

JUL 12 2017

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

NOT FOR PUBLICATION

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.	NC-15-1206-BSKu
)		
MONICA HUJAZI,)	Bk. No.	13-30477-HLB
)		
Debtor.)		
_____)		
MONICA HUJAZI,)		
)		
Appellant,)		
)		
v.)		
)		
E. LYNN SCHOENMANN, Chapter)		
7 Trustee,)		
)		
Appellee.)		
_____)		

MEMORANDUM¹

Argued on January 19, 2017
at San Francisco, California

Submitted on February 23, 2017

Filed - July 12, 2017

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

Honorable Hannah L. Blumenstiel, Bankruptcy Judge, Presiding

Appearances: Bradley Kass of Kass & Kass Law Offices argued for
appellant Monica Hujazi; Thomas F. Koegel of
Crowell & Moring LLP argued for appellee E. Lynn
Schoenmann, Chapter 7 Trustee.

¹ 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.

1 Before: BRAND, SPRAKER² and KURTZ, Bankruptcy Judges.

2 Former alleged debtor Monica Hujazi appeals an order denying
3 her motion against the chapter 7³ trustee in a related debtor's
4 case for violation of the automatic stay. The related debtor, the
5 Zuercher Trust of 1999, was a business trust owned by Hujazi. The
6 former chapter 11 trustee for the Zuercher Trust had filed seven
7 adversary proceedings, two of which were filed against Hujazi
8 individually, in the Zuercher Trust case without obtaining relief
9 from stay in Hujazi's involuntary bankruptcy case. Hujazi
10 objected, contending that the filing of all seven adversary
11 proceedings violated the stay. The bankruptcy court disagreed,
12 holding that, because the adversary proceedings were filed in the
13 same bankruptcy court where Hujazi's bankruptcy case was pending,
14 the trustee's actions had not violated the stay.

15 Prior to this appeal, the Zuercher Trust case was converted
16 to chapter 7. E. Lynn Schoenmann was appointed as the chapter 7
17 trustee of its estate. Subsequent to this appeal, an order for
18 relief was entered in Hujazi's case and Janina Hoskins was
19 appointed as the chapter 7 trustee of her estate. The two
20 chapter 7 trustees then entered into a global settlement
21 agreement, which resolved all issues between the estates,
22 including the adversary proceedings that are the subject of this
23 appeal. The settlement order was not appealed.

24

25

26 ² Hon. Gary A. Spraker, Chief Bankruptcy Judge for the
District of Alaska, sitting by designation.

27

28 ³ Unless specified otherwise, all chapter, code and rule
references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 We deferred submission of Hujazi's appeal for the parties to
2 brief the issue of whether the appeal was now moot due to the
3 settlement. Upon consideration of those briefs, we conclude that
4 the appeal is MOOT. In addition, we conclude that Hujazi lacks
5 standing to appeal the bankruptcy court's order with respect to
6 the five adversary proceedings that were not filed against her
7 individually. We DISMISS.

8 I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

9 A. Events leading to the motion at issue

10 Some background is necessary to put this appeal into context.
11 In September 2012, Hujazi caused a chapter 11 bankruptcy case to
12 be filed for the Zuercher Trust. Hujazi formed the Zuercher Trust
13 as a business trust to own and develop real estate in California;
14 she is its trustee and sole beneficiary. The Zuercher Trust case
15 was assigned to and is currently pending before Judge Blumenstiel.

16 On March 1, 2013, an involuntary chapter 7 bankruptcy case
17 was filed against Hujazi by petitioning creditors Recoverex Corp.,
18 Michael E. Grodsky, Allen Hyman and the Law Firm of Harold
19 Greenberg, all of whom had filed claims in the Zuercher Trust
20 case. Hujazi's involuntary case was also assigned to Judge
21 Blumenstiel.

22 Prior to the conversion of the Zuercher Trust case, the
23 former chapter 11 trustee filed seven adversary proceedings in
24 that case to recover property allegedly fraudulently transferred
25 by the Zuercher Trust and Hujazi out of the Zuercher Trust estate.
26 The first of the adversary proceedings was filed on March 19,
27 2013, just days after the filing of the Hujazi involuntary; the
28 remainder were filed in September 2014. The seven adversary

1 proceedings at issue are:

2 1. 13-03046 – Kravitz v. Peninsula Commons, LLC

3 2. 14-03117 – Kravitz v. Monica Hujazi

4 3. 14-03118 – Kravitz v. Monica Hujazi

5 4. 14-03119 – Kravitz v. Bay Cities Fin. Corp.

