

MAY 10 2011

SUSAN M SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. 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

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.

Before: MARKELL, HOLLOWELL and JURY, Bankruptcy Judges.

*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.

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

8 The LLC defaulted on payments due under the Loan in February
9 2008. During the next several months, the parties engaged in
10 negotiations concerning the Loan. Also during this period,
11 Paulson unsuccessfully attempted to market and sell the Property.
12 In August 2008, when negotiations faltered, Fairway sent the LLC
13 a formal demand letter for the cure of the Loan default, and
14 Paulson filed a "predatory lending" lawsuit against Fairway and
15 others in the United States District Court for the District of
16 Oregon, Case No. CV-08-00982-ST (the "Predatory Lending
17 Lawsuit").

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

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

12 In March 2009, Fairway and some of the other defendants in
13 the Predatory Lending Lawsuit filed a Civil Rule 12(b)(6) motion
14 to dismiss most of the causes of action stated in Paulson's
15 second amended complaint. In the motion to dismiss, Fairway
16 contended, inter alia: (1) that Paulson was not a party to the
17 loan, so he personally had no rights to enforce with respect to
18 the Loan; (2) that TILA, RESPA and HOEPA only apply to consumer
19 loans made primarily for personal, family or household use,
20 whereas the Loan was a commercial loan expressly made for
21

22 ³Paulson also later complained about Fairway's conduct
23 during his bankruptcy case, which conduct ultimately led to
24 Fairway's foreclosure on the Property and Paulson's eviction
25 therefrom. Paulson filed counterclaims and third party claims
26 against Fairway and others in Fairway's Oregon state court
27 litigation for possession of the Property (the "Eviction
28 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.

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

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

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

24
25 ⁴We obtained copies of Paulson's bankruptcy schedules and
26 statement of financial affairs by accessing the bankruptcy
27 court's electronic docket. We may take judicial notice of the
28 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).

1 was unable to close a sale on or before September 14, 2009, and
2 Fairway completed its nonjudicial foreclosure of the Property by
3 successfully credit-bidding for the Property on September 25,
4 2009.

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

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

25
26 ⁵According to the Trustee, Paulson and his counsel asserted
27 at the § 341 examination that the Predatory Lending Lawsuit was
28 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.

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

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

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

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

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

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

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

13 The bankruptcy court found with respect to the first factor
14 that success on the merits appeared "problematic." The court
15 concurred with the Trustee's evaluation of the Predatory Lending
16 Lawsuit and focused on the facts that the Loan appeared to be a
17 commercial loan and that Paulson was not personally a party to
18 the Loan. The court particularly noted that Paulson had signed
19 the Loan documents (apparently without reading any of them),
20 including a one-page affidavit in which he swore under oath "that
21 the proceeds of the note are being used solely for business
22 purposes, and none of the loan proceeds evidenced by the note
23 will be expended for a personal, private or consumer use."

24 May 7, 2010 Ev. Hrg. Trans. at 60:18-24.⁶

26 ⁶The court apparently was quoting or paraphrasing from
27 Paulson's affidavit executed at the time of the Loan (Evidentiary
28 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.

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

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

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

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

1 Predatory Lending Lawsuit as an asset of the estate; and (2) it
2 made it impracticable to employ formal sale procedures under
3 § 363.

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

9 JURISDICTION

10 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
11 §§ 1334 and 157(b)(1). We have jurisdiction under 28 U.S.C.
12 § 158(a)(1), subject to the jurisdictional issue discussed below.

13 ISSUES

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

18 STANDARDS OF REVIEW

19 We have an independent duty to determine whether we have
20 jurisdiction over an appeal, and we review such jurisdictional
21 questions de novo. Belli v. Temkin (In re Belli), 268 B.R. 851,
22 853-54 (9th Cir. BAP 2001); Gen. Elec. Capital Auto Lease, Inc.
23 v. Broach (In re Lucas Dallas, Inc.), 185 B.R. 801, 804 (9th Cir.
24 BAP 1995).

