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

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

6 In re: ) BAP No. CC-15-1151-FKiKu  
7 MOISEY FRIDMAN and )  
8 ROSA FRIDMAN, ) Bk. No. 8:12-bk-11721-ES  
9 Debtors. )  
10 \_\_\_\_\_ )  
11 MOISEY FRIDMAN; ROSA FRIDMAN, )  
12 Appellants, )  
13 v. ) **MEMORANDUM\***  
14 KARL T. ANDERSON, Chapter 7 )  
15 Trustee; KARL AVETOOM, )  
16 Appellees. )

Argued and Submitted on June 23, 2016  
at Pasadena, California

Filed - July 15, 2016

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

Honorable Erithe A. Smith, Bankruptcy Judge, Presiding

Appearances: Appellant Rosa Fridman argued pro se; Juliet Y. Oh  
argued for Appellee Karl T. Anderson, Chapter 7  
Trustee; Appellee Karl Avetoom argued pro se.

Before: FARIS, KIRSCHER, and KURTZ, 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 After the superior court denied the Fridmans' motion for new  
2 trial and a motion for judgment notwithstanding the verdict, the  
3 Fridmans appealed.

4 **B. Bankruptcy proceedings**

5 While the appeal was pending, the Fridmans filed for  
6 chapter 13 bankruptcy. They converted their case to chapter 7,  
7 and appellee Karl Anderson ("Trustee") was appointed as chapter 7  
8 trustee (apparently after an election).

9 According to the Fridmans' schedules, they have general  
10 unsecured debts totaling approximately \$60,245.76. Their only  
11 other debts are the \$650,000 judgment and a \$119,000 equity line  
12 of credit.

13 The Trustee made several attempts to extricate the estate  
14 from the litigation and appeal. First, he filed a motion for  
15 authority to sell the estate's rights to pursue the Fridmans'  
16 appeal to Mr. Avetoom for \$25,000, subject to overbid. The  
17 Fridmans complained that they could not afford to bid and would  
18 oppose any such sale. The United States Trustee also expressed  
19 concern that the proposed sale might be tantamount to an  
20 impermissible waiver of discharge in violation of § 524(c).<sup>3</sup> As  
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22 <sup>3</sup> Debts for "willful and malicious injury" are not  
23 dischargeable in bankruptcy under § 523(a)(6). A prebankruptcy  
24 judgment that includes punitive damages can sometimes establish,  
25 under issue preclusion principles, that the debtor's conduct was  
26 "willful and malicious." See, e.g., Khaligh v. Hadaegh  
27 (In re Khaligh), 338 B.R. 817, 831-32 (9th Cir. BAP 2006), aff'd,  
28 506 F.3d 956 (9th Cir. 2007) (holding that "it was permissible  
for the court to apply issue preclusion to establish willful and  
malicious injury for purposes of § 523(a)(6)"). The sale (and  
extinguishment) of the Fridmans' appellate rights thus could have  
saddled them with a nondischargeable debt.

1 a result, the Trustee withdrew the motion.

2 The Trustee then attempted to transfer the appeal rights to  
3 the Fridmans. The Trustee filed a motion for approval of a  
4 compromise with the Fridmans ("Compromise Motion"). He sought  
5 authority to abandon the appeal rights and to allow the Fridmans  
6 to prosecute the appeal at their own expense. They were required  
7 to recover and return to the estate certain funds that they had  
8 paid to their prebankruptcy lawyers.

9 While the Compromise Motion was pending, the Trustee  
10 commenced an adversary proceeding against the Fridmans, seeking a  
11 denial of discharge under § 727.

12 At the hearing on the Compromise Motion, the court found  
13 that the Trustee had the power to sell the right to appeal  
14 because it was property of the Fridmans' estate, but ordered that  
15 the Compromise Motion be taken off calendar pending the  
16 resolution of the adversary proceeding. The court also ordered  
17 the state court appeal stayed.

18 Just prior to trial in the § 727 adversary proceeding, the  
19 Fridmans stipulated to the entry of judgment denying their  
20 discharge.

21 **C. Sale of the appeal rights**

22 The Trustee did not renew the Compromise Motion after the  
23 § 727 adversary proceeding was concluded. Instead, the Trustee  
24 filed a motion seeking authority to sell the appeal rights to  
25 Mr. Avetoom and the HOA, subject to overbid ("Sale Motion").

