NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re: ASHKAN RAJAEE and NASSIM RAJAEE, Debtors.	BAP No. SC-25-1091-CBS Bk. No. 3:24-bk-00617-CL
ASHKAN RAJAEE, Appellant, v. CHRISTOPHER BARCLAY, Chapter 7 Trustee, Appellee.	**MEMORANDUM**[*]

Appeal from the United States Bankruptcy Court
for the Southern District of California
Christopher B. Latham, Chief Bankruptcy Judge, Presiding

Before: CORBIT, BRAND, and SPRAKER, Bankruptcy Judges.

INTRODUCTION

Chapter 7[1] debtor Ashkan Rajaee ("Rajaee") appeals the bankruptcy

[*] 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] Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and all "Rule" references are to the Federal Rules of Bankruptcy Procedure.

court's approval of a settlement between the chapter 7 trustee and third parties involved in state court litigation. Because the bankruptcy court did not abuse its discretion, we AFFIRM.

FACTS[2]

A. Arbitration and related litigation

In 2017, Rajaee and Tyler B. Davis ("Davis") created TopDevz, LLC ("TopDevz"), a software development and consulting business. Eventually, a dispute arose between Rajaee and Davis over their ownership and management of TopDevz. In 2021, Rajaee initiated an arbitration proceeding against Davis asserting that he had a 51% ownership interest while Davis had the remaining 49%. Davis filed a counterclaim seeking *inter alia* dissolution of TopDevz and asserting he was the majority owner.

On May 12, 2023, an arbitrator issued a 68-page final award against Rajaee. Among other things, the arbitrator determined that: (a) Davis owned more than 95% of TopDevz; (b) Davis had the right to dissolve TopDevz under applicable California law; (c) Rajaee had improperly taken millions out of the company; and (d) Rajaee was liable for damages to Davis for breach of fiduciary duty and for fraud. The arbitrator rejected

[2] We exercise our discretion to take judicial notice of documents electronically filed in the adversary proceeding, main bankruptcy case, and related proceedings. *See Atwood v. Chase Manhattan Mortg. Co. (In re Atwood)*, 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003); *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (Courts "may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.") (citation modified).

Rajaee's counterclaims for defamation, extortion, intentional infliction of emotional distress, tortious interference, and breach of fiduciary duty. Based on the misconduct, the arbitrator entered judgment against Rajaee. Davis was awarded $1,704,415.64 and TopDevz was awarded $7,670,151.00 ("Arbitration Award").

Davis filed a petition to confirm the Arbitration Award in state court. In response, Rajaee filed a motion to vacate the Arbitration Award. On July 20, 2023, the state court issued a detailed written decision affirming the Arbitration Award ("Arbitration Judgment").[3]

Rajaee believes that the arbitrator's factual findings were contrary to the evidence presented and that the arbitration process was unfair and a violation of his due process rights. Consequently, Rajaee has filed numerous lawsuits aimed at collaterally attacking the Arbitration Judgment and those involved with the process.

Relevant to this appeal is Rajaee's litigation against Lavine Lofgren Morris and Engelberg LLP ("LLM&E"), the former accountants for both Rajaee and TopDevz, and several related individuals, Jennifer A. Glaser, James Vinograd, Rodolfo Mercado, Jr., and Larry Campbell (collectively with LLM&E, the "LLM&E Defendants").

Rajaee asserted claims against the LLM&E Defendants for professional negligence, breach of contract, and breach of fiduciary duty

[3] Rajaee appealed the Arbitration Judgment although the matter is currently stayed because Rajaee filed for bankruptcy.

relating to tax matters and with respect to Rajaee's ownership in TopDevz. Rajaee alleged that LLM&E's actions caused or contributed to the arbitrator's adverse ruling against Rajaee. According to Rajaee, LLM&E improperly recorded the members' capital contributions in TopDevz's books and records and in the company's tax returns. Rajaee believed the arbitrator relied on the incorrect accounting entries to determine the ownership of TopDevz. The complaint sought $15 million in general and special damages.

The LLM&E Defendants denied Rajaee's allegations. They argued that: (a) Rajaee was the "tax matters partner" for TopDevz and reviewed and approved all of their actions; (b) Rajaee never raised any concerns with LLM&E's actions until after he lost the arbitration; (c) the accounting entries reflecting the members' relative capital contributions were accurate based on the information provided to LLM&E; (d) Rajaee lost the arbitration because he provided inaccurate and untruthful testimony, not because of the LLM&E Defendants' actions; and (e) Rajaee's claims against the LLM&E Defendants were barred by the applicable statute of limitations.

