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NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: WESTWOOD PLAZA
NORTH, a California
general partnership,
Debtor.

SHMUEL ERDE,
Appellant,

v.

IRSFELD, IRSFELD &
YOUNGER, LLP,
Appellee.

No. 21-60056

BAP No. 21-1046

MEMORANDUM*

(Filed Dec. 15, 2022)

Appeal from the Ninth Circuit
Bankruptcy Appellate Panel Gan, Heston, and
Lafferty III, Bankruptcy Judges, Presiding

Submitted December 8, 2022**

Before: WALLACE, TALLMAN, and BYBEE, Circuit
Judges.

Shmuel Erde appeals pro se from the Bankruptcy
Appellate Panel's decision affirming the bankruptcy

* This disposition is not appropriate for publication and is
not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for
decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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court's order denying Erde's third motion for reconsideration. We have jurisdiction under 28 U.S.C. § 158(d). We review de novo the bankruptcy court's conclusions of law and for clear error its findings of fact. *Decker v. Tramiel (In re JTS Corp.)*, 617 F.3d 1102, 1109 (9th Cir. 2010). We affirm.

The bankruptcy court did not abuse its discretion by denying Erde's third motion for reconsideration of the order denying Erde's motion to vacate the dismissal of Westwood Plaza North's bankruptcy case because Erde failed to demonstrate any basis for relief. *See* Fed. R. Bankr. P. 9024 (making Fed. R. Civ. P. 60 applicable to bankruptcy cases); *Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (setting forth standard of review and grounds for relief under Rule 60(b)).

All pending motions and requests are denied.

AFFIRMED.

NOT FOR PUBLICATION
UNITED STATES BANKRUPTCY APPELLATE
PANEL OF THE NINTH CIRCUIT

In re: WESTWOOD PLAZA NORTH, a California general partnership, Debtor.	BAP No. CC-21-1046-GHL Bk. No. 2:84-bk-10894-BR
SHMUEL ERDE, Appellant, v. IRSFELD, IRSFELD & YOUNGER, LLP, Appellee.	MEMORANDUM* (Filed Oct. 22, 2021)

Appeal from the United States Bankruptcy Court
for the Central District of California
Barry Russell, Bankruptcy Judge, Presiding
Before: GAN, HESTON,** and LAFFERTY, Bank-
ruptcy Judges.

* This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have, see Fed. R. App. P. 32.1, it has no precedential value, see 9th Cir. BAP Rule 8024-1.

** Hon. Mary Jo Heston, United States Bankruptcy Judge for the Western District of Washington, sitting by designation.

INTRODUCTION

Over the past two decades, Appellant Shmuel Erde (“Erde”) has filed at least six lawsuits in state and federal court, multiple bankruptcy cases, and at least nineteen adversary proceedings to recover losses resulting from a failed partnership nearly forty years ago. His lawsuits have been dismissed with prejudice and his numerous motions for post-judgment relief have been denied. His appeals in these actions have failed, and he has been declared a vexatious litigant in state court, in federal district court, and in the bankruptcy court.

Erde’s present appeal is from the bankruptcy court’s order denying his third motion for reconsideration (“Third Motion”) of the court’s order denying his motion to vacate the dismissal of chapter 11¹ debtor Westwood Plaza North’s (“Debtor”) 1984 bankruptcy case (the “2020 Motion to Vacate”). Erde continues to assert arguments that he has repeatedly made in several prior cases which were denied and affirmed on appeal.

Erde appealed the order denying his motion to vacate to the United States District Court for the Central District of California (“District Court”). That appeal was subsequently dismissed. The present appeal is

¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532, all “Rule” references are to the Federal Rules of Bankruptcy Procedure, and all “Civil Rule” references are to the Federal Rules of Civil Procedure

limited to review of the order denying the Third Motion. But Erde argues only the merits of the 2020 Motion to Vacate and raises no argument that the court abused its discretion in denying the Third Motion. Furthermore, he did not establish any basis for relief in his Third Motion. Accordingly, we AFFIRM.

FACTS²

A. Erde's History With Debtor

In 1984, Debtor filed a chapter 11 petition. Erde asserts that he was a partner in Debtor and its largest creditor. Five months after the petition date, the bankruptcy court dismissed the case. After the dismissal, the partnership failed and Erde lost everything. In 2001, Erde began a string of lawsuits against his former partner Theodor Bodnar, his attorneys, and others.³

After ten years of litigation involving the partnership's assets, Erde filed a motion in 2012 to reopen Debtor's bankruptcy case, seeking to have the assets administered by the bankruptcy court. He argued that the bankruptcy case must be reopened because he did

² We exercise our discretion to take judicial notice of documents electronically filed in the bankruptcy court's docket in this case and in other cases involving Mr. Erde. *See Atwood v. Chase Manhattan Mortg. Co. (In re Atwood)*, 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

³ For a comprehensive history of Erde's litigation, see *Erde v. Dye (In re Erde)*, BAP No. CC-18-1321-FLS, 2019 WL 2399708 (9th Cir. BAP June 6, 2019), and *In re Westwood Plaza North*, CV 13-00318-BRO, 2016 WL 11697903 (C.D. Cal. Sept. 16, 2016).

