

AUG 31 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NOT FOR PUBLICATION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.	SC-16-1350-BJuF
	)		
ENRIQUE V. GREENBERG,	)	Bk. No.	3:15-bk-06578-MM
	)		
Debtor.	)		
_____	)		
	)		
ENRIQUE V. GREENBERG,	)		
	)		
Appellant,	)		
	)		
v.	)	<b>MEMORANDUM<sup>1</sup></b>	
	)		
UNITED STATES TRUSTEE,	)		
	)		
Appellee.	)		
_____	)		

Submitted Without Oral Argument on July 27, 2017

Filed - August 31, 2017

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

Honorable Margaret M. Mann, Bankruptcy Judge, Presiding

Appearances: Appellant Enrique V. Greenberg, pro se, on brief;  
 Ramona D. Elliott, P. Matthew Sutko and John  
 Postulka of the Executive Office for United States  
 Trustee and Tiffany Carroll and Terri H. Didion of  
 Office of the United States Trustee on brief for  
 appellee United States Trustee.

Before: BRAND, JURY 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, it has no precedential value. See 9th Cir. BAP Rule 8024-1.

1 Chapter 11<sup>2</sup> debtor Enrique Greenberg ("Debtor") appeals an  
2 order dismissing his bankruptcy case under § 1112(b)(1) for bad  
3 faith. The bankruptcy court determined that Debtor had filed his  
4 case and plan solely with a litigation objective and not to  
5 reorganize. We AFFIRM.

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

7 **A. Events prior to the instant bankruptcy case**

8 Debtor's mother owned real property in Temecula, California  
9 ("Property"). In 2008, she entered into a reverse mortgage loan  
10 agreement with Countrywide Bank and executed deeds of trust in  
11 favor of Countrywide and the U.S. Department of Housing and Urban  
12 Development that purported to encumber the Property. The deeds of  
13 trust, however, inaccurately described the Property; the legal  
14 description misidentified the Property as Lot 35 instead of  
15 Lot 36.

16 Debtor inherited the Property (subject to the debt) after his  
17 mother's death in 2010.<sup>3</sup> Debtor does not live, and has never  
18 lived, in the Property. After Debtor failed to make the required  
19 payments on the loan, which then totaled approximately \$220,000,  
20 foreclosure proceedings were commenced on the Property. In  
21 response, Debtor filed a wrongful foreclosure action. When that  
22

23  
24  
25 

---

<sup>2</sup> Unless specified otherwise, all chapter, code and rule  
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

27 <sup>3</sup> In April 1999, Debtor's mother executed a grant deed for  
28 the Property in favor of Debtor, but for reasons unknown it was  
not recorded until September 2011.

1 failed, he filed his first bankruptcy case under chapter 13.<sup>4</sup>  
2 That case was dismissed less than two months after it was filed.

3 A week after the chapter 13 case was dismissed, Debtor filed  
4 a second bankruptcy case under chapter 7. The case was assigned  
5 to Judge Mann. Debtor received a chapter 7 discharge on May 13,  
6 2014.<sup>5</sup>

7 In the second bankruptcy case, the chapter 7 trustee  
8 discovered the defective deeds of trust and filed an adversary  
9 proceeding against U.S. Bank to avoid the liens. The trustee  
10 alleged that the defective trust deeds were ineffective to  
11 encumber the Property. After a hotly contested proceeding and  
12 substantial negotiation, the chapter 7 trustee and U.S. Bank  
13 agreed to settle the dispute. The trustee paid U.S. Bank \$58,000.  
14 In exchange, the trust deeds would be reformed to perfect a lien  
15 on the Property. The parties also exchanged mutual releases,  
16 eliminating any claims against the chapter 7 estate, and the  
17 chapter 7 trustee agreed to dismiss the adversary proceeding with  
18 prejudice and abandon the estate's interest in the Property.  
19 Debtor opposed the settlement, contending that the lien should be  
20 voided, resulting in the debt owed to U.S. Bank being unsecured.  
21 The bankruptcy court approved the settlement; Debtor did not  
22

---

23 <sup>4</sup> Debtor filed his first bankruptcy case in the Central  
24 District of California. His subsequent three cases were filed in  
the Southern District of California.

