UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

July 18, 2019 at 2:00 p.m.

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1. 18-90029-E-11 JEFFERY ARAMBEL
18-9002
LOPEZ V. ARAMBEL

CONTINUED STATUS CONFERENCE RE: COMPLAINT
4-16-18 [1]

Plaintiff's Atty: Howard S. Nevins; Aaron A. Avery
Defendant's Atty: Iain A. Macdonald

Adv. Filed: 1/13/16
Answer: 2/23/16 [Robinson Enterprises Profit Sharing Plan]
2/23/16 [Johnny Massella; Mary Massella]
Counterclaim Filed: 2/23/16 [Robinson Enterprises Profit Sharing Plan]
Answer: None
Counterclaim Dismissed 5/2/16
Counterclaim Filed: 2/23/16 [Johnny Massella; Mary Massella]
Answer: None
Counterclaim Dismissed 5/2/16

Nature of Action:
Validity, priority or extent of lien or other interest in property

Notes:
Continued from 5/23/19 by request of the Parties.

Substitution of Attorney for Benjamin Lopez filed 5/30/19 [Dckt 39]; Order granting filed 5/31/19 [Dckt 41]

Plaintiff's Status Report filed 7/11/19 [Dckt 42]

Defendant's Status Report filed 7/11/19 [Dckt 44]

The Status Conference is xxxxxxxxxxxxxxx

With the recent loss of Plaintiff's former counsel, new counsel substituted in on May 31, 2019. Order, Dckt. 41. Defendant-Debtor and Plaintiff have filed updated Status Reports.

In Defendant-Debtor's Status Report (Dckt. 44), it is reported that the first amended complaint in this case has not been filed, with the court having approved a stipulation extending that time to allow the Defendant-Debtor to work as the debtor in possession toward confirmation of a Chapter 11 plan. The Order on the stipulation was issued on July 13, 2018. Dckt. 22. One of the deadlines for having the first amended complaint filed was nine months after issuance of that order. That deadline expired on April 13, 2019. That coincided with the unfortunate passing of Plaintiff's prior counsel.

Defendant-Debtor states that settlement negotiations with Plaintiff and Plaintiff's new counsel have been productive. There is a disagreement, if the matter cannot be settled, whether the underlying state court action should be allowed to proceed to judgment, and then that judgment brought to this court, or whether the entire action should be conducted in this court. The latter is favored by Defendant-Debtor and Plaintiff prefers to go back to state court where the matter is ready to be set for trial.

Plaintiff provides an analysis addressing some of the challenges caused by the passing of Plaintiff's prior counsel in his Updated Status Report. Dckt. 42. If Debtor can confirm a plan and through that plan pay Plaintiff's claim in full, then the issue of nondischargeability would be moot. However, no plan has been confirmed as of this time.

The underlying liability issues arise under state law (as do almost all, if not all, nondischargeability adversary proceedings in bankruptcy court), Plaintiff believes that the state court action which is ready for trial should be where the liability issues are litigated. Then that judgment can be brought back to this court.

Issues Addressed at Status Conference

Several issues stand out for the court. First, it is necessary for Plaintiff to get on file a first amended complaint, otherwise this Adversary Proceeding will be dismissed and the need to litigate in State Court rendered nearly moot (assuming the Debtor in Possession can get a plan confirmed).

At the hearing, new counsel for Plaintiff addressed the filing of a first amended complaint, advising the court **xxxxxxxxxxx**

In granting the motion to dismiss the original Complaint, the ruling of the court included the following:

> Reading these allegations, even generously, it is asserted that unidentified representations were made at non-specific times, concerning the promise to pay made at some time, over some four-year period. The only thing said was in the nature of paying for the services provided, and any intention not to is secret, for which no allegations are made of any facts or events (other than non-payment).

Plaintiff further alleges that he continued to provide the services, apparently being paid nothing, for more than four years and multiple millions of dollars in services being provided. Though not being paid year after year, Plaintiff asserts the legal conclusion that he reasonably relied.

As drafted, the Complaint runs afoul of the Supreme Court standard stated in Ashcroft v. Iqbal, 556 U.S. 662, 687 (2009) and Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556 (2007). Plaintiff "plead[s] the bare elements of his cause of action, [affixes] the label of 'general allegation[s],' and then expects to fill it all in later in the litigation. As set forth in Ashcroft v. Iqbal, 556 U.S. at 687, such pleading strategy does not work. Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. See Bell Atl. Corp. v. Twombly, 550 U.S. at 556.

