

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

September 10, 2020 at 2:00 p.m.

1. **18-90029-E-11** **JEFFERY ARAMBEL** **STATUS CONFERENCE RE:**
20-9008 **COMPLAINT**
ARAMBEL V. LBA RV-COMPANY **7-16-20 [1]**
XXVII, LP ET AL

Plaintiff's Atty: Michael St. James
Defendant's Atty:
Michael R. Pinkston [LBA RV-Company XXVII, LP]
Unknown [Commonwealth Land Title Company]

Adv. Filed: 7/16/20
Answer: 8/20/20 [LBA RV-Company XXVII, LP]

Counterclaim: 8/20/20 [LBA RV-Company XXVII, LP]
Answer: none

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

Notes:
[MRP-1] LBA RV-Company XXVII, LP's Partial Motion to Dismiss Complaint for Relief Relating to Holdback Agreement filed 8/20/20 [Dckt 11]

Joint Discovery Plan filed 9/2/20 [Dckt 20]

The Status Conference is ~~XXXXXXXXXX~~

SEPTEMBER 10, 2020 STATUS CONFERENCE

SUMMARY OF COMPLAINT

Jeffery Arambel, the Plaintiff-Reorganized Debtor under the confirmed Chapter 11 Plan in his bankruptcy case, filed a Complaint (Dckt. 1), which claims for relief include, as summarized by the court:

A. In April 2017, prior to the commencement of Plaintiff's Chapter 11 bankruptcy case, Plaintiff and LBA RV-Company XXVII, LP ("Defendant") entered into a Purchase and Sale Agreement ("Agreement") for Defendant to purchase approximately 56.5 acres of land located at Rogers Road, California.

B. Following the sale closing, a portion of the sales proceeds in the amount of \$750,000.00 was held in escrow (the "Holdback").

C. The Agreement provided that disbursement of the sales proceeds depended on the extension of a Large Industrial Investment Incentive Program (the "Incentive Program"), which provides for the reimbursement of certain costs to developers of industrial properties in the County.

D. The Incentive Program was set to expire on or about July 2017.

E. The "Escrow Holdback Agreement" provides that:

1. If prior to December 31, 2017 the Incentive Program was not extended in substantially the same form for an additional five years, the Holdback would be disbursed to Defendant.
2. If the Incentive Program was extended, the Holdback is to be disbursed as follows:
 - a. \$37,500.00 to Cushman and Wakefield, Plaintiff's Broker; and
 - b. \$712,500.00 to MetLife.

F. The Incentive Program was timely extended for an additional five years.

G. Defendant was "resistant" to releasing the Holdback as provided in the Agreement.

1. Defendant in an email confirmed that the parties had orally agreed to release \$637,500 of the Holdback to Plaintiff, for disbursement to MetLife, and Defendant to retain the balance.
2. Plaintiff confirmed, as requested by Defendant, in a reply email that the Parties had agreed to such terms.

H. The Parties documented the agreement in a written Amendment to Escrow Holdback Agreement dated January 29, 2018. A copy is provided as Exhibit C to the Complaint.

I. Under the terms of the Amendment to the Escrow Holdback Agreement, MetLife was to be disbursed \$615,000.00 from the Holdback in March 2018.

J. Plaintiff has demanded that the monies in the Holdback be released, but Defendant has refused.

K. Claims for Relief stated in the Complaint are identified as:

1. First Claim for Relief - Breach of Contract
2. Second Claim for Relief - Promissory Estoppel
3. Third Claim for Relief - Unjust Enrichment
4. Fourth Claim for Relief - Breach of Covenant of Good Faith and Fair Dealing
5. Fifth Claim for Relief - Declaratory Judgment
 - a. Court notes that it does not appear that there are any potential future events for which declaratory relief is appropriate, but that the alleged breaches have occurred and the alleged wrongful conduct has fully ripened such that an actual judgment is proper. ^{FN. 1}
6. Sixth Claim for Relief - Declaratory Judgment for Attorney's Fees
 - a. As noted above, it appears that the claims, if warranted, have ripened so that an actual award of attorney's fees is proper, and not merely a declaration that if some events occur in the future then in some future action there would be a right to attorney's fees.

It does not appear that the Complaint seeks an order for the disbursement of the Holdback monies being held in escrow. Though Commonwealth Land Title Company is named as a defendant, no claims for relief against Commonwealth are stated in the Complaint. (As discussed below, Plaintiff and Commonwealth have already addressed this by a Stipulation.)

