NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	) BAP No. NC-07-1306-PaMkMc
WILLIE D. TURNER and LINDA A. TURNER,	) Bk. No. 02-46268
Debtors.	)
WILLIE D. TURNER and LINDA A. TURNER,	)
Appellants,	)
v.	) **M E M O R A N D U M**[1]
LOIS I. BRADY, Chapter 7 Trustee; REGENTS OF THE UNIVERSITY OF CALIFORNIA; DAVID MATTOS,	)
Appellees.	)

Argued by Telephone Conference and Submitted
on February 22, 2008

Filed - March 5, 2008

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

Honorable Edward D. Jellen, Bankruptcy Judge, Presiding

Before: PAPPAS, MARKELL and MCMANUS,[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. Michael S. McManus, Chief U.S. Bankruptcy Judge for the Eastern District of California, sitting by designation.

Debtors Willie D. Turner and Linda A. Turner ("Turner")[3] appeal the decision of the bankruptcy court approving a compromise. We DISMISS the appeal as moot.

FACTS

On November 21, 2002, Turner and her husband filed a voluntary petition under chapter 7[4]. Lois I. Brady, the chapter 7 trustee ("Trustee"), filed a no-asset report in the bankruptcy case on January 14, 2003. A discharge in favor of Debtors was granted on February 19, 2003, and the case was closed on March 6, 2003.

Before the case was closed, on February 24, 2003, Turner filed a lawsuit against her employer, the Regents of the University of California ("Regents"), and a co-worker, Dave Mattos,[5] in the Superior Court of California, Yolo County. Turner v. Regents of the University of California et al., case no. CV-03-391 (the "Lawsuit"). In the Lawsuit, Turner asserted claims for racial discrimination, retaliation, and failure to prevent

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[3] Although Willie Turner is a debtor and an appellant, only Linda Turner is directly involved in these proceedings. We thus will refer to Turner as synonymous with Debtors and Appellants in this appeal.

[4] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, as enacted and promulgated prior to the effective date (October 17, 2005) of the relevant provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, April 20, 2005, 119 Stat. 23, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

[5] Although Mattos was named in the Lawsuit and is listed as an appellee in this appeal, he has not taken an active role in the proceedings in this appeal. We will generally refer to the appellees herein as Regents, unless otherwise noted.

discrimination, all in violation of California's Fair Employment and Housing Act ("FEHA"), CAL. GOVT. CODE § 12900 et seq., and related state law claims. The complaint sought recovery of only monetary damages and made no reference to Title VII of the federal Civil Rights Act of 1964. Debtors admit that they did not list the Lawsuit in their schedules, nor otherwise inform Trustee of its existence.

On March 29, 2005, Regents moved for judgment on the pleadings in the Lawsuit, arguing that Turner lacked standing to prosecute the Lawsuit because it was an asset of the bankruptcy estate and could only be prosecuted by Trustee.[6]

Also on or about March 29, 2005, Regents informed Trustee about the Lawsuit. Trustee stated in a declaration that she was also informed that Turner had filed a complaint with the United States Equal Employment Opportunity Commission on or about June 5, 2002, and with the California Department of Fair Employment and Housing on August 4, 2002, citing discrimination claims under FEHA. Trustee indicated that she was informed that filing of these complaints was a procedural step that must be accomplished before Turner could commence a civil action against Regents.[7]

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[6] The record is unclear concerning the actions of the state court in response to Regents' motion for judgment on the pleadings. According to Regents, "The state court granted the motion on or about May 27, 2005." Reply Br. at 5. However, no copy of the state court order was included in the excerpts of record. Some time on or after January 23, 2006, Trustee appears to have been substituted as plaintiff in the Lawsuit.

[7] It is not clear in Trustee's declaration by whom she was informed of the filing of these complaints, and that they were procedural prerequisites to the filing of the Lawsuit. Regardless of the source, however, the latter is a correct statement of law. The timely filing of an administrative complaint is a prerequisite (continued...)

