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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

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UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	CC-11-1353-PaMkH
)		
BRIAN W. DAVIES,)	Bk. No.	10-37900-SC
)		
Debtor.)		
_____)		
BRIAN W. DAVIES,)		
)		
Appellant,)		
)		
v.)	M E M O R A N D U M ¹	
)		
PATRICIA ZIMMERMAN, Chapter 7)		
Trustee,)		
)		
Appellee.)		
_____)		

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

Filed - December 9, 2011

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

Honorable Scott C. Clarkson, Bankruptcy Judge, Presiding

Appearances: Appellant Brian W. Davies argued pro se. Trustee
Patricia Zimmerman filed a brief but did not appear
at oral argument.

Before: PAPPAS, MARKELL and HOLLOWELL, Bankruptcy Judges.

¹ This disposition is not appropriate for publication.
Although it may be cited for whatever persuasive value it may have
(see Fed. R. App. P. 32.1), it has no precedential value. See 9th
Cir. BAP Rule 8013-1.

1 Chapter 7² debtor Brian W. Davies ("Davies") appeals the
2 bankruptcy court's "Order Denying in Part and Granting in Part
3 Trustee's Motion to Set Aside/Reconsider Order Granting Debtor's
4 Motion to Compel Abandonment of Property by the Trustee and to
5 Withdraw the Trustee's No Asset Report." We AFFIRM.

6 **FACTS**

7 Unless noted otherwise, the facts in this appeal are
8 undisputed.

9 Davies divorced his wife, Carolyn Kao, in 2007. In
10 connection with the divorce, in October 2007, Davies was granted a
11 money judgment against Kao for \$2,693,680.97 (the "Judgment").
12 Davies alleges that Kao, a Canadian citizen, left the area and he
13 has been unable to locate her.

14 After several years of unsuccessful searching, Davies
15 assigned his interest in the Judgment to Scott Kohn, a collections
16 agent, on June 29, 2009. The assignment provided that any amounts
17 collected by Kohn on the Judgment would be split evenly between
18 Davies and Kohn. The agreement also provided that "if judgment
19 has not been satisfied after 2 years, judgment will be reassigned
20 back to [Davies]."

21 Davies filed a petition under chapter 7 on August 31, 2010.
22 Patricia Zimmerman was appointed trustee ("Trustee"). Although
23 his original schedules made no reference to the Judgment, on
24 September 27, 2010, Davies amended Schedule B to include the
25 following information about the Judgment:

26 _____
27 ² Unless otherwise indicated, all chapter, section and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, to
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037, or to
the Federal Rules of Civil Procedure, Civil Rules 1-86.

1 Judgment against Carolyn Kao entered on 10/29/2007 as
2 part of the divorce Debtor was awarded \$2.7 million.
3 Debtor signed over the award money to a collection
4 agency to collect the money. If collection agency
5 collects the debt, Debtor gets half and collection
6 agency gets half of what is collected. Respondent in
7 case has disappeared and a skip trace has been placed.
8 Likelihood of collection is unknown.

9 Davies listed the value of the Judgment in the schedule as
10 "\$0.00."

11 Davies was examined by Trustee at the § 341(a) meeting on
12 October 15, 2010, where Davies provided Trustee a copy of the
13 Judgment and Kohn's address. Davies and Trustee agree that, at
14 the creditor's meeting, Davies advised Trustee that he tried to
15 collect on the Judgment but that he had "given up."

16 Trustee thereafter contacted Kohn and was told that there was
17 little hope of recovering on the Judgment. Trustee filed a "No
18 Asset" report with the bankruptcy court on November 26, 2010.³

19 Davies filed a motion to compel abandonment of property on
20 March 14, 2011. The only reference in the moving papers to the
21 property at issue was the following:

22 The market value of Debtor's real property [in Indio] is
23 approximately \$230,000 and the disputed debt against
24 said real property is \$650,000. The real property,
25 taking into account the mortgages, liens and the costs
26 of sale, has no equity for the benefit of the estate or
27 the creditors. By this motion, the Debtor seeks the
28 Court for an Order to compel abandonment of property by
the Trustee on the grounds that the property is
burdensome and is of inconsequential value to the
estate.