6 5. 14-03120 – Kravitz v. M & J Real Estate Appraisal

7 6. 14-03122 – Kravitz v. Brownstone Lofts, LLC

8 7. 14-03124 – Kravitz v. Emerald Square, LLC

9 **B. Hujazi's motion for violation of the automatic stay**

10 Prior to the entry of the order for relief in her bankruptcy,
11 Hujazi filed a motion against Trustee Schoenmann, alleging that
12 the seven adversary proceedings filed in the Zuercher Trust case
13 had been filed and/or pursued in violation of the automatic stay
14 effective in Hujazi's case (the "Challenged APs"). Hujazi's one-
15 and-one-half page brief failed to explain how, or otherwise
16 support her contention that, the Challenged APs had violated the
17 stay, arguing only that they had and were void as a result.
18 Hujazi requested that the court strike the complaints and dismiss
19 the Challenged APs.

20 Trustee Schoenmann opposed the motion. She first noted that
21 Hujazi was named as a defendant in only two of the seven
22 Challenged APs; thus, she lacked standing to raise a stay
23 violation claim as to the other five. Trustee Schoenmann further
24 argued that, because the Challenged APs were filed in the "home
25 bankruptcy court" of Hujazi, they fell within an exception to the
26 automatic stay. For her argument, Trustee Schoenmann relied on
27 Prewitt v. North Coast Village, Ltd. (In re North Coast Village,
28 Ltd.), 135 B.R. 641, 643 (9th Cir. BAP 1992), where the Panel held

1 that "the stay does not apply to proceedings commenced against the
2 debtor in the bankruptcy court where the debtor's bankruptcy case
3 is pending." Alternatively, Trustee Schoenmann requested that the
4 bankruptcy court grant retroactive annulment of the automatic stay
5 under § 362(d)(1) for cause.

6 Hujazi disputed Trustee Schoenmann's interpretation of the
7 holding in North Coast Village, arguing that it did not define
8 "home bankruptcy court" as being the "courthouse." Rather, the
9 phrase meant the "actual case" in which the party is seeking to
10 take some type of action. Thus, argued Hujazi, the former
11 chapter 11 trustee was required to obtain relief from stay before
12 filing the Challenged APs in the Zuercher Trust case against her.

13 **C. The bankruptcy court's ruling on Hujazi's motion**

14 At the hearing on Hujazi's motion, the bankruptcy court
15 expressed its disagreement with Hujazi's interpretation of the
16 case law, concluding that the automatic stay did not apply to
17 proceedings filed against the debtor in the "same bankruptcy
18 court" where the debtor's bankruptcy case is pending. The court
19 also noted Hujazi's failure to address that she was not even a
20 defendant in five of the Challenged APs.

21 Hujazi timely appealed the bankruptcy court's order denying
22 her motion for violation of the automatic stay.

23 **D. Events subsequent to the appeal**

24 On November 30, 2015, the bankruptcy court entered an order
25 for relief in Hujazi's individual bankruptcy case. As noted,
26 Trustee Hoskins was appointed as the chapter 7 trustee.

27 On July 11, 2016, Trustees Schoenmann and Hoskins entered
28 into a settlement agreement resolving all disputes between the

1 Zuercher Trust and Hujazi bankruptcy estates. Over Hujazi's
2 objection, the bankruptcy court approved the settlement in both
3 cases on August 11, 2016. The settlement required dismissal of
4 the Challenged APs with prejudice. No party appealed the
5 settlement order.

6 **II. JURISDICTION**

7 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
8 and 157(b)(2)(O). We discuss our jurisdiction below.

9 **III. ISSUES**

10 1. Does Hujazi have standing to appeal the order denying her
11 motion with respect to the five Challenged APs not naming her as a
12 defendant?

13 2. Is the appeal moot?

14 3. If the appeal is not moot, does the Ninth Circuit's "home
15 court" rule, which excepts from the automatic stay those actions
16 "against the debtor in the bankruptcy court where the debtor's
17 bankruptcy case is pending," include actions against the debtor in
18 a different but related bankruptcy case pending before the same
19 court?

