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OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re: GOLDEN EMPIRE AIR RESCUE, INC. Debtor,	BAP Nos. EC-07-1086-JuMkPa EC-07-1087-JuMkPa Bk. Nos. 05-18746 05-19955
In re: GOLDEN EMPIRE AMBULANCE, INC. Debtor,	
PETER MOSESIAN; NEVADA BUSINESS CREDIT, LLC, Appellants, v. PATRICK KAVANAGH, Chapter 7 Trustee; ROGERS HELICOPTERS, INC., Appellees.	**M E M O R A N D U M**[1]
PETER MOSESIAN; NEVADA BUSINESS CREDIT, LLC., Appellants, v. ROSSANA A. ZUBRZYCKI-BLANCO, Chapter 7 Trustee; ROGERS HELICOPTERS, INC., Appellees.	

[1] This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1) it has no precedential value. See 9th Cir. BAP Rule 8013-1.

Argued and Submitted on September 21, 2007
at Pasadena, California

Filed - October 25, 2005

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

Honorable Whitney Rimel, Bankruptcy Judge, Presiding

Before: JURY, MARKELL and PAPPAS, Bankruptcy Judges.

I. INTRODUCTION

The Chapter 7[2] trustees of the related debtors sought approval of a compromise between the bankruptcy estates and Rogers Helicopters, Inc. Peter Mosesian and Nevada Business Credit, LLC ("NBC") objected on the grounds that the compromise was a "disguised sale" subject to overbids and the record contained no evidence that Rogers gave reasonable value. The bankruptcy court approved the compromise over their objections.

Mosesian filed a motion for reconsideration under Rule 9023.[3] On reconsideration, the bankruptcy court found that, even

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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, 119 Stat. 23, because the cases from which this appeal arises were filed before its effective date (generally October 17, 2005).

[3] NBC filed a motion requesting the bankruptcy court to amend its Findings of Fact and Conclusions of Law under Rule 7052. The bankruptcy court granted the motion to clarify that Rogers could pursue the estates' causes of action only against Mosesian, John Penrose ("Penrose") and any entity owned or controlled by them. In other words, Rogers could not pursue any other third party.

if the compromise was a sale, the requirements under § 363 were met and overbids were not required. Mosesian and NBC timely appealed.

We find that some of the claims that the trustees sought to settle were decided by the bankruptcy court prior to the time the motion for compromise was heard. Thus, these claims were no longer in dispute. Further, the trustees failed to submit any evidence in support of their motion to approve the compromise with Rogers. The record contains only conclusory statements with respect to the factors set forth in Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1380 (9th Cir. 1986). Finally, because the compromise disposes of property which belongs to the bankruptcy estates, the sale provisions of § 363 are implicated. We find that the possibility of overbids from Mosesian and NBC triggered the prospect of an auction and, therefore, procedures for overbids should have been established. We REVERSE and REMAND.

II. FACTS

Golden Empire Air Rescue, Inc. ("GEAR") filed its Chapter 7 petition on October 7, 2005, and Patrick M. Kavanah was appointed trustee. Golden Empire Ambulance, Inc. ("GEA") filed its Chapter 7 petition on October 13, 2005, and Rossana A. Zubrzycki-Blanco was appointed trustee.[4] The debtors are closely-held corporations owned and controlled by Mosesian or related entities. NBC is also owned by Mosesian or his family trust.

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[4] Hereinafter, GEA and GEAR are collectively referred to as the "debtors" and Kavanah and Blanco are collectively referred to as the "trustees.".

Mosesian and NBC filed claims in both bankruptcy cases.[5] Mosesian's claims are unsecured, while NBC's claims are secured.[6] Rogers filed an unsecured claim in both cases for almost $1 million.[7]

Mosesian and Rogers have a history of litigation that began in 2002. Their dispute arose out of a joint venture formed by Rogers and GEA in 1994 to operate an air ambulance service. GEA thereafter created GEAR to carry out its obligations under the joint venture agreement. Debtors and Rogers were to split the profits. In 1999, Rogers asked for an accounting. Debtors either failed to provide one or produced an accounting that did not satisfy Rogers.[8]

The State Court Lawsuit

In 2002, Rogers sued the debtors, Mosesian and Penrose[9] in superior court, seeking an accounting and alleging fraud, breach

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[5] There is no indication in the record that the trustees filed objections to the claims. Therefore, the claims are "deemed allowed" pursuant to § 502(a).

