

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

April 18, 2019 at 2:00 p.m.

1. [18-90029](#)-E-11 JEFFERY ARAMBEL CONTINUED STATUS CONFERENCE RE:
[18-9002](#) COMPLAINT
LOPEZ V. ARAMBEL 4-16-18 [1]

Final Ruling: No appearance at the April 18, 2019 Status Conference is required.

Plaintiff's Atty: Michael F. Babitzke
Defendant's Atty: Iain A. Macdonald

Adv. Filed: 1/13/16
Answer: 2/23/16 [Robinson Enterprises Profit Sharing Plan]
2/23/16 [Johnny Massella; Mary Massella]
Counterclaim Filed: 2/23/16 [Robinson Enterprises Profit Sharing Plan]
Answer: None
Counterclaim Dismissed 5/2/16
Counterclaim Filed: 2/23/16 [Johnny Massella; Mary Massella]
Answer: None
Counterclaim Dismissed 5/2/16

Nature of Action:
Validity, priority or extent of lien or other interest in property

The Status Conference is continued to 2:00 p.m. on May 23, 2019.

Notes:
Continued from 11/29/18 to allow the Parties to focus on the Chapter 11 Plan.

Defendant's Status Report filed 4/1/19 [Dckt 31]

APRIL 18, 2019 STATUS CONFERENCE

In the Status Conference Report filed by Defendant-Debtor on April 1, 2019, it is reported that pursuant to the Order staying this Adversary Proceeding the Parties are working on their possible settlement, with this Adversary Proceeding stayed until April 13, 2019. Defendant-Debtor requests a thirty-day continuance “to allow the Parties a chance to finalize a settlement.” Status Report, p. 2:19; Dckt. 31.

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 reviewed the Updated Status Report filed by Defendant-Debtor for the Continued Status Conference, 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 May 23, 2019.

No further continuances of the Status Conference will be granted unless requested jointly by the parties (such joint request by joint *ex parte* motion prior to the Status Conference or by oral motion at the Status Conference).

2. [18-90339-E-7](#) **KIMBERLY SOLARIO**
[18-9014](#)
DE JONG V. SOLARIO 8-17-18 [1]

**CONTINUED STATUS CONFERENCE RE:
COMPLAINT**

Plaintiff's Atty: Michael R. Tener
Defendant's Atty: Pro Se

Adv. Filed: 8/17/18
Answer: 9/7/18
Nature of Action:
Dischargeability - priority tax claims
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury



Notes:

Continued from 3/14/19. The Parties reported that the Defendant-Debtor was not pursuing the appeal and that they were now ready to proceed with the prosecution of this Adversary.

SUMMARY OF COMPLAINT

Craig De Jong ("Plaintiff") asserts claims for the nondischargeability of alleged obligation pursuant to 11 U.S.C. § 523(a)(2)(A) [fraud], § 523(a)(4) [breach of fiduciary obligation, embezzlement, larceny] and § 523(a)(6) [wilful and malicious injury to property or person]. The obligation asserted is represented by a monetary judgment issued by the California Superior Court for the County of San Joaquin, *De Jong v. Beach et al*, 2014-0008188 ("State Court Action"), in the amount of \$460,663.03, plus attorney's fees and costs, which is stated to be subject to an offset for the turnover of specified property. It is asserted that the factual findings and determinations in the State Court Action provide the basis for determining that the obligation is nondischargeable (application of Collateral Estoppel under the *Doctrine of Res Judicata*). Judgement for additional amounts were awarded Plaintiff against other defendants in the State Court Action.

SUMMARY OF ANSWER

Kimberly Zsolaro ("Defendant"), *in pro se*, filed a form Answer (Dckt. 7, EDC For 3-101) denying the allegations in the Complaint except for those: (1) alleging the filing of the bankruptcy petition and (2) that this is a core proceeding, which also admits federal court jurisdiction.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Craig De Jong 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) and (O). Complaint ¶¶ 1, 2, Dckt. 1. In the Answer, Defendant Kimberly Solario admits the allegations of jurisdiction and core proceedings. Answer, Dckt. 7. The determination of the dischargeability of a debt is a core proceeding arising under the Bankruptcy Code and one for which the bankruptcy judge issues all final orders and judgment.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- a. Plaintiff Craig De Jong 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) and (O). Complaint ¶¶ 1, 2, Dckt. 1. In the Answer, Defendant Kimberly Solario admits the allegations of jurisdiction and core proceedings. Answer, Dckt. 7. The determination of the dischargeability of a debt is a core proceeding arising under the Bankruptcy Code and one for which the bankruptcy judge issues all final orders and judgment.
- b. Initial Disclosures shall be made on or before **April ----, 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.

