

DEC 09 2015

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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NOT FOR PUBLICATION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. EC-14-1371-FDJu
)
 J. PEDRO ZARATE,) Bk. No. 13-22346
)
 Debtor.)
)
)
 J. PEDRO ZARATE,)
)
 Appellant,)
)
 v.) **MEMORANDUM***
)
 UMPQUA BANK; GEOFFREY)
 RICHARDS, Chapter 7 Trustee,)
)
 Appellees.)
)

Argued and Submitted on November 19, 2015
at Sacramento, California

Filed - December 9, 2015

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

Honorable Christopher M. Klein, Bankruptcy Judge, Presiding

Appearances: Appellant J. Pedro Zarate argued pro se; Dana A. Suntag of Herum Crabtree Suntag argued for Appellee Geoffrey Richards, Chapter 7 Trustee; David Marvin Wiseblood argued for Appellee Umpqua Bank.

Before: FARIS, DUNN, and JURY, Bankruptcy Judges.

* This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8024-1.

1 **INTRODUCTION**

2 When Appellant J. Pedro Zarate filed his bankruptcy
3 petition, he had a pending state-court lawsuit against Appellee
4 Umpqua Bank ("Bank"). The chapter 7 trustee, Appellee Geoffrey
5 Richards ("Trustee"), entered into a settlement of the lawsuit
6 with the Bank. The bankruptcy court approved the agreement under
7 Rule 9019 of the Federal Rules of Bankruptcy Procedure.¹
8 Mr. Zarate appeals. We hold that the bankruptcy court did not
9 abuse its discretion in approving the compromise as fair,
10 equitable, and reasonable. Accordingly, we AFFIRM.

11 **FACTUAL BACKGROUND**

12 **A. State-court litigation**

13 On or around November 7, 2001, Mr. Zarate took out a
14 commercial loan for \$85,750 from Sonoma National Bank, which is a
15 predecessor to the Bank.² The loan was secured by commercial
16 real property on East Lindsay Street in Stockton, California
17 ("Subject Property"). Mr. Zarate executed a promissory note and
18 deed of trust in favor Sonoma National Bank. The loan provided
19 for an adjustable interest rate and a ten-year term with a
20 balloon payment at the loan's maturity.

21 Mr. Zarate defaulted on the loan when it matured in December
22

23 ¹ Unless specified otherwise, all chapter and section
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
25 all "Rule" references are to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9037.

26 ² Sonoma National Bank merged with Sterling Savings Bank.
27 The Bank alleges that it is the successor-in-interest to Sterling
28 Savings Bank. Unless otherwise indicated, the three entities
will collectively be referred to as the "Bank."

1 2011. On or around June 28, 2012, the Bank filed a complaint for
2 specific performance against Mr. Zarate in San Joaquin County
3 Superior Court. On or around July 31, 2012, the state court
4 granted the Bank's motion to appoint a receiver. The order
5 restrained Mr. Zarate from interfering with the Subject Property
6 or the receiver.

7 Mr. Zarate filed a second amended answer and a second
8 amended cross-complaint containing ten causes of action,
9 including fraudulent inducement, breach of fiduciary duty,
10 declaratory relief as to property interest, slander of title,
11 improper foreclosure, and quiet title. Essentially, Mr. Zarate
12 alleged that the loan was supposed to have a thirty-year term, a
13 fixed interest rate, and fully amortizing payments, rather than a
14 ten-year term with variable interest and a final balloon payment.
15 He also argued that the lender represented that he and his wife
16 were both signing the promissory note, whereas, in fact, he was
17 the only signatory. Finally, Mr. Zarate argued that the Bank
18 improperly acted as its own broker and owed a fiduciary duty to
19 Mr. Zarate.

