IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

In re:	§	
	§	
WILLIAM DENNIS BROSSEAU,	§	**CASE NO. 91-41712-A**
	§	**(Chapter 7)**
Debtor	§	
_____	§	
	§	
DENNIS RANZAU,	§	
	§	
Plaintiff,	§	
v.	§	
	§	
WILLIAM DENNIS BROSSEAU, TERESA LUCAS, ALEXA CHRISTINA BROSSEAU, LARRY LUCAS, JORDAN LUCAS BROSSEAU, LAIRD J. LUCAS AND/OR WILLIAM D. BROSSEAU, AS TRUSTEES FOR THE ALEXA CHRISTINA BROSSEAU AND JORDAN LUCAS BROSSEAU TRUST, DESARROLO TURISTICO ALEXA, S.A. DE C.V., LUIS V. ALTAMIRANO PINEDA, CHARLES MCGARRY, BANCO NACIONAL DE MEXICO, S.A., 80451 HOLDINGS, LTS. ANGELINA MARIA PEREZ, SHAFFER INTERNATIONAL, INC. AND BEA MAULDEN	§	**Adv. No. 01-4248**
	§	
Defendants.	§	

MEMORANDUM OF DECISION REGARDING
MOTIONS FOR SUMMARY JUDGMENT[1]

This matter is before this Court on the Motion for Summary Judgment filed by William D. Brosseau (the "Brosseau Motion"), the Motion for Summary Judgment filed by Angelina M. Perez (the "Perez Motion"), and the Motion to Dismiss filed by Banco

[1] This Memorandum of Decision is not designated for publication and shall not be considered as precedent, except under the respective doctrines of claim preclusion, issue preclusion, the law of the case, or as to other evidentiary doctrines applicable to the specific parties in this proceeding.

Nacional De Mexico (the "Banamex Motion") and the responses thereto filed by Dennis Ranzau (the "Plaintiff"). Hearings on the motions and responses were held on June 17, 2004 and November 15, 2005, at which time the parties presented arguments regarding their respective positions. At the hearing held on these matters, on June 17, 2004, this Court orally announced its preliminary ruling and for the reasons stated on the record, this Court granted the Brosseau Motion and the Perez Motion. At that time, the Banamex Motion was converted to a Motion for Summary Judgment and the parties were given additional time to designate summary judgment evidence and brief certain legal issues. On November 15, 2004, the Banamex Motion was taken under advisement. For the reasons discussed below, this Court concludes that the motions are proper and should be granted. This Memorandum of Decision constitutes the Court's decisions regarding the Brosseau Motion, the Perez Motion and the Banamex Motion and disposes of such motions.

I. Factual Background

The Plaintiff alleges in the Complaint, that this matter originally began on April 7, 1989, in the 253rd Judicial District Court of Liberty County, Texas, Case No. 43,911 (the "Liberty County Proceeding"), as a dispute between the Plaintiff and William D. Brosseau (the "Debtor"). The dispute concerns ownership of certain property particularly, a piece of real property referred to as Casa T, located in the Las Brisas area of Acapulco, Mexico (the "Casa T Property"), and the ownership interests of a Canadian company named 80451 Holdings, Ltd. ("80451") which held the deed to the Casa T Property at one time. By order entered April 21, 1989 in the Liberty County Proceeding, a receiver was appointed to take possession and control of the Casa T Property and the

equity interests in 80451, a copy of which was attached to the Complaint.

A. Bankruptcy Proceedings

On October 8, 1991, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, in this Court, the Eastern District of Texas, Sherman Division, commencing the initial bankruptcy proceeding, Case No. 91-41712.

On April 1, 1992, the Debtor filed an EMERGENCY MOTION UNDER 11 U.S.C. SECTIONS 362 AND 105 TO DECLARE POST-PETITION STATE COURT PROCEEDINGS VOID (the "Turnover Motion") requesting turnover of the Casa T Property from the receiver appointed in the Liberty County Proceeding to the Chapter 11 bankruptcy estate. Upon the request of the Debtor, this Court held an emergency hearing on the Turnover Motion, and by Memorandum Opinion issued June 4, 1992, this Court, Judge C. Houston Abel presiding, denied the relief requested (the "Turnover Order"). This Court recognized that the Casa T Property might not be 'property of the estate,' as that term is defined by 11 U.S.C. §541, and until ownership of the Casa T Property was determined in the Liberty County Proceeding, or some other court of competent jurisdiction, and it was determined that the Debtor actually had a legal or equitable interest in or to the Casa T Property, turnover was inappropriate. On August 24, 1992, this Court addressed the Debtor's request for reconsideration of the Turnover Order and issued a second Memorandum Opinion (the "Reconsideration Order") again declining to order turnover of the Casa T Property because the Debtor had failed to meet its burden of showing that the Casa T Property was in fact, 'property of the estate.'

On July 9, 1992, the Debtor filed its CHAPTER 11 PLAN OF REORGANIZATION (the "Plan"). A hearing on confirmation of the Plan was held on October 2, 1992, and

confirmation was denied. Thereafter, by order dated November 16, 1992, the case was converted to a Chapter 7 proceeding,[2] and John J. Jenkins was appointed to administer and liquidate the Chapter 7 bankruptcy estate as Chapter 7 Trustee (the "Trustee").

On June 1, 1993, the Trustee filed a complaint objecting to the Debtor's discharge (the "Dischargeability Complaint") and an objection to the Debtor's claimed exemptions. On November 1, 1993, the Trustee filed a MOTION TO SELL PROPERTY OR POTENTIAL PROPERTY OF THE ESTATE UNDER 11 U.S.C. §363 (the "Sale Motion"). The Sale Motion requested authority to sell the bankruptcy estate's interest, *if any*, in the Casa T Property, to the Plaintiff. A few parties initially objected to the Sale Motion but all such objections were resolved by agreement or withdrawn.[3]

The Trustee proposed to sell by quitclaim deed (without any representations or warranties of any kind) all right, title, interest and claim, *if any*, owned, possessed, or asserted by the bankruptcy estate with respect to or related to the Casa T Property and any equity interests in 80451 (collectively the "Sale Property"). In the Sale Motion, the Trustee characterized the interest of the bankruptcy estate in the Sale Property as highly

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[2] Plaintiff asserts that this Court converted the case *sua sponte*, but that is incorrect. This Court raised the issue of conversion, *sua sponte*, at the confirmation hearing but upon the opposition of the Debtor, allowed the parties additional time to submit briefs on the proposed conversion and agreed to withhold entry of an order converting the case for ten (10) days. In the interim, on October 5, 1992, the United States Trustee filed a motion to convert the case which was scheduled for hearing on October 20, 1992 (the "Conversion Hearing"). On October 14, 1992, the Debtor filed an EMERGENCY MOTION TO DISMISS his bankruptcy case which was denied by the Court at the Conversion Hearing. On November 16, 1992, this Court entered an order converting the bankruptcy case to a Chapter 7 proceeding pursuant to the United States Trustee's Motion to Convert.

[3] On November 18, 1993, the Debtor and a trust created for the Brosseau / Lucas Children, filed objections to the Sale Motion. The Debtor objected to the sale generally asking the Court for no specific relief but to not "contribute to the continued criminal activity of [the Plaintiff]" and to correct the ongoing injustices in depriving other parties of their property. The Childrens' Trust objected to the sale because it asserted that the property was not property of the estate and that the sale price was insufficient. On November 22, 1993, Teresa Brosseau Lucas filed an objection to the Sale Motion complaining of the Trustee's proposed transfer of interests acquired by the estate as community property interests through Teresa Lucas, as well as the transfer of claims against Teresa Lucas. Ms. Lucas asserted that the Trustee had no right to transfer any potential claims the estate had against her to a third-party.

speculative and costly to liquidate given the complex factual and legal circumstances necessary to obtain a final determination of the ownership dispute. The Sale Motion stated that the Sale Property to be conveyed "is likely of little or no practical or realizable value" to the bankruptcy estate. Sale Motion, ¶8, page 11.

