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FILED
JUL 13 2018
MOLLY C. DWYER,
CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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|--|--|
| In re: SONJA RITTER, Debtor. ----- SONJA RITTER, Appellant, v. LOIS I. BRADY, Chapter 7 Trustee, Appellee. | No. 17-60064 BAP No. 17-1001 MEMORANDUM* |
|--|--|

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Faris, Brand, and Jury, Bankruptcy Judges,
Presiding

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

Submitted July 10, 2018^{**}

Before: CANBY, W. FLETCHER, and
CALLAHAN, Circuit Judges.

Sonja Ritter appeals pro se from the Bankruptcy Appellate Panel’s (“BAP”) judgment affirming the bankruptcy court’s order denying her motion to reopen her bankruptcy case. We have jurisdiction under 28 U.S.C. § 158(d). We review de novo BAP decisions and apply the same standard of review that the BAP applied to the bankruptcy court’s ruling. *Boyajian v. New Falls Corp. (In re Boyajian)*, 564 F.3d 1088, 1090 (9th Cir. 2009). We affirm.

The bankruptcy court did not abuse its discretion by denying Ritter’s motion to reopen and motion for reconsideration because Ritter failed to demonstrate grounds for such relief. See *Curry v. Castillo (In re Castillo)*, 297 F.3d 940, 945 (9th Cir. 2002) (“A bankruptcy court’s decision to reopen is entirely within its sound discretion, based upon the circumstances of each case.” (citation and internal quotation marks omitted)); *Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (standard of review and

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

grounds for relief under Fed. R. Civ. P. 59(e) or 60(b)); *see also* Fed. R. Bankr. P. 9023, 9024 (making Rules 59 and 60 applicable to bankruptcy cases). Contrary to Ritter's contention, the Supreme Court has held that the lien avoidance mechanism in 11 U.S.C. § 506(d) is not available when a claim secured by a lien has been allowed under § 502. *See Dewsnup v. Timm*, 502 U.S. 410, 416-20 (1992); *accord Bank of Am., N.A. v. Caulkett*, 135 S. Ct. 1995, 1999-2001 (2015) (applying *Dewsnup's* interpretation of § 506(d) to wholly underwater mortgage liens).

We reject as without merit Ritter's contention that the bankruptcy court was required to grant her motion to avoid PNC Bank's junior lien on the basis of PNC Bank's failure to oppose the motion. We reject as unsupported by the record Ritter's contentions that the bankruptcy court was biased against her as a pro se litigant or failed to give due consideration to her motion to reopen or motion for reconsideration.

AFFIRMED.

FILED
AUG 08 2017
SUSAN M. SPRAUL,
CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

**UNITED STATES BANKTRUPTCY APELLATE
PANEL OF THE NINTH CIRCUIT**

| | |
|---|---|
| In re: SONJA RITTER, Debtor. | BAP No. NC-17- 1001-FBJu Bk. No. 13-40868 |
| ----- -- SONJA RITTER, Appellant, | MEMORANDUM* |
| v. LOIS I. BRADY, Chapter 7 Trustee, Appellee. | |

Submitted Without Argument on July 27, 2017

* 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.

Filed – August 8, 2017

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

Honorable William J. Lafferty, Bankruptcy Judge,
Presiding

Appearances: Appellant Sonja Ritter, pro se, on brief.

Before: FARIS, BRAND, and JURY, Bankruptcy
Judges.

INTRODUCTION

Debtor Sonja Ritter appeals the bankruptcy court's denial of her motion to reopen her chapter 7¹ bankruptcy case. The bankruptcy court correctly ruled that reopening her case would have been futile; even if the bankruptcy court reopened her case, she would not have been able to accomplish her objective, which was to strip off her junior mortgage lien. We AFFIRM.

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

FACTUAL BACKGROUND²

When Ms. Ritter filed her chapter 7 bankruptcy petition, she owned real property (the “Property”) valued at \$185,000. Bank of America held a first lien against her Property with a claim for \$297,229. PNC Bank held a second lien with a claim for \$42,416.

Ms. Ritter filed a motion to avoid PNC Bank’s lien (“Motion to Avoid Lien”). She stated that the senior lien exceeded the value of the Property and requested that the court determine that PNC Bank’s lien was unsecured under § 506. According to Ms. Ritter, she prepared and submitted a proposed order granting the Motion to Avoid Lien.

The bankruptcy court granted Ms. Ritter a discharge. Without ruling on the Motion to Avoid Lien, it closed the case.

