

Motion to Reconsider
Fed. R. Bankr. P. 8002(b)
Fed. R. Civ. P. 59
Fed. R. Bankr. P. 9023

In re Taggart, Case No. 09-39216-rld7

01/31/2012 RLD

Unpublished

Prior to his chapter 7 bankruptcy filing, the debtor owned a 25% member interest in Sherwood Park Business Center, LLC ("SPBC"), which was formed to build and operate a two-building business park in Sherwood, Oregon. The debtor later transferred his 25% member interest in SPBC to BT of Sherwood, LLC ("BT"), which he had formed. He then transferred his entire member interest in BT to his attorney, who had represented him in the formation of BT and the transfer of his member interest in SPBC to BT.

SPBC initiated a state court action against the debtor, his attorney and BT, asserting various claims, including breach of fiduciary duty and breach of contract. The state court action was stayed while the debtor's bankruptcy case was pending.

The state court action was revived after the debtor received his bankruptcy discharge. After a hearing, the state court entered judgment against the debtor. A petition for costs and attorney's fees ("attorney's fees petition") was filed on behalf of SPBC and the SPBC members. The attorney's fees petition sought attorney's fees and costs incurred in the state court action for the period following the debtor's bankruptcy discharge. The state court awarded attorney's fees in favor of SPBC as an offset.

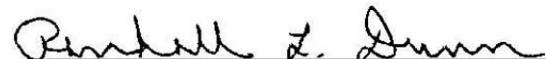
The debtor filed a motion for contempt ("contempt motion") against the SPBC members and their attorney for an alleged violation of the discharge injunction under 11 U.S.C. § 524(a)(2) in seeking the judgment and in filing the attorney's fees petition. Following an evidentiary hearing, the bankruptcy court denied the debtor's contempt motion.

The debtor filed a motion for reconsideration ("motion to reconsider") after the bankruptcy court issued its memorandum opinion but before it entered its order on the contempt motion. After reviewing the debtor's motion to reconsider, the bankruptcy court denied it. The bankruptcy court determined that the debtor did not set forth any grounds for granting a new trial; he did not present any new evidence or demonstrate that the bankruptcy court clearly erred in its legal or factual determinations.

January 31, 2012

Clerk, U.S. Bankruptcy Court

1 Below is an Opinion of the Court.
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RANDALL L. DUNN
U.S. Bankruptcy Judge

9 UNITED STATES BANKRUPTCY COURT

10 FOR THE DISTRICT OF OREGON

11 In Re:) Bankruptcy Case
12 BRADLEY WESTON TAGGART,) No. 09-39216-rld7
13 Debtor.)) MEMORANDUM DECISION

14 On December 9, 2011, I issued my original Memorandum Opinion
15 ("Memorandum Opinion") stating my findings of fact and conclusions of law
16 with respect to debtor Bradley Weston Taggart's ("Mr. Taggart") Amended
17 Motion to Hold Stuart M. Brown, Terry W. Emmert, Keith Jehnke and
18 Sherwood Park Business Center, LLC in Contempt for Violating Discharge
19 Injunction under 11 U.S.C. § 524 ("Contempt Motion") and further stating
20 my intent to deny the Contempt Motion. For reasons that are not clear,
21 following the submission of two alternative forms of order denying the
22 Contempt Motion on December 19, 2011, the order denying the Contempt
23 Motion ("Denial Order") was not entered until January 23, 2012.

24 In the meantime, on January 18, 2012, Mr. Taggart filed a
25 motion to reconsider ("Motion to Reconsider") the decision reflected in
26 the Memorandum Opinion. Subsequently, on January 24, 2012, Mr. Taggart

1 filed a Notice of Appeal of the Denial Order to be heard by the district
 2 court.

3 I retain jurisdiction to decide the Motion to Reconsider and to
 4 allow Mr. Taggart's appeal to become effective upon entry of an order
 5 deciding the Motion to Reconsider under Fed. R. Bank. P. 8002(b).¹ See,
 6 e.g., Miller v. Marriott Int'l, Inc., 300 F.3d 1061, 1063-64 (9th Cir.
 7 2002) ("[A] notice of appeal filed after the district court announces
 8 judgment is not effective until the district court has disposed of all
 9 [Civil] Rule 60(b) motions filed no later than ten (10) days after
 10 judgment is entered."); Martin v. Viles, 2009 WL 3365894 at *1 (E.D. Cal.
 11 Oct. 16, 2009) ("If the notice of appeal is instead filed after a motion
 12 for new trial, the notice of appeal is held in abeyance while the
 13 district court resolves the motion. Fed. R. App. P. 4(a)(4)(B)(i).").

