

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

July 2, 2015 at 2:30 p.m.

1. [15-90207](#)-E-7 BOOTA BASI
OLG-1

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
4-8-15 [[17](#)]

JASJEET SINGH VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and State Litigation Attorney for Debtor on April 8, 2015. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Relief From the Automatic Stay is denied
without prejudice.**

REVIEW OF MOTION

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Boota Singh Basi ("Debtor") commenced this bankruptcy case on March 2, 2015. Jasjeet Singh ("Movant") seeks relief from the automatic stay with respect to pursue their pending state court litigation in Santa Clara County Superior Court (the "Action"). The moving party has provided the Declaration of Ray D. Hacke to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Debtor filed an opposition on May 5, 2015. Dckt. 38. The Movant filed a reply on May 14, 2015. Dckt. 39.

However, the Movant has failed to comply with Fed. R. Bankr. P. 9013 and state with particularity the grounds for relief in the Motion.

The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

- A. Movant moves this court for an order modifying the automatic stay to allow Movant to continue Movant's state court proceeding against Debtor in the Santa Clara County superior Court, Case No. 1-13-CV-255938, to determine the amount of general, special, and punitive damages, attorney's fees, and costs of suit owed to Movant in the underlying matter and to proceed to judgment against Debtor and Debtor's bankruptcy estate.
- B. This motion is brought on the ground that the subject proceedings against Debtor were pending before Debtor's bankruptcy proceeding was commenced and relief from stay is necessary to liquidate the amount of Movant's damages against the Debtor and the bankruptcy estate.

The Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that there is an underlying state court case without any reference to the grounds to justify the relief sought. This is not sufficient.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause

of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649-650; see also *In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the

grounds therefor, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities - buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

REVIEW OF POINTS AND AUTHORITIES

The court notes that Movant has filed an extensive Points and Authorities. Dckt. 19. If the court were to consider this Points and Authorities part of the Motion (creating a mash-up "Mothorities") woven through the citations, quotations, arguments, and speculation may well be facts and allegations which could be the grounds upon which Movant would state (subject to Fed. R. Bankr. P. 9011) in support of the Motion. Some may well not be such "grounds," but mere argument which Movant may assert that there is no Rule 9011 certification.

From what the court can glean from the Mothorities, little has been accomplished in the state court action, with Movant wanting to seek a motion to compel discovery. In the Mothorities there is a statement that a "trial had been scheduled in the State Court for May, 2015," but it is not clear if there was a courtroom and judge dedicated to try the case that day, or whether the parties were to merely show up for "first call and continuance" due to the overloaded state court calendars of criminal, family law, and other matters. While this court appreciates Movant's judicial economy concern,

There is no need for Movant's libel claim to be heard in two courts. Moreover, the Bankruptcy Court does not need to concern itself with a case that does not fall within its specialized area of law when the Bankruptcy Court presumably has plenty of other cases that do fall within that area.

Points and Authorities, p. 9:17-20; handling civil matter claims and nondischargeability litigation is routine for this court. Congress has provided the parties in bankruptcy with civil law judges who are dedicated to the prompt adjudication of the civil law claims and nondischargeability of debts. As compared to their state trial court and district court brethren, bankruptcy judges are not swamped with misdemeanor and felony trials, arraignments, drunk driving trials, habeas corpus applications, molestation and abuse trials, or the myriad of endless dissolution and domestic relation

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litigation. Even considering the Mothorities, Movant has failed to show this court that there will be any significant duplication of judicial efforts or that the state court action can actually be tried before a trial could be conducted in this court.

MAY 21, 2015 HEARING

At the hearing, upon considering arguments of counsel, the court determined that setting the matter for further briefing, rather than denying the Motion without prejudice was in the best interests of the parties and judicial economy. Dckt. 41. The court specially set the continued hearing for 2:30 p.m. on July 2, 2015. The court ordered that the Movant shall file and serve Supplemental Pleadings on or before June 5, 2015; Debtor shall file Supplemental Opposition on or before June 19, 2015; and a Reply, if any, shall be filed and served on or before June 26, 2015.

DISCUSSION

No party has filed supplemental papers in connection with the instant Motion. The court noted at the previous hearing that the hearing was continued with the concurrence of the Movant, in lieu of the court denying the Motion without prejudice. However, the Movant did not take this invitation to properly file supplement pleadings complying with Fed. R. Bankr. P. 9013.

As discussed supra, the Motion does not comply with Fed. R. Bankr. P. 9013, and is denied without prejudice.

The court shall issue an 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 for Relief From the Automatic Stay filed by Boota Singh Basi ("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 is denied without prejudice.

2. [10-94411-E-7](#) CAROLE CAMERON
[14-9005](#)
FERLMANN V. GARRETT ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
1-30-14 [[1](#)]

Final Ruling: No appearance at the July 2, 2015 Status Conference is required.

Plaintiff's Atty: Carl W. Collins
Defendant's Atty:
 Samuel Kelsall [Karen J. Garrett]
 unknown [Glenn Alan Garrett]

Adv. Filed: 1/30/14
Answer: 3/26/14
Nature of Action:
Recovery of money/property - fraudulent transfer
Recovery of money/property - other

<p>The Status Conference is continued to 2:30 p.m. on August 20, 2015.</p>

Notes:

Continued from 4/30/15 to allow the parties the opportunity to consummate the settlement of this Adversary Proceeding approved by the court.