3. [18-90339-E-7](#) **KIMBERLY SOLARIO**
[18-9014](#) **NEU-2**
DE JONG V. SOLARIO

**CONTINUED MOTION TO STAY
DISCOVERY AND/OR MOTION TO
WAIVE INITIAL DISCLOSURES,
DISCOVERY CONFERENCE, AND
DISCOVERY PLAN**
10-2-18 [8]

The Motion is denied and the order staying this Adversary Proceeding is vacated.

The court has previously issued its order staying this Adversary Proceeding to allow the Parties to diligently prosecute an appeal of the State Court Judgment. At the March 14, 2019 hearing on this Motion the Parties advised the court that the appeal of the State Court Judgment had been dropped and that said judgment was now final. The court continued the stay in effect until the April 18, 2019, Status Conference in which the court set the discovery schedule and other prosecution deadlines in this Adversary Proceeding.

The Order staying this Adversary Proceeding is vacated and the Motion is denied.

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 Stay Discovery having been presented to the court, the court having entered an interim stay, the Parties advising the court that all State Court appeals have been concluded, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order of this court filed on November 8, 2018 (Dckt. 17) staying this Adversary Proceeding is vacated.

IT IS FURTHER ORDERED that the Motion to Stay Discovery is denied.

4. [18-90764-E-7](#) DAWN CHRISTENSEN
[19-9005](#)
EDMONDS V. CHRISTENSEN ET AL

STATUS CONFERENCE RE:
COMPLAINT
1-30-19 [1]

Final Ruling: No appearance at the April 18, 2019 Status Conference is required.

Plaintiff's Atty: Anthony D. Johnston
Defendant's Atty: unknown

Adv. Filed: 1/30/19
Reissued Summons: 2/19/19; 3/14/19
Answer: none

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

Notes:

<p>The Status Conference is continued to 2:00 p.m. on May 2, 2019.</p>

APRIL 18, 2019 STATUS CONFERENCE

On January 30, 2019, Irma Edmonds, the Chapter 7 Trustee in the Dawn Christensen Chapter 7 case, ("Plaintiff-Trustee") filed the Complaint in this Adversary Proceeding seeking to avoid the transfer of and recover assets pursuant to 11 U.S.C. § 548(a)(1)(A) and (B), § 544(b), and § 550. The allegations in the Complaint allege that a "Family Trust" was set up in 1998. Trustees of the Family Trust hold title to real property in Stockton, California (the "Property"). In 2017 the Trustees of the Family Trust transferred title to the Property to themselves as Trustees and Dawn Christensen, the Chapter 7 debtor ("Debtor").

It is further alleged that Debtor was sued on March 2, 2018, for an alleged breach of contract. Four days later on March 6, 2018, Debtor executed a grant deed purporting to transfer her 50% interest in the Property back to the Trustees of the Family Trust. The grant deed includes the statement that no transfer taxes were due because no consideration was paid for the 50% interest in the Property transferred by Debtor.

In June of 2018, the Trustees of the Family Trust purported to sell the Property, with net sales proceeds in the amount of \$249,222.68 received by said Trustees. The Plaintiff-Trustee asserts that 50% of the proceeds are property of the Chapter 7 bankruptcy estate or are proceeds of a transfer that may be avoided and recovered for the benefit of the Chapter 7 bankruptcy estate.

On March 14, 2019, the Clerk of the Court reissued the summons in this Adversary Proceeding. Dckt. 12. The Certificate of Service filed by Plaintiff-Trustee attests to the service of the Reissued Summons, Complaint, and related documents on March 14, 2019. Dckt. 13.

The Reissued Summons states that the Status Conference in this Adversary Proceeding shall be conducted at 2:00 p.m. on May 2, 2019.

