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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. CC-06-1385-PaMkT
WILLIAM EISEN, Debtor.	Bk. No. SA 06-10372-ES
WILLIAM EISEN; THE ALLEN GROUP PARTNERS; JAMES A. LAW, Appellants,	
v.	**M E M O R A N D U M**[1]
JEFFREY I. GOLDEN, Chapter 7 Trustee, Appellee.	

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

Filed - October 26, 2007

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

Honorable Erithe A. Smith, Bankruptcy Judge, Presiding

Before: PAPPAS, MARKELL and TCHAIKOVSKY,[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. Leslie J. Tchaikovsky, United States Bankruptcy Judge for the Northern District of California, sitting by designation.

This is an appeal of the bankruptcy court's order approving a compromise and release agreement (the "Compromise") between Jeffrey I. Golden (the "Trustee") and DFL Partnership ("DFL"). We DISMISS the appeal because there are no appellants with standing to appeal.

FACTS[3]

Eisen filed a voluntary petition for relief under chapter 11[4] of the Bankruptcy Code on December 3, 1993, in the Southern District of California.[5] The case was converted to one under

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[3] There are currently four appeals before this Panel in Eisen's bankruptcy case. We present here only the facts relevant and material to this appeal, CC-05-1385, concerning the bankruptcy court's approval of the Compromise. A discussion of the court's disallowance of James A. Law 's claim ("Law")is presented in our memorandum decision in CC-06-1387, and a discussion of the court's sanctions of debtor William Eisen ("Eisen") is in our memorandum decision in CC-06-1313. The fourth appeal, regarding reconsideration of the Law claim and the Compromise examined in this appeal, is presented in our memorandum decision in CC-06-1433.

[4] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as enacted and promulgated prior to the effective date (October 17, 2005) of the relevant provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, April 20, 2005, 119 Stat. 23.

[5] A note about the many procedural irregularities in Appellants' submissions is appropriate here. For example, the excerpts of record begin with "page 521." 9th Cir. BAP Rule 8009(b)-1(b)(2) requires only that the excerpts be continuously paginated; it does not dictate that the pagination begin with page one. Apparently, Appellants begin the excerpts on page 521 to allow for inclusion in the record on appeal of the 520 pages submitted to this panel in a previous appeal. In the table of contents, Appellants begin with "Matters for which this court is requested to take judicial notice." Appellants then list the 520 pages of the excerpts of record in an earlier BAP appeal, CC-05-1333, as well as over 640 pages in an appeal taken to the United States District Court for the Central District of California. Appellants have not provided copies of any of those documents from the other appeals, and we are not obligated to examine portions of the record not submitted in the excerpts of record. In re Kritt, (continued...)

chapter 7 on August 24, 1994.

On or about May 1, 1995, the bankruptcy case was transferred to the Bankruptcy Court of the Central District of California. Gilbert R. Vasquez was appointed chapter 7 trustee. On January 4, 2002, Vasquez resigned as trustee and Jeffrey I. Golden was appointed trustee on January 29, 2002.

The central issue in this appeal concerns the ownership of certain real estate, which is claimed by numerous parties. An historical review of this asset and the various claimants, while perhaps tedious, is therefore appropriate.

Disputes Concerning Ownership of the Crest Drive Property

Eisen's Schedule A listed as an asset certain real property (the "Crest Drive Property") "subject to unperfected foreclosure sale." Eisen had acquired the Crest Drive Property on April 30, 1971. Eisen transferred his interest in the Crest Drive Property

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[5](...continued)
190 B.R. 382, 386-87 (9th Cir. BAP 1995). Because Appellants did not file a separate request for judicial notice, and have given us neither copies of those 1,160+ pages of documents nor any reasons why we should take judicial notice of them, Appellants' request that we take judicial notice of those documents is DENIED.

Appellants also failed to provide copies of certain required documents in their excerpts, such as the complaint in this adversary proceeding and Appellants' answer, which violates Rule 8009(b)(1). In addition, Appellants' citations in the opening brief to documents not submitted in the excerpts of record violate Rule 8010(a)(1)(D).

