

UNITED STATES BANKRUPTCY COURT
For The Northern District Of California

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:]	Case No. 98-51326-ASW
H. KEITH HENSON,]	Chapter 7
]	
<u>Debtor</u>]	
RELIGIOUS TECHNOLOGY CENTER,]	
]	
Plaintiff,]	
]	
vs.]	Adversary Proceeding
]	No. 03-5131
V. AREL LUCAS, an individual, as]	
wife of the Debtor; CAROL WU, as]	
Chapter 7 Trustee,]	
]	
Defendants.]	
]	

MEMORANDUM DECISION REGARDING STANDING OF
RELIGIOUS TECHNOLOGY CENTER TO FILE THIS ADVERSARY PROCEEDING

Before the Court is a motion by V. Arel Lucas ("Lucas") for summary judgment against Religious Technology Center ("Creditor"), a creditor of H. Keith Henson, the debtor in this Chapter 7¹ case ("Debtor").

¹ Unless otherwise noted, all statutory references are to the Bankruptcy Code, Title 11 United States Code, as it provided with respect to cases filed on February 23, 1998.

Creditor is represented by Elaine M. Seid, Esq. of McPharlin, Sprinkles & Thomas LLP; Samuel D. Rosen, Esq.; and Helena K. Kobrin, Esq. of Moxon & Kobrin. Lucas is represented by Wayne A. Silver, Esq. The Chapter 7 Trustee ("Trustee"), Carol Wu, is represented by Susan B. Luce, Esq. of the Law Offices of Charles E. Logan. Debtor appeared *in propria persona*.

During the hearings on the summary judgment motion, Lucas objected to Creditor's standing to bring this adversary proceeding ("Action"). The Court continued the matter to permit the parties to brief the issue. The matter was briefed, argued and submitted for decision.

Lucas thereafter filed a request that the Court take judicial notice of the Ninth Circuit case of Smith v. Arthur Andersen LLP, 421 F.3d 989 (9th Cir. 2005). The Court issued an order requesting further briefing regarding the impact of that case on this submitted matter. Additional briefs were filed by the parties and considered by the Court.

This Memorandum Decision constitutes the Court's findings of fact and conclusions of law, pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

I.

BACKGROUND

A. Procedural History of the Bankruptcy Case

Debtor filed a Chapter 13 bankruptcy petition on February 23, 1998. Debtor's bankruptcy case was dismissed on April 28, 1998.

1 The dismissal was vacated on July 20, 1998 on a prospective basis
2 only.

3 Debtor's Chapter 13 case was converted to a Chapter 7 case on
4 February 7, 2003 and the Trustee was then appointed.²

5 **B. Factual Background**

6 Debtor and Lucas are married and have been married since
7 1982. Debtor and Lucas entered into a prenuptial agreement on or
8 about August 21, 1982. The prenuptial agreement provides, *inter*
9 *alia*, that both income and property acquired during marriage is
10 their separate property.

11 In July 1996, Debtor and Lucas purchased real property
12 located at 302 College Avenue, Palo Alto, California ("Property")
13 and took title to the Property in joint tenancy.

14 On May 14, 1998, Creditor obtained a judgment against Debtor
15 in the amount of \$75,000 and on June 9, 1998, recorded an abstract
16 of the judgment ("Abstract") in the real property records in Santa
17 Clara County. The Abstract was recorded during the period when
18 Debtor's Chapter 13 bankruptcy case had been dismissed and before
19 the dismissal had been vacated.

20 Recordation of the Abstract created a lien on the Property in
21 the amount stated in the Abstract and Creditor has a secured claim
22 in that amount ("Secured Claim"). Even though its Secured Claim is
23 in the amount of \$75,000, Creditor states in a Declaration filed in
24

25 ² This is an unusual bankruptcy case -- Creditor has filed more
26 than 60 motions, has commenced at least 3 adversary proceedings,
27 has made a motion to disqualify this Court, has filed 3 separate
28 motions to withdraw the reference, has filed at least 6 motions
regarding its objection to the sale of this Property, and has filed
numerous appeals from this Court's orders. Creditor has also sought
to have the case dismissed from its inception.

