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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH
Central Division**

<p>In re</p> <p>CASTLE ARCH REAL ESTATE INVESTMENT COMPANY, LLC; CAOP MANAGERS, LLC; CASTLE ARCH KINGMAN, LLC; CASTLE ARCH SECURED DEVELOPMENT FUND, LLC; and CASTLE ARCH SMYRNA, LLC ; CASTLE ARCH STAR VALLEY, LLC; <i>and</i></p> <p>CASTLE ARCH OPPORTUNITY PARTNERS I, LLC; CASTLE ARCH OPPORTUNITY PARTNERS II, LLC,</p> <p>Debtors.</p>	<p>Case Nos. 11-35082, 11-35237, 1135243, 11-35242 and 11-35246 (Substantively Consolidated)</p> <p>Case Nos. 11-35241 and 11-35240 (Jointly Administered)</p> <p>(Chapter 11) Honorable Joel T. Marker</p> <p>THIS DOCUMENT RELATES TO:</p> <ul style="list-style-type: none"><input type="checkbox"/> Affects All Debtors<input checked="" type="checkbox"/> Affects the Substantively Consolidated Debtors<input checked="" type="checkbox"/> Affects only Castle Arch Opportunity Partners I, LLC<input type="checkbox"/> Affects Castle Arch Opportunity Partners II, LLC
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**MOTION TO SET ASIDE ORDER
APPROVING SETTLEMENT AGREEMENT**

Pursuant to Federal Rule of Civil Procedure 60(b)(6), Prince, Yeates & Geldzahler (“**Prince Yeates**”) respectfully moves this Court for an order setting aside this Court’s prior order approving a settlement agreement (the “**Settlement Agreement**”) between the Legacy Trust and the CAOP I Trust that was proposed by Ray Strong (“**Strong**”) as trustee of both trusts and which was entered on December 4, 2014 (the “**Settlement Order**”). Main Case Dkt. 1042.

INTRODUCTION

Prince Yeates is a beneficiary of the Legacy Trust,¹ having an allowed administrative expense claim arising from its services as CAREIC’s counsel during its chapter 11 bankruptcy case. Prince Yeates is an unlikely movant because the Legacy Trust was the clear winner under the Settlement Agreement, and setting aside the Settlement Order is likely to reduce the money available for distribution to it and fellow Legacy Trust beneficiaries. Strong has, however, provided Prince Yeates with other motivation. He has sued Prince Yeates for malpractice arising from Prince Yeates’ alleged failure (while representing CAREIC as a debtor-in-possession) to ensure that CAREIC’s management reported certain claims to its D & O insurance carrier. This malpractice claim was recently dismissed by this Court on summary judgment based upon Strong’s inability to identify any claims that Prince Yeates should have reported. But Strong has appealed. And in that

¹ For this memorandum, Prince Yeates will use the same defined terms as are used in John Saggiani’s Motion to Set Aside Order Approving Settlement Agreement filed on November 3, 2015. Main Case Dkt. 1165.

appeal, Strong has identified the \$2.9 million unsecured claim of the CAOP I Trust against the Legacy Trust—which is among the claims that Strong agreed to in the Settlement Agreement—as a claim that Prince Yeates was responsible to have reported but did not. In Strong’s appeal of the malpractice action, Prince Yeates has argued that it has no liability for the CAOP I Trust’s \$2.9 million claim against the Legacy Trust because, among other reasons, the claim was barred and, therefore, unenforceable before Strong agreed to it in the Settlement Agreement.² But the stamp of this Court’s approval (*i.e.*, the Settlement Order) is, and remains, a stumbling block for Prince Yeates in defending against Strong’s claims on appeal—hence the primary motivation behind Prince Yeates’ present motion.

FACTS

Prince Yeates incorporates by this reference the facts numbered 1 through 44 and 46 as stated in John Saggiani’s Motion to Set Aside Order Approving Settlement Agreement. Main Case Dkt. 1165.

ARGUMENT

Prince Yeates incorporates by this reference the arguments in sections I and II in John Saggiani’s Motion to Set Aside Order Approving Settlement Agreement. Main Case Dkt. 1165.

² Prince Yeates was unaware that CAREIC’s claims were barred until after the Settlement Order was entered. It discovered the true facts only by virtue of preparing its defenses to Strong’s malpractice claims.

CONCLUSION

In the Settlement Agreement, Strong acted as the fiduciary of two trusts with adverse claims. He was, accordingly, conflicted. The Court granted Strong's motion for approval of the Settlement Agreement on the basis that Strong had purged himself of this conflict by adherence to the conflicts resolution procedure set forth in the trust agreements for the Legacy Trust and the CAOP I Trust. But he did not adhere to them. Specifically, Strong did not disclose to the Conflict Referee the facts relating to a bar date defense that provided a complete defense to the Legacy Trust's avoidance claims—and which would have, therefore, eliminated the § 502(h) claim of the CAOP I Trust for the \$2.9 million in cash that CAOP I had paid for the Tooele Land and Water. Strong should not be entitled to rely on the validity of an order that he obtained in contravention of the procedures that were required of him as a condition to seeking this Court's approval of an otherwise conflicted settlement. Accordingly, the Settlement Order should be set aside under Rule 60(b)(6).

DATED this 5th day of November, 2015.

PRINCE, YEATES & GELDZAHLER

By /s/ Adam S. Affleck

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of November, 2015, a true and correct copy of the foregoing was filed with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF users.

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