20 Based on these allegations, Mr. Zarate claimed that the Bank
21 committed fraud when it represented to Mr. Zarate and his wife
22 that the loan was set at a fixed rate for thirty years. He
23 contended that the Bank knew or should have known that Mr. Zarate
24 could not comply with the terms of the ten-year loan and did not
25 understand that the loan had an adjustable interest rate and
26 balloon payment due when the loan matured. He similarly asserted
27 that the Bank fraudulently told Mr. Zarate and his wife that both
28 would be signatories to the promissory note, when, in actuality,

1 Mr. Zarate's wife signed the deed of trust, not the promissory
2 note. As a result of these allegedly wrongful acts, Mr. Zarate
3 argued that the Bank breached its fiduciary duties to him.

4 Mr. Zarate sought declaratory and injunctive relief against
5 the Bank. He also requested \$4,538.64 in statutory damages,
6 \$75,000 in compensatory damages, and \$425,000 in general damages.

7 **B. Bankruptcy proceedings**

8 On February 22, 2013, before the Bank answered Mr. Zarate's
9 second amended cross-complaint, Mr. Zarate filed his chapter 13
10 petition. On motion by the Bank, the bankruptcy court ordered
11 the case converted to a chapter 7 case. The court then appointed
12 the Trustee to oversee administration of the estate.

13 The Trustee and his counsel "investigated the facts and
14 circumstances relating to the Lawsuit to determine the potential
15 value of the Lawsuit. The investigation included review of
16 documents served and filed in the Lawsuit and conversations about
17 the Lawsuit with Appellant and his counsel in the Lawsuit and the
18 Bank's counsel in the Lawsuit." The Trustee determined that
19 Mr. Zarate had indisputably defaulted under the loan. He also
20 learned that the Bank had conducted a nonjudicial foreclosure
21 sale of the Subject Property in October 2012, and Mr. Zarate had
22 not sought to enjoin the foreclosure sale.

23 The Trustee attempted to learn the factual and legal bases
24 for Mr. Zarate's claims against the Bank. The Trustee reviewed
25 the Bank's discovery responses and documents that it had produced
26 in the state-court lawsuit. He stated that Mr. Zarate and his
27 attorney were not "able to provide significant factual or
28 evidentiary information to support Appellant's claims. In

1 addition, they were unable to present persuasive legal argument
2 to support Appellant's claims." The Trustee also inquired if
3 Mr. Zarate's attorney in the state-court lawsuit was willing to
4 continue prosecuting the lawsuit on behalf of the bankruptcy
5 estate; the lawyer declined.

6 The Trustee decided to attempt to settle the state-court
7 lawsuit with the Bank. The Bank agreed to pay \$20,000 to the
8 Trustee in exchange for a dismissal of the second amended cross-
9 complaint with prejudice.

10 On February 25, 2014, the Trustee filed Chapter 7 Trustee
11 Geoffrey Richards' Motion to Compromise Controversy ("Motion to
12 Compromise"). He argued that, under the applicable Ninth Circuit
13 test, the compromise was reasonable, fair, and equitable,
14 particularly because the state-court lawsuit lacked merit and its
15 success was doubtful. Only Mr. Zarate opposed the motion. The
16 bankruptcy court heard arguments on the Motion to Compromise on
17 March 25, 2014, and took the motion under submission.

18 On March 31, 2014, before ruling on the Motion to
19 Compromise, the bankruptcy court assigned the case to the
20 Bankruptcy Dispute Resolution Program. The parties participated
21 in the court-ordered mediation, but were unable to settle the
22 dispute.

23 On June 18, 2014, the bankruptcy court issued an order for
24 an initial Judicial Mediation Conference, in order to determine
25 whether it should order judicial participation in further
26 mediation. At the conference, presided over by Chief Judge
27 Ronald Sargis, the court questioned the parties regarding the
28

1 strength of the lawsuit and the potential for settlement.³ When
2 the court questioned Anh Nguyen, Mr. Zarate's state-court
3 counsel, about information he had provided to the Trustee
4 regarding the state-court lawsuit, Mr. Nguyen stated:

5 I gave him as much information as I could. It's THE
6 [sic] beginning stages of the case. I honestly told
7 him we had very little right now. It's going to be an
8 uphill battle for us. We didn't know how much this
9 case is worth and whether or not it would be a good
10 option to pursue it considering the resources that we
11 have to put into the case.

