

OCT 26 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NOT FOR PUBLICATION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. CC-14-1310-KuDTa  
 )  
 6 KAHTAN BAYATI, ) Bk. No. 2:13-bk-36168-VZ  
 )  
 7 Debtor. )  
 )  
 8 \_\_\_\_\_ )  
 KAHTAN BAYATI, )  
 )  
 9 Appellant, )  
 )  
 10 v. ) **MEMORANDUM\***  
 )  
 11 WILLIAM MUSHARBASH; TOWN SQUARE )  
 12 M PROPERTIES, LLC; NANCY K. )  
 13 CURRY, Chapter 13 Trustee; )  
 14 UNITED STATES TRUSTEE, )  
 )  
 Appellees. )  
 \_\_\_\_\_ )

Submitted Without Oral Argument  
on September 24, 2015

Filed - October 26, 2015

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

Honorable Vincent P. Zurzolo, Bankruptcy Judge, Presiding

Appearances: Appellant Kahtan Bayati on brief pro se; Bahram  
Madaen on brief for appellees William Musharbash  
and Town Square M Properties LLC.

Before: KURTZ, DUNN and TAYLOR, 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 Chapter 13<sup>1</sup> debtor Kahtan Bayati appeals from the bankruptcy  
3 court's relief from stay order permitting appellees William  
4 Musharbash and Town Square M Properties LLC to proceed with state  
5 court litigation regarding a disputed lease of real property. In  
6 granting relief from stay, the bankruptcy court acted well within  
7 the bounds of its discretion, and the record amply supports the  
8 bankruptcy court's key findings. Accordingly, we AFFIRM the  
9 bankruptcy court's relief from stay order, and we also AFFIRM the  
10 bankruptcy court's denial of Bayati's reconsideration motion.

11 Bayati also seeks appellate review of the bankruptcy court's  
12 oral ruling denying his motion seeking a declaration that Town  
13 Square M Properties effectively "rejected" its entitlement under  
14 § 365(h) to retain its rights under the lease and seeking  
15 turnover of the property. However, that ruling was interlocutory  
16 - not final - and we decline to grant leave to appeal.  
17 Accordingly, we DISMISS FOR LACK OF JURISDICTION Bayati's appeal  
18 of the bankruptcy court's oral ruling denying his lease rejection  
19 and turnover motion.

20 **FACTS**

21 Bayati filed his chapter 13 petition on October 29, 2013.  
22 In his schedules, he listed two parcels of raw land located in  
23 Pomona, California. In addition, he listed in his statement of  
24 financial affairs his lawsuit pending in the Los Angeles County

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25  
26 <sup>1</sup>Unless 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. All "Civil Rule" references are to the Federal Rules  
of Civil Procedure.

1 Superior Court against Musharbash, Town Square M Properties and  
2 others alleging multiple causes of action, including eviction,  
3 fraud and waste, all related to Town Square M Properties' alleged  
4 lease and occupancy of the Pomona land. Bayati did not mention  
5 in his statement of financial affairs the numerous cross-claims  
6 Town Square M Properties and Musharbash filed against him and  
7 others for breach of lease, fraud, specific performance,  
8 declaratory relief and so on.

9 In November 2013, Bayati filed his proposed chapter 13 plan.  
10 In the plan, Bayati proposed to reject the disputed real property  
11 lease under § 365(a). Town Square M Properties filed an  
12 opposition to the plan. Among other things, Town Square M  
13 Properties asserted in its opposition that, depending on the  
14 outcome of the state court litigation, the unsecured debt owed to  
15 it might cause Bayati to exceed the eligibility limitations set  
16 forth in § 109(e). Alternately, Town Square M Properties  
17 asserted that the plan was not feasible because it failed to  
18 account for Bayati's potential liability to it. The bankruptcy  
19 court ultimately confirmed the plan over Town Square M  
20 Properties' objection, but conditioned confirmation as follows:  
21 "Case [plan] is confirmed pending determination of the amount of  
22 the unliquidated, unsecured claim filed by creditor Town Square  
23 . . . . Trustee is to dismiss case if unsecured claim exceeds  
24 debt limit." Order Confirming Chapter 13 Plan (June 25, 2014) at  
25 p. 2.

