2020 Mont. B.R. 204

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In re **LEILANI HOPE RICKERT,** Debtor(s).	Case No. **18-60937-BPH**

ORDER

At Butte in said District this 2nd day of June, 2020.

In this Chapter 13[1] bankruptcy, the Court conducted a telephonic hearing on confirmation of Debtor's Amended Chapter 13 Plan dated May 13, 2020 at ECF No. 245 ("Plan") on May 26, 2020.[2] The Chapter 13 Trustee ("Trustee") filed objections to the Plan at ECF No. 246, and requested that the case be dismissed pursuant to § 1307(c)(5). A hearing on confirmation was set by prior order for May 26, 2020.[3] Late in the evening on May 25, 2020, Debtor filed a Motion to Continue the hearing at ECF No. 253 ("Motion"). Appearances were noted on the record. In this case, Debtor is representing herself.

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

[2] Initially Debtor's operative plan was at ECF No. 124, and any further amendment to Debtor's Chapter 13 Plan was to be filed on or before April 28, 2020. Debtor missed this deadline. The Plan at ECF No. 245 was filed May 13, 2020. Debtor conceded at the hearing that her plan at ECF No. 245 was not timely filed and not confirmable. Debtor also agreed that her filing of the amended plan at ECF No. 245, was a concession that the Plan at ECF No. 124 was not confirmable. The Court has included this explanatory footnote because beginning at minute 5:59 the Court mistakenly referred to ECF No. 245, when it should have referred to ECF No. 124.

[3] ECF No. 240.

A. Confirmation of the Plan.

To confirm a plan, each of the requirements outlined in § 1325 must be met. In this case, the Trustee filed an objection that identified multiple deficiencies, including:

- Debtor's failure to comply with this Court's Order at ECF No. 240, and failure to timely file her Plan;
- The Plan failed to comply with § 1325(b)(4)(a)(1);
- The Plan was underfunded;
- Debtor's approach to her duties under § 521 and Rule 1007 has been cavalier ("This court should hold that giving such disregard to complete and accurate Schedules abridges her duties as they appear under the Code and Rules");
- Plan violated § 1322(a)(3);
- Plan unreasonably discriminated among creditors, § 1325(a)(5);
- Debtor's certification of Plan in paragraph 12 was not true; and,
- Debtor failed to serve the Plan on all creditors.

ECF No. 246. The deficiencies in this Plan, followed 6 prior plans that were equally objectionable and not confirmable.[4] The objection includes a request for dismissal under § 1307(c)(5)

At the hearing Debtor conceded that the Plan before the Court was not confirmable. The Court denied confirmation of the Plan based on this concession. Also, as a result of Debtor's concession, the Court reasoned that any motion to "continue" was moot (no reason to continue a confirmation hearing on a plan that was admittedly not confirmable). Finally, in conjunction with her concession that the Plan was not confirmable, Debtor requested additional time to correct the deficiencies. The Court did not rule on Debtor's request for additional time at the hearing, or the Trustee's request for dismissal pursuant to § 1307(c)(5), that was included in his objection to the Plan.

[4] *See* ECF Nos. 17, 21, 27, 43, 46, and 124.

The Court did not have an opportunity to review the Motion in detail prior to the hearing, because it was filed late the night before.[5] Although Debtor identified the Motion as a "motion to continue", the Court questioned whether it was a motion to continue or raised other issues. The Court's inquiry followed Debtor's statements referring to her appeal in an adversary case, and her references to Rule 8007. Following comments from counsel and the Debtor, the Court advised the parties it would review the Motion in greater detail and address any issues raised in it.

B. The Motion, although styled as a "motion to continue," implicates other issues.

Courts have a duty to construe pro se pleadings liberally, including pro se motions as well as complaints. *Bernhardt v. Los Angeles County*, 339 F.3d 920, 925 (9th Cir. 2003). We make reasonable allowance for pro se litigants and construe their papers liberally. *Ozenne v. Bendon* (*In re Ozenne*), 337 B.R. 214, 218 (9th Cir. BAP 2006). Pro se litigants must follow the same rules of procedure that govern other litigants. *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987), citing *United States v. Merrill*, 746 F.2d 458, 465 (9th Cir. 1984), cert. denied, 469 U.S. 1165, 105 S.Ct. 926, 83 L.Ed.2d 938 (1985) (overruled on other grounds by *Lacey v. Maricopa Cnty.*, 693 F.3d 896 (9th Cir. 2012)). To date this Court has excused Debtor's failure to comply with the rules and justified doing so under its duty to liberally construe Debtor's pleadings. For example, the Motion is subject to being denied as untimely. Instead this Order liberally construes Debtor's pleadings one last time and endeavors to divine the relief being requested.[6]

