

DEC 20 2016

NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re:	)	BAP No.	NV-16-1024-KiLDo
ILIA CHAROV,	)	Bk. No.	15-13297-mkn
	)	Adv. No.	15-01107-mkn
Debtor.	)		
<hr/>			
ILIA CHAROV,	)		
	)		
Appellant,	)		
v.	)		
BANK OF NEW YORK MELLON,	)		
SELECT PORTFOLIO SERVICING,	)		
INC.,	)		
	)		
Appellees.	)		
<hr/>			

MEMORANDUM<sup>1</sup>

Submitted Without Oral Argument  
on October 21, 2016,

Filed - December 20, 2016

Appeal from the United States Bankruptcy Court  
for the District of Nevada

Honorable Mike K. Nakagawa, Bankruptcy Judge, Presiding

Appearances: Appellant Ilia Charov, pro se, on brief; Chelsea A. Crowton of Wright, Finlay & Zak, LLP on brief for appellees Bank of New York Mellon and Select Portfolio Servicing, Inc.

Before: KIRSCHER, LAFFERTY and DORE,<sup>2</sup> Bankruptcy Judges.

<sup>1</sup> This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have, it has no precedential value. See 9th Cir. BAP Rule 8024-1.

<sup>2</sup> Hon. Timothy W. Dore, Bankruptcy Judge for the Western District of Washington, sitting by designation.

1 Former chapter 13<sup>3</sup> debtor, Ilia Charov ("Charov"), appeals an  
2 order dismissing his adversary complaint against appellees, the  
3 Bank of New York Mellon, f/k/a/ Bank of New York, as Trustee for  
4 the Certificate Holders CWALT, Inc., Alternative Loan Trust  
5 2006-OC2, Mortgage Pass-through Certificates Series 2006-OC2  
6 ("BONY") and Select Portfolio Servicing, Inc. ("Select"). For the  
7 reasons explained below, we AFFIRM.

## 8 I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

### 9 A. Prepetition events

#### 10 1. Charov's loan with BONY's predecessor

11 In 2005, Charov obtained a loan for \$247,100 from GreenPoint  
12 Mortgage Funding, Inc. to purchase real property located in  
13 Maricopa County, Arizona ("Property"). As a condition of the  
14 loan, Charov signed a note and deed of trust ("DOT"), which was  
15 secured by the Property. The note and DOT were ultimately  
16 assigned through several recorded assignments to BONY in or about  
17 2010. Select services the loan. Charov has admittedly not made a  
18 payment on the loan since August 2008.<sup>4</sup>

#### 19 2. Charov's prior bankruptcy filings

20 Between April 13, 2009, and June 5, 2015, Charov filed five  
21 chapter 13 bankruptcy cases in the District of Nevada. The  
22 bankruptcy court dismissed these cases for various reasons,  
23 including the failure to file required documents, schedules and a  
24

---

25 <sup>3</sup> Unless specified otherwise, all chapter, code and rule  
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
27 the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The  
28 Federal Rules of Civil Procedure are referred to as "Civil Rules."

<sup>4</sup> According to the proof of claim filed by BONY, the  
prepetition arrearages on the loan were \$81,498.97.

1 statement of financial affairs, to pay filing fees, to attend the  
2 § 341(a) meeting, to commence plan payments and to file chapter 13  
3 plans. On June 5, 2015, Charov filed his fifth case within three  
4 months of filing his fourth case and within seven days of the  
5 dismissal of the fourth case.

6 **B. Postpetition events**

7 On June 30, 2015, Charov, pro se, filed an adversary  
8 complaint against BONY and Select to determine the validity or  
9 extent of their claims against the Property. Charov alleged that  
10 he initiated the adversary proceeding to "determine the validity  
11 or extent of [BONY's and Select's] claim against the [Property]"  
12 and to determine whether Select by acting on behalf of BONY "is  
13 liable for being negligent **per se** under state and federal  
14 statutes[]" in asserting "aggressive claims against my property  
15 without first proving those claims adequately under state and  
16 federal law." (emphasis in original).