1 the Action and argues in its briefs that its Secured Claim arising
2 from the Abstract is in the amount of \$271,820 rather than \$75,000.
3 (See Declaration of Helena Kobrin filed July 13, 2005.)

4 The Trustee obtained permission from this Court to sell both
5 the Debtor's interest and co-owner Lucas' interest in the Property
6 pursuant to Bankruptcy Code §363(h). The Trustee sold the Property
7 in November 2003 and currently holds approximately \$290,000 in sale
8 proceeds (the "Sale Proceeds").

9 Pursuant to the terms of the Order approving the sale, the
10 Trustee is holding the Sale Proceeds pending resolution of disputes
11 relating to (i) Creditor's Secured Claim; (ii) Debtor's homestead
12 exemption; and (iii) the nature of Lucas' ownership interest.

13 **C. The Adversary Proceeding**

14 Creditor commenced the Action in April 2003. On July 31,
15 2003, Creditor filed its Amended Complaint to Determine the
16 Interest of a Putative Co-Owner Under Bankruptcy Rule 7001(2) (the
17 "Complaint"). The Complaint names the Trustee and Lucas as
18 defendants. (Creditor alleges that this Action is not a core
19 proceeding under 28 U.S.C. §157(b) and says it does not consent to
20 entry of final orders by this Court.)

21 In a total of nine paragraphs, the Complaint alleges, *inter*
22 *alia*, that (i) Creditor is informed and believes that the Trustee
23 *may have an interest* in and to the Property by virtue of the
24 interests of the Debtor and Lucas in the Property; (ii) Creditor's
25 Abstract encumbers the entirety of the Property because the
26 Property was community property; (iii) Lucas asserts that her
27 interest in and to the Property is her separate property held in
28

1 joint tenancy and is free and clear of the lien arising from the
2 Abstract.

3 The Complaint asks for a declaration that (i) the entirety of
4 the Property is community property; (ii) the Abstract encumbers the
5 entirety of the Property; (iii) Creditor's lien is to be paid from
6 the total proceeds of the sale of the Property; (iv) the interest
7 of Lucas is junior and subordinate to the interest of Creditor; and
8 (v) Creditor's interest is senior to Lucas' interest.

9 While the Complaint acknowledges that the Trustee *may have* an
10 interest in the Property, it does not seek any relief on behalf of
11 the estate. The prayer in the Complaint indicates that Creditor is
12 suing only on its own behalf, on the theory that Creditor is
13 entitled to receive the entire Sale Proceeds.

14 Both the Trustee and Lucas have answered the Complaint.
15 Lucas raises standing as one of six affirmative defenses in her
16 Answer. The Trustee has also argued that Creditor lacks standing
17 and that the appropriate remedy is to substitute the Trustee in as
18 plaintiff in the Action.

19
20 II.

21 THE PARTIES' POSITIONS

22
23 A. Applicable State Law

24 All parties agree that state law determines the nature and
25 extent of a debtor's interest in the Property. Abele v. Mod. Fin.
26 Plans Svcs. (In re Cohen), 300 F.3d 1097, 1104 (9th Cir. 2002).

27 There is a general presumption that property acquired during
28 marriage is community property. If the written instrument by which

1 property is acquired states it is separate property, the community
2 property presumption is rebutted and each spouse is presumed to own
3 an undivided one-half interest. Hanf v. Summers (In re Summers),
4 332 F.3d 1240, 1243 (9th Cir. 2003).

5 In opposition to Lucas' summary judgment motion, Creditor
6 argues that this separate property presumption is rebuttable and
7 there are triable issues of fact regarding whether Lucas and Debtor
8 actually intended to hold the Property as community property.

