UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION

In re: Mohammad Reza Sahranavard Debtor(s).	CHAPTER 7 Case No.: 1:10-bk-11390-MT Adv No: 1:16-ap-01041-MT
Better World JL Institute, Italian Historical Society of America, John LaCorte, Frank Sorrention Plaintiff(s), v. Mandana Vasseghi, Donna Vasseghi Defendant(s).	**MEMORANDUM OF DECISION DENYING MOTION FOR RECONSIDERATION** [No hearing required]

On February 8, 2010, Mohammad Sahranavard ("Debtor") filed a voluntary chapter 7 petition with the assistance of his attorney Mandana (aka Donna) Vasseghi[1] ("Vasseghi"). At the time the bankruptcy was filed, John LaCorte ("LaCorte") asserted a claim against Debtor in the

[1] LaCorte and BWI have also alleged that Vasseghi may be Debtor's "wife" under Islamic Law. No finding has been made as to the marital status of Vasseghi and Debtor.

principal amount of $2,843,054.00. Better World JL Institute ("BWI") is a non-profit corporation with its principal place of business in New York, which asserts a claim against Debtor in the principal amount of $2,111,750.00. LaCorte is an officer and director of BWI.

At the time the bankruptcy was filed, La Corte alleged that Vasseghi was in a confidential or fiduciary relationship with him and that Vasseghi remained in a confidential or fiduciary with him from the date of the filing of this Chapter 7 Case to and/or through well beyond the deadlines for filing actions under 11 U.S.C. §523 and 11 U.S.C. §727.

Prior to the filing of Debtor's bankruptcy case, La Corte alleges that Debtor tendered regular payments on the promissory notes held by La Corte and BWI, for several months after the filing of Debtor's bankruptcy case. La Corte alleges that Debtor directed a group of individuals, holding pre-petition assets, or proceeds of prepetition assets, in his name or on his account, consisting of, but not limited to, Vasseghi, Hamid Sahranavard (Debtor's brother, "Hamid"), American Regional Gallery, and Monica Contreras, to continue making the payments on Debtor's account in connection with the promissory notes held by La Corte and BWI.

On June 8, 2016, Vasseghi filed a breach of contract action in Los Angeles Superior Court (the "State Court") against BWI, Italian Historical Society of America ("IHSA"), LaCorte, and others (collectively, the "Movants"). On December 2, 2015, Vasseghi filed an amended complaint (the "Vasseghi Complaint"). On January 13, 2016, Movants filed an answer to the Vasseghi Complaint. On March 24, 2016, BWI and LaCorte removed the Vasseghi Complaint to this Court (1:16-ap-01041-MT).

On October 29, 2014, Hamid filed a breach of contract action in the State Court against Movants. On May 11, 2015, 2015, Hamid filed a second amended complaint (the "Hamid Complaint"). On June 12, 2015, Movants filed an answer to the Hamid Complaint. On March 23, 2016, BWI and LaCorte removed the Hamid Complaint to this Court (1:16-ap-01040-MT, together with 1:16-ap-01041 as the "Removed Actions").

Vasseghi and Hamid (collectively, the "State Plaintiffs") allege that, over the last nine months, there have been lengthy depositions taken, several motions heard by the State Court, and that the parties had engaged in extensive written discovery. Vasseghi also contends that a trial setting conference was scheduled to take place in the State Court on April 15, 2016, which was continued because of this removal. Hamid states that depositions of LaCorte and BWI

were scheduled for March 30, 2016, and a trial was set for May 31, 2016, none of which occurred because of the removal. The State Defendants separately moved for remand of the Removed Actions (the "Remand Motions").

On May 25, 2016, the Court held a hearing on the Remand Motions. Appearances are as noted on the record. After extensive oral argument in response to the Court's tentative ruling, the Court granted the Motions for Remand. Movants now move for reconsideration of the Orders Granting Motion for Remand, entered on the docket for each of the Removed Actions. As the Motions for Reconsideration that were filed in each of the Removed Actions are nearly identical (the "Reconsideration Motions"), both are analyzed below.

