APPENDIX

continued

APPENDIX continued

APPENDIX A

NOT FOR PUBLICATION

[DATE STAMP]
FILED
JUN 24, 2022
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
No. 20-56150

In re: PAULA PARISI,
Debtor,

PAULA PARISI,
Appellant,
v.
PETER C. ANDERSON, United States Trustee for Region 16,
Appellee.

D.C. No. 2:19-cv-07775-JVS

MEMORANDUM*

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

Appeal from the United States District Court
for the Central District of California
James V. Selna, District Judge, Presiding

Submitted June 15, 2022**

Before: SILVERMAN, WATFORD, and FORREST, Circuit Judges.

Paula Parisi appeals pro se from the district court's judgment affirming the bankruptcy court's order dismissing her Chapter 11 bankruptcy case. We have jurisdiction under 28 U.S.C. § 158(d). We review de novo the district court's decision and apply the same standard of review that the district court applied to the bankruptcy court's ruling. *Mano–Y & M, Ltd. v. Field* (*In re The Mortgage Store, Inc.*), 773 F.3d 990, 994 (9th Cir. 2014). We affirm.

The bankruptcy court did not abuse its discretion by dismissing Parisi's bankruptcy case for cause because the record demonstrates that Parisi failed to comply with the bankruptcy court's orders to submit a timely Chapter 11 plan and related disclosure statement, and to file timely monthly operating reports. See 11 U.S.C. § 1112(b)(4)(E) (explaining that failure to comply with court orders is cause for dismissal of a Chapter 11 bankruptcy petition);

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

Toibb v. Radloff, 501 U.S. 157, 165 (1991) (bankruptcy court has "substantial discretion" to dismiss a Chapter 11 case).

We do not consider Parisi's due process claims because Parisi failed to raise them before the bankruptcy court. See *In re Rains*, 428 F.3d 893, 902 (9th Cir. 2005) (explaining that "this Court does not consider an issue raised for the first time on appeal").

We do not consider Parisi's claims regarding the bankruptcy court's denial of Parisi's motion to continue the automatic stay, which was a final decision that Parisi appealed earlier in this action. See *Nat'l Env't Waste Corp. v. City of Riverside* (*In re Nat'l Env't Waste Corp.*), 129 F.3d 1052, 1054 (9th Cir. 1997 ("Orders granting or denying relief from the automatic stay are deemed to be final orders."); *Humanitarian Law Project v. U.S. Dep't of Justice*, 352 F.3d 382, 392-93 (9th Cir. 2003) (holding that law of the case prevented further review of a previous decision decided on appeal), vacated on other grounds by 393 F.3d 902 (9th Cir. 2004).

We reject as without merit Parisi's contentions that the bankruptcy court was biased against her, that the district court erred by naming the U.S. Trustee as appellee, or that the district court abused its discretion by refusing to allow Parisi to file an amended opening brief.

Parisi's motion to substitute her reply brief (Docket Entry No. 37) is granted. All other pending motions and requests are denied.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. CV 19-7775 JVS Date October 26, 2020
Title In re Paula Parisi

Present: The Honorable James V. Selna, U.S. District Court Judge

Lisa Bredahl Deputy Clerk	Court Reporter Not Present
Attorneys Present for Plaintiffs Not Present	Attorneys Present for Defendants Not Present

Proceedings: **[IN CHAMBERS] Order Regarding Motion for Relief and Motion for Rehearing**

Before the Court are two motions. First, Parisi filed a motion for relief from the court's order denying Parisi leave to file her amended opening brief ("AOB") and change the appellee (the "Motions Order") pursuant to Federal Rule of Bankruptcy Procedure 9024. Relief Mot., ECF No. 41. Second, appellant Paula Parisi ("Parisi") filed a motion for rehearing of the order dismissing her bankruptcy appeal (the "Appeal Order") pursuant to Federal Rule of Bankruptcy Procedure § 8022. Rehearing Mot., ECF No. 40.

For the following reasons, the Court **DENIES** Parisi's motion for relief and **DENIES** Parisi's motion for a rehearing.

I. BACKGROUND

The motions at issue arise from two of this Court's orders. In the first, the Court denied Parisi's motion to amend her opening brief, and denied her request to name the U.S. Bankruptcy Court as the appellee in this case and join U.S. Bank, N.A. ("U.S.Bank") and Selene Finance, LP ("Selene Finance"). Motions Order, ECF No. 38. The Court dismissed Parisi's motion to amend her opening brief because the Court concluded that neither Federal Rule of Bankruptcy Procedure 8018 nor Federal Rule of Civil Procedure 15 granted the Court that authority. Id. at 2-3. Moreover, even if Rule 15 applied, the Court concluded that granting Parisi leave to file the AOB would have been inappropriate for two reasons. Id. at 3. First, Parisi specifically requested that U.S. Trustee respond to an opening brief that she intended to substantially amend. Id. Second, Parisi demonstrated undue delay in filing her amended opening brief in that it was filed six months following a final deadline the Court set for the filing of her opening brief, which itself was filed late. Id. The Court then concluded that it was inappropriate to name the U.S. Bankruptcy Court as the appellee in this case because it did not have an interest in the underlying case. Id. Finally, the Court concluded that no rule gave the Court the authority to join U.S. Bank and Selene Finance as parties. Id. at 4.

In the second order, the Court denied Parisi's bankruptcy appeal. Appeal Order, ECF No. 39. The

Court concluded that the U.S. Bankruptcy Court did not abuse its discretion in dismissing Parisi's appeal. First, the Court found that the U.S. Bankruptcy Court had cause to dismiss Parisi's case because she had failed to comply with an order of the court by not timely filing a plan for reorganization, a related disclosure statement, or monthly operating statements. Id. at 3. Then, the Court concluded that the U.S. Bankruptcy Court properly found it more appropriate to dismiss Parisi's case rather than convert it into a chapter 7 proceeding because there had already been a foreclosure sale of Parisi's house. Id. at 4. Finally, the Court concluded that Parisi's due process arguments were not raised before the U.S. Bankruptcy Court and therefore could not be considered by the Court. Id.

II. LEGAL STANDARD

A. Motion for Relief

Federal Rule of Bankruptcy Procedure 9024 incorporates Federal Rule of Civil Procedure 60 as to bankruptcy cases. Pursuant to Federal Rule of Civil Procedure 60(b), the court may relieve a party from a final judgment, order, or proceeding for, among other reasons, "(1) mistake, inadvertence, surprise, or excusable neglect." If the motion is made under Rule 60(b)(1), the motion must be made within a reasonable time, and no more than one year after the judgment, order, or proceeding. Fed. R. Civ. P. 60(c)(1). The moving party bears the burden of establishing that Rule 60(b) relief is justified. Cassidy v. Tenorio, 856 F.2d 1412, 1415 (9th Cir. 1988).

In determining whether neglect is "excusable" within the meaning of the Rule, courts undertake an equitable analysis, looking to such factors as (1) the danger of prejudice to the opposing party; (2) the length of the delay before bringing the motion; (3) the reason for the delay; and (4) whether the movant's actions are in good faith. Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. Partnership, 507 U.S. 380, 395 (1993).

The decision to grant relief is within the discretion of the court. Meadows v. Dominican Republic, 817 F.2d 517, 521 (9th Cir. 1987).

B. Motion for Rehearing

Pursuant to Federal Rule of Bankruptcy Procedure 8022, "any motion for rehearing by the district court or [the Bankruptcy Appellate Panel] must be filed within 14 days after entry of judgment on appeal." If a motion for rehearing is granted, the district court may: "(A) make a final disposition of the appeal without reargument; (B) restore the case to the calendar for reargument or resubmission; or (C) issue any other appropriate order." Id.

III. DISCUSSION

A. Motion for Relief

Parisi first moves for relief from the Court's order denying Parisi's motion to amend and motion to change the name of the appellee. Parisi claims relief under Federal Rule of Civil Procedure 60(b) because

her failure to file her AOB timely was excusable neglect. Relief Mot. at 9. Specifically, she says that "excusable neglect applies where Appellant was struggling to file a credible pleading within acceptable time parameters." Id.

The Court disagrees that Parisi's late filing of the AOB was excusable neglect for which it can grant relief. First, Rule 60(b) allows the Court to provide relief from a "final judgment, order, or proceeding." Assuming that Rule 60(b) does apply to this appeal, it would only apply to the Court's order denying Parisi's bankruptcy appeal. The Court's order denying Parisi leave to file her AOB was not the final order in this appeal for it does not resolve Parisi's case. See Notes of the Advisory Committee on 1946 Amendments to Rule 60 ("The addition of the qualifying word 'final' emphasizes the character of the judgments, orders or proceedings from which Rule 60(b) affords relief; and hence interlocutory judgments are not brought within the restrictions of the rule.").