On January 12, 1994, this Court held a hearing on the Sale Motion (the "Sale Hearing"). At the Sale Hearing, the objecting parties announced resolution and withdrawal of their objections, along with a brief summary of the terms of the settlement. The parties represented, and this Court acknowledged, that the contemplated transfer would be without representations and warranties because of the pending litigation and ongoing dispute as to ownership. Prior to approving the Sale Motion, this Court stated that it was not making any findings of fact with respect to any party's ownership interest in the Sale Property and the parties acknowledged on the record in open court that no such findings were being made by this Court. See TRANSCRIPT OF HEARING DATED JANUARY 12, 1994, MOTION TO SELL POTENTIAL PROPERTY (the "1/12/94 Transcript"), page 11.

Based on the foregoing, by order dated January 12, 1994, this Court authorized the Trustee to transfer the bankruptcy estate's interest, *if any*, in and to the Sale Property (the "Sale Order"). More specifically, the Sale Order authorized the Trustee to take the following actions: (i) to transfer to the Plaintiff, by quitclaim deed, the estate's interest in the equity interests of 80451; (ii) to transfer to the Plaintiff, by quitclaim deed, the estate's interests in any claims against the receiver appointed in the Liberty County Proceeding; (iii) to transfer to the Plaintiff, by quitclaim deed, the estate's interests in claims to the Casa T Property constituting community property interests acquired through

Teresa Lucas, and (iv) to transfer to the Plaintiff, by quitclaim deed, the estate's interest in the claim of any partnership having claims to the Casa T Property.

On January 4, 1994, prior to approval of the Sale Motion, the Debtor filed a voluntary waiver of discharge and, at the Sale Hearing, this Court approved the AGREED JUDGMENT DENYING DISCHARGE resolving the Dischargeability Complaint (the "Denial of Discharge"). The Denial of Discharge specifically decreed that, by virtue of that order alone, the Debtor was not waiving his right to pursue or defend against any of his creditors, including the Plaintiff herein.[4] As a result of the Denial of Discharge, the Debtor's creditors, including the Plaintiff, were permitted to pursue their claims against the Debtor as if no bankruptcy case had been commenced and to pursue such claims in any court of competent jurisdiction.[5]

On February 1, 1994 the Trustee executed a bill of sale and quitclaim deed conveying all rights and title which the bankruptcy estate might have held in the Sale Property to the Plaintiff.

B. Post-Sale Events

The Plaintiff alleges in the Complaint that, on September 6, 1994, the Debtor and Teresa Lucas concluded litigation concerning their divorce that was pending in the 330th

[4] Particularly, the order states "that the entry of this Agreed Judgment Denying Discharge shall in no way, by collateral estoppel, res judicata or otherwise, by any other legal theory, operate to prejudice the right of the Debtor to pursue, by trial, appeal, claim objections or otherwise in any state, federal or bankruptcy court, his right to defend and litigate the validity, enforceability or amount of damages or any claims of any of his creditors, including, but not limited to, … Dennis Ranzau. *Jenkins v. Brosseau*, Adversary Proceeding No. 93-4082a (Bankr. E.D. Tex. January 12, 1994) (order denying discharge).

[5] Section 727(a)(10) provides that "[t]he court shall grant the debtor a discharge unless -- the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter" By order dated Februay 24, 1994, this Court entered an order denying the Debtor's discharge. A discharge in bankruptcy "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor." 11 U.S.C. § 524(a)(2). Thus, if a debtor is denied a discharge, creditors are no longer barred from recovering debts owed to them by the debtor and they may proceed in whatever manner or by whatever remedy provided by law.

Judicial District Court for the County of Dallas, Cause No 92-9891, (the "Dallas Divorce Proceeding") with the entry of an agreed FINAL DECREE OF DIVORCE, a copy of which was attached to the Complaint (the "Divorce Decree"). The Divorce Decree contained a finding that the Sale Order was not effective with respect to the transfer of any interest in the Sale Property held by the trust created for the Brosseau / Lucas Children, The J.L. & A.C. Brosseau Trust (the "Childrens' Trust"), along with a finding that the Childrens' Trust owned and controlled all of the equity interests in 80451. No evidence has been presented that the Divorce Decree or any other orders entered in the Dallas Divorce Proceeding have ever been modified, stayed, suspended, or appealed.

The Plaintiff alleges in the Complaint that, on October 31, 1995, the Debtor instituted a declaratory judgment action in the Court of First Instance of the Civil Branch of the Judicial District of Tabares, Acapulco, Guerro, Mexico, Case No. 1109-95 (the "First Mexican Proceeding") against Banamex, the Plaintiff and the receiver appointed in the Liberty County Proceeding seeking, among other things, a declaration that Banamex (i) comply with a trust agreement entered into by Banamex and 80451 and (ii) recognize 80451, rather than the Plaintiff, as the beneficiary of the trust holding rights to the Casa T Property. The Complaint also asserts that, on August 26, 1996, after the bankruptcy case was closed,[6] the relief requested in the First Mexican Proceeding was granted and an order was entered directing Banamex to recognize 80451 as the beneficiary of the trust. No evidence has been presented that this or any other order entered in the First Mexican Proceeding was ever modified, stayed, suspended, or appealed.

The Plaintiff alleges in the Complaint that, on or about July 24, 1996, the Plaintiff initiated legal proceedings before the Supreme Court of British Columbia, Vancouver

[6] A FINAL DECREE was entered on July 31, 1996, closing the Chapter 7 bankruptcy case.

Registry, No. A96-2455 (the "Canadian Proceeding"), against the Debtor, 80451, Teresa Lucas and the Childrens' Trust to resolve the ownership dispute and restrain any additional disposition of the Sale Property. The Complaint also asserts that, on September 30, 1996, the court granted the injunctive relief sought, and on July 27, 1997, expanded the order to include an injunction against Desarrollo Turistico Alexa, S.A. De C.V. ("Desarrollo"), a corporation organized under the laws of the County of Mexico, from any further disposition or transfer of the Sale Property. The Complaint also asserts that, on October 24, 1997, the Court removed the Debtor from serving as an officer or director of 80451. No evidence has been presented that this injunction or any other orders entered in the Canadian Proceeding were ever further modified, stayed, suspended, or appealed.

The Plaintiff alleges in the Complaint that, on September 20, 1996, the Securities and Exchange Commission commenced a criminal suit in the United States District Court for the Northern District of Texas, Case No. 96-cv2655 (the "Securities Case"), against the Debtor with respect to securities fraud and violations related to a corporate entity named Offshore Financial Corporation. The Complaint further asserts that, on March 12, 1997, the Debtor pled guilty to one count of securities fraud, and on October 21, 1997, the Debtor was sentenced to five years in prison.

The Plaintiff further alleges in the Complaint that, on July 9, 1999, Desarrollo initiated litigation in the Court of First Instance of the Civil Branch of the Judicial District of Tabares, Acapulco, Guerro, Mexico, Case No. 228-2-99 (the "Second Mexican Proceeding") to collect on a $100,000.00 promissory note supposedly executed to secure a loan from 80451. The Complaint further asserts that Desarrollo and 80451 entered into

a settlement agreement acknowledging the $100,000.00 obligation and transferring 80451's interest in the Casa T Property to Desarrollo in satisfaction thereof.

C. The Instant Adversary Proceeding

A FINAL DECREE was entered, closing the bankruptcy case, on July 31, 1996. Approximately five years thereafter, on October 19, 2001, the Plaintiff filed its ORIGINAL COMPLAINT REQUESTING (A) ENTRY OF AN ORDER TO SHOW CAUSE WHY ONE OR MORE OF THE DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT (B) A TEMPORARY INJUNCTION, (C) A PERMANENT INJUNCTION AND (D) ACTUAL AND PUNITIVE DAMAGES IN VIOLATION OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO) (the "Original Complaint") as amended by PLAINTIFF'S AMENDED COMPLAINT filed on July 4, 2004 (the Original Complaint together with all amendments, the "Complaint"), commencing the current adversary proceeding, Case No. 01-4248. The Complaint asserts that Defendants' continuing efforts to deny or interfere with Plaintiff's possession, control, or ownership of the Casa T Property constitutes a fraud upon the court in violation of this Court's previous orders, specifically the Sale Order. The Complaint asserts the following claims or causes of action: (i) civil contempt, (ii) temporary and permanent injunction, (iii) fraud and conspiracy to defraud, and (iv) violation of the Organized Crime Control Act of 1970, Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961, *et seq*. ("RICO").