25 We review a bankruptcy court's decision to approve a
26 compromise for abuse of discretion. Goodwin v. Mickey Thompson
27 Entm't Group, Inc. (In re Mickey Thompson Entm't Group, Inc.),
28 292 B.R. 415, 420 (9th Cir. BAP 2003) (citing In re A & C Props.,

1 784 F.2d at 1380).

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

12 DISCUSSION

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

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

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

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

1 Cir. 1993). An appeal from a final bankruptcy court order must
2 be filed within fourteen days of entry of the order, see Rule
3 8002(a), and the time deadline for filing an appeal is mandatory
4 and jurisdictional. See Browder v. Director, Dep't of
5 Corrections, 434 U.S. 257, 264 (1978); Slimick v. Silva (In re
6 Slimick), 928 F.2d 304, 306 (9th Cir. 1990). Accordingly, if we
7 were to consider the merits of Paulson's untimely appeal of the
8 January 2010 Relief From Stay Order, we would be committing
9 reversible error. See Browder, 434 U.S. at 271-72.

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

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

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

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

26 Id. (citations omitted).

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

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

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

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

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

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

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

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

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

23 **a. Likelihood of success on the merits.**

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

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

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

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

17 **b. Difficulties of collection.**

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

26 **c. Complexity, expense, delay and inconvenience.**

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

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

14 **d. Interests of creditors.**

15 The bankruptcy court found that the settlement was in the
16 interests of creditors and the estate. The court found that the
17 \$5,000 offered by Fairway would bring at least some funds into
18 the bankruptcy estate, and that there was no practicable means
19 available to the Trustee to increase the estate's recovery on
20 account of the Predatory Lending Lawsuit. The court also noted
21 that no creditor had filed an objection to the settlement, and
22 that no creditor appeared at the hearing to oppose the

23
24 ⁷Paulson for the first time on appeal perhaps suggests that
25 he might have been willing to prosecute the Predatory Lending
26 Lawsuit for the benefit of the estate, but he gives no indication
27 how he could afford to fund the litigation. Furthermore, we
28 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.")

1 settlement.

2 **e. Compromise as sale of estate property.**

3 Some of our recent decisions have held that, when a
4 settlement disposes of causes of action that are property of the
5 estate, it may be appropriate under certain circumstances for the
6 court to examine the settlement as both a compromise under
7 Rule 9019 and a sale under § 363. See Fitzgerald v. Ninn Worx Sr
8 Inc. (In re Fitzgerald), 428 B.R. 872, 884 (9th Cir. BAP 2010);
9 Simantob v. Claims Prosecutor, LLC. (In re Lahijani), 325 B.R.
10 282, 290 (9th Cir. BAP 2005); In re Mickey Thompson Entm't Group,
11 Inc., 292 B.R. at 421-22.

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

18 Here, the bankruptcy court found that there was no
19 practicable means of conducting an auction sale of the Predatory
20 Lending Lawsuit to obtain a better price for it because no one
21 had expressed any interest in purchasing the Predatory Lending
22 Lawsuit, other than Fairway for its nuisance value. This finding
23 is consistent with our observation in Fitzgerald and Lahijani
24 that, when a bankruptcy trustee seeks to sell a cause of action,
25 competition often is limited to the parties to that cause of
26 action. See In re Fitzgerald 428 B.R. at 883; In re Lahijani,
27 325 B.R. at 289. In this instance, despite the court's repeated
28 inquiries, not even Paulson, the plaintiff, was willing to make a

1 competing bid for the Predatory Lending Lawsuit.

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

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

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

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

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

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

25
26 ⁸Paulson's appeal brief contains a bald assertion that the A
27 & C Props. factor requiring the bankruptcy court to consider the
28 "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...)

1 **CONCLUSION**

2 For all of the reasons set forth above, the bankruptcy
3 court's settlement order is AFFIRMED.
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

25 ⁸(...continued)

26 and because it was not adequately addressed in Paulson's brief.
27 See Golden v. Chicago Title Ins. Co. (In re Choo), 273 B.R. 608,
28 613 (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).