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HAROLD S. MARENUS, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	AZ-07-1400-MoMkE
)		
EDWARD J. BALL, JR.,)	Bk. No.	03-14674
)		
Debtor.)	Adv. No.	06-00355
)		
EDWARD J. BALL, JR.,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM¹	
)		
DAVID A. BIRDSELL, Chapter 7)		
Trustee; SELLECK DEVELOPMENT)		
GROUP, INC.; DANIEL SELLECK,)		
)		
Appellees.)		
)		

Argued and Submitted on October 17, 2008
at Phoenix, Arizona

Filed - November 20, 2008

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

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

Before: MONTALI, MARKELL, and EFREMSKY,² Bankruptcy Judges.

¹ 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.

² Hon. Roger L. Efremsky, U.S. Bankruptcy Judge for the Northern District of California, sitting by designation.

1 Debtor-Appellant, Edward J. Ball ("Ball"), appeals an order
2 granting the Trustee-Appellee's Motion for Approval of Settlement
3 Agreement, and appeals an order denying his Motion for
4 Reconsideration of Trustee's Motion for Approval of Settlement
5 Agreement ("Motion to Reconsider"). Since the bankruptcy court
6 properly applied the factors set forth in Woodson³ and A & C
7 Properties,⁴ we AFFIRM its order granting the Trustee-Appellee's
8 Motion for Approval of Settlement Agreement. Furthermore,
9 because Ball offered no valid grounds as to why the court should
10 have reconsidered its decision approving the settlement agreement
11 as to the estate's claims, we AFFIRM the bankruptcy court's order
12 denying Ball's Motion to Reconsider.

13 However, because the bankruptcy court conflated the Motion
14 to Reconsider with the issue of whether the promissory note
15 consisted of property of the estate or belonged to Ball, without
16 allowing Ball to brief that issue or present any admissible
17 evidence supporting his position, we VACATE the portion of the
18 court's decision that extinguished Ball's interest in the note,
19 if any.

20 I. FACTS

21 A. Prepetition Facts

22 On November 22, 2002, Ball entered into a Settlement
23 Agreement and General Release ("Selleck Settlement Agreement")
24 with Daniel F. Selleck and Selleck Development Group, Inc.

26 ³ Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839
27 F.2d 610, 619 (9th Cir. 1987).

28 ⁴ Martin v. Kane (In re A & C Properties), 784 F.2d 1377,
1380 (9th Cir. 1986).

1 (collectively "Selleck") on one hand, and Ball, Ball Properties,
2 Inc., and Ball Development Corporation on the other.⁵ It settled
3 multiple issues and disputes between Selleck and Ball arising out
4 of their former business relationship. The terms indicate that
5 Selleck would pay Ball \$200,000 on November 20, 2002 (which Ball
6 received), and a total of \$300,000 in equal installments of
7 \$50,000 per year for the years 2003-2008, with each payment due
8 on November 18. It also states that Selleck would pay Ball a
9 total of \$60,000 in equal installments of \$5,000 per month for 12
10 months as a "consulting fee" regarding the Centrepointhe Property
11 and the State Farm development project or Moorpark Property, with
12 payments beginning in January 2003. Daniel Selleck was to
13 personally guarantee the \$360,000 and the form of guaranty was to
14 be prepared by Selleck's attorney. Finally, the Selleck
15 Settlement Agreement states that Ball would provide "reasonable
16 cooperation" in a lawsuit in Ventura County, California, Superior
17 Court captioned Selleck, et. al. v. Special Devices, Inc., et.
18 al. (the "SDI" Action").

19 Approximately four months later, on March 25, 2003, Selleck
20 and Ball entered into a Promissory Note ("Note"), which
21 incorporated and set out the same \$300,000 and \$60,000 payment
22 terms as in the Selleck Settlement Agreement. It had no interest
23 component. The Note states that it shall be guaranteed by Daniel
24 F. Selleck pursuant to the attached Personal Guaranty ("Selleck
25 Guaranty"), which was also executed on March 25, 2003.

26
27 ⁵ The parties Ball Properties Inc. and Ball Development
28 Corp. are not before us. For convenience, we continue to use the
term "Ball" to refer to either Mr. Ball individually or his
various entities.