Finally, we note that Appellants' decision to submit a single set of excerpts of record for all four appeals currently before the Panel without leave of the Panel significantly complicates the parties' and the Panel's ability to examine the record. Opposing parties and the Panel are not obliged to search the entire record unaided for error. Dela Rosa v. Scottsdale Mem'l Health Sys., Inc., 136 F.3d 1241 (9th Cir. 1998).

to William Kengel ("Kengel") by quitclaim deed on July 1, 1985.[6]

Though he had purportedly already deeded his title away, on November 27, 1985, Eisen allegedly entered into a contract to sell the Crest Drive Property to Judith Day ("Day"). Later, Eisen would argue that this contract was not binding, and he refused to transfer the property to Day. As a result, Day filed an action against Eisen in the Los Angeles Superior Court for specific performance of the contract. Day v. Eisen, case no. SWC 84861 (April 24, 1986)(the "Specific Performance Action").

On October 21, 1986, Eisen formed Crest 3514, a limited partnership ("Crest 3514"). Also on that date, Kengel transferred the Crest Drive Property to Crest 3514 by grant deed. The next day, Eisen filed a voluntary chapter 11 petition for Crest 3514. This bankruptcy case was dismissed on March 20, 1987.

On May 12, 1987, Crest 3514 transferred the property back to Eisen by quitclaim deed. On the same day, Eisen filed a personal petition under chapter 11. Eisen's chapter 11 case was converted to chapter 7 on October 29, 1987, and dismissed on May 9, 1988.

As discussed below, Eisen suggests that there was a foreclosure sale of the Crest Drive Property in 1990, at which Allen Group Partners ("Allen") purchased the property, although it would not record the foreclosure deed until 15 years later. The record is scant concerning this alleged sale.[7]

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[6] We are unable to determine from this record the nature of any relationship between Kengel and Eisen. It would appear that they had some ongoing business relationship which apparently deteriorated over time.

[7] The details of any foreclosure sale are not directly implicated in this appeal, except to the extent that they may add (continued...)

The day before trial was to begin in the Specific Performance Action, on September 19, 1991, Eisen filed yet another petition for relief, this time under chapter 13. The bankruptcy court dismissed that case on January 14, 1992.

The state court rescheduled trial on the Specific Performance Action for March 9, 1992. On March 6, 1992, Eisen filed another chapter 13 petition. The bankruptcy court found that Eisen filed the petition in bad faith. According to the presiding bankruptcy judge,

> It's clear that this debtor is not going to tell a straight story and the truth unless an objection is made, and then an amendment comes which then tells the whole story. I find . . . that I have absolutely no doubt that this debtor is not using a Chapter 13 bankruptcy case for an appropriate purpose as contemplated by Congress in enacting Chapter 13 in Title 11.

Tr. Hr'g 9:9-12 (April 15, 1992). The order dismissing the case, which included a 180-day bar of any refiling, was entered on April 21, 1992. Eisen appealed the order of April 21, 1992, to the District Court, which affirmed the dismissal order and imposed sanctions against Eisen for pursuing a frivolous appeal. The Court of Appeals affirmed that decision in the first of several scathing decisions regarding Eisen:

> The record leaves no doubt that Eisen filed his petition in bad faith. He timed the filing to frustrate the state court action with the automatic stay provisions of 11 U.S.C. § 362. He submitted contradictory and misleading descriptions of his interest in the duplex, and failed to disclose an earlier bankruptcy. He filed the second Chapter 13 petition shortly after the first was dismissed for bad faith. The

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[7](...continued)
further complexity to the Trustee's challenges to be faced in eventually sorting out title issues.

> bankruptcy judge properly dismissed the petition under 11 U.S.C. § 1307(c), and 11 U.S.C. § 109(g)(1) required the 180-day bar. Eisen's appeals to the district court and to this court were frivolous. Fed. R. App. P. 38.

Eisen v. Curry (In re Eisen), 14 F.3d 469, 470 (9th Cir. 1994). The court of appeals also imposed sanctions on Eisen.

On April 17, 1992, Eisen transferred the Crest Drive Property back to Crest 3514. The same day Crest 3514 filed a petition under chapter 11. Day filed an emergency motion to dismiss the case, and a hearing was set for May 29, 1992.

The April 17 petition listed Vincent J. Quigg as attorney for Crest 3514. On the day of the hearing, Quigg filed a declaration with the bankruptcy court, disavowing any knowledge of the April 17 petition.

> On the second page of this document is a signature which purports to be my signature. This is not my signature and I have never authorized, consented to, or been retained to represent Crest in regard to this bankruptcy filing. I am not counsel to Crest in this bankruptcy proceeding.
>
> Mr. Eisen has previously signed my name to legal documents without my consent, and in September, October, 1991, and February, 1992, I have previously instructed Mr. Eisen to cease and desist from signing my name from any document without my review of the particular document and written approval and consent.