On May 9, 2005, the U.S. Trustee moved to reopen Turner's chapter 7 case. In a sworn declaration accompanying the U.S. Trustee's motion, Trustee informed the bankruptcy court that Debtors had not disclosed the Lawsuit in their schedules, and that she had listened to the tape recording of the Debtors' § 341 meeting, which she had attended, and, when asked if they had any plans to sue anyone, Debtors replied "no." The bankruptcy court granted the motion to reopen the bankruptcy case in an order entered on May 10, 2005.

There is mention, though with little detail in the record, that shortly after the reopening of the bankruptcy case, Regents offered to settle the Lawsuit for $10,000, but this offer was rejected by Trustee, who countered with an offer of $20,000. Regents accepted Trustee's counter-offer. However, the York Law Corporation ("York"), which had represented Turner in both the administrative proceedings and the Lawsuit, asserted that the Lawsuit had substantial value and offered to represent Trustee as special counsel in the Lawsuit. Trustee then informed Regents that a $20,000 compromise would not be in the best interests of the estate, and applied to the bankruptcy court for leave to employ York as special counsel to prosecute the Lawsuit.

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[7](...continued)
to bringing a civil action for damages under both Title VII and FEHA. 42 U.S.C. § 2000e-5(e); CAL. GOVT. CODE § 12960(d); Del. State Coll. v. Ricks, 449 U.S. 250, 256 (1980) (Title VII); Romano v. Rockwell Int'l, Inc. 14 Cal. 4th 479, 456 (1996) (FEHA) ("Under the FEHA, an employee must exhaust the administrative remedy provided by the statute by filing a complaint with the Department of Fair Employment and Housing (Department), and must obtain from the Department a notice of right to sue, in order to be entitled to file a civil action in court based on violations of the FEHA.").

On May 5, 2006, the bankruptcy court approved employment of York as special counsel for Trustee to prosecute the Lawsuit.[8]

Relations between Trustee and York deteriorated over the next eight months. On January 22, 2007, Timothy Nelson of York wrote to Trustee as follows:

> We have asked you on several occasions to consider abandoning Linda Turner's civil lawsuit against the Regents of the University of California and David Mattos, in order to allow Linda to proceed with her civil lawsuit and to allow her and everyone involved to receive the maximum value for the discrimination and harassment she endured while employed at UC Davis. . . . At this point, we feel that we have no choice but to withdraw from representing you as the trustee in this action. . . . We no longer feel that this case will continue to be profitable for any of the parties if it is not abandoned. This case will require significant resources to prepare for mediation and eventually for trial. Our office has lost the principal attorney who was responsible for handling this case. It will take time and resources for our other attorneys to get up to speed on this case. Furthermore, there is significant work that remains to be done, including opposing a motion for summary judgment and preparing for mediation. Opposing the motion for summary judgment will require an enormous expenditure of time and resources. . . . We simply cannot bear the enormous financial risk that this case entails without your cooperation in abandoning the case.

Trustee asserts that, left without special counsel and faced with an imminent summary judgment motion, she was forced to contact Regents and to negotiate a compromise directly with them. In a letter from Trustee's bankruptcy counsel, Stromsheim, to York on January 26, 2007, Trustee accepted York's withdrawal as her special counsel, and notified York that she had reached a tentative settlement with Regents.

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[8] The bankruptcy court had earlier approved Trustee's application to engage Stromsheim & Associates ("Stromsheim") as bankruptcy counsel on February 17, 2006.

Wendy York of York replied to this information on February 12, 2007, complaining that Trustee was attempting to settle the case while York was still her court-appointed counsel, that the settlement amount did not adequately reflect the true settlement value, and that Trustee had not contacted York to discuss the strengths and weaknesses of the case. York informed Trustee and all parties that York was asserting a lien on any proceeds of the settlement to secure its unpaid fees and costs.[9]

Trustee reached an agreement with Regents on or about May 4, 2007, in which Regents agreed to pay $17,500 to the bankruptcy estate for settlement and release of Turner's claim in the Lawsuit, together with any other prepetition claims arising out of Turner's employment by Regents (the "Compromise"). On May 11, 2007, Trustee filed a Notice of Compromise in the bankruptcy case, and served it on all parties in interest.

