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NOT FOR PUBLICATION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. AZ-16-1050-JuFL
	)	
PETER F. BRONSON and	)	Bk. No. 02:08-bk-00777-GBN
SHERRI L. BRONSON,	)	
	)	Adv. No. 2:09-ap-01312-GBN
Debtors.	)	
	)	
<hr/> PETER F. BRONSON; SHERRI L.	)	
BRONSON,	)	
	)	
Appellants,	)	
	)	
v.	)	<b>MEMORANDUM*</b>
	)	
THOMAS M. THOMPSON,	)	
	)	
Appellee.	)	
	)	

Submitted Without Oral Argument  
on September 23, 2016\*\*

Filed - October 12, 2016

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

Honorable George B. Nielsen, Jr., Bankruptcy Judge, Presiding

Appearances: Appellants Peter F. Bronson and Sherri L. Bronson  
on brief pro se; Jimmie D. Smith on brief for  
appellee Thomas M. Thompson.

Before: JURY, FARIS, and LAFFERTY, 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.

\*\* By order entered on August 8, 2016, a motions panel  
determined this appeal suitable for submission on the brief and  
record without oral argument.

1 Peter F. Bronson and Sherri L. Bronson (collectively,  
2 Debtors) appeal pro se from the bankruptcy court's order  
3 dismissing their state law claim in this adversary proceeding  
4 and ordering the adversary case closed.<sup>1</sup>

5 Appellee, Thomas M. Thompson (TMT), commenced this  
6 adversary proceeding seeking a deficiency judgment against  
7 Debtors after conducting a foreclosure of commercial property  
8 due to Debtors' default on the underlying loan. Although the  
9 bankruptcy court entered a judgment in 2011 in favor of TMT  
10 consisting of attorney's fees and a deficiency, upon  
11 reconsideration it determined that the judgment pertaining to  
12 the deficiency was entered prematurely and left the deficiency  
13 issue to be resolved by future litigation. In their motion for  
14 reconsideration of the amount of the deficiency, Debtors  
15 asserted a state law claim against TMT arising out of the  
16 deficiency litigation.

17 After lengthy procedural delays caused by conversion of the  
18 original chapter 11<sup>2</sup> proceeding to chapter 7 and several  
19 intervening appeals by Debtors, Debtors moved for summary  
20 judgment on the fair market value of the property at the time of  
21 foreclosure, which was relevant to the deficiency litigation.

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23 <sup>1</sup> The order on appeal did more than dismiss the state law  
24 claim. Because we affirm the bankruptcy court's dismissal of the  
25 state law claim and closing of the adversary proceeding, it is  
not necessary to address any other issues.

26 <sup>2</sup> Unless otherwise indicated, all chapter and section  
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532,  
28 "Rule" references are to the Federal Rules of Bankruptcy  
Procedure, and "Civil Rule" references are the Federal Rules of  
Civil Procedure.

1 The bankruptcy court denied the summary judgment because the  
2 value of the property presented a disputed issue of fact.

3 It then addressed the pending adversary on broader terms,  
4 finding that the remaining issues arose under state law and  
5 would have no impact on the administration of Debtors'  
6 bankruptcy estate because (1) the chapter 7 trustee had  
7 abandoned Debtors' state law claim against TMT and thus it was  
8 not an asset of their estate; (2) Debtors' estate had been fully  
9 administered; and (3) Debtors had received their discharge.  
10 Accordingly, the court sua sponte dismissed Debtors' state law  
11 claim for lack of jurisdiction and ordered the adversary  
12 proceeding closed.

13 For the reasons explained below, we conclude the bankruptcy  
14 court properly exercised its discretion in dismissing the  
15 Debtors' state law claim and closing the adversary.  
16 Accordingly, we AFFIRM.

### 17 I. FACTS<sup>3</sup>

18 TMT was a secured creditor of Debtors. Debtors defaulted  
19 on the loan they owed to TMT. As a result, TMT commenced  
20 foreclosure proceedings against the underlying commercial  
21 property, an office building (Property), which secured the loan.

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22  
23 <sup>3</sup> This is the sixth pro se appeal Debtors have pursued  
24 before the Panel. The decision disposing of BAP No. AZ-12-1320,  
25 Bronson v. Thompson, 2013 WL 2350791 (9th Cir. BAP May 29, 2013),  
26 contains a lengthy recitation of facts concerning Debtors'  
27 disputes with TMT throughout this bankruptcy case. We recite  
28 here only those facts relevant to our disposition in this appeal.  
To the extent necessary, we take judicial notice of the pleadings  
filed and docketed in the underlying bankruptcy case and  
adversary proceeding. Atwood v. Chase Manhattan Mortg. Co.  
(In re Atwood), 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

1 In October 2007, TMT recorded a notice of trustee's sale.

2 On January 28, 2008, the day before the scheduled trustee's  
3 sale, Debtors filed their chapter 11 bankruptcy petition.

