NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. NV-05-1147-MoBK
VACATION VILLAGE, INC.,	Bk. No. S-00-18832-BAM
Debtor.	Adv. No. 03-01003-BAM
VACATION VILLAGE, INC.; SHANGRI LA, LTD.; TERRIE HEERS THOMPSON; TIM S. HEERS; CATHLEEEN HEERS NORCOTT; GARY R. HEERS; CHERYL D. NOLTE,	Appeal Ref. No. 05-13
Appellants,	
v.	**M E M O R A N D U M**[1]
FOOTHILL CAPITAL CORP.,	
Appellee.	

Argued and Submitted on November 30, 2005
at Las Vegas, Nevada

Filed - March 1, 2006

Appeal from the United States Bankruptcy Court
for the District of Nevada

Honorable Bruce A. Markell, Bankruptcy Judge, Presiding.

Before: MONTALI, BRANDT and KLEIN, Bankruptcy Judges.

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

Vacation Village, Inc. ("Debtor") and its affiliates appeal from the bankruptcy court's judgment dismissing their claims against creditor Foothill Capital Corporation ("Foothill") based on claim preclusion and a reading of the confirmed plan of reorganization in this case (the "Plan") not to release Foothill's unsecured deficiency claim. Appellants argue, among other things, that the bankruptcy court wrongly interpreted the Plan and should not have reached the claim preclusion issues, but instead should have dismissed their state law claims under the Rooker-Feldman doctrine. We AFFIRM.[2]

I. FACTS

In September of 1999 Debtor entered into a Loan and Security Agreement with Foothill for an $18 million term loan and a series of monthly nonrevolving advances in the total amount of $1 million (collectively, the "Loan"). The Loan was secured by a deed of trust on Debtor's property known as the Vacation Village Hotel and Casino in Las Vegas, Nevada ("Vacation Village"). The Loan was further secured by a Pledge Agreement from Debtor's affiliate, Shangri La, Ltd., a Nevada general partnership ("Shangri La"), pledging its property known as Sundance Plaza also in Las Vegas, Nevada ("Sundance Plaza"). A Continuing Guaranty was executed by the five general partners of Shangri La ("Guarantors" or, with Shangri La, the "Affiliates").

The Loan matured on September 14, 2000. On October 24, 2000,

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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.

Foothill filed a complaint against Debtor and its Affiliates (collectively, "Appellants") alleging that at Debtor's request Foothill had agreed to forbear from exercising its rights and remedies until October 14, 2000, that the outstanding indebtedness was $19,351,820.82 as of October 23, 2000, that the Loan had not been repaid and the Continuing Guaranty had been breached, and that Foothill was entitled to appointment of a receiver for Vacation Village and Sundance Plaza, damages, and other relief (Case No. A426036, Dist. Ct., Clark Co., Nevada, Dept. No. VIII) (the "Nevada District Court Action"). Debtor filed its voluntary Chapter 11 petition on November 17, 2000 (the "Petition Date").

In early 2003 Appellants asserted claims against Foothill in three fora: (1) in the Nevada District Court Action, by way of counterclaims, (2) in an action filed in another department of the Nevada state court (Case No. A426036, Dist. Ct., Clark Co., Nevada, Dept. No. XI) (the "Nevada Business Court Action"), and (3) in an adversary proceeding in the bankruptcy court (Adv. No. 03-1003) (the "Adversary Proceeding"). The state law claims in all three actions (the "State Law Claims") are virtually identical. The Adversary Proceeding includes additional claims couched in terms of bankruptcy law: for turnover of property of the estate (1st Claim), for implementation of the Plan (5th Claim), and for disallowance of any unsecured claim asserted by Foothill (6th Claim) (collectively, the "Bankruptcy Law Claims"). These Bankruptcy Law Claims all assert that Foothill received more than it was entitled to and should return the excess, either based on the State Law Claims or based on Appellants' interpretation of the Plan.

The core issues in all three actions appear to be:

(A) whether Foothill violated provisions of the Loan documents requiring it to pursue collection in a particular sequence (the "Sequencing Provisions"),

(B) whether there is a deficiency or a surplus after subtracting the Loan debt from the proceeds of liquidation of collateral. There is no dispute that, on the one hand, Nevada does not have any prohibition on deficiency judgments after non-judicial foreclosure sales and, on the other hand, Nevada anti-deficiency laws protect guarantors if a creditor releases the principal obligor from a deficiency. The parties do dispute whether Foothill was entitled to liquidate not only Vacation Village but also Sundance Plaza, whether the collateral was to be valued at fair market value or some other valuation under Nevada law, and whether interest should accrue at the "legal rate," the 14% contractual rate, or the 21% contractual default rate (collectively, the "Deficiency/Surplus Issues"), and

(C) whether the Plan, which was proposed by Foothill, released or preserved its deficiency claim (the "Plan Issues").

Both Debtor and its Affiliates assert damages of at least $4.5 million. That is the fair market value of Sundance Plaza according to findings of the Nevada District Court. Appellants' theory appears to be that Foothill released its unsecured deficiency claim, either by violating the Sequencing Provisions or under Nevada anti-deficiency laws or under the terms of the Plan, and that this barred Foothill not only from collecting any

deficiency from the Affiliates personally but also from pursuing Affiliates' property, Sundance Plaza. When Foothill nevertheless foreclosed on Sundance Plaza, Appellants appear to argue, it should have at least credited the $4.5 million value of Sundance Plaza to reduce its secured claim against Debtor.

