

JUL 22 2016

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NOT FOR PUBLICATION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

5	In re:)	BAP No.	CC-15-1117-KiKuF
6	MASSROCK, INC., d/b/a Lenders)	Bk. No.	2:13-bk-37648-RN
7	Assurance,)		
	Debtor.)		
8	_____)		
9	RONALD TAXE, Trustee of the)		
10	TAXE FAMILY TRUST OF 2001,)		
11	Appellant,)		
11	v.)	MEMORANDUM¹	
12	DAVID M. GOODRICH, Chapter 7)		
13	Trustee,)		
14	Appellee.)		
15	_____)		

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

Filed - July 22, 2016

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

Honorable Richard M. Neiter, Bankruptcy Judge, Presiding

Appearances: Douglas E. Miles argued for appellant Ronald Taxe,
Trustee of the Taxe Family Trust of 2001; Joseph
Scott Klapach of Klapach & Klapach argued for
appellee David M. Goodrich, Chapter 7 Trustee.

Before: KIRSCHER, KURTZ and FARIS, Bankruptcy Judges.

¹ This disposition is not appropriate for publication.
Although it may be cited for whatever persuasive value it may
have, it has no precedential value. See 9th Cir. BAP Rule 8024-1.

1 Appellant Ronald Taxe ("Taxe"), trustee of the Taxe Family
2 Trust of 2001 ("Taxe Trust"), appeals an order approving a
3 settlement that resolved a controversy involving disputed deeds of
4 trust encumbering a certain commercial property. Trustee contends
5 that the Taxe Trust lacks standing to appeal the settlement order.
6 We disagree, and we VACATE and REMAND the settlement order because
7 the bankruptcy court did not make any findings for what was called
8 a Rule 9019² motion, but also included sale terms implicating
9 § 363.

10 I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

11 A. Prepetition events

12 This case involves a dispute over a commercial real property
13 located on Jefferson Boulevard in Los Angeles (the "Jefferson
14 Property"). In June 2003, certain plaintiffs who had sued Taxe
15 and his wife in state court recorded a notice of attachment
16 against the Jefferson Property. At that time, the record owner of
17 the property was the Taxe Trust.

18 On or about July 3, 2003, debtor Massrock, Inc. ("Massrock")
19 recorded a deed of trust against the Jefferson Property, securing
20 a \$400,000 promissory note. The transaction allegedly involved
21 the sale of certain artwork owned by Massrock to the Taxes in
22 their capacities as co-trustees of the Taxe Trust. Richard Taxe
23 ("Richard"),³ Taxe's brother, is the President, Secretary and
24

25 ² Unless specified otherwise, all chapter, code and rule
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
27 the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
28 Federal Rules of Civil Procedure are referred to as "Civil Rules."

³ We refer to Richard Taxe as Richard to avoid any confusion
(continued...)

1 Chairman of the Board of Massrock.

2 In November 2004, Taxe had an appraisal prepared for the
3 Jefferson Property, which valued it at \$750,000.

4 On or about January 24, 2006, a deed of trust in favor of
5 DMC, Inc. was recorded against the Jefferson Property, securing
6 repayment of a \$250,000 loan made to the Taxes as co-trustees of
7 the Taxe Trust. It was disputed whether the Taxes represented to
8 DMC that the deed of trust was to be a first priority lien
9 encumbering the Jefferson Property and whether DMC knew of the
10 existing Massrock deed of trust, which was still apparently in
11 first position but alleged to have not appeared on the title
12 report obtained by DMC.⁴

13 In February 2006, DMC assigned its interest in the deed of
14 trust to parties known as Goslins and Sweet ("Goslins/Sweet").
15 DMC allegedly represented to Goslins/Sweet that the assigned deed
16 of trust was a first priority lien on the Jefferson Property.