25 <sup>5</sup> During the state court litigation and Debtor's first two  
26 bankruptcy filings, Bank of America acquired Countrywide and  
27 became the successor-in-interest to the deed of trust. Bank of  
28 America later assigned its interest in the Property to Champion  
Mortgage Company; Champion subsequently assigned its interest to  
U.S. Bank. For ease of reference, we refer to these four parties  
collectively as U.S. Bank.

1 appeal the order.

2 Less than one week after the settlement between the chapter 7  
3 trustee and U.S. Bank, Debtor filed a third bankruptcy case, this  
4 time under chapter 11. This case was also assigned to Judge Mann.  
5 The chapter 7 trustee from the prior case, which was still  
6 pending, moved to dismiss the third case, arguing that the filing  
7 was an attempt to circumvent the settlement and therefore was an  
8 abuse of the bankruptcy process. The bankruptcy court granted the  
9 motion and dismissed the case without prejudice, finding that any  
10 attempt to restructure the secured debt in the chapter 11 case was  
11 futile until the settlement closed and the Property was abandoned  
12 back to Debtor subject to the secured claims. The court declined  
13 to find that Debtor had filed the case in bad faith.

14 **B. Debtor's instant bankruptcy case**

15 After the chapter 7 trustee abandoned the estate's interest  
16 in the Property in the second bankruptcy case, Debtor filed the  
17 instant chapter 11 case, his fourth bankruptcy case in two years.  
18 This case was also assigned to Judge Mann. Debtor listed the  
19 Property in his Schedule A, valuing it at \$445,100 and contending  
20 it was not subject to any secured claims. Debtor listed U.S. Bank  
21 in his Schedule D, but indicated its claim against the Property  
22 was wholly unsecured. Debtor listed no unsecured debt in his  
23 Schedule F. Debtor later filed an amended Schedule D, asserting  
24 that U.S. Bank held a secured claim against the Property for  
25 \$1.00.

26 Debtor then filed a proof of claim on behalf of U.S. Bank and  
27 proceeded to file his objection to the claim. Debtor argued that  
28 U.S. Bank had failed to establish that it had standing to file the

1 proof of claim based on its party-in-interest or ownership status  
2 in the mortgage note. U.S. Bank moved to withdraw the claim and  
3 indicated its desire to litigate any disputes over the claim in  
4 state court. Ultimately, the bankruptcy court deemed the claim  
5 withdrawn without prejudice.

6 **1. U.S. Bank's motion for relief from stay**

7 U.S. Bank moved for relief from the automatic stay in order  
8 to file an action in state court to reform the trust deeds to  
9 identify the correct legal description for the Property. In  
10 support of the motion, U.S. Bank included a declaration from  
11 Jeffrey Jefferson, an employee of Champion, the servicer of the  
12 loan. Jefferson stated that the mortgage note was being held by  
13 Recon Trust Company as Custodian of Records for Champion.  
14 Attached to the Jefferson declaration were copies of: (1) the  
15 mortgage note executed by Debtor's mother for the reverse mortgage  
16 loan; (2) the assignment of the deed of trust from Bank of America  
17 to Champion; (3) the assignment of the deed of trust from Champion  
18 to U.S. Bank; and (4) the 1999 grant deed from Debtor's mother to  
19 Debtor.

20 Debtor opposed the stay relief motion, contesting U.S. Bank's  
21 standing to enforce the note or foreclose on the Property. In  
22 short, Debtor contended that U.S. Bank had not sufficiently  
23 established that it possessed the mortgage note.

24 In its tentative ruling, the bankruptcy court noted that  
25 Debtor had yet to file a chapter 11 plan and that the exclusivity  
26 period had expired long ago. In addition, the only claims filed  
27 by the deadline were one for Debtor's car loan, which was current,  
28 and the one he filed for U.S. Bank and then objected to. Although

1 Debtor still had time to file his plan, the court questioned the  
2 legitimacy of his case; U.S. Bank was the only creditor, and  
3 Debtor did not seek to reorganize its claim but merely eliminate  
4 it through a claim objection. Furthermore, U.S. Bank did not wish  
5 to assert any claim in Debtor's case and wanted to resolve the  
6 parties' lien dispute in state court.

7 Overruling Debtor's standing argument and tentatively  
8 granting U.S. Bank's motion, the bankruptcy court opined that  
9 Debtor was not using the case to accomplish any legitimate  
10 bankruptcy purpose to restructure his debts, but instead sought  
11 merely to eliminate U.S. Bank's claims against the Property which  
12 were settled, at least in part, during his prior chapter 7 case.  
13 In short, Debtor's goal was not a proper bankruptcy goal.