Declaration of Vincent J. Quigg (May 29, 1992) at ¶¶ 3-4. The bankruptcy court dismissed Crest 3514's chapter 11 case with a 180-day bar.

Yet again, that same day, Eisen filed another voluntary petition under the name of a new entity, Crest Partners. There is no information in the record concerning the legal status of Crest Partners. However, the tax identification number for Crest

Partners is the same as the social security number listed on Eisen's chapter 13 petition on March 6, 1992. On June 1, 1992, Eisen, acting on his own, sent a notice of the filing of this bankruptcy case to the superior court overseeing the Specific Performance Action, advising the state court that Crest Partners was now the owner of the Crest Drive Property and that the automatic stay was in effect. Eisen also removed the Specific Performance Action to the bankruptcy court.

Day filed an emergency motion for, among other things, remand of the Specific Performance Action to the state court. The bankruptcy court, having determined that there was no need for a hearing, ordered a remand with instructions that the action "shall not be removed again from the State Court by any party to the action without first securing leave from this Court to do so." The bankruptcy court also granted Day relief from stay to pursue the Specific Performance Action in the state court, regardless of the future filing of any bankruptcy cases. Acting pursuant to § 105(a), the bankruptcy court enjoined Eisen from transferring his interest in the Crest Drive Property without leave of the court and decreed that any transfer occurring on or after the Crest Partners' petition date (May 29, 1992) was void.

Working on the assumption that Crest 3514 was the holder of record title to the property, Kengel, a partner of Crest 3514, entered into a settlement with Day on or about September 28, 1992, in which he agreed to transfer the Crest Drive Property to Day. Kengel and Day filed their settlement agreement with the state court on October 5, 1992.

Day thereupon sought to evict Eisen from the Crest Drive Property. On March 9, 1993, Day served Eisen with a 30-day notice to quit. Twenty-nine days later, on April 7, 1993, Eisen recorded a trustee's deed for the Crest Drive Property which allegedly transferred title to Eisen as the purchaser pursuant to a deed of trust foreclosure sale ostensibly held on October 26, 1986, while Kengel was the record titleholder to the Crest Drive Property.

Day filed an unlawful detainer action against Eisen in the Municipal Court, South Bay Judicial District, County of Los Angeles and, when Day attempted to serve him with process on April 20, 1993, he moved to quash the summons, which was denied by the Municipal Court. Eisen then filed a petition for writ of mandate with the Los Angeles Superior Court, asserting that he was legal owner of the Crest Drive Property, not Day, pursuant to the trustee's deed upon sale recorded on April 7, 1993.

Trial in the unlawful detainer action was scheduled to begin on July 6, 1993. That day, Eisen removed the action to the bankruptcy court in connection with the Crest Partners bankruptcy case. The next day, July 7, 1993, Eisen filed a voluntary petition for relief under chapter 13 in the Southern District of California. This chapter 13 petition was voluntarily dismissed on August 16, 2003. Trial in the unlawful detainer action was scheduled for December 7, 1993.

On August 11, 1993, Day transferred her interest in the Crest Drive Property to DFL by quitclaim deed. As noted above, four days before the trial in the unlawful detainer action was scheduled to commence, on December 3, 1993, Eisen filed the personal bankruptcy case from which this appeal arises, this time

under chapter 11 and still in the Southern District of California. DFL then filed an adversary proceeding against Eisen and the Trustee, seeking to quiet title to the Crest Drive Property or, alternatively, for damages and a declaration that DFL's resulting claim was nondischargeable. The bankruptcy case was converted to one under chapter 7 on August 24, 1994, and on or about May 1, 1995, it was transferred to the Central District of California. It is not clear in the record whether DFL's claims asserted in the adversary proceeding it initiated were ever resolved.[8]

In January 2005, the Trustee filed an application to employ a real estate broker to sell the Crest Drive Property. Eisen opposed the application and attached to his opposition a trustee's deed transferring the Crest Drive Property to the Allen Group. That trustee's deed was not recorded until January 11, 2005, some fifteen years after the purported foreclosure sale and shortly after the Trustee filed the application to employ the brokers to sell the Crest Drive Property.

On July 15, 2005, the Trustee initiated an adversary proceeding in Eisen's bankruptcy case against Allen[9] and DFL. The complaint seeks, among other things, to establish the bankruptcy estate's right, title and interest to the Crest Drive Property. As to DFL, the Trustee seeks declaratory relief that the estate's interest in the Crest Drive Property is superior to DFL's interest.