Trustee did not oppose Davies' abandonment motion, and the
bankruptcy court entered an order granting the motion on April 7,

³ This conversation with Trustee is the only documented
contact with Kohn in the bankruptcy case. Kohn has not appeared
or taken any part in the proceedings or in this appeal.

1 2011 (the "Abandonment Order").

2 A month after entry of the Abandonment Order, on or about
3 May 7, Trustee received an offer of \$5,000 to buy the Judgment.
4 The record does not reflect who submitted the offer. Trustee, on
5 June 20, 2011, filed a Motion to Set Aside/Reconsider Order
6 Granting Debtor's Motion to Compel Abandonment of Property by the
7 Trustee and to Withdraw the Trustee's No Asset Report (the "Set
8 Aside Motion"). In the motion, Trustee asked the bankruptcy court
9 to either set aside the Abandonment Order, or to amend it to only
10 include real property.

11 Davies filed an opposition to the Set Aside Motion on
12 June 22, 2010. Davies principally argued that an Abandonment
13 Order under § 554(b) is irrevocable. Davies' opposition contained
14 no reference to Kohn.

15 On June 29, 2011, finding that no hearing was necessary, the
16 bankruptcy court entered an Order denying in part and granting in
17 part the Set Aside Motion (the "Set Aside/Reconsider Order"). The
18 court granted that portion of the Set Aside Motion requesting
19 leave by Trustee to withdraw the No Asset report, but denied the
20 request to set aside or modify the Abandonment Order because:

21 The Order entered on April 7, 2011 as docket number 75,
22 granting Debtor's Motion to Compel Abandonment by
23 Trustee (the "Abandonment Order"), only concerned and
24 affected the real property identified as [the Indio
25 property]. No other property, real or personal, was
26 abandoned by the Abandonment Order. The "Ko Judgment"
27 identified in the Motion remains property of the
28 bankruptcy estate. Therefore, the [Set Aside] Motion
with respect to abandonment is denied as moot.

26 Davies filed a timely appeal of the Set Aside/Reconsider
27 Order on July 8, 2011, commencing the instant appeal.

28 On July 3, 2011, Trustee filed a Notice of Assets and

1 Possible Dividend in the bankruptcy case. On July 13, 2011,
2 Trustee filed a motion for approval of the sale of the Judgment.
3 In this motion, Trustee proposed to sell the bankruptcy estate's
4 interest in the Judgment to Asset Acquisition Partners, LLC of
5 Orlando Florida for \$5,000, free and clear of liens, but subject
6 to the right of others to submit overbids. A hearing on the sale
7 motion was set for August 10, 2011.

8 Davies did not oppose the sale motion. However, on July 20,
9 2011, he filed an emergency motion for stay of the Set
10 Aside/Reconsider Order pending appeal in the bankruptcy court. He
11 repeated his argument that the Judgment had been effectively
12 abandoned in the Abandonment Order under § 554(b), and that such
13 abandonment was irreversible. He urged that he would likely
14 succeed on the merits in this appeal, that he would suffer
15 irreparable harm if Trustee's proposed sale was not stayed, and
16 that a stay would not harm others. Again, Davies made no mention
17 of Kohn in his motion for stay pending appeal. Trustee opposed
18 the motion.

19 The bankruptcy court conducted a hearing on Davies' stay
20 motion on July 25, 2011. Davies and Trustee appeared.⁴ On
21 July 25, 2011, the bankruptcy court entered a Memorandum Opinion
22 indicating its intent to deny the stay motion. The court observed
23 that the only legal question presented by Davies in the appeal was
24 whether the Abandonment Order effectively covered all estate
25 property, including the Judgment. The court repeated its earlier
26 conclusion that the Abandonment Order pertained only to real
27 property, not the Judgment. While it agreed, generally, with

28 ⁴ There is no transcript of this hearing in the record.

1 prejudice as a result of the failure to raise the issue in the
2 trial court." Rhoades v. Henry, 598 F.3d 495, 501 (9th Cir.
3 2010). None of these conditions apply. However, even if we were
4 to examine this tardy argument, we conclude it lacks merit.