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not have notice of the dismissal. The bankruptcy court denied the motion and specifically found, “I believe you knew very well, Mr. Erde, that it was dismissed.” Erde filed a motion to alter or amend the order pursuant to Civil Rule 60(a), made applicable by Rule 9024, which the court denied. Erde appealed, and the District Court affirmed. *In re Westwood Plaza North*, No. CV 13-00318-BRO, 2013 WL 12443393 (C.D. Cal. Oct. 18, 2013). Undeterred, Erde continued his litigation efforts through multiple bankruptcy cases and adversary proceedings. *See Erde v. Dye (In re Erde)*, BAP No. CC-18-1321-FLS, 2019 WL 2399708 (9th Cir. BAP June 6, 2019).

In 2016, Erde requested leave from the District Court to file a motion to correct errors in the bankruptcy court’s order dismissing Debtor’s case, pursuant to Civil Rules 60(b)(4) and (b)(6). *In re Westwood Plaza North*, CV 13-00318-BRO, 2016 WL 11697903 (C.D. Cal. Sept. 16, 2016). The District Court denied the request and held that the 1984 dismissal order was not void because notice was provided to at least one member of the partnership and, under partnership principles, the knowledge and actions of one partner were imputed to all others. *Id.* at *2. The District Court further held that Debtor failed to provide any grounds for relief under Civil Rules 60(b)(4) and (b)(6). *Id.*

In a 2018 personal chapter 11 case, Erde filed a motion to vacate the 1984 dismissal order and consolidate Debtor’s chapter 11 case with his own (the “2018 Motion to Vacate”). *See Erde v. Bodnar (In re Erde)*, BAP No. CC19-1023-STaL, 2019 WL 5957355 (9th Cir.

BAP Nov. 12, 2019). He argued that Debtor's 1984 case was dismissed in violation of his due process rights because he was not served with notice of the motion to dismiss or the order dismissing the case, and consequently the dismissal order was void and must be vacated under Civil Rule 60(b)(4). *See Id.*

The bankruptcy court denied the 2018 Motion to Vacate. We affirmed on the basis that Erde's due process claim was an impermissible collateral attack on the bankruptcy court's 2012 decision not to reopen Debtor's case. *Id.* The Ninth Circuit affirmed. *Erde v. Bodnar (In re Erde)*, 831 F. App'x 323 (9th Cir. Dec. 15, 2020).

B. The 2020 Motion To Vacate And Erde's Motions For Reconsideration

In December 2020, Erde filed the 2020 Motion to Vacate the 1984 dismissal order pursuant to Civil Rule 60(b)(4) and again argued that the dismissal order was void for lack of due process. Debtor's former attorneys, and the target of much of Erde's prior litigation, Irsfeld, Irsfeld & Younger, LLC ("Appellee"), filed an opposition to the motion and provided a description of Erde's numerous prior cases.

On January 5, 2021, after a thorough review of all documents and exhibits filed, the bankruptcy court entered an order denying the motion with prejudice. The court held that Erde did not establish any grounds for relief and the motion was "simply a continuation of

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many years of abuse of the judicial system by Mr. Erde in filing meritless pleadings in many courts.”

On January 11, 2021, Erde filed his first motion for reconsideration (the “First Motion”) and claimed that the court: (1) failed to address constitutional due process; (2) did not address that Debtor concealed assets in its 1984 case; and (3) improperly relied on evidence of Erde’s prior acts in violation of Fed. R. Evid. 404(b). The bankruptcy court denied the First Motion, stating, “[t]his Motion is a continuation of the abuse of the judicial system by Mr. Erde and is without merit.”

On January 18, 2021, Erde filed a second motion for reconsideration (the “Second Motion”) arguing that Appellee, and not Erde, was abusing the judicial system, and demanding that the court further explain its decision. The court denied the Second Motion for reconsideration on January 20, 2021, and it provided a “brief yet thorough” history of Erde’s abusive filings. The court held that the Second Motion was also without merit and was simply a continuation of the many years of abuse of the judicial system by Erde.

On January 28, 2021, Erde filed the Third Motion and argued that the court erred in its previous rulings. While the Third Motion was pending, Erde filed a motion to disqualify Judge Russell for alleged bias.

On February 25, 2021, the court entered a memorandum decision and order denying Erde’s motion to disqualify. The court also entered an order denying the Third Motion. The court again determined that Erde’s

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motion was lacking in merit and was simply a continuation of many years of abuse of the judicial system.

Erde appealed to the District Court the order denying the 2020 Motion to Vacate. Pursuant to the District Court's vexatious litigant order, the appeal was not accepted for filing. Erde appealed the District Court's decision, and the Ninth Circuit dismissed his appeal as frivolous.

On March 5, 2021, Erde filed a separate notice of appeal of the order denying the Third Motion.

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(A). We have jurisdiction under 28 U.S.C. § 158.

Erde's arguments on appeal pertain to the propriety of the order denying the 2020 Motion to Vacate, but we previously entered an order limiting the scope of this appeal to the order denying the Third Motion because consecutive reconsideration motions do not toll the time to appeal an original order. *See Nat'l Loan Invs., L.P. v. Brewster (In re Brewster)*, 343 B.R. 51, 55 (9th Cir. BAP 1999); *Martinez v. City of Chicago*, 499 F.3d 721, 72526 (7th Cir. 2007).

ISSUE

Did the bankruptcy court abuse its discretion by denying Erde's Third Motion?

