

FILED & ENTERED

SEP 26 2014

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
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UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION

In re

Orange Coast Real Estate Investments,  
Inc.,

Debtor.

Case No. 2:13-bk-19479-RK

Chapter 7

Adversary No. 2:14-ap-01113-RK

Richard K Diamond,

Plaintiff,

vs.

DORA LAND, a California corporation

Defendant.

ORDER ON MOTION FOR  
RECONSIDERATION IN MAIN  
BANKRUPTCY CASE, MOTIONS OF  
DEFENDANT DORA LAND TO DISMISS  
AND FOR SUMMARY JUDGMENT AND  
RESCHEDULING OF STATUS  
CONFERENCE IN ADVERSARY  
PROCEEDING

OLD DATE: October 1, 2014

NEW DATE: November 12, 2014

TIME: 2:00 p.m.

PLACE: Courtroom 1675  
255 East Temple Street  
Los Angeles, CA 90012

Pending before the court and scheduled for hearing on October 1, 2014, are: (1) the motion of Dora Land and Orange Coast Real Estate Investments, Inc., debtor, for reconsideration of the court's order reopening case in the main bankruptcy case (ECF 31 in 2:13-bk-19479-RK); (2) the motion of defendant Dora Land to dismiss or strike the amended complaint in the adversary proceeding by the Chapter 7 trustee against Dora

1 Land (ECF 19 in 2:14-ap-01113-RK); (3) the motion of defendant Dora Land for summary  
2 judgment, or in the alternative, for partial summary judgment in the adversary proceeding  
3 by the trustee against Dora Land (ECF 22 in 2:14-ap-01113-RK); and (4) the status  
4 conference in the adversary proceeding by the trustee against Dora Land.

5 Having considered the papers in support and in opposition of the various motions,  
6 for the reasons stated herein, the court takes the motions under submission, vacates the  
7 hearings on October 1, 2014, and determines that the motion for reconsideration in the  
8 main bankruptcy case is a contested matter within the meaning of Federal Rule of  
9 Bankruptcy Procedure 9014 and that the court will set the matter for status conference  
10 and scheduling of pretrial proceedings, that the motion of Dora Land to dismiss or strike  
11 the amended complaint in the adversary proceeding should be denied and that Dora  
12 Land should be ordered to serve and file an answer to the amended complaint; that the  
13 motion of Dora Land for summary judgment or partial summary judgment should be  
14 granted to the extent of partial summary adjudication of issues, but otherwise denied;  
15 and that the status conference in the adversary proceeding should be reset for about 60  
16 days in order for the parties to meet and confer in an early meeting of counsel and to  
17 submit a joint status report with proposed pretrial and trial schedules pursuant to Federal  
18 Rule of Bankruptcy Procedure 7026 and Local Bankruptcy Rules 7016-1 and 7026-1.

19 Dora Land and Orange Coast Real Estate Investments, Inc., have moved for  
20 reconsideration of the court's order reopening the bankruptcy case pursuant to Federal  
21 Rule of Bankruptcy Procedure 9024, Federal Rule of Civil Procedure 60 and Local Civil  
22 Rule 7-18 (C.D. Cal.). Movants contend that the court's order reopening the bankruptcy  
23 case should be reconsidered because the trustee failed to disclose his knowledge of  
24 certain material facts relating to property transfers known to him at the time of his ex  
25 parte motion to reopen the case and the trustee should be judicially estopped from  
26 reopening the case in light of his representations under penalty of perjury when he filed  
27 his "no distribution" report requesting that the case be closed. Movants assert that based  
28 on these circumstances, they are entitled to relief from the court's order reopening the

1 case on grounds of newly discovered evidence, that they could not have earlier moved  
2 for a new trial or for reconsideration and/or that there was fraud, misrepresentation or  
3 misconduct by an opposing party, or that there was a material difference in fact or law  
4 from that which was presented to the court before such decision and that Movants, in the  
5 exercise of reasonable diligence could not have been known to them as the parties  
6 moving for reconsideration. Fed. R. Civ. P. 60(b)(2) and (3), as incorporated by  
7 reference by Fed. R. Bankr. P. 9024 and L.R. 7-18 (C.D. Cal.).

8 The trustee opposes the motion on grounds that the motion was not brought within  
9 a reasonable period of time under Fed. R. Civ. P. 60(b), Dora Land lacks standing to  
10 seek reconsideration since it is neither a creditor nor a party in the bankruptcy case, and  
11 the trustee should not be estopped from reopening the case because his decisions to file  
12 the “no distribution” report leading to the closing of the case and to seek reopening the  
13 case to pursue litigation to recover assets were based on the limited knowledge available  
14 at the time and a reasonable exercise of his reasonable business judgment.