26 Meanwhile, in February 2014, Musharbash filed its motion for  
27 relief from the automatic stay to permit Musharbash to proceed  
28 with the state court litigation. In support of the motion,

1 Musharbash submitted two declarations - one using the form  
2 provided by the bankruptcy court - plus a supplemental  
3 declaration, which accompanied Musharbash's other moving papers  
4 and exhibits.<sup>2</sup>

5 In his declarations, Musharbash explained that Bayati  
6 commenced the state court lawsuit in June 2010, and the parties  
7 had vigorously litigated their claims and crossclaims during the  
8 next three years, up to the time of Bayati's late-October 2013  
9 bankruptcy filing. As Musharbash put it:

10 4. The abovementioned case has been completed and is  
11 ready for trial. I have gone through numerous  
12 motions and discoveries and spent substantial  
13 amount of money to continue the case and prepare  
14 for trial. ( A true copy of the case summary is  
15 attached as exhibit "2")

16 5. As of December 20, 2013, I have incurred legal  
17 fees and cost through my attorney \$589,480, and so  
18 far I have paid \$336,009 and I owe him \$253,471.

19 Musharbash Decl. (Feb. 3, 2014) at ¶¶ 4-5. According to  
20 Musharbash, at the time of Bayati's bankruptcy filing, the state  
21 court was about to hold (on October 30, 2013) its final case

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22 <sup>2</sup>Bayati argues that the bankruptcy court should have denied  
23 the relief from stay motion because the wrong bankruptcy case  
24 number was listed on the supplemental declaration. This argument  
25 is specious. In spite of the clerical error, there was no  
26 legitimate doubt that the supplemental declaration pertained to  
27 Bayati's bankruptcy case. His name is correctly listed as  
28 "debtor" right next to the erroneous case number, and the  
contents of the declaration unequivocally concern Bayati's  
bankruptcy case and the state court litigation commenced by  
Bayati. Furthermore, the supplemental declaration with the  
erroneous case number was filed in the correct bankruptcy case  
and was accompanied by all of the other relief from stay moving  
papers, which listed the correct case number and which were  
served on Bayati's counsel.

1 management conference, and trial was set for mid-November 2013.

2 Much of the rest of Musharbash's supplemental declaration is  
3 devoted to describing the lease dispute that the parties had been  
4 litigating in the state court since 2010. Generally speaking,  
5 the litigation involves a purported lease by Town Square M  
6 Properties of vacant land, which lease Bayati alleges he never  
7 actually entered into or alternately alleges he is entitled to  
8 rescind. To counter these allegations, Musharbash asserts among  
9 other things that he has made hundreds of thousands of dollars in  
10 lease payments to Bayati, that he is current on the lease  
11 payments and that Bayati has accepted the lease payments. Bayati  
12 disputes that Musharbash is current on the lease payments.

13 The parties stipulated to continue the relief from stay  
14 hearing and filed multiple papers in support of and in opposition  
15 to the relief from stay motion. Both parties' papers are largely  
16 devoted to describing (and arguing) the disputes at issue in the  
17 state court litigation, but the precise details of those disputes  
18 are not material to our resolution of this appeal. It suffices  
19 for us to say that these disputes are hotly contested and concern  
20 events spanning several years, from the alleged commencement in  
21 2006 of negotiations for the lease of the Pomona land to the  
22 filing of Bayati's state court complaint in 2010. The parties  
23 also disagree about how much in rent has been paid since the  
24 lawsuit began.

25 In his opposition to the relief from stay motion, Bayati  
26 admitted that he already has spent over \$500,000 litigating in  
27 the state court. Indeed, he states that the amounts he had spent  
28 prosecuting the state court lawsuit impoverished him and directly

1 led to his bankruptcy filing.

