

NOT FOR PUBLICATION

APR 12 2017

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP Nos.	EC-16-1147-JuTaB
)		EC-16-1151-JuTaB
GLORIA ALCORDO ESTILLORE,)		(Related Appeals)
)		
Debtor.)	Bk. No.	1:15-bk-11283
)		
GLORIA ALCORDO ESTILLORE,)	Adv. No.	1:15-ap-01076
)		
Appellant,)		
)		
v.)		
)		
TRUDI G. MANFREDO, Chapter 7)		
Trustee; CORELOGIC SOLUTIONS,)		
LLC; BANK OF AMERICA, N.A.;)		
SAGE POINT LENDER SERVICES,)		
LLC; NATIONSTAR MORTGAGE LLC;)		
U.S. BANK, N.A.,)		
)		
Appellees.)		

MEMORANDUM*

Argued and Submitted on March 23, 2017
at Sacramento, California

Filed - April 12, 2017

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

Honorable Fredrick E. Clement, Bankruptcy Judge, Presiding

Appearances: Appellant Gloria Alcordo Estillore appeared pro se; David R. Jenkins appeared for appellee Trudi G. Manfred, chapter 7 trustee; Bernard J. Kornberg appeared on brief for appellees U.S. Bank., N.A., Bank of America, N.A., and Nationstar Mortgage LLC; Kathryn A. Moorer

* 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 appeared on brief for appellee CoreLogic
2 Solutions, LLC.

3 _____
4 Before: JURY, TAYLOR, and BRAND, Bankruptcy Judges.

5 Debtor Gloria Alcordo Estillore (Estillore) appeals from
6 the bankruptcy court's orders: (1) denying her motion under
7 Civil Rule 60(b)(6)¹ to set aside the bankruptcy court's order
8 approving a compromise between appellee Trudi G. Manfredo, the
9 chapter 7 trustee (Trustee), and appellees Bank of America, N.A.
10 (BANA), Nationstar Mortgage LLC (Nationstar), Sage Point Lender
11 Services, LLC (Sage Point),² and CoreLogic Commercial Real
12 Estate Services, Inc. (CoreLogic) (BAP No. 16-1147); and
13 (2) dismissing a removed state-court adversary proceeding filed
14 against U.S. Bank National Association, as Trustee for the
15 Certificate Holders of the LXS 2007-15N Trust Fund (U.S. Bank),
16 Nationstar, and Sage Point pursuant to the terms of the
17 settlement agreement (BAP No. 16-1151). For the reasons set
18 forth below, we AFFIRM the orders on appeal.

19 **I. FACTS**

20 **A. Prepetition Events**

21 **1. The Foreclosure**

22 On May 2, 2007, Severino L. Estillore Jr., a married man,
23 and James A. Estillore and Cristyflor Estillore, as husband and
24 wife, (collectively, Borrowers) obtained a \$458,480 loan from

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

30 ² Sage Point has not appeared in this appeal.

1 Countrywide Bank, FSB (Countrywide). To secure the loan,
2 Borrowers executed a deed of trust encumbering real property
3 located on East Newhall Drive, Fresno, California. The deed of
4 trust was assigned to U.S. Bank. Sage Point was substituted as
5 trustee under the deed of trust. On April 14, 2014, Sage Point
6 recorded a notice of default against the property.

7 On May 12, 2014, in response to the commencement of
8 foreclosure, Borrowers executed a quitclaim deed granting their
9 entire interest in the property to Estillore.

10 On July 18, 2014, Sage Point recorded a notice of trustee's
11 sale setting a sale date of August 20, 2014. The sale went
12 forward as scheduled. The purchaser at foreclosure was U.S.
13 Bank, the owner of the loan. On September 4, 2014, a trustee's
14 deed upon sale was recorded.

