

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Geraldine Mund, Presiding  
Courtroom 302 Calendar**

**Tuesday, January 23, 2024**

**Hearing Room 302**

10:00 AM

**1:00-00000**

**Chapter**

**#0.00 The 10:00 am calendar will be conducted remotely, using ZoomGov video and audio.**

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

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Judge Mund seeks to maintain a courtroom in which all persons are treated with dignity and respect, irrespective of their gender identity, expression or preference. To that end, individuals are invited to identify their preferred pronouns (he, she, they, etc.) and their preferred honorific (Mr., Miss, Ms., Mrs., Mx, M, etc.) in their screen name, or by advising the judge or courtroom deputy.

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**Chapter**

Docket 0

**Tentative Ruling:**

- NONE LISTED -

**1:13-10386 Shirley Foose McClure**  
Adv#: 1:21-01021 Reitman v. McClure

**Chapter 11**

**#1.00** Status Conference Re: Amended Complaint for (1) for Declaratory Relief that the Trustee May Sell Real Property of the Estate Located at 3401 Gregory Avenue, Fullerton, California Free and Clear of 5% Tenant in Common Interest of Jason McClure Pursuant to 11 U.S.C. § 363(h), (i)) and (j)); (2) Reimbursement of Estate Funds Expended to the Benefit of Such Interest; and (3) for Associated Injunctive Relief Nature of Suit: (31 (Approval of sale of property of estate and of a co-owner - 363(h))), (14 (Recovery of money/property - other)), (72 (Injunctive relief - other))

fr. 7/13/21, 8/24/21, 11/9/21; 12/21/21; 1/25/22; 3/22/22; 4/5/22, 7/26/22; 10/11/22, 12/6/22, 1/31/23; 3/14/23, 5/16/23, 7/18/23; 8/22/23(stip); 10/24/23(stip); 12/5/23; 12/14/23(stip)

Docket 11

**\*\*\* VACATED \*\*\* REASON: Continued by stip to 3/19/24 at 10:00 am**

**Tentative Ruling:**

This is being settled as part of the compromise in the main case. Continue to the same date as the other matters in that case.

<b>Party Information</b>
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**Debtor(s):**

Shirley Foose McClure

Represented By  
Andrew Goodman  
Yi S Kim  
Robert M Scholnick  
James R Felton

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**Chapter 11**

Faye C Rasch  
Faye C Rasch  
Lisa Nelson  
Michael G Spector

**Defendant(s):**

Jason McClure

Pro Se

**Plaintiff(s):**

John P. Reitman

Represented By  
Jon L. Dalberg

**Trustee(s):**

John P. Reitman

Represented By  
John P. Reitman  
Jon L. Dalberg

**1:15-14213 Michael Robert Goland**

**Chapter 7**

**#2.00 Motion to Reopen Bankruptcy Chapter 7 Case**

Docket 461

**Tentative Ruling:**

The bankruptcy case of Michael Goland, which was filed in 2015, was closed in April 2022. The motion to reopen was filed in the bankruptcy case (15-bk-14213), but really concerns Lewis v. Goland, adv. 16-ap-01046 (closed in February 2018). Initially that adversary proceeding sought that two state court judgments should be declared non-dischargeable, but later it was amended to add a third.[dkt.1, 97] The two that are at issue are set forward in bold type:

**Dog at Home, Inc. v. Goland, LASC SC088376, in which the superior court granted a judgment against Goland in the amount of \$15,040 for violation of an injunction [the Contempt Matter].**

**Goland v. Susan Marlowe and Dog at Home, Inc [filed in the Superior Court**

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as Goland v. Lima Norris et al], LASC BC410835, in which the superior court granted an anti-slapp motion and awarded Dog at Home, Inc.(DAH) and Susan Marlowe (Marlowe) fees and costs of \$6,541. [referred to as the Norris-Judgment, the anti-Slapp matter or the Vexatious Litigant Matter]. According to the complaint and the amended complaint, prior March 29, 2016 Marlowe and Dog At Home, Inc. assigned all of their rights to Bret D. Lewis (Lewis). [dkt. 1, ¶18; dkt. 97, ¶18]

Goland v. Dog at Home, Inc. and Susan Marlowe, LASC EC044886, in which the superior court dismissed the complaint with prejudice and awarded the defendants \$31,625 The claim for relief was added in the amended complaint. According to the amended complaint, "Susan Marlowe has assigned all of her rights in the EC044886 Award to Lewis." [dkt. 97, ¶21]

