

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

March 27, 2014 at 2:30 p.m.

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1. [10-94411-E-7](#) CAROLE CAMERON STATUS CONFERENCE RE: COMPLAINT
[14-9005](#) 1-30-14 [[1](#)]
FERLMANN V. GARRETT ET AL

Plaintiff's Atty: Carl W. Collins
Defendant's Atty: unknown

Adv. Filed: 1/30/14
Answer: none

Nature of Action:
Recovery of money/property - fraudulent transfer
Recovery of money/property - other

Tentative Ruling: The Status Conference is continued to 2:30 p.m. on May 1, 2014. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Notes:

MARCH 27, 2014 STATUS CONFERENCE

The Plaintiff-Trustee filed a Status Report on March 24, 2014. Dckt. 8. He states that no answer has been filed by Glenn Alan Garrett, one of the Co-Defendants, and that the Plaintiff-Trustee will now be filing a request for entry of a default and motion for entry of a default judgment thereon.

The Plaintiff-Trustee granted Defendant Garrett an extension of time to file an answer, through and including March 17, 2014. Though no answer appears on the Docket in this Adversary Proceeding, the Trustee reports that an incorrect adversary proceeding number was placed on that answer. The Plaintiff-Trustee requests time to now review the answer and conduct a discovery conference with the one responding Defendant.

The court grants the Plaintiff-Trustee's request for additional time to review and meet and confer with the Defendant who has recently filed an answer.

SUMMARY OF COMPLAINT

March 27, 2014 at 2:30 p.m.

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The Complaint alleges that in violation of the automatic stay Defendant Karen Garrett obtained property of the bankruptcy estate (one-half interest), having it transferred to herself and her son, Glenn Garrett. It is asserted that this asset of the estate had a value of \$62,500.00 as of the commencement of the case, but when the Co-Defendants sold said 100% of the asset they received \$125,000.00.

The Second Cause of Action is to avoid the post-petition transfer pursuant to 11 U.S.C. § 549. The Third Cause of Action is for fraudulent conveyance pursuant to 11 U.S.C. § 544 and California Civil Code §§ 3439.04-05. The Fourth Cause of Action is to recover the asset transferred or value thereof from the Defendants pursuant to 11 U.S.C. § 550.

The Fifth Cause of Action pleads a claim for attorneys' fees pursuant to 11 U.S.C. § 362(k) based on the alleged violation of the automatic stay.

REVIEW OF ANSWER

In Adversary Proceeding 14-9006 (which also involves this Plaintiff-Trustee and the Co-Defendants) an answer has been filed to the "Complaint to Recover Avoidable Transfers." The Complaint in Adversary Proceeding 14-9006 is one for sale of interests in property pursuant to 11 U.S.C. § 363(h), thus it appears that this is the misfiled answer to the complaint in this Adversary Proceeding.

The Answer, 14-9006 Dckt. 12, admits and denies specific allegations in the Complaint. These include,

- A. Admitting that federal court jurisdiction exists pursuant to 28 U.S.C. §§ 1334 and 157. *Id.* ¶ 1.
- B. Denies that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(H). *Id.* ¶ 1
- C. Admits that the Plaintiff-Trustee states specified statutory grounds upon which the Complaint is based and venue. *Id.* ¶¶ 2, 3.
- D. Defendant states that she "can neither admit or deny" most of the affirmative allegations of the Complaint.

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 Status Conference in this Adversary Proceeding having been conducted by the court, and upon review of the pleadings, it being reported that an answer has been filed by one Defendant-Debtor (but was filed in the wrong adversary proceeding), the other Defendant-Debtor not filing an answer and the Plaintiff-Trustee proceeding with having his default entered and seeking a default judgment,

(November 8, 2010). It is asserted that the "two year statute of limitations period has expired, citing to 11 U.S.C. § 108. (Which addresses an extension of time for periods for the Debtor to act under applicable nonbankruptcy law, order in a nonbankruptcy proceeding, or agreement.)

- C. The Trustee cannot "wait for years for real property to appreciate in value and then seek to recover."
- D. The Defendant addresses medical and physical burdens created by a sale of the property.

3. [13-91938-E-7](#) OSCAR CARDENAS STATUS CONFERENCE RE: COMPLAINT
[14-9001](#) 1-22-14 [[1](#)]
TURLOCK IRRIGATION DISTRICT V.
CARDENAS, JR.

Plaintiff's Atty: Ken R. Whittall-Scherfee
Defendant's Atty: Pro Se

Adv. Filed: 1/22/14
Answer: 2/14/14

Nature of Action:
Dischargeability - fraud as fiduciary, embezzlement, larceny

Notes:

Plaintiff's Discovery Plan filed 3/19/14 [Dckt 8]

SUMMARY OF COMPLAINT

The Complaint asserts claims arising under 11 U.S.C. § 523(a)(4) [fraud or defalcation in a fiduciary capacity; embezzlement; larceny] against the Defendant-Debtor. It is alleged that the Defendant-Debtor without authorization diverted (stole) electrical power from the Plaintiff. The damages asserted are: Actual Damages of \$26,353.12, Treble Damages of \$78,759.36 (Cal. Civ. § 1882.2), and attorneys' fees (Cal. Civ. § 1882.2).

