

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND**

In re: JOCK WEST
Debtor

BK No: 10-14653
Chapter 7

M2MULTIHULL, LLC,
Plaintiff

A.P. No. 11-01021

v.

Not For Publication

JOCK WEST, SHOWTIME, LLC, and
SHOWTIME of NEWPORT, LLC,
Defendants.

MEMORANDUM AND ORDER
(this relates to Doc. #257)

Plaintiff M2Multihull, LLC filed a Renewed Motion for Leave to File a Third Amended Complaint (“Motion”), to which Defendant Jock West (“Defendant”) objects. Plaintiff’s Motion must be denied because there is no pending complaint to amend in light of the Court’s prior dismissal of Plaintiff’s Second Amended Complaint and the entry of judgment in favor of Defendant.

JURISDICTION

The Court has jurisdiction over this matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a). This is a core proceeding in accordance with 28 U.S.C. § 157(b)(2)(I).

PROCEDURAL HISTORY

With leave of the Court, Plaintiff filed a Second Amended Complaint, which Defendant moved to dismiss. After a hearing, the Court granted Defendant’s Motion to Dismiss and entered judgment in favor of Defendant on August 16, 2012. *See* Doc. ## 227 and 228. Plaintiff appealed that order and judgment to the District Court. While the appeal was pending, Plaintiff filed in this

Court a Motion for Leave to File a Third Amended Complaint, which the Court denied without prejudice for lack of jurisdiction while the appeal was pending. After the District Court affirmed the judgment of dismissal on July 15, 2013, Plaintiff filed the instant Motion.

DISCUSSION

After dismissal of the Second Amended Complaint and the entry of judgment, the Court lacks the power to grant a motion to amend the complaint unless post-judgment relief, such as a motion to vacate the judgment under Federal Bankruptcy Rule 9024, has been both sought and granted. *See Acevedo-Villalobos v. Hernandez*, 22 F.3d 384, 389 (1st Cir. 1994), *cert. denied*, 513 U.S. 1015 (1994). In this case, no such post-judgment relief has been granted by the Court or even requested by Plaintiff.¹ On this very issue the Court of Appeals for the First Circuit explained: “The rationale for the principle is unassailable: once judgment has entered, the case is a dead letter, and the [trial] court is without power to allow an amendment to the complaint because there is no complaint left to amend.” *Fisher v. Kadant, Inc.*, 589 F.3d 505, 509 (1st Cir. 2009) (*citing Mirpuri v. ACT Mfg., Inc.*, 212 F.3d 624, 628-29) (1st Cir. 2000)).

¹ Plaintiff’s Motion recites the well-known standard of Federal Civil Rule 15 (applicable to this adversary proceeding under Federal Bankruptcy Rule 7015) that leave to amend is to be freely given when justice so requires, but it ignores the threshold issue that for leave to be given to amend a complaint there must be a complaint pending to amend.

CONCLUSION

For the foregoing reasons, Defendant's Objection is SUSTAINED and Plaintiff's Renewed Motion for Leave to File a Third Amended Complaint is DENIED.

Dated: this 10th day of September, 2013.

By the Court,



Diane Finkle
U.S. Bankruptcy Judge
Date: 9/10/2013