

DEC 22 2006

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	NC-06-1024-DBPa
)		
AB LIQUIDATING CORP.,)	Bk. No.	01-53685-ASW
)		
Debtor.)	Adv. No.	05-05553-ASW
)		
CGO INVESTMENTS, LLC,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM ¹	
)		
AB LIQUIDATING CORP.,)		
)		
Appellee.)		
)		

Argued and Submitted on November 17, 2006
at San Jose, California

Filed - December 22, 2006

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

Honorable Arthur S. Weissbrodt, Bankruptcy Judge, Presiding.

Before: DUNN, BRANDT and PAPPAS, Bankruptcy Judges.

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

1 This is an interlocutory appeal in which CGO Investments,
2 LLC ("CGO") appeals an order denying: (1) its motion for summary
3 judgment on its request for declaratory relief as to its right to
4 collect a damages claim against the debtor, AB Liquidating Corp.
5 ("AB"); and (2) its application for a writ of attachment against
6 the assets of AB.

7 For the reasons set forth below, we AFFIRM the bankruptcy
8 court's ruling.

9
10 I. Facts

11 A. AMB's Claim

12 On April 17, 2000, AMB Property, L.P. ("AMB"), as landlord,
13 and AB, as tenant, entered into a five-year lease for certain
14 commercial property. Pursuant to the lease, AB tendered to AMB a
15 \$1 million security deposit in the form of a letter of credit.

16 On July 26, 2001, AB filed for bankruptcy relief under
17 chapter 11.² On August 31, 2001, AB rejected the lease pursuant
18 to § 365(a).

19 AMB alleged that it suffered approximately \$5.6 million in
20 damages from the termination of the lease. On November 2, 2001,
21 AMB filed a proof of claim in the AB bankruptcy case for
22 approximately \$2 million in damages, which, it asserted,

23
24 ² Unless otherwise indicated, all chapter, section and rule
25 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and
26 to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as
27 enacted and promulgated prior to the effective date (October 17,
28 April 20, 2005) of most of the provisions of the Bankruptcy Abuse
Prevention and Consumer Protection Act of 2005, Pub. L. 109-8,
April 20, 2005, 119 Stat. 23.

1 represented the maximum amount allowable under § 502(b)(6) (i.e.,
2 the capped portion of its lease termination damages claim). AMB
3 did not file a claim for the balance of its alleged damages
4 (i.e., the uncapped portion of its lease termination damages
5 claim).

6 On June 3, 2002, the official creditors' committee filed an
7 objection to the proof of claim, arguing that AMB should apply
8 the proceeds of the letter of credit against the capped portion
9 of the lease termination damages claim. The bankruptcy court
10 agreed, sustaining the objection, and ultimately was affirmed by
11 the Ninth Circuit in *AMB Property, L.P. v. Official Creditors for*
12 *the Estate of AB Liquidating Corp. (In re AB Liquidating Corp.)*,
13 416 F.3d 961 (9th Cir. 2005).

14
15 B. AB's Chapter 11 Plan

16 On January 18, 2002, AB filed its first amended chapter 11
17 plan (the "plan"). The plan was a liquidating plan. The plan
18 proposed distributions to creditors out of a fund generated from
19 proceeds from the sale of substantially all of AB's assets, any
20 recoveries from litigation, and any cash on hand as of the
21 effective date of the plan (the "plan proceeds"). Declaration of
22 Robert A. Franklin in Support of Memorandum of Points and
23 Authorities in Opposition to Motion for Partial Summary Judgment
24 ("Franklin Declaration"), Exh. B, First Amended Plan of

1 Reorganization ("Amended Plan")³, 9:1.51, 16:5.2, 17:5.4. Upon
2 the effective date of the plan, the plan proceeds would be free
3 and clear of all claims and liens. Amended Plan, 16-17:5.2,
4 29:8.2-8.3. AB, as the disbursing agent under the plan, was to
5 hold the plan proceeds in trust and, starting on the effective
6 date of the plan, "[was] authorized and directed to distribute
7 the amounts required under the Plan to the holders of Allowed
8 Claims and Interests according to the provisions of the Plan."
9 Amended Plan, 5:1.29, 16:5.2, 17:5.4, 18:5.6.

