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NOT FOR PUBLICATION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. CC-15-1211-KuDTa
)
 IRISON LOMONT JONES,) Bk. No. 2:13-bk-15206-SK
)
 Debtor.)
)
)
 IRISON LOMONT JONES;)
 ELZA JONES,)
)
 Appellants,)
)
 v.) **MEMORANDUM***
)
 WESLEY H. AVERY, Chapter 7)
 Trustee; KATHY A. DOCKERY,)
 Chapter 13 Trustee; BRETT BOYD)
 CURLEE,)
)
 Appellees.)
)

Argued and Submitted on March 17, 2016
at Pasadena, California

Filed - April 25, 2016

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

Honorable Sandra R. Klein, Bankruptcy Judge, Presiding

Appearances: Jessica Ponce argued for appellants Irison Lomont Jones and Elza Jones; Brett Boyd Curlee argued for appellees Wesley H. Avery, Chapter 7 Trustee, and Brett Boyd Curlee.

Before: KURTZ, DUNN and TAYLOR, 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.

1 **INTRODUCTION**

2 The debtor Irison Lomont Jones appeals from a bankruptcy
3 court order dismissing his chapter 13¹ bankruptcy case and
4 imposing restrictions on his future bankruptcy filings. The
5 dismissal order barred Jones from obtaining a discharge of his
6 existing debts in any future bankruptcy case and also barred
7 Jones from filing a new case for three years absent a court
8 order, obtained in advance, permitting the bankruptcy filing.

9 The dismissal order also imposed the same restrictions on
10 Jones' wife, Elza, who also appeals from the bankruptcy court's
11 dismissal order.

12 The record supports all aspects of the bankruptcy court's
13 decision against Jones. Over the course of several years, Jones
14 engaged in a pattern of conduct aimed at unfairly manipulating
15 the bankruptcy process in order to prevent his secured creditors
16 from foreclosing on his real property assets, and he did so
17 without any real desire or intent to obtain actual bankruptcy
18 relief. Jones' conduct also was egregious and justified the
19 exceptional restrictions the court imposed against him.

20 On the other hand, in the process of imposing restrictions
21 against Elza, the bankruptcy court committed both procedural and
22 substantive errors. Elza was not named as a party in the
23 dismissal motion, nor was any relief requested against her in the
24 motion. More importantly, no evidence was offered demonstrating

25
26 ¹Unless specified otherwise, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
28 all "Rule" references are to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9037. All "Civil Rule" references are to
the Federal Rules of Civil Procedure.

1 that she actively participated in Jones' misconduct, and no
2 findings were made supporting the extraordinary bankruptcy
3 restrictions imposed against her.

4 Accordingly, we REVERSE those portions of the dismissal
5 order barring Elza from discharging her existing debts in future
6 bankruptcy cases and barring her from filing bankruptcy for three
7 years in the absence of a pre-filing order permitting such filing.
8 All other aspects of the bankruptcy court's dismissal order are
9 AFFIRMED.

10 **FACTS**

11 Jones commenced his current bankruptcy case, a chapter 7
12 case, in February 2013. According to Jones, he commenced the
13 case because of foreclosure proceedings pending against a four-
14 unit apartment building he owned in Culver City, California.
15 This was not Jones' first bankruptcy case. In July 2008, Jones
16 filed a chapter 11 petition, which he voluntarily dismissed a few
17 months later.

18 Jones also was involved in four other bankruptcy cases
19 filed with the obvious intent to prevent foreclosure of his
20 residence located in Lancaster, California. The secured
21 creditor, Indymac Bank, recorded a notice of trustee's sale in
22 March 2010 scheduling the sale to take place on April 16, 2010.
23 Before that sale could take place, however, Jones proceeded to
24 make a series of transfers of 25% fractional interests in his
25 Lancaster residence to third parties, who then commenced their
26 own bankruptcy cases. These events are more specifically
27 described as follows:

- 28 • On April 14, 2010, Jones executed a quitclaim deed, which

1 was recorded on April 15, 2010, transferring a 25% interest
2 in the Lancaster property to his brother, Brett Jones-
3 Theophilious.

- 4 • On April 15, 2010, Theophilious commenced a chapter 13
5 bankruptcy case. In his face-sheet filing, Theophilious
6 identified the address of the Lancaster property as his
7 street address, and the only creditor he included on his
8 mailing list was Indymac.
- 9 • On May 7, 2010, the bankruptcy court dismissed Theophilious'
10 bankruptcy case, with an 180-day bar to refileing, because he
11 failed to file any of the required schedules or a statement
12 of financial affairs.
- 13 • On May 11, 2010, Jones executed a quitclaim deed, which was
14 recorded on May 14, 2010, transferring a 25% interest in the
15 Lancaster property to Armando Carranza, Jr.
- 16 • On May 14, 2010, Carranza commenced a chapter 13 bankruptcy
17 case. In his face-sheet filing, Carranza identified the
18 address of the Lancaster property as his street address, and
19 the only creditor he included on his mailing list was
20 Indymac.
- 21 • On June 4, 2010, the bankruptcy court dismissed Carranza's
22 bankruptcy case because he failed to file any of the
23 required schedules or a statement of financial affairs.
- 24 • On July 6, 2010, Carranza commenced a second chapter 13
25 bankruptcy case. In his second petition, Carranza
26 identified the address of the Lancaster property as his
27 street address, and the only creditor he scheduled and
28 included on his mailing list was Indymac.