Plaintiff fails to present grounds with particularity (Federal Rule of Civil Procedure 9(b), Federal Rule of Bankruptcy Procedure 7009) to support a claim for fraud. Reviewing the specific paragraphs noted by Plaintiff, the court finds several defects. First, Paragraph 11 does not address any "material fact" that relates to the alleged oral promises made by Defendant- Debtor. Instead, Paragraph 11 is replete with legal conclusions that everything Defendant- Debtor allegedly did was by deliberate intent to defraud. Plaintiff does not point the court or Defendant-Debtor to specific facts supporting its allegations such that Defendant-Debtor could respond appropriately.

Second, Paragraph 16 does not contain any allegation that Defendant-Debtor acted with an intent to deceive or to induce an action by Plaintiff. Instead, the paragraph contains legal conclusions that Defendant-Debtor's alleged acts were willful, malicious, oppressive, and done with intent. Nothing in the paragraph provides the court or Defendant-Debtor with even a hint of a fact to support the allegation.

Third, Paragraph 12 does not contain any support for the element of reasonable reliance by the promisee. In contrast, the factual allegations in Paragraph 12 come well after reliance would have happened. The allegations point to a time when Plaintiff was already trying to litigate this matter in state court against Defendant-Debtor. Plaintiff has not provided factual allegations about Defendant-Debtor's alleged fraudulent promises were relied upon reasonably by Plaintiff such that Plaintiff provided services to Defendant-Debtor.

Fourth, Plaintiff has completely omitted referring the court to any support for the fifth element of nonperformance by the promisor. Plaintiff may think that such element is obvious, but the court notes nonetheless that Plaintiff has not felt the need to argue it or to state the facts with particularity.]

. . .

The court also notes that the Complaint forcefully asserts that the "fraud" and "bad conduct" is shown by Defendant-Debtor availing himself of the uniform

bankruptcy law enacted by Congress pursuant to Article I, Section 8, Clause 4, of the United States Constitution. Plaintiff asserts:

> 12. Plaintiff was required to file an action in Stanislaus County Superior Court, action number 152-8774, against [Defendant-]Debtor. [Defendant-]Debtor filed papers with the Superior Court which denied all liability. The pleadings filed by the Defendant[-Debtor] with the Superior Court were false and fraudulent. The Defendant debtor changed attorneys and delayed the matter as far as he could. On the eve of trial in Stanislaus County, Defendant[-Debtor] filed his bankruptcy petition attempting to utilize the federal law to use this to avoid just and proper debts, which debts had been incurred with fraudulent intent.

Complaint ¶ 12, Dckt. 1. As above, general allegations and legal conclusions are drawn by Plaintiff. Additionally, Plaintiff asserts that it is a "fraud" for Defendant-Debtor to file bankruptcy because the obligations owed to Plaintiff are "just and proper debts." Except in rare circumstances, debtors file bankruptcy to put off payment of, restructure, or discharge "just and proper debts." A bankruptcy is not required to restructure payment of "unjust and improper debts that are not owed." Plaintiff's disgust with the filing of the bankruptcy and general affront at Defendant-Debtor filing bankruptcy is consistent with choosing to just plead legal conclusions, rather than enough factual matter to establish plausible grounds for the relief sought.

Civil Minutes, Dckt. 18 at 7-9. While Plaintiff's former counsel may have adopted a non-federal pleading style he was comfortable with, such was not adequate in federal court. There is little concern that Plaintiff's experienced federal court counsel will have any difficulty preparing a first amended complaint consistent with the Federal Rules of Civil Procedure as applied by the U.S. Supreme Court.

With respect to proceeding with the state court action rather than "starting over" in federal court, Defendant-Debtor's Updated Status Conference hints at an alternative. Though the matter may be ready to be "set for trial" in state court, with all of the priority criminal, age, disability, and other matters that will take priority, as well as the sheer number of cases to be set for trial, it may be that getting it "set for trial" may not equate with "getting to trial."