B. Bankruptcy

On February 26, 2024, Rajaee and his wife, Nassim Rajaee, (together, the "Debtors") filed a voluntary chapter 11 bankruptcy petition. On May 9, 2024, the bankruptcy court entered an order converting the Debtors' bankruptcy case from chapter 11 to chapter 7, and a chapter 7 trustee was

appointed ("Trustee"). In the conversion order, the bankruptcy court noted that Rajaee's litigation history suggested bad faith.

In December 2024, (approximately seven months later), the Debtors sought reconsideration of the conversion order which the bankruptcy court denied. The Debtors appealed the denial of the reconsideration motion, and that appeal is currently pending before the district court.

Once the case was converted, Rajaee was no longer the debtor-in-possession and Trustee became the real party in interest in the ongoing litigation pursuant to § 323 and Rule 6009. After obtaining temporary stays from the various courts, Trustee evaluated the pending litigation to determine whether to settle, abandon, dismiss, or prosecute the various causes of action. After evaluating the pending cases, Trustee filed several motions to approve Rule 9019 settlement agreements.

Relevant to this appeal is Trustee's motion to approve a Rule 9019 settlement to resolve the pending litigation with the LLM&E Defendants (the "LLM&E Settlement") and the proof of claim filed by Allan Cate and Cate Legal Group (collectively, "Cate") (the "Cate Settlement").

In the motion to approve the LLM&E Settlement, Trustee explained that the purpose of the settlement was to resolve the estate's purported accounting malpractice claims against LLM&E Defendants ("LLM&E Lawsuit"). Under the terms of the proposed LLM&E Settlement, the LLM&E Defendants agreed to pay Trustee $177,000.00 in return for dismissal of the LLM&E Lawsuit with prejudice and mutual general

releases.

Trustee argued that the LLM&E Settlement satisfied the factors set forth in *Martin v. Kane (In re A & C Props.)*, 784 F.2d 1377, 1381 (9th Cir. 1986). As to the probability of success, Trustee stated that the claims against the LLM&E Defendants were "not particularly strong," that proving causation would be difficult, and the fact that Rajaee was the estate's primary witness would be "extremely problematic." Trustee further argued that the expense, uncertainty, and delay that would result from prosecuting a weak case, as opposed to a guaranteed payment of $177,000.00 for the estate, weighed heavily in favor of approving the proposed settlement.

As to the Cate Settlement, Trustee explained that Cate was Rajaee's attorney in the LLM&E Lawsuit. Cate had asserted an attorneys' charging lien of 30% on any recovery in the LLM&E Lawsuit pursuant to California law and the attorney-client fee contract attached to Cate's Proof of Claim ("Cate's POC"). Although Trustee disputed the validity and amount of Cate's POC, Trustee indicated that the estate was willing to settle the claim by paying Cate for the hours spent thus far on the litigation, which according to the detailed billing invoice was $18,018. Under the terms of the proposed Cate Settlement, the estate agreed to pay Cate $18,018 in return for withdrawal of Cate's POC and general releases.

Trustee argued the Cate Settlement satisfied the *A & C Properties* factors because in California, "a discharged contingent fee attorney can

seek compensation for the reasonable value of their services through a 'quantum meruit' claim, which is determined by factors like the time spent, the nature of the case, and the results obtained, rather than the original contingent fee agreement." Therefore, Trustee believed that Cate had a valid basis for a claim against the estate for the hours thus far spent on the LLM&E Lawsuit. Based on the applicable law, Trustee asserted that it was in the interest of the estate to quickly and efficiently resolve the claim and to ensure full and complete satisfaction of Cate's asserted lien rights against the estate.

Rajaee did not oppose either settlement.

On April 24, 2025, the bankruptcy court entered an order approving the LLM&E Settlement and the Cate Settlement (the "Settlement Order").

Rajaee timely appealed the Settlement Order.

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(A). We have jurisdiction under 28 U.S.C. § 158.[4]

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[4] Trustee raises questions of mootness and standing which we assess de novo. *Silver Sage Partners, Ltd. v. City of Desert Hot Springs (In re City of Desert Hot Springs)*, 339 F.3d 782, 787 (9th Cir. 2003). Because we could vacate the Settlement Order, the appeal is not constitutionally moot. *Clear Channel Outdoor, Inc. v. Knupfer (In re PW, LLC),* 391 B.R. 25, 33 (9th Cir. BAP 2008). However, equitable mootness occurs when the circumstances of a case have been altered so substantially as to render the consideration of the merits of an appeal inequitable. *See Rev Op Group v. ML Manager LLC (In re Mortgs. Ltd.),* 771 F.3d 1211, 1214 (9th Cir. 2014). Because we address the merits of the issue, we decline to reach the question of equitable mootness. *See Harkey v. Grobstein (In re Point Ctr. Fin., Inc.),* 957 F.3d 990, 1002 (9th Cir. 2020)

ISSUE

Whether the bankruptcy court abused its discretion in entering the Settlement Order.

