

FILED & ENTERED

MAY 20 2021

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:

CARLOS ERNESTO SALAZAR and  
ADELA SALAZAR,

Debtors.

Case No. 2:20-bk-10038-RK

Chapter 7

**ORDER GRANTING IN PART AND  
DENYING IN PART EX PARTE MOTION OF  
UNITED STATES TRUSTEE TO REOPEN  
CHAPTER 7 CASE UNDER 11 U.S.C.  
§350(b) AND TO DIRECT APPOINTMENT  
OF TRUSTEE**

Pending before the court is the ex parte motion of the United States Trustee to reopen this joint Chapter 7 bankruptcy case under 11 U.S.C. §350(b) and direct appointment of a Chapter 7 trustee, Docket No. 25, filed on May 20, 2021. Kelly L. Morrison, Trial Attorney, Office of the United States Trustee, represents Movant United States Trustee.<sup>1</sup>

According to the motion, the grounds for reopening the case are that the case was filed on January 3, 2020, debtors Carlos Ernesto Salazar and Adela Salazar failed to appear at their meeting of creditors under 11 U.S.C. § 341(a), the former Chapter 7 trustee Rosendo Gonzalez filed a request to dismiss the case for failure to appear at the

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<sup>1</sup> The proofs of service of the moving papers show that service of the papers was made on the debtors by mail and on their counsel, Daniel King, by electronic notice. Docket Nos. 28-30, filed on May 20, 2021.

1 meeting of creditors and that the case was closed on June 17, 2020. Docket No. 25 at  
2 2. Also according to the motion, subsequently, the former Chapter 7 trustee learned  
3 that the debtors had made a prepetition transfer of their interests in certain real property  
4 to the sister of one of debtors, the property transfer was not disclosed in their  
5 bankruptcy schedules, the former Chapter 7 trustee believes that there is sufficient  
6 equity in the property to pay 100% of scheduled creditors' claims and that the former  
7 trustee wishes to pursue administration of the property for the benefit of creditors. *Id.*  
8 Therefore, the United States Trustee requests the court to reopen the case and grant  
9 authorization to appoint a Chapter 7 trustee to administer the property as part of the  
10 bankruptcy estate. *Id.* at 3.

11 The closing and reopening of a bankruptcy case are governed by 11 U.S.C. §  
12 350. Regarding closing of a bankruptcy case, 11 U.S.C. § 350(a) provides: "(a) After an  
13 estate is fully administered and the court has discharged the trustee, the court shall  
14 close the case." Regarding reopening of a bankruptcy case, 11 U.S.C. § 350(b)  
15 provides that: "(b) A case may be reopened in the court in which such case was closed  
16 to administer assets, to afford relief to the debtor, or for other cause." According to the  
17 Ninth Circuit Bankruptcy Appellate Panel, "the reopening of a closed bankruptcy case is  
18 a ministerial act that functions primarily to enable the file to be managed by the clerk as  
19 an active matter and that, by itself, lacks independent legal significance and determines  
20 that nothing with respect to the merits of the case." *In re Menk*, 241 B.R. 896, 913 (9th  
21 Cir. BAP 1999). As such, "an application to reopen may be made ex parte and without  
22 notice." *In re Daniels*, 34 B.R. 782, 784 (9th Cir. BAP 1983); *see also, In re Menk*, 241  
23 B.R. at 914 (noting that Federal Rule of Bankruptcy Procedure 5010 "requires a motion,  
24 [and] it does not require that notice be given to anyone and that 11 U.S.C. § 350(b)  
25 does not "contain the talismanic mention of notice and hearing that connotes the  
26 statutory need to permit a contest").

