UNITED STATES BANKRUPTCY COURT
Central District of California

I hereby attest and certify that on 02/09/12 the attached reproduction(s), containing 12 pages, is a full, true and correct copy of the complete document entitled: JUDGMENT

Case #: LA-02-05672-BR Doc #: [illegible]

which includes: ☐ Exhibits ☒ Attachments

on file in my office and in my legal custody at the marked location:

☒ 255 E. Temple Street, Suite 940
Los Angeles, CA 90012

☐ 3420 Twelfth Street, Suite 125
Riverside, CA 92501-3819

☐ 411 West 4th Street, Suite 2074
Santa Ana, CA 92701-4593

☐ 1415 State Street
Santa Barbara, CA 93101-2511

☐ 21041 Burbank Boulevard
Woodland Hills, CA 91367

KATHLEEN J. CAMPBELL
Clerk of Court

By: Sheila J. Moulton
Deputy Clerk

001534

THIS CERTIFICATION IS VALID ONLY WITH THE UNITED STATES BANKRUPTCY COURT SEAL.

07/25/12

Revised August 2010

RECEIVED
MAY 11 1988

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re DEL RIO DEVELOPMENT, INC. Debtor.	BAP No. CC-86-2034JMoV Bankruptcy No. LA82-05672LF
DEL RIO DEVELOPMENT, INC., Appellant, v. LENDER LIMITED PARTNERSHIPS. Appellee.	Adversary No. FILED OCT 22 1987 Jed G. Weintraub, Clerk U.S. BKCY. APP. PANEL OF THE NINTH CIR. JUDGMENT

ON APPEAL from the United States Bankruptcy Court for the CENTRAL District of CALIFORNIA

THIS CAUSE came on to be heard on the record from the above court and was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Panel that the judgment of the Bankruptcy Court is AFFIRMED.

BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT
A True Copy
Attest:
Jed G. Weintraub, Clerk
By Deputy Clerk
5/4/88

FOR THE PANEL,

Jed G. Weintraub
Panel Clerk

By: Carlotta Smith
Deputy Clerk

001535

BAP/9

NOT FOR PUBLICATION

FILED
OCT 22 1987
Jed G. Weintraub, Clerk
U.S. BKCY. APP. PANEL
OF THE NINTH CIR.

UNITED STATES BANKRUPTCY APPELLATE

PANEL OF THE NINTH CIRCUIT

In re:	CHAPTER 7
DEL RIO DEVELOPMENT, INC., Debtor.	BAP NO. CC 86-2034 JMoV
DEL RIO DEVELOPMENT, INC., Appellant, vs. LENDER LIMITED PARTNERSHIPS, Appellee.	M E M O R A N D U M

Argued and Submitted on
June 17, 1987 at Pasadena, California

Filed - October 22, 1987

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

Honorable Lisa Hill Fenning, Bankruptcy Judge, Presiding

Before: JONES, MOOREMAN and VOLINN, Bankruptcy Judges

001536

07/25/12

The debtor, Del Rio Development ("Del Rio"), appeals the trial court's order vacating a prior order which, in turn, had vacated an order entered November 29, 1984. The latter order dismissed Del Rio's bankruptcy effective April 1, 1985. We AFFIRM.

FACTS

Prior to 1980, the Lee Mansdorf Family Trust ("Mansdorf Trust"), Lee Mansdorf, Trustee, owned approximately 950 acres of unimproved real property in Los Angeles known as the La Tuna Canyon property ("La Tuna property"). In 1980 Mansdorf met Leon Brukman. They agreed to develop the La Tuna property and in early 1981 Mansdorf deeded the La Tuna property to a newly formed corporation, Del Rio. In exchange, Mansdorf received all the shares of Del Rio. Brukman was the president and sole director of Del Rio and entered into a joint venture agreement with Mansdorf giving Mansdorf the right to approve or disapprove of steps taken toward development including encumbering the La Tuna property. As sole director of Del Rio, Brukman authorized himself to sell, transfer or otherwise encumber the La Tuna property.

