

JUN 08 2005

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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	CC-04-1145-KMaB
)		
ANDY MAHINDRU,)	Bk. No.	SV 02-11594-KL
)		
)	Adv. No.	SV 02-01224-KL
Debtor.)		
)		
_____)		
)		
ANDY MAHINDRU,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM*	
)		
GULSHAN BHATIA; CHANDANI)		
SAGAR,)		
)		
Appellees.)		
_____)		

Argued and Submitted on February 23, 2005
at Los Angeles, California

Filed - June 8, 2005

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

Honorable Kathleen T. Lax, Bankruptcy Judge, Presiding

Before: KLEIN, MARLAR and BRANDT, Bankruptcy Judges.

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

1 The debtor, Andy Mahindru, appeals from a judgment quieting
2 title to real property in favor of appellees, Gulshan Bhatia and
3 Chandani Sagar. We AFFIRM.

4
5 FACTS

6 This appeal centers around real property located at 18951
7 Vanowen Street in Reseda, California (the "Reseda Property"). In
8 1998, the debtor acquired the Reseda Property from Gary Plunkett.
9 At the time, the debtor owned and resided in another property.
10 Over the next several years, the Reseda Property was used as a
11 rental. Plunkett carried a note for \$13,500 secured by a second
12 deed of trust ("DOT") on the Reseda Property.¹

13 Also in 1998, the debtor left his successful career as an
14 engineer and its accompanying lifestyle to devote all his time to
15 spiritual development and travel.

16 In 1991, the debtor borrowed \$75,000 from his friend Bhatia
17 that was secured by a third DOT on the Reseda Property.
18 According to the debtor, the loan was for a term of one year and
19 was for the purpose of giving it to the needy. Because the
20 debtor planned on being out of the country for an extended period
21 of time for religious studies, he paid Bhatia a year's worth of
22 interest on the loan in advance.

23 In 1992 or 1993, the debtor offered to transfer the Reseda
24 Property to Bhatia for cancellation of the debt. Bhatia declined
25 the offer.

26
27
28

¹Washington Mutual Home Loans, Inc., held a first DOT on the
Reseda Property.

1 In mid-1994, the debtor defaulted on the payments due to the
2 holder of the first DOT. Bhatia cured the default in order to
3 protect his third DOT interest in the Reseda Property and
4 demanded that the debtor forward rental payments received from
5 the tenant residing in the Reseda Property to him so that he
6 could ensure that the first DOT payments were up to date. The
7 debtor complied with the request and forwarded the rental
8 payments to Bhatia for a little over a year.

9 In the fall of 1995, the debtor told Bhatia that he would no
10 longer forward the rental payments, but rather would start making
11 the mortgage payments himself out of the rent he collected. The
12 debtor then borrowed \$15,000 on his primary residence (not from
13 Bhatia).

14 The debtor's primary residence subsequently went into
15 foreclosure and the debtor again stopped making payments to the
16 first DOT holder on the Reseda Property.

17 The bankruptcy court found that in April 1996 the debtor
18 offered the Reseda Property to Bhatia to settle his debt and that
19 Bhatia agreed to take the Reseda Property. The court
20 specifically found that

21 the terms of the agreement were that [the debtor] would
22 continue to hold legal title pending instructions from
23 Bhatia because Bhatia was concerned about taking title
24 because the loan had been made from pension funds. The
25 parties agreed that [the debtor] would assist in
26 renting and managing the Property because Bhatia lived
27 too far away to do so. For his part, Bhatia cured the
28 default to the holder of the first trust deed, paid the
ongoing payments whether or not rent was coming in, and
got the rent from the tenant when rent was paid. In
addition, Bhatia testified that he agreed to consider
giving the Property back to [the debtor] if and when
[the debtor] could pay the money Bhatia had loaned on
and put into the Property.

1 In January 1997, the debtor executed a "Limited Power of
2 Attorney" in favor of Bhatia that "was intended to allow Bhatia
3 to deal with the Property even though legal title remained in
4 [the debtor's] name."

5 A few months later, the debtor executed another "Limited
6 Power of Attorney" in favor of Bhatia. This later power of
7 attorney granted Bhatia the "power to sell, sign and execute
8 grant deeds. Power to hypothecate and sign deeds of trust.
9 Power to enter into escrow instructions and any other document
10 pertaining to the property known as: 18951 Vanowen Street,
11 Reseda, California 91335."

12 In August 1997, without Bhatia's knowledge, the debtor
13 executed a fourth DOT on the Reseda Property in favor of a bail
14 bond company. In June 1998, the debtor lost his primary
15 residence to foreclosure.²

16 In June 2000, the debtor and Bhatia agreed that the debtor
17 would live in the Reseda Property and make repairs in
18 consideration for three months free rent. After those three
19 months, the debtor would make rental payments to Bhatia. The
20 debtor "testified that he intended to refinance the property
21 after the first three months and pay off his debt to Bhatia."
22 The debtor lived in the Reseda Property with other tenants who
23 paid the debtor rent.

