

JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

In re LAKE MATHEWS MINERAL)	Case No. CV 22-247-DMG
PROPERTIES, LTD., Debtor )	
)	<b>ORDER RE BANKRUPTCY APPEAL</b>
PAUL MERRITT, )	<b>[1]</b>
Plaintiff-Appellant, )	
v. )	
)	
PECAS LLC, <i>et al.</i> , )	Bankruptcy No.: 2:16-bk-16363-NB
)	
Defendant-Appellees. )	Adversary No.: 2:20-ap-01160-NB
)	
)	

Before the Court is an appeal by *pro se* Plaintiff-Appellant Paul Merritt of an Order of the United States Bankruptcy Court for the Central District of California. [Doc. # 1.] For the reasons discussed herein, the Court **AFFIRMS** the Bankruptcy Court’s Order and **DISMISSES** Merritt’s appeal.

1 I.

2 PROCEDURAL BACKGROUND

3 On January 12, 2022, Merritt filed a notice of appeal (“NOA”) of an order of the  
4 Bankruptcy Court for the Central District of California dismissing the adversary  
5 proceeding between Plaintiff-Appellant and Defendant-Appellees, No. 2:20-ap-01160-NB  
6 (the “Adversary Case”), and denying leave to file a First Amended Complaint (“FAC”).  
7 *See* NOA, Ex. 1 (Ord. Denying Leave to File Amended Complaint and Dismissing  
8 Adversary Proceeding without Leave for Further Amendments) at 6–10 [Doc. # 1  
9 (“Dismissal Order”)]. On September 15, 2022, the Court received notice that the  
10 bankruptcy record was complete. [Doc. # 24.] On December 14, 2022, Merritt filed his  
11 supplemental opening brief (“AOB”). [Doc. # 27.]

12 Merritt served the Chapter 7 Trustee of the Bankruptcy estate Elisa D. Miller,  
13 Miller’s lawyer Juliet Y. Oh, and a Michael J. Berger, who is the attorney for the debtor  
14 Lake Mathews Mineral Properties, LTD in the lead bankruptcy case.<sup>1</sup> [Doc. # 1.] The  
15 adversary proceeding from which this appeal arises involves two defendants, PECAS LLC  
16 (“PECAS”), and Chabad Temple Inc. (“Chabad”), neither of whom Merritt served in the  
17 underlying adversary proceeding or in this appeal. *See* Fed. R. Bankr. P. 8009(a)(1)(A);  
18 *see also* Adversary Case, Doc. # 5 (summons and notice of status conference on Defendants  
19 returned unexecuted). Even if they had been served, the defendants do not have “any  
20 obligation to respond” to the suit because it was stayed as of September 17, 2020.  
21 Dismissal Ord. at 7; Adversary Case, Doc. # 6.

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25 <sup>1</sup> While service on the debtor’s attorney is required in the adversary proceeding itself, no such rule  
26 applies to district court appeals of bankruptcy court orders. *Compare* Fed. R. Bankr. P. 7004(g) (“If the  
27 debtor is represented by an attorney, whenever service is made upon the debtor under this Rule, service  
28 shall also be made upon the debtor’s attorney . . . .”) *with* Fed. R. Bankr. P. 8011(b) (“[A] party must, at  
or before the time of the filing of a document, serve it on the other parties to the appeal.”). In an appeal  
of an order in an adversary proceeding, such as this one, the debtor is not necessarily a “part[y] to the  
appeal.” *See* Fed. R. Bankr. P. 7001 (listing types of adversary proceedings).

1 The Court has considered Merritt’s written submission and deems this matter  
2 suitable for decision without oral argument. *See* Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-  
3 15.

## 4 5 II.

### 6 FACTUAL BACKGROUND

7 On May 13, 2016, Lake Mathews Mineral Properties, LTD (“LMMP”) filed a  
8 voluntary Chapter 11 bankruptcy petition. *See* Dismissal Ord. at 6; *see also In re Lake*  
9 *Mathews Mineral Properties, LTD*, Case No. 2:16-bk-16363-NB (Bankr. C.D. Cal. 2016)  
10 (“Lead Case”). Nearly a year later, on March 2, 2017, the Bankruptcy Court converted the  
11 action to a Chapter 7 bankruptcy case. *See* Dismissal Ord. at 8. The Bankruptcy Court  
12 ultimately approved the sale of virtually all LMMP’s assets to PECAS for \$78,000, which  
13 also included a settlement and mutual releases with PECAS. *Id.* Prior to the sale of  
14 LMMP’s assets, Appellant had filed various challenges to the sale and filed this adversary  
15 proceeding against PECAS and Chabad on July 17, 2020. *Id.* at 3.

16 On July 17, 2020, Merritt initiated the Adversary Case. A month later, he filed his  
17 proposed FAC. In his December 28, 2021 Dismissal Order, Hon. Neil W. Bason, United  
18 States Bankruptcy Judge, held that even if Merritt “conceivably could have some sort of  
19 claims against PECAS and Chabad,” despite his “settlement with, and sale of assets to,  
20 PECAS,” there was no jurisdiction over his claims because they do not “arise under” any  
21 provision of the Bankruptcy Code, “arise in” a pending bankruptcy case, nor are they  
22 “related to” this bankruptcy case within the meaning of 28 U.S.C. section 1334. Dismissal  
23 Ord. at 9–10. Accordingly, Judge Bason denied Merritt leave to amend his complaint and  
24 dismissed the Adversary Case against PECAS and Chabad for lack of jurisdiction. *Id.*

25 Merritt appealed the Bankruptcy Court order. *See* NOA. On appeal, Merritt argues,  
26 *inter alia*, that the Bankruptcy Court erred in dismissing his claims because “there were  
27 illegal, fraudulent and unclean conduct and actions by PECAS, LLC, the Debtor, and other  
28

1 third parties/defendants, to his legal detriment and damage as an interested party, creditor,  
2 and person with an equity interest.” AOB at 3.

