

APR 08 2009

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NOT FOR PUBLICATION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

6	In re:)	BAP No.	CC-08-1240-MkHMo
7	STEPHEN LAW,)	BK No.	LA 04-10052-TD
8	Debtor.)	Adv. No.	LA 08-01559-TD
9	_____)		
10	STEPHEN LAW,)		
11	Appellant,)		
12	v.)	M E M O R A N D U M *	
13	ALFRED H. SIEGEL, Chapter 7)		
14	Trustee,)		
15	Appellee.)		
	_____)		

Submitted Without Oral Argument
on March 18, 2009

Filed - April 8, 2009

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

Honorable Thomas B. Donovan, Bankruptcy Judge, Presiding

Before: MARKELL, HOLLOWELL and MONTALI, 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 The debtor, Stephen Law ("Debtor"), appeals from the
2 dismissal of his removed state court lawsuit against his chapter
3 7¹ trustee, Alfred Siegel ("Trustee"). For reasons set forth
4 below, we AFFIRM.

5 **I. Facts**

6 Debtor filed for chapter 7 relief in January of 2004. Soon
7 thereafter, the Trustee sued to set aside a consensual lien on
8 Debtor's residence as, among other things, a fraudulent transfer
9 ("Avoidance Action"). The Trustee sued a person named Lili Lin,
10 which was the name of the beneficiary on the deed of trust.
11 Therein starts the confusion. The Debtor maintains that there
12 are two persons named Lili Lin: one lives in Artesia, California
13 ("Lin of Artesia"); and the other apparently resides in China
14 ("Lin of China"). According to Debtor, he borrowed money from
15 Lin of China, and is a judgment creditor of Lin of Artesia.

16 After some procedural problems, the Trustee served Lin of
17 Artesia in the Avoidance Action. He ultimately settled with her
18 in early 2005, after which she submitted declarations indicating
19 that she was the beneficiary of the deed of trust at issue in
20 the Avoidance Action. The settlement was heard and approved by
21 the bankruptcy court on May 18, 2005. By way of stipulated
22 judgment entered shortly thereafter, the lien was avoided and
23 preserved for the benefit of the estate. Lin of China appealed
24 the settlement, lost at the BAP, Lin v. Siegel (In re Law), No.
25 CC-05-1303 (9th Cir. BAP, Dec. 29, 2006), and again at the Ninth

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27 ¹Unless otherwise indicated, all chapter, section and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 Circuit. Lin v. Siegel (In re Law), 2009 WL 117877, No.
2 07-55200 (9th Cir., Jan. 14, 2009) (unpublished).

3 No stay pending appeal was obtained. The Trustee sold
4 Debtor's residence in March of 2006. The sale yielded about
5 \$316,650 in net equity, inclusive of Debtor's homestead
6 interest.

7 Debtor contested the validity of the sale, and has
8 contested many of the bankruptcy court's decisions in this case;
9 he has filed no less than fifteen appellate actions arising out
10 of his bankruptcy case.² In January, 2009, however, along with
11 affirming this court's affirmance of the bankruptcy court's
12 approval of the lien Avoidance Action, the Ninth Circuit upheld
13 the sale of the residence. Lin v. Siegel (In re Law), 2009 WL
14 117869, No. 07-56239 (9th Cir., Jan. 14, 2009) (unpublished).
15 The direct attacks on the Trustee's actions were thus resolved
16 in the Trustee's favor.

17 Debtor also sought relief from the Trustee's actions in
18 California state court. In May of 2006, after the Trustee sold
19 his residence, he and Lin of China filed a lawsuit in Los
20 Angeles County Superior Court, Case No KC048398 (the "California
21 Action"). The only named defendant was Lin of Artesia, although
22 the complaint listed several other "Doe" defendants. The
23 lawsuit alleged that Lin of Artesia impersonated or assumed the
24 identity of Lin of China in the bankruptcy case and committed
25

26 ²The Trustee filed a separate motion requesting that we take
27 judicial notice of some of these cases, and of some motions filed
28 in those cases. We deny that motion. Information regarding
Debtor's prior appeals was obtained from the court's own docket.

1 perjury in agreeing to settle the Avoidance Action, all of which
2 caused Debtor and Lin of China monetary losses. The complaint
3 sounded in fraud, interference with contractual relations, and
4 abuse of process.

