UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

March 19, 2015 at 1:30 p.m.

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1. 10-48239-E-7 BARBARA STEWART AND WAYNE STREWART DMB-1
15-2019 STEWART ET AL V. ROSS ET AL
MOTION TO DISMISS ADVERSARY PROCEEDING
2-19-15 [8]

Tentative Ruling: The Motion to Dismiss First Amended Complaint for Failure to State a Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiffs' attorney, Chapter 7 Trustee and U.S. Trustee on February 19, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss First Amended Complaint for Failure to State a Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Dismiss First Amended Complaint for Failure to State a Claim is granted and the Adversary Proceeding is dismissed.

Steve and Summer Ross ("Defendants") filed the instant Motion to Dismiss on February 19, 2015. Dckt. 8. The Defendants argue that Barbara and Wayne Stewart ("Plaintiff-Debtors") failed to state a claim pursuant to Fed. R. Civ. P. 12(b)(6), as incorporated by Fed. R. Bankr. P. 7012.

COMPLAINT

Plaintiff-Debtors filed a Complaint for damages and injunctive relief on January 22, 2015. Dckt. 1. In the five page complaint, the Plaintiff-Debtors state that they are the sole beneficiaries and owners of a trust entitled The Stewart 2009 Revocable Family Trust which included property commonly known as 28555 State Highway 49, Shingletown, California. The Plaintiff-Debtors argue that the Property was funded into the Trust through a Trustee's Deed Upon Sale dated September 23, 2009 and recorded on September 25, 2009 to the Trust.

The Plaintiff-Debtors entered into a relationship with the Defendants which ended in the Defendants suing the Plaintiff-Debtors. **The parties entered into a settlement agreement which required that the Plaintiff-Debtors to sign a Deed of Trust prepared by the Defendant's attorney which was recorded on January 26, 2010.** The Deed of Trust encumbered the Property by securing the payment of $150,000.00 through a promissory note. The Plaintiff-Debtors argue that the Deed of Trust was entered into by the Plaintiff-Debtors in their individual capacity rather than Trustees of the Trust. The Plaintiff-Debtors argue that this means the Deed of Trust legally encumbers nothing.

Additionally, Plaintiff-Debtors state that under the settlement agreement, they had to execute a Grant Deed in Lieu of Foreclosure which was executed but never recorded or perfected. Again, however, Plaintiff-Debtors argue that it was in their individual name and thus no rights, title or interest were passed.

Plaintiff-Debtors allege that the Defendants recorded an assignment of their interest in the promissory note and deed of trust to Daryll Wagner (now deceased, of the firm of Altemus and Wagner.

The Property was listed on Schedule A of the Plaintiff-Debtors's bankruptcy case.

In December 2014, the Defendants filed a motion to amend the deed to transfer the title to the Property from the Plaintiff-Debtors to the Defendants in the state court action.

The Plaintiff-Debtors allege two causes of action:

1.Determination of unsecured status of the Property and request for injunction 11 U.S.C. § 524

a.Plaintiff-Debtors allege that the Defendants violated the discharge injunction by attempting to perfect their interest in the Property in the state court action on December 2, 2014.

2.Disgorgement of Funds

a.Plaintiff-Debtors allege that Defendants caused to be filed Proof of Claim No. 8-1, that the Defendants knew they had assigned their interest to an attorney and had no right to title and interest in the Property. Furthermore, Plaintiff-Debtors allege that the Defendants were informed that they had

no interest in the Property and had received funds improperly from the estate. Demand was made for disgorgement and was refused.

b.Plaintiff-Debtors state that the Chapter 13 Trustee was informed that the Proof of Claim No. 8-1 was invalid but the case was converted to a Chapter 7 and no action was taken.

MOTION

Law and motion pleading practice in adversary proceedings is governed by Federal Rule of Civil Procedure 7(b). Fed. R. Bankr. P. 7007. A motion filed in an adversary proceeding, must:

A. be in writing unless made during a hearing or trial;

B. **state with particularity the grounds** for seeking the order; and

C. state the relief sought.

Fed. R. Civ. P. 7(b)(emphasis added).

