

APR 06 2015

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NOT FOR PUBLICATION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**

1 In re:) BAP No. NV-14-1474-DJuKu
2)
3 WILLIAM WALTER PLISE,) Bk. No. 12-14727
4)
5 Debtor.)
6)
7)
8)
9 TENNILLE I. PLISE,)
10)
11 Appellant,)
12)
13 vs.) **MEMORANDUM**¹
14)
15 SHELLEY D. KROHN, Chapter 7)
16 Trustee; WILLIAM WALTER PLISE,)
17)
18 Appellees.)
19)

Argued and Submitted on March 19, 2015
at Las Vegas, Nevada

Filed - April 6, 2015

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

Honorable Linda B. Riegler, Bankruptcy Judge, Presiding

20 Appearances: Matthew L. Johnson of Johnson & Gubler, P.C.,
21 argued for Appellant Tennille I. Plise; Jacob L.
22 Houmand and Victoria L. Nelson of Nelson & Houmand,
23 P.C., argued for Appellee Shelley D. Krohn, Chapter 7
24 Trustee.

25 ¹ This disposition is not appropriate for publication.
26 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 8024-1.

1 Before: DUNN, JURY, and KURTZ, Bankruptcy Judges.

2 Shelley D. Krohn, the Chapter 7² trustee ("Trustee"), filed an
3 adversary proceeding against appellant Tennille I. Plise, alleging
4 that Ms. Plise's prepetition divorce from Chapter 7 debtor William
5 Walter Plise ("Debtor") was a sham, such that transfers of property
6 to Ms. Plise pursuant to the dissolution proceedings constituted
7 fraudulent transfers. The Trustee's claims against Ms. Plise were
8 settled by the payment of \$425,000 to the estate. Sometime after
9 the bankruptcy court approved the settlement ("Settlement"),
10 Ms. Plise filed a proof of claim, asserting that as a result of the
11 Settlement she was owed a \$425,000 prepetition domestic support
12 obligation, later amended to \$715,000, which was entitled to
13 priority status under the Bankruptcy Code and therefore to payment
14 ahead of the professionals employed by the Trustee.

15 Although we have been hampered in our review by the absence of
16 any detailed findings of facts and conclusions of law by the
17 bankruptcy court, we nevertheless AFFIRM the bankruptcy court's
18 order sustaining the trustee's objection to Ms. Plise's claim,
19 because the record on appeal supports the imposition of the doctrine
20 of judicial estoppel against Ms. Plise to preclude her from
21 asserting her claim in the bankruptcy case.

22

23

24 ² Unless specified otherwise, all chapter and section
25 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
26 all "Rule" references are to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9037. All "Civil Rule" references are to the
Federal Rules of Civil Procedure.

1 **I. FACTUAL BACKGROUND³**

2 The following basic facts provide the framework for the
3 litigation that underlies this appeal:

- 4 • Ms. Plise and the debtor were married on December 4, 2001.
- 5 • On September 29, 2008, Ms. Plise and the Debtor filed a Joint
6 Petition for Divorce in the Clark County Nevada District Court
7 ("Nevada Family Court").
- 8 • On October 24, 2008, the Nevada Family Court entered a Decree
9 of Divorce ("Divorce Decree") that was based upon a Joint
10 Petition For Divorce agreed to between the Debtor and Ms. Plise
11 and filed by each as "Petitioner in Proper Person."⁴
- 12 • The debtor filed his chapter 7 petition on April 23, 2012.
- 13 • Debtor's schedules reflect that as of the petition date he
14 owned (a) no real property, and (b) personal property valued at
15 \$4,738.71. Debtor claimed as exempt all but \$2,000 of the
16 personal property disclosed. The nonexempt personal property
17

18 ³ The record provided by the parties to the appeal was
19 incomplete with respect to their assertions in connection with
20 resolution of the Trustee's claims against Ms. Plise in the
21 adversary proceeding. We have exercised our discretion to review
22 the bankruptcy court's main case and adversary proceeding dockets
23 and the documents on record therein to assist us in our
24 consideration of this appeal. See O'Rourke v. Seaboard Sur.
Co. (In re E.R. Fegert, Inc.), 887 F.2d 955, 957-58 (9th Cir.
1989); Atwood v. Chase Manhattan Mortg. Co. (In re Atwood), 293 B.R.
227, 233 n.9 (9th Cir. BAP 2003).

25 ⁴ Ms. Plise asserts that the Debtor was represented by counsel
26 in connection with the Joint Petition for Divorce but that she was
not.