17 On December 21, 2007, the Taxes as co-trustees of the Taxe
18 Trust executed a deed of trust in favor of Dean Gulo against the
19 Jefferson Property, securing repayment of a \$235,000 loan made to
20 the Taxes as co-trustees of the Taxe Trust. Days later, Gulo
21 assigned his interest in the note and deed of trust to Lenders
22 Assurance Corporation ("Lenders"), an entity affiliated with
23 Richard and Massrock. The Lenders' deed of trust was recorded on
24

25 ³(...continued)
26 between the parties. No disrespect is intended.

27 ⁴ It was also alleged that the Massrock deed of trust was
28 reconveyed and no longer existed when DMC recorded its deed of
trust.

1 December 28, 2007.

2 The Taxe Trust eventually defaulted on the note(s), and
3 Massrock began foreclosure proceedings of the Jefferson Property
4 in May 2009, recording a notice of default. Apparently that same
5 month, Goslins/Sweet also recorded a notice of default. On
6 August 7, 2009, Massrock recorded a notice of trustee's sale,
7 stating that the Jefferson Property would be sold on September 1,
8 2009.

9 On August 5, 2009, Goslins/Sweet filed a complaint in state
10 court against the Taxes, the Taxe Trust and Massrock concerning
11 the validity and priority of the trust deeds against the Jefferson
12 Property. They also recorded a lis pendens.

13 In light of the Goslins/Sweet lawsuit and competing
14 foreclosure proceedings, Massrock and Goslins/Sweet agreed that
15 Massrock would not conduct a trustee's sale before November 2,
16 2009, and in exchange Goslins/Sweet agreed to not record a notice
17 of trustee's sale until after November 2, 2009. Despite the
18 agreement, Goslins/Sweet apparently (and allegedly inadvertently)
19 recorded a notice of trustee's sale on August 24, 2009, for a sale
20 to take place on September 17, 2009.

21 Massrock went forward with its sale of the Jefferson Property
22 on September 9, 2009, recording its trustee's deed upon sale on
23 September 11, 2009. Massrock obtained the Jefferson Property with
24 a credit bid of \$599,791.

25 The second amended complaint of Goslins/Sweet filed in May
26 2010 was dismissed in its entirety with prejudice on July 6, 2010.
27 In its ruling, the state court noted that since Massrock had
28 foreclosed on the Jefferson Property in September 2009, Massrock

1 was the owner of the Jefferson Property and the junior
2 Goslins/Sweet lien had been extinguished.

3 Goslins/Sweet appealed and prevailed in part. Following
4 remand, Goslins/Sweet filed a third amended complaint alleging
5 claims for (1) quiet title, (2) imposition and foreclosure of an
6 equitable lien, (3) cancellation of the trustee's deed and
7 reconveyance of the Massrock trust deed, and (4) judicial
8 foreclosure of the Goslins/Sweet deed of trust.

9 Notwithstanding the Goslins/Sweet lawsuit, the disputed liens
10 and the recorded lis pendens, on October 26, 2012, Massrock
11 recorded a deed of trust in favor of the Rosen Group against the
12 Jefferson Property, securing repayment of a loan for \$350,000 to
13 Massrock. Richard allegedly represented to the Rosen Group on
14 behalf of Massrock that the Rosen Group deed of trust would be a
15 first priority lien on the Jefferson Property.

16 After a bench trial on the Goslins/Sweet third amended
17 complaint, the state court issued its tentative ruling in May
18 2013. The court ruled, among other things: (1) the Massrock deed
19 of trust failed for lack of consideration and was ordered
20 cancelled; (2) the Goslins/Sweet deed of trust was a valid, first
21 priority lien against the Jefferson Property; (3) the foreclosure
22 sale by Massrock was unwound and the trustee's deed upon sale set
23 aside; and (4) that the Goslins/Sweet deed of trust be foreclosed,
24 the Jefferson Property be sold, and the sale proceeds be applied
25 in payment of the amounts due to Goslins/Sweet.

26 However, before the state court's tentative ruling became the
27 final statement of decision, Goslins/Sweet, for reasons not
28 evident in the record, moved ex parte on June 17, 2013, for an

1 order dismissing their cause of action for judicial foreclosure.
2 The application was granted and the judicial foreclosure cause of
3 action was dismissed.