10 The plan defined allowed claims and allowed interests as
11 those claims or interests listed in the schedules as undisputed,
12 noncontingent or liquidated; those claims or interests for which
13 a timely proof of claim had been filed and no objection raised;
14 and those claims or interests allowed by a final order, under the
15 plan or under any agreements entered into in connection with the
16 plan. Amended Plan, 3:1.3.1-1.3.3.

17 The plan provided for payment of allowed unsecured claims
18 after the payment of allowed administrative claims, allowed
19 secured claims, and allowed priority tax and employee claims.
20 Amended Plan, 12:3.1, 13:3.3-4.1, 14:4.2-4.3. After payment in
21 full of all allowed claims and plan expenses and the
22 establishment of reserve funds for disputed claims and interests
23

24 ³ The first amended disclosure statement, the first amended
25 plan, and the order confirming the first amended plan were not
26 filed as separate documents in the adversary proceeding. The
27 Franklin Declaration attaches these documents as Exhibit A,
28 Exhibit B, and Exhibit C, respectively. Henceforth, we refer to
these documents by shortened names, designated herein.

1 and plan expenses, "[e]ach holder of an Allowed Interest shall
2 receive such Holder's pro rata share of the Residue [i.e., the
3 remaining plan proceeds], if any" Amended Plan, 15:4.4,
4 23:5.11.8.

5 The plan further provided that, upon the effective date, all
6 of AB's debts would be deemed fixed and adjusted pursuant to the
7 plan. Amended Plan, 18:5.6, 28:8.1. AB would have no further
8 liability on account of any claims or interests, except as set
9 forth in the plan. Amended Plan, 18:5.6. Also, "[e]xcept as
10 otherwise expressly provided in [the] Confirmation Order or the
11 Plan, and except in connection with the enforcement of the terms
12 of the Plan or any documents provided for or contemplated in the
13 Plan, all [claimants and interest holders] who have held, hold or
14 may hold Claims against or Interests in [AB] . . . that arose
15 prior to the Effective Date are permanently enjoined" from
16 commencing or continuing any action or proceeding against AB or
17 its property, with respect to their claims or interests.

18 Franklin Declaration, Exh. C, Order Confirming First Amended Plan
19 of Reorganization ("Confirmation Order"), 18:R; Amended Plan, 29-
20 30:8.5. However, nothing in the plan provided or allowed for a
21 discharge of AB. Amended Plan, 18:5.6; Confirmation Order, 11:C.

22 Upon the effective date of the plan, all property of the
23 estate, including the plan proceeds, was to revert in and be
24 retained by AB for the purposes set forth in the plan. Amended
25 Plan, 29:8.2.

26 Upon confirmation, the "provisions of the confirmed Plan
27
28

1 shall bind the Debtor, the Reorganized Debtor, any entity
2 acquiring property under the Plan, and any Creditor or Interest
3 Holder, whether or not such Creditor or Interest Holder has filed
4 a proof of Claim or Interest in the Chapter 11 Case, whether or
5 not the Claim of such Creditor or the Interest of such Interest
6 Holder is impaired under the Plan, and whether or not such
7 Creditor or Interest Holder has accepted or rejected the Plan.”
8 Amended Plan, 28:8.1; Confirmation Order, 11:B.

9 AMB did not object to the plan and voted to accept the plan.
10 On February 28, 2002, the bankruptcy court entered an order
11 confirming the plan. On or about March 3, 2002, the plan became
12 binding and effective. AMB did not appeal the confirmation
13 order.

14 Sometime after confirmation of the plan, AB paid AMB the
15 allowed capped portion of its lease termination damages claim in
16 full. On or about October 7, 2005, AMB transferred its rights
17 and interests under the lease to CGO, including the uncapped
18 portion of its lease termination damages claim.

19
20 C. CGO's Motion for Partial Summary Judgment

21 On October 28, 2005, CGO filed an adversary complaint
22 against AB, seeking, among other claims, declaratory relief as to
23 its right to collect the uncapped portion of AMB's lease
24 termination damages claim and the issuance of a writ of
25 attachment against the undistributed plan proceeds. On November
26 3, 2005, CGO moved for partial summary judgment on its claim for
27

1 declaratory relief (the "motion"). AB opposed the motion.

2 On December 2, 2005, the bankruptcy court held a hearing on
3 the motion. The bankruptcy court denied CGO's motion, making its
4 findings of fact and conclusions of law orally on the record. On
5 January 6, 2006, the bankruptcy court entered its order denying
6 the motion.