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[5] The Court explained that because the Motion was filed on the eve of the hearing, the Court had not reviewed it. Further, pursuant to Mont. Local Bankruptcy Rule (LBR) 5071-1(a), a motion to continue a hearing must be filed at least 3 business prior to the scheduled hearing. The Court could have denied the Motion because it was untimely under LBR 5071-1(a).

[6] At some point the Court's indulgence of *pro se* practice under its duty to liberally construe pleadings is unfair to every other constituency in the case whose time and resources are also

However, this Court has no obligation to act as counsel or paralegal to pro se litigants." *Pliler v. Ford*, 542 U.S. 225, 231, 124 S.Ct. 2441, 159 L.Ed.2d 338 (2004); see also *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987) ("courts should not have to serve as advocates for pro se litigants"). Although styled as a motion to continue, the Motion implicates at least 2 other issues: (i) a stay pending appeal; and, (ii) this Court's jurisdiction pending appeal. In essence, Debtor is seeking to stay this bankruptcy case during the pendency of an appeal in an associated adversary case. Familiarity with Debtor's first and second appeals to the Ninth Circuit Bankruptcy Appellate Panel ("BAP") is necessary to analyze these issues.

1. The first and second appeals to the BAP.

This case has been pending since October 2, 2018. During this case's pendency, Debtor objected to Specialized Loan Servicing's ("SLS") proof of claim, and its motion to modify the stay under § 362. Following an evidentiary hearing, the Court overruled Debtor's objection to SLS's proof of claim. The Court concluded that SLS was the party entitled to enforce the note, and granted SLS stay relief to pursue its non-bankruptcy remedies under the deed of trust that secured the note.[7] Implicit, if not explicit in this decision was a determination that the Note was enforceable, and SLS could enforce its interest under the deed of trust in another form under non-bankruptcy law. On March 9, 2020, the BAP affirmed this Court's decision.

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taxed by the filings.

[7] Generally, granting or denying a stay relief motion is non-preclusive. However, because stay relief was heard with the claim objection, the claim objection was an adjudication on the merits with both explicit and implicit findings and conclusions, including, "Thus, its [SLS] proof of claim provided prima facie evidence as to the validity and amount of its claim and the burden was thus on Debtor to supply sufficient evidence 'tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves.' Debtor offered no evidence to refute the validity of SLS's claim."

Just days before the BAP's decision was entered, Debtor filed an adversary complaint against SLS, challenging the validity, priority or extent of its lien. SLS filed a motion to dismiss and attached as an exhibit the BAP's decision. This Court reasoned that the issues raised in the adversary complaint had been decided both explicitly and implicitly in its prior decision that was affirmed by the BAP. The Court relied on the BAP decision from the first appeal in its decision to grant SLS's motion to dismiss the adversary proceeding. The new adversary complaint was a thinly veiled attempt to repeat the same challenges and arguments that were disposed of by this Court's decision overruling the claim objection and granting stay relief. The Court further concluded that amendment would not cure the deficiencies.[8] Debtor filed her second appeal to the BAP, and that appeal is pending.

Debtor raises 7 issues in her second appeal to the BAP:

1. Was Debtor denied due process when the Bankruptcy Court dismissed the adversary complaint without having a hearing?[9]
2. Did the Bankruptcy Court abuse its discretion, violate Debtor's due process, and make a clearly erroneous application of law when Defendants' motion to dismiss had technical defects, failed to comply with local bankruptcy rules and had insufficient service of process?
3. Is the Bankruptcy Court's Order void for being issued in denial of due process?
4. Was the Debtor denied an opportunity to offer a proper defense when the Defendants [SLS] presented extrinsic evidence not plead in her complaint?
5. Did the Bankruptcy Court ignore Debtor's evidence showing that Debtor does not have any legal or legitimate Debt contract with SLS and there was no breach of contract with SLS?
6. Does SLS have legal authority to move to dismiss when Debtor has presented conclusive evidence that [SLS] has absolutely no standing in regards to its proof of claim?
7. Did the Bankruptcy Court err in issuing an order to dismiss when it relied on extrinsic evidence not plead in her complaint?