STANDARD OF REVIEW

We review for an abuse of discretion the bankruptcy court's denial of a motion for reconsideration. *Carruth v. Eutsler (In re Eutsler)*, 585 B.R. 231, 235 (9th Cir. BAP 2017). A bankruptcy court abuses its discretion if it applies an incorrect legal standard or its factual findings are illogical, implausible, or without support in the record. *TrafficSchool.com v. Edriver, Inc.*, 653 F.3d 820, 832 (9th Cir. 2011).

DISCUSSION

In his opening brief, Erde argues that the bankruptcy court should have granted the 2020 Motion to Vacate, but he makes no argument that the bankruptcy court abused its discretion by denying the Third Motion. Erde filed the Third Motion more than fourteen days after the original order denying the motion to vacate. We therefore treat it as a motion for relief under Civil Rule 60(b). *Am. Ironworks & Erectors, Inc. v. N. Am. Constr. Corp.*, 248 F.3d 892, 898-99 (9th Cir. 2001).

“Ninth Circuit decisions have settled that Rule 60(b) is not a substitute avenue for appeal[.]” *Atkins v. Fiberglass Representatives, Inc. (In re Atkins)*, 134 B.R. 936, 939 (9th Cir. BAP 1992). A movant seeking relief under Civil Rule 60(b) after the appeal period has expired “is not permitted to revisit the merits of the underlying judgment or argue that the trial court committed some legal error in arriving at that judgment.” *United Student Funds, Inc. v. Wylie (In re Wylie)*,

349 B.R. 204, 209 (9th Cir. BAP 2006). The movant cannot use a Civil Rule 60(b) motion to reargue points already made, or that could have been made, in dispute of the underlying motion. *Branam v. Crowder (In re Branam)*, 226 B.R. 45, 55 (9th Cir. BAP 1998), *aff'd*, 205 F.3d 1350 (9th Cir. 1999) (table).

Instead, the movant is limited to the narrow grounds enumerated in Civil Rule 60(b).⁴ “These grounds generally require a showing that events subsequent to the entry of the judgment make its enforcement unfair or inappropriate, or that the party was deprived of a fair opportunity to appear and be heard in connection with the underlying dispute.” *In re Wylie*, 349 B.R. at 209.

On an appeal from a Civil Rule 60(b) order, we review an appellant’s arguments “solely as they bear on

⁴ Civil Rule 60(b) provides that the court can relieve a party from a final order for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under [Civil] Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

the [bankruptcy] court's exercise of discretion on the Rule 60(b) motion. [Appellant] cannot prevail merely by showing that the [underlying] judgment itself was erroneous." *Sec. & Exch. Comm'n v. Seaboard Corp.*, 666 F.2d 414, 415-16 (9th Cir. 1982).

None of Erde's arguments on appeal bear on the bankruptcy court's exercise of discretion in denying the Third Motion. And he made no argument relevant to any of the grounds for relief under Civil Rule 60(b) in the Third Motion. He merely reasserted arguments which were made, or which could have been made, in the 2020 Motion to Vacate. The bankruptcy court properly denied the Third Motion and we perceive no error.

CONCLUSION

Based on the foregoing, we AFFIRM the bankruptcy court's order denying the Third Motion.

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

WESTWOOD PLAZA
NORTH, a California
general partnership,
Debtor(s).

Case No.: 2:84-bk-10894-BR

Chapter 11

**ORDER DENYING
“THIRD MOTION FOR
RECONSIDERATION,
PURSUANT TO FRBP 9024”**

[NO HEARING REQUIRED]

(Filed Feb. 25, 2021)

This matter is before the Court on the “Third Motion for Reconsideration, Pursuant to FRBP 9024” (“Third Reconsideration Motion”) filed by Shmuel Erde as “Partner and Creditor In Pro Se” on January 28, 2021 (Docket No. 60).

In this Third Reconsideration Motion, Mr. Erde seeks reconsideration of the Court’s “Order Denying “Motion To Vacate A Void Order And To Address Violations Of Constitutional Due Process” With Prejudice, Denying Hearing On Request For Clarification And Restricting Docket No. 40” entered on January 5, 2021 (“January 5, 2021 Order”) (Docket No. 45).

I. BACKGROUND:

Motion to Vacate a Void Order [Etc.]: On December 9, 2020, Mr. Erde filed a “Notice Of Motion And Motion To Vacate A Void Order And To Address Violations Of

Constitutional Due Process” (“First Motion”) (Docket No. 39). Irsfeld, Irsfeld & Younger, LLP filed an Opposition to the First Motion on December 23, 2020 (Docket No. 42) and Mr. Erde filed a Reply and Exhibits to the Opposition on January 4, 2021 (Docket Nos. 43 and 44, respectively).

Following a thorough review of all documentation filed, the Court entered a three-page “Order Denying ‘Motion To Vacate A Void Order And To Address Violations Of Constitutional Due Process’ With Prejudice, Denying Hearing On Request For Clarification And Restricting Docket No. 40” on January 5, 2021), which attached 54 pages of exhibits and a one-page proof of service (collectively, “58 Page Order of January 5, 2021”) (Docket No. 45).

The 58 Page Order of January 5, 2021 denied the First Motion with prejudice, finding, *inter alia*, that it lacked any evidence to support the requested relief and constituted another motion in a long-standing history of meritless pleadings filed by Mr. Erde in this Court and many other courts.

