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NOT FOR PUBLICATION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

In re:) BAP No. NC-14-1568-JuTaD
)
 YVONNE LACONICO ZIVANIC,) Bk. No. 14-51918
)
 Debtor.)
)
 _____)
)
 YVONNE LACONICO ZIVANIC,)
)
 Appellant,)
)
 v.) M E M O R A N D U M *
)
 DEUTSCHE BANK NATIONAL TRUST)
 COMPANY, Trustee for WAMU)
 2005-AR6, its assignees and/or)
 successors in interest;)
 FRED S. HJELMESET, Chapter 7)
 Trustee,**)
)
 Appellees.)
)
 _____)

Argued and Submitted on October 23, 2015
at San Francisco, California

Filed - October 30, 2015

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

Honorable M. Elaine Hammond, Bankruptcy Judge, Presiding

Appearances: Motaz M. Gerges on brief for appellant Yvonne
Zivanic; Jonathan S. Lieberman of Locke Lord LLP
argued for appellee Deutsche Bank National Trust

* 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.

** The chapter 7 trustee Fred S. Hjelmset has not
participated in this appeal.

1 Company, Trustee for WAMU 2005-AR6.

2
3 Before: JURY, TAYLOR, and DUNN, Bankruptcy Judges.

4 Appellee Deutsche Bank National Trust Company as Trustee
5 for WAMU 2005-AR6 (Bank) filed a motion seeking relief from the
6 automatic stay to proceed with an unlawful detainer action
7 (UD Action) against chapter 13¹ debtor Yvonne Laconico Zivanic.
8 The bankruptcy court granted the motion by order entered on
9 December 1, 2014 (Stay Relief Order). Debtor filed a premature,
10 although timely, notice of appeal from the Stay Relief Order.

11 Bank then filed a motion to dismiss (MTD) the adversary
12 proceeding commenced by debtor, which the bankruptcy court
13 granted by order entered January 14, 2015 (Dismissal Order).
14 Although debtor contends otherwise, she did not file a timely
15 notice of appeal from the Dismissal Order. As a result, the
16 scope of this appeal is limited to the Stay Relief Order.

17 Debtor was granted her discharge in her bankruptcy case
18 and, therefore, the automatic stay has terminated by operation
19 of law under § 362(c)(2)(C). Accordingly, we DISMISS the appeal
20 from the Stay Relief Order as MOOT.

21 **I. FACTS**

22 Debtor owned real property located on Springer Avenue in
23 Saratoga, California. On August 6, 2009, the property was sold
24 pursuant to a nonjudicial foreclosure sale held in the County of
25

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

1 Santa Clara. On August 12, 2009, the Trustee's Deed Upon Sale
2 was recorded.

3 To avoid eviction, debtor filed a voluntary chapter 13
4 petition on November 10, 2009 (Bankr. Case No. 08-bk-59810).
5 Debtor did not file the required information, and her case was
6 dismissed on December 1, 2009. One day prior to the closure of
7 the first bankruptcy case, on December 17, 2009, debtor filed a
8 second chapter 13 petition (Bankr. Case No. 09-bk-61052). This
9 case was dismissed on February 16, 2010. Debtor filed her third
10 chapter 13 petition on September 7, 2011 (Bankr. Case No. 11-bk-
11 58408). This case was dismissed on December 8, 2011 as a result
12 of debtor's failure to file information.

13 On March 1, 2011, Bank caused a Notice to Quit to be served
14 on debtor and her husband. Shortly thereafter, Bank filed the
15 UD Action against debtor and her husband in the Superior Court
16 of California, County of Santa Clara, Case No. 11-CV-196650. In
17 early May 2011, debtor and her husband filed an answer to the
18 UD Action.

19 On April 30, 2014, debtor filed the instant case under
20 chapter 7. On October 16, 2014, debtor commenced an adversary
21 proceeding in the bankruptcy court against Bank and others
22 (Adv. No. 14-05111).

