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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NOT FOR PUBLICATION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

In re:)	BAP No.	CC-14-1552-TaKuD
)		
LOFTON RYAN BURRIS,)	Bk. No.	2:14-bk-10801-WB
)		
Debtor.)		
)		
LOFTON RYAN BURRIS,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM*	
)		
NANCY K. CURRY, Chapter 13)		
Trustee,)		
)		
Appellee.**)		

Submitted Without Oral Argument***
on September 24, 2015

Filed - October 9, 2015

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

* This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8024-1(c)(2).

** The Panel invited the chapter 13 trustee, Nancy K. Curry, to file a brief in this appeal. Receiving no response, the Panel determined that only the Appellant's brief would be considered in this appeal.

*** After examination of the briefs and record, and after notice to the Debtor, in an order entered May 29, 2015, the Panel unanimously determined that oral argument was not needed for this appeal. See Fed. R. Bankr. P. 8019(b); 9th Cir. BAP Rule 8019-1.

1 Honorable Julia W. Brand, Bankruptcy Judge, Presiding

2

Appearances: Lofton Ryan Burris, pro se, on brief.

3

Before: TAYLOR, KURTZ, and DUNN, Bankruptcy Judges.

4 **INTRODUCTION**

5 The Debtor appeals from an order dismissing his chapter 13¹
6 case; we AFFIRM.

7 **FACTS²**

8 **The first bankruptcy, the subsequent chapter 13 case,**
9 **and the initial confirmation hearings**

10 The Debtor and his spouse received a chapter 7 discharge in
11 2011. Although ineligible for a discharge, he filed a
12 chapter 13 petition on January 15, 2014. The Debtor's
13 chapter 13 schedules reflected an ownership interest in real
14 property located in Carson, California (the "Property"), with a
15 current value of \$300,000. The Debtor scheduled "Wells Fargo
16 Home Mortgage" as holding a disputed obligation in the amount of
17 \$25,000 secured by a lien against the Property.

18 The proofs of claim filed by creditors in the chapter 13
19 case, however, told a different story; they evidenced that two
20 deeds of trust encumbered the Property, one securing an
21

22

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

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

1 obligation owed to Wells Fargo Bank, N.A. ("Wells Fargo") and
2 another securing an obligation owed to Deutsche Bank National
3 Trust Company, as Trustee for a securitized trust ("Deutsche
4 Bank"). Wells Fargo submitted Claim 3-1 as a servicer on behalf
5 of Deutsche Bank and asserted a \$611,145.38 secured claim,
6 including \$97,352.82 in arrears.³ Wells Fargo submitted
7 Claim 2-1 on its own behalf and alleged a \$68,040.84 secured
8 claim, including \$11,957.97 in arrears.

9 The Debtor submitted a chapter 13 plan consistent with his
10 schedules; he proposed monthly payments of \$462.50 which, over
11 60 months, would pay \$2,775 to nonpriority unsecured creditors.
12 He also elected to pay only \$25,000 during the term of the plan
13 on account of secured debt.

14 Not surprisingly, Deutsche Bank objected to plan
15 confirmation; the Debtor's plan failed to cure the nearly
16 \$100,000 in arrears it claimed as payable. The Chapter 13
17 Trustee also objected to confirmation. The Debtor opposed
18 Deutsche Bank's objection and moved to strike it. After a
19 confirmation hearing, the bankruptcy court declined to confirm
20 the plan.

21 As the case continued, Deutsche Bank withdrew its
22 opposition to confirmation; it did not need to object. The
23 Chapter 13 Trustee continued to oppose confirmation arguing, in
24 part, that the plan failed to provide adequately for Wells Fargo
25 and Deutsche Bank's claims. The Debtor replied and asserted
26 that he did not owe anything to Wells Fargo because of his

27 ³ For clarity, when Wells Fargo acted on Deutsche Bank's
28 behalf, we refer to it as Deutsche Bank.

