

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 21 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

HARADA FAMILY DENTAL CARE, PC,

Plaintiff - Appellee,

v.

KAPITUS SERVICING, INC., as Servicing
Agent for Kapitus LLC,

Defendant - Appellant,

STRATEGIC FUNDING SOURCE, INC.,
D/B/A Kapitus Servicing Inc.,

Defendant.

No. 25-6945

D.C. No.

4:25-cv-00057-BMM

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Brian M. Morris, Chief District Judge, Presiding

Submitted May 19, 2026**
Seattle, Washington

Before: TALLMAN, OWENS, and R. NELSON, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Kapitus Servicing, Inc. appeals the district court’s order denying its motion for leave to file an interlocutory appeal of the bankruptcy court’s order denying arbitration. We have jurisdiction under 9 U.S.C. § 16(a)(1)(B). We affirm.

1. To start, the district court erred in denying Kapitus leave to appeal. Section 16(a)(1)(B) of the Federal Arbitration Act gave Kapitus a right to interlocutory appeal of the bankruptcy court’s order denying its motion to compel arbitration. 9 U.S.C. § 16(a)(1)(B); *see Coinbase, Inc. v. Bielski*, 599 U.S. 736, 740 (2023). Appellee Harada Family Dental Care concedes as much in its Answering Brief.

The district court’s contrary reasoning rested on a misreading of *In re Thorpe Insulation Co.*, 671 F.3d 1011 (9th Cir. 2012). The district court treated the bankruptcy court’s conclusion that there was an inherent conflict between the FAA and the Bankruptcy Code as an obstacle to Kapitus’s right to invoke § 16(a)(1)(B). But whether such a conflict exists is a merits question: a bankruptcy court has discretion to deny arbitration of a core claim only if “arbitration would conflict with the underlying purposes of the Bankruptcy Code.” *Thorpe*, 671 F.3d at 1021. Whether the claim is core, whether the requisite conflict exists, and whether the bankruptcy court properly exercised its discretion are all merits questions reviewable on appeal. *See id.* at 1019–20. The district court’s jurisdictional label was error.

2. We may nevertheless affirm on any basis presented in the record. “When a district court improperly dismisses a bankruptcy appeal without reaching the merits, we generally reverse the district court’s dismissal and remand for the district court’s consideration of the appeal in the first instance.” *In re Wrightwood Guest Ranch, LLC*, 896 F.3d 1109, 1113 (9th Cir. 2018) (quoting *Mastro v. Rigby*, 764 F.3d 1090, 1097 (9th Cir. 2014)). “But remand is not mandatory, nor is it advisable” where the record is sufficiently developed and we are “in as good a position as the district court” to resolve the question. *Id.* (cleaned up). Both conditions are met here. The district court’s order denying leave reached what was, in substance, a merits holding under *Thorpe*—finding that Kapitius’s proof of claim “submits an amount far exceeding the value of Plaintiff’s assets” and “seriously could offset Plaintiff’s bankruptcy plans.” The district court would not undertake any additional factual development if we were to remand. It would rely on the same record already developed before the bankruptcy court; and it would likely reach the same conclusion. And as we review the bankruptcy court’s order de novo, *Thorpe*, 671 F.3d at 1019, there is no need for the district court to further develop the legal issues. Where a district court “incorrectly attache[s] a jurisdictional label to what should

have been a decision on the merits,” we may affirm on the merits. *Al-Qarqani v. Chevron Corp.*, 8 F.4th 1018, 1027 (9th Cir. 2021).¹

3. On the merits, the bankruptcy court did not abuse its discretion in denying arbitration. Under *Thorpe*, a bankruptcy court has no discretion to deny arbitration of non-core claims, but it has discretion to deny arbitration of core claims if it concludes that arbitration would conflict with the underlying purposes of the Bankruptcy Code. 671 F.3d at 1020–22. Kapitus concedes that the counterclaim here is statutorily core under 28 U.S.C. § 157(b)(2)(C). The only remaining question is whether the bankruptcy court abused its discretion in finding the underlying conflict.

It did not. The bankruptcy court identified the “twin goals” of the Bankruptcy Code: distribution of assets and a fresh start for the debtor. And it found that arbitration-induced delay would frustrate those goals. Specifically, the bankruptcy court found that Class 3 and 4 unsecured creditors “are the ultimate beneficiaries if Harada prevails because their distributions under the Plan will increase,” while “the Small Business Administration risks having its distributions under the Plan modified

¹ Kapitus argues that affirming on the merits without remand denies it an opportunity for full merits briefing in the district court. But Kapitus ignores that it had ample opportunity to brief the merits in its Opening Brief in this court. We may “affirm the district court’s dismissal on any basis supported by the record even if the district court did not rely on that basis.” *Wrightwood*, 896 F.3d at 1113 (cleaned up). Kapitus’s choice to focus its brief before us exclusively on the appealability question does not create a right to remand.

and reduced.” Those findings are specific to this bankruptcy proceeding. *See Thorpe*, 671 F.3d at 1021–22.

Kapitus argues that the bankruptcy court could not assume delay from arbitration absent a case-specific finding that arbitration itself would slow proceedings. *Thorpe* forecloses that argument. There, we recognized that “[a]rbitration of a creditor’s claim against a debtor, even if conducted expeditiously, prevents the coordinated resolution of debtor-creditor rights and can delay the confirmation of a plan of reorganization,” and that the bankruptcy court “would lose control over the timing of the reorganization because it would not have control over the timing of the arbitrations.” 671 F.3d at 1023. That reasoning was based on the structural features of arbitration, not specific findings as to how long a specific arbitration proceeding was likely to last. *Id.* The bankruptcy court was entitled to treat arbitration-induced delay as a relevant cost and to weigh it against the particularized creditor impacts it identified.

AFFIRMED.