NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP Nos. CC-05-1322-MoBK
	CC-05-1333-MoBK
WILLIAM EISEN,	(cross-appeals)
Debtor.	Bk. No. 96-11114-ES
	Adv. No. 05-01765-ES
WILLIAM EISEN; THE ALLEN GROUP PARTNERS,	
Appellants,	
v.	**M E M O R A N D U M**[1]
JEFFREY I. GOLDEN, Chapter 7 Trustee; UNITED STATES TRUSTEE;	
Appellees.	
JAMES A. LAW,	
Appellant,	
v.	
JEFFREY I. GOLDEN, Chapter 7 Trustee; UNITED STATES TRUSTEE; THE ALLEN GROUP PARTNERS; WILLIAM EISEN; WILLIAM KENGEL;	
Appellees.	

Argued and Submitted on November 15, 2006
at Orange, California

Filed - December 28, 2006

[1]This disposition is not appropriate for publication and may not be cited except when relevant under the doctrines of law of the case or the rules of res judicata, including issue and claim preclusion. See 9th Cir. BAP Rule 8013-1.

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

Honorable Erithe A. Smith, Bankruptcy Judge, Presiding.

Before: MONTALI, BRANDT and KLEIN, Bankruptcy Judges.

Prior to the petition date, property owned by the debtor was sold at what appears to have been a friendly foreclosure sale. The purchaser, however, did not record a trustee's deed until almost twelve years after the petition date. After the purchaser commenced efforts to sell the property, the chapter 7[2] trustee filed a complaint against the purchaser for avoidance and recovery of a post-petition transfer, for turnover, for quieting of title and for preliminary injunction. The bankruptcy court granted the preliminary injunction enjoining creditor's efforts to market and sell the property. The purchaser and the debtor (as well as, purportedly, another creditor) appealed. We AFFIRM the bankruptcy court's decision to issue the preliminary injunction against the purchaser, DISMISS debtor's portion of the appeal for lack of standing, and DISMISS the appeal purportedly filed by the creditor.

I. FACTS

Appellant William Eisen ("Debtor") owned certain real property in Manhattan Beach, California (the "Property"). In 1990, Appellant The Allen Group Partners ("Allen Group"), with

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[2]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 of The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, Apr. 20, 2005, 119 Stat. 23.

which entity Debtor has a relationship that is not adverse, purportedly purchased the Property at a foreclosure sale. A trustee's deed upon sale reflecting the Allen Group's alleged purchase of the Property was not recorded until January 11, 2005, almost twelve years after Debtor filed his bankruptcy petition.

In the interim, Debtor continued to reside on the Property and represented that he was still the owner of the Property capable of transferring title.[3] Debtor admitted on his Schedule "A" that as of the bankruptcy petition date, he held an ownership interest in the Property "subject to unperfected foreclosure sale." Moreover, a title report dated August 24, 2004, shows Debtor as the owner of the Property.

Debtor filed a chapter 11 petition on December 3, 1993.[4] The case was eventually converted to chapter 7 and appellee Jeffrey I. Golden ("Trustee") was appointed as chapter 7 trustee in 2002. In January 2005, Trustee filed an application to employ real estate brokers to sell the Property. Debtor opposed the

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[3]For example, on April 17, 1992, he executed a quitclaim deed transferring the Property to an entity that filed a bankruptcy petition on the same day.

[4]Debtor had filed at least four prior personal bankruptcies between 1984 and 1992 in the Central District of California. In 1994, the Ninth Circuit affirmed the dismissal of one case as a bad faith filing and imposed sanctions against Debtor for prosecuting a frivolous appeal. Eisen v. Curry (In re Eisen), 14 F.3d 469 (9th Cir. 1994). After the bankruptcy courts in the Central District dismissed most of the cases, Debtor filed a chapter 13 and a chapter 11 petition in the Southern District of California; the bankruptcy court for the Southern District of California dismissed the chapter 13 case in 1993, converted the chapter 11 case to chapter 7 in 1994 and transferred it to the Central District of California in May 1995. The case number has changed several times because the case was reassigned to different divisions within the Central District of California.

application and attached to his opposition a trustee's deed (the "Deed") transferring the property to the Allen Group; the Deed had been recorded on January 11, 2005 (after Trustee notified Debtor that he intended to market and sell the Property) without Trustee's knowledge or the court's authorization. At the hearing on the employment application, the bankruptcy court noted that the recording of the Deed violated the automatic stay.