II. Standard

Under Rule 9023 of the Federal Rules of Bankruptcy Procedure, "Rule 59 F.R.Civ.P. applies" in bankruptcy cases. Under Rule 59 of the Federal Rules of Civil Procedure, the court may alter or amend a judgment pursuant to a motion that is timely filed. FED. R. CIV. P. 59(e). "A motion to alter or amend a judgment must be filed no later than 28 days after the entry of judgment." Id.

Reconsideration of an entered judgment is an extraordinary remedy that should be used sparingly. McDowell v. Calderon, 197 F.3d 1253, 1255 n.1 (9th Cir. 1999). Local Bankruptcy Rule 9013-4(a) sets forth a non-exclusive list of eight grounds upon which a motion for reconsideration may be granted. In the Ninth Circuit, generally motions for reconsideration may be granted on four grounds: "(1) the judgment is based upon manifest errors of law or fact; (2) there is newly discovered or previously unavailable evidence; (3) amendment is necessary to prevent manifest injustice; or (4) there is intervening change in the controlling law." Id.; *see also* Turner v. Burlington Northern Santa Fe R.R., 338 F.3d 1058, 1063 (9th Cir. 2003); Pilkington v. Cardinal Health, Inc., 516 F.3d 1095, 1100 (9th Cir. 2008).

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III. Analysis

A. Manifest Errors of Law or Fact

Effect of Removed Matters on Administration of the Estate

Procedurally, if the ground for the motion for reconsideration is an error of law, "the error or errors relied upon must be stated specifically." LBR 9013-4(b)(1). A manifest error of fact or law must be one "that is plain and indisputable, and that amounts to a complete disregard of the controlling law or the credible evidence in the record." In re Oak Park Calabasas Condo. Ass'n, 302 B.R. 682, 683 (Bankr.C.D.Cal.2003) (quoting Black's Law Dictionary 563 (7th ed. 1999)).

Here, Movants argues that this Court has a "fundamental misunderstanding" of their position. Movants contend that the Removed Actions, which seek to recover "a stream of payments from Debtor's attorney wife Donna Vasseghi and Debtor's brother Hamid Saharanavard to [Movants] on the ground that said payments were tendered as 'loans,' whereas [Movants] steadfastly maintain that this stream of payments was tendered … as 'loan payments'" Mtn. for Reconsideration, 14:24-15-4. It is Movants position that the outcome of the Removed Actions will affect the administration of the estate because they "bear a direct, pivotal, and outcome determinative issues in connection with the issue of whether or not Debtor's discharge is revoked on the conspiracy to defraud theory."

Movants, in support of their motions, make the same arguments that were made at the hearing on the Remand Motions. Movants again explain in great detail their theory as to why this Court is the proper venue for the Removed Matters. Movants believe that Debtor, Vassseghi, and Hamid colluded to procure Debtor's "discharge through fraud by engaging in a conspiracy that, among other things, prevented LaCorte from engaging independent counsel to assert their rights in the bankruptcy." Reconsideration Motion, 15:7-18. It is these actions, of which the bulk of the factual allegations are actions by Vasseghi and alleged agents of Debtor, which Movants believe will affect the administration of the estate. Movants generally define "administration of the estate" as a "readjustment of the debtor creditor relationship."

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A motion under [Civil Rule 59(e)] does not allow a party to "ask the Court to rethink matters already decided, to reargue matters already submitted, or to attempt to cure deficiencies in earlier submissions that were found to be inadequate." In re Wilson, 349 B.R. at 834, citing Alexander v. Bleau (In re Negrete), 183 B.R. 195, 197 (9th Cir.B.A.P.1995), aff'd, 103 F.3d 139 (9th Cir.1996). Instead, Civil Rule 59(e) "offers an 'extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.' " Carroll v. Nakatani, 342 F.3d 934, 945 (9th Cir.2003), quoting 12 James Wm. Moore et al., Moore's Federal Practice § 59.30 [4] (3d ed.2000).

