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NOT FOR PUBLICATION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

5	In re:)	BAP No.	CC-15-1106-TaKuKi
6	HOLY HILL COMMUNITY CHURCH,)	Bk. No.	2:14-bk-21070-WB
7	Debtor.)	Adv. No.	2:14-ap-01744-WB
8	_____)		
9	DANA PARK,)		
10	Appellant,)		
11	v.)	MEMORANDUM*	
12	RICHARD J. LASKI, Chapter 11)		
13	Trustee; 1111 SUNSET, LLC;)		
14	DOWNTOWN CAPITAL, LLC,)		
	Appellees.**)		
	_____)		

Argued and Submitted on November 19, 2015
at Pasadena, California

Filed - January 5, 2016

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

Honorable Julia Wagner Brand, Bankruptcy Judge, Presiding

Appearances: Marvin Levy argued for appellant Dana Park;
Richard D. Buckley, Jr. of Arent Fox LLP argued
for appellee Richard J. Laski, Chapter 11
Trustee.

* 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).

** Although named by Appellant in the notice of appeal,
1111 Sunset, LLC was not a party to the adversary proceeding.
And Downtown Capital, LLC did not appear in the appeal.

1 Before: TAYLOR, KURTZ, and KIRSCHER, Bankruptcy Judges.

2 **INTRODUCTION**

3 Dana Park appeals from an order dismissing, without leave
4 to amend, a complaint against chapter 11¹ debtor Holy Hill
5 Community Church. DISMISSAL of the appeal, based on mootness,
6 is warranted. To the extent any portion of the appeal retains
7 vitality, a merits review yields no basis for reversal and we
8 would AFFIRM.

9 **FACTS**

10 The Debtor is a Presbyterian church that formerly owned
11 valuable real property located in Los Angeles, California (the
12 "Property").

13 **Prepetition Events**

14 In 2010, a schism developed between the Debtor's membership
15 and leadership. Eventually, The Western California Presbytery,
16 a governing organization for the Debtor, became involved. The
17 dispute escalated, and the Presbytery took action; on March 24,
18 2011, it terminated Dong Sub Bang as pastor and president of the
19 board of elders, and it replaced the three members of the board
20 of elders. The result of the Presbytery's actions was a
21 competition between the factions for possession and control of
22 the church and the Property.

23 In April 2011, the Presbytery sought a secular solution to
24 the discord and commenced an action against Bang and the three

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

1 removed elders (collectively, the "Bang Faction") in California
2 state court (the "Presbytery action"). The Bang Faction
3 responded by recording two deeds of trust purporting to create
4 liens in their favor and against the Property. And in August
5 2011, it executed and recorded a quitclaim deed ("Beverly Deed")
6 purporting to transfer the Property from the Debtor to Beverly
7 Real Estate Investments LLC ("Beverly LLC"). Beverly LLC later
8 recorded a quitclaim deed transferring the Property to Golden
9 Fish, LLC. Park now entered the fray; she controls both
10 Beverly LLC and Golden Fish, LLC.

11 After its discovery of this activity, the Debtor took
12 action independent of the Presbytery and commenced a quiet title
13 action against Park, Beverly LLC, and the Bang Faction in state
14 court. Subsequently it filed an application for an order
15 restoring title in the Property to the Debtor, based on an order
16 entered in the related Presbytery action.

17 In the Presbytery action, the court had issued an order
18 finding the Beverly Deed invalid because the Bang Faction
19 executed it after their removal from the Debtor's governance
20 ("Presbytery action order"). Based on that finding, the court
21 then granted a request for injunctive relief preventing the Bang
22 Faction, Park, and Beverly LLC from interfering with the
23 Debtor's possession, management, and control of the Property.
24 It also ordered restoration of the Property to the Presbytery.
25 Notably, the Presbytery action order contained express reference
26 to Park and Beverly LLC, although neither was a named party in
27 the litigation.