On June 27, 2005, Trustee filed an application to employ special counsel to litigate the estate's right, title and interest in the Property and, in particular, to prosecute claims against the Allen Group with respect to the Property. Soon thereafter, Debtor (acting on behalf of the Allen Group) placed an advertisement in the Los Angeles Times to sell the Property.[5]

Upon learning of these efforts to sell the Property, Trustee filed a complaint against the Allen Group and DFL Partnership (another entity that had asserted ownership interests in the Property) for declaratory relief, injunctive relief, avoidance and recovery of post-petition transfer, turnover, and to quiet title. Debtor was not named as a defendant. At the same time, Trustee filed an ex parte application for issuance of a temporary restraining order against the Allen Group to prevent any transfer of the Property. The court issued the temporary restraining order on July 15, 2005, ordering the Allen Group to appear on July 25, 2005, to show cause why a preliminary injunction should not be entered against it prohibiting it from transferring,

[5]At oral argument before this panel, Debtor admitted that he was acting in concert with the Allen Group and that he placed and paid for the advertisement in the Los Angeles Times. The Allen Group later reimbursed him.

selling or marketing the Property. The court further ordered the Allen Group to file any written response to the order to show cause no later than July 21, 2005.

Trustee served copies of the temporary restraining order and the application for preliminary injunction on Debtor and the Allen Group on July 18, 2005, by overnight mail. On the same date, he also served the papers by regular mail to Debtor's post office box.

On July 19, 2005, the court held a hearing on the application to employ special counsel. The Allen Group appeared through counsel. Prior to the hearing, Trustee's counsel hand-delivered the complaint and the temporary restraining order to Debtor and counsel for the Allen Group. Therefore, as of July 19, 2005, Debtor and the Allen Group had notice of the hearing on the preliminary injunction on July 25.

At the July 19 hearing, counsel for the Allen Group represented to the court that Allen Group marketed the Property "to see what they can offer in terms of settlement. They wanted to know the value of the asset." Transcript of July 19 Hearing at page 17.

The Allen Group did not file an opposition to Trustee's request for issuance of a preliminary injunction, although the Debtor did file an opposition on the day of the hearing. The Allen Group appeared through counsel at the hearing on July 25 and orally requested a continuance, which the court denied. Counsel for the Allen Group stated on the record that it had not filed a written request for a continuance because they "did not have time." Transcript of July 25 Hearing at page 4-5. The

Allen Group offered no substantive defense against issuance of a preliminary injunction at the hearing.

In support of his opposition to the preliminary injunction, Debtor filed the declaration of Bob Allen, a partner of the Allen Group. Allen declared that "the Allen Group has received a good offer of $1.5 million for the subject property which it has accepted. But the buyer will be lost if the Allen Group is restrained from transferring its interest in the [P]roperty." Declaration of Bob Allen (appended to Debtor's objections to the application for preliminary injunction at page 7) (emphasis added). The bankruptcy court noted that this declaration was contrary to the representations of the Allen Group's counsel on the record the previous week:

> I am very concerned that this [Property] is going to be sold if I don't issue some sort of injunction. I find it very interesting that you're saying in your papers that there's currently a buyer for the [Property] that could be lost if the Allen Group is not allowed to go forward. I can take judicial notice of the fact that counsel for the Allen Group last week represented to the Court that the only reason the [Property] was marketed was to attempt to ascertain the value of the [Property]. That was the reason given to me by the Allen Group.
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> Transcript of July 25 Hearing at page 8.

