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

NOT FOR PUBLICATION

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UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	CC-09-1135-PaHMo
)		
AVRAM MOSHE PERRY,)	Bk. No.	SV-09-11476-GM
)		
Debtor.)		
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AVRAM MOSHE PERRY,)		
)		
Appellant,)		
)	M E M O R A N D U M ¹	
v.)		
)		
CHASE AUTO FINANCE,)		
)		
Appellee.)		
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Argued and Submitted on October 23, 2009
at Pasadena, California

Filed - November 10, 2009

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

Hon. Geraldine Mund, United States Bankruptcy Judge, Presiding.

Before: PAPPAS, HOLLOWELL and MONTALI, 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 Chapter 7² debtor Avram Moshe Perry ("Perry") appeals the
2 order of the bankruptcy court granting Chase Auto Finance's
3 ("Chase") motion for relief from stay and denying Perry's request
4 for injunctive relief and monetary damages. We DISMISS as moot
5 the appeal from the bankruptcy court's decision granting stay
6 relief and denying injunctive relief, and AFFIRM the bankruptcy
7 court's decision to permissively abstain from adjudicating Perry's
8 state law claim for damages.

9 **FACTS**

10 In 2004, Perry and Chase executed a promissory note and
11 security agreement (the "Contract"), granting Chase a security
12 interest in a 2001 Nissan Pathfinder (the "Nissan"). On May 16,
13 2008, the parties executed a modification of the Contract (the
14 "Rewrite Agreement"), in which Perry agreed to make one payment to
15 Chase of \$381.52 by May 10, 2008, followed by 39 monthly payments
16 of \$252.08. Chase alleges that Perry made only sporadic payments
17 under the Rewrite Agreement, and that he defaulted, although the
18 number and timeliness of his payments have been hotly contested by
19 the parties.

20 Perry alleges that on February 2, 2009, he contacted
21 Chase, informing them of his financial difficulties and that he
22 was preparing a bankruptcy filing. On February 5, 2009, an
23 attorney representing Perry wrote to Chase "attempting to resolve
24 a dispute involving an account" of Perry. The letter made no
25

26
27 ² Unless otherwise indicated, all chapter, section and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 reference to a bankruptcy filing and directed Chase to communicate
2 directly with Perry.

3 It is not disputed that, early in the morning on February 6,
4 2009, Chase's agent, Key Auto Recovery ("Key"), repossessed the
5 Nissan.

6 On February 11, 2009, Perry filed a bankruptcy petition under
7 chapter 7. On his Schedules B and D, he listed the Nissan as his
8 personal property worth \$9,000, subject to a disputed secured
9 claim by Chase.

10 On February 17, 2009, Perry filed an action against Chase and
11 Key in Los Angeles Superior Court. Case no. BC044679 (the "State
12 Court Action"). Few documents from the State Court Action are
13 included in the record. However, based on the transcript of the
14 bankruptcy court hearing and statements of counsel at oral
15 argument before the Panel, it appears that the parties have been
16 actively pursuing the State Court Action at the same time as the
17 bankruptcy proceedings and this appeal, and the issues in the
18 State Court Action parallel those in the bankruptcy case.³

19
20 ³ From the hearing transcript attached to Perry's Motion to
21 Waive 4 Copies of Appellant Opening Brief, 12:4-12 (April 9,
2009):

22 THE COURT: [to Perry] [Y]ou've got a week to get
23 yourself to State Court and get an injunction against
24 them selling the car. PERRY: Well, that's what I did.
25 THE COURT: What? PERRY: And the judge told me to come
26 here. THE COURT: Well, I'm telling you to go back.
27 Okay. PERRY: I'm being played like a ping-pong ball.

28 Also attached to Perry's Opening Br. at Exh. E and F are Chase's
Opposition to Perry's application for a preliminary injunction in
the State Court Action, together with a supporting declaration
from Key's president Joe Scharlin. Finally, Chase's counsel
confirmed at oral argument before the Panel that the State Court
Action is proceeding and a trial is scheduled for November 2009.