- 1 • On July 26, 2010, the bankruptcy court dismissed Carranza's
2 second bankruptcy case because he failed to file all but one
3 of the required schedules, and he also failed to file a
4 statement of financial affairs.
- 5 • On August 3, 2010, Jones executed a quitclaim deed, which
6 was recorded on August 19, 2010, transferring a 25% interest
7 in the Lancaster property to Tamisha Mealand Herbert.
- 8 • On August 19, 2010, Herbert commenced a chapter 13
9 bankruptcy case. In her face-sheet filing, Herbert
10 identified the address of the Lancaster property as her
11 street address, and the only creditor she included on her
12 mailing list was Indymac.
- 13 • On August 19, 2010, the bankruptcy court dismissed Herbert's
14 bankruptcy case because she failed to file any of the
15 required schedules or a statement of financial affairs.

16 In contrast, in his own 2013 case, Jones did file bankruptcy
17 schedules, although his first attempt at doing so was less than
18 adequate. For example, Jones did not list any real property on
19 his Schedule A. He did list both his Culver City property and
20 his Lancaster residence on his Schedule C - property claimed as
21 exempt - but he did not identify in his Schedule C any exemption
22 that he actually was claiming.

23 When Jones eventually filed amended schedules in June 2013,
24 he listed both the Lancaster property and the Culver City
25 property in his amended Schedule A, but Jones included nothing in
26 his schedules to reflect the 25% fractional interests in the
27 Lancaster property he had conveyed in 2010 to Theophilious,
28 Carranza and Herbert, or to reflect that he only held a 25%

1 interest in the Lancaster property as a result of those
2 transfers.

3 In his amended Schedule B, Jones listed a nonfunctioning
4 Subaru automobile, an Apple boat trailer, a Ford recreational
5 vehicle, a Yamaha all-terrain vehicle, and a Sun Tracker boat.
6 The total aggregate value he attributed to these items was
7 \$13,200. The same personal property transportation assets were
8 listed on Jones' original schedules, with the same aggregate
9 value stated.

10 The initial § 341(a) first meeting of creditors was held in
11 March 2013. At the initial meeting, the chapter 7 trustee,
12 Wesley Avery, requested that Jones provide additional documents
13 so that Avery could complete his investigation of Jones' assets,
14 and Avery continued the § 341(a) hearing until May 2013. Jones
15 never complied with Avery's document requests, and he
16 corresponded with Avery to tell him that he would not attend the
17 continued § 341(a) hearing, as required by statute. In his
18 correspondence, Jones advised Avery that "[d]ue to my current
19 circumstances, I am no longer seeking chapter 7 bankruptcy
20 protection at this time." But Jones did not take any action in
21 the bankruptcy court to voluntarily dismiss or convert his
22 chapter 7 case. Instead, he filed his amended chapter 7
23 schedules in June 2013.²

24
25 ²Around the same time, in May 2013, Avery commenced two
26 adversary proceedings. While the two adversary proceedings did
27 not play a leading role in the bankruptcy court's June 2015
28 decision to dismiss Jones' bankruptcy case, they did play a
supporting role, and they are part of the context in which the
(continued...)

1 Jones' most notable incidents of debtor misconduct related
2 to Avery's attempts to sell Jones' Lancaster residence. When
3 Avery and his professionals contacted Jones by phone in March
4 2013 seeking to gain access to the Lancaster property and the
5 Culver City property for a "walk-through," Jones verbally refused
6 and hung up on them.

7 Later on, in February 2014, the bankruptcy court granted
8 Avery approval to sell the Lancaster property over Jones'
9 objections. Even though Jones had advised Avery in April 2013
10 that he no longer desired chapter 7 relief, Jones did not file a
11 motion to voluntarily dismiss his chapter 7 case until January
12 2014, shortly after Avery filed his motion to sell the Lancaster
13 property.

14 Around the same time, Jones also filed a motion to convert
15 his bankruptcy case to chapter 13 and a motion effectively
16 seeking to have the bankruptcy court reconsider its prior ruling
17 limiting his homestead exemption to his 25% interest in the
18

19 ²(...continued)
20 bankruptcy court dismissed Jones' case with a bar to discharge
21 and a three-year bar to refile. In the first (Adv. Dkt. No.
22 13-01502), Avery sued Theophilious, Carranza and Herbert to avoid
23 and recover the fractional interests in the Lancaster property
24 Jones previously conveyed to them. In the second (Adv. Dkt. No.
25 13-01559), Avery sued Jones, primarily seeking to deny Jones a
26 discharge, but also seeking to bar Jones from recovering any
27 transfers avoided by Avery in the first adversary proceeding.
28 Subsequently, Avery obtained default judgments against
Theophilious, Carranza and Herbert in the first adversary
proceeding, and he added claims for relief for waste and
conversion of estate property against both Jones and his wife
Elza in the second adversary proceeding. The second adversary
proceeding was still pending at the time the bankruptcy court
dismissed Jones' bankruptcy case.

1 Lancaster property. According to Jones, because Avery obtained a
2 default judgment avoiding the fractional interests Jones had
3 conveyed to Theophilious, Carranza and Herbert, Jones now was
4 entitled to a homestead exemption for a 100% interest in the
5 Lancaster property. In addition, Jones asserted that the
6 bankruptcy court should deny Avery's motion to sell because of
7 his entitlement to a homestead exemption and because he and his
8 family resided at the Lancaster property and would be left
9 homeless if the property were sold.