What this court has done several times in similar situations is to have the parties rely on and use the discovery conducted in the state court action to conduct the federal court nondischargeability trial that includes determining the debt and then whether it is nondischargeable. Due to Congress having creating a team of federal bankruptcy judges who exist solely to get bankruptcy cases and case related matters promptly resolved (and who are not burdened by criminal, divorce, probate, and other general state court jurisdiction matters), one does not only quickly get to trial setting, but the trial is actually conducted within a couple months of the trial setting conference.

At the Status Conference, **xxxxxxxxxxxxxxxxx**

With respect to the first amended complaint, the parties agreed to a deadline of **xxxxxx, 2019**, for a first amended complaint to be filed and served.

APRIL 18, 2019 STATUS CONFERENCE

In the Status Conference Report filed by Defendant-Debtor on April 1, 2019, it is reported that pursuant to the Order staying this Adversary Proceeding the Parties are working on their possible settlement, with this Adversary Proceeding stayed until April 13, 2019. Defendant-Debtor requests a thirty-day continuance "to allow the Parties a chance to finalize a settlement." Status Report, p. 2:19; Dckt. 31.

NOVEMBER 29, 2018 STATUS CONFERENCE

On November 20, 2018, the Defendant filed an updated Status Report. Dckt. 26. The Plaintiff joins in the Status Report and request for further continuance. Dckt. 28.

Defendant repots that an amended complaint has not been filed and that settlement discussions have been unproductive. The parties request that the Status Conference be continued to April 18, 2019 (the court's regular Modesto hearing date in April 2019), to allow the parties to focus on the Chapter 11 Plan.

2. 18-90029-E-11 MF-40 JEFFERY ARAMBEL APPROVAL OF CHAPTER 11 DISCLOSURE STATEMENT FILED BY DEBTOR 6-6-19 [824]

No 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 creditors holding the twenty largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on June 6, 2019. By the court's calculation, 42 days' notice was provided. 42 days' notice is required. FED. R. BANKR. P. 2002(b) (requiring twenty-eight days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Approve Disclosure Statement 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 Approve Disclosure Statement is xxxxx.

REVIEW OF THE DISCLOSURE STATEMENT

Case filed: January 17, 2018.

Background:

Jeffery Edward Arambel, Debtor in Possession, filed this Chapter 11 case in part to stop a foreclosure sale. The Debtor in Possession owns a mix of almond, cherry, peach and apricot orchards, rangeland and undeveloped but entitled business lots known as the Arambel Business Park. The Debtor in Possession estimates that the land, in aggregate, is worth significantly more than such claims, being worth more than $150 million, conservatively.

The Debtor in Possession estimates there are secured claims in the amount of $70 million and unsecured claims of $11 million. Debtor in Possession's course of action to satisfy claims has been to liquidate real property of the Estate. Prior to filing this case, the Debtor in Possession sold approximately

$16 million in real property. Post-petition, the Debtor in Possession had sold real property for a total of $10.44 million.

The sixty-five (65) page Disclosure Statement was filed on June 6, 2019. Dckt. 824.

The Chapter 11 Plan of Reorganization will provide for the continued liquidation of real property to satisfy claims.

Class 1: — Secured Claims of Prepetition Lenders; Paid from Plan Assets	**Treatment**	
MetLife	**Claim Amount**	[$6,432,005.57]
	Impairment	
Summit	**Claim Amount**	[$43,411,844.22]
	Impairment	
Carolyn Dilday and Dan Stadtler, Successor Co-Trustees of the Phlip N. Stadtler & Lois C. Stadtler Trust UAD 3/4/1994	**Claim Amount**	$1,722,954.70
	Impairment	
Dorothy M. Arnaud, et al. (POC 27)	**Claim Amount**	$633,422.91
	Impairment	
Dorothy M. Arnaud, et al. (POC 26)	**Claim Amount**	$2,328,909.29
	Impairment	
Irrigation Design & Construction (POC 15)	**Claim Amount**	$277,860.25
	Impairment	
Tom Cazale	**Claim Amount**	$1,229,382.00
	Impairment	

West Valley Agricultural Services, LLC	**Claim Amount**	$3,610,488.70
	Impairment	
Class 2:— Secured Claims of Governmental Units	**Treatment**	
Stanislaus County Tax Collector	**Claim Amount**	$308,233.27
	Impairment	
Class 3:— Secured Claims of Prepetition Lenders; Defaults To Be Cured	**Treatment**	
Chase Bank, N.A.	**Claim Amount**	$173,330.00
	Impairment	
U.S. Bank, N.A.	**Claim Amount**	$784,961.69
	Impairment	
Westlake Financial Services	**Claim Amount**	$0.00
	Impairment	
	this claim was paid in full by the co-borrower	
Class 4:—Secured Claim of LBA RV-Company XXVII, LP	**Treatment**	
LBA RV-Company XXVII, LP.	**Claim Amount**	N/A
	Impairment	None
	This creditor's claim consists of a right of first refusal against certain real property and other ancillary rights.	

