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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

ORDERED PUBLISHED

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

In re:)	BAP No. SC-07-1422-KMkDo
)	
RANDALL M. HICKMAN,)	Bk. No. 07-02628
)	
Debtor.)	
_____)	
)	
RANDALL M. HICKMAN,)	
)	
Appellant,)	
)	
v.)	OPINION
)	
LINDA HANA; A.A. PERLMUTTER;)	
GERALD DAVIS, Chapter)	
7 Trustee,)	
)	
Appellees.)	
_____)	

Argued and Submitted on January 23, 2008
at San Diego, California

Filed - March 20, 2008

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

Honorable John J. Hargrove, Chief Bankruptcy Judge, Presiding

Before: KLEIN, MARKELL, and DONOVAN,¹ Bankruptcy Judges.

¹ Hon. Thomas B. Donovan, U.S. Bankruptcy Judge for the
Central District of California, sitting by designation.

1 KLEIN, Bankruptcy Judge:

2
3 The chapter 7 debtor, who developed "buyer's remorse" when
4 the trustee and creditors became aggressive, appeals the denial
5 of his motion to dismiss his case. He contends his desire to
6 return to state court and exercise his Seventh Amendment jury
7 trial right against a creditor who sued him in bankruptcy trumps
8 the effect of his having invoked equity by filing bankruptcy and
9 provides compelling "cause" to dismiss under 11 U.S.C. § 707(a).
10 We hold that, by filing the chapter 7 case, the debtor invoked
11 equitable bankruptcy jurisdiction in which the Seventh Amendment
12 jury right does not apply in proceedings to restructure his
13 debtor-creditor relations and that his later change of mind does
14 not constitute sufficient § 707(a) "cause" to dismiss the case so
15 as to overcome opposition to dismissal. Hence, we AFFIRM.

16
17 FACTS

18 At the first session of the meeting of creditors in the
19 voluntary chapter 7 case of appellant Randall Hickman on June 25,
20 2007, trustee Gerald Davis was not satisfied that assets and
21 financial dealings were accurately disclosed. He continued the
22 meeting until July 16, 2007, to afford Hickman time to amend his
23 schedules and statements and to turn over records, including bank
24 statements, an accounting for a trust, and a tax return.

25 Hickman was so distressed by the June 25 interrogation
26 conducted on behalf of Linda Hana, who was the plaintiff in an
27 automatically stayed state-court action against him, that he
28 "decided to simply dismiss the bankruptcy and litigate the issues

1 in state court before a jury of my peers."²

2 Hickman did not attend the July 16 session, did not obey the
3 trustee's direction to produce information and records, and did
4 not file the promised amendments of his schedules and statement
5 of financial affairs. The meeting was continued several more
6 times and remained uncompleted when this appeal was filed.

7 Three adversary proceedings were filed against Hickman in
8 August 2007. Hana filed a nondischargeability action under 11
9 U.S.C. § 523(a)(4) and (6). A.A. Perlmutter sought to except his
10 judicially-confirmed arbitration award from discharge under
11 § 523(a)(2). The trustee objected to Hickman's discharge.

12 Hickman filed a motion to dismiss the chapter 7 case on
13 September 20, 2007, asserting that his preference for jury trial
14 in the Hana dispute provided "cause" to dismiss under § 707(a) so
15 that a jury trial could be heard in state court.

16 Having been truant from the July 16 and August 23 sessions,
17 Hickman attended a continued meeting of creditors on September
18 27, 2007, at which time he had not yet amended his schedules but
19 did produce some of the requested documentation. The partial
20 production revealed transfers of \$53,000 to Hickman's son.

21 Hickman amended his schedule of assets on October 5, 2007,
22 adding interests in six entities and a counterclaim against Hana
23 for the amount of a \$2,317,539.50 judgment debt against Hickman.

24
25 ² Decl. of Randall M. Hickman in Support of Motion to
26 Dismiss (9/20/07) at 3 ("Hana's attorney began interrogating me
27 at the 341a [sic] hearing and I felt that the hearing was
28 becoming a deposition or a quasi-trial. I discussed my concerns
with my counsel and decided to simply dismiss the bankruptcy and
litigate the issues in state court before a jury of my peers.").