10 The court rejected all of the arguments Jones made in
11 opposition to the sale and entered an order on February 7, 2014
12 authorizing Avery to sell the Lancaster property to a third party
13 for \$535,000. The court further ordered that all of the
14 occupants of the property, including Jones and his spouse, needed
15 to turn over possession of the property to Avery by no later than
16 5:00 pm on February 24, 2014. Jones filed a notice of appeal
17 from the sale order and sought a stay pending appeal, which the
18 bankruptcy court and this Panel both denied.

19 In advance of the turnover of possession, on February 19,
20 2014, Avery's field agent Rommel Agee inspected all of the
21 automobiles and boats located on the Lancaster property. In
22 addition to the personal property transportation assets listed on
23 Jones' Schedule B, Agee found five additional motor vehicles on
24 the property, an additional recreational vehicle, an additional
25 boat, and a "Sea Doo" watercraft.

26 Agee returned to the Lancaster property on February 24,
27 2014, at 1:00 p.m., to assist Avery in recovering possession of
28 the residence. According to Agee, all of the motor vehicles

1 formerly on the property had been removed, except for the Ford
2 recreational vehicle. The two boats and the boat trailer also
3 were present. After an unidentified man threatened Agee, Agee
4 parked his car several yards from the property but with a clear
5 view of the property and observed the unidentified man get into a
6 truck and tow away the Sun Tracker boat and the boat trailer at
7 about 3:00 p.m.

8 At roughly 5:00 p.m., Avery's real estate broker met Agee at
9 the Lancaster property, and they attempted to take possession of
10 the property from Jones and his spouse, but Jones refused, saying
11 that they still were in the process of moving out. Later that
12 same evening, Agee observed Jones loading personal property into
13 the Ford recreational vehicle and driving away. Apparently, Agee
14 made some comment to Jones at that time about him not being
15 authorized to leave with the recreational vehicle, that the
16 vehicle belonged to the bankruptcy trustee. According to Agee,
17 Jones responded that he was taking the recreational vehicle
18 "because he needed a place to live."

19 At roughly 10:30 p.m. that same night, Agee, Avery's real
20 estate agent, and the purchaser's real estate agent were able to
21 enter into the interior of the property. Upon entering, they
22 discovered that many fixtures had been removed and that the
23 residence had been vandalized. The bankruptcy court summarized
24 the damage to the property in the following manner:

- 25 1. Significant portions of the plumbing had been smashed
26 out and the electrical wiring was substantially
compromised;
- 27 2. Concrete was poured down the drains and the plumbing
28 was ripped out;

- 1 3. The pool filtration system was taken out and
2 concrete was poured down the pipes leading from
the pool filtration system to the pool;
- 3 4. All the appliances from the indoor kitchen and the
4 outdoor barbeque/wet bar area had been removed and
the utility lines to the outdoor barbeque area had
5 been destroyed;
- 6 5. The range hood had been ripped out of the ceiling
in the kitchen;
- 7 6. Parts of the marble counter tops had been smashed
8 out;
- 9 7. The ceiling fans had been torn out;
- 10 8. The cabinetry was demolished and/or damaged;
- 11 9. The sink in the bar area of the kitchen had been
removed;
- 12 10. All of the light poles in the backyard had been
13 torn out;
- 14 11. Debris were [sic] strewn throughout;
- 15 12. Dry concrete had been poured and mashed into
carpets;
- 16 13. The built-in fireplace facade had been destroyed
17 and the gas lines had been ripped out; and
- 18 14. Assorted animals had been slaughtered and
19 dismembered and left in containers in the
backyard.

20 Final Ruling (June 11, 2015) at pp. 7-8.

21 Subsequently, Avery obtained a contractor's bid estimating
22 the cost of repairs that needed to be made to the Lancaster
23 property at \$90,000. In light of the damage done to the
24 Lancaster property, the pending sale could not be completed and
25 was cancelled. Avery also was unsuccessful in recovering the
26 personal property transportation assets, and Jones ignored
27 Avery's demands that Jones disclose information regarding the
28 location of those assets, their registration and any liens held

1 against them.

2 In May 2014, Avery withdrew his opposition to conversion of
3 Jones' bankruptcy case from chapter 7 to chapter 13. Shortly
4 thereafter, the bankruptcy court entered a conversion order.

5 During the rest of 2014 and the first quarter of 2015, Jones
6 attempted to confirm several different versions of his chapter 13
7 plan. Ultimately, the bankruptcy court denied confirmation of
8 Jones' third amended chapter 13 plan. The court ruled that it
9 would be impossible for Jones to obtain confirmation of a
10 chapter 13 plan. According to the court, there were a number of
11 unresolved inconsistencies regarding the case and regarding
12 Jones' reporting of his assets.

13 At Avery's request, at the final plan confirmation hearing
14 held on April 2, 2015, the court set a date for Avery and his
15 former counsel and his former accountant - all three creditors
16 holding chapter 7 administrative claims - to file a motion to
17 dismiss Jones' case, with a bar to refileing and/or a bar to
18 discharge.³ The court also set May 6, 2014 as the date for that
19 motion to be heard, but the court later continued the hearing
20 date to June 10, 2014, because, at least initially, Avery only
21 served the dismissal motion on Jones' counsel and not on Jones

22 _____
23 ³Whereas all three chapter 7 administrative claimants
24 jointly filed an objection to Jones' third amended chapter 13
25 plan, only the attorney and the accountant were named as movants
26 in the dismissal motion. Meanwhile, on appeal, Avery and his
27 former attorney jointly filed an appellee's responsive brief.
28 While the parties nominally opposing Jones changed somewhat over
time, Jones has not raised any issue in relation to these
changes, nor do we perceive any potentially dispositive issue
concerning these changes. For ease of reference, we continue to
refer to the party opposing Jones simply as Avery.