3  
4 **III.**  
5 **JURISDICTION**

6 The Court has appellate jurisdiction pursuant to Federal Rule of Bankruptcy  
7 Procedure 8005 and 28 U.S.C. section 158(c)(1). Under Rule 8005 and section 158(c)(1),  
8 parties may elect to have an appeal heard by a district court instead of the Bankruptcy  
9 Appellate Panel. Fed. R. Bankr. P. 8005; 28 U.S.C. § 158(c)(1).

10  
11 **IV.**  
12 **STANDARD OF REVIEW**

13 A district court reviews questions of the Bankruptcy Court’s jurisdiction *de novo*.  
14 *In re Ray*, 624 F.3d 1124, 1130 (9th Cir. 2010).

15  
16 **V.**  
17 **DISCUSSION**

18 28 U.S.C. section 1334 grants district courts (and bankruptcy courts by reference)  
19 “original but not exclusive jurisdiction of all civil proceedings arising under title 11,” the  
20 Bankruptcy Code, “or arising in or related to cases under title 11.” *See* 28 U.S.C. § 1334(b);  
21 *see also Stern v. Marshall*, 564 U.S. 462, 473 (2011).

22 This language creates three statutory bases of bankruptcy jurisdiction. The first  
23 category is simply for proceedings that “arise[] under” title 11, invoked in cases involving  
24 a claim grounded in a substantive provision in the bankruptcy code. *Battle Ground Plaza,*  
25 *LLC v. Ray (In re Ray)*, 624 F.3d 1124, 1131 (9th Cir. 2010). The second category is  
26 claims or proceedings that “arise[] in” title 11, where they may not be “created or  
27 determined by the bankruptcy code,” but “would have no existence outside of a bankruptcy  
28 case.” *Harris v. Wittman (In re Harris)*, 590 F.3d 730, 737 (9th Cir. 2009). The third—

1 and broadest—category is cases that are merely “related to” title 11, that is, if their outcome  
2 could have *any convincible effect* on the estate being administered in bankruptcy. *McGuire*  
3 *v. United States*, 550 F.3d 903, 911–12 (9th Cir. 2008) (emphasis added) (citing *In re Fietz*,  
4 852 F.2d 455, 457 (9th Cir. 1988)).

5 Here, the sole question before the Court is whether Merritt’s claims arise under, arise  
6 in, or are related to title 11 of the Bankruptcy Code such that the Bankruptcy Court is  
7 authorized and empowered to proceed over his claims. See NOA at 10 (dismissing  
8 adversary proceeding for lack of jurisdiction). In the Adversary Case, Merritt seeks to  
9 bring three distinct claims: (1) a declaratory judgment to quiet title; (2) violation of the  
10 California Business and Professional Code of Conduct 17200; and (3) a claim for  
11 fraudulent transfer. Bankr. Ord. at 6–7.

12 The Dismissal Order does not explain its bases for concluding there is no “arising  
13 under” or “arising in” jurisdiction, but Merritt’s claims are state law claims that would exist  
14 independently of any bankruptcy proceeding. Dismissal Ord. at 10.

15 Unlike the first two categories, “[a] bankruptcy court’s ‘related to’ jurisdiction is  
16 very broad, including nearly every matter directly or indirectly related to the bankruptcy.”  
17 *In re Wilshire Courtyard*, 729 F.3d 1279, 1287 (9th Cir. 2013) (quoting *Sasson v. Sokoloff*  
18 (*In re Sasson*), 424 F.3d 864, 868 (9th Cir. 2005) (internal quotation marks omitted)). In  
19 cases such as this one in which the bankruptcy plan has already been fully administered,  
20 the Ninth Circuit instructs courts to use a “close nexus” test, encompassing matters  
21 “affecting the interpretation, implementation, consummation, execution, or administration  
22 of the confirmed plan.” *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1194 (9th Cir. 2005)  
23 (internal quotation omitted).

24 Here, it would be impossible for any of Merritt’s claims to impact the bankruptcy  
25 plan. The Debtor fully settled his claims with PECAS, and executed a mutual release of  
26 claims. Dismissal Ord. at 8. As Judge Bason noted, the bankruptcy estate “remains  
27 hopelessly insolvent, and the alleged equity held by persons such as Plaintiff is worthless.”  
28 *Id.* In fact, the estate only had \$78,000 to repay over \$2,000,000 of debt claims against it.


1 See Chap. 7 Trustee's Final Account and Distribution Report Certification that the Estate  
2 Has Been Fully Administered and Application to be Discharged at 2, Lead Case, Doc. #  
3 354. Given these facts, the resolution of Merritt's claims could not possibly affect the  
4 administration of the bankruptcy estate. See *In re Fietz*, 852 F.2d at 457.

5  
6 **VI.**  
7 **CONCLUSION**

8 In light of the foregoing, the Court **AFFIRMS** the Bankruptcy Court's Order  
9 dismissing the adversary proceeding between Plaintiff-Appellant and Defendant-Appellees  
10 and denying leave to file an amended complaint.

11 **IT IS SO ORDERED.**

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13  
14 DATED: July 17, 2023

15   
16 DOLLY M. GEE  
17 UNITED STATES DISTRICT JUDGE

18  
19 cc: Bankruptcy Court  
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