

SIGNED.

Dated: May 4, 2012



James M. Marlar

James M. Marlar, Chief Bankruptcy Judge

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7 **UNITED STATES BANKRUPTCY COURT**
8 **DISTRICT OF ARIZONA**

9 In re:

10 THOMAS GERALD BACH,

11 Debtor.

Chapter 7

No. 4:09-bk-16624-JMM

12 **MEMORANDUM DECISION RE:**
13 **MOTION TO REOPEN**

14 Chapter 7 Debtor, Thomas G. Bach, has asked this court to reopen his case, so that he
15 may pursue certain individuals for sanctions for allegedly violating this court's discharge order
16 in his individual Chapter 7 case (ECF No. 43). He defines those whom he wishes to have
17 sanctioned as:

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- 19 A. Thomas R. Duffy, Special Litigation Counsel to the Chapter 11 estate of
 - 20 Cedar Funding;
 - 21 B. Duffy and Guenther (Thomas R. Duffy's law firm);
 - 22 C. Russell K. Burbank, Chapter 11 Plan Administrator for Cedar Funding's
 - 23 bankruptcy estates;
 - 24 D. The Cedar Funding Bankruptcy Estates themselves; and
 - 25 E. Burr, Pilger & Mayer (Russell K. Burbank's law firm).
- 26

27 The motion to reopen will be denied for several reasons. They are:
28

1 1. The adversary proceeding to which Mr. Bach was named as a party was
2 dismissed by the court (Adversary No. 11-5254) on January 20, 2012. See
3 dismissal order attached as Exhibit "1."

4 Thus, the matter about which Mr. Bach complains has been
5 dismissed and withdrawn and, therefore, his concerns have been alleviated,
6 rectified and eliminated. The instant motion is therefore legally moot.

7 2. Although there is no private right of action for damages under § 524, an
8 individual may seek contempt sanctions in the core bankruptcy
9 proceedings. Barrientos v. Wells Fargo Bank, N.A., 633 F.3d 1186 (9th
10 Cir. 2011). Mr. Bach's motion sets forth no monetary injury to himself.
11 He employed no attorney and had no out-of-pocket expenses. Again,
12 without damages, the action is moot. See In re Dyer, 322 F.3d 1178, 1192-
13 95 (9th Cir. 2003) (only civil sanctions, such as compensation for attorneys'
14 fees, are available under § 105(a)); cf. In re Dawson, 390 F.3d 1139 (9th
15 Cir. 2004).

16 3. The individual parties against whom Mr. Bach seeks to proceed were acting
17 as officers of bankruptcy estates, and are therefore entitled to immunity or
18 derived quasi-judicial immunity from suits such as this. See In re Harris,
19 590 F.3d 730, 742-43 (9th Cir. 2009) (bankruptcy trustees and court-
20 appointed officers who represent the estate are entitled to "broad immunity
21 from suit when acting within the scope of their authority and pursuant to
22 court order"), cert. denied sub nom., Harris v. Wittman, 130 S.Ct. 3413
23 (2010), (citing Bennett v. Williams, 892 F.2d 822 (9th Cir. 1989) and In re
24 Crown Vantage, Inc., 421 F.3d 963 (9th Cir. 2005)). Thus, no relief can be
25 accorded against Duffy, the Duffy and Guenther firm, Burbank or Burr,
26 Pilger & Mayer. Mr. Bach has not shown that he obtained the appointing
27 court's authority to sue those parties. As applied in the Ninth Circuit, the
28 Barton doctrine requires "that a party must first obtain leave of the

1 bankruptcy court before it initiates an action in another forum against a
2 bankruptcy trustee or other officer appointed by the bankruptcy court for
3 acts done in the officer's official capacity." In re Harris, 590 F.3d 730, 742
4 (9th Cir. 2009) (quoting In re Crown Vantage, Inc., 421 F.3d 963, 970 (9th
5 Cir.2005); see also Barton v. Barbour, 104 U.S. 126, 26 L.Ed. 672 (1881).

6 Indeed, other than frustration by the process, Mr. Bach has been
7 vindicated, and his bankruptcy discharge upheld. There is no need for
8 punitive measures to continue when there is nothing to show real injury
9 and/or pecuniary harm. Sometimes the ways of the system can be slow and
10 tedious, but in the end, as here, the right result usually happens.

- 11 4. No action can be maintained against the bankruptcy estates of the Cedar
12 Funding entities, as they are protected by the automatic stay of 11 U.S.C.
13 § 362(a). Unless Mr. Bach obtains permission from the bankruptcy court
14 which is administering those estates (Northern District of California), and
15 obtains orders allowing relief from the stay, he may not commence an
16 action against those entities.

17 CONCLUSION

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20 There is no viable legal reason to reopen the Bach bankruptcy case. To do so would lead
21 only to futile litigation, and be costly to all concerned, with no reasonable outcome achievable.
22 The matter is over. It should rest.

23 A separate order will be entered which:

- 24 A. DENIES the motion to reopen; and
25 B. DENIES the motion to waive the reopening fee, as moot.

26
27 DATED AND SIGNED ABOVE.

1 COPIES to be sent by the Bankruptcy Noticing
2 Center ("BNC") to the following:

3 Debtor

4 Trustee

5
6 Thomas R. Duffy, Esq.
7 Duffy & Guenther LLP
8 149 Bonifacio Place
9 Monterey, California 93940

10
11 Ralph P. Guenther Esq.
12 Duffy & Guenther LLP
13 149 Bonifacio Place
14 Monterey, California 93940

15
16 Russell K. Burbank
17 Burr Pilger & Mayer LLP
18 600 California Street, Suite 1300
19 San Francisco, California 94108

20
21 Russell K. Burbank
22 c/o Richard A. Rogan
23 Jeffer Mangels Butler & Mitchell
24 Two Embarcadero Center
25 San Francisco, California 94111

26
27 Stephen D. Mayer, Chairman & CEO
28 Burr Pilger & Mayer LLP
600 California Street, Suite 1300
San Francisco, California 94108

R. Todd Neilson, Trustee
LECG
2049 Century Park East - Suite 2300
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Office of the U.S. Trustee

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EXHIBIT "1"



The following constitutes
the order of the court. Signed January 20, 2012

A handwritten signature in cursive script, reading "Charles Novack".

Charles Novack
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:
CEDAR FUNDING, INC.,
Debtor.

Case No. 08-52709 CN
Chapter 11

RUSSELL BURBANK, Chapter 11
Liquidating Trustee,

Adversary No. 11-5254

Plaintiff,

**ORDER DISMISSING ADVERSARY
PROCEEDING**

vs.

CRAIG ATAIDE, ET AL.,
Defendants.

A status conference in the above-entitled matter was held on January 13, 2012. Appearances were stated on the record. Good cause appearing,

IT IS HEREBY ORDERED for the reasons stated on the record, the above captioned adversary proceeding is dismissed.

**** END OF ORDER *****

COURT SERVICE LIST

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- Craig Ataide
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- Thomas Schellenberg
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- Martin Huddleson
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Salinas, CA 93933
- Randy Domras
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Pebble Beach, CA 93953