9 **B. Lucas' Position Regarding Standing**

10 Lucas asserts that the Action is one to determine an
11 ownership interest in property of a bankruptcy estate. Under
12 Bankruptcy Code §541 and §704, Lucas argues, only the Trustee has
13 standing to pursue such an action. Lucas claims that the Ninth
14 Circuit's recent decision in Smith v. Arthur Andersen LLP, 421 F.3d
15 989 (9th Cir. 2005) supports this argument. Lucas also relies on
16 Honiqman v. Comerica Bank (In re Van Dresser Corp.), 128 F.3d 945
17 (6th Cir. 1997); Schertz-Cibolo-Universal City, Indep. Sch. Dist.
18 v. Wright (In the Matter of Educators Group Health Trust), 25 F.3d
19 1281 (5th Cir. 1994); e-Realbiz.com, LLC v. Protocol
20 Communications, Inc. (In re Real Marketing Services, LLC), 309 B.R.
21 783 (S.D. Cal. 2004).

22 Lucas points out that standing must be determined as of the
23 date the Action was filed and cannot be cured by later
24 developments. Lucas cites People ex rel. Younger v. Andrus, 608
25 F.2d 1247 (9th Cir. 1979) for this proposition. As of that date,
26 i.e., April 2, 2003, the Property had not been sold and Debtor and
27 Lucas held title to the Property in joint tenancy.

Lucas contends that Creditor is asking this Court to reform the deed by which Lucas and Debtor held title, from joint tenancy to community property, since that is the only remedy that could have been asserted when the Action was commenced.

Lucas argues that, as a general rule, only parties to an instrument (or those in privity with them) have standing to seek its reformation and that Creditor lacks standing for this additional reason.³

C. Creditor's Position Regarding Standing

Creditor denies that the Action asks for reformation of a deed. However, Creditor acknowledges that what it seeks is a determination of Lucas' interest in the Sale Proceeds and that this determination must be made before the Trustee can distribute them.

Creditor sees itself as the proper party to sue because it alleges that it has the greatest economic interest in the Action and claims that the Trustee has, until recently, "acquiesced" in Creditor's taking the leading role in this determination.

Although Creditor in fact presently only has a Secured Claim for \$75,000, it argues that the unavowed lien arising from its Abstract secures a claim of \$271,820.⁴ From this, Creditor argues

³ The Court does not make a determination on this issue in light of its conclusion regarding Creditor's standing reached on other grounds.

⁴ The status and amount of Creditor's claims has not yet been determined. Under §502(a), claims are deemed allowed unless objected to. Creditor has filed the following claims: Claim no. 4 is an unsecured claim in the amount of \$1,060,636; Claim no. 7 is an unsecured claim in the amount of \$222,651.83 and states that it amends claim no. 4; Claim no. 8 states the total amount owed is \$222,651.83, states that it amends the two prior claims, and that it is a secured claim "at least to the extent of" \$75,000 based on

1 that it is the real party in interest with standing because the
2 Trustee has only a nominal or potential interest and no real stake
3 in the outcome.

4 Creditor also argues that it has standing because the Trustee
5 does not have standing to bring an action that will benefit only a
6 single, particular creditor.

7 **D. Trustee's Position Regarding Standing**

8 The Trustee asserts an interest in the Sale Proceeds on
9 behalf of the estate. The Trustee sees the issue as whether
10 Creditor "has standing to commence an adversary proceeding against
11 a non-debtor party in Bankruptcy Court to bring property into the
12 bankruptcy estate." (Trustee's Brief re Standing filed July 14,
13 2005.)

14 Trustee correctly points out that standing is a
15 jurisdictional question that cannot be waived and can be raised at
16 any time.

17 Trustee's argument is premised on these sections of the
18 Bankruptcy Code: Bankruptcy Code §323(a) makes the Trustee the
19 representative of the estate and §323(b) gives the Trustee the
20 capacity to sue and be sued. Bankruptcy Code §541 defines property
21 of the estate as all legal or equitable interests of the debtor in
22 property. Bankruptcy Code §704 requires a chapter 7 trustee to
23 collect and reduce to money the property of the estate. Under

24
25 _____
26 Creditor's Abstract. Creditor has not filed a secured claim for any
27 amount above this \$75,000. Nor has the District Court amended the
28 judgment which forms the basis of Creditor's Secured Claim. The
estate's interest in the Sale Proceeds may not be distributed until
the issues regarding the status and amount of Creditor's claims are
resolved.

1 Bankruptcy Code §704, only a trustee is authorized to take
2 possession of property of the chapter 7 estate, liquidate it, and
3 distribute it to creditors.

