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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IN RE: Debtor Allana Baroni

CASE NO. CV 22-7414-MWF

ORDER RE: APPEAL FROM
BANKRUPTCY COURT'S ORDERS
DENYING JAMES BARONI'S
MOTION RELATED TO THE
CARMEL PROPERTY AND
GRANTING IN PART TRUSTEE'S
MOTION FOR PROTECTIVE ORDER

Before the Court is a consolidated appeal of two orders from the United States Bankruptcy Court for the Central District of California (the Honorable Martin R. Barash, United States Bankruptcy Judge), Case No. 1:12-bk-10986-MB. This Court previously granted Appellant James Baroni's Motion to consolidate the two appeals, Case Nos. 22-cv-7414-MWF and 22-7526-MWF, under the earlier case number. (The "Consolidated Appeal" (Docket No. 17)).

In the Consolidated Appeal, Appellant James Baroni, the non-debtor spouse of Debtor Allana Baroni, appeals the following two orders: (1) the Bankruptcy Court's Order Denying Motion of James Baroni Relating to the Carmel Property (the "363 Motion") and the Bankruptcy Court's Order Granting in Part and Denying in Part Chapter 7 Trustee David Seror's ("Trustee") Motion for a Protective Order and Sanctions (the "Protective Order Motion"), both entered on the Bankruptcy Court's docket on September 12, 2022. (Appellant's Excerpts of Record ("ER") 2

1 (Written Order Denying James Baroni’s Motion Related to the Carmel Property
2 (“363 Order”), ER 3 (Written Order Granting in Part Chapter 7 Trustee’s Motion for
3 a Protective Order) (the “Protective Order”); (*see also* ER 45 (Bankruptcy Court’s
4 Oral Findings of Fact and Conclusions of Law on both Motions) (“FF&CL”),
5 entered on the Bankruptcy Court Docket on August 18, 2022)).

6 Appellant filed his opening brief (“OB”) on December 23, 2022. (Docket No.
7 20). Appellee Trustee filed his responsive brief (“RB”) on January 23, 2023.
8 (Docket No. 22). Appellant filed his reply brief (“ARB”) on February 2, 2023.
9 (Docket No. 24).

10 The Court read and considered the papers on the Motion and deemed the
11 matter appropriate for decision without oral argument. *See* Fed. R. App. P.
12 34(a)(2)(C) (noting that appeals may be decided without oral argument if the “facts
13 and legal arguments are adequately presented in the briefs and record, and the
14 decisional process would not be significantly aided by oral argument”).

15 The 363 Order and the Protective Order are **AFFIRMED**.

16 To the extent the Consolidated Appeal seeks to have the Carmel Property sold
17 to Mr. Baroni, Mr. Baroni impermissibly seeks to collaterally attack the Carmel Sale
18 Order, which specifically found and held that Mr. Baroni’s § 363(i) rights were
19 waived because Mr. Baroni failed to appear and object to the sale of the Property.
20 Mr. Baroni neither timely appealed the Carmel Sale Order nor sought
21 reconsideration under Rule 60(b). Therefore, Mr. Baroni may not now argue that
22 the Bankruptcy Court erred by finding Mr. Baroni waived his § 363(i) rights prior to
23 the “consummation” of the sale of the Carmel Property.

24 To the extent the appeal seeks to have the proceeds of the sale distributed to
25 Mr. Baroni, the Consolidated Appeal is likewise an impermissible collateral attack
26 not only on the Carmel Sale Order but additionally on the also-final Settlement
27 Order, both of which detail precisely how the proceeds from the sale of the Carmel
28 Property were to be distributed.

1 Accordingly, the Bankruptcy Court did not err in concluding that the 363
2 Motion was an impermissible collateral attack. The 363 Order is **AFFIRMED**.

3 The Bankruptcy Court also did not abuse its discretion in granting the
4 Trustee's request for a protective order because the discovery Mr. Baroni sought
5 was irrelevant, burdensome, and unwarranted. Indeed, there is no possibility that
6 the discovery would change the outcome of the 363 Motion. Accordingly, the
7 Protective Order is likewise **AFFIRMED**.

8 **I. BACKGROUND**

9 ***Carmel Sale Motion and Order:*** On October 30, 2020, the Trustee filed a
10 Sale Motion to approve the sale of real property located at 3435 Rio Road in
11 Carmel, California (the "Carmel Property") to the buyers (the "Captains") for \$1.4
12 million subject to overbid and subject to Mr. Baroni's § 363(i) rights (the "Carmel
13 Sale Motion"). The Carmel Sale Motion was served on Mr. Baroni's then counsel,
14 Wayne Silver, via electronic filing (ER 4 (Carmel Sale Motion) at 127), and notice
15 of the Sale Motion was served on Mr. Silver and Mr. Baroni twice – the original sale
16 notice and the amended sale notice. (*See* Appellee's Appendix ("AA"), Ex. 1
17 (Original Sale Notice), Ex. 2 (Amended Sale Notice)). The Sale Notices indicated
18 that "[i]f Mr. Baroni wishes to exercise []his right, he must appear at the hearing,
19 express his intent to exercise his [§] 363(i) right and provide the Trustee and the
20 Court with evidence that he has the ability to close at the ultimate sale price." (*See*,
21 *e.g.*, AA, Ex. 1 (Original Sale Notice) at 8).