12 The court continued the hearing on the Motion to Compromise until
13 July 1, 2014.

14 At the July 1, 2014 hearing, Judge Klein gave Mr. Zarate an
15 opportunity to present the Trustee with further information
16 regarding the lawsuit. On July 3, Mr. Zarate submitted over
17 400 pages of documents in support of his lawsuit. The Trustee
18 claimed that the documents were "jumbled" and Mr. Zarate failed
19 to properly explain the documents. The court reset the hearing
20 for July 8.

21 At the continued hearing, counsel for the Trustee informed
22 the court:

23 [Mr. Zarate] provided a series of e-mails containing a
24 series of documents, most of which we had already seen,
25 some of which we had not seen. The documents he
26 provided that we had not seen did not in any way change
27 our view of the case. He also provided some
28 explanations of essentially his theory of the case that
essentially restated what we had heard before and do
nothing more than confirm to us that these claims are
extremely weak.

³ Judge Klein, who oversaw the case and ultimately approved the compromise, was not present at the judicial mediation conference. It is unclear whether Judge Klein was aware of the arguments and representations made before Chief Judge Sargis.

1 There are significant defenses to the case, and
2 the settlement of \$20,000, which is a significant
3 portion of the loan amount of \$85,000, is a very good
4 settlement, and we are satisfied that it is the proper
5 settlement based on the additional materials Mr. Zarate
6 provided, and we would again ask that the Court grant
7 the Motion[.]

8 With that information, the court took the matter under
9 submission.

10 On July 9, 2014, the bankruptcy court entered its order
11 granting the Motion to Compromise. It noted that Mr. Zarate had
12 been "advised on multiple occasions . . . that he needs to come
13 forth with facts and evidence to support facts that demonstrate
14 that there is more merit to his contentions than heretofore has
15 appeared." Turning to the issue of "whether the compromise is
16 fair and equitable taking into account the probability of success
17 in litigation, difficulties, if any, to be encountered in the
18 matter of collection, complexity of litigation, the expense,
19 inconvenience, and delay necessarily attending it, and the
20 interests of the creditors[,]" the court concluded that, under
21 the totality of the circumstances, the compromise was fair and
22 equitable. The court held that

23 the probability of success appears to be low.
24 Mr. Zarate has repeatedly been asked for evidence to
25 back up his contentions regarding this \$85,750
26 commercial loan. The evidence has not been
27 forthcoming. What has been forthcoming are technical
28 assertions that Mr. Zarate was not represented by a
29 broker and that his spouse was not party to the loan.
30 The bank has presented information that goes beyond
31 those assertions and other assertions made by
32 Mr. Zarate. Thus, there are questions of fact that
33 would need to be resolved.

34 Given that "litigation would be complex and the outcome
35 uncertain[,]" the court held that the \$20,000 offer of settlement
36 "appears likely to exceed the net amount that could be achieved

1 in litigation” The court also stated that “[e]xpense,
2 inconvenience, and delay are manifest. Litigation would be
3 costly, fact-specific, and consume a considerable amount of
4 time.” The court noted that collectibility was not a factor, as
5 the Bank is sufficiently solvent, and none of the creditors
6 opposed the compromise.

7 Mr. Zarate timely filed his notice of appeal on July 22,
8 2014.

9 **JURISDICTION**

10 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
11 §§ 1334 and 157(b) (2) (A) and (O). We have jurisdiction under
12 28 U.S.C. § 158.

13 **ISSUE**

14 Whether the bankruptcy court abused its discretion in
15 approving the compromise of Mr. Zarate’s state-court lawsuit.

