



FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
RIVERSIDE DIVISION

In re:)	Case No.: 6:13-bk-11471-MJ
)	
SONJIA MAY GONZALES,)	Chapter: 13
)	
Debtor.)	
)	
)	MEMORANDUM OF DECISION
)	RE MOTION FOR CLARIFICATION
)	OF CHAPTER 13 CONFIRMATION
)	ORDER
)	
)	
)	Date: March 24, 2014
)	Time: 1:30 p.m.
)	Courtroom: 301
)	
)	

In January 2007, state court litigation (the Litigation) commenced between the Estate of Erin Elizabeth Wilson (the Estate) and Susanne Christensen (Christensen) as plaintiffs (referred to collectively herein as Movants) and Debtor Sonja May Gonzales (Debtor), Clifford Brace (Brace) and others regarding title to certain real property in Apple Valley, California (the Real Property). Movants alleged that Debtor and

1 Brace had fraudulently absconded with real and personal property
2 of the Estate after Erin Wilson died based on a fraudulent
3 scheme and sought to quiet title to the Real Property in the
4 Estate. At the time the Litigation commenced and continuing to
5 the present date the Real Property is titled in Debtor's name.

6 The Litigation has taken a remarkably slow path to
7 resolution because of the incarceration of Brace and three
8 different bankruptcy proceedings filed by Debtor. In the third
9 such bankruptcy proceeding, this Court entered a chapter 13
10 confirmation order, confirming a plan proposed by Debtor on the
11 mandatory form of the Central District Bankruptcy Court. Based
12 on the effect of confirmation of the plan and the provisions of
13 § 1327(b)¹, Debtor filed a motion for judgment on the pleadings
14 in the Litigation. Debtor asserted that the confirmation of the
15 chapter 13 plan and the revesting language of § 1327(b) (as
16 explained more fully below, the revesting caused by this section
17 is delayed until plan completion by language in the mandatory
18 plan form) created a preclusive ruling by the bankruptcy court
19 that Debtor owned the Real Property and that judgment for Debtor
20 on the quiet title issue was mandated.

21 Debtor's interpretation of the effect of the confirmation
22 order and § 1327(b) is wrong. Nothing in the chapter 13 plan
23 confirmation process in this case nor the revesting language
24 contained in the plan and in § 1327(b) adjudicates title to the
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26 ¹ Unless specified otherwise, all chapter and section references are to the
27 Bankruptcy Code, 11 U.S.C. §§ 101-1532, and all "Rule" references are to the Federal
Rules of Bankruptcy Procedure, Rules 1001-9037.

1 Real Property. Therefore, the order confirming the plan has no
2 preclusive effect on the issues in the Litigation. The state
3 court may proceed to resolve that issue based on a forthcoming
4 order of this court, founded on the reasoning below.

5
6 **1. FACTUAL AND PROCEDURE BACKGROUND**

7 In 2007 the Litigation was commenced, alleging wrong deeds
8 by Debtor and Brace which had occurred primarily before Erin
9 Wilson died in 2006. The current iteration of the complaint
10 (Second Amended) alleges that through a complex fraudulent and
11 criminal scheme Brace had used the confidence and trust placed
12 in him by Wilson and her daughter Christensen, which he had
13 curried for years, to cause the title to the Real Property to be
14 vested in Debtor.² With regard to Debtor, the Litigation now
15 seeks only to quiet title to the Real Property in the Estate.
16 The Litigation was abated from 2008 to 2010 due to criminal
17 proceedings against Debtor and Brace and Brace's eventual
18 incarceration.

19 On September 17, 2010, Debtor filed a chapter 7 case in
20 this Court, which created an automatic stay preventing the
21 Litigation from proceeding. Debtor listed the Real Property in
22 Schedule A and her state court attorneys advised the state court
23 of the stay. The chapter 7 proceeded unremarkably to discharge,
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25 ² This summary of the litigation is drawn from the Second Amended Complaint
26 filed in Case No. VCVVS 044885, Superior Court of California, County of San
27 Bernardino, on August 17, 2011, of which this Court takes judicial notice. Any
interpretation here of the Litigation is this Court's brief summary only and should
not be construed as a comprehensive summary.

1 which was entered on January 3, 2011, and close on January 10,
2 2011. In May 2012, Debtor caused the chapter 7 case to be
3 reopened and in June 2012 she filed an Order to Show Cause Re
4 Contempt For Violation of the Discharge Injunction, asserting
5 that the Estate, Christensen, and numerous attorneys who had
6 represented their interests were violating the discharge
7 injunction by continuing to pursue the Litigation. After full
8 briefing by the parties and multiple hearings, this Court denied
9 the contempt. It found that the only relief sought against
10 Debtor was in rem, quiet title to the Real Property, not
11 personal liability which would have been affected by the
12 discharge injunction. The order denying contempt was entered on
13 September 10, 2012, and the chapter 7 reclosed on October 24,
14 2012.

