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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NOT FOR PUBLICATION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

5	In re:)	BAP No.	EC-15-1202-KuMaJu
)		
6	KEYSTONE MINE MANAGEMENT II,)	Bk. No.	13-16845
)		
7	Debtor.)		
	_____)		
8)		
9	KEYSTONE MINE COMPANY, LTD;)		
	KEYSTONE MINE MANAGEMENT, LTD.;)		
10	KIRK L. DUSHANE; ROGER SMITH;)		
	PATRICK O'BRIEN,)		
11	Appellants,)		
)		
12	v.)	MEMORANDUM*	
)		
13	VINCENT A GORSKI, Chapter 7)		
	Trustee; BUSH MANAGEMENT)		
14	COMPANY; KEYSTONE MINE)		
	MANAGEMENT II,)		
15)		
16	Appellees.)		
	_____)		

Argued and Submitted on October 20, 2016
at Sacramento, California

Filed - December 2, 2016

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

Honorable W. Richard Lee, Bankruptcy Judge, Presiding

Appearances: Meir J. Westreich argued for the appellants; Lisa Anne Holder of Klein Denatale Goldner Cooper Rosenlieb & Kimball, LLP argued for appellee Vincent A. Gorski, Chapter 7 Trustee; Charles A. Bird of Dentons US LLP argued for appellee Bush Management Company.

*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 Before: KURTZ, MARTIN** and JURY, Bankruptcy Judges.

2 **INTRODUCTION**

3 The appellants herein are all creditors or equity interest
4 holders of the debtor Keystone Mine Management II. Over the
5 course of roughly 14 months, they opposed every step the
6 chapter 7¹ trustee Vincent A. Gorski attempted to take to
7 liquidate the debtor's assets and reduce them to cash, in
8 accordance with his duties under § 704(a).

9 Ultimately, the bankruptcy court approved Gorski's proposed
10 sale and compromise transaction with Bush Management Company,
11 pursuant to which Bush purchased all of Keystone Mine Management
12 II's assets. The bankruptcy court's bidding procedures order
13 provided interested parties with an opportunity to make competing
14 bids for the assets, but no competing bids were made, even though
15 Gorski had advertised the sale of the assets for a number of
16 months.

17 Appellants appealed both the bankruptcy court's bidding
18 procedures order and its sale order, but they did not obtain
19 a stay pending appeal. In addition, the bankruptcy court made
20 ample findings to support its determination that Bush was a good
21 faith purchaser and was entitled to the benefit of § 363(m),
22 which prevents appellate courts from disturbing the validity of a
23 bankruptcy sale even when the appellant prevails on appeal. The

24
25 ^{**}Hon. Brenda K. Martin, United States Bankruptcy Judge for
the District of Arizona, sitting by designation.

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

1 bankruptcy court's findings related to Bush's good faith were not
2 clearly erroneous, so § 363(m) applies; it renders moot the
3 appellants' appeals from the bidding procedures order and the
4 sale order.

5 The appellants also have appealed from the bankruptcy
6 court's order approving the compromise aspects of the transaction
7 between Gorski and Bush. Under the particular circumstances of
8 this case, we decline to hold that § 363(m) applies to the
9 compromise order. Even though § 363(m) has not rendered moot the
10 appeal from the compromise order, the appellants did not include
11 in their appeal brief any arguments specifically and distinctly
12 challenging the compromise order. Nor did they order a
13 transcript of the final compromise hearing, at which the
14 bankruptcy court stated its findings of fact and conclusions of
15 law orally on the record. As a result, we have not been
16 presented with (nor are we aware of) any grounds that would
17 justify reversal of the court's compromise order.

18 Accordingly, we DISMISS AS MOOT the appeals from the
19 bankruptcy court's bidding procedures order and its sale order.
20 The compromise order is AFFIRMED.

21 **FACTS**

22 The litigation history surrounding Keystone Mine Management
23 II's bankruptcy case is voluminous, but most of that history need
24 not be recounted here in order to dispose of this appeal.

25 **1. Key Parties**

26 We start with the key parties. At all relevant times before
27 the appointment of Gorski as chapter 7 trustee, Kirk DuShane had
28 been serving as the manager of the debtor and its two affiliates:

1 Keystone Mine Management, Ltd. ("KMM") and Keystone Mining
2 Company ("Company"). Debtor ("KMM II") is a limited partnership
3 in which KMM holds a 60% partnership interest and DuShane holds a
4 40% partnership interest. In turn, Company nominally is the
5 general partner of KMM, but DuShane is Company's general partner,
6 pursuant to which he exercised management control over all three
7 entities.