July 2, 2015 STATUS CONFERENCE

The Plaintiff-Trustee reports that the settlement previously approved by the court has been consummated by the Defendant-Debtor. Report, Dckt. 31. The Defendant-Debtor having performed, the Plaintiff-Trustee states that he will convey the estate's interest in the real property commonly known as 289 Rivertree Way and then move to dismiss this Adversary Proceeding pursuant to the Stipulation.

3. [10-94411-E-7](#) CAROLE CAMERON
[14-9006](#)
FERLMANN V. GARRETT

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
1-30-14 [[1](#)]

Final Ruling: No appearance at the July 2, 2015 Status Conference is required.

Plaintiff's Atty: Carl W. Collins
Defendant's Atty: Samuel Kelsall

Adv. Filed: 1/30/14

Answer: 3/18/14

Nature of Action:

Recovery of money/property - fraudulent transfer

Recovery of money/property - other

Approval of sale of property of estate and of a co-owner

<p>The Status Conference is continued to 2:30 p.m. on August 20, 2015.</p>

Notes:

Continued from 4/30/15 to allow the parties the opportunity to consummate the settlement of this Adversary Proceeding approved by the court.

July 2, 2015 STATUS CONFERENCE

The Plaintiff-Trustee reports that the settlement previously approved by the court has been consummated by the Defendant-Debtor. Report, Dckt. 58. The Defendant-Debtor having performed, the Plaintiff-Trustee states that he will convey the estate's interest in the real property commonly known as 289 Rivertree Way and then move to dismiss this Adversary Proceeding pursuant to the Stipulation.

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4. [14-90929-E-7](#) SASHI PAL
[15-9004](#)
U.S. TRUSTEE V. PAL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
1-30-15 [[1](#)]

Final Ruling: No appearance at the July 2, 2015 Status Conference is required.

Plaintiff's Atty: Jason M. Blumberg
Defendant's Atty: unknown

Adv. Filed: 1/30/15
Answer: none

Nature of Action:
Objection/revocation of discharge

The Adversary Proceeding having been dismissed, the Status Conference is removed from the calendar.
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Notes:

Continued from 4/16/15 to allow the parties to implement the settlement as set forth in the Stipulation filed on 4/14/15 [Dckt 9].

[UST-1] Motion of the United States Trustee to Dismiss Adversary Proceeding filed 6/1/15 [Dckt 13], set for hearing 7/2/15 at 10:30 a.m.

JULY 2, 2015 STATUS CONFERENCE

On June 1, 2015, Tracy Hope Davis, the U.S. Trustee for Region 17, the Plaintiff, filed a Motion to Dismiss the Adversary Proceeding. Dckt. 13. Plaintiff states that in the Defendant-Debtor's bankruptcy case the court has issued an order dismissing that case and imposing a four-year bar on refiling another bankruptcy case. 14-90929; Order, Dckt. 56.

The Plaintiff requests that the court order the dismissal of this Adversary Proceeding. While a plaintiff may normally dismiss an adversary proceeding for in which no answer or other qualifying responsive pleading has been filed, Federal Rule of Bankruptcy Procedure 7041 that such unilateral dismissal is not available for complaints objecting to a debtor's discharge. Notice to the bankruptcy trustee, U.S. Trustee, and other parties as the court may direct is required.

Here, the court has granted the U.S. Trustee's Motion to dismiss.

5. [13-91189](#)-E-11 MICHAEL/JUDY HOUSE
[14-9025](#)
HOUSE ET AL V. AMARAL

CONTINUED PRE-TRIAL CONFERENCE
RE: COMPLAINT FOR: 1)
DECLARATORY RELIEF; 2) EASEMENT
BY PRESCRIPTION; 3)
PRESCRIPTIVE EASEMENT; 4) QUIET
TITLE; 5) CONTEMPT FOR
VIOLATION OF THE AUTOMATIC
STAY; 6) INJUNCTIVE RELIEF
8-8-14 [[1](#)]

Final Ruling: No appearance at the July 2, 2015 Status Conference is required.

Plaintiff's Atty: Robert M. Yaspan
Defendant's Atty: Michael B. Ijams

Adv. Filed: 8/8/14
Answer: 9/8/14

Nature of Action:
Injunctive relief - imposition of stay
Declaratory judgment

The Status Conference is continued to 2:30 p.m. on October 1, 2015.
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Notes:

Continued from 4/30/15 to afford the parties time to document their settlement and seek court approval.

JULY 2, 2015 PRE-TRIAL CONFERENCE

On June 25, 2015, the parties filed a Joint Status Report. Dckt. 61. The parties report that a crucial part of the settlement in this Adversary Proceeding is the surveying of the lot line adjustment to be made concerning the property in dispute. The land surveyor required that the Debtor in Possession obtain authorization to employ the surveyor. That was granted by the court on June 11, 2015. 13-91189; Order, Dckt. 299. The order having been obtained, the Surveyor is not able to commence the work until July 6, 2015.

The parties request that the court continue the Pre-Trial Conference to allow the surveyor to complete his critical services.