

OCT 11 2007

NOT FOR PUBLICATION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: )  
RODEO CANON DEVELOPMENT CORP., ) BAP No. CC-07-1088-KMoD  
Debtor. ) Bk. No. LA 99-49349 VZ

BEVERLY RODEO DEVELOPMENT CORP.; )  
FRED YASSIAN, )  
Appellants, )

v. ) MEMORANDUM\*

BIJAN CHADORCHI; FERESHTEH )  
CHADORCHI; THE CHADORCHI LIVING )  
TRUST; SUSAN DEL PRETE; NELSON )  
SHELTON & ASSOCIATES, INC.; LIBERTY )  
MUTUAL INSURANCE CO.; ROBERT L. )  
GOODRICH; CHARLIE HILL; ROBERT )  
DENNIS PRYCE; AMERICAN GUARANTEE & )  
LIABILITY INSURANCE CO.; NATIONAL )  
UNION FIRE INSURANCE CO.; WILLIAM )  
WARNICK; ANN WARNICK; JILL WARNICK;) )  
ALLAN WARNICK; DAVID PERRY; DANNY )  
PERRY; DWIGHT SCORZA; PRYCE PARKER )  
HILL; PRYCE, PARKER & HILL, LLP, )  
Appellees. )

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

Filed - October 11, 2007

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

Hon. Vincent P. Zurzolo, Chief Bankruptcy Judge, Presiding

Before: KLEIN, MONTALI and DUNN, Bankruptcy Judges.

\*This disposition is not appropriate for publication.  
Although it may be cited for whatever persuasive value it may  
have (see Fed. R. App. P. 32.1), it has no precedential value.  
See 9th Cir. BAP Rule 8013-1.

1 This appeal is from an order denying a request for allowance  
2 and payment of an administrative expense with respect to a  
3 dispute that is not yet finally resolved. Appellants filed the  
4 request for payment of their administrative expense under the  
5 Supreme Court's doctrine established in Reading v. Brown, 391  
6 U.S. 471, 483-84 (1968), under which damages for trustee torts  
7 have administrative status. Appellants allege that the sale of  
8 real property by the former chapter 7 trustee was tortious and  
9 obtained by fraud and fraud on the court, and that at least half  
10 of the property sold was not property of the bankruptcy estate.

11 We AFFIRM because a settlement agreement that included a  
12 release of all known and unknown claims between Beverly Rodeo and  
13 the estate remains binding. Moreover, the court order approving  
14 the real property sale is the subject of continuing litigation,  
15 but, for the time being, remains in effect, thereby negating  
16 appellants' underlying premise that the sale was wrongful.

17  
18 FACTS<sup>1</sup>

19 Rodeo Canon Development Corporation ("debtor" or "Rodeo  
20 Canon") filed this chapter 11 case in 1999. Upon conversion to  
21 chapter 7, Robert D. Pryce became the trustee.

22 The debtor held record title to an office building at 9615  
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25 <sup>1</sup>Some facts are taken directly from our memoranda decisions  
26 in Beverly Rodeo Dev. Corp. v. Liberty Mut. Ins. Co. (In re Rodeo  
27 Canon Dev. Corp.), BAP Nos. CC-04-1169 & 1509-BMoR (9th Cir. BAP  
28 Aug. 5, 2005), and Beverly Rodeo Dev. Corp. v. Chadorchí, et al.  
(In re Rodeo Canon Dev. Corp.), BAP No. CC-06-1074-KPaB (9th Cir.  
BAP July 14, 2006). These past memoranda decisions also provide  
additional background leading up to this appeal.

1 Brighton Way, Beverly Hills, California ("Brighton Way  
2 Property"), that was valued at \$14,000,000 on the original  
3 petition.

4 The building was operated by the 9615 Brighton Way  
5 Partnership, a general partnership formed in 1990 to operate the  
6 property in which the co-general partners were the debtor Rodeo  
7 Canon and appellant Beverly Rodeo Development Corporation  
8 ("Beverly Rodeo"). Appellant Fred Yassian is the president and  
9 sole shareholder of Beverly Rodeo. The general partnership was  
10 still in existence when the chapter 11 was filed.

