

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

February 21, 2018, at 2:00 p.m.

-
1. [12-41422-E-13](#) [16-2057](#) **DAVID/ANNA MONTOYA** **Peter Cianchetta** **PRE-TRIAL CONFERENCE RE:
AMENDED COMPLAINT OBJECTING TO
PROOF OF CLAIM AND RELATED
STATE CAUSES OF ACTION
3-25-16 [7]**
- MONTOYA, JR. ET AL V. OCWEN
LOAN SERVICING, LLC ET AL**

Plaintiff's Atty: Peter L. Cianchetta

Defendant's Atty: Dhruv M. Sharma; Brian A. Paino; Mike Aleali

Adv. Filed: 3/24/16

Answer: none

Amd. Cmplt. Filed: 3/25/16

Answer: 5/25/16

Nature of Action:

Declaratory judgment

Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

The Pre-Trial Conference is continued to 2:00 p.m. on March 21, 2108, pursuant to prior order of the court.

Notes:

Stipulation to Continue Pre-Trial Conference [to 3/6/18 at 3:00 p.m.] filed 2/15/18 [Dckt 57]; order pending

February 21, 2018, at 2:00 p.m.

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2. [17-27740-E-13](#) **RANDY KEMP**
[17-2227](#) **Pro Se**

STATUS CONFERENCE RE:
COMPLAINT
12-4-17 [1]

**KEMP V. TIDALWAVE FINANCE
CORP.**

Plaintiff's Atty: Pro Se
Defendant's Atty: Christopher R. Blevins

Adv. Filed: 12/4/17
Answer: none

Nature of Action:
Recovery of money/property - turnover of property
Injunctive relief - other

The Status Conference is ~~XXXXXXXXXXXXXX~~.

Notes:

[CRB-1] Defendant Tidal Wave Finance Corporation's Motion to Dismiss; Memorandum of Points and Authorities in Support Thereof filed 1/9/18 [Dckt 8]; set for hearing 3/22/18 at 11:00 a.m.

SUMMARY OF COMPLAINT

Randy Kemp ("Plaintiff-Debtor") filed a Complaint, which states the following as the claims and rights asserted in the Complaint:

Cause of Actions

I. U.S. Code § 362 - Automatic Stay, by way of collect fees or/and demand of Cancelled Protection (AUTO) Defendants duty of contact and/or mailing, happened Nov 30 - Dec. 1st 2017.

II 18 U.S.C. Code § 242

Defendants [discriminatori...] behavior towards plaintiff request and/or [cried] property return back to plaintiff which Defendants failure to comply § 542.

NATURE OF SUIT

III § 542 Recovery of Money/Property

Plaintiff request defendants to return vehicle Chevy Camaro SS 2010 as of 12/5/2017. Additional demand \$20,000 due to defendants violated 18 usc Code § 242 and 11 U.S. Code § 362 Automatic Stay, on and/or date plaintiff filed Chapter 13 petition.

SUMMARY OF RESPONSIVE PLEADING—MOTION TO DISMISS

Tidalwave Finance Corporation (“Defendant”) has responded to the Complaint, filing a Motion to Dismiss. Dckt. 8. The grounds stated with particularity in the Motion (FED. R. CIV. P. 7(b), FED. R. BANK. P. 7007) are summarized as follows:

“Defendant Tidalwave Finance Corporation (“Tidalwave”) hereby moves, pursuant to Federal Rules of Civil Procedure 12(b)(6), made applicable by Federal Rule of Bankruptcy Procedure 7012, for an order dismissing without leave to amend the Complaint filed by Plaintiff and Debtor Randy Kemp (“Debtor”) based on failure to state a claim.”

Motion to Dismiss, p. 2:1–5.

The Motion further states that it is based on the Points and Authorities, all of the pleadings and papers on file in this action, and all other written and oral arguments that Defendant chooses to present to the court at any time before the Motion is taken under submission by the court. Such generic “grounds” consisting of nothing more than a statement of the applicable Rule and dictating that the court will canvas the files to assemble the grounds for the relief is not a sufficient motion.

Rule 7(b)(1) of the Federal Rules of Civil Procedure [incorporated into Fed. R. Bankr. P. 7007] provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, “shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought.” (Emphasis added). The standard for “particularity” has been determined to mean “reasonable specification.” 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819–20 (7th Cir. 1977).