5 Lin of Artesia responded to the California Action with
6 demurrers and motions to dismiss. After being amended several
7 times, Debtor and Lin of China filed a Third Amended Complaint
8 in May, 2007 ("TAC"). Lin of Artesia answered the TAC in July,
9 2007. Thereafter, Debtor moved for summary judgment in the
10 California Action, and before it was decided, the parties
11 settled. Lin of Artesia soon thereafter requested dismissal
12 from the action.

13 On May 28, 2008, Debtor amended the California action by
14 substituting the Trustee for one of the Doe defendants. A
15 summons was issued and served by mail on May 30, 2008. On June
16 26, 2008, the Trustee removed the California Action to the
17 bankruptcy court. On July 2, 2008, the bankruptcy court entered
18 an order to show cause why the California action should not be
19 remanded, and set a hearing on the matter for September 3, 2008.
20 On July 2, the Trustee having not responded to the TAC, Debtor
21 requested that the bankruptcy court enter the Trustee's default.
22 On the same day, the Trustee filed a motion to dismiss the
23 removed action, and obtained a hearing date of August 20, 2008.
24 Debtor filed a written opposition to Trustee's motion, to which
25 the Trustee replied.

26 On August 18, 2008, two days before the scheduled hearing,
27 the bankruptcy court issued its tentative ruling. This ruling
28 indicated that the court would grant the motion to dismiss for

1 failure to state a claim, for failure to obtain bankruptcy court
2 approval before suing the Trustee, and for misuse of the "Doe"
3 practice in California. The tentative ruling further stated
4 that the parties' appearances on August 20 were not necessary,
5 and directed the Trustee to lodge a proposed order within seven
6 days. The Trustee did, and the bankruptcy court signed that
7 order. That order also stated that the order to show cause
8 regarding the remand was moot, and all hearings related to that
9 order to show cause were taken off calendar.

10 Debtor appeals.

11 **II. Statement of Jurisdiction**

12 The Trustee's removal of the California Action to the
13 bankruptcy court was timely under 28 U.S.C. § 1452 and Rule
14 9027.

15 Once removed, the bankruptcy court had core jurisdiction
16 under 28 U.S.C. § 1334(b) over the causes of actions stated in
17 the TAC because "as the functional equivalent of an action
18 against the trustee, [they were] inextricably tied to the
19 determination of an administrative claim against the estate and
20 [were] similarly tied to questions concerning the proper
21 administration of the estate." Honingman, Miller, Schwartz &
22 Cohn v. Weitzman (In re DeLorean Motor Co.), 155 B.R. 521, 525
23 (9th Cir. BAP 1993). See also Kirk v. Hendon (In re Heinson),
24 247 B.R. 237, 243-44 (E.D. Tenn. 2000).

25 The order dismissing Debtor's adversary proceeding is a
26 final order over which this court has jurisdiction. 28 U.S.C.
27 § 158. This court has jurisdiction over the appeal of the order
28 denying remand. 28 U.S.C. § 1452(b).

1 Finally, to the extent that the dismissal of the TAC
2 constituted a decision not to remand, a refusal to remand is
3 reviewed under the abuse of discretion standard. Miles v. Okun
4 (In re Miles), 294 B.R. 756, 759 (9th Cir. BAP 2003), aff'd, 430
5 F.3d 1083 (9th Cir. 2005); McCarthy v. Prince (In re McCarthy),
6 230 B.R. 414, 416 (9th Cir. BAP 1999).

7 V. Discussion

8 A. Overview

9 Analysis of Debtor's points is difficult. Debtor appears
10 pro se, and his briefs indicate a limited command of English.
11 In addition, his command of the law is also weak; while his
12 opening brief refers to the order appealed from, his reply brief
13 refers to issues not germane to this appeal, and includes a long
14 list of findings of fact that he proposes we enter.³ He asserts
15 that the bankruptcy court improperly overruled orders entered
16 prior to removal by the state court, but that would seem
17 impossible. Debtor settled with the only named defendant before
18 he substituted the Trustee for a previously-unnamed Doe

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20 ³The Debtor's reply brief is mainly concerned with the
21 Trustee's proposed surcharge of his homestead. That issue was
22 the subject of a prior appeal to this panel. We reversed the
23 earlier surcharge in an unpublished memorandum, leaving open,
24 however, the possibility that the Trustee could renew the issue
with better evidence. In re Law, No. CC-06-1180 (9th Cir. BAP
2006), aff'd mem., In re Law, No. 07-55194 (9th Cir. Jan. 14,
2009).

