

SEP 08 2009

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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NOT FOR PUBLICATION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

6	In re:)	BAP Nos.	CC-09-1078-MoPaR
)		CC-09-1086-MoPaR
7	MILTON LEE VANDEVORT,)		
)	Bk. No.	LA-05-23588-EC
8	Debtor.)		
)		
9	MELISSA HANLIN, individually)		
	and as Trustee of the MELISSA)		
10	HANLIN TRUST; ALWAYS THERE)		
	NURSING CARE, INC.,)		
11)		
	Appellants/)		
12	Cross-Appellees,)		
)		
13	v.)	M E M O R A N D U M ¹	
)		
14	HELEN RYAN FRAZER, Chapter 7)		
	Trustee,)		
15)		
	Appellee/)		
16	Cross-Appellant.)		
)		

Argued and Submitted on July 31, 2009
at Pasadena, California

Filed - September 8, 2009

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

Hon. Ellen Carroll, Bankruptcy Judge, Presiding.

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.

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Before: MONTALI, PAPPAS, and RIEGLE,² Bankruptcy Judges.

Before the debtor filed his bankruptcy petition, an assignee of a judgment creditor filed a state law fraudulent transfer action against the debtor, the debtor's wife and others. After debtor filed bankruptcy, the chapter 7³ trustee moved to intervene in the state court fraudulent transfer action as the proper party plaintiff; after defendants objected, the state court held that it would not grant the trustee's motion to intervene until the bankruptcy court granted relief from the automatic stay to the trustee. The trustee moved for an order determining that the automatic stay was inapplicable, or, alternatively, for relief from the automatic stay.

In addition, the non-debtor defendants in the state fraudulent transfer action filed a motion for relief from stay so that they could file a motion to dismiss that action. They contended that, upon the filing of debtor's case, the creditor plaintiff lost standing and thus the chapter 7 trustee could not intervene or substitute herself as the plaintiff.

The bankruptcy court denied the non-debtor defendants' motion for relief from stay, holding that the creditor plaintiff did not lose standing and that the trustee could intervene in the state

² Hon. Linda B. Rieggle, Bankruptcy Judge for the District of Nevada, sitting by designation.

³ 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.

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2 court lawsuit. For the same reasons, the court entered an order
3 terminating the automatic stay as to the trustee, even though it
4 struck the trustee's requested language that the stay was
5 inapplicable. The defendants appealed the denial of their motion
6 and the granting of the trustee's motion, and the trustee cross-
7 appealed the court's order granting her relief from the stay
8 because it did not specifically provide that the stay was
9 inapplicable. We AFFIRM the order denying the defendants' motion
10 for relief from stay, AFFIRM the order granting the trustee's
11 motion for relief from stay, and DISMISS the trustee's cross-
12 appeal on jurisdictional grounds.

13 I. FACTS

14 On April 12, 2002, Robert E. McKee, Inc. obtained a judgment
15 in the amount of \$730,193.15 against Lee Vandevort. In June 2004,
16 Robert E. McKee, Inc. assigned its rights and interests in the
17 judgment to Creditors Adjustment Bureau, Inc. ("CAB"). On
18 November 22, 2004, CAB filed a state court complaint (the "State
19 Court Action") to set aside a fraudulent transfer pursuant to the
20 Uniform Fraudulent Transfer Act, naming Leland W. Vandevort a/k/a
21 Lee Vandevort, Melissa Hanlin (individually and as trustee of the
22 Melissa Hanlin Trust) ("Hanlin") and Always There Nursing Care,
23 Inc. ("Always There") as defendants. On December 10, 2004, CAB
24 recorded a Notice of Pendency of Action (the "Lis Pendens")
25 against real property located in Los Angeles (the "Property").