2 In March 2014, while the relief from stay motion was  
3 pending, Bayati filed a motion seeking a declaration that Town  
4 Square M Properties had "rejected" the purported lease under  
5 § 365(h) and also seeking turnover of the land based on this  
6 alleged rejection. At the April 14, 2014 hearing on Bayati's  
7 lease rejection and turnover motion, the bankruptcy court orally  
8 denied the motion, but that oral ruling never was reduced to  
9 writing. The court directed counsel for Town Square M Properties  
10 to lodge an appropriate form of order, but counsel never did so.

11 At the April 29, 2014 relief from stay hearing, the  
12 bankruptcy court stated that it would grant the stay relief as  
13 Musharbash requested. The court explained its reasoning as  
14 follows:

15 The moving party has given me admissible evidence  
16 establishing that the state court had advanced to a  
17 significant stage. They were prepared to go forward.  
18 They are very close -- actually trial had been set.  
19 There were parties involved besides the Debtor which  
20 would complicate having the matter adjudicated in two  
21 different foraa [sic], i.e. having the  
22 nondischargeability adversary proceeding adjudicated  
23 here, as well as having the matter also adjudicated in  
24 state court with regards to other parties. Finally,  
25 the fact that the filing of the bankruptcy case was  
26 just before trial was about to commence in the state  
27 court action, I draw the inference that the Debtor  
28 filed this bankruptcy case to delay the state court  
action.

23 Hr'g Tr. (April 29, 2014) at 2:25-3:12.

24 After the bankruptcy court orally granted relief from stay  
25 but before entry of the relief from stay order, Bayati filed a  
26 reconsideration motion in which he mainly complained that  
27 Musharbash had lied to the court. Whereas Musharbash had stated  
28 that trial was set for November 12, 2013, Bayati pointed out that

1 trial actually was set for six days later - on November 18,  
2 2013.<sup>3</sup>

3 At the hearing on the reconsideration motion, the bankruptcy  
4 court stated that it would deny reconsideration for two reasons:  
5 (1) the court had not yet entered a final order granting relief  
6 from stay; and (2) Bayati had not presented any evidence to  
7 establish any grounds for relief under either Rule 9023 or Rule  
8 9024.

9 The bankruptcy court entered both its order granting relief  
10 from stay and its order denying reconsideration on June 12, 2014,  
11 and Bayati timely filed a notice of appeal on June 16, 2014. In  
12 addition to referencing the court's relief from stay order and  
13 the order denying reconsideration, Bayati's notice of appeal  
14 referenced the court's oral ruling denying his lease rejection  
15 and turnover motion.

#### 16 JURISDICTION

17 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
18 §§ 1334 and 157(b) (2) (A), (E) and (G). Except as otherwise  
19 stated in this decision, we have jurisdiction under 28 U.S.C.  
20 § 158.

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23 <sup>3</sup>This minor inaccuracy regarding the trial date does not  
24 support reversal of either the bankruptcy court's relief from  
25 stay order or its denial of Bayati's reconsideration motion. On  
26 this record, we are convinced that this six-day difference would  
27 not have changed (and should not have changed) the bankruptcy  
28 court's rulings. In this sense, the trial date discrepancy was  
harmless error, and the bankruptcy court was obliged to ignore  
harmless error. See Civil Rule 61 (made applicable in bankruptcy  
cases by Rule 9005).

1 **ISSUES**

- 2 1. Did the bankruptcy court abuse its discretion when it  
3 granted Town Square M Properties' relief from stay motion?  
4 2. Did the bankruptcy court abuse its discretion when it denied  
5 Bayati's reconsideration motion?  
6 3. Does this court have jurisdiction to consider Bayati's  
7 appeal from the bankruptcy court's oral ruling denying  
8 Bayati's lease rejection and turnover motion?

9 **STANDARDS OF REVIEW**

10 We review for an abuse of discretion the bankruptcy court's  
11 order granting relief from stay. Moldo v. Matsco, Inc.  
12 (In re Cybernetic Servs.), 252 F.3d 1039, 1045 (9th Cir. 2001);  
13 Benedor Corp. v. Conejo Enters., Inc. (In re Conejo Enters.,  
14 Inc.), 96 F.3d 346, 351 (9th Cir. 1996).