14 At the hearing, after considering the parties' arguments, the  
15 bankruptcy court sustained its tentative ruling granting stay  
16 relief to U.S. Bank. The court noted that it was not deciding  
17 whether the endorsement on the mortgage note was proper or whether  
18 the loan was properly securitized; that was for the state court to  
19 decide.

20 Notably, the court again expressed its concerns about the  
21 legitimacy of Debtor's case; all he wished to do was litigate  
22 U.S. Bank's claim, not reorganize it. Specifically, the court  
23 opined that the case should be dismissed as premature. Until the  
24 parties' claims in state court had been decided, it was unknown  
25 whether the debt to U.S. Bank, if any, needed to be restructured.  
26 Without a claim from U.S. Bank, which had yet to be determined,  
27 the court told Debtor that he had no possibility of confirming a  
28 plan. Although Debtor's case appeared to have no bankruptcy

1 purpose, the court again declined to find that it had been filed  
2 in bad faith.

3 The order granting U.S. Bank's stay relief motion provided  
4 that the automatic stay was terminated "to allow litigation to  
5 proceed in state court against Debtor or any other party to  
6 determine U.S. Bank's rights in the [Property]" and that "absent  
7 further order of this Court, U.S. Bank may not proceed to execute  
8 any judgment obtained in state court regarding any interest  
9 U.S. Bank may have in the Property." Thereafter, Debtor filed a  
10 motion for reconsideration of the stay relief order, which the  
11 bankruptcy court denied.

12 Ultimately, Debtor's appeal of the stay relief order was  
13 dismissed as moot on January 31, 2017, because his underlying  
14 bankruptcy case had been dismissed. Debtor's appeal of the  
15 Panel's dismissal to the Ninth Circuit Court of Appeals was  
16 dismissed for failure to pay the filing fee.

## 17 **2. Debtor's chapter 11 plan**

18 Meanwhile, Debtor filed his proposed chapter 11 plan and  
19 disclosure statement, which purported to pay U.S. Bank \$1.00 for  
20 its (alleged) secured claim of approximately \$235,829.87.

21 Prior to the plan hearing, the bankruptcy court issued a  
22 tentative ruling disapproving the plan because it failed to pay  
23 anything to creditors in violation of § 1123(a)(3). The court  
24 also found that Debtor's bankruptcy case had only a litigation  
25 objective and a desire to retain his property; therefore, Debtor's  
26 plan had not been filed in good faith.

27 No party presented argument at the plan hearing. The  
28 bankruptcy court sustained its tentative ruling and disapproved

1 Debtor's chapter 11 plan. The U.S. Trustee ("UST") announced it  
2 was moving to dismiss Debtor's case and set a hearing date. The  
3 court informed Debtor that he could file another chapter 11 plan  
4 in response to the UST's motion to dismiss. No additional plans  
5 were filed.

6 **3. UST's motion to dismiss**

7 In its motion to dismiss Debtor's case under § 1112(b)(1),  
8 the UST contended that "cause" existed to dismiss because the  
9 court had disapproved Debtor's plan, finding that it had not been  
10 filed in good faith, and had found that Debtor filed his case  
11 solely with a litigation objective and not to repay creditors.  
12 The UST contended that conversion was not appropriate because  
13 Debtor's schedules listed no unsecured debt and he was ineligible  
14 to receive a chapter 7 discharge, having received one less than  
15 three years earlier.

16 Debtor opposed the motion to dismiss, arguing that his case  
17 had been filed in good faith. Debtor stated that his "intent in  
18 filing his first proposed plan payment of \$1.00 should be  
19 construed as an effort to move creditors to providing evidence as  
20 to the validity and extent of their lien, and the exact amount."  
21 Debtor also disputed the Jefferson declaration offered in support  
22 of U.S. Bank's stay relief motion. Debtor argued that "without  
23 adjudication of his appeal (of the stay relief order) pending on  
24 the question of standing and claims objections, dismissal of his  
25 bankruptcy case would be both premature and a manifest injustice."  
26 Finally, Debtor argued that he still had time to file another  
27 plan, so no "cause" existed to dismiss his case.