SUMMARY OF ANSWER

The Answer, in the form of a letter, states that the Defendant-Debtor denies residing at the property at issue. Further, he denies altering or damaging any of the Plaintiff's property, as well as denies diverting any electrical service. The Defendant-Debtor does admit that the Plaintiff provided electrical service to the Property.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 11 U.S.C. § 523 (the

federal statutory grounds). Further, that this nondischargeability action is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 2, 3 Dckt. 1. In his Answer, the Defendant-Debtor does not deny the allegations of jurisdiction or that this is a core proceeding.

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

- a. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. §§ 1334 and 11 U.S.C. § 523 (the federal statutory grounds). Further, that this nondischargeability action is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 2, 3 Dckt. 1. In his Answer, the Defendant-Debtor does not deny the allegations of jurisdiction or that this is a core proceeding. This is a core proceeding for which the bankruptcy judge issues all orders and the final judgment.
- b. Initial Disclosures shall be made on or before -----, **2014**.
- c. Expert Witnesses shall be disclosed on or before -----, 2013, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2014.
- d. Discovery closes, including the hearing of all discovery motions, on -----, 2014.
- e. Dispositive Motions shall be heard before -----, 2014.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2014.

4. [13-91963-E-7](#) MICHELLE HOLTZINGER
[14-9008](#)
KEAGY V. HOLTZINGER

STATUS CONFERENCE RE: COMPLAINT
1-30-14 [1]

Plaintiff's Atty: Timothy T. Trujillo
Defendant's Atty: Thomas P. Hogan

Adv. Filed: 1/30/14
Answer: 3/14/14

Nature of Action:
Dischargeability - fraud as fiduciary, embezzlement, larceny

Notes:

Joint Status Conference Statement filed 3/17/14 [Dckt 11]

SUMMARY OF COMPLAINT

The Complaint asserts a cause of action for nondischargeability pursuant to 11 U.S.C. § 523(a)(4). It is alleged that the Plaintiff and Debtor entered into an oral partnership to develop certain real property in East Palo Alto, California. It is alleged that the Defendant-Debtor failed to disburse the Plaintiff's portion of the partnership profits. In May 2012, it is asserted that Plaintiff obtained a stated court judgment for 50% of the profits, which Plaintiff computes to be \$135,817.50, plus interest at the legal rate.

The prayer of the Complaint makes a request for legal fees. The court cannot identify any claim stated (whether as a separate cause of action or "a short plain statement showing the grounds" under which Plaintiff is entitled to recover attorneys' fees, Fed. R. Bankr. P. 7008(b) and Fed. R. Civ. P. 7(a)(2), which is separate from the demand for the relief sought, Fed. R. Civ. P. 7(a)(3).

SUMMARY OF ANSWER

In the Answer Defendant specifically admits and denies allegations in the Complaint. The Defendant-Debtor cites the court to several cases, including the recent U.S. Supreme Court decision in *Bullock v. BankChampaign, N.A.*, ___ U.S. ___, 133 S. Ct. 1754 (2013), stating that there is an intent component to this ground for fiduciary breach or embezzlement. It is alleged that the judgment, after trial, found only "constructive fraud" and not "actual fraud."

The prayer of the Answer makes a request for legal fees. The court cannot identify any claim stated (whether as a separate cause of action or "a short plain statement showing the grounds" under which Plaintiff is entitled to recover attorneys' fees, Fed. R. Bankr. P. 7008(a) and Fed. R. Civ. P. 7(a)(2), which is separate from the demand for the relief sought, Fed. R. Civ. P. 7(a)(3).

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b), 11 U.S.C. § 523(a)(4), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 4, 5 Dckt. 1. In her answer, Defendant-Debtor admits the allegations of jurisdiction and core proceedings. Answer ¶ 1, Dckt. 9. **To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**

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

- a. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. §§ 1334 and 157(b), 11 U.S.C. § 523(a)(4), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 4, 5 Dckt. 1. In her answer, Defendant-Debtor admits the allegations of jurisdiction and core proceedings. Answer ¶ 1, Dckt. 9. **To the extent that any issues in this Adversary Proceeding are related to proceedings, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all claims and issues in this Adversary Proceeding referred to the bankruptcy court.**
- b. Initial Disclosures shall be made on or before -----, **2014.**
- c. Expert Witnesses shall be disclosed on or before -----, 2013, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2014.
- d. Discovery closes, including the hearing of all discovery motions, on -----, 2014.
- e. Dispositive Motions shall be heard before -----, 2014.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2014.

5. [13-90465-E-7](#) **KIMBERLY VEGA**
[14-9004](#)
MCGRANAHAN V. VEGA ET AL

STATUS CONFERENCE RE: COMPLAINT
1-29-14 [1]

Plaintiff's Atty: Steven S. Altman
Defendant's Atty:
 Pro Se [Kimberly Vega]
 unknown [Maria Rangel; Victor Vega]

Adv. Filed: 1/29/14
Answer: 3/3/14 [Kimberly Vega]

Nature of Action:
Approval of sale of property of estate and of a co-owner
Declaratory judgment

Notes:

Entry of Default [Maria Rangel] filed 3/12/14 [Dckt 13]
Entry of Default [Victor Vega] filed 3/12/14 [Dckt 14]

MARCH 27, 2014 STATUS CONFERENCE

The Chapter 7 Trustee filed the present Complaint against Kimberly Vega (the Defendant-Debtor), Victor Vega and Maria Rangel. The Defaults of Victor Vega and Maria Rangel have been entered. Dckts. 13, 14. On March 3, 2014 Kimberly Vega filed an answer.

