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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

In re:

ARTURO GONZALEZ,

Debtor.

No. 2:15-bk-25283-RK

Chapter 7

**ORDER (1) DENYING DEBTOR'S MOTION  
TO STAY THE BANKRUPTCY CASE AND (2)  
VACATING THE NOVEMBER 1, 2022  
HEARING**

**Vacated Hearing**

Date: November 1, 2022

Time: 2:30 p.m.

19 On October 6, 2022, Debtor Arturo Gonzalez filed a Motion to Stay the Case Due  
20 to the Bankruptcy Court Being in Subordinate Position ("motion") (Docket No. 670). The  
21 caption of the motion lists a hearing date of November 1, 2022 at 2:30 p.m. On October  
22 18, 2022, Chapter 7 Trustee Wesley H. Avery filed an opposition to the motion (Docket  
23 No. 674). However, the motion was not properly noticed for hearing because it was not  
24 accompanied by a written notice of motion as required by Local Bankruptcy Rule 9013-  
25 1(c)(2).

26 Having considered the motion and opposition, pursuant to Local Bankruptcy Rule  
27 9013-1(j)(3), the court determines that a reply and oral arguments are not necessary,  
28 dispenses with oral argument on the motion, takes the motion under submission, and

1 denies the motion for insufficient cause.

2 Debtor's motion to stay the bankruptcy case does not establish a factual or legal  
3 basis to support a stay of this bankruptcy case. Debtor apparently argues that his  
4 appeal before the District Court of this court's order granting in part and denying in part  
5 Trustee's motion objecting to Debtor's amended schedules deprives this court of  
6 continuing jurisdiction over the bankruptcy case. Motion at 2-4.

7 However, as the United States Court of Appeals for the Ninth Circuit has stated:

8 The general rule that a properly filed notice of appeal deprives the trial  
9 court of jurisdiction to proceed further except by leave of the appellate court does  
10 not apply in bankruptcy proceedings. Appellants' contention to the contrary is  
11 refuted by the very case they cite:

12 (P)roceedings in bankruptcy should not halt merely because  
13 interlocutory orders are appealed from the referee . . . (rather,) a case  
14 should continue to be adjudicated on the merits by the referee unless the  
15 order appealed from was of such a nature as to render further  
16 proceedings useless.

17 *Mavity v. Associates Discount Corporation*, 320 F.2d 133, 136 (5th Cir. 1963).

18 The Trustee in a bankruptcy proceeding is expected and encouraged to  
19 proceed with administration of the estate after the entry and during the appeal of  
20 an order of adjudication. *Georgia Jewelers, Inc. v. Bulova Watch Co.*, 302 F.2d  
21 362, 370 (5th Cir. 1962).

22 *Matter of Christian and Porter Aluminum Co.*, 584 F.2d 326, 334 (9th Cir. 1978).

23 As a general rule, an appeal of an order in a bankruptcy case does not deprive  
24 the bankruptcy court of jurisdiction over the case unless the order appealed from was of  
25 such a nature as to render further proceedings useless. *Id.* (citation omitted). Debtor  
26 has not shown that the court's order that he has appealed from was of such a nature as  
27 to render further proceedings useless based on his arguments in support of his motion  
28 at pages 2-4, that is, by showing that he can now amend his bankruptcy schedules to  
change his exemptions to show that there were no dischargeable debts to justify the  
administration of this bankruptcy case that he initiated with a voluntary petition for relief

