NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	)	BAP No. OR-10-1173-MkHJu
	)	
LAUREN PAULSON,	)	Bk. No. 09-32439-rld7
	)	
Debtor.	)	
_____	)	
	)	
LAUREN PAULSON,	)	
	)	
Appellant,	)	
	)	
v.	)	**MEMORANDUM**[*]
	)	
AMY MITCHELL, Chapter 7 Trustee; FHLF, LLC,	)	
	)	
Appellees.	)	
_____	)	

Argued and Submitted on March 16, 2011
at Pasadena, California

Filed – May 10, 2011

Appeal from the United States Bankruptcy Court
for the District of Oregon

Honorable Randall L. Dunn, Bankruptcy Judge, Presiding

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Appearances: Appellant Lauren Paulson, pro se, argued on his own behalf; and Craig Russillo of Schwabe, Williamson & Wyatt, P.C., argued on behalf of Appellee FHLF, Inc.

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Before: MARKELL, HOLLOWELL and JURY, Bankruptcy Judges.

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[*]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.

INTRODUCTION

Debtor and appellant Lauren Paulson ("Paulson") appeals the order of the bankruptcy court approving the settlement between chapter 7[1] trustee Amy Mitchell ("Trustee") and FHLF, LLC. ("FHLF"). We AFFIRM.

FACTS

In November 2005, FHLF's predecessor in interest Fairway Commercial Mortgage Corporation[2] made a $400,000 loan (the "Loan") secured by four parcels of real property (collectively, the "Property"). Paulson's LLC, Huber-Wheeler Crossing, LLC (the "LLC"), owned three of the four parcels, and the Lauren Paulsen Trust owned the fourth parcel (the "Trust"). The Property contains three structures of note, Paulson's former law offices and two separate rental properties. At some point, Paulson ceased practicing law, but he continued to occupy a portion of the Property as his residence until he was evicted in May 2010. Paulson is the sole and managing member of his LLC. According to Paulson, he formed the LLC to own and operate the two rental properties on the Property.

All of the documentation for the Loan identifies the Loan as a commercial loan and identifies the LLC as the borrower. Paulson nonetheless has disputed these facts. Paulson claims that he always intended to use the Loan proceeds as a personal

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[1]Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and all "Rule" references are to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. All "Civil Rule" references are to the Federal Rules of Civil Procedure.

[2]FHLF and its predecessor in interest are jointly referred to herein as "Fairway."

loan for consumer purposes. According to Paulson, he does not recall ever reading the Loan documents, even though he admits that he signed them. The signature block on one of the two deeds of trust indicates that Paulson signed as "Successor Trustee" of the Trust. The signature blocks on all of the other Loan documents indicate that Paulson signed as "Managing Member" of the LLC.

The LLC defaulted on payments due under the Loan in February 2008. During the next several months, the parties engaged in negotiations concerning the Loan. Also during this period, Paulson unsuccessfully attempted to market and sell the Property. In August 2008, when negotiations faltered, Fairway sent the LLC a formal demand letter for the cure of the Loan default, and Paulson filed a "predatory lending" lawsuit against Fairway and others in the United States District Court for the District of Oregon, Case No. CV-08-00982-ST (the "Predatory Lending Lawsuit").

Paulson asserted numerous causes of action in his Predatory Lending Lawsuit, including: violations of the Truth in Lending Act ("TILA"); violations of the Real Estate Settlement Procedures Act ("RESPA"); violations of the Home Ownership and Equity Protection Act of 1994 ("HOEPA"); fraud; violations of Oregon lending law; breach of contract; breach of good faith and fair dealing; promissory estoppel; declaratory relief; conspiracy; injunction; interference with prospective economic advantage; usury; rescission; accord and satisfaction; and unfair and deceptive trade practices. Paulson further alleged that the Predatory Lending Lawsuit should be tried as a class action.

