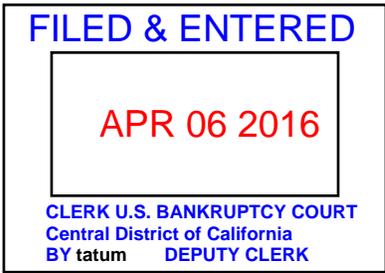


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**NOT FOR PUBLICATION**  
**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**LOS ANGELES DIVISION**

In re:  
TAE WOON KIM and CHUNG HEE KIM,  
Debtors.  
  
HEE OK JUNG,  
Plaintiff,  
v.  
CHUNG HEE KIM, et al.,  
Defendants.

Case No. 2:15-bk-13630-RK  
Chapter 7  
Adversary No. 2:15-ap-01263-RK  
[Case No. BC541247 in the Superior Court of California, County of Los Angeles]  
ORDER GRANTING IN PART AND DENYING IN PART TRUSTEE'S MOTION FOR RELIEF UNDER FRBP 9024 AND FRCP 60 FROM THE COURT'S MARCH 23, 2016 ORDER DENYING WITHOUT PREJUDICE PLAINTIFF'S 12 DISCOVERY MOTIONS AND VACATING HEARING

Pending before the court is the motion filed by Dana M. Dorsett and Jeremy Cook, of the law firm of Moon & Dorsett, P.C., Special Counsel for the Chapter 7 Trustee, Edward M. Wolkowitz (Trustee), on behalf of Trustee for relief under Federal Rule of Bankruptcy Procedure (FRBP) 9024 and Federal Rule of Civil Procedure (FRCP) 60 from the court's March 23, 2016 order denying without prejudice plaintiff's 12 discovery motions, which motion for relief from prior order, or for reconsideration, was noticed for

1 hearing on April 19, 2016 at 2:30 p.m. Having considered the motion for reconsideration  
2 and the declaration Counsel for Defendants, S. Young Lim, of the law firm of Park & Lim,  
3 filed in opposition thereto, the court determines that oral argument is not necessary,  
4 dispenses with it, vacates the hearing on April 19, 2016 at 2:30 p.m. and rules as follows.

5 Special Counsel for Trustee who represented the original plaintiff creditor and now  
6 the Chapter 7 Trustee, who substituted in for the original plaintiff, requests the court to  
7 reconsider its denial of plaintiff's 12 discovery motions pending before the state court  
8 prior to the removal of this action to this court for lack of compliance with the  
9 requirements of the Local Bankruptcy Rules that the papers and pleadings filed in state  
10 court, including the 12 discovery motions, must be filed with this court and that counsel  
11 did not provide a judge's copy of the motions to the court for consideration. Special  
12 Counsel had filed a "renotice" of these motions in this case removed to this court, but did  
13 not actually refile the motions or provide a judge's copy of the motions to the court.

14 Special Counsel for Trustee argues that the court's premise that the state court  
15 documents were not filed with the court was incorrect because defendants had actually  
16 filed the documents, though admitting their omission in never identifying to the court in  
17 their "renotice" of the motions the precise location of these documents on the court's  
18 docket for the benefit of the court and the other parties. Special Counsel argues that  
19 reconsideration of the denial of the motions should be granted based on their "excusable  
20 neglect" under Federal Rule of Bankruptcy Procedure 9024 and Federal Rule of Civil  
21 Procedure 60. Special Counsel believe that they have rectified their earlier neglect by  
22 not only now pointing out where and when the discovery motions were filed on the court's  
23 case docket, but by also providing a judge's copy of the discovery motions to chambers.  
24 The underlying premise of the reconsideration motion and the "renotice" of the discovery  
25 motions is nonetheless that plaintiff may exclusively rely upon state court procedures for  
26 this court to consider and rule upon these motions after removal.

27 In attempting to point out the court's premise that plaintiff's 12 discovery motions  
28 were not filed on the court's docket was erroneous, Special Counsel for Trustee now

1 points out that prior counsel for defendants had filed copies of the state court pleadings in  
2 Docket No. 16 in compliance with Local Bankruptcy Rule 9027-1. This is helpful  
3 information because Special Counsel for Trustee had not provided any meaningful  
4 information to the court in the “renotice” of the 12 discovery motions where the motions  
5 could be found on the court’s docket. Special Counsel for Trustee had not provided  
6 judge’s copies of plaintiff’s motions when the “renotice” was filed. Special Counsel had  
7 not originally identified where the court could locate such motions on the case docket,  
8 leaving the court somewhat mystified as to what it was to rule upon. (The term “renotice”  
9 is perhaps a misnomer because technically speaking, it was not a “renotice” to this court  
10 since the motions had never been previously noticed before the court.) Thus, Special  
11 Counsel for Trustee has now attempted to rectify the situation by now providing judge’s  
12 copies of the motions and identifying where on the docket they can be located.

