

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

February 11, 2021 at 2:00 p.m.

1. [20-20715-E-13](#) **FOUAD MIZYED**
[20-2016](#)
MIZYED V. FAY SERVICING, LLC
ET AL

CONTINUED STATUS CONFERENCE
RE: AMENDED COMPLAINT
9-14-20 [49]

Plaintiff's Atty: Arasto Farsad; Nancy W. Weng
Defendant's Atty: Jana Logan

Adv. Filed: 2/14/20
Answer: none
First Amd. Cmplt Filed: 6/8/20
Answer: none
First Amd. Cmplt Filed: 9/14/20
Answer: none

Nature of Action:
Injunctive relief - other
Declaratory judgment
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:
Continued from 11/18/20 by request of the Parties [Order Staying Proceedings and Continuing Status Conference, Dckt 62]

Joint Updated Status Conference/Pre-Trial Statement filed 1/25/21 [Dckt 68]

The Status Conference is ~~XXXXXXX~~

Review of Second Amended Complaint

The Second Amended Complaint was filed on September 14, 2020. Dckt. 49. The Causes of Action identified in the Second Amended Complaint are: 1st Breach of Contract; 2nd Breach of Implied Covenant of Good Faith and Fair Dealing; 3rd Negligence; 4th Fraudulent Concealment (Cal. C.C.

§ 1710(3); 5th Fraudulent Misrepresentation (Cal. C.C. § 1710(1)); and 6th Unfair or Deceptive Business Practices (Cal. B&P §§ 17200 *et seq.*). The dispute relates to the asserted failure of Defendants to properly apply a \$20,000.00 payment made by Plaintiff-Debtors.

Review of Answer

No answer has been filed to the Second Amended Complaint, these proceedings having been stayed pending the parties participation in dispute resolution mediation.

Review of Joint Status Report

On January 25, 2021, the Parties filed a Joint Updated Status/Pretrial Conference Report. Dckt. 68. The original Scheduling Order (Dckt. 30) issued in this Adversary Proceeding provided for close of discovery on September 30, 2020, and a pre-trial conference to be conducted on November 18, 2020. This Adversary Proceeding was stayed while the Parties attempted to resolve their disputes through a settlement.

The Parties were not able to resolve this matter through mediation, which was concluded December 18, 2020. Though the mediation has concluded, the parties continue a constructive discussion of the issues in an effort to see if a settlement can be achieved.

Discovery is ongoing, with Defendants having provided Plaintiff-Debtor a copy of his entire loan file. Plaintiff-Debtor filed an objection to the claim of Defendant, which was heard on January 26, 2021. That Objection was overruled without prejudice. 20-20715; Order, Dckt. 65.

The Parties believe that they are ready to set a trial date.

The status conference order in this Adversary Proceeding was issued by the judge to whom this matter was previously assigned. The court has received the pre-trial conference statements providing the witnesses, documents, and undisputed facts necessary to schedule a trial.

Additionally, at this time there is not an answer to the Second Amended Complaint. It is not clear to the current judge whether the prior answer filed is to be matched up to the Second Amended Complaint and how the newly added party, the “lender,” U.S. Bank, N.A., as Trustee. A review of the Docket discloses that no answer has been filed by any Defendant in this Adversary Proceeding.

Defendants state that they intend to file a motion to dismiss the Adversary Proceeding, and if that it not granted a motion for summary judgment. There being no answer on file and Defendants advising the court that they will be filing a motion to dismiss, it does not appear prudent to set the matter for trial. Doing so would terminate Defendants ability to file a terminating motion, and with no answer on file, allegations in the Second Amended Complaint would be deemed admitted. 2 MOORE’S FEDERAL PRACTICE, § 8.07[1].

Further Scheduling Order

XXXXXXX

2. [20-20715-E-13](#) **FOUAD MIZYED**
[20-2016](#)
MIZYED V. FAY SERVICING, LLC
ET AL

CONTINUED PRE-TRIAL
CONFERENCE RE: AMENDED
COMPLAINT
9-14-20 [49]

Plaintiff's Atty: Arasto Farsad; Nancy W. Weng
Defendant's Atty: Jana Logan

Adv. Filed: 2/14/20
Answer: none
First Amd. Cmplt Filed: 6/8/20
Answer: none
First Amd. Cmplt Filed: 9/14/20
Answer: none

Nature of Action:
Injunctive relief - other
Declaratory judgment
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:
Continued from 11/18/20 by request of the Parties [Order Staying Proceedings and Continuing Status Conference, Dckt 62]

Joint Updated Status Conference/Pre-Trial Statement filed 1/25/21 [Dckt 68]

The Pre-Trial Conference is ~~XXXXXXX~~

Debtor's Atty: Pro Se

Notes:

Continued from 12/3/20

Operating Report filed: 1/29/21

Notice of Plan Administrator's Post-Confirmation Monthly Compensation Report for Payment of Professional Fees for Services During the Month of:

November 2020 filed 12/18/20 [Dckt 1334]

December 2020 filed 1/25/21 [Dckt 1357]

Order for Appearance of Debtor [re 12/17/20 10:30 a.m. hearing] filed 12/9/20 [Dckt 1325]

[FWP-7] Request to Withdraw Plan Administrator's Motion for Authority to Assign Certain Unexpired Leases and Development Agreement Related to Sale of 343.25 Acres (Business Park) filed 12/16/20 [Dckt 1329]; Order dismissing motion filed 12/23/20 [Dckt 1344]

[FWP-10] Plan Administrator's Motion to Approve Stipulation Granting Leave, Standing and Authority to the Reorganizing Debtor to Continue Prosecution of the Claims and Causes of Action Pending Against LBA RV-Company XXVILL, LP in Adversary Proceeding Case No. 20-09008 filed 12/31/20 [Dckt 1346]; Order granting filed 2/2/21 [Dckt 1368]

Transfer of Claim Other Than for Security [Transferee: U.S. Bank Trust National Association as trustee of Igloo Series IV Trust; Transferor: Wells Fargo Bank, N.A.] filed 1/26/21 [Dckt 1360]

The Post Confirmation Status Conference is XXXXXXX

Focus Management Group, the Plan Administrator under the confirmed Chapter 11 Plan, filed its Quarterly Report (for the period ending December 31, 2020) on January 29, 2021. Dckt. 1364. The information in the Report includes the following. There were \$4,974,996 in receipts and (\$3,914,018) in disbursements in the fourth quarter of 2020. The cash balance held by the Plan Administrator increased to \$1,640,924 during the fourth quarter, from \$579,946 at the start of the quarter. The total payments under the Plan through the end of the fourth quarter have been (\$8,296,069), with the remaining payments totaling (\$66,750,058).

At the Status Conference, the Plan Administrator's counsel reported XXXXXXX

Debtors' Atty: Mark J. Hannon
Trustee's Atty: Estela O. Pino

Notes:

Continued from 12/3/20. Counsel for the Plan Administrator to lodge with the court an appropriate order for the disbursement of the \$25,000.0 by the Clerk of the Court to the Plan Administrator.

[MJH-22] Stipulation and Regarding Proposed *Ex Parte* Order Between the Attorney for the Debtors and the Plan Administrator Gary Farrar filed 12/7/20 [Dckt 1135]; Order for Emergency Status Conference filed 12/15/20 [Dckt 1139]; Supplement to Order filed 12/16/20 [Dckt 1141]

[MJH-21] Stipulation Regarding the \$25,000.00 Held by the Clerk of the Court filed 12/8/20 [Dckt 1137]; Order approving filed 12/9/20 [Dckt 1138]

[BLF-5] Joint *Ex Parte* Motion and Stipulation Regarding Sale of Real Property and Distribution of Proceeds of Sale filed 12/17/20 [Dckt 1142]; Order approving filed 12/18/20 [Dckt 1149]

[Financial Entry / lodged 1/19/21] - "Court order signed 12/9/20 document #1138, funds disbursed to Gary Farrar, Plan Administrator (\$25,000.00) by Treasury on 1/14/21."

Status Report #13 filed 2/4/21 [Dckt 1152]

**The Post-Confirmation Status Conference is continued to 2:00 p.m. on
XXXXXX , 2021.**

February 11, 2021 Post-Confirmation Status Conference

Gary Farrar, the Plan Administrator under the confirmed Chapter 11 Plan, filed Status Report #13 on February 4, 2021. Dckt. 1152. He reports that the final plan payments were issued on January 15, 2021. There are two outstanding checks that have not been negotiated - one for \$210.67 and the other for \$441.60.

The Plan Administrator has requested that Debtor provide an update of the sale of property authorized by the court to make a payment of \$80,000 to USFI. The Plan Administrator reports that Debtor's counsel has advised that the buyer "was not in the country and the closing was delayed." The court's order authorizing the sale of the real property was entered on December 18, 2020. Dckt. 1149.

The Plan Administrator reports that he and his counsel will be filing what are expected to be their final fee applications.

At the Status Conference, **XXXXXXX**

5. [20-90692](#)-E-7 NAVDEEP BALI
5 thru 6

**CONTINUED STATUS CONFERENCE
RE: INVOLUNTARY PETITION
10-21-20 [1]**

Debtor's Atty: Pro Se

Notes:

Continued from 12/17/20.