20 **IV. STANDARDS OF REVIEW**

21 We review de novo our own jurisdiction, including questions
22 of standing and mootness. Palmdale Hills Prop., LLC v. Lehman
23 Comm. Paper, Inc. (In re Palmdale Hills Prop., LLC), 654 F.3d 868,
24 873 (9th Cir. 2011) (standing); Suter v. Goedert, 504 F.3d 982,
25 985 (9th Cir. 2007) (mootness).

26 "Whether the automatic stay provisions of 11 U.S.C. § 362(a)
27 have been violated is a question of law reviewed de novo."
28 Eskanos & Adler, P.C. v. Leetien, 309 F.3d 1210, 1213 (9th Cir.

1 2002) (citing Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission),
2 98 F.3d 1147, 1150 (9th Cir. 1996)). However, whether a party has
3 willfully violated the automatic stay is a question of fact
4 reviewed for clear error. Id. (citing McHenry v. Key Bank
5 (In re McHenry), 179 B.R. 165, 167 (9th Cir. BAP 1995)).

6 V. DISCUSSION

7 **A. Hujazi lacks standing to appeal the order with respect to the** 8 **five adversary proceedings not filed against her.**

9 "A federal court may exercise jurisdiction over a litigant
10 only when that litigant meets constitutional and prudential
11 standing requirements." Veal v. Am. Home Mortg. Servicing, Inc.
12 (In re Veal), 450 B.R. 897, 906 (9th Cir. BAP 2010) (citing Elk
13 Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 11 (2004)).

14 "Standing is a 'threshold question in every federal case,
15 determining the power of the court to entertain the suit.'" Id.
16 (quoting Warth v. Seldin, 422 U.S. 490, 498 (1975)).

17 Constitutional standing requires an injury in fact, which is
18 caused by or fairly traceable to some conduct or some statutory
19 prohibition, and which the requested relief will likely redress.
20 Sprint Commc'ns Co. v. APCC Servs., Inc., 554 U.S. 269, 273-74
21 (2008). Prudential standing embodies judicially self-imposed
22 limits on the exercise of federal jurisdiction. Id. at 289. For
23 prudential standing, the plaintiff must assert its own legal
24 rights and may not assert the legal rights of others. Id.

25 Hujazi fails to explain why the filing of five of the seven
26 Challenged APs not naming her as a defendant violated the
27 automatic stay effective in her case or, more importantly, how she
28 had standing to prosecute stay violation claims for parties other

1 than herself, especially when those parties are non-debtors and no
2 stay even exists. See Boucher v. Shaw, 572 F.3d 1087, 1092-93
3 (9th Cir. 2009) (automatic stay protects only the debtor, not non-
4 debtors or their property). She described no individual injury
5 from the five adversary proceedings filed against non-debtor third
6 parties. And, for purposes of this appeal, Hujazi has not shown
7 that she has been "directly and adversely affected pecuniarily" by
8 the bankruptcy court's decision to deny her stay violation motion
9 with respect to the five adversary filings. Fondiller v.
10 Robertson (In re Fondiller), 707 F.2d 441, 442 (9th Cir. 1983)
11 (bankruptcy appellate prudential standing doctrine dictates that
12 "[o]nly those persons who are directly and adversely affected
13 pecuniarily by an order of the bankruptcy court" have standing to
14 appeal that order).

15 Accordingly, Hujazi lacks standing to appeal the bankruptcy
16 court's order denying her stay violation motion as to the five
17 adversary proceedings not naming her as the defendant.

18 **B. The appeal is moot.**

19 Hujazi does, however, have standing to appeal the order as it
20 relates to the two Challenged APs in which she is a defendant.⁴
21 Nonetheless, we conclude that her appeal is both constitutionally

22
23 ⁴ In response to a clerk's order challenging Hujazi's
24 standing to bring this appeal as a chapter 7 debtor, Hujazi
25 asserted that her estate is a surplus estate. A debtor has
26 standing to challenge a bankruptcy court's order if a surplus
27 estate is likely. Duckor Spradling & Metzger v. Baum Tr.
28 (In re P.R.T.C., Inc.), 177 F.3d 774, 778 n.2 (9th Cir. 1999).
Trustee Schoenmann has not disputed Hujazi's surplus estate
assertion or her standing in this appeal, at least with respect to
the two Challenged APs filed against her. Accordingly, we are
satisfied that Hujazi has established standing to appeal the
bankruptcy court's order as it relates to these two adversary
proceedings.

