Receivership NEWS

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In Custodia Legis

A Publication of the California Receivers Forum

Honorable Alan Jaroslovsky

An Interview with the Honorable Alan Jaroslovsky

By Ron Oliner*

To anyone who has been involved in a bankruptcy case north of San Francisco, from Marin County up to Eureka, **Judge Jaroslovsky** is a well-known fixture. He has served our community as a bankruptcy judge in the Northern District of California, Santa Rosa Division, for 29 years (that's two full terms and now beginning his third), and presided over thousands of bankruptcy cases, large and small. I recall speaking at length with another great jurist, **Judge James Grube** (now deceased), many years ago, and am reminded of his description of three important qualities every judge should bring to the bench. One, a judge has a duty to carefully read the papers submitted. Two, a judge must allow counsel to make their arguments at the hearing, and really listen to them. And three, a judge should always try to rule promptly and make clear to the losing party the basis for the adverse ruling. Lawyers (me included) who have appeared regularly before Judge Alan Jaroslovsky over the past three decades will agree that he exemplifies these characteristics. Below is a short conversation we had in his chambers recently, which I hope you find interesting.

Ron: To begin with, let me ask you to talk a little bit about your background and your roots in Northern California.

Judge Jaroslovsky: Well, I was born in Iowa, but my parents moved to Petaluma when I was two and to Santa Rosa when I was seven. So, I was raised in Santa Rosa. Montgomery High, Class '66. I left Santa Rosa in '66 to go to UCLA. I spent four years at UCLA and three years in the Navy, and then I went to law school in San Francisco. When I graduated law school, I moved back to Santa Rosa and hung out my shingle.

Ron: You were a sole practitioner initially, were you not?

Judge Jaroslovsky: Yes.

Ron: Tell me a little bit about that. What sort of work you were doing for clients in those early days as a sole practitioner?

Judge Jaroslovsky: Well, I started out in general solo stuff, no family law but general civil and with an emphasis on real estate. I think I made $2000 my first year, and $1500 my second year, but on increased volume. But then my best client had to file bankruptcy, and that was in 1979, just as the new Bankruptcy Code went into effect. There was literally nobody in town who understood the Bankruptcy Code so I had to teach it to myself in order to handle a bankruptcy case. I fell in love with it. I started doing more and more, and the more I did the more people started referring things to me.

Ron: So, you were doing debtor side work in the late '70s, early '80s?

Judge Jaroslovsky: Well, I started out doing debtor work but very quickly, by

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Inside

Publisher's Comments

By Robert P. Mosier, Publisher*

An important part of the support organization that makes Receivership News (RN) possible is our network of associate publishers. This group provides our eyes and ears (and feet on the ground) to give RN its statewide presence. RN is pleased and proud to have the sustained input of Northern California insolvency lawyer, **Ron Oliner**, who is RN's associate publisher for the San Francisco Bay area. In this issue alone, Mr. Oliner has made two important contributions: (a) he prepared our Judge profile, Federal Bankruptcy **Judge Alan Jaroslovsky** who serves the Northern District of California and (b) Mr. Oliner co-authored and contributed to the annual update on Recent Case Law developments in the Bankruptcy area.

Robert P. Mosier

**Robert P. Mosier is a Southern California receiver and trustee and principal of Mosier & Company, Inc., a firm that has specialized in managing and turning around troubled companies for more than 25 years.*

Wait: isn't this Receivership News? What is all the emphasis on Bankruptcy (admittedly sometimes a first cousin to Receivership)? Well, annually this is the one issue that RN devotes to largely bankruptcy related stories. About two-thirds of our readership is the membership of the California Bankruptcy Forum. RN is pleased to have the opportunity to emphasize bankruptcy topics in this once per-year tradition. We hope to see you in Napa at the CBF annual conference.

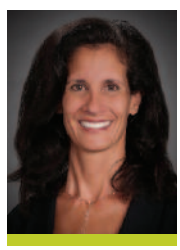
And speaking of successful conferences, I am pleased to report that Loyola VI was a great success. Even with the economy recovering, which translates to fewer insolvency related receiverships, the two days of concentrated, advanced education for receivers, their counsel, accountants and support group was superb. Thanks to co-chairs **Joel Weinberg** and **Stacy Rubin**. Inside you will find a colorful picture essay of Loyola VI and all that it had to offer.

We hope you enjoy the issue. We know you will have a good time in Napa. RPM

Editor's Comments

By Kathy Bazoian Phelps*

The issue of the Receivership News allows us to focus on the related practice area of bankruptcy law. We are so fortunate to have portions of the Recent Developments in Business Bankruptcy – 2014 from contributing authors **Peggy Brister, Robert Clark, Cecily Dumas, Geoffrey Heaton, Judge Dennis Montali**, and **Ron Oliner**. It is a wonderful review of some of the more important bankruptcy decisions from this past year.



Kathy Bazoian Phelps

**Kathy Bazoian Phelps is a partner at Diamond McCarthy, LLP, Los Angeles, and the co-author of The Ponzi Book: A Legal Resource for Unraveling Ponzi Schemes. She frequently represents receivers and trustees.*

On the receiver side, with Loyola VI behind us, this issue takes a look back at the pictures and provides a good recap of the educational programs at the conference. Please also take a look at the article on Auctions and Liquidations written by **Mike Kletecka** to learn some useful tips for receivers about maximizing returns in auctions and liquidations. The article by **Peter Davidson** on the recent Fifth Circuit decision of *Janvey v. The Golf Channel* is also an important read, offering receivers new arguments in fraudulent transfer litigation.

The professional profile of **Bruce Cornelius** gives us a window into the life of the immediate past president of the California Receivers Forum, and the interview of **Judge Alan Jaroslovsky** reveals his impressive background and interesting journey as a bankruptcy judge.

As always, we thank Peter Davidson for his informative Ask the Receiver column and **Alan Mirman** for keeping us all in the loop in his Heard in the Halls column.

Please continue to submit your ideas and articles for future issues of the Receivership News.

Kathy

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the time I'd been doing bankruptcy for a few years, I was doing secured creditor work, creditors' committee work, and the biggest case I had I represented the trustee. So, I did a little bit of everything.

RON: Who was the judge back in those days here in Santa Rosa?

JUDGE JAROSLOVSKY: **Conley Brown**.

Ron: Of course. And generally, can you describe the legal landscape here in that time?

JUDGE JAROSLOVSKY: Well, when I started, Conley was the judge for this district. **Lloyd King** was the San Francisco judge, there was **Cy Abrams** down in San Jose, and in Oakland, there was **Cameron Wolf** and **Jack Rainville**, I believe. I don't go back to the generation before and don't recall the judges before them. But those were the judges on the bench – when I started.

RON: You must have appeared before Judge Brown in particular, enumerable times in those years. What was he like?

JUDGE JAROSLOVSKY: Well, I give Conley a lot of credit for my career and getting me into bankruptcy. When I first started practicing bankruptcy law, he did not know me from Adam. I mean, I was just this young kid venturing into a new area, and bankruptcy has always been to some extent a close-knit club with regular practitioners. And in Conley I found a judge who was fair and would listen to what I had to say even though I was a young kid. You can't ask for any more from a judge than that. So, I fell in love with the practice. I fell in love with the complexity and the fact that it moves so fast. Things happen. You don't have to litigate for five years before you're forced to settle, and there's all kinds of interesting issues, not only bankruptcy law, but every other of the area of law that pop up in the bankruptcy context. Combine that with a fair judge who listens. What more could you ask for?

RON: How long have you been on the bench?

JUDGE JAROSLOVSKY: I'm in my 29th year.

RON: I've been in your courtroom on at least a few larger cases and many others not so large. Can you briefly describe, maybe in a few words, the more memorable cases you've had here in your 29 years on the bench?

JUDGE JAROSLOVSKY: We don't get the big mega cases, but do get in a bunch of interesting ones. There have been a lot of cases which have had local impact on the community, Eureka Southern Railroad – for one.

RON: Health Plan of the Redwoods?

JUDGE JAROSLOVSKY: Yes. And some pretty large individual bankruptcies, when very successful business persons got caught up in the recession. But you know, the bigger the case, the

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2014 Year End Review: Recent Developments in Business Bankruptcy

By: Peggy Brister, Robert Clark, Cecily Dumas, Geoffrey Heaton, Judge Dennis Montali, and Ron Oliner

Each year, **Judge Dennis Montali**, **Cecily Dumas** and **Ron Oliner** present a two-hour program to the San Francisco Bar Association and, separately, the Bay Area Bankruptcy Forum, covering developing case law in the bankruptcy field. Together with authors **Peggy Brister**, Law Clerk to the Hon. Dennis Montali; **Robert E. Clark**, Dumas & Clark LLP; and **Geoffrey A. Heaton**, Duane Morris LLP, the group puts together very comprehensive materials for attendees. These materials are reprinted in complete form in the *California Bankruptcy Journal*. Here are excerpts from the program materials, describing some of the most significant decisional law rendered by courts in the Ninth Circuit, and the Supreme Court, in 2014.

PROPERTY OF THE ESTATE / EXEMPTIONS

A. Inherited IRAs Are Not Exemptible "Retirement Funds"

The Bankruptcy Code allows an exemption for retirement funds "to the extent that those funds are in a fund or account that is exempt from taxation" under specified sections of the Internal Revenue Code. One such type of fund is the so-called "inherited IRA"–a retirement account held by a parent or a spouse (for example) that passes to the holder's heir upon death. These accounts receive favorable tax treatment similar to regular IRAs, but there are significant differences: the heir cannot contribute new money to the funds, is allowed to withdraw money from the fund at any time without penalty, and is required to either withdraw it all within five years or a certain amount annually thereafter.

