

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Sacramento, California

December 3, 2014 at 2:30 p.m.

-
1. [10-26415](#)-E-13 IGNACIO/ANNA ADAM CONTINUED STATUS CONFERENCE RE:
[14-2145](#) COMPLAINT
ADAM ET AL V. SUNTRUST 5-29-14 [[1](#)]
MORTGAGE, INC.

Final Ruling: No appearance at the December 3, 2014 Status Conference is required.

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

Adv. Filed: 5/29/14
Reissued Summons: 10/2/14

Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property
Declaratory judgment

The Status Conference is continued to 2:30 p.m. on February 18, 2015.

DECEMBER 3, 2014 STATUS CONFERENCE

The default of the Defendant was entered on November 19, 2014. Plaintiff is to file and serve a motion for entry of default judgment on or before December 19, 2014. The Status Conference is continued to afford the Plaintiff the opportunity to file and have heard such motion.

Notes:

Continued from 10/15/14

Request for Entry of Default filed 11/17/14 [Dckt 17]

Entry of Default and Order Re Default Judgment Procedures filed 11/19/14 [Dckt 18]; prove-up hearing requested

December 3, 2014 at 2:30 p.m.

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2. [11-26716-E-13](#) ROLANDO/NYMPHA ZAPANTA
[11-2440](#)
SEHR V. ZAPANTA ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
6-20-11 [[1](#)]

Final Ruling: No appearance at the December 3, 2014 Status Conference is required.

Plaintiff's Atty: Mark Gorton; Domenic D. Spinelli
Defendant's Atty: Pro Per

Adv. Filed: 6/20/11
Answer: 8/10/11

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

The Status Conference is continued to 2:30 p.m. on December 17, 2015

DECEMBER 3, 2014 STATUS CONFERENCE

This Adversary Proceeding has been stayed pursuant to the Stipulation fo the Parties and order of the court. The Defendant-Debtor is performing through his Chapter 13 Plan a Stipulation which will resolve this Adversary Proceeding. Plaintiff reports that the Defendant-Debtor is current on his plan. It is requested that the Status Conference be continued another year for an administrative holding date.

Notes:

Continued from 12/4/13 to allow the Debtors the opportunity to continue with the performance under the Stipulation and minimize further costs and expense to the parties and the court.

Plaintiff's Fourth Status Conference Statement filed 11/12/14 [Dckt 31]

Final Ruling: No appearance at the December 3, 2014 Status Conference is required.

Debtor's Atty: Scott A. CoBen

Notes:

Continued from 10/15/14

Operating Report filed: 11/21/14

[SAC-13] Second and Final Application for Compensation by Scott A. CoBen & Associates Attorney for Chapter 11 Debtor and Debtor-in-Possession filed 10/17/14 [Dckt 431], set for hearing 12/11/14 at 10:30 a.m.

[SAC-14] Motion for Final Decree and Closing of Chapter 11 Case filed 10/17/14 [Dckt 436], set for hearing 12/11/14 at 10:30 a.m.

The Status Conference is continued to 2:30 p.m. on January 21, 2015.

DECEMBER 3, 2014 STATUS CONFERENCE

The Chapter 11 Plan Administrator-Debtor has filed a motion to administratively close this case, all post-confirmation motions having been filed and orders entered thereon. There is pending an Adversary Proceeding, 14-2284, which has been stayed pursuant to a stipulation concerning Debtor's performance under the confirmed Chapter 11 Plan.

This Status Conference is continued until after the hearing on the motion to close the case.

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 Post-Confirmation Status Conference having been set for December 3, 2014; the Plan Administrator-Debtor having filed a motion to administratively close this case; an Adversary Proceeding in which the court has entered an order for preliminary injunction concerning the Chapter 11 Plan pursuant to the stipulation of the Plan Administrator-Debtor and the creditor party; and good cause appearing,

IT IS ORDERED that the Status Conference

December 3, 2014 at 2:30 p.m.

5. [14-29231-E-11](#) MIZU JAPANESE SEAFOOD
BUFFET, INC.