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[8] This Court could not distinguish the theories and relief requested in the new adversary complaint from the claims and arguments presented in Debtor's prior claim objection that was the subject of her first appeal.

[9] According to Debtor's brief, "Plaintiff request[ed] that the Bankruptcy Court make a ruling without a hearing." Adv. No. 20-01003, ¶2 at page 6, ECF No. 8.

Adv. No. 20-01003, ECF No. 19. The appeal is in its infancy. On May 28, 2020, the Clerk of Court certified the record. *Id*. at ECF No. 20.

2. Debtor's Motion cites Rule 8007, and appears to request a stay pending appeal.

The Motion includes a block quote of Rule 8007, but fails to articulate in a meaningful way the precise relief Debtor is seeking. Considering this Court's duty to construe pro se pleadings liberally, it appears Debtor is seeking relief under Rule 8007(a)(1)(A) and (a)(1)(D). As a result, this Court will consider both subsections. The Motion also refers to Rule 8004, but only to establish that Debtor has a pending appeal.

a. Debtor is not entitled to a stay pending appeal under subsection (a)(1)(A) of Rule 8007.

Rule 8007(a)(1)(A) provides for the filing of a stay of judgment, order, or decree of the bankruptcy court pending appeal. To obtain a stay pending appeal, a party must demonstrate:

> (1) a likelihood of success on the merits, (2) irreparable injury if stay is denied, (3) no substantial harm to appellee from grant of stay, and (4) that the stay will do no harm to public interest.

In re Wymer, 5 B.R. 802, 806 (9th Cir. BAP 1980). In *Wymer*, the BAP cautioned that a stay "should be sparingly employed and reserved for the exceptional situation." *Wymer*, 5 B.R. at 806. In this case, there is nothing exceptional about the situation, and the Motion is silent on each of the 4 factors.

i. Likelihood of success on the merits.

In this case, Debtor has not presented any argument or evidence that suggests she enjoys a likelihood of success on the merits. To the extent Debtor's appeal raises due process issues, in this Court's view, the record does not support this claim. The Court ruled on the motion to

dismiss without a hearing, at Debtor's request. To the extent Debtor complains that this Court's analysis considered extrinsic evidence, the extrinsic evidence she is referring to seems to be the BAP's decision affirming this Court's prior decision on the same and similar issues, which this Court had authority to do.[10] Ultimately, the BAP will review this Court's work and determine whether it erred, but Debtor has not presented this Court with any authority or argument that suggests she enjoys a likelihood of success on the merits in her second BAP appeal.

ii. Irreparable injury.

Next, Debtor has not established that she will suffer irreparable injury if a stay is denied. This Court cannot discern any irreparable injury that Debtor will suffer absent a stay, and the Motion fails to address this requirement in any substantive way. This Court acknowledges that denial of a stay and dismissal may give rise to an argument that Debtor's appeal is equitably moot. However, "[a] majority of courts have held that a risk of mootness, standing alone, does not constitute irreparable harm." See *In re Adelphia Communications Corp.*, 361 B.R. 337, 347 & n. 39 (S.D.N.Y.2007).

The issues in this bankruptcy case are limited to Debtor's dispute with SLS. It is a two-party dispute at this point. SLS was granted relief from the stay under § 362 and SLS is authorized to proceed with its remedies under non-bankruptcy law. Similarly, Debtor can invoke

[10] This Court was permitted to take judicial notice of the BAP's decision without converting SLS' motion to dismiss to a motion for summary judgment. See *Disabled Rights Action Comm. v. Las Vegas Events, Inc.*, 375 F.3d 861, 866 n.1 (9th Cir. 2004); *Mack v. S. Bay Beer Distrib., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986) ("On a motion to dismiss . . . a court may take judicial notice of facts outside the pleadings. . . . Therefore, on a motion to dismiss a court may properly look beyond the complaint to matters of public record and doing so does not convert a Rule 12(b)(6) motion to one for summary judgment.") (citations, quotations, and footnote omitted), overruled on other grounds by *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 111 (1991).

her rights and defenses under non-bankruptcy law in another forum. Given this context, this Court cannot discern any irreparable injury Debtor will suffer absent a stay. To the contrary, perpetuating this case and the appeal benefit Debtor because it creates uncertainty for SLS that may cause it to pause and delay taking any definitive action in a non-bankruptcy forum. Its efforts to enforce its claim and interests have been effectively stymied since the petition date, October 2, 2018.

iii. Harm to appellee (SLS).

