

AUG 08 2017

NOT FOR PUBLICATION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-17-1001-FBJu
)		
SONJA RITTER,)	Bk. No.	13-40868
)		
Debtor.)		
_____)		
SONJA RITTER,)		
)		
Appellant,)		
v.)	MEMORANDUM*	
)		
LOIS I. BRADY, Chapter 7)		
Trustee,)		
)		
Appellee.)		
_____)		

Submitted Without Argument on July 27, 2017

Filed - August 8, 2017

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

Honorable William J. Lafferty, Bankruptcy Judge, Presiding

Appearances: Appellant Sonja Ritter, pro se, on brief.

Before: FARIS, 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 Debtor Sonja Ritter appeals the bankruptcy court's denial of
3 her motion to reopen her chapter 7¹ bankruptcy case. The
4 bankruptcy court correctly ruled that reopening her case would
5 have been futile; even if the bankruptcy court reopened her case,
6 she would not have been able to accomplish her objective, which
7 was to strip off her junior mortgage lien. We AFFIRM.

8 **FACTUAL BACKGROUND²**

9 When Ms. Ritter filed her chapter 7 bankruptcy petition, she
10 owned real property (the "Property") valued at \$185,000. Bank of
11 America held a first lien against her Property with a claim for
12 \$297,229. PNC Bank held a second lien with a claim for \$42,416.

13 Ms. Ritter filed a motion to avoid PNC Bank's lien ("Motion
14 to Avoid Lien"). She stated that the senior lien exceeded the
15 value of the Property and requested that the court determine that
16 PNC Bank's lien was unsecured under § 506. According to
17 Ms. Ritter, she prepared and submitted a proposed order granting
18 the Motion to Avoid Lien.

19 The bankruptcy court granted Ms. Ritter a discharge.
20 Without ruling on the Motion to Avoid Lien, it closed the case.

21
22 ¹ Unless specified otherwise, all chapter and section
23 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all
24 "Rule" references are to the Federal Rules of Bankruptcy
25 Procedure, and all "Civil Rule" references are to the Federal
Rules of Civil Procedure.

26 ² Other than a hearing transcript, Ms. Ritter did not
27 provide the Panel with any excerpts of record. We exercise our
28 discretion to review the bankruptcy court's docket. See O'Rourke
v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d 955,
957-58 (9th Cir. 1989).

1 Over three years later, Ms. Ritter filed a motion to reopen
2 the case and to avoid PNC Bank's lien ("Motion to Reopen"). She
3 requested that the court reopen her case and sign the order
4 avoiding PNC Bank's lien because "no objection was filed and my
5 Court order was never signed."

6 The court denied the motion, stating that it would not
7 reopen the case because it could not strip off the lien under
8 Bank of America, N.A. v. Caulkett, 135 S. Ct. 1995 (2015).

9 Ms. Ritter filed a motion to reconsider the denial of the
10 Motion to Reopen ("Motion for Reconsideration"). She reiterated
11 that she had filed the Motion to Avoid Lien and that, because PNC
12 Bank did not oppose it, the court should have granted it. At the
13 hearing on the Motion for Reconsideration, Ms. Ritter questioned
14 whether Caulkett was applicable, given that she had filed her
15 Motion to Avoid Lien two years prior to that decision.

16 The bankruptcy court entered an order denying the Motion for
17 Reconsideration. It explained that, based on Caulkett, it could
18 not grant Ms. Ritter's request to strip off PNC Bank's junior
19 lien on the Property. The court held that Ms. Ritter did not
20 articulate any basis for reconsideration under Civil Rule 60.

21 Ms. Ritter timely appealed the denial of the Motion to
22 Reopen and Motion for Reconsideration.

23 JURISDICTION

24 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
25 §§ 1334 and 157(b)(1). We have jurisdiction under 28 U.S.C.
26 § 158.

27 ISSUE

28 Whether the bankruptcy court erred in denying Ms. Ritter's

1 Motion to Reopen and Motion for Reconsideration so that she could
2 avoid PNC Bank's second mortgage lien.

3 **STANDARD OF REVIEW**

4 We review for abuse of discretion the denial of a motion to
5 reopen a bankruptcy case. Staffer v. Predovich (In re Staffer),
6 306 F.3d 967, 971 (9th Cir. 2002). We also review for abuse of
7 discretion the denial of a motion for reconsideration. N. Alaska
8 Envtl. Ctr. v. Lujan, 961 F.2d 886, 889 (9th Cir. 1992).