The Court has already previously considered Movants' arguments for why this forum is proper for these disputes. See Tr. of Hr'g re Mtn. for Remand, 3:17-10:16. The Court understands Movants' "big picture" argument that this Court is the most convenient venue for these disputes to be heard by one finder of fact, but as the Court has previously stated, this is not sufficient for this Court of *limited jurisdiction* to keep the Removed Matters here. See Notice of Tentative Ruling re Motion for Remand, ad. ECF doc. no. 30, 6:20-28. Movants contention that the adjudication of the Removed Matters is core because they are proceedings regarding revocation of Debtor's discharge[2] stretches the definition too far, and the authority cited by Movants predates the United States Supreme Court's decision in Stern v. Marshall, 564 U.S. 462 (2011), in which the Supreme Court explained the bounds of the limited jurisdiction of an Article I court. There is no need for this Court to test the bounds of its limited jurisdiction when there were proceedings before a court of unquestioned jurisdiction going forward, before they were removed here.

As is often the case in this Court of limited jurisdiction, litigation between non-debtor parties asserting state law claims are resolved in state court, or another court of proper jurisdiction. Later in the bankruptcy, any findings that are germane to the resolution of an adversary to revoke Debtor's discharge can be given preclusive effect here, if required. While the Court realizes that litigating piecemeal is generally unfavored, it is unfortunately required in circumstances where non-debtor parties are asserting state law claims against each other that have only a tangential relationship to this bankruptcy.

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[2] Discharge has not been entered in the bankruptcy case because the dismissal of the adversary LaCorte, et al. v. Sahranavard 1:15-ap-01128, which asserted a 727 cause of action, is on appeal. Until the appeal of 1:15-ap-01128 is resolved, a discharge will not be entered in the bankruptcy.

Dicta

Movant takes issue with the Court's characterization as dicta of its use of the term "preferential transfer" in its tentative ruling on the Adversary Extension Motion[3] (bankr. ECF doc. no. 81). Movants argue in the Reconsideration Motion that the Court based its finding that LaCorte received post-petition payments on the declaration of Vasseghi and was a factor in its decision to deny the Adversary Extension Motion, and thus the fact that LaCorte received post-petition payments was not properly characterized as "dicta." Reconsideration Motion, 17:5-17.

As stated in the Notice of Tentative Ruling re Motion for Remand, any finding that LaCorte received post-petition payments was based on statements *he* had made in his allegations in a dismissed complaint. Notice of Tentative Ruling re Remand, 4:23-24; see also Complaint for Denial of Discharge, 1:15-ap-01128, ECF doc. no. 1 (Aug. 7, 2015). As previously explained, this fact was not the controlling factor that resulted in the denial of the Adversary Extension Motion. As was explained in previous rulings, the plain reading of the statute was the determinative factor. In fact, Movants' own counsel recognized that the statement was dicta:

> Ms. Parker: I'll just imagine that tentative being attached, okay, to the later thing, to the later action in the state court. Or they say, look, they said there was a preference, and the state court judge might conclude that there was unjust enrichment here. So –
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> The Court: No. I'll just say for the record that was dicta.
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> Ms. Parker: Right. No, I understand. And I realize it's dicta, too. You know, it wasn't really latched onto for that purpose.

Tr. of Hr'g re Mtn. for Remand, 11:5-14.

