UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

April 21, 2016 at 10:00 a.m.

1.	16-20912-A-11 UST-1	SEAN SUH'S CARE HOMES, INC.	MOTION FOR ORDER DETERMINING WHETHER THE APPOINTMENT OF A PATIENT CAR OMBUDSMAN IS NECESSARY 3-18-16 [38]

Tentative Ruling: The motion will be granted.

The United States Trustee seeks an order determining whether the appointment of a patient care ombudsman is necessary in this case.

The debtor responds that the facility operated by the debtor is being inspected on regular basis by the State of California and that there are no outstanding complaints or adverse reports pertaining to the debtor's operations.

11 U.S.C. § 333(a)(1) provides that:

If the debtor in a case under chapter 7, 9, or 11 is a health care business, the court shall order, not later than 30 days after the commencement of the case, the appointment of an ombudsman to monitor the quality of patient care and to represent the interests of the patients of the health care business unless the court finds that the appointment of such ombudsman is not necessary for the protection of patients under the specific facts of the case.

The term "health care business" means "any public or private entity (without regard to whether that entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for— (i) the diagnosis or treatment of injury, deformity, or disease; and (ii) surgical, drug treatment, psychiatric, or obstetric care." 11 U.S.C. § 101(27A).

The debtor operates a 24-hour residential facility for six disabled adults in their 20s and 30s (suffering from autism and mental retardation), who have been all there for at least 10 years. The debtor asserts that the facility does not provide medical care. Docket 45.

The United States Trustee has produced evidence that the facility administers medications and provides behavioral therapy and training on daily living skills to the residents. Docket 40.

While this appears to qualify the debtor as a health care business, offering both the treatment of disease and drug treatment care, the court is satisfied that no patient care ombudsman is necessary in this case, given the United States Trustee's conversation with a representative of the debtor's monitoring entity on behalf of the State of California, Alta California Regional Center.

The United States Trustee has spoken with Shelli Bose, service coordinator for ACRC. Ms. Bose indicated that the debtor does not need the appointment of patient care ombudsman, as the debtor "does not have any significant infractions." Docket 40. The court will not be appointing a patient care ombudsman.

2. 13-23517-A-7 TRACY GATEWAY, L.L.C. ORDER TO
15-2065 APPEAR FOR EXAMINATION
FUKUSHIMA V. APOLLO EQUITY, L.L.C. (YVONNE LAU)
1-20-16 [39]

Tentative Ruling: None. The respondent shall appear prior to the start of the 10:00 a.m. calendar to be sworn in for the examination.

3. 13-23517-A-7 TRACY GATEWAY, L.L.C. ORDER TO
15-2065 SHOW CAUSE
FUKUSHIMA V. APOLLO EQUITY, L.L.C. 1-12-16 [38]

Tentative Ruling: The court issued this order to show cause because Apollo Equity, L.L.C. did not appear for an examination on January 11, 2016. The examination was continued to February 22, 2016 at 10:00 a.m. and then to March 7, 2016 at 10:00 a.m.

At the March 7 hearing, the court will consider assessing sanctions against Apollo if it determines that Apollo willfully failed to obey the court's November 13, 2015 order to appear at the January 11, 2016 examination.

If Apollo fails to appear on March 7, the court also will consider sanctions to compel attendance at an examination and production of records, including authorizing the apprehension of a representative of Apollo by the U.S. Marshall to compel such attendance and production.

4. 13-23517-A-7 TRACY GATEWAY, L.L.C. ORDER TO
15-2065 APPEAR FOR EXAMINATION
FUKUSHIMA V. APOLLO EQUITY, L.L.C. (APOLLO EQUITY, L.L.C.)
11-13-15 [36]

Tentative Ruling: None. A responsible individual for the judgment debtor, Apollo Equity, L.L.C., shall appear prior to the start of the 10:00 a.m. calendar to be sworn in for the examination.

5. 15-28128-A-7 LOREN BEALS MOTION TO
16-2020 MF-1 STRIKE
CUTTY ET AL V. BEALS 3-18-16 [10]

Tentative Ruling: The motion will be granted in part.

The plaintiffs, Dwight Cutty and Donald Cutty, move for the striking of the defendant's answer, as he has generally denied all factual assertions in the complaint. The motion also seeks an order declaring that the defendant has waived all affirmative defenses.

