

MAR 05 2008

NOT FOR PUBLICATION

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

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. NC-07-1306-PaMkMc
)
WILLIE D. TURNER and LINDA A.) Bk. No. 02-46268
TURNER,)
)
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.

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.

1 Debtors Willie D. Turner and Linda A. Turner ("Turner")³
2 appeal the decision of the bankruptcy court approving a
3 compromise. We DISMISS the appeal as moot.
4

5 **FACTS**

6 On November 21, 2002, Turner and her husband filed a
7 voluntary petition under chapter 7⁴. Lois I. Brady, the chapter 7
8 trustee ("Trustee"), filed a no-asset report in the bankruptcy
9 case on January 14, 2003. A discharge in favor of Debtors was
10 granted on February 19, 2003, and the case was closed on March 6,
11 2003.

12 Before the case was closed, on February 24, 2003, Turner
13 filed a lawsuit against her employer, the Regents of the
14 University of California ("Regents"), and a co-worker, Dave
15 Mattos,⁵ in the Superior Court of California, Yolo County. Turner
16 v. Regents of the University of California et al., case no. CV-03-
17 391 (the "Lawsuit"). In the Lawsuit, Turner asserted claims for
18 racial discrimination, retaliation, and failure to prevent
19

20
21 ³ Although Willie Turner is a debtor and an appellant, only
22 Linda Turner is directly involved in these proceedings. We thus
will refer to Turner as synonymous with Debtors and Appellants in
this appeal.

23 ⁴ Unless otherwise indicated, all chapter, section and rule
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, as
25 enacted and promulgated prior to the effective date (October 17,
26 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.

27 ⁵ Although Mattos was named in the Lawsuit and is listed as
28 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.

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

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

12 Also on or about March 29, 2005, Regents informed Trustee
13 about the Lawsuit. Trustee stated in a declaration that she was
14 also informed that Turner had filed a complaint with the United
15 States Equal Employment Opportunity Commission on or about June 5,
16 2002, and with the California Department of Fair Employment and
17 Housing on August 4, 2002, citing discrimination claims under
18 FEHA. Trustee indicated that she was informed that filing of
19 these complaints was a procedural step that must be accomplished
20 before Turner could commence a civil action against Regents.⁷

21
22 ⁶ The record is unclear concerning the actions of the state
23 court in response to Regents' motion for judgment on the
24 pleadings. According to Regents, "The state court granted the
25 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.

26 ⁷ It is not clear in Trustee's declaration by whom she was
27 informed of the filing of these complaints, and that they were
28 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...)

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

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

22

23

24 ⁷(...continued)
25 to bringing a civil action for damages under both Title VII and
26 FEHA. 42 U.S.C. § 2000e-5(e); CAL. GOVT. CODE § 12960(d); Del.
27 State Coll. v. Ricks, 449 U.S. 250, 256 (1980) (Title VII); Romano
28 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.").

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

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

6 We have asked you on several occasions to consider
7 abandoning Linda Turner's civil lawsuit against the
8 Regents of the University of California and David Mattos,
9 in order to allow Linda to proceed with her civil lawsuit
10 and to allow her and everyone involved to receive the
11 maximum value for the discrimination and harassment she
12 endured while employed at UC Davis. . . . At this point,
13 we feel that we have no choice but to withdraw from
14 representing you as the trustee in this action. . . . We
15 no longer feel that this case will continue to be
16 profitable for any of the parties if it is not abandoned.
17 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.

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

25
26

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

1 Wendy York of York replied to this information on February
2 12, 2007, complaining that Trustee was attempting to settle the
3 case while York was still her court-appointed counsel, that the
4 settlement amount did not adequately reflect the true settlement
5 value, and that Trustee had not contacted York to discuss the
6 strengths and weaknesses of the case. York informed Trustee and
7 all parties that York was asserting a lien on any proceeds of the
8 settlement to secure its unpaid fees and costs.⁹

9 Trustee reached an agreement with Regents on or about May 4,
10 2007, in which Regents agreed to pay \$17,500 to the bankruptcy
11 estate for settlement and release of Turner's claim in the
12 Lawsuit, together with any other prepetition claims arising out of
13 Turner's employment by Regents (the "Compromise"). On May 11,
14 2007, Trustee filed a Notice of Compromise in the bankruptcy case,
15 and served it on all parties in interest.

