

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Modesto, California

November 21, 2013 at 2:30 p.m.

-
1. [12-92723-E-7](#) [13-9004](#) JOHN/KRISTINE ROBINSON PRE-TRIAL CONFERENCE RE:
GRANT BISHOP MOTORS, INC. V. COMPLAINT OBJECTING TO DEBTORS'
ROBINSON, IV ET AL DISCHARGE AND DISCHARGEABILITY
OF DEBTS AND TURNOVER OF
PROPERTY
1-17-13 [[1](#)]

Plaintiff's Atty: Steven S. Altman
Defendant's Atty: William M. Woolman

Adv. Filed: 1/17/13
Answer: 2/15/13

The Pre-Trial Conference has been continued to July 30, 2014 at 2:30 p.m. Order, Dckt. 47. No appearance at the November 21, 2013 Pre-Trial Conference is required.

Nature of Action:
Objection/revocation of discharge
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury
Dischargeability - other

Notes:

Scheduling order -
Initial disclosures by 4/15/13
Disclose experts by [extended to 5/27/14]
Exchange expert reports by [extended to 5/27/14]
Non-Expert close of discovery [extended to 5/27/14]
Supplemental experts disclosed by [extended to 6/19/14]
Expert close of discovery [extended to 7/30/14]
Dispositive motions heard by [extended to 7/30/14]
Pretrial Conference: continued to 7/30/14 at 2:30 p.m.

Stipulation Regarding Discovery and Extending Deadlines filed 10/7/13 [Dckt 46]; Order granting filed 10/7/13 [Dckt 47]

2. [12-93136-E-7](#) [13-9008](#) MARIA ALCANTAR
ALCANTAR V. RT FINANCIAL, INC.
ET AL

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
3-28-13 [[17](#)]

Plaintiff's Atty: Brian S. Haddix
Defendant's Atty: Michael S. Warda

Adv. Filed: 3/5/13
Amd Cmplt Filed: 3/6/13
Second Amd Cmplt Filed: 3/28/13

Answer: none
Amd Cmplt Answer: 5/6/13

November 21, 2013 Status Conference

The Status Conference was continued from September 5, 2013 to allow the parties to document their settlement. As of November 20, 2013, no settlement or any further pleadings to prosecute this Adversary Proceeding had been filed.

The Status Conference has been continued

Nature of Action:

Recovery of money/property - other

Injunctive relief - other

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

Notes:

Continued from 9/5/13 to afford the Parties the opportunity to document the settlement in an orderly manner.

3. [13-90150-E-7](#) PAUL/SHELBY ADAMS
[13-9032](#)
ADAMS ET AL V. U.S. DEPARTMENT
OF EDUCATION

STATUS CONFERENCE RE: COMPLAINT
9-26-13 [[1](#)]

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

Adv. Filed: 9/26/13
Answer: none

Nature of Action:
Dischargeability - student loan

Notes:

SUMMARY OF COMPLAINT

The Complaint names the U.S. Department of Education as the Defendant. It is alleged that the Plaintiffs suffered serious medical and criminal events which required them to postpone their education. They were unsuccessful in obtaining assistance from the school and were forced to exit the education program. No "viable" education was received from the school for the monies obtained by Plaintiffs through student loans. Though they have tried, due to unemployment and having two children, no agreement has been reached concerning the student loan debt. The Plaintiffs seek to have their student loan debt discharged.

The certificate of service shows that the pleadings were served on the U.S. Department of Education at 400 Maryland Ave, SW, Washington, D.C. The U.S. Attorney General was not served.

SUMMARY OF ANSWER

No answer filed.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists 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 ¶¶ X, X, Dckt. X. In its answer, ----- admits the allegations of jurisdiction and core proceedings. Answer ¶¶ X, X, Dckt. X. To the extent that any issues in this Adversary Proceeding are "related to" matters, 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 issues and claims in this Adversary Proceeding referred to the bankruptcy court.

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

a. 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) (A), (N), and (O). **First Amended** Complaint, ¶¶ X, X, Dckt. X. The Defendant admits the jurisdiction and that this is a core proceeding. Answer, ¶¶ X, X, Dckt. X. **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. Initial Disclosures shall be made on or before -----, **2014.**

c. Expert Witnesses shall be disclosed on or before -----, 2013, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2014.

d. Discovery closes, including the hearing of all discovery motions, on -----, 2014.

e. Dispositive Motions shall be heard before -----, 2014.

f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2014.