The bankruptcy court asked Debtor how he had standing to oppose the preliminary injunction. He argued that the estate could potentially be a surplus estate, thereby conferring standing on him, and that he had standing as a lessee and "I stand to gain if the [P]roperty is not sold."[6] Id. at page 7. Even though the court indicated that Debtor did not have standing

[6]Debtor did not present any evidence as to how the case could be a solvent estate.

to oppose the preliminary injunction, Debtor was permitted to speak at the hearing.

The court found that Trustee had presented a "serious issue" regarding the validity of the purported foreclosure sale of the Property to the Allen Group. Id. at pages 8-9. The court also found that the Property was "in danger of being sold" by the Allen Group and that it would have no control over distribution of the proceeds of such a sale. Id. at page 11. The court noted that the Allen Group had taken inconsistent positions regarding its intent to sell the Property. Given that the estate appeared to have an interest in the Property and the estate's sale of the Property would benefit creditors, the court found that the hardships balanced sharply in favor of the Trustee.

The court therefore entered a preliminary injunction on July 26, 2005, stating that pending resolution of the Trustee's adversary proceeding against the Allen Group or further order of the court "the Allen Group and all of its partners, agents, servants, employees, and those acting in concert with it or at its direction, are enjoined from taking any action whatsover to transfer any interest in the [Property], including but not limited to advertising the [Property] as being for sale, soliciting offers [for] the purchase of the [Property], opening any escrow for the purpose of facilitating a transfer of the [Property], or executing any documents or instruments that would effectuate a transfer of any interest in the [Property]."

Debtor and the Allen Group filed a timely notice of appeal on July 28, 2005, giving rise to BAP No. CC-05-1322. They appealed both the preliminary injunction and an order approving

employment of special counsel to prosecute the adversary proceeding against the Allen Group. On August 8, 2005, appellant James A. Law ("Law"), a purported unsecured creditor who was not a defendant in Trustee's adversary proceeding, allegedly filed his own notice of appeal of the preliminary injunction and the employment order.[7] Law's notice of appeal relates to BAP No. CC-

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[7]At oral argument, counsel for the Allen Group conceded that Law is not an appellant. Evidence suggests that Law's notice of appeal was forged. The notice of appeal was signed by Lewis O. Amack ("Amack") as counsel for Law. Amack has since testified that he did not prepare or file the notice of appeal and that the signature purporting to be his is a forgery. Amack has also stated under oath that other papers purportedly filed by him on behalf of Law before this panel (including the response to the notice of deficiency) contained his forged signature and were not prepared or filed by him. Amack has also testified that pleadings involving Law or the Allen Group purportedly prepared and signed by him after 1997 were forgeries and that his purported mailing address on the pleadings is not his address but instead is a mail drop rented by Debtor.

Law has also testified that he did not authorize anyone to file certain proofs of claim purportedly filed on his behalf by Debtor or Amack.

In light of Amack's testimony and other irregularities highlighted by the bankruptcy court in extremely detailed findings of fact in support of a vexatious litigant order against Debtor, the bankruptcy court found:

> The evidence . . . overwhelmingly demonstrates that the pleadings filed on behalf of the Allen Group and Law, purportedly by Amack, were a farce. The magnitude of the fraud perpetuated upon this Court and other courts, the Trustee, creditors and their counsel is breathtaking.
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> In twelve years on the bench, this judicial officer has never seen or witnessed a circumstance such as this where multiple pleadings were filed improperly. At this point, the integrity of the Court process is at stake, and has been severely jeopardized and undermined. The court cannot allow it to continue.

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05-1333. The appeals were consolidated for briefing purposes.

On August 15, 2005, this panel issued an administrative Notice of Deficient Appeal noting that Law's appeal appeared untimely. After considering the responses filed by Law and the Trustee, the panel entered an order on October 11, 2005, deeming the Law appeal to be timely. The panel also granted leave to appeal the interlocutory preliminary injunction, but it severed the appeal of the employment order from both appeals.

