



UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: Anne Lan Peterson, Debtor	Case No.: 2:11-bk-60846-ER Adv. No.: 2:17-ap-01505-ER
Brad D. Krasnoff, Chapter 7 Trustee, Plaintiff	MEMORANDUM OF DECISION DENYING MOTION FOR RECONSIDERATION
v.	
Ronald Peterson, an individual; Maitreya, LLC, a Nevada limited liability company; and Maitreya, LLC, an Arizona limited liability company, Defendants	[No hearing required pursuant to Federal Rule of Civil Procedure 78(b) and Local Bankruptcy Rule 9013-1(j)(3)]

On June 14, 2018, the Court entered final judgment (the “Judgment”) in favor of the Chapter 7 Trustee (the “Trustee”), and against the Defendants, on the Trustee’s first, third, and fifth claims for relief.¹ The Judgment ordered Defendants to turnover to the Trustee property located at 359 W. Langston Street, Upland, CA 91786 (the “Property”) by no later than July 6, 2018, at 5:00 p.m. Defendants failed to comply with the Court’s order and did not turnover the Property

¹ See Summary Judgment [Doc. No. 64], Order Granting Chapter 7 Trustee’s Motion for Summary Judgment on First, Third, and Fifth Claims for Relief [Doc. No. 65], and Final Ruling Granting Chapter 7 Trustee’s Motion for Summary Judgment on First, Third, and Fifth Claims for Relief [Doc. No. 60].

by the July 6 deadline. Defendants now move for reconsideration of the Judgment, and seek a hearing on their motion for reconsideration (the “Motion”) on shortened time.² The Court finds this matter appropriate for disposition without oral argument, pursuant to Civil Rule 78(b) and LBR 9013-1(j)(3).³ For the reasons set forth below, the Motion is DENIED. Because Defendants have failed to turnover the Property as ordered, the Court will grant the Trustee’s application for issuance of a Writ of Possession, and will issue a Writ of Possession directing the United States Marshal to enforce the Judgment’s turnover provisions.

I. Background

Anne Lan Peterson (the “Debtor”) commenced a voluntary Chapter 7 petition on December 14, 2011. On April 16, 2012, the Debtor received a discharge, and on April 30, 2012, the Debtor’s case was closed as a “no asset” case. Bankr. Doc. Nos. 18 and 20.

The Debtor was married to Ronald Peterson (“Ronald”),⁴ one of the defendants herein, from 1997 to 2010. Divorce proceedings between the Debtor and Ronald have been lengthy and contentious. In an apparent attempt to gain a tactical advantage in the divorce litigation, Ronald notified the Trustee of undisclosed assets, and the Debtor’s case was reopened.

On October 19, 2017, the Trustee initiated a Complaint against Ronald and two LLCs—Maitreya, LLC, a Nevada LLC (“Maitreya Nevada”) and Maitreya, LLC, an Arizona LLC (“Maitreya Arizona”). The Complaint sought a declaration that the Property was community property of the Debtor and Ronald, and therefore property of the estate pursuant to §541(a)(2). The Complaint sought turnover of the Property, avoidance of the post-petition transfer of the Property to Maitreya Arizona, and dissolution of Maitreya Nevada pursuant to Nevada Revised Statute §86.495, on the grounds that the Trustee, as the sole owner, is entitled to liquidate Maitreya Nevada.

On June 7, 2018, the Court conducted a hearing on the Trustee’s motion for summary judgment (the “MSJ”) on the Complaint’s first, third, and fifth claims for relief. On June 6,

² The Court has considered the following papers in connection with this matter:

- 1) Defendants’ Notice of Motion and Motion for Reconsideration of Order Granting Chapter 7 Trustee’s Motion for Summary Judgment on First, Third, and Fifth Claims for Relief [Doc. No. 84] (the “Motion”);
- 2) Declaration of Yoon O. Ham in Support of Defendants’ Notice of Motion and Motion for Reconsideration of Order Granting Chapter 7 Trustee’s Motion for Summary Judgment on First, Third, and Fifth Claims for Relief [Doc. No. 85];
- 3) Declaration of Michelle Belleau in Support of Defendants’ Notice of Motion and Motion for Reconsideration of Order Granting Chapter 7 Trustee’s Motion for Summary Judgment on First, Third, and Fifth Claims for Relief [Doc. No. 86]; and
- 4) Application for Order Setting Hearing on Shortened Notice [Doc. No. 87].

