

Batlan v. Truslow, BAP No. OR-94-1752-HVAs  
Adv. No. 93-3456

In re Bullis, Case No. 391-36539-elp7

8/3/95 BAP unpublished

Affirming Judge Perris

The trustee sought to recover a postpetition payment made for the benefit of defendant Truslow, who contended that a prior settlement barred the trustee from recovering the payment. The bankruptcy court held that the settlement did not bar Truslow's liability for the postpetition transfer.

On appeal, the BAP affirmed the bankruptcy court's finding that the trustee did not know of the postpetition transfer at the time of the settlement and that the settlement did not include future unknown claims. The BAP determined that Truslow failed to sustain his burden of proving that the settlement barred the claim. The BAP also determined that the bankruptcy court complied with Fed. R. Bankr. P. 7052 and Fed. R. Civ. P. 52(a) by stating its findings of fact and conclusions of law orally on the record in open court.

NOT FOR PUBLICATION

FILED

AUG - 3 1995 C.A.

NANCY B. DICKERSON, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re ) BAP No. OR-94-1752-HVAs  
HARRY EDWARD BULLIS, )  
Debtor. ) Adv. No. 93-3456

CLERK, U.S. BANKRUPTCY COURT  
DISTRICT OF OREGON

DAVID W. TRUSLOW,  
Appellant,

AUG - 3 1995

LODGED RECD  
PAID DOCKETED

v.

MEMORANDUM

MICHAEL B. BATLAN, Trustee,  
GREEN & MARKLEY, P.C., CHRIS  
R. MORTON, Esq., and HARRY  
EDWARD BULLIS,

Appellees.

Argued and Submitted on June 22, 1995  
at Portland, Oregon

Filed - AUG - 3 1995

Appeal from the United States Bankruptcy Court  
for the District of Oregon

Honorable Elizabeth L. Perris, Bankruptcy Judge, Presiding

Before: HAGAN, VOLINN, and ASHLAND, Bankruptcy Judges.

Plaintiff, Michael B. Batlan, the chapter 7 trustee in the underlying case filed this adversary proceeding against David W. Truslow, attorney Chris R. Morton and the law firm of Green & Markley, P.C., to set aside an unlawful post-petition transfer by the Debtor. On cross-motions for summary judgment, the bankruptcy judge entered judgment in favor of the Plaintiff, Trustee, against the Defendant, David W. Truslow, and in favor of the other Defendants against the Trustee. David W. Truslow appeals the summary judgment against him. For the reasons stated in this Memorandum, we AFFIRM the bankruptcy judge's Order.

## FACTS

The Debtor, Harry Bullis, and the Defendant, David W. Truslow ("Appellant"), in this adversary proceeding, had been friends prior to Bullis filing his chapter 7 petition. According to the Appellant, at one time Harry Bullis ("Debtor") had left a large sum of money with him and from time to time would draw on it. After exhausting his own funds the debtor began borrowing from Appellant. In order to secure these loans the Debtor gave certain trust deeds to Appellant.

After the Debtor filed his chapter 7 petition, Appellee Michael B. Batlan ("Trustee") made a preference claim against the Appellant for \$79,506.25. This claim was settled for \$50,000.00 paid by the Appellant to the Trustee, in addition to a reconveyance of the trust deeds. On November 10, 1992, the Trustee filed with the bankruptcy court a "Motion and Notice of

1 Intent to Settle" the compromise with the Appellant, and the  
2 settlement was shortly thereafter approved by the bankruptcy  
3 court.

4 On September 12, 1993, the Trustee filed this adversary  
5 proceeding against the Appellant, Chris R. Morton ("Morton"),  
6 and the law firm of Green & Markley, P.C. ("Green & Markley"),  
7 to avoid and recover post-petition transfers under the  
8 provisions of 11 U.S.C. § § 549(a) and 550. The Complaint  
9 alleges that on or about October 1, 1992, the Debtor, Harry  
10 Bullis, sold certain real property located at 63220 Silvis Road,  
11 Bend, Deschutes County, Oregon, without authorization of the  
12 bankruptcy court and contrary to the provisions of the  
13 Bankruptcy Code. The complaint further alleges a title company  
14 sent two checks representing a part of the proceeds to the  
15 Defendant law firm of Green & Markley, totaling \$98,000.00, and,  
16 on October 5, 1992, Green & Markley, sent a check in the amount  
17 of \$58,000.00 to attorney Morton for the benefit of Truslow.

18 Appellant Truslow answered the complaint with affirmative  
19 defenses of promissory estoppel, settlement, negligence, failure  
20 to litigate damages, failure to state a claim and expiration of  
21 the statute of limitations. The only applicable affirmative  
22 defenses are those of promissory estoppel and settlement,  
23 alleged by the Appellant to have occurred as a result of the  
24 November 10, 1992 compromise agreement.