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[8] However, as the bankruptcy court would later determine, the fact that DFL filed an adversary proceeding in this case, seeking a declaration that DFL's claim was nondischargeable, in itself may constitute an informal proof of claim.

[9] The Trustee is not challenging Allen's interests in this appeal.

The Trustee alleged that, shortly before the complaint was filed, an unknown party placed an advertisement in the Los Angeles Times to sell the Crest Drive Property.[10] The bankruptcy court granted the request of the Trustee for a TRO and preliminary injunction prohibiting the marketing and sale of the Crest Drive Property.[11]

On August 15, 2005, Allen, through its purported attorney Lewis O. Amack ("Amack"), filed an answer to the complaint. At the same time, Allen, in papers signed by Amack, filed a third party complaint against Eisen and Lawyers Title Insurance Corporation. In our memorandum decisions in CC-06-1313 and 06-1387, we include more detail concerning the controversy over these Allen pleadings. They are not directly relevant to this appeal, except that Eisen argues that the third party complaint gives him standing to appear in the adversary proceeding as a third-party defendant. We note that the bankruptcy court dismissed Allen's third party complaint as to Eisen on March 7, 2006 on the grounds that it was forged.

Allen, through its new attorney, Burkenroad, filed an answer that was substantively identical to the forged document on February 23, 2006. It also filed a new cross-complaint against

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[10] Although it was not known to the court at the time the court granted the preliminary injunction, Eisen would later admit at oral argument before this Panel on November 15, 2006, that he placed and paid for the advertisement in the Los Angeles Times.

[11] On August 12, 2005, Eisen, Allen and Law appealed the bankruptcy court's order approving the preliminary injunction. We affirmed the court's decision to grant the preliminary injunction, dismissed Eisen's portion of the appeal on the grounds of lack of standing, and dismissed Law as an appellant because counsel at the panel hearing admitted that Law has no standing. Our decision is on appeal to the Ninth Circuit.

DFL, seeking declaratory relief as to whether the alleged sale agreement between Eisen and Day in 1986 was ever consummated. Allen did not refile the third party complaint against Eisen.[12]

There is no indication in the record that DFL ever filed its own answer to the complaint.

The Compromise

On April 24, 2006, the Trustee provided notice to all parties in interest that he had reached a Compromise with DFL concerning the Crest Drive Property dispute. The substance of that Compromise appears in his motion to approve the Compromise (the "Compromise Approval Motion"):

> The Trustee and DFL have agreed to a compromise of the Trustee's claims against DFL, which compromise is fully set forth in the Agreement. If the Agreement is approved, DFL will transfer all of its right, title and interest in the Crest Drive property to the Trustee. In exchange, DFL will be afforded a general, unsecured claim against the estate in the amount of $400,000.

On May 10, 2006, Eisen, Allen and Law filed an opposition to the Compromise Approval Motion. They argued that: (1) Allen was improperly excluded from the Compromise agreement and that the agreement was an end-run around Allen's own cross-complaint against DFL; (2) a claim in favor of DFL may not be approved prior to DFL's filing of a proof of claim; and (3) the alleged sale contract between Eisen and Day was an executory contract which was rejected as a matter of law under the Bankruptcy Code, and thus Day did not have any damages.

A hearing on the Compromise Approval Motion was conducted on

[12] Consequently, Eisen does not have standing in the adversary proceeding as a third party defendant.

May 24, 2006. The Trustee was represented by his attorney; Eisen appeared pro se; and Law and Allen were represented by Thomas Kemmerer, an attorney substituting for Burkenroad. Eisen and the Trustee's attorney were heard by the court; Kemmerer submitted on the court's tentative ruling, which was to grant the motion and approve the Compromise.

On July 11, 2006, the bankruptcy court entered its order approving the Compromise, thereby allowing an unsecured claim against the bankruptcy estate in favor of DFL for $400,000.

At the same time, the bankruptcy court also entered separate findings of fact and conclusions of law in support of approving the Compromise. In them, the court directly answered the three objections raised by appellants:

> Conclusion of Law 2: The Allen Group's argument that the motion should be denied because the Allen Group was not included in the settlement is frivolous. The Trustee's proposed settlement has no pecuniary impact on the Allen Group. The settlement merely requires DFL to quitclaim to the Trustee whatever interest DFL has in the Crest Drive property.
>
> Conclusion of Law 4. The Allen Group's argument that allowance of an unsecured claim without requiring the filing of a proof of claim is impermissible is not supported by relevant case authority. In re Holm, 931 F.2d 620, 622 (9th Cir. 1991).
>
> Conclusion of Law 7: The Trustee's analysis regarding potential damages under California Civil Code § 3306 appears reasonable under the facts and circumstances presented. The arguments in the opposition papers are unpersuasive and unsupported by legal authority.