15 We also review for an abuse of discretion the bankruptcy  
16 court's denial of Bayati's reconsideration motion. Benson v.  
17 JPMorgan Chase Bank, N.A., 673 F.3d 1207, 1211 (9th Cir. 2012).  
18 The bankruptcy court abuses its discretion if it applies an  
19 incorrect legal rule or its factual findings are illogical,  
20 implausible or unsupported by the record. United States v.  
21 Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

22 Considering the finality of the bankruptcy court's oral  
23 ruling denying Bayati's lease termination and turnover motion is  
24 a jurisdictional issue, which we have a duty to raise sua sponte  
25 and which we review de novo. Wolkowitz v. Beverly  
26 (In re Beverly), 374 B.R. 221, 230 (9th Cir. BAP 2007), aff'd in  
27 part, dismissed in part, 551 F.3d 1092 (9th Cir. 2008); see also  
28 Arbaugh v. Y & H Corp., 546 U.S. 500, 514 (2006) ("courts . . .



1 have an independent obligation to determine whether  
2 subject-matter jurisdiction exists, even in the absence of a  
3 challenge from any party.”).

#### 4 **DISCUSSION**

5 Under § 362(a), an automatic stay is imposed in most  
6 bankruptcy cases upon commencement of the case, which stay  
7 enjoins non-debtors from, among other things, moving forward with  
8 litigation against the debtor pending outside the bankruptcy  
9 court. In re Conejo Enters., Inc., 96 F.3d at 351. However, the  
10 bankruptcy court may modify or terminate the stay “for cause.”  
11 § 362(d)(1). In the context of a relief from stay motion seeking  
12 to proceed with pending state court litigation, what constitutes  
13 cause is determined on a case-by-case basis. Id. at 352;  
14 Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.),  
15 912 F.2d 1162, 1166 (9th Cir. 1990).

16 Here, the bankruptcy court explicitly considered several  
17 factors. The court noted the presence of non-debtor parties -  
18 parties other than Bayati against whom Town Square M Properties  
19 and Musharbash have filed cross-claims in the state court  
20 lawsuit. The court also noted that Musharbash and Town Square M  
21 Properties had commenced a nondischargeability proceeding arising  
22 from the same disputed lease transaction. But most important to  
23 the bankruptcy court was the advanced state of the state court  
24 lawsuit, which was ready for trial and for which a trial date  
25 already had been set. In essence, the bankruptcy court  
26 determined that the interests of efficient and economical  
27 resolution of the parties’ dispute strongly militated in favor of  
28 permitting the state court to finish the lawsuit, which was well

1 on its way to completion.

2 The undisputed facts in the record further reflected an  
3 absence of factors militating against relief from stay. In light  
4 of the pending nondischargeability proceeding and a pending  
5 objection to Town Square M Properties' proof of claim, the  
6 determination of Bayati's liability (if any) to Town Square M  
7 Properties and the determination of the amount of that liability  
8 needed to be adjudicated either in the state court or the  
9 bankruptcy court, and the state court was poised to resolve those  
10 issues. Thus, permitting the state court lawsuit to proceed  
11 fostered the expeditious administration of the bankruptcy case.  
12 In addition, the issues concerning the existence and amount of  
13 liability were controlled in this instance by state law and not  
14 bankruptcy law. See generally § 502(b)(1); Johnson v. Righetti  
15 (In re Johnson), 756 F.2d 738, 741 (9th Cir. 1985) ("in proof of  
16 claim litigation under 11 U.S.C. § 502(b)(1), the validity of the  
17 claim is determined under state law."). Finally, the bankruptcy  
18 court's inference that Bayati filed his bankruptcy case in bad  
19 faith in order to delay the state court proceedings also  
20 militated in favor of lifting the stay.

