

determination that Modern was the initial transferee must accordingly be reversed.

Video Depot's "burden of inquiry" analysis is also relevant to a determination of Modern's status as a subsequent good faith purchaser under § 550(b). The bankruptcy court in this case did not reach that issue in granting the trustee's cross-motion for summary judgment. The matter must therefore be remanded for consideration of this issue.

V. CONCLUSION

The bankruptcy court determined that the appellant was the initial transferee under § 550(a) of an avoidable transfer based on an erroneous application of *In re Video Depot*, 127 F.3d 1195 (9th Cir.1997) to the facts of this case. The court did not reach the issue of appellant's alleged status as a subsequent good faith transferee under § 550(b). The court's determination that the appellant was as an initial transferee under § 550(a) is REVERSED, and the matter is REMANDED for consideration of the issue of § 550(b).



In re Nader MIRZAI, Debtor.

Hill & Sandford, LLP, Appellant,

v.

Nader Mirzai, Appellee.

BAP No. CC-98-1195-KJP.

Bankruptcy No. ND-93-11060-RR.

United States Bankruptcy Appellate Panel
of the Ninth Circuit.

Argued and Submitted Feb. 18, 1999.

Decided June 29, 1999.

Following reversal of professional fee award, 234 B.R. 767, case was returned to

the United States Bankruptcy Court for the Central District of California, and professional appealed to Court of Appeals from Bankruptcy Appellate Panel's (BAP's) reversal of bankruptcy court's initial award. While appeal to Court of Appeals was pending, the Bankruptcy Court, Donal D. Sullivan, J., entered order implementing BAP's previous mandate and requiring professional to disgorge fees. Professional appealed. The Bankruptcy Appellate Panel, Klein, J., held that bankruptcy court did not have authority to enter judgment implementing BAP's prior mandate, once timely appeal was pending to the Court of Appeals from BAP's decision.

Reversed.

1. Bankruptcy ⚖️3776.1

Principle that timely notice of appeal immediately transfers jurisdiction to appellate court is judge-made doctrine that is designed to promote judicial economy and to avoid confusion and ineptitude resulting when two courts are dealing with same issue at same time.

2. Bankruptcy ⚖️3776.1

After timely notice of appeal has been filed, trial court cannot take actions over those aspects of case involved in appeal.

3. Bankruptcy ⚖️3776.1

In deciding what action trial court may take while case is on appeal, court's focus must be on whether trial court is being asked to alter status quo with respect to appeal.

4. Bankruptcy ⚖️3776.1

Once timely notice of appeal is filed, trial court cannot enter order that supplements order on appeal because such supplementation would change status quo.

5. Bankruptcy ⚖️3776.1

Rule of exclusive appellate jurisdiction is not absolute; even while case is on appeal, trial court can correct clerical errors,

take steps to maintain status quo, take steps that aid in appeal, award attorney fees, impose sanctions, and proceed with matters not involved in appeal.

6. Bankruptcy \S 3776.1

Filing of notice of appeal does not preclude trial court from enforcing judgment that has been neither superseded nor stayed, as mere pendency of appeal does not, in itself, disturb finality of judgment.

7. Bankruptcy \S 3776.1

Bankruptcy court did not have authority to enter judgment implementing Bankruptcy Appellate Panel's (BAP's) reversal of its professional fee award, where timely appeal was pending to the Court of Appeals from BAP's decision; because bankruptcy court, in order to follow BAP's mandate, would have to alter status quo, it was without jurisdiction to do so until after Court of Appeals had decided appeal from BAP's decision.

8. Bankruptcy \S 3776.1

Bankruptcy Appellate Panel (BAP) had jurisdiction, while appeal to Court of Appeals was pending from its reversal of bankruptcy court's professional fee award, to hear appeal from bankruptcy court order implementing BAP's earlier mandate, where bankruptcy court's order on remand had the effect of altering status quo while appeal to Court of Appeals was pending, and BAP, by hearing appeal from order on remand, could serve to maintain status quo.

