

SEP 26 2013

NOT FOR PUBLICATION

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No. NC-12-1385-DJuPa
)	
MICHAEL THOMAS FALK,)	Bk. No. 08-12561-AJ
)	
Debtor.)	
_____)	
)	
SHANNON FALK,)	
)	
Appellant,)	
)	
v.)	M E M O R A N D U M¹
)	
MICHAEL THOMAS FALK,)	
)	
Appellee.)	
_____)	

Submitted without Oral Argument
September 20, 2013

Filed - September 26, 2013

Appeal from the United States Bankruptcy Court
for the Northern District of California

Honorable Alan Jaroslovsky, Chief Bankruptcy Judge, Presiding

Appearances: Merle C. Meyers, Esq. and Kathy Quon Bryant, Esq.
of Meyers Law Group, P.C. on brief for Appellant
Shannon Falk; Craig A. Burnett, Esq. on brief for
Appellee Michael Thomas Falk.

Before: DUNN, JURY and PAPPAS, Bankruptcy Judges.

¹ 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 The appellant, Shannon Falk ("Shannon"), appeals the
2 bankruptcy court's order (1) estimating one of her proofs of
3 claim at zero for distribution purposes in the chapter 7²
4 bankruptcy case of her former spouse, the appellee, Michael
5 Thomas Falk ("Michael"), and (2) abstaining from adjudicating her
6 claims under 28 U.S.C. § 1334(c)(1) and (2).³ We AFFIRM.
7

8 **FACTS**

9 Shannon and Michael's marital trust and divorce

10 Shannon and Michael married in 1989. While married, they
11 established a marital trust by an agreement ("Marital Trust
12 Agreement"). Under the Marital Trust Agreement, Shannon and
13 Michael transferred various assets into a trust and transmuted
14 them into community property ("Community Property Assets"). The
15 Community Property Assets included the following:⁴ 1) a rental
16 property located in Santa Rosa, California ("Santa Rosa
17 property"); 2) a promissory note and trust deed relating to a
18

19
20 ² Unless otherwise indicated, all chapter, section and rule
21 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

22 ³ The bankruptcy court decided to abstain under both
23 28 U.S.C. § 1334(c)(1), permissive abstention, and 28 U.S.C.
24 § 1334(c)(2), mandatory abstention. Because we may affirm on any
25 ground supported by the record, see Shanks v. Dressel, 540 F.3d
26 1082, 1086 (9th Cir. 2008), and have determined that the
bankruptcy court did not abuse its discretion in permissively
abstaining from adjudicating the claims, we need not address its
mandatory abstention decision.

27 ⁴ The Community Property Assets included other assets that
28 are not the subject of this appeal.

1 73-acre parcel of real property located in Healdsburg,
2 California;⁵ 3) a life insurance policy;⁶ 4) interests in three
3 limited partnerships, two of which were located in New York
4 ("New York Partnership Interests"); and 5) a general partnership
5 interest.⁷

6 Two years after Shannon and Michael separated in 2005, the
7 state court entered an order dissolving their marriage. It also
8 entered an order requiring Michael to pay Shannon \$969 per month
9 in spousal support ("Spousal Support Order"). However, the state
10 court did not make any determinations as to the division of
11 property or any other domestic support obligations ("Dissolution
12 Issues").

13 _____
14 ⁵ Shannon described the real property located in Healdsburg,
15 California as consisting of 83 acres. Christopher Johnson
16 purchased the real property from Michael. (Michael financed
17 Christopher's purchase of the real property in the form of a
18 promissory note secured by a trust deed.) In a declaration,
19 Christopher described the real property as consisting of 73
20 acres.

21 ⁶ It is unclear whether only one life insurance policy or
22 various life insurance policies were placed into the marital
23 trust. Exhibit A to the Marital Trust Agreement appears to list
24 only one life insurance policy with a \$75,000 face value.
25 However, in her trial brief for the evidentiary hearing on
26 Michael's objections to her proofs of claim, Shannon indicates
27 that "various life insurance policies having an aggregate cash
28 surrender value in excess of \$30,000 . . ." were placed in the
marital trust.

⁷ Shannon described the partnership interest as a 12%
interest in a general partnership, Oroville Associates,
identified in the Marital Trust Agreement as Feather River
Cinemas, LP. Exhibit A to the Marital Trust Agreement simply
lists a "Limited Partnership interest in Feather River Cinemas,
LP."

