

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF HAWAII**

In re ) Case No. 97-03746  
 ) Chapter 11  
UPLAND PARTNERS, )  
 ) Re: Docket No. 3340  
Debtor. )  
\_\_\_\_\_ )

**MEMORANDUM OF DECISION REGARDING  
MOTION TO AMEND FINDINGS, CONCLUSIONS,  
AND JUDGMENT DATED OCTOBER 5, 2005**

On October 6, 2005, the court entered its Memorandum Decision on Trustee’s Motion to Distribute the Remaining Assets of the Estate and Close the Case. William S. Ellis, Jr., who claims he is an unsecured creditor and a party in interest, has moved to amend the Memorandum Decision.

A.

Mr. Ellis insists that the Memorandum Decision is insufficient because it does not “find the facts specially and state separately [the court’s] conclusions of law thereon.” Fed. R. Civ. P. 52(a), made applicable by Fed. R. Bankr. P. 7052 and 9014. Mr. Ellis ignores the fact that rule 52(a) also provides that “it will be sufficient if the findings of fact and conclusions of law . . . appear in an opinion or memorandum of decision filed by the court.”

B.

Mr. Ellis claims that he recently learned that Banana Growers of Hawaii, Inc., was involuntarily dissolved in 1994, and that “[t]his undisclosed fact has extensive ramifications.” Mr. Ellis never describes these “extensive ramifications” and none come to mind. Banana Growers of Hawaii, Inc., apparently has no direct claims against or interests in the debtor or the estate. Rather, it is a limited partner of Kula-Olinda Associates, a secured creditor whose claims have been resolved. It is not likely that the dissolution of a limited partner of a creditor would have any effect on this case. In any event, Mr. Ellis urges the court, in his reply memorandum, not to determine what those ramifications might be. Therefore, this argument has been abandoned.

C.

Footnote one of the Memorandum Decision states that the district court and the Ninth Circuit court of appeals have affirmed a prior order of the court filed on February 13, 2004. Mr. Ellis says that the footnote is incorrect in that the Ninth Circuit did not affirm the order but rather dismissed Mr. Ellis’ appeal because he lacked standing. Mr. Ellis is correct but no amendment is necessary. The footnote was included only for background purposes and to show that the

court's prior findings of Mr. Ellis' misconduct are no longer subject to appellate review.

D.

Mr. Ellis repeats his argument that there should not be a distribution in this case in the absence of a confirmed plan of reorganization. He refers to authorities which were cited or could have been cited regarding his objection to the trustee's motion. Federal Rules of Civil Procedure Rule 59(e), made applicable to bankruptcy cases pursuant to Federal Rules of Bankruptcy Procedure Rule 9023, provides that any motion to alter or amend a judgment should not be granted, absent highly unusual circumstances, unless the court is presented with newly discovered evidence, the court committed clear error, the alteration or amendment is necessary to prevent manifest injustice, or there is an intervening change in the controlling law. See McDowell v. Calderon, 197 F.3d 1253, 1255 (9<sup>th</sup> Cir. 1999). A Rule 59(e) motion may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment. Zimmerman v. City of Oakland, 255 F.3d 734 (9<sup>th</sup> Cir. 2001); Kona Enterprises, Inc. v. Estate of Bishop, 229 F.3d 877 (9<sup>th</sup> Cir. 2000). Therefore, there is no basis for reconsideration of this point.

E.

Mr. Ellis contends that the proposed distribution to creditors must be recomputed for two reasons.

First, he claims that because he and P.F. Three Partners have filed documents entitled “Repudiation” which purport to “disclaim without prejudice” certain distributions, the distributions to other creditors must be increased. Bankruptcy law does not permit a creditor to “repudiate” or “disclaim” a distribution and simultaneously maintain the claim on account of which the distribution is made. Trustees must make distributions to holders of allowed claims. If a claim holder does not want the distribution, the creditor must withdraw the claim. Any other result would create unnecessary administrative headaches for trustees. Similarly, neither Mr. Ellis nor P.F. Three Partners attempts to explain what it means to disclaim a distribution “without prejudice.”

Second, Mr. Ellis argues that there is no basis to make a partial distribution on account of Claim No. 55. Since the court cannot determine from the record (1) why the trustee proposes to pay part of the claim and not other parts and (2) to whom the distribution is to be made, the trustee must file with the court a memorandum by January 13, 2006, explaining the basis for the proposed

distribution on account of Claim No. 55. All responses should be filed by January 27, 2006.

The seal of the United States Bankruptcy Court, District of Hawaii, is circular. It features an eagle with wings spread, perched on a shield. The shield is supported by two figures. The seal is surrounded by the text "UNITED STATES BANKRUPTCY COURT" at the top and "DISTRICT OF HAWAII" at the bottom, separated by two small stars.

*/s/ Robert J. Faris*  
**United States Bankruptcy Judge**  
Dated: 12/15/2005