

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

August 1, 2019 at 2:00 p.m.

1. [18-90030-E-11](#) **FILBIN LAND & CATTLE** **CONTINUED STATUS CONFERENCE RE:**
[19-9009](#) **CO., INC.** **COMPLAINT**
FILBIN LAND & CATTLE CO., INC. **4-13-19 [1]**
V. ARNAUD ET AL

Final Ruling: No appearance at the August 1, 2019 Status Conference is required.

Plaintiff's Atty: Michael St. James
Defendant's Atty: Jay A. Christofferson; Steven K. Vote

Adv. Filed: 4/13/19
Reissued Summons: 4/15/19
Answer: none

Nature of Action:
Recovery of money/property - other
Validity, priority or extent of lien or other interest in property
Declaratory judgment

Notes:
Continued from 6/27/19. Plaintiff's updated Status Report to be filed by 7/24/19. No status report filed as of 7/26/19.

The Notice of Dismissal with Prejudice of this Adversary Proceeding has been filed by the Plaintiff as provided in the Settlement approved by the court. **This Adversary Proceeding having been dismissed, the Status Conference is removed from the Calendar.**

2. [18-90764-E-7](#) **DAWN CHRISTENSEN**
[19-9005](#)

**STATUS CONFERENCE RE:
COMPLAINT
1-30-19 [1]**

EDMONDS V. CHRISTENSEN ET AL

Plaintiff's Atty: Anthony D. Johnston
Defendant's Atty: Daniel J. Griffin

Adv. Filed: 1/30/19
Reissued Summons: 2/19/19; 3/14/19
Answer: 7/18/19

Counterclaim Filed: 7/18/19
Answer: none

Nature of Action:
Recovery of money/property - fraudulent transfer

Notes:
Continued by request of Parties through Stipulation filed 6/12/19 [Dckt 26]

Answer and Counterclaims of Defendant filed 7/18/19 [Dckt 32]

The Status Conference is XXXXXXXXXXXXXXXX

SUMMARY OF COMPLAINT

Irma Edmons, the Plaintiff Chapter 7 Trustee ("Plaintiff-Trustee") has filed the Complaint in this Adversary Proceeding seeking to avoid an alleged fraudulent conveyance, naming Gary and Frances Ann Christensen, individually and as Trustees of the Christensen Family Trust ("Defendants") as the defendants. The allegations in the Complaint (Dckt. 1) include:

1. Defendants, as trustees of the Christensen Trust conveyed an interest in the real property commonly known as 9747 Treetop Drive ("Property") to themselves as trustees and to Dawn Larae Christensen, the Chapter 7 debtor in case 18-90764, by grant deed dated September 15, 2017.
2. The grant deed was recorded on September 20, 2019.
3. Defendants and Debtor executed a deed of trust in favor of Capital One, N.A. to secure a \$30,000 obligation. The deed of trust was recorded on January 5, 2018.
4. In March 2018, Cynthia Jones commenced an action in state court against Debtor for alleged breach of contract.

5. On March 6, 2018, four days after the Certificate of Service in the state court actions states that Debtor was served, Debtor executed and recorded a grant deed conveying her 50% undivided interest in the Property to the Defendants as trustees of the Christensen Trust.
6. The grant deed states under penalty of perjury that no consideration was paid for the transfer of the 50% interest.
7. On or about June 5, 2018, Cynthia Jones obtained an arbitration award against Debtor in the amount of \$116,933.99, which was filed with the Superior Court.
8. On or about June 14, 2018, the Defendants transferred the Property to Sarah and William Shanklin, with the deed recorded on June 20, 2018.
9. The net proceeds received from the sale by Defendants was \$249,222.68.
10. An undivided 50% interest in the Property equals \$124,611.34.
11. A portion of the gross sales proceeds was used to pay off the secured obligation of (\$30,277.64) that was secured by the deed of trust granted by Defendants and Debtor.
12. Debtor did not disclose any interest in the Property, the transfer of the 50% undivided interest, or any right to payment relating to that 50% interest.
13. The transfer of the 50% interest was made within one year of the Debtor commencing her Chapter 7 case, no consideration was received by Debtor, and the transfer was made with the intent to hinder, delay, or defraud creditors.
14. The transfer is avoidable as a fraudulent conveyance pursuant to 11 U.S.C. § 548(a)(1) and California Civil Code § 3439.05, and a monetary judgment may be awarded Plaintiff-Trustee against Defendants pursuant to 11 U.S.C. § 550.

SUMMARY OF ANSWER

Gary and Frances Ann Christensen, individually and as Trustees of the Christensen Family Trust (“Defendants”) have filed an Answer and CounterClaim (Dckt. 32), which:

1. Admits and denies specific allegations in the Complaint.
2. Defendants assert eight Affirmative Defenses. The Sixth Affirmative Defense asserts that to the extent that a transfer may be avoided an obligation exists, it is subject to the set off for that portion of expenses relating to the Property for the 50% undivided interest at issue. The Seventh Affirmative Defense alleges that Debtor held merely legal title and no equitable interests pursuant to the grant deed.