1 Shannon's chapter 11 bankruptcy case

2 On July 20, 2007, Shannon filed a chapter 11 bankruptcy
3 petition.⁸ At the time she filed for bankruptcy, the Dissolution
4 Issues remained pending in state court.

5 Shannon scheduled the Community Property Assets and \$12,000
6 in past due alimony and child support as part of her bankruptcy
7 estate. She scheduled Michael as a general unsecured creditor
8 with an unknown claim amount, characterizing his claim as
9 unliquidated and disputed.

10 Shannon referenced the marital trust in her statement of
11 financial affairs ("SOFA"). She noted that the marital trust
12 involved "all property." She also mentioned in her SOFA the
13 dissolution proceeding pending in state court.

14
15 Shannon's adversary proceeding against Michael

16 Shannon initiated an adversary proceeding against Michael
17 seeking a determination that the New York Partnership Interests
18 were community property under the Marital Trust Agreement and
19 were part of her bankruptcy estate. She also sought an order
20 requiring Michael to turn over to her bankruptcy estate all of
21 the distributions received on account of the New York Partnership
22 Interests ("New York Partnership Interest Distributions").

23 Shannon moved for summary judgment, which the bankruptcy
24
25
26

27 ⁸ Judge Jaroslovsky presided over the bankruptcy cases of
28 both Shannon and Michael.

1 court granted in an order entered on February 1, 2008.⁹ In the
2 memorandum decision issued on January 22, 2008, the bankruptcy
3 court determined that the New York Partnership Interests had been
4 transmuted into community property. In the judgment entered on
5 June 23, 2008 ("Judgment"), the bankruptcy court also determined
6 that the New York Partnership Interests were property of the
7 estate under § 541(a)(2). It ordered Michael to turn over to
8 Shannon's bankruptcy estate the New York Partnership Interest
9 Distributions.¹⁰

10 On November 26, 2008, the bankruptcy court entered an order
11 holding Michael in contempt for failing to comply with the
12 Judgment ("Contempt Order").¹¹ Two days later, Michael filed his
13
14

15
16 ⁹ Michael filed a cross-motion for summary judgment, which
17 the bankruptcy court denied.

18 ¹⁰ Michael appealed the bankruptcy court's order granting
19 summary judgment in favor of Shannon. The district court
20 affirmed the bankruptcy court. Michael then appealed to the
21 Ninth Circuit; the Ninth Circuit dismissed the appeal for failure
22 to file the opening brief.

23 ¹¹ On November 5, 2008, Shannon filed an ex parte motion for
24 an order to show cause re: contempt ("Ex Parte OSC Motion"),
25 contending that Michael failed to turn over the New York
26 Partnership Interest Distributions pursuant to the Judgment. One
27 day later, the bankruptcy court entered an order granting the
28 Ex Parte OSC Motion.

After a hearing, the bankruptcy court granted Shannon's
contempt motion and entered the Contempt Order. Under the
Contempt Order, Michael was required to pay \$500 per day
("penalty") for each day he failed to comply with the terms of
the Judgment. If he posted a bond or complied with the Judgment,
the penalty would be waived.

1 own chapter 7 bankruptcy petition.¹²

2
3 Michael's chapter 7 bankruptcy case

4 Michael scheduled the Santa Rosa property, the New York
5 Partnership Interests and the life insurance policy as part of
6 his bankruptcy estate. He also scheduled a "claim for
7 reimbursement against [his] ex-wife[,] Shannon Falk[,] for
8 separate property contribution and for [the] value of
9 contribution of all separate property that was subsequently
10 transmuted at [the] time of transmutation" He described
11 the value of this claim as "unknown."

12 Michael referenced the marital trust in his SOFA. Like
13 Shannon, he noted that the marital trust involved "all property."
14 He also listed in his SOFA the dissolution proceeding pending in
15 state court. He noted that the dissolution proceeding had been
16 bifurcated, addressing the divorce and the division of assets
17 separately.

18 Michael scheduled Shannon as an unsecured priority creditor
19 with a spousal support claim in the amount of \$769. He also
20 listed in his SOFA the adversary proceeding, noting the Judgment
21 in Shannon's favor.

22
23 Shannon's chapter 11 plan

24 More than a year after she obtained the Judgment, Shannon

26 ¹² Michael previously had filed a chapter 13 bankruptcy
27 petition (07-10860). (Judge Jaroslovsky presided over that
28 bankruptcy case.) Michael's chapter 13 case was dismissed on
July 31, 2007 on a motion filed by Michael.