Appellants' claims for damages have been rejected in all three fora, but Foothill has also been denied any deficiency judgment:

> (1) In the Nevada District Court Action, on May 3, 2001, a judgment for breach of the Continuing Guaranty was entered against Guarantors, jointly and severally and both individually and as partners of Shangri La, in the amount of $19,351,820.82 "plus interest accruing thereon at the contractual default rate [of 21%] from October 24, 2000 until paid in full" (the "Original Judgment"). In 2003, Debtor's Affiliates were denied leave to file amended answers and counterclaims and their amended pleadings were stricken. Debtor was permitted to assert counterclaims in its answer, which it had not previously filed because of the automatic stay, but ultimately the Nevada District Court dismissed Debtor's counterclaims in an amended judgment on March 24, 2004 (the "March, 2004 Judgment"). That judgment also dismissed Foothill's claims for a deficiency, superseding the Original Judgment and other judgments that had awarded Foothill a deficiency and had enabled Foothill to pursue collection from Guarantors. The grounds for the March, 2004 Judgment are unclear from the excerpts of record but they appear to be that (a) Foothill was entitled to liquidate both

Vacation Village and Sundance Plaza but (b) it is barred from pursuing its claim for a deficiency, and perhaps also (c) Foothill was entitled to only the "legal" rate of interest and not the contractual default rate (although this ruling might apply only post-judgment). Both Foothill and Appellants have appealed to the Supreme Court for the State of Nevada (the "Nevada Supreme Court") where their appeals are pending.

(2) In June of 2004 the Nevada Business Court dismissed Appellants' claims, apparently based on claim preclusion from the Nevada District Court Action. Appellants appealed to the Nevada Supreme Court where their appeal is pending.

(3) On February 11, 2005, the bankruptcy court entered a judgment in favor of Foothill and dismissed the Adversary Proceeding, on the basis of claim preclusion as to the State Law Claims and based on its reading of the Plan as to the Bankruptcy Law Claims.

What follows is a more complete summary of the issues and procedural history:

A. The Sequencing Provisions

There are lengthy portions of the Pledge Agreement (§§ 11.2-12.2) that allow Foothill to pursue its remedies in any sequence but they are subject to Sequencing Provisions that appear in substantially identical form in several parts of the Pledge Agreement (§§ 11.8, 12.5, 13.1):

> 11.8 . . . SO LONG AS NO GUARANTOR, [nor Debtor, nor Shangri La are] SUBJECT TO A PROCEEDING UNDER 11 U.S.C., AND ARE NOT LIMITING OR RESTRICTING, OR SEEKING TO LIMIT OR RESTRICT, THE EXERCISE BY FOOTHILL OF ITS RIGHTS AND REMEDIES UNDER LAW OR ANY

> OF THE LOAN DOCUMENTS (AS DEFINED IN THE LOAN AGREEMENT), THEN FOOTHILL SHALL AGREE TO RECOVER REPAYMENT OF THE SUMS OWING IT BY [Debtor] OR GUARANTOR FIRST BY SEEKING RECOURSE AGAINST THE COLLATERAL [owned by Debtor, including Vacation Village], SECOND AGAINST THE COLLATERAL [owned by] GUARANTOR OR [Shangri La], AND LASTLY AGAINST GUARANTORS, INDIVIDUALLY. [Capitalization in original, underlining added.]

The Continuing Guaranty has a nearly identical provision (¶ 8(b)) and Debtor points to a similar concept in the letter of intent for the Loan.[3] Appellants allege that Foothill pursued recovery in the "exact reverse sequence" from these Sequencing Provisions by first pursuing Guarantors personally (starting with naming them in the Nevada District Court Action), next pursuing appointment of a receiver who collected rents and profits from Sundance Plaza, next foreclosing on Sundance Plaza, and last retaining all proceeds from the sale of Vacation Village. Foothill's pursuit of Guarantors and Sundance Plaza allegedly prevented them from offering "personal assets and personal guarantees for any and all refinancing that might be sought for [Vacation Village]," which Appellants claim was one of the purposes of the Sequencing Provisions.

Foothill denies that it violated the Sequencing Provisions by its initial step of filing the Nevada District Court Action. Then, once Debtor filed its voluntary Chapter 11 petition on November 17, 2000, Foothill argues that the Sequencing Provisions

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[3] The Complaint in this adversary proceeding (Adv. No. 03-1003) does not actually refer to the Sequencing Provisions of the Pledge Agreement or the Continuing Guaranty. Those documents are referred to in other documents filed later by Appellants. The Complaint does quote from the letter of intent, stating that Foothill will exercise its rights against the Affiliates "only after exercising its rights and remedy, for a reasonable period of time, under its first mortgage to the Borrowers [sic]."

became inapplicable by their own terms and it was free to pursue its remedies in any sequence it chose. Appellants reply that Foothill had already breached the Sequencing Provisions before Debtor filed its bankruptcy petition.

After the Petition Date Foothill obtained the Original Judgment, pursued Guarantors by filing in California a Notice of Entry of Judgment on Sister-State Judgment, commenced non-judicial foreclosure proceedings against Sundance Plaza, and sought collection from Debtor by proposing the Plan, which provided for the auction sale of Debtor's assets. The Plan was confirmed by the bankruptcy court in August of 2001.

B. The Deficiency/Surplus Issues

On November 20, 2001, Vacation Village was auctioned for $17,800,000.00, or $17,706,389.31 after costs of sale. Sundance Plaza was sold at a non-judicial foreclosure sale on December 12, 2001, for a credit bid of $500,000.00. Shortly thereafter, the Vacation Village sale was confirmed by order of the bankruptcy court and the sale closed.[4]

Foothill calculated that the proceeds from these sales was $18,206,389.31 -- consisting of net proceeds of $17,706,389.31 from the sale of Vacation Village plus $500,000.00 from the sale of Sundance Plaza. According to Foothill, that was not enough to pay the amount then owed on the Loan. Appellants argue that, to the contrary, Foothill has received a surplus.

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[4] On November 20, 2001, Foothill assigned all of its rights under the Loan documents to FCC Holdings Limited, a California corporation ("FCC"). Notwithstanding this assignment to FCC, Foothill has continued to litigate with Appellants in its own name.

1. Sundance Plaza

As noted above, Appellants apparently argue that foreclosing on Sundance Plaza was effectively an attempt to collect a deficiency in violation of Nevada's anti-deficiency laws. Foothill responds that the resort to additional consensual collateral (Sundance Plaza) does not constitute the pursuit of a deficiency judgment, citing as persuasive authority the California case of Dreyfuss v. Union Bank of California, 24 Cal.4th 400, 101 Cal.Rptr.2d 29, 11 P.3d 383 (Cal. 2000). Appellants argue that Nevada would not follow Dreyfuss.