25 Following the Ninth Circuit's actions in January, the
26 Trustee sought again to surcharge Debtor's homestead, and after
27 the briefing in this appeal was closed, the bankruptcy court
issued a new opinion again surcharging Debtor's entire homestead
28 interest. In re Law, ___ B.R. ___, 2009 WL 483821 (Bankr. C.D.
Cal. Feb. 20, 2009).

1 defendant. The Trustee then promptly removed the action to
2 bankruptcy court. The Trustee does not seek to challenge any
3 action taken against any other defendant.

4 The Trustee asserts that the TAC is either vague or fatally
5 silent about the Trustee's culpability. The TAC's prayer asks
6 only for relief from Lin of Artesia. The Trustee is mentioned
7 by name only as someone who bought the disputed note and deed of
8 trust from Lin of Artesia. Notably, there are no conspiracy
9 claims seeking to hold the Trustee liable for complicity in any
10 fraudulent scheme.

11 The TAC's "Allegation [sic] Common to All Claims for
12 Relief" refers to the assignment of the note and deed of trust
13 to the Trustee, and mentions the Trustee only in one other
14 paragraph, paragraph 15. That paragraph appears exactly as
15 follows:

16 15. On or about March 9, 2006, after defendant Lin
17 falsely pretend to be Lin of China, assigned the Note
18 and DOT to Alfred Siegel who sold the real property,
19 therefore, caused by defendant Lin's willful,
malicious wrongful conducts, and for the retaliation
to plaintiff Law who lost the property and equity of
the property, creditability and reputation.

20 We acknowledge that "[a] document filed pro se is 'to be
21 liberally construed,' . . . , and 'a pro se complaint, however
22 inartfully pleaded, must be held to less stringent standards
23 than formal pleadings drafted by lawyers,'" Erickson v. Pardus,
24 551 U.S. 89 (2007) (quoting Estelle v. Gamble, 429 U.S. 97, 106
25 (1976)). Accordingly, a pro se litigant such as Debtor should
26 be given an opportunity to amend the complaint to overcome a
27 deficiency unless it is clear that no amendment can cure the
28 defect. Potter v. McCall, 433 F.2d 1087, 1088 (9th Cir. 1970);

1 Stone v. Baum, 409 F. Supp. 2d 1164, 1174 (D. Ariz. 2005).

2 Although courts must construe pro se pleadings liberally,
3 “[p]ro se litigants must follow the same rules of procedure that
4 govern other litigants.” King v. Atiyeh, 814 F.2d 565, 567 (9th
5 Cir. 1987). The court will not supply facts the litigants have
6 not pled. See Ivey v. Board of Regents of the Univ. of Alaska,
7 673 F.2d 266, 268 (9th Cir. 1982).

8 Against this background, Debtor appears to raise the
9 following points: (1) the bankruptcy court should have sent the
10 case back to state court; (2) the bankruptcy court did not have
11 any jurisdiction over the common law counts he alleged. The
12 first issue is treated below as an assertion that the bankruptcy
13 court should have remanded the matter to state court, an issue
14 subject to abuse of discretion review. The second issue is
15 treated below as an argument that the court should not have
16 dismissed the complaint, an issue subject to de novo review.
17 Since the first point - remand - turns on the second point -
18 jurisdiction - the analysis will first consider the
19 jurisdictional arguments.

20 B. Jurisdiction and Related Arguments

21 1. **The Bankruptcy Court Had Jurisdiction Over**
22 **Alleged Wrongs Committed by The Trustee While**
23 **Acting in the Scope of His Duties and Pursuant to**
Court Order

24 Although the causes of action pled by Debtor are common law
25 claims (fraud, interference with contractual relations, and
26 abuse of process), the acts complained of relate to the
27 Trustee’s performance of his official duties. In such cases,
28 this court has held that core jurisdiction exists. In re

1 DeLorean Motor Co., 155 B.R. at 525. See also In re Heinson,
2 247 B.R. at 243-44.

3 The reason for this is relatively simple. Bankruptcy
4 courts have a significant interest in the actions of the
5 trustees who appear before them. The facts of this case
6 illustrate some of the issues: Debtor attacked in state court
7 the actions the Trustee took in bankruptcy court pursuant to a
8 bankruptcy court order. Bankruptcy courts retain jurisdiction
9 over such matters to confirm and preserve their own
10 jurisdiction, lest state courts attack bankruptcy jurisdiction
11 through an attack on the trustees who appear in bankruptcy
12 court. See, e.g., In re Heinson, 247 B.R. 237 at 243-44 (debtor
13 brought malicious prosecution action in state court over
14 bankruptcy trustee's criminal referral).