1 was fully encumbered.

2 A. Transfers Pursuant to the Divorce Decree.

3 As relevant to this appeal, the Divorce Decree provided that
4 Ms. Plise was to receive (a) a one-time lump-sum payment of child
5 support in the amount of \$1,850,000, and (b) a one-time lump-sum
6 payment of alimony in the amount of \$1,000,000.

7 1. Lump-Sum Transfer For Child Support.

8 Ms. Plise asserts she received a lump-sum payment of \$1,850,000
9 in satisfaction of the child support obligation, and she used these
10 funds to purchase real property in Austin, Texas ("Austin Property")
11 where she thereafter resided with the parties' children. Ms. Plise
12 contends that she thereafter became ill for a 2-3 year period,
13 precluding her from working and necessitating borrowing money "from
14 others" to pay for her medical bills, living expenses, and
15 attorney's fees. Ms. Plise contends that she attempted to sell the
16 Austin Property because she needed to pay this money back.

17 When her sale efforts were not successful, Ms. Plise asserts
18 she contacted the debtor because she believed he had contacts that
19 could help her obtain a loan. Debtor referred her to Mike
20 Halverson.⁵ Ms. Plise contends she was advised by Mr. Halverson

21 _____
22 ⁵ Mike Halverson was a close business associate of the debtor.
23 The Chapter 7 Trustee filed twenty fraudulent transfer adversary
24 proceedings in the underlying bankruptcy case, twelve of which named
25 5550 Las Vegas, LLC ("5550 Las Vegas") as a defendant and as the
26 alter ego of the debtor.

25 The Settlement Agreement at issue in this appeal recites that
26 the debtor formed 5550 Las Vegas on February 23, 2009 and was the
(continued...)

1 that the lender would require removing her name from the property
2 out of concern for Texas homestead laws. She therefore "sold" the
3 Austin Property to 13413 Shore Vista Drive, LLC ("Shore Vista"), an
4 entity managed by Mr. Halverson, on March 29, 2012. Shore Vista
5 then obtained a loan⁶ in the amount of "approximately \$850,000 to
6 \$900,000." The lender was granted a first position lien on the
7 Austin Property for the amount of the loan; Ms. Plise received a
8 second lien for her alleged equity in the Austin Property in the
9 amount of \$1.1 million. Ms. Plise asserts that with the loan

10
11 ⁵(...continued)

12 sole member until July 12, 2010, when he transferred his membership
13 interest to Mr. Halverson. The allegation regarding 5550 Las Vegas
14 in the more recent complaints provides:

15 Upon information and belief, 5550 Las Vegas, LLC ("5550
16 Las Vegas") is a revoked Nevada Limited Liability Company
17 in which Michael Halverson ("Halverson") was the manager
18 and member. On or about March 8, 2013, Halverson avoided
19 the transfer of the membership interest in 5550 Las Vegas
20 and transferred any and all interest he held in 5550 Las
21 Vegas to the bankruptcy estate of the Debtor including,
22 but not limited to, all real or personal property owned or
23 controlled by 5550 Las Vegas, all legal and equitable
24 interests owned or controlled by 5550 Las Vegas, all
25 tangible and intangible property interests owned or
26 controlled by 5550 Las Vegas, or any claims for relief
arising under Nevada law or the United States Bankruptcy
Code out of the transfer of money from 5550 Las Vegas to
third parties. Halverson further agreed to not defend,
dispute, object or assist in any defense of a claim for
relief for alter ego brought against 5550 Las Vegas by the
Trustee.

⁶ The term of the loan was short. The Settlement Statement
reflects the date of the loan was March 30, 2012. The loan was due
in March 2013.

1 proceeds she paid the loan costs and interest, and 12 months of
2 rent.

3 2. Transfers For Alimony.

4 In October 2008, in satisfaction of the \$1 million owed as
5 alimony, Ms. Plise accepted \$350,000, together with a parcel of
6 vacant land in Colorado ("Colorado Property"), the assignment of the
7 debtor's interest in a promissory note dated February 6, 2009 from
8 Cracked Egg, LLC in the amount of \$700,000.00, and Bank of George
9 common stock.

10 Ms. Plise asserts she used the Bank of George stock (which she
11 contends was worthless) to settle the fraudulent transfer claim Bank
12 of George had asserted against her based on its contention that the
13 divorce was a sham.