26 The Sale Motion drew opposition from two parties. First,  
27 the Fridmans argued that the sale of the right to appeal was  
28 improper and that the overbid procedures were unfair. They

1 argued that Mr. Avetoom was engaging in "threatening, unethical,  
2 and malicious behavior" to prevent an appeal of the state court  
3 judgment. They also claimed that the Trustee had already agreed  
4 to abandon the appeal rights to them. Second, the law firm of  
5 Darling & Risbrough, LLP, which had formerly represented the  
6 Fridmans, objected to the inclusion of the HOA as one of the  
7 proposed buyers, contending that the HOA lacked power to make  
8 such a purchase.

9 In his reply brief, the Trustee represented that the HOA  
10 agreed not to participate as a buyer. Mr. Avetoom agreed to  
11 purchase the right to appeal with his own monies.

12 The court issued a tentative ruling indicating that it was  
13 inclined to grant the Sale Motion. At the hearing,<sup>4</sup> the Trustee  
14 conducted an auction of the right to appeal pursuant to the  
15 overbid procedures. The Fridmans were present, but only  
16 Mr. Avetoom and the Darling & Risbrough law firm participated in  
17 the auction. Mr. Avetoom eventually won the right to appeal with  
18 a purchase price of \$37,000. Following the auction, the court  
19 granted the Sale Motion.

#### 20 **D. BAP appeal and post-appeal events**

21 The court entered a written order approving the sale (the  
22 "Sale Order"), which was a short, counsel-prepared order that  
23 incorporated the court's tentative ruling. The Fridmans had  
24 already filed a premature notice of appeal. They did not obtain  
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26 <sup>4</sup> The Fridmans did not include in their excerpts of record a  
27 transcript of the hearing on the Sale Motion. They represented  
28 that they did not have the financial resources to order the  
transcript and asked for the Panel's understanding.



1 participate in the bankruptcy case.

2 (5) Whether the sale is subject to scrutiny by the  
3 Department of Homeland Security ("DHS").

#### 4 **STANDARDS OF REVIEW**

5 We review de novo our own jurisdiction, including questions  
6 of mootness. Silver Sage Partners, Ltd. v. City of Desert Hot  
7 Springs (In re City of Desert Hot Springs), 339 F.3d 782, 787  
8 (9th Cir. 2003). "De novo review requires that we consider a  
9 matter anew, as if no decision had been made previously."

10 Francis v. Wallace (In re Francis), 505 B.R. 914, 917 (9th Cir.  
11 BAP 2014) (citations omitted).

12 The question whether a purchaser is a good faith purchaser  
13 under § 363(m) is a question of fact that we review for clear  
14 error. Thomas v. Namba (In re Thomas), 287 B.R. 782, 785 (9th  
15 Cir. BAP 2002).

16 We review for abuse of discretion an order approving a § 363  
17 sale. Moldo v. Clark (In re Clark), 266 B.R. 163, 168 (9th Cir.  
18 BAP 2001). Similarly, the bankruptcy court's decision to approve  
19 a compromise under Rule 9019 is reviewed for abuse of discretion.  
20 Martin v. Kane (In re A&C Props.), 784 F.2d 1377, 1380 (9th Cir.  
21 1986).

22 To determine whether the bankruptcy court has abused its  
23 discretion, we conduct a two-step inquiry: (1) we review de novo  
24 whether the bankruptcy court "identified the correct legal rule  
25 to apply to the relief requested" and (2) if it did, whether the  
26 bankruptcy court's application of the legal standard was  
27 illogical, implausible, or "without support in inferences that  
28 may be drawn from the facts in the record." United States v.

1 Hinkson, 585 F.3d 1247, 1262-63 & n.21 (9th Cir. 2009) (en banc).  
2 "If the bankruptcy court did not identify the correct legal rule,  
3 or its application of the correct legal standard to the facts was  
4 illogical, implausible, or without support in inferences that may  
5 be drawn from the facts in the record, then the bankruptcy court  
6 has abused its discretion." USAA Fed. Sav. Bank v. Thacker  
7 (In re Taylor), 599 F.3d 880, 887-88 (9th Cir. 2010) (citing  
8 Hinkson, 585 F.3d at 1261-62).

## 9 DISCUSSION

### 10 A. This appeal is not moot.

11 Appellees urge us to hold that this appeal is moot, because  
12 the Fridmans did not obtain a stay of the Sale Order and the  
13 state court appeal has been dismissed. We discuss two alternate  
14 mootness grounds: statutory mootness and equitable mootness.

