

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

March 28, 2019 at 2:00 p.m.

1. [19-90122-E-11](#) MIKE TAMANA FREIGHT STATUS CONFERENCE RE:
LINES, LLC VOLUNTARY PETITION
2-8-19 [\[1\]](#)

Debtor's Atty: Reno F.R. Fernandez

The Status Conference is continued to 2:00 p.m. on xxxxxxxxxxxx, 2019.

Notes:

[MF-1] Filing Statement filed 2/12/19 [Dckt 8]

[MF-2] Motion for Interim and Final Authority to (I) Pay Prepetition Wages, Salaries, Withholding Obligations, and Other Compensation and Benefits and (II) Maintain Employee Benefits Programs filed 2/12/19 [Dckt 9]; Order granting filed 2/15/19 [Dckt 48]

Motion for Order Shortening Time filed 2/12/19 [Dckt 14]; Order granting filed 2/12/19 [Dckt 27]

[MF-3] Motion for Authority to Obtain Debtor-In-Possession Financing filed 2/12/19 [Dckt 15]; Order granting and continuing hearing to 3/28/19 at 10:30 a.m. filed 2/15/19 [Dckt 46]

Motion for Order Shortening Time filed 2/12/19 [Dckt 20]; Order granting filed 2/12/19 [Dckt 28]

[MF-4] Motion for Authority to Use Cash Collateral filed 2/12/19 [Dckt 21]; Order granting and continuing hearing to 3/28/19 at 10:30 a.m. filed 2/15/19 [Dckt 47]

Motion for Order Shortening Time filed 2/12/19 [Dckt 26]; Order granting filed 2/12/19 [Dckt 29]

[MF-5] Application for Authority to Employ Reno F.R. Fernandez III as General Bankruptcy Counsel for Debtor in Possession filed 2/20/19 [Dckt 52]; Order granting filed 3/1/19 [Dckt 65]

[MF-6] *Ex Parte* Motion to Extend Time to File Schedules and Statement of Financial Affairs filed 2/21/19 [Dckt 55]; Order granting filed 2/21/19 [Dckt 58]

[MF-7] Debtor in Possession's Motion to Hold HSD Trucking, Inc., in Contempt of Court for Wilful Violation of the Automatic Stay and for an Award of Sanctions filed 3/1/19 [Dckt 66]; heard 5/5/19, continued to 3/14/19, continued to 5/2/19 at 10:30 a.m., Order filed 3/22/19 [Dckt 113] Motion for Order Shortening Time filed 3/1/19 [Dckt 70]; Order granting 3/4/19 [Dckt 72]

Status Report filed 3/8/19 [Dckt 77]

[MF-8] Motion to Further Extend Time to File Schedules and Statement of Financial Affairs filed 3/11/19 [Dckt 82]; Order granting filed 3/19/19 [Dckt 104] Motion for Order Shortening Time filed 3/11/19 [Dckt 85]; Order granting filed 3/11/19 [Dckt 86]

Trustee Report at 341 Meeting docketed 3/20/19

MARCH 28, 2019 STATUS CONFERENCE

The court has conducted a number of special hearings in this case, some of which had final hearings on the March 28, 2019 a.m. calendar.

Summary of Schedules.

On Schedule A/B the estate's assets of significant value are: (1) \$57,000 in business checking account; \$1,981,000 in accounts receivable; (3) \$298,000 in equipment and supplies; (4) \$16,859,000 in truck and trailer equipment; and (5) \$2,000,000 litigation claims.

On Schedule D secured claims of \$17,698,000 are listed. On Schedule E/F Debtor lists \$1,800,000 in priority unsecured claims and \$2,781,000 in general unsecured claims.

At the Status Conference **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**

2. [18-90029-E-11](#) JEFFERY ARAMBEL

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
1-17-18 [1]

Debtor's Atty: Reno F.R. Fernandez

The Status Conference is continued to 2:00 p.m. on xxxxxxxxxxxx, 2019.

Notes:

Continued from 11/29/18. Debtor in Possession discussed the ongoing plan negotiations with Summit and MetLife.

