

FILED

AUG 07 2013

SUSAN M SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

FILED
Aug 07, 2013
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

In re:)	BAP No.	EC-13-1211
)		
LARRY TEVIS; NANCY TEVIS;)	Bk. No.	04-26357
)		
Debtors.)	Case # 2:13-mc-0082 MCE AC (PS)	
_____)		
)		
LARRY TEVIS; NANCY TEVIS,)		
)		
Appellants,)		
)		
)		
v.)	ORDER TRANSFERRING IFP	
)	MOTION	
)	(Response Required)	
MICHAEL F. BURKART, Trustee;)		
HOSEIT & KOELEWYN; MAX HOSEIT;)		
HERMAN L. KOELEWYN,)		
)		
Appellees.)		
_____)		

Before: DUNN and KIRSCHER, Bankruptcy Judges.

Appellants filed a motion for leave to proceed in forma pauperis with respect to this appeal ("IFP Motion"). A Clerk's Notice to the bankruptcy court was issued, giving the bankruptcy court the opportunity to make a certification under 28 U.S.C. § 1915(a)(3) regarding whether the appeal is frivolous. A certification was made by the bankruptcy court on July 31, 2013. The bankruptcy court declined to certify that the appeal is "not

taken in good faith" within the meaning of 28 U.S.C.

§ 1915(a)(3), determined that the appeal "is not frivolous" for purposes of 28 U.S.C. § 753(f), and determined that the appeal does not present a "substantial question" within the meaning of the penultimate sentence of 28 U.S.C. § 753(f).

Under the holding of Perroton v. Gray (In re Perroton), 958 F.2d 889 (9th Cir. 1992) and Determan v. Sandoval (In re Sandoval), 186 B.R. 490, 496 (9th Cir. BAP 1995), the Bankruptcy Appellate Panel has no authority to grant or deny in forma pauperis motions under 28 U.S.C. § 1915(a) because bankruptcy courts are not "court[s] of the United States" as defined in 28 U.S.C. § 451.

Therefore, appellants' IFP Motion is hereby TRANSFERRED to the United States District Court for the Eastern District of California for the limited purpose of ruling on the IFP Motion.

It is appellants' responsibility to take all necessary steps to have the IFP Motion considered by the district court within a reasonable period of time.

No later than **Friday, September 6, 2013**, appellants must file with the Panel and serve on opposing counsel a written response which includes as an exhibit a copy of the district court's order on the IFP Motion or an explanation of the steps appellants have taken to have the IFP Motion considered by the

district court. For the convenience of the district court, copies of the notice of appeal, the IFP Motion, the bankruptcy court's certification, and the order on appeal are attached to this order.

Failure to comply with the requirements of this order may result in dismissal of this appeal for lack of prosecution without further notice to the parties. 9th Cir. BAP R. 8070-1.

2

1 Larry Tevis and Nancy Tevis
2 P.O. Box 156
3 Rescue, CA 95672
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7 UNITED STATES BANKRUPTCY COURT
8 EASTERN DISTRICT OF CALIFORNIA
9 SACRAMENTO DIVISION

10 In re:

11 LARRY TEVIS & NANCY TEVIS
12 Debtors,

Case Number: 04-26357-B13

13
14 **NOTICE OF APPEAL**

15
16 Debtors Larry and Nancy Tevis appeal under 28 U.S.C. section 158(a) or (b) from
17 the judgement, order, or decree of Bankruptcy Judge Christopher M. Klein's order
18 Debtors Motion For Relief Under Federal Rule Of Civil Procedure 60(d)(3) Fraud
19 On The Court filed on April 25, 2013.

20 The names and addresses of all parties and respective attorneys to the order
21 appealed from, as follows:
22

23 Michael F. Burkart
24 Trustee Michael F. Burkart
25 5150 Fair Oaks Blvd. # 101-185
26 Carmichael, CA 95608
27

Paul L. Cass
Law Offices of Paul L. Cass
7803 Madison Ave. Ste. 610
Citrus Heights, CA 95610

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Peter A. Galgani
Law Offices of Peter A. Galgani
1120 "D" St. Ste. 100
Sacramento, CA 95814

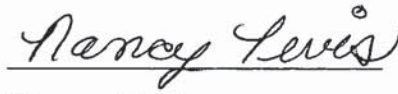
Hoseit & Koelewyn
Max Hoseit
Herman Koelewyn
700 University Ave. #140
Sacramento, CA 95825