22 On December 9, 2020, the Bankruptcy Court held a hearing on the Carmel
23 Sale Motion, at the end of which the Bankruptcy Judge explained that he was going
24 to approve the Carmel Sale Motion. (ER 15 (Carmel Sale Hearing) at 271-272).
25 The written Carmel Sale Order was entered on December 16, 2020. (ER 16 (Carmel
26 Sale Order) at 309-315). The Bankruptcy Court made the following findings in the
27 Carmel Sale Order with respect to Mr. Baroni's § 363(i) rights based upon the fact
28 that the Carmel Property was scheduled as community property:

1 D. Proper, timely, sufficient and adequate notice has been
2 provided to the Debtor's spouse, James Baroni, regarding his
3 rights under 11 U.S.C. § 363(i). Despite having sufficient
4 notice and opportunity to exercise his rights under § 363(i)
5 with regard to the Property, James Baroni failed to invoke
6 such rights or otherwise oppose the Motion.

7 4. The Trustee is authorized to sell, convey, assign, and
8 transfer all of the estate's right, title and interest in the
9 Property for a purchase price of One Million Four Hundred
10 Thousand Dollars (\$1,400,000.00) ("Purchase Price") to
11 Buyer, on an "AS IS, WHERE IS" basis, without any
12 warranties, expressed or implied, and without any
13 contingencies, pursuant to Bankruptcy Code § 363(b), and
14 pursuant to Bankruptcy Code § 363(f), free and clear of all
15 liens, claims, interests, and encumbrances, including but not
16 limited to (a) the property taxes, (b) the deeds of trust, and (c)
17 the Option, with such liens, claims, interests, and
18 encumbrances to attach to the sale proceeds with the same
19 priority and rights of enforcement as previously existed, if
20 any. Specifically, the Property is sold free and clear of the
21 1999 Deed of Trust and the Option pursuant to Bankruptcy
22 Code §§ 363 (f)(2) and (4).

23 ***5. The Property is sold free and clear of any and all liens,
24 claims, interests and encumbrances James Baroni may have
25 in the Property pursuant to Bankruptcy Code §§ 363(f)(2)
26 and (i).***

27 7. Because James Baroni did not object to the sale or invoke
28 his § 363(i) rights, the Court concludes that ***he has consented
to the sale of the Property*** pursuant to § 363(f)(2) and no
signature is necessary from James Baroni to effectuate the
sale.

(*Id.* at 311, 313) (emphasis added).

The Bankruptcy Court also made findings as to the distribution of the Carmel
Property sale proceeds, pursuant to the terms of another final order regarding a

1 Settlement between the Trustee and certain creditors. The findings as to the
2 distribution of proceeds included the following:

3 (a) Normal closing costs including, but not limited to, the
4 Trustee's share of escrow charges, the cost of standard
5 coverage title insurance policy, recording fees, documentary
6 transfer taxes, pro-rated real property taxes, and other normal
and customary charges, pro-rations, costs, and fees;

7 (b) Current and delinquent property taxes owed;

8 (c) ***\$75,000 carveout paid to the Trustee pursuant to the***
9 ***Settlement with Nationstar*** and the Order Granting Chapter 7
10 Trustee's Motion for Approval of Compromise with Certain
11 Prepetition Lenders Pursuant to Federal Rule of Bankruptcy
12 Procedure 9019 and Section 363(m) of the Bankruptcy Code
[Doc. #1273] (the "Settlement Order") to be held for the
benefit of the Estate;

13 (d) Commission of 6% of the Purchase Price paid to the
14 estate's broker, Heidi Robinson, (\$42,000) and to the Buyer
15 in his capacity as a California licensed real estate broker
16 (\$42,000); and

17 (e) ***The remaining sum of sale proceeds***, after the amounts in
18 Paragraphs 6(a) through 6(d) are paid, ***shall be paid by escrow***
19 ***to Nationstar in satisfaction of its Deed of Trust recorded***
20 ***March 4, 2004 as agreed to by Nationstar in the settlement***
21 ***agreement*** entered into between, among others, Nationstar
and the Trustee and approved pursuant to the Settlement
Order.

22 (*Id.* at 314) (emphasis added).

