

**NOT FOR PUBLICATION**

**JUL 14 2005**

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

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

In re:	)	BAP No. CC 04-1519-TKMa
	)	
AMERICAN COMPUTER & DIGITAL	)	Bk. No. LA 04-19259-TD
COMPONENTS, INC.,	)	
	)	
Debtor.	)	
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ALAN SHEEN and JAMES SHEEN,	)	
	)	
Appellants,	)	
	)	
v.	)	<b>MEMORANDUM<sup>1</sup></b>
	)	
RICHARD DIAMOND, CHAPTER 7	)	
TRUSTEE; HARRIS TRUST AND	)	
SAVINGS BANK; UNITED STATES	)	
TRUSTEE; AMERICAN COMPUTER &	)	
DIGITAL COMPONENTS, INC.,	)	
	)	
Appellees.	)	
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Argued and Submitted on May 12, 2005  
at Pasadena, California

Filed - July 14, 2005

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

Honorable Thomas B. Donovan, Bankruptcy Judge, Presiding

Before: TCHAIKOVSKY,<sup>2</sup> KLEIN, and MARLAR, Bankruptcy Judges

<sup>1</sup>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 issue and claim preclusion. See 9<sup>th</sup> Cir. BAP Rule 8013-1.

<sup>2</sup>Hon. Leslie J. Tchaikovsky, United States Bankruptcy Judge for the Northern District of California, sitting by designation.

1 Appellants, the shareholders of the debtor American Computer &  
2 Digital Components, challenge the bankruptcy court's order overruling  
3 their objection to the release provision in a post-petition credit  
4 agreement entered into by Richard Diamond, the chapter 7 trustee, and  
5 the debtor's principal secured creditor, Harris Trust and Savings  
6 Bank. We hold that the bankruptcy court did not err or abuse its  
7 discretion by overruling the appellants' objection to the release  
8 provision and therefore AFFIRM.

### 9 **FACTS**

10 Prior to the commencement of this bankruptcy case, the debtor  
11 entered into a loan and security agreement with the bank. The  
12 agreement gave the bank a security interest in substantially all of  
13 the debtor's assets. The appellants guaranteed the loan obligation.  
14 In 2004, the debtor defaulted on the loan. When the bank attempted  
15 to take possession of its collateral, the debtor filed a chapter 11  
16 petition. Shortly thereafter, the debtor stipulated to the  
17 appointment of a chapter 11 trustee, and Diamond was appointed as a  
18 chapter 11 trustee.

19 After his appointment, Diamond moved to convert the case to  
20 chapter 7. At the same time, he entered into an agreement with the  
21 bank for a post-petition loan of \$500,000, to be secured by the  
22 estate's post-petition assets, including the proceeds of any avoiding  
23 power actions. The agreement provided that all the collections from  
24 the liquidation of the debtor's assets would be paid to the bank  
25 except that the bank agreed to subordinate its claim to pay  
26 administrative expenses of up to \$50,000. Diamond agreed to waive

1 his right to surcharge the bank's collateral under 11 U.S.C. § 506(c)  
2 and released the debtor's claims against the bank in connection with  
3 the pre-petition loans. The agreement gave the trustee 15 days from  
4 the date of its execution to challenge the bank's pre-petition claim  
5 or security interest; other parties in interest were given 60 days  
6 from the date of entry of the order approving the agreement.<sup>3</sup>

7 The bankruptcy court approved the trustee's agreement with the  
8 bank on an interim basis at a preliminary hearing and granted the  
9 trustee's motion to convert the case to chapter 7. Prior to the  
10 final hearing, the appellants filed an objection. The objection was  
11 directed solely to the propriety of the release provision. The  
12 appellants contended that the bank had acted tortiously pre-petition  
13 and had caused the debtor significant harm. They noted that the bank  
14 had initiated litigation against the debtor pre-petition. They  
15 stated that they wanted to assert counterclaims against the bank on  
16 behalf of the debtor. The appellants asked the court to preserve  
17 their right to do so provided their claims were filed within 60 days  
18 after entry of the final order.

19 At the final hearing, the trustee and the bank urged the court  
20 to approve the agreement, including the release provision. They  
21 pointed out that the appellants would have 60 days to challenge the  
22 bank's claim or security interest. The appellants asked for  
23 clarification that they would also have an additional 60 days to  
24 assert the debtor's claims against the bank.

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26 <sup>3</sup>The agreement removed any financial incentive for asserting  
an avoiding power action against the bank since the bank's post-  
petition lien encumbered any recovery.

