

NOT FOR PUBLICATION

APR 26 2017

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-16-1173-KuLJu
)		
CM REED ALMEDA 1-3062, LLC,)	Bk. No.	2:13-bk-19117
)		
Debtor.)		
_____)		
)		
CM REED ALMEDA 1-3062, LLC,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM*	
)		
HARRIS COUNTY,)		
)		
Appellee.)		
_____)		

Submitted Without Oral Argument
on February 24, 2017

Filed - April 26, 2017

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

Honorable Gary A. Spraker, Bankruptcy Judge, Presiding

Appearances: Gerald M. Gordon and Mark M. Weisenmiller of
Garman Turner Gordon LLP and Douglas S. Draper of
Heller, Draper, Patrick, Horn & Dabney, L.L.C. on
brief for appellant CM Reed Almeda 1-3062, LLC;
Jeanette E. McPherson of Schwartz & McPherson
Law Firm and John P. Dillman of Linebarger Goggan
Blair & Sampson, LLP on brief for appellee Harris
County.

Before: KURTZ, LAFFERTY and JURY, 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 11¹ debtor CM Reed Almeda 1-3062, LLC appeals from
3 an order denying its motion under § 505 to determine its ad
4 valorem property tax liability. With respect to property taxes
5 assessed between 2007 and 2009, the bankruptcy court held that
6 CM Reed Almeda lacked standing because it did not own the
7 property at the time the taxes were assessed. As for all
8 property taxes assessed in 2014 and before, the bankruptcy court
9 held that § 505 barred it from determining CM Reed Almeda's tax
10 liability because the time to challenge those taxes had expired
11 under applicable nonbankruptcy law before CM Reed Almeda filed
12 its motion. Finally, concerning 2015 and 2016 taxes, the
13 bankruptcy court ruled that it would exercise its discretion to
14 abstain.

15 We agree with the bankruptcy court's determination that
16 CM Reed Almeda's request for a determination of its tax liability
17 for 2014, and all years prior, was time barred. In addition, we
18 hold that the bankruptcy court did not abuse its discretion in
19 abstaining from hearing and deciding the dispute over 2015 and
20 2016 taxes.

21 Therefore, we AFFIRM.

22 **FACTS**

23 CM Reed Almeda has not challenged the bankruptcy court's
24 recitation of the basic underlying facts set forth in the court's

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. All "Civil Rule" references are to
the Federal Rules of Civil Procedure.

1 memorandum of decision entered on May 31, 2016, so we have relied
2 on that recitation.

3 CM Reed Almeda filed its chapter 11 petition in 2013. Its
4 sole asset is roughly 16 acres of vacant land in Harris County,
5 Texas. The land formerly was used for oil and gas exploration,
6 but more recently it was platted for residential development.
7 The land's former use resulted in environmental issues.
8 Additionally, numerous property transfers, encumbrances and
9 foreclosures clouded title. In 2011, Larry Ramming and Dick
10 Wheeler purportedly acquired the land via a foreclosure.
11 Thereafter, many tax notices were sent to Ramming and Wheeler as
12 the owners of record.

13 At the time of its 2013 bankruptcy filing, CM Reed Almeda
14 claimed ownership of the land. According to CM Reed Almeda, it
15 filed bankruptcy in order to take advantage of the Bankruptcy
16 Code provision enabling debtors to sell assets free and clear of
17 liens and other interests. CM Reed Almeda expected to clear
18 title to the land, through a bankruptcy sale.

19 Another issue CM Reed Almeda sought to address in the
20 bankruptcy case was its disputed tax liability to Harris County.
21 Harris County filed two proof of claims asserting secured and
22 priority tax claims.² The first proof of claim was for
23 prepetition ad valorem real property taxes arising between 2007
24

25 ²Actually, the tax claims asserted by Harris County were an
26 aggregation of tax liability owed to a variety of city and county
27 taxing authorities. For ease of reference and because the
28 identity of the specific taxing authorities is not relevant to
our analysis or the resolution of this appeal, we collectively
refer to these taxing authorities as Harris County.

1 and 2013 in the aggregate amount of \$556,275.07. Harris County
2 submitted over 400 pages of supporting documentation, consisting
3 of partial tax statements issued by the Harris County Tax
4 Assessor-Collector. The tax statements showed that the taxing
5 entities had assessed taxes against each subdivided lot rather
6 than against the land as a whole, and most of the statements
7 identified Wheeler and Ramming as the "certified owners" of the
8 land. None of them identified CM Reed Almeda as certified owner,
9 nor is there any indication in the proof of claim or the
10 supporting documentation as to whether or when CM Reed Almeda
11 received notice of the tax assessments.

12 Harris County's second proof of claim was for postpetition
13 ad valorem real property taxes arising in 2014 and 2015 in the
14 aggregate amount of \$111,492.52. The partial tax statements
15 submitted in support of Harris County's amended postpetition
16 claim are similar to those submitted in support of Harris
17 County's prepetition claim, inasmuch as they identify Wheeler and
18 Ramming as the "certified owners" of the property and none of
19 them identify CM Reed Almeda as the certified owner.

