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NOT FOR PUBLICATION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-15-1175-TaJuKi
)		
RODOLFO VELASQUEZ,)	Bk. No.	3:14-bk-30344
)		
Debtor.)		
_____)		
RODOLFO VELASQUEZ,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM*	
)		
DAVID BURCHARD, Chapter 13)		
Trustee,)		
)		
Appellee.)		
_____)		

Argued and Submitted on July 28, 2016
at San Francisco, California

Filed - August 9, 2016

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

Honorable Dennis Montali, Bankruptcy Judge, Presiding

Appearances: Rodolfo Velasquez argued pro se; Brisa C. Ramirez
argued for appellee.

Before: TAYLOR, 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(c)(2).

1 **INTRODUCTION**

2 Chapter 13¹ debtor Rodolfo Velasquez appeals from an order
3 dismissing his chapter 13 case. We AFFIRM.

4 **FACTS**

5 The Debtor, pro se, filed a chapter 13 case in March 2014.
6 He scheduled ownership of real property located in San
7 Francisco, California (the "Property"). The record shows
8 that the Debtor essentially had two creditors: Bank of America
9 N.A. and JPMorgan Chase Bank. Bank of America holds a note
10 secured by a deed of trust against the Property. The Debtor's
11 schedules also showed ownership of limited personal property
12 assets and that the Debtor had no unsecured creditors. His
13 second amended chapter 13 plan provided for de minimus payments
14 to the taxing authorities. This was not an obviously
15 complicated chapter 13 case.

16 The Debtor was not punctilious in performing his duties as
17 a chapter 13 debtor. He failed to attend a continued § 341(a)
18 meeting of creditors, and he eventually stopped making plan
19 payments.

20 He also struggled to propose a viable chapter 13 plan. He
21 filed several but received objections from both Bank of America
22 and Chase.² Rather than concentrate on his chapter 13 debtor
23 obligations, the Debtor focused his energy on insisting that
24 Chase modify its loan and leveling accusations of fraud against

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

28 ² Bank of America subsequently withdrew its objection to
the last in-time proposed plan.

1 Bank of America. The Debtor asserted, in particular, that Bank
2 of America fraudulently claimed that he owed \$35,732.30 in
3 arrearages on the debt secured by the Property.

4 After months of the Debtor filing unconfirmable plans and
5 following a payment default and a failure to appear at a
6 continued § 341(a) meeting, the Trustee moved to dismiss the
7 chapter 13 case. He asserted that cause to dismiss existed
8 based on unreasonable delay that was prejudicial to creditors
9 under §§ 1307(c) (1) and 1307(c) (4).³

10 The Debtor opposed, but his argument reflected his
11 inappropriate focus on his perceived injury at the hands of Bank
12 of America. He, thus, renewed his claim that Bank of America
13 was committing fraud against him and now asserted that the
14 Trustee was derelict in an alleged duty to prosecute Bank of
15 America for fraud. He more relevantly contested that he was in
16 default of plan payments and less helpfully maintained that he
17 would not attend another § 341(a) meeting until the issues
18 relating to Bank of America were resolved.

19 At the hearing, the Trustee informed the bankruptcy court
20 that the Debtor had not made any payments to the Trustee for
21 nearly five months. In ruling, the court relied on this factor;
22 it also emphasized that the Debtor insisted on repeating
23 nonavailing arguments regarding the alleged fraud by Bank of
24 America and his desire for a loan modification from Chase Bank

25
26 ³ The Trustee also sought case dismissal based on the
27 Debtor's failure to turn over his income tax return for the
28 prior tax year pursuant to § 521(e) (2) (A) (I) and (B).
Apparently, the Debtor responded by providing those documents to
the Trustee.

1 and failed to cooperate appropriately in a mediated resolution
2 of his disputes with Bank of America. The bankruptcy court,
3 thus, acknowledged the total lack of case progress and the
4 negative impact of the Debtor's action and inaction and
5 dismissed the case.

6 Following the bankruptcy court's entry of an order
7 dismissing the case, the Debtor timely appealed.

8 **JURISDICTION**

9 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
10 §§ 1334 and 157(b) (2) (A). We have jurisdiction under 28 U.S.C.
11 § 158.