The bankruptcy court also addressed the Woodson factors for

approval of a compromise in its findings and conclusions.[13]

On October 16, 2006, appellants filed a timely appeal of the order approving the Compromise.

JURISDICTION

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

ISSUES[14]

Whether any of the appellants has standing to appeal the court's order approving the Compromise.

Whether the bankruptcy court abused its discretion in approving the Compromise.

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[13] Appellants did not mention these factors in their opposition to the Compromise Approval Motion, nor do they in their Opening Brief in this appeal.

[14] As they have done in all four appeals now before this panel in the Eisen case, appellants persist in listing as an issue on appeal that the adversary proceeding should be dismissed on the grounds of laches and judicial estoppel. These arguments are not germane as to the propriety of the bankruptcy court's approval of the compromise between Trustee and DFL. Moreover, the arguments were not made to bankruptcy court. If an issue is not raised in the bankruptcy court, we will not usually consider it for the first time on appeal. Beck v. Pace Int'l Union, 427 F.3d 668, 674 (9th Cir. 2005), rev'd on other grounds, 127 S.Ct. 2310 (2007). Our circuit permits review of new issues on appeal under three circumstances: (1) in the "exceptional" case in which review is necessary to prevent a miscarriage of justice or to preserve the integrity of the judicial process, (2) when a new issue arises while appeal is pending because of a change in the law, or (3) when the issue presented is purely one of law and either does not depend on the factual record developed below, or the pertinent record has been fully developed. Cold Mt. v. Garber, 375 F.3d 884, 891 (9th Cir. 2004). We find that none of these exceptions apply here, and we decline to consider the laches or judicial estoppel arguments.

STANDARDS OF REVIEW

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

We review the issue of standing de novo. Brown v. Sobczak (In re Sobczak), 369 B.R. 512, 516 (9th Cir. BAP 2007). Whether an entity is a "person aggrieved" and thus has standing to appeal is a question of fact. Duckor Spradling & Metzger v. Baum Trust (In re P.R.T.C., Inc.), 177 F.3d 774, 777 (9th Cir. 1999).

The bankruptcy court's approval of a compromise is reviewed for abuse of discretion. Debbie Reynolds Hotel & Casino, Inc. v. Calstar Corp. (In re Debbie Reynolds Hotel & Casino, Inc.), 255 F.3d 1061, 1065 (9th Cir. 2001).

DISCUSSION

I.

The appellants lack standing to appeal.

There are three appellants in this appeal: Eisen, Allen and Law. We determine that none of them has standing to appeal the order of the bankruptcy court approving the Compromise.

In this circuit, only "persons aggrieved" have standing to appeal an order of the bankruptcy court. In re Fondiller, 707 F.2d 441, 442 (9th Cir. 1983). The test of an aggrieved person in a bankruptcy appeal is if that person is "directly and adversely affected pecuniarily by an order of the bankruptcy court." P.R.T.C., 177 F.3d at 777 (emphasis added).

The bankruptcy court made a specific finding that Allen did not have a pecuniary interest in approval of the Compromise. As

the bankruptcy court stated in its Conclusion of Law 2, "[t]he Trustee's proposed settlement has no pecuniary impact on the Allen Group. The settlement merely requires DFL to quitclaim to the Trustee whatever interest DFL has in the Crest Drive property." Thus, and contrary to the appellants' arguments in the bankruptcy court, the court's approval of the compromise made no determination of any party's rights to the Crest Drive Property. It merely blessed an arrangement whereby DFL ceded whatever rights it may have in the property to the Trustee. We agree with this analysis and the bankruptcy court's conclusion that Allen has no pecuniary interest in this outcome of the compromise, and thus does not have standing to appeal.

Eisen may presumably assert standing on two grounds. First, as a putative owner (or holder of some other interest) in the Crest Drive Property, Eisen might assert that any determination of DFL's or the Trustee's rights in the Crest Drive Property would have an effect on his claimed rights. However, as noted above, the bankruptcy court made no such determination of rights in the property, and thus Eisen may not claim standing on that basis.

