

DEC 29 2006

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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re: ) BAP Nos. CC-05-1303-KMoB  
) CC-05-1344-KMoB  
STEPHEN LAW, ) CC-06-1195-KMoB  
) CC-06-1180-KMoB  
Debtor. )  
\_\_\_\_\_ ) Bk. No. LA 04-10052-TD  
) )  
LILI LIN, ) Adv. No. LA 04-01969-TD  
) )  
Appellant, )  
) )  
v. ) **MEMORANDUM\***  
) )  
ALFRED H. SIEGEL, Chapter )  
7 Trustee; UNITED STATES )  
TRUSTEE; PERLISS & GROSS; )  
STEPHEN LAW, )  
Appellees )  
\_\_\_\_\_ )  
STEPHEN LAW, )  
) )  
Appellant, )  
) )  
v. )  
) )  
ALFRED H. SIEGEL, Chapter 7 )  
Trustee, )  
) )  
Appellee. )  
\_\_\_\_\_ )

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

Filed - December 29, 2006

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

1 Appeals from the United States Bankruptcy Court  
2 for the Central District of California

3 Honorable Thomas B. Donovan, Bankruptcy Judge, Presiding  
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5 Before: KLEIN, MONTALI and BRANDT, Bankruptcy Judges.  
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7 We confront four related appeals arising from the chapter 7  
8 trustee's efforts to liquidate nonexempt equity in the debtor's  
9 residence. The debtor appeals orders requiring turnover of the  
10 property to the trustee (No. CC-05-1344), authorizing sale of the  
11 property (No. 06-1195), and surcharging the debtor's homestead  
12 exemption (No. 06-1180). In addition, one of two people claiming  
13 to be the "Lili Lin" to whom the debtor granted a lien on his  
14 residence appeals the order approving a settlement with the other  
15 Lili Lin (No. 05-1303). In a parallel appeal, we have affirmed  
16 the denial of the debtor's discharge (No. CC-05-1352).

17 We DISMISS, as moot, the appeals from the orders authorizing  
18 turnover and sale of the residence and AFFIRM the order approving  
19 the settlement with one of the two Lili Lins, but clarify (as  
20 conceded by the trustee during oral argument) that there has not  
21 been an adequate judicial determination that the other Lili Lin  
22 does not actually have a lien; hence we will also extend the stay  
23 of distribution of the sale proceeds that we previously entered  
24 pending the resolution of this appeal until the other Lili Lin's  
25 rights have been determined. We REVERSE the order surcharging  
26 the debtor's homestead exemption.  
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28



1 2004, after a Lili Lin from China ("Lili Lin of China") filed a  
2 Motion to Set Aside Default and Default Judgment through counsel.

3 In April 2005, a Lili Lin from Artesia, California ("Lili  
4 Lin of Artesia"), filed an answer in the adversary proceeding and  
5 a stipulation for judgment that purported to resolve all the  
6 differences between the trustee and Lili Lin of Artesia with  
7 respect to the adversary proceeding.

8 Lili Lin of Artesia executed a declaration stating that she  
9 knows the debtor and did not loan him money as set forth in the  
10 Note and DOT. She further declared that the debtor gave her a  
11 copy of the Note and DOT in 1999, but never explained to her why  
12 he gave her the documents. She also stated that she did not  
13 reside in China, she did not sign a declaration in support of the  
14 motion to set aside the default judgment, and had never retained  
15 attorney Peter Chow to represent her in the adversary proceeding,  
16 nor had she ever spoken with him.

17 The trustee filed a Motion to Approve Compromise with Lili  
18 Lin of Artesia. Lili Lin of China filed an opposition to the  
19 compromise arguing that she had not settled with the trustee.

20 A hearing on the compromise was held on May 18, 2005. The  
21 trustee appeared through counsel, the debtor appeared pro se, and  
22 attorney Peter Chow appeared on behalf of Lili Lin of China.