1 himself.

2 At the June 2014 hearing on the motion to dismiss, the
3 bankruptcy court ruled that the case should be dismissed, that
4 Jones should be permanently barred from discharging his existing
5 debts, and that Jones additionally should be barred from filing
6 another bankruptcy case for three years in the absence of prior
7 bankruptcy court approval. In support of its ruling, the
8 bankruptcy court stated that it was examining the totality of the
9 circumstances and considering the following four factors
10 articulated by the Ninth Circuit:

11 (1) Whether the debtor misrepresented facts in his
12 petition or plan, unfairly manipulated the Bankruptcy
13 Code, or otherwise filed his Chapter 13 petition or
14 plan in an inequitable manner;

15 (2) The debtor's history of filings and dismissals;

16 (3) Whether the debtor only intended to defeat state
17 court litigation; and

18 (4) whether egregious behavior is present.

19 Final Ruling (June 11, 2015) at p. 16 (citing Leavitt v. Soto
20 (In re Leavitt), 171 F.3d 1219, 1224 (9th Cir. 1999)).

21 Addressing the first Leavitt factor, the bankruptcy court
22 found that Jones misrepresented in his petition and schedules the
23 extent of his ownership in the Lancaster property (by not
24 disclosing that he only held a 25% interest in the property).
25 The bankruptcy court also found that Jones unfairly manipulated
26 the bankruptcy process. According to the court, once Jones
27 learned of Avery's intent to carry out his statutory duties as
28 chapter 7 trustee to collect and liquidate Jones' assets,
particularly the Lancaster property, Jones wholly refused to
cooperate with Avery and instead sent a letter to Avery stating

1 that he no longer was seeking chapter 7 protection. In addition,
2 the court noted, Jones obstructed Avery's efforts to sell the
3 Lancaster property, ultimately by vandalizing the property, which
4 led to cancellation of the sale.

5 The bankruptcy court also made two findings that led the
6 court to conclude that Jones proposed his chapter 13 plans in an
7 inequitable manner. First, the bankruptcy court found that
8 Jones' plans either wholly omitted the allowed administrative
9 claims of Avery and his professionals or proposed to pay those
10 claims with a vacant lot rather than in cash. Second, the
11 bankruptcy court found that Jones manipulated the income and
12 expense figures in the various versions of his schedules I and J
13 to support whatever at the moment he was attempting to propose in
14 his plan.

15 Addressing the second Leavitt factor, the bankruptcy court
16 turned its attention to the history of bankruptcy filings and
17 dismissals in which Jones was involved. The bankruptcy court
18 focused on the fractional interest bankruptcy scheme involving
19 the Lancaster property. The bankruptcy court rejected Jones'
20 argument that he only engaged in this scheme because a paralegal
21 told him that the scheme was legal. The court, in effect, found
22 that Jones was not credible on this point and that Jones
23 knowingly and actively sought to obstruct all efforts undertaken
24 to divest him of the Lancaster property.

25 As for the third Leavitt factor, the bankruptcy court found
26 nothing in the record indicating the existence or status of state
27 court litigation against Jones, so the court concluded that the
28 third Leavitt factor was inapplicable. However, with respect to

1 the fourth Leavitt factor, the bankruptcy court found that Jones
2 had acted egregiously in the following ways:

3 by interfering with Avery's performance of his
4 statutory duties and by vandalizing or allowing to be
5 vandalized the Lancaster Property, which caused the
6 cancellation of the sale. Further, it appears that
7 Jones either removed or allowed to be removed from the
8 Lancaster Property several vehicles that could have
9 been liquidated for the benefit of creditors and the
10 estate.

11 Final Ruling (June 11, 2015) at p. 128.

12 After determining that dismissal, rather than conversion
13 back to chapter 7, was in the best interests of creditors, the
14 bankruptcy court next addressed what restrictions it should
15 impose on any future bankruptcy filings by Jones. In accordance
16 with In re Leavitt, 171 F.3d at 1224, the bankruptcy court
17 applied the same factors it had considered in dismissing Jones'
18 bankruptcy case and held that Jones should be barred from
19 discharging his existing debts in any future bankruptcy case. As
20 an additional restriction on Jones' future bankruptcy filings,
21 the bankruptcy court ruled that Jones would be barred for three
22 years from filing another bankruptcy case unless he first
23 obtained court approval to file bankruptcy. The bankruptcy court
24 further specified that, in any future bankruptcy case filed by
25 Jones, by his wife or by any person to whom Jones has transferred
26 property, the filing party would need to file a copy of the
27 bankruptcy court's final ruling in this matter within seven days
28 of the filing of the bankruptcy petition.

Notwithstanding the above, the final written order of the
bankruptcy court, based on a form of order submitted by Avery,
went further. Whereas the bankruptcy court's ruling at the time

1 of the hearing only barred Jones from discharging his existing
2 debts and from filing another bankruptcy for three years, the
3 final written order also applied the same bars to Jones' wife,
4 Elza.

5 On June 30, 2015, Jones and Elza timely filed their notice
6 of appeal.

7 **JURISDICTION**

8 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
9 §§ 1334 and 157(b) (2) (A). We have jurisdiction under 28 U.S.C.
10 § 158.

