

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE :
: Bankruptcy No. 06-10110 (CSS)
RNI WIND DOWN CORPORATION, :
et al., : Debtors. :
: CHARLES L. GRIMES :
: Appellant, :
: v. : Civil Action No. 06-585 GMS
RNI WIND DOWN CORPORATION, :
et al., : Appellees. :

MEMORANDUM

I. INTRODUCTION

On August 25, 2006, appellant, Charles L. Grimes (“Mr. Grimes”) filed this appeal from an August 23, 2006 order (the “Amended Settlement Order”) of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). On December 19, 2006, appellees, RNI Wind Down Corporation, *et al.* (collectively, the “Debtors”)¹ filed a motion to dismiss this appeal (D.I. 13). On December 14, 2006, Mr. Grimes filed a motion requesting that the court take judicial notice of certain pleadings and orders relating to this appeal that were filed and/or issued in the Bankruptcy Court and in the Ninth Circuit (D.I. 11). These two motions are presently pending before the court. For the following reasons, the court will deny the Debtors’ motion to dismiss

¹ The Debtors are RNI Wind Down Corporation, formerly known as Riverstone Networks, Inc., BlueCoast Software, Inc., The OASys Group, Inc., Riverstone Networks SPC, Inc., and Pipal Systems, Inc.

without prejudice,² and will grant Mr. Grimes's motion for judicial notice.

II. THE PARTIES' CONTENTIONS

The Debtors contend that Mr. Grimes is permanently enjoined from pursuing this appeal. Specifically, the Debtors contend that the plain language of the Bankruptcy Court's September 12, 2006 Order (the "Confirmation Order") and the plan approved by that order (the "Plan")³ expressly and permanently enjoin him from pursuing this appeal. The Debtors further contend that Mr. Grimes's pursuit of this appeal constitutes an impermissible collateral attack on the Confirmation Order. They argue that Mr. Grimes is not (and should not be) permitted to collaterally attack the Confirmation Order because: (1) it is a final order, that (2) he failed to timely appeal, and (3) the time to appeal has since expired.

Mr. Grimes contends that the Debtors' motion to dismiss is without merit. Specifically, he contends that the plain language of the Confirmation Order does not expressly enjoin him from pursuing this appeal. Mr. Grimes also contends that the Bankruptcy Court was aware of this appeal at the time it entered the Confirmation Order, and that it never intended for the Confirmation Order to bar this appeal. Mr. Grimes further contends that at issue in this appeal is whether the Bankruptcy Court had jurisdiction to amend the Amended Settlement Order (not the Confirmation Order), and that he is not collaterally attacking the Confirmation Order insofar as it does not relate to or enjoin him from proceeding with this appeal.

² The court denies the Debtors' motion to dismiss without prejudice to the Debtors' renewing these arguments in their answering brief on the merits.

³ The Joint Plan of Reorganization and Liquidation Under Chapter 11 of the Bankruptcy Code Proposed by the Debtors, the Official Committee of Unsecured Creditors and the Official Committee of Security Holders, as Revised (originally filed on June 30, 2006).

In his motion for judicial notice, Mr. Grimes contends that the court should take judicial notice of the requested documents because: (1) the documents are relevant to this appeal, (2) there would be no prejudice to the Debtors, and (3) the Bankruptcy Court's decision would not be undermined by this court doing so.