4 The state court entered a judgment on the remaining claims on
5 July 9, 2013 ("Judgment"). The Judgment cancelled the Massrock
6 deed of trust finding it void ab initio, voided the Massrock
7 foreclosure sale and trustee's deed upon sale, decreed that the
8 Goslins/Sweet deed of trust was a first position lien, and quieted
9 title to the Taxe Trust as of January 26, 2006, subject to the
10 Goslins/Sweet deed of trust.

11 The Taxes, the Taxe Trust and Massrock appealed the Judgment
12 in October 2013. Defendants argued that the Massrock deed of
13 trust was not void and that it could not be cancelled as a matter
14 of law. Goslins/Sweet were eventually awarded attorney's fees
15 against the Taxes and the Taxe Trust.

16 Subsequently, Goslins/Sweet recorded a notice of default to
17 foreclose on their \$250,000 deed of trust. The trustee's sale of
18 the Jefferson Property was scheduled for November 19, 2013.

19 **B. Postpetition events**

20 One day before the Goslins/Sweet scheduled trustee's sale of
21 the Jefferson Property, Massrock filed a chapter 11 bankruptcy
22 case on November 18, 2013. The case was later converted to
23 chapter 7; David M. Goodrich was appointed as trustee. He
24 successfully moved to stay the pending appeal of the Judgment.

25 **1. Trustee's settlement motion**

26 In January 2015, Trustee, Goslins/Sweet and First American
27 Title Insurance Company (as assignee of the Rosen Group) entered
28 into a Settlement Agreement and General Release ("Settlement

1 Agreement"). In the recitals, the Settlement Agreement noted the
2 pending appeal of the Judgment and the parties' controversy
3 involving disputed deeds of trust encumbering the Jefferson
4 Property. The parties executed a mutual release of claims. For
5 Massrock's part, this meant giving up its appeal of the Judgment.

6 To fund the settlement, the parties agreed to a future sale
7 of the Jefferson Property, with the proceeds to be paid out in the
8 following order: (1) costs of sale; (2) property taxes;
9 (3) \$85,000 to Trustee; (4) \$250,000 in principal to
10 Goslins/Sweet, plus accrued interest, penalties, foreclosure
11 costs, and \$100,000 in attorney's fees (the parties had incurred
12 over \$450,000 in attorney's fees to date); (5) \$85,000 to First
13 American in full satisfaction of its \$350,000 lien against the
14 Jefferson Property; (6) any other valid liens on the Jefferson
15 Property; and (7) the remainder of any net proceeds to the
16 bankruptcy estate. The Settlement Agreement also provided that
17 the sale would be free and clear of the 2007 Lenders' deed of
18 trust, although it does not appear that Lenders, if a separate
19 entity from Massrock, was notified of the settlement or of the
20 loss of its property interest. The proposed opening bid for the
21 Jefferson Property was to be \$750,000. However, if it sold for
22 less than \$750,000, the carve out paid to Trustee would be reduced
23 to \$80,000. Finally, the Settlement Agreement provided that
24 Goslins/Sweet would prepare an application or stipulation to
25 dismiss the appeal of the Judgment by Massrock.

26 Trustee then moved for approval of the Settlement Agreement
27 under Rule 9019 ("Settlement Motion"). He noted that the proposed
28 settlement recovered at least \$80,000 for the estate, and

1 depending on the final sale price of the Jefferson Property,
2 potentially much more, without the substantial administrative
3 costs that would accompany a protracted appeal. Trustee contended
4 that the hurdles to recovering property or cash for the estate
5 absent this compromise were substantial. He would be required to
6 prosecute the appeal of the Judgment in light of the state court's
7 findings that: (1) Massrock's deed of trust failed for lack of
8 consideration; (2) even if it had been valid, it had been
9 reconveyed; and (3) Massrock and all others claiming under them
10 after the Goslins/Sweet deed of trust were barred and foreclosed
11 from all rights, claims, interest or equity of redemption in the
12 Jefferson Property. Thus, because of the expense associated with
13 the appeal and Massrock's slim chance of success, Trustee believed
14 it was in the best interest of the estate's creditors to approve
15 the Settlement Agreement. In his supporting declaration, Trustee
16 stated that the proposed settlement was made in good faith, was
17 fair and equitable and, under the circumstances, was reasonable
18 and adequate. Trustee further stated that the settlement was
19 negotiated at arm's length by the parties through their respective
20 counsel.

