

At the June 4, 2020 Status Conference, **XXXXXXXXXX**

APRIL 23, 2020 CONTINUED STATUS CONFERENCE

At the Status Conference Trustee's Counsel reported that the Trustee is continuing to work with the Debtor for a sale of the Property, and requested that the Status Conference be continued. In light of the additional challenges created by the COVID-19 restrictions on travel and meeting, the Status Conference is continued.

MARCH 12, 2020 STATUS CONFERENCE

By order of the court filed January 10, 2020 (Dckt. 27), this Adversary Proceeding has been stayed to allow the Plaintiff-Trustee, Defendant, and Debtor to focus their discussions on a possible Chapter 13 plan and conversion of this case rather than the liquidation of the Property that is the subject of this Adversary Proceeding, until such stay is vacated by further order of this court.

At the Status Conference, counsel for the Plaintiff reported that the parties are continuing their discussions and requested one final continuance.

Review of Complaint

The Complaint contains the allegations that the Orangeburg Avenue Property is property of the bankruptcy estate. The Trustee asserts that the Property may be sold as provided in 11 U.S.C. § 363(h), including the asserted equitable interests of the Debtor's mother.

Plaintiff's Atty: Pro Se
Defendant's Atty: Robert Scott Kennard

Adv. Filed: 6/25/18
Answer: 7/26/18

Nature of Action:
Dischargeability - student loan
Dischargeability - other

Notes:
Continued from 4/23/20. Supplemental Pre-Trial Conference Statements to be filed and served on or before 5/21/20.

Pretrial Conference Statement [Plaintiff] filed 5/18/20 [Dckt 123]

Defendant's Amended Pre-Trial Conference Statement filed 5/21/20 [Dckt 125]

SUMMARY OF COMPLAINT

Daryl Fitzgerald, the Plaintiff-Debtor, has filed a Complaint to have his student loan obligation determined dischargeable. The named defendants are Navient Solutions, Inc., WilkesBarre, and Trellis Company. The court has dismissed Navient Solutions, Inc. from this Adversary Proceeding.

SUMMARY OF ANSWER

Trellis Company, fka Texas Guaranteed Student Loan filed an Answer (Dckt. 18) that admits and denies specific allegations in the Complaint.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff seeks in the complaint a determination of the dischargeability of specified student loan debt pursuant to 11 U.S.C. § 523(a)(8). This is a core proceeding arising under the Bankruptcy Code, which has been assigned to this Bankruptcy Court by the District Court.

The court shall issue an Trial Setting in this Adversary Proceeding setting the following dates and deadlines:

- A. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1.
- B. **Plaintiff** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2020**.

C. **Defendant** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2020**.

D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, **2020**.

E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, **2020**.

F. The Trial shall be conducted at ----**x.m. on** -----, **2020**.

The Parties in their respective Pretrial Conference Statements, Dckts. 119, 123, and as stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

Plaintiff(s)

Defendant(s)

Jurisdiction and Venue: Plaintiff seeks in the complaint a determination of the dischargeability of specified student loan debt pursuant to 11 U.S.C. § 523(a)(8). This is a core proceeding arising under the Bankruptcy Code, which has been assigned to this Bankruptcy Court by the District Court.	
Undisputed Facts: 1. Long narrative provided, without specifically identified, enumerated asserted undisputed facts.	Undisputed Facts: 1. Plaintiff became obligated on three separate Perkins and Stafford student loan debts incurred for the purpose of attending California State University, Chico. 2. Plaintiff's former spouse, Vanessa Fitzgerald, became obligated on a separate Stafford student loan debt incurred for the purpose of attending Butte College. 3. On or about March 31, 1997, Plaintiff and Ms. Fitzgerald jointly applied to SallieMae for consolidation of their student loans. Ms. Fitzgerald was the primary borrower and Plaintiff was the co-borrower for the consolidated loan. 4. Plaintiff and Ms. Fitzgerald were legally married at the time of the application for consolidation of their student loans. 5. The loan consolidation request was granted.

