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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NOT FOR PUBLICATION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. AZ-16-1239-LBJu
)
 DUSTIN ROGER CHANTEL and) Bk. No. 0:13-bk-11909-EPB
 ELIZABETH DARLENE CHANTEL,)
)
 Debtors.)
)
)
 DUSTIN ROGER CHANTEL;)
 ELIZABETH DARLENE CHANTEL,)
)
 Appellants,)
)
 v.) **M E M O R A N D U M**
)
 DITECH FINANCIAL LLC, fka)
 Green Tree Servicing LLC,)
)
 Appellee.)
)

Submitted Without Argument on May 18, 2017

Filed - June 8, 2017

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

Honorable Eddward P. Ballinger, Jr., Bankruptcy Judge, Presiding

Appearances: Appellants Dustin Roger Chantel and Elizabeth
 Darlene Chantel, pro se on brief; Mark W. Drutz,
 Thomas P. Kack, and Jeffrey Gautreaux of Musgrove
 Drutz Kack & Flack, PC on brief for Appellee
 Ditech Financial LLC.

Before: LAFFERTY, BRAND, and JURY, 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 Appellee Ditech Financial LLC ("Ditech") moved for relief
3 from the automatic stay in Appellants-Debtors' chapter 7¹
4 bankruptcy, seeking to foreclose on its security interest in
5 Debtors' residence in Kingman, Arizona (the "Property") and to
6 resolve priority disputes with judgment lien creditors. Ditech
7 alleged that Debtors had no equity in the real property and that
8 Debtors had not been making payments. Debtors opposed the motion
9 but presented no evidence to refute those allegations; they
10 instead argued that Ditech lacked standing and that Ditech's deed
11 of trust was void. After a hearing, the bankruptcy court granted
12 relief from stay, and Debtors appealed. We AFFIRM.

13 **FACTS**

14 Debtors filed a chapter 13 petition on July 11, 2013. The
15 case was dismissed on August 7, 2013, for failure to file a plan
16 timely; in response, Debtors filed a motion to reinstate the case
17 and convert it to chapter 7, which the bankruptcy court granted.
18 The order reinstating the case was entered August 12, 2013.
19 Debtors did not list any real property on Schedule A. On
20 Schedule G, Executory Contracts and Unexpired Leases, Debtors
21 listed a lease with an entity called Chan-Lan Trust (the
22 "Trust"), with the explanation "lease of land for farming." The
23 Trust was actually an entity created in 1995 by Debtors, who were
24 its settlors, trustees, and beneficiaries. The Trust held

25
26 ¹Unless otherwise indicated, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.
28 "LBR" references are to the Local Rules of Bankruptcy Procedure
for the District of Arizona.

1 various assets (including the Property) for the benefit of
2 Debtors.

3 Shortly after the case was converted, the chapter 7 trustee,
4 William E. Pierce ("Trustee"), and the United States Trustee
5 ("UST") each filed separate adversary proceedings seeking denial
6 of Debtor's discharge under § 727(a) based on Debtors' failure to
7 disclose their interests in the Trust and for failure to disclose
8 pre- and post-petition transfers of real property held in the
9 name of the Trust. Trustee also sought a declaration that
10 property held by the Trust was property of the estate. The
11 adversary proceedings were consolidated for trial, and on
12 November 11, 2014, the bankruptcy court entered judgments for
13 Trustee and UST. Both judgments denied Debtors' discharge under
14 various subsections of § 727(a); the judgment in Trustee's
15 adversary proceeding also declared the property held by the Trust
16 to be property of the estate and ordered turnover of that
17 property to Trustee. Debtors appealed both judgments; this Panel
18 affirmed the judgment declaring the Trust assets to be property
19 of the estate and ordering turnover and for denial of discharge
20 under § 727(a) (2) (A), (a) (2) (B), and (a) (4) and reversed the
21 denial of Debtors' discharge under § 727(a) (3) and (a) (4) (D).
22 Debtors appealed the Panel's decision to the Ninth Circuit Court
23 of Appeals; those appeals remain pending.

24 On April 26, 2016, Ditech filed a motion for relief from
25 stay ("Stay Motion") to commence judicial foreclosure on the
26 Property and to resolve a priority dispute with judgment
27 creditors Mohave Electric Cooperative Incorporated and Federated
28 Cooperative Rural Electric Exchange, Inc. (collectively,

1 "Judgment Creditors"). According to the Stay Motion, Countrywide
2 Home Loans, Inc. loaned Dustin Chantel \$249,200 in 2005;
3 Mr. Chantel executed a note and deed of trust encumbering the
4 Property. The deed of trust was thereafter assigned to Green
5 Tree Servicing, LLC ("Green Tree"), which was subsequently
6 renamed as Ditech. Shortly after Debtors filed their bankruptcy
7 case, Green Tree loaned \$168,520 to Debtors, as trustees of the
8 Trust, to refinance the 2005 loan; the loan was secured by a deed
9 of trust recorded August 7, 2013.² Ditech asserted that although
10 Judgment Creditors had recorded their judgments on December 13,
11 2012 and June 11, 2013, Ditech's deed of trust had priority over
12 those judgment liens because the 2013 deed of trust "replaced"
13 the 2005 deed of trust. Ditech intended to litigate that issue
14 in the context of a judicial foreclosure.

