

FILED

FEB 14 2020

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

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

In re:)	BAP No.	CC-20-1033
)		
MARY CUMMINS-COBB,)	Bk. No.	2:17-bk-24993-RK
)		
Debtor.)	Adv. No.	2:18-ap-01066-RK
_____)		
)		
MARY CUMMINS-COBB,)		
)		
Appellant,)		
v.)	CLERK'S ORDER	
)	(Response Required)	
KONSTANTIN KHIONIDI, as)		
Trustee of the Cobbs Trust,)		
)		
Appellee.)		
_____)		

This appellate case file has been administratively reviewed and there appears to be a jurisdictional issue which must be resolved. A briefing schedule will not be issued until jurisdiction is established.

The Bankruptcy Appellate Panel (BAP) has jurisdiction to hear timely appeals from final judgments, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees of bankruptcy judges. 28 U.S.C. § 158. A final decision is one that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Elliott v. Four Seasons Properties (In re Frontier Properties, Inc.)*, 979 F.2d 1358, 1362 (9th Cir. 1992).

This is an appeal from an order granting summary judgment on one of four claims in the adversary complaint. The remaining three claims are unresolved. Under Fed. R. Civ. P. 54(b), made applicable by Fed. R. Bankr. P. 7054(a):

When an action presents **more than one claim** for relief--whether as a claim, counterclaim, crossclaim, or third-party claim--or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates **fewer than all the claims** or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities. (Emphasis added).

The BAP Clerk's Office cannot discern an express direction for entry of final judgment on Claim 4 and a determination that there is no just reason for delay in either the Statement of Uncontroverted Facts at docket 118 or the Order for partial summary judgment at docket 117. It is possible the forthcoming judgment which the bankruptcy court directed be lodged¹ will contain such a direction and determination, but that is unknown at this time. At present the ruling appears to be interlocutory.

An appeal of an interlocutory order requires leave of the Panel. See 28 U.S.C. § 158(a)(3) and Fed. R. Bankr. P. 8004.

It is appellant's duty to establish appellate jurisdiction.

¹ "Plaintiff is ordered to lodge a proposed judgment consistent with this order . . . within 30 days of the entry of this order." Adv. Docket 117 at 2:3-6.

By **FRIDAY, MARCH 13, 2020**, or **FOURTEEN (14) DAYS** from entry of the anticipated forthcoming separate judgment, whichever is sooner, appellant must file and serve a written response either 1) explaining how the order on appeal is final and immediately reviewable; 2) demonstrating what steps appellant is taking to expeditiously obtain a final order; or 3) moving for leave to appeal.

Although it is not technically necessary, a limited remand is hereby granted to allow appellant to seek a Civil Rule 54(b) direction for the entry of a final judgment and express determination that there is no just reason for delay, if she chooses to do so.

Failure to timely respond to this clerk's order may result in the dismissal of this appeal for lack of jurisdiction or lack of prosecution. If this appeal is dismissed as interlocutory, the interlocutory order can be challenged in a timely appeal from the final judgment entered in the adversary proceeding. See *Am. Ironworks & Erectors, Inc. v. N. Am. Const. Co.*, 248 F.3d 892, 897-98 (9th Cir. 2001) ("party may appeal interlocutory orders after entry of final judgment because those orders merge into that final judgment"); *Baldwin v. Redwood City*, 540 F.2d 1360, 1364 (9th Cir. 1976).

FOR THE PANEL,

Susan M. Spraul

Susan M. Spraul, Clerk of Court