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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re
PACIFIC THOMAS CORPORATION, dba
THOMAS CAPITAL, dba SAFE STORAGE,
Debtor.

KYLE EVERETT, Chapter 11 Trustee,
Plaintiff
v.
RANDALL WHITNEY, et al.,
Defendants.
_____ /

No. C-13-5766 MMC
Bankruptcy Adv. Proc. No. 13-04079 MEH
**ORDER GRANTING IN PART AND
DEFERRING RULING IN PART ON
APPELLANT’S ADMINISTRATIVE
REQUEST FILED AUGUST 15, 2014;
DIRECTING APPELLANT TO SHOW
CAUSE WHY APPEAL SHOULD NOT BE
DISMISSED AS MOOT**

Before the Court is appellant Randall Whitney’s Administrative Request, filed August 15, 2014, to “Consolidate Appeals for Briefing and to Vacate Due Date for Filing Opening Brief Pending Setting of Dates in Appeal No C-14-3465-MMC or Extend Briefing Date.”

Having read and considered the request, the Court rules as follows.

To the extent the administrative request seeks relief from the August 15, 2014 deadline to file the opening brief in the instant appeal, the request is hereby GRANTED, for the reason that the instant appeal, as discussed below, appears to be moot.

To the extent the administrative request seeks additional relief, the Court hereby DEFERS ruling thereon, and, for the reasons stated below, will direct appellant to show cause why the instant appeal should not be dismissed as moot.

In the instant appeal, appellant seeks review of a preliminary injunction, filed

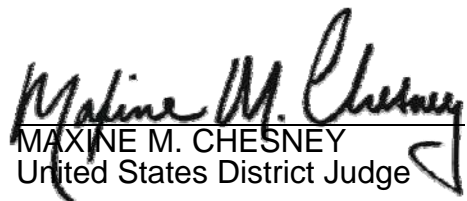
1 November 18, 2013, by which injunction appellant was prohibited from, inter alia, entering
2 the business premises of the debtor and from collecting rent owed to the debtor. (See
3 Record on Appeal, Doc. 7, Attachment 25.) Thereafter, the bankruptcy court conducted a
4 trial, and, on July 8, 2014, filed a Decision After Trial, in which it issued, inter alia, a
5 permanent injunction “consistent” with the terms of the preliminary injunction. (See In re
6 Pacific Thomas Corp., C-14-3465, Doc. 1, Ex. A.) Appellant filed a notice of appeal from
7 said Decision, which appeal is pending before this Court as Civil Case No. 14-3465 MMC.

8 Where, as here, a party appeals from an order granting a preliminary injunction, and
9 subsequently appeals from an order granting a permanent injunction, the appeal from the
10 order granting a preliminary injunction is subject to dismissal as moot and the appellate
11 court considers only the merits of the appeal from the permanent injunction. See, e.g.,
12 Smith v. Illinois Bell Telephone Co., 270 U.S. 587, 588-89 (1926) (dismissing as moot
13 appeal from order granting preliminary injunction where “interlocutory injunction had
14 become merged in the final decree”; considering merits of appeal from permanent
15 injunction); Planned Parenthood Arizona Inc. v. Betlach, 727 F.3d 960, 962-63 (9th Cir.
16 2013) (holding “district court’s entry of final judgment and a permanent injunction moot[ed]
17 [defendant’s] appeal of the preliminary injunction”; dismissing as moot appeal from order
18 granting preliminary injunction and considering merits of appeal from order granting
19 permanent injunction).

20 Accordingly, appellant is hereby ORDERED TO SHOW CAUSE, in writing and no
21 later than September 5, 2014, why the instant appeal from the order granting a preliminary
22 injunction should not be dismissed as moot.

23 **IT IS SO ORDERED.**

24
25 Dated: August 19, 2014

26 
27 MAXINE M. CHESNEY
28 United States District Judge