1 submitted a chapter 11 plan in her bankruptcy case.¹³ She
2 proposed to pay all allowed general unsecured claims in cash in
3 full, plus interest, in quarterly installments over sixty months,
4 "upon satisfaction of the [J]udgment."¹⁴ She also proposed to
5 retain "such interests subject to division as community property
6 consistent with [the Judgment]." Shannon reserved "the right to
7 adjudicate the transmutation of the [Community Property Assets]
8 described in the [Marital Trust Agreement] as between such
9 interest holders, including, but not limited to . . . division
10 . . . and remedies to collect sums found due."

11 Shannon also mentioned in her Chapter 11 Plan her intent to
12 "compel division of the [Community Property Assets] as determined
13 by [the bankruptcy] court and any other Court of competent
14 jurisdiction." She also indicated that she would initiate
15 another adversary proceeding "to determine the character of all
16 assets described in the [Marital Trust Agreement]" Upon
17 confirmation of her Chapter 11 Plan, Shannon asserted "standing
18 to enforce community property rights, collect property of the
19 estate, [and] litigate the rights of the estate and [the] debtor
20 in property"

21 She further provided in her Chapter 11 Plan that for five
22

23 ¹³ Shannon submitted a total of five chapter 11 plans. She
24 filed the last amended chapter 11 plan titled, "Fourth Amended
25 Chapter 11 Plan of Reorganization" ("Chapter 11 Plan"), on
26 July 17, 2009.

27 ¹⁴ Shannon proposed to pay the general unsecured claims also
28 with "capital accounts, liquidation proceeds of [the] movie
theater interest, [and] proceeds of [the] sale of [the real
property located in Santa Rosa, California]."

1 years or until "all allowed non-subordinated claims are paid
2 pursuant to the chapter 11 plan," the chapter 11 trustee was to
3 remain in possession of the bankruptcy estate assets. When that
4 time expired, the bankruptcy court was to approve an inter vivos
5 trust, naming a successor trustee to oversee the remaining
6 assets. Upon payment in full of allowed administrative expenses
7 and allowed priority and general unsecured non-subordinated
8 claims, the successor trustee was to continue to collect the New
9 York Partnership Interest Distributions. The successor trustee
10 was to apply such distributions as follows: 1) to any approved
11 settlement agreement; 2) for a living allowance for Shannon; and
12 3) to payment of subordinated claims.¹⁵

13 The bankruptcy court entered an order conditionally
14 confirming Shannon's Chapter 11 Plan on August 7, 2009.
15 Following a final hearing, the bankruptcy court entered an order
16 confirming the Chapter 11 Plan on October 20, 2009.

17 On May 6, 2011, Shannon filed a motion seeking the
18 bankruptcy court's approval of a living allowance and an inter
19 vivos trust pursuant to the confirmed Chapter 11 Plan. She
20 reported that the chapter 11 trustee had paid all allowed
21 non-subordinated claims in full as of January 31, 2011. On
22 August 10, 2011, the bankruptcy court entered an order approving
23 the inter vivos trust and directing the successor trustee to pay
24 Shannon \$5,000 per month as a living allowance.

25 Shannon later moved for entry of a final decree,
26

27 ¹⁵ The subordinated claims consisted of the postpetition
28 fees of Shannon's former bankruptcy counsel, David Chandler, and
her former special counsel, Richard Sax.

1 representing that all allowed non-subordinated claims and
2 subordinated claims had been paid in full. On August 19, 2012,
3 the bankruptcy court entered a final decree and closed her
4 bankruptcy case.

5
6 Shannon's proofs of claim in Michael's chapter 7 bankruptcy case

7 Meanwhile, on January 27, 2011, Michael filed objections
8 ("claim objections") to three proofs of claim (collectively,
9 "Claims") filed by Shannon in his bankruptcy case. She filed her
10 first proof of claim on December 24, 2008 ("Claim #1"), her
11 second proof of claim on June 17, 2009 ("Claim #21"), and her
12 third proof of claim on June 18, 2009 ("Claim #24"). Shannon did
13 not attach any documents in support of her Claims.

14 Claim #1 was in the amount of \$11,628, all of which was
15 allegedly entitled to priority as a domestic support obligation
16 under § 507(a)(1)(A) or (a)(1)(B). Claim #1 was based on
17 "dissolution of marriage."

18 Claim #21 was in the amount of \$10,100,000. Of this amount,
19 \$100,000 was allegedly entitled to priority as a domestic support
20 obligation under § 507(a)(1)(A) or (a)(1)(B). Claim #21 was
21 based on "support, property division, [and] undisclosed
22 property."