Turner objected to the Compromise, arguing that Trustee had failed to disclose material information, that Trustee misrepresented the positions of York, that the $17,500 grossly undervalued the Lawsuit, and that the Compromise violated Turner's constitutional rights under Title VII of the Civil Rights Act of 1964. Turner also offered to purchase the Lawsuit for $18,000 plus 5 percent of the net recovery from the Lawsuit. York then objected to the settlement, arguing that it had advised Trustee to abandon the Lawsuit in favor of Turner, that York had invested significant time and resources in the Lawsuit and had not received

[9] There is no indication in the record or in the bankruptcy court's docket that York ever requested or received permission to withdraw as Trustee's special counsel from the bankruptcy court.

any compensation, and that Trustee had not cooperated with York in handling the Lawsuit. York submitted an updated notice of lien asserting a right to recover $4,434.16 plus 40 percent of the gross settlement amount.

A hearing on the proposed Compromise was conducted by the bankruptcy court on June 28, 2007, at which Trustee, Turner, Regents, and York appeared by counsel and were heard. At that hearing, York offered to forego any claim for compensation from the bankruptcy estate if Turner's $18,000 bid plus 5 percent of proceeds was accepted.[10] Hearing this, Turner, through her counsel, recalculated the value of Turner's bid, suggesting it now amounted to $29,435.00 ($18,000 cash plus waiver of the York fees and costs of $11,235 as of June 28, 2007). Trustee acknowledged the new value of Turner's bid, and indicated a desire to accept additional bids in increments of $5,000. Regents indicated that it was prepared to offer $34,435 in cash.

At this point, the bankruptcy court intervened and stopped the bidding because no notice had been given that there was to be an auction, and because the court wanted the attorneys to have an opportunity to consult with their clients. The bankruptcy court continued the hearing to July 18, 2007.

On July 18, 2007, the hearing was reconvened; the parties were again represented by attorneys who were heard. After considering their arguments, the bankruptcy court first ruled on Turner's objection to the Compromise because, her counsel argued, § 541 does not include as property of the bankruptcy estate

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[10] York indicated that it expected to recoup these funds directly from Turner or from the proceeds of the Lawsuit.

Turner's non-economic redress rights. Counsel explained,

> What we are objecting to, your Honor . . . is simply those remedies which have no [monetary] value at all, such as injunctive relief on a cease-and-desist order if a determination is made in state court that a [civil rights] violation did occur, so it doesn't occur in the future. What about those seniority and job advancement and job placements which were denied to her based on sexual and also racial discrimination. Those benefits, Your Honor, are clear. They are distinct[.]

Tr. Hr'g 7:6-14 (July 18, 2007). The bankruptcy court ruled on the record,

> They were prepetition and they're property of the estate. . . . I'm going to rule in accordance with § 541 of the Bankruptcy Code that any prepetition assets encompassed within the lawsuit are property of the estate and available for the trustee to sell. This ruling is consistent with the cases cited by the trustee, Canterbury v. Federal Mogul [Ignition], 483 F. Supp. 2d 820; Berg v. Potter, 306 B.R. 559; Harris v. St. Louis University, 114 B.R. 647; and numerous other cases holding that Title 7 claims based on race discrimination, age discrimination, etc., are property of the estate.
>
> It's been suggested that there is a conflict between 541(a) and [Title VII]. There is none. [Title VII] provides that certain rights inure to victims of discrimination. And upon the bankruptcy filing, claims [derived from those rights] pass to the trustee, so there is no conflict.

Tr. Hr'g 7:15 – 8:10.

The court then recessed to allow the Trustee to conduct the auction. Upon return to the hearing, Trustee announced that the highest and best bid had been made by Regents for $34,435 in cash, which Trustee had accepted: "The offer encompasses all causes of action in the Lawsuit described in the pleadings that has been filed by Mrs. Turner." Tr. Hr'g 9:4-9.

The bankruptcy court then asked the parties to address the standards for approval of a compromise under A&C Properties. After considering their positions, the court announced,

> My finding is that the compromise meets the A&C Properties criteria and is in the best interests of the estate, basically for the reasons outlined on the record by [Trustee's counsel] and as supplemented by the papers that she has referred to. That's my finding.