15 **2. The State Court Lawsuit**

16 Prior to the sale, on August 14, 2014, Estillore filed a
17 complaint against U.S. Bank, Nationstar, and Sage Point (the
18 Lending Defendants) in Fresno County Superior Court. Estillore
19 amended the complaint to add BANA and CoreLogic as defendants.
20 Estillore alleged, among other things, irregularities in the
21 origination of the loan and the foreclosure process. She
22 requested that the court set aside the foreclosure sale.

23 The Lending Defendants demurred to the first amended
24 complaint. The state court sustained the demurrer, but granted
25 leave to amend as to some causes of action. Estillore failed to
26 timely amend the complaint. The Lending Defendants filed an ex
27 parte motion to dismiss the action due to Estillore's failure to
28 amend. The court granted the motion and entered the order

1 dismissing the action as to the Lending Defendants.

2 In response, Estillore filed an unauthorized second amended
3 complaint which removed the Lending Defendants as parties, but
4 added several employees and attorneys of the Lending Defendants
5 as new defendants. The second amended complaint alleged causes
6 of action for (1) Violation of the Lanham Act; (2) RESPA and
7 TILA Violations; (3) Negligent Misrepresentation; (4) Fraud and
8 Concealment; (5) Conspiracy; (6) Set Aside Trustee's Sale;
9 (7) Void or Cancel Deed of Trust; (8) Wrongful Foreclosure;
10 (9) Violation of California Business and Professions Code, and
11 (10) Quiet Title. The record does not reflect whether the
12 second amended complaint was served on any party.

13 **B. Bankruptcy Events**

14 On April 1, 2015, Estillore filed a chapter 7 petition.
15 Ms. Manfredo was appointed the trustee.

16 **1. Compromise Of The State Court Lawsuit**

17 As Estillore's ongoing state court lawsuit was property of
18 the bankruptcy estate, Trustee filed a notice of removal,
19 removing the lawsuit to the bankruptcy court.

20 Trustee then filed a motion to compromise the controversy
21 between Trustee on the one hand and Nationstar, BANA, CoreLogic
22 and Sage Point on the other. In exchange for \$46,000,³ Trustee
23 agreed to a complete dismissal of the adversary proceeding with
24 prejudice, a release of all claims, and withdrawal of the lis
25 pendens which Estillore had filed against the property. In

26
27 ³ The allocation of the total amount due was as follows:
28 BANA - \$27,000; Nationstar - \$15,000; Sage Point - \$2,000; and
CoreLogic - \$2,000.

1 support of the motion, Trustee submitted a report by attorney
2 David A. Roberts regarding the value of the claims brought in
3 the lawsuit. After analyzing the pleadings and papers in the
4 case, Mr. Roberts concluded that most of the claims brought by
5 Estillore had no legal merit.

6 Estillore opposed the motion to compromise, contending that
7 numerous parties had committed fraud and requesting that Trustee
8 abandon the lawsuit.

9 At the hearing on the motion, the bankruptcy court stated
10 its findings of fact and conclusions of law on the record.
11 First, the court found that the settlement was negotiated in
12 good faith. Second, the court considered the four factors set
13 forth in Martin v. Kane (In re A & C Props.), 784 F.2d 1377,
14 1380-81 (9th Cir. 1986) before concluding that the compromise
15 was fair and equitable. Those factors include: (a) the
16 probability of success in the litigation; (b) the difficulties,
17 if any, to be encountered in the matter of collection; (c) the
18 complexity of the litigation involved, and the expense,
19 inconvenience and delay necessarily attending it; and (d) the
20 paramount interest of the creditors and a proper deference to
21 their reasonable views in the premises.

22 As to the first factor, the court found the probabilities
23 of success in the litigation were low. Regarding the second
24 factor, the bankruptcy court noted there would be no difficulty
25 with collection from the settling parties. In discussing the
26 third factor, the court found that the litigation was complex
27 and, due to its complexity, the cost of litigation could reach
28 \$50,000 or more. Finally, as to the fourth factor, the court

1 found that the paramount interests of the creditors favored
2 settlement because there would be about \$20,000 which could be
3 distributed to creditors.⁴ In the end, the bankruptcy court
4 granted the motion.

