

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 15 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

In the Matter of: LAWRENCE D.  
WRIGHT; ANN MARIE WRIGHT  
Deceased,

Debtors,

OLYMPIC COAST INVESTMENT,  
INC.,

Appellant,

v.

DARCY M. CRUM, Chapter 7 Trustee,

Appellee.

No. 08-60050

BAP No. MT-08-1164-MoDH

MEMORANDUM\*

Appeal from the Ninth Circuit  
Bankruptcy Appellate Panel  
Hollowell, Montali, and Dunn, Bankruptcy Judges, Presiding

Submitted July 10, 2009\*\*  
Portland, Oregon

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: PREGERSON, RYMER and TASHIMA, Circuit Judges.

Olympic Coast Investment, Inc. (OCI) appeals a memorandum decision of the Ninth Circuit Bankruptcy Appellate Panel (BAP), which affirmed the bankruptcy court's order overruling OCI's objection to the proposed bankruptcy distribution that did not include an unsecured claim for OCI. We review the BAP's determination that OCI's appeal was equitably moot *de novo*, see *Baker & Drake, Inc. v. Pub. Serv. Comm'n (In re Baker & Drake, Inc.)*, 35 F.3d 1348, 1351 (9th Cir. 1994), and we affirm.

OCI not only failed to obtain a stay from the bankruptcy court, it never even asked for one. See *Trone v. Roberts Farms, Inc. (In re Roberts Farms, Inc.)*, 652 F.2d 793, 795 (9th Cir. 1981) ("Appellants did not at any time apply to the bankruptcy judge for a stay."); cf. *Focus Media, Inc. v. Nat'l Broad. Co. (In re Focus Media, Inc.)*, 378 F.3d 916, 924 (9th Cir. 2004) (distinguishing *Roberts Farms* and declining to apply the equitable mootness doctrine where the appellant requested a stay from the bankruptcy court but was denied).

OCI also failed to make any of the third-parties that would be affected by a decision on the merits – the unsecured creditors – party to its appeal. Although "unscrambl[ing] the eggs," see *Baker & Drake*, 35 F.3d at 1351, is theoretically possible through disgorgement of all the unsecured creditors, doing so is made all

the more difficult when those unsecured creditors are not involved in the appeal. *See Arnold & Baker Farms v. United States ex rel. U.S. Farmers Home Admin. (In re Arnold & Baker Farms)*, 85 F.3d 1415, 1420 (9th Cir. 1996) (“The bankruptcy court could fashion effective relief simply by ordering Western Cotton to return the 130 acres to Arnold and Baker.”); *United States v. Arkison (In re Cascade Roads, Inc.)*, 34 F.3d 756, 761 (9th Cir. 1994) (“Given the trustee’s notice and participation in this appeal, it would not be inequitable to [fashion effective relief.]”); *Sirtos v. Moreno (In re Sirtos)*, 992 F.2d 1004, 1007 (9th Cir. 1993) (“We can fashion effective relief by ordering Debtor, who is a party to this appeal, to return the money to the estate.”); *Salomon v. Logan (In re Int’l Env’tl. Dynamics, Inc.)*, 718 F.2d 322, 326 (9th Cir. 1983) (“Because Logan is a party to this appeal, this court could fashion effective relief by remanding with instructions to the bankruptcy court to order the return of erroneously disbursed funds.”). Under these circumstances, we agree with the BAP that allowing OCI to proceed with its appeal would be inequitable.

**AFFIRMED.**