23 On October 22, 2014, Bank filed its Motion for Relief in
24 connection with the property, seeking relief from the automatic
25 stay to proceed with the UD Action and obtain possession of the
26 property following the nonjudicial foreclosure sale. The motion
27 was accompanied by a notice that a hearing would be held on
28 November 14, 2014. In a late-filed opposition, debtor opposed

1 the relief on the ground that Bank did not have standing.

2 On November 12, 2014, debtor received her \$ 727 discharge.

3 At the November 14, 2014 hearing, the bankruptcy court
4 granted Bank's motion for relief from the automatic stay so that
5 it could proceed with the UD Action. Although there was some
6 discussion about the pending adversary proceeding at that
7 hearing, the bankruptcy court made clear that the only issue
8 before it was a relief from stay motion to proceed with an
9 unlawful detainer action post-foreclosure and that the court was
10 not addressing its jurisdiction over the adversary proceeding at
11 that hearing.

12 On November 21, 2014, debtor filed a premature notice of
13 appeal. Debtor's statement of issues on appeal identified the
14 following:

15 1. Did the bankruptcy court err as a matter of law
16 and a matter of fact in granting the Creditor['s]
17 Motion for Relief from Automatic Stay while an
adversary complaint remained unresolved that effected
[sic] the same creditor?

18 2. Did the bankruptcy court abuse its authority
19 denying debtor['s] oral motion to extend [the]
automatic stay?

20 The bankruptcy court entered the Stay Relief Order on
21 December 1, 2014.

22 On November 21, 2014, Bank filed the MTD the adversary
23 proceeding with a hearing scheduled for January 12, 2015.
24 Debtor failed to file an opposition to the MTD. On January 14,
25 2015, the bankruptcy court entered an order dismissing the
26 adversary proceeding for lack of subject matter jurisdiction.
27 Debtor did not file a notice of appeal from the Dismissal Order.

28 On April 8, 2015, the Panel issued a single judge Order re

1 Jurisdictional Issue requiring a response from debtor as to why
2 this appeal should not be dismissed for lack of jurisdiction
3 since debtor did not file a timely notice of appeal from the
4 Dismissal Order. In response, debtor asserted that the
5 bankruptcy court sua sponte dismissed her adversary proceeding
6 at the November 14, 2014 hearing on Bank's motion for relief
7 from the automatic stay. Debtor argued that her notice of
8 appeal, although premature, included the Dismissal Order entered
9 on January 14, 2015, and no new notice of appeal was required.
10 For these reasons, debtor concluded that the Panel had
11 jurisdiction to hear the merits of her appeal in connection with
12 the dismissal of the adversary proceeding. At that time, the
13 transcript of the November 14, 2014 hearing was neither included
14 in the appellate record nor available to the Panel.

15 On May 18, 2015, the Panel issued an order deeming its
16 April 8, 2015 Order re Jurisdictional Issue satisfied due to
17 debtor's representations and argument. The Panel further
18 ordered debtor to file a copy of the November 14, 2014 hearing
19 transcript by June 1, 2015. The transcript was included in
20 Bank's supplemental excerpts of record.

21 On August 31, 2015, the Panel issued a Clerk's Notice Re
22 Mootness. In response, Bank maintained that the appeal was not
23 moot at that time since it had not yet completed the unlawful
24 detainer action against debtor. The Panel then took the issue
25 of mootness under advisement.

26 **II. JURISDICTION**

27 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
28 §§ 1334 and 157(b)(2)(G). Our jurisdiction is based upon

1 28 U.S.C. § 158, and we discuss two aspects of that jurisdiction
2 in more detail below.

3 **III. ISSUES**

4 What is the scope of this appeal?

5 Is the bankruptcy court's order terminating the automatic
6 stay moot?

7 **IV. STANDARD OF REVIEW**

8 We review our own jurisdiction, including questions of
9 mootness, de novo. Silver Sage Partners, Ltd. v. City of Desert
10 Hot Springs (In re City of Desert Hot Springs), 339 F.3d 782,
11 787 (9th Cir. 2003).

