

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

October 2, 2014 at 2:30 p.m.

1. [13-91701-E-7](#) **MARVAIS WADEN AND SHAIMA** CONTINUED STATUS CONFERENCE RE:
[14-9021](#) **KAKAR** COMPLAINT
DAMON REED, GUARDIAN AD LITEM 5-30-14 [[1](#)]
FOR MINOR PAYTEN E. V. WADAN

Plaintiff's Atty: Kenneth M. Foley

Defendant's Atty: unknown

Adv. Filed: 5/30/14

Answer: none

Nature of Action:

Dischargeability - willful and malicious injury

Notes:

Continued from 8/28/14 to be heard in conjunction with order to show cause.

2. [13-91701-E-7](#) [14-9021](#) MARVAIS WADEN AND SHAIMA ORDER TO SHOW CAUSE
KAKAR RHS-1 8-28-14 [9]
DAMON REED, GUARDIAN AD LITEM
FOR MINOR PAYTEN E. V. WADAN

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Kenneth Foley, Debtor, Chapter 7 Trustee, other parties requesting special notice, and the Office of the United States Trustee on August 28, 2014. The court computes that 35 day's notice has been provided.

The Order to Show Cause was issued to have Plaintiffs, Kenneth Foley, show cause why the court should not dismiss this adversary proceeding for failure to prosecute.

The court's tentative decision is to discharge the Order to Show Cause.

On August 28, 2014, the court issues an Order to Show Cause why the court should not dismiss the adversary proceeding for failure to prosecute. Dckt. 9.

KENNETH FOLEY'S DECLARATION

Kenneth Foley, attorney for the Plaintiff, filed a declaration in response to the Order to Show Cause on September 17, 2014. In his response, Mr. Foley states that he filed the adversary on behalf of Payten Reed, a minor, because Mr. Foley had yet received relief from the automatic stay. Mr. Foley states that he was told in conversations that he had with the Debtors' attorneys that removing the stay was not a problem. To that end, Mr. Foley alleges that he sent a stipulation to Debtors' counsel, along with a Stipulation and Order, Notice of Motion for Approval of Stipulation and Declaration of Mr. Foley which he did not receive back the executed stipulation by Mr. Foyil or the Chapter 7 Trustee. Mr. Foley states that after consulting with a bankruptcy expert, Mr. Foley is now filing the Motion for Relief from Stay to be heard on October 2, 2014 at 10:00 a.m. in Department E. Mr. Foley states that since he does not anticipate any opposition on the Motion for Relief from Stay, Mr. Foley states that his intention is to dismiss the Adversary Proceeding upon receiving the court's order allowing Payten Reed to proceed in the State Court action, with the understanding she would be pursuing insurance proceeds only, and no personal judgment against the Debtors or their estate. The Motion for Relief from Stay is only being made in the individual

Debtor Action, Case No. 13-91707-E-7, but in Case No. 13-91297-E-7, the bankruptcy filed by the corporation, Ariana Avesta, Inc. Identical relief is sought in that action.

Mr. Foley continues by explaining that he has not practiced frequently in bankruptcy courts, the last time being in the 1980's. Mr. Foley states that the procedures have changed since his last appearance in a bankruptcy court. Mr. Foley states that, if the minor is not afforded the relief from the stay to pursue the insurance coverage, the minor's counsel would at that time request the opportunity to issue a Summons and serve the Debtors.

Mr. Foley apologizes to the court for any delay in his handling of the request for relief from stay has caused.

The Complaint filed in the State Court did pray for punitive damages because the dog who ripped off the Plaintiff's ear, or a portion thereof, had previously attacked another child. However, because there is insurance which does exist on behalf of the Debtors, Plaintiff believes it is in her best interest to pursue that recovery, and not pursue the Debtors personally. Mr. Foley requests that if the relief from stay is not allowed and the court believes Plaintiff's counsel has not been diligent, the Minor's counsel would request sanctions be imposed against the Minor's counsel, and not in any way prejudice the Minor's ability to seek damages from the Debtors' insurer.

OCTOBER 2, 2014 HEARING

At the hearing, -----

DISCUSSION

The court having granted Mr. Foley's Motion for Relief from Stay in the companion bankruptcy case, the court discharges the Order to Show Cause.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the case shall proceed in this court.