So are inherited IRAs exempted from the heir's bankruptcy estate? Affirming the Seventh Circuit, a unanimous Supreme Court held that they aren't. For the exemption to apply, it isn't enough that the funds be exempt from taxation under the IRC–they also need to be "retirement funds". And that determination can't be made subjectively, based on the debtor's intended use of the money. It needs to be an objective test, based on the funds' legal characteristics. So evaluated, inherited IRAs don't qualify for the exemption: you can't put more money into them, so they don't encourage saving for retirement; you have to

Continued on page 5...

withdraw the money early and/or regularly, however far away from retirement you may be; and pre-retirement withdrawals are entirely without penalty. These characteristics aren't consistent with the meaning of "retirement fund" or the purpose of the retirement fund exemption: protecting debtors' ability to provide for themselves in old age. The money's original status as retirement funds for the deceased does not survive the inheritance.

Clark v. Rameker, 134 S. Ct. 2242 (2014).

B. A Trustee Cannot "Equitably Surcharge" Exempt Property to Pay for Debtor Malfeasance

With the appellate courts' blessing (*see, e.g., Latman v. Burdette*, 366 F.3d 774 (9th Cir. 2004)), bankruptcy courts have made a practice of equitably "surcharging" exempt property to remedy debtor misbehavior, such as underreporting assets or misappropriating nonexempt property. In this case, the debtor falsely claimed that his residence secured a loan to a woman named "Lili Lin", leaving no equity to satisfy his other creditors. After a local acquaintance by that name denied any involvement, he insisted that the lender was a different Lili Lin who lived in China–a claim that took the chapter 7 trustee five years and more than half a million dollars to fully litigate and disprove. The trustee then asked to surcharge the debtor's $75,000 homestead exemption to help defray those costs, which the bankruptcy court, the district court, and the Ninth Circuit all deemed appropriate.

A unanimous Supreme Court disagreed. Although bankruptcy courts have some latitude in exercising their equitable powers, those powers are ultimately circumscribed by the Bankruptcy Code. And the Code (at § 522(k)) says that exempted property is (with limited exceptions) "not liable for the payment of any administrative expenses"–including the trustee's litigation expenses. Nor could the surcharge have been replaced with an equitable disallowance of the exemption, as such disallowances are themselves limited to the "mind-numbingly detailed" range of circumstances provided under the Code. There are other measures available to deal with a dishonest debtor, from denial of discharge to sanctions under Rule 9011 to outright criminal charges. But exempt property is not liable for administrative expenses under the Code, and the bankruptcy court can't change that.

Law v. Siegel, 134 S. Ct. 1188 (2014).

C. Just Because Property Has Been Abandoned Doesn't Mean the Stay No Longer Applies

The chapter 7 trustee of a corporate debtor abandoned a non-operational gas station that was fully encumbered by secured creditor's liens due to lack of funds. After the abandonment order was entered, but before the case was closed, the secured creditor foreclosed on the gas station. The debtor moved to reopen the case so it could seek to set aside the foreclosure and commence contempt proceedings for violation of the automatic stay. The bankruptcy court reopened the case and *sua sponte* annulled the stay retroactively.

On appeal, the BAP reversed, holding that the bankruptcy court erred because even though the gas station was no longer property of the estate, 11 U.S.C. § 362(a)(5) protects property that remains property of the debtor. The court held that the gas station was property of the debtor until the case was closed, and therefore the foreclosure that occurred weeks earlier was void. (The BAP disagreed with *D'Annies Rest., Inc. v. N.W. Nat. Bank of Mankato* (*In re D'Annies Rest., Inc.*), 15 B.R. 828 (Bankr. D. Minn. 1981), which held that when property of the estate is abandoned and the debtor is a corporation–as opposed to an individual debtor the stay no longer protects either the debtor or the subject property from lien enforcement.)

Gasprom, Inc. v. Fateh (In re Gasprom, Inc.), 500 B.R. 598 (9th Cir. BAP 2013).

D. Inheritance Acquired More than 180 Days After Petition Date Was Property of Chapter 13 Estate

The chapter 13 debtors received a $30,000 inheritance more than 180 days after the petition date, but prior to confirmation of

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LOYOLA VI

By Joel Weinberg

2014 Board of Directors final meeting was held in January 2015 at Loyola VI
Back Row: ***Robert Greeley, Gordon Dunfee, Peter Davidson, Kenton Johnson****,*
Middle Row: ***Christopher Seymour, Dominic LoBuglio, Bruce Cornelius, Ivo Keller, Scott Sackett*** *Front Row:* ***Mia Blackler, Stacy Rubin***

With the number of real estate foreclosures and consequent receiverships on the wane, the Loyola VI team was tasked with a challenge of providing a program which was responsive to the needs and interests of receivers and related professionals in the current economic climate.

Loyola VI focused on business receiverships and the issues unique to these types of matters. We were quite fortunate in having outstanding panels on a variety of business related topics with a considerable depth of expertise from across the State of California. As a result of all of the excellent work done by the entire leadership team and session producers, the symposium drew 160 attendees this year. The two day symposium consisted of three general sessions and ten concurrent panels on a host of business-related topics.

We also would like to extend our appreciation and thanks to the **Honorable Sandra Klein**, United States Bankruptcy Judge, **Honorable Neil Bason**, United States Bankruptcy Judge and the **Honorable Derek Hunt**, Orange County Superior Court Judge and Dean Paul Hayden and Loyola Law School of Los Angeles.

Having attended the general and breakout sessions it was evident that the audience was engaged. Comments reflect that the substance of the symposium and outstanding panelists were very well received. Loyola VI achieved a new bench mark of excellence for the high quality of the educational content. Our special thanks to the segment chairs **Mia Blackler, Peter Davidson, Richard Golubow, Ori Katz, Benjamin King, Richard Kipperman, Rene Lastreto, II, Randy Michelson, Alan Mirman, Samuel Newman, Kathy Bazoian Phelps, Teri Riker, Lei Lei Wang Ekvall** and to each of the outstanding panelists. I would be remiss in not extending a special thanks to **Jeanne Sleeper,** who not only served as a session producer, but she together with **Toni Spangler** lead us fearlessly from the inception of Loyola VI, as a concept, to the finish line of a truly excellent event.

Sales Free and Clear for Business and Realty Panel; ***Peter Davidson, Oren Bitan, Neil Erickson, Byron Moldo****.*

Judge Derek Hunt *speaking on receiverships and the perspective from the bench.*

A View From Special Asset Management Speaker ***Leslie Reuter****; California Bank & Trust*

Maryam Ghazi *and colleague during a coffee break*

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*Loyola Law School Dean of Faculty, **Paul T. Hayden**, Accepts $5,000 donation from the California Receivers Forum towards the Law School Juris Fund.*

*Toxic Takeovers was presented by **Ben King**, **Albert Cohen** and **Gunther Gee**.*

*Bay Area Board Member **Ivo Keller**, Loyola VI Sponsorship Co-Chair, **Mike Brumbaugh** & CRF State Treasurer, **Scott Sackett**.*

***Terri Riker** fielded Ask the Expert questions.*

***Douglas Wilson**, **Judge Hunt** & **Robert Mosier** preparing for the Friday afternoon TED-style Talk.s*

***Rita Solis** – Exhibitor Representative, Escrow of The West*

***Amy Mea** – Exhibitor Representative, Bond Services*

*CRF Past President **Gordon Dunfee**, **Maureen Dunfee** and Sponsorship Co-Chair, **Chris Hawkins** enjoying the Thursday reception.*

***Marc Brooks** and **Mia Blackler**, the new CRF Projects Director*

***Gary Caris** and others filled the breakout sessions.*

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Education Co-Chair, **Joel Weinberg** welcomes the group.

Dean Hayden and **Richard Weissman** discuss Loyola Law School.

Immediate Past President, **Bruce Cornelius** makes opening remarks Friday Morning

Receivership in Aid of Enforcement of Judgments Panel, **Everett Barry, Susan Uecker** and **Richard Kipperman**.

Ted Phelps and **Kevin Singer**

Bill Hoffman joins the discussion.

Samuel Maizel

Michael Bubman and **Jennifer Tullius** debate which panel to attend.

Mike Walters, Tranzon, exhibited at Loyola VI

Marilyn Bessey, **Todd Wohl**, **David Jaffe** and **Dominic LoBuglio**

Alan Mirman moderates the Ask the Experts Panel

AUCTIONS & LIQUIDATIONS: Are you getting returns you can count on?

By Michael Kletecka*

When auctions or liquidations are required, most clients' objectives are to achieve the highest return and an outcome that comes within the proposed estimated returns (+/- 10% is a reasonable variation).

Factors Impacting Auction or Liquidation

Each auction or liquidation can be significantly distinct from one another despite assets possessing close similarity. Some of the factors causing variation are location, time of year, condition of the assets, current marketplace, hazardous waste issues, landlord cooperation and the amount of time to conduct the sale.

• Type of Property to Be Sold

Specialized equipment can have large swings in value based on limited customers in the marketplace, as well as, whether or not a buyer needs it now or not. If a buyer needs it now, the sale can garner very good returns. If not, the equipment will typically be sold for approximately 10% to 50% of its value. Other factors that can also affect value are potential maintenance issues, re-calibration or de-contamination requirements, software transferability, equipment that may need to remain running and operational, or equipment that may need to be properly shut down.

• Location of Sale

The type of auction or liquidation can impact returns as well. A sale being held "onsite" in conjunction with an online webcast can typically achieve higher returns (approximately 10% to 20%, or higher in some cases), compared to only conducting sales online, or off-site. This is because assets show better in place or in use, providing buyers the opportunity to properly inspect, touch and feel, thus removing buyer speculation, which can often times causes conservative bidding.

Auction/liquidation returns can also be challenged if the assets need to be relocated or consolidated from various locations, which often adds additional expenses. This can also have a negative effect on presentation, which can hinder achieving highest possible returns.

• Terms of Sale

When it comes time to auction or liquidate, to help obtain the proposed estimated returns, one should opt to receive a "Cash Buy Out" or "Guarantee of Expected Returns." These will help to eliminate any risk in the sale process.

• Qualifications of Auction Company

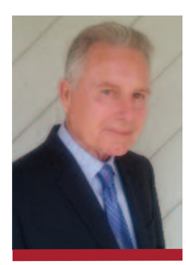
To help achieve both the highest and most accurate returns, it is best to utilize a proven and seasoned auction company, with experienced auctioneers and support staff who truly understand the various assets for sale and who conduct sales on a regular basis. Also, they should have a deep understanding of the global marketplace, along with an expansive data base of companies, manufacturers, retailers, distributors, wholesalers, end-users and dealers (not just purchased lists).

