

**DEC 06 2006**

**NOT FOR PUBLICATION**

**HAROLD S. MARENUS, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT**

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT**

5	In re:	)	BAP Nos.	CC-06-1105-MoBK
		)		CC-06-1106-MoBK
6	EARL JONES,	)		(Related Appeals)
		)		
7	Debtor.	)	Bk. No.	RS 03-10070 MJ
		)		
8	_____	)	Adv. Nos.	RS 05-01260 MJ
	EARL JONES	)		RS 05-01261 MJ
9		)		
	Appellant,	)		
10	v.	)	<b>MEMORANDUM<sup>1</sup></b>	
		)		
11	KARL T. ANDERSON, Chapter 7	)		
	Trustee; STEVE ODELL JONES;	)		
12	KEITH ALEXANDER JONES; ADELE	)		
	JONES DINGLE; DANIEL EDWARD	)		
13	JONES; PATRICIA ANN JONES;	)		
	EVAN JONES; ROBERT EARL JONES;	)		
14	STEPHANIE CECELIA JONES;	)		
	BILLIE JOYCE JONES; UNITED	)		
15	STATES TRUSTEE,	)		
		)		
16	Appellees.	)		
	_____	)		

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

Filed - December 6, 2006

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

Hon. Meredith A. Jury, Bankruptcy Judge, Presiding.

Before: MONTALI, BRANDT, and KLEIN, Bankruptcy Judges.

<sup>1</sup>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.

1 The bankruptcy court held that two adversary proceedings to  
2 avoid post-petition transfers pursuant to 11 U.S.C. § 549<sup>2</sup> were  
3 "core" proceedings under 28 U.S.C. §§ 157. We AFFIRM.

4 **I. FACTS**

5 Appellant Earl Jones ("Debtor") filed a voluntary chapter 7  
6 petition on January 2, 2003. Appellee Karl T. Anderson  
7 ("Trustee") was appointed chapter 7 trustee. Debtor owned real  
8 property in Perris, California (the "Perris Property") and Moreno  
9 Valley, California (the "Moreno Valley Property").

10 On or about October 17, 2000, Debtor executed two deeds of  
11 trust against the Perris Property in favor of his family members.  
12 Likewise, on the same date, he executed a deed of trust against  
13 the Moreno Valley Property in favor of family members and others.  
14 As of the petition date, these deeds of trust had not been  
15 recorded.

16 On or about April 6, 2004, more than a year after the  
17 petition date, the deeds of trust against the Perris Property  
18 were recorded. On or about April 12, 2004, the deed of trust  
19 against the Moreno Valley Property was recorded.

20 On June 20, 2005, the bankruptcy court approved a motion of  
21 the Trustee to sell the Perris Property free and clear of liens  
22 and specifically ordered that the deeds of trust recorded  
23

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24 <sup>2</sup>Unless otherwise indicated, all chapter, section and rule  
25 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and  
26 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as  
27 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.

1 postpetition without court authorization would "attach to the net  
2 sales proceeds to the same extent, validity and priority that  
3 existed as of the Petition Date." Similarly, on June 14, 2005,  
4 the bankruptcy court entered an order authorizing the Trustee to  
5 sell the Moreno Valley Property free and clear of liens. That  
6 order contained an identical provision whereby the Moreno Valley  
7 Property deed of trust recorded post-petition would attach to the  
8 proceeds "to the same extent, validity and priority that existed  
9 as of the Petition Date."<sup>3</sup>

10 On June 24, 2005, Trustee commenced two adversary  
11 proceedings against Debtor<sup>4</sup> and others to avoid the postpetition  
12 recordation of the deeds of trust. Trustee sought relief  
13 pursuant to sections 549 and 550. On September 13, 2005, Debtor  
14 filed a "Request for Judge Determination of Core/Noncore  
15 Jurisdiction for Trust Deed Avoidance Proceedings" in the Perris  
16 Property adversary proceeding. He filed a similar pleading in  
17 the Moreno Valley adversary proceeding on September 15, 2005.