15 To further delay the litigation, on December 3, 2012, the
16 Debtor, pro se, filed a chapter 13 case in this Court. She
17 again listed the Real Property in Schedule A and her plan
18 purported to pay a small arrearage on a trust deed on that
19 property in the name of one of Brace's aliases (as alleged in
20 the Second Amended Complaint). Otherwise, the plan did not
21 address any claim or interest of the Estate or Christensen.
22 However, the only parties on her service list were professionals
23 representing the Estate and Christensen. Debtor did not appear
24 at the confirmation hearing on January 14, 2013, but the trustee
25 represented she had appeared at the morning creditor's meeting.
26 The trustee noted the plan had not been served and that the
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1 "rental property" was vacant and therefore had negative cash
2 flow.³ The trustee requested the case be dismissed without a
3 bar to refiling and the Court entered an order dismissing the
4 case on January 15, 2013. Nothing that occurred at this
5 confirmation hearing alerted the Court that this was the same
6 debtor Gonzales who had brought the unsuccessful contempt
7 proceeding. Since Movants had not been served, they had no
8 opportunity to participate at the hearing.

9 With the litigation moving toward trial, Debtor again filed
10 a chapter 13 case on January 28, 2013, this time with
11 experienced chapter 13 counsel. Her attorneys recognized that
12 because a prior chapter 13 had been filed and dismissed within a
13 year of this filing, under the provisions of § 362(c)(3) the
14 automatic stay would expire after 30 days, unless extended for
15 cause by the Court. They promptly filed a motion to extend the
16 stay and noticed it for regular hearing. Having received
17 notice, one of the representatives of the Estate appeared at the
18 hearing and reminded the Court of the contempt proceeding in the
19 prior chapter 7. At this point, the Court recognized this was
20 the same Debtor Gonzales and inquired of Debtor's counsel what
21 she was trying to accomplish with the chapter 13. Debtor's
22 counsel responded that she only knew of the arrearage on a first
23 trust deed and had been advised by Debtor that this creditor was
24 foreclosing, a legitimate reason to file a chapter 13 and cure

25
26 ³ Since the only real property in Schedule A was the Real Property, the Court
27 assumes the trustee was referring to that property as "rental property" because the
28 Debtor had characterized it as such at the creditor's meeting.

1 an arrearage through the plan.⁴ The Court denied the extension
2 of the automatic stay, finding that the quiet title action must
3 proceed in state court and opining that there was really nothing
4 to reorganize in a chapter 13 until title to the Real Property
5 was resolved there.

6 Despite this admonition from the Court and the absence of
7 any further stay, this case proceeded to confirmation on March
8 11, 2013, based on the trustee's recommendation and without
9 hearing.⁵ The confirmed plan cured the same small arrearage to
10 the purported first trust deed, paid attorney's fees, and paid
11 less than \$1000 of unsecured debt, requiring a plan payment of
12 \$160 per month.

14 2. MOTION FOR CLARIFICATION

15 on December 13, 2013, Debtor's attorneys in the Litigation
16 filed a motion for judgment on the pleadings in the state court,
17 asserting the plan confirmation had claim preclusive effect⁶ on
18 title to the Real Property.⁷ The moving papers initially relied
19 only on the argument that Debtor had listed the Real Property in
20

21 ⁴ The Court only learned later, after inspecting the complaint in the
Litigation, that the holder of the first trust deed was an alias of Brace.

22 ⁵ It is normal procedure in this Division that when a plan appears to be in
23 order, service is correct, and no creditors object, the trustee may recommend
confirmation without hearing and place the confirmation on the "consent calendar."
That occurred in this case.

24 ⁶ Debtor's motion refers to the term *res judicata*. This court shall use the
25 currently accepted term in federal courts of claim preclusion.

26 ⁷ The Court takes judicial notice of the pleadings filed in Case No. VCVVS
27 044885, including those filed in conjunction with the motion for judgment on the
pleadings. The court refers to them only to restate the allegations and arguments
made in those pleadings.