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
9-15-14 [[1](#)]

Debtor's Atty: Stephen M. Reynolds

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

Notes:

Continued from 10/23/14

Operating Report filed: 11/12/14

Second Status Conference Report filed 11/21/14 [Dckt 87]

DECEMBER 3, 2014 STATUS CONFERENCE

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

Second Status Conference Statement - Dckt. 87

The Debtor in possession reports that it is responding to discovery requests from creditors concerning the proposed sale of the estate's assets. The Debtor in Possession does intend to file a liquidation plan of reorganization. Debtor in Possession reports that there are three "avoidable judgments" which may require litigation to "liquidate." At the Status Conference the Debtor in Possession explained ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

It is also reported that the estate has counter claims against some former employees for embezzlement which are currently be evaluated for financial viability based on the projected disbursement to creditors holding general unsecured claims. At the hearing the Debtor in Possession disclosed the value of the counter claims to be \$~~xxxxxxx~~, whether exemplary damages are to be sought, and whether police reports have been filed by the Debtor or Debtor in Possession.

PADAYACHEE V. TERRY, III

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: Pro Se

Adv. Filed: 9/30/14
Answer: 10/31/14

Nature of Action:

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

Notes:

SUMMARY OF COMPLAINT

The Complaint alleges that Plaintiff-Debtor obtained an order of the court valuing the Defendant's secured claim to have a value of \$0.00 for treatment through the Chapter 13 Plan in the Plaintiff-Debtor's bankruptcy case. In the First Cause of Action Plaintiff-Debtor states that he is seeking declaratory relief pursuant to Fed. R. Bankr. P. 7001(9) [which is merely the rule stating that declaratory relief must be requested by adversary proceeding and does not create a right for declaratory relief] that the relief requested requires that Defendant release its lien. This sounds as a claim for a declaration that Plaintiff-Debtor has rights which may be enforced (either by a determination that the lien is void or injunctive relief), but is not enforcing those rights, but merely wants a judgment stating that such rights could be enforced if so sought to be enforced.

The Second Cause of Action asserts that the Defendant's deed of trust is "completely unsecured" and that the deed of trust is an unsecured claim. The court interprets this statement to be an allegation that the court has determined that the debt secured by the Defendant's deed of trust has a value of \$0.00 pursuant to 11 U.S.C. § 506(a). The Chapter 13 Plan provided for payment of the \$0.00 secured claim in full. The Chapter 13 Plan has been completed, making the modification of the rights between the Plaintiff-Debtor and Defendant binding. The modified rights of the parties, including the \$0.00 valuation, being binding and final, there is no obligation secured by Defendant's deed of trust. Finally, pursuant to applicable California law the deed of trust is void, and Defendant has an obligation (statutory and contractual) to reconvey the deed of trust and clear record title of this void lien. *Martin v. CitiFinancial Services, Inc. (In re Martin)*, Adv. No. 12-2596, 2013 LEXIS 1622 (Bankr. E.D. CA 2013); *In re Frazier*, 448 B.R. 803 (Bankr. ED Cal. 2011), *affd.*, 469 B.R. 803 (ED Cal. 2012) (discussion of "lien striping" in Chapter 13 case).

It is then alleged that pursuant to "applicable law" the court may "extinguish" the deed of trust. This allegation is inconsistent with the prior (as interpreted by the court) allegations that there is no obligation to be secured by the deed of trust and said deed of trust is void. The term "extinguish" connotes that there is a valid deed of trust, but the court must "put it out" for the Plaintiff-Debtor. FN.1.

FN.1. The definition of "extinguish," as relevant to this Complaint, includes, "1 a(1) : to bring to an end : make an end of <hope for their safety was slowly extinguished>;... c : to cause extinction of (a conditioned response)...2 a : to cause to be void : nullify <extinguish a claim>; b : to get rid of usually by payment <extinguish a debt>." <http://www.merriam-webster.com/dictionary/extinguish>. None of these appear consistent with a deed of trust which is void by virtue of there being no obligation to be secured.

The Complaint also seek \$500.00 in statutory damages in the Third Cause of Action (Cal. Civ. § 2941(d)) and attorneys' fees.

SUMMARY OF ANSWER

The Answer admits and denies specific allegations. It has been filed by the Defendant in pro se. In the Affirmative Defenses Defendant asserts that he was not notified that Plaintiff-Debtor had completed his plan and the asserted discharge. He further asserts that Plaintiff-Debtor and Plaintiff-Debtor's counsel have not communicated any demand for (or right to receive) a reconveyance of the deed of trust.

