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NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. CC-11-1100-DPaTa
VALLEY HEALTH SYSTEM,)
Debtor.) Bk. No. 07-18293
Adv. No. 10-01566

PEGGY KIRTON; DIANA AGNELLO,
Appellants,

v.

MEMORANDUM¹

VALLEY HEALTH SYSTEM; VALLEY
HEALTH SYSTEM RETIREMENT
PLAN; JOEL BERGENFELD,
Trustee of the Valley Health
System Retirement Plan;
VINAY M. RAO, Trustee of the
Valley Health System
Retirement Plan; MICHELE BIRD,
Trustee of the Valley Health
System Retirement Plan,
Appellees.

Argued and Submitted on January 22, 2015
at Pasadena

Filed - February 24, 2015

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Peter Carroll, Bankruptcy Judge, Presiding

¹ This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8024-1.

1 Appearances: Gregory G. Petersen argued for Appellants Peggy
2 Kirton and Diana Agnello; Gary E. Klausner of
3 Levene, Neale, Bender, Yoo & Brill LLP argued for
4 Appellee Valley Health System; Mark R. Attwood of
5 Jackson Lewis LLP argued for Appellees Valley
6 Health System Retirement Plan and its trustees,
7 Joel Bergenfeld, Vinay M. Rao, and Michele Bird.

8 Before: DUNN, PAPPAS, and TAYLOR, Bankruptcy Judges.

9 This appeal is before us for a second time. On March 19,
10 2012 ("Prior Disposition"),² the Panel determined that the
11 bankruptcy court lacked subject matter jurisdiction over the
12 dispute between the parties. On further appeal to the Ninth
13 Circuit Court of Appeals, that determination was reversed and
14 remanded to this Panel to determine the remaining substantive
15 issues posed on appeal from the bankruptcy court. See Valley
16 Health Sys. v. Kirton (In re Valley Health Sys.), 584 Fed.Appx.
17 477 (9th Cir. 2014).

18 We restate the introduction to the appeal set forth in the
19 Prior Disposition:

20 Peggy Kirton and Diana Agnello ("Kirton Parties") are
21 former employees of Valley Health System ("VHS") and
22 were participants in the Valley Health System
23 Retirement Plan ("Retirement Plan"). After VHS
24 confirmed its chapter 9³ plan of adjustment, they filed
25 in state court a petition for writ of mandamus
26 ("Petition") against VHS and others seeking to enforce
27 their alleged rights under the Retirement Plan. VHS

28 ² The Prior Disposition was a reported opinion: Kirton v.
Valley Health Sys. (In re Valley Health Sys.), 471 B.R. 555 (9th
Cir. BAP 2012).

³ Unless specified otherwise, all chapter and section
references are 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. All "Civil Rule" references are to
the Federal Rules of Civil Procedure.

1 removed the Petition to the bankruptcy court. Along
2 with other named respondents, VHS then filed a Civil
3 Rule 12(b)(6) motion to dismiss the Petition, which the
4 bankruptcy court granted without leave to amend. The
5 Kirton Parties filed a motion for reconsideration,
6 which the bankruptcy court denied.

7 The Kirton Parties appeal from both the dismissal order
8 and the order denying the motion for reconsideration.

9 For the reasons stated below, we AFFIRM the bankruptcy
10 court's dismissal of the adversary proceeding.

11 I. FACTUAL BACKGROUND⁴

12 A. VHS Confirms a Chapter 9 Plan

13 VHS is a local health care district under the California
14 Local Health Care District Law, Cal. Health & Safety Code § 32000
15 et seq. VHS filed a chapter 9 bankruptcy petition in December
16 2007, and the bankruptcy court entered an order for relief in the
17 case in February 2008. Pursuant to § 943, the bankruptcy court
18 confirmed VHS' first amended plan of adjustment ("Chapter 9
19 Plan") by order entered April 26, 2010 ("Confirmation Order").
20 On October 14, 2010, VHS issued a notice that October 13, 2010,
21 was the effective date of the Chapter 9 Plan. Among other
22 things, the Chapter 9 Plan provided for the discharge of VHS'
23 prepetition debts and also enjoined claimants from pursuing any
24 action or proceeding on account of such debts.