Class 5:—Secured Claim of American AgCredit, FLCA	**Treatment**	
American AgCredit, FLCA	**Claim Amount**	
	Impairment	None
	American AgCredit completed a non-judicial foreclosure of its collateral	
Class 6:—General Unsecured Claims.	**Treatment**	
General unsecured claims.	**Claim Amount**	$6,839,436.38
	Impairment	
	The claim of the El Che Corporation is disallowed because it was scheduled as disputed and no proof of claim was timely filed.	
Class 7:—Insider claims.	**Treatment**	
Laura Arambel (Loan)	**Claim Amount**	$451,619.00
	Impairment	
Laura Arambel (Seller Financing)	**Claim Amount**	$1,017,880.00
	Impairment	
Laura Arambel, Trustee of the Credit Trust under the Harold and Laura Arambel Family Trust Dated December 16, 2005 (Sale of Jointly Owned Property)	**Claim Amount**	$2,631,040.48
	Impairment	

Sherry Arambel	**Claim Amount**	$125,150.00
	Impairment	
Class 8: —Unimpaired Equity Interest	**Treatment**	
Equity Interests of Debtor in Possession	**Claim Amount**	N/A
	Impairment	None

A. C. WILLIAMS FACTORS PRESENT

__Y__Incidents that led to filing Chapter 11

__Y__Description of available assets and their value

__N__Anticipated future of Debtor

__Y__Source of information for D/S

__Y__Disclaimer

__Y__Present condition of Debtor in Chapter 11

__Y__Listing of the scheduled claims

__Y__Liquidation analysis

__N__Identity of the accountant and process used

__N__Future management of Debtor

__Y__The Plan is attached

In re A. C. Williams Co., 25 B.R. 173 (Bankr. N.D. Ohio 1982); *see also In re Metrocraft Pub. Servs., Inc.*, 39 B.R. 567 (Bankr. N.D. Ga. 1984).

OBJECTIONS

Several oppositions to the Disclosure Statement were filed and are listed as follows. .

Objection of Cazale Family Trust

The Cazale Family Trust, Cazale Family Revocable Trust, and the Josephine A. Cazale Trust dated October 7, 1998 ("Cazale Family Trust"), filed an Opposition on July 2, 2019. Dckt. 832.

Cazale Family Trust opposes the Disclosure Statement on the grounds it is misleading and attempts to subvert this court's Order. Cazale Family Trust states that this court granted a Motion For Relief From Stay on October 3, 2018 (Dckt. 663) after Debtor in Possession failed to sell the Cazale Ranch. Despite the Order granting relief, Cazale Family Trust notes the plan requires they "not seek relief from the automatic stay to exercise their rights related to their collateral until the earlier of (a) the date that is sixteen months after the Effective Date or (b) the occurrence of a Material Default under the Plan."

Cazale Family Trust requests the Disclosure Statement be denied approval and the Plan denied confirmation.

Consideration of Objection

The Opposition appears to be one of substance, not disclosure. Here, the proposed Disclosure Statement clearly tells the Cazale Family Trust that if the plan is confirmed, then whatever pre-confirmation relief it had obtained will be altered. Cazale Family Trust clearly knows what rights it has and what pre-confirmation orders have been issued. The fact that a plan alters the pre-petition rights and the ability of a creditor to proceed with a foreclosure pursuant to an order modifying the automatic stay, does not render the disclosure statement stating that such relief is sought is "misleading," "inaccurate," or "deficient"

Objection of LBA

LBA RV-COMPANY XXVII, LP ("LBA") filed an Opposition on July 4, 2019. Dckt. 836. LBA argues that the Disclosure Statement should not be approved because it fails to provide adequate information. The information identified as deficient is as follows:

1. Neither the Disclosure Statement or Proposed Plan explains LBA's claims or treatment other than to say that LBA has a right of first refusal and other ancillary rights.