Advantages of the Auction / Liquidation Process

Using the auction or liquidation process to sell assets can have many advantages:

- All attention is focused on marketing the seller's assets to thousands of potential buyers (oftentimes globally).
- The process creates a deadline and sense of urgency, causing qualified buyers to compete amongst one another, knowing that the seller is taking serious action to sell.
- Auctions can exceed the price of a negotiated sale.
- Auctions eliminate long negotiations, numerous showings, potentially high maintenance and carrying costs and various unforeseen risks.
- Assets are typically sold "as is" with no contingencies.
- All assets are sold at the same time, often to individual buyers, providing the seller the benefits of a bulk sale.
- Upon conclusion of the Auction sale, the facility can be near or completely empty and broom swept, if required. (Please note, based on the facilities condition and potential environmental issues, this service can be very costly to perform).

** **Mike Kletecka** is an Auction Consultant with AAG – American Auctioneers Group, which has a 20 year history of conducting approximately 90 to 100 auctions annually with a 95% success rate in accurately determining estimated returns.*



Mike Kletecka

Continued from page 3.

Fast lane: Weekend road racer, then SCAA licensing school instructor, Judge Jaroslovsky loves cars.

better the lawyers; I can't take credit for what the lawyers have done in those cases.

RON: I can't recall when we went live on Electronically Case Filing System.

JUDGE JAROSLOVSKY: We did it here in 2003. We were the first to go.

Ron: You were well ahead, and maybe still are, of the curve and you personally were a great advocate for the change-over. Any comments about the change to electronic filing and where we are now?

JUDGE JAROSLOVSKY: Oh, yeah. It had to be done. At the height of the recession, with half of the people we used to have, we were dealing with three times the normal case load. There was no way we could have done it without electronic filing. It just had to be. And that's the only thing that made managing our huge caseload during the recession manageable at all.

RON: I think it's also changed our world immeasurably in the sense that when I was a young lawyer working for **Irv Kornfield**, I would have to go to the Clerk's Office in Oakland, or San Francisco, or Santa Rosa, just to read the docket in order to figure out what the heck was going on in a case. Now we do that every day from our computers.

JUDGE JAROSLOVSKY: But it had to be done, and we led the way here in Santa Rosa. We had excellent people and we had to drag the rest of the district kicking and screaming into the 21st century.

RON: What's keeping you busy on the docket lately?

JUDGE JAROSLOVSKY: Things are quieter than they've ever been. Thank God. We went through four years of hell with huge case loads. I was trying to be chief judge on top of that. So, I'm very grateful for the respite, that things are very slow now that the recession is over, and that the economy is picking up.

Ron: What are common mistakes or pet peeves you have when lawyers appear before you? This may be the most important question for our readers.

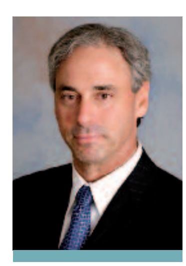
Judge Jaroslovsky: Well, one thing that I really dislike, is when some attorneys appear by telephone, they are rude and interrupt another attorney or interrupt me or blather on and I can't get a word edge wise. They don't realize that when you're appearing by telephone and you can't see what's going on in the courtroom, you have to be extra courteous and not extra rude. So, I usually have fairly quick words of chastisement for attorneys who think because they are on the telephone they are entitled to interrupt anyone.

RON: And, finally, can you tell us a little bit about any hobbies or interests you have, stuff you like to do outside of your career as a judge?

JUDGE JAROSLOVSKY: Well, my two hobbies are astronomy and cars. I am an amateur astronomer, and I have had an article published in an astronomy magazine. I've had articles published in astronomy magazines and bankruptcy journals and car magazines. But I raced race cars during the '90s. I have retired from racing, but I taught racing at the SCCA licensing school for seven years after I stopped racing. They have a track up in Willow Springs, and they run a three-day school every year.

RON: Well, thank you very much.

Ron Mark Oliner is a partner at the San Francisco office of Duane Morris LLP.*



Ron Oliner

Continued from page 5.

their chapter 13 plan. On motion of the chapter 13 trustee, the bankruptcy court entered an order determining that the inheritance was property of the estate, and requiring the debtors either to (i) turn over the inheritance to the trustee, or (ii) amend their plan to account for distribution of the inheritance. The debtors appealed, and the BAP affirmed.

Section 541(a)(5)(A) provides that property of the estate includes a "bequest, devise, or inheritance" that a debtor "acquires or becomes entitled to acquire" within 180 days after the petition date. Section 1306(a)(1), in turn, provides that in a chapter 13 case, property of the estate includes, "in addition to the property specified in section 541", all property specified in § 541 that a debtor acquires after the petition date but before the case is closed, dismissed, or converted. Construing the two statutes, the BAP adopted the position of the Fourth Circuit Court of Appeals, holding that in a chapter 13 case § 1306(a)(1) extends § 541(a)(5)'s 180 day period until the case is closed, dismissed, or converted.

Dale v. Maney (In re Dale), 505 B.R. 8 (9th Cir. BAP 2014).

E. Jewel's Death Knell? District Court Finds Firm Has No Property Interest in Hourly Fee Matters

The bankrupt Heller firm's dissolution plan included a "*Jewel* waiver": a waiver of any rights under the doctrine of *Jewel v. Boxer*, 156 Cal. App. 3d 171 (1984), to collect legal fees generated for hourly work performed by former Heller partners following their departure. Heller partners landed at various law firms, taking with them pending hourly matters formerly handled by Heller. Heller's trustee sued these firms, contending that the Jewel waiver was a fraudulent transfer of Heller's property. The district court granted the defendant firms' motion for summary judgment, finding that "neither law, equity, nor policy recognizes a law firm's property interest in hourly fee matters."

From a legal perspective, the court highlighted a number of critical distinctions, including that *Jewel* was decided under the Uniform Partnership Act, which had been superseded in 1999 by the Revised Uniform Partnership Act (RUPA). Under RUPA, a dissolved firm does not have the right to demand an accounting for profits earned by a former partner under a new retainer agreement with a client. (The former Heller clients had signed new retainer agreements with their new firms.) Looking to the equities, the court reasoned that the new firms which performed legal work on behalf of the clients should keep the fees earned for that work. Once the clients retained new counsel, the client matters ceased to be Heller's partnership business and became

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partnership business of the new firms. Finally, looking to policy, the court reasoned that the position advocated by the trustee would incentivize partners to leave struggling but still viable firms. New firms likewise would be discouraged from taking partners or clients of a dissolved firm since the new firm would be unable to profit from labor and capital invested in matters previously handled by the dissolved firm.

Heller Ehrman LLP v. Davis, Wright, Tremaine, LLP, 2014 WL 2609743 (N.D. Cal. June 11, 2014).

JURISDICTION, STANDING, AND PROCESS

A. Supreme Court Defers Deciding If Parties Can Consent (Explicitly or Implicitly) to a Bankruptcy Court Adjudication of Stern-Type Matters

"Never put off till tomorrow what may be done day after tomorrow just as well."—Mark Twain.

In *Stern v. Marshall*, 131 S. Ct. 2595 (2011), the Supreme Court held that a bankruptcy court could not enter a final order on a debtor's state law counterclaim that "in no way derived from or [was] dependent upon bankruptcy law" and "existed without regard to any bankruptcy proceeding." That holding generated conflicting case law, and the Supreme Court granted certiorari in *Bellingham* to address two issues: (1) whether the parties could consent (explicitly or implicitly) to final adjudication by the bankruptcy court; and (2) whether a bankruptcy court can enter proposed conclusions of law and findings of fact in core matters purportedly outside of its constitutional authority. Unfortunately, the bankruptcy community still does not know the answer to the first, and most significant, question regarding consent. The Supreme Court ducked that issue and instead simply confirmed what many courts and practitioners assumed: where a bankruptcy court lacks constitutional authority to enter a judgment on a core matter, it may adjudicate the claim as non-core and submit proposed findings of fact and conclusions of law to the district court for de novo review.

The Supreme Court will perhaps resolve the lingering *Stern* issues next term (including the consent issues), having granted certiorari to review the Seventh Circuit's decision in *Wellness Int'l Network, Ltd. v. Sharif*, 727 F.3d 751 (7th Cir. 2013) (discussed in last year's materials). There, the Seventh Circuit held that a litigant may not waive an Article III objection to a bankruptcy court's constitutional authority to enter final judgment in a core proceeding. The Supreme Court certified the following issues for review:

> (1) Whether the presence of a subsidiary state property law issue in an 11 U.S.C. § 541 action brought against a debtor to determine whether property in the debtor's possession is property of the bankruptcy estate means that such action does not "stem from the bankruptcy itself" and therefore, that a bankruptcy court does not have the constitutional authority to enter a final order deciding that action.
>
> (2) Whether Article III permits the exercise of the judicial power of the United States by the bankruptcy courts on the basis of litigant consent, and if so, whether implied consent based on a litigant's conduct is sufficient to satisfy Article III.

Exec. Benefits Ins. Agency v. Arkison, 134 S. Ct. 2165 (2014).

Wellness Intern. Network, Ltd. v. Sharif, 134 S. Ct. 2901 (2014) (Mem.) (granting writ of certiorari).

B. Think Twice Before You Agree to Prepare the Court's Order

A debtor received funds from settlement of a personal injury action. A creditor with a lien on the settlement funds filed an interpleader action in state court against other creditors asserting liens on the funds. After the debtor filed for bankruptcy, debtor's counsel turned over the funds to the bankruptcy trustee. The state court judge, aware of the bankruptcy and informed that the funds had been turned over to the trustee, issued an order to show cause why debtor's counsel should not be held in contempt for failing to deposit the funds with the state court. To that end, the judge directed creditor's counsel to prepare the OSC, which counsel dutifully prepared. Debtor's counsel, in turn, filed a complaint in district court against the state court judge, creditor's counsel, and others for violation of the automatic stay. Although the district court dismissed the judge from the suit based on the doctrine of absolute judicial immunity, it found that creditor's counsel was not protected by absolute quasi-judicial immunity.