18 On March 9, 2006, the bankruptcy court entered orders in  
19 both adversary proceedings declaring them to be core (the "Core  
20 Orders"). On March 14, 2006, Debtor filed timely notices of  
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22 <sup>3</sup>According to the bankruptcy court's electronic docket, no  
23 party filed a timely appeal of the orders approving the sales of  
24 the Perris Property and the Moreno Valley Property free and clear  
of liens. Those orders are final.

25 <sup>4</sup>In his adversary proceeding complaints, Trustee asserted  
26 that Debtor owned the subject properties. The complaints also  
27 named Debtor as a defendant in his capacity as trustee of a  
family trust which was the beneficiary of the deeds of trust  
recorded postpetition.

1 appeal of the Core Orders. Thereafter, on June 7, 2006, the  
2 bankruptcy court entered summary judgments in favor of Trustee in  
3 both adversary proceedings. Debtor did not file a notice of  
4 appeal from either summary judgment and those judgments are  
5 final.

6 Trustee moved to dismiss both appeals as interlocutory.  
7 This panel entered orders denying the motions to dismiss, holding  
8 that entry of the summary judgments rendered the Core Orders  
9 final. See Cato v. Fresno City, 220 F.3d 1073, 1074-75 (9th Cir.  
10 2000) (an appeal subject to a finality defect can be "cured" when  
11 a final judgment is entered); Gulf States Exploration Co. v.  
12 Manville Forest Prods. Corp. (In re Manville Forest Prods.  
13 Corp.), 896 F.2d 1384, 1388 (2d Cir. 1990) (the issue of whether  
14 a claim objection was core was preserved for subsequent appeal  
15 after the bankruptcy court conducted a bench trial and entered a  
16 final order sustaining the objection). In denying Trustee's  
17 motions to dismiss, the panel stated:

18 [Debtor] did not file a timely appeal from the  
19 bankruptcy court's final judgment[s;] therefore, the  
20 issue on appeal is limited to whether the bankruptcy  
21 [court] correctly determined that [these were] core  
22 proceeding[s]. [These appeals are] not moot because if  
23 appellant were to prevail in [these appeals], final  
24 judgment would have to be rendered by the district  
25 court.

## 23 II. ISSUES

- 24 1. Are the appeals moot?
- 25 2. Did the bankruptcy court err in declaring the adversary  
26 proceedings to be "core"?



1 In addition, a case becomes moot when the issues presented  
2 are no longer live or the parties lack a legally cognizable  
3 interest in the outcome. Kescoli v. Babbitt, 101 F.3d 1304, 1308  
4 (9th Cir. 1996). An appeal is moot if an event occurs during  
5 its pendency "that makes it impossible for the appellate court to  
6 grant 'any effectual relief whatever' to the prevailing party."  
7 United States v. Tanoue, 94 F.3d 1342, 1344 (9th Cir. 1996)  
8 (citations omitted).

9 Here, entry of the summary judgments does not make it  
10 impossible for the appellate court to grant effectual relief. If  
11 the matters were not core, the bankruptcy court would not have  
12 had authority to enter final judgment and, absent consent of the  
13 parties, the district court would have to enter the final  
14 judgments based on the bankruptcy court's proposed rulings. See  
15 11 U.S.C. § 158(c); Dunmore v. United States, 358 F.3d 1107, 1114  
16 (9th Cir. 2004) ("in 'non-core' proceedings, the bankruptcy court  
17 is limited to hearing the matter and submitting proposed findings  
18 of fact and conclusions of law to the district court"). Reversal  
19 of the court's determination that the adversary proceedings are  
20 core would provide effective relief to Debtor because the  
21 bankruptcy court's judgments would necessarily need to be vacated  
22 as having been entered without the requisite judicial authority.<sup>5</sup>

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23  
24 <sup>5</sup>Trustee also notes that he has already made distributions  
25 based on the summary judgments. Making such distributions does  
26 not render the appeals moot, because if the Core Orders were  
27 reversed and a district court ultimately entered final judgment  
in favor of Debtor, Trustee could recover the amount of those  
distributions necessary to satisfy the non-avoided liens.