Tr. Hr'g 19:2-6.

The court entered the Order Approving Compromise and Sale ("Compromise Order")on July 31, 2007. It provides:

> The court having found that the claims set forth in the Lawsuit are property of the estate pursuant to 11 U.S.C. § 541 which the Trustee has the right to sell and/or compromise, that the offer from the Regents and Mattos in the sum of $34,435 is the highest and best offer; that the offer is in the best interests of the creditors of the estate based on the pleadings filed in support of and in opposition to the compromise and the arguments made by counsel at the time of the hearing; and based on the findings made on the record being, which are hereby incorporated herein and good cause appearing, therefor IT IS HEREBY ORDERED that the compromise between the Trustee, the Regents and Mattos for payment of $34,435 to settle all claims asserted in the Lawsuit is hereby approved[.]

Turner filed a timely appeal of the Compromise Order on August 8, 2007.[11]

JURISDICTION

The bankruptcy court had jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(A) and (O). We have jurisdiction pursuant to 28 U.S.C. § 158.

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[11] On January 9, 2008, Regents requested that the Panel take judicial notice of the state court's dismissal with prejudice of the Lawsuit, which occurred on September 24, 2007. Insofar as Turner has not objected to this request, and the dismissal order is a public document and germane to our review of the mootness issue, the request for judicial notice is hereby GRANTED. FED. R. EVID. 201(b), (d); Conopco, Inc. v. Roll Int'l, 231 F.3d 82 (2d Cir. 2000) (federal appellate court may take judicial notice of final judgment in state court proceeding related to order of federal court on appeal).

ISSUES

1. Whether this appeal is moot.
2. Whether the bankruptcy court erred in determining that Turner's employment discrimination prepetition claims were property of the estate.
3. Whether the bankruptcy court abused its discretion in approving the Compromise.

STANDARDS OF REVIEW

We examine our own jurisdiction, including mootness issues, de novo. Wiersma v. D.H. Kruse Grain & Milling (In re Wiersma), 324 B.R. 92, 110 (9th Cir. BAP 2005).

Whether property is property of the bankruptcy estate is a question of law we review de novo. In re Bibo, 200 B.R. 348, 350 (9th Cir. BAP 1996).

A bankruptcy court's approval of a compromise is reviewed for abuse of discretion. Debbie Reynolds Hotel & Casino, Inc. v. Calstar Corp. (In re Debbie Reynolds Hotel & Casino, Inc.), 255 F.3d 1061, 1065 (9th Cir. 2001). "A court abuses its discretion if it does not apply the correct law or if it rests its decision on a clearly erroneous finding of material fact." Ho v. Dowell (In re Ho), 274 B.R. 867, 871 (9th Cir. BAP 2002).

DISCUSSION

I.

This appeal is moot.

Turner's fundamental argument in this appeal is that certain non-monetary claims exist that she could assert against her

employer and co-worker in the Lawsuit which are not property of the estate. She contends she should be permitted to continue the Lawsuit to prosecute those claims. Trustee and Regents argue that this appeal is moot because the state court has dismissed the Lawsuit with prejudice and, even if the Panel were to reverse the bankruptcy court's Compromise Order, we are unable to craft any meaningful relief for Turner. We agree with Trustee and Regents.

The Constitution limits the power of the federal courts to "the adjudication of actual cases and live controversies." Luckie v. EPA, 752 F.2d 454, 457 (9th Cir. 1985); U.S. CONST. art. III, § 2, cl. 1. The equitable mootness doctrine, derived from this rule, prohibits a court from considering an appeal when an appellant has "'failed and neglected diligently to pursue their available remedies to obtain a stay'" and changes in circumstances "'render it inequitable to consider the merits of the appeal.'" Darby v. Zimmerman (In re Popp), 323 B.R. 260, 271 (9th Cir. BAP 2005)(quoting Focus Media, Inc. v. Nat'l Broad. Co., Inc. (In re Focus Media, Inc.), 378 F.3d 916, 923 (9th Cir. 2004)). An appeal is equitably mooted when the appellant fails to obtain a stay, and transactions in reliance upon the order appealed have occurred which are "complex and difficult to unwind." Lowenschuss v. Selnick (In re Lowenschuss), 170 F.3d 923, 933 (9th Cir. 1999).

