

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 21, 2017 at 10:00 a.m.

1.	16-22654-A-7 MARC LIM 16-2202 RJF-1 CHICK'S PRODUCE, INC. ET AL V. LIM	MOTION FOR SUBSTITUTION OF PROPER PARTY FOLLOWING DEATH OF DEBTOR/DEFENDANT 5-12-17 [31]
----	--	--

Tentative Ruling: The motion will be granted in part.

The plaintiffs, Chick's Produce, Inc. and Del Fresh Produce, Inc. move to substitute in the place of the now deceased defendant, Marc Lim (also the named debtor in the underlying bankruptcy case), Christian Lim and Cameron Lim as real parties in interest defendants, pursuant Fed. R. Civ. P. 25, as made applicable here via Fed. R. Bankr. P. 7025.

Under Fed. R. Civ. P. 25(a)(1), "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed."

Preliminarily, this motion has been filed within the 90-day deadline of Rule 25(a)(1). The notice of death as to the defendant was filed by his counsel on April 4, 2017. Case No. 16-22654, Docket 139. This motion was filed on May 12, 2017.

Now that the court has evidence that Christian Lim and Cameron Lim are surviving children of Marc Lim, the court will substitute them in the place of Marc Lim.

However, the court will add Paige Lim to the substitution, as she is also a surviving child of Marc Lim. Christian Lim, Cameron Lim, and Paige Lim are all successors in interest to Marc Lim due to the fact that they are the surviving children or issue of Marc Lim and, under California intestacy law, they are beneficiaries of his estate. Marc Lim did not have a spouse, meaning that his children are the primary beneficiaries of his estate. See Cal. Prob. Code § 6402 (prescribing intestacy distributions in the event the decedent is not survived by a spouse).

And, the court has no evidence of a will disinheriting any of Marc Lim's children as beneficiaries of his estate. See Cal. Prob. Code § 6400 (making the scope of intestacy distributions subject to the existence and scope of a will).

Finally, the court is substituting Marc Lim's children as parties to this

August 21, 2017 at 10:00 a.m.

litigation solely due to their status as his children and primary beneficiaries of his estate. Torres v. Bayer Corp. (In re Baycol Prods. Litig.), 616 F.3d 778, 784-85 (8th Cir. 2010) (emphasizing that the "successor" under Rule 25(a)(1) is 1) the primary beneficiary of an already distributed estate, 2) the executor of the decedent's estate as named in a will, even if the will is not probated, 3) the primary beneficiary of an unprobated intestate estate which need not be probated).

The court rejects the movant's contention that Christian Lim and Cameron Lim being beneficiaries to life insurance policies makes them successors in interest to Marc Lim. A successor in interest is someone who is a beneficiary to the estate of the deceased. See Baycol at 784-85. Being the beneficiary to a life insurance policy does not make someone automatically a beneficiary to the estate of the deceased. Anyone can be named the beneficiary of a life insurance policy. And, life insurance proceeds are generally not a part of the estate of the deceased. The motion will be granted in part.

2. 16-21585-A-11 AIAD/HODA SAMUEL MOTION TO
SUBSTITUTE ATTORNEY
7-17-17 [853]

Tentative Ruling: The motion will be granted in part, denied in part, and dismissed as moot in part.

Debtor Hoda Samuel, who has been incarcerated in federal prison for the duration of this bankruptcy case, asks the court to discharge Edward Smith and Patricia Miller as her attorneys, and remove the reference of them as her attorneys from the docket. She also asks for the court to strike Edward Smith and Patricia Miller from the docket record, "granting her leave to file her pro-se appearance."

The chapter 11 trustee opposes the motion to the extent it requests that the names of Edward Smith and Patricia Miller be stricken from the docket.

The motion will be dismissed as moot with respect to the discharge of Edward Smith. Mr. Smith filed a motion to withdraw as counsel for the debtors. Docket 213. The court issued a ruling permitting withdrawal of Edward Smith as counsel for Mrs. Samuel.

"As to Mrs. Samuel, the analysis is different. The movant has had serious difficulties in representing the debtors in this case because they have failed to provide him with requested documents and have been taking unilateral actions at representing themselves in this proceeding, without his authorization. Such actions have included the filing of motions, without the consent or authority of the movant. As such, the movant has been unable to carry out his duties as their counsel."

"This is cause for permitting the movant's withdrawal pursuant to California Professional Conduct Rule 3-700(C)(1)(d) as to Mrs. Samuel. The court will permit the movant's withdrawal from this case as to Mrs. Samuel. The motion will be granted as to Mrs. Samuel."

Docket 261.

The motion to withdraw was moot as to Mr. Samuel because the court had previously approved the substitution of Mr. Jare for Mr. Smith. While the court ruled that Mr. Smith could withdraw from his representation of Mrs.

Samuel, Mr. Smith never lodged an order granting the motion. Therefore, the court will enter a minute order in connection with Mr. Smith's motion, making this motion moot.

Patricia Miller filed a motion to withdraw as counsel for Mrs. Samiel on February 21, 2017, but that motion was never set for hearing. The motion has been sitting on the docket without a disposition because Ms. Miller failed to serve the motion and set it for hearing. See Docket 713.

Given Ms. Miller's motion to withdraw and now Mrs. Samuel's motion to discharge Ms. Miller, the court will approve the discharge of Ms. Miller as counsel for Mrs. Samuel.

Finally, the court will deny the request to strike the names of Edward Smith and Patricia Miller from the docket. Edward Smith and Patricia Miller both participated in this case and their appearances are part of its history. As such, references to them are part of the record of this case. They, however, will no longer be counsel for Mrs. Samuel. Her motion will be granted as to Ms. Miller and an order will be entered on Mr. Smith's motion.

3. 14-31890-A-11 SHAINA LISNAWATI MOTION FOR
JHH-16 FINAL DECREE
8-7-17 [320]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The debtor is asking the court to enter a final decree and close the case, as the court has already granted her motion for chapter 11 discharge.

11 U.S.C. § 350(a) provides that "[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case." Similarly, Fed. R. Bankr. P. 3022 provides that "*[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.*"

In the chapter 11 context, courts have defined full administration as substantial consummation. In re Wade, 991 F.2d 402, 406 n.2 (7th Cir. 1993) (citing In re BankEast Corp., 132 B.R. 665, 668 n.3 (Bankr. D.N.H. 1991)). Substantial consummation is defined by section 1101(2) as "(A) *transfer of all or substantially all of the property proposed by the plan to be transferred;* (B) *assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan;* and (C) *commencement of distribution under the plan.*"

This court granted the debtor's motion for entry of chapter 11 discharge on August 7, 2017. Docket 319. The case cannot be administered further. Accordingly, the court will grant this motion. After entry of the order granting the debtor's discharge, a final decree will be entered and the case closed.