

OCT 26 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NOT FOR PUBLICATION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 No.	CC-06-1385-PaMkT
	)		
WILLIAM EISEN,	)	Bk. No.	SA 06-10372-ES
	)		
Debtor.	)		
_____	)		
	)		
WILLIAM EISEN; THE ALLEN GROUP	)		
PARTNERS; JAMES A. LAW,	)		
	)		
Appellants,	)		
	)		
v.	)	<b>MEMORANDUM<sup>1</sup></b>	
	)		
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,<sup>2</sup> Bankruptcy Judges.

<sup>1</sup> 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.

<sup>2</sup> Hon. Leslie J. Tchaikovsky, United States Bankruptcy Judge for the Northern District of California, sitting by designation.

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

### 6 **FACTS**<sup>3</sup>

7 Eisen filed a voluntary petition for relief under chapter 11<sup>4</sup>  
8 of the Bankruptcy Code on December 3, 1993, in the Southern  
9 District of California.<sup>5</sup> The case was converted to one under

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11 <sup>3</sup> There are currently four appeals before this Panel in  
12 Eisen's bankruptcy case. We present here only the facts relevant  
13 and material to this appeal, CC-05-1385, concerning the bankruptcy  
14 court's approval of the Compromise. A discussion of the court's  
15 disallowance of James A. Law's claim ("Law") is presented in our  
16 memorandum decision in CC-06-1387, and a discussion of the court's  
17 sanctions of debtor William Eisen ("Eisen") is in our memorandum  
18 decision in CC-06-1313. The fourth appeal, regarding  
19 reconsideration of the Law claim and the Compromise examined in  
20 this appeal, is presented in our memorandum decision in CC-06-  
21 1433.

22 <sup>4</sup> Unless otherwise indicated, all chapter, section and rule  
23 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and  
24 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as  
25 enacted and promulgated prior to the effective date (October 17,  
26 2005) of the relevant provisions of the Bankruptcy Abuse  
27 Prevention and Consumer Protection Act of 2005, Pub. L. 109-8,  
28 April 20, 2005, 119 Stat. 23.

29 <sup>5</sup> A note about the many procedural irregularities in  
30 Appellants' submissions is appropriate here. For example, the  
31 excerpts of record begin with "page 521." 9th Cir. BAP Rule  
32 8009(b)-1(b)(2) requires only that the excerpts be continuously  
33 paginated; it does not dictate that the pagination begin with page  
34 one. Apparently, Appellants begin the excerpts on page 521 to  
35 allow for inclusion in the record on appeal of the 520 pages  
36 submitted to this panel in a previous appeal. In the table of  
37 contents, Appellants begin with "Matters for which this court is  
38 requested to take judicial notice." Appellants then list the 520  
39 pages of the excerpts of record in an earlier BAP appeal, CC-05-  
40 1333, as well as over 640 pages in an appeal taken to the United  
41 States District Court for the Central District of California.  
42 Appellants have not provided copies of any of those documents from  
43 the other appeals, and we are not obligated to examine portions of  
44 the record not submitted in the excerpts of record. In re Kritt,

(continued...)

1 chapter 7 on August 24, 1994.

2 On or about May 1, 1995, the bankruptcy case was transferred  
3 to the Bankruptcy Court of the Central District of California.  
4 Gilbert R. Vasquez was appointed chapter 7 trustee. On January 4,  
5 2002, Vasquez resigned as trustee and Jeffrey I. Golden was  
6 appointed trustee on January 29, 2002.

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

11

12 Disputes Concerning Ownership of the Crest Drive Property

13 Eisen's Schedule A listed as an asset certain real property  
14 (the "Crest Drive Property") "subject to unperfected foreclosure  
15 sale." Eisen had acquired the Crest Drive Property on April 30,  
16 1971. Eisen transferred his interest in the Crest Drive Property

17

18

19 <sup>5</sup>(...continued)

20 190 B.R. 382, 386-87 (9th Cir. BAP 1995). Because Appellants did  
21 not file a separate request for judicial notice, and have given us  
22 neither copies of those 1,160+ pages of documents nor any reasons  
23 why we should take judicial notice of them, Appellants' request  
24 that we take judicial notice of those documents is DENIED.

25 Appellants also failed to provide copies of certain required  
26 documents in their excerpts, such as the complaint in this  
27 adversary proceeding and Appellants' answer, which violates Rule  
28 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).