11 The primary bone of contention throughout this case has been  
12 the assertion that, although Rodeo Canon held record title,  
13 Beverly Rodeo actually owned a fifty percent interest in the  
14 Brighton Way Property.

15 At an auction held on March 22, 2001, Pryce obtained  
16 approval from the bankruptcy court to sell the Brighton Way  
17 Property to the Chadorchy Trust. The court's order was entered  
18 on April 4, 2001, and the sale closed soon after.

19 The sale was infected by crime. Pryce was later convicted  
20 of a federal crime that implicated the sale by way of a kickback  
21 scheme in which the purchaser is alleged to have participated.  
22 Pryce is now serving time in federal prison.

23 The validity of the sale has been the subject of litigation  
24 ever since. While there is pending litigation in the bankruptcy  
25 court regarding the validity of the sale,<sup>2</sup> Beverly Rodeo's most  
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27 <sup>2</sup>Yassian, et al. v. Pryce, Adv. No. LA 03-02072 VZ, filed on  
28 Feb. 12, 2007.

1 recent attempt to void or vacate the order authorizing the sale  
2 has so far been unsuccessful.<sup>3</sup> Accordingly, the sale has not  
3 been unwound and the sale order remains valid. There is,  
4 however, some possibility that the appellants' quest may  
5 eventually bear fruit.

6 Prior to the sale, in January 2001, Pryce filed an adversary  
7 proceeding for turnover of distributions made by Rodeo Canon and  
8 Beverly Rodeo to various entities (Adv. No. LA-01-01014-VZ).  
9 Beverly Rodeo and Yassian filed counterclaims, asserting an  
10 ownership interest in the Brighton Way Property.

11 Beverly Rodeo and Pryce reached a settlement, memorialized  
12 by a Settlement Deal Term Sheet ("SDTS"), and approved by the  
13 court on June 19, 2002. The SDTS included a release between  
14 Beverly Rodeo and the trustee of all known and unknown claims in  
15 connection with the Brighton Way Property.<sup>4</sup> As will be seen, in  
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17 <sup>3</sup>At the hearing on February 20, 2007, the bankruptcy court  
18 also heard Beverly Rodeo's and Yassian's Motion to: (1) Hold Void  
19 or Vacate Sale Order Entered on April 4, 2001; and (2) Avoid  
20 Sale, filed on October 4, 2006 (the "Sale Avoidance Motion").  
21 The Sale Avoidance Motion alleged that the sale order was void  
22 for want of subject matter jurisdiction and that the sale order  
23 should be vacated because of fraud on the court. The motion was  
24 denied.

25 <sup>4</sup>Paragraph 18 of the SDTS provides as follows:

26 18. Upon court approval of this Agreement and for good  
27 and valuable consideration, except for rights and  
28 obligations established, contemplated or preserved  
herein, Beverly [Rodeo] and the Trustee, and their  
respective agents, employees, and insurers, release  
each other from all claims, including all tax claims or  
obligations under United States Bankruptcy Code  
§ 505(b) and causes of action in connection with the

(continued...)

1 2005, the court rejected an agreement to rescind the SDTS. Thus,  
2 the SDTS and release remain in effect.

3 A stipulated judgment, entered on July 11, 2002, dismissed  
4 most of Pryce's claims and Beverly Rodeo's counterclaims against  
5 the estate with prejudice.

6 Subsequent to the sale and approval of the release, Pryce  
7 resigned as trustee, and, as already noted, was later convicted  
8 of federal crimes, related (inter alia) to his duties as  
9 bankruptcy trustee in the administration of this case. Appellee  
10 Robert Goodrich was appointed as successor trustee on April 8,  
11 2003.

12 Pryce's sale and misdeeds spawned numerous adversary and  
13 contested proceedings, including disputes regarding ownership of

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14 <sup>4</sup>(...continued)  
15 Brighton Way Property, whether known or unknown.

16 It is the intention of the parties hereto that by  
17 executing the foregoing release it shall be effective  
18 as complete and absolute mutual bar to all claims,  
19 demands, and causes of action relating to any and all  
20 claims by and between Beverly [Rodeo] and the Trustee  
21 in connection with the Brighton Way Property, except  
22 claims and rights identified and preserved herein,  
including the pending appeal. In furtherance of this  
intention, the parties hereby waive any and all rights  
and benefits conferred upon the parties pursuant to  
California Civil Code § 1542, which provides:

23 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
24 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR  
25 AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN  
26 BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT  
WITH THE DEBTOR."

