NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re: MICHAEL ALLEN ZITO and ELIZABETH ZITO, Debtors.	BAP No. AZ-25-1120-LNB Bk. No. 3:22-bk-08203-DPC
MICHAEL ALLEN ZITO; ELIZABETH ZITO, Appellants, v. EDWARD JOHN MANEY, Chapter 13 Trustee; BLUE CASTLE (CAYMAN) LTD., Appellees.	**MEMORANDUM***

Appeal from the United States Bankruptcy Court
for the District of Arizona
Daniel P. Collins, Bankruptcy Judge, Presiding

Before: LAFFERTY, NIEMANN, and BRAND, 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

Michael Allen Zito and Elizabeth Zito ("Debtors") appeal the bankruptcy court's order dismissing their chapter 13[1] case under § 1307(c).

Debtors omitted certain assets from their schedules. After chapter 13 trustee Edward John Maney (the "Trustee") discovered the existence of the assets, he brought a motion to dismiss Debtors' case based on bad faith. The bankruptcy court held that Debtors' omissions, coupled with their failure to satisfy the requirements of their confirmed plan, provided cause to dismiss their case.

Debtors assert that dismissal on the basis of bad faith was improper because their omissions were inadvertent, the assets lacked value, and Debtors would have satisfied claims against the estate through a chapter 13 plan. We detect no error in the bankruptcy court's conclusions.

We AFFIRM.

FACTS[2]

Prepetition, Debtors held a 100% interest in several entities that owned property in Yavapai County, Arizona (the "BySynergy Entities"). According to Debtors, the BySynergy Entities' businesses also included

[1] Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532.

[2] We have taken judicial notice of the bankruptcy court docket and various documents filed through the electronic docketing system. *See O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.)*, 887 F.2d 955, 957-58 (9th Cir. 1989); *Atwood v. Chase Manhattan Mortg. Co. (In re Atwood)*, 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

certain water distribution rights and water treatment operations related to these properties.

In December 2022, Debtors filed a chapter 13 petition. Debtors did not list their interest in any of the BySynergy Entities in their schedules or statements. Debtors also did not identify any interest in water distribution rights they may have held in connection with their operation of the BySynergy Entities. Debtors signed their schedules and statements under penalty of perjury.

Debtors did identify their interest in real property located in Sedona, Arizona (the "Sedona Property") and indicated that Blue Castle (Cayman) LTD ("Blue Castle") held a lien against the Sedona Property that Debtors disputed.

In March 2024, during the course of Debtors' bankruptcy case, counsel representing one of the BySynergy Entities owned by Debtors sent a cease-and-desist letter to Dulge, LLC ("Dulge"), an entity that owned property previously owned by the BySynergy Entities. Through this letter, the BySynergy Entities asserted that they still owned the water rights to the land despite the transfer of the real property to Dulge.

Subsequently, Dulge filed a lawsuit against Debtors and certain BySynergy Entities to determine ownership of the water rights and certain other assets. Notwithstanding the litigation surrounding these assets, Debtors did not amend their schedules to identify their interests in the BySynergy Entities, the water rights, or the litigation against Dulge.

In April 2024, the bankruptcy court confirmed Debtors' chapter 13 plan. The confirmation order required Debtors to, among other things, sell the Sedona Property to satisfy Blue Castle's lien and, potentially, Debtors' other creditors.

A few months after confirmation of Debtors' plan, the Trustee discovered Debtors' interest in the BySynergy Entities and the litigation against Dulge. Based thereon, the Trustee filed a motion to dismiss Debtors' case pursuant to § 1307(c), arguing that Debtors' concealment of assets amounted to bad faith warranting dismissal of their case (the "Motion to Dismiss").

One week after the Trustee filed the Motion to Dismiss, Debtors filed an amended schedule A/B. In their amended schedules, Debtors identified a 100% interest in the BySynergy Entities as well as their interest in the lawsuit against Dulge. Debtors also opposed the Motion to Dismiss, primarily arguing that the omitted assets lacked any value and that Debtors were entitled to receive a discharge because they had made payments under their confirmed plan.

In June 2025, the bankruptcy court held a hearing on the Motion to Dismiss and issued its oral ruling (the "Ruling"). In its Ruling, the bankruptcy court held that the Trustee had demonstrated cause to dismiss Debtors' case based on the omission of assets, noting that Debtors' opinion about the value of the assets was irrelevant to the legal question before the court.

Despite the existence of cause, however, the court stayed dismissal until August 1, 2025, allowing Debtors an opportunity to avoid dismissal of their case by selling the Sedona Property or obtaining financing to satisfy the claims against the estate. On June 25, 2025, the court entered an order in accordance with its Ruling (the "Dismissal Order").

Debtors appealed the Dismissal Order. Subsequently, the court entered another order staying dismissal until September 15, 2025. Ultimately, Debtors neither timely sold the Sedona Property nor obtained financing to pay off their claims, and Debtors' case was dismissed.

JURISDICTION

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

ISSUE

Did the bankruptcy court err in dismissing Debtors' bankruptcy case under § 1307(c)?

STANDARD OF REVIEW

We review the bankruptcy court's dismissal of the chapter 13 case for an abuse of discretion. *Schlegel v. Billingslea (In re Schlegel)*, 526 B.R. 333, 338 (9th Cir. BAP 2015). A bankruptcy court abuses its discretion if it applies the wrong legal standard, misapplies the correct legal standard, or makes factual findings that are illogical, implausible, or without support in inferences that may be drawn from the facts in the record. *See*

TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d 820, 832 (9th Cir. 2011) (citing *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc)).