The second ground on which Eisen might assert standing is that allowance of a creditor's claim in favor of DFL could theoretically reduce any surplus that might be returned to him after payment to the creditors. We have held that "debtors only have standing to object to claims where there is 'a sufficient possibility' of a surplus to give them a pecuniary interest." Heath v. Am. Express Travel Related Servs. Co. (In re Heath), 331 B.R. 424 , 429 (9th Cir. BAP 2005). Here, there is no evidence in the record to show a "sufficient possibility" of a surplus to give

Eisen standing. We therefore conclude that Eisen lacks standing to bring this appeal.

Finally, we examined the Law creditor claims in CC-06-1387 and affirmed the bankruptcy court's disallowance of those claims. Law is not a party, directly or indirectly, in this adversary proceeding. He is not a creditor, has no pecuniary interest in the bankruptcy case or adversary proceeding, and thus has no standing in this appeal.

For these reasons, we conclude that none of the appellants has standing to pursue this appeal, and it will be dismissed.

II.

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

Even if one or more of the appellants has standing to appeal, we would nonetheless conclude that the bankruptcy court did not abuse its discretion in approving the Compromise.

Rule 9019(a), which deals with compromises and arbitrations, provides that,

> On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002(a) and to any other entity as the court may direct.

The bankruptcy court has long been required to conduct an inquiry into the complexity, expense and likely duration of any litigation which would continue without the compromise or settlement, and "all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise." Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v.

Anderson, 390 U.S. 414, 424 (1968). Our court of appeals has established the criteria for this inquiry as follows:

> In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) probability of success in the litigation, (b) the difficulties, if any, to be encountered in the matter of collection, (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; [and] (d) the paramount interest of creditors and a proper deference to their reasonable views in the premises.

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

The bankruptcy court has wide latitude and considerable discretion in evaluating a proposed compromise because the judge "is uniquely situated to consider the equities and reasonableness." United States v. Alaska Nat'l Bank (In re Walsh Constr., Inc.), 669 F.2d 1325, 1328 (9th Cir. 1982).

In this case, the bankruptcy court issued 48 findings of fact and 12 conclusions of law in support of its decision to allow the Compromise. The appellants have challenged none of the findings or conclusions on appeal. We give special deference to the findings of fact by a bankruptcy court. Rule 8013.

The bankruptcy court explicitly addressed the Woodson factors in its first conclusion:

> Conclusion of Law 1. Evidence submitted by the Trustee in support of the motion satisfies the Trustee's burden of proof for approval of the proposed compromise, including the factors

> enunciated in In re A&C Properties, 784 F.2d 1377 (9th Cir. 1986), including without limitation the risk of loss in litigation, the complexity and likelihood of protracted litigation, and the interest of the estate.

The court also applied Woodson in its conclusion that the allowance of an unsecured claim for DFL as part of the Compromise was reasonable:

> Conclusion of Law 8. Taking into account all of the circumstances of this case, including but not limited to the long history of transfers, allegations of breaches of contract, the potential protracted litigation that would be necessitated by the adversary proceeding against DFL, the general unsecured claim provided to DFL under the settlement agreement is reasonable.

As we discuss below, the bankruptcy court's decision to approve the Compromise is fully supported by the record.

1. Probability of success in the litigation.

At the heart of the adversary proceeding is the Trustee's contention that the bankruptcy estate's rights in the Crest Drive Property are superior to those of Allen and DFL. For the Trustee to succeed in the adversary proceeding against DFL, he must establish that Eisen had a superior interest in the Crest Drive Property on the petition date.

There is a considerable risk that the Trustee may not succeed in this argument. The Trustee admits that "DFL has a nonfrivolous argument that it owned record title to the Crest Drive property as of the petition date." The chain of title to the Crest Drive Property is not at all clear. There are at least six recorded changes of title between 1971 and 1993. There are challenges to various transfers, and moreover, the chain of title is complicated by the purported foreclosure sale in 1990, and the recording of

the trustee's deed from that foreclosure sale in 2005 by Allen (after the filing of Eisen's bankruptcy petition). The Trustee argues, justifiably, that discovery would likely be required regarding events occurring at least as far back as 1985. In addition, the Trustee would likely be required to conduct discovery as to, among other things, the validity of the trustee's deed stemming from the foreclosure sale recorded in favor of Eisen in April 1993.

At the center of this web of confusion is Eisen. The Trustee would need to rely on Eisen's testimony to establish Eisen's role in the various title transfers, as well as to verify various documents. The Trustee states that he simply cannot depend on Eisen.