17 That same day, Charov filed an "Application for Preliminary  
18 Injunction" in the adversary proceeding, which sought an  
19 injunction to prevent a nonjudicial foreclosure of the Property  
20 apparently scheduled for July 8, 2015.<sup>5</sup> However, Charov never  
21 noticed the Application for hearing and no proof of service exists  
22 showing that BONY or Select were served with the Application.

23 On July 7, 2015, BONY moved for a comfort order in the main  
24 case stating that no stay was in effect under § 362(c)(3) due to  
25 Charov's instant case being his second bankruptcy case filed  
26 within the last year. Charov opposed the motion. The bankruptcy

---

27  
28 <sup>5</sup> After the bankruptcy court dismissed the bankruptcy case, the record does not indicate whether any foreclosure occurred.

1 court entered the comfort order stating that the stay had expired  
2 and was no longer in effect as to the Property. The order  
3 dismissing Charov's adversary proceeding states that the stay  
4 expired as to Charov and the Property on July 5, 2015, by  
5 operation of law under § 362(c)(3)(A).

6 On July 22, 2015, the chapter 13 trustee moved to dismiss  
7 Charov's bankruptcy case under § 1307(c)(3) for failure to timely  
8 file a plan; the deadline to file a plan expired on June 19, 2015.  
9 A hearing on the dismissal motion was set for August 27, 2015.<sup>6</sup>

10 On July 28, 2015, BONY filed its proof of claim for  
11 \$327,806.46 based on its debt secured by the Property. BONY  
12 asserted that its debt was fully secured, even though Charov had  
13 valued the Property at \$314,000 in his Schedule A.

14 On August 12, 2015, Charov filed an objection to BONY's  
15 claim, but never noticed the matter for hearing.<sup>7</sup> It also appears  
16 he never served the objection on BONY or Select. Charov  
17 questioned BONY's standing as a creditor, alleging that BONY had  
18 failed to bring forth an authenticated copy of the note and DOT.

19 On September 1, 2015, the bankruptcy court entered an order  
20 dismissing Charov's bankruptcy case. He did not appeal the  
21 dismissal order. Subsequently, the court closed the case. Later  
22 the court administratively reopened the case solely with respect  
23 to Charov's remaining adversary proceeding against BONY and  
24

---

25 <sup>6</sup> Charov did not oppose the trustee's motion to dismiss or  
26 appear at the hearing on August 27, 2015.

27 <sup>7</sup> Based on his asserted claim that English is his second  
28 language, Charov requested that no hearing be held. Unfortunately  
for Charov, claim objections require hearings per Rule 3007(a) and  
Local Bankruptcy Rule 3007(b).

1 Select.

2 On November 13, 2015, BONY and Select moved to dismiss  
3 Charov's adversary complaint under Civil Rule 12(b)(6),  
4 incorporated in Rule 7012(b), for its failure to state a claim or,  
5 alternatively, for a more definite statement under Civil  
6 Rule 12(e), incorporated in Rule 7012(b). Defendants contended  
7 that BONY had a valid lien against the Property as evidenced by  
8 the recorded DOT and assignments. To the extent Charov was asking  
9 defendants to present the original note prior to any nonjudicial  
10 foreclosure, defendants contended they were not required to do so  
11 under Arizona law.

12 Charov opposed BONY and Select's motion to dismiss the  
13 adversary complaint. Besides his repeated standing argument, much  
14 of Charov's argument was based on his erroneous view of civil  
15 procedure or substantive law. BONY and Select noted these  
16 deficiencies in their reply.<sup>8</sup>

17 Charov did not appear at the hearing on the motion to dismiss  
18 the adversary complaint on January 14, 2016. We do not have a  
19 transcript from that hearing and it is not available on the  
20 docket. The bankruptcy court took the matter under submission.

