2:19-cv-10352-DSF[1]

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al.*,[2] Debtors and Debtors In Possession	On Appeal from the United States Bankruptcy Court for the Central District of California
STRATEGIC GLOBAL MANAGEMENT, INC. Appellant v. VERITY HEALTH SYSTEM OF CALIFORNIA, INC., *et al.* Appellees	Bankruptcy Court Lead Case No.: 2:18-bk-20151-ER Chapter 11 Judge: Hon. Dale S. Fischer Courtroom: 7D Location: 350 W. First Street Los Angeles, CA 90012

APPELLEES' JOINT RESPONSE TO COURT'S TENTATIVE DECISION TO VACATE ORDERS

[1] This appeal (2:19-cv-10352-DSF) has been consolidated with the following related appeals: 2:19-cv-10354-DSF and 2:19-cv-10356-DSF.

[2] The other Debtors in the chapter 11 cases, jointly administered under Lead Case No. 2:18-bk-20151-ER, are O'Connor Hospital 2:18-bk-20168-ER, Saint Louise Regional Hospital 2:18-bk-20162-ER, St. Francis Medical Center 2:18-cv-20165-ER, St. Vincent Medical Center 2:18-bk-20164-ER, Seton Medical Center 2:18-cv-20167-ER, O'Connor Hospital Foundation 2:18-bk-20179-ER, Saint Louise Regional Hospital Foundation 2:18-cv-20172-ER, St. Francis Medical Center of Lynwood Foundation 2:18-cv-20178-ER, St. Vincent Foundation 2:18-cv-20180-ER, St. Vincent Dialysis Center, Inc. 2:18-cv-20171- ER Seton Medical Center Foundation 12:8-cv-20175-ER, Verity Business Services 2:18-cv-20173-ER, Verity Medical Foundation 2:18-cv-20169-ER, Verity Holdings, LLC 2:18-cv-20163-ER, DePaul Ventures, LLC 2:18-cv-20176-ER, and DePaul Ventures - San Jose Dialysis, LLC 2:18-cv-20181-ER.

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Verity Health System of California, Inc. ("VHS"), and its affiliated debtors (the "Debtors") in the above-captioned chapter 11 cases (the "Bankruptcy Cases") pending in the United States Bankruptcy Court (the "Bankruptcy Court"), the California Attorney General (the "AG"), and the Official Committee of Unsecured Creditors (the "Committee" and, collectively, the "Appellees") respond to the Court's tentative decision to vacate the Bankruptcy Court's Orders.[3] *See* Docket No. 59 at 2.

I. ARGUMENT

A. The AG Order Should Not Be Vacated Because It Has No Preclusive Effect on SGM and Resolved A Dispute Between the Debtors and the AG.

The AG Order resolves a dispute between the Debtors and the AG that is limited to the AG's authority to impose conditions on the sale under state law and the rights of the Debtors to "cut-off" those conditions under § 363.[4] *See* AA at 1532.[5] Appellant Strategic Global Management, Inc. ("SGM") did not oppose the underlying motion, agrees that the Bankruptcy Court correctly decided the substantive issues, and only objects to the precise language of the AG Order. *See* AA1509-15. The AG Order did not enhance or diminish SGM's rights or property, but, instead, procured the AG's support for the sale. In the trial before this Court,[6] the parties will litigate whether the AG Order satisfied an APA closing condition and obligated SGM to close the sale. In short, the impact of the AG Order on SGM's APA obligations is an issue in the litigation. The AG Order cannot not be used for preclusive purposes because none of the issues were litigated between the Debtors

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[3] The "Orders" refers collectively to the Bankruptcy Court's (i) November 14, 2019 (the "AG Order"), (ii) November 18, 2019 (the "Scheduling Order"), and (iii) November 27, 2019 (the "MAE Order").

[4] All section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

[5] "AA" refers to the Appellant's Appendix [Docket No. 44], "DA" refers to the Appellees' Appendix [Docket No. 56], and "RJN" refers to the Appellees' Request for Judicial Notice [Docket No. 57].

[6] *See* Case No. 2:20-cv-00613-DSF, Docket No. 29 (the "Complaint").

and SGM nor is there an identity of claims that resulted in a judgment. Thus, this Court should not invoke the remedy of vacatur, an extraordinary remedy, but instead permit the AG Order to stand. *See U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 23-24 (1994) (citing *United States v. Munsingwear, Inc.*, 340 U.S. 36, 40, n. 2 (1950)) (holding that the Supreme Court has rejected uniform application of vacatur to moot appeals); *id.*at 26 ("It is petitioner's burden, as the party seeking relief from the status quo of the appellate judgment, to demonstrate . . . equitable entitlement to the extraordinary remedy of vacatur."); *Camreta v. Greene*, 563 U.S. 692, 712 (2011) (recognizing vacatur for mootness as an "'established' (though not exceptionless) practice"); *In re Burrell,* 415 F.3d 994, 999 (9th Cir. 2005) ("the touchstone of vacatur is equity").