This Court, Judge Donald R. Sharp presiding, by order dated October 30, 2001, denied the Plaintiff's request for a temporary injunction for lack of subject matter jurisdiction and dismissed these proceedings *sua sponte* (the "10/31/01 Order"). By order dated December 7, 2001, this Court denied the Plaintiff's request for

reconsideration of the 10/31/01 Order (the "12/7/01 Order"). Plaintiff appealed these decisions, and on appeal, *Ranzau v. Brosseau*, 4:02cv16, (E.D. Tex. Sept. 17, 2002) (the "Appeal Order"), the District Court held that this Court had jurisdiction over the instant adversary proceeding to interpret and enforce its own prior orders, even after the underlying bankruptcy case had been closed. The District Court held that the mere completion or closing of a case was insufficient to divest the bankruptcy court of its ancillary jurisdiction. This adversary was then remanded to this Court for a determination on the merits of the Complaint.

On January 24, 2003, Banamex filed its MOTION TO DISMISS (the "First Banamex Motion") in response to the Complaint asserting that any and all claims asserted against Banamex had been fully and finally adjudicated by the declaratory judgment entered in the First Mexican Proceeding and requesting dismissal from the instant adversary proceeding. By order dated March 19, 2003, and for reasons stated by this Court on the record, the First Banamex Motion was denied.

On February 19, 2004, Banamex renewed its motion to be dismissed from this proceeding pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, made applicable herein by Rule 7012 of the Federal Rules of Bankruptcy Procedure, for failure to state a cause of action or claim for which relief is available (the "Second Banamex Motion"). Banamex also asserts that dismissal is appropriate pursuant to Rules 19 and 21 of the Federal Rules of Civil Procedure, res judicata, and the principle of comity.

On March 12, 2004, the Debtor filed its AMENDED MOTION FOR SUMMARY JUDGMENT, AND INCORPORATED BRIEF (the "Brosseau Motion"), and Angelina Perez filed her AMENDED MOTION FOR SUMMARY JUDGMENT, AND INCORPORATED BRIEF (the

"Perez Motion" and together with the Brosseau Motion, the "Summary Judgment Motions") asserting that this Court's limited jurisdiction was insufficient to adjudicate the claims raised in the Complaint and that the Plaintiff is collaterally estopped from relitigating the issues resolved by the First Mexican Proceeding. On May 28, 2001, the Plaintiff filed its responses to the Summary Judgment Motions, PLAINTIFF'S RESPONSE TO DEFENDANT PEREZ' SUMMARY JUDGMENT MOTION, Docket No. 201, and PLAINTIFF'S RESPONSE TO DEFENDANT BROSSEAU'S SUMMARY JUDGMENT MOTION, Docket No. 202, arguing that this Court had jurisdiction to enforce its orders and the transactions contemplated and consummated therewith.

On March 23, 2004, Plaintiff filed its RESPONSE TO BANAMEX'[S] MOTION TO DISMISS asserting that Banamex's participation in the transfer of the Casa T Property to Fomento Inmobiliario y de la Constucción, S.A. de C.V. ("Fomento") constitutes a breach of fiduciary duty owed to the Plaintiff. The fiduciary duty is supposedly owed to the Plaintiff, under a Mexican trust agreement between 80451 and Banamex (the "Mexican Trust"), by virtue of the Plaintiff's disputed ownership of 80451 which holds or held the beneficial interest in the Mexican Trust. In addition to the fiduciary duty claim, Plaintiff asserts that Banamex's participation in the transfer of the Casa T Property gives rise to a claim under RICO. Banamex filed its REPLY IN SUPPORT OF ITS MOTION TO DISMISS, on April 9, 2004, arguing again that subject matter jurisdiction under this Court's jurisdiction as expressed in the Appeal Order was lacking with respect to any claim related to the Mexican Trust.

On April 13, 2004, oral argument on the Second Banamex Motion was held and this Court requested additional briefing on the jurisdictional arguments raised. Banamex

filed its POST-HEARING BRIEF IN SUPPORT OF THE MOTION TO DISMISS on May 27, 2004, and Plaintiff filed its SUPPLEMENTAL RESPONSE TO THE MOTION TO DISMISS on May 29, 2004. Banamex argues that the scope of the Sale Order is limited to the Trustee's transfer of interests to the Plaintiff, and therefore the jurisdiction of this Court is equally limited and does not extend to any of the underlying ownership dispute or the claims arising therefrom. The Plaintiff argues that this Court has jurisdiction over the adversary claims and causes of action because they 'arise under Title 11' and the RICO claims invoke federal question jurisdiction. The Plaintiff also asks this Court to recommend withdrawal of the reference.

On June 17, 2004, this Court heard final arguments on the Second Banamex Motion and took the matter under advisement. By order entered July 2, 2004, the Plaintiff's AMENDED MOTION FOR LEAVE TO AMEND COMPLAINT was granted. On July 14, 2004, the Plaintiff filed its Sur-Reply regarding the Second Banamex Motion incorporating a request for this Court to reconsider its preliminary ruling and/or reurging this Court to recommend withdrawal of the reference prior to granting the Second Banamex Motion. Pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, the Second Banamex Motion shall be treated as a motion for summary judgment.

D. Status of the Instant Adversary Proceeding

Of the fourteen original defendants named in the Complaint, only Movants remain as live litigants. On December 13, 2002, Louis Pineda was dismissed from this proceeding by Notice of Stipulated Dismissal.[7] A default order was entered against Bea Maulden and Shaffer International Inc. on January 29, 2003, and against Desarrollo on

[7] Plaintiff asserted in the Amended Complaint that Pineda has not been served but the record reflects that Pineda was dismissed by stipulation prior to that time.

February 28, 2003. Teresa Lucas, Alexa Brosseau, Jordan Brosseau, Larry Lucas and Laird Lucas were dismissed, with prejudice, by order entered March 18, 2003. 80451 Holdings, Ltd. was realigned as a Plaintiff by Joinder filed January 16, 2004. In addition, by Stipulation and order entered March 11, 2004, Charles McGarry was dismissed from this proceeding.

II. Summary Judgment Standard

Motions for summary judgment are authorized by Rule 56 of the Federal Rules of Civil Procedure, which is made applicable herein by Rule 7056 of the Federal Rules of Bankruptcy Procedure. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party or parties are entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (quoting FED. R. CIV. P. 56(c)). If a summary judgment motion is properly supported, the party opposing the motion may not merely rest upon the contents of its pleading, but must demonstrate the existence of specific facts constituting a genuine issue of material fact for which a trial is necessary. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986) (citing FED. R. CIV. P. 56(e)); *In re Municipal Bond Reporting Antitrust Litigation*, 672 F.2d 436, 440 (5th Cir. 1982) (in order to defeat entry of summary judgment, the opposing party must produce significant probative evidence demonstrating the existence of a genuine issue of fact). The court will not engage in a comprehensive search for the existence of an undesignated issue of material fact, but in passing upon motions for summary judgment, the court may also consider "oral testimony, matters subject to judicial notice, stipulations and concessions, and other

materials admissible in evidence or otherwise usable at trial." *Clay v. Equifax, Inc.*, 762 F.2d 952, 956 (11th Cir. 1985) (citing 6 Moore Federal Practice ¶56.15[7]).

To determine whether summary judgment is appropriate, the record presented should be reviewed in the light most favorable to the non-moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986). If the evidence demonstrating the need for trial "is merely colorable or is not significantly probative, summary judgment may be granted." *Anderson*, 477 U.S. at 249-250. Thus, the non-moving party must show more than a "mere disagreement" between the parties, *Calpetco 1981 v. Marshall Exploration, Inc.*, 989 F.2d 1408, 1413 (5th Cir. 1993), or that there is more than "some metaphysical doubt as to the material facts," *Matsushita*, 475 U.S. at 586.

