

1 WRITTEN DECISION - NOT FOR PUBLICATION

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DEC 13 2006
CLERK, U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

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6 CLERK, U.S. BANKRUPTCY COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
8 BY DEPUTY

8 UNITED STATES BANKRUPTCY COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 In re:) Adversary Case No. 05-90348-H11
11 JOSEPH VINCENT CARACCILO,)
12 Debtor.) MEMORANDUM DECISION
13 Bk. Case No. 93-05609-H11)
14)
15 JACK WIREMAN and RONALD)
16 THOMPSON,)
17 Plaintiffs,)
18 vs.)
19 JOSEPH VINCENT CARACCILO,)
20 Defendant.)
21)
22 JOSEPH VINCENT CARACCILO,)
23 Counter-Claimant,)
24 v.)
25 JACK WIREMAN and RONALD)
26 THOMPSON,)
27 Counter-Defendants.)

27 Jack Wireman and Ronald Thompson (collectively, "WT" or
28 "Plaintiffs") and Joseph Vincent Caracciolo ("Debtor" or

1 "Defendant") filed cross motions for summary judgment.

2 The matter came before the Court on October 12, 2006.
3 Subsequently, the parties submitted supplemental briefs pursuant to
4 this Court's Notice of Opportunity of Additional Briefing and Order
5 Granting Ex Parte Application for Order Authorizing Further
6 Briefing.

7 At issue is whether the notice of Debtor's bankruptcy filing
8 by publication meets the constitutional requirements of due
9 process.

10 This Court has jurisdiction to determine this matter
11 pursuant to 28 U.S.C. §§ 1334 and 157(b) (1) and General Order
12 No. 312-D of the United States District Court for the Southern
13 District of California. This is a core proceeding pursuant to
14 28 U.S.C. § 157(b) (2) (A) and (I).

15 The Court having reviewed the parties' summary judgment
16 motions and all the exhibits attached thereto, and all affidavits
17 in support thereof, and having considered the argument of counsel
18 and additional briefs, makes the following findings of fact and
19 conclusions of law.

20 I.

21 FINDINGS OF FACT

22 In late 1990, Rolling Hills Estates, Ltd. ("RHE"), and others,
23 filed a lawsuit against the Rainbow Municipal Water District, and
24 others, for Declaratory and Injunctive Relief and Money Damages
25 entitled Ronald P. Thon, et al. v. Rainbow Municipal Water
26 District, et al. (Superior Court Case No. N48567) (the "State Court
27 Lawsuit"). The gist of the complaint involved a dispute between
28 plaintiffs and defendants regarding the approval of an alternative

1 sewer system in connection with the plaintiffs' real property.

2 Debtor was not a named plaintiff in the State Court Lawsuit,
3 but was a partner in a general partnership (GCW Associates) that
4 was a general partner of plaintiff RHE.

5 On or about July 1991, WT were added as defendants in the
6 State Court Lawsuit.

7 WT moved for summary judgment which was granted in their favor
8 on or about November 12, 1992.

9 RHE and other plaintiffs appealed the judgment in favor of WT.

10 On or about March 1993, the plaintiffs settled the State Court
11 Lawsuit with all defendants except WT.

12 In April 1993, the San Diego Superior Court entered a final
13 judgment whereby WT were awarded costs as the prevailing parties.

14 On May 25, 1993, Debtor filed his voluntary chapter 11
15 bankruptcy petition.

16 On or about June 7, 1993, Debtor's bankruptcy filing was
17 listed in the San Diego Daily Transcript (the "Transcript"). The
18 listing provided Debtor's bankruptcy case number, name and address,
19 and was under the heading of Chapter 11. See Exhibit A attached
20 hereto.

21 The Transcript did not publish the last date to object to
22 Debtor's discharge or file a proof of claim.

23 The deadline to file a nondischargeability complaint was
24 August 24, 1993.

25 The claims bar date was December 31, 1993.

26 WT were not scheduled as creditors and the debt owed to them
27 was not scheduled as a claim.

28 WT did not file a proof of claim nor file a

1 nondischargeability complaint by the August 24, 1993, bar date.

2 On November 8, 1994, the California Court of Appeal entered
3 its published decision affirming the award of costs, subject to a
4 reduced amount, in favor of WT.

5 On November 22, 1994, Debtor's reorganization plan was
6 confirmed.

7 On January 7, 1995, this Court entered a Notice of Entry of
8 Confirmation of Plan and Discharge.

9 On March 23, 1995, the San Diego Superior Court entered the
10 final judgment regarding costs in the amount of \$23,952.05 in favor
11 of WT.

12 On or about March 1995, the appellate court affirmed the order
13 granting summary judgment in favor of WT, but RHE petitioned for
14 the Supreme Court of California to review.

15 On or about June 14, 1995, the California Supreme Court denied
16 review.

17 On or about June 1995, WT's cost award became enforceable.

18 On or about April 1996, WT filed a lawsuit in the San Diego
19 Superior Court against various parties, including but not limited
20 to, Debtor and RHE seeking damages for malicious prosecution (the
21 "MPL").

22 Debtor filed an answer in the MPL and as a twentieth and
23 separate affirmative defense, he claimed that Plaintiffs were
24 barred from recovering from him since all obligations owing to them
25 were discharged in his bankruptcy.

26 On or about July 1997, the MPL came on for trial "as to the
27 remaining defendant Joseph Caracciolo" as all other defendants had
28 either settled or were defaulted.

