UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

February 13, 2020 at 11:00 a.m.

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1. **18-27720-E-13** **DAVID RYNDA**
19-2023

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
10-16-19 [72]

RYNDA V. MACHADO ET AL

Plaintiff's Atty: Tracy L. Wood
Defendant's Atty:
Armando S. Mendez [Elina Machado]
Unknown [Gabriel Machado]

Adv. Filed: 2/11/19
Answer: none [order granting open extension filed 2/27/19]

1st Amd. Cmplt. Filed: 3/3/19
Answer: none
2nd Amd. Cmplt. Filed: 9/17/19
Answer: none
3rd Amd. Cmplt. Filed: 10/16/19
Answer: Elina M. Machado 11/16/19
Counterclaim Filed: 11/16/19
Answer: none

The Status Conference is xxxxxxxxxx

Notes:
Continued from 1/8/20 to be conducted in conjunction with the hearing on the Plaintiff-Debtor's Objection, Motion to Strike, and Motion for Judgment on the Pleadings.

Notice of Unavailability of Counsel [counsel for Debtor] filed 1/28/20 [Dckt 98]

In this Adversary Proceeding the Third Amended Complaint has been filed and Answered. The Counter-Claim has been filed by Elina Machado, the Defendant/Counter-Claimant, with the Answer, but no answer has been filed by David Rynda the Plaintiff/Defendant-Debtor.

Plaintiff/Defendant-Debtor shall file his answer to the Counter-Claim on or before **xxxxxxxxxx**

In the Counter-Claim Defendant/Counter-Claimant asserts her demand for a jury trial. At the hearing the parties addressed this demand and provided the court with the following analysis of why a jury trial is proper in this litigation.

xxxxxxxxxx

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

a. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O). First Amended Complaint, ¶¶ X, X, Dckt. X. The Defendant admits the jurisdiction and that this is a core proceeding. Answer, ¶¶ X, X, Dckt. X. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this is Adversary Proceeding are related to proceedings, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all claims and issues in this Adversary Proceeding referred to the bankruptcy court.

b. Initial Disclosures shall be made on or before **-----, 2020**.

c. Expert Witnesses shall be disclosed on or before **----------, 2020**, and Expert Witness Reports, if any, shall be exchanged on or before **----------, 20209**.

d. Discovery closes, including the hearing of all discovery motions, on **----------, 2020**.

e. Dispositive Motions shall be heard before **----------, 2020**.

f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **------- p.m. on ----------, 2020**.

2. **18-27720-E-13 DAVID RYNDA**
19-2023 TLW-3
RYNDA V. MACHADO ET AL

CONTINUED
OPPOSITION/OBJECTION
TO DEFENDANT'S DEMAND FOR TRIAL
BY JURY, MOTION TO STRIKE
11-18-19 [79]

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 Defendant on November 18, 2019. By the court's calculation, 73 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss Adversary Proceeding has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). 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 Objection to Defendant's Demand for Trial by Jury and Motion to Strike is denied without prejudice.

On November 18, 2019, Plaintiff-Debtor David Rynda filed an Objection to Trial by Jury Demand AND Motion to Strike Defendant's Affirmative Defenses and Counter-Claims, and Deem Admitted Defendant's Responses to Plaintiff's Complaint. The Motion begins with Federal Rules of Civil Procedure 8 and 12, which is incorporated into Federal Rules of Bankruptcy Procedure 7008 and 7012.

Summary of Complaint

The Third Amended Verified Complaint to Quiet Title was filed by the David Rynda, the Plaintiff-Debtor on October 16, 2019. Dckt. 72. The Third Amended Complaint is summarized as follows:

1. The Plaintiff-Debtor is the Chapter 13 debtor in his bankruptcy case (No. 18-2770.)

2. The First Cause of Action is to quiet title to the real property commonly known as 9436 Windrunner Lane, Elk Grove, California ("Property").

3. The Defendants are Elina Machado and Gabriel Machado (collectively "Defendants")

4. Plaintiff-Debtor asserts that on November 22, 2014, Defendants executed and had notarized a quitclaim for the Property to Plaintiff-Debtor.