14 On September 19, 2012, Ms. Plise transferred the Colorado
15 Property to Old Toll Road, LLC ("Old Toll Road"), an entity she
16 wholly owns.⁷ According to the Trustee, Old Toll Road was formed on
17 September 19, 2012. When initially organized, Keith Clegg, a long-
18 time friend of the Debtor, was the named manager. On November 1,
19 2012, Ms. Plise was named the manager. On April 5, 2013, the Debtor
20 was named the manager, and he opened a bank account at the Bank of
21 Nevada for Old Toll Road on that date. Four days later the Colorado
22 Property was sold; the sale proceeds in the amount of \$186,396.76
23

24 ⁷ Ms. Plise asserts this transfer was made to protect herself
25 from liability after she had consented to allow county trucks to
26 park on the Colorado Property when work was commenced on the road
nearby.

1 were wired into the Old Toll Road bank account. Debtor subsequently
2 transferred more than \$140,000 of the sale proceeds to a bank
3 account he had opened in his name on May 16, 2012, less than one
4 month after he filed his chapter 7 petition.

5 B. The Trustee's Claims Against Ms. Plise.

6 On September 19, 2012, the Trustee filed a complaint
7 ("Complaint") against Ms. Plise, Shore Vista, and Old Toll Road
8 seeking to avoid fraudulent transfers pursuant to § 544(b), to
9 recover fraudulent transfers pursuant to § 550, for turnover of
10 estate property pursuant to § 542, and for injunctive relief
11 pursuant to Rule 7065.⁸

12 On September 20, 2012, the Trustee filed a motion for a
13 preliminary injunction ("Injunction Motion"), seeking to prevent any
14 transfer of the Austin Property. Ms. Plise opposed the Injunction
15 Motion ("Injunction Motion Opposition"), asserting (1) § 544 did not
16 apply because the transfers made under the Divorce Decree had
17 occurred nearly four years before the Debtor filed his bankruptcy
18 case, with the result that Ms. Plise, not the Debtor, was the owner
19 at the time the Austin Property was transferred to Shore Vista and
20 at the time the Colorado Property was sold; (2) Nevada law, NRS
21 Chapter 112, prohibits third parties from challenging a divorce such
22 that the Trustee is unable to undo any of the transfers made
23

24 ⁸ The Trustee amended the complaint on October 17, 2012, to add
25 a claim to avoid as a fraudulent transfer Ms. Plise's transfer of
26 the Colorado Property to Old Toll Road, LLC, which had taken place
the same day the adversary proceeding was filed.

1 pursuant to the Divorce Decree; (3) the bankruptcy court lacked
2 jurisdiction over the award or adjustment of support; and (4) the
3 Trustee was precluded from asserting that the divorce was a sham
4 because a Nevada court previously had ruled in favor of Ms. Plise on
5 that issue, e.g., in litigation initiated by the Bank of George
6 against Ms. Plise. Most importantly for purposes of this appeal,
7 Ms. Plise opposed the Injunction Motion on the basis that the
8 bankruptcy court could not, in light of § 507, provide Ms. Plise any
9 redress if the transactions under the Divorce Decree were unwound.

10 The Court is unable to provide redress. Based on
11 Section 507, even if the Court finds that the Debtor
12 fraudulently transferred all of the property that the
13 Trustee seeks, the fact remains that [Ms. Plise] has a
14 valid, final, non-appealable domestic relations order.
15 The ultimate result is that the Trustee would still have
16 to first pay the monies due and owing under a
17 super-priority, valid, unappealable Divorce Decree, before
18 first taking a fee and paying any funds for any
19 administrative expenses. Therefore, the Court is unable
20 to provide redress.

21 Injunction Motion Opposition at 18:7-12.

22 In or about February of 2013, Ms. Plise and Shore Vista settled
23 the claims the Trustee had asserted against them in the Adversary
24 Proceeding. The relevant terms of the Settlement are as follows:

25 1. Settlement Agreement With Shore Vista and [Ms. Plise].
26 In settlement of the claims for relief in the Second
Amended Complaint against Shore Vista and [Ms. Plise], the
Parties agree that the Austin Property will be sold
according to the following terms:

a. The Austin Property shall continue to be listed
for sale . . . pursuant to the terms of the exclusive
listing agreement entered into between Shore Vista
[and its realtor] (the "Exclusive Listing
Agreement"). If the Austin Property has not sold by
the time the Exclusive Listing Agreement expires, the
Trustee, in her sole discretion, will have the right

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to replace [the realtor] with a real estate agent of her choosing.

