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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
6
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8 In re:)
9 CREEKSIDE VINEYARDS,) Case No. 02-30522-B-11
10 Debtor(s).)
11)
12 KATHLEEN LAGORIO JANSSEN, ET) Adv. No. 09-2085-B
13 AL.,)
14 Plaintiff(s)) Docket Control No. RDN-1
15 vs.) Date: April 14, 2009
16 DAVID HIRSCH, ET AL.,) Time: 9:30 a.m.
17 Defendant(s).)
18

19 On or after the calendar set forth above, the court issued
20 the following ruling. The official record of the ruling is
appended to the minutes of the hearing.

21 Because the ruling constitutes a "reasoned explanation" of
22 the court's decision under the E-Government Act of 2002 (the
"Act"), a copy of the ruling is hereby posted on the court's
23 Internet site, www.caeb.uscourts.gov, in a text-searchable
24 format, as required by the Act. However, this posting does not
constitute the official record, which is always the ruling
appended to the minutes of the hearing.

25 **DISPOSITION AFTER ORAL ARGUMENT**

26 Neither the respondent within the time for opposition nor
27 the movant within the time for reply has filed a separate statement
28 identifying each disputed material factual issue relating to the

1 motion. Accordingly, both movant and respondent have consented to the
2 resolution of the motion and all disputed material factual issues
3 pursuant to Fed. R. Civ. P. 43(e). LBR 9014-1(f)(1)(ii) and (iii).

4 The motion is denied.

5 Defendants David A. Hirsch and Donald G. Hirsch (collectively
6 "Hirsches" or "Defendants") seek dismissal of the one-count adversary
7 complaint pursuant to Fed. R. Civ. P. 12(b)(1), (b)(6) and/or (b)(7),
8 made applicable to this proceeding by Fed. R. Bankr. P. 7012.

9 Alternatively, the Hirsches seek an order requiring plaintiffs

10 Kathleen Lagorio Janssen, Chris Lagorio, and Joseph Dondero

11 (collectively "Plaintiffs") to file a more definite statement of the
12 complaint pursuant to Fed. R. Civ. P. 12(e), made applicable to this
13 proceeding by Fed. R. Bankr. P. 7012.

14 The Hirsches argue the following in support of their request for
15 dismissal. First, dismissal under 12(b)(1) is warranted because the
16 complaint fails to articulate a basis for core, related to, ancillary,
17 or Rooker-Feldman jurisdiction. Second, dismissal under 12(b)(6) is
18 warranted because no exception to the Anti-Injunction Act is properly
19 pled in the complaint and, alternatively, because plaintiffs lack
20 standing to assert a claim for injunctive relief. Third, dismissal
21 under 12(b)(7) is warranted because the complaint fails to name as
22 parties debtors and their creditors.

23 The adversary complaint in this case seeks a permanent injunction
24 prohibiting the Hirsches from further prosecuting their state court
25 action, case no. CV026757, in state court ("State Court Action"), an
26 order directing the Hirsches to dismiss with prejudice the State Court
27 Action, and an award of costs of suit. (Dkt. 1 at 5). The State
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1 Court Action has not been removed to this court and is pending in the
2 San Joaquin County Superior Court. The state court complaint contains
3 several state law claims, but the thrust of the complaint asserts that
4 Plaintiffs, as directors of debtors Creekside Vineyards, Inc. and
5 Creekside Vineyards, LP, breached and continue to breach their
6 fiduciary duties to the Hirsches. The complaint in the State Court
7 Action alleged that Plaintiffs' wrongful conduct commenced prior to
8 the filing of the two Creekside bankruptcy petitions and continues
9 through the present time. (Dkt. 22 at 4).

10 Rule 12(b)(1) authorizes a motion seeking dismissal for lack of
11 subject matter jurisdiction.

12 Rule 12(b)(6) authorizes a motion seeking dismissal for failure
13 to state a claim upon which relief can be granted.

14 The purpose of a motion to dismiss under Rule 12(b)(6) of
15 the Federal Rules of Civil Procedure, made applicable
16 here under Fed. R. Bankr. P. 7012, is to test the legal
17 sufficiency of a plaintiff's claims for relief. In
18 determining whether a plaintiff has advanced potentially
19 viable claims, the complaint is to be construed in a
light most favorable to the plaintiff and its allegations
taken as true. Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct.
1683, 40 L.Ed.2d 90 (1974); Church of Scientology of
Cal. v. Flynn, 744 F.2d 694, 696 (9th Cir.1984). . .