Over three years later, Ms. Ritter filed a motion to reopen the case and to avoid PNC Bank’s lien (“Motion to Reopen”). She requested that the court

² Other than a hearing transcript, Ms. Ritter did not provide the Panel with any excerpts of record. We exercise our discretion to review the bankruptcy court’s docket. See O’Rourke v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d 955, 957–58 (9th Cir. 1989).

reopen her case and sign the order avoiding PNC Bank's lien because "no objection was filed and my Court order was never signed."

The court denied the motion, stating that it would not reopen the case because it could not strip off the lien under Bank of America, N.A. v. Caulkett, 135 S. Ct. 1995 (2015).

Ms. Ritter filed a motion to reconsider the denial of the Motion to Reopen ("Motion for Reconsideration"). She reiterated that she had filed the Motion to Avoid Lien and that, because PNC Bank did not oppose it, the court should have granted it. At the hearing on the Motion for Reconsideration, Ms. Ritter questioned whether Caulkett was applicable, given that she had filed her Motion to Avoid Lien two years prior to that decision.

The bankruptcy court entered an order denying the Motion for Reconsideration. It explained that, based on Caulkett, it could not grant Ms. Ritter's request to strip off PNC Bank's junior lien on the Property. The court held that Ms. Ritter did not articulate any basis for reconsideration under Civil Rule 60.

Ms. Ritter timely appealed the denial of the Motion to Reopen and Motion for Reconsideration.

JURISDICTION

The bankruptcy court had jurisdiction

pursuant to 28 U.S.C. §§ 1334 and 157(b)(1). We have jurisdiction under 28 U.S.C. § 158.

ISSUE

Whether the bankruptcy court erred in denying Ms. Ritter’s Motion to Reopen and Motion for Reconsideration so that she could avoid PNC Bank’s second mortgage lien.

STANDARD OF REVIEW

We review for abuse of discretion the denial of a motion to reopen a bankruptcy case. Staffer v. Predovich (In re Staffer), 306 F.3d 967, 971 (9th Cir. 2002). We also review for abuse of discretion the denial of a motion for reconsideration. N. Alaska Envtl. Ctr. v. Lujan, 961 F.2d 886, 889 (9th Cir. 1992).

To determine whether the bankruptcy court has abused its discretion, we conduct a two-step inquiry: (1) we review de novo whether the bankruptcy court “identified the correct legal rule to apply to the relief requested” and (2) if it did, we consider whether the bankruptcy court’s application of the legal standard was illogical, implausible or “without support in inferences that may be drawn from the facts in the record.” United States v. Hinkson, 585 F.3d 1247, 1261–62 & n.21 (9th Cir. 2009) (en banc).

DISCUSSION

Ms. Ritter sought to reopen her bankruptcy case to void PNC Bank's lien because she believed that the lien should have been stripped off in her initial chapter 7 case. When the bankruptcy court denied her motion, she sought reconsideration, repeating the same arguments. The bankruptcy court did not err.

Section 350(b) states that “[a] case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.” “[A]lthough a motion to reopen is addressed to the sound discretion of the bankruptcy court, ‘the court has the duty to reopen an estate whenever prima facie proof is made that it has not been fully administered.’” Lopez v. Speciality Rests. Corp. (In re Lopez), 283 B.R. 22, 27 (9th Cir. BAP 2002) (citation omitted).

Nevertheless, a bankruptcy court should decline to reopen a case when doing so would be a “pointless exercise.” Beezley v. Cal. Land Title Co. (In re Beezley), 994 F.2d 1433, 1434 (9th Cir. 1993); see Cortez v. Am. Wheel, Inc. (In re Cortez), 191 B.R. 174, 179 (9th Cir. BAP 1995) (“The bankruptcy court did not abuse its discretion by denying the debtors’ motion to reopen their bankruptcy case when there was no legal basis for granting the relief sought.”).

The bankruptcy court properly denied the Motion to Reopen because it could not strip off PNC Bank's junior lien. In Caulkett, the Supreme Court

held that “a debtor in a Chapter 7 bankruptcy proceeding may not void a junior mortgage lien under § 506(d) when the debt owed on a senior mortgage lien exceeds the current value of the collateral.” 135 S. Ct. at 2001. The Court relied on its previous decision in Dewsnup v. Timm, 502 U.S. 410 (1992).