20 To challenge Harris County's tax claims, CM Reed Almeda
21 filed a motion under § 505 asserting that taxes were improperly
22 assessed against its land and that it did not receive notice of
23 the taxes assessed. Harris County opposed the motion. Harris
24 County argued in relevant part that CM Reed Almeda lacked
25 standing to challenge the taxes imposed for 2007 through 2009
26 because CM Reed Almeda did not own the land at the time. Harris
27 County also argued that the time period for disputing the tax
28 liability had expired and alternately argued that the bankruptcy

1 court should abstain from hearing the tax dispute.

2 After holding a hearing on CM Reed Almeda's motion, the
3 bankruptcy court issued a memorandum decision, which held in part
4 that the court lacked authority under § 505(a) to determine
5 CM Reed Almeda's tax liability and abstained in part from
6 resolving the dispute. For taxes incurred between 2007 and 2009,
7 the bankruptcy court reasoned that CM Reed Almeda lacked standing
8 under Texas law to challenge those taxes because CM Reed Almeda
9 did not own the land at the time the taxes were incurred.

10 For taxes incurred between 2010 and 2014, the bankruptcy
11 court ruled that CM Reed Almeda's challenge was untimely. The
12 court pointed out that § 505(a)(2)(C) prohibits the bankruptcy
13 court from considering the debtor's challenge to ad valorem
14 property taxes if the applicable period under nonbankruptcy law
15 for challenging the taxes had expired.³ The court interpreted
16 state tax law in concluding that CM Reed Almeda was time barred
17 both from directly challenging the taxes assessed and from
18 complaining that it did not receive notice of the taxes assessed.

19 For taxes incurred in 2015 and 2016, the bankruptcy court
20 concluded that it would abstain. The court set forth two
21 alternate abstention tests for resolving discretionary abstention

22
23 ³The bankruptcy court further ruled that the critical date
24 for purposes of determining timeliness was the date CM Reed
25 Almeda filed its § 505 motion and that § 108(a) did not apply to
26 extend any state-law-imposed deadlines for disputing ad valorem
27 property tax liability. CM Reed Almeda has not challenged these
28 rulings on appeal, so we decline to discuss them further. See
Christian Legal Soc'y v. Wu, 626 F.3d 483, 487-88 (9th Cir. 2010)
(declining to address matters not specifically and distinctly
discussed in the appellant's opening brief); Brownfield v. City
of Yakima, 612 F.3d 1140, 1149 n.4 (9th Cir. 2010) (same).

1 issues: one that has been used outside the Ninth Circuit
2 specifically to resolve the question of whether the bankruptcy
3 court should exercise its discretion under § 505 to determine the
4 debtor's tax liability and another that is the prevailing Ninth
5 Circuit test used to resolve discretionary abstention questions
6 arising under 28 U.S.C. § 1334(c)(1). Under either test, the
7 court determined discretionary abstention was appropriate.⁴

8 The bankruptcy court entered its order denying CM Reed
9 Almeda's § 505 motion on May 31, 2016, and CM Reed Almeda timely
10 appealed.

11 JURISDICTION

12 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
13 §§ 1334 and 157(b)(2)(A), (B) and (O), and we have jurisdiction
14 under 28 U.S.C. § 158.

15 ISSUES

- 16 1. Was CM Reed Almeda's § 505 motion untimely?
- 17 2. Did the bankruptcy court abuse its discretion in deciding to
18 abstain from determining CM Reed Almeda's tax liability for
19 2015 and 2016?

20 STANDARDS OF REVIEW

21 The bankruptcy court's determination that CM Reed Almeda's
22 § 505 motion should be denied as untimely turned on its
23 interpretation and application of the Bankruptcy Code and Texas
24 law. We review these matters de novo. Rund v. Bank of Am. Corp.

26 ⁴The bankruptcy court further stated that, to the extent its
27 rulings regarding the taxes incurred between 2007 and 2014 turned
28 out to be incorrect, its abstention ruling would apply to those
taxes as well.

1 (In re EPD Inv. Co., LLC), 523 B.R. 680, 684 (9th Cir. BAP 2015).

2 The bankruptcy court's permissive abstention ruling is
3 reviewed for an abuse of discretion. In re Bankr. Petition
4 Preparers who are not Certified Pursuant to Requirements of Ariz.
5 Sup. Ct., 307 B.R. 134, 140 (9th Cir. BAP 2004). A bankruptcy
6 court abuses its discretion if it fails to identify or apply the
7 correct legal rule or its application of the correct legal rule
8 was "(1) 'illogical,' (2) 'implausible,' or (3) without 'support
9 in inferences that may be drawn from the facts in the record.'" Yellow Express, LLC v. Dingley (In re Dingley), 514 B.R. 591, 596
10 (9th Cir. BAP 2014) (citing United States v. Hinkson, 585 F.3d
11 1247, 1262-63 (9th Cir. 2009) (en banc)).

