

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

April 22, 2021 at 11:00 a.m.

1. [20-20938-E-13](#) **DEANDRA JACKSON** **MOTION BY JOSEPH M. CANNING TO**
[20-2103](#) **JMC-1** **WITHDRAW AS ATTORNEY**
PADILLA-ANGEL V. JACKSON **2-25-21 [25]**

Tentative Ruling: 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Defendant-Debtor's Attorney, Plaintiff, Chapter 13 Trustee, and Office of the United States Trustee on February 25, 2021. By the court's calculation, 56 days' notice was provided. 28 days' notice is required.

The Motion to Withdraw as Attorney has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Withdraw as Attorney is ~~XXXXX~~.

Joseph M. Canning ("Movant"), counsel of record for Maria Padilla-Angel ("Plaintiff"), filed a Motion to Withdraw as Attorney as Plaintiff's counsel in the adversary proceeding. Movant states the following:

- A. The Motion is brought pursuant to Local Bankruptcy Rule 2017-1(e) and California Rule of Professional Conduct 3-700(C)(1).

- B. Counsel and Plaintiff have encountered difficulties and have not been able to successfully resolve them.

Motion, Dckt. 25.

APPLICABLE LAW

District Court Rule 182(d) governs the withdrawal of counsel. LOCAL BANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010).^{FN.1.}

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF'L CONDUCT 3-700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act. CAL. R. PROF'L CONDUCT 3-700(B).

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

(1) The client

(d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively.

CAL. R. PROF'L. CONDUCT 1.16(b)(4)(d).

DISCUSSION

This is an Adversary Proceeding where the Plaintiff is asserting a claim that an obligation owed by Defendant-Debtor relating to the rental of real property is nondischargeable. The grounds include misrepresentation of Defendant-Debtor's income and that Defendant-Debtor had not filed prior bankruptcy cases.

As a ground for the Motion to Withdraw as Attorney, Movant states that Attorney and Plaintiff are no longer able to prosecute this case together. Movant states in his declaration:

2. The above-captioned case was commenced with the filing of an adversarial proceeding on May 23, 2020.

3. During this span of time as counsel, it has become apparent that Plaintiff and I are no longer able to agree as to important issues regarding the prosecution of this case.

Declaration, Dckt. 27.

Movant does not discuss any prejudice that withdrawal as a counsel will or will not cause or harm it might or might not have on administration of justice. Neither the Chapter 13 Trustee, Debtor, nor any other relevant party has filed an opposition to this Motion, however, which was filed according to Local Bankruptcy Rule 9014-1(f)(1).

Furthermore, under California Rule of Professional Conduct 3-700(C)(1)(d), Debtor's conduct, such as the inability to agree to important issues regarding the prosecution of this case is hindering Movant's ability to carry out his employment and duties effectively. Those are sufficient reasons for permissive withdrawal.

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 Withdraw as Attorney filed by Joseph M. Canning ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Withdraw as Attorney is granted, and Movant is permitted to withdraw as counsel for Maria Angel-Padilla (“Plaintiff”).

2. [20-20938-E-13](#) **DEANDRA JACKSON**
[20-2103](#)
PADILLA-ANGEL V. JACKSON

**CONTINUED PRE-TRIAL
CONFERENCE
RE: COMPLAINT TO DETERMINE
DISCHARGEABILITY
5-23-20 [1]**

Plaintiff’s Atty: Joseph M. Canning
Defendant’s Atty: Peter G. Macaluso

Adv. Filed: 5/23/20
Answer: 7/14/20

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

Notes:
Continued from 3/3/21 to be conducted in conjunction with Plaintiff’s counsel’s motion to withdraw from this Adversary Proceeding.

The Pretrial Conference is XXXXXXX

SUMMARY OF COMPLAINT

Maria Padilla-Angel (“Plaintiff”) filed a Complaint (Dckt. 1) asserting that debt should be nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A), with the allegations in the Complaint summarized as follows:

- A. Deandra Renee Jackson, “Defendant-Debtor,” submitted to Plaintiff an application to rent property.
- B. In reliance on the information provided therein, Plaintiff rented the property to Defendant-Debtor.
- C. The lease commenced on November 15, 2019, and Defendant-Debtor pre-paid rent through December 31, 2019.
- D. Defendant-Debtor has made no further rent payments and continues in possession of the property.

