

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

July 23, 2015 at 2:30 p.m.

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1. [11-94410-E-7](#) SAWTANTRA/ARUNA CHOPRA CONTINUED STATUS CONFERENCE RE:
[15-9005](#) FARRAR V. HARTFORD LIFE AND COMPLAINT
ANNUIITY INSURANCE COMPANY 1-30-15 [[1](#)]

Final Ruling: No appearance at the July 23, 2015 Status Conference is required.

Plaintiff's Atty: Aaron A. Avery

Defendant's Atty: unknown

Adv. Filed: 1/30/15

Answer: none

Nature of Action:

Recovery of money/property - turnover of property

The Adversary Proceeding having been dismissed by Plaintiff (Dckt. 14), **the Status Conference is removed from the calendar.**

Notes:

Continued from 6/11/15

July 23, 2015 at 2:30 p.m.

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2. [13-91938-E-7](#) OSCAR CARDENAS
[14-9001](#)
TURLOCK IRRIGATION DISTRICT V.
CARDENAS, JR.

PRE-TRIAL CONFERENCE RE:
COMPLAINT OBJECTING TO
DISCHARGEABILITY OF DEBT
1-22-14 [[1](#)]

Plaintiff's Atty: Ken R. Whittall-Scherfee
Defendant's Atty: Thomas O. Gillis

Adv. Filed: 1/22/14
Answer: 2/14/14

Nature of Action:
Dischargeability - fraud as fiduciary, embezzlement, larceny
Notes:

Scheduling Order-
Discovery reopened 3/26/15
Close of discovery 6/19/15

Plaintiff's Pretrial Statement filed 7/14/15 [Dckt Nos. 64, 65, 66, 67]

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

SUMMARY OF COMPLAINT

The Complaint asserts claims arising under 11 U.S.C. § 523(a)(4) [fraud or defalcation in a fiduciary capacity; embezzlement; larceny] against the Defendant-Debtor. It is alleged that the Defendant-Debtor without authorization diverted (stole) electrical power from the Plaintiff. The damages asserted are: Actual Damages of \$26,353.12, Treble Damages of \$78,759.36 (Cal. Civ. § 1882.2), and attorneys' fees (Cal. Civ. § 1882.2).

SUMMARY OF ANSWER

The Answer states that the Defendant-Debtor denies residing at the property at issue. Further, he denies altering or damaging any of the Plaintiff's property, as well as denies diverting any electrical service. The Defendant-Debtor does admit that the Plaintiff provided electrical service to the Property.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 11 U.S.C. § 523 (the federal statutory grounds). Further, that this nondischargeability action is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint 2, 3 Dckt. 1. In his Answer, the Defendant-Debtor does not deny the allegations of jurisdiction or that this is a core proceeding. The determination of the dischargeability of a debt is a core proceeding arising under the Bankruptcy Code for which the bankruptcy judge issues all orders and the final judgment.

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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 -----, 201x.
- C. Defendant shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, 201x.
- D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, 201x.
- E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, 201x.
- F. The Trial shall be conducted at ----x.m. on -----, 201x.

The Parties in their respective Pretrial Conference Statements, Dckts. ---, ---, -----, 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	Defendant
<p>Jurisdiction and Venue:</p> <ol style="list-style-type: none"> 1. 28 U.S.C. §§ 1334 and 157. 2. Core proceeding, 28 U.S.C. § 157(b)(2)(I), arising under the Bankruptcy Code to determine the dischargeability of debt. 	<p>Jurisdiction and Venue:</p> <ol style="list-style-type: none"> 1. No Pretrial Statement Filed By Defendant-Debtor
<p>Undisputed Facts:</p> <ol style="list-style-type: none"> 1. Plaintiff provided electric service to the real property commonly known as 1441 Lucchesi Lane, Ceres, California. 	<p>Undisputed Facts:</p> <ol style="list-style-type: none"> 1. No Pretrial Statement Filed By Defendant-Debtor