7 CGO timely filed its notice of appeal. We granted leave to
8 appeal the bankruptcy court's interlocutory order.

9
10 II. Jurisdiction

11 The bankruptcy court had jurisdiction under 28 U.S.C.
12 §§ 1334 and 157(b)(1) and (b)(2). We have jurisdiction under 28
13 U.S.C. § 158(c).

14
15 III. Issues⁴

16 (1) Whether the bankruptcy court erred in denying CGO
17 partial summary judgment by finding that the terms of the
18 confirmed plan and the confirmation order prohibited CGO from
19 proceeding to recover the uncapped portion of its lease
20 termination damages claim from AB and the plan proceeds, despite
21 AB's not receiving a discharge.

22 (2) Whether the bankruptcy court erred in denying CGO
23 partial summary judgment by finding that § 502(b)(6) limited the
24 damages recoverable from the plan proceeds held in trust by AB.

25
26 _____
27 ⁴ CGO presented sixteen issues in its brief. We have
condensed our discussion around three main issues.

1 (3) Whether the bankruptcy court erred in denying CGO a
2 writ of attachment against the plan proceeds held in trust by AB.

3
4 IV. Standards of Review

5 We review summary judgment orders de novo. Tobin v. San
6 Souci Ltd. P'ship (In re Tobin), 258 B.R. 199, 202 (9th Cir. BAP
7 2001). Viewing the evidence in the light most favorable to the
8 non-moving party, we must determine "whether there are any
9 genuine issues of material fact and whether the trial court
10 correctly applied relevant substantive law." Id.

11 The preclusive effect of a prior judgment constitutes "a
12 mixed question of law and fact in which the legal questions
13 predominate." Kelley v. South Bay Bank (In re Kelley), 199 B.R.
14 698, 701 (9th Cir. BAP 1996). Thus, we review the application of
15 claim preclusion de novo. Id.

16 A chapter 11 plan contains elements of both a judgment and a
17 contract. Dolven v. Bartleson (In re Bartleson), 253 B.R. 75, 78
18 (9th Cir. BAP 2000). Generally, a chapter 11 plan should be
19 interpreted as a contract. Id. at 78-79. We review questions of
20 contract enforcement and interpretation de novo, unless the
21 parties introduce extrinsic evidence on issues such as intent.
22 Id. at 79; M&I Thunderbird Bank v. Birmingham (In re Consol.
23 Water Util.), 217 B.R. 588, 590 (9th Cir. BAP 1998). In such an
24 event, we review the relevant factual findings for clear error.
25 Captain Blythers, Inc. v. Thompson (In re Captain Blythers,
26 Inc.), 311 B.R. 530, 534 (9th Cir. BAP 2004).

1 V. Discussion

2 A. Claim Preclusive Effects of Confirmed Plans

3 CGO contends that it can recover the uncapped portion of its
4 lease termination damages claim against AB and the plan proceeds
5 because AB will not receive a discharge under the terms of the
6 confirmed plan and operative Code provisions. CGO further
7 asserts that the confirmed plan itself clearly provides that CGO
8 may recover the uncapped portion of its lease termination
9 damages. Thus, CGO contends, it may recover on the uncapped
10 portion of its lease termination damages claim before the allowed
11 interest holders receive a distribution.

12 CGO misinterprets both the confirmed plan and the relevant
13 Code provisions. In CGO's view, simply because AB did not
14 receive a discharge, the provisions of the confirmed plan have no
15 binding effect on CGO once allowed claims have been paid in full,
16 leaving it free to proceed to collect its uncapped lease
17 termination damages claim against AB and the plan proceeds it
18 holds in trust. Such an interpretation undermines chapter 11
19 plan confirmation and distorts the effect of a lack of discharge
20 in a chapter 11 liquidating plan.

21 The terms of a confirmed plan bind all parties, such as the
22 debtor and any creditor or equity security holder, whether or not
23 such party has accepted the plan. 11 U.S.C. § 1141(a). Once the
24 court confirms the plan, "all questions that could have been
25 raised pertaining to the plan are entitled to res judicata [i.e.,
26 claim preclusive] effect." Trulis v. Barton, 107 F.3d 685, 691

1 (9th Cir. 1995).