5 On December 22, 2015, the bankruptcy court entered the
6 order approving the compromise (Compromise Order). That order
7 was not appealed.

8 **2. Motion For Relief Under Civil Rule 60(b)(6)**

9 On April 15, 2016, Estillore filed a motion for relief
10 (MFR) from the Compromise Order. Relying on Civil Rule
11 60(b)(6), Estillore argued that the compromise was not fair and
12 equitable because she lost her home due to a fraudulent scheme
13 by the defendants. She also asserted that the parties signing
14 the settlement agreement were not authorized to do so.

15 At the May 17, 2016 hearing, the bankruptcy court denied
16 the MFR on several grounds. The court observed that the order
17 approving the compromise was entered December 22, 2015, and that
18 Estillore filed the MFR on April 15, 2016, four months later.
19 The court noted that under Civil Rule 60(c)(1), Estillore was
20 required to file her MFR under Civil Rule 60(b)(6) within a
21 "reasonable time." The court concluded that the MFR was not
22 filed within a reasonable time under the circumstances of the
23 case – Estillore was present at the hearing on the motion for
24 compromise, and she offered no explanation for her delay in
25 bringing the MFR.

26
27
28 ⁴ As discussed below, Estillore had not yet claimed a proper exemption in the state court lawsuit.

1 The court also observed that Estillore sought relief based
2 on the court's error in applying the facts and law to the
3 compromise. The bankruptcy court noted that when a Civil Rule
4 60(b) motion is made based on the court's error, the motion must
5 be made before the expiration of the time for appeal under the
6 holding in Gila River Ranch v. United States, 368 F.2d 354, 357
7 (9th Cir. 1966); see also Morris v. Adams-Millis Corp., 758 F.2d
8 1352, 1358 (10th Cir. 1985) ("A contrary rule would permit a
9 [Civil Rule] 60(b) motion to serve as an appeal, which would be
10 untimely otherwise."). Therefore, the court held that Estillore
11 could not use the MFR as a substitute for a timely appeal.

12 Finally, the bankruptcy court found that although Estillore
13 was proceeding under Civil Rule 60(b)(6), her arguments fell
14 within the scope of Civil Rule 60(b)(1). Accordingly, the court
15 concluded that her motion was not properly brought under Civil
16 Rule 60(b)(6) nor had she demonstrated "'extraordinary
17 circumstances'" suggesting that she was "faultless in the
18 delay." Pioneer Inv. Servs. v. Brunswick Assocs., 507 U.S. 380,
19 393 (1993).

20 The bankruptcy court denied the MFR in a Civil Minute Order
21 dated May 17, 2016. Estillore filed a timely notice of appeal
22 from that order (BAP No. 16-1147).

23 **3. Dismissal Of The Adversary Proceeding**

24 At the same May 17, 2016 hearing, the bankruptcy court held
25 a status conference on the removed state-court adversary
26 proceeding. Trustee asked the bankruptcy court to dismiss the
27 adversary proceeding with prejudice pursuant to the terms of the
28 settlement agreement which had been approved by the court. The

1 bankruptcy court agreed and entered a Civil Minute Order
2 dismissing the adversary proceeding with prejudice. Estillore
3 filed a timely notice of appeal from that order (BAP No. 16-
4 1151).⁵

5 **II. JURISDICTION**

6 The bankruptcy court had jurisdiction over this proceeding
7 under 28 U.S.C. §§ 1334 and 157(b)(2)(A) and (O). As explained
8 below, we conclude that we have jurisdiction over both appeals
9 under 28 U.S.C. § 158.