5 At the very beginning of the case, Trustee contacted Kohn and
6 was informed that there was little likelihood of collecting on the
7 Judgment. Thus, Kohn was aware that Davies had filed a bankruptcy
8 case, and that Trustee had concluded that the bankruptcy estate
9 held some interest in the Judgment. Despite being the putative
10 owner of the Judgment, Kohn did not participate in the case. One
11 reasonable inference from these events would be that Kohn
12 considered whatever interest he might have in the Judgment to be
13 worthless, and he therefore chose not to assert that interest in
14 the bankruptcy case.

15 Second, and perhaps more important, whatever interests Kohn
16 had in the Judgment had been extinguished by the time that the
17 bankruptcy court entered its Set Aside/Reconsider Order, the order
18 on appeal. As noted above, Davies' assignment to Kohn contained a
19 reversion clause: "if [the] judgment has not been satisfied after
20 2 years, judgment will be reassigned back to [Davies]." It is
21 apparently undisputed that Kohn had made no collections on the
22 Judgment, and thus, by the terms of the assignment, whatever
23 interest in the Judgment Kohn had been given under the assignment
24 reverted back to Davies, and to his bankruptcy estate, on June 29,
25 2011.

26 That this date is coincidentally the same as the day the
27 bankruptcy court entered the Set Aside/Reconsider Order at issue
28 in this appeal is interesting, but not necessarily relevant. Even

1 before that, Davies had, at a minimum, a contingent, reversionary
2 interest in the Judgment and, under § 541(a) and Ninth Circuit
3 case law, Davies' contingent reversionary interest became property
4 of the bankruptcy estate on the petition date. Nicholas v.
5 Birdsell, 491 F.3d 987, 990 (9th Cir. 2007) ("By including all
6 legal interests without exception, Congress indicated its
7 intention to include all legally recognizable interests although
8 they may be contingent and not subject to possession until some
9 future time.").

10 We therefore conclude there is no merit in Davies' late
11 argument that Trustee "erred in pursuing the sale of property not
12 contained in the estate." Davies' interest in the Judgment was
13 always part of the estate, and Kohn's interest in the Judgment was
14 extinguished under the terms of the assignment by the time the
15 bankruptcy court entered the Set Aside/Reconsider Order.⁶

16 II.

17 Turning to the merits, in the bankruptcy court, and on
18 appeal, Davies has steadfastly contended that the bankruptcy
19 court's Abandonment Order effectively abandoned the Judgment.
20 From that premise, Davies argues that whatever is abandoned cannot
21 be returned to the estate. There is, of course, support for the
22 irrevocability of an abandonment:

23 A number of cases recognize a general rule that
24 abandonment is irrevocable, even if it is subsequently
25 discovered that the abandoned property had greater value
26 than previously believed. In re Lintz West Side Lumber,
Inc., 655 F.2d 786, 789 (7th Cir. 1981) [other citations

26 ⁶ Davies has filed a Request for Judicial Notice of five
27 documents relating to Kohn's actions and services. These
28 documents were never presented to the bankruptcy court. See
Kirschner v. Uniden Corp. of Am., 842 F.2d 1074, 1077-78 (9th Cir.
1988). The request is therefore DENIED.

1 omitted].
2 DeVore v. Marshack (In re DeVore), 223 B.R. 193, 197 (9th Cir. BAP
3 1998). The bankruptcy court agreed with Davies on this point,
4 even citing In re Lintz W. Side Lumber, Inc. But the court
5 repeatedly, and correctly, reminded Davies that this case did not
6 present any question whether the Abandonment Order should be
7 "revoked." Instead, the bankruptcy court construed its order, and
8 concluded in the Set Aside/Reconsider Order that the Abandonment
9 Order:

10 only concerned and affected the real property identified
11 as [the Indio, California property]. No other property,
12 real or personal, was abandoned by the Abandonment
13 Order. The [Judgment] identified in the Motion remains
14 property of the bankruptcy estate.

15 Set Aside Order at 1. Because it concluded that the Abandonment
16 Order only concerned Davies' real property in Indio, California,⁷
17 it held the Judgment had never been abandoned. As a result,
18 Davies' arguments are misplaced.