15 The court determines that the motion for reconsideration, which was filed within  
16 seven months of the order reopening the case, was brought within a reasonable period of  
17 time for purposes of Fed. R. Civ. P. 60(b)(2) and (3), which have outside time limits of  
18 one year. Dora Land sought reconsideration only after it was sued as a defendant in the  
19 adversary proceeding and made the motion before it was required to serve an answer to  
20 the complaint and amended complaint. The court further determines that the movants  
21 have standing to move for reconsideration since debtor was a party in the bankruptcy  
22 case and Dora Land may be affected by the adversary proceeding made possible by the  
23 court’s order reopening the underlying bankruptcy case. See *Eyak Native Village v.*  
24 *Exxon Corp.*, 25 F.3d 773, 777 (9th Cir. 1994) (“a nonparty may seek relief from  
25 judgment procured by fraud if the nonparty’s interests are directly affected”). Before the  
26 court addresses the merits of the motion for reconsideration, the court notes that movants  
27 have interposed evidentiary objections to the trustee’s declaration in opposition to the  
28

1 motion. The court has considered the evidentiary objections to the trustee's declaration  
2 and the trustee's responses thereto and overrules the objections.

3 Whether to grant or deny reopening of a closed bankruptcy case is committed to  
4 the discretion of the bankruptcy court. *In re Adair*, 253 B.R. 85, 91 (9th Cir. BAP 2000).  
5 As pointed out by Movants, a bankruptcy court has the discretion to deny reopening of a  
6 closed bankruptcy case where a bankruptcy trustee made a deliberate informed decision  
7 not to administer or pursue an asset. *Id.* However, based on the evidence submitted by  
8 the parties, the court determines that disputed issues of material fact exist as to whether  
9 there are grounds to reconsider the court's order reopening the case, including whether  
10 the trustee had made a deliberate and informed decision not to administer or pursue  
11 assets before filing his "no distribution" report that might work an estoppel against him  
12 from reopening the case based on the facts now known to the parties and the court. The  
13 evidence is conflicting and requires an evidentiary hearing to resolve, and accordingly,  
14 the court deems the motion for reconsideration a contested matter under Fed. R. Bankr.  
15 P. 9014.

16 The court grants Dora Land's motion for summary judgment only to the extent of  
17 summary adjudication of issues as to its statements of uncontroverted fact, nos. 1, 2, 3, 4  
18 and 5 since these statements of fact are uncontroverted.

19 The court has considered Dora Land's motion to dismiss or strike the amended  
20 complaint pursuant to Fed. R. Civ. P. 12 and the evidentiary objections to the declaration  
21 of Christian Kim in support of the trustee's opposition to the motion. The court overrules  
22 the evidentiary objections to the Kim declaration. The court determines that the motion to  
23 dismiss or strike should be denied because the circumstances of the inadvertent mistake  
24 by counsel for trustee in serving counsel for defendant with the first amended complaint  
25 at an old address, which mistake was promptly rectified with service at the correct  
26 address, do not warrant the terminating sanction of dismissal of the adversary proceeding  
27 under Fed. R. Bankr. P. 7041 and Fed. R. Civ. P. 41(b), the adversary proceeding was  
28 commenced timely pursuant to 11 U.S.C. § 546(a) and 108, *In re McGoldrick*, 117 B.R.

1 554 (Bankr. C.D. Cal. 1990), and the amended complaint adequately pleads a cause of  
2 action for fraud to justify a request for punitive damages under California Civil Code §  
3 3294, California Civil Code § 3439.07. Accordingly, the motion to dismiss or strike is  
4 denied.

5 As the court has denied Dora Land's motion to dismiss the amended complaint,  
6 Dora Land is hereby ordered to serve and file its answer to the trustee's amended  
7 complaint in the adversary proceeding within 14 days of entry of this order pursuant to  
8 Fed. R. Bankr. P. 7012. The status conference set for October 1, 2014, is vacated and  
9 continued to November 12, 2014 at 1:30 p.m. The parties are ordered to file a joint  
10 status report as required by Local Bankruptcy Rule 7016-1 on or before November 5,  
11 2014.

12 The court hereby orders that this order be filed in the main bankruptcy case to  
13 address the motion of Dora Land and Orange Coast Real Estate Investments, Inc.,  
14 debtor, for reconsideration and that it also be filed in the adversary proceeding by the  
15 trustee against Dora Land on the motions to dismiss and for summary judgment and on  
16 rescheduling the status conference.

17 IT IS SO ORDERED.

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23 Date: September 26, 2014  
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Robert Kwan  
United States Bankruptcy Judge