Summary of Counterclaim

The Defendants counterclaim that:

1. Defendants acquired their interest in the Property upon the passing of one of their parents.
2. Debtor expressed a desire to purchase the property from Defendants.
3. After obtaining free legal advice from the El Dorado County Senior Services Center, Defendants executed the grant deed for the 50% interest for Debtor as a device they intended to be for a future purchase of the Property by Debtor.
4. Defendants allege that they did not intend for Debtor to be an owner of the Property pursuant to the grant deed.
5. Defendants paid the taxes, maintenance, and other expenses on the Property from August 21, 2017 until it was sold.
6. In March 2018, Defendants and Debtor discussed whether Debtor could purchase the Property and they concluded that she could not. Upon reaching that conclusion in March 2018, Debtor was taken off title so Defendants could then sell the Property to a third-party.
7. Neither Defendant believed that by issuing the grant deed any interest in the Property was conveyed to Debtor.
8. Pursuant to the Counterclaim, Defendants seek:
 - a. Rescission of the grant deed purporting to transfer the 50% interest to Debtor based on mutual mistake.
 - b. Reformation of the grant deed into an option for Debtor.
 - c. Determination that the doctrine of promissory estoppel based on Debtor stating that she was interested in buying the Property, if she was financially able, has caused injury to Defendants.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Irma Edmonds, Chapter 7 Trustee alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, 151, and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157, and consents to the bankruptcy judge issuing all final order and judgment, subject to review on appeal as provided in 28 U.S.C. § 158. Complaint ¶¶ 1, 2, 4, Dckt. X. In the Answer, Defendants Gary and Frances Ann Christensen, individually and as Trustees of the Christensen Family Trust, (“Defendants”) admits the allegations of jurisdiction and core proceedings. Answer ¶ 1, Dckt. 32. Additionally, Defendants consented to the entry of all final orders (which includes judgment) by the bankruptcy judge in this Adversary Proceeding, including the Counterclaim.

At the hearing the Parties confirmed on the record their consent to the bankruptcy judge issuing final orders and judgment on the Complaint and Counterclaim 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.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

a. Plaintiff Irma Edmonds, Chapter 7 Trustee alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, 151, and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157, and consents to the bankruptcy judge issuing all final order and judgment, subject to review on appeal as provided in 28 U.S.C. § 158. Complaint ¶¶ 1, 2, 4, Dckt. X. In the Answer, Defendants Gary and Frances Ann Christensen, individually and as Trustees of the Christensen Family Trust, (“Defendants”) admits the allegations of jurisdiction and core proceedings. Answer ¶ 1, Dckt. 32. Additionally, Defendants consented to the entry of all final orders (which includes judgment) by the bankruptcy judge in this Adversary Proceeding, including the Counterclaim.

At the hearing the Parties confirmed on the record their consent to the bankruptcy judge issuing final orders and judgment on the Complaint and Counterclaim in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

- b. Initial Disclosures shall be made on or before -----, **2019**.
- c. Expert Witnesses shall be disclosed on or before -----, **2019**, and Expert Witness Reports, if any, shall be exchanged on or before -----, **2019**.
- d. Discovery closes, including the hearing of all discovery motions, on -----, **2019**.
- e. Dispositive Motions shall be heard before **TBD, 2020**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- **p.m. on TBD, 2020**.

3. [12-92570-E-12](#) COELHO DAIRY

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
9-28-12 [1]

Final Ruling: No appearance at the August 1, 2019 Status Conference is required.

Debtor's Atty: Thomas O. Gillis

Notes:

Continued from 6/27/19 to allow for the objection period to run and the filing of any post-plan completion motions, if any.

Order Approving Trustee's Final Report and Account and Discharging Trustee filed 7/25/19 [Dckt 724]

The court having approved the Chapter 12 Trustee's Final Report (Dckt. 721), **the Status Conference is continued to 2:00 p.m. on October 17, 2019**, to allow for the closing of the file by the Clerk.

Final Ruling: No appearance at the August 1, 2019 Status Conference is required.

Debtor's Atty: David C. Johnston

Notes:

Continued from 6/27/19. Debtor in Possession to file and serve an updated Status Report on or before 7/19/19. Status Report not filed as of 7/26/19.

The status Conference is continued to 10:30 a.m. on August 29, 2019 (specially set time) to be heard in conjunction with the Motion to Dismiss this case filed by the Debtor in Possession.

AUGUST 1, 2019 STATUS CONFERENCE

At the June 27, 2019 Status Conference Counsel for the Debtor in Possession ("ΔIP") reported that the case was in a state of paralysis due to the post-petition foreclosures and that dismissal of the case sought.

The court continued the Status Conference to August 1, 2019, thirty-three (33) days later to afford the ΔIP the opportunity to prosecute this case, even if that meant filing a motion to dismiss. The court further ordered that an Updated Status Report be filed and served on or before July 19, 2019.