b. The listing agreement for the Austin Property shall be amended to indicate that the Trustee and Shore Vista are jointly selling the Austin Property.

c. Any sale of the Austin Property is contingent on the written approval of both the Trustee and Shore Vista.

d. Any proceeds from the sale of the Austin Property will first be used to satisfy any balance owed to [the holder of] the First Deed of Trust.

e. After the First Deed of Trust . . . has been satisfied, four hundred and twenty-five thousand dollars (\$425,000.00) shall be wired from escrow to the Trustee.

f. Any funds remaining after (1) the First Deed of Trust . . . has been satisfied and (2) the four hundred and twenty-five thousand dollars (\$425,000.00) has been wired to the Trustee shall be distributed to [Ms. Plise].

2. Release of Claims. The Trustee agrees to release [Ms. Plise] from all claims arising out of the transfer of any and all real and/or personal property related to the Divorce Decree, including the transfer of the Colorado Property, the assignment of the Debtor's interest in the promissory note dated February 6, 2009 from the Cracked Egg, LLC in the amount of seven hundred thousand dollars (\$700,000.00), the payment of any income taxes owed to the Internal Revenue Service, and the transfer of common stock in the Bank of George. Furthermore, the Trustee releases Shore Vista of any and all claims relating to the transfer of the Austin Property.

3. Settlement Agreement With Old Toll. The Trustee agrees to voluntarily dismiss the claims for relief in the Second Amended Complaint against Old Toll and the Colorado Property.

. . .

6. Reservation of Rights. Notwithstanding anything to the contrary contained in this Agreement, the Parties hereto expressly reserve unto themselves any claims or causes of action, whether at law or in equity, arising out of the non-performance of this Agreement by a Party. The

1 Parties agree that if any Party hereto employs counsel or
2 brings suit to enforce the terms or conditions of this
3 Agreement, and if such Party is successful in such effort,
4 he or it (as the case may be) shall be entitled to recover
5 from the non-performing Party any and all damages, costs,
6 expenses and attorneys' fees incurred as a result thereof.

5 On March 8, 2013, the Trustee filed a motion to approve the
6 Settlement ("Settlement Approval Motion") reached with Ms. Plise.
7 In her memorandum in support of the Settlement Approval Motion, the
8 Trustee stated:

9 The Debtor's Schedule B provides that he only owns
10 personal property in the amount of \$4,738.71. This
11 \$4,738.71 figure includes a checking account (\$988.71), a
12 personal safe and computer (\$250.00), assorted clothing
13 (\$250.00), a wedding ring and watch (\$1,000.00), a 9mm
14 Glock Pistol (\$250.00), and an eighteen foot trailer
15 (\$2,000.00). Schedule C provides that the Debtor is
16 exempting \$2,738.71 of the \$4,738.71 in assets. The only
17 item of personal property that was not exempted, the
18 eighteen foot trailer, is secured by a lien equal to its
19 fair market value. Therefore, as of the Petition Date,
20 the Debtor has had a no-asset bankruptcy case. The
21 proposed Settlement Agreement is in the best interests of
22 the creditors and the Debtor because it will result in the
23 recovery of four hundred twenty-five thousand dollars that
24 can be used for the benefit of creditors. Accordingly,
25 approval of the Settlement Agreement will result in the
26 recovery of funds that can be distributed to unsecured
creditors.

19 Settlement Approval Motion at 10:2-12. Ms. Plise explicitly joined
20 ("Joinder") in the Trustee's Settlement Approval Motion:

21 "Defendant, TENNILLE I. PLISE ("Plise"), through her attorneys of
22 the law firm of MATTHEW L. JOHNSON & ASSOCIATES, P.C., respectfully
23 submits her joinder to the Trustee's Motion to Approve Compromise
24 And Settlement Pursuant To Federal Rule of Bankruptcy Procedure

1 9019.”⁹ Following a hearing on the Settlement Approval Motion, on
2 March 25, 2013, the bankruptcy court entered an order (“Settlement
3 Order”) granting the Settlement Approval Motion.¹⁰

4 C. Ms. Plise’s Proof of Claim.

5 On July 1, 2013, the law firm of Cotton, Driggs, Walch, Holley,
6 Woloson & Thompson (“Cotton Driggs Firm”), former counsel for the
7 Trustee, filed its first interim application (“Cotton Driggs Fee
8 Application”) for compensation based on services the Cotton Driggs
9 Firm had performed between July 17, 2012 and December 31, 2012 and
10 for expenses the Cotton Driggs Firm had incurred during the period
11 July 17, 2012 through June 27, 2013.

