

AUG 11 2017

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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NOT FOR PUBLICATION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

|    |               |   |                                       |                 |
|----|---------------|---|---------------------------------------|-----------------|
| 5  | In re:        | ) | BAP No.                               | AZ-16-1133-BTaF |
| 6  | AIDA AZIZ,    | ) | Bk. No.                               | 15-12354-EPB    |
| 7  | Debtor.       | ) |                                       |                 |
| 8  | _____         | ) |                                       |                 |
| 9  | AIDA AZIZ,    | ) |                                       |                 |
| 10 | Appellant,    | ) |                                       |                 |
| 11 | v.            | ) | <b>AMENDED MEMORANDUM<sup>1</sup></b> |                 |
| 12 | U.S. BANK, NA | ) |                                       |                 |
| 13 | Appellee.     | ) |                                       |                 |
|    | _____         | ) |                                       |                 |

Submitted Without Oral Argument on February 23, 2017

Originally Filed - August 3, 2017  
Amended - August 11, 2017

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

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

Appearances: Appellant Aida Aziz on brief pro se; Mark D. Chernoff and Patricia A. Premeau of the Chernoff Law Firm, PC on brief for appellee U.S. Bank, N.A.

Before: BRAND, TAYLOR and FARIS, Bankruptcy Judges.

<sup>1</sup> 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 Chapter 13<sup>2</sup> debtor Aida Aziz appeals an order overruling her  
2 objection to the claim of U.S. Bank, N.A. For the reasons set  
3 forth below, we DISMISS the appeal as MOOT.

4 **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

5 **A. Prepetition events**

6 In 2008, Debtor's son, Mena Bishara, purchased a residence  
7 in Scottsdale, Arizona ("Property") with an \$830,231.00 loan  
8 provided by U.S. Bank. Bishara executed a promissory note and  
9 deed of trust in favor of U.S. Bank. The deed of trust was  
10 recorded in Maricopa County.

11 U.S. Bank initiated a trustee's sale in 2010, which was  
12 continued multiple times due to litigation between the parties  
13 that commenced in state court in 2011. Bishara claimed, among  
14 other things, that his signature on the recorded deed of trust  
15 was forged and therefore void. However, Bishara admitted to  
16 receiving the funds, purchasing the Property with them, and not  
17 making any payments on the loan since May 2009. The action was  
18 later removed to the federal district court. That court  
19 dismissed the suit with prejudice based on Bishara's admissions.  
20 Bishara appealed to the Ninth Circuit Court of Appeals, which  
21 affirmed the district court's ruling in June 2015.

22 On September 17, 2015, Bishara transferred the Property by  
23 quitclaim deed to Debtor. Together as plaintiffs, Bishara and  
24 Debtor then filed a new lawsuit in state court raising the same  
25 arguments that were rejected and deemed "futile" in the first  
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27 <sup>2</sup> Unless specified otherwise, all chapter, code and rule  
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 action. The second lawsuit was dismissed with prejudice in  
2 February 2016; U.S. Bank was awarded attorney's fees.

3 **B. Postpetition events**

4 Meanwhile, Debtor filed her chapter 13 bankruptcy case on  
5 September 28, 2015, just eleven days after Bishara quitclaimed  
6 the Property to her.

7 **1. U.S. Bank's initial proof of claim**

8 U.S. Bank filed its initial \$1,141,956.75 proof of claim in  
9 Debtor's case in February 2016. By then, prepetition arrearages  
10 on the Bishara loan were \$314,155.48. The initial proof of claim  
11 mistakenly stated that Debtor, as opposed to Bishara, executed  
12 the note secured by the deed of trust for the Property. Debtor  
13 objected to U.S. Bank's claim, arguing that the attached exhibits  
14 contained the alleged forged note and deed of trust. In reply,  
15 U.S. Bank contended that Debtor was precluded from claiming the  
16 loan documents were forged; she had already litigated that issue  
17 and lost. In addition, U.S. Bank argued that, because Debtor was  
18 not a party to the deed of trust, she lacked standing to  
19 challenge its validity.

