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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LARRY AND NANCY TEVIS,
Appellants,
v.
MICHAEL F. BURKART, et al.,
Appellees.

No. 2:13-mc-0082 MCE AC PS

ORDER

Appellants are proceeding or are seeking to proceed with a bankruptcy appeal, which has been referred to the Bankruptcy Appellate Panel of the Ninth Circuit, and which bears BAP No. EC-13-1211 and Bk. Case No. 04-26357.

Pending before this court is the appellants’ application to proceed in forma pauperis, which has been referred to this court by order of Bankruptcy Judges Dunn and Kirscher, filed August 7, 2013 with the bankruptcy appellate panel and filed in this court on the same day. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Local Rules 72-302 and 72-303.

Appellants’ initial application to proceed in forma pauperis was referred to the bankruptcy court, giving that court the opportunity to make a certification under 28 U.S.C. § 1915(a)(3) regarding whether the appellants’ appeal was frivolous. On July 31, 2013, a certification was made by the bankruptcy court declining to certify that the appeal is “not taken in good faith”

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

4 Pursuant to the holding of Perroton v. Gray (In re Perroton), 958 F.2d 889 (9th Cir. 1992)
5 and Determan v. Sandoval (In re Sandoval), 186 B.R. 490, 496 (9th Cir. BAP 1995), it was
6 determined that the Bankruptcy Appellate Panel has no authority to grant or deny in forma
7 pauperis motions under 28 U.S.C. § 1915(a) because bankruptcy courts are not “court[s] of the
8 United States” as defined in 28 U.S.C. § 451. This matter was therefore transferred to this court
9 for the limited purpose of ruling on the appellants’ in forma pauperis motion.

10 The court has reviewed the application submitted by appellants. Appellants have made
11 the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma
12 pauperis will be granted. 28 U.S.C. § 1915(a).

13 Further, because this matter was transferred to this court for the sole and limited purpose
14 of ruling on the motion to proceed in forma pauperis, and because this court has performed the
15 purpose of the transfer, the court will order the matter transferred to the Bankruptcy Appellate
16 Panel.

17 Accordingly, it IS ORDERED that

- 18 1. Appellants’ application to proceed in forma pauperis is granted, and
- 19 2. This matter is transferred back to the United States Bankruptcy Appellate Panel of the
20 Ninth Circuit; and
- 21 3. The Clerk of Court is directed to serve this order by mail upon appellants Larry and
22 Nancy Tevis at P.O. Box 156, Rescue, California 95672, and to make appropriate
23 service upon the other parties and the United States Bankruptcy Appellate Panel of the
24 Ninth Circuit; and

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4. This district court case, No. 2:13-mc-0082 MCE AC, shall be administratively closed.

DATED: August 8, 2013


ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE

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