2. The Disclosure Statement indicates Debtor in Possession has possible claims and defenses to be resolved against LBA in the pending Adversary Proceeding. However, no claims or defenses are described.

3. The Disclosure Statement fails to disclose that post-petition Debtor in Possession executed with LBA an amendment to their purchase and sale agreement, memorandum right of first refusal, and escrow agreement all without notifying LBA of this bankruptcy.

4. The Disclosure Statement fails to how to address purchase and sale agreements subject to the memorandum right of first refusal.

5. The Disclosure Statement proposes to preserve claims, such as avoidance actions, for prosecution after plan confirmation, but does not provide

specific information about the type or values of such claims and any anticipated recoveries.

6. The Disclosure Statement indicates the proposed plan may be modified but does not set criteria for evaluating modifications or explain why modification would be necessary.

Consideration of Objection

LBA asserts that from reading the proposed Disclosure Statement it has little, if any, disclosure of how its rights are being altered and treated. The specific language used in the proposed Disclosure Statement is:

> Class 4—Secured Claim of LBA RV-Company XXVII, LP
>
> Class 4 consists of the Secured Claim of LBA RV-Company XXVII, LP ("LBA") consisting of a right of first refusal against certain parcels of real property which are part of the Arambel Business Park against, as more fully described in that certain First Amendment to memorandum of Right of First Refusal, offered as Exhibit "D" to this Disclosure Statement, and certain other and ancillary rights as identified in the Proof of Claim filed by LBA (Claim No. 12). In addition, LBA and the Reorganizing Debtor each assert the right to receive $750,000 currently held in escrow by Commonwealth Land Title Company pursuant to prepetition joint escrow instructions executed by Jeffery Edward Arambel and LBA. However, because that dispute is in the nature of whether or not the funds are Property of the Estate , LBA's asserted right to the funds held in escrow is not treated as part of its Secured Claim but rather is addressed in Section 7.9 of the Plan. The Secured Claim in Class 4 shall be an Allowed Secured Claim

Proposed Disclosure Statement, p. 12:3-14; Dckt. 824.

> Class 4—Secured Claim of LBA RV-Company XXVII, LP
> The Allowed Secured Claim in Class 4 of LBA is not modified by the Plan.

Id., p. 18:18-19.

> I. LBA Adversary Proceeding. LBA and the Reorganizing Debtor each assert the right to receive $750,000 currently held in escrow by Commonwealth Land Title Company, pursuant to prepetition joint escrow instructions executed by Jeffery Edward Arambel and LBA. After the Effective Date, and subject to approval of Plan Administrator (provided, however, that approval of the Plan Administrator shall not be required if the professionals employed to prosecute the adversary proceeding are paid from a source other than the Plan Funding Sources), the Reorganizing Debtor shall commence an adversary proceeding to resolve his disputes with the LBA with respect to the funds held by Commonwealth Land Title Company and any other claims or defenses the Debtor in Possession and the Reorganizing Debtor may hold against LBA (or its predecessors and successors), all of which are specifically retained. The Bankruptcy Court reserves jurisdiction to resolve such disputes. To the

> extent the Reorganizing Debtor receives any monetary amount in connection with this adversary proceeding (whether by Final Order, by settlement with the LBA, or otherwise), all such amounts shall be Property of the Estate and Plan Assets, transferred by the Reorganizing Debtor to a Plan Account, and available for Distribution by the Plan Administrator in accordance with Section 7.8 of the Plan. Any monetary amount received on account of the adversary proceeding is the collateral of MetLife and Summit as it is traceable to a sale of a parcel from within the Arambel Business Park.

Id., p. 35:16-28, 36:1-4.

Objection of IDC

Irrigation Design & Construction ("IDC") filed an Opposition on July 5, 2019. Dckt. 837. IDC argues that the Disclosure Statement should not be approved because it fails to provide adequate information and because the proposed plan described is not confirmable.

IDC argues inadequate information was provided because the Disclosure Statement does not discuss the court's Order granting IDC's Motion For Relief From Stay on October 3, 2018 (Dckt. 663), the real property secured by IDC's claim, and what effect a foreclosure proceeding would have.