1 previous bankruptcy discharge. He further argued that Wells
2 Fargo and Deutsche Bank's claims were "disputed claims and no
3 debts [were] owed and, thus, no provisions [were] made."
4 Bk. ECF No. 20 at 3. The bankruptcy court held another
5 confirmation hearing; it did not confirm the Debtor's plan.

6 **The claim objections and adversary proceeding**

7 While the plan confirmation disputes proceeded, the Debtor
8 objected to both Claim 2-1 and Claim 3-1. He principally argued
9 that he discharged these claims in his previous chapter 7; he
10 consequently moved to strike the claims as frivolous.

11 The Debtor also commenced an adversary proceeding against
12 Wells Fargo and Deutsche Bank (collectively, "Defendants").
13 Reduced to its essentials, the complaint alleged that
14 Defendants' proofs of claim and the related Deutsche Bank
15 objection to confirmation were fraudulent because the claims
16 were "discharged in a prior bankruptcy proceeding." The
17 complaint further alleged that a "false lien ha[d] been placed
18 upon the [P]roperty" Thirteen claims for relief later,
19 the complaint requested \$26,405,492.38 in damages.

20 The bankruptcy court eventually overruled the Debtor's
21 objections to Claims 2-1 and 3-1. The Debtor appealed both
22 orders to the district court.

23 In the adversary proceeding, Defendants moved to dismiss
24 pursuant to Civil Rule 12(b)(6). The Debtor failed to timely
25 oppose the motion; the bankruptcy court granted it and dismissed
26 the adversary proceeding with prejudice. The Debtor appealed,
27 and Defendants elected to have the district court also hear this
28 appeal.

1 The district court consolidated these appeals; on May 15,
2 2015, it dismissed all appeals pending before it based on lack
3 of prosecution. The Debtor did not appeal further to the Ninth
4 Circuit. Consequently, the dismissal of the Debtor's appeals at
5 the district court is now final.

6 **Further confirmation hearings**

7 The Trustee continued to oppose confirmation; she filed a
8 first supplemental objection. The Debtor again opposed, and the
9 bankruptcy court held a third confirmation hearing. It did not
10 confirm the Debtor's plan.

11 Shortly thereafter, the Debtor filed a notice of hearing on
12 plan confirmation. The bankruptcy court then held a fourth
13 confirmation hearing at which it explained to the Debtor that he
14 needed "to address all of those issues that the Trustee has
15 raised. They were all raised at the last hearing that we had on
16 confirmation of your plan, so I need to know why there hasn't
17 been [] any progress and really why I shouldn't just dismiss
18 your case today." Hr'g Tr. (Oct. 29, 2014) at 3:5-10. The
19 bankruptcy court also explained that the Debtor needed to
20 address Wells Fargo's secured obligation. Id. at 4:3-5.
21 Although the bankruptcy court asked the Debtor about the Wells
22 Fargo claim, he provided no response. It then stated:

23 I see that you're struggling here. All right. I
24 understand. I understand that. And so maybe the
25 best thing for you would be to dismiss your case
26 and allow you then to possibly seek legal counsel
27 about addressing the issues in your case and the
28 payment of your creditors because I don't see the
case moving forward. And if the case is not moving
forward, I have to dismiss it.

Id. at 5:17-25. The bankruptcy court dismissed the case by

1 order entered on November 5, 2014. The Debtor timely appealed.

2 JURISDICTION

3 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
4 §§ 1334 and 157(b) (2) (A). We have jurisdiction under 28 U.S.C.
5 § 158.