1 bankruptcy case number and name and address in the Transcript, was
2 sufficient information to alert Plaintiffs that he filed a chapter
3 11 petition and, was given in time for them to protect their
4 rights. According to Debtor, nothing more is required under the
5 U.S. Constitution.

6 On the other hand, Plaintiffs argue that they were known
7 creditors and, therefore, they were entitled to actual notice of
8 Debtor's bankruptcy. Alternatively, if they were unknown
9 creditors, Plaintiffs argue that the notice Debtor relies upon was
10 inadequate because it did not contain a claims bar date, the date
11 by which to file a nondischargeability complaint, or the
12 confirmation date. Therefore, the notice did not satisfy the
13 requirements of due process.

14 A. STANDARDS FOR SUMMARY JUDGMENT

15 Rule 56(c) of the Federal Rules of Civil Procedure, made
16 applicable to adversary proceedings by Fed. R. Bankr. P. 7056,
17 provides that summary judgment:

18 [S]hall be rendered forthwith if the pleadings,
19 depositions, answers to interrogatories, and
20 admissions on file, together with the
21 affidavits, if any, show that there is no
genuine issue as to any material fact and that
the moving party is entitled to a judgment as a
matter of law.

22 "The moving party bears the initial responsibility of informing the
23 district court of the basis for its motion, and identifying those
24 portions of 'the pleadings, depositions, answers to
25 interrogatories, and admissions on file, together with the
26 affidavits, if any,' which it believes demonstrate the absence of a
27 genuine issue of material fact." Hughes v. United States, 953 F.2d
28 531, 541 (9th Cir. 1992) citing Celotex Corp. v. Catrett, 477 U.S.

1 317, 323, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). "After the
2 moving party has met its initial burden, Rule 56(e) . . .
3 requires the nonmoving party to go beyond the pleadings and by her
4 own affidavits, or by the 'depositions, answers to interrogatories,
5 and admissions on file,' designate 'specific facts showing that
6 there is a genuine issue for trial.'" Hughes, 953 F.2d at 541
7 (citation omitted). If the record as a whole could not lead a
8 rational trier of fact to find for the non-moving party, then there
9 is no genuine issue of fact precluding summary judgment.
10 Matsushita Elec. Ind. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-
11 87, 106 S.Ct. 1348 (1986).

12 All material issues of fact regarding the published notice of
13 Debtor's bankruptcy are undisputed and, therefore, summary judgment
14 will be appropriate upon an analysis of the relevant law.

15 B. NOTICE STANDARDS IN BANKRUPTCY

16 "The Due Process Clause of the United States Constitution
17 applies to proceedings under the Bankruptcy Code." In re Argonaut
18 Fin. Serv., Inc., 164 B.R. 107, 110 (N.D. Cal. 1994) (citations
19 omitted). The framework for the Due Process Clause is well
20 established. The principal case is Mullane v. Central Hanover Bank
21 & Trust Co., 339 U.S. 306, 70 S.Ct. 652 (1950). In Mullane, the
22 Supreme Court held that for notice to comport with due process, it
23 must be "reasonably calculated, under all the circumstances, to
24 apprise interested parties of the pendency of the action and afford
25 them an opportunity to present their objections." Id. at 314.
26 "The notice must be of such nature as reasonably to convey the
27 required information . . . and it must afford a reasonable time
28 for those interested to make their appearance." Id. at 314-15.

1 The standard set forth in Mullane is flexible and whether a
2 particular method of notice is reasonably calculated to reach
3 interested parties depends upon the particular circumstances of
4 each case. Tulsa Professional Collection Serv., Inc. v. Pope, 485
5 U.S. 478, 484 (1988) (emphasis added). "One circumstance to
6 consider in evaluating the sufficiency of notice is whether alleged
7 inadequacies in the notice prejudiced the creditor." Pettibone
8 Corp. v. Payne (In re Pettibone Corp.), 151 B.R. 166, 172-73
9 (Bankr. N.D. Ill. 1993) (citing People ex rel. Hartigan v. Peters,
10 871 F.2d 1336, 1340 (7th Cir. 1989)). "Another circumstance to
11 consider is whether notice was given to the creditor in time for it
12 to take meaningful action in response to the impending deprivation
13 of its rights." Pettibone, 151 B.R. at 172-73 (citations omitted).

14 The Seventh Circuit sums up the due process requirements set
15 forth in Mullane as follows: "Fair or adequate notice has two
16 basic elements: content and delivery." Fogel v. Zell, 221 F.3d
17 955, 962 (7th Cir. 2000) (citations omitted). "If notice is
18 unclear, the fact that it was received will not make it adequate."
19 Id. (citations omitted). "But unless received, the notice is
20 inadequate unless the means chosen to deliver it was reasonable."
21 Id. (noting that there are two basic means -- the transmission of
22 the notice to the intended recipient and the publication of the
23 notice in a newspaper or magazine or other medium likely to come to
24 the attention of the person entitled to notice) (citations
25 omitted).

26 1. UNKNOWN VERSUS KNOWN CREDITORS

27 In the bankruptcy context, the knowledge of the parties
28 dictates the delivery aspect of fair and adequate notice. See

1 Argonaut, 164 B.R. at 112 ("Courts have found that known creditors
2 are deserving of actual notice while unknown creditors are owed
3 only publication notice.") (citations omitted); In re Talon Auto.
4 Grp., Inc., 284 B.R. 622, 625 (Bankr. E.D. Mich. 2002) (finding
5 that creditor in chapter 11 case was known creditor and, therefore,
6 entitled to actual notice, but also noting that "[w]hen a creditor
7 is unknown to the debtor, publication notice of the claims bar date
8 may satisfy the requirements of due process.") (citing Mullane v.
9 Central Hanover Bank & Trust Co., 339 U.S. 306, 317-18).