SUMMARY OF COMPLAINT

By this Complaint the Plaintiff-Trustee seeks to sell real property in which the estate has an undivided interest and the interests of the co-owners pursuant to 11 U.S.C. § 363(h). The Complaint alleges that the Defendant-Debtor has previously admitted that she was the legal and equitable owner of the interest in the subject Property. It is asserted that Defendant-Debtor is now estopped from asserting a contrary legal position.

SUMMARY OF ANSWER

In the Answer the Defendant-Debtor admits allegations in the Complaint, denying the following:

- A. That the Defendant-Debtor held a 1/3 or ½ interest in the Property.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b) (2) (A), (E), (N), and (O).

Complaint ¶ 5, Dckt. 1. In her Answer, Defendant-Debtor Kimberly Vega admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 5, Dckt. 8. **To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**

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

- a. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2) **(A), (N), and (O)**. **First Amended** Complaint, ¶¶ **X, X**, Dckt. **X**. The Defendant admits the jurisdiction and that this is a core proceeding. Answer, ¶¶ **X, X**, Dckt. **X**. **To the extent that any issues in this Adversary Proceeding are related to proceedings, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all claims and issues in this Adversary Proceeding referred to the bankruptcy court.**
- b. Initial Disclosures shall be made on or before -----, **2014**.
- c. Expert Witnesses shall be disclosed on or before -----, 2013, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2014.
- d. Discovery closes, including the hearing of all discovery motions, on -----, 2014.
- e. Dispositive Motions shall be heard before -----, 2014.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2014.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Tim Brown, Debtor, Debtor's Attorney, Chapter 7 Trustee, all creditors, and Office of the United States Trustee on July 11, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion for Contempt 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 hearing on the Court's Order requiring Tim Brown to pay sanctions and turn over possession of two vehicles, the court orders that XXXXXXXXXXXX. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

These Civil Minutes contain the minutes from the prior hearings and orders concerning the conduct of Tim Brown relating to the present Motion. The court has determined that continuing the Civil Minutes in this format insures that all proceedings in connection with this Motion and orders thereon are reflected in the latest set of minutes.

**MOTION FOR ORDER TO SHOW CAUSE AND
PROCEEDINGS IN WHICH TIM BROWN HAS
BEEN FOUND TO BE IN CONTEMPT FOR
FAILURE TO COMPLY WITH ORDERS OF THIS COURT**

The Chapter 7 Trustee, Michael D. McGranahan, moved the court for an Order to Show Cause why Tim Brown should not be adjudged in civil contempt for failing and refusing to comply with the Judgment of the court. The Trustee states that the court entered judgment in Adversary Proceeding No. 12-09003 against Tim Brown determining that the following vehicles are property of the bankruptcy estate with a total value of \$42,915.00, which must be turned over by Mr. Brown to the Trustee on or before December 31, 2013:

- (a) 1997 Harley Davidson Red Fat Boy Motorcycle, VIN ending in 32282;
- (b) 2008 Harley Davidson Cross Bones Motorcycle, VIN ending in 40575; and
- (c) 2007 Chevrolet Corvette Automobile, Licence No.

5XYR543, VIN ending in 33800.

The Trustee states that he has made repeated requests to Mr. Brown and his counsel seeking compliance with the Judgment for the turnover of the property, but Mr. Brown has failed and refused to turn over the vehicles.

Additionally, the Trustee states he has incurred attorney's fees in the amount of \$1,593.56 in fees and expenses incurred in employing his counsel to enforce the Judgment.

DISCUSSION

Bankruptcy Courts have the jurisdiction to impose sanctions. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-49 (9th Cir. 2004). The court also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see also 11 U.S.C. § 105(a).

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience to a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemtor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Lehtinen*, 564 F.3d at 1058. However, the court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

Here, the Trustee has shown that Time Brown has failed to comply with the court's Judgment order to turn over the personal property described above. Tim Brown has failed to respond to the Motion as required under Local Bankruptcy Rule 9013-1(f)(1).

AUGUST 22, 2013 HEARING

At the August 22, 2013 hearing Tim Brown and his counsel, David Foyil, appeared in response to the Motion. At the hearing, David Foyil and Tim Brown offered the following explanations as to why the court's prior judgment and order for the turn over of the vehicles had not been complied with by Tim Brown.

- A. After the entry of the judgment Tim Brown and his representatives, communicated with the Trustee about Tim Brown purchasing the vehicles from the Trustee rather than turning them over to the Trustee.
- B. Because there are liens on (at least some of) the vehicles, Tim Brown thought that he could retain possession of them so long as he made monthly payments on those obligations.
- C. Tim Brown spoke with some attorney (it not being made clear the identify of the attorney) who is purported to have told him that he could retain possession of the vehicle notwithstanding this

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court's judgment and order for possession.

- D. Tim Brown represented to the court and Trustee that the 2008 Harley Davidson was "run over" and is "in pieces" at a number of different locations. Tim Brown also represented that he did not maintain insurance on the 2008 Harley Davidson which he did not turn over to the Trustee.
- E. When the attorney for the Trustee unequivocally communicated to David Foyil (counsel for Mr. Brown) that the negotiations with Mr. Brown were concluded when Mr. Brown had failed to provide payment to the Trustee for the vehicles, Mr. Foyil reports that it was his office who failed to communicate with Tim Brown to turn over the vehicles. Mr. Foyil agrees to pay the \$1,593.56 in legal fees incurred by the Trustee.