STANDARD OF REVIEW

We review approval of a Rule 9019 settlement agreement for an abuse of discretion. *Goodwin v. Mickey Thompson Ent. Grp., Inc. (In re Mickey Thompson Ent. Grp., Inc.)*, 292 B.R. 415, 420 (9th Cir. BAP 2003). A bankruptcy court abuses its discretion if it applies the wrong legal standard, misapplies the correct legal standard, or if its factual findings are illogical, implausible, or without support in the record. *United States v. Hinkson*, 585 F.3d 1247, 1261-62 (9th Cir. 2009) (en banc).

DISCUSSION

A. The bankruptcy court's Settlement Order was not an abuse of discretion.

Rule 9019 allows the bankruptcy court to approve a compromise or

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Rajaee must also establish both Article III standing and that he is aggrieved by the Settlement Order. *Clifton Cap. Grp., LLC v. Sharp (In re E. Coast Foods, Inc.),* 80 F.4th 901, 905 (9th Cir. 2023), as amended, (citing *Fondiller v. Robertson (In re Fondiller),* 707 F.2d 441, 443 (9th Cir. 1983)). Trustee argues that Rajaee lacks standing because the bankruptcy estate is insolvent, though there is no evidence to support this allegation. A chapter 7 debtor generally lacks standing to challenge orders affecting the assets of the estate unless there is likely to be a surplus after paying all creditors. *Duckor Spradling & Metzger v. Baum Tr. (In re P.R.T.C., Inc.),* 177 F.3d 774, 778 n.2 (9th Cir. 1999); *In re Fondiller,* 707 F.2d at 442. Because Debtor's schedules allege a large surplus estate (listing total assets of $90 million and total liabilities of $20 million), and Trustee has provided no evidence to the contrary, Rajaee has standing to appeal and we address the merits of the issue.

settlement. The bankruptcy court has great latitude in approving a compromise or settlement under Rule 9019. *In re Mickey Thompson Ent. Grp., Inc.*, 292 B.R. at 420. Even so, the compromise must be fair and equitable, in the best interests of the estate, and reasonable. *Id.* Rather than conduct an exhaustive investigation or a mini-trial on the merits of the claims sought to be compromised, the court's role is to "canvas the issues and see whether the settlement falls below the lowest point in the range of reasonableness." *In re Pac. Gas & Elec. Co.*, 304 B.R. 395, 417 (Bankr. N.D. Cal. 2004) (citations omitted); accord *Burton v. Ulrich (In re Schmitt)*, 215 B.R. 417, 423-25 (9th Cir. BAP 1997).

In determining whether a proposed compromise is fair, reasonable, and adequate, the bankruptcy court must consider: (1) the probability of success in the litigation; (2) the difficulties, if any, of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. *In re A & C Props.*, 784 F.2d at 1381.

Rajaee did not object to the settlements when they were before the bankruptcy court, so no evidence has been presented controverting Trustee's declaration. Nor does Rajaee argue that the court applied the wrong law in reaching its decision to approve the settlements. Accordingly, Rajaee is left to demonstrate that the bankruptcy court's factual findings were illogical, implausible, or without support in the record. *Hinkson*, 585

F.3d at 1261-62. Yet, Rajaee made no such argument in his briefs or at oral argument. Indeed, his appellate arguments focus almost exclusively on his belief that anything related to, or based on, the Arbitration Judgment is voidable and that the bankruptcy court erred in converting his case to a chapter 7. Neither of those issues is relevant to the only issue before the Panel, whether the bankruptcy court abused its discretion in entering the Settlement Order. To the extent that Rajaee even addressed the Settlement Order, his only argument was that it should be voided because it "gave effect to a void state court judgment."

Based on the record before us, the bankruptcy court's Settlement Order was not an abuse of its discretion.[5] As to the LLM&E Settlement, the bankruptcy court relied on Trustee's business judgment, which determined that the probability of successfully prosecuting the claims against the LLM&E Defendants was low while the probability that the estate would incur significant legal costs if litigation went forward was high. Furthermore, based on the record it was reasonable for the bankruptcy court to agree with Trustee that a guaranteed payment of $177,000 rather than facing the risk, cost, and delay associated with continuing to prosecute the weak claims against the LLM&E Defendants, was fair, equitable, and in the best interests of creditors and the estate.

