

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

**Honorable Ronald H. Sargis**  
Chief Bankruptcy Judge  
Sacramento, California

**November 15, 2018 at 11:00 a.m.**

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1. [17-20220-E-7](#)      **WILLIAM/FAYE THOMAS**      **CONTINUED STATUS CONFERENCE**  
[18-2090](#)                **RE: AMENDED COMPLAINT**  
                     **8-29-18 [18]**  
**PUTNAM V. THOMAS, JR. ET AL**

**Final Ruling:** No appearance at the November 15, 2018 Status Conference is required.

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*Continued to 12/11/18 at 1:30 p.m.*

Plaintiff's Atty: Pro Se  
Defendant's Atty: Lucas B. Garcia

Adv. Filed: 6/7/18  
Answer: none  
Amd. Cmplt Filed: 8/29/18  
Answer: none

Nature of Action:  
Recovery of money/property - fraudulent transfer  
Validity, priority or extent of lien or other interest in property  
Objection/revocation of discharge  
Dischargeability - false pretenses, false representation, actual fraud  
dischargeability - fraud as fiduciary, embezzlement, larceny  
Dischargeability - willful and malicious injury

<p><b>By prior order of the court, the Status Conference has been continued to 1:30 p.m. on December 11, 2018 (specially set date and time). Order, Dckt. 46.</b></p>
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Notes:

Continued from 10/10/18 to be conducted in conjunction with the Motion to Dismiss.

Stipulation to Continue Hearing on Motion to Dismiss filed 11/5/18 [Dckt. 36]; Order continuing filed







forthcoming Chapter 13 Plan, which allows Debtors to pay 100% of its allowed general unsecured claims.

By this Motion, the Debtor wishes to preserve potential causes of action for avoidance under 11 U.S.C. §§ 544, 545, 547, 548, and 553, and avoid the running of any applicable statutes of limitation sufficiently in advance thereof.

The following terms and conditions of the Agreement are summarized by the court (the full terms of the Agreement are set forth in Exhibit A in support of the Motion, Dckt. 104):

1. All applicable statutes of limitations and other timebased defenses (including the limitations set forth in 11 U.S.C. § 546) to the Avoidance Actions, are hereby tolled as of the Effective Date for a period to and including June 7, 2023, as to any Avoidance Action which would not have been barred had any such Avoidance Action been properly filed in a court of competent Jurisdiction.
2. Creditor agrees to defer payments on the 2012 Promissory Note and 2013 Promissory Note during Debtor's Bankruptcy Case. Subject to the terms and conditions of this Agreement and the 2012 Promissory Note and 2013 Promissory Note, the Parties hereby agree to extend the "Due Date" stated in the 2012 and 2013 Promissory Notes to the Termination Date. Debtors acknowledges and agrees that as of the Effective Date interest shall accrue on the unpaid principal balance of the 2012 Promissory Note and 2013 Promissory Note at the rate of 5.00%.
3. This Agreement will automatically terminate upon the earlier of i) June 7, 2023 at 5:00 p.m. Pacific Standard Time unless extended by written agreement of the Parties; or ii) the time Debtor's Bankruptcy case is closed or dismissed.

## **NOVEMBER 6, 2018 HEARING**

At the November 6, 2018, hearing the court (at the request of the parties) continued the hearing on the Motion to November 15, 2018 at 11:00a.m. to be heard alongside various Adversary Proceeding matters in this bankruptcy case.

## **APPLICABLE LAW**

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

*In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

## **DISCUSSION**

Debtor has proceeded with the Motion as though it were a use of property. It does have that Character. Additionally, Debtor and Creditor are compromising, modifying, and extending various rights they have. The court interprets the Motion to also be in the nature of a request for approval of compromise.

Debtor argues that the Agreement is in the best interest of the Estate and creditors because it will allow Debtor time to work out a settlement of the avoidance issues without jeopardizing the Debtor's right to later bring avoidance claims.

Tolling is not the typical compromise assessed by the *Woodson* factors. That test examines whether the ultimate resolution of the claims is in the better interest of the Estate and creditors than pursuing the claims fully on the merits. Nevertheless, the court finds that the ultimate consideration of *A & C Props* and *Woodson* (what is in the best interest of the Estate and creditors) is met by this Agreement. Therefore, the Motion is granted.

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 Motion To Approve Tolling And Deferment Agreement filed by debtors Gevorg George Poladyan and Armine Asatryan ("Debtor"), 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 Motion To Approve Tolling And Deferment Agreement between Debtor and Outsourced Legal Support ("Creditor") is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Tolling Agreement filed as Exhibit A in support of the Motion (Dckt. 104).

The Clerk of the Court shall serve a copy of this Order on,

Raymond H. Aver, Esq  
Law Offices of Raymond H. Aver, APC  
10801 National Blvd., Suite 100  
Los Angeles, California 90064

who is listed on Proof of Claim No. 18 filed for Outsourced Legal Support, LCC to insure that he, as apparent counsel for Outsourced Legal Support, LLC is aware of this Order for the Tolling Agreement signed for his apparent client.

6. [17-27397-E-13](#) [18-2130](#) **GEVORG/ARMINE POLADYAN PGM-2** **CONTINUED MOTION TO CONSOLIDATE LEAD CASE 18-02130 WITH 18-02014 9-12-18 [14]**  
**POLADYAN ET AL V. TRIVEDI**

**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.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant and Defendant's Attorney on September 12, 2018. By the court's calculation, 43 days' notice was provided. The court issued an order setting the hearing .