The court appreciated, at that time, both David Foyil and Tim Brown having appeared at the court hearing on August 22, 2013, and not requiring the U.S. Marshal to otherwise waste time and resources to take Mr. Brown into custody and present him in court as ordered. However, the court does not find reasonable Tim Brown's contentions that he though he did not have to comply with the judgment and order of this court to turn over the vehicles.

The court found Tim Brown has failed to comply with the Judgment and Order of this Court ("December 13, 2012 Judgment and Order"). Adv. Proc. 12-9003, Dckt. 41. Compliance with federal court judgments and orders is not optional. This court has the power and authority to compel compliance with orders and judgments through the issuance of corrective sanctions. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); 11 U.S.C. § 105(a), addressing the inherent civil contempt power exercised by judgments of the bankruptcy court.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemtor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehitine*, 564 F.3d at 1058. However, the bankruptcy court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

It was necessary and appropriate for the exercise the civil contempt power of this court to enforce the December 13, 2012 Judgment and Order. David Foyil shall pay the Chapter 7 Trustee \$1,593.56 to compensate the estate for the legal fees and expenses incurred in connection with the present Motion caused by Tim Brown failing to comply with the December 13, 2012 Judgment and Order. This is ordered as the payment of expenses incurred and not as "sanctions" against counsel.

It was also necessary and appropriate to order corrective monetary sanctions, to be paid, if Tim Brown fails to comply with the order issued by the court pursuant to this Motion. To the extent that Tim Brown suffered from any "confusion" (whether created in his own mind or by unnamed persons), there

is no confusion that the court has ordered him, in open court at the August 22, 2013 hearing to turn over the following vehicles:

- A. The 1997 Harley Davidson Red Fat Boy Motorcycle, shall be delivered by Tim Brown to the Trustee at Huisman Auctions, inc., 13070 W. Stockton Blvd., Galt, California, during regular business hours on or before 4:00 p.m. on August 28, 2013.
- B. The 2007 Chevrolet Corvette Automobile, License No. 5XYR543, VIN IGIYY26U575133800, shall be delivered by Tim Brown to the Trustee at Huisman Auctions, inc., 13070 W. Stockton Blvd., Galt, California, during regular business hours on or before 4:00 p.m. on September 4, 2013.
- C. With each vehicle, Tim Brown shall turn over the current registration, title documents, the names of any lien holders, and contact information for such lien holders.

The dates to turnover the vehicles in compliance with this court's judgment were sent with the concurrence of Tim Brown. He expressly represented to the court that he would have the vehicles turned over within the above time periods and did not require any additional time.

The court did not issue a further order at this time for the turn over of the 2008 Harley Davidson which is asserted to be "in pieces." The December 13, 2012 Judgment and Order includes a monetary judgment amount for each vehicle, which may be enforced by the Trustee. The court left it to the Trustee to determine if the "in pieces" 2008 Harley Davidson should be turned over, or if the Trustee believes that he should enforce the monetary judgment to recover the value of this vehicle which Tim Brown retained possession of and did not insure.

As corrective sanctions, the court provided that it would order Tim Brown to pay \$2,500.00 if he fails to timely turn over the 1997 Harley Davidson Red Fat Boy Motorcycle and a separate \$2,500.00 if Tim Brown fails to timely turn over the 2007 Chevrolet Corvette Automobile. Tim Brown had the ability to avoid paying the corrective sanctions by complying with this order of the court. Again, the court set the deadlines for the turn over of the two vehicles after confirming with Tim Brown and his counsel in open court that such vehicles can be so delivered by Mr. Brown.

The court continued the hearing on this Motion to obtain confirmation that both vehicles have been turned over and whether the corrective sanctions must be ordered because of his future non-compliance.

SEPTEMBER 26, 2013 HEARING

On September 4, 2013, the Trustee filed a report of sale of the Debtor's 2004 Harley Davidson Duece Softtail back to the Debtor Tina M. Brown for a total sum of \$5,000.00. Dckt. 80.

On September 24, 2013, the Trustee filed a Report stating that as of September 24, 2013, Tim Brown failed to turn over possession of the 1997 Harley Davidson Red Fat Boy Motorcycle and the 2007 Chevrolet Corvette Automobile.

The Trustee also reported that the documents provided to him by counsel for Tim Brown demonstrate that on or about May 1, 2013, Tim Brown encumbered the 2007 Corvette and 1997 Harley Davidson by purporting to grant Francine Phillips a security interest in the vehicles. This granting of a security interest was in violation of the automatic stay and contrary to the court's December 31, 2013 judgment.

Though Tim Brown expressly represented to the court that he would turn over possession of the two vehicles to the Trustee as previously ordered, the Chapter 7 Trustee reported that the vehicles have not been turned over. David Foyil appeared at the hearing, stating that he may be appearing in connection with this Motion to represent Tim Brown. The court instructed David Foyil to either file a notice of appearance or, as provided by the Local District Court Rules and Local Bankruptcy Rules, the next hearing at which he appears for Tim Brown shall be deemed an appearance and he shall be the attorney of record for Tim Brown in this Contested Matter.

Tim Brown offered no explanation or excuse for failing to comply with the court's prior order at the hearing (he did not appear). Further, he offered no explanation as to why or how he has failed to comply with the order which was set based upon his confirmation of ability to turn over the vehicles or why he has not complied with the express promises he made to the court and Chapter 7 Trustee at the August 22, 2013 hearing.