(continued...)

1 B. Substantive Issues

2 Debtor contends that the bankruptcy court erred when it  
3 determined that the section 549 actions were core.<sup>6</sup> Debtor's  
4 position, however, is contrary to clear statutory language as  
5 well as case law.

6 In response to the Supreme Court's decision in Northern  
7 Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50  
8 (1982), Congress provided bankruptcy courts with two tiers of  
9 judicial authority depending whether a proceeding is "core" or  
10 "non-core." 28 U.S.C. § 157. As the Ninth Circuit explained in  
11 Dunmore:

12 This ["core" versus "non-core"] distinction forms the  
13 linchpin for bankruptcy court adjudication under the  
14 amended Act. In "core" proceedings, the bankruptcy  
15 court may hear, determine, and enter final orders and  
16 judgments. 28 U.S.C. § 157(b)(1). Acting as appellate  
17 courts, the district courts and the courts of appeal  
18 review the bankruptcy court's decisions in core  
19 matters. 28 U.S.C. § 158. In contrast, in "non-core"  
20 proceedings, the bankruptcy court is limited to hearing

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

22 Nothing in the record reflects that such a recovery and  
23 redistribution would be impossible, as opposed to merely  
24 difficult.

25 <sup>6</sup>At oral argument, Debtor argued that the bankruptcy court  
26 in general lacked jurisdiction over the adversary proceeding to  
27 avoid the postpetition recordation of liens. Specifically,  
28 Debtor argued that the bankruptcy court somehow lacked  
jurisdiction because no one had objected to his voluntary  
petition and schedules and because no one had objected to claims.  
These facts are irrelevant to the bankruptcy court's  
jurisdiction. Debtor filed a voluntary petition, so the  
bankruptcy court had jurisdiction over the main bankruptcy case  
and adversary proceedings pursuant to 28 U.S.C. § 1334.  
Moreover, as discussed in the text, the adversary proceedings  
constitute core proceedings subject to the bankruptcy court's  
jurisdiction under 28 U.S.C. § 157(b).

1 the matter and submitting proposed findings of fact and  
2 conclusions of law to the district court. The district  
3 court reviews de novo any finding or conclusion  
4 objected to and enters a final order and judgment. See  
5 28 U.S.C. § 157(c)(1). If the parties consent, the  
6 district court may expand the bankruptcy court's power  
7 to adjudicate non-core proceedings to include the power  
8 to issue final orders and judgments. See 28 U.S.C.  
9 § 157(c)(2).

10 Dunmore, 358 F.3d at 1114. The Ninth Circuit further observed in  
11 Harris Pine Mills, 44 F.3d at 1436 (citations omitted), that "'no  
12 exact definition of the term[s] [core and non-core] exists in the  
13 [B]ankruptcy [C]ode. Rather, section 157(b)(2) contains a  
14 laundry list of core proceedings along with the admonition that  
15 core proceedings include, but are not limited to, the items  
16 listed.'"

17 Congress specifically included in this laundry list actions  
18 to determine "the validity, extent or priority of liens" as well  
19 as "proceedings to determine, avoid or recover fraudulent  
20 conveyances" and actions "to turn over property of the estate."  
21 See 28 U.S.C. § 157(b)(2)(E), (H), and (K). Both the Perris  
22 Property adversary proceeding and the Moreno Valley Property  
23 adversary proceeding seek relief that would fall within all of  
24 these categories, particularly sub-category (K) pertaining to  
25 actions to determine the validity, extent or priority of liens.  
26 Consequently, the bankruptcy court did not err in concluding that  
27 the adversary proceedings were "core."