In the prayer to the Answer, Defendant requests (1) that the court make a "final determination" that the March 12, 2010 order was a "final non-appealable order" determining Defendant's lien has a value of \$0.00; (2) confirm that Plaintiff-Debtor has completed his plan; (3) draft for Defendant an order, in a format allowable for recording, that extinguishes Defendant's lien; and (4) disallow attorneys' fees and statutory damages.

FN.2.

FN.2. The answer appears to make it clear that Defendant is "willing" to get the title to Plaintiff-Debtor's property cleared of the deed of trust - if that it proper. In substance, the Defendant is asking the court for legal advice or representation. Further, the court is then tasked with the responsibility of preparing the reconveyance for the Defendant (again, further legal or real estate professional representation). In addition, the Defendant seeks to have the Plaintiff commence this Adversary Proceeding, the court provide legal representation, and then the court prepare all of the documents for the parties - with Defendant asserting that Plaintiff-Debtor should not recover the statutory damages provided by the California Legislature or be reimbursed for the legal expenses he had to incur to enforce his legal rights against the Defendant.

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 pursuant to 28 U.S.C. § 157(b)(2). To the extent not core, Plaintiff consents to all final orders and judgment being entered by the bankruptcy judge. Complaint ¶¶ 1-5, Dckt. 1. In his Answer, Thomas J. Terry III, Defendant, admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 1,2, 5, Dckt. 8. **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 for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). To the extent not core, Plaintiff consents to all final orders and judgment being entered by the bankruptcy judge. Complaint ¶¶ 1-5, Dckt. 1. In his Answer, Thomas J. Terry III, Defendant, admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 1,2, 5, Dckt. 8. **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 -----, **2015**, and Expert Witness Reports, if any, shall be exchanged on or before -----, **2015**.
- d. Discovery closes, including the hearing of all discovery motions, on -----, **2015**.
- e. Dispositive Motions shall be heard before -----, **2015**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, **2015**.

Debtor in Possession ("ÄIP") states in his Chapter 11 Status Report filed September 8, 2014 (Dckt. 54) that he intends to file a plan within 60 days. He has been attempting to have the Internal Revenue Service file an The Status Conference is continued to 2:30 p.m. on December 3, 2014. Case Number: 2014-20352 Filed: 9/10/2014 Doc # 59 amended proof of such. Such amended claim not being filed, he will now object to the existing claim.

2014 MAY 28 STATUS CONFERENCE

In his May 22, 2014 Status Report the ÄIP states that he is waiting for the Internal Revenue Service to file an amended proof of claim taking into account the filed 2013 tax returns (which reduce the IRS claim by approximately \$15,000). The ÄIP projects having a plan and disclosure statement filed withing 60 days and set for hearing.

2014 FEBRUARY 19 STATUS CONFERENCE

In his Status Conference Report, the Debtor in Possession notifies the court that there are only two general unsecured claims - the federal and state income taxing agencies. The Debtor in Possession intends to use a combined Disclosure Statement and Plan due to the very limited number of creditors and the nature of their claims. The Estate income is generated by the Debtor operating his professional corporation. For creditors, there is one secured claim (airplane purchased as an investment). The two taxing agencies have non-priority general unsecured claims. There are no other creditors listed on the Schedules.

9. [09-32061-E-13](#) ROBERT/KATHLEEN ASH STATUS CONFERENCE RE: COMPLAINT
[14-2286](#) 10-3-14 [[1](#)]
ASH ET AL V. ONEWEST BANK, FSB
ADV. CASE DISMISSED 11/19/14

Dismissed 11/19/14

Final Ruling: No appearance at the December 3, 2014 Status Conference is required.

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

Adv. Filed: 10/3/14
Answer: none

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

The Adversary Proceeding having been dismissed, the Status Conference is removed from the calendar.

10. [09-32061](#)-E-13 ROBERT/KATHLEEN ASH
[14-2287](#)
ASH ET AL V. SYNCHRONY BANK

STATUS CONFERENCE RE: COMPLAINT
10-3-14 [[1](#)]

Final Ruling: No appearance at the December 3, 2014 Status Conference is required.

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

Adv. Filed: 10/3/14
Answer: none

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

The Status Conference is continued to 2:30 p.m. on February 18, 2015.

Notes:

Entry of Default and Order Re: Default Judgment Procedures filed 11/14/14 [Dckt 8]; prove-up hearing required

DECEMBER 3, 2014 STATUS CONFERENCE

The Default of the Defendant having been entered and Plaintiff required to file a motion for entry of default judgment by December 15, 2014, the Status Conference is continued to allow for the proper prosecution of such motion.