8 The other two named appellants - Patrick O'Brien and Roger
9 Smith - are, respectively, an accountant and a geologist who have
10 provided services over the years to the Keystone entities and who
11 claim to be creditors and/or equity investors in one or more of
12 these entities.²

13 The Keystone entities' only significant assets consisted of
14 some mining equipment, 44 mining claims and 4 mill site claims
15 granted by the U.S. Bureau of Land Management, which claims
16 entitled the Keystone entities to conduct mining and milling
17 operations on the applicable U.S. government land.

18 William Weyerhaeuser is the sole trustee of a trust which,
19 over several years, beginning in 1988, lent the Keystone entities
20 roughly \$2.6 million and received in exchange a deed of trust
21 encumbering 20 of the mining claims and a security interest in
22 the mining equipment. Weyerhaeuser's trust also made a \$500,000
23 equity investment in the Keystone entities in 1989.

24 John Hagestad was a relatively minor equity investor in the
25

26 ²For ease of reference, our recitation of facts sometimes
27 refers to the appellants as "DuShane and the non-debtor Keystone
28 entities" because they are the most involved participants on
behalf of the appellants. No disrespect is intended to O'Brien
or Smith.

1 Keystone entities who, in addition, loaned \$60,000 directly to
2 DuShane. In 2012, Hagestad filed a state court lawsuit against
3 DuShane and KMM II, which lawsuit ultimately led to DuShane
4 filing a chapter 11 bankruptcy petition on behalf of KMM II in
5 October 2013.³ Hagestad also owns and controls a company known
6 as Bush Management Company. In June 2014, after KMM II commenced
7 its bankruptcy case, Bush acquired all of the Weyerhaeuser
8 trust's loan and lien rights arising from the Weyerhaeuser
9 trust's loans to the Keystone entities. By way of Bush's
10 acquisition of the Weyerhaeuser trust's rights and interests,
11 Hagestad transformed himself from a minor equity investor into
12 the Keystone entities' sole significant secured creditor.

13 Gorski is the duly-appointed chapter 7 trustee for KMM II.
14 Almost immediately after he was appointed (in February 2014), he
15 commenced efforts to liquidate the estate's assets by proposing
16 to sell those assets to Bush.

17 **2. Gorski's Efforts to Sell the Keystone Assets**

18 Over the course of a year and a half, Gorski persistently
19 sought to sell the mine and mill site claims and the mining
20 equipment on behalf of KMM II's bankruptcy estate. At each step
21 of the way, DuShane and the non-debtor Keystone entities
22 vigorously opposed the trustee's sales efforts. Initially,
23 before the Weyerhaeuser trust sold its loan and lien rights to
24 Bush, Gorski filed a motion seeking to sell the Keystone assets
25 to Bush free and clear of all liens and interests, including
26

27
28 ³The bankruptcy court converted KMM II's bankruptcy case
from chapter 11 to chapter 7 in February 2014.

1 Weyerhaeuser's loan and lien rights, which Gorski at the time
2 believed were subject to legitimate dispute.

3 DuShane and the non-debtor Keystone entities opposed
4 Gorski's first sale motion largely on the ground that the
5 \$250,000 proposed sale price was - according to them - grossly
6 inadequate and the trustee's marketing efforts were grossly
7 inadequate. According to DuShane and the non-debtor Keystone
8 entities, Gorski should have been marketing the assets for
9 somewhere between \$10 million and \$20 million, not including
10 royalty payments.⁴

11 In June 2014, after the bankruptcy court continued the
12 hearing on Gorski's first sale motion, Bush acquired the
13 Weyerhaeuser trust's loan and lien rights and expressed to Gorski
14 its desire to credit bid for the Keystone entities' assets. The
15 trustee initially maintained that the loan and lien rights were
16 still subject to dispute and that Bush's request to credit bid
17 should be restricted or prohibited.

18 However, by September 2014, Gorski had changed his mind
19 regarding the validity of Bush's loan and lien rights. By then,
20 Gorski had completed his review and analysis of Bush's proof of
21 claim, in which Bush asserted its rights as the successor to the
22 Weyerhaeuser trust's loan and lien rights. In light of his
23 complete review and analysis, Gorski reached a new agreement with

24
25 ⁴It is somewhat difficult to reconcile the Keystone
26 entities' asserted market value with: (1) the Keystone entities'
27 admission that tens of millions of dollars in capital investment
28 were necessary before the mining and milling operations could be
rendered fully operational; and (2) the apparently undisputed
fact that the Keystone entities had not been able to adequately
capitalize or operate the mines and mill sites for decades.