25 The underlying fact that has driven the litigation that is
26 the subject of this appeal is that VHS, prepetition, allegedly
27 had failed to fund the Retirement Plan adequately by at least

28 ⁴ A complete recitation of the facts is set forth in the
Prior Disposition. The facts in this Memorandum are more
summary in nature, and borrow heavily from the previously stated
facts.

1 \$100 million. The Chapter 9 Plan specifically addressed VHS'
2 obligations under its Retirement Plan:

3 Defined Benefit Plan Participants will be entitled to
4 the same rights and benefits to which such participants
5 are currently entitled under the VHS Retirement Plan
6 and the MetLife Group Annuity Contract, and such
7 participants shall have no recourse to the District or
8 to any assets of the District, and shall not be
9 entitled to receive any distributions under this Plan.
10 Instead, all unallocated amounts held by MetLife Group,
11 pursuant to the VHS Retirement Plan and the MetLife
12 Group Annuity Contract, will continue to be made
13 available to provide retirement benefits for
14 participants in the manner indicated under the
15 provisions of the VHS Retirement Plan and the MetLife
16 Group Annuity Contract. Accordingly, the treatment of
17 Allowed Class 2C claim holders set forth herein shall
18 not affect any legal, equitable or contractual rights
19 to which the VHS Retirement Plan participants are
20 entitled.

21 Chapter 9 Plan (Dec. 17, 2009) at 16:13-22. Based on this
22 treatment, Retirement Plan participants (Class 2C claimants) were
23 characterized as unimpaired, with no entitlement to vote on the
24 Chapter 9 Plan.

25 The Kirton Parties were served with notice of the claims bar
26 date, bankruptcy court approval of the first amended disclosure
27 statement, and the confirmation hearing on the Chapter 9 Plan.
28 They also received copies of the Chapter 9 Plan and the first
amended disclosure statement. The Kirton Parties filed no proofs
of claim, did not object to confirmation of the Chapter 9 Plan,
and otherwise did not participate in VHS' Chapter 9 case. They
further did not appeal the Confirmation Order.

29 B. The Kirton Parties Seek Relief in State Court

30 In August 2010, after the Chapter 9 Plan had been confirmed,
31 the Kirton Parties filed the state court Petition, naming as
32 respondents VHS, the Retirement Plan, three individual trustees

1 for the Retirement Plan, and MetLife, Inc. ("MetLife"), the
2 administrator of the Retirement Plan. The Petition sought
3 damages in excess of \$100 million under various theories for the
4 alleged underfunding of the Retirement Plan since 1999. The
5 Petition's prayer for relief sought a writ of mandate directing
6 the respondents to fund the Retirement Plan as required by law,
7 to disclose VHS' underfunding and violations of the Retirement
8 Plan and the California Constitution, to cease any concealment of
9 underfunding/violations, and to prosecute any actions allowed or
10 required to conserve the Retirement Plan's assets. The Petition
11 alleged that all of the respondents had breached their respective
12 duties to prevent, to disclose, or both, VHS' underfunding of the
13 Retirement Plan, which were alleged to have arisen under the
14 Retirement Plan itself and California Constitution Art. XVI,
15 Sec. 17. However, ultimately, as noted in the Prior Disposition,
16 "[t]he gravamen of the Petition was that VHS allegedly
17 underfunded the Retirement Plan to the tune of \$100 million."
18 471 B.R. at 560.

19 C. VHS Removes the State Court Petition to Bankruptcy Court

20 On September 22, 2010, VHS filed a notice of removal
21 pursuant to 28 U.S.C. § 1452(a) and Rule 9027, which removed the
22 Petition from state court to the bankruptcy court. VHS, the
23 Retirement Plan, and its Trustees ("VHS Defendants") then filed
24 the motion ("Dismissal Motion") to dismiss the Petition under
25 Civil Rule 12(b)(6), applicable in the adversary proceeding
26 pursuant to Rule 7012, on October 22, 2010.