10 The Supreme Court has defined a known creditor as one whose
11 identity is either known or "reasonably ascertainable by the
12 debtor." Tulsa Professional Collection Serv., 485 U.S. at 490.
13 "An 'unknown' creditor is one whose 'interests are either
14 conjectural or future or, although they could be discovered upon
15 investigation, do not in due course of business come to the
16 knowledge [of the debtor].'" Mullane, 339 U.S. at 317.

17 The parties thoroughly briefed and argued the issue of whether
18 Plaintiffs were known or unknown creditors. Debtor asserts that
19 Plaintiffs were unknown while Plaintiffs contend they were known.
20 Assuming Plaintiffs were unknown creditors as Debtor contends,
21 Debtor could provide notice to Plaintiffs by publication in a
22 newspaper or magazine or other medium likely to come to the
23 attention of the Plaintiffs. Therefore, the issue of whether
24 Plaintiffs were known or unknown creditors need not be resolved if
25 the notice Debtor relies upon was insufficient to meet the
26 constitutional requirements under Mullane.

27 ///

28 ///

1 C. ADEQUACY OF THE DEBTOR'S NOTICE BY PUBLICATION

2 1. CONTENT

3 Debtor relies on GAC Enters., Inc. v. Medaglia (In re
4 Medaglia), 52 F.3d 451 (2d Cir. 1995) for the proposition that
5 publication of Debtor's bankruptcy filing, without the bar dates,
6 provides sufficient notice under § 523(a)(3) to meet the
7 requirements of due process. In other words, once Plaintiffs read
8 that Debtor had filed a chapter 11 petition, they were put on
9 inquiry notice regarding any bar dates.

10 Medaglia involved a chapter 7 filing where the creditors
11 missed the deadline for filing their nondischargability complaint.
12 The creditors did not receive formal notice of the bar date for
13 filing their nondischargeability complaint, but their counsel wrote
14 to debtor's counsel indicating that they were aware of Medaglia's
15 bankruptcy filing. In analyzing § 523(a)(3)(B), the court stated
16 that the statute "contemplates the situation of unlisted creditors
17 who have timely, actual knowledge of a 'case' but fail to receive
18 official notice of the bar date. The section imposes a burden on
19 such creditors to come forward before the bar date . . . it is well
20 established that due process is not offended by requiring a person
21 with actual, timely knowledge of an event that may affect a right
22 to exercise due diligence and take necessary steps to preserve that
23 right." Id. at 455. The court held that a creditor's actual
24 knowledge of a bankruptcy filing may substitute for formal notice
25 of the deadline to file a nondischargeability complaint against the
26 debtor.

27 Arguably, the rule regarding actual knowledge of the
28 bankruptcy filing appears to apply only in chapter 7 and 13 cases.

1 As the Ninth Circuit explained in Levine v. Maya Const. (In re Maya
2 Const. Co.), 78 F.3d 1395, 1399 (9th Cir. 1996), in chapter 7 and
3 13 cases, the lack of formal notice of a proof of claims deadline
4 is not as significant in those chapters. "In contrast to the rule
5 governing proofs of claims in a Chapter 11 suit, which instructs
6 the court to fix a proof of claims deadline and permits the court
7 to extend that deadline 'for cause shown,' . . . the rule governing
8 Chapter 7 and 13 proceedings provides that proofs of claim shall be
9 filed within 90 days of the first creditors meeting and specifies
10 limited exceptions. Thus, once the creditors. . . had received
11 notice of the creditors meeting, they had effective notice that
12 proofs of claim were due within 90 days, unless very limited
13 exceptions applied." Id.

14 Therefore, in individual chapter 7 or 13 cases no formal
15 notice of the bar dates is required because in those chapters, upon
16 learning that a petition has been filed, the creditor can easily
17 calculate the time periods in which to file a nondischargeability
18 complaint or proof of claim. But in an individual's chapter 11
19 case such as this, the Ninth Circuit's rationale in Maya for giving
20 formal notice of a bar date in a corporate chapter 11 context is
21 equally applicable here. Even though this case involves an
22 individual chapter 11 debtor, the Plaintiffs would be unable to
23 calculate the claims bar date simply by reading that Debtor had
24 filed bankruptcy.

25 Addressing the rights of an unknown creditor in the chapter 11
26 context, one court noted: "Notice by publication must state more
27 than the fact that a petition has been filed. The notice must
28 contain minimal information necessary to protect the rights of the

1 unknown creditors. It must state where the bankruptcy is pending
2 and the bar date. It should give sufficient information to permit
3 an unknown creditor to file a timely proof of claim." In re Nat'l
4 Spa & Pool Institute, 257 B.R. 784, 791 (Bankr. E.D. Va. 2001)
5 (citations omitted). Plaintiffs cite case law that supports this
6 proposition as well.¹ Therefore, the Court finds that a published
7 notice giving the Debtor's bankruptcy case number, name and
8 address, and the filing date is insufficient information in a
9 chapter 11 case because Plaintiffs would be unable to calculate the
10 bar date for filing claims.