28 Prior to the hearing, the bankruptcy court issued a tentative



1 ruling granting the UST's motion, finding that "cause" existed to  
2 dismiss Debtor's case. First, the court found that Debtor's  
3 chapter 11 plan lacked any repayment for his creditors, offering  
4 only a nominal \$1.00 to U.S. Bank, and was not a good faith plan.  
5 Second, Debtor admitted that his intent behind proposing a \$1.00  
6 payment was to motivate his creditors to furnish more evidence as  
7 to the validity of the loan, which evidenced that Debtor's case  
8 was filed with an improper litigation objective. Therefore, based  
9 on the totality of the circumstances, the court found that  
10 Debtor's case had not been filed in good faith and should be  
11 dismissed.

12 At the dismissal hearing, the bankruptcy court sustained its  
13 tentative ruling and reiterated that it was finding bad faith as  
14 to Debtor's chapter 11 plan and to his case filing. These bad  
15 faith findings were both independent grounds for the court's  
16 ruling to dismiss for cause. The court further noted that  
17 dismissal was the proper outcome, because there were no creditors  
18 to pay in a converted case. This timely appeal followed.

## 19 **II. JURISDICTION**

20 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334  
21 and 157(b)(2)(A). We have jurisdiction under 28 U.S.C. § 158.

## 22 **III. ISSUE**

23 Did the bankruptcy court abuse its discretion in dismissing  
24 Debtor's chapter 11 case for bad faith?

## 25 **IV. STANDARDS OF REVIEW**

26 "We review for abuse of discretion the bankruptcy court's  
27 decision to dismiss a case as a 'bad faith' filing. We review the  
28 finding of 'bad faith' for clear error." Marsch v. Marsch

1 (In re Marsch), 36 F.3d 825, 828 (9th Cir. 1994) (citing Stolrow  
2 v. Stolrow's, Inc. (In re Stolrow's, Inc.), 84 B.R. 167, 170 (9th  
3 Cir. BAP 1988)). A bankruptcy court abuses its discretion if it  
4 applied the wrong legal standard or its findings were illogical,  
5 implausible, or without support in the record. TrafficSchool.com,  
6 Inc. v. Edriver Inc., 653 F.3d 820, 832 (9th Cir. 2011).

## 7 V. DISCUSSION

### 8 **A. The bankruptcy court did not abuse its discretion in** 9 **dismissing Debtor's chapter 11 case for bad faith.**

10 Section 1112(b)(1) provides that "the court shall convert a  
11 case under this chapter to a case under chapter 7 or dismiss a  
12 case under this chapter, whichever is in the best interests of  
13 creditors and the estate, for cause . . . ." § 1112(b)(1). The  
14 Ninth Circuit has held that a lack of good faith in filing a  
15 chapter 11 petition establishes "cause" for dismissal under  
16 § 1112(b). In re Marsch, 36 F.3d at 828. "'The existence of good  
17 faith depends on an amalgam of factors and not upon a specific  
18 fact.'" Id. (quoting Idaho Dep't of Lands v. Arnold  
19 (In re Arnold), 806 F.2d 937, 939 (9th Cir. 1986)).

20 On a motion to dismiss under § 1112(b), the debtor bears the  
21 burden to prove the chapter 11 petition was filed in good faith.  
22 Marshall v. Marshall (In re Marshall), 721 F.3d 1032, 1048 (9th  
23 Cir. 2013) (citing Soto v. Leavitt (In re Leavitt), 209 B.R. 935,  
24 940 (9th Cir. BAP 1997)). In seeking to determine whether the  
25 petition was filed in good faith, the debtor's "subjective intent"  
26 is not determinative. In re Marsch, 36 F.3d at 828. Rather, the  
27 good faith inquiry focuses on the manifest purpose of the petition  
28 filing and whether the debtor is seeking to achieve thereby

1 "objectives outside the legitimate scope of the bankruptcy laws."  
2 Id. Put another way, the good faith standard requires the  
3 bankruptcy court to ascertain "whether [the] debtor is attempting  
4 to unreasonably deter and harass creditors or attempting to effect  
5 a speedy, efficient reorganization on a feasible basis." Id.  
6 (citing In re Arnold, 806 F.2d at 939).

