UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

February 25, 2021 at 11:00 a.m.

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1. **20-23267-E-7** **SHON/JILL TREANOR** **STATUS CONFERENCE RE: MOTION TO COMPEL**
DNL-3
1 thru 2
2-8-21 [110]

Debtors' Atty: Pro Se

Notes:
Set by order of the court filed 2/12/21 [Dckt 113]. No responsive or supplemental pleadings shall be filed. Shon Treanor, Jill Treanor, and Gary Fraley, Esq. ordered to telephonically appear.

The Status Conference is xxxxx.

ORDER:
FOR STATUS CONFERENCE ON MOTION TO COMPEL AND GRANT COURT ORDER
AND
STAYING PROCEEDING AND THE FILING OF ANY OPPOSITION OR SUPPLEMENTAL PLEADINGS PRIOR TO CONCLUSION OF THE STATUS CONFERENCE

As discussed below, the undersigned judge was notified by the case manager of a pleading filed by Debtor Jill Treanor, as the Executor Trustee of the Cheyrl Gortemiller Trust, ("Exec-Trustee Jill")[1] in *pro se*. Upon review of the pleading, the court became concerned that it could lead to a deeper morass of financial problems for the two debtors, Jill Treanor and Shon Treanor (collectively "Debtors"), in this case. The court addresses some of those issues below.

[1] Because there are two "Treanors" in this case, the court uses Debtor Jill Treanor's first name in creating a defined term for ease of identifying which Treanor is identified as being the moving party when referenced in this Order.

As also addressed below, it appears that there is a "simple"[2] dispute between the two Debtors and Gary Fraley, Esq., an attorney to whom they made a pre-petition payment for legal services to be rendered. The payment was in the form of a transfer of title of a Keystone Trailer. The Chapter 7 Bankruptcy Trustee has abandoned all rights and interests of the estate to recover the transfer to the attorney back to the two Debtors personally, who now hold all such rights and interests. This federal court has been given jurisdiction to review and address any transactions between a debtor and an attorney who provides legal services in connection with a bankruptcy case. 11 U.S.C. § 329. Thus, it appears that the dispute between the two Debtors and Mr. Fraley relate to the pre-petition payment made to Mr. Fraley in connection with filing bankruptcy and what portion (if any) he should have to pay back (whether in cash or the return of the Trailer).

In ordering this Status Conference, the court intends to head off extensive legal work and confusion - for the court, the Debtors, and Mr. Fraley, as well as the Chapter 7 Trustee and his counsel who have to monitor the proceedings in this case even though the asset at issue has been abandoned. To the extent that the Debtors are entitled to be repaid some portion or all of the value transferred, the court seeks to avoid Debtors from inadvertently running up possible corrective sanctions (in the form of reimbursement of fees and expenses) caused by their inadvertent, but improper citations to statutes and grounds which could be in violation of Federal Rule of Bankruptcy Procedure 9011.

If, after the Status Conference, Debtors believe that they are proceeding properly, they may proceed as they deem proper, and the court will make rulings in further proceedings on the merits based on the law and the evidence.

Therefore, as part of this Status Conference Order, the court stays any proceeding on the present motion and orders that no further pleadings be filed.

Review of Pleadings

On February 8, 2021, the Deputy Clerk of the Court case manager for this bankruptcy case brought to the court's attention a motion filed by Debtor Jill Treanor, in her capacity as an "Executor Trustee" and Shon Treanor as a "Co-Trustee." Dckt. 110. Attached to the Motion are Exhibits A - I, the Declaration of Shon Treanor, and a California Superior Court Certificate of Service. Under the Local Bankruptcy Rules, the motion, the notice of hearing, the declarations, and the exhibits (which may be combined into one exhibit document) are each filed as separate documents by a moving party. L.B.R. 9004-2(c), 9014-1(d)(4). Additionally, the filing party is to assign a unique docket control number to the motion (commonly being the filer's initials, followed by a number, such as JDT-1 for this debtor, with the number increasing with each future motion, application, or objection filed). Here, the Docket Control Number DNL-3 has been used, which is the Docket Control Number used on the Trustee's Motion to Abandon.