[6] NBC attached a UCC-1 filing to its proof of claims that shows it holds a security interest in all of the debtors' assets, including general intangibles.

[7] The claims registers for both cases show other creditors besides Mosesian, NBC and Rogers. Those creditors include the Franchise Tax Board, IRS, John Wright and Richard Monje. In essence, though, these bankruptcy cases are a two party dispute.

[8] In 1999, GEA sold its ambulance permit. In 2001, GEAR sold its air permit. The trustees were investigating how the proceeds of these two sales were used or disbursed. The debtors have not conducted any business since 2001.

[9] Penrose was the debtors' president and has not appeared in these matters. Although he may remain a defendant in the Kern County Action, there are no further references to Penrose herein.

of fiduciary duty and conversion by all defendants (the "Kern County Action").[10] The superior court found debtors liable to Rogers for more than $700,000 in connection with the accounting. The remaining causes of action[11] were set for trial on October 17, 2005, which did not commence due to debtors' Chapter 7 filings. GEAR also asserted a counterclaim that is still pending.

Because the alter ego claims against Mosesian were unresolved, Mosesian began to take steps to minimize his liability to Rogers.

The Pre-Petition Settlements With the Debtors

Mosesian first entered into settlement agreements with the debtors prior to their Chapter 7 filings. Mosesian believed, or at least hoped, that the alter ego claims would be property of the prospective bankruptcy estates. Mosesian agreed to pay the debtors $145,000 in return for settlement of any and all of their claims against him. A condition to consummation, however, was the entry of a court order finding that the releases contained in the settlements would protect Mosesian.

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[10] Rogers also sued Williams & Brown, the accountant for debtors and their joint venture. After debtors filed their chapter 7 petitions, Rogers settled the action and was paid $500,000 by Camico Mutual Insurance Co., Williams & Brown's insurance carrier. Camico received a first-position lien on the Kern County Action. Camico then commenced an action against the debtors, Mosesian, and Penrose for indemnity and asserted alter-ego causes of action against Mosesian and Penrose.

[11] The remaining causes of action against Mosesian include fraud, breach of fiduciary duty, conversion and form alter ego allegations. Hereinafter, collectively referred to as the "alter ego claims."

The Removal of the Kern County Action

After the bankruptcies were filed, Mosesian sought to enforce the settlements with the debtors by removing the Kern County Action to the bankruptcy court. However, the court remanded the action to state court and granted Rogers' motion for relief from stay to allow the Kern County Action to proceed.

The Adversary Proceedings

Mosesian also commenced an adversary proceeding in each of the two bankruptcy cases, against Rogers, the trustees, and others seeking declaratory relief that the alter ego claims asserted in the Kern County Action against him were property of the two bankruptcy estates and were settled upon the payment of $145,000. Thus, the issue of whether the alter ego claims were property of the bankruptcy estates was squarely before the bankruptcy court. The defendants moved to dismiss.

At a hearing on July 26, 2006, the bankruptcy court examined the complaint in the Kern County Action and found that "the claims that Rogers asserts in its state court action are individual, particular, and specific to Rogers" and granted its motions to dismiss. The bankruptcy court further noted that even if its ruling was incorrect, the alter ego claims were not brought by the proper party which would be the bankruptcy trustees. Therefore, the court also granted the trustees' motions to dismiss.

The Compromise

Prior to the bankruptcy court's hearing and decision on the motions to dismiss, the trustees and Rogers disputed whether the

alter ego claims and "other claims[12]" were property of the bankruptcy estates. The trustees and Rogers were also wary of duplicating efforts if they each pursued their respective claims against Mosesian. Specifically, the trustees were concerned that they would be collecting money that would in large part go right back to Rogers, which had asserted a substantial claim in both estates.