1 **B. Postpetition Facts (2003 to 2006)**

2 Ball filed a voluntary petition under Chapter 11 on August
3 19, 2003.⁶ On the petition date, Ball was the owner and holder
4 of the Note and Selleck Guaranty, of which \$315,000 was still
5 due. David Birdsell was appointed Chapter 11 trustee ("Trustee")
6 on September 25, 2003.

7 Ball filed his Schedules and Statement of Financial Affairs
8 on or around December 2, 2003. On his Schedule B under "Accounts
9 Receivable," Ball listed, allegedly on the Trustee's direction,
10 the lawsuit settlement with Selleck including the Note's payment
11 terms and its contingent liabilities, all of which was enumerated
12 in the Selleck Settlement Agreement. In his Statement of
13 Financial Affairs under "Suits, executions, garnishments and
14 attachments," Ball, allegedly on the Trustee's direction,
15 described the Selleck Settlement Agreement as a "Business
16 Lawsuit." He did not list the Note or the Selleck Settlement
17 Agreement as an Executory Contract under Schedule G, and he did
18 not list the Selleck Settlement Agreement in Schedule C as exempt
19 property.

20 The Trustee received the first (and only) \$50,000 annual
21 installment Note payment on November 18, 2003, and the remaining
22 three \$5,000 consulting fee payments on October 30, 2003,
23 November 20, 2003, and December 31, 2003, respectively. The next
24 annual installment payment under the Note was due on November 18,

25
26 ⁶ Unless otherwise indicated, all chapter, section and rule
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and
28 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037, as
enacted and promulgated prior to the effective date of The
Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,
Pub. L. 109-8, 119 Stat. 23.

1 2004. Selleck never made the payment. Selleck took the position
2 (in February of 2005) that the Selleck Settlement Agreement was a
3 "personal services contract," and since Ball failed to cooperate
4 in the SDI Action, Selleck's obligation for the remaining
5 \$250,000 was extinguished and neither Ball nor the estate was
6 entitled to anything under the Note or Selleck Guaranty. This
7 resulted in litigation between the Trustee, Selleck, and Ball in
8 2006.

9 **C. Postpetition Facts (2006 to Present)**

10 Because Selleck continued to assert that the Selleck
11 Settlement Agreement was an executory contract for personal
12 services and therefore Selleck's obligation to pay was
13 extinguished as a result of Ball's breach, and because Ball
14 claimed the Note belonged to him as postpetition earnings, on
15 March 17, 2006, the Trustee filed his Complaint to Determine
16 Extent of Validity of Interests in Property, Declaratory
17 Judgment, and For Turnover of Property of the Estate, naming as
18 defendants Selleck Development Group, Inc., Daniel F. Selleck and
19 Jane Doe Selleck, and Ball. The Trustee sought a determination
20 that the Note was bankruptcy estate property, that Ball had no
21 right, title or interest in it, and for judgment on the remaining
22 amounts due. He later dismissed Ball from the suit.

23 On May 31, 2007, the Trustee filed a Motion for Approval of
24 Settlement Agreement seeking approval of his agreement with
25 Selleck ("Settlement Agreement") that postpetition payments
26 already made to the Trustee, and a lump-sum payment of \$100,000
27 upon approval of the settlement, would represent full and
28 complete satisfaction of the Selleck Note.

1 Ball filed his Rejection of Selleck Settlement on June 19,
2 2007. It consisted of approximately seven lines, requesting an
3 evidentiary hearing to determine if the Settlement Agreement was
4 on behalf of debtor, and whether Trustee's counsel, Daniel P.
5 Collins ("Collins"), the Trustee, and/or Selleck should be sued.
6 Furthermore, Ball asserted that both Collins and the Trustee were
7 up to something and he was sure "it [was] no good." Ball also
8 inquired as to the whereabouts of his money from Selleck.
9 Selleck and the Trustee filed replies.

10 The bankruptcy court held a hearing on the Trustee's
11 settlement motion on July 10, 2007. Although the court noted
12 that a Chapter 7 debtor like Ball essentially had no standing to
13 object to the settlement, it desired to hold the hearing because
14 "[it] needed some more information about what [was] going on
15 here." (Transcript of Hearing on Debtor's Objection to Proposed
16 Settlement 2:20-21, July 10, 2007).