28 Consistent with the Presbytery action order, the court in

1 the Debtor's quiet title action granted the Debtor's
2 application, over Park's objection, and ordered that title in
3 the Property be restored to the Debtor ("order restoring
4 title"). Its decision was made in accordance with the
5 Presbytery action order, "finding invalid the attempt to
6 transfer the Property" Concurrently, the state court
7 clerk of court, on behalf of Beverly LLC, executed a quitclaim
8 deed that transferred the Property from Beverly LLC back to the
9 Debtor; the deed was properly recorded. The Debtor also moved
10 for and obtained a state court order expunging the deeds of
11 trust recorded by the Bang Faction ("order expunging liens").

12 Park and Beverly LLC soon found themselves without counsel
13 in the quiet title action. As a result, the state court struck
14 their answers and entered defaults (but not default judgments)
15 against them; they did not appear again in the litigation.
16 Meanwhile, having obtained restoration of title to the Property,
17 the Debtor successfully petitioned for voluntary case dismissal
18 of its action.

19 **Bankruptcy Filing and Post-Petition Events**

20 The Debtor filed its chapter 11 petition in June 2014. A
21 chapter 11 trustee was appointed soon after.

22 In September 2014 and in spite of knowledge of the
23 bankruptcy, Park commenced an action against the Debtor and
24 members of the Bang Faction (but not Bang), in state court; she
25 did not seek stay relief prior to filing the action. The
26 complaint alleged broadly that Park held an interest in the
27 Property based on "a quitclaim deed." It sought to quiet title
28 against the Debtor's claims to the Property as of the chapter 11

1 petition date and requested a declaration that the defendants
2 did not have any right, title, estate, lien, or interest in the
3 Property. The complaint also alleged that the defendants
4 wrongfully threatened to sell the Property; thus, Park sought
5 injunctive relief preventing interference with her use of the
6 Property.

7 The Trustee removed Park's action to the bankruptcy court
8 and moved to dismiss the complaint under Civil Rule 12(b)(6),
9 without leave to amend, based on the issue preclusive effect of
10 the state court orders in the Debtor's quiet title action.
11 Thus, he discounted the impact of the Beverly Deed because the
12 state court previously deemed it invalid. Similarly, he also
13 dismissed the impact of an unrecorded deed in lieu of
14 foreclosure relied upon by Park; the Bang Faction signed it
15 during a time when the state court previously determined they
16 lacked authority to take action on behalf of the Debtor.

17 Park opposed. Beyond a broad assertion that the complaint
18 contained sufficient factual allegations supporting a plausible
19 claim for relief, she also asserted, vaguely, that other claims
20 for relief possibly existed, including fraud, unjust enrichment,
21 and "other causes of action." Park admitted, however, that she
22 needed to propound discovery on the Debtor and "other involved
23 parties" to flesh out these claims.

24 At the bankruptcy court's request, the parties submitted
25 supplemental briefs on the issue of issue preclusion; the
26 bankruptcy court was particularly concerned with whether the
27 "final judgment" element was satisfied, given that the Debtor
28 had dismissed its quiet title action prior to trial. Park

1 responded with an assertion aslant of this request; according to
2 Park, the Beverly Deed was executed on account of Beverly LLC's
3 purchase of the promissory note evidencing an obligation owed
4 for the Property in July 2011. She also argued more generally
5 that the state court orders were not final for issue preclusion
6 purposes and that, in any event, she was not a party to or in
7 privity with the party subject to the Presbytery action order.

8 At a continued hearing, the bankruptcy court stated that
9 after a careful review of the Trustee's motion, Park's
10 opposition, and the supplemental briefs, it would dismiss the
11 complaint without leave to amend. It found all of the elements
12 for issue preclusion satisfied, as it deemed the order restoring
13 title a final order. It also noted that quitclaim deed executed
14 by the state court clerk of court had transferred the Property
15 back to the Debtor, and that no appeal followed. The bankruptcy
16 court concluded with the observation that Park was free to file
17 a proof of claim in the bankruptcy case if she had claims beyond
18 the complaint, but that leave to amend the complaint was not
19 warranted.

