

OCT 06 2016

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:) BAP No. CC-15-1423-KuKiTa
)
RICHARD STEPHEN KVASSAY,) Bk. No. 2:11-bk-11698-DS
)
Debtor.)

RICHARD STEPHEN KVASSAY,)
)
Appellant,)

v.)

MEMORANDUM*

ROBERT V. KVASSAY, Trustee of)
the Kvassay Family Trust dated)
February 26, 1993; RUSSAKOW &)
TAN LLP; RUSSAKOW, GREENE &)
TAN LLP; MATTHEW C. BROWN,)
)
Appellees.)

Argued and Submitted on September 22, 2016
at Pasadena, California

Filed - October 6, 2016

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

Honorable Deborah J. Saltzman, Bankruptcy Judge, Presiding

Appearances: Troy A. Stewart argued for appellant Richard
Stephen Kvassay; appellee Matthew C. Brown argued
for himself and for appellee Robert V. Kvassay,
trustee.

Before: KURTZ, KIRSCHER and TAYLOR, Bankruptcy Judges.

*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 **INTRODUCTION**

2 Former chapter 7¹ debtor Richard Stephen Kvassay appeals
3 from an order denying his motion to reopen his bankruptcy case so
4 that he could commence contempt proceedings against his brother
5 Robert Kvassay and his attorneys for alleged violation of the
6 discharge injunction. The bankruptcy court denied the motion to
7 reopen without specifying why, other than to merely state that
8 there was no reason to reopen.

9 Neither the Bankruptcy Code nor the Federal Rules of
10 Bankruptcy Procedure nor the bankruptcy court's Local Rules
11 require that a bankruptcy case be reopened before commencing
12 contempt proceedings for violation of the discharge injunction.
13 On that basis, we AFFIRM.

14 **FACTS**

15 The dispute underlying this appeal involves three brothers,
16 (Richard, Robert and Peter), and a three and a half acre estate
17 and residence in Eagle Rock, California. Title to the real
18 property was placed into the Kvassay Family Trust dated
19 02/26/1993 by the brothers' parents, who are now both deceased.
20 At the time of the parents' death, both Richard and Peter lived
21 on the property. In fact, Richard had lived there more or less
22 continually since the 1960's, and Peter had lived there since the
23

24
25 ¹Unless specified otherwise, all chapter and section
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
27 all "Rule" references are to the Federal Rules of Bankruptcy
28 Procedure, Rules 1001-9037. All "Local Rule" references are to
the Local Bankruptcy Rules of the United States Bankruptcy Court
for the Central District of California.

1 1980's.²

2 At first, the three brothers attempted to cooperate
3 regarding refurbishing and disposing of the property.
4 Eventually, however, that cooperation completely broke down, and
5 Robert as trustee of the trust sued Richard and Peter in the
6 Probate Division of the Los Angeles County Superior Court.

7 Robert's verified petition sought, among other things, to
8 evict Richard and Peter from the property and to offset against
9 their distributive share of the proceeds damages incurred as a
10 result of their alleged misconduct. According to Robert, both
11 brothers permitted the property to become extremely dilapidated
12 and interfered with efforts to refurbish the property. In
13 addition, Robert claimed, Peter falsely represented himself to be
14 trustee of the trust and thereby obtained a \$1.5 million loan
15 secured by the trust property.

16 In 2011, while the probate court litigation was pending,
17 Richard filed a chapter 11 petition. His bankruptcy case later
18 was converted to chapter 7, and Robert obtained a bankruptcy
19 court order for relief from the automatic stay, which order
20 permitted him to proceed with the probate court litigation
21 without any restrictions on any aspect of those proceedings,
22 including eventual enforcement of the judgment.

23 After extensive probate court litigation, including an
24 unsuccessful state court appeal by Richard and Peter, Robert

26 ²We have derived many of the facts set forth in this
27 decision from In re Kvassay, 2014 WL 2446181 (Mem. Dec.) (9th
28 Cir. BAP May 30, 2014), aff'd, 2016 WL 3318634 (Mem. Dec.) (9th
Cir. June 15, 2016).

1 succeeded in evicting both Richard and Peter from the property in
2 2012. Other aspects of the probate court litigation continued
3 into 2015 and beyond.³

4 In September 2013, the bankruptcy court entered its standard
5 form discharge order, which is substantially the same as Official
6 Form B 18. The bankruptcy case was administratively closed in
7 October 2015 pursuant to § 350(a), and the debtor (Richard) filed
8 a motion to reopen the case in November 2015. In compliance with
9 the bankruptcy court's Local Rule 5010-1, the motion to reopen
10 was accompanied by a declaration explaining why the case needed
11 to be reopened. According to the declaration, Richard wanted the
12 case reopened so he could commence contempt proceedings against
13 Robert and his attorneys for violation of the discharge
14 injunction. As Richard put it, Robert's and his attorneys'
15 continued litigation in the probate court constituted an action
16 to collect, recover or offset roughly \$1.5 million in discharged
17 prepetition debt, in violation of the discharge injunction.

