

JUN 05 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRUCE DARIAN, Individually, on his
own behalf, aka SEAL 1 dba Darian
Construction, Co.,

Plaintiff - Appellant,

and

USA, EX REL. DARIAN, as a Relator on
behalf of the United States Government,

Plaintiff,

v.

ACCENT BUILDERS, INC., a California
corporation, aka SEAL A; et al.,

Defendants,

AMERICAN INTERNATIONAL
COMPANIES; et al.,

Defendants,

and

DAVID PASTERNAK; et al.,

No. 06-55692

D.C. No. CV-00-10255-FMC

MEMORANDUM *

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

Defendants - Appellees.

Appeal from the United States District Court
for the Central District of California
Florence-Marie Cooper, District Judge, Presiding

Submitted June 3, 2009**
Pasadena, California

Before: RYMER and GRABER, Circuit Judges, and ALDRICH, *** District Judge.

Bruce Darian appeals pro se from the district court's judgment under Federal Rule of Civil Procedure 54(b) in favor of state court-appointed receiver David Pasternak and his law firm. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

The district court properly dismissed Darian's claims against Pasternak because Pasternak is entitled to absolute immunity for actions undertaken in his capacity as receiver that are "functionally comparable to those of judges." *Curry v. Castillo (In re Castillo)*, 297 F.3d 940, 947 (9th Cir. 2002); *see also New Alaska Dev. Corp. v. Guetschow*, 869 F.2d 1298, 1303-04 & n.6 (9th Cir. 1989) (concluding that state court-appointed receiver was entitled to absolute immunity

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Ann Aldrich, Senior United States District Judge for the Northern District of Ohio, sitting by designation.

for allegedly mismanaging company assets). The district court properly dismissed Darian's claims against Pasternak's law firm because those claims are based only on allegations against Pasternak.

The district court's Rule 54(b) order was also free from error. There is no risk that like claims will be decided in piecemeal fashion because the claims brought against Pasternak and his firm are unique and "not legally or factually related" to the claims brought against other defendants. *AmerisourceBergen Corp. v. Dialysist W., Inc.*, 465 F.3d 946, 954 (9th Cir. 2006). The district court also reasonably concluded the equities favored partial final judgment. *See id.* at 955 (noting that weighing the equities is the job of the trial judge). Finally, the district court expressly determined that there was no just reason for delaying partial final judgment in favor of Pasternak and his firm. *See Fed. R. Civ. P. 54(b); Frank Briscoe Co. v. Morrison-Knudsen Co.*, 776 F.2d 1414, 1416 (9th Cir. 1985).

The district court properly denied Darian's requests to remove related state court actions to federal court because Darian either was the plaintiff in those actions or did not file a timely notice of removal. *See* 28 U.S.C. § 1441(a) (providing the option of removal to "the defendant or the defendants"); 28 U.S.C. § 1446(b) (providing a thirty-day limit for filing a notice of removal).

Darian's remaining arguments are unpersuasive.

AFFIRMED.