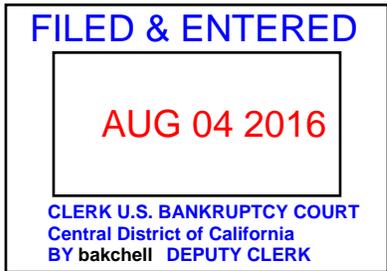


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NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re
CARLOS ANTONIO GONZALEZ VIGON,

Debtor.

Case No. 2:10-bk-26616-RK
Chapter 7

**ORDER ON CREDITOR DONALD
NOTT'S MOTION TO REOPEN
DEBTOR'S CHAPTER 7 BANKRUPTCY
CASE, AND CONTINUING HEARING ON
CREDITOR'S MOTION FOR
DETERMINATION THAT BANKRUPTCY
DISCHARGE INJUNCTION DOES NOT
APPLY TO HIM**

Date: August 9, 2016
Time: 2:30 p.m.
Place: Courtroom 1675
Roybal Federal Building
255 East Temple Street
Los Angeles, CA 90012

Pending before the court is the motion ("Reopen Motion") to reopen the above-captioned Chapter 7 bankruptcy case of Debtor Carlos Antonio Gonzalez Vigon ("Debtor") filed by Creditor Donald Nott ("Nott") for the limited purpose of allowing Nott to file a motion to determine whether his state court action against Debtor violates Debtor's discharge injunction. ECF 125, filed on July 7, 2016. The Reopen Motion was noticed for hearing for August 9, 2016 at 2:30 p.m. No opposition was filed as to the Reopen Motion.

1 The court further notes that Nott filed the motion he seeks permission to file in his
2 Motion to reopen, entitled “Motion For Determination That Bankruptcy Discharge
3 Injunction Does Not Apply” (“Substantive Motion”), ECF 126, filed on July 7, 2016,
4 concurrently with his Reopen Motion to reopen and also noticed it for hearing on August
5 9, 2016 at 2:30 p.m. Debtor filed an opposition to the Substantive Motion and request for
6 judicial notice. ECF 129, 130 and 131. Nott filed a reply to Debtor’s opposition to his
7 Substantive Motion. ECF 132.

8 The court, having reviewed the Reopen Motion, determines that pursuant to Local
9 Bankruptcy Rules 5010-1(e) and 9013-1(q), a hearing on the Reopen Motion is not
10 required, nor necessary, takes the Reopen Motion to reopen under submission, vacates
11 the August 9, 2016 hearing on the Reopen Motion as improvidently noticed by Nott in
12 violation of these local rules, and rules as follows on the Reopen Motion.

13 The court determines that the Reopen Motion should be granted for “other cause”
14 under 11 U.S.C. § 350(b) and Federal Rule of Bankruptcy Procedure 5010 for the
15 reasons stated in the moving papers, that is, for the limited purpose of allowing Nott to file
16 his substantive motion to determine whether the bankruptcy discharge injunction applies
17 to his civil complaint against Debtor, but makes no determination of the merits of any
18 such motion at this time since that would not be appropriate on a motion to reopen a
19 bankruptcy case. See 4 March, Ahart and Shapiro, *California Practice Guide:*
20 *Bankruptcy*, ¶ 23:151 at 23-19 (2015), *citing, inter alia, In re Menk*, 241 BR 896, 913 (9th
21 Cir. BAP 1999) (“[T]he reopening of a closed bankruptcy case is a ministerial act that
22 functions primarily to enable the file to be managed by the clerk as an active matter and
23 that, by itself, lacks independent legal significance and determines nothing with respect to
24 the merits of the case.”).

25 Additionally, the court determines that the hearing on Nott’s “Motion For
26 Determination That Bankruptcy Discharge Injunction Does Not Apply” was also
27 improvidently noticed and must be continued because it was noticed for hearing before
28 the court ruled on the Reopen Motion. Litigation of a substantive motion in a closed

1 bankruptcy case should not be permitted until the case is actually reopened. Although a
2 separate motion requesting “any relief other than the reopening of a case” may be filed
3 concurrently with the motion to reopen, see Local Bankruptcy Rule 5010-1(b)(1), the
4 court will generally set a hearing on the separate substantive motion once it has ruled on
5 the motion to reopen the bankruptcy case. Here, Nott improperly noticed the motion to
6 reopen case for hearing on August 9, 2016, and the court did not consider the motion to
7 reopen until it prepared its workup for the August 9, 2016 calendar, and thus, the case
8 was not yet reopened. Nott did not seek the court’s permission to notice the substantive
9 motion for hearing otherwise before the case was reopened. To allow Nott’s substantive
10 motion to be noticed for hearing and inviting litigation responses by other parties before
11 the court reopened the case would reward his disregard of the local court rule on not
12 noticing a motion to reopen case for hearing absent court authorization, which was not
13 given here.

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1) Nott’s Motion to reopen the above-captioned Chapter 7 bankruptcy case is
16 GRANTED pursuant to 11 U.S.C. § 350(b), Federal Rule of Bankruptcy
17 Procedure 5010, and Local Bankruptcy Rules 5010-1 and 9013-1(q), and
18 the bankruptcy case is ordered reopened.
- 19 2) The hearing on the Motion to reopen set for August 9, 2016 at 2:30 p.m. is
20 vacated and taken off calendar. No appearances are required at the
21 August 9, 2016 hearing on the Motion to reopen.
- 22 3) Although the court grants the Motion to reopen, the court observes that
23 Nott’s counsel, James K. Unwelling (“Counsel”), of Unwelling Siddiqui, LLP,
24 who filed the Motion to reopen on Nott’s behalf, acted contrary to Local
25 Bankruptcy Rule 5010-1(e) by calendaring a hearing date for the Motion
26 without prior court authorization, which expressly provides that, “A motion to
27 reopen may be ruled on without a hearing pursuant to LBR 9013-1(q). The
28 movant must not calendar a hearing date nor will a hearing be held on the

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motion, unless otherwise ordered by the court.” The court strongly urges Nott’s Counsel to read and re-read the Local Bankruptcy Rules and, in particular, Local Bankruptcy Rule 5010-1, until he is thoroughly familiar with them.

- 4) Additionally, the hearing on Nott’s “Motion For Determination That Bankruptcy Discharge Injunction Does Not Apply” set for August 9, 2016 at 2:30 p.m. is continued to on August 30, 2016 at 2:30 p.m. on the court’s own motion in light of the fact that the case has not yet been reopened until the entry of this order for the reason to protect the integrity of the court’s rules and procedures. No appearances are required on August 9, 2016.

IT IS SO ORDERED.

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Date: August 4, 2016



Robert Kwan
United States Bankruptcy Judge