The Ninth Circuit affirmed, explaining that a non-judicial officer is only entitled to absolute quasi-judicial immunity where the function performed is a judicial act with "a sufficiently close nexus to the adjudicative process," and involves an exercise of "discretionary judgment." Here, the Court reasoned that although creditor's counsel performed a function with a close nexus to the judicial process (drafting a proposed order at the direction of a judge), the act did not involve "discretionary judgment" insofar as only the judge had the ultimate discretion to approve the order and sign it. In a dissent, Judge Gilman pointed out that law clerks are entitled to quasi-judicial immunity, and here creditor's counsel was essentially acting as the judge's law clerk in preparing the order. The dissent also noted the "fundamental unfairness of holding liable those who carry out the orders of judges when the judges themselves are absolutely immune", and lamented that the Court's decision "unfortunately puts at risk the common practice of private attorneys drafting proposed orders on behalf of a judge."

Burton v. Infinity Capital Management, 2014 WL 2504728 (9th Cir. June 4, 2014).

C. A Close Call for a Close Nexus

A bankruptcy court's "related to" jurisdiction has a broad reach, extending to any matter that could have a "conceivable effect" on the estate. *See Pacor, Inc. v. Higgins*, 743 F.2d 984 (3d Cir. 1984). But that reach is restricted after a plan is confirmed, covering only those matters having a "close nexus" to the bankruptcy case. *See In re Pegasus Gold Corp.*, 394 F.3d 1189 (9th Cir. 2005). A close nexus typically means that the matter will

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affect the interpretation, implementation, consummation, execution, or administration of the confirmed plan. (The First Circuit has held that the "close nexus" test only applies to reorganization plans, not liquidation plans, *see In re Boston Regional Med. Ctr., Inc.*, 410 F.3d 100 (1st Cir. 2005), but the Ninth Circuit hasn't adopted that rule, and the district court here rejected it.)

In this case, a liquidating trustee was trying to prosecute claims for fraud and negligence against the principal and the auditor of a Ponzi-scheme fund–claims that were assigned to the trustee by the fund's creditors in connection with the confirmed plan. The bankruptcy court didn't think there was a close enough nexus to support post-confirmation jurisdiction, and so dismissed the action. The district court recognized that such a determination needs to be made on a case-by-case basis, looking at the "whole picture", but was able to state generally that an explicit reservation of jurisdiction by the plan would make no difference–a plan proponent can't write its own "jurisdictional ticket". The court also found it insufficient that the litigation could yield a potential benefit to creditors, or that the state court might reach conclusions at odds with those of the bankruptcy court–issues that arise in any estate litigation. However, the claims in this case were specifically referenced in the plan, and their anticipated pursuit was "part of the calculus" of the plan's negotiation. Under these conditions, litigating the claims qualified as part of the plan's execution and implementation. This relation to the plan overrode the bankruptcy court's concerns about the complaint's timeliness, the trustee's apparent forum shopping, and the state court's familiarity with the issues, and sufficed to confer "related to" jurisdiction over the matter.

Calvert v. Berg (In re Consolidated Meridian Funds), 511 B.R. 140 (W.D. Wash. 2014).

D. Notice Requirements: Bankruptcy Rules Trump Code of Civil Procedure

Debtors filed a motion to avoid a judicial lien of Wells Fargo Card Services pursuant to § 522(f) and served it by mail addressed to the chief executive officer of Wells Fargo at an address in Sioux Falls (as provided on the FDIC's website) and by mail addressed to the attorney for Wells Fargo identified on the judgment lien. The bankruptcy court denied the motion without prejudice on substantive grounds. Thereafter, the debtors filed an amended motion and served it by certified mail to Wells Fargo's chief executive officer and by regular mail to the person and address identified in Wells Fargo's proof of claim. This time, however, they did not serve the counsel identified on the

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judgment lien. The bankruptcy court denied the motions because the notice did not identify the real property which was the subject of the motion (although the accompanying motion *did* identify the property) and the motion was not served on counsel listed on the abstract of judgment as required under California Code of Civil Procedure section 684.010.

Debtors filed a motion for reconsideration, asserting that the notice and motion complied with the court's local rules (B.L.R. 9013-1(b)(1) and (2)); the national rules (Fed. R. Bankr. P. 9014 and 7004); and the judge's practices and procedures. Citing *Beneficial Cal. Inc. v. Villar (In re Villar)*, 317 B.R. 88 (9th Cir. BAP 2004), Debtors also contended that service on the attorney that obtained the underlying judgment under California Code of Civil Procedure 684.010 was not required.

The BAP reversed and remanded, observing that Rules 4003(d), 9014, and 7004 govern the notice and service requirements for lien avoidance motions under § 522(f). Rule 4003(d) states that a proceeding to avoid a lien shall be by motion in accordance with Rule 9014, which governs contested matters. Rule 9014(b) states that service of the motion is required to be in a manner provided in Rule 7004. Rule 7004(h), which governs service of process on an insured depository institution such as Wells Fargo, states that service shall be made by certified mail addressed to an officer of the institution. Three exceptions to this rule exist, none of which applied in this case. The BAP found that Rule 7004 did not require the debtors to serve notice on the attorney named in the abstract of judgment, and that service on him would not have satisfied Rule 7004 in the absence of proper service on an officer of Wells Fargo. "Nowhere do the bankruptcy rules require compliance with [Cal. Civ. Pro. § 684.010] nor do we perceive any reason why compliance should be compelled in light of the procedural due process safeguards provided by the rules themselves." Finally, the BAP held that while the notice of the motion did not specify the liened property, the attached motion did so, and thus sufficiently provided the creditor with an opportunity to present its objections.

<u>Frates v. Wells Fargo Bank, N.A. (In re Frates)</u>, 507 B.R. 298 (9th Cir. BAP 2014).

TRUSTEES AND COMMITTEES

A. Chapter 11 Trustee Is Not a "Public Official" for Purposes of Defamation Suit

A chapter 11 trustee filed a defamation suit against an individual who published blog posts accusing the trustee of fraud, corruption, money-laundering, and other illegal activities in connection with the trustee's administration of the debtor's estate. At issue on appeal was whether the trustee qualified as a "public official." Under the U.S. Supreme Court's *New York Times Co. v. Sullivan* decision, a "public official" who seeks damages for defamation is required to show "actual malice," *i.e.*, that the defendant published the defamatory statement "with knowledge that it was false or with reckless disregard of whether it was false or not." If, however, the plaintiff is not a public official, and the statement involves a "matter of public concern," then, under the Supreme Court's *Gertz v. Robert Welch, Inc.* decision, only a negligence standard applies.

Following a thorough analysis of Supreme Court and other authorities, the Ninth Circuit held that the trustee was not a public official, since he was not elected or appointed to a government position, and did not exercise "substantial … control over the conduct of governmental affairs." Rather, the trustee simply substitutes for a debtor in possession, and receives compensation from the bankruptcy estate, not the government. Accordingly, since public allegations that someone is involved in a crime qualify as "matters of public concern," the Gertz negligence standard applied to the defendant.

<u>Obsidian Fin. Group, LLC v. Cox,</u> 740 F.3d 1284 (9th Cir. 2014).

B. Further guidance on allowance of a chapter 7 trustee's "commission" under § 330(a)(7)

Section 330(a)(7) provides: "In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326." In a long and detailed opinion, Judge Klein reviewed fee requests submitted by chapter 7 trustees in four different cases. The court had three primary concerns: (1) how to reconcile the "commission" with § 330's other provisions, including that a

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trustee's compensation must be "reasonable" and for "actual, necessary services rendered" (§ 330(a)(1)), and that a court is authorized to "award compensation that is less than the amount of compensation that is requested" (§ 330(a)(2)); (2) under what circumstances should a court reduce fees below the commission; and (3) how to screen trustee fee requests to identify fees that are subject to reduction.

Ultimately, the court more or less adopted Judge Carlson's analysis in *In re McKinney*, 383 B.R. 490, concluding that § 330(a)(7) creates a presumption that the commission calculated under § 326 is "reasonable," which may be rebutted if the fee is "unreasonably disproportionate." The value of a trustee's services, moreover, while relevant, are not necessarily dispositive of the unreasonable disproportion issue; other circumstances can give rise to unreasonable disproportion as well.

The court also identified five circumstances where all trustees in the district would be required to file formal fee applications supported by time records and a written narrative of services performed, including where the requested fees exceed $10,000 or exceed the amount remaining for unsecured claims, and where there has been a carve-out or short sale. In a concurring opinion, the other bankruptcy judges of the Eastern District adopted these guidelines with the intention that they be incorporated into the District's local rules.

In re Scoggins, 2014 Bankr. LEXIS 3857 (Bankr. E.D. Cal. 2014).

ATTORNEYS AND OTHER PROFESSIONALS

A. Malpractice Action Against Committee Counsel Is a Core Proceeding

A chapter 11 debtor sold its assets through a confirmed plan. The buyer executed a promissory note for part of the sale price, to be secured by liens on real and personal property. Debtor's counsel failed to file the financing statements necessary to perfect the personal property liens. After the buyer defaulted, the net recovery for creditors was significantly less than it would have been with a perfected security interest. Four creditors' committee members sued committee counsel in state court for malpractice, alleging that he had been negligent by failing to ensure that debtor's counsel had perfected the security interest. Debtor's counsel removed the action to the bankruptcy court, and plaintiffs moved to remand.

The bankruptcy court denied the remand motion, determining that it had federal jurisdiction over the malpractice action, and granted committee counsel's motion to dismiss. The district court affirmed, as did the Ninth Circuit, citing to its prior decisions holding that a post-petition claim against a court-appointed professional is a core proceeding. Here, the malpractice claim was "inseparable" from the bankruptcy case. It was based solely on acts that occurred within the administration of the estate, and any alleged duties arose from obligations created under bankruptcy law. Dismissal, moreover, was proper since committee counsel represented the committee as a whole, not committee members individually, and had not been involved in the sale or charged with recording the financing statements.