12 Similarly, findings of fact made in the course of the court
13 exercising its discretion are reviewed under the clearly
14 erroneous standard and are not clearly erroneous unless they were
15 illogical, implausible or without support in the record.
16 Hinkson, 585 F.3d at 1261-62 & n.21.

18 DISCUSSION

19 A. Timeliness Issue

20 The Bankruptcy Code authorizes the bankruptcy court to
21 determine the debtor's liability for taxes unless they were
22 adjudicated prepetition "by a judicial or administrative tribunal
23 of competent jurisdiction." § 505(a)(1), (a)(2). With respect
24 to ad valorem property taxes, the Code restricts the bankruptcy
25 court's authority by prohibiting the court from determining the
26 debtor's tax liability when the period "under applicable
27 nonbankruptcy law" for challenging the amount of taxes has
28 expired. § 505(a)(2)(C).

1 In turn, Texas law generally permits property owners to
2 protest ad valorem property tax assessments until the later of
3 June 1 of the tax year in question or until 30 days after the
4 date notice was delivered to the property owner, whichever is
5 later. Texas Tax Code § 41.44(a)(2). More importantly for this
6 appeal, a tax protest based on a failure to receive proper notice
7 must be filed no later than the date the taxes become delinquent.
8 Texas Tax Code § 41.44(c); see also Heritage Operating, L.P. v.
9 Barbers Hill Indep. Sch. Dist., 496 S.W.3d 318, 325 (Tex. Ct.
10 App. 2016) (“A property owner is not entitled to have the
11 lack-of-notice protest heard and determined unless, before the
12 taxes become delinquent, the property owner files the notice of
13 protest”). While taxes generally become delinquent on
14 February 1 of the year following the year in which the taxes were
15 imposed, Texas Tax Code § 31.02(a), there is a special, extended
16 delinquency date for purposes of a notice-based tax protest:

17 . . . a property owner who files a [notice-
18 based] protest under Section 41.411 on or
19 after the date the taxes on the property to
20 which the notice applies become delinquent,
21 but not later than the 125th day after the
22 property owner, in the protest filed, claims
23 to have first received written notice of the
24 taxes in question, is entitled to a hearing
25 solely on the issue of whether one or more
26 taxing units timely delivered a tax bill. If
27 at the hearing the appraisal review board
28 determines that all of the taxing units
failed to timely deliver a tax bill, **the
board shall determine the date on which at
least one taxing unit first delivered written
notice of the taxes in question, and for the
purposes of this section the delinquency date
is postponed to the 125th day after that
date.**

27 Texas Tax Code § 41.44(c-3) (emphasis added).

28 The bankruptcy court, here, effectively determined that,

1 pursuant to § 505(a)(2)(C), it lacked authority to determine
2 CM Reed Almeda's liability to Harris County for tax years 2007
3 through 2014 because CM Reed Almeda did not timely challenge
4 these tax assessments and did not timely complain of the absence
5 of written notice of these taxes.⁵ In relevant part, the
6 bankruptcy court explained that Texas Tax Code § 41.411 is the
7 exclusive remedy for contesting the notice given of tax
8 assessments and that, under Texas Tax Code § 41.44(c-3), Harris
9 County's proofs of claim had been sufficient notice of the taxes
10 to cause the 125-day extension period to begin to run. Because
11 CM Reed Almeda's § 505 motion was not filed within 125 days of
12 the filing of Harris County's proofs of claim, the § 505 motion
13 was time-barred for the 2014 tax year and for all tax years prior
14

15 ⁵For the tax years 2007, 2008 and 2009, the bankruptcy court
16 actually ruled that CM Reed Almeda lacked standing to dispute
17 these taxes because it did not own the land at the time the taxes
18 were imposed. Citing Houston Land & Cattle Co. v. Harris Cnty.
19 Appraisal Dist., 104 S.W.3d 622, 625 & n.2 (Tex. Ct. App. 2003),
20 the bankruptcy court held that only the owner of the property at
21 the time the assessment was made has standing to contest either
22 that assessment or an alleged lack of notice of that assessment.
23 Read as a whole, Houston Land & Cattle Co. arguably might be
24 better interpreted as a forfeiture case rather than a standing
25 case. That is to say, because the prior owners had forfeited any
26 rights to contest the appraisals or lack of notice thereof, the
27 prior owners had no surviving challenge rights that they could
28 have passed to a successor owner. Id. at 623-25.

24 In any event, CM Reed Almeda has not challenged the
25 bankruptcy court's "standing" holding on appeal. Moreover, even
26 if CM Reed Almeda had challenged this holding, it would be
27 unnecessary for us to review it because the bankruptcy court's
28 timeliness ruling adequately supports its denial of the § 505
motion for the 2007, 2008 and 2009 tax years. We can affirm on
any ground supported by the record. Fresno Motors, LLC v.
Mercedes Benz USA, LLC, 771 F.3d 1119, 1125 (9th Cir. 2014).

1 to 2014.

