

1 **NOT FOR PUBLICATION**

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3 ENTERED **OCT 31 2005**
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5 **OCT 28 2005**
6 CLERK, U.S. BANKRUPTCY COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
8 BY _____ UNITED STATES BANKRUPTCY COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 In re
12
13 SAMUEL KELSALL,
14 _____
Debtor.

Bankruptcy No. 04-10374-JM
Memorandum Decision

15 On September 6, 2005, the Chapter 7 trustee filed his "Motion for
16 Sale of Assets and Approval of Settlement Agreement" ("Motion"). The
17 assets in question were claims asserted by the debtor against
18 Fennemore Craig. The trustee determined that there was little merit
19 to the claims.

20 In keeping with the trustee's duty to maximize the value of the
21 asset, the settlement was also styled as a sale, giving third parties
22 the opportunity to purchase the claims for an amount greater than the
23 settlement figure. In all practicality, the purpose of such an
24 overbid provision was to maximize the value for the estate in case the
25 debtor desired to prosecute the claims for his own benefit. Under
26 such circumstances, the debtor could have made a higher offer.

27 In his Motion, the trustee provided an analysis of the agreement
28 he reached with Fennemore and Craig both as a compromise under the

1 fair and equitable standard and as a sale under Section 363. See In
2 re Lahijani, 325 B.R. 282, 290 (9th Cir. BAP 2005) ("sale" of claim to
3 defendant must also be analyzed as a compromise under the fair and
4 equitable standard).

5 At a hearing on October 6, 2005, the Court granted the trustee's
6 Motion. The debtor has now filed a motion for reconsideration. The
7 Debtor contends that under California law the claims involved could
8 not be sold or assigned to a third-party.

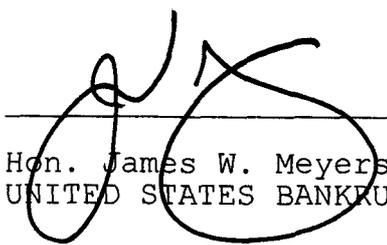
9 The debtor was provided with notice of the hearing on September
10 6, 2005. He filed his opposition on September 26, 2005. He did not
11 argue at that time that the trustee did not have the right to assign
12 or settle the claims at issue. The first time he raised this argument
13 issue was at the hearing itself. The debtor effectively waived the
14 issue by failing to raise it in his written opposition.

15 Additionally, there is no merit to the argument because it fails
16 to take into account that the Motion, while including language
17 regarding a sale, was still a settlement between the estate and the
18 alleged tortfeasor, Fennemore Craig. The case law cited by the debtor
19 is inapplicable because it involves instances where a defendant has
20 raised an objection to a third party's standing to assert claims
21 assigned to it. That simply is not an issue in this instance. The
22 trustee was well within his rights to settle the claims against
23 Fennemore Craig, and the settlement was fair and equitable.

24 The debtor's motion for reconsideration will be DENIED.

25 OCT 28 2005

26 Date: _____

27 
28 Hon. James W. Meyers
UNITED STATES BANKRUPTCY JUDGE