In the present Motion, the below grounds are stated with particularity. Defendants alleges the following:

A. The trust deed created a security interest in the Property that was perfected ten months before the Plaintiff-Debtors filed bankruptcy.

1. The Stewarts failed to reveal their representative capacity as trustees when they executed the Deed of Trust.

2. By executing the Deed of Trust in favor of Ross, the Stewarts effectively conveyed a security interest to Ross, even though the Deed of Trust does not identify the Stewarts as trustees of the Stewart 2009 Revocable Family Trust and even though the Property was held in that trust. “A Deed of Trust, by way of a written instrument, conveys title to real property from the trustor-debtor to a third party trustee to secure payment of a debt owed to the beneficiary-creditor under a promissory note. (Citations omitted).” *(Jenkins v. J.P. Morgan Chase Bank, N.A.* 216 Cal. App. 4th 497, (2013) 508)(Thus, Placer Title Company, the Trustee of the Deed of Trust, actually has the “title” to the Deed of Trust until it is foreclosed upon.)

B. The Stewarts’ act of executing the Deed of Trust without disclosing their status as trustees of the trust just as effectively conveyed a security interest in the trust property as if they had spelled out their status as trustees.

C. The Stewarts were alter egos of their trust and in executing a Deed of Trust in favor of Ross, the Stewarts’ effectively conveyed a security interest in the property even

though it had been transferred or "funded" to the trust.

D. The Deed of Trust executed by the Plaintiff-Debtors contradicts the allegations of the complaint and the Deed of Trust must be given effect by the court.

1. The Plaintiffs may plead themselves out of court by attaching exhibits inconsistent with their claims: "When a written instrument contradicts allegations in a complaint to which it is attached, the exhibit trumps the allegation."(Thompson v. Illinois Dept. Of Prof. Reg., 300 F.3d 750, 754(7th Cir. 2002)(emphasis in original; internal quotes omitted); *United States ex rel. Riley v. St. Luke's Episcopal Hosp.*, 355 F.3d 370, 377 (5th Cir. 2004).

2. In the instant case, the Stewarts have effectively pleaded themselves out of court by attaching exhibits to the Complaint which are inconsistent with their allegations that they did not effectively convey the Deed of Trust to Ross.

3. The Stewarts affirmatively represented in paragraph 4 of the Settlement Agreement attached to the Complaint as Exhibit B that the property was owned "free and clear" therefore indicating that they were able to convey a security interest in it. Under California Probate Code 18200, the Stewarts could convey this interest and did. The attached exhibits demonstrate as a matter of law that a security interest was conveyed and perfected before the Stewarts filed bankruptcy.

E. The Plaintiff-Debtors are judicially estopped from claiming that Defendants' security interest in the Property is invalid or unperfected

1. "Judicial estoppel is an equitable doctrine that precludes a party from gaining an advantage by asserting one position, and then later seeking an advantage by taking a clearly inconsistent position." *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d at 782(9th Cir. 2001)(citing *Rissetto v. Plumbers & Steamfitters Local*, 343, 94 F.3d 597, 600-01(9th Cir. 1996). The aim of this doctrine is not only to prevent a party from gaining an advantage by asserting inconsistent positions, but also to ensure "the orderly administration of justice and... the dignity of judicial proceedings," and to "protect against a litigant playing fast and loose with the courts." *Russell v. Rolfs*, 893 F. 2d 1033, 1037 (9th Cir. 1990).

2. Here, the Stewarts should be judicially estopped from stating a new position that the Deed of Trust does not create a lien on the Property when they conceded in their bankruptcy schedules, and other bankruptcy filings, that they had the ability to encumber Property they repeatedly

claimed to own in various bankruptcy filings and statements made under oath.