The Certificate of Service is a California State Court form which lists the court as being the Superior Court for the State of California, with the matter being in the "Bankruptcy Court Department" of the Superior Court. While this improper reference to the federal court being part of the Superior Court is

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[2] The court puts "simple" in italic because there is nothing simple about addressing money issues in connection with a bankruptcy case. Every dollar is dear and needed. But it is "simple" in the applicable law for why this court has jurisdiction, 11 U.S.C. § 329, and there is a well established body of law concerning the attorney-client relationship and fees.

not fatally defective, it does add to the confusion. Dckt. 110 at 64. The Certificate of Service states that the Motion, the Declaration of Shon Treanor, and the Certificate of Service were served. *Id*. It does not state that the Exhibits were served. Most likely, the *pro se* Exec-Trustee Jill construed the Exhibits attached to the Motion as part of the "Motion" referenced in the Certificate, but it further adds to the confusion.

In Paragraph 5 of the State Certificate of Service Form, the person certifying that service was made must state on whom the pleadings were served and the address where served. No person is listed and no address provided.

The person stating under penalty of perjury that service was made cannot be identified from the "typed" (or printed) name on the Certificate or from that person's signature. *Id*. at 65. Both are illegible.

For a motion, it must be noticed for hearing on either at least 28 days notice (unless a Federal Rule of Bankruptcy Procedure requires a longer period of time), and written opposition is required; or it may be done on at least 14 days notice, with no opposition require. The notice of hearing must state under what Local Rule it is filed and whether written notice is required. L.B.R. 9014-1(d). No notice of hearing has been filed and it is unknown whether one was given and the Local Rule complied with.

The Motion was filed on February 8, 2021. The Certificate of Services states the pleadings were mailed (with no persons identified in the Certificate of Service) and on February 6, 2021. Certificate, ¶4; Dckt. 110 at 64. That would be 19 days before a hearing on February 25, 2021, so no written opposition would be required under Local Bankruptcy Rule 9014-1.

Review of Motion to Compel and Grant Court Order

For motions, the basic pleading rules require that the motion state with particularity the grounds and relief requested. Fed. R. Bankr. P. 9013. For legal authorities, if the motion is six pages or less in length, the legal points and authorities may be included in the motion. L.B.R. 9014-1(d)(4). If the motion, including any authorities, is longer than six pages, the points and authorities must be filed as a separate pleading. Here, the Motion is 16 pages in length and includes extensive legal authority quotations.

The Motion begins by stating that it is only "Jill D. Treanor, Executor Trustee of the Cheryl Gortemiller Trust" who is requesting relief from the court. Motion, p. 1:21-23; Dckt. 110. Debtor Shon Treanor is not stated as a party seeking relief.

The requested relief is "[t]o stop all harassment of Gary Frayely [sic] and demand the legal turnover of the disputed Estate property involved." Further, "We ask the Court to sign and approve a Court Order demanding the return of the Keystone travel trailer dishonorably earned or attempted to be earned as a token payment for services failed by Gary Frayely [sic]." *Id*., p.1:23-25.

Identification of Real Party in Interest

In this portion of the requested relief the Executor Trustee of the Cheryl Gortemiller Trust appears to be seeking injunctive relief - the "stopping harassment." Such relief must be requested in an adversary proceeding. Fed. R. Bankr. P. 7001.

At this juncture, the court notes that the right to recover the trailer (which is reported to have been transferred to Mr. Fraley as payment for future legal services) has been abandoned to Shon Treanor and Jill Treanor, personally, the Debtors in this case. Order of Abandonment, Dckt. 108. Those rights have not been abandoned to an "Executor Trustee." Thus, it does not appear that the court has before it a real party in interest who may assert an interest in or right to recover the trailer or challenge the attorney's fees charged by Mr. Fraley. The real parties in interest are the individual Debtors, personally.

Statutes Included in Motion

The Motion then has seven pages of copied bankruptcy statutes, beginning with 11 U.S.C. § 507 (administrative expenses), 11 U.S.C. § 302(commencement of a bankruptcy case), 11 U.S.C. § 559 (contractual right of a repo participant or financial participant under a repurchase agreement), and 11 U.S.C. § 1301 (co-debtor stay in a Chapter 13 case). Each of these appear not to be applicable to the dispute in this Chapter 7 case.