21 On January 15, 2016, the bankruptcy court entered an order  
22 denying BONY and Select's motion to dismiss under Civil  
23 Rule 12(b)(6), but nevertheless dismissed the adversary complaint.  
24 Specifically, the court determined:

25 \_\_\_\_\_  
26 <sup>8</sup> BONY and Select spent a great deal of time in their reply  
27 discussing Nevada nonjudicial foreclosure law. However, because  
28 the Property is located in Arizona and the DOT states that Arizona  
law governs, Arizona law governs. In any event, it does not  
matter because the bankruptcy court dismissed the adversary  
proceeding on an entirely different basis.

1 Because the Debtor's Chapter 13 proceeding has been  
2 dismissed, no bankruptcy relief presently is being  
3 sought. The order dismissing the Debtor's case has not  
4 been appealed. No distribution will be made on the  
5 [proof of claim]. Thus, the validity, extent or priority  
6 of Defendants' interest in the Arizona Property has no  
7 relationship to any bankruptcy matter or case before this  
8 court.

9 . . . .

10 Absent any connection with a bankruptcy matter before  
11 this court, the claims set forth in the Complaint reflect  
12 only a two-party dispute governed by Arizona law  
13 involving real property located in Maricopa County,  
14 Arizona.

15 Under these circumstances, dismissal of the Complaint is  
16 appropriate. Such dismissal, however, will be without  
17 prejudice to the Debtor presenting his claims, if any, in  
18 an appropriate non-bankruptcy forum. No further  
19 adversary proceedings may be commenced in connection with  
20 Case No. 15-13297.

21 Charov timely appealed.

## 22 **II. JURISDICTION**

23 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334  
24 and 157(b) (2) (A) and (K). We have jurisdiction under 28 U.S.C.  
25 § 158.

## 26 **III. ISSUES**

27 Did the bankruptcy court abuse its discretion in dismissing  
28 Charov's adversary complaint given that his underlying bankruptcy  
case had been dismissed?

## 29 **IV. STANDARDS OF REVIEW**

30 We review a bankruptcy court's decision not to exercise  
31 jurisdiction over an adversary proceeding following the dismissal  
32 of the underlying bankruptcy case for an abuse of discretion.  
33 Carraher v. Morgan Elec., Inc. (In re Carraher), 971 F.2d 327, 328  
34 (9th Cir. 1992); Davis v. C.G. Courington (In re Davis), 177 B.R.  
35 907, 910-11 (9th Cir. BAP 1995). Likewise, we review the

1 bankruptcy court's sua sponte dismissal of an action for an abuse  
2 of discretion. Snell v. Cleveland, Inc., 316 F.3d 822, 825 (9th  
3 Cir. 2002). A bankruptcy court abuses its discretion if it  
4 applies the wrong legal standard, misapplies the correct legal  
5 standard, or if its factual findings are clearly erroneous.  
6 TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d 820, 832 (9th  
7 Cir. 2011).

8 We may affirm on any ground supported by the record,  
9 regardless of whether the bankruptcy court relied upon, rejected  
10 or even considered that ground. Fresno Motors, LLC v. Mercedes  
11 Benz USA, LLC, 771 F.3d 1119, 1125 (9th Cir. 2014).

#### 12 V. DISCUSSION

13 **The bankruptcy court did not abuse its discretion in**  
14 **dismissing the adversary proceeding.**

15 Charov's argument on appeal consists of two short paragraphs.  
16 Interpreting his pro se brief liberally as we must, Balistreri v.  
17 Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990), Charov  
18 argues that in light of 28 U.S.C. § 157(c)(1),<sup>9</sup> because the  
19 matters before the bankruptcy court in the adversary proceeding  
20 were "non-core," the court lacked authority to enter a final order  
21 dismissing the adversary proceeding; rather, it was required to  
22

---

23 <sup>9</sup> 28 U.S.C. § 157(c)(1) provides:

24 A bankruptcy judge may hear a proceeding that is not a core  
25 proceeding but that is otherwise related to a case under  
26 title 11. In such proceeding, the bankruptcy judge shall  
27 submit proposed findings of fact and conclusions of law to  
28 the district court, and any final order or judgment shall be  
entered by the district judge after considering the  
bankruptcy judge's proposed findings and conclusions and  
after reviewing de novo those matters to which any party has  
timely and specifically objected.