1 On February 25, 2009, Perry filed a pleading in the
2 bankruptcy court that he styled as an "Opposition to Chase Bank
3 Motion to Lift Stay, Request from the United States District Court
4 for a Preliminary and/or Permanent Injunction and/or Any Relief
5 Under 28 U.S.C. sec. 2283, Money Damages" (the "Opposition/
6 Injunction Request"). Although Perry called this pleading, in
7 part, an "opposition" to a Chase stay relief motion, at that time
8 Chase had filed no such motion. It appears that he opposed relief
9 from stay for Chase because of its improper actions in the
10 repossession of the Nissan, and sought an injunction against the
11 sale of the Nissan by Chase and for turnover of the Nissan.
12 Though he references "Money Damages" in the caption of the
13 Opposition/Injunction Request, Perry does not articulate any claim
14 for damages in the pleading, either by type, amount, or through
15 identification of the legal authority for such an award.

16 A few days later, on March 9, 2009, Perry filed his "Motion
17 to Show Cause and for Shortening Time, Sanctions and Holding Key
18 Auto Recovery and Chase Auto Finance in Contempt for Violation of
19 the Automatic Stay under § 362(a)" (the "Sanctions Motion"). In
20 this motion, Perry argued that Chase and Key should be held in
21 contempt for violation of the automatic stay in failing to turn
22 over the Nissan to Perry after Perry filed for bankruptcy
23 protection. Additionally, Perry contended that Chase should be
24 subject to punitive and other damages for the allegedly improper
25 actions of Key in effecting the repossession.

26 Chase filed its Motion for Relief from Stay (the "Stay Relief
27 Motion") on March 10, 2009, requesting permission to proceed under
28 state law to sell the Nissan. The motion was supported by a

1 declaration from a Chase "bankruptcy specialist," opining that the
2 fair market value of the Nissan was \$7,245.00, and that Perry's
3 debt on the Nissan was \$9,507.28, resulting in a negative equity
4 cushion of \$2,262.28.

5 On March 23 and 30, 2009, Chase responded to Perry's
6 Sanctions Motion, arguing various procedural defects, principally
7 that Perry's motion was a disguised turnover motion that could
8 only be prosecuted in an adversary proceeding, and only by the
9 chapter 7 trustee, not Perry. Chase replied to the Opposition/
10 Injunction Request on March 30, 2009, contending that it was
11 entitled to stay relief and restated the arguments in its response
12 to Perry's Sanction Motion. Chase never discussed Perry's request
13 for injunctive relief or monetary damages.

14 The bankruptcy court held a hearing on Chase's Stay Relief
15 Motion and Perry's Opposition/Injunction Request on April 9,
16 2009.⁴ Perry appeared pro se and Chase was represented by
17 counsel.

18 After hearing from both parties, the bankruptcy judge made
19 several rulings on the record, including that:

20 (1) Perry could not move for an injunction prohibiting
21 Chase from selling his car by motion because an
22 adversary proceeding was required. The bankruptcy court
23 therefore denied Perry's request for injunction.

24 (2) Chase did not violate the automatic stay by
25 repossessing the Nissan, because, in the court's words,
26 "I know that you told them you were going to file
27 bankruptcy, and therefore it would be a violation of the
28 automatic stay, but it doesn't matter because it [the
repossession] occurred before you filed bankruptcy.

27 ⁴ There is no indication in the record that Perry's Sanction
28 Motion was ever heard. It was not considered by the court at the
April 9, 2009 hearing.

1 Therefore, there was no automatic stay." Hr'g Tr. 9:12-
2 16.

3 (3) Chase did not violate the automatic stay by
4 retaining possession of the Nissan after the bankruptcy
5 filing and the court would not grant an injunction/
6 turnover of the Nissan to Perry, explaining, "[t]he fact
7 that they didn't turn the car back to you, they don't
8 have to. They have to within a reasonable time filing
9 motion for relief from stay to keep the car. They did
10 that. You are not entitled to the car back under the
11 bankruptcy law." Hr'g Tr. 9:17-21.

12 (4) The bankruptcy court granted Chase's request for
13 relief from stay, effective April 17, 2009. The court
14 deferred the effective date to allow Perry to seek
15 relief in the State Court Action.

16 The bankruptcy court abstained and declined to rule on
17 whether Perry should recover any damages from Chase for its
18 alleged unlawful repossession of the Nissan, referring Perry to
19 the state court to litigate his claim. When Perry suggested to
20 the bankruptcy judge that the court had jurisdiction to consider
21 Perry's state law damage claim, the judge acknowledged that the
22 court had jurisdiction but stated, "I'm not going to exercise it."
23 Hr'g Tr. 10:11.