First Reconsideration Motion: On January 11, 2021, Mr. Erde filed a “Motion For Reconsideration, Pursuant To FRBP 9024” (“First Reconsideration Motion”) (Docket No. 47). No opposition to the First Reconsideration Motion was filed. Following yet another thorough review of the First Reconsideration Motion, the Court entered its “Order Denying Motion For Reconsideration Pursuant To FRBP 9024” (“First Reconsideration Order”) on January 12, 2021 (Docket No.

48). This Order denied the First Reconsideration Motion on the basis that “[it] is a continuation of the abuse of the judicial system by Mr. Erde and is without merit.” Id. at page 1.

Second Reconsideration Motion: On January 18, 2021, Mr. Erde filed a “Motion For Reconsideration, Pursuant To FRBP 9024” (“Second Reconsideration Motion”) (Docket No. 50). No opposition to the Second Reconsideration Motion was filed. The Court entered its “Order Denying ‘Motion For Reconsideration, Pursuant To FRBP 9024’” (“Second Reconsideration Order”) on January 20, 2021 (Docket No. 53). This Order denied the Second Reconsideration Motion, stating that “At the risk of repeating itself, this Court again finds, as it did in the 58 Page Order of January 5, 2021, that this Second Reconsideration Motion is simply a continuation of many years of abuse of the judicial system by Mr. Erde in filing meritless pleadings in this Court as well as in many other courts.” Id. at page 2, lines 25-28.

II. THE CURRENT MOTION: The Third Reconsideration Motion, which is the subject of this Order, now looks back in time and requests that this Court reconsider its 58 Page Order of January 5, 2021. Simply stated, the short answer is no. Once again, this Third Reconsideration Motion is wholly lacking in merit and is simply a continuation of many years of abuse of the judicial system by Mr. Erde in filing meritless pleadings in this Court as well as in many other courts.

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III. CONCLUSION:

Once again, Mr. Erde has failed to show any good cause whatsoever for the relief requested. Accordingly, this Third Reconsideration Motion is **DENIED**.

IT IS SO ORDERED.

Date:	/s/ Barry Russell
February 25, 2021	<u>Barry Russell</u>
	United States Bankruptcy
	Judge

[Certificate Of Service Omitted]

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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

WESTWOOD PLAZA
NORTH, a California
general partnership,
Debtor(s).

Case No.: 2:84-bk-10894-BR

Chapter 11

**ORDER DENYING
“MOTION TO VACATE
A VOID ORDER AND TO
ADDRESS VIOLATIONS
OF CONSTITUTIONAL
DUE PROCESS” WITH
PREJUDICE, DENYING
HEARING ON REQUEST
FOR CLARIFICATION
AND RESTRICTING
DOCKET NO. 40**

[NO HEARING REQUIRED]

(Filed Jan. 5, 2021)

This matter is before the Court on the “Notice Of Motion And Motion To Vacate A Void Order And To Address Violations Of Constitutional Due Process” (“Motion”) filed on December 9, 2020 by Shmuel Erde (Docket No. 39).

The Court has reviewed the Motion, the Opposition to the Motion filed on December 23, 2020 by Irsfeld, Irsfeld & Younger, LLP (Docket No. 42),¹ the

¹ In its opposition, Irsfeld, Irsfeld & Younger states “. . . this court should impose some severe monetary and other prohibitory

“Request For Clarification” filed on December 24, 2020 by Mr. Erde (Docket No. 41),^{2 3} and the Reply and Exhibits filed on January 4, 2021 (Docket Nos. 43 and 44, respectively) by Mr. Erde in support of Motion.

Following a thorough review of all documents and exhibits filed, the Court finds no evidence in the Motion to support the requested relief. Furthermore, the Court finds that this Motion is simply a continuation of many years of abuse of the judicial system by Mr. Erde in filing meritless pleadings in many courts.

By way of background, this voluntary bankruptcy petition was originally filed on May 24, 1984 and

sanctions against Erde to prevent him from continuing to file what are admittedly frivolous, harassing and previously litigated matters that have been repeatedly shown to have no merit whatsoever” (Docket No. 42 at page 19, lines 19-22). If Irsfeld, Irsfeld & Younger wishes to pursue this request, they must file a formal motion in that regard.

² The Court notes that Docket No. 40, entered on December 10, 2020 and entitled “Notice Of Motion And Motion To Vacate A Void Order And To Address Violations Of Constitutional Due Process,” may or may not be duplicative of the Motion (Docket No. 39). However, in the “Request For Clarification” filed on December 24, 2020 (Docket No. 41 at lines 7-11), Mr. Erde requests that Docket No. 40 be corrected and removed from the docket. The Court accordingly orders that Docket No. 40 be restricted.