Consideration of Objection

This Objection appears to assert that the proposed Disclosure Statement is defective because the proposed Plan does not incorporate a pre-confirmation grant of relief from the stay.

The Disclosure Statement discloses that executory contract with IDC relating to the equipment subject to the rights and interests asserted in Proof of Claim No. 28 is rejected. *Id.*, p. 40:5-10. The obligation relating to Proof of Claim No. 28 is included in the general unsecured claims. *Id.*, p. 13:15.

The terms for the rejected claim do not indicate what happens to collateral securing the claim - abandoned, surrendered, retained, or what.

IDC is listed as having a secured claim for $227,860.25 in the proposed Disclosure Statement. *Id.*, p. 11:9-10. This is the amount of the secured claim stated in Proof of Claim 15-1 filed by IRD.

Objection of Growers Link

Growers Link filed an Opposition on July 5, 2019. Dckt. 840. Growers Link argues that the Disclosure Statement should not be approved because it fails to provide adequate information and because the proposed plan described is not confirmable.

Growers Link asserts it was not identified in the Disclosure Statement as belonging to any class, and never received notice of this bankruptcy case. While not clearly explained, this appears to be the basis for Growers Link asserting the Disclosure Statement does not provide adequate information.

Objection of Arnaud, et al.

Creditors Dorothy M. Arnaud, individually, and as Co-Trustee of the Patrick H. and Margaret J. Pilbin Trust UTA, dated December 30, 1973; Helen P. Jacobson, individually, and as Co-Trustee of the Patrick H. and Margaret J. Pilbin Trust UTA, dated December 30, 1973; Deborah De Wolf; and Garry De Wolf (collectively, "Arnaud, et al") filed an Opposition on July 5, 2019. Dckt. 842. Arnaud, et al argues that the Disclosure Statement should not be approved because it fails to provide adequate information and because the proposed plan described is not confirmable.

Specifically, Arnaud et al argue the following:

1. The Disclosure Statement provides a two year window for litigation and objections, but does not describe any anticipated litigation concerning disputed claims. Furthermore, it is unclear why the period is extended beyond the 16 month period for the sale or refinance of assets securing claims.

2. While a liquidation analysis is given, the analysis consists of a single page lacking any factual or evidentiary support. In many instances, Debtor in Possession merely slashes property values in half to arrive at a Chapter 7 liquidation value. Additionally, Debtor in Possession makes unsupported assumptions including that Summit would agree to certain cash collateral use in a Chapter 7 and that a Chapter 7 would delay distribution to claims.

3. The proposed plan is not confirmable. No detail is provided as to the manner of selling various assets where Debtor in Possession has already been selling assets with little success. Furthermore, while no provision for progress payments is described for secured claims, unsecured claims and insider claims will receive pro rata distributions plus interest.

Consideration of Arnaud, et al. Objection

As is clear from the face of the Objection, it goes to the substance of the Plan and the evidence that will have to be submitted in support of, and in opposition to confirmation.

DEBTOR IN POSSESSION'S OMNIBUS REPLY

On July 11, 2019, Debtor in Possession filed an Omnibus Reply to the various oppositions filed in this Matter. Dckt. 853. The Reply states the following:

1. Debtor in Possession will modify the Plan and Disclosure Statement to make clear that IDC has obtained relief from the automatic stay, include the Debtor in Possession's best information on the current status of IDC's foreclosure efforts, and provide that Cazale Family Trust's and IDC's claims will be satisfied in full by their recovery on their collateral.

2. Debtor in Possession in not aware of any claim held by Growers Link and for this reason did not schedule Grower's Link. Growers Link filed an untimely claim (Proof of Claim, No. 36), and the claim is patently

objectionable because it asserts a claim in the principal amount of $96,071.15 (indicating that said amount is exclusive of interest or other charges), but only a single invoice from 2016 in the total amount of $14,742.15 is offered in support of the claim. Debtor in Possession will amend the Plan and Disclosure Statement to include Grower's Link as a holder of a disputed general unsecured claim in the amount of $96,071.15.

3. LBA's rights are not modified by the Plan. However, the Debtor in Possession will amend the Disclosure Statement to provide more clarity as to LBA's rights and provide detail about reserved claims. Debtor in Possession argues further the Bankruptcy Code sets requirements for plan modifications, and therefore concerns over vague criteria is unwarranted.