The court ordered that Tim Brown shall pay corrective sanctions of \$31,915.00 to the Clerk of the Court if the (1) 1997 Harley Davidson Red Fat Boy Motorcycle, VIN ending in 32282 and (2) the 2007 Chevrolet Corvette Automobile, Licence No. 5XYR543, VIN ending in 33800, are not delivered to the Chapter 7 Trustee by the close of business on October 15, 2013. David Foyil, who appears as the possible attorney for Tim Brown confirmed at the September 26, 2013 hearing that he would communicate those date and the corrective sanction to Tim Brown, in addition to the Clerk of the Court serving the order on Tim Brown.

The \$31,915.00 sanction was determined an appropriate amount because it represents the value of the two vehicles. Given Tim Brown's conduct to date, a lesser amount would likely not have the necessary corrective effect and induce compliance with the court's order. A lesser amount could cause Tim Brown to conclude that he can just "buy the vehicles" and "buy off the court" for an amount less than the vehicles are worth.

If Tim Brown fails to turn over the vehicles as ordered by the court, then the court shall impose the \$31,915.00 in corrective monetary sanction and set the Motion for further hearing with a higher corrective sanction amount. Only after exhausting the higher monetary sanction amount will the court consider a corrective incarceration sanction or referring this matter to the U.S. District Court for the imposition of appropriate punitive sanctions, including incarceration for such period of time as the District Court judge determines appropriate for the failure to comply with this court's order.

The Chapter 7 Trustee was ordered to file an updated Status Report on or before October 22, 2013. The Trustee also was ordered to file any request for attorneys' fees and costs in connection with Tim Brown's failure to comply with the order of this court to turn over the vehicles, which may include costs

and fees projected through the October 31, 2013 hearing.

STATUS REPORT

Carl Collins, Counsel for the Chapter 7 Trustee, filed a declaration stating that Tim Brown has failed to comply with the order of this court and no vehicles have been turned over the Trustee's auctioneer.

Counsel states that he conducted a lengthy telephonic conference with Mr. Brown discussing the default of the court's order and the continued hearing and advising him to seek the advice of independent counsel. Counsel states Mr. Brown was planning to register a complaint with the Office of the U.S. Trustee in this matter.

Counsel testifies that for the period of July 3, 2013 through October 22, 2013, he has rendered legal services to the bankruptcy estate in the amount of \$2,532.00 and incurred costs of \$151.34 for a total of \$2,683.34 in connection with this matter.

TIM BROWN'S LETTER

On October 15, 2013, Tim Brown filed a letter from him to the Office of the U.S. Trustee, dated October 10, 2013. Mr. Brown states his rights are being violated and asks the U.S. Trustee to stay the motion as the court "ignored" several facts when issuing the order. Mr. Brown appears to dispute the value of the 1997 Fatboy Harley and the 2007 Corvette.

Upon review of the Response from Tim Brown the court reviewed the Adversary Proceeding and the statements and representations made therein by Tim Brown and his counsel. What Tim Brown asserted in the Adversary Proceeding stand in stark contrast to the excuses he now offers and complaints as to the judicial process for his failure to comply with the judgment and order of this court.

In the Adversary Proceeding McGranahan v. Tim Brown, ADV. No. 12-09003, the Complaint was filed on February 24, 2012, and the Answer by Tim Brown and his counsel was filed on March 25, 2012. The Chapter Plaintiff Trustee filed a Motion for Summary Judgment, to which Tim Brown failed to file any opposition or response. At the October 31, 2012 hearing on the Motion for Summary Judgment, the court required the Plaintiff Trustee to file supplemental pleadings which specifically identified the evidence which supported the alleged undisputed facts. 12-09003 Dckt. 29.

On November 5, 2012, the Plaintiff-Trustee filed the Supplemental Statement of Undisputed Facts, Dckt. 31, which specifically referenced the evidence in support of that fact. These undisputed facts included the following.

- A. Plaintiff-Trustee commenced this adversary proceeding on February 24, 2012. Complaint, Dckt. 1.
- B. A copy of the summons and complaint were served on Defendant on February 29, 2012. Proof of Service, Dckt. 6.

- C. Defendant filed an answer denying the substantive allegations in the complaint on March 25, 2012. Answer, Dckt. 7.
- D. Defendant was served with Plaintiff's request for admissions on July 17, 2012. Proof of Service, Dckt. 22.
- E. Defendant failed to timely file a response to Plaintiff's First Request for Admissions on or before August 16, 2012. Adversary Proceeding Docket.
- F. Defendant served an untimely response to Plaintiff's First Request for Admissions on August 23, 2012. Response and Proof of Service, Exhibit 1, Dckt. 27.
- G. Defendant has not moved for withdrawal or amendment of the resulting deemed admissions. Adversary Proceeding Docket.
- H. Defendant is deemed to have admitted that the aforementioned vehicles are property of the estate since Defendant has not filed a timely response to Plaintiff's First Request for Admissions. Request for Admissions, pages 5:24 through 6:13, Dckt. 22.
- I. Defendant is deemed to have admitted that the aforementioned vehicles are in his possession since Defendant has not filed a timely response to Plaintiff's First Request for Admissions. Request for Admissions, page 6:16-18, Dckt. 22.
- J. Defendant is deemed to have admitted that Plaintiff/Trustee has demanded turnover of property and that Defendant has failed to turnover vehicles to the bankruptcy estate. Request for Admissions, pages 6:21 through 7:5, Dckt. 22.
- K. On August 22, 2011 Debtor, Defendant, and state court counsel executed a stipulation for judgment describing the character of property in the marriage between Debtor and Defendant. Request for Admissions, pages 5:24 through 6:6, Dckt. 22; and Certified Copy of State Court Dissolution Judgment, Exhibit 2, Dckt. 27.
- L. On August 28, 2011 Tuolumne County Superior Court entered a dissolution judgment incorporating a stipulation for judgment to dissolve the marriage and divide community and separate property of the Debtor and Defendant. Certified Copy of State Court Dissolution Judgment, Exhibit 2, Dckt. 27.
- M. In the Dissolution Judgment the state court determined that the 2008 Harley Davidson Cross Bones motorcycle has a fair market value of \$11,000 and is the community property of the Debtor and Defendant. Certified Copy of Dissolution Judgment, Exhibit 2, Dckt. 27.
- N. In the Dissolution Judgment the state court determined that the 2007 Chevrolet Corvette had a fair market value of \$24,915 and is the community property of the Debtor and Defendant.

