

FEB 05 2015

NOT FOR PUBLICATION

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

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	HI-13-1459-KuJuKi
)		
GUY R. EUGENIO and LYNN L.)	Bk. No.	13-00833
MAINAAUPO-EUGENIO,)		
)	Adv. No.	13-90020
Debtors.)		
<hr/>			
GUY R. EUGENIO; LYNN L.)		
MAINAAUPO-EUGENIO,)		
)		
Appellants,)		
)		
v.)	MEMORANDUM*	
)		
CONTINENTAL PACIFIC, LLC,)		
)		
Appellee.)		
<hr/>			

Argued and Submitted on January 22, 2015
at Pasadena, California

Filed - February 5, 2015

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

Honorable Robert J. Faris, Chief Bankruptcy Judge, Presiding

Appearances: Anthony Paul Locricchio argued for appellants Guy
R. Eugenio and Lynn L. Mainaupo-Eugenio; Jesse W.
Schiel of Kobayashi Sugita & Goda argued for
appellee Continental Pacific, LLC.

Before: KURTZ, JURY and KIRSCHER, 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 8024-1.

1 **INTRODUCTION**

2 Continental Pacific, LLC commenced a state court action
3 against the Eugenios seeking summary possession of the real
4 property on which the Eugenios resided. After the state court
5 denied Continental Pacific's summary judgment motion and set the
6 matter for trial, the Eugenios filed their chapter 13¹ bankruptcy
7 petition. Continental Pacific then removed the state court
8 action to the bankruptcy court and filed a new summary judgment
9 motion. The bankruptcy court granted the summary judgment motion
10 and also denied the Eugenios' motion to set aside that judgment.
11 The Eugenios did not timely appeal either of these rulings.

12 The Eugenios thereafter filed a reconsideration motion in
13 which they argued that Continental Pacific's removal of the state
14 court action was improper, that the bankruptcy court lacked
15 subject matter jurisdiction, and that the state court's prior
16 denial of Continental Pacific's summary judgment motion precluded
17 the bankruptcy court from granting summary judgment. The
18 bankruptcy court denied the reconsideration motion, and the
19 Eugenios appealed.

20 Because each of the arguments the Eugenios made in their
21 reconsideration motion lack merit, we AFFIRM.

22 **FACTS**

23 The Eugenios leased a parcel of land from Continental
24 Pacific under a written month-to-month lease agreement. In
25

26 ¹Unless specified otherwise, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
28 all "Rule" references are to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9037.

1 September 2012, Continental Pacific notified the Eugenios in
2 writing that it was terminating the lease 120 days from the date
3 of that notice. Continental Pacific offered several different
4 justifications for the termination of the lease. In one notice
5 sent in February 2012, Continental Pacific stated that it needed
6 to terminate the lease in furtherance of its redevelopment plans,
7 which contemplated the conversion of the subject real property
8 pursuant to Hawaii's condominium property regime, Haw. Rev.
9 Stats. § 514B-1, et seq. At other times, Continental Pacific
10 said that it was terminating the lease because: (1) the Eugenios
11 were delinquent in paying their monthly rent; and (2) the
12 Eugenios denied Continental Pacific's contractors access to the
13 real property for the purpose of making improvements.

14 When the Eugenios did not move out by the termination date,
15 Continental Pacific filed a complaint for summary possession of
16 the property in the district court for the State of Hawaii.
17 Continental Pacific then filed a motion for summary judgment,
18 which the state court ultimately denied, but the court shortly
19 thereafter set the matter for trial. On May 20, 2013, a few days
20 before the scheduled trial date, the Eugenios filed their
21 chapter 13 bankruptcy petition, and the automatic stay prevented
22 the state court from moving forward with the trial. A week
23 later, Continental Pacific removed the state court litigation to
24 the bankruptcy court by filing a notice of removal pursuant to
25 28 U.S.C. 1452(a) and Rule 9027 and then filed a summary judgment
26 motion. The Eugenios did not initially file any opposition to
27 the summary judgment motion. Instead, they requested a
28 continuance of the summary judgment proceedings, which request

1 the bankruptcy court denied.

