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NOT FOR PUBLICATION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-16-1142-TaLN
6	MARY L. BECKNER,)	Bk. No.	16-bk- 10252-MB
7	Debtor.)		
8	_____)		
9	MARY L. BECKNER,)		
10	Appellant,)		
11	v.)	MEMORANDUM*	
12	ELIZABETH F. ROJAS,)		
13	Chapter 13 Trustee,)		
14	Appellee.)		
	_____)		

Submitted Without Oral Argument**
on January 19, 2017

Filed - February 2, 2017

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

Honorable Martin R. Barash, Bankruptcy Judge, Presiding

Appearances: Mary L. Beckner, pro se, on brief.

* 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).

** The Panel unanimously determined that the appeal was suitable for submission without oral argument. Rule 8019(b)(3).

1 Before: TAYLOR, LAFFERTY, and NOVACK,^{***} Bankruptcy Judges.

2 **INTRODUCTION**

3 Debtor Mary L. Beckner appeals from an order dismissing her
4 chapter 13 case; we AFFIRM.

5 **FACTS¹**

6 **The initial bankruptcy proceedings.** Debtor filed a
7 voluntary chapter 13² petition on January 27, 2016. She listed
8 two pieces of real property on Schedule A/B; she did not
9 schedule any secured creditors. Instead, she provided an
10 attachment to Schedule A/B and listed various deposit accounts,
11 security deposits, and amounts allegedly owed to her. First,
12 she asserted that she "made 60 monthly 'payments' into financial
13 accounts" and thought she was "re-paying a loan of money."
14 Second, she stated that she "owns a negotiable instrument" that
15 "was to be held as a security deposit" if a company "was not re-
16 paid for a loan . . . that it represented that it would give to
17 Debtor. . . . Debtor was never paid after issuing the note,
18 therefore its value is still owed to Debtor." (Emphasis
19 omitted.) Last, she alleged that she submitted a loan

21 ^{***} The Hon. Charles Novack, United States Bankruptcy Judge
22 for the Northern District of California, sitting by designation.

23 ¹ We exercise our discretion to take judicial notice of
24 documents electronically filed in the underlying bankruptcy case
25 and a related adversary proceeding. See Atwood v. Chase
Manhattan Mortg. Co. (In re Atwood), 293 B.R. 227, 233 n.9 (9th
Cir. BAP 2003).

26 ² 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.

1 application but the company then created a "one-sided debt with
2 nothing in exchange" (Emphasis omitted.)

3 Debtor's initial chapter 13 plan shed no light on the
4 identity of her secured creditors and the amount of their
5 claims. Instead, she wrote on page 3:

6 CHAPTE[R] 13 PLAN

- 7 1. Establish by validation, verification and standing
8 the true creditors.
9 2. Establish my true standing as creditor or debtor.

9 And on page 8, she wrote: "All above subject to clarification
10 and determination as to true creditor or debtor status."

11 Chapter 13 Trustee Elizabeth Rojas objected to confirmation
12 for a variety of reasons that included: (1) Debtor's failure to
13 provide the Trustee with all tax returns and other documents
14 required by the Rules and local bankruptcy rules; (2) questions
15 raised by Debtor's failure to properly complete her schedules
16 and other forms; and (3) the need for an amended plan that,
17 among other things, provided for a plan payment. In response,
18 Debtor filed "answers." As relevant here, she explained why
19 documents were not provided, asserted she filled the forms out
20 properly, and explained that she did not need to amend the plan
21 because no creditors had filed a proof of claim.³

22 **The first confirmation hearing and its aftermath.** The
23 bankruptcy court held an initial confirmation hearing. Although
24 Debtor failed to provide a transcript for this hearing, we
25 deduce, from comments at the later hearing, that the bankruptcy

26
27 ³ In her papers, Debtor refers to Official Form 410
28 (B410), which is more colloquially referred to as the proof of
claim form.

1 court denied confirmation, encouraged Debtor to consult an
2 attorney, and continued the hearing.