1 Bush for the sale of the Keystone assets and for the allowance of
2 Bush's secured claim in the amount of \$8.1 million.

3 The proposed agreement additionally contemplated a complex
4 set of bidding procedures aimed at permitting Bush to credit bid
5 while at the same time attempting to minimize the chilling effect
6 Bush's credit bidding might have on competing bids. Under the
7 agreed bidding procedures, the Keystone assets were broken into
8 two groups: Group A - consisting of those assets over which Bush
9 held lien rights - and Group B - consisting of those assets over
10 which Bush held no lien rights. The Group A assets were subject
11 to an initial Bush credit bid of \$500,000 and, if the Group A
12 assets were subject to competing overbids, Bush was permitted to
13 credit bid up to 50% of its \$8.1 million allowed secured claim.
14 To the extent Bush's bid exceeded 50% of its allowed secured
15 claim, the bid would be considered a cash bid subject, however,
16 to offset against the remainder of its allowed secured claim. On
17 the other hand, the Group B assets were subject to an all cash
18 sale pursuant to which Bush committed to an initial bid of
19 \$250,000.

20 In furtherance of his newly-proposed sale and compromise
21 transaction with Bush, Gorski filed his first bidding procedures
22 motion and his first compromise approval motion. Meanwhile, Bush
23 filed a motion for relief from stay seeking - in the event
24 Gorski's proposed sale and compromise failed to occur by
25 January 15, 2015 - court authorization to proceed with
26 foreclosure pursuant to its lien rights.

27 In support of the compromise approval motion, Gorski
28 submitted a declaration specifically identifying many of the

1 issues regarding the validity of Bush's loan and lien rights and
2 generally explaining why the trustee determined that the
3 compromise and sale transaction was in the best interests of the
4 KMM II bankruptcy estate. In essence, after fully reviewing and
5 analyzing the arguments challenging Bush's loan and lien rights,
6 and after reviewing the documentation supporting Bush's proof of
7 claim, Gorski concluded that none of the arguments challenging
8 Bush's loan and lien rights had any merit. Gorski then
9 summarized his reasoning why he believed that the compromise and
10 sale transaction should be approved, as follows:

11 Because the settlement with [Bush] allows me to sell
12 the Mining Claims, including [Bush's] collateral,
13 without the need to file an adversary proceeding to
14 determine the nature, extent, and validity of [Bush's]
15 Debt and lien, limits [Bush's] credit bid to a low
16 opening amount, provides other cash and economic
17 benefits to the Bankruptcy Estate, and sets a cap on
18 [Bush's] credit bid as a maximum of 50% of its claim, I
19 believe that the settlement should be approved as being
20 in the best interest of the creditors and the estate.

21 Gorski Decl. (Sept. 4, 2014) at ¶¶ 7-8.

22 Additionally, Gorski described the arm's-length nature of
23 his negotiations with Bush:

24 The settlement was negotiated at arm's length between
25 [Bush] and me through a lengthy and vigorous
26 give-and-take process. It took weeks of negotiation,
27 dozens of emails, and multiple telephone conference
28 calls between [Bush's] attorney, representative, me,
and my attorney, and the provision by [Bush] of a
149 page proof of claim, to reach resolution. Every
possible challenge was raised to [Bush's] Debt and
lien, and was thoroughly analyzed. Debtor has
challenged every action by me related to [Bush] as a
buyer, and [Bush] as creditor and lien holder.

29 Id. at ¶ 13.

30 To bolster Gorski's proposed sale and compromise, Bush filed
31 a detailed legal memorandum asserting that all of the challenges

1 to its loan and lien rights lacked merit.

2 At the October 2014 hearing on Gorski's and Bush's motions,
3 the bankruptcy court indicated that it was not prepared to grant
4 relief as requested in any of the motions unless and until the
5 parties resolved a pending dispute regarding which of the
6 Keystone entities was entitled to legal title over the Keystone
7 assets. The court noted that the title dispute was the subject
8 of a pending adversary proceeding (Adv. No. 14-1112), denied
9 Bush's relief from stay motion without prejudice and suspended
10 Gorski's motions pending a final resolution in the adversary
11 proceeding.

