

AUG 11 2017

SUSAN M. SPRAUL, CLERK
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NOT FOR PUBLICATION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.	CC-17-1030-KuLTa
)		
PETER BROWN KLEIDMAN,)	Bk. No.	1:12-bk-11243-MB
)		
Debtor.)		
_____)		
)		
PETER BROWN KLEIDMAN,)		
)		
Appellant,)		
)		
v.)		
)		
HILTON & HYLAND REAL ESTATE,)		
INC.,)		
)		
Appellee.)		
_____)		

MEMORANDUM DISMISSING APPEAL
FOR LACK OF STANDING*

Submitted Without Oral Argument
on July 27, 2017

Filed - August 11, 2017

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

Honorable Martin R. Barash, Bankruptcy Judge, Presiding

Appearances: Appellant Peter Brown Kleidman on brief pro se;
Matthew A. Lesnick and Christopher E. Prince of
Lesnick Prince & Pappas LLP and Aviv L. Tuchman
and Michael C. Dicecca of Tuchman & Associates on
brief for appellee.

Before: KURTZ, LAFFERTY and TAYLOR, 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 The reorganized chapter 11¹ debtor Peter Brown Kleidman
3 appeals from an order granting his motion for leave to file an
4 adversary proceeding but denying his alternate request seeking
5 permission to pursue the same claims in state court. Kleidman
6 also appeals from an order denying his subsequent motion under
7 Rule 9023 seeking to amend the first order to delete the denial
8 of his alternate request.

9 Kleidman is concerned that the denial of his alternate
10 request might be construed as a denial "with prejudice" - that it
11 might later preclude him from pursuing his claims in state court
12 if the bankruptcy court later determines that it does not have
13 jurisdiction to hear and resolve the adversary proceeding. But
14 the bankruptcy court specified in open court that it meant to
15 deny the alternate request "without prejudice" - that it did not
16 intend for its denial to substantively alter Kleidman's rights.
17 The bankruptcy court's manifested intent controls the meaning of
18 its order.

19 Given that Kleidman's rights were not altered in any
20 meaningful way by the denial of the alternate request (or by the
21 denial of his Rule 9023 motion), Kleidman lacks standing to
22 appeal. Accordingly, this appeal will be DISMISSED for lack of
23 standing.

24
25

26 ¹Unless specified otherwise, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
28 all "Rule" references are to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9037. All "Civil Rule" references are to
the Federal Rules of Civil Procedure.

1 **FACTS**

2 Kleidman's chapter 11 plan was fully implemented as of July
3 2016, and his bankruptcy case was closed. Several months later,
4 Kleidman filed a motion to reopen his bankruptcy case, and he
5 simultaneously filed a separate motion requesting the following
6 relief: (1) leave to file an adversary proceeding in the
7 bankruptcy court against his former court-approved real estate
8 broker, Hilton & Hyland Real Estate, Inc., which helped him sell
9 a residence for \$5.3 million; or (2) leave to pursue his claims
10 against the broker in state court. According to Kleidman, the
11 broker knew the residence was worth millions more than it sold
12 for but kept this information to itself because it had a closer
13 business relationship with the buyer of the residence than it had
14 with Kleidman and stood to gain a great deal more by allying
15 itself with the buyer.

16 The bankruptcy court granted the motion to reopen and also
17 granted Kleidman leave to file the adversary proceeding. But the
18 bankruptcy court also specifically denied his alternate request
19 for relief - his request that the court permit him to pursue his
20 claims in state court. In response to the bankruptcy court's
21 January 20, 2017 order, Kleidman filed on February 2, 2017, a
22 motion under Rule 9023 to amend the court's order. Kleidman
23 contended that the language denying his alternate request for
24 relief was unnecessary, potentially detrimental to his rights,
25 and should be stricken from the order. Kleidman maintained that
26 the explicit denial of his alternate request for relief
27 potentially could preclude him from later pursuing his claims in
28 state court in the event that the bankruptcy court subsequently

1 determined that it lacked jurisdiction to hear and resolve the
2 adversary proceeding against the broker. Later the same day,
3 Kleidman also filed a notice of appeal from the January 20, 2017
4 order.

5 Kleidman then filed a motion to stay his Rule 9023 motion.
6 Kleidman contended that the bankruptcy court should delay in
7 deciding the Rule 9023 motion because, if the court finally
8 determined that it had jurisdiction over Kleidman's adversary
9 proceeding, then the Rule 9023 motion would become moot. The
10 bankruptcy court held a hearing on the stay motion on
11 February 28, 2017. At the hearing, the bankruptcy court denied
12 both the stay motion and the Rule 9023 motion. The court
13 explained in relevant part that it did not mean or intend for its
14 denial of Kleidman's alternate request for relief to have any
15 substantive impact on Kleidman - other than to prevent him from
16 pursuing his claim in state court for the time being. The court
17 told Kleidman that, if the bankruptcy court later were to dismiss
18 the adversary proceeding on jurisdictional grounds, nothing in
19 the January 20, 2017 order prevented or precluded him from filing
20 a new motion for leave to pursue his claims in state court:

21 I hear you are concerned for some reason about
22 jurisdiction over the dispute, but if I were to -- if
23 there were a motion to dismiss, and I were to grant
24 that [on] jurisdictional grounds, there's nothing about
the [January 20, 2017 order] that would preclude you
from asking me to revisit the issue of you being able
to proceed in state court.