13 In recognition of the recent efforts of Special Counsel for Trustee attempting to  
14 rectify their prior “excusable neglect,” the basis for their motion for reconsideration, the  
15 court grants the motion for reconsideration in part and denies it in part upon the terms  
16 and conditions stated herein. The court now orders the parties to comply with the  
17 procedural requirements of Local Bankruptcy Rule 7026-1 regarding plaintiff’s 12  
18 discovery motions originally filed in state court, specifically that the parties may only  
19 request a hearing on the motions once they have satisfied the procedural requirements of  
20 Local Bankruptcy Rule 7026-1.

21 In this regard, the court reviews the general procedures for a federal court in  
22 considering the effect of prior state court proceedings in a removed action. A leading  
23 treatise on federal civil procedure before trial, the Rutter Group treatise, states:

24 The federal court takes the action as it stood in the state court when  
25 removed. Thus, all existing orders—including rulings on discovery and  
26 extensions of time to plead—remain in effect until modified by the federal  
27 court. [*Jenkins v. Commonwealth Land Title Ins. Co.* (9<sup>th</sup> Cir. 1996) 95 F3d  
28 791, 795; see 28 USC § 1450—all “orders and other proceedings had in  
(state court) action prior to its removal *shall remain in full force and effect*  
until dissolved or modified by the district court” (emphasis and parentheses  
added)].

1 1 Wagstaffe, Rutter Group Practice Guide: Federal Civil Procedure Before Trial, ¶ 2:3528  
2 at 2D-185 (2016). In this case, the state court did not issue discovery orders on plaintiff's  
3 12 pending discovery motions, and Trustee "renoticed" the motions to obtain from this  
4 court the discovery orders not yet obtained.

5 With respect to pending discovery requests in a removed action, the Rutter Group  
6 treatise states:

7 Arguably, discovery requests (e.g., notice of depositions, document  
8 demands, etc.) served before removal should also be given effect under 28  
9 USC § 1450 unless modified or terminated by the federal court. Discovery  
10 requests appear to be "proceedings had in such action prior to removal"  
within the meaning of § 1450.

11 However, the matter is unclear. [See *Visicorp v. Software Arts, Inc.* (ND CA  
12 1983) 575 F. Supp. 1528, 1531 – "Whether or not such discovery is lodged  
13 with the state court, *it is not a matter which remains with any force or effect*  
after removal" (dictum)(emphasis added).

14 1 Wagstaffe, *Rutter Group Practice Guide: Federal Civil Procedure Before Trial*, ¶ 2:3533  
15 at 2D-186. Thus, the Rutter Group treatise suggested a "practice pointer":

16 Avoid the problem. The better practice in such cases is to contact opposing  
17 counsel and get a stipulation as to when the discovery in question shall be  
18 due. Or, if appropriate, simply serve additional discovery requests under  
the Federal Rules.

19 *Id.*, ¶ 2:3534 at 2D-186. The reference to the "Federal Rules" in the practice pointer  
20 alludes to the general proposition that "[o]nce a case has been removed from state court,  
21 it is subject to the Federal Rules of Civil Procedure." *Id.*, ¶ 2:3541 at 2D-187, *citing inter*  
22 *alia*, Fed. R. Civ. P. ("These rules apply to a civil action after it is removed from a state  
23 court.") and *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9<sup>th</sup> Cir. 2009)(federal  
24 pleading rules apply regardless of whether substantive law at issue is state law).

