

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

August 21, 2019 at 2:00 p.m.

1. [19-20520-E-7](#) **KAE SAECHAO** **STATUS CONFERENCE RE:**
[19-2059](#) **COMPLAINT**
 5-2-19 [1]

LOOFBOURROW V. SAECHAO

Final Ruling: No appearance at the August 21, 2019 Status Conference is required.

Plaintiff's Atty: Pro Se
Defendant's Atty: unknown

Adv. Filed: 5/2/19
Answer: none

The Court having ordered this Adversary Proceeding dismissed due to lack of prosecution, **the Status Conference is concluded and removed from the Calendar.**

Notes:

Order setting special status conference for 7/16/19 and requiring appearance of Plaintiff filed 6/25/19 [Dckt 12]. Plaintiff did not appear.

[RHS-1] Order to Show Cause Why Adversary Proceeding Should Not Be Dismissed For Failure To Prosecute filed 7/23/19 [Dckt 16], set for hearing 8/15/19 at 11:00 a.m.; Order to Show Cause sustained, adversary proceeding dismissed.

**FIRST DATA MERCHANT SERVICES
LLC V. MCA RECOVERY, LLC ET AL**

Plaintiff's Atty: Randy B. Soref; Andrew Joseph Nazar

Defendants' Atty:

Robert S. McWhorter [MCA Recovery, LLC]

Gabriel E. Liberman [First Capital Retail, LLC]

Jeffrey D. Ganz; J. Russell Cunningham [13th Floor/Pilot, LLC]

Adv. Filed: 3/22/18

Answer: 4/23/18 [First Capital Retail, LLC]

Amd. Cmplt. Filed: 5/17/18

Answer: 7/20/18 [13th Floor/Pilot, LLC]

7/20/18 [First Capital Retail, LLC]

7/20/18 [MCA Recovery, LLC]

Amd. Answer: 8/3/18 [MCA Recovery, LLC]

Cross-Claim Filed [by 13th Floor/Pilot, LLC]: 7/20/18

Answer: none

Cross-Claim Filed [by MCA Recovery, LLC]: 8/3/18

Answer: 8/22/18 [13th Floor/Pilot, LLC]

Amd. Cross-Claim Filed [by 13th Floor/Pilot, LLC]: 8/22/18

Answer: 10/23/18 [MCA Recovery, LLC]

Notes:

Continued from 5/29/19 to afford the Parties time to proceed with concluding the settlement of these and related issues.

The Status Conference is ~~continued to 2:00 p.m. on xxxxxx, 2019, to afford the Parties time to proceed with concluding the settlement of these and related issues.~~

AUGUST 21, 2019 STATUS CONFERENCE

At the August 21, 2019 Status Conference, ~~xxxxxxxxxxxxxx~~

MAY 29, 2019 STATUS CONFERENCE

The Parties have not filed an updated Status Conference Report concerning the status of this Adversary Proceeding. At the Status Conference the Parties reported that the terms of an agreement, for which a motion to approve will be filed in the underlying bankruptcy case, which includes resolution of

all issues with the Trustee and the bankruptcy estate.

MARCH 20, 2019 STATUS CONFERENCE

On February 13, 2019, the Parties filed a Stipulation to Continue the then pending Status Conference. Dckt. 144. The Parties advised the court that they were engaged in settlement discussions and requested the continuance to save the parties what might be unnecessary attorney's fees. The Parties further advised the court that their Joint Discovery Plan would be filed by March 15, 2019.

Nothing further has been filed in this case by the Parties.

At the March 20, 2019 Status Conference, the parties reported that they are continuing in their negotiations and are working towards settlement. The Parties filed on March 19, 2019 a request for a further continuance. (Dckt. 150).

SUMMARY OF FIRST AMENDED COMPLAINT AND CROSS-COMPLAINTS

Given the complexity of the pleadings and identification of parties in this multi-cross complaint adversary proceeding, the court has constructed the following chart of the live matters before the court:

<p>FIRST AMENDED COMPLAINT (Dckt. 39) First Data Merchant Services, LLC ("Plaintiff") alleges in its First Amended Complaint that it has commenced this interpleader action:</p> <ol style="list-style-type: none"> 1. Plaintiff is holding \$214,923.33. 2. Defendant First Capital Retail, LLC (Defendant-Debtor) has filed a bankruptcy petition in the Eastern District of California. 3. Plaintiff is a payment card processor for Defendant-Debtor. 4. Plaintiff was served with a Restraining Notice by MCA Recovery, LLC for \$214,932.33 of payments being processed for Defendant-Debtor. Plaintiff has frozen the payments. 5. On November 8, 2017, Defendant-Debtor filed a Motion for an Order Avoiding Preferential Transfer, Directing Turn Over and Mandating Delivery of the Frozen Funds. 6. On April 6, 2018, the court approved the sale of Defendant-Debtor's assets to 13th Floor/Pilot LLC. 7. Defendant-Debtor and Defendant MCA Recovery, LLC each have demanded the \$214,932.33. 	<p>AMENDED CROSS-CLAIM of 13th Floor (Dckt. 108) against MCA Recovery which alleges:</p> <ol style="list-style-type: none"> 1. Cross-Claimant seeks recovery against Defendant-MCA Recovery. 2. It is asserted that asserted obligation of Defendant-Debtor to Defendant-MCA Recovery are avoidable as fraudulent conveyances pursuant to 11 U.S.C. § 548. 3. It is further asserted that Cross-Claimant can recover payments made by Defendant-Debtor to and a purported judgment lien against Defendant-Debtor by Defendant-MCA Recovery as fraudulent conveyances pursuant to 11 U.S.C. §§ 548, 550, and 551. 4. It is asserted that the agreement with Yellowstone by which Defendant-MCA Recovery asserts its interests was entered into by a person who had not authority to act for Defendant-Debtor. 5. No monies for which Defendant-MCA Recovery asserts its rights were delivered to Defendant-Debtor. 6. The unauthorized representative of Defendant-Debtor made unauthorized payments to Yellowstone. These payments were made within the period for avoidable fraudulent conveyances and preferential transfers. 	<p>CROSS-COMPLAINT of MCA Recovery (Dckt. 89) against Defendant-Debtor and 13th Floor, asserting:</p> <ol style="list-style-type: none"> 1. That for the Cross-Complaint jurisdiction exists pursuant to 28 U.S.C. § 1332, § 1334, and § 1335, and that it is core proceeding pursuant to 28 U.S.C. § 157(b)(2)(a), (k), and (o). 2. The rights of MCA Recovery, as the assignee of Yellowstone, in the underlying contract and the monies that are the subject of the Interpleader Complaint are to be determined in favor of MCA Recovery.