3 Debtor then filed a "Chapter 13 Plan for Form 3015-1.02."
4 It read:

- 5 1. Trustee will identify each Creditor that has signed
a Form B410.
- 6 2. Trustee will then promptly notify alleged debtor
with a signed document.
- 7 3. Petitioner will pay \$50.00 per month to each
alleged creditor that Trustee designates.
- 8 4. If no creditors appear then move the Court to force
the proof of claim of those that damaged me.
- 9 -OR-
- 10 5. File an Adversary Complaint to force the proof of
claim of unlawful intervenors.

11 Debtor also filed an adversary proceeding asserting claims
12 against a number of parties. She chiefly alleged that the
13 defendants failed to: validate their debts under the Fair Debt
14 Collection Practices Act; attend the § 341(a) meeting; file
15 proofs of claims; or abide by the automatic stay.

16 **The second confirmation hearing and case dismissal.** The
17 bankruptcy court held a second confirmation hearing; Debtor and
18 the Trustee appeared. The Trustee provided a case status update
19 and represented that: (1) over three months into the case, the
20 Debtor had tendered only \$100 in plan payments (likely because
21 the plan still required none); (2) problems discussed at the
22 last hearing persisted; (3) Debtor still had not filed a
23 document that qualified as a chapter 13 plan; and (4) Debtor
24 still had not provided various documents required by the local
25 rules. The bankruptcy court then addressed Debtor and noted,
26 among other things, that she had not filed a document that
27 constituted a plan. Debtor then responded by emphasizing that
28 no creditors had filed a claim, questioning her status as a

1 debtor, requesting a ruling on the adversary complaint, and
2 otherwise making arguments that failed to address the concerns
3 raised by the bankruptcy court. The bankruptcy court then ruled
4 from the bench:

5 The plan that's been filed does not comply with the
6 Bankruptcy Code. It's patently unconfirmable as a
7 Chapter 13 plan. Further, everything that's gone on
8 today in terms of the failure to file a confirmable
9 plan and to comply with the Local Rules applicable to
10 a Chapter 13 [and to] provid[e] . . . the required
11 information to the Trustee, I don't see this case as
12 having any realistic prospect of having a confirmed
13 plan. So I'm going to deny confirmation of your plan
14 and I'm going to dismiss this case.

15 Hr'g Tr. (May 5, 2016) at 10:5-14. After further discussion
16 with Debtor, the bankruptcy court explained:

17 The purpose of a Chapter 13 plan - 13 case is to
18 confirm a Chapter 13 plan that complies with the
19 requirements of the Bankruptcy Code. Yours did not.
20 Yours did not last time either. I gave you a second
21 chance and encouraged you to get legal advice. And
22 what we got . . . was patently unconfirmable. And so
23 I'm denying confirmation and I'm dismissing the case
24 and that's my ruling.

25 Id. at 11:8-16.

26 The next day, the bankruptcy court entered an order
27 dismissing the case. Debtor timely appealed.

28 **JURISDICTION**

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

ISSUE

Whether the bankruptcy court abused its discretion in
dismissing the chapter 13 case under § 1307(c).

1 **STANDARD OF REVIEW**

2 We review the bankruptcy court’s dismissal of the
3 chapter 13 case for an abuse of discretion. Schlegel v.
4 Billingslea (In re Schlegel), 526 B.R. 333, 338 (9th Cir. BAP
5 2015). A bankruptcy court abuses its discretion if it applies
6 the wrong legal standard, misapplies the correct legal standard,
7 or makes factual findings that are illogical, implausible, or
8 without support in inferences that may be drawn from the facts
9 in the record. See TrafficSchool.com, Inc. v. Edriver Inc.,
10 653 F.3d 820, 832 (9th Cir. 2011) (citing United States v.
11 Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc)).