Attorneys for Hoseit & Koelewyn
Andrew E. Benizinger
Lewis Brisbois Bisgaard & Smith LLP
2850 Gateway Oaks Drive, Suite 450
Sacramento, California 95833

DATED: April 29, 2013

Respectfully submitted,


Larry Tevis


Nancy Tevis

FILED
APR 25 2013
UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

In re:) Case No. 04-26357-B-13J
)
LARRY TEVIS and NANCY TEVIS,)
)
)
Debtor(s).)
_____)

**ORDER ON MOTION FOR RELIEF UNDER FEDERAL RULE OF CIVIL
PROCEDURE 60(d)(3) FRAUD ON THE COURT**


The debtors contend that a fraud was committed upon the court in connection with an order entered November 12, 2004, based on certain statements made by attorney Daniel Egan.

This pending motion was directed to the undersigned as the judge who conducted the subject hearing and issued the order that is said to be eligible to be set aside as a fraud on the court pursuant to Federal Rule of Civil Procedure 60(d)(3).

After reviewing the record carefully, the undersigned concludes that there was not a fraud on the court. As Mr. Egan points out correctly, the offending statements regarding whether CalVet was party to the settlement were accurate when made. Even if CalVet had been part of the compromise, as the movant contends, the undersigned would not have made a different ruling. Since the ruling by the undersigned judge would not have been different, relief on the asserted basis is not warranted.

IT IS ORDERED that the motion is DENIED.

Dated: April 25, 2013.


UNITED STATES BANKRUPTCY JUDGE

FILED

JUN - 4 2013

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

0A-26357

AO 240 (Rev. 07/10) Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form)

UNITED STATES DISTRICT COURT

for the
Eastern District of California

Larry and Nancy Tevis

Plaintiff/Petitioner

v.

Michael Burkart, Paul Cass, Galgani, Hoseit & koelewyn

Defendant/Respondent

Civil Action No. BAP No. EC-13-1211

APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS (Short Form)

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested.

In support of this application, I answer the following questions under penalty of perjury:

1. *If incarcerated.* I am being held at: NA

If employed there, or have an account in the institution, I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. *If not incarcerated.* If I am employed, my employer's name and address are:

NA

My gross pay or wages are: \$ _____, and my take-home pay or wages are: \$ _____ per
(specify pay period) _____.

3. *Other Income.* In the past 12 months, I have received income from the following sources (check all that apply):

- | | | |
|--|---|-----------------------------|
| (a) Business, profession, or other self-employment | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (b) Rent payments, interest, or dividends | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (c) Pension, annuity, or life insurance payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (d) Disability, or worker's compensation payments | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| (e) Gifts, or inheritances | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (f) Any other sources | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

Larry Tevis- United States Treasury; Social Security Disability - \$1341.00
Nancy Tevis- United States Treasury; Social Security Disability- \$ 619.00

Total-\$1960.00

Larry and Nancy Tevis expect to receive \$1960.00 a month in the future.

AO 240 (Rev. 07/10) Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form)

4. Amount of money that I have in cash or in a checking or savings account: \$ 150.00 .

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name (describe the property and its approximate value):

None

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses (describe and provide the amount of the monthly expense):

Electric Bill- \$300.0 Food- \$800.00 Total Monthly Expenses \$1775.00
Propane----- \$175.00
Transportation \$400.00
Loan Payments-\$100.00

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support:

None

8. Any debts or financial obligations (describe the amounts owed and to whom they are payable):

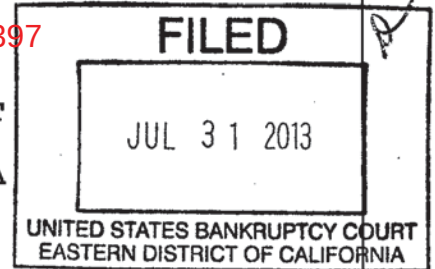
We are in Bankruptcy since 2004, the financial obligations are undetermined as we are in a Adversary Proceeding.