12 In opposing the Cotton Driggs Fee Application, Ms. Plise filed
13 two documents on July 24, 2013. The first was proof of claim 20-1
14 (“Priority Claim”), pursuant to which Ms. Plise asserted she was
15 owed \$425,000 as a priority domestic support obligation pursuant to

16
17 ⁹ The balance of the Joinder reads:

18 Additionally, Plise respectfully requests that the Court
19 note in the Order Approving the Settlement Agreement that
20 any cause of action for alleged fraudulent transfers from
21 the Debtor to Plise are vested exclusively with the
22 Trustee, and that once the Order approving the Settlement
23 with the Trustee is entered, other creditors can no longer
24 pursue fraudulent transfer actions involving transfers
25 from the Debtor to Plise pursuant to 11 U.S.C. §544. See
26 11 U.S.C. §544; In re Kimmell, 367 B.R. 174 (N.D. Cal.
2007); Hyosong (America), Inc. v. Hantle USA, Inc., No.
C 10-02160 SBA, 2011 WL 835781 (N.D. Cal. Mar. 4, 2011);
In re Smith Motors, 286 BR 905, 908 (N. Cal. 2002).

¹⁰ The Settlement Order did not include the additional language
Ms. Plise had requested in her Joinder.

1 § 507(a)(1). The second was a limited opposition ("Cotton Driggs
2 Limited Opposition") to the Cotton Driggs Fee Application. In the
3 Cotton Driggs Limited Opposition, Ms. Plise asserted that, in
4 settling with the Trustee, Ms. Plise did not waive her right to
5 child support or alimony awarded through the Divorce Decree.
6 Further, she asserted that the \$425,000 paid to the Trustee as a
7 part of the Settlement constituted exempt child support or alimony
8 pursuant to NRS 21.090(s) and (t). On the bases of (1) Nevada
9 exemptions she was entitled to claim in support payments, and
10 (2) the priority payment status provided to support obligations
11 under § 507, Ms. Plise objected to any payment to the Cotton Driggs
12 Firm until her \$425,000 claim for alimony and child support was
13 paid.

14 The Trustee cried foul. In her reply to the Cotton Driggs
15 Limited Opposition, the Trustee pointed out that, as of the Petition
16 Date, Ms. Plise held no claim, priority or otherwise. Specifically,
17 prior to that date, Ms. Plise had received full satisfaction from
18 the Debtor for all support obligations due under the Divorce Decree.
19 The Trustee further alleged that Ms. Plise's actions after the
20 Settlement had been approved belied her claim that she was due
21 support. In particular, the Colorado Property was sold after the
22 Trustee released claims against Ms. Plise and Old Toll Road, and the
23 proceeds of that sale were transferred to an account in the Debtor's
24 name. The Trustee asserted that if Ms. Plise believed she was owed
25 support, which is the basis upon which she allegedly acquired the
26 Colorado Property in the first instance, Ms. Plise would have

1 retained those proceeds rather than paying them over to the Debtor.
2 Finally, the Trustee asserted that the Settlement did not provide
3 Ms. Plise a domestic support claim. On August 9, 2013, the
4 bankruptcy court approved the Cotton Driggs Fee Application over the
5 Cotton Driggs Limited Opposition.

6 On February 9, 2014, the law firm of Nelson & Houmand, P.C.
7 ("N&H Firm"), current counsel for the Trustee, filed its first
8 interim application ("N&H Fee Application") for compensation based
9 on services the N&H Firm had performed between September 13, 2013
10 and February 7, 2014 and for reimbursement of expenses. Ms. Plise
11 filed a limited opposition ("N&H Limited Opposition") to the N&H Fee
12 Application, objecting to any payment to the N&H Firm until the
13 Priority Claim was paid, raising the same issues she had presented
14 in the Cotton Driggs Limited Opposition. On March 17, 2014, the
15 bankruptcy court approved the N&H Fee Application over the N&H
16 Limited Opposition. The order reflected that the bankruptcy court
17 had reviewed the N&H Limited Opposition; that although awarded, any
18 payment of fees pursuant to the N&H Fee Application remained subject
19 to disgorgement; and that the bankruptcy court had not made a
20 determination on the Priority Claim filed July 24, 2013.