Foothill also argues that a lender with more than one property as collateral does not have to obtain a deficiency judgment after each non-judicial foreclosure, but instead can wait until up to six months after the last parcel serving as security is sold, citing N.R.S. § 40.455(2). It is not clear that Appellants disagree, although they do assert that the six month period has long since passed.

2. Fair market value

According to Appellants, Nevada law calculates a deficiency or surplus after foreclosure based on fair market value, not the $500,000.00 amount of FCC's credit bid. If Foothill disagrees, it has not advanced any such argument on this appeal. Rather, Foothill appears to argue that it may choose to seek a deficiency judgment based solely on the consideration recited in the trustee's deed, without reference to fair market value; if it chooses not to seek a deficiency judgment then fair market value is irrelevant; and if it does attempt to obtain a deficiency judgment then any valuation can only be used by Debtor and its

Affiliates as a shield, not as a sword to obtain a recovery from Foothill on account of any lost equity from allegedly low dollar bids or credit bids at the auction and foreclosure sale.

The actual fair market values were found by the Nevada District Court to be $4.5 million for Sundance Plaza and $19 million for Vacation Village, as of the times of their respective dispositions. All parties appear to accept these valuations for purposes of this appeal.

3. Interest rate

As noted above, the March, 2004 Judgment of the Nevada District Court awarded interest at "the legal rate," at least post-judgment, rather than the 14% contractual rate or, as previously ordered in the Original Judgment, the 21% contractual default rate of interest. Appellants prepared spreadsheets that applied the legal rate of interest to "Foothill's own accounting" of credits and debits. They calculated a surplus to Foothill of over $3 million immediately after Sundance Plaza and Vacation Village were liquidated. Foothill concedes on this appeal that application of the legal rate "would substantially reduce, if not eliminate, Foothill's deficiency judgment in light of the fair market value determinations already made by the [Nevada] District Court."

C. The Plan Issues

The Plan Issues are made more complex by the procedural history of this case: (1) Initially the bankruptcy court (Judge Robert C. Jones) orally declined to adopt either Appellants' or Foothill's interpretation of the Plan, declining to address even the amount of Foothill's secured claim, let alone whether any

deficiency claim was released. Nevertheless, (2) Judge Jones issued a written order that, read literally, suggests that Foothill's deficiency claim was released by the Plan. Later (3) the bankruptcy court (Judge Bruce A. Markell) issued a memorandum decision that reads Judge Jones' written order as if, consistent with his oral ruling, it avoided any decision regarding the deficiency claim -- and, based on that reading, Judge Markell ruled that any claims by Debtor against Foothill were implicitly barred. In addition, (4) Judge Markell interpreted the Plan as not releasing Foothill's deficiency claim. Meanwhile the Nevada District Court relied on Judge Jones' written order, which appeared to hold that the Plan released Foothill's deficiency claim.

The disputed language appears in Section IX.D.4. of the Plan. Appellants point to the contrast between the language explicitly preserving a deficiency claim in the following paragraphs (a) and (c) and the absence of such language in paragraph (b):

> Proponent [Foothill] shall receive one (1) of the following alternative treatments:
>
> (a) In the event the collateral for Proponent's allowed Secured Claim was not purchased at the Auction, Debtor or Reorganized Debtor, as the case may be, shall abandon on the Effective Date to Proponent the collateral securing such Secured Claim <u>with Proponent having an allowed General Unsecured Claim in Class 7 for the difference between its claim and its allowed Secured Claim</u>; or
>
> (b) In the event Proponent's collateral for the allowed Secured Claim was purchased at the Auction Sale, the liens of Proponent shall attach in order of pre-Petition Date priorities to the proceeds of the Auction. On the Payment Date Proponent shall receive, on account of its allowed Secured Claim, cash equal to its allowed Secured Claim or such lesser amount which Proponent may agree to receive in <u>full satisfaction and release of such allowed Secured</u>

Claim; or

> (c) In the event Proponent was a successful credit bidder at the Auction, return of its collateral on the Effective Date with Proponent having an allowed General Unsecured Claim in Class 7 for the difference between its claim and the credit bid. [Emphasis added.]

These provisions ("Paragraphs (a), (b) and (c)") were the subject of Appellants' motion for implementation of the Plan under Section 1142 (the "Plan Implementation Motion"). Foothill opposed the motion and the matter came on for hearing before the bankruptcy court (Judge Jones) on January 7, 2003. Foothill argued that the "Secured Claim" referred to in Paragraph (b) is a defined term essentially incorporating the Bankruptcy Code's bifurcation of claims into secured and unsecured portions,[5] and that any "satisfaction and release" of the Secured Claim had no effect on Foothill's unsecured claim against Debtor. Transcript Jan. 7, 2003, pp. 19:21-20:5.

Judge Jones initially questioned Foothill's counsel about whether Foothill's Secured Claim for purposes of Paragraph (b) would be equal to the auction proceeds from Vacation Village or the potentially higher actual value of Vacation Village. Judge Jones posed a hypothetical situation in which Vacation Village was worth $20 million but sold for $17 million and asked whether Paragraph (b), which provides for "full satisfaction and release"

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[5] The Plan states, "Secured Claim. This term shall mean a claim that is secured by a lien against property of the Estate to the extent of the value of any interest in such property of the Estate securing such claim or to the extent of the amount of such claim subject to setoff in accordance with Section 553 of the Bankruptcy Code, in either case as determined pursuant to Section 506(a) of the Bankruptcy Code." Plan § XVIII.K(10).

of Foothill's "Secured Claim," means that Foothill was "releasing the balance of a secured claim up to a total of 20 [million dollars] or does that mean that you were releasing simply a secured claim against [Debtor] in the amount of $17,000,000 only?" Transcript Jan. 7, 2003, pp. 21:24-24:10.

Judge Jones then questioned Affiliates' counsel and established that there had been no objection to Foothill's amended proof of claim, which was therefore deemed allowed in the approximate amount of $24 million. Id. pp. 24:25-25:16. The bankruptcy court next asked Affiliates' counsel:

> THE COURT: Well, without referencing that at all [i.e., without referencing Foothill's deemed allowed claim for roughly $24 million], would you be satisfied with a ruling that simply says the proponent agreed to and gave a full release and full satisfaction of its allowed secured claim, and then you'll have to raise in state court under state law whether that provided a release for your guarantors[?]
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> MR. RAY [Affiliates' counsel]: Yes. . . .