27 However, this case is a dismissed case pursuant to the court's order dismissing  
28 the case for failure of debtors to appear at the meeting of creditors as requested by the

1 former trustee, Docket No. 22, filed and entered on May 26, 2020, and administratively  
2 closed by the clerk on June 17, 2020, Docket No. 24. But it is not closed pursuant to 11  
3 U.S.C. § 350(a) because as a dismissed case, it was not fully administered. See *In re*  
4 *Lewis & Coulter, Inc.*, 159 B.R. 188, 191 (Bankr. W.D. Pa. 1993) (“Only a bankruptcy  
5 case which has been closed pursuant to 11 U.S.C. § 350(a)---i.e., in which the estate  
6 has been fully administered and any trustee has been discharged---may be ‘reopened’  
7 pursuant to 11 U.S.C. § 350(b).”), citing, *In re Income Property Builders, Inc.*, 699 F.2d  
8 963, 965 (9th Cir. 1963).

9 In *Lewis & Coulter, Inc.*, the court held that the debtor’s motion to reinstate its  
10 dismissed Chapter 11 bankruptcy case had to be construed as a motion to vacate the  
11 dismissal order pursuant to Federal Rule of Bankruptcy Procedure 9024 because it held  
12 that the case had not been fully administered within the meaning of 11 U.S.C. § 350(a).  
13 *Id.* (“Only a bankruptcy case which has been closed pursuant to 11 U.S.C. § 350(a)---  
14 i.e., in which the estate has been fully administered and any trustee has been  
15 discharged---may be ‘reopened’ pursuant to 11 U.S.C. § 350(b).”), citing, *In re Income*  
16 *Property Builders, Inc.*, 699 F.2d 963, 965 (9th Cir. 1963); but see, *In re Ross*, 278 B.R.  
17 269 (Bankr. M.D. Ga. 2001) (disagreeing with *Lewis & Coulter, Inc.*, stating that a  
18 dismissed bankruptcy case could be “reopened”).

19 The Ninth Circuit Court of Appeals in *In re Income Property Builders, Inc.*, held  
20 that the proper method to reinstate a dismissed bankruptcy case is not a motion to  
21 reopen the case under 11 U.S.C. § 350(b), but a motion to vacate the dismissal  
22 pursuant to Federal Rule of Civil Procedure 60 and former Federal Rule of Bankruptcy  
23 Procedure 924 (now Federal Rule of Bankruptcy Procedure 9024). *In re Income*  
24 *Property Builders, Inc.*, 699 F.2d at 965. The Ninth Circuit denied a petition for  
25 rehearing an appeal on grounds that its order denying the appeal as moot because the  
26 dismissed bankruptcy case was no longer in existence was not erroneous, holding as  
27 follows:

28 We hold an order dismissing a bankruptcy proceeding is not an order  
closing it; that a motion to vacate a dismissal is not a motion to reopen;

1 that a motion to vacate a dismissal must be made within one year; that the  
2 motion here came too late; and that the bankruptcy court has no  
jurisdiction.

3 *Id.* In explaining its holding, the Ninth Circuit stated:

4 . . . a bankruptcy is normally closed after the bankruptcy proceedings are  
5 completed. At that time the debts of the bankrupt are usually discharged  
6 and the proceeds of the debtor's nonexempt assets divided among  
7 creditor. A bankruptcy is reopened under 11 U.S.C. § 350(b), not to  
8 restore the prebankruptcy status, but to continue the bankruptcy  
9 proceeding. The word "reopened" used in Section 350(b) obviously  
relates to the word "closed" used in the same section. In our opinion a  
case cannot be reopened unless it has been closed. An order dismissing  
a bankruptcy case accomplishes a completely different result than an  
order closing it would and is not an order closing.

10  
11 Fed.R.Bank.P 924 makes the one-year limitation prescribed in  
12 Fed.R.Civ.P. 60 applicable to bankruptcy motions except motions to  
reopen a case or for reconsideration of an order allowing or disallowing a  
13 claim against the estate entered without contest. A motion to vacate the  
dismissal of a bankruptcy case is neither a motion to reopen nor a motion  
for such reconsideration.

14 *Id.*; see also, *In re Menk*, 241 B.R. at 911-912 (discussing the differences between  
15 "closing" a case and "dismissing" a case).