21 On June 11, 2014, the Trustee formally objected ("Claim
22 Objection") to the Priority Claim. The Trustee asserted in the
23 Claim Objection that the Priority Claim should be disallowed
24 because, assuming that Ms. Plise did have a claim for support
25 against the Debtor as a result of the Settlement, that claim would
26 not be enforceable against the bankruptcy estate where it arose

1 postpetition. In both the Cotton Driggs Limited Opposition and the
2 N&H Limited Opposition, in an effort to avoid the application of the
3 claims bar date ("Bar Date") to the Priority Claim, Ms. Plise stated
4 that she had no reason to file a proof of claim until the Bankruptcy
5 Court had granted the Settlement Approval Motion, an event which
6 took place after the Bar Date.

7 The Trustee further asserted the Priority Claim was not a
8 domestic support obligation. The alleged claim only arose after the
9 Trustee was paid \$425,000 in exchange for a release of the
10 bankruptcy estate's fraudulent transfer claims against Ms. Plise.
11 The Trustee pointed out that Ms. Plise did not personally transfer
12 any funds to the Trustee where the funds came from the sale of the
13 Austin Property titled in the name of Shore Vista; that it would be
14 illogical for the Trustee to settle fraudulent transfer claims,
15 which Ms. Plise had defended on the basis that they were support,
16 only to allow Ms. Plise to file a claim for support in the
17 bankruptcy case; and that the "claim" was not established by the
18 Divorce Decree. The Trustee also pointed out that it was
19 "understood that the settlement amount was going to be used by the
20 Trustee to administer the Debtor's bankruptcy estate including
21 paying administrative professionals and unsecured creditors."

22 Ms. Plise responded ("Claim Objection Response") that the
23 Priority Claim was one for "a domestic support obligation arising
24 from the Divorce Decree which has not been fully satisfied," and
25 that because the Debtor's obligation to Ms. Plise was created under
26 the Divorce Decree entered prepetition, it is not an unmatured claim

1 for support. She further asserted that because funds had been paid
2 to the Trustee on account of the fraudulent transfer claims raised
3 against Ms. Plise, Ms. Plise was entitled to the protection of
4 § 502(h) which provides: "A claim arising from the recovery of
5 property under section . . . 550 . . . of this title shall be
6 determined, and shall be allowed under section (a), (b), or (c) of
7 this section . . . the same as if such claim had arisen before the
8 date of the filing of the petition."

9 Ms. Plise further stated that she reserved all of her rights to
10 the Priority Claim in the Settlement. In support of this position
11 she quoted paragraph 6 of the Settlement Agreement, titled
12 "Reservation of Rights," emphasizing language that provided the
13 parties "expressly reserve unto themselves any claims or causes of
14 action, whether at law or in equity, arising out of the non-
15 performance of this Agreement by a Party." She pointed out that the
16 Trustee had released all claims against her for the alleged
17 fraudulent transfers, which Ms. Plise appeared to interpret as a
18 release of any claim that the funds transferred under the Divorce
19 Decree as support were not actually support, but rather transfers
20 made in an effort to remove property and funds from the reach of
21 Debtor's creditors. She reiterated that the Priority Claim
22 represented debts owed to or recoverable by a former spouse and
23 child, in the nature of support. Finally, she asserted that,
24 although the funds paid to the Trustee were from the sale of the
25 Austin Property owned by Shore Vista, Ms. Plise actually "paid"
26 them, because otherwise she would have been entitled to those funds

1 based on the second lien she held.

2 Ms. Plise further contended that because the source of the
3 Priority Claim is the Divorce Decree, Nevada law precludes the
4 Trustee from "attacking" it.

5 Finally, Ms. Plise asserted that the Priority Claim was timely.
6 Although she did not file it before the Bar Date, she filed it four
7 months after the Settlement had been approved by the bankruptcy
8 court. Notably, at the time the Priority Claim was filed, the
9 Trustee had not commenced distribution pursuant to § 726(a)(1), with
10 the result that Ms. Plise asserted the claim did not lose its
11 priority payment status.

12 After filing the Claim Objection Response, Ms. Plise amended
13 the Priority Claim to include an additional \$290,000 amount. With
14 much effort, the Trustee was able to determine that the Priority
15 Claim amount was increased to include the amount for which Ms. Plise
16 asserted she settled the litigation Bank of George had filed against
17 her on the basis that Ms. Plise's divorce was a sham and the
18 transfers made pursuant to the Divorce Decree were fraudulent. It
19 appears that Ms. Plise settled with Bank of George for \$40,000 plus
20 the return of stock, which Ms. Plise throughout proceedings in the
21 bankruptcy court had repeatedly claimed was "worthless."¹¹

22
23 ¹¹ In her response to the Trustee's supplemental objection to
24 the Priority Claim, Ms. Plise offered a valuation of the Bank of
25 George stock in the range of \$357.50-363.50 per share based on a
26 U.S. Department of the Treasury press release. However, as the
Trustee points out, those values were for Class A and Class B stock,

(continued...)