4 Trustee says the Action seeks to bring Lucas's purported
5 separate property interest in the co-owned Property into Debtor's
6 bankruptcy estate. Thus, the Trustee is the real party in interest
7 and the Trustee should be substituted in as the plaintiff pursuant
8 to Rule 7017 of the Federal Rules of Bankruptcy Procedure.

9
10 III.

11 ANALYSIS

12
13 A. Introduction

14 In this Action, Creditor seeks a determination that the Sale
15 Proceeds are community property rather than Debtor and Lucas'
16 separate property. Creditor's transparent purpose in bringing the
17 Action is to obtain a greater recovery for itself.

18 Resolution of the standing question raised by Lucas and the
19 Trustee requires an analysis of the cause of action stated in the
20 Complaint and applicable sections of the Bankruptcy Code. It also
21 requires an analysis of Creditor's claims in this case and the
22 Bankruptcy Code's treatment of those claims.

23 After a careful review of the statutory scheme regarding
24 chapter 7 trustees' duties, the definition of property of the estate
25 under Bankruptcy Code §541, and an analysis of the relief sought by
26 Creditor, the Court concludes that Creditor does not have standing
27 because the cause of action stated in the Complaint belongs
28 exclusively to the estate.

1 Creditor has usurped the Trustee's role in bringing this
2 Action. Creditor's theory regarding standing would introduce chaos
3 into the orderly process set out in the Bankruptcy Code for bringing
4 property into an estate, for distributing it from an estate, and for
5 settling disputes regarding the ownership of property. The Creditor
6 suing Lucas and the Trustee in the fashion done here is no different
7 than a creditor taking steps to sell any estate property -- real or
8 personal -- based on the creditor's self-serving claim that it will
9 ultimately be entitled to a significant portion of the sale
10 proceeds.

11 **B. The Role of the Chapter 7 Trustee**

12 Bankruptcy Code §323(a) provides that the trustee in a case
13 under title 11 is the "representative of the estate." Bankruptcy
14 Code §323(b) provides that a trustee has the "capacity to sue and be
15 sued."

16 Bankruptcy Code §704 sets out the duties of a chapter 7
17 trustee. A trustee must "collect and reduce to money the property
18 of the estate for which trustee serves and close such estate as
19 expeditiously as is compatible with the best interests of parties in
20 interest."

21 Bankruptcy Code §541(a) provides that:

22 The commencement of a case under section 301, 302, or
23 303 of this title creates an estate. Such estate is
24 comprised of all the following property, wherever
25 located and by whomever held:

26 (1)... all legal or equitable interests of the debtor in
27 property as of the commencement of the case.
28

1 (2) all interests of the debtor and the debtor's spouse in
2 community property as of the commencement of the case that is-

3 (A) under the sole, equal, or joint management and control of
4 the debtor; or

5 (B) liable for an allowable claim against the debtor, or for
6 both an allowable claim against the debtor and an allowable
7 claim against the debtor's spouse, to the extent that such
8 interest is so liable.

9 Within this framework, a chapter 7 trustee acts on behalf of
10 all creditors to collect property of the estate and distribute the
11 funds of the estate to its creditors in the manner set out in the
12 Bankruptcy Code.

13 **C. The Trustee's Causes of Action**

14 "Property of the estate" as defined in Bankruptcy Code §541
15 is a very broad concept and it includes causes of action. Sierra
16 Switch Board Co. v. Westinghouse Electric Corp., 789 F.2d 705, 707
17 (9th Cir. 1986). Because a chapter 7 trustee's role is to maximize
18 the estate, a trustee will necessarily prosecute those causes of
19 action available to the trustee that will accomplish that goal.

20 If a debtor could raise a claim at the commencement of the
21 bankruptcy case, the claim becomes the exclusive property of the
22 bankruptcy estate and *cannot* be asserted by a creditor. While this
23 issue arises in many different contexts, the analysis involves a
24 careful look at the relief sought in a complaint and the harm it
25 seeks to redress.