12 In April 2015, after the court resolved the title dispute in
13 favor of Gorski and against DuShane and the non-debtor Keystone
14 entities, Gorski resumed his efforts to obtain bankruptcy court
15 approval of his sale and compromise with Bush. Gorski filed a
16 new compromise motion and a new bidding procedures motion. For
17 purposes of this appeal, these two motions did not materially
18 differ from the motions Gorski had filed in September 2014.
19 Gorski also filed a new sale motion. In support of the sale
20 motion, Gorski detailed his marketing efforts, as follows:

21 8. I advertised the sale of the mining-related assets
22 with:

23 (a) the International Mining Journal (both print and
24 on-line publications (icmj.com)), which have run
continuously since September 2014 (see Exhibit "M" to
the Supplemental Exhibits in Support of the Motion);

25 (b) minelistings.com which has run continuously since
26 July 2014 (see Exhibit "N" to the Supplemental
Exhibits);

27 (c) Junior Miners (juniorminers.com/gold-mining-
28 claims-for-sale.html) which has run continuously since
July 2014 (see Exhibit "O" to the Supplemental

1 Exhibits);

2 (d) National Association of Bankruptcy Trustees
3 (marketassetsforsale.com), which was posted in May 2014
(see Exhibit "P" to the Supplemental Exhibits); and

4 (e) Loopnet.com, a real estate listing service, which
5 was posted in May 2014 (see Exhibit "Q" to the
Supplemental Exhibits).

6 I advanced all marketing costs. All online ads
7 pour-over to my firm's website, where voluminous
information is posted:

8 <http://www.thegorskifirm.com/#!bankruptcy-sales/c18d4>

9 According to the counter on my website, the page has
1,257 hits. (See Exhibit "R" to the Supplemental
Exhibits).

10 9. I reviewed Alibaba.com and found no listings for
11 gold mining claims - although there were listings for
gold mining equipment. I determined Alibaba.com was not
12 an appropriate marketing vehicle for Debtor's
mining-related assets. My review of The Northern Miner
13 indicated it does not offer classified ads.

14 10. I also worked to find a broker to list the mining
claims. I contacted two real estate brokerage firms
15 (one in Bakersfield and one in Ridgecrest), and
requested referrals when those firms could not assist
16 [me]. Even so, I did not find a broker who dealt in
unpatented BLM mining claims such as those owned by
debtor.

17
18 Gorski Decl. (June 25, 2015) at ¶¶ 8-10.

19 DuShane and the non-debtor Keystone entities, once again,
20 opposed Gorski's motions. According to the appellants, Gorski
21 incorrectly had concluded: (1) that the arguments challenging
22 Bush's loan and lien rights had no merit; and (2) that Bush
23 should be permitted to credit bid for the Keystone assets while
24 its loan and lien rights remained the subject of bona fide
25 dispute. Furthermore, the appellants argued, Hagestad's efforts
26 to acquire (through Bush) Keystone's assets constituted a breach
27 of his fiduciary duties to his fellow Keystone partners. They
28 further maintained that the assets should be marketed for at

1 least 90 days - free of any credit bid by Bush to potentially
2 chill competing bidders.

3 **3. The Bankruptcy Court's Rulings**

4 In June 2015, the bankruptcy court granted Gorski's bidding
5 procedures motion, thereby permitting Bush to bid up to 50% of
6 its allowed secured claim. And in July 2015, the bankruptcy
7 court granted Gorski's sale motion and his compromise motion.
8 Because no one else bid for KMM II's assets, Bush was the
9 successful bidder and purchaser of KMM II's assets.

10 The bankruptcy court issued a memorandum decision in which
11 it made a number of factual findings in support of its
12 determination in favor of the sale. Among other things, the
13 bankruptcy court found that the sale was in the "best interest of
14 the estate and its creditors," "was fair and reasonable" under
15 the circumstances, "was negotiated and proposed in good faith,"
16 "was subject to competitive bidding at the hearing" and was "the
17 result of an arm's length transaction between the parties after
18 lengthy negotiations."

19 The court additionally found that the trustee had adequately
20 marketed KMM II's assets and had fully complied with the
21 procedures set forth in the sale motion and in the bidding
22 procedures order.

23 Furthermore, the bankruptcy court noted that the proposed
24 sale was the only currently-available means for the estate to
25 realize any value from the estate's assets and that a failure to
26 approve the sale would almost certainly lead to Bush obtaining
27 relief from stay and foreclosing on the estate's most valuable
28 assets. Even more to the point, the court opined that, without

1 the sale, the trustee likely never would acquire any funds for
2 distribution to creditors.

3 As for Bush, the court found that it qualified as a good
4 faith purchaser under § 363(m) and that the consideration to be
5 paid by Bush was "fair and reasonable" under the circumstances,
6 was the "highest or best offer for the assets," and constituted
7 "reasonably equivalent value."

8 Moreover, the court pointed out that neither the trustee nor
9 any of the parties objecting to the sale had commenced any action
10 to challenge Bush's lien rights or to object to Bush's proof of
11 claim. As a result, the court determined that Bush's proof of
12 claim was prima facie valid under Rule 3001(f) and deemed allowed
13 under § 502(a). The court thus concluded that there was no bona
14 fide dispute as to Bush's loan or lien rights.