#### 15 1. Statutory mootness

16 The "safe harbor" provision of § 363(m) states:

17 The reversal or modification on appeal . . . of a sale  
18 or lease of property does not affect the validity of a  
19 sale or lease under such authorization to an entity  
20 that purchased or leased such property **in good faith**,  
whether or not such entity knew of the pendency of the  
appeal, **unless such authorization and such sale or**  
**lease were stayed pending appeal.**

21 § 363(m) (emphases added).

22 With respect to an appeal of a sale of assets in bankruptcy,  
23 the Ninth Circuit has stated: "[W]hen, in the absence of a stay  
24 of the order of sale, a sale to a 'good faith purchaser' has been  
25 concluded, an appellate court cannot undo the sale. Because the  
26 court cannot provide meaningful relief to the appellant under  
27 those circumstances, any appeal of the order of sale thereby  
28 becomes moot." Dunlavey v. Ariz. Title Ins. & Tr. Co.

1 (In re Charlton), 708 F.2d 1449, 1454 (9th Cir. 1983) (quoting  
2 Taylor v. Lake (In re CADA Invs., Inc.), 664 F.2d 1158, 1160 (9th  
3 Cir. 1981)).

4       However, “[e]ven though an appeal from an order approving a  
5 sale is moot if the sale has not been stayed and is consummated,  
6 there are several exceptions. One exception to the mootness rule  
7 is for appeals questioning whether the purchaser purchased the  
8 property in good faith.” Fitzgerald v. Ninn Worx Sr, Inc.  
9 (In re Fitzgerald), 428 B.R. 872, 880 (9th Cir. BAP 2010) (citing  
10 Sw. Prods., Inc. v. Durkin (In re Sw. Prods., Inc.), 144 B.R.  
11 100, 102-03 (9th Cir. BAP 1992)); see Onouli-Kona Land Co. v.  
12 Richards (In re Onouli-Kona Land Co.), 846 F.2d 1170, 1173 (9th  
13 Cir. 1988) (“Bankruptcy’s mootness rule operates only when a  
14 purchaser bought an asset in good faith.”).

15       In the present case, it is undisputed that the Fridmans did  
16 not seek a stay of the Sale Order and that the state court appeal  
17 has been dismissed. The question, then, is whether Mr. Avetoom  
18 is a “good faith” purchaser entitled to the protections of  
19 § 363(m).

20       A good faith purchaser is “one who buys ‘in good faith’ and  
21 ‘for value.’” Ewell v. Diebert (In re Ewell), 958 F.2d 276, 281  
22 (9th Cir. 1992). The Ninth Circuit has “defined lack of good  
23 faith as ‘fraud, collusion . . . or an attempt to take grossly  
24 unfair advantage of other bidders.’” In re Onouli-Kona Land Co.,  
25 846 F.2d at 1173 (quoting Cnty. Thrift & Loan v. Suchy  
26 (In re Suchy), 786 F.2d 900, 902 (9th Cir. 1985)).

27       “‘Good faith’ is a factual determination to be reviewed for  
28 clear error . . . .” In re Thomas, 287 B.R. at 785. The

1 bankruptcy court's factual finding must be supported by evidence  
2 in the record. In re Fitzgerald, 428 B.R. at 880-81. An  
3 appellate court will look past a "boilerplate 'good faith'  
4 finding" and ascertain whether the finding has "an evidentiary  
5 foundation." Id. at 881. "[P]arties who desire the protection  
6 of section 363(m) [must] establish an evidentiary record for the  
7 bankruptcy court to make the necessary findings of fact and  
8 conclusions of law." T.C. Inv'rs v. Joseph (In re M Capital  
9 Corp.), 290 B.R. 743, 745 (9th Cir. BAP 2003); see  
10 In re Fitzgerald, 428 B.R. at 881 ("The boilerplate 'good faith'  
11 finding in the Sale Order does not suffice under section 363(m),  
12 and the bankruptcy court should not have signed such an order  
13 without an evidentiary foundation.").

14 The BAP will not make a finding of good faith (or the lack  
15 thereof) in the first instance on appeal, because "determination  
16 of section 363(m) good faith is the province of the trial court."  
17 In re M Capital Corp., 290 B.R. at 747; see id. at 752 ("Without  
18 such affirmative findings, the ramifications should be obvious:  
19 no safe harbor[.]").