5. [15-90680-E-7](#) **JO GIBSON**
[18-9001](#)
GIBSON V. NATIONAL RECOVERIES
ET AL

SPECIAL STATUS CONFERENCE RE:
AMENDED COMPLAINT
6-21-18 [29]

Plaintiff's Atty: Pro Se

Defendants' Atty:

Jeffrey J. Lodge [United States Department of Education]

Miriam E. Hiser [Education Credit Management Corporation]

Unknown [Direct Loans; General Revenue Corporation; Great Lakes Higher Education Corporation; Illinois Student Aid Commission; National Recoveries; United Student Aid Funds]

Adv. Filed: 4/5/18

Answer:

Amd. Cmplt. Filed: 6/21/18

Answer:

Nature of Action:

Dischargeability - student loan

The Special Status Conference is XXXXXXXXXXXXXXXXXX

Notes:

Specially set from 3/14/19 at 10:00 to consider the status of the prosecution by Plaintiff-Debtor, modifications to the scheduling order in this Adversary Proceeding, and other matters as appropriate.

APRIL 18, 2019 STATUS CONFERENCE

On December 6, 2019, the court entered its Scheduling Order (Dckt. 55) in this Adversary Proceeding. The close of discovery is scheduled for June 28, 2019.

On March 15, 2019, the court issued an order authorizing counsel of record to withdraw from representation of the Plaintiff-Debtor. Dckt. 66. The grounds for the order are set forth in the Civil Minutes (Dckt. 65) for the hearing on the Motion to Withdraw.

April 18, 2019 at 2:00 p.m.

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The court scheduled this Special Status Conference to allow the Defendant-Debtor, who is now in *pro se*, to address with the court any scheduling issues or the pending substitution in of new counsel. Additionally, at the hearing on the Motion to Withdraw counsel for Defendant addressed with the court and Defendant-Debtor possible processes that the Defendant-Debtor may utilize to have Defendant consider these financial matters short of a trial.

At the Special Status Conference **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**

SUMMARY OF COMPLAINT

Jo Anne Gibson, the Plaintiff-Debtor, seeks a judgment from the court determining that her obligation for student loans is dischargeable. The amount of the student loan debt is \$151,907.96. The Complaint alleges a number of health-related issues and inability to be employed.

SUMMARY OF ANSWER

Defendant U.S. Department of Education filed its Answer to the First Amended Complaint on July 26, 2018. Dckt. 38. This Defendant admits and denies allegations in the First Amended Complaint.

SUMMARY OF ANSWER

Educational Credit Management Corporation (“ECMC”) filed its Answer to the First Amended Complaint on November 19, 2018. Dckt. 53. Defendant ECMC admits and denies specific allegations in the First Amended Complaint.

DISMISSAL OF OTHER NAMED DEFENDANTS

By Order filed on June 3, 2018, the court dismissed without prejudice Navient Solutions, LLC (named as Navient in the original Complaint) from this Adversary Proceeding. Order, Dckt. 25.

SUBSTITUTION OF OTHER PARTIES

By Order filed on August 28, 2018, the court substituted in United Student Aid Funds, Great Lakes Higher Education Corporation, Illinois Student Aid Commission, and Educational Credit Management Corporation as defendants. Order, Dckt. 46.

FINAL BANKRUPTCY COURT JUDGMENT

The Plaintiff-Debtor alleges that jurisdiction exists for this Adversary Proceeding, this matter concerning the dischargeability of debt arising in her Chapter 7 bankruptcy case and under the Bankruptcy Code. Issues arising under the Bankruptcy Code are core matter proceedings. Defendant United States Department of Education admits that jurisdiction exists to determine the dischargeability of the debt at issue (student loans). 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 is 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.

6. [17-90492-E-7](#) **JED GLADSTEIN**
[17-9020](#)
**GLADSTEIN V. EDUCATIONAL
CREDIT MANAGEMENT CORPORATION**

**CONTINUED PRE-TRIAL CONFERENCE
RE: AMENDED COMPLAINT
1-10-18 [15]**

Plaintiff's Atty: Randall K. Walton
Defendant's Atty: Miriam E. Hiser, Randall K. Walton

Adv. Filed: 11/12/17
Answer: 12/6/17
Amd. Cmplt Filed: 1/10/18
Answer: 1/25/18

Nature of Action:
Dischargeability - student loan

Notes:

Continued from 2/14/19 by request of the Parties, consistent with the Parties' diligent prosecution and resolution of this Adversary Proceeding.

Defendant's Pre-Trial Conference Statement filed 4/5/19 [Dckt 44]

Pretrial Conference Statement [Defendant] filed 4/9/19 [Dckt 46]

APRIL 18, 2019 STATUS CONFERENCE

On April 5, 2019, Plaintiff-Debtor filed a Pre-Trial Statement. Dckt. 44. In it Plaintiff-Debtor states that it was believed until recently that this matter was fully resolved, the Plaintiff-Debtor having received an administrative discharge of this debt.