1 under Chapter 7 of the Bankruptcy Code with the assistance of counsel. As stated in  
2 the court's order on Trustee's motion objecting to Debtor's amended schedules, Debtor  
3 cannot now change his exemptions because his exemptions have been adjudicated to  
4 final judgments are now nonappealable, the law of the case and/or res judicata.  
5 Debtor's claimed exemptions under California Code of Civil Procedure § 703.140(b)(1)  
6 and (5) were determined in a final order of this court in the contested matter of Trustee's  
7 objections to such exemptions entered on July 12, 2016, and there was no timely notice  
8 of appeal of that order. Debtor's claimed exemptions under California Code of Civil  
9 Procedure § 704.060 were finally determined by the District Court in Case No. 2:19-cv-  
10 07779-JVS (C.D. Cal.) on September 10, 2020 when that court denied Debtor's motion  
11 for reconsideration of the dismissal of his appeal of this court's order disallowing such  
12 exemptions based on equitable estoppel in the contested matter of Trustee's motion  
13 objecting to such exemptions. Since it appears that Debtor's pending appeal of the  
14 court's order on Trustee's motion objecting to Debtor's amended schedules lacks merit,  
15 its resolution does not render further proceedings in this bankruptcy case useless, and  
16 Trustee was expected and encouraged to continue administration of the case as he has  
17 done based on what the Ninth Circuit has stated in *Matter of Christian and Porter*  
18 *Aluminum Co.*, 584 F.2d at 334.

19 The cases cited by Debtor, *Griggs v. Provident Consumer Discount Co.*, 459  
20 U.S. 56, 58 (1982), *In re Strawberry Square Associates*, 152 B.R. 699 (Bankr. E.D. N.Y.  
21 1993); and *In re Bryant*, 175 B.R. 9, 11-12 (W.D. Va. 1994) at pages 2-3 of the Motion  
22 do not support Debtor's motion because such authorities are inapplicable and/or not  
23 controlling or persuasive in this case. *Griggs* did not involve bankruptcy court  
24 proceedings, and is thus inapplicable. 459 U.S. at 58. *Strawberry Square Associates*  
25 recognized that an appeal in a bankruptcy case does not deprive the court of jurisdiction  
26 of other aspects of the case not under appeal and thus, does not support Debtor's  
27 motion. 152 B.R. at 701-702. The approval of Trustee's final report and allowance of  
28 professional fees are not issues under Debtor's appeal of the court's order on Trustee's

1 motion objecting to Debtor's amended schedules. In any event, *Strawberry Square*  
2 *Associates* was a decision of an out of circuit bankruptcy court and not binding or  
3 controlling on this court. In this court's view, the appropriate jurisdictional standard was  
4 set out by the Ninth Circuit whose decisions are controlling on this court in *Matter of*  
5 *Christian and Porter Aluminum Co.* as to whether an appeal of a bankruptcy court order  
6 divests the court of jurisdiction. *Bryant* was a decision of an out of circuit district court  
7 and not binding or controlling on this court. *Bryant* applied the jurisdictional standard  
8 applicable to the district court involving an appeal before the court of appeals to the  
9 bankruptcy court, citing *Griggs*. 175 B.R. at 11-12. Based on *Matter of Christian and*  
10 *Porter Aluminum Co.*, the standard stated by the district court in *Bryant* is not  
11 completely appropriate. Accordingly, the court does not apply the standards enunciated  
12 in the cases cited by Debtor.

13 The court does not address Trustee's argument regarding a motion for stay  
14 pending appeal pursuant to Federal Rule of Bankruptcy Procedure 8007 because there  
15 is no pending appeal of the order approving Trustee's final report and fee applications of  
16 Trustee and his professionals, and thus, there can be no pending motion for stay  
17 pending appeal. Debtor has a pending motion for reconsideration under Federal Rule  
18 of Bankruptcy Procedure 9023, and thus, discussion of a stay pending appeal is  
19 premature.

20 Additionally, the court denies Debtor's motion for stay of the bankruptcy case  
21 because the motion was not accompanied by a written notice of motion as required by  
22 Local Bankruptcy Rule 9013-1(c)(2) on the mandatory court form, Hearing Notice, Form  
23 F9013-1.1.HEARING.NOTICE. Even though Debtor is a self-represented litigant, he is  
24 required to comply with the court's rules the same as parties represented by counsel as  
25 stated in Local Bankruptcy Rule 9011-2(d).

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1 Because the court has ruled on Debtor's motion by this written order, the hearing  
2 on the motion for November 1, 2022 at 2:30 p.m. is vacated. No appearances are  
3 required on the motion on November 1, 2022 as the court will not call the motion for  
4 hearing on that date.

5 IT IS SO ORDERED.

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24 Date: October 19, 2022



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26 Robert Kwan  
27 United States Bankruptcy Judge  
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