20 **2. U.S. Bank's amended proof of claim**

21 Thereafter, U.S. Bank filed an amended proof of claim. The  
22 amended claim clarified that Debtor was not a party to the note  
23 and therefore she did not personally owe the note payments;  
24 Debtor only held title to the Property based on the quitclaim  
25 deed. Nonetheless, her ownership interest was subject to the  
26 debt and U.S. Bank's lien rights. U.S. Bank argued that, if  
27 Debtor wanted to keep the Property, she had to pay for it, making  
28 the bank an implied creditor of her bankruptcy.

1 Debtor objected to U.S. Bank's amended proof of claim,  
2 raising essentially the same arguments she did in her objection  
3 to the initial proof of claim. She requested that the court  
4 disallow the amended claim due to U.S. Bank's failure to provide  
5 appropriate documentation to support it.

6 In reply, U.S. Bank represented that it was not seeking any  
7 monetary relief from Debtor; rather, it had filed the initial and  
8 amended proofs of claim simply to enforce its lien rights against  
9 the Property. However, argued U.S. Bank, Debtor would have to  
10 pay for the Property if she intended to keep it.

11 The bankruptcy court held a hearing on April 13, 2016.<sup>3</sup>  
12 Debtor has not provided a transcript so we are not certain what  
13 took place. However, that same day, the bankruptcy court issued  
14 a Minute Entry/Order for Matter Taken Under Advisement. In  
15 addition to granting U.S. Bank relief from stay, the Under  
16 Advisement order stated that Debtor's objection to U.S. Bank's  
17 amended proof of claim "was moot in light of the bank's agreement  
18 that it seeks no distribution from Debtor's estate (other than  
19 for fees and sanctions [requested in U.S. Bank's motion for  
20 relief from stay])." U.S. Bank's request for fees and sanctions  
21 was denied. The Under Advisement order directed counsel for U.S.  
22 Bank "to file and serve an appropriate form of order."

23 Before an order was submitted by U.S. Bank and entered by  
24 the bankruptcy court, Debtor filed a motion for reconsideration,  
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26  
27 <sup>3</sup> This hearing also included U.S. Bank's pending motion for  
28 relief from stay and Debtor's objection to that motion. That  
issue is not part of this appeal.

1 which the bankruptcy court summarily denied.<sup>4</sup>

2 **C. Post-appeal events**

3 Although no order had yet been entered respecting Debtor's  
4 claim objection or U.S. Bank's motion for relief from stay or  
5 request for sanctions, Debtor appealed the bankruptcy court's  
6 Under Advisement order on May 12, 2016. Thereafter, U.S. Bank  
7 submitted an order, which the bankruptcy court signed and entered  
8 on May 16, 2016. Curiously, the May 16 order did not dispose of  
9 Debtor's claim objection; it referenced only U.S. Bank's relief  
10 from stay motion and the court's denial of sanctions to U.S.  
11 Bank.

12 U.S. Bank then moved to dismiss Debtor's appeal, arguing  
13 that it was moot because the foreclosure sale had now taken  
14 place. The motions panel determined that the relief from stay  
15 issue was moot, but not the claim objection or sanctions issues.  
16 Therefore, those two issues remained live and appealable.<sup>5</sup> U.S.  
17 Bank's request for attorney's fees, costs and sanctions was  
18 denied for failure to comply with the separate motion requirement  
19 under Rule 8020(a).

20 After briefing by the parties, it was discovered that the  
21 Panel lacked a final order from the bankruptcy court on Debtor's  
22 claim objection; the Under Advisement order entered on April 13  
23 and the May 16 order did not serve as a final order on that  
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25 <sup>4</sup> Debtor has not argued that the bankruptcy court abused its  
26 discretion by denying her motion for reconsideration. In any  
27 event, based on our decision here, we need not reach that issue.

28 <sup>5</sup> U.S. Bank has not cross-appealed the bankruptcy court's  
ruling denying sanctions.

1 issue. Ross v. Thompson (In re Levine), 162 B.R. 858, 859 (9th  
2 Cir. BAP 1994) (court's "under advisement ruling" was not a final  
3 appealable order because it did not evidence the judge's  
4 intention that the order was the court's final act, as counsel  
5 was directed in that order to lodge an order consistent with the  
6 under advisement ruling).