³ Unless otherwise indicated, all “Civil Rule” references are to the Federal Rules of Civil Procedure, Rules 1–86; all “Bankruptcy Rule” references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037; all “Evidence Rule” references are to the Federal Rules of Evidence, Rules 101–1103; all “LBR” references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California, Rules 1001-1–9075-1; and all statutory references are to the Bankruptcy Code, 11 U.S.C. §§101–1532.

⁴ A given name is used to distinguish Ronald Peterson from Anne Lan Peterson. No disrespect is intended.

2018—the day prior to the hearing on the MSJ—the Court posted, at 12:20 p.m., a tentative ruling indicated its intent to grant the MSJ. Approximately eleven hours later, at 11:03 p.m., Ronald filed a Cross-Complaint against the Trustee and the Debtor.

The Cross-Complaint alleges that the Trustee breached his fiduciary duties to Ronald by failing to adequately investigate the Debtor's assets at the time the petition was initially filed in 2011. The Cross-Complaint alleges that had the Trustee conducted an adequate investigation, he would have discovered the undisclosed Property much sooner, before it had appreciated in value. The Cross-Complaint alleges that this breach of fiduciary duty harmed Ronald by preventing him from negotiating a purchase of the estate's interest in the Property at a lower price. The Cross-Complaint seeks damages in the amount of \$300,000.

At the hearing on the MSJ, Ronald appeared and argued that adjudication of the MSJ should be continued to provide the parties an opportunity to engage in mediation with respect to the issues raised by the MSJ, the Complaint, and the Cross-Complaint. The Trustee opposed any continuance of the MSJ and requested that the Court set a date certain by which the Defendants would be required to turnover the Property.

The Court concluded that the filing of the Cross-Complaint was not cause for continuing the hearing on the MSJ. The Court noted that there were strong indications that Ronald filed the Cross-Complaint primarily to delay the litigation and gain additional bargaining leverage against the Trustee. The Court noted that Ronald could have asserted the claims raised in the Cross-Complaint when he served an Answer to the operative Complaint on February 26, 2018, but instead waited to file the Cross-Complaint until after the Court had posted its tentative ruling in the Trustee's favor. Pursuant to Civil Rule 54(b), the Court found that there was no just reason to delay the entry of final judgment in favor of the Trustee with respect to the first, third, and fifth claims for relief.⁵

On June 14, 2018, the Court entered the Judgment in favor of the Trustee. Among other things, the Judgment ordered Defendants to turnover the Property to the Trustee by no later than July 6, 2018, at 5:00 p.m. Defendants failed to comply with the Court's order and did not turnover the Property by the July 6 deadline. On July 9, Defendants filed the instant Motion seeking reconsideration of the Judgment. According to Defendants, the only claims filed in the Debtor's bankruptcy case are on account of debts the Debtor incurred after she separated from Ronald. Defendants maintain that as a result, the claims are not payable from property of the estate because they do not qualify as "community claims" within the meaning of §101(7). Defendants' theory is that the absence of any creditors entitled to receive a distribution from the estate precludes the Trustee from administering estate property. Defendants further argue that the Judgment's turnover provisions are unenforceable against Ronald's fiancée, Michelle Belleau, who has lived at the Property since May 2012.

II. Findings and Conclusions

Defendants assert that the Motion is governed by Civil Rule 54(b), which provides, in relevant part, that a judgment "that adjudicates fewer than all the claims ... does not end the action as to any of the claims ... and may be revised at any time before the entry of a judgment adjudicating all the claims" Defendants are mistaken. The excerpted portion of Civil Rule 54 does not apply where the Court "expressly determines that there is no just reason" to delay the

⁵ See Final Ruling Granting Chapter 7 Trustee's Motion for Summary Judgment on First, Third, and Fifth Claims for Relief [Doc. No. 60] at pp. 3–4.

entry of final judgment. *See* Civil Rule 54(b). Here, the Court made such an express determination that there was no just reason to delay entering final judgment on the first, third, and fifth claims. *See* Final Ruling Granting Chapter 7 Trustee's Motion for Summary Judgment on First, Third, and Fifth Claims for Relief [Doc. No. 60] at p. 4 ("Pursuant to Civil Rule 54(b), the Court finds that there is no just reason to delay the entry of judgment in favor of the Trustee with respect to the first, third, and fifth claims for relief. Prior to the filing of the Cross-Complaint, the Trustee's intent was to dismiss the second and fourth claims after obtaining judgment on the first, third, and fifth claims. The Trustee requested that the second and fourth claims remain pending only after Ronald filed the Cross-Complaint on the eve of the hearing. Under these circumstances, the Court finds that Trustee did not request entry of final judgment on fewer than all claims asserted in the Complaint for bad-faith tactical reasons. To the contrary, it is entirely reasonable for the Trustee to seek to preserve his litigation options in view of the unexpected, last-minute filing of the Cross-Complaint.").