On March 3, 2017, the Court granted summary judgment to Lewis as to the \$15,040 contempt judgment and initially denied summary adjudication without prejudice as to the \$6,541 vexatious litigant judgment. [dkt. 71] However, on May 2, 2017 the Court entered an Order Partially Granting Motion to Reconsider and awarding summary adjudication to Lewis on the Vexation Litigant Matter. [dkt. 99, 100]

Lewis as plaintiff then filed an amended complaint as to the Vexatious Litigant Matter and added a claim for relief as to LASC EC044886, seeking to declare both judgments to be non-dischargeable. On January 24, 2018, Lewis and Goland's attorney filed a stipulation to dismiss the amended complaint as to the EC044886 award and the Court's order on the motion for reconsideration vacated the claim for further relief on BC410835 [dkt. 123]

This left Lewis with a judgment in the initial amount of \$15,040 and of \$6,541 which were declared non-dischargeable by this court.

Although filed in the bankruptcy case, the crux of this motion is that the adversary case should be reopened because the purported assignment to Lewis was faulty procedurally under California law and because Susan Marlowe's signature was forged. The motion sets forth a group of exemplars of signatures by Susan Marlowe, which Mr. Goland asserts show that the assignment was forged.

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Opposition

Mr. Lewis raises several issues, the first being whether Mr. Goland has the standing to file anything due to his status as a vexatious litigant by order of the superior court.

Beyond that, Mr. Lewis raises various other arguments in opposition, which generally consist of the passage of time and the need for finality. He also provides the declaration of Susan Marlowe that she did assign the judgments to Mr. Lewis and that the questioned assignment contains her original signature.

Goland Reply

The vexatious litigant order is limited to filing new litigation in California courts without prior consent. This does not apply to the bankruptcy court, which is a federal court. [Order of Judge Armen Tamzarian in BC410835, entered January 5, 2024]

As to the time limit, FRCP 60(d)(3) does not preclude a request to set aside a judgment based on fraud on the court, which can be brought at any time.

The issue as to whether there was fraud should be determined once the motion to reopen is granted so that the motion to vacate the judgment can be heard.

Even if Ms. Marlowe's signature is valid, the procedure for assignment was not followed. Because the assignment was not notarized, the assignment is void. Both Lewis and Marlowe were aware that CCP §673 required notarization and thus Lewis knowingly and maliciously committed fraud on this court.

Even though Goland is familiar with Marlowe's signature (she being his ex-wife), he consulted with an expert who told him that it is most likely not Marlowe's signature. Thus, in his opposition, Lewis has subsumed perjury from Marlowe that it is her signature.

TENTATIVE RULING

This motion was filed some six years after all action concluded in the adversary proceeding and that case was closed. It appears that this motion was

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triggered because Mr. Lewis is seeking a contempt order in the superior court case of Goland v. Susan Marlowe and Dog at Home, Inc. LASC BC410835 (filed 1/4/24). [dkt. 465, Ex. B] A review of the superior court docket shows that there is continuing contentious litigation in that case.

As to the argument that Mr. Goland is barred from filing this motion because of the state court vexatious litigant order, the judge in the superior court case has made it clear that the order does not apply to an existing case and also that it is limited to actions in the California state court system. [See Minute Order filed 1/5/24]. I fully agree with this reading of the vexatious litigant order. There is no vexatious litigant order in this court, which is where the motion is being filed.

**REOPENING THE BANKRUPTCY CASE**

11 USC §350 controls the reopening of bankruptcy cases. That provision is limited to "administration of assets, to accord relief to the debtor, or for other cause." Although some cases allow reopening to allow a creditor to file a new adversary proceeding under §523, none appear to allow this or require it to deal with an existing adversary proceeding in which there is already a judgment that the debt is non-dischargeable. It is simply something that does not impact the bankruptcy case itself. Reviewing the case law, most of these motions to reopen a bankruptcy case deal with such things as adding a creditor or claim, adding an asset to the estate, administer assets of the estate, avoiding liens, etc.

Here there is no benefit to the debtor or to the estate because no distribution was made to Mr. Lewis or any other unsecured creditor and thus there is no money to be refunded to the estate. [dkt. 458] Similar to a "no asset" case, the reopening of the bankruptcy would be of no benefit to anyone. In re Mendiola, 99 B.R. 864, 865 (Bank. III(N) 1989. Even Mr. Goland does not request that the Trustee be reappointed to administer recovered assets for distribution in that there are no assets to recover.

**REOPENING THE ADVERSARY PROCEEDING**

Although there may be exceptions, a motion to reopen an adversary proceeding does not require that the bankruptcy case itself be reopened under §

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350, but it falls under Fed.R. Bank.Proc. 9024, which incorporates, Fed.R. Civ.Proc. 60.