23 The court ruled that Lili Lin of China lacked standing to  
24 oppose the compromise motion. The court noted that Lili Lin of  
25 China had never actually appeared in court in person and had not  
26 furnished evidence to the court that she was the lienor. In  
27 contrast, there was Lili Lin of Artesia's evidence that she had  
28 been involved in the grant of the lien in 1999.

1           The court determined that the evidence proffered by the  
2 trustee was sufficient to grant the compromise motion and that  
3 approval of the stipulated judgment in favor of the trustee was  
4 fair and equitable, and in the best interests of the estate. The  
5 stipulated judgment provided that the transfer to Lili Lin of  
6 Artesia was avoided under § 544(b), and California Civil Code  
7 § 3439.04(a). The interests of Lili Lin of Artesia in the Note  
8 and DOT were deemed recovered by the trustee under § 550(a) and  
9 preserved for the benefit of the estate under § 551.

10           On May 31, 2005, Lili Lin of China, acting pro se, filed an  
11 answer to the trustee's adversary complaint, together with a  
12 Motion for Reconsideration of the order approving the compromise  
13 between the trustee and Lili Lin of Artesia.

14           A hearing on the Motion for Reconsideration was held on July  
15 6, 2005. Neither Lili Lin of China, nor the debtor appeared at  
16 the hearing. On July 12, 2005, the court denied the motion.  
17 Lili Lin of China appealed (BAP No. CC-05-1303).

18           The answer by Lili Lin of China remains on file. During  
19 oral argument of this appeal, the trustee conceded that the  
20 settlement with Lili Lin of Artesia did not resolve the  
21 contention by Lili Lin of China that she is the lienor and that  
22 the issue is still open to be resolved. To the extent that the  
23 trustee may need to take action that requires service of process,  
24 attorney Andrew Smyth (who entered an appearance and argued the  
25 appeal on behalf of Lili Lin of China) agreed in open court to  
26 accept service of process on behalf of Lili Lin of China.

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1                                   **Turnover motion (BAP No. CC-05-1344)**

2           On July 8, 2005, the trustee filed a Motion for Turnover of  
3 the property pursuant to 11 U.S.C. § 542 on the premise there was  
4 equity in the property for the benefit of the estate.

5           A hearing was held on August 3, 2005, and the motion was  
6 granted on August 10, 2005, over the debtor's opposition.

7           The debtor appealed the turnover order (BAP No. CC-05-1344).  
8 We denied a motion for stay pending appeal, as did the Ninth  
9 Circuit. The property has since been turned over and sold.

10  
11                                   **Sale Motion (BAP No. CC-06-1195 and 06-1180)**

12           On January 9, 2006, the trustee filed a Motion to Sell the  
13 property free and clear of liens, interests, and encumbrances  
14 pursuant to 11 U.S.C. §§ 363(f) & (m). Debtor opposed the  
15 motion, which was heard by the court on February 1, 2006.

16           At the hearing on the sale motion, an auction was conducted.  
17 The property was sold to the high bidder for \$680,000, which was  
18 approximately \$165,000 more than the sum of all liens listed on  
19 Schedule D plus the debtor's homestead exemption.

20           The order granting the sale motion was entered on February  
21 22, 2006. Escrow on the sale closed on March 9, 2006. The court  
22 ruled that the purchaser of the property was a buyer in "good  
23 faith" within the meaning of 11 U.S.C. § 363(m), and was entitled  
24 to the protections afforded by that section.

25  
26                                   **Surcharge motion (BAP No. CC-06-1195 and 06-1180)**

27           When he filed the sale motion, the trustee also filed a  
28 Motion to Surcharge in which he sought to surcharge the debtor's

1 \$75,000 homestead exemption by \$75,000 because the debtor  
2 "engaged in exceptional circumstances of misconduct" by  
3 "willfully and knowingly attempt[ing] to defraud his creditors by  
4 removing equity from the property."

5 With respect to the surcharge motion, which was also heard  
6 at the February 1 hearing, the parties acquiesced in the court's  
7 suggestion to discuss settlement regarding the distribution of  
8 the sale funds so that the debtor may be able to keep some or all  
9 of his homestead exemption. The court thereupon continued the  
10 hearing on the surcharge motion.