11 **ISSUES**

- 12 1. Did the bankruptcy court commit reversible error when it
13 dismissed Jones' case based on Jones' bad faith, or when it
14 imposed restrictions on Jones' future bankruptcy filings?
- 15 2. Did the bankruptcy court commit reversible error when it
16 imposed restrictions on Elza's future bankruptcy filings?

17 **STANDARDS OF REVIEW**

18 We review the bankruptcy court's case dismissal and its
19 restrictions on Jones' and Elza's future bankruptcy filings for
20 an abuse of discretion. Ellsworth v. Lifescape Med. Assocs.,
21 P.C. (In re Ellsworth), 455 B.R. 904, 914 (9th BAP Cir. 2011);
22 see also Richardson v. Melcher (In re Melcher), 2014 WL 1410235,
23 at *9 (Mem. Dec.) (9th Cir. BAP Apr. 11, 2014).

24 The bankruptcy court abused its discretion if it applied an
25 incorrect legal standard or its findings were illogical,
26 implausible or without support in the record. United States v.
27 Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

1 **DISCUSSION**

2 Under § 1307(c), the bankruptcy court may dismiss a
3 chapter 13 bankruptcy case "for cause". The bad faith of the
4 debtor in filing his or her bankruptcy petition is one type of
5 cause for dismissal. In re Leavitt, 171 F.3d at 1224.

6 Jones has not challenged on appeal the legal standards the
7 bankruptcy court applied in support of its decision to dismiss
8 his case. We accept those standards as correct. The bankruptcy
9 court correctly examined the totality of circumstances and duly
10 considered the four factors enunciated in In re Leavitt, 171 F.3d
11 at 1224.

12 Jones also has not challenged, in general, the procedures
13 the bankruptcy court employed before dismissing his case and
14 before imposing restrictions on Jones' future bankruptcy filings.
15 Jones had sufficient notice and time to respond to Avery's
16 motion, which specifically sought dismissal of the current case,
17 a bar to discharge existing debts in future cases, and a
18 permanent bar to filing a new bankruptcy case absent prior court
19 approval. Nor did Jones request either an evidentiary hearing or
20 a continuance of the dismissal hearing for the purpose of further
21 addressing the proposed restrictions. Moreover, the bankruptcy
22 court duly considered alternatives to the restrictions Avery
23 proposed and, in fact, opted for a three-year ban on future
24 filings in lieu of the permanent ban Avery requested. Under
25 these circumstances, we cannot say that the procedures employed
26 by the bankruptcy court were fatally deficient with respect to
27 Jones. See In re Ellsworth, 455 B.R. at 922-23.

28 On appeal, Jones primarily challenges a handful of the

1 bankruptcy court's findings and the weight the court gave to
2 other findings in determining that Jones filed his bankruptcy
3 petition in bad faith. Jones concentrates heavily on the
4 bankruptcy court's finding that all four versions of his
5 chapter 13 plan were proposed in an inequitable manner. Jones
6 contends that the plans were both feasible and equitable. More
7 specifically, Jones points out that, at the time his original
8 plan and his first amended plan were filed, he did not provide
9 for any chapter 7 administrative claims because none of the
10 chapter 7 administrative creditors had yet requested or obtained
11 allowance of their administrative claims. He also points out
12 that his second and third amended plans did contain provisions
13 aimed at paying the chapter 7 administrative claimants.

14 Jones further argues that, in determining his plans to be
15 inequitable, the bankruptcy court should not have made a finding
16 that Jones changed the amounts he reported in the various
17 versions of his Schedules I and J to support whatever he was
18 proposing at the time in his various proposed plans. According
19 to Jones, the court violated his constitutional due process
20 rights by considering the inconsistent Schedules I and J because
21 they were not discussed in Avery's dismissal motion.

22 We disagree. Due process is a relatively minimal standard
23 that only requires "notice reasonably calculated, under all the
24 circumstances, to apprise interested parties of the pendency of
25 the action and afford them an opportunity to present their
26 objections." Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S.
27 306, 314 (1950). Avery's moving papers made it clear that Avery
28 was seeking dismissal of Jones' bankruptcy case, a bar to

1 discharging existing debts in future bankruptcy cases and a
2 permanent bar to refiling bankruptcy absent advance court
3 approval. The moving papers also identified the correct legal
4 standard, which required the bankruptcy court to examine "all of
5 the relevant facts and circumstances in a case." Motion
6 (April 10, 2015) at 20:3-4. Under this exceptionally broad
7 standard, Jones cannot credibly argue that inconsistencies within
8 his bankruptcy schedules were beyond the scope of the dismissal
9 motion. Nor can Jones credibly argue that the information
10 contained in the schedules was unknown to him, as he was the one
11 who filed them.

12 That Jones, as a matter of strategy or tactics, chose not to
13 address the inconsistencies in his schedules is not a violation
14 of his due process rights. Tellingly, the bankruptcy court's
15 concerns regarding the inconsistent amounts in Jones' Schedules I
16 and J were disclosed in the bankruptcy court's tentative ruling,
17 which was emailed to the parties the day before the hearing on
18 the dismissal motion. Yet Jones did not comment on those
19 concerns at the hearing, nor did he ask for more time to address
20 those concerns. Indeed, even on appeal, Jones has not offered
21 any alternate explanation for the inconsistencies in his
22 Schedules I and J - documents within his own knowledge and
23 control. In short, the only plausible explanation ever offered
24 for Jones' inconsistent Schedules I and J was the explanation the
25 bankruptcy court inferred: that Jones changed the income and
26 expense amounts stated in his Schedules I and J to support
27 whatever proposal he was making at the time in his chapter 13
28 plan.

