

JUN 03 2016

NOT FOR PUBLICATION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.	NV-14-1528-FBD
)		
PETER SZANTO,)	Bk. No.	3:13-51261-GWZ
)		
Debtor.)	Adv. No.	3:14-05003-GWZ
)		
_____)		
PETER SZANTO,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM*	
)		
JOSEPH M. BISTRITZ,)		
)		
Appellee.)		
_____)		

Submitted Without Argument on May 19, 2016

Filed - June 3, 2016

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

Honorable Bruce T. Beesley, Chief Bankruptcy Judge, and
Gregg W. Zive, Bankruptcy Judges, Presiding

Appearances: Appellant Peter Szanto, pro se, on brief;
John S. Bartlett on brief for Appellee Joseph
Bistriz.

Before: FARIS, BARASH,** and DUNN, 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.

** Hon. Martin R. Barash, United States Bankruptcy Judge for
the Central District of California, sitting by designation.

1 On January 26, 2014, Mr. Szanto initiated the underlying
2 adversary complaint against Mr. Bistriz. Mr. Szanto asserted
3 various causes of action arising out of the lease of the Miami
4 Beach property. He argued that Mr. Bistriz breached the lease
5 agreement by failing to deliver the property to Mr. Szanto
6 (Breach of Contract); that Mr. Bistriz breached his fiduciary
7 duty to Mr. Szanto by not surrendering the property (Breach of
8 Fiduciary Duty); and that his eviction was "subterfuge" for
9 Mr. Bistriz to convert Mr. Szanto's personal property
10 (Conversion).

11 He alleged that jurisdiction was proper in the Nevada
12 bankruptcy court "because the money and property which the
13 defendant has withheld from plaintiff is part of plaintiff's
14 bankruptcy estate." He also alleged that federal jurisdiction
15 was proper because "there is complete diversity between the
16 parties."

17 **C. The motion to abstain**

18 Mr. Bistriz filed a motion requesting that the bankruptcy
19 court abstain from exercising jurisdiction over the claims raised
20 in the adversary complaint under 28 U.S.C. § 1334(c)(1) and (2)
21 and that the court dismiss the action ("Motion to Abstain").
22 Essentially, he argued that the adversary complaint alleged only
23 non-core claims that are not dependent on the Bankruptcy Code for
24 their existence and that the factors laid out in Christensen v.
25 Tucson Estates, Inc. (In re Tucson Estates, Inc.), 912 F.2d 1162,
26 1167 (9th Cir. 1990), weighed in favor of abstention.

27 In response, Mr. Szanto argued that complete diversity
28 existed between the parties, thus mandating that Mr. Bistriz's

1 claims be heard in federal court. He also argued that the
2 litigation in Florida state court is a core proceeding because it
3 may potentially add to or affect his bankruptcy estate.

4 Ultimately, the court granted the Motion to Abstain. It
5 held that the Tucson Estates factors favored discretionary
6 abstention under 28 U.S.C. § 1334(c)(1).

7 **D. The motion for reconsideration**

8 Mr. Szanto filed a motion for reconsideration ("Motion for
9 Reconsideration"), arguing not that the court erred in
10 abstaining, but rather that the order prepared by Mr. Bistriz
11 (and signed by the court) did not accurately reflect the court's
12 ruling. In summary, he contended that the court should not have
13 made any specific ruling concerning its jurisdiction, since it
14 had determined that it would abstain (and therefore should not
15 have gone further to explain its reasoning).

16 The hearing on the Motion for Reconsideration was delayed
17 for fifteen months because Mr. Szanto claimed that he was too ill
18 to appear.

19 **E. Dismissal of the bankruptcy case**

20 In the meantime, the bankruptcy court dismissed Mr. Szanto's
21 bankruptcy case. The chapter 11 trustee moved to dismiss the
22 case or convert it to chapter 7 because Mr. Szanto failed timely
23 under § 1112(b)(4)(J) to file a disclosure statement. The court
24 granted the motion and dismissed the bankruptcy case with a
25 six-month bar on filing or re-filing any bankruptcy petition.