With respect to 11 U.S.C. § 507, Debtor points to subsection 7 (presumably referencing § 507(a)(7), that being the only paragraph with the number (7)) asserting that "unsecured assets of claims" stands as a "valid purchase used to secure services to be rendered by a professional of our Estate." *Id*., p. 6:25-28. 11 U.S.C. § 507(a)(7) states:

> § 507. Priorities
>
> (a) The following expenses and claims have priority in the following order:
> . . .
> (7) Seventh, allowed unsecured claims of individuals, to the extent of $3,025 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided.

This identified a claim that a creditor would have relating to purchase or lease of property or services for personal use, and the debtor failed to provide such property or services, and the portion of the claim which is given a priority over paying other creditors. These priorities set the "pecking order" of creditors getting paid from the assets of a debtor, not rights given to a debtor.

Next, for the citation to 11 U.S.C. § 302, providing for joint bankruptcy cases by a debtor and a spouse, Exec-Trustee Jill comments that it "confirms that a spouse has the legal right to demand relief as a single filing party also." Dckt. 110, at 7:24-25. The statute states:

> § 302. Joint cases
>
> (a) A joint case under a chapter of this title is commenced by the filing with the bankruptcy court of a single petition under such chapter by an individual that may be a debtor under such chapter and such individual's spouse. The commencement of a joint case under a chapter of this title constitutes an order for relief under such chapter.

(b) After the commencement of a joint case, the court shall determine the extent, if any, to which the debtors' estates shall be consolidated.

11 U.S.C. § 302. It is unclear the reason for citing this statute in connection with debtor Jill Treanor separately asserting rights abandoned to her and her co-debtor spouse Shon Treanor.

Exec-Trustee Jill next cites 11 U.S.C. § 559, which addresses contractual rights of a "repo participant" or "financial participant" to cause the liquidation, termination, or acceleration of a repurchase agreement." The persons who are the subject of this statute and a "repurchase agreement" are defined in 11 U.S.C. § 101, identified by the paragraph numbers used in § 101 (emphasis added) as follows:

(22A) The term "**financial participant"** means—

(A) an entity that, at the time it **enters into a securities contract, commodity contract, swap agreement, repurchase agreement, or forward contract**, or at the time of the date of the filing of the petition, has one or more agreements or transactions described in paragraph **(1), (2), (3), (4), (5), or (6) of section 561(a)** [11 U.S.C. § 561(a)][3] with the debtor or any other entity (other than an affiliate) **of a total gross dollar value of not less than $1,000,000,000 in notional or actual principal amount outstanding** (aggregated across counterparties) at such time or on any day during the 15-month period preceding the date of the filing of the petition, or has **gross mark-to-market positions of not less than $100,000,000** (aggregated across counterparties) in one or more such agreements or

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[3] 11 U.S.C. § 561(a) provides:

§ 561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts; proceedings under chapter 15
(a) Subject to subsection (b), the exercise of any contractual right, because of a condition of the kind specified in section 365(e)(1) [11 U.S.C. § 365(e)(1)], to cause the termination, liquidation, or acceleration of or to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more (or the termination, liquidation, or acceleration of one or more)—

(1) securities contracts, as defined in section 741(7);
(2) commodity contracts, as defined in section 761(4)
(3) forward contracts;
(4) repurchase agreements;
(5) swap agreements; or
(6) master netting agreements,

shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by any order of a court or administrative agency in any proceeding under this title.

transactions with the debtor or any other entity (other than an affiliate) at such time or on any day during the 15-month period preceding the date of the filing of the petition; or

(B) **a clearing organization** (as defined in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991).

. . .

(46) The term "**repo participant**" means an entity that, at any time before the filing of the petition, has an **outstanding repurchase agreement with the debtor**

(47) The term "**repurchase agreement**" (which definition also applies to a reverse repurchase agreement)—

(A) means—

(i) an agreement, including related terms, which provides for the transfer of **one or more certificates of deposit, mortgage related securities** (as defined in section 3 of the Securities Exchange Act of 1934), **mortgage loans, interests in mortgage related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities** (defined as a security that is a **direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development**), or **securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States** against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests, with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptance, securities, mortgage loans, or interests of the kind described in this clause, at a date certain not later than 1 year after such transfer or on demand, against the transfer of funds;

(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);

(iii) an option to enter into an agreement or transaction referred to in clause (i) or (ii);

(iv) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a repurchase agreement under this paragraph,

> except that such master agreement shall be considered to be a repurchase agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), or (iii); or
>
> (v) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in clause (i), (ii), (iii), or (iv), including any guarantee or reimbursement obligation by or to a repo participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title [11 U.S.C. § 562]; and
>
> (B) does not include a repurchase obligation under a participation in a commercial mortgage loan.