Declaration: I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

Date: 05/31/2013

Larry Tevis
Nancy Tevis
Applicant's signature
Larry and Nancy Tevis
Printed name

Case 04-26357 Filed 07/31/13 Doc 397



1 UNITED STATES BANKRUPTCY COURT
 2 EASTERN DISTRICT OF CALIFORNIA

5 In re:)
 6 LARRY TEVIS; NANCY TEVIS) Case No. 04-26357-C-7
 7 Debtors.)
 8 _____)

9 MEMORANDUM DECISION ON BANKRUPTCY APPELLATE PANEL
 10 CLERK'S NOTICE IN BAP APPEAL NO. EC-13-1211

11
 12 The trial court is authorized to make certain certifications
 13 under 28 U.S.C. §§ 753(f) and 1915(a)(3) regarding appeals when
 14 in forma pauperis status is requested. The pending appeal of
 15 Larry Tevis & Nancy Tevis v. Michael F. Burkart, Trustee, Hoseit
 16 & Koelewyn, Max Hoseit, & Herman L. Koelewyn (In re Tevis), BAP
 17 No. EC-13-1211, is such an appeal and triggered a BAP Clerk's
 18 Notice to this court of the opportunity to consider the
 19 certification questions.

20 The appeal is from an this court's order in the case of In
 21 re Tevis, No. 04-26357, denying the debtors' motion to set aside
 22 an order entered November 12, 2004, on a theory of fraud on the
 23 court pursuant to Federal Rule of Civil Procedure 60(d)(3).¹

24 Upon receiving from the debtors a request to proceed in
 25 _____

26 ¹Rule 60(d)(3) provides:

27 (d) Other Powers to Grant Relief. This rule does not limit
 28 a court's power to: ... (3) set aside a judgment for fraud
 on the court.

Fed. R. Civ. P. 60(d)(3), incorporated by Fed. R. Bankr. P.
 9024.

1 forma pauperis, the Bankruptcy Appellate Panel invited the views
2 of this trial court under 28 U.S.C. §§ 753(f) and 1915(a)(3)
3 pursuant to the procedure outline in Knutson v. Price (In re
4 Price), 410 B.R. 51, 55-60 (Bankr. E.D. Cal. 2009).

5
6 I

7 An appeal may not be taken in forma pauperis if the trial
8 court, which is this bankruptcy court in this instance, certifies
9 in writing that the appeal is not taken in good faith:

10 (a)(3) An appeal may not be taken in forma pauperis if the
11 trial court certifies in writing that it is not taken in
good faith.

12 28 U.S.C. § 1915(a)(3).

13 When a person is permitted to appeal in forma pauperis, the
14 United States will not pay any fees for transcripts if there is
15 not a certification "that the appeal is not frivolous (but
16 presents a substantial question)" 28 U.S.C. § 753(f).

17
18 II

19 The debtors believe they became ensnared a "Catch-22"
20 situation involving their residence that was acquired with a so-
21 called "CalVet" loan. Loans made under the CalVet program are
22 structured such that title nominally remains in CalVet until such
23 time as the purchasing veteran extinguishes the loan.

24 They contend that there was a fraud on the court committed
25 by the trustee's counsel in representations made to the court
26 regarding the relationship of CalVet to the settlement, which
27 representations are not consistent with the final form of the
28 settlement.

1 This court determined that the original ruling would not
2 have been different if the debtors' version of the role of CalVet
3 had been made explicit at the time of the original order.
4 Accordingly, an order was entered declining to afford relief
5 under a Rule 60(d)(3) fraud-on-the-court theory. That order is
6 the subject of this appeal.

7

8

III

9 As to the § 1915(a)(3) question of whether the appeal is
10 taken in good faith, this court is persuaded that these self-
11 represented debtors² believe in good faith that they have been
12 treated badly and believe that they ought to be entitled to
13 relief.

14 There is no apparent purpose of delay or other motive
15 inconsistent with seeking judicial relief for a harm that they
16 believe has been visited upon them.

17 Accordingly, this court is persuaded that there is not a
18 lack of good faith in taking this appeal as of right pursuant to
19 28 U.S.C. § 158(a)(1). Hence, there will be no certification by
20 this trial court that the appeal "is not taken in good faith"
21 within the meaning of § 1915(a)(3).

22

23

IV

24 As to the § 753(f) question, there are two separate
25 essential elements: that the appeal "is not frivolous" and that
26 it "presents a substantial question." 28 U.S.C. § 753(f). Each

27

28 ²The frivolity analysis might be different if the debtors
were represented by counsel.