Del Rio borrowed over three million dollars from certain investors known as Lender Limited Partnerships ("LLP"), giving LLP ten promissory notes secured by first deeds of trust on the La Tuna property. During April and May 1981, Mansdorf learned of the Del Rio-LLP transactions. During the summer of 1981, the loans went into default and LLP initiated foreclosure proceedings.

On August 27, 1981 the Mansdorf Trust commenced an action in

California Superior Court to obtain a constructive trust over certain proceeds obtained by Brukman and to enjoin the LLP foreclosures. According to Mansdorf's declaration filed in the state court proceeding, Brukman ran a "confidence game" on Mansdorf. Brukman allegedly fraudulently induced Mansdorf to convey the La Tuna property to Del Rio then embezzled the $3,000,000 Del Rio borrowed from LLP.

On September 14, 1981, Mansdorf signed a letter "To whom it may concern" in which he certified both that Del Rio was the owner of the La Tuna property and that Mansdorf was the president and director of Del Rio. On September 15, 1981, Del Rio deeded the La Tuna property to the Mansdorf Trust. On February 16, 1982 Mansdorf, as trustee for the Mansdorf Trust, quitclaimed the property back to Del Rio. Then, acting as president of Del Rio, Mansdorf conveyed the property to La Tuna Properties Ltd. On April 6, 1982, with title to the La Tuna property held by La Tuna Properties Ltd., Mansdorf sought a temporary restraining order to prevent LLP's foreclosure on the La Tuna property which was set for the next day. The superior court refused to issue the TRO and denied Mansdorf's application for a preliminary injunction in part because the owner of the property, La Tuna Properties Ltd., was not a party to the action. (Presumably, the TRO and injunction were sought as part of the previously mentioned state court lawsuit.)

On the following day, April 7, 1982, the La Tuna property was transferred from La Tuna Properties Ltd. back to Del Rio which promptly filed the bankruptcy petition that originally commenced these proceedings. The bankruptcy petition was signed

07/25/12

by Mansdorf as president of Del Rio and listed the La Tuna property as an asset of Del Rio. The automatic stay halted the LLP foreclosures.

After two years without confirmation of a reorganization plan, LLP sought relief from the automatic stay. By an order entered June 26, 1984, the court granted LLP relief from the stay allowing it to foreclose on the La Tuna properties. The June 26 order left the stay intact until July 17, 1986 so Del Rio could try to submit a plan of reorganization or to refinance the La Tuna properties allowing it to pay its secured creditors in full. The order also recited that the court would hold a continued hearing to determine the validity of foreclosure sales previously conducted on behalf of LLP. The latter issue, however, was resolved by a stipulation and order (dated June 24, 1986) pursuant to which the foreclosures were found invalid under Bankruptcy Code section 544(a)(3). The order called for rescission of all deeds executed as part of the foreclosures, reinstatement of all deeds of trust, and left in effect the June 26 order lifting the automatic stay.

On October 3, 1984, Del Rio filed a motion to dismiss the Chapter 11 proceeding. Del Rio's counsel declared in the motion that "all of the automatic stays protecting [the La Tuna property] have been vacated, and foreclosure of sales have been ratified, and most of the real estate constituting the assets of this corporation have been foreclosed upon by certain secured creditors." LLP and other parties opposed the motion fearing that if the case was dismissed, Del Rio would initiate another proceeding to try to block foreclosure. LLP therefore asked the court to make the dismissal effective April 1, 1985, which the court, per Judge Elliott, did by an order entered November 29, 1984.[1]

On September 18, 1985, LLP moved for summary adjudication of issues in the state proceeding on the grounds that the plaintiff, the Mansdorf Trust, did not have standing to assert title to the La Tuna property. The superior court granted the motion for summary adjudication and on March 19, 1986, the court granted LLP's motion to convert the summary adjudication into summary judgment. Accordingly, judgment was entered in favor of the defendant, LLP, and against the Mansdorf Trust. The Trust appealed and that appeal is now pending.