16 Turner objected to the Compromise, arguing that Trustee had
17 failed to disclose material information, that Trustee
18 misrepresented the positions of York, that the \$17,500 grossly
19 undervalued the Lawsuit, and that the Compromise violated Turner's
20 constitutional rights under Title VII of the Civil Rights Act of
21 1964. Turner also offered to purchase the Lawsuit for \$18,000
22 plus 5 percent of the net recovery from the Lawsuit. York then
23 objected to the settlement, arguing that it had advised Trustee to
24 abandon the Lawsuit in favor of Turner, that York had invested
25 significant time and resources in the Lawsuit and had not received
26

27
28 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.

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

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

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

22 On July 18, 2007, the hearing was reconvened; the parties
23 were again represented by attorneys who were heard. After
24 considering their arguments, the bankruptcy court first ruled on
25 Turner's objection to the Compromise because, her counsel argued,
26 § 541 does not include as property of the bankruptcy estate

27

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

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

2 What we are objecting to, your Honor . . . is simply those
3 remedies which have no [monetary] value at all, such as
4 injunctive relief on a cease-and-desist order if a
5 determination is made in state court that a [civil rights]
6 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[.]

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

9 They were prepetition and they're property of the estate.
10 . . . I'm going to rule in accordance with § 541 of the
11 Bankruptcy Code that any prepetition assets encompassed
12 within the lawsuit are property of the estate and
13 available for the trustee to sell. This ruling is
14 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.

15 It's been suggested that there is a conflict between
16 541(a) and [Title VII]. There is none. [Title VII]
17 provides that certain rights inure to victims of
18 discrimination. And upon the bankruptcy filing, claims
[derived from those rights] pass to the trustee, so there
is no conflict.

19 Tr. Hr'g 7:15 - 8:10.

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

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

1 My finding is that the compromise meets the A&C Properties
2 criteria and is in the best interests of the estate,
3 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.

4 Tr. Hr'g 19:2-6.

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

7 The court having found that the claims set forth in the
8 Lawsuit are property of the estate pursuant to 11 U.S.C.
9 § 541 which the Trustee has the right to sell and/or
10 compromise, that the offer from the Regents and Mattos in
11 the sum of \$34,435 is the highest and best offer; that the
12 offer is in the best interests of the creditors of the
13 estate based on the pleadings filed in support of and in
14 opposition to the compromise and the arguments made by
15 counsel at the time of the hearing; and based on the
16 findings made on the record being, which are hereby
17 incorporated herein and good cause appearing, therefor IT
18 IS HEREBY ORDERED that the compromise between the Trustee,
19 the Regents and Mattos for payment of \$34,435 to settle
20 all claims asserted in the Lawsuit is hereby approved[.]

21 Turner filed a timely appeal of the Compromise Order on
22 August 8, 2007.¹¹

23 JURISDICTION

24 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
25 §§ 1334 and 157(b)(2)(A) and (O). We have jurisdiction pursuant
26 to 28 U.S.C. § 158.

27 ¹¹ On January 9, 2008, Regents requested that the Panel take
28 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).

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

8 The Constitution limits the power of the federal courts to
9 "the adjudication of actual cases and live controversies." Luckie
10 v. EPA, 752 F.2d 454, 457 (9th Cir. 1985); U.S. CONST. art. III,
11 § 2, cl. 1. The equitable mootness doctrine, derived from this
12 rule, prohibits a court from considering an appeal when an
13 appellant has "'failed and neglected diligently to pursue their
14 available remedies to obtain a stay'" and changes in circumstances
15 "'render it inequitable to consider the merits of the appeal.'" Darby v. Zimmerman (In re Popp), 323 B.R. 260, 271 (9th Cir. BAP
16 2005) (quoting Focus Media, Inc. v. Nat'l Broad. Co., Inc. (In re
17 Focus Media, Inc.), 378 F.3d 916, 923 (9th Cir. 2004)). An
18 appeal is equitably mooted when the appellant fails to obtain a
19 stay, and transactions in reliance upon the order appealed have
20 occurred which are "complex and difficult to unwind." Lowenschuss
21 v. Selnick (In re Lowenschuss), 170 F.3d 923, 933 (9th Cir. 1999).