While Paulson alleged a number of different grounds for the relief he sought, the grounds essentially boiled down to three separate instances of alleged misconduct: (1) breach, fraud and nondisclosure relating to the 2005 Loan; (2) breach, fraud and nondisclosure during the course of the 2008 workout/forbearance negotiations; and (3) breach, fraud and interference in connection with Paulson's attempts to market and sell the Property. According to Paulson, all of the acts of Fairway and the other Predatory Lending Lawsuit defendants were part of an overarching scheme primarily intended to deprive Paulson of his ownership and equity in the Property.[3]

In March 2009, Fairway and some of the other defendants in the Predatory Lending Lawsuit filed a Civil Rule 12(b)(6) motion to dismiss most of the causes of action stated in Paulson's second amended complaint. In the motion to dismiss, Fairway contended, inter alia: (1) that Paulson was not a party to the loan, so he personally had no rights to enforce with respect to the Loan; (2) that TILA, RESPA and HOEPA only apply to consumer loans made primarily for personal, family or household use, whereas the Loan was a commercial loan expressly made for

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[3]Paulson also later complained about Fairway's conduct during his bankruptcy case, which conduct ultimately led to Fairway's foreclosure on the Property and Paulson's eviction therefrom. Paulson filed counterclaims and third party claims against Fairway and others in Fairway's Oregon state court litigation for possession of the Property (the "Eviction Proceedings"). While Paulson's counterclaims and third party claims in the Eviction Proceedings largely overlapped with his causes of action in the Predatory Lending Lawsuit, Paulson's Predatory Lending Lawsuit predated Paulson's bankruptcy filing and did not contain any allegations covering Fairway's alleged postpetition conduct.

business purposes; (3) that Paulson had failed to state his fraud claims with specificity; and (4) that Paulson had not sufficiently alleged the elements for claims for relief based on breach of good faith and fair dealing, interference with prospective economic advantage and usury.

Fairway also commenced and continued to pursue foreclosure proceedings against the Property, but before foreclosure occurred and before the hearing on its motion to dismiss, Paulson filed a chapter 11 bankruptcy petition, on April 8, 2009. According to Paulson, he caused his LLC and the Trust to convey the Property to him at the time of his bankruptcy filing, so he listed the Property in his Schedule A listing of real property. He also listed Fairway's security interest in the Property in his Schedule D listing of secured creditors, but he did not list the Predatory Lending Lawsuit as an asset of his estate.[4]

Shortly after Paulson filed his bankruptcy, Fairway filed a motion seeking relief from stay to permit Fairway to resume its foreclosure proceedings against the Property. In June 2009, Paulson and Fairway stipulated to relief from stay. In exchange for Paulson's consent to modification of the stay, Fairway agreed to give Paulson until September 14, 2009 to close a sale of the Property. Fairway further agreed not to resume its foreclosure proceedings until after September 14, 2009. Ultimately, Paulson

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[4]We obtained copies of Paulson's bankruptcy schedules and statement of financial affairs by accessing the bankruptcy court's electronic docket. We may take judicial notice of the filing and contents of these documents. See O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d 955, 957-58 (9th Cir. 1989); Atwood v. Chase Manhattan Mrtg. Co. (In re Atwood), 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

was unable to close a sale on or before September 14, 2009, and Fairway completed its nonjudicial foreclosure of the Property by successfully credit-bidding for the Property on September 25, 2009.

Having lost ownership of the Property, Paulson moved to convert his bankruptcy case from chapter 11 to chapter 7. Based on Paulson's motion, the bankruptcy court entered an order on November 25, 2009, converting his bankruptcy case and appointing the Trustee. Shortly thereafter, Fairway sought and obtained an order granting relief from stay to permit Fairway to commence the Eviction Proceedings (the "January 2010 Relief From Stay Order"). Paulson ultimately was evicted in May 2010.