10 **III. ISSUES**

11 A. Does Estillore have standing in these appeals?

12 B. Is the appeal from the order denying Estillore's MFR
13 moot?

14 C. Did the bankruptcy court abuse its discretion by
15 denying Debtor's MFR from the Compromise Order?

16 D. Did the bankruptcy court abuse its discretion by
17 dismissing the adversary proceeding with prejudice?

18 ///

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21 ⁵ Rule 7058 incorporates Civil Rule 58 and applies in
22 adversary proceedings. Civil Rule 58(a) states that every
23 judgment must be entered on a separate document. The order
24 dismissing the adversary proceeding in BAP No. 16-1151 may not
25 be a sufficiently separate final judgment under Civil Rule
26 58(a). Although no separate judgment was entered, the
27 bankruptcy court's order became final under Civil Rule
28 58(c)(2)(B) 150 days after the order was entered on the docket.
Regardless, the separate judgment requirement is not
jurisdictional and can be waived. See Bankers Tr. Co. v. Mallis, 435 U.S. 381, 384-85 (1978). On appeal, Estillore did not argue the lack of a separate judgment. Accordingly, she waived her right to require entry of a separate judgment. Id. at 386.

1 **IV. STANDARDS OF REVIEW**

2 Our jurisdiction, including the issues of standing and
3 mootness, are questions of law subject to de novo review. Menk
4 v. LaPaglia (In re Menk), 241 B.R. 896, 903 (9th Cir. BAP 1999);
5 Wiersma v. D.H. Kruse Grain & Milling (In re Wiersma), 324 B.R.
6 92, 110 (9th Cir. BAP 2005).

7 We review a motion for relief under Rule 9024, which
8 incorporates Civil Rule 60(b), for an abuse of discretion. Cel-
9 A-Pak v. Cal. Agric. Labor Relations Bd., 680 F.2d 664, 668 (9th
10 Cir. 1982); Tennant v. Rojas (In re Tennant), 318 B.R. 860, 866
11 (9th Cir. BAP 2004).

12 Rule 7041, which incorporates Civil Rule 41, governs the
13 dismissal of adversary proceedings. A bankruptcy court's
14 decision to dismiss an adversary proceeding under Civil Rule
15 41(a)(2) is reviewed under an abuse of discretion standard.
16 Sams v. Beech Aircraft Corp., 625 F.2d 273, 277 (9th Cir. 1980).

17 Under the abuse of discretion standard, we first "determine
18 de novo whether the [bankruptcy] court identified the correct
19 legal rule to apply to the relief requested." United States v.
20 Hinkson, 585 F.3d 1247, 1261-62 & n.21 (9th Cir. 2009) (en
21 banc). If the bankruptcy court identified the correct legal
22 rule, we then determine under the clearly erroneous standard
23 whether its factual findings and its application of the facts to
24 the relevant law were: "(1) illogical, (2) implausible, or
25 (3) without support in inferences that may be drawn from the
26 facts in the record." Id.

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1
2 **V. DISCUSSION**

3 **A. Estillore's Standing To Appeal**

4 Although no party raised the issue of Estillore's standing
5 to appeal the MFR and dismissal order, we have an independent
6 obligation to examine our own jurisdiction, and standing "is
7 perhaps the most important of [the jurisdictional] doctrines."

8 FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 231 (1990).

9 Bankruptcy appellate standing is limited to those persons who
10 can demonstrate that they are directly and adversely affected
11 pecuniarily by an order of the bankruptcy court. Robinson v.

12 Fondiller (In re Fondiller), 707 F.2d 441, 442-43 (9th Cir.

13 1983). A party asserting standing must demonstrate that the

14 bankruptcy court's order either diminishes his property,

15 increases his burdens, or detrimentally affects his rights. Id.

16 at 442. The pecuniary interest requirement extends to a

17 debtor's objections regarding proposed settlements. In re Rake,

18 363 B.R. 146, 151 (Bankr. D. Idaho 2007).