26 ²In November 1998, the debtor's wife passed away and the
27 debtor "testified that after her funeral, he had no home, no
28 clothes, and no money and lived by going from monastery to
monastery."

1 _____ In early 2001, the debtor and Bhatia made an attempt at
2 mediation that would allow the debtor to keep the Reseda Property
3 and give Bhatia all of the money Bhatia personally put into the
4 Reseda Property. Bhatia learned for the first time about the
5 fourth DOT in favor of the bail bond company and that it had
6 scheduled a foreclosure sale for February 28, 2001. Bhatia also
7 learned that the first DOT was again in default.

8 On February 23, 2001, the debtor filed a chapter 7
9 bankruptcy case. The debtor scheduled the Reseda Property as
10 property of the estate. On February 28, 2001, Bhatia exercised
11 his power under the limited power of attorney and transferred the
12 Reseda Property by quitclaim deed to his niece, appellee Sagar.
13 Sagar personally paid the bail bond debt to stop the foreclosure
14 sale. The bankruptcy court found that neither Bhatia nor Sagar
15 knew about the bankruptcy at the time of transfer or payment of
16 the bail bond debt. The debtor received a discharge in July
17 2001.

18 In January 2002, the holder of the first DOT on the Reseda
19 Property noticed a foreclosure sale. The debtor entered into an
20 agreement with the foreclosing lender to cure the default over
21 time. Unaware of the debtor's agreement with the foreclosing
22 lender, on February 21, 2002, Bhatia cured the default.

23 On February 22, 2002, the debtor filed the instant chapter
24 13 case. The debtor again scheduled the Reseda Property as
25 property of the estate.

26 In March 2002, the debtor filed an adversary complaint
27 against Bhatia, Sagar, Plunkett, and the bail bond company. The
28 complaint asserted ten causes of action - claims one through

1 seven were against Bhatia and Sagar for avoidance and recovery of
2 fraudulent transfer, cancellation of instrument, quiet title,
3 slander of title, and injunctive relief. Claim eight was against
4 Bhatia for determination of the extent and validity of liens.
5 Claims nine and ten were against Plunkett and the bail bond
6 company for cancellation of instrument.

7 Because neither Plunkett nor the bail bond company answered
8 the complaint or participated in the proceedings, the bankruptcy
9 court entered their defaults and granted judgment against them
10 and in favor of the debtor on claims nine and ten.

11 The bankruptcy court held a trial on the debtor's complaint
12 that lasted seven days over a period of several weeks. Multiple
13 witnesses were examined and exhibits were admitted.

14 On March 9, 2004, the bankruptcy court issued a written
15 memorandum on trial with extensive findings of fact and
16 conclusions of law. The court found that it was the debtor's
17 intention to give the Reseda Property to Bhatia in satisfaction
18 of his debt owed to Bhatia and that the debtor orally expressed
19 this intention on several occasions. The limited power of
20 attorney that the debtor executed in Bhatia's favor was intended
21 to memorialize his tender of the Reseda Property to Bhatia so
22 that Bhatia could deal with the Reseda Property as his own -
23 including the power to acquire it in his own name or transfer
24 title to another. The court further found that at the time of
25 the debtor's first bankruptcy (chapter 7), the debtor had bare
26 legal title to the Reseda Property while Bhatia held equitable
27 title.

28

1 The court further found that when Bhatia transferred the
2 Reseda Property to Sagar, he did so without notice or knowledge
3 of the debtor's bankruptcy case. Because the debtor intended to
4 give the Reseda Property to Bhatia, the court quieted title to
5 the Reseda Property in favor of Sagar and entered judgment in
6 favor of Bhatia and Sagar, and against the debtor on claims one
7 through seven. Because of the court's findings and the judgment
8 in favor of Sagar on claims one through seven, the court found
9 that the debtor's claim for an accounting was moot.

10 The court entered a final judgment consistent with these
11 findings the same day, and the debtor timely appealed.

12 13 JURISDICTION

14 The bankruptcy court had jurisdiction via 28 U.S.C. §§ 1334
15 and 157(b)(1). We have jurisdiction under 28 U.S.C. § 158(a)(1).

16 17 ISSUES

- 18 1. Whether the bankruptcy court erred when it quieted title to
19 the Reseda Property in favor of Sagar.
20 2. Whether the court erred when it found that the debtor's
21 request for an accounting was a moot issue.

22 23 STANDARD OF REVIEW

24 The bankruptcy court's findings of fact are reviewed for
25 clear error and its conclusions of law are reviewed de novo.
26 Higgins v. Vortex Fishing Sys., Inc., 379 F.3d 701, 705 (9th Cir.
27 2004) (quoting Galam v. Carmel (In re Larry's Apt., LLC), 249
28 F.3d 832, 836 (9th Cir. 2001)).