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

1 to William Kengel ("Kengel") by quitclaim deed on July 1, 1985.<sup>6</sup>

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

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

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

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

24

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25        <sup>6</sup> We are unable to determine from this record the nature of  
26 any relationship between Kengel and Eisen. It would appear that  
27 they had some ongoing business relationship which apparently  
deteriorated over time.

28        <sup>7</sup> The details of any foreclosure sale are not directly  
implicated in this appeal, except to the extent that they may add  
(continued...)

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

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

10                       It's clear that this debtor is not going to tell  
11                       a straight story and the truth unless an  
12                       objection is made, and then an amendment comes  
13                       which then tells the whole story. I find . . .  
14                       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.

15 Tr. Hr'g 9:9-12 (April 15, 1992). The order dismissing the case,  
16 which included a 180-day bar of any refileing, was entered on April  
17 21, 1992. Eisen appealed the order of April 21, 1992, to the  
18 District Court, which affirmed the dismissal order and imposed  
19 sanctions against Eisen for pursuing a frivolous appeal. The  
20 Court of Appeals affirmed that decision in the first of several  
21 scathing decisions regarding Eisen:

22                       The record leaves no doubt that Eisen filed his  
23                       petition in bad faith. He timed the filing to  
24                       frustrate the state court action with the  
25                       automatic stay provisions of 11 U.S.C. § 362.  
26                       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

27 \_\_\_\_\_  
28                       <sup>7</sup>(...continued)  
further complexity to the Trustee's challenges to be faced in  
eventually sorting out title issues.

1 bankruptcy judge properly dismissed the petition  
2 under 11 U.S.C. § 1307(c), and 11 U.S.C.  
3 § 109(g)(1) required the 180-day bar. Eisen's  
4 appeals to the district court and to this court  
5 were frivolous. Fed. R. App. P. 38.

6 Eisen v. Curry (In re Eisen), 14 F.3d 469, 470 (9th Cir. 1994).

7 The court of appeals also imposed sanctions on Eisen.

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

12 The April 17 petition listed Vincent J. Quigg as attorney for  
13 Crest 3514. On the day of the hearing, Quigg filed a declaration  
14 with the bankruptcy court, disavowing any knowledge of the April  
15 17 petition.

16 On the second page of this document is a  
17 signature which purports to be my signature.  
18 This is not my signature and I have never  
19 authorized, consented to, or been retained to  
20 represent Crest in regard to this bankruptcy  
21 filing. I am not counsel to Crest in this  
22 bankruptcy proceeding.

23 Mr. Eisen has previously signed my name to  
24 legal documents without my consent, and in  
25 September, October, 1991, and February, 1992, I  
26 have previously instructed Mr. Eisen to cease  
27 and desist from signing my name from any  
28 document without my review of the particular  
document and written approval and consent.

29 Declaration of Vincent J. Quigg (May 29, 1992) at ¶¶ 3-4. The  
30 bankruptcy court dismissed Crest 3514's chapter 11 case with a  
31 180-day bar.

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

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

9 Day filed an emergency motion for, among other things, remand  
10 of the Specific Performance Action to the state court. The  
11 bankruptcy court, having determined that there was no need for a  
12 hearing, ordered a remand with instructions that the action "shall  
13 not be removed again from the State Court by any party to the  
14 action without first securing leave from this Court to do so."  
15 The bankruptcy court also granted Day relief from stay to pursue  
16 the Specific Performance Action in the state court, regardless of  
17 the future filing of any bankruptcy cases. Acting pursuant to  
18 § 105(a), the bankruptcy court enjoined Eisen from transferring  
19 his interest in the Crest Drive Property without leave of the  
20 court and decreed that any transfer occurring on or after the  
21 Crest Partners' petition date (May 29, 1992) was void.

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

28

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

8 Day filed an unlawful detainer action against Eisen in the  
9 Municipal Court, South Bay Judicial District, County of Los  
10 Angeles and, when Day attempted to serve him with process on April  
11 20, 1993, he moved to quash the summons, which was denied by the  
12 Municipal Court. Eisen then filed a petition for writ of mandate  
13 with the Los Angeles Superior Court, asserting that he was legal  
14 owner of the Crest Drive Property, not Day, pursuant to the  
15 trustee's deed upon sale recorded on April 7, 1993.