F. The Plaintiff-Debtors' claims are not valid under bankruptcy law.

1. In *Cortez v. In re American Wheel (In re Cortez)*, 191, B.R. 174 (B.A.P. 9th Cir. 1995), the debtors executed a promissory note secured by a deed of trust on their residence in favor of California Wheel Company. California Wheel Company did not record the deed of trust before the debtors filed a chapter 7 bankruptcy, listing California Wheel Company as an "unsecured" creditor. After the debtors received a discharge, California Wheel Company recorded the deed of trust and filed a judicial foreclosure action against the debtors in state court. As in *Cortez,* the Stewarts are incorrect in asserting that Ross violated the "permanent injunction" by attempting to have the Deed of Trust cleared up in state court. **The state court action is in preparation to foreclose on the Property. No claims are asserted or will be asserted against the** Stewarts personally in state court. So, with any interpretation of the facts asserted in the Complaint, the Stewarts cannot obtain the relief they seek and therefore the Complaint must be dismissed.

G. The court cannot issue injunctive relief.

1. The court is prevented from entering an order enjoining the state court action. 28 U.S.C. 2283; see *Scherbenske v. Wachovia Mortgage*, 626 F. Supp. 2d 1052, 1050 (2009 E.D. Ca.)). Because the Stewarts are precluded from obtaining injunctive relief, the Complaint must be dismissed.

H. Since the automatic stay was lifted, the § 524 injunction did not preclude the state court action.

1. Since the stay was lifted, the **§** 524 injunction did not apply to the state court action the Stewarts seek to enjoin. *Watson v. Shandell (In re Watson)*, 192 B.R. 739, 749 (B.A.P. 9th Cir. 1996).

I. Despite the assignment of the note and Deed of Trust to Defendants' attorney as security for the payment of fees and costs, Defendants were entitled to the "adequate protection" payments received.

1. According to the Settlement Agreement and Mutual General Release" attached to the Declaration of Steven Ross Submitted In Support of motion to Confirm that Automatic Stay Does Not Preclude State Court Action or Non-Judicial Foreclosure as Exhibit 1, no payments were due on the Note until November 30, 2010, at which time the entire amount of principal and interest was then due. (Settlement Agreement p.1)

2. The Settlement Agreement gave Ross a choice if the Stewarts did not pay what they owed by November 30, 2010. Ross could accept and record the Grant Deed in Lieu of Foreclosure. Although Ross assigned the Note and Deed of Trust to his attorney to secure the payment of fees and costs, Ross did not assign all of his rights, including the right to record a Grant Deed in Lieu of Foreclosure in his name. (Exhibit D to Complaint). Therefore, Ross was entitled to "adequate protection" payments the Stewarts made during the course of their bankruptcy.

3. Additionally, although the Stewarts are not privy to Ross's agreement with his attorney, there would be nothing to prevent Ross from collecting "adequate security" payments from the Stewarts for his own benefit and for the benefit of his attorney. California law permits an action or proceeding to be maintained in the name of the original party even if that party has transferred his or her rights to another party. (California Code Civ. Proc. Section 368.5). Rule 25(c) of the Federal Rules of Civil Procedure is to the same effect.

4. Furthermore, Ross had and has the right to require his attorney to return the Note and re-assign or release the assessment of the Deed of Trust upon the payment of attorneys' fees and costs. (See, Kinsey v. Ryer (1925) 74 Cal. App. 567, 575). Since the attorneys' fees and costs owinf by Ross are less than the amount of the Note, Ross always retained an interest in the Note and Deed of Trust despite the assignment. Therefore, "count" must also be dismissed.

Dckt. 8.

FED. R. CIV. P. 12(b)(6) AND FED. R. BANKR. 7012 STANDARD

In considering a motion to dismiss, the court starts with the basic premise that the law favors disputes being decided on their merits. Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008 require that complaints contain a short, plain statement of the claim showing entitlement to relief and a demand for the relief requested. Fed. R. Civ. P. 8(a). Factual allegations must be enough to raise a right to relief above the speculative level. *Id.*, citing to 5 C. WRIGHT & A. MILLER, FED. PRACTICE AND PROCEDURE § 1216, at 235-36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action").