15 DuShane and the non-debtor Keystone entities timely
16 appealed the bidding procedures order, the sale order and the
17 compromise order.

18 **JURISDICTION**

19 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
20 §§ 1334 and 157(b)(2)(N). Except as otherwise indicated below,
21 we have jurisdiction under 28 U.S.C. § 158.

22 **ISSUES**

- 23 1. Do the appellants have standing to appeal?
- 24 2. Is this appeal moot?
- 25 3. To the extent the appeal from the compromise order is not
26 moot, have the appellants presented us with a sufficient record
27 and briefing that would enable us to reverse the bankruptcy
28 court's compromise order?

1 **STANDARDS OF REVIEW**

2 The appellants’ standing is a question of law we consider de
3 novo. Menk v. LaPaglia (In re Menk), 241 B.R. 896, 903 (9th Cir.
4 BAP 1999) .

5 The bankruptcy court’s determination that Bush qualified as
6 a good faith purchaser for purposes of § 363(m) is a finding of
7 fact reviewed for clear error. Adeli v. Barclay (In re Berkeley
8 Delaware Court, LLC), 2016 WL 4437616, *4 (9th Cir. 2016);
9 Thomas v. Namba (In re Thomas), 287 B.R. 782, 785 (9th Cir. BAP
10 2002). A finding of fact is not clearly erroneous unless it is
11 illogical, implausible, or without support in the record. Retz
12 v. Samson (In re Retz), 606 F.3d 1189, 1196 (9th Cir. 2010).

13 **DISCUSSION**

14 **1. Appellate Standing**

15 The appellants lack appellate standing unless they were
16 directly and adversely affected pecuniarily by the orders on
17 appeal. Fondiller v. Robertson (In re Fondiller), 707 F.2d 441,
18 442 (9th Cir. 1983); Cheng v. K & S Diversified Invs., Inc.
19 (In re Cheng), 308 B.R. 448, 455 (9th Cir. BAP 2004), aff'd,
20 160 Fed.Appx. 644 (9th Cir. 2005); In re Menk, 241 B.R. at 917.
21 Gorski and Bush argue on appeal that the appellants do not
22 satisfy this “person aggrieved” standard because there is no
23 practicable means by which appellants, under any scenario,
24 reasonably could expect any distribution from the KMM II
25 bankruptcy estate. According to Gorski and Bush, the estate is
26 administratively insolvent, and the appellants, as unsecured
27 creditors and/or equity interest holders in KMM II, consequently
28 have no prospect of receiving any distribution regardless of the

1 efficacy of the orders on appeal.

2 It is true that, when an appellant's chances of receiving a
3 distribution from the bankruptcy estate are hopeless, the
4 appellant may lack standing to appeal orders affecting the size
5 of the bankruptcy estate. See In re Fondiller, 707 F.2d at 442;
6 see also Duckor Spradling & Metzger v. Baum Trust
7 (In re P.R.T.C., Inc.), 177 F.3d 774, 778 n.2 (9th Cir. 1999).

8 That being said, Gorski's and Bush's standing argument assumes
9 that Bush's secured claim is valid and unassailable for purposes
10 of determining the appellants' standing. In other words, Gorski
11 and Bush seek to deny the appellants a merits determination on
12 the primary issue the appellants seek to raise on appeal - the
13 enforceability of Bush's loan and lien rights.

14 Admittedly, the reasons Gorski and Bush offer about why the
15 enforceability of Bush's loan and lien rights are not properly at
16 issue in this appeal are compelling. As Gorski and Bush point
17 out, the appellants never objected to Bush's claim, never
18 commenced an adversary proceeding challenging Bush's loan and
19 lien rights, and never took any other action they might have
20 taken to place Bush's loan and lien rights squarely at issue
21 before the bankruptcy court.

22 Gorski and Bush contend that, as a result of the appellants'
23 failures, the appellants should be determined to lack bankruptcy
24 appellate standing. But we are not convinced. The same points
25 that Gorski and Bush make in their appellate standing argument
26 can be considered, if necessary, in addressing the merits of the
27 appellants' appeal. Indeed, the appellants' failure in the
28 bankruptcy court to squarely place at issue Bush's loan and lien

1 rights ultimately might be fatal to their appeal, but we don't
2 think that this failure should deprive them of appellate
3 standing.