Not pleading with particularity the grounds in a contested matter can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. It may also be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try to float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were “mere academic postulations” not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such “postulations.”

Improper “Mothorities”

The court can foresee Defendant’s argument that the “motion” is really the seven pages of pleadings filed, including the four-page Points and Authorities attached to the Motion. Continuing through this multi-headed pleading, a Proof of Service is stuck on to the Motion-Points and Authorities (“Mothorties”) as a seventh page.

This stitching together of different pleadings, combining grounds with extensive citations, quotations, arguments, speculation, and conjecture, and then sticking a proof of service on the end of the Mothorities is not permitted under the long-standing Local Rules in this District. See LOCAL BANKR. R. 9014-1, the current statement of this Rule and pleading requirements.

The Points and Authorities portion of the Mothorities addresses the obvious defect in Plaintiff’s Complaint—failure to adequately state a claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868, 884 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

To Defendant’s credit, it appears to identify the events that may be the real issue at the core of Plaintiff’s Complaint in the “Factual Background” portion of the Points and Authorities:

“The Vehicle at issue was repossessed at the time Debtor’s bankruptcy was filed. However, the relief Debtor seeks with regard to the return of the vehicle is now moot since the vehicle was returned to the Debtor. Debtor attempts to allege a claim for violation of the automatic stay, but fails to make any factual allegations to support such a claim let alone damages totaling \$20,000. Debtor also attempts to allege a claim for discrimination under 18 U.S.C. § 242 despite the fact that no private right of action exists for Debtor under 18 U.S.C. § 242. Accordingly, Debtor’s claims fail and his Complaint should be dismissed in its entirety with prejudice.

...

Specifically, Debtor fails to allege any facts to support when Tidalwave received notice of the petition, that Tidalwave’s actions were in willful violation of the stay, or that Debtor suffered damages. Debtor also ignores the fact that the relief sought, return of the Chevy Camaro SS 2010, was already been achieved thereby making his claim moot.”

Motion, Points and Authorities Factual Background, Dckt. 8 at 3:9–16, 5:8–12.

It appears that Defendant may be asserting that though the vehicle repossession may have occurred after the case was filed, Defendant had no notice of the bankruptcy case being filed. At some point in time it was given notice of the case being filed. Then, the vehicle was returned to Debtor at some unstated time after the bankruptcy case was filed.

Discussion

Plaintiff-Debtor commenced his Chapter 13 case on November 27, 2017. 17-27740. Plaintiff-Debtor did not appear at his First Meeting of Creditors. 17-27740; Trustee’s January 5, 2018 Docket Entry

Report. This led to the Chapter 13 Trustee filing a motion to dismiss the bankruptcy case. *Id.*, Dckt. 21. The Chapter 13 Trustee has also filed a motion to dismiss the bankruptcy case. *Id.*, Dckt. 25. The grounds asserted by the Chapter 13 Trustee include: (1) Debtor has failed to make any plan payments, (2) failure to attend the First Meeting of Creditors, and (3) failure to provide tax returns and pay statements.

Defendant has filed a proof of claim in Plaintiff-Debtor's bankruptcy case. *Id.*, Proof of Claim No. 3. Defendant asserts a secured claim in the amount of \$16,154.07. Defendant asserts that the collateral has a value of \$13,000, and the obligation has an interest rate of 21.99%.

At the Status Conference, XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

3. [16-20743-E-7](#) ANNA PETERSON
[17-2234](#) John Sargetis

STATUS CONFERENCE RE:
COMPLAINT
12-8-17 [1]

THOMPSON V. PETERSON

Plaintiff's Atty: Pro Se
Defendant's Atty: unknown

Adv. Filed: 12/8/17
Answer: none

Nature of Action:
Dischargeability - willful and malicious injury
Dischargeability - other
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:

SUMMARY OF COMPLAINT

Kevin Thompson ("Plaintiff") filed a Complaint to have the court determine a debt nondischargeable. Dckt. 1. Plaintiff and Defendant-Debtor are parents of a minor child. It is alleged that Plaintiff obtained a judgment from the family court for Defendant-Debtor to pay \$100 per month to Plaintiff as Defendant-Debtor's share of court ordered expenses, as well as an additional \$100 per month for past due amounts.