15 Ditech contended that the Property was worth \$118,594 based
16 on the 2016 Mohave County Assessor's assessment of "full cash
17 value." Ditech asserted that it was owed \$168,520 and that the
18 Property was also encumbered by the judgment liens totaling
19 approximately \$200,000, thus Debtors had no equity in the
20 Property. Further, Ditech alleged that Debtors were not making
21 payments on the loan. Ditech also alleged that the Property was
22 not necessary to an effective reorganization because Debtors were
23 in a chapter 7.

24
25 ²The recording of the deed of trust does not appear to have
26 been a stay violation: the order dismissing the chapter 13 case
27 was entered on August 7, 2013 at 9:47:30; the 2013 deed of trust
28 was recorded August 7, 2013 at 9:49:00. The bankruptcy court
entered an order reinstating the case on August 13, 2013.
Moreover, at the time the deed of trust was recorded, the
Property was still in the name of the Trust.

1 Included as attachments to the Stay Motion were a copy of
2 the recorded 2013 deed of trust and a copy of a page from the
3 Mohave County Assessor's website showing the assessed values of
4 the Property for 2015, 2016, and 2017. On July 15, 2016, Ditech
5 filed the declaration of Patricia Luna ("Luna Declaration")
6 supporting the facts asserted in the Stay Motion.

7 Debtors filed an opposition, asserting (1) that Ditech did
8 not have standing to bring the motion, (2) that the 2013 deed of
9 trust attached to the motion was not valid; and (3) that the
10 Property was worth \$320,000 based on an unauthenticated "Letter
11 of Appraisal" dated April 25, 2016, which was attached to the
12 opposition.³

13 With respect to standing, Debtors alleged that shortly after
14 the 2013 deed of trust was executed, Green Tree had sold its
15 interest in the deed of trust to Fannie Mae. Debtors attached to
16 their opposition an unauthenticated copy of a letter to Dustin
17 Chantel dated March 31, 2016, from the Fannie Mae Resource Center
18 confirming that Fannie Mae "is the investor" on the Property.

19 Regarding the validity of the 2013 deed of trust, Debtors
20 alleged that the borrowers were misidentified as "Dustin Chantel
21 and Elizabeth D. Chantel, Trustees of the Chan-Lan Trust dated
22 September 9, 1995." It is not clear why Debtors believed this
23 designation was incorrect; they stated only that "the wording
24

25 ³Debtors did not include a copy of their opposition with
26 their excerpts of record. However, we have exercised our
27 discretion to examine the bankruptcy court's docket and imaged
28 Woods & Erickson, LLP v. Leonard (In re AVI, Inc.), 389 B.R. 721,
725 n.2 (9th Cir. BAP 2008).

1 placed in the document clearly represented a different entity
2 than the entity that the [Debtors] were trustee of." Debtors
3 stated that the notary who brought the deed of trust to their
4 home for signatures told them that the deed of trust could not be
5 changed but that Debtors could contact the lender within three
6 days to make the correction or cancel the transaction. Debtors
7 alleged that they did so but that the deed of trust was never
8 corrected or cancelled and thus the Property was "clouded with an
9 invalid Deed of Trust." According to the Luna Declaration, Green
10 Tree never received a notice of cancellation from Debtors, and
11 the copy of the unauthenticated cancellation letter Debtors
12 produced in the bankruptcy court appears to have been sent to
13 Fannie Mae, not Green Tree.

14 Debtors made additional assertions in their opposition:

15 (1) that the 2013 deed of trust could not have been a
16 "replacement" deed of trust for the 2005 deed of trust because
17 the borrower's names were different and the 2013 deed of trust
18 indicated that the loan was made in California; and (2) that
19 \$3,808.38 added to the principal balance for accruing interest
20 was actually for "commissions, title insurance costs, fees,
21 documentation fees, recording fees and other miscellaneous fees
22 that Green Tree Servicing, LLC charged." Debtors also accused
23 Green Tree/Ditech and their counsel of acting in bad faith and
24 presenting false and misleading information to the court. No
25 supporting declaration was filed with the opposition.