26 The district court affirmed the bankruptcy court's order of
27 dismissal. Mr. Szanto appealed the district court's decision to
28 the Ninth Circuit, and that appeal is currently pending.

1 **F. Ruling on the Motion for Reconsideration**

2 The court issued its findings of fact and conclusions of law
3 on the Motion for Reconsideration. It rejected Mr. Szanto's
4 objections to the order on the Motion to Abstain, holding that
5 the court properly analyzed the Motion to Abstain under Tucson
6 Estates. The court reviewed the hearing transcript and concluded
7 that "the Order prepared by counsel accurately portrayed the oral
8 findings and conclusions" The court thus denied the
9 Motion for Reconsideration.

10 **JURISDICTION**

11 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
12 §§ 1334 and 157(b)(1). Mr. Szanto's notice of appeal was
13 premature because he filed it before the bankruptcy court decided
14 his Motion for Reconsideration. Now that the bankruptcy court
15 has entered a final order on the Motion for Reconsideration, we
16 have jurisdiction under 28 U.S.C. § 158.

17 **ISSUES**

18 (1) Whether the bankruptcy court erred in abstaining from
19 considering the adversary proceeding in favor of the litigation
20 in Florida state court.

21 (2) Whether the bankruptcy court erred in entering the
22 counsel-prepared order on the Motion for Reconsideration, which
23 included a discussion of the court's jurisdiction.

24 **STANDARDS OF REVIEW**

25 "A bankruptcy court's determination regarding discretionary
26 abstention is fundamentally a matter within the discretion of the
27 court to be reviewed for abuse of discretion." In re Bankr.
28 Petition Preparers Who Are Not Certified Pursuant to Requirements

1 of Ariz. Sup. Ct., 307 B.R. 134, 140 (9th Cir. BAP 2004)

2 (citations omitted).

3 Similarly, we review for abuse of discretion the court's
4 decision to decline to exercise jurisdiction over an adversary
5 proceeding after dismissal of the underlying bankruptcy case.
6 Carraher v. Morgan Elecs., Inc. (In re Carraher), 971 F.2d 327,
7 328 (9th Cir. 1992).

8 We also review for abuse of discretion the denial of a
9 motion for reconsideration. See N. Alaska Env'tl. Ctr. v. Lujan,
10 961 F.2d 886, 889 (9th Cir. 1992).

11 To determine whether the bankruptcy court has abused its
12 discretion, we conduct a two-step inquiry: (1) we review de novo
13 whether the bankruptcy court "identified the correct legal rule
14 to apply to the relief requested" and (2) if it did, whether the
15 bankruptcy court's application of the legal standard was
16 illogical, implausible, or "without support in inferences that
17 may be drawn from the facts in the record." United States v.
18 Hinkson, 585 F.3d 1247, 1262-63 & n.21 (9th Cir. 2009) (en banc).
19 "If the bankruptcy court did not identify the correct legal rule,
20 or its application of the correct legal standard to the facts was
21 illogical, implausible, or without support in inferences that may
22 be drawn from the facts in the record, then the bankruptcy court
23 has abused its discretion." USAA Fed. Sav. Bank v. Thacker
24 (In re Taylor), 599 F.3d 880, 887-88 (9th Cir. 2010) (citing
25 Hinkson, 585 F.3d at 1261-62).

26 We may affirm on any ground supported by the record. Diener
27 v. McBeth (In re Diener), 483 B.R. 196, 202 (9th Cir. BAP 2012).

1 (In re Casamont Inv'rs, Ltd.), 196 B.R. 517, 523 (9th Cir. BAP
2 1996) ("retention of jurisdiction was found to have been **improper**
3 when the initiation of the dispute was recent, no action had been
4 taken prior to the dismissal and the dispute concerned issues of
5 probate law, in which the state courts had more expertise"
6 (emphasis in original)); Zegzula v. JPMorgan Chase Bank, N.A.
7 (In re Zegzula), BAP No. WW-14-1119-JuKiF, 2015 WL 5786572 (9th
8 Cir. BAP Oct. 2, 2015) (holding that the bankruptcy court did not
9 abuse its discretion in declining to retain jurisdiction over the
10 adversary proceeding when it had previously dismissed the
11 underlying bankruptcy case and found that considerations of
12 judicial economy and fairness did not support the court's
13 retention of jurisdiction over the adversary proceeding).