23 Mr. Baroni neither objected to the entry of the Carmel Sale Order nor did he
24 appeal. The Debtor, however, appealed the Carmel Sale Order and the Bankruptcy
25 Appellate Panel ("BAP") affirmed. *See In re Baroni*, No. 1:12-BK-10986-MB,
26 2021 WL 3011907, at *8 (B.A.P. 9th Cir. July 13, 2021), *appeal dismissed*, No. 21-
27 60045, 2023 WL 2058699 (9th Cir. Feb. 8, 2023) ("[T]he record supports the
28 bankruptcy court's findings underlying its approval of the sale."). After Debtor

1 dismissed her appeal to the Ninth Circuit, the Carmel Sale Order became a final
2 order as to all parties involved.

3 ***Consummation of the Sale of the Carmel Property:*** A stay pending appeal
4 was imposed on the sale of the Carmel Property until the Ninth Circuit issued its
5 decision in two related appeals. *In re Baroni*, 36 F.4th 958 (9th Cir. 2022). As a
6 result of the Ninth Circuit’s lifting of the stay on June 8, 2022, the Carmel Sale
7 Order was no longer stayed, and the Trustee was free to complete the sale of the
8 Carmel Property.

9 On June 23, 2022, the Trustee completed the sale of the Carmel Property. On
10 June 27, 2022, after the Trustee received the final settlement statement (the
11 “Settlement Statement”) from the escrow company, the Trustee filed his Report of
12 Sale, advising the Court and all interested parties that the Carmel Property had been
13 sold and escrow had closed, and attached a copy of the Settlement Statement to the
14 filing. (ER 22 (Report of Sale of Carmel Property) at 393-398).

15 ***Mr. Baroni’s 363 Motion and Trustee’s Motion for Protective Order:*** On
16 July 5, 2022, with the Carmel Property sold pursuant to the Carmel Sale Order and
17 the proceeds distributed, Mr. Baroni filed the 363 Motion seeking to have the
18 Carmel Property sold to him or, alternatively, to receive 50% of the net proceeds.
19 (ER (363 Motion) at 399-550). In the 363 Motion, Mr. Baroni made a slew of
20 arguments suggesting there were various improprieties surrounding when and how
21 the sale of the Carmel Property closed. The Court need not and does not attempt to
22 summarize the litany of arguments on this issue; suffice it to say that each of Mr.
23 Baroni’s arguments seeks to establish that the sale of the Carmel Property has never
24 been “consummated” as a matter of law.

25 In association with the 363 Motion, Mr. Baroni moved for discovery, seeking
26 to investigate the details concerning the sale and escrow process of the Carmel
27 Property. Meanwhile, before the Bankruptcy Court ruled on the request for
28 discovery, Mr. Baroni and Debtor served subpoenas, deposition notices, and

document demands on several parties, including the Trustee. The discovery that was sought is listed as follows:

Discovery Item	Proponent	Date for Production or Appearance
Notice of Deposition of Antoni[a] Delgado; Rule 45 subpoena for documents	Debtor and Mr. Baroni	19-July-22
Notice of Deposition of A&A Escrow Services, Inc; Rule 45 subpoena for documents	Debtor and Mr. Baroni	19-July-22
Notice of Deposition of Brutzkus Gubner Rozansky Seror Weber LLP, Currently Named BG Law LLP per Their Press Release; Rule 45 subpoena for documents	Debtor and Mr. Baroni	20-July-22
Notice of Deposition of David Seror	Debtor and Mr. Baroni	21-July-22

The document demands included the following:

1. Payoff demand from the bank and evidence of payment to the bank
2. Evidence of payment to broker;
3. Evidence that Captains paid \$43,500 deposit;
4. Documents referring to why the quitclaim deed was signed by the Trustee on 12/12/2020 and when Captains received such deed, including whether such deed was received prior to payment;
5. Documents relating to the payment of the \$1,400,000 purchase price;
6. Communications with the Captains or the escrow company regarding the motion to sell and entry of the court's Carmel Sale Order;
7. All communications with the Captains and the escrow company from the date of the original purchase to June 30, 2022;

The Debtor and Mr. Baroni also seek the depositions of the Trustee's counsel, the escrow agent and escrow company, and the Trustee all related to the sale of the Carmel Property.

(ER 33 (Trustee's Motion for a Protective Order) at 741-42).

1 In response to the above discovery requests, the Trustee moved for a
2 protective order, quashing the subpoenas and deposition notices. (*Id.* at 743).

3 The Bankruptcy Court denied the 363 Motion (the “363 Order”) and granted
4 the Trustee’s request for a Protective Order (the “Protective Order”) but denied
5 without prejudice the Trustee’s request for sanctions. The sanctions issue is not a
6 subject of this appeal.

7 **II. ISSUES ON APPEAL**

8 1. Did the Bankruptcy Court err in concluding that the 363 Motion was an
9 impermissible collateral attack on the Carmel Sale Order?

10 2. Did the Bankruptcy Court abuse its discretion by granting the Trustee’s
11 protective order against Mr. Baroni’s discovery requests?