1 Schedule A and the plan had been confirmed; therefore, she
2 asserted the provisions of § 1327 applied such that the order
3 confirming the plan was claim preclusive on title to the Real
4 Property, determining that Movants had no interest in the Real
5 Property. After multiple rounds of briefing, the state court
6 stayed the proceedings while Movants sought clarification from
7 this Court on the effect of its confirmation order on the
8 Litigation. One of the issues raised in state court was the
9 effect of the language in the plan which delayed the revesting of
10 property in Debtor from the time of plan confirmation until
11 discharge or dismissal.

12 Seeking the clarification which the state court sought,
13 Movants filed this Motion for Clarification of Chapter 13 Plan.⁸
14 Debtor's responsive papers first assert that the Clarification
15 Motion is inappropriate because, rather than asking for
16 "clarification" of the order, it asks the Court to determine the
17 effect of the confirmation order on the Litigation. Debtor
18 contends the Court lacks the authority to make such a ruling.
19 She then argues, as in state court, that the confirmation of the
20 plan is a preclusive ruling on title to the Real Property based
21 on § 1327(b). The court will address these arguments in turn.

22
23 A. Authority to Interpret Own Order

24 Bankruptcy court's have always been empowered to interpret

25
26 ⁸ Prior to filing the clarification motion, on January 21, 2014, movants filed
27 an adversary proceeding in this court, seeking to quiet title to the Real Property in
the Estate. This case is duplicative of the state court litigation on this issue and
will be dismissed by this Court once the Clarification Order is entered.

1 and enforce their own orders. In Traveler's Indemnity Company v.
2 Bailey, 557 U.S. 137, 151 (2009) the Supreme Court upheld the
3 bankruptcy court's jurisdiction to enter a "clarifying order,"
4 interpreting the scope of an injunction contained in a prior
5 order confirming a chapter 11 plan entered in 1986 because the
6 bankruptcy court "plainly had jurisdiction to interpret and
7 enforce its own orders." More recently, in In re Wilshire
8 Courtyard, 729 F.3d 1279, 1289 (9th Cir. 2013), the Ninth Circuit
9 opined that the ancillary jurisdiction of a bankruptcy court
10 empowered it to interpret its prior orders when the issue before
11 the court was the impact of a chapter 11 plan on subsequent
12 action initiated by the California Franchise Tax Board against
13 individual partners of the chapter 11 debtor.

14 Additional authority for this Court to interpret the impact
15 of its orders is found in § 105(a), which allows this Court to
16 issue any order, process, or judgment that is necessary or
17 appropriate to carry out the provisions of the Bankruptcy Code.
18 The scope of an order confirming a chapter 13 plan falls within
19 this broad power. Determining the extent a confirmation order
20 effects creditors or interested parties in the case certainly
21 falls under the auspices of § 105(a).

22 As Movant's note, whether the motion is called a
23 "clarification" motion or a motion to "determine the effect of
24 the order" is of no import. Both the Supreme Court and the Ninth
25 Circuit use the term "interpret" when speaking of this Court's
26 power. Finally, if not this Court, which court would be tasked
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1 to interpret the effect of this confirmation order on the
2 Litigation? The state court was clearly stymied, since it
3 required Movants to return to this Court to determine the impact
4 of the confirmation order on the case before it.

5 The Court has the power to decide this issue.

6
7 B. Limits on Preclusive Effect of Plan
8 Confirmation

9 The premise of Debtor's claim preclusion argument is that
10 under the provisions of § 1327(b) and (c), when property is
11 "revested" in the Debtor, it is shed of any claims or interests
12 which might have been asserted against the Debtor. This argument
13 misunderstands the meaning of "revesting" as well as the
14 preclusive effect of a confirmed chapter 13 plan.

15 Section 1327 provides:

16 (a) The provisions of a confirmed plan bind the debtor and
17 each creditor, whether or not the claim of such creditor is
18 provided for by the plan, and whether or not such creditor
19 has objected to, has accepted, or has rejected the plan.

20 (b) Except as otherwise provided in the plan or the order
21 confirming the plan, the confirming of a plan vests all of
22 the property of the estate in the debtor.

23 (c) Except as otherwise provided in the plan or in the order
24 confirming the plan, the property vesting in the debtor
25 under subsection (b) of this section is free and clear of
26 any claim or interest of any creditor provided for by the
27 plan.

28 Surprisingly, there is very little case law discussing the
meaning and impact of the vesting (actually revesting) of
property from the estate into a debtor upon plan confirmation,
something which occurs by statute in both chapter 13 and chapter
11 proceedings. To understand the meaning, one must consider how
the bankruptcy estate is created and its role in a bankruptcy

1 proceeding.