Accord "Interlocutory," Oxford English Dictionary ("Pronounced during the course of an action; not finally decisive of a case or suit.").

Moreover, even if the Court were to accept that Rule 60(b) does apply to the order denying Parisi leave to amend, the Court does not believe Parisi's failure to timely submit her AOB was excusable neglect. As the Court stated in its original order:

> Indeed, granting leave to file the amended brief would amount to allowing Parisi to knowingly circumvent the three previous time limits that the Court specified for the

> filing of her opening brief. After all, Parisi stated in her opening brief that she intended to file the instant amended opening brief, showing that she did not intend to file a final opening brief by the Court's deadline. The Court also expressly stated in its third extension that it would allow "no further extension." Third Extension, ECF No. 19.

Motions Order at 2-3. Parisi argues that the Court was incorrect in holding that Parisi "did not intend to file a final opening brief by the Court's deadline," and that she could provide affidavits that she daily informed others that she intended to file her brief "today." Relief Mot. at 11. But this type of proof is insufficient. Parisi does not address how her opening brief was filed four days past the Court's third extended deadline, for which the Court clearly said it would allow "no further extension." Nor does she address how that opening brief made reference to an AOB. This latter fact in particular shows that, even excusing Parisi's four-day delay, Parisi did not intend the original brief that she filed to be her final brief. As such, the Court does not conclude that Parisi's failure to file her opening brief until six months after the Court's third extended deadline is "excusable neglect" that justifies relief under Rule 60(b).

Parisi's other arguments for why she should be allowed to file her AOB relitigate the conclusion that the Court reached in its previous order. See Relief Mot. at 3-8, 11-12. These arguments are not linked to any rule that instructs the Court to reexamine its

prior Order. Consequently, even if successful they could not result in any relief for Parisi.

Regardless, these arguments are insufficient to persuade the Court that it should have allowed the AOB. Parisi's first argument boils down to a contention that she suffers more prejudice from the failure to file her AOB than U.S. Trustee because she suffered $200,000 in economic harm. Relief Mot. at 5-8. While the Court does agree that this is a sizeable economic loss to Parisi, this does not give her carte blanche to circumvent court deadlines. Failing to hold otherwise, particularly where the Court has concluded that there was undue delay, would result in an inability for the Court to manage its docket. After all, each plaintiff that enters the court system does so because he or she claims an injury and resulting harm. As such, any plaintiff would be able to make the same argument as Parisi and claim that he or she should be allowed to ignore court deadlines.

Parisi's second argument that Rule 15 applies, id. at 9-10, is not sufficient because the Court concluded that leave to file the AOB was inappropriate under Rule 15. See Motions Order, at 3 ("The result is the same if we were to apply Federal Rule of Civil Procedure 15 as Parisi urges."). Finally, the Court notes that although COVID-19 did cause hardship at the beginning of March, see Relief Mot. at 12, Parisi received three extensions to her deadline to file her opening brief, and filed her AOB six months late, far exceeding any allowance the Court could grant given the circumstances.

Parisi also argues again that the Court incorrectly denied her request to name the U.S. Bankruptcy

Court as the appellee. Relief Mot. at 12-17. But once again, these arguments are not linked to any rule that instructs the Court to reexamine its prior Order, and therefore cannot form the basis for any relief. Regardless of this independent reason to deny relief, Parisi's arguments miss the point. The Court reads Parisi's motion as expressing a concern that failure to name the U.S. Bankruptcy Court as the appellee will leave her unable to "hold accountable" the U.S. Bankruptcy Court. See id. at 15. The Court stresses that the title of this case–including who is named the appellee–has no bearing on what legal authority this Court has to decide a remedy for Parisi. A successful appeal even with U.S. Trustee named as the appellee would result in a reversal of the U.S. Bankruptcy Court's decision. As such, whether the U.S. Bankruptcy Court is named as the appellee has no bearing on the rights at issue here. That is why who is named the appellee has no bearing on the Court's analysis in its dismissal of the appeal. See generally Appeal Order.

Moreover, there is no other remedy that this Court could grant other than reversal of the U.S. Bankruptcy Court's dismissal of Parisi's bankruptcy case. Parisi argues that she "is leveling charges of misconduct against the U.S. Bankruptcy Court in an Appeal pursued in part in alternative to a complaint under 28 U.S.C. §§ 351–364, the Judicial Conduct and Disability Act of 1980 ('ACT')." Relief Mot. at 12-13. But no claims under 28 U.S.C. §§ 351-364 appear in the opening brief, ECF No. 20, or the AOB. To the extent that Parisi is concerned about the appearance that she is in a dispute with the U.S. Trustee and not

the U.S. Bankruptcy Court, the Court notes that the primary caption for this case already is In re Parisi as Parisi requests. Id. at 17. The Court therefore **DENIES** Parisi's motion for relief.

B. Motion for Rehearing

Parisi next requests that the Court rehear her bankruptcy appeal. Rehearing Mot. Parisi raises a series of arguments for why the Court should rehear her appeal, which the Court now addresses. Before doing so, however, the Court notes that those arguments that rely on her AOB are moot because the Court has denied leave to file the AOB. The Court therefore does not address arguments numbered 5, 11, and 12. Id. at 9, 13-14.

First, Parisi argues that the Court did not consider problems with two of the bases that the bankruptcy court cited as cause for dismissing Parisi's case. Id. at 7-8. But Parisi ignores that the Court affirmed the bankruptcy court on its first basis, "failure to comply with an order of the court." Appeal Order at 3. Parisi's argument is therefore insufficient to justify rehearing.

Parisi next argues that the Court incorrectly stated that her July 2019 monthly operating report was outstanding on entry of the dismissal order. Rehearing Mot. at 8.But, once again, the Court affirmed the bankruptcy court also on the basis of the late filing of the May and June monthly operating reports, a plan for reorganization, and related disclosures. Appeal Order at 3.

Parisi's broad argument that the Court's order was "based on incomplete information, and in the interest of justice the circumstances should be reexamined" does not argue why this is true. Rehearing Mot. at 8. Moreover, the Court notes that it gave Parisi ample time to file a brief, even extending its deadline three times. As such the Court does not address this argument.

Parisi next argues that the Court failed to consider whether it was prejudicial for the bankruptcy judge to not "allow the Debtor in Possession to administer her Estate by negotiating and proposing a plan of reorganization." Id. at 9. But, as the Court found, the bankruptcy judge gave Parisi such an opportunity, but Parisi failed to timely file her reorganization plan. Appeal Order at 3.

Then, Parisi argues that the Court improperly found that Parisi's due process argument was waived for not having been raised in the bankruptcy court. Rehearing Mot. at 9-10. The Court disagrees. First, Parisi tries to distinguish In re Rains, 428 F.3d 893, 902 (9th Cir. 2005), by arguing that Raines did not raise his due process argument in his opening brief to the district court. Rehearing Mot. at 10. But that fact is irrelevant. The key point of law is that courts do "not consider an issue raised for the first time on appeal." In re Rains, 428 F.3d at 902. This is an appeal. Therefore, the failure to raise the due process argument before the bankruptcy court forecloses the ability to raise that argument now. Then, Parisi makes a broad claim that she made "numerous objections before the Bankruptcy Court regarding denial of [her] rights." Rehearing Mot. at 10. But Parisi does not cite to any point in the record where

those objections were made. Further, an objection that is not "well articulated," id., can also lead to failure to preserve a due process challenge. After all, the Ninth Circuit went on in Rains to note that the argument "must be raised sufficiently for the trial court to rule on it." 428 F.3d at 902 (quoting Broad v. Sealaska Corp., 85 F.3d 422, 430 (9th Cir. 1996)). The objection must "adequately apprise the bankruptcy court of the nature of [Parisi's] request such that the court had an opportunity to rule on it." Id. As Parisi has not indicated that the bankruptcy court ever ruled on such an objection, Parisi was not able to bring her due process challenge for the first time on appeal.