> As evidenced by, among other things, the debtor's refusal to appear at a deposition, the Trustee cannot depend upon the debtor to be cooperative; to the contrary, the Trustee can expect that the debtor will attempt to obstruct any efforts of the Trustee to administer the estate.[15]

Indeed, the Trustee went on to argue that he could not rely on Eisen, even if Eisen were fully cooperative:

> Given the history of this case and the debtor's actions in this case and prior cases, testimony given by the debtor likely would be suspect and signatures on even basic documents would need to be verified at great cost to the estate.[16]

Thus, the record clearly supports the bankruptcy court's determination that "risk of loss" in the adversary proceeding favored approval of the Compromise. The court did not abuse its

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[15] Chapter 7 Trustee's Reply Brief in Support of Motion for Approval of Compromise with DFL Partnership at 5.

[16] Id.

discretion in coming to this conclusion.

2. Difficulties to be encountered in collection.

The bankruptcy court did not address this Woodson factor. However, since title to the Crest Drive Property is the object of the adversary proceeding, we conclude that the collection factor is not relevant to approval of the Compromise under these facts. The Trustee is not asserting a claim for money damages against DFL.

3. Complexity of the litigation, and the expense, inconvenience, and delay necessarily attending it.

Even a cursory review of the history of this case indicates that litigation with DFL would likely be complex, expensive, and would further delay the Trustee's administration of the case. As noted above, if the Trustee is required to litigate the validity of the original sales agreement between Eisen and Day (on which Day's successor-in-interest, DFL, bases its claim), extensive discovery would be required. Also, discovery concerning the validity of the trustee's deed upon sale recorded in favor of Eisen in 1993 would be required in view of Eisen's likely refusal to cooperate.

The Trustee has acknowledged that, even if he were able to establish the estate's superior right, title, and interest in the Crest Drive Property on the basis of deficiencies in title, "DFL likely would be left with the right to the allowance of 'informal' proofs of claim." There was considerable discussion in the bankruptcy court over the measure of damages if the court found Eisen breached his contract with Day in 1986. The Trustee estimated that, if DFL's damages were to be calculated as the

price for which Eisen agreed to sell the Crest Drive Property to Day ($240,000), plus interest at 10 percent per annum since 1986, DFL's claim as of the petition date would be over $430,000, exclusive of attorney's fees. We agree with the bankruptcy court's Conclusion of Law 7 that the Trustee's calculation is approximately correct under Cal. Civ. Code § 3306. This section provides that the measure of damages for breach of contract to convey real property is the price paid for the property, the expenses incurred in examining title and preparing the necessary papers, the difference between the price agreed to be paid, and the value at the time of breach, expenses incurred in preparing to enter upon the land, consequential damages, and interest.

In sum, the bankruptcy court had considerable evidence that continuing the adversary proceedings against DFL would be complex, expensive, and would further delay the Trustee's administration of the case. The bankruptcy court did not abuse its discretion in determining that "taking into account . . . the long history of transfers, allegations of breaches of contract, the potential protracted litigation that would be necessitated by the adversary proceeding against DFL, the general unsecured claim provided to DFL under the settlement agreement is reasonable."

4. Paramount interest of the creditors.

The bankruptcy court apparently misstated the last of the Woodson factors in its first conclusion of law by referring to "the interest of the estate" rather than the paramount interest of the creditors of the estate. It is possible that this was inadvertent. However, even if it was an error, it was harmless.

The bankruptcy court had evidence before it that, absent the Trustee's sale of the Crest Drive Property, there would be no funds for the creditors. In addition to DFL, there were only two allowed claimants, Kengel and Landau. Although Kengel and Landau may receive smaller distributions from the estate than if DFL did not have an allowed claim, neither Landau nor Kengel would receive anything if the Trustee's claims against DFL are unsuccessful. Neither Kengel or Landau opposed the compromise. Therefore, on this record, it is unquestionable that the Compromise was in the best interest of the creditors.[17]

As we discussed earlier, the appellants did not challenge any of the bankruptcy court's findings of fact and conclusions of law in their Opening Brief, including the conclusion that the Woodson factors favored approval of the Compromise. Their entire argument against approval of the Compromise is contained in two sentences on page 6.

> As pointed out by appellants in their opposition to the trustee's compromise with DFL, the acknowledgment of a debt, as the compromise proposes to do, does not constitute the filing of a claim, whether formal or informal. In re Crawford (D. Kan. 1991), 135 B.R. 128 (ER 780). Allowance of an unsecured claim without requiring its filing wo [sic] effectively denies interested parties, such as appellants, due process of law by denying them an opportunity to object to the claim.

