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OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL OF THE NINTH CIRCUIT

In re: ARMIN DIRK VAN DAMME, Debtor.	BAP No. NV-25-1052-NBC Bk. No. 25-10329-gs
ARMIN DIRK VAN DAMME, Appellant, v. U.S. BANK NATIONAL ASSOCIATION, as Trustee, successor by merger to Lasalle Bank National Association, as Trustee for Structured Asset Investment Loan Trust Mortgage Pass-Through Certificates, Series 2004-11; WELLS FARGO BANK, N.A., Appellees.	**MEMORANDUM**[*]

Appeal from the United States Bankruptcy Court
for the District of Nevada
Gary A. Spraker, Bankruptcy Judge, Presiding

Before: NIEMANN, BRAND, and CORBIT, 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.

INTRODUCTION

Chapter 11[1] debtor Armin Dirk Van Damme ("Debtor") appeals the bankruptcy court's order dismissing his case with prejudice and imposing a two-year bar to refiling. This appeal, like the more than 20 other cases involving Debtor since 2009, relates to the real property currently scheduled as Debtor's residence and commonly known as 2775 Twin Palms Circle, Las Vegas, Nevada (the "Property"). After multiple bankruptcy filings and over 15 years of litigation in various courts, the bankruptcy court determined Debtor filed his most recent case in bad faith to delay foreclosure of the Property.

Debtor's arguments before this Panel further support this conclusion. Debtor's stated challenge to the dismissal order is that it "permitted an unlawful . . . foreclosure sale" of the Property. Debtor argues the order dismissing his case was "void ab initio for violating the automatic stay . . . and [his ex-wife's] discharge injunction." Debtor argues simultaneously that the Property is (1) not part of his bankruptcy estate (thereby, per his arguments, removing subject matter jurisdiction from the bankruptcy court to dismiss his chapter 11 case), and (2) protected by the automatic stay arising from this latest bankruptcy case (thereby, again per his arguments, making the foreclosure sale "void ab initio"). Debtor's argument against

[1] Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532, and all "Civil Rule" references are to the Federal Rules of Civil Procedure.

the two-year bar is that it is "prohibited due to U.S. Bank's bad faith, judicial estoppel, and the court's lack of jurisdiction."

Debtor's arguments are not well-taken. The bankruptcy court correctly applied the law, and its determination of bad faith is well supported by the record. This appeal is simply the latest step in Debtor's well-documented efforts to "unreasonably deter and harass creditors." *Marsch v. Marsch (In re Marsch)*, 36 F.3d 825, 828 (9th Cir. 1994). We discern no error and AFFIRM.

FACTS[2]

A. The Property and Loan History

On September 21, 2004, Debtor and his now ex-wife, Geraldine Van Damme, refinanced the Property with a loan in the principal amount of $740,000 (the "Loan"). The Loan was secured by a first deed of trust against the Property recorded on October 5, 2004. After a series of assignments,

[2] We exercise our discretion to take judicial notice of documents electronically filed in the underlying bankruptcy case and related proceedings. *See Atwood v. Chase Manhattan Mortg. Co. (In re Atwood)*, 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003); *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (Courts "may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.") (citation omitted). While the facts set forth below are drawn primarily from the memorandum decision issued by the bankruptcy court in support of the order on appeal, they have been supplemental by the documents filed in the noted related cases.

appellee U.S. Bank N.A. (collectively with its servicer Wells Fargo Bank, N.A., "U.S. Bank") is the secured creditor holding the Loan.[3]

Sometime between October 2004 and December 2008, the Van Dammes separated.[4] A final divorce decree appears to have been entered on or about August 5, 2022.

The Van Dammes failed to make payments due under the Loan and a notice of default was recorded in October 2007. On March 18, 2008, Debtor signed a Loan Modification Agreement. No payments were made after the execution of that modification in 2008. Roughly 17 years later, U.S. Bank completed a foreclosure sale of the Property on February 24, 2025.

B. Prior Litigation History

On or about October 1, 2004, the owners of the neighboring property ("Hammer") sued the Van Dammes in Nevada state court for causes of action related to a property line dispute. After several days of trial, Geraldine Van Damme filed a chapter 7 bankruptcy case in the Northern District of California on December 16, 2008. As noted above, Debtor was listed as the separated, non-filing spouse in that bankruptcy case. Although stayed as to Geraldine Van Damme, the trial proceeded against Debtor,

[3] The transfer of the Loan between secured lenders through the Mortgage Electronic Registration Systems, Inc. aka MERS is detailed in both *Van Damme v. Wells Fargo Bank, N.A. (In re Van Damme*), 651 B.R. 791, 802 (Bankr. D. Nev. 2022), and the bankruptcy court's memorandum decision at issue in this appeal.