2 On July 17, 2013, the bankruptcy court issued an order
3 granting Continental Pacific's motion for summary judgment and
4 also issued a judgment for possession of the property. Two days
5 later, the Eugenios filed a motion to set aside the judgment and
6 to stay enforcement of the judgment. The court partially granted
7 that motion. The court temporarily stayed its prior judgment for
8 possession and, with the consent of both parties, re-opened
9 briefing on the summary judgment motion to permit the Eugenios a
10 further opportunity to file a brief and declarations opposing the
11 motion.

12 The Eugenios filed their summary judgment opposition and
13 over a hundred pages of supporting documents and declarations.
14 In their opposition, the Eugenios argued that there were genuine
15 issues of material fact. According to the Eugenios, there were
16 genuine factual issues concerning whether Continental Pacific was
17 engaging in a retaliatory eviction and concerning whether
18 Continental Pacific had "unclean hands," which the Eugenios
19 believed would bar Continental Pacific from obtaining any relief
20 from the bankruptcy court. The Eugenios also argued that
21 Continental Pacific had no entitlement to evict them unless and
22 until Continental Pacific satisfied all prerequisites for
23 converting the subject property in accordance with Hawaii's
24 community property regime.

25 On August 29, 2013, the bankruptcy court entered an order
26 denying the Eugenios' motion to set aside. In that order, the
27 court rejected all of the Eugenios' arguments, denied them any
28 further relief on account of their motion to set aside, and

1 dissolved the temporary stay of the judgment. The bankruptcy
2 court's grant of summary judgment, its denial of the Eugenios'
3 motion to set aside, and the issues the Eugenios raised in their
4 summary judgment opposition are all beyond the scope of this
5 appeal because the Eugenios did not timely file a notice of
6 appeal either from the order granting summary judgment or from
7 the order denying the motion to set aside that judgment.

8 On September 18, 2013, the Eugenios filed a motion for
9 reconsideration of the court's order denying their motion to set
10 aside. The Eugenios asserted that there were grounds for
11 reconsideration based on Civil Rule 60(b)(3) and (4)
12 (respectively, providing relief from judgments that are void and
13 judgments that were obtained by fraud). In essence, the Eugenios
14 argued in their reconsideration motion that the removal of the
15 state court lawsuit to the bankruptcy court was improper, that
16 the bankruptcy court lacked jurisdiction over the matter, and
17 that the state court's order denying summary judgment precluded
18 the bankruptcy court from granting summary judgment.

19 The bankruptcy court entered an order denying the
20 reconsideration motion on September 23, 2013. The bankruptcy
21 court in relevant part reasoned that none of the allegations set
22 forth in the motion, even if they were found to be true, would
23 support the conclusion that the judgment was either fraudulently
24 obtained or void. The bankruptcy court further reasoned that all
25 of the arguments set forth in the motion either already were
26 raised, or should have been raised, in the Eugenios' summary
27 judgment opposition. That same day, the Eugenios filed their
28 notice of appeal.

1 **JURISDICTION**

2 We address the relevant jurisdictional issues in the
3 discussion section, below.

4 **ISSUES**

- 5 1. Is this appeal moot?
6 2. Did the bankruptcy court have subject matter jurisdiction
7 over Continental Pacific's removed complaint for summary
8 possession?
9 3. Did the state court's denial of summary judgment preclude
10 the bankruptcy court from granting summary judgment?

11 **STANDARDS OF REVIEW**

12 We consider jurisdictional issues under the de novo standard
13 of review. Mantz v. Cal. State Bd. of Equalization
14 (In re Mantz), 343 F.3d 1207, 1211 (9th Cir. 2003); see also Rev
15 Op Group v. ML Manager LLC (In re Mortgs. Ltd.), 771 F.3d 1211,
16 1214 (9th Cir. 2014).

17 We review the bankruptcy court's denial of the Eugenios'
18 reconsideration motion for an abuse of discretion. First Ave. W.
19 Bldg. LLC v. James (In re OneCast Media, Inc.), 439 F.3d 558, 561
20 (9th Cir. 2006). The bankruptcy court abused its discretion in
21 denying the reconsideration motion if its ruling was based on an
22 erroneous view of the law or a clearly erroneous factual finding.
23 United States v. Loew, 593 F.3d 1136, 1139 (9th Cir. 2010).