[14-2290](#)

U.S. TRUSTEE V. RUE

Plaintiff's Atty: Allen C. Massey
Defendant's Atty: Pro Per

Adv. Filed: 10/8/14

Answer: 11/7/14

Nature of Action:
Injunctive relief - other

Notes:

Joint Discovery Plan filed 11/13/14 [Dckt 9]

SUMMARY OF COMPLAINT

In the Complaint the U.S. Trustee, Plaintiff, alleges that the Defendant-Debtor has filed and failed to prosecute nine bankruptcy cases during the period April 2003 through April 2014. These cases were all dismissed. It is further alleged that Defendant-Debtor's current Chapter 13 case, 14-29671, has been filed in bad faith. The Plaintiff seeks an injunction barring the Defendant-Debtor from filing another bankruptcy case for a period of three years, unless pre-filing permission is obtained from the bankruptcy court in which Defendant-Debtors seeks to file a case.

SUMMARY OF ANSWER

The Defendant-Debtor has filed his Answer in pro se. He generally denies the allegations in Paragraphs 1-16 of the Complaint based on lack of information and belief. These paragraphs include the allegations of prior cases being filed, federal court jurisdiction, and that this is a core proceeding. Defendant-Debtor denies that it was his intention to abuse the bankruptcy laws.

The Answer also includes a narrative of events which occurred during the prior cases and difficulties with prior plans.

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 pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶ 2, Dckt. 1. In his Answer, Danny Rule, the Defendant-Debtor does not specially allege or deny the allegation of jurisdiction (Fed. R. Bankr. P. 2012(b)) and this being a core proceedings. These are core proceedings, both as admitted by failure to deny, and that they arise under the Bankruptcy Code itself - eligibility to commence bankruptcy cases and access to the bankruptcy court. **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:

December 3, 2014 at 2:30 p.m.

a. The Plaintiff alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶ 2, Dckt. 1. In his Answer, Danny Rule, the Defendant-Debtor does not specially allege or deny the allegation of jurisdiction (Fed. R. Bankr. P. 2012(b)) and this being a core proceedings. These are core proceedings, both as admitted by failure to deny, and that they arise under the Bankruptcy Code itself - eligibility to commence bankruptcy cases and access to the bankruptcy court. **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 November 26, 2014.

c. Discovery closes, including the hearing of all discovery motions, on February 27, 2015.

d. Dispositive Motions shall be heard before **March 26, 2014, 2015.**

e. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:30 p.m. on April 1, 2015.**

12. [13-31975](#)-E-13 JACK/LINDA GANAS
[14-2080](#)
GANAS ET AL V. WELLS FARGO
BANK, N.A.

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

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: Eddie R. Jimenez

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

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

Notes:

Continued from 8/7/14 [Dckt 50]

DECEMBER 3, 2014 STATUS CONFERENCE

On August 7, 2014 the court issued an order continuing the Status Conference to December 3, 2014. Dckt. 50. In pertinent part the order provides,

A. The Plaintiff-Debtor's Motion to filed a First Amended Complaint was denied without prejudice.

December 3, 2014 at 2:30 p.m.

B. In light of the substantive settlement negotiations and the nature of the issues in this Adversary Proceeding, pursuant to the agreement of the parties all matters in this Adversary Proceeding are stayed until further order of the court.

C. The Parties are to continue with the informal discovery as part of their settlement discussions.

D. Defendant Wells Fargo Bank, N.A. is granted an open extension for filing a responsive pleading to the Complaint. The court shall set a deadline for such responsive pleading at the continued status conference.

A detailed discussion of the claims as pleaded by the Plaintiff-Debtors is provided in the court's Civil Minutes for the hearing on the motion for leave to file first amended complaint. Dckt. 48.

As of the court's December 2, 2014 review of the Docket, for further pleadings or a Status Conference Statement was filed by any of the parties.