[4] Geraldine Van Damme listed Armin Van Damme as her separated, non-filing spouse in her chapter 7 bankruptcy case filed on December 16, 2008.

with the court finding against Debtor on all counts. After the state court signed a 23-page memorandum decision but before it was filed, Debtor filed his own chapter 7 bankruptcy case in the Northern District of California on March 6, 2009 (the "First Bankruptcy"). *See Van Damme v. Hammer 1994 Trust (In re Van Damme)*, BAP No. NC-12-1601-JuPaD, 2013 WL 5550368 (9th Cir. BAP Oct. 8, 2013) (finding judgment against Van Damme nondischargeable under § 523(a)(6) on the basis of issue preclusion).

1. Debtor's First Bankruptcy

U.S. Bank describes the First Bankruptcy as the beginning of "what would become a more-than sixteen-year crusade to obtain a free house, each step of which was decided against" Debtor. Debtor was represented in the First Bankruptcy by an attorney. His schedules in that case list his joint interest in the Property, a first mortgage against the Property in the amount of $796,930, and a lis pendens against the Property by Hammer. Debtor received his discharge in the First Bankruptcy on June 9, 2009.

Several months later, U.S. Bank moved for relief from the automatic stay to foreclose on its deed of trust against the Property. The bankruptcy court granted that motion on December 22, 2010.

2. Debtor's First State Court Lawsuit Challenging the Loan and Pending Foreclosure

On August 28, 2015, Debtor filed suit in Nevada state court against U.S. Bank, and other parties related to the lender, challenging the loan

modification and seeking to invalidate the deed of trust. In October 2015, that action was removed by U.S. Bank to the federal district court (the "First District Court Case"). After amendments, Debtor's operative complaint asserted claims for quiet title, fraud, breach of contract, and breach of the implied covenant of good faith and fair dealing. On March 26, 2018, the district court entered an order dismissing the case with prejudice for failure to state a claim and as time-barred ("Order Dismissing First District Court Case").[5]

After the dismissal of the First District Court Case,[6] U.S. Bank recorded another notice of default, and on June 5, 2019, it recorded a Notice of Trustee's Sale scheduling the foreclosure sale for July 1, 2019.

3. Debtor's Second Bankruptcy Case

Three days before the scheduled foreclosure sale, Debtor filed his second bankruptcy case—this time in the District of Nevada (the "Second Bankruptcy"). Again, Debtor was represented by counsel and listed U.S. Bank in his Schedule D as a secured creditor owed $808,041 secured by the

[5] *See Van Damme v. JP Morgan Chase Bank, Inc., N.A.*, No. 2:15-cv-1951-GMN-PAL, 2018 WL 1512599 (D. Nev. Mar. 26, 2018).

[6] The First District Court Case is still open. On April 1, 2024, the district court entered an order granting a motion by U.S. Bank to expunge a lis pendens filed against the Property by Debtor. Debtor appealed that order to the Ninth Circuit. That appeal was assigned Case No. 24-2481 and is still pending at this time. *See Van Damme v. JP Morgan Chase Bank, Inc., N.A.*, No. 2:15-cv-01951-GMN-PAL, 2024 WL 2944250 (D. Nev. June 10, 2024) (denying motion for stay pending appeal and related motions).

Property. U.S. Bank filed a proof of claim asserting a secured claim in the amount of $1,492,802.87.33.

4. Adversary Proceeding by Debtor in Second Bankruptcy Challenging Loan and Pending Foreclosure

On May 26, 2021, Debtor's counsel in the Second Bankruptcy filed an adversary complaint against U.S. Bank. The complaint alleged that: (1) the loan modification was invalid; (2) U.S. Bank was not the real party in interest on the promissory note; (3) the Loan was sold without proper securitization; (4) U.S. Bank lacked standing; (5) U.S. Bank committed fraud; and (6) U.S. Bank's claim is barred. After more than a year of litigation, on August 18, 2022, the bankruptcy court entered an order granting a motion by U.S. Bank to dismiss the adversary proceeding without leave to amend ("Order Dismissing First AP"). *See Van Damme*, 651 B.R. 791. The order rejected Debtor's arguments against U.S. Bank's standing to enforce the Loan. Moreover, the court explained that Debtor was precluded from challenging U.S. Bank's status under the doctrine of issue preclusion, in light of the Order Dismissing First District Court Case. As to the fraud claims, the court held that they were also barred by claim preclusion—again, in light of the First District Court Case—as well as the applicable statute of limitations.