March 27, 2014 at 2:30 p.m.

Certified Copy of Dissolution Judgment, Exhibit 2, Dckt. 27.

- O. In the Dissolution Judgment the state court determined that the 1997 Harley Davidson had a fair market value of \$7,000 and is the separate property of Debtor awarded to defendant.
Certified Copy of Dissolution Judgment, Exhibit 2, Dckt. 27.

The court granted the Motion for Summary Judgment (Order, Dckt. 39) and Judgment was entered for Plaintiff-Trustee on December 13, 2013 (Judgment), Dckt. 41. The Judgment includes a mandatory injunction requiring Tim Brown to turn over the three vehicles by December 31, 2013.

In this Bankruptcy case the Plaintiff-Trustee first filed a Motion for Turnover of Property on January 5, 2012. In it the Plaintiff-Trustee alleged that on September 19, 2011, Trustee discovered that the Debtor had transferred to Tim Brown property of the estate post-petition purportedly through a marital dissolution property division. Further, that Tim Brown and Tina Brown stipulated, and an order entered thereon on November 17, 2011, to vacating the purported division of property in the state court dissolution. This motion for turnover was filed three months after the Trustee learned of the purported post-petition transfer of these vehicles.

Tina Brown filed an opposition to the Motion, stating that she was in possession of the 2006 Harley Davidson Screaming Eagle motorcycle and would turn it over to the Trustee. Dckt. 29. The Motion was settled (order approving the compromise, Dckt. 50), which included the Debtor turning over possession of the motorcycle to the Chapter 7 Trustee.

On April 3, 2013, the Plaintiff-Trustee filed his Motion and gave Notice of Auction that the Screaming Eagle Motorcycle would be sold at public auction, to be conducted by Huisman Auctions, Inc. Dckt. 45. The Trustee estimated that the motorcycle would sell for \$10,000.00. Tim Brown was served with this Motion and Notice of Auction. Certificate of Service, Dckt. 48. The auction was conducted and the Report of Sale states that it was sold for \$8,000.00.

In his letter to the U.S. Trustee, Tim Brown complains that the Chapter 7 Trustee sold the sold the 2005 Duce Harley Davidson back to Tina Brown for only \$5,000.00, with payments of \$1,000 a month. He asserts that the Blue Book was \$11,000.00. However, the sale was conducted by the Trustee pursuant to a Motion and Notice of Sale, Dckt. 19. This Motion and Notice of Sale was served on Tim Brown. Certificate of Service, Dckt. 22. While Tim Brown complains that the sales price of \$5,000.00 is less than his asserted \$11,000.00 value, the actual sales price equates to more than \$10,000.00.

The Estate was paid \$5,000.00 cash by Tina Brown. The Debtor claimed a \$2,725.00 exemption. For a \$10,000.00 sale at auction, there would have been a 15% fee, which totals \$1,500.00. From a \$10,000.00 sale, the Trustee could expect to recover a net of \$5,775.00. The recovery of \$5,000.00 is reasonable in light of avoiding the vagaries of an auction sale. This is consistent with the value as stipulated by Tim Brown in the state court action. Further, having notice of the sale, if Tim Brown believed it had a higher value, he could have presented his own higher offer. He did not.

Tim Brown complains that the 2007 Corvette secures a debt for which he is personally liable, with that debt being in the amount of \$18,000.00. If such a pre-petition debt existed, then the Trustee would ultimately take that into account in deciding how to administer the vehicle. However, other than Tim Brown complaining in his letter to the U.S. Trustee, he and his counsel did not present evidence of that to the court, did not seek to have the Corvette abandoned, if he deemed there to be no value for the estate, or otherwise take any action other than to violate the mandatory injunction in this court's judgment and order to turn over the Corvette.

Tim Brown complains that the Trustee has valued the 2007 Corvette at \$22,000.00. This is consistent with the value stipulated to by Tim Brown and Tina Brown for the Dissolution Judgment (that amount being \$24,915, Exhibit 2, 12-09003 Dckt. 27). That is the value of the vehicle. If it is subject to a pre-petition lien, then the Trustee must address that lien. However, a lien does not change the value of the underlying property.