23 Claim #24 was in the amount of \$17,442, all of which was
24 allegedly entitled to priority as a domestic support obligation
25 under § 507(a)(1)(A) or (a)(1)(B). Claim #24 was based on
26 "support arrears."

27 Michael objected to each claim on the same grounds. He
28 contended that there was no way to determine the validity of the

1 Claims because Shannon did not submit or produce any documents or
2 proof in support of them. He also argued that the Claims
3 involved non-bankruptcy law issues - child and spousal support
4 and division of property - that should be resolved in state
5 court. Michael further asserted that Claim #1 and Claim #24 were
6 duplicates of Claim #21. He asked that the bankruptcy court
7 abstain from adjudicating the Claims.

8 Shannon responded to Michael's objections, asserting that
9 she had valid Claims based on the spousal support order, the
10 Marital Trust Agreement and the Judgment.

11 She argued that she had a valid claim for spousal support
12 under the spousal support order, which required Michael to pay
13 her \$969 per month. She alleged that Michael owed her
14 approximately \$11,000 in spousal support as of the petition date.

15 Shannon also contended that she had a valid general
16 unsecured claim of \$1,059,283.04, arising from Michael's failure
17 to turn over the Community Property Assets and the distributions
18 therefrom pursuant to the Marital Trust Agreement and the
19 Judgment. She moreover alleged that Michael had "a fiduciary
20 duty" to turn over to her any distributions he received from the
21 Community Property Assets. Because he violated his fiduciary
22 duty, Shannon was "entitled to an award of the value of the
23 concealed assets, the income, profits and income from such
24 assets[,] as well as punitive and exemplary damages [under] the
25 Family Code."

26 Following a preliminary hearing, the bankruptcy court set an
27 evidentiary hearing on Michael's claim objections for July 24,
28 2012. At the evidentiary hearing, Michael withdrew his objection

1 to Claim #1, as it was "the only claim that had any support at
2 all." Tr. of July 24, 2012 hr'g, 9:11. The bankruptcy court
3 therefore allowed Claim #1 in the amount filed.

4 With respect to Claim #21 and Claim #24, the bankruptcy
5 court decided to abstain from adjudicating them and estimated
6 them at zero for distribution purposes. It believed that, in
7 filing Claim #21 and Claim #24, Shannon was "trying to turn
8 community property arguments into money claims" and "trying to
9 transmute Family Law issues into money claims." Tr. of July 24,
10 2012 hr'g, 3:20-21, 7:1-2. The bankruptcy court refused "to be a
11 substitute for the Family Law Court," pointing out that Claim #21
12 and Claim #24 involved family law issues that should be
13 determined by the state court. Tr. of July 24, 2012 hr'g, 4:6-7.

14 The bankruptcy court went on to say that "all [it] cared
15 about [was] making sure the third parties [i.e., creditors] got
16 paid" and "all [the bankruptcy court] ever wanted to do was clear
17 out the bankruptcy issues so it's strictly a Family Law issue and
18 then send it back to State Court." Tr. of July 24, 2012 hr'g,
19 6:4-5, 6:21-23.

20 A day after the evidentiary hearing, the bankruptcy court
21 issued a memorandum decision ("Memorandum"). In the Memorandum,
22 it determined that Claim #1 and Claim #24 were for spousal
23 support. It also found Claim #24 to be a duplicate of Claim #1.

24 The bankruptcy court then analyzed Claim #21, finding it to
25 be "a trumped-up affair cobbled together largely or entirely by
26 Shannon calling her community property distribution rights a
27 claim for money." Memorandum, 1:26, 2:1-2. It determined that
28 Claim #21 included "about \$180,000 in other claims, some of which

1 may have already been allowed and paid in Shannon's bankruptcy."
2 Memorandum, 2:2-3. It concluded that "most that really remains
3 is the ugly dispute between Michael and Shannon." Memorandum,
4 2:3-4.

5 The bankruptcy court explained that it was abstaining from
6 adjudicating Claim #21 and Claim #24 under § 1334(c)(1) because
7 it did not "deem it appropriate . . . to decide how marital
8 property ought to be divided after creditors [were] paid."
9 Memorandum, 2:8-9. It "[saw] no reason to hold up distributions
10 to other creditors while Shannon and Michael play[ed] out their
11 drama." Memorandum, 2:8. It estimated both Claim #21 and
12 Claim #24 at zero for distribution purposes under § 502(c)(1)
13 "without prejudice to all rights and defenses" in the dissolution
14 proceeding.