A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to the relief. *Williams v. Gorton*, 529 F.2d 668, 672 (9th Cir. 1976). Any doubt with respect to whether a motion to dismiss is to be granted should be resolved in favor of the pleader. *Pond v. General Electric Co.*, 256 F.2d 824, 826-27 (9th Cir. 1958). For purposes of determining the propriety of a dismissal before trial, allegations in the complaint are taken as true and are construed in the light most favorable to the plaintiff. *McGlinchy v. Shell*

Chemical Co., 845 F.2d 802, 810 (9th Cir. 1988); *Kossick v. United Fruit Co.*, 365 U.S. 731, 731 (1961).

Under the Supreme Court's formulation of Rule 12(b)(6), a plaintiff cannot "plead the bare elements of his cause of action, affix the label 'general allegation,' and expect his complaint to survive a motion to dismiss." *Ashcroft v. Iqbal,* 129 S. Ct. 1937, 1954 (2009). Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. *See Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1964-66 (2007). ("[A] plaintiff's obligation to provide 'grounds' of his 'entitle[ment]' to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.").

In ruling on a 12(b)(6) motion to dismiss, the Court may consider "allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). The court need not accept unreasonable inferences or conclusory deductions of fact cast in the form of factual allegations. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Nor is the court required to "accept legal conclusions cast in the form of factual allegations if those conclusions cannot be reasonably drawn from the facts alleged." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994).

IMPROPER "MOTHORITIES"

Defendants have filed what this court characterizes as a "Mothorities," a mash up of the motion and points and authorities in which the grounds stated with particularity (and subject to the warranties of Fed. R. Bankr. P. 9011) are hidden among numerous citations, quotations, factual allegations, arguments, speculation, and statements of indignation.

This is not the proper practice in the bankruptcy courts in this District. "Motions, notices, objections, responses, relies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a). Counsel is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by the Local Bankruptcy Rule 9014-1(d)(1). This failure is cause to deny the motion, Local Bankr. R. 1001-1(g), 9014-1(1).

The court has observed that the more complex the Mothorities in which the grounds are hidden, the more likely it is that no proper grounds exist. Rather, the moving party is attempting to beguile the court and other party. In such situations, the court routinely denies the motion without prejudice and without hearing. Law and motion practice in federal court, and especially in bankruptcy court, is not a treasure hunt process by which a moving party makes it unnecessarily difficult for the court and other parties to see and understand the particular grounds (the basic allegations) upon which the relief is based. The court does not provide a differential application of the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules as between creditors and debtors, plaintiff and defendants, or case and adversary proceedings. The rules are simple and uniformly applied.

This court has analogized the pleading requirements under the Federal Rule of Civil Procedure and the Local Rule to basic anatomy. The motion is the skeleton which alleges all of the necessary elements and allegations upon which the movant relies for the relief requested. If the court so chose pursuant to Federal Rule of Civil Procedure 55(b)(2) and Federal Rule of Bankruptcy Procedure 7055 and accept the well pleaded facts and other allegations as true, the motion could be granted or denied without proceeding to the supporting materials. The declarations, exhibits and other evidence are the muscle, providing the court with the evidence to support the alleged facts and providing the basis for the court finding that the witnesses testimony is credible. Finally, the points and authorities provide the legal theories which forms the skin and hold together the allegations and evidence. Each of these provide a separate and distinct element in the movant making a case for the granting of the motion.

As discussed by the court in connection with the motion for relief from the automatic stay filed by Defendants, in light of the specific disputes between the parties and their propensity to multiply, not reduce, litigation, the court waives this defect and wades through the 30 page Mothorities to discern what grounds Defendants state with particularity as the grounds for the relief requested.

