

**UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA**

Marcus Daniel Silver v. U.S. Bank, National Association

Silver v. U.S. Bank · No. 2:23-cv-10860-MEMF · Decided March 27, 2025

OPINION

In Re: Marcus Daniel Silver

PER CURIAM.

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UNITED STATES DISTRICT COURT

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CENTRAL DISTRICT OF CALIFORNIA

9 10 Case No.: 2:23-cv-10860-MEMF MARCUS DANIEL SILVER, Bankruptcy Court Case No.:

2:21-bk-16492-BB 11 Adversary Case No.: 2:22-ap-01117-BR Plaintiff-Appellant, 12

v. ORDER AFFIRMING ORDER DIRECTING

13 CLERK TO ENTER DISCHARGE AND

CLOSE BANKRUPTCY CASE

14

U.S. BANK, NATIONAL ASSOCIATION,

15 Defendant-Appellee. 16 17 18 19 20 Before the Court is the Appeal of an Order issued by the
United States Bankruptcy Court for 21 the Central District of California, in which the court
discharged and closed Marcus Daniel Silver’s 22 bankruptcy case. See ECF No. 1. For the reasons
stated herein, the Court AFFIRMS the opinion of 23 the Bankruptcy Court. 24 25 26 27 /// 28 ///

1 I. Background1 2 On August 16, 2021, Plaintiff-Appellant Marcus Daniel Silver filed a Chapter
7 Bankruptcy 3 petition with the U.S. Bankruptcy Court. ECF No. 1-1 (“BK Docket”), No. 1. On
October 1, 2021, 4 Silver removed a state court action he initiated (to quiet title regarding certain
real property, 5 hereinafter “the Property”), resulting in the first Adversary Proceeding (“First
AP”). BK Docket, No. 6 11. Silver filed a Motion to Stay in the bankruptcy case on October 25,
2021, seeking a stay of 7 foreclosure of the Property until the removal hearing. BK Docket, No.
12 (“Motion to Stay”). 8 The creditors in the First AP sought remand of the case, but Silver
opposed the remand in 9 part by filing a Motion to Convert his bankruptcy case from a Chapter 7
to Chapter 13 on November 10 5, 2021. BK Docket, No. 14 (“Motion to Convert”). 11 On
November 29, 2021, Judge Ernest M. Robles, who was then presiding over Silver’s 12 bankruptcy
case, denied Silver’s request to stay the foreclosure as unnecessary because the 13 automatic stay

already in effect in the bankruptcy case remained in effect with respect to the 14 Property and would remain in effect “until the Court adjudicates the Motion to Remand.” BK 15 Docket, No. 15 (“Stay Order”). Judge Robles also found that because Silver’s position with respect 16 to the remand of the First AP was predicated on the outcome of the Motion to Convert, he would 17 handle the Motion to Convert and the Motion to Remand at the same time and, accordingly, directed 18 the clerk “to not enter a discharge in [the bankruptcy case] until after the Court has adjudicated the 19 Motion to Convert.” Id. 20 On December 16, 2021, Judge Robles denied Silver’s Motion to Convert. BK Docket, No. 21 17. In the order, Judge Robles stated that the clerk “may enter a discharge [in the bankruptcy case] 22 provided the Debtor is otherwise entitled to receive one.” Id. The next day, Silver filed a Motion for 23 Reconsideration on this issue. BK Docket, No. 19. On May 20, 2022, Judge Robles denied the 24 Motion for Reconsideration. BK Docket, Nos. 25, 26 (“Reconsideration Order”). On May 31, 2022, 25 26 27 28 1 1 Silver appealed the Reconsideration Order. BK Docket, No. 30.2 On December 19, 2022, the 2 Bankruptcy Appellate Panel (“BAP”) affirmed the lower court decision. BK Docket, No. 38. On 3 January 13, 2023, Silver appealed again to the Ninth Circuit. BK Docket, No. 41.

