

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION**

In re:

GUSTAVO RUIZ,

Debtor.

GUSTAVO RUIZ,

Plaintiff,

vs.

LOAN FUNDER, LLC, a Delaware Limited Liability Company, LOAN FUNDER LLC SERIES 8389, HOF I GRANTOR TRUST 5, a Delaware Trust, JSS ENTERPRISES, INC, an unknown entity, LIL' WAVE FINANCIAL INC DBA SUPERIOR LOAN SERVICING, a Nevada Corporation

Defendants.

Case No.: 1:22-bk-11162-VK

Chapter 7

Adv. No.: 1:24-ap-01004-VK

**MEMORANDUM OF DECISION
DISMISSING ADVERSARY PROCEEDING**

Hearing:

Date: June 12, 2024

Time: 1:30 p.m.

Place: Courtroom 301

21041 Burbank Blvd.

Woodland Hills, CA 91367

1 For the reasons set forth below, the Court will dismiss this adversary proceeding for lack
2 of jurisdiction.

3 I. BACKGROUND

4 A. *The Chapter 13 Case*

5 On October 3, 2022, Gustavo Ruiz ("Debtor"), filed a chapter 13 petition, initiating
6 bankruptcy case no. 1:22-bk-11162-VK (the "Bankruptcy Case"). In his voluntary petition,
7 Debtor stated that he had a dba of "Simi Valley Brewing, Inc." and that he lived at 15039 Vose
8 Street, Van Nuys, CA 91405. In his statement of financial affairs, filed on October 18, 2022
9 [Bankruptcy Case, doc. 8], Debtor indicated that he had not lived anywhere else during the last 3
10 years.
11

12 On October 18, 2022, Debtor filed his schedules of assets and liabilities [Bankruptcy
13 Case, doc. 8]. In his schedule A/B, Debtor represented that he had an interest in the following
14 real properties, each of which is located in Mojave, California: (1) 1853 Richard Avenue; (2)
15 3327 Martin Avenue; (3) 15829 L Street; (4) 16034 & 16036 K Street; (5) 15559 L Street; and
16 (6) 15834 - 15836 L Street (collectively, the "Rental Properties"). In schedule A/B, Debtor
17 provided a value at \$900,000 for his interest in the Rental Properties.
18

19 In his schedule C, Debtor claimed a \$279,067 exemption in the Rental Properties under
20 California Code of Civil Procedure § 704.730. In his schedule D, Debtor disclosed a claim owed
21 to Superior Loan Servicing in the amount of approximately \$620,000, secured by a deed of trust
22 encumbering the Rental Properties.
23

24 In his schedule G, Debtor indicated that he did not have any unexpired real property
25 leases, and in his statement of financial affairs, Debtor indicated that he had generated no income
26 from January 1, 2022 to the petition date and in 2020 and 2021. In contrast, in his schedule I,
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1 Debtor indicated that he generated \$10,000 per month in net income from rental property and
2 from operating a business.

3 ***B. Motion to Convert Chapter 13 Case to One Under Chapter 11***

4 On December 13, 2022, Debtor file a motion to convert his chapter 13 case to one under
5 chapter 11 (the "Chapter 11 Conversion Motion") [Bankruptcy Case, doc. 25]. In his declaration
6 filed in support of the Chapter 11 Conversion Motion, Debtor stated that he owned the Rental
7 Properties, that they were 100% rented and Debtor received enough rental income to propose a
8 feasible plan under chapter 11 [Bankruptcy Case, doc. 25]. Debtor also stated that the Rental
9 Properties were encumbered with a deed of trust which secured a claim in the amount of
10 \$643,45.21, which deed of trust was held by "HOF [I] Grantor Trust 5," as set forth in its proof
11 of claim filed on November 7, 2022 (the "HOF I Proof of Claim").
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14 In his declaration, Debtor represented that this loan was fully matured and that the five-
15 year cure period under a chapter 13 plan was insufficient for Debtor to cure the arrears.
16 Consequently, Debtor sought to convert the chapter 13 case to one under chapter 11. *Id.*
17

