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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NOT FOR PUBLICATION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

6	In re:)	BAP Nos.	CC-06-1259-MoPaD
)		CC-06-1289-MoPaD
7	AMERICAN BUILDING STORAGE,)		
	LLC,)		
8)	Bk. No.	LA 03-17465-AA
	Debtor.)		
9)	Adv. No.	LA 04-01412-AA
	REDWOOD TRUST,)		
10)		
	Appellant,)		
11)		
	v.)	MEMORANDUM ¹	
12)		
	AMERICAN BUILDING STORAGE,)		
13	LLC; ALFRED SIEGEL, Chapter 7)		
	Trustee; UNITED STATES)		
14	TRUSTEE; GERALD S. RUBIN;)		
	EDWARD DEASON,)		
15)		
	Appellees.)		
16)		

Argued and Submitted on March 22, 2007
at Pasadena, California

Filed - April 2, 2007

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

Honorable Alan M. Ahart, Bankruptcy Judge, Presiding.

Before: MONTALI, PAPPAS and DUNN, Bankruptcy Judges.

¹This 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 Just prior to trial, the chapter 7² trustee and the
2 defendant in an action commenced by the trustee reached a
3 compromise. The bankruptcy court entered an order approving the
4 compromise and an order dismissing the adversary proceeding. A
5 purported equity interest holder in the debtor company has
6 appealed both orders. We AFFIRM.

7 I. FACTS

8 A. The Parties

9 American Building Storage, LLC³ ("Debtor") filed its chapter
10 7 petition in 2003. Appellee Alfred Siegel ("Trustee") was
11 appointed to serve as the trustee. Trustee filed an adversary
12 proceeding against appellee Gerald Rubin ("Rubin") seeking an
13 accounting and a judgment dissolving a partnership that
14 purportedly existed between Debtor and Rubin. Among his many
15 defenses, Rubin asserted that no such partnership existed.
16 Shortly before the first phase of the trial commenced, Trustee
17 and Rubin reached a compromise.

18 An entity called the "Redwood Trust" (the "Trust") filed an
19 opposition to the proposed compromise. Several creditors filed
20 joinders to the opposition. The Trust identified itself as an
21

22 ²Unless 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 of The
Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,
Pub. L. 109-8, 119 Stat. 23.

26 ³The notices of appeal identified the debtor as "American
27 Budget Storage, LLC" but the bankruptcy court docket and the
chapter 7 petition identify the debtor as "American Building
28 Storage, LLC." We have therefore corrected the debtor's name on
our docket and include this footnote to explain the correction.

1 "Equity Holder and Creditor" on its objection. Appellees contend
2 that the Trust, the sole appellant, lacks standing to prosecute
3 the appeals.

4 The Trust has never filed a proof of claim or a proof of
5 equity interest in Debtor's case.⁴ The Trust was not on Debtor's
6 list of unsecured creditors. In his "Statement Regarding
7 Authority to Sign and File Petition," Debtor's managing member
8 Thomas Davidson ("Davidson") stated that he was "the sole general
9 partner of American Building Storage, LLC, a Delaware limited
10 partnership." In addition, the initial List of Equity Security
11 Holders showed Davidson as the only member of Debtor. Debtor
12 later amended the List of Equity Security Holders to show that
13 Redwood Trust was a 99 percent equity holder.

14 The Trust was created in 2001 by Davidson. The trust
15 agreement reflects Davidson and "ABS, LLC" as the grantors, and
16 assigns to the trustee of the Trust a 99% interest in ABS, LLC.
17 The signature page of the trust agreement identifies "ABS, LLC"
18 as "American Budget Storage, LLC" and not as Debtor (i.e.,
19 American Building Storage).⁵

20 B. The Underlying Adversary Proceeding

21 Trustee filed an adversary proceeding against Rubin for
22 dissolution of a partnership, the ABS-190 Partnership ("ABS-

23
24 ⁴On August 4, 2003, the clerk of court issued a notice of
25 possible dividends and fixing deadlines to file claims. The
26 notice directs creditors to file proofs of claim before November
3, 2003. It does not direct equity interest holders to file
proofs of interest.

27 ⁵Davidson was one of two initial members of American Budget
28 Storage, LLC, when it was formed in 1998. Davidson later amended
the certificate of formation to reflect that he was the sole
initial member of American Budget Storage, LLC.

