

1  
2 UNITED STATES DISTRICT COURT  
3 NORTHERN DISTRICT OF CALIFORNIA

4  
5 ANITA B. CARR,

6 Appellant,

7 v.

8 MARTHA BRONITSKY,

9 Appellee/Trustee.

Case No. [15-cv-05781-WHO](#)

**ORDER AFFIRMING DISMISSAL BY  
BANKRUPTCY COURT**

Re: Dkt. No. 20

10 Appellant Anita B. Carr, proceeding *pro se*, challenges the actions and inactions of the  
11 Bankruptcy Trustee and the Bankruptcy Court as well as the ultimate dismissal of her Chapter 13  
12 case. The question before me is a narrow one; did the Bankruptcy Court commit legal error in  
13 dismissing Carr's case? The answer, as explained below, is no. The Bankruptcy's Court Order is  
14 **AFFIRMED.**

15 **BACKGROUND**

16 Carr filed her Chapter 13 petition on July 15, 2015. Bankruptcy Case No. 15-42212 (here  
17 after BRC), Dkt. No. 1.<sup>1</sup> She filed her initial Plan on July 28, 2015 and an Amended Chapter 13  
18 Plan on August 31, 2015. *Id.*, Dkt. Nos. 9, 23. Plaintiff filed a Third Amended Plan on September  
19 23, 2015. BRC Dkt. No. 38. On October 30, 2015, the Bankruptcy Trustee filed an "Objection to  
20 Confirmation of Chapter 13 Plan and Motion to Dismiss Chapter 13 Case." BRC Dkt. 45. The  
21 Trustee's objections to the Third Amended Plan were that:

- 22
- 23 • "The plan fails to provide for submission of all or such portion of future earnings or other  
24 future income to the supervision and control of the Trustee as is necessary for execution of  
25 the plan," in other words, "Debtor's Plan fails to commit her income to the Plan for the  
26 duration of the Plan because in Section 1.01(c) Debtor has failed to enter the Plan term."

27  
28 <sup>1</sup> This was Carr's third Chapter 13 Petition. Two others had been filed and dismissed in 2008 and  
2009. Carr had also filed a Chapter 7 Petition, which was discharged in 2007. Bankruptcy Court,  
Dkt. No. 3.

- 1 • “The plan unfairly discriminates between a class or classes of unsecured claims,” because  
2 “Debtor provides for payment of certain unsecured claims in full in Section 2.11 while  
3 providing a 3% dividend for the remainder in Section 2.12. The reason for this  
4 discrimination is unclear. Per Section 1325(a)(4), all unsecured creditors must be paid in  
5 full.”
- 6 • “The plan fails to provide for the value, as of the effective date of the plan, of property to  
7 be distributed under the plan on account of each allowed unsecured claim is at least the  
8 amount that would be paid on such claim if the estate of the Debtor was liquidated under  
9 Chapter 7 of this title on such date,” because “Debtor's proposed 3% Plan fails to pay into  
10 the Plan the amounts that unsecured creditors would receive in the estate was liquidated in  
11 a hypothetical Chapter 7. Debtor's real property in Fairfield Bay, AR and Dublin, CA have  
12 sufficient equity to pay a 100% dividend to unsecured creditors. Trustee also has a pending  
13 objection to all claims of exemptions.”
- 14 • “The Plan is not feasible. The Debtor will not be able to make all payments under the plan  
15 and comply with the plan,” because “Debtor has attached provisions to the Plan that are  
16 unnecessary, redundant, and lack purpose. Debtor has already provided for Hyundai  
17 Motor's claim in Section 2.07 of the Plan, so the additional provision is redundant and  
18 unnecessary. Regarding the potential lawsuit recoveries, Debtor has not provided sufficient  
19 information regarding these claims on Schedule B and the combined value of the lawsuits  
20 are stated to be \$4.00. (Schedule B, Doc. #40).”
- 21 • “Debtor has filed a 28 day plan notice, but not a certificate of service. Parties have not  
22 been appropriately served in this case thus far.”
- 23 The Trustee also moved to dismiss the case because:
- 24 • “Unreasonable delay by the Debtor that is prejudicial to creditors,” because “Debtor's  
25 Confirmation Hearing was continued from September 24, 2015 to November to give  
26 Debtor ample time to retain counsel. As of now Debtor has not retained counsel and is no  
27 closer to resolving objections.”