- E. On January 10, 2020, Plaintiff served a three-day notice to pay rent or quit on Defendant-Debtor.
- F. At the time of giving the three-day notice, Plaintiff discovered that Defendant-Debtor had filed three bankruptcy cases in less than one year. One was filed prior to the rental agreement being signed on October 10, 2019, and two after, those cases filed on October 11, 2019, and November 18, 2019. The pre-Rental Agreement bankruptcy was not disclosed to Plaintiff on the Rental Application.
- G. Defendant-Debtor did not list Plaintiff as a creditor in the two post-Rental Agreement cases filed. However, after the three-day notice was given, Defendant-Debtor amended her Schedules to list Plaintiff.
- H. The unlawful detainer trial was set for March 10, 2020. Defendant-Debtor's third bankruptcy case was dismissed on February 17, 2020, ten days after Plaintiff filed a motion for a "comfort order" concerning the automatic stay.
- I. Defendant-Debtor commenced her current Chapter 13 case, 20-20938, ("Current Case") on February 20, 2020.
- J. Defendant-Debtor requested that the bankruptcy court impose the stay in the Current Case. No stay had been imposed as of the March 10, 2020 unlawful detainer trial, but the state court continued the trial until after the bankruptcy court could rule on the motion to impose the stay.
- K. The bankruptcy court granted the motion to impose the stay as to all persons, except the Plaintiff.
- L. Due to the COVID-19 pandemic, the State Court has not been able to set a trial in the unlawful detainer.
- M. In reviewing the Defendant-Debtor's Schedules and Statement of Financial Affairs, Plaintiff has determined that the income information Defendant-Debtor provided in the Rental Application was not accurate.
- N. Plaintiff has identified a dozen bankruptcy cases that Defendant-Debtor has filed in the Eastern District of California, with five cases having been filed within seven years of the Rental Application given to Plaintiff, which Application did not disclose those cases.
- O. In the First Cause of Action, Plaintiff asserts that the obligations owed to Plaintiff relating to the rental are nondischargeable for fraud pursuant to 11 U.S.C. § 523(a)(2)(A). The alleged misrepresentation are as to the Defendant-Debtor's income and the failure to disclose the multiple bankruptcy cases filed.
- P. In the Second Cause of Action Plaintiff asserts that Defendant-Debtor has injured Plaintiff's property, converting the rental Property, and the damages relating to that conduct is nondischargeable pursuant to 11 U.S.C. § 523(a)(6).

SUMMARY OF ANSWER

Deandra Renee Jackson (“Defendant-Debtor”) filed an Answer (Dckt. 7) to the Complaint, which the court summarizes as follows:

A. The Defendant-Debtor begins with a “general denial,” which states:

Defendant hereby **denies, both generally and specifically, each and every allegation in the Complaint**, and specifically denies any allegation that Plaintiff has been, is, or will be damaged in the amount alleged, or any manner or sum whatsoever, or entitled to any recovery or remedy of any type whatsoever, by reason or any act, conduct, or omission of Defendant.

Answer, p. 2:4-9; Dckt. 7. ^{FN. 1}

FN. 1. The U.S. Supreme Court provides in Federal Rule of Civil Procedure 8(b)(3), incorporated into Federal Rule of Bankruptcy Procedure 7008, that a party may make a general denial only as follows:

(3) General and Specific Denials. A party that intends in **good faith to deny all the allegations** of a **pleading—including the jurisdictional** grounds—may do so by a general denial. A party that does **not intend to deny** all the allegations must **either specifically deny designated allegations or generally deny all except those specifically admitted**.

By this general denial, Defendant-Debtor is denying that federal court jurisdiction exists for adjudicating claims that debt is nondischargeable under the Bankruptcy Code based on the specific grounds stated in the Bankruptcy Code.

B. In Paragraph 1 of the Answer Defendant-Debtor provides the conflicting admission that federal court jurisdiction exists for this Adversary Proceeding.

C. Defendant-Debtor denies that she is “a residential tenant” of the Property.

FINAL BANKRUPTCY COURT JUDGMENT

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)(I). Complaint, ¶¶ 1, 2, Dckt. 1. The Defendant admits the jurisdiction and that this is a core proceeding. Answer, ¶¶ 1, 2 (notwithstanding denying it in the “general denial” in Section I of the Answer), Dckt. 7.

MOTION TO SUBSTITUTE ATTORNEY

On January 22, 2021, Joseph Canning, Esq., attorney for Plaintiff, filed a Substitution of

Attorney, which purports to substitute counsel of record out and put Plaintiff in *pro se* in his place. The court has not issued an order permitting counsel to substitute out from the representation of Plaintiff. E.D. Cal. LBR 2017-1(e); E.D. Cal. L.R. 182(e).

On February 25, 2021, Mr. Canning filed a Motion to Withdraw as counsel for Plaintiff. Dckt. 25. The hearing on the Motion is set for April 22, 2021.

Defendant filed a Pre-Trial Statement providing all of the required information for the court to set this matter for trial.

At the Prior Pre-Trial Conference, counsel for the Defendant reported that he has not heard back from counsel for Plaintiff. The court continues the Pre-Trial Conference to be heard in conjunction with the Motion to Withdraw.

FINAL RULINGS

3. [20-90478-E-7](#) TRICIA DODSON CONTINUED STATUS CONFERENCE
[20-9011](#) RE: COMPLAINT
ANDERSON LITFIN, INC. V. 9-11-20 [1]
DODSON ET AL

Final Ruling: No appearance at the April 22, 2021 Status Conference is required.

Plaintiff's Atty: Steven S. Altman
Defendant's Atty: *Pro Se*

Adv. Filed: 9/11/20
Answer: 12/3/20

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury
Dischargeability - other
Subordination of claim or interest

Notes:
Continued from 3/11/21 (specially set to Sacramento Division Courthouse). Parties agreed to continuance in light of possible settlement and continuing BDRP mediation.

Stipulation for Entry of Judgment filed 3/30/21 [Dckt 36]

Judgment Pursuant to Stipulation for Entry of Judgment filed 3/31/21 [Dckt 38]

Second Status Conference Statement of Plaintiff filed 4/9/21 [Dckt 41]

Judgment having been entered (Dckt. 38), the Status Conference is concluded and removed from the Calendar.