

1-28-08

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January 9, 2008

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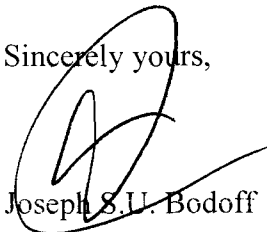
Re: Erkins Ninth Circuit Decision

Dear George:

I understand that based on affidavits filed by Petros Eliopulos and Charles Vihon that the title company is reporting that your Idaho properties are tied up in litigation and that, therefore, you cannot presently convey clear title. It is my understanding that the Eliopulos and Vihon submissions refer to the litigation that was pending in the Idaho District Court that was recently resolved by the Ninth Circuit Court of Appeals. In its decision dated July 17, 2007, the Ninth Circuit ruled in your favor and directed the District Court to dismiss the case. A copy of that decision is enclosed. On October 5, 2007, the District Court, in fact, did dismiss the case, per the direction of the Ninth Circuit. A copy of the docket entry showing the dismissal is also enclosed.

Let me know if you need anything else.

Sincerely yours,



Joseph S.L. Bodoff

Enclosures

1 of 3 DOCUMENTS

**ALFRED J. BIANCO, as Plan Administrator to the Estate of Gaston & Snow;
GEORGE PANAGIOTOU, Plaintiffs - Appellees, v. ROBERT A. ERKINS;
BERNARDINE ERKINS, Defendants - Appellants.**

No. 02-35218

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

235 Fed. Appx. 429; 2007 U.S. App. LEXIS 17404

**November 6, 2003 ** , Argued and Submission Deferred; July 13, 2007, Submitted,
Seattle, Washington**

** Proceedings in this case were stayed pursuant to 11 U.S.C. § 362 pending the outcome of bankruptcy proceedings.

July 17, 2007, Filed

NOTICE: PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

provided by *Ninth Circuit Rule 36-3*.

Before: WARDLAW, GOULD, and PAEZ, Circuit Judges.

PRIOR HISTORY: [**1]

Appeal from the United States District Court for the District of Idaho. D.C. No. MC-00-05065-BLW/LMB. B. Lynn Winmill, District Judge, Presiding.
Erkins v. Bianco, 88 Fed. Appx. 989, 2004 U.S. App. LEXIS 4396 (9th Cir. Idaho, 2004)

COUNSEL: For GEORGE PANAGIOTOU, Plaintiff - Appellee: Allen B. Ellis, Esq., ELLIS, BROWN & SHEILS, Boise, ID.

For ROBERT A. ERKINS, BERNADINE ERKINS, Defendants - Appellants: H. James Magnuson, Esq., Coeur d'Alene, ID.

JUDGES: Before: WARDLAW, GOULD, and PAEZ, Circuit Judges.

OPINION

[*429] MEMORANDUM *

* This disposition is not appropriate for publication and is not precedent except as

Robert and Bernardine Erkins ("the Erkins") appeal the district court's decision not to quash the writ of execution and extinguish the judgment liens on the Erkins' real property located in Jerome and Gooding Counties in the State of Idaho. Appellee Bianco had sought to levy upon this real property in an effort to execute a judgment entered in his favor against the Erkins. Although the property has since been sold pursuant to the district court's order, the Erkins seek "an order quashing the writ of execution and extinguishing the judgment liens." The Erkins make no further prayer for relief.

On December 27, 2001, [**2] the district court issued a writ of execution on the Erkins' real property. The Erkins moved for reconsideration of the district court's order and to enjoin the U.S. Marshal's sale of the property. On February 6, 2002, the district court denied both motions, noting that because the Erkins had not posted a supersedeas bond that would have preserved the status quo pending appeal, the sale could proceed:

Given the Court's decision to deny [the Erkins'] and [the Erkins' children's] ¹ motions to reconsider, the Court will also

deny their motions to stay as they relate to [Federal Rule of Civil Procedure] 62(b), which permits a stay pending disposition of motions for new trial or to alter or amend a judgment. With respect to [the Erkins'] and [their children's] motions to stay, as they relate to an appeal, Rule 62(d) provides that a claimant may post a bond at or after the filing of a notice of appeal, and such a stay is [*430] effective when the bond is approved. Neither [the Erkins] nor [their children] have produced such a bond in this case, nor have they shown any intention to do so. Therefore, the Court will deny the motions.

The foreclosure sale took place as scheduled on February 12, 2002. [*3] The real property lying at the heart of the Erkins' appeal was sold in accordance with the district court's February 6, 2002 memorandum decision and order.

1 In a separate memorandum disposition, filed on December 24, 2003, we resolved the claims of the Erkins' children--Intervenors in a consolidated matter--to the various items of personal property

seized by the U.S. Marshals from the Erkins' real property.