26 For example, in In re Real Marketing Services, LLC, 309 B.R.
27 at 788, the district court affirmed the bankruptcy court's decision
28 that breach of contract and related causes of action belonged

1 exclusively to the estate of the limited liability company debtor
2 rather than its managing member because the harm was to the debtor
3 not the managing member. In In re Van Dresser Corp., 128 F.3d at
4 947, the Sixth Circuit found that tort claims were the exclusive
5 property of the bankruptcy estate because the claims implicitly or
6 explicitly alleged harm to the debtor. See also, CBS, Inc. v. Folks
7 (In re Folks), 211 B.R. 378 (B.A.P. 9th Cir. 1997)(alter ego claim
8 against principal of corporate debtor belonged to estate and trustee
9 had standing to bring it because harm was to the debtor).

10 In Estate of Spirtos v. One San Bernardino County Superior
11 Court Case Numbered SPR 02211, No. 03-56405, 2006 WL 933405 (9th
12 Cir. Apr. 12, 2006) the Ninth Circuit faced the issue of whether a
13 creditor of a bankruptcy estate has standing to bring a claim on
14 behalf of the estate. In line with the authority from other
15 circuits and lower court decisions, the Ninth Circuit held that
16 Bankruptcy Code §323 and §704 vest the trustee with the exclusive
17 right to sue on behalf of the estate.

18 In Estate of Spirtos, plaintiff -- ex-wife of chapter 7
19 debtor -- sued in district court alleging RICO claims against the
20 chapter 7 trustee and other parties involved in the bankruptcy case
21 and the probate case of her deceased ex-husband. The district court
22 dismissed her complaint on standing grounds and the Ninth Circuit
23 affirmed. The Ninth Circuit explained:

24 To date, we have not squarely addressed the question of
25 whether the creditor of a bankruptcy estate also has
26 standing to assert claims on behalf of the estate.

27 However, we have stated in dicta that, in general,

28 trustees are the exclusive parties possessing the right

1 to sue on behalf of the estate [citations omitted]. We
2 have held that in some circumstances, the trustee may
3 authorize others to bring suit, but we implicitly held
4 that the right to bring suit -- or choose not to do so
5 -- belongs to the trustee in the first instance.

6 Estate of Spirtos, 2006 WL 933405, at *2.

7 After reviewing authority from other circuits, the Ninth
8 Circuit went on to state:

9 We therefore reaffirm our previous reasoning and that
10 of our sister circuits and hold that the bankruptcy
11 code endows the bankruptcy trustee with the exclusive
12 right to sue on behalf of the estate. Accordingly,
13 [plaintiff], as a creditor of the estate who did not
14 receive authorization to sue from the trustee, lacks
15 standing to assert a RICO claim on behalf of the
16 estate." Id. at *3 (emphasis added).

17 Based on Estate of Spirtos and the earlier decisions in this
18 Circuit, it is clear that Creditor does not have standing to bring
19 this Action.⁶ If a cause of action seeks to redress harm to the

21 ⁶ Creditor argues that the holding in Chase Manhattan Bank,
22 N.A. v. Jacobs (In re Jacobs), 48 B.R. 570 (Bankr. S.D. Cal. 1985)
23 supports the conclusion that Creditor has standing. Jacobs does not
24 hold anything regarding standing; the issue of standing apparently
25 was neither raised nor discussed. In Jacobs, the debtor and his
26 non-debtor spouse held title to the family residence as joint
27 tenants. A lien creditor argued that the property was community
28 property. The bankruptcy court ruled in debtor's favor on his
motion for summary judgment. The creditor failed to submit
sufficient evidence to rebut the separate property presumption
arising from the fact that the title was held in joint tenancy.
Jacobs is a bankruptcy court decision and, as such, is not binding
on this Court. In any event, after Estate of Spirtos, it seems
entirely irrelevant to this decision.

1 debtor, it is property of the estate, and the trustee has the
2 exclusive authority to deal with it.