Debtor appealed the Order Dismissing First AP to the Panel on September 2, 2022. The Panel affirmed the bankruptcy court's decision on April 12, 2023. *See Van Damme v. Wells Fargo, N.A. (In re Van Damme)*, BAP

No. NV-22-1175-GCB, 2023 WL 2911610 (9th Cir. BAP April 12, 2023). Debtor then appealed to the Ninth Circuit, which affirmed the Panel's decision on July 23, 2024. *See Van Damme v. Wells Fargo, N.A. (In re Van Damme)*, No. 23-60023, 2024 WL 3508512 (9th Cir. July 23, 2024).

5. Debtor's Grant, Bargain and Sale Deed of Property

On August 22, 2022—four days after the entry of the Order Dismissing First AP—Debtor and Geraldine Van Damme executed and recorded a Grant, Bargain, and Sale Deed conveying the Property solely to Geraldine Van Damme. That deed references a Decree of Divorce ordered on August 5, 2022. The deed was executed during the pendency of the Second Bankruptcy Case and apparently after Debtor terminated his bankruptcy counsel in May 2022.

6. Debtor's Second State Court Lawsuit Challenging the Loan and Pending Foreclosure

On April 11, 2024, U.S. Bank recorded another Notice of Default and Election to Sale under Deed of Trust. Roughly two months later, in June 2024, Debtor filed another action to quiet title in the Property in Nevada state court. On July 17, 2024, U.S. Bank removed that action to the district court (the "Second District Court Case"). Debtor also asserted claims for violations of due process and the Fair Debt Collections Practices Act, unjust enrichment, emotional distress, and fraud.

The district court entered an order granting U.S. Bank's motion to dismiss the case with prejudice on September 19, 2024,[7] which was subsequently amended on November 26, 2024[8] (the "Order Dismissing Second District Court Case"). The order details how the claims asserted were barred by claim and/or issue preclusion and as a collateral attack on the district court's order in the First District Court Case expunging a lis pendens filed by Debtor. The order also finds Debtor's claim of unjust enrichment time barred. Finally, the order dismisses the balance of Debtor's claims as "devoid of legal merit" after carefully analyzing each in detail. The order also denies a motion by U.S. Bank to declare Debtor a vexatious litigant noting the court "cannot conclude that his litigation history has reached the point of vexatious - though it's close."

On December 17, 2024, Debtor appealed various orders related to the dismissal of the Second District Court Case to the Ninth Circuit.[9] That appeal was assigned Case No. 24-7767 and is still pending at this time.

7. Debtor's Third Bankruptcy

While the Second District Court Case was pending, on September 12, 2024, Debtor filed his third bankruptcy case (the "Third Bankruptcy") in

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[7] *See Van Damme v. U.S. Bank N.A.*, No. 2:24-cv-01287-JAD-BNW, 2024 WL 4235982 (D. Nev. Sept. 19, 2024).

[8] *See Van Damme v. U.S. Bank N.A.*, No. 2:24-cv-01287-JAD-BNW, 2024 WL 4892599 (D. Nev. Nov. 26, 2024).

[9] The Order Dismissing Second District Court Case was not directly among the orders appealed.

the Northern District of California.[10] On September 26, 2024, U.S. Bank filed a motion to transfer the venue of the Third Bankruptcy to the bankruptcy court for the District of Nevada (the "Motion to Transfer Venue"). U.S. Bank argued Debtor had fraudulently listed as his residence a mailbox at a UPS store in Danville, California to support the filing in California.

The Motion to Transfer Venue was scheduled to be heard on November 6, 2024. On the day of the hearing, Debtor's counsel filed an application to dismiss the Third Bankruptcy. At the November 6 hearing, Judge Lafferty directed Debtor's counsel to upload an updated dismissal order providing that (1) any future bankruptcy filings by Debtor in the Northern District of California would be assigned to Judge Lafferty, regardless of the division where the petition is filed, and (2) any hearings on motions to dismiss the case, to change venue, or for relief from the automatic stay may be heard on seven days' notice without the need for a specific order shortening time. The order, so providing, was entered on November 8, 2024.