18 In connection with the hearing on the Chapter 11 Conversion Motion, the Court asked
19 Debtor to address the following issues, among others: (1) why Debtor's statement of financial
20 affairs represented that Debtor had no income during 2022, before Debtor filed his chapter 13
21 petition, and also that Debtor had no income during the two prior years; (2) why Debtor
22 represented in his petition that Debtor had used a dba of Simi Valley Brewing in the last 8 years,
23 when Debtor did not identify Simi Valley Brewing as a business which Debtor owned or with
24 which he had a connection in his statement of financial affairs; and (3) if the Debtor was leasing
25 the Rental Properties and earning rental income from them, why did Debtor state in schedule G
26 that he had no unexpired leases. At the hearing on the Chapter 11 Conversion Motion, the Court
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1 continued the hearing and mandated that Debtor file amended schedules and an amended
2 statement of financial affairs [Bankruptcy Case, doc. 37].

3 On January 10, 2023, Debtor filed amended schedules and an amended statement of
4 financial affairs [Bankruptcy Case, doc. 36]. In his amended schedule G, Debtor identified a
5 rental agreement and the lessee for each of the Rental Properties, and in his amended statement
6 of financial affairs, Debtor stated that he owned Simi Valley Brewing, Inc. from 2018 to October
7 3, 2022. Debtor did not indicate that he had owned or had any connections to any other
8 businesses within the four years before the Bankruptcy Case was filed.
9

10 In a second amended statement of financial affairs, filed on January 23, 2023, Debtor
11 disclosed rental income generated from January 1, 2022 to October 3, 2022 and for 2021 and
12 2020 [Bankruptcy Case, doc. 41]. Debtor also supplemented his response to provide an EIN for
13 Simi Valley Brewing, Inc. *Id.* Based on the Chapter 11 Conversion Motion, Debtor's supporting
14 declarations and the amended schedules and statement of financial affairs, the Court entered an
15 order converting the case to one under chapter 11 [Bankruptcy Case, doc. 46].
16
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18 In February 2023, the United States Trustee filed a motion to dismiss or convert the
19 chapter 11 case, because Debtor had not complied with the requirements of the United States
20 Trustee Guidelines (the "UST Guidelines") and Local Bankruptcy Rules, as applicable to chapter
21 11 cases [Bankruptcy Case, doc. 55]. In response to that motion, Debtor's bankruptcy counsel
22 filed a declaration stating that, as a result of Debtor's absence and counsel's resulting inability to
23 communicate with Debtor, Debtor's bankruptcy counsel had been unable to obtain the required
24 documents and information to proceed with the case in compliance with the UST Guidelines
25 [Bankruptcy Case, doc. 65]. Consequently, in March 2023, the Court entered an order
26 converting the chapter 11 case to one under chapter 7 [Bankruptcy Case, doc. 69].
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1 **C. *The HOF I Secured Claim***

2 On November 17, 2022, HOF I Grantor Trust 5, a Delaware Trust ("HOF I"), filed the
3 HOF I Proof of Claim. Attached to the HOF I Proof of Claim is a Commercial Promissory Note
4 in the principal amount of \$387,500.00, dated July 23, 2019, from Simi Valley Brewing, Inc. to
5 Loan Funder LLC, Series 8389 (the "Promissory Note"). The Promissory Note provides that the
6 entire principal amount of the note, together with accrued interest and all other sums due
7 thereunder, is due and payable in full on July 23, 2020. The Promissory Note is signed by
8 Debtor, as President of Simi Valley Brewing, Inc.

9
10 Also attached to the HOF I Proof of Claim is a Commercial Deed of Trust, Security
11 Agreement and Fixture Filing, recorded in Kern County on August 5, 2019, by which Simi Valley
12 Brewing, Inc. encumbered its right, title and interest in the Rental Properties to secure the
13 Promissory Note (the "Deed of Trust"). The Deed of Trust is signed by Debtor as President of
14 Simi Valley Brewing, Inc. Another document attached to the HOF I Proof of Claim is an
15 Assignment of the Deed of Trust from Loan Funder, LLC, Series 8389 to HOF I, which
16 Assignment was recorded in Kern County on February 20, 2020.