<p>First Capital Retail, LLC ("Defendant-Debtor") filed its Answer(Dckt. 73) which:</p> <ol style="list-style-type: none"> 1. Admits and denies specific allegations in the First Amended Complaint. 2. Asserts four affirmative defenses, including that Defendant MCA Recovery, LLC is barred from receiving the monies because such would be a preferential transfer. 3. Seeks to have the court determine that the \$214,932.33 be awarded to 13th Floor/Pilot, Inc. as Defendant-Debtor's successor. 	<p>Defendant-MCA filed its Answer (Dckt. 127) to the Amended Cross-Claim, that:</p> <ol style="list-style-type: none"> 1. Admits and denies specific allegations in the Cross-Claim. 2. Asserts ten affirmative defenses. 3. Does not state whether this is a core proceeding and if not, if it consents to the entry of final orders and judgment by the bankruptcy judge. 	<p>13th Floor Answer to Cross-Complaint Filed by MCA Recovery (Dckt 107)</p> <p>13th Floor has filed its Answer (Dckt. 107) to the Cross-Complaint that:</p> <ol style="list-style-type: none"> 1. Admits and denies specific allegations in the Cross-Complaint. 2. Asserts seven affirmative defenses.
<p>13th Floor/Pilot LLC ("Defendant-13th Floor") has filed an Answer (Dckt. 70) that:</p> <ol style="list-style-type: none"> 1. Admits and denies specific allegations in the First Amended Complaint. 2. States three affirmative defenses. 	<p>Order (Dckt. 135) Dismissing Claims 1, 2, 3, 4, and 7 (in part) of the Amended Cross-Complaint filed by 13th Floor.</p>	
<p>MCA Recovery, LLC, as the Assignee of Yellowstone Capital West, LLC ("Defendant-MCA Recovery") filed its Answer (Dckt. 75) to the Complaint for Interpleader, stating:</p> <ol style="list-style-type: none"> 1. The Answer admits and denies specific allegations in the Complaint. 2. The Answer states two affirmative defense. 		

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff does not allege in the Complaint how jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), or whether this is a core proceeding in the Complaint. The court notes that if the issue presented was one whether the property at issue was property of the bankruptcy estate, then such claims/issues arising under the Bankruptcy Code, 11 U.S.C. § 541, would, in addition to be subject to the exclusive jurisdiction of the federal courts (28 U.S.C. § 1334(e)), be a claim arising under the Bankruptcy Code.

In its Answer, Defendant-13th Floor does not allege a basis for federal court jurisdiction in this bankruptcy court or whether it is a core matter. For the Cross-Claim, it is alleged that subject matter jurisdiction exists pursuant to 28 U.S.C. § 1334(b), § 157(a) and § 157(b) [core matter], and further that Defendant-13th Floor consents to the entry of final orders and judgment by the bankruptcy judge.

In its Amended Answer, Defendant-MCA Recovery asserts that the Complaint for Interpleader is not a core matter and it does not consent to a bankruptcy judge issuing final orders and judgment in such action.

However, in its Cross-Complaint for a determination of the respective rights of the parties in the contract upon which MCA Recovery asserts its interest in the interpleader monies and against the fraudulent conveyance and preference claims, MCA Recovery alleges that jurisdiction exists pursuant to 28 U.S.C. § 1332, § 1334, and § 1335, and that it is core proceeding pursuant to 28 U.S.C. § 157(b)(2)(a), (k), and (o).

From review of the Complaint and Cross-Claims, the substance of the claims in this Adversary Proceeding is for the court to determine conflicting claims in the monies at issue of:

The Bankruptcy Estate of First Capital Retail, LLC, the Chapter 7 Debtor in Chapter 7 case 17-26125

13th Floor/Pilot, LLC, which asserts to be the successor to the above Debtor pursuant to a sale of assets from the bankruptcy trustee (17-26125; Order, Dckt. 378).

MCA Recovery, LLC, which is asserted to have received transfers from Debtor

The sale of assets to 13th Floor/Pilot, LLC sold are stated in the Motion to Sell, ¶ 13; 17-26125, Dckt. 304 as:

[a]ll or substantially all of the Debtor's business-related assets . . . included, but were not limited to, the following: inventory, account receivables, executory contracts, cash, deposits, franchise agreements (including the Franchise Agreement with Franchisor), supply agreements, permits, licenses, software systems, fixtures, furniture, equipment, tools, supplies, intellectual property, all leasehold interests and tenant improvements, and all other assets used in connection with operating Debtor's various franchise businesses (collectively the "Acquired Assets").

(Emphasis in original).

