

APR 08 2009

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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NOT FOR PUBLICATION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.	)	<b>M E M O R A N D U M</b> *	
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 7<sup>1</sup> 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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26  
27 <sup>1</sup>Unless 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.<sup>2</sup> 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

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26 <sup>2</sup>The 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 **III. Issues Presented**

2 Was the dismissal of the TAC as to the Trustee proper? Put  
3 another way, was it appropriate to retain jurisdiction and  
4 dismiss the TAC:

5 (a) for failure to secure prior bankruptcy court  
6 approval to sue the Trustee for case-related activities;

7 (b) for abuse of the "Doe" defendant practice;

8 (c) because the Trustee had immunity with respect to  
9 the acts specified in the TAC?; or

10 (d) because the TAC failed to state any claims for  
11 which relief could be granted?

12 **IV. Standards of Review**

13 Dismissals of adversary proceedings are reviewed de novo.  
14 North Slope Borough v. Rogstad (In re Rogstad), 126 F.3d 1224,  
15 1228 (9th Cir. 1997); Mandalay Resort Group v. Miller (In re  
16 Miller), 292 B.R. 409, 412 (9th Cir. BAP 2003). "Our review is  
17 based on the contents of the complaint, the allegations of which  
18 we accept as true and construe in the light most favorable to  
19 the plaintiff." Love v. United States, 915 F.2d 1242, 1245 (9th  
20 Cir.1990), amending 871 F.2d 1488 (9th Cir.1989). "Dismissal is  
21 improper unless 'it appears beyond doubt that the plaintiff can  
22 prove no set of facts in support of his claim which would  
23 entitle him to relief.'" Id., (quoting Conley v. Gibson, 355  
24 U.S. 41, 45-46 (1957)).

25 In addition, the Panel may affirm on any basis found in the  
26 record. Steckman v. Hart Brewing, Inc., 143 F.3d 1293, 1295  
27 (9th Cir. 1998); Warrick, v. Birdsell (In re Warrick), 278 B.R.  
28 182, 184 (9th Cir. BAP 2002).

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.<sup>3</sup> 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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19  
20 <sup>3</sup>The 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**  
**Court**

24 The nature of the bankruptcy court's jurisdiction not only  
25 justifies retention of the case, but also dismissal. As plead,  
26 the bankruptcy court had exclusive jurisdiction over the claims  
27 asserted. Under venerable authority, Barton v. Barbour, 104  
28 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.<sup>4</sup> 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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26  
27 <sup>4</sup>At 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.<sup>5</sup>

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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21  
22  
23 <sup>5</sup>The 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.