1           The court's response to this request was ambiguous. Although  
2 the court stated that it was approving the agreement in its entirety,  
3 it also assured the appellants that they had an additional 60 days to  
4 challenge "the deal." An order was entered reflecting the court's  
5 order approving the agreement. The order was also ambiguous.  
6 Paragraph 3 of the order provided that the agreement was approved in  
7 its entirety. However, paragraph 15 stated that the release  
8 provision was approved "subject to paragraph 11." Paragraph 11 gave  
9 parties in interest an additional 60 days to challenge the bank's  
10 claim and security interest.

11           The appellants filed a subsequent objection to the release  
12 provision within 60 days of the entry of the order approving the  
13 agreement and a declaration in support of the objection. In the  
14 objection, the appellants claimed that the bank had destroyed the  
15 debtor's business by telling the debtor's employees and customers  
16 that the appellants were crooks and that the debtor was going out of  
17 business. They also contended that the bank's conduct was not  
18 commercially reasonable and rendered it liable under Cal. Comm. Code  
19 § 9625. Third, they argued that the agreement constituted a  
20 compromise of controversy and that the bankruptcy court had not  
21 addressed the factors required for approval of a compromise. See In  
22 re A & C Properties, Inc., 784 F.2d 1377, 1381 (9<sup>th</sup> Cir.), cert.  
23 denied 479 U.S. 854 (1986).

24           In its response to the appellants' objection, the bank contended  
25 that the objection was barred by the doctrine of claim and/or issue  
26 preclusion. It asserted that the order approving the agreement only

1 gave the appellants additional time to object to its pre-petition  
2 claim and security agreement, not to assert claims against the bank.  
3 In addition, the bank contended that the claims were without merit.  
4 In support of this contention, the bank asked the court to take  
5 judicial notice of a series of declarations filed in support of the  
6 trustee's motion to convert the case to chapter 7. The declarations  
7 described a variety of fraudulent transactions engaged in by the  
8 debtor prior to the commencement of the case, including the creation  
9 of fraudulent accounts receivable and check kiting. The bank also  
10 moved to strike the appellants' declaration.

11 In their reply, the appellants did not challenge evidence of  
12 wrongdoing submitted by the appellees nor did they oppose the motion  
13 to strike their declaration. Instead, they asserted two new legal  
14 arguments. First, they contended that the release provision was  
15 unreasonable because it did not waive the protection of Cal. Civ.  
16 Code § 1542 (general release of claims does not extend to unknown  
17 claims). Second, they argued that a release of the estate's claims  
18 was required to be submitted to competitive bidding. In support of  
19 the latter point, the appellants cited In re Mickey Thompson  
20 Entertainment Group, Inc., 292 B.R. 415 (9<sup>th</sup> Cir. BAP 2003). The  
21 appellants stated that they would be prepared to bid on the debtor's  
22 claims against the bank once bidding terms were set.

23 Prior to the scheduled hearing on the appellants' objection, the  
24 bankruptcy court issued a tentative ruling. The tentative ruling  
25 indicated that the bank's motion to strike the appellants'  
26 declaration would be granted. It stated that the appellants'

1 objection to the release provision would be overruled as not  
2 supported by sufficient evidence or cause and on the ground that  
3 Mickey Thompson did not apply. The appellants did not request a  
4 hearing, and an order was entered in accordance with the tentative  
5 ruling. The appellants filed a timely notice of appeal from this  
6 order.

#### 7 **JURISDICTION**

8 The bankruptcy court had jurisdiction to enter the order  
9 overruling the objection to the release provision pursuant to 28  
10 U.S.C. §§ 1334(b)(1) and 157(b)(2). We have jurisdiction over this  
11 appeal under 28 U.S.C. § 158.

#### 12 **ISSUES**

13 1. Do the appellants have standing to appeal?

14 2. Did the order approving the agreement bar the appellants'  
15 subsequent objection to the release provision?

16 3. If not, did the bankruptcy court err or abuse its discretion  
17 by overruling the objection?<sup>4</sup>

#### 18 **STANDARD OF REVIEW**

19 The preclusive effect of a bankruptcy court order raises mixed  
20 questions of fact and law in which legal issues predominate. See In  
21 re Associated Vintage Group, Inc., 283 B.R. 549, 554 (9<sup>th</sup> Cir. BAP  
22 2002). Findings of fact are reviewed for clear error. In re Fowler,  
23 394 F.3d 1208, 1212 (9<sup>th</sup> Cir. 2005). Conclusions of law are reviewed  
24 de novo. Associated Vintage, 283 B.R. at 554. Approval of a

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25  
26 <sup>4</sup>The appellants did not appeal the bankruptcy court's order  
granting the appellees' motion to strike the appellants'  
declaration.