Turner did not seek a stay of the Compromise Order from either the bankruptcy court or this Panel. Absent a stay, Trustee moved in the state court to dismiss the Lawsuit with prejudice, as was required under ¶ 5(3) of the Compromise. The state court granted that motion and dismissed the Lawsuit with prejudice.

Under California law, a dismissal of a civil action with prejudice constitutes a judgment on the merits and is entitled to res judicata effect. Rice v. Crow, 81 Cal. App. 4th 725, 733-35 (Cal. Ct. App. 2000). The state court's dismissal order has not been appealed or otherwise challenged. In short, the Lawsuit has been concluded.

The Panel lacks the authority to direct the state court to revive the Lawsuit. Even if the Panel were to reverse the Compromise Order, Trustee (or more likely Turner) must convince the state trial or appellate court[12] to reinstate a lawsuit that had already been dismissed with prejudice. Moreover, as argued by Trustee, faced with such a request, the state court may decide that California's five-year statute of limitations on bringing a lawsuit to trial bars reinstatement of the Lawsuit: "An action shall be brought to trial within five years after the action is commenced against the defendant." CAL. CODE CIV. PROC. § 583.310 (2007). "Brought to trial" in CAL. CODE CIV. PROC. § 583.310 means that the trial itself, not preliminary motions, must have commenced. Canal St., Ltd. v. Sorich, 77 Cal. App. 4th 602, 608 (Cal. Ct. App. 2000). The Lawsuit was filed on February 24, 2003. In this instance, the five-year statute expired on February 24, 2008.[13]

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[12] Turner suggests in her reply brief that she could seek "whatever extraordinary writ is available in the California state courts to determine whether Appellants are barred from further equitable relief." Turner Reply Br. at 5. Turner does not explain what extraordinary writs might be available nor cite any statutory or case law authority to support such an action.

[13] Admittedly, the five-year statute of limitations on bringing an action to trial in California allows some exceptions. CAL. CODE CIV. PROC. § 583.340(c) allows tolling of the statute if

(continued...)

Turner offers no justification for her failure to pursue a stay pending appeal of the Compromise Order. Even if the Panel reversed the Compromise Order, it lacks authority to compel the state court to revive the Lawsuit and Turner would face extraordinary hurdles in attempting to convince the state court to reinstate the Lawsuit. In reliance upon the Compromise Order, the Lawsuit has been dismissed with prejudice and other events have occurred which are complex and difficult to unwind. Lowenschuss, 170 F.3d at 933.

The appeal will be dismissed as equitably moot.

II.

The bankruptcy court did not err in determining that Turner's employment discrimination claims were property of the estate.

While the appeal will be dismissed, in the interests of judicial economy, we think it appropriate in this case to discuss the merits of the appeal. In that regard, even if this appeal was not moot, the Panel concludes that the bankruptcy court did not err in deciding that Turner's claims in the Lawsuit are property of the bankruptcy estate pursuant to § 541.

Under § 541(a)(1), property of the estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." This expansive language is not

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[13](...continued)
commencement of trial is "impossible, impracticable or futile." It is not our role to speculate whether, under the facts of this case, the statutory exception might protect Trustee or Turner. Rather, we note the implications of this statute to demonstrate the complexity and difficulty of unraveling actions taken in reliance on the bankruptcy court's Compromise Order. See also 11 U.S.C. § 108(c).

ambiguous – all means all. But even assuming the statute is ambiguous, this provision has been consistently interpreted by the courts to have the broadest possible scope. "Congress intended a broad range of property to be included in the estate. . . . The statutory language reflects this scope of the estate. . . . The house and senate reports on the Bankruptcy Code indicate that § 541(a)(1)'s scope is broad." United States v. Whiting Pools, 462 U.S. 198, 204 (1983); accord, Cusano v. Klein, 264 F.3d 936, 945 (9th Cir. 2001). The legislative history of this provision supports the case law's interpretation:

> The scope of this paragraph [§ 541(a)(1)] is broad. It includes all kinds of property, including tangible or intangible property, causes of action (see Bankruptcy Act § 70a(6)), and all other forms of property currently specified in section 70a of the Bankruptcy Act.