Page 2 of the Complaint is blank. The Complaint continues on page 3.

On page 3, it is alleged that Debtor filed her Chapter 7 case, 16-20743, in which the discharge of the evaluation costs was waived.

Defendant-Debtor did file a Chapter 7 case on February 10, 2016, in which she was granted a Chapter 7 discharge on December 19, 2017. 16-20743; Discharge Order, Dckt. 138. This Complaint was filed on December 8, 2017.

SUMMARY OF ANSWER

Anna Krin Peterson ("Defendant-Debtor") has not filed an answer or other responsive pleading.

DISCUSSION

At the Status Conference **XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX**.

4. [11-39552-E-13](#) **CHRISTINA LAXTON**
[17-2171](#) **Gerald Glazer**

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
9-10-17 [1]

LAXTON V. JPMORGAN CHASE BANK
NA

Final Ruling: No appearance at the February 21, 2018 Status Conference is required.

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: Matthew S. Henderson

Adv. Filed: 9/10/17
Answer: none

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

The Adversary Proceeding having been dismissed by Stipulation of the Parties (Dckt. 21), **the Status Conference is removed from the Calendar**, and the Clerk of the Court may close this file.

Notes:
Continued from 1/17/18 by request of Parties. Order filed 1/11/18 [Dckt 18]

Joint Stipulation of Dismissal with Prejudice filed 2/14/18 [Dckt 21]

5. [12-24772-E-13](#) [17-2228](#) **WESLEY/KAREN COCHRAN**
Peter Macaluso

STATUS CONFERENCE RE:
COMPLAINT
12-4-17 [\[1\]](#)

COCHRAN ET AL V. HSBC MORTGAGE
SERVICES, INC. ET AL

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty:
 Unknown [HSBC Mortgage Services, Inc.]
 Jennifer C. Wong [Select Portfolio Servicing, Inc.]

Adv. Filed: 12/4/17
Answer:
 1/3/18 [Select Portfolio Servicing, Inc.]

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

The Status Conference is continued to 2:00 p.m. on May 30, 2018.

Notes:
Plaintiff's Status Statement filed 2/13/18 [Dckt 13]

Status Conference Statement [Select Portfolio Servicing, Inc.] filed 2/14/18 [Dckt 15]

SUMMARY OF COMPLAINT

Westly and Karen Conchran ("Plaintiff-Debtor") have filed a Complaint seeking to quiet title as to an asserted void deed of trust (the obligation, if any, owning on it having been fully satisfied under the completed Chapter 13 Plan), and damages and attorneys' fees for the failure of Defendant to reconvey said deed of trust. Complaint, Dckt. 1.

SUMMARY OF ANSWER

Select Portfolio Servicing, Inc., servicing agent for Wilmington Savings Fund Society, FSB, d/b/a/ Christina Trust, as Trustee ("Defendant") has filed an Answer that admits and denies specific allegations in the Complaint. Answer, Dckt. 10.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff alleges 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)(K) and (L). Complaint ¶¶ 2, 3, Dckt. 1. In its Answer, Defendant admits the allegations of jurisdiction and core

proceedings. Answer ¶ 2–7, Dckt. 10. To the extent that any issues in the existing Complaint as of the Status Conference are “related to” matters, the parties consent in the Complaint (¶ 4) and Answer (¶ 2–7) on the record to this bankruptcy court entering the final orders and judgment in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

CONTINUANCE OF STATUS CONFERENCE

Both parties, in their respective Status Conference Statements, request that the court continue the Status Conference to allow the parties to continue in their settlement discussions. While the nature of the issues in the Complaint lend themselves to such resolution by settlement, more significantly the respective counsel for Plaintiff-Debtor and counsel for Defendant have each established themselves as not only effective advocates for their clients, but good attorneys who can resolve matters. The court respects the opinions of counsel and grants their request so they can focus on resolution.

The court continues the Status Conference to May 30, 2018, a longer continuance than the parties likely anticipated, but necessary due to the court’s schedule for Spring of 2018.