Fed R. Civ. P. 12(f), as made applicable here by Fed. R. Bankr. P. 7012(b), provides that:

"The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading."

"The function of a 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial. . . ." Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 973 (9th Cir. 2010). The disposition of a motion to strike lies within the discretion of the court and such motions are disfavored and infrequently granted. Garcia-Barajas v. Nestle Purina Petcare Co., No. 1:09-CV-00025 OWW DLB, 2009 WL 2151850, at *2 (E.D. Cal. July 16, 2009) (citing Legal Aid Serv. of Or. v. Legal Serv. Corp., 561 F. Supp. 2d 1187, 1189 (D. Or. 2008)).

The defendant's answer simply states that he "denies Paragraphs 11-90." Docket 9. This is 11 pages of facts pertaining to the subject dispute. Docket 1 at 2-13.

While the court is not surprised that the defendant is denying much of the allegations in the complaint, the court is not persuaded that such denial is done in good faith. Complaints contain basic, undisputed facts that should be admitted, in order to keep litigation costs and the expansion of judicial resources down. The plaintiffs are also entitled to know from the answer what specific facts the defendant is denying. This is the purpose of answer.

Accordingly, the court will strike the part of the answer denying paragraphs 11-90, but with leave for the defendant to amend its answer as to those paragraphs by addressing each such paragraph separately. The defendant shall have 14 days from entry of the order on this motion to amend his answer accordingly.

The court will deny the motion insofar it seeks declaration of waiver of all affirmative defenses. This issue is not ripe for adjudication at this time. The defendant has not asserted any affirmative defenses, after filing his answer.

Nevertheless, the court will give the defendant leave to amend only the part of his answer denying paragraphs 11-90. The defendant is not receiving leave to amend the answer to include affirmative defenses.

6. 15-28128-A-7 LOREN BEALS — STATUS CONFERENCE
16-2020 — 2-8-16 [1]
CUTTY ET AL V. BEALS

Tentative Ruling: None.

7. 15-29541-A-12 TIMOTHY WILSON — MOTION TO
WW-12 — AVOID JUDICIAL LIEN
VS. SUSQUEHANNA COMMERCIAL FINANCE — 3-21-16 [107]

Tentative Ruling: The motion will be denied.

The debtor is moving the court to avoid a purported judicial lien held by Susquehanna Commercial Finance, attached to the debtor's real property consisting of two different parcels, both located at 16030 Schaefer Ranch Road, Pioneer, California.

The evidence in support of the motion does not establish that there is a judicial lien this court can avoid. The court has reviewed Susquehanna's abstract of judgment in the record. Docket 110 at 20. However, the abstract of judgment does not name the debtor as a judgment debtor. It names only Timberland Resource Renewal, Inc. as a judgment debtor.

More, there is nothing on the abstract indicating that it was ever recorded, as claimed by the motion.

And, although Susquehanna filed a proof of claim in the debtor's prior chapter 12 bankruptcy case, that proof of claim does not establish the existence of an avoidable judicial lien. There is no abstract of judgment attached to the proof of claim. The motion will be denied.

8. 15-26281-A-7 STEPHEN TRUMAN — MOTION TO
15-2216 JMB-1 — DISMISS ADVERSARY PROCEEDING
MGM GRAND HOTEL, L.L.C. V. TRUMAN — 3-9-16 [14]

Tentative Ruling: The motion will be granted in part.

The defendant, Stephen Truman, the debtor in the underlying chapter 7 case, seeks dismissal under Rule 12(b)(6) of the subject 11 U.S.C. § 523(a)(2)(A), (a)(2)(B), (a)(4) and (a)(6) claims, arguing that the complaint fails to state a claim upon which relief can be granted.

Before he filed the underlying chapter 7 bankruptcy case on August 6, 2015, the defendant borrowed $170,000 from the plaintiff, over an unspecified period of time, to gamble at the plaintiff's casino in Las Vegas, Nevada, by executing a credit agreement and what are known as "markers." Markers are negotiable credit instruments under whose terms the defendant promised to repay the borrowed money to the plaintiff, representing that he "ha[s] funds on deposit in accounts of which [he is] an authorized signatory for all purposes without restriction sufficient to pay this negotiable instrument marker on demand." Docket 10 at 2.