As discussed below, Movants have demonstrated that there is no genuine issue of material fact or factual dispute in need of resolution. Where the unresolved issues are primarily legal rather than factual, as in this case, summary judgment is particularly appropriate. *Mansker v. TMG Life Ins. Co.*, 54 F.3d 1322, 1326 (8th Cir. 1995); *Thompson Everett, Inc. v. National Cable Advertising, L.P.*, 57 F.3d 1317, 1323 (4th Cir. 1995) ("A federal court may resolve the legal questions between the parties as a matter of law and enter judgment accordingly").

III. Jurisdiction

Federal courts are courts of limited jurisdiction, and bankruptcy courts, as a unit of the federal district courts, are no exception. The jurisdiction of all federal courts is completely 'grounded in and limited by statute.' *Bass v. Denney (In re Bass)*, 171 F.3d 1016, 1022 (5th Cir. 1999) (quoting *Celotex Corp. v. Edwards*, 514 U.S. 300, 307, 115

S.Ct. 1493, 131 L.Ed.2d 403 (1995)). Federal courts have "only the authority endowed by the Constitution and that conferred by Congress." *Epps v. Bexar-Medina-Altascosa Counties Water Improvement Dist. No. 1*, 665 F.2d 594, 595 (5th Cir. 1982) (quoting *Save the Bay, Inc. v. U.S. Army*, 239 F.2d 1100, 1102 (5th Cir. 1981)). Within the context of a bankruptcy case or proceeding, the grant of jurisdiction is found in 28 U.S.C. §1334. With respect to litigation brought within a bankruptcy case, subsection (b) provides, in relevant part:

> Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

28 U.S.C. §1334(b). If a matter falls within one of these three distinct categories -- (i) arising under title 11, (ii) arising in a case under title 11, or (iii) related to a case under title 11 -- the district court has subject matter jurisdiction over that matter and may refer that matter to the bankruptcy court for that district under 28 U.S.C. §157(a).[8] Thus, if a matter falls within one of the categories identified in 28 U.S.C. §1334(b), subject matter jurisdiction exists, both at the district and bankruptcy court levels. *See Celotex Corp v. Edwards*, 514 U.S. 300, 307-08, 115 S.Ct. 1493, 1498-99, 131 L.Ed.2d 403 (1995).

Section 105 of the Bankruptcy Code enables the bankruptcy courts to exercise ancillary jurisdiction and provides that bankruptcy courts "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. §105(a). The purpose of section 105 is to ensure that bankruptcy courts have the

[8] 28 U.S.C. §157 provides that "[e]ach district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district." Pursuant to the Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc entered on August 6, 1984, the United States District Court for the Eastern District of Texas has provided that all cases under title 11 or proceedings arising under title 11 or arising in or related to cases under title 11 are referred to the United States Bankruptcy Court for the Eastern District of Texas for consideration and resolution.

power to effectuate their jurisdiction and take whatever action is appropriate or necessary to aid in the exercise of their jurisdiction.

Movants have all raised the threshold issue of subject matter jurisdiction over this adversary proceeding. Accordingly, this Court will address jurisdiction first. This Court previously dismissed, *sua sponte*, this adversary proceeding for lack of subject matter jurisdiction and because the case had been closed. The Plaintiff appealed the dismissal to the District Court and following a discussion of the jurisdiction and the procedural history of the underlying dispute, the District Court, citing *Local Loan Co. v. Hunt*, 292 U.S. 234, 239, 54 S.Ct. 695, 697, 78 L.Ed. 1230 (1934), held that the United States Supreme Court recognizes that bankruptcy courts have subject matter jurisdiction to enforce their own orders even after a bankruptcy case is closed.[9] The District Court found that "the Bankruptcy Court retains ancillary jurisdiction to enforce its orders even after the underlying bankruptcy case is closed. As such, the Bankruptcy Court erred when it dismissed the case *sua sponte* for lack of subject matter jurisdiction." The District Court reversed the dismissal and remanded this case "to the Bankruptcy Court for further proceedings not inconsistent with this Order."

In light of the District Court's conclusion that this Court has ancillary jurisdiction with respect to enforcement of its prior orders, this Court must now examine the causes of action in this case that fall within the ancillary jurisdiction of this Court while being mindful of its limitations as instructed by the existing jurisprudence of this circuit. The Fifth Circuit, in *In the Matter of Mooney Aircraft, Inc*., 730 F.2d 367, 374 (5th Cir. 1984), recognizes that the ancillary jurisdiction supported by *Local Loan* is not limitless and

[9] See also *In the Matter of Mooney Aircraft, Inc*., 730 F.2d 367, 374 (5th Cir. 1984) and *Southmark Properties v. Charles House Corporation*, 742 F.2d 862, 868 (5th Cir. 1984) which recognize that bankruptcy courts have jurisdiction to effectuate and protect their prior judgments.

does not apply to orders that the bankruptcy court has never made. *See also In the Matter of Federal Shopping Way, Inc.*, 717 F.2d 1264, 1270 (9th Cir. 1983) ("where prior judgment of bankruptcy court did not encompass claims sought to be enjoined [*Local Loan*] does not support jurisdiction"). This power does not "authorize the bankruptcy courts to create substantive rights that are otherwise unavailable under applicable law, or constitute a roving commission to do equity." *U.S. v. Sutton*, 786 F.2d 1305, 1308 (5th Cir. 1986). As stated above, federal courts are courts of limited jurisdiction, and bankruptcy courts, sitting only by designation of the federal courts, are courts of more limited jurisdiction. This Court could endeavor to right every inequity and injustice committed and would gladly do so if anointed to serve that purpose, but this judge, like all other bankruptcy judges, was appointed solely to exercise bankruptcy jurisdiction. *Jamo v. Katahdin Fed. Credit Union (In re Jano)*, 283 F.3d 392, 403 (1st Cir. 2002) ("section 105(a) does not provide bankruptcy courts with a roving writ, much less a free hand."). While ancillary jurisdiction exists to assist the court in effectuating its general grant of jurisdiction, this jurisdiction does not extend any further than necessary to achieve the purpose of protecting and effectuating its prior orders.

IV. Discussion

Turning to an examination of this Court's prior orders and the Complaint, this Court concludes, upon a review of the summary judgment evidence submitted,[10] that the

[10] In support of their motions, Movants submitted the following exhibits: (i) the Affidavit of William Brosseau; (ii) the Affidavit of Angelina Perez; (iii) August 26, 1996 Final Judgment issued in the First Mexican Proceeding; (iv) the Turnover Order; (v) the August 4, 1992 Memorandum Opinion Order issued by this Court denying reconsideration of the Turnover Order; (vi) the Sale Order; (vii) the January 12, 1994 Order issued by this Court denying the Debtor's discharge in the underlying Chapter 7 proceeding; and (viii) the Appeal Order.

The Plaintiff submitted the following additional exhibits in opposition to the motions: (i) excerpts of Monthly Operating Reports filed for the periods November 1991 through August 1992; (ii) the November

facts when viewed in the light most favorable to the Plaintiff fail to establish the essential elements of his claims. Each of the Plaintiff's causes of action is premised on the assertion that the Sale Order quieted title to the Casa T Property and that the Defendants violated the Sale Order, as a result of which the Plaintiff seeks (i) a permanent injunction against the Defendants prohibiting any action claiming or asserting title to the Casa T Property or the equity interests in 80451, (ii) civil contempt sanctions and/or an assessment of damages against the Defendants for past acts relating to claims of title or possession of the Casa T Property and the equity interests in 80451, and (iii) damages for violation of, or conspiracy to violate, RICO. In order to grant the relief requested in the Complaint, this Court would be required to (i) find that the Sale Order determined ownership and title to the Casa T Property and (ii) evaluate the contradictory judgments and opinions issued by four other courts of competent jurisdiction. For the reasons set forth below, the Defendants are entitled to summary judgment.

A. Plaintiff misinterprets the Court's prior orders as encompassing claims and causes of action beyond this Court's jurisdiction.