28 In addition, courts have consistently treated section 549  
actions to avoid postpetition transfers as "core." See Gandara  
v. Bitterroot Rock Products (In re Gandara), 257 B.R. 549, 551



1 (Bankr. D. Mont. 2000) ("This is a core proceeding to avoid a  
2 post-petition transfer of property of the estate under § 549(a)  
3 and 28 U.S.C. § 157(b)(2)."); Commercial Fin. Servs., Inc. v.  
4 Brady (In re Commercial Fin. Servs., Inc.) 239 B.R. 586, 594  
5 (Bankr. N.D. Okla. 1999) (claims "for relief under 11 U.S.C.  
6 § 549 and 550 (for recovery of unauthorized post-petition  
7 transfers or their value) . . . arise under title 11 and are  
8 therefore 'core' proceedings over which this Court has plenary  
9 jurisdiction"); N. Parent, Inc. v. Cotter & Co. (In re N. Parent,  
10 Inc.), 221 B.R. 609, 629 (Bankr. D. Mass. 1998) (section 549  
11 causes of action arise "under title 11, could not exist but in  
12 bankruptcy, and [are] intended to remedy improper administration  
13 of the case and the estate" and are "core proceedings under 28  
14 U.S.C. § 157(b)(2)") (multiple citations omitted).<sup>7</sup>

15 As explained in Global Int'l Airways Corp. v. Azima (In re  
16 Global Int'l Airways Corp.), 76 B.R. 700, 705 (Bankr. W.D. Mo.  
17 1987):

18 With respect to the action for turnover under  
19 section 549, however, there can be no question that  
20 actions for the recovery of assets of an estate which  
21 were transferred subsequent to the petition has always  
22 been considered within the "summary" or "core"  
23 jurisdiction of a bankruptcy court. Section 157(b)(2),

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22 <sup>7</sup>In gratis dictum, the Ninth Circuit has acknowledged that  
23 section 549 actions are indeed core. Sasson v. Sokoloff (In re  
24 Sasson), 424 F.3d 864, 871 (9th Cir. 2005), cert. denied, 126 S.  
25 Ct. 2890 (2006) ("In the exercise of federal bankruptcy power,  
26 bankruptcy courts may avoid [transfers] in core proceedings, see,  
27 e.g., 11 U.S.C. §§ 544, 547, 548, 549 . . . ."); cf. Harris Pine  
Mills, 44 F.3d at 1437 ("state law claims asserted by or against  
a trustee in bankruptcy or the trustee's agent for conduct  
arising out of the sale of property belonging to the bankruptcy  
estate qualify as core proceedings").

1 Title 28, United States Code, provides that "orders to  
2 turn over property of the estate" are part of the  
3 "core" jurisdiction of the bankruptcy court. And,  
4 under the historical precedents, a bankruptcy court  
5 always had summary jurisdiction to recover assets of  
6 the estate which were transferred after bankruptcy.  
7 Any other rule would make it impossible for the court  
8 of bankruptcy to protect the assets of an estate in  
9 accordance with its assigned duty. This court  
10 therefore rejects the proposition that the section 549  
11 claim is without the "core" or "summary" jurisdiction  
12 of the bankruptcy court.

13 Therefore, under statutory and case law, the Trustee's  
14 section 549 actions to avoid the postpetition recordation of  
15 liens are core. The bankruptcy court did not err.<sup>8</sup>

#### 16 **V. CONCLUSION**

17 Because the Trustee's adversary proceedings to avoid the  
18 postpetition recordation of liens is a core proceeding, we AFFIRM  
19 the bankruptcy court's decision in the Core Orders.

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20 <sup>8</sup>Debtor raises two other arguments on appeal. Debtor argues  
21 that the adversary proceedings were not core because the Trustee  
22 had not filed a proof of interest. A trustee does not have to  
23 file a proof of claim to prosecute a section 549 or 550 action;  
24 those sections in their text confer standing on a trustee to  
25 pursue such actions. Moreover, as discussed above, an action to  
26 avoid a postpetition transfer is "core" as a matter of case and  
27 statutory law. A filing of a proof of interest by a trustee is  
28 simply irrelevant and unnecessary.

Debtor also argues for the first time on appeal that the  
section 549 action was untimely. Debtor is incorrect. Section  
549(d)(1) requires that an action to avoid a postpetition  
transfer be commenced within two years of the transfer sought to  
be avoided. The postpetition transfers here occurred in April  
2004; Trustee filed the section 549 actions in June 2005. The  
actions were timely under section 549(d).