26 On January 20, 2005, Leland W. Vandevort a/k/a Lee Vandevort
27 a/k/a Milton Lee Vandevort ("Debtor") filed a chapter 7 petition
28 in Wyoming. After CAB filed a motion to transfer venue, the

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2 Wyoming bankruptcy court transferred venue to the Central District
3 of California in May 2005. Helen Ryan Frazer ("Trustee") was
4 appointed chapter 7 trustee. Debtor's discharge has been denied.

5 On January 5, 2007, Trustee filed an adversary proceeding
6 (the "AP") against Debtor, Hanlin, Always There and others to,
7 among other things, recover preferential and fraudulent transfers.
8 As CAB had alleged in the State Court Action, Trustee alleged that
9 Debtor, Hanlin and Always There participated in a fraudulent
10 transfer of the Property.

11 In May 2008, Hanlin filed a motion for relief from stay so
12 that she could bring a motion to expunge CAB's Lis Pendens.
13 Trustee opposed it, noting that after the Lis Pendens was
14 recorded, Hanlin refinanced the Property.⁴ In July 2008, Trustee
15 obtained (by stipulation) an order stating that to the extent the
16 recording of the Lis Pendens constituted a transfer, the transfer
17 was avoided as preferential and preserved for the benefit of the
18 estate. On February 25, 2009, the bankruptcy court granted relief
19 from the automatic stay as to Hanlin and Always There so that they
20 could seek an order from the state court expunging the Lis
21 Pendens. That order is not the subject of these appeals.

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23 ⁴ On pages 3-4 of her Opening Brief, Trustee explained the
24 significance of the Lis Pendens to the estate. Trustee wants to
25 preserve the benefit of the recording of the Lis Pendens for the
26 estate, thereby giving the estate a priority over the holders of
27 subsequent encumbrances. California Code of Civil Procedure
28 section 405.24 states that from the time of the recording of a
pendency of action, a subsequent purchaser, encumbrancer, or
other transferee has constructive notice of the action. The
rights and interests of the claimant/plaintiff, as ultimately
determined in the action, relate back to the date of the
recording of the notice. Cal. Code Civ. Pro. § 405.24.

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2 On September 28, 2008, Hanlin and Always There (collectively,
3 "Appellants") filed another motion for relief from stay (the
4 "Hanlin MRS") so that they could file a motion to dismiss the
5 State Court Action on the grounds of lack of standing. In
6 particular, the Hanlin MRS stated that "relief from the stay only
7 is sought so that a motion may be brought to dismiss a State Court
8 action that a plaintiff-creditor lacks standing to pursue and that
9 the Trustee has no interest in." (Emphasis added).

10 Thereafter, Trustee moved in the State Court Action to
11 intervene as the proper plaintiff. On November 5, 2008, the state
12 court entered a minute order denying Trustee's motion to intervene
13 "without prejudice to re-filing if [Trustee] can obtain relief
14 from the automatic stay from the bankruptcy court." Consequently,
15 on November 19, 2008, Trustee filed a motion for relief from stay
16 (the "Trustee MRS") so that she could move to intervene in the
17 State Court Action. Trustee sought a ruling that the automatic
18 stay was inapplicable; alternatively, Trustee requested relief
19 from the automatic stay.

20 The bankruptcy court held a joint hearing on the Trustee MRS
21 and the Hanlin MRS on January 6, 2009. The court held that CAB
22 did not lose the standing it held as of the commencement of the
23 State Court Action; rather, the filing of Debtor's bankruptcy
24 stayed CAB from pursuing that action. The court further held that
25 Trustee had the right to intervene in the State Court Action and
26 to prosecute it on behalf of the estate. The court therefore
27 indicated that it would deny the Hanlin MRS and grant the Trustee
28 MRS.

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2 On January 21, 2009, the bankruptcy court entered an order
3 granting the Trustee MRS. The court struck language in the order
4 proposed by the Trustee indicating that the automatic stay was
5 inapplicable with respect to the Trustee's intervention in and
6 prosecution of the State Court Action. On February 2, 2009 (a
7 Monday), before the court entered an order denying the Hanlin MRS,
8 Appellants filed a motion to vacate and amend the order denying
9 the Hanlin MRS and the order granting the Trustee MRS. The order
10 denying the Hanlin MRS was entered on February 13, 2009, and the
11 order denying the motion to vacate or amend was entered on
12 February 25, 2009.