2 The commencement of a case under any chapter creates an
3 estate as defined in § 541(a), which includes all legal or
4 equitable interests of the debtor in property as of the
5 commencement of the case. Section 1306(a) expands the estate in
6 a chapter 13 to include not only § 541(a) property but also
7 property acquired while the case is pending and before it is
8 closed, dismissed or converted to another chapter. Under these
9 provisions, read together, whatever interests the debtor had in
10 real or personal property on the petition date becomes property
11 of the chapter 13 estate, as well as anything the debtor acquires
12 while the chapter 13 is pending. A bankruptcy estate is
13 considered a separate entity from the debtor and enjoys certain
14 protections, such as the automatic stay of § 362(a).⁹

15 When a reorganization plan is confirmed in a chapter 13
16 case, unless the court orders otherwise, the property of the
17 estate reverts in the debtor under § 1327(b).¹⁰ In the Central
18 District of California, the court "has ordered otherwise." Its
19 mandatory chapter 13 plan form contains the following standard
20 language:

21 VI REVESTING OF PROPERTY

22 Property of the estate shall not revert in the Debtor until
23 such time as a discharge is granted or the case is dismissed
24 or closed without a discharge. Revestment shall be subject
to all liens and encumbrances in existence when the case was

25 ⁹ Subsections (2), (3), and (4) apply specifically to the estate.

26 ¹⁰ Whether an estate continues to exist after property reverts is open to
27 question in the Ninth Circuit and is of no consequence in this case. See In re Jones,
657 F.3d 921 (9th Cir. 2011).

1 filed, except those liens avoided by court order or
2 extinguished by operation of law

3 As quoted above, this plan language also alters subsection
4 (c) to provide that when revestment does occur, the property is
5 still subject to all liens and encumbrances except those
6 specifically avoided by order or operation of law. Therefore,
7 even if Debtor's argument that her confirmed plan had preclusive
8 effect against Movant's asserted interest in the Real Property
9 had merit, that effect would not come into play until she
10 completed the plan and the case was discharged or closed without
11 discharge. Moreover, when the Real Property did revest in her,
12 it would still be subject to all liens and encumbrances not
13 specifically avoided.

14 Even without the provision of the mandatory plan which may
15 override § 1327(c)¹¹, it is useful to understand how revesting has
16 been defined in Ninth Circuit case law. As mentioned above, this
17 case law is sparse and this Court has found no case which
18 analyzes the meaning of vesting or revesting in § 1327. However,
19 that term has been analyzed when it is used in § 349(b)(3)¹² which
20 talks about the effect of dismissal of a case. In Nash v Kester
21 (In re Nash), 765 F.2d 1410, 1414 (9th Cir. 1985), in speaking of

22 ¹¹ Under § 1327(c) the debtor receives property free and clear of any lien or
23 interest of "any creditor provided for by the plan." So, its impact is limited to
creditors' rights addressed in the plan.

24 ¹² § 349(b) provides:

25 Unless the court, for cause, orders otherwise, a dismissal of a case
26 other than under section 742 of this title -

27 . . .
(3) revests the property of the estate in the entity in which such
property vested immediately before the commencement of the case under
this title.

1 what happened to ownership of the Nashs' property after their
2 chapter 13 case was dismissed, the court looked at the
3 legislative history to determine the meaning of revesting:

4 The legislative history of § 349(b) states that "[t]he basic
5 purpose of the subsection is to undo the bankruptcy case, as
6 far as practicable, and to restore all property rights to
 the position in which they were found at the commencement of
 the case." S.Rep. No. 989, 95th Cong., 2d Sess. 49.

7 This meaning has been cited with favor in In re Jones, 657
8 F.3d 921, 928 (9th Cir. 2011) when speaking of the revesting of
9 property in the debtor after a chapter 13 plan was confirmed,
10 applying the same meaning to the words in § 1327. Therefore,
11 when the Real Property reverts in Debtor here after she completes
12 her plan (or the case is dismissed), she would take whatever
13 property rights she had in the property when the case commenced.
14 Unless her confirmed chapter 13 plan, or some other proceeding
15 which occurred while under the bankruptcy court jurisdiction,
16 affected title, she retains the Real Property subject to any
17 prepetition claims of Movants.

18 On this background, the Court now turns to whether the
19 chapter 13 plan of Debtor here decided anything preclusively with
20 regard to Movant's claimed interest in the Real Property.¹³ The
21 quick and simple answer is no. Debtor's uncomplicated chapter 13
22 plan makes a monthly payment of \$160 to the trustee to be
23 distributed to the small arrearage on the purported first trust
24 deed, to her minimal unsecured debt, and to trustee and

26 ¹³ Debtor makes no claim that anything other than plan confirmation occurred in
27 her case regarding the Real Property and the docket reflects that nothing else
 initiated by Debtor did.