The Status Conference is continued to 2:00 p.m. on ~~March 25, 2021.~~

On February 5, 2021, a Stipulation for Referral to Bankruptcy Dispute Resolution Program ("BDRP") was filed by Ajay Sood, the Petitioning Creditor; Navdeep Bali, the Involuntary Debtor; and creditors asserting secured claims Cary Hahn and Kanwal Singh. Dckt. 25.

Petitioning Creditor Status Report

Petitioning Creditor Ajay Sood filed an Updated Status Report on February 5, 2021. Dckt. 26. It is reported that the reported possible resolution referenced in the November 19, 2020 Status Conference, and the then represented optimism at the continued Status Conference on December 17, 2020, that resolution could be achieved through a BDRP, has now led to the February 5, 2021 filing of a Stipulation to participate in a BDRP mediation. A proposed order appointing J. Russell Cunningham as a BDRP mediator was lodged with the court on February 8, 2021.

Petitioning Creditor suggests that the Status Conference and the Motion to Set Trial Date be continued approximately 45 days to allow the Parties to put their efforts into the BDRP process.

XXXXXXX

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Status Conference in this Involuntary Bankruptcy case having been conducted, the Parties having stipulated to address this dispute through the Bankruptcy Dispute Resolution Program, and upon review of the pleadings, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Status Conference is continued to **2:00 p.m. on ~~March 25, 2021.~~**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors, parties requesting special notice, and Office of the United States Trustee on December 9, 2020. By the court's calculation, 64 days' notice was provided. 28 days' notice is required.

The Motion to Set Trial Date has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Set Trial Date is continued to 2:00 p.m. on ~~March 25, 2021.~~

Ajay Sood, the Creditor having filed this involuntary Chapter 7 petition ("Creditor"), against Navdeep Bali ("Debtor"), moves the court for an order setting a trial date pursuant to 11 United States Code § 303(h) and Federal Rules of Bankruptcy Procedure 1013(a) in response to the court's Notice requiring that a motion to set trial and a notice of hearing on such motion was issued on November 19, 2020.

Review of the Notice

The court issued a Notice to Petition Creditor(s) on November 19, 2020. Dckt. 14. The Notice states the following:

In reviewing the Court's records, it appears that an answer or response to your Involuntary Petition has been filed. In order for this case to proceed, a Motion to Set Trial Date and a Notice of Hearing with the date and time filled in must be received by the Clerk of the U.S. Bankruptcy Court, by mail to the Sacramento Division Office located at Robert T. Matsui United States Courthouse, 501 I Street, Suite 3-200, Sacramento, CA 95814, or in person at the divisional office indicated below, within twenty-one (21) days from the date of this notice with the

date and time filled in. Self-set calendar procedures and available hearing dates are posted under Court Calendars on the Court's web site (www.caeb.uscourts.gov).

THIS IS THE ONLY REMINDER YOU WILL RECEIVE. If you fail to file the required document(s) within twenty-one(21) days of the date of this notice, the Court will issue a Notice of Intent or Order to Show Cause re Dismissal for failure to prosecute this case.

If you have already complied with the above, please disregard this notice.

Notice, Dckt. 14.

A review of the docket for this case shows that Debtor filed an Involuntary Answer on November 12, 2020. Dckt. 9.

DISCUSSION

Creditor refers to the November 19, 2020 status conference where Creditor, Debtor and a foreclosing creditor “expressed optimism that a resolution could be reached,” and the parties agreed to continue the status conference to December 17, 2020. The hearing having occurred on the same and the civil minutes having been added to the docket on November 20, 2020, it seems that the Notice was automatically issued once Debtor filed the Involuntary Answer.

The Civil Minutes for the November 19, 2020 Status Conference reflect that the parties have been actively working on a settlement to resolve this involuntary bankruptcy case and requested the Status Conference be continued. Civil Minutes, Dckt. 15, at 3. At the continued hearing on December 11, 2020 the court explained that:

The Order issued by the court to file a motion to set a trial date was generated by the left hand at the court, while the right hand was continuing the Status Conference for the Parties to continue in the good faith discussions.

Civil Minutes, Dckt. 21, at 2. At the hearing, Creditor also reported that the parties prefer to handle the matter over BDRP rather than litigating the issues and the court continued the hearing to February 11, 2020. *Id.*

In response to the Notice, Creditor filed this motion despite the update given at the Status Conference to set a trial date. Creditor also requests the court to order Debtor to comply with Federal Rules of Bankruptcy Procedure 1003(b) and 1008 immediately, completely, and under oath so additional creditors may be given the opportunity to join in the petition as contemplated by Rule 1003(b).

Lastly, Creditor requests the court order commencement of discovery pursuant to Rule 1018. At the Status Conference, Creditor had expressed that he is ready to proceed with discovery now that Debtor had filed an Answer.