13 On March 5, 2009, Appellants filed their notice of appeal of
14 the order denying the Hanlin MRS, the order granting the Trustee
15 MRS and the order denying the motion to vacate and amend both of
16 those orders. This notice of appeal commenced BAP No. 09-1078
17 (the "Appeal").⁵ Trustee filed her timely notice of cross-appeal
18 on March 11, 2009, leading to BAP No. 09-1086 (the "Cross-
19 Appeal").

20 The matter was argued before us on July 31, 2009; on
21 August 14, 2009, Trustee filed a motion to augment the record with
22 a conformed copy of her request for dismissal of her complaint in
23 intervention in the State Court Action; this motion provided
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25 ⁵ A motion to amend a judgment filed before entry of the
26 order suspends the appeal period that would otherwise start when
27 the order is entered. The appeal period recommences upon entry
28 of an order disposing of the tolling motion. Larez v. City of
Los Angeles, 946 F.2d 630, 636-37 (9th Cir. 1991); Fjeldsted v.
Lien (In re Fjeldsted), 293 B.R. 12, 28-19 (9th Cir. BAP 2003).
Appellants' notice of appeal was thus timely under Rule 8002(b).

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2 evidence of representations made by Trustee's counsel at oral
3 argument. Notwithstanding her request to dismiss her complaint in
4 intervention, Trustee stated in her motion that she eventually
5 intends to intervene again in the State Court Action and thus the
6 "propriety of the [order granting the Trustee MRS] remains
7 contested and at issue" in the Appeal and Cross-Appeal.
8 Appellants filed an opposition to the motion to augment on
9 August 19, 2009. Appellants did not oppose the augmentation
10 itself, but argued that Trustee's post-appeal actions in the State
11 Court Action may have mooted the Cross-Appeal, but did not moot
12 the portion of the Appeal pertaining to the order granting the
13 Trustee MRS.⁶

14 **II. ISSUES**

15 A. Do we have jurisdiction over the Appeal and Cross-
16 Appeal?

17 B. Did the bankruptcy court err in denying the Hanlin MRS?

18 **III. JURISDICTION**

19 The bankruptcy court had jurisdiction over both the Hanlin
20 MRS and the Trustee MRS under 28 U.S.C. § 157(b)(2)(G) and § 1334.
21 For the reasons set forth below, we have jurisdiction over the
22 Appeal, but not the Cross-Appeal.

23 A. The Appeal

24 "Orders granting or denying relief from the automatic stay
25 are deemed to be final orders." Nat'l Env'tl. Waste Corp. v. City
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27 ⁶ We hereby grant the motion to augment the record, and
28 will address the legal ramifications of Trustee's post-appeal
actions in Part III (Jurisdiction).

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2 of Riverside (In re Nat'l Env'tl. Waste Corp.), 129 F.3d 1052, 1054
3 (9th Cir. 1997). As noted in footnote 5, the Appellants' notice
4 of appeal is timely and therefore we have jurisdiction over the
5 Appeal pursuant to 28 U.S.C. § 158, to the extent it is not moot.
6 Appellants expressed concern in their opposition to the motion to
7 augment that we would treat as moot their appeal of both the order
8 granting the Trustee MRS and the order denying the Hanlin MRS, in
9 light of the Trustee's request to dismiss her complaint in
10 intervention in the State Court Action. We do not, as reversal in
11 the Appeal would grant effective relief to Appellants.