18 In Robert's response to the motion to reopen, Robert argued
19 that the motion to reopen should be denied because Richard was
20 improperly attempting to relitigate the probate court's

21
22 ³Because the excerpts of record provided by the parties
23 included little information regarding the relief from stay and
24 probate court proceedings, we have reviewed the electronic case
25 dockets from the underlying bankruptcy case and the underlying
26 probate court litigation. See Bk. No. 11-11698; LASC Case No.
27 BP122477. We can and do take judicial notice of these documents.
28 See O'Rourke v. Seaboard Sur. Co. (In re E.R. Fegert, Inc.),
887 F.2d 955, 957-58 (9th Cir. 1989); Mullis v. Bankr. Ct.,
828 F.2d 1385, 1388 & n.9 (9th Cir. 1987). We also have reviewed
the bankruptcy and adversary proceeding dockets in the related
bankruptcy case of Richard's brother Peter. We take judicial
notice of these dockets as well. See id.

1 determination that Richard had "stolen assets of the trust."
2 Robert further argued that Richard had "unclean hands" and that
3 it would be inequitable to permit Richard to reopen his
4 bankruptcy case to commence contempt proceedings. Among other
5 things, Robert pointed out that he had not been listed or
6 scheduled as a creditor in Richard's bankruptcy case, and he
7 additionally claimed that he did not actually know about
8 Richard's bankruptcy case until it was too late to file either a
9 proof of claim or a nondischargeability action under § 523(c).

10 Robert also asserted that denial of the motion to reopen was
11 justified for the same reasons the bankruptcy court indicated it
12 was prepared to deny the motion of Richard's brother Peter for an
13 order to show cause re contempt for violation of the discharge in
14 Peter's bankruptcy case. According to Robert, the bankruptcy
15 court stated its reasons for denying Peter's motion for an order
16 to show cause during the course of a summary judgment hearing in
17 Robert's nondischargeability adversary proceeding against Peter.
18 (Adv. No. 12-02577).

19 During the summary judgment hearing, the bankruptcy court
20 stated that it was going to deny Peter's motion for an order to
21 show cause re contempt because Robert's actions in prosecuting
22 the probate court litigation did not violate the discharge
23 injunction. The bankruptcy court reasoned that, in light of the
24 fact that the liability at issue in the probate court litigation
25 also was the subject of a pending nondischargeability action, the
26 discharge injunction did not enjoin Robert from prosecuting the
27
28

1 probate court litigation.⁴

2 After reviewing Richard's motion to reopen and Robert's
3 opposition, the bankruptcy court denied the motion to reopen
4 without holding a hearing. The three sentence order merely
5 stated that the motion to reopen was denied because "there are no
6 grounds to reopen the case." The bankruptcy court entered its
7 order denying Richard's motion to reopen on December 2, 2015, and
8 Richard timely appealed.

9 JURISDICTION

10 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
11 §§ 1334 and 157(b) (2) (O). We have jurisdiction under 28 U.S.C.
12 § 158.

13 ISSUE

14 Did the bankruptcy court commit reversible error when it
15 held that there were no grounds to reopen Richard's bankruptcy
16 case?

17 STANDARDS OF REVIEW

18 Orders denying motions to reopen are reviewed for an abuse
19 of discretion. Staffer v. Predovich (In re Staffer), 306 F.3d
20 967, 971 (9th Cir. 2002).

21 The bankruptcy court abuses its discretion if it applies an
22 incorrect legal rule or its factual findings are illogical,
23 implausible or without support in the record. See U.S. v.
24 Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

26 ⁴Peter appealed the denial of his motion for an order to
27 show cause re contempt, and oral argument in Peter's appeal was
28 held on the same date and before the same panel as held in this
appeal. (BAP No. CC-15-1420-KiTaKu.)

1 In conducting our appellate review, we must ignore harmless
2 error, and we may affirm on any ground supported by the record.
3 Lakhany v. Khan (In re Lakhany), 538 B.R. 555, 559-60 (9th Cir.
4 BAP 2015).

5 **DISCUSSION**

6 Under § 350(b), the bankruptcy court may reopen a bankruptcy
7 case "to administer assets, to accord relief to the debtor, or
8 for other cause." Rule 5010 describes the appropriate procedures
9 for requesting the reopening of a case pursuant to § 350(b).

