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OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re: PAUL ANTHONY LEWIS, Debtor. _____ AUDREY CROSSLEY, Appellant, v. PAUL ANTHONY LEWIS; NANCY CURRY, Chapter 13 Trustee; AMY GOLDMAN, Chapter 7 Trustee, Appellees. _____	BAP No. CC-06-1396-BPaMa Bk. No. LA 04-30441-SB **M E M O R A N D U M**[1]

Argued and Submitted on July 27, 2007
at Pasadena, California

Filed - August 24, 2007

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

Honorable Samuel L. Bufford, Bankruptcy Judge, Presiding

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Before: BRANDT, PAPPAS and MARLAR,[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. James M. Marlar, U.S. Bankruptcy Judge for the District of Arizona, sitting by designation.

In this second appeal before the Panel addressing appellant Audrey Crossley's individual standing to pursue rights in relation to the same parcel of real property, Crossley appeals the order for sale of property obtained by appellee chapter 13[3] debtor Paul Lewis. Finding again that her trustee, and not Crossley, had standing, the court approved the sale. Crossley appealed.

We AFFIRM.

I. FACTS

1. Background. The parties' recitation of the facts is long and complicated, and there has been a great deal of litigation over the past five years. The issue before us involves the interaction between Crossley's 2003 bankruptcy case and Lewis' 2004 bankruptcy case, and indirectly, an adversary proceeding in Lewis' case against the trustee in Crossley's. Each party to the appeal (or his/her estate) claims ownership interest in real property in Burbank, California (the "Property"). Neither estate's trustee is a party to this appeal.

In the earlier related appeal involving the same parties, CC-05-1206, we summarized the facts as follows:

> It appears that appellant Audrey Crossley is in the business of entering into financial arrangements with property owners who are facing foreclosure. In early 2002, Crossley and chapter 13 debtor and appellee Paul Lewis entered into a transaction whereby Crossley "purchased" Lewis' real property in Burbank, California. Crossley and Lewis agreed that Lewis would continue to live in the property and make the mortgage payments and that immediately after the close of escrow Crossley would deed the property to Lewis as trustee of the

[3] Absent contrary indication, all "Code," chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330 prior to its amendment by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23, as the case from which these appeals arise was filed before its effective date (generally 17 October 2005). All "Rule" references are to the Federal Rules of Bankruptcy Procedure, all "FRCP" references are to the Federal Rules of Civil Procedure.

> Pharrpage Unlimited Trust, which Lewis had created on Crossley's advice in March, 2001.
>
> According to Lewis, Crossley did convey title to the trust but the conveyance was defective because it did not convey title to him as trustee of the trust. Lewis alleges that Crossley then falsified a copy of the trust document, backdated it to March, 2000, and named herself as trustee of the fabricated trust.
>
> According to Crossley, on September 19, 2003, Lewis recorded a deed purporting to transfer title to the property from the trust to himself. She argues that this was a "wild deed," outside the chain of title, because there had never been a transfer of title to Lewis as the trustee of the trust.
>
> Crossley then filed an unlawful detainer action in state court, and Lewis countered with a complaint to quiet title. They then reached a global settlement whereby Lewis would pay Crossley $50,000.00 by a date certain. Lewis alleges that he tendered the payment on time, but it was rejected by Crossley. Crossley appears to allege that Lewis breached the agreement, but that is unclear. Crossley returned to state court to prosecute her unlawful detainer action and Lewis responded by filing his second chapter 13 case on September 23, 2004.

Memorandum, 9 March 2006 ("Memorandum") at 2 (footnote omitted).

Lewis' amended schedule of real property listed a $900,000 "equitable interest" in the Property based on "possession and color of title" but noted that a "cloud on title . . . has resulted in property not being held by Paul Anthony Lewis, Trustee of Pharpaage Living Trust."

In October and November 2004, Crossley filed two motions for relief from the automatic stay to allow her to continue with the state court unlawful detainer proceedings. In his response, Lewis alleged, and the bankruptcy court later found, that Crossley had filed a Chapter 13 petition on 25 August 2003 under an alias, Steven B. McAllister or McAllister Stevens, No. SV03-17026-KL, which was converted to chapter 7 in November 2003, and Amy Goldman was appointed trustee.

Crossley had not disclosed or scheduled any interest in the Property, and did not do so until she filed an amended real property

schedule on 22 August 2006, approximately two months before the Sale Order at issue. She scheduled a reversionary future interest in the Property, valued (in 2003) at $50,000, indicating it was "purchased in October 2002."