4 Thereafter, TMT obtained relief from stay and held a trustee's  
5 sale, at which TMT was the successful bidder based on a credit  
6 bid of \$200,000.

7 In October 2009, TMT filed an adversary complaint against  
8 Debtors seeking a deficiency judgment. TMT sought, among other  
9 things, attorney's fees in the amount of \$31,325.10 and a  
10 deficiency in the amount of \$18,574.15.

11 On October 28, 2011, the bankruptcy court entered a final  
12 judgment in favor of TMT, which overruled Debtors' objections to  
13 TMT's attorney fee request in the amount of \$31,325.10 and found  
14 a deficiency in the amount of \$18,574.15. On November 14, 2011,  
15 Debtors filed a Civil Rule 60<sup>4</sup> motion for relief from the  
16 judgment as it pertained to the deficiency amount, as no  
17 determination of the fair market value of the Property had been  
18 made. The bankruptcy court agreed that value had not been  
19 determined and on January 19, 2012, vacated the paragraphs in  
20 the judgment relating to the deficiency.

21 In their Civil Rule 60 motion and during subsequent  
22 hearings, Debtors, relying on Arizona Revised Statute (A.R.S.)  
23 § 33-814(A), asserted that the fair market value of the Property  
24 on the foreclosure date exceeded the amount due on the secured  
25 debt and thus they held a claim against TMT for the excess  
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28 <sup>4</sup> Rule 9024 incorporates Civil Rule 60.

1 value.<sup>5</sup>

2 On April 17, 2012, the bankruptcy court entered an order  
3 converting Debtors' case to chapter 7. The case conversion led  
4 to a controversy regarding who had standing to prosecute the  
5 state law claim which Debtors argued gave them a right to  
6 payment from TMT.

7 On June 26, 2012, the chapter 7 trustee (Trustee) filed a  
8 notice of abandonment of Debtors' asserted claims of "unjust  
9 enrichment" or "unconscionability" in connection with the  
10 foreclosure conducted by TMT. Trustee also sought to abandon  
11 Debtors' asserted claim for professional negligence against the  
12 attorneys involved in the stay relief obtained by TMT concerning  
13 the Property. The bankruptcy court approved the abandonment by  
14 order entered on July 23, 2012.

15 Meanwhile, Debtors continued to file a number of pleadings  
16 in the adversary proceeding. In May 2013, the bankruptcy court  
17 entered an order staying the proceeding, which prohibited  
18 Debtors from filing any further pleadings unless authorized by  
19 the court.

20 On March 28, 2014, Debtors received their discharge.

21 A few weeks later, Trustee filed his final report showing  
22 that the estate was administratively insolvent. Trustee was  
23 discharged. The underlying bankruptcy case remains open.

24 Debtors objected to Trustee's final report on the ground,  
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26 <sup>5</sup> A.R.S. § 33-814(A) sets forth the procedure for  
27 determining a deficiency claim. We do not address whether  
28 Debtors' assertion has merit under the Arizona statute and case  
law.

1 among others,<sup>6</sup> that he had refused to participate in the  
2 litigation with TMT. Trustee confirmed in a February 14, 2014  
3 email to Mr. Bronson that the bankruptcy estate had no interest  
4 in the outcome of this adversary proceeding, opining that there  
5 "were no estate assets at issue, so there is nothing to  
6 abandon." On March 21, 2014, Trustee responded to Debtors'  
7 objection to his final report:

8 [T]he litigation was unnecessary and functionally  
9 irrelevant since there are and will never be any funds  
10 to pay on any unsecured deficiency claim.  
11 Consequently, the [T]rustee is unwilling to  
12 participate in that litigation. If Mr. Bronson wishes  
13 to litigate it for whatever joy it brings to him, he  
14 is free to do so.