Rather than litigate over ownership of the various claims, the trustees agreed that Rogers would pursue Mosesian on all claims, including those that arose because of the filings (defined in the settlement agreement as the "Trustees' Causes of Action"). In exchange, Rogers agreed to pay an immediate deposit of $30,000 to each estate and 5% of the gross recovery that exceeded $1.2 million from any judgment obtained in any court, to be equally divided between the two estates.[13]

The trustees moved for authority to enter into the compromise.[14] Mosesian and NBC objected to the compromise, contending it was a sale disguised as a compromise for the purpose of preventing overbids. NBC maintained that it had a security interest in the estates' causes of action and, therefore, was entitled to credit bid under § 363(k). Mosesian and NBC also objected on the ground that there was no

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[12] As discussed infra the record does not provide much guidance as to what the "other claims" may be.

[13] The Settlement Agreement reflects the date of "May__, 2006," but was not signed by the parties.

[14] The motion was noticed for June 21, 2006, on shortened time. A hearing was held and the bankruptcy court authorized further briefing and continued the hearing until August 30, 2006.

evidence before the court that demonstrated the value offered by Rogers was reasonable.

After hearing oral argument, the bankruptcy court took the matter under submission and issued Findings of Fact and Conclusions of Law approving the compromise. On reconsideration, the court found that even if the compromise was a sale, the requirements under § 363 were met.

III. JURISDICTION

The bankruptcy court had jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(b)(1). We have jurisdiction under 28 U.S.C. § 158.

IV. ISSUES

1. Whether the court erred in finding that the assignment of the Trustees' Causes of Action did not constitute a sale?
2. Whether the court erred in finding that even if the compromise was a sale, all the requirements of a sale were met and no overbidding was required?
3. Whether the court abused its discretion in approving the trustees' settlement with Rogers pursuant to Rule 9019?

V. STANDARDS OF REVIEW

The panel reviews a bankruptcy court's order approving a trustee's application to compromise a controversy for abuse of discretion. In re A & C Props., 784 F.2d at 1380. The reviewing court must "determine whether the settlement entered into by the trustee was reasonable, given the particular circumstances of the case." Id. at 1381.

Sales under § 363 are reviewed for abuse of discretion. Moldo v. Clark (In re Clark), 266 B.R. 163, 168 (9th Cir. BAP

2001).

We review the denial of a motion for reconsideration for abuse of discretion. In re Weiner, 161 F.3d 1216, 1217 (9th Cir. 1998).

VI. DISCUSSION

This appeal involves the overlap of § 363 and Rules 6004 and 9019(a).

When examining a compromise pursuant to Rule 9019, it is necessary to distinguish between a true settlement and the sale of estate property. "[T]he disposition by way of 'compromise' of a claim that is an asset of the estate is the equivalent of a sale of the intangible property represented by the claim, which transaction simultaneously implicates the 'sale' provisions under section 363 as implemented by Rule 6004 and the 'compromise' procedure of Rule 9019(a)." Goodwin v. Mickey Thompson Entm't Group, Inc. (In re Mickey Thompson Entm't Group, Inc.), 292 B.R. 415, 421 (9th Cir. BAP 2003)(citations omitted). However, not "every compromise of a bona fide controversy presented to a bankruptcy court under Rule 9019 must pass muster as a sale under § 363." Id. at 422 n.7.

The standards for approving a compromise are well settled. "In determining the fairness, reasonableness and adequacy of a proposed compromise, a bankruptcy court must consider: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expenses, inconvenience and delay necessarily attending it; [and] (d) the paramount interest of the creditors and a proper deference to

their reasonable views in the premise[s]." Id. at 420. (citation omitted). Additionally, "a bankruptcy court is obliged to consider, as part of the 'fair and equitable' analysis, whether any property of the estate that would be disposed of in connection with the settlement might draw a higher price through a competitive process and be the proper subject of a section 363 sale." Id. at 422.

A. Analysis of the Compromise: True Settlement or Sale?

"By its very nature, a settlement resolves adversarial claims prior to their definitive determination by the court, whereas a 'sale' effects a '[t]ransfer of ['the title...'] [to] property for a consideration." See Hicks, Muse & Co., Inc. v. Brandt (In re Healthco Int'l, Inc.), 136 F.3d 45, 49 (1st Cir. 1998)(emphasis in original). The settlement of conflicting claims to property is not the equivalent of a sale when there has been no determination of whether the property was property of the estate. In re Fidelity Am. Fin. Corp., 43 B.R. 74, 77 (Bankr. E.D. Pa. 1984). On the other hand, causes of action owned by the trustee are intangible items of property of the estate that may be sold. Lahijani v. Claims Prosecutor, LLC (In re Lahijani), 325 B.R. 282, 287 (9th Cir. BAP 2005).