1 At the hearing on Hickman's motion, two creditors and the
2 trustee opposed dismissal of the case. No creditor supported
3 dismissal. Hickman argued his right to trial by jury in
4 nonbankruptcy court constituted "cause" to dismiss the case,
5 which he saw as not harming creditors. The order denying the
6 motion was entered November 7, 2007. This timely appeal ensued.

7 8 JURISDICTION

9 Subject-matter jurisdiction was founded on 28 U.S.C. § 1334
10 over this core proceeding under 28 U.S.C. § 157(b)(2)(A) and (I).
11 An order denying a motion to dismiss a bankruptcy case is
12 ordinarily interlocutory. Sherman v. SEC (In re Sherman), 491
13 F.3d 948, 967 n.24 (9th Cir. 2007) (chapter 7); Dunkley v. Rega
14 Props., Ltd. (In re Rega Props., Ltd.), 894 F.2d 1136, 1137-39
15 (9th Cir. 1990) (chapter 11). We exercised our authority to grant
16 leave to appeal the interlocutory order, fixed an expedited
17 schedule, and declined to issue a stay pending appeal. Hence,
18 our jurisdiction is founded upon 28 U.S.C. § 158(a)(3).

19 20 ISSUES

21 1. Whether a voluntary chapter 7 debtor can compel
22 dismissal of a chapter 7 case because he decides he prefers his
23 Seventh Amendment jury trial right over restructuring debtor-
24 creditor relations under equitable bankruptcy jurisdiction.

25 2. Whether the bankruptcy court abused its discretion in
26 concluding that the movant did not demonstrate "cause" sufficient
27 to warrant dismissal of the bankruptcy case under § 707(a).

1 STANDARD OF REVIEW

2 We review the denial of debtor's motion to dismiss his
3 chapter 7 case for abuse of discretion. Bartee v. Ainsworth (In
4 re Bartee), 317 B.R. 362, 365 (9th Cir. BAP 2004). If the trial
5 court applied a correct legal standard and did not operate under
6 a clearly erroneous view of the facts, we can reverse only if we
7 have a definite and firm conviction that there was a clear error
8 of judgment in the conclusion reached. United States v. Finley,
9 301 F.3d 1000, 1007 (9th Cir. 2002); Bartee, 317 B.R. at 365.

10
11 DISCUSSION

12 Hickman found bankruptcy inhospitable. The trustee asked
13 hard questions and objected to discharge. Creditors filed
14 nondischargeability actions. Hickman wanted to extricate himself
15 by having the case dismissed. The court rejected his argument
16 that a new-found Seventh Amendment preference for jury trial in a
17 nonbankruptcy court constituted sufficient "cause" under § 707(a)
18 to dismiss his voluntary case over opposition and was not
19 persuaded that the balance of interests favored dismissal.

20
21 I

22 As Hickman relies primarily upon his Seventh Amendment right
23 to trial by jury in the dispute with Hana as the basis to provide
24 the "cause" warranting dismissal under § 707(a), we must resolve
25 the embedded question of whether a chapter 7 debtor has a right
26 to jury trial in a dispute with a creditor who files a
27 nondischargeability action against him in bankruptcy court. If
28 so, then the alternatives (in absence of consent to jury trial in

1 bankruptcy court) would be either to have the reference under 11
2 U.S.C. § 157(a) withdrawn for a jury trial to occur in district
3 court or to permit the matter to be tried in state court. If,
4 however, there is no right to jury trial in the pertinent
5 bankruptcy litigation, then the dilemma does not arise.

6 We have held that a creditor has no right to trial by jury
7 on a § 523 nondischargeability issue and have suggested that the
8 same result would apply to debtors, but we have not heretofore
9 made a debtor-specific analysis. Locke v. United States Tr. (In
10 re Locke), 205 B.R. 592, 599-600 (9th Cir. BAP 1996).