20 Here, the bankruptcy court made a finding of good faith in  
21 the Sale Order: "The Purchaser is a 'good faith' purchaser of the  
22 Appeal Rights within the meaning of 11 U.S.C. § 363(m)." The  
23 court's tentative ruling covered the elements of "good faith"  
24 under the Ninth Circuit standard: "There is no evidence of any  
25 fraud or collusion between the purchaser, Avetoom, and the court  
26 finds that the transaction was negotiated and proposed in good  
27 faith." The court may have said more on this topic on the record  
28 at the hearing on the Sale Motion, but the Trustee and

1 Mr. Avetoom have not provided us with a copy of the hearing  
2 transcript.

3 The bankruptcy court's finding has evidentiary support in  
4 the record. Cf. In re Fitzgerald, 428 B.R. at 880 ("we see  
5 absolutely no evidence in the record to support a 'good faith'  
6 finding under section 363(m)"). The Trustee offered evidence  
7 that: the Trustee and Mr. Avetoom negotiated the proposed sale at  
8 arm's length and in good faith; there had been no fraud and  
9 collusion; the Trustee sought competitive bids for the appeal  
10 rights; and the Trustee had taken steps to obtain the highest  
11 price possible. As such, we discern no clear error in the  
12 bankruptcy court's finding of good faith.

13 We make this determination with some unease. The amount of  
14 energy which the parties have devoted to this litigation, and the  
15 extraordinary degree of venom they have poured on each other,  
16 make it clear that this case is more of a personal vendetta than  
17 a rational attempt by the parties to protect their legitimate  
18 interests. To say that either of these parties is acting in  
19 "good faith" stretches the common meaning of that phrase to the  
20 breaking point. But the case law ascribes a special meaning to  
21 the phrase in the context of § 363(m). Given that definition, we  
22 cannot say that the bankruptcy court erred.

23 But all of this assumes that § 363(m) applies. We have  
24 repeatedly held that a transaction presented as a settlement of  
25 litigation often must be analyzed both as a settlement under  
26 Rule 9019 and as a sale under § 363(m). See Goodwin v. Mickey  
27 Thompson Entm't Grp., Inc. (In re Mickey Thompson Entm't Grp.,  
28 Inc.), 292 B.R. 415, 421 (9th Cir. BAP 2003). The converse is

1 also true: a transaction presented as a sale that is in substance  
2 a settlement under Rule 9019 must be analyzed under both  
3 provisions. See In re Lahijani, 325 B.R. at 290;  
4 In re Fitzgerald, 428 B.R. at 884.

5 The hybrid nature of the motion is important here because,  
6 while § 363(m) applies to sales, no comparable provision applies  
7 to settlements under Rule 9019. Further, applying § 363(m) to  
8 settlements would not further that subsection's purpose.  
9 Section 363(m) is intended to increase the confidence of  
10 purchasers in bankruptcy sales and then encourage them to buy  
11 estate assets for higher prices. See In re Ernst Home Ctr.,  
12 Inc., 209 B.R. 974, 986 (Bankr. W.D. Wash. 1997) ("The intent of  
13 Section 363(m) is to encourage third parties to do business with  
14 a debtor in possession, by providing certainty and finality to a  
15 transaction where consideration is paid in good faith to the  
16 estate by that third party."). This purpose is not directly  
17 related to settlements.

18 We therefore conclude that this appeal is not statutorily  
19 moot under § 363(m).

## 20 **2. Equitable mootness**

21 Equitable mootness requires "that practical and equitable  
22 factors should be taken into consideration in determining if an  
23 appeal is moot." Twenty-Nine Palms Enters. Corp. v. Bardos  
24 (In re Bardos), BAP No. CC-13-1316, 2014 WL 3703923, at \*6 (9th  
25 Cir. BAP July 25, 2014). Equitable mootness arises when  
26 "appellants have failed and neglected diligently to pursue their  
27 available remedies to obtain a stay of the objectionable orders  
28 of the Bankruptcy Court, thus 'permitting such a comprehensive

1 change of circumstances to occur as to render it inequitable  
2 . . . to consider the merits of the appeal.” Id. (quoting Focus  
3 Media, Inc. v. NBC (In re Focus Media, Inc.), 378 F.3d 916, 922  
4 (9th Cir. 2004)). The party asserting equitable mootness must  
5 “demonstrate that the case involves transactions ‘so complex or  
6 difficult to unwind’ that equitable mootness applies.” Id. at \*7  
7 (quoting Lowenschuss v. Selnick (In re Lowenschuss), 170 F.3d  
8 923, 933 (9th Cir. 1999)). “Equitable mootness requires the  
9 court to look beyond impossibility of a remedy to ‘the  
10 consequences of the remedy and the number of third parties who  
11 have changed their position in reliance on the order that is  
12 being appealed.’” Clear Channel Outdoor, Inc. v. Knupfer  
13 (In re PW, LLC), 391 B.R. 25, 33 (9th Cir. BAP 2008) (quoting  
14 Darby v. Zimmerman (In re Popp), 323 B.R. 260, 271 (9th Cir. BAP  
15 2005)).