7 We have long said that the bankruptcy court must consider the  
8 totality of the circumstances when determining whether the debtor  
9 acted in bad faith. Meadowbrook Inv'rs Grp. v. Thirtieth Place,  
10 Inc. (In re Thirtieth Place, Inc.), 30 B.R. 503, 505 (9th Cir. BAP  
11 1983) (finding of bad faith "require[s] an examination of all the  
12 particular facts and circumstances in each case"). Debtor  
13 contends the court erred by dismissing his case based on only one  
14 factor – that his proposed chapter 11 plan offered to pay  
15 U.S. Bank \$1.00.<sup>6</sup>

16 Courts have developed helpful lists of circumstantial factors  
17 that might indicate bad faith. The bankruptcy court does not need  
18 to consider all of the factors, nor does it have to weigh them  
19 equally. A bankruptcy court may find one factor dispositive or  
20 may find bad faith even if none of the factors are present.  
21 Mahmood v. Khatib (In re Mahmood), CC-16-1210-TaFC, 2017 WL  
22 1032569, at \*4 (9th Cir. BAP Mar. 17, 2017).

23 In St. Paul Self Storage Ltd. Partnership v. Port Authority  
24 of St. Paul (In re St. Paul Self Storage Ltd. Partnership),

25  
26 <sup>6</sup> Debtor contends that his \$1.00 payment offer was  
27 reasonable given that U.S. Bank failed to establish that it held  
28 the mortgage note or the amount owed. U.S. Bank's standing was  
the subject of the order granting stay relief and a prior appeal,  
which has since been dismissed. Therefore, this issue is not  
properly before us and we do not consider it.

1 185 B.R. 580, 582-83 (9th Cir. BAP 1995), we set forth a list of  
2 factors that might indicate whether a chapter 11 case has been  
3 filed in bad faith for purposes of dismissal under § 1112(b):

- 4 1. the debtor has only one asset;
- 5 2. the debtor has an ongoing business to reorganize;
- 6 3. there are any unsecured creditors;
- 7 4. the debtor has any cash flow or sources of income to  
8 sustain a plan of reorganization or to make adequate  
9 protection payments; and
- 10 5. the case is essentially a two-party dispute capable of  
11 prompt adjudication in state court.

11 We have also utilized a more expansive list of factors. See,  
12 e.g., In re Stolrow's, Inc., 84 B.R. at 171 (considering eight  
13 factors, including the factor that debtor has only one asset and  
14 that the secured creditor's lien encumbers that asset).

15 Although the bankruptcy court did not cite a list of factors  
16 it considered in finding that Debtor's case had been filed in bad  
17 faith, we disagree with Debtor's contention that the \$1.00 plan  
18 payment offer was the only factor the court considered and relied  
19 upon for its bad faith finding. However, it would not be  
20 reversible error if that was all the court had considered. See  
21 In re Mahmood, CC-16-1210-TaFC, 2017 WL 1032569, at \*4. The court  
22 also found bad faith because Debtor's proposed plan had only a  
23 litigation objective, not one to reorganize, and the automatic  
24 stay had already been terminated to allow the parties' lien  
25 dispute to be resolved by the state court.

26 A petition in bankruptcy arising out of a two-party dispute  
27 does not per se constitute a bad-faith filing by the debtor. Id.  
28 But courts find bad faith based on two-party disputes where "it

1 is an apparent two-party dispute that can be resolved outside of  
2 the Bankruptcy Court's jurisdiction.'" Sullivan v. Harnisch  
3 (In re Sullivan), 522 B.R. 604, 616 (9th Cir. BAP 2014)  
4 (quoting Oasis at Wild Horse Ranch, LLC v. Sholes (In re Oasis at  
5 Wild Horse Ranch, LLC), 2011 WL 4502102, at \*10 (9th Cir. BAP  
6 Aug. 26, 2011) (citing N. Cent. Dev. Co. v. Landmark Capital Co.  
7 (In re Landmark Capital Co.), 27 B.R. 273, 279 (Bankr. D. Ariz.  
8 1983))). See also, In re Silberkraus, 253 B.R. 890, 902-03  
9 (Bankr. C.D. Cal. 2000) (bad faith may be found under § 1112(b)  
10 where the debtor has filed bankruptcy as a litigation tactic –  
11 e.g., forum shopping).