24 Prior to the entry of any order, Perry filed a premature
25 notice of appeal of the bankruptcy court's rulings on April 14,
26 2009, describing the appeal as relating to "stay, vehicle repos'd
27 wrongfully in breach of peace, Chase refuse turnover." On the
28 same day, Perry filed a motion for reconsideration of "Bankruptcy
Court's declination to entertain Debtor's Motion to Show Cause for
Vehicle Turnover during Stay and damages against Chase for
wrongful repossession in breach of peace [and] Lifting the stay
until April 17, 2009 to enable Debtor to bring his cause in the
state court." In his motion, Perry repeated his various

1 allegations but provided no new evidence or suggestion of change
2 in law.

3 The bankruptcy court denied the motion for reconsideration on
4 April 23, 2009. Then, the bankruptcy court entered an order
5 granting relief to Chase from the automatic stay on April 23,
6 2009. The order also provided that "Debtor's 'Request From the
7 United States District Court for a Preliminary and/or Permanent
8 Injunction and/or Any Injunctive Relief Under 28 U.S.C.
9 Section 2283, Money Damages,' is hereby denied." Upon entry of
10 this order, Perry's premature appeal was rendered timely.
11 Rule 8021(a) (providing that a notice of appeal filed after
12 announcement of bankruptcy court's decision, but before entry of
13 an order, is to be treated as filed after such entry);
14 Am. Ironworks & Erectors Inc. v. N. Am. Const. Co., 248 F.3d 892,
15 897-98 (9th Cir. 2001); Baldwin v. Redwood City, 540 F.2d 1360,
16 1364 (9th Cir. 1976).

17 Perry filed a motion for a stay of the final order pending
18 appeal, which was denied by the bankruptcy court. Perry did not
19 request a stay pending appeal from the Panel.

20 It is undisputed that the Nissan was sold by Chase at auction
21 to a third party not involved in this bankruptcy case or appeal,
22 for value, on May 30, 2009.

23

24

JURISDICTION

25 The bankruptcy court had jurisdiction under 28 U.S.C.
26 §§ 1334(b) and 157(b)(1) and (b)(2)(G) and (O). We discuss the
27 issues concerning our jurisdiction over this appeal below. As to
28 mootness, a federal court always has jurisdiction to examine its

1 own jurisdiction. Muthig v. Brant Point Nantucket, 838 F.2d 600,
2 603 (1st Cir. 1988).

4 ISSUES

- 5 1. Whether Perry's objection to Chase's motion for relief from
6 stay and his request for injunctive relief, alternatively
7 viewed as a turnover motion, are moot.
- 8 2. Whether the bankruptcy court abused its discretion in
9 abstaining from Perry's state law cause of action for
10 unlawful repossession.

11 STANDARD OF REVIEW

12 We examine our own jurisdiction, including mootness, de novo.
13 Wiersma v. O.H. Kruse Grain & Milling (In re Wiersma), 324 B.R.
14 92, 110 (9th Cir. BAP 2005).

15 A bankruptcy court's decision to permissively abstain from
16 hearing or deciding a state law cause of action is reviewed for
17 abuse of discretion. Brown v. State Bar (In re Bankr. Petition
18 Preparers), 307 B.R. 134, 140 (9th Cir. BAP 2004). To reverse for
19 abuse of discretion the Panel must have a definite and firm
20 conviction that the bankruptcy court committed a clear error of
21 judgment in the conclusion it reached. Stasz v. Gonzalez
22 (In re Stasz), 387 B.R. 271, 274 (9th Cir. BAP 2008).

23 DISCUSSION

24 I.

25 Perry's appeal as to the bankruptcy court's order granting Chase
26 relief from stay and denying injunctive relief is moot.