1 As for the bankruptcy court's criticism of Jones' plan
2 treatment of his chapter 7 administrative creditors, even if we
3 were to assume that there is some merit to Jones' complaints
4 regarding this criticism, this criticism was one of two alternate
5 findings on which the bankruptcy court based its determination
6 that Jones had filed his chapter 13 plans inequitably. As
7 explained above, Jones' challenge to the alternate finding -
8 regarding changes to his Schedules I and J to suit his plan needs
9 - lacks merit.

10 Moreover, the court's determination that Jones filed his
11 plans in an inequitable manner was one of three alternate grounds
12 the bankruptcy court offered for concluding that the first factor
13 enunciated in In re Leavitt was satisfied. The bankruptcy court
14 additionally determined that Jones misrepresented facts in his
15 petition and that Jones attempted to unfairly manipulate the
16 bankruptcy process. In support of its misrepresented facts
17 determination, the bankruptcy court relied on the undisputed
18 fact that Jones' amended schedules indicated that he held a 100%
19 fee simple ownership interest in the Lancaster property and the
20 undisputed fact that nowhere in Jones' schedules did he mention
21 that he had conveyed 25% fractional interests in that property to
22 Theophilious, Carranza and Herbert, thereby reducing his own
23 interest to 25%.

24 In support of its unfair manipulation of the bankruptcy
25 process determination, the bankruptcy court pointed to Jones'
26 refusal to appear for examination at the continued § 341(a)
27 meeting of creditors and his efforts to obstruct Avery's attempts
28 to liquidate his assets for the estate's benefit, including his

1 vandalization of the Lancaster property, which led to the
2 cancellation of the pending sale of that property.

3 Jones' argument on appeal attacking these findings is
4 exceptionally weak. Without explanation, Jones characterizes the
5 bankruptcy court's findings regarding his refusal to appear for
6 examination at his continued § 341(a) meeting and his failure to
7 accurately list his actual ownership interest in the Lancaster
8 property as immaterial or of minimal probative value. We
9 disagree. Jones had statutory duties both to appear for
10 examination and to accurately list his assets in his bankruptcy
11 schedules. See §§ 343, 521. The debtor's full, complete and
12 accurate disclosure of his financial affairs in his bankruptcy
13 case is essential to the functioning of our bankruptcy system.
14 Searles v. Riley (In re Searles), 317 B.R. 368, 378 (9th Cir. BAP
15 2004), aff'd, 212 Fed. Appx. 589 (9th Cir. 2006). More to the
16 point, Jones' failure to cooperate in the financial disclosure
17 process is highly indicative of his unfairly gaming the
18 bankruptcy system, as the bankruptcy court essentially found.

19 As for the bankruptcy court's finding that Jones vandalized
20 the Lancaster property before moving out (or that he permitted
21 others to vandalize the property while he was in possession and
22 control of the property), Jones' challenge to this finding is
23 twofold. First, Jones claims that he was denied due process
24 because Avery refused his requests to access the property so that
25 he could inspect the alleged damage and respond to the charges of
26 vandalism and waste. Second, Jones contends that the evidence in
27 the record does not reasonably support the bankruptcy court's
28 finding that Jones vandalized the Lancaster property or permitted

1 it to be vandalized. According to Jones, the bankruptcy court
2 had no evidence before it that would allow it reasonably to infer
3 that Jones vandalized the property at the time he moved out.

4 Jones was not denied due process. If Jones desired to
5 inspect the Lancaster property and if Avery refused access to
6 Jones for that purpose, Jones could have sought relief from the
7 bankruptcy court in the form of a motion seeking to compel Avery
8 to permit the inspection. Jones' alleged waste of the Lancaster
9 property was at issue in Avery's adversary proceeding against
10 Jones (Adv. No. 13-01559) since April 2014, so Jones had ample
11 time and incentive to pursue the issue of an inspection in
12 conjunction with that adversary proceeding. But Jones never
13 requested relief in that adversary proceeding seeking to compel
14 Avery to permit that inspection. Nor did Jones request such
15 relief in the main bankruptcy case. Jones' failure to pursue his
16 rights by filing an appropriate motion with the court does not
17 constitute a violation of Jones' due process rights.

18 As for the bankruptcy court's finding that Jones vandalized
19 the Lancaster property, that finding was not illogical, was not
20 implausible, and was supported by reasonable inferences drawn
21 from the facts in the record. Avery submitted sufficient
22 evidence to support the bankruptcy court's finding. That
23 evidence included the declaration testimony of several witnesses
24 who observed the condition of the Lancaster property immediately
25 after Jones moved out. The evidence also included photographs
26 showing the condition of the property both before and after Jones
27 moved out. Jones never objected to any of the evidence offered
28 by Avery.