DISCUSSION

A. First Cause of Action - Determination of Unsecured Status of the Property and Request for Injunction 11 U.S.C. § 524

Defendants argue that the first cause of action fails because the trust deed was perfected, the attached deed of trust contradicts the allegations in the complain, the Plaintiff-Debtors are estopped from claiming that the security interest is invalid, that the claims are not valid, and that the automatic stay was lifted which did not preclude the Defendants in the state court action.

At first glance, the Defendants are arguing the merits of the case rather than the sufficiency of the complaint to state a cause of action. Discerning the grounds in the unnecessarily convoluted Motion, the crux of the Defendants ground for dismissal under Fed. R. Civ. P. 12(b)(6) is that the Plaintiff-Debtors are misstating the facts arising from the Deed of Trust and that any action taken by the Defendants after the termination of the stay are not in violation of the discharge injunction.

A review of the Complaint in light of the court’s preference of deciding matters on the merits rather than dismissal, the court finds that there are not sufficient grounds from which the relief requested in the Complaint may be granted.

Under the Fed. R. Civ. P. 12(b)(6) standard, the court, taking the factual allegations of the complaint as well as taking judicial notice of the attached exhibits, find that the factual allegations do not rise to the level of more than mere speculation. On the Complaints face, there appears to be an internal inconsistency on the status and ownership of the Property. The Plaintiff-Debtors base the entire Complaint on the fact that the Plaintiff-Debtors do not own the Property but, rather, it is part of the Trust. The legal

conclusion that the Plaintiff-Debtors depend on is not the type of "legal conclusions cast in the form of factual allegations" that need to be accepted since the facts alleged do not lead to that conclusion. The Plaintiff-Debtors rely on the face of the Deed Upon Sale without taking into consideration that fact the Plaintiff-Debtors represented themselves as the owner in not only the bankruptcy but the settlement agreement. FN.1.

FN.1. The court notes that in the Complaint the Plaintiff-Debtors first assert that "Wayne and Barbara Stewart owned no rights, title or interest in the [Property]. Therefor no interest passes [by virtue of the deed of trust or deed in lieu of foreclosure]." Complaint, ¶ 7, p. 3:3-4; Dckt. 1. Then Plaintiff-Debtors alleged on October 25, 2010, Plaintiff-Debtors filed bankruptcy and the Property because property of the bankruptcy estate. Complaint, ¶¶ 8, 11. No allegation is made as to how the Property, in which the Plaintiff-Debtors "owned no rights, title or interest" because property in which they had an interest to be property of the bankruptcy estate. 11 U.S.C. § 541(a).

The general pleading requirements for a complaint in federal court were addressed by the United States Supreme Court in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), and restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). In discussing the minimum pleading requirement for a complaint, which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id*. A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id*. It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

The Complaint swings between the Plaintiff-Debtors individually, asserting that the property is theirs and was included in the bankruptcy estate, and saying that the deed of trust they signed is not valid because the property was owned by their trust. The Plaintiff-Debtors are individually the plaintiffs in this Adversary Proceeding, not in their fiduciary capacities as trustees of the trust which they assert has title to the property. The Complaint does not allege grounds how the individual Plaintiff-Debtors assert that Defendants asserting an interest in the property superior to the trust arises to a claim being asserted by the individual Plaintiff-Debtors.

The Complaint also alleges that the deed of trust was not perfected pre-petition, and therefore any attempt to perfect it post-petition is a violation of the discharge injunction. No allegations are made as to why the pre-petition transfer of an interest in the property by the Plaintiff-Debtors is not interest in the property post-petition and post-discharge. As confirmed by the U.S. Supreme Court in *Dewsnup v. Timm*, 502 U.S. 410, 416 (1992),

> "Under the Bankruptcy Act of 1898, a lien on real property passed through bankruptcy unaffected. This Court recently acknowledged that this was so. See *Farrey v. Sanderfoot*, 500 U.S. 291, 297, 114 L. Ed. 2d 337, 111 S. Ct. 1825 (1991)

('Ordinarily, liens and other secured interests survive bankruptcy'); *Johnson v. Home State Bank*, 501 U.S. 78, 84, 115 L. Ed. 2d 66, 111 S. Ct. 2150 (1991) ('Rather, a bankruptcy discharge extinguishes only one mode of enforcing a claim -- namely, an action against the debtor in personam -- while leaving intact another -- namely, an action against the debtor in rem')."