14 Applying the Carraher factors to the present case, we
15 conclude that the court had no basis to retain jurisdiction.

16 First, judicial economy did not favor retention of the
17 adversary proceeding. The adversary proceeding had not
18 progressed beyond the initial pleading stage, and Mr. Bistriz
19 had not answered the complaint. Moreover, the issues raised by
20 the adversary complaint are state law issues that can be resolved
21 expeditiously in state court. See In re Casamont Inv'rs, Ltd.,
22 196 B.R. at 524.

23 Second, dismissal did not unduly inconvenience either party.
24 There was ongoing litigation in state court regarding the
25 residential lease,⁴ and Mr. Szanto could have brought his claims

26
27 ⁴ The Florida state litigation was pending at the time of
28 the hearing and the order on the Motion to Abstain in April 2014.
(continued...)

1 in that forum. See id. Although Mr. Szanto said that he is not
2 a resident of Florida, he admitted that he lived there for part
3 of the year, and the full extent of his contact with the forum is
4 unknown.

5 Third, it was not unfair to require Mr. Szanto to litigate
6 his claims in state court. The Florida state court was already
7 considering the lease dispute and could have adjudicated
8 Mr. Szanto's claims. See id. Traditionally, disputes about real
9 property interests are adjudicated where the property is located.
10 It is not unfair to hold Mr. Szanto to the traditional rule.

11 Finally, comity favors refusing jurisdiction over the
12 adversary complaint. Mr. Szanto's claims are straightforward
13 issues of Florida state law that are best decided by the Florida
14 state courts. See id.

15 Therefore, retention of jurisdiction over the adversary
16 proceeding following the dismissal of the underlying bankruptcy
17 case would have been an abuse of discretion.

18 **B. The bankruptcy court did not abuse its discretion when it**
19 **decided to abstain.**

20 The bankruptcy court determined that it had grounds "to
21 abstain from taking jurisdiction over the claims in this
22 adversary proceeding under the provisions of 28 USC § 1334(c)(1),
23 permissive abstention." The court did not err.

24 A court may exercise discretionary abstention in bankruptcy
25 proceedings:

26
27 ⁴(...continued)
28 Subsequently, on February 23, 2015, the Florida court dismissed
the state court lawsuit.

1 Except with respect to a case under chapter 15 of
2 title 11, nothing in this section prevents a district
3 court in the interest of justice, or in the interest of
4 comity with State courts or respect for State law, from
abstaining from hearing a particular proceeding arising
under title 11 or arising in or related to a case under
title 11.

5 28 U.S.C. § 1334(c) (1).

6 **1. The bankruptcy court correctly applied the Tucson**
7 **Estates factors.**

8 The Ninth Circuit has held that, when deciding whether to
9 abstain, a court must consider:

10 (1) the effect or lack thereof on the efficient
11 administration of the estate if a Court recommends
12 abstention, (2) the extent to which state law issues
13 predominate over bankruptcy issues, (3) the difficulty
14 or unsettled nature of the applicable law, (4) the
15 presence of a related proceeding commenced in state
16 court or other nonbankruptcy court, (5) the
17 jurisdictional basis, if any, other than 28 U.S.C.
18 § 1334, (6) the degree of relatedness or remoteness of
19 the proceeding to the main bankruptcy case, (7) the
20 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
involves forum shopping by one of the parties, (11) the
existence of a right to a jury trial, and (12) the
presence in the proceeding of nondebtor parties.

21 In re Tucson Estates, Inc., 912 F.2d at 1167 (quoting
22 In re Republic Reader's Serv., Inc., 81 B.R. 422, 429 (Bankr.
23 S.D. Tex. 1987)).

24 Mr. Szanto addresses only one of the Tucson Estates factors.
25 See section B.2, infra. He attempts to brush the Ninth Circuit's
26 decision aside, saying that Tucson Estates "obfuscates the clear
27 issues" he presents. We cannot, however, simply disregard
28 controlling Ninth Circuit precedent.