5. The Quitclaim provisions include:

> For and in consideration of the sum of Ten Dollars ($10,00) and other good and valuable consideration, the receipt of which is hereby acknowledged, we hereby Remise, Release, AND FOREVER Quitclaim: David Rynda, a single person, who address is 14620 East 14th St., San Leando, California 94578, the following real property in the City of Elk Grove, County of Sacramento, State of California, with the following legal description: See attached exhibit A. 9436 Windrunner Lane, Elk Grove, CA

6. Plaintiff-Debtor asserts that he, pursuant to the Quitclaim, is the owner of the Property.

7. Defendants claim an interest adverse to that of Debtor.

8. Plaintiff-Debtor seeks a determination that he is the owner of the Property, and that Defendants, and each of them, have no interest in the Property.

9. The Second Cause of Action is to quiet title against Defendants, asserting such right pursuant to the doctrine of adversary possession.

10. Plaintiff-Debtor asserts that he has been in actual, open, hostile, continuous, and exclusive possession of the Property since November 22, 2014. Further, that there has been more than five years of such possession.

11. Plaintiff-Debtor has been in such possession by virtue of the Quitclaim executed on November 22, 2014, which was recorded by Plaintiff-Debtor on November 27, 2018.

12. Plaintiff-Debtor's possession of the Property for more than five years, being adverse to all other persons, is curative of any defects in the Quitclaim.

13. Plaintiff-Debtor asserts that he has paid all taxes and assessments that have been levied or assessed against the Property during the five years of possession.

Summary of Answer

On November 16, 2019, Defendant Elina Machado ("Defendant-Elina") filed an Answer to the Third Amended Complaint. Dckt. 76. Defendant-Elina's Answer is summarized as follows:

1. Defendant-Elina admits and denies specific allegations in the Complaint.

2. With respect to the Quitclaim, she alleges "the document was signed with conditions and agreements made between the parties that were never performed and the document was not delivered or signed with any intent to transfer the Property.

3. The Answer states twenty five (25) affirmative defenses.

Counter-Claim Filed by Defendant-Elina (identified as Counter-Claimant Elina for purposes of the Counter-Claim)

4. The First Counter-Claim filed by Counter-Claimant Elina alleges that Defendant-Debtor (as Plaintiff-Debtor is reference for the Counter-Claim) has created waste and destruction of the Property while in his possession.

5. Counter-Claimant has suffered financial damages caused by Defendant-Debtor's possession and waste on the Property.

6. The Second Counter-Claim is for cancellation of the Quitclaim.

7. Counter-Claimant asserts that the Quitclaim and other documents have been recorded against the Property without Counter-Claimant's permission.

8. In addition to the Quitclaim, Counter-Claimant asserts that a deed of trust against the Property given to the Defendant-Debtor's brother is for no valid obligation and has been recorded solely to cloud Counter-Claimant's title to the Property.

9. Counter-Claimant seeks a determination that the various instruments recorded against the Property by Defendant-Debtor or with his permission are void.

10. The Third Counter-Claim is for declaratory relief. This relates to liens asserted by third-parties, some of which pre-date Defendant-Debtor's asserted interest in the Property, and some after that time.

It is not clear from the Counter-Claim whether this seeks just a determination as to between Counter-Claimant and Defendant-Debtor, or attempts to obtain an enforceable determination against the third-parties who are not included in the Counter-Claim.

11. For the Fourth Counter-Claim, Counter-Claimant seeks to quiet title to the Property,

with a determination that Defendant-Debtor has no interest therein.

Defendant/Counter-Claimant Elina makes a demand for a jury trial at the end of the Counter-Claim for this action.

REVIEW OF PLAINTIFF'S OBJECTION

The Motion responds to the Complaint's claims with the following grounds:

Objection to Jury Trial

A. Debtor asserts that Defendant-Elina/Counter-Claimant Elina does not have a right to jury trial in the bankruptcy court.

B. The Motion addresses the jury trial rules, but states that Defendant-Elina has no right to a jury trial because "this is bankruptcy court."

C. Further, that Plaintiff-Debtor does not consent to such a jury trial. 28 U.S.C. § 157(e).

Request to Have "Responses" Deemed Admitted

D. Plaintiff points the court to Rule 8 and asserts that Defendant's responses do not meet the basic pleading requirements of Rule 8 and should be deemed admitted.

E. Plaintiff contends that denials must fairly respond to the substance of the allegation, and that a party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must state so, and the statement has the effect of a denial.