2 On appeal, CM Reed Almeda has not disputed that, before it
3 filed its § 505 motion, the time had expired directly to
4 challenge the 2007 through 2014 tax assessments. Nor has CM Reed
5 Almeda challenged on appeal the bankruptcy court's determination
6 that Texas Tax Code § 41.411 is the exclusive remedy available to
7 contest notice of taxes assessed. See Heritage Operating, L.P.,
8 496 S.W.3d at 323 (citing Texas Tax Code § 42.09 and stating
9 "[a]ny ground of protest that the Code authorizes can be
10 adjudicated only by the procedures it prescribes"); Houston Land
11 & Cattle Co., 104 S.W.3d at 624 (citing Texas Tax Code § 42.09
12 and stating "[t]he Tax Code provides the exclusive remedy for
13 adjudication of property tax protests."). Nor has CM Reed Almeda
14 argued that its alleged failure to receive notice: (1) affected
15 the validity of the tax assessments or the underlying appraisals,
16 or (2) absolved it of an affirmative duty to contest the tax
17 assessments or the underlying appraisals. See Denton Cent.
18 Appraisal v. CIT Leasing, 115 S.W.3d 261, 265-66 (Tex. Ct. App.
19 2003); see also Texas Tax Code § 25.19(d).

20 CM Reed Almeda specifically and distinctly argues only one
21 timeliness issue in its appeal brief - that the bankruptcy court
22 erred when it held that Harris County's proofs of claim
23 constituted sufficient notice of the taxes assessed to trigger
24 the 125-day extension period under Texas Tax Code § 41.44(c-3).
25 Without citing any authority in support, CM Reed Almeda argues
26 that the type of "written notice" referenced in Texas Tax Code
27 § 41.44(c-3) is the same type of "written notice" required under
28 Texas Tax Code § 25.19, which specifies the type of notice the

1 chief appraiser must give property owners when (inter alia) the
2 appraised value of the taxed property increases from the prior
3 year. Texas Tax Code § 25.19(a). Such notice generally must
4 include:

5 (1) a list of the taxing units in which the property is
6 taxable;

7 (2) the appraised value of the property in the
8 preceding year;

9 (3) the taxable value of the property in the preceding
10 year for each taxing unit taxing the property;

11 (4) the appraised value of the property for the current
12 year, the kind and amount of each exemption and partial
13 exemption, if any, approved for the property for the
14 current year and for the preceding year, and, if an
15 exemption or partial exemption that was approved for
16 the preceding year was canceled or reduced for the
17 current year, the amount of the exemption or partial
18 exemption canceled or reduced;

19 (5) if the appraised value is greater than it was in
20 the preceding year, the amount of tax that would be
21 imposed on the property on the basis of the tax rate
22 for the preceding year;

23 (6) in italic typeface, the following statement: "The
24 Texas Legislature does not set the amount of your local
25 taxes. Your property tax burden is decided by your
26 locally elected officials, and all inquiries concerning
27 your taxes should be directed to those officials";

28 (7) a detailed explanation of the time and procedure
for protesting the value;

(8) the date and place the appraisal review board will
begin hearing protests; and

(9) a brief explanation that the governing body of each
taxing unit decides whether or not taxes on the
property will increase and the appraisal district only
determines the value of the property.

Texas Tax Code § 25.19(b).

However, nothing on the face of Texas Tax Code § 41.44(c-3)
or in the context in which it uses the term "written notice"
supports CM Reed Almeda's assertion that the two Texas Tax Code

1 statutes require the same type of notice. To the contrary, Texas
2 Tax Code § 41.44(c-3) was drafted to address a specific, narrow
3 due process defect in the prior version of the Texas Tax Code
4 that sometimes left some property owners without any remedy when
5 the property owner received no notice of the taxes assessed
6 before they became delinquent. See Heritage Operating, L.P.,
7 496 S.W.3d at 325 (citing Indus. Commc'ns, Inc. v. Ward Cty.
8 Appraisal Dist., 296 S.W.3d 707, 715-17 (Tex. Ct. App. 2009)).
9 Under Texas law, "due process is satisfied if the taxpayer is
10 given an opportunity to be heard before some assessment board at
11 some stage of the proceedings." Denton Cent. Appraisal Dist.,
12 115 S.W.3d at 266. Because this due process standard sets a
13 relatively low bar for notice requirement purposes, we are not
14 persuaded that the detailed notice requirements of Texas Tax Code
15 § 25.19(b) apply to the notice requirement set forth in Texas Tax
16 Code § 41.44(c-3). Cf. Rio Valley, LLC v. City of El Paso,
17 441 S.W.3d 482, 492 (Tex. Ct. App. 2014) (citation served in
18 delinquent tax suit was sufficient to constitute "written notice
19 of the taxes" within the meaning of Texas Tax Code § 41.44(c-3)).

20 Harris County's proofs of claim gave CM Reed Almeda notice
21 of the taxes assessed for each of the tax years between 2007 and
22 2014. With respect to tax years 2007 through 2013, Harris
23 County's proof of claim no. 1-1 gave CM Reed Almeda notice of the
24 taxes nearly two years before CM Reed Almeda filed its § 505
25 motion. As for the 2014 taxes, Harris County's proof of claim
26 no. 3-1 gave CM Reed Almeda notice of the taxes roughly 150 days
27 before CM Reed Almeda filed its § 505 motion.