1 of these elements must be satisfied before the United States will
2 pay for transcripts for a person permitted to appeal in forma
3 pauperis. Henderson v. United States, 734 F.2d 483, 484 (9th
4 Cir. 1984); Price, 410 B.R. at 59.

5 The determinations are made as a matter of "judicial
6 discretion." Thomas v. Computax Corp., 631 F.2d 139, 143 (9th
7 Cir. 1980); Price, 410 B.R. at 59.

8 When a bankruptcy judge is the trial judge, the
9 determination is made by the bankruptcy judge. Price, 410 B.R.
10 at 59; Allen v. W. Sierra Bank (In re Allen), 2009 WL 1187957, at
11 *1 (Bankr. D. Idaho 2009).

12 Although the trial judge makes an independent determination
13 in the exercise of judicial discretion, the § 753(f) burden
14 ultimately is on the appellants to persuade the trial judge and,
15 if necessary, a circuit judge. Jaffe v. United States, 246 F.2d
16 760, 761-62 (2d Cir. 1957); Sharpe v. Ogar, 2008 WL 5000155, at
17 *1 (D. Ariz. 2008); Price, 410 B.R. at 59.

18
19 A

20 This court assumes for purposes of analysis that § 753(f)
21 frivolity is the same as § 1915(a)(3) frivolity even though there
22 may be technical differences regarding burdens of proof. Hence,
23 having declined to make a § 1915(a)(3) certification of frivolity
24 on the part of these self-represented debtors, this appeal "is
25 not frivolous."

26
27 B

28 The second requirement - that the appeal presents a

1 "substantial question" – is more of a problem.

2 In assessing whether a "substantial question" is presented
3 by the appeal, the trial judge may evaluate the statement of
4 issues and related material. Gonzales v. Riddle, 2008 WL
5 4723779, at *1 (E.D. Cal. 2008); Price, 410 B.R. 59. There is a
6 "substantial question" when the issue before the appellate court
7 is reasonably debatable. Washburn v. Fagan, 2007 WL 2043854, at
8 *2 (N.D. Cal. 2007), citing with approval, Ortiz v. Greyhound
9 Corp., 192 F.Supp. 903, 905 (D. Md. 1959); Price, 410 B.R. at 59.

10 As this trial court understands the appeal (and recollects
11 the proceedings in 2004 and in 2013), no specific legal issue is
12 presented as to which reasonable minds could differ. Nor is
13 there any contention that binding precedent was not followed. As
14 explained in the questioned ruling, the purported inaccuracy, if
15 known, would not have affected the order from which relief is
16 sought. This is not, in the view of the trial judge, a case that
17 presents a "substantial question" because this court does not
18 believe that the alleged inaccuracy was material and does not
19 believe a fraud was committed upon it. Rather, the chances of
20 success on appeal being essentially nil, this appeal does not
21 present a "substantial question."

22
23 CONCLUSION

24 This trial court declines to certify that this appeal is
25 "not taken in good faith" within the meaning of 28 U.S.C.
26 § 1915(a)3).

27 This trial court determines that, although this appeal "is
28 not frivolous" for purposes of 28 U.S.C. § 753(f), this appeal

Case 04-26357 Filed 07/31/13 Doc 397

1 does not present a "substantial question" within the meaning of
2 the penultimate sentence of 28 U.S.C. § 753(f). Hence, even if
3 the debtors are allowed to appeal in forma pauperis, no
4 transcript will be prepared at public expense.

5
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7


UNITED STATES BANKRUPTCY JUDGE

8 July 30, 2013

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Case 04-26357 Filed 07/31/13 Doc 397

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

CERTIFICATE OF
ELECTRONIC
TRANSMISSION

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was transmitted electronically today to the Bankruptcy Appellate Panel at the email address(es) shown below or on the attached list.