11
12 A

13 We start with the nature of bankruptcy jurisdiction.
14 Despite lurking questions about the parameters of legal and
15 equitable bankruptcy jurisdiction, it is long settled that
16 bankruptcy courts are primarily courts of equity where actions
17 involving the process of allowance and disallowance of claims or
18 the restructuring of the debtor-creditor relationship are
19 "triable only in equity" with "no Seventh Amendment right to a
20 jury trial." Langenkamp v. Culp, 498 U.S. 42, 44-45 (1990);
21 Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 59 & n.14 (1989)
22 ("Granfinanciera"); Katchen v. Landy, 382 U.S. 323, 336-38
23 (1966); Barton v. Barbour, 104 U.S. 126, 133-34 (1881).

24 In those situations in which there is a jury trial right,
25 such as in Granfinanciera, the Seventh Amendment and bankruptcy
26 jurisdiction coexist in the sense that there is no impediment to
27 the conduct of a jury trial within the umbrella of bankruptcy
28 jurisdiction under 28 U.S.C. § 1334. Granfinanciera, 492 U.S. at

1 50. Whether the bankruptcy court or the district court conducts
2 the trial depends upon whether the district court has authorized
3 the bankruptcy judges of the district to conduct jury trials and
4 whether the parties have consented. 28 U.S.C. § 157(e); Fed. R.
5 Bankr. P. 9015. In the absence of such permission and consent,
6 trial occurs in the district court.

7 When a creditor files a claim in bankruptcy, that claim and
8 all counterclaims are triable in equity without a jury even
9 though such claims or counterclaims are otherwise legal in nature
10 and entitled to trial by jury. Langenkamp, 498 U.S. at 44;
11 Granfinanciera, 492 U.S. at 58. This extends to claims for
12 affirmative relief. Langenkamp, 498 U.S. at 44 (i.e., claims
13 that are "integral to the restructuring of the debtor-creditor
14 relationship through the bankruptcy court's equity jurisdiction."
15 [emphasis in original]); Katchen, 382 U.S. at 334-35.

16 The rationale is that by "invoking the court's jurisdiction
17 to establish [one's] right to participate in the distribution"
18 one subjects himself to "all the consequences that attach to an
19 appearance." Alexander v. Hillman, 296 U.S. 222, 241 (1935),
20 quoted with approval by, Katchen, 382 U.S. at 335, and
21 Granfinanciera, 492 U.S. at 59 n.14. Thus, by filing a claim,
22 the creditor triggers the claim allowance process that is
23 "integral to the restructuring of the debtor-creditor
24 relationship through the bankruptcy court's equity jurisdiction"
25 and "subject[s] himself to the bankruptcy court's equitable
26 power."³ Langenkamp, 498 U.S. at 44 (emphasis omitted).

27
28 ³Arguably, the statute excepts personal injury tort and
wrongful death claims that, per 28 U.S.C. § 157(b)(5), "shall be
(continued...)

We are presented, however, with a different question: the right of a chapter 7 debtor, not a claim-filing creditor, to trial by jury. The answer may nevertheless be drawn from the rationale of Supreme Court decisions involving creditors.

B

The precise question focuses upon the Hana litigation because the only jury right in sight applied to the Hana dispute that was pending in the state trial court before bankruptcy.

The procedural posture before us is that Hana filed an adversary proceeding in which she sought to except a debt from discharge together with a money judgment thereon. Meanwhile, Hana's state-court action against Hickman remains pending in state court subject to the bankruptcy automatic stay.

The jurisprudential analysis of Hana's nondischargeability action is straightforward. In Granfinanciera, which is the modern manifesto of the Seventh Amendment jury trial right in bankruptcy, the Court, reaffirming Katchen ("as Katchen makes clear"), explained that "by submitting a claim against the bankruptcy estate, creditors subject themselves to the court's equitable power to disallow those claims." Granfinanciera, 492 U.S. at 59 n.14 (emphasis added).