The Complaint on its face states that a deed of trust was executed by the Plaintiff-Debtors, but they want to dispute the validity of the deed of trust on state law grounds.

The First Cause of Action alleges that on December 2, 2014, the Defendants commenced an action to enforce the rights in the Property they assert under the deed of trust and related documents. The only contention made in the First Cause of Action is that the discharge injunction precludes Defendants from asserting such rights and interests in the Property. That is clearly incorrect as to the effect of the discharge injunction and interests in property as stated by the U.S. Supreme Court.

Here, Plaintiff-Debtors have not pleaded properly under Fed. R. Bankr. P. 7008(b). The Plaintiff-Debtors have not provided enough information to state grounds for relief or to properly explain how the representations by them to the Defendants and the bankruptcy court as owners of the Property entitles them to the relief sought. The Plaintiff-Debtors merely state that because they were not the "owners" of the Property, having transferred it into a revocable trust, there was no security transferred to the Defendants. They then contend that Defendants attempting to assert rights and interests under the deed of trust (which the court understands to be obtain a determination from the state court that the Plaintiff-Debtors did transfer an interest in the property by the deed of trust) violates the discharge injunction. Simultaneously Plaintiff-Debtors make the inconsistent factual argument that they do actually have an interest in the Property sufficient to make it property of the bankruptcy estate. This fails to state a sufficient claim.

Therefore, the court grants the Motion as to the first cause of action and dismisses without prejudice the first cause of action.

B. Second Cause of Action - Disgorgement of Funds

In the Second Cause of Action it is alleged that because Plaintiff-Debtors contend that the Property was owned by the trust, though the Property is listed in their Schedules as property of the Plaintiff-Debtors and was property of the bankruptcy estate, the Defendants did not have an interest in the Property or the note alleged to be secured by the Property. Further, they assert that the Defendants has assigned any interest they had (presumably in the note asserted to be secured by the Property) to their attorney.

The Complaint directs the court to an Assignment of the note and deed of trust, which is attached as Exhibit D to the Complaint. The court initially notes that the assignment states that the Defendants "pledge, assign and transfer" to their former attorney "all rights, title and interest" to the note and deed of trust. The word "pledge" is a security interest word in which a lien interest is transferred, as opposed to the note being sold or given in satisfaction of any obligation. 4 Witkin Sum. Cal. Law, Tenth Edition, Secured

Transactions CH VII B. 1. § [2], Nature of Pledge. Who holds "title" to the personal property is immaterial. Cal. Com. § 9202. The court makes no factual determination as to what interest was held, if any, by Defendants as of the commencement of the bankruptcy case. However, the Complaint indicates that Defendants may have continued to own the note, having provided it to their former attorney as security for an obligation. (Given the fiduciary duties of an attorney to his or her clients, ambiguities in transaction documents as between the attorney and client are construed against the attorney, when there is no independent representation of for the client.)

The Complaint alleges that Plaintiff-Debtors commenced their Chapter 13 case on October 25, 2010. Though the Complaint fails to allege what occurred in the Chapter 13 case, the Plaintiff-Debtors confirmed a Chapter 13 Plan. The Defendants direct the court to this in their Mothorities, a fact which the court may take notice of in connection with this Motion. The 2nd Amended Chapter 13 Plan provides for Defendants as having a Class 2 secured claim in the amount of $150,000.00 which would be paid under the Plan. 10-48239, Dckt. 44. It appears that post-petition the Plaintiff-Debtors recognized the Defendants as the creditor (as that term is defined in 11 U.S.C. § 101(10) and (5)), confirming a plan which required the Chapter 13 Trustee to make distributions to Defendants on that secured claim.