Schultze v. Chandler (In re Schultze), 2014 WL 3537030 (9th Cir. Aug. 1, 2013).

B. Exercise Caution With an Unbundled Retainer Agreement

In connection with litigation against a former employer, Mr. Seare admitted that he had "embellished" certain evidence, resulting in a sanctions order, a $67,430 judgment for defendant's attorneys' fees, and a finding that Mr. Seare had committed "fraud upon the court" by "knowingly providing false information" and "instituting and conducting litigation in bad faith." The defendant obtained a writ of garnishment and garnished Mr. Seare's wages, prompting Mr. Seare and his wife to retain bankruptcy attorney DeLuca.

The debtors executed a retainer agreement with DeLuca that "unbundled" certain defined "basic services," including the preparation and filing of a petition and schedules, from services requiring "additional fees," including defending adversary proceedings. Although aware of the garnishment order, DeLuca did not investigate into the underlying judgment, or otherwise advise debtors of the likelihood of a nondischargeability action. DeLuca also did not consult with the debtors before rejecting a settlement proposal concerning the judgment's dischargeability, and then refused to represent the debtors when the defendant later filed a nondischargeability action. The bankruptcy court

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Professional Profile:
Bruce Cornelius


Bruce Cornelius is the immediate past president of California Receivers Forum.

Bruce Cornelius was introduced to receiverships early in his nearly 40 years of practice. His legal mentor, attorney **Jay Graves**, had decades of experience in acting as a receiver for commercial buildings and businesses when Bruce joined the firm of Graves & Allen in February 1976. Jay had just taken on the receivership of a failed loan fund, and after 10 years of administration of the fund, virtually all investors' original investments were returned. Nearly every possible aspect of business receivership issues arose in this case, and Bruce had first-hand experience in the practical and legal solutions available to a receiver. Much of his practice has since focused on the use of receiverships as a remedy available to commercial lenders. His experience has ranged from family law to decedent's estates to complex business liquidations, illustrating the flexibility of this remedy and its value in a variety of contexts.

Born in Los Angeles in 1949, Bruce grew up in La Crescenta, California. His father worked for a small, privately held printing firm, and his mother as a bank teller. The first person in his immediate family to attend college, Bruce left southern California in the fall of 1967 for what was then a widely touted educational experiment - the new UC campus at Santa Cruz. Although he quickly discovered that the small, perpetually wet, and somewhat isolated, campus did not suit him, he credits his two quarters there with opening his mind to ideas and to people far different than those he had encountered in the largely homogeneous community of his childhood.

After two quarters at UC Santa Cruz, Bruce returned to southern California to attend UCLA, where he majored in Political Science and earned his BA in 1971. Bruce supported himself with a series of jobs in college, most notably as an assistant manager of the UA Westwood movie theater. Knowing from the age of about 8 that he wanted to be a lawyer, Bruce spent nine months after college managing the UA theater in Yuba City while waiting to enter law school. In August1972, he moved to San Francisco to attend Hastings College of the Law and to start what he believed would be a temporary residence in northern California.

As they say, "stuff happens"; however, in this case, the "stuff" was a relationship with an entrenched resident of northern California, his classmate and future wife, Janet. Bruce and Janet now reside in Clayton, California, just east of Walnut Creek. However, Bruce has never relinquished his close ties to southern California, where his extended family and many close friends reside. Advised early on that they held dual citizenship in both the north and south of the state, Bruce and Janet's two children now reside in southern California. The children of two lawyers, each child decided early on that the law was not for them but are, and always will be, the children of lawyers, quite capable of aggressively advocating a position when the need arises.

Joining Graves & Allen was another fateful turn. It was there that Bruce not only began to work with receiverships, but also with all aspects of real estate law and practice, ultimately opening his own office in Lafayette in 1996. Bruce's present practice is one of business litigation, with an emphasis on the representation of commercial lenders and private investment funds. He believes that his clients appreciate the combination of Bruce's technical knowledge coupled with his appreciation of the practical business considerations they are dealing with, and at times, the emotional context in which each of the parties is operating. Bruce has just completed his term as President of the California Receiver's Forum and remains actively involved in the operations of the Bay Area Chapter of the Receiver's Forum as a past president of that organization. He is currently enjoying his role as mentor to associate Mike Mandell, passing to this fine attorney his experience and, he hopes judgment, learned from 40 years at this job. More golf, coupled with less stress, will be his goal as he eyes the future practice of law.

Most of us have parallel lives and careers we can imagine. His family and friends know one of Bruce's other selves is surely a sportscaster, and there is no one who is better company while watching baseball, or football, or basketball, or, or, or. Still, baseball is Bruce's first love, and he scored every Dodgers radio broadcast as a boy after his father printed a ream of score cards for him. Does the announcer have a

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Fore! Ponzi Scheme Lands The Golf Channel In The Rough

By Peter Davidson

Receivers handling Ponzi schemes and fraud cases are familiar with the concept of suing the "winners" in the scheme to recover transfers made to them in excess of their investment. Such suits are based on the theory that the excess payments are fraudulent transfers. Indeed, it is generally accepted that where a Ponzi scheme is involved, no value is given for the excess payments received by investors. *Donell v. Kowell*, 533 F.3d 762 (9th Cir. 2008).

Cases are split on whether parties that aided the fraud, such as brokers or sales people, can be held liable for payments they received. A number of cases hold that these parties can be held liable, reasoning that all transfers made from a Ponzi scheme are fraudulent transfers, because the operator of the scheme knows that later investors will not be paid and, therefore, has the actual intent to hinder, delay or defraud them. These cases hold that the defense to a fraudulent transfer claim - that the recipient of the transfer acted in "good faith" and gave "reasonably equivalent value" for the transfers - is lacking when someone is paid for aiding a scheme. This is because, even if they did not know about the fraud, they did not give anything of value for the payment they received. The entity involved, or its creditors, did not receive anything of value by encouraging more investors to invest; in fact the entity only became more in debt. *See e.g., Warfield v. Byron*, 436 F.3d 551 (5th Cir. 2006); In re Randy, 189 B.R. 425 (Bankr. N. D. Ill. 1995).

These cases judge value by what the entity in receivership or the investors received for the payment made, rather than what the recipient of the payment gave. Cases going the other way look at what the recipient gave and whether that was of value. For example, services rendered to pitch the scheme might be deemed consideration that is sufficient to protect the transfer. *See e.g., In re Churchhill Mortg. Inv. Corp.*, 256 B.R. 664 (Bankr. S.D.N.Y. 2000). These cases warn that if that is not the case, even innocent trade creditors - the landlord or the pizza delivery man - might be found liable for payments made to them.

The Fifth Circuit, in a new case arising out of the Allen Stanford Ponzi scheme, found *The Golf Channel* liable to return nearly $6 million dollars paid to it for advertising services it provided that aided the scheme. Janvey v. The Golf Channel, F.3d, 2015 WL 1058022 (5th Cir. Mar. 11, 2015). That court found that the advertising did not provide reasonably equivalent value from the standpoint of the Stanford creditors.

The court started its analysis by stating that fraudulent transfer laws "were enacted to protect creditors against depletion of the debtor's estate" and allow creditors to void fraudulent transfers and force the transferee to return the transfer. *Id. at *2.* A transfer is fraudulent if it is made "with actual intent to hinder, delay or defraud any creditor of the debtor." California Civil Code § 3439.04(a)(1). Most circuits have held that a Ponzi scheme establishes fraudulent intent in making the transfers (often called the "Ponzi presumption") because the transferor knows he or she is defrauding the investors. *Donell, supra.; Warfield, supra.*

A transferee has a defense if it can establish two elements: (1) that it took the transfer in 'good faith'; and (2) that in return for the transfer it gave the debtor "reasonably equivalent value." California Civil Code § 3439.08(a). While the receiver did not challenge whether The Golf Channel took the payments it received in good faith, the court held, as a matter of law, that the

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Professional Profile: Bruce Cornelius

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comment about a play, a strategy, or a manager's decision? Yes, we know, because Bruce just said that. Even the uninitiated can enjoy a more sophisticated appreciation of the game if they just hang around with Bruce.

An avid (if unaccomplished) golfer, Bruce is a member of the Contra Costa Golf Club, and is enjoying the club's newly revamped course designed by Robert Trent Jones, II, just re-opening after 10 months of patient anticipation. This interest also goes back to childhood, as both his father and several of his uncles caddied to earn much needed cash, learning the game in the process. Other interests range from meteorology to politics to movies. As many lawyers have discovered, having broad interests outside the law is an asset in practice. It helps the lawyer remember that the law is not a thing unto itself, but instead exists in the context of the broader world, representing a human effort to regulate, order and balance our complex human society.

With wife Janet on the 18th Green at Royal Lytham & St. Anne's in August 2012.

Ask The Receiver

By Peter A. Davidson*

Q Can a magistrate appoint a receiver?

A While an arbitrator cannot appoint a receiver, *Marsh v. Williams*, 23 Cal. App 4th 238 (1994), a magistrate can.

A district judge may designate a magistrate judge to hear and determine any non-dispositive civil matter. 20 U.S.C. § 636(b)(1)(A). With respect to dispositive motions, a district judge may designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to the district judge proposed findings of fact and recommendations. 28 U.S.C. § 636(b)(1)(B). Dispositive motions include those specifically identified in 28 U.S.C. § 363(b)(1)(A), such as motions for injunctive relief and motions for summary judgment, as well as other motions not specifically identified in the statute to the extent they are dispositive of a claim or defense. A number of unreported decisions have held that a magistrate judge has authority to appoint a receiver in the pre-judgment context because a receiver is a pre-judgment remedy and is not dispositive of the rights of the parties, nor is the appointment of a receiver specifically excepted by the limitations set forth in § 636(b)(1)(A). *JP Morgan Chase Bank, N.A. v. Heritage Nursing Care, Inc., et al.*, 2007 WL 2608827(N. D. Ill) (limited financial receiver to monitor financial activity); *Home Loan & Investment Bank v. Lauday, Inc.*, 2011 WL 441693 (E. D. N. Y.) (rents receiver); *Fleet Development Ventures, LLC v. Brisker*, 2006 WL 2772686 (D. Conn.) (receiver over corporation due to mismanagement, misappropriation of funds and board deadlock). In the *Fleet* case, the court specifically noted that a motion to appoint a receiver is not a motion for injunctive relief nor is it one of the other specified motions listed in 28 U.S.C. § 636(b)(1)(A) which limits the authority of magistrates.