If a stay pending appeal were imposed, SLS (the appellee) would not suffer any harm because that stay would be limited to the further administration of this bankruptcy case. It would not stay any foreclosure or other action SLS has taken under non-bankruptcy law. This Court granted SLS' request for stay relief under § 362, and that decision was affirmed. The BAP's decision affirming this Court's grant of stay relief under § 362 was not appealed and is a final order. A stay pending appeal would have no effect on any pending foreclosure or other action by SLS under non-bankruptcy law. As a result, SLS would be free to enforce its interests in the note and deed of trust under non-bankruptcy law.

iv. Public Interest.

Finally, the "do no harm to the public interest" factor weighs in favor of denying a stay. One court explained that absent the other factors, "a stay pending appeal would injure the interests of sound case management in the bankruptcy process, and as a consequence, would also injure the public interest." *In re Taub*, 2010 WL 3911360, at *6 (Bankr.E.D.N.Y. Oct. 1, 2010). Considering the posture of this case, rather than entry of a stay, sound case management likely dictates dismissal of this case.

One of the Code's purposes is to grant a "fresh start" to "the honest but unfortunate debtor." As one court explained, "[i]nstead, in general and in Chapter 13 in particular, bankruptcy constantly

requires a balancing of the debtor's need for a fresh financial start against the creditors' right to fair treatment." *In re Chapman*, 146 B.R. 411, 420 (Bankr.N.D.Ill.1992). Sound case administration is administration that is in furtherance of both the debtor's fresh start, and the fair treatment of creditors. Neither objective has been met nor will be achieved in this case.

As the Trustee highlights in his objection, creditor's have not been treated fairly, and in some cases have suffered prejudice as a result of Debtor's conduct during the pendency of this case. A comparison of Debtor's initial schedules E/F at ECF No. 12, with the Amended Schedules at ECF No. 244 supports finding that during the pendency of this case Debtor has made direct payments to nonpriority unsecured creditors on prepetition claims, reducing the total nonpriority unsecured claims disclosed on her initial Schedule E from $13,161.22 to $2,468.37. While Debtor's payment of these claims is perhaps, noble, it has created potentially different outcomes for creditors in the same class and conflicts with § 1322(a)(3).

The Trustee's objection characterizes Debtor's conduct as cavalier, but he could have just easily characterized it as bad faith. Sound case administration disfavors granting a stay when the Debtor has acted in bad faith. The Ninth Circuit has held that in determining whether a chapter 13 plan was proposed in good faith a bankruptcy court should consider (1) whether the debtor misrepresented facts in his or her petition or plan, unfairly manipulated the Code, or otherwise filed his or her petition or plan in an inequitable manner; (2) the debtor's history of filings and dismissals; (3) whether the debtor intended to defeat state court litigation; and (4) whether egregious behavior is present. *In re Leavitt*, 171 F.3d 1219, 1224–25 (9th Cir.1999). Evidence of these factors is present in this case, and the Trustee's objection highlights it.

As to factor 1, Debtor has amended her schedules E/F repeatedly.[11] The Trustee notes in his objection that determining who the unsecured creditors are in this case is a moving target. This makes plan formulation and administration impossible, and completely ignores the significance of the petition date in determining a creditor's status and claim amount. Further the conduct reflects a pattern of misrepresentation and a manipulation of the Code. While Debtor enjoys the protection afforded by the stay unsecured creditors cannot take any collection action. At the same time, Debtor is making preferential payments to certain unsecured creditors in the same class. It is unclear if Debtor has made any post petition payments to secured creditor SLS, but given the litigation to date, it seems unlikely.

Factors 2 and 3 weigh in favor of bad faith. First, Debtor's case was filed on October 2, 2018. ECF No. 1. A nonjudicial foreclosure sale was scheduled for October 9, 2018. ECF No. 8. While the mere filing of a bankruptcy on the eve of foreclosure is not by itself indicative of bad faith, this fact in conjunction with the record in this case calls into question Debtor's objectives and motives, and whether she is seeking the benefits afforded under the Code in exchange for certain burdens that are placed on debtors, or simply seeking to park herself in bankruptcy as long as possible to enjoy the protection afforded by the stay.