Tim Brown complains that the court "advised" the Trustee could charge Tim Brown \$4,000.00 in attorneys fees. At the October 1, 2013 hearing the court granted the then pending motion to have Tim Brown held in contempt for failing to turnover the vehicles. That motion requested the allowance of attorneys fees, which the court granted. The court required the Plaintiff-Trustee to file a written documentation of the requested attorneys' fees, which would be subject to review, and opposition, by Tim Brown. The Plaintiff-Trustee also requested that the court order \$500.00 a day sanctions against Tim Brown. Rather than imposing the immediate \$500.00 a day sanctions, the court elected to give Tim Brown one more chance to honor his word and turn over the vehicles.

The Trustee seeks to recover \$2,532.00 in fees and \$151.34 in costs caused by Tim Browns failure to comply with the mandatory injunction to turn over the vehicles in the judgment and the order of this court for the period August 13, 2013 through October 22, 2013. Declaration, Dckt. 95; Exhibit 1, Time Records, Dckt. 96. The court determines these fees to be reasonable and awards them as compensatory damages.

With respect to the corrective sanctions, though afforded the opportunity to simply turn over the vehicles as he promised in open court on the record and as now been ordered two time since, having notice of corrective sanctions totaling \$31,915.00 were not sufficient for Tim Brown to comply with the court's order. Possible, the actual award of the \$31,915.00 in corrective sanctions may be sufficient to induce him to prospectively comply with the order and not have an additional \$31,915.00 in corrective sanctions ordered.

The court imposed a monetary corrective sanction award in the amount of \$31,915.00 to be paid by Tim Brown to the Clerk of the United States Bankruptcy Court, for deposit in the United States Treasury, on or before November 8, 2013. If not paid, the Chapter 7 Trustee may enforce this sanction award in the same manner as a judgment entered by this court, and pay the monies recovered to the Clerk of the Court.

Tim Brown has demonstrated that further corrective sanctions must be ordered by this court. The court further ordered that Tim Brown shall pay further corrective sanctions of \$31,915.00 to the Clerk of the Court if the (1)

1997 Harley Davidson Red Fat Boy Motorcycle, VIN ending in 32282 and (2) the 2007 Chevrolet Corvette Automobile, Licence No. 5XYR543, VIN ending in 33800, are not delivered to the Chapter 7 Trustee by the close of business on November 21, 2013.

The additional \$31,915.00 sanction was determined an appropriate amount because it represents the value of the two vehicles. Given Tim Brown's conduct to date, a lesser amount would likely not have the necessary corrective effect and induce compliance with the court's order. A lesser amount could cause Tim Brown to conclude that he can just "buy the vehicles" and "buy off the court" for an amount less than the vehicles are worth, given that he is already having to pay \$31,915.00.

If Tim Brown failed to turn over the vehicles as ordered by the court, then the court shall impose the \$31,915.00 in corrective monetary sanction and set the Motion for further hearing for further corrective sanctions. In addition to Tim Brown then, if he fails to comply, elevating this to a situation where the court will be justified in ordering the U.S. Marshall to take and hold Tim Brown in custody until he turns over this property of the estate, the matter may also be referred to the U.S. District Court for the imposition of appropriate punitive sanctions, including incarceration for such period of time as the District Court judge determines appropriate for the failure to comply with this court's order.

DECEMBER 19, 2013 HEARING

On December 3, 2013, the Trustee filed a Status Report stating that Tim Brown has failed to comply with the court's order, as no vehicles, required documents, or information has been turned over to the Trustee. Trustee also states that Tim Brown has not paid monetary damages to the Trustee. The Trustee estates that additional \$295.00 in legal fees and costs have been incurred due to Mr. Brown's failure to comply with the court's order.

No response has been filed by Mr. Brown to date.

At the December 19, 2013 hearing the Chapter 7 Trustee reported that he had not yet attempted to enforce the prior sanction order, either using his bankruptcy counsel, a collection attorney, or a collection agency. While the court cannot and will not condone Mr. Brown's continuing flaunting of the orders of the court and his continuing wrongful possession of the bankruptcy estate property, the failure of the Trustee to attempt to collect the prior sanctions may have caused Mr. Brown to erroneously assume that an award of correction sanctions is merely a "toothless tiger."

Tim Brown has demonstrated that further corrective sanctions must be ordered by this court. The court ordered that Tim Brown pay further corrective sanctions in the amount of \$750.00 a day, computed from December 1, 2013, to the Clerk of the Court until the (1) 1997 Harley Davidson Red Fat Boy Motorcycle, VIN ending in 32282 and (2) the 2007 Chevrolet Corvette Automobile, Licence No. 5XYR543, VIN ending in 33800, are delivered to the Chapter 7 Trustee.

The additional \$750.00 a day sanction is determined an appropriate amount because it represents the value of the two vehicles. Given Tim Brown's

conduct to date, the accrual of additional sanctions is uniquely with the control of Tim Brown to avoid deliver the two vehicles as ordered and no additional corrective sanctions are owed.

The court set a further hearing on this Motion to determine the status of the compliance and for additional proceedings thereto to obtain compliance with orders of this court.

MARCH 27, 2014 HEARING

No response has been made to the December 20, 2013 Order of this Court (Dckt. 112) by Tim Brown. No updated status report has been filed by the Trustee. The Trustee has filed a motion to engage the services of a collection attorney (Motion, Dckt. 117; Order authorizing employment, Dckt. 121) and motion to consolidate money judgment in the adversary proceeding and the sanctions ordered by this court for purposes of enforcing those obligations of Tim Brown (Dckt. 122).