The Court has previously explained that the factual finding that LaCorte received money post-petition was based on his own words. "The trustee did not bring an action for avoiding a preferential transfer and for turnover, thus there was no 'finding' or 'ruling' that the payments

[3] The full title of the Adversary Extension Motion is *Motion of Creditor LaCorte and Creditor Better World for Order Finding that, A. Creditor LaCorte and Creditor Better World Were In Effect deprived of Notice and an Opportunity to File a Timely Action for Denial of Discharge or Non-Dischargeability of Debt Such that the Period For Filing Said Actions Has Not Yet Expired; and, B. Creditor LaCorte and Creditor Better World Were Mislead [sic] by an Officer of the Court Such that Unique or Extraordinary Circumstances Warrant an Extension of the Deadline to File Timely Actions for Denial of Discharge or Non-Dischargeability of Debt*.

received by LaCorte were preferential transfers." Notice of Tentative Ruling re Remand, 4:25-27. The Court's finding as to the stream of payments is limited to the fact that LaCorte acknowledges receiving money post-petition. It is within the purview of the State Court to determine the appropriate legal characterization of the payments.

If the use of the term "dicta" to characterize this ancillary fact is an error of fact (which the Court does not believe it is), it is not sufficiently material to raise grounds for reconsideration of an otherwise sound ruling.

The extent to which state law issues predominate over bankruptcy issues

The causes of action asserted Vasseghi Complaint and the Hamid Complaint are identical: (1) Breach of Contract; (2) Common Counts; (3) Fraud; (4) Aiding and Abetting; and (5) Unjust Enrichment. Movants urge the Court to look to the substance of the proceeding to determine that the Removed Matters are central to the purpose of underlying Title 11. The Court is well aware of Movants' "big picture" arguments, and the cases cited in support of Movants' argument for reconsideration are all pre-Stern, and did not involve non-debtor parties on both sides of the litigation. See In re World Fin. Serv. Center, Inc., 64 B.R. 980 (S.D.Cal. 1986) (Plaintiff-Trustee sued a shareholder of the debtor); Wood v. Wood (In re Wood), 825 F.2d 90 (5th Cir. 1987)(shareholder of medical clinic sued the debtor-shareholder); and In re PSINet, Inc., 271 B.R. 1 (Bankr.S.D.N.Y. 2001)(chapter 11 debtors sued a lessor/creditor).

As stated previously, the Removed Matters do not present issues of bankruptcy law, and any findings relevant to the forthcoming 727 revocation of discharge complaint be given preclusive effect, in the interest of comity and as required under bankruptcy law.

The difficult or unsettled nature of applicable law

Movants argue that the Removed Matters "now involve or present what [may] prove to be complex issues of federal law." The Removed Matters do not present any issues of difficult or unsettled California law for the State Court. The State Court cannot rule on actions under 11 U.S.C. § 727. As stated in the above section, any findings by the State Court can be given proper preclusive effect, and then characterization of payments received by LaCorte has not been ruled on by this Court. The State Court can determine the Removed Actions, and this Court will apply any germane findings to any future adversary proceedings.

The presence of related proceeding commenced in state court or other nonbankruptcy proceeding

Both the Hamid Complaint and the Vasseghi Complaint are related proceedings commenced in the State Court, albeit before two different state court judges. Movant complains that the Removed Matters being before two different state court judges risks inconsistent rulings. This complication for these non-debtor parties cannot be solved by keeping the Removed Matters here, where jurisdiction is not proper.

Jurisdictional basis, if any, other than §1334

There does not appear to be any jurisdictional basis other than 28 U.S.C. §1334. The State Court Proceedings are based on contract and equitable claims arising under state law, so there is no federal question jurisdiction. Vasseghi, Hamid, and LaCorte are California residents, and BWI and IHSA are New York not-for-profit corporations. The amounts in controversy, however, are $14,000 and $53,000 respectively, amounts which do not reach the $75,000 minimum amount required for diversity jurisdiction. Movants contend that with their claims for special and punitive damages, the Removed Matters will (likely) reach the minimum monetary requirement for diversity jurisdiction. Here, there is no request to withdraw the reference to the District Court. Even if the damages are over the diversity minimum, this is not sufficient to confer jurisdiction in this Article I court.

