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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

In Re MELANIO LOLARGA
VALDELLON, III, et al.,

Debtors.

MELANIO LOLARGA VALDELLON, III,
et al.,

Appellants,

v.

WELLS FARGO BANK, N.A., et al.,

Appellees.

District Case No. 2:21-cv-01802-DJC
Bankr. Case No. 14-22555-B-13

ORDER

Pending before the Court is Debtors Melanio Lolarga Valdellon, III and Ellen Cruz Valdellon’s appeal of the Bankruptcy Court’s order in Bankruptcy Case No. 14-22555-B-13 dismissing their Motion for Contempt. (Notice Appeal (ECF No. 1).)

The Court held a hearing on this matter on November 16, 2023, with Mark Wolff appearing for Debtors, and Neil Cooper appearing for Appellees. Having reviewed the Parties’ briefings and arguments, this Court hereby REVERSES dismissal of the Motion for Contempt and REMANDS this matter to the Bankruptcy Court for further proceedings consistent with this order.

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1 **BACKGROUND**

2 In 2005, Debtor Melanio Valdellon obtained a loan (“Loan”) secured by a deed
3 of trust against Debtors’ real property in Roseville, California; the Loan is owned by
4 Appellee Wells Fargo Bank, N.A., as Indenture Trustee Under the Indenture Relating
5 to IMPAC CMB Trust Series 2005-6, and is serviced by Appellee PHH Mortgage
6 Corporation¹ (f/k/a Ocwen Loan Servicing, LLC) (“PHH”). (Pet. (ECF No. 9-1) at 32²;
7 Proof of Claim 9-1 (ECF No. 9-93); Transfer of Claim (ECF No. 9-49).) Debtors filed a
8 Chapter 13 bankruptcy in 2014. (Pet.) Debtors obtained confirmation of several
9 Chapter 13 plans, all of which treated the Loan as a secured claim under 11 U.S.C. §
10 1322(b)(5) and provided for both the cure of pre-petition defaults on the Loan and
11 ongoing monthly payments to keep the Loan current. (First Am. Plan (ECF No. 9-12)
12 at 121; Order Confirming First Am. Plan (ECF No. 9-17); First Mod. Plan (ECF No. 9-20)
13 at 172; Order Confirming First Mod. Plan (ECF No. 9-26); Second Mod. Plan (ECF No.
14 9-32) at 242-43; Order Confirming Second Mod. Plan (ECF No. 9-35).) Debtors’
15 operative plan is their June 15, 2018 Second Modified Chapter 13 plan (“Plan”), which
16 was confirmed on August 24, 2018. (Order Confirming Second Mod. Plan.)

17 Debtors completed their plan payments in September 2019, and Debtors sent
18 monthly payments directly to Appellees beginning in October 2019. (Notice
19 Completed Plan Payments (ECF No. 9-41); Mot. Contempt (ECF No. 9-67) at 5.)
20 Debtors received a discharge on June 1, 2020, which enjoined creditors from
21 collecting on discharged debts, and the bankruptcy was closed on June 15, 2020.
22 (Discharge Order (ECF No. 9-59); Final Decree (ECF No. 9-61).)

23 Debtors re-opened their bankruptcy on January 20, 2021 to file an adversary
24 proceeding against Appellees. (Ex Parte Appl. (ECF No. 9-63); Order Reopening

25 _____
26 ¹ As Appellees note in their corporate disclosure, they were erroneously sued as PHH, Wells Fargo
27 Bank, N.A., IMPAC CMB Trust Series 2005-6, and Wells Fargo Bank, N.A. as Trustee of IMPAC CMB
28 Trust Series 2005-6. (See Appellees’ Br. (ECF No. 11) at 2.)

² Citations to the record on appeal are to the docket number(s) for Debtors’ excerpts of record filed
with this Court (ECF No. 9 through ECF No. 9-193) and, where appropriate, the excerpt of record page
number.

1 Case (ECF No. 9-64.) As is pertinent to this appeal, Count 1 of the adversary
2 complaint alleged a violation of the discharge injunction, 11 U.S.C. § 524. (Adversary
3 Compl. (ECF No. 9-103) at 982.) Debtors filed an amended complaint in their
4 adversary proceeding on July 13, 2021, with Count 1 again alleging violation of the
5 discharge injunction. (Am. Adversary Compl. (ECF No. 9-160).)

