

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: TUESDAY

DATE: FEBRUARY 20, 2018

CALENDAR: 10:00 A.M. CHAPTER 7 ADVERSARY PROCEEDINGS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [17-13859](#)-A-7 **IN RE: KYLE PENNINGTON**
[17-1091](#)

STATUS CONFERENCE RE: COMPLAINT
12-16-2017 [[1](#)]

MARTINEZ V. PENNINGTON
KEVIN LITTLE/ATTY. FOR PL.
RESPONSIVE PLEADING

No Ruling

2. [16-11467](#)-A-7 **IN RE: JERRY/PAMELA STEVENS**
[17-1078](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL
1-11-2018 [[20](#)]

HAWKINS V. STEVENS ET AL
ROBERT HAWKINS/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Adversary Complaint Objecting to Discharge
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the respondent is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

DISMISSAL UNDER RULE 7041

"Rule 41 [of the Federal Rules of Civil Procedure] applies in adversary proceedings, except that a complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the trustee, the United States trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions which the court deems proper." Fed. R. Bankr. P. 7041. "Most bankruptcy judges require a plaintiff seeking to dismiss a § 727 action to give notice to any trustee appointed in the case, the U.S. Trustee and all creditors, informing the noticed parties they have a right to substitute in as plaintiff in the action instead of having the action dismissed."

Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 20:264, at 20-37 (rev. 2014); accord *In re Speece*, 159 B.R. 314, 321 (Bankr. E.D. Cal. 1993) (citing Fed. R. Bankr. P. 7041) ("[T]he rules of procedure forbid voluntary dismissal without notice to the case trustee and to the United States trustee, either of whom were entitled to bring the action in the first instance, so that they may have an opportunity to protect the rights of their constituencies.").

Plaintiff Robert Hawkins has moved to dismiss the complaint in the present adversary proceeding. Rule 7041 applies. Notice has been given to all creditors, the trustee, and the U.S. Trustee, and none has objected or requested to be substituted in for the plaintiff. Accordingly, the court will grant the motion and dismiss the adversary complaint.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Plaintiff Robert Hawkins's motion to dismiss the complaint objecting to discharge under § 727 has been presented to the court and notice has been provided to all creditors, the case trustee, and the U.S. Trustee. Having entered the default of respondent creditors, the case trustee, and the U.S. Trustee for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court orders that the complaint in this adversary proceeding be dismissed without prejudice under Fed. R. Bankr. P. 7041 and Fed. R. Civ. P. 41(a)(2). A complaint objecting to discharge under § 727 may be re-filed by the plaintiff or another creditor, the case trustee, or the U.S. Trustee, subject to the limitations of Fed. R. Bankr. P. 4004.

3. [16-11467](#)-A-7 **IN RE: JERRY/PAMELA STEVENS**
[17-1078](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT
8-23-2017 [[1](#)]

HAWKINS V. STEVENS ET AL
ROBERT HAWKINS/ATTY. FOR PL.

Final Ruling

The adversary proceeding dismissed, the status conference is concluded.

4. [15-11079](#)-A-7 **IN RE: WEST COAST GROWERS, INC. A CALIFORNIA CORPORATION**
[16-1101](#)

RESCHEDULED PRE-TRIAL CONFERENCE RE: COMPLAINT
10-26-2016 [[1](#)]

HAWKINS V. RDX, INC.
HAGOP BEDOYAN/ATTY. FOR PL.
RESPONSIVE PLEADING

No Ruling

5. [17-12781](#)-A-7 **IN RE: DALIP NIJJAR**
[17-1065](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
5-5-2017 [[63](#)]

SALVEN V. NIJJAR
RESPONSIVE PLEADING

No Ruling

6. [17-12781](#)-A-7 **IN RE: DALIP NIJJAR**
[17-1066](#)

STATUS CONFERENCE RE: AMENDED COMPLAINT
1-31-2018 [[151](#)]

SALVEN V. NIJJAR ET AL

No Ruling

7. [17-12781](#)-A-7 **IN RE: DALIP NIJJAR**
[17-1066](#) [GMJ-3](#)

CONTINUED MOTION TO EXPUNGE
11-1-2017 [\[96\]](#)

SALVEN V. NIJJAR ET AL
DAVID GILMORE/ATTY. FOR MV.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Motion to Expunge Lis Pendens and for Attorneys Fees

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Denied

Order: Civil minute order

Virpal K. Nijjar, VK Nijjar Farms, LLC and Nijjar Farm moves to expunge the lis pendens filed by trustee James Salven's predecessor trustee Kevin Kubie. Salven opposes the motion.

