

JUL 10 2007

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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP Nos.	CC-06-1427-KPaA
)		CC-06-1379-KPaA
STEPHEN LAW,)		
)	Bk. No.	LA 04-10052-TD
Debtor.)		
_____)		
)		
LILI LIN; STEPHEN LAW,)		
)		
Appellants,)		
)		
v.)	MEMORANDUM*	
)		
ALFRED H. SIEGEL, Chapter 7)		
Trustee,)		
)		
Appellee.)		
_____)		

Argued and Submitted on June 21, 2007
at Pasadena, California

Filed - July 10, 2007

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

Honorable Thomas B. Donovan, Bankruptcy Judge, Presiding

Before: KLEIN, PAPPAS and ALLEY,** 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.

**Hon. Frank R. Alley, U.S. Bankruptcy Judge for the District of Oregon, sitting by designation.

1 In these two appeals that are being addressed in a single
2 decision, debtor Stephen Law and Lili Lin, appeal from two orders
3 entered in favor of the chapter 7 trustee. The first appeal (CC-
4 06-1427) is from an order approving a compromise between the
5 trustee and two judgment creditors. The second appeal (CC-06-
6 1379) is from an order granting a motion to sell real property.
7 The bankruptcy court authorized the trustee to distribute
8 proceeds from the sale of real property to creditors pursuant to
9 the settlement agreement complained about in CC-06-1427, and to
10 the estate pursuant to an earlier order that avoided and
11 recovered a deed of trust in favor of the trustee. Finding no
12 error, we AFFIRM both orders.

14 FACTS

15 Stephen Law filed a chapter 7 case in January 2004 in which
16 he scheduled and claimed as exempt a residence in Hacienda
17 Heights, California. Alfred Siegel is the case trustee.

18 The residence was scheduled as having a value of \$363,348.00
19 subject to two voluntary liens. The first is a note and deed of
20 trust on a conventional mortgage recorded in 1988 on which
21 \$147,156.52 was owed at the time of filing. Second, a 1999 note
22 and deed of trust debt ("Note and DOT") scheduled at \$156,929.04
23 in favor of Lili Lin was listed on Schedule D as "Lin's Mortgage
24 & Associates, 114 Shan Xan Jui Rd, Guangzhou, PR China." There
25 were also two judgment liens of \$131,821.74 ("Li Lien") and
26 \$3,750.00. The Li Lien arose from a state court judgment entered
27 in favor of Cau-Min Li on October 14, 1999.

1 The trustee challenged the Lili Lin lien by filing Adversary
2 Proceeding No. 04-1969 to avoid the grant of the lien conferred
3 by the Note and DOT on a fraudulent transfer theory by way of
4 California Civil Code § 3439.04(a) and the "strong arm" power
5 under 11 U.S.C. § 544(b).

6 In the complaint, the trustee alleged that the \$168,000
7 promissory note to Lili Lin, dated June 24, 1999, and recorded on
8 or about June 28, 1999, and the attendant deed of trust were
9 fictitious, fraudulent, and intended to diminish the equity in
10 the property.¹

11 The trustee obtained a default judgment in the adversary
12 proceeding on August 31, 2004, which was vacated on October 21,
13 2004, after a person claiming to be the real Lili Lin ("Lili Lin
14 of China") filed a Motion to Set Aside Default and Default
15 Judgment through counsel.

16 In April 2005, a different Lili Lin from Artesia, California
17 ("Lili Lin of Artesia"), filed an answer in the adversary
18 proceeding and a stipulation for judgment that purported to
19 resolve all the differences between the trustee and Lili Lin of
20 Artesia with respect to the adversary proceeding.

21 Lili Lin of Artesia executed a declaration stating that she
22 knows the debtor and did not loan him money as set forth in the
23 Note and DOT. She further declared that the debtor gave her a
24 copy of the Note and DOT in 1999, but never explained to her why
25

26 ¹We have no explanation how, or whether, the original
27 \$168,000 note amount was paid down or the scheduled amount of
28 \$156,929.04 was an error. The discrepancy, however, is not
material to our analysis of the issues before us.