"We may affirm on any basis supported by the record." *Caviata Attached Homes, LLC v. U.S. Bank, N.A. (In re Caviata Attached Homes, LLC)*, 481 B.R. 34, 44 (9th Cir. BAP 2012) (citation omitted).

DISCUSSION

Section 1307(c) allows courts to dismiss a bankruptcy case "for 'cause.'" *In re Schlegel*, 526 B.R. at 339. The list set forth in § 1307(c) is nonexclusive. *Jimenez v. ARCPE 1, LLP (In re Jimenez)*, 613 B.R. 537, 543 (9th Cir. BAP 2020). "Even though § 1307(c) does not explicitly mention it, the bad faith filing of a bankruptcy petition also may constitute 'cause' for dismissal." *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (9th Cir. BAP 2011) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999)).

In determining if a petition was filed in bad faith, bankruptcy courts must review the "totality of circumstances." *Id.* at 917 (citation omitted).

> [W]hen considering dismissal of a chapter 13 case due to bad faith in its filing, a bankruptcy court should consider: (1) whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the 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.

Id. at 917-18 (citing, *inter alia*, *In re Leavitt*, 171 F.3d at 1224).

> [Additional] characteristics of a bad-faith Chapter 13 case include the presence of few creditors, filing on the eve of a foreclosure sale or on the eve of some other litigation event in another court, the debtor's failure to meet deadlines for filing or amending the statement, schedules or the plan, the debtor's failure to attend the meeting of creditors or other hearings, a plan that proposes little payment to creditors, a plan that has no hope of confirmation and general lying, cheating or stealing by the debtor.

Id. at 918 n.11 (citation omitted).

"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), *aff'd but criticized on other grounds*, 846 F.3d 1058 (9th Cir. 2017), *and abrogated in part by Liquidating Tr. Comm. v. Freeman (In re Del Biaggio)*, 834 F.3d 1003 (9th Cir. 2016). Rather, "[t]he *Leavitt* factors are simply tools that the bankruptcy court employs in considering the totality of the circumstances." *Id.*

Debtors' primary argument on appeal is that their omission of assets was inadvertent and that such assets lacked any value. As is evident from the authorities above, even if true, neither Debtors' inadvertence nor the actual value of the omitted assets immunizes a debtor from dismissal of a case based on Debtors' bad faith.[3]

[3] In addition to arguing that inadvertence and lack of value constituted mitigating factors that should have prevented dismissal of their case, Debtors also suggested that they disclosed the subject assets to their bankruptcy counsel. Although Debtors do not directly set forth an advice of counsel defense, any assertion that their counsel's knowledge of the assets immunized Debtors from dismissal is without merit.

Here, the bankruptcy court concluded that Debtors misrepresented facts in their schedules by omitting their interests in the BySynergy Entities and potential water rights held by those entities and/or Debtors. Because courts need not address every *Leavitt* factor to find cause for dismissal, the court did not err in holding that these misrepresentations warranted dismissal. Contrary to Debtors' assertion in their briefs, the court was not required also to conclude that Debtors' behavior was egregious.

Although the bankruptcy court noted that the misrepresentations alone provided cause to dismiss Debtors' case, the bankruptcy court also cited Debtors' failure to sell the Sedona Property in accordance with the terms of their confirmed plan as another basis to dismiss Debtors' case. Pursuant to § 1307(c)(6), a material default of a confirmed plan qualifies as "cause" to dismiss a chapter 13 case. Given that the failure to abide by the terms of a confirmed plan is an enumerated ground for dismissal under the Code, Debtors' inability to sell the Sedona Property also supported the court's dismissal of their case.

Debtors do not articulate why the bankruptcy court's findings regarding the omission of assets and Debtors' inability to satisfy the terms of their chapter 13 plan were "illogical, implausible, or without support in inferences that may be drawn from the facts in the record."

Debtors bore the responsibility of accuracy in their schedules and statements.

TrafficSchool.com, Inc., 653 F.3d at 832. Given the liberal abuse of discretion standard, the court properly considered the totality of the circumstances.

Aside from their arguments regarding inadvertence and valuation, Debtors' only argument is that the bankruptcy court should have considered alternatives to dismissal. First, contrary to Debtors' assertion in their briefs, courts are not required to consider alternatives to dismissal where there is cause to dismiss a case under § 1307(c). Second, the court here *did* provide Debtors the chance to avoid dismissal by twice staying the Dismissal Order to allow Debtors an opportunity to either sell the Sedona Property or obtain financing in accordance with their chapter 13 plan.

Finally, Debtors argue that even if dismissal was appropriate, they complied with the court's conditions to avoid dismissal and, as a result, the court erred in dismissing their case. Debtors' assertion is unsupported by the record. To avoid dismissal, the court required Debtors to either sell the Sedona Property or obtain financing to pay off 100% of the claims against the estate. Debtors did not timely satisfy either condition.

Instead, Debtors argue that their filing of an amended chapter 13 plan that would pay all "legitimate" claims satisfied the court's conditions. But the court's order was clear: without the sale of the Sedona Property or financing that would satisfy all claims against the estate, Debtors' case would be dismissed. Debtors did not offer any authorities that would otherwise compel the court to refrain from dismissal simply because Debtors proposed an amended chapter 13 plan.

For the reasons set forth above, the bankruptcy court did not err in dismissing Debtors' case under § 1307(c).

CONCLUSION

For the reasons set forth above, we AFFIRM.