3. [13-91963-E-7](#) MICHELLE HOLTZINGER
[14-9008](#)
KEAGY V. HOLTZINGER

STATUS CONFERENCE RE: COMPLAINT
1-30-14 [1]

Plaintiff's Atty: Timothy T. Trujillo
Defendant's Atty: Thomas P. Hogan

Adv. Filed: 1/30/14
Answer: 3/14/14

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

Notes:

Status conference set by order of the court dated 6/17/14 [Dckt 29]; Status conference statements to be filed on or before 9/25/14

Modified deadlines for pretrial conference (set for 12/18/14):
Interrogatories, requests for admissions, production of documents on or before 6/15/14
Depositions on or before 7/15/14

Stipulation for Entry of Judgment filed 9/10/14 [Dckt 41]

Joint Status Conference Statement filed 9/25/14 [Dckt 43]

Settlement of Adversary Proceeding

The Parties filed a Joint Status Conference Statement on September 25, 2014. Dckt. 43. In it they report that this Adversary Proceeding has been resolved through the use of the Bankruptcy Dispute Resolution Program, for which Steven Altman served as the Resolution Advocate. The Stipulation was filed on September 10, 2014, Dckt. 41, which provides,

- A. The State Court Judgment (\$203,591.66 computed as of August 14, 2014) and the judgment in this Adversary Proceeding are nondischargeable pursuant to 11 U.S.C. § 523(a)(4).
- B. Plaintiff agrees to conditionally forgive \$88,591.66, and Plaintiff shall have judgment against Defendant and MMH Development, Inc. in the amount of \$115,000.00, which shall be paid on the terms and conditions set forth in the Settlement Agreement. This is referenced as the "Conditional Judgment."
- C. If the Defendant defaults on the "Stipulated Judgment" then Plaintiff is to "have judgment" for specified amounts.

At the Status Conference the Parties clarified the various judgments and specified that the judgment to be issued by the court in this Adversary Proceeding is **XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX**

4. [14-90473-E-7](#) ROBERT WOJTOWICZ AND
[14-9023](#) SHERRI HERTZIC-WOJTOWICZ
HERTZIC-WOJTOWICZ V. IRM
CORPORATION

STATUS CONFERENCE RE: COMPLAINT
7-11-14 [[1](#)]

Plaintiff's Atty: Shane Reich
Defendant's Atty: unknown

Adv. Filed: 7/11/14
Answer: none

Nature of Action:
Recovery of money/property

Notes:

SUMMARY OF COMPLAINT

The Complaint seeks to recover a "preferential transfer" from Defendant IRM Corporation. Plaintiff-Debtor asserts that within ninety days of the commencement of the bankruptcy case Defendant enforced a wage garnishment against the Plaintiff-Debtor, collecting \$932.30. Plaintiff-Debtor asserts that this is an avoidable transfer.

SUMMARY OF ANSWER

No Answer File.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding (not citing to any specific provision, but 28 U.S.C. § 157(b) (2) (F) identifies recovery avoiding and recovering preferences as a core proceeding). Complaint ¶ 1, Dckt. 1

5. [13-90888-E-7](#) MICHAEL/ANN BADIOU
[13-9027](#)
SENTRY SELECT INSURANCE
COMPANY ET AL V. BADIOU

PRE-TRIAL CONFERENCE RE:
COMPLAINT FOR
NONDISCHARGEABILITY OF DEBT
8-5-13 [[1](#)]

Plaintiffs' Atty:

Robert B. Salley [Sentry Select Insurance Company]

Michael B. Ijams [American Chevrolet-Geo, Inc.]

Defendant's Atty: Dan Farrar

Adv. Filed: 8/5/13

Answer: 8/30/13

Nature of Action:

Dischargeability - false pretenses, false representation, actual fraud

Dischargeability - fraud as fiduciary, embezzlement, larceny

Dischargeability - willful and malicious injury

Notes:

Scheduling order -

Close of non-expert witness discovery 5/12/14

Disclose experts by 5/22/14

Exchange expert reports by 5/22/14

Close of expert witness discovery 7/11/14

Dispositive motions heard by 8/25/14

[RBS-1] Order denying motion for summary judgment filed 6/18/14 [Dckt 60]

[EDF-2] Order denying motion to amend the scheduling order filed 8/4/14
[Dckt 98]

Plaintiff Sentry Select Insurance Company's Pretrial Statement filed 9/23/14
[Dckt 105]

Defendant's Pretrial Statement filed 9/23/14 [Dckt 107]

The Plaintiffs allege that jurisdiction exists for this 28 Adversary Proceeding 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). complaint ¶J 1,2, Dckt. 1. In his answer, Defendant-Debtor admits the allegations of jurisdiction and core proceedings. Answer ¶ 1, Dckt. 6. 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.