1 190"), between Debtor and Rubin. ABS-190 was allegedly formed to
2 develop real property located on West 190th Street in Los Angeles
3 (the "Property"). Trustee sought an accounting of the estate's
4 interest in the Property.

5 In response to the Trustee's complaint, Rubin contended that
6 he never formed a partnership with Debtor, that he alone
7 purchased, owned and maintained the Property,⁶ and that he had
8 offsetting claims against Davidson and Debtor. Rubin filed a
9 motion to dismiss and two motions for summary judgment, all of
10 which were denied.

11 Trustee opposed the various motions, noting that even though
12 the Property was legally titled in Rubin's name, Rubin and
13 American Budget Storage had formed a partnership to purchase and
14 develop the Property. In support of his position, Trustee cited
15 a letter of intent between (1) Rubin on behalf of Rubin
16 Management Company and Rubin Development Company and (2) Davidson
17 on behalf of "ABS, LLC." This letter is not a partnership
18 agreement, but an expression of an intent to form a partnership
19 in the future; moreover, the signatory is "ABS, LLC," a separate
20 entity from Debtor with its own tax identification number.⁷ The
21 letter of intent was amended to state that it was "the intent of

22
23 ⁶Rubin cited California Corporations Code section 16204(d)
24 which states: "Property acquired in the name of one or more of
25 the partners, without an indication in the instrument
26 transferring title to the property of the person's capacity as a
partner or of the existence of a partnership and without use of
partnership assets, is presumed to be separate property, even if
used for partnership purposes."

27 ⁷Debtor's voluntary petition reflects that its tax
28 identification number is 95-4720382 while W2s issued by "ABS,
LLC" reflect a tax identification number of 95-4848001.

1 the partners that this [P]roperty will be partnership property
2 though Gerald Rubin may hold it in title as personal property."

3 Rubin retained Davidson to manage the Property. Rubin
4 managed the Property through an entity named ABS-190. All
5 expenses were paid through an account in Rubin's name; Davidson
6 had signatory authority on the account. Davidson also
7 acknowledged in documents filed with the California Secretary of
8 State that another one of his companies (First Los Angeles Group)
9 "collects rents for the property owner, Mr. Gerald Rubin . . .
10 for the [Property]."

11 In 2002, Rubin discovered that Davidson had embezzled funds
12 belonging to Rubin; he obtained a judgment against Davidson. He
13 also learned that Davidson held multiple identities and aliases
14 and multiple companies purportedly for obtaining bank loans under
15 false pretenses. He found out that Davidson had been charged
16 with identity theft, perjury and receiving money and credit under
17 a false name, and had been convicted on one count. Rubin then
18 entered into an agreement with Davidson curtailing Davidson's
19 ability to use Property funds; in the preface, that letter
20 agreement refers to Davidson and Rubin as "partners." Rubin
21 declared that he did not notice the word "partners" in the
22 letter, especially as it was not a part of any covenant.

23 In opposing the various motions filed by Rubin, Trustee
24 depended on the declarations of Davidson. Trustee, however,
25 admitted that Davidson had testified that the Property was owned
26 by Rubin and that a partnership was never formed. Rather,
27 according to Davidson's testimony, he only had an expectation
28 that there "would be a partnership at some future date" but "[w]e

1 never got to that." Trustee also admitted that Davidson had
2 conceded that the Debtor had no ownership interest in the
3 Property.

4 A bifurcated trial was set in the action; the bankruptcy
5 court was to decide whether a partnership existed between Debtor
6 and Rubin before proceeding to a separate trial on damages.⁸ The
7 parties filed their evidentiary declarations and trial briefs.
8 Shortly before the commencement of the first phase of the trial,
9 Trustee and Rubin reached a settlement.

10 C. Approval of the Compromise

11 On June 9, 2006, Trustee filed a motion to approve
12 compromise of controversy. Trustee stated that Rubin had agreed
13 to pay the estate \$600,000 to settle the adversary proceeding.⁹
14 In his memorandum of points and authorities in support of the
15 compromise, Trustee noted that (1) the litigation was hotly
16 contested with substantial conflicts in testimony and with the
17 credibility of its witnesses being questioned, (2) the estate
18 would recover nothing if the court found against it in the first
19

20
21 ⁸Rubin asserts that even if the court found that a
22 partnership existed, the estate would receive nothing in an
23 accounting as he contributed approximately \$7,500,000 in capital
24 and Debtor contributed nothing. Contending that partners are
25 entitled to be repaid the amount of capital contributed on a pro
26 rata basis, Rubin notes that the net value of the Property after
payment of secured debt and other costs and return of his capital
investment is not sufficient for the estate to recover anything
in an accounting. Rubin's Opening Brief at 10-13. The Trust
values the Property as being worth between \$7,500,000 and
\$9,000,000. Appellant's Opening Brief at 6.