The Asset Purchase Agreement is filed as Exhibit C in support of the Motion to Sell Assets. Exhibit C is found in the court's files at Docket 307, beginning on page 38 of the Exhibit Document. The Purchase Agreement with its attachments is seventy-one (71) pages in length. In this detailed agreement, the "Acquired Assets" being sold and purchased are:

The assets of the Seller, which the Agreement defines as "'Seller' has the meaning set forth in the preamble" to the Agreement. Agreement page 14. The "Seller" is defined in the "Preamble," which appears to be the introductory paragraph to the Agreement as "First Capital Retail, LLC." *Id.* at 1. At this time the case was one under Chapter 7 so that "First Capital Retail, LLC" was the debtor and also serving as the debtor in possession. The signature block at the end of the Agreement has it being signed by First Capital Retail, LLC, Debtor and Debtor in Possession."

At issue in this Contested Matter are that transfers may be avoided as fraudulent conveyances pursuant to 11 U.S.C. § 548. The assets being purchased are then stated to be the "Acquired Assets," which are defined as:

"Acquired Assets" means, all of Seller's right, title and interest, free and clear of all Liens (other than Permitted Liens), in and to all of the properties, rights, interests and other tangible and intangible assets of Seller for use in or relating to the Business (wherever located and whether or not required to be reflected on a balance sheet prepared in accordance with GAAP) including any assets acquired by Seller after the date hereof but prior to the Closing; provided, however, that the Acquired Assets shall not include any Excluded Assets. Without limiting the generality of the foregoing, the Acquired Assets shall include the following (except to the extent listed or otherwise included as an Excluded Asset):

. . .

(w) any avoidance actions under chapter 5 of the Bankruptcy Code relating to (1) any Transferred Contract or trade vendor that Buyer will conduct business with following the Closing (the "Acquired Avoidance Actions"), and (2) any cause of action, lawsuit, judgment, claim, refund, right of recovery, right of set-off, counterclaim, defense, demand, warranty claim, right to indemnification, contribution, advancement of expenses or reimbursement, or similar rights of Seller from and against First Data Merchant Services LLC (the "First Data Claims"); provided, that in the event the Buyer (x) realizes a recovery from the prosecution and/or settlement of any First Data Claims, the proceeds realized therefrom shall be allocated and paid according to the following waterfall: first, to reimburse Buyer all costs of collection incurred by Buyer; second, an amount not to exceed \$100,000 in the aggregate for payment to Debtor's retained professionals for actual, reasonable and documented unpaid fees and expenses; and third, the remaining balance, if any, to Buyer for its own account; provided, further, that in the event Buyer determines, after due investigation, not to prosecute the First Data Claims, Buyer agrees that it shall provide prompt written notice of such determination to the Seller, and upon delivery of such notice the First Data Claims shall thereupon become Excluded Assets for all purposes of this Agreement; . . .

In addition to having purchased rights and interests, it appears that 13th Floor/Pilot, LLC is

seeking to exercise rights of a trustee under 11 U.S.C. § 548 to avoid transfers. None of the proceeds are to be paid to the bankruptcy estate.

At the Status Conference the Parties reported there are ongoing settlement negotiations.

Joint Status Report

On April 18, 2019, the Parties filed a Second Joint Status Report. Dckt. 154. In it they jointly report to the court:

- A. The Parties have not yet engaged in discovery.
- B. The Parties' discovery plan is:
 - 1. Discovery will be needed on the following subjects: all claims and defenses of 13th Floor and Yellowstone.
 - 2. All discovery commenced in time to be completed by November 1, 2019.
 - 3. Maximum of 5 depositions by each party.
 - 4. Each deposition limited to maximum of 7 hours unless extended by agreement of parties.
 - 5. Reports from retained experts under Rule 26(a)(2) due:
 - a. from 13th Floor by August 1, 2019;
 - b. from Yellowstone by August 15, 2019;
 - 6. All potentially dispositive motions should be filed by December 15, 2019.
 - 7. (g) The proceeding should be ready for trial by January 30, 2020. The trial is expected to take approximately 3 days.

As with the Complaint, Answers, and Cross-Claims, the issue of federal court jurisdiction and core/non-core proceeding issues are not addressed.

3. [11-44540-E-13](#) **MERCEDES PEREZ**
[18-2041](#)

CONTINUED STATUS CONFERENCE
RE: AMENDED COMPLAINT
3-15-19 [29]

**PEREZ V. STOCKTON MORTGAGE ET
AL**

Plaintiff's Atty: Peter L. Cianchetta
Defendants' Atty: unknown

Adv. Filed: 4/5/18
Answer: none

Amd. Cmplt. Filed: 3/15/19
Answer: none

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

Notes:
Continued from 5/29/19

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXX~~.

AUGUST 21, 2019 STATUS CONFERENCE

At the Status Conference, counsel for Plaintiff reported that ~~XXXXXXXXXXXX~~

MAY 29, 2019 STATUS CONFERENCE

No updated status report has been filed. At the Status Conference, counsel for Plaintiff reported that he was still trying to identify the current holder of the note to be named as the defendant.

Review of First Amended Complaint

The First Amended Complaint seeks a determination that the Defendant's deed of trust lien on Plaintiff Debtor's property is void, the secured claim as determined by the court pursuant to 11 U.S.C. § 506(a) having been paid under Plaintiff Debtor's Chapter 13 Plan and said plan having been completed. The First Amended Complaint seeks statutory damages and attorney's fees and costs for Defendant failing to reconvey the deed of trust as otherwise required under the loan documents and applicable California law.

MARCH 20, 2019 STATUS CONFERENCE

An Amended Complaint was filed in March 15, 2019. Dckt. 29. The order denying the Motion for Entry of Default Judgment on the original Complaint was filed on January 14, 2019. Civil Minutes, Dckt. 24; Order, Dckt. 26.

At the Status Conference Counsel for Plaintiff reported that he is conducting discovery to identify the correct trustees for the defendants and the amended complaint and summons will be served.

