

SEP 23 2013

SUSAN M. SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

5	In re:	)	BAP No.	MT-13-1097-TaPaJu
6	JOHN PATRICK STOKES,	)	Bk. No.	09-60265-RBK
7	Debtor.	)	Adv. No.	12-00052-RBK
8	_____	)		
9	JOHN PATRICK STOKES,	)		
10	Appellant,	)		
11	v.	)	<b>MEMORANDUM*</b>	
12	GREGORY W. DUNCAN;	)		
13	KATHLEEN M. GLOVER,	)		
14	Appellees.	)		
	_____	)		

Argued and Submitted on July 25, 2013  
at Butte, Montana

Filed - September 23, 2013

Appeal from the United States Bankruptcy Court  
for the District of Montana

Honorable Ralph B. Kirscher, Bankruptcy Judge, Presiding

Appearances: Edward Albert Murphy of Murphy Law Offices, PLLC  
argued for appellant John Patrick Stokes; Denny  
Kevin Palmer of McMahon, Wall & Hubley, PLLC  
argued for appellees Gregory W. Duncan and  
Kathleen M. Glover.

Before: TAYLOR, PAPPAS, and JURY, Bankruptcy Judges.

\* This disposition is not appropriate for publication.  
Although it may be cited for whatever persuasive value it may  
have (see Fed. R. App. P. 32.1), it has no precedential value.  
See 9th Cir. BAP Rule 8013-1.



1 converted the Debtor's bankruptcy case to one under chapter 7.  
2 Richard J. Samson was appointed as the chapter 7 trustee  
3 ("Trustee"). The Trustee actively administered the case over the  
4 next two years.

5 On February 28, 2012, while the chapter 7 case was still  
6 pending, the Debtor commenced an action against Duncan and  
7 Glover, Duncan's paralegal, in Montana state court (the "State  
8 Court Action"). The State Court Action involved claims for legal  
9 malpractice, breach of contract, and breach of fiduciary duty  
10 (collectively, "Malpractice Claims"). After he became aware of  
11 this litigation, the Trustee claimed the Malpractice Claims as  
12 assets of the Debtor's estate and obtained a stay of the State  
13 Court Action.

14 The Trustee attempted to recover on the Malpractice Claims  
15 for the benefit of the estate. Thus, he agreed to sell the  
16 estate's interest in the Malpractice Claims, if any, to the  
17 Debtor. This would free Debtor to control the State Court Action  
18 and would end the dispute between the estate and Debtor over  
19 ownership of the claims. After Trustee filed a notice of intent  
20 to sell, however, Duncan and Glover submitted a counter-offer;  
21 obviously, they hoped to gain a controlling interest in the  
22 Malpractice Claims and, thereby, to terminate the State Court  
23 Action. In response, the Trustee withdrew the notice of intent  
24 to sell and, instead, moved for an order establishing bidding  
25 procedures in anticipation of an auction; the bankruptcy court  
26 granted this motion.

27 The bankruptcy court subsequently approved the sale of the  
28 Malpractice Claims by auction ("Sale Order"). The Sale Order

1 described the assets to be sold as "the estate's interest, if  
2 any, in the Malpractice Claims." It also contained language  
3 protecting the estate from post-sale claims; in particular, it  
4 provided that the sale was "as is, where is" and that "the  
5 Trustee [made] no representations or warranties regarding the  
6 validity or sufficiency of the claims and/or **whether the claims**  
7 **are property of this bankruptcy estate.**" (Dkt# 419) (emphasis  
8 added). The protective language protected the estate from a  
9 not-so-hypothetical litigation risk as the Debtor asserted that  
10 the Malpractice Claims accrued entirely post-petition and that  
11 the estate had no interest in them. No one challenged the Sale  
12 Order, and it is now final.