27 ⁹In January 2006, Trustee had filed a motion for approval of
28 a compromise in which Rubin would pay \$100,000 to the estate.
That motion was opposed by the Trust and was denied.

1 phase of trial (i.e., if it found that no partnership existed),
2 (3) even if Trustee prevailed in the first phase of the trial, he
3 faced a second contested phase regarding damages and accounting,
4 and the estate could still recover nothing after partnership
5 contributions and offsets were considered, (4) in contrast, the
6 settlement provided \$600,000, which would be sufficient to pay
7 undisputed unsecured claims in full. Rubin joined the motion,
8 analyzing the respective evidence and positions of the parties to
9 demonstrate the likelihood that the estate would not prevail at
10 trial (on either the partnership or the accounting issues).

11 The Trust opposed the settlement, but never offered to
12 purchase the estate's claim against Rubin. The Trust did not
13 demonstrate that anyone would be willing to bid on the claim.
14 Rather, the Trust argued that the case should go to trial,
15 stating that "[i]f the trustee's case is unsuccessful, all
16 interested parties will know that immediately." Several
17 creditors joined the Trust's opposition to the settlement.¹⁰

18 At the hearing on the motion to approve compromise, the
19 bankruptcy court noted that it had "actually reviewed all the
20 direct evidence, which is unusual . . . for a motion to
21 compromise, for the Court having actually read all the direct
22 evidence [which] will be presented at the trial in connection
23 therewith." After reviewing all of the direct testimony and
24 evidence, the court was "still not clear how [it] would rule on

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26 ¹⁰It appears as though the Trust's counsel was instrumental
27 in the preparation and filing of the joinders. With one
28 exception, all of the joinders were served by the same party,
Marilyn Alvarado, who also signed the proofs of service of
various pleadings filed by the Trust.

1 this matter," but nonetheless noted that "[t]here is a
2 significant possibility that, at trial, the Trustee would lose
3 and get absolutely zero, and so I cannot second-guess [the
4 decision of the Trustee to settle], especially in light of the
5 credibility issues that would accompany the trial." The court
6 therefore granted the Trustee's motion.

7 The bankruptcy court entered its order approving the
8 compromise on July 13, 2006, and the Trust filed its timely
9 notice of appeal on July 19, 2006, giving rise to BAP No. CC-06-
10 1259. The bankruptcy court entered an order dismissing the
11 Trustee's adversary proceeding against Rubin on August 4, 2006,
12 and the Trust filed its second notice of appeal on August 11,
13 2006, giving rise to BAP No. CC-06-1289. On October 3, 2006, the
14 panel entered an order allowing the parties to file consolidated
15 briefs for both appeals.

16 II. ISSUES

17 (A) Whether the Trust has standing to appeal.

18 (B) Whether the bankruptcy court abused its discretion in
19 granting Trustee's motion for approval of compromise pursuant to
20 Rule 9019 and in dismissing the adversary proceeding.

21 III. STANDARD OF REVIEW

22 The bankruptcy court's decision to approve a compromise is
23 reviewed for abuse of discretion. Martin v. Kane (In re A & C
24 Properties), 784 F.2d 1377, 1380 (9th Cir. 1986). As noted by
25 the Ninth Circuit in A & C Properties:

26 The law favors compromise and not litigation for its
27 own sake (citation omitted), and as long as the
28 bankruptcy court amply considered the reasonableness of
the compromise, the court's decision must be affirmed
(citation omitted).

1 Id. at 1381. "Approving a proposed compromise is an exercise of
2 discretion that should not be overturned except in cases of abuse
3 leading to a result that is neither in the best interests of the
4 estate nor fair and equitable for the creditors." CAM/RPC
5 Electronics v. Robertson (In re MGS Marketing), 111 B.R. 264,
6 266-67 (9th Cir. BAP 1990).

7 Under the abuse of discretion standard, we cannot reverse
8 the bankruptcy court's ruling unless we have a definite and firm
9 conviction that the court committed a clear error of judgment in
10 the conclusion it reached upon a weighing of the relevant
11 factors. Marx v. Loral Corp., 87 F.3d 1049, 1054 (9th Cir.
12 1996).