As this Court correctly recognized, the central equitable objective of vacatur "is to prevent an unreviewable decision from spawning any legal consequences, so that no party is harmed by what we have called a 'preliminary' adjudication." *Camreta*, 563 U.S. at 713. Thus, the equitable application of vacatur is appropriate where the appealed judgment would have a collateral estoppel effect in later litigation. *U.S. Bancorp Mortg. Co.,* 513 U.S. at 27. Conversely, however, courts reject the application of vacatur where these collateral estoppel considerations do not apply. *See Chernetsky v. Nevada*, 705 Fed. Appx. 658, 660 (9th Cir. 2017) ("[W]e do not exercise the equitable remedy of vacatur, which has as its purpose the avoidance of 'an unfair application of collateral estoppel.'"); *United States v. Arpaio*, 951 F.3d 1001, 1005 (9th Cir. 2020) ("[B]ecause the mootness issue here arises from the fact that the district court's findings of guilt can be given no future preclusive effect, the *Munsingwear* rule does not apply, and Arpaio is not entitled to vacatur.").

Here, the AG Order would not have res judicata effect in the litigation before this Court. "Res judicata is applicable whenever there is (1) an identity of claims, (2) a final judgment on the merits, and (3) privity between parties." *See Stratosphere*

Litig. L.L.C. v. Grand Casinos, Inc., 298 F.3d 1137, 1143 n.3 (9th Cir. 2002) (citation omitted).[7] In this instance, (i) there was no "claim" at issue that is in any way identical to the claims pending in the current litigation (i.e., imposition of the AG conditions on the sale versus breach by SGM of the APA as asserted in the Complaint), and (ii) there was no privity in the interests of the AG and SGM—the parties were in direct conflict. *See Taylor v. Sturgell*, 553 U.S. 880, 894 (2008) ("a nonparty may be bound by a judgment because she was 'adequately represented by someone with the same interests who [wa]s a party' to the suit"). Thus, res judicata is not applicable.

Additionally, collateral estoppel does not apply by definition: collateral estoppel renders "a determination in a prior case . . . conclusive in a subsequent action between the parties only when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment." *Arpaio*, 951 F.3d at 1006 (quoting *B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 148 (2015)). Collateral estoppel does not apply because (i) the AG Order (concerning AG conditions) did not raise "identical issues" to the claims related to the APA raised in the Complaint, (ii) the claims in Complaint were not actually litigated (the AG Order only related to whether the AG could impose certain conditions on the sale), (iii) SGM was not a litigant in the dispute between the Debtors and the AG, and (iv) the AG Order is not a judgment against SGM. SGM's dispute with the language of the order was not essential to the Bankruptcy Court's ruling that the sale was free and clear of the AG's conditions under state law. *See Bobby v. Bies*, 556 U.S. 825, 835 (2009) ("A determination ranks as necessary or essential only when the final outcome hinges on it.").

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[7] The APA is governed by California law, *see* AA at 154; however, the preclusive effect of a federal court order is governed by federal law. *See Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 507-08 (2001); *Western Sys., Inc. v. Ulloa,* 958 F.2d 864, 871 n. 11 (9th Cir. 1992). Nevertheless, the same outcome results under California law governing claim and issue preclusion. *See DKN Hldgs. LLC v. Faerber*, 61 Cal. 4th 813, 824-825 (2015).

Importantly, vacatur of the AG Order would prejudice the Debtors and the AG, whose rights are actually affected by the AG Order. Among other things, the AG Order vacated a prior memorandum decision entered by the Bankruptcy Court, *see* AA at 1532, which obviated the AG's intended appeal of the memorandum decision, *see* AA at 1490. By contrast, as the Appellees submitted, SGM does not have standing to appeal the AG Order because it is not a "person aggrieved" by the AG Order under the controlling Ninth Circuit standard because the AG Order neither gave anything to, nor took anything from, SGM—SGM was not a creditor of the estate, and SGM did not oppose the motion that resulted in the AG Order. *See In re P.R.T.C., Inc.*, 177 F.3d 774, 777 (9th Cir. 1999); *Fondiller v. Robertson (In re Fondiller)*, 707 F.2d 441, 442-43 (9th Cir. 1983); Appellees' Br. at 31-32. Similarly, SGM waived its objection to the substantive relief in the AG Order under the APA and in its briefing and argument. *See* AA0146, 01454, DA444; Appellees' Br. at 30-31.[8] Nothing in the AG Order prevents SGM from arguing that the Debtors did not sufficiently fulfill a condition precedent in the APA or has any detrimental impact on any rights ever granted to SGM under the APA.