Operating Reports filed: 12/18/18; 1/16/19; 2/20/19

[MF-36] Order granting use of cash collateral filed 12/6/18 [Dckt 727]

[JCW-1] Order granting Motion for Relief from Stay filed 12/26/18 [Dckt 732]

[MF-37] Motion to Use Cash Collateral (February & March 2019) filed 2/12/19 [Dckt 740]; Interim Order filed 2/26/19 [Dckt 761]; Order granting filed 3/15/19 [Dckt 765]

Motion for Order Shortening Time filed 2/12/19 [Dckt 741]; Order granting filed 2/13/19 [Dckt 744]

MARCH 28, 2019 STATUS CONFERENCE

At the Status Conference xxxxxxxxxxxx

Final Ruling: No appearance at the March 28, 2019 Status Conference is required.

Debtor's Atty: Michael St. James

The Status Conference is continued to 2:00 p.m. on October 17, 2019, to allow the parties the opportunity to file the necessary post-confirmation motions and seek to administratively close the case if appropriate.

Notes:

Continued from 11/29/18

Operating Reports Filed: 12/18/18; 1/16/19; 2/19/19; 3/18/19

[STJ-20] Motion to Set Reorganization Schedule and Approve Solicitation of Ballots filed 1/10/19 [Dckt 392]; Order setting hearing filed 1/28/19 [Dckt 404]

[STJ-20] First Amended Plan of Reorganization [Dated January 10, 2019] filed 1/11/19 [Dckt 396]; Order confirming Plan filed 3/18/19 [Dckt 430]

[STJ-20] First Amended Disclosure Statement To Accompany Plan of Reorganization Dated January 10, 2019, filed 1/11/19 [Dckt 397]

Supplement to First Amended Disclosure Statement To Accompany Plan of Reorganization Dated January 10, 2019, filed 1/30/19 [Dckt 406]

Second Supplement to First Amended Disclosure Statement To Accompany Plan of Reorganization Dated January 10, 2019, filed 2/26/19 [Dckt 412]

[STJ-21] *Ex Parte* Application for Order Authorizing Employment and Compensation of Broker for Valuation (Kevin Donlon) filed 1/23/19 [Dckt 401]; Order granting filed 1/25/19 [Dckt 403]

MARCH 28, 2019 STATUS CONFERENCE

The order confirming the Chapter 11 Plan in this case was entered on March 18, 2019. Order, Dckt. 430.

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 court having entered on March 18, 2019, the order confirming the Plan in this case,, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to 2:00 p.m. on March 17, 2019.

Debtor’s Atty: David C. Johnston

The Status Conference is XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Notes:

Debtor’s Chapter 11 Status Report filed 3/16/19 [Dckt 15]

MARCH 28, 2019 STATUS CONFERENCE

Y&M Rental Property Management, LLC commenced this voluntary Chapter 11 case on February 21, 2019. Debtor’s prior Chapter 11 case was filed on May 22, 2018 and dismissed on December 6, 2018. 18-90375. In dismissing the prior case the court noted that the “reason” given for filing bankruptcy did not relate to reorganization of the Debtor’s business, but a dispute concerning an alleged “rogue” deed of trust on the Debtor’s property. 18-90375; Civil Minutes, Dckt. 39. Such “rogue” deed of trust could not be restructured through a plan, but required litigation in the state court.

Y&M Rental Property Management, as the Debtor and not as the debtor in possession, has filed its Status Report in this case. Dckt. 15. The Debtor states that it owns seven distinct properties. The Debtor states that it has no obligations, but that it asserts that there is a fraudulent deed of trust recorded against one of its properties. ^{FN. 1.}

FN. 1. The Debtor having chosen to appear as Debtor, and not the fiduciary debtor in possession, the court makes reference to Debtor. This is not the misuse of a statutorily defined term and an attempt to merge the legal concepts of debtor and debtor in possession into one Frankensteinian entity, but to accurately identify the entity that filed the Status Report and is appearing at the Status Conference.

Debtor states that it intends to file a plan on or before June 21, 2019. There is no indication as to what the plan will provide for this Debtor who owes no obligations.

Debtor indicates that it disputes that Wells Fargo Bank, N.A. has an obligation that is secured by one of Debtor’s properties. Debtor states that it wants Wells Fargo Bank, N.A. to file a proof of claim so that the Debtor could undertake discovery.

Review of Schedules

On Schedule A/B Debtor lists the following significant assets: (1) \$56,000 in bank accounts; (2) \$1,500 of office equipment; and (3) \$1,000,000 of real property. Dckt. 14.