19 It is well-established that a chapter 7 debtor ordinarily

20 lacks standing to challenge orders affecting the assets of the

21 estate unless there is likely to be a surplus after bankruptcy.

22 Duckor Spradling & Metzger v. Baum Trust (In re P.R.T.C., Inc.),

23 177 F.3d 774, 778 (9th Cir. 1999). However, an exception to

24 this rule is when a debtor shows that there is property that may

25 be the subject of an allowed exemption. In re Rake, 363 B.R. at

26 151. If, for example, the settlement would result in proceeds

27 that may be exempt or partially exempt, then the debtor would

28 have a pecuniary interest in the settlement. Id.

Estillore's original schedule C did not include the

1 litigation claims and used § 522(b)(3) as a ground for her
2 exemptions. On October 28, 2015, Trustee filed the motion for
3 compromise. Prior to the entry of the Compromise Order, on
4 December 18, 2015, Estilloire filed an amended schedule C using
5 § 522(b)(3) for her exemptions, including exempting the
6 litigation. Trustee objected to her exemptions, arguing that
7 § 522(b)(3) could not be used as a basis for Estilloire's
8 exemptions. In response, Estilloire amended her schedule C on
9 March 7, 2016, claiming a \$26,600 exemption in the "Sage Point
10 Lender Services, LLC in default." Trustee has not objected to
11 this exemption and represented at the hearing on this matter
12 that Estilloire's wildcard exemption would be honored. We thus
13 conclude that Estilloire's claimed exemption gives her a
14 pecuniary interest in the claims compromised, and therefore she
15 has standing in these appeals.

16 **B. Jurisdiction Over BAP No. 16-1147**

17 Trustee, U.S. Bank, and BANA argue that Estilloire's appeal
18 of the order denying her MFR is moot under § 363(m)⁶ as she
19 failed to obtain a stay of the Compromise Order.

20 For their mootness argument, they rely on the holding in
21

22 ⁶ Section 363(m) provides:

23 The reversal or modification on appeal of an
24 authorization under subsection (b) or (c) of this
25 section of a sale or lease of property does not affect
26 the validity of a sale or lease under such
27 authorization to an entity that purchased or leased
28 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.

1 Adeli v. Barclay (In re Berkeley Del. Court, LLC), 834 F.3d 1036
2 (9th Cir. 2016). In Adeli, the debtor filed a prepetition
3 lawsuit against a creditor-lender regarding the validity of a
4 prepetition loan. The debtor filed a chapter 11 case which was
5 converted to chapter 7. The creditor removed the action to the
6 bankruptcy court. Because the bankruptcy estate held legal
7 claims against the lender, the trustee determined that a
8 settlement offered fair and equitable terms to the estate. The
9 trustee filed a motion seeking approval of the settlement under
10 Rule 9019 and the sale of the estate's claims under § 363(b),
11 which the bankruptcy court granted. In doing so, the bankruptcy
12 court found that the sale was entered into by the parties
13 without collusion and in good faith.

14 The debtor's principal appealed the bankruptcy court's
15 approval of the settlement to the district court, but he failed
16 to seek a stay of the sale order. The district court dismissed
17 the appeal as moot under § 363(m). Id. at 1039. The court also
18 rejected the appellant's arguments that the mootness rule would
19 not apply where the overbid procedures did not result in
20 competing bids, or where the counterparty was not an "outside
21 party". Id. at 1040.

22 The Ninth Circuit affirmed, concluding that the failure of
23 the debtor to seek a stay of the order approving the settlement
24 rendered the appeal moot. The Ninth Circuit reasoned that the
25 disposition by way of the compromise of a claim that is an asset
26 of the estate is the equivalent of a sale of the intangible
27 property represented by the claim. The Ninth Circuit also found
28 that the evidence supported the bankruptcy court's finding that

1 the creditor was a purchaser in good faith. Accordingly,
2 because settlement of the claims constituted a sale under
3 § 363(b), and since the debtor did not seek a stay of the order
4 approving the settlement, § 363(m) prevented judicial review of
5 the sale of the claims unless the sale was not in good faith.
6 The Ninth Circuit affirmed the dismissal of the appeal.