21 Taxe, as co-trustee of the Taxe Trust, opposed the
22 Settlement Motion pro se. He contended the Taxe Trust owned the
23 Jefferson Property, not Massrock, based on the Judgment which
24 cancelled Massrock's deed of trust and conclusively determined,
25 prepetition, that Massrock had no interest in the property.
26 Accordingly, argued Taxe, Trustee had no interest in the Jefferson
27 Property to sell. Taxe objected to the sale under § 363.
28 Attached to Taxe's opposition was a copy of a recent preliminary

1 title report dated January 8, 2015, which indicated that the Taxe
2 Trust held title and the fee interest in the Jefferson Property.

3 In reply, Trustee refuted Taxe's argument that the Taxe Trust
4 owned the Jefferson Property. First, Trustee contended that Taxe
5 was judicially estopped from now arguing that Massrock did not own
6 the property, when he had argued in the appeal of the Judgment
7 that the state court erred in ruling Massrock's deed of trust and
8 foreclosure void. Second, Trustee contended that because the
9 Judgment, which Taxe alleged vested title to the Jefferson
10 Property in the Taxe Trust, was not final and unenforceable based
11 on the appeal, Massrock was still record owner of the property.
12 Trustee noted that had Taxe desired to have title to the Jefferson
13 Property vest in the Taxe Trust, he should have allowed the
14 Judgment to become final, but instead he kept the controversy
15 alive by appealing it. Included with Trustee's reply was a
16 request for judicial notice ("RJN"), which contained a copy of the
17 defendants' brief filed in the appeal of the Judgment.

18 One day before the hearing on the Settlement Motion, Richard,
19 President of Massrock, filed a document stating that neither he
20 nor Taxe were served with copies of Trustee's reply and RJN. In
21 any event, Richard attached what he contended were documents
22 proving that Massrock did not own the Jefferson Property and
23 evidencing Trustee's attempt to "hoodwink" the court. These
24 documents included copies of Massrock's trustee's deed upon sale,
25 the Judgment and the appellate court docket. It is not clear
26 whether the bankruptcy court knew of or reviewed Richard's filing.

27 **2. The Settlement Motion hearing and court's ruling**

28 A hearing on the Settlement Motion proceeded on March 17,

1 2015. Counsel for Trustee explained that the Settlement Motion
2 was not a sale of the Jefferson Property, but rather only
3 authorized Trustee to sell the property upon a proper § 363 motion
4 to be filed. Counsel noted that the Jefferson Property could sell
5 for as much as \$1 million, thereby creating a surplus estate and
6 providing money to the Taxes. Counsel for Goslins/Sweet agreed
7 with the bankruptcy court's observation that if Massrock's
8 foreclosure sale was deemed to be invalid, then title to the
9 Jefferson Property would remain in the Tax Trust. However,
10 counsel argued that the Judgment, which could have vested title in
11 the Tax Trust, was not final due to the pending appeal. In any
12 event, the Tax Trust was free to oppose the future sale motion;
13 the bankruptcy court agreed.

14 After Taxe made his arguments (Richard spoke on Taxe's behalf
15 due to illness), counsel for Trustee stood up and stated that he
16 was ready for the bankruptcy court's ruling. Hr'g Tr. (Mar. 17,
17 2015) 28:15-16. Upon that, the court stated, "I've ruled." Id.
18 at 28:17. Seemingly confused, counsel questioned whether the
19 court had in fact made its ruling, to which the court replied, "I
20 thought I had." Id. at 28:20-24. "I approved the settlement."⁵
21 Id. at 29:3.