15 DeLorean illustrates this point. There, a defendant in a
16 fraudulent transfer lawsuit ultimately prevailed against the
17 trustee. He later sued the trustee and his counsel for
18 malicious prosecution. The trustee removed the action. The
19 state court litigant contended that the action was at best
20 "related to" the bankruptcy case, and that abstention or remand
21 was required. The bankruptcy court agreed, and the BAP
22 reversed. As the BAP noted:

23 Although the [removed case] asserts a state law claim,
24 as the functional equivalent of an action against the
25 trustee, it is inextricably tied to the determination
26 of an administrative claim against the estate and is
similarly tied to questions concerning the proper
administration of the estate.

27 In re DeLorean, 155 B.R. at 525. The court thus found the
28 action to be a core proceeding, thereby undermining the basis of

1 the bankruptcy court's discretionary decision to abstain. Id.

2 Here, as in DeLorean, all relevant acts in the complaint
3 relate to the Trustee's performance of his duties under the
4 Bankruptcy Code. Indeed, the actions Debtor attacks in the TAC
5 are actions approved by the bankruptcy court when it approved
6 the settlement between Lin of Artesia and the Trustee. As
7 appeals from that settlement have now ended, Debtor's actions
8 are little more than an indirect way to reverse a bankruptcy
9 court decision with which he disagrees, and otherwise interfere
10 with the administration of Debtor's bankruptcy estate. As such,
11 the bankruptcy court had core jurisdiction over the matter.

12 Debtor contends that since his litigation over his
13 residence is now either completed or on appeal, the bankruptcy
14 court did not have any jurisdiction. This argument is wrong
15 and, in any event, irrelevant. When Debtor chose to sue the
16 Trustee, 28 U.S.C. § 1452 gave the Trustee the power to remove
17 the matter to federal court, since the subject matter of the TAC
18 related directly to the Trustee's administration of Debtor's
19 estate. Moreover, the issues raised in the TAC are dissimilar
20 to the homestead and other issues of which Debtor complains.
21 His arguments thus fail.

22 2. **The Debtor Did Not Obtain Advance Permission to**
23 **Sue the Trustee in State Court or in Bankruptcy**
24 **Court**

25 The nature of the bankruptcy court's jurisdiction not only
26 justifies retention of the case, but also dismissal. As plead,
27 the bankruptcy court had exclusive jurisdiction over the claims
28 asserted. Under venerable authority, Barton v. Barbour, 104
U.S. 126, 129 (1881), a person seeking to sue a court officer

1 such as a bankruptcy trustee must first obtain the permission of
2 the court that appointed the officer. Curry v. Castillo (In re
3 Castillo), 297 F.3d 940, 945 (9th Cir. 2002). As stated in
4 Castillo:

5 [I]t is generally held that without leave of the
6 bankruptcy court, no suit may be maintained against a
7 trustee for actions taken in the administration of the
8 estate. A court other than the appointing court has no
9 jurisdiction to entertain an action against the
10 trustee for acts within the trustee's authority as an
11 officer of the court without leave of the appointing
12 court.

13 In re Castillo, 297 F.3d at 945 (quoting 3 Collier on Bankruptcy
14 ¶ 323.03[3] (15th rev. ed. 2001)).

15 There is no dispute here that Debtor did not seek
16 bankruptcy court approval before filing the TAC. As such, the
17 Trustee had sufficient grounds to seek dismissal, and the
18 bankruptcy court was justified in dismissing the case.

19 3. **The Debtor Did Not Comply With the California**
20 **"Doe" Defendant Procedure**

21 Debtor appears to have played somewhat fast and loose with
22 his state court complaint. Although he filed the action in 2006
23 after the Trustee sold his residence, he never specifically
24 named or served the Trustee until April 30, 2008, after Debtor
25 had fought, and settled, with Lin of Artesia.

26 Contrary to these admitted facts, paragraph 4 of his
27 complaint states that:

28 4. The true names and capacities of the defendants
named herein as Does 1 through 30, Inclusive, whether
individual, corporate, escrow, associates, law
offices, Chapter 7 trustee of the Bankruptcy Court,
attorneys or otherwise, plaintiff who therefore sues
such defendants by fictitious names pursuant to the
California Code of Civil Procedure section 474. . . .

1 Plaintiff will amend this complaint to show such true
2 names and capacities when they have been ascertained.

3 (Emphasis added.) This allegation was made despite the fact
4 that the Trustee was specifically named in several other
5 paragraphs of the TAC.