16 **STANDARD OF REVIEW**

17 The bankruptcy court’s decision to approve a compromise is
18 reviewed for abuse of discretion. Martin v. Kane (In re A&C
19 Props.), 784 F.2d 1377, 1380 (9th Cir. 1986), cert. denied,
20 479 U.S. 854 (1986); CAM/RPC Elecs. v. Robertson (In re MGS
21 Mktg.), 111 B.R. 264, 266-67 (9th Cir. BAP 1990). We apply a
22 two-part test to determine objectively whether the bankruptcy
23 court abused its discretion, first determining de novo whether
24 the court identified the correct legal rule, and second examining
25 the court’s factual findings under the clearly erroneous
26 standard. Beal Bank USA v. Windmill Durango Office, LLC
27 (In re Windmill Durango Office, LLC), 481 B.R. 51, 64 (9th Cir.
28 BAP 2012) (citing United States v. Hinkson, 585 F.3d 1247,

1 1261-62 (9th Cir. 2009) (en banc)). A bankruptcy court abuses
2 its discretion if it applied the wrong legal standard or its
3 findings were illogical, implausible, or without support in the
4 record. See TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d
5 820, 832 (9th Cir. 2011).

6 DISCUSSION

7 **A. Rule 9019(a) allows the court to approve settlement or**
8 **compromise of claims belonging to the bankruptcy estate if**
9 **it is fair, reasonable, and adequate.**

10 Rule 9019(a) provides that, “[o]n motion by the trustee and
11 after notice and a hearing, the court may approve a compromise or
12 settlement. Notice shall be given to creditors, the United
13 States trustee, the debtor, and indenture trustees as provided in
14 Rule 2002 and to any other entity as the court may direct.”
15 Rule 9019(a).

16 “The bankruptcy court has great latitude in approving
17 compromise agreements.” Woodson v. Fireman Fund Ins. Co.
18 (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988) (citing
19 In re A&C Props., 784 F.2d 1380-81).

20 It is clear that there must be more than a mere
21 good faith negotiation of a settlement by the trustee
22 in order for the bankruptcy court to affirm a
23 compromise agreement. The court must also find that
24 the compromise is fair and equitable. See, e.g.,
25 Citibank, N.A. v. Baer, 651 F.2d 1341, 1345-46 (10th
26 Cir. 1980).

27 In determining the fairness, reasonableness and
28 adequacy of a proposed settlement agreement, the court
must consider:

- (a) The probability of success in the litigation;
- (b) the difficulties, if any, to be encountered in
the matter of collection;
- (c) the complexity of
the litigation involved, and the expense,
inconvenience and delay necessarily attending it;
- (d) the paramount interest of the creditors and a
proper deference to their reasonable views in the

1 premises.

2 In re A&C Props., 784 F.2d at 1381 (citation omitted). The Ninth
3 Circuit has also stated that “[t]he trustee, as the party
4 proposing the compromise, has the burden of persuading the
5 bankruptcy court that the compromise is fair and equitable and
6 should be approved.” Id. (citing In re Hallet, 33 B.R. 564,
7 565-66 (Bankr. D. Me. 1983)).

8 The law favors compromise, “and as long as the bankruptcy
9 court amply considered the various factors that determined the
10 reasonableness of the compromise, the court’s decision must be
11 affirmed.⁴ Thus, on review, we must determine whether the
12 settlement entered into by the trustee was reasonable, given the
13 particular circumstances of the case.” Id. (internal citations
14 omitted).

15 Moreover, “[w]hen assessing a compromise, courts need not
16 rule upon disputed facts and questions of law, but only canvass
17 the issues.’ If the court were required to do more than canvass
18 the issue, ‘there would be no point in compromising; the parties
19 might as well go ahead and try the case.’” Suter v. Goedert,
20 396 B.R. 535, 548 (D. Nev. 2008) (citations omitted).

21 **B. The bankruptcy court did not abuse its discretion in**
22 **determining that the probability of success on Mr. Zarate’s**
23 **state-court lawsuit was low, such that it was fair and**
24 **reasonable to approve the settlement.**

24 It is undisputed that the bankruptcy court employed the

25
26 ⁴ In his reply brief, Mr. Zarate takes issue with the
27 Trustee’s and the Bank’s citation to this sentence in
28 A&C Properties. However, he does not explain how the citation is
misleading or wrong or otherwise argue that the bankruptcy court
erroneously applied this principle.

1 correct legal standard. Mr. Zarate only asserts that the court
2 erred in its findings regarding the first of the four factors
3 discussed in A&C Properties, i.e., that the probability of
4 success in the state-court lawsuit was low.⁵ We hold that the
5 bankruptcy court did not err in finding that the compromise was
6 fair and equitable and granting the Motion to Compromise.