Tim Brown having been afforded multiple opportunities to comply with the orders of this court, the imposition of corrective monetary sanctions not having been sufficient to have Tim Brown comply with the orders of this court, and concluding that corrective monetary sanctions are not likely to induce Tim Brown to comply with the orders of this court, the court has determined that the following corrective and possible punitive sanctions are necessary and appropriate:

- A. Issue an order for the United States Marshal to take Tim Brown into custody and seize the two vehicles which are the subject of the court's order, if in the possession of Tim Brown when he is taken into and held in custody;
- B. The United States Marshal to notify the court when Tim Brown is in custody;
- C. The United States Marshal Hold Tim Brown in custody and deliver him to this court, Department 33, at the then next regularly scheduled law and motion hearing date for Chapter 7 cases (on either the court's Modesto or Sacramento hearing calendars), or such sooner date as the court may schedule;
- D. When delivered to the court for Tim Brown to
 - 1. Disclose the location of and to turn over possession of the two vehicles to the Chapter 7 Trustee; and
 - 2. If the location of the two vehicles are not disclosed and possession of the two vehicles are not delivered to the Chapter 7 Trustee, show cause why the United States Marshal does not continue to hold Tim Brown in custody, as a corrective sanction, until Tim Brown delivers possession of the two vehicles to the Chapter 7 Trustee.
- E. Refer Tim Brown to the Chief Judge of the United States District

Court for assignment of this matter to a United States District Court Judge for a determination of what punitive sanctions, whether monetary, additional detention after turning over the vehicles, or both, should properly be impose for the wilful, intentional, and flagrant violations of the orders issued by the United States Bankruptcy Court.

F. Referral of this matter to the United States Attorney for the Eastern District of California for review and such action, if any, as the United States Attorney determines appropriate in the exercise of the powers of his office.

7. [13-91881-E-7](#) **JERRY/PAULINE RODRIQUEZ** **STATUS CONFERENCE RE: COMPLAINT**
[14-9003](#) **1-27-14 [1]**
SOCIAL SECURITY ADMINISTRATION
V. RODRIQUEZ

Plaintiff's Atty: Jeffrey J. Lodge
Defendant's Atty: Pro Se

Adv. Filed: 1/27/14
Answer: 2/25/14

Nature of Action:
Recovery of money/property - other
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - willful and malicious injury

Notes:

SUMMARY OF COMPLAINT

The United States, Plaintiff, alleges that the Defendant-Debtor filed inaccurate information with the Social Security Administration, failed to timely report her earnings, failed to report her earnings, received double payments, and received numerous SSI overpayments during the period November 1999 through October 2000. The Plaintiff states that through administrative proceedings and Administrative Law Judge determined that the Defendant-Debtor was at fault for the overpayments. Plaintiffs seeks to have the debt of \$17,180.10 determined nondischargeable and for a judgment against Defendant-Debtors for such amount.

SUMMARY OF ANSWER

The Defendant-Debtor has filed an Answer in pro se (EDC 3-101 pro se form, 11/98). The Defendant-Debtor admits to being indebted to Plaintiff, but denies each and every other allegation of the Complaint.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b), and 11 U.S.C. § 523(a)(2) and (6). Further, that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (I), and (O). Complaint ¶ 1, Dckt. 1. In her Form Answer, Defendant-Debtor does not expressly address the jurisdictional and core proceeding allegations as required by Federal Rule of Bankruptcy Procedure 7012(b).

This Adversary Proceeding is a core matter for which the bankruptcy judge issues all orders and final judgment.

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

- a. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. §§ 1334 and 157(b), and 11 U.S.C. § 523(a)(2) and (6). Further, that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (I), and (O). Complaint ¶ 1, Dckt. 1. In her Form Answer, Defendant-Debtor does not expressly address the jurisdictional and core proceeding allegations as required by Federal Rule of Bankruptcy Procedure 7012(b).

This Adversary Proceeding is a core matter for which the bankruptcy judge issues all orders and final judgment.

To the extent that any issues in this Adversary Proceeding are related to proceedings, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all claims and issues in this Adversary Proceeding referred to the bankruptcy court.

- b. Initial Disclosures shall be made on or before -----, **2014**.
- c. Expert Witnesses shall be disclosed on or before -----, **2014**, and Expert Witness Reports, if any, shall be exchanged on or before -----, **2014**.
- d. Discovery closes, including the hearing of all discovery motions, on -----, **2014**.
- e. Dispositive Motions shall be heard before -----, **2014**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, **2014**.

8. [12-91889-E-7](#) GERALD CRAWFORD
[13-9035](#)
FARRAR V. CRAWFORD

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
10-8-13 [[1](#)]

Dismissed 3/18/14

Plaintiff's Atty: Dana A. Suntag
Defendant's Atty: John C. Brewer

Adv. Filed: 10/8/13
Answer: none

Nature of Action:
Recovery of money/property - preference
Recovery of money/property - fraudulent transfer

Final Ruling: The Adversary Proceeding having been dismissed by order of the court pursuant to the Stipulation of the parties, the Status Conference is removed from the calendar. No appearance at the March 27, 2014 Status Conference is required.

Notes:

Continued from 1/30/14

[HCS-2] Stipulation for Dismissal of Adversary Proceeding filed 3/17/14 [Dckt 14]; Order dismissing filed 3/18/14 [Dckt 15]