13 At the auction, Duncan submitted the winning bid. After the  
14 sale was finalized, Duncan and Glover commenced an adversary  
15 proceeding seeking a declaratory judgment that the Malpractice  
16 Claims were property of the estate at the time of Duncan's  
17 purchase ("Declaratory Relief Action"). Duncan and Glover  
18 clearly intended the Declaratory Relief Action to remove any  
19 doubt regarding the extent of their interest in the Malpractice  
20 Claims and to act as a bar to any resumption of the State Court  
21 Action. Duncan and Glover promptly filed a summary judgment  
22 motion ("MSJ").

23 The Debtor opposed the MSJ, but also moved to dismiss the  
24 Declaratory Relief Action based on lack of subject matter  
25 jurisdiction ("Dismissal Motion"). In the Dismissal Motion, he  
26 argued that the bankruptcy court no longer had jurisdiction as a  
27 result of the sale of the estate's interest, if any, in the  
28

1 Malpractice Claims.<sup>2</sup> He bolstered this argument by noting that  
2 the sale was made expressly without warranty of title.

3 On February 9, 2013, the bankruptcy court entered: (1) an  
4 order granting the MSJ and denying the Dismissal Motion; (2) an  
5 accompanying memorandum decision; and (3) a declaratory judgment  
6 providing that the Malpractice Claims were property of the estate  
7 and that the Trustee sold them to Duncan pursuant to the Sale  
8 Order.

9 The Debtor timely appealed from this order and judgment.

#### 10 JURISDICTION

11 We have jurisdiction over this appeal pursuant to 28 U.S.C.  
12 § 158. We discuss the bankruptcy court's jurisdiction below.

#### 13 ISSUE

14 Did the bankruptcy court lack subject matter jurisdiction  
15 and, therefore, err when it adjudicated ownership issues related  
16 to assets previously sold by the Trustee without warranty of  
17 title?

#### 18 STANDARD OF REVIEW

19 The existence of subject matter jurisdiction is a question  
20 of law reviewed de novo. See Atwood v. Fort Peck Tribal Ct.  
21 Assiniboine, 513 F.3d 943, 946 (9th Cir. 2008). Findings of fact  
22 relevant to the bankruptcy court's determination of subject  
23 matter jurisdiction are reviewed for clear error. See Coyle v.  
24 P.T. Garuda Indonesia, 363 F.3d 979, 984 n.7 (9th Cir. 2004). A

---

25  
26 <sup>2</sup> We exercise our discretion to take judicial notice of  
27 documents filed in the underlying bankruptcy case and adversary  
28 proceeding. See O'Rourke v. Seaboard Sur. Co. (In re E.R.  
Fegert, Inc.), 887 F.2d 955, 957-58 (9th Cir. 1989).

1 factual finding is clearly erroneous if illogical, implausible,  
2 or without support in the record. See United States v. Hinkson,  
3 585 F.3d 1247, 1261-62 (9th Cir. 2009) (en banc).

4 **DISCUSSION**

5 The jurisdiction of bankruptcy courts is grounded in, and  
6 limited by, statute. Kirton v. Valley Health Sys. (In re Valley  
7 Health Sys.), 471 B.R. 555, 563 (9th Cir. BAP 2012) (citation  
8 omitted). One relevant statute limits bankruptcy jurisdiction to  
9 civil proceedings "arising under" the Bankruptcy Code and  
10 "arising in" or "related to" a bankruptcy case. See 28 U.S.C.  
11 § 1334(b); see also 28 U.S.C. § 157(b)(1), (2) (describing "core"  
12 bankruptcy proceedings in relation to "arising under" and  
13 "arising in" jurisdiction).<sup>3</sup> Significantly, this statutory grant  
14 of jurisdiction is not exclusive in many respects. See 28 U.S.C.  
15 § 1334(b). The bankruptcy court also has exclusive jurisdiction  
16 over all assets of the debtor and property of the estate.  
17 28 U.S.C. § 1334(e)(1).

18 Here we analyze statutory jurisdiction to consider the  
19 Declaratory Relief Action against the background of the Sale  
20 Order and the subsequent sale of the Malpractice Claims.