No Updated Status Report has been filed by the ΔIP. However, on July 30, 2019, at 1:04 p.m., approximately forty-eight (48) hours before the August 1, 2019 Status Conference, a Motion to Dismiss the Chapter 11 case was filed by the ΔIP. The hearing on the Motion is set for 10:30 a.m. on August 29, 2019.

The Motion to Dismiss contains specific details concerning the bankruptcy estate and the post-petition operation of estate assets by the ΔIP. This information is in the nature of an Updated Status Report. While not filed by the July 19, 2019 deadline, the Motion to Dismiss does provide substantive information about the case.

The court continues the Status Conference to be conducted in conjunction with the Motion to Dismiss.

August 1, 2019 at 2:00 p.m.

JUNE 27, 2019 STATUS CONFERENCE

At the March 2019 Status Conference the ΔIP reported to the court that it would be requesting to have this case dismissed. No motion to dismiss has been filed.

At the Status Conference the ΔIP stated that the negotiations with the former lender that foreclosed have terminated.

The owners are in disagreement as to whether it should be dismissed.

This case appears to now be in a state of paralysis, with the Debtor in Possession unable to give any direction to its counsel.

MARCH 14, 2019 STATUS CONFERENCE

This Chapter 11 case was filed on December 1, 2017. No proposed Chapter 11 plan or proposed disclosure statement has been filed. A review of the most Recent Monthly Operating Report filed, for the month of January 2019, the Debtor in Possession (“ΔIP”) reports that in the fifteen months this Chapter 11 case has been pending:

- A. The estate has received \$590,273.57 in Cash Received;
- B. Has spent \$148,073.16 for Administrative Disbursements;
- C. Has spent \$220,409 for Salaries/Commissions; and
- D. Has a Cash Balance of \$58,440 (increased from \$3,661 in December 2018).

Monthly Operating Report, p. 4; Dckt. 101.

In the Updated Status Report filed on November 26, 2018, the ΔIP reported that in August 2018, the principals of the ΔIP meet with counsel and formulated a plan to pay creditors holding the remaining claims in this case following the foreclosure sale of the Debtor’s Fresno property. However, due to family illness involving ΔIP’s counsel’s family, counsel had been diverted from prosecuting such plan.

No Updated Status Report was filed as of the court’s March 11, 2019 review of the Docket in this case.

At the Status Conference, counsel for ΔIP reported talks have broken down with the landlord (the former lender) for the Fresno facilities.

With that occurring, Debtor in Possession will be moving to dismiss this case.

AUGUST 23, 2018 STATUS CONFERENCE

At the Status Conference the Debtor in Possession reported that it is continuing to operate in both facilities, notwithstanding the foreclose in Fresno. The Debtor in Possession is working on a lease for the

property, having found a buyer for the property from the Loeb Trustee (generating the sales proceeds for the Loeb Trust), for the long-term operation of that facility.

The Debtor in Possession is anticipating a 100% plan. There are no other creditors now active in the case (the Loeb Trust having been granted relief from the stay).

NOVEMBER 29, 2018 STATUS CONFERENCE

At the Status Conference, the Debtor in Possession reported that it is working on the plan, including a new lease from the buyer of the Fresno facility.

APRIL 26, 2018 STATUS CONFERENCE

On April 15, 2018, Debtor in Possession filed three monthly operating reports. These reports are summarized as follows:

Mar 2018 Report, Dckt. 56

Cash Receipts From Sales.....	\$15,917	\$24,844
Insurance Payments.....	\$38,221	\$196,676

Amended Feb 2018 Report, Dckt. 60

Cash Receipts From Sales.....	\$8,927	\$8,927
Insurance Payments.....	\$35,393	\$158,455

Amended January 2018 Report, Dckt. 58

Cash Receipts From Sales.....	\$ -0-	\$ -0-
Insurance Payments.....	\$79,991	\$123,062

At the Status Conference, the parties agreed to continue the Status Conference to 2:00 p.m. on August 23, 2018.

JANUARY 11, 2017 STATUS CONFERENCE

Status Conference Summary

This Chapter 11 case was filed on December 1, 2017. The Schedules and Statement of Financial Affairs were filed on December 19, 2017. The Status Report states that Debtor in Possession is operating as property of the estate two related businesses. The primary business is a 16-bed in-patient drug and alcohol abuse behavior modification program in Fresno, California. This is not a “medical treatment facility.” The Estate is also operating an out-patient program in Modesto, California.

Debtor was incorporated in 2014 and purchased the Fresno, California property. The purchase obligation has matured, with Debtor and seller creditor entering into a forbearance agreement for a period, with the seller creditor ultimately setting a foreclosure sale for the Fresno property.

August 1, 2019 at 2:00 p.m.

The Status Conference Report discusses problems with Debtor refinancing relating to tax liens asserted against the former president of Debtor. Debtor in Possession intends to file an adversary proceeding to obtain a judicial determination of the extent, validity, and priority of any such tax liens for obligations of the former president of Debtor.