12 In determining whether an appeal is moot, our "inquiry
13 focuses upon whether we can still grant relief between the
14 parties." I.R.S. v. Pattullo (In re Pattullo), 271 F.3d 898, 901
15 (9th Cir. 2001). Here, reversal would grant relief to Appellants
16 if we ultimately agree with them that the bankruptcy court erred
17 as a matter of law in granting the Trustee MRS and denying the
18 Hanlin MRS. The Trustee MRS order granted relief from the stay
19 so that Trustee could move to intervene in the State Court Action;
20 the court placed no temporal limitation on such intervention.
21 Thus, the order remains effective whether Trustee intervenes now
22 or at a later date; in other words, Trustee can move to intervene
23 at some uncertain date in the future (which she intends to do,
24 according to her motion to augment the record) without requesting
25 further relief from the stay. A reversal would negate that extant
26 order, to the benefit of Appellants.

27 Similarly, notwithstanding Trustee's withdrawal of her
28 complaint in intervention, Appellants are still prevented from

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2 moving for dismissal of the State Court Action in light of the
3 denial of the Hanlin MRS (which specifically requested relief from
4 the stay so that Appellants could move for dismissal because CAB
5 "lacks standing to pursue [it] . . . and Trustee has no interest
6 in [it].)" Appellants contend that the bankruptcy court erred as
7 a matter of law when granting the Trustee MRS and denying the
8 Hanlin MRS, and request that we address the purported error now.
9 Because a reversal of either order would provide effective relief
10 to Appellants, the events described in Trustee's motion to augment
11 do not render the Appeal moot.

12 B. The Cross-Appeal

13 The Cross-Appeal, however, presents different jurisdictional
14 issues. In determining if we have jurisdiction, we must examine
15 whether the parties have standing, whether the case or controversy
16 is ripe, or whether the issue is moot. Lee v. Oregon, 107 F.3d
17 1382, 1387 (9th Cir. 1997). "[J]usticiability requires that a
18 dispute be ripe and present an actual controversy." Menk v.
19 Lapaqlia (In re Menk), 241 B.R. 896, 905 (9th Cir. BAP 1999). We
20 do not have jurisdiction over the Cross-Appeal because Trustee
21 lacks standing as a party "aggrieved" by the order granting the
22 Trustee MRS and the issues raised in the Cross-Appeal are not ripe
23 for review.⁷

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26 ⁷ For the reasons described in subsection A (regarding the
27 Appeal) above, we do not believe the Cross-Appeal is moot. The
28 order granting the Trustee MRS is still extant, and Trustee has
indicated an intent to take the action permitted by the order
(intervention in the State Court Action) at a future date.

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2 First, only a party aggrieved by a judgment may appeal from
3 it. United States v. Good Samaritan Church, 29 F.3d 487, 488
4 (9th Cir. 1994) (appeal dismissed even though appellants lost on
5 issue appealed because decision on that issue was immaterial to
6 judgment below, had no preclusive effect on appellants, and
7 appellants otherwise won the case). Here, even though Trustee
8 obtained the relief she sought (leave from the bankruptcy court to
9 file a motion or complaint to intervene in the State Court
10 Action), she wants us to issue an advisory opinion on her
11 alternate theory of relief: "A definitive ruling by this Court in
12 a published opinion [that the automatic stay is inapplicable to
13 trustees] will hopefully provide adequate precedent so that State
14 Court judges will no longer be in a quandary regarding this
15 issue." Trustee's Opening Brief at page 2.

16 Because the Trustee received relief from the automatic stay,
17 the bankruptcy court did not have to reach or decide the Trustee's
18 alternate theory that the automatic stay is inapplicable to
19 trustees; a finding or conclusion as to that theory was not
20 necessary for the granting of Trustee's MRS. As the Supreme Court
21 said in Elec. Fittings Corp. v. Thomas & Betts Co., 307 U.S. 241
22 (1939): "A party may not appeal from a judgment or decree in his
23 favor, for the purpose of obtaining a review of findings he deems
24 erroneous which are not necessary to support the decree." In any
25 event, the bankruptcy court made no findings as to the
26 applicability of the stay, so the doctrine of issue preclusion
27 should not apply. The court did not make a finding adverse to
28 Trustee which was necessary or material to the order granting

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2 relief from the stay. Pension Trust Fund for Operating Engrs. v.
3 Fed. Ins. Co., 307 F.3d 944, 947 n.1 (9th Cir. 2002). In the
4 absence of an adverse ruling with preclusive effect, Trustee lacks
5 standing to bring the cross-appeal. Id.