Michael L. Sandford, Hill & Sandford, Santa Barbara, CA, for Hill & Sandford, LLP, for appellants.

Melbourne Weddle, Santa Barbara, CA, for Nader Mirzai, appellees.

Before: KLEIN, JONES and PERRIS, Bankruptcy Judges.

OPINION

KLEIN, Bankruptcy Judge.

This is an appeal from a judgment entered in compliance with a prior bankruptcy appellate panel decision reversing a fee award. The appellant contends that the bankruptcy court did not have authority to enter judgment because there was then pending a timely appeal to the court of appeals from our prior panel's decision. We agree and REVERSE.

FACTS

The facts present the obverse of our recent decision in *Marino v. Classic Auto Refinishing, Inc. (In re Marino)*, 234 B.R. 767 (9th Cir. BAP 1999).

Appellant Hill & Sandford ("H & S") was awarded compensation for its chapter 11 representation of the debtor, Nader Mirzai, over Mirzai's objection. Mirzai appealed to the bankruptcy appellate panel.

Our panel reversed the fee award and remanded with instructions to deny all compensation and require that H & S disgorge all fees received. *In re Mirzai*, BAP No. CC-96-1708-OHV (unpublished memorandum decision filed December 24, 1997).

H & S appealed our decision to the court of appeals in a timely fashion. *In re Mirzai*, CA No. 98-55223. That appeal is still pending before the court of appeals.

The bankruptcy appellate panel's mandate issued as a matter of administrative routine because no stay of our determination had been obtained either from us or from the court of appeals.

Mirzai filed a motion asking the bankruptcy court to enter judgment on the strength of our mandate. The bankruptcy court granted the motion and entered judgment determining that H & S is entitled to no compensation and requiring disgorgement of compensation previously paid. The court reasoned that it should act because there had been no stay issued

pending appeal. H & S filed the instant appeal.

DISCUSSION

The question of what a bankruptcy court may do while a bankruptcy appellate panel decision regarding one of its orders is on appeal to the court of appeals is analogous to what a district court may do while one of its orders is on appeal to the court of appeals. The difference is that in bankruptcy there are two layers of appeal as of right, rather than the single layer applicable to the orders of district courts.

I

Although the precise problem of a remote appeal from a first appellate layer to a second appellate layer does not frequently arise in current federal practice, the hierarchical nature of the structure of the judicial system suggests that the operative principles should be the same regardless of how many layers are interposed.

We see no reason why the fact of the existence of two levels of courts junior to the court of appeals in bankruptcy should make any difference. Thus, if a district court would be forbidden to act because of an appeal pending before the court of appeals, then both the bankruptcy appellate panel and the bankruptcy court would be similarly constrained.

Accordingly, we look for guidance to the settled jurisprudence regarding the latitude afforded to district courts during the pendency of appeals.

II

[1, 2] The principle that a timely notice of appeal immediately transfers jurisdiction to the appellate court is a judge-made doctrine that is designed to promote judicial economy and to avoid the confusion and ineptitude resulting when two courts are dealing with the same issue at the same time. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982); *Marino*, 234

B.R. at 769; 20 JAMES WM. MOORE ET AL., *MOORE'S FEDERAL PRACTICE* ¶ 303.32[1] (3rd ed. 1999) ("MOORE'S"). The trial court cannot take actions "over those aspects of the case involved in the appeal." *Griggs*, 459 U.S. at 58, 103 S.Ct. 400.

[3, 4] The focus is on whether the trial court is being asked to alter the status quo with respect to the appeal. Thus, a trial court cannot enter an order that supplements the order on appeal because such supplementation would change the status quo. *McClatchy Newspapers v. Central Valley Typographical Union*, 686 F.2d 731, 734-35 (9th Cir.1982).

