



Signed and Filed: December 10, 2010

THOMAS E. CARLSON  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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In re ) Case No. 08-32577 SFC  
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JIN FAR LIANG, ) Chapter 13  
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Debtor. )  
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MEMORANDUM RE DEBTOR'S MOTION FOR RECONSIDERATION

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Debtor brought a motion against judgment lien creditor MGM Grand Hotel, LLC (MGM) to avoid MGM's lien against Debtor's residence on the basis that it impaired Debtor's homestead. After a short trial, the court denied the motion, determining that the residence was community property, that the debt owed to MGM was a community obligation, and that the value of the residence was sufficient to pay both the judgment lien and Debtor's homestead exemption. Debtor argued at trial that he was separated from his wife at the time the debt was incurred, but offered no evidence to support that claim. The court found on the basis of the evidence presented at trial that Debtor and his wife were married and living together when the debt was incurred.

1 Debtor then brought the present motion for reconsideration,  
2 seeking to reopen the case to introduce evidence that he and his  
3 wife were separated. At the hearing on the motion for  
4 reconsideration, Debtor then raised for the first time the argument  
5 that the debt was by its very nature not a community obligation,  
6 because it was a gambling debt, citing Cairo v. Cairo, 204 Cal.  
7 App. 3d 1255 (1988).

8 Debtor's motion for reconsideration should be denied. The  
9 case should not be reopened to allow Debtor to introduce evidence  
10 that he was separated when he incurred the debt, because the  
11 evidence (Debtor's own testimony) is not newly discovered evidence  
12 that was not known to Debtor before trial. The Cairo decision did  
13 not hold that a gambling debt may not be enforced against community  
14 property. That case involved the allocation of debt between  
15 spouses upon dissolution of marriage, not the enforcement of a debt  
16 by a creditor.

17 MGM's counter-motion for sanctions should also be denied. The  
18 argument made for imposition of sanctions--that Debtor's motion was  
19 frivolous--indicates that MGM is seeking sanctions under Rule 11  
20 (Bankruptcy Rule 9011). MGM's request must be denied, because the  
21 request for sanctions was not made by a separate motion. See Fed.  
22 R. Bankr. P. 9011(c)(1)(A). The court declines to act on its own  
23 motion. Id. 9011(c)(1)(B).

24 **\*\*END OF MEMORANDUM\*\***

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