27 Chase argues that, because Perry was unsuccessful in
28 obtaining a stay pending appeal, and because the Nissan has been

1 sold to a good faith purchaser for value who was not involved in
2 the bankruptcy proceedings, the Nissan cannot be returned to Perry
3 and, thus, the Panel can grant Perry no effective relief. We
4 agree that any issues involving the bankruptcy court's decision to
5 grant Chase relief from the automatic stay, and declining to
6 enjoin Chase from selling the Nissan, are moot. As a result, we
7 lack jurisdiction to entertain Perry's arguments on appeal
8 regarding these issues and the appeal regarding those issues must
9 be dismissed.

10 Chase sought relief from the automatic stay from the
11 bankruptcy court under § 362(d)(2)⁵ so that it could continue in
12 possession and proceed with a sale of the Nissan. Perry's request
13 for injunctive relief generally seeks turnover of the Nissan to
14 Perry, and an order directing Chase to cease its attempts to
15 retain possession and sell the Nissan. However, the bankruptcy
16 court denied Perry's request, and denied Perry's motion for a stay
17 pending this appeal. In the meantime, the Nissan was sold in a
18 commercially reasonable manner to a third party bona fide
19 purchaser for value. As a result, even if Perry's arguments on
20 appeal have merit, the Panel has no authority to invalidate that
21 sale, nor to order the purchaser to return the Nissan to Perry.

22 This Panel can only address actual cases and controversies.
23 Tennant v. Rojan (In re Tennant), 318 B.R. 98, 99-100 (9th Cir.

24
25 ⁵ "On request of a party in interest and after notice and a
26 hearing, the court shall grant relief from the stay provided under
27 subsection (a) of this section, such as by terminating, annulling,
28 modifying, or conditioning such stay . . . with respect to a stay
of an act against property under subsection (a) of this section,
if - (A) the debtor does not have an equity in such property; and
(B) such property is not necessary to an effective
reorganization." § 362(d)(2).

1 BAP 2004). As the Ninth Circuit cautions, "Article III requires
2 that a live controversy persist throughout all stages of the
3 litigation. Where this condition is not met, the case has become
4 moot, and its resolution is no longer within our constitutional
5 purview." Gator.com Corp. v. L.L. Bean, Inc., 398 F.3d 1125,
6 1128-29 (9th Cir. 2005) (citation omitted).

7 The two appellate issues we discuss in this section, relief
8 from stay and injunctive relief, involve what the court of appeals
9 refers to as "true, Article III" mootness.⁶ See Nat'l Mass Media
10 Telecommcn's Sys., Inc. v. Stanley (In re Nat'l Mass Media
11 Telecommcn's Sys., Inc.), 152 F.3d 1178, 1180 (9th Cir. 1998)
12 ("[R]eal or constitutional (Article III) mootness [is] a concept
13 that applies when an event occurs while a case is pending appeal
14 that makes it impossible for the court to grant 'any effectual
15 relief.'") (citing Church of Scientology v. United States,

16 ⁶ Where "true mootness" is found to exist, an appellate
17 court must dismiss the appeal. True mootness is distinguished
18 from equitable mootness, where an appellate court has discretion
19 to dismiss for mootness when factors have emerged that make it
20 difficult to fashion relief. See In re UNR Indus., Inc., 20 F.3d
21 766, 769 (7th Cir. 1994) ("There is a big difference between
22 inability to alter the outcome (real mootness) and unwillingness
23 to alter the outcome ('equitable mootness').") (emphasis in
24 original).

25 In his Opening Brief, Perry argues that these issues are not
26 moot, principally because of the alleged inequitable conduct of
27 Chase. To some extent, Perry is correct that equitable mootness
28 does not apply here, but for the wrong reason. Contrary to
Perry's suggestion, the conduct of parties is irrelevant in
analyzing whether constitutional mootness exists. Even if Chase
had acted inequitably and even if the bankruptcy court had erred
in entering its stay relief order, the fact that an order was
entered, not stayed and, as a result, Perry's property was sold to
a third party, bona fide purchaser for value, moots any appeal
attempting to recover or control the property. Gemmill v. Robison
(In re Combined Metals Reduction Co.), 557 F.2d 179, 192 (9th Cir.
1977) ("Given the trial court's ruling, the transfer of title and
the failure to join the transferees as parties, it would appear
that this court cannot . . . restore the status quo or grant any
relief, even if the district court did err.").

1 506 U.S. 9, 12 (1994) (“[I]f an event occurs while a case is
2 pending on appeal that makes it impossible for the court to grant
3 ‘any effectual relief whatever’ to a prevailing party, the appeal
4 must be dismissed.”).