14 DISCUSSION

15 A. Standards for Deciding a Motion for Reconsideration

16 The Motion for Reconsideration asks that I reconsider and
 17 reverse the decision reflected in the Memorandum Opinion. The Motion for
 18 Reconsideration is "analogous to a motion for new trial or to alter or
 19 amend the judgment pursuant to [Civil Rule] 59 as incorporated by Rule
 20 9023." United Student Funds, Inc. v. Wylie (In re Wylie), 349 B.R. 204,
 21 209 (9th Cir. BAP 2006).

22 The Ninth Circuit has held that "[t]here are three grounds for
 23 granting new trials in court-tried actions under [Civil] Rule 59(a)(2):

24
 25 ¹ Unless otherwise indicated, all chapter and section references are
 26 to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and all "Rule" references
 are to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
 Federal Rules of Civil Procedure are referred to as "Civil Rules."

1 (1) manifest error of law; (2) manifest error of fact; and (3) newly
2 discovered evidence." Brown v. Wright, 588 F.2d 708, 710 (9th Cir.
3 1978). See also Clinton v. Deutsche Bank Nat'l Trust Co. (In re
4 Clinton), 449 B.R. 79, 83 (9th Cir. BAP 2011):

5 To succeed on her motion to alter or amend the
6 judgment, debtor must have: (1) presented newly
7 discovered evidence, (2) showed clear error, or (3)
showed an intervening change in controlling law.
Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH &
Co., 571 F.3d 873, 880 (9th Cir. 2009).

9 I have broad discretion in determining whether to reconsider my
10 own orders, and "a motion for reconsideration should not be granted in
11 the absence of highly unusual circumstances." Orange St. Partners v.
12 Arnold, 179 F.3d 656, 665 (9th Cir. 1999).

13 B. Grounds for Reconsideration

14 The only legal authority cited by Mr. Taggart in the Motion for
15 Reconsideration is the Ninth Circuit's decision in Boeing North American,
16 Inc. v. Ybarra (In re Ybarra), 424 F.3d 1018 (9th Cir. 2005), cited by
17 both parties in their memoranda supporting and opposing the Contempt
18 Motion prior to my issuance of the Memorandum Opinion. I reviewed Ybarra
19 and discussed it at length in the Memorandum Opinion. Nothing in the
20 Motion for Reconsideration tends to suggest that I applied legal
21 standards inconsistent with Ybarra. Accordingly, I conclude that the
22 Motion for Reconsideration does not establish clear error of law or any
23 change in controlling law.

24 The Motion for Reconsideration further does not present any new
25 evidence, other than statements regarding the entry of judgment in the
26 Circuit Court following my issuance of the Memorandum Opinion. Rather,

1 the Motion for Reconsideration argues in effect that I clearly erred in
2 my fact findings and conclusions that Mr. Taggart reengaged in the
3 Circuit Court Lawsuit and "reentered the fray," considering Ybarra. As I
4 hope I made clear in the Memorandum Opinion, I carefully considered the
5 factual record before me and did not come lightly to the conclusion that
6 Mr. Taggart could not prevail on the Contempt Motion. As I pointed out
7 in the Memorandum Opinion, the record before me was mixed, but after
8 analyzing the evidence in light of Ybarra, I concluded that Mr. Taggart
9 did not meet his burden of proof to prevail on the Contempt Motion.
10 Nothing contained in the Motion for Reconsideration convinces me that I
11 erred in that determination. If I did commit clear error in my decision
12 of the Contempt Motion, that error can be corrected in Mr. Taggart's
13 appeal.

CONCLUSION

15 For the foregoing reasons, I will deny the Motion for
16 Reconsideration. The court will prepare a consistent order to be entered
17 contemporaneously with this memorandum decision.

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19 cc: Damon J. Petticord
James Ray Streinz
20 John Berman
Tyler Smith