1 At the hearing on the Claim Objection held August 28, 2014, the
2 bankruptcy court sustained the objection based upon its finding that
3 no domestic-support obligation was created by virtue of the
4 Settlement Agreement. The order sustaining the Claim Objection was
5 entered September 10, 2014 ("Claim Objection Order"), and this
6 timely appeal followed.

7 **II. JURISDICTION**

8 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
9 and 157(b) (2) (B). We have jurisdiction under 28 U.S.C. § 158.

10 **III. ISSUE**

11 Whether the bankruptcy court committed reversible error when it
12 disallowed Ms. Plise's claim.

13 **IV. STANDARDS OF REVIEW**

14 In appeals arising from a ruling on a claim objection, we
15 review the bankruptcy court's conclusions of law de novo and its
16 findings of fact under the clearly erroneous standard. See Allen v.
17 U.S. Bank, NA (In re Allen), 472 B.R. 559, 564 (9th Cir. BAP 2012).
18 Fact findings are not clearly erroneous unless they are illogical,
19 implausible or without support in the record. Retz v. Samson
20 (In re Retz), 606 F.3d 1189, 1196 (9th Cir. 2010) (citing United
21 States v. Hinkson, 585 F.3d 1247, 1261-62 & n.21 (9th Cir. 2009)
22 (en banc)).

23 We may affirm the decision of the bankruptcy court on any basis

24
25 ¹¹(...continued)
26 while the stock transferred to Ms. Plise in settlement of the
obligations in the Divorce Decree was common stock.

1 supported by the record. See ASARCO, LLC v. Union Pac. R. Co.,
2 765 F.3d 999, 1004 (9th Cir. 2014); Shanks v. Dressel, 540 F.3d
3 1082, 1086 (9th Cir. 2008).

4 **V. DISCUSSION**

5 We determine that Ms. Plise is estopped from asserting the
6 Priority Claim. See Hamilton v. State Farm Fire & Cas. Co.,
7 270 F.3d 778, 782-83 (9th Cir. 2001) (explaining the doctrine of
8 judicial estoppel in relatively neutral language: "Judicial estoppel
9 is an equitable doctrine that precludes a party from gaining an
10 advantage by asserting one position, and then later seeking an
11 advantage by taking a clearly inconsistent position.").

12 The Ninth Circuit used more strident language appropriate to
13 the actions of Ms. Plise in Rockwell Int'l Corp. v. Hanford Atomic
14 Metal Trades Council, 851 F.2d 1208, 1210 (9th Cir. 1988).

15 Unlike collateral estoppel, *res judicata*, and equitable
16 estoppel, judicial estoppel focuses exclusively on
17 preventing the use of inconsistent assertions that would
18 result in an "affront to judicial dignity" and "a means of
19 obtaining unfair advantage."

20 Id. In Rockwell Int'l, the Ninth Circuit explained that the purpose
21 of the doctrine of judicial estoppel is "to protect against a
22 litigant playing 'fast and loose with the courts' by asserting
23 inconsistent positions." Id.

24 In Milton H. Green Archives, Inc. v. Marilyn Monroe, LLC,
25 692 F.3d 983 (9th Cir. 2012), the Ninth Circuit discussed the
26 current law on judicial estoppel under its own precedents in light
of the factors identified by the Supreme Court in New Hampshire v.
Maine, 532 U.S. 742, 749 (2001), to be considered in determining

1 whether the doctrine should apply in a given case. We analyze Ms.
2 Plise's actions to determine whether to apply judicial estoppel
3 using these factors.