2 Claim preclusion bars a party from asserting a claim if “a
3 court of competent jurisdiction has rendered a final judgment on
4 the merits of the claim in a previous action involving the same
5 parties and claims.” Id. Claim preclusion applies where: (1)
6 the parties are identical or in privity; (2) a court of competent
7 jurisdiction rendered the judgment in the prior action; (3) there
8 was a final judgment on the merits; and (4) both suits involve
9 the same claim or cause of action. Rein v. Providian Fin. Corp.,
10 270 F.3d 895, 899 (9th Cir. 2001); Stratosphere Litig. LLC v.
11 Grand Casinos, Inc., 298 F.3d 1137, 1142-43 (9th Cir. 2002).

12 Within the context of chapter 11 plan confirmation, if a
13 party does not appeal the confirmation order, the confirmation
14 order constitutes a final judgment. Trulis, 107 F.3d at 691;
15 Beck v. Fort James Corp. (In re Crown Vantage, Inc.), 421 F.3d
16 963, 972 (9th Cir. 2005); Heritage Hotel Ltd. P’ship I v. Valley
17 Bank (In re Heritage Hotel P’ship I), 160 B.R. 374, 377 (9th Cir.
18 BAP 1993), aff’d without opinion, 59 F.3d 175 (9th Cir. 1995).
19 If a creditor fails to protect its interests by timely objecting
20 to a plan or appealing the confirmation order, it cannot later
21 challenge the provisions of the confirmed plan, even if such
22 provisions arguably are inconsistent with the Code. Beck, 421
23 F.3d at 972 (quoting Enewally v. Wash. Mut. Bank (In re
24 Enewally), 368 F.3d 1165, 1172 (9th Cir. 2004)).

25 As AMB neither objected to the treatment of its claim under
26 the plan nor appealed the confirmation order, the terms of the
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1 plan, as confirmed, became final and bound all parties, including
2 CGO, AMB's successor in interest. Although CGO was not a party
3 in interest at the time the plan was confirmed, as a party in
4 privity through its acquisition of AMB's claim, it is bound by
5 the terms of the confirmed plan in the same way AMB was bound.
6 Hasso v. Mozsgai (In re La Sierra Fin. Servs.), 290 B.R. 718, 729
7 (9th Cir. BAP 2002) (stating that "a party in privity is bound the
8 same way the [predecessor] is bound"); United States v. Schimmels
9 (In re Schimmels), 127 F.3d 875, 881 (9th Cir. 1997) (defining
10 privity as a party "'so identified in interest with a party to
11 former litigation that [it] represents precisely the same right
12 in respect to the subject matter involved'") (quoting Southwest
13 Airlines Co. v. Texas Int'l Airlines, Inc., 546 F.2d 84, 94 (5th
14 Cir. 1977)).

15 Here, the plan explicitly and unequivocally sets forth the
16 provisions for the liquidation and distribution of AB's assets.
17 It defines the claims and interests deemed allowed and thus
18 eligible to receive distributions under the plan. It explicitly
19 sets forth the order of distribution to such allowed claims and
20 allowed interests and the mechanism for distribution: AB holds
21 the plan proceeds in trust for distribution to claimants holding
22 allowed claims and interests. After payment of allowed
23 administrative claims, secured claims, priority tax and employee
24 claims, unsecured claims, and plan expenses, the allowed interest
25 holders are to receive a distribution, pro rata, out of the
26 remaining plan proceeds.

1 The plan further provides that, upon the effective date, all
2 of AB's debts would be deemed fixed and adjusted pursuant to the
3 plan. It states that AB would have no further liability on
4 account of any claims or interests, except as set forth in the
5 plan. These terms of the confirmed plan stand and bind CGO. CGO
6 cannot now circumvent the binding effects of the plan by
7 collateral attack in an adversary proceeding.

8 CGO argues that it has the right to payment on the uncapped
9 portion of its lease termination damages claim before AB makes a
10 distribution to allowed interest holders because the plan
11 earmarks the plan proceeds for distribution to "all" creditors
12 and interest holders. As the bankruptcy court noted, CGO's
13 argument is nothing more than a collateral attack on the
14 confirmed plan. The plan clearly provides that distributions
15 will be made to holders of allowed claims and interests and sets
16 forth the method of distribution and the distribution schedule
17 for the plan proceeds accordingly. CGO cannot demand payment on
18 its claim contrary to the provisions of the confirmed plan.