13. [14-25376-E-7](#) **KEVIN/BREE SEARS**
[13-2284](#)
ADAMS V. SEARS

**PRE-TRIAL CONFERENCE RE:
COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT
9-4-13 [1]**

Plaintiff's Atty: Arthur J. Pollock
Defendant's Atty: Douglas B. Jacobs

Adv. Filed: 9/4/13
Answer: 9/24/13

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

Notes:

Scheduling Order -
Initial disclosures by 11/30/13
Close of Discovery ~~3/31/14~~ 10/15/14 [amd scheduling order 7/2/14]
Dispositive motions heard by ~~5/16/14~~ 11/15/14 [amd scheduling order 7/2/14]
Plaintiff's pretrial statement two weeks prior to pretrial conference
Defendant's pretrial statement one week prior to pretrial conference

Stipulation to Modify Pretrial Scheduling Order filed 10/15/14 [Dckt 23]; no order pending

Requests:

Close of discovery 2/16/15
Dispositive motions heard by 3/18/15
Pretrial Conference to be determined by the court

Defendant's Status Statement filed 11/24/14 [Dckt 24]

DECEMBER 3, 2014 STATUS CONFERENCE

This Adversary Proceeding was filed on September 4, 2013, in connection with the prior Chapter 13 bankruptcy case (13-27044) filed by Kevin Sears, the Defendant-Debtor. The prior bankruptcy case was dismissed on May 18, 2014, and Defendant-Debtor filed his second Chapter 13 case on May 21, 2014. On November 17, 2014 Defendant-Debtor elected to convert his Chapter 13 case to one under Chapter 7. When the Debtor-Defendant filed the Second Bankruptcy case, the court allowed the continued prosecution of this Adversary Proceeding to determine whether the debt claimed by Plaintiff was nondischargeable.

Though this Adversary Proceeding has been pending for fourteen months, little has transpired. Most of the battles between the Plaintiff and the Defendant-Debtor have been in the bankruptcy case fighting for/against confirmation and seeking to dismiss/maintain the bankruptcy case. Though the Defendant-Debtor and his co-Debtor are highly compensated and have gross income of \$172,476.00 (Schedule A, Dckt. 1, 14-25376). On Amended Schedule J the Defendant-Debtor and co-Debtor corrected this information to state gross income of \$218,496 a year. Notwithstanding such substantial income, confirmation of a Chapter 13 Plan eluded the Defendant-Debtor and his co-Debtor.

Whether a Chapter 13 case or Chapter 7, determination of the nondischargeability of the debt was necessary. Plaintiff's counsel has argued to the court that Defendant-Debtor has stated that Plaintiff will never see a dime of what is owed. The court makes no determination of whether such a statement was made, but assuming that Plaintiff believes it was made, then active prosecution of this adversary proceeding must occur if Plaintiff seeks to protect his asserted rights.

The Original Scheduling Order in this Adversary Proceeding set a March 31, 2014 close of discovery. Order, Dckt. 12. Pursuant to the stipulation of the parties, the court extended the close of discovery to October 15, 2014. Order, Dckt. 19.

On October 15, 2014, the day ordered for close of discovery as extended pursuant to the first stipulation, the Parties submitted a second stipulation to extend discovery to February 16, 2015. Second Stipulation, Dckt. 23. The Second Stipulation provides no explanation as to why discovery has not been conducted over the past fourteen months or why the Parties have not completed discovery as they represented to the court they would so do in the first stipulation.

Defendant-Debtor's Status Statement

The Defendant-Debtor has filed s Status Statement. None has been filed by Plaintiff. Defendant-Debtor states it was determined through arbitration that Defendant-Debtor (an attorney) was obligated to pay back to Plaintiff a "considerable portion" of "two large retainers" received by Defendant-Debtor to represent Plaintiff in a criminal proceeding.

Defendant-Debtor further states that there have been on settlement discussions, but possibly after discovery the parties may be able to "rationally" resolve this matter. Such statements are not consistent with this Adversary Proceeding which has been pending for fourteen months and two years of Chapter 13 Chapter 13 cases in which the Defendant-Debtor and Plaintiff could have "rationally resolved" this dispute.

Defendant-Debtor reports that the Plaintiff continues to be incarcerated in Southern California. The Parties seek to avoid the cost and expense of having to depose the Plaintiff. It further states that Plaintiff intends to take the Defendant-Debtor's deposition and that the Defendant-Debtor wants to take the deposition of the Plaintiff's criminal defense

attorney.

No explanation is provided as to why these two, relatively simple, declarations have not been taken after fourteen months in this Adversary Proceeding. Further, Defendant-Debtor does not provide any indication as to why he rationally would need to take Plaintiff's criminal defense attorney's deposition over a dispute relating to fees which Defendant-Debtors has been order through arbitration to repay to the Plaintiff.