11 2. DELIVERY

12 Besides the lack of critical information, the notice of
13 Debtor's bankruptcy filing was buried in a list of all the
14 bankruptcies that were filed on the same date as his,² it was
15 published only one time, and there is no evidence that it was
16 published in a newspaper that was likely to come to the Plaintiffs
17 attention. Debtor has the burden of proof to show that the notice
18

19 ¹ Plaintiffs also cite numerous cases in support of the proposition that
20 notice by publication must include important dates, especially in Chapter 11
21 proceedings. See Chemetron Corp. v. Jones, 72 F.3d 341, 348 (3rd Cir. 1995) (due
22 process requires claims bar date to be communicated in publication notice); Monster
23 Content, LLC v. HOMES.COM, Inc., 331 B.R. 438, 442 (N.D. Cal. 2005) (due process
24 demands that a creditor in a Chapter 11 bankruptcy case must receive reasonable
25 notice of a claims bar date before it is effective against the creditor); Second
26 Chance Body Armor, Inc. v. Amer. Body Armor & Equip., 1999 WL 608718 (N.D. Ill.
27 1999) (finding debtors' published notice insufficient when it did not communicate
28 necessary dates such as the claims bar and confirmation hearing date); Grant v. U.S.
Home Corp. (In re U.S.H. Corp. of New York), 223 B.R. 654, 658 (S.D.N.Y.1998)
(noting that publication notice of the claims bar date may satisfy the requirements
of due process citing Mullane, 339 U.S. at 317-18, 70 S.Ct. 652); Charter Crude Oil
Co. v. Petroleos Mexicanos (In re the Charter Co.), 125 B.R. 650, 655 at n. 3 (M.D.
Fla. 1991) (noting in chapter 11 case that debtor had constitutional obligation to
provide adequate notice of the bar date) (citation omitted).

² Specifically, the Transcript lists approximately 59 bankruptcy filings on
May 25 that are single spaced and categorized under the headings of Chapter 7,
Chapter 11 and Chapter 13. Creditors would have to examine each listing since they
wouldn't have known which chapter Debtor filed under.

1 was reasonably calculated under the circumstances to come to
2 Plaintiffs' attention, but he provided no evidence that persons
3 similarly situated to the Plaintiffs would be reading a publication
4 such as the Transcript and, if they did, that they would read the
5 section of the paper under the heading of "Bankruptcy Filings."³

6 In sum, the notice Debtor relies upon fails to give the
7 minimum information necessary and was not reasonably calculated to
8 apprise WT of their rights. The failure to provide information
9 regarding the claims bar date and the date by which to file a
10 nondischargeability complaint prejudiced Plaintiffs since they were
11 unable to take any meaningful action in response to the impending
12 deprivation of their rights.

13 D. WHETHER DEBTOR OR HIS LAWYERS "CAUSED" THE PUBLICATION

14 There is some dispute as to whether Debtor, or his lawyers,
15 "caused" the publication to occur, or whether the Transcript
16 published the information in the ordinary course of its business.
17 Debtor submitted a declaration stating that he recalls either his
18 lawyers or someone of their staff informing him that he had to
19 publish an announcement of his bankruptcy and "that it would be
20 done in the San Diego Daily Transcript." Debtor also declares that
21 he recalls "getting proofs of the published notice" and that he is
22 "absolutely certain that the publication was arranged by my
23 bankruptcy lawyers, and was not something that the newspaper simply
24 reported by finding out about it from some other source." Debtor
25 submitted a supplemental declaration that "clarifies" his
26 recollection of whether his lawyers contacted the Transcript to

27

28 ³ The Court takes judicial notice the Debtor's publication and notes that his
bankruptcy filing was not published in the section of the Transcript under the
heading of "Public Notices."

1 provide the information regarding his bankruptcy filing. This
2 supplemental declaration contradicts his earlier memories of the
3 facts regarding how his bankruptcy filing appeared in the
4 Transcript.⁴

5 Plaintiffs refute Debtor's version of the facts by submitting
6 the declaration of Jeff Phillips who is the operations manager at
7 the Transcript. Mr. Phillips declares that he examined the copy of
8 the pages from the Transcript submitted by Defendant and the
9 information about bankruptcy filings contained in this part of the
10 newspaper is obtained directly from the United States Bankruptcy
11 Court, not from the bankruptcy debtors or their attorneys. Mr.
12 Phillips further declares there is another portion of the newspaper
13 under the heading of "Public Notices" that is used for purposes of
14 providing the public with published notice of matters that are
15 required to be published by law or pursuant to court order.

16 Although Debtor's supplemental declaration appears to remove
17 any dispute as to whether his lawyers provided the information
18 about Debtor's bankruptcy filing to the Transcript, to the extent
19 there is a dispute, in ruling on a motion for summary judgment, the
20 court is not to make credibility determinations, weigh evidence, or
21 draw from the facts legitimate inferences for the movant, Anderson
22 v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505 (1986). But
23 facts that are irrelevant or unnecessary to a decision are
24

25 ⁴ The Debtor filed his supplemental pleadings and Plaintiffs filed a
26 response. These pleadings were filed without authorization from the Court. The
27 Court has discretion to consider supplemental pleadings and will do so in this case.
28 See Agate Holdings, Inc. v. Ceresota Mill Ltd. P'ship (In re Ceresota Mill Ltd.
P'ship), 211 B.R. 315, 318 (B.A.P. 8th Cir. 1997) ("[W]hile a trial court may have
the discretion to consider a late-filed document where no party objects, a party
filing an untimely document without an accompanying 9006(b) motion does so at its
peril.")

1 "non-material" and do not prevent summary judgment. Anderson, 477
2 U.S. at 242, 106 S.Ct. 2505. The Court finds that to the extent
3 there is a disputed fact regarding how notice of Debtor's
4 bankruptcy filing appeared in the Transcript, that fact that is
5 immaterial in light of this Court's analysis regarding the content
6 of the notice⁵ and, therefore, is not an impediment to granting
7 summary judgment in favor of WT.