Hickman does not have a jury trial right with respect to the determination and liquidation of the amounts at issue in Hana's § 523 adversary proceeding complaint because such claims are integral to the adjustment of the debtor-creditor relationship.

³(...continued)
tried in [a] district court" even though they implicate the
debtor-creditor relation. 28 U.S.C. § 157(b)(5).

1 Schieber v. Hooper (In re Hooper), 112 B.R. 1009, 1012-13 (9th
2 Cir. BAP 1990). We limited our ruling in Hooper, which was
3 decided after Granfinanciera but before Langenkamp, to the
4 unavailability of jury trial on the § 523 question of excepting a
5 debt from discharge and did not reach the question whether a jury
6 trial was available on the question of the quantum of damages.
7 Hooper, 112 B.R. at 1012-13.

8 The Ninth Circuit, however, later extended the Hooper result
9 to damages in a nondischargeability action. Sasson v. Sokoloff
10 (In re Sasson), 424 F.3d 864, 870 (9th Cir. 2005), cert. denied,
11 547 U.S. 1206 (2006). Under Sasson's reasoning, because
12 determination of dischargeability is "exclusively within the
13 equitable jurisdiction of the bankruptcy court, then it must
14 follow that the bankruptcy court may also render a money judgment
15 in an amount certain without the assistance of a jury." Sasson,
16 424 F.3d at 869-70 (quoting Cowen v. Kennedy (In re Kennedy), 108
17 F.3d 1015, 1017-18 (9th Cir. 1997)) (emphasis added). Hence,
18 Hickman is not entitled to a jury trial on Hana's adversary
19 proceeding complaint.

20 The focus shifts to whether the \$2,317,539.50 counterclaim
21 against Hana that Hickman lists in his amended schedules is so
22 integral to the adjustment of the debtor-creditor relationship
23 that it is subsumed within equitable bankruptcy jurisdiction.
24 While we do not know the details of the theory of the putative
25 cause of action and whether it would be a compulsory or
26 permissive counterclaim, we do know that it arose prepetition and
27 that it exactly equals the amount of a judgment against Hickman.
28 Hence, it also figures into the debtor-creditor relationship.

1 Moreover, Hickman's argument fallaciously assumes that he
2 has unfettered control over the putative counterclaim. He does
3 not. Rather the counterclaim is property of the estate that
4 belongs to the chapter 7 trustee. At most, Hickman could assert
5 it only to the extent of providing a basis for a defensive
6 offset. The question, then, is whether the Seventh Amendment
7 applies to a defensive offset that is integral to the debtor-
8 creditor relationship.

9 The Supreme Court supplied the answer in Granfinanciera when
10 it explained that the bankruptcy court's equitable power extends
11 to the resolution of counterclaims, "even though the debtor's
12 opposing counterclaims are legal in nature and the Seventh
13 Amendment would have entitled creditors to a jury trial had they
14 not tendered claims against the estate." Granfinanciera, 492
15 U.S. at 59 n.14 (emphasis added). It reasoned that such matters
16 were "integral to the restructuring of debtor-creditor
17 relations." Id. at 58. As such, the erstwhile legal issue is
18 transformed into an equitable issue.

19 It follows that Hickman has no jury trial right in the
20 bankruptcy adversary proceeding, even on the counterclaim to the
21 extent that he has the ability to assert it, because he is
22 subject to the Supreme Court's subject-themselves-to-the-court's-
23 equitable-power analysis.

24 By filing a chapter 7 case, Hickman invoked the bankruptcy
25 court's equitable jurisdiction in a more profound manner than a
26 mere creditor who has the Hobson's choice either to submit to the
27 equitable power of the court or to forego a bona fide claim. The
28 act of filing the chapter 7 case causes the equitable bankruptcy

1 proceeding to come into existence. All property of the debtor
2 and property of the estate passes into the exclusive jurisdiction
3 of the court. 28 U.S.C. § 1334(e). Hickman is a participant in
4 the distribution scheme, which is the end product of the
5 allowance and disallowance of claims. 11 U.S.C. § 726(a)(6).
6 Whether to discharge debts and whether to except particular debts
7 from discharge are questions integral to restructuring debtor-
8 creditor relations. Indeed, the filing by the debtor of the
9 bankruptcy case is the most basic instance of invoking the
10 equitable jurisdiction of the bankruptcy court.