1 He also argues that the test only becomes applicable after
2 Mr. Bistrutz submitted to the jurisdiction of the bankruptcy
3 court. Neither authority nor logic supports this novel
4 proposition.

5 The bankruptcy court properly applied the Tucson Estates
6 test. The court specifically addressed the factors and concluded
7 that, on balance, the facts of the case favored abstention:

8 (1) the case can be more efficiently resolved in Florida state
9 court; (2) the case raised "totally a state law issue in state
10 court, in Florida, that's controlled by Florida law"; (3) there
11 is already a related proceeding in Florida; (4) the adversary
12 proceeding is only remotely related to the underlying bankruptcy
13 case; (5) the adversary proceeding is not a core proceeding;
14 (6) it is not feasible to sever the state claims and bankruptcy
15 claims; (7) the court professed suspicion that Mr. Szanto is
16 forum shopping; (8) the bankruptcy court generally lacks power to
17 conduct jury trials; and (9) there are no non-debtor parties
18 (other than Mr. Bistrutz) who would be affected by the
19 proceedings.⁵

20 We find no error in the bankruptcy court's analysis. It
21 correctly identified the operative legal standard and considered
22 the various relevant factors to conclude that abstention was
23 warranted.

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25
26
27 ⁵ We note that Mr. Bistrutz is not otherwise involved in the
28 bankruptcy proceeding, so there are no other parties affected by
the abstention.

1 **2. Mr. Szanto's adversary complaint did not commence a**
2 **"core proceeding."**

3 Mr. Szanto argues that his adversary proceeding against
4 Mr. Bistriz was a "core proceeding." Although he does not say
5 so, this relates to the sixth and seventh Tucson Estates factors.
6 Mr. Szanto apparently thinks that a "core proceeding" is one that
7 is important to a particular bankruptcy case. He fails to
8 recognize that "core proceeding" is a term of art in bankruptcy
9 law and that his adversary proceeding is not a "core proceeding."

10 Some historical background is helpful to understand the
11 meaning of "core proceedings."

12 In 1978, Congress enacted the Bankruptcy Code, which (among
13 many other things) dramatically increased the powers of
14 bankruptcy judges. The Code "mandated that bankruptcy judges
15 'shall exercise' jurisdiction over 'all civil proceedings arising
16 under title 11 or arising in or related to cases under
17 title 11.'" Executive Benefits Ins. Agency v. Arkison, 134 S.
18 Ct. 2165, 2170-71 (2014) (citing 28 U.S.C. § 1471(b)-(c)).

19 In 1982, the United States Supreme Court decided Northern
20 Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50
21 (1982) ("Marathon"). The Court held that Congress had granted
22 too much power to bankruptcy judges who lack the protections of
23 Article III status. Although the Marathon decision is difficult
24 to parse because there was no majority opinion, the holding of
25 the case is that Congress may not empower a judge lacking
26 Article III protections to enter final judgment in a case brought
27 by the representative of a bankruptcy estate against a third
28 party on state law claims (at least where the third party

1 objects). The Supreme Court concluded that "the broad grant of
2 jurisdiction to the bankruptcy courts" should be struck down so
3 Congress could rewrite it. Id. at 87.

4 In an attempt to solve the constitutional problem identified
5 in Marathon, Congress enacted the Bankruptcy Amendments and
6 Federal Judgeship Act of 1984. Congress gave the district courts
7 "original and exclusive jurisdiction of all cases under
8 Title 11," 28 U.S.C. § 1334(a), and "original, but not exclusive,
9 jurisdiction of all civil proceedings arising under Title 11, or
10 arising in or related to cases under Title 11[,]" id. § 1334(b).
11 Congress created the bankruptcy courts as "units" of the district
12 courts, id. § 151, staffed them with bankruptcy judges appointed
13 to fourteen-year terms by the respective courts of appeal, id.
14 § 152(a), and authorized (but did not require) the district
15 courts to refer to the bankruptcy courts matters falling under
16 bankruptcy jurisdiction, id. § 157(a).