7 After a clerk's order, the bankruptcy court entered an  
8 amended order on March 2, 2017, finally disposing of Debtor's  
9 objection to U.S. Bank's amended claim as moot. Thus, Debtor's  
10 premature notice of appeal became timely. Rule 8002(a).

11 On May 20, 2017, the bankruptcy court entered an order  
12 dismissing Debtor's chapter 13 bankruptcy case for failure to  
13 make plan payments and barring her from refileing a new bankruptcy  
14 case in the District of Arizona for 180 days.

## 15 **II. JURISDICTION**

16 The bankruptcy court had jurisdiction under 28 U.S.C. §§  
17 1334 and 157(b)(2)(B). We discuss our jurisdiction below.

## 18 **III. ISSUES**

- 19 1. Is the order on appeal moot now that Debtor's bankruptcy  
20 case has been dismissed?  
21 2. Is U.S. Bank entitled to sanctions or costs on appeal?

## 22 **IV. STANDARD OF REVIEW**

23 We review de novo our own jurisdiction, including the  
24 question of mootness. Suter v. Goedert, 504 F.3d 982, 985 (9th  
25 Cir. 2007).

## 26 **V. DISCUSSION**

### 27 **A. The appeal is moot.**

28 An appeal is constitutionally moot if it has become

1 impossible for the appellate court to fashion meaningful relief.  
2 Ederel Sport, Inc. v. Gotcha Int'l L.P. (In re Gotcha Int'l  
3 L.P.), 311 B.R. 250, 253 (9th Cir. BAP 2004). If no effective  
4 relief is possible, we must dismiss for lack of jurisdiction.  
5 Ellis v. Yu (In re Ellis), 523 B.R. 673, 677 (9th Cir. BAP 2014).

6 Secured creditor U.S. Bank filed a proof of claim in  
7 Debtor's case even though it had represented to the bankruptcy  
8 court and to Debtor that it was not seeking a distribution under  
9 her chapter 13 plan; it was seeking only to enforce its lien  
10 rights and remedies under state law. Based on U.S. Bank's  
11 representations, the bankruptcy court was satisfied that it was  
12 not seeking any money from Debtor. Accordingly, the court deemed  
13 Debtor's claim objection moot.

14 We disagree that, at the time the bankruptcy court ruled on  
15 Debtor's claim objection, it was moot. Despite U.S. Bank's  
16 representations otherwise, when the court ruled on Debtor's  
17 objection, U.S. Bank had a pending objection to Debtor's first  
18 amended chapter 13 plan contending that the plan failed to  
19 account for or cure the arrearages on the Bishara loan. Based on  
20 the objection to confirmation, it appeared that Debtor intended  
21 to make, and U.S. Bank intended to receive, a distribution from  
22 Debtor's chapter 13 plan.

23 However, during the course of this appeal, the claim  
24 objection order has become moot due to the dismissal of Debtor's  
25 bankruptcy case. Although dismissal of a debtor's underlying  
26 bankruptcy case does not necessarily moot an appeal from an order  
27 overruling a claim objection because of the preclusive effect the  
28

1 order can have in other courts, we do not face that issue here.<sup>6</sup>  
2 In this case, the bankruptcy court made no dispositive ruling on  
3 the merits of U.S. Bank's claim that could be given preclusive  
4 effect in future litigation between the parties; the court  
5 neither allowed nor disallowed the claim. In addition, without  
6 an existing estate or chapter 13 plan, it is clear that U.S. Bank  
7 will not be seeking any plan distribution from Debtor respecting  
8 the Property. Thus, reversal of the claim objection order would  
9 be meaningless. Accordingly, because we are unable to provide  
10 Debtor with any meaningful relief, the appeal is moot and we must  
11 dismiss for lack of jurisdiction.<sup>7</sup>

12 \_\_\_\_\_  
13 <sup>6</sup> Compare Bevan v. Social Commc'ns Sites, LLC (In re Bevan),  
14 327 F.3d 994, 996-97 (9th Cir. 2003) (appeal from order overruling  
15 claim objection not moot because of potential preclusive effect  
16 that order might have in future litigation) (citing Siegel v. Fed.  
17 Home Loan Mortg. Corp., 143 F.3d 525, 529 (9th Cir. 1998)), with  
Ctr. For Biological Diversity v. Lohn, 511 F.3d 960, 965 (9th Cir.  
2007) (citing Pilate v. Burrell (In re Burrell), 415 F.3d 994,  
998-99 (9th Cir. 2005)) (potential preclusive effect of order on  
appeal did not prevent appeal from that order from becoming moot).