8. Adversary Proceeding by Debtor in Third Bankruptcy Challenging Loan and Pending Foreclosure

Before the dismissal of the Third Bankruptcy, Debtor, acting in pro se, filed an adversary proceeding against U.S. Bank on November 1, 2024 (the "Second AP"). His complaint included claims for: (1) declaratory relief

[10] Shortly after filing the Third Bankruptcy, Debtor unsuccessfully sought to stay the Second District Court Case, based on his bankruptcy filing, prior to the entry of the Order Dismissing Second District Court Case.

and determination of standing; (2) judicial notice of adjudicative facts and void judgment under Civil Rule 60(b)(4); (3) fraud and misrepresentation; and (4) objection to claims and demand for documentation of standing. Debtor then filed two motions in the Second AP seeking a temporary restraining order and preliminary injunction to prevent the pending foreclosure sale of the Property. Neither motion was noticed for a hearing. On November 25, 2024, U.S. Bank brought a motion to dismiss the Second AP. That motion was heard on December 5, 2024, with the court granting the motion. The order dismissing the Second AP with prejudice was entered on December 10, 2024 (the "Order Dismissing Second AP").

Debtor appealed the Order Dismissing Second AP to the Panel on December 17, 2024. On May 27, 2025, that appeal was dismissed for lack of prosecution in light of Debtor's failure to file an opening brief and transcript. The Second AP was then closed by the bankruptcy court on July 24, 2025.

9. Debtor's Third State Court Lawsuit Challenging the Loan and Pending Foreclosure

On December 16, 2024, the day before appealing the Order Dismissing Second AP, Debtor, pro se, filed a third action in Nevada state court "for Declaratory Relief, to Bar Foreclosure."[11] The complaint, filed this time against the foreclosing trustee appointed by U.S. Bank, again

[11] As noted above, Debtor filed his notice of appeal related to the Second District Court Case on December 17, 2024—the day after filing his third Nevada state court lawsuit to challenge the foreclosure of the Property.

raised claims for quiet title and challenged any ability to proceed with foreclosure based on the same arguments previously rejected by the district and bankruptcy courts. On December 19, 2024, the defendant removed the complaint to federal district court (the "Third District Court Case"). The next day, U.S. Bank moved to intervene and that motion was granted. *See Van Damme v. Nat'l Default Serv. Co.*, No. 2:24-cv-02376-RFB-EJY, 2025 WL 2530648 (D. Nev. Sept. 2, 2025).

Despite the latest lawsuit, U.S. Bank proceeded with the foreclosure process, recording a Notice of Sale on December 23, 2024. The foreclosure sale was scheduled for January 25, 2025. The Notice of Sale stated the unpaid principal and interest secured by the deed of trust totaled $1,831,711.24.60.

Debtor responded by filing a Petition for Foreclosure Mediation with the Nevada state court on December 30, 2024. Debtor followed the next day with a motion for a temporary restraining order to halt the foreclosure sale and another similar emergency motion a week later. On January 10, 2025, the Nevada state court entered a minute order denying both motions as improperly filed and beyond the scope of the foreclosure mediation assistance program.

C. Debtor's Latest Bankruptcy Filing and the Dismissal of His Case

On January 21, 2025, four days before the scheduled foreclosure sale of the Property, Debtor filed his fourth bankruptcy (the "Fourth Bankruptcy") in the District of Nevada. Debtor scheduled the Property as

his residence. Unlike his other bankruptcies, the Fourth Bankruptcy was filed under chapter 11. The current appeal originates from the order dismissing the Fourth Bankruptcy.

On January 22, 2025, U.S. Bank filed their Motion to (1) Dismiss Chapter 11 Case with Prejudice or, in the alternative, (2) for Immediate Relief from the Automatic Stay (the "Motion to Dismiss"). U.S. Bank also asked for the Motion to Dismiss to be heard on shortened time, prior to the scheduled foreclosure sale on January 25. The bankruptcy court initially scheduled the hearing for February 12, 2025.

Debtor filed numerous motions—at least 21 as recited in footnote 65 of the memorandum decision by the bankruptcy court—directed at stopping the foreclosure sale, including requests to continue the hearing on the Motion to Dismiss. One of those was a motion filed on February 2, 2025 entitled Debtor, Armin Dirk Van Damme's Emergency Motion for Stay or Continuance of Proceedings Pending Resolution of Medical Emergency. That filing asserted Debtor had suffered a medical emergency on January 31, 2025, and requested a continuance of all matters. As relevant here, the bankruptcy court continued the hearing on the Motion to Dismiss to March 4, 2025.