17 Collins explained to the court that Selleck "had a pretty
18 strong argument that [the Selleck Settlement Agreement] was a
19 personal services contract and [was] not something that [the
20 Trustee] had the ability to assume . . .," which is why the
21 Trustee believed it was in the best interest of the estate and
22 creditors to settle the matter.

23 Ball repeatedly voiced his concerns that the Settlement
24 Agreement's language extinguished any claims he had against the
25 Note. In response, Ball was told no less than ten times by the
26 bankruptcy court, Collins, and Selleck's counsel, Philip Rudd,
27 that the Settlement Agreement proposed to settle all of the
28 estate's right to the Note, whatever the extent and validity, and

1 that Ball's claims, if any, were preserved and he was free to
2 bring them in a motion or complaint against the parties on
3 another day. Accordingly, the court made no rulings as to
4 whether the Note was property of the estate or belonged to Ball.

5 After oral argument, the court analyzed the Settlement
6 Agreement under Woodson and A & C Properties, found it to be
7 reasonable, fair and equitable, overruled Ball's objection, and
8 approved the Settlement Agreement. However, after the court
9 issued its oral ruling, Collins announced that not all creditors
10 had been noticed on the motion. Therefore, the court's order
11 entered on July 11, 2007, overruled Ball's objection to the
12 Settlement Motion, and ordered Collins to provide notice of the
13 motion to all creditors and parties-in-interest under Rule
14 2002(a)(3),⁷ which he did on July 11, 2007.

15 On August 2, 2007, the bankruptcy court authorized Ball to
16 file his Motion to Reconsider. Ball believed the bankruptcy
17 court improperly approved the Settlement Agreement without first
18 adjudicating the ownership of the Note, again asserting it was a
19 nonassumable personal services contract belonging to him, and
20 requested that the court (or a jury) determine the Note ownership
21 issue, as well as ownership of the past Note proceeds paid to the
22 Trustee.

23 Even though the court believed Ball's motion lacked any
24 facts or law supporting the position that the Note, the Selleck
25 Guaranty and Selleck Settlement Agreement were not estate

26
27 ⁷ The July 11, 2007 order did not affirmatively approve the
28 Settlement Agreement, but only overruled Ball's objection. A
final order approving the Settlement Agreement was not entered
until October 23, 2007.

1 property, the bankruptcy court agreed that resolving this core
2 issue was appropriate and entered an order on August 24, 2007,
3 directing the Trustee to file and serve a response brief and
4 setting the matter for oral argument on September 28, 2007. The
5 Trustee filed his response on September 24, 2008.

6 At the September 28 hearing, Ball immediately requested an
7 additional 30 to 45 days to prepare something similar to that of
8 the Trustee to support his position that a large portion of the
9 Note was excluded earnings under section 541(a)(6).⁸ In order to
10 simplify things, Ball also suggested that one paragraph be added
11 to the Settlement Agreement stating that Ball was not giving up
12 any of his rights to the Selleck Note, if any. Collins opposed
13 any continuance, and asserted that whether Ball had any claims
14 against Selleck from work that he did postpetition, which would
15 be excluded earnings under section 541(a)(6), was between Ball
16 and Selleck. Collins also declined Ball's invitation to
17 renegotiate the Settlement Agreement.

18 The court then proceeded to explain the circumstances under
19 which a motion to reconsider can be granted, and discussed
20 Lauglin v. Nickless, 190 B.R. 719 (D. Mass. 1996), comparing it
21 to the instant case. The court believed the Selleck Settlement
22

23 ⁸ When a debtor files for bankruptcy relief, pursuant to
24 section 541(a)(1), an estate is created which is comprised of
25 "all legal and equitable interests of the debtor in property as
26 of the commencement of the case." Section 541(a)(6) expands this
27 further, including any "proceeds, product, offspring, rents or
28 profits of or from property of the estate." However, section
541(a)(6) is limited in that any proceeds, product, offspring,
rents or profits that are earned as the result of postpetition
services, are excluded from the debtor's bankruptcy estate under
section 541(a). See Towers v. Wu (In re Wu), 173 B.R. 411, 413-
416 (9th Cir. BAP 1994).