6. [17-24489-E-13](#) **JAMES SEIBERT**
[17-2187](#) **Peter Cianchetta**

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
10-19-17 [1]

SEIBERT, JR. V. SEIBERT

Plaintiff's Atty: Ralph E. Laird
Defendant's Atty: Pro Se

Adv. Filed: 10/19/17 [Jury Demand]
Answer: 11/27/17

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny

Notes:
Continued from 1/17/18

FEBRUARY 21, 2018 STATUS CONFERENCE

No status reports have been filed by any parties to this Adversary Proceeding. Defendant-Debtor's bankruptcy case, 17-24489, was dismissed on November 7, 2017. Defendant-Debtor's second bankruptcy case (discussed below), 17-27303, was dismissed on January 31, 2018. The dismissal of the second bankruptcy case was "with prejudice." 17-27303; Order, Dckt. 62. The court also imposed a one-year bar on Debtor filing another bankruptcy case.

The dismissal "with prejudice" renders the bankruptcy nondischargeability issues in this Complaint moot.

JANUARY 17, 2018 STATUS CONFERENCE

SUMMARY OF COMPLAINT

Robert Seibert, Jr. ("Plaintiff") alleges claims in his Complaint for determination of nondischargeability of debt based on: (1) First Cause of Action—fraud, 11 U.S.C. § 523(a)(2)(A); (2) Second Cause of Action—fraud or defalcation in a fiduciary capacity, 11 U.S.C. § 523(a)(4); and (3) financial abuse on a dependent adult, 11 U.S.C. §§ 523(a)(2)(A) and (a)(4).

The Complaint requests entry of a monetary judgment (there being no existing non-bankruptcy court judgment) and a determination that the monetary judgment of this court is nondischargeable.

SUMMARY OF ANSWER

James Alex Seibert (“Defendant-Debtor”) has filed a *pro se* Answer (Dckt. 7) using the court’s on-line form, in which he: (1) alleges that this is a core proceeding, and (2) denies each and every allegation of the Complaint other than the procedural facts regarding the filing of the bankruptcy petition.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b) and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶ 3, Dckt. 1. In his *pro se* Answer, Defendant-Debtor admits the allegations of jurisdiction and core proceedings. Answer, Dckt. 7.

Request for Jury Trial

In the Complaint, p. 9:1–2, Plaintiff makes a demand for trial by jury. The only causes of action asserted in the Complaint are for the claims (damages) asserted by Plaintiff to be determined nondischargeable under the Bankruptcy Code. These are core matters arising under the Bankruptcy Code, for which the bankruptcy judge determines facts, as well as making the legal conclusions, and issuing the judgment.

DISMISSAL OF DEFENDANT-DEBTOR’S BANKRUPTCY CASE

This Adversary Proceeding is associated with the Chapter 13 Bankruptcy Case filed by Defendant-Debtor. Bankr. E.D. Cal. No. 17-24489. That bankruptcy case was dismissed on November 7, 2017.

This Adversary Proceeding was filed on October 19, 2017, prior to the dismissal of the Chapter 13 Bankruptcy Case.

On November 2, 2017, Defendant-Debtor, with the assistance of the same counsel as in the first bankruptcy case, filed a second Chapter 13 case. Case No. 17-24489 (“Second Bankruptcy Case”). That bankruptcy case is now before the Hon. Christopher D. Jaime (a different judge than the first case or this Adversary Proceeding).

In the Second Bankruptcy Case, Defendant-Debtor and his counsel are trying to dismiss that case. 17-24489; Motion, Dckt. 35. The Motion states that Defendant-Debtor’s two creditors support dismissal of the Second Bankruptcy Case. That court has not yet ruled on the Defendant-Debtor’s request to dismiss.

However, in ruling on objections to confirmation of the Chapter 13 Plan in the Second Bankruptcy Case, that court noted:

“First, the Debtor does not appear to have the ability to fund the plan. Debtor’s schedules and Statement of Financial Affairs in this case diverge from those filed in Debtor’s prior case no. 17-24489 before the Honorable Ronald Sargis. The

Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, this case and plan do not appear to be proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3) and (7) since the Debtor has two pending non-dischargeability adversary proceedings filed against him (see adv. nos. 17-02187, 17-02190). The adversary proceedings relate to Debtor's case no. 17-24489 that was dismissed on November 7, 2017."

17-24489; Civil Minutes, Dckt. 44. That court also notes that Defendant-Debtor: (1) failed to attend the First Meeting of Creditors; (2) failed to provide copies of tax returns to the Chapter 13 Trustee; and (3) failed to provide copies of payroll advices or other documentation of income.