20 The bankruptcy court entered an order dismissing Park's
21 claims with prejudice. Park appealed.

22 **JURISDICTION**

23 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
24 §§ 1334 and 157(b) (2) (A). We have jurisdiction under 28 U.S.C.
25 § 158, as discussed further below.

26 **ISSUES**

27 Whether this appeal is moot; if not, whether the bankruptcy
28 court erred in dismissing the complaint or abused its discretion

1 in dismissing without leave to amend.

2 **STANDARDS OF REVIEW**

3 We review the following issues de novo: our jurisdiction,
4 including questions of mootness, Ellis v. Yu (In re Ellis),
5 523 B.R. 673, 677 (9th Cir. BAP 2014); dismissal of an adversary
6 proceeding under Civil Rule 12(b)(6), Johnson v. Fed. Home Loan
7 Mortg. Corp., 793 F.3d 1005, 1007 (9th Cir. 2015); and the
8 availability of issue preclusion. Plyam v. Precision Dev., LLC
9 (In re Plyam), 530 B.R. 456, 461 (9th Cir. BAP 2015).

10 If issue preclusion was available, we next review the
11 bankruptcy court's application for an abuse of discretion. Id.
12 A bankruptcy court abuses its discretion if it applies the wrong
13 legal 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 Id. We also review for an abuse of discretion a bankruptcy
17 court's decision to dismiss a complaint without leave to amend.
18 Tracht Gut, LLC v. Cty. of Los Angeles Treasurer & Tax Collector
19 (In re Tracht Gut, LLC), 503 B.R. 804, 810 (9th Cir. BAP 2014).

20 Finally, we may affirm on any basis supported by the
21 record. Heers v. Parsons (In re Heers), 529 B.R. 734, 740 (9th
22 Cir. BAP 2015).

23 **DISCUSSION**

24 Following the filing of the notice of appeal, the
25 bankruptcy court entered an order approving a § 363 sale (the
26 "§ 363 order") of the Property to a third party purchaser, "free
27 and clear of all liens, liabilities, claims and encumbrances of
28 any kind and nature" The § 363 order contained several

1 critical findings: the bankruptcy estate was "the sole and
2 lawful owner of the Property"; the sale vested the purchaser
3 with all of the estate's "right, title, and interest . . . to
4 the Property"; and the purchaser was a good faith buyer within
5 the meaning of § 363(m). Park received notice of the motion to
6 sell; she did not file any opposition. No appeal was taken from
7 the § 363 order, and it is now final.

8 In response to a BAP Clerk order on potential mootness,
9 Park contends that the sale did not moot the appeal, as the
10 Panel could provide that the sale was subject to Park's claims
11 in her quiet title action. And she contends that the buyer was
12 not a bona fide purchaser because it knew or should have known
13 of Park's quiet title action. In the alternative, she asserts
14 that the Panel could order the "Trustee [to] hold in reserve,
15 from future distributions to be made to unsecured creditors,
16 funds sufficient to pay [Park's] pro rate [sic] share of her
17 claim as required by section 502(j) of the Bankruptcy Code,
18 especially since the Chapter 11 Plan has not yet been confirmed
19 by the bankruptcy court." In closing, Park argues that hotly
20 contested issues remain as to her asserted rights and claims to
21 the Property.

22 Based on the record before us, we conclude that the appeal
23 is moot as to Park's claims for injunctive relief and requesting
24 a quiet title order as to the Property.

25 "A case is moot if the issues presented are no longer live
26 and there fails to be a 'case or controversy' under Article III
27 of the Constitution." Pilate v. Burrell (In re Burrell),
28 415 F.3d 994, 998 (9th Cir. 2005). Determining constitutional

1 mootness turns on whether “the appellate court can give the
2 appellant any effective relief in the event that it decides the
3 matter on the merits in [its] favor.” Id. An appeal may be
4 equitably moot if an appellant fails to seek a stay pending
5 appeal. See JPMCC 2007-C1 Grasslawn Lodging, LLC v. Transwest
6 Resort Properties, Inc. (In re Transwest Resort Props., Inc.),
7 801 F.3d 1161, 1167 (9th Cir. 2015).

