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NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP Nos.	CC-15-1310-TaKuD
)		CC-15-1326-TaKuD
NTD ARCHITECTS, INC.,)		(related appeals)
)		
Debtor.)	Bk. No.	2:14-bk-16883-BR
_____)		
LITTLE DIVERSIFIED)		
ARCHITECTURAL CONSULTING,)		
INC.,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM*	
)		
NTD ARCHITECTS, INC.; FRED)		
BOLLE; SHARON BOLLE,)		
)		
Appellees.**)		
_____)		

Argued and Submitted on March 17, 2016
at Pasadena, California

Filed - April 26, 2016

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

Honorable Barry Russell, Bankruptcy Judge, Presiding

Appearances: Stephen F. Biegenzahn of Friedman Law Group, P.C.
argued for appellant; appellee Sharon Bolle
argued pro se.

* 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(c)(2).

** NTD Architects, Inc. did not file a brief; pursuant to
the BAP Clerk of Court's conditional order of waiver, it waived
the right to appear in this appeal.

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

2 **INTRODUCTION**

3 Little Diversified Architectural Consulting, Inc.
4 ("Little") appeals from two nearly identical orders approving a
5 stipulation between chapter 11¹ debtor NTD Architects, Inc. and
6 appellees Sharon Bolle and Fred Bolle. The stipulation, as
7 approved by the bankruptcy court's orders, negatively impacts
8 Little's rights, and there is no evidence that Little received
9 notice sufficient to allow it to protect its interests. The
10 record before us also raises other concerns.

11 We, thus, REVERSE and REMAND to the bankruptcy court for
12 further proceedings consistent with this decision.

13 **FACTS**

14 The Debtor was an established architectural firm and had
15 numerous accounts and ongoing projects.

16 **Post-Petition Secured Financing**

17 After filing for bankruptcy, the Debtor obtained \$100,000
18 in debtor-in-possession financing from Sharon Bolle, a longtime
19 employee of the Debtor, and her husband. The Debtor agreed to
20 pledge some of its accounts receivable as collateral for the
21 loan. The bankruptcy court entered an order (the "financing
22 order") approving this secured post-petition financing. There
23 was no appeal from the financing order, and it is now final.

24 **The § 363(f) Sale to Little**

25 Not long after the Bolles' loan, it became apparent that
26

27 ¹ Unless otherwise indicated, all chapter and section
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

1 reorganization was not feasible. The Debtor, thus, commenced
2 liquidation efforts and found a willing buyer for some of its
3 assets, including some client contracts and its accounts
4 receivable, in Little, an east coast architectural firm.

5 The Debtor and Little entered into a purchase agreement
6 that defined the client contracts subject to the sale as
7 "Assigned Contracts" and expressly identified these contracts in
8 an attached schedule. It also provided that a portion of the
9 purchase price would be paid by Little over a two year period
10 after closing and through quarterly payments based on a
11 percentage of the profits received under the Assigned Contracts
12 and the collections on the acquired accounts receivable.²

13 The purchase agreement contained a representation by the
14 Debtor that all assets sold were free and clear of liens, and
15 the truth of this representation was a condition to closing.
16 Consistent with this representation and condition, the purchase
17 agreement stated that the Debtor would indemnify Little to the
18 extent it suffered any loss resulting from or relating to a
19 failure to transfer the purchased assets to Little free and
20 clear of all liens.

21 The Debtor sought approval of the purchase agreement and
22 related sale through a motion authorizing a sale free and clear
23 of liens. In support of the motion, the Debtor asserted that
24 the value of its assets was tied directly to the ability to
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26 ² An amended sale order supplemented the payment
27 arrangement; it provided that Little also would pay additional
28 amounts upon collection to satisfy outstanding post-petition
claims of the Debtor's consultants and sub-consultants.

1 complete existing client projects and then to collect on those
2 receivables. The Debtor, thus, argued that absent the sale to
3 an architectural firm who could continue (and hopefully
4 complete) the projects, the contracts (and related receivables)
5 were significantly less valuable, if not valueless. This was a
6 key business justification for the sale to Little.

7 The bankruptcy court entered an order approving the sale of
8 assets to Little on the terms set forth in the purchase
9 agreement. Neither the sale motion nor the sale order expressly
10 referenced the Bolles' lien. And there was no proof of service
11 evidencing that the Debtor served the Bolles with notice of the
12 sale motion. Little, however, asserts on appeal that the Bolles
13 had informal notice and that Sharon Bolle was present at the
14 hearing on the sale. The sale order did not provide for liens
15 to attach to proceeds. There was no appeal from the sale order,
16 and it is now final.

