

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

February 9, 2021 at 1:30 p.m.

1. [17-22887-E-7](#) **SEAN STODDARD**
[19-2119](#)
CARTER ET AL V. STODDARD

**CONTINUED PRE-TRIAL
CONFERENCE
RE: COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT
9-20-19 [1](#)**

Plaintiff's Atty: Steven H. Schultz
Defendant's Atty: Douglas B. Jacobs

Adv. Filed: 9/20/19
Answer: 2/10/20

Nature of Action:
Dischargeability - other

Notes:
Last status conference held 3/5/20. Minutes [Dckt 60].
Continued from 1/6/21 by stipulation of the Parties. Order filed 12/18/20 [Dckt 76]
Defendant's Pre-Trial Statement filed 1/28/21 [Dckt 77]
Creditor's Pretrial Statement filed 2/1/21 [Dckt 80]

The Pre-Trial Conference is XXXXX.
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FEBRUARY 9, 2021 PRE-TRIAL CONFERENCE

SUMMARY OF COMPLAINT

Patsy Carter and Monty Carter, collectively "Plaintiff," have filed a complaint to have the alleged obligations determined nondischargeable. The obligations arise out of medical treatment provided to Plaintiff by Defendant-Debtor. They are asserted to be nondischargeable pursuant to 11 U.S.C. § 523(a)(3)(A).

SUMMARY OF ANSWER

Sean Stoddard, the “Defendant-Debtor,” has filed an Answer (Dckt. 53) specifically admitting and denying the allegations in the Complaint, and three affirmative defenses.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Patsy Carter and Monty Carter allege in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 1, 3, Dckt. 1. In his Answer, Defendant-Debtor Robert Stoddard admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 1, Dckt. 53; Stipulation, Dckt. 48.

The court shall issue an Trial Setting in this Adversary Proceeding setting the following dates and deadlines:

- A. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1.
- B. **Plaintiff** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2021**.
- C. **Defendant** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2021**.
- D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, **2021**.
- E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, **2021**.
- F. The Trial shall be conducted at ----x.m. on -----, **2021**.

The Parties in their respective Pretrial Conference Statements, Dckts. -----, 77, and as stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

Plaintiffs Patsy and Monty Carter

Defendant Sean Stoddard

Jurisdiction and Venue:

Plaintiff Patsy Carter and Monty Carter allege in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 1, 3, Dckt. 1. In his Answer, Defendant-Debtor Robert Stoddard admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 1, Dckt. 53; Stipulation, Dckt. 48.

<p>Undisputed Facts:</p> <ol style="list-style-type: none"> 1. That Sean Stoddard, D.P.M. ("Debtor") recommended total ankle replacement surgery to Patsy Carter ("Creditor"). 2. That Sean Stoddard, D.P.M. performed surgery including a total ankle replacement ("TAR") on Patsy Carter 6/24/16. 3. That Debtor performed the TAR without first conducting an MRI or CT scan. 4. Post-surgically Debtor told Creditor that her surgery was successful, and she was doing very well. 5. Post-surgically, Creditor went on to develop a failed TAR which ultimately resulted in the amputation of her leg, below the knee. 	<p>Undisputed Facts:</p> <ol style="list-style-type: none"> 1. This bankruptcy was filed on April 28, 2017, and the Debtor received a discharge on August 7, 2017. 2. The Debtor is, and at all times relevant was, a licensed Podiatrist and engaged in that medical practice. 3. On or about June 24, 2016, Defendant performed a "total ankle replacement" for Plaintiff, Patsy Carter. 4. On or about September 6, 2018, Plaintiff filed a medical malpractice case against the Defendant. The first time that Defendant became aware of Plaintiffs allegations of malpractice was when he was served with that complaint (several months after it was filed). 5. Defendant re-opened his bankruptcy case on or about May 16, 2019, amended Schedule "F" to include Ms. Carter, and immediately gave notice to Plaintiffs counsel that the alleged debt was included in the bankruptcy. 6. Plaintiff filed this adversary proceeding on September 20, 2019.
<p>Disputed Facts:</p> <ol style="list-style-type: none"> 1. Whether Debtor knew that Patsy Carter was not an appropriate candidate for TAR. 2. Whether Debtor falsely and/or recklessly interpreted Creditor's x-ray as showing arthritis, thereby justifying a TAR surgery. 3. Whether the Debtor falsely misled Creditor into having a surgery she did not need and/or was not an appropriate candidate for. 	<p>Disputed Facts:</p> <ol style="list-style-type: none"> 1. Plaintiff alleges that Defendant fraudulently advised her that the total ankle replacement would improve her use of that leg and foot and would alleviate much of the pain she had been experiencing in that foot. In the alternative, she alleges that Defendant's acts in operating on her ankle were "willful and malicious." 2. Defendant denies making any broad statements or "guarantees" about the success of the surgery. Additionally, he