Final Ruling: No appearance at the August 21, 2019 Status Conference is required.

Debtor's Atty: Jeffrey J. Goodrich

Notes:

Continued from 1/9/19

Operating Reports filed: 2/5/19 [Nov, Dec 2018], 2/14/19 [Jan], 4/16/19 [Feb, Mar], 5/20/19 [Apr];
8/15/19 [May, Jun, July]

[JJG-11] Notice of and Order for Trial filed 1/17/19 [Dckt 322]; Order on Objection to Claim of Wayne Bier filed 4/29/19 [Dckt 388]

[JJG-12] Motion of Debtor in Possession to Value Security filed 9/27/18 [Dckt 283]; Order dismissing without prejudice filed 6/14/19 [Dckt 425]

[JJG-16] Order granting Motion to Pay compensation to professionals filed 3/25/19 [Dckt 356]

[JJG-15] Order granting Motion to Use Cash Collateral through 5/31/19 and continuing hearing filed 3/28/19 [Dckt 365]; Order granting Motion to Use Cash Collateral through 8/31/19 and continuing hearing filed 6/3/19 [Dckt 417]; continued to 8/27/19 at 1:30 p.m.

[MET-2] Motion for Relief from Stay [Movant, East West Bank] filed 5/16/19 [Dckt 391], heard 6/13/19 at 10:00 a.m. and continued to 8/15/19 15 10:30 a.m.

Joint Status Report of Debtor in Possession and East-West Bank filed 8/14/19 [Dckt 430]

Stipulation to Partial Relief from Stay filed 8/14/19 [Dckt 429]; Order approving filed 8/15/19 [Dckt 434]

The Status Conference is continued to 1:30 p.m. on August 27, 2019 (Specially Set day and time) to be conducted in conjunction with the continued hearing on the Motion to Use Cash Collateral and Motion for Relief from the Automatic Stay.

AUGUST 21, 2019 STATUS CONFERENCE

The court continues the Status Conference to be conducted in conjunction with the specially set hearing on the Motion to Use Cash Collateral and Motion for Relief From the Stay to allow the Parties the opportunity to appear at one hearing to completely address the issues in this case.

5. [18-22747-E-13](#) DAVID/CHRISTINA CASTILLO CONTINUED STATUS CONFERENCE
19-2009 RE: COMPLAINT
1-17-19 [1]

CASTILLO ET AL V. LVNV
FUNDING, LLC ET AL
5 Thru 8

Final Ruling: No appearance at the August 21, 2019 Status Conference is required.

Plaintiff's Atty: Aubrey L. Jacobsen
Defendant's Atty: unknown

Adv. Filed: 1/17/19
Answer: none

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

Notes:
Continued from 6/19/19. Court to issue an Order to Show Cause why the Adversary Proceeding should not be dismissed for lack of prosecution.

[RHS-1] Order to Show Cause Lack of Prosecution filed 6/24/19 [Dckt 11], set for 8/15/19 at 11:00 a.m.; Order to Show Cause sustained, adversary proceeding dismissed

The court having issued an order dismissing this Adversary Proceeding due to lack of prosecution by the Plaintiff, **the Status Conference is concluded and removed from the Calendar.**

6. [18-22747-E-13](#) DAVID/CHRISTINA CASTILLO CONTINUED STATUS CONFERENCE
[19-2010](#) RE: COMPLAINT
1-17-19 [\[1\]](#)

CASTILLO ET AL V. LVNV
FUNDING, LLC ET AL

Final Ruling: No appearance at the August 21, 2019 Status Conference is required.

Plaintiff's Atty: Aubrey L. Jacobsen
Defendant's Atty: unknown

Adv. Filed: 1/17/19
Answer: none

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

Notes:
Continued from 6/19/19. Court to issue an Order to Show Cause why the Adversary Proceeding should not be dismissed for lack of prosecution.

[RHS-1] Order to Show Cause Lack of Prosecution filed 6/24/19 [Dckt 11], set for 8/15/19 at 11:00 a.m.; Order to Show Cause sustained, adversary proceeding dismissed

The court having issued an order dismissing this Adversary Proceeding due to lack of prosecution by the Plaintiff, **the Status Conference is concluded and removed from the Calendar.**

8. [18-22747-E-13](#) DAVID/CHRISTINA CASTILLO CONTINUED STATUS CONFERENCE
19-2012 RE: AMENDED COMPLAINT
1-23-19 [10]

CASTILLO ET AL V. LVNV
FUNDING, LLC

Final Ruling: No appearance at the August 21, 2019 Status Conference is required.

Plaintiff's Atty: Aubrey L. Jacobsen
Defendant's Atty: unknown

Adv. Filed: 1/17/19
Answer: none
Amd. Cmpl. Filed: 1/23/19
Answer: none

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

Notes:
Continued from 6/19/19. Court to issue an Order to Show Cause why the Adversary Proceeding should not be dismissed for lack of prosecution.

[RHS-1] Order to Show Cause Lack of Prosecution filed 6/24/19 [Dckt 11], set for 8/15/19 at 11:00 a.m.; Order to Show Cause sustained, adversary proceeding dismissed

The court having issued an order dismissing this Adversary Proceeding due to lack of prosecution by the Plaintiff, **the Status Conference is concluded and removed from the Calendar.**

9. [11-29166-E-13](#) **MICHAEL/JENNIFER PETERS**
[18-2185](#)
PETERS ET AL V. HSBC FINANCE

**PRE-TRIAL CONFERENCE RE:
AMENDED COMPLAINT FOR
DECLARATORY RELIEF TO
DETERMINE CORPORATION
ET AL LIEN SECURING
DEBTORS' RESIDENCE TO BE
VOID; RELATED RESIDENCE TO BE
STATED CAUSED OF ACTION
INCLUDING REQUESTS FOR
DAMAGES AND ATTORNEY FEES
11-12-18 [7]**

Final Ruling: No appearance at the August 21, 2019 Status Conference is required.