8 Here, the complaint sought to quiet title in Park’s favor
9 and for injunctive relief barring the Debtor’s “interference”
10 with Park’s use of the Property. Curiously, title to and
11 possession of the Property was restored to the Debtor nearly two
12 and a half years before Park commenced her action. In any
13 event, the § 363 sale extinguished Park’s requests as to title
14 and possession. As stated, the § 363 order is now final.
15 Park’s failure to appeal, let alone seek a stay pending appeal
16 of the § 363 order, only strengthens a mootness determination.
17 See Rev Op Grp. v. ML Manager LLC (In re Mortgs. Ltd.), 771 F.3d
18 1211, 1216 (9th Cir. 2014).

19 To the extent Park believes that she possesses a damages
20 claim or is entitled to the sale proceeds based on an
21 extinguished ownership interest in the Property, on this record,
22 we disagree. Park’s interest in the Property was premised on
23 the Beverly Deed. But, the state court in the Presbytery action
24 determined that the deed was invalid. As the bankruptcy court
25 determined, Park was precluded from relitigating the validity of
26 the Beverly Deed issue so as to establish an ownership interest
27 in the Property. Therefore, it did not err in dismissing the
28 complaint with prejudice. But, even if issue preclusion was not

1 available, any error was harmless as the § 363 order supplies an
2 ultimate bar to Park's claims to the Property.

3 A motion to dismiss under Civil Rule 12(b)(6) (incorporated
4 into adversary proceedings by Rule 7012(b)) challenges the
5 sufficiency of the allegations set forth in a complaint and "may
6 be based on either a lack of [:(1)] a cognizable legal theory
7 or . . . [(2)] sufficient facts alleged under a cognizable
8 legal theory." Johnson v. Riverside Healthcare Sys., LP,
9 534 F.3d 1116, 1121 (9th Cir. 2008) (internal quotation marks
10 and citation omitted). The court's review is limited to the
11 allegations of material facts set forth in the complaint, which
12 must be read in the light most favorable to the non-moving
13 party, and together with all reasonable inferences therefrom,
14 must be taken as true. Pareto v. Fed. Dep't Ins. Corp.,
15 139 F.3d 696, 699 (9th Cir. 1998).

16 Consistent with Civil Rule 8(a)(2), the factual allegations
17 in the complaint must state a claim for relief that is facially
18 plausible. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); see
19 also Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007). Thus,
20 based on the Iqbal/Twombly rubric, the bankruptcy court must
21 first identify bare assertions that "do nothing more than state
22 a legal conclusion—even if that conclusion is cast in the form
23 of a factual allegation," and discount them from an assumption
24 of truth. See Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th
25 Cir. 2009). Then, if there remain well-pleaded factual
26 allegations, the bankruptcy court should assume their truth and
27 determine whether the allegations "and reasonable inferences
28 from that content" give rise to a plausible claim for relief.

1 Id. “[D]etermining whether a complaint states a plausible claim
2 is context-specific, requiring the reviewing court to draw on
3 its experience and common sense.” 556 U.S. at 679.

4 In California, issue preclusion applies: (1) after final
5 adjudication; (2) of an identical issue; (3) actually litigated
6 in the former proceeding; (4) necessarily decided in the former
7 proceeding; and (5) asserted against a party in the former
8 proceeding or in privity with that party. See DKN Holdings LLC
9 v. Faerber, 61 Cal. 4th 813, 825 (2015).

10 Park challenges only the bankruptcy court’s determinations
11 in relation to two of the elements of issue preclusion: that the
12 state court orders were final and that Park was a party to or in
13 privity with the parties to those orders. To be clear, there
14 are two sets of state court orders: the Presbytery action order
15 (consisting of a preliminary injunction order) and the Debtor’s
16 quiet title action orders (consisting of the order restoring
17 title and the order expunging liens). In issuing its orders,
18 the state court in the Debtor’s quiet title action explicitly
19 relied on the Presbytery action order.

