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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NOT FOR PUBLICATION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 CORPORATION,	)	Bk. No. LA 99-49349-VZ
	)	
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

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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.

Before: MARKELL, HOLLOWELL and DUNN, Bankruptcy Judges.

INTRODUCTION

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

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

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[1]Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, as enacted and promulgated prior to October 17, 2005, the effective date of most of the provisions of the Bankruptcy Abuse Prevention 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.

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

Therefore, we AFFIRM.

FACTS[2]

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

At an auction held in 2001, Pryce obtained bankruptcy court

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[2]Many of the facts set forth below are taken from our prior decision in Beverly Rodeo Dev. Corp. v. Chadorchi (In re Rodeo Canon Dev. Corp.), BAP No. CC-07-1088-KMoD (9th Cir. BAP Oct. 11, 2007) ("Rodeo III"). Rodeo III in turn derived some of its facts from our prior decisions in Beverly Rodeo Dev. Corp. v. Liberty 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. Chadorchi (In re Rodeo Canon Dev. Corp.), BAP No. CC-06-1074-KPaB (9th Cir. BAP July 14, 2006) ("Rodeo II").

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

[3]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).

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

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

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

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

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

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

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

SDTS at p. 1.[4]

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

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

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[4]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).

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

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

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

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

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

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

The bankruptcy court denied the Rescission Agreement

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

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

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

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

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

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

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

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

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

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

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

require an adversary proceeding. According to the court, Goodrich did not request and did not need a determination regarding whether any particular property was property of the estate. The court also determined that the relief sought by the Fee Cap Relief Motion did not constitute a compulsory counterclaim to the Eleventh Claim. The court found that both the subject matter and the key facts of the Fee Cap Relief Motion and the Eleventh Claim were sufficiently distinct that Civil Rule 13 did not apply. The court concluded that, because the Fee Cap Relief Motion was not part of the Yassian Adversary Proceeding, the stay of that litigation did not apply to the Fee Cap Relief Motion.[5]

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

After considering extrinsic evidence – the declaration testimony of Yassian and his counsel, and the declaration testimony of Pryce – the court found that, at the time they entered into the SDTS, the parties and the court contemplated "a

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[5]The court also made what it characterized as threshold rulings on evidentiary objections, waiver, estoppel, laches, and 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.

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

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

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

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

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

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

1. Pryce's bankruptcy crimes;

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

3. The resulting increase in estate administrative expenses; and

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

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

1. The absence of prejudice to the Yassian Parties;

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

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

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

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

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

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

funds to pay the Third Interim Fee Awards.

The Yassian Parties timely appealed the Fee Cap Relief Order.

JURISDICTION

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

ISSUES[6]

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

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

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

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

STANDARDS OF REVIEW

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

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[6]The bankruptcy court also made determinations that relief from the Fee Cap was not available under § 328, and that Goodrich was not barred by estoppel, laches, waiver or conflicts from seeking relief from the Fee Cap. None of these rulings are 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).

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

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

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

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

DISCUSSION

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

Rule 7001 sets forth the types of relief that must be sought by adversary proceeding. Matters not delineated in Rule 7001 as adversary proceedings typically are contested matters resolved by motion pursuant to Rule 9014 or pursuant to other Rules. 10 COLLIER ON BANKRUPTCY, ¶ 7001.01 (Alan N. Resnick & Henry J. Sommer, eds., 15th ed. rev. 2010). Unless Rule 7001 specifically requires that the relief be sought by adversary proceeding, the bankruptcy court properly may dispose of the matter by motion. See United Student Funds, Inc. v. Wylie (In re Wylie), 349 B.R. 204, 214 (9th Cir. BAP 2006).

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

On appeal, the Yassian Parties argue that the Fee Cap Relief Motion sought declaratory relief in the form of contractual interpretation of the SDTS, and sought in the alternative equitable relief in the form of rescission of the Fee Cap.[7]

[7]Before the bankruptcy court, the Yassian Parties also (continued...)