13 IV. JURISDICTION

14 The bankruptcy court had jurisdiction to review and
15 approve the settlement under 28 U.S.C. § 1334 and 28 U.S.C.
16 § 157(b)(2)(A), (H) and (K). We have jurisdiction over this
17 matter pursuant to 28 U.S.C. § 158.

18 The Trustee and Rubin both contend that the Trust lacks
19 standing to appeal because it has not filed a proof of claim or
20 interest in this case. The Trust responds by stating that the
21 appellees have waived this issue. Standing, however, is
22 jurisdictional and cannot be waived. United States v. Hays, 515
23 U.S. 737, 742 (1995).

24 That said, the Trust's failure to file a proof of interest
25 is not sufficient to deprive it of standing. The Ninth Circuit
26 has adopted the "person aggrieved" test as the standard for
27 determining whether a party possesses standing in a bankruptcy
28 appeal. See e.g., Fondiller v. Robertson (In re Fondiller), 707

1 F.2d 441, 442-43 (9th Cir. 1983). The test limits standing to
2 "those persons who are directly and adversely affected
3 pecuniarily by an order of the bankruptcy court." Id. Here, the
4 Trust contends that successful prosecution of the lawsuit could
5 lead to significant recovery for the equity interest holders in
6 Debtor, and that the settlement cuts off this potential financial
7 recovery. As such, an equity interest holder has standing to
8 object to the compromise.

9 Trustee and Rubin contend that we should not consider the
10 Trust as an equity interest holder because it did not file a
11 proof of interest by the deadline for filing proofs of claim.
12 The notice setting the deadline for "creditors" to file "proofs
13 of claim" did not mention or set a deadline for "proofs of
14 interest." Moreover, while Rule 3002(c) sets a deadline for
15 filing "proofs of claims," it does not set a similar deadline for
16 filing "proofs of interest" although Rule 3002(a) states that a
17 proof of interest "must" be filed for it to be allowed.¹¹
18 Because the Trust could still file a proof of interest, the
19 amended schedules reflect that it holds an equity interest in
20 Debtor, and no court has yet invalidated its purported equity
21 interest,¹² we conclude that the Trust does have standing to
22 oppose the compromise and prosecute these appeals.

23
24 ¹¹Section 726 makes no provision for distribution to holders
25 of filed proofs of interest; rather, the section states that the
26 debtor shall receive any surplus after the payment of claims with
27 interest. 11 U.S.C. § 726(a)(6).

28 ¹²While Trustee and Rubin have set forth facts indicating
that the Trust may not possess a legitimate equity interest in
Debtor, we are not fact finders and cannot resolve this dispute
in an appellate setting.

1 In a short paragraph on the final page of his brief, Rubin
2 argues that the appeals are moot since he has paid the settlement
3 amount (\$600,000) and has taken steps to manage and improve the
4 property. Rubin's argument is not well-taken. A "mootness
5 inquiry focuses upon whether we can still grant relief between
6 the parties." I.R.S. v. Pattullo (In re Pattullo), 271 F.3d 898,
7 901 (9th Cir. 2001). "If an event occurs while a case is still
8 pending on appeal that makes it impossible for the court to grant
9 any effectual relief whatever to a prevailing party, the appeal
10 is moot and must be dismissed. . . . However, while a court may
11 not be able to return the parties to the status quo ante . . . ,
12 an appeal is not moot if the court can fashion some form of
13 meaningful relief." Id. (quoting United States v. Arkison (In re
14 Cascade Rds.), 34 F.3d 756, 759 (9th Cir. 1994) (ellipses and
15 emphasis in original)).

16 Here, if we were to reverse, the Trustee could return the
17 settlement funds to Rubin. Any improvements Rubin has made to
18 the Property post-settlement are irrelevant, given that his
19 contention throughout the pendency of the underlying litigation
20 has been that he owns the Property (and thus any improvement
21 inures to his benefit). In any event, should we reverse and the
22 bankruptcy court ultimately rule against Rubin in the adversary
23 proceeding, any such funds expended would be considered and
24 included in any accounting.