II. ISSUES

(1) Do Law and Debtor have standing to prosecute their respective appeals?

(2) Did the bankruptcy court err in issuing the preliminary injunction?

III. STANDARD OF REVIEW

We review the grant of a preliminary injunction for an abuse of discretion. Morgan-Busby v. Gladstone (In re Morgan-Busby), 272 B.R. 257, 260 (9th Cir. BAP 2002). A bankruptcy court abuses its discretion if it bases its ruling on an erroneous legal standard or on a clearly erroneous assessment of the evidence. Alcove Inv., Inc. v. Conceicao (In re Conceicao), 331 B.R. 885, 889 (9th Cir. BAP 2005). When the bankruptcy court is alleged to have relied on an erroneous legal premise, we review the underlying issues of law de novo. Earth Island Inst. v. U.S. Forest Serv., 351 F.3d 1291, 1298 (9th Cir. 2003).

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[7](...continued)
Under the circumstances of this case, the Court can no longer assume the validity of pleadings filed on behalf of or in the name of Law and the Allen Group, nor pleadings purportedly filed by Amack.

Findings of Fact at page 26.

Standing is a jurisdictional matter, which we review de novo. Houston v. Eiler (In re Cohen), 305 B.R. 886, 891 (9th Cir. BAP 2004).

IV. JURISDICTION

The bankruptcy court had jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(b). We have jurisdiction under 28 U.S.C. § 158(a)(3) and (b)(1).

V. DISCUSSION

A. Standing Issues

In light of the concessions of counsel for the Allen Group at oral argument that Law is not an appellant, we do not have to address the Trustee's argument that Law has no standing to appeal. Instead, based on these concessions, Law's appeal (CC-05-1333-MoBK) is DISMISSED. We nonetheless note that the Trustee's argument regarding Law's lack of standing is well taken.[8]

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[8]Trustee contended that Law lacks standing because (1) the notice of appeal purportedly signed by his counsel was a forgery, (2) he has no allowed claim against the estate, as the bankruptcy court has disallowed all five claims purportedly filed on his behalf, and (3) even if he were a valid unsecured creditor, he was not aggrieved by the preliminary injunction. We agree that even if Law were the holder of a valid unsecured claim, and even if his notice of appeal were valid (which it does not appear to be), he lacks standing to object to or appeal the preliminary injunction.

"Only a party who is 'directly and adversely affected pecuniarily' by an order of the bankruptcy court may appeal. To provide standing, 'the order must diminish the appellant's property, increase its burdens, or detrimentally affect its rights.'" Debbie Reynolds Hotel & Casino, Inc. v. Calstar Corp, Inc. (In re Debbie Reynolds Hotel & Casino, Inc.), 255 F.3d 1061, 1066 (9th Cir. 2001). Here, the preliminary injunction has no pecuniary effect on Law; to the contrary, issuance of the preliminary injunction benefits unsecured creditors as it

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Similarly, Debtor lacks standing to appeal the preliminary injunction. "Debtors, particularly chapter 7 debtors, rarely have a pecuniary interest [in an appealed order] because how the estate's assets are disbursed by the trustee has no pecuniary effect on the debtor." Nangle v. Surratt-Sales (In re Nangle), 288 B.R. 213, 216 (8th Cir. BAP 2003); see also Fondiller v. Robertson (In re Fondiller), 707 F.2d 441, 442 (9th Cir. 1983) (a "hopelessly insolvent" debtor does not have standing to appeal orders affecting the size of the estate). Nonetheless, if a debtor "can show a reasonable possibility of a surplus after satisfying all debts, then the debtor has shown a pecuniary interest and has standing to object to a bankruptcy order." Nangle, 288 B.R. at 216. Here, the record does not reflect a "reasonable possibility" of a surplus estate; in fact, in their opening briefs, appellants refer to testimony of Trustee that the case is administratively insolvent. See pages 8 and 9 of Appellants' Opening Brief. More importantly, even if the estate were a surplus estate, the preliminary injunction would not adversely affect Debtor's pecuniary interests. Instead, as with Law, an avoidance of the post-petition recordation of the Trustee's Deed and a liquidation of the Property for the estate would only serve to increase assets available for distribution to Debtor, assuming the estate is solvent.