	<p>The total of the consolidated loan was \$35,997.91. Approximately \$16,102.48 of the consolidated loan amount was attributed to Ms. Fitzgerald's loan, and approximately \$19,895.43 was attributed to Plaintiff's individual loans. An interest rate of 8.00% per annum was assigned to the consolidation loan.</p> <p>6. A promissory note for the consolidation loan was executed and signed by Ms. Fitzgerald as the primary borrower and Plaintiff as the co-borrower.</p> <p>7. The originator and creditor for the consolidated student loan debt was SallieMae.</p> <p>8. Thereafter, ownership of and servicing of the loan was transferred to Navient Federal Loan Trust.</p> <p>9. Ownership of and servicing of the loan has since been transferred to the current creditor Trellis Company fka Texas Guaranteed Student Loans.</p> <p>10. Payments were made on the consolidated loan from 1997 through March 2, 2015. As of the date of the last payment, the balance on the consolidated loan, including accrued interest, was \$81,949.19.</p> <p>11. In 2017, an application was made for partial discharge of the debt based on Ms. Fitzgerald's representation that she became permanently disabled on or about July 21, 2017. Based on the application and representations contained therein, the debt was reduced by a factor of 44.73%, which represents the percentage of the original consolidated amount that belonged to Ms. Fitzgerald at the time of consolidation. The principal was reduced from \$90,952.71 to \$50,269.56, and the interest was reduced from \$9,744.24 to \$5,385.64.</p> <p>12. On January 1, 2018, Plaintiff submitted to Defendant Trellis Company fka Texas Guaranteed Student Loans an application to</p>
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	<p>discharge the debt on the basis that the promissory note for the consolidation loan was forged and that he did not sign the note.</p> <p>13. On February 22, 2018, Defendant responded to Plaintiff with a letter indicating that the request for discharge was denied as Plaintiff had received the benefit of the loaned funds, and is therefore responsible for repaying the loan obligation. By the same letter, Plaintiff was advised that if he wished to appeal the decision, he would need to send his written appeal to Defendant and it would be forwarded to the U.S. Department of Education (ED) for determination.</p> <p>14. Plaintiff made a written appeal to ED. After a review of the matter, ED denied the appeal and determined that Plaintiff remained obligated on the loan.</p> <p>15. Plaintiff filed for Chapter 7 Bankruptcy on February 29, 2016. The adversary proceeding was filed on June 25, 2018.</p> <p>16. By his Complaint, Plaintiff is seeking discharge of the underlying student loan debt alleging that the promissory note executed in connection with the consolidation was forged, and that preventing discharge of the student loan debt would pose an undue financial hardship.</p> <p>17. In his Complaint, Plaintiff claims that his earning potential has “maxed out,” as he is nearing 50 years old and is approaching 2 years since his bankruptcy case was discharged.</p>
<p>Disputed Facts:</p> <p>1. Fraud Application by the Defendants with known relatives of the Plaintiff, handwriting does not match the Plaintiff's lifetime of messy large writing style</p> <p>2. This jumbo student loan was of no educational benefit to the</p>	<p>Disputed Facts:</p> <p>1. Plaintiff disputes whether he remains obligated for;</p> <p>(a) the entire balance remaining on the loan;</p> <p>(b) the entire outstanding balance of his individual student loan prior to the reduction based on Ms. Fitzgerald's representations that she became</p>