Transcript Jan. 7, 2003, p. 25:17-23 (emphasis added).

Judge Jones went on to state that he was "inclined to agree" with Foothill that the Affiliates were not released as a matter of bankruptcy law, but that Foothill was bound by the language of the Plan and "thereby did provide a release and full satisfaction of the allowed secured claim, period," and whether that had any effect on "the obligation of the guarantors" is "a matter of state law" that the bankruptcy court would leave to the state courts. Id. pp. 26:21-27:12 (emphasis added). Judge Jones and the parties studiously avoided going beyond this limited language, which simply tracks Paragraph (b) in the Plan in which Foothill agreed to receive "cash equal to its allowed Secured Claim," or such

lesser amount as it "may agree to receive," in "full satisfaction and release of [its] allowed Secured Claim." Plan § IX.D.4(b) (emphasis added). When Foothill's counsel later asked, "What is Foothill's allowed secured claim?" and "Is it the value of the property that was secured at the auction?" Judge Jones responded, "Do you want me to rule on that?" and after consultation with his client Foothill's counsel answered, "No. I think that's properly a matter for the state court, actually." Id. pp. 27:20-28:3. Affiliates' counsel immediately added, "We're satisfied," and Debtor's counsel stated "We agree with your Honor's ruling on the allowed secured claim for Vacation Village." Id. p. 28:4-10.

Notwithstanding these statements at the hearing, on February 19, 2003, Judge Jones signed an "Order Granting Joint Motion to Order Implementation of Plan, Including the Satisfaction and Release of Foothill's Claim" (the "Plan Implementation Order") that grants the Plan Implementation Motion "as hereinafter provided" and then states:

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Foothill filed its Proof of Claim on June 26, 2001, against [Debtor]; Foothill filed its Amended Proof of Claim on November 16, 2001 in the amount of $24,314,131.47 plus accruing interest against [Debtor]; and Foothill, as the proponent of the confirmed [Plan] is bound by and obligated to the language that it provided in the Plan and, in fact, Foothill did provide a release and full satisfaction of its filed claim against [Debtor]. [Emphasis added.]

As the emphasized text shows, the words "filed claim" appear in place of the words "Secured Claim" discussed at the hearing. Appellants' attorneys submitted this order and Foothill's counsel signed it under the words "Approved by." Both Appellants and Foothill emphasize that no appeal was taken from this order, which

they each apparently view as favorable to themselves.

D. The Nevada District Court Action

After a number of appeals and amendments to earlier judgments the Nevada District Court issued its March, 2004 Judgment, stating as follows:

> IT IS HEREBY ORDERED, ADJUDGED AND DECREED that [Foothill's] claims against [Debtor], including the Second Cause of Action [for "Recovery of [Debtor's] Personal Property [Claim & Delivery]"] were ordered released as to [Debtor] by the [bankruptcy court's Plan Implementation Order], on February 19, 2003, and as [Foothill] is seeking no further relief against the remaining Defendants as to its request contained within [that Cause of Action, those claims] are hereby dismissed.
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> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the legal rate of interest is the fair rate to which Foothill is entitled pursuant to its Judgment [this capitalized term is not defined in the March, 2004 Judgment], including the award entered May 3, 2001 on the paper entitled "Judgment" filed on that date [i.e., the Original Judgment].
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> * * *
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> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all of the claims and counterclaims herein are now dismissed by Judgment; that no Judgment amount is awarded to any of the parties because the Judgment amount on all claims is zero; and that the parties agree that in light of the Court's ruling there is no prevailing party and no costs or attorney's fees will be awarded, although the parties reserve all of their rights to challenge the Court's rulings on appeal.

As noted above, both Foothill and Appellants have filed appeals from this March, 2004 Judgment. The appeals are pending before the Nevada Supreme Court (Sup. Ct. Nos. 43185, 43740).

E. The Bankruptcy Court's rulings after the Plan Implementation Order

Foothill filed motions for dismissal and for summary judgment in the Adversary Proceeding and Debtor filed oppositions and a

cross-motion for partial summary judgment (collectively, the "Dispositive Motions"). Most of Debtor's claims involve state law issues, and the bankruptcy court (Judge Markell) held that those claims are barred by claim preclusion in its Memorandum Opinion Regarding Dismissal of Plaintiffs' Claims (the "A/P Decision"). Judge Markell also held that the bankruptcy court had no jurisdiction over claims asserted by non-debtors Shangri La and Guarantors because they have not filed claims, the bar date had long since passed, and without the possibility of claims for indemnification or contribution there is no conceivable effect on the bankruptcy estate. Judge Markell also rejected Debtor's Bankruptcy Law Claims for turnover of the alleged surplus under Section 542, enforcement of the plan under Section 1142, and disallowance of Foothill's unsecured claim under Section 502(b). According to Judge Markell, the earlier Plan Implementation Order (issued by Judge Jones)

> establishes that Foothill's secured claims against the estate were satisfied, and implicit in that order is the converse: that the estate had no claims back against Foothill upon the security for the claim.

Judge Markell supported this interpretation of the Plan Implementation Order by starting with some basic principles of bankruptcy law under Section 506(a):

> . . . a claim is not secured for bankruptcy purposes if the creditor does not have a lien "on property in which the estate has an interest." [11 U.S.C. § 506(a)] Thus, if D owed C $100, and the only security C had was a mortgage on A's house, C's claim would be unsecured in D's bankruptcy. Changing the hypothetical slightly, if C also had a security interest in D's $50 house, C would change to a secured creditor, but only to the extent of the house's $50 value. C would still have an unsecured deficiency claim for the $50 difference.