17 Congress further divided bankruptcy court jurisdiction into
18 "core proceedings" and so-called "non-core" proceedings. See
19 Executive Benefits Ins. Agency, 134 S. Ct. at 2171 ("The 1984 Act
20 implements that bifurcated scheme by dividing all matters that
21 may be referred to the bankruptcy court into two categories:
22 'core' and 'non-core' proceedings. It is the bankruptcy court's
23 responsibility to determine whether each claim before it is core
24 or non-core." (internal citations omitted)).

25 The distinction between "core" and "non-core" proceedings
26 determines the scope of review of the bankruptcy court's
27 decisions. The bankruptcy court can enter a final judgment,
28 subject to appellate review under the usual standards, in a "core

1 proceeding," or if all parties consent. See Battle Ground Plaza,
2 LLC v. Ray (In re Ray), 624 F.3d 1124, 1130 (9th Cir. 2010),
3 overruled on other grounds by Stern v. Marshall, 563 U.S. 462,
4 476-77 (2011).

5 In all other cases, the bankruptcy court must submit
6 proposed findings of fact and a recommended judgment to the
7 district court for de novo review. See generally Wellness Int'l
8 Network, Ltd. v. Sharif, 135 S. Ct. 1932, 1940 (2015) ("Congress
9 gave bankruptcy courts the power to 'hear and determine' core
10 proceedings and to 'enter appropriate orders and judgments,'
11 subject to appellate review by the district court. But it gave
12 bankruptcy courts more limited authority in non-core proceedings:
13 They may 'hear and determine' such proceedings, and 'enter
14 appropriate orders and judgments,' only 'with the consent of all
15 the parties to the proceeding.' Absent consent, bankruptcy
16 courts in non-core proceedings may only 'submit proposed findings
17 of fact and conclusions of law,' which the district courts review
18 de novo." (citations omitted)).

19 "[A] core proceeding is one that 'invokes a substantive
20 right provided by title 11 or . . . a proceeding that, by its
21 nature, could arise only in the context of a bankruptcy case.'" In re Ray,
22 624 F.3d at 1131 (quoting Gruntz v. Cty. of L.A.
23 (In re Gruntz), 202 F.3d 1074, 1081 (9th Cir. 2000)). In
24 contrast, proceedings are "related to" a bankruptcy case and thus
25 "non-core" if "they do not depend on the Bankruptcy Code for
26 their existence and they could proceed in another court." Id.
27 (quoting Dunmore v. United States, 358 F.3d 1107, 1114 (9th Cir.
28 2004)).

1 This history shows that Congress invented the concept of
2 "core proceedings" to address the constitutional problem
3 identified in Marathon. Therefore, in case of doubt, the
4 statutory definition of "core proceedings" should be interpreted
5 to exclude proceedings in which the constitution precludes a
6 bankruptcy judge from entering final judgment under Marathon,
7 i.e., claims by representatives of the estate against
8 non-consenting third parties to recover money or property for the
9 estate on non-bankruptcy law grounds.

10 We agree with the bankruptcy court that Mr. Szanto's
11 adversary proceeding is a non-core proceeding. He brought his
12 adversary proceeding against a non-consenting third party
13 allegedly in order to bring into the estate property in which his
14 leasehold interest had terminated by its terms. His claims are
15 based solely on state law and not bankruptcy law. None of his
16 claims depend on the Bankruptcy Code for their existence, and
17 they could be brought independently in state court. Thus, even
18 construing Mr. Szanto's arguments liberally, the sixth and
19 seventh Tucson Estates factors do not weigh in his favor.

20 **3. Neither equitable considerations nor the court's**
21 **supposed "mandate" gives rise to any error.**

22 Mr. Szanto spends the bulk of his briefs arguing that the
23 court should not have abstained for equitable reasons. He
24 contends that (1) Mr. Bistriz has unclean hands; (2) Mr. Szanto
25 has been mistreated by the court⁶ and his opponent; and (3) the

26
27 ⁶ Mr. Szanto overstates his case. He claims that the
28 court's admonition to "sit down or I will have you removed" meant
(continued...)

1 court ignored a "mandate" to adjudicate his claims.