Rule 60 provides in relevant part:

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding.

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding 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 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.

(c) Timing and Effect of the Motion.

(1) Timing. A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

In general this Rule incorporates the concept of finality. Things must come to an end. Five specific reasons for a motion for relief from a judgment are set forth with a sixth that is for "any other reason that justifies relief." The first three reasons are time-limited to one year. The only other reason that might apply here is FRCP 60(b)(6), which must have been brought within a reasonable time and is generally deemed to require extraordinary circumstances that caused the delay. Further, Rule 60(b)(6) cannot be used to supplant the time-limited provisions. Under that catchall provision, a court may relieve a party from an order for "any other reason that

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justifies relief," Fed. R. Civ. P. 60(b)(6), but only "to prevent manifest injustice" and "only where extraordinary circumstances prevented a party from taking timely action." Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.), 503 F.3d 933, 941 (9th Cir. 2007) (quoting United States v. Washington, 394 F.3d 1152, 1157 (9th Cir. 2005)); see also Delay v. Gordon, 475 F.3d 1039, 1044 (9th Cir. 2007) (Rule 60(b)(6) "applies only when the reason for granting relief is not covered by any of the other reasons set forth in Rule 60.").

In short, one cannot use the catch-all of FRCP 60(b)(6) to resurrect a claim that would have been allowed if brought in a timely fashion under FRCP 60(b)(1), (2), or (3). Both of the issues raised by Mr. Goland in this motion to reopen fall squarely under Rules 60(b)(2) and 60(b)(3).

Without prejudging the outcome if these had been brought in a timely fashion, I will look at the allegations to determine if they could have been brought in a timely fashion or if there are extraordinary circumstances that prevented Mr. Goland from raising these in a timely manner. Although not necessary if unless extraordinary circumstances exist to reopen, I will briefly analyze whether it is likely that reopening would lead to a different result as to each superior court judgment.

The Signature of Ms. Marlowe

The specific action that Goland complains of is that Lewis (or someone other than Marlowe) signed Marlowe's name to the assignment of the judgment and that Goland was not aware of this until recently. It appears from the exemplars, that the document to which Mr. Goland is referring is the declaration of Ms. Marlowe which is attached as part of Mr. Lewis's proof of claim that was filed on April 7, 2017. [claim 10-1]

As to the alleged forgery, that falls under FRCP 60(b)(2) and 60(b)(3). Both of these provisions have long-since expired.

Even if, for some reason, Goland did not notice the alleged difference in the signature of Marlowe on the declaration, this cannot be excused under FRCP 60(b)(2), which is limited to "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)."



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Goland and Marlowe were formerly married, were in hot litigation with many signed documents and declarations, and only the least bit of due diligence would have brought this issue before the court at the time of the motion for summary judgment, etc. or shortly thereafter. There is no excuse for the 6 ½ year delay and it is barred by the statute of limitations. In fact, there is no excuse for the failure to request a copy of the actual assignment (which is not attached to the proof of claim) in this hotly contested relationship.

The Failure to Comply with California Law as to the Assignment

Cal.Code Civ Proc. §673 states:

a) An assignee of a right represented by a judgment may become an assignee of record by filing with the clerk of the court which entered the judgment an acknowledgment of assignment of judgment.

(b) An acknowledgment of assignment of judgment shall contain all of the following:

(1) The title of the court where the judgment is entered and the cause and number of the action.

(2) The date of entry of the judgment and of any renewals of the judgment and where entered in the records of the court.

(3) The name and address of the judgment creditor and name and last known address of the judgment debtor.

(4) A statement describing the right represented by the judgment that is assigned to the assignee.

(5) The name and address of the assignee.

(c) The acknowledgment of assignment of judgment shall be:

(1) Made in the manner of an acknowledgment of a conveyance of real property.

(2) Executed and acknowledged by the judgment creditor or by the prior assignee of record if there is one.

Assignment of SC088376 (the Norris matter)

The complaint and amended complaint state that after DAH was awarded

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\$15,040 for attorney's fees and costs in SC088376, "[o]n June 26, 2015 Dog at Home, Inc. acknowledged its assignment of its rights in the judgment (the "Judgment") to Bret D. Lewis, its attorney of record in the case, including interest thereon." [dkt. 1, ¶14; dkt. 97, ¶14]

A review of the superior court docket in SC088376 shows an entry on June 26, 2015 of the assignment and of an acknowledgment of the assignee of judgment filed by Mr. Lewis. Although no copy of the actual assignment is in the papers for this motion or on the adversary docket [as far as I can find], a copy of the acknowledgement was filed in the adversary complaint as dkt. 37-8. There is no dispute that the signature on the acknowledgement is that of Ms. Marlowe and no information has been filed to show that this assignment does not meet the statutory requirements. However, only the interest of Dog at Home, Inc. was assigned and while Mr. Lewis certainly has ownership rights through Dog at Home, Inc., he is not the sole owner and Ms. Marlowe still has her interest in the judgment.