12 **III. STANDARD OF REVIEW**

13 The Court has jurisdiction to hear appeals from final judgments, orders, and
14 decrees of the bankruptcy court. 28 U.S.C. § 158(a). When considering an appeal
15 from the bankruptcy court, a district court uses the same standard of review that a
16 circuit would use in reviewing a decision of a district court. *See In re Baroff*, 105
17 F.3d 439, 441 (9th Cir. 1997).

18 Whether a prior judgment has a claim preclusive or issue preclusive effect is
19 either a question of law or a mixed question of law and fact with the legal issues
20 predominating. The Court has therefore reviewed the bankruptcy court's
21 determination that the 363 Motion is a collateral attack de novo, except to the extent
22 it involved the Bankruptcy Court’s interpretation of its own orders, which the Court
23 reviewed for abuse of discretion. *See In re Fine*, No. ADV LA 04-01303-BB, 2005
24 WL 6960195, at *6 (B.A.P. 9th Cir. Sept. 30, 2005) (citing *O'Malley Lumber Co. v.*
25 *Lockard (Matter of Lockard)*, 884 F.2d 1171, 1174 (9th Cir. 1989)); *see also*
26 *Marciano v. Fahs (In re Marciano)*, 459 B.R. 27, 35 (9th Cir. BAP 2011), *aff'd, sub.*
27 *nom Marciano v. Chapnick (In re Marciano)*, 708 F.3d 1123 (9th Cir. 2013) (“[A]

1 bankruptcy court's interpretation of its own orders [is reviewed] for abuse of
2 discretion.”).

3 A denial of discovery by the bankruptcy court is subject to an abuse of
4 discretion standard. *Laub v. U.S. Dep't of Interior*, 342 F.3d 1080, 1093 (9th Cir.
5 2003). “A decision to deny discovery will not be disturbed except upon the clearest
6 showing that the denial of discovery results in actual and substantial prejudice to the
7 complaining litigant. Prejudice is established if there is a reasonable probability that
8 the outcome would have been different had discovery been allowed.” *Colchester v.*
9 *Lazaro*, 16 F.4th 712, 725 (9th Cir. 2021) (quoting *Laub*, 342 F.3d at 1093).

10 **IV. DISCUSSION**

11 **A. The Bankruptcy Court Did Not Err in Concluding that Mr.** 12 **Baroni’s 363 Motion was an Impermissible Collateral Attack on** 13 **the Final, Non-Appealable Carmel Sale Order.**

14 Mr. Baroni seeks to compel the Trustee to sell the Carmel Property to Mr.
15 Baroni pursuant to 11 U.S.C. § 363(i), or alternatively to compel the Trustee to
16 distribute to Mr. Baroni 50% of the net sale proceeds obtained from the sale of the
17 Carmel Property pursuant to 11 U.S.C. § 363(j). (AB at 1).

18 In pertinent part, § 363(i) of the Bankruptcy Code provides that “[b]efore the
19 consummation of a sale . . . of property of the estate that was community property . .
20 . the debtor's spouse . . . may purchase such property at the price at which such sale
21 is to be consummated. 11 U.S.C. § 363(i). Section 363(j) provides that after a sale
22 of community or co-owned property, the Trustee shall distribute the sale proceeds
23 according to the interests of any spouse, co-owner, and the estate. 11 U.S.C. §
24 363(j).

25 True to form, Mr. Baroni’s counsel advances convoluted arguments that ask
26 the Court to engage in painful mental gymnastics. Much of the arguments put
27 forward may be ignored, however, because Mr. Baroni faces an insurmountable
28 hurdle that he fails to adequately confront. The Carmel Sale Order — which sold

1 the Carmel Property free and clear of Mr. Baroni’s § 363(i) rights and detailed how
2 the proceeds of the sale would be distributed — is a final, non-appealable order that
3 cannot be collaterally attacked.

4 The Carmel Sale Order forecloses the request made under § 363(i), because
5 within that Order, the Bankruptcy Court explicitly held that the “[Carmel] Property
6 is sold free and clear of any and all liens, claims, interests and encumbrances James
7 Baroni may have in the Property pursuant to Bankruptcy Code.” (ER 16 (Carmel
8 Sale Order) at 311, 313, 314). Further, the Bankruptcy Court held that “[b]ecause
9 James Baroni did not object to the sale or invoke his § 363(i) rights . . . he has
10 consented to the sale of the Property pursuant to § 363(f)(2).” (*Id.* at 314). While
11 the Bankruptcy Code limits the conditions under which an interest can be
12 extinguished by a bankruptcy sale, “one of those conditions *is the consent of the*
13 *interest holder*, and lack of objection (provided of course there is notice) counts as
14 consent.” *See FutureSource LLC v. Reuters Ltd.*, 312 F.3d 281, 285 (7th Cir. 2002)
15 (collecting cases) (emphasis added).