[5] The rule of exclusive appellate jurisdiction is not, however, absolute. *Masalosal v. Stonewall Ins. Co.*, 718 F.2d 955 (9th Cir.1983); 20 MOORE'S ¶ 303.32[1]. The court can correct clerical errors, take steps to maintain the status quo, take steps that aid in the appeal, award attorney's fees, impose sanctions, and proceed with matters not involved in the appeal. *Pyrodyne Corp. v. Pyrotronics Corp.*, 847 F.2d 1398, 1403 (9th Cir.1988); *Mastro v. Rigby (In re Imperial Real Estate Corp.)*, 234 B.R. 760, 762 (9th Cir. BAP 1999) (stay pending appeal); 20 MOORE'S ¶¶ 303.32[2][b].

[6] The trial court can also enforce a judgment that has been neither superseded nor stayed, the rationale being that the "mere pendency of the appeal does not, in itself, disturb the finality of a judgment." *Wedbush, Noble, Cooke, Inc. v. SEC*, 714 F.2d 923, 924 (9th Cir.1983); 20 MOORE'S ¶ 303.32[2][b][vi].

III

The bankruptcy court in the instant appeal entered a judgment on remand from this panel, which judgment was the opposite of that which had been entered in the first instance and appealed. This plainly changed the status quo.

The bankruptcy appellate panel's mandate operates as a relinquishment of juris-

diction. In the absence of a further timely appeal to the court of appeals, our relinquishment of jurisdiction would cause jurisdiction to revert to the bankruptcy court in circumstances in which the law of the case as established by us when we reversed the order would require a new judgment to be entered consistent with our decision.

Once there is a timely appeal taken to the court of appeals following our decision, then the doctrine of exclusive appellate jurisdiction, applied from the perspective of the court of appeals rather than the bankruptcy appellate panel, would once again pre-empt jurisdiction. Such pre-emption would of necessity encompass all junior tribunals—both the jurisdiction of the bankruptcy appellate panel (if it has not already relinquished jurisdiction by issue of a mandate) and of the bankruptcy court.

[7] During the pendency of the appeal to the court of appeals, the bankruptcy court could do no more than what district courts can do pending appeal. Here, the judgment entered on remand changed the status quo notwithstanding that it faithfully implemented our decision. The status quo cannot be changed until after the court of appeals decides the appeal pending before it. *Marino*, 234 B.R. 767.

[8] Applying the same principles, we have jurisdiction over the instant appeal, because our action is taken for the purpose of maintaining the initial status quo. *Newton v. Consolidated Gas Co.*, 258 U.S. 165, 177, 42 S.Ct. 264, 66 L.Ed. 538 (1922); cf. *Pyrodyne*, 847 F.2d at 1403; *McClatchy Newspapers*, 686 F.2d at 734–35.

Accordingly, the judgment of the bankruptcy court entered on remand from our prior decision is REVERSED.

**In re Donald Nelson ROWE; Uka
Yvette Rowe, Debtors.**

Donald Nelson Rowe, Appellant,

v.

**Ione Jackman, Chapter 7
Trustee, Appellee.**

**BAP No. NV-99-1072-BuRyK.
Bankruptcy No. 97-30082.**

United States Bankruptcy Appellate Panel
of the Ninth Circuit.

Argued and Submitted June 23, 1999.

Decided July 9, 1999.

Debtor and his then-wife, who were living apart, filed a joint bankruptcy petition. After initially claiming a Nevada homestead exemption in the property at which the wife resided, debtor-husband moved to amend his schedules to claim a homestead exemption in the property at which he resided. Chapter 7 trustee objected to the claim of exemption. The United States Bankruptcy Court for the District of Nevada, Gregg W. Zive, J., sustained the objection, and debtor-husband appealed. The Bankruptcy Appellate Panel, Bufford, J., held that a married couple, filing a joint bankruptcy petition but living apart, may not each claim a homestead exemption in their separate residences under Nevada law, even though the two exemptions would not exceed the \$125,000 statutory limit and even though the parties subsequently divorce.

Affirmed.

1. Bankruptcy ☞2764

Nevada has opted out of the federal exemptions set forth in the Bankruptcy Code. Bankr.Code, 11 U.S.C.A. § 522(b); N.R.S. 21.090, subd. 3.