22 Turner did not seek a stay of the Compromise Order from
23 either the bankruptcy court or this Panel. Absent a stay, Trustee
24 moved in the state court to dismiss the Lawsuit with prejudice, as
25 was required under ¶ 5(3) of the Compromise. The state court
26 granted that motion and dismissed the Lawsuit with prejudice.
27
28

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

7 The Panel lacks the authority to direct the state court to
8 revive the Lawsuit. Even if the Panel were to reverse the
9 Compromise Order, Trustee (or more likely Turner) must convince
10 the state trial or appellate court¹² to reinstate a lawsuit that
11 had already been dismissed with prejudice. Moreover, as argued by
12 Trustee, faced with such a request, the state court may decide
13 that California's five-year statute of limitations on bringing a
14 lawsuit to trial bars reinstatement of the Lawsuit: "An action
15 shall be brought to trial within five years after the action is
16 commenced against the defendant." CAL. CODE CIV. PROC. § 583.310
17 (2007). "Brought to trial" in CAL. CODE CIV. PROC. § 583.310 means
18 that the trial itself, not preliminary motions, must have
19 commenced. Canal St., Ltd. v. Sorich, 77 Cal. App. 4th 602, 608
20 (Cal. Ct. App. 2000). The Lawsuit was filed on February 24, 2003.
21 In this instance, the five-year statute expired on February 24,
22 2008.¹³

23
24 ¹² Turner suggests in her reply brief that she could seek
25 "whatever extraordinary writ is available in the California state
26 courts to determine whether Appellants are barred from further
27 equitable relief." Turner Reply Br. at 5. Turner does not
28 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...)

1 Turner offers no justification for her failure to pursue a
2 stay pending appeal of the Compromise Order. Even if the Panel
3 reversed the Compromise Order, it lacks authority to compel the
4 state court to revive the Lawsuit and Turner would face
5 extraordinary hurdles in attempting to convince the state court to
6 reinstate the Lawsuit. In reliance upon the Compromise Order, the
7 Lawsuit has been dismissed with prejudice and other events have
8 occurred which are complex and difficult to unwind. Lowenschuss,
9 170 F.3d at 933.

10 The appeal will be dismissed as equitably moot.

11
12 **II.**

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

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

21 Under § 541(a)(1), property of the estate includes "all legal
22 or equitable interests of the debtor in property as of the
23 commencement of the case." This expansive language is not
24

25

¹³(...continued)

26 commencement of trial is "impossible, impracticable or futile."
27 It is not our role to speculate whether, under the facts of this
28 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).

1 ambiguous - all means all. But even assuming the statute is
2 ambiguous, this provision has been consistently interpreted by the
3 courts to have the broadest possible scope. "Congress intended a
4 broad range of property to be included in the estate. . . . The
5 statutory language reflects this scope of the estate. . . . The
6 house and senate reports on the Bankruptcy Code indicate that
7 § 541(a)(1)'s scope is broad." United States v. Whiting Pools,
8 462 U.S. 198, 204 (1983); accord, Cusano v. Klein, 264 F.3d 936,
9 945 (9th Cir. 2001). The legislative history of this provision
10 supports the case law's interpretation:

11 The scope of this paragraph [§ 541(a)(1)] is broad. It
12 includes all kinds of property, including tangible or
13 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.

14 H.R. Rep. No. 95-595, p. 367 (1977); S. Rep. No. 95-989, p. 82
15 (1978) (emphasis added).¹⁴

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

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

25 ¹⁵ Under § 541(a)(6), property of the estate also includes
26 any "proceeds" from other property of the estate, "except such as
27 are earnings from services performed by an individual debtor after
28 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...)

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

8 This position is simply not the law. Prepetition racial,
9 sexual, and other employment discrimination claims have been
10 uniformly held by the courts to constitute property of the
11 victim's bankruptcy estate. See Parker v. Wendy's Int'l, Inc.,
12 365 F.3d 1268, 1272 (11th Cir. 2004) (Title VII¹⁶ employment
13 discrimination claim was property of the estate; failure to list
14 Title VII action in bankruptcy schedule leaves that interest in
15 the bankruptcy estate); Cable v. Ivy Tech State Coll., 200 F.3d
16 467, 473 (7th Cir. 1999) (employment discrimination claim was
17 property of the estate); Canterbury v. Federal-Mogul Ignition Co.,
18 483 F.Supp. 2d 820 (S.D. Ia. 2007); Estel v. Bigelow Mgmt., Inc.,

19
20 ¹⁵(...continued)

21 Debtors do not argue here that any of Turner's potential recovery
22 from the Lawsuit would be shielded from Trustee by this statutory
exception, so the Panel need not address that issue here.