7 Adeli is factually distinguishable from this case. Unlike
8 the trustee in Adeli, Trustee did not mention § 363 or the sale
9 of an asset in her motion to approve the compromise nor did she
10 request a good faith finding under § 363(m). Her declaration
11 did not discuss the good faith of the settling parties under
12 § 363(m) standards and at no time did the bankruptcy court
13 actually decide whether any of the settling parties - BANA,
14 Nationstar, or CoreLogic - was a good faith purchaser for
15 purposes of § 363(m). Although the bankruptcy court found that
16 the settlement was negotiated in good faith, it did not make an
17 affirmative finding of good faith under § 363(m). "'Good faith'
18 is a factual determination," and "[u]nless and until 'good
19 faith' has been determined, the appeal is not moot under
20 § 363(m)." Thomas v. Namba (In re Thomas), 287 B.R. 782, 785
21 (9th Cir. 2002); see also Fitzgerald v. Ninn Worx Sr, Inc. (In
22 re Fitzgerald), 428 B.R. 872, 881 (9th Cir. BAP 2010) ("Without
23 a proper 'good faith' finding under § 363(m), there is no safe
24 harbor to shield the Sale Order from appellate review and
25 appellate remedies.") (citing T.C. Inv'rs v. Joseph (In re M
26 Capital Corp.), 290 B.R. 743, 746 (9th Cir. BAP 2003)).
27 Accordingly, the appeal is not moot despite Estillore's failure
28 to obtain a stay. We thus have jurisdiction to decide

1 Estilloire's appeal of the MFR (BAP No. 16-1147).

2 **C. MFR Under Civil Rule 60(b) (6)**

3 On appeal, Estilloire raises errors related to the
4 bankruptcy court's approval of the compromise and the merits of
5 the state court litigation. However, we do not consider these
6 alleged errors. The scope of our review is limited to the
7 bankruptcy court's denial of her MFR. In re Tennant, 318 B.R.
8 at 866 ("[A]n appeal from an order denying a [Civil Rule] 60(b)
9 motion brings up for review only the correctness of that denial
10 and does not bring up for review the final judgment."). Given
11 the limited scope of our review, the merits of the state court
12 litigation are not properly before us.

13 As already indicated, Estilloire's MFR was expressly based
14 on Civil Rule 60(b) (6). Relief under Civil Rule 60(b) (6) is to
15 be "used sparingly as an equitable remedy to prevent manifest
16 injustice and is to be utilized only where extraordinary
17 circumstances prevented a party from taking timely action to
18 prevent or correct an erroneous judgment." Latshaw v. Trainer
19 Wortham & Co., 452 F.3d 1097, 1103 (9th Cir. 2006). "[A] motion
20 for reconsideration should not be granted, absent highly unusual
21 circumstances, unless the [bankruptcy] court is presented with
22 newly discovered evidence, committed clear error, or if there is
23 an intervening change in the controlling law." Marlyn
24 Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873,
25 880 (9th Cir. 2009). In addition, a motion brought under Civil
26 Rule 60(b) (6) "must be made within a reasonable time." Civil
27 Rule 60(c) (1).

28 Relief under Civil Rule 60(b) (6) requires a showing that

1 the moving party was affected by "external, extraordinary
2 circumstances" and was "faultless in the delay." Pioneer Inv.
3 Servs., 507 U.S. at 393. Nowhere did Estillore demonstrate that
4 there were external, extraordinary circumstances beyond her
5 control that prevented her from acting sooner or that she was
6 faultless in the delay. We find no abuse of discretion for
7 denial of her MFR on this ground.