H.R. Rep. No. 95-595, p. 367 (1977); S. Rep. No. 95-989, p. 82 (1978) (emphasis added).[14]

Consistent with the clear command from the case law and the Code's legislative history that property of the estate was intended to broadly encompass all of a debtor's legal or equitable interests, the bankruptcy court correctly ruled in this case that all of Turner's prepetition assets, remedies and claims included in the Lawsuit are property of the estate.[15]

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[14] For additional discussion of the history of § 541 and the broad definition of property of the estate, see n.17 infra.

[15] Under § 541(a)(6), property of the estate also includes any "proceeds" from other property of the estate, "except such as are earnings from services performed by an individual debtor after commencement of a case." Any recovery from Turner's discrimination claim would constitute proceeds of that prepetition asset. Arguably, though, the damages suffered by a debtor as a result of the alleged discrimination could include compensation for lost or reduced "earnings" like wages, benefits and the like.

(continued...)

Turner weaves a complex pattern of arguments challenging the constitutionality of § 541(a), asserting Fifth Amendment rights under the takings clause, and contending that the Compromise deprives her of unspecified due process or "liberty" interests. However, reduced to their essence, she argues that her potential claims for nonmonetary remedies arising from discrimination are not property of the estate and remain hers.

This position is simply not the law. Prepetition racial, sexual, and other employment discrimination claims have been uniformly held by the courts to constitute property of the victim's bankruptcy estate. See Parker v. Wendy's Int'l, Inc., 365 F.3d 1268, 1272 (11th Cir. 2004) (Title VII[16] employment discrimination claim was property of the estate; failure to list Title VII action in bankruptcy schedule leaves that interest in the bankruptcy estate); Cable v. Ivy Tech State Coll., 200 F.3d 467, 473 (7th Cir. 1999) (employment discrimination claim was property of the estate); Canterbury v. Federal-Mogul Ignition Co., 483 F.Supp. 2d 820 (S.D. Ia. 2007); Estel v. Bigelow Mgmt., Inc.,

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[15](...continued)
Debtors do not argue here that any of Turner's potential recovery from the Lawsuit would be shielded from Trustee by this statutory exception, so the Panel need not address that issue here.

[16] The Lawsuit does not state claims under Title VII, but rather relies for recovery on California's law, FEHA. However, the parties in this appeal refer to Title VII and FEHA interchangeably in their briefs. Indeed, many provisions of Title VII and FEHA are essentially the same, and both the federal courts in California and the California Supreme Court appear to condone the practice of California courts applying the Title VII legal framework to resolution of claims asserted under FEHA. See Guz v. Bechtel Nat. Inc., 24 Cal. 4th 317, 354 (2000) ("Because of the similarity between state and federal employment discrimination laws, California courts look to pertinent federal precedent when applying our own statutes."); accord, Metoyer v. Chassman, 504 F.3d 919, 941-42 (9th Cir. 2007).

323 B.R. 918, 919 (E.D. Tex. 2005); Byrd v. Potter, 306 B.R. 559 (N.D. Miss. 2002); Anderson v. Acme Markets, Inc., 287 B.R. 624 (E.D. Pa. 2002); Harris v. St. Louis Univ., 114 B.R. 647 (E.D. Mo. 1990); In re Sherman, 322 B.R. 889 (Bankr. N.D. Fla. 2004); In re Williams, 197 B.R. 398 (Bankr. M.D. Ga. 1996). Indeed, Turner does not cite, nor has the Panel located, any decisions to the contrary.

Turner also argues that "Section 541 is overbroad to the extent that it deprives and infringes upon the Debtor's constitutional right to be free from current and future conduct by the employer as well as Congress's remedial intent in enacting Title VII."[17] Turner's Opening Br. at 16. Once again, Turner relies upon conclusory statements rather than authorities or citations to relevant case law. This statement also exhibits a

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[17] It is not clear in Turner's briefs if she is arguing constitutionality for rhetorical effect or as a formal challenge to § 541. If it is a formal challenge and Turner seeks our ruling that § 541 is unconstitutionally broad, we reject the challenge as frivolous. Turner presents only two pages of conclusory statements without sufficient argument or citations to relevant case law. Considering the age and importance of § 541, which has been described as the "essence of the Bankruptcy Code," 5 Alan N. Resnick & Henry J. Sommer, COLLIER ON BANKRUPTCY ¶ 541.01 (Matthew Bender 15th ed. rev. 2007), this approach will not do.