24 **DISCUSSION**

25 **A. Mootness Issue**

26 One of the threshold issues that we must resolve before we
27 can address the merits of this appeal is whether this appeal is
28 moot. This issue is jurisdictional and arises from the case or

1 controversy requirement of Article III of the Constitution.
2 In re Mortgs. Ltd., 771 F.3d at 1214; Motor Vehicle Cas. Co. v.
3 Thorpe Insulation Co. (In re Thorpe Insulation Co.), 677 F.3d
4 869, 880 (9th Cir. 2012). We have an independent duty to assure
5 ourselves that this appeal is not moot even when the parties do
6 not raise the issue. Pilate v. Burrell (In re Burrell), 415 F.3d
7 994, 997 (9th Cir. 2005).

8 An appeal is moot, and does not present a live case or
9 controversy, when it would be impossible for us to grant any
10 meaningful relief to the appellants even if they were to prevail.
11 In re Mortgages Ltd., 771 F.3d at 1214. Here, the Eugenios have
12 admitted that they already have been evicted from their residence
13 and that their residence has been demolished. See Aplt. Opn. Br.
14 at p. 19 ("It has now since been bulldozed down, despite the fact
15 improper possession of the home owned by the Eugenios was
16 obtained through a defective Writ of Possession.").
17 Consequently, even if we were to rule in the Eugenios' favor and
18 reverse or vacate the summary judgment ruling granting possession
19 to Continental Pacific, the Eugenios could not be restored to
20 possession of their residence, as it no longer exists.

21 It is obvious from the Eugenios' filings in the bankruptcy
22 court and on appeal that, by opposing Continental Pacific's
23 summary judgment motion, they sought to continue to live in their
24 residence. Now that possession of their residence no longer can
25 be restored to them, resolving this appeal in their favor would
26 appear to confer upon them little meaningful relief. See
27 Benavides v. Hous. Auth. of San Antonio, Tex., 238 F.3d 667, 670
28 (5th Cir. 2001) (holding that action seeking to enjoin demolition

1 project was moot where demolition was 55% complete and had
2 progressed to the point where the plaintiffs' dwellings were no
3 longer habitable); see also Pres. Pittsburgh v. Conturo, 477 F.
4 App'x 918, 920 (3d Cir. 2012) (holding that action seeking to
5 enjoin demolition of Pittsburgh's Civic Arena was rendered moot
6 by the demolition of the Arena); Interior Reg. Hous. Auth. v.
7 Vill. of Dot Lake, 303 Fed.Appx. 483 (9th Cir. 2008) (dispute
8 regarding housing authority's legal right to evict tenants
9 despite passage of tribal ordinance purporting to prohibit those
10 evictions was moot because all of the tenants already had moved
11 out of the subject building, the housing authority had closed
12 down the building, and there was no legal impediment to the
13 housing authority demolishing the building if it chose to do so).

14 The Eugenios suggest that we still might be able to afford
15 them other meaningful relief, that we could order Continental
16 Pacific to replace the demolished residence. See Aplt. Opn. Br.
17 at pp. 31-32. We disagree. The proceedings before the
18 bankruptcy court were limited to Continental Pacific's complaint
19 seeking summary possession of the real property. As a result,
20 the Eugenios' attempt now to seek affirmative relief is beyond
21 the scope of this appeal.

22 Even so, we decline to dismiss this appeal as moot. The
23 lease the Eugenios entered into with Continental Pacific was in
24 essence a ground lease. If the Eugenios were to prevail, the
25 facts currently before us suggest that we could restore
26 possession of the raw land to the Eugenios pending resolution of
27 the litigation over the parties' respective rights to possession.
28 While this certainly is not the complete relief the Eugenios

1 would have preferred, it is sufficient effective relief to
2 prevent this appeal from being declared moot.²

3 **B. Merits Analysis**

4 The only issues properly within the scope of this appeal are
5 the Eugenios' jurisdiction argument and their preclusion
6 argument. Those were the only two arguments the Eugenios raised
7 in their reconsideration motion, and the Eugenios' appeal was
8 only timely as to the order denying that reconsideration motion.
9 We will address each of these arguments in turn. However, before
10 we do so, we will set forth the standards generally governing
11 reconsideration motions.