On February 20, 2025, the bankruptcy court entered an Order Denying Motions (1) to Cancel Hearing and (2) to Extend the Automatic Stay (the "Order Denying Extension of Stay"). With that order, the automatic stay in Debtor's Fourth Bankruptcy terminated on February 20,

2025 by operation of § 362(c)(3)(A). The Order Denying Extension of Stay is the subject of Debtor's related appeal, BAP No. NV-25-1039-NBC.[12] As noted above, U.S. Bank completed the foreclosure sale of the Property on February 24, 2025.[13]

Debtor filed an opposition to the Motion to Dismiss on March 3, 2025, the day before the hearing. Debtor and counsel for U.S. Bank appeared by Zoom video conference at the March 4 hearing. At the conclusion of the hearing, the court took the Motion to Dismiss under submission.

Debtor then filed a flurry of additional motions continuing his attack on the foreclosure sale. On March 6, Debtor filed a motion entitled Emergency Motion for Clarification of the March 4, 2025 Hearing; Notice of Lack of Subject Matter Jurisdiction Due to Separation of Deed and Note; and Request for Credit Bid Information. The following day, Debtor filed the Debtor's Emergency Motion to Halt All Proceedings and Halt the Trustee Sale Due to Separation of Deed and Note, and Due Process Violations. On March 11, 2025, Debtor filed his Emergency Motion for

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[12] The Panel heard oral argument on the related appeals concurrently on October 24, 2025. At the start of Debtor' allotted time, the Panel advised Debtor his allocated time for argument would cover both appeals. Debtor's oral argument focused entirely on his alleged defenses to U.S. Bank's foreclosure of the Property. Debtor did not substantively address either appeal in his oral argument. After oral argument, Debtor filed a motion asking the Panel to "grant rehearing/reconsideration in BAP No. 25-1052." Debtor alleges he was denied the opportunity to heard as to this appeal. For the reasons noted above, the motion is DENIED.

[13] The bankruptcy court denied additional motions by Debtor, filed between February 20 and 24, to further continue the hearing on the Motion to Dismiss.

Clarification of the March 4, 2025 Hearing, Immediate Halt of All Proceedings Due to Lack of Subject Matter Jurisdiction, and Judicial Notice of Summary Judgment Filed in Federal Court. Again, none of the motions were set for hearing or properly noticed.

On March 13, 2025, the bankruptcy court entered its memorandum decision (the "Memorandum Decision")[14] and order (the "Appealed Order") on the Motion to Dismiss. The Appealed Order granted the Motion to Dismiss and dismissed the Fourth Bankruptcy with a two-year bar to refiling a bankruptcy case from the date of the entry of the Appealed Order. The 20-page Memorandum Decision detailed the bankruptcy court's findings in support of the Appealed Order.

The court found the Fourth Bankruptcy was filed in bad faith and that bad faith constituted "cause" for dismissal under § 1112(b). The court found that each factor that may be considered, in accordance with the test developed by the Ninth Circuit in *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1226 (9th Cir. 1999), "compels a finding that the bankruptcy was filed in bad faith" and Debtor "has failed to identify any valid bankruptcy purpose to be served." Memorandum Decision at 14 and 17. The court then found Debtor's behavior was so egregious it warranted a two-year bar to refiling:

[14] *See In re Van Damme*, No. 25-10329-gs, 2025 WL 825282 (Bankr. D. Nev. March 13, 2025).

> Accordingly, under § 349, as interpreted by *Leavitt*, the bankruptcy court shall exercise its discretion to bar any further bankruptcy filings submitted by Van Damme for two years after entry of the order of dismissal to prevent further bankruptcy litigation of the same issues involving U.S. Bank's secured claim.

Memorandum Decision at 19-20.

JURISDICTION

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

ISSUES

1. Did the bankruptcy court abuse its discretion by dismissing Debtor's chapter 11 case?

2. Did the bankruptcy court abuse its discretion by imposing a two-year bar to refiling?

STANDARDS OF REVIEW

A bankruptcy court's decisions to dismiss a case and to impose a filing bar are reviewed for abuse of discretion. *See Leavitt*, 171 F.3d at 1222-23. A bankruptcy court abuses its discretion if it applies an incorrect legal standard, misapplies the correct legal standard, or makes factual findings that are illogical, implausible, or not supported by the record. *Schlegel v. Billingslea (In re Schlegel)*, 526 B.R. 333, 338 (9th Cir. BAP 2015) (citing *TrafficSchool.com, Inc. v. Edriver Inc.*, 653 F.3d 820, 832 (9th Cir. 2011)).