Although the defendant much money by gambling with the plaintiff, he also won at the plaintiff's sister casino, the Bellagio. Specifically, the complaint alleges that the defendant had $169,000 in winnings, although the defendant has claimed - in a separate legal proceeding - winnings of $187,700. Docket 10 at 2 and 4.

The plaintiff was unable to enforce the markers executed by the defendant as the accounts upon which they were drawn did not have the funds to satisfy the loans. This led to the defendant making further promises to repay the debt owed to the plaintiff, including promising repayment from anticipated salary at a new job, and promising repayment from his Bellagio winnings.

The defendant also represented that his continued gambling with the plaintiff was with funds from his exempt IRA and he transferred "all of his funds into a self-directed IRA to avoid collection of these funds." Docket 10 at 5 and 6.

In addition, "[a]fter he became unemployed, [the defendant] formed Saaz, LLC, which he transferred into his self-directed IRA," and "claimed that all of the assets of Saaz, LLC were exempt." Docket 10 at 4.

The defendant filed his chapter 7 bankruptcy case on August 6, 2015. The plaintiff filed this adversary proceeding on November 13, 2015, asserting four

claims, a claim under section 523(a)(2)(A), a claim under section 523(a)(2)(B), a claim under section 523(a)(4) for larceny, and a claim under section 523(a)(6). The amended complaint asserts that the plaintiff suffered damages in the amount of $206,414.53. Docket 10 at 2 and 10.

Rule 12(b)(6) permits dismissal when a complaint fails to state a claim upon which relief can be granted. Dismissal is appropriate where there is either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. Saldate v. Wilshire Credit Corp., 686 F. Supp. 2d 1051, 1057 (E.D. Cal. 2010) (citing Balisteri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990)(as amended)).

"In resolving a Rule 12(b)(6) motion, the court must (1) construe the complaint in the light most favorable to the plaintiff; (2) accept all well pleaded factual allegations as true; and (3) determine whether plaintiff can prove any set of facts to support a claim that would merit relief." See Stoner v. Santa Clara County Office of Educ., 502 F.3d 1116, 1120-21 (9th Cir. 2007); see also Schwarzer, Tashmina & Wagstaffe, California Practice Guide: Federal Civil Procedure Before Trial, § 9.187, p. 9-46, 9-47 (The Rutter Group 2002).

"*To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' . . . A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. . . . The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. . . . Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of "entitlement to relief."'*"

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (Citations omitted).

"In sum, for a complaint to survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009) (quoting Iqbal at 678).

More recently, the Supreme Court has applied a "two-pronged approach" to address a motion to dismiss:

"*First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. . . . Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. . . . Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. . . . But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'-'that the pleader is entitled to relief.'*

"*In keeping with these principles a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal*

conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief."

Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009) (Citations omitted).

Further, "[i]f, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56." Fed. R. Civ. P. 12(d); S&S Logging Co. v. Barker, 366 F.2d 617, 622 (9th Cir. 1966). If either party introduces evidence outside of the challenged pleading, a court *may* bring the conversion provision (Rule 12(d) - converting motion to dismiss into motion for summary judgment) into operation. Cunningham v. Rothery (In re Rothery), 143 F.3d 546, 548-549 (9th Cir. 1998).

Turning to the asserted causes of action, 11 U.S.C. § 523(a)(2) provides that an individual is not discharged "from any debt for money . . . , to the extent obtained by- (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;" or "(B) use of a statement in writing- (i) that is materially false; (ii) respecting the debtor's or an insider's financial condition; (iii) on which the creditor to whom the debtor is liable for such money . . . reasonably relied; and (iv) that the debtor caused to be made or published with intent to deceive."

11 U.S.C. § 523(a)(2)(A) requires a showing that: (1) the defendant made representations; (2) the defendant knew them to be false, when he made them; (3) he made the representations with the intent and purpose to deceive the plaintiff; (4) the plaintiff justifiably relied on the representations; and (5) as a result, the plaintiff sustained damage. Younie v. Gonya (In re Younie), 211 B.R. 367, 373 (B.A.P. 9th Cir. 1997); see also Providian Bancorp. (In re Bixel), 215 B.R. 772, 776-77 (Bankr. S.D. Cal. 1997) (citing Field v. Mans, 516 U.S. 59, 59-60 (1995) (holding that "§ 523(a)(2)(A) requires justifiable, but not reasonable, reliance")). These elements are virtually identical to the elements of common law or actual fraud. Younie, 211 B.R. at 374; Advanta Nat'l Bank v. Kong (In re Kong), 239 B.R. 815, 820 (B.A.P. 9th Cir. 1999).