28 BRC Dkt. No. 45. In addition to the Trustee’s objections, JP Morgan Chase (Chase) filed an

1 objection as the servicer for the J.P. Morgan Mortgage Acquisition Trust 2006-NC1, a trust that  
2 Chase alleges is the holder of a secured claim recorded against Carr’s residence (Residence) that  
3 Carr listed as an asset on her Plan. Dkt. No. 43. Chase argued that the Third Amended Plan was  
4 deficient in that it did not provide for any repayment of the pre-petition arrearages owed on the  
5 mortgage, and failed to provide that post-petition monthly mortgage payments will be made to  
6 Chase. *Id.* Carr objected to Chase’s objection, arguing that Chase has not submitted any proof  
7 that it was a valid servicer on a valid obligation held by a valid trust, or that TILA rescission  
8 didn’t invalidate her debt; all issues that Carr had been litigating in *other* proceedings, including  
9 proceedings pending in this Court.<sup>2</sup> BRC Dkt. No. 44.

10 Carr also filed objections to the Trustee’s motion, arguing that the Trustee was not  
11 impartial and Carr’s due process rights were being violated because the Trustee was assuming that  
12 Chase had rights with respect to her Residence. Carr requested the Trustee to “examine” Chase’s  
13 claims to determinate their veracity (*i.e.*, whether Chase was a valid servicer on a valid obligation  
14 held by a valid trust and whether TILA rescission invalidated the alleged debt). Dkt. No. 48. The  
15 Trustee responded, identifying a number of reasons separate and apart from Chase’s objections  
16 and regardless of whether Chase has a valid creditor’s claim on the Residence, as to why the Plan  
17 was deficient and why the case should be dismissed for delay and harm to Carr’s other creditors.  
18 Dkt. No. 49. The Trustee asserted that the “duties” Carr wanted the Trustee to perform (*e.g.*,  
19 “producing affidavits on Debtor’s behalf and acting the role of Debtor’s attorney”), were not  
20 duties the Trustee is required or authorized to perform. *Id.* Finally, the Trustee noted that Chase  
21 had not even filed a proof of claim or an affidavit of its validity, so that any objections by Chase  
22 were irrelevant to the Trustee’s analysis and position. *Id.*

23 A hearing was held with the Bankruptcy Judge on November 12, 2015. Dkt. No. 74. At  
24 that hearing, Carr raised the issue of Chase’s objections. The Trustee responded that issues  
25

---

26 <sup>2</sup> Plaintiff sued U.S. Bank National Assn, the then-trustee for J.P. Morgan Mortgage Acquisition  
27 Trust 2006-NC1 asserting claims regarding the mortgage and subsequent foreclosure proceedings  
28 with respect to her Residence. *See Carr v. U.S. Bank National Assn*, Case No. 16-cv-1690-VC.  
That case was dismissed as barred by the applicable statutes of limitations in June 2016 and is  
currently on appeal to the Ninth Circuit.

1 regarding Chase and its standing were not appropriately resolved in the Bankruptcy Court, but  
2 should be resolved in District Court. *Id.* The Bankruptcy Judge agreed that the resolution of  
3 whether Chase had a secured interest was not appropriately resolved in Bankruptcy Court and that  
4 in any event the Plan had serious deficiencies, including the discrimination between unsecured  
5 creditors and given her position about the equity in her Residence, the need to propose a 100%  
6 Plan, which Carr had repeatedly failed to do. *Id.* at pgs. 6-7. The Bankruptcy Judge noted that  
7 despite having continued the hearing two months, Carr was still unrepresented and had not cured  
8 the unsecured creditor discrimination and 100% issue. Therefore, the Bankruptcy Judge sustained  
9 the Trustee’s objections and dismissed the case. Dkt. No. 50.