15 Finally, as for Mr. Bronson's contention that money  
16 can be brought into the estate if it can be  
17 established that certain real property was worth more  
18 than the bid at a foreclosure sale, there is no merit  
19 to that allegation. The bid at a foreclosure sale has  
20 nothing to do with the fair market value of the  
21 property. The bid is nothing more than what the buyer  
22 is willing to pay. A bidder at a foreclosure sale can  
23 bid as little as \$1.00 and, if no one bids more, the  
24 property is foreclosed for \$1.00, regardless of what  
25 the property is actually worth. Mr. Bronson's  
26 assertion that proof of a greater value creates a  
27 cause of action against the bidder is little more than  
28 wishful and fuzzy thinking.

At the hearing on Debtors' objection to Trustee's final  
report, the bankruptcy court overruled Debtors' objection,  
finding that Trustee had abandoned the state law claim to  
Debtors.

On September 17, 2015, Debtors filed a motion for summary  
judgment (MSJ) in the adversary proceeding seeking to establish

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<sup>6</sup> Debtors had numerous other problems with the report which  
are not relevant to this appeal.

1 the Property's fair market value on the foreclosure date.  
2 Debtors asserted that they were entitled to such a determination  
3 under A.R.S. § 33-814(A) and argued that the fair market value  
4 was higher, such that there would be no deficiency judgment and  
5 TMT would owe money to their estate. TMT filed a motion to  
6 strike the pleading on the grounds that the bankruptcy court had  
7 previously entered an order which stayed the adversary  
8 proceeding and prohibited Debtors from filing further pleadings  
9 unless authorized by the court.

10 On February 9, 2016, the bankruptcy court heard the matters  
11 (Final Hearing). The court denied Debtors' MSJ and denied TMT's  
12 motion to strike. In denying Debtors' MSJ which sought to  
13 establish the fair market value of the Property, the court found  
14 there were factual issues in dispute, making summary judgment  
15 inappropriate. It then more broadly addressed Debtors' claim,  
16 observing for the first time that Debtors had not filed what  
17 might have been a compulsory counterclaim. The court further  
18 recalled that Trustee refused to advance the "clearly state law  
19 cause of action," and thus it was effectively abandoned.<sup>7</sup>  
20 Finally, the court noted that Debtors' estate was fully  
21 administered and they had received their discharge. Under these  
22 circumstances, the bankruptcy court decided that the deficiency  
23 litigation had no impact on Debtors' bankruptcy estate and thus  
24 the court lacked jurisdiction over the matter. Accordingly, the  
25 bankruptcy court sua sponte dismissed the claim. The court

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27 <sup>7</sup> The bankruptcy court apparently had forgotten that it had  
28 entered a formal order of abandonment and that it had advised  
Debtors they held the claim.

1 further held that even if there was a "shred" of jurisdiction,  
2 it would abstain from hearing the matter.

3 On February 16, 2016, the bankruptcy court entered the  
4 order reflecting its decision and ordering the clerk to close  
5 the adversary proceeding. Debtors filed a timely appeal.

## 6 **II. JURISDICTION**

7 The bankruptcy court had jurisdiction under 28 U.S.C.  
8 § 157(b) (2) (A). We have jurisdiction under 28 U.S.C. § 158.

## 9 **III. ISSUE**

10 Whether the bankruptcy court abused its discretion by  
11 dismissing Debtors' state law claim and closing the adversary  
12 proceeding.

## 13 **IV. STANDARD OF REVIEW**

14 We review a bankruptcy court's decision to decline to  
15 exercise jurisdiction over an adversary proceeding for an abuse  
16 of discretion. Carraher v. Morgan Elec., Inc. (In re Carraher),  
17 971 F.2d 327, 328 (9th Cir. 1992). A bankruptcy court abuses  
18 its discretion if it applies the wrong legal standard,  
19 misapplies the correct legal standard, or if its factual  
20 findings are illogical, implausible, or without support in  
21 inferences that may be drawn from the facts in the record. See  
22 TrafficSchool.com, Inc. v Edriver Inc., 653 F.3d 820, 832 (9th  
23 Cir. 2011) (citing United States v. Hinkson, 585 F.3d 1247, 1262  
24 (9th Cir. 2009) (en banc)).

## 25 **V. DISCUSSION**

26 As a threshold matter, we note that the only ruling  
27 properly before this Panel is the bankruptcy court's decision to  
28 dismiss Debtors' state law claim against TMT and close the

1 adversary proceeding. Therefore, we do not consider Debtors'  
2 requests for additional relief set forth in their opening brief.

3 The bankruptcy court's jurisdiction is statutory. Under  
4 28 U.S.C. § 1334(b), the district courts have original, but not  
5 exclusive, jurisdiction of all civil proceedings arising under  
6 title 11, or arising in or related to cases under title 11.