The Trustee learned of the Predatory Lending Lawsuit from a telephone conversation with Fairway's counsel in December 2009, and asked Paulson about it at his January 2010 § 341 examination.[5] After the § 341 exam, the Trustee gathered further information regarding the Predatory Lending Lawsuit in separate telephone conversations with Fairway and Paulson. In addition, Fairway sent the Trustee a letter on February 4, 2010, proposing to settle the claims asserted in the Predatory Lending Lawsuit in exchange for a payment to the Trustee of $5,000 (the "Settlement Letter"). In the Settlement Letter, Fairway explained why it believed the Predatory Lending Lawsuit was meritless and attached in support of its contentions a number of documents, including,

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[5]According to the Trustee, Paulson and his counsel asserted at the § 341 examination that the Predatory Lending Lawsuit was of no value to the estate, so the Trustee should abandon the lawsuit to Paulson pursuant to § 554, which in general authorizes a trustee to abandon estate property that is either burdensome to the estate or of inconsequential value.

among others: (1) the Loan documents, (2) the second amended complaint in the Predatory Lending Lawsuit, (3) various pleadings from the Eviction Proceedings, and (4) Fairway's Civil Rule 12(b)(6) motion to dismiss.

In assessing the merits of the Predatory Lending Lawsuit, the Trustee primarily focused on the fact that the transaction appeared to be a commercial transaction, and that TILA, RESPA and HOEPA only applied to consumer transactions. But in her telephone conversation with Paulson, they also discussed his allegations that Fairway interfered with his attempts to sell the Property and wrongfully foreclosed on the Property. During these discussions, Paulson apparently focused on Fairway's postpetition conduct and his desire to reclaim the property, even though Fairway already had successfully foreclosed. At no point during her telephone conversations with Paulson or his attorney did either of them suggest that Paulson was interested in making a competing bid to what Fairway was offering.

On February 25, 2010, the Trustee filed a motion for authority to enter into a settlement with Fairway along the lines of Fairway's Settlement Letter, and Paulson thereafter filed an objection to the motion. In response, Fairway filed a memorandum and a declaration in support of the settlement, which largely recounted what Fairway had presented in its Settlement Letter. The bankruptcy court then set the matter for an evidentiary hearing on May 7, 2010.

On the eve of the May 7, 2010 evidentiary hearing, Paulson filed a memorandum in support of his objection. Paulson asserted that it was premature to attempt to assess the likelihood of

success in the Predatory Lending Lawsuit, that the lawsuit had not sufficiently progressed to afford a reasonable means of valuing its true worth. Paulson did not explain or even suggest who would bear the risk and cost of prosecuting the Predatory Lending Lawsuit until it reached a point where the Trustee could better evaluate its worth. According to Paulson, the most important factor demonstrating his likelihood of success was the absence of a copy of a loan agreement signed by both parties. Paulson pointed out that the copy Fairway had provided only was signed by Paulson. But Paulson did not dispute that he signed the loan agreement and the other Loan documents and admitted that Fairway funded the Loan in the amount of $375,000. Moreover, Paulson did not explain how the absence of Fairway's signature on the loan agreement tended to support any of his causes of action in the Predatory Lending Lawsuit, nor was such support apparent.

Paulson further asserted that the bankruptcy court should not approve the Trustee's settlement because the district court was presiding over the Predatory Lending Lawsuit and because Paulson sought to try the Predatory Lending Lawsuit as a class action. In particular, Paulson contended that it would be inequitable to settle Paulson's claims because it would deprive the class of Paulson's representation as class representative. Finally, Paulson argued that Fairway's foreclosure proceedings did not comply with Oregon law governing foreclosures on residential real property, but Paulson did not explain how any alleged defects in Fairway's foreclosure proceedings support any of his causes of action in the Predatory Lending Lawsuit, nor is such support apparent.

On May 7, 2010, the bankruptcy court held its evidentiary hearing, at which both the Trustee and Paulson testified. After the close of testimony, each party (the Trustee, Fairway and Paulson) made a closing argument, and then the court announced its decision, and its findings of fact and conclusions of law, orally on the record. The court relied on the "fair and equitable" standards articulated in Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986) ((1) likelihood of success on the merits; (2) difficulty of collection efforts; (3) complexity, cost, inconvenience and delay associated with the litigation; and (4) paramount interests of the estate's creditors, and their reasonable views).

