
FILED
 SEP 27 2017
 UNITED STATES BANKRUPTCY COURT
 EASTERN DISTRICT OF CALIFORNIA

1 UNITED STATES BANKRUPTCY COURT
 2 EASTERN DISTRICT OF CALIFORNIA

3
 4 In re:) Case No. 11-37711-B-7
)
 5 DELANO RETAIL PARTNERS, LLC,) Adversary No. 16-2146
)
 6 Debtor.) DC Nos. HSM-2
)
 7 _____)
)
 8 SUSAN K. SMITH, Chapter 7)
 Trustee,)
 9 Plaintiff,)
)
 10 v.)
)
 11 C&S WHOLESALE GROCERS, INC., a)
 Vermont Corporation,)
)
 12 Defendant.)
)
 13 _____)
)
 14 C&S WHOLESALE GROCERS, INC., a)
 Vermont Corporation,)
)
 15 Counterclaimant,)
)
 16 v.)
)
 17 SUSAN K. SMITH, Chapter 7)
 Trustee,)
 18)
 19 Counterdefendant.)
)
 20 _____)

20 ORDER GRANTING PLAINTIFF'S MOTION TO AMEND MEMORANDUM DECISION

21 Introduction

22 Before the court is a Motion to Amend Memorandum Decision
 23 Granting Trustee's Motion for Summary Judgment and Denying C&S's
 24 Motion for Summary Judgment. The motion was filed on August 25,
 25 2017, by plaintiff Susan K. Smith in her capacity as the chapter
 26 7 trustee in In re Delano Retail Partners, LLC, No. 11-37711.
 27 Defendant C&S Wholesale Group, Inc., filed a non-opposition to
 28 the plaintiff's motion to amend on September 21, 2017.

1 Plaintiff asks the court to amend the Memorandum Decision
2 Granting Trustee's Motion for Summary Judgment and Denying C&S's
3 Motion for Summary Judgment ("Memorandum Decision") filed on
4 August 14, 2017, and entered on August 15, 2017. See Dkts. 90,
5 91. Plaintiff moves pursuant to Federal Rule of Civil Procedure
6 59 (applicable by Federal Rule of Bankruptcy Procedure 9023).
7 Filed within fourteen days of the date on which the Memorandum
8 Decision was entered, plaintiff's motion is timely. See Fed. R.
9 Bankr. P. 9023.

10 Plaintiff moves for a \$10,000.00 increase in the amount of
11 "Settlement Funds" (as defined in the Memorandum Decision) the
12 estate is entitled to receive under the parties' May 2013
13 stipulation (as also defined in the Memorandum Decision) and
14 which the defendant was ordered to turn over to the estate.
15 Specifically, plaintiff maintains the amount stated in the
16 Memorandum Decision is \$429,505.00 whereas that amount should be
17 \$439,505.00.

18 Plaintiff also moves for a non-substantive amendment
19 regarding the date on which the parties' cross-motions for
20 summary judgment were heard. Whereas the Memorandum Decision
21 references the hearing date as June 9, 2017, plaintiff correctly
22 notes it should be June 6, 2017.

23
24 Background

25 The Memorandum Decision states that the amount of Settlement
26 Funds due plaintiff under the parties' May 2013 stipulation is
27 \$429,505.00. Plaintiff contends that the actual amount is
28 \$439,505.00, and the \$10,000.00 difference does not take into

1 account \$40,000.00 received under what the Memorandum Decision
2 defines as the "Neri" settlement agreement. Plaintiff noted the
3 \$10,000.00 difference in the Settlement Funds amount in footnote
4 3 of dkt. 57 and footnote 2 of dkt. 64. Plaintiff also correctly
5 notes that the court considered both the Neri settlement
6 agreement and the "Delano/2040 FF" settlement agreement (defined
7 in the Memorandum Decision) in reference to the \$429,505.00
8 amount stated in the Memorandum Decision.