7 The district courts may, in turn, refer "any or all proceedings  
8 arising under title 11 or arising in or related to a case under  
9 title 11 . . . to the bankruptcy judges for the district."

10 28 U.S.C. § 157(a). Congress empowered the bankruptcy courts to  
11 enter final judgment in "core proceedings." Congress provided  
12 a non-exhaustive list of core proceedings and indicated a matter  
13 may be a core proceeding even if state law may affect its  
14 outcome. See 28 U.S.C. § 157(b)(2), (3); see also Marshall v.  
15 Stern (In re Marshall), 600 F.3d 1037, 1054 (9th Cir. 2010),  
16 aff'd, 564 U.S. 462 (2011).

17 Among the list of core proceedings is the allowance or  
18 disallowance of claims against the estate. 28 U.S.C.  
19 § 157(b)(2)(B). A counterclaim by the estate against a person  
20 filing a claim is also core. 28 U.S.C. § 157(b)(2)(C). When  
21 Debtors were in chapter 11, TMT filed the adversary complaint  
22 against them seeking to establish the amount of his deficiency  
23 claim so that he could participate in distributions to unsecured  
24 creditors, if any, under Debtors' chapter 11 plan. Therefore,  
25 the bankruptcy court had core jurisdiction over the adversary  
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1 when it was filed.<sup>8</sup>

2 Although Debtors never filed a formal counterclaim, they  
3 began asserting affirmative rights – i.e., the right to a money  
4 judgment against TMT – at status conferences and other adversary  
5 hearings while the case was still in chapter 11. The bankruptcy  
6 court and TMT gave credence to those rights by raising the  
7 standing issue after the case was converted to chapter 7,  
8 asserting that the claim could only be prosecuted by Trustee.  
9 This assertion led to multiple attempts by both TMT and Debtors  
10 to get Trustee involved and eventually led to the estate’s  
11 formal abandonment of the state law claim to Debtors. At every  
12 status conference on the adversary, which were numerous because  
13 of the delays caused by the standing issue and the multiple  
14 appeals by Debtors, the arguments about Debtors’ rights in the  
15 deficiency litigation were discussed on the record. At no time  
16 did TMT argue or the bankruptcy court rule that the claim  
17 Debtors were asserting was barred as a compulsory counterclaim  
18 or had somehow been waived.

19 After it became clear that the chapter 7 estate would make  
20 no distribution to unsecured creditors, TMT’s enthusiasm for the  
21 adversary faded. Since any claim against Debtors would be  
22 discharged and TMT would receive no money from the estate, TMT’s  
23 need for a determination of the deficiency, if any, abated.

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25 <sup>8</sup> The bankruptcy court recognized its core jurisdiction when  
26 it granted Debtors’ reconsideration motion regarding the  
27 deficiency part of the final judgment on January 17, 2012. When  
28 granting the motion, it remarked: “So I don’t think this  
litigation implicates non-core proceedings or implicates an  
inability on my part to enter a final order.”

1 However, Debtors still maintained that they had a potential  
2 right to recovery from TMT if the fair market value of the  
3 Property exceeded the debt on the foreclosure date,<sup>9</sup> and the  
4 bankruptcy court never ruled on the claim.<sup>10</sup> As such, while the  
5 main case was pending, the bankruptcy court had jurisdiction not  
6 only over TMT's deficiency claim, but also over Debtors' state  
7 law claim.

8 Full administration of the main case did not automatically  
9 terminate jurisdiction over the adversary. Our circuit  
10 authority instructs us that dismissal of an underlying  
11 bankruptcy case does not automatically divest the bankruptcy  
12 court of jurisdiction over a related adversary proceeding  
13 seeking recovery on state law theories. In re Carraher,  
14 971 F.2d at 328. We find no principled reason to distinguish a  
15 fully administered case, where the estate no longer has any  
16 interest in the outcome of the litigation, from a dismissed case  
17 where the same circumstance is true.

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19 <sup>9</sup> At the Final Hearing, the bankruptcy court articulated the  
20 claim the pro se Debtors had been asserting for years: "The  
21 Bronsons are asserting against a former secured creditor a claim  
22 that the creditor owes them money because the value of property  
23 established by a bid at a foreclosure sale was not - was  
24 significantly below true market value. And as a result of that,  
25 the Bronsons were robbed of true market value."