FN. 1. Declaratory relief is an equitable remedy distinctive in that it allows adjudication of rights and obligations on disputes regardless of whether claims for damages or injunction have arisen. See Declaratory Relief Act, 28 U.S.C. § 2201. "In effect, it brings to the present a litigable controversy, which otherwise might only be tried in the future." *Societe de Conditionnement v. Hunter Eng. Co., Inc.*, 655 F.2d 938, 943 (9th Cir. 1981). The party seeking declaratory relief must show (1) an actual controversy and (2) a matter within federal court subject matter jurisdiction. *Calderon v. Ashmus*, 523 U.S. 740, 745 (1998). There is an implicit requirement that the actual controversy relate to a claim upon which relief can be granted. *Earnest v. Lowentritt*, 690 F.2d 1198, 1203 (5th Cir. 1982).

28 U.S.C. §2201, provides:

§ 2201. Creation of remedy

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty

proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

The court may only grant declaratory relief where there is an actual controversy within its jurisdiction. *Am. States Ins. Co. v. Kearns*, 15 F.3d 142, 143 (9th Cir. 1994). The controversy must be definite and concrete. *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240-41 (1937). However, it is a controversy in which the litigation may not yet require the award of damages. *Id.*

SUMMARY OF ANSWER

LBA RV-Company XXVII, LP, “Defendant,” has filed an Answer and Counterclaim (Dckt. 16) which the court summarizes as follows:

A. The Agreement for the sale of the Property was between Plaintiff and Defendant’s predecessor in interest.

The copy of the Escrow Holdback Agreement provided as Exhibit A to the Complaint identified the entity entering into the Agreement for the sale of the Property with Plaintiff to be LBA Realty, LLC. Dckt. 6 at 4.

B. Defendant asserts that the Investment Incentive Program was not extended for an additional five years in “substantial conformance” to the program as it existed when the Agreement was entered into.

C. Prior to the disbursement of the Holdback, Plaintiff filed bankruptcy on January 17, 2018. Plaintiff did not inform Defendant that a bankruptcy case had been filed and Defendant is not listed as a creditor.

D. On January 29, 2018, after the bankruptcy case was filed, Plaintiff and Defendant entered into amendments to the Agreement to sell the property.

1. These amendments included providing “only \$112,500 of the Holdback Funds to [Defendant].”

E. To induce Defendant to make these Amendments, Plaintiff “fraudulently concealed from [Defendant] the material fact that [Plaintiff] had filed for bankruptcy protection.”

F. Defendant learned of Plaintiff's bankruptcy case only "after [Defendant] had been unwittingly induced by [Plaintiff] into the amendments...."

G. Pursuant to 11 U.S.C. § 363(b)(1), Plaintiff was required to give notice to his creditors and the Bankruptcy Court of his intent to enter into the "Amended Escrow Agreement, Fifth Amendment to PSA and ROFR Amendment."

H. Plaintiff did not obtain bankruptcy court approval as required by 11 U.S.C. § 361(b)(1), and thereby the Amended Escrow Agreement, Fifth Amendment to PSA, and the ROFR Amendment are void and unenforceable.

I. The extension of the Investment Incentive Program is stated not to be in substantial conformance as follows:

28. Stanislaus County did not extend the Incentive Program prior to December 31, 2017, in "substantial conformance to its current form (including, without limitation, with respect to the amount of reimbursement from the County) for an additional five (5) year period" because, among other reasons:

(1) the program previously had provided for reimbursements and discounts from the County up to a maximum of 75% of the County's fees, whereas the reinstated program reduced available reimbursements and discounts to a maximum of 60% of the County's fees; and

(2) the Incentive Program was not extended for at least an additional five (5) year period.

Answer, ¶ 28; Dckt. 16 (the text copied, with the court altering the format of the paragraph).

J. Defendant would not have entered into the amendments if Plaintiff had disclosed that he had filed bankruptcy.

K. It is alleged that Plaintiff did not serve motion filed in the bankruptcy case of proposed sales of properties or notices of the sales so that Defendant could exercise its rights of first refusal relating to properties Plaintiff was attempting to sell.