4. The Debtor in Possession will amend the Disclosure Statement to provide additional details concerning anticipated litigation, other than claim objections. With respect to claim objections, the Debtor in Possession is not required to provide additional details concerning potential claim objections other than listing the claim as disputed because providing such information is not likely to change how a creditor or interest holder votes on the Plan. However, the Debtor in Possession will modify the Plan to shorten the bar date for claim objections to 16 months.

5. The Chapter 7 liquidation values for real properties were obtained from the real estate brokers employed by the Estate and the Disclosure Statement will be amended to so state. With respect to Summit's willingness to provide cash collateral to Chapter 7 trustee, the Debtor in Possession believes Summit can speak for itself, but will amend the Disclosure Statement to note that Summit has not indicated its willingness to provide a carve out for unsecured creditors to provide for the early payment of a portion of their claims if the case were converted to Chapter 7.

6. Objections to the confirmation of the proposed plan are premature and without merit.

7. The U.S. Trustee requested that the Debtor in Possession modify § 7.16.2 of the Plan tor be consistent with 28 U.S.C. § 1930(a)(6) which requires payment of U.S. Trustee fees during any quarter or fraction thereof the case remains pending until converted or dismissed. The Debtor in Possession has agreed to make this modification.

APPLICABLE LAW

Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).

"Adequate information" means information of a kind, and in sufficient detail, so far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a).

Courts have developed lists of relevant factors for the determination of adequate disclosure. *E.g., In re A. C. Williams*, *supra*.

There is no set list of required elements to provide adequate information per se. A case may arise where previously enumerated factors are not sufficient to provide adequate information. Conversely, a case may arise where previously enumerated factors are not required to provide adequate information. *In re Metrocraft Pub. Servs., Inc.*, 39 B.R. 567 (Bank. N.D. Ga. 1984). "Adequate information" is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented. *Official Comm. of Unsecured Creditors v. Michelson*, 141 B.R. 715, 718–19 (Bankr. E.D. Cal. 1992).

The court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D. Pa. 1982).

The court begins its analysis with the statutory requirements of 11 U.S.C. § 1125 for a disclosure statement. Solicitation of an acceptance or rejection of a plan may be made with a written disclosure statement which was approved by the court. The disclosure statement must provide "adequate information." The term "adequate information" is defined in 11 U.S.C. § 1125(a)(1) to be,

> (1) "adequate information" means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information;...

Determination of whether there is "adequate information" is a subjective determination made by the bankruptcy court on a case by case basis. *In re Texas Extrusion Corp.*, 844 F.2d 1142 (5th Cir. 1988), *cert. denied* 488 U.S. 926 (1988). Non-bankruptcy rules and regulations concerning disclosures do not

govern the determination of whether a disclosure statement provides adequate information. 11 U.S.C. § 1125(d); *Yell Forestry Products, Inc. v. First State Bank*, 853 F.2d 582 (8th Cir. 1988).

DISCUSSION

At the hearing, xxxxxxxxxxxxxx.

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 for Approval of the Disclosure Statement filed by Jeffery Edward Arambel ("Debtor") 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 XXXXXXXXXX.

3. 19-90254-E-7 PATRICIA COSTA **STATUS CONFERENCE RE: COMPLAINT**
19-9010 **5-8-19 [1]**
COSTA V. CB MERCHANT SERVICES

Plaintiff's Atty: Joseph Angelo
Defendant's Atty: Mark E. Ellis

Adv. Filed: 5/8/19
Answer: 6/14/19

Nature of Action:
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:
Notice of Settlement Between Plaintiff Patricia Costa and Defendant CB Merchant Services filed 7/10/19 [Dckt 8]

The Status Conference is concluded and removed from the Calendar, this Adversary Proceeding having been dismissed by the Parties (Dckt. 9).

On July 16, 2019, the Parties filed a dismissal of this Adversary Proceeding as permitted by Federal Rule of Bankruptcy Procedure 41(a)(1)(A)(ii), as incorporated into Federal Rule of Bankruptcy Procedure 7041.