A broad definition of property of the estate, in one form or another, has been incorporated in American bankruptcy law for over 200 years. Under section 2 of the Bankruptcy Act of 1800, the bankruptcy commissioners were authorized to take possession of "all the estate, real and personal, of every nature and description to which the said bankrupt may be entitled, either in law or equity, in any manner whatsoever." Bankruptcy Act of 1800, 2 Stat. 19, reprinted in 10 Lawrence P. King, COLLIER ON BANKRUPTCY, Appendix (Matthew Bender 14th ed. 1974). As discussed above, the Bankruptcy Act of 1898, the predecessor of the current Bankruptcy Code, continued the broad definition of property of the estate, and explicitly included prepetition causes of action as property of the estate. Bankruptcy Act § 70a(6)).

Additionally, we decline to address a constitutional challenge because the Attorney General has not been given notice of it, as now required by Rule 9005.1 (effective December 1, 2007).

basic misunderstanding of the bankruptcy concept of property of the estate.

The decision by the bankruptcy court that all of Turner's claims, and the remedies for those claims, that existed as of the date of the filing of her bankruptcy case were property of the estate would not bar Turner from asserting claims against her employer to redress post-bankruptcy offenses, i.e., "current or future discriminatory acts." The bankruptcy court made this clear at the July 18 hearing:

> MR. AMES [attorney for Turner]: So, therefore, the issue before the court is simply whether or nor she retains her substantive rights of due process and equal protection.
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> THE COURT: That's not the issue at all. [W]hatever claims arose postpetition –
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> MR. AMES: I understand.
>
> THE COURT: [Turner] has. Whatever claims arose prepetition she doesn't have.

Tr. Hr'g 5:8-12 (July 18, 2007).

> MS. STROMSHEIM [attorney for Trustee]: The offer encompasses all causes of action in the lawsuit described in the pleadings that has been filed by Mrs. Turner.
>
> THE COURT: And we're not dealing with anything that happened post-petition, is that correct?
>
> MS. STROMSHEIM: Correct.
>
> THE COURT: Okay.

Tr. Hr'g 9:7-13 (July 18, 2007).[18]

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[18] At oral argument, counsel for Regents argued that, in light of the Compromise Order, Turner may not now or in the future recover for any claims against Regents asserted in the Lawsuit. We agree. However, counsel for Regents also clearly acknowledged that Turner is not precluded by the Compromise Order from pursuing (continued...)

Turner repeatedly argues that she is only seeking to defend her non-economic interests.[19] However, an examination of Turner's state court complaint reveals that Turner never sought the imposition of any non-monetary remedies. Absent a request for such remedies, Turner's argument lacks merit.[20]

The Panel concludes that the bankruptcy court correctly decided that, under § 541, "property of the estate" in this case encompassed all of Turner's prepetition assets, including all of the claims and rights to remedies encompassed in the Lawsuit.

III.

The bankruptcy court did not abuse its discretion in approving the Compromise.

Rule 9019(a) provides that,

> On motion by the trustee and after a hearing on notice to creditors, the debtor and indenture trustees as provided in Rule 2002(a) and to such other entities as the court may designate, the court may approve a compromise or settlement.

In weighing the propriety of a proposed compromise, the bankruptcy court has long been required to conduct an inquiry into the complexity, expense, and likely duration of any litigation

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[18](...continued)
recovery for any post-bankruptcy claims, and in doing so, from presenting facts or patterns of discrimination that may involve acts or omissions occurring prepetition.

[19] At one point, she describes those interests as relating to job promotion, advancement, job training and seniority benefits. Turner's Opening Br. at 1.

