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NOT FOR PUBLICATION

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

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No. AZ-16-1084-JuLB
)	
Inglewood Woman's Club, Inc.)	Bk. No. 4:15-BK-15376-SHG
)	
Debtor.)	
)	
Marlene Fearing,)	
)	
Appellant.)	MEMORANDUM*

Argued and Submitted on May 18, 2017
at Phoenix, Arizona

Filed - June 7, 2017

Appeal from the United States Bankruptcy Court
District of Arizona

Honorable Scott H. Gan, Bankruptcy Judge, Presiding

Appearances: Appellant Marlene Fearing argued pro se.

Before: JURY, LAFFERTY, and BRAND, 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 8013-1.

1 This is an appeal from bankruptcy court rulings that
2 (a) dismissed a chapter 11¹ bankruptcy case because the debtor,
3 a non-profit corporation, failed to obtain attorney
4 representation; (b) denied a request by an interested party that
5 the bankruptcy court commence an independent investigation of
6 alleged criminal activity by a United States Attorney, a party
7 unrelated to the bankruptcy proceeding; and (c) denied
8 reconsideration of those rulings. For the reasons set forth
9 below, we AFFIRM.

10 I. FACTS

11 The facts are straightforward. Inglewood Woman's Club, Inc.
12 ("Debtor") filed a voluntary chapter 11 petition on December 3,
13 2015. Debtor is a non-profit corporate entity. Debtor's chief
14 executive officer is Marlene Fearing ("Ms. Fearing"), who is
15 also a creditor of the estate. The main asset of Debtor is a
16 single piece of real property located in Oro Valley, Arizona,
17 with one of the largest creditors, Stoney Canyon I Townhomes
18 Association ("Stoney Canyon"), holding a secured claim.

19 Shortly after filing the bankruptcy petition, Debtor filed
20 an application to employ the Wright Law Offices as counsel,
21 which was approved by the bankruptcy court on December 8, 2015.
22 On January 14, 2016, Ms. Fearing, acting pro se and primarily on
23 her own behalf, filed a motion entitled "Motion to Compel
24 Investigation of Stolen Assets Belonging to the Inglewood

25
26 ¹ Unless specified otherwise, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532,
28 all "Rule" references are to the Federal Rules of Bankruptcy
Procedure, and all "Civil Rule" references are to the Federal
Rules of Civil Procedure.

1 Woman's Club" (the "Motion to Compel Investigation"). Generally
2 speaking, the Motion to Compel Investigation (a) alleged that a
3 Minnesota United States Attorney stole \$2 million of Debtor's
4 assets in a prior bankruptcy case, and (b) demanded that the
5 bankruptcy court call for an independent investigation of the
6 alleged orchestrated embezzlement. The very next day, on
7 January 15, 2016, the Wright Law Offices filed a motion to
8 withdraw as counsel (the "Motion to Withdraw"), citing as cause
9 "irreconcilable differences" and an "adverse relationship"
10 between Debtor's representative, Ms. Fearing, and the Wright Law
11 Offices. On January 19, 2016, Stoney Canyon filed a response,
12 requesting that any order granting the Motion to Withdraw
13 require new counsel to file an appearance within ten calendar
14 days. The bankruptcy court set the Motion to Compel
15 Investigation and the Motion to Withdraw for hearing on
16 February 9, 2016.

17 At the February 9th hearing, the bankruptcy court granted
18 the Motion to Withdraw and denied the Motion to Compel
19 Investigation. In doing so, the court (a) gave Debtor ten days
20 to seek employment of counsel or the case would be dismissed,
21 per Stoney Canyon's request; and (b) made clear that it never
22 could grant the relief Ms. Fearing requested in the Motion to
23 Compel Investigation, as a bankruptcy court does not have
24 jurisdiction to compel an investigation of alleged crimes. On
25 February 16, 2016, the Court entered its order granting the
26 Motion to Withdraw. As a result of Debtor's failure to retain
27 new counsel, on February 22, 2016, the court entered an order
28 dismissing the case (the "Dismissal Order"). The next day,

1 Ms. Fearing, again acting primarily on her own behalf, filed a
2 request for "Hearing for Motion to Uphold Crime Statutes and
3 Adversary Complaint" (the "Second Motion to Compel
4 Investigation") asserting the same arguments set forth in the
5 Motion to Compel Investigation. The court set the matter for
6 hearing on March 22, 2016.