4 On September 15, 2023, Silver’s case was reassigned from Judge Robles to Judge Sheri 5 Bluebond. BK Docket, No. 42. On December 13, 2023, Judge Bluebond issued an order directing 6 the clerk to discharge and close the bankruptcy case in part noting that “this Court has resolved the 7 debtor’s motion to convert” and “there are no matters currently pending before this Court that 8 require resolution.” BK Docket, No. 43 (“Discharge Order”). 9 On December 28, 2023, Silver appealed Judge Bluebond’s Discharge Order to this Court. 10 ECF No. 1.3 Silver filed his opening brief on February 21, 2024. ECF No. 10 (“Silver Brief”). On 11 March 8, 2024, Defendant-Appellee U.S. Bank, National Association (“U.S. Bank”) filed its 12 response. ECF No. 12 (“U.S. Bank Brief”). On March 29, 2024, Silver filed a reply. ECF No. 15 13 (“Silver Reply”). On April 25, 2024, Silver filed a Motion for Evidentiary Hearing, which was fully 14 briefed. ECF Nos. 18, 20, 21. The Court deemed the Motion for Evidentiary Hearing appropriate for 15 resolution without oral argument and vacated the hearing. ECF No. 23; see also C.D. Cal. L.R. 7-15. 16 On June 10, 2024, the Ninth Circuit affirmed the BAP’s decision, finding that the bankruptcy 17 court did not abuse its discretion in denying Silver’s Motion to Convert or the Motion for 18 Reconsideration. BK Docket, No. 56. On July 29, 2024, Silver filed an Emergency Motion for Stay 19 or Injunction, which was fully briefed. ECF Nos. 25, 26, 28. On August 15, 2024, the Court denied 20 Silver’s Emergency Motion, finding that it was “procedurally deficient, and regardless, that Silver 21 has not shown a likelihood of success on the merits of his appeal to justify the relief sought,” in part 22 citing the Ninth Circuit’s decision. ECF No. 30. 23 / / / 24 / / / 25 26 27 2 2 Also on this day, Silver removed a second state law case, resulting in a second Adversary Proceeding (“Second AP”). BK Docket, No. 29. 28 3 1 II. Applicable Law 2 District courts have jurisdiction to hear appeals from bankruptcy court’s final judgements, 3 orders, and decrees. 28 USC § 158(a)(1). On an appeal, the district court may

affirm, modify, or 4 reverse a bankruptcy judge's judgement, order, or decree or remand with instructions for further 5 proceedings. Fed. R. Bankr. P. 8013. "[T]he district court functions as an appellate court in 6 reviewing a bankruptcy decision and applies the same standards of review as a federal court of 7 appeals." In re Crystal Props., Ltd., LP, 268 F.3d 743, 755 (9th Cir. 2001) (citation and internal 8 quotation marks omitted). "Findings of fact of the bankruptcy court are reviewed for clear error, and 9 conclusions of law are reviewed de novo. Mixed questions of law and fact are reviewed de novo." 10 Harkey v. Grobstein (In re Point Ctr. Fin., Inc.), 957 F.3d 990, 995 (9th Cir. 2020) (citations 11 omitted). Reconsiderations of a previously assigned judge's interlocutory orders are reviewed for 12 abuse of discretion. In re Roth, 2009 WL 7751410 (B.A.P. 9th Cir. June 10, 2009), aff'd, 431 F. 13 App'x 541 (9th Cir. 2011); Amarel v. Connell, 102 F.3d 1494, 1515 (9th Cir. 1997). 14 III. Discussion 15 Silver raises two issues on appeal both related to Judge Bluebond's discharge of his 16 bankruptcy case. First, Silver contends that Judge Bluebond lacked jurisdiction to discharge his case 17 while the appeal of the order denying his Motion to Convert was still pending. Silver also contends 18 that Judge Bluebond erred by purportedly ignoring Judge Robles's prior order to stay a discharge of 19 his case until the adjudication of the Motion to Convert. For the reasons discussed below, the Court 20 finds, under a de novo review, that Judge Bluebond had jurisdiction to issue the order 21 notwithstanding the pending appeal in the Ninth Circuit. The Court further finds that Judge 22 Bluebond did not abuse her discretion in discharging and closing Silver's bankruptcy case. Finally, 23 as the Court explained in its order on Silver's Emergency Motion, any error is now harmless as the 24 Ninth Circuit has affirmed Judge Robles's denial of the Motion to Convert.⁴ 25 26 4 The Court has reviewed the Motion for Evidentiary Hearing (ECF No. 18) and notes that the evidence Silver seeks a review of do not appear have any bearing on the issues presented on this appeal. Regardless, Silver 27 cites no authority for the proposition that it would be proper to conduct an evidentiary hearing on appeal. See Kirshner v. Uniden Corp. of America, 842 F.2d 1074, 1077 (9th Cir. 1988) ("An appellate court may not 28 1 A. The Court Finds that Judge Bluebond Had Jurisdiction to Discharge the Case 2 The issue of whether a bankruptcy court has jurisdiction is reviewed de novo. Dunmore v. 3 U.S., 358 F.3d 1107, 1111 (9th Cir. 2004). The filing of an appeal "will typically divest a bankruptcy 4 court of jurisdiction over those aspects of the case involved in the appeal." In re Sherman, 491 F.3d 5 948, 967 (9th Cir. 2007). However, bankruptcy courts retain jurisdiction on matters unrelated to the 6 appeal and "retain[] substantial jurisdiction as to the order that is the subject of the interlocutory 7 appeal." Ahmed, 420 B.R. at 523. Bankruptcy courts are only deprived of the "power to alter, 8 expand, or vacate the order at issue." Id. (citing Padilla, 222 F.3d at 1190). The bankruptcy court 9 continues to have jurisdiction to manage all other matters necessary to implement or enforce the 10 order being appealed. In re Sherman, 491 F.3d at 967. 11 Here, the Court finds that the pending appeal of Silver's Motion to Convert with the Ninth 12 Circuit did not divest Judge Bluebond of jurisdiction over the rest of the case. Judge Bluebond's 13 discharge order in no way affected the issue pending on appeal. Id. at 965 (concluding that "the