³ The Request for Clarification is a continuation of abuse of the judicial system by Mr. Erde. In his “Memorandum of Points and Authorities”, his actual “Request for Clarification” is not a request for clarification but an improper and frivolous request that Irsfeld, Irsfeld & Younger LLP admit or deny certain alleged facts. Therefore, the Request for Clarification will be denied and will not be set for hearing.

dismissed by the Court on October 2, 1984. Mr. Erde, as a “Creditor In Pro Se,” filed an “Ex Parte Motion To Reopen Chapter 11 Bankruptcy Case, Pursuant To 11 U.S.C. §350(b), FRBP 5010, And LBR 5010(1)” on October 26, 2012 (“Motion to Reopen”) (Docket No. 5). An opposition to the Motion to Reopen was filed by John H. Brink, James J. Waldorf and Irsfeld, Irsfeld & Younger LLP on November 5, 2012 (Docket No. 2).⁴

The Court held a hearing on December 12, 2012, at which time the Court denied the Motion to Reopen.⁵ An “Order Denying Shmuel Erde’s *Ex Parte* Application To Reopen Bankruptcy” was entered on December 27, 2012 (Docket No. 12).⁶ Notwithstanding the December 27, 2012 Order, Mr. Erde filed a “Motion To Alter Or Amend The Order To Dismiss This Bankruptcy Case Pursuant to FRBP 9024 And FRCP 60(a)” (“Motion to Amend”) on December 31, 2012 (Docket No. 13). An opposition was again filed (Docket No. 15). On January 10, 2013, this Court issued its “Order denying the Motion to Amend” (Docket No. 17).

Mr. Erde continues with abusive, time-consuming filings, most recently in his personal chapter 11 bankruptcy filing, Case No. 2:18-bk-20200-VZ. Mr. Erde’s continued abuse of the legal system is outlined in [excruciating] detail in the “Findings Of Fact And

⁴ A copy of the opposition to the Motion to Reopen is attached to this Order as Exhibit A.

⁵ A copy of the “Transcript of Proceedings” of the December 12, 2012 hearing is attached to this Order as Exhibit B.

⁶ A copy of the December 27, 2012 Order denying the application to reopen is attached to this Order as Exhibit C.

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Conclusions Of Law” entered in Case No. 2:18-bk-20200-VZ on February 21, 2019.⁷

In view of the above-described long-standing history of filing meritless pleadings in many courts, and because the Court finds no evidence in the Motion to support the requested relief, the Motion is **DENIED WITH PREJUDICE**. In addition, Docket No. 40 is **ORDERED RESTRICTED** based on the “Request for Clarification” (Docket No. 41).

IT IS FURTHER ORDERED that the Request for Clarification is **DENIED** and will not be set for hearing.

IT IS SO ORDERED.

Date:	/s/ Barry Russell
January 5, 2021	_____ Barry Russell United States Bankruptcy Judge

⁷ A copy of the Findings of Fact and Conclusions of Law is attached to this Order as Exhibit D.

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

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In Re:) Case No.
WESTWOOD PLAZA) LA84-10894-BR
NORTH,) Los Angeles, California
Debtor.) Wednesday, December 12,
	) 2012 2:00 p.m.

HRG RE MOTION TO REOPEN
CHAPTER 11 CASE

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BARRY RUSSELL
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Opposing Parties:	CHRISTOPHER WONG, ESQ. Waxler, Carner & Brodsky 1960 East Grand Avenue Suite 1210 El Segundo, California 90245 (310) 416-1300
For the Creditor, Moving Party:	SHMUEL ERDE, IN PRO PER 350 North Crescent Drive Suite 314 Beverly Hills, California 90210 (310) 867-3673
Court Recorder:	Valerie Moody United States Bankruptcy Court Edward R. Roybal Federal Building 255 East Temple Street Los Angeles, California 90012

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[1] LOS ANGELES, CALIFORNIA WEDNESDAY, DE-
CEMBER 12, 2012 2:00 PM

- - oOo - -

(Call to order of the Court.)

THE CLERK: Number 9, Westwood Plaza.

MR. ERDE: Good afternoon, your Honor.
Shmuel Erde, a creditor and moving party in pro se.

MR. WONG: Good afternoon, your Honor.
Christopher Wong on behalf of opposing parties, and
anticipated Defendants Irsfeld, Irsfeld, and Younger,
James Waldorf and John Brink.

THE COURT: Well, I've read these papers.
They're extensive.

You've read them all too, Mr. Erde, I assume?

MR. ERDE: Yes, I have.

THE COURT: Right. I'm not going to grant
your motion. I don't think this needs any further argu-
ment. I've read the papers. I can assure you of this. But,
this is a history – this case goes back what almost 20
years?

MR. ERDE: Twenty-eight years.

THE COURT: This has been litigated. I can
tell you one thing you can litigate it to your hearts con-
tent outside of this Court. But, I'm not going to allow
you to reopen this whole case and start litigating this
all over again. I've read your papers. I understand the

arguments. They've been raised, by the way, in the state courts for a [2] number of times. So, I'm not going to let you litigate in here. You can go back, if you can, to the state court, but I'm not going to let you litigate this. There's no reason I should reopen this case.

I don't need any further argument in this. Again, I've taken quite a lot of time reading your papers, reading their papers, and I understand exactly what's going on. This is not the place for a case that's been closed for what almost 20 years, to reopen this to litigate this. I'm just not going to reopen this case. If you would, counsel, I'd like you to prepare an order denying the motion to reopen.

MR. WONG: I'll prepare the order, your Honor. Thank you.

THE COURT: Thank you both.

MR. ERDE: May I make a comment, your Honor?

THE COURT: You can make a couple of comments, but I've already read your papers. What do you want to say?

MR. ERDE: What I wish to say is things were handled in this bankruptcy case very wrongfully. The motion to dismiss was done without notice as far as I was concerned.