21 ///

22 ///

---

23  
24 <sup>3</sup> Jurisdiction is initially conferred on the district  
25 courts. 28 U.S.C. § 1334. The district courts, in turn, may  
26 refer bankruptcy cases and proceedings to the bankruptcy courts.  
27 28 U.S.C. § 157(a). Although the language in § 157(a) is  
28 permissive, "each district court has provided by rule for  
automatic reference to bankruptcy judges." 1 Collier on  
Bankruptcy ¶ 3.02[1] (Alan N. Resnick and Henry J. Sommer, eds.,  
16th ed. 2013).

1 **A. The Sale Of The Malpractice Claims Terminated Jurisdiction**  
2 **Under 28 U.S.C. § 1334(e)(1).**

3 The bankruptcy court has jurisdiction over all property of a  
4 debtor as of the commencement of a bankruptcy case and all  
5 property of the estate. 28 U.S.C. § 1334(e)(1); see also  
6 H.K. & Shanghai Banking Corp., Ltd. v. Simon (In re Simon),  
7 153 F.3d 991, 996 (9th Cir. 1998) (commencement of a bankruptcy  
8 case gives the court "exclusive in rem jurisdiction over all of  
9 the property in the estate" pursuant to 28 U.S.C. § 1334(e));  
10 cf. Cent. Va. Cmty. Coll. v. Katz, 546 U.S. 356, 369 (2006)  
11 ("Bankruptcy jurisdiction, as understood today and at the time of  
12 the framing, is principally *in rem* jurisdiction.") (emphasis in  
13 original). This aspect of bankruptcy jurisdiction is a  
14 continuation of the in rem bankruptcy jurisdiction that existed  
15 under the Bankruptcy Act of 1898 ("Act"), ch. 541, 30 Stat. 544  
16 (1898).

17 It is axiomatic that in rem jurisdiction over an asset  
18 terminates once the bankruptcy estate relinquishes all rights and  
19 interests in the asset. See In re Hall's Motor Transit Co.,  
20 889 F.2d 520, 522 (3d Cir. 1989) ("The bankruptcy court's  
21 jurisdiction does not follow the property, but rather, it lapses  
22 when the property leaves the debtor's estate."); Elscint, Inc. v.  
23 First Wis. Fin. Corp. (Matter of Xonics, Inc.), 813 F.2d 127, 131  
24 (7th Cir. 1987) (once property of the estate is sold, the  
25 bankruptcy court must obtain a new source of federal  
26 jurisdiction); see also Gardner v. United States (In re Gardner),  
27 913 F.2d 1515, 1518 (10th Cir. 1990) ("A bankruptcy court has  
28 jurisdiction over disputes regarding alleged property of the

1 bankruptcy estate at the outset of the case. When property  
2 leaves the bankruptcy estate, however, the bankruptcy court's  
3 jurisdiction typically lapses, and the property's relationship to  
4 the bankruptcy proceeding comes to an end." ) (citation omitted).

5       Consequently, as was true under the Act, a bankruptcy court  
6 ordinarily lacks jurisdiction to adjudicate ownership disputes  
7 involving former property of the estate. See McQuaid v. Owners  
8 of NW 20 Real Estate (Matter of Fed. Shopping Way, Inc.),  
9 717 F.2d 1264, 1272 (9th Cir. 1983) (decided under the Bankruptcy  
10 Act)<sup>4</sup> ("[W]here property is outside the possession of the  
11 bankruptcy court and is held adversely to the trustee, the court,  
12 absent consent, has no jurisdiction to adjudicate conflicting  
13 claims of title to the property, even where one of the claims is  
14 asserted by the trustee himself."); see also Rodeo Canon Dev.  
15 Corp. v. Goodrich (In re Rodeo Canon Dev. Corp.), 392 F. App'x  
16 576, 579 (9th Cir. 2010) (citing Matter of Fed. Shopping Way,  
17 Inc. and determining that the bankruptcy court lacked  
18 jurisdiction to adjudicate ownership of property when the subject  
19 property was sold, and, thus, was no longer property of the  
20 estate); see also In re Gardner, 913 F.2d at 1519 (also citing  
21 Matter of Fed. Shopping Way, Inc. in support of its determination  
22 that a bankruptcy court lacks jurisdiction to resolve disputes  
23

