Civil Rule 12(b)(6).**

4 Under Civil Rule 12(b)(6), made applicable in adversary  
5 proceedings by Rule 7012, a bankruptcy court may dismiss an  
6 adversary complaint if it fails to "state a claim upon which  
7 relief can be granted." "In order to survive a motion to  
8 dismiss, a party must allege 'sufficient factual matter,  
9 accepted as true, to state a claim to relief that is plausible  
10 on its face.'" Official Comm. of Unsecured Creditors v. Hancock  
11 Park Capital II, L.P. (In re Fitness Holdings, Intern., Inc.),  
12 714 F.3d 1141, 1144 (9th Cir. 2013) (quoting Ashcroft v. Iqbal,  
13 556 U.S. 662, 678 (2009)); Nordeen v. Bank of Am., N.A. (In re  
14 Nordeen), 495 B.R. 468, 477 (9th Cir. BAP 2013). "A claim has  
15 facial plausibility when the plaintiff pleads factual content  
16 that allows the court to draw the reasonable inference that the  
17 defendant is liable for the misconduct alleged.'" In re Fitness  
18 Holdings, 714 F.3d at 1144 (quoting Iqbal, 556 U.S. at 678); see  
19 also In re Nordeen, 495 B.R. at 477. By definition, a claim  
20 cannot be plausible when it lacks any legal basis. Cedano v.  
21 Aurora Loan Servs. (In re Cedano), 470 B.R. 522, 528 (9th Cir.  
22 BAP 2012). A dismissal under Civil Rule 12(b)(6) may be based  
23 on either the lack of a cognizable legal theory, or on the  
24 absence of sufficient facts alleged under a cognizable legal  
25 theory. Johnson v. Riverside Healthcare Sys., LP, 534 F.3d 1116,  
26 1121 (9th Cir. 2008).

27 Upon our de novo review, we made a diligent attempt to  
28 parse debtor's complaint to discern the factual and legal basis  
for his purported "claims." Debtor's complaint bases his "sole

1 cause of action" for "quiet title" on two distinct and specific  
2 theories of California law despite the fact that his property is  
3 located in Washington, not California.

4 One theory is entitled "severance, and/or bifurcation"  
5 which suggests that the ownership of the deed of trust was split  
6 from the note through a sale or assignment or because the loan  
7 was securitized. Courts in this Circuit and the Washington  
8 Supreme Court have rejected this "split the note" theory. See  
9 Cervantes v. Countrywide Home Loans, Inc., 656 F.3d 1034,  
10 1044-45 (9th Cir. 2011); Zhong v. Quality Loan Serv. Corp., 2013  
11 WL 5530583, at \*2 (W.D. Wash. Oct. 7, 2013); Blake v. U.S. Bank.  
12 Nat'l Ass'n, 2013 WL 6199213, at \*3 (W.D. Wash. Nov. 27, 2013);  
13 Bain v. Metro. Mortg. Grp., Inc., 175 Wash. 2d 83, 112, 285 P.3d  
14 34, 48 (2012). In short, this claim is legally barred.

15 The other theory suggests that the terms and provisions of  
16 the deed of trust were fully satisfied when the note was sold  
17 for the full value. Thus, according to debtor, Chase no longer  
18 has a valid lien against his property. Debtor cites no  
19 proposition of law supporting this novel legal theory.

20 Finally, the complaint does not state a plausible claim for  
21 quiet title. Under Washington law, to "maintain a quiet title  
22 action against a mortgagee, a plaintiff must first pay the  
23 outstanding debt on which the subject mortgage is based."  
24 Zhong, 2013 WL 5530583, at \*6. Debtor never alleges that he  
25 paid the debt owed on the note.

26 Debtor's complaint includes a section entitled "Pro Se  
27 Status of Plaintiff." There, debtor emphasizes, among other  
28 things, that pro se complaints are held to less stringent

1 standards. Generally, federal courts have a duty to construe  
2 pro se complaints liberally. See Bernhardt v. L.A. Cty.,  
3 339 F.3d 920, 925 (9th Cir. 2003). However, the court has "no  
4 obligation to act as counsel or paralegal to pro se litigants."  
5 Pliler v. Ford, 542 U.S. 225, 231 (2004); see also Noll v.  
6 Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987) ("courts should not  
7 have to serve as advocates for pro se litigants").

8 In sum, debtor's complaint does not contain claims that  
9 have any legal basis, nor are there sufficient facts that allow  
10 us to draw the reasonable inference that Chase is liable for any  
11 alleged wrongdoing. Therefore, we conclude that the bankruptcy  
12 court did not err by dismissing debtor's adversary complaint  
13 without prejudice based on the standards under Civil  
14 Rule 12(b)(6).

15 To the extent Debtor contends that he was denied due  
16 process, that contention is not supported by the record. See  
17 SEC v. McCarthy, 322 F.3d 650, 659 (9th Cir. 2003) (due process  
18 requires notice and an opportunity to be heard). Debtor  
19 received notice of the dismissal motion and the bankruptcy court  
20 held a hearing in which debtor participated. Due process was  
21 satisfied.

## 22 VI. CONCLUSION

23 Having found no error, we AFFIRM.  
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