15 The bankruptcy court lifted all stays against the
16 dissolution proceeding. It provided that no order involving the
17 disposition of Michael's bankruptcy estate assets could be
18 enforced until his chapter 7 bankruptcy case was closed, without
19 the chapter 7 trustee's consent or court order.

20 On the same day, the bankruptcy court entered an order
21 consistent with its Memorandum. Shannon timely appealed the
22 bankruptcy court's determination as to Claim #21 only.¹⁶

23 ///

24 ///

26 ¹⁶ Shannon notes in her opening brief that she only
27 challenges the bankruptcy court's determination as to Claim #21,
28 as Claim #24 is a duplicate of Claim #21. Appellant's Opening
Brief at 16 n.2.

1 **JURISDICTION**

2 The bankruptcy court had jurisdiction under 28 U.S.C.
3 §§ 157(b)(2)(B) and 1334(b). We have jurisdiction under
4 28 U.S.C. § 158.¹⁷
5

6 **ISSUES**

7 1) Did the bankruptcy court err in applying § 502(c)(1) in
8 estimating Claim #21?

9 2) Did the bankruptcy court err in estimating Claim #21 at
10 zero for distribution purposes?

11 3) Did the bankruptcy court err in permissively abstaining
12 from adjudicating Claim #21?
13

14 **STANDARDS OF REVIEW**

15 We review de novo a bankruptcy court's interpretation of the
16 Bankruptcy Code. Meruelo Maddux Props.-760 S. Hill Street LLC v.
17 Bank of Am., N.A. (In re Meruelo Maddux Props., Inc.), 667 F.3d
18 1072, 1076 (9th Cir. 2012). We review the bankruptcy court's
19 factual findings for clear error. Id.

20 We review for abuse of discretion a bankruptcy court's
21 decision to permissively abstain from adjudicating state law
22 issues. Arizona Bankruptcy Petition Preparers, 307 B.R. at 140.
23

24 ¹⁷ 28 U.S.C. § 1334(d) prohibits a court of appeal or the
25 Supreme Court from reviewing a bankruptcy court's permissive or
26 mandatory abstention decision. The statute does not apply to
27 this Panel because we are a bankruptcy appellate panel under
28 28 U.S.C. § 158(c). See also In re Bankruptcy Petition Preparers
Who Are Not Certified Pursuant to Requirements of the Arizona
Supreme Court, 307 B.R. 134, 140, n.6 (9th Cir. BAP 2004)
("Arizona Bankruptcy Petition Preparers").

1 We apply the same standard of review to its estimation of claims
2 under § 502(c)(1). See In re Corey, 892 F.2d 829, 834 (9th Cir.
3 1989) (“A court has broad discretion when estimating the value of
4 an unliquidated claim”)(citation omitted); First City Beaumont v.
5 Durkay (In re Ford), 967 F.2d 1047, 1049 n.3 (5th Cir. 1992)
6 (“‘Estimation’ for the purposes of section 502(c)(1) simply means
7 that the bankruptcy court may exercise its discretionary powers
8 to determine the allowability of claims in bankruptcy in
9 accordance with the principles of equity.”).

10 We apply a two-part test to determine objectively whether
11 the bankruptcy court abused its discretion. United States v.
12 Hinkson, 585 F.3d 1247, 1261-62 (9th Cir. 2009)(en banc). First,
13 we “determine de novo whether the bankruptcy court identified the
14 correct legal rule to apply to the relief requested.” Id.
15 Second, we examine the bankruptcy court’s factual findings under
16 the clearly erroneous standard. Id. at 1262 & n.20. A
17 bankruptcy court abuses its discretion if it applied the wrong
18 legal standard or its factual findings were illogical,
19 implausible or without support in the record. TrafficSchool.com
20 v. Edriver Inc., 653 F.3d 820, 832 (9th Cir. 2011).

21 We may affirm on any ground supported by the record. Shanks
22 v. Dressel, 540 F.3d 1082, 1086 (9th Cir. 2008).

23 ///

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28 ///

1 **DISCUSSION**

2 A. Estimation of Claim #21 under § 502(c)

3 1. Application of § 502(c)(1)¹⁸

4 Section 502(c)(1) establishes a procedure for the estimation
5 of contingent or unliquidated claims against the bankruptcy
6 estate, if the fixing or liquidation of such claims would unduly
7 delay the administration of the bankruptcy estate. Corey,
8 892 F.2d at 834. "Estimation" simply means that the bankruptcy
9 court may use its discretion in determining the allowability of
10 claims in bankruptcy. Ford, 967 F.2d at 1049 n.3.