25 **V. DISCUSSION**

26 "The bankruptcy court has great latitude in approving
27 compromise agreements." Woodson v. Fireman's Fund Ins. Co. (In
28 re Woodson), 839 F.2d 610, 619 (9th Cir. 1987). The court's

1 discretion, however, is not unlimited; the compromise must be
2 "fair and equitable" and "reasonable." Id.; A & C Properties,
3 784 F.2d at 1381. In determining the fairness and reasonableness
4 of a proposed settlement, the court must consider:

5 (a) The probability of success in the litigation; (b)
6 the difficulties, if any, to be encountered in the
7 matter of collection; (c) the complexity of the
8 litigation involved, and the expense, inconvenience and
9 delay necessarily attending it; (d) the paramount
10 interest of the creditors and a proper deference to
11 their reasonable views in the premises.

12 A & C Properties, 784 F.2d at 1381. While creditors' objections
13 to a compromise must be afforded due deference, such objections
14 are not controlling. Id. "The opposition of the creditors of
15 the estate to approval of a compromise may be considered by the
16 court, but is not controlling and will not prevent approval of
17 the compromise where it is evident that the litigation would be
18 unsuccessful and costly." Official Unsecured Creditors' Comm. v.
19 Beverly Almont Co. (In re The General Store of Beverly Hills), 11
20 B.R. 539, 541 (9th Cir. BAP 1981).

21 The court may give weight to the opinions of the trustee,
22 the parties and their attorneys. A & C Properties, 784 F.2d at
23 1384. "Rather than conducting a detailed evaluation of the
24 merits of the state court action," the bankruptcy court's
25 function is "to examine the proposed settlement to determine if
26 it falls below the lowest point in the range of reasonableness."
27 In re Hydronic Enterprise, Inc., 58 B.R. 363, 366 (Bankr. D. R.I.
28 1986).

29 In this case, we affirm the bankruptcy court's approval of
30 the settlement; the record before the bankruptcy court was
31 sufficient to support the court's approval of the settlement and

1 its conclusion that it was "fair and equitable." While the court
2 did not explicitly check off each of the "fair and equitable"
3 factors set forth in A & C Properties, it did make general
4 findings supporting the settlement and the record clearly
5 reflects that application of these factors weighs in favor of the
6 settlement.¹³ Even though creditors opposed the compromise, the
7 court's approval was appropriate where the record demonstrated
8 that continued litigation would not necessarily benefit the
9 estate. General Store of Beverly Hills, 11 B.R. at 541.

10 A & C Properties requires a bankruptcy court to consider the
11 probability of success in litigation when evaluating a proposed
12 settlement and determining whether it is "fair and equitable."
13 It further requires the court to consider the difficulties of
14 collection and the complexity, expense and delay attendant to the
15 litigation. Further, as this panel has stated:

16 The function of compromise is to avoid litigation involving
17 delay and expense unless there appears to be a sound legal
18 basis for the litigation and a likelihood of substantial
19 benefit to the estate (citation omitted). Approval of
20 compromise is appropriate if the court finds that the
outcome of the litigation is doubtful, but even when a
compromised dispute was based on a substantial foundation
and was not clearly invalid as a matter of law, approval of
compromise is not an abuse of the court's discretion.

21 General Store of Beverly Hills, 11 B.R. at 541 (emphasis added).
22
23

24 ¹³While the record would have been much clearer had the
25 bankruptcy court identified, analyzed, and announced how it
26 weighed each of the A & C Properties factors, we will not
27 overturn the approval of the compromise merely because the court
28 did not articulate its consideration of each factor. Rather,
"where the record supports approval of the compromise, the
bankruptcy court should be affirmed," even if the bankruptcy
court has made only general findings supporting the compromise.
A & C Properties, 784 F.2d at 1383.

1 Here, the bankruptcy court had been exposed many times to
2 the claims asserted against Rubin, having ruled on several
3 motions for summary judgment. Furthermore, the court was able to
4 and did review the direct evidence to be presented in the first
5 phase of the trial. Given its familiarity with the issues and
6 the direct evidence, we give great weight to the court's opinion
7 that "there is a significant possibility that, at trial, the
8 Trustee would lose and get absolutely zero."¹⁴ The court clearly
9 considered the estate's probability of success in the litigation
10 and found that this factor weighed in favor of the compromise.¹⁵

11 The record demonstrates that the second factor -- the
12 difficulties to be encountered in the matter of collection --
13 weighs in favor of the settlement. As argued by Trustee and
14 Rubin in their memoranda and at the hearing, a ruling in favor of
15 the Trustee in the first phase of trial would not necessarily

16
17 ¹⁴The evidence in the record supports the bankruptcy court's
18 conclusion that zero recovery by the estate was significantly
19 possible. The documentary evidence consists of letters of
20 intent, and not of partnership agreements. The person who
21 purportedly entered into the partnership on behalf of Debtor has
admitted under oath that the partnership was never formed. No
partnership accounts exist, and Rubin holds title to the
Property. Trustee faced a considerable challenge in overcoming
the weight of this evidence against his case.