III. DISCUSSION

A. Debtors' Motion to Dismiss

After having considered the parties' submissions and the relevant law, the court will deny the Debtors' motion to dismiss the appeal without prejudice to the Debtors renewing these arguments in their answering brief on the merits. *See Grimes v. Pereira, et al.*, No. 05-16588, slip op. at 1 (9th Cir. Apr. 11, 2007) (same).⁴ The court is not prepared at this time to conclude that the plain language of the Confirmation Order and the Plan approved by that order necessarily bar Mr. Grimes from pursuing this appeal. As Mr. Grimes correctly notes, neither the Confirmation Order nor the Plan "expressly" enjoin Mr. Grimes from pursuing *this* appeal.⁵ At present, the court is also not convinced that the Bankruptcy Court actually intended for the Confirmation Order to enjoin this appeal. Certainly when the Bankruptcy Court entered the Confirmation Order, it knew that Mr. Grimes was appealing the Amended Settlement Order.⁶ It also knew that if Mr. Grimes's appeal was successful that the Amended Settlement Order (and not necessarily the Confirmation Order) would be reversed. As it stands, it is, at best, unclear whether the Bankruptcy Court intended for the Confirmation Order to enjoin this appeal. In addition, contrary to the Debtors' claims, the court is

⁴ A copy of the Ninth Circuit's order is included at D.I. 22 (Attachment #1).

⁵ *See, e.g.*, Confirmation Order at ¶ 29; Plan at § 6.10.

⁶ The Confirmation Order was entered by the Bankruptcy Court on September 12, 2006, while the notice of appeal of the Amended Settlement Order was filed on August 25, 2006.

not persuaded that Mr. Grimes's failure to appeal the Confirmation Order or to object to the injunctive provisions of the Plan conclusively foreclose his right to proceed with this appeal. *See, e.g., In re United Merchants & Manufacturers, Inc.*, 138 B.R. 426, 429 (D. Del. 1992) (noting that failure to secure a stay pending appeal in the bankruptcy context is "not per se dispositive of all the issues") (citations omitted). Similarly, the court is not inclined to, at least at this time, conclude that this appeal necessarily constitutes an impermissible collateral attack of the Confirmation Order.

Based on the current record, the court believes that final consideration of this appeal is best reserved until after full briefing on the merits. *Cf. BBC Worldwide, Ltd. v. Bee Load Ltd.*, No. 06-MC-36-GZS, 2006 U.S. Dist. LEXIS 20604, at *2-3 (D. Me. Apr. 10, 2006). Accordingly, the court denies Debtors' motion to dismiss without prejudice, and orders the parties to submit a jointly prepared proposed schedule for filing the answering brief and the reply brief on the merits by no later than October 3, 2008.

B. Mr. Grimes's Motion for Judicial Notice

The court will grant Mr. Grimes's motion for judicial notice. The documents that Mr. Grimes is seeking judicial notice of are all pleadings and orders that relate to issues presented in this appeal, and that were filed and/or issued in the Bankruptcy Court and in the Ninth Circuit subsequent to the designation of the record in this appeal. The court finds that there is no prejudice to the Debtors' by taking judicial notice of the requested documents, and doing so does not in any way undermine the Bankruptcy Court's decision that is the subject of this appeal. *See In re Peregrine Systems*, 311 B.R. 679, 692 (D. Del. 2004). The court also notes that the Debtors did not file any opposition to this motion.

IV. CONCLUSION

For the foregoing reasons, the court will deny the Debtors' Motion to Dismiss the Appeal (D.I. 13) without prejudice, and will grant Mr. Grimes's Motion for Judicial Notice (D.I. 11).

Dated: September 22, 2008

/s/ Gregory M. Sleet
CHIEF, UNITED STATES DISTRICT JUDGE

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ORDER

For the reasons stated in the court's Memorandum of this same date, IT IS HEREBY ORDERED THAT:

1. The Debtors' Motion to Dismiss the Appeal (D.I. 13) is DENIED without prejudice to Debtors renewing the arguments in the answering brief on the merits; and
2. The parties submit a jointly prepared proposed schedule for filing the answering brief and the reply brief on the merits for the court's consideration by no later than October 3, 2008; and
3. Mr. Grimes's Motion for Judicial Notice (D.I. 11) is GRANTED.

Dated: September 22, 2008

/s Gregory M. Sleet
CHIEF, UNITED STATES DISTRICT JUDGE