5 The Ninth Circuit has repeatedly ruled that conditions like
6 those present in this appeal of the relief from stay order – an
7 appeal from a court order for relief from stay that directly or
8 indirectly authorizes the sale of a debtor’s property, where that
9 order is not stayed, and where the property is sold to a bona fide
10 purchaser for value – make it impossible for the appellate court
11 to grant any effectual relief seeking control or return of the
12 property. Suter v. Goedert, 504 F.3d 982, 986 (9th Cir. 2007)
13 (“The bankruptcy mootness rule applies when an appellant has
14 failed to obtain a stay from an order that permits a sale of a
15 debtor's assets. Whether an order directly approves the sale or
16 simply lifts the automatic stay, the mootness rule dictates that
17 the appellant's failure to obtain a stay moots the appeal.”)
18 (quoting Onouli-Kona Land Co. v. Estate of Richards (In re Onouli-
19 Kona Land Co.), 845 F.2d. 1170, 1172 (9th Cir. 1988)); Sewell v.
20 MGF Funding, Inc., (In re Sewell), 345 B.R. 174, 177 (9th Cir. BAP
21 2006) (same). In sum, the Nissan was sold under conditions that
22 cannot be reversed. Since it is impossible for the Panel to
23 review the stay relief order and grant Perry any relief, the
24 appeal is moot.

25 Similarly, the Panel cannot fashion effective relief in
26 response to Perry’s request that it review the bankruptcy court’s
27 order denying injunctive relief. Insofar as Perry’s request for
28 injunctive relief is a request for turnover of the Nissan and

1 enjoining Chase from interfering with Perry's possession of the
2 Nissan, it is impossible for the Panel to direct the bankruptcy
3 court to order the return of the Nissan to Perry. The appeal of
4 the denial of injunctive relief is also moot.

5 Perry's appeal of the bankruptcy court's order granting Chase
6 stay relief, and denying Perry injunctive relief, is therefore
7 DISMISSED.

8
9 II.

10 The bankruptcy court did not abuse its discretion by abstaining
11 from hearing and deciding Perry's state law cause of action
12 for Chase's alleged unlawful repossession of the Nissan.

13 There were three motions presented to the bankruptcy court:
14 (1) the Opposition/Injunctive Relief Request, (2) the Sanctions
15 Motion by Perry, and (3) the Stay Relief Motion by Chase. The
16 bankruptcy court heard argument on April 9, 2009, on the
17 Opposition/Injunctive Relief Request and the Stay Relief Motion.
18 Based upon our review of the bankruptcy court's docket, Perry's
19 Sanctions Motion was never heard or disposed of by the bankruptcy
20 court. The court's April 23, 2009, order granted Chase's motion
21 for relief from stay and denied Perry's request for injunctive
22 relief.

23 Our decision in the previous section moots these appeals
24 except, perhaps, for one other issue raised by Perry's Opposition/
25 Injunctive Relief Request. That request was captioned,
26 "Opposition to Chase Bank Motion to Lift Stay, Request from the
27 United States District Court for a Preliminary and/or Permanent
28 Injunction and/or Any Relief Under 28 U.S.C. sec. 2283, Money
Damages." To the extent this pleading sought this form of relief

1 (i.e., "Money Damages"), the bankruptcy court's order refusing to
2 grant relief is not moot because, assuming Perry could establish
3 that he was damaged by Chase's actions, and that Chase's conduct
4 violated state law, it would not be impossible for the Panel to
5 craft a remedy for Perry.

6 Although the Opposition/Injunctive Relief Request refers to
7 money damages in the caption, it does not provide any specific
8 details in the body of the pleading regarding Perry's demand for
9 damages. Nevertheless, because Perry is a pro se appellant, we
10 construe his pleadings liberally. Wolfe v. Strankman, 392 F.3d
11 358, 362 (9th Cir. 2004); Kashani v. Fulton (In re Kashani),
12 190 B.R. 875, 883 (9th Cir. BAP 1995) ("The courts are to make
13 reasonable allowances for pro se litigants and are to construe pro
14 se papers and pleadings liberally.")