Plaintiff's Atty: Mark A. Wolf
Defendants' Atty: Austin T. Beardsley
Adv. Filed: 11/7/18
Answer: none
Amd. Complaint Filed: 11/12/18
Answer: 12/13/18

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

Notes:
Scheduling order -
Initial disclosures by 1/25/19
Close of discovery 5/10/19
Dispositive motions heard by 7/12/19

[WW-2] Notice of Acceptance of Defendant's Offer of Judgment filed 3/8/19 [Dckt 17]

[WW-2] Judgment entered 3/15/19 [Dckt 20]
Satisfaction of Judgment filed 6/12/19 [Dckt 23]

Judgment having been entered in this Adversary Proceeding, the Pre-Trial Conference is concluded and removed from the Calendar.

Satisfaction of Judgment having been filed, the Clerk of the Court may close the file in this Adversary Proceeding.

Debtor’s Atty: Arasto Farsad

Notes:
Continued from 5/29/19

Operating Report filed: 6/19/19 [May], 7/21/19 [Jun]

[AF-5] Motion to Approve Trial Loan Modification Agreement filed 6/10/19 [Dckt 40]

[AF-3] Order granting Motion to Employ Arasto Farsad as counsel for Debtor filed 6/13/19 [Dckt 46]

U.S. Trustee Report at 341 Meeting docketed 7/30/19

Combined Plan of Reorganization and Disclosure Statement filed 8/8/19 [Dckt 52], set for hearing 9/26/19 at 11:30 a.m.

Status Conference Statement filed 8/12/19 [Dckt 56]

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXX~~

AUGUST 21, 2019 STATUS CONFERENCE

This case was filed on April 25, 2019. On June 19, 2019, a Monthly Operating Report was filed for the May 2019. The Debtor in Possession reports having “Income” of \$35,413.00. Dckt. 27 at 4. From that Debtor has spent (\$18,287) for “living expenses.” No information is provided as to how the Debtor in Possession has (\$18,287) in monthly living expense and what they are.

The bank statement attached to the Monthly Operating Report shows the Debtor in Possession taking cash withdrawals from the Estate’s bankruptcy account in the Month of May as follows:

- (\$1,500).....May 6, 2019
- (\$4,000).....May 10, 2019
- (\$ 750).....May 13, 2019
- (\$ 15).....May 13, 2019
- (\$1,000).....May 13, 2019
- (\$ 500).....May 20, 2019
- (\$ 500).....May 6, 2019
- (\$ 500).....May 9, 2019
- (\$ 500).....May 13, 2019

(\$ 600).....May 22, 2019

(\$ 500).....May 23, 2019

This does not include the various EFT purchases or checks written. The copies of the checks attached to the Monthly Operating Report are largely illegible.

Additionally, the statement shows monies being transferred to another checking account, which is not listed as an account of the Bankruptcy Estate.

On Amended Schedule A/B Debtor states that he has no interests in any business or entities. Dckt. 48.

On Amended Schedule I Debtor states that he has Net Income of \$8,748.00 from rental property or business, \$1,565, in Social Security, and \$132 in VA benefits. Dckt. 29 at 5. For the Non-Debtor spouse, Debtor states additional income of \$6,000 a month, from which there are \$1,124.72 a month in withholding. *Id.* Debtor's monthly income, before non-debtor withholding, is \$16,445.00, which is \$197,340 in annual income on which taxes are computed.

On Schedule I Debtor states that his employer is Hillside Place II, for which he is a "Licensee/Administrator." The non-debtor spouse's employer is also identified as Hillside Place II and the non-debtor spouse's occupation is listed as "Administrator."

Attached to Amended Schedule J is a Business Income and Expense Statement. *Id.* at 9. On that Debtor lists monthly gross income of \$33,000. The three major expenses are payroll of (\$13,100) a month, payroll taxes of (\$1,052), and insurance of (\$950) a month. *Id.*

At the bottom of the Expenses for the *business* is a (\$2,400) a month expense for "food/groceries." *Id.*

July 2019 Monthly Operating Report

The July Report (Dckt. 58) provides some additional information. Two rental properties are listed, for which no income is stated. Dckt. 58 at 3. For income, Debtor in Possession states \$53,717 for the month and for "living and operating" expenses lists (\$42,078) for the month.

On the Profit and Loss Statement attached to the July Monthly Operating Report, two businesses are listed as residential care facilities: "D' Hillside Place II and JT Evergreen." *Id.* at 5. These "business expenses" paid by the Debtor in Possession from the property of the Bankruptcy Estate include three mortgage payments totaling (\$5,618), car payments totaling (\$2,560), and food expense of (\$1,613.00). *Id.*

Amended Statement of Financial Affairs

On the Amended Statement of Financial Affairs Debtor states he is operating two sole proprietorships – "Hillside Place II" and "JT Evergreen Care Home." Dckt. 50 at 8.