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[8](...continued)
protects what appears to be an estate asset from an improper post-petition sale. In other words, by preserving this asset, the preliminary injunction actually increases the chances that an estate asset can be liquidated for possible distribution to unsecured creditors. Therefore, assuming arguendo that Law holds a valid unsecured claim, he is not aggrieved by the preliminary injunction. If he were in fact an appellant, he would lack standing to pursue his appeal. Id.

Debtor additionally argues that the preliminary injunction affects his rights because he is purportedly a tenant of the Property now. In making this argument, Debtor told the bankruptcy court: "I stand to gain if the [P]roperty is not sold, Your Honor. Because I have an interest in the [P]roperty. I'm -- I have a lease hold [sic] on the [P]roperty." Transcript of July 25 Hearing at page 7. By Debtor's own admission, therefore, the preliminary injunction benefits him: it enjoins a sale of the Property and he stands to gain if the Property is not sold. Consequently, assuming arguendo (in the absence of any independent evidence) that Debtor is a lessee of the Property, the preliminary injunction does not negatively affect his pecuniary interests inasmuch as it protects the Property from sale by the Allen Group.[9]

Because Debtor is not "directly and adversely affected pecunarily" by the preliminary injunction, he lacks standing to prosecute this appeal or to object to the preliminary injunction. Debbie Reynolds Hotel & Casino, 255 F.3d at 1066. Accordingly, Debtor's portion of the appeal in CC-05-1322 is DISMISSED.

B. Appropriateness of the Preliminary Injunction

Even if Debtor did have standing to appeal, we would still affirm the bankruptcy court's issuance of the preliminary

[9]At oral argument, Debtor told us that although he is not named as a party in Trustee's adversary proceeding, he is subject to the preliminary injunction as an agent of the Allen Group. Counsel for the Trustee conceded that the preliminary injunction does not prevent Debtor from transferring his interests as a lessee and agreed to execute a stipulation to that effect to be filed with the bankruptcy court. This concession further demonstrates that Debtor lacks standing to appeal the preliminary injunction; the injunction simply does not affect whatever rights he holds as a purported lessee under an oral lease with a month-to-month tenancy.

injunction on the merits. Debtor and the Allen Group received sufficient notice of the hearing on the preliminary injunction and grounds existed for issuance of the injunction.

1. Notice

Federal Rule of Civil Procedure 65(a)(1) (incorporated by Rule 7065) provides that "[n]o preliminary injunction shall be issued without notice to the adverse party" but does not define "notice." Therefore, the sufficiency of notice "is a matter left within the discretion of the trial court." United States v. Alabama, 791 F.2d 1450, 1458 (11th Cir. 1986). The Supreme Court has stated that the rule's notice requirement "implies a hearing in which a defendant is given a fair opportunity to oppose the application and to prepare for such opposition." Granny Goose Foods, Inc. v. Teamsters, 415 U.S. 423, 434 n.7 (1974). Furthermore, Rule 9006(d) states that a written motion and notice of any hearing "shall be served not later than five days before the time specified for such hearing, unless a different period is fixed by these rules or by order of the court." To the extent Rule 7065 does not fix a notice period for an application for a preliminary injunction, we can consider the five-day period of Rule 9006 in considering whether the notice in this case was reasonable under the circumstances. See Parker v. Ryan, 960 F.2d 543, 544 (5th Cir. 1992) (incorporating FRCP 6(d)'s five-day notice requirement into FRCP 65); Granny Goose, 415 U.S. at 434 n.7 (acknowledging that commentators read "into Rule 65(a) a five-day-notice requirement based on Fed. Rule Civ. Proc. 6(d).")