22 _____
23 ⁵ The approval of the Settlement Motion may arise from the
24 court's earlier statement:

25 THE COURT: All I'm doing is approving this compromise
26 among the parties who so far - so before you and does
27 not - as Mr. Shinbrot - today is not a motion to sell
28 the property. The Trustee will file a separate motion
to sell his right, title and interest in the property.
At that time if the Tax Family Trust claims it has an
ownership interest, it can assert it.

Hr'g Tr. (Mar. 17, 2015) 21:2-8.

1 Trustee's counsel was ordered to circulate his proposed order
2 approving the Settlement Motion to all parties who appeared before
3 submitting it to the court. Any oppositions to the proposed order
4 were due within one week. Taxe filed an opposition to Trustee's
5 proposed order on March 27, 2015, claiming he was never served
6 with it and discovered that the bankruptcy court had entered it on
7 March 25, 2015. Taxe essentially reargued his opposition to the
8 Settlement Motion, adding that Lenders, which held a deed of trust
9 recorded in 2007, must also be a party to any proposed settlement
10 regarding the Jefferson Property.

11 On April 30, 2015, the bankruptcy court reentered an order
12 approving the Settlement Motion (the "Settlement Order"). The
13 Settlement Order provided no findings, stating only that the
14 settlement was approved. Taxe timely appealed.

15 **II. JURISDICTION**

16 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
17 and 157(b) (2) (A), (K) and (N). We discuss our jurisdiction under
18 28 U.S.C. § 158 below.

19 **III. ISSUES**

- 20 1. Does the Taxe Trust have standing to challenge the Settlement
21 Order?
- 22 2. Did the bankruptcy court abuse its discretion in approving
23 the Settlement Motion?

24 **IV. STANDARDS OF REVIEW**

25 Questions of standing are reviewed de novo. Motor Vehicle
26 Cas. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.),
27 677 F.3d 869, 879 (9th Cir. 2012).

28 We review the bankruptcy court's decision to approve a

1 settlement for an abuse of discretion. Martin v. Kane (In re A&C
2 Props.), 784 F.2d 1377, 1380 (9th Cir. 1986); Goodwin v. Mickey
3 Thompson Entm't Grp., Inc. (In re Mickey Thompson Entm't Grp.,
4 Inc.), 292 B.R. 415, 420 (9th Cir. BAP 2003). The court abuses
5 its discretion if it applied the wrong legal standard or its
6 findings were illogical, implausible or without support in the
7 record. TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d 820,
8 832 (9th Cir. 2011).

9 V. DISCUSSION

10 A. Taxe Trust has standing to challenge the Settlement Order.

11 Trustee contends that the Taxe Trust lacks standing to
12 challenge the Settlement Order, as it has no right to stop the
13 sale of the Jefferson Property. Notably, Trustee did not dispute
14 standing until now. However, because standing is a jurisdictional
15 requirement and is open to review at all stages of the litigation,
16 we must consider the issue once raised. Nat'l Org. For Women,
17 Inc. v. Scheidler, 510 U.S. 249, 255 (1994); Ctr. for Biological
18 Diversity v. U.S. Fish & Wildlife Serv., 807 F.3d 1031, 1043 (9th
19 Cir. 2015).

20 To have standing to appeal a decision of the bankruptcy
21 court, an appellant must show that it is a "person aggrieved" who
22 was directly and adversely affected pecuniarily by an order of the
23 bankruptcy court. Darby v. Zimmerman (In re Popp), 323 B.R. 260,
24 265 (9th Cir. BAP 2005) (internal quotation marks and citations
25 omitted). A "person aggrieved" is someone whose interest is
26 directly affected by the bankruptcy court's order, either by a
27 diminution in property, an increase in the burdens on the
28 property, or some other detrimental effect on the rights of

1 ownership inherent in the property. Id. Thus, the burden is on
2 the Taxe Trust to establish its standing for this appeal. Ctr.
3 for Biological Diversity, 807 F.3d at 1043.