3 D. The Cause of Action Brought by Creditor Belonged to the Trustee.

4 Debtor could have sued Lucas before bankruptcy to obtain a
5 ruling that the joint tenancy designation on the deed by which they
6 held title to the Property did not reflect their true ownership.
7 The Trustee inherits that cause of action and acts on behalf of the
8 estate in bringing it. (See In re Summers, 332 F.3d 1240,
9 summarizing California law relevant to this Action in a case where
10 the chapter 7 trustee of the wife's estate sued the chapter 13
11 trustee of the husband's estate on the grounds that joint tenancy
12 property was *in fact* community property, the same argument made by
13 Creditor.)

14 E. The Estate Has a Significant Interest in the Action.

15 Creditor argues that its unavowed lien entitles it to
16 recover the "entirety" of the Sale Proceeds which "imbues" it with
17 standing. Creditor states that "because of the Trustee's *potential*,
18 *possible* interest in a *small portion* of the sale
19 proceeds...[Creditor] included the Trustee as a defendant."
20 (Creditor's Supplemental Memorandum on Standing dated June 15,
21 2005.)

22 An analysis of Creditor's claims filed in this case and the
23 hypothetical distribution of the Sale Proceeds illustrates that
24 Creditor's premise is fallacious. Contrary to the assertion in the
25 Kobrin Declaration and the argument in its briefs, Creditor appears
26 to concede in its last proof of claim that its Secured Claim arising
27
28

1 from its Abstract is limited to the principal amount of \$75,000 and
2 an unsecured claim for an additional amount. ⁷

3 If the Property was Debtor and Lucas' separate property, in
4 accordance with the presumption that follows from the joint tenancy
5 title, one-half the Sale Proceeds, or \$145,000, belongs to the
6 Trustee as property of the estate and the other half will be
7 distributed to Lucas. Conversely, if the presumption that follows
8 from the joint tenancy title is rebutted, the entire \$290,000 is
9 property of the estate. Whatever the final determination is, the
10 funds of the estate will be distributed in accordance with the
11 priorities established in the Bankruptcy Code.

12 At this juncture, Creditor's Secured Claim is only \$75,000.
13 After administrative claims are paid, Debtor's disputed homestead
14 exemption is resolved, and Creditor's Secured Claim is resolved,
15 Creditor will share the rest of the net Sale Proceeds along with
16 other unsecured creditors whose claims have been allowed. The
17 estate thus has a significant interest in the Action and the
18 estate's interest is more than a "small portion" of the Sale
19 Proceeds.

20 Accordingly, no matter how the title issue is resolved, the
21 estate presently has a significant financial stake in the outcome of
22 this litigation.

23
24
25 ⁷ The Court notes that the increase in the amount claimed by
26 Creditor beyond the \$75,000 in the Abstract is primarily attorneys
27 fees and sanctions incurred in litigation with Debtor in District
28 Court that took place after July 20, 1998, when this bankruptcy
case was reinstated. Creditor obtained relief from stay to proceed
with that litigation. The judgment has not been amended to increase
the \$75,000 based on these alleged attorneys fees and sanctions.

1 F. A Creditor's Views Are Considered in Approval of Settlements.

2 As discussed above, under the Bankruptcy Code, this cause of
3 action is property of the estate and belongs exclusively to the
4 Trustee. Creditor argues that it has the greatest stake in the
5 outcome so it is the real party in interest. Creditor is mistaken
6 on this point. However, Creditor's concern that its views be
7 considered is protected by the Bankruptcy Code provisions regarding
8 compromise or settlement of the litigation.

9 For example, although the Trustee (not Creditor) is the only
10 party who can settle the title dispute with Lucas, Creditor's rights
11 are protected. Rule 9019(a) of the Federal Rules of Bankruptcy
12 Procedure provides, "[o]n motion by the trustee and after notice and
13 a hearing, the court may approve a compromise or settlement. Notice
14 shall be given to creditors, the United States trustee, the debtor,
15 ... and to any other entity as the court may direct."

16 No settlement or compromise may be approved without careful
17 consideration of the views of an estate's creditors. See Martin v.
18 Robinson (In re A&C Properties), 784 F.2d 1377 (9th Cir. 1986),
19 *cert. denied, sub nom. Martin v. Robinson*, 479 U.S. 854 (1986). To
20 approve a settlement, a bankruptcy court must find that the proposed
21 settlement has been negotiated in good faith and is reasonable, fair
22 and equitable. A&C Properties, 784 F.2d at 1381; In re Pacific Gas
23 and Elec. Co., 304 B.R. 395, 417 (Bankr. N.D. Cal. 2004).