2 The first two arguments are not among the Tucson Estates
3 factors and are not relevant to the question of abstention.

4 The third claim is patently incorrect. Mr. Szanto offers no
5 authority for the proposition that the bankruptcy court has a
6 "mandate" to adjudicate every issue raised by a party. To the
7 contrary, the statutory abstention provisions make clear that a
8 bankruptcy court can decline to decide controversies that are
9 within its jurisdiction.

10 Moreover, it is unclear whether Mr. Szanto presented any of
11 these arguments before the bankruptcy court.

12 **4. The automatic stay does not preclude abstention.**

13 Mr. Szanto argues that the bankruptcy court erred when it
14 decided to abstain before lifting the automatic stay. "The
15 existence of the automatic stay, however, is not relevant to the
16 question of whether bankruptcy courts should exercise
17 jurisdiction over a matter." Bowen Corp., Inc. v. Sec. Pac. Bank
18 Idaho, F.S.B., 150 B.R. 777, 784 (Bankr. D. Idaho 1993)
19 (citations omitted). It is true that, even after the bankruptcy
20 court abstains in favor of a proceeding in another court, the
21 other proceeding may not resume until the bankruptcy court lifts
22 the automatic stay. It does not follow, however, that the
23 bankruptcy court must lift the stay **before** abstaining.

24 _____
25 ⁶(...continued)
26 that "if he did not sit down, he would be removed from existence,
27 that is - **that he would be killed/exterminated - his right to**
28 **live would be removed!**" (Emphasis in original.) The bankruptcy
judge may have been annoyed, but there is no indication that he
was in a murderous rage.

1 In any event, subsequent developments have mooted this
2 argument. The automatic stay terminated when the court dismissed
3 the underlying bankruptcy case in May 2014. See § 362(c)(2)(B).
4 Thus, the automatic stay no longer bars prosecution of the
5 Florida litigation.

6 **5. Jurisdiction is not exclusive to the bankruptcy court.**

7 Mr. Szanto also argues that the federal courts have
8 exclusive jurisdiction of his dispute with Mr. Bistriz because
9 he and Mr. Bistriz are of diverse citizenship. Even assuming
10 that Mr. Szanto's representations about citizenship are correct,
11 this argument is wrong.

12 First, diversity jurisdiction is not exclusive. Diversity
13 of citizenship does not preclude state court jurisdiction. See
14 Jones v. Sheehan, Young & Culp, P.C., 82 F.3d 1334, 1338 n.3 (5th
15 Cir. 1996) ("federal diversity jurisdiction permits state and
16 federal courts to exercise **concurrent** jurisdiction" (emphasis in
17 original) (citing Colo. River Water Conservation Dist. v. United
18 States, 424 U.S. 800, 809 (1976))); Zora Analytics, LLC v.
19 Sakhamuri, No. 13-CV-00639 JM (WMC), 2014 WL 1289450, at *5 (S.D.
20 Cal. Mar. 27, 2014) ("plaintiffs are not required to file cases
21 in federal court simply because diversity exists").

22 Second, diversity jurisdiction does not apply to the
23 bankruptcy court. The district court can refer to the bankruptcy
24 court only matters that are within its bankruptcy jurisdiction.
25 See 28 U.S.C. § 157(b)(1). No statute permits a district court
26 to refer to the bankruptcy court matters covered by diversity
27 jurisdiction. Thus, diversity would not give the bankruptcy
28 court any power over the adversary proceeding.

1 **6. Mr. Bistritz was not required to bring his claims in**
2 **bankruptcy court.**

3 Finally, Mr. Szanto argues that the bankruptcy court should
4 not have forced him to bring his claims as counterclaims in
5 Florida state court, but rather should have waited until
6 Mr. Bistritz filed his claims in bankruptcy court.⁷ We reject
7 this argument for three reasons.

8 First, Mr. Szanto incorrectly assumes that Mr. Bistritz has
9 a duty to file a claim in the bankruptcy case. Creditors
10 generally must file claims in order to receive distributions from
11 the estate, but they are not required to submit themselves to the
12 bankruptcy court's jurisdiction.