27 The primary argument in the Dismissal Motion was that the
28 Chapter 9 Plan and the Confirmation Order discharged VHS'

1 obligation to fund the Retirement Plan. In addition, the VHS
2 Defendants argued that the Trustees had no contractual or
3 fiduciary obligations to the Kirton Parties under the Retirement
4 Plan; that the Retirement Plan did not have legal capacity to sue
5 or be sued; that the Kirton Parties did not comply with the pre-
6 filing requirements of the California Government Claims Act; that
7 both VHS and the Trustees were immune from liability; and that
8 the Kirton Parties failed to plead the requisite elements for
9 mandamus relief or for relief under the causes of action alleged.

10 The notice which accompanied the Dismissal Motion warned the
11 Kirton Parties that if they failed to file a timely opposition,
12 the Local Rules authorized the bankruptcy court to treat that
13 failure as consent to the relief requested in the Dismissal
14 Motion. Notwithstanding that warning, the Kirton Parties never
15 filed a response to the Dismissal Motion. On the eve of the
16 January 4, 2011, hearing ("Hearing") on the Dismissal Motion, the
17 Kirton Parties instead filed what they intended to be an amended
18 complaint.

19 At the Hearing, the bankruptcy court found that no valid
20 amended complaint had in fact been filed; the Kirton Parties had
21 failed to comply with Civil Rule 15, which required either
22 written consent from the VHS Defendants or an order from the
23 bankruptcy court in advance of filing an amended complaint,
24 neither of which the Kirton Parties had obtained. In light of
25 the Kirton Parties' failure to respond to the Dismissal Motion,
26 the bankruptcy court granted the Dismissal Motion without leave
27 to amend.

28 The Kirton Parties objected to the proposed dismissal order

1 prepared by the VHS Defendants on the basis that it attempted to
2 grant relief beyond that sought in the Dismissal Motion and to
3 resolve matters not properly before the bankruptcy court. In
4 particular, the Kirton Parties asserted that granting the
5 Dismissal Motion in favor of parties not expressly named as
6 movants in the Dismissal Motion would violate the Kirton Parties'
7 due process rights. In large part this argument seems to be
8 directed to the Kirton Parties' assertions that VHS had more than
9 one retirement plan and that the retirement plan named in their
10 Petition was not the Retirement Plan on behalf of which the
11 Dismissal Motion was filed. The Kirton Parties also asserted
12 that the California Constitution deprived the bankruptcy court of
13 jurisdiction over any retirement plan of VHS. The bankruptcy
14 court overruled the Kirton Parties' objections and entered the
15 form of order ("Dismissal Order") the VHS Defendants had lodged.

16 In response, the Kirton Parties filed a motion for
17 reconsideration of the Dismissal Order, reiterating their
18 arguments made against the form of order. The bankruptcy court
19 entered a Memorandum of Decision ("Opinion") without a hearing
20 with respect to reconsideration on February 24, 2011. In the
21 Opinion, the bankruptcy court explicitly found that "VHS had only
22 one retirement plan - the VHS Retirement Plan identified in VHS's
23 disclosure Statement." The bankruptcy court also rejected the
24 Kirton Parties' theory that the VHS Retirement Plan was a sui
25 juris entity capable of being sued in its own right. Rather, the
26 bankruptcy court ruled that the VHS Retirement Plan was
27 "tantamount to a pre-petition contract between VHS and the plan
28 participants," citing Westley v. Cal. Pub. Employees Ret. Sys.

1 Bd. of Admin., 105 Cal. App. 4th 1095, 1116 (3d Dist. 2003). The
2 bankruptcy court ruled that VHS' only funding obligation arose
3 from this contractual relationship, implicitly rejecting any
4 theory that the underfunding implicated the California
5 Constitution. Finally, the bankruptcy court ruled that the
6 Trustees had no contractual obligations under the Retirement Plan
7 in their individual capacities. Noting that the Kirton Parties
8 had been on notice throughout VHS' bankruptcy case of relevant
9 deadlines but had failed to take any action to protect any claim
10 they might have had against VHS for underfunding the Retirement
11 Plan, the bankruptcy court concluded that the claims asserted in
12 the Petition were barred by the confirmed Chapter 9 Plan.