The Plaintiff characterizes the Sale Order as having resolved the ownership of the Casa T Property,[11] and uses this erroneous interpretation as the foundation for all

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19, 1992 ORDER DENYING CONFIRMATION OF DEBTOR'S PLAN OF REORGANIZATION; (iii) excerpts from transcript of Confirmation Hearing held October 1, 1992; (iv) the Sale Motion; (v) the Response of the Debtor to the Sale Motion; (vi) the Objection of the Childrens' Trust to the Sale Motion; (vii) the Objection of Teresa Lucas to the Sale Motion; (viii) the Settlement Agreement and Mutual Release related to the Sale Motion; (ix) excerpts from the 1/12/94 Transcript; (x) Quitclaim Deed from Trustee to Plaintiff; (xi) Bill of Sale from Trustee to Plaintiff; (xii) Bill of Sale from Teresa Lucas and Childrens' Trust to Plaintiff; (xiii) Corporate Resolution of 80451 dated May 17, 1994; (xiv) Stock Certificate No. 12 issued by 80451 to Desarrollo; (xv) the FINAL DECREE OF DIVORCE in the Dallas Divorce Proceedings; (xvi) translation from Spanish of Final Judgment in First Mexican Proceedings; (xvii) Affidavit of William D. Brosseau dated October 24, 2000; (xviii) Affidavit of Leonardo Samuel Gonzalez Trujillo dated August 29, 2000; (xix) Affidavit of Murray K. Morrison dated March 31, 2000; (xx) Affidavit of William D. Brosseau dated August 24, 1996; and (xxi) Quitclaim Deed of Childrens' Trust to Plaintiff dated February 14, 1994.

[11] See Complaint, page 16, Section C which is entitled "The Resolution of the Casa T Dispute in the Bankruptcy Court," as well as, paragraph 43, page 16, which asserts that the parties "entered into a letter

allegations that the Sale Order has been violated by the Defendants. An examination of the court's role in sales of property that occur within a bankruptcy proceeding, and the Sale Order itself, reveals the fundamental flaws in the Plaintiff's argument.

1. The Bankruptcy Court's role with respect to sales under section 363 of the Bankruptcy Code is limited to approval of the Trustee's business judgment in administering or liquidating the assets of the bankruptcy estate.

Pursuant to section 704 of the Bankruptcy Code, the trustee in a Chapter 7 case is charged with administration and liquidation of the Chapter 7 bankruptcy estate. Such liquidation must be accomplished in an expeditious manner consistent with the best interests of the estate. In furtherance of this duty, on November 1, 1993, the Trustee requested authority to sell to the Plaintiff, for $70,000.00, the bankruptcy estate's interest in the Casa T Property and the 80451 Property. The Sale Motion provides a fairly detailed chronology of the ownership dispute. The Sale Motion asserts that in light of the complex factual and legal background surrounding the issue of title to the Casa T Property that the estate's possible recovery with respect to this asset would be highly speculative and would necessitate substantial additional litigation costs. The Sale Motion states that the Casa T Property would "likely [be] of little or no practical or relizable value to [the] estate." Sale Motion, ¶8, page 11.

Historically, in the context of a sale of estate property under the repealed Bankruptcy Act, the court was charged with dictating the type and terms of notice of a sale, evaluating whether proper cause existed for the sale, as well as, approving the terms

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agreement intended to resolve the Casa T issue 'once and for all,' and paragraph 50, page 20, which states in reference to the Court's approval of the Sale Order and consummating transfers, "[o]ne would have thought that this was the end of the controversy."

and conditions of the sale itself.[12] This level of judicial supervision and involvement in sales of estate assets was fundamentally altered by the Bankruptcy Code. *See In re NEPSCO, Inc.*, 36 B.R. 25, 26 (Bankr. Me. 1983) ("This scheme promotes Congress' intent of keeping bankruptcy judges out of the administrative aspect of bankruptcy cases, since the Court no longer supervises sales as it did under the repealed Bankruptcy Act").

Under the Bankruptcy Code, which became effective October 1, 1979, the court is only charged with determining the reasonableness of the trustee's proposed actions. The court's role in the sale process is limited to oversight or approval of the trustee's judgment regarding the sale, use or lease of estate property when proposed outside the ordinary course of business. In fact, absent a dispute or timely filed objection, no court action is even required under 11 U.S.C. §363(b). *See In re Telesphere Communications, Inc.* 179 B.R. 544, 552 (Bankr. N.D. Ill. 1994) ("[w]here there is no objection after notice, a proposed disposition of assets may be effective without judicial review"); *In re Winston Inn & Restaurant Corp.*, 104 B.R. 589, 595 (Bankr. E.D.N.Y.1989) ("In the absence of objections to a proposed sale, so long as there is compliance with the notice and a hearing mandate by the trustee or debtor-in-possession, judicial involvement is not required and approval by the bankruptcy judge of the sale is unnecessary").[13] In addition, a sale under the Bankruptcy Code is not a judicial sale as it was under the Bankruptcy

[12] Section 116 of the Bankruptcy Act of 1898 provided in relevant part as follows: "[T]he judge may, in addition to the jurisdiction, powers, and duties in this chapter conferred and imposed upon him and the court -- . . . (3) authorize a receiver or a trustee or a debtor in possession, upon such notice as the judge may prescribe and upon cause shown, to lease or sell any property of the debtor, whether real or personal, upon such terms and conditions as the judge may approve."

[13] See H.R. Rep. 95-595, 95th Cong., 1st Sess. 315 (1977), *reprinted in* App. Pt. 4(d)(i) ("[t]his is a significant change from present law, which requires the affirmative approval of the bankruptcy judge for almost every action); *In the Matter of Hooten Enterprise, Inc*., 21 B.R. 499, 501 n. 4 (Bankr. N.D. Ala. 1982) ("The change [from the Bankruptcy Act] will permit the bankruptcy judge to stay removed from the administration of the bankruptcy or reorganization case, and to become involved only when there is a dispute about a proposed action, that is, only when there is an objection").

Act.[14] Section 363 only contemplates that the court verifiy that the statutory requirements of the Bankruptcy Code are met. The court simply grants authority for the estate or its representatives to act.

In determining whether a proposed sale is appropriate, courts generally examine whether the trustee properly exercised his business judgment, as articulated by the Second Circuit in *In re Lionel Corporation*, 722 F.2d 1063 (2nd Cir. 1983) and adopted generally by the bankruptcy courts. *See e.g., Licensing by Paolo, Inc. v. Sinatra (In re Gucci)*, 126 F.3d 380, 387 (2d Cir. 1997) ("A sale … other than in the ordinary course of business may be conducted if a good business reason exists to support it"); *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991) (stating that sales are an exercise of a fiduciary duty that requires an 'articulated business justification'); *In re Continental Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986) (there must be some 'articulated business justification' for use, lease or sale of property under §363); *Stephens Industries, Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *In re Global Crossing Ltd.*, 295 B.R. 726 (Bankr. S.D.N.Y. 2003) (the business judgment rule shields corporate decision-makers and their decisions from judicial second-guessing if the appropriate elements are present); *In re Charter Broadcast Group, Ltd.*, 1994 WL 586983 (Bankr. N.D. Ohio 1994) (a bankruptcy court may authorize the sale of assets when a sound business purpose dictates such action); *In the Matter of Phoenix Steel Corp.*, 82 B.R. 334 (Bankr. D. Del. 1987).

The business judgment test is simply a "presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith, and in

[14] *See In re Canyon Partnership*, 55 B.R. 520, 524 (Bankr. S.D.Cal. 1985) (section 363 "clearly indicates that the manner of sale is within the discretion of the Trustee and that any such sale is not a judicial sale as was the case under Section 70 of the Bankruptcy Act) (citing *Berg v. Scanlon (In re Alisa Partnership)*, 15 B.R. 802, 802 (Bank. D. Del. 1981); *accord In re Bakalis*, 220 B.R. 525 (Bankr. E.D.N.Y. 1998).

the honest belief that the action taken was in the best interests of the company." *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992); *In re Orion Pictures Corp.*, 4 F.3d 1095, 1099 (2nd Cir. 1993) ("the bankruptcy court sits as an overseer of the wisdom with which the bankruptcy estate's property is being managed …, and not, as it does in other circumstances, as the arbiter of disputes"); *accord In re Tama Beef Packing, Inc.*, 277 B.R. 407 (Bankr. N.D. Iowa 2002). This approach grafts traditional corporate standards onto the bankruptcy framework. Since a trustee operates in the same manner as a board of directors or officers of a solvent company, courts routinely apply this standard in reviewing the propriety of transactions within the bankruptcy context as well.