1 submit proposed findings of fact and conclusions of law to the  
2 district court. In other words, he contends the bankruptcy court  
3 had no authority or discretion to dismiss the adversary  
4 proceeding.

5 We disagree with Charov that the claims at issue in the  
6 adversary proceeding were non-core. Among the list of "core"  
7 proceedings is the determination of the validity, extent or  
8 priority of liens against property of the estate. 28 U.S.C.  
9 § 157(b)(2)(K). Additionally, Charov's allegations stated in his  
10 adversary complaint raise claims concerning the extent of BONY's  
11 and Select's interest in the Property and their standing. Thus,  
12 Charov raised issues concerning the allowance or disallowance of  
13 any claims asserted by BONY or Select against property of the  
14 estate, even though he failed to properly notice his previous  
15 objection to BONY's proof of claim.<sup>10</sup> 28 U.S.C. § 157(b)(2)(B).  
16 Charov's allegations, even though based on state law claims, arose  
17 in his bankruptcy case.

18 Even though the underlying bankruptcy case was later  
19 dismissed, the bankruptcy court had "core" jurisdiction over the  
20 adversary proceeding when it was filed. See Linkway Inv. Co. v.  
21 Olsen (In re Casamont Inv'rs, Ltd.), 196 B.R. 517, 521 (9th Cir.  
22 BAP 1996) ("Jurisdiction is determined as of the commencement of  
23 the action."). Bankruptcy courts are empowered to enter final  
24 judgments in "core proceedings." 28 U.S.C. § 157(b)(2). A matter  
25 may be a core proceeding even if state law may affect its outcome.  
26 Bronson v. Thompson (In re Bronson), 2016 WL 5956642, at \*4 (9th

---

27  
28 <sup>10</sup> The record fails to establish that Charov ever exempted  
the Property.



1 Cir. BAP Oct. 12, 2016) (citing 28 U.S.C. § 157(b)(2), (3);  
2 Marshall v. Stern (In re Marshall), 600 F.3d 1037, 1054 (9th Cir.  
3 2010), aff'd, 564 U.S. 462 (2011)). Thus, Charov is mistaken that  
4 the bankruptcy court was required to submit proposed findings and  
5 conclusions with respect to his claims to the district court.<sup>11</sup>

6 While the main case was pending, Charov's claims asserted in  
7 his adversary complaint potentially affected the confirmation of  
8 his chapter 13 plan and the treatment of his creditors' claims in  
9 his chapter 13 plan. However, when his case was dismissed, his  
10 state law claims remained, but such claims no longer affected  
11 confirmation or the treatment of his creditors' claims. Circuit  
12 authority instructs us that dismissal of the main bankruptcy case  
13 does not necessarily end an adversary proceeding seeking relief on  
14 state law theories. See Carraher, 971 F.2d at 328.

15 In Carraher, the Ninth Circuit recognized the bankruptcy  
16 court's discretion to retain jurisdiction over related state law  
17 claims once the underlying bankruptcy case has been dismissed.  
18 Id. Since Charov's state law claims may form the bases for either  
19 arising in or related to jurisdiction depending on the effect the  
20 claims may have had during the pendency of the bankruptcy case, we  
21 conclude the four Carraher factors should be applied in this  
22 instance. In deciding whether to retain jurisdiction, the  
23 bankruptcy court must consider economy, convenience, fairness and  
24

---

25 <sup>11</sup> Even if Charov is correct and his claims are non-core, the  
26 bankruptcy court had authority to enter an order dismissing the  
27 adversary proceeding without prejudice. The bankruptcy court's  
28 decision to decline to retain jurisdiction is a decision not to  
hear the proceeding and, thus, does not trigger 28 U.S.C.  
§ 157(c)(1)'s requirement to submit the order with proposed  
findings and conclusions to the district court.