1. The Alter Ego Claims: No Dispute over Whether they Were Property of the Estates After Court Ruled On the Motions to Dismiss

Any dispute over whether the alter ego claims were property of the estates was resolved on July 26, 2006, prior to the hearing on the compromise. When ruling on Rogers' motions to dismiss, the bankruptcy court found that the claims Rogers asserts in its state court action are individual, particular, and

specific to Rogers. When ruling on the trustees' motions to dismiss, the bankruptcy court found "as the court has concluded that the state court claims are not property of the bankruptcy estate, it must, therefore, lack jurisdiction." The bankruptcy court granted all motions to dismiss without leave to amend.

Generally, an order granting a motion to dismiss without leave to amend is a final order. Lopez v. City of Needles, Cal., 95 F.3d 20, 22 (9th Cir. 1996)(a dismissal without leave to amend is final); Grover v. Riggsby (In re Riggsby), 745 F.2d 1153, 1154 (7th Cir. 1984)(a bankruptcy court's grant of a motion to dismiss an adversary proceeding is a final order). Although the orders on the motions to dismiss were not part of the record on appeal, at minimum, the law of the case doctrine would apply. Under this doctrine, when the court decides upon a rule of law - for example, that the alter ego claims were not property of the estates - that decision should continue to govern the same issues in subsequent stages of the same case. "[A] court is ordinarily precluded from reexamining an issue previously decided by the same court...in the same case." Wiersma v. Bank of the W. (In re Wiersma), 483 F.3d 933, 941 (9th Cir. 2007).

On reconsideration, the bankruptcy court essentially acknowledged that there was no longer a dispute over the ownership of the alter ego claims in light of its prior ruling. Thus, at the time the hearing on the compromise took place, there was nothing for Rogers and the trustees to settle in connection with the alter ego claims. Cf. Mickey Thompson, 292 B.R. at 421 n.5 (noting that while the settlement might have met the standards of A & C Properties when it was agreed upon and when

the motion was filed, the trustee's post-agreement departure from the overbid procedures meant the compromise failed to meet the fair and equitable standards); Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3rd Cir. 1996)(finding that a trustee did not breach settlement agreement by informing the court of changed circumstances that would warrant withdrawal of trustee's support).

2. "Other Claims:" No Evidence They Were Property of the Estates

After acknowledging that it had already decided whether the alter ego claims were estate property, the bankruptcy court noted at the hearing on reconsideration that the trustees may hold other claims. The court further stated that because the estates and Rogers agreed that Rogers may pursue these claims, this resolves a dispute between Rogers and the estates about who owns the claims. The record does not support this conclusion.

The record does not provide much guidance as to what the "other claims" may be. If the "other claims" were those involved in the Kern County Action, any dispute over whether they were property of the estates was resolved in the context of the motions to dismiss. Moreover, at the hearing for the approval of the compromise, Rogers' attorney characterized the so-called dispute with the trustees over the "other claims" as a battle over how to define, or characterize, certain claims. For example, the attorney expressed concern that in the Kern County Action, Mosesian would take the position that the fraud, conversion or breach of fiduciary duty claim cannot be pursued by Rogers because it is "really a fraudulent transfer." He further

argued that the trustees and Rogers don't want to "argue over how to define - not who owns, but who wants to define the cause of action that is being asserted in the Kern County trial. And that's what's being compromised[.]" (emphasis added). How to "define" a breach of fiduciary duty claim versus a fraudulent transfer claim is well settled and cannot properly be characterized as a bona fide controversy.

Accordingly, the record before us raises more questions than it answers in connection with the "other claims" because the trustees neither identify the "other claims" nor evaluate them pursuant to the factors set forth in A & C Properties. We remand to the bankruptcy court to determine what the "other claims" are and whether settlement of them is in the best interests of the estate.