16 Despite these fatal findings, Mr. Baroni’s 363 Motion (and now his appeal)
17 seeks to unravel the final Carmel Sale Order based on his claimed § 363(i) rights.
18 The Bankruptcy Court, reviewing its own Carmel Sale Order, concluded that, after
19 being served with sufficient notice of the Carmel Sale Hearing, “Mr. Baroni waived
20 his matching right under [§] 363(i) because he didn’t appear at the [Carmel Sale]
21 [H]earing and state his intention to exercise it[.]” (ER 45 (FF&CL) at 1333:24-
22 1335:9). Yet, Mr. Baroni now argues on appeal that “James has **not** waived his [§]
23 363(i) rights[.]” (ARB at 4) (emphasis in original).

24 The Bankruptcy Court reasoned that while Mr. Baroni’s counsel contends that
25 he is “not seeking to collaterally attack the [Carmel] [S]ale [O]rder,” that is,
26 “precisely what he is trying to do.” (ER 45 (FF&CL) at 1336:4-5). The Bankruptcy
27 Court explained that the Carmel Sale Order “plainly precludes Mr. Baroni from now
28 seeking to have the property sold to him” because in the Carmel Sale Order, the

1 Bankruptcy Court “found that Mr. Baroni did not show up at the hearing to express
2 an intent to exercise his [§] 363(i) purchase rights, concluded that Mr. Baroni had
3 therefore consented to the sale to the third-party purchasers and authorized the sale
4 to those buyers.” (*Id.* at 1336:6-11).

5 The Bankruptcy Court’s interpretation of its own Carmel Sale Order (i.e., that
6 the Order found and concluded that Mr. Baroni’s §363(i) rights had been waived) is
7 the only rational reading of the Carmel Sale Order, and therefore was not an abuse
8 of discretion.

9 Further, the Bankruptcy Court did not err as a matter of law, in concluding
10 that the 363 Motion is a collateral attack on the Carmel Sale Order, given Mr.
11 Baroni seeks to assert his §363(i) rights despite the Carmel Sale Order’s holding that
12 Mr. Baroni waived his § 363(i) rights.

13 The essence of Mr. Baroni’s argument is that the finding of waiver in the
14 Carmel Sale Order is erroneous because Mr. Baroni “should not have been required
15 to show up” at the Carmel Sale Hearing “as a prerequisite to exercising his [§]
16 363(i) rights.” (ER 45 (FF&CL) at 1336:19-22; *see also* AB at 31). Instead, Mr.
17 Baroni “contends that up until the moment of ‘consummation’ he can swoop in and
18 purchase the property” and because the Carmel Sale Order prohibits him from doing
19 so, he contends “the [Carmel] [S]ale [O]rder interferes with this right.” (ER 45
20 (FF&CL) at 1336:22-25). This argument, in turn, is premised on the language of
21 §363(i) and a BAP decision interpreting that language.

22 As noted, § 363(i) provides that “[b]efore the consummation of a sale” of
23 community property, the debtor's spouse “may purchase such property at the price at
24 which such sale is to be consummated.” 11 U.S.C. § 363(i) (emphasis added). In
25 *In re Lewis*, 515 B.R. 591 (B.A.P. 9th Cir. 2014), the BAP considered whether the
26 entry of a sale order, without more, constituted “consummation of a sale,” such that
27 a non-debtor spouse may never assert his or her §363(i) rights following the entry of
28 a sale order. The BAP concluded that a sale order does not, on its own, amount to

1 “consummation of a sale” for purposes of §363(i), but instead, to consummate a
2 sale, the third party must tender payment. *See id.* at 595.

3 Nothing in *In re Lewis* suggests that the BAP was dealing with a sale order
4 that included an **explicit** finding that the non-debtor spouse had waived her § 363(i)
5 rights by failing to object to the first sale order. Indeed, the facts suggest the
6 opposite because the bankruptcy court entered a second sale order selling the
7 property to the non-debtor spouse pursuant to § 363(i), without even “officially
8 vacat[ing]” the first sale order to the third party, which necessarily implies that the
9 orders were not irreconcilable (and moreover, the non-debtor spouse sought timely
10 reconsideration of the first sale order). *See id.* at 593, 396 (noting that the
11 bankruptcy court did not need to “officially vacate” the first sale order before
12 granting the non-debtor spouse’s § 363(i) sale order, which implicitly suggests that
13 the orders could be read to mean that the first sale order was contingent on the
14 failure of the non-debtor spouse to exercise her rights under § 363(i) prior to
15 consummation of the sale by the third party).