28 We need not decide precisely what type of notice is

1 sufficient in every instance to satisfy the due process concerns
2 underlying Texas Tax Code § 41.44(c-3)'s 125-day window. It
3 suffices to say here that Harris County's proofs of claim were
4 sufficient to trigger this 125-day notice period, which expired
5 before CM Reed Almeda filed its § 505 motion.

6 Therefore, the bankruptcy court correctly held that CM Reed
7 Almeda's notice-based tax protest for taxes assessed in 2014 and
8 before was untimely and correctly concluded that it had no
9 authority under § 505 to determine CM Reed Almeda's tax liability
10 for those tax years.

11 **B. Abstention Issue**

12 For the 2015 and 2016 tax years, the delinquency date for
13 payment of taxes had not yet occurred, so the period for
14 protesting 2015 and 2016 taxes had not yet closed at the time
15 CM Reed Almeda filed its § 505 motion. Thus, relief under § 505
16 was not time barred for the 2015 and 2016 tax years. However,
17 the bankruptcy court relied upon the discretionary abstention
18 doctrine to determine that it would abstain from determining
19 CM Reed Almeda's tax liability for the 2015 and 2016 tax years.

20 The bankruptcy court applied two different discretionary
21 abstention tests and held that, under either test, discretionary
22 abstention was appropriate. The first test has been used outside
23 the Ninth Circuit specifically to resolve the question of whether
24 the bankruptcy court should exercise its discretion under § 505
25 to determine the debtor's tax liability.⁶ The second test -

26
27 ⁶As articulated by the bankruptcy court the factors in the
28 first test are:

(continued...)

1 enunciated in Christensen v. Tucson Estates, Inc. (In re Tucson
2 Estates, Inc.), 912 F.2d 1162, 1167 (9th Cir. 1990) - is used in
3 the Ninth Circuit and elsewhere to resolve discretionary
4 abstention questions arising under § 1334(c)(1). Neither party
5 on appeal disputes the correctness of applying the Tucson Estates
6 test in determining whether a bankruptcy court should hear and
7 decide a § 505 motion. Furthermore, virtually all of the factors
8 in the first test are subsumed within the Tucson Estates test.
9 Therefore, we will assume without deciding that application of
10 the Tucson Estates test is the correct means for determining
11 whether a bankruptcy court should abstain from hearing and
12 deciding a motion under § 505.

13 The Tucson Estates test sets forth the following factors for
14 consideration:

15 (1) the effect or lack thereof on the efficient
16 administration of the estate if a Court recommends
17 abstention, (2) the extent to which state law issues
18 predominate over bankruptcy issues, (3) the difficulty
19 or unsettled nature of the applicable law, (4) the

19 ⁶(...continued)

20 (1) the complexity of the tax issues to be decided;

21 (2) the need to administer the bankruptcy case in an
22 orderly and efficient manner;

23 (3) the burden on the bankruptcy court's docket;

24 (4) the length of time required for trial and decision;

25 (5) the asset and liability structure of the debtor;
26 and

27 (6) the prejudice to the taxing authority.

28 Mem Dec. (May 31, 206) at 15:16-16:4 (citing IRS v. Luongo
(In re Luongo), 259 F.3d 323, 330 (5th Cir. 2001)).

1 presence of a related proceeding commenced in state
2 court or other nonbankruptcy court, (5) the
3 jurisdictional basis, if any, other than 28 U.S.C.
4 § 1334, (6) the degree of relatedness or remoteness of
5 the proceeding to the main bankruptcy case, (7) the
6 substance rather than form of an asserted "core"
7 proceeding, (8) the feasibility of severing state law
8 claims from core bankruptcy matters to allow judgments
9 to be entered in state court with enforcement left to
10 the bankruptcy court, (9) the burden of [the bankruptcy
11 court's] docket, (10) the likelihood that the
12 commencement of the proceeding in bankruptcy court
13 involves forum shopping by one of the parties, (11) the
14 existence of a right to a jury trial, and (12) the
15 presence in the proceeding of nondebtor parties.

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

18 **1. Tucson Estates Factors 1 & 6 - Effect of Abstention on**
19 **Case Administration and Relationship Between Main**
20 **Bankruptcy Case and Proceeding in Question**

21 The bankruptcy court opined that abstention would not
22 negatively impact administration of CM Reed Almeda's bankruptcy
23 case. At the time of the bankruptcy court's decision,
24 administration of CM Reed Almeda's single-asset bankruptcy estate
25 hinged on a sale of the land, and no sale had yet been
26 consummated. More importantly, the court noted that the debtor
27 "has always contemplated" a liquidating plan to resolve its
28 chapter 11 case and that "the debtor has no general unsecured
creditors" who would be inconvenienced by any delay in
distribution of any future sale proceeds pending resolution of
the parties' surviving tax disputes. The court also found
telling the fact that CM Reed Almeda had made no effort to seek
any determination of any of its tax liability until roughly two
years after the bankruptcy case was commenced and Harris County
filed its proof of claim covering tax years 2007 through 2013.