28 U.S.C. § 636(b) only deals with prejudgment matters involving civil cases or post-trial matters in criminal cases. 28 U.S.C. § 636(b)(3) however provides: "A magistrate may be assigned such additional duties as are not inconsistent with the Constitution and the laws of the United States." In *Bache Halsey Stuart Shields Inc., v. Killop*, 585 F. Supp. 390 (E. D. Mich. 1984), the district court affirmed the magistrate's appointment of a post-judgment receiver to aid in the collection of a judgment, finding that a magistrate's authority in the post-judgment context comes from the "additional duties" clause of § 636. The court also found that the appointment of a receiver in the post-judgment context is not a "dispositive matter" because a judgment has already been entered. In the case, the judgment debtors argued that the order should not be affirmed because of the prohibition of a magistrate issuing orders relating to injunctive relief. The court specifically found the appointment of the receiver in the post-judgment context did not constitute the exercise of injunctive powers, even though the order authorized the receiver to take charge of the defendant's earnings. The court stated that the term injunctive relief as used in § 636(b)(1)(A) refers to a coercive order that compels or prohibits particular conduct *and* establishes the rights and obligations of the parties. As indicated, the court felt because there was a judgment, the order did not establish the rights and obligations of the parties.

Most orders appointing receivers have specific injunctive relief provisions in them. Sometimes those orders relate to the turnover of property, prohibit interference with the receiver, or stay litigation. In those situations, while a magistrate can appoint the receiver, it might be better to have the magistrate make findings and recommendations so that the order is issued by the district court, which clearly has authority to issue injunctive relief. Alternatively, one could obtain two orders, with the magistrate issuing the order appointing the receiver and designating his or her powers and duties, and a separate order issued by the district court with regard to any injunctive provisions. This might be best when it is necessary to have the receiver appointed without the delay that may occur in having the magistrate make findings and recommendations and then waiting for the district court to review them and enter an order.

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Q I am a receiver and I have just learned that the defendant purported to sell property I am receiver over. I contacted counsel for the defendant and for the buyer and demanded that the property be returned to me. The buyer's attorney said his client would not reconvey the property, that the sale was good, and that I should bring a contempt action against the defendant if the defendant violated my order of appointment by selling the property. . Is this correct?

A A recent case, *In Re Domun Locis LLC*, 521 B.R. 661 (Bankr. C.D. Cal. 2014), decided by bankruptcy Judge Kwan, dealt with the very receivership issue of whether a transfer of receivership estate assets, without the receivership court's approval, was void or merely voidable. The facts are not unusual. An individual borrowed a significant sum ($9,000,000) and secured the loan with a deed of trust on three income-producing properties. The borrower defaulted and the bank had a receiver appointed over the properties. The individual then formed an LLC (in which he was the 100% owner), conveyed the properties to the LLC, and filed a chapter 11 bankruptcy. The debtor LLC then filed a motion to use "cash collateral" (the rents), and the bank filed a motion for relief from the automatic stay and to excuse the receiver from having to turn over the property to the new debtor. 11 U.S.C. §543(d). The case turned on the legal issue of whether the transfer of the property to the LLC was void or voidable. If void, the new debtor had no assets because the properties remained in the individual's name and in the receivership. If voidable, the properties would be property of the LLC's bankruptcy's estate, subject to the bank or the receiver having to sue to set aside the transfers, if possible, or only being able to bring a contempt motion against the individual in state court for violating the receivership court's order.

In the *Domun Locis* case, Judge Kwan first pointed out that although the question whether an interest claimed by the debtor is "property of the estate" is a federal question to be decided by federal law, bankruptcy courts must look to state law to determine whether and to what extent the debtor has any legal or equitable interest in property as of the commencement of the case. The court, therefore, was required to look to the California law to see whether the debtor had any interest in the properties when the case commenced. Citing a number of California Supreme Court cases, including *Pacific Railway Co. v. Wade,* 91 Cal. 449 (1891) and *Tapscott v. Lion*, 103 Cal. 297 (1894), the court held that California has long recognized that properties subject to a court appointed receivership are held *in custodia legis*, that is, in the custody of the court. Following this concept, California courts have held that, therefore, only the receivership court may authorize a transfer or encumbrance such property, and any attempt to transfer an interest in property that is held in custodia legis is void and ineffective. Accordingly, Judge Kwan held that the properties were not assets or property of the debtor's bankruptcy estate and remained in the receivership estate, under the receiver's custody and control, and that, therefore, the debtor had no assets.

The decision in *Domun Locis* is correct and significant. It can be used to stop defendants from playing games when a receiver is appointed over their property. Additionally, the case has value to address the situation when a receiver gets a call from the defendant or the plaintiff telling the receiver that the case is over because the defendant has sold the property that was in dispute and has worked out a deal with or paid the plaintiff. As <u>*Domun Locis*</u> indicates, any such sale, without approval of the receivership court, is void, and unless and until receivership court approval of any such sale is obtained, the receivership continues.

Peter A. Davidson

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issued a published opinion sanctioning DeLuca for violating several ethical rules and Code provisions, and the BAP affirmed.

While there were many missteps, the upshot, as summarized in a concurring opinion by Judge Jury, is that DeLuca did not obtain his clients' informed consent. DeLuca's failure to investigate into the judgment led to his failure to advise of the likely nondischargeability action, and, ultimately, to his failure to advise the debtors that the unbundled "basic services" package was unlikely to provide the relief they sought.

De Luca v. Seare (In re Seare), 2014 WL 4186483 (9th Cir. BAP Aug. 25, 2014).

SALES AND COMPROMISES

A. BAP Defines "Consummation" for Purposes of Exercising First Refusal Rights Under § 363(i)

Section 363(i) provides that "[b]efore the consummation of a sale" of estate property that was "community property of a debtor and the debtor's spouse immediately before commencement of the case," the debtor's spouse may purchase the property "at the price at which such sale is to be consummated." Here, a chapter 7 trustee sold, with court approval, the debtor's interest in certain pending state court litigation for $40,000, with payment due within 30 days of the sale order becoming final. A week after the sale hearing, the debtor's non-filing wife, who asserted a community property interest in the claim, notified the trustee of her intention to exercise first refusal rights under § 363(i). The bankruptcy court approved the sale to the wife under § 363(i), and the original buyer appealed, contending, among other things, that the sale had already been consummated when the wife exercised her § 363(i) rights.

Affirming the bankruptcy court, the BAP held that the sale had not been consummated for purposes of § 363(i) prior to the wife's exercising first refusal rights. Since "consummation" is not defined in the Code, the BAP looked to dictionary definitions and, by analogy, to the definition of "substantial consummation" in § 1101(2), concluding that the term "involves more than mere approval of a sale and requires finalization of the sale[,]" typically through payment. Here, payment was not due until well after the point when the wife asserted her § 363(i) rights, and, in fact, the original buyer had never tendered payment to the trustee.

Kallman & Co. LLP v. Gottlieb (In re Lewis), 2014 WL 4099248 (9th Cir. BAP Aug. 20, 2014).

B. There Is No Per Se Rule Banning Carve-out Agreements in Chapter 7

A chapter 7 trustee employed an auctioneer to conduct a public sale of the debtor's assets, consisting of inventory from its sporting goods business. The trustee determined that the bank held a perfected security interest encumbering all of the inventory. The bank and trustee entered into a stipulation whereby the net proceeds of the inventory would be split between the bank and the estate. The trustee believed that the transaction would net approximately $4,400 for the estate. The bankruptcy court declined to approve the stipulation, opining that arrangements between chapter 7 trustees and secured lenders raise a presumption of impropriety, and that the presumption had not been rebutted here.

On appeal, the BAP vacated the court's ruling, explaining that there is no per se rule banning carve-out agreements as proposed by the trustee. While these types of transactions do raise a presumption of impropriety, the BAP held that the presumption can be rebutted where (1) the trustee fulfills his basic duties, (2) there is a benefit to the estate (*i.e.*, prospects for a meaningful distribution to unsecured creditors), and (3) the terms of the carve-out have been fully disclosed to the court. In this instance, the record confirmed that the trustee had fulfilled the first and third requirements. The BAP remanded for the court to make findings as to whether the estimated proceeds would result in a meaningful distribution to unsecured creditors.

In re KVN Corp., Inc., 514 B.R. 1 (9th Cir. BAP 2014).

C. A Covenant May Be Wiped Out by Foreclosure, But That Doesn't Mean a Trustee Can Get Rid of It

In the 1980s and 1990s, the Redevelopment Agency of the City of West Covina conveyed several properties to the debtor for the operation of auto dealerships. The debtor agreed to certain covenants governing the use of the properties, including one that granted the agency the right to approve or disapprove any future owner of the properties, as well as any future operator of auto dealerships on the property. Following conversion of the case from chapter 11 to chapter 7, the trustee moved for approval of a sale of the properties free and clear of the covenants and contractual interests of the agency. The agency, in turn, filed a motion for enforcement of those covenants and contractual interests.

The bankruptcy court denied the agency's motion and granted the trustee's motion, holding that the ownership restriction was not enforceable as a contractual interest, a real property covenant, or an equitable servitude. The bankruptcy court held, however, that the operations restriction was enforceable as an equitable servitude. Notwithstanding this finding, the court concluded that the trustee could sell the properties free and clear of this equitable servitude under § 363(f)(5) as the agency and its successors "could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest." In approving the sale, the bankruptcy court agreed with the trustee that if the senior lienholder foreclosed, the junior covenants and equitable servitudes would be extinguished. Consequently, the agency or its successors would be "compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest."