<p>4. Whether the Debtor falsely misled the Creditor into believing she was doing well and recovering normally after TAR surgery.</p>	<p>adamantly denies that he knew or could have known the extent, if any, of the pain Plaintiff would feel and certainly did not operate on Plaintiff with a willful and malicious intent.</p>
<p>Disputed Evidentiary Issues:</p> <p>1. None Identified.</p>	<p>Disputed Evidentiary Issues:</p> <p>1. None Identified.</p>
<p>Relief Sought:</p> <p>1. Determine Debtor's misconduct was intentional and/or reckless disregard for the health and safety of Creditor, Patsy Carter.</p> <p>2. Debtor's liability to Creditor for her injuries and damages is not discharged by Debtor's bankruptcy.</p>	<p>Relief Sought:</p> <p>1. Plaintiff seeks a determination the Debtor should be responsible for any and all damages sustained by her due to the surgery, and that such obligation is not dischargeable.</p>
<p>Points of Law:</p> <p>1. 11 U.S.C. § 523.</p>	<p>Points of Law:</p> <p>1. 11 U.S.C. § 523(a)(3).</p> <p>Plaintiff must file "a timely request for determination of dischargeability" if the debt is allegedly one within 523§(a) (2) (4) or (6).</p> <p>2. 11 U.S.C. § 523(a)(2).</p> <p><i>In re Shannon</i> (9th Cir. BAP 2016) 553 BR 380,388; <i>In re Sabban</i> (9th Cir. 2010) 600 F.3d 1219, 1222; Elements of nondischargeable fraud.</p> <p>3. 11 U.S.C. § 523(a)(6).</p> <p>Plaintiff must show that the debts were intentionally caused. <i>Kawaauhau v. Geiger</i>, 523 U.S. 57, 63-64 (1998); addressing alleged medical malpractice claim.; <i>Kawaauhau</i>, <i>id at</i> 64, and <i>Ditto v. McCurdy</i> (9th Cir. 2007) 510 F.3d 1070, 1077- 1078.</p>

<p>Abandoned Issues:</p> <ol style="list-style-type: none"> 1. None Identified 	<p>Abandoned Issues:</p> <ol style="list-style-type: none"> 2. None Identified
<p>Witnesses:</p> <ol style="list-style-type: none"> 1. Patsy Carter 2. Monty Carter 3. Sean R. Stoddard, D.P.M. 4. Christopher Kreulen, M.D. 5. Natalie Hannum 6. Olivia Baboso 7. Kelma Cooper 	<p>Witnesses:</p> <ol style="list-style-type: none"> 1. Sean Robeli Stoddard
<p>Exhibits:</p> <ol style="list-style-type: none"> 1. Report of expert, Christopher Kreulen, M.D. 2. Medical records from: Glenn Medical Center; Sean Stoddard, DPM; UC Davis Medical Center; Norman Challburg, M.D.; Oroville Hospital; Twin Oaks Post Acute Rehab; 3. 9/10/12 X-ray of the right ankle from Glenn Medical Center; 7/19/16 X-rays of the right ankle from Diagnostic Labs and Diagnostic; films from UC Davis Medical Center from various dates; imaging studies of the right leg and ankle between 2010 to the present; 4. The pleadings in this case, specifically Creditor's adversary complaint; 5. Manufacturer/use instructions for the subject total ankle replacement device used on Creditor; 	<p>Exhibits:</p> <ol style="list-style-type: none"> 1. Schedules and Summaries. 2. Letter to Plaintiffs' attorney informing him of reopening of the bankruptcy case. 3. Adversary complaint filed by Plaintiffs. 4. Selected pages of Total Ankle Replacement, an Operative Manual, by James K. DeOrio and Selene G. Parekh, Wolters Kluwer, (2014).