L. Defendant learned of the bankruptcy, filed a claim, and was given notice of the proposed sales.

M. Plaintiff is alleged to have breached its agreement by the sales occurring in the bankruptcy court for which there is an open process by which overbids are accepted. Defendant alleges that this prejudiced Defendant in having the right of first refusal as to any overbids presented in open court.

N. The Counterclaim filed by Defendant seeks the following relief:

1. Counterclaim Count I - Declaratory Judgment that the Amended Escrow Agreement and Right of First Refusal are Void, that the Original Holdback Agreement is binding, and the Holdback monies belong to Defendant.
 - a. As discussed above, it appears that the time for a “declaratory judgment” has passed and the time for a judgment determining the rights and obligations of the parties has ripened.
2. Counterclaim Count II - Intentional Fraud and Deceit against Plaintiff
 - a. Concealment of the bankruptcy case having been filed when Plaintiff was inducing Defendant entering into the amendments was actionable fraud.
3. Counterclaim Count III - Turnover of Holdback Monies to Defendant.

STIPULATION TO INTERPLEAD MONIES

On September 8, 2020, Plaintiff, Defendant, and Commonwealth Land Title Company filed a Stipulation (Dckt. 21) agreeing that Commonwealth may deposit the \$750,000.00 of Holdback monies with the court, and then dismissed from this Adversary Proceeding.

MOTION TO DISMISS FILED BY DEFENDANT

Defendant filed a Motion to Dismiss on August 20, 2020. Dckt. 11. The Motion seeks to dismiss all Claims for relief except the Fifth Claim for Declaratory Relief re Holdback Agreement and the Sixth Claim for Declaratory Relief re Attorney’s Fees. The grounds for dismissal are summarized as:

A. First Claim for Relief:

1. The Amendments are void due to Plaintiff violating 11 U.S.C. §§ 362(a) and 363(b)(1).
2. The email exchange on the day before the bankruptcy case was filed does not meet the requirements of the statute of frauds.

B. Second Claim for Relief:

1. Promissory Estoppel applies only in the absence of consideration.
2. Defendant already had the right of first refusal, so the extension did not give it any additional benefit.

C. Third Claim for Relief:

1. Because Plaintiff alleges a valid and enforceable contract, the claim for Unjust Enrichment cannot stand.

2. Unjust Enrichment may lie only when an entity obtains a benefit to which it is not entitled. No benefit obtained by Defendant is alleged.

JOINT DISCOVERY PLAN

On September 2, 2020, the Plaintiff and Defendant filed their Joint Discovery Plan. Dckt. 20. The court has incorporated the requested dates and deadlines in the schedule below.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Jeffery Arambel, the Reorganized Debtor, alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334(b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (H), and O. Further, Plaintiff expressly consents that the bankruptcy judge may issue all final orders and judgment in this Adversary Proceeding. Complaint ¶¶ 5, 6, 7; Dckt. 1. In the Answer, Defendant LBA RV-Company XXVII, LP admits the allegations of jurisdiction and core proceedings. Defendant further expressly consents to the bankruptcy judge issuing all final orders and judgment in this Adversary Proceeding. Answer, ¶¶ 7, 8, 9; Dckt. 16. **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 Adversary Proceeding are “related to” matters, the parties confirmed on the record at the Status Conference to this bankruptcy judge 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.**

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- a. Plaintiff Jeffery Arambel, the Reorganized Debtor, alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334(b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (H), and O. Further, Plaintiff expressly consents that the bankruptcy judge may issue all final orders and judgment in this Adversary Proceeding. Complaint ¶¶ 5, 6, 7; Dckt. 1. In the Answer, Defendant LBA RV-Company XXVII, LP admits the allegations of jurisdiction and core proceedings. Defendant further expressly consents to the bankruptcy judge issuing all final orders and judgment in this Adversary Proceeding. Answer, ¶¶ 7, 8, 9; Dckt. 16. **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 Adversary Proceeding are “related to” matters, the parties confirmed on the record at the Status Conference to this bankruptcy judge 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.**
- b. Initial Disclosures shall be made on or before **September 17, 2020**.
- c. Expert Witnesses shall be disclosed on or before -----, **2020**, and Expert Witness Reports, if any, shall be exchanged on or before -----, **2020**.
- d. Discovery closes, including the hearing of all discovery motions, on -----, **2020**.

September 10, 2020 at 10:00 a.m.

e. Dispositive Motions shall be heard before -----, 2021.

f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2021.