In other words, under the Bankruptcy Code Foothill's claim is bifurcated into a secured claim against Debtor -- a claim secured by Vacation Village -- and a deficiency claim that was collateralized by Sundance Plaza but was unsecured as against Debtor. The A/P Decision states that the Plan Implementation Order is consistent with this bifurcation:

> So it was in this case. The [Plan] Implementation Order settled the status of Foothill's secured claim against the estate, but as all agree, the [Plan] Implementation Order studiously avoided stating anything about the overall debt owed to Foothill.[6]

Judge Markell reasoned from this that the Plan Implementation Order left open the possibility that Foothill had an unsecured deficiency claim, and conversely it implied that Foothill did not owe any money back to the estate:

> This establishes that there might have been a deficiency. In other words, there remained the possibility that the [Plan] Implementation Order did not indicate all debt was satisfied, just debt equal to the secured claim. But this determination carries within it the implicit notion that Foothill did not owe any money back to the estate. Put another way, implicit in the order was the fact that the total debt owed to Foothill equaled or exceeded the amount of proceeds received. Otherwise, as [Appellants] allege, the foreclosure would have yielded a surplus. And given the vigor with which every issue in this case seems to have been litigated, such a lacuna would surely have been seized upon by one side or the other. If the auction of the Debtor's property had yielded more than what Foothill had been owed, that

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[6] In fact, Appellants do not agree that the Plan Implementation Order avoided "stating anything about the overall debt owed to Foothill." Appellants appear to be correct: as quoted above, that order recites that Foothill filed its amended proof of claim in the amount of "$24,314,131.47 plus accruing interest" and that Foothill's "filed claim" had been released by the Plan. Nevertheless, as discussed further below, at the time of the hearing on January 7, 2003, the intent of Judge Jones and all of the parties appears to have been to avoid stating anything about the overall debt owed to Foothill. The written Plan Implementation Order is contrary to this intent.

> issue surely would have been raised at the time of the implementation hearing. The [Plan] Implementation Order, however, does not acknowledge that Foothill's claims were less than the agreed amount of foreclosure proceeds, and this acknowledgment [sic] dooms the Debtor's claims based on receipt of excess funds at the time of the foreclosure auction process.
>
> This leads to the conclusion that Foothill did not receive more than its secured claim from the Debtor's estate. If it did not, then there is no issue of fact, material or otherwise, that needs to be resolved, and judgment can be entered for Foothill on the Debtor's Bankruptcy Claims. [Emphasis in original.]

On February 11, 2005, the bankruptcy court issued a judgment stating: "JUDGMENT IS ENTERED FOR DEFENDANT [Foothill], as to all causes of action, and the matter is hereby dismissed" (the "A/P Judgment"). Appellants filed a notice of appeal.

On June 10, 2005, a motions panel of the BAP denied Foothill's motion to dismiss the appeal as untimely because Appellants had filed a motion to amend the A/P Judgment that extended the time to appeal.[7] On November 1, 2005, a motions

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[7] We have an independent duty to consider our jurisdiction and are not bound by the motions panel's determination, but we agree with the motions panel. Within the time provided for tolling motions under Rules 8002 and 9006, Appellants filed a motion entitled "Motion to Amend, to Alter and Amend and Motion for Stay" (the "Motion to Amend"). Within ten days after the bankruptcy court denied that motion Appellants filed their notice of appeal. Therefore the issue is whether the Motion to Amend extended the time to appeal under Rule 8002(b). Fed. R. Bankr. P. 8002(b).

If the Motion to Amend simply requested a stay it would not extend the time for appeal, but it does more than this. See In re Peters, 191 B.R. 411, 418-420 (9th Cir. BAP 1996) (nomenclature is not controlling and "[i]n order to qualify as a tolling motion, a pleading must seek 'substantive, not merely ministerial or clerical, relief,'" quoting Munden v. Ultra-Alaska Assoc., 849 F.2d 383, 387 (9th Cir. 1988)); In re Curry and Sorensen, Inc., 57 B.R. 824, 827 (9th Cir. BAP 1986) (motion extends time to appeal (continued...)

panel denied Appellants' motion to stay this appeal because of the pending appeals before the Nevada Supreme Court, denied a motion to strike Foothill's brief, and took under advisement Foothill's request for judicial notice of the briefs filed with the Nevada Supreme Court.[8]

II. ISSUES

A. Do the parties have standing, and does the bankruptcy court have jurisdiction over the State Law Claims?

B. Does the Rooker-Feldman doctrine bar the State Law Claims?

C. If not, is the bankruptcy court correct that claim preclusion bars the State Law Claims?

D. Is Foothill entitled to dismissal of the Bankruptcy Law Claims based on the Plan Implementation Order?

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[7](...continued)
if it "draws into question the correctness of the trial court's decision"); Miller v. Transamerican Press, Inc., 709 F.2d 524, 527 (9th Cir. 1983).

The Motion to Amend asks the bankruptcy court to amend the A/P Decision and A/P Judgment by "adding a finding and an appropriate ruling in the context of this adversary proceeding and the Court's previous orders of abstention that it is in the best interests of judicial economy and the parties to stay the entry of final judgment . . . ." (Emphasis added.) We are persuaded that the motion is, in the language of Rule 8002, "a timely motion: (1) to amend or make additional findings of fact under Rule 7052, whether or not granting the motion would alter the judgment; (2) to alter or amend the judgment under Rule 9023; (3) for a new trial under Rule 9023; or (4) for relief under Rule 9024 if the motion is filed no later than 10 days after the entry of judgment." Fed. R. Bankr. P. 8002(b). The appeal was timely.

[8] Appellants opposed this request for judicial notice on grounds of lack of authentication or any statement as to the purpose of requesting judicial notice. Foothill filed a declaration authenticating the briefs and a reply stating that a full history is important given the complex, lengthy history and interaction of the proceedings in Nevada state courts and the bankruptcy court. We hereby grant the request for judicial notice.

E. If not, is Foothill entitled to dismissal of the Bankruptcy Law Claims for alternative reasons?

III. STANDARDS OF REVIEW

"We review the bankruptcy court's conclusions of law and questions of statutory interpretation de novo, and factual findings for clear error. When there are two permissible views of the evidence, the trial judge's choice between them cannot be clearly erroneous." Village Nurseries v. Gould (In re Baldwin Builders), 232 B.R. 406, 410 (9th Cir. BAP 1999) (citations omitted).