4 Prior to Massrock's foreclosure of its lien, the Taxe Trust
5 owned the Jefferson Property. After the foreclosure and prior to
6 the Judgment, Massrock held title to the Jefferson Property
7 pursuant to its recorded trustee's deed upon sale. The Judgment,
8 however, voided the foreclosure sale and Massrock's deed upon sale
9 and quieted title in the Taxe Trust, subject to the Goslins/Sweet
10 lien. If the Judgment had not been appealed, title would have
11 once again vested in the Taxe Trust. However, because the
12 Judgment was appealed and still pending at the time of the
13 Settlement Motion, title to the Jefferson Property remained in
14 Massrock; the Taxe Trust could not avail itself of the
15 adjudication to establish its rights in the property. Smith v.
16 Smith, 134 Cal. 117, 119 (1901) (one cannot avail himself of an
17 adjudication establishing a right while the judgment is suspended
18 by an appeal); Nathanson v. Hecker, 99 Cal. App. 4th 1158, 1163
19 n.1 (2002) (California orders and judgments are not final so long
20 as an appeal is pending). See also Cal. Code Civ. Proc. § 1049
21 ("An action is deemed to be pending from the time of its
22 commencement until its final determination upon appeal, or until
23 the time for appeal has passed, unless the judgment is sooner
24 satisfied.").

25 The Taxe Trust contends that it has standing to challenge the
26 Settlement Order because it is the current titleholder to the
27 Jefferson Property and a sale would eliminate its ownership
28 rights. The "evidence" the Taxe Trust submitted to show that it

1 holds legal title to the Jefferson Property was a preliminary
2 title report from January 2015. However, two problems exist. The
3 title report, by itself, was not admissible evidence, and
4 secondly, under California law, preliminary title reports have
5 very limited, if any, value as to how title to real property is
6 **actually** held:

7 Since 1982, the Insurance Code has limited the
8 significance of such preliminary reports. (Southland
9 Title Corp. v. Superior Court (1991) 231 Cal. App. 3d
10 530, 537, 282 Cal. Rptr. 425; see White v. Western Title
11 Ins. Co. (1985) 40 Cal.3d 870, 884, 221 Cal. Rptr. 509,
12 710 P.2d 309.) A preliminary title report is an offer
13 "to issue a title policy subject to the stated exceptions
14 set forth" therein. (Ins. Code, § 12340.11.) "The
15 reports are not abstracts of title" and "shall not be
16 construed as, nor constitute, a representation as to the
17 condition of title to real property . . ." (Ibid.) An
18 "[a]bstract of title" is a written listing of "all
recorded conveyances" affecting "the chain of title to
the realty property described therein." (Ins. Code,
§ 12340.10.) The intent of these statutes is to relieve
title insurers from liability as title abstractors for
the negligent preparation of preliminary title reports.
(Cf. Southland Title Corp. v. Superior Court, supra,
231 Cal. App. 3d 530, 537-538, 282 Cal. Rptr. 425.)
These statutes do not make such reports meaningless. The
reports serve to apprise the prospective insured of the
state of title against which the insurer is willing to
issue a title insurance policy. (Ibid.)

19 Alfaro v. Cmty. Hous. Imp. Sys. & Planning Ass'n, Inc., 171 Cal.
20 App. 4th 1356, 1389 (2009), as modified on denial of reh'g
21 (Mar. 18, 2009).