16 By contrast, here, the Bankruptcy Court conditioned the sale of the Carmel
17 Property to the Captains on Mr. Baroni ***appearing at the Carmel Sale Hearing and***
18 ***objecting to the sale.*** Not having done so, the Bankruptcy Court explicitly held via
19 the Carmel Sale Order that Mr. Baroni waived his § 363(i) rights. Therefore, any
20 order compelling the Trustee to now sell the property to Mr. Baroni under § 363(i)
21 would inevitably be irreconcilable with the Carmel Sale Order, which held that Mr.
22 Baroni waived his § 363(i) rights. *See In re Adams*, No. BAP CC-19-1030-TALS,
23 2019 WL 6463992, at *5 (B.A.P. 9th Cir. Nov. 26, 2019) (concluding that a spouse
24 must appeal (or otherwise seek reconsideration under Rule 60(b) of) a sale order that
25 finds and concludes that the spouse’s § 363(i) rights have been waived in order to
26 preserve the § 363(i) right).

27 Ultimately, the question on appeal is not whether, under *In re Lewis*, the
28 Bankruptcy Court erred by requiring Mr. Baroni to object to the sale or otherwise

1 waive his § 363(i) rights, but whether the Bankruptcy Court erred in concluding that
2 res judicata precluded Mr. Baroni from making such an argument after the time to
3 appeal has expired and without seeking reconsideration of the Carmel Sale Order
4 under the proper procedure. The Bankruptcy Court correctly concluded that the
5 argument and relief sought are barred by principles of res judicata.

6 An individual may challenge an order authorizing a sale of estate assets by
7 either (1) objecting to the proposed sale and then appealing the sale order to the
8 district court or (2) attacking the order collaterally pursuant to Federal Rule of Civil
9 Procedure 60(b), which is applicable to bankruptcy proceedings pursuant to Federal
10 Rule of Bankruptcy Procedure 9024. *See In re Ducane Gas Grills*, 320 B.R. 324,
11 333 (Bankr. D.S.C. 2004); *In re Liu*, 611 B.R. 864, 881 (B.A.P. 9th Cir. 2020) (“Our
12 prior decisions make clear that appellants cannot successfully challenge an order on
13 appeal by attacking a prior final order that they did not timely appeal.”); *In re*
14 *Alakozai*, 499 B.R. 698, 704 (9th Cir. BAP 2013) (“Alakozai’s challenge to . . . the
15 In Rem Order in the Fourth Case amounts to a collateral attack on a final order”);
16 *see also In re Grantham Bros.*, 922 F.2d 1438, 1442 (9th Cir. 1991) (“The failure of
17 the debtors to seek any review, reconsideration, or stay of the bankruptcy court’s
18 order precluded the collateral attack included in [debtors’ adversary proceeding]
19 complaint.”); *In re TLFO, LLC*, 572 B.R. 391, 429 (Bankr. S.D. Fla. 2016) (“[F]inal
20 sale orders of bankruptcy courts may not be challenged or collaterally attacked
21 outside of [the proscribed] method of challenges, objections[,] and appeals[.]”).

22 Here, Mr. Baroni did not object to the entry of the Carmel Sale Order, appeal
23 the Carmel Sale Order, or seek reconsideration of the Carmel Sale Order from the
24 Bankruptcy Court under Rule 60(b). Instead, Mr. Baroni repeatedly insists that the
25 363 Motion is not a collateral attack. Mr. Baroni is mistaken.

26 As the Bankruptcy Court explained, whether *In re Lewis* prohibited it from
27 finding that Mr. Baroni’s rights were waived prior to the consummation of the sale
28 is “immaterial” because if Mr. Baroni did not agree that such a waiver was valid, he

1 should have “objected, appeared at the hearing, and appealed the order[.]” (ER 45
2 (FF&CL) at 1337:7-9). The Bankruptcy Court reasoned that the Carmel Sale Order,
3 “authorizing the Trustee to sell the property to third-party buyer, notwithstanding
4 Mr. Baroni’s Section 363(i) rights, is a final order” and yet “Mr. Baroni is now
5 showing up arguing that the property should be sold to him because of his 363(i)
6 rights.” (*Id.* at 1337:8-15). The Bankruptcy Court noted, “if this is not an
7 impermissible collateral attack on a final order of this court, I don’t know what is.”
8 (*Id.* at 1337:16-18). Therefore, the Bankruptcy Court denied the 363 Motion under
9 principles of res judicata. (*Id.* at 1337:19-22).

10 The doctrine of res judicata bars a party from bringing a claim if a court of
11 competent jurisdiction has rendered final judgment on the merits of the claim in a
12 previous action involving the same parties or their privies. *In re Int’l Nutronics,*
13 *Inc.*, 28 F.3d 965, 969 (9th Cir. 1994) (internal citation omitted). “Res judicata bars
14 all grounds for recovery that could have been asserted, whether they were or not, in
15 a prior suit between the same parties on the same cause of action.” *Id.* The elements
16 necessary to establish res judicata are: “(1) an identity of claims, (2) a final
17 judgment on the merits, and (3) privity between parties.” *Headwaters Inc. v. U.S.*
18 *Forest Serv.*, 399 F.3d 1047, 1052 (9th Cir. 2005) (internal citations omitted).