26 Judgment Creditors jointly filed a motion to intervene in
27 the relief from stay matter, disputing Ditech's contention that
28 the 2013 deed of trust related back to the 2005 deed of trust so

1 as to take priority over Judgment Creditors' liens.

2 Trustee did not file a response to the Stay Motion.

3 The bankruptcy court held a preliminary hearing on June 15,
4 2016, and continued the matter to July 20, 2016, at the request
5 of counsel for Ditech and Judgment Creditors, who indicated they
6 believed they would be able to settle their priority dispute. At
7 the continued hearing on July 20, 2016, counsel for Judgment
8 Creditors indicated that he had spoken to Trustee's counsel and
9 that Trustee had no objection to the Stay Motion. Ditech's
10 counsel stated that an agreement had been reached with Judgment
11 Creditors regarding the priority issue, which was to be litigated
12 in state court once the stay was lifted. With that, the
13 bankruptcy court took the matter under advisement; later that
14 day, the court granted the Stay Motion. Debtors timely appealed.

15 **JURISDICTION**

16 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
17 §§ 1334 and 157(b) (2) (G). We have jurisdiction under 28 U.S.C.
18 § 158.

19 **ISSUES**

20 Did the bankruptcy court abuse its discretion in granting
21 Ditech's Stay Motion?

22 **STANDARDS OF REVIEW**

23 We review for abuse of discretion the bankruptcy court's
24 order granting relief from stay. Leafy v. Aussie Sonoran
25 Capital, LLC (In re Leafy), 479 B.R. 545, 550 (9th Cir. BAP
26 2012). A bankruptcy court abused its discretion if it applied
27 the wrong legal standard or its findings were illogical,
28 implausible or without support in the record. TrafficSchool.com,

1 Inc. v. Edriver Inc., 653 F.3d 820, 832 (9th Cir. 2011).

2 We may affirm on any basis supported by the record. Caviata
3 Attached Homes, LLC v. U.S. Bank, N.A., 481 B.R. 34, 44 (9th Cir.
4 BAP 2012).

5 **DISCUSSION**

6 Under § 362(d), the bankruptcy court shall grant relief from
7 the automatic stay:

8 (1) for cause, including the lack of adequate
9 protection of an interest in property of such party in
interest;

10 (2) with respect to a stay of an act against property
11 under subsection (a) of this section, if-

12 (A) the debtor does not have an equity in such
property; and

13 (B) such property is not necessary to an effective
14 reorganization[.]

15 The bankruptcy court did not make explicit findings as to
16 its reason for granting relief from stay. However, "[e]ven when
17 a bankruptcy court does not make formal findings, [we] may
18 conduct appellate review if a complete understanding of the
19 issues may be obtained from the record as a whole or if there can
20 be no genuine dispute about omitted findings." Veal v. Am. Home
21 Mortg. Serv'g, Inc. (In re Veal), 450 B.R. 897, 919-20 (9th Cir.
22 BAP 2011) (citations and quotations omitted).

23 The record before us supports the bankruptcy court's ruling.
24 Ditech alleged facts that would support stay relief under either
25 § 362(d)(1) or (2). First, Ditech alleged that Debtors were not
26 making payments on the obligation and that there was no equity
27 cushion to provide adequate protection for Ditech's interest in
28 the Property, thus supporting a conclusion that Ditech was not

1 adequately protected. Second, Ditech alleged that Debtors lacked
2 equity in the Property and that the Property was not necessary to
3 an effective reorganization.

4 In response, the only plausible argument Debtors offered was
5 that the Property was worth more than Ditech asserted. Although
6 neither party presented authenticated evidence of value, even
7 accepting the higher value of \$320,000 asserted by Debtors, they
8 had no equity in the Property: liens against the Property totaled
9 approximately \$368,520. Debtors did not dispute the amount of
10 the liens, nor did they dispute the allegations that they had not
11 been making payments or that they did not need the Property for
12 an effective reorganization.

13 The other arguments advanced by Debtors in the bankruptcy
14 court and in this appeal (that Ditech lacks standing, the deed of
15 trust is void, and Debtors are entitled to a homestead exemption)
16 are issues that the bankruptcy court did not need to address in
17 the context of the Stay Motion:

18 Relief from stay proceedings . . . are primarily
19 procedural; they determine whether there are sufficient
20 countervailing equities to release an individual
21 creditor from the collective stay. One consequence of
22 this broad inquiry is that a creditor's claim or
23 security is not finally determined in the relief from
24 stay proceeding.

25

26 Given the limited nature of the relief obtained
27 through a motion for relief from the stay, the
28 expedited hearing schedule § 362(e) provides, and
because final adjudication of the parties' rights and
liabilities is yet to occur, this Panel has held that a
party seeking stay relief need only establish that it
has a colorable claim to enforce a right against
property of the estate.

