

MAR 25 2016

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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NOT FOR PUBLICATION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.	SC-15-1228-FJuKi
)		
MARSHALL CASEY PFEIFFER,)	Bk. No.	13-09062-CL13
)		
Debtor.)		
_____)		
)		
MARSHALL CASEY PFEIFFER,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM*	
)		
DAVID SKELTON, Trustee,**)		
)		
Appellee.)		
_____)		

Submitted Without Oral Argument
on March 17, 2016

Filed - March 25, 2016

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

Honorable Christopher B. Latham, Bankruptcy Judge, Presiding

Appearances: Appellant Marshall Casey Pfeiffer, pro se, on the
brief.

Before: FARIS, JURY, and KIRSCHER, 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.

** Mr. Skelton did not file an answering brief or otherwise
make an appearance in this appeal.

1 **INTRODUCTION**

2 Chapter 13¹ debtor Marshall Casey Pfeiffer appeals from the
3 bankruptcy court's order granting chapter 13 trustee David
4 Skelton's motion to dismiss. The bankruptcy court determined
5 that Mr. Pfeiffer had failed to make regular plan payments and
6 could not pay off the plan by presenting the Trustee with an
7 invalid promissory note. Mr. Pfeiffer fails to identify any
8 reversible error. Accordingly, we AFFIRM.

9 **FACTUAL BACKGROUND²**

10 Mr. Pfeiffer's chapter 13 plan (the "Plan") required him to
11 make monthly payments of \$1,435. Mr. Pfeiffer made Plan payments
12 for approximately one year but then stopped.

13 The Trustee filed a motion to dismiss Mr. Pfeiffer's case
14 for failure to make Plan payments (the "Motion to Dismiss"). He
15 alleged that Mr. Pfeiffer materially defaulted under the Plan
16 pursuant to § 1307(c)(6) or (8).

17 In response, Mr. Pfeiffer attached an alleged promissory
18 note stub to his opposition. He argued that the document
19 evidenced the delivery of a promissory note for \$54,473.97 (the
20 "Promissory Note") to the Trustee that satisfied his outstanding
21 debt. Mr. Pfeiffer also stated that he transmitted a copy of the
22 Promissory Note receipt to the United States Treasury.

23 The Promissory Note, supposedly issued the same day as
24

25 ¹ Unless specified otherwise, all chapter and section
references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

26 ² Mr. Pfeiffer presents us with a limited record. We have
27 exercised our discretion to review the bankruptcy court's docket,
28 as appropriate. See Woods & Erickson, LLP v. Leonard (In re AVI, Inc.), 389 B.R. 721, 725 n.2 (9th Cir. BAP 2008).

1 Mr. Pfeiffer's opposition, identifies the issuer as "Marshall
2 Casey Pfeiffer" and the principal as "The United States of
3 America." The Drawee is "United States in behalf of the United
4 States of America," and the Promissory Note is "payable" at "The
5 United States Treasury or at a Bank in the United States." The
6 Promissory Note is "redeemable" at the "Treasury Department of
7 the United States, City of Washington, District of Columbia or at
8 Any Federal Reserve Bank."³

9 At the hearing on the Motion to Dismiss, Mr. Pfeiffer
10 argued that the Promissory Note is legal tender because it is
11 "legally the same as a check or a dollar bill." He contended
12 that he "sent the promissory note to the principal [the United
13 States of America] asking them to pay the debt because the
14 principal is responsible for the debt as the principal of the
15 agency. The principal is the beneficiary and legally responsible
16 for all debts related to the agency that it created."

17 On July 1, 2015, the court issued its order granting the
18 Motion to Dismiss (the "Order"). It determined that the
19 Promissory Note is not legal tender. It also held that the
20 Promissory Note is invalid, because "[t]here is no indication
21 that Debtor has any standing, capacity, or authority whatever to
22 draw upon the Federal Treasury or bind the United States in any
23 kind of contract." The court concluded that Mr. Pfeiffer failed
24 to make Plan payments, which constituted a material default under

25
26 ³ Mr. Pfeiffer also attached a document entitled "Purpose of
27 Promissory Note." He stated that the Promissory Note was meant
28 to pay off or discharge any debt as it relates to his bankruptcy
case. He contended that the United States of America is the
principal liable for payment on the Promissory Note.

1 the Plan, and dismissed the case under § 1307(c) (6).

2 Mr. Pfeiffer timely appealed the Order.

3 **JURISDICTION**

4 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
5 §§ 1334 and 157(b) (1). We have jurisdiction under 28 U.S.C.
6 § 158.

7 **ISSUE**

8 Whether the bankruptcy court erred in dismissing
9 Mr. Pfeiffer's chapter 13 case for failure to make plan payments.

10 **STANDARD OF REVIEW**

11 "We review the bankruptcy court's dismissal of a chapter 13
12 bankruptcy case under any of the enumerated paragraphs of
13 § 1307(c) for abuse of discretion." Schlegel v. Billingslea
14 (In re Schlegel), 526 B.R. 333, 338 (9th Cir. BAP 2015) (citing
15 Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth),
16 455 B.R. 904, 914 (9th Cir. BAP 2011)).