The bankruptcy court denied relief from stay because Crossley was guilty of "dirty hands" for her failure to schedule the property in her own bankruptcy and "due to res judicata based on prior order entered on November 24[sic], 2004." Memorandum, at 1-15. Crossley appealed; we affirmed, concluding that Crossley lacked standing:

> Unscheduled assets are property of the bankruptcy estate, and remain so even after the bankruptcy case has been closed pursuant to § 554(d) of the Bankruptcy Code. "If [a debtor] fail[s] properly to schedule an asset . . . that asset continues to belong to the bankruptcy estate and d[oes] not revert to [the debtor]." Cusano v. Klein, 264 F.3d 936, 945-46 (9th Cir. 2001); see also In re Associated Vintage Group, Inc., 283 B.R. 549, 566 n.14 (9th Cir. BAP 2002). "If a cause of action belongs to the estate, then the trustee has exclusive standing to assert the claim." In re Educators Group Health Trust, 25 F.3d 1281, 1284 (5th Cir. 1994). Thus, Crossley's motions were properly denied because she had no standing to bring them.

Memorandum at 7:1-12 (emphasis added).

In February 2006, while that appeal was pending, Lewis filed an adversary proceeding against Goldman, Crossley and others, seeking a determination that he was the sole and legal owner of the Property. Adv. Pro. LA-06-1332-SB. Goldman did not answer and Lewis moved for default against Goldman, to which only Crossley objected. The bankruptcy court entered default judgment,[4] quieting title in favor of Lewis, and holding in part:

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[4] There is no final judgment disposing of the other causes of action: Lewis's motion for summary judgment on Crossley's counterclaims for quiet title and constructive trust was denied by the bankruptcy court's order entered 18 June 2007.

> Whatever interest Crossley/McAllister had, may have had in [the Property] escheated to the McAllister bankruptcy estate when Crossley filed Chapter 7, and . . . Crossley has no current or present interest in [the Property] . . . [and Lewis . . . is hereby determined to be the sole and legal owner of [the Property] [and] the objection is overruled - objecting party lacks standing.

Judgment for Default, 3 October 2006, at 2.[5]

The bankruptcy court heard the contested motion to sell the Property on the same date. See Transcript, 3 October 2006. Goldman neither objected nor appeared. On 23 October 2006 the court entered an order authorizing Lewis to sell the Property for $870,000 and directed the net proceeds of sale (less closing costs and consensual liens) to be held by the Chapter 13 Trustee ("Sale Order"). The order also provided that Crossley's objection to sale "is hereby overruled on the grounds that Crossley has . . . no standing to object to said sale."

Crossley timely appealed. Her motion for an emergency stay pending appeal, and motion for temporary restraining order to enjoin, were denied, based on the finding that "Crossley has fully litigated her claim as to Lewis in this court, which was resolved by order entered on 10/23/06." Order Denying Ex parte Motion for Temporary Restraining Order, 23 November 2006. Crossley then moved the panel for stay pending appeal, which we denied on 22 November for insufficient grounds.[6]

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[5] Crossley did not appeal but did move for a new hearing, arguing the ruling was overbroad, which the court denied.

[6] We also denied both of Lewis's motions to dismiss: first, based on Crossley's lack of standing; the renewed motion to dismiss argued mootness based on the sale of the Property. Our order denying the motion provided that in "AP No. LA-06-1332-SB, Appellant seeks to quiet title to the property. That counterclaim has not been [resolved] thus implicating . . . In re Thomas, 287 B.R. 782, 785 (9th Cir. BAP 2002) and In re Popp, 323 B.R. 260, 268 (9th Cir. BAP 2005) which indicate that a bankruptcy court cannot authorize the sale of real property until a determination of the estate's interest in that property has been made." We directed the parties to address the impact of Popp and Thomas.

2. Further Procedural Developments in Crossley's Case

We take judicial notice of Crossley's reopened bankruptcy case. In re E.R. Fegert, Inc., 887 F.2d 955, 957-58 (9th Cir. 1989). On 14 May 2007, the bankruptcy court granted her unopposed motion to compel trustee Goldman to abandon the estate's interest in the Property and any causes of action the estate might have, including stay violation and civil contempt, against Lewis (pleadings not in the excerpts of record). The order provided "that it shall not constitute a determination of the validity, nature, or extent of the McAllister/Crossley estate's interest in any of the afore-described property being abandoned."