Status of Adversary Proceeding

What is eluding the court is what complicated discovery is required which could not, and should have been conducted during the fourteen months that this Adversary Proceeding has been pending. It appears that there can be little factual matters in dispute. If a binding arbitration has been conducted and specific findings made, no party has asserted that such determinations can be ignored or relitigated by this court. It appears that possibly some legal issues concerning the attorney-client relationship, the obligation to hold retainers in an attorney's client trust account, and the fiduciary duties and relationship which may exist between an attorney and his or her client.

As this Adversary Proceeding has wound forward, it has and continues to consume the time and resources of not only the parties, but the court.

failed to place client monies in his trust account
Though this Adversary PR

REVIEW OF COMPLAINT

The Complaint filed by Plaintiff alleges that Plaintiff engaged Defendant-Debtor as his criminal defense attorney. Plaintiff provided Defendant-Debtor with a \$25,000.00 retainer, but Defendant-Debtor did not deposit the retainer in his client trust account. It is asserted that attorneys in California are required to deposit such client retainers in their trust accounts.

The Complaint further alleges that Defendant-Debtor did not prepare a written contract to provide such legal services during the "early stages of the legal defense the [criminal] case." Further, that Defendant-Debtor did not provide regular, periodic gilling statements to Plaintiff.

Two weeks prior to the criminal trial, Plaintiff paid Defendant-Debtor an additional \$20,000.00. At this time, approximately one year after the legal representation began, Defendant-Debtor provided Plaintiff with a written contract for the legal services to be provided. It is alleged that Defendant-Debtor did not sign the contract. It is alleged that the Defendant-Debtor did not deposit the \$20,000.00 into his client trust account.

A dispute over the legal fees arose, with the Plaintiff and Defendant-Debtor prosecuting a binding arbitration. It is alleged that the arbitration award has become final and non-appealable. Plaintiff further alleges that the arbitration award determination included: (1) the fair value of the legal services provided by Defendant-Debtor was \$15,000.00, (2) that Defendant-Debtor was ordered to refund \$30,000.00 of the \$45,000.00 retainer he was paid by Plaintiff, and (3) that the \$45,000.00 retainer should have been placed in Defendant-Debtor's client trust account.

The Complaint further alleges that a fiduciary relationship existed

between Plaintiff and Defendant-Debtor concerning the monies paid for the legal services retainer. It is further alleged that the failure to deposit the monies in the client trust account is a breach of the fiduciary duty and a "defalcation" which renders this \$30,000.00 debt nondischargeable pursuant to 11 U.S.C. § 523(a)(4).

REVIEW OF ANSWER

In his Answer, the Defendant-Debtor admits the allegations in Paragraphs 1-7 of the Complaint, which include the jurisdiction grounds and that this is a core proceeding. Defendant-Debtor further admits that he agreed to represent the Plaintiff in the criminal case.

Defendant-Debtor then generally denies paragraphs 8-17 of the Complaint. This includes denying: (1) \$25,000.00 was paid as an initial retainer to Defendant Debtor for the legal representation to be provided Plaintiff; (2) that Defendant-Debtor did not deposit the \$25,000.00 in his client trust account; (3) \$20,000.00 was paid as an additional retainer to Defendant-Debtor to represent Plaintiff; (4) that Defendant-Debtor did not deposit the \$25,000.00 in his client trust account; (5) that Plaintiff was convicted in the criminal case for which Defendant-Debtor was his attorney; (6) that Plaintiff and Defendant-Debtor engaged in an arbitration regarding the legal fees and retainer paid by Plaintiff; (7) that in the arbitration it was determined (a) that Defendant-Debtor should have placed the \$45,000.00 retainer monies in his client trust account, (b) that the value of the legal services provided by Defendant-Debtor to Plaintiff was \$15,000.00, and (c) that it was determined Defendant-Debtor is obligated to return \$30,000.00 of the retainer monies paid to Plaintiff; and (8) that the arbitration is final, Defendant-Debtor having dismissed his state court action to reject the award.

14. [14-28780-E-13](#) CASEY WADE
[14-2292](#)
STEVENS ET AL V. WADE

STATUS CONFERENCE RE: NOTICE OF
REMOVAL
10-8-14 [[1](#)]

Final Ruling: No appearance at the December 3, 2014 Status Conference is required.