THE COURT: You put that in your papers.

MR. ERDE: Yes, I did.

THE COURT: I understand that.

MR. ERDE: And what I also put in the papers is that some of the issues that I mentioned in the papers two [3] things. First, specifically bankruptcy issues that were not litigated in the state court and elsewhere, and they have not been litigated. The place to litigate them to resolve them is here, not some place else. Certainly, not in the state court.

THE COURT: I totally disagree with you. I know you don't agree. I totally disagree. So, this case has been done – it was a 1984 case I believe.

MR. WONG: That's correct, your Honor.

THE COURT: It is too late to be arguing these things in this case, in this Court. It is within my discretion to reopen the case, and I think it would be an injustice to reopen the case at this point. So, I'd like you, if you would, prepare that order.

MR. ERDE: If I may make one more quick comment, your Honor.

THE COURT: All right. California Code of Civil Procedure Section 328 allows up [to] 20 years if the injured party has been under disability, and has not commenced any action. So, the issue of time is not applicable, as I understand it.

THE COURT: Well, I disagree. First of all, the Code section is not a federal code section you just cited me. That's the California code.

MR. ERDE: That's correct.

[4] THE COURT: It has nothing to do with Federal law with the bankruptcy court. This is a federal court.

MR. ERDE: I understand that.

THE COURT: Okay. So, I know you don't agree. But, I'm going to deny this motion. And I'd like you, if you would, prepare an order.

MR. WONG: Your Honor, may I state for the record, just a very brief response.

THE COURT: All right. If you could step aside, Mr. Erde, just a second. Yes.

MR. WONG: Just in anticipation of Mr. Erde taking yet another appeal.

THE COURT: I anticipate that because of reading the papers.

MR. WONG: The statute that Mr. Erde cites and relies on is 11 U.S.C. Section 350. That doesn't apply –

THE COURT: That's just a section to reopen the case. That's all that is.

MR. WONG: Correct. That section does not apply to cases that have been dismissed, as opposed to cases that have been fully administered.

THE COURT: You're right. There's nothing to reopen.

MR. WONG: Discharge and –

THE COURT: You're correct. This is a dismissed [5] case. This is not a motion to – you're correct.

MR. WONG: Correct. There is a ninth circuit case called In Re Income Property Builders, Inc. 699 F.2nd 963.

THE COURT: I understand that. But, I was going – you're absolutely correct but I was also going through the merits of it.

MR. WONG: Absolutely. Then, that leads to another point which is when you have a dismissal as opposed to a closed case, Federal Rules of Civil Procedure requires that – it's like Rule 60 requires that any motion be brought within a year of the dismissal. Obviously, we're well past that.

THE COURT: No, I understand that as well.

MR. WONG: And I'll prepare the order, your Honor. THE COURT: All right. Thank you both.

MR. ERDE: May I respond very briefly to Mr. Wong's comments?

THE COURT: All right.

MR. ERDE: While I have recently learned that the case was dismissed, not closed, because I was not served.

THE COURT: What do you mean recently? You've known this case has been dismissed for years.

MR. ERDE: No. I relied on the –

THE COURT: In any case, the case was dismissed years ago.

[6] MR. ERDE: The only information I had was the docket, and the docket showed that the case did close 16 months later, and a copy of the docket was attached to my reply as Exhibit – and I can show it to the Court since the Court doesn't have it right there.

THE COURT: I understand. What do you have to say?

MR. WONG: Your Honor, that's simply not true. Mr. Erde's 2001 verified complaint states in paragraph 167, that's Exhibit 3 to our request for judicial notice on page 84 of that document, specifically states and alleges that the 1984 bankruptcy was dismissed.

THE COURT: I believe you knew very well, Mr. Erde, that it was dismissed. So, in any case, I would like you to prepare that order.

MR. WONG: I will, your Honor.

THE COURT: Thank you both.

MR. ERDE: May I –

THE COURT: No, this is it, Mr. Erde.

MR. ERDE: All right.

THE COURT: If history repeats itself, I assume you'll appeal but you have every right to do that.

MR. ERDE: If I may, your Honor, I respectfully disagree with the Court order, and I will –

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THE COURT: I understand. You're perfectly able [7] to disagree.

MR. ERDE: Thank you very much, your Honor.

MR. WONG: Thank you, your Honor.

(Proceedings concluded.)

[Transcriber Certification Omitted]

JAMES J. WALDORF, ESQ.
IRSFELD, IRSFELD & YOUNGER
100 West Broadway – Suite 900
Glendale, California 91210-0001
(818) 242-6859

Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In re	)	(Chapter 11)
	)	Case No. LA 84-10894-JA
WESTWOOD PLAZA	)	ORDER OF DISMISSAL
NORTH, A California	)	OF CHAPTER 11 CASE
General Partnership,)	
	)	Date: September 26, 1994
Debtor.	)	Time: 10:00 a.m.
	)	Courtroom: "F" – 9th Floor
	)	(Filed Oct. 2, 1984)

Upon the motion of the United States Trustee, on September 26, 1984, in which the debtor orally joined, through its attorney, James J. Waldorf, and good cause appearing therefor, it is hereby:

1. ORDERED, ADJUDGED and DECREED that this Chapter 11 case be, and it is hereby is, dismissed;

2. IT IS FURTHER ORDERED, ADJUDGED and DECREED that no proceedings may be initiated by, or on behalf of, the above-named debtor for a period of 180 days from the date hereof.