Crossley mentioned the court's tentative abandonment ruling in her Reply Brief at 2-3 (filed 26 April) but did not seek to supplement the record, nor has Lewis had an opportunity to respond to this recent development.

II. ISSUES

1. Whether this appeal is moot;

2. Whether Crossley had standing to object to the Sale Order, and if not, whether we should dismiss the appeal; and

3. Whether the bankruptcy court abused its discretion in entering the Sale Order.

III. JURISDICTION

The bankruptcy court had jurisdiction via 28 U.S.C. § 1334(b) and § 157(b)(1) and (2)(A), and we do under 28 U.S.C. § 158(a)(1) and (c).

IV. STANDARDS OF REVIEW

A. Standing is a legal issue which we review de novo. Loyd v. Paine Webber, Inc., 208 F.3d 755, 758 (9th Cir. 2000); In re Aheong, 276 B.R. 233, 238 (9th Cir. BAP 2002). De novo means review is independent, with no deference given to the trial court's conclusion. Rule 8013.

B. We review appeals from orders to sell property of the estate other than under § 363(b) for abuse of discretion. In re Popp, 323 B.R. 260, 265 (9th Cir. BAP 2005). A court abuses its discretion if it does not apply the correct law or rests its decision on a clearly erroneous finding of material fact. Reversal requires a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon weighing the relevant factors. In re Stine, 254 B.R. 244, 248 (9th Cir. BAP 2000), aff'd, 19 Fed. Appx. 626 (9th Cir. 2001).

C. We review conclusions of law, including the bankruptcy court's interpretation of the Code, de novo. In re Staffer, 262 B.R. 80, 82 (9th Cir. BAP 2001), aff'd, 306 F.3d 967 (9th Cir. 2002); In re Pardee, 218 B.R. 916, 919 (9th Cir. BAP 1998), aff'd, 193 F.3d 1083 (9th Cir. 1999).

V. DISCUSSION

A. Mootness

Lewis argues that this appeal is moot as the sale closed in December 2006, despite Crossley's unsuccessful efforts to stay the sale. We are not bound by the order of our motions panel, which denied the motion to dismiss, In re Markus, 268 B.R. 556, 565 (9th Cir. BAP 2001), aff'd in part, rev'd in part, 313 F.3d 1146 (2002), but we agree that the appeal is not moot.

Were we to reverse, it would be possible to fashion effective relief, at least with respect to the sale proceeds. In re Focus Media Inc., 378 F.3d 916, 923 (9th Cir. 2004).

B. Standing

1. Generally

Standing is a jurisdictional issue that is open to review at all stages of the litigation. See National Org. For Women, Inc. v. Scheidler, 510 U.S. 249, 255 (1994). Because standing is a jurisdictional requirement, we must dismiss an appeal when the appellant lacks standing.

Standing refers to the proper litigant in a suit, and relates to capacity to sue: "The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated." In re Unger & Assoc., Inc., 292 B.R. 545, 551 (Bankr. E.D. Tex. 2003)(citation omitted). The Ninth Circuit follows the "person aggrieved" standard for standing. In re Fondiller, 707 F.2d 441, 442-43 (9th Cir. 1983) (only parties that are pecuniarily affected by a bankruptcy court order or judgment have standing to appeal). See also In re Godon, Inc., 275 B.R. 555 (Bankr. E.D. Cal. 2002) (discussing various standing doctrines) and In re Stoll, 252 B.R. 492, 495 (9th Cir. BAP 2000) ("To have standing a party must assert its own legal rights and interest and cannot rest its claim to relief on the legal rights or interest of third parties").

2. Standing on Appeal

Based on the 14 May 2007 order of abandonment in her case, Crossley has standing to appeal before us. Where a trustee (after notice and

hearing, per § 554 and Rule 6007) abandons the estate's interest in a lawsuit which is property of the bankruptcy estate, standing to pursue that cause of action is relinquished to the debtor. Cullen v. Bank One Corp., 145 Fed. Appx. 192, 193 (9th Cir. 2005) (citing Turner v. Cook, 362 F.3d 1219, 1225-26 (9th Cir. 2004)).

3. Standing as of Date of the Sale Order

The crux of this appeal is whether Crossley had standing to oppose the sale motion. We conclude she did not.