16  
17 Liberally speaking, because the case was "closed" by the clerk of court for  
18 administrative purposes after the case was dismissed, it makes sense to "reopen" the  
19 case so that the file can be managed as an active matter, and thus, the court is inclined  
20 to grant the motion in part to this limited extent. However, strictly speaking, the case  
21 was not "closed" when it was dismissed as the Ninth Circuit stated in *In re Income*  
*Property Builders, Inc.*, as quoted above.

22  
23 However, the United States Trustee requests relief beyond the ministerial act of  
24 reopening of the case that functions primarily to enable the file to be managed by the  
25 clerk as an active matter, that is, the United States Trustee seeks an order reinstating  
26 the case so that a trustee can be appointed to administer the case, but without asking  
27 the court to vacate the order of dismissal. The court cannot simply ignore the order of  
28 dismissal and allow administration of the case. The motion does not address the

1 authority of the court to allow a dismissed case to proceed with administration, which  
2 the Ninth Circuit has held in *In re Income Property Builders, Inc.*, requires a motion to  
3 vacate the dismissal pursuant to Federal Rule of Bankruptcy Procedure 9024 and  
4 Federal Rule of Civil Procedure 60.<sup>2</sup> Such a motion to vacate the dismissal is a matter  
5 of independent legal significance and is a determination on the merits of the case, which  
6 would require notice pursuant to Federal Rules of Bankruptcy Procedure 9013 and 9014  
7 and Local Bankruptcy Rule 9013-1, as reinstating the case for a trustee to administer  
8 allegedly undisclosed assets would affect the substantive rights of other parties in  
9 interest, including the debtors. At this time, it would not be futile to “reopen” the case  
10 administratively as the one year time period for filing a motion to vacate dismissal  
11 entered on May 26, 2021 pursuant to Federal Rule of Bankruptcy Procedure 9024 and  
12 Federal Rule of Civil Procedure 60(c) has not yet run.<sup>3</sup> But it is premature to authorize  
13 and direct the appointment of a trustee as the case is still a dismissed case at this time  
14 and case administration cannot proceed without vacating the dismissal order.

15 For the foregoing reasons, the motion is granted in part and denied in part as  
16 follows:

- 17 1. The case is ordered reopened as a ministerial act that functions primarily to  
18 enable the file to be managed by the clerk of court as an active matter.

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22 <sup>2</sup> Since this court is situated within the Ninth Circuit, the precedential decisions of the Ninth Circuit Court of  
23 Appeals are binding on this court.

24 <sup>3</sup> One bankruptcy treatise suggests: “Courts generally treat a motion to ‘reopen’ a dismissed case as a motion to  
25 vacate a judgment or order under FRBP 9024.” March, Ahart and Shapiro, Rutter Group California Practice Guide:  
26 Bankruptcy, ¶23:91 (online edition December 2020 update), *citing inter alia*, *In re Lewis & Coulter, Inc.*, 159 B.R. at  
27 191. The court declines this suggestion here because the motion in no way addresses the standard of a motion for  
28 relief from judgment or final order pursuant to Federal Rule of Bankruptcy Procedure 9024 and Federal Rule of  
Civil Procedure 60 as to the order of dismissal of the case. Specifically, the motion does not even mention the  
order of dismissal of this case, though it does state that the case was “closed” after the former trustee filed a  
request to dismiss debtors for failure to appear. Docket No. 25 at 1-5. A motion under Federal Rule of Bankruptcy  
Procedure 9024 would be timely under the Federal Rule of Civil Procedure 60(c) if it were filed on or before May  
26, 2021, one year after the entry of order of dismissal on May 26, 2020. *See also*, Federal Rule of Bankruptcy  
Procedure 9006.

2. The request to authorize and direct the appointment of a trustee is denied  
without prejudice as the case remains a dismissed case until relief is granted  
on a motion to vacate the order of dismissal.

IT IS SO ORDERED.

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Date: May 20, 2021



Robert Kwan  
United States Bankruptcy Judge