A bankruptcy court's finding of bad faith in support of dismissal is reviewed for clear error. *Leavitt*, 171 F.3d at 1222-23. Factual findings are clearly erroneous if they are illogical, implausible, or without support in the record. *Retz v. Samson (In re Retz)*, 606 F.3d 1189, 1196 (9th Cir. 2010).

DISCUSSION

The Motion to Dismiss sought, and the Appealed Order granted, relief under § 1112(b). The Motion to Dismiss also asked that the case be dismissed with prejudice, in light of Debtor's egregious conduct. The Appealed Order granted this additional relief, under § 349(a) as applied by *Leavitt*, and ordered a two-year bar to refiling. We will separately address these two components of the Appealed Order.

A. The bankruptcy court did not abuse its discretion by dismissing the case.

The bankruptcy court may dismiss a chapter 11 case "for cause" upon the request of a party in interest and after notice and a hearing under § 1112(b)(1). Although the statute does not define "for cause," it identifies a nonexclusive list of factors that may constitute "cause." *See* § 1112(b)(4). However, the bankruptcy court has broad discretion in determining what constitutes "cause" under § 1112(b). *Sullivan v. Harnisch (In re Sullivan)*, 522 B.R. 604, 614 (9th Cir. BAP 2014); *Pioneer Liquidating Corp. v. United States Tr. (In re Consol. Pioneer Mortg. Entities),* 248 B.R. 368, 375 (9th Cir. BAP 2000) (noting § 1112(b)(4) is "not exhaustive"), *aff'd*, 264 F.3d 803 (9th Cir. 2001).

A commonly recognized non-enumerated cause for dismissal is a debtor's lack of good faith in filing the bankruptcy petition. *Marsch*, 36 F.3d at 828 (citations omitted). Because good faith is required in the commencement and prosecution of a chapter 11 case, "the lack thereof constitutes 'cause' for dismissal under § 1112(b)(1)." *Sullivan*, 522 B.R. at 614 (quoting *In re Mense*, 509 B.R. 269, 276 (Bankr. C.D. Cal. 2014)). Further, "[o]n a motion to dismiss under § 1112(b), the debtor bears the burden to prove the chapter 11 petition was filed in good faith." *Greenberg v. United States Tr. (In re Greenberg)*, BAP No. SC-16-1350-BJuF, 2017 WL 3816042, at *4 (9th Cir. BAP Aug. 17, 2017) (citing *Marshall v. Marshall (In re Marshall)*, 721 F.3d 1032, 1048 (9th Cir. 2013)).

In determining if a petition was filed in good faith, bankruptcy courts must review the "totality of circumstances." *Eisen v. Curry (In re Eisen)*, 14 F.3d 469, 470 (9th Cir. 1994) (per curiam); *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 917-919 (9th Cir. BAP 2011). While the debtor's subjective intent may be relevant to this good/bad faith inquiry, it is not determinative. *Marsch*, 36 F.3d at 828. The bankruptcy court must determine "whether [the] debtor is attempting to unreasonably deter and harass creditors or attempting to effect a speedy, efficient reorganization on a feasible basis." *Id.* (citing *Idaho Dep't of Lands v. Arnold (In re Arnold)*, 806 F.2d 937, 939 (9th Cir. 1986)). Bankruptcy courts "may consider any factors which evidence an intent to abuse the judicial process

and the purposes of the reorganization provisions." *Marshall*, 721 F.3d at 1048 (citation modified).

The Ninth Circuit has summarized the factors considered in determining the presence of bad faith as follows: (1) whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed his petition or plan in an inequitable manner; (2) the debtor's history of filings and dismissals; (3) whether the debtor intended to defeat state court litigation; and (4) whether egregious behavior is present. *Leavitt*, 171 F.3d at 1224. "The bankruptcy court is not required to find that each [*Leavitt*] factor is satisfied or even to weigh each factor equally." *Khan v. Barton (In re Khan)*, 523 B.R. 175, 185 (9th Cir. BAP 2014). Rather, "[t]he *Leavitt* factors are simply tools that the bankruptcy court employs in considering the totality of the circumstances." *Id*.