In re Veal, 450 B.R. at 914-15 (citations omitted).

1 On appeal, Debtors make essentially the same arguments they
2 made to the bankruptcy court: that Ditech lacked standing and
3 that the Property is worth more than Ditech alleged. Debtors'
4 standing argument is premised upon their belief that the deed of
5 trust was transferred to Fannie Mae. However, the record shows
6 that Fannie Mae is an **investor** in the loan and not the holder of
7 the note or deed of trust. The Luna Declaration indicated
8 that the deed of trust secured a note for \$168,520.00 and that
9 Green Tree loaned those funds to Debtors, and the deed of trust
10 reflects that Green Tree was the lender. These documents
11 established that Ditech, which is merely the renamed version of
12 Green Tree, had a colorable claim to enforce its deed of trust
13 against the Property.

14 As for value, Debtors contend that a loan of \$249,200 was
15 obtained against the Property in 2005 and thus the Property was
16 worth at least \$300,000 at that time, and assessments have
17 increased since then. However, as noted, even if the Property
18 were worth the \$320,000 asserted by Debtors, the encumbrances
19 against the Property exceeded that value, leaving no equity for
20 Debtors or the estate.

21 Debtors also seem to argue that because of the appeal
22 pending at the Ninth Circuit Court of Appeals, the bankruptcy
23 court lacked jurisdiction to grant the Stay Motion. However, a
24 pending appeal divests the trial court of jurisdiction only "over
25 those aspects of the case involved in the appeal." Marino v.
26 Classic Auto Refinishing, Inc. (In re Marino), 234 B.R. 767, 769
27 (9th Cir. 1999) (citing Trulis v. Barton, 107 F.3d 685, 694-95
28 (9th Cir. 1995)). One of the pending Ninth Circuit appeals

1 involves the issue of whether the Property should be deemed to be
2 property of the estate. The outcome of that appeal would have no
3 impact on the issues involved in the Stay Motion, which is
4 "limited to issues of the lack of adequate protection, the
5 debtor's equity in the property, and the necessity of the
6 property to an effective reorganization." Johnson v. Righetti
7 (In re Johnson), 756 F.2d 738, 740 (9th Cir. 1985) (overruled on
8 other grounds by Travelers Cas. & Sur. Co. v. Pac. Gas & Elec.
9 Co., 549 U.S. 443 (2007)).

10 Debtors include in their brief a number of allegations that
11 are not supported by the record and have no bearing on the issues
12 relevant to this appeal. Debtors allege that Trustee, creditors,
13 their attorneys, and even the bankruptcy judge engaged in a
14 scheme to harm Debtors. Debtors allege they transferred property
15 worth \$223,138.47 to Trustee but that Trustee did not acknowledge
16 or record payment of that judgment.⁴ Debtors further allege that
17 Trustee is holding the case open for the sole purpose of
18 collecting fees. Debtors accuse Trustee of retaliating against
19 Debtors for pointing out Trustee's and his counsel's "fraudulent
20 wrongful actions." As for Ditech, Debtors allege that the filing
21 of the Stay Motion was an act to cover up Green Tree's sale of a
22 null and void document to Fannie Mae. Debtors go so far as to
23 allege unspecified "criminal activity," but there is simply

24
25 ⁴Debtors seem to assert that \$223,138.47 transferred to the
26 Trustee was to pay off the Judgment Creditors' liens, but that
27 assertion makes no sense. As noted, Trustee had obtained a
28 judgment from the bankruptcy court that ordered Debtors to turn
over to Trustee all real and personal property of the Chan-Lan
Trust; thus, any funds or property transferred to Trustee was
likely in satisfaction of that judgment.

1 nothing in the record to support these allegations. And even if
2 there were evidence of such activity, these are questions that
3 would need to be dealt with by the bankruptcy court in the first
4 instance. Finally, Debtors include in their brief an
5 incomprehensible discussion of "legal reform driven by divine
6 intelligence." These arguments and allegations are not relevant
7 to lack of adequate protection, equity, or necessity of the
8 property to an effective reorganization, which, as noted, are the
9 only issues involved in determining whether to grant stay relief,
10 In re Johnson, 756 F.2d at 740; thus we need not consider them.

11 **CONCLUSION**

12 Simply put, Debtors have not demonstrated that the
13 bankruptcy court applied an incorrect legal standard or that its
14 (implicit) findings were illogical, implausible or without
15 support in the record. On the record before us, and given the
16 limited issues decided in the context of a motion for relief from
17 stay, we find no abuse of discretion by the bankruptcy court.
18 Accordingly, we AFFIRM.