The bankruptcy court found with respect to the first factor that success on the merits appeared "problematic." The court concurred with the Trustee's evaluation of the Predatory Lending Lawsuit and focused on the facts that the Loan appeared to be a commercial loan and that Paulson was not personally a party to the Loan. The court particularly noted that Paulson had signed the Loan documents (apparently without reading any of them), including a one-page affidavit in which he swore under oath "that the proceeds of the note are being used solely for business purposes, and none of the loan proceeds evidenced by the note will be expended for a personal, private or consumer use." May 7, 2010 Ev. Hrg. Trans. at 60:18-24.[6]

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[6]The court apparently was quoting or paraphrasing from Paulson's affidavit executed at the time of the Loan (Evidentiary Hearing Exhibit No. 108 -- see also Ev. Hrg Trans. at 4:22-23), but neither party has provided this exhibit to us as part of the excerpts of record on appeal.

Regarding the second factor (difficulty of collection), the Trustee neither argued nor presented evidence indicating that Fairway could not answer any judgment that might ultimately be awarded against it. Even though this factor did not militate in favor of settlement, the court found that this factor was outweighed by the other factors.

With respect to the third factor (complexity, cost, inconvenience and delay associated with the litigation), the bankruptcy court found that the Predatory Lending Lawsuit would be "enormously expensive and time consuming" to prosecute, that the estate had no funds to hire an attorney to prosecute the Predatory Lending Lawsuit, and that no one had offered or likely would offer to prosecute the Predatory Lending Lawsuit on behalf of the estate at their own risk and expense. Consequently, the court reasoned that the third factor militated strongly in favor of the settlement.

Finally, the court noted that no creditor of the estate had objected to or had appeared to oppose the proposed settlement. According to the court, this tended to indicate that the settlement was consistent with the fourth factor, which focuses on the interests of the creditors and the views they have expressed.

During the course of making its oral ruling, the court repeatedly pointed out that neither Paulson nor any other party had stepped forward and proposed any competing bid to what Fairway had offered for the Predatory Lending Lawsuit. The court found this fact significant for two reasons: (1) it significantly limited the Trustee's options and ability to liquidate the

Predatory Lending Lawsuit as an asset of the estate; and (2) it made it impracticable to employ formal sale procedures under § 363.

On May 13, 2010, the court entered an order approving the settlement, and on May 17, 2010, Paulson filed a notice of appeal. In his notice of appeal, Paulson stated that he was seeking appellate review of both the settlement order, and the January 2010 Relief From Stay Order.

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(a)(1), subject to the jurisdictional issue discussed below.

ISSUES

1. Does the BAP have jurisdiction to review the January 2010 Relief From Stay Order?
2. Did the Bankruptcy Court abuse its discretion when it approved the Trustee’s settlement with Fairway?

STANDARDS OF REVIEW

We have an independent duty to determine whether we have jurisdiction over an appeal, and we review such jurisdictional questions de novo. Belli v. Temkin (In re Belli), 268 B.R. 851, 853-54 (9th Cir. BAP 2001); Gen. Elec. Capital Auto Lease, Inc. v. Broach (In re Lucas Dallas, Inc.),185 B.R. 801, 804 (9th Cir. BAP 1995).

We review a bankruptcy court's decision to approve a compromise for abuse of discretion. Goodwin v. Mickey Thompson Entm't Group, Inc. (In re Mickey Thompson Entm't Group, Inc.), 292 B.R. 415, 420 (9th Cir. BAP 2003) (citing In re A & C Props.,

784 F.2d at 1380).

Under the abuse of discretion standard of review, we first "determine de novo whether the [bankruptcy] court identified the correct legal rule to apply to the relief requested." United States v. Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc). And if the bankruptcy court identified the correct legal rule, we then determine under the clearly erroneous standard whether its factual findings and its application of the facts to the relevant law were: "(1) illogical, (2) implausible, or (3) without support in inferences that may be drawn from the facts in the record." Id. (internal quotation marks omitted).