16 The Trustee argues that this appeal is equitably moot,  
17 because the state appellate court dismissed the appeal, and that  
18 order is final and non-appealable. Mr. Avetoom adds that other  
19 litigation has been dismissed because the appeal has been  
20 dismissed.

21 While perhaps unlikely, it may not be impossible for the  
22 Fridmans to obtain effective relief if we were to reverse. We  
23 cannot rule out the possibility that the California appellate  
24 courts might exercise their inherent powers<sup>6</sup> to set aside the

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25  
26 <sup>6</sup> The California state courts have broad inherent powers to  
27 effect justice. See, e.g., Clark v. First Union Sec., Inc.,  
28 153 Cal. App. 4th 1595, 1608 (2007) (“All courts have inherent  
powers that enable them to carry out their duties and ensure the  
(continued...)”)

1 dismissal of the appeal if we were to rule that the bankruptcy  
2 court should not have put Mr. Avetoom in control of the appeal  
3 rights. Similarly, Mr. Avetoom does not give us enough  
4 information about the other dismissed litigation to persuade us  
5 that the transaction cannot be unwound.

6 Moreover, the HOA is the only third party affected by this  
7 case. But because the HOA was a party to the underlying  
8 litigation, the HOA is not the type of third party that the  
9 equitable mootness doctrine was meant to shield. See Bardos v.  
10 Gladstone (In re Bardos), BAP No. CC-15-1217-FDKu, 2016 WL  
11 1161225, at \*6 (9th Cir. BAP Mar. 23, 2016) (“While it is true  
12 that Twenty-Nine Palms is not a party to this appeal, it is the  
13 largest creditor and a participant in both the Individual Case  
14 and the Corporate Case. Accordingly, we cannot say that Twenty-  
15 Nine Palms is the type of third party that equitable mootness is  
16 meant to protect.”). Also, there is no indication that the HOA  
17 or other third parties have changed their positions in reliance  
18 on the Sale Order.

19 Thus, the appeal is not equitably moot.

20 **B. The Fridmans’ right to appeal the adverse state court**  
21 **judgment is property of their bankruptcy estate that the**  
22 **Trustee can sell or compromise.**

23 The Fridmans argue that the Trustee had no power to sell the  
24 right to appeal. Essentially, they contend that, because the  
25 sale of the right to appeal to Mr. Avetoom forecloses the

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26 <sup>6</sup>(...continued)  
27 orderly administration of justice. The inherent powers of courts  
28 are derived from California Constitution, article VI, section 1,  
and are not dependent on statute.”).

1 possibility of reversing the state court judgment, the sale is  
2 improper and against their "Constitutional right" of appeal. We  
3 disagree.

4       The right to appeal a state court judgment is property that  
5 is part of a debtor's estate. See, e.g., McCarthy v. Goldman  
6 (In re McCarthy), BAP No. CC-07-1083-MoPaD, 2008 WL 8448338, at  
7 \*16 (9th Cir. BAP Feb. 19, 2008) (implicitly agreeing with the  
8 bankruptcy court that the debtor's "Appeal Rights are property of  
9 the estate"); In re Marciano, No. 1:11-BK-10426-VK, 2012 WL  
10 4369743, at \*1 (C.D. Cal. Sept. 25, 2012) (under California law,  
11 the right to appeal an adverse judgment is a property right);  
12 Mozer v. Goldman (In re Mozer), 302 B.R. 892, 896 (C.D. Cal.  
13 2003) ("all of the Debtors' appellate rights, including the  
14 Defensive Appellate Rights, are saleable by the Trustee").

15       The Fridmans fail to provide any legal authority in support  
16 of their position. Rather, as discussed above, a right to appeal  
17 may be sold as part of estate assets, even to the party against  
18 whom the appeal is directed. See In re Mozer, 302 B.R. at 896.  
19 The fact that Mr. Avetoom purchased the appeal rights to  
20 foreclose an appeal of the state court judgment in his favor is  
21 not out of the ordinary or otherwise improper.

22       The Fridmans also argue that the Trustee could not sell the  
23 appeal rights to Mr. Avetoom, because he had already sold those  
24 rights to them. The Fridmans misapprehend the bankruptcy  
25 process. While it is true that the Trustee initially entered  
26 into an agreement with the Fridmans to abandon the appeal rights,  
27 the Trustee had no power to abandon or sell the appeal rights to  
28 anyone absent court approval, and the bankruptcy court never

1 approved the abandonment to the Fridmans.