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19 Also attached to the HOF I Proof of Claim are two Extension Agreements. The first one
20 is dated July 23, 2020, and provides for an extension of the due date under the Promissory Note
21 to October 31, 2021. The second one is dated October 23, 2021, and provides for an extension of
22 the due date under the Promissory Note to April 23, 2022. Both of these Extension Agreements
23 are signed by Debtor as President of Simi Valley Brewing, Inc. and individually, as guarantor.

24
25 **D. *The Settlement Agreement***

26 On November 2, 2023, Amy L. Goldman, the chapter 7 trustee (the "Trustee"), filed a
27 motion to approve a settlement agreement with Debtor (the "Compromise Motion") [Bankruptcy
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1 Case, doc. 112]. In the Compromise Motion, the Trustee requested that the Court approve a
2 settlement agreement between the Trustee and Debtor (the "Settlement Agreement"). *See* Exh. 1
3 to the Declaration of Amy L. Goldman (the "Goldman Declaration") [Bankruptcy Case, doc.
4 112].

5 The Settlement Agreement includes the following terms:

6 1.2.1 Upon execution of this Agreement, the Debtor shall pay \$140,000 to the
7 Trustee (the "Settlement Payment").

8 1.2.2 In exchange for the Settlement Payment, upon Bankruptcy Court approval
9 of the Agreement (a) the Rental Properties, subject to all liens, claims, and
10 encumbrances, shall be deemed abandoned to the Debtor and no longer remain
11 property of the Debtor's estate, and (b) all rights and interests in the Avoidance
Claims¹ shall be transferred to the Debtor.

12 ...
13 **2.1 Release:**

14 a....[T]he Trustee agrees to and does release and waive all claims and cause
15 of action the estate now has, whether known or unknown, against Debtor
arising from and related to the Rental Properties, [Simi Valley Brewing,
16 Inc.] and the Avoidance Claims

17 b....Debtor agrees to and does release and waive all claims and causes of
18 action it now has, whether known or unknown, against the Trustee,
Trustee's counsel, the Debtor's estate arising from and related to the Rental
19 Properties, [Simi Valley Brewing, Inc.] and the Avoidance Claims

20 The Compromise Motion was never set for hearing. Instead, the Trustee provided
21 notice to certain parties in interest of the Compromise Motion and the deadline to file any
22 response to that motion [Bankruptcy Case, doc. 113]. After no responses to the
23 Compromise Motion were filed by that deadline, the Trustee filed a declaration stating
24 that the Compromise Motion was not opposed and lodged an order to grant the
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26
27 ¹ The Settlement Agreement describes the "Avoidance Claims" as avoidance claims which Debtor's estate may
28 assert: (1) against HOF I "with respect to the loan between Debtor and [HOF I] secured by the Rental Properties;"
and (2) with respect to a mechanics' lien recorded against each of the Rental Properties, "purportedly securing
payment for construction provided to [Simi Valley Brewing, Inc.] and not construction on the Rental Properties."

1 Compromise Motion [Bankruptcy Case, doc. 114]. On December 14, 2023, the Court
2 entered that order [Bankruptcy Case, doc. 115].