2. [12-93049-E-11](#) **MARK/ANGELA GARCIA** **CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
11-30-12 [1]**

Debtors' Atty: Mark J. Hannon

Notes:

Continued from 5/14/20

Operating Reports filed: 5/19/20 [Sep 2019]; [Dec 2019]; [Mar 2020]

[GRF-11] Third Interim Application for Compensation of Gary R. Farrar, Plan Administrator filed 6/23/20 [Dckt 1119]; Order granting filed 8/7/20 [Dckt 1125]

**The Post-Confirmation Status Conference is continued to 2:00 p.m.
on XXXXXXXXXXXX**

**SEPTEMBER 10, 2020 POST-CONFIRMATION
STATUS CONFERENCE**

On September 6, 2020, Gary Farrar, the replacement Plan Administrator, filed his Status Report #11. Dckt. 1126. The Plan Administrator reports that his computation is that \$23,853.11 is required to complete the required distributions under the Confirmed Plan. In addition, monthly payments to USFI of \$3,000 have not been made beginning in March 2019, for which the Plan Administrator computes there is a total of \$60,000 unpaid to USFI.

The Plan Administrator reports that Debtor and Debtor's counsel represent that the stage has been set for a settlement with USFI, but none has been presented. The court directed the Plan Administrator to confirm whatever arrangement was being developed, but neither the Debtor nor USFI have responded.

The Plan Administrator further reports that the following amounts are in default and unpaid by Debtor:

1. Approved Plan Administrator Fees.....\$ 5,160;
2. Approved Fees for Coleman & Horowitz.....\$26,436.19; and
3. US Trustee Fees.....\$ 975.00.

September 10, 2020 at 10:00 a.m.

Conference, the court will consider dismissal without prejudice of this Adversary Proceeding if the complaint has not been timely served, as well as whether this appears to be an action in which the Plaintiff-Debtor is seeking to asserts pre-petition claims and rights that are property of the bankruptcy estate

The Complaint is styled as a Counter Complaint for Indemnity under the California Code of Civil Procedure and injunctive relief for renewal of judgment. Dckt. 1.

No Certificate of Service for a summons and complaint has been filed by Plaintiff-Debtor Thomas Swartz.

On August 25, 2020, in this Adversary Proceeding Plaintiff-Debtor filed a pleading titled:

Case No.: 20-90373 DEBTOR THOMAS P. SWARTZ'S
OBJECTION TO CREDITORS ACTION TAKEN ON
NOTICE OF FILING REPORT OF NO DISTRIBUTION AND
ORDER FIXING DEADLINE TO OBJECT, PLAINTIFF'S
AMENDED ADVERSARY COMPALINT [sic] for
INDEMNITY UNDER THE PROVISIONS of [CCP Sections
428.10, 428.20] & f MONETARY, DECLARATORY, &
INJUNCTIVE RELIEF FROM THE RENEWAL OF
JUDGMENT filed on January 2,2020 and PROVISIONS, of
CALIFORNIA CIVIL CODE SECTION 52.1 (a) (b) and
Section 51.7

Dckt. 13 at 1. There are no motions or anything filed in this Adversary Proceeding to which this is a response. This appears to be a re-styling of the Complaint.

On May 25, 2020, the above document appears to have been filed a second time. Dckt. 14.

Federal Rule of Civil Procedure 4(m), as incorporated into Federal Rule of Bankruptcy Procedure 7004, expressly addresses a situation where a complaint is filed but not served, providing:

(m) Time Limit for Service. If a **defendant is not served within 90 days after the complaint is filed**, the **court**—on motion or on its own after notice to the **plaintiff**—**must dismiss the action without prejudice** against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).

Fed. R. Civ. P. 4(m) (emphasis added). The ninety day period from the June 9, 2020 filing of the Complaint expired on September 9, 2020.

At the hearing, Plaintiff explained **XXXXXXXXXX**

AUGUST 6, 2020 STATUS CONFERENCE

This Adversary Proceeding was commenced on June 9, 2020. No certificate of service has been filed and no answer or other responsive pleadings has been filed.

The “Complaint” is titled as a “Counter Complaint” and appears to be a pleading brought over from another court proceeding.