<p>Plaintiff/Debtor.</p> <p>3. The Plaintiff/Debtor ask the Court to consider scholarships and non-payback grants as an educational benefit only.</p> <p>4. Loan Numbers on the fraud application showing higher amounts pointing toward the Plaintiff. The numbers do not match the jumbo student loan which means someone was guessing or making numbers up.</p> <p>5. Per the Federal Student Aid - Perkins Loans carried a rate of 3% and 6%. Therefore, combining loans per Primary Borrower's fraud application with Sallie Mae into a Jumbo Student Loan of 8% or higher makes no financial sense.</p> <p>6. The application was fraud.</p>	<p>permanently disabled, totaling approximately \$40,683.15 plus interest, or;</p> <p>(c) the outstanding balance on his individual student loan after reduction due to Ms. Fitzgerald's representations, totaling \$19,895.43 plus interest.</p> <p>2. The parties also dispute whether it would be an undue hardship for Plaintiff to deny discharge of the student loan obligation.</p>
<p>Disputed Evidentiary Issues:</p> <p>1. None identified</p>	<p>Disputed Evidentiary Issues:</p> <p>1. None identified</p>
<p>Relief Sought:</p> <p>1.</p> <p>2.</p>	<p>Relief Sought:</p> <p>1. Defendant seeks a judgment granting Plaintiff no relief requested in the Complaint.</p> <p>2. Reasonable costs and attorney's fees</p>
<p>Points of Law:</p> <p>1. 20 WASH. & LEE J. CIVIL RTS & SOC. JUST. 215,272-276 (2014); 4 COLLIER ON BANKRUPTCY 1[523.14121 (16th ed. 2017)</p>	<p>Points of Law:</p> <p>1. 11 U.S.C. § 523(a)(8).</p> <p>2. <i>In re Yapuncich</i>, 266 B.R. 882, 888 (Bankr. D. Mont. 2001).</p>

<p>2. <i>Carow v. Chase Student Loan Serv. (In re Carow)</i>, Bankr. No. 10-30264, Adv. No. 10-7011, 2011 WL 802847, at 1..5 (Bankr. D.N.D. Mar. 2, 2011)</p> <p>3. <i>Roy v. Sallie Mae</i>, Bankr. No. 0833318, Adv. No.09-1406,2010 WL 1523996, at *1 (Bankr. D.N.J. Apr. 15, 2010).</p>	<p>3. Ratification of the obligation</p> <p><i>In re Feagins</i>, 439 B.R. 165, 174 (Bankr. D. Haw. 2010)</p> <p><i>In re Hedlund</i>, 573 B.R. 777, 783 (Bankr. N.D. Cal. 2017).</p> <p><i>In re Feagins</i>, 439 B.R. 165, 175 (Bankr. D. Haw. 2010).</p> <p>4. A marital community may be liable for debts incurred for the benefit of the community.</p> <p>Cal. Fam. Code § 760</p>
<p>Abandoned Issues:</p> <p>1. None identified</p>	<p>Abandoned Issues:</p> <p>1. None identified</p>
<p>Witnesses:</p> <p>1. Daryl Darnell Fitzgerald</p>	<p>Witnesses:</p> <p>1. Paul Miller, Bankruptcy Supervisor for Trellis Company fka Texas Guaranteed Student Loans</p> <p>2. Dale Kern, former Bankruptcy Supervisor for Trellis Company fka Texas Guaranteed Student Loans</p> <p>3. Custodian of Records for Trellis Company fka Texas Guaranteed Student Loan;</p> <p>4. Daryl Fitzgerald, the Plaintiff herein</p> <p>5. Vanessa Fitzgerald</p>
<p>Exhibits:</p> <p>1. Supplemental Loan Listing Sheet for SMART LOAN, dated March 31, 1997. (Exhibit A to Pretrial Statement)</p> <p>2. Information Sheet on Trellis</p>	<p>Exhibits:</p> <p>1. The promissory note(s) executed by Vanessa Fitzgerald in connection with her obligation(s) on student loan(s) for the purpose of attending Butte College;</p> <p>2. The promissory notes executed by Plaintiff in</p>