19 The application of the doctrine to bankruptcy court orders is somewhat
20 distinct from other scenarios given the nature of the proceedings, but courts
21 routinely conclude that attacks to final, non-appealable bankruptcy court orders
22 outside the specified criteria of Rule 60(b) are improper “collateral attacks,” and the
23 “collateral attack” doctrine is a species of “res judicata.” *See, e.g., In re Grantham*
24 *Bros.*, 922 F.2d at 1442 (Ninth Circuit affirming order imposing Rule 11 sanctions
25 against the debtor’s counsel because the debtor’s counsel collaterally attacked a sale
26 order and did not seek “any review, reconsideration, or stay of the bankruptcy
27 court’s order”); *see also In re Int’l Nutronics*, 28 F.3d at 970-71 (referring to an
28 action barred by res judicata as a “collateral attack” on a bankruptcy court order).

1 Therefore, the Bankruptcy Court applied the correct legal standard and also
2 correctly concluded that all the elements are readily met, for these reasons:

3 **First**, there is an identity of claims given Mr. Baroni’s entire motion is
4 premised on the fact that his 363(i) rights have not been waived despite the Carmel
5 Sale Order’s contrary holding. And that Mr. Baroni did not raise the *In re Lewis*
6 argument prior to the entry of the Carmel Sale Order does not save him. *See In re*
7 *HNRC Dissolution Co.*, 549 B.R. 469, 483 (Bankr. E.D. Ky. 2016), *aff’d*, 585 B.R.
8 837 (B.A.P. 6th Cir. 2018), *aff’d*, 761 F. App’x 553 (6th Cir. 2019) (“A different
9 legal theory, based on the same set of facts as in the prior action will not save the
10 claim from res judicata.”).

11 **Second**, the Carmel Sale Order is a final judgment on the merits. *See In re*
12 *Int’l Nutronics*, 28 F.3d at 969 (the Ninth Circuit noting that a “bankruptcy court’s
13 order confirming a sale has preclusive effects” and is a final judgment for purposes
14 of res judicata); *see also In re Clinton St. Food Corp.*, 254 B.R. 523, 530–31 (Bankr.
15 S.D.N.Y. 2000) (collecting cases across multiple circuits for the proposition that
16 “[a] bankruptcy court order approving a sale of assets is a final order for res judicata
17 purposes”).

18 And **third**, the privity element is met because “[a] bankruptcy sale under 11
19 U.S.C. § 363, free and clear of all liens, is a judgment that is good as against the
20 world, not merely as against parties to the proceedings.” *Regions Bank v. J.R. Oil*
21 *Co., LLC*, 387 F.3d 721, 732 (8th Cir. 2004); *see also Gekas v. Pipin (In re Met-L-*
22 *Wood Corp.)*, 861 F.2d 1012, 1017 (7th Cir. 1988) (“A proceeding under [§] 363 is
23 an in rem proceeding. It transfers property rights and property rights are rights good
24 against the world, not just against parties to a judgment or persons with notice of the
25 proceeding.”).

26 Therefore, Mr. Baroni’s arguments are foreclosed by res judicata – even if the
27 Carmel Sale Order was erroneous (which this Court has not considered but doubts,
28 based on what can be gleaned from the appellate briefs). *See Espinosa v. United*

1 *Student Aid Funds, Inc.*, 553 F.3d 1193 (9th Cir. 2008), *judgment aff'd*, 559 U.S.
2 260 (2010) (“Even an incorrect judgment is binding, unless and until it is re-opened
3 and modified”). Because Mr. Baroni did not bring a Rule 60(b) motion for
4 reconsideration of the Carmel Sale Order, does not advance any Rule 60(b)
5 arguments, and instead insists that the 363 Motion is not a collateral attack, this
6 Court will not construe the 363 Motion or this appeal as a Rule 60(b) motion.

7 In sum, the Bankruptcy Court correctly concluded that the 363 Motion was a
8 collateral attack on the Carmel Sale Order to the extent it sought to have the Trustee
9 sell Mr. Baroni the Carmel Property under §363(i).