We review a grant of summary judgment or a motion to dismiss de novo. Jacobson v. AEG Capital Corp., 50 F.3d 1493, 1496 (9th Cir. 1995). Rooker-Feldman issues are reviewed de novo. Mfg. Home Cmtys., Inc. v. City of San Jose, 420 F.3d 1022, 1025 (9th Cir. 2005). Claim and issue preclusion are reviewed de novo. In re Moncur, 328 B.R. 183, 186 (9th Cir. BAP 2005).

A confirmed plan of reorganization is essentially a contract and is interpreted as such. Miller v. U.S., 363 F.3d 999, 1003-04 (9th Cir. 2004). For the reasons we discuss below we would affirm the bankruptcy court's interpretation of the Plan under any standard of review. Therefore we need not decide the precise standard of review applicable to the bankruptcy court's interpretation of the particular Plan in this case, and whether that standard of review would be less deferential in this case because the parties did not introduce extrinsic evidence to aid in interpreting the Plan qua contract. Compare, e.g., Agricredit Acceptance, LLC v. UAP Northwest, 65 Fed.Appx. 187, 189 (9th Cir. 2003) ("We assume, without deciding, that the bankruptcy court's

interpretation of a confirmed plan is entitled to deference and is reviewed for an abuse of discretion.") with Hillis Motors, Inc. v. Hawaii Auto. Dealers' Ass'n, 997 F.2d 581, 588 (9th Cir. 1993) ("When parol evidence is employed to explain the intent of the parties who drafted the document, intent becomes a question of fact," although remand unnecessary where only one construction of plan would not be clearly erroneous) (citations omitted). See also In re Harvey, 213 F.3d 318, 321-322 (7th Cir. 2000) (questioning Hillis Motors' application of state law to plan interpretation, as opposed to "the four corners principle that governs federal consent decrees").

IV. DISCUSSION

It is not clear whether the bankruptcy court, in rendering the A/P Judgment in favor of Foothill, granted Foothill's motion to dismiss or its motion for summary judgment or both. It does not matter for our purposes because the analysis is substantially the same where the central issues are purely legal.

In deciding whether summary judgment was appropriate, we must determine, viewing the evidence in the light most favorable to the non-moving party, whether there are any genuine issues of material fact and whether the bankruptcy court correctly applied the relevant substantive law. In re Green, 198 B.R. 564, 566 (9th Cir. BAP 1996). Summary judgment is appropriate if the moving party shows by "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, . . . that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Green, 198 B.R. at 566 (citations omitted)

(quoting Hansen v. United States, 7 F.3d 137, 138 (9th Cir. 1993)). See generally Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-257 (1986) (discussing requirement that any disputed issues of fact be "genuine" and "material" under applicable substantive law and evidentiary standards).

On a motion to dismiss for failure to state a claim, the complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would warrant relief. Hartford Fire Ins. v. California, 509 U.S. 764, 811 (1993) (quotation marks and citations omitted). The court must assume the truth of the material facts as alleged in the complaint and read the allegations in the light most favorable to the non-movant. Davis Next Friend LaShonda D. v. Monroe County Bd. of Educ., 526 U.S. 629, 633 (1999); H.J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229, 249-250 (1989). The court need not, however, accept legal conclusions couched as factual allegations. B.H. Papasan v. Allain, 478 U.S. 265, 286 (1986).

A. Standing and Jurisdiction

The parties have not raised the issue of standing. Nevertheless we have an independent duty to consider it. In re Lucas Dallas, Inc., 185 B.R. 801, 804 (9th Cir. BAP 1995).

It is not obvious how Debtor is injured by an allegedly wrongful foreclosure of someone else's property -- Sundance Plaza, which is Shangri La's property. Nevertheless, the Complaint asserts that Debtor is itself entitled to some of the funds from the sale of Vacation Village, since Foothill was in Appellants' view limited by the Plan to a maximum recovery equal to the ($19

million) value of Vacation Village, and yet had already obtained property worth $4.5 million through foreclosure of Sundance Plaza. In addition, the Complaint alleges that all Appellants were damaged because Debtor's Affiliates were unable to refinance the Loan after Foothill took its initial allegedly wrongful steps to collect the Loan debt. Therefore, Debtor has alleged at least some injury in fact, causation, and redressability, and we are not prepared to say on the pleadings that Debtor lacks standing. See generally Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (describing minimum constitutional requirements for standing).

We also question whether Foothill is the proper party before us, given its assignment of all of its rights under the Loan documents to its affiliate, FCC. Nevertheless, there is some indication in the excerpts of record that Foothill retained or took back an interest in the subject matter of this litigation. More importantly, it has no choice about being the defendant in the actions brought by Appellants, so presumably it would be up to Foothill argue that FCC should be substituted as the proper party, if that is so. Therefore, we are not prepared to say that Foothill lacks standing.

Finally, we agree with the bankruptcy court that it lacked jurisdiction to adjudicate the non-debtor Appellants' claims. Appellants have made no argument to the contrary on this appeal, as their counsel confirmed at oral argument. The bar date for Shangri La and Guarantors to assert indemnity or contribution claims against Debtor has long since past, so the outcome of any proceeding on their claims against Foothill could not conceivably

have any effect on the bankruptcy estate, let alone have a "close nexus to the bankruptcy plan or proceeding." See In re Fietz, 852 F.2d 455, 457 (9th Cir.1988) (adopting "conceivable effect" test of Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984)) and In re Pegasus Gold Corp., 394 F.3d 1189, 1194-95 (9th Cir. 2005) (following Third Circuit's more limited "close nexus" test for post-confirmation jurisdiction); 28 U.S.C. § 1334(b).

B. The Rooker-Feldman doctrine in not applicable

We are somewhat troubled by Appellants' argument that their own State Law Claims should have been rejected by the bankruptcy court under the Rooker-Feldman doctrine, which they find more acceptable than the bankruptcy court's ruling that those claims are barred by claim preclusion. Nevertheless, Foothill has not argued that judicial estoppel or any other doctrine trumps the well established right of parties to raise jurisdictional issues at any time (In re Crown Vantage, Inc., 421 F.3d 963, 971 n. 5 (9th Cir. 2005)), and we have an independent duty to consider our jurisdiction (Lucas Dallas, 185 B.R. at 804), so we address the merits of Appellants' Rooker-Feldman argument.