Dismissal of the AG Order appeal without vacatur is also the result "most consonant to justice" and consistent with the practice of other courts that routinely dismiss moot appeals from bankruptcy court orders without vacating the underlying order. *See, e.g.*, *In re Verity Health Sys. of Cal., Inc.*, 2:18-cv-10675-RGK, 2019 WL 7997371, at *6 (C.D. Cal. Aug. 2, 2019); *In re Gardens Reg'l Hosp. & Med. Center, Inc.*, 2:17-cv-03708-JLS, 2018 WL 1229989, at *6 (C.D. Cal. Jan. 19, 2018); *In re Vista Del Mar Associates, Inc.*,181 B.R. 422, 424-425 (B.A.P. 9th Cir. 1995); *In re Gotcha Int'l L.P.*,311 B.R. 250, 253-255 (B.A.P. 9th Cir. 2004); *In re Onali-Kona Land Co.*, 846 F.2d 1170, 1172 (9th Cir. 1989); *In re Filtercorp, Inc.*, 163 F.3d 570,

[8] The Court may reconsider these renewed jurisdictional arguments. *See, e.g., United States v. Arevalo*, 408 F.3d 1233, 1237 n.2 (9th Cir. 2005) ("a merits panel should reconsider jurisdictional issues even if previously decided by a motions panel").

576 (9th Cir. 1998); *In re Roberts Farm, Inc*., 652 F.2d 793, 797 (9th Cir. 1981); *In re Southwest Products, Inc*., 144 B.R. 100, 105 (B.A.P. 9th Cir. 1992).

B. Vacatur of the Scheduling and MAE Orders Is Not Appropriate Because They Are Interlocutory Orders.

"In the case of interlocutory appeals . . . the usual practice is just to dismiss the appeal as moot and not vacate the order appealed from." *In re Tax Refund Litig.,* 915 F.2d 58, 59 (2d Cir.1990); *see also In re Danner*, 549 Fed. Appx. 702, 705 (9th Cir. 2013) (dismissing appeal of interlocutory order as moot without vacatur); *U.S. v. Wash. Dept. of Fishers,* 573 F.2d 1118,1121 (9th Cir. 1978).

As the Appellees argued, the Scheduling Order and MAE Order are interlocutory because they did not "finally determine a cause of action." *In re Kashani*, 190 B.R. 875, 882 (B.A.P. 9th Cir. 1995); *see also In re Travers*, 202 B.R. 624, 625 (B.A.P. 9th Cir. 1996); *see also* Appellees' Joint Br. At 23-25. Indeed, the Bankruptcy Court interpreted its Scheduling Order and MAE Order and concluded that "[i]n the future, the Debtors will have an opportunity to litigate the issues of whether SGM has breached the APA and whether the Debtors are entitled to retain SGM's good-faith deposit." DA306; *see also* RJN, Ex. L, at 16 ("The Orders do not adjudicate whether SGM breached the APA[.]").

If the Court finds that the Scheduling Order and MAE Order are not interlocutory, the Debtors are prepared to stipulate that they will have no preclusive effect in their litigation with SGM to obviate the need for vacatur. The Debtors strongly prefer that the Scheduling Order and MAE Order are not vacated because they remain critical factual bases on which the Debtors relied in making decisions in their Bankruptcy Cases, but Debtors agree that the Orders are do not finally resolve any of the issues raised by the Complaint.

II. CONCLUSION

WHEREFORE, the Appellees respectfully request that the Court dismiss the appeals without vacating the Orders.

Dated: May 28, 2020

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CERTIFICATE OF COMPLIANCE

1. This Response complies with the page limit set forth in the Court's Order [Docket No. 59] and the word limit of FED. R. BANKR. P. 8013(f) because, excluding the parts of the Response exempted by FED. R. BANKR. P.8013(a)(2)(C) and FED. R. BANKR. P. 8015(g), this Response is 5 pages and contains 1,822 words.

2. This Response complies with the typeface requirements of FED. R. BANKR. P. 8015(a)(5) and the type-style requirements of FED. R. BANKR. P. 8015(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

Dated: May 28, 2020

/s/ Tania M. Moyron
Tania M. Moyron

CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2020, I electronically filed the foregoing document with the Clerk of the Court for the United States District Court for the Central District of California by using the CM/ECF system.

I further certify that parties of record to this appeal who either are registered CM/ECF users, or who have registered for electronic notice, or who have consented in writing to electronic service, will be served through the CM/ECF system.[9]

/s/ Tania M. Moyron
Tania M. Moyron

[9] Pursuant to the Notice from the Clerk concerning COVID-19, dated March 21, 2020, the Appellees have not served a chambers copy. The Appellees will provide the Court a chambers copy of the attached Response via overnight mail upon request.