12 **ISSUE⁴**

13 Whether the bankruptcy court abused its discretion in
14 dismissing the Debtor's bankruptcy case.

15 **STANDARD OF REVIEW**

16 We review the bankruptcy court's dismissal of a chapter 13
17 bankruptcy case pursuant to § 1307(c) for an abuse of
18 discretion. Schlegel v. Billingslea (In re Schlegel), 526 B.R.
19 333, 338 (9th Cir. BAP 2015). A bankruptcy court abuses its
20 discretion if it applies the wrong legal standard, misapplies
21 the correct legal standard, or if its factual findings are
22 illogical, implausible, or without support in inferences that
23 may be drawn from the facts in the record. See
24 TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d 820, 832
25 (9th Cir. 2011) (citing United States v. Hinkson, 585 F.3d 1247,

26
27 ⁴ The Debtor identifies six issues on appeal. The
28 majority of these are nonsensical, irrelevant, or beyond the
scope of this appeal.

1 1262 (9th Cir. 2009) (en banc)).

2 We may affirm the decision of the bankruptcy court on any
3 basis supported by the record. See Hooks v. Kitsap Tenant
4 Support Servs., Inc., 816 F.3d 550, 554 (9th Cir. 2016).

5 **DISCUSSION⁵**

6 Section 1307(c)(1) permits the bankruptcy court to dismiss
7 a chapter 13 case based on unreasonable delay by the debtor that
8 is prejudicial to creditors. Here, the bankruptcy court found
9 dismissal appropriate.

10 At the time of dismissal, the chapter 13 case had been
11 actively pending for nearly 14 months and a confirmable plan was
12 not in sight. The Debtor's second amended plan - the fourth
13 proposed plan overall - was facially problematic. First, it
14 continued to require a loan modification by Chase that was
15 opposed. In addition, it potentially required monthly payments
16 by the Trustee to Bank of America in excess of the amount of
17 the Debtor's monthly plan contribution.

18 The Debtor remained distracted by the alleged Bank of
19 America fraud, and these disputes were not anywhere near
20 resolution.⁶ At the bankruptcy court's suggestion, the Debtor

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22 ⁵ The Trustee did not request conversion as an alternative
23 under § 1307(c). Thus, the bankruptcy court did not err in
24 dismissing the case without discussing whether conversion was
appropriate.

25 ⁶ The Debtor, in fact, argues that the Trustee was
26 derelict in his duties to the estate in neglecting to pursue
27 Bank of America for fraud. This argument is without merit.
28 Aside from the fact that this goes beyond the scope of this
appeal, nothing in this record suggests that the Trustee was
(continued...)

1 agreed to participate in a mediation with Bank of America. The
2 bankruptcy court also instructed the Debtor to supply Bank of
3 America with his documentation of payments on the loan within
4 the two-week period after the hearing on the Debtor's objection
5 to the bank's proof of claim. He did neither.

6 And while Debtor continued in a non-productive and
7 inadequately supported attack on Bank of America, he neglected
8 the most basic of chapter 13 debtor duties. There is no dispute
9 that at the time of case dismissal, the Debtor had not made any
10 payments to the Trustee for nearly five months. At oral
11 argument, he initially contested that he had defaulted on plan
12 payments. On rebuttal and following confirmation of payment
13 default by the Trustee,⁷ the Debtor admitted that he had stopped
14 making plan payments but argued that he had a discussion with
15 the Trustee advising him of the payment cessation pending
16 resolution of the alleged fraud of Bank of America. What the
17 Debtor fails to appreciate is that he proposed the monthly plan
18 payment; as a chapter 13 debtor he could not unilaterally decide
19 to cease the plan payments provided for in the plan he proposed.

20 The Debtor also refused to continue and complete the
21 § 341(a) meeting process. The Trustee could not administer the
22 case appropriately until the § 341(a) process was concluded.

23 On this record, the bankruptcy court did not abuse its
24

25 ⁶(...continued)
26 derelict in his duties to the estate.

27 ⁷ The Trustee confirmed at oral argument that the last
28 payment received was on December 23, 2014, in the amount of
\$175.

1 discretion in determining that cause existed to dismiss the
2 chapter 13 case for unreasonable delay detrimental to creditors.
3 The Debtor was not funding his chapter 13 case, the Debtor was
4 not proposing viable plans, and the Debtor was not making
5 progress in clearing the confirmation road blocks. After
6 14 months, and on this record, none of these causes of delay
7 were reasonable, and the detriment to creditors was clear.⁸

8 **CONCLUSION**

9 Based on the foregoing, we AFFIRM.

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26 ⁸ At oral argument, the Debtor requested that to the
27 extent the Panel affirmed the case dismissal, that it be done
28 without prejudice. The bankruptcy court, however, did not
dismiss the case with prejudice. Thus, we disregard the
Debtor's request.