13 Based upon the foregoing, the bankruptcy court ruled that
14 granting the Dismissal Motion was appropriate, as was granting it
15 without leave to amend where the claims stated by the Petition
16 could not possibly be cured by the allegation of other facts.
17 Further, extending the Dismissal Order to cover claims asserted
18 against MetLife, notwithstanding MetLife's failure to make an
19 appearance in response to the Petition, was warranted because
20 MetLife's position was aligned with that of the VHS Defendants.

21 The order ("Reconsideration Order") denying the
22 Reconsideration Motion was entered February 24, 2011. The Kirton
23 Parties thereafter timely appealed both the Dismissal Order and
24 the Reconsideration Order.

25 **II. JURISDICTION**

26 The bankruptcy court had "related to" jurisdiction under
27 28 U.S.C. §§ 1334 and 157. See Valley Health Sys. v. Kirton
28 (In re Valley Health Sys.), 584 Fed.Appx. 477 (9th Cir. 2014).

1 We have jurisdiction under 28 U.S.C. § 158.

2 **III. ISSUES**

3 Whether the bankruptcy court clearly erred and/or abused its
4 discretion when it dismissed the adversary proceeding.

5 **IV. STANDARDS OF REVIEW**

6 We review de novo the bankruptcy court's interpretation of
7 the Civil Rules. Am. Sports Radio Network, Inc. v. Krause
8 (In re Krause), 526 F.3d 1070, 1073 n.5 (9th Cir. 2008). Thus,
9 the bankruptcy court's dismissal of an adversary proceeding for
10 failure to state a claim under Civil Rule 12(b)(6) is reviewed de
11 novo. N.M. State Inv. Council v. Ernst & Young LLP, 641 F.3d
12 1089, 1094 (9th Cir. 2011); Barnes v. Belice (In re Belice),
13 461 B.R. 564, 572 (9th Cir. 2011).

14 "Dismissal without leave to amend is improper unless it is
15 clear, upon de novo review, that the complaint could not be saved
16 by any amendment." Thinket Ink Info. Res., Inc. v. Sun
17 Microsystems, Inc., 368 F.3d 1053, 1061 (9th Cir. 2004) (citation
18 omitted). Where amendment would be futile, it is not error for a
19 trial court to deny leave to amend. Id., citing Saul v. United
20 States, 928 F.2d 829, 843 (9th Cir. 1991).

21 We review the bankruptcy court's denial of a motion for
22 reconsideration for an abuse of discretion. Tracht Gut, LLC v.
23 Cnty. of L.A. Treasurer & Tax Collector (In re Tracht Gut, LLC),
24 503 B.R. 804, 809 (9th Cir. BAP 2014).

25 Review of an abuse of discretion determination involves a
26 two-prong test; first, we determine de novo whether the
27 bankruptcy court identified the correct legal rule for
28 application. See United States v. Hinkson, 585 F.3d 1247, 1261-

1 62 (9th Cir. 2009) (en banc). If not, then the bankruptcy court
2 necessarily abused its discretion. See id. at 1262. Otherwise,
3 we next review whether the bankruptcy court's application of the
4 correct legal rule was clearly erroneous. We will affirm unless
5 its fact findings were illogical, implausible, or without support
6 in inferences that may be drawn from the facts in the record.

7 See id.

8 We may affirm the decision of the bankruptcy court on any
9 basis supported by the record. See ASARCO, LLC v. Union Pac. R.
10 Co., 765 F.3d 999, 1004 (9th Cir. 2014); Shanks v. Dressel,
11 540 F.3d 1082, 1086 (9th Cir. 2008).

12 V. DISCUSSION

- 13 1. The Bankruptcy Court Dismissed the Adversary
14 Proceeding Because the Kirton Parties Failed to
Comply With National and Local Rules.