4 Our decision not to dismiss these appeals on appellate
5 standing grounds is supported by the fact that the appellate
6 standing doctrine is not a constitutional mandate but rather is a
7 prudential, judge-made rule applied in the interests of judicial
8 economy and efficiency. See generally In re P.R.T.C., Inc.,
9 177 F.3d at 778 (describing nature of appellate standing
10 doctrine). In light of the circumstances described immediately
11 above, we decline to dismiss these appeals on appellate standing
12 grounds.

13 **2. Application of Section 363(m) and Mootness**

14 Gorski and Bush also argue on appeal that § 363(m) applies
15 to this matter and has rendered these appeals moot.
16 Section 363(m) limits the remedies available on appeal when the
17 purchaser has acted in good faith. Section 363(m) provides as
18 follows:

19 The reversal or modification on appeal of an
20 authorization under subsection (b) or (c) of this
21 section of a sale or lease of property does not affect
22 the validity of a sale or lease under such
23 authorization to an entity that purchased or leased
24 such property in good faith, whether or not such entity
25 knew of the pendency of the appeal, unless such
26 authorization and such sale or lease were stayed
27 pending appeal.

28 11 U.S.C. § 363(m).

The Bankruptcy Code does not define the term "good faith"
for purposes of § 363(m), but the Ninth Circuit Court of Appeals
repeatedly has stated that, in this context, a lack of good faith
"typically [is] shown by fraud, collusion between the purchaser

1 and other bidders or the trustee, or an attempt to take grossly
2 unfair advantage of other bidders." In re Berkeley Delaware
3 Court, LLC, 2016 WL 4437616 at *4 (citing Paulman v. Gateway
4 Venture Partners III, L.P. (In Re Filtercorp, Inc.), 163 F.3d
5 570, 577 (9th Cir. 1998)); see also Onouli-Kona Land Co. v.
6 Estate of Richards (In re Onouli-Kona Land Co.), 846 F.2d 1170,
7 1173 (9th Cir. 1988); Community Thrift & Loan v. Suchy
8 (In re Suchy), 786 F.2d 900, 902 (9th Cir. 1985). The Ninth
9 Circuit also has said that a good faith purchaser is "one who
10 buys in good faith and for value." Ewell v. Diebert
11 (In re Ewell), 958 F.2d 276, 281 (9th Cir. 1992) (citations and
12 internal quotation marks omitted).

13 Based on these and other Ninth Circuit authorities, we have
14 held that the following factors are relevant to the good faith
15 determination: (1) compliance with approved sale procedures;
16 (2) arms-length negotiations, leading to a sale reflecting a
17 purchase price at or near the market value of the property;
18 (3) opportunity for competitive bidding; (4) knowledge in advance
19 of the sale of who the proposed purchaser is; and (5) the absence
20 of any evidence of fraud, collusion or grossly unfair advantage
21 over other bidders. Zuercher Trust of 1999 v. Schoenmann
22 (In re Zuercher Trust of 1999), 2016 WL 721485, at *9 (Mem. Dec.)
23 (9th Cir. BAP Feb. 22, 2016).

24 Here, the bankruptcy court considered all of these factors
25 and concluded that the factors militated in favor of a finding
26 that Bush was a good faith purchaser for purposes of § 363(m).
27 The court found that the sale "was negotiated and proposed in
28 good faith," "was subject to competitive bidding at the hearing"

1 and was "the result of an arm's length transaction between the
2 parties after lengthy negotiations." The court also found that
3 the proposed sale was the only currently available means for the
4 estate to realize any value from the estate's assets and that a
5 failure to approve the sale would almost certainly lead to Bush
6 obtaining relief from stay and foreclosing on the estate's most
7 valuable assets.

8 The appellants on appeal have not directly challenged any of
9 these findings. Nor did they specifically and distinctly argue
10 that the bankruptcy court's good faith finding was clearly
11 erroneous.

12 Even so, appellants did argue some points that, if proven
13 correct, arguably would undermine the bankruptcy court's good
14 faith finding. The appellants primarily contend that Bush's loan
15 and lien rights were unenforceable under Washington law. They
16 essentially argue that Gorski must have been acting collusively
17 with Bush because he refused to commence and pursue an action in
18 Washington state court to invalidate Bush's loan and lien rights.
19 The appellants further maintain that, had Gorski done so, the
20 value of KMM II's assets would have been rendered largely
21 unencumbered, and then those assets could have been sold for
22 millions of dollars, without the chilling cloud of Bush's credit
23 bid and Bush's \$8.1 million allowed secured claim hanging over
24 KMM II's assets.