BAPCA09Filings/CA09/09/USCOURTS

DATED: 7/31/13

By: Stephen Peterson
Deputy Clerk

BANKRUPTCY APPEAL TRANSMITTAL FORM

TO: Bankruptcy Appellate Panel of the Ninth Circuit
125 S. Grand Avenue
Pasadena, CA 91105

FROM: U.S. Bankruptcy Court
Eastern District of California
District Office No. 0972



DATE: 05/02/13

Debtor(s) Name: Larry Tevis and Nancy Tevis

Bankruptcy Case No. 04-26357-B-13

Adversary Proceeding No. _____

Docket Control No. _____

Bankruptcy Judge (who signed the order): Klein

Date Notice of Appeal Filed: 4/30/13

Date of Entry of Order Appealed From: 4/26/13

Date Bankruptcy Case Filed: 6/21/04

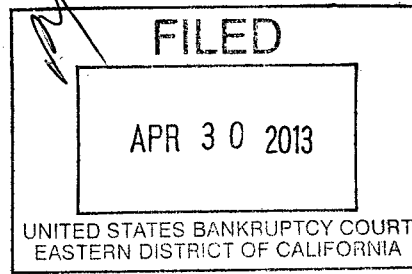
Date Notice of Appeal and
Notice of Referral of Appeal Mailed to Parties: 5/2/13

Filing Fee Paid? (Check One) [] Yes [x] No _____

Stephen P. ...
Deputy Clerk
U.S. Bankruptcy Court
501 I Street, Suite 3-200
Sacramento, CA 95814-2322
(916) 930-4400

2

Larry Tevis and Nancy Tevis
P.O. Box 156
Rescue, CA 95672



UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re:

LARRY TEVIS & NANCY TEVIS
Debtors,

Case Number: 04-26357-B13

NOTICE OF APPEAL

Debtors Larry and Nancy Tevis appeal under 28 U.S.C. section 158(a) or (b) from the judgement, order, or decree of Bankruptcy Judge Christopher M. Klein's order Debtors Motion For Relief Under Federal Rule Of Civil Procedure 60(d)(3) Fraud On The Court filed on April 25, 2013.

The names and addresses of all parties and respective attorneys to the order appealed from, as follows:

Michael F. Burkart
Trustee Michael F. Burkart
5150 Fair Oaks Blvd. # 101-185
Carmichael, CA 95608

Paul L. Cass
Law Offices of Paul L. Cass
7803 Madison Ave. Ste. 610
Citrus Heights, CA 95610

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Sacramento, CA 95814

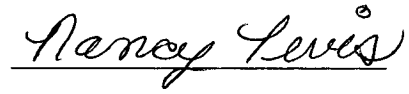
Hoseit & Koelewyn
Max Hoseit
Herman Koelewyn
700 University Ave. #140
Sacramento, CA 95825

Attorneys for Hoseit & Koelewyn
Andrew E. Benizinger
Lewis Brisbois Bisgaard & Smith LLP
2850 Gateway Oaks Drive, Suite 450
Sacramento, California 95833

DATED: April 29, 2013

Respectfully submitted,


Larry Tevis


Nancy Tevis

MS

<p>FILED</p> <p>APR 25 2013</p> <p>UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF CALIFORNIA</p>

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:) Case No. 04-26357-B-13J
)
 LARRY TEVIS and NANCY TEVIS,)
)
)
 Debtor(s).)
 _____)

**ORDER ON MOTION FOR RELIEF UNDER FEDERAL RULE OF CIVIL
 PROCEDURE 60(d)(3) FRAUD ON THE COURT**


The debtors contend that a fraud was committed upon the court in connection with an order entered November 12, 2004, based on certain statements made by attorney Daniel Egan.

This pending motion was directed to the undersigned as the judge who conducted the subject hearing and issued the order that is said to be eligible to be set aside as a fraud on the court pursuant to Federal Rule of Civil Procedure 60(d)(3).

After reviewing the record carefully, the undersigned concludes that there was not a fraud on the court. As Mr. Egan points out correctly, the offending statements regarding whether CalVet was party to the settlement were accurate when made. Even if CalVet had been part of the compromise, as the movant contends, the undersigned would not have made a different ruling. Since the ruling by the undersigned judge would not have been different, relief on the asserted basis is not warranted.

IT IS ORDERED that the motion is DENIED.

Dated: April 25, 2013.



 UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

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On the date indicated below, I served a true and correct copy(ies) of the attached document by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed and by depositing said envelope in the United States mail or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's Office.

Larry Tevis
PO BOX 156
RESCUE CA 95672

H. L. Koelewyn
700 University Ave #140
Sacramento CA 95825-6703

Daniel L. Egan
400 Capitol Mall 22nd Fl
Sacramento CA 95814

Dated: 4/26/13


DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

FILED
05/02/13
UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re)
Larry Tevis and Nancy Tevis)
)
)
)
)
Debtor(s))

Bankruptcy Case No. 04-26357-B13
Adversary Proceeding No.
Docket Control No.