On Schedule D Debtor lists Wells Fargo Bank, N.A. as the only creditor with a secured claim. *Id.* at 9.

No creditors are listed on Schedule E/F. *Id.* at 14.

It appears that the only possible person who can vote in this case for confirmation of a plan is the one creditor - Wells Fargo Bank, N.A. The only reason for the bankruptcy case being filed appears to be to create a basis for federal jurisdiction to litigate a state law quiet title issue.

At the Status Conference, counsel for the Debtor

5. [10-92356-E-7](#) HARKRISHAN/MANBIR
[18-9017](#) KHATKAR

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
12-13-18 [1]

**KHATKAR ET AL V. HOLIDAY
HOSPITALITY FRANCHISING, LLC
ADVERARY PROCEEDING
DISMISSED: 03/11/2019**

Final Ruling: No appearance at the March 28, 2019 Status Conference is required.

The Adversary Proceeding having been dismissed (Stipulation, Dckt. 12), **the Status Conference is removed from the Calendar.**

Plaintiff's Atty: G. Michael Williams
Defendant's Atty: Leib M. Lerner

Adv. Filed: 12/13/18
Answer: none

Nature of Action:
Declaratory judgment

Notes:
[LML-3] Stipulation Dismissing Adversary Case filed 3/11/19 [Dckt 12]

Debtor's Atty: David C. Johnston

The Status Conference is XXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Notes:
Debtor's Chapter 11 Status Report filed 3/16/19

MARCH 28, 2019 STATUS CONFERENCE

This voluntary Chapter 11 bankruptcy case was filed by Barreno Enterprises, LLC on February 25, 2019. Debtor's prior voluntary Chapter 11 case was filed on March 26, 2018, and dismissed on December 6, 2018. 18-90196.

In this case Barreno Enterprises, LLC, the Debtor, and not the debtor in possession, filed a Status Report. Dckt. 15. Debtor reports operating one Dickey's Barbeque Pit franchise, having closed five other locations.

Debtor states that it, and not the debtor in possession, intends to file a Chapter 11 plan by June 25, 2019. The Debtor notes that as of the March 16, 2019 filing of the Status Report only one proof of claim had been filed, that for \$325.00 by the U.S. Trustee.

On Schedule A/B Debtor lists having significant assets consisting of: (1) \$4,000 in cash and banking deposits; (2) \$4,500 in food and inventory; (3) \$16,000 in machinery and equipment; and (4) a franchise worth \$75,000. Dckt. 14.

On Schedule D Debtor lists creditors having secured claims which total (\$36,000). *Id.* at 11-12.

On Schedule E/F Debtor lists \$96,000 in priority claims and \$1,559,000 in general unsecured claims. *Id.* at 13-18.

At the Status Conference XXXXXXXXXXXXXXXXXXXXXXXXXXXXX

7. [18-90776-E-7](#) **ABIGAIL HENSYEL**
[19-9003](#)

**STATUS CONFERENCE RE:
COMPLAINT
1-18-19 [1]**

PETTAPIECE V. HENSYEL

Plaintiff's Atty: Lisa Blanco Jimenez
Defendant's Atty: unknown

Adv. Filed: 1/18/19
Summons Reissued: 2/7/19
Answer: none

Nature of Action:
Dischargeability - willful and malicious injury

Notes:

SUMMARY OF COMPLAINT

Whitney Pettapiece ("Plaintiff") filed a Complaint on January 18, 2019 seeking a determination of the nondischargeability of debt. A summons was reissued in this Adversary Proceeding on February 7, 2019. Dckt. 6. In the Complaint Plaintiff alleges:

1. Abigail Hensyel, the Defendant-Debtor in this Adversary Proceeding is the defendant in a defendant in a pending action in the Superior Court.
2. Plaintiff filed the state court complaint asserting claims for assault, battery, and stalking.
3. Defendant-Debtor filed a cross-complaint in the State Court Action against Plaintiff in the state court action asserting a claim for assault.
4. The State Court Action was to commence on November 6, 2018. The Defendant-Debtor commenced her Chapter 7 bankruptcy case on October 26, 2018, which caused the State Court Action to be stayed.
5. The Complaint includes specific allegations of communications, threats, vandalism, and calls which are attributed to Defendant-Debtor.
6. It is further alleged that Defendant-Debtor came into Plaintiff's place of employment, confronted Plaintiff, and physically struck Plaintiff.
7. It is alleged that Plaintiff's employment was terminated due to the altercation with Defendant-Debtor.