7 First, Mr. Zarate argues that the court improperly forced
8 him "to prove up his case to show probability of success without
9 requiring Sterling Bank to deny the allegations by way of a
10 verified answer" to the second amended cross-complaint. In other
11 words, Mr. Zarate contends that, because the Bank had not
12 answered the second amended cross-complaint, "there was no
13 evidence contradicting the sworn to facts as alleged in the
14 Second Amended Cross Complaint," and such facts must be deemed
15 conclusive. Mr. Zarate concludes that his responsibility "to
16 bring forth additional evidence to show probability of success
17 was premature, unreasonable, unfair and inequitable"

18 Mr. Zarate does not argue that the bankruptcy court failed
19 to consider the evidence he presented or applied an incorrect
20 legal standard.⁶ Rather, he takes issue with the bankruptcy
21 court's order requiring him to present evidence in support of his
22 state-court claims.

23 It is true that "[t]he trustee . . . has the burden of
24

25 ⁵ The Trustee argues that the bankruptcy court properly
26 evaluated all four factors and found that the settlement was
27 reasonable. Because this appeal only concerns the first factor,
28 we do not address the remaining three factors.

⁶ Mr. Zarate agrees that the correct four-part test is
articulated by the Ninth Circuit in A&C Properties.

1 persuading the bankruptcy court that the compromise is fair and
2 equitable and should be approved." In re A&C Props., 784 F.2d at
3 1381 (citing In re Hallet, 33 B.R. at 565-66). However, the
4 bankruptcy court did not improperly shift the burdens of
5 production and persuasion to Mr. Zarate. Rather, the bankruptcy
6 court considered the facts and evidence in both the Trustee's
7 Motion to Compromise and Mr. Zarate's opposition, found
8 Mr. Zarate's evidence insufficient, and was prepared to side with
9 the Trustee. The court stated that "[t]he bank has presented
10 information that goes beyond those assertions and other
11 assertions made by Mr. Zarate." By requiring that Mr. Zarate
12 "come forth with evidence to support facts that demonstrate that
13 there is more merit to his contentions," the bankruptcy court did
14 not force Mr. Zarate to prove his claims in the first instance,
15 but rather gave Mr. Zarate multiple chances to convince the
16 Trustee and the court that his chances of success on the lawsuit
17 were higher than the Trustee thought.⁷ The bankruptcy court did
18 not err when it credited the Trustee's evaluation of Mr. Zarate's
19 claims.

20 Second, the court did not err in determining that the
21 probability of success in the state-court lawsuit was low. The
22 Trustee attested that he had investigated the facts and
23 circumstances surrounding the state-court lawsuit. The Trustee
24 determined that: (1) the promissory note was clear and

25
26 ⁷ The court gave Mr. Zarate ample opportunity to present
27 sufficient evidence to show that his claims had merit. The court
28 even sua sponte ordered the parties to mediation after it took
the Motion to Compromise under submission, because it was
concerned "whether the debtor had been treated fairly."

1 unambiguous and the parol evidence rule would prevent Mr. Zarate
2 from arguing that the terms of the loan differ from what is shown
3 on the promissory note; (2) under California law, a lender does
4 not owe a fiduciary duty to commercial loan customers; (3) the
5 state court had already found that the Bank had standing to
6 pursue the litigation; and (4) the terms of the deed of trust
7 created a rebuttable presumption that the foreclosure sale was
8 proper.

9 The Trustee also concluded that some of Mr. Zarate's claims
10 were facially insufficient. For example, Mr. Zarate's claim
11 regarding his wife as signatory to the promissory note likely
12 lacked merit. The Bank denied that Mr. Zarate's wife was
13 supposed to be a co-signer, and Mr. Zarate "has failed to show
14 how, even if his wife was supposed to be a cosigner on the loan,
15 how that could create a claim against the Bank."