11 On February 24, 2006, the debtor and Lili Lin of China filed  
12 a Motion for Reconsideration of the sale order. In the  
13 alternative, they sought a stay of the sale order pending appeal.

14 On March 22, 2006, the court held a combined hearing on the  
15 reconsideration motion and the continued surcharge motion.

16 With respect to the surcharge motion, the parties informed  
17 the court that settlement negotiations had failed. The court  
18 explained to the debtor that settlement would be in the best  
19 interests of all parties involved because the expenses associated  
20 with the debtor's conduct would consume "just about any benefit  
21 that anybody might get" out of the case. The court then granted  
22 the surcharge motion. In doing so, the court stated:

23 Having said that, I would also have to  
24 acknowledge, without in any way adjudicating the  
25 matter, that as far as I am aware, all of the appellate  
26 activity in this case has been initiated by Mr. Law. I  
27 am not sure where any of those appeals are going. It  
28 is not my business to know that. It is my business to  
wait and see what the appellate courts have to say.  
But I can at least acknowledge that the fact that the  
Trustee in matters brought before me has expended  
enormous amounts of time and energy in bringing this  
case to the point that it has been brought. The case

1 has been a difficult one, both in terms of the claims  
2 made by the Trustee, but also in the resistance put up  
3 by Mr. Law. And those efforts have resulted in  
4 substantial, although not yet accounted for to me,  
5 expenses of the Trustee and fees of the Trustee's  
6 attorneys.

7 While it is unfortunate that Mr. Law is not able  
8 to benefit from his homestead exemption claim as a  
9 result of my ruling today, it seems to me that all  
10 things considered, it is basically Mr. Law's conduct  
11 that has been the direct cause of the expenses that  
12 have been incurred by the Trustee, or at least the bulk  
13 of the expenses that have been incurred by the Trustee  
14 in this case, up to this point, before me and  
15 presumably, in order to vindicate the orders issued in  
16 favor of the Trustee, I would have to surmise that  
17 substantial additional expenses are going to be  
18 incurred by the estate in defending Mr. Law's appeals.

19 The court also denied the debtor's motion to reconsider the  
20 sale order and his oral motion for stay pending appeal.

21 The debtor appealed the sale and surcharge orders (BAP Nos.  
22 CC-06-1195 and CC-06-1180).

#### 23 JURISDICTION

24 The bankruptcy court had jurisdiction via 28 U.S.C. § 1334.  
25 We have jurisdiction under 28 U.S.C. § 158(a)(1).

#### 26 ISSUES

27 (1) Did the court abuse its discretion when it approved the  
28 compromise between the trustee and Lili Lin of Artesia?

(2) Whether the court's finding that Lili Lin of China  
lacked standing to oppose the compromise between Lili Lin of  
Artesia and the trustee was conclusive to determine Lili Lin of  
China's status as a lienholder.

(3) Whether the debtor's appeals of the orders requiring  
turnover of the property and authorizing its sale are moot.

1 (4) Whether surcharge of the debtor's entire \$75,000  
2 homestead exemption was warranted.

3  
4 STANDARD OF REVIEW

5 We review an order approving a compromise of a controversy  
6 for an abuse of discretion. Martin v. Kane (In re A & C Props.),  
7 784 F.2d 1377, 1380 (9th Cir. 1986). Findings of fact are  
8 reviewed for clear error, and conclusions of law are reviewed de  
9 novo. Latman v. Burdette, 366 F.3d 774, 781 (9th Cir. 2004).  
10 Equitable surcharge is reviewed for abuse of discretion. Id., at  
11 786.

12  
13 DISCUSSION

14 **Adversary proceeding 04-1969 (BAP No. CC-05-1303)**

15 The bankruptcy court concluded that Lili Lin of China did  
16 not have standing to oppose the compromise between the trustee  
17 and Lili Lin of Artesia.