21 In any event, the lynchpin of the bankruptcy court's relief  
22 from stay ruling was its finding that allowing the state court  
23 action to proceed would promote the efficient and economical  
24 resolution of the parties' dispute, and the Ninth Circuit has  
25 held that, in some instances, interests of efficiency and economy  
26 by themselves may be sufficient to support an order granting  
27 relief from stay. See Packerland Packing Co. v. Griffith  
28 Brokerage Co. (In re Kemble), 776 F.2d 802, 807 (9th Cir. 1985)

1 ("The prior extensive preparation for the damages retrial made  
2 proceeding with that trial efficient. The decision to lift the  
3 stay could be upheld on this ground alone.").

4 In short, the bankruptcy court considered the appropriate  
5 factors, and the record amply supported the findings the court  
6 made in support of its relief from stay ruling. We certainly  
7 cannot say that any of its findings were illogical, implausible  
8 or without support in the record. Therefore, the bankruptcy  
9 court did not abuse its discretion in granting Musharbash's  
10 relief from stay motion.

11 As for Bayati's reconsideration motion, the bankruptcy court  
12 correctly treated it as a motion for relief under Rule 9023 and  
13 Rule 9024. See Am. Ironworks & Erectors Inc. v. N. Am. Constr.  
14 Corp., 248 F.3d 892, 898-99 (9th Cir. 2001). The bankruptcy  
15 court also correctly found that Bayati had not submitted any  
16 evidence demonstrating any of the grounds for relief set forth in  
17 Rules 9023 and 9024. Mere disagreement with the court's ruling  
18 is not a proper basis for seeking reconsideration under Civil  
19 Rule 59(e) or Civil Rule 60 (made applicable in bankruptcy cases  
20 by Rules 9023 and 9024). See, e.g., Faysound Ltd. v. United  
21 Coconut Chemicals, Inc., 878 F.2d 290, 296 (9th Cir. 1989);  
22 Backlund v. Barnhart, 778 F.2d 1386, 1388 (9th Cir. 1985).  
23 Consequently, the bankruptcy court did not abuse its discretion  
24 in denying Bayati's reconsideration motion.

25 The only other issue we must address is the finality of the  
26 bankruptcy court's oral ruling denying Bayati's lease rejection  
27 and turnover motion. The bankruptcy court correctly stated that  
28 the motion should have been brought as an adversary proceeding.

1 See Rule 7001(1), (9). This was the principal reason the  
2 bankruptcy court cited for denying the motion.

3 The court also expressed concern that the motion was  
4 "confused and confusing" with respect to its assertion that the  
5 lease should be "deemed rejected" based on the conduct of Town  
6 Square M Properties - the non-debtor party to the lease. The  
7 court highlighted this concern by pointing out the following:  
8 (1) only the bankruptcy trustee (or a debtor-in-possession) may  
9 assume or reject an unexpired lease under § 365; (2) any attempt  
10 by Bayati - as the debtor - to reject the lease was not effective  
11 unless and until the bankruptcy court entered an order approving  
12 the rejection; and (3) even if Bayati duly rejected the lease,  
13 Town Square M Properties would have the option under  
14 § 365(h) (1) (A) (ii) to retain its use and occupancy rights under  
15 the lease. The court further noted its concern that Bayati might  
16 not even satisfy the eligibility requirements set forth in  
17 § 109(e) for chapter 13 debtors. Based on all of the above-  
18 referenced points and concerns, the bankruptcy court denied the  
19 motion.

20 The bankruptcy court's oral ruling amounted to nothing more  
21 than a denial without prejudice of the relief requested. Reading  
22 the court's comments as a whole, we are convinced that the  
23 bankruptcy court manifested an intent not to preclude Bayati from  
24 seeking the same relief by way of a properly commenced adversary  
25 proceeding, in which Bayati could have clarified his allegations  
26 and the nature of the relief he was seeking.<sup>4</sup>

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27  
28 <sup>4</sup>In spite of the ambiguities noted by the bankruptcy court,  
(continued...)