[20] The only example of a non-monetary remedy mentioned in Turner's briefs is that "she alone currently possesses the right and ability to ask for a cease and desist order to protect herself and other employees from the alleged discriminatory conduct of the settling parties." Turner's Opening Br. at 14. Assuming this statement is not hyperbole, Turner would be free to seek relief from any on-going (i.e., post-petition) discrimination.

which would continue without the settlement, and "all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise." Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968). Our court of appeals has established criteria to be employed by the bankruptcy court in conducting such inquiry:

> In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) 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; [and] (d) the paramount interest of creditors and a proper deference to their reasonable views in the premises.

Martin v. Kane (In re A&C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court of appeals repeated these criteria in In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988). See also Goodwin v. Mickey Thompson Entm't Group, Inc. (In re Mickey Thompson Entm't Group, Inc.), 292 B.R. 415, 420 (9th Cir. BAP 2003).

The bankruptcy court has wide latitude and considerable discretion in evaluating a proposed compromise because the judge "is uniquely situated to consider the equities and reasonableness." United States v. Alaska Nat'l Bank (In re Walsh Constr., Inc.), 559 F.2d 1325, 1328 (9th Cir. 1982).

In this case, the bankruptcy court explicitly invoked A&C Props. in its evaluation of the proposed Compromise. The court stated on the record that it would approve the Compromise for the reasons outlined in Trustee's arguments made at the hearing on July 18, 2007. From the record, it appears that the bankruptcy court had been given the following information to support the Compromise:

1. The probability of success in the litigation. Trustee's special counsel had withdrawn (or at least, indicated its intent to withdraw) from representing her in the Lawsuit, and Trustee had been unable to secure appointment of a new special counsel. Trustee was therefore facing the prospect of defending, pro se, against two imminent summary judgment motions. She was also burdened with limited maneuverability in the Lawsuit stemming from the expiration, within one year, of the five-year statute of limitations, discussed above.

There was also a veiled threat in York's withdrawal letter: "Without Linda Turner's input into any possible settlements, the Defendants in this action will have little incentive to offer a settlement value that is even close to the true value of this case." Although this statement was made in the context of settlement negotiations, it also implied that Turner may not be willing to cooperate with Trustee in prosecuting the Lawsuit. Without Turner's participation and support, the chances of a successful outcome could greatly diminish.

In light of these circumstances, the bankruptcy court could properly find that the likelihood of Trustee's succeeding on the merits in the Lawsuit was substantially impaired.

2. Difficulties anticipated in collection. The bankruptcy court could reasonably assume that there would be no extraordinary collection difficulties if Trustee was successful in the Lawsuit. The Regents, as a state entity, had the resources to satisfy any money judgment.

3. The complexity of the litigation involved, and related expense, delay and inconvenience. Trustee brought to the

bankruptcy court's attention the information that her former special counsel provided in the withdrawal letter.

> This case will require significant resources to prepare for mediation and eventually for trial. Our office has lost the principal attorney who was responsible for handling this case. It will take time and resources for our other attorneys to get up to speed on this case. Furthermore, there is significant work that remains to be done, including opposing a motion for summary judgment and preparing for mediation.

Based on this "litany of horrors," the bankruptcy court could properly conclude that the litigation would be very expensive, complex and inconvenient.

4. The paramount interest of the creditors. Only one creditor filed a creditor's claim in the bankruptcy case, the Internal Revenue Service. All creditors, however, were given notice of the proposed Compromise, and none objected. While the amount to be received from the Lawsuit was modest, it would provide a significant distribution to the one creditor holding an allowed claim. Under these circumstances, the bankruptcy court could conclude that the Compromise was viewed by the creditors as in their best interests.

Based upon this record, the Panel concludes that the bankruptcy court made a sufficient inquiry, and was given adequate information through argument and the submissions of the parties, to decide that the proposed Compromise satisfied the A&C Props. requirements.

Simply put, even if this appeal is not moot, it was not an abuse of discretion for the bankruptcy court to approve the Compromise.

CONCLUSION

We DISMISS the appeal as equitably moot. Alternatively, in considering the merits of the appeal, the Panel concludes that the bankruptcy court did not abuse its discretion in approving the Compromise.