4. **17-90577-E-7** **WILSON SARHAD**

17-9019
GARCIA V. SARHAD

CONTINUED PRE-TRIAL CONFERENCE
RE: COMPLAINT TO (1) DETERMINE DISCHARGEABILITY OF PARTICULAR DEBT; AND (2) DETERMINE DISCHARGEABILITY OF ALL DEBTS
11-6-17 [1]

THE APPEARANCES OF MICHAEL DENNIS, ESQ. AND DAVID JOHNSTON, ESQ., THE ATTORNEYS FOR THE PARTIES IN THIS ADVERSARY PROCEEDING ARE REQUIRED FOR THE STATUS CONFERENCE

TELEPHONIC APPEARANCES PERMITTED

Plaintiff's Atty: Michael R. Dennis
Defendant's Atty: David C. Johnston

Adv. Filed: 11/6/17
Answer: 12/3/17

Nature of Action:
Dischargeability - willful and malicious injury
Objection/revocation of discharge

Notes:
Continued from 6/6/19. On or before 7/11/19, the Parties shall file updated status report.

Updated Status Report filed 7/11/19 [Dckt 30]

The Pre-Trial Conference is continued to 2:00 p.m. on xxxxxx, 2019.

This Adversary Proceeding was commenced on November 6, 2017. No appearances were made at the June 6, 2019 continued Pre-Trial Conference. The court issued an order for continuing the Pre-Trial Conference and requiring the filing of an updated Pre-Trial Conference Statement be filed. Order, Dckt. 29.

On July 11, 2019, Defendant-Debtor filed an Updated Status Report. Dckt. 30. In it the Defendant-Debtor reports:

a. Logistical details remain to resolution of this now six hundred and eighteen (618) day old Adversary Proceeding. While such would not seem to be a long time in state court and its overwhelming calendars, it is an ancient being in bankruptcy court.

b. Defendant-Debtor will pay any surplus portion of a settlement payment made to the Chapter 7 Trustee that is paid back to Defendant-Debtor. That amount is estimated to be $8,000.00.

c. Plaintiff will retain her judgment lien on the one-ninth interest (in some identified asset).

d. Defendant-Debtor will transfer to Plaintiff tow trucks (including certificates of title) that are schedule as assets in Defendant-Debtor's bankruptcy case, or the "fair market value" (which amount is not stated).

e. Plaintiff will not "impeded" efforts of Defendant-Debtor to avoid the judgment lien of Plaintiff on Defendant-Debtor's residence (which is not identified in the Status Report).

f. Defendant-Debtor will file a motion for Plaintiff to be given authority to dismiss this Adversary Proceeding objecting to Defendant-Debtor's discharge.

In reviewing the above terms, there is little that indicates any "logistical details" that would cause this Adversary Proceeding to grow six under and eighteen (618) days ancient.

At the Status Conference each of the attorneys addressed the lack of prosecution of this Adversary Proceeding.

Xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

5. **17-90492-E-7** **JED GLADSTEIN**

CONTINUED PRE-TRIAL CONFERENCE
RE: AMENDED COMPLAINT
1-10-18 [15]

17-9020
GLADSTEIN V. EDUCATIONAL CREDIT MANAGEMENT CORPORATION

Plaintiff's Atty: Randall K. Walton
Defendant's Atty: Miriam E. Hiser

Adv. Filed: 11/12/17
Answer: 12/6/17
Amd. Cmplt Filed: 1/10/18
Answer: 1/25/18

Nature of Action:
Dischargeability - student loan

Notes:
Continued from 4/18/19 to allow the Plaintiff-Debtor to obtain a tax opinion on this issue and determine what, if any, federal court proceedings should be prosecuted now or whether this can be dismissed without prejudice.

[RKW-2] Motion for Leave to File Second Amended Complaint and Other Relief filed 6/18/19 [Dckt 48], set for hearing 7/18/19 at 10:30 a.m.

[MH-1] Motion to Dismiss Adversary Proceeding or in the Alternative to Substitute Department of Education as Proper Party in Interest and to Dismiss Named Defendant Educational Credit Management Corporation filed 6/20/19 [Dckt 52], set for hearing 7/18/19 at 10:30 a.m.

The Status Conference is continued to 2:00 p.m. on xxxxxxxxxxx, 2019

The court having granted the motion to substitute the new real party in interest defendant and setting a deadline for filing an amended complaint, the parties at the hearing on that motion concurred in the continuance of the Status Conference to the above date and time.