16 The Trustee considered that even Mr. Zarate's own state-
17 court counsel declined to prosecute the lawsuit on behalf of the
18 estate. The Trustee's counsel attested that he had inquired
19 whether Mr. Nguyen would pursue the claim, but Mr. Nguyen refused
20 to do so. Mr. Nguyen admitted in open court (before Chief Judge
21 Sargis) that "I honestly told [the Trustee] we had very little
22 [information] right now. It's going to be an uphill battle for
23 us. We didn't know how much this case is worth and whether or
24 not it would be a good option to pursue it considering the
25 resources that we have to put into the case." The Trustee
26 further determined that the estate did not have the resources to
27 retain other counsel.

28 As such, the Trustee concluded that the probability of

1 success in the lawsuit was uncertain at best. The bankruptcy
2 court agreed.

3 Mr. Zarate has not pointed to any specific error in the
4 Trustee's analysis of the probability of success or the court's
5 consideration thereof. Accordingly, the court did not abuse its
6 discretion when it determined that the compromise was fair and
7 reasonable, because the likelihood of success in the state-court
8 lawsuit was low.

9 Finally, Mr. Zarate appears to argue that he has established
10 that he will likely prevail on his state-court claims, because
11 the facts in his second amended cross-complaint should be treated
12 as conclusive (or, at least, not refuted). He contends that
13 "[t]he facts alleged were evidence in nature, and because
14 Sterling Bank had not answered Appellant's Second Amended Cross-
15 Complaint, there was no evidence contradicting the sworn to facts
16 as alleged in the Second Amended Cross-Complaint." He states
17 that "the Trustee could have entered default against Sterling
18 Bank."

19 This argument is meritless. As the Trustee points out, "the
20 Trustee and the Bank were in communication once the Trustee was
21 appointed and it would have been inappropriate to file a request
22 for entry of default without a warning to the Bank." We cannot
23 fault the Trustee for choosing to engage in settlement
24 discussions with the Bank, rather than continuing to litigate a
25 case that he found questionable at best. Moreover, given the
26 evidence and argument provided by the Trustee in his Motion to
27 Compromise, we cannot say that the bare facts alleged in the
28 second amended cross-complaint are sufficient to establish a

1 likelihood of success.

2 Accordingly, the bankruptcy court did not err in holding
3 that the likelihood of success in the state-court lawsuit was
4 low, such that the compromise was fair and equitable.

5 **C. The court did not err in allowing the Bank to be heard as an**
6 **interested party.**

7 Mr. Zarate argues that the bankruptcy court erred in not
8 requiring the Bank to prove that it held an interest in the
9 promissory note and deed of trust. He claims that the Bank is
10 not properly a party in interest. He states that "Sterling Bank
11 has not shown, whether by way of proof of claim or otherwise that
12 it is a successor in interest to the Note and DOT."

13 Mr. Zarate has not shown that he raised this issue before
14 the bankruptcy court. Moreover, the state court had already
15 considered and rejected this argument in connection with the
16 foreclosure proceedings.

17 Further, the question of the Bank's standing has no bearing
18 on the Trustee's evaluation of the settlement. Mr. Zarate
19 complains that the "Bank has not shown that it is a party in
20 interest in these proceedings." If Mr. Zarate means that the
21 Bank must establish its standing before the Trustee can settle
22 the state-court claims in bankruptcy court, he is incorrect. The
23 Trustee is free (subject to bankruptcy court approval) to settle
24 claims with anyone. Here, Umpqua Bank was willing to settle the
25 state-court claims for \$20,000, and the Trustee utilized his
26 business judgment to determine that the settlement was in the
27 best interest of the estate. The court did not err when it
28 agreed with the Trustee's evaluation that the settlement was

1 fair, reasonable, and in the best interest of the estate.

2 **D. The state court's order to maintain the status quo applied**
3 **solely to Mr. Zarate.**

4 Mr. Zarate also argues that the bankruptcy court abused its
5 discretion when it approved the compromise after it had received
6 notice that the state court had ordered that the status quo was
7 to remain in effect.