Appellants badly misrepresent the holding in the only court decision they cite to support their position. Crawford does not

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[17] The bankruptcy court disallowed the claims of Law, and we affirmed that decision in our Memorandum entered in CC-06-1387. However, even if Law held legitimate creditor claims in this case, it would also be in his best interests for the court to approve the Compromise which provides for some distributions to creditors. Otherwise, he too would receive nothing on his purported claims.

hold that the acknowledgment of a debt does not constitute the filing of a claim. Crawford concerned a chapter 7 debtor who listed the IRS as a creditor on his schedules and later asserted that listing the claim was an informal proof of claim. As the court explained,

> Crawford makes two other arguments in his brief regarding the allowability of his late filed proof of claim. His first argument is that creditors were put on notice as to a possible claim by the IRS due to Crawford's listing of the IRS on his schedules, and therefore creditors would not be prejudiced by allowing the IRS claim. This argument fails due to the fact that scheduling of debts does not constitute filing of claims (informal or formal), pursuant to Bankruptcy Code Section 501. Otherwise, there would in effect be no claims deadline (all subsequently filed proofs of claim relating back to the informal, scheduled claims), and the Bankruptcy Rule requiring the filing of proofs of claim in Chapter 7 cases (Rule 3002) would have no meaning. In re Poor, 127 Bankr. [B.R.] 787 (Bankr. M.D. La. 1991). Mere notice of a claim alone does not qualify as an informal proof of claim and does not excuse the absence of proper timely proof. In re International Horizons, Inc., 751 F.2d 1213 (11th Cir. 1985).

Crawford, 135 B.R. at 132 (emphasis added). Crawford deals with creditors listed in the schedules that have not timely filed proofs of claim. Crawford has nothing to do with whether an informal claim may arise as a result of an adversary proceeding.

That an informal claim may arise as a result of an adversary proceeding is precisely the conclusion the bankruptcy court reached in this case, which conclusion was not appealed:

> Conclusion of Law 5. The filing by DFL of an adversary proceeding concerning its alleged interest in the Crest Drive Property may constitute an informal proof of claim against the debtor's estate.
>
> Conclusion of Law 6. The settlement agreement between the Trustee and DFL may constitute an

> informal proof of claim against the debtor's estate.

The court also appropriately noted that this conclusion is consistent with the relevant case law in this circuit by its citation to In re Holm, 931 F.2d 620, 622 (9th Cir. 1991) (filing of an adversary proceeding may constitute an informal proof of claim).

We conclude that the bankruptcy court did not abuse its discretion in approving the Compromise.

CONCLUSION

We DISMISS the appeal because all of the appellants lack standing to appeal.[18]

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[18] On page 20 of his Brief, Trustee refers to the "frivolousness" of this appeal. The Panel agrees that this is likely a frivolous appeal. As noted above, the appellants all lack standing to appeal, and Appellants' entire argument on appeal is presented in two sentences of their opening brief, with only one citation to authority which, as we discuss above, was of no help to the Panel. Appellants filed no reply brief. See Hamblen v. County of Los Angeles, 803 F.2d 462, 465 (9th Cir. 1986) (appeal frivolous where entire argument consisted of bare legal conclusions and fragmented, unsupported assertions); Ernst Haas Studio, Inc. v. Palm Press, Inc., 164 F.3d 110, 112-13 (2d Cir. 1999) (appellant's main brief did not cite single relevant statute or court decision and did not present coherent legal theory – even without citation to authority – that would sustain its position); Coastal Transfers Co. v. Toyota Motor Sales, 833 F.2d 208, 212 (9th Cir. 1987) (sanctions for frivolous appeal appropriate where there is a history of meritless claims, needless expenditure of judicial time and the appellate court intends to deter future frivolous appeals). Although Rule 8020 would allow us to initiate proceedings sua sponte for the imposition of sanctions on the Appellants, we are reluctant to involve the Trustee and bankruptcy estate in such proceedings in light of the limited resources available to them. Moreover, we are also mindful of the observation of our court of appeals that "prior sanctions imposed upon Eisen apparently have not deterred his litigious nature." Eisen v. Golden, case no. 03-55643 (9th Cir., April 7, 2004). If the Trustee, in the exercise of his discretion, determines it worthwhile and appropriate to pursue sanctions, he may request such by motion under Rule 8020.