<p>Company (Exhibit B to Pretrial Statement)</p>	<p>connection with his obligations on student loans for the purpose of attending California State University, Chico;</p>
<p>3. Primary Borrower Estate Address Inheritance (Exhibit C to Pretrial Statement)</p>	<p>3. The promissory note for the consolidation entered into between Defendant's predecessor-in-interest, Vanessa Fitzgerald, and Plaintiff, dated March 31, 1997;</p>
<p>4. Navient Payment Notice (Exhibit C2 to Pretrial Statement)</p>	<p>4. The Lender Verification Certificate signed by the parties, dated March 31, 1997;</p>
<p>5. Plaintiff's Health (Exhibit C3 to Pretrial Statement - illegible)</p>	<p>5. The Request for Forbearance submitted by Vanessa Fitzgerald and Plaintiff, dated October 30, 1997;</p>
<p>6. Plaintiff's FTC Case Information (Exhibit D to Pretrial Statement)</p>	<p>6. The Request for Forbearance submitted by Vanessa Fitzgerald and Plaintiff, dated June 19, 1998;</p>
<p>7. Motion to Reopen Case, Complaint for Dischargeability (Exhibit E to Pretrial Statement)</p>	<p>7. The Request for Forbearance submitted by Vanessa Fitzgerald and Plaintiff, dated February 18, 1999;</p>
<p>8. Answer to Complaint filed by The Trellis Company (Exhibit F to Pretrial Statement)</p>	<p>8. The Request for Forbearance submitted by Vanessa Fitzgerald and Plaintiff, dated November 10, 1999;</p>
	<p>9. The Economic Hardship Deferment Request submitted by Plaintiff, dated and April 1, 2001;</p>
	<p>10. The Request for Forbearance submitted by Vanessa Fitzgerald and Plaintiff, dated January 24, 2003;</p>
	<p>11. The Request for Forbearance submitted by Vanessa Fitzgerald and Plaintiff, dated December 15, 2003;</p>
	<p>12. The Application for an Income-Sensitive Repayment Account submitted by Vanessa Fitzgerald and Plaintiff, dated May 20, 2006;</p>
	<p>13. The Request for Forbearance submitted by Vanessa Fitzgerald and Plaintiff, dated June 20, 2006;</p>

	<p>14. The Economic Hardship Deferment Request submitted by Plaintiff, dated May 31, 2011;</p> <p>15. The application for Partial Spousal Disability Discharge;</p> <p>16. The Partial Spousal Disability Discharge Worksheet completed by a representative of Defendant Trellis Company fka Texas Guaranteed Student Loans, dated October 20, 2017;</p> <p>17. Correspondence to Plaintiff and Vanessa Fitzgerald regarding partial discharge of the student loan debt, dated October 20, 2017;</p> <p>18. The Loan Discharge Application: False Certification submitted by Plaintiff, dated January 1, 2018;</p> <p>19. Correspondence sent to Plaintiff in response to the Loan Discharge Application: False Certification, dated February 22, 2018;</p> <p>20. The written appeal made to Defendant's determination that Plaintiff remained obligated on the consolidated loan, made by Plaintiff and sent to Defendant Trellis Company fka Texas Guaranteed Student Loans;</p> <p>21. The U.S Department of Education's determination of Plaintiff's continuing obligation on the consolidated loan, dated April 11, 2018;</p> <p>22. Correspondence to Plaintiff from the Ombudsman for Defendant Trellis Company fka Texas Guaranteed Student Loans dated November 21, 2019 in response to his request dated October 27, 2019 that the account be closed due to fraud;</p> <p>23. The transaction history for the consolidated student loan debts;</p> <p>24. The chain of title documents setting forth the chain of title from the original creditor to</p>
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	<p>Defendant, and;</p> <p>25. Plaintiff's bankruptcy petition and schedules</p>
<p>Discovery Documents:</p> <p>1. None identified</p>	<p>Discovery Documents:</p> <p>1. None identified</p>
<p>Further Discovery or Motions:</p> <p>1. None identified</p>	<p>Further Discovery or Motions:</p> <p>1. None identified</p>
<p>Stipulations:</p> <p>1. None</p>	<p>Stipulations:</p> <p>1. Proposed</p>
<p>Amendments:</p> <p>1. None identified</p>	<p>Amendments:</p> <p>1. None identified</p> <p>2. Correct the record to show Defendant's name as: "Trellis Company fka Texas Guaranteed Student Loans."</p>
<p>Dismissals:</p> <p>1. None identified</p>	<p>Dismissals:</p> <p>1. None identified</p>
<p>Agreed Statement of Facts:</p> <p>1. None</p>	<p>Agreed Statement of Facts:</p> <p>1. Intends to propose one to Plaintiff</p>
<p>Attorneys' Fees Basis:</p> <p>1. None sought</p>	<p>Attorneys' Fees Basis:</p> <p>1. Basis not stated</p>
<p>Additional Items</p> <p>1. None identified</p>	<p>Additional Items</p> <p>1. Defendant may request that the court vacate the expiration of the deadline for filing dispositive motions.</p>