10 To the extent the 363 Motion seeks a distribution of proceeds pursuant to
11 §363(j), the Bankruptcy Court’s conclusion is even more justified because such
12 relief is barred by *two* final orders. The Carmel Sale Order detailed precisely how
13 the sale proceeds would be distributed, and in that respect, the Carmel Sale Order
14 merely implemented the terms of another final, non-appealable order, the Settlement
15 Order, reached between the Trustee and certain creditors of the Estate. (*See* ER 16
16 (Carmel Sale Order) at 314); *see also* Bankruptcy Docket No. 1273 (“Settlement
17 Order”) (mandating the sale of the Carmel Property and detailing how the proceeds
18 would be distributed); *see also See In re Baroni*, No. 1:12-BK-10986-MB, 2021 WL
19 3011907, at *7 (B.A.P. 9th Cir. July 13, 2021) (affirming Settlement Order on
20 Debtor’s appeal); *In re Baroni*, Case No. 21-60045, 2023 WL 2058699, at *1 (9th
21 Cir. Feb. 8, 2023) (dismissing Debtor’s appeal of the Settlement Order for lack of
22 standing). Mr. Baroni does not even pretend to advance arguments to explain how
23 the 363 Motion is not a collateral attack on both the Carmel Sale Order and the
24 Settlement Order. Therefore, the Bankruptcy Court did not err when it concluded
25 that Mr. Baroni “may not seek to unsettle the Court’s order governing the
26 distribution of proceeds that he had notice of and opportunity to object to, and an
27 opportunity to appeal from.” (ER 45 (FF&CL) at 1370:23-1371:1).

1 Because Mr. Baroni's 363 Motion would necessarily require the final, non-
2 appealable Carmel Sale Order to be set aside, it is clearly a collateral attack.
3 Accordingly, the Bankruptcy Court did not err, and the 363 Order is **AFFIRMED**.

4 For safe measure, the Court further notes that even if it were not an
5 impermissible collateral attack, Mr. Baroni fails to convince the Court that the
6 Bankruptcy committed any error of law or abuse of discretion in concluding that the
7 sale of the Carmel Property *has in fact been consummated*, such that Mr. Baroni's
8 § 363(i) rights are extinguished by operation of law (and regardless of the Carmel
9 Sale Order). Indeed, Mr. Baroni concedes that if the sale has been consummated,
10 then his § 363(i) rights have been extinguished and he lacks standing to bring a §
11 363(i) Motion and/or appeal. (*See* ARB at 2) (“**IF** the sale was **consummated**,
12 pursuant to the [Carmel] Sale Order” then “[b]y not opposing/appealing” Mr. Baroni
13 “would have waived his 363(i) rights”) (emphasis in original).

14 Because the Bankruptcy Court correctly concluded that the sale has in fact
15 been consummated, Mr. Baroni lacks standing to bring a motion premised on rights
16 that he no longer has. Accordingly, the Bankruptcy Court's 363 Order is further
17 **AFFIRMED** to the extent it is premised on Mr. Baroni's lack of standing.

18 **B. The Bankruptcy Court Did Not Abuse its Discretion in Granting**
19 **the Trustee's Protective Order in Response to the Discovery**
20 **Requests.**

21 The Bankruptcy Court concluded that all of the discovery requests, which
22 delve into the “details of how the escrow operated,” were “irrelevant,” because they
23 all went to the issue of whether the sale of the Carmel Property was
24 “consummated.” (ER 1370:19-20). Correctly applying Federal Rule 26(b)(1),
25 which is applicable to bankruptcy courts in contested matters via Federal Rules of
26 Bankruptcy Procedure 7026, the Bankruptcy Court concluded that “the discovery . .
27 . is not important to the issues at stake in the action, not important to resolving any
28 issues of consequence in the matter, not proportional and not justified by any benefit

1 it would produce.” (ER 45 (FF&CL) at 1372:9-12). The Bankruptcy Court utilized
2 the correct standard and correctly applied that standard.

3 Whether the sale was “consummated” would only matter if Mr. Baroni
4 successfully set aside the Carmel Sale Order, which, as noted, explicitly held that
5 Mr. Baroni’s § 363(i) rights in the Carmel Property were forever extinguished
6 because he failed to object at the Carmel Sale Hearing. Because Mr. Baroni may
7 not use this appeal to collaterally attack the Carmel Sale Order, Mr. Baroni fails to
8 establish that the discovery sought is relevant and/or proportional to the needs of
9 any contested matter. (*See* AB at 37) (“No amount of discovery can undo the
10 finality of the [Carmel] Sale Order.”). In sum, Mr. Baroni has not shown that he
11 was prejudiced by the denial of discovery, because there is no possibility that the
12 outcome would have been different had discovery been allowed. *See Colchester*, 16
13 F.4th at 725 (explaining that appellant must show prejudice to establish that a denial
14 of discovery was an abuse of discretion).

15 The Bankruptcy Court did not abuse its discretion in granting the Trustee’s
16 request for a protective order. Accordingly, the Protective Order is **AFFIRMED**.

17 **C. Sanctions Request**

18 To the extent the Trustee seeks sanctions for bringing this appeal, the request
19 is **DENIED**. The Trustee must bring such requests as separately filed Motions and
20 should not add such requests to his briefs regarding the merits of the appeal.
21 Further, the Court is already considering another sanctions order against Mr. Baroni
22 and his counsel, and that sanctions order, if issued, will consider Mr. Baroni’s and
23 counsel’s history of meritless arguments and appeals.

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IT IS SO ORDERED.


MICHAEL W. FITZGERALD
United States District Judge

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