20 Quad-Cities Constr., Inc. v. Advanta Business Services Corp. (In
21 re Quad-Cities Constr., Inc.), 254 B.R. 459, 465 (Bankr. D. Idaho
22 2000). Under the Supreme Court's most recent formulation of the
23 standard for a motion to dismiss under Rule 12(b)(6), a defendant
24 need not demonstrate that a plaintiff can prove "no set of facts" in
25 support of his claim. See Bell Atlantic Corp. v. Twombly, 127 S.Ct.
26 1955, 1964-66 (2007). Instead, a complaint must set forth enough
27 factual matter to establish plausible grounds for the relief sought.

1 Id. ("[A] plaintiff's obligation to provide 'grounds' of his
2 'entitle[ment] to relief requires more than labels and conclusions,
3 and a formulaic recitation of the elements of a cause of action will
4 not do."). Factual allegations must be enough to raise a right to
5 relief above the speculative level. Id., citing to 5 C. Wright & A.
6 Miller, Federal Practice and Procedure § 1216, pp. 235-236 (3d ed.
7 2004) ("[T]he pleading must contain something more. . . than. . . a
8 statement of facts that merely creates a suspicion [of] a legally
9 cognizable right of action").

10 Rule 12(b)(7) authorizes a motion seeking dismissal for failure
11 to join a party under Rule 19. Rule 19 states that a party is
12 required if "in that person's absence, the court cannot accord
13 complete relief among the existing parties[]" or "that persons claims
14 an interest relating to the subject of the action and is so situated
15 that disposing of the action in the person's absence may . . . impair
16 or impede the person's ability to protect the interest[] or leave an
17 existing party subject to a substantial risk of incurring double,
18 multiple, or otherwise inconsistent obligations because of the
19 interest."

20 Rule 12(e) allows a party to move for a more definite statement
21 "of a pleading to which a responsive pleading is allowed but which is
22 so vague or ambiguous that the party cannot reasonably prepare a
23 response."

24 The court will next address each of Defendants' arguments.

25 A. Defendants' request for dismissal pursuant to Rule 12(b)(1):

26 Defendants' request for dismissal pursuant to Rule 12(b)(1) is
27 denied because Defendants have not shown entitlement to this relief.

1 The court has "arising under" or "arising in" jurisdiction under 28
2 U.S.C. § 1334(b) and, alternatively, has ancillary jurisdiction to
3 interpret and effectuate its prior orders.

4 Post-closing requests for interpretations of orders entered
5 during a bankruptcy case are within the court's "arising under"
6 subject matter jurisdiction. 28 U.S.C. § 1334(b); Beneficial Trust
7 Deeds v. Franklin (In re Franklin), 802 F.2d 324, 326 (9th Cir. 1986)
8 ("Simply put, bankruptcy courts must retain jurisdiction to construe
9 their own orders if they are to be capable of monitoring whether those
10 orders are ultimately executed in the intended manner. Requests for
11 bankruptcy courts to construe their own orders must be considered to
12 arise under title 11 if the policies underlying the Code are to be
13 effectively implemented.").

14 Alternatively, the court has "arising in" jurisdiction under 28
15 U.S.C. § 1334(b). As the court in Menk v. Lapaglia (In re Menk), 241
16 B.R. 896 (9th Cir. BAP 1999) explained, "[t]he phrase 'arising in a
17 case under title 11' means primarily those administrative proceedings
18 that, while not based on any right created by title 11, nevertheless
19 have no existence outside of bankruptcy." Menk, 241 B.R. at 909
20 (citing cases). Here, the complaint alleges that the court has
21 subject matter jurisdiction over this adversary proceeding pursuant to
22 28 U.S.C. § 1334. (Complaint ¶ 1). The complaint further details
23 certain motions filed within the debtors' chapter 11 cases, the
24 court's orders on those motions, and the initiation of the State Court
25 Action which allegedly seeks "damages flowing from the filing of the
26 debtors' bankruptcy petitions, from the court-approved compromise of
27 the debtors' leases, and from the court-approved sale of the debtors'