Both Debtor and the Allen Group received sufficient notice of the application for a preliminary injunction. They were hand-

delivered the pertinent papers and the temporary restraining order containing the order to show cause six days prior to the hearing and two days prior to the deadline for any written opposition. Neither Debtor nor the Allen Group filed a written application for extension of time. The July 25 hearing on the application for a preliminary injunction was discussed by the parties at a July 19 hearing on a related matter. The nature of the requested relief was not complicated and did not require extensive briefing, assuming the parties had a legitimate defense. Yet the only party with standing -- the Allen Group -- offered no substantive defense orally or in writing. In light of the nature of the relief requested, the length of the notice given to the parties (more than the five days otherwise provided by Rule 9006), and the failure of the affected defendant to offer even a semblance of a defense notwithstanding a fair opportunity to at least offer a nominal defense, we find that the notice of the hearing was adequate. Granny Goose, 415 U.S. at 434 n.7.

2. Merits

Injunctive relief is available in bankruptcy court in two ways: pursuant to the court's discretionary and inherent equitable power under section 105(a) "to issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title," or under the auspices of Bankruptcy Rule 7065, which makes Federal Rule of Civil Procedure ("FRCP") 65 applicable in adversary proceedings. Trustee here sought a preliminary injunction pursuant to Bankruptcy Rule 7065 (incorporating FRCP 65).

Under Bankruptcy Rule 7065 and FRCP 65, the traditional criteria for issuing a preliminary injunction are: "1) a strong likelihood of success on the merits, 2) the possibility of irreparable injury to plaintiff if the preliminary relief is not granted, 3) a balance of hardships favoring the plaintiff, and 4) advancement of the public interest (in certain cases)." Morgan-Busby, 272 B.R. at 261 (citation omitted).

Alternatively, under the traditional test, a preliminary injunction may issue if the moving party demonstrates "(1) a combination of probable success on the merits and the possibility of irreparable harm; or (2) that serious questions are raised and the balance of hardships tips in its favor." Id. (citation omitted). "Probability of success and possibility of irreparable harm can be viewed as two factors on a sliding scale so that as the required probability of success increases, the likelihood of irreparable harm that is required decreases." Alcove Inv., 331 B.R. at 889.

Applying either test, the bankruptcy court did not err in granting the preliminary injunction. It also did not err in its findings (reflected on the record of the hearing on the preliminary injunction). The facts show that Trustee has an overwhelming probability of prevailing on the merits: Debtor admitted in his schedules that the foreclosure sale was "unperfected" as of the petition date. The Trustee's Deed was not filed until many years after the petition date. Title reports show that Debtor was the owner of the Property as of the petition date, and thus the Property is property of the estate. 11 U.S.C. § 541. Title reports further show that the Allen Group

did not record a trustee's deed prior to the petition date. Therefore, Trustee is highly likely to prevail on his claims to avoid the post-petition recordation of the Trustee's Deed and any purported transfer of title to the Allen Group under section 549.[10]

Furthermore, if the Allen Group were allowed to market and sell the Property notwithstanding the estate's interest in the Property, the estate and its creditors could be irreparably harmed. The Allen Group has presented contrary positions to the court regarding its intent to sell the Property; a high likelihood exists that the Allen Group would sell the Property without court authorization even though it appears to be estate property. Neither Debtor nor the Allen Group has offered any evidence that they would not expend the proceeds of any sale of the Property, or that they would be able to reimburse the estate if any such funds were expended.[11]

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[10]In the "Statement of Case" portion of their opening brief, appellants argue for the first time that Trustee's underlying complaint against the Allen Group is time-barred under section 546(a). Appellants are incorrect. Section 546(a)'s limitations period does not apply to actions to avoid post-petition transfers pursuant to section 549. Rather, section 549(d) provides that the action may be commenced within two years of the transfer which the trustee seeks to avoid. 11 U.S.C. § 549(d). Here, the post-petition transfer (the recordation of the Trustee's Deed) occurred on January 11, 2005. Trustee filed his section 549 complaint on July 15, 2005, well within the limitations period of section 549(d). The Trustee's action is not barred by the statute of limitations.