17 **Stipulation between the Debtor and the Bolles**

18 Six months after the sale to Little, the Debtor moved for
19 approval of a stipulation with the Bolles relating to the unpaid
20 balance of the post-petition loan. There was no proof of service
21 evidencing that the Debtor correctly served Little with the
22 notice or the motion relating to the stipulation. In its proof
23 of service, the Debtor included counsel for Little; as listed,
24 however, counsel's email address is incorrect. The domain name
25 in counsel's email address is "flg-law.com." But the Debtor
26 listed it as "fig-law.com." And the only notice even arguably to
27 Little itself was not directed to an officer or other party with
28 the responsibility for its defense against such claims. Instead,

1 it went to the Debtor's former president, Jay Tittle, who is now
2 employed by Little. The proof of service reflects electronic
3 service on "Tittle, Jay (former employee of NTD[]):
4 Jay.Tittle@littleonline.com." On this record there is no
5 evidence that Tittle was authorized to receive service or notice
6 on Little's behalf. The Bolles, however, assert on appeal that,
7 at a minimum, Little had informal notice.

8 The proposed stipulation informed the bankruptcy court that
9 a dispute had arisen as to the exact collateral securing the
10 Bolles' loan. In resolving this dispute, the Debtor agreed to
11 pay \$107,119.50, "from funds turned over or to be turned over by
12 Little [] which are traceable to the accounts or any receivables
13 generated from [sic] the accounts identified in the moving
14 papers."

15 The Official Committee of Unsecured Creditors filed a notice
16 of position in connection with the motion seeking approval of the
17 proposed stipulation; it asserted that the stipulation was
18 inconsistent with the Bolles' financing agreement and the terms
19 of the sale to Little. The bankruptcy court disregarded these
20 concerns and approved the stipulation through an order that did
21 not mirror the language in the stipulation. As relevant, the
22 order authorized payment to the Bolles of \$107,119.50 from
23 "proceeds traceable to projects set forth in [an attached list]
24 . . . whether in the possession of [Little] or [Debtor's
25 liquidating agent.]"

26 Following the bankruptcy court's entry of an amended
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1 stipulation order (the "stipulation order"),³ Little appealed.

2 **JURISDICTION**

3 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
4 §§ 1334 and 157(b) (2) (A). We have jurisdiction under 28 U.S.C
5 § 158.

6 **ISSUES**

7 Whether Little has standing to appeal from the amended
8 stipulation order; if so, whether the bankruptcy court abused its
9 discretion in approving the stipulation between the Debtor and
10 the Bolles.

11 **STANDARD OF REVIEW**

12 Standing is an issue that we may raise sua sponte and review
13 do novo. Paine v. Dickey (In re Paine), 250 B.R. 99, 104 (9th
14 Cir. BAP 2000). Whether an appellant is a "person aggrieved" for
15 the purposes of standing is a factual question. Id. (citing
16 Duckor Spradling & Metzger v. Baum Trust (In re P.R.T.C., Inc.),
17 177 F.3d 774, 777 (9th Cir. 1999)).

18 We review the bankruptcy court's decision to approve the
19 stipulation for an abuse of discretion. See In re KVN Corp.,
20 Inc., 514 B.R. 1, 5 (9th Cir. BAP 2014). The bankruptcy court
21 abuses its discretion if it applies the wrong legal standard,
22 misapplies the correct legal standard, or if its factual findings
23 are illogical, implausible, or without support in inferences that

24
25 ³ The orders on appeal are virtually identical except that
26 the amended stipulation order clarifies that the Bolles have a
27 "security interest," rather than a "superpriority lien," with
28 respect to the identified assets. It also supersedes the
initial order. Thus, we dispose of both appeals in this appeal
but refer only to a single stipulation order in the text.

1 may be drawn from the facts in the record. See
2 TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d 820, 832
3 (9th Cir. 2011) (citing United States v. Hinkson, 585 F.3d 1247,
4 1262 (9th Cir. 2009) (en banc)).

5 **DISCUSSION**

6 Little argues that it purchased assets from the Debtor free
7 and clear of all liens and interests, including the Bolles' post-
8 petition lien. It argues that the stipulation order negatively
9 impacts its property interests. The Bolles, in response, contend
10 that Little lacks standing to appeal because it did not object to
11 the proposed stipulation in the bankruptcy court. They also
12 express chagrin at Little's reliance on the effect of the
13 § 363(f) sale; the Bolles contend that Little benefitted
14 tremendously from the sale and that, as a large and well-
15 capitalized company, it is ludicrous to argue that Little would
16 not have purchased the Debtor's assets had it known of the
17 Bolles' lien.

18 We first address the Bolles' standing argument.

19 **A. Little has standing to appeal from the stipulation order.**

20 To satisfy the prudential standing requirement in bankruptcy
21 cases, an "appellant must be a 'person aggrieved' by the
22 bankruptcy court's order." In re P.R.T.C., Inc., 177 F.3d at 777
23 (citation omitted). "An appellant is aggrieved if 'directly and
24 adversely affected pecuniarily by an order of the bankruptcy
25 court'; in other words, the order must diminish the appellant's
26 property, increase its burdens, or detrimentally affect its
27 rights." Id. (citation omitted).