10 Carr the filed this appeal and asks me to reverse the Bankruptcy Court’s Order.<sup>3</sup>

11 **DISCUSSION**

12 Carr’s appeal challenges the alleged failure of both the Trustee and the Bankruptcy Judge  
13 to resolve the issue that she believes is key, whether Chase has a legitimate secured interest in her  
14 Residence. Indeed the “statement of issues” in her opening brief all revolve around the alleged  
15 interest of Chase and Carr’s belief that Chase’s purported interest should have been tested by the  
16 Trustee and the Bankruptcy Court. Dkt. No. 20. By failing to do so, Carr alleges the Trustee  
17 violated her fiduciary and statutory duties to the bankruptcy estate. Those duties include failing to  
18 verify that Chase had a perfected security interest under 11 U.S.C. § 506 (discussing the definition  
19 of “secured status” for an “allowed claim of a creditor secured by a lien on property”) and 11  
20 U.S.C. § 1302(b)(1) (discussing the duties of a Trustee and incorporating 11 U.S.C. § 704(a)(5)).  
21 However, § 704(a)(5) provides that “if a purpose would be served” the Trustee “shall examine  
22 proofs of claims.” Here, Chase *did not* actually file and perfect a claim supported by an affidavit  
23 in the Chapter 13 proceedings. No purpose would have been served because there was no claim.  
24 And even if there were a claim, as discussed below, the Plan was otherwise not confirmable so

25 \_\_\_\_\_  
26 <sup>3</sup> Carr asked for and was given three extensions of time to file her opening brief, which she did  
27 after being given a final deadline by which to file. Dkt. Nos. 15, 17, 19. Carr asked for and  
28 received one extension of time in which to file a reply. Dkt. No. 28. Carr was cautioned that if  
she did not file a reply by the date set, I would proceed to adjudicate her appeal nonetheless.  
Carr’s reply brief was due on March 1, 2017. No reply brief was filed. *Id.*

1 investigation into the claim would have served no purpose.

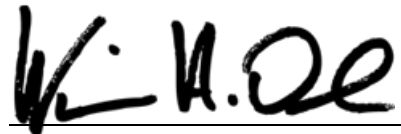
2 The Trustee did not violate any of the duties identified by Carr.<sup>4</sup>

3 As to the actions of the Bankruptcy Court, the Judge adopted the Trustee's Objections,  
4 which did not mention Chase. Moreover, the Trustee's objections assumed that Carr had – as *she*  
5 asserted in *her* Plan – \$605,000 equity in her residence “unencumbered” by any liens. That is why  
6 Carr's Plan violated the Chapter 7 liquidation analysis.<sup>5</sup> Dkt. No. 26. Finally, even other than the  
7 Chapter 7 issue, the Plan had additional defects which prevented its confirmation, including the  
8 disparate treatment of unsecured creditors. There were numerous grounds, separate and apart  
9 from the Chase issue, that gave the Bankruptcy Judge grounds to adopt the Trustee's objections  
10 and dismiss the case.<sup>6</sup> Carr does not challenge these grounds or provide any argument as to why  
11 the Judge could not rely on them in adopting the Trustee's objections to the Plan and dismissing  
12 the case. *See* 11 U.S.C. § 1307(c)(1) (allowing dismissal for delay and prejudice to creditors).

13 The Bankruptcy Judge's Order adopting the objections and dismissing the case is  
14 AFFIRMED. Judgment shall be entered accordingly.

15 **IT IS SO ORDERED.**

16 Dated: March 9, 2017



17  
18 William H. Orrick  
United States District Judge

19  
20 \_\_\_\_\_  
21 <sup>4</sup> Carr also alleges that the Trustee violated her duty to report suspected “criminal activity” by a  
22 creditor – here Chase – under 28 U.S.C. § 586(a)(3)(F). Opening Brief at 4-5. Carr's allegations  
23 that Chase or its lawyers submitted false and criminal claims in the Bankruptcy proceedings is  
24 purely speculative and without support and provides no basis for a finding that the Trustee  
25 breached a fiduciary or statutory duty.

26 <sup>5</sup> General unsecured creditors must receive at least as much under a Chapter 13 plan as they would  
27 receive under a Chapter 7 liquidation. 11 U.C.S. § 1325(a)(4).

28 <sup>6</sup> Carr additionally argues that she is entitled under various consumer protection statutes to test the  
validity of Chase's claims against her Residence. Those claims, however, are not appropriately  
resolved in a Chapter 13 proceeding nor on an appeal to this Court from the dismissal of a Chapter  
13 proceeding. Similarly, her claims that Chase abused the process of law and engaged in  
malicious prosecution are irrelevant to this appeal (as well as the decision below) because as  
noted, Chase never filed a perfected claim in the Bankruptcy Court proceedings and neither the  
Trustee or the Judge relied on any of Chase's representations in objecting to the Plan and  
dismissing the case.