The agency appealed and obtained an order staying the sale pending appeal. The district court thereafter reversed on the merits. It first agreed with the bankruptcy court's conclusion that under California law, the parties' operating covenant was enforceable as an equitable servitude. However, it concluded that foreclosure of a senior lien held by a third party did not constitute a "legal or equitable proceeding" in which city could be compelled to accept a money satisfaction of its interest. In

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particular, the term " 'satisfaction'–at least in the context of 'satisfaction of [an] interest'–connotes giving something of value in exchange for terminating an outstanding obligation." A foreclosure sale could simply wipe out a junior lien or interest without giving anything of value to the junior interest holder. Consequently, the bankruptcy court erred by construing the Bankruptcy Code to authorize a sale free and clear of the equitable servitude.

In re Hassen Imports P'ship, 502 B.R. 851 (C.D. Cal. 2013).

AVOIDING POWERS

A. Bankruptcy Court Has Authority to Avoid Transfers of Interests In Foreign Property

Prior to their bankruptcy, the debtors purchased an interest in property in Mexico. Under Mexican law, they could not hold fee simple title in the property, and thus a Mexican bank held the title and the debtors held a right to use the property. The vendor of the property thereafter obtained a judgment in district court (S.D. Cal.) requiring them to return their interest in the property or pay damages. During that litigation, the debtors transferred their interests in the Mexican property to an alter ego shell company and subsequently filed their chapter 7 case. While the chapter 7 case was pending, the shell company then sold the property interest to two individuals at a price adjusted to account for obligations owed by the debtors to the purchasers. The purchasers, who knew about the bankruptcy and the possibility that a trustee could seek to avoid the initial transfer of the property interest to the alter ego company, paid most of the consideration to entities other than the shell company but still associated with the debtors.

The trustee filed an action to avoid the transfer of the property interest from the debtors to their alter ego company. The trustee also sought to avoid the transfer from the alter ego to the purchasers as an unauthorized postpetition transfer. The bankruptcy court affirmed, and the district court affirmed. On appeal, the purchasers contended that the bankruptcy court inappropriately exercised jurisdiction over Mexican land and improperly applied U.S. bankruptcy law extraterritorially. The Ninth Circuit affirmed, holding that the bankruptcy court, by virtue of its exclusive jurisdiction over property of the estate wherever located, could adjudicate unauthorized postpetition transfer proceeding affecting Mexican realty. It also held that the bankruptcy court did not abuse its discretion in declining to enforce a forum selection clause contained in the relevant documents. The panel concluded that the bankruptcy court's order did not implicate principles of international comity and Mexico was not a necessary party in adversary proceeding to unwind transfer. Finally, the Ninth Circuit held that the bankruptcy court could apply United States bankruptcy law in deciding whether downstream purchasers of a beneficial interest in Mexican realty completed the purchase in good faith.

In a related appeal involving the same parties and property, the Ninth Circuit affirmed the award of contempt of court sanctions against the purchasers and held that it had jurisdiction over the appeal even though the district court had partially remanded the matter to the bankruptcy court for recalculation of the amount of sanctions. The Ninth Circuit also held that the bankruptcy court had the power to facilitate transfer of the property (i.e., by compelling execution of certain documents) even though the fraudulent transfer judgment was on appeal. "After an appeal is filed, a court generally may not 'alter or expand upon the judgment,' [although] it retains jurisdiction to supervise a required course of conduct."

Kismet Acquisition, LLC v. Icenhower (In re Icenhower), 757 F.3d 1044 (9th Cir. 2014) (affirming fraudulent transfer judgment).

Kismet Acquisition, LLC v. Diaz-Barba (In re Icenhower), 755 F.3d 1130 (9th Cir. 2014) (affirming the award of contempt of court sanctions against the purchasers).

B. You Can Be the Target of a Turnover Motion Even If You No Longer Have the Property

A chapter 7 trustee filed a motion against a debtor for turnover of funds that were in the debtor's bank account on the petition date. However, at the time the trustee filed the turn-over motion the funds were no longer in the debtor's account due to certain payments and transfers made post-petition. The bankruptcy court denied the turnover motion because the debtor did not have possession or control of the funds at the time the trustee filed the motion. The trustee appealed, and the district court affirmed.

Reversing the district court, the Ninth Circuit held that a trustee may seek turnover from an entity that had "possession, custody, or control" of the subject property during the bankruptcy case, regardless of whether the entity had possession, custody, or control at the time the turnover motion was filed. In arriving at its holding, the Court looked to the plain language of § 542(a), which only requires possession, custody, or control "during" the case, and allows a trustee to recover the value of the subject property if the entity is no longer in possession when the motion is filed. The Court's ruling was also supported by pre-Code turnover practice.

Shapiro v. Henson, 739 F.3d 1198 (9th Cir. 2014).

C. Just Like Foreclosure Sales, Regularly Conducted Tax-Default Sales Are Not Fraudulent Transfers

About a month before the chapter 11 debtor's petition date, the Los Angeles County Treasurer and Tax Collector duly conducted tax sales of two of the debtor's real properties at public auction. The debtor filed an adversary proceeding against the county to avoid the tax sales as fraudulent transfers under § 548(a), among other relief. The bankruptcy court granted the county's Rule 12(b)(6) motion and dismissed the complaint with prejudice, finding that the debtor could not amend the complaint to state a viable cause of action. The debtor appealed.

Affirming the bankruptcy court, the BAP looked to the U.S. Supreme Court's decision in *BFP v. Resolution Trust Corp.*, 511 U.S. 531 (1994), which held that a "fair and proper price, or 'reasonably equivalent value,' for a foreclosed property, is the

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price in fact received at the foreclosure sale, so long as all the requirements of the State's foreclosure law have been complied with." The BAP, agreeing with courts across the country, held that *BFP's* holding should be applied to regularly conducted sales of tax-defaulted real property in California. In this instance, there was no evidence that the tax sales did not comply with all applicable notice and other statutory requirements. Accordingly, there was a conclusive presumption that the sales were for reasonably equivalent value. The tax sales therefore were not subject to avoidance under § 548(a). On a separate note, the BAP also held that the county's post-petition recordation of the tax deeds was a ministerial act, and therefore did not violate the automatic stay.

Tracht Gut, LLC v. County of Los Angeles, Treasurer and Tax Collector (In re Tracht Gut, LLC), 503 B.R. 804 (9th Cir. BAP 2014).

D. District Court Finds That Section 544(b) Does Not Apply to Post-petition Transfers

A chapter 11 debtor scheduled certain real property located in Hillsborough, California as having a value of $1.2 million. The debtor's chapter 11 plan provided that upon confirmation all property of the estate would vest in the debtor. Two months after the plan was confirmed (and the property had vested in the debtor), the debtor sold the property for over $3.1 million. The debtor received $1.9 million out of escrow, nearly all of which it wired to a corporation created by the debtor's insider 21 days earlier. After the case converted to chapter 7, the trustee filed an adversary proceeding to set aside the sale as a fraudulent transfer under § 544(b) and Cal. Civ. Code § 3439.04. Section 549 was not available to the trustee, as it applies by its terms only to unauthorized post-petition transfers of estate property.

Reversing the bankruptcy court, the district court ruled that § 544(b) does not apply to post-petition transfers. Based upon an analysis of case law, statutory language, and legislative history, the court reasoned that Congress intended § 549 to be the sole section addressing post-petition transfers, as evidenced by, among other things, the fact that § 549 contains its own statute of limitations keyed to the date of the transfer ("two years after the [post-petition] transfer sought to be avoided"). Section 544(b)'s statute of limitations, in contrast, set out in § 546(a), expires after the later of two years after entry of the order for relief or one year after appointment of a trustee. If § 544(b) were intended to apply to post-petition transfers, it would make little sense to cut off the limitations period so early. The court acknowledged that a window had been "left open" for debtors to engage in mischief, but concluded that it was Congress's responsibility to close it.

Casey v. Rotenberg (In re Kenny G. Enterprises, LLC), 2014 WL 2889650 (C.D. Cal. June 24, 2014).

E. Paying Off Credit Card Bill Every Month Qualifies for Ordinary Course Defense

During the 90 days preceding their petition date, the chapter 7 debtors made four payments totaling $10,868.58 on their credit card account with Barclays Bank. The chapter 7 trustee sued Barclays to avoid the payments as preferences. After evaluating the litigants' cross-motions for summary judgment, the bankruptcy court found that Barclays had a complete defense under either prong of the ordinary course of business defense. In particular, under § 547(c)(2)(A), all payments were for the full amount due, or close to it, which was consistent with the debtors' pre-preference period payment history. The payments also satisfied the "ordinary business terms" standard of sub-section (c)(2)(B), after taking into account studies showing that approximately half of credit card users pay the full balance each month. In addition, Barclays established a new value defense as to all but about $3,000 of the transfers.

Notably, the court was critical of Barclays for stating in its cross-motion that it objected to the court's constitutional authority to enter final judgment per *Stern*, but then concluding with a request that the court enter final judgment in favor of Barclays and dismiss the action with prejudice. As the court put it, "Barclays cannot have it both ways," and wait to see how the court rules before deciding whether to consent to entry of final judgment. Ultimately, the court concluded that Barclays had waived or forfeited its *Stern* objection by affirmatively asking for entry of final judgment by the bankruptcy court.

Haley v. Barclay's Bank Delaware (In re Carter), 506 B.R. 83 (Bankr. D. Ariz. 2014).

F. Subcontractor's Release of Stop Notices Provided Contemporaneous Exchange Defense

The chapter 7 debtor was a contractor for various school districts. During the 90 days preceding its petition date, the debtor made a $75,000 payment to a subcontractor, who in turn released several statutory stop notices. The subcontractor served several stop notices within the 90 days as well. The chapter 7 trustee sued the subcontractor to avoid the payment and the stop notices as preferences. Following a trial, the bankruptcy court ruled that the subcontractor established complete (or nearly complete) ordinary course, new value, and contemporaneous exchange defenses with respect to the payment.