The court shall issue an Trial Setting in this Adversary Proceeding setting the following dates and deadlines:

- A. The Plaintiffs allege that jurisdiction exists for this 28 Adversary Proceeding pursuant to 28 U.S.C. §§ 1334 and 157(b) (2), and that

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this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). complaint ¶J 1,2, Dckt. 1. In his answer, Defendant-Debtor admits the allegations of jurisdiction and core proceedings. Answer ¶ 1, Dckt. 6. 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. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1.
- C. Plaintiff shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, 201x.
- D. Defendant shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, 201x.
- E. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, 201x.
- F. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, 201x.
- G. 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(s)

Defendant(s)

<p>Jurisdiction and Venue:</p> <p>1. 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). Consent for Related to Matters given.</p>	<p>Jurisdiction and Venue:</p> <p>1. 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). Consent for Related to Matters given.</p>
<p>Undisputed Facts:</p> <p>1. No Agreed Facts Identified</p>	<p>Undisputed Facts:</p> <p>1. Defendant bought and sold cars on behalf of American Chevrolet and eventually owed American Chevrolet many hundres of thousand of dollars.</p>
<p>Disputed Facts:</p>	<p>Disputed Facts:</p>

1.	1.
Disputed Evidentiary Issues: 1. None identified	Disputed Evidentiary Issues: 1. None Identified
Relief Sought: 1. Judgment in the amount of \$349,899.75; 2. Punitive Damages in the amount of at least \$250,000.00; 3. 11 U.S.C. § 523(a)(2) [fraud] 4. 11 U.S.C. § 523(a)(4) [fraud or defalcation while acting as a fiduciary] 5. 11 U.S.C. § 523(a)(6) [willful and malicious injury]	Relief Sought: 1. Judgment affirming that debt is dischargeable.
Points of Law: 1. Specifically identified in Pre-Trial Brief for all issues.	Points of Law: 1. Not specifically identified.
Abandoned Issues: 1. None	Abandoned Issues: 1. None
Witnesses: 1. Michael Badiou 2. Ann Badiou 3. David Halvorson 4. James Halvorson 5. Carol Solario 6. Dwain Cormier	Witnesses: 1. Chrissy VanBoven 2. Kenton Merrihew 3. John Bettencourt 4. John Fariola 5. Jeremy Roland

<ul style="list-style-type: none"> 7. Ginger Blevins 8. Liza Mazza 9. Michael Morillo 10. Richard Parker 11. Annette Hassler 12. Chet Ney 13. Betty Whittle 14. Sarah Hinker 	<ul style="list-style-type: none"> 6. Paul Yohanon 7. Judy Sorentino 8. Annette Hassler 9. Betty Whittle 10. Jimmy Halvorson 11. David Halvorson 12. Mike Solario 13. Chey Ney 14. Ginger Blevins 15. Ann Badiou
<p>Exhibits:</p> <ul style="list-style-type: none"> 1. Sentry Select Insurance Company Policy, No. 24-56175-04, for the period 9/1/2012 - 9/1/2013 2. Record of Complaint filed by David Halvorson with California Department of Motor Vehicles ("DMV") 3. American Chevrolet's claim submitted to Sentry. 4. Proof of Loss documents filed by David Halvorson, president and owner of American Chevrolet, with Sentry for repayment for 34 vehicles sold by Badiou. 5. Sentry's March 28, 2013 offer on American Chevrolet's claim. 6. American Chevrolet's March 28, 20 13 acceptance of Sentry's offer. 7. Proof of Payment from Sentry to American Chevrolet, for \$349,899.75, for the theft of 34 vehicles. 8. Copies of text messages between David Halvorson and Badiou. 	<p>Exhibits:</p> <ul style="list-style-type: none"> 1. No specific exhibits identified. 2. On or before October 15, 2014, Defendant shall file and serve list of exhibits. Only exhibits listed shall be allowed to be introduced as part of Defendant's case in chief (non-rebuttal).