F. To support his contention that Defendant's responses should be deemed admitted, Plaintiff points the court to the following:

> A response alleging that the party is without knowledge or sufficient information can be deemed admitted when the matter is: 1) obviously one as to which the defendant has knowledge (*David v. Crompton & Knowles Corp.* (1973, ED Pa) 58 FRD 444, 16 FR Serv. 2d. 1442); 2) when the party does not make "reasonable effort" to obtain knowledge of the fact that even minimal investigation would give defendant sufficient grounds to form a belief

(*Greenbaum v. United States* (1973, ED Pa) 360 F. Supp 784, 17 FR Serv 2d 799); or 3) when asserting this denial is obviously a sham (*Harvey Aluminum Inc. v. NLRB* (1964, CA9) 335 F2d 749, 56 BNA LRRM 2982, 50 CCH LC P 19179).

Objection, at ¶ 31.

G. Plaintiff further argues that Defendant's use of "lack of knowledge or insufficient information" is"reckless" and "disingenuous" and is not permitted by Rule 8(b)(5).

H. Plaintiff asserts that the Affirmative Defenses stated consist of statements of the specific legal affirmative defense, but does not plead the basis for each Affirmative Defense. Therefore, they must be "stricken."

Plaintiff Asserts the Following Affirmative Defenses to Defendant's Counterclaims:

I. CA Statute of Frauds- Civil Code 1624 Plaintiff asserts that Defendant's allegation that there were "conditions and agreements made between the parties that were never performed" must be stricken because there is no mention of such on the quitclaim.

J. CA Statute of Limitations Civil Code 337- CA Statute of Limitations Civil Code 337 has a four-year statute of limitations on claims arising from a written contract. Plaintiff asserts that Defendant's affirmative defenses and counterclaims are barred by the Statute of Limitations because the quitclaim, dated November 22, 2014, is the contract and more than five years have passed since it was signed.

K. Judicial Estoppel- Plaintiff asserts Defendant's affirmative defenses and counter claims are barred by judicial estoppel because claimed to own and reside in the property at issue in her Chapter 13 bankruptcy petition, Case No. 15-21423, dated 2/25/2015. Plaintiff alleges Defendant did not list in her schedules any claims against Plaintiff.

L. Adverse Possession- Plaintiff asserts he has satisfied all elements required by California Code of Civil Procedure §325 and has paid all property taxes for the past five years. Plaintiff claims to be the owner of the property by adverse possession because Defendant failed to file a complaint for quiet title within the preceding five years.

M. Laches- Plaintiff alleges Defendant has known she wanted to take back the house from Plaintiff for at least two years but has not filed a claim for quiet title. Plaintiff asserts he paid money to Defendant per the terms of the contract and has relied on the contract. Plaintiff further alleges to have paid Defendant's payments to the Trustee while she was in Chapter 13 bankruptcy. Plaintiff alleges to have paid the mortgage over the past five years, and prejudice will be caused if he is denied the benefit of his bargain.

N. Waiver- Plaintiff repeats the assertion that Defendant's counterclaims are barred because she did not attempt to sue him for breach of contract or quiet title during the five years he lived in the home.

O. Equitable Estoppel- Plaintiff asserts that if the quit-claimed Defendant signed did not contain all the material facts of their agreement, then she made a misrepresentation of material fact, or she is lying. Plaintiff asserts he relied on the agreement as written on the quitclaim and voiding the contract would be detrimental to him.

P. Ratification- Plaintiff asserts Defendant's acts of selling her home, signing, notarizing and delivering the quitclaim deed to him were done by word or conduct with her full knowledge of the earlier act with the intention of giving validity to the act.

Q. Unclean Hands- Plaintiff alleges that Defendant sold him her home, let him live there and pay the mortgage and utilities for more than five years. Plaintiff alleges he bailed Defendant out on the eve of foreclosure when the home had no equity. Plaintiff claims Defendant is making false allegations that she had a side agreement with him. Plaintiff alleges Defendant committed bankruptcy fraud in her Chapter 13 bankruptcy case.

R. Failure to State a Claim- Plaintiff asserts that Defendant has not stated any counterclaims in her Answer upon which relief can be granted.

DISCUSSION

Demand for Trial by Jury

As to the Right to Jury Trial, Plaintiff asserts that he does not consent to such a trial. Therefore, on his non-consent the right to jury trial in this federal court terminates, if such a right to jury

trial existed. The basis for this is the *procedural rule* as to how a bankruptcy judge addresses whether a party, who has the right to a jury trial, would have a jury trial conducted in front of an Article I bankruptcy judge rather than an Article III district court judge. Federal Rule of Bankruptcy Procedure 9015(b) states in pertinent part (emphasis added):

> (b) Consent To Have Trial Conducted by Bankruptcy Judge. **If the right to a jury trial applies**, a timely demand has been filed pursuant to Rule 38(b) F.R.Civ.P., and **the bankruptcy judge has been specially designated to conduct the jury trial**, the parties **may consent to have a jury trial conducted by a bankruptcy judge** under 28 U.S.C. §157(e) by jointly or separately filing a statement of consent within any applicable time limits specified by local rule.

