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Neal Bricker, M.D.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

CHARLES P. COPELAND,  
COPELAND WEALTH  
MANAGEMENT, A FINANCIAL  
ADVISORY CORPORATION; and  
COPELAND WEALTH  
MANAGEMENT, A REAL ESTATE  
CORPORATION,

Defendants.

CASE NO. 2:11-cv-08607-R-DTB

OBJECTING LIMITED  
PARTNER NEAL BRICKER  
M.D.'S OPPOSITION TO  
RECEIVER'S MOTION FOR  
ORDER: (1) APPROVING  
RECEIVER'S DISTRIBUTION OF  
ASSETS TO THE INVESTORS  
OF COPELAND PROPERTIES 18,  
L.P.; AND (2) AUTHORIZING  
TERMINATION AND  
CANCELLATION OF  
COPELAND PROPERTIES 18,  
L.P. AS AN ENTITY;  
DECLARATION OF MARSHALL  
BRUBACHER IN SUPPORT  
THEROF

Date: September 16, 2013  
Time: 10:00 a.m.  
Dept: 8, 2nd Floor  
The Honorable Manuel R. Real

1 Thomas C. Hebrank, the Receiver, ("Mr. Hebrank") moves for an order  
2 approving his distribution of Copeland Properties 18, L.P.'s ("CP18") assets to its  
3 investors and approving the termination and cancellation of CP18 as an entity ("the  
4 Motion"). As described more fully below, Mr. Hebrank's Motion is procedurally  
5 flawed and without substantive merit.

6  
7 **I**  
8 **THE FACTS**

9 **A. Mr. Hebrank's Motion**

10 In the Motion, Mr. Hebrank asks this Court to authorize him to distribute  
11 CP18's cash resulting from its sale of a parcel of real property located at 6103  
12 Landmark Center Blvd., Greensboro, NC 27407 ("the North Carolina Property")  
13 without making provision for any payment to Copeland Properties 3, L.P. ("CP3"),  
14 which lent money to CP18. [Doc. Nos. 319-1, pg. 10, lns. 12-22 and 319-2; Exh.  
15 "A" thereto].

16 In his plan of distribution, Mr. Hebrank proposes to first pay off the  
17 following debts of CP18: (1) loans made to CP18 by various Copeland entities  
18 (i.e., Copeland Properties 5, L.P., Copeland Properties 17, L.P., and Copeland  
19 Realty, Inc.); (2) a loan made by Werdna Eure to CP 18; (3) management fees  
20 owed by CP 18 to an unidentified entity, presumably either Copeland Realty, Inc.  
21 or Copeland Wealth Management, a Real Estate Corporation; and (4) accrued  
22 attorneys fees. [Doc. No. 319-2; pg. 5, lns. 14-20, Exh. "A" thereto].

23 Thereafter, Mr. Hebrank proposes to pay CP18's 2012 taxes and the costs  
24 associated with preparing its tax returns. [*Id.*].

25 Finally, Mr. Hebrank proposes to distribute the remaining \$2,257,425.38 to  
26 holders of equity interest in CP 18. [*Id.*].

27 Mr. Hebrank's planned distributions do not include any payments to CP3 or  
28 to Neal Bricker, M.D., a limited partner in CP3 ("Dr. Bricker"). [*Id.*].

1 **B. Dr. Bricker's Proof of Claim and Mr. Hebrank's Erroneous Denial**  
2 **Thereof**

3 In light of the fact that Mr. Hebrank, who is the Receiver appointed by this  
4 Court to act on behalf of CP3, did not appear to be planning to arrange to pursue its  
5 claims against CP18 for amounts loaned by CP3 to CP18, and in light of the fact  
6 that Dr. Bricker was not authorized to act on behalf of CP3 to protect its interests,  
7 Dr. Bricker submitted a Proof of Claim in his individual capacity against CP18  
8 seeking to at least recover, at least, the \$215,000 that he had originally invested  
9 into CP3. [Doc. No. 319-2, pg. 6, lns. 8–21].

10 As Mr. Hebrank acknowledges, Dr. Bricker's claim against CP18 is based  
11 on CP18's indebtedness to CP3 for amounts borrowed from CP3 to purchase the  
12 North Carolina Property. [Doc. Nos. 319-2, pg. 6, lns. 15–21; 319-1, pg. 7, lns.  
13 16-23].

14 Mr. Hebrank unilaterally, and without this Court's approval, denied Dr.  
15 Bricker's claim on the ground that "CP3 did not loan money to CP18, nor did CP3  
16 purchase the Property." [*Id.*]. Mr. Hebrank claims that the monies provided by  
17 CP3 to CP18, which totaled \$2,128,544.11, was actually an investment by CP3  
18 into CP18, not a loan by CP3 to CP18. [*Id.*].