DISCUSSION

1. Paulson did not timely appeal the January 2010 Relief From Stay Order, and thus we lack jurisdiction to review that order.

In this appeal, one of our motions panels issued an order on July 21, 2010, excluding the January 2010 Relief From Stay Order from the scope of review on appeal (the "Exclusion Order"). Our motions panel issued the Exclusion Order because Paulson did not file his appeal from the January 2010 Relief From Stay Order until May 17, 2010.

Notwithstanding our issuance of the Exclusion Order, Paulson included argument in his brief seeking review of the January 2010 Relief From Stay Order. As indicated in our Exclusion Order, we lack jurisdiction to review the January 2010 Relief From Stay Order.

An order granting relief from stay is final for purposes of filing an appeal. See Bonner Mall P'ship v. U.S. Bancorp Mortgage Co. (In re Bonner Mall P'ship), 2 F.3d 899, 903 (9th

Cir. 1993). An appeal from a final bankruptcy court order must be filed within fourteen days of entry of the order, see Rule 8002(a), and the time deadline for filing an appeal is mandatory and jurisdictional. See Browder v. Director, Dep't of Corrections, 434 U.S. 257, 264 (1978); Slimick v. Silva (In re Slimick), 928 F.2d 304, 306 (9th Cir. 1990). Accordingly, if we were to consider the merits of Paulson's untimely appeal of the January 2010 Relief From Stay Order, we would be committing reversible error. See Browder, 434 U.S. at 271-72.

In short, we cannot review the January 2010 Relief From Stay Order, and our review will be limited to the bankruptcy court's settlement order, entered on May 13, 2010.

2. The bankruptcy court did not abuse its discretion when it approved the Trustee's settlement with Fairway.

The bankruptcy court enjoys broad discretion in approving compromises. In re A & C Props., 784 F.2d at 1380-81. As stated in A & C Props.:

> The purpose of a compromise agreement is to allow the trustee and the creditors to avoid the expenses and burdens associated with litigating sharply contested and dubious claims. The law favors compromise and not litigation for its own sake, and as long as the bankruptcy court amply considered the various factors that determined the reasonableness of the compromise, the court's decision must be affirmed.

Id. (citations omitted).

On the other hand, even though the bankruptcy court has wide latitude in approving compromises, its discretion is not completely unfettered. See Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988). Bankruptcy courts only may approve a settlement if it is "fair and

equitable" and "reasonable, given the particular circumstances of the case." In re A & C Props., 784 F.2d at 1381.

As mentioned previously, A & C Props. adopted a four-part test to assist bankruptcy courts in determining the "fairness, reasonableness and adequacy" of proposed settlement agreements:

(a) the likelihood of success on the merits of the litigation;

(b) the difficulties anticipated in collecting on any judgment obtained;

(c) the complexity, cost, inconvenience and delay associated with the litigation; and

(d) the paramount interest of the creditors, and deference to their reasonable views.

See In re A & C Props., 784 F.2d at 1381. The trustee bears the burden of proof to establish that the compromise is fair and equitable. Id.

In this case, the bankruptcy court correctly identified each of the A & C Props. factors, so the only remaining question is whether the court's determination that the settlement was fair and equitable, and in the best interests of the estate, was clearly erroneous. See Hinkson 585 F.3d at 1262. We will look at each of the A & C Props. factors in turn.

a. Likelihood of success on the merits.

In rendering its finding on the first A & C Props. factor – likelihood of success on the merits – the bankruptcy court characterized the estate's chances of success in the Predatory Lending Lawsuit as "problematic." The court focused on Paulson's marquee claims – his federal consumer credit causes of action

alleging violation of TILA, RESPA and HOEPA. The court found the merits of these claims doubtful at best because the Loan appeared on its face to be a commercial credit transaction, whereas TILA, RESPA and HOEPA generally apply only to consumer credit transactions. See 12 U.S.C. § 2606(a)(1); 12 C.F.R. 226.3(a).