1 Agreement did not specify any actions required by Ball in
2 connection with the \$5,000 per month consulting fee, and on the
3 contrary, it provides that if Selleck decided not to use Ball's
4 services, the unpaid portion of the consulting fee would be
5 released to Ball immediately. Indeed, the Selleck Settlement
6 Agreement represented the end of a complex and contentious
7 business relationship, not a continued partnership or employment
8 agreement between Selleck and Ball, and Ball's assertion that it
9 created a personal services contract was misplaced - the same
10 result reached in Laughlin. After this thorough analysis, the
11 court stated:

12 Viewing the postpetition payments under the agreement in
13 light of the contract as a whole, the proceeds due
14 Laughlin under the agreement were not payments for
15 services, but rather consideration for release of the
16 debtor's claims. I agree. And as such, [Ball] has no
interest in the postpetition payments and I again find
that the trustee properly resolved the estate's claims
regarding the Selleck agreement.

17 This is why I'm going to deny the motion for
18 reconsideration. My order of August 24th which set this
19 hearing simply provided for a limited response on an
20 identified issue by the trustee and did not provide an
21 opportunity for a reply by the debtor. And the debtor
22 did not object to that August 24th order. Now the - -
23 more than a month later, the debtor seeks a continuance
24 of 30 to 45 days to respond to the trustee's papers. I
25 don't think so.

26 . . . I think the legal issues established by the claim
27 of - - that the consulting agreement is some type of
28 nonestate property have been well researched and
reviewed, and I think I'm going to use my discretion to
not grant the last minute request for a further
continuance by the debtor. Accordingly, the motion for
reconsideration is denied and this concludes my ruling.

(Transcript of Hearing on Motion for Reconsideration 13:12-14:10,
September 28, 2007) (emphasis added).

1 The bankruptcy court entered an order on October 10 denying
2 Ball's Motion to Reconsider. Although the court issued an oral
3 ruling on July 10, 2007, approving the settlement, it did not
4 enter its Order Approving the Settlement Agreement until October
5 23, 2007, thus rendering it final and appealable. Ball filed his
6 timely notice of appeal on October 23, 2007, under Rule 8002(a).

7 **II. ISSUES**

8 1. Did the bankruptcy court abuse its discretion in
9 granting Trustee's Motion for Approval of Settlement Agreement?

10 2. Did the bankruptcy court abuse its discretion in
11 denying Ball's Motion to Reconsider?⁹

12 **III. STANDARD OF REVIEW**

13 The bankruptcy court's decision to approve a compromise is
14 reviewed for abuse of discretion. A & C Properties, 784 F.2d at
15 1380. As noted by the Ninth Circuit in A & C Properties:

16 The law favors compromise and not litigation for its own
17 sake (citation omitted), and as long as the bankruptcy
18 court amply considered the reasonableness of the
compromise, the court's decision must be affirmed
(citation omitted).

19 Id. at 1381. "Approving a proposed compromise is an exercise of
20 discretion that should not be overturned except in cases of abuse
21 leading to a result that is neither in the best interests of the
22 estate nor fair and equitable for the creditors." CAM/RPC Elec.
23 v. Robertson (In re MGS Mktg.), 111 B.R. 264, 266-67 (9th Cir.
24 BAP 1990).

26 ⁹ A party's notice of appeal, filed after the disposition of
27 a postjudgment motion, permits appellate review of issues raised
28 by the final judgment plus the issues raised by the postjudgment
motion. Matter of Grabill Corp., 983 F.2d 773, 775 (7th Cir.
1993).

1 The bankruptcy court's denial of a motion for
2 reconsideration is reviewed for an abuse of discretion. Hale v.
3 U.S. Trustee (In re Basham), 208 B.R. 926, 930 (9th Cir. BAP
4 1997); Weiner v. Perry, Settles & Lawson, Inc. (In re Weiner),
5 161 F.3d 1216, 1217 (9th Cir. 1998).

6 A bankruptcy court's decision whether to hold an evidentiary
7 hearing is also reviewed for an abuse of discretion. Zurich Am.
8 Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.),
9 503 F.3d 933, 939 (9th Cir. 2007).