6 Section 474 of the California Code of Civil Procedure,
7 however, states that:

8 When the plaintiff is ignorant of the name of a
9 defendant, he must state that fact in the
10 complaint, . . . and when his true name is discovered,
the pleading or proceeding must be amended
accordingly

11 Cal. Code. Civ. Pro. § 474. Under California law, the effect of
12 improperly substituting a known defendant as a "Doe" fictitious
13 defendant is denial of any relation-back of the complaint, and
14 preclusion of the substitution.⁴ Taito v. Owens Corning, 7
15 Cal. App. 4th 798, 802, 9 Cal. Rptr. 2d 687, 689 (Cal. App.
16 1992) ("When it appears that plaintiff knew both the person's
17 identity and the facts giving rise to liability when the
18 complaint was filed, but did not name him, that person cannot be
19 served as a Doe after the statute of limitations has run.").
20 Thus, the TAC should be deemed to have been filed as against the
21 Trustee as of May 30, 2008.

22 But the actions complained of against the Trustee occurred
23 in May of 2005, when the settlement of the adversary proceeding
24 resulted in the avoidance of the lien alleged to be in favor of
25 Lin of China. So unless the statute of limitations for any

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27 ⁴At least one federal court has held that the California
28 "Doe" practice is substantive law under Erie. Brennan v. Lermer
Corp., 626 F. Supp. 926 (N.D. Cal. 1986).

1 cause of action is longer than two years, Debtor's service of
2 the TAC was untimely, and dismissal would be appropriate under
3 California law. Taito, 7 Cal. App. 4th at 802, 9 Cal. Rptr. 2d
4 at 689; Woo v. Superior Court, 75 Cal. App.4th 169, 89 Cal.
5 Rptr. 2d 20 (Cal. App. 1999) (if plaintiff was not ignorant of a
6 defendant's identity at time original complaint was filed, that
7 defendant may not be added after the statute of limitations has
8 expired even if the new defendant cannot establish prejudice
9 resulting from the delay).

10 Under California law, fraud, the subject of Debtor's first
11 cause of action, has a three-year statute of limitations. Cal.
12 Code. Civ. Pro. § 338(d). Tortious interference with a
13 contractual relationship, the subject of the Debtor's second
14 cause of action, has a two-year statute of limitations. Cal.
15 Code Civ. Proc., § 339(1); Tu-Vu Drive-In Corp. v. Davies, 66
16 Cal. 2d 435, 437, 58 Cal. Rptr. 105, 426 P.2d 505 (1967).
17 Debtor's third and final cause of action sounds in abuse of
18 process, and that has a one-year statute of limitation. Cal.
19 Code Civ. Proc. § 340(3); Cantu v. Resolution Trust Corp., 4
20 Cal. App.4th 857, 886, 6 Cal. Rptr. 2d 151, 168 (Cal. App.
21 1992).

22 The statute of limitations for the second and third causes
23 of action - for interference with contract and abuse of process
24 - had thus already expired when the TAC was amended on April 30,
25 2008 to add the Trustee. These two causes of action would thus
26 be barred by the statute of limitations, and dismissal would be
27
28

1 appropriate.⁵

2 Although the bankruptcy court explicitly ruled in the
3 Trustee's favor on his Doe defendant argument, the court's
4 tentative ruling did not provide any reasoning for that result.
5 Even if this reference did not incorporate the Trustee's
6 arguments, we can affirm on any basis found in the record.
7 Steckman v. Hart Brewing, Inc., 143 F.3d 1293, 1295 (9th Cir.
8 1998); Warrick, v. Birdsell (In re Warrick), 278 B.R. 182, 184
9 (9th Cir. BAP 2002). This rule, when combined with the
10 statement in the tentative ruling that "Plaintiff has misused
11 the Doe defendant device of California procedural law", provides
12 a basis here to find that, even if Debtor could surmount all
13 other procedural and substantive hurdles, his second and third
14 causes of action were time-barred, and thus dismissal of those
15 causes of action was appropriate.

16 **4. The Trustee Has an Absolute Defense of Immunity**

17 The Trustee acts as an official of the court. "Bankruptcy
18 trustees are entitled to broad immunity from suit when acting
19 within the scope of their authority and pursuant to court
20 order." Bennett v. Williams, 892 F.2d 822, 823 (9th Cir. 1989).