3. The Assignment of the Trustees' Causes of Action Constitutes a Sale

The trustees assign the Trustees' Causes of Action in paragraph 3 of the settlement.[15] The Ninth Circuit does not

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[15] Paragraph 3 provides: "Blanco and Kavanagh on behalf of the Chapter 7 estate [sic] of GEA and GEAR shall assign the Trustees' Causes of Action held by the two Chapter 7 estates against Peter Mosesian ...,and other entities related to GEA and GEAR or related to or controlled by Peter Mosesian....This assignment is to be treated in its broadest possible sense to include any and all causes of action held by either of the two bankruptcy estates against any entity that arise only upon the filing and as a result of the filing of the two Chapter 7 cases of GEA and GEAR."

The trustees also purport to assign general causes of action (in paragraph 4) of the agreement in the event any court determines that a Rogers' Cause of Action is not particular, but general. However, this assignment appears unnecessary in light of the bankruptcy court's ruling on the motions to dismiss.

prohibit such assignments. Spradling & Metzger v. Baum Trust (In re P.R.T.C., Inc.), 177 F.3d 774 (9th Cir. 1999). It is undisputed that the Trustees' Causes of Action are property of the estates and the bankruptcy court acknowledged that the settlement agreement made clear that causes of action that arose upon the filing, such as preferential or fraudulent transfers, are general causes of action belonging to the two bankruptcy estates.

A review of the agreement also demonstrates that the assignment of the Trustees' Causes of Action is the equivalent of a sale. Not only are the Trustees' Causes of Action property of the estates, but the trustees relinquished all control over those causes of action to Rogers. Healthco Int'l, Inc., 136 F.3d at 49 (holding that "a 'sale' effects a '[t]ransfer of ['the title...'] [to] property for a consideration.") (citation omitted). At the same time, Rogers took all the risks of ownership because the trustees made no representations regarding the existence or validity of any such causes of action, yet Rogers was willing to pay for them. Notably, Rogers is also not giving up any portion of its claim against the estates. Thus, this aspect of the compromise involves a sale subject to § 363(b). See Lahijani, 325 B.R. at 287 (noting that causes of action owned by the trustee are intangible items of property of the estate that may be sold); see also In re Telesphere Commc'ns, Inc., 179 B.R. 544 (Bankr. N.D. Ill. 1994)(settlement of cause of action held by bankruptcy estate is plainly equivalent of "sale" of that claim under § 363(b) subject to judicial approval where there is objection to settlement; there is no difference in effect on bankruptcy estate

between sale of claim by way of assignment to third party and settlement of claim with adverse party).

B. The Fair and Equitable Analysis

The bankruptcy court could only approve or deny the compromise as a whole. "The court must find that the compromise is fair and equitable." A&C Props., 784 F.2d at 1381. "[W]hile a court generally gives deference to a trustee's business judgment in deciding whether to settle a matter, the trustee 'has the burden of persuading the bankruptcy court that the compromise is fair and equitable and should be approved.'" Id. The trustees failed to carry their burden in these cases.

1. Issues Regarding the Compromise

The bankruptcy court's analysis of the factors set forth in A&C Properties only pertained to the dispute over whether the alter ego claims in the Kern County Action were property of the estates. The trustees apparently were content to rest upon the conclusory statements in their declarations and supplemental declarations, filed in support of the compromise, rather than submit any evidence.

The record contains no evidence regarding the Trustees' Causes of Action or a discussion of the A&C Properties factors in relation to those claims, which is required under Mickey Thompson, 292 B.R. at 420-21. The evidence in the record did not identify the Trustees' Causes of Action which were being assigned nor weigh the likelihood of recovery. There was no cost-benefit analysis of the merits of pursuing or assigning the Trustees' Causes of Action. In short, there was no evaluation at all, making it impossible to determine whether the price to be paid by

Rogers for the opportunity to pursue the Trustees' Causes of Action was reasonable under the circumstances.

Moreover, the potential value of the 5% premium was not analyzed by the trustees. Rogers is not giving up any portion of its claims against these estates. More troubling is the lack of any evidence regarding GEAR's counterclaim against Rogers in the Kern County Action which is an asset of GEAR's estate and possibly an offset to Rogers' claims.