F.R.B.P. 9015.

Federal Rule of Bankruptcy Procedure 9015 does not create a right to a jury trial, just the procedure to be used to determine whether the trial will be conducted by the Article I bankruptcy judge or the Article III district court judge.

Defendant/Cross-Claimant offers no response to the objection to demand for jury trial. Notwithstanding this lack of response, the court takes seriously the admonition of the Supreme Court in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010), and before granting relief or denying someone of a Constitutional right, such as to a jury trial, the party seeking the relief shall show the court the basis for such relief.

The Objection to demand for jury trial is denied without prejudice.

Motion to Deem Admitted Defendant's Responses to Plaintiff's Complaint and Motion to Strike Affirmative Defenses and Counter-Claims

Plaintiff requests the court deemed admitted Defendant's responses asserting "lack of knowledge or insufficient information." The use (and over use) of denials based on lack of knowledge or insufficient information is based on Federal Rule of Civil Procedure 8(b)(5), which is incorporated into Federal Rule of Bankruptcy Procedure 7008, which provides:

> (5) Lacking Knowledge or Information. A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

The use of this denial practice is discussed in 2 Moore's Federal Practice - Civil § 8.06, which reports:

> [5] Pleading Insufficient Information or Knowledge Permitted in Limited Settings

> If a party is without knowledge or information sufficient to form a belief as to the truth of an averment in a pleading, the party must so state in the responsive pleading. A statement of this type has the same effect as a denial. The statement is subject to the good faith requirements of Rule 11 (see [2], above). A statement of lack of knowledge or information is most appropriate as to matters that are peculiarly within the control of the opposing party. A specific denial should be used as to matters of public knowledge or on which the defendants could have informed themselves with reasonable effort. In other words, denials for lack of information and belief are appropriate only after the party making such a denial has fulfilled its Rule 11 obligation to make an "inquiry reasonable under the circumstances."

The court surveys the "lack of information" denials to determine whether it appears that Defendant is lazily denying to avoid admitting what must be admitted, or whether it appears plausible that the denial, at this time, is within Federal Rule of Civil Procedure 8(b)(5).

> For Paragraph 5, Defendant does not know whether Plaintiff is a debtor in a Chapter 13 case.
>
> For Paragraph 7, Defendant does not know whether Gabriel Machado, her ex-husband, is a natural person residing in Sacramento.
>
> For Paragraph 8, Defendant does not know if Plaintiff does not know the true names of other persons who he wants to name as "DOE defendants" (which, parenthetically, is not a pleading practice permitted in federal court).
>
> For Paragraph 9, Defendant does not know if "This case was commenced by the filing of a bankruptcy petition with the Clerk of this court on 12/12/2019." (Before the court is an adversary proceeding, not the bankruptcy case.)
>
> For Paragraph 10, Defendant does not know if an Order for Relief was entered by the bankruptcy court for the Chapter 13 case.
>
> For Paragraph 11, Defendant does not know when the First Meeting of Creditors occurred.
>
> For Paragraph 12, Defendant does not know that Plaintiff listed the Windrunner property on Schedule A in his bankruptcy case.

At this juncture it does not appear that the above are grossly outside of the lack of a non-bankruptcy trained person who was not a party actively prosecuting a bankruptcy case knowledge. As to the location of the ex-husband, she may not know. Additionally, these lack of information denials do not appear to be related to significant allegations.

Defendant then denies based on lack of information allegations in paragraphs 1, 2, 3, 4, 8, 15, and 16 (Plaintiff having begun renumbering paragraphs for each cause of action rather than having one numbering system in the Third Amended Complaint) as they apply to persons, including all of the unknown (improperly included) "DOE defendants." It is unclear why the Defendant felt the need, or has the ability to deny allegations as to anyone other than her. Defendant has affirmatively denied them for the one person she can - herself.

For Paragraph 5 of the First Cause of Action, provides a standard "denial" of allegations of what a document says as phrased by the Plaintiff. In effect, Plaintiff admits whatever is stated on the exhibit. Professionally, if the statement is accurate then Plaintiff should not waste everyone's time with a "denial," but read the exhibit and affirmatively step up. While not fatally defective, it smacks of "fast and loose play" in the defense.