CERTIFICATE OF MAILING

The undersigned clerk in the Office of the United States Bankruptcy Court for this district hereby certifies that copies of the **Notice of Appeal and Notice of Referral of Appeal to the Bankruptcy Appellate Panel of the Ninth Circuit** were mailed today to the following parties at their respective addresses as shown in the Court's records:

Larry and Nancy Tevis
PO BOX 156
RESCUE CA 95672

Jan P. Johnson
PO Box 1708
Sacramento CA 95812

Michael F. Burkart
5150 Fair Oaks Blvd.
#101-185
Carmichael CA 95608

Paul L. Cass
7803 Madison Ave #610
Citrus Heights, CA 95610

Peter A. Galgani
1120 D St #100
Sacramento CA 95814

Max Hoseit
700 University Ave #140
Sacramento CA 95825

Andrew E. Benizinger
2850 Gateway Oaks Dr
#450
Sacramento, CA 95833

U.S. Trustee
501 I St #7-500
Sacramento, CA 95814

Dated: 05/02/13

BY: 
Deputy Clerk

General Docket
U. S. Bankruptcy Appellate Panel for the Ninth Circuit

Bankruptcy Appellate Panel Docket #: 13-1211 Larry Tevis, et al v. Michael Burkart, et al Appeal From: California Eastern - Sacramento Fee Status: fee due	Docketed: 05/02/2013
Case Type Information: 1) Bankruptcy 2) Chapter 7 Non-Business 3) null	
Originating Court Information: District: 0972-2 : 04-26357-B13 Presiding Judge: Christopher M. Klein, U.S. Bankruptcy Judge Date Filed: 06/21/2004 Date NOA Filed: 04/30/2013 Date Rec'd BAP: 05/02/2013	
Prior Cases: 05-1131 Date Filed: 04/08/2005 Date Disposed: 06/29/2006 Disposition: Affirmed in part, Reversed; Opinion	
Current Cases: None	
Panel Assignment: Not available	

In re: LARRY TEVIS Debtor NANCY TEVIS Debtor ----- LARRY TEVIS Appellant NANCY TEVIS Appellant v. MICHAEL F. BURKART, Trustee Appellee HOSEIT & KOELEWYN Appellee	Larry Tevis [COR LD NTC Pro Se] Firm: 530/676-2757 P.O. Box 156 Rescue, CA 95672 Nancy Tevis [COR LD NTC Pro Se] Firm: 530/676-2757 P.O. Box 156 Rescue, CA 95672 Paul Cass, Attorney [COR LD NTC Retained] LAW OFFICE OF PAUL L. CASS #610 7803 Madison Ave. Citrus Heights, CA 95610-0000 Peter A. Galgani, Esquire [COR LD NTC Retained] Law Offices of Peter A. Galgani Suite 100 1120 "D" Street Sacramento, CA 95814 Andrew Edward Benzinger, Esquire, Attorney Direct: 916-564-5400 [COR LD NTC Retained] LEWIS, BRIBOIS, BISGAARD & SMITH LLP Suite 450 Firm: 916/ 564-5400 2850 Gateway Oaks Drive Sacramento, CA 95833
--	---

MAX HOSEIT
Appellee

Andrew Edward Benzinger, Esquire, Attorney
Direct: 916-564-5400
[COR LD NTC Retained]
(see above)

HERMAN L. KOELEWYN
Appellee

Andrew Edward Benzinger, Esquire, Attorney
Direct: 916-564-5400
[COR LD NTC Retained]
(see above)

In re: LARRY TEVIS; NANCY TEVIS

Debtors

LARRY TEVIS; NANCY TEVIS

Appellants

v.

