

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 7
)	
BLACKHAWK CORPORATION,)	Case No. 13-10282(KG)
)	
Debtor.)	Re: Dkt No. 70
_____)	

MEMORANDUM OPINION

Blackhawk Corporation ("Debtor") has moved for summary judgment (the "Motion") on the ground that litigation pending in the Superior Court of the State of California (the "California Action") is barred by *res judicata*. For the following reasons, the Motion is granted.

The facts are undisputed. The Creditors seek damages from landslides and soil movement in the California Action. The affected homes abut an undeveloped hillside, a portion of which is owned by Debtor and is known as Parcel G. The Creditors commenced the California Action against Debtor and others on May 6, 2009.

Debtor filed for bankruptcy under chapter 7 of the Bankruptcy Code on February 15, 2013. Given the bankruptcy filing, the Creditors severed and stayed the claims against Debtor in the California Action. The Court in the California Action approved the severance and the stay and Debtor has not been involved in the California Action since March 2, 2013.

On July 2, 2013, the Creditors each filed a proof of claim to which they attached a copy of the Third Amended Complaint in the California Action. The proofs of claim state they are based on Debtor's failure to "provide subjacent and lateral support to neighboring landowners. Total claim represents the estimated total cost of repair attributable to debtor

for all related creditor claims." In fact, each of Creditors' proofs of claim was allowed for \$6 million, and the Trustee based on an Order of this Court (D.I. 62) distributed to each Creditor his or her pro rata share of property available for distribution. Creditors did not object to or appeal from any distribution related matters.

The Court entered an Order on September 9, 2014 granting the Creditors limited relief from the automatic stay to have access to Parcel G "for purposes of investigation of remediation." Order, ¶ 2. D.I. 42. The Court also made it clear that it would not permit Creditors to proceed with the California Action but, instead, the Court would resolve such claims. Transcript of Hearing on August 18, 2014, 4:19-23, 23:6-9.

There are no material disputed facts. The Court may grant summary judgment if no genuine issue of material fact exists and, viewing the facts most favorably to the non-moving party, the movant is entitled to judgment as a matter of law. *Shubert v. Premier Paper Products, LLC (In re Am. Tissue, Inc.)*, 2007 Bankr. LEXIS 4004, at *9 (Bankr. D. Del. Nov. 20, 2007); F.R. Civ. P. 56(a). Such is the present case. The allowed proofs of claim are equivalent to a final judgment and "a bankruptcy court order allowing an uncontested proof of claim constitutes a 'final judgment' and thus a predicate for *res judicata*."¹ *EDP Med. Computer Sys. v. United States*, 480 F. 2d 621, 625 (2d Cir. 2007). *See also, Katchen v. Landy*, 382 U.S. 323 ("a creditor who offers a proof of claim and demands its allowance is bound by what is judicially determined.") In *In re Kurz v. EMAK Worldwide, Inc.*, 464 B.R.

¹ An action is barred by *res judicata* when, as here, there is a final judgment on the merits, the same parties are involved and the causes of action are the same. *U.S. v. Athlone Indus., Inc.*, 746 F. 2d 977, 986 (3d Cir. 1984). All of these factors exist here.

635, 643 (D. Del. 2011) the District Court held that Creditors filing of their proofs of claim transformed the claims they assert in the California Action into a core matter before the Court. Remember, the Creditors attached a copy of the Third Party Complaint to their proofs of claim. There is simply no difference between the Creditors' proofs of claim resolved in the bankruptcy case and the claims to be litigated in the California Action. The claims in the California Action are clearly pre-petition claims and were fully adjudicated in the claims process. This is true even if the damage did not appear until after the reorganization. The reason is that a claim is pre-petition when the exposure to harm gives rise to a right to payment. "[A] 'claim' arises when an individual is exposed pre-petition to a product or other conduct giving rise to an injury, which underlies a 'right to payment' under the Bankruptcy Code." *Jeld-Wen, Inc. v. Van Brunt (In re Grossman's Inc.)* 607 F. 3d 114, 125 (3d Cir. 2010).

What all of the foregoing means and stands for is that the Creditors' claims were allowed, they are the same claims which the Creditors assert in the Third Party Complaint and, therefore, the allowance of the proofs of claim here is *res judicata* to and bars further action in the California Action against Debtor.

Finally, the Creditors argue that the motion for summary judgment requires the filing of an adversary proceeding pursuant to Bankruptcy Rule 7001(9), and the request for injunctive relief requires an adversary proceeding pursuant to Bankruptcy Rule 7001(7). The Court does not believe that an adversary proceeding is necessary where Debtor is seeking to enforce a previous Order of the Court, namely the Distribution Order and the

Order granting limited stay relief whereby the Court made it clear that the Court would decide any issues relating to Parcel G. See *In re World Corp., Inc.*, 252 B.R. 890, 895 (Bankr. D. Del. 2000), and *In re Woods*, 316 B.R. 522, 525 (Bankr. N.D. Ill. 2004) ("a separate adversary proceeding is not required for collateral issues.")

Accordingly, the Court hereby grants Debtor's motion for summary judgment. The California Action is hereby barred on the basis of *res judicata*. An Order will issue.

Dated: May 26, 2016



KEVIN GROSS, U.S.B.J.

**IN THE UNITED STATES BANKRUPTCY
COURT FOR THE DISTRICT OF DELAWARE**

In re:) Chapter 7
)
BLACKHAWK CORPORATION,) Case No. 13-10282(KG)
)
Debtor.) Re: D.I. 70
_____)

ORDER GRANTING DEBTOR'S MOTION FOR SUMMARY JUDGMENT

Upon the motion of Blackhawk Corporation (the "Debtor") for entry of summary judgment (the "Motion") stating that any litigation of claims by creditors Jerrold Feiger, Nouri & Mehri Shahabi, Helen Vrionis, Michael & Pamela Volberding, Jose & Theresa Mendoza, Curtis & Julia Kundred, Geoffrey Fisher, Mary Sembrat, Shashipavan Bairaboina, Joseph & Martha Mazuryk, Siegfried Richert, Cynthia Coutermarsh, Michael & Kathleen Brown, Mary Harrison, Richard & Muriel Ruslender, Martin & Barbara Gerber, Michael & Kristy Desrosiers, Barry Weismann, and the Silver Oak Townhomes Homeowners Association (collectively, the "Creditors") arising out of the litigation styled *Feigler, et al. v. Blackhawk Corporation, et al.*, Case No. C09-01221 pending in the Superior Court of the State of California (the "California Action") are barred by the doctrine of *res judicata*; and the Court having considered the Motion, objection and reply; and the Court having held a hearing on the Motion; and due and proper notice of the Motion having been given, and no other or further notice being necessary or required, and after due deliberation and sufficient cause appearing therefor, the Court hereby

ORDERS that:

1. The Motion is GRANTED. There are no genuine disputes as to any material fact and the Debtor is entitled to relief as a matter of law.

2. The Creditors' claims against the Debtor in the California Action have been fully and finally resolved by this Court, and any further litigation by the Creditors against the Debtor based on the claims set forth in the California Action is forever barred, based upon *res judicata*.

3. This Court shall retain exclusive jurisdiction over any matter regarding the enforcement, interpretation, or implementation of this Order and any claims against and of the Debtor or its estate arising from or relating to the California Action, the Proofs of Claim, and the satisfaction thereof.

Dated: May 26, 2016
Wilmington, Delaware



THE HONORABLE KEVIN GROSS