The requirements of section 523(a)(2)(B) have been stated to be: (1) a representation of fact by the debtor, (2) that was material, (3) that the debtor knew at the time to be false, (4) that the debtor made with the intention of deceiving the creditor, (5) upon which the creditor relied, (6) that the creditor's reliance was reasonable, and (7) that damage proximately resulted from the representation. Candland v. Insurance Co. of N. America (In re Candland), 90 F.3d 1466, 1469 (9th Cir. 1996).

11 U.S.C. § 523(a)(4) provides that an individual is not discharged "from any debt for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." Larceny does not require the existence of a fiduciary relationship. Transamerica Commercial Fin. Corp. v. Littleton (In re Littleton), 942 F.2d 551, 555 (9th Cir. 1991); see also First Delaware Life Ins. Co. v. Wada (In re Wada), 210 B.R. 572, 576 (B.A.P. 9th Cir. 1997). In the motion, the plaintiff argues that the defendant's actions amount to larceny under section 523(a)(4).

"'For purposes of section 523(a)(4), a bankruptcy court is not bound by the state law definition of larceny but, rather, may follow federal common law,

which defines larceny as a "felonious taking of another's personal property with intent to convert it or deprive the owner of the same."'"

Ormsby v. First Am. Title Co. of Nevada (In re Ormsby), 591 F.3d 1199, 1205 (9th Cir. 2010) (quoting 4 COLLIER ON BANKRUPTCY ¶ 523.10[2] (15th ed. rev. 2008)); Welfare Trust Fund for No. California v. Quinones (In re Quinones), 537 B.R. 942, 950 (Bankr. N.D. Cal. 2015); In re Brown, 331 B.R. 243, 249 (Bankr. W.D. Va. 2005) (citing Johnson v. Davis (In re Davis), 262 B.R. 663, 672 (Bankr. E.D. Va. 2001)). Larceny requires an intent to steal. In re Lynch, 315 B.R. 173, 179-80 (Bankr. D. Col. 2004) (discussing the requisite intent for larceny).

Larceny is distinguished from embezzlement in that the original taking of the property was unlawful. Quinones at 950.

11 U.S.C. § 523(a)(6) provides that an individual is not discharged "from any debt for willful and malicious injury by the debtor to another entity or to the property of another entity."

To prevail on its 11 U.S.C. § 523(a)(6) claim, the plaintiff must show that the injury was both willful and malicious. Kawaauhau v. Geiger, 523 U.S. 57, 61 (1998); Baldwin v. Kilpatrick (In re Baldwin), 249 F.3d 912, 917 (9th Cir. 2001).

The injury element of 11 U.S.C. § 523(a)(6) necessarily involves harm to the plaintiff's person or property. Quarre v. Saylor (In re Saylor), 108 F.3d 219, 221 (9th Cir. 1997) (citing Snoke v. Riso (In re Riso), 978 F.2d 1151, 1154 (9th Cir. 1992)).

The term willful means a deliberate or intentional injury. Kawaauhau, 523 U.S. at 61. This requires proof not only that the actor intended to act, but that the injury was also intended by the actor. Id.

Determining the intent aspect of a willful injury is a subjective standard, focusing on the debtor's state of mind. Carrillo v. Su (In re Su), 290 F.3d 1140, 1144-46 (9th Cir. 2002); Hughes v. Arnold, 393 B.R. 712, 718 (E.D. Cal. 2008); Ormsby v. First American Title Co. of Nevada (In re Ormsby), 386 B.R. 243, 250 (E.D. Cal. 2008). The debtor must have had the subjective intent to harm or the subjective belief / knowledge that harm is substantially certain to result from his conduct. Su at 1144. "We hold that § 523(a)(6)'s willful injury requirement is met only when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct." Su at 1142.

A willful injury though is not necessarily malicious for purposes of 11 U.S.C. § 523(a)(6).