19 CGO attempts to circumvent the binding provisions of the
20 plan by arguing that because AB will not receive a discharge, the
21 plan does not bind CGO. The fact that AB will not receive a
22 discharge does not annul any of the plan provisions. CGO
23 misconstrues the unavailability of a discharge within a chapter
24 11 liquidating plan context. As the bankruptcy court pointed
25 out, CGO attempts to blur the distinction between the
26 unavailability of a discharge under § 1141(d)(3), the meaning of
27

1 denial or revocation of a discharge under § 727, and the meaning
2 of a nondischargeable debt or claim under § 523.

3 Generally, upon confirmation of a plan, a debtor receives a
4 discharge of debts that arose prior to confirmation and of
5 certain other debts, such as claims arising from the rejection of
6 an executory contract or unexpired lease. 11 U.S.C.

7 § 1141(d)(1)(A). A discharge typically relieves the debtor of
8 personal liability on debts. 11 U.S.C. § 524(a); Johnson v. Home
9 State Bank, 501 U.S. 78, 85 n.5 (1991) (stating that a bankruptcy
10 discharge "extinguishes 'the personal liability of the debtor
11 with respect to any debt'"). Exceptions to the discharge exist.
12 An individual debtor does not receive a discharge from a debt
13 deemed nondischargeable under § 523. The court may also deny or
14 revoke the discharge of an individual debtor pursuant to § 727.

15 A corporate debtor does not receive a discharge upon
16 confirmation of a chapter 11 liquidating plan at all, except as
17 specifically provided for in the confirmed plan. 11 U.S.C.
18 § 727(a)(1); 11 U.S.C. § 1141(d)(3). Accordingly, it remains
19 liable for debts not provided for in the confirmed plan. See
20 Star Phoenix Mining Co. v. West One Bank, 147 F.3d 1145, 1147 n.2
21 (9th Cir. 1998) (stating that, in a liquidating chapter 11 plan,
22 the confirmation of the plan does not discharge the corporate
23 debtor's debts, but liquidates them).

24 The distinction between the availability of a discharge to
25 an individual debtor and the unavailability of a discharge to a
26 liquidating corporate debtor is rooted in different public policy

1 concerns with respect to these two types of debtors. The purpose
2 behind denying a discharge to a liquidating corporate debtor is
3 to prevent trafficking in corporate shells. Borsdorf v.
4 Fairchild Aircraft Corp. (In re Fairchild Aircraft Corp.), 128
5 B.R. 976, 982 (Bankr. W.D. Tex. 1991) (stating that "by freighting
6 the [corporate] shell with all the claims, so that any claims or
7 portions of claims not paid by the liquidation will attach to the
8 shell . . . [the corporate shell becomes] much less attractive
9 for use in starting up another enterprise.").

10 CGO asserts that because AB will not receive a discharge,
11 its claim is nondischargeable. The fact that AB will not receive
12 a discharge pursuant to §§ 727(a)(1) and 1141(d)(3) does not
13 transmute the debt allegedly owed to CGO into a nondischargeable
14 debt within the meaning of § 523. Nor does the fact that AB will
15 not receive a discharge signify that its discharge has been
16 revoked or denied within the meaning of § 727, allowing CGO to
17 proceed to recover on its claim from the plan proceeds. These
18 meanings are not interchangeable, as CGO seems to suggest.
19 Though CGO cites to a number of cases in support of its argument,
20 see Miller v. United States, 363 F.3d 999 (9th Cir. 2004);
21 Computer Task Group, Inc. v. Brotby (In re Brotby), 303 B.R. 177
22 (9th Cir. BAP 2003); Dolven v. Bartleson (In re Bartleson), 253
23 B.R. 75 (9th Cir. BAP 2000); DePaolo v. United States (In re
24 DePaolo), 45 F.3d 373 (10th Cir. 1995); In re Howell, 84 B.R. 834
25 (Bankr. M.D. Fla. 1988); and Goodnow v. Adelman (In re Adelman),
26 90 B.R. 1012 (Bankr. D.S.D. 1988), none of the authorities cited

1 stands for the proposition CGO asserts. All of the cases cited
2 by CGO involve debts excepted from discharge pursuant to § 523.
3 CGO does not assert a claim for taxes or alimony or any other of
4 the nondischargeable debts listed in § 523. The cases cited by
5 CGO and their holdings are inapplicable here.