<p>Disputed Facts:</p> <ol style="list-style-type: none"> 1. Defendant-Debtor denies that he resided at the Lucchesi Lane Property. 2. Defendant-Debtor denies that he was in control of the Lucchesi Lane Property. 3. Defendant-Debtor denies altering or damaging Plaintiff's equipment located at the Lucchesi Lane Property. 4. Defendant-Debtor denies diverting electric service at the Lucchesi Lane Property. 	<p>Disputed Facts:</p> <ol style="list-style-type: none"> 1. No Pretrial Statement Filed By Defendant-Debtor
<p>Disputed Evidentiary Issues:</p> <ol style="list-style-type: none"> 1. None identified. 	<p>Disputed Evidentiary Issues:</p> <ol style="list-style-type: none"> 1. No Pretrial Statement Filed By Defendant-Debtor
<p>Relief Sought:</p> <ol style="list-style-type: none"> 1. Nondischargeable judgment for \$78,759.36. 2. Attorneys' fees and costs. 	<p>Relief Sought:</p> <ol style="list-style-type: none"> 1. No Pretrial Statement Filed By Defendant-Debtor
<p>Points of Law:</p> <ol style="list-style-type: none"> 1. California Civil Code §§ 1882 - 1882.6 relating to theft of utility service. 2. Rebuttable presumption arising under California Civil Code § 1882.3. 3. Nondischargeable pursuant to 11 U.S.C. § 523(a)(4). (Larceny) 	<p>Points of Law:</p> <ol style="list-style-type: none"> 1. No Pretrial Statement Filed By Defendant-Debtor
<p>Abandoned Issues:</p> <ol style="list-style-type: none"> 1. None 	<p>Abandoned Issues:</p>

	1. No Pretrial Statement Filed By Defendant-Debtor
<p>Witnesses:</p> <ol style="list-style-type: none"> Kevin Edwards (TID Employee) Tracy Jones (TID Employee) Oscar Cardenas (Defendant-Debtor) 	<p>Witnesses:</p> <ol style="list-style-type: none"> No Pretrial Statement Filed By Defendant-Debtor
<p>Exhibits:</p> <ol style="list-style-type: none"> Property Detail Report. TID Reports of power usage. Grow House Equipment Inventory. TID Power Theft Report. Revenue Recovery-Power Diversion Charges. TID Invoices for the Property. Transcript of First Meeting of Creditors for Cardenas. Summary of Attorneys' Fees and Costs incurred by TID. 	<p>Exhibits:</p> <ol style="list-style-type: none"> No Pretrial Statement Filed By Defendant-Debtor
<p>Discovery Documents:</p> <ol style="list-style-type: none"> Special Interrogatories propounded by TID and defendant's response. Request for Production of Documents and defendant's response. Requests for Admission and defendant's response. 	<p>Discovery Documents:</p> <ol style="list-style-type: none"> No Pretrial Statement Filed By Defendant-Debtor
<p>Further Discovery or Motions:</p> <ol style="list-style-type: none"> None Stated. 	<p>Further Discovery or Motions:</p> <ol style="list-style-type: none"> No Pretrial Statement Filed By Defendant-Debtor

<p>Stipulations:</p> <p>1. None Stated.</p>	<p>Stipulations:</p> <p>1. No Pretrial Statement Filed By Defendant-Debtor</p>
<p>Amendments:</p> <p>1. None Stated.</p>	<p>Amendments:</p> <p>1. No Pretrial Statement Filed By Defendant-Debtor</p>
<p>Dismissals:</p> <p>1. None Stated.</p>	<p>Dismissals:</p> <p>1. No Pretrial Statement Filed By Defendant-Debtor</p>
<p>Agreed Statement of Facts:</p> <p>1. None Stated.</p>	<p>Agreed Statement of Facts:</p> <p>1. No Pretrial Statement Filed By Defendant-Debtor</p>
<p>Attorneys' Fees Basis:</p> <p>1. California Civil Code § 1882.2.</p>	<p>Attorneys' Fees Basis:</p> <p>1. No Pretrial Statement Filed By Defendant-Debtor</p>
<p>Additional Items</p> <p>1. Plaintiff is willing to proceed with Bankruptcy Dispute Resolution Process if the court does not set it for trial.</p>	<p>Additional Items</p> <p>1. No Pretrial Statement Filed By Defendant-Debtor</p>
<p>Trial Time Estimation: Four (4) Hours.</p>	<p>Trial Time Estimation: No Pretrial Statement Filed By Defendant-Debtor</p>

JANUARY 29, 2015 HEARING

The court continued the hearing to March 26, 2015 at 2:30 p.m. Dckt. 30.