Parisi also argues that she should be able to challenge the denial of her motion for a continued stay because the final order dismissing her case "invoke[d] the relevance" of that denial. Rehearing Mot. at 12. Parisi quotes from In re Frontier Properties Inc., 979 F.2d 1358, 1364 (9th Cir.1992), for the claim that "[w]here an issue is determined in an interlocutory order and later incorporated into a final order, the determination of the original issue is appealable upon an appeal of the final order, thereby allowing the appellate court to review all the combined issues." Rehearing Mot. at 12. She argues that the denial of her motion for a continued stay is an incorporated interlocutory order. Id. But Parisi leaves out the context of this quote. The In re Frontier Properties Inc. court went on to state "[a]n interlocutory appeal is permissive, not mandatory. When an appeal is not taken, the interlocutory order merges in the final judgment and may be challenged in an appeal from

that judgment." 979 F.2d at 1364 (quoting Baldwin v. Redwood City, 540 F.2d 1360, 1364 (9th Cir. 1974), cert. denied, 431 U.S. 913 (1977)). Here, the Court stated that it cannot review the denial of Parisi's motion for a continued stay because "[t]here has already been a separate appeal of the order denying the continued stay, and that appeal was dismissed as moot." Appeal Order at 5. Since an appeal was taken, even if the denial of the motion for a continued stay is interlocutory, it is not appealable here for a second time.

Finally, Parisi includes a series of points seeking clarification of the Court's initial order. See id. at 10-13. The Court included the following quote from the bankruptcy judge: "So because you haven't sold [the house] to date, and I don't think you're likely to, ...it just won't pass the test to continue the stay." Appeal Order at 4. This was to indicate that the bankruptcy judge did what the Court said was proper in the previous sentence: "inform parties of the court's tentative ruling in a case and inform the parties of what would be required to meet the legal standard that the court has to apply." Id. This was not in the "Legal Standard" section, as Parisi says, but in the "Discussion." The Court also acknowledges the incorrect citation for Parisi's "prior admission that permitting the foreclosure sale would render her appeal moot." Id. at 5. That is at ECF No. 21-3 at 647.

Having not found any arguments justifying a rehearing of Parisi's appeal, the Court **DENIES** her motion.

IV. CONCLUSION

For the foregoing reasons, the Court **DENIES** Parisi's motion for relief and **DENIES** Parisi's motion for a rehearing. The Court finds that oral argument would not be helpful in this matter. Fed. R. Civ. P. 78; L.R. 7-15. Hearing set for November 16, 2020, is ordered **VACATED.**

IT IS SO ORDERED.

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APPENDIX C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. CV 19-7775 JVS Date Sept. 28, 2020
Title In re Parisi

Present: **The Honorable James V. Selna, U.S. District Court Judge**

Lisa Bredahl Deputy Clerk	Court Reporter Not Present
Attorneys Present for Plaintiffs Not Present	Attorneys Present for Defendants Not Present

Proceedings: **[IN CHAMBERS] Order Regarding Motion to Amend Opening Brief, Request to Change Appellee, and Motion to Join Parties**

Before the Court is Appellant Paula Parisi's ("Parisi") motion to amend the opening brief in her appeal of the dismissal of her bankruptcy case, Case No. 1:19-bk-10299-VK. Mot., ECF No. 31. Appellee Peter C. Anderson, United States Trustee for Region 16 ("Trustee") filed an opposition. Opp'n ECF No. 33.

Parisi has also filed two briefs asking the Court to change the parties named in this appeal. First, Parisi has requested that the Court name the U.S. Bankruptcy Court as the appellee instead of Trustee.

Request to Correct Appellee, ECF No. 34. Second, Parisi has filed a motion seeking to join U.S. Bank, N.A. ("U.S. Bank") "not in its individual capacity but solely as legal title trustee for BCAT 2016-18TT," and Selene Finance, LP ("Selene Finance"). Motion to Join, ECF No. 36.

For the following reasons, the Court:

- **DENIES** the motion;
- **DENIES** the request to name the U.S. Bankruptcy Court as the appellee; and
- **DENIES** the motion to join U.S. Bank and Selene Finance.

I. BACKGROUND

Parisi is appearing pro se in this appeal. On September 9, 2019, Parisi filed a notice of appeal of the dismissal of her bankruptcy case. Notice of Appeal, ECF No. 1.

Following three extensions of time for Parisi to file her opening brief, see ECF Nos. 12, 16, and 19, Parisi filed her opening brief on March 6, 2020. Opening Brief, ECF No. 20. This was four days after the deadline of March 2, 2020, stated in the Court's third extension of time. Third Extension, ECF No. 19. Notably, the opening brief contains two sections titled "V. Main Argument" and "VI. Conclusion and Request for Relief," each of which merely refers the Court to Paris's "First Amended Appellant's Opening Brief (1.1)." See Opening Brief at 16-17.

Parisi later filed a motion for an order requiring Trustee to participate in this case. Mot. For Participation, ECF No. 27. Following the Court's request, Trustee filed a reply brief on July 13, 2020. Trustee

Brief, ECF No. 30. Parisi then filed her motion to amend on September 9, 2020, exactly one year following her initial notice of appeal. Mot. This was more than six months following her March 6 filing of her opening brief that referenced her amended opening brief.

II. LEGAL STANDARD

The Federal Rules of Bankruptcy Procedure do not include a standard by which district courts should grant leave for appellants to amend their briefs. The most relevant rule is Rule 8018(a)(1), which states that "[t]he appellant must serve and file a brief within 30 days after the docketing of notice that the record has been transmitted or is available electronically." This requirement is applies "unless the district court or [Bankruptcy Appeals Panel] by order in a particular case excuses the filing of briefs or specifies different time limits." Rule 8018(a).

III. DISCUSSION

A. Motion to Amend

The Court holds that it does not have the authority to allow Parisi to file an amended opening brief. The most relevant of the Federal Rules of Bankruptcy Procedure is Rule 8018(a)(1), which gives the Court authority to "excuse [] the filing of briefs [and] specif[y] different time limits." The terms of this rule do not include allowing a party to state an intent to file an amended brief and then file that amended brief six months later.

Indeed, granting leave to file the amended brief would amount to allowing Parisi to knowingly circumvent the three previous time limits that the

Court specified for the filing of her opening brief. After all, Parisi stated in her opening brief that she intended to file the instant amended opening brief, showing that she did not intend to file a final opening brief by the Court's deadline. The Court also expressly stated in its third extension that it would allow "no further extension." Third Extension, ECF No. 19.

The result is the same if we were to apply Federal Rule of Civil Procedure 15 as Parisi urges, see Mot. at 3-5, although it is not applicable to this bankruptcy appeal. Under Rule 15, in the absence of an "apparent or declared reason," such as undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies by prior amendments, prejudice to the opposing party, or futility of amendment, it is an abuse of discretion for a district court to refuse to grant leave to amend a complaint. Foman v. Davis, 371 U.S. 178, 182 (1962); Moore v. Kayport Package Express, Inc., 885 F.2d 531, 538 (9th Cir. 1989). The consideration of prejudice to the opposing party "carries the greatest weight." Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003). Granting leave to file the amended opening brief would be particularly inappropriate here, where Parisi specifically stated that she thought "it is appropriate that once [Trustee] review[s] the case materials they file a brief taking a position on the Appeal." Parisi therefore specifically requested that Trustee respond to a brief that she now states was merely a "framework," Mot. at 6, and that she was intending to substantially amend. Id. This amounts to prejudice to Trustee. Further, the Court finds that there was undue delay insofar as it is clear that this amendment amounts to an indirect request for the Court to excuse the time limit, from six months

ago, that was stated in the Court's third extension of the deadline to file the opening brief.

The Court therefore **DENIES** the motion to amend the opening brief.

B. Request to Correct Appellee

Parisi has requested that the appellee in this case be the U.S. Bankruptcy Court and not Trustee. Request to Correct Appellee. The Court declines this request. As a general practice, the Court names as the appellee in a bankruptcy appeal the party that would benefit from affirming the bankruptcy court's ruling. Here, the bankruptcy court does not have an interest in the underlying bankruptcy case and would not benefit from the Court rejecting Parisi's appeal. As such, the bankruptcy court would not be the appropriate appellee. By contrast, it is well established that Trustee has the authority to appear as a party in bankruptcy appeals. See In re Donovan Corp., 215 F.3d 929, 930 (9th Cir. 2000) (Trustee "may also intervene and appear at any level of the proceedings from the bankruptcy court on, 11 U.S.C. § 307, as either a party or an amicus." (quoting In re Bernard, 31 F.3d 842, 844 (9th Cir. 1994)).