8 Debtor also relies on In re West Coast Video Enters., Inc.,
9 174 B.R. 906, 909 (Bankr. E.D. Pa. 1994) for the proposition that
10 he, or his lawyers, do not need to cause the notice of his
11 bankruptcy to be published and simply learning of a bankruptcy
12 filing is sufficient notice.⁶ Compare In re Nat'l Spa & Pool
13 Institute, 257 B.R. at 791 (finding that stories in trade journals
14 and in two newspapers do not constitute notice by publication since
15 the stories were not calculated to give notice of the filing of a
16 petition in bankruptcy or the bar date) (citations omitted).
17 Even assuming that this Court was bound by West Coast, the facts
18 and circumstances in that case are vastly different.

19 In West Coast, the debtor was a well-known franchisor of video
20 rental stores. Former franchisees of the debtor sought to reopen
21 the case and make a late claim and proceed with pending state court
22 litigation against the debtor and certain of its principals. The
23 debtor presented evidence that its filing received considerable

24
25 ⁵ A one time published notice containing only the Debtor's case number and
26 name and address, buried in a single spaced list of approximately 59 bankruptcies
27 involving chapter 7, chapter 11 and chapter 13, does not meet the due process
28 requirements set forth in Mullane.

⁶ To the extent Debtor's reliance on West Coast is a variation of his earlier
argument under Medaglia, the Court will not repeat its earlier findings regarding
the content of the notice required for an individual chapter 11 case such as this.

1 media publicity on several local television stations and was the
2 subject of several local newspaper and trade journal articles. The
3 court found the franchisees were "unknown creditors" and noted that
4 the debtor did not provide any formal or official sort of
5 publication notice to its "unknown" creditors of the bar date, the
6 confirmation hearing, or any other pertinent benchmarks in its
7 case. Nonetheless, the court found the publicity about the case
8 was quite likely to be noticed by lay persons to a much greater
9 degree than an obscure legal notice. The court also did not
10 believe the franchisees were unaware of the filing. "Assuming
11 arguendo the Movants' unlikely lack of actual knowledge of the
12 Debtor's bankruptcy, we nevertheless conclude that the publicity of
13 the Debtor's bankruptcy case, particularly at its outset, provided
14 reasonable notice of the Debtor's bankruptcy filing to them, which
15 would have permitted them to access all information relevant
16 thereto, including the bar date and the terms of the plan, had they
17 chosen to investigate further." West Coast, 174 B.R. at 909-910.

18 Here, Debtor provided no evidence that his bankruptcy case was
19 highly publicized through television stations or articles in local
20 newspapers nor has the Debtor provided evidence that he was "well-
21 known" and there was such a high degree of participation in his
22 case that contributed to making his case a "complex, high-profile
23 matter." West Coast would also appear contrary to Ninth Circuit
24 law which holds that a creditor's actual knowledge of a chapter 11
25 bankruptcy proceeding does not obviate the need for formal notice.
26 See In re Maya Const. Co., 78 F.3d at 1395. The Court finds West
27 Coast unpersuasive.

28 Lastly, Debtor provided no evidence that demonstrated why he

1 needed to provide notice by publication to his unknown creditors.
2 In this Court's experience, notice by publication is usually
3 required in large corporate chapter 11 cases which involve
4 defective products and involve hundreds of unknown plaintiffs. The
5 Court is unaware of a notice by publication in an individual's
6 chapter 11 case. Moreover, if notice by publication is necessary,
7 the debtor usually files a motion to obtain Court approval of the
8 notice and the Court takes judicial notice that no such motion was
9 filed in this case.

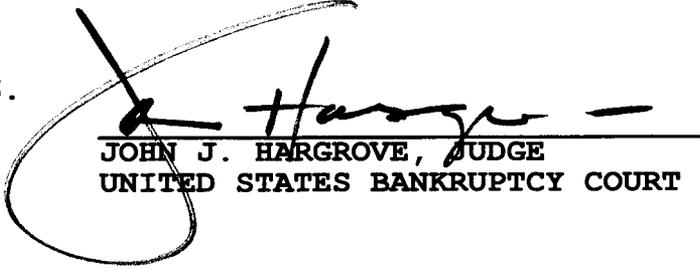
10 III.

11 CONCLUSION

12 The Court finds that it is unnecessary to determine whether
13 Plaintiffs were known or unknown creditors of the Debtor because
14 under either scenario the notice by publication that Debtor relies
15 upon was insufficient and does not meet the constitutional
16 requirements of due process. Therefore, Plaintiffs are entitled to
17 summary judgment on this issue.

18 This Memorandum Decision constitutes findings of fact and
19 conclusions of law pursuant to Federal Rule of Bankruptcy Procedure
20 7052. Plaintiffs are directed to file with this Court an order in
21 conformance with this Memorandum Decision within ten (10) days from
22 the date of entry thereof.

23
24 Dated: December 13, 2006.

25 
26 _____
27 JOHN J. HARGROVE, JUDGE
28 UNITED STATES BANKRUPTCY COURT

3-03-019-U-CHIM USA v. Edward Victor Trigueros
 3-03-0236-U-CHIM USA v. Rosa Kimball
 3-03-0133-U-CHIM USA v. Lorena Garcia Valenzuela et al

Courtroom 9
 Hon. HOWARD B. TURRENTINE
 District Judge

Called at 9:00 a.m.