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DATED: Oct. 2, 1984

BK Judge R. Mednick
United States Bankruptcy Judge

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

☐ I, the undersigned, say:
I have read the foregoing _____
_____ and know its contents.

☒ CHECK APPLICABLE PARAGRAPH

☐ I am a party to this action. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an officer ☐ a partner _____ ☐ a _____ of a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in it are true.

☐ I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in it are true.

Executed on _____, 19 __, at _____
California.

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I declare under penalty of perjury that the foregoing is true and correct.

(Signature)

ACKNOWLEDGMENT OF
RECEIPT OF DOCUMENT
(other than summons and complaint)

Received copy of document described as _____

on _____ 19 ____ .

(Signature)

PROOF OF SERVICE BY MAIL
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles,
State of California.

I am over the age of 18 and not a party to the within
action; my business address is: 100 W. Broadway,
Suite 900, Glendale, California 91210-0001

On Sept. 27, 19 84 I served the foregoing
document described as ORDER OF DISMISSAL
OF CHAPTER 11 CASE

_____ on U.S. Trustee office
in this action by placing a true copy thereof en-
closed in a sealed envelope with postage thereon
fully prepaid in the United States mail at:
Glendale, California
addressed as follows:

LAEL B. STABLER, Esq.
Office of United States Trustee
3101 Federal Building
300 North Los Angeles Street
Los Angeles, California 90012

Executed on September 27, 19 84, at Glendale,
California.

(check applicable paragraph below)

- ☐ (State) I declare under penalty of perjury that
the above is true and correct.
- ☒ (Federal) I declare that I am employed in the of-
fice of a member of the bar of this court
at whose direction the service was
made.

/s/ Victoria Haynes

(Signature)

Victoria Haynes

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: WESTWOOD PLAZA
NORTH, a California
general partnership,
Debtor.

SHMUEL ERDE,
Appellant,

v.

IRSFELD, IRSFELD &
YOUNGER, LLP,
Appellee.

No. 21-60056

BAP No. 21-1046

ORDER

(Filed Mar. 17, 2023)

Before: WALLACE, TALLMAN, and BYBEE, Circuit
Judges.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Erde's petition for rehearing en banc (Docket Entry Nos. 48, 50, 51) is denied.

Erde's request for publication (Docket Entry No. 52) is denied.

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No further filings will be entertained in this closed case.

JAMES J. WALDORF, ESQ.
JOHN H. BRINK, ESQ.
IRSFELD, IRSFELD & YOUNGER
7060 Hollywood Boulevard
Hollywood, California 90028
Attorneys for Petitioner

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA

In Re	)	CASE NO. LA 84-10894-JA
WESTWOOD PLAZA	)	VOLUNTARY PETITION
NORTH, A California	)	UNDER CHAPTER 11
General Partnership,	)	(Filed May 24, 1984)
Petitioner.)	

The petition of Westwood Plaza North, a California General Partnership, alleges:

1. Petitioner is a California General Partnership, comprised of M.M.C.A., Inc., a California Corporation, and American General Resources, Inc., a California Corporation, general partners.
2. Petitioner's post-office address is 499 Beverly Drive, Suite 203, Beverly Hills, California 90212.
3. Petitioner has had its principal office for the transaction of business within this district for the preceding 180 days.

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4. No other case under the Bankruptcy Code initiated on a Petition by or against Petitioner is now pending.

5. Petitioner is qualified to file this petition and is entitled to the benefits of Chapter 11 under the Bankruptcy Code.

6. Petitioner is insolvent.

7. Petitioner intends to file a plan under Chapter 11 of the Bankruptcy Code.

8. Attached hereto as Exhibit "A" and made a part hereof, is a list of Petitioner's creditors and their addresses.

9. No taxpayer identification number has been issued to Petitioner.

10. Attached hereto and made a part hereof is a mailing list of all secured and unsecured creditors of Petitioner.

WHEREFORE, Petitioner prays for relief in accordance with the provisions of Chapter 11 of the Bankruptcy Code.

Dated: May 24, 1984 IRSFELD, IRSFELD
& YOUNGER

By /s/ James J. Waldorf

[Verification Omitted]

EXHIBIT "A"

WESTWOOD PLAZA NORTH
A Joint Venture

SCHEDULE OF 20 LARGEST UNSECURED
CREDITORS

- | | | |
|---|--|----------|
| 1. Ventura Pacific Builders
9601 Wilshire Boulevard
Suite M-150
Beverly Hills, CA 90210
(213) 276-1662 | Cost Analysis,
Breakdown
and Studies | \$10,000 |
| 2. Grant L. Griffin and
S. Dan Barton
9601 Wilshire Boulevard
Suite M-150
Beverly Hills, CA 90210
(213) 276-1662 | Construction
Consultants | 20,000 |
| 3. Theodor Nickolas Bodnar
AAIL, AIBD
9601 Wilshire Boulevard
Suite M-150
Beverly Hills, CA 90210
(213) 276-1662 | Ten Months
at \$10,000 | 100,000 |
| 4. Cooney & Cooney
4858 Van Nuys Boulevard
Sherman Oaks, CA 91403
(818) 788-3500 | Legal | 8,000 |