4. [12-93176-E-7](#) [13-9007](#) **LESA DEL DON**
KUBALA ET AL V. DEL DON

PRE-TRIAL CONFERENCE RE:
COMPLAINT FOR
NONDISCHARGEABILITY
2-21-13 [[1](#)]

Plaintiff's Atty: Andrea Sessions
Defendant's Atty: pro se

Adv. Filed: 2/21/13
Answer: 3/22/13

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

Notes:

Scheduling order -
Initial disclosures by 4/30/13
Disclose experts by 7/1/13
Exchange expert reports by 7/1/13
Close of discovery 8/30/13
Dispositive motions heard by 10/31/13

Defendant's Pretrial Statement filed 11/12/13 [Dckt 14]

Pretrial Statement of Jennifer Kubala and Sharon Stencil, individually and dba Ritzy Ragz & Thinz filed 11/12/13 [Dckt 16]

SUMMARY OF COMPLAINT

Plaintiff Creditor asserts a claim arising out the purchase of assets and inventory of the Defendant-Debtor's business for \$30,000.00. It is asserted that Defendant-Debtor misrepresented that the assets were free and clear of liens. The assets were subject to a lien of the California Board of Equalization for which Plaintiffs were subject to successor liability. It is asserted that damages of \$30,000.00, plus additional special, general, and punitive damages as proven at trial are nondischargeable based on fraud.

SUMMARY OF ANSWER

The Defendant-Debtor has filed a pro se general denial. Dckt. 8

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)(E) and (I). Complaint, 1 and 3, Dckt. 1. The Defendants do not deny the allegations of jurisdiction or that this is a core proceeding as required by Federal Rule of Bankruptcy Procedure 7012(b). Answer, General Denial, Dckt. 8. The denial of a discharge is a quintessential core matter arising solely under and unique to

the Bankruptcy Code enacted by Congress pursuant to Article I, Section 8, Clause 4 of the United States Constitution. 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. Scheduling and Pretrial Conference Order, Dckt. 9.

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

A. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1.

B. The Debtors shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, 2012.

C. The Trustee shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, 2012.

D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, 2012.

E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, 2012.

F. The Trial shall be conducted at ----- on -----, 2012.

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:

Plaintiffs

Defendant

<p>Jurisdiction and Venue:</p> <ol style="list-style-type: none"> 1. 28 U.S.C. § 1334 2. Core Proceeding 	<p>Jurisdiction and Venue:</p> <ol style="list-style-type: none"> 1. Admitted, Core Proceeding
<p>Undisputed Facts:</p> <ol style="list-style-type: none"> a. On or about February 13, 2008, Plaintiffs and Defendant entered into a written agreement whereby Plaintiffs purchased certain assets and inventory of defendant's business known as Consign Couture in exchange for payment of \$30,000.00. b. Specifically included in the 	<p>Undisputed Facts:</p> <ol style="list-style-type: none"> 1. At the close of escrow on February 25, 2008, Consign Couture was free of all liens and encumbrances.

contract is a warranty by the defendant that "Seller is the legal owner of the business and that it is free of all liens and encumbrances.

c. Defendant had outstanding sales tax liabilities owed to the State of California, Board of Equalization in connection with her business, Consign Couture, relating to the periods of May 9, 2005 through March 31, 2008 in an amount in excess of \$22,500.00, plus penalties and interest.

d. On or about November 18, 2008, the State of California, Board of Equalization issued a Notice of Successor Liability to Plaintiffs for the Tax Debt owed by defendant in the amount of \$30,000.00.

e. Plaintiffs filed a Petition for Reconsideration of the Notice of Successor Liability on December 12, 2008, and participated in an Appeals Conference on October 22, 2009.

f. The Board of Equalization Appeals Division issued its decision and recommendation to deny the Petition on February 2, 2010.

g. Plaintiffs requested a formal Board Hearing which was scheduled for August 25, 2010.

h. The Board of Equalization took Plaintiffs' Appeal under submission and issued its Notice of Reconsideration on September 3, 2010 denying plaintiffs Appeal and finding that Plaintiffs were the successor and therefore liable for the Tax Debt of Lesa Marie Coopersmith/Consign Couture in the amount of \$30,000.00.

