

MAR 25 2010

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

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: BRANFORD PARTNERS, LLC,

Debtor,

No. 08-60051

BAP No. CC-08-01044-PaMkK

ALL-TEX, INC.,

Appellant,

MEMORANDUM*

v.

BRANFORD PARTNERS, LLC; BERT F.
FORNACIARI; LINDA COX
FORNACIARI,

Appellees.

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Pappas, Klein, and Markell, Bankruptcy Judges, Presiding

Argued and Submitted March 4, 2010
Pasadena, California

Before: CANBY, GOULD and IKUTA, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

We have jurisdiction to review the decision of the Bankruptcy Appellate Panel under 28 U.S.C. § 158, and we affirm.

In a memorandum disposition to be filed simultaneously with this disposition, *All-Tex, Inc. v. Branford Partners, LLC*, No. 08-60052, we have concluded that Branford Partners, LLC, properly could avoid All-Tex, Inc.'s alleged liens and interests in the property. Given that decision, All-Tex no longer had standing to challenge the disbursement of the sale proceeds and its appeal was moot. *See Foster v. Carson*, 347 F.3d 742, 745 (9th Cir. 2003); *Retail Clerks Welfare Trust v. McCarty (In re Van de Kamp's Dutch Bakeries)*, 908 F.2d 517, 519 (9th Cir. 1990).

Judge Canby would affirm on the ground that the Debtor in Possession did not abuse its discretion in implicitly concluding that the All-Tex priority claim was valueless and not worth pursuing on behalf of the estate.

AFFIRMED.