11 The Bankruptcy Code does not define the terms "contingent"
12 or "unliquidated." In re Nicholes, 184 B.R. 82, 88 (9th Cir. BAP
13 1995). However, case law has set forth working definitions of
14 the terms. A contingent claim is "one which the debtor will be
15 called upon to pay only upon the occurrence or happening of an
16 extrinsic event which will trigger the liability of the debtor to
17 the alleged creditor." Siegel v. Fed. Home Loan Mortg. Corp.,
18 143 F.3d 525, 532 (9th Cir. 1998)(quoting Fostvedt v. Dow
19 (In re Fostvedt), 823 F.2d 305, 306 (9th Cir. 1987)(internal
20 quotation marks omitted)). In other words, a contingent claim is
21 one that has not accrued and depends upon a future event.
22 In re Dill, 30 B.R. 546, 548 (9th Cir. BAP 1983). An
23 unliquidated claim is one that is not "subject to 'ready
24

25 ¹⁸ Section 502(c)(1) provides: "There shall be estimated for
26 purpose of allowance under this section . . . any contingent or
27 unliquidated claim, the fixing or liquidation of which, as the
28 case may be, would unduly delay the administration of the case
. . . ."

1 determination and precision in computation of the amount due.'"
2 Fostvedt, 823 F.2d at 306 (quoting In re Sylvester, 19 B.R. 671,
3 673 (9th Cir. BAP 1982)).

4 Shannon argues that the bankruptcy court should not have
5 attempted to estimate Claim #21 at all. She contends that the
6 bankruptcy court erred in estimating Claim #21 under § 502(c)(1)
7 because § 502(c)(1) did not apply, as Claim #21 was not
8 contingent or unliquidated. Shannon asserts that she presented
9 ample evidence demonstrating that Claim #21 already had accrued,
10 triggering Michael's liability. We disagree.

11 Claim #21 was based on "support, property division, [and]
12 undisclosed property."¹⁹ As she points out, Shannon submitted
13 numerous documents for the evidentiary hearing in support of
14 Claim #21. Most of these documents pertain to the Community
15 Property Assets and the distributions therefrom.

16 With respect to that portion of Claim #21 based on
17 "support," Shannon submitted her declaration and a copy of the
18 spousal support order as evidence. The declaration briefly
19 refers to the spousal support order and calculates the total
20 amount of spousal support in arrears at \$11,724.90. The spousal
21 support order states that Michael must pay \$969 per month in
22 spousal support, beginning on January 1, 2008.

23 Clearly, that portion of Claim #21 based on support is not
24

25
26 ¹⁹ The bankruptcy court noted in its Memorandum that Shannon
27 herself had made it in her motion for entry of final decree in
28 her chapter 11 bankruptcy case. The bankruptcy court found her
description accurate.

1 contingent or unliquidated because the state court already
2 determined Michael's liability under the spousal support order.
3 (Although the total amount of spousal support due Shannon may be
4 at issue.) But that portion of Claim #21 simply duplicates
5 Claim #1, which the bankruptcy court already allowed.

6 As for the remainder of Claim #21 for "property division,
7 [and] undisclosed property," we conclude that it is contingent
8 and unliquidated. Shannon argues that Claim #21 is not
9 contingent because "the elements of the claim" were "evident and
10 easy to quantify." Appellant's Opening Brief at 22. She seems
11 to imply that a contingent claim is one that is not easily
12 ascertainable. But Shannon misapprehends the meaning of
13 "contingent."

14 A contingent claim is one that has not yet arisen or
15 developed. A claim is contingent if its existence depends on
16 events outside of the bankruptcy case that give rise to the
17 debtor's liability to the creditor. Here, looking at only the
18 face sheet of Claim #21, Shannon bases it, in part, on "property
19 division and undisclosed property." None of the documents she
20 submitted at the evidentiary hearing show that a determination
21 has been made dividing up the Community Property Assets between
22 her and Michael. The documents also do not establish that
23 Michael received the alleged amounts in distributions from the
24 Community Property Assets. And no determination has been made as
25 to Michael's liability for alleged "undisclosed property."

26 Shannon alleges that the Judgment and the Marital Trust
27 Agreement require Michael to turn over the Community Property
28 Assets and/or the distributions therefrom. The Marital Trust

1 Agreement simply transmuted various assets into community
2 property and then placed them into the marital trust. It did not
3 provide for turnover of these Community Property Assets and any
4 distributions therefrom to Shannon.