22 ¹⁵Disregarding the bankruptcy court's finding regarding the
23 significant possibility of a zero recovery, counsel for the Trust
24 insisted at oral argument that approval of the settlement was
25 inappropriate because the bankruptcy court had stated that it was
26 "still not clear how [it] would rule" in the adversary
27 proceeding. Counsel believes that this statement somehow
28 reinforces its position that Trustee must proceed to trial
instead of settling. Counsel is incorrect. The court's
uncertainty about the eventual outcome actually weighs in favor
of settlement. "Approval of compromise is appropriate if the
court finds that the outcome of the litigation is doubtful[.]"
General Store of Beverly Hills, 11 B.R. at 541.

1 result in the recovery of damages in the second phase. Even if
2 the court found that a partnership existed between Debtor and
3 Rubin, the estate would not recover all of the assets of that
4 partnership.

5 Rather, Rubin argued that he would be entitled to a return
6 of his capital contributions (as would Debtor, who made no
7 financial contribution) before any division of profits or income
8 would occur. Tiffany v. Short, 22 Cal.2d 531 (1943); Cal. Corp.
9 Code § 16807. Given the Trust's concession that the Property was
10 worth \$7,500,000 to \$9,000,000 and Rubin's contention that he had
11 contributed in excess of \$7,500,000 to the Property, it was
12 possible that the estate would recover nothing even if it
13 prevailed on the partnership issue. This is particularly true if
14 the estate had to incur the expense of litigating the second
15 phase of the trial. Thus, the \$600,000 settlement appears "fair
16 and equitable" when considering the possibility of the estate
17 collecting nothing on a favorable partnership ruling.

18 Likewise, the factor of "complexity" and "expense" of
19 litigation weighs in favor of the settlement. The record shows
20 that the litigation was highly contentious, and the second phase
21 of the trial had not even been set yet. The bankruptcy court
22 acknowledged the complexity of the case when he noted the
23 "credibility issues that would accompany the trial."

24 Finally, consideration of the paramount interest of
25 creditors favors the compromise. Both the Trustee and the court
26 concluded that a significant possibility existed that the Trustee
27 would recover nothing, thus depriving creditors of any recovery.
28 The chances of succeeding in two separate phases (partnership and

1 accounting) were not sufficient to justify risking a sure
2 \$600,000 recovery, which would be sufficient to pay undisputed,
3 liquidated claims in full.¹⁶ That amount would also provide more
4 recovery to the disputed claims than would the "significant[ly]"
5 possible zero recovery at trial.

6 The Trust argues that the bankruptcy court erred by not
7 hearing the testimony of rebuttal witnesses or by viewing the
8 witnesses' live testimony. The parties had agreed, however, to
9 present direct testimony through declarations. Therefore, any
10 objection to the form of the testimony presented to the
11 bankruptcy court is waived. In any event, a full evidentiary
12 hearing is not necessary when approval of a settlement is sought.
13 Depoister v. Mary M. Holloway Foundation, 36 F.3d 582, 585-86
14 (7th Cir. 1994) ("we believe that the bankruptcy court was not
15 obligated to conduct an evidentiary hearing as a prerequisite to
16 approving the compromise"). This is particularly true in a case
17 such as this, where the court is already highly acquainted with
18 the litigation being settled and the merits of that litigation.
19 Here, the bankruptcy court was in possession of sufficient facts
20 "to form an educated estimate of the complexity, expense, and
21 likely duration of such litigation" and was in a prime position
22 to "compare the terms of the compromise with the likely rewards
23

24 ¹⁶The Trust argues that the settlement does not provide
25 sufficient recovery for equity holders, and that the matter
26 should go to trial to maximize the chances of equity holders
27 getting some recovery. The Trust prefers that the unsecured
28 creditors forego a significant recovery so that it (as a
purported equity holder) may increase its chances of receiving
something. In other words, the Trust wants to gamble with a
stake provided by the unsecured creditors.