1 and equitably moot.

2 Once the order for relief was entered in Hujazi's case in
3 November 2015, Trustee Hoskins succeeded to whatever rights might
4 have existed for the alleged injury to the Hujazi involuntary
5 estate from the alleged stay violation. As trustee, she could
6 choose to pursue or to settle any claims belonging to the Hujazi
7 involuntary estate. § 323(b); § 704(a)(1); Rule 9019; Hamilton-
8 Brown Shoe Co. v. Ben L. Berwald Shoe Co., 10 F.2d 275, 276 (5th
9 Cir. 1925) (trustee may, with court approval, compromise any
10 controversy concerning the bankrupt estate) (citing the former
11 Bankruptcy Act § 27). Trustee Hoskins chose to settle the
12 fraudulent transfer claims against the Hujazi estate.

13 The post-appeal settlement agreement entered into by Trustees
14 Schoenmann and Hoskins in July 2016 not only settled all
15 fraudulent transfer disputes between the Zuercher Trust and Hujazi
16 bankruptcy estates and authorized the division and sale of some of
17 the subject properties, it also provided a full, mutual release of
18 any and all claims, known or unknown, between the two estates.
19 The order approving the trustees' settlement was not appealed and
20 is final.

21 An appeal is constitutionally moot if it has become
22 impossible for the appellate court to fashion meaningful relief.
23 Ederel Sport, Inc. v. Gotcha Int'l L.P. (In re Gotcha Int'l
24 L.P.), 311 B.R. 250, 253 (9th Cir. BAP 2004). If no effective
25 relief is possible, we must dismiss for lack of jurisdiction.
26 Ellis v. Yu (In re Ellis), 523 B.R. 673, 677 (9th Cir. BAP 2014).

27 Hujazi's appeal is constitutionally moot, because we are
28 unable to provide Hujazi with any of the relief she has

1 requested.⁵ Even if we determined that a stay violation occurred
2 with the filing of the two adversary proceedings against her,
3 thereby rendering those proceedings void,⁶ that does not change
4 the court-approved settlement containing a complete release of any
5 and all claims between the two estates or the division of
6 properties that were the subject of those proceedings. Certainly,
7 no adversary proceedings were even necessary for the trustees to
8 resolve the fraudulent transfer disputes between the two estates.

9 Hujazi's appeal is also equitably moot. Equitable mootness
10 applies "when a comprehensive change of circumstances has occurred
11 so as to render it inequitable for the appellate court to consider
12 the merits of the appeal." Motor Vehicle Cas. Co. v. Thorpe
13 Insulation Co. (In re Thorpe Insulation Co.), 677 F.3d 869, 880
14 (9th Cir. 2012) (internal quotation marks and citation omitted).
15 For an appeal to be equitably moot, "[t]he question is whether the
16 case presents transactions that are so complex or difficult to
17 unwind that the doctrine of equitable mootness would apply." Id.
18 (internal quotation marks and citation omitted).

19 As noted by the trustees, the two estates have moved forward
20 with the unstayed settlement and the trustees have sold two of
21 three subject properties to third-party buyers not before this
22 Panel. The sale orders were also neither stayed nor appealed.

24
25 ⁵ In response to the Panel's request for briefing on the
26 mootness issue, Huzaji reaffirmed that she seeks to unwind the
settlement between the bankruptcy estates and dismissal of the
Challenged APs as void.

27 ⁶ Actions taken by a party in violation of the automatic
28 stay are void. Griffin v. Wardrobe (In re Wardrobe), 559 F.3d
932, 934 (9th Cir. 2009).

1 Therefore, even if we could fashion any sort of effective relief
2 for Hujazi, it would be inequitable, if not impossible, to unwind
3 the sale of those properties. Nor would it be equitable to
4 deprive the Zuercher Trust estate of the benefit of the bargain in
5 a fair and equitable settlement.

6 **VI. CONCLUSION**

7 Hujazi lacks standing to appeal the order with respect to the
8 five Challenged APs not naming her as a defendant. As to the
9 remaining two Challenged APs filed against her, we conclude that
10 her appeal is MOOT and DISMISS for lack of jurisdiction.⁷

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

27 ⁷ Because we are dismissing the appeal for lack of
28 jurisdiction, we do not reach the merits of the bankruptcy court's
decision with respect to Hujazi's motion.