STATUS CONFERENCE STATEMENT

Plaintiff has filed a "Discovery Plan" in which it is requested that the court not set a discovery schedule because it is likely that this Adversary Proceeding will be dismissed. Dckt. 8. Plaintiff anticipates Defendant-Debtor's Second Bankruptcy Case being dismissed. In the Report, Plaintiff states that there is a 2014 State Court Action pending in which various claims for damages are asserted against Defendant-Debtor. Plaintiff asserts that the first bankruptcy case (with this Department) was filed on the eve of the State Court issuing a writ of attachment in the State Court action.

The Motion to Dismiss the Second bankruptcy Case is set for hearing on January 23, 2018.

7. [17-24489-E-13](#) **JAMES SEIBERT**
[17-2190](#) **Peter Cianchetta**

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
10-23-17 [1]

MILLER V. SEIBERT

Plaintiff's Atty: Felix G. Poggemann
Defendant's Atty: Pro Se

Adv. Filed: 10/23/17
Answer: 11/27/17

Nature of Action:

Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury
Dischargeability - other

Notes:

Continued from 1/17/18

FEBRUARY 21, 2018 STATUS CONFERENCE

No status reports have been filed by any parties to this Adversary Proceeding. Defendant-Debtor's bankruptcy case, 17-24489, was dismissed on November 7, 2017. Defendant-Debtor's second bankruptcy case (discussed below), 17-27303, was dismissed on January 31, 2018. The dismissal of the second bankruptcy case was "with prejudice." 17-27303; Order, Dckt. 62. The court also imposed a one-year bar on Debtor filing another bankruptcy case.

The dismissal "with prejudice" renders the bankruptcy nondischargeability issues in this Complaint moot.

FEBRUARY 17, 2018 STATUS CONFERENCE

SUMMARY OF COMPLAINT

Dana Miller ("Plaintiff") is the wife (separated and dissolution proceedings pending) of Defendant-Debtor. Plaintiff seeks to have her claims (debts owed by Defendant-Debtor) determined nondischargeable: (1) for fraud, 11 U.S.C. § 523(a)(2)(A); for fraud, 11 U.S.C. § 523(a)(2)(B); for fraud or defalcation in a fiduciary capacity, 11 U.S.C. § 523(a)(4); and for damages caused by willful and malicious conduct, 11 U.S.C. § 523(a)(6).

SUMMARY OF ANSWER

James Alex Seibert (“Defendant-Debtor”) has filed a *pro se* Answer (Dckt. 7) using the court’s on-line form, in which he: (1) alleges that this is a core proceeding, and (2) denies each and every allegation of the Complaint other than the procedural facts regarding the filing of the bankruptcy petition.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff alleges 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 ¶¶ 4, 2, Dckt. 1. In his *pro se* Answer, Defendant-Debtor admits the allegations of jurisdiction and core proceedings. Answer, Dckt. 7.

DISMISSAL OF DEFENDANT-DEBTOR’S BANKRUPTCY CASE

This Adversary Proceeding is associated with the Chapter 13 Bankruptcy Case filed by Defendant-Debtor. Bankr. E.D. Cal. No. 17-24489. That bankruptcy case was dismissed on November 7, 2017.

This Adversary Proceeding was filed on October 23, 2017, prior to the dismissal of the Chapter 13 Bankruptcy Case.

On November 2, 2017, Defendant-Debtor, with the assistance of the same counsel as in the first bankruptcy case, filed a second Chapter 13 case. Case No. 17-24489 (“Second Bankruptcy Case”). That bankruptcy case is now before the Hon. Christopher D. Jaime (a different judge than the first case or this Adversary Proceeding).

In the Second Bankruptcy Case, Defendant-Debtor and his counsel are trying to dismiss that case. 17-24489; Motion, Dckt. 35. The Motion states that Defendant-Debtor’s two creditors support dismissal of the Second Bankruptcy Case. That court has not yet ruled on the Defendant-Debtor’s request to dismiss.