6 ISSUE

7 Whether the bankruptcy court abused its discretion in
8 dismissing the Debtor's chapter 13 case pursuant to § 1307.

9 STANDARD OF REVIEW

10 We review the bankruptcy court's dismissal of the
11 chapter 13 case for an abuse of discretion. Schlegel v.
12 Billingslea (In re Schlegel), 526 B.R. 333, 338 (9th Cir. BAP
13 2015); see also Leavitt v. Soto (In re Leavitt), 171 F.3d 1219,
14 1223 (9th Cir. 1999). A bankruptcy court abuses its discretion
15 if it applies the wrong legal standard, misapplies the correct
16 legal standard, or if its factual findings are illogical,
17 implausible, or without support in inferences that may be drawn
18 from the facts in the record. See TrafficSchool.com, Inc. v.
19 Edriver Inc., 653 F.3d 820, 832 (9th Cir. 2011) (citing United
20 States v. Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en
21 banc)).

22 We may affirm on any basis in the record. Heers v. Parsons
23 (In re Heers), 529 B.R. 734, 740 (9th Cir. BAP 2015).

24 DISCUSSION

25 The Debtor is pro se; as a result, we construe his
26 appellate brief liberally. Keys v. 701 Mariposa Project, LLC
27 (In re 701 Mariposa Project, LLC), 514 B.R. 10, 15 n.3 (9th Cir.
28 BAP 2014). Even so, we can discern no argument that supports a

1 reversal.

2 **A. We are bound by the orders overruling the Debtor's claim**
3 **objections.**

4 The Debtor asserted that the bankruptcy court erred in
5 denying confirmation and sustaining the Trustee's feasibility
6 objection because it was based on discharged mortgages. He also
7 argued that the bankruptcy court deprived him of due process by
8 dismissing the case without first resolving the claim
9 objections. Thus, these arguments indirectly attack the orders
10 overruling the objections to the Wells Fargo and Deutsche Bank
11 claims. These arguments fail, however, because we lack
12 jurisdiction to reverse the claim objections orders. They are
13 now final and were never before this Panel on appeal.

14 The Debtor appealed these orders to the district court; as
15 a result, only the district court had jurisdiction to determine
16 whether the bankruptcy court erred in overruling the claim
17 objections. Further, the district court dismissed the appeals
18 from the claim objection orders and no further appeal was taken
19 to the Ninth Circuit. Thus, the orders overruling the claim
20 objections are now final and nonappealable. In short, we must
21 assume for purposes of this appeal that the bankruptcy court
22 correctly overruled the claims objections and that Wells Fargo
23 and Deutsche hold valid claims secured by the Property.⁴

24
25 ⁴ We further note that the Debtor failed to provide us
26 with a transcript necessary for review of the bankruptcy court's
27 orders overruling the claim objections; according to its orders,
28 the bankruptcy court adopted "the findings of fact and
conclusions of law made on the record." If a bankruptcy court

(continued...)

1 **B. The bankruptcy court did not abuse its discretion by**
2 **dismissing the case.**

3 On appeal, the Debtor also argues that the bankruptcy court
4 provided inadequate or inappropriate Rule 7052 factual findings
5 and legal conclusions in its order and in its statements on the
6 record. We disagree.

7 At the October 29, 2014 confirmation hearing, the
8

9 _____
10 ⁴(...continued)

11 makes its findings of facts and conclusions of law on the
12 record, the appellant must include the transcript as part of the
13 excerpts of record. McCarthy v. Prince (In re McCarthy),
14 230 B.R. 414, 416-17 (9th Cir. BAP 1999). Here, the Debtor did
15 not do so; were the matter before us, we could summarily affirm
16 the bankruptcy court's rulings on this basis. Ehrenberg v. Cal.
State Univ. Fullerton Found. (In re Beachport Entm't), 396 F.3d
1083, 1087-88 (9th Cir. 2005); Morrissey v. Stuteville
(In re Morrissey), 349 F.3d 1187, 1189 (9th Cir. 2003) (failing
to provide a critical transcript may result in summary
affirmance).

