UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

REIS BOROUGH BUILDING, LLC, — Case No. DK 14-00380, Hon. Scott W. Dales

Debtor.
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In re: — Case No. DK 14-00381, Hon. Scott W. Dales

LIVERY BUILDING, LLC,

Debtor.
_________________________/

MEMORANDUM OF DECISION AND ORDER

PRESENT: HONORABLE SCOTT W. DALES
Chief United States Bankruptcy Judge

On September 15, 2014, the court dismissed the above-referenced cases[1] on the United States Trustee's motions to convert or dismiss, using nearly identical orders. *See* Order Dismissing Bankruptcy Case (DN 62 in Reis Borough Docket; DN 65 in Livery Building Docket) (collectively, the "Dismissal Orders"). Several weeks later, the Clerk made a docket entry in each case as follows: "Chapter 11 Bankruptcy Case Closed (ljb) (Entered: 10/24/2014)." *See* Text Entry Closing Case (DN 65 in Reis Borough Docket; DN 68 in Livery Building Docket); *see also* 11 U.S.C. § 350(a) (closing cases).

Several days after the Clerk closed the cases, Hinsdale Bank & Trust Co. (the "Bank") filed motions to enforce the stipulations it entered into with each of the Debtors just before

[1] The chapter 11 cases of Reis Borough Building, LLC and Livery Building, LLC were not jointly-administered or substantively consolidated, and the Clerk maintained separate dockets. The court will refer to the docket in Case No. 14-00380 as the "Reis Borough Docket" and the docket in Case No. 14-00381 as the "Livery Building Docket."

dismissal (the "Motions to Enforce," DN 66 in Reis Borough Docket; DN 69 in Livery Building Docket), and motions to expedite the court's consideration of the Motions to Enforce (the "Motions to Expedite," DN 67 in Reis Borough Docket; DN 70 in Livery Building Docket). The court will resolve the Motions to Expedite and the Motions to Enforce without putting other interested parties to the expense of responding.

First, the cases are closed and have not been reopened. Although the Bank's Motions to Enforce cite cases for the proposition that dismissal and case closing are separate events -- a proposition the court accepts -- the Bank was evidently not aware that the cases have been closed, and therefore did not file a motion to reopen, or pay the reopening fees required under the Bankruptcy Court Miscellaneous Fee Schedule (28 U.S.C. § 1930). Because the cases remain closed, the Motions to Enforce and the Motions to Expedite are premature.

Moreover, even if the court were to ignore the requirement of reopening, it would nevertheless hesitate to exercise any post-dismissal jurisdiction, as predicted during the dismissal hearing. Indeed, although the court considered the two stipulations between the Bank and the Debtors when ruling on the United States Trustee's motions, and although the parties to the stipulations state that the court will retain jurisdiction, the court took care when announcing its decision, and again when signing the Dismissal Orders, not to incorporate the stipulations into the Dismissal Orders, but instead to recite only that the stipulation "filed jointly by the Debtor and Hinsdale Bank & Trust Co. binds those two parties." *See* Dismissal Orders at p. 2 (third decretal paragraph); *see generally Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994).

Moreover, the obvious purpose of the Dismissal Orders was to end the court's involvement in resolving disputes between the Debtors and their creditors (including the Bank),

leaving them to their state law rights and remedies.[2] In other words, rather than contemplating enforcement of the stipulations in federal court, the Dismissal Orders expressly state that "creditors of the Debtor may take whatever action is permitted by applicable nonbankruptcy law to collect their respective debts without further permission of this Court." *See* Dismissal Orders at p. 1 (second decretal paragraph).

As the Supreme Court observed in *Kokkonen,* "[t]he judge's mere awareness and approval of the terms of the settlement agreement do not suffice to make them part of his order." *Kokkonen,* 511 U.S. at 381. Consequently, by acknowledging the stipulation in the Dismissal Order, the court did not intend to assert otherwise "nonexistent federal jurisdiction" and create an exception to the general rule of limited jurisdiction as set forth in *Kokkonen*. *Id.,* 511 U.S. at 377 and 379.[3] Finally, even assuming the stipulations were expressly incorporated into the terms of the Dismissal Orders, the court would nevertheless remain at liberty to abstain from exercising any jurisdiction it might have retained.

For these reasons, the court will deny the Motions to Enforce and the Motions to Expedite, without prejudice to renewal if the Bank makes a motion to reopen the cases, and further, persuades the court to exercise post-dismissal jurisdiction notwithstanding the doubts expressed during the hearing on the United States Trustee's motion, in the Dismissal Orders, and once again today.

NOW, THEREOFRE, IT IS HEREBY ORDERED that the Motions to Enforce and the Motions to Expedite are DENIED without prejudice.

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[2] The court understands from motion practice early in these cases that the Bank moved the Allegan County Circuit Court to appoint a receiver. That forum may be better-suited to address the Bank's post-dismissal concerns.

[3] To the extent that granting the Motions to Enforce would have the effect of hauling the Debtors' tenants into federal court, the court's post-dismissal jurisdiction is even more tenuous.

IT IS FURTHER ORDERED that the Clerk shall enter this Order in the Reis Borough Docket and the Livery Building Docket.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Memorandum of Decision and Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Cody H. Knight, Esq., Eric D. Carlson, Esq., Dean E. Reitberg, Esq., and all parties requesting notice.

END OF ORDER

IT IS SO ORDERED.

Dated October 30, 2014

Scott W. Dales
United States Bankruptcy Judge