The Memorandum Decision considered each *Leavitt* factor separately. As to the first *Leavitt* factor, the bankruptcy court found Debtor has "continued to litigate the same basic facts" decided in the First District Court Case. Memorandum Decision at 14. "Having litigated and lost, not only is he precluded from relitigating the claims he argued, but claim preclusion also prevents him from rearguing any claim that he could have brought against" U.S. Bank or its agents. *Id*. The court further found Debtor had four separate adverse judgments and different judges "telling him directly and unequivocally that such claims are precluded and time barred." *Id*. Debtor raised the same arguments again as the basis of his

opposition to the Motion to Dismiss. The court concluded: "His continued desire and willingness to raise claims that have been finally decided against him compellingly demonstrates that he has filed the current bankruptcy to continue those efforts rather than reorganize under the Bankruptcy Code." *Id.* The bankruptcy court also noted Debtor's continued failure to file his schedules and statements—"the most basic, initial obligation in bankruptcy"—as further evidence that Debtor is "merely using this bankruptcy for his tactical advantage rather than to reorganize." *Id.* at 14-15.

As to the second *Leavitt* factor, the bankruptcy court found Debtor has an extensive history of filing, dismissing and refiling both before and outside of the bankruptcy courts. Memorandum Decision at 15. Debtor's bankruptcy cases were used "as a vehicle to continue his challenges to the secured debt" without any substantive progress being made in the bankruptcy cases themselves. *Id*. After the First Bankruptcy, each subsequent bankruptcy ended in dismissal without a confirmed plan. Those bankruptcy filings were also strategically "sandwiched between [Debtor's] litigation in the district court." *Id*. The court further found the Third Bankruptcy was filed "under a tenuous and allegedly fraudulent basis" and Debtor "conveniently avoided scrutiny of his actions by voluntarily dismissing that chapter 13." *Id*.

As to the third *Leavitt* factor—intent to defeat state court litigation—the bankruptcy court noted Debtor has continued to invoke both the

discharge (from the First Bankruptcy) and recurring automatic stays to thwart U.S. Bank's efforts to foreclose on the Property without any substantive merit.[15] Further, the arguments raised in the Fourth Bankruptcy against U.S. Bank's secured claim have been previously rejected by the district court and bankruptcy courts with prejudice. The court found this "continued litigation with U.S. Bank is also readily characterized as 'an apparent two-party dispute that can be resolved outside of the Bankruptcy Court's jurisdiction.'" Memorandum Decision at 16 (quoting *Sullivan*, 522 B.R. at 616).

The bankruptcy court noted that Debtor failed to address the issue of his good faith in filing the Fourth Bankruptcy—an issue for which Debtor holds the burden of proof under § 1112(b). *See also Marshall*, 721 F.3d at 1048. There was no discussion of a plan or purpose behind the chapter 11 filing. Nor did Debtor file his required case commencement documents, "which would address whether he has the ability to reorganize." Memorandum Decision at 17. These facts left the bankruptcy court to conclude Debtor "filed the current bankruptcy merely to defeat the pending foreclosure rather than to reorganize." *Id*.

As to the final *Leavitt* factor, the bankruptcy court found Debtor's actions also constitute egregious behavior:

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[15] In dismissing the Second Bankruptcy, the bankruptcy court specifically advised Debtor that "[n]either the foreclosure sale nor the enforcement of the deed of trust, however, are barred by the discharge injunction resulting from Debtor's prior Chapter 7." Memorandum Decision at 16 (citing Case No. 19-14142 Dkt. 156 at 6).

> There is no evidence that [Debtor] has other creditors or any need to reorganize. As noted above, he is no longer personally liable for the secured debt and has no ownership interest in the Property – it is now owned by his ex-wife. Taken at face value, his continued efforts to litigate a debt for which he is no longer personally liable, and concerning property he no longer owns, serves no valid bankruptcy purpose – especially given the final decisions entered against him by this and other courts.

Memorandum Decision at 17.

Debtor's only argument against the dismissal under § 1112(b) is that the Appealed Order was "void ab initio" in light of his alleged defenses to U.S. Bank's Loan secured by the Property. We agree with the bankruptcy court that these arguments are "frivolous as contrary to controlling law." Memorandum Decision at 15-16. Further, the bankruptcy court neither considered nor was required to consider the validity of U.S. Bank's security interest in dismissing Debtor's case for bad faith.[16] Debtor has not established an abuse of discretion by the bankruptcy court in its decision to dismiss the Fourth Bankruptcy for cause under § 1112(b). The bankruptcy court correctly determined that a finding of bad faith in filing can constitute "cause" for dismissal under § 1112(b). The court applied the correct legal standard, and its factual findings were not illogical or

[16] As a result, Debtor's arguments regarding the validity of U.S. Bank's claims are not properly before the Panel and are not relevant to this appeal. For the same reason, the Panel declines Debtor's request to take judicial notice of certain documents that Debtor contends would have bearing on the validity of U.S. Bank's claim. Such documents are not relevant to a determination regarding whether Debtor filed his chapter 11 petition in bad faith.

implausible. The court's findings were amply supported by the extensive record Debtor has created.