1 compromise of controversy is reviewed for abuse of discretion. In re  
2 A & C Properties, Inc., 784 F.2d at 1380.

### 3 **DISCUSSION**

#### 4 **A. STANDING**

5 The appellees did not challenge the appellants' standing to  
6 object to the release provision nor to file a notice of appeal from  
7 the order overruling the objection. However, we have an independent  
8 duty to consider this jurisdictional issue. In re Aheong, 276 B.R.  
9 233, 238 (9<sup>th</sup> Cir. BAP. 2001). A party's standing in a bankruptcy  
10 case is governed by the "person aggrieved" standard. A "person  
11 aggrieved" is one whose pecuniary interests are directly and  
12 adversely affected. Id.; In re Fondiller, 707 F.2d 441, 442-43 (9<sup>th</sup>  
13 Cir. 1983). We conclude that the appellants qualify as "persons  
14 aggrieved."

15 At the hearing on the appeal, the appellants conceded that they  
16 had not filed proofs of claim and that it was unlikely that there  
17 would be any dividend to shareholders. However, the appellants urged  
18 that, because the trustee considered the estate's claims against the  
19 bank to have no value, he should abandon them to the debtor. See 11  
20 U.S.C. § 554 (property of the estate may be abandoned if burdensome  
21 or of inconsequential value). If the claims were abandoned to the  
22 debtor, as the shareholders of the debtor, the appellants could  
23 assert them against the bank so as to diminish the bank's pre-  
24 petition claim against the debtor. To the extent this claim were  
25 diminished, the appellants' guaranty liability to the bank would also  
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1 be diminished. Thus, the appellants have a direct pecuniary interest  
2 in the outcome of this appeal.

3 **B. DID THE ORDER APPROVING THE AGREEMENT BAR APPELLANTS' SUBSEQUENT**  
4 **OBJECTION TO THE RELEASE PROVISION AS MATTER OF CLAIM**  
5 **PRECLUSION?**

6 The appellees contend that the order approving the agreement was  
7 a final order. They argue that, because the appellants did not file  
8 a timely notice of appeal from that order, they were not entitled to  
9 file their subsequent objection to the release provision. They  
10 assert that the appellants' subsequent objection was barred by the  
11 doctrine of issue and/or claim preclusion and that their appeal is  
12 untimely. We disagree.

13 The law is clear that a final order has a preclusive effect,  
14 barring both the reassertion of claims actually litigated--i.e.,  
15 issue preclusion--and claims that could have been litigated as part  
16 of the controversy affected by the order--i.e., claim preclusion.  
17 See Associated Vintage, 283 B.R. at 555. We agree with the appellees  
18 that the order approving the agreement was a final order. Two  
19 factors support this conclusion. First, the order was denominated a  
20 final order. Second, the bank relied on the finality of the order by  
21 advancing substantial sums to the bankruptcy estate. However,  
22 concluding that the order was final does not end our inquiry. The  
23 essential question is not whether the order was final but whether the  
24 order should be construed as giving the appellants an additional 60  
25 days to object to the release provision.<sup>5</sup>

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26 <sup>5</sup>The order clearly left some things to be determined later:  
i.e., any challenge to the bank's pre-petition claim or security  
(continued...)



1 Several factors support the conclusion that it did not. As  
2 discussed above, the agreement did not give the appellants an  
3 additional 60 days to challenge the release provision. Section 4.6  
4 of the agreement gave them 60 days only to assert an objection to  
5 "the validity, enforceability or perfection of the Bank's Pre-  
6 petition Loan and its interests in the Property of the Debtor's  
7 estate." The release provision was set forth in a different section:  
8 i.e., section 9.14. This section did not give the appellants any  
9 additional time to challenge its provisions. To the contrary,  
10 section 9.14 reads as a *fait accompli*: i.e., in that section, the  
11 trustee, "fully, unconditionally, and irrevocably" releases the bank  
12 from any and all claims. Finally, the appellees' motion asked the  
13 court to approve the agreement, and the order approving the agreement  
14 stated that the agreement was approved in its entirety.