The court further pointed out that Paulson did not appear to be a party to the transaction from which Paulson's causes of action allegedly arose; rather, Paulson's LLC was the party. As a result, it was doubtful that Paulson had any personal rights to vindicate with respect to the claims he asserted in the Predatory Lending Lawsuit.

Under these circumstances, we cannot conclude that the court's findings regarding the estate's likelihood of success in the Predatory Lending Lawsuit were "illogical," "implausible," or "without support in inferences that may be drawn from the facts in the record." Hinkson, 585 F.3d at 1262.

b. Difficulties of collection.

The bankruptcy court determined that the Trustee did not offer any evidence tending to suggest that there would be any difficulty in collecting a judgment from Fairway if any part of the Predatory Lending Lawsuit succeeded. Accordingly, the court found that this factor did not militate in favor of settlement. On the other hand, the court also found that this factor was outweighed by the other A & C Props. factors. We perceive no error in this determination, nor has Paulson pointed us to any.

c. Complexity, expense, delay and inconvenience.

The bankruptcy court found that this factor strongly militated in favor of settlement. Based primarily on Paulson's

second amended complaint, on Fairway's motion to dismiss, and on Paulson's first document production request, the bankruptcy court found that the Predatory Lending Lawsuit would be "enormously expensive and time consuming" to litigate. The court also found, based primarily on its own experience, that it was very unlikely that any attorney would agree to prosecute the lawsuit on a contingency-fee basis. The court further noted that the estate had no money to fund the prosecution of the Predatory Lending Lawsuit, and that no party had stepped forward and offered to prosecute the lawsuit for the benefit of the estate at the party's own risk and expense. Once again, Paulson has not pointed us to any error with respect to these findings, nor do we perceive any error.[7]

d. Interests of creditors.

The bankruptcy court found that the settlement was in the interests of creditors and the estate. The court found that the $5,000 offered by Fairway would bring at least some funds into the bankruptcy estate, and that there was no practicable means available to the Trustee to increase the estate's recovery on account of the Predatory Lending Lawsuit. The court also noted that no creditor had filed an objection to the settlement, and that no creditor appeared at the hearing to oppose the

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[7]Paulson for the first time on appeal perhaps suggests that he might have been willing to prosecute the Predatory Lending Lawsuit for the benefit of the estate, but he gives no indication how he could afford to fund the litigation. Furthermore, we decline to consider this factual matter for the first time on appeal. See United States v. Waters, 627 F.3d 345, 355 (9th Cir. 2010) (quoting Nat'l Wildlife Fed'n v. Burlington N. R.R., Inc., 23 F.3d 1508, 1511 n.5 (9th Cir. 1994)) ("Facts not presented to the [trial] court are not part of the record on appeal.")

settlement.

e. Compromise as sale of estate property.

Some of our recent decisions have held that, when a settlement disposes of causes of action that are property of the estate, it may be appropriate under certain circumstances for the court to examine the settlement as both a compromise under Rule 9019 and a sale under § 363. See Fitzgerald v. Ninn Worx Sr Inc. (In re Fitzgerald), 428 B.R. 872, 884 (9th Cir. BAP 2010); Simantob v. Claims Prosecutor, LLC. (In re Lahijani), 325 B.R. 282, 290 (9th Cir. BAP 2005); In re Mickey Thompson Entm't Group, Inc., 292 B.R. at 421-22.

However, as emphasized in Mickey Thompson, whether it is appropriate to analyze a settlement as a sale depends on the facts of the particular case. See id. at 421-422 ("Whether to impose formal sale procedures is ultimately a matter of discretion that depends upon the dynamics of the particular situation.").