22 Nonetheless, the Taxe Trust has standing. Under the
23 Settlement Agreement, the parties agreed that the appeal of the
24 Judgment, at least with respect to Massrock, would be dismissed.
25 That still leaves the Taxe Trust, a nondebtor over which Trustee
26 has no control, a party in the pending appeal. The Taxe Trust
27 could either pursue the appeal against Goslins/Sweet or choose to
28 dismiss it. If the appeal is dismissed or the Judgment is

1 affirmed, then title to the Jefferson Property would again vest in
2 the Taxe Trust. And, contrary to Trustee's argument,
3 Goslins/Sweet do not have the absolute right to sell the property;
4 they gave up that right (at least temporarily) once they dismissed
5 their judicial foreclosure cause of action. As for any
6 nonjudicial foreclosure right, the notices issued by Goslins/Sweet
7 in 2013 are stale. They would need to follow California law with
8 proper notice to the owner of the Jefferson Property, which may be
9 the Taxe Trust if the pending state court appeal is dismissed or
10 affirmed. Thus, it appears that the Taxe Trust has at least some
11 interest at stake here; the Settlement Agreement essentially wrote
12 out and ignored any potential interest it may have. This failure
13 to consider any interest by the Taxe Trust would certainly make it
14 an "aggrieved" party.

15 Although Trustee contends that the Taxe Trust can raise any
16 objections it has to the sale of the Jefferson Property when the
17 § 363 motion is filed, the approved Settlement Agreement already
18 contains many of the sale terms – i.e., price, priority of liens,
19 selling free and clear of Lenders' deed of trust, and distribution
20 rights – and it has essentially determined that Massrock owns the
21 Jefferson Property, without the benefit of an adversary proceeding
22 to conclusively determine the disputed fee interest. In re Popp,
23 323 B.R. at 268-69. So, it is not apparent what the Taxe Trust
24 would be able to argue once the forthcoming sale motion is filed.

25 Accordingly, on this record, we conclude that the Taxe Trust
26 has standing to appeal the Settlement Order. Having established
27 our jurisdiction, we now turn to the merits of the appeal.

28 / / /

1 **B. The bankruptcy court failed to make any findings and**
2 **conclusions to support approval of the Settlement Motion.**

3 **1. Compromises under Rule 9019**

4 Rule 9019(a) authorizes the bankruptcy court to approve a
5 compromise or settlement upon a motion of the trustee and after a
6 hearing on twenty-one days' notice to all creditors and the
7 U.S. Trustee. See Rule 2002(a)(3). Compromises are favored in
8 bankruptcy because they avoid the expenses and burdens associated
9 with litigation. In re A&C Props., 784 F.2d at 1381. Therefore,
10 the bankruptcy court has "great latitude" in approving compromises
11 and settlements. Woodson v. Fireman's Fund Ins. Co.
12 (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988). Nevertheless,
13 the court may only approve a compromise if it is satisfied that
14 its terms are "fair, reasonable and equitable." In re A&C Props.,
15 784 F.2d at 1381.

16 To determine whether a settlement is fair and reasonable, the
17 bankruptcy court must consider:

- 18 (a) the probability of success in the litigation;
- 19 (b) the difficulties, if any, to be encountered in the matter
20 of collection;
- 21 (c) the complexity of the litigation involved, and the
22 expense, inconvenience and delay necessarily attending it;
23 and
- 24 (d) the paramount interest of the creditors and a proper
25 deference to their reasonable views in the premises.

26 Id. Trustee, as the party proposing the settlement, had the
27 burden of demonstrating it was fair, reasonable and equitable.

28 Id.

2. Analysis

Trustee contends that the bankruptcy court, "after weighing

1 the relevant facts," "properly concluded that the trustee's
2 settlement was 'fair and equitable' to the estate's creditors and
3 would 'be in the best interests of the estate.'" Nothing could be
4 further from the truth.

5 When opposed, a motion to compromise a controversy under
6 Rule 9019 is subject to the provisions governing contested matters
7 set forth in Rule 9014. 10 Collier on Bankruptcy ¶ 9019.01
8 (Alan N. Resnick & Henry J. Sommer, eds., 16th ed. 2012). As a
9 contested matter, the bankruptcy court was required to make
10 findings of fact, either orally on the record or in a written
11 decision. See Rule 9014(c) (incorporating Rule 7052, which in
12 turn incorporates Civil Rule 52). The findings must be sufficient
13 to indicate the factual basis for the court's ultimate conclusion.
14 Unt v. Aerospace Corp., 765 F.2d 1440, 1444 (9th Cir. 1985).