3 ***E. The Adversary Proceeding***

4 On February 14, 2024, Debtor filed a complaint initiating this adversary proceeding (the
5 "Complaint") against: (1) Loan Funder LLC; (2) Loan Funder LLC Series 8389 ("Series 8389");
6 (3) HOF; (4) JSS Enterprises Inc; and (5) Lil' Wave Financial Inc (collectively, the
7 "Defendants"). In the Complaint, Debtor asserts the following claims against all defendants: (1)
8 avoidance of transfers pursuant to 11 U.S.C. § 544(a) and (b) and California Civil Code ("CCC")
9 §§ 3439.04(a), 3439.07 and 3439.09(a) and (c); (2) recovery and preservation of avoided
10 transfers pursuant to 11 U.S.C. §§ 550(a)(1) and (a)(2) and 551; (3) violation of CCC § 1632; (4)
11 intentional misrepresentation; (5) unfair business practices pursuant to California Business &
12 Professions Code § 17200; (6) fraud; and (7) declaratory relief. In addition, Debtor asserts a
13 claim against Loan Funder LLC and Series 8389 for violations of California Financial Code §
14 4970, et seq.
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18 On April 2, 2024, the Court entered its *Order to Show Cause Why This Adversary*
19 *Proceeding Should Not Be Dismissed* (the "OSC") [doc 11]. In the OSC, the Court notes that,
20 given that this is a case under chapter 7, the Rental Properties have been abandoned by the
21 Trustee and the Settlement Agreement does not provide for any benefits arising from "Avoidance
22 Claims" to be provided to Debtor's creditors, it appears that Debtor cannot prosecute causes of
23 action which are based on 11 U.S.C. §§ 544(a) and (b), 550(a)(1) and (a)(2) and/or 551. In
24 addition, the OSC states that Debtor, in this chapter 7 case, has no duty to maximize recovery for
25 creditors and any recovery Debtor obtains through this adversary proceeding apparently would
26 not benefit the estate. Finally, in the OSC, the Court questions whether it has subject matter
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1 jurisdiction over the remaining causes of action in the Complaint, because those causes of action
2 apparently do not "arise under title 11," do not "arise in" the Bankruptcy Case and are not
3 "related to" the Bankruptcy Case, i.e., because Debtor is the sole beneficiary of the asserted
4 causes of action, the outcome of this adversary proceeding will not conceivably have an effect on
5 Debtor's bankruptcy estate.

6
7 Taking into account: (1) the terms and impact of the Settlement Agreement; (2) that
8 Debtor is not prosecuting the Avoidance Claims for the benefit of creditors; and (3) that the
9 outcome of this adversary proceeding will not conceivably have an effect on the estate in this
10 case, the OSC ordered Debtor to explain why this adversary proceeding should not be dismissed
11 for lack of subject matter jurisdiction. On April 9, 2024, Debtor filed a response to the OSC (the
12 "Response") [doc. 17]. No other party in interest has filed a response to the OSC.

13
14 In his response, Debtor asserts that he, like any creditor, may purchase and prosecute
15 avoidance claims. Debtor contends that the Court should consider the benefit that the estate
16 received from Debtor's settlement with the Trustee, pursuant to which Debtor paid \$140,000 to
17 the Trustee and the Rental Properties are deemed abandoned to Debtor. Debtor further contends
18 that dismissal of this adversary proceeding could render the Settlement Agreement null and void.

19
20 In addition, regardless of whether benefits to the estate exist, Debtor states that the facts
21 in the Complaint support a cause of action under 11 U.S.C. § 522(h). Finally, Debtor represents
22 that he has agreed to provide the estate with 1% of a recovery in this adversary proceeding, and
23 that the Trustee will file a motion to seek approval of an amended settlement agreement.

24 25 **II. RELEVANT AUTHORITY**

26 ***A. Exemptions Under 11 U.S.C. § 522***

27 11 U.S.C. § 522 provides, in relevant part:
28

1 (b) (1) Notwithstanding section 541 of this title, an individual debtor may
2 exempt from property of the estate the property listed in...paragraph (3) of this
3 subsection...

4 ...
5 (g) Notwithstanding sections 550 and 551 of this title, the debtor may exempt
6 under subsection (b) of this section property that the trustee recovers under
7 section...550, [or] 551 . . . of this title, to the extent that the debtor could have
8 exempted such property under subsection (b) of this section if such property had
9 not been transferred, if—

10 (1) (A) *such transfer was not a voluntary transfer of such property by the*
11 *debtor*; and

12 (B) the debtor did not conceal such property; or

13 (2) the debtor could have avoided such transfer under subsection (f)(1)(B)
14 of this section.