Plaintiff's Atty: Thomas M. Hogan
Defendant's Atty: Walter R. Dahl

Adv. Filed: 10/8/14
Answer: none

Nature of Action:
Determination of removed claim or cause
Recovery of money/property - turnover of property
Recovery of money/property - other
Injunctive relief - other

The Complaint having been remanded to the State Court, this Status Conference is removed from the calendar.

Notes:

[DL-1] Motion to Remand filed 10/20/14 [Dckt 6]; order granting filed 11/12/14 [Dckt 18]

15. [12-36884-E-7](#) JENNY PETTENGILL

STATUS CONFERENCE RE: COMPLAINT
9-19-14 [[1](#)]

[14-2276](#)

ROBERTS V. LAZUTKINE ET AL

Plaintiff's Atty: George C. Hollister
Defendant's Atty: unknown

Adv. Filed: 9/19/14
Summons Reissued: 9/23/14

Answer: none

Nature of Action:

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

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

Notes:

DECEMBER 3, 2014 STATUS CONFERENCE

SUMMARY OF COMPLAINT

Through the Complaint the Plaintiff, the Chapter 7 Trustee in the Jenny Pettengill bankruptcy case (14-36884) asserts interests in significant personal and real property which are alleged by the Debtor to be community property with her ex husband, Stanislav Lazutkine. These claims include the following. First Claim for Relief - constructive trust for the Tahoe Property. Second Claim for Relief - turnover and accounting for the Tahoe Property. Third Claim for Relief - determination of the estate's interests in the Metprom Stock and Records. Fourth Claim for Relief - turnover and accounting Metprom Stock and Records. Fifth Claim for Relief - turnover of artwork and vehicles. Sixth Claim for Relief - objection to claim of Corrigan Finance Limited. Seventh Claim for Relief - determination that no entity using the names "Trusban" or "Trisban" have an allowed claim in the bankruptcy case.

Debtor's Atty: Lucas B. Garcia

The Status Conference is **XX.**

Notes:

Continued from 10/15/14

[LBG-4] Motion to Authorize the Debtor to Employ Realtor Mimi Nassif filed 10/9/14 [Dckt 36]; Order granting filed 10/24/14 [Dckt 63]

[LBG-5] Motion to Authorize the Debtor to Employ Attorney Luke Garcia filed 10/9/14 [Dckt 46]; heard 10/23/14 and continued to 12/11/14 at 10:30 a.m.

[LBG-6] Motion to Authorize the Debtor in Possession to Sell Real Property and Contents filed 10/9/14 [Dckt 41]; Order granting in part filed 10/28/14 [Dckt 73]

[LBG-7] Motion to Dismiss Case filed 11/17/14 [Dckt 81], set for hearing 12/11/14 at 10:30 a.m.

[LBG-8] Emergency Application for Order Authorizing the Debtor in Possession to Receive Early Disbursement of Estimated Remaining Funds from Sale filed 11/19/14 [Dckt 85]; denied without prejudice 11/20/14

Order to Show Cause re Failure to Pay Fees filed 11/21/14 [Dckt 90], set for hearing 12/11/14 at 10:30 a.m.

17. [13-27293-E-7](#) CHRISTOPHER/TANA CROSBY
[13-2306](#)
SANDOVAL ET AL V. CROSBY

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
9-12-14 [[42](#)]

Final Ruling: No appearance at the December 3, 2014 Status Conference is required.

Plaintiff's Atty: Sean Gavin
Defendant's Atty: Stephen C. Ruehmann

Adv. Filed: 9/30/13
Answer: 11/1/13

Amd Cmplt Filed: 9/12/14
Answer: none

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - willful and malicious injury
Declaratory judgment

The Status Conference is continued to 1:30 p.m. on December 11, 2014

Notes:

Continued from 10/15/14. Defendant to file a responsive pleading to the First Amended Complaint on or before 10/30/14.

[SCR-6] Defendant's Motion to Dismiss Plaintiffs' First Amended Complaint for Failure to State a Claim on Which Relief Can Be Granted filed 10/30/14 [Dckt 53], set for hearing 12/11/14 at 1:30 p.m.

DECEMBER 3, 2014 STATUS CONFERENCE

The Defendant's motion to dismiss the Complaint is set for hearing at 1:30 p.m. on December 11, 2014. The court continues the Status Conference to be conducted in conjunction with the hearing. Opposition to the motion was due on November 27, 2014, with none being shown on the court's docket for the Adversary Proceeding as of the court's December 2, 2014 review.