11 The underlying principle, then, to be drawn from the Supreme
12 Court decisions is that the crucial event is the act of a chapter
13 7 debtor coming into a court of equity to seek "restructuring of
14 the debtor-creditor relationship through the bankruptcy court's
15 equity jurisdiction." Langenkamp, 498 U.S. at 44 (emphasis in
16 original). Issues that are ordinarily legal are transformed into
17 equitable issues for which jury trial is not available, and the
18 actor gives up the right to contend otherwise.⁴

19 We agree with the Sixth and Seventh Circuits that the
20 analysis does not differ as between debtor and creditor. Longo
21 v. McClaren (In re McLaren), 3 F.3d 958, 960-61 (6th Cir. 1993);
22 N.I.S. Corp. v. Hallahan (In re Hallahan), 936 F.2d 1496, 1505
23 (7th Cir. 1991). As the Seventh Circuit reasoned, if creditors
24 lose a Seventh Amendment jury trial right by filing a claim, then
25

26 ⁴Precision warrants noting that this is not a "waiver" in
27 the sense of not timely demanding a jury. Fed. R. Civ. P. 38(d).
28 Rather, the actor elects to pursue a remedial scheme in which a
jury trial is not available and agrees to be bound by the result.

1 "debtors who initially choose to invoke the bankruptcy court's
2 jurisdiction to seek protection from their creditors cannot be
3 endowed with any stronger right." Hallahan, 936 F.2d at 1505;
4 cf., Germain v. Conn. Nat'l Bank, 988 F.2d 1323, 1330 (2d Cir.
5 1993) (construing Hallahan, on remand from Supreme Court).

6 In this instance, Hickman filed the bankruptcy case to
7 restructure his debtor-creditor relationship with, among others,
8 Hana. The particular relationship with Hana involves both Hana's
9 claim against Hickman and Hickman's counterclaim against Hana.

10 To the extent that the counterclaim could lead to
11 affirmative relief, it is, as noted, property of the estate
12 controlled by the trustee as to which Hickman has no authority to
13 bind the trustee. He could, however, raise it defensively in the
14 same manner as one may be permitted to assert a time-barred claim
15 defensively, even though he could obtain no affirmative relief.
16 If he were to do so, however, Langenkamp teaches that he is not
17 entitled to trial by jury on his counterclaim.

18 Nor would such a defense strategy impair the rights of the
19 trustee to obtain an affirmative recovery in a separate action.
20 The trustee would not be bound by an outcome adverse to Hickman
21 so long as he does not become party to the action or agree to be
22 bound. RESTATEMENT (SECOND) OF JUDGMENTS §§ 27-29, 34 & 40.

23 In sum, by the act of filing the voluntary chapter 7 case,
24 Hickman invoked the equitable jurisdiction of the bankruptcy
25 court to restructure his relations with his creditors and thereby
26 agreed to litigate the adversary proceeding filed by Hana in the
27 bankruptcy court that was addressed to her claim against him, and
28 all counterclaims, in equitable proceedings in which the Seventh

1 Amendment does not apply.⁵

3 II

4 A chapter 7 bankruptcy case may be dismissed "only for
5 cause." 11 U.S.C. § 707(a). In the end, the question is whether
6 there was § 707(a) "cause" to dismiss the case.

8 A

9 The term "for cause" is defined in the Bankruptcy Code only
10 by way of a list of three examples – unreasonable delay
11 prejudicial to creditors, nonpayment of filing fees, and not
12 filing schedules – that is plainly incomplete. 11 U.S.C.
13 § 707(a)(1)-(3); Sherman, 491 F.3d at 970; Neary v. Padilla (In
14 re Padilla), 222 F.3d 1184, 1191 (9th Cir. 2000).