10 Under the abuse of discretion standard, we cannot reverse
11 the bankruptcy court's ruling unless we have a definite and firm
12 conviction that the court committed a clear error of judgment in
13 the conclusion it reached upon a weighing of the relevant
14 factors. Marx v. Loral Corp., 87 F.3d 1049, 1054 (9th Cir.
15 1996).

16 IV. JURISDICTION

17 The bankruptcy court had jurisdiction to review and approve
18 the settlement under 28 U.S.C. § 1334 and 28 U.S.C.
19 § 157(b)(2)(A). We have jurisdiction under 28 U.S.C. § 158.

20 V. DISCUSSION

21 A. The Bankruptcy Court Did Not Abuse Its Discretion When It 22 Granted Trustee's Motion For Approval Of Settlement Agreement.

23 Rule 9019(a) provides that the court may approve a
24 compromise or settlement upon motion of the trustee and after a
25 hearing on twenty days' notice to all creditors and the United
26 States Trustee.

27 "The bankruptcy court has great latitude in approving
28 compromise agreements." Woodson, 839 F.2d at 619. The court's

1 discretion, however, is not unlimited; the compromise must be
2 "fair and equitable" and "reasonable." Id.; A & C Properties,
3 784 F.2d at 1381. In determining the fairness and reasonableness
4 of a proposed settlement, the court must consider:

5 (a) The probability of success in the litigation; (b) the
6 difficulties, if any, to be encountered in the matter of
7 collection; (c) the complexity of the litigation
8 involved, and the expense, inconvenience and delay
necessarily attending it; (d) the paramount interest of
the creditors and a proper deference to their reasonable
views in the premises.

9 A & C Properties, 784 F.2d at 1381. Further, as this Panel has
10 stated:

11 The function of compromise is to avoid litigation
12 involving delay and expense unless there appears to be a
13 sound legal basis for the litigation and a likelihood of
14 substantial benefit to the estate (citation omitted).
Approval of compromise is appropriate if the court finds
that the outcome of the litigation is doubtful

15 Gen. Store of Beverly Hills v. Beverly Almont Co. (In re Gen.
16 Store of Beverly Hills), 11 B.R. 539, 541 (9th Cir. BAP
17 1981) (emphasis added). Finally, as part of its decision, the
18 court may give weight to the opinions of the trustee, the parties
19 and their attorneys. A & C Properties, 784 F.2d at 1384.

20 At the hearing on approval of the Settlement Agreement,
21 Collins reiterated the long history of negotiations with Selleck,
22 explaining that when talks began Selleck was asserting that
23 Ball's refusal to cooperate rendered its obligations under the
24 Note extinguished. As a result, the initial settlement figure
25 was in the range of \$50,000-\$65,000. However, when the Trustee
26 discovered months later that Ball was in fact cooperating with
27 Selleck in the SDI Action, contrary to Selleck's prior
28 statements, this undermined Selleck's position that this was a

1 rejected agreement since it was getting the benefit of its
2 bargain, thus increasing the value of the Trustee's claim to the
3 \$100,000 figure eventually reached. Collins also stated that it
4 was in the best interest of the estate and creditors that cash be
5 generated now rather than risk expensive and time-consuming
6 litigation, especially since Selleck had a strong case that the
7 Selleck Settlement Agreement and Note was a personal services
8 contract not assumable by the Trustee.

9 Although Ball voiced his concerns that the Settlement
10 Agreement extinguished any claims he held against the Note, he
11 was told repeatedly by the court and all parties that the
12 Settlement Agreement proposed only to settle all of the estate's
13 right to the Note, whatever the extent and validity, and that
14 Ball's independent claims, if any, were preserved and he was free
15 to bring them in a motion or complaint against the parties on
16 another day, including his claims to the Note.

17 The bankruptcy court then went through the factors set forth
18 in Woodson and A & C Properties, focusing primarily on the
19 probability of successful litigation, stating:

20 It seems to me that the outcome of the litigation in the
21 adversary between the trustee and Mr. Selleck is
22 doubtful. I don't - there could be circumstances under
23 which the trustee would win. There could be
24 circumstances under which Mr. Selleck would win. We
25 don't know.