A malicious injury involves (1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse. Carrillo v. Su (In re Su), 290 F.3d 1140, 1146-47 (9th Cir. 2002) (citing In re Jercich, 238 F.3d 1202, 1209 (9th Cir. 2001)); see also Jett v. Sicroff (In re Sicroff), 401 F.3d 1101, 1106 (9th Cir. 2005).

The motion will be granted in part. First, for every claim of fraud the complaining party must state *with particularity* the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally. Fed. R. Civ. P. 9(b). "The plaintiffs

must include the 'who, what, when, where, and how' of the fraud." Lane v. Vitek Real Estate Indus. Group, 713 F. Supp. 2d 1092, 1102 (E.D. Cal. 2010).

The plaintiff's amended complaint is difficult to follow as it does not present facts in sequential order. For instance, the facts in the complaint go back and forth between pre-petition and post-petition events.

The complaint also makes no effort to identify the dates of the defendant's representations, including his subsequent representations of intent to repay. Docket 10. The complaint does not even provide dates for the markers. Nor does it identify how many markers the defendant executed and their respective amounts. The same is true as to when the plaintiff incurred damages. There are no dates for when the plaintiff unsuccessfully tried to cash the markers. These factual deficiencies plaguing the complaint are only as way of example. Docket 10.

As a result, the court is unable to tell what representations gave rise to what damages for the plaintiff. The section 523(a)(2)(A) and (a)(2)(B) claims fall short of Ashcroft's plausibility standard for causation. This alone warrants dismissal of the claims.

Second, the section 523(a)(2)(A) claim will be dismissed because the complaint does not allege that the defendant knew the representations to be false when he made them and does not allege that he made the representations with intent to deceive, *i.e.*, induce reliance. Docket 10 at 1-6.

Third, in asserting the fraud-based claims (under section 523(a)(2)(A) and (a)(2)(B)), the court will dismiss without leave to amend the part of those claims involving the defendant's transfer of funds into his IRA or limited liability company. Docket 10 at 4. "Truman also fraudulently transferred all of his funds into a self-directed IRA to avoid collection of these funds." Docket 10 at 5. Such actions are not representations for purposes of section 523(a)(2)(A) or (a)(2)(B). Although the plaintiff may have suffered damages due to such transfers, the plaintiff could not have relied on the transfers at the time credit was extended. The plaintiff appears not to have even known about the transfers until after they had taken place.

In any event, due to the lack of a time line in the complaint's factual narrative, it is impossible to be certain about which came first, the transfers or the representations.

Fourth, while the Supreme Court has stated that "technically speaking, a check is not a factual assertion at all, and therefore cannot be characterized as 'true' or 'false,'" the instruments at issue here – the markers – are not merely checks. Williams v. United States, 458 U.S. 279, 284 (1982).

"Petitioner's bank checks served only to direct the drawee banks to pay the face amounts to the bearer, while committing petitioner to make good the obligations if the banks dishonored the drafts. Each check did not, in terms, make any representation as to the state of petitioner's bank balance." Williams at 284-85.

On the other hand, the markers here include an unequivocal statement by the defendant that: "I have funds on deposit in accounts on which I am an authorized signatory for all purposes, without restriction, sufficient to pay this negotiable instrument marker on demand." Docket 10 at 2 & Ex. 2.

As such, the court rejects the contention that the markers do not contain a representation. By executing the markers, the defendant represented his ability to repay the sum loaned under each respective marker. The defendant has cited to no binding legal authority deeming the subject markers not to be representations for purposes of section 523(a)(2)(A) or (a)(2)(B) claims.

More, for purposes of section 523(a)(2)(B), such representation in a marker is a statement in writing respecting the defendant's financial condition -- namely, his solvency to repay the loan at hand.

And, even if the court were to consider the Mandalay Resort Group v. Miller (In re Miller), 310 B.R. 185 (Bankr. C.D. Cal. 2004) case cited by the defendant, that case is unhelpful here because the court there held, *after trial*, that "Mandalay has offered no evidence of anything Miller said or wrote when obtaining his markers. Mandalay offers only the markers themselves, the legal equivalent of checks." Miller at 194. The issue in Miller then was an evidentiary one, whereas the court is not considering evidence in connection with this motion.