No later than November 14, 2016, Golan had a copy of the purported assignment (attached as exhibit 34 to the declarations of Marlowe and Lewis in the motion for summary judgment [dkt. 37-8, exhibit 34]. On January 30, 2017 he questioned whether it assigned both DAH's interest in the judgment and Marlowe's interest or only DAH's interest. [dkt. 61, p. 19]

So the assignment of the Norris matter is a non-issue and there would be no relief to be granted to Mr. Goland even if he is able to get around the statute of limitations provision of FRCP 60.

As to granting this as extraordinary relief, Mr. Goland had notice that the assignment may only have been the interest of DAH. And a review of the assignment would have shown him whether or not it met all of the statutory requirements. Due diligence by him or his attorney would have revealed this from the outset of the adversary proceeding or during the pendency of it. This simply does not meet the requirement to forgo the one-year statute of limitations.

Assignment of BC410835 (the Anti-Slapp matter)

As to the Anti-Slapp Matter (BC410835), Lewis states in the complaint and amended complaint that after the awarding of fees to DAH and Marlowe, but before

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the filing of the adversary complaint, DAH and Marlowe "assigned all of their right, title and interest in the Anti-Slapp Judgment to Lewis, including interest accrued thereon." [dkt. 1, ¶18; dkt. 97, ¶18]

No copy of the actual assignment has been filed here or in the superior court. As part of Mr. Lewis's proof of claim #10-1, he attaches a declaration of Susan Marlowe signed on April 7, 2017 that states that "I, individually, and on behalf of Dog at Home, Inc., as its authorized signatory, assigned to Bret D. Lewis, all my rights and those rights of Dog at Home, Inc. to amounts payable to me and/or Dog at Home, Inc. in LASC Case No. BC410835 and in LASC Case No. EC044886," This is the document that Goland refers to in his assertion that Marlowe's signature is forged. And this is the document that her latest declaration validates.

The court does not find any notice of the assignment on the docket of case BC410835. Marlowe and/or DAH are listed as the person(s) filing notices, etc. after the adversary proceeding was begun and even after the judgment in that adversary proceeding. See, for example, entries on the BC410835 docket on 11/17/16, 4/6/17 (which is the day before the declaration of Ms. Marlowe asserting that the assignment had previously taken place [Proof of Claim #10-1]), 12/4/18, 3/9/21, 9/13/21, 8/31/22, 5/25/23, 8/25/23, 10/12/23. etc. The Court does not have access to the actual documents filed, but presumably they were filed by Mr. Lewis as the attorney for Marlowe and for DAH.

Status of Lewis' Interest

Whether or not Lewis was the assignee of Marlowe's and/or DAH's interest, he made it clear that he had his own interest in the superior court cases and therefore the issue of the assignment may be a "red herring." The complaint and amended complaint [dkt. 1, ¶17; dkt. 97, ¶17] both state that Marlowe and DAH were the plaintiffs in SC088376 and in BC410835 and that Lewis was their attorney and had an attorney lien interest in the cases.

In his declaration attached to the Request for Judicial Notice as part of the Motion to Reconsider portions of the judgment which was filed on March 15, 2017 [dkt. 80], Mr. Lewis states that "I am presently and at all material times since 2007 been the attorney for Susan Marlowe and Dog at Home, Inc."

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**RULING**

Here there is nothing to show that there were extraordinary circumstances that prevented Mr. Goland from challenging the assignments prior to judgment or within the limited time to set aside the judgment or bring a motion to reconsider. Beyond that, the judgments were not based on the assignments, but on the actions of Mr. Goland. There was no "manifest injustice" in the court's judgment in the adversary proceeding.

Also the evidence provided in the motion to reopen does not demonstrate that the court can provide the relief requested and therefore reopening the adversary proceeding would be pointless. Horton v. United States (In re Horton), 2020 Bankr. LEXIS 2675, 2020 WL 5814363, at \*2 (B.A.P. 9th Cir. Sept. 29, 2020).

The motion is denied.

<b>Party Information</b>
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**Debtor(s):**

Michael Robert Goland

Represented By  
David S Hagen

**Trustee(s):**

Nancy J Zamora (TR)

Represented By  
Jessica L Bagdanov  
David Seror  
Ezra Brutzkus Gubner