6 In addition, the Cross-Appeal is not ripe. Trustee is
7 concerned that the bankruptcy court's refusal to make a finding as
8 to the applicability of the stay will somehow affect issues
9 pertaining to the removal and possible remand of the State Court
10 Action. Such issues regarding removal and remand, however, are
11 uncertain and contingent; a determination by us as to the
12 applicability of the stay would be an advisory opinion on a
13 speculative, abstract controversy. We therefore lack jurisdiction
14 to resolve the Cross-Appeal and will dismiss it. Richardson v.
15 City and County of Honolulu, 124 F.3d 1150, 1160 (9th Cir. 1997).

16 IV. STANDARDS OF REVIEW

17 "The decision to grant or deny relief from the automatic stay
18 is committed to the sound discretion of the bankruptcy court, and
19 we review such decision under the abuse of discretion standard."
20 Benedor Corp. v. Conejo Enter., Inc. (In re Conejo Enter., Inc.)
21 96 F.3d 346, 351 (9th Cir. 1996); citing Idaho v. Arnold (In re
22 Arnold), 806 F.2d 937, 938 (9th Cir. 1986). We review findings of
23 fact for clear error and issues of law de novo. Litton Loan
24 Serv'g, LP v. Garvida (In re Garvida), 347 B.R. 697, 703 (9th Cir.
25 BAP 2006).

26 V. DISCUSSION

27 Appellants argue that the bankruptcy court erred as a matter
28 of law in granting the Trustee MRS and in denying the Hanlin MRS.

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2 Specifically, Appellants contend that the bankruptcy court erred
3 in concluding that (1) CAB did not lose standing in the State
4 Court Action and (2) Trustee had the right to intervene as the
5 proper plaintiff in the State Court Action. Appellants assert
6 that the bankruptcy court therefore abused its discretion in
7 denying the Hanlin MRS and depriving Appellants of the ability to
8 move for dismissal on standing grounds, and in granting the
9 Trustee relief from the stay to intervene in the State Court
10 Action. We disagree.

11 A. CAB's Standing

12 As the bankruptcy court correctly noted in its oral ruling,
13 standing is determined at the time a lawsuit is commenced. Skaff
14 v. Meridien N. Am. Beverly Hills, LLC, 506 F.3d 832, 850 (9th Cir.
15 2007) ("Standing is determined at the time of the lawsuit's
16 commencement, and we must consider the facts as they existed at
17 that time the complaint was filed, with the effect of subsequent
18 events generally analyzed under mootness principles."), citing
19 Lujan v. Defenders of Wildlife, 504 U.S. 555, 571 n.4 (1992). No
20 one disputes that CAB had standing to bring the State Court Action
21 at the time it was commenced. Viewing the facts as they existed
22 when the state court complaint was filed (as directed by the
23 Supreme Court in Lujan), we agree with the bankruptcy court that
24 CAB had standing in the State Court Action and dismissal would be
25 inappropriate on standing grounds.

26 Moreover, Debtor's filing of the bankruptcy petition did not
27 cause CAB to lose its standing. As the First Circuit held in
28 Unisys Corp. v. Dataware Prods., Inc., 848 F.2d 311, 313-14

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2 (1st Cir. 1988), a creditor who filed a prepetition fraudulent
3 transfer action did not "lose" standing; to the contrary, upon the
4 abandonment of the fraudulent transfer causes of action by the
5 trustee, those causes of action "reposed" in the creditor "free of
6 any stay." Id. at 314. The creditor could therefore pursue its
7 prepetition fraudulent transfer litigation.