15 However, several more compelling factors override these  
16 considerations. First, at the final hearing, in response to the  
17 appellants' request that the court preserve its right to assert  
18 claims against the bank, at least for 60 days, the bankruptcy judge  
19 assured the appellants that they would have an additional 60 days to  
20 challenge "the deal."<sup>6</sup> Second, paragraph 15 of the final order, which  
21 deals with the release provision, stated that the provision was

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22 <sup>5</sup>(...continued)  
23 interest. The appellees did not contend that this provision  
24 prevented the order from becoming final.

25 <sup>6</sup>See Associated Vintage, 283 B.R. at 549, n6 (quoting from the  
26 Restatement (Second) of Judgments § 26, which identifies as an  
exception to claim preclusion when the "court in the first action  
has expressly reserved the plaintiff's right to maintain the second  
action").

1 approved subject to paragraph 11. Paragraph 11 was the paragraph  
2 that gave the parties an additional 60 days to assert claims against  
3 the bank's pre-petition loan and security agreement. Finally, and  
4 most important, the bankruptcy court construed its own order as  
5 permitting the subsequent objection. The court's tentative ruling  
6 addressed the merits of the objection; it was not based on the  
7 grounds of issue or claim preclusion. For all of these reasons, we  
8 conclude that the order approving the agreement, although final, did  
9 not bar the appellants' subsequent challenge to the release  
10 provision.

11 **C. DID BANKRUPTCY COURT ERR OR ABUSE ITS DISCRETION BY OVERRULING**  
12 **OBJECTION TO RELEASE PROVISION?**

13 The appellants contend that the bankruptcy court erred or abused  
14 its discretion by overruling their objection to the release  
15 provisions for several reasons. First, they argue that the release  
16 constituted the sale of an estate asset and that the court erred by  
17 not submitting it to competitive bidding. Second, they contend that  
18 the release constituted a compromise of controversy and that the  
19 bankruptcy court erred by not considering the factors set forth in A  
20 & C Properties. Third, they assert that, for various other reasons,  
21 the release provision was not in the best interests of the estate and  
22 that the bankruptcy court abused its discretion by approving it.  
23 None of these arguments has any merit.

24 **1. Release Provision as Sale of Estate Asset**

25 If a chapter 7 debtor has a claim against a third party when the  
26 bankruptcy petition is filed, that claim becomes property of the

1 estate. See 11 U.S.C. § 541(a)(1). If the trustee transfers the  
2 claim to another for consideration, the transaction is fairly  
3 characterized as a sale. A release of a claim by the estate against  
4 a third party is equivalent to the sale of the claim to the third  
5 party. Thus, the standards applicable to approval of a release are  
6 the same as those applicable to a sale of other estate property.

7 The principal issue regarding the sale of estate property is  
8 whether the sale represents the optimal return to the estate under  
9 the circumstances. The court defers to the trustee's business  
10 judgment as to the best way to achieve this return. However, there  
11 are clearly limits to this deference. When a party in interest files  
12 an objection to the sale, the ultimate responsibility for the  
13 decision rests with the court. In re Lahijani, 325 B.R. 282 (9<sup>th</sup> Cir.  
14 BAP 2005).

15 Frequently, the maximum value of estate property will be  
16 realized by competitive bidding. However, this is not always true.  
17 In Mickey Thompson, upon which the appellants rely, we reversed the  
18 bankruptcy court's approval of a chapter 7 trustee's unexplained sale  
19 of claims to a third party for a lower price after establishing an  
20 overbidding procedure and receiving a higher bid. Under these  
21 circumstances, we held that the trustee breached his fiduciary duty  
22 to maximize the return to the estate. However, we noted that not  
23 every compromise must be submitted to overbidding. We stated that:  
24 "[w]hether to impose formal sale procedures" and to establish "a  
25 competitive process" with respect to the proposed disposition of  
26 claims by the estate against a third party was "ultimately a matter

1 of discretion" dependent "upon the dynamics of the particular  
2 situation." Mickey Thompson, 292 B.R. at 422.

3 In its tentative ruling, the bankruptcy judge stated that Mickey  
4 Thompson was inapplicable. Because the appellants did not request a  
5 hearing, we have only the bankruptcy judge's conclusion, not his  
6 rationale for this decision. However, his conclusion is clearly  
7 supported by the record.<sup>7</sup> The bank was not offering a set price for  
8 purchase of the claims. The release was part and parcel of a multi-  
9 term agreement. It would not have been feasible to call for  
10 overbids.