This is Debtor's second bankruptcy filing in less than 4 years. Debtor's previous case was filed October 28, 2016. Debtor received her discharge on January 23, 2017. This case was filed on October 2, 2018. As a result, Debtor is not eligible for a discharge in this case under § 1328(f)(1). Ordinarily, the fresh start afforded under the Code reflects one of the primary purposes of bankruptcy. Recognition that Debtor is ineligible for a discharge along with

[11] ECF Nos. 22, 25, 35, 45 and 244.

Debtor's conduct in the case cause this Court to question the sincerity of her "reorganization" efforts under Chapter 13.

Finally, although no single act in isolation might be "egregious," consideration of ECF No. 1-255 in this case, reflect a pattern of conduct that qualifies as egregious. Since filing her petition, more than 18 months have passed and a plan has not been confirmed, despite no less than 7 plans having been considered. While enjoying the protection of the stay, Debtor has made payments to certain preferential unsecured creditors while paying others in the same class nothing, and avoiding a foreclosure action that was scheduled to be completed 18 months ago. The Trustee's characterization of the Debtor's approach as cavalier was charitable given this record.[12]

The public interest favors sound case administration and a balancing of interests. On this record, Debtor's inability to obtain a discharge, her conduct indicative of bad faith, and the recognition that in essence this case involves a 2-party dispute capable of adjudication in a non-bankruptcy forum, sound case administration and the public interest would not be served by a stay. Indeed, a stay would undermine the public's confidence in this Court's fair and efficient resolution of the matters before it.

b. Debtor is not entitled to a stay pending appeal under subsection (a)(1)(D) of Rule 8007.

Rule 8007(a)(1)(D) incorporates subsection (e) of Rule 8007, which states that "[d]espite Rule 7062 and subject to the authority of the district court, BAP, or court of appeals, the bankruptcy court may: (1) suspend or order the continuation of other proceedings in the case; or (2) issue any other appropriate orders during the pendency of an appeal to protect the rights of all

[12] The Trustee's analysis may have been tempered by Debtor's record of making plan payments. The Court observes that the pending request to dismiss is not based on § 1307(c)(4).

parties in interest." The standards governing a stay under subdivision (e) are the same as those governing a stay under subdivision (a). 10 Collier on Bankruptcy P 8007.12 n.4 (16th 2020). The Court's analysis of the factors under subsection (a)(1)(A) applies with equal force to subsection (a)(1)(D), and its incorporation of subsection (e).

3. This Court's jurisdiction while an appeal is pending.

According to Debtor, "because this [adversary] case is now in appeal, the Trustee and the Court do not have jurisdiction to dismiss this case for the Court's denial of plan or any other reason." ECF No. 253 at ¶ C. This is not a correct statement of the law. Generally, the timely filing of a notice of appeal divests the trial court of jurisdiction. *In re Silberkraus*, 336 F.3d 864, 869 (9th Cir.2003). However, the rule is not absolute. *In re Padilla*, 222 F.3d 1184, 1190 (9th Cir.2000). The Bankruptcy Appellate Panel for the First Circuit recently discussed the applicability of the "divestiture rule" to bankruptcy court orders, and concluded by succinctly stating:

> the test for determining if a pending appeal divests a lower court of jurisdiction is whether the subject matter presented in the appeal is so closely related to the issues raised in the motion that the entry of the order 'impermissibly interfere[s]' with the appellant's rights in its appeal.

In re Old Cold, LLC, 602 B.R. 798, 822 (1st Cir. BAP 2019) citing *In re Whispering Pines Estates, Inc.*, 369 B.R. 752, 757 (1st Cir. BAP 2007). Although this formulation of the test is not binding on this Court, it is instructive and consistent with the discussion and application of the "divestiture rule," in this Circuit.[13]

[13] See *In re Padilla*, 222 F.3d 1184 (9th Cir.2000), *In re Rains*, 428 F.3d 893, 901 (9th Cir.2005), *In re Sherman*, 491 F.3d 948, 969 (9th Cir.2007).

The issues on appeal are not closely related to the Trustee's objection to the Plan, or confirmation of the Plan. Trustee's objections hinge on §§ 1322, 1325, and Debtor's duties under the Code. Although the Trustee characterized Debtor's approach as cavalier, he could have just as easily characterized it as bad faith. The issues on appeal are limited to Debtor's dispute with SLS, and neither the Trustee's objections nor the Court's rationale for denying confirmation relate to that dispute or the SLS claim. Instead, confirmation was denied based on Debtor's concession the Plan was not confirmable. The appeal did not divest this Court of jurisdiction to deny confirmation, or deny a request to continue the hearing on confirmation.