7 At the March 22nd hearing, the bankruptcy court treated the
8 Second Motion to Compel Investigation as a motion for
9 reconsideration of the Dismissal Order and the denial of the
10 Motion to Compel Investigation (the "Reconsideration Motion").
11 The court denied the Reconsideration Motion for two reasons.
12 First, as to the dismissal of the case, the court stated Debtor
13 did not retain counsel in the ten day time period as required by
14 the court when granting the Motion to Withdraw; therefore,
15 because, under federal law, a corporation must be represented by
16 counsel in federal court, the court denied reconsideration of
17 its decision to dismiss the case. Second, as to the motion to
18 compel a criminal investigation, the court again stressed that
19 it did not have the authority or jurisdiction to commence the
20 action requested by Ms. Fearing against the United States
21 Attorney. The court advised Ms. Fearing to look to a proper
22 forum for such relief, but noted that the bankruptcy court was
23 not the proper forum. Ms. Fearing filed a timely appeal.²

24
25 ² The timeliness of Ms. Fearing's appeal was not immediately
26 apparent. The Clerk's office sent a Notice of Deficient Notice of
27 Appeal, questioning whether the appeal was timely filed. A
28 motions panel entered an order determining that the notice of
appeal was timely filed because the Reconsideration Motion was a
(continued...)

1 **II. JURISDICTION**

2 The bankruptcy court had jurisdiction over the Dismissal
3 Order pursuant to 28 U.S.C. §§ 1334 and 157(b) (2) (A). The
4 bankruptcy court's jurisdiction over the criminal investigation
5 is discussed below. We have jurisdiction of this appeal under
6 28 U.S.C. § 158.

7 **III. ISSUES**

8 A. Whether the bankruptcy court abused its discretion in
9 dismissing the corporate debtor's chapter 11 bankruptcy case for
10 failure to obtain replacement counsel;

11 B. Whether the bankruptcy court erred in the denial of
12 Ms. Fearing's request to commence a criminal investigation;

13 C. Whether the bankruptcy court abused its discretion in
14 not granting Ms. Fearing's motion to reconsider the dismissal of
15 the case and denial of her request to commence a criminal
16 investigation.

17 **IV. STANDARD OF REVIEW**

18 We review a bankruptcy court's order to dismiss a
19 bankruptcy case for abuse of discretion. Leavitt v. Soto
20 (In re Leavitt), 171 F.3d 1219, 1223 (9th Cir. 1999); Guastella
21 v. Hampton (In re Guastella), 341 B.R. 908, 915 (9th Cir. BAP
22 2006).

23 The existence of jurisdiction is a question of law which we
24 review de novo. Bethlahmy v. Kuhlman (In re ACI-HDT Supply Co.),

25
26 _____
26 ² (...continued)

27 timely tolling motion pursuant to Rule 8002(b) (1) (D). The panel
28 then requested a formal order denying the reconsideration. That
order was filed on May 20, 2016.

1 205 B.R. 231, 234 (9th Cir. BAP 1997); Nilsen v. Neilson
2 (In re Cedar Funding, Inc.), 419 B.R. 807, 816 (9th Cir. BAP
3 2009).

4 We review a bankruptcy court's denial of a motion for
5 reconsideration for an abuse of discretion, whether the motion
6 for reconsideration is based on Civil Rule 59(e) or Civil
7 Rule 60(b). First Ave. W. Bldg., LLC v. James (In re OneCast
8 Media, Inc.), 439 F.3d 558, 561 (9th Cir. 2006); School District
9 No. 1J v. AC & S, Inc., 5 F.3d 1255, 1262 (9th Cir. 1993).