1 attorney's fees. Nothing in the plan speaks of avoiding a lien
2 or interest of Movants in the Real Property. The only direct
3 provision of the plan cited by Debtor on this issue is the
4 delayed revesting provision, Part VI.

5 The extent to which a confirmed chapter 13 plan can be said
6 to have claim preclusive effect was addressed definitively in
7 Brawders v County of Ventura (In re Brawders), 503 F. 3d 856 (9th
8 Cir. 2007), which adopted the prior Ninth Circuit BAP opinion in
9 the same case. Both courts recognized that "[i]n rare instances,
10 the res judicata [claim preclusion] effect of a confirmed Chapter
11 13 plan can effectively avoid a creditor's lien or modify its in
12 rem rights even if there is no valid legal basis for doing so,
13 provided that the plan does so explicitly and due process
14 considerations are met." Id. at 863.¹⁴ But the appellate courts
15 spoke on the "major limitations" to this general proposition. A
16 key limitation was that the plan had to clearly state its
17 intended effect on a given issue; any ambiguity would be
18 interpreted against the debtor:

19 [A]ny ambiguity may also reflect that the court that
20 originally confirmed the plan did not make any final
21 determination of the matter at issue, and claim preclusion
22 generally does not apply to a "claim" that was not within
23 the parties' expectations of what was being litigated, nor
24 where it would be plainly inconsistent with the fair and
25 equitable implementation of a statutory or constitution
26 scheme. Id. at 867.

27 A further limitation is that due process requires adequate
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25 ¹⁴ The legal authority for this statement by the BAP at the time was Great Lakes
26 Higher Educ. Corp v Pardee (In re Pardee), 193 F. 3d 1083 (9th Cir. 1999) and Espinosa
27 v United Student Aid Fund (In re Espinosa), 553 F. 3d 1193 (9th Cir. 2008). The
United State Supreme Court has blessed this concept in United Student Aid Funds, Inc.
v Espinosa, 130 S. Ct. 1367 (2010).

notice and procedures. Id. at 867 (confirmation has no preclusive effect on matters requiring adversary proceeding, or where plan does not give adequate notice of proposed treatment). The courts in Brawders were faced with whether a confirmed chapter 13 plan which paid a sum certain on secured real property taxes in Class 2 (which was insufficient to pay the full balance due under the county tax lien) precluded the county from enforcing its right to collect the unpaid balance after that plan completed. The bankruptcy court had granted summary judgment for the debtor, finding that when the property revested in the debtor after plan completion, § 1327(c) and the plan provision that the Class 2 claimants had been paid in full meant that the debtor regained rights to the property free and clear of the county's tax lien. Id. at 859. Because the plan did not explicitly state it was reducing the county's tax lien to the amount to be paid or otherwise give notice to the county that its lien rights were to be effected, the BAP reversed this decision, affirmed by the Ninth Circuit. Id. at 873.

Similar limitations to the preclusive effect of a confirmed plan have been reiterated by the Ninth Circuit BAP in In re J.J. Re-Bar Corp., Inc., 420 B.R. 496 (9th Cir. BAP 2009), speaking of the effect of a confirmed chapter 11 plan. The debtor in J.J. Re-Bar had confirmed a plan which provided an installment payment on a debt for employee withholding taxes to the Internal Revenue Service; general language in the confirmation order enjoined creditors from pursuing claims against third parties when the

1 claim was addressed by the plan. Id. at 500. When the IRS started
2 collection activities on the "trust fund" obligation against the
3 debtor's insiders, the debtor argued the permanent injunction of
4 the plan precluded such action. Id. at 503. In denying the relief
5 sought by the debtor, the bankruptcy court and the BAP said that
6 for a plan term to be preclusive, it must be clear and its
7 proposed effect on the creditor must be explicit. Id. The general
8 language of the J.J. Re-Bar plan failed this test. Id.

9 Unlike Brawders and J.J.Re-Bar, Debtor's plan did not have
10 even general provisions which purported to effect Movant's
11 claimed interest in the Real Property. Other than the general
12 delayed revesting provision of Part VI, nothing in the plan could
13 even be construed to effect Movant's rights. Therefore, since
14 revesting the Real Property in Debtor gives her the property in
15 the same legal condition as at the commencement of the case, the
16 plan has no preclusive effect on the quiet title action now
17 pending in state court. That action should proceed to determine
18 ownership rights to the Real Property.

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Dated: April 9, 2014

MEREDITH A. JURY
United States Bankruptcy Judge