15 (h) The debtor may avoid a transfer of property of the debtor or recover a setoff
16 to the extent that the debtor could have exempted such property under subsection
17 (g)(1) of this section if the trustee had avoided such transfer, if—

18 (1) such transfer is avoidable by the trustee under section 544...of this
19 title...; and

20 (2) the trustee does not attempt to avoid such transfer.

21 11 U.S.C. § 522(b)(1), (g) and (h) (emphasis added).

22 **B. *Avoidance Actions and Remedies Under 11 U.S.C. §§ 544, 550(a) and 551***

23 11 U.S.C. § 544 states, in pertinent part:

24 (a) The trustee shall have, as of the commencement of the case, and without
25 regard to any knowledge of the trustee or of any creditor, the rights and powers of,
26 or may avoid any transfer of property of the debtor or any obligation incurred by
27 the debtor that is voidable by—

28 (1) a creditor that extends credit to the debtor at the time of the
commencement of the case, and that obtains, at such time and with respect
to such credit, a judicial lien on all property on which a creditor on a simple
contract could have obtained such a judicial lien, whether or not such a
creditor exists;

1 (2) a creditor that extends credit to the debtor at the time of the
2 commencement of the case, and obtains, at such time and with respect to
3 such credit, an execution against the debtor that is returned unsatisfied at
4 such time, whether or not such a creditor exists; or

5 (3) a bona fide purchaser of real property, other than fixtures, from the
6 debtor, against whom applicable law permits such transfer to be perfected,
7 that obtains the status of a bona fide purchaser and has perfected such
8 transfer at the time of the commencement of the case, whether or not such
9 a purchaser exists.

10 (b) (1) Except as provided in paragraph (2), the trustee may avoid any transfer of
11 an interest of the debtor in property or any obligation incurred by the debtor that
12 is voidable under applicable law by a creditor holding an unsecured claim that
13 is allowable under section 502 of this title or that is not allowable only under
14 section 502(e) of this title.

15 11 U.S.C. § 550(a) states, in relevant part, that "[e]xcept as otherwise provided in this
16 section, to the extent that a transfer is avoided under section 544...of this title, the trustee may
17 recover, for the benefit of the estate, the property transferred or, if the court so orders, the value
18 of such property." Pursuant to 11 U.S.C. § 551, "[a]ny transfer avoided under section...544...of
19 this title...is preserved for the benefit of the estate but only with respect to property of the
20 estate."

21 "[11 U.S.C. § 544] was designed to aid the trustee in recovering properties of the estate
22 for the eventual benefit of all creditors." *In re LMJ, Inc.*, 159 B.R. 926, 928 (D. Nev. 1993). "If a
23 creditor is pursuing interests common to all creditors or is appointed for the purpose of
24 enforcement of the plan, he may exercise the trustee's avoidance powers." *In re Professional Inv.*
25 *Properties of America*, 955 F.2d 623, 626 (9th Cir. 1992). *See also In re P.R.T.C., Inc.*, 177 F.3d
26 774, 782–83 (9th Cir. 1999) ("a bankruptcy court can authorize a creditor to exercise [a trustee's
27 avoidance] powers if: (1) the creditor is pursuing interests common to all creditors...and (2)
28 allowing the creditor to exercise those powers will benefit the remaining creditors").

1 "In order to have standing to seek recovery of an avoided transfer under § 550, the
2 recovery must be for the benefit of the estate." *In re Gerlinger, Inc.*, 2008 WL 3992140, at *9
3 (Bankr. N.D. Ohio Aug. 25, 2008). *See also In re Kmart Corp.*, 310 B.R. 107, 126 (Bankr. N.D.
4 Ill. 2004) ("[S]ection 550(a) has the effect of limiting actions to only those actions that benefit
5 the estate.") (citing *Matter of P.A. Bergner & Co.*, 140 F.3d 1111, 1117 (7th Cir. 1998)).