8 This argument is disingenuous. The state court's order was
9 directed at Mr. Zarate, not the Bank, the bankruptcy court, or
10 the Trustee. In its written order, the state court unequivocally
11 stated that "Defendant Pedro Zarate is enjoined and restrained
12 from committing or permitting waste of the Property; removing,
13 transferring, encumbering or otherwise disposing of the Property
14 or its fixtures; demanding, collecting, diverting or receiving
15 rents; or interfering in any way with the discharge of the
16 receiver's duties." By its terms, the state court's order did
17 not prevent the Trustee from compromising the lawsuit.

18 **E. Mr. Zarate had ample opportunity to conduct discovery.**

19 Finally, Mr. Zarate argues throughout his briefs that the
20 court prematurely approved the compromise, because "no discovery
21 proceedings had been conducted." He complains that the Bank
22 failed to respond to his discovery requests, implying that he
23 could not present the court with adequate evidence with which to
24 evaluate the A&C Properties factors.

25 However, Mr. Zarate misstates the facts when he alleges that
26 the Bank did not "submit[] itself to discovery proceedings."
27 The Trustee points out that Mr. Zarate propounded numerous form
28 interrogatories, special interrogatories, requests for admissions

1 and document requests, all of which were answered by the Bank.
2 Mr. Zarate does not deny the appellees' arguments, but responds
3 in his reply brief that, although he "attempted" to conduct
4 discovery, "because Sterling Bank did not verify its responses to
5 Mr. Zarate's discovery requests, they are incomplete and act as
6 no responses at all. . . . As a result, **no** discovery had been
7 conducted." (Emphasis in original.)

8 Mr. Zarate's argument is unavailing and misleading. It is
9 undisputed that Mr. Zarate propounded extensive discovery on the
10 Bank totaling 213 individual requests.⁸ He also does not dispute
11 that he received the Bank's responses to all of the requests. He
12 now argues that the Bank did not "verify" its responses, but each
13 of the responses to the discovery requests was signed by the
14 Bank's counsel and included a sheet stating, "VERIFICATION TO
15 FOLLOW." While the record does not reflect whether the Bank
16 subsequently provided a verification, it does not matter here.
17 Mr. Zarate does not explain how the lack of a verification
18 renders the discovery responses so deficient that he could not
19 present his case to the bankruptcy court. Accordingly,
20 Mr. Zarate's dubious complaints regarding the discovery process
21 do not convince us that the bankruptcy court abused its
22 discretion.

23 Mr. Zarate also argues that, because he made two "mistakes"
24 in propounding his discovery requests (a mistake in describing
25 the deed of trust and the property), and because the Bank

27 ⁸ Mr. Zarate propounded 23 requests for answers to
28 interrogatories, 22 requests for admissions, and 168 requests for
production of documents.

1 objected to his discovery requests, "almost no request was
2 forthcoming with the requested information, documents, or
3 admissions." Even assuming the Bank's responses were deficient,
4 this matter should have properly been raised by a discovery
5 motion before the bankruptcy court, rather than before the Panel
6 on appeal.

7 Furthermore, even if Mr. Zarate had not conducted any
8 discovery, the Trustee could still compromise the state-court
9 lawsuit. A trustee can exercise his business judgment to settle
10 claims at any time, based on his evaluation of the case.
11 Rule 9019 does not constrain the timing of a compromise.
12 Mr. Zarate, on the other hand, appears to advocate for a bright-
13 line rule, whereby a trustee cannot settle a state-court lawsuit
14 until the debtor has had a chance to conduct full discovery to
15 prove his case. This view is nonsensical, as it would interfere
16 with the Trustee's ability to administer the estate in the most
17 fair and efficient manner. Rather, the Trustee must be permitted
18 to use his business acumen and judgment in the best interest of
19 the estate. As such, we decline to impose any hard and fast rule
20 regarding the timing of the Trustee's right to compromise claims
21 in the bankruptcy case.

22 **CONCLUSION**

23 For the reasons set forth above, we conclude that the
24 bankruptcy court did not abuse its discretion in approving the
25 compromise of the state-court lawsuit. Accordingly, we AFFIRM.
26
27
28