

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

December 1, 2022 at 2:00 p.m.

FINAL RULINGS

1. [20-90210-E-11](#) **JOHN YAP AND IRENE LOKE** **MOTION FOR FINAL DECREE**
[AF-13](#) **10-13-22 [288]**

Final Ruling: No appearance at the December 1, 2022 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on October 12, 2022. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

The Motion for Final Decree and Order Closing Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Final Decree and Order Closing Case is granted.

The Motion for Final Decree and Order Closing Case has been filed by the Debtor / Debtor in Possession, John Hst Yap and Irene Laiwah Loke, (“Movant”). Dckt. 228. Movant does not state any legal grounds in this Motion, or supporting documents and exhibits, supporting the relief sought.

Review of Minimum Pleading Requirements for a Motion

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to “read every document in the file and glean from that what the grounds should be for the motion.” That “state with particularity” requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court’s repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. See 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. See 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the “state with particularity” requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the “short and plain statement” standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor’s secured claim, determination of a debtor’s exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were “mere academic postulations” not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such “postulations.”

Our Local Rules make clear what constitutes proper legal grounds to satisfy the particularity requirement:

The application, motion, contested matter, or other request for relief shall set forth the relief or order sought and shall **state with particularity the factual and legal grounds therefor. Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request** but does not include a discussion of those authorities or argument for their applicability.

Local Bankruptcy Rule 9014-1(d) (emphasis added).

Here, Movant has not provided the court any citation to a statute, rule, case, or common law doctrine that supports a Final Decree and Closing of the Case. Rather, Movant simply lists factual assertions and “respectfully pray” the court enter their request relief. *See* Motion, Dckt. 288.

Movant is reminded that “[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys’ fees and costs, and other lesser sanctions.” LOCAL BANKR. R. 1001-1(g) (emphasis added).

APPLICABLE LAW

Final Decree and Closing of Case

Federal Rules of Bankruptcy Procedure Rule 3022 provides that, after 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. 11 U.S.C. § 350(a) states additionally that the court is required to close a case after an estate is “fully administered and the court has discharged the trustee.” The fact that the estate has been fully administered merely means that all available property has been collected and all required payments made. *In re Menk*, 241 B.R. 896, 911 (9th Cir. B.A.P. 1999).

To determine whether a Chapter 11 case has been “fully administered,” factors the court considers include whether:

- A. the plan confirmation order is final;
- B. deposits required by the plan have been distributed;
- C. property to be transferred under the plan has been transferred;
- D. the debtor (or the debtor’s successor under the plan) has taken control of the business or of the property dealt with by the plan;
- E. plan payments have commenced; and
- F. all motions, contested matters, and adversary proceedings have been finally resolved.

Federal Rule of Bankruptcy Procedure 3022, Adv. Comm. Note (1991). Additionally, unless the Chapter 11 plan or confirmation order provides otherwise, a Chapter 11 case should not remain open solely

because plan payments have not been completed. *See id.*; *In re John G. Berg Assocs., Inc.*, 138 B.R. 782, 786 (Bankr. E.D. Pa. 1992).

DISCUSSION

Although Movant has not provided legal grounds, Movant has listed factual grounds for approving this Motion:

1. An Order Confirming Chapter 11 Plan was entered on July 2, 2021.
2. An Order granting the Motion for Discharge was entered on June 26, 2022.
3. All monthly operating reports and post-confirmation quarterly reports that are due will be filed prior to the hearing on this Motion.
4. All payments have been made under the Plan and Debtor is current on those payoffs, including full payoffs of all general unsecured claims.
5. The Debtors have continued with management of the property dealt with under the Plan.
6. All claims and expenses required to be paid upon Plan confirmation or the Effective Date of the Plan has been paid.
7. All post-confirmation taxes have been paid.
8. The estate has been fully administered within the meaning of 11 U.S.C. § 350(a).

Motion, Dckt. 288.

There being no objection, Movant is entitled to the closing of the case.

In consideration of the factors indicating full administration, the court finds the Estate has been fully administered. The Motion is granted, and the court shall enter an order closing the Chapter 11 case.

FN. 1. Though the court may be a bit “pleading prickly” notwithstanding the Holiday Season, the court recognizes the attention to this case and legal services provided by counsel for the Debtor in Possession and the Debtor in navigating this case which has had some “interesting” issues. Said counsel fulfilled their obligations as officers of the court, assisted the Debtor in Possession in their duties, and assisted the Debtor/Plan Administrator in performing the Plan.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Final Decree and Order Closing Case filed by Debtor / Debtor in Possession John Hst Yap and Irene Laiwah Loke (“Movant”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the Clerk of the Court may enter the Final Decree and Close this Chapter 11 Case.

2. [19-90464-E-7](#) RICHARD RICKS
[20-9013](#) MAS-1
EDMONDS V. HUGHES

CONTINUED STATUS CONFERENCE RE:
MOTION FOR SUMMARY JUDGMENT
2-11-21 [\[15\]](#)

ADVERSARY PROCEEDING CLOSED:
11/15/22

Final Ruling: No appearance at the December 1, 2022 Status Conference is required.

Plaintiff's Atty: Mark A. Serlin
Defendant's Atty: Michael E. Dietrick

Adv. Filed: 11/19/20
Answer: 12/15/20

Nature of Action:
Recovery of money/property - fraudulent transfer

Notes:
Request for Dismissal of Adversary Proceedings filed 10/25/22 [Dckt 47]; Order granting filed 10/28/22 [Dckt 48]

Adversary Proceeding Closed 11/15/22

This Adversary Proceeding having been resolved by settlement and dismissed,
the Status Conference is concluded and removed from the Calendar.

The Clerk of the Court has closed the file for this Adversary Proceeding
(November 15, 2022 Docket Entry).

3. [21-90584-E-7](#)
[22-9004](#)

MARIA CUEVAS LEMUS
CAE-1

STATUS CONFERENCE RE:
COMPLAINT
10-6-22 [\[1\]](#)

CUEVAS LEMUS V. MARTINEZ,

CONTINUED TO 12/15/22 at 10:30 A.M.

Final Ruling: No appearance at the December 1, 2022 Status Conference is required.

Plaintiff's Atty: Marc Voisenat

Defendant's Atty: unknown

Adv. Filed: 10/6/22

Answer: none

Nature of Action:

Validity, priority or extent of lien or other interest in property

Injunctive relief - imposition of stay

Declaratory judgment

Notes:

[ALG-1] Joint *Ex Parte* Motion and Stipulation for Order Extending Deadline to Respond to Plaintiff's Complaint and to Continue Status Conference filed 11/8/22 [Dckt 8]; Order granting setting hearing for 12/15/22 at 10:30 a.m. filed 11/16/22 [Dckt 10]

<p>The Status Conference has been continued to 10:30 a.m. on December 15, 2022 (Specially Set Time) by prior Order (Dckt. 10) of the court.</p>
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