27 Trustee's Mot. for Order Approving the Settlement Deal Term  
28 Sheet, Ex. A, at 8-9 (emphasis added; capitalization in  
original).

1 the Brighton Way Property and whether the sale was valid.<sup>5</sup>  
2 According to the appellants, the complicated circumstances were  
3 compounded by the authorization of the sale before the court  
4 resolved a dispute regarding whether the debtor owned more than  
5 half of the asset.

6 On March 25, 2005, Beverly Rodeo filed a request for  
7 approval of an administrative expense ("Request"). The Request  
8 alleges that Pryce, while acting as the chapter 7 trustee of the  
9 estate, wrongfully and tortiously harmed Beverly Rodeo by  
10 fraudulently inducing the court to authorize sale of the Brighton  
11 Way Property. The Request further alleges that approval of the  
12 sale was obtained by fraud on the court, since the court would  
13 have no authority to permit the sale if the Brighton Way Property  
14 was not property of the estate. Beverly Rodeo asserted that it  
15 has suffered damages of no less than \$18.1 million.<sup>6</sup>

16 No immediate action was taken by Beverly Rodeo to schedule  
17 its request for payment of administrative expense for hearing.  
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19 <sup>5</sup>The current appeal is entangled with at least two adversary  
20 proceedings and one other contested matter. Two of those three  
21 matters are presently on appeal before the district court (those  
22 appeals were briefly before this Court in early March 2007 as BAP  
23 Nos. CC-07-1079 and CC-07-1080). And, the other matter is at the  
pleading stage before the bankruptcy court, following remand by  
the Panel (BAP Nos. CC-07-1169 & 1509).

24 <sup>6</sup>This amount apparently is comprised of damages of \$15.5  
25 million created by losses attributable to the loss of the  
26 Brighton Way Property allegedly valued currently at approximately  
27 \$19 million; damages resulting from the loss of cash flow  
28 generated by the Brighton Way Property in an amount not less than  
\$1.6 million; and "additional consequential and incidental  
damages not yet fully quantified, but known to exceed" \$1  
million.

1 In the interim, Goodrich filed a motion requesting approval of an  
2 agreement between Goodrich and Beverly Rodeo and Yassian to  
3 rescind the SDTS. However, on September 6, 2005, the court  
4 denied the trustee's motion requesting approval of the agreement  
5 to rescind the SDTS. Thus, the release remains in effect.

6 On November 20, 2006, almost nineteen months after Beverly  
7 Rodeo first filed its Request, Goodrich filed an opposition to  
8 Beverly Rodeo's request for approval and payment of the  
9 administrative expense. Goodrich argued that the Request should  
10 be denied for three reasons: (1) the estate had derived judicial  
11 immunity for the sale of the Brighton Way Property; (2) Beverly  
12 Rodeo waived any right to such a demand under the terms of the  
13 SDTS; and (3) Beverly Rodeo suffered no damages because the  
14 Brighton Way Property was sold for more than fair market value.  
15 Goodrich later set a hearing for February 20, 2007.

16 Beverly Rodeo filed a reply to Goodrich's opposition to the  
17 Request on February 6, 2007, accusing Goodrich of pursuing a  
18 litigation tactic to "protect" interim fee applications. Beverly  
19 Rodeo reiterated that it suffered harm in the wrongful  
20 disposition of its property interests as a result of the wrongful  
21 sale of the Brighton Way Property. Beverly Rodeo also argued  
22 that derived judicial immunity does not apply because derived  
23 judicial immunity operates to insulate a person from liability  
24 for acts committed within or in excess of his jurisdiction, and  
25 is irrelevant to requests for administrative expense payments  
26 against an estate. Furthermore, Beverly Rodeo contended that  
27 Goodrich's opposition created a contested matter that should be  
28 treated as an adversary proceeding, especially in light of the

1 significant overlap of issues pending in Adv. No. LA 03-02072-VZ,  
2 which directly attacks the sale order (among numerous claims).