12 **V. DISCUSSION**

13 **A. Scope of Appeal**

14 On appeal, Bank argues that debtor's notice of appeal does
15 not include an appeal from the Dismissal Order. We agree that
16 the only ruling properly before this Panel is the bankruptcy
17 court's Stay Relief Order.

18 Contrary to debtor's prior assertions in response to the
19 Panel's Order re Jurisdictional Issue, the bankruptcy court did
20 not dismiss her adversary proceeding at the November 14, 2014
21 hearing on Bank's motion for relief from the automatic stay.
22 Rather, the transcript of that hearing shows that after the
23 bankruptcy court heard debtor's arguments against stay relief –
24 all of which related to the merits of the adversary proceeding –
25 the court merely gave debtor a courtesy "heads up" as to what
26 might happen in the future with respect to the adversary
27 proceeding. The bankruptcy court expressed its concern that it
28 might not have jurisdiction over debtor's adversary proceeding

1 and the claims she raised due to her discharge, but noted that
2 "the State Court certainly would [have jurisdiction]." After
3 this discussion, the court stated: "That's not actually the
4 issue I'm addressing here today, but I wanted to let you know
5 about it in advance, so you don't get it cold at the adversary
6 proceeding hearing." Later, the bankruptcy court said: "[T]he
7 only thing to do here today is I am going to grant the relief
8 requested."

9 Bank then filed its MTD in the adversary proceeding. The
10 bankruptcy court granted the motion by order entered on
11 January 14, 2015. That order became final because debtor did
12 not file a notice of appeal. United Student Aid Funds, Inc. v.
13 Espinosa, 130 S.Ct. 1367, 1380 (2010) (holding that bankruptcy
14 court's erroneous order nonetheless was binding and enforceable
15 against appellant because appellant had notice of the
16 proceedings but did not appeal that order). Therefore, we lack
17 jurisdiction to address debtor's contentions regarding the
18 dismissal of her adversary proceeding because she failed to file
19 a timely notice of appeal from the Dismissal Order.

20 **B. The appeal of the Stay Relief Order is moot.**

21 We cannot exercise jurisdiction over a moot appeal. United
22 States v. Pattullo (In re Pattullo), 271 F.3d 898, 900 (9th Cir.
23 2001). A moot case is one where the issues presented are no
24 longer live and no case or controversy exists. Pilate v.
25 Burrell (In re Burrell), 415 F.3d 994, 998 (9th Cir. 2005).
26 The test for mootness is whether an appellate court can still
27 grant effective relief to the prevailing party if it decides the
28 merits in his or her favor. Id.

1 As noted, debtor received her discharge under § 727(a)
2 prior to the bankruptcy court's ruling on Bank's motion for
3 relief from the automatic stay. Under § 362(c)(2)(C), the
4 provisions of the § 362(a) automatic stay that would shield
5 debtor from any legal actions by Bank to recover the property
6 from her continued in effect only "until the earliest of ... the
7 time a discharge is granted or denied." Since the entry of the
8 discharge order in the bankruptcy case there has been no
9 automatic stay in effect. Consequently, even were we to
10 overturn the Stay Relief Order which allowed Bank to proceed in
11 the UD Action, the stay has now terminated as to
12 debtor/appellant as a matter of law. Bigelow v. Comm'r, 65 F.3d
13 127, 129 (9th Cir. 1995) ("a stay immediately dissolves upon
14 issuance of a discharge by the bankruptcy court. § 362(2)(C)").
15 In sum, we lack the ability to grant debtor any effective relief
16 with respect to the Stay Relief Order which is the only order
17 before us on appeal. Accordingly, since we are unable to grant
18 effective relief, the appeal is dismissed. Cook v. Fletcher
19 (In re Cook), 730 F.2d 1324, 1326 (9th Cir. 1984) (dismissing
20 appeal of stay relief order as moot where the chapter 7
21 discharge was issued after the appeal was filed).

22 VI. CONCLUSION

23 For the reasons stated above, we DISMISS this appeal as
24 moot.