8 In City Nat'l Bank v. Chabot (In re Chabot), 100 B.R. 18, 23
9 (Bankr. C.D. Cal. 1989),⁸ the bankruptcy court examined this issue
10 and held that a creditor may pursue a state law fraudulent
11 conveyance (transfer) cause of action upon a trustee's abandonment
12 of that cause of action:

13 "Under Code § 544(b), the filing of a bankruptcy
14 petition does not strip creditors of state-created
15 rights to avoid transfers, it merely shifts that right
16 to the creditors' representative." 4 Norton Bankruptcy
17 Law & Practice § 30.06, at 12 (1988). The mere fact
18 that Section 544(b) gave the Chapter 7 Trustee standing
19 in a representative capacity to assert the Bank's claim
20 for a period of time did not act to destroy the Bank's
21 rights. When a case is closed in which the trustee did
22 not pursue a fraudulent conveyance cause of action
23 pursuant to Section 544(b), such as happened in the
24 Chabots' case, the right to pursue the state law cause
25 of action reposes once again in whomever is able to
26 assert it.

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⁸ The bankruptcy court's decision was affirmed by the
22 district court at 131 B.R. 720 (C.D. Cal. 1991) and by the Ninth
23 Circuit at 992 F.2d 891 (9th Cir. 1993). The primary focus of
24 all three Chabot decisions was whether, under section 522(f), the
25 homestead exemption was impaired by a judicial lien when its
26 nominal value was not diminished in value. The section 522(f)
27 aspect of the Ninth Circuit's Chabot decision was overruled by
28 statute as noted in Wynns v. Wilson (In re Wilson), 90 F.3d 347,
350 (9th Cir. 1996) (the mathematical formula inserted by
Congress into section 522(f) in its 1994 amendments overruled
Chabot). The bankruptcy court's other holding -- that a creditor
does not "lose" standing to prosecute a prepetition fraudulent
transfer action, but is instead stayed from acting on it -- has
not been reversed or overruled.

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2 Chabot, 100 B.R. at 23 (emphasis added). In other words, the
3 filing of a bankruptcy petition does not strip a creditor of
4 standing to pursue a fraudulent transfer action if the trustee
5 abandons it, particularly where (as here) the debtor's discharge
6 has been denied. Rather, the creditor is stayed from prosecuting
7 the claim and unless the trustee opts to intervene or to file his
8 or her own fraudulent transfer action, the creditor may pursue the
9 cause of action upon closing of the bankruptcy estate (unless the
10 matter has become moot because the creditor's claim has been
11 discharged).

12 Appellants have cited only one case where a prepetition
13 fraudulent transfer was dismissed because the plaintiff "lost"
14 standing; most of the cases cited by Appellants involve the
15 standing of creditors to bring postpetition fraudulent transfer
16 actions. Appellants cite California v. PG&E Corp. (In re Pac.
17 Gas & Elec. Co.), 281 B.R. 1 (Bankr. N.D. Cal. 2002) and other
18 distinguishable cases holding that a creditor lacks standing to
19 commence a postpetition fraudulent transfer action. They also
20 cite In re Daniele Laundries, Inc., 40 B.R. 404 (Bankr. S.D.N.Y.
21 1984) in which the bankruptcy court held that a trustee's
22 adversary proceeding to avoid fraudulent transfers "supersedes" a
23 creditor's prepetition state court action to avoid the same
24 transfers. The creditor therefore did not have "standing" to
25 prosecute its state court action.