6 Appellees filed a motion to dismiss on July 26, 2021 arguing, inter alia, that
7 Count 1 for violation of the discharge injunction was procedurally improper and relief
8 could only be sought by way of a contempt motion, not an adversary proceeding.
9 (Mot. Dismiss (ECF No. 9-163) at 1717; P. & A. (ECF No. 9-165) at 1735.) Debtors then
10 filed the subject Motion for Contempt on August 10, 2021, which duplicated Count 1
11 for violation of the discharge injunction pled in their adversary proceeding. (See Mot.
12 Contempt.)

13 On August 20, 2021, the Bankruptcy Court ruled on Appellees' motion to
14 dismiss the amended adversary complaint. (Mot. Dismiss Order (ECF No. 9-169).)
15 The Bankruptcy Court rejected Appellees' procedural argument regarding Count 1,
16 finding the procedural error was harmless and it had discretion to reach the merits.
17 (*Id.* at 1784-85.) On consideration of the merits, however, the Bankruptcy Court
18 dismissed Count 1 with prejudice, finding Debtors failed to allege a violation of the
19 discharge injunction because the conduct complained of occurred after the Plan was
20 complete and the Loan was not discharged. (*Id.* at 1785-88.)

21 Based on this ruling, the Bankruptcy Court also dismissed the Motion for
22 Contempt as moot, reasoning that the Motion requested the same relief as Count 1.
23 (See Civil Mins. (ECF No. 9-74); Order Dismissing Mot. Contempt (ECF No. 9-75).)
24 Debtors appealed both the dismissal of the adversary complaint and the Motion for
25 Contempt. The dismissal of the adversary complaint is the subject of related appellate
26 proceedings in *Valdellon v. PHH Mortg. Corp. (In re Melanio Lolarga Valdellon, III)*, No.
27 21-cv-1840, before this Court. (See Related Case Order (ECF No. 6).)

28 ////

1 **LEGAL STANDARD**

2 “The doctrine of mootness, which is embedded in Article III’s case or
3 controversy requirement, requires that an actual, ongoing controversy exist at all
4 stages of federal court proceedings.” *Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081,
5 1086 (9th Cir. 2011). “The basic question in determining mootness is whether there is
6 a present controversy as to which effective relief can be granted.” *Ruiz v. City of Santa*
7 *Maria*, 160 F.3d 543, 549 (9th Cir. 1998) (quoting *Nw. Env’t Def. Ctr. v. Gordon*, 849
8 F.2d 1241, 1244 (9th Cir. 1988)). “A case is moot when the issues presented are no
9 longer live or the parties lack a legally cognizable interest in the outcome.” *Clark v.*
10 *City of Lakewood*, 259 F.3d 996, 1011 (9th Cir. 2001), *as amended* (Aug. 15, 2001)
11 (quoting *City of Erie v. Pap’s A.M.*, 529 U.S. 277, 287 (2000)) (quotation marks
12 omitted).

13 Mootness is a question of law reviewed de novo on appeal. *See Nat. Res. Def.*
14 *Council v. Cnty. of Los Angeles*, 840 F.3d 1098, 1102 (9th Cir. 2016).

15 **ANALYSIS**

16 On February 2, 2024, this Court reversed the Bankruptcy Court’s dismissal of
17 Count 1 with prejudice, finding that the Bankruptcy Court abused its discretion in
18 denying Debtors’ leave to amend because amendment was not futile. *See In re*
19 *Melanio Lolarga Valdellon, III*, No. 2:21-cv-1840, ECF No. 28. The Court granted
20 Debtors leave to file an amended adversary complaint within 30 days and remanded
21 the matter to the Bankruptcy Court for further proceedings. *Id.*

22 The Court’s decision in Case No. 21-cv-1840 compels reversal here as well, as
23 there is now a live case or controversy. Accordingly, the Court will reverse the
24 Bankruptcy Court’s dismissal of Debtors’ Motion for Contempt on mootness grounds.

25 **CONCLUSION**

26 For the reasons set forth above, the Court hereby:

- 27 1. REVERSES the Bankruptcy Court’s dismissal of Debtors’ Motion for
28 Contempt;

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2. REMANDS this matter to the Bankruptcy Court for further proceedings consistent with this order; and
3. DIRECTS the Clerk of Court to close this case.

IT IS SO ORDERED.

Dated: February 2, 2024


Hon. Daniel J. Calabretta
UNITED STATES DISTRICT JUDGE

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