9. DMV records pertaining to the Subject 34 Vehicles [listed in footnote 2 of the Pre-Trial Statement].
10. Badiou's deal jackets for all of the Subject 34 Vehicles.
11. American Chevrolet's records pertaining to all of the Subject 34 Vehicles.
12. Badiou's banking records pertaining to all of the Subject 34 Vehicles.
13. American Chevrolet's Accounts Receivable (220 and 220W) for Badiou for 2007.
14. American Chevrolet's Accounts Receivable (220 and 220W) for Badiou for 2008.
15. American Chevrolet's Accounts Receivable (220 and 220W) for Badiou for 2009.
16. American Chevrolet's Accounts Receivable (220 and 220W) for Badiou for 2010.
17. American Chevrolet 's Accounts Receivable (220 and 220W) for Badiou for 2011.
18. American Chevrolet's Accounts Receivable (220 and 220W) for Badiou for 2012.
19. Badiou's Department of Treasury Internal Revenue Service Form 1099-MISC from 2011, from American Chevrolet.
20. Badiou's Department of Treasury Internal Revenue Service Form 1099-MISC from 2012, from American Chevrolet.
21. Badiou's Department of Treasury Internal Revenue Service Form 1099-MISC from 2013, from American

Chevrolet.

22. Badiou's Department of Treasury Internal Revenue Service Form 1099-MISC from 2013, from D & T Recycling, LLC.

23. Badiou's Department of Treasury Internal Revenue Service Form W2 from 2013, from Grizzly Nut, LLC.

24. Vendor Summary for Badiou for January 14, 2014, to April 10, 2014, from D & T Recycling, LLC.

25. ASK Wholesale's Profit and Loss Statement for 2008.

26. ASK Wholesale's Profit and Loss Statement for 2009.

27. ASK Wholesale's Profit and Loss Statement for 2010.

28. ASK Wholesale 's Profit and Loss Statement for 2011.

29. ASK Wholesale 's Profit and Loss Statement for 2012.

30. ASK Wholesale's Profit and Loss Statement for 2013.

31. Graphs prepared by counsel for Sentry regarding Badiou's Accounts Receivable (220 and 220W) with American Chevrolet.

32. Graphs prepared by counsel for Sentry comparing Badiou's actions with the 34 stolen vehicles compared with the vehicles he legitimately had taken possession of.

33. Deal jackets, DMV Wholesale Report of Sale forms and Notice of Release of Liability for the following vehicles:

a. 2008 Honda CR-V (VIN #JHLRE38758C021483);

b. 2007 Chevrolet Silverado (VIN

<p>#2GCEKI3M971680726);</p> <p>c. 2004 Chevrolet Silverado (VIN #IGCGK23U34FI20476);</p> <p>d. 2003 Chevrolet pickup truck (VIN #1 GCHC24193EI58482);</p> <p>e. 2004 Chevrolet Avalanche (VIN #3GNEKI2TX4G261478);</p> <p>f. 1999 Chevrolet Silverado (VIN #2GCECI9V6X 1232134);</p> <p>g. 2003 Buick Lesabre (VIN #IG4HP52K33U279608);</p> <p>h. 200 I Chrysler Sebring (VIN # I C3EL56021 N632673);</p> <p>I. 2007 Chrysler 300 (VIN #2C3LA 73WI7H748558);</p> <p>j. 2004 Dodge Grand Caravan (VIN #2D4GP44L64R5547 14);</p> <p>k. 2006 Volkswagen Jetta (VIN #3VWSG7IKI6M666574);</p> <p>l. 2003 Ford Explorer (VIN # I FMZU73W63ZB 15881);</p> <p>m. 2004 Jeep Grand Cherokee (VIN #IJ4GW48S04CI93663);</p> <p>n. 2000 Honda CR-V (VIN #JHLRDI866YSOI0884); and</p> <p>o. 2006 Honda Civic (VIN #2HGFG21586H700267).</p>	
<p>Discovery Documents:</p> <p>A. Sentry's Interrogatories, Set One, to Defendant Michael Badiou;</p> <p>B. Defendant Michael Badiou's Responses to Sentry's Interrogatories, Set One;</p> <p>C. Sentry's Requests for</p>	<p>Discovery Documents:</p> <p>1. None</p>