2. The Sale Order authorized the Trustee's to transfer the bankruptcy estate's interest in certain property to the Plaintiff and does not extend to any other party or transfer.

Consistent with the foregoing analysis regarding the court's role in bankruptcy sales, the Sale Order authorized the Trustee to sell to the Plaintiff the bankruptcy estate's interest in the Casa T Property and the equity interests of 80451. The Sale Order, which admittedly is the only source of this Court's power to adjudicate the claims asserted in the Complaint, did nothing more than authorize the Chapter 7 Trustee to transfer whatever interest the bankruptcy estate had in the Sale Property to the Plaintiff.

The Plaintiff also argues that the Sale Order incorporates the settlement agreement made between the Plaintiff, the Childrens' Trust, the Debtor's ex-wife and the receiver in the Liberty County Proceedings, but that contention is incorrect. The underlying title dispute and its resolution, purportedly represented by the settlement agreement, were matters pending before other courts, not this Court, and the Plaintiff's attempt to characterize the Sale Order as encompassing such issues is insupportable.

a. The Sale Order on its face does not quiet title to the Casa T Property. As an initial matter, the Sale Order on its face fails to incorporate the settlement agreement. There is no mention of the settlement agreement, or its terms, in the Sale Order.[15]

A careful review of the Sale Order and the documentation executed in connection therewith establishes that the Sale Order did not attempt to determine ownership or legal title to any property. The Sale Order is a one page order that grants the Sale Motion, approves the proposed sale, and directs the Trustee to consummate the sale contemplated therein and did not require any other person or entity to act or forbear from acting. More specifically, the Sale Order approves, without incorporation of its express terms, the letter agreement which evidences the terms and conditions of the transfers. The letter agreement contemplates the following actions: (i) the Trustee's quitclaim transfer (i.e., without warranty or representations as to title)[16] to the Plaintiff by Quitclaim Deed of the estate's interest in the Casa T Property and (ii) the Trustee's quitclaim transfer to the Plaintiff by Bill of Sale of the estate's interest in (a) the equity interests in 80451, (b) any

[15] Even if this court had jurisdiction over matters that are the subject of the settlement agreement, some courts have held that the court may exercise jurisdiction and enforce such underlying settlement agreements only where the terms of the underlying settlement is explicitly set forth in the order. *See Lucille v. City of Chicago*, 31 F.3d 546, 548 (7th Cir. 1994) (ancillary jurisdiction exists to enforce an underlying settlement agreement if the order explicitly incorporates the settlement agreement or reserves authority to enforce the settlement agreement); *In the Matter of Hanks*, 182 B.R. 930, 934 (reference to the existence of a settlement agreement in an order is insufficient to incorporate the terms of such agreement into the order for the purpose of asking the court to enforce such terms); *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 381, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994) ("The judge's mere awareness and approval of the terms of the settlement agreement do not suffice to make them part of his order."). In this case the Sale Order did not recite the terms of the settlement agreement or even make reference to the settlement agreement.

[16] A quitclaim deed does not establish title or convey the property itself, it merely passes the interests that the grantor has in the property at the time of executing and delivering the instrument. *Diversified, Inc. v. Hall*, 23 S.W.3d 403, 407 (Tex. App. Houston 1st Dist. 2000), reh'g overruled, (June 19, 2000) ("Quitclaim deed conveys any title, interest, or claim of the grantor, but it does not profess that the title is valid nor does it contain any warrant or covenants of title").

claims against the Plaintiff or the receiver appointed in the Liberty County Proceeding, (c) any claims through or against Teresa Lucas with respect to claims against the Casa T Property, and (d) any claims in and to any interest in a partnership asserting an interest in the Casa T Property. The Bill of Sale executed by the Trustee, disclaims any express, implied, or statutory warranty of title or merchantability, and expressly denies any representation that any rights are actually being conveyed.[17]

The fact that the parties chose a quitclaim deed as the manner of conveyance rather than a warranty deed, further evidences that the Sale Order and the related documentation were never intended that this Court decide any ownership issues with respect to the Sale Property. The evidence presented shows, without any genuine issue of fact, that all of the parties -- the Plaintiff, Defendants, Trustee, and this Court -- were all aware that the Sale Order simply authorized the Trustee to execute the underlying documentation and transfer the potentially non-existent rights of the estate in the Sale Property to the Plaintiff. See 1/12/94 Transcript, page 4-5, with respect to the Trustee's recognition in open court that the bankruptcy estate might not have an interest in the Sale Property being conveyed:

> THE COURT: [T]he hearing on that – earlier hearing on that case along with the lack of documentation and records tell you something about this case.
> Mr. Barber [Counsel for Chapter 7 Trustee]: That's correct, Your Honor.
> THE COURT: I mean I've never seen anything more convoluted and hard to fathom than that transaction there, Counsel.

[17] The Bill of Sale contains the following disclaimer: "…THE TRUSTEE EXPRESSLY DISCLAIMS ANY WARRANTY, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF TITLE, FREEDOM FROM ENCUMBRANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AS TO THE ASSETS. THE [PLAINTIFF] EXPRESSLY ACKNOWLEDGES THAT THE BANKRUPTCY ESTATE MAY NOT HAVE ANY RIGHT, TITLE, INTEREST OR CLAIM IN THE ASSETS, AND IF ANY SUCH RIGHT, TITLE, INTEREST OR CLAIM DOES EXIST THEY MAY BE INVALID OR UNENFORCEABLE…"

> Mr. Barber: Those are our exact sentiments, Your Honor. That's why we have sought to sell by quit claim, without representation or warranties of any kind, whatever interest this estate has in that property.

The Sale Order merely authorized the Trustee to dispose of the estate's interest in the Sale Property, to the extent such interest existed, without representations as to title. The Plaintiff asserts that the relief requested herein is an extension of this Court's authority to interpret and enforce the Sale Order, but the only possible act that this Court could enjoin as an extension of the Sale Order is to compel the Trustee to execute the appropriate quitclaim deed or bill of sale referenced in the letter agreement. The record indicates, and the parties do not dispute, that all of the appropriate transfer documentation was executed in the manner and time proposed by the Sale Motion.[18]

b. At the Sale Hearing, the Court refused to incorporate any agreements into the Sale Order. This Court specifically declined to approve or adopt the settlement agreement at the Sale Hearing when the Plaintiff attempted to recite the "global resolution" into the record. This Court stated on the record that the settlement agreement would not be findings of the court, and that approval of the Sale Order was the only action being taken by this Court:

> THE COURT: Mr. Barber, I don't want – I don't want it to be an impression that [the statement's read into the record]'s a finding of the Court, those statements.
> Mr. Barber: Correct, Your Honor. We don't – we don't –
> THE COURT: That Mr. Moore quoted. That's simply a condition of his option to withdraw the objection to the sale.
> Mr. Barber: That's correct, Your Honor.
> THE COURT: That does not become a finding of this Court.
> Mr. Barber: Correct, Your Honor.
> THE COURT: You understand that?

[18] The record shows that a Quitclaim Deed was executed on February 1, 1994, granting Dennis R. Ranzau the bankruptcy estate's interest in the Casa T Property, and also that, on the same day, a Bill of Sale was executed by John J. Jenkens, as Trustee of the Chapter 7 Bankruptcy Estate of William D. Brosseau relating to the Sale Property.

Mr. Barber: Yes, Sir.
THE COURT: All I'm going to do based on that is approve or disapprove the sale.
Mr. Barber: Correct, Your Honor.
THE COURT: All right. Is that your understanding, Mr. Moore?
Mr. Moore [Counsel for the Debtor]: Your Honor, just one slight thing. I'm just requesting the Court take judicial notice. Those are pleadings found in the Court's files filed by Mr. Ranzau. That's all. We're not requesting the Court to make those specific findings.
THE COURT: All right.