[11]Appellants argue that Trustee could simply obtain a lis pendens in lieu of an injunction. First, appellants did not make this argument to the bankruptcy court so it is waived. Beck v. Pace Intern. Union, 427 F.3d 668, 674 (9th Cir. 2005). Secondly, recordation of a lis pendens does not necessarily prevent a sale

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Finally, given the nature of the conduct of Debtor and the Allen Group in recording a post-petition Trustee's Deed only after learning about the Trustee's interest in selling the Property, in putting the Property on the market without court consent, in offering contrary positions regarding ownership and intent to sell and even in filing pleadings with the court, the balance of the hardships tips sharply in favor of Trustee. Absent the injunction, the Trustee and estate faced incurring large expenses simply to recover property (or proceeds from the sale of property) which the Allen Group likely has no right to sell. The injunction not only preserves the status quo, it prevents Debtor and the Allen Group from taking action which appears to violate the Bankruptcy Code (i.e., transferring assets of the estate without court authorization). Therefore, the balance of hardships tips sharply in favor of issuance of the injunction.[12]

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[11](...continued)
of the Property, which would in turn lead to more litigation and more expense for the estate. Preservation of the status quo by preliminary injunction prevents such harm.

[12]Debtor and the Allen Group argue that Trustee waived the estate's right to the Property by not attempting to liquidate it earlier. First, Trustee was appointed in 2004, and moved for employment of brokers to sell the Property in 2005. There was no significant delay. Even if there were, however, Debtor's argument is not well-taken. Section 554(d) clearly provides that property that is not abandoned and that is not administered "remains property of the estate." There is no time limitation placed on trustees to abandon or administer the estate.

Debtor and the Allen Group also argue for the first time on appeal that the hardships tip in their favor because the preliminary injunction restricts their First Amendment rights to free speech. Debtor and the Allen Group did not make this
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Because the Trustee has an overwhelming likelihood of prevailing on the merits of its action to avoid the post-petition recordation of the Trustee's Deed, because the estate faces irreparable harm if the Allen Group were allowed to sell what appears to be property of the estate, and because the balance of hardships tip heavily in favor of Trustee, the bankruptcy court did not err in issuing the preliminary injunction. Morgan-Busby, 272 B.R. at 261. We therefore AFFIRM the issuance of the preliminary injunction against the Allen Group.

V. CONCLUSION

For the foregoing reasons, we AFFIRM (in BAP No. CC-05-1322-MoBK) the bankruptcy court's decision to issue the preliminary injunction against the Allen Group, we DISMISS Debtor as an appellant in BAP No. CC-05-1322-MoBK for lack of standing, and we DISMISS Law's purported appeal in BAP No. CC-05-1333-MoBK.

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[12](...continued)
argument to the bankruptcy court and it is thus waived. Beck, 427 F.3d at 674. In any event, the argument is not well-taken. First, the only case cited by Debtor and the Allen Group (Clear Channel Outdoor, Inc. v. City of Los Angeles, 234 F.Supp.2d 1127 (C.D. Cal. 2002) has been vacated by the Ninth Circuit. See Clear Channel Outdoor, Inc. v. City of Los Angeles, 340 F.3d 810 (9th Cir. 2003) (vacating district court's preliminary injunction). Secondly, as noted by the Supreme Court, for commercial speech to come within the First Amendment, it must "at least concern lawful activity and not be misleading." Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of New York, 447 U.S. 557, 566 (1980). To the extent the Allen Group is representing that it has the authority to sell the Property in its marketing efforts, such representations are misleading and thus not entitled to deferential treatment under the First Amendment.