15 A fair reading of his Opposition/Injunctive Relief Request
16 shows that Perry discusses events and actions that occurred before
17 the filing of his bankruptcy petition. There is no allegation in
18 the Opposition/Injunctive Relief Request that Perry was harmed by
19 the post-petition actions of Chase.⁷ The bankruptcy court also

20
21 ⁷ We acknowledge that Perry's Sanctions Motion discussed
22 damages under § 362(k) for violation of the automatic stay.
23 However, Perry's Sanctions Motion was not before the court and was
24 not addressed in the bankruptcy court's April 23, 2009, order
25 reviewed in this appeal.

26 However, we also note that the court effectively dealt with
27 the question of damages for stay violation by simply ruling that
28 Chase did not violate the stay. The court ruled on the record
that there was no automatic stay in place when the Nissan was
repossessed prepetition. This is consistent with the plain
language of § 362(a)(3). Further, there was no stay violation by
Chase in retaining the Nissan postpetition because Chase, a
secured creditor, expeditiously sought relief from stay. This is
consistent with our case law in Expeditors Int'l of Washington, DC
v. Colortran, Inc., (In re Colortran, Inc.), 210 B.R. 823, 828

(continued...)

1 observed that any damages and remedies sought by Perry in the
2 motions before it stemmed from the pre-petition activities of
3 Chase and its agent for allegedly unlawful repossession of the
4 Nissan. At one point, the court observed,

5 Now, as to everything that happened, you go fight that
6 out in State Court. You've got an action there, and
7 even if you didn't, I would have told you to go to State
8 Court because that's the proper place. I don't deal
9 with these things. I don't deal with how the
10 repossession takes place. . . . That's state law, and
11 it's supposed to take a state judge to [decide] it.

12 Hr'g Tr: 9:22 - 10:4.

13 As Perry acknowledges in his Opening Brief, in declining to
14 hear his wrongful repossession claims, the bankruptcy court was
15 exercising its discretion to permissively abstain under 28 U.S.C.
16 § 1334(c)(1), which provides: "Except with respect to a case under
17 chapter 15 of Title 11, nothing in this section prevents a
18 district court in the interests of justice, or in the interests of
19 comity with State Courts or respect for State law, from abstaining
20 from hearing a particular proceeding arising under title 11 or
21 arising in or related to a case under title 11."⁸

22 The Ninth Circuit has provided guidelines for the bankruptcy
23 courts when considering whether to permissibly abstain under
24 § 1334(c)(1). In particular, the bankruptcy court should examine:

25 ⁷(...continued)
26 (9th Cir. BAP 1997) remanded on other grounds 1998 U.S. App. LEXIS
27 29027 (9th Cir. 1998) (a secured creditor, concerned that its
28 interests in property would be endangered by its surrender, may
request an expedited relief from stay motion, and prerequisites to
surrender of the property will be determined by the court).

⁸ Although this provision specifically refers to the
district court, bankruptcy judges acting in cases referred by the
district court may likewise permissibly abstain under this
section. In re Pac. Gas & Elec. Co., 279 B.R. 561, 566 (Bankr.
N.D. Cal. 2002).

1 (1) the effect or lack thereof on the efficient
2 administration of the estate if a Court recommends
3 abstention, (2) the extent to which state law issues
4 predominate over bankruptcy issues, (3) the difficulty
5 or unsettled nature of the applicable law, (4) the
6 presence of a related proceeding commenced in state
7 court or other nonbankruptcy court, (5) the
8 jurisdictional basis, if any, other than 28 U.S.C.
9 § 1334, (6) the degree of relatedness or remoteness of
10 the proceeding to the main bankruptcy case, (7) the
11 substance rather than form of an asserted "core"
12 proceeding, (8) the feasibility of severing state law
13 claims from core bankruptcy matters to allow judgments
14 to be entered in state court with enforcement left to
15 the bankruptcy court, (9) the burden of [the bankruptcy
16 court's] docket, (10) the likelihood that the
17 commencement of the proceeding in bankruptcy court
18 involves forum shopping by one of the parties, (11) the
19 existence of a right to a jury trial, and (12) the
20 presence in the proceeding of nondebtor parties.

12 Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.),
13 912 F.2d 1162, 1167 (9th Cir. 1990); Honigman, Miller, Schwartz &
14 Cohn v. Weitzman (In re Weitzman), 155 B.R. 521, 524 (9th Cir. BAP
15 1993).