26 (Transcript of Hearing on Debtor's Objection to Proposed
27 Settlement 19:8-12). Likewise, the expense and burdens of
28 litigation weighed in favor of the settlement. Finally, the
court noted it was "telling" that none of the creditors had
objected, and despite Ball's objection, the evidence before it

1 left "little to suggest that the compromise [was] not fair and
2 reasonable."¹⁰ (Id. at 19:5,13-14). Although the court did not
3 discuss the difficulties of collection, Collins stated that
4 collection itself was not an issue, but since Selleck resides
5 out-of-state certainly some costs could be involved.¹¹

6 On this record, we believe the bankruptcy court properly
7 applied Woodson and A & C Properties and correctly determined
8 that the Settlement Agreement was fair, reasonable, and
9 equitable. We therefore conclude the court did not abuse its
10 discretion, and AFFIRM its decision granting Trustee's Motion for
11 Approval of Settlement Agreement, to the extent it resolves the
12 claims between the estate and Selleck.

13 **B. The Bankruptcy Court Did Not Abuse Its Discretion When**
14 **It Denied Ball's Motion To Reconsider, But Did Err When**
15 **It Determined Ownership Of The Note In The Improper**
16 **Context Of Ball's Motion To Reconsider.**

17 Ball argues on appeal that the bankruptcy court committed
18 clear error when it denied his attempts to provide newly
19 discovered evidence.

20 The Bankruptcy Code does not contemplate motions for
21 reconsideration; rather such motions are treated as motions to
22 alter or amend judgment under Fed. R. Civ. P. 59(e), made

23 ¹⁰ As noted in Section I.C., after the court's ruling,
24 Collins announced that not all creditors had been noticed on the
25 motion. Subsequently, all proper parties were noticed and no
26 creditors objected.

27 ¹¹ We will not overturn the approval of the compromise
28 merely because the court did not articulate its consideration of
each factor. Rather, "where the record supports approval of the
compromise, the bankruptcy court should be affirmed," even if the
bankruptcy court has made only general findings supporting the
compromise. A & C Properties, 784 F.2d at 1383.

1 applicable by Bankruptcy Rule 9023. Hanson v. Finn (In re Curry
2 and Sorensen, Inc.), 57 B.R. 824, 826-27 (9th Cir. BAP 1986); see
3 In re America West Airlines, Inc., 240 B.R. 34 (Bankr. D. Ariz.
4 1999).

5 The bankruptcy court has wide discretion in deciding whether
6 to reconsider its own judgment or orders. A motion for
7 reconsideration should not be granted, absent highly unusual
8 circumstances, unless the court is presented with newly
9 discovered evidence that was not available at the time of the
10 original hearing, or committed clear error, or if there is an
11 intervening change in the controlling law. 389 Orange Street
12 Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999).

13 If the motion is based upon newly discovered evidence, the
14 movant must show that: 1) the evidence was discovered after the
15 hearing; 2) the exercise of due diligence would not have resulted
16 in the evidence being discovered at an earlier stage; and 3) the
17 newly discovered evidence is of such magnitude that producing it
18 earlier would likely have changed the outcome of the case. Hasso
19 v. Mozsgai (In re La Sierra Financial Serv., Inc.), 290 B.R. 718,
20 733 (9th Cir. BAP 2002) (citing Defenders of Wildlife v. Bernal,
21 204 F.3d 920, 928-29 (9th Cir. 2000)).

22 A motion for reconsideration is not permitted to rehash the
23 same arguments made the first time or to simply express an
24 opinion that the court was wrong. In re Greco, 113 B.R. 658 (D.
25 Haw. 1990), aff'd and remanded, 952 F.2d 406 (9th Cir. 1991).