Meanwhile, Del Rio sought to reopen the bankruptcy proceedings. On January 22, 1986, Del Rio filed an Application to Vacate Order of Dismissal and to Reopen Chapter 11 Estate. The application was not served on LLP. The application asserted that dismissal of the case had been sought "based upon the mistake and belief [sic] by this debtor that all of said property had been foreclosed upon by all of the holders of notes and deeds of trust . . ." but that certain foreclosures had not yet occurred and might be preventable. After a hearing on the application, the court, per Judge Fenning, entered an order vacating the Elliott order and reopening the bankruptcy proceeding.[2]

---

1. This order will hereinafter be referred to as the "Elliott order."

2. It appears that Del Rio wants its bankruptcy case activated so that a trustee could reexamine the loan transactions through which the LLP obtained the deeds of trust and determine whether the LLP transactions involving the La Tuna property may be unwound.

001540

07/25/12

When LLP learned that Del Rio's application had been granted, it filed a motion to dismiss the "reopened" proceeding. LLP argued that the court lacked jurisdiction to vacate the Elliott order pursuant to FRCP 60(b) because Del Rio's motion to vacate that order was filed more than one year after November 26, 1984 when the order was entered. The bankruptcy court agreed and vacated its prior order which had vacated the Elliott order. Del Rio timely appealed.

STANDARD OF REVIEW

The sole question before the Panel is whether the bankruptcy court properly interpreted the Elliott order. This is analogous to the interpretation of statutes, contracts, and consent decrees, all of which are questions of law and subject to de novo review. See Chrysler Credit Corp. v. First Nat'l Bank and Trust Co., 746 F.2d 200, 202 (3rd Cir. 1984) (statutory construction is question of law reviewable de novo); Vertex Dist. Co. v. Falcon Foam Plastics, Inc., 689 F.2d 885, 892-93 (9th Cir. 1982) (construction of contracts and consent decrees is question of law reviewable de novo) (quoting United States v. ITT Continental Baking Co., 420 U.S. 223, 236-37 (1975)). In the case at bar, moreover, the judge construing the order is not the same judge who issued it. Thus, we need not give additional weight to the court's interpretation of the order. Cf. Oldham v. Pritchett, 599 F.2d 274, 281 (8th Cir. 1979) (trial court's conclusion that collateral estoppel applied was entitled to great weight because the same judge presided at both proceedings).

DISCUSSION

Bankruptcy Rule 9024 makes Rule 60 of the Federal Rules of

07/25/12

Civil Procedure ("FRCP 60") applicable to bankruptcy proceedings with two exceptions not relevant to the instant case.[3] FRCP 60(b) allows a court to provide relief from a final judgment or order when the reason for the relief is mistake, inadvertance, surprise or excusable neglect. A motion seeking such relief must be made within a reasonable time not more than one year after the judgment or order is entered.

The Elliott order was entered on the docket November 29, 1984, but stated that Del Rio's bankruptcy was dismissed effective April 1, 1985. Del Rio did not seek relief from the order until January 22, 1986, more than one year after the Elliott order was entered but less than one year after the April 1 effective date of the dismissal. The only question is whether the one year period for seeking relief from the order pursuant to FRCP 60(b) began to run when the Elliott order was entered or on the effective date of the dismissal.

In its October, 1986 order vacating its February 1986 order, the bankruptcy court stated that it "was under the misapprehension, created by the Debtor's Application, that Judge Elliott's order had been entered not on November 29, 1984, but rather on April 1, 1985." Having reviewed the Elliott order and the docket, which revealed that no other order relating to dismissal had been entered, the court concluded that the Elliott

---

[3] One of the exceptions is that a motion to reopen a case is not subject to the one year time limitation of FRCP 60(b). The Elliott order dismissed the case pursuant to Bankruptcy Code section 1112 and Bankruptcy Rule 1017(a). A dismissal order is not an order closing a case, and FRCP 60(b)'s one year limitation therefore applies when relief from such an order is sought. <u>See</u> <u>In re Income Property Builders, Inc.</u>, 699 F.2d 963, 965 (9th Cir. 1982).

order was the dismissal order from which Del Rio sought relief. Because that order was entered more than one year before FRCP 60(b) relief was sought, the court concluded that it did not have jurisdiction to vacate the Elliott order. Accordingly, the court vacated the order that had vacated the Elliott order.