The Court therefore concludes that it is proper for Trustee to be named as the appellee in this case and **DENIES** the request to name the U.S. Bankruptcy Court as the appellee.

C. Motion to Join

Finally, Parisi argues that U.S. Bank and Selene Finance should be added as parties to this appeal. Parisi has not cited any law or rule that gives the Court the authority to add a party on appeal. Motion to Join at 5-6. Nor is the Court aware of any. Parisi

has cited Federal Rule of Civil Procedure 12(h)(2), Motion to Join at 6-7, but that provision is not applicable to bankruptcy appeals, as bankruptcy appeals are governed by the Federal Rules of Bankruptcy Procedure. Rather, Rule 12(h)(2) only describes the timeliness of motions to dismiss a civil case for failure to join a required party under Federal Rule of Civil Procedure 12(b)(7). Although Parisi argues that Rule 12(h)(2) applies because it incorporates Federal Rule of Appellate Procedure 6, Rule 6 only applies to bankruptcy appeals made to the court of appeals. See Federal Rule of Appellate Procedure 6 ("An appeal to a court of appeals from a final judgment, order, or decree of a district court exer- cising jurisdiction under 28 U.S.C. §1334 is taken as any other civil appeal under these rules." (emphasis added)). Rule 6 and Rule 12(h)(2) are therefore both inapplicable here. Parisi also cites Disparte v. Corporate Executive Board, 223 F.R.D. 7, 12 (D.D.C. 2004), Motion to Join at 7, but that case deals with Federal Rule of Civil Procedure 21. As stated above, the Federal Rules of Bankruptcy Procedure are what govern this appeal.

Parisi finally cites Federal Rule of Bankruptcy Procedure 7019, which does incorporate Federal Rule of Civil Procedure 19. Motion to Join at 5-6. There are two problems with relying on Rule 7019, however. The first is that it incorporates Rule 19 for "adversary proceedings," which this case is not. See Federal Rule of Bankruptcy Procedure 7001 (defining what counts as an "adversary proceeding"); see also "Bankruptcy Case Vs. Adversary Proceeding, What is the Difference?" U.S. Bankruptcy Court for the Central

District of California (last visited Sept. 28, 2020).1[1] The second is that, as Parisi notes, Motion to Join at 7, Part VII of the Federal Rules of Bankruptcy Procedure do not apply to bankruptcy appeals.

But even if the Court were to rely on Federal Rule of Civil Procedure 19, the Court would not find it proper to join U.S. Bank and Selene Finance. Parisi contends that U.S. Bank and Selene Finance should be added because they have an interest in reversal of the bankruptcy court's orders denying Parisi's motion to continue the automatic stay and granting U.S. Bank's relief from the automatic stay. Motion to Join at 5-6. Neither of those orders are the subject of this appeal, however. There has already been a separate appeal of the bankruptcy court's order denying the motion for a continued stay, and that appeal was dismissed as moot following Parisi's "prior admission that permitting the foreclosure sale would render her appeal moot." Appendix, ECF No. 21-3, at 527. Moreover, this Court only has the authority in this appeal to determine whether there was an abuse of discretion in the bankruptcy court's dismissal of Parisi's case, for that is the order that is on appeal. The deadline to file an appeal of the order granting U.S. Bank relief from the stay has passed. See Bankruptcy Court Docket, ECF No. 1-1, at 9 (noting that the order granting relief from the automatic stay was docketed on April 3, 2019); Federal Rule of Bankruptcy Procedure 8002 ("[A] notice of appeal must be filed with the bankruptcy clerk within 14 days after entry of the judgment, order, or decree

[1] https://www.cacb.uscourts.gov/faq/bankruptcy-case-vs-adversary-proceeding-what-difference

being appealed."). The deadline had also passed as of the date of the instant appeal. See Notice of Appeal (filed September 5, 2019).

The instant appeal is from a non-adversarial bankruptcy case, and the order on appeal relates exclusively to dismissal of Parisi's filing for chapter 11 bankruptcy. As the orders that Parisi argues would form the basis for U.S. Bank and Selene Finance's interest in the instant appeal are not at issue, the Court **DENIES** the motion to join the two parties.

IV. CONCLUSION

For the foregoing reasons, the Court:

- **DENIES** the motion;
- **DENIES** the request to name the U.S. Bankruptcy Court as the appellee; and
- **DENIES** the motion to join U.S. Bank and Selene Finance.

The Court finds that oral argument would not be helpful in this matter. Fed. R. Civ. P. 78; L.R. 7-15. Hearings set for October 5, 2020, and October 26, 2020, are ordered **VACATED**.

IT IS SO ORDERED.

_____: 0____

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APPENDIX D

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. CV 19-7775 JVS Date Sept. 28, 2020
Title In re Parisi

Present: **The Honorable James V. Selna, U.S. District Court Judge**

Lisa Bredahl Deputy Clerk	Court Reporter Not Present
Attorneys Present for Plaintiffs Not Present	Attorneys Present for Defendants Not Present

Proceedings: **[IN CHAMBERS]** **Order Regarding Bankruptcy Appeal**

Before the Court is Appellant Paula Parisi's ("Parisi") the bankruptcy court's decision to dismiss Parisi's bankruptcy case for cause. Parisi Br., ECF No. 20. Appellee Peter C. Anderson, United States Trustee for Region 16 ("Trustee") filed a reply. Reply, ECF No. 30. For the following reasons, this Court **AFFIRMS** the bankruptcy court's dismissal of Parisi's case.

I. BACKGROUND

The factual background to this case is well known to the parties, and is summarized here only to the extent relevant to analyzing the arguments brought on appeal. This appeal stems from Parisi's February 7, 2019, filing for chapter 11 bankruptcy. Appendix, ECF No. 21-1, at 13. On March 21, 2019, the bankruptcy court denied Parisi's motion for a continuation of the automatic stay to collection activities by creditors that was initiated on the filing of her petition. Id. at 19.

On May 23, 2019, the bankruptcy court held a status conference, after which it ordered the filing of a proposed chapter 11 plan and related disclosure statement no later than August 1, 2019, a status report no later than August 8, 2019, timely filing of monthly operating reports, and timely payment of the United States trustee quarterly fees for the period through July 2019. May 23 Order, ECF No. 30-2, at 5-6. Failure to comply, the bankruptcy court warned, could result in dismissal. Id. at 6.

On June 7, 2019, a foreclosure sale was conducted of Parisi's residence, which constituted her primary asset. Trustee Deed on Sale, ECF No. 30-2, at 67. On August 23, 2019, the bankruptcy court issued an order dismissing Parisi's case. Order, ECF No. 3, 5-6. The bankruptcy court found that Parisi had not timely filed a chapter 11 plan and related disclosure statement, a status report, or monthly operating expenses through July 2019, each of which served as cause for dismissal under 11 U.S.C. § 1112(a). Id. On September 9, 2019, Parisi filed a notice of appeal of

the dismissal of her bankruptcy case. Notice of Appeal, ECF No. 1.

II. LEGAL STANDARD

A district court has jurisdiction to hear an appeal from a bankruptcy court. See 28 U.S.C. § 158. "On an appeal the district court or bankruptcy appellate panel may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings." Fed. R. Bankr. P. 8013. When examining an appeal, a district court uses the same standard of review that a circuit would use when reviewing a district court's decision. See In re Baroff, 105 F.3d 439, 441 (9th Cir. 1997).

"The bankruptcy court is given wide discretion to convert a chapter 11 case to chapter 7 for cause, and an order for conversion is reviewed for an abuse of discretion." In re Greenfield Drive Storage Park, 207 B.R. 913, 916 (B.A.P. 9th Cir. 1997). In addition, a decision to deny a request for continuance is reviewed for abuse of discretion. Orr v. Bank of Am., 285 F.3d 764, 783 (9th Cir. 2002). Under the abuse of discretion standard, the reviewing court needs to have a definite and firm conviction that the bankruptcy court committed a clear error. Hopkins v. Cerchione (In re Cerchione), 414 B.R. 540, 545 (B.A.P. 9th Cir. 2009).

To determine if a bankruptcy court abused its discretion, a court must first "determine de novo whether the [bankruptcy] court identified the correct legal rule to apply to the relief requested." United States v. Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (recognized as applicable for bankruptcy appeals in In

re Marciano, 459 B.R. 27, 34 (B.A.P. 9th Cir. 2011)). Next, it must determine if the bankruptcy court's "application of the correct legal standard was (1) illogical, (2) implausible, or (3) without support in inferences that may be drawn from the facts in the record." Id. (internal quotation marks omitted). If a court finds that the bankruptcy court used the incorrect rule or that the bankruptcy court's application of the rule was illogical, implausible, or without support, then the bankruptcy court abused its discretion. Id.