25 In this case, regardless of how one comes out on the issue of whether plaintiff's  
26 discovery requests should be given effect after removal pursuant to 28 U.S.C. § 1450,  
27 which issue does not appear to have been definitively decided as discussed herein, the  
28 court will assume that such requests should be given effect after removal pursuant to 28

1 U.S.C. § 1450, but, and this is an important “but,” the court under the qualifying language  
2 of 28 U.S.C. § 1450 in exercising its discretion under its case management authority to  
3 supervise this litigation pursuant to Federal Rule of Bankruptcy Procedure 7016 and  
4 Federal Rule of Civil Procedure 16 will and does modify such effect to apply the  
5 requirements of the federal civil and bankruptcy procedural rules to the litigation involving  
6 the discovery requests. The court did not make that clear in its prior order denying the  
7 discovery motions without prejudice as it perhaps should have, it does so now for the  
8 edification of the parties to avoid further misunderstanding of the court’s expectations.

9       Whatever state court procedures applied when the discovery motions pending  
10 before that court are now superseded and modified to conform to the federal rules of  
11 procedure applicable in this court in conformance with the general principle that the  
12 federal rules apply after removal. While the court does not require Trustee as plaintiff to  
13 re-serve or reformulate his discovery requests, he may do so, but if Trustee seeks to  
14 compel such requests by motion, the court orders that the parties comply with the  
15 applicable federal procedural rules governing discovery disputes, such as the prefiling  
16 meeting of counsel and discovery dispute stipulation requirements of Local Bankruptcy  
17 Rule 7026-1. The court believes that since this court is a new venue for this litigation,  
18 there should be a fresh look at the litigation since there are “fresh eyes” to look at these  
19 motion papers, particularly since there are new players, including a new principal acting  
20 as the plaintiff, Trustee, and there are new counsel involved. The changes in  
21 circumstances in this litigation may facilitate a more flexible approach to resolving this  
22 litigation than the kneejerk, combative litigation gamesmanship which has apparently  
23 burdened the parties while the case was pending in state court and until now. This court  
24 has every confidence in its procedures for discovery dispute resolution as found in the  
25 local rules, which promote fair and efficient resolution of such disputes through  
26 constructive dialogue and orderly litigation between the disputing parties. The court  
27 believes that its discovery dispute prefiling meeting of counsel and postconference  
28 discovery dispute stipulation procedures will be of assistance to the parties in narrowing

1 their differences, resolving undisputed issues and efficiently framing the remaining ones  
2 for formal resolution by the court (perhaps, for example, through such a prefiling meeting  
3 of counsel, much of this particular discovery dispute could be consensually resolved if  
4 Special Counsel for Trustee can accommodate the reasonable requests of counsel for  
5 Defendants new to this case for an extension of time to produce the requested discovery  
6 as a professional courtesy with much less expense before having to seek the court's  
7 assistance in obtaining the requested discovery which might result in a less desirable  
8 outcome). The court not only commends these discovery dispute resolution procedures  
9 to the parties here, it will insist on strict compliance of the parties with these procedures  
10 under its inherent and regulatory case management authority.

11 For the foregoing reasons, Special Counsel for Trustee's motion for relief from the  
12 court's prior order, or for reconsideration, is granted in part, and denied in part, as set  
13 forth herein, and the hearing on the motion noticed for April 19, 2016 at 2:30 p.m. is  
14 vacated. The court further orders as express conditions of its rulings herein that: (1)  
15 Trustee may only notice the 12 discovery motions for hearing by this court only after he  
16 and his special counsel comply with the federal procedural rules governing discovery  
17 disputes applicable in this court, including Local Bankruptcy Rule 7026-1; (2) any  
18 discovery dispute meeting of counsel pursuant to Local Bankruptcy Rule 7026-1(c)(2)  
19 must be conducted face-to-face in person to insure more cooperative and constructive  
20 dialogue between counsel rather than by telephone or electronic means as in the prior  
21 communications between them regarding this matter characterized by the unattractive,  
22 dismissive posturing by counsel as shown in their pointless exchange of bickering emails,  
23 copies of which were attached to the declaration of counsel for Defendants in opposition  
24 to the motion for reconsideration, which in this court's view exemplifies the dysfunctional,  
25 passive aggressive litigation gamesmanship that does not represent the level of  
26 professionalism and courtesy that is expected of practitioners in the Central District of  
27 California; and (3) Special Counsel for Trustee are ordered to personally consult with  
28 Trustee, Mr. Wolkowitz, regarding this order to insure that Trustee and his professionals

1 fully comply with the terms of this order, and file a declaration under penalty of perjury  
2 that they have apprised Trustee of this order and have personally consulted him about it  
3 by April 20, 2016.

4 IT IS SO ORDERED.

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Date: April 6, 2016

  
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Robert Kwan  
United States Bankruptcy Judge