Here, the bankruptcy court found that there was no practicable means of conducting an auction sale of the Predatory Lending Lawsuit to obtain a better price for it because no one had expressed any interest in purchasing the Predatory Lending Lawsuit, other than Fairway for its nuisance value. This finding is consistent with our observation in Fitzgerald and Lahijani that, when a bankruptcy trustee seeks to sell a cause of action, competition often is limited to the parties to that cause of action. See In re Fitzgerald 428 B.R. at 883; In re Lahijani, 325 B.R. at 289. In this instance, despite the court's repeated inquiries, not even Paulson, the plaintiff, was willing to make a

competing bid for the Predatory Lending Lawsuit.

In sum, the bankruptcy court did not abuse its discretion when it approved the Trustee's settlement with Fairway. The court properly considered the A & C Props. factors, and the record was sufficient to support the court's findings that the settlement satisfied those factors.

3. None of Paulson's arguments on appeal justify reversal.

We have reviewed and considered Paulson's other arguments on appeal, but none of them have persuaded us that the bankruptcy court committed reversible error under the abuse of discretion standard of review.

For instance, Paulson argued that the bankruptcy court lacked authority to approve the settlement. Paulson did not dispute that Rule 9019 generally gave the bankruptcy court broad discretion to approve settlements. Rather, Paulson argued that the court lacked authority to approve the settlement because it dealt with claims pending in another court; namely, the claims asserted in the Predatory Lending Lawsuit. But Paulson cited no legal authority to support his argument. Contrary to his argument, we have routinely upheld the application of Rule 9019 to the estate's settlement of litigation pending in other courts. See, e.g., In re Fitzgerald, 428 B.R. at 884. Nor did Paulson's class action allegations limit the bankruptcy court's authority under Rule 9019. While Civil Rule 23(e) does place procedural restrictions on the settlement of class actions, these restrictions on their face only apply after a class has been certified. Here, no class was certified in the Predatory Lending Lawsuit, so Paulson's lack of authority argument has no merit.

Paulson also argued that the settlement inequitably deprived the litigant class he sought to represent of its prospective class representative. However, Paulson did not point out how this would prejudice the members of this prospective class, nor do we perceive any prejudice, especially when the class was never certified. Moreover, any alleged impact of the settlement on the interests of the prospective class members, who did not have any stake in Paulson's bankruptcy estate, was not properly a concern of the bankruptcy court's under the A & C Props. factors, which focus exclusively on the estate's interests.

Finally, Paulson argued that the bankruptcy court was biased against him. To support this contention, Paulson pointed to the court's comment during the evidentiary hearing: "so your defense in the [Predatory Lending Lawsuit] is going to be pure heart, empty head even though you were a lawyer." May 7, 2010 Ev. Hrg. Trans. at 26:15-17. We fail to perceive how the court's characterization of Paulson's litigation position constituted any evidence of bias. Furthermore, the court's comment would not justify any action by an appellate court for two additional reasons: (1) Paulson did not ask the bankruptcy judge to recuse himself, and (2) the alleged bias does not meet the extrajudicial source requirement. See Cordoza v. Pac. States Steel Corp., 320 F.3d 989, 998-99 (9th Cir. 2003). Thus, Paulson's bias argument also fails.[8]

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[8]Paulson's appeal brief contains a bald assertion that the A & C Props. factor requiring the bankruptcy court to consider the "paramount interests of creditors" violates his constitutional right to equal protection of the laws. We decline to consider this assertion because it was raised for the first time on appeal (continued...)

CONCLUSION

For all of the reasons set forth above, the bankruptcy court's settlement order is AFFIRMED.

[8](...continued)
and because it was not adequately addressed in Paulson's brief. See Golden v. Chicago Title Ins. Co. (In re Choo), 273 B.R. 608, 613 (9th Cir. BAP 2002); Branam v. Crowder (In re Branam), 226 B.R. 45, 55 (9th Cir. BAP 1998), aff'd, 205 F.3d 1350 (table) (9th Cir. 1999).