10 Under Rule 5010, the motion to reopen does not need to be served
11 on any parties; instead, the court may consider the motion ex
12 parte, because it presents an extremely limited range of issues:
13 "whether further administration appears to be warranted; whether
14 a trustee should be appointed; and whether the circumstances of
15 reopening necessitate payment of another filing fee." Menk v.
16 Lapaglia (In re Menk), 241 B.R. 896, 916-17 (9th Cir. BAP 1999).

17 Put another way, the reopening of the bankruptcy case is a
18 ministerial act of little or no legal significance. It merely
19 enables the bankruptcy court clerk to manage the bankruptcy
20 docket and case file and treat the case as an active, pending
21 matter. In re Staffer, 306 F.3d at 972; In re Menk, 241 B.R. at
22 913. As further explained in Menk, reopening of the bankruptcy
23 case does not affect either the debtor's property or abandoned
24 estate property. Id. at 914. In fact, "[t]o the extent that
25 effects of closing are to be undone, specific orders in separate
26 civil proceedings are necessary." Id. at 913.

27 Given the limited legal significance and limited practical
28 impact of reopening a bankruptcy case, when ruling on a motion to

1 reopen, bankruptcy courts ordinarily should avoid addressing the
2 merits of any legal or factual disputes underlying the motion to
3 reopen. In re Staffer, 306 F.3d at 972; In re Menk, 241 B.R. at
4 916. As Menk explained:

5 It may be objected that considerations of economy make
6 it sensible to combine consideration of the motion to
7 reopen with consideration of arguably dispositive
8 issues in the underlying litigation. The logical
9 appeal in this position turns out, in the long run, to
10 be a false economy. Well-intentioned shortcuts that
11 give short shrift to orderly procedure create
12 unfortunate misimpressions about the quality of justice
13 dispensed in bankruptcy courts, look sloppy, and lead
14 one into disorienting thickets that present more
15 trouble than they avoid.

16 The better practice is the procedurally correct one of
17 requiring merits issues to be left to the underlying
18 litigation and relying on Rule 9011 and the court's
19 inherent sanctioning authority to constrain
20 inappropriate litigation.

21 Id. at 916 (citations omitted).

22 On the other hand, when the undisputed facts in the record
23 unequivocally establish that reopening the case would be a
24 "pointless exercise," the bankruptcy court may deny the motion to
25 reopen on that basis. See, e.g., Beezley v. Cal. Land Title Co.
26 (In re Beezley), 994 F.2d 1433, 1437 (9th Cir. 1993).

27 In this case, the motion to reopen was unnecessary - or
28 pointless - for the following reason: neither the Bankruptcy Code
29 nor the Federal Rules of Bankruptcy Procedure required the
30 reopening of the bankruptcy case in order for Richard to commence
31 the contempt proceedings for alleged violation of the discharge
32 injunction. Staffer and Menk held that reopening of the case is
33 not required either jurisdictionally or otherwise before bringing
34 a post-closing nondischargeability action against the debtor.

35 In Re Staffer, 306 F.3d at 972; In re Menk, 241 B.R. at 912; see

1 also In re Lakhany, 538 B.R. at 560 (same). For the same reasons
2 that Staffer, Menk and Lakhany concluded that reopening was not
3 necessary in order to commence a post-closing action under § 523,
4 case reopening similarly is not necessary for the commencement of
5 post-closing contempt proceedings for violation of the discharge
6 injunction. At most, reopening the case in this context would be
7 a matter of convenience for the clerk of court in order to
8 facilitate case management and file management activities.
9 In re Staffer, 306 F.3d at 972; In re Menk, 241 B.R. at 913.

10 In addition, the bankruptcy court's "Court Manual"⁵
11 specifies that case reopening is not procedurally required in the
12 Central District of California before commencing a post-closing
13 action under § 523 or a post-closing action to remedy a violation
14 of the discharge injunction. See Court Manual at § 2.8(c) (Last
15 Revised August 2016).

16 In sum, it was unnecessary to reopen Richard's bankruptcy
17 case in order for Richard to commence contempt proceedings
18 against Robert and his attorneys for alleged violation of the
19 discharge injunction, so the bankruptcy court did not commit
20 reversible error when it denied Richard's motion to reopen.

21 **CONCLUSION**

22 For the reasons set forth above, we AFFIRM the bankruptcy
23 court's order denying Richard's motion to reopen his bankruptcy
24 case.

26 ⁵The Court Manual describes itself as an "adjunct" to the
27 bankruptcy court's Local Rules and can be found on the bankruptcy
28 court's website at <http://www.cacb.uscourts.gov/court-manual>
(last visited Sept. 22, 2016).