The Supreme Court has recently emphasized the narrow reach of the Rooker-Feldman doctrine:

> The Rooker-Feldman doctrine, we hold today, is confined to cases of the kind from which the doctrine acquired its name: cases brought by state court losers complaining of injuries caused by state-court judgments rendered before the [federal] court proceedings commenced and inviting [federal] court review and rejection of those judgments. Rooker-Feldman does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state-court actions.

Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, ___, 125 S.Ct. 1517, 1521-22 (2005) (emphasis added, citing Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), and District of Columbia Ct. App. v. Feldman, 460 U.S. 462 (1983)).

The March, 2004 Judgment in the Nevada District Court Action was not rendered before the Adversary Proceeding commenced. See Exxon Mobil, 544 U.S. at ___, 125 S.Ct. at 1526-27 ("neither Rooker nor Feldman supports the notion that properly invoked concurrent jurisdiction vanishes if a state court reaches judgment on the same or related question while the case remains sub judice in a federal court" rather, "[d]isposition of the federal action, once the state-court adjudication is complete, would be governed by preclusion law"). Moreover, Appellants' own opposition to Foothill's motion for summary judgment states that they "in no way, shape or form suggest or request that the [bankruptcy] Court in any way act as an appellate tribunal to the [Nevada District Court] or the Business Court." The Rooker-Feldman doctrine is inapplicable.

C. Appellants' State Law Claims are barred by claim preclusion

Our de novo review confirms the bankruptcy court's ruling that claim preclusion bars Debtor's State Law Claims. We apply the law of Nevada because that is where the bankruptcy court sits. 28 U.S.C. § 1738. The elements of claim preclusion under Nevada law are (1) a valid and final judgment on a claim, and (2) a second suit brought against the same party on the same claim. Executive Mgmt., Ltd. v. Ticor Title Ins. Co., 114 Nev. 823, 835; 963 P.2d 465, 473 (1998).

There is no suggestion that the March, 2004 Judgment is invalid, and it appears to be final because it disposes of all claims in the Nevada District Court Action. Although the March, 2004 Judgment is on appeal to the Nevada Supreme Court it is still final for purposes of claim preclusion: "Nevada appears to follow the general view -- according finality to judgments notwithstanding opportunities to appeal." Clements v. Airport Authority of Washoe County, 69 F.3d 321, 329 n.7 (9th Cir. 1995) (citing Baker v. Leary, 70 Nev. 152, 261 P.2d 1013 (1953)).

Appellants admit that the State Law Claims in all three fora are almost word-for-word identical, so the claims are certainly the same for claim preclusion purposes. The parties are the same in all three fora. Therefore, all the elements of claim preclusion are satisfied.

Appellants point out that Foothill presented the Nevada District Court with several alternative grounds for disposing of their State Law Claims, and the excerpts of record have almost no information about the basis of the March, 2004 Judgment, so it is difficult to know what issues the Nevada District Court addressed and how it ruled on each issue. That ambiguity would be relevant to issue preclusion, not claim preclusion. "[C]laim preclusion embraces all grounds of recovery that were asserted in a suit, as well as those that could have been asserted, and thus has a broader reach than issue preclusion." Executive Mgmt., 114 Nev. at 835, 963 P.2d at 473 (emphasis added, internal quotation marks, brackets, and citation omitted). Therefore, claim preclusion bars Appellants' State Law Claims in the Adversary Proceeding.

D. The Plan Implementation Order did not bar claims against Foothill

Judge Markell ruled in the A/P Decision that the Plan Implementation Order must be read to embody "the implicit notion that Foothill did not owe any money back to the estate." (Emphasis in original.) While we respect the bankruptcy court's interpretation of its own order (albeit an order issued by a different judge) we cannot agree.

Judge Jones' Plan Implementation Order itself states only that Foothill filed an original and amended proof of claim, the dollar amount, and that "Foothill, as the proponent of the confirmed [Plan] is bound by and obligated to the language that it provided in the Plan and, in fact, Foothill did provide a release and full satisfaction of its filed claim against [Debtor]." That language alone says nothing about whether Foothill owes money back to the estate.

Judge Markell's A/P Decision also relies on the notion that Appellants would have asserted claims if they had intended to preserve them. They did. On January 3, 2003, just four days before the hearing on the Plan Implementation Motion, Appellants filed their Complaint commencing the Adversary Proceeding in which they asserted among other things a claim for turnover of approximately $3.2 million based on the theory that "when Foothill elected its treatment under Article IX, Section D.4(b) [of the Plan], Foothill was only entitled to approximately $14,600,000 of the proceeds." We do not believe that the lack of discussion of these claims at a hearing on a different matter four days later amounts to an implicit surrender of those claims.

Our view is reinforced by the transcript of that hearing, which shows that the parties and Judge Jones avoided determining broader issues and intended to keep the Plan Interpretation Order narrowly focused on Paragraph (b) (Plan § IX.D.4(b)). For example, Judge Jones noted that Foothill's amended proof of claim was deemed allowed in the approximate amount of $24 million, but then made his oral ruling "without referencing that at all." Transcript Jan. 7, 2003, p. 25:17-22. Similarly, Judge Jones briefly explored whether the amount of Foothill's Secured Claim would be the fair market value of Vacation Village or the actual sales price, but the parties all explicitly agreed with Judge Jones that the bankruptcy court would not to decide that issue. Id. pp. 27:20-28:10. We do not believe that, when the parties and Judge Jones were so carefully avoiding any decision even as to the amount of Foothill's Secured Claim, they were implicitly deciding that Debtor had no claim back against Foothill.

Finally, we note that at the hearing before Judge Markell on the Dispositive Motions Foothill's own counsel conceded that he was not sure the Plan Implementation Order could be read to bar any claim against Foothill:

> MR. ZIRZOW [Foothill's counsel]: So the question is whether Foothill is -- whether the [Plan] [I]mplementation [O]rder not only adjudicated a release of --
>
> THE COURT [Judge Markell]: It terminated Foothill's status as a creditor, but, also, did it have within it the notion that Foothill was not a debtor[?] That, in fact, everything was even between the parties[?]
>
> MR. ZIRZOW: You know, I sure would like it to say that, but I'm not sure if it does to be perfectly honest. I'm looking at it right now.