6
7 Regarding § 551, "[i]n the case of an avoided security interest or lien, § 551 ensures that
8 a trustee avoiding a senior lien moves into that priority position and the estate is not trumped by
9 the existence of a junior lien." *In re Trout*, 609 F.3d 1106, 1109 (10th Cir. 2010). "[U]pon
10 avoidance of a lien, under § 551 the trustee 'steps into the shoes of the former lienholder, with
11 the same rights in the collateralized property that the original lienholder enjoyed.'" *Id.* at 1110
12 (quoting *Morris v. St. John Nat'l Bank (In re Haberman)*, 515 F.3d 1207, 1210 (10th Cir. 2008)).

13
14 "Section 551 is very specific when it states that a transfer avoided under § 544... 'is
15 preserved for the benefit of the estate but only with respect to property of the estate.'" *In re*
16 *Yacoobian Enterprises LP*, 2012 WL 3818194, at *4 (Bankr. C.D. Cal. Sept. 4, 2012).

17 **C. Jurisdiction**

18
19 Federal Rule of Civil Procedure 12(h)(3) requires that a court dismiss an action at any
20 time upon finding a lack of subject matter jurisdiction. Fed. R. Civ. P. 12(h)(3) ("If the court
21 determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the
22 action.").

23
24 Bankruptcy courts have jurisdiction over all civil proceedings (1) "arising under title 11,"
25 i.e., any proceedings to enforce rights created by the Bankruptcy Code, (2) "arising in" a
26 bankruptcy case, i.e., other proceedings that would not exist outside a bankruptcy case, such as
27 case administration, or (3) "related to" a bankruptcy case, i.e., any proceedings the outcome of
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1 which could "conceivably" have any effect on the bankruptcy estate. *See* 28 U.S.C. § 1334(b); *In*
2 *re Harris*, 590 F.3d 730, 737 (9th Cir. 2009); *In re Fietz*, 852 F.2d 455, 457 (9th Cir. 1988).

3 **1. *Arising Under Jurisdiction***

4 "A matter 'arises under' the Bankruptcy Code if its existence depends on a substantive
5 provision of bankruptcy law, that is, if it involves a cause of action created or determined by a
6 statutory provision of the Bankruptcy Code." *In re Ray*, 624 F.3d 1124, 1131 (9th Cir. 2010).

8 **2. *Arising In Jurisdiction***

9 "A proceeding 'arises in' a case under the Bankruptcy Code if it is an administrative
10 matter unique to the bankruptcy process that has no independent existence outside of bankruptcy
11 and could not be brought in another forum, but whose cause of action is not expressly rooted in
12 the Bankruptcy Code." *Id.*

14 In *In re Harris*, 590 F.3d 730 (9th Cir. 2009), the Ninth Circuit Court of Appeals held that
15 the state law contract claim asserted by the debtor ("Harris") against the chapter 7 trustee, for
16 breach of a settlement agreement, arose in the debtor's bankruptcy case. Consequently, the
17 bankruptcy court had jurisdiction over the debtor's state law breach of contract claim. As noted
18 by the Court of Appeals:

20 Harris's breach of contract claim is not created or determined by Title 11; it is a
21 common law action, therefore it does not qualify for 'arising under' jurisdiction.
22 The bankruptcy court, thus, had authority to hear Harris's claim *only if the claim*
arose in his bankruptcy case. *See* 28 U.S.C. §§ 1334(b) and 157(a).

23 *Id.* at 737 (emphasis added).

24 As explained by the Court of Appeals, "although it is a state law cause of action, [the
25 debtor's] claim arose in his bankruptcy case because it could not exist independently of his
26 bankruptcy case. [The debtor] alleged that Wittman, the bankruptcy trustee, breached the
27 Settlement Agreement by selling bankruptcy estate assets that she had agreed not to sell
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1 Therefore, [the debtor's] state law claim arose in his bankruptcy case, and it could be referred to
2 the bankruptcy court." *Id.* at 738.