1 he gave her the documents. She also stated that she did not
2 reside in China and she did not sign a declaration in support of
3 the motion to set aside the default judgment.

4 The trustee filed a Motion to Approve Compromise with Lili
5 Lin of Artesia. Lili Lin of China filed an opposition to the
6 compromise arguing that she had not settled with the trustee.

7 A hearing on the compromise was held on May 18, 2005. The
8 trustee appeared through counsel, the debtor appeared pro se, and
9 attorney Peter Chow appeared on behalf of Lili Lin of China.

10 The court ruled that Lili Lin of China lacked standing to
11 oppose the compromise motion. The court noted that Lili Lin of
12 China had never actually appeared in court in person and had not
13 furnished evidence to the court that she was the lienor. In
14 contrast, there was Lili Lin of Artesia evidence that she had
15 been involved in the grant of the lien in 1999.

16 The court determined that the evidence proffered by the
17 trustee was sufficient to grant the compromise motion and that
18 approval of the stipulated judgment in favor of the trustee was
19 fair and equitable, and in the best interests of the estate. The
20 stipulated judgment provided that the transfer to Lili Lin of
21 Artesia was avoided under § 544(b), and California Civil Code
22 § 3439.04(a). The interests of Lili Lin of Artesia in the Note
23 and DOT were deemed recovered by the trustee under § 550(a) and
24 preserved for the benefit of the estate under § 551.

25 On May 31, 2005, Lili Lin of China, acting pro se, filed an
26 answer to the trustee's adversary complaint, together with a
27 Motion for Reconsideration of the order approving the compromise
28 between the trustee and Lili Lin of Artesia.

1 A hearing on the Motion for Reconsideration was held on July
2 6, 2005. Neither Lili Lin of China nor the debtor appeared at
3 the hearing. On July 12, 2005, the court denied the motion.
4 Lili Lin of China appealed (BAP No. CC-05-1303). On appeal, we
5 affirmed the order approving the compromise between the trustee
6 and Lili Lin of Artesia. Lin v. Siegel, BAP No. CC-05-1303-KMoB
7 (filed 12/29/06). However, because Lili Lin of China's status as
8 a lienholder was not conclusively determined by the compromise
9 order, we held it to be incumbent upon the trustee to obtain an
10 appropriate judicial determination eliminating her interest.¹

11 Id.

12 In the meantime, on July 8, 2005, the trustee filed a Motion
13 for Turnover of the property pursuant to 11 U.S.C. § 542 on the
14 premise that there was equity in the property for the benefit of
15 the estate.

16 A hearing was held on August 3, 2005, and the motion was
17 granted on August 10, 2005, over the debtor's opposition.

18 On January 9, 2006, the trustee filed a Motion to Sell the
19 property free and clear of liens, interests, and encumbrances
20 pursuant to 11 U.S.C. §§ 363(f) & (m). Debtor opposed the
21 motion, which was heard by the court on February 1, 2006.

22 At the hearing on the sale motion, an auction was conducted.
23 The property was sold to the high bidder for \$680,000, which was
24 approximately \$165,000 more than the sum of all liens listed on
25 Schedule D plus the debtor's homestead exemption.

26
27 ¹Subsequent to our decision, the trustee both appealed our
28 decision to the Ninth Circuit, and filed a complaint in the
bankruptcy court against Lili Lin of China for declaratory relief
(Adversary Proceeding No. 07-01102).

1 The order granting the sale motion was entered on February
2 22, 2006. Escrow on the sale closed on March 9, 2006. The court
3 ruled that the purchaser of the property was a buyer in "good
4 faith" within the meaning of 11 U.S.C. § 363(m), and was entitled
5 to the protections afforded by that section.