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

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

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

On the other hand, the Yassian Parties have argued on appeal that the bankruptcy court erred in ordering payment of the Third 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.

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

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

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

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

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

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

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

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

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

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

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[8](...continued)
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).

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

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

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

(and perhaps even inappropriate) to include express language purporting to directly bind successor trustees and professionals to the terms of the Fee Cap.[9]

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

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[9]Indisputably, the Fee Cap cannot and does not apply directly against Goodrich and his professionals, as a straight waiver of their compensation rights. Under California law, any attempt to waive future rights belonging to a third party would have been ineffective. Waiver requires existing rights and must be done in a knowing, informed and intentional manner. See Waller v. Truck Ins. Exch., 11 Cal.4th 1, 31 (1995); Util. Audit Co. v. City of Los Angeles, 112 Cal.App.4th 950, 958 (2003). Similarly, under bankruptcy law, neither Pryce nor the bankruptcy estate could have waived the prospective compensation rights of future officers and professionals. To the contrary, compensation rights are personal rights of the professional, and the court is not permitted to disallow even a portion of the professional's compensation claim without giving that professional notice and opportunity for hearing. See Law Offices of David A. Boone v. 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).

[10]We question the propriety and validity of any attempt by Pryce to limit the estate's future ability to compensate successor trustees and professionals for investigating and remedying Pryce's malfeasance. Under the common law of trusts, 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...)

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

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[10](...continued)
successor's compensation for carrying out those duties. See generally RESTATEMENT (SECOND) OF TRUSTS § 196 (1959)(stating that, absent an express trust provision to the contrary, a successor trustee generally holds the same rights and duties as the predecessor trustee); Moeller v. Superior Court, 16 Cal.4th 1124, 1131 (1997) (same). Among other duties, a successor trustee must 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.

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

Furthermore, when Goodrich applied to employ his professionals under § 327, there was no apparent attempt to impose pursuant to § 328 any conditions or restrictions on the employment or future compensation of the professionals. Rather, the employment applications contemplated that the professionals would be compensated at their standard rates, subject only to the normal review of the reasonableness of the fees and expenses claimed under § 330. Absent express provision to the contrary, § 330 governs the allowance and payment of professional compensation. Circle K Corp. v. Houlihan, Lokey, Howard & Zukin, Inc. (In re Circle K Corp.), 279 F.3d 669, 674 (9th Cir. 2002). In addition, we would have expected the Yassian Parties to object to the employment applications as inconsistent with their broad interpretation of the Fee Cap because there was no other legal means for the estate to even partially comply with the Fee Cap, other than through the employment applications. But the Yassian Parties did not file any objection. Thus, at the crucial time of employment of Goodrich's professionals, each party acted inconsistently with the Yassian Parties' broad interpretation of the Fee Cap. This also militates against their broad interpretation. See Employers Reinsurance Co. v. Superior Court, 161 Cal.App.4th 906, 920-22 (2008) (holding that course of conduct of parties, before controversy arises, is admissible extrinsic evidence of meaning of contract term).

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

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

Accordingly, we agree with the bankruptcy court's interpretation of the Fee Cap, as only applying to Pryce and his professionals. The bankruptcy court did not err in this respect.[11]

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

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

[11]The bankruptcy court also determined as a matter of contract interpretation that the SDTS did not govern the $1 million in funds that Goodrich recovered. We address that determination in section D, below.

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

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

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

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

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

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

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

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

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

The Yassian Parties also contend that Goodrich did not

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

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

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

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

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

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

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

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

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

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

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

[12]On this point, after this matter had been submitted, counsel for appellee Goodrich brought to our attention that the Ninth Circuit had decided a related case, Beverly Rodeo Dev. Corp. v. Goodrich (In re Rodeo Canyon Dev. Corp.), No. 07-56718 (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.

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

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

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

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

CONCLUSION

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