---

24       <sup>4</sup> Unless Congress expressly manifests its intent to change  
25 well-established judicial interpretation of the bankruptcy laws  
26 as they existed prior to enactment of the Bankruptcy Code in  
27 1978, we must presume that pre-Code interpretations of the Act  
28 have survived the enactment. See generally United States v. Ron  
Pair Enter., Inc., 489 U.S. 235, 244-45 (1989); Rodriguez v.  
United States, 480 U.S. 522, 525 (1987) (per curiam).



1 between third-parties as to non-estate property).

2 Federal Shopping Way involved most directly a bankruptcy  
3 court's injunction barring state court action under facts very  
4 similar to those in this case. There, the trustee sold property,  
5 but the deed and order did not convey more than whatever the  
6 trustee had and did not decide title questions. 717 F.2d at  
7 1270. The Ninth Circuit, thus, determined that an injunction was  
8 not necessary to enforce an order that the bankruptcy court did  
9 not make. Id. And it further held that once the property left  
10 the actual or constructive possession of the bankruptcy court,  
11 the bankruptcy court lacked jurisdiction to adjudicate  
12 conflicting claims of ownership. Id. at 1272.

13 Here, the Declaratory Relief Action squarely and singularly  
14 sought a determination of pre-sale ownership and property rights  
15 in the Malpractice Claims. Under the rule articulated in Federal  
16 Shopping Way (and reaffirmed in Rodeo Canon), however, the  
17 bankruptcy court lacked jurisdiction under 28 U.S.C. § 1334(e) to  
18 adjudicate disputes as to ownership and property rights in the  
19 Malpractice Claims once the asset was sold and transferred from  
20 the estate. The bankruptcy court's in rem jurisdiction over the  
21 Malpractice Claims lapsed after the sale. Thus, because the  
22 estate no longer had any interest in these claims, 28 U.S.C.  
23 § 1334(e)(1) could not be a source of jurisdiction.

24 **B. The Bankruptcy Court Did Not Have Jurisdiction Under**  
25 **28 U.S.C. § 1334(b) To Decide The Declaratory Relief Action.**

26 Having concluded that jurisdiction under 28 U.S.C. § 1334(e)  
27 terminated upon sale of the Malpractice Claims, the Panel must  
28 determine whether jurisdiction otherwise exists for bankruptcy

1 court consideration of the Declaratory Relief Action. Here, the  
2 sale of the Malpractice Claims significantly altered the  
3 jurisdictional analysis. Ultimately, bankruptcy jurisdiction is  
4 designed to provide a single forum for dealing with all claims to  
5 the bankrupt's assets and extends no further than its purpose.  
6 In re Xonics, Inc., 813 F.2d at 131. This general description of  
7 jurisdiction suggests there was no basis for bankruptcy  
8 jurisdiction to decide the Declaratory Relief Action; judicial  
9 resolution of the Declaratory Relief Action no longer had any  
10 direct relationship to the estate.

11 The only issue before the bankruptcy court in the  
12 Declaratory Relief Action was the dispute as to ownership and  
13 property rights in the Malpractice Claims at the time of the  
14 sale. A resolution of this dispute necessarily involved  
15 exclusively a consideration of state law. See Butner v. United  
16 States, 440 U.S. 48, 55 (1979) ("Property interests are created  
17 and defined by state law. Unless some federal interest requires  
18 a different result, there is no reason why such interests should  
19 be analyzed differently simply because an interested party is  
20 involved in a bankruptcy proceeding."). The parties do not argue  
21 that a federal interest compels a different result here, and we  
22 do not independently discern one.