However, in subsequently consulting with a CPA, Plaintiff-Debtor discovered that while the federal government does not treat the administrative discharge (forgiveness) of student loan debt as income, the State of California has not adopted tax law consistent with the federal law on this point. Thus, Plaintiff-Debtor is concerned that the existing forgiveness of this debt may cause his to incur some state taxes.

Thus, Plaintiff-Debtor is prepared to incur the cost and expense of preparing for and conducting a trial in federal court on the issue of whether a bankruptcy discharge should be entered in this Adversary Proceeding (with federal law providing that the discharge of a debt is not income for either federal or state tax law purposes).

On April 9, 2019, Defendant filed its Pre-Trial Statement. Dckt. 46. Defendant acknowledges that Plaintiff-Debtor's student loan obligation has been discharged through administrative proceedings, subject to a three-year reinstatement period if the Plaintiff-Debtor: (1) obtains another student loan or (2) has earnings that exceed the poverty guidelines for a family of two person.

Defendant then cites to the California Revenue and Tax Code which provides in § 17131 regarding income excluded from state income tax as follows:

Section 17131 of the California Revenue and Tax Code provides that items that are specifically excluded from gross income under federal law shall also be excluded as gross income under California law, except as otherwise provided. There are no known sections of the California Revenue and Tax Code that "otherwise provide" that "discharge of indebtedness income" of student loan borrowers is taxable.

Pre-Trial Statement, p. 2:6-10; Dckt. 46.

Defendant concludes that because the debt has been “discharged” through the administrative process, this adversary proceeding has been rendered moot.

Consideration of Financial Issues

While Plaintiff-Debtor may be prepared to incur the cost and expense of preparing for and conducting a trial, the court first looks to the economic realities in this Adversary Proceeding. The amount of student debt at issue is less than \$30,000.

As addressed by Defendant, the administrative forgiveness of debt is conditioned on Debtor not making more than the poverty level for a family of two persons. On Schedule I in his bankruptcy case Debtor shows having income of \$1,433.00 in Social Security Benefits and \$71.00 in Cal Fresh benefits a month. 17-90492; Dckt. 1 at 27. Debtor has very modest income.

For the California 2018 taxes California provides for a single person to have a standard deduction of \$4,401. There are additional credits and deductions which the court passes over for this discussion. ^{FN.1}

FN. 1. The court obtained the information for this discussion from the California Franchise Tax Board website, <https://www.ftb.ca.gov/forms/2018-California-Tax-Rates-and-Exemptions.shtml#sd>.

If there was \$30,000 in income (it is alleged to be less in the Complaint), using the 2018 California tax table, it appears that the state income tax for a single person filing would be only \$709. Thus, it would appear that if the administrative forgiveness would be only \$700, well less than the amount in taking this matter to trial.

Defendant does not dispute the discharge. While doing so may cost more than \$700 in Plaintiff-Debtor attorney time, it may be possible for the court to enter a judgment discharging the debt, with the discharge being subject to the two three year conditions.

At the Pre-Trial Conference, **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**

FEBRUARY 14, 2019 PRETRIAL CONFERENCE

Request for Continuance

The Parties filed a Joint Pre-Trial Conference Statement on February 12, 2019. Dckt. 41. In it they report that the Parties productive settlement discussions were derailed by the Government Shutdown in January 2019. The Parties report that they believe that a settlement will be forthcoming based upon their respective investigation of the underlying facts.

The Parties request to continue the Pre-Trial Conference to a date in April 2019. This request is reasonable and consistent with the Parties' prosecution and resolution of this Adversary Proceeding.

SUMMARY OF COMPLAINT

Jed Rackson Gladstein ("Plaintiff-Debtor") filed his First Amended Complaint on January 10, 2018. Dckt. 15. Debtor seeks relief in the form of discharge of his student loans. Plaintiff-Debtor asserts that due to his age (70 years old) and medical disabilities, discharge of the debts are proper.

SUMMARY OF ANSWER

Education Credit Management Corporation ("Defendant") has filed an answer admitting and denying specific allegations in the First Amended Complaint. Dckt. 20.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Debtor alleges in the Corrected First Amended Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. § 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Corrected First Amended Complaint ¶ 2, 3, Dckt. 15. In its Answer, Defendant admits the allegations of jurisdiction and core proceedings. Answer ¶ 1, Dckt. 20.