5 As for the Judgment, it required Michael to turn over to
6 Shannon the New York Partnership Interest Distributions. But
7 Claim #21 does not indicate that it is based on the Judgment. It
8 simply asserts that it is based on "support, property division,
9 [and] undisclosed property" - none of which comprise the grounds
10 for the Judgment. Also, the Judgment only required Michael to
11 turn over the New York Partnership Interest Distributions, not
12 the other Community Property Assets.

13 Moreover, as the bankruptcy court emphasized, Claim #21
14 involves non-bankruptcy law issues best left to determination by
15 the state court. The division of community property assets is
16 not within the bankruptcy court's purview.

17 Because Claim #21 is contingent and unliquidated, we
18 determine that the bankruptcy court did not abuse its discretion
19 in applying § 502(c)(1) to estimate Claim #21.

20
21 2. Estimation of Claim #21 at zero for distribution
22 purposes

23 "An estimation under section 502(c) may be for broad or
24 narrow purposes." In re Pac. Gas & Elec. Co., 295 B.R. 635, 642
25 (Bankr. N.D. Cal. 2003). The bankruptcy court must follow "the
26 substantive law governing the nature of the claim (such as
27 following contract law when estimating a breach of contract
28 claim)." Id. (citation omitted). "Otherwise, neither the

1 Bankruptcy Code nor the Bankruptcy Rules set forth a procedure
2 for estimating claims; instead, the court may use 'whatever
3 method is best suited to the particular contingencies at issue.'" Id.
4 (quoting Bittner v. Borne Chem. Co., Inc., 691 F.2d 134,
5 135-36 (3d Cir. 1982)). The bankruptcy court therefore has broad
6 discretion to determine the appropriate method of estimation.
7 See id.

8 The bankruptcy court "only needs to reasonably estimate the
9 probable value of the claim." Id. (quoting Matter of Fed. Press
10 Co., 116 B.R. 650, 653 (Bankr. N.D. Ind. 1989)(internal quotation
11 marks omitted)). "Such an estimate necessarily implies no
12 certainty and is not a finding or fixing of an exact amount. It
13 is merely the court's best estimate for the purpose of permitting
14 the case to go forward" Id. (quoting Fed. Press Co.,
15 116 B.R. at 653)(internal quotation marks omitted)).

16 Shannon argues that, even though she proffered sufficient
17 evidence demonstrating the allowability of the entire amount of
18 Claim #21, the bankruptcy court estimated it at zero. She
19 further argues that the bankruptcy court provided no methodology
20 or analysis for arriving at that amount.

21 Claim #21 was based on "support, property division, [and]
22 undisclosed property." As we earlier explained, no determination
23 had been made as to the division of property and as to the
24 alleged undisclosed assets.²⁰ Aside from the Spousal Support
25 Order, the state court had made no determinations relevant to

26
27 ²⁰ Shannon describes these "undisclosed assets" as the
28 distributions from the Community Property Assets that Michael
failed to turn over to her.

1 Claim #21.

2 Because no determinations had been made on the bases for
3 Claim #21, the bankruptcy court gave its best estimate - zero -
4 in order to permit the bankruptcy case to move forward. Contrary
5 to Shannon's assertion, the bankruptcy court did in fact explain
6 its methodology: it estimated Claim #21 at zero because it
7 believed it was inappropriate for it to decide how the Community
8 Property Assets should be divided and saw no reason to hold up
9 distributions to other creditors. The bankruptcy court exercised
10 its broad discretion in estimating Claim #21. We see nothing in
11 the record indicating that the bankruptcy court abused its
12 discretion.

13
14 B. Permissive abstention under 28 U.S.C. § 1334(c)(1)

15 "Section 1334(c)(1) provides for permissive abstention in
16 both core and non-core proceedings." Sec. Farms v. Int'l Bhd. of
17 Teamsters, Chauffers, Warehouseman & Helpers, 124 F.3d 999, 1009
18 (9th Cir. 1997). A bankruptcy court should consider the
19 following factors when deciding whether to abstain:

20 (1) the effect or lack thereof on the efficient
21 administration of the estate if a Court recommends
22 abstention, (2) the extent to which state law issues
23 predominate over bankruptcy issues, (3) the difficulty
24 or unsettled nature of the applicable law, (4) the
25 presence of a related proceeding commenced in state
26 court or other nonbankruptcy court, (5) the
27 jurisdictional basis, if any, other than 28 U.S.C.
28 § 1334, (6) the degree of relatedness or remoteness of
the proceeding to the main bankruptcy case, (7) the
substance rather than form of an asserted 'core'
proceeding, (8) the feasibility of severing state law
claims from core bankruptcy matters to allow judgments
to be entered in state court with enforcement left to
the bankruptcy court, (9) the burden of [the bankruptcy
court's] docket, (10) the likelihood that the
commencement of the proceeding in bankruptcy court

1 involves forum shopping by one of the parties, (11) the
2 existence of a right to a jury trial, and (12) the
presence in the proceeding of nondebtor parties.