MICHAEL F. BURKART, Trustee; HOSEIT & KOELEWYN; MAX HOSEIT; HERMAN L. KOELEWYN

Appellees

05/02/2013	<input type="checkbox"/> 1 6 pg, 177.85 KB	Received notice of appeal filed in Bankruptcy Court on 04/30/2013, transmittal form, and copy of order. (PI)
05/16/2013	<input type="checkbox"/> 2 3 pg, 77.69 KB	Notice to all parties and Bankruptcy Court RE: BAP Case number assigned: EC-13-1211. Sent Bankruptcy Record Request Form to Bankruptcy Court. (PI)
05/16/2013	<input type="checkbox"/> 3 3 pg, 42.15 KB	Sent BRIEFING ORDER to appellant Larry Tevis and Nancy Tevis. Copies to all parties. Appellant Larry Tevis and Nancy Tevis's opening brief due 07/01/2013 (PI)
05/16/2013	<input type="checkbox"/> 4 2 pg, 42.59 KB	Notice of Deficiency sent to Appellant RE: lack of prosecution for filing fee due. Response Due: 05/30/2013. cc: All parties. (PI)
05/16/2013	<input type="checkbox"/> 5 2 pg, 39.77 KB	Sent Notice of Mandatory Attorney Electronic Filing form to Andrew E. Benizinger, Esquire for Appellees Herman L. Koelewyn, Max Hoseit and HOSEIT & KOELEWYN, Paul Cass for Appellee Michael F. Burkart and Peter A. Galgani, Esquire for Appellee Michael F. Burkart with note that no further paper filings will be accepted. (PI)
05/21/2013	<input type="checkbox"/> 6 2 pg, 43.02 KB	Notice of Deficiency sent to Appellant RE: Record on appeal not filed (for lack of prosecution). Re: Response Due: 06/04/2013. cc: All parties. (VJ)
06/05/2013	<input type="checkbox"/> 7 2 pg, 93.19 KB	Filed original and copies of Larry Tevis and Nancy Tevis's motion to proceed in forma pauperis; served on 05/31/2012. (VJ)
07/02/2013	<input type="checkbox"/> 8 2 pg, 25.48 KB	Filed original and copies of Larry Tevis and Nancy Tevis's motion extending time to file appellant's opening brief until 07/09/2013; served on 6/27/13. (VJ)
07/02/2013	<input type="checkbox"/> 9 1 pg, 33.61 KB	Filed order (Deputy Clerk: vjw) Motion to extend time to file appellant's opening brief filed by Nancy Tevis and Larry Tevis is GRANTED Appellant Larry Tevis and Nancy Tevis's opening brief due 07/09/2013.; dated: 07/02/2013. (VJ)
07/11/2013	<input type="checkbox"/> 10 28 pg, 566.49 KB	Filed original and 3 copies, opening brief with 4 copies excerpts of record, served on 07/09/2013 ; Appellee Michael F. Burkart, HOSEIT & KOELEWYN, Max Hoseit and Herman L. Koelewyn's opening brief due 07/30/2013. (VJ)
07/24/2013	<input type="checkbox"/> 11 3 pg, 14.84 KB	Filed order (Clerk: sms) On 7/31/13, the Panel will forward the request for leave to proceed IFP to the U.S. District Court for its consideration. An appeal may not be taken IFP if the trial court certifies in writing that it is not taken in good faith. This Clerk's Order is being issued to allow the trial court the opportunity to "certify in writing that the appeals is not taken in good faith". ; dated: 07/24/2013. (PI)
07/24/2013	<input type="checkbox"/> 12 12 pg, 310.01 KB	Filed (ECF) Attorney Mr. Andrew Edward Benzinger, Esquire for Appellees Herman L. Koelewyn, Max Hoseit and HOSEIT & KOELEWYN's brief on appeal; served on 07/24/2013 US mail - Appellants Tevis, Tevis; Attorney for Appellees: Cass, Galgani; email - Appellants Tevis, Tevis; Attorney for Appellees: Benzinger, Cass, Galgani. (AEB)
07/31/2013	<input type="checkbox"/> 13 7 pg, 218.83 KB	Received from Bankruptcy Court copy of Bk.Ct. Judge's response to BAP Clerk's Notice re: Certification - Appeal is not Frivolous (see attached order) filed in Bk. Ct. 07/31/2013. (VJ)
08/07/2013	<input type="checkbox"/> 14 15 pg, 1.52 MB	Filed order (DUNN and KIRSCHER); appellants' IFP Motion is hereby TRANSFERRED to the United States District Court for the Eastern District of California for the limited purpose of ruling on the IFP Motion. No later than Friday, September 6, 2013, appellants must file with the Panel and serve on opposing counsel a written response of the steps appellants have taken to have the IFP Motion considered (see attached order);. (VJ)

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