1 On appeal, CM Reed Almeda essentially contends that the
2 estate's inability to pay any creditors until the tax dispute
3 with Harris County is resolved is sufficient impact on
4 administration of the estate, and a sufficient relationship to
5 the main case, to militate against abstention. But CM Reed
6 Almeda: (1) did not challenge any of the facts the bankruptcy
7 court relied upon in assessing the relationship and impact
8 factors; (2) did not challenge any of the inferences the
9 bankruptcy court drew from those facts; and (3) did not challenge
10 the court's application of those facts in weighing the first and
11 sixth Tucson Estates factors. Simply put, CM Reed Almeda has not
12 demonstrated that the bankruptcy court's application of the
13 correct legal standard "was illogical, implausible, or without
14 support in inferences that may be drawn from the facts in the
15 record." Hinkson, 585 F.3d at 1262-63. Nor is any such
16 misapplication evident to us.

17 **2. Tucson Estates Factors 2 & 3 - The Predominance of**
18 **State Law Issues and their Complexity or Difficulty**

19 As the bankruptcy court put it, "the [§] 505 motion involves
20 only state law issues," and "[r]esolution of those issues is more
21 complex than asserted by the debtor." The bankruptcy court
22 explained that contesting the assessed value of the land and
23 determining the extent to which anticipated remediation costs
24 could be taken into account would be governed by state law and
25 that the parties appeared to disagree regarding these issues
26 given the positions they asserted in their moving and opposition
27 papers.

28 On appeal, CM Reed Almeda posits that the legal issues the

1 bankruptcy court expressed concern over were not really in
2 dispute. Instead, it contended that the parties' dispute focused
3 exclusively on a factual issue: the prospective costs of
4 remediation. CM Reed Almeda has not explained why the bankruptcy
5 court's perception of the anticipated litigation was incorrect or
6 even why its own perception might be more correct than the
7 bankruptcy court's on this issue. Put another way, CM Reed
8 Almeda has not demonstrated that the bankruptcy court's
9 assessment of Tucson Estates Factors 2 & 3 was illogical,
10 implausible, or without support in the record.

11 **3. Tucson Estates Factor 4 - Pending Related Proceeding**
12 **Before a State Court or Tribunal**

13 The bankruptcy court conceded that there was no state
14 proceeding pending to address CM Reed Almeda's disputed tax
15 liability, but the court gave this factor little weight. For the
16 tax years 2015 and 2016, the bankruptcy court pointed out that CM
17 Reed Almeda could avail itself in Texas of the procedures and
18 grounds for contesting Harris County's tax assessments permitted
19 under Texas law and that there was no legitimate need to
20 substitute a Nevada bankruptcy court for the Texas tribunals
21 available to address the disputed tax liability.

22 Citing Security Farms v. Int'l Bhd. of Teamsters, 124 F.3d
23 999, 1009 (9th Cir. 1997), CM Reed Almeda argues on appeal that
24 the absence of a pending state proceeding is fatal to the
25 bankruptcy court's discretionary abstention ruling. But CM Reed
26 Almeda's reliance on Security Farms is misplaced. The absence of
27 a pending state proceeding is not dispositive here. If we were
28 to hold to the contrary - that the absence of a pending state

1 proceeding is dispositive - our holding would be in conflict with
2 In re Tucson Estates, 912 F.2d at 1167, and Eastport Assocs. v.
3 City of Los Angeles (In re Eastport Assocs.), 935 F.2d 1071,
4 1075-76 (9th Cir. 1991). Both Tucson Estates and Eastport
5 Assocs. identified "the presence of a related proceeding
6 commenced in state court or other nonbankruptcy court" as one of
7 a dozen factors to weigh in deciding whether to apply
8 discretionary abstention. If the presence of a state court
9 proceeding was a mandatory requirement, both Tucson Estates and
10 Eastport Assocs. would have specified that the presence of a
11 state proceeding was an absolute prerequisite, rather than merely
12 identifying it as one of twelve factors the bankruptcy court
13 needed to consider and weigh.

14 Our analysis is supported by Schulman v. California
15 (In re Lazar), 237 F.3d 967, 981-82 (9th Cir. 2001). Lazar, like
16 Security Farms, involved an action removed from state court to
17 the bankruptcy court. Lazar followed Security Farms and
18 generally held that, as a consequence of the removal, no state
19 court action thereafter existed, so both 28 U.S.C. § 1334(c) (1)
20 permissive abstention and 28 U.S.C. § 1334(c) (2) mandatory
21 abstention were unavailable. Lazar, 237 F.3d at 981-82.

22 In a footnote, Lazar acknowledged Eastport Assocs. and
23 pointed out that Eastport Assocs. applied the Tucson Estates
24 twelve-factor test for determining the propriety of permissive
25 abstention even though no state proceeding had been commenced.
26 Lazar, 237 F.3d at 982 n.17. Instead of treating Security Farms
27 and Eastport Assocs. as being in conflict, Lazar harmonized the
28 two by effectively limiting its holding (and Security Farms'

1 holding) to actions removed to the bankruptcy court under
2 28 U.S.C. § 1452(a). Lazar, 237 F.3d at 982 n.17.