20 These orders, admittedly, provided for injunctive relief,
21 so as to preserve the status quo during the pendency of the
22 Debtor’s quiet title action (and the Presbytery action). In
23 California, “a decision on an application for a preliminary
24 injunction does not amount to a decision on the ultimate rights
25 in controversy.” Bomberger v. McKelvey, 35 Cal. 2d 607, 612
26 (1950). Nonetheless, an exception is carved out when “it
27 appears that the court intended a final adjudication of the
28 issue involved” Id.

1 That was the result here. As stated, Park's interest in
2 the Property is premised on the Beverly Deed. But, the state
3 court in the Presbytery action found that the Beverly Deed was
4 invalid because the Bang Faction had been removed from their
5 positions in the church at the time that the Beverly Deed was
6 executed and recorded. In particular:

7 The evidence show[ed] that the attempt by Bang and his
8 affiliates to quitclaim the deed to the Property was
9 **invalid** as these individuals had already been removed
10 from their positions by the Presbytery, and thus, had
11 **no authority to act on behalf of the Church.** See
12 August 29, 2011 Order (finding that Bang was removed
13 by the Presbytery as Senior Pastor on March 29, 2011,
14 that the Presbytery appointed a new Board of Elders
15 headed by the new Senior Pastor Reverend Abraham Cho,
16 and that "the Cho faction was entitled to operate and
17 manage Church property on an interim basis.").

18 Adv. Dkt. No. 11 at 124 (emphasis added).

19 On appeal in the Presbytery action, the California court of
20 appeal in effect reaffirmed this finding. See The W. Cal.
21 Presbytery v. Holy Hill Cmty. Church, 2012 WL 5360909, at *2, 4
22 (Cal. Ct. App. Nov. 1, 2012) (the record supported the trial
23 court's determination that Bang was removed from his pastorship
24 in March 2011); see also Jun Ki Kim v. True Church Members of
25 Holy Hill Cmty. Church, 236 Cal. App. 4th 1435, 1442 (2015)
26 ("[W]ithout authority, Rev. Bang entered into financial
27 arrangements with . . . other entities which had the effect of
28 encumbering the [Property] . . ."). That Bang and his faction
were no longer in control of the church and, thus, lacked any
authority to effectuate a transfer of the Property in August
2011 is beyond dispute; it is now a conclusive fact. Nothing
Park asserts can change this fact. And, even if Park could
surmount this hurdle, she ignores the consequences of the

1 quitclaim deed later issued by the state court clerk of court,
2 transferring the Property back to the Debtor.

3 Park's arguments as to the same party or privity element
4 similarly fail. There is no question that Park was a party to
5 the Debtor's quiet title action or that the state court's orders
6 in that litigation applied to Park and Beverly LLC. Again, the
7 state court in the Debtor's quiet title action relied on the
8 finding in the Presbytery action order, but it acted
9 independently. In any event, the state court in the Presbytery
10 action identified Park and Beverly LLC in its order. That Park
11 and Beverly LLC were not parties to the Presbytery action is,
12 thus, irrelevant.

13 Based on the foregoing, issue preclusion was available and
14 the bankruptcy court did not abuse its discretion in giving
15 preclusive effect to the state court orders. But, even if issue
16 preclusion was not available, any error was harmless based on
17 the § 363 order.

18 Again, the § 363 order contained critical findings, such as
19 the estate's sole ownership of the Property. The order,
20 inclusive of the findings, is now final and non-appealable. The
21 result serves to bar any assertion by Park of an interest in the
22 Property. Instead, Park's continued efforts to challenge
23 ownership constitute an impermissible collateral attack of the
24 § 363 order.

25 In sum, Park could not show that she had a valid interest
26 in the Property when she filed her complaint. The § 363 order
27 now further bars any such assertion. Consequently, there was no
28 error in the bankruptcy court's dismissal of the complaint; nor

1 did it abuse its discretion in denying leave to amend as any
2 amendment would be futile.

3 **CONCLUSION**

4 We conclude that DISMISSAL of the appeal as moot is
5 appropriate. In the alternative, based on a merits review, we
6 would AFFIRM the bankruptcy court.

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