1 The evidence also included Jones' declaration stating that
2 the Lancaster property was his "pride and joy" and that he never
3 would have destroyed any part of it. Jones did admit, however,
4 that he removed from the property a number of fixtures including
5 a walk-in freezer, a marble table top, and an oven and oven hood.
6 These admissions are consistent with other admissions that Jones
7 made in other declarations he filed in the bankruptcy court. For
8 instance, in a declaration he filed in March 2014 in the main
9 bankruptcy case, Jones admitted to removing refrigeration units,
10 kitchen equipment, and "other equipment throughout the premises."
11 In another declaration filed in April 2014 in Avery's adversary
12 proceeding against Jones, Jones admitted to removing the above-
13 referenced fixtures as well as ceiling fans. While Jones
14 protested that he and his movers were very careful not to damage
15 anything as they moved him out of the Lancaster property, the
16 bankruptcy court apparently found Jones not credible on this
17 point. Instead, the bankruptcy court found that, as part of
18 Jones' ongoing efforts to obstruct Avery's attempted sale of the
19 Lancaster property, Jones vandalized the property before he moved
20 out. On this record, we cannot say that the bankruptcy court's
21 view of the evidence or the inferences it drew from that evidence
22 were unreasonable. Accordingly, we have no basis to overturn the
23 bankruptcy court's determination that Jones unfairly manipulated
24 the bankruptcy process or to overturn the findings on which the
25 bankruptcy court based that determination.

26 This only leaves the bankruptcy court's determination that
27 Jones' conduct was egregious - the final relevant In re Leavitt
28 factor. Jones contends that his conduct did not rise to the

1 level of egregiousness required to justify the restrictions on
2 future bankruptcy filings the bankruptcy court imposed. In
3 challenging the bankruptcy court's egregiousness determination,
4 Jones, in essence, claims that something more in the way of
5 misconduct was required before the bankruptcy court properly
6 could order a bar to discharge and a three-year bar to refiling.
7 We will address each restriction on future filings in turn.

8 The bankruptcy court articulated the correct standard for
9 dismissing a case with a bar to discharging existing debts in
10 future cases. See 11 U.S.C. § 349(a); In re Leavitt, 171 F.3d at
11 1224; In re Ellsworth, 455 B.R. at 922. When the bankruptcy
12 court dismisses a case with a bar to discharging debts in future
13 bankruptcy cases, the bankruptcy court must consider the four
14 In re Leavitt factors and must find egregious conduct.
15 In re Leavitt, 171 F.3d at 1224 ("a finding of bad faith based on
16 egregious behavior can justify dismissal with prejudice").

17 There is no standard definition as to what constitutes
18 egregious conduct for purposes of dismissing a bankruptcy case
19 with prejudice. Rather, the holdings in In re Leavitt and
20 In re Ellsworth suggest that the egregiousness determination
21 ordinarily should be made on a case-by-case basis. We see no
22 justification to depart from that methodology here, nor has Jones
23 offered us any justification. Suffice it to say that Jones'
24 fractional interest bankruptcy scheme, his refusal to satisfy his
25 duties to fully and accurately disclose his financial affairs,
26 his obstruction of the trustee's sale of the Lancaster property
27 and his changing the amounts stated in his Schedules I and J to
28 suit the needs of his proposed chapter 13 plans, when considered

1 together, more than sufficiently justify the bankruptcy court's
2 egregiousness determination and dismissal of Jones' case with a
3 bar to discharging existing debts in future bankruptcy cases.

4 The bankruptcy court also correctly stated the standards for
5 imposing a permanent bar to refiling absent a prior court order -
6 often referred to as a prefiling order. Citing In re Melcher,
7 2014 WL 1410235, at *9-*10, the bankruptcy court stated that,
8 before a bankruptcy court enters an indefinite prefiling order
9 against a debtor, the court must do all of the following:

10 (1) ensure that the debtor has been given adequate notice and
11 opportunity for hearing; (2) facilitate the development of an
12 adequate record enumerating the debtor's abusive activities;
13 (3) determine that the debtor's positions were frivolous or were
14 brought with the intent to harass other parties; and (4) narrowly
15 tailor the remedy to deter the debtor's specific misconduct. Id.
16 at *9 (citing DeLong v. Hennessey, 912 F.2d 1144, 1147-48 (9th
17 Cir. 1990)).

18 In turn, in performing the third and fourth tasks set forth
19 above, the bankruptcy court must consider the following five
20 factors:

21 (1) the litigant's history of litigation and in
22 particular whether it entailed vexatious, harassing or
23 duplicative lawsuits; (2) the litigant's motive in
24 pursuing the litigation, e.g. does the litigant have an
25 objective good faith expectation of prevailing?;
26 (3) whether the litigant is represented by counsel;
(4) whether the litigant has caused needless expense to
other parties or has posed an unnecessary burden on the
courts and their personnel; and (5) whether other
sanctions would be adequate to protect the courts and
other parties.

27 In re Melcher, 2014 WL 1410235, at *10 (quoting Safir v. U.S.
28 Lines, Inc., 792 F.2d 19, 24 (2d Cir. 1986), cited with approval

1 in, *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1058 (9th
2 Cir. 2007)).

3 However, when the bankruptcy court ruled that it would
4 impose a three-year prefiling order, it did not make specific
5 findings addressing each of the five Safir factors.⁴ Instead,
6 the bankruptcy court relied on the findings and analysis it
7 already had made in its decision to dismiss the case for bad
8 faith. As the bankruptcy court put it:

9 I will impose a three-year bar to refileing based upon
10 my analysis of the facts in this case, as well as the
11 relevant case law that's cited in the tentative ruling.
12 I believe that a three-year bar to filing another case
is appropriate. And again, that's a three-year bar
absent an order [of] the Court authorizing such filing.

13 Hr'g Tr. (June 10, 2015) at 17:7-13.

14 Even so, we do not consider the bankruptcy court's three
15 year prefiling order fatally deficient. When, as here, the
16 record is fully developed and is sufficient to support the
17 bankruptcy court's ultimate conclusion, we do not need to remand
18 for further findings. *Simeonoff v. Hiner*, 249 F.3d 883, 891 (9th
19 Cir. 2001). Nor is remand necessary when, as here, the appellate
20 court reasonably can infer from the bankruptcy court's findings
21 other facts that would suffice to support the bankruptcy court's
22 decision. *Brock v. Big Bear Market No. 3*, 825 F.2d 1381, 1384
23 (9th Cir. 1987).

