

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Modesto, California

May 22, 2014 at 2:30 p.m.

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1. [11-94410](#)-E-11 SAWTANTRA/ARUNA CHOPRA CONTINUED STATUS CONFERENCE RE:
[13-9042](#) COMPLAINT
FARRAR V. TRIUNFO ONE 12-27-13 [[1](#)]
ACQUISITION LLC ET AL

Plaintiff's Atty: Aaron A. Avery
Defendant's Atty: unknown

Adv. Filed: 12/27/13
Answer: none

Nature of Action:
Recovery of money/property - preference
Recovery of money/property - other
Recovery of money/property - turnover of property

Notes:

Continued from 3/6/14. The Plaintiff-Trustee reporting in the 3/4/14 status report that active settlement discussions were going forward.

2. [09-93445](#)-E-7 FELIPE/JENNIFER CASALDUC STATUS CONFERENCE RE: COMPLAINT
[14-9014](#) 3-26-14 [[1](#)]
SKOBRAK ET AL V. CASALDUC ET
AL

Plaintiff's Atty: Charles L. Hastings
Defendant's Atty: David C. Johnston

Adv. Filed: 3/26/14
Answer: 4/25/14

Nature of Action:
Dischargeability - other

Notes:

Plaintiffs' Discovery Plan filed 5/14/14 [Dckt 15]

SUMMARY OF COMPLAINT

The Complaint alleges that Plaintiffs have a claim against the Defendant-Debtors which they assert has not been discharged in Bankruptcy Case No. 09-03445. This relates to home improvement work done in 2011 and 2012. The Bankruptcy Case was originally commenced under Chapter 13 and was converted to one under Chapter 7 on October 23, 2012.

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Plaintiffs commenced their state court action against the Defendant-Debtors on September 26, 2012. The Defendant-Debtors did not amend their Schedules to list the Plaintiff's asserted claims until January 27, 2013, the day before the then scheduled deadline for filing complaints to determine the nondischargeability of debts. Plaintiffs assert that they were not aware of the Defendant-Debtors' bankruptcy case until after the deadline for filing a nondischargeability complaint had expired.

Plaintiffs assert that they have a claim which is based on fraud, which was not scheduled as required under 11 U.S.C. § 521(a)(1) and is therefore nondischargeable pursuant to 11 U.S.C. § 523(a)(3)(B).pre-dates the commencement of the bankruptcy case. The Chapter 7 Trustee filed a No Distribution Report on November 30, 2012. 09-93445 Dckt. 98.

SUMMARY OF ANSWER

In the Answer, Defendant-Debtors assert that the Complaint fails to comply with the minimum pleading requirements of Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008(a). No statements of federal court jurisdiction, whether the matter is core or non-core, and whether Plaintiffs consent to the bankruptcy judge issue final orders and the judgment for non-core matters. The Defendant-Debtors allege in the Answer that federal court jurisdiction exists, that this is a core matter, and that Defendant-Debtors consent for the bankruptcy judge to issue all final orders and judgment for any non-core matters for which claims are pleaded in the Complaint. (No reference is made to specific statutes upon which federal court jurisdiction is based.)

The Defendant-Debtors admit and deny specific allegations in the Complaint. They also allege that they were not served with the state court complaint on September 30, 2012. It is further asserted that since the Defendant-Debtors' Chapter 7 case was a "No Asset Case," there is no bar date (setting aside equitable defenses) for the filing of a complaint for nondischargeability of the debt pursuant to 11 U.S.C. § 523(c).

The Affirmative Defenses include: (1) Plaintiff's dispute is with Hamptons Blueprint, Inc, a disclosed principal; (2) Plaintiffs were aware of the bankruptcy case in 2013, and after which they obtained a judgment and recorded an abstract of judgment in violation of the discharge injunction; (3) service of the Summons and Complaint in this Adversary Proceeding is defective, and (4) the Complaint fails to state with particularity the circumstances constituting fraud or mistake (Fed. R. Civ. P. 9(b) and Fed. R. Bank. P. 7009).

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint fails to allege the basis for jurisdiction for this Adversary Proceeding. As stated on the record at the May 22, 2014 Status Conference, the parties concur 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). **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**

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to the bankruptcy court.