8. It is asserted that the conduct of Defendant-Debtor specified in the Complaint and damages resulting therefrom are nondischargeable pursuant to 11 U.S.C. § 523(a)(6) [willful and malicious injury].

SUMMARY OF ANSWER

Abigail Hensyel (“Defendant-Debtor”) filed a form answer provided for pro se defendants in which she alleges that this action is a core proceeding and denies each and every other allegation in the Complaint. Dckt. 11.

A review of the Answer causes the court to question whether it has actually be signed by the Defendant-Debtor. Rather than a signature, it has merely a printed name in the place of a signature, “/s/ Abigail Hensyel.” Dckt. 11 at 2:6.

The pro se form answer in the upper left hand corner indicates that it was prepared by Cort V. Weigand, an attorney. *Id.* at 1-6. It continues, stating that Cort V. Weigand is for “Defendant(s), *Pro Se.*” By this it appears that Mr. Wiegand is the attorney for Defendant Abigail Hensyel in this Adversary Proceeding.

The court’s files reflect that this Answer was electronically filed by Cort V. Weigand, Esq. In filing this Answer electronically, Mr. Weigand has now appeared as and is the Defendant-Debtor’s attorney of record. The following Local Bankruptcy Rules addressing this appearance by Mr. Weigand as attorney for Defendant-Debtor include:

LOCAL BANKRUPTCY RULE 2017-1

Attorneys – Appearances, Scope of Representation, and Withdrawal

(b) Appearance as Attorney of Record.

...

2) Manner of Making Appearance. Appearance as an attorney of record is made:

A) By signing and filing an initial document;

B) By causing the attorney’s name to be listed in the upper left hand corner of the first page of the initial document;

C) By physically appearing at a court hearing in the matter, formally stating the appearance on the record, and then signing and filing a confirmation of appearance within seven (7) days; **or**

D) By filing and serving on all parties a substitution of attorneys as provided in Subpart (h) of this Rule.

LOCAL BANKRUPTCY RULE 5005.5-1

March 28, 2019 at 2:00 p.m.

- Page 11 of 16 -

Eligibility and Registration for Electronic Filing; Use of Passwords

(d) Unauthorized Use of Password Prohibited.

1) **A registered user shall not use his/her username and password to file pleadings or other documents on behalf of someone who is not a registered user.**

2) No person may use a username and password without the permission of the registered user to whom they were issued. Registered users shall protect the security and confidentiality of their username and password and prevent their disclosure to any person other than the registered user's authorized agent.

LOCAL BANKRUPTCY RULE 9004-1 General Requirements of Form

(c) Signatures Generally. **All pleadings and non-evidentiary documents shall be signed by the individual attorney for the party presenting them, or by the party involved if that party is appearing in propria persona.** Affidavits and certifications shall be signed by the person offering the evidentiary material contained in the document. The name of the person signing the document shall be typed underneath the signature.

1) Signatures on Documents Submitted Electronically.

A) Signature of the Registered User. **The username and password required to access the electronic filing system shall serve as the registered user's signature on all electronic documents filed with the Court.** They shall also serve as a signature, with the same force and effect as a written signature, for purposes of the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules of this Court, including Fed. R. Bankr. P. 9011-1 and Local Bankruptcy Rule 9004-1(c), and for any other purpose for which a signature is required in connection with proceedings before the Court. Unless the electronically filed document has been scanned and shows the registered user's original signature or bears a software-generated electronic signature thereof, an "/s/" and the registered user's name shall be typed in the space where the signature would otherwise appear.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Whitney Pettapiece alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 1, 4; Dckt. 1. In her Answer, Defendant Abigail Hensyel admits that this is a core proceeding, and with that the allegation that federal court jurisdiction exists for this Adversary Proceeding. Answer, Dckt. 11. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued 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.**

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- a. Plaintiff Whitney Pettapiece alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 1, 4; Dckt. 1. In her Answer, Defendant Abigail Hensyel admits that this is a core proceeding, and with that the allegation that federal court jurisdiction exists for this Adversary Proceeding. Answer, Dckt. 11. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued 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.**
- b. Initial Disclosures shall be made on or before **March 31 2019**.
- c. Expert Witnesses shall be disclosed on or before **May 1, 2019**, and Expert Witness Reports, if any, shall be exchanged on or before **May 24, 2019**.
- d. Discovery obtained in
- e. Discovery closes, including the hearing of all discovery motions, on **August 30, 2019**.
- f. Dispositive Motions shall be heard before **October November 18, 2019**.
- g. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on November 21, 2019**.