From a clear and plain reading of the Answer to the Third Amended Complaint, there is no basis for determining the lack of information denials improper and deem them admitted. Second, none of the "denials" appear to be as to the substance of the allegations that go to the merits of the litigation.

The Motion to Deem these denials admissions is denied.

Affirmative Defenses

Additionally, Plaintiff further requests the court to "strike" Defendant's defenses for failure to meet particularity standards.

Defendant states twenty-five items designated as Affirmative Defenses. These appear to be a laundry list of precautionary defenses. While precautionary, they are made with the certifications by both Defendant and Defendant's counsel's arising under Federal Rule of Bankruptcy Procedure 9011.

As to the pleading requirement for affirmative defenses, Moore's Federal Practice Guide is most illuminating in this respect stating that:

> There is a difference in pleading standards between pleading affirmative defenses in an answer and asserting a claim for relief. In summary, affirmative defense pleading should not be subject to the same "plausibility" standard applicable in pleading a claim for relief. For pleading affirmative defenses, Rule 8 requires only that a party "affirmatively state" any avoidance or affirmative defense. By contrast, a pleading asserting a claim for relief must include "a short and plain statement of the claim showing that the pleader is entitled to relief." The Supreme Court, in imposing the plausibility standard for pleading a claim for relief, relied heavily on the rule language purporting to require a "showing" of entitlement to relief, meaning, according to the Supreme Court, that the pleader of a claim for relief must allege sufficient facts to "show" that the claim is

> "plausible" (see §8.04[1]). Having staked the requirement for a "plausibility" requirement in pleading a claim for relief on rule language requiring a "showing" (see §8.04[1][b]), the quite different rule language covering pleading of affirmative defenses should obviate any plausibility requirement. Under Rule 8, the pleader of an affirmative defense need only "state" the defense, but need not "show" anything in order to survive a motion to strike. As noted below, an affirmative defense that an action is barred by the statute of limitations may be pleaded without specificity, merely by asserting it (see [6], below).

2 Moore's Federal Practice - Civil § 8.08[1] (2019)

Moore's continues, stating that some district court decisions have begun applying a *Twombly* analysis to affirmative defenses. Moore's addresses why such a "plausibility standard" analysis is not consistent with the pleading requirements as stated in Rule 8 for affirmative defenses, "may state any affirmative defense," as compare for stating a claim, "a short plain statement of the claim showing that the pleader is entitled to the relief...." Fed. R. Civ. P. 8(c)(1) and (a)(2).

Interestingly, in the Rutter Group Practice Guide, Federal Civil Procedure Before Trial, Calif. & 9th Cir. Editions ¶ 8:1057, the issue of "shotgun affirmative defenses" is addressed.

> (e) [8:1057] Limitation—"shotgun answers": Some courts look with disfavor on the common practice of listing a number of conclusory affirmative defenses, none responding to a particular claim. This "shotgun" form of pleading may violate Rule 8(b)(1)(A)'s requirement that a party "state in short and plain terms its defenses to each claim asserted against it." Courts may intervene *sua sponte* to require repleading in such cases. [See *Byrne v. Nezhat* (11th Cir. 2001) 261 F3d 1075, 1133, fn. 114 (abrogation on other grounds recognized by *Jackson v. Bank of America, N.A.* (2018) 898 F3d 1348)].

In reviewing some of the defenses in Defendant's Answer, they appear to be the boilerplate affirmative defenses that get copied from answer to answer in a law firm. But often, such are stated because the defendant needs to conduct discovery to flesh them out.

Correspondingly, the plaintiff can propound discovery requiring all the grounds to be disclosed. If it turns out no such grounds existed, then the plaintiff can seek to recover the costs and expenses of having to address such baseless affirmative defenses.

At this juncture, the Affirmative Defenses squeak by the Motion to Strike, the court confident that it can address any improper gamesmanship if the defenses have not been stated in good faith and consistent with the Rule 9011 certifications, as well as other statutory, rule, and inherent powers of the court to address improper conduct if it exists.

Based on the above, the Motion to Strike is denied without prejudice.

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 Objection to Trial by Jury Demand AND Motion to Strike Defendant's Affirmative Defenses and Counter-Claims, and Deem Admitted Defendant's Responses to Plaintiff's Complaint filed by David Jerome Rynda ("Plaintiff") 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 Objection to Trial by Jury Demand AND Motion to Strike Defendant's Affirmative Defenses and Counter-Claims, and Deem Admitted Defendant's Responses to Plaintiff's Complaint, and each of them, are denied without prejudice.