3 After oral arguments were heard on February 20, 2007, the  
4 court denied the appellants' request for payment of the  
5 administrative expense. It criticized Beverly Rodeo and Yassian  
6 for not satisfying the "burden of going forward" to provide  
7 notice and hearing in seeking allowance of their Request in a  
8 timely fashion, and then it proceeded to decide the Request on  
9 the merits. The court concluded that the appellants did not meet  
10 the "burden of persuasion" or "burden of proof" to submit  
11 admissible evidence showing: (1) a basis for the Request to be  
12 categorized as an administrative expense claim; (2) causation  
13 (the expense was created by the estate or fiduciary of the  
14 estate); and (3) the amount of the claim. The court also denied  
15 the Request on two independent grounds: (1) that the release,  
16 which waived all claims between the appellants and the estate,  
17 was enforceable, and (2) that it was possible that derived  
18 judicial immunity protected the estate.

19 The court entered its order denying Beverly Rodeo's Request  
20 for Approval and Payment of Chapter 7 Administrative Expense  
21 Claim on February 27, 2007.

22 Beverly Rodeo timely appealed.

23  
24 JURISDICTION

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



1 After notice and a hearing, an administrative expense is allowed  
2 for "the actual, necessary costs and expenses of preserving the  
3 estate."<sup>8</sup> 11 U.S.C. § 503(b) (1) (A).

4 The Request in this instance is based on the Supreme Court's  
5 Reading Doctrine, which recognized administrative priority status  
6 under what is now 11 U.S.C. § 507(a) (2) for damage awards  
7 resulting from the tortious or wrongful conduct of a trustee  
8 during his administration of the estate.<sup>9</sup> See Reading, 391 U.S.  
9 at 483-84 (Bankruptcy Act); Texas Comptroller of Pub. Accountants  
10 v. Megafoods Stores, Inc. (In re Megafoods Stores, Inc.), 163  
11 F.3d 1063, 1071 (9th Cir. 1998). See also Oregon v. Witcosky (In  
12 re Allen Care Ctrs.), 96 F.3d 1328, 1331 (9th Cir. 1996) (Reading  
13 Doctrine applies to "post-petition tort-like conduct"); Metro  
14 Fulfillment, 294 B.R. at 310 (Reading survived enactment of the  
15 Code); Brutoco Eng'g & Constr. Co., Inc. v. Dennis Ponte, Inc.

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17 <sup>7</sup>(...continued)  
18 administrative expense, or may tardily file such  
19 request if permitted by the court for cause.

19 11 U.S.C. § 503(a).

20 <sup>8</sup>The Code states in pertinent part:

21 After notice and a hearing, there shall be allowed  
22 administrative expenses, other than claims allowed  
23 under section 502(f) of this title, including . . . the  
24 actual and necessary costs and expenses of preserving  
the estate . . . .

25 11 U.S.C. § 503(b) (1) (A).

26 <sup>9</sup>Besides unsecured claims for domestic support obligations,  
27 administrative expense claims allowed under § 503(b) have higher  
28 priority in distribution over all other types of claims. See 11  
U.S.C. § 503(a) (2).

1 (In re Dennis Ponte, Inc.), 61 B.R. 296, 298 (9th Cir. BAP 1986)  
2 (damages for post-petition tort become an administrative expense  
3 under 11 U.S.C. § 503(b)(1)(A)).

4 In denying appellants' Request, the court ruled that the  
5 release in the SDTS, which included a release of all known and  
6 unknown claims between Beverly Rodeo and the estate, bound the  
7 appellants to a waiver of any claims they had against the estate.  
8 We perceive no error.<sup>10</sup>

9 Although Beverly Rodeo argues that the SDTS cannot be relied  
10 upon because the release itself is being contested in a pending

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12 <sup>10</sup>While we affirm the court's decision in denying the  
13 Request, we question the viability of the procedure used in  
14 resolving this matter at a hearing with respect to which there  
15 does not appear to have been adequate notice to the appellants  
16 that they were to provide evidence at that time, as anticipated  
17 by Federal Rule of Bankruptcy Procedure 9014(e). Although the  
18 court recognized that the Request and trustee's opposition was a  
19 contested matter subject to Federal Rule of Bankruptcy Procedure  
20 9014 which requires that contested material facts be resolved in  
21 the same manner as the trial of an adversary proceeding, the  
22 court did not provide "procedures that enable parties to  
23 ascertain at a reasonable time before any scheduled hearing  
24 whether the hearing will be an evidentiary hearing at which  
25 witnesses may testify." Fed. R. Bankr. P. 9014(d) and (e).