III. DISCUSSION

Parisi argues that the bankruptcy court "bypassed the formalities of 'cause' and issuance of a proper 'order' to force a liquidation of Parisi's chapter 11 bankruptcy. Parisi Br. at 15-16. The bankruptcy court dismissed Parisi's case under 11 U.S.C. § 1112(b)(1). Order at 6. That section states in relevant part that "the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate." 11 U.S.C. § 1112(b)(1). The bankruptcy court then cited three bases for "cause": "failure to comply with an order of the court," § 1112(b)(4)(E); "unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter," § 1112(b)(4)(F); and "failure to file a

disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court," § 1112(b)(4)(J).

The Court begins by considering whether the record supports a finding that Parisi failed to comply with an order of the court. On May 23, 2019, the bankruptcy court issued an order requiring, for example, that Parisi to file a proposed chapter 11 plan for reorganization and related disclosure statement by August 1, 2019. May 23 Order at 5. At the time of the bankruptcy court's hearing on August 22, 2019, Parisi had still not filed a plan for reorganization and related disclosure statement. Appendix, ECF No. 21-3, at 482. That alone is sufficient for the bankruptcy court to have found that there was cause to dismiss Parisi's case. Similarly, the bankruptcy court ordered Parisi to timely file each monthly operating report through July 2019 by the status conference on August 22, 2019. Order at 6. Parisi filed her May, June, and July operating reports all on August 21 and 22. Appendix at 482. This is also sufficient grounds for the bankruptcy court to have found that Parisi did not comply with its order. The Court therefore determines that the bankruptcy court did have cause to dismiss Parisi's case. The Court therefore declines to address to the two other bases of cause that the bankruptcy court cited.

Having concluded that the bankruptcy court did have cause to dismiss Parisi's case, the Court next turns to whether the record supported the bankruptcy court's decision to dismiss Parisi's case rather than convert it into a case under chapter 7. "If the bankruptcy court finds that cause exists to grant

relief under § 1112(b)(1), it must then: "'(1) decide whether dismissal, conversion, or the appointment of a trustee or examiner is in the best interest of creditors and the estate; and (2) identify whether there are unusual circumstances that establish that dismissal or conversion is not in the best interest of creditors and the estate.'" Warren v. Young (In re Warren), 2015 WL 3407244, at *4 (B.A.P. 9th Cir. May 28, 2015) (quoting Sullivan v. Harnisch (In re Sullivan), 522 B.R. 604, 612 (B.A.P. 9th Cir. 2014)). The order itself does not address Judge Kaufman's reasoning for dismissing the case rather than convert to chapter 7. At the August 22 status conference, however, Judge Kaufman noted that since there had already been a foreclosure sale on Parisi's house, "[t]here wouldn't be anything for the trustee to administer at this point." Appendix at 483. Nor has Parisi indicated that there are any unusual circumstances that would make dismissal inappropriate here. The Court therefore does not find that it was an abuse of discretion for the bankruptcy court to order a dismissal of Parisi's case.

The Court next addresses Parisi's assertions that she was deprived of her due process rights by the bankruptcy court. Parisi suggests in her brief that the bankruptcy court "prosecute[d] the case for Ms. Parisi's opposition," "acted prejudicially against Ms. Parisi because she was representing herself pro se," and "improperly coerce[d] Ms. Parisi by threatening economic harm if she did not voluntarily 'agree' with 'what the Court's [proposing].'" Parisi Br. at 9. Parisi did not raise this objection before the bankruptcy court and so waived this argument. See In re Rains,

428 F.3d 893, 902 (9th Cir. 2005) (declining to consider a due process challenge that was not raised by a debtor appellant before the bankruptcy court). Moreover, the quotes that Parisi includes to imply that the bankruptcy court threatened her were merely part of the bankruptcy court's explanation of its tentative ruling in her motion for an automatic stay. See Appendix, ECF No. 21-1, at 121. It is common practice for courts to inform parties of the court's tentative ruling in a case and inform the parties of what would be required to meet the legal standard that the court has to apply. See id. ("So because you haven't sold [the house] to date, and I don't think you're likely to, . . . it just won't pass the test to continue the stay."). The Court therefore does not find that there was a violation of Parisi's due process rights. (declining to consider a due process challenge that was not raised by a debtor appellant before the bankruptcy court). Moreover, the quotes that Parisi includes to imply that the bankruptcy court threatened her were merely part of the bankruptcy court's explanation of its tentative ruling in her motion for an automatic stay. See Appendix, ECF No. 21-1, at 121. It is common practice for courts to inform parties of the court's tentative ruling in a case and inform the parties of what would be required to meet the legal standard that the court has to apply. See id. ("So because you haven't sold [the house] to date, and I don't think you're likely to, . . . it just won't pass the test to continue the stay."). The Court therefore does not find that there was a violation of Parisi's due process rights.

Finally, the Court notes that Parisi's other arguments are not germane to the order being appealed, which specifically relates to the dismissal of her case. Whether or not Parisi filed her chapter 11 bankruptcy in "bad faith" does not have any bearing on whether her case was properly dismissed § 1112, which governs the dismissal of chapter 11 bankruptcy cases. See Parisi Br. at 9. Moreover, the bankruptcy court's previous order denying Parisi's motion for a continued stay is not at issue in this appeal. See id. There has already been a separate appeal of the order denying the continued stay, and that appeal was dismissed as moot following Parisi's "prior admission that permitting the foreclosure sale would render her appeal moot." Appendix, ECF No. 21-3, at 527. This Court only has the authority in this appeal to determine whether there was an abuse of discretion in the bankruptcy court's dismissal of Parisi's case.

The Court thus finds that the bankruptcy court's dismissal of Parisi's chapter 11 bankruptcy case was not an abuse of discretion.

IV. CONCLUSION

For the foregoing reasons, the Court **AFFIRMS** the bankruptcy court's order.

IT IS SO ORDERED.

_____: 0____

Initials of Preparer lmb

APPENDIX E

[DATE STAMP]
FILED & ENTERED
AUG 23 2019
CLERK U.S. BANKRUPTCY COURT
Central District of California
BY Cetulio DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION

In re:
PAULA PARISI,
Debtor.

Case No.: 1:19-bk-10299-VK
Chapter 11

ORDER DISMISSING CHAPTER 11 CASE WITH A 180-DAY BAR TO REFILING PURSUANT TO 11 U.S.C. §§ 105(a), 349(a) and 1112(b)(1), (b)(4)(E), (4)(F) and (J)

Date: August 22, 2019
Time: 1:00 p.m.
Place: Courtroom 301
21041 Burbank Blvd.
Woodland Hills, CA 91367

On February 7, 2019, Paula Parisi ("Debtor") filed a voluntary chapter 11 petition. On May 23, 2019, the Court entered an *Order Setting (1) Deadlines Concerning Chapter 11 Plan and Disclosure Statement and (2) Continued Status Conference* (the "Order") [doc. 96]. Pursuant to the Order, Debtor was required to: (1) file a proposed chapter 11 plan of reorganization and related disclosure statement by August 1, 2019; (2) file and serve an updated case status report by August 8, 2019; (3) file each monthly operating report due for the post-petition period through July 2019; and (4) pay the United States trustee quarterly fees due for the post -petition period through July 2019.

Contrary to the Order, Debtor did not timely file a proposed chapter 11 plan of reorganization and related disclosure statement and an updated case status report. On August 21, 2019, Debtor belatedly filed her monthly operating report for May and June 2019; Debtor has not yet filed a monthly operating report for July 2019.

On August 22, 2019, the Court held a continued status conference in this case, the Honorable Victoria S. Kaufman, United States Bankruptcy Judge, presiding. Appearances were as noted on the record.