23 The Sale Order explicitly made clear that as a result of the  
24 sale, a buyer had no further recourse against the estate. The  
25 Sale Order sold the estate's interest, if any, in the Malpractice  
26 Claims on an "as-is where-is" basis and expressly disclaimed  
27 any warranty of title. Thus, the estate not only transferred its  
28 rights, if any, in the Malpractice Claims, but it also insulated

1 itself from the consequences of a subsequent determination that  
2 all it sold was a valueless claim.

3 The Sale Order left open the issue of ownership, but nothing  
4 in the record states or even suggests that the bankruptcy court  
5 would make this determination. The bankruptcy court did not  
6 expressly retain jurisdiction. Against this background, we  
7 evaluate jurisdiction under 28 U.S.C. § 1334(b).

8 **1. Asset Resolution Issues Generally Are Not Core Unless**  
9 **They Affect Estate Administration or Involve**  
10 **Liquidation of the Estate's Assets or Adjustment of the**  
11 **Debtor-Creditor Relationship.**

12 The Appellees correctly note that issues involving estate  
13 assets are central to the bankruptcy process and that proceedings  
14 determining the extent of estate assets are typically core  
15 proceedings where bankruptcy court jurisdiction clearly exists.  
16 On this platform they claim, jurisdiction firmly stands. An  
17 examination of the statute defining core jurisdiction, however,  
18 makes clear that, under the facts of this case, this matter was  
19 far from clearly core.

20 The statutory law defining core matters does not include a  
21 specific reference to estate asset ownership disputes. See  
22 28 U.S.C. § 157(b). Instead, jurisdiction in relation to estate  
23 assets typically arises under 28 U.S.C. § 1334(e) and the  
24 bankruptcy court's in rem jurisdiction in assets, while  
25 jurisdiction over a particular dispute arises under the catch-all  
26 provisions of 28 U.S.C. § 157 to the extent the dispute affects  
27 estate administration or involves liquidation of these assets or  
28 adjustment of the debtor-creditor relationship. See 28 U.S.C.

1 § 157(b)(2)(A) & (O). Thus, the stated categories of core  
2 matters encompassed the Declaratory Relief Action only to the  
3 extent it involved current liquidation of assets, a current  
4 adjustment of debtor-creditor relationship, or current  
5 administration of the bankruptcy estate.

6 Here, the Declaratory Relief Action achieved none of these  
7 goals. As a result of the language in the Sale Order, the  
8 Declaratory Relief Action was completely estate neutral. It did  
9 not result in a transfer of an estate asset; it did not create a  
10 claim against the estate; it did not relieve the estate from a  
11 claim; and, thus, it in no way impacted administration of the  
12 estate. Neither the Trustee nor estate creditors had a stake in  
13 the action.

14 The fact that the Debtor was involved is irrelevant as the  
15 Debtor's recovery or expenses, again, would not impact the  
16 estate. If the Debtor prevailed, the estate would not be  
17 enhanced. If he was unsuccessful, the estate was not lessened.  
18 The Declaratory Relief Action was far from clearly core.  
19 Section 157(b), however, does not include a comprehensive list of  
20 core matters; a matter may still be core if jurisdiction "arises  
21 under" the Code or "arises in" the bankruptcy case. Thus, we  
22 look more closely at these possible bases for jurisdiction.

23 **2. The Bankruptcy Court Did Not Have "Arising Under"**  
24 **Jurisdiction Over the Declaratory Relief Action.**

25 Neither party argues that the Declaratory Relief Action was  
26 a proceeding "arising under" the Code. Nonetheless, on de novo  
27 review, we conclude that it was not.

28 A civil proceeding "arises under" the Code if it "depends on

1 a substantive provision of bankruptcy law, that is, if it  
2 involves a cause of action created or determined by a statutory  
3 provision of the Bankruptcy Code." Battleground Plaza, LLC v.  
4 Ray (In re Ray), 624 F.3d 1124, 1130 (9th Cir. 2010); see also  
5 In re Valley Health Sys., 471 B.R. at 563 ("A proceeding to  
6 enforce a right to relief created by [the Code] "arises under"  
7 [the Code].").