12 We see no clear error with the bankruptcy court's finding of  
13 bad faith based on Debtor's apparent improper litigation objective  
14 with his chapter 11 filing and proposed \$1.00 plan. The record  
15 clearly evidences Debtor's intent to forum shop by invoking the  
16 automatic stay with the filing of his petition and attempting to  
17 have the bankruptcy court, rather than the state court, determine  
18 the extent and validity of U.S. Bank's lien. Those issues are  
19 purely state law issues easily resolved by the state court. This  
20 was Debtor's fourth successive bankruptcy filing in two years,  
21 which, based on its timing, was likely filed to impede U.S. Bank's  
22 settlement with the chapter 7 trustee and frustrate its efforts to  
23 reform the deeds of trust. It is apparent that Debtor's case had  
24 no reorganizational purpose.

25 We reject Debtor's argument that the bankruptcy court erred  
26 by citing to Chinichian v. Campolongo (In re Chinichian), 784 F.2d  
27 1440, 1445-46 (9th Cir. 1986), for the proposition that a debtor's  
28 plan is not filed in good faith if its purpose is to retain

1 property or not pay creditors in pursuit of a litigation  
2 objective. Debtor argues that because Chinichian involved a  
3 chapter 13 case, not a chapter 11 case, it has no relevance. We  
4 have observed that, because the provisions governing dismissal or  
5 conversion of chapter 13 and chapter 11 cases are similar, cases  
6 under one chapter often are helpful in resolving cases under the  
7 other chapter. See Nelson v. Meyer (In re Nelson), 343 B.R. 671,  
8 674-75 (9th Cir. BAP 2006). Thus, the court did not err by  
9 relying on Chinichian.

10 Other factors in the record further support the bankruptcy  
11 court's finding of bad faith. Debtor was current on his auto loan  
12 payments and had no unsecured debt due to his prior chapter 7  
13 discharge. Debtor's proposed plan showed he had no interest in  
14 reorganizing the debt owed to U.S. Bank; he sought only to  
15 eliminate the bank's claim against the Property, which was the  
16 only asset of the estate. Ultimately, as the bankruptcy court  
17 repeatedly told Debtor, his current case served no legitimate  
18 bankruptcy purpose.

19 If a bankruptcy court determines that cause exists to convert  
20 or dismiss, it must also (1) decide whether dismissal, conversion,  
21 or the appointment of a trustee or examiner is in the best  
22 interests of creditors and the estate and (2) identify whether  
23 there are unusual circumstances establishing that dismissal or  
24 conversion is not in the best interests of creditors and the  
25 estate. § 1112(b)(1), (b)(2); In re Sullivan, 522 B.R. at 612.

26 The bankruptcy court determined that conversion served no  
27 purpose as there were no creditors to pay. We find no error in  
28 that determination. Debtor did not argue that any unusual

1 circumstances existed for the court to consider or raise that  
2 issue in his opening brief. Thus, he has waived that argument.  
3 Smith v. Marsh, 194 F.3d 1045, 1052 (9th Cir. 1999) ("[A]n  
4 appellate court will not consider issues not properly raised  
5 before the [trial] court. Furthermore, on appeal, arguments not  
6 raised by a party in his opening brief are deemed waived."). In  
7 any event, none exist here. There is nothing unusual about a  
8 debtor trying to get a free house.

9 Finally, Debtor contends the bankruptcy court erred by  
10 dismissing his case when his appeal of the stay relief order was  
11 pending. This argument is now moot due to the dismissal of that  
12 appeal. Nonetheless, there was nothing improper about the court's  
13 decision to entertain a motion to dismiss while the appeal of the  
14 stay relief order was pending.<sup>7</sup>

## 15 VI. CONCLUSION

16 We conclude that the bankruptcy court did not abuse its  
17 discretion in dismissing Debtor's chapter 11 case as a bad faith  
18 filing under § 1112(b). Accordingly, we AFFIRM.

---

19  
20  
21  
22  
23  
24  
25 <sup>7</sup> In conjunction with Debtor's opening brief, he filed a  
26 "declaration" which objects to the evidence U.S. Bank filed in  
27 support of its stay relief motion. We will not consider the  
28 declaration for two reasons. First, it is essentially an  
impermissible second opening brief, consisting almost entirely of  
argument and citations to authority. Second, the arguments  
pertain to issues involved in the dismissed appeal of the stay  
relief order and thus are not relevant to the issue before us.