Along with objecting to confirmation, the Trustee requested dismissal of this case under § 1307(c)(5). The Ninth Circuit Bankruptcy Appellate Panel has explained:

> Two elements must be satisfied to constitute "cause" under § 1307(c)(5): first, denial of confirmation of a plan under § 1325 and second, denial of a request made for additional time to file another plan.

Phillips v. Leavitt (*In re Phillips*), 2015 WL 2180321, at *1-2 (9th Cir. BAP May 8, 2015). To date, Debtor has filed no less than 7 plans and failed to achieve confirmation. Most recently, following Debtor's concession that her plan was not confirmable, she requested additional time to file a new plan. Based on this Court's review and familiarity with the record, granting Debtor additional time to file a further amended plan would not serve the purposes of the Code, and more importantly Chapter 13. As a result, both elements required under § 1307(c)(5) are satisfied, and cause exists to dismiss this case, so long as this Court has not been divested of jurisdiction to do so.

The appeal did not divest this Court of jurisdiction to administer this case, including confirmation proceedings and any dismissal that may result from Debtor's inability to confirm a plan under § 1307(c)(5). The issues in Debtor's second BAP appeal are narrow and involve a limited dispute between Debtor and SLS. While the Court acknowledges that dismissal of this case may give

rise to an argument that the appeal is equitably moot, this mere possibility does not equate to "impermissible interference" with appellant's rights in the appeal. Instead, dismissal on grounds totally independent of the issues on appeal is wholly permissible. If it were not permitted, the filing of an appeal would bring bankruptcy cases to a halt, and "effectively cede control of the conduct of a . . . . case to disappointed litigants."[14]

The Trustee has established that Debtor has serially amended her schedules to reflect her preferential payments while the case has been pending to creditors, resulting in unequal treatment amongst creditors in the same class, and payments to unsecured creditors that would ordinarily be paid after administrative claims are paid. This reflects an unfair manipulation of the Code. Debtor is not eligible for a discharge, and the only benefit Debtor seems capable of realizing in this case is the benefit of the stay under § 362 without shouldering any of the burdens or duties under the Code. Ultimately, this Court concludes that the merits weigh in favor of dismissal for cause under § 1307(c)(5). Failing to dismiss this case enables conduct that perverts the objectives of the Code. Nothing that has transpired in the last 18 months of this case suggests or justifies allowing Debtor yet another opportunity to amend her plan. Instead, dismissal of this case under § 1307(c)(5) is appropriate.

Having reviewed the record, and for the reasons discussed above, IT IS ORDERED that:

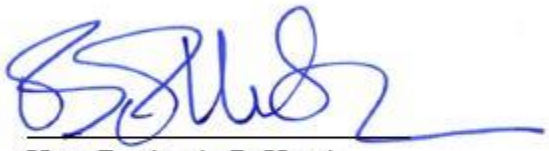
[14] "If the divestiture doctrine were to be applied in a way that divests bankruptcy courts of jurisdiction over all issues relevant to confirmation on which the court has previously ruled and are the subject of a pending appeal, this would lead to an absurd result—courts would likely decline to rule on any issues that could be implicated at confirmation for fear of interfering with a debtor's ability to emerge from chapter 11. Moreover, it would effectively cede control of the conduct of a chapter 11 case to disappointed litigants. This cannot be, and is not, the law." *In re Sabine Oil & Gas Corp.*, 548 B.R. 674, 681 (Bankr. S.D.N.Y. 2016). This Court finds this logic even more persuasive here, where the appeal is wholly unrelated to confirmation.

1. Debtor's Motion at ECF No. 253, seeking a stay under Rule 8007(a)(1)(A), a suspension of proceedings under Rule 8007 (a)(1)(D), and challenge to this Court's jurisdiction under the "divestiture rule" pending appeal is denied;

2. The Trustee's Objections at ECF No. 246 to Confirmation of Debtor's Plan dated May 13, 2020 at ECF No. 245 are sustained, and confirmation under § 1325 is denied;

3. Debtor's oral request at the hearing for additional time to file an 8th amended plan is denied; and this bankruptcy case is dismissed for cause pursuant to § 1307(c)(5).

BY THE COURT:



Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana