

OCT 28 2010

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NOT FOR PUBLICATION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. CC-10-1089-MkHD  
 )  
 RODEO CANON DEVELOPMENT ) Bk. No. LA 99-49349-VZ  
 CORPORATION, )  
 )  
 Debtor. )  
 \_\_\_\_\_ )  
 )  
 FRED YASSIAN; BEVERLY RODEO )  
 DEVELOPMENT CORPORATION; 9615 )  
 BRIGHTON WAY PARTNERSHIP, )  
 )  
 Appellants, )  
 )  
 v. ) **MEMORANDUM\***  
 )  
 ROBERT L. GOODRICH, Chapter 7 )  
 Trustee, )  
 )  
 Appellee. )  
 \_\_\_\_\_ )

Argued And Submitted On  
July 23, 2010, at Pasadena, California

Filed: October 28, 2010

Appeal From The United States Bankruptcy Court  
for the Central District of California

Honorable Vincent P. Zurzolo, Chief Bankruptcy Judge, Presiding

Appearances: Jerry Kaplan of Kaplan, Kenegos & Kadin appeared  
 for Appellants Fred Yassian, Beverly Rodeo  
 Development Corporation and 9615 Brighton Way  
 Partnership  
 Samuel Maizel of Pachulski Stang Ziehl & Jones LLP  
 appeared for Appellee Robert L. Goodrich,  
 Chapter 7 Trustee.

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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.

1 Before: MARKELL, HOLLOWELL and DUNN, Bankruptcy Judges.

2  
3 **INTRODUCTION**

4 Appellants Fred Yassian ("Yassian"), Beverly Rodeo  
5 Development Corporation ("Beverly"), and 9615 Brighton Way  
6 Partnership (the "Partnership"), appeal from the bankruptcy  
7 court's order granting the motion of successor trustee Robert  
8 Goodrich ("Goodrich") for interpretation or clarification of a  
9 court-approved settlement between the appellants and the debtor's  
10 bankruptcy estate. The order also directed payment of  
11 compensation previously awarded on the third interim fee  
12 applications of Goodrich and his bankruptcy counsel and his  
13 accountant, who Goodrich employed under § 327.<sup>1</sup>

14 This appeal concerns the scope of a provision within the  
15 settlement limiting the fees of officers and professionals of the  
16 bankruptcy estate. We agree with the bankruptcy court's  
17 interpretation of the provision limiting fees, that it only  
18 applied to the trustee and estate professionals who were  
19 specifically referenced in the fees provision. To the extent the  
20 fees provision could have been interpreted more broadly, the  
21 bankruptcy court had authority under Civil Rule 60(b)(6) to  
22 clarify the fees provision, and relief under that rule was

23 \_\_\_\_\_  
24 <sup>1</sup>Unless otherwise indicated, all chapter and section  
25 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, as  
26 enacted and promulgated prior to October 17, 2005, the effective  
27 date of most of the provisions of the Bankruptcy Abuse Prevention  
28 and Consumer Protection Act of 2005, Pub. L. 109-8, April 20,  
2005, 119 Stat. 23. All "Rule" references are to the Federal  
Rules of Bankruptcy Procedure, and all "Civil Rule" references  
are to the Federal Rules of Civil Procedure.

1 equitable and appropriate. Finally, the bankruptcy court did not  
2 err in ordering payment of fees and expenses.

3 Therefore, we AFFIRM.

4 **FACTS<sup>2</sup>**

5 Rodeo Canon Development Corporation ("Rodeo") filed its  
6 chapter 11 bankruptcy in 1999. Upon conversion to chapter 7,  
7 Robert D. Pryce ("Pryce") became the trustee. Rodeo's Schedule  
8 A<sup>3</sup> listed Rodeo as record titleholder of an office building at  
9 9615 Brighton Way, Beverly Hills, California (the "Brighton Way  
10 Property"), which was operated by the Partnership, whose general  
11 partners were Rodeo and Beverly. Yassian is the president and  
12 sole shareholder of Beverly. (Beverly and Yassian are jointly  
13 referred to herein as the "Yassian Parties".) Rodeo's alleged  
14 interests in the Brighton Way Property and the Partnership were  
15 Rodeo's only significant scheduled assets.

16 At an auction held in 2001, Pryce obtained bankruptcy court  
17

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18 <sup>2</sup>Many of the facts set forth below are taken from our prior  
19 decision in Beverly Rodeo Dev. Corp. v. Chadorch (In re Rodeo  
20 Canon Dev. Corp.), BAP No. CC-07-1088-KMoD (9th Cir. BAP Oct. 11,  
21 2007) ("Rodeo III"). Rodeo III in turn derived some of its facts  
22 from our prior decisions in Beverly Rodeo Dev. Corp. v. Liberty  
23 Mut. Ins. Co. (In re Rodeo Canon Dev. Corp.), BAP Nos. CC-04-1169  
& 1509-BMoR (9th Cir. BAP Aug. 5, 2005) ("Rodeo I"), and Beverly  
Rodeo Dev. Corp. v. Chadorch (In re Rodeo Canon Dev. Corp.), BAP  
24 No. CC-06-1074-KPaB (9th Cir. BAP July 14, 2006) ("Rodeo II").

25 Other facts are taken from the statement of facts set forth  
26 in the appellants' opening brief, as virtually all of those facts  
27 are uncontested.

28 <sup>3</sup>We have exercised our discretion to independently review  
the electronic docket from the underlying bankruptcy case, and  
the imaged documents attached thereto. See Woods & Erickson, LLP  
v. Leonard (In re AVI, Inc.), 389 B.R. 721, 725 n.2 (9th Cir. BAP  
2008).

1 approval to sell the Brighton Way Property to the Chadorch  
2 Trust, and the sale closed soon after. Pryce later plead guilty  
3 to a number of federal crimes, in the process calling into  
4 question the bona fides of the sale of the Brighton Way Property.  
5 According to Pryce's Plea Agreement, the sale was the subject of  
6 a kickback scheme involving Pryce, his real estate broker and  
7 their contractor. Pryce served time in federal prison for his  
8 crimes.

9       The Yassian Parties have asserted throughout Rodeo's  
10 bankruptcy case that, even though Rodeo held legal title to the  
11 Brighton Way Property, that property actually was owned by the  
12 Partnership, and thus was not property of the estate. The  
13 Yassian Parties filed a counterclaim asserting the property of  
14 the estate issue in an adversary proceeding commenced by Pryce in  
15 2001 (Adv. No. LA-01-01014-VZ) (the "Pryce Adversary  
16 Proceeding.")

17       In 2002, shortly before Pryce's misconduct was discovered,  
18 the Yassian Parties and Pryce reached a settlement in the Pryce  
19 Adversary Proceeding. They set forth the terms of their  
20 settlement in a Settlement Deal Term Sheet ("SDTS"), which  
21 resolved the property of the estate issue and disposed of the  
22 claims and counterclaims that they had asserted against each  
23 other in the Pryce Adversary Proceeding. With respect to the  
24 Brighton Way Property, the parties agreed to a stipulated  
25 judgment declaring that the property was 50% owned by Beverly and  
26 50% owned by Rodeo.

27       In addition to resolving the property of the estate issue,  
28 the SDTS set forth a detailed scheme of allocation and

1 distribution of funds held by the estate, with reserves to be  
2 maintained pending resolution of certain lingering disputes,  
3 mostly being litigated by the Yassian Parties against third  
4 parties. Also, the SDTS provided that the Yassian Parties would  
5 not challenge the fees that Pryce and his professionals claimed  
6 in the aggregate amount of \$530,400.

7 For his part, Pryce agreed that the aggregate amount of his  
8 future fees, and those of his professionals, would not exceed  
9 \$50,000 (the "Fee Cap"):

10 Future Professionals' Fees of Trustee and his  
11 professionals following approval of this Agreement will  
12 not exceed an additional \$50,000 in the aggregate  
13 (beyond the \$530,400 above). [The Yassian Parties]  
14 hereby agree to refrain from making any objections for  
15 the payment of these fees to the Trustee or any  
16 professional.

17 SDTS at p. 1.<sup>4</sup>

18 The entirety of the SDTS conveys the impression that the  
19 contracting parties intended to wrap up substantially all of the  
20 remaining issues between the Yassian Parties and the estate. At  
21 the time, the parties apparently anticipated that closing the  
22 case would not require much additional work by Pryce or his  
23 professionals.

24 The bankruptcy court entered an order approving the SDTS  
25 (the "SDTS Approval Order") in the main case, and a stipulated  
26 judgment in the Pryce Adversary Proceeding. Subsequent to the  
27

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28 <sup>4</sup>The SDTS further acknowledged the prior allowance and  
payment of other fees, by court order entered in 2001; the amount  
of fees approved and paid in 2001 was \$169,274.20. Thus, the  
total amount of fees and expenses expressly provided for under  
the SDTS was \$749,674.20 (\$530,400 plus \$169,274.20 plus  
\$50,000).

1 sale of the Brighton Way Property and the approval of the SDTS,  
2 Pryce resigned as trustee, and, as already noted, was convicted  
3 of federal crimes, related in part to his conduct as trustee in  
4 the administration of this case. Goodrich was appointed  
5 successor trustee in 2003.

6 Ever since the discovery of Pryce's criminal misconduct, the  
7 Yassian Parties have sought to invalidate the sale of the  
8 Brighton Way Property. The Yassian Parties commenced an  
9 adversary proceeding in 2003 against Pryce, the Chadorchi Trust  
10 and other alleged co-conspirators seeking, among other things, to  
11 recover damages for fraud and breach of fiduciary duty, and to  
12 invalidate the sale (Adv. No. LA-03-02072-VZ) (the "Yassian  
13 Adversary Proceeding"). The Yassian Adversary Proceeding  
14 currently is stayed by order of the bankruptcy court.

15 Meanwhile, around the time of Goodrich's appointment in  
16 2003, Goodrich sought and obtained court approval to employ  
17 counsel and an accountant to assist him with his duties as  
18 trustee. The terms of employment provided for compensation of  
19 his professionals at their standard hourly rates. There were no  
20 limitations on compensation. No one submitted any objection to  
21 the terms of employment, and the bankruptcy court approved the  
22 terms of employment as proposed. Goodrich and his professionals  
23 further sought and obtained interim allowance and payment of  
24 compensation in 2004 and 2005, in the aggregate amount of  
25 \$451,096, without any objection from any party.

26 Also in 2003, Goodrich commenced an adversary proceeding  
27 against the Chadorchi Trust, Pryce and his professionals, and the  
28 surety companies that had bonded Pryce's performance as chapter 7

1 trustee (Adv. No. LA-03-01606-VZ) (the "Goodrich Adversary  
2 Proceeding"). The Goodrich Adversary Proceeding sought to unwind  
3 the sale of the Brighton Way Property to the Chadorchí Trust, and  
4 sought damages against the Chadorchí Trust based on allegations  
5 that the Chadorchí Trust had colluded with Pryce. The Goodrich  
6 Adversary Proceeding also sought to collect from the sureties on  
7 account of Pryce's trustee bonds. Goodrich obtained a settlement  
8 recovery from the Sureties of \$750,000, a settlement recovery  
9 from Pryce's real estate broker (the Nelson Shelton firm) of  
10 \$100,000, and proceeds from the sale of the estate's claims  
11 against the Chadorchí Trust of \$150,000. In short, the Goodrich  
12 Adversary Proceeding brought into the bankruptcy estate a total  
13 of \$1 million.

14 In 2005, Goodrich brought a motion for court approval of an  
15 agreement between him and the Yassian Parties to rescind the SDTS  
16 in its entirety (the "Rescission Agreement Approval Motion").  
17 The motion was grounded on Civil Rule 60(b)(5) and (6), which  
18 Rule 9024 makes applicable in all bankruptcy cases. As part of  
19 the basis for the relief sought, Goodrich stated that he could  
20 not abide by the terms of the Fee Cap because it could restrict  
21 him and his professionals from recovering the fees and expenses  
22 that they incurred serving the estate. The Chadorchí Trust and  
23 the sureties who had settled with Goodrich filed objections,  
24 complaining that approval would substantially and inequitably  
25 change the circumstances on which they had been relying  
26 including, among other things, the estate's prior interest in the  
27 Brighton Way Property.

28 The bankruptcy court denied the Rescission Agreement

1 Approval Motion. In denying the motion, the court did not refer  
2 to Civil Rule 60(b), but rather treated the Rescission Agreement  
3 Approval Motion as a motion to compromise controversies between  
4 Goodrich and the Yassian Parties under Rule 9019. According to  
5 the court, Goodrich failed to establish that the compromise met  
6 the standards for approval of compromises enunciated in Martin v.  
7 Kane (In re A and C Properties), 784 F.2d 1377 (1986), and had  
8 failed to establish that the compromise was in the best interests  
9 of the bankruptcy estate. The court also determined that service  
10 of the motion was inadequate.

11 As set forth above, the employment applications and the  
12 first and second interim fee applications of Goodrich and his  
13 professionals were all approved without objection. However, when  
14 Goodrich and his professionals filed their third interim fee  
15 applications in 2007, the Yassian Parties objected. According to  
16 the Yassian Parties, the Fee Cap barred Goodrich and his  
17 professionals from receiving any award of fees in the Rodeo Case  
18 in excess of \$50,000.

19 The bankruptcy court allowed \$229,644.84 of the fees and  
20 expenses requested in the third interim fee applications (the  
21 "Third Interim Fee Awards"), but the court ruled that the Third  
22 Interim Fee Awards could not be paid unless and until Goodrich  
23 and his professionals sought and obtained some sort of relief  
24 with respect to the Fee Cap.

25 Shortly after the ruling on the third interim fee  
26 applications, the Yassian Parties filed their seventh amended  
27 complaint in the Yassian Adversary Proceeding, thereby adding an  
28 eleventh claim for relief against Goodrich seeking rescission of



1 the SDTS (the "Eleventh Claim"). As mentioned above, the  
2 bankruptcy court stayed the Yassian Adversary Proceeding by order  
3 entered April 14, 2008.

4 In May 2009, Goodrich filed a motion seeking relief from the  
5 terms of the Fee Cap (the "Fee Cap Relief Motion"). Goodrich  
6 based his Fee Cap Relief Motion on the court's authority to  
7 interpret and enforce its own orders, on Civil Rule 60(b)(5) and  
8 (6), and on sections 105(a) and 328. Goodrich argued that the  
9 express language of the Fee Cap only referenced Pryce and his  
10 professionals, and that there was no provision in the Fee Cap, or  
11 elsewhere in the SDTS, binding successors. Goodrich further  
12 asserted that a narrow interpretation of the Fee Cap would not  
13 prevent the Yassian Parties from receiving the benefit of their  
14 bargain under the SDTS, or otherwise impair any of the other  
15 terms of the SDTS, because neither the parties nor the SDTS  
16 anticipated or provided for the events that subsequently  
17 transpired: the appointment of a successor trustee who with the  
18 help of his professionals recovered an additional \$1 million.  
19 According to Goodrich, interpreting the Fee Cap more broadly, as  
20 restricting the compensation of Goodrich and his professionals,  
21 would give the Yassian Parties a windfall at the expense of  
22 Goodrich and his professionals.

23 Goodrich also argued: (1) that the Fee Cap did not apply to  
24 him and his professionals on the grounds of estoppel and waiver;  
25 (2) that the orders authorizing employment of his professionals  
26 implicitly modified or limited the Fee Cap; (3) that the Fee Cap  
27 should be modified under § 328; (4) that the Fee Cap should be  
28 modified under Civil Rule 60(b)(5) and (6); and (5) that the Fee

1 Cap should be modified under § 105 and general equitable  
2 principles.

3       The Yassian Parties opposed the Fee Cap Relief Motion,  
4 challenging all of the grounds stated in the motion and  
5 advocating for a broad interpretation of the Fee Cap to cover  
6 Goodrich and his Professionals. The Yassian Parties argued that  
7 Goodrich knew or should be charged with knowing that the Fee Cap  
8 applied to him and his professionals from the outset of the case.  
9 They also argued that the issue of whether any of the funds held  
10 by the estate were property of the estate (the "Property Of The  
11 Estate Issue") was a preliminary question that had to be resolved  
12 before addressing the specifics of the Fee Cap Relief Motion.  
13 According to the Yassian Parties, the Property Of The Estate  
14 Issue and the Fee Cap Relief Motion had to be resolved by  
15 adversary proceeding, the Fee Cap Relief Motion should have been  
16 brought as a compulsory counterclaim to the Eleventh Claim in the  
17 Yassian Adversary Proceeding, and litigation relating to the Fee  
18 Cap Relief Motion should be covered by the order staying the  
19 Yassian Adversary Proceeding. They also characterized the Fee  
20 Cap Relief Motion as an impermissible request for partial  
21 rescission of a contract.

22       After discovery, several rounds of responses, evidentiary  
23 objections and replies, and a final hearing, the bankruptcy court  
24 granted the Fee Cap Relief Motion. The court's order (the "Fee  
25 Cap Relief Order") contains a lengthy analysis and a number of  
26 findings of fact and conclusions of law.

27       The court first addressed the procedural issues. The court  
28 ruled that resolution of the Fee Cap Relief Motion did not

1 require an adversary proceeding. According to the court,  
2 Goodrich did not request and did not need a determination  
3 regarding whether any particular property was property of the  
4 estate. The court also determined that the relief sought by the  
5 Fee Cap Relief Motion did not constitute a compulsory  
6 counterclaim to the Eleventh Claim. The court found that both  
7 the subject matter and the key facts of the Fee Cap Relief Motion  
8 and the Eleventh Claim were sufficiently distinct that Civil  
9 Rule 13 did not apply. The court concluded that, because the Fee  
10 Cap Relief Motion was not part of the Yassian Adversary  
11 Proceeding, the stay of that litigation did not apply to the Fee  
12 Cap Relief Motion.<sup>5</sup>

13 The court then addressed the merits of the motion. Applying  
14 California's principles of contract interpretation, the  
15 bankruptcy court ruled that the Fee Cap was ambiguous. According  
16 to the court, Goodrich's narrow interpretation of the Fee Cap,  
17 based on its plain language, was more reasonable than the Yassian  
18 Parties's broad interpretation of the Fee Cap, especially in  
19 light of the absence of a provision in the SDTS binding  
20 successors.

21 After considering extrinsic evidence - the declaration  
22 testimony of Yassian and his counsel, and the declaration  
23 testimony of Pryce - the court found that, at the time they  
24 entered into the SDTS, the parties and the court contemplated "a  
25

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26 <sup>5</sup>The court also made what it characterized as threshold  
27 rulings on evidentiary objections, waiver, estoppel, laches, and  
28 alleged conflicts of Goodrich and his professionals; the Yassian  
Parties did not appeal any of these so-called threshold rulings,  
nor are they pertinent to our analysis or disposition.

1 rapid wind down of the Case" and that neither party anticipated  
2 or provided in the SDTS for a situation in which a successor  
3 trustee would need to be appointed and substantial additional  
4 work undertaken by the successor trustee and his professionals.

5 As an additional ground for its interpretation, the  
6 bankruptcy court concluded that any lingering ambiguity should be  
7 interpreted against the Yassian Parties because counsel for the  
8 Yassian Parties actively participated in the negotiation and  
9 preparation of the SDTS, whereas the Goodrich Parties had no role  
10 and, in fact, were not yet involved in the case in any capacity  
11 at that time. Finally, the court questioned whether Pryce,  
12 either individually or as the representative of the Rodeo estate,  
13 could waive the prospective compensation rights of third parties  
14 not yet involved in the case. The court thus concluded that the  
15 Fee Cap did not govern the compensation of Goodrich and his  
16 professionals.

17 The court also determined as a matter of contract  
18 interpretation that the Fee Cap did not govern the \$1 million in  
19 funds recovered by Goodrich. According to the bankruptcy court,  
20 the Fee Cap (and the SDTS as a whole) only governed the proceeds  
21 from the sale of the Brighton Way Property.

22 As separate and independent grounds for granting the motion,  
23 the court concluded that, to the extent the Fee Cap might have  
24 been subject to the Yassian Parties' broader interpretation, it  
25 was appropriate and equitable for the court to clarify or modify  
26 the SDTS Approval Order so as to render the Fee Cap inapplicable  
27 to Goodrich and his professionals. The court held that it was  
28 authorized to modify the SDTS Approval Order under either Civil

1 Rule 60(b)(5) or (6), or under § 105(a).

2 In so holding, the court focused on the following common  
3 pool of facts, which it found were unforeseen at the time the  
4 court entered the SDTS Approval Order:

5 1. Pryce's bankruptcy crimes;

6 2. The resulting need for a successor trustee and  
7 professionals;

8 3. The resulting increase in estate administrative  
9 expenses; and

10 4. The resulting recovery of \$1 million by Goodrich.

11 The court relied on several additional facts as establishing  
12 that Goodrich timely requested relief:

13 1. The absence of prejudice to the Yassian Parties;

14 2. The Yassian Parties' involvement in negotiating and  
15 drafting the Fee Cap;

16 3. The Yassian Parties' knowledge of the broader  
17 interpretation of the Fee Cap;

18 4. The Yassian Parties' failure to assert their  
19 broader interpretation earlier;

20 5. The delay in Goodrich and his professionals  
21 learning of the broader interpretation; and

22 6. The hundreds of thousands of dollars in  
23 compensation that would be denied to Goodrich and his  
24 professionals unless the court granted relief.

25 Finally, relying on its determination that the SDTS did not  
26 apply to the \$1 million recovered by Goodrich, and its  
27 determination that those funds were property of the estate, the  
28 bankruptcy court also concluded that there were sufficient estate

1 funds to pay the Third Interim Fee Awards.

2 The Yassian Parties timely appealed the Fee Cap Relief  
3 Order.

#### 4 JURISDICTION

5 The bankruptcy court had jurisdiction under 28 U.S.C.  
6 §§ 1334 and 157(b)(2)(A) and (O), and we have jurisdiction under  
7 28 U.S.C. § 158.

#### 8 ISSUES<sup>6</sup>

9 1. Did the bankruptcy court correctly determine that Rules  
10 7001 and 7013, and the stay of the Yassian Adversary Proceeding,  
11 did not apply to the Fee Cap Relief Motion?

12 2. Did the bankruptcy court err when it interpreted the  
13 Fee Cap narrowly, as not applying to the fees of Goodrich and his  
14 professionals?

15 3. Did the bankruptcy court commit reversible error in its  
16 rulings under Civil Rule 60(b) and § 105(a)?

17 4. Did the bankruptcy court err when it determined that  
18 there were sufficient estate funds to pay Goodrich and his  
19 professionals?

#### 20 STANDARDS OF REVIEW

21 Interpretation of a settlement agreement, like the  
22 construction of any other contract, is a question of law we  
23

24 <sup>6</sup>The bankruptcy court also made determinations that relief  
25 from the Fee Cap was not available under § 328, and that Goodrich  
26 was not barred by estoppel, laches, waiver or conflicts from  
27 seeking relief from the Fee Cap. None of these rulings are  
28 addressed in the Yassian Parties' appeal briefs, so they are  
deemed waived. See Chappel v. Lab. Corp. of Am., 232 F.3d 719,  
725 n.3 (9th Cir. 2000) (holding that arguments not renewed on  
appeal are deemed waived).

1 review de novo. See Commercial Paper Holders v. Hine (In re  
2 Beverly Hills Bancorp), 752 F.2d 1334, 1338 (9th Cir. 1984);  
3 Pekarsky v. Ariyoshi, 695 F.2d 352, 354 & n.1 (9th Cir. 1982);  
4 Kittitas Reclamation Dist. v. Sunnyside Valley Irrigation Dist.,  
5 626 F.2d 95, 98 (9th Cir. 1980).

6 We review for abuse of discretion the bankruptcy court's  
7 granting of relief under Civil Rule 60(b) and § 105(a). See  
8 Harvest v. Castro, 531 F.3d 737, 741, 748 (9th Cir. 2008);  
9 Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l  
10 Fibercom, Inc.), 503 F.3d 933, 939, 945 (9th Cir. 2007).

11 Under U.S. v. Hinkson, 585 F.3d 1247 (9th Cir. 2009) (en  
12 banc), we apply a two-part, objective test to determine whether  
13 the bankruptcy court abused its discretion. First, we review de  
14 novo whether the bankruptcy court identified the correct legal  
15 rule to apply to the relief requested. Id. at 1261-63. Second,  
16 we review the court's findings, and its application of those  
17 findings, to determine whether they were "(1) 'illogical,'  
18 (2) 'implausible,' or (3) without 'support in inferences that may  
19 be drawn from the facts in the record.'" Id. at 1262 (citation  
20 omitted). "If any of these three apply, we may conclude that the  
21 court abused its discretion by making a clearly erroneous finding  
22 of fact." Groshong v. Sapp (In re Mila, Inc.), 423 B.R. 537, 542  
23 (9th Cir. BAP 2010).

24 Whether certain property is property of the estate is a  
25 question of law that is reviewed de novo. See Mila, Inc.,  
26 423 B.R. at 542; First Fed. Bank of Cal. v. Cogar (In re Cogar),  
27 210 B.R. 803, 808 (9th Cir. BAP 1997).

1 DISCUSSION

2 **A. The bankruptcy court correctly determined that the Fee Cap**  
3 **Relief Motion was not subject to Rules 7001 or 7013, or to the**  
4 **stay of the Yassian Adversary Proceeding.**

5 Rule 7001 sets forth the types of relief that must be sought  
6 by adversary proceeding. Matters not delineated in Rule 7001 as  
7 adversary proceedings typically are contested matters resolved by  
8 motion pursuant to Rule 9014 or pursuant to other Rules.

9 10 COLLIER ON BANKRUPTCY, ¶ 7001.01 (Alan N. Resnick & Henry J.  
10 Sommer, eds., 15th ed. rev. 2010). Unless Rule 7001 specifically  
11 requires that the relief be sought by adversary proceeding, the  
12 bankruptcy court properly may dispose of the matter by motion.  
13 See United Student Funds, Inc. v. Wylie (In re Wylie), 349 B.R.  
14 204, 214 (9th Cir. BAP 2006).

15 By way of the Fee Cap Relief Motion, Goodrich asked the  
16 bankruptcy court to interpret, clarify and/or modify its prior  
17 SDTS Approval Order. This type of relief is not listed in Rule  
18 7001, so it ordinarily may be sought by motion as a contested  
19 matter, without an adversary proceeding. Solow v. Kalikow (In re  
20 Kalikow), 602 F.3d 82, 93-94 (2d Cir. 2010); Applewood Chair Co.  
21 v. Three Rivers Planning & Dev. Dist. (In re Applewood Chair  
22 Co.), 203 F.3d 914, 918 (5th Cir. 2000); In re Worldcorp, Inc.,  
23 252 B.R. 890, 895 (Bankr. D. Del. 2000).

24 On appeal, the Yassian Parties argue that the Fee Cap Relief  
25 Motion sought declaratory relief in the form of contractual  
26 interpretation of the SDTS, and sought in the alternative  
27 equitable relief in the form of rescission of the Fee Cap.<sup>7</sup>

28 <sup>7</sup>Before the bankruptcy court, the Yassian Parties also

(continued...)



1 According to the Yassian Parties, both declaratory relief and  
2 equitable relief require an adversary proceeding under Rule 7001.  
3 See Rule 7001(7) and (9). However, the Yassian Parties'  
4 interpretation of Rule 7001 is overbroad. On its face,  
5 Rule 7001(9) limits the type of declaratory relief requiring an  
6 adversary proceeding to determinations "relating to" any of the  
7 types of relief listed in the first eight enumerated clauses of  
8 Rule 7001. These eight clauses simply do not cover the relief  
9 that Goodrich sought, and thus Rule 7001(9) does not require an  
10 adversary proceeding here. See COLLIER, supra, ¶ 7001.10 ("If  
11 declaratory relief falls outside of the types covered by those  
12 specified clauses [clauses 1-8 of Rule 7001], an adversary  
13 proceeding is unnecessary.").

14 Similarly, Rule 7001(7) does not cover all types of  
15 equitable relief. The relief of interpreting, clarifying and  
16 modifying a prior court order pursuant to Civil Rule 60(b) is  
17 equitable in nature. Int'l Fibercom, 503 F.3d at 940. But Civil  
18 Rule 60(b) on its face states that relief under that Civil Rule  
19 may be sought by motion. Furthermore, motions under Civil Rule  
20 60(b) in bankruptcy cases are considered contested matters that

21 <sup>7</sup>(...continued)  
22 argued that an adversary proceeding was necessary because the  
23 court first was required to determine, as a threshold issue,  
24 whether any funds held by the estate were estate property, and  
25 that this estate property issue had to be determined in an  
26 adversary proceeding. The Yassian Parties did not make this  
27 argument in their appeal briefs, so it has been waived. Chappel,  
28 232 F.3d at 725 n.3.

26 On the other hand, the Yassian Parties have argued on appeal  
27 that the bankruptcy court erred in ordering payment of the Third  
28 Interim Fee Awards because none of the funds held by Goodrich  
have been determined to be property of the estate. We address  
this argument in section D, below.

1 may be brought by motion. See Rule 9024; State Bank of S. Utah  
2 v. Gledhill (In re Gledhill), 76 F.3d 1070, 1078 (10th Cir.  
3 1996); see also Kalikow, 602 F.3d at 93-94 (holding that motion  
4 seeking interpretation and enforcement of prior order granting  
5 injunctive relief did not require an adversary proceeding).

6 It makes little sense to require an adversary proceeding  
7 when the court is interpreting a prior stipulated ruling based on  
8 an agreement of the parties; to the extent there are disputed  
9 factual issues regarding the agreement, contested matters allow  
10 for discovery and evidentiary hearings similar to what is allowed  
11 for in adversary proceedings. See Rule 9014(c); see also Int'l  
12 Fibercom, 503 F.3d at 946 (holding that evidentiary hearing was  
13 available but not necessary); Worldcorp, 252 B.R. at 895 (holding  
14 that an adversary proceeding was not required where the relief  
15 sought was interpretation and enforcement of a prior order  
16 approving a settlement agreement).

17 The case law cited by the Yassian Parties is inapposite.  
18 None of the cases they cite stands for the proposition that a  
19 bankruptcy court only may interpret, clarify or modify its prior  
20 orders in an adversary proceeding. The cases we cite above  
21 persuade us that an adversary proceeding was not necessary.

22 The Yassian Parties further contend that the Fee Cap Relief  
23 Motion was subject to Civil Rule 13 (made applicable in adversary  
24 proceedings by Rule 7013), and that the motion should have been  
25 presented instead as a compulsory counterclaim to the Eleventh  
26 Claim in the Yassian Adversary Proceeding. This argument lacks  
27 merit. Neither Civil Rule 13 nor Rule 7013 apply to contested  
28 matters. See Rule 9014(c).

1 But even if the compulsory counterclaim rule somehow did  
2 apply to the Fee Cap Relief Motion, nothing in the compulsory  
3 counterclaim rule prohibited the bankruptcy court from hearing  
4 and determining the Fee Cap Relief Motion separately from the  
5 Yassian Adversary Proceeding. While the compulsory counterclaim  
6 rule might bar the holder of a counterclaim from pursuing its  
7 counterclaim after the litigation of the opposing party's claim  
8 has been resolved by final judgment, the compulsory counterclaim  
9 rule does not mandate that the bankruptcy court follow a  
10 particular procedure when the opposing party's claim for relief  
11 is still pending. See Charles Alan Wright, Arthur R. Miller,  
12 Mary Kay Kane, Richard L. Marcus, 6 Fed. Prac. & Proc. Civ.  
13 § 1418 (3d ed. 2010). More importantly, where as here the  
14 counterclaim and the opposing party's claim are pending before  
15 the same court but in separate actions, the appropriate issue for  
16 the court to consider, if raised, is whether consolidation of the  
17 two actions is appropriate pursuant to Civil Rule 42(a). See Id.  
18 Civil Rule 42 applies in both adversary proceedings and contested  
19 matters (per Rules 7042 and 9014), so if the Yassian Parties  
20 believed that there were compelling reasons for the consolidation  
21 of the Fee Cap Motion with the Eleventh Claim, they should have  
22 brought a Civil Rule 42(a) motion in the bankruptcy court, but  
23 they did not do so. We will not consider for the first time on  
24 appeal whether the Fee Cap Relief Motion and the Eleventh Claim  
25 should have been consolidated under Civil Rule 42(a).<sup>8</sup>

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26 <sup>8</sup>We do note, however, that federal courts enjoy broad  
27 discretion in deciding whether to consolidate matters, Investors  
28 Research Co. v. Dist. Court, 877 F.2d 777 (9th Cir. 1989), and  
(continued...)

1 Finally, the Yassian Parties argue that, because the Fee Cap  
2 Relief Motion should have been made part of the Yassian Adversary  
3 Proceeding, and because the Yassian Adversary Proceeding was  
4 stayed by court order, the Fee Cap Relief Motion also should have  
5 been stayed. The Yassian Parties' stay argument is based on a  
6 fatally-flawed premise. As set forth above, the Yassian Parties  
7 have not established that the Fee Cap Relief Motion should have  
8 been made part of the Yassian Adversary Proceeding. Thus, their  
9 stay argument also fails.

10 Accordingly, the bankruptcy court did not err when it  
11 rejected the Yassian Parties' attempts to apply to the Fee Cap  
12 Relief Motion Rules 7001 and 7013, and the Yassian Adversary  
13 Proceeding stay.

14 **B. The bankruptcy court did not err when it interpreted the Fee**  
15 **Cap narrowly, as not applying to the fees of Goodrich and his**  
16 **professionals.**

17 Generally speaking, we interpret a settlement agreement  
18 approved by court order like we would interpret any other  
19 contract, and we look to state laws of contract construction to  
20 guide our interpretation. See In re Beverly Hills Bancorp, 649  
21 F.2d at 1332-33. In California, "parol evidence is admissible to  
22 construe a facially unambiguous contract if the proffered  
23 interpretation is one to which the written agreement is  
24 'reasonably susceptible.'" Id. at 1335 (quoting Pac. Gas & Elec.  
25 Co. v. G. W. Thomas Drayage & Rigging Co., 69 Cal.2d 33, 37  
(1968)).

26 \_\_\_\_\_  
27 <sup>8</sup>(...continued)  
28 that the party seeking consolidation bears the burden of showing  
that matters should be consolidated. Internet Law Library, Inc.  
v. Southridge Cap. Mgmt., LLC, 208 F.R.D. 59, 61 (S.D.N.Y. 2002).

1           On its face, the Fee Cap limited the future fees and  
2 expenses of the "Trustee" and his professionals. The SDTS, in  
3 turn, defined the "Trustee" as: "Chapter 7 Trustee ('Trustee') -  
4 Robert D. Pryce." Thus, by itself, the express language of the  
5 Fee Cap only applied to Pryce and his professionals.

6           The Yassian parties argue for a broader interpretation of  
7 the Fee Cap. They assert that the Fee Cap was meant to apply to  
8 any successor trustees and their professionals. Their argument  
9 makes some sense when the SDTS is considered in its entirety.  
10 The parties to the SDTS generally were the Yassian Parties and  
11 Pryce as trustee of the Rodeo bankruptcy estate. The SDTS  
12 provisions governing claims administration, governing the  
13 resolution of the Pryce Adversary Proceeding, and governing the  
14 allocation and distribution of funds held by Pryce as trustee,  
15 all unequivocally dealt with the rights and obligations of the  
16 Rodeo bankruptcy estate on the one hand and the rights and  
17 obligations of the Yassian Parties on the other hand. Thus,  
18 while the fee-related provisions of the SDTS in a vacuum seem  
19 directed at the compensation rights of Pryce and his  
20 professionals as individuals, the entirety of the SDTS could  
21 justify a different construction: that the Fee Cap was meant to  
22 restrict the estate's ability in the future to employ trustees  
23 and professionals on any terms inconsistent with the limitations  
24 set forth in the Fee Cap. See Segal v. Silberstein, 156 Cal.  
25 App.4th 627, 633 (2007) (holding that contract must be  
26 interpreted as a whole, rather than in a piecemeal fashion).

27           Additionally, interpreting the Fee Cap broadly, as binding  
28 the estate, might explain why the parties deemed it unnecessary

1 (and perhaps even inappropriate) to include express language  
2 purporting to directly bind successor trustees and professionals  
3 to the terms of the Fee Cap.<sup>9</sup>

4         Simply put, the Fee Cap at least arguably was meant to apply  
5 broadly, to bind not only Pryce and his professionals but also  
6 the Rodeo bankruptcy estate. Whereas Pryce and his professionals  
7 only could agree as individuals to limit their own compensation  
8 rights, it is conceivable that the Fee Cap also was meant to  
9 prohibit the estate in the future from employing successor  
10 trustees and professionals, except on terms consistent with the  
11 Fee Cap.<sup>10</sup>

12 \_\_\_\_\_  
13         <sup>9</sup>Indisputably, the Fee Cap cannot and does not apply  
14 directly against Goodrich and his professionals, as a straight  
15 waiver of their compensation rights. Under California law, any  
16 attempt to waive future rights belonging to a third party would  
17 have been ineffective. Waiver requires existing rights and must  
18 be done in a knowing, informed and intentional manner. See  
19 Waller v. Truck Ins. Exch., 11 Cal.4th 1, 31 (1995); Util. Audit  
20 Co. v. City of Los Angeles, 112 Cal.App.4th 950, 958 (2003).  
21 Similarly, under bankruptcy law, neither Pryce nor the bankruptcy  
22 estate could have waived the prospective compensation rights of  
23 future officers and professionals. To the contrary, compensation  
24 rights are personal rights of the professional, and the court is  
25 not permitted to disallow even a portion of the professional's  
26 compensation claim without giving that professional notice and  
27 opportunity for hearing. See Law Offices of David A. Boone v.  
28 Derham-Burk (In re Eliapo), 468 F.3d 592, 602-03 (9th Cir.  
2006); In re Busy Beaver Bldg. Ctrs., Inc., 19 F.3d 833, 845-46  
(3d Cir. 1994); In re Nucorp Energy, Inc., 764 F.2d 655, 658-59  
(9th Cir. 1985).

24         <sup>10</sup>We question the propriety and validity of any attempt by  
25 Pryce to limit the estate's future ability to compensate  
26 successor trustees and professionals for investigating and  
27 remedying Pryce's malfeasance. Under the common law of trusts,  
28 it is doubtful that any trust, in the absence of express  
language, would be interpreted to permit a trustee to limit the  
rights and duties of a successor trustee, or to restrict the

(continued...)

1 That being said, even though we have given due consideration  
2 to this broad interpretation of the Fee Cap based on the entirety  
3 of the SDTS, there are a number of serious problems with this  
4 interpretation. For instance, we know of no bankruptcy law that  
5 would have enabled the Rodeo estate to fully comply with the Fee  
6 Cap. While the bankruptcy estate could have sought to limit,  
7 restrict or condition the compensation of its professionals by  
8 way of § 328, there is no corresponding statute applicable to  
9 trustees. In other words, even if the Rodeo Bankruptcy estate  
10 had partially complied with the Fee Cap by limiting the terms of  
11 employment of Goodrich's professionals pursuant to § 328, there  
12 was no corresponding means for the estate to alter the statutory  
13 terms of Goodrich's appointment and compensation as trustee.  
14 That there was no apparent means for the estate to fully comply  
15 with the Fee Cap militates against the Yassian Parties' broad  
16 interpretation. As stated in Segal: "[w]here an agreement is  
17 capable of being interpreted in two ways, we should construe it  
18 in order to make the agreement 'lawful, operative, definite,  
19 reasonable and capable of being carried into effect . . . . ' "

20 \_\_\_\_\_  
21 <sup>10</sup>(...continued)

22 successor's compensation for carrying out those duties. See  
23 generally RESTATEMENT (SECOND) OF TRUSTS § 196 (1959)(stating that,  
24 absent an express trust provision to the contrary, a successor  
25 trustee generally holds the same rights and duties as the  
26 predecessor trustee); Moeller v. Superior Court, 16 Cal.4th 1124,  
27 1131 (1997) (same). Among other duties, a successor trustee must  
28 make reasonable inquiry into prior trust administration and take  
reasonable steps to remedy any breach of trust discovered. See  
90A C.J.S. Trusts § 341 (2010). In short, it is difficult to  
fathom how a successor trustee could be expected to investigate  
and remedy the misconduct of her predecessor if the predecessor  
is empowered to cut off the funds that the successor needs to  
carry out those duties.

1 Id. at 633 (quoting City of El Cajon v. El Cajon Police Officers'  
2 Assn., 49 Cal.App.4th 64, 71 (1996)).

3 Furthermore, when Goodrich applied to employ his  
4 professionals under § 327, there was no apparent attempt to  
5 impose pursuant to § 328 any conditions or restrictions on the  
6 employment or future compensation of the professionals. Rather,  
7 the employment applications contemplated that the professionals  
8 would be compensated at their standard rates, subject only to the  
9 normal review of the reasonableness of the fees and expenses  
10 claimed under § 330. Absent express provision to the contrary,  
11 § 330 governs the allowance and payment of professional  
12 compensation. Circle K Corp. v. Houlihan, Lokey, Howard & Zukin,  
13 Inc. (In re Circle K Corp.), 279 F.3d 669, 674 (9th Cir. 2002).

14 In addition, we would have expected the Yassian Parties to object  
15 to the employment applications as inconsistent with their broad  
16 interpretation of the Fee Cap because there was no other legal  
17 means for the estate to even partially comply with the Fee Cap,  
18 other than through the employment applications. But the Yassian  
19 Parties did not file any objection. Thus, at the crucial time of  
20 employment of Goodrich's professionals, each party acted  
21 inconsistently with the Yassian Parties' broad interpretation of  
22 the Fee Cap. This also militates against their broad  
23 interpretation. See Employers Reinsurance Co. v. Superior Court,  
24 161 Cal.App.4th 906, 920-22 (2008) (holding that course of  
25 conduct of parties, before controversy arises, is admissible  
26 extrinsic evidence of meaning of contract term).

27 In sum, when we take into account the entirety of the SDTS,  
28 it is possible to conceive that the parties intended to bind the



1 estate - and not just Pryce and his professionals - to the fee  
2 limitations set forth in the Fee Cap. However, the parties did  
3 not identify in the SDTS any legal means by which the estate  
4 could fully comply with the Fee Cap, nor are we aware of any such  
5 means. To the extent the estate could have partially complied  
6 with the Fee Cap through the professional employment process, it  
7 did not do so, nor did the Yassian Parties object or otherwise  
8 respond when the estate made no attempt to comply with the Fee  
9 Cap. Simply put, the Yassian Parties' broad interpretation of  
10 the Fee Cap collapses under its own weight.

11 Accordingly, we agree with the bankruptcy court's  
12 interpretation of the Fee Cap, as only applying to Pryce and his  
13 professionals. The bankruptcy court did not err in this  
14 respect.<sup>11</sup>

15 **C. The bankruptcy court did not commit reversible error in its**  
16 **rulings under Civil Rule 60(b) and § 105(a).**

17 Civil Rule 60(b)(6) often is referred to as a "catch-all"  
18 provision, and applies when "any other reason . . . justifies  
19 relief" not covered by the other five numbered clauses of Civil  
20 Rule 60(b). See Int'l Fibercom, 503 F.3d at 940; Lyon v. Agusta  
21 S.P.A., 252 F.3d 1078, 1088-89 (9th Cir. 2001). But Civil Rule  
22 60(b)(6) is to be used sparingly, and only to prevent manifest  
23 injustice. Int'l Fibercom, 503 F.3d at 941; United States v.  
24 Alpine Land & Reservoir Co., 984 F.2d 1047, 1049 (9th Cir. 1993).  
25 Consequently, application of this rule requires a showing of

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26 <sup>11</sup>The bankruptcy court also determined as a matter of  
27 contract interpretation that the SDTS did not govern the  
28 \$1 million in funds that Goodrich recovered. We address that  
determination in section D, below.

1 extraordinary circumstances. More specifically, the movant must  
2 "show both injury and that circumstances beyond its control  
3 prevented timely action to protect its interests." Id.  
4 Alternately stated, the court should not grant Civil Rule  
5 60(b)(6) relief unless "extraordinary circumstances prevented a  
6 party from taking timely action to prevent or correct an  
7 erroneous judgment." Int'l Fibercom, 503 F.3d at 941; see also  
8 Alpine Land & Reservoir, 984 F.2d at 1049.

9 The bankruptcy court's analysis correctly articulated the  
10 extraordinary circumstances standard, and relied upon Int'l  
11 Fibercom. Consequently, the bankruptcy court satisfied the first  
12 part of Hinkson's abuse of discretion standard, and the only  
13 remaining question is whether the bankruptcy court's  
14 extraordinary circumstances findings met the second part of the  
15 Hinkson test; that is, whether the findings were  
16 "(1) 'illogical,' (2) 'implausible,' or (3) without 'support in  
17 inferences that may be drawn from the facts in the record.'" Id.  
18 at 1262.

19 We cannot conclude that the bankruptcy court's extraordinary  
20 circumstances findings were clearly erroneous under the Hinkson  
21 standard. To the contrary, the entirety of the record reveals  
22 that Civil Rule 60(b)(6) relief was appropriate under  
23 circumstances quite similar to Int'l Fibercom. There, the  
24 bankruptcy court authorized a debtor-in-possession to assume  
25 under § 365 its workers compensation insurance coverage, on terms  
26 agreed upon between the debtor-in-possession and the insurer. A  
27 subsequently-appointed chapter 7 trustee moved under Civil  
28 Rule 60(b)(6) to clarify or modify the agreed-upon assumption

1 terms, and the bankruptcy court granted the trustee's motion.  
2 The Ninth Circuit affirmed and held that Civil Rule 60(b)(6)  
3 relief was appropriate, because the assumption order was legally  
4 erroneous, and because the agreed-upon assumption terms otherwise  
5 would have inequitably elevated the insurer's lien status and  
6 priority with respect to the insurer's prepetition claims. Int'l  
7 Fibercom, 503 F.3d at 940-44.

8 Here, the bankruptcy court approved the terms of the SDTS  
9 without realizing that, if interpreted broadly, the Fee Cap  
10 purported to prohibit the estate from employing and compensating  
11 future trustees and professionals except as permitted under the  
12 Fee Cap. Neither bankruptcy law nor state law would have enabled  
13 the estate to fully effectuate such restrictions. As a result,  
14 to the extent the Fee Cap could have been interpreted broadly,  
15 the bankruptcy court's order approving the SDTS was legally  
16 erroneous, much like the assumption order in Int'l Fibercom.

17 Further, the bankruptcy court here found that, absent  
18 clarification or modification, the Fee Cap under the broader  
19 interpretation would have inequitably improved the Yassian  
20 Parties' position, at the expense of Goodrich and his  
21 professionals, to the tune of hundreds of thousands of dollars.  
22 That finding was logical, plausible, and supported by inferences  
23 that may be drawn from the record.

24 Additionally, we note that the Yassian Parties have not  
25 asserted that the clarification of the Fee Cap has interfered  
26 with any intervening rights. To the contrary, the Yassian  
27 Parties themselves have vigorously advocated to unwind the entire  
28 SDTS, of which the Fee Cap is just one provision. Moreover,

1 clarification of the Fee Cap will not deprive the Yassian Parties  
2 of any of the funds that they expected to be paid under the SDTS,  
3 at least up to the amount of \$1 million. Goodrich has collected  
4 an additional \$1 million that no one anticipated at the time the  
5 SDTS was approved. As such, the Yassian Parties cannot complain  
6 that they will receive less than they expected as a result of the  
7 clarification of the Fee Cap.

8         The Yassian Parties contend that the bankruptcy court erred  
9 in determining that it was equitable to relieve the estate from  
10 the Fee Cap without at the same time relieving the Yassian  
11 Parties from the remainder of the SDTS. We disagree. The  
12 Yassian Parties have not yet made their case for relief from the  
13 entirety of the SDTS, nor have they brought their own motion  
14 under Civil Rule 60(b) for such relief. Rather, they attempt to  
15 bootstrap the relief they seek to the relief sought by Goodrich.  
16 Yet, the Yassian Parties have not established that any other  
17 aspect of the SDTS was impermissible under bankruptcy or state  
18 law. Further, the bankruptcy court found that there is no  
19 evidence of fraud with respect to the SDTS. In other words, the  
20 Yassian Parties have not established that any other aspect of the  
21 SDTS was anything other than an arm's length transaction between  
22 Pryce and the Yassian Parties. Moreover, unlike the Fee Cap,  
23 modifying or vacating other aspects of the SDTS may have  
24 significant implications for other interested parties. In short,  
25 Goodrich established that relief from the Fee Cap was equitable,  
26 but the Yassian Parties have not yet shown that relief from the  
27 entire SDTS is equitable.

28         The Yassian Parties also contend that Goodrich did not

1 timely seek relief. As set forth above, Goodrich needed to  
2 establish “. . . that circumstances beyond [his] control  
3 prevented timely action to protect [his] interests.” Alpine Land  
4 & Reservoir, 984 F.2d at 1049. Goodrich first requested relief  
5 under Civil Rule 60(b)(5) and (6) in 2005, in his Rescission  
6 Agreement Approval Motion. As the bankruptcy court found,  
7 Goodrich had knowledge of the Fee Cap before that time, but there  
8 is no evidence that Goodrich knew before 2005 of the Yassian  
9 Parties’ broad interpretation of the Fee Cap; only the Yassian  
10 Parties could have revealed their broad interpretation. The  
11 Yassian Parties had both the opportunity and motivation to reveal  
12 their broad interpretation earlier in response to the employment  
13 applications and first interim fee applications of Goodrich and  
14 his professionals, but the Yassian Parties did not do so. Thus,  
15 the delay prior to 2005 was not within Goodrich’s control.

16 In light of the bankruptcy court’s denial in 2005 of the  
17 Rescission Agreement Approval Motion, there was no reason between  
18 2005 and 2007 for Goodrich to make a new request for Civil  
19 Rule 60(b) relief. However, in 2007, in the process of ruling on  
20 the third interim fee applications, the bankruptcy court invited  
21 Goodrich to file a new request for relief, this time focusing  
22 exclusively on the Fee Cap, rather than on the SDTS as whole.

23 Goodrich has not explained why he did not file the Fee Cap  
24 Relief Motion sooner than 2009, but we hold that the delay  
25 between 2007 and 2009 (the only part of the delay attributable to  
26 Goodrich) does not undermine the bankruptcy court’s finding that  
27 the Fee Cap Relief Motion was timely. The delay between 2007 and  
28 2009 did not cause Goodrich to miss any opportunities to clarify

1 or modify the Fee Cap on other grounds. Consequently, the  
2 holdings in Lyon and Alpine Land & Reservoir are distinguishable.  
3 In both of those cases, but for the movant's delay, the movant  
4 could have sought to prevent or correct the allegedly erroneous  
5 ruling without resorting to Civil Rule 60(b)(6). See Lyon,  
6 252 F.3d at 1088-89; Alpine Land & Reservoir, 984 F.2d at 1049.

7 In sum, while we do not condone the delay between 2007 and  
8 2009, we cannot conclude that the bankruptcy court clearly erred  
9 when it found under the facts and circumstances discussed above  
10 that the Fee Cap Relief Motion was filed within a reasonable  
11 time, especially when there was no evidence of prejudice to the  
12 Yassian Parties resulting from the delay.

13 Based on the analysis set forth above, we hold that the  
14 bankruptcy court did not err in granting relief under Civil Rule  
15 60(b)(6). Because we hold that relief was appropriate under  
16 Civil Rule 60(b)(6), we need not address the bankruptcy court's  
17 alternate rulings that relief was appropriate under Civil Rule  
18 60(b)(5) and § 105(a).

19 **D. The bankruptcy court did not err when it determined that**  
20 **there were sufficient estate funds to pay Goodrich and his**  
**professionals.**

21 In the Fee Cap Relief Order, the bankruptcy court determined  
22 that there were sufficient estate funds to pay the allowed fees  
23 of Goodrich and his professionals. More specifically, the  
24 bankruptcy court determined that at least \$900,000 of the \$1  
25 million that Goodrich recovered was property of the estate.  
26 Whether the bankruptcy court's determination was correct hinges  
27 on interpretation of the SDTS. As a matter of contract  
28 interpretation, we hold that the SDTS provided that all funds

1 received by the estate, regardless of whether they otherwise  
2 would have been deemed estate property or sale proceeds, would be  
3 50% owned by the Rodeo estate and 50% owned by Beverly, except  
4 that administrative expenses would be paid "off the top" before  
5 remaining funds would be distributed 50-50.

6 The bankruptcy court incorrectly interpreted the SDTS as  
7 only addressing ownership and distribution of the sale proceeds.  
8 On its face, the SDTS uses distinctive terms for estate funds and  
9 proceeds. See SDTS at ¶¶ 6-16.<sup>12</sup> Furthermore, not all of the  
10 estate funds at the time were sale proceeds. See Id. at ¶¶ 5(c)  
11 and 6. Most importantly, taken as whole, the SDTS was meant to  
12 resolve all allocation and distribution issues between the estate  
13 and the Yassian Parties, regardless of the source of funds, or  
14 whether the funds had yet been received. Even though the parties  
15 did not anticipate the estate's recovery of an additional \$1  
16 million, the SDTS did anticipate, and decide, how to distribute  
17 all estate funds.

18 On the other hand, the bankruptcy court's contract  
19 interpretation error was harmless, because the SDTS also provided  
20 for payment of administrative expenses "off the top." See Id. at  
21 ¶¶ 6 ("administrative expenses of the estate, like certain  
22 secured claims, will be deemed paid 'off the top'.") and 7("the  
23 Trustee will also pay approximately \$580,400 in professional fees

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24 <sup>12</sup>On this point, after this matter had been submitted,  
25 counsel for appellee Goodrich brought to our attention that the  
26 Ninth Circuit had decided a related case, Beverly Rodeo Dev.  
27 Corp. v. Goodrich (In re Rodeo Canyon Dev. Corp.), No. 07-56718  
28 (9th Cir., Aug. 19, 2010). See FED. R. APP. P. 28(g). We have  
read the Ninth Circuit's memorandum disposition, and find that  
its holding is consistent with our view as to whether the sales  
proceeds are property of the estate.

1 and expenses on behalf of the co-owners." ).

2 In short, all funds recovered by the estate, whether 100%  
3 property of the estate or 50-50 sale proceeds, were available to  
4 pay the compensation of Goodrich and his professionals.

5 The Yassian Parties argued on appeal that the bankruptcy  
6 court erred in ordering payment of allowed fees because none of  
7 the funds held by the trustee have been determined to be property  
8 of the estate. The Yassian Parties contend that all of the funds  
9 held by the estate are proceeds of the Brighton Way Property, and  
10 that estate ownership of the Brighton Way Property is an open  
11 issue. We disagree. As set forth above, the SDTS determined the  
12 allocation and distribution rights and duties of the Yassian  
13 Parties and the estate. It is law of the case that, unless and  
14 until the Yassian Parties succeed in invalidating the SDTS, they  
15 are bound by its terms. See Rodeo III, at pp. 11-13. In the  
16 event that they eventually succeed, compensation previously paid  
17 to Goodrich and his professionals might later be subject to  
18 disgorgement. See Id.

19 Thus, the bankruptcy court did not err when it determined  
20 that there were sufficient estate funds to pay the Third Interim  
21 Fee Awards to Goodrich and his professionals, nor when it ordered  
22 payment of those awards.

### 23 CONCLUSION

24 For all of the reasons set forth above, we affirm the  
25 bankruptcy court's Fee Cap Relief Order.