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

- a. The Parties stated on the record at the May 22, 2014 Status Conference 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). **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.**
- b. Initial Disclosures shall be made on or before **June 4, 2014**.
- c. Written Discovery (all discovery other than depositions), including discovery motions, closed on **-----, 2014**.
- d. Depositions 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**.

3. [09-93445-E-7](#) FELIPE/JENNIFER CASALDUC ORDER TO SHOW CAUSE
[14-9014](#) 3-27-14 [6]
SKOBRAK ET AL V. CASALDUC ET
AL

Notice Provided: The Order to Show Cause was served by the Clerk of the Court through the Bankruptcy Noticing Center on all parties on March 27, 2014. 56 days notice of the hearing was provided.

Final Ruling: The Order to Show Cause is discharged. No appearance at the May 22, 2014 hearing is required.

The court ordered that Plaintiffs Steve Skobrak and Veronica Skobrak, by their attorney Charles Hastings, to appear to show cause why this court should not dismiss the above adversary proceeding for failure to reopen the parent case or not having an order waiving the reopening of the parent case.

OPPOSITION

On April 2, 2014, Plaintiff opposed the Order to Show Cause, arguing that the Ninth Circuit Court of Appeals has ruled that it is not necessary to reopen a parent case in order to file a complaint to determine dischargeability under 11 U.S.C. § 523(a)(3)(B) as stated by the court in *In re Staffer*, 306 F.3d 967, 969 (9th Cir. 2002).

DISCUSSION

"Arising under" jurisdiction does not hinge "on the present existence of an open case or a non-dismissed case," but "depends solely on the existence of 'civil proceedings arising under title 11.'" *Aheong v. Mellon Mortg. Co. (In Re Aheong)*, 276 B.R. 233, 244 (B.A.P. 9th Cir. 2002); see *Menk v. Lapaglia (In re Menk)*, 241 B.R. 896, 904 (B.A.P. 9th Cir. 1999) ("[S]ubject-matter jurisdiction is conferred by the 'arising under' clause of § 1334(b), as it is a cause of action created by the Bankruptcy Code, without existence outside the context of bankruptcy, and otherwise unknown to the law" and "the action [can] be commenced after the bankruptcy case has been closed"). Therefore, an adversary proceeding may be commenced in bankruptcy court years after the related bankruptcy case has been administered and closed without reopening the case. See *Staffer v. Predovich (In re Staffer)*, 306 F.3d 967, 972 (9th Cir. 2002) ("[A] separate motion to reopen is not a jurisdictional requirement, or even a prerequisite for commencing an action for nondischargeability of a debt under § 523(a)(3)(B)."); *Menk*, 241 B.R. at 906 ("[T]here is no jurisdictional requirement that a closed bankruptcy case be reopened before 'arising under' jurisdiction can be exercised to determine whether a particular debt is excepted from discharge.").

Therefore, because this court has post-closing jurisdiction over any claim arising under § 362(k), the court finds that Plaintiff was not required to reopen the prior bankruptcy case to assert § 362(k) claims that may have accrued. This court has "the power to compensate victims of violations of the automatic stay and punish the violators, even after the conclusion of the underlying bankruptcy case." *Stanwyck v. Bogen (In re Stanwyck)*, 450 B.R. 181, 193 (Bankr. C.D. Cal. 2011).

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 Order to Show Cause issued by the court having been responded to, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged.

4. [12-93049-E-11](#) MARK/ANGELA GARCIA
[13-9029](#)
UNITED STATES FIRE INSURANCE
COMPANY V. GARCIA ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
8-23-13 [[1](#)]

Plaintiff's Atty: Gregory M. Salvato
Defendant's Atty: Mark J. Hannon

Adv. Filed: 8/23/13
Answer: 10/4/13

Nature of Action:

Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

Notes:

Continued from 3/6/14 by stipulation of the parties

[MJH-4] Stipulation re Extension of Time for Initial Disclosures filed 5/13/14 [Dckt 30]; order pending

[MJH-5] Stipulation re Continuance of Status Conference filed 5/13/14 [Dckt 31]; order pending

5. [13-90465-E-7](#) KIMBERLY VEGA
[13-9028](#)
MCGRANAHAN V. VEGA

PRE-TRIAL CONFERENCE RE:
COMPLAINT OBJECTING TO
DISCHARGE OF DEBTOR
8-14-13 [[1](#)]

Plaintiff's Atty: Steven S. Altman
Defendant's Atty: Thomas O. Gillis

Adv. Filed: 8/14/13
Summons Reissued: 8/21/13

Answer: 11/15/13

Final Ruling: The Parties having filed a Motion for dismissal of this Adversary Proceeding which is set for hearing at 10:30 a.m. on June 12, 2014, the court continues the Pre-Trial Conference to that same time and date. No appearance at the May 22, 2014 Pre-Trial Conference is required.

