

FILED

JAN 18 2018

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re: ERIK SUNDQUIST and RENÉE)
SUNDQUIST,)
Debtors.)

Case No. 10-35624

ERIK SUNDQUIST and RENÉE)
SUNDQUIST,)
Plaintiffs,)
v.)

Adv. Pro. No. 14-02278

BANK OF AMERICA, N.A.;)
RECONTRUST COMPANY, N.A.; BAC)
HOME LOANS SERVICING, LP,)
Defendants.)

Docket Control No. PSZ-3

**ORDER GRANTING IN PART MOTION TO VACATE JUDGMENT AND OPINION AND
DISMISS ADVERSARY PROCEEDING AS PART OF SETTLEMENT WITH BANK OF
AMERICA**

Erik J. Sundquist and Renée Sundquist ("Plaintiffs") filed their Motion to Vacate Judgment and Opinion and Dismiss Adversary Proceeding as part of Settlement with Bank of America ("Motion to Vacate") on August 15, 2017. The hearing on the Motion to Vacate initially took place on September 26, 2017, at 2:00 p.m. The hearing was continued to October 4, 2017, and subsequently to October 18, 2017, at 11:00 a.m.

On October 18, 2017, Estela O. Pino, of Pino & Associates, and Kenneth Brown, of Pachulski Stang Ziehl & Jones LLP, appeared on behalf of the Plaintiffs, who were also present in Court. Jonathan D. Hacker, of O'Melveny & Meyers LLP, and Le Duong of Reed Smith LLP, appeared by phone on behalf of Bank of America,

1 N.A., for itself and as successor by merger with BAC Home Loans
2 Servicing, LP and ReconTrust Company, N.A. (erroneously sued as
3 "ReconTrust Company") ("Defendants"). Roger N. Heller of Lief
4 Cabraser Heimann & Bernstein LLP, appeared by phone on behalf of
5 the National Consumer Law Center and the National Consumer
6 Bankruptcy Rights Center. Rhonda Goldstein appeared by phone for
7 the Regents of the University of California on behalf of the
8 University of California, Davis School of Law; Berkeley Law,
9 University of California; University of California, Irvine School
10 of Law; and University of California Los Angeles School of Law.
11 Rhonda Goldstein also appeared on behalf of Elise K. Traynum of
12 the Office of the General Counsel, University of California,
13 Hastings College of Law. Other appearances were noted within the
14 Civil Minutes (Adv. Proc. ECF 505).

15 The National Consumer Law Center, the National Consumer
16 Bankruptcy Rights Center, the Regents of the University of
17 California on behalf of the University of California, Davis
18 School of Law; Berkeley Law, University of California; University
19 of California, Irvine School of Law; and University of California
20 Los Angeles School of Law; and the University of California,
21 Hastings College of Law shall hereinafter be collectively
22 referred to as the "Intervenors."

23 During the hearing the Plaintiffs, by and through their
24 attorneys of record, represented to the Court that if the
25 settlement with Bank of America goes forward, the Plaintiffs will
26 voluntarily donate \$300,000 to the Intervenors as follows:

- 27 1. \$75,000, to the National Consumer Law Center; and

- 1 2. \$75,00, to the National Consumer Bankruptcy Rights
- 2 Center; and
- 3 3. \$30,000, to each of the University of California Law
- 4 Schools (University of California, Davis School of Law;
- 5 Berkeley Law, University of California; University of
- 6 California, Irvine School of Law; University of
- 7 California Los Angeles School of Law; and University of
- 8 California, Hastings College of Law).

9 At the conclusion of the hearing, the Court took the matter
10 under submission.

11 Having considered: the Motion to Vacate; the documents filed
12 by Plaintiffs and Defendants in support of the Motion to Vacate;
13 the settlement agreement provided to the court after the hearing
14 for *in camera* review; the arguments presented during the various
15 hearings; the agreements entered into; and the voluntary
16 charitable contributions which the Plaintiffs represented they
17 will make to the Intervenor; and taking into account that the
18 claims asserted by the Plaintiffs against the Defendants have
19 been fully resolved by settlement, and good cause appearing
20 therefor:

21 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

22 1. The Motion to Vacate is granted only to the extent set
23 forth herein; and

24 2. The Judgment issued by this Court on March 23, 2017 (ECF
25 261 on the docket of the Adversary Proceeding) is vacated in its
26 entirety as to Defendants, and is without preclusive effect; and
27

1 3. No adjudication regarding Defendants is sufficiently
2 firm to be accorded conclusive effect within the meaning of
3 Restatement of Judgments (Second) § 13.

4 4. The Court retains sole and exclusive jurisdiction to
5 enforce and interpret this Order; and

6 5. The Court retains sole and exclusive jurisdiction to
7 enter an Amended Judgment with respect to the attorneys' fees
8 awarded to Dennise Henderson, former attorney for the Plaintiffs,
9 and imposing a mandatory injunction on Plaintiffs for the payment
10 of the attorneys' fees awarded to Dennise Henderson; and

11 6. The court retains sole and exclusive jurisdiction over
12 the Plaintiffs'/Debtors' transactions with attorneys pursuant to
13 Section 329 of Title 11 of the United States Code; and

14 7. The adversary proceeding is not dismissed; and

15 8. No opinion rendered in this adversary proceeding is
16 vacated; and

17 9. This adversary proceeding shall be closed forthwith
18 without prior determination of the claims stated against
19 Defendants or of any other pending motion.

20 **IT IS SO ORDERED**

21
22
23 Dated: January 18, 2018

24 
25 UNITED STATES BANKRUPTCY JUDGE
26
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**INSTRUCTIONS TO CLERK OF COURT
SERVICE LIST**

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

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