19 Mr. Hebrank's claims in his Motion directly contradict his prior submissions  
20 to this Court wherein he represented that CP3 had loaned \$2,128,544.11 to CP18  
21 and further represented that CP18 had a note payable to CP3 in that amount. [Doc.  
22 No., 47-2, pg. 32 through 33, Section 2003 of CP18's General Ledger entitled  
23 "Note Payable – CP – CP3" reflecting that CP3 loaned a total of \$2,128,544.11 to  
24 CP18].

25 On August 16, 2013, in the face of a Motion by, among others, Dr. Bricker  
26 asking this Court to lift the stay to allow CP3's creditors and CP3's limited  
27 partners to file suit against, among others, CP18, to recoup the amounts loaned by  
28

1 CP3 to CP18, Mr. Hebrank filed this Motion without first making any attempt to  
2 “meet and confer” with counsel for Dr. Bricker. [Brubacher Decl., ¶ 2].

3 **II**

4 **MR. HEBRANK’S MOTION IS PROCEDURALLY FLAWED**

5 California Central District Local Rule 7-3 provides as follows:

6 “[C]ounsel contemplating the filing of any motion shall first contact  
7 opposing counsel to discuss thoroughly, *preferably in person*, the  
8 substance of the contemplated motion and any potential resolution. . .

9 . If the parties are unable to reach a resolution which eliminates the  
10 necessity for a hearing, counsel for the moving party shall include in  
11 the notice of motion a statement to the following effect:

12 ‘This motion is made following the conference of counsel pursuant to  
13 L.R. 7-3 which took place on (date).’” (Emphasis in original).

14 Mr. Hebrank’s Notice of the Motion fails to comply with Local Rule 7-3  
15 because it reflects that Mr. Hebrank’s counsel filed the motion after an unspecified  
16 “attempt to confer with counsel pursuant to” Local Rule 7-3 as opposed to an  
17 actual conference of counsel.

18 The reason for Mr. Hebrank’s attempt to circumvent Local Rule 7-3 is  
19 simple -- Mr. Hebrank’s counsel did not comply with Local Rule 7-3’s  
20 requirements or even attempt to do so. [Brubacher Decl., ¶ 2].

21 For this reason alone, the Court should deny Mr. Hebrank’s Motion.  
22 *Superbalife, Int’l v. Powerpay* 2008 WL 4559752 at \*1 (C.D. Cal. 2008) (denial of  
23 motion to dismiss for failure to comply with Local Rule 7-3).

24 **III**

25 **MR. HEBRANK HAS NOT SHOWN THAT HIS PLANNED**  
26 **DISTRIBUTION IS FAIR OR REASONABLE**

27 As Mr. Hebrank points out in his Motion, this Court may only authorize his  
28 plan of distribution if he shows that it is both fair and reasonable. The burden is on

1 Mr. Hebrank to produce competent evidence that would support a finding that his  
2 planned distribution is both fair and reasonable. *SEC v. Wealth Management, LLC*,  
3 628 F.3d 323, 332-333 (7<sup>th</sup> Cir. 2010) (plan proposed by equitable receiver must be  
4 both fair and reasonable); *SEC v. Wang*, 944 F.2d 80, 88 (2<sup>nd</sup> Cir. 1991) (same).  
5 Mr. Hebrank has failed to do so.

6 The only evidence Mr. Hebrank has provided in support of his claim that his  
7 plan of distribution is fair and reasonable with respect with respect to Dr. Bricker's  
8 Claim and the monies provided by CP3 to CP18 is his self-serving declaration  
9 wherein he opines that he is "informed and believes that CP3 did not loan money  
10 to CP18" and that he is "informed and believes" that the amounts provided by CP3  
11 to purchase the North Carolina Property were an investment by CP3 in CP18 not a  
12 loan by CP3 to CP18. [Doc. No. 319-2, pgs. 6-7, ¶21]. Mr. Hebrank has failed to  
13 produce any of the information he relied on in arriving at his beliefs.

14 The reason for his failure to do so is obvious – there is no such information  
15 or evidence. As described above, Mr. Hebrank's prior submissions to this very  
16 Court clearly reflect that CP3 did, in fact, loan \$2,128,544.11 to CP18,  
17 notwithstanding Mr. Hebrank's recent claims to the contrary. [Doc. No., 47-2, pg.  
18 32 through 33, Section 2003 of CP18's General Ledger entitled "Note Payable –  
19 CP – CP3" reflecting that CP3 loaned a total of \$2,128,544.11 to CP18].