Reference is made that this section "makes it clear" that "any transfer of property" prior to filing bankruptcy must be returned to the bankruptcy estate. It does not appear that this provision so provides, but instead relates to specific loan and Securities and Exchange Commission regulated transactions. This is discussed in 5 Collier on Bankruptcy ¶ 561.01 (2021 , as follows (emphasis added):

> ¶ 561.01 Overview of Section 561
>
> Subsections (a), (b) and (c) of section 561 of the Bankruptcy Code and related provisions in chapter 5 are intended to work in coordination with the **special protections for securities contracts, commodity contracts, forward contracts, repurchase agreements and swap agreements** (collectively, "protected transactions") contained elsewhere in the Bankruptcy Code **by protecting the exercise of rights of setoff** [4]across different kinds of such protected transactions ("cross-product netting"). . . .

This does not appear to support the assertion that it is a right of the bankruptcy estate to recover pre-petition transfers.

The next quotation is of 11 U.S.C. § 1301, which provides for the automatic stay to apply to a non-debtor who is a co-debtor with the bankruptcy debtor on a consumer obligation. This is a Chapter 7 case, to which the provisions of Chapter 13 are not applicable.

Apparent Dispute between the Debtors and Gary Fraley[5]

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[4] The term "setoff" being defined and treated as a creditor's right against the Debtor, and given treatment as a secured claim. 11 U.S.C. § 553, 506(a).

[5] The court says "apparent" because it does not make any findings about the dispute, but has attempted to understand the nature of the dispute from what has been filed. If, and when, such dispute is put before the court, the court will issue its ruling.

It has been presented to the court that the Debtors engaged the services of Gary Fraley for filing bankruptcy. They believe that he did not properly represent them, made misrepresentations, and is not entitled to retain the Trailer or value thereof. In the Exhibits are responsive emails from Mr. Fraley to emails from Debtors, but the related Debtors' emails are not provided. From Mr. Fraley's emails, he appears to be asserting that the Debtors disagreed with his advice and sought to proceed other than he believed proper. Thus, it appears that what could be a "simple" fee dispute may also include an attorney-client dispute over how to properly proceed based on the applicable law.

Further, it appears that this dispute, and the rights (if any) to recover monies are rights of Shon Treanor and Jill Treanor personally, and as part of assets under the control of a fiduciary executor or trustee.

Debtor's Status Report

On February 23, 2021, newly retained counsel for Debtor filed a Status Report. Dckt. 130. Counsel reports that while he has met with counsel for the Trustee, he has not yet had an opportunity to meet with Gary Fraley, Esq., the attorney providing pre-petition services with whom Debtor has a dispute and is seeking to recover the payment made to Mr. Fraley.

Counsel for Debtor requests a 30 day continuance so that he may work on addressing these issues and what proceedings will be required.

2. 20-23267-E-7 SHON/JILL TREANOR MOTION TO DISMISS ADVERSARY
20-2160 DNL-2 PROCEEDING/NOTICE OF REMOVAL
SANDERS ET AL V. TREANOR ET AL 1-12-21 [57]

Final Ruling: No appearance at the February 25, 2021 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Defendant on January 12, 2021. By the court's calculation, 44 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss Adversary Proceeding is granted.

Hank M. Spacone ("Trustee") moves for the court to dismiss this adversary proceeding without prejudice pursuant to Federal Rule of Civil Procedure 41 (a)(2) after the Trustee and Plaintiff have stipulated to the dismissal so that the parties have an opportunity to investigate, evaluate and possibly resolve matters raised by complaint without incurring the costs of litigation.

APPLICABLE LAW

Dismissal of Actions

Federal Rule of Civil Procedure 41 provides for dismissal of action, specifically as it pertains to a voluntary dismissal, Rule 41(a)(2) provides:

(a) Voluntary Dismissal.

[. . .]

> (2) By Court Order; Effect. Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

Fed. R. Civ. P. 41.

REVIEW OF THE STIPULATION

The parties have stipulated to the following:

A. This adversary proceeding be dismissed without prejudice, including to all claims that have been asserted or could be asserted by the parties by way of the Complaint and Answer/Counterclaim.