13 Second, there are limits on the bankruptcy court's
14 constitutional power to decide counterclaims brought against
15 persons filing claims against the estate. See Stern, 564 U.S. at
16 487. Abstention permitted the bankruptcy court to avoid this
17 constitutional problem.

18 Third, as discussed above, the dismissal of the underlying
19 bankruptcy case moots this argument. See section B.4, supra.

20 **C. The court properly denied the Motion for Reconsideration.**

21 Civil Rule 60(b), made applicable through Rule 9024,
22

23 ⁷ Relatedly, Mr. Szanto also argues that he has a
24 constitutional right to bankruptcy protection. He is wrong. See
25 In re Kane, 336 B.R. 477, 481 (Bankr. D. Nev. 2006) ("there is no
26 constitutional right to file for bankruptcy"); In re Golden State
27 Capital Corp., 317 B.R. 144, 149 (Bankr. E.D. Cal. 2004) ("A
28 debtor does not have a constitutional or fundamental right to a
discharge in bankruptcy. Similarly, the automatic stay should
not be viewed as a 'right,' but more as a 'privilege' which may
be denied to petitioners who abuse it." (citations omitted)).

1 provides:

2 On motion and just terms, the court may relieve a party
3 or its legal representative from a final judgment,
order, or proceeding for the following reasons:

4 (1) mistake, inadvertence, surprise, or excusable
5 neglect;

6 (2) newly discovered evidence that, with
7 reasonable diligence, could not have been
discovered in time to move for a new trial under
Rule 59(b);

8 (3) fraud (whether previously called intrinsic or
9 extrinsic), misrepresentation, or misconduct by an
opposing party;

10 (4) the judgment is void;

11 (5) the judgment has been satisfied, released or
12 discharged; it is based on an earlier judgment
that has been reversed or vacated; or applying it
13 prospectively is no longer equitable; or

14 (6) any other reason that justifies relief.

15 Mr. Szanto argues that "surprise" and "misconduct by an
16 opposing party" regarding the language of the order warrant
17 striking the order under Civil Rule 60(b) for three reasons.

18 First, he argues that the written order improperly deviated
19 from the court's oral ruling. He contends that "most of the
20 proposed language of the ORDER was neither discussed nor analyzed
21 by the Court nor ever stated on the record." But there is no
22 requirement that written orders conform to oral rulings. Courts
23 enter written orders partly in order to permit the judge to
24 consider the form and substance of the ruling more carefully than
25 is possible during a hearing. See Rawson v. Calmar S.S. Corp.,
26 304 F.2d 202, 206 (9th Cir. 1962) ("The trial judge is not to be
27 lashed to the mast on his off-hand remarks in announcing decision
28 prior to the presumably more carefully considered deliberate

1 findings of fact.” (citations omitted)).

2 Second, Mr. Szanto argues that the written order improperly
3 decided unnecessary issues. Mr. Szanto contends that “[t]his
4 Court, having abstained from jurisdiction, has thereby ended all
5 of its ability to adjudicate any matter, issue or law in this
6 case” and should not have analyzed its jurisdiction over the
7 adversary proceeding. (Emphasis omitted.)

8 We reject this argument. The bankruptcy court properly
9 stated the reasons for its decision to abstain, including (as
10 Tucson Estates requires) doubts about the bankruptcy court’s
11 jurisdiction. Mr. Szanto disagrees with the court’s reasoning,
12 but he was not entitled to prevent the court from stating its
13 reasoning.

14 Third, Mr. Szanto also argues that the order contained
15 erroneous statements about his possible forum shopping. In its
16 consideration of the Tucson Estates factors, the court did not
17 make any final finding on this issue, but stated during the
18 hearing that it was suspicious of Mr. Szanto’s motives. The
19 order adequately reflected the court’s statements at the hearing,
20 and the record supports the bankruptcy court’s suspicions.
21 Because possible forum shopping is one of the Tucson Estates
22 factors, the bankruptcy court did not err in noting its
23 suspicions in its order.

24 CONCLUSION

25 For the foregoing reasons, we conclude that the bankruptcy
26 court did not err in abstaining from hearing the adversary
27 proceeding or denying the Motion for Reconsideration.
28 Accordingly, we AFFIRM.