Debtor having not timely filed a chapter 11 plan and related disclosure statement as required by the Order and 11 U.S.C. §§ 1112(b)(4)(E) and (4)(J); having not timely filed a status report as required by the Order and 11 U.S.C. § 1112(b)(4)(E); having not timely filed her required post-petition monthly operating reports through July 2019 as required by 11

U.S.C. § 1112(b)(4)(F); and good cause appearing, it is hereby

ORDERED, that Debtor's case is dismissed for cause pursuant to 11 U.S.C. §§ 1112(b)(1), (b)(4)(E), (4)(F) and (4)(J) for the reasons discussed in the Court's ruling [doc. 113]; and it is further

ORDERED, that pursuant to 11 U.S.C. §§ 105(a) and 349(a), Debtor may not be a debtor under any chapter of 11 U.S.C. §§ 101 *et seq.* for 180 days from the date of entry of this Order unless: (a) Debtor files a motion requesting permission to file a new bankruptcy case, (b) the motion is supported by admissible evidence, and (c) the Court grants the motion; and it is further

ORDERED, that the Court will retain jurisdiction to award any appropriate judgment in favor of the United States Trustee. However, the Court will not retain jurisdiction on any other matters related to this case.

###

Date: August 23, 2019

/s/ Victoria S. Kaufman
United States Bankruptcy Judge

APPENDIX F

NOT FOR PUBLICATION

[DATE STAMP]
FILED
OCT 3, 2022
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
No. 20-56150

In re: PAULA PARISI,
Debtor,

PAULA PARISI,
Appellant,
v.
PETER C. ANDERSON, United States Trustee for Region 16,
Appellee.

D.C. No. 2:19-cv-07775-JVS
Central District of California,
Los Angeles

ORDER

Before: SILVERMAN, WATFORD, and FORREST, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Parisi's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 42) are denied.

No further filings will be entertained in this closed case.

APPENDIX G

Excerpts of transcripts, hearings from March 6, 2019 to May 23, 2019. Proceedings recorded by electronic sound recording, transcript produced by J&J Court Transcribers, Inc., 268 Evergreen Avenue, Hamilton, New Jersey 08619. jjcourt@jjcourt.com (609) 586-2311

U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

IN RE: PAULA PARISI, Debtor
Case No. 1:19-bk-10299-VK, Chapter 11
Woodland Hills, California
Thursday, May 23, 2019..... 1:12 p.m.

STATUS CONFERENCE BEFORE THE HONORABLE VICTORIA S. KAUFMAN, UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor By: PAULA PARISI, PRO SE
3629 Weslin Ave Sherman Oaks, CA 91423
(818) 728-1645

For the U.S. Trustee: Office of the U.S. Trustee
By: RUSSELL CLEMENTSON, ESQ.
915 Wilshire Blvd., Suite 1850,
Los Angeles, CA 90017 (213) 894-4505

THE COURT: We're not imposing the stay. No, there is no such thing as in possession, no. We already -- I think we already did your motion. You had another -- didn't you have a motion to reconsider or something?

MS. PARISI: There was a motion to continue the stay. Then there was a motion for relief from the stay.

THE COURT: No, we're not going to -- no, you want to get -- you want to deal with this property, you should sell it before it's foreclosed. That's what you should do.

MS. PARISI: Okay. Do -- I do –

THE COURT: I mean, you know, right now, I mean, it allegedly has equity. If I were you, I'd be selling it ASAP before there's a foreclosure sale.

MS. PARISI: I am exploring all those opportunities.

THE COURT: Okay. Well, good for you. That's what you're supposed to be doing –

MS. PARISI: I just –

THE COURT: -- as a fiduciary to creditors when you're a debtor-in-possession. It's not just about you.

MS. PARISI: I understand that.

THE COURT: Yes. Okay.

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

IN RE: PAULA PARISI, Debtor
Case No. 1:19-bk-10299-VK, Chapter 11
Woodland Hills, California
Wednesday, April 3, 2019..... 9:44 a.m.

TRANSCRIPT OF MOTION FOR RELIEF FROM STAY BEFORE THE HONORABLE VICTORIA S. KAUFMAN UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:
For the Debtor By: PAULA PARISI, PRO SE

TELEPHONIC APPEARANCE:
For U.S. Bank: The Mortgage Law Firm, PLC By: KELSEY X. LUU, ESQ.

[9]

THE COURT: So, it's the debtor's burden. It's the movant's burden in a motion to continue the stay.

MS. PARISI: I provided my response -- my reply, excuse me.

THE COURT: Right, and we took it into -- and that we had a chance to look at your reply, and we continued the hearing for that. Well, we didn't actually -- well, you filed it untimely. So we would have had time if you had filed it on time, but of course, you only filed it the morning of the hearing.

MS. PARISI: I think the record from the March 20th hearing will show that the Court continued the hearing based on the fact that the debtor wasn't served, not to give me a chance to reply to anything.

THE COURT: Well, I think I know why the Court decided to continue the hearing.

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

IN RE: PAULA PARISI, Debtor
Case No. 1:19-bk-10299-VK, Chapter 11
Wednesday, March 20, 2019..... 9:58 a.m.

TRANSCRIPT OF MOTION IN INDIVIDUAL CASE FOR ORDER IMPOSING A STAY OR CONTINUING THE AUTOMATIC STAY AS THE COURT DEEMS APPROPRIATE BEFORE THE HONORABLE VICTORIA S. KAUFMAN UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:
For the Debtor By: PAULA PARISI, PRO SE
3629 Weslin Ave, Sherman Oaks, CA 91423
Los Angeles, CA (818) 728-1645

TELEPHONIC APPEARANCE:
For U.S. Bank: The Mortgage Law Firm, PLC By:
KELSEY X. LUU, ESQ.
27455 Tierra Alta Way, Suite B, Temecula, CA
92590 (619) 465-8200

[3]

THE COURT: ... So these are your choices as outlined originally which are agree to the appointment of a Chapter 11 trustee or conversion of the case to Chapter 7, or we are denying the motion.

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

IN RE: PAULA PARISI, Debtor
Case No. 1:19-bk-10299-VK, Chapter 11
Woodland Hills, California
Wednesday, March 6, 2019.....9:46 a.m.

TRANSCRIPT OF MOTION IN INDIVIDUAL CASE FOR ORDER IMPOSING A STAY OR CONTINUING THE AUTOMATIC STAY AS THE COURT DEEMS APPROPRIATE BEFORE THE HONORABLE VICTORIA S. KAUFMAN UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:
For the Debtor By: PAULA PARISI, PRO SE
3629 Weslin Ave, Sherman Oaks, CA 91423
Los Angeles, CA (818) 728-1645

TELEPHONIC APPEARANCE:
For U.S. Bank: The Mortgage Law Firm, PLC By:
KELSEY X. LUU, ESQ.
27455 Tierra Alta Way, Suite B, Temecula, CA
92590 (619) 465-8200

[6]

THE COURT: Okay. But -- even though there appears to be equity in your property. So because you haven't sold it to date, and I don't think you're likely to, and it just won't pass the test to continue the stay. So the tentative says if I have a Chapter 11 trustee appointed who will be in charge of selling the property, then I feel comfortable that it would meet the test. Or

if we convert the case and a Chapter 7 trustee is employed who would sell the property, I have confidence that you'd get it discharged. Absent one of those two, we are not continuing the automatic stay.

MS. PARISI: Okay. Well, thank you, Your Honor. I hope I have a chance to present an oral argument here.

THE COURT: Sure.

MS. PARISI: Thank you, very much. First of all, I notice in your tentative ruling that it says the stay was opposed, that this motion was opposed, and I have not been served with any opposition. I think you gave a deadline of yesterday.

[7]

THE COURT: We have a written opposition.

MS. PARISI: I didn't receive it. Am I not supposed to be served with an opposition?

THE COURT: Well, most likely, you got it.

MS. PARISI: No, I did not get it, Your Honor.

THE COURT: Well, did you want to look at it now?

MS. PARISI: No, I don't -- I mean, isn't the procedure I'm supposed to have time –

THE COURT: They have a proof of service that you were served.

MS. PARISI: Can you look at it, please, and tell me what it says?

THE COURT: It was filed the 4th, and there's a proof of service.

MS. PARISI: How was it served? Because I was checking all my various options that you provided, and that I provided to them with the order.

THE COURT: I don't see a proof of service now. I Don't see a proof of service here, Ms. Luu.

MS. LUU: Yes, there's a proof of service on the docket. I believe Docket 31, or 30, that shows that both the request of judicial notice and the opposition were filed.

MS. PARISI: Judge Kaufman, do you mind if I sit down, because I feel like I'm going to faint?

THE COURT: No, I don't mind at all.

[8]

MS. PARISI: Thank you.

THE COURT: Oh, proof of service. There is a separate proof of service and it says it was mailed to you on the 4th.

MS. PARISI: Okay. How was it mailed?