18 Lili Lin of China argues that she has not received a  
19 judicial determination of whether she is the "real" Lili Lin.  
20 Rather, she contends that the bankruptcy court simply accepted  
21 the trustee's word that Lili Lin of Artesia is the "real" Lili  
22 Lin involved in the 1999 Note and DOT with the debtor.

23 Lili Lin of China further argues that the court-approved  
24 stipulated judgment between the trustee and Lili Lin of Artesia  
25 inappropriately establishes facts adverse to her as a "non party"  
26 and cites Howard Young Mediation Ctr., Inc. v. Shalaka, 207 F.3d  
27 437 (7th Cir. 2000), in support.

1 As to standing, Lili Lin of China had the burden to  
2 establish her standing, which requires a demonstration that the  
3 compromise would cause her to be "injured in fact." United Food  
4 & Commercial Workers Union Local 751 v. Brown Group, Inc., 517  
5 U.S. 544, 551 (1996); Oregon Advocacy Ctr. v. Mink, 322 F.3d  
6 1101, 1108-09 (9th Cir. 2003); Cheng v. K&S Diversified Invs.,  
7 Inc. (In re Cheng), 308 B.R. 448, 454 (9th Cir. BAP 2004), aff'd  
8 mem., 160 F. App'x 644 (9th Cir. 2005).

9 Lili Lin of China has not demonstrated that she has been  
10 "injured in fact" by the compromise between the trustee and Lili  
11 Lin of Artesia. The settlement with one of the Lili Lins does  
12 not, in principle, affect the rights of the other.

13 Indeed, the court's conclusion that Lili Lin of China lacked  
14 standing necessarily constituted the court's determination that  
15 she was not "injured in fact" by the compromise with the other  
16 Lili Lin. It follows, then, that her fear that she might lose  
17 her right to continue to assert the 1999 lien (which is premised  
18 on the assumption that she would be frozen out and, hence,  
19 "injured in fact") is misplaced.

20 Since the court's determination that she lacked standing was  
21 necessarily premised on a lack of "injury in fact," the ruling,  
22 by definition, contradicts a contention that she would be  
23 precluded from proceeding by virtue of that ruling. It is plain  
24 that Lili Lin of China remains entitled to assert her claim to  
25 the 1999 Note and DOT.

26 Moreover, at oral argument, the trustee conceded that the  
27 rights of Lili Lin of China have not been judicially resolved;  
28 this concession also was consistent with the trustee's contention

1 that Lili Lin of China lacks appellate standing. The answer  
2 filed by Lili Lin of China caused her to join the issue on the  
3 merits. Attorney Andrew Smyth represented to this Panel that he  
4 now represents Lili Lin of China and will proceed towards prompt  
5 judicial resolution and will accept service of process and other  
6 papers on behalf of Lili Lin of China. The court will now need  
7 to resolve the dispute by way of findings of fact and conclusions  
8 of law following the close of appropriate proceedings.<sup>2</sup>

9 In short, the court did not err in determining that Lili Lin  
10 of China was not "injured in fact" by the trustee's compromise  
11 with Lili Lin of Artesia.

12 Appellate standing is different. In order to have appellate  
13 standing, one must be "directly and adversely affected  
14 pecuniarily by an order of the bankruptcy court." Fondiller v.  
15 Robertson (In re Fondiller), 707 F.2d 442-43 (9th Cir. 1983);  
16 Cheng, 308 B.R. at 454.

17 The question of appellate standing is clouded in this  
18 instance by the trustee's efforts to distribute the proceeds of  
19 the sale of the residence as if the rights of Lili Lin of China  
20 had been conclusively rejected. We have, in a separate order  
21 issued on November 9, 2006 (in 06-1379), found it necessary to  
22 issue a stay of that distribution. At oral argument of this

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23  
24 <sup>2</sup>We will leave the precise procedure to the discretion of  
25 the bankruptcy court, subject to applicable rules of procedure  
26 and principles of due process. While we are mindful that the  
27 trustee may have evidence that would enable the court to conclude  
28 that Lili Lin of China is not the beneficiary of the 1999 Note  
and DOT and might not even exist, the current posture of the  
dispute reveals two sides to the story. It is peculiarly within  
the fact-finding competence of a trial court to believe and  
disbelieve evidence and to ascertain the correct story.