I. In February of 2008, when plaintiffs and defendant negotiated purchase of defendant's business "Consign Couture" by plaintiffs,

<p>Defendant affirmatively represented to plaintiffs that she had no outstanding obligations or any liens or encumbrances in relation to the business or its assets.</p> <p>j. Plaintiffs acted in reliance upon the truth of Defendant's representations and were justified in relying upon those representations in proceeding with the purchase of the business from defendant at the contract price of \$30,000.00.</p> <p>k. Plaintiffs first discovered Defendant's actual fraud and misrepresentation in December of 2012 when they obtained plaintiffs account records from the State Board of Equalization.</p> <p>l. In those records was evidence of Defendant's actual knowledge of the outstanding sales tax liability as far back as November of 2007 and the continued knowledge as late as February 19, 2008.</p>	
<p>Disputed Facts:</p> <p>1. None</p>	<p>Disputed Facts:</p> <p>1. Same Fact as stated for Undisputed Fact.</p>
<p>Disputed Evidentiary Issues:</p> <p>5. None</p>	<p>Disputed Evidentiary Issues:</p> <p>1. Same Issue as stated for Undisputed Fact.</p>
<p>Relief Sought:</p> <p>1. Determination that Debt is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) [Fraud].</p> <p>2. Punitive damages.</p>	<p>Relief Sought:</p> <p>1.</p> <p>2.</p> <p>3.</p>
<p>Points of Law:</p>	<p>Points of Law:</p>

<ol style="list-style-type: none"> 1. <i>In re Weinberg</i>, 410 B.R. 19 (B.A.P. 9th Cir., 2009). 2. <i>Edelson v, Commissioner</i>, 829 F.2d 828, 832 (9th Cir. 1987); <i>Gertsch v. Johnson & Johnson, Fin. Corp. (In re Gertsch)</i>, 237 B.R. 160, 167-68 (9th Cir. BAP 1999). 3. <i>In re Ormsby</i>, 591 F.3d 1199, 1206 (9th Cir. 2010). 	<ol style="list-style-type: none"> 1. Same as stated for Undisputed Fact. 2. 3.
<p>Abandoned Issues:</p> <ol style="list-style-type: none"> 1. None 	<p>Abandoned Issues:</p> <ol style="list-style-type: none"> 1. Same as stated for Undisputed Fact.
<p>Witnesses:</p> <ol style="list-style-type: none"> 1. Jennifer Kubala 2. Sharon Stencil 3. Lesa Coopersmith aka Del Don 4. Custodian of Records, California Board of Equalization 	<p>Witnesses:</p> <ol style="list-style-type: none"> 1. Sharon Stencil 2. Jenifer Kubla 3. Stephane Nuniz 4. Stephanie Pacheco
<p>Exhibits:</p> <ol style="list-style-type: none"> 1. Sales Contract -February 13, 2008 2. Notice of Reconsideration -September 3, 2010 from the State of California Board of Equalization 3. Records from the State of California Board of Equalization for Lesa Marie Del Don, Account #100566776 4. Emails between parties dated 2/11/08 to 3/31/10 	<p>Exhibits:</p> <ol style="list-style-type: none"> 1. Sales Contract/Bill for Sale of Business known as Consign Couture. 2. Record from State Board of Equalization, Account #100566776 3. Westlaw database dated recorded liens against Defendant
<p>Discovery Documents:</p>	<p>Discovery Documents:</p>

1. Rule 26 Initial Disclosures	1. No Requests
Further Discovery or Motions: 1. None	Further Discovery or Motions: 1. None
Stipulations: 1. None	Stipulations: 1. None
Amendments: 1. None	Amendments: 1. None
Dismissals: 1. None	Dismissals: 1. None
Agreed Statement of Facts: 1. None	Agreed Statement of Facts: 1. None
Attorneys' Fees Basis: 1. Attorneys' fees claimed, basis not stated. [Claim for Attorneys' Fees not in Complaint]	Attorneys' Fees Basis: 1. None
Additional Items 1. None	Additional Items 1. None
Trial Time Estimation: 1 to 2 Days	Trial Time Estimation: 1 Hour

6. [09-91780-E-7](#) [13-9031](#) **ORGELIA GOMEZ**
GOMEZ V. GOMEZ

STATUS CONFERENCE RE: COMPLAINT
9-20-13 [1]

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

Adv. Filed: 9/20/13
Answer: 11/19/13

Nature of Action:
Objection/revocation of discharge
Dischargeability - domestic support
Dischargeability - student loan
Dischargeability - other

Notes:

SUMMARY OF COMPLAINT

The complaint seeks a determination that the debt is not dischargeable and to deny the Debtor's Discharge. The grounds stated in the complaint are:

523(a)(5):
Domestic Support Obligation

523(a)(15):
To a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit

553:
Setoff

506(a)(1):
An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

727(a) (4) (A) :

Debtor knowingly and fraudulently, in or in connection with the case- (A) made a false oath or account. [Alleged misrepresentation of Debtor's residence and improperly claiming homestead in such property.]