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23 ⁵The first cause of action for fraud also probably had
24 expired. The TAC's main allegations assert reliance on a
25 misrepresentation by Lin of Artesia in 2000, which occurred more
26 than three years before the TAC's amendment. But the TAC might
27 be read to include some of Lin of Artesia's representations to
28 relate to the bankruptcy settlement, which was not memorialized
in an order until May of 2005. Regardless of time, however, the
TAC's first cause of action does not contain any allegation of
any misrepresentation by the Trustee or any reliance by Debtor or
Lin of China.

1 Here, the TAC does not allege that the Trustee was acting
2 outside the scope of his authority. Indeed, the TAC refers to
3 him only in his capacity as a case trustee. It is beyond
4 dispute that the Trustee obtained an order from the bankruptcy
5 court approving the settlement after a fully-noticed motion, and
6 avoided the lien pursuant to that order. In such cases, the
7 Trustee enjoys immunity from collateral or direct attack of his
8 actions. Id. See also Curry v. Castillo (In re Castillo), 297
9 F.3d 940, 951 (9th Cir. 2002) (chapter 13 trustee has quasi-
10 judicial immunity for actions taken in noticing motion); 3
11 Collier on Bankruptcy ¶ 323.03[3] (Henry Sommers & Alan Resnick,
12 eds., 15th rev. ed. 2008).

13 5. **The Bankruptcy Court Properly Found That the**
14 **Debtor's Complaint Did Not State Any Viable Cause**
of Action Against the Trustee

15 The TAC principally alleges misdeeds by Lin of Artesia.
16 Its only connection with the Trustee is that it recites that
17 Trustee took an assignment from Lin of Artesia, and further
18 alleges:

19 15. On or about March 9, 2006, after defendant Lin
20 falsely pretend to be Lin of China, assigned the Note
21 and DOT to Alfred Siegel who sold the real property,
22 therefore, caused by defendant Lin's willful,
malicious wrongful conducts, and for the retaliation
to plaintiff Law who lost the property and equity of
the property, creditability and reputation.

23 The Trustee contends that there is nothing for him to
24 respond to, since none of the paragraphs of the complaint
25 indicate that he did anything wrongfully, and the prayer only
26 asks for relief against Lin of Artesia. Although this argument
27 might be overcome by liberally construing the complaint, the
28 Trustee points out the following:

1 ● With respect to the first cause of action, fraud, the
2 misrepresentation alleged is stated to have occurred
3 in 2000, long before Debtor filed his bankruptcy case,
4 and thus long before the Trustee was appointed. He
5 thus cannot be liable for fraud since he could not
6 have made the misrepresentation. Further, to the
7 extent that the fraud could be alleged to have
8 occurred in connection with the settlement with Lin of
9 Artesia, the TAC contains no allegations of any
10 misrepresentations by the Trustee, or of any reliance
11 by Debtor or Lin of China on any statements made by
12 the Trustee.

13 ● The second and third causes of action allege only that
14 the Trustee was the assignee of the note and deed of
15 trust. As the Trustee points out, however, there was
16 no assignment; the lien was avoided pursuant to a
17 judgment entered pursuant to a settlement, and now has
18 been preserved for the benefit of the estate under 11
19 U.S.C. § 551. Although consideration of the order
20 approving the settlement - a matter outside the
21 complaint - technically would transform the motion to
22 dismiss into a summary judgment motion, Fed. R. Civ.
23 P. 12(d) (incorporated by Fed. R. Bankr. P. 7012),
24 there is no harm in considering the court's own docket
25 here. It is undisputed that the lien was avoided
26 pursuant to bankruptcy court process, rather than
27 voluntary private action. This is a fatal fact for
28 Debtor. As is, the TAC contradicts the bankruptcy

1 court's docket, and an order of the bankruptcy court.
2 Were the Debtor to seek to amend the TAC to allege the
3 facts as shown by the court's docket, he would then
4 face the insurmountable hurdle of immunity.

5 **VI. Conclusion**

6 Debtor attempted to sue the Trustee in state court over
7 actions the Trustee took in his official capacity, and pursuant
8 to bankruptcy court order. The bankruptcy court had
9 jurisdiction over the removal of this action, and properly
10 dismissed it. At least four independent grounds support the
11 bankruptcy court's action: Debtor did not secure advance
12 approval to file suit against the Trustee; the Trustee enjoys
13 immunity for acting pursuant to court order; the Debtor misused
14 the California "Doe" practice such that the TAC would be deemed
15 filed against the Trustee long after the expiration of any
16 applicable statute of limitations; and, finally, the TAC states
17 no claims against the Trustee on the merits, regardless of how
18 liberally construed.

19 AFFIRMED.