

MAR 09 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NOT FOR PUBLICATION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**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

In re:)	BAP No.	CC-05-1206-JKPa
)		
PAUL ANTHONY LEWIS,)	Bk. No.	LA 04-30441 SB
)		
Debtor.)		
_____)		
AUDREY CROSSLEY,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM¹	
)		
PAUL ANTHONY LEWIS,)		
)		
Appellee.)		
_____)		

Argued and submitted on February 23, 2006
at Pasadena, California

Filed - March 9, 2006

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

Honorable Samuel L. Bufford, Bankruptcy Judge, Presiding

Before: JAROSLOVSKY², KLEIN and PAPPAS, Bankruptcy Judges.

¹ This disposition is not appropriate for publication and may not be cited except when relevant under the doctrines of law of the case, res judicata, or collateral estoppel. See 9th Cir. BAP Rule 8013-1 and 9th Cir. Rule 36-3.

² Hon. Alan Jaroslovsky, Bankruptcy Judge for the Northern District of California, sitting by designation.

1 FACTS

2
3 This is an appeal from orders denying a motion for relief
4 from the automatic stay and a motion for rehearing. The
5 bankruptcy court decided the motions without taking testimony and
6 based its rulings on essentially admitted facts. Accordingly, our
7 recitation of the facts is an amalgam of allegations and
8 admissions. However, the essential facts are undisputed.

9 It appears that appellant Audrey Crossley is in the business
10 of entering into financial arrangements with property owners who
11 are facing foreclosure. In early 2002, Crossley and chapter 13
12 debtor and appellee Paul Lewis entered into a transaction whereby
13 Crossley "purchased" Lewis' real property at 846 N. Clybourn
14 Avenue, Burbank, California.³ Crossley and Lewis agreed that
15 Lewis would continue to live in the property and make the mortgage
16 payments and that immediately after the close of escrow Crossley
17 would deed the property to Lewis as trustee of the Pharrpage
18 Unlimited Trust, which Lewis had created on Crossley's advice in
19 March, 2001.⁴

20 According to Lewis, Crossley did convey title to the trust
21 but the conveyance was defective because it did not convey title
22 to him as trustee of the trust.⁵ Lewis alleges that Crossley then
23

24 ³ At the time of the sale, Lewis was in a prior chapter 13
25 and a creditor had obtained relief from the automatic stay. It
26 appears that Crossley was involved in counseling Lewis in that
chapter 13.

27 ⁴ Lewis also refers to it as the Pharrpage Living Trust.

28 ⁵ It appears that the deed transferred title to the trust
itself, not a trustee of the trust.

1 falsified a copy of the trust document, backdated it to March,
2 2000, and named herself as trustee of the fabricated trust.

3 According to Crossley, on September 19, 2003, Lewis recorded
4 a deed purporting to transfer title to the property from the trust
5 to himself. She argues that this was a "wild deed," outside the
6 chain of title, because there had never been a transfer of title
7 to Lewis as the trustee of the trust.

8 Crossley then filed an unlawful detainer action in state
9 court, and Lewis countered with a complaint to quiet title. They
10 then reached a global settlement whereby Lewis would pay Crossley
11 \$50,000.00 by a date certain. Lewis alleges that he tendered the
12 payment on time, but it was rejected by Crossley. Crossley
13 appears to allege that Lewis breached the agreement, but that is
14 unclear. Crossley returned to state court to prosecute her
15 unlawful detainer action and Lewis responded by filing his second
16 chapter 13 case on September 23, 2004.

17 On October 12, 2004, Crossley filed her first motion for
18 relief from the automatic stay to allow her to continue with the
19 unlawful detainer proceedings in state court. In her supporting
20 declaration, she alleged that she was the legal owner of the
21 property at 846 N. Clybourn Avenue and that she had purchased the
22 property on October 15, 2002. The motion was heard on November 9,
23 2004, and denied "based on the grounds stated in the opposition."
24 The opposition is not part of the appellate record. The only fact
25 discussed at the hearing was that Crossley had not produced a
26 signed copy of the state court settlement. The court's order,
27 entered on November 26, 2004, recited that the denial was "without
28 prejudice."