SUMMARY OF ANSWER

General Pro Se Denial form improperly used by attorney.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists 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 ¶¶ X, X, Dckt. X. In its answer, ----- admits the allegations of jurisdiction and core proceedings. Answer ¶¶ X, X, Dckt. X. To the extent that any issues in this Adversary Proceeding are "related to" matters, 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 issues and claims in this Adversary Proceeding referred to the bankruptcy court.

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

a. 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) (A), (N), and (O). **First Amended** Complaint, ¶¶ X, X, Dckt. X. The Defendant admits the jurisdiction and that this is a core proceeding. Answer, ¶¶ X, X, Dckt. X. 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. Initial Disclosures shall be made on or before -----, **2014**.

c. Expert Witnesses shall be disclosed on or before -----
--, 2013, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2014.

d. Discovery closes, including the hearing of all discovery motions, on -----, 2014.

8. [13-90382-E-7](#) MICHAEL CARSON
[13-9016](#)
TAIPE V. CARSON

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
8-12-13 [[33](#)]

Plaintiff's Atty: Thomas P. Hogan
Defendant's Atty: Robert D. Rodriguez

Adv. Filed: 4/10/13
Amd Complt Filed: 8/12/13
Answer: 11/14/13

Nature of Action:
Dischargeability - divorce or separation obligation (other than domestic support)

Notes:

Continued from 10/10/13. The parties are investigating the nature of the offset obligation and whether the date of the offset would be the date of the order or the date of the various debts incurred which constitute the offset.

[RDR-2] Order denying motion to strike filed 11/6/13 [Dckt 62]

[RDR-2] Order denying motion to dismiss filed 11/6/13 [Dckt 64]

Plaintiff's Status Conference Statement filed 11/14/13 [Dckt 69]

SUMMARY OF COMPLAINT

Plaintiff seeks to have a judgment in the amount of \$12,480.00, plus interest at the rate of 10% per annum from February 3, 2013 determined non-dischargeable pursuant to 11 U.S.C. § 523(a)(5), a domestic support obligation. It is asserted that the judgment is for sanctions issued by the family law court against the Defendant-Debtor relating to the Defendant-Debtor's prosecution of a child support claim against the Plaintiff. It is asserted that the stated court judge found that the Defendant-Debtor litigated the child support claim in bad faith.

The basis of the attorneys' fee award was California Family Code § 271, which provides,

§ 271. Basis and effect of award

(a) Notwithstanding any other provision of this code, the court may base an award of attorney's fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney's fees and

costs pursuant to this section is in the nature of a sanction. In making an award pursuant to this section, the court shall take into consideration all evidence concerning the parties' incomes, assets, and liabilities. The court shall not impose a sanction pursuant to this section that imposes an unreasonable financial burden on the party against whom the sanction is imposed. In order to obtain an award under this section, the party requesting an award of attorney's fees and costs is not required to demonstrate any financial need for the award.

(b) An award of attorney's fees and costs as a sanction pursuant to this section shall be imposed only after notice to the party against whom the sanction is proposed to be imposed and opportunity for that party to be heard.

(c) An award of attorney's fees and costs as a sanction pursuant to this section is payable only from the property or income of the party against whom the sanction is imposed, except that the award may be against the sanctioned party's share of the community property.

SUMMARY OF ANSWER

Admits and denies specific allegations. Admits jurisdiction and core matter. Answer states ten affirmative defenses.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists 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)(H) and (I), this Adversary Proceeding being one to determine the dischargeability of a debt under 11 U.S.C. § 523. Complaint ¶¶ 1, 2, Dckt. 1. At the hearing the Defendant concurred that this is a core matter, as pled in the Complaint. In addition, to the extent that any issues in this Adversary Proceeding are "related to" matters, 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 issues and claims in this Adversary Proceeding referred to the bankruptcy court.

9. [10-90583-E-7](#) JESSE/DEANNA RUELAS
[13-9009](#)
RUELAS V. GREENHILLS MASTER
ASSOCIATION ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
3-8-13 [[1](#)]

Plaintiff's Atty: Cort V. Wiegand
Defendant's Atty: Steven R. Hrdlicka

Adv. Filed: 3/8/13
Answer: 4/15/13

Nature of Action:
Dischargeability - other
Injunctive relief - other

Notes:

Continued from 9/26/13 to afford the parties time to complete the documentation of a settlement.