1- 93-0216-T-CHIM USA v. Antonio Gonzalez-Aguilera
 2- 93-0469-T-CHIM USA v. Francisco Claudio Landeros
 3- 93-0086-T-CHIM USA v. Denise Stewart
 4- 93-1402-T-CHIM USA v. John M. Ifigo
 5- 93-1633-T-CHIM USA v. Eduardo Mares-Barajas
 6- 93-0027-T-CHIM USA v. Juan Garcia-Arias
 7- 93-0079-T-CHIM USA v. Nlea Valdivia-Huelas
 8- 93-1270-T-CHIM USA v. Everado Espinosa-Contreras et al
 9- 91-0904-T-CHIM USA v. Gerald Carroll
 10- 93-0132-T-CHIM USA v. Gerald Carroll
 11- 89-0652-T-CHIM USA v. Anthony Alexander Alvarez
 12- 86-1077-T-CHIM USA v. Donald Gene Henjhome

Called at 2:00 p.m.

1- 92-0704-T-CHIM USA v. Ilija Liljan Duncan
 2- 89-1173-T-CHIM USA v. Arturo Casas-Perrit
 3- 93-0225-T-CHIM USA v. Clifford Rubin
 4- 93-0507-T-CHIM USA v. Susan zionskowski
 5- 90-1029-T-CHIM USA v. Peter Del Dura
 6- 93-0232-T-CHIM USA v. Kurt Forrester Pankowski et al

Courtroom 10
 Hon. LELAND C. NIELSEN
 District Judge

Called at 9:00 a.m.

1- 92-1380-N-CRIM USA v. Armando Tescano-Cobian
 2- 91-0567-N-CRIM USA v. Filemon Bernal-Obeso
 3- 91-0443-N-CRIM USA v. Elizabeth Ewing
 4- 93-0192-N-CRIM USA v. Mario Palomino

Called at 2:00 p.m.

1- 91-0863-N-CRIM USA v. Juan Carlos Quevedo-Lopez
 2- 93-0384-N-CRIM USA v. Tony Conli, Sr.
 3- 93-0525-N-CRIM USA v. James Joseph Petit
 4- 93-0233-N-CRIM USA v. Augustin Gonzalez-Gomez

Courtroom 11
 Hon. HENRY F. GONZALEZ
 District Judge

Called at 9:00 a.m.

1- 93-0462-IEG-CRIM USA v. Salvador Nagellanes-Torres
 2- 87-1389-IEG-CRIM USA v. Efrén Mender-Duenas et al
 3- 93-0712-IEG-CRIM USA v. Javier Mendota-Godoy
 4- 92-1307-IEG-CRIM USA v. Carlos Rodrigo Pelaez-Camargo
 5- 92-1139-IEG-CRIM USA v. Phillip R. Gordon
 6- 92-1592-IEG-CRIM USA v. Sergio Kau Lai Philippe
 7- 93-0055-IEG-CRIM USA v. Rudy Delgado

Called at 2:00 p.m.

1- 93-0718-IEG-CRIM USA v. Martin Gerardo Valle-Salazar
 2- 93-0120-IEG-CRIM USA v. David A. Krippner
 3- 93-0061-IEG-CRIM USA v. Cedric

2- 01-00802-3111 -Frial Interstate Bank of Arizona v. Donald Silver

Hon. LOUISE DeCARLUADINI,
 Department 2

Called at 9:30 a.m.

1- 93-13640-A7 Fred Stephenson
 2- 92-1400-A7 Visitor Corp
 3- 92-09064-111 Cabrillo Crane & Rigging Corp.

Called at 10:00 a.m.

1- 91-12877-A11 Loujima Stahla Inc. Donald G. ptnr. in pro per.
 19- 93-17693 Matsch, Lisa v. John. Seimoes for ptnr.
 20- 93-55524 Scott C. Ruryynski v. Elizabeth F. Mayfield. Tavano for ptnr., resp. in pro per.
 21- 93-61379 Hyatt, Sundro v. Randall Warner for ptnr. Aex for resp.
 22- 93-61874 Wright, Kathy L. v.

BANKRUPTCY FILINGS

Filed May 26
 Chapter 7

93-03589 Point Loma Venture Inc., PO Box 900196, San Diego
 93-05480 Sonia Renee & Quentin Eduardo Anderson, 9922 Estralla Dr., Spring Valley
 93-05591 Harille H. Carlos dba De-align Concepts, 3607 Cheshire Ave., Carlsbad
 93-05596 Maria L. & David Duren Torres, PO Box 403, Niland
 93-05587 Antonio G. Sandoval, 1329 Third Ave., #119, Chula Vista
 93-05598 Helen Duffin, 2308-120 Altama Way, Carlsbad
 93-05599 Olga Vuckovich Cutler, 3001 Carlsbad Blvd., #G, Carlsbad
 93-05600 Dale Vivian & John Douglas McMillinray, 1827 Alta Vista Dr., Vista
 93-05601 Karen Louise White, 4742 Pochonata, San Diego
 93-05602 Debra Jean & John Gregory Benfield, 1729 Tacoma Ln., Vista
 93-05603 Peter Nguyen, 3826 Carnegie, Oceanside
 93-05604 Tai Giang, 7717 Daney Ild., San Diego
 93-05605 Robert C. Stonea, 2009 Via Vocas, Carlsbad
 93-05606 Linda M. & Anthony R. Jackson dba Ajax Builders, 1379 Ashley Rd., Ramona
 93-05607 Kathleen A. & Pete L. Torres, 28119 Eclega Ct., Ramona
 93-05608 Patricia Aguilera, 1334 E. 16th St., National City
 93-05610 Fays Veronica Somera, 13641 Comuna Dr., Poway
 93-05611 Dennis Copson, 4230 Half Moon Bay Way, Oceanside
 93-05612 Teresa D. Herrera, 1630 C Ave., #D, National City
 93-05613 Nikki A. & James W. Symington, 645 Tyrone St., El Cajon
 93-05614 Your Mattress Inc. dba Your Mattress, 108 Calle Redondal, San Clemente
 93-05615 The American Ballet Foundation Inc., c/o Ted Redosovich, 17204, Vendor Pl., Poway
 93-05616 Connie L. Griffin, PO Box 846, Ladd
 93-05618 Annette E. Cary, 1181 E. Grand Ave., #11-158, Escondido
 93-05619 Veronica P. & Richard E. Flores, 411 Chastnut, #18, Carlsbad
 93-05620 William F. Groves, 2440 La Ramada Ln., Escondido
 93-05621 Benjamin M. Chua, 417 Oaklawn Ave., #A, Chula Vista
 93-05625 Debra M. & Christopher J. Walt, 10411 Rue Finisterre, San Diego
 93-05628 Cheryl E. & William J. Carpenter, 3641 Conrad Ave., San Diego
 93-05629 Mary Jane Mulcahy, 181 W. El Norte Pkwy., #D-8, Escondido
 93-05628 Richard C. Cummings, 378 Skyview Glenn, Escondido
 93-05629 Elliott D. Valadeo Jr., 1600