3 **3. Related to Jurisdiction**

4 Bankruptcy courts also have jurisdiction over proceedings that are "related to" a
5 bankruptcy case. 28 U.S.C. § 1334(b); *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1193 (9th Cir.
6 2005). A proceeding is "related to" a bankruptcy case if "the outcome of the proceeding could
7 conceivably have any effect on the estate being administered in bankruptcy." *Pegasus Gold*
8 *Corp.*, 394 F.3d at 1193. If a claim results in a recovery that is beyond the reach of the debtor's
9 creditors, the claim is not "related to a case under title 11." *In re Fietz*, 852 F.2d 455, 459 (9th
10 Cir. 1988).
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13 **III. ANALYSIS**

14 **A. Debtor's Ability to Prosecute Claims Under Sections 544, 550 and 551**

15 Under § 550, transferred property may be recovered "for the benefit of the estate[.]" 11
16 U.S.C. § 550(a). Under § 551, any transfer avoided under § 544 is preserved "for the benefit of
17 the estate[.]" 11 U.S.C. § 551. However, assuming Debtor prevails, only Debtor will obtain any
18 benefit from pursuing the Avoidance Claims. Consequently, Debtor has not shown that he has
19 standing to prosecute claims under §§ 550 (a)(1) and (a)(2) and 551.
20

21 *In re Lahijani* 325 B.R. 282, 285 (9th Cir. BAP 2005), referred to as *Simantob* in the
22 Response, is inapposite. There, in exchange for a fixed sum plus a percentage of net recoveries to
23 be provided to the estate, creditors attempted to acquire fraudulent transfer and turnover causes
24 of action from a chapter 7 trustee. The debtor's relative, who, along with the debtor, would be a
25 defendant in such avoidance and turnover actions, offered a sum certain, instead of a net
26 percentage of any recovery, to purchase the claims. The relative conceded that he did not intend
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1 to prosecute the causes of action.

2 After bidding commenced, in evaluating the bids, the chapter 7 trustee refused to take
3 into account any portion of the creditors' offers which included a percentage of net recoveries to
4 be provided to the estate. As requested by the chapter 7 trustee, the bankruptcy court held that:
5 (1) it would take into account only the payment of a certain amount of money in the bids; (2) that
6 the relative's offer was the best offer for the estate's causes of action; and (3) that the debtor's
7 relative, who would not pursue those causes of action, could acquire these causes of action from
8 the estate, over the objection of creditors.
9

10 The issues on appeal were:

11 1. Whether the court applied the correct legal standard when approving a section
12 363 sale of causes of action to a defendant, over objection by the main creditor in
13 the case, who wanted to pursue the causes of action.

14 2. Whether the sale of causes of action to defendants in this instance meets the
15 requirements for approving a compromise as "fair and equitable."

16 *Id.* at 287. The Ninth Circuit Bankruptcy Appellate Panel held that, when a cause of action is
17 being sold to a present or potential defendant over the objection of creditors, the bankruptcy
18 court must "in addition to treating it as a sale, independently evaluate the transaction as a
19 settlement under the prevailing 'fair and equitable' test, and consider the possibility of
20 authorizing the objecting creditors to prosecute the cause of action for the benefit of the estate, as
21 permitted by § 503(b)(3)(B)."²

22
23 Here, Debtor seeks to avoid and recover, for his own benefit, allegedly fraudulent
24 transfers concerning the Rental Properties, the Promissory Note and the Deed of Trust. However,
25
26

27 ² 11 U.S.C. § 503(b)(3)(B) provides that the court must allow an administrative expense for actual, necessary
28 expenses incurred by a creditor that recovers, after the court's approval, for the benefit of the estate any property
transferred or concealed by the debtor.

1 in *Lahijani*, the BAP did not hold that a chapter 7 debtor may prosecute avoidance actions, which
2 arise under provisions of the Bankruptcy Code, *without providing for any recovery to be shared*
3 *with creditors*. Rather, the BAP held that a defendant's offer to acquire the estate's interest in
4 such causes of action, with the intent to extinguish them, must be evaluated under the standards
5 for approval of a settlement with that defendant, as well as under the standards for the sale of an
6 asset.