12 **1. General Reconsideration Motion Standards**

13 Depending on the timing of the motion, a motion generically
14 named as a reconsideration motion may seek relief under either
15 Civil Rule 59 or Civil Rule 60 (as made applicable in bankruptcy
16 cases by Rules 9023 and 9024). See United Student Funds, Inc. v.
17 Wylie (In re Wylie), 349 B.R. 204, 209 (9th Cir. BAP 2006);
18 Captain Blythers, Inc. v. Thompson (In re Captain Blythers,
19 Inc.), 311 B.R. 530, 539 (9th Cir. BAP 2004).

20 When a party files a reconsideration motion within fourteen
21 days of entry of the judgment or order, the court may treat the
22

23 ²At oral argument, counsel for Continental Pacific asserted
24 that the Eugenios leased their dwelling from Continental Pacific.
25 The record does not support Continental Pacific's assertion. The
26 lease Continental Pacific presented to the court in support of
27 its summary judgment motion plainly stated that Continental
28 Pacific was leasing the land to the Eugenios and specifically
excluded from the lease any improvements built on the land. In
fact, the lease also contained an acknowledgment stating that
Continental Pacific did not own the improvements built on the
land.

1 motion as a motion for new trial or to alter or amend the
2 judgment under Civil Rule 59(e). See Rule 9023; In re Wylie,
3 349 B.R. at 209. On the other hand, when (as here) the
4 reconsideration motion is filed more than fourteen days after
5 entry of the judgment or order, a motion for reconsideration must
6 be construed as a motion for relief from judgment under Civil
7 Rule 60(b). See Rule 9024; In re Captain Blythers, Inc.,
8 311 B.R. at 539; Negrete v. Bleau (In re Negrete), 183 B.R. 195,
9 197 (9th Cir. BAP 1995).

10 When a party seeks Civil Rule 60(b) relief after the time
11 period for filing an appeal has expired, that party may not
12 revisit the underlying merits of the judgment or otherwise attack
13 the court's rulings leading up to that judgment. In re Wylie,
14 349 B.R. at 209. Consequently, the moving party generally cannot
15 use his or her 60(b) motion to reargue points already made, or
16 that could have been made, when the dispute originally was
17 presented to the bankruptcy court. Branam v. Crowder
18 (In re Branam), 226 B.R. 45, 55 (9th Cir. BAP 1998); aff'd,
19 205 F.3d 1350 (table) (9th Cir. 1999).

20 Consistent with these general principles, the bankruptcy
21 court here determined that the Eugenios' reconsideration motion
22 should be denied because the Eugenios only offered in support of
23 their motion factual and legal points that they did offer or
24 could have offered in their response to Continental Pacific's
25 summary judgment motion or in their prior motion to set aside the
26 summary judgment. In any event, each of the arguments the
27 Eugenios attempted to make in their reconsideration motion was
28 meritless, as explained below.

1 **2. Jurisdiction Argument**

2 Citing no legal authority, the Eugenios claimed that
3 Continental Pacific's removal of its complaint to the bankruptcy
4 court was improper and that the bankruptcy court lacked
5 jurisdiction over the subject matter of the complaint. We
6 disagree. At the time the Eugenios filed their bankruptcy case,
7 they had at least a possessory interest in the land they were
8 leasing, and Continental Pacific's complaint sought to divest
9 them of that interest. At a minimum, these undisputed facts were
10 sufficient to confer upon the bankruptcy court subject matter
11 jurisdiction under the broad scope of the bankruptcy court's
12 "related to" jurisdiction, as set forth in 28 U.S.C. § 1334(b).
13 See *Sasson v. Sokoloff (In re Sasson)*, 424 F.3d 864, 868-69 (9th
14 Cir. 2005) (stating that bankruptcy court "related to"
15 jurisdiction is very broad, "including nearly every matter
16 directly or indirectly related to the bankruptcy"); *Feitz v.*
17 *Great W. Sav. (In re Feitz)*, 852 F.2d 455, 457 (9th Cir. 1988)
18 (stating that an action is "related to" the debtor's bankruptcy
19 case if the action's disposition "could alter the debtor's
20 rights, liabilities, options, or freedom of action (either
21 positively or negatively) and which in any way impacts upon the
22 handling and administration of the bankrupt estate."). Thus, the
23 bankruptcy court had subject matter jurisdiction over Continental
24 Pacific's action sufficient to support Continental Pacific's
25 removal of that action under 28 U.S.C. § 1452(a).