15 When the asserted "cause" for dismissal is not one of the
16 three items listed in § 707(a), the first question is whether the
17 asserted "cause" is contemplated by a specific Bankruptcy Code
18 provision. If so, then there is no § 707(a) "cause." Sherman,
19 491 F.3d at 970; Padilla, 222 F.3d at 1194.

20 If there is no specific Bankruptcy Code provision that
21 addresses the asserted "cause," the question becomes whether the
22 totality of circumstances amount to § 707(a) "cause." Sherman,
23 491 F.3d at 970; Leach v. United States (In re Leach), 130 B.R.

25 ⁵This appeal involves only a chapter 7 debtor's rights in
26 bankruptcy litigation involving adjustment of the debtor-creditor
27 relationship. We do not address actions that do not implicate
28 the debtor-creditor relationship. Whether a trustee, or a debtor
under another chapter, may have a jury right is left to another
day. See Germain, 988 F.2d at 1329-30 (chapter 7 trustee
entitled to jury trial on postpetition cause of action).

1 855, 856 (9th Cir. BAP 1991).

2 The dismissal decision rests within the sound discretion of
3 the court and is reversible only for abuse of discretion.

4 Schroeder v. Int'l Airport Inn P'ship (In re Int'l Airport Inn
5 P'ship), 517 F.2d 510, 511 (9th Cir. 1975) (Bankruptcy Act); Gill
6 v. Hall (In re Hall), 15 B.R. 913, 917 (9th Cir. BAP 1981) (Int'l
7 Airport Inn P'ship remains good law under Bankruptcy Code).

8 A case will not be dismissed on the motion of a debtor if
9 such dismissal would cause "some plain legal prejudice" to a
10 creditor. Int'l Airport Inn P'ship, 517 F.2d at 512; Leach, 130
11 B.R. at 857-58. The question of prejudice resulting from
12 dismissal may be evaluated using both legal and equitable
13 considerations. Leach, 130 B.R. at 856. Thus, we found abuse of
14 discretion in the dismissal of a chapter 7 case at the debtor's
15 request because "plain legal prejudice" would result from the
16 ability of the debtor to claim materially greater exemptions upon
17 a refiling, with concomitant diminution of property available to
18 be distributed to creditors. Hall, 15 B.R. at 917. Similarly,
19 we have affirmed a refusal to dismiss when the bankruptcy court
20 perceived legal prejudice. Leach, 130 B.R. at 857-58.

21
22 B

23 Hickman's theory on his motion to dismiss runs afoul of the
24 first step of the Padilla-Sherman § 707(a) test. As we have
25 already explained, while there are some rights to jury trial in
26 bankruptcy, there is no right to jury trial in Hickman's dispute
27 with Hana. Even if Hickman had such a jury trial right in
28 bankruptcy, Hickman's theory that he is entitled to have his

1 bankruptcy case dismissed fails; he could have his jury trial in
2 the federal court within the confines of federal bankruptcy
3 jurisdiction. Thus, the Seventh Amendment does not provide
4 § 707(a) "cause" to dismiss a bankruptcy case.

5 The real question on the motion to dismiss, however, was
6 whether the totality of the circumstances added up to § 707(a)
7 "cause." Sherman, 491 F.3d at 970; Leach, 130 B.R. at 856.

8 Hickman, as movant, had the burden of persuasion. Hence, he
9 had the burden to demonstrate, among other things, that there
10 would be no legal prejudice resulting from the dismissal. He
11 contended that his creditors would be better off outside
12 bankruptcy by returning to state court. Two creditors did not
13 agree and preferred to eschew the revolving door. Nor did the
14 bankruptcy trustee agree. The bankruptcy court was not persuaded
15 that Hickman met his burden on this or any other point.