8 In addition, Estillore was required to file her MFR under
9 Civil Rule 60(b)(6) within a "reasonable time," a standard which
10 "depends upon the facts of each case, taking into consideration
11 the interest in finality, the reason for delay, the practical
12 ability of the litigant to learn earlier of the grounds relied
13 upon, and prejudice to other parties." Ashford v. Stuart, 657
14 F.2d 1053, 1055 (9th Cir. 1981). Estillore filed her MFR four
15 months after the Compromise Order was entered and provided no
16 explanation for the delay. Without a reason for the delay, on
17 this record we cannot say that the bankruptcy court abused its
18 discretion when it denied the motion as untimely.

19 Moreover, Estillore argued in the MFR that the bankruptcy
20 court made errors of fact or law which are generally considered
21 "mistakes" under Civil Rule 60(b)(1). Fid. Fed. Bank, FSB v.
22 Durga Ma Corp., 387 F.3d 1021, 1024 (9th Cir. 2004) ("The
23 district court has discretion to correct a judgment for mistake
24 or inadvertence, either on the part of counsel or the court
25 itself."); Phonometrics, Inc. v. Hospitality-Franchise Sys.,
26 Inc., 126 F. App'x 793, 794 (9th Cir. 2005) (unpublished
27 decision) ("The 'mistakes' of judges may be remedied under
28 [Civil Rule 60(b)(1)], which also encompasses mistakes in the

1 application of the law."). Therefore, the bankruptcy court
2 properly observed that Estillore's arguments pertaining to the
3 errors of the court were improper under Civil Rule 60(b)(6).
4 Civil Rule 60(b)(6) is not a substitute for motions brought
5 under Civil Rule 60(b)(1). See Lyon v. Augusta S.P.A., 252 F.3d
6 1078, 1088-89 (9th Cir. 2001).

7 A motion under Civil Rule 60(b)(1) must be brought within a
8 reasonable time, which must be "no more than a year after the
9 entry of the judgment or order." Unless a Civil Rule 60(b)(1)
10 motion based on legal errors is filed within the time for taking
11 an appeal, a court will find it untimely. See Gila River Ranch,
12 368 F.2d at 357; accord Lebahn v. Owens, 813 F.3d 1300, 1305
13 (10th Cir. 2016) ("[A Civil] Rule 60(b)(1) motion asserting
14 mistake of law is untimely—and therefore gives the district
15 court no authority to grant relief—unless brought within the
16 time to appeal."); see also Gonzalez v. Crosby, 545 U.S. 524,
17 536-38 (2005) (Civil Rule 60(b)(6) not available to raise
18 alleged errors that should have been raised in an appeal).
19 Estillore had 14 days to appeal the Compromise Order. See Rule
20 8002(a). Estillore did not file her MFR within the time for
21 taking an appeal, waiting almost four months before doing so.
22 Accordingly, the bankruptcy court found her MFR untimely.
23 Again, the bankruptcy court did not abuse its discretion by
24 denying her MFR on this ground.

25 Estillore also complains on appeal that the appellants
26 engaged in fraud. She alleged in her initial MFR that the
27 signatures on the settlement agreement were not authorized. On
28 appeal, she argues that the signatories either "don't exist or

1 they don't have the titles as stated on the documents that they
2 are signing." At another point, she argues that Trustee
3 "intentionally allowed the fraudulent agreement" and suggests
4 that the parties who signed the agreement had no personal
5 knowledge of the underlying contract and that their signatures
6 were possibly forged. Finally, she argues that fraud on the
7 court occurred because Mr. Roberts' report submitted in support
8 of the compromise was false.⁷

9 "Acts of 'fraud on the court' can sometimes constitute
10 extraordinary circumstances meriting relief under [Civil] Rule
11 60(b)(6)."⁸ Latshaw, 452 F.3d at 1104. The Ninth Circuit
12 explained:

13 Such fraud on the court 'embrace[s] only that species
14 of fraud which does or attempts to, defile the court
15 itself, or is a fraud perpetrated by officers of the
16 court so that the judicial machinery can not perform
17 in the usual manner its impartial task of adjudging
18 cases that are presented for adjudication.'