26 In his Motion to Reconsider, Ball contended that there
27 could be no Settlement Agreement when the ownership of the Note
28 had never been adjudicated. Despite the assurances of the court,

1 Collins, and Rudd at the Settlement Motion hearing that the
2 Settlement Agreement did not extinguish Ball's independent
3 nonbankruptcy claims against Selleck and/or the Trustee, and it
4 did not extinguish his claims against the Note, if any, Ball's
5 motion asserted that his rights were clearly affected by the
6 Settlement Agreement, its language contradicted what all parties
7 stated at the hearing, and the court was "attempting to bypass
8 the law" by not determining the ownership of the Note -
9 essentially the same arguments he raised, and were rejected, at
10 the settlement hearing. Nevertheless, the court agreed that this
11 property issue needed to be resolved and set a hearing on Ball's
12 motion.

13 With respect to the Settlement Agreement in settling the
14 estate's claims, if any, Ball's motion did not present any one of
15 the grounds necessary to grant it. We have reviewed the "new"
16 evidence he was not allowed to submit to the bankruptcy court,
17 but see nothing that was previously unavailable, and certainly no
18 evidence that would render the Settlement Agreement as to the
19 estate's claims, if any, unreasonable or not fair and
20 equitable.¹² Furthermore, Woodson and A & C Properties are still
21 the controlling law in the Ninth Circuit, and Ball did not
22 demonstrate how the court clearly erred in its application of
23 that existing law.

24 Since Ball offered no valid grounds to cause the bankruptcy
25 court to reconsider its approval of the Settlement Agreement, we
26

27 ¹² However, we are not saying that this evidence could not
28 help support Ball's position regarding the Note, if and when he
files an action seeking adjudication of that issue.

1 conclude that the bankruptcy court did not abuse its discretion
2 when it denied Ball's Motion to Reconsider. We therefore AFFIRM
3 its decision, to the extent the agreement settles the estate's
4 claims vis-a-vis Selleck to the Note, whatever the extent and
5 validity.

6 However, it is our opinion that Ball's Motion to Reconsider
7 was not the proper context in which to determine the ownership
8 of, or interests in, the Note. Besides asking the court to
9 reconsider its decision on the Settlement Agreement, Ball's
10 motion also asked that the court determine ownership of the Note
11 and its proceeds. Certainly, this was a fair request and the
12 court recognized the importance of resolving the issue in order
13 to avoid future litigation. However, with respect to the Note,
14 Ball's request acted as the functional equivalent of an adversary
15 proceeding,¹³ and the court erred when it conflated the two
16 matters into Ball's Motion to Reconsider, and adjudicated the
17 Note's ownership interest without providing him procedural due
18 process and the opportunity to properly brief that issue, or
19 present any admissible evidence at the September 28 hearing.

20 Ideally, and as even the bankruptcy court noted, this
21 matter should be brought before the court on another day, with
22 each party being entitled to fully brief the issue, submit
23 admissible evidence supporting its position, and cross-examine
24 witnesses.

27 ¹³ Rule 7001(2) provides that an adversary proceeding must
28 be commenced to determine "the validity, priority, or extent of a
lien or other interest in property . . ." (emphasis added).

1 At the hearing before this Panel on October 17, 2008, the
2 Trustee acknowledged that the bankruptcy court erred procedurally
3 by determining the ownership of the Note in the context of Ball's
4 Motion to Reconsider. As a result, the parties have stipulated
5 that Ball will not appeal our affirmance of the bankruptcy
6 court's decision on the Settlement Agreement as between the
7 estate's interest in the Note and Selleck, if any, in exchange
8 for Ball being allowed to bring an adversary proceeding, file
9 briefs, and submit any admissible evidence he believes supports
10 his position that the Note, or at least a portion thereof, is
11 exempt postpetition earnings under section 541(a)(6), including
12 the Selleck payments already made to the Trustee.

13 Accordingly, we VACATE the bankruptcy court's decision to
14 the extent it concluded that Ball has no interest in the Note,
15 and it is property of the estate.

16 **VI. CONCLUSION**

17 Based upon the foregoing reasons, we AFFIRM the bankruptcy
18 court's Order granting the Trustee's Motion for Approval of
19 Settlement Agreement, AFFIRM the bankruptcy court's Order denying
20 Ball's Motion to Reconsider, to the extent the agreement settles
21 the estate's claims vis-a-vis Selleck to the Note, whatever the
22 extent and validity, and VACATE the bankruptcy court's decision
23 to the extent it extinguished Ball's interest in the Note, if
24 any.