Similarly, Ms. Ritter is seeking to strip off PNC Bank’s junior lien because her home was worth less than the amount owed on her first mortgage. But Caulkett forbids a bankruptcy court from doing so.

In her Motion for Reconsideration, Ms. Ritter questioned whether Caulkett, decided in 2015, was applicable to her 2013 bankruptcy case. The bankruptcy court correctly explained that Caulkett restated the law as it had existed since the Supreme Court’s 1992 decision in Dewsnup.

Ms. Ritter argues that PNC Bank did not oppose the Motion to Avoid Lien. But the bankruptcy court can deny a motion, even if no one opposed it, if the motion lacks legal merit. See Local Bankruptcy Rule 9014-1(b)(4) (allowing, but not requiring, a court to grant an unopposed motion by default); Edward H. Bohlin Co. v. Banning Co., 6 F.3d 350, 356 (5th Cir. 1993) (Under similar Texas law, “[a]lthough failure to respond to a motion will be considered a statement of no opposition, the court is not required to grant every unopposed motion.”).

Even if the bankruptcy court had reopened Ms. Ritter’s case, it could not void PNC Bank’s lien.

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Because the Motion to Reopen was futile, the court did not abuse its discretion when it denied the Motion to Reopen and Motion for Reconsideration.

CONCLUSION

For the reasons set forth above, the bankruptcy court did not err. Accordingly, we AFFIRM.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
(OAKLAND DIVISION)

In Re: Case No. 13-40868
Chapter 7
SONJA RITTER,
Debtor. Oakland, California
November 9, 2016
10:33 a.m.

_____ /

TRANSCRIPT OF PROCEEDINGS
MOTION TO REOPEN CASE

BEFORE THE HONORABLE WILLIAM J.
LAFFERTY, UNITED STATES BANKRUPTCY
JUDGE

APPEARANCES:

For the Debtor, Pro Se: Sonja Ritter
499 Estudillo Avenue,
#101
San Leandro, CA 94577

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2868 E. Clifton Court

13a

Gilbert, AZ 85295
Telephone: (480) 361-3790

P R O C E E D I N G S

November 9, 2016

10:33 a.m.

-oOo-

COURTROOM DEPUTY: All rise. This is the United States Bankruptcy Court for the Northern District of California, the Honorable William J. Lafferty presiding.

THE COURT: Okay. Please be seated. Okay, this is our 10:30 law and motion calendar. I'm going to call these out of order. I'm going to start with the last one, Sonja Ritter.

MS. RITTER: Good morning, Your Honor.

THE COURT: Please tell me your name for the record.

MS. RITTER: Oh, Sonja Ritter.

THE COURT: Okay. So Chapter 7 case.

MS. RITTER: Yes.

THE COURT: And you want me to reopen it.

MS. RITTER: Yes.

THE COURT: So you can strip off the lien.

MS. RITTER: Correct.

THE COURT: Okay. I've got good new and bad news.

MS. RITTER: Okay.

THE COURT: I can reopen the case; I can't strip off the lien.

MS. RITTER: Okay.

THE COURT: Up until a year ago, there was some doubt as to whether you could in a Chapter 7 case strip off a wholly unsecured lien, and the Supreme Court told us last year, very emphatically, we can't. So — that's the Bank of America versus Calkeck case. I have a copy of it if you want to see it. It's not very long, and it's unfortunately very direct. What I'm going to suggest to you is, you can't do what you want to do in a Chapter 7 case; I would suggest that you talk to a lawyer and see if there's some other way of doing what you want to do, because it's possible there is. Okay?

MS. RITTER: Okay.

THE COURT: Make sense? But I'll give this to you in the meantime, and what I would suggest is, I

just deny the motion as moot, because I can't ultimately do what you'd like me to do in a 7.

MS. RITTER: Okay.

THE COURT: Does that make sense to you?

MS. RITTER: Yes, it does.

THE COURT: And you can assess what else you might be able to do, and there are some other things you might be able to do. Okay? And I'll leave it at that. I don't mean to be cryptic, but I'm not your lawyer and if you talk to somebody, you'll — I think you'll have some options. Okay?

MS. RITTER: Okay.

THE COURT: Let me give this to you in the meantime.

MS. RITTER: Oh, that would be great. Thank you, Your Honor.

THE COURT: Sure, you bet. It will keep you up at night. It's thrilling and exciting and -- okay. Okay?

MS. RITTER: Okay.

THE COURT: All right. Thank you very much. Good luck going forward.

MS. RITTER: Thank you.

