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UNITED STATES BANKRUPTCY COURT EASTERN
DISTRICT OF CALIFORNIA

Not for Publication

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re

Case No. 12-17088

Frank Jeffrey Ketscher
and Carol Kathleen Ketscher,

Debtors.

MEMORANDUM DECISION

(Corrected)

1 Should the bankruptcy court reopen a Chapter 7 case to allow the
2 debtors to attack the foreclosure of their residence that occurred
3 after the case closed, over which the court has no jurisdiction and
4 from which the bankruptcy estate will not benefit?

5 **FACTS**

6 Debtors Frank Ketscher and Carol Ketscher ("Ketschers") filed a
7 Chapter 7 bankruptcy. On the date of the petition, the Ketschers owned
8 real property, in which they resided, at 33390 Antelope Lane, Squaw
9 Valley, California. That property was listed on Schedule A. The
10 property was encumbered by a lien in favor of JPMorgan Chase Bank. The
11 Chapter 7 trustee filed a Report of No Distribution, Ketschers received
12 a discharge and the case closed.

13 Six months after the case closed, JPMorgan Chase foreclosed its deed
14 of trust, divesting the debtors of title.

15 Ketschers now move ex parte to reopen the case for the expressed
16 purpose of converting the case to Chapter 13 and filing an adversary
17 proceeding to determine the validity of the foreclose sale. The basis
18 of the adversary proceeding is JPMorgan Chase's alleged lack of ownership
19 of their loan, false promises of loan modification during the bankruptcy,
20 and violations of applicable provisions of state foreclosure law, as well
21 as common law torts, that occurred post-petition.

22 **JURISDICTION**

23 This court has jurisdiction. See 28 U.S.C. § 1334; General Order
24 No. 182 of the U.S. District Court for the Eastern District of
25 California. This is a core proceeding. See 28 U.S.C. §
26 157(b)(2)(A),(O).

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1 "the outcome of the proceeding could conceivably have any effect on the
2 estate being administered in the bankruptcy." *In re Fietz*, 852 F.2d 455,
3 457 (9th Cir. 1988). "An action is related to the bankruptcy if the
4 outcome could alter the debtor's rights, liabilities, options, or freedom
5 of action (either positively or negatively) and which in any way impacts
6 upon the handling and administration of the bankrupt estate." *Fietz*, 852
7 F.2d 457. Moreover, where as here, the underlying case has been closed,
8 the matter must have a "close nexus" to the bankruptcy estate being
9 administered. *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1194 (9th Cir.
10 2005). "Arising under" and "arising in" are not in play here, and the
11 only basis for bankruptcy court involvement is the more narrow post-
12 closure "related to" jurisdiction.

13 The first reason to reopen this case is to pursue an claims against
14 JPMorgan Chase in an effort to recover Ketschers' residence. But neither
15 the residence, nor the causes of action arising under state law to
16 recover it, affect the Chapter 7 estate. Upon closure, the estate
17 abandoned its interest in the Ketschers' residence. 11 U.S.C. §554(c).
18 Reopening the case will not revest that property in the estate. *Menk v.*
19 *LaPaglia (In re Menk)*, 241 B.R. 896, 913-14 (9th Cir. BAP 1999). Since
20 each of the alleged acts that give rise to state law rights against
21 JPMorgan Chase occurred post-petition, those causes of action were never
22 property of the estate. Compare, Declaration of Carol Kathleen Ketscher
23 ¶¶ 4, 5, May 20, 2014, ECF # 24, with 11 U.S.C. §§ 541(a). As a
24 consequence, the estate has no stake in the outcome of this dispute and
25 the court lacks jurisdiction to afford the relief requested.

26 **III. Converting to Chapter 13**

27 Section 350(b) authorizes reopening to administer assets, provide
28 the debtor relief or for other cause.

1 The second reason for reopening the case is to convert it from
2 Chapter 7 to Chapter 13, apparently either to create standing to pursue
3 the adversary proceeding against JPMorgan Chase, *see In re Cohen*, 305
4 B.R. 886 (9th Cir. BAP 2004)(avoiding powers), or to cure the deed of
5 trust arrearage due JPMorgan Chase, 11 U.S.C. § 1322(b)(3). But no cause
6 exists here. This court does not have jurisdiction to entertain the
7 challenge the Ketschers wish to prosecute and, as a result, standing will
8 not support a motion to reopen under § 350(b). Moreover, the residence
9 lost after closure of the Chapter 7 case, Ketschers have no ability to
10 cure the arrearage, unless and until they recover the property.

11 **CONCLUSION**

12 For the reasons stated, the motion is denied without prejudice.

13 Dated: June 5, 2014

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16 Fredrick E. Clement
17 United States Bankruptcy Judge
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