Because the property has been sold, and because no claim for damages was asserted in the district court, the Erkins' claim to the property is moot. "A controversy is moot, and therefore nonjusticiable, when it is no longer 'ongoing,' or where the court is no longer capable of 'affect[ing] the rights of litigants in the case before [it].'" *DiLoreto v. Downey Unified Sch. Dist. Bd. of Educ.*, 196 F.3d 958, 963 n.1 (9th Cir. 1999) (alterations in original).

We decline to review the district court's ruling on the Erkins' due process claims relating to the notice procedures followed for Bianco's execution of his judgment against the Erkins, because the appeal has been rendered moot by the sale of the property.

When mootness occurs during the pendency of the appeal, the proper course is to [*4] vacate the district court's opinion and remand the case for dismissal. *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39, 71 S. Ct. 104, 95 L. Ed. 36 (1950). We therefore VACATE the district court's decision and REMAND with instructions to dismiss.

Docket Activity Report

U.S. District Court -- District of Idaho (LIVE Database) Version 3.0.5

Report Filed Period: 7/2/2007 - 10/25/2007

Case Number/Title	Dates	Category/Event	Docketed by	Notes
1:00-mc-05065-BLW Bianco, et al v. Erkins, et al	<i>Entered:</i> 07/17/2007 07:35:22 <i>Filed:</i> 07/16/2007 <i>Reopened:</i> 10/18/2000	<i>Category:</i> appeal <i>Event:</i> USCA Order <i>Document:</i> <u>362</u>	dks <i>Type:</i> crt	<i>Cause:</i> Civil Miscellaneous Case <i>Office:</i> Boise - Southern <i>Presider:</i> B. Lynn Winmill <i>Jury demand:</i> None <i>Case Flags:</i> CSMDDL LC5 REOPEN
ORDER of USCA (dks,)				
	<i>Entered:</i> 08/14/2007 16:33:44 <i>Filed:</i> 08/13/2007 <i>Reopened:</i> 10/18/2000	<i>Category:</i> appeal <i>Event:</i> USCA Order <i>Document:</i> <u>363</u>	ja <i>Type:</i> crt	
ORDER of USCA. Appellants' motion for clarification and or motion for a more definite statement is denied. (ja,)				
	<i>Entered:</i> 10/04/2007 11:07:33 <i>Filed:</i> 10/04/2007 <i>Reopened:</i> 10/18/2000	<i>Category:</i> appeal <i>Event:</i> USCA Judgment <i>Document:</i> <u>364</u>	dks <i>Type:</i> crt	
USCA JUDGMENT vacating the District Court's decision and remanding with instructions to dismiss (dks,)				
	<i>Entered:</i> 10/05/2007 12:09:59 <i>Filed:</i> 10/05/2007 <i>Reopened:</i> 10/18/2000	<i>Category:</i> order <i>Event:</i> Order <i>Document:</i> <u>365</u>	sbh <i>Type:</i> crt	
DOCKET ENTRY ORDER - On February 6, 2002, the Court entered an Order in this matter [129]. Robert and Bernardine Erkins appealed that Order to the Ninth Circuit Court of Appeals. In a Memorandum 362 issued on July 17, 2007, on which the mandate issued on October 1, 2007 364, the Ninth Circuit vacated this Court's decision and remanded with instructions to dismiss. Accordingly, IT IS HEREBY ORDERED that the action relating to the subject matter of the appeal is DISMISSED as moot. The contempt portion of the action remains stayed pursuant to				

the Court's prior Order 328. Signed by Judge B. Lynn Winmill. (caused to be mailed to non Registered Participants at the addresses listed on the Notice of Electronic Filing (NEF) by Darlene Smith on October 5, 2007.) (sbh)			
<i>Entered:</i> 10/15/2007 12:15:27 <i>Filed:</i> 10/15/2007 <i>Reopened:</i> 10/18/2000	<i>Category:</i> misc <i>Event:</i> Return Mail <i>Document:</i> 366	<i>dks</i> <i>Type:</i> crt	
RETURN MAIL undelivered as to Joseph H. Reinhardt re: 364 USCA Judgment, [365] Order (dks,)			

Selection Criteria for Report

Case number	00-05065
Filed Date	7/2/2007 - 10/25/2007
Entered Date	All
Office	Boise - Southern
Nature of Suit	All
Cause	All
Case type	cv
Case flags	All
Open Cases	No
Closed Cases	No
Event Category	All
Docket Text	full
Sort by	case number
Total Number of Docket Entries: 5	

PACER Service Center			
Transaction Receipt			
10/25/2007 15:09:16			
PACER Login:	rb0018	Client Code:	39528.00015/gbm
Description:	Docket Activity Report	Search Criteria:	1:00-mc-05065-BLW Filed From: 7/2/2007 Filed To: 10/25/2007
Billable Pages:	5	Cost:	0.40