14 bankruptcy court retained jurisdiction to enter an order granting the discharge” while there was a 15 pending appeal on a motion to dismiss). Had the Ninth Circuit reversed a denial of the Motion to 16 Convert, the bankruptcy court would have had to act in accordance with the Ninth Circuit’s 17 decision—and the discharge would not have otherwise changed this. See *id.* at 968 (explaining that 18 “entry of a discharge order alone does not irrevocably terminate bankruptcy proceedings” and that a 19 bankruptcy petition remains open “valid discharge order notwithstanding,” during the appeal). 20 Silver cites language from an order Judge Robles issued in the Second AP (Silver Brief at 7), 21 which states that an appeal “confers jurisdiction of the court of appeals and divests the district court 22 over those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer Disc. Co.*, 459 23 U.S. 56, 58 (1982). However, this is consistent with the idea that the district court retains jurisdiction 24 over the aspects of the case not involved in the appeal. While Judge Robles found that the pending 25 26 27 consider evidence not presented to the trial court which is thus not part of the record on appeal.”). 28 1 appeal divested the bankruptcy court of jurisdiction over the issues in the Second AP,⁵ this finding 2 does not carry over to a procedural discharge of the bankruptcy case—nor did it appear that Judge 3 Robles intended it to, as no order staying the bankruptcy action was ever issued. See *In re Sherman*, 4 491 F.3d at 967 (“If a party wants to stay all of the proceedings in bankruptcy court while an appeal 5 is pending, it must file a motion to stay.”). 6 Accordingly, the Court finds Judge Bluebond had jurisdiction to issue the Discharge Order. 7 B. Judge Bluebond Did Not Err in Issuing the Discharge Order 8 Separate and apart from whether the bankruptcy court had jurisdiction to discharge the case, 9 Silver contends that Judge Bluebond erred in doing so because it was allegedly contrary to Judge 10 Robles’s prior Stay Order. But it plainly was not.⁶ The Stay Order merely held that the automatic 11 stay would remain in effect until “the Court” adjudicated the Motion to Remand and directed “the 12 Clerk of Court” not to enter discharge until after “the Court has adjudicated the Motion to Convert.” 13 BK Docket, No. 15. In both places, Judge Robles specifically referenced the decision of “the Court” 14 on the Motion to Remand—namely, the bankruptcy court. He did not indicate that the stay would be 15 in place until all appeals were exhausted, nor order a stay pending reconsideration or appeals, and 16 this Court will not read his plain language that way. In fact, when he later denied the Motion to 17 Convert, Judge Robles himself stated that the clerk “may enter a discharge,” thereby lifting any 18 possible restriction from discharge expressed in the Stay Order. BK Docket, No. 17. 19 20 5 The Court does not review this determination as it is outside the scope of this appeal. 21 6 The Court notes that it would not have been an abuse of discretion for Judge Bluebond to issue a discharge 22 even if the Stay Order was intended to forbid a discharge. The issue of whether a subsequent judge can reconsider an interlocutory order is reviewed for abuse of discretion. *Amarel v. Connell*, 102 F.3d 1494, 1515 23 (9th Cir. 1997). The “principles of comity and uniformity” urge judges presiding in the same court to avoid overruling each other’s decisions. *Castner v. First Nat’l Bank of Anchorage*, 278 F.2d 376, 379 (9th Cir. 24 1960). Nonetheless, district judges have the inherent

power to modify interlocutory orders at any time prior to final judgement, even if the case is reassigned to another judge. *Amarel v. Connell*, 102 F.3d 1494, 1515 (9th Cir. 1996); *Castner*, 278 F.2d at 380–81 (holding that a judge has discretion to set aside a predecessor’s decision if “cogent reasons” or “exceptional circumstances” arise). Judge Bluebond issued the discharge upon 26 finding that “(1) the trustee has filed a no asset report, (2) this Court has resolved the debtor’s motion to convert, and (3) there are no matters currently pending before this Court that require resolution.” BK Docket, 27 No. 43. Silver has not demonstrated that this decision was an abuse of discretion—he has not shown that any or all three grounds do not present “cogent reasons” to depart from any prior restriction of discharge. Rather, 28 1 Thus, the Court does not find that Judge Bluebond erred by ignoring any prior order in the 2 || issuance of the Discharge Order. 3 IV. Conclusion 4 For the reasons stated herein, the Court AFFRIMS the bankruptcy court’s Discharge Order. 5 6 IT IS SO ORDERED. 7 Mf 8 Dated: March 27, 2025 9 MAAME EWUSI-MENSAH FRIMPONG 10 United States District Judge 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28