In our prior Memorandum we determined that only Goldman, not Crossley individually, had standing under § 541(a)(1), as upon the filing of her chapter 7 petition, all of her legal and equitable interests became property of the estate. The debtor's assets, including all claims, pass to the trustee upon appointment. In re Eisen, 31 F.3d 1447, 1451 n.2 (9th Cir. 1994). Any legal and equitable interest which Crossley had passed to her estate on filing and, on conversion, to Goldman as trustee. She did not seek abandonment of the estate's rights before the motion for sale and entry of the Sale Order.

Our earlier holding is the law of the case: under this doctrine, "the decision of an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case." Yu v. Signet Bank/Virginia, 103 Cal. App. 4th 298, 309, 126 Cal. Rptr. 2d 516 (2002) (citation omitted); see also In re Rainbow Magazine, Inc., 77 F.3d 278, 281 (9th Cir. 1996) ("The law of the case doctrine states that the decision of an appellate court on a legal issue must be followed in all subsequent proceedings in the same case.")

Neither the facts nor the applicable laws have changed since our Memorandum: at the time the sale motion was heard and the Sale Order entered, no party with standing objected. The law of the case doctrine applies and is determinative of the parties' rights in this appeal. The later abandonment may have eliminated any question about Crossley's appellate standing, but it did not retroactively confer standing on her at the time the Sale Order was entered.

Whether Crossley might have grounds to seek FRCP 60 relief in some further proceeding, based on the order of abandonment, is not before us. A bankruptcy court has the power to reconsider, modify or vacate its previous orders provided that no intervening rights have become vested in reliance on the order. FRCP 60(b); Rule 9024; In re Cisneros, 994 F.2d 1462, 1466-67 (9th Cir. 1993); In re Lenox, 902 F.2d 737, 739-40 (9th Cir. 1990); In re Chinichian, 784 F.2d 1440, 1443 (9th Cir. 1986).

C. Merits

In any event, Crossley's arguments lack merit: Crossley's main argument on the merits is that Sale Order was an abuse of discretion because the Property had not been finally determined to be property of Lewis' estate. In Popp, we held that a determination of the estate's interest in property must be made before authorizing a sale under § 363, or the sale order is invalid.

That requirement was met: after Lewis obtained reopening of Crossley's chapter 7 case and Trustee Goldman was reappointed in April 2006, he commenced an adversary proceeding, naming Goldman, served her with the summons and complaint, and obtained an order of default, and a default judgment quieting title in Lewis. That is a final order as it

"finally determines the rights of the parties to secure in that suit the relief they seek." Fondiller, 707 F.2d at 441 n.1.

But Crossley contends that the default judgment and the Sale Order are violations of the stay in her case. Section 362(a)(3) stays "any act to obtain possession of property of the estate . . . and is applicable to all entities."

Her argument is unavailing: an individual debtor has no standing to argue the alleged violation against property of the estate, as that remedy belongs to the trustee:

> The trustee is authorized to prosecute, with or without court approval, any action or proceeding on behalf of the estate before any tribunal. Fed. R. Bankr. P. 6009.
>
> The consequence is that, once the bankruptcy case is filed, the debtor lacks standing because the trustee owns the cause of action. Moreover, the automatic stay bars any act by anybody, including the debtor, to "exercise control over property of the estate" that belongs to the trustee.

In re An-Tze Cheng, 308 B.R. 448, 461 (9th Cir. BAP 2004), aff'd, 160 Fed. Appx. 644 (9th Cir. 2005) (emphasis added).

We need not, therefore, explore the ramifications of a default judgment affecting alleged estate property entered by a different judge of the same court in which that trustee is appointed.

VI. CONCLUSION

We are not required on appeal to untangle this extended procedural morass.[7] The Sale Order is the only order before us. Crossley had no

[7] We note again that Crossley did not even amend her schedules to claim an interest in the Property until two months before the sale, and we draw on wisdom expressed in an earlier opinion: "The efficacy of the bankruptcy system depends in important aspects on accurate self-reporting by debtors. Debtors and bankruptcy professionals who do not fulfill their obligations deserve to be chastised severely." An-Tze Cheng, 308 B.R. at 458.

standing to object to its entry, and the later abandonment order in her case did not cure that defect.

The bankruptcy court determined, by default judgment against Crossley's trustee, that Lewis was the sole legal owner of the Property. The Sale Order thus satisfies the requirements under Popp, and Crossley has not shown an abuse of discretion. We AFFIRM.