15 It is well- and long-established that a court's local rules
16 have the force of law. See Weil v. Neary, 278 U.S. 160, 169
17 (1929). This principle includes the bankruptcy court's Local
18 Rules. See Price v. Lehtinen (In re Lehtinen), 332 B.R. 404,
19 412-14 (9th Cir. BAP 2005), aff'd, 564 F.3d 1052 (9th Cir. 2009).

20 In the Bankruptcy Court for the Central District of
21 California, Local Rule 9013-1(f) provides, with exceptions not
22 relevant to this appeal, that "each interested party opposing or
23 responding to the motion must file and serve the response
24 (Response) on the moving party and the United States trustee not
25 later than 14 days before the date designated for hearing."
26 Further, Local Rule 9013-1(h) cautions "if a party does not
27 timely file and serve documents, the court may deem this to be
28 consent to the granting or denial of the motion, as the case may

1 be.”

2 The VHS Defendants filed the Dismissal Motion on October 22,
3 2010. The notice of motion, with which the Kirton Parties were
4 served, warned that a failure to file a timely opposition to the
5 Dismissal Motion could be treated by the bankruptcy court as
6 consent to the relief requested in the Dismissal Motion.

7 Notwithstanding the notice that serious consequences might result
8 if a timely response to the Dismissal Motion was not filed, the
9 Kirton Parties never filed any response, even with several
10 opportunities to do so.

11 The original scheduled hearing date on the Dismissal Motion
12 was November 30, 2010, making the Kirton Parties' response due no
13 later than November 16, 2010. The record establishes that on
14 November 24, 2010, the parties filed a stipulation to continue
15 the hearing to a proposed date of December 30, 2010; that the
16 continuance was a professional courtesy being extended to counsel
17 for the Kirton Parties based upon his poor health; and that the
18 parties expressly stipulated “[t]o allow [the Kirton Parties’]
19 Opposition and [the VHS Defendants’] Reply to the Opposition to
20 [the Dismissal Motion] to be filed in accordance with the new
21 date [sic] hearing.” The bankruptcy court ultimately reset the
22 hearing on the Dismissal Motion for January 4, 2011, resetting
23 the deadline for the Kirton Parties to file an opposition to the
24 Dismissal Motion to December 21, 2010. A joint status report
25 also was due on December 21, 2010 under the Local Rules; however,
26 counsel for the VHS Defendants was unable to obtain the
27 cooperation of counsel for the Kirton Parties. The VHS
28 Defendants filed a unilateral status report instead. On

1 December 30, 2010, the VHS Defendants filed a notice that no
2 opposition had been filed to the Dismissal Motion. Ultimately,
3 at 9:23 p.m. on January 3, 2011, the day before the Hearing, the
4 Kirton Parties filed their own unilateral status report.

5 The Kirton Parties belatedly attempted to file an amended
6 complaint, taking the position that the amended complaint would
7 render the Dismissal Motion moot, thereby relieving the Kirton
8 Parties of the responsibility for responding to the Dismissal
9 Motion, timely or otherwise.

10 Local Rule 7015-1(a)(3) provides, "Unless otherwise ordered,
11 a pleading will not be deemed amended absent compliance with this
12 rule and [Rule] 7015." Rule 7015 expressly incorporates Civil
13 Rule 15. Because the Kirton Parties did not amend the Petition
14 within 21 days after the Dismissal Motion was filed, they were
15 required to comply with Civil Rule 15(a)(2), which states: "In
16 all other cases, a party may amend its pleading only with the
17 opposing party's written consent or the court's leave. The court
18 should freely give leave when justice so requires." The Kirton
19 Parties having obtained neither the written consent of the VHS
20 Defendants nor leave of the bankruptcy court to file their
21 amended complaint, the bankruptcy court properly determined that
22 the Petition was not deemed amended. The Kirton Parties were
23 therefore left with a live Dismissal Motion to which they had not
24 responded.

25 The bankruptcy court neither erred nor abused its discretion
26 in entering the Dismissal Order in these circumstances. That
27 determination was in accordance with Local Rules 9013-1(f) and
28 (h), of which the Kirton Parties were fully informed.