assets.” (Complaint ¶¶ 14-29). In construing the complaint in a light most favorable to Plaintiffs and taking its allegations as true, the court finds that it has subject matter jurisdiction over the complaint pursuant to 28 U.S.C. § 1334(b). In particular, the court finds it has subject matter jurisdiction where, as here, the complaint seeks to enjoin prosecution of a state court action that requests damages allegedly arising, at least in part, from orders of the bankruptcy court. Those orders either flow from civil proceedings under specific sections of the Bankruptcy Code (thus “arising under” title 11) or flow from civil proceedings that “have no existence outside of bankruptcy” (thus “arising in” a case under title 11).

Alternatively, the court has ancillary jurisdiction to interpret and effectuate its prior orders. “Generally speaking, we have asserted ancillary jurisdiction (in the very broad sense in which that term is sometimes used) for two separate, though sometimes related, purposes: (1) to permit disposition by a single court of claims that are, in varying respects and degrees, factually interdependent, [citations omitted]; and (2) to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees, [citations omitted].”

Kokkonen v. Guardian Life Insurance Co. Of America, 511 U.S. 375, 379-380, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994). See also Tsafaroff v. Taylor (In re Taylor), 884 F.2d 478, 481 (9th Cir.1989) (“Under the law of this circuit, the bankruptcy court retains subject matter jurisdiction to interpret orders entered prior to dismissal of the underlying bankruptcy case [citing Franklin]...”); see also Aheong v. Mellon Mortgage Company (In re Aheong), 276 B.R. 233, 240 (B.A.P. 9th

1 Cir. 2002) (“...the Ninth Circuit has ruled that after dismissal the
2 bankruptcy court has ancillary jurisdiction to ‘interpret’ and
3 ‘effectuate’ its orders.”).

4 Defendants mis-apply the core/non-core distinction. Subject
5 matter jurisdiction in bankruptcy is derived from 28 U.S.C. § 1334.
6 The core/non-core distinction of 28 U.S.C. § 157 addresses a different
7 issue - when an Article I bankruptcy court may constitutionally enter
8 a final judgment. It may do so in “core” matters, but it may not do
9 so in “non-core” matters without the consent of all parties.

10 Defendants also mis-apply the Rooker-Feldman doctrine.
11 Defendants’ Memorandum of Points and Authorities contains a section
12 entitled “No ‘Rooker-Feldman’ Jurisdiction.” (Dkt. 10 at 9).
13 However, the Rooker-Feldman doctrine is not a basis for federal
14 jurisdiction, it is a limitation on federal jurisdiction. Construing
15 Defendants’ reference to Rooker-Feldman as an argument that the court
16 has no subject matter jurisdiction because of the Rooker-Feldman
17 doctrine, the court disagrees. Application of the Rooker-Feldman
18 doctrine “is confined to cases of the kind from which the doctrine
19 acquired its name: cases brought by state-court losers complaining of
20 injuries caused by state-court judgments rendered before the district
21 court proceedings commenced and inviting district court review and
22 rejection of those judgments.” Exxon Mobil Corp. v. Saudi Basic
23 Indus. Corp., 544 U.S. 280, 284, 125 S.Ct. 1517, 1521-22, 161 L.Ed.2d
24 454 (2005). The Rooker-Feldman doctrine “is a well-established
25 jurisdictional rule prohibiting federal courts from exercising
26 appellate review over final state court judgments;” however, it “may
27 also apply where the parties do not directly contest the merits of a
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1 state court decision, as the doctrine 'prohibits a federal district
2 court from exercising subject matter jurisdiction over a suit that is
3 a de facto appeal from a state court judgment.'" Reusser v. Wachovia
4 Bank, N.A., et al., 525 F.3d 855, 858-859 (9th Cir. 2008). Here, there
5 is no state court judgment. The decision of the Court of Appeal of
6 the State of California, Third Appellate District (San Joaquin
7 Division) (Dkt. 11 at 21-42) reversed orders sustaining demurrers
8 without leave to amend. It simply resuscitated Defendants' state
9 court lawsuit.