26 The procedural error, however, was harmless. The result of  
27 denying the Request is correct because the appellants cannot  
28 satisfy their burden of proof due to the continuing vitality of  
the release in the SDTS. See Microsoft Corp. v. DAK Indus., Inc.  
(In re DAK Indus., Inc.), 66 F.3d 1091, 1094 (9th Cir. 1995)  
(burden of proving administrative expense claim on claimant).  
Even if a briefing schedule had been set and a formal evidentiary  
hearing held under Rule 9014(d), the appellants would still be  
unable to establish fundamental premises of their Request that  
the sale was wrong and that they suffered damages as a result, so  
long as the order approving the SDTS remains enforceable.

Thus, even though the contested matter was not handled in  
strict accord with Rule 9014(d) and (e), the court was correct  
that appellants had no evidentiary proof from which to award an  
administrative expense at this stage of the litigation.

1 lawsuit<sup>11</sup> and that it is inappropriate for Goodrich to rely on  
2 the settlement when he had previously asked the court to approve  
3 his agreement to rescind the SDTS (which the court denied), the  
4 SDTS nevertheless remains effective and the release provisions  
5 are enforceable.<sup>12</sup> The SDTS is a binding agreement that released  
6 all known and unknown claims between Beverly Rodeo and the  
7 estate.

8 We agree with the court that the appellants are not  
9 presently entitled to an administrative expense award in light of  
10 the enforceability of the release provided by the SDTS. However,  
11 we emphasize that the correctness in denying the Request is a  
12 temporal result of the current status of the case and other  
13 pending proceedings. We are mindful that Pryce has been  
14 convicted of federal crimes in connection with the sale of the  
15 Brighton Way Property. It is conceivable in the future that the  
16 sale may be undone or adjusted.

17 Accordingly, the court's denial of Beverly Rodeo's Request  
18 is without prejudice to a future request for payment of the  
19 administrative expense. If the sale were to be unwound, then the  
20 appellants would be entitled to ask the bankruptcy court to  
21 revisit the administrative expense question. Federal Rule of  
22 Civil Procedure 60(b)(5), as incorporated by Federal Rule of

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24 <sup>11</sup>Yassian v. Pryce (In re Rodeo Canon Dev. Corp.), Bk. No.  
25 LA 99-49349 VZ, filed Feb. 12, 2007.

26 <sup>12</sup>The appellants also argue that Goodrich's reliance on the  
27 release is a defense to which Goodrich is unable to show there is  
28 no material question of fact regarding enforceability. Goodrich  
responds that the appellants are attempting to alter the burden  
of proof when appellants are the moving party.

1 Bankruptcy Procedure 9024, is designed to relieve the appellants  
2 of the order denying the administrative expense claim if the sale  
3 order is vacated.<sup>13</sup> However, the sale is valid for the moment,  
4 and Beverly Rodeo's Request cannot be sustained.

5 Thus, the bankruptcy court did not err in denying Beverly  
6 Rodeo's Request for payment of its administrative expense.<sup>14</sup>

7  
8 CONCLUSION

9 The court correctly denied the Request because the release  
10 attendant to the settlement agreement remains effective. We  
11 recognize that subsequent litigation may alter the present  
12 landscape. If and when that occurs, the administrative expense  
13 question may be revisited. For the present, however, we agree  
14 that the court was not in error to disallow Beverly Rodeo's  
15 Request. We AFFIRM.

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<sup>13</sup>Federal Rule of Civil Procedure 60(b)(5) provides:

21 [T]he court may relieve a party from a final judgment,  
22 order, or proceeding . . . [if] a prior judgment upon  
23 which it is based has been reversed or otherwise  
24 vacated, or it is no longer equitable that the judgment  
should have prospective application.

25 Fed. R. Civ. P. 60(b)(5).

26 <sup>14</sup>We do not find it necessary to discuss the issue of  
27 whether the estate was protected by derived judicial immunity of  
28 the trustee, since the enforceability of the release and sale  
order renders the court's judgment correct.