8 Here, the only arguably applicable Code provision is § 541;  
9 the Declaratory Relief Action contained a single ground for  
10 relief: a determination as to whether the assets sold to Duncan  
11 were property of the estate under § 541. While this request  
12 seemingly implicates and, indeed, requires application of § 541,  
13 on closer inquiry, there exists a subtle yet important  
14 distinction. Section 541 defines property of the estate, but  
15 does not create a right to relief. It, therefore, follows that  
16 an action to enforce a right thereunder cannot exist. See, e.g.,  
17 Wilshire Courtyard v. Cal. Franchise Tax Bd. (In re Wilshire  
18 Courtyard), --- F.3d ---, 2013 WL 4797288, at \*5 (9th Cir.  
19 Sept. 10, 2013) (fact that bankruptcy statute was implicated did  
20 not transform statute into substantive right to relief for the  
21 purposes of bankruptcy jurisdiction).

22 Appellees seek a determination as to ownership of the  
23 Malpractice Claims, and in their petition for declaratory relief,  
24 state that: "[a]n actual controversy has arisen and now exists  
25 relating to the rights and duties of the parties to this action."  
26 (Emphasis added). The Malpractice Claims are claims arising  
27 under Montana law and whether they were assets of the bankruptcy  
28 estate is a function of timing that is also determined under

1 Montana law. See Butner, 440 U.S. at 55. Under these particular  
2 facts, then, whether the assets sold were property of the estate  
3 under § 541 was a secondary (and perfunctory) issue in contrast  
4 to the actual and substantive issue: ownership of and rights in  
5 the Malpractice Claims for the purposes of the State Court  
6 Action. See generally In re Wilshire Courtyard, 2013 WL 4797288,  
7 at \*4 (merits question that does not rest on substantive portion  
8 of the Code does not "arise under" the Code). Here, the  
9 Declaratory Relief Action could not "arise under" the Code.

10 **3. The Bankruptcy Court Did Not Have "Arising In"**

11 **Jurisdiction Over the Declaratory Relief Action.**

12 Proceedings "arising in" a bankruptcy case are those that  
13 would not exist outside the case, such as matters involving the  
14 administration of the bankruptcy estate. In re Ray, 624 F.3d at  
15 1130. Moreover, "that a matter would not have arisen had there  
16 not been a bankruptcy case does not *ipso facto* mean that the  
17 proceeding qualifies as an 'arising in' proceeding."

18 In re Wilshire Courtyard, 2013 WL 4797288, at \*5 (citation  
19 omitted).

20 Such jurisdiction does not support consideration of the  
21 Declaratory Relief Action. Here, because of the protective  
22 language in the Sale Order, the dispute did not involve estate  
23 administration or the actions of the Trustee in any respect. As  
24 a result of the protective language in the Sale Order, the estate  
25 was insulated from any administrative impact.

26 Appellees cite multiple cases for the proposition that  
27 jurisdiction existed because the Malpractice Claims "arose in"  
28 the Debtor's bankruptcy case. See, e.g., Grausz v. Englander,

1 321 F.3d 467 (4th Cir. 2003); Matter of Wheeler, 137 F.3d 299  
2 (5th Cir. 1998); Kaiser Group Holdings, Inc. v. Squire Sanders &  
3 Dempsey LLP (In re Kaiser Group Int'l, Inc.), 421 B.R. 1 (Bankr.  
4 D.D.C. 2009); Simmons v. Johnson, Curney & Fields, P.C.  
5 (In re Simmons), 205 B.R. 834 (Bankr. W.D. Tex. 1997); In re SPI  
6 Commc'ns & Mktg., Inc., 114 B.R. 14 (Bankr. N.D.N.Y. 1990);  
7 Smith-Canfield v. Spencer (In re Smith-Canfield), 2011 WL 1883833  
8 (Bankr. D. Or. May 17, 2011). These cases are distinguishable  
9 first because the Malpractice Claims were filed in state court  
10 and remained there; the merits of these claims were not before  
11 the bankruptcy court. Also, none of these cases involved a  
12 situation where the estate's interest was sold prior to  
13 initiation of the action at issue.