10 B. Defendants' request for dismissal pursuant to Rule 12(b)(6):

11 Defendants' request for dismissal pursuant to Rule 12(b)(6) is
12 denied because Defendants have not shown entitlement to this relief.
13 The parties do not appear to dispute the applicability of the Anti-
14 Injunction Act here. However, Defendants argue that dismissal is
15 appropriate because the complaint fails to assert an exception to the
16 Anti-Injunction Act. The court disagrees and finds that paragraphs
17 33, 34, and 35 of the complaint adequately plead such an exception to
18 the extent that the Anti-Injunction Act applies in this case.

19 Furthermore, the court denies Defendants' request for dismissal
20 based on Plaintiffs' alleged lack of standing. First, an argument for
21 lack of standing should be raised pursuant to Rule 12(b)(1), not Rule
22 12(b)(6). Second, Defendants' argument that the Plaintiffs have
23 failed to allege a pecuniary interest is unpersuasive. The complaint,
24 which seeks to enjoin the State Court Action, alleges that the State
25 Court Action requests "damages flowing from the filing of the debtors'
26 bankruptcy petitions, from the court-approved compromises of the
27 debtors' leases, and from the court-approved sale of the debtors'

assets". (Complaint ¶ 27). Because the complaint effectively seeks to prevent Defendants' recovery of money damages from Plaintiffs in the State Court action, the court finds that Plaintiffs have a pecuniary interest in the outcome of this proceeding.

C. Defendants' request for dismissal pursuant to Rule 12(b)(7):

Defendants' request for dismissal pursuant to Rule 12(b)(7) is denied because Defendants have not shown entitlement to this relief. Defendants' argument for dismissal pursuant to Rule 12(b)(7) amounts to one conclusory and unsupported statement, namely that "if there is any merit to Plaintiff's assertion of 'related to' jurisdiction. . . then the debtor and its creditors would be indispensable parties under Rule 19. . ." This argument, with nothing more, fails to articulate why the debtor or creditors can fairly be classified as indispensable parties and, therefore, fails to establish Defendants' entitlement to dismissal under Rule 12(b)(7).

D. Defendants' request for a more definite statement pursuant to Rule 12(e):

Defendants' request for a more definite statement is denied because Defendants have not shown entitlement to this relief. Motions for a more definite statement are generally not favored, because a party's pleadings are to be construed liberally to do substantial justice. "Rule 12(e)'s standard is plainly designed to strike at unintelligibility rather than lack of detail In the presence of proper, although general, allegations, the motion will usually be denied on the grounds that discovery is the more appropriate vehicle for obtaining the detailed information." James Wm. Moore, et. al., Moore's Federal Practice § 12.36[1] (2008). Despite a general

1 disfavor of the motion, Professor Moore goes on to describe the
2 utility of a Rule 12(e) motion in two types of situations:

3 First, proper pleading under Rule 8 requires a pleading
4 to contain allegations of each element of the claim. If
5 it does not, and if the deficiency is not so material
6 that the pleading should be dismissed under Rule
7 12(b) (6), a more definite statement is appropriate.
8 Second, if a complaint approaches the other extreme of
9 being overly prolix or complex, the motion for more
 definite statement can assist the court in "the
 cumbersome task of sifting through myriad claims, many of
 which may be foreclosed by various defenses." Because of
 its potential usefulness in that respect, courts will
 occasionally order a more definite statement sua sponte,
 which they have the freedom to do.

10 James Wm. Moore, et. al., Moore's Federal Practice § 12.36[1]
11 (2008) (citations omitted). In particular, Professor Moore cites
12 Anderson v. District Board of Trustees of Central Florida Community
13 College, 77 F.3d 364, 366 (11th Cir. 1996) for the proposition that a
14 court has a supervisory obligation to order a more definite statement
15 where the complaint incorporates every antecedent allegation by
16 reference into each subsequent claim and fails to adequately link a
17 claim for relief to its factual predicates. Here, Defendants have not
18 shown that either of the two exceptions described by Professor Moore
19 applies here. Moreover, the court finds that the allegations in the
20 complaint are sufficient pled such that Defendants can reasonably
21 prepare a response.

22 The court will issue a minute order.