10 Under the abuse of discretion standard, we reverse only
11 when the bankruptcy court applied an incorrect legal rule or
12 where its application of the law to the facts was illogical,
13 implausible or without support in inferences that may be drawn
14 from the record. TrafficSchool.com, Inc. v. Edriver Inc.,
15 653 F.3d 820, 832 (9th Cir. 2011), citing United States v.
16 Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

17 V. DISCUSSION

18 A. The scope of the appeal

19 Following the notice of appeal, after briefing had
20 concluded, Ms. Fearing attempted to file supplemental
21 declarations and exhibits based on issues pertaining to pre-
22 appeal and post-appeal events that purportedly related to the
23 requested criminal investigation. On April 11, 2017, a motions
24 panel entered an order rejecting Ms. Fearing's supplemental
25 filings (the "April 11th Order"). In doing so, the panel stated
26 that Ms. Fearing's attempted filings contained documents which
27 were not considered by the bankruptcy court when it made its
28 rulings, noting that the sole issue on appeal was the dismissal

1 of the Debtor's bankruptcy case for failure to retain legal
2 counsel.

3 On April 27, 2017, Ms. Fearing filed a response to the
4 April 11th Order, asserting that the dismissal of the case is
5 not the sole issue on appeal. Recognizing an error in its order,
6 on April 28, 2017, the panel entered a corrective order finding
7 that the scope of the appeal includes (1) the order dismissing
8 the bankruptcy case for failure of the debtor to appear through
9 counsel, (2) the order denying the motion for criminal
10 investigation, and (3) the order denying reconsideration of
11 those rulings.

12 We agree with the motions panel and conclude that the scope
13 of this appeal includes the three issues described in its order
14 of April 28.

15 **B. The bankruptcy court's dismissal of the chapter 11 case**

16 On appeal, Ms. Fearing does not posit any argument as to
17 why the bankruptcy court abused its discretion in dismissing
18 Debtor's bankruptcy case for not retaining counsel. Nor could
19 she.

20 In federal courts an individual may proceed either pro se
21 or by an attorney. See 28 U.S.C. § 1654 ("In all courts of the
22 United States the parties may plead and conduct their own cases
23 personally or by counsel.") Although federal statutes protect an
24 individual's right to conduct her own litigation, that right has
25 never been interpreted to allow a corporation to appear pro se.
26 See Carr Enterprises, Inc. v. United States, 698 F.2d 952, 953
27 (8th Cir. 1983). Unlike an individual, a corporation is an
28 artificial entity, which can only act or appear through an

1 authorized agent. See Ritchie Grocer Co. v. Aetna Casualty &
2 Surety Co., 426 F.2d 499, 500 (8th Cir. 1970) (asserting the
3 general principle of corporate law that a corporation may only
4 act through its authorized agents); see also Env'tl. Corp. v.
5 Knight (In re Goodman), 991 F.2d 613, 618 (9th Cir. 1993)
6 (rejecting the view that a corporation is an "individual" as
7 defined by the Bankruptcy Code). As a result, it is a well-
8 settled principle that a corporation must be represented by an
9 attorney to appear in federal court. Rowland v. Cal. Men's
10 Colony, Unit II Men's Advisory Council, 506 U.S. 194, 201-02
11 (1993) ("It has been the law for the better part of two
12 centuries . . . that a corporation may appear in the federal
13 courts only through licensed counsel"); Osborn v. Bank of United
14 States, 22 U.S. 738, 830 (1824); First Hartford Corp. Pension
15 Plan & Trust v. United States, 194 F.3d 1279, 1290 (Fed. Cir.
16 1999); Pridgen v. Andresen, 113 F.3d 391, 392-93 (2d Cir. 1997);
17 In re Tamojira, Inc., 20 F. App'x 133, 133-34 (4th Cir. 2001);
18 National Indep. Theatre Exhibitors v. Buena Vista Distrib.,
19 748 F.2d 602, 609 (11th Cir. 1984); Carr Enter., Inc. v. United
20 States, 698 F.2d at 953.