Transcript Sept. 8, 2004, p. 40:16-25.

For all of these reasons, we cannot agree with Judge Markell that the Plan Implementation Order implicitly barred Debtor's or Appellants' claims against Foothill. Nevertheless, we affirm on the alternative grounds discussed below. "An appellate court in the Ninth Circuit may consider any issue supported by the record and may affirm on any basis supported by the record, even where the issue was not expressly considered by the bankruptcy court." In re Fernandez, 227 B.R. 174, 177 (9th Cir. BAP 1998), aff'd 208 F.3d 220 (9th Cir. 2000) (table).

E. Judge Markell properly corrected the Plan Implementation Order to be consistent with Judge Jones' oral ruling, and then properly ruled that the Plan does not bar Foothill's deficiency claim

Although Judge Jones' Plan Implementation Order, as written, appears to bar Foothill's deficiency claim, it is inconsistent with his oral ruling at the hearing on January 7, 2003. We interpret Judge Markell's A/P Decision as correcting the written order to reflect Judge Jones' oral decision and to clarify that the Plan does not bar Foothill's deficiency claim.

Such correction of an interlocutory order is both permissible and appropriate. See Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 12 and n. 14 (1983) ("every order short of a final decree is subject to reopening at the discretion of the [trial court] judge"); City of Los Angeles, Harbor Div. v. Santa Monica BayKeeper, 254 F.3d 882, 885-87 (9th Cir. 2001) (court has "inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause seen by it to be sufficient")

(citation, internal quotation marks, and emphasis omitted); In re White Crane Trading Co., Inc., 170 B.R. 694, 700-701 & n. 9 (Bankr. E.D. Cal. 1994) (under the "law of the case" doctrine reconsideration of an interlocutory order is a matter of the trial court's "good sense," and trial judges constantly reexamine their rulings on the basis of new information or argument or just fresh thoughts) (citations omitted). See also 11 U.S.C. § 105(a), Fed. R. Bankr. P. 9024.[9]

The Plan Implementation Order states that Foothill provided a "release and full satisfaction" of not just its "Secured Claim" as defined in the Plan but its entire "filed claim" for "$24,314,131.47 plus accruing interest." Read literally, this order would appear to bar Foothill's deficiency claim for the difference between the $19 million value of Vacation Village and the $24,314,131.47 filed claim.

At the hearing leading to this order, however, Judge Jones and the parties studiously avoided any determination of the amount of Foothill's Secured Claim, let alone whether its deficiency claim was released. Everyone agreed to a form of order, proposed

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[9] We note that the Nevada District Court relied on the Plan Implementation Order as written, before it was corrected by Judge Markell in the A/P Decision. Therefore a preliminary issue, which neither party has addressed, is whether this reliance by the Nevada District Court is binding on the bankruptcy court. We do not believe it is. Deference to state courts has limits, and we do not believe it precludes the bankruptcy court from reconsidering its own order. Cf. In re Gruntz, 202 F.3d 1074 (9th Cir. 2000) (state court may determine applicability of automatic stay, but such determination not binding on bankruptcy court).

Of course, the Nevada state court actions might be affected by the fact that the bankruptcy court's order, on which the Nevada District Court apparently relied, has now been superseded by the A/P Decision, the A/P Judgment, and our disposition of this appeal. That is a matter for the state courts to determine.

by Judge Jones, that "without referencing" the amount of Foothill's Secured Claim should track the language of the Plan and "simply say[] [that] the proponent [Foothill] agreed to and gave a full release and full satisfaction of its allowed secured claim . . . ." Transcript Jan. 7, 2003, pp. 25:17-23, 27:20-28:10 (emphasis added). Plan § IX.D.4(b).

Judge Markell treated the written Plan Implementation Order as if it were consistent with what everyone agreed to at the hearing on January 7, 2003. That correction is proper.

Judge Markell also held that the Plan meant what it said, and only what it said: by electing Paragraph (b) Foothill accepted the auction proceeds from the sale of Vacation Village in full satisfaction and release of its allowed Secured Claim, without in any way affecting its unsecured deficiency claim. We agree. To hold otherwise would ignore the specific definition of Secured Claim in the Plan (see footnote 5 above), the provisions of Section 506(a), and the entire body of caselaw concerning bifurcation of claims under the Bankruptcy Code. See, e.g., Dewsnup v. Timm, 502 U.S. 410 (1992). Paragraph (b) simply applies hornbook law on bifurcation. There is nothing inconsistent in Paragraph (c), which attempts to go further and define the amount of Foothill's deficiency claim as "the difference between its claim and the credit bid" -- a potential windfall to Foothill if its credit bid were in a small dollar amount. Plan § IX.D.4(c). Nor is there anything inconsistent about Paragraph (a), which first provides that if Vacation Village were not purchased by anyone at the Auction then Debtor shall "abandon" Vacation Village to Foothill and then takes the

precaution of explicitly stating that this does not waive Foothill's deficiency. Plan § IX.D.4(a). For all of these reasons, under any standard of review we agree with the bankruptcy court that Paragraph (b) meant only what it said: it released Foothill's "Secured Claim" but had no effect on Foothill's deficiency claim.

All of Debtor's Bankruptcy Law Claims rest either on its interpretation of the Plan as releasing Foothill's unsecured deficiency claim, which Judge Markell rightly rejected, or else on the State Law Claims, which were rightly dismissed on claim preclusion grounds. Therefore, the bankruptcy court properly dismissed all of Debtor's Bankruptcy Law Claims against Foothill.

V. CONCLUSION

The unfortunate history of the parties' disputes includes litigation in three fora, numerous appeals, and a written order of the bankruptcy court that did not accurately reflect its oral ruling. The bankruptcy court properly corrected the written order and clarified that Foothill's Plan meant what it said and only what it said: when Foothill received the full amount of its secured claim that claim was satisfied and released, but the Plan did nothing to release Foothill's deficiency claim. Whether or not Foothill has a deficiency claim is a matter of state law. The state courts have rejected Debtor's State Law Claims, and those rulings are binding on the bankruptcy court as a matter of claim preclusion. Accordingly, all of Appellants' claims were properly dismissed, and the A/P Judgment is AFFIRMED.