NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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

In re: HOMESITE HOLDINGS, LLC Debtor ______________________________ HOMESITE HOLDINGS, LLC, Appellant. v. RONALD E. STADTMUELLER, Chapter 7 Trustee; SMDL, LLC; T2, LLC, Appellees.	No. 25-626 D.C. No. 24-1034 MEMORANDUM*
In re: HOMESITE HOLDINGS, LLC Debtor ______________________________ HOMESITE HOLDINGS, LLC; MICHAEL R. CARTWRIGHT II, Appellants. v. RONALD E. STADTMUELLER, Chapter	No. 25-627 D.C. No. 24-1035

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

7 Trustee; HOUSHANG AFRAMIAN; SMDL, LLC; T2, LLC,

Appellees.

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel
Julia W. Brand, Scott H. Gan, and Frederick Philip Corbit, Bankruptcy Judges, Presiding

Argued and Submitted July 6, 2026
Pasadena, California

Before: RAWLINSON, SANCHEZ, and TUNG, Circuit Judges.

Appellants Homesite Holdings, LLC and Michael R. Cartwright II appeal from the Bankruptcy Appellate Panel's ("BAP") judgment affirming the bankruptcy court's decision denying Appellants' motion for summary judgment, approval of the joint settlement agreement and sale of real property, and denial of Appellants' motion for reconsideration. We review BAP decisions de novo and apply the same standard of review that the BAP applied to the bankruptcy court's ruling. *Boyajian v. New Falls Corp. (In re Boyajian)*, 564 F.3d 1088, 1090 (9th Cir. 2009). We have jurisdiction under 28 U.S.C. § 158(d), and we affirm.

1. The bankruptcy court did not err in denying Appellants' motion for summary judgment on SMDL/T2's nuisance claim. *See Suncrest Healthcare Ctr. LLC v. Omega Healthcare Investors, Inc. (In re Raintree Healthcare Corp.*), 431 F.3d 685, 687 (9th Cir. 2005). Summary judgment is proper only where there is no genuine dispute of material fact. Fed. R. Civ. P. 56(a); Fed. R. Bankr. P. 7056;

Celotex Corp. v. Catrett, 477 U.S. 317, 322–23 (1986). Here, the record presented genuine disputes of material fact with respect to two issues.

First, a genuine dispute of material fact exists as to whether the statute of limitations barred SMDL/T2's nuisance claim. *See* Cal. Code Civ. P. § 338(b). The landslide giving rise to the claim began in 2005. However, expert testimony indicated that the nuisance caused by the landslide could be considered continuing, meaning that a claim could accrue with each new subsidence. *See Bellman v. Contra Costa County*, 54 Cal. 2d 363, 369 (1960) (in bank). Whether there was a continuing nuisance depended on whether the nuisance could be abated at a reasonable cost and whether damage occurred within the past three years of the limitations period. Deciding those issues would have required the bankruptcy court to weigh conflicting expert testimony and other evidence in the record. *See Madani v. Rabinowitz*, 45 Cal. App. 5th 602, 608 (2020). Accordingly, the bankruptcy court correctly held that conflicting evidence precluded summary judgment.

Second, a genuine dispute of material fact exists as to whether Homesite could be held liable as a successor. Homesite could be held liable as a successor at common law if it knew of a dangerous artificial condition and failed to make it safe or otherwise protect others against it. *See Lee v. Takao Bldg. Dev. Co.*, 175 Cal. App. 3d 565, 568 n.2 (1985); Restatement (Second) of Torts § 366. Homesite could also be held liable as a successor under the Civil Code if it failed to abate a continuing nuisance. Cal. Civ. Code § 3483. Both issues turn on disputed questions of fact and would require the bankruptcy court to resolve competing expert declarations and other evidence in the record. Accordingly, the bankruptcy court correctly held that summary judgment was not proper.

2. The bankruptcy court did not abuse its discretion when it approved the joint settlement agreement and sale of real property. *See Goodwin v. Mickey Thompson Enter. Grp., Inc. (In re Mickey Thompson Enter. Grp., Inc.)*, 292 B.R. 415, 420 (B.A.P. 9th Cir. 2003); *Fitzgerald v. Ninn Worx Sr, Inc. (In re Fitzgerald)*, 428 B.R. 872, 880 (B.A.P. 9th Cir. 2010). The bankruptcy court correctly applied the *A & C Properties* factors, and made detailed, record-supported findings that all four factors—probability of success, difficulty of collection, complexity and expense of litigation, and the paramount interest of creditors—favored approving the compromise as reflected in the joint settlement agreement and sale. *See In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986).

3. Finally, the bankruptcy court did not abuse its discretion by denying Appellants' motion for reconsideration. *See* Fed. R. Civ. P. 59(e), 60(b)(3); *United Nat. Ins. Co. v. Spectrum Worldwide, Inc.*, 555 F.3d 772, 780 (9th Cir. 2009). Appellants sought reconsideration on two grounds: newly discovered evidence and fraud. With respect to the newly discovered evidence, Appellants claimed to have discovered (after the bankruptcy court's denial of summary judgment) an

undisclosed application that SMDL/T2 had submitted to the California Coastal Commission in October 2023. Appellants claim that this application demonstrated that SMDL/T2 knew that the retaining walls were not a dangerous condition and not the cause of any ongoing landslide. However, Appellants' purportedly newly discovered evidence is not material. Additionally, Homesite failed to act with reasonable diligence when it waited until after its motion for summary judgment was denied to procure and produce the application and provided no valid explanation for the delay. For the same reasons, Appellants' asserted basis for reconsideration on grounds of fraud also lacked merit.

AFFIRMED.[1]

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[1] Appellees also argue that this case is equitably moot. Equitable mootness is a "judge-made abstention doctrine unrelated to the constitutional prohibition against hearing moot appeals." *In re Mortgages Ltd.*, 771 F.3d 1211, 1214 (9th Cir. 2014) (internal quotation marks omitted). Because we affirm the bankruptcy court's substantive rulings, we need not address whether this case is equitably moot. *See In re Point Ctr. Fin., Inc.*, 957 F.3d 990, 1002 (9th Cir. 2020).