THE COURT: Mailed to 3629 Weslin Avenue, Sherman Oaks 91423.

MS. PARISI: Well, you stipulated in your order it was to be overnight mailed, personally delivered, or emailed, I believe, was my recollection. And I have your order here to check. If you have a copy of it on the docket, perhaps –

THE COURT: Well, they say they mailed it.

MS. PARISI: Okay. Well, mail, it takes -- the last thing they mailed me took over a week to get to me. So mail does was not one of your options, Your Honor. They did not follow your order. Standard U.S. mail was not an option you provided in your order. I was supposed to have a certain amount of time as of noon yesterday till this morning to respond to any opposition, and as of yesterday, noon, I was checking my, you know, mailbox to see if someone had personally delivered it. I was checking my email. I don't have a fax machine which I put in my declaration that please do not fax me.

THE COURT: Right. Okay. Well, that's true. That's a problem.

APPENDIX H

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar

Wednesday, March 6, 2019 Hearing Room 301

9:30 AM

1:19-10299 **Paula Parisi** **Chapter 11**
#12.10 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate

Docket 14

Tentative Ruling:

If the debtor will agree to the appointment of a chapter 11 trustee or to the Court converting this case to one under chapter 7, the Court will grant the motion. Otherwise the Court will deny the motion.

On February 22, 2019, the debtor filed a motion to continue the automatic stay as to all creditors (the "Motion to Continue Stay") [doc. 14]. In the Motion to Continue Stay, the debtor represents that her financial circumstances have improved with the prospect of leasing her real property, located at 3629 Weslin Avenue, Sherman Oaks, California 91423 (the "Property"), for $6,000.00 per month or selling the Property under improved market conditions.

The United States Bankruptcy Court
Central District of California
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar
San Fernando Valley

Wednesday, March 20, 2019 Hearing Room 301

9:30 AM
1:19-10299 Paula Parisi Chapter 11

#4.20 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate

fr. 3/6/19

Docket 14

Judge:

For the reasons discussed below, if the debtor will agree to the appointment of a chapter 11 trustee or to the Court converting this case to one under chapter 7, the Court will grant the motion. Otherwise, the Court will deny the motion.

Debtor's Real Property

On July 17, 2003, Paula Parisi ("Debtor") executed a promissory note in the principal sum of $400,000, which was made payable to Bank of America, N.A.

APPENDIX I

UNITED STATES CODE

11 U.S.C. § 101 – Definitions *[in relevant part:]*
(15) The term "entity" includes person, estate, trust, governmental unit, and United States trustee.[1]

11 U.S. Code § 105 - Power of court[2] *[in relevant part:]*
(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

Chapter 3 – Case Administration
11 U.S.C. § 307 – United States trustee (1986)
The United States trustee may raise and may appear and be heard on any issue in any case or proceeding under this title but may not file a plan pursuant to section 1121 (c) of this title.

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[1] Definition of "entity" was added by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2000 (BAPCPA).
[2] §105 was added with the Bankruptcy Reform Act of 1978.

11 U.S.C. § 362 *[in relevant part:]*

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the

debtor on the 30th day after the filing of the later case;

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors, if—

(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

11 U.S.C. Chapter 11 – Reorganization
Subchapter I – Officers and Administration

11 U.S.C. § 1104 – Appointment of trustee or examiner [3] *[in relevant part:]*

(a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee—

(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or

(2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.

11 U.S.C. § 1107 – Rights, powers, and duties of debtor in possession *[in relevant part:]*

(a) Subject to any limitations on a trustee serving in a case under this chapter, and to such limitations or conditions as the court prescribes, a debtor in possession shall have all the rights, other than the right to compensation under section 330 of this

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[3] *Petitioner's note:* The Bankruptcy Reform Act of 1978 introduced § 1104 with the concept of a debtor in possession as the default mode of administration in chapter 11 cases.

title, and powers, and shall perform all the functions and duties, except the duties specified in sections 1106 (a)(2), (3), and (4) of this title, of a trustee serving in a case under this chapter.

11 U.S.C. § 1112 – Conversion or dismissal *[in relevant part:]*

(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title unless—

(1) the debtor is not a debtor in possession;

(2) the case originally was commenced as an involuntary case under this chapter; or

(3) the case was converted to a case under this chapter other than on the debtor's request.

(b)

(1) Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

(2) The court may not convert a case under this chapter to a case under chapter 7 or dismiss a case

under this chapter if the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes that—

(A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and

(B) the grounds for converting or dismissing the case include an act or omission of the debtor other than under paragraph (4)(A)—

(i) for which there exists a reasonable justification for the act or omission; and

(ii) that will be cured within a reasonable period of time fixed by the court.

(3) The court shall commence the hearing on a motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion not later than 15 days after commencement of such hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.

11 U.S.C. § 1121 - Who may file a plan *[in relevant part:]*

(b) Except as otherwise provided in this section, only the debtor may file a plan until after 120 days after the date of the order for relief under this chapter.

28 U.S.C. 28, Part I, Chapter 6, Bankruptcy Judges **§ 158** – Appeals *[in relevant part:]*

(a) The district courts of the United States shall have jurisdiction to hear appeals

(1) from final judgments, orders, and decrees;

28 U.S.C., Part II, Chapter 29, The U.S. Trustee **§ 586** - Duties; supervision by Attorney General *[in relevant part:]*

(a) Each United States trustee, within the region for which such United States trustee is appointed, shall—

(3) supervise the administration of cases and trustees in cases under chapter 7, 11 *** of title 11 by, whenever the United States trustee considers it to be appropriate—

(D) taking such action as the United States trustee deems to be appropriate to ensure that all reports, schedules, and fees required to be filed under title 11 and this title by the debtor are properly and timely filed;

(G) monitoring the progress of cases under title 11 and taking such actions as the United States trustee deems to be appropriate to prevent undue delay in such progress;

28 U.S.C. § 2072 - Rules of procedure and evidence; power to prescribe. *[in relevant part:]*

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right.

28 U.S.C. § 2075 – Bankruptcy rules. The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11.

Such rules shall not abridge, enlarge, or modify any substantive right.

Federal Rules Of Appellate Procedure

Fed. R. App. P. Rule 29. Brief of an Amicus Curiae *[in relevant part:]*

(a) When Permitted. The United States or its officer or agency, or a State, Territory, Commonwealth, or the District of Columbia may file an amicus-curiae

brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing.

Federal Rules Of Bankruptcy Procedure
PART VIII—Appeals To District Court or Bankruptcy Appellate Panel

Fed. R. Bankr. P. Rule 8003. Appeal as of Right—How Taken; Docketing the Appeal *[in relevant part:]*

(d) Transmitting the Notice of Appeal to the District Court or BAP; Docketing the Appeal.

2) Docketing in the District Court or BAP. Upon receiving the notice of appeal, the district or BAP clerk must docket the appeal under the title of the bankruptcy case and the title of any adversary proceeding, and must identify the appellant, adding the appellant's name if necessary.

(Added Apr. 25, 2014, eff. Dec. 1, 2014.)

Fed. R. Bankr. P. Rule 8013. Motions; Intervention *[in relevant part:]*

(g) Intervening in an Appeal. Unless a statute provides otherwise, an entity that seeks to intervene in an appeal pending in the district court or BAP must move for leave to intervene and serve a copy of the motion on the parties to the appeal. The motion or other notice of intervention authorized by statute must be filed within 30 days after the appeal is docketed. It must concisely state the movant's

interest, the grounds for intervention, whether intervention was sought in the bankruptcy court, why intervention is being sought at this stage of the proceeding, and why participating as an amicus curiae would not be adequate.

(Added Apr. 25, 2014, eff. Dec. 1, 2014.) Subdivision (g) clarifies the procedure for seeking to intervene in a proceeding that has been appealed. It is based on F.R.App.P. 15(d), but it also requires the moving party to explain why intervention is being sought at the appellate stage. The former Part VIII rules did not address intervention.

Federal Rules of Civil Procedure
Title IV. Parties *[in relevant part:]*

Fed. R. Civ. P. Rule 19. Required Joinder of Parties
(a) Persons Required to Be Joined if Feasible.

(1) Required Party. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

Fed. R. Civ. P. Rule 24. Intervention *[in relevant part:]*

(a) Intervention of Right. On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a federal statute; or

(c) Notice and Pleading Required. A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.