1/12/94 Transcript, page 10-11. This Court made clear to the Plaintiff and the other parties present that it would not act beyond its jurisdictional limitations because the underlying dispute was beyond its jurisdiction and pending in front of, or already resolved by, other courts.[19] A federal court under its ancillary jurisdictional powers cannot exercise jurisdiction over claims not addressed in the judgment or order that the court is being asked to protect. *Royal Ins. Co. of Am. v. Quinn-L Capital Corp*., 3 F.3d 877, 882 (5th Cir. 1993) ("The basis for allowing the federal courts to exercise ancillary jurisdiction … is to allow them to protect their prior judgments; where new claims are involved the policy basis for ancillary jurisdiction disappears."). *See also Lucille v. City of Chicago*, 31 F.3d 546, 548 (7th Cir. 1994) ("Violation of terms that are not in the judgment cannot be thought to flout the court's order or imperil the court's authority, and

[19] The settlement agreement referenced by the Plaintiff relates to the ownership interests in 80451 and the Casa T Property held by the Childrens' Trust, the Debtor's ex-wife, and the receiver appointed in the Liberty County Proceedings. The settlement agreement has no relation or bearing on the interests of the bankruptcy estate, and it is the estate's interests which were the subject of the Sale Order. While the settlement agreement may be a valid and enforceable contract between the Plaintiff, the Childrens' Trust, the Debtor's ex-wife and the receiver appointed in the Liberty County Proceedings, any alleged breach of the settlement agreement is a question sounding in general contract principles and a matter of state law, not the Bankruptcy Code. These issues do not 'arise in', 'arise under' or 'relate to' the Debtor's bankruptcy proceeding or the Trustee's authority to transfer estate assets and fall outside this Court's ancillary jurisdiction. A party cannot confer jurisdiction upon the court by merely making a reference on the record to issues it would like the Court to adjudicate. Federal courts, as courts of limited jurisdiction, possess only that power which is authorized by the Constitution or by federal statute, and such powers cannot be expanded by judicial decree or by agreement of the parties. *See Mitchell v. Maurer*, 293 U.S. 237, 244, 54 S.Ct. 162, 165, 79 L.Ed. 338 (1934); *American Fire & Casualty Co. v. Finn*, 341 U.S 6, 18, 71 S.Ct. 534, 542, 75 L.Ed. 702 (1951); *Lowry v. International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America*, 259 F.2d 568, 575 (5th Cir. 1958).

claims of such violations therefore do not activate the ancillary jurisdiction of the court."). Inasmuch as the Sale Order failed to explicitly include the global settlement and the Court declined to incorporate any settlement into the Sale Order, the Plaintiff's argument, that the Sale Order incorporates or adopts the settlement, fails.

3. The allegations contained in the Complaint describe no actions which violate the Sale Order or any other order of this Court.

Based on this Court's interpretation of the Sale Order, this Court concludes that the following acts do not violate the Sale Order and are unrelated to the matters adjudicated in the Sale Order:

a. Issuance of Ownership Interests in 80451. The Complaint asserts that dilution of the ownership interests in 80451, by the issuance of additional stock to Desarrollo, violates the Sale Order. While the stock dilution may be a violation of some of the injunctions or orders issued in the First Mexican Proceeding or the Canadian Proceeding, this act has absolutely no relation to the Sale Order. The Court authorized the Trustee to sell the Debtor's ownership interest in 80451, but 80451 was not a party to the Sale Order and the Sale Order did not require or prohibit any action of 80451.

b. Inclusion of provisions in the Divorce Decree Nullifying the Settlement Agreement. The Complaint asserts that insertion of a provision in the Divorce Decree which recited, as a finding of the 330th Judicial District Court in the Dallas Divorce Proceeding, that the settlement agreement reached in connection with the Sale Order was ineffective with respect to the transfer of any interest held by the Childrens' Trust, violates the Sale Order and is evidence of a conspiracy to defraud this Court. The Divorce Decree is not inconsistent with the Sale Order because the Sale

Order only authorized the Trustee to sell the *estate's* interest in the Sale Property. The Sale Order did not require or prohibit any action of the Childrens' Trust.

c. Initiation of Mexican Proceedings Relating to the Property. The Plaintiff also asserts that initiation of First Mexican Proceeding and Second Mexican Proceeding operated as a fraud upon this Court and "all parties who relied upon the integrity of the bankruptcy process to divest" the bankruptcy estate, the Debtor and the Childrens' Trust of claims with respect to the Sale Property. As an initial matter, as discussed above, the Plaintiff erroneously characterizes the Sale Order as divesting the interests of non-debtors. Relief based upon the allegation of 'fraud on the court' requires a showing of "an unconscionable plan or scheme which is designed to improperly influence the court in its decision" (citing *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1338 (5th Cir. 1978) and should "embrace only the species of fraud which does or attempts to, defile the court itself or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." *Wilson v. Johns-Manville Sales Corp.*, 873 F.2d 869, 872 (5th Cir. 1989). The only issue before this Court under the Sale Motion was the Trustee's business judgment in transferring the estate's interest in the Sale Property. The Plaintiff has failed to show any deception, fraud or improper conduct related to the Trustee's judgment in selling assets for $70,000.00 when the buyer – the Plaintiff – understood that the estate might not have any interest in the assets, therefore this Court finds that there has been no fraud on the court.

d. The Transfer or Sale of Property to Fomento. The Plaintiff asserts that Banamex was aware of the ownership dispute regarding the Casa T Property

and violated its fiduciary duty to the Plaintiff by participating in the sale of the Casa T Property to Fomento. In response to that allegation, Banamex argues that Rule 19 of the Federal Rules of Civil Procedure requires joinder of Fomento to this adversary.[20] This Court finds that Fomento is not a necessary party with respect to the fiduciary duty claim, but to the extent that Plaintiff seeks an order requiring Banamex to recognize the Plaintiff as the owner of 80451, then Fomento as the current trustee of the Casa T Property would be necessary to any effective relief. However, it is of no import because neither of these matters bear any relationship to the bankruptcy proceedings or the Sale Order and all such claims are well beyond the scope of this Court's limited authority and jurisdiction herein.

e. Other Orders of this Court. The only other orders of this Court identified in the Complaint are the June 4, 1992 order denying turnover of the Casa T Property to the bankruptcy estate (the "Turnover Order") and the August 4, 1992 denial of reconsideration of the turnover request (the "Reconsideration Order"). These orders denied relief to the Debtor and required no action or forbearance of action by any party.

Accordingly, this Court finds that the allegations contained in the Complaint describe no actions which violate this Court's orders, and likewise this Court finds no evidence of any conspiracy to violate such orders in which the Defendants could have participated. To the extent that the Plaintiff seeks relief relating to any issue not encompassed within this Court's prior orders, this Court lacks subject matter jurisdiction to hear such matters.

[20] Rule 19 of the Federal Rules of Civil Procedure provides for joinder of all parties necessary to afford complete relief to the parties. Joinder is necessary under Rule 19 if, the person's absence may impair or impede a person's ability to protect its interests or leave parties exposed to a substantial risk of double, multiple, or otherwise inconsistent obligations. F.R.C.P. Rule 19.

V. Permanent Injunction Standard

Turning to the injunctive relief requested, in order to prevail under the Complaint, the Plaintiff must meet the traditional requirements for permanent injunctive relief and prove that (i) the Plaintiff has prevailed on the merits, (ii) there exists a substantial threat that the Plaintiff will suffer irreparable injury if the injunction is not granted, (iii) that the threatened injury to the Plaintiff outweighs the threatened harm an injunction may cause to any party opposing the injunction, and (iv) that granting the injunction will not disserve the public. *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 546 n. 12, 107 S.Ct. 1396, 94 L.Ed.2d 542 (1987) ("[t]he standard for a preliminary injunction is essentially the same as for a permanent injunction with the exception that the plaintiff must show a likelihood of success on the merits rather than actual success"); *Dresser-Rand Co. v. Virtual Automation, Inc.*, 361 F.3d 831, 848 (5th Cir. 2004); *Icee Distributors, Inc. v. J&J Snack Foods Corp.*, 325 F.3d 586, 597 n. 34 (5th Cir. 2003). This Court, Judge Donald R. Sharp presiding, denied Plaintiff's request for a preliminary injunction on March 6, 2003 for failure to introduce any evidence as to the elements identified above, and no additional or supplemental evidence has been introduced since the preliminary injunction hearing. See TRANSCRIPT OF PROCEEDINGS, MARCH 6, 2003, TEMPORARY INJUNCTION HEARING, page 138, lines 19-24. As such, the Plaintiff has once again failed to support his burden of proof or persuasion on the requested injunctive relief.