8 When the Court granted the Compromise Motion, the Court did not decide whether
9 Debtor could prosecute causes of action held by the estate under §§ 544, 550 and 551, when the
10 Rental Properties had been deemed abandoned to Debtor under the Settlement Agreement, and
11 the estate would not receive any benefit from Debtor's prosecution of such causes of action.
12 Moreover, assuming Debtor and the Trustee are willing to amend the Settlement Agreement so
13 that Debtor's prosecution of this adversary proceeding may provide a benefit to the estate, no
14 motion seeking approval of such an amended agreement has been filed.

16 Regarding Debtor's contention that he has the power to avoid a transfer of his property
17 under § 522(h), Debtor disregards the portion of that statute which provides that Debtor may do
18 so if the transfer was *not voluntary*. Debtors have the burden of showing that a transfer was not
19 voluntary under 11 U.S.C. § 522(g) and (h). *In re Trevino*, 96 B.R. 608, 613 (Bankr. E.D. North
20 Carolina 1989) ("When a debtor voluntarily grants a security interest in property or makes an
21 absolute transfer, he gives up his exemption rights with respect to that property and he cannot
22 recover those rights simply because the bankruptcy trustee can acquire rights superior to the
23 transferee.").

26 Here, Debtor apparently signed the Promissory Note, the Deed of Trust and the Extension
27 Agreements. Consequently, if such transfers are avoidable by the Trustee under section 544,
28

1 Debtor cannot avoid any such transfers which took place pursuant to the Promissory Note, the
2 Deed of Trust or the Extension Agreements. *In re Cunningham*, 2014 WL 5427506 * 3-4 (C.D.
3 Cal. Oct. 24, 2014) (affirming bankruptcy court's dismissal of debtor's complaint with prejudice,
4 because of debtor's lack of standing to assert trustee's avoidance powers under § 522(h); "a
5 debtor cannot succeed to the trustee's avoidance powers and exempt property that has been
6 recovered by the trustee when the transfer sought to be avoided was voluntarily entered into by
7 the debtor"); *In re Rodriguez*, 361 B.R. 887, 894 (Bankr. D. Ariz. 2007) (after debtor failed to
8 establish that granting of deeds of trust were involuntary transfers as required by § 522(g)(1),
9 holding that debtor lacked standing under § 522(h) to set aside deeds of trust and that court
10 lacked jurisdiction to decide claims in debtor's complaint and dismissing adversary proceeding
11 with prejudice).
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14 ***B. Debtor's State Law Claims***

15 Besides Debtor's claims under §§ 544, 550 and 551, the remaining claims in the
16 Complaint are: (1) avoidance of transfers pursuant to CCC §§ 3439.04(a), 3439.07 and
17 3439.09(a) and (c); (2) violation of CCC § 1632; (3) intentional misrepresentation; (4) unfair
18 business practices pursuant to California Business & Professions Code § 17200; (5) violations of
19 California Financial Code § 4970, et seq.; (6) fraud; and (7) declaratory relief (collectively, the
20 "Remaining Claims").
21

22 The Remaining Claims do not arise under the Bankruptcy Code; these causes of action
23 are not created or determined by a statutory provision of the Bankruptcy Code, and these claims
24 could exist in the absence of the Bankruptcy Case. In addition, these claims could have an
25 independent existence outside of the Bankruptcy Case. Finally, the outcome of the litigation
26 could not conceivably have an impact on the bankruptcy estate because, pursuant to the
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28


1 Settlement Agreement, the Rental Properties are deemed abandoned to Debtor and Debtor is not
2 obligated to provide any benefits arising from Debtor's prosecution of the adversary proceeding
3 to the estate. Regardless of how the Remaining Claims are resolved, the estate will not be
4 affected. Consequently, the Court does not have subject matter jurisdiction over the Remaining
5 Claims.
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7 **IV. CONCLUSION**

8 For the reasons discussed above, the Court will dismiss this adversary proceeding.

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24 Date: June 14, 2024


Victoria S. Kaufman
United States Bankruptcy Judge