Review of Claims Filed

The Internal Revenue Service has filed Proof of Claim No. 1 in the amount of (\$219,253.24). Of this (\$123,486) is asserted to be secured, (\$90,427.71) as unsecured priority, and the balance as general unsecured. The Internal Revenue Service Claims are for:

FICA and FUTA taxes for 2008 through 2013 totaling (\$123,496.79).....Secured

Income, FICA, and FUTA taxes for 2014 through 2019 totaling (\$90,427.71).....Priority

FICA taxes for 2014 totaling (\$5,328.74)....General Unsecured

Deutsche Bank National Trust Company, as Trustee (“DBNT”), has filed Proof of Claim No. 5 asserting a secured claim for (\$427,918.45). For this claim there is an asserted pre-petition arrearage of (\$95,027.81). The collateral securing this property is the 103 Michael Court Property. On Schedule A/B Debtor states this property to have a value of \$415,000. Dckt. 48. At 4. Debtor describes this property as:

Debtor's investment property located at: 103 Michael Ct, Vallejo, CA 94591;

Property description: A 1,752 sq ft single family home w/ 4br, 2ba, situated on 0.31AC of land; Property title vested solely in Debtor's name as a Fee Simple interest; Current fair market value determined from verbal Broker Price Opinion of Broker/Realtor Ramon L. Gil (CA BRE No. 0633530) on April 1, 2019. Property was upgraded to 7 bedrooms, 3.5 baths, with permits for the Care Home

U.S. Bank, N.A., as Trustee, has filed Proof of Claim No. 6 asserting a secured claim for (\$232,594.45). For this claim there is an asserted pre-petition arrearage of (\$29,458.31). The collateral securing this claim is 115 Michael Court Property. On Schedule A/B Debtor states the value of this property to be \$400,000. *Id.* at 5. Debtor describes this property as:

Debtor's primary residence located at: 115 Michael Ct, Vallejo, CA 94591;

Property description: A 2,155 sq ft single family home w/ 5br, 3.5ba, situated on 0.170AC of land; Property title vested solely in Debtor's name as a Fee Simple interest; Current fair market value determined from verbal Broker Price Opinion of Broker/Realtor Ramon L. Gil (CA BRE No. 0633530) on April 1, 2019.

At the Status Conference **XXXXXXXXXXXXXXXXXXXX**

MAY 29, 2019 STATUS CONFERENCE

STATUS CONFERENCE SUMMARY

This Chapter 11 case was filed by the Debtor, Juanito Copero, on April 25, 2019. Debtor had a prior Chapter 13 case that was filed on June 11, 2018, and February 11, 2019. 18-23639. The court extended the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B) by order filed on May 10, 2019.

On May 16, 2019, counsel for the Debtor in Possession filed a Status Report. Dckt. 31. Income for the Debtor comes from operating “care homes for the elderly in Vallejo, California, and have average income of \$16,349.78 a month.

Debtor suffered financially from a 2013 divorce. It is explained that the Debtor’s Chapter 13 case was dismissed due to his loss of income to fund the plan when he had to travel overseas to assist family and he had to hire extra staff to run the business.

At the Status Conference counsel for the Debtor in Possession reported that the meeting with the U.S. Trustee was concluded on May 29, 2019.

MONTHLY OPERATING REPORT SUMMARY

The bankruptcy case being filed on April 25, 2019 and this status conference being conducted on May 29, 2019, there has not been a monthly operating report filed for the several days in April.

11. [19-21976-E-7](#) **CONQUIP, INC.**
[19-2048](#)

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
4-3-19 [1]

ZIELENSKI V. CONQUIP, INC. ET AL

Trustee's Atty: J. Russell Cunningham
Plaintiff's Atty: Port J. Parker
Defendant's Atty:
 Jennifer E. Duggan [Conquip, Inc.]
 unknown [Yuquing Cao; Matthew Lind]

Adv. Filed: 4/3/19
Answer: none

Nature of Action:
Determination of removed claim or cause

Notes:
Continued from 6/19/19. Parties requested a further continuance to allow them to conclude this matter and focus on the other issues in this case.

The Status Conference is XXXXXXXXXXXXXXXXXXXXXXXXXXXX

AUGUST 21, 2019 STATUS CONFERENCE

No updated status reports have been filed by an of the Parties in this Adversary Proceeding.

At the Status Conference XXXXXXXXXXXXXXXXXXXX

JUNE 19, 2019 STATUS CONFERENCE

On April 3, 2019, J. Michael Hopper, the Plaintiff-Trustee, filed a Notice of Removal, of an action from the California Superior Court. The Notice of Removal states that claims of the Debtor were asserted in the State Court Complaint by Adam Zielenski, the principal of the Debtor, as derivative claims.

A copy of the State Court Complaint is attached as Exhibit A to the Complaint. Dckt. 1 at 3. The State Court Complaint has a filing date of November 6, 2017. The Debtor commenced its bankruptcy case on March 29, 2019. The title to the State Court Complaint lists the Derivative Claims of the Debtor as:

1. Breach of Fiduciary Duty;
2. Abuse of Control;
3. Corporate Waste; and
4. Unjust Enrichment

The Status Conference was continued to June 19, 2019, at the request of the Plaintiff-Trustee. No Status Report has been filed by the Plaintiff-Trustee.

At the Status Conference, counsel for the Plaintiff-Trustee stated that based on the ongoing discussions this Adversary Proceeding is anticipated to be dismissed without prejudice.

A further continuance was requested to allow the parties to so conclude this matter and focus on the other issues in the case.

12. [19-20284-E-7](#) DUANE/CAROL ZANON
19-2045

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
4-1-19 [1]

ZANON ET AL V. U.S. DEPARTMENT
OF EDUCATION
12 Thru 14

Plaintiff's Atty: David N. Chandler
Defendant's Atty: unknown

Adv. Filed: 4/1/19
Answer: none

Nature of Action:
Dischargeability - student loan

Notes:

Continued from 6/19/19. On 6/4/19 the Clerk issued a Reissued Summons, for which the Status Conference in this Adversary Proceeding was reset to 2:00 p.m. on 8/21/19.

The Status Conference is XXXXXXXXXXXXXXXXXX

AUGUST 21, 2019 STATUS CONFERENCE

The Reissued Summons was issued by the Clerk of the Court on June 4, 2019. Dckt. 10. A Certificate of Service for the Reissued Summons, Complaint, and Notice of Status Conference was filed on June 10, 2019. Dckt. 12.