15 "'The findings must be explicit enough to give the appellate
16 court a clear understanding of the basis of the trial court's
17 decision, and to enable it to determine the ground on which the
18 trial court reached its decision.'" Mattel, Inc. v. Walking
19 Mountain Prods., 353 F.3d 792, 815 (9th Cir. 2003) (quoting Unt,
20 765 F.2d at 1444). In the absence of complete findings, we may
21 vacate a judgment and remand to the bankruptcy court to make the
22 required findings. See United States v. Ameline, 409 F.3d 1073
23 (9th Cir. 2005).

24 The bankruptcy court did not make any findings, either orally
25 or in the Settlement Order, indicating the factual bases it
26 believed supported each (or any) of the A&C Properties' factors.
27 It failed to even reference A&C Properties or conclude that the
28 settlement was "fair and equitable." When it came time for the

1 ruling at the hearing, the court spoke in the past tense, saying
2 that it thought it had approved the settlement. This implies that
3 findings were provided either before or at the hearing. However,
4 careful review of the record and transcript establishes that no
5 such findings were made at anytime during the hearing or in any
6 tentative ruling. Thus, we have no ability to provide any
7 meaningful review.

8 Given the state of the record, we must conclude that the
9 bankruptcy court erred by failing to make findings evidencing
10 consideration of the A&C Properties' factors. In addition, the
11 Settlement Agreement included sale terms that went beyond a true
12 settlement under Rule 9019 and implicated § 363, for which no
13 findings were made. See In re Mickey Thompson Entm't Grp., Inc.,
14 292 B.R. at 421-22.

15 We cannot say whether the record would support the requisite
16 findings. The settlement calls for the dismissal of an appeal,
17 even though one of the appellants (Taxe Trust) is not a party to
18 the settlement, and the sale of property which the estate may or
19 may not own. Thus, it is not clear that the settlement can even
20 be implemented. The bankruptcy court should consider in the first
21 instance whether such a settlement is in the best interests of the
22 estate and whether it is appropriate to consider the settlement
23 apart from a proposed sale of the Jefferson Property.

24 We understand and sympathize with the predicament of the
25 Trustee and the settling parties. The Taxes are willing to go to
26 great lengths to block any sale of the Jefferson Property:
27 according to the superior court, they concocted the Massrock deed
28 of trust, presumably to stymie a creditor's effort to foreclose

1 its lien against the property; and they are unashamed to reverse
2 their long-held position that the Massrock deed of trust is valid.
3 Thus, we understand the impulse to "settle around" the Taxes.
4 Further, the Trustee makes a persuasive argument that, if it could
5 be consummated, the settlement transactions would be highly
6 advantageous to the estate. We simply cannot say, however,
7 whether the settlement can be implemented and whether it is in the
8 estate's best interest considering the barriers to its
9 implementation.

10 Thus, the court abused its discretion in approving the
11 Settlement Motion. As such, we VACATE the Settlement Order and
12 REMAND for further proceedings consistent with this decision.⁶

13 VI. CONCLUSION

14 For the foregoing reasons, we VACATE and REMAND.⁷

21 ⁶ It seems the better course would be to have all issues
22 heard at once, including the disputed ownership interest of the
Jefferson Property.

23 ⁷ In support of the Tax Trust's reply brief, Taxe offered a
24 declaration. Some of what he asserts is already in the record,
some is not. Trustee has moved to strike the Taxe declaration.
25 Generally, an appellate court will not consider facts outside the
record developed before the trial court. U.S. ex. rel. Robinson
26 Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248
(9th Cir. 1992). Because Taxe seeks to present new testimony on
27 appeal that was not before the bankruptcy court, we GRANT
Trustee's motion to strike and will not consider the Taxe
28 declaration. Even if we did consider it, however, it would not
change the outcome of this appeal.