3 Here, Security Farms does not apply because the action in
4 the bankruptcy court was not a removed state court action. Thus,
5 we reject CM Reed Almeda's argument that the bankruptcy court's
6 grant of discretionary abstention was fatally defective in the
7 absence of a pending state action on the parties' tax dispute.⁷

8 **4. Tucson Estates Factor 5 - Alternate Bases For Federal**
9 **Jurisdiction**

10 The bankruptcy court stated that § 505 was jurisdictional in
11 nature and provided an alternate ground for federal jurisdiction
12 in addition to 28 U.S.C. § 1334(b). See generally Mantz v. Cal.
13 State Bd. of Equalization (In re Mantz), 343 F.3d 1207, 1211 (9th
14 Cir. 2003) (describing § 505 as a jurisdictional grant of
15 authority). Nonetheless, the bankruptcy court concluded that, to
16 the extent the existence of an alternate ground for federal
17 jurisdiction ordinarily might weigh against abstention, this
18 weight was offset by the plain language of § 505, which makes the
19 exercise of jurisdiction under § 505 permissive rather than
20 mandatory.

21
22 ⁷This Panel previously held in In re Bankruptcy Petition
23 Preparers Who Are Not Certified Pursuant to Requirements of
24 Arizona Supreme Court, 307 B.R. at 140, that Security Farms'
25 holding only applied to mandatory abstention requests. It is
26 difficult to reconcile Bankruptcy Petition Preparers with Lazar,
27 which held that both permissive and mandatory abstention
28 doctrines are unavailable in actions removed from state court.
Because we hold that Lazar supports the bankruptcy court's
application of discretionary abstention, we need not further
address here the apparent tension between Lazar and Bankruptcy
Petition Preparers.

1 On appeal, CM Reed Almeda completely ignores the bankruptcy
2 court's Tucson Estates Factor 5 analysis and merely states "No
3 other basis for jurisdiction exists." This statement is wholly
4 unsupported and does not meaningfully challenge the bankruptcy
5 court's analysis. Thus, CM Reed Almeda has not demonstrated that
6 the bankruptcy court's assessment of Tucson Estates Factor 5 was
7 illogical, implausible, or without support in the record.

8 **5. Tucson Estates Factors 7 & 8 - Substance Rather than**
9 **Form of "Core" Proceeding and Feasibility of Severing**
10 **State Law Claims From Core Bankruptcy Matters**

11 The bankruptcy court did not say much about these two
12 factors, except to state that "[t]here are no 'core' bankruptcy
13 matters to be severed." We do not agree with this statement.
14 When, as here, tax liability has been asserted in proofs of claim
15 filed in the bankruptcy case, a § 505 motion seeking a
16 determination of the debtor's tax liability falls within the
17 ambit of 28 U.S.C. § 157(b)(2)(B), which identifies as "core" the
18 allowance or disallowance of claims against the estate.
19 Moreover, the motion "arises under Title 11" because § 505 in
20 essence creates a "cause of action" for the determination of tax
21 liability. 28 U.S.C. § 157(a); see also Wilshire Courtyard v.
22 Cal. Franchise Tax Bd. (In re Wilshire Courtyard), 729 F.3d 1279,
23 1285 (9th Cir. 2013) ("Proceedings 'arising under' title 11
24 involve causes of action created or determined by a statutory
25 provision of that title.").

26 Nonetheless, even if this tax dispute qualifies as a core
27 proceeding, this does not necessarily mean that these two Tucson
28 Estates factors militate against abstention. To the contrary,

1 the seventh Tucson Estates factor requires us to focus on the
2 **substance** of the "core" proceeding. Here, that substance is a
3 dispute over taxes arising under state law, which dispute could
4 and would arise regardless of the intervening bankruptcy case.
5 And the eighth Tucson Estates factor requires us to focus on the
6 existence of state law claims and the feasibility of severing
7 them "from core bankruptcy matters to allow judgments to be
8 entered in state court with enforcement left to the bankruptcy
9 court."

10 According to CM Reed Almeda, the absence of a pending state
11 court action renders it infeasible to sever out the state law tax
12 claims. We disagree. As the bankruptcy court pointed out, Texas
13 has an entire system of tribunals and a comprehensive statutory
14 scheme for resolving disputes concerning ad valorem property
15 taxes assessed under Texas law. CM Reed Almeda has not offered
16 any reason why the Texas tribunals are incapable of effectively
17 and efficiently determining CM Reed Almeda's tax liability for
18 2015 and 2016. In fact, the only apparent impediment to
19 determining this liability in those tribunals is CM Reed Almeda's
20 failure and refusal to bring its tax dispute before those
21 tribunals.

22 In short, even though CM Reed Almeda's § 505 motion
23 qualified as a core proceeding, the seventh and eighth Tucson
24 Estates factors still militated in favor of abstention.