3. **18-27720-E-13 DAVID RYNDA**
19-2023 TLW-4

RYNDA V. MACHADO ET AL

CONTINUED MOTION FOR JUDGMENT ON THE PLEADINGS
1-18-19 [85]

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant and Defendant's Attorney on November 18, 2019. By the court's calculation, 73 days' notice was provided. 14 days' notice is required.

The Motion for Judgment on the Pleadings was not properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). See L.B.R. 9014-1(f)(2)(A).

The notice having been given and opposition filed, sufficient notice has been given. The court will rule on the merits of the Motion.

The Motion for Judgment on the Pleadings is denied.

David Jerome Rynda ("Plaintiff") filed ths adversary proceeding on February 11, 2019. Dckt. 1. Plaintiff filed the instant motion on November 18, 2019.

On November 18, 2019, Plaintiff filed the instant Motion for a Judgment on the Pleadings pursuant to Federal Rule of Civil Procedure 12(c). Dckt. 85. The court first reviews the Complaint, Answer, Cross-Complaint and Cross-Answer.

Summary of Complaint

The Third Amended Verified Complaint to Quiet Title was filed by David Rynda, the Plaintiff-Debtor on October 16, 2019. Dckt. 72. The Third Amended Complaint is summarized as follows:

A. The Plaintiff-Debtor is the Chapter 13 debtor in his bankruptcy case (No. 18-2770).

B. The First Cause of Action is to quiet title to the real property commonly known as 9436 Windrunner Lane, Elk Grove, California ("Property").

C. The Defendants are Elina Machado and Gabriel Machado (collectively "Defendants").

D. Plaintiff-Debtor asserts that on November 22, 2014, Defendants executed and had notarized a quitclaim for the Property to Plaintiff-Debtor.

E. The Quitclaim provisions include:

> For and in consideration of the sum of Ten Dollars ($10,00) [sic] and other good and valuable consideration, the receipt of which is hereby acknowledged, we hereby Remise, Release, AND FOREVER Quitclaim: David Rynda, a single person, who address is 14620 East 14th St., San Leando, California 94578, the following real property in the City of Elk Grove, County of Sacramento, State of California, with the following legal description: See attached exhibit A. 9436 Windrunner Lane, Elk Grove, CA

F. Plaintiff-Debtor asserts that he, pursuant to the Quitclaim, is the owner of the Property.

G. Defendants claim an interest adverse to that of Debtor.

H. Plaintiff-Debtor seeks a determination that he is the owner of the Property, and that Defendants, and each of them, have no interest in the Property.

I. The Second Cause of Action is to quiet title against Defendants, asserting such right pursuant to the doctrine of adversary possession.

J. Plaintiff-Debtor asserts that he has been in actual, open, hostile, continuous, and exclusive possession of the Property since November 22, 2014. Further, that there has been more than five years of such possession.

K. Plaintiff-Debtor has been in such possession by virtue of the Quitclaim executed on November 22, 2014, which was recorded by Plaintiff-Debtor on November 27, 2018.

L. Plaintiff-Debtor's possession of the Property for more than five years, being adverse to all other persons, is curative of any defects in the Quitclaim.

M. Plaintiff-Debtor asserts that he has paid all taxes and assessments that have been levied or assessed against the Property during the five years of possession.

Summary of Answer

On November 16, 2019, Defendant Elina Machado ("Defendant-Elina") filed an Answer to the Third Amended Complaint. Dckt. 76. Defendant-Elina's Answer is summarized as follows:

1. Defendant-Elina admits and denies specific allegations in the Complaint.

2. With respect to the Quitclaim, she alleges "the document was signed with conditions and agreements made between the parties that were never performed and the document was not delivered or signed with any intent to transfer the Property.

3. The Answer states twenty five (25) affirmative defenses.

Counter-Claim Filed by Defendant-Elina (identified as Counter-Claimant Elina for purposes of the Counter-Claim)

1. The First Counter-Claim filed by Counter-Claimant Elina alleges that Defendant-Debtor David Rynda (as Plaintiff-Debtor is reference for the Counter-Claim) has created waste and destruction of the Property while in his possession.

2. Counter-Claimant has suffered financial damages caused by Defendant-Debtor's possession and waste on the Property.

3. The Second Counter-Claim is for cancellation of the Quitclaim.

4. Counter-Claimant asserts that the Quitclaim and other documents have been recorded against the Property without Counter-Claimant's permission.