DISCUSSION

Here, the adversary proceeding was filed by Plaintiff Sanders against Debtor-Defendants. The Plaintiff sought determination of the nature, extent and priority of a charging lien asserted against the bankruptcy estate's interest in the Cheryl Gortemiler Living Trust. Dckt. 1. In response, Debtor-Defendant filed an Answer/Counterclaim, wherein Debtor-Defendant Asserted a damage claims against Plaintiff. Dckt. 22.

Trustee intervened on this adversary proceeding on the basis that the bankruptcy estate had an interest in the CG Trust and the counterclaim. Dckt. 29. The court granted Trustee's motion to intervene in January 6, 2021. Dckt. 49.

Consistent with the court's finding that Trustee was the real party in interest, Trustee and Plaintiff have engaged in discussion that resulted in the instant stipulation and accompanying motion to dismiss.

The Motion to Dismiss Adversary Proceeding is warranted because the parties will now be able to focus their resources into investigating and evaluation the claims in a manner that might result in possible resolution. The Motion is granted.

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 Proceeding filed by Hank M. Spacone ("Trustee") 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 to Dismiss is granted and the Adversary Proceeding is dismissed without prejudice.

3. 19-25936-E-7 NUR BANO
20-2152
CARELLO V. NISHA

CONTINUED STATUS CONFERENCE RE: COMPLAINT
9-15-20 [1]

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

Adv. Filed: 9/15/20
Answer: none

Nature of Action:
Recovery of money/property - preference

Notes:
Continued from 1/6/21. The Plaintiff-Trustee prosecuting the entry of a default judgment and reporting that a settlement is being prosecuted.

The Status Conference is xxxxxxx

FEBRUARY 25, 2021 STATUS CONFERENCE

At the February 25, 2021 Status Conference, the Plaintiff-Trustee reported **xxxxxxx**

JANUARY 6, 2021 STATUS CONFERENCE

The Plaintiff-Trustee has set for hearing on January 6, 2021 a motion for entry of a default judgment. Plaintiff-Trustee reports in a Supplemental Declaration filed in support of the motion for entry of default judgment that a relative of Defendant has made a partial payment on the asserted preference and that a final payment is to be made in February 2021.

The court continues the Status Conference to allow the Plaintiff-Trustee and other parties to address the payment of the claim or the entry of judgment.

NOVEMBER 18, 2020 STATUS CONFERENCE

Sheri Carello, the Plaintiff-Trustee, commenced this Adversary Proceeding to avoid a preferential transfer as provided in 11 U.S.C. § 547 and obtain a judgment for $12,000.00 against Defendant Ashvin Nisha. Dckt. 1. It is alleged in the Complaint that Chapter 7 Debtor Nur Bano on August 15, 2019 and

September 4, 2019, made payments totaling $12,000.00 to Defendant. Further, that Defendant is an insider of the Debtor. Debtor filed for bankruptcy on September 23, 2019, which is within 40 days of the two transfers.

No answer has been filed and an Amended Request for Entry of Default was filed by Plaintiff on November 6, 2020. Dckt. 19

4. 19-25936-E-7 NUR BANO
20-2152
CARELLO V. NISHA

CONTINUED MOTION FOR ENTRY OF DEFAULT JUDGMENT
11-25-20 [25]

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, Debtor's Attorney, and Defendant on November 25, 2020. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Default Judgement 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 for Entry of Default Judgement is xxxxx.

Sheri L. Carello, the Chapter 7 Trustee ("Plaintiff"), filed the instant Motion for Default Judgment on November 25, 2020. Dckt. 25. Plaintiff seeks a default judgment against Ashvin Nisha ("Defendant") in the instant Adversary Proceeding No. 20-02152.

The instant Adversary Proceeding was commenced on September 15, 2020. Dckt. 1. The summons was issued by the Clerk of the United States Bankruptcy Court on September 15, 2020. Dckt. 3. The complaint and summons were properly served on Defendant. Dckt. 7.

Defendant failed to file a timely answer or response or request for an extension of time. Default was entered against Defendant pursuant to Federal Rule of Bankruptcy Procedure 7055 by the Clerk of the United States Bankruptcy Court on November 16, 2020. Dckt. 21.

SUMMARY OF COMPLAINT

Plaintiff filed a complaint to avoid two preferential transfers and to recover the property or its value for the bankruptcy estate. The Complaint contains the following general allegations as summarized by the court:

A. This is an action pursuant to 11 U.S.C. § 547(b) to avoid the transfer of interests in property of the Debtor to the Defendant.