Admissions, Set One, to Defendant Michael Badiou;

D. Defendant Michael Badiou 's Responses to Sentry's Requests for Admissions, Set One;

E. Sentry's Demand for Production of Documents, Set One, to Defendant Michael Badiou;

F. Defendant Michael Badiou's Responses to Sentry's Demand for Production of Documents, Set One;

G. Defendant Michael Badiou's Requests for Production of Records, Set One;

H. Sentry's Responses to Defendant Michael Badiou's Requests for Production of Records, Set One

I. Sentry's Interrogatories, Set Two, to Defendant Michael Badiou;

J. Defendant Michael Badiou's Responses to Sentry's Interrogatories, Set Two;

K. Sentry's Demand for Production of Documents, Set Two, to Defendant Michael Badiou;

L. Defendant Michael Badiou's Responses to Sentry's Demand for Production of Documents, Set Two;

M. Sentry's Interrogatories, Set Three, to Defendant Michael Badiou;

N. Defendant Michael Badiou's Responses to Sentry's Interrogatories, Set Three;

O. Sentry's Demand for Production of Documents, Set Three, to Defendant Michael Badiou;

P. Defendant Michael Badiou's Responses to Sentry's Demand for Production of Documents, Set Three;

<p>Q. Sentry's voluntary production of records to Defendant Michael Badiou;</p> <p>R A certified copy of Defendant Michael Badiou's deposition transcript;</p> <p>and</p> <p>S. A certified copy of Chet Ney's deposition transcript.</p>	
<p>Further Discovery or Motions:</p> <p>1. None Anticipated</p>	<p>Further Discovery or Motions:</p> <p>1. None</p>
<p>Stipulations:</p> <p>1. None</p>	<p>Stipulations:</p> <p>1. None</p>
<p>Amendments:</p> <p>1. None</p>	<p>Amendments:</p> <p>1. None</p>
<p>Dismissals:</p> <p>1. None</p>	<p>Dismissals:</p> <p>1. None</p>
<p>Agreed Statement of Facts:</p> <p>1. None</p>	<p>Agreed Statement of Facts:</p> <p>1. None</p>
<p>Attorneys' Fees Basis:</p> <p>1. Not Requested</p>	<p>Attorneys' Fees Basis:</p> <p>1. None Requested</p>
<p>Additional Items</p> <p>1. None</p>	<p>Additional Items</p> <p>1. None</p>
<p>Trial Time Estimation: 4-5 Days</p>	<p>Trial Time Estimation: Defendant's direct and cross-examination projected to be six hours.</p>

6. [13-91189](#)-E-11 MICHAEL/JUDY HOUSE
RMY-11

STATUS 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](#)]

Debtors' Atty: Robert M. Yaspan
Creditor's Atty: Steven Altman; Eric Capron

Notes:

Continued from 9/4/14. Pursuant to stipulation of the parties stated on record at the 9/4/14 hearing, this objection to claim shall be administratively consolidated for all purposes, including trial, with the pending Adversary Proceeding between these parties, 14-9024.

7. [13-91189](#)-E-11 MICHAEL/JUDY HOUSE
[14-9024](#)
HOUSE ET AL V. HOUSE

STATUS CONFERENCE RE: COMPLAINT
8-1-14 [[1](#)]

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)

Notes:

8. [13-90795](#)-E-7 JOSE IRAHETA AND ALBA
[14-9016](#) MARTINEZ
MCGRANAHAN V. IRAHETA ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
3-28-14 [[1](#)]

Plaintiff's Atty: Steven S. Altman
Defendant's Atty: unknown

Adv. Filed: 3/28/14
Answer: none

Nature of Action:
Objection/revocation of discharge

Notes:

Continued from 8/21/14

[SSA-1] Order granting motion for entry of default judgment filed 8/28/14
[Dckt 40]

No judgment on the Docket as of October 1, 2014.