MARCH 26, 2015 HEARING

The court continued the hearing to June 11, 2015 at 2:30 p.m. Dckt. 32.

JUNE 11, 2015 HEARING

The court continued the hearing to July 23, 2015 at 2:30 p.m. Dckt. 40.

No parties have filed an supplemental papers in connection with this Motion since the court continued the hearing.

APPLICABLE LAW

Federal Rule of Civil Procedure 55 and Federal Rule of Bankruptcy Procedure 7055 govern default judgments. *In re McGee*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006). Obtaining a default judgment is a two-step process which requires: (1) entry of the defendant's default, and (2) entry of a default judgment. *Id.* at 770.

Even when a party has defaulted and all requirements for a default judgment are satisfied, a claimant is not entitled to a default judgment as a matter of right. 10 Moore's Federal Practice - Civil ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds. 3rd ed.). Entry of a default judgment is within the discretion of the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). Default judgments are not favored, as the judicial process prefers determining cases on their merits whenever reasonably possible. *Id.* at 1472. Factors which the court may consider in exercising its discretion include:

- (1) the possibility of prejudice to the plaintiff,
- (2) the merits of plaintiff's substantive claim,
- (3) the sufficiency of the complaint,
- (4) the sum of money at stake in the action,
- (5) the possibility of a dispute concerning material facts,
- (6) whether the default was due to excusable neglect, and
- (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Id. at 1471-72 (citing 6 Moore's Federal Practice - Civil ¶ 55-05[s], at 55-24 to 55-26 (Daniel R. Coquillette & Gregory P. Joseph eds. 3rd ed.)).; *In re Kubick*, 171 B.R. at 661-662.

In fact, before entering a default judgment the court has an independent duty to determine the sufficiency of Plaintiff's claim. *Id.* at 662. Entry of a default establishes well-pleaded allegations as admitted, but factual allegations that are unsupported by exhibits are not well pled and cannot support a claim. *In re McGee*, 359 B.R. at 774. Thus, a court may refuse to enter default judgment if Plaintiff did not offer evidence in support of the allegations. *See id.* at 775.

DISCUSSION

The Certificate of Service filed by Plaintiff attests to the Summons and Complaint having been served on Paul Echols, as the managing or general agent of IRM Corporation. Dckt. 6. The California Secretary of State reports that the corporate powers of IRM Corporation have been suspended. <http://kepler.sos.ca.gov>. It also discloses that the agent for service of process for IRM Corporation is an individual named John Connolly, whose address is listed as 2151 Salvio St, Ste 325, Concord, California 94520. FN.1.

FN.1. The Secretary of State's information is consistent with that reported on the LEXIS-NEXIS research data base. The information reported thereunder indicates that the corporate powers were suspended March 1, 2014.

The California State Bar website reports that a Paul Echols is an attorney licensed to practice law in the State of California. The address at which Plaintiff states to have served Mr. Echols as the managing or general agent of IRM Corporation is the same address as listed by the California State Bar for Paul Echols.

On Schedule F Debtors list IRM Corporation as having a general unsecured claim for which a judgment was entered in 1993. Paul Echols, at the Modesto address, is listed as an additional notice person for the IRM Corporation judgment. If entered in 1993, such judgment would now be more than 20 years old.

6. [15-90087-E-7](#) DIOLINDA MACHADO
[15-9016](#)
MACHADO V. MACHADO

STATUS CONFERENCE RE: COMPLAINT
5-15-15 [[1](#)]

Plaintiff's Atty: Anthony D. Johnston
Defendant's Atty: Pro Se

Adv. Filed: 5/15/15
Answer: 6/22/15

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



Notes:

SUMMARY OF COMPLAINT

Mary Machado, individually and as Trustee, ("Plaintiff") seeks to have debt determined nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A), (a)(4), (a)(6), and (a)(7). Defendant-Debtor is a family member of Plaintiff with whom there is alleged to have been a confidential relationship. It is alleged that Plaintiff qualifies for protection pursuant to California Welfare and Institutions Code § 15610.27 (elder protection).