The Motion To Consolidate Lead Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion To Consolidate Lead Case 18-02130 With 18-02014 is granted.**

Tapan Trivedi, Administrator for Estate of Ortansa Ambrus-Cernat, (“Creditor”) filed this Motion seeking to “consolidate” this Adversary Proceeding with Adversary Proceeding 18-2014.

Creditor asserts that after the tolling of its first action based on nondischargeability and fraudulent transfers, the case was converted to Chapter 13, based on the representation of a 100 percent plan. Creditor further asserts that rather than keep with prior representations, the Debtor has now filed this Adversary Proceeding Objection to the Claim, which contains the same parties, the same common issues, the same witnesses, the same factual allegations, and the same legal analysis. Creditor concludes consolidation of the two Adversary Proceedings (18-02130 and 18-2014) is supported by judicial economy as the two proceedings share the same set of facts, parties, legal analysis, and witnesses, and because consolidation would not be prejudicial to either party.

### **CASE OVERVIEW**

Creditor Trivedi filed action 18-2014 for a determination of the nondischargeability of an obligation of debtors Poladyan and Asatrayan (“Debtors”). In this action, commenced by Debtors, the relief sought is:

- A. Debtors own the 2242 Palmwood Court, Rancho Cordova, California Property (“Property”).
- B. Creditor has filed a Proof of Claim in Debtors’ bankruptcy case.
- C. Debtors Object to the Claim on the following grounds:
  - 1. No Contract, Note, or Deed of Trust relating to the Property.
  - 2. No “evidence” that Debtors owe any obligation.
  - 3. The Notary who notarized the Deed states she remembers the discussion and that it was intended as a gift.

Complaint, Dckt. 1.

Proof of Claim No. 1 filed by Creditors in Debtors’ Bankruptcy Case (17-27397) asserts the following claim and grounds upon which the claim is based:

- A. Claim in the amount of \$279,510.00, unsecured.
- B. Attached to Proof of Claim No. 1 is a copy of a complaint from the California Superior, County of Sacramento, action brought by Creditor against Debtors.

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- 1. The State Court complaint outlines an alleged agreement upon which the claim for damages is based.

Creditor commenced a prior Adversary Proceeding seeking a monetary judgment for the obligation that is Creditor’s claim in the Debtors’ Bankruptcy Case and that said judgment was



nondischargeable. 18-2014; Complaint, Dckt. 1. The Complaint in Adversary Proceeding 18-2014 was filed when Debtors were prosecuting their case under Chapter 7.

The Amended Complaint in Adversary Proceeding 18-2014 includes claims for nondischargeability of debt, objection to discharge, avoiding transfers pursuant to 11 U.S.C. § 544 (powers of a Chapter 13 debtor and not a creditor, unless otherwise ordered by the court), and avoidance of preferential transfers (powers of a Chapter 13 debtor and not a creditor, unless otherwise ordered by the court).

Adversary Proceeding 18-2014 has been stayed pending further order of the court. 18-2014; Order, Dckt. 53. As stated in the Civil Minutes, 18-2014 was stayed because the parties were going to litigate the dispute as an objection to claim. *Id.*; Civil Minutes, Dckt. 52.

### **OCTOBER 25, 2018 HEARING**

At the October 25, 2018 hearing on the Motion, the court noted the parties had filed a stipulation to the consolidation of the two Adversary Proceedings. *See* Stipulation, Dckt. 18. The court then went on to note that the Adversary Proceeding 18-2014 had been stayed by an Order of the court. *See* Dckts. 53, 54.

### **MOTION TO DISMISS ADVERSARY PROCEEDING 18-2014**

On November 14, 2018, the court heard the Motion to Dismiss Adversary Proceeding 18-2014, which had previously been stayed. The court granted the Motion in part, dismissing all but the second, fourth, and fifth causes of action. For those remaining causes of action, the court ordered Defendants Armine Asatryan and Gevorg Poladyan, and each of them, to file an answer to the Amended Complaint on or before November 29, 2018.

### **APPLICABLE LAW**

Fed. R. Civ. P. 42 and Fed. R. Bankr. P. 7042 provides:

Rule 42. Consolidation; Separate Trials

(a) Consolidation. If actions before the court involve a common question of law or fact, the court may:

(1) **join for hearing or trial any or all matters at issue in the actions;**

(2) **consolidate the actions;** or

(3) issue any other orders to avoid unnecessary cost or delay.

(b) Separate Trials. For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When

ordering a separate trial, the court must preserve any federal right to a jury trial.

## **DISCUSSION**

At the heart of both Adversary Proceedings in this bankruptcy case is the determination of the claim held by Tapan Trivedi, Administrator of the Estate of Ortansa Ambrus-Cernat (AP 18-2130 being in the form of an objection to proof of claim; AP 18-2014 being a determination of dischargeability of the debt). Each Adversary Proceeding will necessarily involve significant overlap in factual underpinnings.

The common questions of fact are grounds for consolidating the two Adversary Proceedings. The Motion is granted, and Adversary Proceedings 18-02130 and 18-2014 shall be consolidated.

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 Motion To Consolidate Lead Case 18-02130 With 18-02014 filed by Tapan Trivedi, Administrator for Estate of Ortansa Ambrus-Cernat, (“Creditor”) 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 Motion To Consolidate Lead Case 18-02130 With 18-02014 is granted, and those two Adversary Proceedings are consolidated.