25 In fact, I think if it were, if there were an issue of
26 jurisdiction here in the bankruptcy court, you'd have a
pretty good argument.

27 Hr'g Tr. (February 28, 2017) at 5:9-18.

28 The bankruptcy court entered its orders denying the stay

1 motion and the Rule 9023 motion on March 9, 2017, and, pursuant
2 to Rule 8002(b)(3), Kleidman filed an amended notice of appeal
3 covering the denial of the Rule 9023 motion.

4 **JURISDICTION**

5 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
6 §§ 1334 and 157(b)(2)(A). See Harris v. Wittman (In re Harris),
7 590 F.3d 730 (9th Cir. 2009); Maitland v. Mitchell (In re Harris
8 Pine Mills), 44 F.3d 1431 (9th Cir. 1995). We have jurisdiction
9 under 28 U.S.C. § 158.

10 The bankruptcy court retained jurisdiction to dispose of the
11 Rule 9023 motion even though Kleidman also filed a notice of
12 appeal from the January 20, 2017 order. See Rule 8002(b)(2).

13 **ISSUE**

14 Does Kleidman have standing to appeal the January 20, 2017
15 order and the order denying his Rule 9023 motion?

16 **STANDARD OF REVIEW**

17 We review standing issues de novo. Fursman v. Ulrich
18 (In re First Prot., Inc.), 440 B.R. 821, 826 (9th Cir. BAP 2010).

19 **DISCUSSION**

20 As a preliminary matter, it is important to note what
21 Kleidman does not challenge on appeal. Kleidman has not taken
22 issue with bankruptcy court's granting of his request for leave
23 to file an adversary proceeding against his former real estate
24 broker. Nor does Kleidman dispute the bankruptcy court's
25 decision not to permit him to pursue the same claims in state
26 court while the adversary proceeding is pending.

27 The only thing Kleidman challenges on appeal is the
28 bankruptcy court's decision to expressly deny his alternate

1 request for leave to pursue his claims in state court. Kleidman
2 asserts that it was unnecessary for the bankruptcy court to
3 address his alternate request for relief because the court
4 granted him the primary relief he sought: leave to file the
5 adversary proceeding. According to Kleidman, the bankruptcy
6 court should not have said anything about his alternate request.
7 Kleidman insists that he might be adversely affected by the
8 denial to the extent the denial is later interpreted to be a
9 denial "with prejudice."

10 However, the bankruptcy court clarified at the hearing on
11 Kleidman's stay motion that the denial was not meant to have any
12 preclusive effect on Kleidman's future rights. In other words,
13 the court signified that the denial should be construed as a
14 denial "without prejudice." We must give significant deference
15 to the bankruptcy court's construction of its own judgments and
16 orders. See Hallett v. Morgan, 296 F.3d 732, 739-40 (9th Cir.
17 2002); Rosales v. Wallace (In re Wallace), 490 B.R. 898, 906
18 (9th Cir. BAP 2013).

19 No one - neither the parties nor the court - is suggesting
20 that the denial of Kleidman's alternate request for relief should
21 be construed as a denial with prejudice. Furthermore, the
22 bankruptcy court made it clear that it intended otherwise; it
23 intended its denial to be a denial without prejudice. As a
24 result, Kleidman lacks standing.

25 Arguably, the denial meets the minimal requirements of
26 constitutional standing because the denial effectively prohibits
27 Kleidman (at least for the time being) from pursuing his claims
28 in state court. See generally Veal v. Am. Home Mortg. Servicing,

1 Inc. (In re Veal), 450 B.R. 897, 906 (9th Cir. BAP 2011)
2 (explaining constitutional standing requirements). Even so, in
3 order to appeal a bankruptcy court order, an appellant also must
4 establish that it is a "person aggrieved," that it has been
5 "directly and adversely affected pecuniarily" by the order
6 appealed. Fondiller v. Robertson (In re Fondiller), 707 F.2d
7 441, 442 (9th Cir. 1983); see also Cheng v. K & S Diversified
8 Invs., Inc. (In re Cheng), 308 B.R. 448, 454 (9th Cir. BAP 2004),
9 aff'd, 160 F. App'x 644 (9th Cir. 2005). To meet this standard,
10 the appellant must demonstrate that the order on appeal
11 diminished its property, increased its burdens, or detrimentally
12 affected its rights. Duckor Spradling & Metzger v. Baum Trust
13 (In re P.R.T.C., Inc.), 177 F.3d 774, 777 (9th Cir. 1999) (citing
14 In re Fondiller, 707 F.2d at 442).

15 Kleidman has not established the existence of any such
16 adverse effect resulting from the denial of his alternate request
17 for relief - or from the denial of his Rule 9023 motion. Given
18 that the bankruptcy court manifested its unequivocal intent to
19 deny Kleidman's alternate request for relief **without prejudice**,
20 the denial did not have any meaningful impact on him or any of
21 his rights. Consequently, Kleidman lacks standing, and we must
22 dismiss his appeal.

23 CONCLUSION

24 For the reasons set forth above, we DISMISS this appeal
25 based on Kleidman's lack of standing.