1 2. Dismissal Without Leave to Amend Was Not Improper

2 Rule 15(a)(2) requires the bankruptcy court to freely give
3 leave to amend a pleading "when justice so requires." If,
4 however, upon de novo review, it is clear that the Petition could
5 not be saved by any amendment, dismissal without leave to amend
6 is not improper. See Polich v. Burlington N., Inc., 942 F.2d
7 1467, 1472 (9th Cir. 1991). To dismiss a pleading without leave
8 to amend, the bankruptcy court was required to determine that the
9 Petition could not possibly be cured by the allegation of other
10 facts. United States v. SmithKline Beecham, Inc., 245 F.3d 1048,
11 1052 (9th Cir. 2001).

12 Any underfunding of the Retirement Plan could only be
13 collected from VHS. As noted by the bankruptcy court, the
14 Petition through its various claims for relief sought damages in
15 excess of \$100 million for the alleged underfunding of the
16 Retirement Plan since 1999. Yet, in light of the terms of the
17 confirmed Chapter 9 Plan, no action could be taken to require VHS
18 to pay additional funds into the Retirement Plan. In these
19 circumstances, the bankruptcy court concluded that the Petition
20 failed to state a plausible claim for relief against any of the
21 VHS Defendants or MetLife, a fatal defect that could not be cured
22 by amendment. We agree with the bankruptcy court's conclusion.
23 It is clear that the allegation of additional facts would not
24 cure the defects in the Petition. Accordingly, the bankruptcy
25 court did not err in dismissing the Petition without leave to
26 amend.

27 3. The Scope of the Dismissal Was Not Improper

28 The Kirton Parties contend that the bankruptcy court erred

1 in dismissing the Petition as to all of the named respondents
2 when not all had requested dismissal. Aside from Does 1-200, the
3 only "Respondent" named in the Petition that did not join in the
4 Dismissal Motion was MetLife.

5 The Ninth Circuit has held as a matter of law that dismissal
6 with prejudice in favor of a party which has not appeared can be
7 based upon the presentations of other defendants which have
8 appeared. See Abagninin v. AMVAC Chemical Corp., 545 F.3d 733,
9 743 (9th Cir. 2008). MetLife was the administrator of the
10 Retirement Plan; its interest was absolutely aligned with that of
11 the VHS Defendants. The bankruptcy court determined that MetLife
12 was in an identical position to the VHS Defendants such that the
13 claims in the Petition against MetLife also should be dismissed
14 without leave to amend. Not only was it within the authority of
15 the bankruptcy court to do so (see Silverton v. Dep't. of
16 Treasury, 644 F.2d 1341, 1345 (9th Cir.), cert. denied, 454 U.S.
17 895 (1981)), it was not error in the circumstances before us.

18 VI. CONCLUSION

19 In light of the failure of the Kirton Parties to comply with
20 the Local Rules in relation to the Dismissal Motion, the
21 bankruptcy court did not err when it dismissed the Petition. Nor
22 was dismissal without leave to amend the Petition error where the
23 confirmed Chapter 9 Plan precluded any effort by the Kirton
24 Parties to compel VHS to provide additional funding to the
25 Retirement Plan. Extending the scope of the Dismissal Order to
26 MetLife was appropriate where MetLife was merely the
27 administrator of the Retirement Plan and was aligned with all of
28 the other VHS Defendants. Accordingly, we AFFIRM both the

1 Dismissal Order and the Reconsideration Order.⁵

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22 ⁵ Appellants filed two requests for judicial notice in this
23 appeal. The first requested that we take judicial notice of
24 (1) the list of creditors in the chapter 9 case and (2) the
25 docket of the chapter 9 case. The second, filed days before oral
26 argument, requested that we take judicial notice of a June 2,
27 2003, opinion of the Attorney General for the State of
28 California. We deny the requests on the basis that the documents
which Appellants request that we take judicial notice of are not
relevant to the disposition of this appeal or are merely
redundant to facts and/or authorities already in the record
before us.