1 appeal, the trustee's counsel repeatedly responded to questions  
2 about the need to obtain judicial resolution of the status of  
3 Lili Lin of China before distributing the proceeds by saying  
4 words to the effect, "I am not sure I have to do that," which may  
5 be construed to include the implied conclusion, "hence, I am not  
6 going to do that." That prospect of unilateral action by the  
7 trustee, however unwarranted, arguably supports appellate  
8 standing.

9 For purposes of this appeal and for the sake of  
10 completeness, we assume, without deciding, that Lili Lin of China  
11 has standing to appeal because of the risk that the trustee will  
12 attempt to dissipate the sale proceeds without having first  
13 obtained a judicial determination establishing Lili Lin of  
14 China's lien status in those proceeds.

15 The order being appealed is a compromise reached between the  
16 trustee and Lili Lin of Artesia. Pursuant to the compromise, the  
17 transfer accomplished by the grant of the deed of trust in 1999  
18 was avoided under California Civil Code § 3439.04(a), as  
19 incorporated by § 544(b), and the Note and DOT were recovered  
20 from Lili Lin of Artesia to the extent she had rights in that  
21 lien that were preserved for the benefit of the estate under  
22 § 551.

23 A compromise, which must be in the best interests of the  
24 estate, is scrutinized under the legal standard of whether it is  
25 "fair and equitable," taking into account: (a) probability of  
26 success in litigation; (b) collectability; (c) complexity,  
27 expense, inconvenience, and delay attendant to continued  
28 litigation; and (d) the interests of creditors. A & C Props.,

1 784 F.2d at 1381; Simantob v. Claims Prosecutor, LLC (In re  
2 Lahijani), 325 B.R. 282, 290 (9th Cir. BAP 2005).

3 If Lili Lin of Artesia is the "true" Lili Lin, then based on  
4 the evidence proffered by the trustee, the compromise is fair and  
5 equitable and is in the best interests of the estate because it  
6 amounts to total victory for the trustee. Conversely, if she is  
7 merely an interloper, the compromise is also fair and equitable  
8 because it eliminates the interloping. It follows that the  
9 bankruptcy court did not abuse its discretion when it approved  
10 the trustee's compromise with Lili Lin of Artesia. The order  
11 approving the compromise will be affirmed.

12  
13 **Turnover Order (BAP No. CC-05-1344)**

14 The trustee argues that the appeal from the turnover order  
15 is moot because the turnover has been completed and the property  
16 has been sold to a good faith purchaser, without a stay pending  
17 appeal having been obtained. We agree. Onouli-Kona Land Co. v.  
18 Richards (Onouli-Kona Land Co.), 846 F.2d 1170, 1172-73 (9th Cir.  
19 1988); Vista Del Mar Assocs., Inc. v. West Coast Land Fund (In re  
20 Vista Del Mar Assocs., Inc.), 181 B.R. 422, 424 (9th Cir. BAP  
21 1995). The appeal from the turnover order will be dismissed as  
22 moot.

23  
24 **Sale Order (BAP No. CC-06-1195)**

25 The trustee argues that the appeal from the sale order is  
26 moot because the property has been sold to a good faith  
27 purchaser, without a stay pending appeal having been obtained.

1           The debtor counters that he requested a stay pending appeal  
2 in his motion for reconsideration of the sale order that he  
3 caused to be set for hearing on March 22, 2006, but that the  
4 trustee sold the property before the hearing. Although the  
5 debtor contends that there may ultimately be a remedy imposed  
6 against the trustee personally (as to which we express no view),  
7 we are constrained to conclude that the appeal is statutorily  
8 moot.