11 Moreover, approval of the agreement was time sensitive. The  
12 estate had no cash. The appellants expressed their interest in  
13 purchasing the estate's claims against the bank for the first time in  
14 their reply to the bank's response to their subsequent objection.  
15 The court could have reasonably concluded that, under these  
16 circumstances, the delay occasioned by requiring an overbidding  
17 procedure to be established would not have been in the best interests  
18 of the estate. Consequently, the bankruptcy judge did not err in  
19 finding Mickey Thompson inapplicable.

## 20 **2. Release Provision as Compromise of Controversy**

21 The appellants also contend that the release provision  
22 represented a compromise of controversy and that, before approving  
23 the compromise, the bankruptcy judge was required to consider the

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25 <sup>7</sup>By not requesting a hearing and by submitting to the  
26 tentative ruling, the appellants bear the responsibility for the  
limited state of the record. We may affirm the bankruptcy court's  
conclusion as long as the record supports it. In re Crystal  
Properties, Ltd., L.P., 268 F.3d 743, 755 (9<sup>th</sup> Cir. 2001).

1 factors set forth in A & C Properties. We agree with this  
2 contention. See In re Lahijani, 325 B.R. at 290 (sale of claims to  
3 defendant must be analyzed as a compromise).

4 In A & C Properties, the Ninth Circuit held that, in approving  
5 a compromise, in addition to finding that the settlement negotiations  
6 had been conducted in good faith, the bankruptcy court was required  
7 to consider:

8 (a) The probability of success in the  
9 litigation; (b) the difficulties, if any, to be  
10 encountered in the matter of collection; (c) the  
11 complexity of the litigation involved, and the  
12 expense, inconvenience and delay necessarily  
13 attending it; (d) the paramount interest of the  
14 creditors and a proper deference to their  
15 reasonable views in the premises.

16 A & C Properties, 784 F.2d at 1381. The appellants contend that the  
17 bankruptcy court did not consider any of these factors. They contend  
18 that, for various reasons, approval of the compromise was not in the  
19 best interests of the estate.

20 Again, because the appellants did not request a hearing on their  
21 subsequent objection, thereby submitting to the tentative ruling, we  
22 are unable to determine whether or not the court considered these  
23 factors in concluding that the objection was unsupported by  
24 sufficient cause. As noted above, the appellants bear the  
25 responsibility for the limited state of the record, and we may affirm  
26 as long as the record supports the bankruptcy court's decision to  
approve the release provision under the standards set forth above.  
In re Crystal Properties, Ltd., L.P., 268 F.3d 743, 755 (9<sup>th</sup> Cir.  
2001). We conclude that it does.

1           The evidence submitted by the appellees, which was  
2 uncontradicted by any competent evidence presented by the appellants,  
3 indicated that the debtor's purported claims against the bank lacked  
4 any merit. While presumably the estate would have had no difficulty  
5 collecting any judgment against the bank, any litigation would have  
6 been complex and would have resulted in an undesirable delay in  
7 administering the estate. The only parties challenging the  
8 compromise were the appellants. The bankruptcy court could have  
9 reasonably concluded that, under these circumstances, approving the  
10 compromise was in the best interests of the estate. Thus, the  
11 bankruptcy court did not abuse its discretion in overruling the  
12 appellants' objection to the release provision.

### 13           **3. Appellants' Other Arguments**

14           The other legal arguments asserted by the appellants are not  
15 persuasive. First, the appellants contended that the bank was liable  
16 to the debtor because it acted in a commercially unreasonable manner  
17 by refusing to restructure the pre-petition loan in return for  
18 additional collateral. They asserted that the bank had an obligation  
19 to establish that it acted reasonably. In support of this  
20 contention, they cited Cal. Comm. Code §§ 9607, 9625, and 9626.<sup>8</sup>

21           The appellants contended that § 9607 requires a secured creditor  
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23           <sup>8</sup>Section 9607 requires a secured creditor to proceed in a  
24 commercially reasonable manner in enforcing its rights against its  
25 collateral in the event of a default. Section 9625 makes a secured  
26 creditor liable for any damages caused as result of the creditor's  
failure to proceed in a commercially reasonable manner. Section  
9626 places the burden on the secured creditor, under certain  
circumstances, to establish that it has proceeded in a commercially  
reasonable manner.