Of particular note, the court found that the stop notice releases provided in return for the payment constituted a contemporaneous exchange for new value. The releases constituted new value because they obviated the equitable lien the debtor's surety otherwise would have had against the construction fund if the surety had made the payment instead of the debtor. Significantly, in making this determination, the court found that the surety would have been fully secured at the time of the transfer, since the amount in the construction fund exceeded the amount of matured claims against the bond. In addition, the court found that the stop notices were statutory liens that could not be avoided by operation of § 547(c)(6) (providing that a trustee may not avoid a transfer "that is the fixing of a statutory lien that is not avoidable under section 545").

Stahl v. Whelan Electric, Inc. (In re Modtech Holdings, Inc.), 503 B.R. 737 (Bankr. C.D. Cal. 2013).

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G. Trustee Successfully Invokes "Sham Affidavit Rule" in Avoiding Transfers of Trademarks

Within two years before their bankruptcy filings, chapter 11 debtors transferred for no consideration their most valuable assets–trademarks to their "Girls Gone Wild" adult entertainment business–to an entity managed and controlled by the debtors' insider. Following the assignment, the debtors continued to use the trademarks, but paid no licensing fees or royalties to the transferee. Shortly before the petition date, the transferee terminated the debtors' rights to use the trademarks and then relicensed the trademarks to the debtors in return for a fee of $274,250.52. The fee, paid just before the petition date, effectively cleaned out the debtors' bank accounts.

The chapter 11 trustee sought to avoid the foregoing transfers as fraudulent transfers under § 548(a). In his motion for summary judgment, the trustee presented overwhelming evidence that the debtors made the transfers with actual intent to hinder, delay, or defraud their creditors (including testimony by the insider's lawyer that the trademarks were transferred so that creditors could not seize them). The trustee established multiple "badges of fraud" as well. In opposition, the insider submitted a declaration which was "glaringly discordant" and otherwise implausible given his prior deposition testimony. The court essentially threw out the declaration based on the "sham affidavit rule," which prevents a party from simply raising an issue of material fact by submitting a declaration that contradicts the party's prior deposition testimony. The court granted the trustee's motion under the actual fraud standard of § 548(a)(1)(A).

Argyle Online, LLC v. Nielson (In re GCW Brands LLC), 504 B.R. 577 (Bankr. C.D. Cal. 2013).

CHAPTER 11

A. Substantive Consolidation of Chapter 11 Debtors and Non-Debtor Entities Justified under Bonham Standard

A chapter 11 trustee filed an adversary proceeding against a host of entities related to the debtors (all of which were controlled by the debtors' insider), seeking substantive consolidation of the debtors' estates with the defendant entities (*i.e.*, the defendants' assets and liabilities would be pooled together with those of the estates, as if all were a single entity). Following a very lengthy and detailed set of factual findings, the bankruptcy court determined that substantive consolidation *nunc pro tunc* to the petition date was warranted, and granted the trustee's motion for summary judgment.

In a thorough discussion of the legal standards and rationales for substantive consolidation, the court looked to the Ninth Circuit's *Bonham* decision and its adoption of the so-called "Augie/Restivo" factors, distilled as follows: whether creditors dealt with entities as a single economic unit, and whether the affairs of the debtor are so entangled that consolidation will benefit all creditors. Here, the undisputed facts established, among other things, that (1) it was impossible to identify and segregate the assets of the debtors and defendants given the thousands of inter-company transactions over a nine-year period and the lack of adequate records establishing the purposes of the transfers; (2) debtors and defendants were not treated as separate entities but rather as alter egos of one another; (3) substantive consolidation would promote fairness to all creditors by ensuring ratable distribution of defendants' assets while avoiding the cost of trying to determine who owes what to whom; and (4) defendants' creditors dealt with defendants and debtors as if they were all the same entity.

Sharp v. Salyer (In re SK Foods, LP), 499 B.R. 809 (Bankr. E.D. Cal. 2013).

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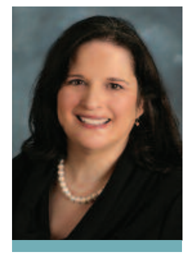

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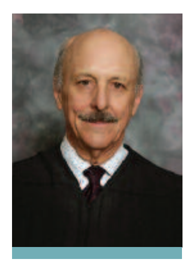

Judge Dennis Montali

**Hon. Dennis Montali is a United States Bankruptcy Judge sitting in the San Francisco Division of the Northern District of California.*

Ponzi Scheme...

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advertising was of no value viewed from the standpoint of the creditors. It cited comments to the Uniform Fraudulent Transfer Act that the definition of value was modeled after the bankruptcy code and that "the purpose of the act [is] to protect a debtor's estate from being depleted to the prejudice of the debtor's creditors. *Consideration having no utility from a creditor's standpoint does not satisfy the statutory definition*." *Id. at* *3 (emphasis in original). Based on that definition and a number of cases the court cited, the court held, "we measure of value 'from the standpoint of the creditors,' and not from that a buyer in the marketplace." *Id. at* *4. The court also cited: (1) *Warfield, supra.*, where it held that commissions paid to a broker for securing new investors in a Ponzi scheme were voidable, even if the broker was unaware of the fraud; and (2) *Donell, supra.* "that interest payments made to investors in a Ponzi scheme 'are merely used to keep the fraud going by giving the false impression that the scheme is a profitable, legitimate business' and do not compensate for the time value of money." *The Golf Channel at* *5 *fn*.6.

The Golf Channel argued that it was an innocent trade creditor simply promoting a business brand and it should be treated differently from a broker who tries to secure new investments in the scheme. The Court rejected this plea, stating that the law makes no distinction between different types of services or transferees and that there is no authority to create an exception for "trade creditors." *Id. at**5.

Some commentators have complained that the case goes too far and lament that, should every business have to do a financial prostate exam of every customer who happens to be a money manager? Unless the Supreme Court grants review, it appears to be a hole-in-one for the receiver. Indeed, news reports state that the Stanford receiver has claims against seven other sports marketing deals involving $36 million dollars – which had been stayed pending *The Golf Channel* decision.

THE LIST

While there is no court-approved list of Receivers, the following is a partial list of Receivers who are members of the California Receiver's Forum and have the indicated educational experience. Inclusion on this List shall not be deemed an endorsement of any of the names listed below by the Receivership News, the California Receiver's Forum, or any of its Chapters. This is a paid advertisement.

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❖ This symbol indicates those receivers who completed a comprehensive 16-hour course on receivership administration and procedures presented at Loyola Law School in January 2009.

♒ This symbol indicates those who facilitated and attended the January 2009 Loyola Law School course.

⌘ This symbol indicates those who completed up to 20 hours of receivership law and practice, Loyola IV Symposium, at the LA Convention Center in January 2011.

▲ This symbol indicates those who facilitated and attended the January 2011 Loyola IV Symposium

🌢 This symbol indicates those who completed up to 14 hours of advanced receivership education at the Loyola V, Complex Case Symposium in January 2013.

■ This symbol indicates those who facilitated and attended the Loyola V, Complex Case Symposium in January 2013.

⊗ This symbol indicates those who completed 9 hours of education at the Loyola VI Symposium in January 2015.

≠ This symbol indicates those who facilitated and attended the Loyola VI Symposium in January 2015.

Heard in the Halls

NOTES, OBSERVATIONS, AND GOSSIP RELAYED

BY ALAN M. MIRMAN*

Welcome to the latest edition of *Heard in the Halls*. Please provide your snippits of news, questions or comments about receivership issues or the professional community by telephone, mail, fax, or email to: **Alan M. Mirman**, Mirman, Bubman & Nahmias, LLP. 21860 Burbank Blvd, Suite 360, Woodland Hills, CA 91367. Phone: (818) 451-4600; Fax: (888) 451-7624; email: amirman@mbnlawyers.com

Here is what we have *Heard in the Halls* ...

- As we go to press, the Bay Area and Sacramento Chapters are co-sponsoring their fourth annual "Economic Forecast" meeting to talk about "Where Will the Receiver's Money Come From?" **Bob Greeley** of the Sacramento Chapter reports that this "will be a more upside down look at where the distress in the economy is and where receivers are most likely to find work. Three Receivers and one Economist are on the panel, and the discussion is always lively as receivers, attorneys, accountants, and guests burn some brain cells trying to read the tea leaves and crystal balls of the economic road map and find the train wrecks and pot holes of the California and Federal Agency economy." Bob also notes that the Sacramento Chapter is scheduling a group of brown bag luncheons for the remainder of the year, discussing more complex receivership issues dealing with bankruptcy and operating businesses. They expect that Superior Court and Bankruptcy judges will be joining them as speakers.

- More from up north… **Ivo Keller** of the Bay Area Chapter reports that on January 15th, the Bay Area Chapter hosted its annual New Year's celebration and networking event. An enthusiastic group of long-time members and more recent additions got together in the beautiful conference space at Duane Morris for a champagne toast, hors d'oeuvres, and some belated holiday cheer.

Dennis Miller and Mia Blackler

Bruce Cornelius and Susan Uecker

- Loyola VI (held in January in Orange County) was a grand success. We heard favorable comments about the selection of programs, the format, and the venue. Please give me your comments regarding what you thought of the programs, so that the Forum can take that into account in planning for the future.

- Last issue we debuted a new feature in HITH, sort of a "What I Did Last Summer" item. Bay Area Chapter VP and long-time receiver, Clay Dunning, who wrote me about his 4,000 Mile Bike Ride Across America. Thus far, no new entries from other members. Who else will step forward with a story of their adventure or hobby?

- **Kathy Bazoian Phelps**, Editor of the Receivership News and an LA/OC Chapter Board member, reports that the NAFER Annual Conference will be taking place in San Diego this year. Session producers include CRF members **Bob Mosier**, **Gary Caris**, and Kathy Bazoian Phelps. From the NAFER website at www.nafer.org:

  The 2015 NAFER Annual Conference officially begins on Friday morning, October 16th, with 1 2/3 days of professional panels addressing key issues and relevant topics for Federal Equity Receivers and those who support receiverships. For those arriving early, we will have optional early events, including an opening reception on Thursday evening, October 15th, so plan to arrive early! This year's conference will take place at the beautiful US Grant Hotel in San Diego. In addition to being a great venue for our conference, the beautiful city of San Diego offers a plethora of recreational activities, amusements and destinations representative of the great history of Southern California.

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