20 Mr. Hebrank must not be allowed to re-classify the monies provided by CP3  
21 to CP18 in an effort to justify his discriminatory treatment of CP3. *Rockwell*  
22 *International v. Hanford Atomic Metal Trades*, 851 F.2d 1208, 1210 (9th Cir.  
23 1988) (doctrine of judicial estoppel "is intended to protect against a litigant playing  
24 'fast and loose with the courts' by asserting inconsistent positions"); *Broderick v.*  
25 *Anderson*, 23 F.Supp. 488, 495 (S.D.N.Y. 1938) ("Plaintiff cannot blow hot and  
26 blow cold as to its position under the facts here."); *Prudential Property & Casualty*  
27 *Ins. Co. v. Superior Court*, 36 Cal.App.4th 275, 278, fn. 3 (1995) ("This court has  
28 noticed an increasing, and disturbing, tendency of counsel to alter argumentative

1 course 180° to suit the prevailing wind of expediency. ‘One may not alter one's  
2 [legal] argument as the chameleon does his color, to suit whatever terrain one  
3 inhabits at the moment.’”).

4 In the event that Mr. Hebrank may attempt to again change course in his  
5 reply papers and belatedly argue that CP18 repaid the \$2,128,544.11 that CP3  
6 loaned to it, the Court should disregard that argument as well as any evidence  
7 belatedly submitted in support thereof. *Zamani v. Carnes*, 491 F3d 990, 997 (9th  
8 Cir. 2007) (“district court need not consider arguments raised for the first time in a  
9 reply brief”). To do otherwise, would be patently unfair to and a violation of Dr.  
10 Bricker’s due process rights. *Wild Fish Conservancy v. National Park Service*,  
11 2012 WL 6615925 (W.D. Wash. 2012) (“Plaintiffs . . . presented a new argument  
12 in their reply . . . , which is procedurally improper and violates due process.”);  
13 *Beaird v. Seagate Tech., Inc.*, 145 F3d 1159, 1164–1165 (10th Cir. 1998) (if the  
14 court relies on new material contained in a reply brief, it must afford the opposing  
15 party a reasonable opportunity to respond).

16 Allowing Mr. Hebrank to make new arguments and to present new evidence  
17 would create a host of issues. For example, assuming that Mr. Hebrank argued that  
18 CP18 repaid \$1,705,000 of the monies lent to it by CP3 by issuing equity interests  
19 in CP18 to certain of CP3’s limited partners, Mr. Hebrank has not offered any  
20 evidence to support such an argument. Among other things, Mr. Hebrank has not  
21 offered any Form K-1s that reflect the initial equity interest of any of CP3’s limited  
22 partners in CP18 or any evidence to show that those Form K-1s totaled \$1,705,000.

23 Even if Mr. Hebrank could belatedly produce evidence showing that CP3 or  
24 any of CP3’s limited partners received equity interests in CP18 totaling  
25 \$1,705,000, he has offered no evidence to explain why CP18 should not be  
26 required to repay to CP3 the remaining amount of the note receivable, \$423,544.11  
27 (i.e., \$2,128,544.11 minus \$1,705,000).

1 Mr. Hebrank may belatedly argue that CP18 is not required to repay the  
 2 remaining amount of the note receivable, \$423,544.11 because CP3 transferred its  
 3 rights thereto to Copeland Realty, Inc. (“CRI”), CP3’s General Partner. However,  
 4 Mr. Hebrank has offered no evidence to substantiate any such transfer or to show  
 5 that any such transfer, which Mr. Hebrank described as ambiguous and complex,  
 6 was legitimately made. [Doc. No. 90, pg. 5 of 16, ln. 11 through pg. 6 of 16, ln.  
 7 12]. The absence of any evidence relating to the \$423,544.11 is, standing alone,  
 8 fatal to this Motion because this Court cannot reasonably be expected to “rubber  
 9 stamp” such a transfer to CRI, an entity that the Receiver accused of using CP3 as  
 10 its “Piggy Bank” and of having perpetrated a fraud upon victims such as Dr.  
 11 Bricker. [Doc. No. 90, pg. 3 of 16, lns. 25-28 (“The General Partner . . . Copeland  
 12 Realty, Inc. [] treated the Receivership Entities as a collective ‘Piggy Bank’ with  
 13 funds flowing freely between entities on an as needed basis.”); Doc. No. 130, pg. 5  
 14 of 29, lns. 3-5 (“This case involves a fraud perpetrated largely upon retired, or soon  
 15 to be retired professionals.”)].

16 For the foregoing reasons, Mr. Hebrank has failed to carry his burden to  
 17 show that his proposed plan of distribution is both fair and reasonable with respect  
 18 to its treatment of CP3 and Dr. Bricker, and as a result, his Motion must be denied.

19 Dated: August 26, 2013

MUNDELL, ODLUM & HAWS, LLP  
 MARSHALL BRUBACHER

21 By: */s/ Marshall Brubacher*  
 22 Marshall Brubacher

23 Attorneys for Objecting Limited Partner Neal  
 24 Bricker, M.D.