There was also no evidence regarding the probability of Rogers obtaining a judgment(s) in excess of $1.2 million or, more importantly, collecting such a judgment(s)in order to place a value on the 5% premium offered by Rogers.[16] Although Mosesian may have assets, the trustees presented no analysis of what those assets might be or the likely recovery.

The aspect of delay should also have been considered. No evidence was offered to show how long the estates would remain open before receiving the 5% premium.

Lastly, the interests of the creditors, although possibly hard to ascertain in these cases, was not discussed. The hand-full of creditors that exist -- save Rogers, NBC and Mosesian -- have remained silent. Although Rogers has large claims in both estates, its support cannot predominate over the interests of the creditors as a whole.

The trustees failed to present any evidence to substantiate their argument that the compromise was in the best interests of

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[16] Since the accounting award to Rogers, even with accrued interest, was only worth about $1 million, an argument could be made that the 5% premium was worthless.

the estates. Therefore, the bankruptcy court abused its discretion in approving the compromise.

2. Issues Regarding the Sale

The bankruptcy court found that if the compromise was a sale, the sale requirements under § 363(b) were met, notice was adequate, and no overbidding was required.

a. Notice

Mosesian and NBC challenge the notice given by the trustees because it did not mention the assets being sold. Mosesian and NBC received adequate notice of the compromise and the merits of their objections were heard by the bankruptcy court. Assuming the trustees mislabeled the motion, there is no resulting harm because the requirements of notice and a hearing pursuant to Rules 6004 and 9019 are the same.

b. Bidding

The main issue with respect to the sale of estate assets is whether the trustees obtained the best possible price in light of their fiduciary duty to maximize the value to the estates. A sale that is well advertised and subject to overbids is usually the preferred method to achieve the best possible price. However, the guiding principle is that the "court's obligation in section 363(b) sales is to assure that optimal value is realized by the estate <u>under the circumstances</u>." <u>Lahijani</u>, 325 B.R. at 288-89 (emphasis added).

The bankruptcy court concluded that even if the compromise did involve the sale of estate property, no overbidding was required under the circumstances since Mosesian would not be bidding on the same thing as Rogers. However, the bankruptcy

court did not recognize that assignment of the Trustees' Causes of Action involved a sale of estate property. Whether sold to creditors such as NBC or Rogers, or a defendant such as Mosesian, the rights sold would have been identical. Compare Lahijani, 325 B.R. 282 (cause of action was being sold to present/potential defendant over creditors' objection). Thus, although the bankruptcy court considered the possibility of overbids and found that they were not required, its analysis did not recognize that the compromise involved the sale of estate property, which had a value that could be maximized by overbid. Mickey Thompson, 292 B.R. at 422 ("The possibility that someone else may be willing to pay a higher price triggers the prospect of an auction that could yield an even higher price.").

Although the bankruptcy court has discretion whether to impose formal sale procedures, it abused its discretion under the circumstances. Mosesian was interested in bidding on the avoidance actions. Setting up formal bidding procedures and allowing the bidding process to play out would have helped assure that the highest and best price was received for the benefit of the silent creditors.

c. NBC's Rights, if any, to Credit Bid Under 363(k)

NBC argued that it had the right to credit bid. The bankruptcy court did not acknowledge NBC as an objecting party and did not discuss or determine what rights, if any, NBC had to credit bid. On remand, the bankruptcy should determine whether NBC has any right to credit bid and, if so, what impact that right has on the compromise. In re Hung Tan Pham, 250 B.R. 93, 99 (9th Cir. BAP 2000)(finding that an appellate court may remand

when there is an absence of findings of fact and conclusions of law that prevents review on appeal)(citation omitted).

VII. CONCLUSION

In sum, the bankruptcy court abused its discretion by approving the compromise without any evidence to establish, at minimum, the factors set forth in A & C Properties. The court also did not properly analyze the settlement as a sale of estate assets. On this record, the trustees failed to meet their burden of showing that the compromise was "fair and equitable." On remand, the bankruptcy court should review the compromise in light of the relevant criteria enumerated above in order to determine whether the compromise is in the best interest of the estates or sale criteria should be imposed.

The order of the bankruptcy court approving the compromise is REVERSED. REVERSED AND REMANDED for further proceedings consistent with this memorandum decision.