24 To determine fairness, a court must consider four factors:
25 the probability of success on the merits in the litigation; the
26 difficulties, if any, to be encountered in the collection of any
27 judgment; the complexity of the litigation and the expense,
28 inconvenience and delay attending it; the paramount interests of the

1 creditors giving a proper deference to their views. A&C Properties,
2 784 F.2d at 1381.

3 So that this settlement approval process is a meaningful
4 undertaking, a trustee must explain the risks of proceeding with the
5 litigation and the benefits of a proposed settlement. All creditors'
6 views are welcome and are considered carefully before a settlement
7 is approved by a bankruptcy court. *The process is not a mere*
8 *formality.*

9 Here, both the Creditor's interests and the Trustee's
10 interests are aligned in that both of them seek to maximize the
11 estate. Their interests may diverge after this threshold
12 determination, if, for example, the Trustee sought to avoid
13 Creditor's lien or objected to Creditor's claims. The Court
14 highlights this obvious fact to further demonstrate why the
15 Bankruptcy Code gives the Trustee control over this litigation and
16 its settlement.⁸

17 Consideration of this essential aspect of the Bankruptcy Code
18 and bankruptcy litigation buttresses the Court's conclusion that
19 Creditor does not have standing and that Creditor has usurped the
20 Trustee's role by bringing the Action in the first place. The
21 Trustee acts on behalf of *all creditors* and owes a fiduciary duty to
22 them. Creditor acts on its own behalf and owes no fiduciary duty to
23 the other creditors of this estate or the Debtor. Creditor acts for
24

25 ⁸ It also highlights the fact that although Creditor sued
26 Lucas and the Trustee in bankruptcy court, Creditor may have
27 violated the automatic stay of §362(a)(3),(4), and/or (5) when it
28 filed the Action. The Court leaves this determination for another
day as well as a determination of the remedies that may be
available for violation of the automatic stay.

1 its own selfish motives. If Creditor is allowed to control the
2 litigation, the Trustee's role is dangerously eroded and one
3 creditor with no fiduciary duty to others in the case takes over the
4 Trustee's role. This is not what the Bankruptcy Code contemplates.
5 There would be a complete breakdown of the orderly process provided
6 by the Bankruptcy Code if creditors could unilaterally take this
7 sort of role in bankruptcy cases.

8 **G. A Creditor May Acquire Standing from a Trustee.**

9 While the Bankruptcy Code gives a trustee exclusive authority
10 to sue in the first instance and provides a mechanism for a trustee
11 to settle litigation with creditor participation, a creditor is not
12 without options under the Bankruptcy Code if a trustee declines to
13 act. A creditor can ask a trustee for permission to pursue
14 litigation on behalf of the estate as special counsel to a trustee
15 or as an assignee of a cause of action from a trustee. Since a
16 cause of action is property of the estate, with court approval, a
17 trustee may also sell a cause of action to a creditor.

18 There are certain well established circumstances in which a
19 trustee may authorize another party to pursue the matters over which
20 the Bankruptcy Code gives a trustee exclusive authority. In Duckor
21 Spradling & Metzger v. Baum Trust (In re P.R.T.C., Inc.), 177 F.3d
22 774 (9th Cir. 1999), the Ninth Circuit approved a chapter 7
23 trustee's assignment to the estate's largest creditor of the
24 estate's rights to avoid various transactions and to sue certain
25 individuals when the estate lacked the resources to fund the
26 litigation and the creditor was pursuing interests common to all
27 creditors. Under the terms of the assignment, the creditor and the
28 trustee agreed to split any net proceeds recovered. In Avalanche