B. Prior to the filing of the bankruptcy, Debtor made two payments to Defendant, one on August 16, 2019 and another one on September 4, 2019 in the total sum of $12,000.

C. Plaintiff alleges that these payments were made on account of an antecedent debt.

D. Defendant is the nephew of the Debtor and is therefore an insider defined by the Bankruptcy Code.

E. Debtor was insolvent at the time of the transfer.

F. Defendant obtained more than he would have received if the transfer had not been made.

Prayer

Plaintiff requests the following relief in the Complaint's prayer:

A. A judgment avoiding the preferential transfer, and

B. An order for Defendant to turn over $12,000 to the bankruptcy estate.

REVIEW OF THE MOTION FOR ENTRY OF DEFAULT JUDGMENT

On November 25, 2020, Plaintiff filed the instant Motion for Entry of Default Judgment pursuant to Fed. R. Bankr. P. 7055. Dckt. 25. Plaintiff filed the Motion for Default Judgment, accompanied by, the Declaration of Sheri L. Carello, Dckt. 27, and Exhibits A through D, Dckt. 28.

The court begins its consideration of the requested relief with the Motion itself and the grounds with particularity stated therein. Fed. R. Civ. P. 7(b), Fed. R. Bankr. P. 7007. The grounds stated with particularity consist of the following:

1. In Debtor's original bankruptcy schedules, Debtor failed to disclose that she paid to Defendant the sum of $12,000 in two payments, one on August 4, 2019 and the other on August 16, 2019.

2. Debtor disclosed these payments during the October 20, 2019 meeting of creditors.

3. On November 19, 2019, Debtor amended her Statement of Financial Affairs to disclose the payments to Defendant.

4. On November 22, 2019, Debtor amended her Schedule E/F to add Defendant as creditor in the amount of $12,000, with the debt having been incurred in 2013.

5. Debtor provided to Plaintiff-Trustee copies of the two checks to Defendant dated August 4, 2019 for $2,000 and August 16, 2019 for $10,000.

6. Entry of default judgment is appropriate because the transfer was made within one year of the filing of Debtor's Chapter 7 petition and at the time of the transfer Debtor was insolvent.

7. As a result, the transfer allowed Defendant to obtain more than he would receive if the transfer had not been made.

Motion, Dckt. 25.

DOCUMENTS FILED WITH THE MOTION

Next, Plaintiff filed the Declaration of Sheri L. Carello, in support of the motion. Dckt. 27. Plaintiff testifies under penalty of perjury that at the Meeting of Creditors conducted on October 20, 2019, Debtor testified that two large withdrawals from her bank account, one of $2,000 and another one for $10,000, were payments made to pay back her nephew (Defendant) from whom she had borrowed money.

Plaintiff also filed four Exhibits in support: Exhibit A, Debtor's Original Bankruptcy Schedules filed October 7, 2019; Exhibit B, Debtor's Amended Statement of Financial Affairs filed on November 19, 2019; Exhibit C, Debtor's Amended Schedule E/F filed November 22, 2019; and Exhibit D, copies of cancelled checks to Defendant August 4, 2019 and August 16, 2019. Dckt. 28.

Exhibit D is properly authenticated by Plaintiff in her Declaration. The exhibit are copies of two checks. *Id.*, at 41-42. The first check dated August 4, 2019, reflects a payment of $2,000 from Nur Bano (Debtor) to Ashvin Nisha (Defendant) from Debtor's Golden 1 Credit Union account. *Id.*, at 41. The second check dated August 16, 2019, reflects a payment of $10,000 from Nur Bano (Debtor) to Ashvin Nisha (Defendant) from Debtor's Golden 1 Credit Union account. *Id.*, at 42.