26 Here, no one disputes that CAB lacks the right (denominated
27 as "standing" by the Daniele Laundries court) to prosecute the
28 State Court Action as long as the Trustee possesses the authority

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2 to prosecute such claims under section 544. Notwithstanding the
3 language of Daniele Laundries, we believe that the First Circuit
4 and the bankruptcy court in Chabot correctly held that prepetition
5 standing of a creditor plaintiff is not "lost" but rather its
6 rights are superseded unless and until claims are abandoned under
7 section 554, particularly when the discharge of the debtor has
8 been denied.⁹

9 B. Trustee's Right to Intervene

10 Appellants also argue that the bankruptcy court should have
11 granted their request for relief from stay so that they could move
12 for dismissal of an action "that the Trustee has no interest in."
13 Specifically, Appellants contend that Trustee has no right to
14 intervene or substitute herself as the proper plaintiff in the
15 State Court Action. We disagree. Bankruptcy Rule 6009 permits a
16 trustee to prosecute any action or proceeding on behalf of the
17 estate "before any tribunal." Case law demonstrates that such
18 prosecution encompasses the substitution or intervention by the
19 trustee in a fraudulent transfer action commenced by a creditor.

20 In Matter of Leonard, 125 F.3d 543, 544 (7th Cir. 1997),
21 creditors filed a prepetition fraudulent transfer action and
22 recorded a lis pendens against the transferred property. The

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24 ⁹ A case cited by Appellants further supports this
25 conclusion. In Barber v. Westbay (In re Integrated Agri, Inc.),
26 313 B.R. 419, 422-23 (Bankr. C.D. Ill. 2004), the court held that
27 a "creditor who had the right to bring, outside of bankruptcy, a
28 UFTA claim to recover prepetition transfers fraudulently made by
the debtor, has no standing to commence or continue the suit
during the bankruptcy case, until and unless the trustee
relinquishes the Section 544(b) claim or the trustee no longer
has a viable cause of action." (Emphasis added.) Thus, standing
is not "lost" but merely suspended while the case is pending.

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2 chapter 7 trustee, obviously having intervened or otherwise
3 acquiring the right to appear in the state court lawsuit, removed
4 the action to bankruptcy court. The creditors moved for relief
5 from the stay and for abandonment of the property. The bankruptcy
6 court denied the relief and the Seventh Circuit affirmed. The
7 Seventh Circuit noted that the fraudulent transfer action remained
8 on the bankruptcy court's docket, implicitly confirming that the
9 trustee had the right to remove and prosecute the prepetition
10 fraudulent conveyance action.

11 In In re Zwirn, 362 B.R. 536, 541-42 (Bankr. S.D. Fla. 2007),
12 a creditor brought a prepetition fraudulent transfer against the
13 debtor and other defendants. The bankruptcy court held that the
14 chapter 7 trustee had exclusive standing to prosecute those claims
15 during the pendency of the case and therefore could settle those
16 claims over the objection of the creditor, noting that the trustee
17 was free to file his own fraudulent transfer claim or to intervene
18 in the state court fraudulent transfer action. In Sturgeon State
19 Bank v. Perkey (In re Perkey), 194 B.R. 846, 851 (Bankr. W.D. Mo.
20 1996), the court held that the trustee had the right to intervene
21 in a fraudulent conveyance action commenced by a creditor as long
22 as the creditor waived a potential conflict of interest problem.

23 A review of published California state cases reflect that
24 bankruptcy trustees have been substituted as the proper plaintiffs
25 in state court fraudulent transfer cases filed by the debtor's
26 creditors. See Chichester v. Mason, 43 Cal.App.2d 577, 111 P.2d
27 362 (1941); Wells v. Lloyd, 35 Cal.App.2d 6, 94 P.2d 373 (1939).
28 Appellants have not demonstrated by citation to any law that

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Trustee is prohibited from intervening in the State Court Action. The bankruptcy court therefore did not abuse its discretion in granting the Trustee MRS and denying the Hanlin MRS; granting the Hanlin MRS would have been futile, because Appellants would not have prevailed on a motion to dismiss the State Court Action based on the purported absence of standing by both CAB and Trustee.

VI. CONCLUSION

For the foregoing reasons, we AFFIRM the orders denying the Hanlin MRS and granting the Trustee MRS. We DISMISS the Cross-Appeal for lack of jurisdiction.