It is alleged that Defendant-Debtor forged Plaintiff's signature on a deed to transfer real property from a trust to Plaintiff's name individually so as to fraudulently obtain secured loans in Plaintiff's name.

It is further alleged that Defendant-Debtor forged Plaintiff's signature to: (1) obtain surrender value payments on three life insurance policies, and (2) obtain financing to purchase a vehicle.

It is further alleged that Defendant-Debtor forged Plaintiff's signature to purportedly refinance Plaintiff's property and diverted the loan proceeds. Additionally, that Defendant-Debtor fraudulently used Plaintiff's bank accounts to withdraw money therefrom.

SUMMARY OF ANSWER

The Defendant-Debtor has filed a pro se answer, checking the box that Defendant-Debtor denies the allegations of the complaint, other than procedural facts relating to the filing of the bankruptcy petition.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges 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), seeking a determination of nondischargeability of debt arising under the Bankruptcy Code. Complaint ¶¶ 1,2, Dckt. 1. In her Answer, Diolinda Machado ("Defendant-Debtor") does not specifically deny the allegations of jurisdiction and core proceedings. Answer, Dckt. 8. The determination of the dischargeability of debt arises under the Bankruptcy Code and is a core proceeding for which the bankruptcy judgment issues the orders and final judgment. 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.

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

- a. The Plaintiff alleges 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), seeking a determination of nondischargeability of debt arising under the Bankruptcy Code. Complaint ¶¶ 1,2, Dckt. 1. In her Answer, Diolinda Machado ("Defendant-Debtor") does not specifically deny the allegations of jurisdiction and core proceedings. Answer, Dckt. 8. The determination of the dischargeability of debt arises under the Bankruptcy Code and is a core proceeding for which the bankruptcy judgment issues the orders and final judgment. To the extent that any issues in this Adversary Proceeding are related to proceedings, 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 claims and issues in this Adversary Proceeding referred to the bankruptcy court.
- b. Initial Disclosures shall be made on or before -----, 2015.
- c. Expert Witnesses shall be disclosed on or before -----, 2015, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2015.
- d. Discovery closes, including the hearing of all discovery motions, on -----, 2015.
- e. Dispositive Motions shall be heard before -----, 2015.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2015.

7. [13-91189](#)-E-11 MICHAEL/JUDY HOUSE
RMY-11

PRE-TRIAL CONFERENCE RE:
OBJECTION TO CLAIM OF KAREN D.
HOUSE, CLAIM NUMBER 11 AND/OR
OBJECTION TO CLAIM OF KAREN D.
HOUSE, CLAIM NUMBER 12
7-14-14 [[142](#)]

Final Ruling: No appearance at the July 23, 2015 Pre-Trial Conference is required.

Debtors' Atty: Robert M. Yaspan
Creditor's Atty: Steven Altman; John T. Resso

The Pre-Trial Conference is continued to 10:30 a.m. on August 20, 2015, to be conducted in conjunction with the hearing on the Motion to approve a compromise between the parties.

8. [13-91189](#)-E-11 MICHAEL/JUDY HOUSE
[14-9024](#)
HOUSE ET AL V. HOUSE

PRE-TRIAL CONFERENCE RE:
COMPLAINT FOR: (1) VIOLATION OF
CALIFORNIA USURY LAWS; (2)
DECLARATORY JUDGMENT
DETERMINING VALIFITY, PRIORITY
AND EXTENT OF SMITH RANCH DEED
OF TRUST, ET AL.
8-1-14 [[1](#)]

Final Ruling: No appearance at the July 23, 2015 Pre-Trial Conference is required.

Plaintiff's Atty: Robert M. Yaspan
Defendant's Atty: John T. Resso, Steven S. Altman

Adv. Filed: 8/1/14
Answer: 8/29/14

Nature of Action:
Validity, priority or extent of lien or other interest in property
Declaratory judgment
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)