2 The Fridmans complain that the Trustee kept part of the  
3 funds he received pursuant to the compromise, even though the  
4 court never approved the compromise and the Trustee did not carry  
5 out his end of the deal. The record on this issue is opaque, but  
6 the Trustee apparently handled the funds in accordance with the  
7 bankruptcy court's orders that no one appealed. In any event,  
8 the only issue before us is whether the court erred in approving  
9 the transaction with Mr. Avetoom.

10 Therefore, the right to appeal was property of the  
11 bankruptcy estate that the Trustee could choose to sell or  
12 auction.

13 **C. The bankruptcy court did not abuse its discretion in**  
14 **granting the Sale Motion.**

15 The Fridmans contend that the sale of the appeal rights to  
16 Mr. Avetoom was improper for a number of reasons. Although the  
17 Fridmans do not state a legal basis for their position, we  
18 consider whether the Sale Order was proper under § 363 and  
19 Rule 9019.

20 **1. The sale was proper under § 363(b)(1).**

21 Section 363(b)(1) provides that "[t]he trustee, after notice  
22 and a hearing, may use, sell, or lease, other than in the  
23 ordinary course of business, property of the estate . . . ."  
24 § 363(b)(1). "The trustee (and, ultimately, the bankruptcy  
25 court) must assure that the estate receives optimal value as to  
26 the asset to be sold." DeBilio v. Golden (In re DeBilio),  
27 BAP No. CC-13-1441-TaPaKi, 2014 WL 4476585, at \*6 (9th Cir. BAP  
28 Sept. 11, 2014) (citing § 363(b)(1); Simantob v. Claims

1 Prosecutor, LLC (In re Lahijani), 325 B.R. 282, 288-89 (9th Cir.  
2 BAP 2005)). "Ordinarily, the position of the trustee is afforded  
3 deference, particularly where business judgment is entailed in  
4 the analysis or where there is no objection. Nevertheless,  
5 particularly in the face of opposition by creditors, the  
6 requirement of court approval means that the responsibility  
7 ultimately is the court's." In re Lahijani, 325 B.R. at 289. We  
8 also stated that, "[i]n the Ninth Circuit, a § 363(b)(1) sale  
9 does not require a good faith finding." Id. (citing  
10 In re Thomas, 287 B.R. at 785 ("While no bankruptcy judge is  
11 likely to approve a sale that does not appear to be in 'good  
12 faith,' an actual finding of 'good faith' is not an essential  
13 element for approval of a sale under § 363(b).")).

14 In its tentative ruling (incorporated in the Sale Order),  
15 the court held:

16 The trustee has exercised sound business judgment  
17 in pursuing the sale of the Appeal Rights. The  
18 proposed sale will generate funds in the amount of  
19 \$25,000 for the benefit of the bankruptcy estate. The  
20 alternative, prosecuting the appeal, would result in  
the incurring of additional attorneys fees and, best  
case scenario, a reduction of Avatoom's [sic] claim  
against the estate. Given the nature of the asset, the  
proposed sale is fair and reasonable.

21 There is no evidence of any fraud or collusion  
22 between the purchaser, Avatoom [sic], and the court  
23 finds that the transaction was negotiated and proposed  
24 in good faith. Further, the trustee and the trustee  
25 [sic] has sought competitive bids for the Appeal Rights  
26 from those most interested -- Debtors and the Darline  
27 [sic] & Risbrough law firm but neither has expressed an  
28 intent to submit an overbid. In this regard, the court  
also finds that the proposed overbid procedure  
(starting at \$26,000 with subsequent overbids in  
increments of \$1000) to be reasonable. As the trustee  
has a duty to maximize the liquidation of assets of the  
estate, it follows that no limit should be placed on  
the purchase price.

1           The court properly determined that: (1) the sale had a sound  
2 business purpose of bringing money into the estate; (2) the sale  
3 was in the best interest of the estate, because the sale price  
4 was fair and reasonable, and it would bring in \$25,000 or more  
5 and avoid the cost and uncertainty of further litigation; (3) the  
6 Trustee marketed the asset and sought competitive bids from the  
7 Fridmans and Darling & Risbrough; and (4) the sale was proposed  
8 and made in good faith, because there was no fraud or collusion.  
9 We find no error in the court's ruling.