19 In reaching its conclusion, the bankruptcy court interpreted
20 its own order.⁸ The Ninth Circuit instructs that we should "give
21 deference to [a] court's interpretation of its own order, based on
22 the court's extensive oversight of the decree from the

23 ⁷ Concurrently with this appeal, the Panel examined a
24 dispute between Davies and Deutsche Bank regarding this real
25 property. See Davies v. Deutsche Bank Nat'l Trust Co., BAP no.
26 CC-11-1221 (9th Cir. BAP 2011).

27 ⁸ The full text of the Abandonment Order reads as follows:

28 "On March 14, 2011, Brian William Davies (the "Debtor") filed
his Motion to Compel Abandonment of Property by Trustee in this
case.

"The Debtor having filed a declaration on April 1, 2011
stating that he has not received any opposition nor any objection
to his Motion, and for good cause shown,

"IT IS HEREBY ORDERED that the Debtor's Motion to Compel
Abandonment of Property by Trustee is GRANTED."

1 commencement of the litigation to the current appeal." Hallett v.
2 Morgan, 296 F.3d 732, 739-40 (9th Cir. 2002); accord Zinchiak v.
3 CIT Small Bus. Lending Corp. (In re Zinchiak), 406 F.3d 214, 224
4 (3rd Cir. 2005) (noting that the bankruptcy court is well suited
5 to "provide the best interpretation of its own order.");
6 Graefenhain v. Pabst Brewing Co., 870 F.2d 1198, 1203 (7th Cir.
7 1989) ("Few persons are in a better position to understand the
8 meaning of a [court order] than the judge who oversaw and approved
9 it."); Brown v. Neeb, 644 F.2d 551, 558 n.12 (6th Cir. 1981).

10 Our deference to the construction by the bankruptcy court is
11 not blind and, in this case, there is considerable support in the
12 record for the bankruptcy court's conclusion that the Abandonment
13 Order did not cover the Judgment. For example, Davies' motion to
14 compel abandonment described only the real property. Immediately
15 following that description, the motion represents that, "By this
16 motion, the Debtor seeks the Court for an Order to compel
17 abandonment of property by the Trustee on the grounds that the
18 property is burdensome and is of inconsequential value to the
19 estate." And though § 554(b) authorizing abandonment upon request
20 of a party targets property which is either burdensome or of
21 inconsequential value, the only property of Davies that was both
22 burdensome and of inconsequential value (as referenced in the
23 motion) was the over-encumbered real property. The Judgment,
24 arguably, had inconsequential value at the time the abandonment
25 motion was acted on by the bankruptcy court, but it is difficult
26 to see how it could be described as burdensome.

27 Davies' argument supporting the abandonment motion notes:
28 Not all property of the bankruptcy estate will be of

1 value to creditors. Often, the Debtor's property is so
2 heavily encumbered, as in this case, that there is no
3 equity and the expenses of maintaining the property are
4 greater than can be realized from the sale or other
5 disposition of the property.

6 In this passage, Davies is arguing to the bankruptcy court that
7 the property to be abandoned has no equity and its maintenance is
8 costing the bankruptcy estate more than it is worth. Fairly, that
9 argument can only refer to the real property. Even if the
10 Judgment had no equity, it also was maintenance-free.

11 Finally, as shown above, neither the motion for abandonment
12 nor the Abandonment Order contains any reference to the Judgment.

13 The bankruptcy court, in construing its own order, is
14 entitled to deference. The court based its construction on its
15 parallel review of Davies' abandonment motion, that unquestionably
16 referred to abandonment of property that was both burdensome on
17 the estate and of inconsequential value. That description can
18 only apply to the real property in this case. Neither the motion
19 nor the order entered by the bankruptcy court specifically
20 references the Judgment.

21 All things considered, the bankruptcy court did not abuse its
22 discretion when it decided that the Abandonment Order did not
23 cover the Judgment, and in denying Davies' Set Aside Motion for
24 that reason.

25 **CONCLUSION**

26 We AFFIRM the order of the bankruptcy court.
27
28