1 DISCUSSION

2 On appeal, the debtor argues that the court erred when it
3 quieted title in favor of Sagar and then refused to conduct an
4 accounting on the amount he owes to Bhatia. The debtor
5 specifically contends that he did not intend the limited power of
6 attorney to memorialize his tender of the Reseda Property to
7 Bhatia. Rather, the debtor argues that Bhatia admitted he was
8 not interested in the Reseda Property and that the court failed
9 to recognize that the dispute was about the balance owed on
10 Bhatia's secured lien and that the court must address the issue
11 of an accounting.

12 Bhatia argues that the record is replete with evidence of
13 the debtor's intention to transfer the Reseda Property to Bhatia
14 by means of the power of attorney. Over a period of several
15 years, Bhatia cured multiple defaults to other DOT holders on the
16 Reseda Property in an effort to protect his own investment.
17 Bhatia attempted many times to give the debtor an opportunity to
18 collect rent and make the payments himself. Bhatia also forgave
19 three months of payments due while the debtor lived in the Reseda
20 Property to make repairs.

21 The debtor neglected to live up to his obligations to Bhatia
22 and other lien holders on several occasions and even lost his
23 primary residence to foreclosure.

24 The debtor admitted during his 11 U.S.C. § 341(a) meeting of
25 creditors in his chapter 7 case that he verbally agreed to give
26 the Reseda Property to Bhatia and that he signed a power of
27 attorney for that purpose.

28 The debtor and Bhatia were long-time friends. Bhatia

1 attempted to help the debtor with his financial woes multiple
2 times. After curing several of the debtor's defaults, losing
3 large amounts of money on the loan he made to the debtor, and
4 dealing with the debtor filing for bankruptcy, Bhatia decided to
5 exercise his rights under the power of attorney to put the
6 financial nightmare to an end.

7 This is fundamentally a question of credibility that was
8 resolved by the trial court. The bankruptcy court was in the
9 best position to judge the character, credibility, and veracity
10 of the witnesses and exhibits at trial. The court found as a
11 matter of fact, after seven days of trial and over several months
12 of dealing with these parties, that the debtor's intent was to
13 give the Reseda Property to Bhatia to satisfy the mounting debt
14 he owed to his friend.

15 The transfer occurred several years before the debtor filed
16 his first bankruptcy case and the court found that at the time of
17 that first case, the debtor only held bare legal title to the
18 Reseda Property, while Bhatia held equitable title. Bhatia had
19 in his hands the power to transfer legal title at any time and he
20 did so soon after the debtor, unbeknownst to him, filed his
21 chapter 7 case.

22 A factual finding is clearly erroneous if the appellate
23 court, after reviewing the record, has a firm and definite
24 conviction that a mistake has been committed. Anderson v.
25 Bessemer City, 470 U.S. 564, 573 (1985). If two views of the
26 evidence are possible, the trial judge's choice between them
27 cannot be clearly erroneous. Id. at 574. Findings of fact based
28 upon credibility are given particular deference by appellate

1 courts. Id. at 575; see also Smyrnos v. Padilla (In re Padilla),
2 213 B.R. 349 (9th Cir. BAP 1997).

3 We cannot say that the court clearly erred when it found, as
4 a matter of fact, that the debtor intended to transfer the Reseda
5 Property to Bhatia. Further, even though the court did not
6 explicitly annul the automatic stay when it quieted title to the
7 Reseda Property in favor of Sagar, we hold that was the court's
8 implicit intent. The stay had to be annulled for legal title to
9 properly be quieted in favor of Sagar because the transfer, which
10 occurred after the debtor filed for bankruptcy, otherwise would
11 be considered void. 11 U.S.C. § 362(a); Fjeldstad v. Lien (In re
12 Fjeldstad), 293 B.R. 12, 20 (9th Cir. BAP 2003), citing Schwartz
13 v. United States (In re Schwartz), 954 F.2d 569, 572 (9th Cir.
14 1992).

15 The court further did not err when it found that the issue
16 of an accounting was moot because the transfer of the Reseda
17 Property from the debtor to Bhatia was intended to extinguish the
18 debt. Because the debt was extinguished, there was no need for
19 an accounting.

20 21 CONCLUSION

22 The bankruptcy court did not err when it quieted title to
23 the Reseda Property in favor of Sagar. The court found as a
24 matter of fact that the debtor intended to give the Reseda
25 Property to Bhatia in satisfaction of his debt. The bankruptcy
26 court was in the best position to judge the parties' intent. We
27 will not disturb that finding. Because the automatic stay was
28 implicitly annulled and title was properly quieted in favor of

1 Sagar, the court did not err in finding the accounting issue to
2 be moot. AFFIRMED.

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