12 **DISCUSSION**

13 Section 1307(c) sets forth a nonexclusive list of factors
14 that constitute “cause” for conversion or dismissal. See
15 11 U.S.C. § 1307(c); In re Schlegel, 526 B.R. at 339. “A
16 debtor’s unjustified failure to expeditiously accomplish any
17 task required either to propose or confirm a chapter 13 plan may
18 constitute cause for dismissal under § 1307(c) (1).” de la Salle
19 v. U.S. Bank, N.A. (In re de la Salle), 461 B.R. 593 (9th Cir.
20 BAP 2011) (quoting Ellsworth v. Lifescape Med. Assocs., P.C.
21 (In re Ellsworth), 455 B.R. 904, 915 (9th Cir. BAP 2011)).
22 Whether dismissal is appropriate is committed to the sole
23 discretion of the bankruptcy court. In re Schlegel, 526 B.R. at
24 339.

25 Here, the bankruptcy court dismissed Debtor’s case because
26 the proposed chapter 13 plan, even on Debtor’s second attempt,
27 was “patently unconfirmable” and because Debtor failed to
28 provide the Trustee information as required by the local

1 bankruptcy rules.

2 On appeal, Debtor never directly addresses the bankruptcy
3 court's basis for denying plan confirmation and dismissing her
4 case. Instead, she asserts that the bankruptcy court erred by
5 not entering default against creditors that failed to file
6 proofs of claims or attend the § 341(a) hearing and not
7 enforcing the automatic stay. More specifically, Debtor argues
8 that the bankruptcy court "erred by concluding that any appellee
9 is a party-in-interest with standing to bring a proof of claim";
10 and that the bankruptcy court "lacked jurisdiction because
11 appellee failed to establish it has standing to file a proof of
12 claim." She asks the panel to reverse the bankruptcy court and
13 "find that Appellees have not complied with the law and do not
14 have standing as Creditors to sue or act as true Creditors in
15 Fact."

16 Given her pro se status, we liberally construe Debtor's
17 appellate brief. See Cruz v. Stein Strauss Trust # 1361
18 (In re Cruz), 516 B.R. 594, 604 (9th Cir. BAP 2014).
19 Nevertheless, as Debtor fails to specifically and distinctly
20 address the only issue on appeal, we may summarily affirm the
21 bankruptcy court on that basis alone. See Padgett v. Wright,
22 587 F.3d 983, 986 n.2 (9th Cir. 2009) (per curiam) (appellate
23 court "will not ordinarily consider matters on appeal that are
24 not specifically and distinctly raised and argued in appellant's
25 opening brief"). Further, Debtor's belief that her chapter 13
26 case filing compelled her creditors (alleged or actual) to
27 attend her § 341(a) meeting of creditors and to file proofs of
28 claim is mistaken. If a creditor does not attend the § 341(a)

1 meeting, then it only loses the ability to ask a debtor
2 questions at that specific meeting.

3 She also erroneously supposes that she can use a chapter 13
4 plan to compel her secured creditors to provide evidence of
5 their standing. A secured creditor is not required to file a
6 proof of claim; if it fails to do so, the only consequence is
7 the loss of the right to receive payments under a plan.

8 In re Schlegel, 526 B.R. at 342 ("Secured creditors in a
9 chapter 13 case may, but are not required to, file a proof of
10 claim. Such creditors may choose not to participate in the
11 bankruptcy case and look to their liens for satisfaction of the
12 debt." (citation omitted)).

13 On appeal, Debtor appears in the main to focus on issues
14 related to her adversary proceeding. To the extent Debtor
15 disputes the bankruptcy court's handling of that adversary
16 proceeding, however, this appeal of the bankruptcy case
17 dismissal order offers her no avenue for relief.

18 In sum, Debtor does not argue that the bankruptcy court
19 erred in dismissing her chapter 13 case based on her failure to
20 appropriately propose a plan and to provide required documents;
21 instead, she objects to the bankruptcy court's failure to
22 facilitate her use of her bankruptcy proceeding to litigate with
23 her creditors. Accordingly, we conclude that the bankruptcy
24 court did not abuse its discretion by denying plan confirmation
25 and dismissing the chapter 13 case.

26 **CONCLUSION**

27 Based on the foregoing, we AFFIRM.