Trial Time Estimation: 1 to 2 Hours	Trial Time Estimation: 4 hours

Debtor's Atty: David C. Johnston

Notes:
Continued from 2/6/20

Operating Reports filed: 2/14/20 [Dec 2019; Jan 2020]; 3/20/20; 4/14/20; 5/17/20

The Status Conference is XXXXXXXXXXXX

JUNE 4, 2020 STATUS CONFERENCE

The Debtor in Possession filed an Updated Status Report (Dckt. 43) on June 1, 2020. The Debtor in Possession states that there are ongoing settlement discussions with the major creditor, Ms. Knight. If a settlement cannot be reached, then a plan of reorganization will be filed by June 8, 2020.

The most recent Monthly Operating Report filed on May 17, 2020, states that through April 30, 2020, the cumulative commission income for the Estate has been \$2.5MM. Of this, \$2.2MM has been spent on salaries/commissions.

At the Status Conference, the Debtor in Possession XXXXXXXXXXXX

FEBRUARY 6, 2020 STATUS CONFERENCE

This Chapter 11 case was filed on December 11, 2019. The Debtor in Possession filed a Status Report on January 13, 2020. Dckt. 25. The Debtor in Possession reports that the Bankruptcy Estate is operating a real estate brokerage firm with agents in seven locations. Prepetition litigation initiated by the Debtor resulted in an adverse judgment determining that the Debtor was obligated for \$47,000 in actual damages and an additional \$200,000 in attorneys' fees and costs.

The judgment creditor assets a judgment lien on the Debtor's personal property pursuant to a lien recorded with the Secretary of State and an Order of Examination.

On Schedule A/B Debtors lists having personal property consisting substantially of: \$3,665 in bank deposits; \$12,207 in security deposits; \$10,000 in office equipment; and \$37,229 in "Exit Reality Franchises." Dckt. 16 at 5-10. Debtor states having no interest in any real property. *Id.*

Krista Knight, the judgment lien creditor has filed a response to the Debtor in Possession Status Report. Dckt. 29. Ms. Knight first provides a detailed recounting of the dispute with the Debtor, a thirteen day trial, and the judgment in her favor for (\$287,790.17).

Ms. Knight then asserts that her judgment is nondischargeable on 11 U.S.C. § 523(a)(6) grounds that the judgment is for a willful and malicious injury.

Ms. Knight then asserts that the Debtor failed to disclose the following assets, in which Ms. Knight asserts her judgment lien: (1) \$100,000 in real estate commissions that are currently being held in escrow; and (2) pre-paid rent on Debtor's Manteca office in the amount of \$220,000 which is being held by the landlord of that property.

The landlord alleged to be holding the \$220,000 is Success Group, LLC, which Ms. Knight alleges is owned by Kris Klair. Kris Klair is the president of the Debtor and the authorized representative who signed the Bankruptcy Petition. Dckt. 1 at 4.

Further, Ms. Knight alleges that the Debtor in Possession has been improperly using the cash collateral that secured Ms. Knight's claim without her consent or an order of this court.

At the Status Conference counsel for the Debtor in Possession responded, asserting that there are no hidden monies or pre-paid rent.

Creditor's counsel says that the \$100,000 estimate comes from the "pending transactions" and other information about the sales.

The information provided about the "pre-paid rent" is that the actual rent is \$5,000 a month. At the 341 meeting, Debtor's principal said that there is money in an account maintained by the landlord, from which money is paid for the rent each month.

The Debtor in Possession argues that this is not a "pre-paid" rent account, but for more complex transactions relating to tenant improvements.