1 to settle and compromise claims with a debtor. They argued that the  
2 bank was required to agree to restructure their pre-petition loan in  
3 return for their offer of additional collateral. The language of  
4 § 9607 does not support this contention, and the appellants have  
5 cited no case authority to support it either. Moreover, the evidence  
6 of the debtor's fraudulent conduct pre-petition supports the view  
7 that the bank acted in commercially reasonable manner by refusing to  
8 continue to deal with the debtor under any terms.

9 The appellants' second argument has even less substance. They  
10 contended that the bankruptcy court erred by approving the release  
11 provision because the trustee did not waive the protection of Cal.  
12 Civ. Code § 1542. Section 1542 provides that a general release does  
13 not extend to unknown claims. This protection can be waived, and in  
14 fact the trustee did waive it. Section 9.14 expressly waives all  
15 claims, known and unknown related to the bank's loan relationship  
16 with the debtor.

17 Moreover, the appellants' concern with the trustee's purported  
18 failure to waive unknown claims makes no sense. The appellants  
19 expressed the desire to assert claims against the bank in future  
20 litigation on behalf of the debtor.<sup>9</sup> However, those claims are not  
21 "unknown claims." In addition, if they were unknown claims, it would  
22 have been to the appellants' advantage if the trustee had not waived  
23 the protection of § 1542. If the protection had not been waived,  
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25 <sup>9</sup>The appellants also expressed the desire to assert their own  
26 claims against the bank. However, the release provision approved  
by the bankruptcy judge did not purport to release the appellants'  
claims against the bank.

1 unknown claims would not have been included in the release and would  
2 have been abandoned to the debtor when the estate was closed. See 11  
3 U.S.C. § 554.

#### 4 **CONCLUSION**

5 The appeal was not untimely nor was it barred by issue or claim  
6 preclusion. The order approving the agreement was clearly a final  
7 order. However, given the court's statements at the hearing and the  
8 form of the order, the order must be construed as giving the  
9 appellants an additional 60 days to challenge the release provision.  
10 The bankruptcy court construed its own order in this fashion by  
11 addressing the merits of the objection, rather than ruling on the  
12 ground that the objection was barred by the preclusive effect of the  
13 order.

14 The bankruptcy court did not err nor did it abuse its discretion  
15 by overruling the appellants' objection. First, it did not abuse its  
16 discretion by concluding that competitive bidding for the release  
17 provision was not required under these circumstances. Second,  
18 although approval of a release should be viewed as a compromise and  
19 the factors applicable to a compromise considered, the record  
20 supports the bankruptcy court's conclusion that approval of the  
21 release provision was in the best interests of the estate. We  
22 conclude that it does and therefore AFFIRM.



1 MARLAR, Bankruptcy Judge, concurring:

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3 I agree with the result, but disagree with my colleagues as to  
4 a portion of the analysis.

5 Appellants lack standing to challenge the court's order. See  
6 Fondiller v. Robertson (In re Fondiller), 707 F.2d 441, 442 (9th Cir.  
7 1983) (only persons who are "directly and adversely affected  
8 pecuniarily" by an order of the bankruptcy court have standing to  
9 appeal); Duckor Spradling & Metzger (In re P.R.T.C., Inc.), 177 F.3d  
10 774, 777 (9th Cir. 1999) (same). Appellants are not creditors, did  
11 not file claims, and acknowledged at oral argument that the estate  
12 would not be in a position to pay creditors one hundred percent, plus  
13 interest. Thus, because the estate is insolvent, shareholders are  
14 deprived of appellate standing. See id. at 778 & n.2 (ordinarily  
15 only a solvent debtor can challenge a bankruptcy court's order  
16 affecting the size of the estate). They simply cannot interfere with  
17 the administration of the estate by the creditor's representative,  
18 the trustee. See Stoll v. Quintanar (In re Stoll), 252 B.R. 492, 495  
19 (9th Cir. BAP 2000). Cf. Matter of Schultz Mfg. Fabricating Co., 956  
20 F.2d 686, 690 (7th Cir. 1992) (only chapter 7 trustee had standing to  
21 appeal settlement on behalf of debtor and unsecured creditor  
22 shareholders).

23 Simply because they may have executed personal guarantees does  
24 not confer standing in the debtor's case. To the extent that they  
25 have defenses against the Bank, they are not precluded from asserting  
26 them.

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I also believe that the order was final, and any appeal therefrom was untimely. The order allowed parties in interest to challenge only the Bank's security interest. It did not open the Bank up to all of appellees' potpourri of claims. Moreover, the judge's statements, however "ambiguous," were overridden by the terms of the actual signed order. That order is not ambiguous.