9. [14-90299-E-7](#) LORENS BETMIRZA
[14-9020](#)
FIRST NATIONAL BANK OF OMAHA
V. BETMIRZA

JOINT MOTION TO APPROVE
STIPULATION OF
NON-DISCHARGEABILITY
9-15-14 [[14](#)]

Tentative Ruling: The Motion to Approve Stipulation was set for hearing by order of the court. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

The Order for Hearing on Joint Motion to Approve Stipulation was served by the Clerk of the Court on Plaintiff's Counsel, Defendant's Counsel, and the Office of the United States Trustee on September 18, 2014. The court computes that 14 day's notice has been provided.

The court's decision is to grant the Joint Motion to Approve Stipulation of Non-Dischargability, and pursuant thereto enter judgment that the obligation of \$3,019.00 is nondischargeable.

In this Adversary Proceeding, First National Bank of Omaha ("Plaintiff") and Lorens Betmirza ("Defendant") have filed a Stipulation resolving the Adversary Proceeding. Stipulation attached to Joint Motion to Approve Stipulation, Dckt. 14. The court's reading of the Stipulation states the following terms for the judgment in this Adversary Proceeding:

- A. A judgment stating that the sum of \$3,019.00 owed by Defendant to Plaintiff is nondischargeable. ("Plaintiff shall be granted judgment of nondischargeability against Defendant in this [\$3,019.00].")

The Stipulation continues to state various contractual terms how this nondischargeable amount will be repaid:

- A. On or before September 1, 2014, Defendant shall pay \$100.00; and
- B. On or before the first day of each subsequent month Defendant shall pay \$100.00 until the \$3,019.00 is paid in full.

The Stipulation states the additional contractual agreement that if Defendant fails to make any payment, then the "balance" shall bear interest at twelve percent (12%).

The Stipulation continues to state that so long as Defendant timely makes payment, Plaintiff will refrain from pursuing its rights under the agreement. However, if Defendant defaults, Plaintiff may pursue legally available remedies.

As drafted, the court interprets the Stipulation to be for the entry of a judgment determining that the debt of \$3,019.01 is nondischargeable. The court does not read the Stipulation to provide for the entry of a monetary judgment for \$3,019.01. Further, in light of the agreed interest rate of 12% per annum, which is well in excess of the post-judgment interest in federal court, it appears that the parties have agreement that the \$3,019.01 is nondischargeable, and in the event of default, Plaintiff will then seek to enforce its rights by obtaining a state court judgment for that amount.

The court set the hearing the Joint Motion to allow the parties to address the court's reading of the Stipulation and file any further documents which clarify what is sought and permitted in a federal court judgment. The court ordered that the hearing on the Joint Motion would be heard at the currently scheduled Status Conference in this Adversary Proceeding at 2:30 p.m. on October 2, 2014.

No parties have filed any supplemental declarations or pleadings objecting to the court's interpretation of the Stipulation. Since it appears that the Parties concur in the court's interpretation of the Stipulation that it provides for the determination that the obligation of \$3,019.01 is nondischargeable, but does not provide for the entry of judgment in that amount, the court grants the Joint Motion to Approve Stipulation .

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Joint Motion to Approve Stipulation having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Joint Motion to Approve Stipulation is granted, and Plaintiff is granted judgment that the obligation of \$3,019.00 stated in the Stipulation (Exhibit A, Dckt. 14) is nondischargeable. The court makes no determination of the enforceability of any provisions in the Stipulation, including, without limitation, the agreement to a 12% interest rate between the parties.

Counsel for Plaintiff shall prepare and lodge with the court on or before October 17, 2014, a proposed judgment consistent with this Order.

10. [14-90299-E-7](#) LORENS BETMIRZA
[14-9020](#)
FIRST NATIONAL BANK OF OMAHA
V. BETMIRZA

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
5-27-14 [[1](#)]

Plaintiff's Atty: Cory J. Rooney
Defendant's Atty: unknown

Adv. Filed: 5/27/14
Answer: none

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - other

Notes:

Continued from 7/24/14 to afford Plaintiff the opportunity to have a hearing on a motion for entry of default judgment.

Notice of Settlement filed 8/11/14 [Dckt 13]

Order for Hearing on Joint Motion to Approve Stipulation filed 9/17/14 [Dckt 15]

Order states, "If the Parties concur in the court's interpretation of the Stipulation that it provides for the determination that the obligation of \$3,019.01 is nondischargeable, but does not provide for the entry of judgment in the amount, no appearance at the Hearing on the Joint Motion or Status Conference is required."