26 If the Eugenios truly believed that the removal was
27 improper, 28 U.S.C. §§ 1334(c) and 1452(b) set forth procedures
28 that they could have invoked by filing a motion for abstention

1 and/or remand. But the Eugenios never filed such a motion or
2 otherwise requested such relief from the bankruptcy court. We
3 know of no authority that compelled the bankruptcy court to sua
4 sponte remand the matter to the state court, nor have the
5 Eugenios cited us to any such authority.

6 Under these circumstances, the bankruptcy court correctly
7 exercised jurisdiction over Continental Pacific's removed state
8 court complaint.³

9 **3. Preclusion Argument**

10 Alternately, the Eugenios argued that the state court's
11 order denying Continental Pacific's summary judgment motion
12 precluded the bankruptcy court from later granting summary
13 judgment in favor of Continental Pacific. At the outset, we note
14 that the Eugenios did not specify or cite any authority
15 indicating whether they were relying upon issue preclusion
16 doctrine or claim preclusion doctrine. Either way, the Eugenios'
17 preclusion argument would fail. We acknowledge that, under the
18 full faith and credit doctrine, the bankruptcy court and this
19 Panel must give the same preclusive effect to the Hawaii state
20 court's rulings that the Hawaii courts themselves would give
21 them. See Ormsby v. First Am. Title Co. of Nev. (In re Ormsby),

22
23 ³Per Rule 9027(a)(1), Continental Pacific alleged in its
24 notice of removal that its complaint constituted a "core"
25 proceeding governed by 28 U.S.C. § 157(b)(1). The Eugenios never
26 challenged the alleged "core" nature of the proceeding, nor did
27 they ever dispute the bankruptcy court's authority under
28 28 U.S.C. § 157(b)(1) to render a final decision. As a result,
the Eugenios forfeited these issues. See Exec. Benefits Ins.
Agency v. Arkison (In re Bellingham Ins. Agency, Inc.), 702 F.3d
553, 566-70 (9th Cir. 2012), aff'd on other grounds, 134 S.Ct.
2165 (2014).

1 591 F.3d 1199, 1205 n.3 (9th Cir. 2010). Nonetheless, Hawaii law
2 requires a final judgment on the merits for the application of
3 either claim preclusion or issue preclusion. See E. Sav. Bank,
4 FSB v. Estaban, 296 P.3d 1062, 1067 (Haw. 2013); Exotics
5 Hawaii-Kona, Inc. v. E.I. Dupont De Nemours & Co., 90 P.3d 250,
6 257 (Haw. 2004). Here, the state court's order denying summary
7 judgment was not a final judgment on the merits in any sense.
8 Continental Pacific's action unequivocally was still pending in
9 the state court when Continental Pacific removed it to the
10 bankruptcy court.

11 Moreover, even if there were some validity to the Eugenios'
12 preclusion argument (which there is not), the so-called
13 preclusive effect of the state court's order denying summary
14 judgment would not be sufficient by itself to establish that the
15 Eugenios were entitled to relief under either Civil Rule 60(b)(3)
16 or (4), as asserted in their reconsideration motion. In other
17 words, the so-called preclusive effect of the state court's order
18 denying summary judgment would not establish that the bankruptcy
19 court's summary judgment was fraudulent or void. See generally
20 Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 293
21 (2005) (stating that the principles of res judicata - claim
22 preclusion and issue preclusion - are not jurisdictional and must
23 be pled as an affirmative defense under Civil Rule 8(c)(1));
24 In re Sasson, 424 F.3d at 872 (same).

25 **CONCLUSION**

26 For the reasons set forth above, we AFFIRM the bankruptcy
27 court's order denying the Eugenios' reconsideration motion.
28