6 When he filed the sale motion, the trustee also filed a
7 Motion to Surcharge in which he sought to surcharge the debtor's
8 \$75,000 homestead exemption by \$75,000 because the debtor
9 "engaged in exceptional circumstances of misconduct" by
10 "willfully and knowingly attempt[ing] to defraud his creditors by
11 removing equity from the property."

12 On February 24, 2006, the debtor and Lili Lin of China filed
13 a Motion for Reconsideration of the sale order. In the
14 alternative, they sought a stay of the sale order pending appeal.

15 On March 22, 2006, the court held a combined hearing on the
16 reconsideration motion and the continued surcharge motion. The
17 court granted the trustee's motion to surcharge the entire
18 \$75,000 exemption. The court also denied the debtor's motion to
19 reconsider the sale order and his oral motion for stay pending
20 appeal.

21 The debtor appealed the turnover, sale and surcharge orders
22 (BAP Nos. CC-05-1344, CC-06-1195 and CC-06-1180). On appeal, the
23 turnover and sale orders were dismissed as moot. Law v. Siegel,
24 BAP Nos. CC-05-1344-KMoB and CC-05-1195-KMoB (filed 12/29/06).
25 The order surcharging the debtor's \$75,000 homestead exemption by
26 \$75,000 was reversed. Law v. Siegel, BAP No. CC-06-1180-KMoB
27 (filed 12/29/06).

28

1 On July 21, 2006, the trustee filed a motion to approve a
2 compromise between the trustee and judgment creditors Cau-Min Li
3 and Michael Goudi dba United Judgment Enforcement ("Judgment
4 Creditors").² Pursuant to the settlement, the parties agreed
5 that the trustee would pay the Judgment Creditors \$120,000 in
6 full and final satisfaction of two judgment liens recorded
7 against the debtor's residence (one being the Li Lien), and two
8 proofs of claim.³

9 The settlement allowed the trustee to pay all timely filed
10 allowed unsecured proofs of claim in full. The appellants
11 opposed the motion to compromise.

12 A hearing on the compromise was held on August 16, 2006.
13 The court overruled the appellants' objection and approved the
14 compromise as fair and equitable, and in the best interests of
15 the estate. The appellants filed a motion for reconsideration
16 that was denied on October 17, 2006. The appellants appealed
17 (CC-06-1427).

18
19 ²Goudi is an assignee of the debt owed to Li.

20 ³The details of the two judgment liens and two proofs of
21 claim are as follows:

22 (1) judgment lien recorded July 31, 1996 as instrument
23 number 96-1231138 in the negotiated reduced amount of \$2,500;

24 (2) judgment lien recorded January 6, 2000 as instrument
25 number 00-0023003 in the amount of \$131,821.74;

26 (3) unsecured proof of claim in the amount of \$188,555.05
27 timely filed in the Bankruptcy Case, designated by the Clerk of
28 the Court as claim number 1; and

(4) unsecured proof of claim in the amount of \$3,686.00
tardily filed in the Bankruptcy Case, designated by the Clerk of
the Court as claim number 5.

1 Soon after entry of the compromise order, the trustee filed
2 a continued motion to sell in an effort to pay the Judgment
3 Creditors in accordance with the court approved compromise
4 agreement. The trustee sought to pay (from the proceeds that he
5 sequestered from the sale of the debtor's residence) the deed of
6 trust recovered by the trustee from Lili Lin of Artesia
7 (\$280,813.17), a judgment lien of Andrew Schucker Special
8 Administrator of the Estate of Robert M. Schucker (\$2,500), and
9 the \$120,000 settlement amount owed to the Judgment Creditors
10 pursuant to the court approved compromise. The appellants
11 opposed the motion.

12 A hearing took place on October 11, 2006. On October 23,
13 2006, the court entered an order overruling the appellants'
14 objection and granting the motion, ruling that the trustee may
15 disburse the sale proceeds to the Judgment Creditors pursuant to
16 the court approved compromise, and to the trustee pursuant to the
17 recovered deed of trust. All remaining sale proceeds after
18 disbursement were to remain property of the estate pursuant to 11
19 U.S.C. § 541.