3 Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.),
4 912 F.2d 1162, 1166-67 (9th Cir. 1990)(quoting In re Republic
5 Reader's Serv., Inc., 81 B.R. 422, 429 (Bankr. S.D. Tex. 1987)
6 (internal quotation marks omitted)).

7 Shannon contends that the bankruptcy court erred in
8 permissively abstaining from adjudicating Claim #21 because
9 "deciding the merits of Claim No. 21" did not involve state law.
10 Rather, Claim #21 involved a determination as to Michael's
11 alleged failure to turn over Community Property Assets belonging
12 to her bankruptcy estate. Such a determination, she averred,
13 involved the application of §§ 541(a)(2) and 542(a).²¹

14 _____
15 ²¹ Section 541(a) provides, in relevant part:

16 The commencement of a case under section 301, 302, or 303 of
17 this title creates an estate. Such an estate is comprised of all
18 the following property, wherever located and by whomever held:

19 . . .
20 (2) All interests of the debtor and the debtor's spouse in
community property as of the commencement of the case that
is -

- 21 (A) under the sole, equal, or joint management and
control of the debtor; or
22 (B) liable for an allowable claim against the debtor,
23 or for both an allowable claim against the debtor and
24 an allowable claim against the debtor's spouse, to the
extent that such interest is so liable.

25 Section 542(a) provides: Except as provided in subsection
26 (c) or (d) of this section, an entity, other than a custodian, in
27 possession, custody, or control, during the case, of property
that the trustee may use, sell, or lease under section 363 of
28 this title, or that the debtor may exempt under section 522 of

(continued...)

1 We acknowledge that "[f]or purposes of § 541(a)(2), all
2 community property not yet divided by a state court at the time
3 of the bankruptcy filing is property of the bankruptcy estate."
4 Dumas v. Mantle (In re Mantle), 153 F.3d 1082, 1085 (9th Cir.
5 1998). See also Keller v. Keller (In re Keller), 185 B.R. 796,
6 799-800 (9th Cir. BAP 1995) ("When a bankruptcy petition is filed
7 prior to the final disposition of property between divorcing
8 spouses, the community property comes within the jurisdiction of
9 the bankruptcy court to assure fairness to the creditors of the
10 individual spouses and the marital estate."). However, we
11 nonetheless conclude that the bankruptcy court did not abuse its
12 discretion in abstaining from determining the division of the
13 Community Property Assets.

14 As we mentioned earlier, one factor in favor of permissive
15 abstention is the effect on the efficient administration of the
16 bankruptcy estate. Here, the bankruptcy court based its decision
17 to abstain on the fact that the creditors in Shannon's chapter 11
18 bankruptcy case already had been paid and there was "no reason to
19 hold up distributions to other creditors" in Michael's chapter 7
20 bankruptcy case. Had the bankruptcy court decided to address the
21 issues of community property division, Michael's chapter 7
22 bankruptcy case could have dragged on to the detriment of other
23 creditors (e.g., litigation costs, possible depreciating value of
24 certain Community Property Assets). Moreover, Shannon's

26 ²¹(...continued)
27 this title, shall deliver to the trustee, and account for such
28 property or the value of such property, unless such property is
of inconsequential value or benefit to the estate.

1 chapter 11 case was completed; all of her creditors (other than
2 possibly Michael) had been paid, and her chapter 11 case was
3 closed. There was no need to make any determinations on
4 community property division when they would not have added any
5 value or given any benefit to her chapter 11 bankruptcy estate.
6 Further, the situation is confused because when Michael filed for
7 chapter 7 bankruptcy, all of the Falks' Community Property Assets
8 became property of his bankruptcy estate as well. There needs to
9 be a division of the Community Property Assets to determine the
10 allocation of those assets between the two battling ex-spouses -
11 and that should be done by the state court. The bankruptcy court
12 did not abuse its discretion in declining to inject itself into
13 resolving the state law issues concerned in Michael and Shannon's
14 personal marital dissolution disputes.

15
16 **CONCLUSION**

17 For the foregoing reasons, we AFFIRM.
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