14 More importantly, however, reliance on the Malpractice  
15 Claims for "arising in" jurisdiction misses the point;  
16 jurisdiction over the Declaratory Relief Action is the issue  
17 here. Whether the bankruptcy court has or had jurisdiction to  
18 decide the Malpractice Claims themselves is irrelevant. The  
19 Declaratory Relief Action sought only an ownership determination  
20 in the State Court Action. Clearly, it was not a determination  
21 that was limited to a bankruptcy forum; instead it involved state  
22 law issues that could be determined by a state court. Here, the  
23 issue is temporal - jurisdiction may have existed - but as a  
24 result of the Sale Order, it terminated.

25 **4. The Declaratory Relief Action Was Not Otherwise a Core**  
26 **Proceeding.**

27 Core proceedings are matters that "arise under" the Code or  
28 "arise in" a bankruptcy case. Stern v. Marshall, 131 S. Ct.

1 2594, 2605 (2011). Whether a proceeding is core or non-core does  
2 not denote or confer a separate basis of bankruptcy jurisdiction;  
3 rather, a core proceeding refers to matters that the bankruptcy  
4 court may hear and determine, as opposed to non-core matters,  
5 where, absent consent, the bankruptcy court may hear but not  
6 finally adjudicate. See 28 U.S.C. § 157(c)(1). Accordingly,  
7 when a proceeding is "core," it necessarily indicates that the  
8 proceeding "arises under" the Code or "arises in" the bankruptcy  
9 case. See Stern, 131 S. Ct. at 2605.

10 As previously discussed, the Declaratory Relief Action did  
11 not implicate either "arising under" or "arising in"  
12 jurisdiction. Therefore, it follows that the Declaratory Relief  
13 Action cannot constitute a core proceeding. Also as previously  
14 discussed, a facial review of 28 U.S.C. § 157 does not suggest a  
15 different result.

16 Prior to consummation of the sale, the dispute as to  
17 ownership of the assets could have been core as a matter  
18 concerning administration of the estate or as a matter affecting  
19 liquidation of estate assets or adjustment of the debtor-creditor  
20 relationship. 28 U.S.C. § 157(b)(2)(A) & (O). Indeed,  
21 "[p]roceedings to determine the nature and extent of property of  
22 the estate are fundamental to the administration of a bankruptcy  
23 case," and, thus, are "core" proceedings. See Watson v. Kincaid  
24 (In re Kincaid), 96 B.R. 1014, 1017 (9th Cir. BAP 1989), rev'd on  
25 other grounds, 917 F.2d 1162 (9th Cir. 1990). After the sale,  
26 however, there was no estate need or bankruptcy related basis for  
27 any determination in relation to ownership of the Malpractice  
28 Claims. Nor was there a bankruptcy or estate-related need for



1 adjudication of issues related to liquidation of an estate asset  
2 or adjustment of the debtor-creditor relationship. Once again,  
3 post sale the estate had no interest in the dispute.

4 **5. The Bankruptcy Court Did Not Have "Related To"**

5 **Jurisdiction Over the Declaratory Relief Action.**

6 "Related to" jurisdiction exists when "the outcome of the  
7 proceeding could conceivably have any effect on the estate being  
8 administered in bankruptcy." Fietz v. Great W. Sav.  
9 (In re Fietz), 852 F.2d 455, 457 (9th Cir. 1988) (adopting the  
10 test in Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir.  
11 1984)).