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(Whereupon, the proceedings are concluded at 10:35 a.m.)

CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript from the digital sound recording of the proceedings in the above-entitled matter.

DATED: March 23, 2017

By: /s/ Jo McCall

17a

Entered on Docket
November 14, 2016
Edward J. Emmons, Clerk
U.S. Bankruptcy Court
Northern District of
California



The following
constitutes the order of the
court.

Signed November 11, 2016

A handwritten signature in cursive script that reads "William J. Lafferty, III". The signature is written in black ink and is positioned above a horizontal line.

William J. Lafferty, III
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re
Sonja Ritter,

Debtor.

No. 13-40868
Chapter 7

ORDER DENYING MOTION TO REOPEN CASE

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On November 2, 2016, Debtor filed the *Motion to Reopen and Vacate Reopening Fee, Motion to Sign Order Vacating Lien of PNC, and Motion to Waive Filing Fee* (doc. 27) (the “Motion”). On November 9, 2016, the Court held a hearing on the Motion. For the reasons stated on the record, the Motion is DENIED.

END OF ORDER

COURT SERVICE LIST

Sonja Ritter
499 Estudillo Ave. # 101
San Leandro, CA 94577

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF
CALIFORNIA
OAKLAND DIVISION

In Re:) **Case No. 13-40868-WJL**
) Chapter 7
SONJA RITTER,)
) December 14, 2016
) Oakland, California
Debtor.) 10:30 a.m. Calendar
)
) STATUS CONFERENCE
) REGARDING MOTION
) FOR
) RECONSIDERATION
)
_____)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WILLIAM J.
LAFFERTY, UNITED STATES CHIEF
BANKRUPTCY JUDGE.

APPEARANCES:

For the Debtor, Pro Se: Sonja Ritter
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20a

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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

OAKLAND, CALIFORNIA - DECEMBER 14, 2016 -
10:41 A.M.

THE COURT: Okay. Anybody here on the phone in connection with Sonja Ritter?

COURTCALL OPERATOR: No, Your Honor.

THE COURT: Okay. Are you Ms. Ritter?

MS. RITTER: Yes, I am, Your Honor.

THE COURT: Come on up.

MS. RITTER: Good morning.

THE COURT: Good morning. I'm not entirely sure what you're asking me to do. When we were here last, the issue I thought we had was could you strip a lien in a Chapter 7 case, right? That was the question?

MS. RITTER: The issue -- excuse me, Your Honor. I'm trying to get over something.

THE COURT: Uh-huh.

MS. RITTER: The issue was is that when I had filed for bankruptcy in 2012, 2013, --

THE COURT: Uh-huh.

MS. RITTER: -- I had filed in paperwork avoidance of a lien. So at the time, the Court Clerk did not get that filed in court. And I had recently tried to refinance my home, --

THE COURT: Uh-huh.

MS. RITTER: -- and so PNC Bank is not willing to give me a clear title in order for me to refinance my home.

THE COURT: Uh-huh.

MS. RITTER: And so I'm very concerned that, with every month that passes, the mortgage rates keep going up.

THE COURT: Well, yeah, I understand all of that.

MS. RITTER: Okay.

THE COURT: And what we talked about last time was the fact that the United States Supreme Court has told me in no uncertain terms, you can't strip a lien in a Chapter 7. Thank you. Go home. End of story.

So, I, you know, whatever delusions of grandeur I may have, I'm not going to ignore a Supreme Court opinion that is right on point. And to the extent this is a motion for reconsideration, I mean, I just don't know what I can do. So, I'm at something of a loss here.

MS. RITTER: So, may I say something, Your Honor?

THE COURT: You have already, but keep going.

MS. RITTER: Okay. Well, I mean, this is something that was filed several years ago, so that it was prior to that Supreme Court hearing. So that's why I had put this matter back before the Court, in hopes that something that –

THE COURT: I don't –

MS. RITTER: -- could have been –

THE COURT: I don't think it works that way for two reasons. First of all, I didn't have the request in front of me until fairly recently. And secondly, there was nothing in that Supreme Court opinion that suggested they thought they were changing the law. They were just answering a question nobody had asked before.

So I don't think there's any power for me to do what you want, and I have to deny the motion.

MS. RITTER: Okay.

THE COURT: Okay? I mean, I suggest it might help you -- psychologically, if nothing else -- to talk to a lawyer about this, somebody who could look at this from your perspective and maybe can explain why I'm telling you I don't think I can do a darn thing about it. Because I am convinced I can't do a darn thing about this problem. Okay?