4 1. "[A] party's later position must be clearly inconsistent
5 with its earlier position." Id. at 750-51. The Joinder is the
6 document which highlights Ms. Plise's inconsistent positions for
7 purposes of this appeal. Ms. Plise had articulated in the
8 Injunction Motion Opposition her concern that the bankruptcy court
9 could not, in light of § 507, provide Ms. Plise any redress if the
10 transactions under the Divorce Decree were unwound. Nevertheless,
11 she settled with the Trustee, who agreed to accept a payment of
12 \$425,000 in return for a waiver of claims up to \$2,450,000 against
13 Ms. Plise. Ms. Plise then affirmatively joined in the Settlement
14 Approval Motion, which contained the representation that the
15 proceeds of the Settlement would be used to pay unsecured creditors.
16 Ms. Plise also tried, albeit unsuccessfully, to have the Settlement
17 Agreement insulate her from future fraudulent transfer actions that
18 might be filed by other creditors. Having achieved protection from
19 the bankruptcy estate with respect to the balance of the transfers
20 made under the Divorce Decree, Ms. Plise then filed the Priority
21 Claim, effectively saying as to the Settlement proceeds: "They're
22 mine."

23 2. By her affirmative and unreserved adoption of the
24 Settlement Approval Motion, Ms. Plise can be said to have "succeeded
25 in persuading [the bankruptcy] court to accept [her] earlier
26 position," i.e. that she was giving up property which she asserted

1 was acquired in satisfaction of a domestic support obligation in
2 order to settle the Trustee's claims against her. Id. Had the
3 bankruptcy court allowed the Priority Claim as she had requested, it
4 would have "create[d] the perception" that the bankruptcy court had
5 been misled in the proceedings relating to the Settlement or in the
6 claim proceedings. This is the second factor articulated in
7 New Hampshire. Having been unsuccessful in the bankruptcy court,
8 Ms. Plise now asks this Panel to ignore her inconsistent position
9 and reverse the Claim Objection Order. This we will not do.

10 3. The final consideration is whether allowing the Priority
11 Claim would provide Ms. Plise an unfair advantage or impose an
12 unfair detriment on the Trustee. Clearly, it would. The Trustee
13 negotiated a settlement with Ms. Plise for the articulated purpose
14 of bringing the Settlement proceeds into the bankruptcy estate for
15 the benefit of unsecured creditors. Allowance of the Priority Claim
16 would render the Settlement an exercise in futility.

17 Although the Supreme Court and the Ninth Circuit have
18 acknowledged that the circumstances where the doctrine of judicial
19 estoppel apply "are probably not reducible to any general
20 formulation" (Milton H. Green Archives, Inc, 692 F.3d at 993), in
21 this appeal the record establishes that Ms. Plise was, and is,
22 "playing fast and loose with the courts." The Divorce Decree was
23 the product of an agreement exclusively between the Debtor and
24 Ms. Plise that was rubber stamped by the Family Court. Ms. Plise
25 thereafter entered into two different six-figure settlements, one
26 with the Bank of George and one with the Trustee, for fraudulent

1 transfer claims based on assets she received from the Debtor under
2 the Divorce Decree. In order to reap the benefits provided by the
3 Settlement Agreement, including resolution of future liability to
4 the Trustee, Ms. Plise joined with the Trustee in the Settlement
5 Approval Motion which explicitly provided that the Settlement
6 proceeds would benefit the general unsecured creditors. Ms. Plise
7 then filed the Priority Claim to avoid any impact on her by the
8 Settlement and to recover the Settlement proceeds for herself. Not
9 satisfied with that as her objective, Ms. Plise amended the Priority
10 Claim in an effort to avoid any impact on her by her settlement with
11 Bank of George, and to recover from the bankruptcy estate an
12 additional \$290,000. Finally, approximately two weeks after the
13 Settlement was approved by the bankruptcy court, Ms. Plise
14 transferred to the Debtor \$140,000, the source of which can be
15 traced back to assets transferred to her under the Divorce Decree.

16 In protest, Ms. Plise contends she "reserved" her rights to
17 file the Priority Claim in the Settlement Agreement. However,
18 Ms. Plise misreads the reservation of rights; by its explicit terms,
19 the reserved rights relate solely to the enforcement of the
20 Settlement Agreement itself.

21 As an example of "playing fast and loose with the courts," this
22 appeal represents the paradigm. The application of judicial
23 estoppel would have been appropriate in the claim proceedings before
24 the bankruptcy court, and it remains appropriate now. Accordingly,
25 the bankruptcy court did not err in sustaining the objection to
26 Ms. Plise's claim.

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VI. CONCLUSION

Ms. Plise settled the claims against her for fraudulent transfers. Her efforts to avoid the financial impact of the Settlement Agreement by filing the Priority Claim are judicially estopped, as rising to the level of "playing fast and loose with the courts." We AFFIRM the bankruptcy court's entry of the Claim Objection Order.