24 The first Safir factor - inquiring into Jones' history of
25

26 ⁴The bankruptcy court apparently considered explicit
27 findings on all five of the Safir factors necessary only if it
28 was going to impose a permanent prefiling order. See Final
Ruling (June 11, 2015) at p. 23 n.17.

1 vexatious, harassing or duplicative lawsuits - effectively was
2 satisfied by the facts the bankruptcy court found regarding
3 Jones' fractional interest bankruptcy scheme and the facts
4 surrounding Jones' 2013 chapter 7 bankruptcy filing. As for the
5 second Safir factor - examining the motives behind Jones'
6 litigation, we reasonably can infer from the bankruptcy court's
7 findings that Jones did not harbor any **objective** good faith
8 expectation that he would prevail on any of the positions taken
9 in the bankruptcies filed by Theophilious, Carranza and Herbert
10 or on any of the positions taken in his own 2013 bankruptcy case,
11 particularly before he converted his case to chapter 13. To the
12 contrary, the overwhelming weight of the evidence, and the
13 bankruptcy court's specific findings, demonstrate that the
14 positions taken in all four of these bankruptcy cases were part
15 of a scheme orchestrated by Jones to prevent him from losing his
16 real property assets to foreclosure, without him desiring or
17 intending to obtain actual bankruptcy relief.

18 Regarding the third Safir factor - representation by counsel
19 - it is not apparent that Jones was represented by counsel at
20 the time he engaged in his fractional interest bankruptcy scheme
21 or when he filed his chapter 7 petition. Nonetheless, the
22 tactics and strategy Jones employed throughout demonstrate both
23 volition and a significant level of sophistication in unfairly
24 manipulating the bankruptcy process in order to keep his secured
25 creditors and the chapter 7 trustee at bay.

26 With respect to the fourth Safir factor - focusing on the
27 burden and expense Jones' positions imposed on others and the
28 needlessness of that burden and expense - the bankruptcy court's

1 findings and the record establish that all of Jones' creditors,
2 both secured and unsecured, needlessly lost out on recovering on
3 account of their claims as a result of Jones' tactics in unfairly
4 manipulating the bankruptcy process.

5 Finally, on the fifth Safir factor - concerning the
6 availability of other sanctions sufficient to protect the courts
7 and third parties - both the bankruptcy court's written final
8 ruling and its comments at the June 2015 dismissal motion hearing
9 reflect that the court gave careful thought to whether a
10 prefiling order was necessary and the appropriate duration of the
11 prefiling order. Simply put, we are convinced that the
12 bankruptcy court's three-year prefiling order was narrowly
13 tailored to deter Jones from filing another bankruptcy as part of
14 an effort to further hinder his existing secured and unsecured
15 creditors.

16 The substance and procedure relating to the relief granted
17 against Elza are an entirely different matter. We are not aware
18 of any provision of the bankruptcy code giving the bankruptcy
19 court authority to place restrictions on a **non-debtor party** from
20 filing a future bankruptcy case in the context of a motion to
21 dismiss someone else's bankruptcy case. To the extent a
22 bankruptcy court might be able to grant such relief under its
23 general equitable authority,⁵ the bankruptcy court would need to

25 ⁵This is a questionable proposition after Law v. Siegel,
26 134 S.Ct. 1188, 1194-95 (2014), in which the Supreme Court
27 emphatically reaffirmed the principle that, "'whatever equitable
28 powers remain in the bankruptcy courts must and can only be
exercised within the confines of' the Bankruptcy Code." Id.

(continued...)

1 exercise that authority with extreme caution and would need to
2 carefully balance the affected parties' respective rights after
3 ample notice and opportunity for hearing, which typically would
4 include the procedural protections afforded in an adversary
5 proceeding. See In re Van Ness, 399 B.R. 897, 904 (Bankr. E.D.
6 Cal. 2009), cited with approval in, Ellis v. Yu (In re Ellis),
7 523 B.R. 673, 679 n.9 (9th Cir. BAP 2014).

8 Here, there was no adversary proceeding initiated against
9 Elza. She was not even named as a party in Avery's motion to
10 dismiss, nor did Avery's motion request any relief directly
11 against her. Furthermore, the bankruptcy court did not make any
12 findings pertaining to Elza. In fact, there was no evidence in
13 the record from which the bankruptcy court reasonably could have
14 inferred that Elza actively participated in any of Jones'
15 misconduct, let alone evidence that would justify such
16 extraordinary relief as restricting Elza's future bankruptcy
17 filings.

18 Under these circumstances, the bankruptcy court committed
19 reversible error when it imposed bankruptcy filing restrictions
20 against Elza. In this limited respect, the bankruptcy court's
21 order was both substantively and procedurally deficient.

22 CONCLUSION

23 For the reasons set forth above, we REVERSE those portions
24 of the dismissal order barring Elza from discharging her existing
25 debts in any future bankruptcy case and barring her from filing

26
27 ⁵(...continued)
28 (quoting Norwest Bank Worthington v. Ahlers, 485 U.S. 197, 206
(1988)).

1 bankruptcy for three years in the absence of a prefiling order
2 permitting such filing. All other aspects of the bankruptcy
3 court's dismissal order are AFFIRMED.

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