17 To determine whether the bankruptcy court has abused its
18 discretion, we conduct a two-step inquiry: (1) we review de novo
19 whether the bankruptcy court "identified the correct legal rule
20 to apply to the relief requested" and (2) if it did, whether the
21 bankruptcy court's application of the legal standard was
22 illogical, implausible, or "without support in inferences that
23 may be drawn from the facts in the record." United States v.
24 Hinkson, 585 F.3d 1247, 1261-62 & n.21 (9th Cir. 2009) (en banc).
25 "If the bankruptcy court did not identify the correct legal rule,
26 or its application of the correct legal standard to the facts was
27 illogical, implausible, or without support in inferences that may
28 be drawn from the facts in the record, then the bankruptcy court

1 has abused its discretion.” USAA Fed. Sav. Bank v. Thacker
2 (In re Taylor), 599 F.3d 880, 887-88 (9th Cir. 2010) (citing
3 Hinkson, 585 F.3d at 1261-62).

4 DISCUSSION

5 **A. Section 1307 allows dismissal for cause.**

6 The bankruptcy court correctly identified the applicable
7 legal rule. Section 1307(c) allows the bankruptcy court to
8 dismiss a case “for cause.” In re Schlegel, 526 B.R. at 339.
9 That section provides:

10 (c) Except as provided in subsection (f) of this
11 section, . . . the court may convert a case under this
12 chapter to a case under chapter 7 of this title, or may
13 dismiss a case under this chapter, whichever is in the
14 best interests of creditors and the estate, for cause,
15 including -

16 . . .

17 (6) material default by the debtor with respect to
18 a term of a confirmed plan[.]

19 § 1307(c) (6). “The decision to dismiss a chapter 13 case under
20 § 1307(c) is a discretionary decision of the trial court.”
21 In re Schlegel, 526 B.R. at 339 (citation omitted)).

22 “Dismissal under § 1307(c) is a two-step process. Once the
23 court has determined that cause to dismiss exists, it still must
24 decide what remedial action – what form of dismissal – should be
25 taken. . . .” In re Ellsworth, 455 B.R. at 922 (internal
26 citations omitted); see Nelson v. Meyer (In re Nelson), 343 B.R.
27 671, 675 (9th Cir. BAP 2006).

28 **B. The bankruptcy court did not abuse its discretion in dismissing Mr. Pfeiffer’s case for failure to make Plan payments.**

We hold that the court did not err in determining that
Mr. Pfeiffer failed to make his Plan payments and that his

1 default constituted cause for dismissal.

2 Mr. Pfeiffer contends that the Promissory Note constituted
3 legal tender that satisfied the Plan in full. Mr. Pfeiffer is
4 wrong on two counts.

5 First, the Promissory Note is not legal tender. As the
6 bankruptcy court pointed out, legal tender for debts include
7 "United States coins and currency (including Federal reserve
8 notes and circulating notes of Federal reserve banks and national
9 banks)." 31 U.S.C. § 5103. Black's Law Dictionary defines
10 "currency" as "[a]n item (such as a coin, government note, or
11 banknote) that circulates as a medium of exchange." Black's Law
12 Dictionary (10th ed. 2014). Mr. Pfeiffer's Promissory Note fits
13 none of these definitions. It is not coin or paper currency, nor
14 is it issued by a bank or the federal government. Rather, it was
15 unilaterally created and executed by Mr. Pfeiffer.

16 Second, Mr. Pfeiffer presents no evidence that he is
17 entitled to draw upon the United States Treasury. He identifies
18 himself as an "Agent" of Marshall Casey Pfeiffer, "in behalf of
19 for the Principal United States of America." He claims that "the
20 principal is responsible for the debt as the principal of the
21 agency. The principal is the beneficiary and legally responsible
22 for all debts related to the agency it created." He fails to
23 offer any argument or authority explaining how he has become an
24 agent of the United States with the power to require the United
25 States to pay his debt.⁴

26
27 ⁴ Mr. Pfeiffer argues that the United States government and
28 the California state government did not object to any of his acts
(continued...)

1 Accordingly, the court did not abuse its discretion in
2 holding that the Promissory Note cannot cure Mr. Pfeiffer's Plan
3 payment arrears.⁵ Due to Mr. Pfeiffer's failure to make Plan
4 payments, the court properly found cause to dismiss
5 Mr. Pfeiffer's case under § 1307(c)(6).⁶

6 **CONCLUSION**

7 For the reasons set forth above, we conclude that the
8 bankruptcy court did not abuse its discretion in dismissing
9 Mr. Pfeiffer's case. Accordingly, we AFFIRM.

18 _____
19 ⁴(...continued)
20 or otherwise challenge his argument. However, neither the
21 federal government nor state government is a party to this case.

21 ⁵ We further reject Mr. Pfeiffer's argument that Judge
22 Christopher B. Latham either represented the Trustee or gave
23 testimony at the hearing on the Motion to Dismiss. Nothing in
24 the record indicates that the judge either acted as counsel for
the Trustee or testified at the hearing.

25 ⁶ Neither the parties nor the bankruptcy court discussed the
26 second prong of the Ellsworth analysis, and Mr. Pfeiffer does not
27 raise any error concerning the second prong in his opening brief.
As such, we do not address it on appeal. Cf. In re Ellsworth,
28 455 B.R. at 923 ("even though the bankruptcy court ordinarily
would be expected to consider alternatives to dismissal with
prejudice, the [debtor's] silence thwarted that task").