California Civil Code

Division 1. Persons, Part 2. Personal Rights
Cali. Civ. Code § 52.1 *[in relevant part:]*

(b) If a person or persons, whether or not acting under color of law, interferes by threat, intimidation, or coercion, or attempts to interfere by threat, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state, the Attorney General, or any district attorney or city attorney may bring a civil action for injunctive and other appropriate equitable relief in the name of the people of the State of California, in order to protect the peaceable exercise or enjoyment of the right or rights secured. An action

brought by the Attorney General, any district attorney, or any city attorney may also seek a civil penalty of twenty-five thousand dollars ($25,000). If this civil penalty is requested, it shall be assessed individually against each person who is determined to have violated this section and the penalty shall be awarded to each individual whose rights under this section are determined to have been violated.

(c) Any individual whose exercise or enjoyment of rights secured by the Constitution or laws of the United States, or of rights secured by the Constitution or laws of this state, has been interfered with, or attempted to be interfered with, as described in subdivision (b), may institute and prosecute in their own name and on their own behalf a civil action for damages, including, but not limited to, damages under Section 52, injunctive relief, and other appropriate equitable relief to protect the peaceable exercise or enjoyment of the right or rights secured, including appropriate equitable and declaratory relief to eliminate a pattern or practice of conduct as described in subdivision (b).

APPENDIX J

Figure 1: U.S. District Courts–Pro Se Cases and Overall Civil Caseload by Year, 2000 – 2019
www.USCourts.gov, Feb. 2021, tinyurl.com/2f6cwvdb

Figure 1 displays the total number of civil cases filed in U.S. district courts from 2000 to 2019 by pro se litigants, relative to the overall civil caseload. During that period, civil pro se filings generally were relatively stable, except for a 20 percent increase in 2016.

Pro Se Plaintiffs or Defendants	Year: 2019
	Filings: 76,512
Represented Plaintiffs or Defendants	Year: 2019
	Filings: 220,179

Source: U.S. Courts, Statistical Tables for the Federal Judiciary. Table C-13. 12 Month Periods Ending December 31, 2000, through December 31, 2019.

The Art of Appellate Advocacy: A View from the Ninth Circuit Bench
CLE Program with Judge Margaret McKeown,
Presented via Zoom, September 2, 2021, 3 p.m.

Slide 11: Pro Se Cases AO Data 6/30/21
Pro Se 42%, Counseled 58%

Figure 7: U.S. District Courts–Pro Se Civil Cases Filed by Non-Prisoners by Type of Lawsuit and by Percent of Pro Se Cases Filed, 2000 – 2019
www.USCourts.gov, Feb. 2021, tinyurl.com/2f6cwvdb

	Pro Se Plaintiff	Pro Se Defendant	Pro Se Both
Bankruptcy	75%	17.1%	7.9%
Civil Rights	94.1%	4.1%	1.8%
Contract Action	39.9%	58.2%	1.9%
Federal Tax Suits	55.4%	43.5%	1.1%
Forfeiture/Penalty	23.3%	76.0%	0.6%
Immigration	94.6%	5.0%	0.4%
Intellectual Property	30.9%	66.3%	2.7%
Labor	57.6%	41.1%	1.3%
Other Statutes	71.3%	26.6%	2.1%
Personal Injury	86.5%	11.7%	1.7%
Personal Property	76.5%	20.5%	3.1%
Real Property	48.6%	45.9%	5.4%
Social Security	87.9%	11.6%	0.6%

Source: Federal Judicial Center Integrated Database. Civil cases filed between January 1, 2000 through December 31, 2019.

Donna Stienstra, Jared Bataillon, and Jason A. Cantone. Assistance to Pro Se Litigants in U.S. District Courts: A Report on Surveys of Clerks of Court and Chief Judges. 2011. Federal Judicial Center. https://www.fjc.gov/sites/default/files/2012/ProSeUSDC.pdf. Retrieved August 13, 2020.

Collier on Bankruptcy, Sixteenth Edition
Volume 1; Richard Levin, Jenner & Block LLP, Henry J. Sommer, President, National Consumer Bankruptcy Rights Center, Editors-in-Chief; Overview; Bankruptcy Courts; Jurisdiction; Venue; Appeals; U.S. Trustee System; Fees; History; General Coverage. Updated through release no. 165, April 2023. LexisNexis. *Excerpted; footnotes excluded.*

[16-16]

¶6.01 Overview of the U.S. Trustee System

Before the 1978 overhaul of the bankruptcy system, all the administrative aspects of bankruptcy, including the appointment of trustees, were performed by the judiciary. In its inquiry into that system, Congress found at least three significant problems. First, the appointment and supervision of trustees compromised a court's appearance of impartiality. Parties litigating against trustee were naturally concerned that a court would be biased toward a trustee it appointed. Second, in appointing and supervising trustees, courts were performing nonjudicial functions, detracting from their core missions and competencies. Third, under the prior law, the judicial officer (the bankruptcy "referee") presided over meetings of creditors. This subjected the court to information about a case which was otherwise inadmissable. [sic]

In addition, in many parts of the country, the Bankruptcy Act principle of creditor control of cases had degenerated into a system of attorney control. That fostered the development of "bankruptcy rings," closed bankruptcy practices heavily favoring the appointment of insiders, who were obliged to one

another, to trustee positions. Cases were too often administered solely for the benefit of the members of the bankruptcy rings, with creditors receiving nothing.

When the 1978 Code was enacted, the United States Trustee Program was established within the U.S. Department of Justice to address those issues. It provided for a nonjudicial neutral party to oversee bankruptcy administration. United States trustees were made responsible for appointment and general supervision of bankruptcy trustees in chapter 7, 11 and 13 cases and for the appointment of official committees in chapter 1 1 cases.

United States trustees are charged with promoting the efficiency and integrity of the bankruptcy system within their assigned regions. They are also responsible for assuring that trustees, attorneys and parties are properly the system and that bankruptcy laws are properly executed. A broad grant of statutory standing allows United States trustees to address actions or proposed actions be taken by stakeholders in bankruptcy cases that deviate from standards established by the Code.

Initially the United States Trustee Program was introduced by the Bankruptcy Reform Act of 1978 as a pilot project in limited regions of the country. It was made permanent in 1986 and expanded nationally to all states except North Carolina and Alabama. ***
United States trustees do not decide disputes in title 11 cases and are not involved in the administration of the courts, Judges decide disputes, and the administration of the courts is the responsibility of the courts.

[2] Role of United States Trustees

United States trustees have both administrative and substantive duties under 28 U.S.C. § 586. ***

Substantively [11 U.S.C.] section 307 permits a United States trustee to raise, appear and be heard on any issue in any case, but prohibits a United States trustee from filing a chapter 11 plan. The issues raised by a United States trustee in any particular case should touch on systemic issues such as efficiency or integrity. *** On substantive issues, United States trustees are treated like any other litigant in court and must satisfy the burden of proof and burden of persuasion applicable to their motions and pleadings.

[d] Supervision of Chapter 11 Cases

[i] Generally

The situation in chapter 11 cases is substantially different. Chapter 7, chapter 12 and chapter 13 cases are usually overseen by trustees appointed by and subject to the direct supervision of United States trustees. On the other hand, one hallmark of chapter 11 cases is that debtors usually remain in possession and control of their assets. Most chapter 11 cases do not have a trustee appointed.

[3] Relationship of the U.S. Trustee to the Court

The position of the United States trustee vis-à-vis the bankruptcy courts, is said, in the House Report [H.R. Rep. No. 595, 95th Congress, 1st Sess. at 110 (977)] to be comparable to the position of a prosecutor.

The prosecutor appears in every criminal case before a particular court but is, nevertheless, not an

assistant to the court. Similarly, the United States trustee is responsible for certain administrative or executive duties and appears routinely but does not serve as an arm of the court or as a service agency for the court. ***

A court may not direct the United States Trustee to assume duties as a special master or investigator, or any other duty not imposed by statute.

[5] Relationship of U.S. Trustee to Other Parties

*** [R]ather than join any side in the battle, United States trustees usually work to ensure that creditors and other parties in interest are well-informed as to the terms and conditions under which they are operating and given an opportunity to bring before the court any disputed points.

Norton Bankruptcy Law and Practice 3d
2023, Authored by William L. Norton III
Thomson Reuters
CHAPTER 160. INTRODUCTION TO BANKRUPTCY LITIGATION
IV. Role of the Judge
§ 160:17 Diminished administrative role

The phrase "on request of a party in interest" * * * is intended to restrict the court from acting sua sponte.

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