Rule 1018 provides in part that the rules regarding discovery are applicable in an involuntary petition, specifically Rule 7026, Rule 7028 through Rule 7037.

Stipulation for BDRP

On February 5, 2021, a Stipulation for Referral to Bankruptcy Dispute Resolution Program (“BDRP”) was filed by Ajay Sood, the Petitioning Creditor; Navdeep Bali, the Involuntary Debtor; and creditors asserting secured claims Cary Hahn and Kanwal Singh. Dckt. 25.

Petitioning Creditor Status Report

Petitioning Creditor Ajay Sood filed an Updated Status Report on February 5, 2021. Dckt. 26. It is reported that the reported possible resolution referenced in the November 19, 2020 Status Conference, and the then represented optimism at the continued Status Conference on December 17, 2020, that resolution could be achieved through a BDRP, has now led to the February 5, 2021 filing of a Stipulation to participate in a BDRP mediation. A proposed order appointing J. Russell Cunningham as a BDRP mediator was lodged with the court on February 8, 2021.

Petitioning Creditor suggests that the Status Conference and the Motion to Set Trial Date be continued approximately 45 days to allow the Parties to put their efforts into the BDRP process.

XXXXXXX

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Set Trial Date filed by Ajay Sood, the Creditor having filed this involuntary Chapter 7 petition ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Set Trial Date is continued to **2:00 p.m. on ~~March 25, 2021.~~**

FINAL RULINGS

7. [17-90494-E-7](#) [18-9012](#) DALJEET MANN
EDMONDS V. MANN ET AL

POST JUDGMENT STATUS
CONFERENCE RE: COMPLAINT
7-27-18 [1]

Final Ruling: No appearance at the February 11, 2021 Status Conference is required.

Plaintiff's Atty: Steven S. Altman
Defendant's Atty: unknown

Adv. Filed: 7/27/18
Answer: none

Nature of Action:
Injunctive relief - imposition of stay
Recovery of money/property - fraudulent transfer

Notes:
Set by order of the court filed 12/3/20 [Dckt 96]

Plaintiff's Post Judgment Status Conference Statement filed 1/21/21 [Dckt 98]

**The Post-Judgment Status Conference is continued to 2:00 p.m. on
January 27, 2022.**

February 11, 2021 Status Conference

Judgement Creditor Trustee filed her updated Status Report on January 21, 2021. Dckt. 98. She reports that having secured judgments of \$436,128.79 against Defendant Ninder Mann and \$36,112.74 against Defendant Haleen Mann, she has pursued enforcement thereof. These have included: 1. Recording Abstracts of Judgment; 2. Attempted levy on bank accounts, 3. Attempted sale of the judgments to third-parties; and 4. Informal settlement discussions with Defendants' counsel. None have been successful to date.

The Judgment Creditor Trustee will continue in the prosecution of this judgment.

8. [12-91671-E-7](#) **BOB/CANDI CRAWFORD**
[20-9014](#)
CRAWFORD ET AL V. MARK
GUTIERREZ HAY CO. LLC

STATUS CONFERENCE RE:
COMPLAINT
12-11-20 [1]

Final Ruling: No appearance at the February 11, 2021 Status Conference is required.

Plaintiff's Atty: David C. Johnston
Defendant's Atty: unknown

Adv. Filed: 12/11/20
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property
Declaratory judgment

Notes:
Request for Entry of Default by Plaintiff [on Mark Gutierrez Hay Co. LLC] filed 1/12/21 [Dckt 7]

Entry of Default and Order Re: Default Judgment Procedures filed 1/14/21 [Dckt 8]

<p>The Status Conference is continued to 2:00 p.m. on May 20, 2021.</p>
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FEBRUARY 11, 2021 STATUS CONFERENCE

On January 14, 2021, the default of Mark Gutierrez Hay Co, LLC, the only Defendant named in the Complaint, was entered. Dckt. 8. Plaintiff has 30 days from January 14, 2021, to file a motion, supported by evidence, for entry of a default judgment.

The Complaint seeks to have the court determine that a State Superior Court judgment and abstract issued pursuant thereto are void. The Complaint alleges that the causes of action in the State Court Complaint are pre-petition claims that have been discharged. The Complaint, and all proceeding relating thereto, was filed after the Plaintiff-Debtor commenced the bankruptcy case.

The Status Conference is continued 90 days to allow for Plaintiff to file, have heard, and if granted, judgment entered and post-judgment motions, if any filed and heard.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The default of the one Defendant in this Adversary Proceeding having been entered, Plaintiff-Debtor now being in the time period for the filing of a motion for entry of judgment, which will be set for hearing on 28 days notice, and upon review of the pleadings, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to 2:00 p.m. on May 20, 2021.