No answer or other responsive pleading has been filed. No request for entry of default has been made by Plaintiff.

At the Status Conference XXXXXXXXXXXXXXXXXX

JUNE 19, 2019 STATUS CONFERENCE

On June 3, 2019, Plaintiff filed a request for an "Alias Summons," the stated reason being "additional service addresses." Dckt. 10.

On June 4, 2019, the Clerk issued a Reissued Summons, for which the Status Conference in this Adversary Proceeding was reset to 2:00 p.m. on August 21, 2019.

MAY 29, 2019 STATUS CONFERENCE

The Status Conference is continued to 2:00 p.m. on June 19, 2019, as stated in the Reissued Summons. Dckt. 7.

SUMMARY OF COMPLAINT

Duane Zanon and Carol Zanon (Plaintiff-Debtor) filed a Complaint to Determine the Dischargeability of student loan debt. Dckt. 1. The allegations in the Complaint are summarized as follows:

1. Plaintiff-Debtor has guaranteed the student loan of their son (the primary obligor).
2. Plaintiff-Debtor is of retirement age and cannot maintain a minimal standard of living if obligated to pay the student loan obligation.
3. Plaintiff-Debtor has incurred significant financial obligations/expenses in addressing a health issue concerning their son. Their son is unable to pay the student loan.
4. Plaintiff-Debtor's sole source of income is retirement payments and Social Security.
5. Plaintiff-Debtor projects no significant increase in income in the foreseeable future.

SERVICE OF COMPLAINT

On May 1, 2019, Plaintiff-Debtor filed a Certificate of Service attesting to the service of the Complaint and Reissued Summons on May 1, 2019. Dckt. 8. The Reissued Summons reset the Status Conference date for 2:00 p.m. on June 19, 2019. Dckt. 7.

SUMMARY OF ANSWER

No Answer has been filed.

13. [19-20284-E-7](#) DUANE/CAROL ZANON
[19-2046](#)

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
4-1-19 [1]

**ZANON V. EDUCATIONAL CREDIT
MANAGEMENT CORPORATION**

Plaintiff's Atty: David N. Chandler

Defendant's Atty:

Barry H. Spitzer [Educational Credit Management Corporation]

Patricia L. Wheeler [Nelnet]

With Nelnet dismissed with prejudice 6/13/19 [Dckt 17]

Adv. Filed: 4/1/29

Answer:

5/1/19 Educational Credit Management Corporation

6/3/19 Nelnet

Nature of Action:

Dischargeability - student loan

Notes:

Continued from 6/19/19 pursuant to stipulation of the Parties [Dckt 19]

The Status Conference is ~~XXXXXXXXXXXXXXXXXX~~

AUGUST 21, 2019 STATUS CONFERENCE

No status reports have been filed by any of the Parties to this Adversary Proceeding.

At the Status Conference, ~~XXXXXXXXXXXXXXXXXX~~

MAY 29, 2019 STATUS CONFERENCE

The Status Conference is continued to 2:00 p.m. on June 19, 2019, as stated in the Reissued Summons. Dckt. 7.

SUMMARY OF COMPLAINT

Duane Zanon and Carol Zanon (Plaintiff-Debtor) filed a Complaint to Determine the Dischargeability of student loan debt. Dckt. 1. The allegations in the Complaint are summarized as follows:

1. Plaintiff-Debtor has guaranteed the student loan of their son (the primary obligor).

2. Plaintiff-Debtor is of retirement age and cannot maintain a minimal standard of living if obligated to pay the student loan obligation.
3. Plaintiff-Debtor has incurred significant financial obligations/expenses in addressing a health issue concerning their son. Their son is unable to pay the student loan.
4. Plaintiff-Debtor's sole source of income is retirement payments and Social Security.
5. Plaintiff-Debtor projects no significant increase in income in the foreseeable future.

SUMMARY OF ANSWER

On May 1, 2019, Educational Credit Management Corporation, ("ECMC Defendant") filed an Answer (Dckt. 8) asserting that it is the real party in interest in this Adversary Proceeding in the place of the NELNET named defendant. The Answer admits and denies specific allegations in the Complaint.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- a. Plaintiff-Debtor Duane Zanon alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1328 (which appears to be a clerical error for § 1334), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 1, 2, Dckt. 1. In its Answer, Defendant-ECMC admits that the bankruptcy court has jurisdiction over this Adversary Proceeding and expressly consents to the bankruptcy judge issuing final orders and the judgment in this Adversary Proceeding. Answer ¶ 2, Dckt. 8. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this is 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 -----, **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 -----, **2019**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- **p.m. on -----, 2019**.

**ZANON ET AL V. EDUCATIONAL
CREDIT MANAGEMENT CORPORATION**

Plaintiff's Atty: David N. Chandler

Defendant's Atty:

Barry H. Spitzer [Educational Credit Management Corporation]

Dennis Winters [Navient Solutions, LLC]

Adv. Filed: 4/1/19

Answer:

4/25/19 [Navient Solutions, LLC]

6/17/19 [Educational Credit Management Corporation]

Nature of Action:

Dischargeability - student loan

Notes:

Continued from 6/19/19 pursuant to stipulation of the Parties [Dckt 14]

The Status Conference is ~~XXXXXXXXXXXXXXXXXX~~

SUMMARY OF COMPLAINT

Duane Zanon and Carol Zanon (Plaintiff-Debtor) filed a Complaint to Determine the Dischargeability of student loan debt. Dckt. 1. The allegations in the Complaint are summarized as follows:

1. Plaintiff-Debtor has guaranteed the student loan of their son (the primary obligor).
2. Plaintiff-Debtor is of retirement age and cannot maintain a minimal standard of living if obligated to pay the student loan obligation.
3. Plaintiff-Debtor has incurred significant financial obligations/expenses in addressing a health issue concerning their son. Their son is unable to pay the student loan.
4. Plaintiff-Debtor's sole source of income is retirement payments and Social Security.
5. Plaintiff-Debtor projects no significant increase in income in the foreseeable future.