12 Here, the Sale Order sold all of the estate's interest in  
13 the Malpractice Claims and expressly provided that the sale was  
14 made without warranty of title. Once again, the express  
15 disclaimer insured that the estate was insulated from the outcome  
16 of any subsequent dispute with respect to the assets sold. Thus,  
17 it mattered not, from the estate's perspective, what the Trustee  
18 sold to Duncan. The outcome of the Declaratory Relief Action  
19 could not impact the bankruptcy estate, could not impact creditor  
20 recoveries, and could not impact or involve the Trustee. Thus,  
21 the bankruptcy court did not have "related to" jurisdiction. See  
22 Matter of Xonics, Inc., 813 F.2d at 131 ("[I]t is the relation of  
23 dispute to [the] estate, and not of party to [the] estate, that  
24 establishes jurisdiction.").

25 **C. Ancillary Jurisdiction Does Not Exist In Relation To The**  
26 **Declaratory Relief Action.**

27 Finally, Appellees assert that the bankruptcy court  
28 possessed inherent or ancillary jurisdiction to interpret and

1 enforce the Sale Order, independent of 28 U.S.C. § 1334  
2 jurisdiction. A bankruptcy court, indeed, has "jurisdiction to  
3 interpret and enforce its own prior orders." See Travelers  
4 Indem. Co. v. Bailey, 557 U.S. 137, 151 (2009); see also  
5 In re Ray, 624 F.3d at 1130 (bankruptcy court has ancillary  
6 jurisdiction to vindicate its authority and effectuate its  
7 decrees).

8 Here, however, the bankruptcy court authorized the sale with  
9 "no representations or warranties regarding the validity or  
10 sufficiency of the claims and/or whether the claims are property  
11 of this bankruptcy estate." This was not a situation where the  
12 parties disputed the estate's interest in the assets sold before  
13 the sale. In fact, had they disputed the estate's interest  
14 before the sale, the bankruptcy court would have been required to  
15 adjudicate the dispute. See Darby v. Zimmerman (In re Popp),  
16 323 B.R. 260, 268-70 (9th Cir. BAP 2005). Nor was this a case  
17 where the bankruptcy court authorized the sale of specific rights  
18 or adjudicated issues where its determinations were attacked  
19 subsequently.

20 Moreover, because of the express disclaimer in the Sale  
21 Order, it was unnecessary for the bankruptcy court to determine  
22 ownership of the claims as a means of preserving a benefit that  
23 the parties bargained for prior to the sale. See In re Wilshire  
24 Courtyard, 2013 WL 4797288, at \*8-9 ("[A]ncillary jurisdiction  
25 exists where necessary to preserve a benefit the parties  
26 initially bargained for."). Under these circumstances, the  
27 Declaratory Relief Action was not a request for the bankruptcy  
28 court to enforce, clarify, interpret, or otherwise vindicate the

1 Sale Order.

2 Certainly, a bankruptcy court would have jurisdiction where  
3 it purported to sell an asset and judicial action was necessary  
4 to bar subsequent activity inconsistent with the sale order. But  
5 here, the Declaratory Relief Action itself is inconsistent with  
6 the Sale Order. The Sale Order, in effect, washed the estate's  
7 hands of any responsibility for decisions involving the  
8 Malpractice Claims, including subsequent determinations of  
9 ownership. In this sense, it is Appellees who collaterally  
10 attack the Sale Order by requesting findings of ownership,  
11 despite a final order's express disclaimers of warranty.  
12 Questioning the bankruptcy court's jurisdiction over the  
13 Declaratory Relief Action, thus, is far from an attack on a prior  
14 bankruptcy court order.

15 Thus, based on the foregoing discussion, we conclude that  
16 the bankruptcy court lacked subject matter jurisdiction to  
17 resolve the Declaratory Relief Action. It, thus, erred when it  
18 granted the MSJ and denied the Dismissal Motion.<sup>5</sup>

19 **CONCLUSION**

20 For the reasons set forth above, we VACATE the bankruptcy  
21 court's order and judgment and REMAND to the bankruptcy court  
22 with instructions to dismiss the adversary proceeding for lack of  
23 jurisdiction.

24

25

26

27

---

28 <sup>5</sup> As a result, we need not and do not consider the parties'  
remaining arguments on appeal.