16 A review of the transcript and record demonstrates that the
17 majority of the Tucson Estates' factors justify the bankruptcy
18 court's decision to abstain from entertaining Perry's state law
19 claims. For example, the bankruptcy court found and concluded
20 that:

21 - Deciding Perry's state law claims could adversely impact
22 the administration of the bankruptcy estate. In particular,
23 there was no evidence that the trustee in this case was
24 interested in this dispute.⁹ Abstaining from the dispute

24 ⁹ Perry's cause of action against Chase and Key for wrongful
25 repossession most likely belongs to his bankruptcy estate. As a
26 result, the chapter 7 trustee, not Perry, is the real party in
27 interest to prosecute such an action. Under California law, "a
28 cause of action arises on the date upon which the act occurs which
gives rise to the claim." Myers v. Eastwood Care Center, Inc.,
31 Cal.3d 628, 634, 645 P.2d 1218, 1222 (Cal. 1982). Perry's

(continued...)

1 would therefore reduce the time required to close up the
2 bankruptcy and avoid an unnecessary commitment of the
3 bankruptcy court's time.

4 - A dispute over an unlawful repossession is strictly a
5 matter of state contract, statutory or tort law. The
6 bankruptcy court noted this important factor in its comments
7 that Perry's claim "involves state law, and it involves
8 activities that took place prior to this bankruptcy and has
9 nothing to do with this chapter 7." Hr'g Tr. 13:7-9.

10 - The dispute involves no unsettled issues of bankruptcy
11 law.

12 - As discussed by the Ninth Circuit, "Abstention can exist
13 only where there is a parallel proceeding in state court.
14 That is, inherent in the concept of abstention is the
15 presence of a pendent state court action in favor of which
16 the federal court must, or may, abstain." Sec. Farms v.
17 Int'l Bhd. of Teamsters, 124 F.3d 999, 1009 (9th Cir. 1997).
18 Here there was a simultaneous proceeding in the state court
19 raising these issues. The bankruptcy court specifically
20 addressed this criterion and observed, "You have another
21 forum, a perfectly fine forum to go to." Hr'g Tr. 13:12-14.

22 - There was no independent, federal jurisdictional basis for
23 Perry's unlawful repossession claim other than that granted
24 to bankruptcy courts to entertain actions "related to"
25 bankruptcy cases under 28 U.S.C. § 1334(b). Again, in the
26 words of the bankruptcy court, this dispute "had nothing to
27 do with this chapter 7." Hr'g Tr. 13:7-8.

28 - Moreover, a third party, Key, already a defendant in the
State Court Action, was not a participant in the bankruptcy
proceedings, and would need to be joined before the
bankruptcy court could adjudicate Perry's claim of wrongful
repossession.

22 ⁹(...continued)

23 claim therefore arose on February 6, 2009, when the Nissan was
24 repossessed, and became property of the estate on the filing of
25 his chapter 7 petition on February 11, 2009. § 541(a)(1); United
26 States v. Whiting Pools, 462 U.S. 198, 205 n.9 (1983) ("The scope
27 of this paragraph [§ 541(a)(1)] is broad. It includes . . . causes
28 of action[.]"); Sierra Switchboard Co. v. Westinghouse Elec.
Corp., 789 F.2d 705, 707 (9th Cir. 1986) (same); CBS, Inc. v.
Folks (In re Folks), 211 B.R. 378, 384 (9th Cir. BAP 1997) (same).
The chapter 7 trustee succeeded to the interests of Perry in the
alleged wrongful repossession of the Nissan. § 323(a). There is
no indication in the record that the chapter 7 trustee abandoned
this claim to Perry.

1 In summary, most of the recognized criteria favoring
2 permissive abstention were present in this case. As a result, to
3 the extent it was raised by his motion, we conclude that the
4 bankruptcy court did not abuse its discretion in abstaining from
5 considering Perry's state law claim for unlawful repossession and
6 monetary damages.

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CONCLUSION

We DISMISS as moot Perry's objection to relief from stay and request for injunctive relief and AFFIRM the bankruptcy court's decision to abstain from considering Perry's state law cause of action for wrongful repossession.