At best, the Second Cause of Action alleges that a dispute could exist between the Defendants and the heirs of their former attorney concerning which of them have the right to the monies distributed under the confirmed Chapter 13 Plan. The Complaint does not allege the basis for Plaintiff-Debtors asserting such conflicting interest in the note and interest in the property asserted to secure the note. U.S. Const. Art. III, Sec. 2 real party in interest and case or controversy requirement; *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64, 117 S. Ct. 1055 (1997); *Sacks v. Office of Foreign Assets Control*, 466 F.3d 764, 771. (9th Cir. 2006) (Standing must be determined before federal judicial power may be exercised).

The second cause of action fails for the same reasons as the first cause of action does – the sole basis for the alleged cause of action is the legal conclusion that no security interest existed at the time of the bankruptcy and thus the Defendants had no right to file a Proof of Claim or to receive any payments through the Chapter 13 plan. However, that property right issue is the subject of the pending state court action.

As discussed supra, the court does not need to accept as true, for purposes of a Fed. R. Civ. P. 12(b)(6), legal conclusions masked as factual allegations. The Complaint fails to plead a claim for the Second Cause of Action.

Therefore, the court grants the Motion as to the second cause of action and dismisses without prejudice the second cause of action.

OTHER REQUESTS FOR RELIEF

Though not stated as causes of action, the prayer requests that the court issue an injunction prohibiting the Defendants from asserting any rights and interests in the Property. No claim has been stated (even drawing from the general allegations and the two stated Causes of Action) to enjoin Defendants from asserting rights and interests in the Property. The prayer asks for other

relief, including punitive damages. No claim has been stated from the other relief requested.

The court dismisses without prejudice all other claims for relief as may be set forth in the prayer.

PROPER EXERCISE OF FEDERAL COURT JURISDICTION

Jurisdiction was granted to the district courts and bankruptcy courts to the extent that issues arise under the Bankruptcy Code, in the bankruptcy case (such as administration of an asset), or relate to the (administration or outcome of a) bankruptcy case. 28 U.S.C. § 1334(a) and (b). However, recognizing this broad reach of federal court jurisdiction, Congress also provided that federal judges may, and in some situations are required to, abstain from hearing matters though federal court jurisdiction under § 1334 may exist. *See* 28 U.S.C. § 1334(c).

As provided in 28 U.S.C. § 1334(c)(1),

> (1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

A bankruptcy judge's exercise of the federal judicial power is considered in light of core and non-core (related to) jurisdiction created by Congress and limited by the United States Constitution. *See Stern v. Marshall*, 564 U.S. ____ , 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011). This court has previously addressed the issue of when a bankruptcy court judge should utilize federal bankruptcy jurisdiction to adjudicate issues between parties which determination will have no bearing on the bankruptcy case and do not concern Bankruptcy Code issues. *See Pineda v. Bank of America, N.A. (In re Pineda)*, 2011 Bankr. LEXIS 5609 (Bankr. E.D. Cal 2011), *affrm. Pineda v. Bank of America, N.A. (In re Pineda)*, 2013 Bankr. LEXIS 1888 (B.A.P. 9th Cir. 2013). Such jurisdiction should be carefully used by the federal courts to the extent necessary and appropriate to effectuate the goals, policies, and rights relating to bankruptcy cases, and not as a device to usurp state courts of general jurisdiction or the district as the trial court for federal matter and diversity jurisdiction.