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5. Richard Keith 36646 Via Cicada Cathedral City, CA 92234 (619) 324-8553	Consultant and Executive Entertainment	25,000
6. Merit Enterprises 36646 Via Cicada Cathedral City, CA 92234 (619) 324-8-53	Consultant	10,000
7. Peter Lynch 36646 Via Cicada Cathedral City, CA 92234 (619) 324-8553	Engineering	3,500
8. Robert J. Holmes, MAI 1558 Devonshire Drive Salt Lake City, Utah 84108 (801) 581-1247	Appraising	4,400
9. Mary Ellen Woods 3325 Durango – #7 Los Angeles, CA 90034 (213) 837-9262	Secretarial	2,500
10. American General Resources, Inc. 9601 Wilshire Boulevard Suite M-150 Beverly Hills, CA 90210 (213) 276-1662	Guarantors Stand-by Fees	100,000

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- | | | |
|---|----------------------|--------------------|
| 11. American General
Resources, Inc.
9601 Wilshire Boulevard
Suite M-150
Beverly Hills, CA 90210
(213) 276-1667 | Lis Pendens | 500,000 |
| 12. G.S.L.A. Financial Services
Gateway Savings & Loan
10900 Wilshire Blvd.
Suite 601
Los Angeles, CA 90024
(213) 208-2820 | First Trust
Deed | 2,000,000 |
| 13. Pacific Thrift & Loan
170 S. La Brea Avenue
Inglewood, CA
(213) 678-9073 | Second Trust
Deed | Disputed
Amount |

WOLCOTTS FORM 1811 or Sulmeyer, Kubelz,
1813 or 1829 (E or N) RULE Baumann & Rothman
219[illegible] Nov 1-77

JAMES J. WA IDORF, ESQ.
JOHN H. BRINK, ESQ.
Name IRSFELD, IRSFELD & YOUNGER
Address 7060 Hollywood Boulevard
Hollywood, California 90028
Telephone (213) 466-4161
Attorney for Petitioner(s)

(CLERK'S
STAMP)

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

In re

WESTWOOD PLAZA
NORTH, A California
General Partnership,
Petitioner

**STATEMENT OF
ATTORNEY FOR
PETITIONER PURSUANT
TO BANKRUPTCY
RULE 219(b)**

IN BANKRUPTCY
No. LA 84-

The undersigned does hereby state and represent that the fee arrangement in this proceeding with the undersigned is as follows:

For legal services rendered or to be rendered herein (including spouse if both file), Petitioner has paid or agreed to pay the following sums in the following manner:

Petitioner's attorneys have received a retainer in the sum of \$5,000 directly from American General Resources, Inc., a corporation, and a partner in petitioner.

Legal service rendered or to be rendered include:

- (a) Analysis of the financial situation, and rendering advice and assistance to the client in determining whether to file a petition under the Bankruptcy Act.
- (b) Preparation and filing of the petition, schedules of assets and liabilities, and statement of affairs.

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- (c) Representation of the client at the first meeting of creditors.

The undersigned represents that to the best of his or her knowledge and belief the source of monies paid by the bankrupt(s) to the attorneys of record was:

Solely from American General Resources, Inc., a partner in petitioner; no funds have been received directly from petitioner.

The undersigned further states and represents that the attorneys of record have not shared or agreed to share, other than with members of their law firm or corporation, any of said compensation with any other person except:

No exceptions

IRSFELD, IRSFELD &
YOUNGER

DATED: May 24, 1984 /s/ James J. Waldorf
James J. Waldorf, Esq.

/s/ John H. Brink
Attorneys for Petitioner(s)
John H. Brink, Esq.

**INFORMATION REQUIRED BY LOCAL RULE
227, UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

1. A petition under the Bankruptcy Act has previously been filed by or against your petitioner, his/her spouse, any copartnership or joint venture of which

petitioner is or formerly was a general or limited partner, or member as follows: (set forth the number and title of such prior proceeding, date filed, nature thereof, the Referee to whom referred, whether still pending and, if not, the disposition thereof. If none, so indicate.)

Not Applicable

2. (If petitioner is a copartnership or joint venture) A petition under the Bankruptcy Act has previously been filed by or against petitioner or any of the petitioners or members thereof as follows: (Set forth number and title of such prior proceeding, date filed, nature of the proceeding, the Referee to whom referred, whether still pending and, if not, disposition thereof. If not, so indicate.)

None

3. (If petitioner is a corporation) A petition under the Bankruptcy Act has previously been filed by or against petitioner, or any of its affiliates or subsidiaries, or any persons, firms or corporations owning 25% or more of its stock as follows: (Set forth number and title of such prior proceeding, date filed, nature of proceeding, the Referee to whom referred, whether still pending, and if not, the disposition thereof. If not, so indicate.)

Not Applicable

AMERICAN GENERAL
RESOURCES, INC.

By: /s/ Theodor Bodnar
Petitioner

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The undersigned, Petitioner herein, hereby declares (or certifies, verifies, or states), under penalty of perjury*, that the statements contained herein are true and correct.

Executed this 24 day of May, 1984, at Los Angeles, California.

AMERICAN GENERAL
RESOURCES, INC.

By: /s/ Theodor Bodnar
Petitioner

*This unsworn declaration authorized by 28 USC 1746