The Fifth Circuit has repeatedly recognized that summary judgment is proper "where a party fails to establish the existence of an element essential to his case and on which he bears the burden of proof. A complete failure of proof on an essential element

renders all other facts immaterial because there is no longer a genuine issue of material fact." *Washington v. Armstrong World Indus.*, 839 F.2d 1121, 1122 (5th Cir. 1988) (citing *Celotex Corp. v. Catrett*, 477 U.S. at 323). Such is the case here. "If the party with the burden of proof cannot produce any summary judgment evidence on an essential element of his claim, summary judgment is required." *Geiserman v. MacDonald*, 893 F.2d 787, 793 (5th Cir. 1990). In light of this Court's interpretation of the Sale Order, the Plaintiff can not succeed on the merits of his claims, accordingly no injunction shall issue.

B. The principles of res judicata, comity, and the Rooker-Feldman doctrine prohibit this Court from reviewing orders of other jurisdictions.

This Court did not attempt, by the Sale Order or otherwise, to resolve the competing ownership claims. If the parties had so desired, there are many vehicles available to deal with competing claims to property. If the parties had wanted to quiet title they would have needed to bring a quiet title action in state or federal court, which would have required the commencement of an adversarial lawsuit with all of the appropriate due process protections. The Sale Motion was wholly insufficient to resolve competing property rights.[21]

The Plaintiff characterizes his request for relief as an effort to uphold the integrity of this Court but it appears that his request actually undermines the integrity of this Court. Two injunctions relating to the complained of acts by the Defendants to obtain possession and ownership of the Casa T Property are already in effect in the Liberty County Proceeding and the Canadian Proceeding. In addition, at least four other judicial bodies

[21] See *In the Matter of Havik, Inc.*, 14 B.R. 635, 637 (Bankr. N.D.Ga. 1981), where the court declined to grant relief and quiet title under section 363 and stated that "[a] declaration of the Court as to title to the property does not flow from a section 363 claim."

have ruled on the ownership issue since the Sale Order was entered -- (i) in the Liberty County Proceeding the court appointed a receiver to take possession and control of the Casa T Property, judicially foreclosed on the property, and issued an injunction prohibiting the parties from further disposition or alienation of the Casa T Property; (ii) in the Dallas Divorce Proceeding, the Divorce Decree stated that the settlement agreement was invalid with respect to any attempt to transfer the rights and interests of the Childrens' Trust in the Casa T Property; (iii) in the First Mexican Proceeding, the court ordered recognition of Desarrollo and the Childrens' Trust as the owners of 80451, declared that the Plaintiff had no equity interest in 80451, and entered a money judgment against the Plaintiff; and (iv) in the Canadian Proceeding, the court issued a restraining order prohibiting the disposition, transfer, or alienation of the Casa T Property and removed the Debtor as a director of 80451. To the extent this Court had proper jurisdiction with respect to the underlying dispute it would be concurrent with at least some of these other courts.

All of the above referenced proceedings were in courts of competent jurisdiction, courts capable of determining whether or not their orders were obtained through fraud and courts capable of enforcing their own orders. The Plaintiff asks this Court to ignore all of the judicial proceedings, injunctions, and judgments issued after the Sale Order and issue another, the third, injunction prohibiting transfer or alienation of the Casa T Property, as well as, issue another, the fifth, judgment on ownership. The Plaintiff's request ignores the fact that this Court, along with the parties affected thereby, may be bound under the principles of comity, res judicata, or collateral estoppel to honor the judgments and orders of these other courts.

Res judicata is applicable if the parties and causes of action are identical in both suits and the prior judgment is a final judgment on the merits rendered by a court of competent jurisdiction. *Nilsen v. City of Moss Point, Miss.*, 701 F.2d 556, 559 (5th Cir.1983) (en banc); *In re Thornburg*, 277 B.R. 719, 724 (Bankr. E.D. Tex. 2002). There is no evidence that any of the orders or judgments complained of with respect to the Casa T Property have been appealed or stayed in any way, or that the various Texas County courts or the Mexican or Canadian courts lacked jurisdiction to hear the matters they have already resolved.

The principles of comity, recognized by the Supreme Court in *Hilton v. Guyot*, 159 U.S. 113, 16 S.Ct. 139, 40 L.Ed. 95 (1895) suggest that courts of the United States should defer to acts of foreign courts and their government as long as the laws and public policy and rights of residents are not violated. *See Fleeger v. Clarkson Co. Ltd.*, 86 F.R.D. 388, 393 (N.D. Tex. 1980) where the District Court held that "[i]t would be an unjustified violation of the principle of comity for this Court, by hearing the case on the merits, to create the possibility of entering a judgment in Texas which would effectively abrogate the judgments and orders of [another foreign nation]. If, as the Plaintiff alleges, the Defendants have perpetrated a fraud upon the [court or another nation], that court is the appropriate forum to decide that allegation." In particular, this Court has no authority to render an order in direct contradiction to the existing findings of the Second Mexican Proceeding and is compelled to recognize the lawfully entered orders of such court, particularly when the underlying dispute involves ownership of property located within its borders. Similarly, if Plaintiff complains of the First and Second Mexican Proceedings as violations of the orders obtained in the Canadian Proceedings, it should

request that the Canadian Court rectify whatever wrongs may have occasioned from non-compliance with its orders. It is not the province of this Court, a federal bankruptcy court, to determine which competing order should be abrogated, particularly when both orders issued from sovereign nation-states and are in direct contradiction of each other. Under the principles of comity, whether as an exercise in deference to, respect for, or cooperation with another foreign nation, the bankruptcy court should not undertake to abrogate either of these judgments or orders and must recognize the lawfully entered orders of both courts.

Furthermore, under the Rooker / Feldman doctrine,[22] this Court, as a federal court lacks "appellate jurisdiction to review, modify, or nullify final orders of state courts." *Weekly v. Morrow*, 204 F.3d 613, 615 (5th Cir. 2000); *In re Ferren*, 203 F.3d 559, 559-560 (8th Cir. 2000) (bankruptcy court lacks jurisdiction to overturn state court judgment). It is well established that federal courts lack jurisdiction to hear collateral attacks on state court judgments; this jurisdiction lies exclusively with the United States Supreme Court; *Neal v. Wilson*, 112 F.3d 351, 356 (8th Cir. 1997) ("The only court with jurisdiction to review decisions of state courts is the United States Supreme Court"). Accordingly, this Court is precluded from reviewing the orders or judgments issued in the Dallas Divorce Proceeding or the Liberty County Proceeding. Under the foregoing principles and doctrines, this Court agrees with the Movants that the bankruptcy court is neither the appropriate nor proper forum to adjudicate any of the claims and allegations contained in the Complaint.

[22] The Rooker-Feldman doctrine was established by the following decisions of the Supreme Court: *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 363 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983).

VI. Conclusion

Having reviewed the parties' arguments and admissible evidence, this Court finds that even if the evidence is read in the light most favorable to the Plaintiff and this Court assumes that every factual allegation contained in the Complaint is true, the Plaintiff has not submitted any evidence to establish that Defendants have violated any prior order of this Court, that this Court was defrauded, or that any term of the Court's prior order has not been fully executed. The Sale Order simply authorized the Trustee to sell the estate's interest in certain property to the Plaintiff. The Sale Order therefore cannot be the basis for the claims alleged in the Complaint. Based upon the Court's interpretation of the Sale Order, this Court finds that claims and causes of action asserted in the Complaint extend far beyond interpretation and enforcement of this Court's prior orders and are outside the ancillary jurisdiction of this Court. Movants have made a *prima facie* showing of entitlement to summary judgment and the Plaintiff has failed to meet its burden of demonstrating the existence of a triable issue of fact. There being no genuine issue of material fact as to the claims and causes of action within this Court's jurisdiction, this Court finds Movants requests for summary judgment are proper and should be GRANTED. Accordingly, this Court will enter an appropriate order incorporating this Memorandum of Decision and granting the relief requested by the Movants.

Signed on 9/30/2005

Brenda T. Rhoades MD

HONORABLE BRENDA T. RHOADES,
UNITED STATES BANKRUPTCY JUDGE