25 The appellants additionally assert that Gorski initially
26 realized and acknowledged (in May and June 2014) that the loan
27 and lien rights were unenforceable but later made a 180-degree
28 turn (in September 2014) in order "to make the easiest sale to a

1 party who made sure [Gorski] was being adequately compensated,"
2 and Gorski therefore permitted Bush to buy "a valuable asset for
3 a song, without even a semblance of competitive bidding." Aplt.
4 Opn. Br. (Jan. 12, 2016) at p. 23.

5 Unfortunately for the appellants, the bankruptcy court found
6 and determined to the contrary. The bankruptcy court's findings
7 reflect its belief that Gorski had diligently determined that
8 allowance of Bush's secured claim for \$8.1 million and the
9 proposed compromise and sale with Bush were in the best interests
10 of the bankruptcy estate and its creditors. In so finding, the
11 bankruptcy court apparently credited Gorski's declaration
12 testimony representing that he painstakingly analyzed each and
13 every grounds for attacking Bush's loan and lien rights and
14 ultimately determined that he could not prevail on any of them
15 even if he were to pursue them. The appellants obviously have a
16 different belief; however, the bankruptcy court's findings are
17 not illogical, implausible or without evidentiary support, so we
18 must uphold them. See Wells Fargo Bank, N.A. v. Loop 76 LLC
19 (In re Loop 76, LLC), 465 B.R. 525, 544 (9th Cir. BAP 2012)
20 (citing In re Retz, 606 F.3d at 1196).

21 It is worth noting that the appellants never fully
22 articulated their argument on how Gorski could have defeated
23 Bush's loan and lien rights in Washington state court. All they
24 ever presented to Gorski and the bankruptcy court were two or
25 three Washington decisions holding that a six-year statute of
26 limitations applies to actions on promissory notes and that the
27 statute of limitations defense can be asserted in Washington to
28 prevent a secured creditor from conducting a nonjudicial

1 foreclosure under a deed of trust encumbering Washington real
2 property. See, e.g., Westar Funding Inc. v. Sorrels, 239 P.3d
3 1109, 1113 (Wash. Ct. App. 2010); Walcker v. Benson and
4 McLaughlin, P.S., 904 P.2d 1176, 1177-78 (Wash. Ct. App. 1995).
5 They never offered any analysis or case citations establishing
6 that Washington law can and should be applied to determine the
7 enforceability of a deed of trust encumbering California real
8 property. In fact, the appellants never attempted to present,
9 either in the bankruptcy court or on appeal, any sort of choice
10 of law analysis. In contrast, the choice of law analysis that
11 Bush presented to the court indicated that California law would
12 apply to a mortgage or deed of trust encumbering California real
13 property, even if a lawsuit was commenced elsewhere.

14 More importantly, the bankruptcy court did not adjudicate
15 the issue of the validity of Bush's loan and lien rights, nor
16 would it have been appropriate for it to do so in the context of
17 the sale and compromise motion. The appellants never placed the
18 validity of Bush's loan and lien rights squarely at issue before
19 the bankruptcy court. The appellants never objected to Bush's
20 proof of claim and never commenced an adversary proceeding
21 seeking to determine the extent and validity of Bush's lien.

22 On appeal, the appellants essentially concede that, if they
23 had done so, they would have lost because of the forum-related
24 choice of law rules applicable to California bankruptcy courts.
25 Aplt. Opn. Br. at p. 17; see also Sterba v, PNC Bank
26 (In re Sterba), 516 B.R. 579, 584-85 (9th Cir. BAP 2014).
27 Appellants, nonetheless, claim on appeal that Gorski should have
28 authorized them to pursue the issue in Washington state court if

1 Gorski was unwilling to pursue it there himself. Aplt. Opn. Br.
2 at p. 17. But there is nothing in the record indicating that
3 appellants asked for such authority, either from Gorski or the
4 bankruptcy court. The law is clear that the appellants could
5 have done so. See Avalanche Mar., Ltd. v. Parekh
6 (In re Parmetex, Inc.), 199 F.3d 1029, 1031 (9th Cir. 1999);
7 Hansen v. Finn (In re Curry and Sorensen, Inc.), 57 B.R. 824, 827
8 (9th Cir. BAP 1986).

9 In sum, § 363(m) applies to the appellants' appeals from the
10 bidding procedures order and the sale order. Consequently,
11 appellants could not unwind the sale to Bush even if they were to
12 prevail on appeal. Without this remedy, there is no meaningful
13 relief we could grant to appellants in their appeals from the
14 bidding procedures order and the sale order, so these two appeals
15 are moot. See Motor Vehicle Cas. Co. v. Thorpe Insulation Co.
16 (In re Thorpe Insulation Co.), 677 F.3d 869, 880 (9th Cir. 2012)
17 (stating that an appeal is moot if it is impossible for the court
18 to grant any effective relief to the appellant).