9           If an appellant does not obtain a stay pending appeal of an  
10 order permitting the sale of assets to a good faith purchaser,  
11 the appeal is moot. Onouli-Kona Land Co., 846 F.2d at 1172-73 ;  
12 In re Vista Del Mar Assocs., Inc., 181 B.R. at 424.

13           There are two recognized exceptions to the mootness rule:  
14 (1) where the debtor has a statutory right of redemption, and (2)  
15 whether other state law would permit the sale to be set aside.  
16 Vista Del Mar Assocs., Inc., 181 B.R. at 425. Neither exception  
17 applies here. The debtor has no redemption rights under  
18 California law, nor has he cited other state law that would  
19 permit the sale to be set aside.

20           The court ruled in the sale order that the property was sold  
21 to a good faith purchaser under 11 U.S.C. § 363(m). The debtor  
22 does not contend that the purchaser acted with a lack of good  
23 faith. Since the validity of that ruling is not challenged, we  
24 have no occasion to examine its factual basis.

25           The debtor's assertion that the sale was inappropriately  
26 precipitous is not persuasive. The record reflects that, on  
27 February 24, 2006, the debtor sought reconsideration of the sale  
28 order, or, in the alternative, stay pending appeal and set a

1 hearing date for March 22, 2006. The pendency of such a motion  
2 did not operate as a stay and did not prevent the closing of  
3 escrow on the sold property on March 9, 2006. The debtor chose  
4 March 22, 2006, as the hearing date on his motion for the stay  
5 pending appeal. Central District of California Local Bankruptcy  
6 Rule 9075-1 permitted the debtor to file either an emergency  
7 motion for stay or a motion for stay to be heard on shortened  
8 notice. The debtor did neither.

9 Accordingly, the appeal from the sale order must be  
10 dismissed as moot by virtue of § 363(m).

11  
12 **Surcharge order (BAP No. CC-06-1180)**

13 The debtor appeals the order surcharging his \$75,000  
14 homestead exemption by \$75,000. He contends that the only  
15 sanction imposed in his case was in the amount of \$3,520 and  
16 argues that the sole reason for surcharging the entire \$75,000  
17 exemption is to pay the trustee and his attorney their fees.

18 The trustee argues that the court appropriately surcharged  
19 the entire homestead exemption in response to the debtor's  
20 exhibited fraudulent conduct, his bad faith in pursuing repeated  
21 litigious actions, and his failure to comply with the court's  
22 orders and with the trustee.

23 A bankruptcy court may equitably surcharge a debtor's  
24 statutory exemptions when necessary to protect the integrity of  
25 the bankruptcy process. Latman, 366 F.3d at 786. Denial of  
26 discharge and surcharge are separate inquiries that are not  
27 necessarily mutually inconsistent. Id., at 783-84.

1           Surcharge is an equitable power that enables a bankruptcy  
2 court to fashion a remedy in “exceptional circumstances” that is  
3 tailored to “ensure that debtors retain their statutory ‘fresh  
4 start,’ while also permitting creditors access to property in  
5 excess of that which is properly exempted under the Bankruptcy  
6 Code. Id., at 786. Equitable surcharge of a debtor’s statutory  
7 exemptions must be “reasonably necessary both to protect the  
8 integrity of the bankruptcy process and to ensure that a debtor  
9 exempts an amount no greater than what is permitted by the  
10 exemption scheme of the Bankruptcy Code.” Id.

11           The Latman decision is instructive. It involved a situation  
12 where assets were hidden by the debtors and later discovered by  
13 the trustee. The debtors’ discharge was denied, and the court  
14 surcharged the debtors’ “wild card” exemption in two respects:  
15 (a) the amount of proceeds of an undisclosed sale; and (2) the  
16 amount of funds in a hidden bank account unless such funds were  
17 turned over to the trustee. Id., at 779-80. This was a remedy  
18 tailored to the particular situation that was not designed to  
19 “punish”, but rather to protect the debtor’s creditors by  
20 preventing the debtors from “sheltering more assets than  
21 permitted” by statute. Id. at 785 (emphasis in original).