6 CGO also relies on the fact that the confirmed plan itself
7 states that nothing in the plan or confirmation order may
8 constitute, effect or result in a discharge of AB. As the
9 bankruptcy court noted, such a provision is fairly standard in a
10 liquidating plan. The provision is in keeping with §§ 727(a)(1)
11 and 1141(d)(3), both of which dictate that a corporate debtor in
12 a liquidating plan cannot receive a discharge. See Fairchild,
13 128 B.R. at 982. The provision does not, however, allow CGO to
14 pursue its claim against the plan proceeds; it only allows CGO to
15 pursue its claim against AB once AB has completed the plan. AB
16 even concedes that it remains liable on the uncapped portion of
17 the lease termination damages claim. Appellant's Opening Brief,
18 21-22. Nevertheless, CGO cannot "cut in line" before the allowed
19 interest holders and demand payment on its claim from the plan
20 proceeds; the confirmed plan specifically provides otherwise. AB
21 holds the plan proceeds in trust and can only make distributions
22 pursuant to the distribution schedule, as set forth in the
23 confirmed plan.

24 CGO argues that any right to pursue AB once the plan
25 proceeds are fully distributed is empty, as all assets available
26 to pay its claim would then be gone. Indeed, the plan calls for
27

1 the dissolution of AB once the plan proceeds have been
2 distributed. Amended Plan, 17:5.5; Confirmation Order, 19:S.
3 However, if CGO or its predecessor in interest, AMB, were
4 concerned with the loss of the right to pursue claims against AB
5 under provisions of the plan, it needed to object to confirmation
6 and/or appeal the confirmation order. Neither course was
7 followed.

8 CGO asserts that the injunction contained in the confirmed
9 plan constitutes a de facto discharge in violation of the plan
10 and the Code. The language of the plan could be read to support
11 this assertion. Nonetheless, CGO is precluded from contesting
12 the terms of the plan, as AMB, its predecessor in interest,
13 neither raised the de facto discharge argument in an objection to
14 confirmation nor in an appeal of the confirmation order.

15
16 B. Limitation on Liability Under § 502(b)(6)

17 CGO acknowledges that § 502(b)(6) sets a limit on the amount
18 a landlord may claim for damages resulting from the termination
19 of a lease. CGO asserts, however, that, in cases where the
20 debtor does not receive a discharge, § 502(b)(6) merely limits
21 what the landlord can collect from the bankruptcy estate, not
22 from the debtor personally. Thus, as AB will not receive a
23 discharge and will remain liable on any unpaid debts, CGO may
24 proceed to recover the uncapped portion of its lease termination
25 damages against AB and the plan proceeds once allowed claims have
26 been paid in full.

1 We recognize that a lessor has the right to assert a claim
2 for damages resulting from the termination of a lease by a
3 debtor. Kuske v. McSheridan (In re McSheridan), 184 B.R. 91, 96
4 (9th Cir. BAP 1995) ("It is well-settled that a lessor is entitled
5 to assert a general unsecured claim for damages resulting from a
6 debtor's rejection of a lease."). Lease termination damages
7 encompass those damages resulting from the debtor's breach of
8 each and every lease provision, including covenants, upon
9 termination of the lease. Id. at 102. Under §§ 502(a) and (b),
10 should a party in interest object to a claim for lease
11 termination damages, such a claim is allowed only to the extent
12 that such claim does not exceed the statutory cap. Wall Street
13 Plaza, LLC v. JSJF Corp. (In re JSJF Corp.), 344 B.R. 94, 101
14 (9th Cir. BAP 2006). We also understand that § 502(b)(6) only
15 limits the amount of damages recoverable from the estate due to
16 termination of the lease. Id.

17 It is true that CGO may be able to proceed to recover its
18 claim against AB and any assets it has once the plan proceeds
19 have been distributed. But CGO seeks to recover on the uncapped
20 portion of its lease termination damages claim from the plan
21 proceeds that AB is holding in trust under the plan. As
22 discussed above, the binding terms of the confirmed plan clearly
23 lay out the mechanism for and the parties entitled to
24 distributions from the plan proceeds. CGO cannot claim a share
25 in the plan proceeds before the allowed interest holders receive
26 their distribution.

1 termination damages claim against the plan proceeds AB holds in
2 trust. The bankruptcy court did not err in denying summary
3 judgment with respect to CGO's request for declaratory relief.
4 Nor did the bankruptcy court err in denying CGO's application for
5 a writ of attachment against AB.

6 We AFFIRM.

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