25 **6. Tucson Estates Factor 9 – Burden on the Bankruptcy**
26 **Court's Docket**

27 The bankruptcy court did not distinctly articulate the
28 extent of the burden on its docket that would result from its

1 hearing and deciding the § 505 motion. Even so, the bankruptcy
2 court made a number of observations relevant to this factor. The
3 court observed that "an evidentiary hearing would be required if
4 this court were to hear the 505 Motion," and that "[g]iven this
5 court's other commitments, there is no reason to believe that it
6 could hear and determine the issues the debtor has raised more
7 efficiently than the state forum." The court further observed
8 that CM Reed Almeda had offered no explanation why the court
9 should need to "start from scratch" in analyzing Texas law
10 governing the assessment of property taxes and disputes regarding
11 those assessments, "when there is a more efficient tribunal that
12 can determine the valuation issues under applicable state law."
13 In effect, the bankruptcy court's observations amount to a
14 finding that hearing the § 505 motion would constitute an
15 **unnecessary** burden on its docket.

16 Instead of addressing this burden, CM Reed Almeda on appeal
17 has merely pointed out that bankruptcy courts frequently address
18 valuation disputes and has contended that its tax dispute with
19 Harris County is nothing more than that. CM Reed Almeda's
20 appellate argument completely ignored the bankruptcy court's
21 concerns that the tax dispute is more complex than CM Reed Almeda
22 has acknowledged and that the state tax tribunals are better
23 situated to resolve the dispute more efficiently. Once again,
24 CM Reed Almeda has not demonstrated that the court's assessment
25 of the factor in question was illogical, implausible, or without
26 support in the record.

27 **7. Tucson Estates Factor 10 - Forum Shopping Concerns**

28 The bankruptcy court stated that it had developed a "strong

1 sense" of forum shopping as a result of CM Reed Almeda's conduct,
2 particularly its delay in contesting the disputed tax
3 assessments. In essence, the court reasoned that CM Reed
4 Almeda's lack of notice argument did not credibly explain the
5 extent of the delay; rather, the court inferred from CM Reed
6 Almeda's conduct an intent to delay having to pay the tax
7 liability for as long as possible, which also could explain why
8 CM Reed Almeda was insistent that the bankruptcy court should
9 hear and decide the tax dispute.

10 On appeal, CM Reed Almeda focuses on a different set of
11 facts and attempts to draw from those facts an inference that
12 Harris County is forum shopping. CM Reed Almeda ignores the
13 facts relied upon by the court and the inference of forum
14 shopping the court drew from those facts. Yet again, CM Reed
15 Almeda has not demonstrated that the court's assessment of this
16 factor was illogical, implausible, or without support in the
17 record.

18 **8. Tucson Estates Factors 11 & 12 - Jury Trial Rights and**
19 **Presence of Non-Debtor Parties**

20 The bankruptcy court effectively found that these two
21 factors were neutral - that CM Reed Almeda had no jury trial
22 right and that, regardless of whether additional government
23 entities needed to be added to the proceeding as necessary
24 parties, the other Tucson Estates factors justified the court's
25 abstention.

26 At bottom, CM Reed Almeda has done virtually nothing on
27 appeal to persuade us that the bankruptcy court's application of
28 the Tucson Estates factors "was illogical, implausible, or

1 without support in inferences that may be drawn from the facts in
2 the record.” Hinkson, 585 F.3d at 1262-63. Nor is any such
3 misapplication evident to us. Accordingly, the bankruptcy court
4 did not abuse its discretion when it decided to abstain from
5 hearing and deciding the tax dispute with respect to the 2015 and
6 2016 tax years.

7 **9. CM Reed Almeda’s Other Abstention-Related Arguments**

8 There are only two other issues we need to address. First,
9 CM Reed Almeda maintains that Harris County forfeited the
10 abstention issue by filing proofs of claim. CM Reed Almeda has
11 not supported this novel argument with any legal authority, nor
12 are we aware of any that would support it. In fact, the notion
13 that the filing of proofs of claim could strip the bankruptcy
14 court of its discretion to abstain from hearing a dispute
15 relating to those claims is wholly inconsistent with Tucson
16 Estates and its progeny.

17 Second, CM Reed Almeda argues that, if abstention were
18 appropriate with respect to the 2015 and 2016 tax years, it also
19 should have been appropriate for the 2007 through 2014 tax years.
20 This argument is nonsensical and ignores the fact that the
21 bankruptcy court was able to resolve the tax liability dispute
22 regarding the 2007 through 2014 tax years by considering the
23 discrete and relatively straightforward timeliness issue. In
24 contrast, the tax liability dispute regarding the 2015 and 2016
25 tax years could not so easily be resolved, and this distinction
26 in the complexity of the dispute was sufficient, in the
27 bankruptcy court’s eyes, to justify a different result on the
28 abstention issue. We cannot say that the bankruptcy court’s

1 justification for treating the 2007 through 2014 tax years
2 differently from the 2015 and 2016 tax years was illogical,
3 implausible or without support in the record.

4 **CONCLUSION**

5 For the reasons set forth above, the bankruptcy court's
6 order denying CM Reed Almeda's § 505 motion is AFFIRMED.

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