21 In the instant case, the bankruptcy court did not abuse its
22 discretion by dismissing the bankruptcy case. At the February
23 9th hearing, the bankruptcy court gave Debtor ten days to retain
24 legal counsel or the case would be dismissed. When Debtor did
25 not retain counsel after twelve days, the bankruptcy court
26 entered the Dismissal Order. Although the Dismissal Order is
27 silent as to what authority the bankruptcy court relied upon to
28 dismiss the case, the court made it clear at the February 9th

1 hearing that federal law requires a corporation to be
2 represented by a licensed attorney in a bankruptcy case. Because
3 the Supreme Court has consistently held that federal law
4 requires a corporation to be represented through counsel, see
5 Rowland, 506 U.S. at 201, we conclude that the bankruptcy court
6 did not err.

7 **C. Bankruptcy court jurisdiction over criminal investigation**

8 Most of Ms. Fearing's argument takes issue with the
9 bankruptcy court's refusal to commence a criminal investigation.
10 Although Ms. Fearing argues that the bankruptcy court had the
11 jurisdictional authority to compel such investigation, she is
12 mistaken.

13 The bankruptcy court is a court of limited jurisdiction.
14 See Bd. of Governors v. MCorp Fin., Inc., 502 U.S. 32, 40
15 (1991). Bankruptcy courts fall outside of the constitutional
16 authority of Article III and derive their authority from federal
17 statutes. N. Pipeline Constr. Co. v. Marathon Pipe Line Co.,
18 458 U.S. 50, 60-87 (1982) (plurality opinion); Celotex Corp. v.
19 Edwards, 514 U.S. 300, 307 (1995) (asserting that the
20 jurisdiction of a bankruptcy court is "grounded in, and limited
21 by, statute."). Two statutes, 28 U.S.C. §§ 157(a) and 1334,
22 allow district courts to refer proceedings arising in, arising
23 under, or related to a bankruptcy case, to bankruptcy courts.
24 Although generally bankruptcy courts have jurisdiction to hear a
25 wide array of matters, the exercise of bankruptcy court
26 jurisdiction to enter any final order or judgment is limited to
27 (1) "cases under title 11," § 157(b)(1); (2) "core" bankruptcy
28 proceedings that either "arise under" the Bankruptcy Code or

1 "arise in" a case under the Code, id.; or (3) cases in which all
2 interested parties consent to the bankruptcy court entering a
3 final order in a matter that is "related to" a case under the
4 Bankruptcy Code. § 157(c)(2); see also Marathon Pipe Line,
5 458 U.S. at 68; Harris v. Wittman (In re Harris), 590 F.3d 730,
6 737 (9th Cir. 2009).

7 In the Motion to Compel Investigation, Ms. Fearing sought
8 an order from the bankruptcy court that would commence a
9 criminal investigation against a Minnesota United States
10 Attorney for allegedly stealing assets of the Debtor. At the
11 February 9th hearing, the bankruptcy court stated very clearly
12 it could not grant Ms. Fearing's request, as the court does not
13 have the jurisdiction to compel a governmental agency to
14 commence an investigation for any alleged crimes committed. The
15 court pointed out to Ms. Fearing that she must target her
16 request to an agency that would have such jurisdiction, but as a
17 court of limited jurisdiction, it was not the bankruptcy court.