5. In addition to the Quitclaim, Counter-Claimant asserts that a deed of trust against the Property given to the Defendant-Debtor's brother is for no valid obligation and has been recorded solely to cloud Counter-Claimant's title to the Property.

6. Counter-Claimant seeks a determination that the various instruments recorded against the Property by Defendant-Debtor or with his permission are void.

7. The Third Counter-Claim is for declaratory relief. This relates to liens asserted by third-parties, some of which pre-date Defendant-Debtor's asserted interest in the Property, and some after that time.

It is not clear from the Counter-Claim whether this seeks just a determination as to between Counter-Claimant and Defendant-Debtor, or attempts to obtain an enforceable determination against the third-parties who are not included in the Counter-Claim.

8. For the Fourth Counter-Claim, Counter-Claimant seeks to quiet title to the Property, with a determination that Defendant-Debtor has no interest therein.

Defendant/Counter-Claimant Elina makes a demand for a jury trial at the end of the Counter-Claim for this action.

Defendant Gabriel Machado Response

Defendant-Debtor Gabriel Machado has not filed an answer or other responsive pleading to the Complaint.

MOTION FOR JUDGMENT ON THE PLEADINGS

On November 18, 2019, Plaintiff/Defendant Debtor filed the instant Motion for a Judgment on the Pleadings pursuant to Federal Rule of Civil Procedure 12(c). Dckt. 85. Plaintiff asserts:

A. The counterclaims alleging Defendant never intended to sell her home to Plaintiff are in very broad and overly generalized terms.

B. The Court should not ignore the Statute of Frauds because Defendant admits she delivered a signed and notarized quitclaim deed to Plaintiff.

C. Defendant asks the Court to ignore that Plaintiff has gained title by adverse possession.

D. Plaintiff has been the only person to pay the mortgage payments since Defendant sold him her home.

E. Both counterclaims, Waste and Cancellation of Instruments, are mere legal conclusions or recitals of the elements of the cause of action.

F. Defendant has not plead how any conduct by Plaintiff can cause damages or waste to Defendant.

G. Defendant has not specifically plead how Plaintiff's recording of his quitclaim deed and liens on the property causes harm to Defendant.

OPPOSITION

On January 16, 2020, Defendant filed an Opposition to the Motion. Dckt. 94. Defendant argues that:

1. Defendant contends that transfer of title requires more than physical delivery. Rather, to determine if Plaintiff has a present ownership interest in the real property the court needs to consider the intent of the grantor.

2. Plaintiff does not have legal ownership by adverse possession because the continuous and uninterrupted possession of property for a period of five years is tolled when litigation is filed.

3. Plaintiff has not "perfected an ownership" in the property and Defendant continues to have an interest in the property.

4. Plaintiff has created waste by the harmful use and destruction of the subject property.

5. Defendant is not required to state how Plaintiff's conduct caused damages or waste to Defendant.

6. Plaintiff has recorded liens to "create a cloud on title," thus these liens should be declared void and cancelled because they have caused Defendant financial damage.

APPLICABLE LAW

Federal Rule of Civil Procedure 12(c) Standard

On a motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c), the allegations of the non-moving party must be accepted as true, while the allegations of the moving party, which have been denied, are assumed to be false. *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc*., 896 F.2d 1542, 1548 (9th Cir. 1989). Judgment on the pleadings is proper when the moving party

clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law. Id. Dismissal is proper only if it appears beyond a doubt that the plaintiff can prove no set of facts in support of its claim that would entitle him to relief. *New.Net, Inc. v. Lavasoft*, 356 F. Supp. 2d 1090, 1115 (C.D. Cal. 2004). While the court must construe the complaint and resolve all doubts in the light most favorable to the plaintiff, the court does not need to accept as true conclusory allegations or legal characterizations. *Id.* (citing *General Conference Corp. of Seventh-Day Adventists v. Seventh-Day Adventist Congregational Church*, 887 F.2d 228, 230 (9th Cir. 1989); *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 810 (9th Cir. 1988)).

A motion for judgment on the pleadings based on Federal Rule of Civil Procedure 12(c) is a functional equivalent of a motion to dismiss under Federal Rule of Civil Procedure 12(b), requiring the same underlying analysis. *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). Thus, for a complaint to withstand a Rule 12(c) motion for judgment on the pleadings, it must contain more detail than "bare assertions" that are "nothing more than a formulaic recitation of the elements" required for the claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009). Courts must draw upon their "experience and common sense" when evaluating the specific context of the complaint and whether it contains the necessary detail to state a plausible claim for relief. Id. at 679. The factual content on the face of the complaint—not conclusory statements in the pleading—and reasonable inferences drawn from those facts must plausibly suggest that the plaintiff could be entitled to relief for the pleading to survive a Rule 12(c) motion. See *id*. at 677.