26 <sup>10</sup> Because this issue was never joined, we can only  
27 speculate whether Debtors as pro se litigants had properly  
28 asserted a constructive counterclaim sufficient to maintain their  
right to payment in the litigation. Additionally, Debtors  
submitted that Arizona case law accorded them a right to a  
judgment against the foreclosing creditor without the need to  
file an affirmative pleading. The bankruptcy court never ruled  
on that issue, so it was not foreclosed as a possible outcome for  
the adversary.

1 In Carraher, the Ninth Circuit recognized the bankruptcy  
2 court's discretion to either retain jurisdiction or send the  
3 claims back to state court. In deciding whether to retain  
4 jurisdiction, the bankruptcy court must consider economy,  
5 convenience, fairness, and comity. Id. "The [bankruptcy]  
6 court's weighing of these factors is discretionary." Id.  
7 Although the bankruptcy court here did not formally use this  
8 discretionary test to dismiss the adversary proceeding and  
9 Debtor's related state law claim, we may affirm on any ground  
10 supported by the record. See Helvering v. Gowran, 302 U.S. 238,  
11 245 (1937) ("In the review of judicial proceedings the rule is  
12 settled that, if the decision below is correct, it must be  
13 affirmed, although the lower court relied upon a wrong ground or  
14 gave a wrong reason."); ASARCO, LLC v. Union Pac. R.R. Co.,  
15 765 F.3d 999, 1004 (9th Cir. 2014). We thus consider whether  
16 the court abused its discretion in dismissing Debtors' state law  
17 claim and this adversary under a Carraher analysis.

18 Judicial Economy. Although the adversary had been pending  
19 for an extended period of time and Debtors' claim had been  
20 bandied about on the record and in pleadings for years, whether  
21 state law actually supported such claim and whether Debtors were  
22 barred from asserting it as a compulsory counterclaim had never  
23 been briefed by the parties nor decided by the bankruptcy court.  
24 Additionally, assuming there was a properly raised claim, the  
25 bankruptcy court had just denied Debtors' MSJ regarding the fair  
26 market value of the Property, finding it a disputed issue of  
27 fact. Consequently, no briefing had occurred nor court time  
28 expended on the critical issues in the bankruptcy court; a state

1 court could just as efficiently decide those issues.

2 Accordingly, the record amply supports dismissal under this  
3 factor.

4 Convenience. There is no indication in the record that a  
5 proceeding in state court would be inconvenient for either  
6 party. This proceeding was in Phoenix, and TMT's counsel was  
7 already appearing from a distance to assert his client's rights.  
8 A state court in Phoenix would not be any less inconvenient than  
9 the bankruptcy court. At worst, convenience is a neutral  
10 factor.

11 Fairness. Nothing in the record shows it would be unfair  
12 to send the claim to state court.

13 Comity. This factor most overwhelmingly favors dismissal.  
14 As the bankruptcy court noted, the claim was based entirely on  
15 state law: "This is all based on state law procedures. It's  
16 all based on state law statutes." Not only was the remaining  
17 claim one arising under a particular state statute, but also the  
18 bankruptcy estate no longer had any interest in the outcome. As  
19 the bankruptcy court stated at the final hearing:

20 It's clearly a state law cause of action, which has  
21 been refused to be advanced by a bankruptcy trustee  
22 who has abandoned this cause of action. The Chapter 7  
case has been closed, so the impact of this litigation  
has no impact whatsoever on this bankruptcy case.

23 The bankruptcy court properly found no reason to keep the  
24 litigation in a closed estate and articulated substantial  
25 reasons why state court was the appropriate forum for any  
26 continued litigation. Although its articulated reasons to  
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1 abstain are ineffective in the Ninth Circuit,<sup>11</sup> its stated  
2 rationale - "I'm going to abstain from hearing this matter.  
3 Because all this is a state law case, and I've got bankruptcy  
4 issues to hear, and we have an excellent state court judiciary  
5 as well" - fits a comity ruling perfectly.

6 In sum, we hold that the bankruptcy court did not abuse its  
7 discretion in dismissing Debtor's state law claim and closing  
8 the adversary.

9 **VI. CONCLUSION**

10 For the reasons stated, we AFFIRM.

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25 <sup>11</sup> Ninth Circuit case law instructs that abstention can  
26 exist only where there is a parallel proceeding in state court.  
27 Lazar v. California (In re Lazar), 237 F.3d 967 (9th Cir. 2001)  
28 (citing Sec. Farms v. Int'l Brotherhood of Teamsters, 124 F.3d  
999 (9th Cir. 1997)). Since no state proceeding was pending,  
abstention could not be grounds for dismissal here.