DISCUSSION

Expungement of the Lis Pendens

As one commentator noted, "A lis pendens will be expunged without a bond if the court finds either: [1] Plaintiff's complaint does not contain a "real property claim" (i.e., one affecting title or possession of specific real property or use of an easement, etc.; CCP § 405.4). [CCP § 405.31 (emphasis added)][2] Or, the claimant "has not established by a preponderance of the evidence the probable validity of the real property claim." [CCP § 405.32 (emphasis added)]." Weil & Brown, *California Civil Procedure Before Trial*, Law and Motion, Motion to Expunge Lis Pendens § 9:429 (Rutter Group 2017). The trustee bears the burden of proof. Cal. Code of Civ. P. 405.32.

Real Property Claim

"The allegations of the complaint determine whether a "real property claim" is involved; no independent evidence is required. [*Urez Corp. v. Sup.Ct. (Keefer)* (1987) 190 CA3d 1141, 1149, 235 CR 837, 842—decided under former law, but principle probably still valid]. **A "real property claim" is any cause of action which, if meritorious, would affect: [1] title to, or the right to possession of, specific real property; or [2] the use of an easement identified in the pleading (other than an easement obtained pursuant to statute by any regulated public utility). [CCP § 405.4]. *Id.* at 9:431. (emphasis added).**

It is well settled that fraudulent transfer actions will support recordation of a notice of pendency of action. "A suit to set aside a fraudulent conveyance of real property. [*Kirkeby v. Sup.Ct. (Fascenelli)* (2004) 33 C4th 642, 649, 15 CR3d 805, 809-810; *Hunting*

World, Inc. v. Sup.Ct. (Bogar) (1994) 22 CA4th 67, 72, 26 CR2d 923, 926 (citing text)]." *Id.* at § 9:43.5.

Here, the trustee challenges transfers of four parcels of real property, albeit through an entity. This is a sufficient nexus to real property to satisfy California Code of Civil Procedure § 405.31.

Probable Validity

"To avoid a motion to expunge under CCP § 405.32, the burden is on the lis pendens claimant (plaintiff) to establish the "probable validity" of the real property claim "by a preponderance of the evidence." [CCP § 405.32]." *Id.* at 9:436. "'Probable validity" means "it is more likely than not that the (plaintiff) will obtain a judgment against the defendant on the claim." [CCP § 405.3 (emphasis and parentheses added)]." *Id.* at § 9:436.1.

In a close case, the court finds that the evidence offered in opposition to the motion tips in favor of the probable validity of the trustee's claim. Exhibit in Support of the Trustee's Memorandum of Points and Authorities, November 28, 2017, ECF # 106. In doing so, the court considers the totality of the evidence in this complex case and need not conduct a minitrial on each of the sub-issues, e.g., statute of limitations, unresolved allegations of community property and transmutation. By way of illustration only, the court believes that the trustee's evidence gives rise to an inference that neither spouse resided in Nevada when the divorce occurred and, if so, that the marital dissolution judgment is void. *Baltan v. Bledsoe (In re Bledsoe)*, 569 F.3d 1106 (state law governs); *Crouch v. Crouch*, 28 Cal.2d 243, 249 (1946) ("Where neither party is domiciled within the state, no divorce can validly be granted and all proceedings, as well as the judgment, are void."). The trustee has proffered sufficient evidence from which it is more likely than not that the trustee will prevail on at least some of the real property claims.

Attorney's Fees

"The court is required to "direct" an award to the prevailing party of the reasonable attorney fees and costs of making or opposing the motion unless it finds that either: [1] "the other party acted with substantial justification"; or [2] "other circumstances make the imposition of attorney's fees and costs unjust." [CCP § 405.38 (emphasis added)]." *Id.* at § 9:463.

The underlying relief, i.e., expungement, denied, the defendant's request for attorney's fees is also denied.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Virpal K. Nijjar, VK Nijjar Farms, LLC and Nijjar Farm's motion has been presented to the court. Having considered the motion, opposition and reply, ,

IT IS ORDERED that the motion is denied.