The Trustee and Defendant-Debtor have executed a stipulation and have filed a Motion to dismiss this Adversary Proceeding based upon the recent Supreme Court ruling in *Law v. Segal*.

The Complaint asserts a First and Second Claims for Relief based on 11 U.S.C. § 727(a)(2)(B) and (4)(D) - alleging that the Defendant-Debtor failed and refused to provide the Trustee with assets and information concerning property of the estate. The Third Claim for Relief is for a surcharge against the Defendant-Debtor for the costs and expenses incurred in connection with the failure to produce assets and information.

The Stipulation recites that the Defendant-Debtor has provided the information and assets constituting property of the estate. However, the Defendant-Debtor and her counsel were slow in producing the information, necessitating formal discovery.

The Stipulation further states that based upon the recent Supreme Court ruling in *Law v. Segal*, the Chapter 7 Trustee does not want to pursue the Surcharge Claim for Relief.

Nature of Action:
Objection/revocation of discharge

Notes:

Scheduling order -
Initial disclosures by 12/30/13
Close of non-expert witness discovery 2/14/14
Dispositive motions heard by 3/31/14

Plaintiff's Pretrial Conference Statement filed 3/27/14 [Dckt 38]

Stipulation for Entry of Order of Dismissal filed 5/12/14 [Dckt 40]; order pending

[SSA-3] Motion in Support of Joint Stipulation for Entry of Order of Dismissal filed 5/13/14 [Dckt 41], set for hearing 6/12/14 at 10:30 a.m.

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 Pre-Trial Conference having been scheduled for May 22, 2014, the Parties having filed a motion to dismiss the Adversary Proceeding, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Pre-Trial Conference is continued to 10:30 a.m. on June 12, 2014, to be heard in conjunction with Motion to Dismiss the Adversary Proceeding.

6. [13-92068-E-7](#) [14-9012](#) JOSE MORENO CONTINUED STATUS CONFERENCE RE:
MORENO V. THE CLAIMS CENTER, COMPLAINT
LLC 2-28-14 [[1](#)]

Plaintiff's Atty: Shane Reich
Defendant's Atty: unknown

Adv. Filed: 2/28/14
Reissued Summons: 3/7/14

Final Ruling: The Adversary Proceeding having been dismissed by the Plaintiff, the Status Conference is removed from the calendar. No

appearance at the May 22, 2014 Status Conference is required.

On May 21, 2014, Plaintiff filed a Document titled "Debtor's Request for Dismissal of Adversary Proceeding." Dckt. 12. "Debtor" is the Plaintiff in this Adversary Proceeding. No answer or other responsive pleading was filed by the Defendant.

Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rule of Bankruptcy Procedure 7041 provide that under such circumstances the plaintiff may dismiss the action without order of the court. The Plaintiff-Debtor's Request for Dismissal is such a dismissal.

The Adversary Proceeding having been dismissed by the Plaintiff-Debtor, the Status Conference is removed from the calendar.

The Clerk of the Court shall close the file for this Adversary Proceeding.
Answer: none

Nature of Action:
Recovery of money/property - preference

Notes:

Continued from 5/1/14 with Plaintiff reporting that the case is being settled.

Plaintiff's Status Conference Statement filed 5/16/14 [Dckt 11]

7. [10-90583-E-7](#) [13-9009](#) JESSE/DEANNA RUELAS CONTINUED STATUS CONFERENCE RE:
RUELAS V. GREENHILLS MASTER COMPLAINT
ASSOCIATION ET AL 3-8-13 [[1](#)]

Plaintiff's Atty: Cort V. Wiegand
Defendant's Atty: Steven R. Hrdlicka

Adv. Filed: 3/8/13
Answer: 4/15/13

Nature of Action:
Dischargeability - other
Injunctive relief - other

Notes:

Continued from 1/16/14. Parties to resolve all issues in this Adversary Proceeding prior to the 5/22/14 status conference.