The degree of relatedness or remoteness of proceeding to main bankruptcy case

The Court acknowledges that there is a tangential relationship between the Removed Matters and Debtor's six-year old bankruptcy. As stated previously, if State Court Plaintiffs are successful and Movants are required to tender money in satisfaction of a judgment, the chapter 7 trustee may seek a determination from this Court that the payments on which the award was based are preferential transfers under § 547. If the chapter 7 trustee is successful in proving that the funds paid to LaCorte were preferential transfers, then the trustee may sustain an action for turnover of property of the estate under § 542. All of these matters are speculative at this time. None of these bankruptcy law matters require this Court to determine the Removed Actions. The State Court judgments on the Removed Actions will be preclusive as to any factual findings made therein.

This remote connection to the bankruptcy is not sufficient for this Court to hear and determine the State Court Actions involving nondebtors on both sides, let alone enter an order thereon. As described in more detail above, these same arguments were considered and rejected in connection with the Motions to Remand.

Core proceeding; Severability; Burden on Docket; and Non-Debtor Parties

A proceeding is core when it invokes a substantive right created by bankruptcy law and could not exist outside the bankruptcy proceeding. Eastport Assocs. v. Los Angeles (In re Eastport Assocs.), 935 F.2d 1071, 1076-77 (9th Cir. 1991). Put another way, "claims that arise under or in Title 11 are deemed to be 'core' proceedings, while claims that are related to Title 11 are 'noncore' proceedings." Maitland v. Mitchell (In re Harris Pine Mills, 44 F.3d 1431, 1435 (9th Cir. 1995) (citing Robertson v. Isomedix, Inc. (In re Int'l Nutronics), 28 F.3d 965, 969 (9th Cir. 1994)).

Movant argues that the Removed Matters should be treated as core, because the "substance" of the claims asserted in State Court will be determinative of the forthcoming revocation of discharge action. Specifically, Movants present the issue as simply, "all [the] Court needs to do is adjudicate the question of 'whether the payment stream from [Vasseghi] and [Hamid] to LaCorte and BWI were loans or post-petition payments on the Better World Note.'" Movants then envision the State Court resolving the balance of the issues.

Movants' theory, however, misses the jurisdictional issue. There are no bankruptcy claims to sever. All claims arise under state law, and involve only nondebtor parties. Movants would have this Article I Court determine substantive state law claims between two non-debtor parties. As explained above, the Court considered these arguments before its ruling on the Remand Motions. Despite the Movants' arguments to the contrary, the State Court Actions are based on a contract dispute and arises under state law, not Title 11. The State Court Actions present noncore claims between nondebtor parties.

Movants take issue with the Court's statement that "it is not necessary for the Court to decide the issues presented in the State Court [Actions] in order to administer the estate" as "categorically false." Reconsideration Motion, 31:8-10. While Movants maintain the Court will have to adjudicate the issue in the context of the forthcoming complaint to revoke discharge, this is not the case. As stated above, the Court can give preclusive effect to all germane

findings by the State Court. If the chapter 7 trustee determines that the funds paid on any state court judgment are property of the estate, then he can file a complaint in this Court to assert the estate's rights in the funds after completion of the State Court Proceedings. Property that is neither abandoned nor administered remains property of the estate even after the case is closed. See 11 U.S.C. § 541 (property of estate) and § 554(d) (property not abandoned or administered remains property of estate); Pace v. Battley (In re Pace), 146 B.R. 562, 564–66 (B.A.P. 9th Cir. 1992), aff'd, 17 F.3d 395 (9th Cir.1994).

Any findings by the State Court will be applied as required under bankruptcy law to a revocation of discharge action, and it is within the sound discretion of the chapter 7 trustee how to marshal and administer assets of the estate.

Motions for Reconsideration are DENIED.

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Date: October 4, 2016

Maureen A. Tighe
United States Bankruptcy Judge