Las Cuchas Rd., #13, El Cajon
 93-05634 Mary U. & Anthony F. Rapolla, 2038 Darlington Ct., El Cajon
 93-05635 Carol Jean McDaniel, 1614 Granite Hills Dr., #2, El Cajon
 93-05636 Linda Diane & Louis Jose Krone dba L.K. Auto Sales, 4033 Repaire Dr., La Mesa
 93-05641 Teresa Mari & Wesley O. Torio dba Terio Landscaps Co., 881 Terra Ln., El Cajon
 93-05642 Laura Jane & Gary Eugene Krahn dba Krahn's Landscaping Plus, 3618 Amiga Ct., Oceanside
 93-05643 Kimberly Irnee & Wayne A. Collins, 1600 E. Vista Way, #127, Vista
 93-05644 Kathleen Patricia McCall-Smith & David Jordan Smith, 3321 Duena Vista St., San Diego
 93-05645 Jan Elizabeth & Roy Cas Springer, 1071 Australia, El Cajon
 93-05648 Elvira M. & Richard J. Schoonover, 1067 Felipe St., San Diego
 93-05649 William R. Dalmas, 547 Calle N. Imperial Beach
 93-05650 Faith A. Maybury dba AI Your Services Unlimited, 6525 Hillview Ave., La Jolla
 93-05651 Alice Jean & Robert James Galbo, 4849 Bojse Ave., San Diego
 93-05652 Narsha & Dennis L. Hier, 2727 Aristotle Dr., San Diego
 93-05654 Rose Marie & Timothy John Durka, 2209 Zabyrn St., Oceanside

Chapter 11
 93-05582 Quality Stairs of Southern California, 330 S. Pacific St., #A, San Marcos
 93-05609 Joseph Vincent Caracolo, PO Box 3725, Rancho Santa Fe

Chapter 13
 93-05592 Patricia E. Griffin, 11678 Nagley Dr., San Diego
 93-05593 Marygracia Oslang Papa, 1923 F Ave., #8, National City
 93-05594 Eva & Francisco Diaz, 3778 Arzuza St., San Diego
 93-05595 Maria Teresa & Steven Arna Ranberg, 9116 Lamar St., Spring Valley
 93-05617 Martha Holbert Bossy, 2825 Andover Ave., Carlsbad
 93-05622 Mary M. & Kenneth R. Roberts, 3917 Conrad Dr., #A-8, Spring Valley
 93-05623 Antonio Chacon, 815 Morning Way, San Diego
 93-05624 Angela & Adna Rex Murdock, 89 Connolly Cir., Chula Vista
 93-05647 Cara Lynn MacKenzie, 118 Aberdeen Dr., Carlsbad

Exhibit A
 Page 2

EXHIBIT "A"

Urmench, plur. in pro per.
 9- 9306810 Lewis, Dawn K. v. Darrell Dwayne, plur. in pro per.
 10- 9326991 Stephenk Slovenaki v. Mark E. Valentin, plur. in pro per.
 11- 9326990 Teresa Miranda v. Antonio Sandoval, plur. in pro per.
 12- 9326904 Hecelina T. Ochosa v. Naly M. Tyson, plur. in pro per.
 13- 9326922 Joe F. Rodriguez v. Steven Linnehan, plur. in pro per.
 14- 9326909 Isabel Acosta v. Ramon Salchela, ptnr. in pro per.
 15- 9326613 Anela R. Rebolledo v. Dale Hall, ptnr. in pro per.
 16- 93266313 Kemper, Leticia v. Michael Keith, plur. in pro per.
 17- 9326659 Laura Nephew v. Bryan Kirkland, plur. in pro per.
 18- 93266391 Gonzalez, Leticia v. Oscar, plur. in pro per.

Parkway, #291, Escondido. Property lien for 1040. (tax balance of \$11,503.31); assessed: 2-8-93. Recorded San Diego County 5-26-93. document 93-331908.

339324447 -- Darrell W. Gentry, taxpayer, 13474 Chelsea Ct., San Diego. Property lien for 1040 tax balance of \$3,239.99. assessed 5-10-91. Recorded San Diego County 5-26-93. document 93-331910.