DISCUSSION

Judgment on the Pleadings requires that the moving party shows that no material issues of fact remains to be resolved and that it is entitled to judgment as a matter of law. In this case there are several material issues of fact still in dispute.

In reviewing the Counter-Claim, Plaintiff/Defendant-Debtor is correct, it could be plead in a better way. But much of what could be construed as shortcomings is what discovery is for.

The Third Cause of Action in the Counter-Claim seeks relief pursuant to California Code of Civil Procedure § 1060 - declaratory relief. First, California Code of Civil Procedure § 1060 is a procedural, not a substantive law provision. Given that this is a federal court, if Counter-Claimant is seeking relief from a federal court, Counter-Claimant should look to federal law as the basis for such relief.

With respect to the relief, it does appear to only seek a determination as between the Counter-Claimant and the Defendant-Debtor as to between them, who in the future may be liable to the other, if the obligation is not paid. No relief as to the asserted liens is sought. It is possible that Counter-Claimant may state a basis for declaratory relief under federal law, if all that Counter-Claimant seeks is declaration of future responsibilities and not any determination as to the asserts liens against the Property.

The court denies the Motion for Judgment on the Pleadings. While the Counter-Claim could be better drafted, it gets past the present Motion.

The Counter-Claim contains some interesting allegations. Counter-Claimant asserts in Paragraph 1 of the Counter-Claim that the Quit Claim Deed was "created solely to create a cloud on title and to interfere with [her] rights . . . ." However, looking at the Quitclaim attached as Exhibit A to the Third Amended Complaint, Dckt. 72 at 13, the Quitclaim is signed by the Counter-Claimant herself. Thus, her contention appears to be that "I, the Counter-Claimant, created this Quitclaim Deed solely for the purpose of creating a cloud on title to property that I owned, so that I would impair my own rights in the property."

What is clear is that hot, open, contentious disputes exist between the Plaintiff/Defendant-Debtor and the Defendant/Counter-Claimant. It is also clear that their battles and the conduct of their attorneys has the nature of a Family Court dissolution. The economics do not matter, it's the principle of the thing - which equates to big principal paid to the attorneys and little principal left for the parties.

While the parties could carefully parse through the pleadings of their counter parts and amended and re-amended pleadings be filed, the court is convinced that the pleadings will not get any better.

The Counter-Claim gets past this Motion for Judgment on the Pleadings. It sufficiently states the basis for the claims asserted, not merely a legal demand for payment/relief.

The Motion is denied.

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 for Judgment on the Pleadings filed by David Jerome Rynda ("Plaintiff") 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 Motion is denied.

4. **17-22887-E-7** **SEAN STODDARD** **CONTINUED STATUS CONFERENCE**
19-2119 **RE: COMPLAINT**
9-20-19 [1]

CARTER ET AL V. STODDARD

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

Adv. Filed: 9/20/19
Answer: none

Nature of Action:
Dischargeability - other

Notes:
Continued from 1/30/20 to be conducted in conjunction with the Motion to Dismiss this Adversary Proceeding.

[DBJ-5] Stipulation of Parties Regarding Defendant's Motion to Dismiss this Adversary Complaint and Setting Trial Venue filed 2/4/20 [Dckt 48]; Order pending

5. **17-22887-E-7** **SEAN STODDARD** **CONTINUED MOTION TO DISMISS**
19-2119 **DBJ-5** **ADVERSARY PROCEEDING/NOTICE OF REMOVAL**

CARTER ET AL V. STODDARD **10-14-19 [9]**

Final Ruling: No appearance at the February 13, 2020 hearing is required.

The Motion to Dismiss Adversary Complaint is dismissed without prejudice.

Sean Robert Stoddard ("Defendant-Debtor") having filed a Notice of Withdrawal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on February 10, 2020, Dckt. 51; no prejudice to the responding party appearing by the dismissal of the Motion; Debtor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Patsy Carter and Monty Carter ("Plaintiffs"); the Ex Parte Motion is granted, Defendant-Debtor's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 Dismiss Adversary Complaint filed by Sean Robert Stoddard ("Defendant-Debtor") having been presented to the court, Debtor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 51, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss Adversary Complaint is dismissed without prejudice.