At the Status Conference, the Court addressed with the Plaintiff significant pleading issues in the Counter Complaint, the reasons for the filing of the Chapter 7 case, the application of 11 U.S.C. § 541 creating property of the estate (including claims against third-parties that existed prior to the commencement of the case), and the requirement in Federal Rule of Civil Procedure 4(m) requiring the complaint to be served within 90 days of filing (and there being no service as of sixty-one days after the complaint was filed).

Debtor's Atty: David C. Johnston

Notes:

Continued from 7/16/20

The Status Conference is XXXXXXXXXXXX

SEPTEMBER 10, 2020 CONTINUED STATUS CONFERENCE

Debtor commenced this voluntary Chapter 11 case on August 27, 2020. No updated Status Report has been filed by the Debtor in Possession.

On September 9, 2020, the U.S. Trustee filed a Motion to Dismiss or Convert this case. Dckt. 58. The grounds for such relief stated in the Motion are summarized as follows:

1. The Debtor failed to file a Monthly Operating Report for July 2020.
2. A review of the Monthly Operating Report for June 2020 (Dckt. 55) discloses that the estate's receipts during this case total \$278,654, the disbursements total (\$239,081), and the estate has \$16,455 on hand at the end of June 2020. Motion, ¶ 3; Dckt. 58.
3. Debtor has failed to file a plan by the 300-day deadline that applies to small business debtors. *Id.*, ¶ 4. See Petition, section 8; Dckt. 1 at 2.
4. Dismissal of the case, as opposed to conversion, is sought by the U.S. Trustee, asserting that there do not appear to be significant unencumbered assets and the Internal Revenue Service is the only significant dollar amount creditor. *Id.*, ¶ 5.

At the Status Conference, Debtor in Possession's Counsel reported XXXXXXXXXXXX

APRIL 2, 2020 STATUS CONFERENCE

The Debtor in Possession has not provided the court with an updated status report. During the seven months that the Bankruptcy Estate has been operating the Debtor's business, the Estate has seen a net increase of \$35,790 from such operations.

At the February 6, 2020 Status Conference, counsel for the Debtor in Possession reported that the exclusivity period in this small business case did not expire until February 23, 2020, and the Debtor in Possession was intending to get a plan on file by that time.

Counsel for the Debtor in Possession reported that the business is continuing to operate, but the main referral source cabinet company has closed (not an essential business).

FEBRUARY 6, 2020 STATUS CONFERENCE

On February 3, 2020, the Debtor in Possession filed an Updated Status Report. Dckt. 38. This bankruptcy case was filed on August 27, 2019, and was designated by the Debtor as a “small business debtor” as defined in 11 U.S.C. § 101(51D). One hundred and sixty-three (163) days have passed since this case was commenced by the Debtor.

The Debtor in Possession reports that it was originally going to file a plan on or before December 25, 2019, but has determined that in a small business case the exclusivity period will not end until February 23, 2020, so the Debtor in Possession elected to not file and start prosecuting a plan by December 25, 2019 as earlier represented.

Looking at the Docket, there appears that little is being done by the Debtor in Possession to prosecute this case. Other than Monthly Operating Reports being filed, no motions or other contested matters are being prosecuted by the Debtor in Possession.

The Internal Revenue Service has filed Proof of Claim No. 2 in the amount of (\$147,365.34), of which (\$21,043.00) is secured by a statutory lien and (\$126,322.34) of which (\$110,899.29) is asserted as a priority claim. Though the Internal Revenue Service asserts a secured claim in all of the Debtor’s property as of the commencement of this case, the court does not see either a stipulation to use cash collateral or an order authorizing the use of cash collateral.

At the Status Conference, counsel for the Debtor in Possession reported that this is a “tax case.” Counsel has been working with the IRS concerning the claim.

6. [19-90122-E-11](#) MIKE TAMANA FREIGHT CONTINUED STATUS CONFERENCE
LINES, LLC RE:
VOLUNTARY PETITION
2-8-19 [1]
DEBTOR DISMISSED: 8/6/20

Final Ruling: No appearance at the September 10, 2020 Status Conference is required.

Debtor's Atty: Reno F.R. Fernandez; Daniel E. Vaknin; Alexander K. Lee

Notes:

[MF-36] Order granting Debtor's Motion to Dismiss filed 8/6/20 [Dckt 547]

The Bankruptcy Case having been dismissed (Order, Dckt. 547), the Status Conference is concluded and removed from the Calendar.