9 To determine whether the bankruptcy court has abused its
10 discretion, we conduct a two-step inquiry: (1) we review de novo
11 whether the bankruptcy court "identified the correct legal rule
12 to apply to the relief requested" and (2) if it did, we consider
13 whether the bankruptcy court's application of the legal standard
14 was illogical, implausible or "without support in inferences that
15 may be drawn from the facts in the record." United States v.
16 Hinkson, 585 F.3d 1247, 1261-62 & n.21 (9th Cir. 2009) (en banc).

17 **DISCUSSION**

18 Ms. Ritter sought to reopen her bankruptcy case to void PNC
19 Bank's lien because she believed that the lien should have been
20 stripped off in her initial chapter 7 case. When the bankruptcy
21 court denied her motion, she sought reconsideration, repeating
22 the same arguments. The bankruptcy court did not err.

23 Section 350(b) states that "[a] case may be reopened in
24 the court in which such case was closed to administer assets,
25 to accord relief to the debtor, or for other cause." "[A]lthough
26 a motion to reopen is addressed to the sound discretion of the
27 bankruptcy court, 'the court has the duty to reopen an estate
28 whenever prima facie proof is made that it has not been fully

1 administered.'" Lopez v. Speciality Rests. Corp. (In re Lopez),
2 283 B.R. 22, 27 (9th Cir. BAP 2002) (citation omitted).

3 "[R]eopening a case is typically ministerial and 'presents only a
4 narrow range of issues: whether further administration appears to
5 be warranted; whether a trustee should be appointed; and whether
6 the circumstances of reopening necessitate payment of another
7 filing fee.'" Id. at 26 (citation omitted).

8 Nevertheless, a bankruptcy court should decline to reopen a
9 case when doing so would be a "pointless exercise." Beezley v.
10 Cal. Land Title Co. (In re Beezley), 994 F.2d 1433, 1434 (9th
11 Cir. 1993); see Cortez v. Am. Wheel, Inc. (In re Cortez),
12 191 B.R. 174, 179 (9th Cir. BAP 1995) ("The bankruptcy court did
13 not abuse its discretion by denying the debtors' motion to reopen
14 their bankruptcy case when there was no legal basis for granting
15 the relief sought.").

16 The bankruptcy court properly denied the Motion to Reopen
17 because it could not strip off PNC Bank's junior lien. In
18 Caulkett, the Supreme Court held that "a debtor in a Chapter 7
19 bankruptcy proceeding may not void a junior mortgage lien under
20 § 506(d) when the debt owed on a senior mortgage lien exceeds the
21 current value of the collateral." 135 S. Ct. at 2001. The Court
22 relied on its previous decision in Dewsnup v. Timm, 502 U.S. 410
23 (1992).

24 Similarly, Ms. Ritter is seeking to strip off PNC Bank's
25 junior lien because her home was worth less than the amount owed
26 on her first mortgage. But Caulkett forbids a bankruptcy court
27 from doing so.

28 In her Motion for Reconsideration, Ms. Ritter questioned

1 whether Caulkett, decided in 2015, was applicable to her 2013
2 bankruptcy case. The bankruptcy court correctly explained that
3 Caulkett restated the law as it had existed since the Supreme
4 Court's 1992 decision in Dewsnup.

5 Ms. Ritter argues that PNC Bank did not oppose the Motion to
6 Avoid Lien. But the bankruptcy court can deny a motion, even if
7 no one opposed it, if the motion lacks legal merit. See Local
8 Bankruptcy Rule 9014-1(b)(4) (allowing, but not requiring, a
9 court to grant an unopposed motion by default); Edward H. Bohlin
10 Co. v. Banning Co., 6 F.3d 350, 356 (5th Cir. 1993) (Under
11 similar Texas law, "[a]lthough failure to respond to a motion
12 will be considered a statement of no opposition, the court is not
13 required to grant every unopposed motion.").

14 Even if the bankruptcy court had reopened Ms. Ritter's case,
15 it could not void PNC Bank's lien. Because the Motion to Reopen
16 was futile, the court did not abuse its discretion when it denied
17 the Motion to Reopen and Motion for Reconsideration.

18 **CONCLUSION**

19 For the reasons set forth above, the bankruptcy court did
20 not err. Accordingly, we AFFIRM.