APPLICABLE LAW

Federal Rule of Civil Procedure 55 and Federal Rule of Bankruptcy Procedure 7055 govern default judgments. *Cashco Fin. Servs. v. McGee (In re McGee)*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006). Obtaining a default judgment is a two-step process which requires: (1) entry of the defendant's default, and (2) entry of a default judgment. *Id.*

Even when a party has defaulted and all requirements for a default judgment are satisfied, a claimant is not entitled to a default judgment as a matter of right. 10 MOORE'S FEDERAL PRACTICE—CIVIL ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.). Entry of a default judgment is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Default judgments are not favored, because the judicial process prefers determining cases on their merits whenever reasonably possible. *Id.* at 1472. Factors that the court may consider in exercising its discretion include:

(1) the possibility of prejudice to the plaintiff,
(2) the merits of plaintiff's substantive claim,
(3) the sufficiency of the complaint,
(4) the sum of money at stake in the action,
(5) the possibility of a dispute concerning material facts,
(6) whether the default was due to excusable neglect, and
(7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Id. at 1471–72 (citing 6 MOORE'S FEDERAL PRACTICE—CIVIL ¶ 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3d ed.)); *Kubick v. FDIC (In re Kubick)*, 171 B.R. 658, 661–62 (B.A.P. 9th Cir. 1994).

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff's claim. *Id.* at 662. Entry of a default establishes well-pleaded allegations as admitted, but factual allegations that are unsupported by exhibits are not well pled and cannot support a claim. *In re McGee*, 359 B.R. at 774. Thus, a court may refuse to enter default judgment if Plaintiff did not offer evidence in support of the allegations. *See id.* at 775.

Avoidance of Preferential Transfer pursuant to 11 U.S.C. § 547(b)

Section 547(b) of the Bankruptcy Code provides:

> (b)Except as provided in subsections (c) and (i) of this section, the trustee may, based on reasonable due diligence in the circumstances of the case and taking into account a party's known or reasonably knowable affirmative defenses under subsection (c), avoid any transfer of an interest of the debtor in property—
>
> (1) to or for the benefit of a creditor;
>
> (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made—

(A)on or within 90 days before the date of the filing of the petition; or
(B)between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

(5) that enables such creditor to receive more than such creditor would receive if—

(A)the case were a case under chapter 7 of this title;
(B)the transfer had not been made; and
(C)such creditor received payment of such debt to the extent provided by the provisions of this title.

As explained in Collier on Bankruptcy,

> The purposes of the preference section are twofold. First, by permitting a trustee to avoid transfers that occur within a short period before bankruptcy, creditors are discouraged from racing to the courthouse to dismember the debtor's property during the debtor's slide into bankruptcy. The protection thus afforded the debtor often enables the debtor to work a way out of a difficult financial situation through cooperation with all of the creditors. Second, and more importantly, the preference provisions facilitate the prime bankruptcy policy of equality of distribution among creditors of the debtor. Any creditor that received a greater payment than others of its class may be required to disgorge the payment so that all may share equally.

5 Collier on Bankruptcy P 547.01 (16th 2020).

DISCUSSION

Plaintiff filed this Motion for Entry of Default Judgement on August 21, 2020. Defendant has not provided opposition.

Report of Settlement In Process

On December 28, 2020, Plaintiff filed a Supplemental Declaration. Dckt. 34. Plaintiff informs the court that after filing the instant motion, she received a call from Abdul Kaiyum, a relative of Defendant, who indicated that he was going to pay the $12,000 back to the estate on behalf of the Defendant. *Id.*, ¶ 3. Plaintiff also informs the court that on December 7, 2020 she received a $6,000 check from Mr. Kaiyum which has now cleared the estate's bank account. *Id.*, at ¶ 4. Per her conversation with Mr. Kaiyum, Trustee expects another $6,000 payment in the middle of January 2021. *Id.*, at ¶ 5.

At the hearing, the Plaintiff Trustee requested that the hearing be continued to late February 2021.

February 25, 2021 Hearing

As of the court's February 23, 2021 drafting of this pre-hearing disposition, no additional pleadings or documents have been filed.

5. 20-24700-E-13 WILLIAM REDDIN
20-2174 KPW-1
PRICE ET AL V. REDDIN

MOTION FOR SUMMARY JUDGMENT
1-8-21 [11]

Tentative Rulings Will be Updated to Add the Ruling for this Motion for Summary Judgment.

6. 17-22481-E-7 WILLIAM LANDES
20-2130 MPD-2
REGER V. ESSEX BANK

MOTION TO DISMISS CAUSE(S) OF ACTION FROM COUNTERCLAIM AND/OR MOTION TO STRIKE
1-22-21 [59]

Tentative Rulings Will be Updated to Add the Ruling for this Motion to Dismiss Cause(s) of Action from Counterclaim and/or Motion to Strike.