Fifth, all claims will be dismissed without leave to amend to the extent they rely on allegations that the defendant made misrepresentations in his bankruptcy schedules and at the meeting of creditors. Docket 10 at 4. Obviously, there could be no causation link between such representations and the plaintiff's damages. The damages were incurred prior to those representations. The complaint admits that the plaintiff's damages are calculated as of the defendant's bankruptcy petition date. Docket 10 at 2.

Sixth, the larceny claim will be dismissed given that there are no allegations of the defendant unlawfully taking the money the plaintiff loaned to the defendant pursuant to the markers. The defendant may have misrepresented facts to induce the plaintiff to loan him the funds, but his taking of the funds does not necessarily mean that he intended to convert the funds or deprive the plaintiff of them.

In fact, the defendant used the funds precisely for the purpose he borrowed them, to gamble at the plaintiff's casino. None of the allegations of misrepresentations in the execution of the markers negates a defendant's intent to repay the funds back to the plaintiff. The complaint does not allege an intent to deprive the plaintiff from the funds. Docket 10 at 9.

Finally, the court will dismiss the section 523(a)(6) claim, as that claim is based on - once again - the defendant's misrepresentations in executing the markers, inducing the plaintiff to loan him funds to gamble. While such misrepresentations may amount to section 523(a)(2) fraud, they are not actionable under section 523(a)(6) as that provision requires the injury to be willful and malicious.

The debtor must have had the subjective intent to harm or the subjective belief/knowledge that harm is substantially certain to result from his conduct. Su at 1144. "We hold that § 523(a)(6)'s willful injury requirement is met only when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct." Su at 1142.

In other words, the misconduct under section 523(a)(6) must occur together with the injury and not sometime before – thus leading to - the injury, as in the case of section 523(a)(2). Under the allegations of the complaint, the

misconduct here took place when the defendant made misrepresentations to the plaintiff, inducing it to loan him the funds to gamble. The plaintiff's harm, on the other hand, took place when the plaintiff unsuccessfully tried to cash the markers.

The complaint contains no allegations that the defendant had the subjective intent to deprive the plaintiff from the loaned funds at the time he executed the markers.

Conversely, the complaint relies on multiple statements by the defendant stating that he intends to repay the loans. The complaint even contains statements of him stating that he has always repaid his debt to the plaintiff in the past. Docket 10, Ex. 5 at 1. The defendant's gambling relationship with the plaintiff dates back to July 1997. Docket 10 at 2.

Unless specified otherwise in the ruling, the dismissal of each claim is with leave to amend. The plaintiff shall have 14 days from entry of the order on this motion to file an amended complaint. The motion will be granted in part.

9. 15-26281-A-7 STEPHEN TRUMAN — STATUS CONFERENCE
15-2216 — 2-19-16 [10]
MGM GRAND HOTEL, L.L.C. V. TRUMAN

Tentative Ruling: None.

10. 16-21585-A-11 AIAD/HODA SAMUEL — STATUS CONFERENCE
3-15-16 [1]

Final Ruling: This status conference hearing has been continued to May 16, 2016 at 10:00 a.m. Docket 38.

11. 16-21585-A-11 AIAD/HODA SAMUEL — NOTICE OF
USA-1 — INTENT TO DISMISS CASE
3-15-16 [2]

Tentative Ruling: The notice of intent will be discharged and the case will remain pending.

The court issued this notice of intent to dismiss the case due to the debtor's failure to file a master address list and failure to submit the remaining petition documents on the new bankruptcy forms effective December 1, 2015.

The United States of America opposes dismissal of the case, asserting that this case was filed to hamper its efforts to collect on a restitution judgment from the debtors. The debtors purportedly "own significant assets whose total value, when liquidated, is sufficient to make a substantial distribution to creditors."

The case will remain pending as the debtors have updated on current forms nearly all of their petition documents. The court does not see only Schedule I on a current form. Dockets 31 and 32.

The court will not dismiss the case also because it still does not know whether the United States Trustee has had the opportunity to conduct a meeting of creditors in the case. The meeting was scheduled for April 12, 2016. Docket 17.

12. 14-31890-A-11 SHAINA LISNAWATI STATUS CONFERENCE
12-6-14 [1]

Tentative Ruling: None.