18 <sup>7</sup>In her appeal, Debtor also asserted that the bankruptcy  
19 court erred in denying her request for sanctions against US Bank  
20 under 18 U.S.C. §§ 152, 157 and 3571 for filing a false deed of  
21 trust with its proof of claim. The denial of Debtor's request for  
22 sanctions also is moot. It raises the same issues as the claim  
objection, the validity of the deed of trust included in the proof  
of claim. We cannot afford meaningful relief to Debtor on this  
issue for the same reason that we cannot do so with respect to her  
appeal of the Court's ruling on her claim objection.

23 Even if it is not moot, we would affirm the denial of the  
24 Debtor's request for sanctions. Debtor based her request entirely  
25 on criminal statutes (18 U.S.C. §§ 152, 157 and 3571) for which  
26 there is no private right of action. See Diamond v. Charles,  
27 476 U.S. 54, 64-65 (1986) (a private citizen cannot compel the  
enforcement of criminal law, as "a private citizen lacks a  
judicially cognizable interest in the prosecution or  
nonprosecution of another."); see also Nordeen v. Bank of Am.,  
28 N.A. ((n re Nordeen), 495 B.R. 468, 484-85 (9th Cir. BAP 2013)  
("[a]ny alleged perjury committed in the filing of a claim in a

(continued...)



1 **B. U.S. Bank's sanctions request is DENIED; however costs are**  
2 **appropriate.**

3 In its brief, U.S. Bank requested sanctions under Rule 8020  
4 or Rule 9011; it contends that Debtor's appeal is frivolous.  
5 Because U.S. Bank has not complied with the separate motion  
6 requirement in both Rule 8020 and Rule 9011, that request is  
7 DENIED. See Rule 8020(a); Rule 9011(c)(1)(A) (motion for  
8 sanctions must "be made separately from other motions or requests  
9 and shall describe the specific conduct alleged to violate  
10 Rule 9011(b)").

11 However, U.S. Bank has also requested costs under Rule 8021,  
12 which has no separate motion requirement. Because we are  
13 dismissing this appeal, costs are appropriate under  
14 Rule 8021(a)(1). Pursuant to Rule 8021(d), U.S. Bank has 14 days  
15 after entry of judgment on appeal to file with the bankruptcy  
16 court and serve its itemized and verified bill of costs for those

17 \_\_\_\_\_  
18 <sup>7</sup>(...continued)

19 bankruptcy case is subject to criminal sanctions under 18 U.S.C.  
20 § 152, not to any private right of action by the Nordeens");  
21 Miller v. Carrington Mortg. Servs., 2012 WL 3537056, at \*9 (N.D.  
22 Cal. Aug. 14, 2012) ("most courts seem to agree that there is no  
23 private right of action for a violation of § 152") (citing Truong  
24 v. Litman, 312 Fed. Appx. 377, 378 (2d Cir. 2009) ("find[ing] no  
25 ground for disturbing the district court's holding that the  
26 Truongs have not made the difficult case for implying a private  
27 right of action under 18 U.S.C. § 152, a criminal statute") and  
28 Heavrin v. Boeing Capital Corp., 246 F.Supp.2d 728, 731 (W.D. Ky.  
2003) (stating that "there is no private cause of action under  
18 U.S.C. § 152(4) for filing a false proof of claim in a  
bankruptcy proceeding"; following the reasoning of a North  
Carolina bankruptcy court)); Glassey v. Amano Corp., 2006 WL  
889519, 15 \*3 (N.D. Cal. Mar. 31 2006), aff'd, 285 F. App'x 426  
(9th Cir. 2008) ("Glassey lacks standing to enforce any cause of  
action based on Title 18 that he has alleged."). Debtor could not  
prevail on a claim for sanctions under Title 18. The bankruptcy  
court did not err in denying an award of sanctions to plaintiff on  
that basis.

1 items allowable under Rule 8021(c).

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**VI. CONCLUSION**

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For the foregoing reasons, we DISMISS the appeal as MOOT.

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