1 comity. Id. "The [bankruptcy] court's weighing of these factors  
2 is discretionary." Id. Although the bankruptcy court did not  
3 expressly refer to Carraher or its four factors to dismiss the  
4 adversary proceeding, we may affirm on any ground supported by the  
5 record. Fresno Motors, LLC, 771 F.3d at 1125. We therefore  
6 examine whether the court abused its discretion in dismissing the  
7 adversary under Carraher.

8 Judicial Economy. The adversary proceeding had been pending  
9 for about six months when the bankruptcy court decided to dismiss  
10 it without prejudice.<sup>12</sup> Essentially, other than BONY and Select's  
11 motion to dismiss Charov's complaint and Charov's opposition to  
12 dismissal, no discovery or briefing had occurred; nor was any  
13 court time expended on the issues. A state court (or district  
14 court if diversity is shown) could just as efficiently determine  
15 the validity or extent of BONY's and Select's lien or other  
16 interest in the Property under Arizona law. And, the state court  
17 is presumed to have more familiarity with such issues.  
18 Accordingly, the record supports dismissal under this factor.

19 Convenience. It does not appear on the record that a  
20 proceeding in state court would be inconvenient for the parties.  
21 Although the Property is located in Arizona, both Charov and  
22 counsel for BONY and Select are in Las Vegas. Thus, a state court  
23 in Las Vegas would be as convenient as the bankruptcy court.  
24 Charov can easily re-file his complaint in state court and BONY  
25 and Select can simply re-file their motion to dismiss. This

---

27 <sup>12</sup> As noted by the bankruptcy court, it dismissed Charov's  
28 adversary proceeding without prejudice so Charov would be able to  
commence future litigation in a nonbankruptcy forum.

1 factor supports dismissal or, at worst, is neutral.

2 Fairness. Nothing in the record indicates that it would be  
3 unfair to make Charov pursue his claims against BONY and Select in  
4 state court. However, some delay would be involved. Thus, this  
5 factor appears neutral or would perhaps weigh in favor of the  
6 bankruptcy court retaining jurisdiction.

7 Comity. This factor clearly supports dismissal. As noted by  
8 the bankruptcy court, the adversary complaint reflected only a  
9 two-party dispute governed by Arizona law involving real property  
10 in Arizona. In addition, the bankruptcy estate no longer had any  
11 interest in the outcome of Charov's claims against BONY and Select  
12 regarding their interest in the Property, as the Property was no  
13 longer property of the estate and its disposition would have no  
14 impact on the administration of Charov's dismissed chapter 13  
15 case.

16 Because the Carraher factors support dismissal, we conclude  
17 that the bankruptcy court did not abuse its discretion in  
18 dismissing Charov's adversary proceeding.<sup>13</sup>

## 19 VI. CONCLUSION

20 For the foregoing reasons, we AFFIRM.

---

21  
22  
23  
24 <sup>13</sup> It also bears noting, although we are not deciding this  
25 matter on this basis, that as a consequence of the Supreme Court's  
26 decision in Wellness International Network, Ltd. v. Sharif, 135 S.  
27 Ct. 1932, 1948 (2015), which concluded that parties to a dispute  
28 could waive an objection to the entry of a dispositive order by a  
non-Article III Judge by conduct indicating an acquiescence in  
such a Judge disposing of the matter, Charov may well have waived  
the grounds for his appeal in this instance by electing to have  
this appeal determined by this Court, instead of opting for a  
determination by the District Court.