22           Similarly, we have approved of conditioning the allowance of  
23 an amended claim of exemptions on payment of trustee fees and  
24 counsel fees from assets not otherwise available to the estate  
25 (i.e., surcharging an exemption) in circumstances that require  
26 determination of the appropriate amount of fees based on whether  
27 they were reasonable and incurred based on the reasonable  
28 expectations about what the estate would receive. Arnold v. Gill

1 (In re Arnold), 252 B.R. 778, 788-89 (9th Cir. BAP 2000), cited  
2 with approval, Latman, 366 F.3d at 786 n.9.

3 In Arnold, we emphasized that total denial of an exemption  
4 (a \$75,000 surcharge of a \$75,000 exemption is tantamount to  
5 total denial) requires the existence of "bad faith" or of  
6 "prejudice to creditors." Arnold, 252 B.R. at 785-88.

7 Although this case presents instances of debtor misconduct,  
8 obstinance, blatant ignorance of court orders and directives,  
9 animosity towards the court and the trustee, and efforts to  
10 thwart administration of the case, the debtor was not hiding  
11 property. Rather, the nub of the dispute was that the trustee  
12 contested the validity of a fully-disclosed lien on real  
13 property, the validity of which has not yet been determined.

14 Regardless of the debtor's tactics, it is apparent that the  
15 debtor was not abusing his exemptions and that the trustee was  
16 not seeking to remedy such abuse. Rather, the intent of the  
17 trustee was to punish the debtor for his tactics. The sort of  
18 extraordinary circumstances that would be a prerequisite to  
19 surcharge have not been demonstrated.

20 Similarly, it is apparent that the court was merely shifting  
21 litigation expenses to the debtor in a fashion designed to punish  
22 the debtor for his litigation activity. The court explained that  
23 the debtor's conduct "has been the direct cause of the expenses  
24 that have been incurred by the trustee" and that "additional  
25 expenses are going to be incurred by the estate in defending [the  
26 debtor's] appeals." While we do not quarrel with those  
27 observations, they do not warrant denial of a homestead exemption  
28 that was claimed from the outset of the case.

1 While surcharge and denial of discharge are separate  
2 inquiries, the fact that the discharge has been denied is not  
3 irrelevant. After the bankruptcy case is over, creditors who may  
4 have been disadvantaged by the extent of litigation in the case  
5 will remain entitled to collect their debts.

6 In context, we have the definite and firm conviction that  
7 the \$75,000 surcharge of a \$75,000 exemption in this instance is  
8 not warranted by Latman or by Arnold. Accordingly, the order  
9 surcharging the debtor's \$75,000 homestead exemption by \$75,000  
10 will be reversed. We express no opinion whether specific  
11 instances of mischief by the debtor in the past might support  
12 further monetary sanctions in the future, including a surcharge  
13 against his exemption. We point out, however, that any such  
14 relief to the trustee should be supported by specific findings of  
15 fact and appropriate conclusions of law regarding the debtor's  
16 conduct, including an adequate explanation why any surcharge  
17 based on specific damages or expenses incurred by the estate  
18 should be reimbursed from the debtor's exemption.

19  
20 CONCLUSION

21 The compromise reached between the trustee and Lili Lin of  
22 Artesia was fair and equitable and is AFFIRMED. However, because  
23 Lili Lin of China's status as a lienholder was not conclusively  
24 determined by the compromise order, if the trustee continues to  
25 contest the lien status of Lili Lin of China, it is incumbent  
26 upon the trustee to obtain an appropriate judicial determination  
27 eliminating her interest. The stay of distribution of sale  
28 proceeds will remain in effect until the dispute with Lili Lin of

1 China is resolved. We are concurrently issuing an order in 06-  
2 1379 to that effect. The appeals from the turnover and sale  
3 orders are DISMISSED as moot. The order surcharging the debtor's  
4 \$75,000 homestead exemption by \$75,000 is REVERSED.

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