17 Further, the merits of the Debtor's claim objections is
18 based on the faulty premise that his prior chapter 7 discharge
19 nullified the Wells Fargo and Deutsche Bank liens. "Absent some
20 action by the representative of the bankruptcy estate, liens
21 ordinarily pass through bankruptcy unaffected" Brawders
v. Cnty. of Ventura (In re Brawders), 503 F.3d 856, 867 (9th
22 Cir. 2007); see Bank of Am., N.A. v. Caulkett, 575 U.S. ____,
23 135 S. Ct. 1995, 1997, 192 L. Ed. 2d 52 (2015) (holding that a
24 chapter 7 debtor may not "void a junior mortgage under § 506(d)
25 when the debt owed on a senior mortgage exceeds the present
26 value of the property"); see also In re Schlegel, 526 B.R. at
27 342. The Debtor received a discharge of his personal liability
28 for this debt, but the Wells Fargo and Deutsche Bank liens
remained in full force and these secured creditors retained the
right to recover their claims from their collateral. See
Johnson v. Home State Bank, 501 U.S. 78, 80 (1991) (holding that
a mortgage lien, after a chapter 7 proceeding has discharged a
debtor's personal obligation on the underlying debt, remains a
"claim against the debtor that can be rescheduled under
[c]hapter 13").

1 bankruptcy court referred to instructions it gave and objections
2 raised at the previous confirmation hearing. Unfortunately, the
3 Debtor failed to provide us with transcripts for all of the
4 previous confirmation hearings. Consequently, and as explained
5 in footnote 4, we lack a complete record of the proceedings and
6 cannot adequately consider the bankruptcy court's decision for
7 purposes of a reversal. We could summarily affirm on this
8 basis. See Ehrenberg, 396 F.3d at 1087-88.

9 But from the record that the Debtor did provide, we see a
10 more than adequate basis for affirmance. The bankruptcy court
11 noted the Debtor's failure to make progress in the case and the
12 Debtor's failure to address issues discussed at previous
13 confirmation hearings. It then invited the Debtor to address
14 "the payment of [his] creditors" Hr'g Tr. (Oct. 29,
15 2014) at 5:17-25. The Debtor failed to do so. The bankruptcy
16 court, thus, identified a proper legal standard for dismissal:
17 unreasonable delay that is prejudicial to creditors.

18 Section 1307(c) sets forth a non-exclusive list of factors
19 that constitute "cause" for conversion or dismissal. See
20 11 U.S.C. § 1307(c); In re Schlegel, 526 B.R. at 339. "A
21 debtor's unjustified failure to expeditiously accomplish any
22 task required either to propose or confirm a chapter 13 plan may
23 constitute cause for dismissal under § 1307(c)(1)." de la Salle
24 v. U.S. Bank, N.A. (In re de la Salle), 461 B.R. 593, 605 (9th
25 Cir. BAP 2011) (quoting Ellsworth v. Lifescape Med. Assocs.,
26 P.C. (In re Ellsworth), 455 B.R. 904, 915 (9th Cir. BAP 2011)).

27 In de la Salle, the bankruptcy court converted a case from
28 chapter 13 to chapter 7 after the bankruptcy court gave detailed

1 instructions which the debtor failed to follow. 461 B.R. at
2 600-01, 605-06. We affirmed in part because: “[g]iven the
3 passage of time and debtors’ repeated failure to provide for the
4 claim secured by their residence in their plan, the bankruptcy
5 court correctly concluded that conversion of debtors’ case was
6 warranted on account of the resultant delay and prejudice.” Id.
7 at 605.

8 Here, eight months postpetition, the Debtor had made no
9 progress toward proposing a confirmable plan, and the bankruptcy
10 court found prejudice to creditors and cause to dismiss the
11 case.⁵ Its findings were sufficient and not clearly erroneous.

12 **CONCLUSION**

13 Based on the foregoing, we AFFIRM.
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25 ⁵ Although the issue was not raised by the Debtor, the
26 bankruptcy court did not conduct the required “best interest of
27 creditors” analysis before dismissing the case. See
28 In re Schlegel, 526 B.R. at 343 n.10. Nonetheless, on this
record, the error is harmless as case dismissal clearly was in
the best interests of creditors and the estate.