However, in ruling on objections to confirmation of the Chapter 13 Plan in the Second Bankruptcy Case, that court noted:

“First, the Debtor does not appear to have the ability to fund the plan. Debtor’s schedules and Statement of Financial Affairs in this case diverge from those filed in Debtor’s prior case no. 17-24489 before the Honorable Ronald Sargis. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, this case and plan do not appear to be proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3) and (7) since the Debtor has two pending non-dischargeability adversary proceedings filed against him (see adv. nos. 17-02187, 17-02190). The adversary proceedings relate to Debtor’s case no. 17-24489 that was dismissed on November 7, 2017.”

17-24489; Civil Minutes, Dckt. 44. That court also notes that Defendant-Debtor: (1) failed to attend the First Meeting of Creditors; (2) failed to provide copies of tax returns to the Chapter 13 Trustee; and (3) failed to provide copies of payroll advices or other documentation of income.

JANUARY 17, 2018 STATUS CONFERENCE

No Status Report was filed by either Party to this Adversary Proceeding. It appears that the dismissal of the second bankruptcy case appears likely. The court continues the Status Conference.

8. [17-26898-E-13](#) ANA HENRIQUEZ STATUS CONFERENCE RE:
[17-2232](#) Timothy McCandless COMPLAINT
12-6-17 [1]

**HENRIQUEZ V. LINDEN RIVER
FINANCIAL, LLC ET AL**

Plaintiff’s Atty: Timothy McCandless
Defendant’s Atty:
Joseph P. Buchman [Special Default Services, Inc.]
unknown [Linden River Fiancial, LLC]
unknown [LRF Properties, II, GP]

Adv. Filed: 12/6/17 [Jury Demand]
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property
Recovery of money/property - fraudulent transfer
Injunctive relief - other
Declaratory judgment

Notes:
Specially Appearing Defendant Special Default Services, Inc.’s Request for Court to Dismiss Adversary Proceeding at Status Conference filed 2/9/18 [Dckt 7]

FEBRUARY 21, 2018 STATUS CONFERENCE

At the Status Conference, **XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX**

SUMMARY OF COMPLAINT

Ana Henriquez (“Plaintiff-Debtor”) has filed a Complaint for monetary damages and equitable relief. The claims in the Complaint are built around the foreclosure on Plaintiff’s property that is asserted to have been conducted in violation of California foreclosure laws.

The First Cause of Action is for fraud, and the Second Cause of Action seeks specific performance of the identified Forbearance/Modification Change of Terms of Agreement. The Third Cause of Action is for breach of contract (the Agreement). The Fourth Cause of Action is for promissory estoppel, the asserted represented terms of an agreement. The Complaint also asserts a claim for violation of the automatic stay, asserting that the purported foreclosure sale occurred after the commencement of the bankruptcy case.

Plaintiff-Debtor also lists a Seventh Claim for Unjust Enrichment, an Eighth Claim for Equitable Subordination, a Ninth Claim for Equitable Disallowance, a Tenth Claim for Disallowance of Claim, an Eleventh Claim for Fair Debt Collection Practices (California), a Twelfth Claim for Unfair Business Practices (California), and a Thirteenth Claim for Declaratory Relief (that the prior exercise of the power of sale purported to have previously effectuated the purported nonjudicial foreclosure sale was of no force and effect in the past).

The Complaint names the following Defendants:

Linden River Financial, LLC
Special Default Services, Inc.
LRF Properties II, GP

SUMMARY OF RESPONSIVE PLEADINGS

Only Special Default Services, Inc. (“Defendant SDS”) has filed a response in the form of a motion to dismiss

“for lack of subject matter jurisdiction on its own motion at the Status Conference [Defendant] SDS is specially appearing because it has never been properly served in this case The Court has dismissed the Chapter 13 case in which this adversary proceeding has been filed, and consequently, the adversary should also be dismissed.”

Motion, p. 2:3–6; Dckt. 7.

The Motion states with particularity (FED. R. CIV. P. 7(b), FED. R. BANKR. P. 7007) that the summons and complaint were not timely served (lack of personal, not subject matter jurisdiction) and that Plaintiff-Debtor’s bankruptcy case has been dismissed (that the court should abstain from the 28 U.S.C. § 1334 related to matter jurisdiction).

As cited by Defendant SDS, Plaintiff-Debtor’s bankruptcy case was dismissed on January 22, 2018. 2017-26898; Order, Dckt. 59.