Del Rio argues that the Elliott order contemplated a second order, to be entered April 1, 1985, that would actually dismiss the bankruptcy.[1] The Elliott order states: "It is hereby ordered, that the Motion of Debtor be granted effective April 1, 1985, and, as of said date, that the within Chapter 11 proceeding be ordered dismissed." Del Rio asserts that the inclusion of the underscored language "demonstrates the clear intent that the Elliott order was not to be the order dismissing the bankruptcy."

We disagree. The tenor of the Elliott order is that Del Rio's motion is granted, but that the dismissal is not effective until April 1, 1985. Moreover, if a second order was to be entered April 1, then the Elliott order is essentially meaningless. According to Del Rio, the Elliott order grants the relief, but only announces that another order granting the relief will be entered at a later date.

Del Rio further argues that the notice of dismissal issued by the clerk's office[2] supports its contention. That notice stated: "Notice is hereby given that an order was entered on

---

[1] Del Rio makes a second argument that rests upon its first argument. Del Rio asserts that the order that was to be entered on April 1, 1985 was not entered because of a clerical error, which, pursuant to FRCP 60(a), may be corrected at any time. Del Rio asserts that the court can now correct the clerical error thereby making its motion for relief timely. This argument makes sense only if the Elliott order is interpreted to contemplate a second order and need not be separately analyzed.

07/25/12

1, 1985, dismissing the above-entitled proceeding." Del Rio claims that the notice caused it to believe that a second order had actually been entered.

Del Rio cannot claim prejudice because of the language in the notice of dismissal. Del Rio filed the motion to dismiss; its attorney attended the hearing on the motion; and, as the prevailing party, Del Rio's attorney drafted and submitted the Elliott order. The notice of dismissal is simply a form document designed to inform interested parties of the dismissal. The deputy clerk completing the form merely filled in the effective date of the dismissal. An outside third party arguably could assert that it relied on the notice to its detriment, but Del Rio is in no position to make such a claim.

As a further note, the record does not contain the transcript of the hearing on Del Rio's motion to dismiss. Without the transcript, however, there is simply no evidence that a second order was intended. Accordingly, we AFFIRM.

07/25/12

OFFICE OF THE CLERK
United States Bankruptcy Appellate Panel
of the Ninth Circuit

NOTICE OF ENTRY OF JUDGMENT

Judgment was entered in this case as of the file stamp date on the attached decision of the Panel.

Motions for Rehearing

A motion for rehearing may be filed within 10 days after entry of the judgment. (Bankruptcy Rule 8015). A motion should not be filed to reargue the case, but only to direct attention to material facts, or points of law which in the opinion of the moving party the Panel has overlooked or misapprehended.

The motion shall be submitted on 8½ by 11 inch paper, shall not exceed 15 pages in length, and shall comply with rules governing service and signature. An original and three copies shall be filed.

A motion for rehearing does not toll the time for filing a notice of appeal to the Court of Appeals. See In re Lovitt, 757 F.2d 1035 (9th Cir. 1985).

Bill of Costs

Bankruptcy Rule 8014 provides that costs on appeal shall be taxed by the Clerk of the Bankruptcy Court. Cost bills should be filed with the Clerk of the Bankruptcy Court from which the appeal was taken. Also see Rule 39, Federal Rules of Appellate Procedure.

Issuance of the Mandate

The mandate, a certified copy of the judgment addressed to the Clerk of the Bankruptcy Court from which the appeal was taken, will be issued 21 days after entry of the judgment unless otherwise ordered by the Panel. A timely motion for rehearing will stay the mandate until disposition of the motion, unless otherwise ordered. See Bankruptcy Rule 8017 and Rule 41, Federal Rules of Appellate Procedure.

Appeal to Court of Appeals

An appeal to the Court of Appeals is initiated by filing a notice of appeal with the Clerk of this Panel. See the Federal Rules of Appellate Procedure and the Rules of the United States Court of Appeals for the Ninth Circuit for specific requirements.

07/25/12

MAY 1 1 1988

PROOF OF SERVICE OF MANDATE

I, ~~Carlotta Smith~~, sent a certified copy of the attached judgment

to Clerk

U.S. Bankruptcy Court

at 312 North Spring Street, Ninth Floor
(address)

Los Angeles, CA. 90012

on May 11, 1988
(date)

~~Carlotta Smith~~
Deputy Clerk

07/25/12