Defendants also seek reconsideration of the Judgment under Civil Rule 60(b)(6), which applies to these proceedings by virtue of Bankruptcy Rule 9024. Civil Rule 60(b)(6) provides that the Court "may relieve a party ... from a final judgment ... for ... any other reason that justifies relief." The Ninth Circuit has stated:

"[J]udgments are not often set aside under Rule 60(b)(6)." ... Rather, Rule 60(b)(6) should be "used sparingly as an equitable remedy to prevent manifest injustice and is to be utilized only where extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment." ... Accordingly, a party who moves for such relief "must demonstrate both injury and circumstances beyond his control that prevented him from proceeding with ... the action in a proper fashion."

Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.), 503 F.3d 933, 941 (9th Cir. 2007) (internal citations omitted).

Defendants have utterly failed to show the existence of extraordinary circumstances warranting reconsideration of the Judgment. Defendants' theory is that the Trustee is precluded from administering the Property because the only claims on file are not community claims, and therefore the claimants are not entitled to receive a distribution from the estate. The claims to which Defendants refer were filed on February 1, 2012 (Proof of Claim No. 1-1) and May 1, 2017 (Proof of Claim No. 2-1). The hearing on the Trustee's MSJ, which resulted in entry of the Judgment, occurred on June 7, 2018. At that time, both claims had been on file for more than one year. Defendants could have easily presented their theory regarding the Trustee's alleged inability to administer the Property in opposition to the MSJ, but they failed to do so. In fact, Defendants failed to present any written opposition to the MSJ. Defendants have not shown that they were prevented, by circumstances beyond their control, from timely raising the theory they now advance; to the contrary, Defendants offer no explanation whatsoever for their prior inaction.

Defendants further argue that the turnover provisions of the Judgment must be set aside because Ronald's fiancée, Michelle Belleau, has lived with Ronald at the Property since May 2012, and was not served with the Complaint and has not been named in the Judgment.⁶ According to Defendants, the Judgment's turnover provisions violate Ms. Belleau's due process rights by terminating her occupancy of the Property without the opportunity to be heard.

⁶ According to Ms. Belleau's declaration, two young children of Ronald and Ms. Belleau also live at the Property.

The arguments with respect to Ms. Belleau advanced by the Defendants lack merit. The Judgment requires Defendants Ronald, Maitreya Nevada, and Maitreya Arizona to turnover the Property to the Trustee. There is nothing in the record establishing that Defendants do not control the Property or are not capable of complying with the Judgment's turnover provisions. The fact that Ronald has permitted his fiancée, Ms. Belleau, and the couple's children to live with him at the Property is immaterial. As the person in control of the Property, Ronald cannot leverage the presence of Ms. Belleau and the children to escape enforcement of the Judgment.

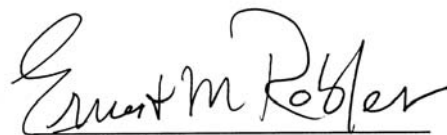
The Trustee has applied for entry of an order directing the Clerk of the Court to issue a Writ of Possession to enforce the Judgment.⁷ Having found no merit in Defendants' request for reconsideration of the Judgment, the Court will direct the issuance of a Writ of Possession.

III. Conclusion

Based upon the foregoing, the Motion seeking reconsideration of the Judgment is DENIED. To enforce the Judgment, the Court will direct the Clerk of the Court to issue a Writ of Possession. The Court will enter orders consistent with this Memorandum of Decision.

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Date: July 12, 2018

A handwritten signature in black ink, appearing to read "Ernest M. Robles", written over a horizontal line.

Ernest M. Robles
United States Bankruptcy Judge

⁷ See Application for Order Directing the Clerk to Issue a Writ of Possession and for Related Relief Re 359 W. Langston Street, Upland, California 91786, Pursuant to Judgment [Doc. No. 82].