20 The appellants timely appealed (CC-06-1379).⁴

23 ⁴On November 9, 2006, we issued an order staying the
24 continued sale order pending appeal. On December 29, 2006, we
25 issued an order modifying our previous order that stated the stay
26 of the continued sale order automatically terminates upon the
27 earlier of: (1) the judicial determination of Lili Lin of China's
28 lienholder status, or (2) the disposition of the debtor's appeal
of the continued sale order (CC-06-1379). As noted, trustee
filed an adversary proceeding against Lili Lin of China seeking a
judicial determination eliminating her interest as a lienholder
(CC-07-01102). The adversary proceeding is currently pending.

1 JURISDICTION

2 The bankruptcy court had jurisdiction via 28 U.S.C. § 1334.
3 We have jurisdiction under 28 U.S.C. § 158(a)(1).
4

5 ISSUES

6 (1) Whether the bankruptcy court abused its discretion when
7 it approved a compromise between the trustee and the Judgment
8 Creditors.

9 (2) Whether the bankruptcy court erred when it granted the
10 trustee's continued motion to sell real property.
11

12 STANDARD OF REVIEW

13 The bankruptcy court's findings of fact are reviewed for
14 clear error, and its conclusions of law are reviewed de novo.
15 Latman v. Burdette, 366 F.3d 774, 781 (9th Cir. 2004). We accept
16 findings of fact made by the bankruptcy court unless these
17 findings leave us with the definite and firm conviction that a
18 mistake has been committed. Id.

19 We review an order approving a compromise of a controversy
20 for an abuse of discretion. Debbie Reynolds Hotel & Casino, Inc.
21 v. Calstar Corp., Inc. (In re Debbie Reynolds Hotel & Casino,
22 Inc.), 255 F.3d 1061, 1065 (9th Cir. 2001). An abuse of
23 discretion may be based on an incorrect legal standard, or a
24 clearly erroneous view of the facts, or a ruling that leaves the
25 reviewing court with a definite and firm conviction that there
26 has been a clear error of judgment. SEC v. Coldicutt, 258 F.3d
27 939, 941 (9th Cir. 2001); Ho v. Dowell (In re Ho), 274 B.R. 867,
28 871 (9th Cir. BAP 2002).

1 DISCUSSION

2 I

3 **Order approving compromise (BAP No. CC-06-1427)**

4 The appellants first argue that because the proof of claim
5 filed by Li (that the bankruptcy court allowed in the amount of
6 \$188,330.05) is the subject of a separate appeal pending before
7 us (CC-06-1390), it was improper for the trustee to include that
8 claim as part of his settlement with the Judgment Creditors.

9 The trustee argues that because the bankruptcy court
10 overruled the appellants' objection and allowed Li's claim, it
11 remains valid unless we determine otherwise in appeal CC-06-1390.
12 If we reverse the bankruptcy court, the trustee contends that the
13 settlement agreement will no longer remain valid and he will not
14 make any payments to the Judgment Creditors in accordance
15 therewith.

16 We are issuing our decision in CC-06-1390 concurrently with
17 the disposition of these two appeals. In CC-06-1390, we affirm
18 the court's dismissal of the debtor's attack on Li's proof of
19 claim, which had previously been allowed by a final order, in the
20 amount of \$188,330.05. Thus, the inclusion of the Li proof of
21 claim in the settlement agreement was correct.

22 Pursuant to the settlement agreement between the trustee and
23 the Judgment Creditors, the trustee was to pay \$120,000 to the
24 Judgment Creditors in full and final satisfaction of their
25 allowed claim of \$188,330.05. The Judgment Creditors also agreed
26 to waive their right to pursue any and all remaining amounts due
27 on account of the judgment liens and proofs of claim against the
28 estate.