28 It is beyond dispute that the bankruptcy court approved a

1 motion seeking to sell the Debtor's accounts receivables and
2 certain contracts to Little free and clear of any liens or
3 interests; this broad language included the Bolles' post-petition
4 liens pursuant to the financing order. The order approved a sale
5 pursuant to the purchase agreement, which required a sale free
6 and clear. Notwithstanding the Bolles' contention that they did
7 not receive formal notice of the sale,⁴ that order is now final
8 and non-appealable. To the extent the stipulation order
9 increased Little's burdens or detrimentally affected its rights
10 to the purchased assets as established by the order approving the
11 purchase agreement, standing to appeal exists. Here, the
12 stipulation order appears to negatively impact Little's rights,
13 and the Bolles certainly argue that this is the case.

14 **B. Little did not waive its ability to appeal.**

15 The Bolles refer to their argument as one involving
16 standing, but their primary argument is actually based on alleged
17 waiver; they focus on Little's failure to oppose approval of the
18 stipulation before the bankruptcy court. There are two reasons
19 why this argument fails.

20 First, there is no evidence in the record evidencing proper
21 service on Little. Contrary to the Bolles' assertion, there is
22 no evidence that Little's counsel was served with notice of the
23 proposed stipulation via email; the email address in the proof of
24 service was wrong. And as to service involving Tittle, this

26 ⁴ We acknowledge that the sale order created an issue
27 because the Bolles were not provided with formal notice of the
28 sale and the sale had the effect of depriving the Bolles of
their lien rights created by the financing order.

1 appears to be an attempt at notice only to Tittle, the Debtor's
2 former employee, who happens now to work at Little. There is
3 nothing in the record establishing that this email constituted
4 notice to Little.

5 But even if service was adequate, the failure to object is
6 not fatal to Little's efforts here. The language of the
7 stipulation itself differs from the relief provided by the
8 stipulation order. The stipulation itself did not have a clear
9 detrimental impact on Little's rights. Similarly, the limited
10 documents filed in support of the motion seeking approval of the
11 stipulation do not provide notice that Little's property rights
12 were involved. The stipulation order, however, contains broader
13 language that has a negative impact. We cannot find that Little
14 waived an objection when the objectionable language emerged only
15 in the stipulation order.

16 **C. To the extent the stipulation order reflects the intent of**
17 **the parties, the bankruptcy court abused its discretion in**
18 **approving the stipulation; to the extent the stipulation**
19 **order materially differed from the stipulation, the**
20 **bankruptcy court also abused its discretion.**

21 We do not understand how the bankruptcy court approved an
22 order providing the Bolles with a security interest in assets and
23 then approved the sale of some of those assets to Little, free
24 and clear of the Bolles' lien but without proof of any notice to
25 them. But, that is the state of affairs as a result of the final
26 sale order.

27 The Debtor retained the right to payment from Little and
28 that payment is calculated with reference to collections on the

1 assets sold. Thus, Little has a contractual obligation to make
2 payments to the Debtor. The Bolles, however, have no continuing
3 rights in the assets after sale. The Debtor, of course, could
4 assign its right to these payments, and the stipulation appears
5 to evidence such a non-controversial contract. But, as Sharon
6 Bolle made clear at oral argument, that was not the Bolles'
7 understanding of the stipulation. The Bolles intended to obtain
8 a limitation on Little's right to continuing payment under the
9 Assigned Contracts and acquired accounts receivable when they
10 entered into the stipulation. The stipulation order contains
11 language consistent with the Bolles stated understanding. On
12 this record, there is considerable confusion. We cannot simply
13 affirm and require modification of the stipulation order.

14 The bankruptcy court appears to have understood that the
15 stipulation detrimentally impacted Little;⁵ yet it approved the
16 stipulation notwithstanding a lack of notice to Little. This
17 error was not harmless as it deprived Little of due process in
18 connection with an order that negatively impacted its rights;
19 this constitutes reversible error.

20 Further, the terms of the stipulation order are inconsistent
21 with the terms of the stipulation. In addition to approving the
22 stipulation, which provided for payment from funds paid or
23 payable by Little, the stipulation order provided for payment
24 from proceeds traceable to assets, including those sold to Little
25 free and clear of the Bolles' lien, and including asset proceeds

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27 ⁵ Indeed, the bankruptcy court commenced the stipulation
28 hearing by observing that the only person subject to potential
injury would be Little. Hr'g Tr. (Aug. 12, 2015) at 1:14-19.

1 in Little's possession. To the extent the stipulation order
2 granted relief beyond that provided for in the stipulation
3 itself, reversible error also exists.⁶

4 **CONCLUSION**

5 Based on the foregoing, we REVERSE and REMAND to the
6 bankruptcy court for further proceedings consistent with this
7 decision.

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21 ⁶ Finally, we note one additional concern, although it is
22 not a basis for our reversal. The stipulation included
23 reference to charges for "monitoring charges per agreement" and
24 attorney's fees. The inclusion of these charges raises
25 questions. The Debtor's motion to approve the secured post-
26 petition financing expressly provided that the monitoring fees
27 were "an independent obligation from repayment of the
28 loan. . . ." And, the charge for "attorney's fees" is an oddity
because, so far as we can tell on this record, the Bolles have
never been represented by counsel in the bankruptcy case. The
bankruptcy court may wish to address the actual amount owed to
the Bolles under the terms of the financing agreement.