16 On appeal, Hickman does not grapple with the implications of
17 his nonperformance of his duties as debtor. He shirked his duty
18 to disclose all assets and financial affairs. 11 U.S.C.
19 § 521(a)(1). That duty required him to prepare the bankruptcy
20 schedules and statements "carefully, completely, and accurately"
21 and bear the risk of nondisclosure. Diamond Z Trailer, Inc. v.
22 JZ L.L.C. (In re JZ L.L.C.), 371 B.R. 412, 417 (9th Cir. BAP
23 2007) (citing Cusano v. Klein, 264 F.3d 936, 946-49 (9th Cir.
24 2001)); In re Mohring, 142 B.R. 389, 394 (Bankr. E.D. Cal. 1992).

25 Hickman also shirked his statutory duty to cooperate with
26 the trustee. 11 U.S.C. § 521(a)(3). In fact, he largely ignored
27 the trustee, perhaps trying to manipulate his way to dismissal,
28 until the trustee objected to his discharge. This will not do.

1 A debtor invoking the protection of the Bankruptcy Code must
2 shoulder the responsibilities attendant to this protection,
3 including accounting for assets and completing schedules in good
4 faith, and may not engage in questionable or fraudulent conduct
5 and then expect to have the case dismissed once such conduct is
6 discovered. Bartee, 317 B.R. at 367.

7 In Bartee, we reasoned that unexplained discrepancies and
8 lack of cooperation with the trustee's efforts to obtain
9 information supported the bankruptcy court's ruling that the
10 debtors did not demonstrate absence of prejudice to creditors
11 upon dismissal of the case. Id. This case is no different.

12 Several other considerations undermine the force of
13 Hickman's argument that the Seventh Amendment compels dismissal
14 of the chapter 7 case. First, Hickman deliberately chose to
15 invoke equitable bankruptcy jurisdiction by filing the chapter 7
16 case in the first instance. An analogy lies in the rules
17 governing federal civil litigation, where a party's failure to
18 make a timely jury demand "constitutes a waiver by the party of
19 trial by jury." Fed. R. Civ. P. 38(d); United States v. Moore,
20 340 U.S. 616, 621 (1951). An untimely request for a jury must be
21 made by motion, over which decision the trial court has broad
22 discretion. Fed. R. Civ. P. 39(b); Chandler Supply Co. v. GAF
23 Corp., 650 F.2d 983, 987-88 (9th Cir. 1980) (denying motion); 8
24 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 39.31[3] (3d ed.
25 2007). The same rationale supports the proposition that a
26 debtor's post-bankruptcy desire for a jury trial on an issue that
27 would be resolved in bankruptcy without a jury is not apodictic.

28 Second, the putative \$2,317,539.50 counterclaim against Hana

1 is a cause of action that is property of the estate that Hickman
2 is not entitled to control over the objection of the chapter 7
3 trustee. To the extent it has merit (we so assume purely for
4 purposes of analysis), Hickman has already committed himself to
5 sharing the proceeds with his creditors. Correlatively,
6 dismissal would operate to abandon all assets, including the
7 counterclaim, to the potential detriment of creditors.

8 Finally, there is an important interest related to the
9 integrity of the bankruptcy system. When a debtor's choice to
10 commence a chapter 7 case backfires, a debtor is not entitled to
11 escape by awarding himself a dismissal either by declining to
12 perform his statutory duties or by recanting the commitment to
13 have debtor-creditor relations adjusted in equitable proceedings.

14 In short, considerations pertinent to "cause" in this
15 instance, in addition to Hickman's desire to extricate himself
16 from an uncomfortable predicament, included the views of
17 creditors, the state of Hickman's compliance with his duties as a
18 chapter 7 debtor, and the view of the chapter 7 trustee.

19 We cannot say that the bankruptcy court abused its
20 discretion when it denied the motion to dismiss the case.

22 CONCLUSION

23 The Seventh Amendment jury trial right does not apply in
24 litigation conducted in bankruptcy court to restructure the
25 debtor-creditor relationship if the debtor is the one who
26 originally invoked the equitable jurisdiction of the bankruptcy
27 court. Here, the debtor's recantation of that choice does not
28 provide sufficient § 707(a) "cause" to dismiss over opposition.

Hence, the denial of the debtor's motion to dismiss was not an abuse of discretion. AFFIRMED.