8. [18-90090-E-7](#) **CLIFFORD BARBERA**
[18-9010](#)

STATUS CONFERENCE RE:
COMPLAINT 6-11-18 [1]

BOWERS ET AL V. BARBERA

Plaintiff's Atty: Bryan Silverman
Defendant's Atty: Diana J. Cavanaugh

Adv. Filed: 6/11/18
Answer: 7/18/18

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

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXX~~

Notes:

Status Conference set for 8/15/18 continued to 9/27/18 at the request of the Parties [Dckt 17]; further continued to 11/8/18 [Dckt 19]; further continued to 3/21/19 [Dckt 22] [Judge Bardwil's calendar];
Notice of Rescheduled Status Conference filed 11/27/18 [Dckt 25]

Plaintiffs Damon Bowers, Lisa Bowers, and DB Capital Investments, Inc.'s Discovery Plan filed 8/9/18 [Dckt 14]

Order lifting automatic stay to allow state court action to go to judgment and staying this adversary proceeding filed 9/26/18 [Dckt 18]

Notice of Transferred Adversary Proceeding filed 11/27/18 [Dckt 24] - transferring adversary proceeding to Judge Ronald H. Sargis

SUMMARY OF COMPLAINT

Damon Bowers, Lisa Bowers, and DB Capital Investments, Inc., ("Plaintiff") filed a Complaint for the determination of nondischargeability of certain debts pursuant to 11 U.S.C. §§ 523(a)(2) and (a)(6). The Complaint alleges:

1. Debtor-Defendant Clifford Barbera entered into a contract with Damon Bowers to perform construction work on property owned by Damon and Lisa Bowers ("The Bowers").
2. The Bowers terminated the services of Defendant-Debtor based on asserted defects in the construction.

3. In August 2016 Plaintiffs filed a State Court Action against Defendant-Debtor and his company, Priceless Kitchen & Bath, Inc. (“Priceless”), in the Superior Court for Contra Costa County.
4. In April of 2015 DB Capital Investments contracted with Defendant Debtor and Priceless to remodel a home. DB Capital Investments sold the home, and the buyer of the home has alleged construction defects relating to Defendant-Debtor’s work, and has sue DB Capital Investments over the purchase of the property.
5. In the Complaint Plaintiffs provide specific allegations of the alleged defects in the work provided by Defendant-Debtor and Priceless.
6. Plaintiffs seek a determination that their damages, including those arising in the state court action against DB Capital Investments are nondischargeable.

SUMMARY OF ANSWER

Clifford Barbera (“Defendant”) has filed his Answer (Dckt. 13) which admits and denies specific allegations in the Complaint.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiffs Damon Bowers, Lisa Bowers, and DB Capital Investments, Inc. allege in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(I), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶ 1, Dckt. 1. In the Answer, Defendant Clifford Lee Barbera admits the allegations of jurisdiction and core proceedings. Answer ¶ 1, Dckt. 13. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued 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.**

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- a. Plaintiffs Damon Bowers, Lisa Bowers, and DB Capital Investments, Inc. allege in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(I), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶ 1, Dckt. 1. In the Answer, Defendant Clifford Lee Barbera admits the allegations of jurisdiction and core proceedings. Answer ¶ 1, Dckt. 13. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued 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.**

- b. Initial Disclosures shall be made on or before May 15, 2019.
- c. Expert Witnesses shall be disclosed on or before -----, **2019**, and Expert Witness Reports, if any, shall be exchanged on or before -----, **2019**.
- d. Discovery closes, including the hearing of all discovery motions, on -----, **2019**.
- e. Dispositive Motions shall be heard before -----, **2019**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- **p.m. on** -----
-----, **2019**.