19 Liberal application is not encouraged, as fraud on the
20 court 'should be read narrowly, in the interest of

21 ⁷ In her MFR, Estilloire's fraud arguments related to the
22 unauthorized signatures on the settlement agreement. Her other
23 arguments regarding fraud and fraud on the court appear for the
24 first time on appeal. In general, we do not consider an issue
25 raised for the first time on appeal. Cold Mountain v. Garber,
26 375 F.3d 884, 891 (9th Cir. 2004). However, because of
27 Estilloire's pro se status, we construe her pleadings liberally.
28 Kashani v. Fulton (In re Kashani), 190 B.R. 875, 883 (9th Cir.
BAP 1995).

⁸ Because of this possibility, we do not construe
Estilloire's fraud arguments as solely within the scope of Civil
Rule 60(b)(3) (fraud (whether previously called intrinsic or
extrinsic), misrepresentation, or misconduct by an opposing
party). We also note that the bankruptcy court has discretion
to set aside a judgment for fraud on the court under Civil Rule
60(d)(3).

1 preserving the finality of judgments.' Our court
2 places a high burden on a plaintiff seeking relief
3 from a judgment based on fraud on the court. For
4 example, in order to provide grounds for relief, the
5 fraud must 'involve an 'unconscionable plan or scheme
6 which is designed to improperly influence the court in
7 its decision.'

8 In Latshaw, the plaintiff accepted and signed an offer from
9 the defendants to settle her lawsuit under Civil Rule 68. Two
10 months after the entry of the judgment, she moved to rescind and
11 vacate the defendants' offer of judgment under Civil Rule 60(b).
12 She sought relief under multiple theories, including relief
13 under Civil Rule 60(b)(6) on the basis that her attorney had
14 forged the signature of local counsel on the acceptance of the
15 offer, which was then submitted to the court. In applying the
16 above referenced standards, the Ninth Circuit held that although
17 it may have been fraud to forge a signature and the fraud may
18 have reached the court, the attorney's alleged conduct fell "far
19 short of 'defiling the court itself' and hardly resembled an
20 'unconscionable plan or scheme which is designed to improperly
21 influence the court in its decision.'" Id. at 1044.

22 Although Estillore alleged the signatures on the settlement
23 agreement were unauthorized in her original motion, implicitly
24 raising the possibility of fraud, there is no evidence
25 supporting her allegations other than her conclusory
26 declaration. Her declaration falls far short of proving fraud
27 on the court under the heightened standards set forth in
28 Latshaw. On this record, it was thus within the bankruptcy
court's discretion to deny relief under Civil Rule 60(b)(6) on
the basis of fraud to the extent it was even considered.

In sum, for all the reasons discussed, the bankruptcy

1 court's denial of Estilloire's MFR was not an abuse of
2 discretion.

3 **D. Dismissal Of The Adversary Proceeding**

4 The bankruptcy court's dismissal of the adversary
5 proceeding was based on Civil Rule 41(a)(2) which provides that
6 "an action may be dismissed at the plaintiff's request only by
7 court order, on terms that the court considers proper."

8 Because the claims set forth in the lawsuit were property
9 of the estate under § 541(a)(1), Estilloire lacked standing to
10 prosecute the claims as plaintiff. It is undisputed that
11 Trustee had the authority to settle those claims and did so in a
12 court-approved settlement. The dismissal of the adversary
13 proceeding with prejudice was a term of the settlement. Since
14 the bankruptcy court approved the settlement, it follows that
15 dismissal of the adversary proceeding with prejudice was not an
16 abuse of discretion. There was no longer any controversy and
17 the agreement of all the defendants in the lawsuit to the
18 dismissal was apparent.

19 **VI. CONCLUSION**

20 For the reasons stated, we AFFIRM both orders on appeal.
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