SUMMARY OF ANSWER

Navient Solutions, LLC ("Navient Defendant") has filed its Answer admitting and denying specific allegations in the Complaint. Answer, Dckt. 8. Navient also states that the student loan which is the subject of the Complaint is being transferred to the Educational Credit Management Corporation.

Navient Defendant has been dismissed from the Adversary Proceeding, with Educational Credit Management Corporation substituted in its place as the defendant in this Adversary Proceeding. Order, Dckt. 15.

Educational Credit Management Corporation (“Defendant-ECMC”) has filed its answer admitting and denying specific allegations in the Complaint. Dckt. 20.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Debtor Duane Zanon alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1328 (which appears to be a clerical error for § 1334), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 1, 2, Dckt. 1. In its Answer, Defendant-ECMC admits that the bankruptcy court has jurisdiction over this Adversary Proceeding and expressly consents to the bankruptcy judge issuing final orders and the judgment in this Adversary Proceeding. Answer ¶ 2, Dckt. 20.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- a. Plaintiff-Debtor Duane Zanon alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1328 (which appears to be a clerical error for § 1334), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 1, 2, Dckt. 1. In its Answer, Defendant-ECMC admits that the bankruptcy court has jurisdiction over this Adversary Proceeding and expressly consents to the bankruptcy judge issuing final orders and the judgment in this Adversary Proceeding. Answer ¶ 2, Dckt. 20. **To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this is 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 -----, **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 -----, **2019**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- **p.m. on -----, 2019**.

15. [13-23599-E-13](#) [19-2070](#) IVAN MONTELONGO

STATUS CONFERENCE RE:
COMPLAINT
6-3-19 [1]

MONTELONGO V. ABINANTI

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: unknown

Adv. Filed: 6/3/19
Answer:

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

Notes:
Plaintiff's Status Statement filed 8/14/19 [Dckt 8]

The Status Conference is XXXXXXXXXXXXXXXXXX

AUGUST 21, 2019 STATUS CONFERENCE

Plaintiff-Debtor filed a Status Report on August 14, 2019. Dckt. 8. Plaintiff-Debtor reports that while no answer has been filed, Defendant has met with Plaintiff-Debtor's counsel concerning this Adversary Proceeding. Plaintiff-Debtor requests the court continue the Status Conference for thirty days to allow settlement negotiations to continue. Alternative, Plaintiff-Debtor requests that the court set an expedited discovery schedule for this Adversary Proceeding - one in which there is no defendant who has filed an answer.

The court will not set a unilateral discovery schedule. If no answer is filed, Plaintiff-Debtor may request the entry of a default and then seek the entry of a default judgment.

At the Status Conference XXXXXXXXXXXXXXXXXX

SUMMARY OF COMPLAINT

Ivan Montelongo, the Plaintiff Chapter 13 Debtor ("Plaintiff-Debtor") has filed a Complaint to address a Second Deed of Trust that has not been reconveyed notwithstanding Plaintiff-Debtor completing his Chapter 13 Plan and the 11 U.S.C. § 506(a) valuation of Defendant's secured claim.

1. Plaintiff-Debtor owns the real property located on Skyway Drive ("Property"), which is asserted

to have had a value of \$170,000 when Plaintiff Debtor commenced his Chapter 13 case.

2. Owen Loan Servicing holds a claim in the amount of \$270,000 secured by the senior deed of trust recorded against the Property.
3. Defendant Joseph Abinanti has a promissory note in the amount of \$80,000 that is secured by a second deed of trust recorded against the Property.
4. Plaintiff-Debtor's confirmed Chapter 13 Plan provides that the second deed of trust will be void and stripped upon completion of the Chapter 13 Plan. Valuation of the claim was made as provided in 11 U.S.C. § 506(a).

In the First Cause of Action the Plaintiff-Debtor seeks no affirmative relief. Rather, Plaintiff-Debtor merely seeks a declaration that the Second Deed of Trust has been satisfied (though it is unclear how a security interest can be "satisfied") and that the Second Deed of Trust is of no force and effect. Plaintiff-Debtor also requests an informative declaration that the debt has been discharge and the security interest voided. It is unclear what Plaintiff-Debtor will then do with a declaration between Plaintiff-Debtor and Defendant. ^{FN. 1}

FN. 1. It does not appear that mere declaratory relief of what would occur in the future based upon alternative actions that the parties could elect once the court has entered a declaration of their existing rights is proper. Rather, it appears that Plaintiff-Debtor should be seeking to enforce his rights and interests.

In the Second Cause of Action Plaintiff-Debtor does seek to enforce his rights and interests in the Property asking this court to "void" the Second Deed of Trust and issue a judgment so providing that may be recorded with the County Recorder.

In the Third Cause of Action Plaintiff-Debtor states his claim for affirmative relief in the form of statutory and actual damages and attorney's fees pursuant to California Civil Code § 2941(b)(1) based on Defendant's failure to reconvey the deed of trust which no longer secures any obligation after the completion of the Chapter 13 Plan.

In the Fourth Cause of Action Plaintiff-Debtor asserts a claim for breach of contract (Second Deed of Trust) for Defendant's failure to reconvey the Second Deed of Trust.

Plaintiff-Debtor also requests statutory and contractual attorney's fees and costs. .

SUMMARY OF ANSWER

Joseph Abinanti, the named defendant ("Defendant") has not filed an answer.

FINAL BANKRUPTCY COURT JUDGMENT

The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C.

§ 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(K), (L). Complaint, ¶ 3, Dckt. 1.