9 The court used the \$429,505.00 figure in the Memorandum
10 Decision as the amount of the Settlement Funds because that is
11 what plaintiff and defendant stipulated to. For purposes of
12 their respective cross-motions for summary judgment, the parties
13 filed a Stipulation Regarding Material Facts. See Dkt. 38, Ex. A
14 (plaintiff's exhibit); Dkt. 45, Ex. A (defendant's exhibit). In
15 that stipulation, the parties "stipulate[d] to the truth of the
16 following facts . . . as evidence in support of or opposition to
17 any motion for summary judgment." Dkt. 38, Ex. A, at 2:3-6; Dkt.
18 45, Ex. A, at 2:3-6. One of the "following facts" that the
19 parties stipulated to is found in ¶ 38 which states as follows:
20 "Based upon the terms of the Delano/2040 FF Settlement Agreement
21 and the Neri Settlement Agreement, the total amount the Trustee
22 is entitled to receive pursuant to the terms of the [May 2013]
23 Stipulation is \$429,505." Id. at 6:22-24 (emphasis added).

24 25 Discussion

26 Stipulations are binding on the parties. See Am. Title Ins.
27 Co. v. Lacelaw Corp., 861 F.2d 224, 226 (9th Cir. 1988);
28 Gallagher v. Holt, 2012 WL 3205175, *16 (E.D. Cal. 2012) ("Under

1 federal law, stipulations . . . are generally binding on the
2 parties and the Court."). And in the Ninth Circuit,
3 "[s]tipulations are treated as judicial admissions." Matter of
4 Christian & Porter Aluminum Co., 584 F.2d 326, 334 (9th Cir.
5 1978); accord Frank v. Wilbur-Ellis Co. Salaried Employees LTD
6 Plan, 2008 WL 4370095, *5 (E.D. Cal. 2008) ("Judicial admissions
7 are formal concessions in . . . stipulations by a party or its
8 counsel[.]"); In re Applin, 108 B.R. 253, 258 (Bankr. E.D. Cal.
9 1989) ("Judicial admissions commonly arise by way of
10 stipulations[.]").

11 Here, the parties stipulated for purposes of their
12 respective summary judgment motions that the amount at issue as
13 the Settlement funds was \$429,505.00. As a judicial admission,
14 the court could treat that stipulated amount as the conclusively
15 established amount of the Settlement Funds. In re Rolland, 317
16 B.R. 402, 421-22 (Bankr. C.D. Cal. 2004) (citations omitted).
17 That said, there is authority that a court has discretion to
18 accept or reject a judicial admission. Applin, 108 B.R. at 258.
19 And since defendant has filed a non-opposition to the motion and
20 the proposed amendment to the amount of the Settlement Funds
21 owed, the court will exercise its discretion to reject the
22 \$429,505.00 figure as a judicial admission. The court construes
23 plaintiff's motion to amend and defendant's non-opposition to the
24 motion as a mutual amendment to the parties' summary judgment
25 stipulation and the amount of the Settlement Funds at issue
26 stated therein.

1 Conclusion

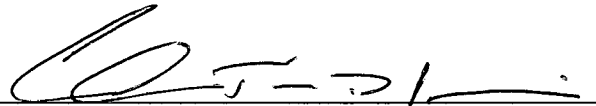
2 Therefore, for the foregoing reasons,

3 IT IS ORDERED that plaintiff's motion to amend the
4 Memorandum Decision is GRANTED.

5 IT IS FURTHER ORDERED that references to "\$429,505.00" at
6 pages 2:20, 5:15, 7:19, 15:7, 15:19, 34:22, 34:27, and 35:13 of
7 the Memorandum Decision are deleted and are replaced with
8 "\$439,505.00".

9 IT IS FURTHER ORDERED that references to "June 9, 2017," at
10 pages 3:26 and 12:27 of the Memorandum Decision are deleted and
11 replaced with "June 6, 2017".

12 Dated: September 26, 2017.

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14 
15 UNITED STATES BANKRUPTCY JUDGE
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INSTRUCTIONS TO CLERK OF COURT
SERVICE LIST

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

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