18 We agree. Ms. Fearing seeks a remedy that is well outside
19 the jurisdiction of any bankruptcy court. Although, in limited
20 circumstances, a bankruptcy court may be required to report
21 violations of the law to the United States Attorney,³ no federal

22
23 ³ See 18 U.S.C. § 3057 ("Any judge . . . having reasonable
24 grounds for believing that any violation under chapter 9 of this
25 title or other laws of the United States relating to insolvent
26 debtors, receiverships or reorganization plans has been
27 committed, or that an investigation should be had in connection
28 therewith, shall report to the appropriate United States attorney
all the facts and circumstances of the case, the names of the
witnesses and the offense or offenses believed to have been
committed.") However, § 3057 does not help Ms. Fearing because

(continued...)

1 statute grants jurisdiction to a bankruptcy court to compel an
2 investigation, as Ms. Fearing requests. It is well established
3 that bankruptcy courts merely decide matters involving property
4 of the debtor and adjudicate disputes between debtors and
5 creditors. See Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 43
6 (1989). A bankruptcy court simply lacks any jurisdiction over
7 criminal proceedings. See e.g., Menk v. Lapaglia (In re Menk),
8 241 B.R. 896, 904 (9th Cir. BAP 1999) (holding that § 1334
9 grants bankruptcy courts jurisdiction only over certain "civil
10 proceedings"); Gruntz v. City of Los Angeles (In re Gruntz),
11 202 F.3d 1074, 1083 (9th Cir. 2000) (interpreting § 362(b)(1) as
12 rendering the automatic stay inapplicable to all criminal
13 proceeding consistent with "its object and policy"); Knupfer v.
14 Lindblade (In re Dyer), 322 F.3d 1178, 1192-95 (9th Cir.
15 2003) (holding that bankruptcy courts have no authority to impose
16 criminal contempt sanctions based on their punitive nature). Nor
17 does the bankruptcy court have discretion to compel governmental
18 agencies to commence criminal investigations. See e.g., Wayte v.
19 United States, 470 U.S. 598, 607 (1985) (finding that the
20 decision to prosecute is "ill-suited to judicial review").
21 Because a bankruptcy court does not have the power to compel
22 other independent governmental agencies to investigate criminal
23 matters, Ms. Fearing's request falls outside any relief the
24 bankruptcy court could have sanctioned under 28 U.S.C. §§ 157(a)

25
26 ³ (...continued)
27 creditors do not have a legal right to request the court to make
28 a report. See In re Valentine, 196 B.R. 386, 387 (Bankr. E.D.
Mich. 1996); see also In re Narumanchi, 471 B.R. 35, 44 (D. Conn.
2012).

1 or 1334. Therefore, the bankruptcy court properly denied her
2 request.

3 **D. The bankruptcy court did not abuse its discretion when it**
4 **denied the motion to reconsider**

5 The bankruptcy court did not make clear under which rule it
6 was treating Ms. Fearing's motion to reconsider.⁴

7 Notwithstanding such, we conclude that it fell under Civil
8 Rule 59(e) since the Second Motion to Compel Investigation was
9 filed within the required 14 days. Absent highly unusual
10 circumstances, a motion under Civil Rule 59(e) should not be
11 granted unless the court is presented with newly discovered
12 evidence, committed clear error, or if there is an intervening
13 change of controlling law. 389 Orange St. Partners v. Arnold,
14 179 F.3d 656, 665 (9th Cir. 1999). A motion for reconsideration
15 is not for rehashing the same arguments made the first time or
16 to assert new legal theories or new facts that could have been
17 raised at the initial hearing. Greco v. Troy Corp., 952 F.2d 406
18 (9th Cir. 1991).

19 In the ruling, the bankruptcy court first determined that
20 it could not grant reconsideration of the dismissal of the case.
21 The court stated that when it granted the Motion to Withdraw, it
22 gave Debtor ten days to seek employment of counsel or the case
23 would be dismissed. Debtor did not retain counsel. Therefore,
24 because the bankruptcy court, per Supreme Court mandate, could

26 ⁴ Treating the Second Motion to Compel Investigation as a
27 motion to reconsider was solely the court's interpretation of
28 Ms. Fearing's motion; Ms. Fearing did not specify which rule
governed her motion.