1 On November 19, 2004, Crossley filed her second motion for
2 stay relief. This time, she attached an executed copy of the
3 settlement agreement. The motion was heard on December 21, 2004,
4 and this is when the case takes an unusual twist. Lewis alleged
5 that Crossley, under the alias Stevens B. McAllister,⁶ was a
6 debtor herself in a chapter 13 case pending at the time in which
7 she did not schedule or disclose her claim to ownership of the
8 property.⁷ The court continued the hearing to February 1, 2005.
9 After confirming Lewis' contentions from court files and a
10 transcript of her deposition in which she admitted her alias, the
11 court denied the motion with prejudice on two grounds: that
12 Crossley was guilty of "dirty hands" for failure to schedule the
13 property in her own bankruptcy and "due to res judicata based on
14 prior order entered on November 24[sic], 2004." The order was
15 entered on February 24, 2005.

16 On March 7, 2005, Crossley filed a motion for a new hearing.
17 In opposition, Lewis argued that he had obtained confirmation of
18 his chapter 13 plan on January 31, 2005, that the plan dealt with
19 Crossley's rights, and that the order of confirmation had become
20 final. The court denied the motion on April 4, 2005, on the basis
21 of "dirty hands." Its order was entered on May 3, 2005. Crossley
22

23
24 ⁶ Crossley refers to herself as "McAllister Stevens." The
25 petition (Last, First, Middle) reads "MC ALLISTER STEVENS B." She
26 admits to having filed this bankruptcy and never scheduling or
27 disclosing her interest in the Clybourn Avenue property. She
28 answered "none" when asked in her statement of affairs to list all
suits to which she was a party in the year prior to her
bankruptcy.

⁷ Case No. SV03-17026KL, filed as a Chapter 13 on August 25,
2003. The case was converted to Chapter 7 on November 17, 2003.

1 appeals both orders.

2

3

JURISDICTION

4 The bankruptcy court had jurisdiction under 28 U.S.C §§ 1334
5 and 157(b) (2) (G). We have jurisdiction under 28 U.S.C.
6 § 158(a) (1) .

7

8

ISSUES

9 1. Whether the second stay relief motion was barred by rules
10 of res judicata.

11 2. Whether the motion was properly denied on the basis of
12 "dirty hands."

13 3. Whether the motion was properly denied on the basis of
14 lack of standing.

15 4. Whether the appeal is moot due to confirmation of Lewis'
16 plan.

17

18

STANDARD OF REVIEW

19 The decision to grant or deny relief from the automatic stay
20 is committed to the sound discretion of the bankruptcy court, and
21 we review such decision under the abuse of discretion standard.
22 In re Conejo Enterprises, Inc., 96 F.3d 346, 350 (9th Cir.1996);
23 In re Arnold, 806 F.2d 937, 938 (9th Cir.1986); In re MacDonald,
24 755 F.2d 715, 716 (9th Cir.1985). Decisions committed to the
25 bankruptcy court's discretion will be reversed only if "based on
26 an erroneous conclusion of law or when the record contains no
27 evidence on which [the bankruptcy court] rationally could have
28 based that decision." In re Windmill Farms, Inc., 841 F.2d 1467,

1 1472 (9th Cir. 1988).

2
3 DISCUSSION

4 The bankruptcy court's conclusion that Crossley's second stay
5 relief motion was barred by rules of res judicata is incorrect.
6 The first motion was specifically denied "without prejudice," and
7 appears from the record before us to have been based solely on
8 Crossley's failure to produce an executed copy of the state court
9 settlement. When a prior action is dismissed without prejudice,
10 it can have no preclusive effect. In re Corey, 892 F.2d 829, 835
11 (9th Cir. 1989), cert. denied 498 U.S. 815 (1996).