10           The Fridmans allege that Mr. Avetoom was allowed to select  
11 the chapter 7 trustee overseeing his case; there was "collusion  
12 between Mr. Avetoom and Trustee Anderson, but nobody listened,  
13 and if they did, no one cared enough to stop it"; the Trustee was  
14 self-interested and was only concerned about his commission; and  
15 it was improper for Mr. Avetoom to overbid. The Fridmans provide  
16 no support for these allegations,<sup>7</sup> and we find no basis in the  
17 record for any of them.

18           The Fridmans also argue that good faith requires an  
19 "identifiable purchaser" who gives "value." They contend that  
20 Mr. Avetoom cannot be an "identifiable purchaser" because he  
21 "said he got the money from several different generous sources,  
22 presumably 'people,' but never disclosed their identities[,] "  
23 which "reeks of a sham transaction, or raises questions of the  
24 involvement of money that has potentially been laundered." The

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25  
26           <sup>7</sup> The record suggests that the Trustee was elected under  
27 § 702. This may be the basis for the Fridmans' argument that  
28 Mr. Avetoom chose the Trustee (since Mr. Avetoom is the largest  
creditor). But there is nothing improper about the election of a  
trustee.

1 Fridmans again have no legal authority for the proposition that a  
2 purchaser in a bankruptcy sale must always identify the  
3 purchaser's funding sources. Nor have they offered any evidence  
4 that Mr. Avetoom got any of the money from a tainted source.

5 They also argue that Mr. Avetoom could not have given  
6 "value." They say that value "has yet to be determined, because  
7 the value of the appeal is only realized once it is heard." They  
8 assert that the Trustee did not consider the real value of the  
9 right to appeal, which ranged from \$1,000,000 (the original  
10 judgment) to \$720,000 (the purported value of their home) to  
11 \$375,000 (the "discounted sale price") to "priceless" (the value  
12 of their "vindication"). The Fridmans fail to recognize another  
13 possibility: the appellate court might reject the appeal, in  
14 which case the appeal rights were worthless. In any event, the  
15 Fridmans' argument leads to the absurd conclusion that a trustee  
16 cannot settle an appeal, or sell the estate's right to appeal,  
17 until after the appeal has concluded. The bankruptcy court did  
18 not err when it found that the Trustee properly exercised his  
19 business judgment in selling those rights to the highest bidder  
20 for \$37,000.

21 We thus hold that the court did not abuse its discretion in  
22 holding that the sale was proper under § 363(b)(1).

23 **2. Viewing the transaction as a compromise under**  
24 **Rule 9019, the bankruptcy court did not err.**

25 Our inquiry does not end with § 363(b)(1). Fitzgerald and  
26 Lahijani both considered the sale of litigation claims to a  
27 person against whom those claims might be asserted. Both  
28 decisions rest on the common-sense proposition that a "sale" of

1 claims to a defendant has the same effect as a settlement of  
2 those claims, and vice versa, so such transactions should be  
3 evaluated both as sales and as settlements. See In re Lahijani,  
4 325 B.R. at 290; In re Fitzgerald, 428 B.R. at 884 ("The  
5 bankruptcy court erred when it issued the Sale Order without  
6 performing the analysis required by the case law regarding  
7 compromises under Rule 9019.").

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

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

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

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

- 28
- (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 premises.

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

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

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

20 In the present case, the bankruptcy court acknowledged that  
21 the sale may be subject to Rule 9019. Neither the tentative  
22 ruling nor the counsel-prepared Sale Order indicates that the  
23 bankruptcy court engaged in the analysis required by A&C  
24 Properties. But we cannot conclusively say that the court did  
25 not consider Rule 9019 and make appropriate findings at the  
26 hearing. We cannot review the oral ruling because the Fridmans  
27 have not provided us with the hearing transcript.

28 Without the benefit of the hearing transcript, we are unable

1 to discern (1) whether the bankruptcy court identified the proper  
2 legal standard and (2) whether the bankruptcy court's application  
3 of the legal standard was illogical, implausible, or "without  
4 support in inferences that may be drawn from the facts in the  
5 record." Hinkson, 585 F.3d at 1261-62.