1 An order dismissing an action or denying relief is  
2 considered interlocutory and not final if the court manifested an  
3 intent to permit further litigation in the matter. See WMX  
4 Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997)  
5 (en banc); Giesbrecht v. Fitzgerald (In re Giesbrecht), 429 B.R.  
6 682, 687 (9th Cir. BAP 2010) (citing Slimick v. Silva  
7 (In re Slimick), 928 F.2d 304, 307 (9th Cir. 1990)). This is  
8 true in bankruptcy cases because the governing principles of  
9 flexible finality dictate that a bankruptcy court ruling only is  
10 considered final if it "1) resolves and seriously affects  
11 substantive rights and 2) finally determines the discrete issue  
12 to which it is addressed." Rosson v. Fitzgerald (In re Rosson),  
13 545 F.3d 764, 769 (9th Cir. 2008). "In bankruptcy, a complete  
14 act of adjudication does not need to end the entire case, 'but  
15 must end any of the interim disputes from which appeal would  
16 lie.'" In re Giesbrecht, 429 B.R. at 687 (quoting In re Slimick,  
17 928 F.2d at 307 n.1). Here, the bankruptcy court's oral ruling  
18 denying Bayati's lease termination and turnover motion satisfied  
19 none of the flexible finality criteria.

20 We acknowledge that Bayati's attempt to appeal the denial of  
21 his lease rejection and turnover motion also is problematic  
22 because the court never entered a written order denying the  
23 motion. See Rule 8002(2) ("A notice of appeal filed after the  
24

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25 <sup>4</sup>(...continued)

26 Bayati has made it clear on appeal that, by way of his motion, he  
27 was arguing that Town Square M Properties forfeited or otherwise  
28 lost its rights under § 365(h)(1)(A)(ii) by allegedly not making  
lease payments after Bayati commenced his bankruptcy case. We  
express no opinion on the merits of Bayati's argument.

1 bankruptcy court announces a decision or order - but before entry  
2 of the judgment, order, or decree - **is treated as filed on the**  
3 **date of and after the entry.**") (emphasis added). We further  
4 acknowledge that the Ninth Circuit Court of Appeals, on occasion,  
5 has chosen to bypass the requirement of an entered written  
6 judgment or order. See, e.g., Noli v. C.I.R., 860 F.2d 1521,  
7 1525 (9th Cir. 1988); but see Sewell v. MGF Funding, Inc.  
8 (In re Sewell), 345 B.R. 174, 181 (9th Cir. BAP 2006) (noting  
9 inherent limitations in Noli's holding). Here, it would have  
10 been easy enough for us to grant a limited remand with a  
11 direction for the bankruptcy court to enter a written order and  
12 thereby rectify the absence of a written order for appeal  
13 purposes.

14 Nonetheless, the finality issue we address above overshadows  
15 the lack of an entered written order. Regardless of whether the  
16 bankruptcy court eventually enters an order or not, the  
17 interlocutory nature of the court's ruling would persist.

18 Even though the bankruptcy court's ruling was interlocutory,  
19 and no motion for leave to appeal was filed, we can and will  
20 consider Bayati's timely notice of appeal as a motion for leave  
21 to appeal. See Rule 8004(d); Roderick v. Levy (In re Roderick  
22 Timber Co.), 185 B.R. 601, 604 (9th Cir. BAP 1995). Having  
23 considered Bayati's appeal papers and the governing standards for  
24 granting leave to appeal, we are not persuaded that his appeal  
25 from the denial of his lease termination and turnover motion  
26 involves a controlling question of law as to which there is  
27 substantial ground for difference of opinion. Nor are we  
28 persuaded that permitting immediate appeal of that ruling would

1 potentially advance the ultimate termination of the parties'  
2 litigation. As a result, we deny leave to appeal, and we lack  
3 jurisdiction to hear the appeal from the denial of Bayati's lease  
4 termination and turnover motion.

5 **CONCLUSION**

6 For the reasons set forth above, we AFFIRM the bankruptcy  
7 court's order granting Town Square M Properties' relief from stay  
8 motion. We also AFFIRM the bankruptcy court's denial of Bayati's  
9 reconsideration motion, and we DISMISS FOR LACK OF JURISDICTION  
10 Bayati's appeal of the bankruptcy court's interlocutory oral  
11 ruling denying his lease rejection and turnover motion.