1 A compromise, which must be in the best interests of the
2 estate, is scrutinized under the legal standard of whether it is
3 "fair and equitable," taking into account: (a) probability of
4 success in litigation; (b) collectability; (c) complexity,
5 expense, inconvenience, and delay attendant to continued
6 litigation; and (d) the interests of creditors. Martin v. Kane
7 (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986);
8 Simantob v. Claims Prosecutor, LLC (In re Lahijani), 325 B.R.
9 282, 290 (9th Cir. BAP 2005).

10 The trustee contends that because the Judgment Creditors
11 agreed to reduce their claims in the case by approximately
12 \$70,000, it allowed the trustee to pay all timely filed allowed
13 unsecured claims in full. The trustee also argues that the
14 settlement would allow him fully to administer the estate and
15 close it, which would bring on-going litigation in the bankruptcy
16 case to an end.

17 The appellants' arguments do not persuade us that the
18 bankruptcy court abused its discretion when it approved the
19 compromise between the trustee and Judgment Creditors as fair and
20 equitable. Hence, the order approving the compromise is
21 affirmed.

22
23 II

24 **Continued sale order (BAP No. CC-06-1379)**

25 Subsequent to the court approved compromise between the
26 trustee and Judgment Creditors, the court also approved the
27 trustee's continued motion to sell that authorized the trustee to
28 distribute the sale proceeds. The court authorized the trustee

1 to distribute \$120,000 to the Judgment Creditors pursuant to the
2 compromise order and approximately \$281,000 to the trustee from
3 the recovered deed of trust from Lili Lin of Artesia.

4 On November 9, 2006, we issued an order staying the
5 continued sale order pending this appeal. On December 29, 2006,
6 we modified our order to provide that the stay automatically
7 terminates upon the earlier of (1) the disposition of this
8 appeal, or (2) the judicial determination of Lili Lin of China's
9 lienholder status.

10 The trustee's adversary proceeding against Lili Lin of China
11 is currently pending. In February 2007, the trustee filed a
12 motion to suspend prosecution of the current appeals (CC-06-1379
13 and CC-06-1427). The trustee argued that if the bankruptcy court
14 determines that Lili Lin of China has a valid interest in the
15 sale proceeds, he would not seek to enforce the compromise order
16 or the continued sale order. Conversely, the trustee argued that
17 if the bankruptcy court determined that Lili Lin of China has no
18 interest in the sale proceeds, then he would seek to enforce the
19 two orders. On March 20, 2007, we denied the trustee's motion to
20 suspend prosecution of these appeals.

21 Because our disposition of appeal number CC-06-1379
22 automatically terminates the stay of the continued sale order,
23 and because we are affirming the compromise order (CC-06-1427),
24 and we previously affirmed the trustee's recovery of the deed of
25 trust from Lili Lin of Artesia, we see no reason why the trustee
26 should be precluded from obtaining orders consistent with our
27 earlier dispositions. The trustee could seek to enforce (or not
28 enforce) the compromise order and the continued sale order

1 following the determination of Lili Lin of China's interest.

2 Thus, the bankruptcy court did not err when it found that
3 the trustee could distribute the sale proceeds to the Judgment
4 Creditors and to the estate.

5
6 CONCLUSION

7 Since the appellants did not demonstrate how the bankruptcy
8 court abused its discretion when it granted the motion to approve
9 the compromise between the trustee and the Judgment Creditors,
10 and because we conclude that the compromise is fair and
11 equitable, and in the best interests of creditors, we AFFIRM the
12 compromise order.

13 Since the purpose of the continued sale order was to
14 distribute proceeds from the sale of the residence to the
15 Judgment Creditors pursuant to the court approved compromise, and
16 to the estate pursuant to the deed of trust recovered from Lili
17 Lin of Artesia (and previously affirmed by us on appeal), we find
18 no error by the bankruptcy court and further AFFIRM the sale
19 order.