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

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



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

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

18 On July 15, 2005, the Trustee initiated an adversary  
19 proceeding in Eisen's bankruptcy case against Allen<sup>9</sup> and DFL. The  
20 complaint seeks, among other things, to establish the bankruptcy  
21 estate's right, title and interest to the Crest Drive Property.  
22 As to DFL, the Trustee seeks declaratory relief that the estate's  
23 interest in the Crest Drive Property is superior to DFL's  
24 interest.

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25  
26 <sup>8</sup> However, as the bankruptcy court would later determine,  
27 the fact that DFL filed an adversary proceeding in this case,  
28 seeking a declaration that DFL's claim was nondischargeable, in  
itself may constitute an informal proof of claim.

<sup>9</sup> The Trustee is not challenging Allen's interests in this  
appeal.

1 The Trustee alleged that, shortly before the complaint was  
2 filed, an unknown party placed an advertisement in the Los Angeles  
3 Times to sell the Crest Drive Property.<sup>10</sup> The bankruptcy court  
4 granted the request of the Trustee for a TRO and preliminary  
5 injunction prohibiting the marketing and sale of the Crest Drive  
6 Property.<sup>11</sup>

7 On August 15, 2005, Allen, through its purported attorney  
8 Lewis O. Amack ("Amack"), filed an answer to the complaint. At  
9 the same time, Allen, in papers signed by Amack, filed a third  
10 party complaint against Eisen and Lawyers Title Insurance  
11 Corporation. In our memorandum decisions in CC-06-1313 and 06-  
12 1387, we include more detail concerning the controversy over these  
13 Allen pleadings. They are not directly relevant to this appeal,  
14 except that Eisen argues that the third party complaint gives him  
15 standing to appear in the adversary proceeding as a third-party  
16 defendant. We note that the bankruptcy court dismissed Allen's  
17 third party complaint as to Eisen on March 7, 2006 on the grounds  
18 that it was forged.

19 Allen, through its new attorney, Burkenroad, filed an answer  
20 that was substantively identical to the forged document on  
21 February 23, 2006. It also filed a new cross-complaint against  
22

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

26 <sup>11</sup> On August 12, 2005, Eisen, Allen and Law appealed the  
27 bankruptcy court's order approving the preliminary injunction. We  
28 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.

1 DFL, seeking declaratory relief as to whether the alleged sale  
2 agreement between Eisen and Day in 1986 was ever consummated.  
3 Allen did not refile the third party complaint against Eisen.<sup>12</sup>

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

6

7

The Compromise

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

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

22 On May 10, 2006, Eisen, Allen and Law filed an opposition to  
23 the Compromise Approval Motion. They argued that: (1) Allen was  
24 improperly excluded from the Compromise agreement and that the  
25 agreement was an end-run around Allen's own cross-complaint  
26 against DFL; (2) a claim in favor of DFL may not be approved prior  
27 to DFL's filing of a proof of claim; and (3) the alleged sale  
28 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

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<sup>12</sup> Consequently, Eisen does not have standing in the  
adversary proceeding as a third party defendant.

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

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

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

14 Conclusion of Law 2: The Allen Group's argument  
15 that the motion should be denied because the  
16 Allen Group was not included in the settlement  
17 is frivolous. The Trustee's proposed settlement  
18 has no pecuniary impact on the Allen Group. The  
19 settlement merely requires DFL to quitclaim to  
20 the Trustee whatever interest DFL has in the  
21 Crest Drive property.

22 Conclusion of Law 4. The Allen Group's argument  
23 that allowance of an unsecured claim without  
24 requiring the filing of a proof of claim is  
25 impermissible is not supported by relevant case  
26 authority. In re Holm, 931 F.2d 620, 622 (9th  
27 Cir. 1991).

28 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

1 approval of a compromise in its findings and conclusions.<sup>13</sup>

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

4  
5 **JURISDICTION**

6 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
7 §§ 1334 and 157(A), (B), and (O). We have jurisdiction pursuant  
8 to 28 U.S.C. § 158.

9  
10 **ISSUES<sup>14</sup>**

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

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

15  
16 \_\_\_\_\_  
17 <sup>13</sup> Appellants did not mention these factors in their  
18 opposition to the Compromise Approval Motion, nor do they in their  
Opening Brief in this appeal.