Debtor's Atty: David C. Johnston

Notes:

Debtor in Possession's Chapter 11 Status Report filed 5/19/20 [Dckt 15]

[DCJ-1] Application of Debtor in Possession for Authority to Employ Attorney filed 5/22/20 [Dckt 19]

The Status Conference is XXXXXXXXXX

JUNE 4, 2020 STATUS CONFERENCE

Debtor IGB Group, Inc. commenced this voluntary Chapter 11 case on April 27, 2020, and is serving as the Debtor in Possession. The First Meeting of Creditors has been continued to June 26, 2020.

In a Status Report filed on May 19, 2020, the Debtor in Possession states that the property of the estate consists of 6.9 acres of property that has a 3,600 square foot home, 6,000 square foot barn, and a former koi farm. This property was purchased eighteen months before the filing of this case. However, the principals of the Debtor are stated to have been the victims of unrelated fraud, which has impaired the ability to proceed with the development of the property.

The 90th day period after the commencement is July 26, 2020, and the Debtor in Possession intends to have a plan on file by that time. The plan is intended to be one of reorganization, not liquidation.

At Status Conference XXXXXXXXXX

FINAL RULINGS

5. [19-90440-E-7](#) LESLIE KINSEY
[19-9015](#)
MORGAN V. KINSEY
ADVERSARY PROCEEDING CLOSED:
5/19/20

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
3-5-20 [22]

Final Ruling: No appearance at the June 4, 2020 Status Conference is required.

Plaintiff's Atty: Stephen M. Reynolds
Defendant's Atty: Pro Se

Adv. Filed: 9/9/19
Answer: 11/25/19
Amd. Cmplt. Filed: 3/5/20
Answer: none

Nature of Action:
Objection/revocation of discharge

Notes:
Continued from 3/12/20

Judgment filed 5/1/20 [Dckt 39]

Adversary Proceeding Closed 5/19/20

The court having entered judgment in this Adversary Proceeding, **the Status Conference is concluded and removed from the Calendar.**

Final Ruling: No appearance at the June 4, 2020 Status Conference is required.

Debtor's Atty: David C. Johnston

Notes:

Continued from 2/27/20

Operating Reports filed: 3/16/20, 4/17/20

[RAC-4] First and Final Application for Fees and Expenses of David M. Sousa, Chapter 11 Trustee filed 4/16/20 [Dckt 138]; Order granting filed 5/17/20 [Dckt 170]

[RAC-5] Second and Final Application for Fees and Expenses of Blakeley LLP filed 4/16/20 [Dckt 143]; Order granting filed 5/17/20 [Dckt 171]

[RAC-6] Motion for Entry of Order Conditionally Dismissing Bankruptcy Case filed 4/16/20 [Dckt 149]; granted, order to be prepared by Attorney for Trustee [Minutes; 5/14/20, Dckt 167]

[RAC-7] Motion for Allowance and Payment of Administrative Expense Priority Claim of ADP, LLC filed 4/28/20 [Dckt 155]; Order granting filed 5/17/20 [Dckt 172]

[RAC-8] Motion to Authorize Payment to Michael Barreno [Buyer] filed 4/28/20 [Dckt 159]; Order granting filed 5/17/20 [Dckt 173]

Chapter 11 Final Report and Account filed 5/22/20 [Dckt 174]

<p>The Status Conference is continued to 2:00 p.m. on July 16, 2020.</p>

JUNE 4, 2020 STATUS CONFERENCE

On May 17, 2020, the court entered orders for final allowance of compensation. On May 22, 2020, the Trustee filed his final report.

The court has granted the Trustee's motion to dismiss this case, with the entry of the order being delayed until the Trustee has made the final disbursements. Civil Minutes, Dckt. 167.

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 Status Conference having been scheduled by the court, the court having determined that the case should be dismissed, with the entry of the order to be made when the Chapter 11 Trustee has paid the allowed administrative expenses and U.S. Trustee Fees, and upon review of the pleadings, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to 2:00 p.m. on July 16, 2020, for purposes of the court tracking the dismissal of this case.

Counsel for the Chapter 11 Trustee shall lodge a proposed order dismissing this case as determined by the court in the Civil Minutes (Dckt. 167) from the hearing on the Trustee's Motion to Dismiss this case.