12 It is debatable whether the doctrine of unclean hands is
13 always an available defense to a motion for relief from the
14 automatic stay. See In re Houck, 199 B.R. 163, 164 (S.D. Ohio
15 1996). The "unclean hands" principle is designed to withhold
16 equitable relief from one who has acted improperly. Shondel v.
17 McDermott, 775 F.2d 859, 868 (7th Cir.1985). The "unclean hands"
18 defense applies only to conduct immediately related to the cause
19 in controversy. CIBA-GEIGY Corp. v. Bolar Pharmaceutical Co., 747
20 F.2d 844, 855 (3rd Cir. 1984), cert. denied, 465 U.S. 1080, 104 S.
21 Ct. 1444, 79 L. Ed. 2d 763 (1984). However, we need not decide
22 this point of law because the basis for the court's ruling was
23 sound even if its articulated legal principle was not applicable.

24 Regardless of whether Crossley was guilty of "dirty hands,"
25 it was uncontested (and could be verified from the court's own
26 records, of which the court was free to take judicial notice) that
27 Crossley was herself a debtor in bankruptcy under a different name
28 and had not scheduled her interest in the property or her

1 settlement with Lewis. Unscheduled assets are property of the
2 bankruptcy estate, and remain so even after the bankruptcy case
3 has been closed pursuant to § 554(d) of the Bankruptcy Code. "If
4 [a debtor] fail[s] properly to schedule an asset . . . that asset
5 continues to belong to the bankruptcy estate and d[oes] not revert
6 to [the debtor]." Cusano v. Klein, 264 F.3d 936, 945-46 (9th Cir.
7 2001); see also In re Associated Vintage Group, Inc., 283 B.R.
8 549, 566 n.14 (9th Cir. BAP 2002). "If a cause of action belongs
9 to the estate, then the trustee has exclusive standing to assert
10 the claim." In re Educators Group Health Trust, 25 F.3d 1281,
11 1284 (5th Cir. 1994). Thus, Crossley's motions were properly
12 denied because she had no standing to bring them.

13 Lewis' conduct in this case is little better than Crossley's.
14 Despite his knowledge that Crossley had filed her own bankruptcy,
15 he has not at any point notified the chapter 7 trustee in
16 Crossley's case or the United States Trustee of Crossley's
17 unscheduled interest in the property or the settlement agreement.
18 In fact, he argues that he has obtained some sort of rights by
19 virtue of his confirmed chapter 13 plan, even though he never
20 scheduled the trustee in Crossley's case or gave that trustee any
21 sort of notice.⁸ Just as Crossley's actions to obtain relief from
22 the stay are futile because she has no standing to seek the
23 relief, so Lewis' attempts to gain advantage in his own chapter 13
24 are futile because he has not identified the proper adversary.

25 _____
26 ⁸ Lewis also alleges that he has commenced an adversary
27 proceeding to determine rights to the property, and has not named
28 the trustee in Crossley's bankruptcy case as a defendant in that
proceeding, either. If so, this is yet another exercise in
futility.

1 Moreover, Lewis himself may be found in violation of the automatic
2 stay in the Crossley case if he persists in his actions. In re
3 Associated Vintage Group, Inc., supra.

4
5 CONCLUSION

6 Crossley has no standing to seek relief from the automatic
7 stay in Lewis' chapter 13 case because all of her rights in the
8 real property which is the subject of her motion belong
9 exclusively to her bankruptcy estate, not her.

10 Lewis has obtained nothing by virtue of the orders appealed
11 from or his own chapter 13 plan. Until the "McAllister/Stevens"
12 chapter 7 is reopened, a trustee is appointed, and the property is
13 administered in that case, all his efforts aimed at Crossley
14 herself are at the very least futile and pointless.

15 For the foregoing reasons, and to make our point perfectly
16 clear, we MODIFY the orders of the bankruptcy court to reflect
17 that they are made without prejudice to the rights of the
18 bankruptcy estate in Crossley's chapter 7 case, and we AFFIRM the
19 orders as modified.

20
21
22
23
24
25
26
27
28