

FEB 13 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NOT FOR PUBLICATION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-05-1138-JBK
)		CC-05-1214-JBK
YEN BACH RIST,)		(Consolidated)
)		
Debtor.)	Bk. No.	RS 99-14422-DN
_____)		
)	Adv. No.	RS 02-01032-DN
YEN BACH RIST,)		
)		
Appellant,)		
v.)	MEMORANDUM¹	
)		
ROBERT S. WHITMORE, Chapter 7)		
Trustee; FIDELITY NATIONAL)		
TITLE INSURANCE COMPANY;)		
CHICAGO TITLE COMPANY,)		
)		
Appellees.)		
_____)		

Argued and submitted on January 18, 2006
at Pasadena, California

Filed - February 13, 2006

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

Honorable David N. Naugle, Bankruptcy Judge, Presiding

Before: JAROSLOVSKY,² BRANDT and KLEIN, Bankruptcy Judges.

¹This 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.

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

1 **FACTS**

2
3 Debtor and appellant Yen Bach Rist filed her Chapter 7
4 petition on March 15, 1999. She scheduled rental property she
5 owned at 812 Mel Avenue, Palm Springs, California, as being worth
6 \$170,000.00 and encumbered by a greater amount. She did not
7 claim an exemption in the property.

8 Eight months prior to her bankruptcy, Rist had entered into
9 an agreement to sell the property to her renters and an escrow
10 had been opened but had been canceled when the renters failed to
11 qualify for a loan. Somehow, the deed to the renters was
12 wrongfully recorded on April 30, 1999. Rist learned about the
13 recording on July 6, 1999, and filed a lawsuit in state against
14 the renters and the escrow company on October 26, 1999. She did
15 not inform the Chapter 7 trustee, appellee Robert S. Whitmore, of
16 anything related to the deed or her lawsuit. The Chapter 7 case
17 was closed on October 20, 2000.

18 After learning of the lawsuit from a defendant, Whitmore had
19 the case re-opened on January 17, 2002. By then, the property
20 had appreciated considerably. He removed Rist's state court
21 action to bankruptcy court and filed a separate adversary
22 proceeding alleging that the deed was an unauthorized
23 postpetition transfer. He then agreed to a compromise of both
24 actions with the defendants to convey title to the renters for
25 \$90,000.00.

26 The bankruptcy court approved the compromise, and Rist
27 appealed. We declined to rule on the merits at that time,
28 reversing the order approving the compromise because the court

1 failed to make findings of fact and conclusions of law supporting
2 its decision.³ Whitmore then renewed his request to the
3 bankruptcy court, which again approved the compromise and
4 substituted Whitmore as the plaintiff in the removed action, this
5 time with appropriate findings and conclusions. Rist appeals
6 these orders.

7
8 **ISSUE**
9

10 The only issue is whether the claims being compromised
11 belong to the estate.
12

13 **STANDARD OF REVIEW**
14

15 Whether property is included in a bankruptcy estate is a
16 question of law subject to de novo review. Moldo v. Clark (In re
17 Clark), 266 B.R. 163, 168 (9th Cir. BAP 2001).
18

19 **DISCUSSION**
20

21 Rist makes two arguments in support of her assertion that
22 the claims being compromised do not belong to the bankruptcy
23 estate. First, she argues that they were never property of the
24 estate because they arose after the filing. Second, she argues
25 that if they were property of the estate they were abandoned by
26 operation of law when the case was closed. Neither argument has
27 merit.

28

³BAP No. CC-03-1633-BrBK, Nov. 22, 2004. Implicit in our
disposition was that the bankruptcy court could revisit the
matter if the proper procedure was followed.

1 There is no basis for the assertion that torts against
2 property of the estate (in this case, slander of title) do not
3 belong to the estate because they arise postpetition; if this
4 were the law, a trustee would be powerless to redress many types
5 of damage to estate property. The correct rule is that claims
6 resulting from torts to property of the estate are themselves
7 property of the estate. 11 U.S.C. § 541(a)(7); In re O'Dowd,
8 233 F.3d 197, 202 (3rd Cir. 2000); In re Savary, 57 B.R. 298,
9 299 (Bkrtcy.M.D.Fla.1986) ("Accordingly, when the loader was
10 converted [postpetition], the party injured by the conversion was
11 the debtor's estate, not debtor individually."). "Proceeds" of
12 estate property under Section 541(a)(6) of the Bankruptcy Code
13 include claims for damage to property of the estate, even where
14 the damage occurs and the right to payment arises postpetition.
15 In re Reed, 94 B.R. 48 (E.D.Pa.1988); In re Haynes, 1999 WL
16 33592904 (Bankr.C.D.Ill. 1999); In re White, 1989 WL 146417
17 (Bankr.N.D.Iowa 1989).

18 Moreover, since the deed was wrongfully recorded while the
19 bankruptcy was pending and before it had been abandoned, it was
20 an unauthorized postpetition transfer of property of the estate
21 avoidable by the trustee pursuant to § 549(a) of the Bankruptcy
22 Code and recoverable pursuant to § 550. Property recovered
23 pursuant to § 550 is specifically made property of the estate by
24 § 541(a)(3).

25 Rist argues that the claims compromised by the trustee were
26 abandoned to her when the case was closed. The major flaw in this
27 argument is Rist's implicit assumption that the claim for
28 wrongful recording of the deed is the same thing as the property

1 itself. At the time Rist filed her petition, only the property
2 existed. During the time the property belonged to the estate, a
3 claim arose which was not only different from the property itself
4 but possibly more valuable considering the right to claim
5 punitive damages. Pursuant to § 554(c) of the Code, only
6 scheduled property is abandoned at the closing of a case;
7 pursuant to § 554(d), other property of the estate remains
8 property of the estate. The claim was never scheduled, or even
9 disclosed, and therefore remained property of the estate after
10 the case was closed.

11 There is no basis for Rist's position that she was entitled
12 to remain silent regarding her knowledge of the wrongly-recorded
13 deed because no specific provision of bankruptcy law required her
14 to inform the trustee. Section 521(a)(3) of the Bankruptcy Code
15 required Rist to cooperate with the trustee as necessary to
16 enable the trustee to perform his duties; § 521(a)(4) required
17 Rist to surrender to the trustee **any** recorded information,
18 including documents, records and papers, relating to property of
19 the estate. Rist was under a duty to inform the trustee that a
20 deed to estate property had been wrongfully recorded, and was not
21 entitled to withhold from him copies of the deed and her lawsuit.
22 Fundamental principles of equity prevent Rist from profiting by
23 her wrongful silence.

24 Rist fatally harmed her position when she withheld from the
25 trustee her knowledge that a deed had been wrongfully recorded
26 during the pendency of her case. As a result, the trustee only
27 knowingly abandoned the property itself, not the claim for
28 damages. Property is only abandoned by operation of law when it

1 is knowing; a debtor may obtain abandonment only by disclosure,
2 not deceit. Cusano v. Klein, 264 F.3d 936, 946 (9th Cir. 2001).

3
4 **CONCLUSION**

5
6 The bankruptcy court properly concluded that the claims
7 compromised by the trustee were property of the estate and had
8 never been abandoned. Accordingly, we AFFIRM.