<p>6. Witness statements/declarations from people in contact with Mrs. Carter reflecting the condition and physical appearance of Mrs. Carter's leg before and after the Stoddard TAR surgery (they will be able to testify as well, if required);</p> <p>7. Anatomy diagrams of the leg, ankle, and foot;</p> <p>8. Imaging studies of other patients with arthritis, etc. requiring TAR surgery.</p>	
<p>Discovery Documents:</p> <p>1. Deposition testimony of Patsy Carter.</p> <p>2. Deposition testimony of Monty Carter.</p> <p>3. Deposition testimony of Sean R. Stoddard, DPM.</p> <p>4. Deposition testimony of Christopher Kreulen, M.D.</p> <p>5. Discovery- Interrogatories, Set One, propounded to and responded by Patsy Carter and Monty Carter.</p> <p>6. Discovery- Interrogatories and Request for Production of Documents, Set One, propounded to and responded by Sean Stoddard, DPM.</p>	<p>Discovery Documents:</p> <p>1. Plaintiffs' Deposition transcripts will be available to impeach their testimony, if necessary.</p> <p>2. Plaintiffs' expert witness, Dr. Christopher Kreulen, Deposition transcript will be available to impeach his testimony, if necessary.</p>
<p>Further Discovery or Motions:</p> <p>1. None Identified</p>	<p>Further Discovery or Motions:</p> <p>1. None Identified</p>
<p>Stipulations:</p> <p>1. None Identified</p>	<p>Stipulations:</p> <p>1. None Identified</p>

Amendments: 1. None Identified	Amendments: 1. None Identified
Dismissals: 1. None Identified	Dismissals: 1. None Identified
Agreed Statement of Facts: 1. None Identified	Agreed Statement of Facts: 1. None Identified
Attorneys' Fees Basis: 1. Stated fees are requested, contractual or statutory basis not identified in Pre- Trial Statement. At the hearing XXXXXXX	Attorneys' Fees Basis: 1. Stated fees are requested, contractual or statutory basis not identified in Pre-Trial Statement. At the hearing XXXXXXX
Additional Items 1. Creditor is willing to engage discussion regarding taking some testimony by affidavit/declaration. Creditor expects some live testimony will be required. Court reviewed the L.B.R. 9017-1 Alternative Direct Testimony procedure and production of live testimony. XXXXXXX	Additional Items 1. None Identified
Trial Time Estimation: Estimated to be up to five days depending on amount of testimony.	Trial Time Estimation: One-half day with the used of Local Bankruptcy Rule 9017-1 Alternative Direct Testimony Statements

FINAL RULINGS

3. [19-23562](#)-E-13 SHERAZ/TERRA KHAN MOTION FOR RELIEF FROM
AP-1 Thomas Amberg AUTOMATIC STAY

JPMORGAN CHASE BANK, N.A.
VS.

1-6-21 [\[42\]](#)

WITHDRAWN BY M.P.

Final Ruling: No appearance at the February 9, 2021 hearing is required.

The Motion for Relief from the Automatic Stay was dismissed without prejudice, and the matter is removed from the calendar.

JPMorgan Chase Bank, N.A. ("Movant"), having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion for Relief from the Automatic Stay was dismissed without prejudice, and the matter is removed from the calendar.**