

1 WRITTEN DECISION - NOT FOR PUBLICATION

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APR 15 2007  
CLERK, U.S. BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY DEPUTY

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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. ) ORDER DENYING EMERGENCY EX PARTE  
13 Bk. Case No. 93-05609-H11 ) MOTION OF JOSEPH V. CARACCILO FOR  
14 ) 1) ENTRY OF PARTIAL JUDGMENT ON  
15 JACK WIREMAN and RONALD ) HIS FIRST TWO COUNTERCLAIMS; AND  
16 THOMPSON, ) 2) SUSPENSION OF PROCEEDINGS  
17 Plaintiffs, ) PENDING APPEAL  
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 Joseph Vincent Caracciolo ("Debtor" or "Defendant") filed an  
28 Emergency Ex Parte Motion for 1) Entry of Partial Judgment on his

1 First Two Counterclaims; and 2) Suspension of Proceedings Pending  
2 Appeal. Jack Wireman and Ronald Thompson ("WT" or "Plaintiffs")  
3 oppose.

4 At issue is whether this Court should order entry of a  
5 separate judgment under Federal Rule Bankruptcy Procedure 7054,  
6 which incorporates Rule 54(b) of the Federal Rules of Civil  
7 Procedure, and suspend discovery while Debtor pursues his appeal.

8 The Court denies Debtor's request as set forth below.

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

14 I.

15 FINDINGS OF FACT AND CONCLUSIONS OF LAW

16 Plaintiffs filed this adversary proceeding against Debtor on  
17 August 11, 2005, alleging a claim for relief under § 523(a)(3)(B).  
18 Debtor answered and asserted four counterclaims against Plaintiffs,  
19 two of which this Court dismissed following cross motions for  
20 summary judgment.<sup>1</sup> [See docket #133].

21 Federal Rule of Civil Procedure 54(b) states:

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27 <sup>1</sup> The Court dismissed Debtor's first and second counterclaims: In his first  
28 counterclaim for relief, Debtor sought declaratory judgment that the malicious  
prosecution judgment obtained by Plaintiffs is void in violation of the discharge,  
and in his second counterclaim for relief, Debtor sought damages for Plaintiffs'  
violation of the discharge injunction.

1           Judgment Upon Multiple Claims or Involving Multiple  
2           Parties. When more than one claim for relief is presented  
3           in an action, whether as a claim, counterclaim, cross-  
4           claim, or third-party claim, or when multiple parties are  
5           involved, the court may direct the entry of a final  
6           judgment as to one or more but fewer than all of the  
7           claims or parties only upon an express determination that  
8           there is no just reason for delay and upon an express  
9           direction for the entry of judgment. In the absence of  
10          such determination and direction, any order or other form  
11          of decision, however designated, which adjudicates fewer  
12          than all the claims or the rights and liabilities of  
13          fewer than all the parties shall not terminate the action  
14          as to any of the claims or parties, and the order or  
15          other form of decision is subject to revision at any time  
16          before the entry of judgment adjudicating all the claims  
17          and the rights and liabilities of all the parties.

18          "Judgments under Rule 54(b) must be reserved for the unusual case  
19          in which the costs and risks of multiplying the number of  
20          proceedings and of overcrowding the appellate docket are  
21          outbalanced by pressing needs of the litigants for an early and  
22          separate judgment as to some claims or parties." Morrison-Knudsen  
23          Co., Inc. v. Archer, 655 F.2d 962, 965 (9th Cir. 1981). The Ninth  
24          Circuit explained:

25                 The trial court should not direct entry of judgment under  
26                 Rule 54(b) unless it has made specific findings setting  
27                 forth the reasons for its order. Those findings should  
28                 include a determination whether, upon any review of the  
                judgment entered under the rule, the appellate court will  
                be required to address legal or factual issues that are  
                similar to those contained in the claims still pending  
                before the trial court. A similarity of legal or factual  
                issues will weigh heavily against entry of judgment under  
                the rule, and in such cases a Rule 54(b) order will be  
                proper only where necessary to avoid a harsh and unjust  
                result, documented by further and specific findings.

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1           The Court finds certification is inappropriate for several  
2 reasons. This adversary case is not "unusual" or complicated. It  
3 is a two party dispute. It involves the debtor's discharge and it  
4 is typical for several claims to be made with respect to discharge  
5 issues. It is also common for summary judgment motions to be made,  
6 and to be granted in part and denied in part: this is how the  
7 parties have chosen to proceed, one summary judgment motion at a  
8 time whittling away at the issues. Compare In re Pacific Gas and  
9 Elec. Co., 275 B.R. 1,4 (Bankr. N.D. Cal. 2002) (court found  
10 certification proper because the Chapter 11 case was of "enormous  
11 significance to thousands of creditors owed billions of dollars.")

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14           Debtor has made no showing that this adversary is anything  
15 other than routine. See Wood v. GCC Bend, LLC, 422 F.3d 873 (9th  
16 Cir. 2005) ("[S]ound judicial administration does not require that  
17 Rule 54(b) requests be granted routinely.") (citation omitted).  
18 There is no evidence that Debtor stands to gain or lose a  
19 significant amount of money or time unless the appeal is heard now  
20 rather than at the end of the trial. The trial, if any, would not  
21 be lengthy or complex. The only issues remaining are whether there  
22 was a Covenant Not to Execute between the parties, whether the  
23 laches defense applies, and whether collateral estoppel should be  
24 applied to the Plaintiffs' judgment. In reality, if the case goes  
25 to trial or is disposed of on subsequent motions for summary  
26 judgment, it probably will be over with in a shorter amount of time  
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1 than it would take for Debtor's appeal. At that juncture, there  
2 can be one appeal, not two.

3 Further, there is a risk of overlap since the Plaintiffs'  
4 claims and Debtor's remaining counterclaims arise out of the same  
5 facts and all involve the dischargeability of Plaintiff's judgment.  
6 There is also a risk that if the Court finds that the Covenant Not  
7 to Execute is a valid and binding agreement, the issue of whether  
8 the judgment is void may be mooted. Or, the case might settle.

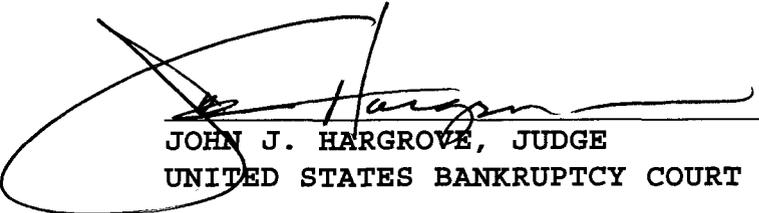
9 This Court cannot find a sufficient reason for certification.

10 In addition, the stay of discovery would only cause further  
11 delay: delay in presenting further dispositive motions and delay  
12 in proceeding to trial. Both Plaintiffs and Debtor continue to get  
13 older and memories of witnesses continue to fade.

14 The Debtor's request for certification under Rule 54(b) and  
15 for a stay of discovery is DENIED.

16 IT IS SO ORDERED.

17 Dated: May 15, 2007.

18   
19 JOHN J. HARGROVE, JUDGE  
20 UNITED STATES BANKRUPTCY COURT  
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28 S:\Caraccilo Order Denying Certification.wpd