339324442 -- James T. Dove Jr., taxpayer, 7678 Linda Vista Ild., #58, San Diego. Property lien for 1040 tax balance of \$258.08. assessed 5-18-92. Recorded San Diego County 5-26-93. document 93-331911.

339324440 -- Allan B. & Judith A. Kinch, taxpayers, P.O. Box 300968, Escondido. Property lien for 1040 tax balance of \$14,000.73. assessed 7-6-92. Recorded San Diego County 5-26-93. document 93-331912.

339324773 -- Patricia E. Ibra, taxpayer, 1610 Glorieta, #4. Coronada. Property lien for 1040 tax balance of \$3,544.39. assessed 10-19-92. Recorded San Diego County 5-26-93. document 93-331913.

339324508 -- Kevin T. Morrow, taxpayer, 1301 Oak St., Carlsbad. Property lien for 1040 tax balance of \$58,123.51. assessed 9-7-92. Re-

BUSINESS T

BUSINESS TAX PERMITS
 1 Women's Apparel Store, 2 Men's Wear, 3 Family Apparel Store, 4 Shoe Store, 5 Limited Price Variety Store, 7 Drug, 8 Dry Goods Store, 9 Gen. Merchandise Store, 10 Newspaper & Magazine Stand, 11 Art, Gift & Novelty Store, 12 Sporting Goods Store, 13 Floral Shop, 14 Coin Store, 15 Music Store, 16 Stationery & Book Store, 17 Jewelry Store, 18 Food Store, 19 Package Laundry Store, 20 Cafe or Snack Bar, 21 Candy Store, 22 Confectionery Store, 23 Cigar Store, 24 Grocery Store, 25 Drug Store, 26 Non-Food Grocery, 27 Post Office, 28 Post Office, 29 Post Office, 30 Post Office, 31 Post Office, 32 Post Office, 33 Post Office, 34 Post Office, 35 Post Office, 36 Post Office, 37 Post Office, 38 Post Office, 39 Post Office, 40 Post Office, 41 Post Office, 42 Post Office, 43 Post Office, 44 Post Office, 45 Post Office, 46 Post Office, 47 Post Office, 48 Post Office, 49 Post Office, 50 Post Office, 51 Post Office, 52 Post Office, 53 Post Office, 54 Post Office, 55 Post Office, 56 Post Office, 57 Post Office, 58 Post Office, 59 Post Office, 60 Post Office, 61 Post Office, 62 Post Office, 63 Post Office, 64 Post Office, 65 Post Office, 66 Post Office, 67 Post Office, 68 Post Office, 69 Post Office, 70 Post Office, 71 Post Office, 72 Post Office, 73 Post Office, 74 Post Office, 75 Post Office, 76 Post Office, 77 Post Office, 78 Post Office, 79 Post Office, 80 Post Office, 81 Post Office, 82 Post Office, 83 Post Office, 84 Post Office, 85 Post Office, 86 Post Office, 87 Post Office, 88 Post Office, 89 Post Office, 90 Post Office, 91 Post Office, 92 Post Office, 93 Post Office, 94 Post Office, 95 Post Office, 96 Post Office, 97 Post Office, 98 Post Office, 99 Post Office, 100 Post Office.

Real, #153, 920 Jodanis, 7325 M Dorane's Custom Painting, 641 (20) Spartaech, PO Box Gregory Clark, Bluewater, 920 Appleby Repery St., 92008, (85) CILU. Steve's Fashion Broadway, #9, Rey V. Fidel, 717 91918, (17) Victor Andraa Manhattan Ave, 9 Barb's Hair Club, 91910, (19) Penkin Enterprises, Ave, 91910, (10) Rodrigues Pipe & ch Co., 91911, (1) Maria Melendes, 1 (28) Salvador Fregi Patricia Ave, 91 Cory Corstar, 124 91911, (35) Flores Aulin Elec 91911, (81) Vista Photo & Co Ln., 91916, (73) Romero's Diarhri Ave., #1, 91910, (1) California Danim #D, 91911, (91) Agri-Plastic Inc., 91010, (99) Biltor Sales Co., 1 (89) CORO Sybil Di Nado, 31 92118, (29) Freddy's Toddler try Club Ln., 921 DEB Dorothy, Marie, 2 92014, (28) Terry's Best, 143 92014, (29) Alvin Leonard Co grounds, 92014, (1) Kyle Cardinal, Cas Box 2388, 92014, A/Anaco Of San Die Daniela, 92014, EL CA Sue Ching, 1689 1 (03) First & Goal Inc., 92018, (12) Country Clock Bb ington Ave., 9202

Cutting A-Pathway, 2010 S. Grady Rd., 91901, (29) BONITA IG Jewelry, 304 Crest View Dr., 91902, (17) William Schleisbauer, 1578 Cumbry View, 91902, (29) 98 Market, 5402, Robinwood Rd., 91902, (31) CARDIFF BY THE SEA Cycles By The Sea Inc., 2145 San Elise Ave., 92007, (12) Sign Line, 725 Cathy Ln., 92007, (28) Rona Facil., 2112 Manchester Ave., 92007, (28) Bill Schildge, PO Box 1017, 92007, (59) CARLSBAD Zeldler & Zeldler 203, 2525 El Camino Real, #231, 92008, (02) Flower Shop, PO Box 188128, 92009, (13) AW Stone, 2512 Via Esparto, 92008, (19) DMW & Associates Inc., 672 Sea Cliff Dr., 92008, (19) Starvin Marvin's, Dall Carlsbad, 5431 Avenida Encinas, #E, 92008, (24) Shady Enterprises, 2778 Arland Rd., 92008, (28)