19 <sup>14</sup> As they have done in all four appeals now before this  
20 panel in the Eisen case, appellants persist in listing as an issue  
21 on appeal that the adversary proceeding should be dismissed on the  
22 grounds of laches and judicial estoppel. These arguments are not  
23 germane as to the propriety of the bankruptcy court's approval of  
24 the compromise between Trustee and DFL. Moreover, the arguments  
25 were not made to bankruptcy court. If an issue is not raised in  
26 the bankruptcy court, we will not usually consider it for the  
27 first time on appeal. Beck v. Pace Int'l Union, 427 F.3d 668, 674  
28 (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.



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

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

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

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

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

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

11  
12 II.

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

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

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

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

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



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

3           In determining the fairness, reasonableness and  
4 adequacy of a proposed settlement agreement, the  
5 court must consider: (a) probability of success  
6 in the litigation, (b) the difficulties, if any,  
7 to be encountered in the matter of collection,  
8 (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.

9 Martin v. Kane (In re A&C Props.), 784 F.2d 1377, 1381 (9th Cir.  
10 1986). The court repeated these criteria in In re Woodson, 839  
11 F.2d 610, 620 (9th Cir. 1988); they are often referred to as the  
12 Woodson factors. See also Goodwin v. Mickey Thompson Entm't  
13 Group, Inc. (In re Mickey Thompson Entm't Group, Inc.), 292 B.R.  
14 415, 420 (9th Cir. BAP 2003).

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

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

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

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

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

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

7           Conclusion of Law 8. Taking into account all of  
8           the circumstances of this case, including but  
9           not limited to the long history of transfers,  
10          allegations of breaches of contract, the  
11          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.

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

14          1.   Probability of success in the litigation.

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

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

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

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

14 As evidenced by, among other things, the  
15 debtor's refusal to appear at a deposition, the  
16 Trustee cannot depend upon the debtor to be  
17 cooperative; to the contrary, the Trustee can  
18 expect that the debtor will attempt to obstruct  
19 any efforts of the Trustee to administer the  
20 estate.<sup>15</sup>

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

23 Given the history of this case and the debtor's  
24 actions in this case and prior cases, testimony  
25 given by the debtor likely would be suspect and  
26 signatures on even basic documents would need to  
27 be verified at great cost to the estate.<sup>16</sup>

28 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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27 <sup>15</sup> Chapter 7 Trustee's Reply Brief in Support of Motion for  
28 Approval of Compromise with DFL Partnership at 5.

<sup>16</sup> Id.

1 discretion in coming to this conclusion.

2 2. Difficulties to be encountered in collection.

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

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

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

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

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

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

22 4. Paramount interest of the creditors.

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

28

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

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

17 As pointed out by appellants in their opposition  
18 to the trustee's compromise with DFL, the  
19 acknowledgment of a debt, as the compromise  
20 proposes to do, does not constitute the filing  
21 of a claim, whether formal or informal. In re  
22 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.

23 Appellants badly misrepresent the holding in the only court  
24 decision they cite to support their position. Crawford does not  
25

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26 <sup>17</sup> The bankruptcy court disallowed the claims of Law, and we  
27 affirmed that decision in our Memorandum entered in CC-06-1387.  
28 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.

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

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

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

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

25 Conclusion of Law 5. The filing by DFL of an  
26 adversary proceeding concerning its alleged  
27 interest in the Crest Drive Property may  
28 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

1 informal proof of claim against the debtor's  
2 estate.

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

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

### 11 CONCLUSION

12 We DISMISS the appeal because all of the appellants lack  
13 standing to appeal.<sup>18</sup>

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15 <sup>18</sup> On page 20 of his Brief, Trustee refers to the  
16 "frivolousness" of this appeal. The Panel agrees that this is  
17 likely a frivolous appeal. As noted above, the appellants all  
18 lack standing to appeal, and Appellants' entire argument on appeal  
19 is presented in two sentences of their opening brief, with only  
20 one citation to authority which, as we discuss above, was of no  
21 help to the Panel. Appellants filed no reply brief. See Hamblen  
22 v. County of Los Angeles, 803 F.2d 462, 465 (9th Cir. 1986)  
23 (appeal frivolous where entire argument consisted of bare legal  
24 conclusions and fragmented, unsupported assertions); Ernst Haas  
25 Studio, Inc. v. Palm Press, Inc., 164 F.3d 110, 112-13 (2d Cir.  
26 1999) (appellant's main brief did not cite single relevant statute  
27 or court decision and did not present coherent legal theory - even  
28 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.