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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: TOWER PARK PROPERTIES,
LLC,

Debtor,

FIDUCIARY TRUST INTERNATIONAL
OF CALIFORNIA, Trustee ad litem of the
Mark Hughes Family Trust dated
September 3, 1987,

Appellant,

v.

TOWER PARK PROPERTIES, LLC,
Reorganized Debtor,

Appellee.

No. 16-56092

D.C. No. 2:13-cv-01518-GHK

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
George H. King, District Judge, Presiding

Argued and Submitted November 15, 2017
Pasadena, California

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

Before: HAWKINS, PARKER,** and IKUTA, Circuit Judges.

Fiduciary Trust International of California (FTIC) appeals the district court's memorandum decision dismissing FTIC's appeal of a bankruptcy court order approving certain "Conditional Provisions" in a settlement agreement that made changes to Tower Park Property, LLC's confirmed Chapter 11 plan of reorganization. Before the district court, FTIC moved to dismiss this appeal on the ground that the Conditional Provisions failed to take effect, and appeals the district court's denial of this motion to dismiss. We have jurisdiction under 28 U.S.C. § 158(d)(1) and 28 U.S.C. § 1291.

The settlement agreement provides that the Conditional Provisions do not take effect unless a fourteen-day appeal period following the bankruptcy court's approval of the provisions elapses "without the filing of any appeal." Because Alexander Hughes appealed the bankruptcy court's approval order within the fourteen-day period, the Conditional Provisions became "void and of no force or effect ab initio." Contrary to Tower Park's argument, the phrase "any appeal" is not "reasonably susceptible" to an interpretation that excludes Hughes's appeal. *Pac. Gas & Elec. Co. v. G.W. Thomas Drayage & Rigging Co.*, 69 Cal. 2d 33, 37

** The Honorable Barrington D. Parker, Jr., United States Circuit Judge for the U.S. Court of Appeals for the Second Circuit, sitting by designation.

(1968). The term that the parties chose is “plainly all-inclusive.” *Gerdlund v. Elec. Dispensers Int’l*, 190 Cal. App. 3d 263, 273 (1987). While Tower Park’s extrinsic evidence shows that certain parties to the settlement agreement were especially concerned about the risk of certain types of appeals, it does not show that the parties to the settlement agreement understood the phrase “any appeal” to mean “only certain appeals.” Because the Conditional Provisions did not go into effect, FTIC’s appeals are moot.¹

REVERSED.

¹Because we resolve this case on mootness grounds, we need not reach either the other threshold question, whether FTIC has appellate standing, *see Sinochem Int’l Co. v. Malaysia Int’l Shipping Corp.*, 549 U.S. 422, 431 (2007), or FTIC’s other arguments.