If Plaintiff-Debtors believe that they may properly file an amended complaint, they shall address in the amended complaint the bankruptcy law claims (arising under or arising in) upon which the court may conclude that the exercise of federal court jurisdiction is proper pursuant to 28 U.S.C. § 1334. From the Complaint, it appears that the dispute which exists is what interests, if any, Defendants have in the Property by virtue of the deed of trust and deed in lieu of foreclosure. Additionally, whether such interest, if any, is not enforceable because it is alleged to not having been "perfected." These appear to be state law issues, not arising under the Bankruptcy Code, arising in the bankruptcy case, or affecting the administration of the bankruptcy case (the Trustee having abandoned the Property when the case was closed, 11 U.S.C. § 554(c)). The California Superior Court, the state court of general jurisdiction, is the one in which real property interest issues (which have no

impact on the bankruptcy case or bankruptcy law) are determined. While federal judges are given great latitude to decided state law issues in connection with the bankruptcy case, federal judges must always be vigilant to unnecessarily trod on the state court judiciary.

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 the Complaint for Failure to State a Claim filed by Barbara and Wayne Stewart ("Plaintiff-Debtors") 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 Complaint for Failure to State a Claim is granted and Complaint, and all claims for relief stated therein, are dismissed without prejudice.
>
> **IT IS FURTHER ORDERED** that if Plaintiff-Debtors believe that filing an amended complaint as permitted by Fed. R. Civ. P. 15(a)(1) or seeks leave to file an amended complaint pursuant to Fed. R. Civ. P. 15(a)(2), as incorporated by Fed. R. Bankr. P. 7015, Plaintiff-Debtors shall clearly state the basis for this court exercising federal court jurisdiction pursuant to 28 U.S.C. § 1334.

2. 13-27293-E-7 CHRISTOPHER/TANA CROSBY — CONTINUED MOTION TO DISMISS
13-2306 SCR-6 — ADVERSARY PROCEEDING
SANDOVAL ET AL V. CROSBY — 10-30-14 [53]

Final Ruling: No appearance at the March 19, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney on August 28, 2014. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss First Amended Complaint for Failure to State a Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered. The court has determined that oral argument will not be of assistance in ruling on the Motion.

The Motion to Dismiss First Amended Complaint for Failure to State a Claim is dismissed without prejudice.

Jaime and Marie Sandoval ("Plaintiffs") filed the instant case on September 30, 2013, objecting to the discharge of debts incurred by Christopher Crosby ("Defendant-Debtor") from a construction contract between the Plaintiffs and Defendant-Debtor. Defendant-Debtor filed the instant motion to dismiss the complaint for failure to state a claim on which relief can be granted (Fed. R. Civ. P. 12(b)(6)).

FEBRUARY 5, 2015 HEARING

At the hearing, the Parties reported to the court that this matter has been settled and the documents are being finalized. The court continued the hearing to 1:30 p.m. on March 19, 2015.

JOINT STIPULATION

The Parties filed a joint stipulation of dismissal with prejudice on March 4, 2015. Dckt. 68. The stipulation is made pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) as incorporated by Fed. R. Bankr. P. 7041. The Stipulation constitutes the dismissal of the adversary proceeding.

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 Plaintiffs' First Amended Complaint for Failure to State a Claim on Which Relief Can Be Granted (Fed. R. Civ. P. 12(b)(6)) filed by Christopher Beck Crosby ("Defendant-Debtor") for all claims asserted in the Complaint filed by Jaime Sandoval and Mary Sandoval ("Plaintiffs") having been presented to the court, the parties having filed a Stipulation pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Civ. P. 7041, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed without prejudice, the parties having previously dismissed this Adversary Proceeding with prejudice pursuant to Stipulation (Dckt. 68).

3. 13-27293-E-7 CHRISTOPHER/TANA CROSBY
13-2306
SANDOVAL ET AL V. CROSBY

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT
9-12-14 [42]

Final Ruling: No appearance at the March 19, 2015 Status Conference is required.

Plaintiff's Atty: Sean Gavin
Defendant's Atty: Stephen C. Ruehmann

Adv. Filed: 9/30/13
Answer: 11/1/13

Amd Cmplt Filed: 9/12/14
Answer: none

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - willful and malicious injury
Declaratory judgment

Notes:

Continued from 2/5/15 to be heard in conjunction with the motion to dismiss.

Joint Stipulation of Dismissal With Prejudice filed 3/4/15 [Dckt 68]