There is no clear error in the bankruptcy court's determination of bad faith in support of dismissal. As outlined above, the bankruptcy court provided multiple facts, supported by the record, weighing in favor of each *Leavitt* factor. Nor is the finding of bad faith "illogical or implausible" in view of the "totality of the circumstances." Debtor provided no evidence to the contrary to support his good faith in filing the Fourth Bankruptcy.

For each of these reasons, the bankruptcy court did not abuse its discretion in dismissing the Fourth Bankruptcy under § 1112(b).

B. The bankruptcy court did not abuse its discretion by imposing a two-year bar to refiling.

While § 1112(b) provides the basis for the dismissal of Debtor's chapter 11 case, the effect of that dismissal is governed by § 349(a), which provides that the dismissal of a bankruptcy case does not bar a discharge in a later case, unless the court orders otherwise.[17]

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[17] Section 349(a) provides:

> Unless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title.

When a bankruptcy case is dismissed, the default rule is to treat the debtor as if the case never happened for the purpose of filing again or getting a discharge of debts in the future—what is commonly referred to as "without prejudice." However, § 349(a) also allows the bankruptcy court to order otherwise for cause. "Section 349(a) is not ambiguous, and plainly provides that the bankruptcy court may, at its discretion and for cause, bar the discharge of existing debt. Inherent in this authority is the power to bar subsequent bankruptcy petitions that seek to discharge such debt." *Leavitt v. Soto (In re Leavitt),* 209 B.R. 935, 942 (9th Cir. BAP 1997), *aff'd*, 171 F.3d 1219 (9th Cir. 1999); *see also Duran v. Rojas (In re Duran)*, 630 B.R. 797, 809 (9th Cir. BAP 2021). The issue of the length of the bar is a matter for the court's discretion. *See Kulick v. Leisure Vill. Ass'n. (In re Kulick)*, BAP No. CC-22-1114-FTL, 2022 WL 17848939, at *3 (9th Cir. BAP Dec. 16, 2022) (quoting *In re Craighead*, 377 B.R. 648, 657 (Bankr. N.D. Cal. 2007).

"'Cause' to impose a condition of prejudice on a dismissal is a more rigorous concept than 'cause' to dismiss a case." *Duran*, 630 B.R. at 808-09. Bad faith under § 349(a) requires egregious behavior, while bad faith for dismissal under § 1112(b) does not—even though the same *Leavitt* factors are considered in determining cause for bad faith under either. *Duran*, 630 B.R. at 810 (citing *Leavitt*, 171 F.3d at 1224). In this case, the bankruptcy court found extensive egregious behavior by Debtor—satisfying the "cause" requirements of both §§ 1112(b) and 349(a).

U.S. Bank asked that Debtor be barred from filing any further bankruptcy cases for two years. Debtor's argument against the two-year bar is that it is "prohibited due to U.S. Bank's bad faith, judicial estoppel, and the court's lack of jurisdiction." Again, U.S. Bank's alleged bad faith and Debtor's asserted defense to U.S. Bank's secured claim are irrelevant to Debtor's lack of good faith in filing the Fourth Bankruptcy. The bankruptcy court's decision that a two-year bar from filing was warranted by Debtor's egregious conduct is not illogical or implausible. The bankruptcy court aptly noted "[n]othing in the record suggests that [Debtor] will be dissuaded from continuing this litigation even after the foreclosure sale."[18] Memorandum Decision at 19. The court applied the correct legal standard to impose additional restrictions under § 349(a), and its findings of egregious conduct are supported by the record. We, therefore, discern no abuse of discretion in the court's imposition of the two-year bar to refiling.

CONCLUSION

For the reasons set forth above, we AFFIRM.

[18] This prediction has already proven accurate. On April 9, 2025, Debtor filed his fourth Nevada state court lawsuit challenging the foreclosure of the Property. That case was filed against the attorneys for the foreclosing trustee, Tiffany & Bosco, P.A.—a name referenced several times by Debtor in his oral arguments to this Panel. Like the prior state court lawsuits filed by Debtor, this new lawsuit was removed by the defendant to federal district court for the District of Nevada, where it was assigned Case No. 2:25-cv-00785 and remains pending.