[5] Trustee stated that he "understands that" the Cate Settlement "is not being challenged as part of this appeal." Answering Br. pg. 9 fn.7. Because the Settlement Order included both settlements and it is not clear that Rajaee restricted the scope of his appeal to only the LLM&E Settlement, we address the merits of both.

As to the Cate Settlement, the bankruptcy court again relied on Trustee's business judgment after he reviewed Cate's POC and the applicable law. By approving Trustee's settlement motion, the bankruptcy court indicated that it agreed with Trustee's business judgment determination that paying Cate for the hours spent (as supported by detailed billing invoices) was consistent with California law and was fair, equitable, and in the best interests of creditors and the estate.

Consequently, the bankruptcy court determined that both settlements were fair and equitable to the estate and its creditors, largely relying on the Trustee's business judgment because Trustee provided evidence that he had amply considered the *A & C Properties* factors before determining the reasonableness of the settlements. Thus, the record evidences the bankruptcy court applied the correct law and based its decision on reasonable findings of fact. The bankruptcy court's Settlement Order was not an abuse of discretion.

B. Due Process

On appeal, Rajaee makes various allegations that his due process rights were violated but those arguments are generally incomprehensible. Again, most of his arguments are directed toward the alleged unfairness of the Arbitration Judgment. Rajaee baldly states that he "did not file an opposition to the compromise motion because the court prevented Rajaee from representing himself until the court held a hearing on Rajaee's request to represent himself." Opening Br. pg. 43.

A cursory review of the docket, however, reveals that Rajaee was represented by counsel during this time. Trustee noticed the proposed settlements on negative notice pursuant to the applicable local rules. During the period for objections, Rajaee agreed that counsel could withdraw from representing him though not his co-debtor wife and requested permission to file his own opposition to another matter pending the hearing on the requested withdrawal of counsel. The court entered an order expressly stating that counsel continued to represent Rajaee until the matter of counsel's withdrawal was heard, but the court allowed either counsel or Rajaee to file the opposition as to other matter. The court set a hearing on counsel's withdrawal for late April 2025. The bankruptcy court entered its order approving the unopposed settlements prior to the hearing on withdrawal of Rajaee's counsel and entering the order granting his withdrawal.

The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (citation modified). To support a due process claim, Rajaee needs to establish he was denied a full and fair opportunity to be heard and that he was prejudiced as a result. *See Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764, 776-77 (9th Cir. 2008), *partially abrogated on other grounds as recognized by Nichols v. Marana Stockyard & Livestock Mkt., Inc. (In re Nichols)*, 10 F.4th 956, 962 (9th Cir. 2021). Rajaee's argument that the court denied him the opportunity to be heard on the

settlements is disingenuous. Rajaee and his counsel both received notice of the settlement motion. He was given the opportunity to object. He did not, and the subsequent withdrawal of his counsel does not negate that opportunity. There was no violation of his due process.

Equally important, Rajaee does not state what different or additional arguments he would have made to the settlements had he or his attorney objected to the settlements. *See, e.g., City Equities Anaheim, Ltd. v. Lincoln Plaza Dev. Co. (In re City Equities Anaheim, Ltd.)*, 22 F.3d 954, 959 (9th Cir. 1994) (rejecting due process claim for lack of prejudice where debtor could not show that any different or additional arguments would have been presented if bankruptcy court had timely approved petition for new counsel). As noted, he simply continues to challenge the Arbitration Judgment. Rajaee's failure to demonstrate that he was prejudiced by any procedural deficiencies also precludes his claim for a violation of due process. [6]

CONCLUSION

Based on the foregoing, we AFFIRM.[7]

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[6] After his reply brief on appeal, Rajaee filed a supplemental pleading objecting to alleged hearsay in Trustee's answering brief. BAP ECF No. 12. To the extent Rajaee is complaining that Trustee's reference to parts of the record allegedly qualify as inadmissible hearsay, the brief itself is merely argument and not evidence. S*ee e.g. British Airways Bd. v. Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978) ("legal memoranda and oral argument are not evidence").

[7] After the case was submitted to the Panel for decision, Rajaee filed a notice of Supplemental Authorities. BAP ECF No. 18. Nothing raised in this filing changes the outcome of this appeal.