1 Maritime, Ltd. v. Parekh (In re Parmetex, Inc.), 199 F.3d 1029 (9th
2 Cir. 1999), the Ninth Circuit held that creditors had standing to
3 pursue avoidance actions on behalf of the estate where the trustee
4 stipulated that the creditors could sue on his behalf and the
5 bankruptcy court approved the stipulation. See also, Liberty Mutual
6 Ins. Co. v. Unsec. Creds. Comm. (In re Spaulding Composites Co.,
7 Inc.), 207 B.R. 899 (B.A.P. 9th Cir. 1997) (a creditors' committee
8 in a chapter 11 case had standing to sue on behalf of the estate for
9 violation of the automatic stay); In re Smith Bros. Motors, Inc.,
10 286 B.R. 905 (Bankr. N.D. Cal. 2002) (creditor had no standing to
11 sue under Bankruptcy Code §506(c) because any recovery under that
12 section would pass directly to the creditor with no benefit to the
13 estate, unlike recovery under an avoidance action under §547, §548
14 or §549).

15 Here, Creditor could have sought the Trustee's permission to
16 pursue the Action but apparently did not even approach the Trustee
17 with the suggestion. Creditor could also have asked the Court for
18 permission to proceed on the estate's behalf if the Trustee failed
19 to act. Instead, Creditor filed suit, usurping the Trustee's role.

20 **H. A Creditor May Ask a Trustee to Abandon a Cause of Action.**

21 The mission of a chapter 7 trustee is to enhance the estate
22 for the benefit of the estate's unsecured creditors. McRoberts v.
23 S.I.V.I. (In re Bequette), 184 B.R. 327, 333 (Bankr. S.D. Ill.
24 1995); In re Tobin, 202 B.R. 339 (Bankr. D. R.I. 1996).

25 As a practical matter, not all property that comes into a
26 trustee's hands will benefit the estate's unsecured creditors. To
27 address this issue, Bankruptcy Code §554 gives a trustee a means to
28 dispose of property that is of "inconsequential value" to the estate

1 or that is "burdensome" to the estate by allowing the trustee to
2 abandon it. See Catalano v. C.I.R. (In re Catalano), 279 F.3d 682,
3 685 (9th Cir. 2002) ("Abandonment" is a term of art with special
4 meaning in the bankruptcy context; it is the formal relinquishment
5 of the property from the bankruptcy estate).

6 Under Bankruptcy Code §554(a), after notice and a hearing, a
7 chapter 7 trustee may abandon property of the estate, including a
8 trustee's causes of action when the property is "burdensome to the
9 estate or is of inconsequential value and benefit to the estate."
10 Under Bankruptcy Code §554(b), after notice and a hearing, a party
11 in interest may request that the court order a trustee to abandon
12 property of the estate for the same reasons.

13 If a trustee abandons a cause of action, another party may
14 pursue it in another court. In re Van Dresser, 128 F.3d at 949;
15 Sierra Switch Board Co., 789 F.2d 705; In re Catalano, 279 F.3d 682.

16 If the Trustee had abandoned this cause of action under
17 §554(a) or (b), Creditor could *then* have sued Debtor or Lucas in
18 state court. Creditor did neither of these things but continues to
19 argue that the Trustee has no real interest in the Action and that
20 it has standing because all Sales Proceeds allegedly will be paid to
21 it. Creditor ignores the provisions of the Bankruptcy Code
22 available to address this issue and instead has usurped the
23 Trustee's exclusive powers in bringing this Action.

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IV.

CONCLUSION

For the reasons stated above, the Sale Proceeds are valuable to the estate and Creditor lacks standing to pursue the Action. Creditor is dismissed as plaintiff. Trustee will be substituted in as the real party in interest as provided in Rule 7017(a). Counsel for the Trustee shall prepare and submit a form of order in accordance with this Memorandum Decision, after review as to form by counsel for Creditor and counsel for Lucas.⁹

Dated:

ARTHUR S. WEISSBRODT
UNITED STATES BANKRUPTCY JUDGE

⁹ Creditor shall also serve Debtor with a copy of the proposed order by mail -- and file a proof of service to that effect -- and the Court will lodge the order for at least 15 days.

UNITED STATES BANKRUPTCY COURT
For The Northern District Of California

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1 Adversary Proceeding No. 03-5131-ASW
2 **Court Service List**

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UNITED STATES BANKRUPTCY COURT
For The Northern District Of California

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