23 ¹⁶ The Lawsuit does not state claims under Title VII, but
24 rather relies for recovery on California's law, FEHA. However,
25 the parties in this appeal refer to Title VII and FEHA
26 interchangeably in their briefs. Indeed, many provisions of Title
27 VII and FEHA are essentially the same, and both the federal courts
28 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).

1 323 B.R. 918, 919 (E.D. Tex. 2005); Byrd v. Potter, 306 B.R. 559
2 (N.D. Miss. 2002); Anderson v. Acme Markets, Inc., 287 B.R. 624
3 (E.D. Pa. 2002); Harris v. St. Louis Univ., 114 B.R. 647 (E.D. Mo.
4 1990); In re Sherman, 322 B.R. 889 (Bankr. N.D. Fla. 2004); In re
5 Williams, 197 B.R. 398 (Bankr. M.D. Ga. 1996). Indeed, Turner
6 does not cite, nor has the Panel located, any decisions to the
7 contrary.

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

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

26 A broad definition of property of the estate, in one form or
27 another, has been incorporated in American bankruptcy law for over
28 200 years. Under section 2 of the Bankruptcy Act of 1800, the
29 bankruptcy commissioners were authorized to take possession of
30 "all the estate, real and personal, of every nature and
31 description to which the said bankrupt may be entitled, either in
32 law or equity, in any manner whatsoever." Bankruptcy Act of 1800,
33 2 Stat. 19, reprinted in 10 Lawrence P. King, COLLIER ON BANKRUPTCY,
34 Appendix (Matthew Bender 14th ed. 1974). As discussed above, the
35 Bankruptcy Act of 1898, the predecessor of the current Bankruptcy
36 Code, continued the broad definition of property of the estate,
37 and explicitly included perpetuation causes of action as property
38 of the estate. Bankruptcy Act § 70a(6)).

39 Additionally, we decline to address a constitutional
40 challenge because the Attorney General has not been given notice
41 of it, as now required by Rule 9005.1 (effective December 1,
42 2007).

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

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

10 MR. AMES [attorney for Turner]: So, therefore, the issue
11 before the court is simply whether or nor she retains
12 her substantive rights of due process and equal
13 protection.

14 THE COURT: That's not the issue at all. [W]hatever
15 claims arose postpetition -

16 MR. AMES: I understand.

17 THE COURT: [Turner] has. Whatever claims arose
18 prepetition she doesn't have.

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

20 MS. STROMSHEIM [attorney for Trustee]: The offer
21 encompasses all causes of action in the lawsuit
22 described in the pleadings that has been filed by Mrs.
23 Turner.

24 THE COURT: And we're not dealing with anything that
25 happened post-petition, is that correct?

26 MS. STROMSHEIM: Correct.

27 THE COURT: Okay.

28 Tr. Hr'g 9:7-13 (July 18, 2007).¹⁸

26 ¹⁸ At oral argument, counsel for Regents argued that, in
27 light of the Compromise Order, Turner may not now or in the future
28 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...)

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

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

10
11 **III.**

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

14 Rule 9019(a) provides that,

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

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

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

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

27 ²⁰ The only example of a non-monetary remedy mentioned in
28 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.

1 which would continue without the settlement, and "all other
2 factors relevant to a full and fair assessment of the wisdom of
3 the proposed compromise." Protective Comm. for Independent
4 Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414,
5 424 (1968). Our court of appeals has established criteria to be
6 employed by the bankruptcy court in conducting such inquiry:

7 In determining the fairness, reasonableness and adequacy
8 of a proposed settlement agreement, the court must
9 consider: (a) probability of success in the litigation,
10 (b) the difficulties, if any, to be encountered in the
11 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.

12 Martin v. Kane (In re A&C Props.), 784 F.2d 1377, 1381 (9th Cir.
13 1986). The court of appeals repeated these criteria in In re
14 Woodson, 839 F.2d 610, 620 (9th Cir. 1988). See also Goodwin v.
15 Mickey Thompson Entm't Group, Inc. (In re Mickey Thompson Entm't
16 Group, Inc.), 292 B.R. 415, 420 (9th Cir. BAP 2003).

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

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

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

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

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

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

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

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

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

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

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

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

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

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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.