MS. RITTER: Well, I hear what you're saying, Your Honor. I guess I'm --

THE COURT: Okay.

MS. RITTER: For me, as I guess I'll say the plaintiff because I don't know my standing, but I feel like this is something that happened several years ago that just was overlooked by the courts, and so that's why I'm -- that's why I brought it back before the Court, in order to --

THE COURT: I don't -- with all due respect, I don't see it the same way you do.

MS. RITTER: Well, you can -- okay.

THE COURT: I think I'm being asked now to do it, and I can't do it now. And frankly, I'm not sure I could have done it then. Okay?

MS. RITTER: Okay.

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THE COURT: All right.

MS. RITTER: I respect that. And thank you,
Your Honor.

THE COURT: All right. Good luck. Thank you.

(Proceedings concluded at 10:45 a.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript
from the electronic sound recording of the proceedings
in the above- entitled matter.

/s/ Kathy Rehling 03/07/2017

Kathy Rehling, CETD-444 Date
Certified Electronic Court Transcriber

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Entered on Docket
December 23, 2016
Edward J. Emmons,
Clerk
U.S. Bankruptcy Court
Northern District of
California



The following constitutes the
order of the court. Signed
December 22, 2016

A handwritten signature in black ink that reads "William J. Lafferty, III". The signature is written over a horizontal line.

William J. Lafferty, III
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re
Sonja Ritter,

Debtor.

No. 13-40868
Chapter 7

ORDER DENYING MOTION FOR
RECONSIDERATION

On November 21, 2016, Debtor in the above-captioned case filed a motion for reconsideration titled *Memorandum of Points & Authorities in Support of Motion for Reconsideration* (doc. 34) (the “Motion”). The Motion requested relief from this Court’s *Order Denying Motion to Reopen Case* (doc. 32) entered on November 11, 2016 after a hearing on November 9, 2016. The Court denied the underlying *Motion to Reopen Case* because the Court concluded that in light of the United State Supreme Court’s opinion in *Bank of America, N.A. v. Caulkett*, 135 S. Ct. 1995, 192 L. Ed. 2d 52 (2015), the Court could not grant the Debtor’s request to “strip off” an undersecured second lien on her real property.

Under Federal Rule of Civil Procedure 60, motions for reconsideration may be granted due to 1) mistake, inadvertence, surprise, or excusable neglect; 2) newly discovered evidence; 3) fraud; 4) the judgment being void, 5) the judgment having been satisfied; or 6) any other reason that justifies relief. In the Motion, Debtor neither pleads nor supports any of the above listed specific reasons but rather simply wants the Court to decide the matter differently upon a second look.

In addition to the Debtor’s failure to articulate a basis for reconsideration, applicable case law is against Debtor’s position concerning the avoidance of liens in chapter 7 cases. In 1992, the Supreme Court of the United States held in *Dewsnup v. Timm*, 502 U.S. 410, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992) that

partially secured liens could not be stripped down in a chapter 7 case. Subsequently, in 1998, the Ninth Circuit Bankruptcy Appellate Panel found that the logic of *Dewsnup* applied equally to stripping off wholly unsecured liens in chapter 7 cases. *Laskin v. First Nat'l Bank of Keystone*, 222 B.R. 872 (B.A.P. 9th Cir. 1998). In *Caulkett*, the Supreme Court confirmed the validity of the Ninth Circuit Bankruptcy Appellate Panel's ruling, in an opinion that applies to all bankruptcy cases, and clearly prohibits the relief sought here by Debtor. Thus, Debtor's argument that *Caulkett*, which was published by the Supreme Court in 2015, should not be the basis for denying Debtor's motion to strip off a lien in 2013 does not address the prevailing view in this district regarding stripping off of liens in a chapter 7 as articulated in *Laskin*. For that reason, this Court would have been unable to grant Debtor the relief requested in 2013 (before *Caulkett*), just as it cannot grant the relief in 2016 (after *Caulkett*).

Lastly, as it has done several times, the Court suggests Debtor consult with an attorney regarding her case. A bankruptcy attorney may be able to suggest an alternate route to achieving the ends Debtor seeks.

For the reasons stated on the record and above, the Court HEREBY DENIES the Motion.

END OF ORDER

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COURT SERVICE LIST

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499 Estudillo Ave. # 101
San Leandro, CA 94577