19 Alternately, the appellants contend that their appeals from
20 the sale order and the bidding procedures order are not moot
21 because both California and Washington grant to the debtor a
22 right of redemption - and other rights - upon the occurrence of a
23 foreclosure sale. We acknowledge that there are a number of
24 Ninth Circuit cases recognizing a redemption right exception to
25 the mootness rules covering bankruptcy-court-issued sale orders;
26 however, all of these cases involved appeals from bankruptcy
27 court orders pertaining to foreclosure sales. See, e.g., Mann v.
28 ADI Invs., Inc. (In re Mann), 907 F.2d 923, 926 (9th Cir. 1990);

1 Phoenix Bond & Indem. Co. v. Shamblin (In re Shamblin), 890 F.2d
2 123, 125 n.1 (9th Cir. 1989); Onouli-Kona Land Co. v. Estate of
3 Richards (In re Onouli-Kona Land Co.), 846 F.2d 1170, 1171-73
4 (9th Cir. 1988); Sun Valley Ranches, Inc. v. Equitable Life
5 Assurance Soc'y of the United States (In re Sun Valley Ranches,
6 Inc.), 823 F.2d 1373, 1375 (9th Cir. 1987). Here, in contrast,
7 the sale at issue was a trustee-initiated bankruptcy sale, rather
8 than a creditor-initiated foreclosure sale. We know of no Ninth
9 Circuit, California or Washington authority indicating that a
10 debtor has a right of redemption following a trustee-initiated
11 bankruptcy sale, nor have appellants pointed us to any such
12 authority.

13 **3. Appellate Review of Compromise Order**

14 This only leaves for our consideration the appellants'
15 appeal from the compromise order. Arguably, the compromise order
16 appeal also has been rendered moot under § 363(m). The Ninth
17 Circuit has applied § 363(m) to the approval of a settlement when
18 the settlement involved a sale of the bankruptcy estate's legal
19 claims and the bankruptcy court invoked and followed the legal
20 standards applicable to § 363 sales. See In re Berkeley Delaware
21 Court, LLC, 2016 WL 4437616 at *3.

22 That being said, it is questionable whether we should extend
23 the holding of In re Berkeley Delaware Court, LLC to the present
24 compromise order appeal. Unlike in Berkeley Delaware Court, the
25 estate property sold here really did not include the estate's
26 legal claims, per se. Furthermore, the bankruptcy court here
27 seemed to separately consider and rule upon the sale aspects and
28 the compromise aspects of the transaction entered into between

1 Gorski and Bush. As best we can tell from the limited record
2 provided, the bankruptcy court's approval of the compromise
3 aspects presumably focused on the legal standards governing
4 compromise of controversies under Rule 9019(a) and not on the
5 legal standards governing § 363 sales.

6 Therefore, under the unique procedural history of this case,
7 we conclude that § 363(m) should not be applied to the bankruptcy
8 court's compromise order, and the appeal therefrom is not moot.
9 Even so, the appellants still cannot prevail. The appellants did
10 not order the transcript from the final compromise hearing held
11 on July 20, 2015, at which the bankruptcy court orally stated its
12 findings of fact and conclusions of law on the record. This
13 makes it impossible for us to conduct any meaningful, informed
14 review of the bankruptcy court's compromise order. See Kyle v.
15 Dye (In re Kyle), 317 B.R. 390, 393-94 (9th Cir. BAP 2004),
16 aff'd, 170 Fed. Appx. 457 (9th Cir. 2006) (stating that the Panel
17 may exercise its discretion to dismiss or summarily affirm when
18 the appellant's failure to provide an adequate record prevents
19 informed appellate review).

20 In addition, appellants' appeal brief did not contain any
21 arguments specifically and distinctly challenging the bankruptcy
22 court's compromise order. As a result, appellants have forfeited
23 any such arguments they could have made. See Christian Legal
24 Soc'y v. Wu, 626 F.3d 483, 487-88 (9th Cir. 2010); Brownfield v.
25 City of Yakima, 612 F.3d 1140, 1149 n.4 (9th Cir. 2010).

26 In short, appellants have not presented us with any grounds
27 that would justify reversal of the bankruptcy court's compromise
28 order, nor are any such grounds evident from the record available

1 to us. Accordingly, the compromise order must be affirmed

2 **CONCLUSION**

3 For the reasons set forth above, we DISMISS AS MOOT the
4 appeals from the bankruptcy court's bidding procedures order and
5 its sale order. The compromise order is AFFIRMED.

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