6 It is the Fridmans' duty to provide the Panel with a  
7 complete record on appeal. See Welther v. Donell (In re Oakmore  
8 Ranch Mgmt.), 337 B.R. 222, 226 (9th Cir. BAP 2006) (the  
9 appellant "bears the burden of presenting a complete record")  
10 (citing Kritt v. Kritt (In re Kritt), 190 B.R. 382, 387 (9th Cir.  
11 BAP 1995)). "The settled rule on transcripts in particular is  
12 that failure to provide a sufficient transcript may, but need  
13 not, result in dismissal or summary affirmance and that the  
14 appellate court has discretion to disregard the defect and decide  
15 the appeal on the merits." Kyle v. Dye (In re Kyle), 317 B.R.  
16 390, 393 (9th Cir. BAP 2004), aff'd, 170 F. App'x 457 (9th Cir.  
17 2006) (citations omitted). But see Ehrenberg v. Cal. State Univ.  
18 (In re Beachport Entm't), 396 F.3d 1083, 1087 (9th Cir. 2005)  
19 ("Although summary dismissal is within the BAP's discretion, it  
20 'should first consider whether informed review is possible in  
21 light of what record has been provided.'").

22 Even if the court did not articulate an analysis of the  
23 A&C Properties factors, we may affirm on any ground supported by  
24 the record. See California ex. rel. Cal. Corps. Comm'r v. Yun  
25 (In re Yun), 476 B.R. 243, 251 (9th Cir. BAP 2012). There is no  
26 doubt that the record supports a determination that the test is  
27 satisfied. Therefore, we find no error concerning the  
28 application of Rule 9019.

1 **D. The Fridmans' argument that the HOA is not a bona fide**  
2 **creditor is untimely and irrelevant.**

3 Next, the Fridmans argue that the court erred, because the  
4 HOA was not a bona fide creditor under 28 U.S.C. § 1359. We  
5 perceive no error.

6 28 U.S.C. § 1359 (incorrectly cited by the Fridmans as  
7 23 U.S.C. § 1359) states: "A district court shall not have  
8 jurisdiction of a civil action in which any party, by assignment  
9 or otherwise, has been improperly or collusively made or joined  
10 to invoke the jurisdiction of such court." Although the Fridmans  
11 invoke this section, they fail to explain how it is relevant to  
12 this appeal or how the HOA was "improperly or collusively made or  
13 joined" in the bankruptcy court litigation. Their bottom-line  
14 argument appears to be that, because the HOA is colluding with  
15 Mr. Avetoom, it was an error to sell the appeal rights to  
16 Mr. Avetoom.

17 The Fridmans did not raise this argument before the  
18 bankruptcy court and have waived this argument for the purposes  
19 of appeal. See Yamada v. Nobel Biocare Holding AG, No. 14-55263,  
20 --- F.3d ---, 2016 WL 3207650, at \*5 (9th Cir. Apr. 20, 2016)  
21 ("[g]enerally, an appellate court will not hear an issue raised  
22 for the first time on appeal"); Ezra v. Seror (In re Ezra),  
23 537 B.R. 924, 932 (9th Cir. BAP 2015) ("Ordinarily, federal  
24 appellate courts will not consider issues not properly raised in  
25 the trial courts."). No exceptional circumstances warrant our  
26 review of these issues in the first instance on appeal. See  
27 In re Ezra, 537 B.R. at 932.

28 Moreover, the Fridmans incorrectly argue that only creditors

1 can bid in a bankruptcy sale. The Trustee is tasked with  
2 realizing the greatest profit when selling estate assets, and  
3 limiting sales only to creditors would not serve this purpose.  
4 Further, the HOA ultimately did not bid.

5 Accordingly, the Fridmans waived their argument concerning  
6 the HOA's standing as a creditor, and, in any event, the argument  
7 is unpersuasive.

8 **E. The Fridmans' argument that the sale is subject to DHS**  
9 **jurisdiction is untimely and irrelevant.**

10 Finally, the Fridmans contend that the funds that  
11 Mr. Avetoom used to purchase the right to appeal are of suspect  
12 origin and should have been scrutinized by the DHS. Again, we  
13 discern no error.

14 The Fridmans did not raise this argument before the  
15 bankruptcy court, and we deem it waived on appeal. See id.

16 Even if we were to consider the merits of the Fridmans'  
17 argument, they do not identify any error. The Fridmans offer no  
18 evidence that Mr. Avetoom's funds are from some nefarious source.  
19 They do not provide any authority for their assertion that all  
20 transactions of more than \$5,000 are subject to DHS review.

21 Nor do we find any merit in the Fridmans' implication that  
22 the Trustee behaved improperly or abused his position.

23 Accordingly, we reject this unsupported argument.

24 **CONCLUSION**

25 For the reasons set forth above, we AFFIRM the bankruptcy  
26 court's order approving the sale of the Fridmans' appeal rights  
27 to Mr. Avetoom.