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.	**M E M O R A N D U M**[1]
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

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

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[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.

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

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

I. FACTS

A. Prepetition Facts

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

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

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

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

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

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[5] The parties Ball Properties Inc. and Ball Development 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.

B. Postpetition Facts (2003 to 2006)

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

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

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

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[6] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and 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.

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

C. Postpetition Facts (2006 to Present)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[8] When a debtor files for bankruptcy relief, pursuant to section 541(a)(1), an estate is created which is comprised of "all legal and equitable interests of the debtor in property as of the commencement of the case." Section 541(a)(6) expands this further, including any "proceeds, product, offspring, rents or 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).

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

> Viewing the postpetition payments under the agreement in light of the contract as a whole, the proceeds due Laughlin under the agreement were not payments for services, but rather consideration for release of the 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.
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> This is why I'm going to deny the motion for reconsideration. My order of August 24th which set this hearing simply provided for a limited response on an identified issue by the trustee and did not provide an opportunity for a reply by the debtor. And the debtor did not object to that August 24th order. Now the - - more than a month later, the debtor seeks a continuance of 30 to 45 days to respond to the trustee's papers. I don't think so.
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> . . . I think the legal issues established by the claim of - - that the consulting agreement is some type of 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).

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

II. ISSUES

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

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

III. STANDARD OF REVIEW

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

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

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

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

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

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

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

IV. JURISDICTION

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

V. DISCUSSION

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

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

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

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

> (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation 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.

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

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

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

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

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

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

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

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

(Transcript of Hearing on Debtor's Objection to Proposed Settlement 19:8-12). Likewise, the expense and burdens of 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

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

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

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

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

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

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

[11] We will not overturn the approval of the compromise 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. CONCLUSION

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