25 The parties made cross-motions for summary judgment. The  
26 summary judgment motions were first considered by the bankruptcy

1 judge at a telephone conference on March 10, 1994. During the  
2 conference, the bankruptcy judge expressed her findings that  
3 Defendants Morton and Green & Markley were not immediate  
4 transferees and summary judgment of dismissal was ultimately  
5 entered against these Defendants. As to Defendant Truslow,  
6 however, the bankruptcy judge determined the previous settlement  
7 did not bar Truslow's liability to return the proceeds of the  
8 sale of the property by him to the Trustee and judgment was  
9 ultimately entered against him on April 7, 1994, when the  
10 bankruptcy judge issued an order granting partial summary  
11 judgment in favor of the Trustee against Truslow. The order  
12 reserved a ruling on the amount of the liability.

13 On April 18, 1994, the bankruptcy judge held another  
14 hearing to determine the amount of Truslow's liability. This  
15 hearing was also by telephone conference. At the conclusion of  
16 that conference, the bankruptcy judge authorized the entry of  
17 summary judgment in favor of the Trustee against Truslow in the  
18 amount of \$26,542.30 as a minimum liability. The Trustee was  
19 granted the right to present evidence of additional liability at  
20 a trial. The Trustee apparently declined that offer as a final  
21 judgment was entered on May 23, 1994 against Defendant Truslow  
22 in the amount of \$26,542.30 plus interest from February 26,  
23 1993. The Appellant Truslow timely appealed the judgment.

24 The issue on appeal centers on the sufficiency of the  
25 evidence to support the bankruptcy judge's finding that a  
26 settlement agreement entered into between the parties prior to

1 the filing of the adversary complaint did not include the  
2 Trustee's cause of action, and thus did not preclude him from  
3 bringing the action. The Appellant further claims the  
4 bankruptcy judge erred by not entering written findings of fact  
5 and conclusions of law.

#### 6 STANDARD OF REVIEW

7 The final judgment was entered based on cross-motions for  
8 summary judgment. The standard of review is *de novo* as to a  
9 grant of summary judgment *In re Nourbakhsh*, 162 B.R. 841, 843 (9th  
10 Cir. B.A.P. 1994). Appellants contend the facts as found by the  
11 bankruptcy court do not support the conclusion, thus the clearly  
12 erroneous standard applies here.

#### 13 DISCUSSION

14 The only legitimate issue in this appeal is the sufficiency  
15 of the evidence to support the factual finding by the bankruptcy  
16 judge that the settlement agreement between the parties did not  
17 bar the Trustee from bringing this adversary proceeding. The  
18 bankruptcy judge, in her findings of facts and conclusions of  
19 law, concluded the preference settlement did not include the  
20 Trustee's claim for voidable transfers in the adversary  
21 proceeding. This conclusion was based on the bankruptcy judge's  
22 findings, based on undisputed facts, that the Trustee did not  
23 know of the transfers at the time of the settlement and the  
24 settlement did not include future unknown claims. She found  
25 Appellant's allegations that the Appellant knew about the  
26 transfer of estate funds and had authorized the transfers were

1 not supported by the record. She further found the Appellant  
2 used the trust deeds as leverage to obtain the transfers from  
3 the Debtor.

4 The Appellant argues two letters support a finding the  
5 settlement agreement included the Trustee's adversary cause of  
6 action. He claims these two letters reflect, or infer, that the  
7 settlement agreement released all claims of the estate or the  
8 Trustee against Truslow.

9 The first letter, dated September 29, 1992, was written by  
10 Mr. Morton to the Trustee's attorney, Mr. Carlton. The second  
11 letter is a response written by Mr. Carlton to Mr. Morton, the  
12 next day, September 30, 1992. Neither document contains any  
13 information, direct or indirect that would indicate the Trustee  
14 was releasing Truslow from any claim against him for receiving a  
15 portion of the proceeds from the sale of the property in  
16 Deschutes County. Mr. Morton's letter contains the statement  
17 "This will resolve any and all claims of the Trustee against  
18 David W. Truslow, including but not limited to preferential  
19 transfers." Again, there is nothing in the record to indicate  
20 the Trustee knew of the sale of the Deschutes County property  
21 and the intended distribution of a portion of the proceeds to  
22 Truslow.

23 The property was sold by the Debtor without court authority  
24 and the transaction is avoidable by the Trustee under the  
25 provisions of Section 549(a) and Section 550 of the Bankruptcy  
26 Code. The Defendant has the burden of proof on his affirmative

1 defense of the effect of the settlement agreement. He has  
2 failed to sustain that burden of proof.

3 The Appellant also urges, as a ground for appeal, the  
4 bankruptcy judge's failure to make written findings of fact and  
5 conclusions of law. F.R.C.P. 52(a) adopted by F.R.B.P. 7052  
6 specifically provides that findings of fact and conclusions of  
7 law are not necessary if "the findings of fact and conclusions  
8 of law are stated orally and recorded in open court following  
9 the close of the evidence. . . ." This was the procedure  
10 followed by the bankruptcy judge.

11 The Appellant did not appear at the time set for argument  
12 either in person or through counsel. Counsel for Trustee made  
13 an oral motion for the imposition of sanctions. The motion is  
14 DENIED.

15 The judgment of the bankruptcy court is AFFIRMED.  
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