

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

December 19, 2019 at 2:00 p.m.

1. [12-92723-E-7](#) **JOHN/KRISTINE ROBINSON** **CONTINUED STATUS CONFERENCE RE:**
[13-9004](#) **GRANT BISHOP MOTORS, INC. V.** **COMPLAINT**
ROBINSON, IV ET AL **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
Nature of Action:
Objection /Revocation of Discharge, Dischargeability

Notes:

Continued from 12/20/18, the Parties performing a confidential settlement pending dismissal of this Adversary Proceeding.

Joint Status Conference Statement of Plaintiff and Defendants filed 10/11/19 [Dckt 136]; Parties request continuance of the 12/19/19 status conference to December 2020.

The Status Conference is continued to 2:00 p.m. on December 17, 2020.

DECEMBER 19, 2019 STATUS CONFERENCE

On October 30, 2019, the Parties filed a Status Report. Dckt. 136. The Parties report that the Defendant is performing the settlement in this Adversary Proceeding by making the payments required thereunder. It is requested that the court continue the Status Conference for case management purposes to December 2020 to allow for the continued performance under the Settlement Agreement.

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 Status Conference having been scheduled, the Plaintiff-Trustee having filed and set for hearing a Motion for Entry of Default Judgment, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to 2:00 p.m. on December 17, 2020.

2. [18-90029-E-11](#) **JEFFERY ARAMBEL** **CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
1-17-18 [1]**

Debtor's Atty: Reno F.R. Fernandez; Iain A. Macdonald

Notes:
Continued from 9/10/19

Operating Report filed: 9/20/19, 10/21/19

[MF-40] Order Confirming Plan filed 9/15/19 [Dckt 970]; Notice of Appeal filed 9/27/19 [Dckt 992]

[AB-3] Second and Final Application for Approval of Compensation and Reimbursement of Expenses for Period June 1, 2018 to September 10, 2019, for Arch & Beam Global, LLC for Debtor in Possession filed 9/26/19 [Dckt 978]; Order granting filed 10/24/19 [Dckt 1027]

[MF-43] Second and Final Application for Approval of Compensation and Reimbursement of Expenses of Macdonald Fernandez LLP as Counsel for Debtor in Possession filed 9/26/19 [Dckt 984]; Order granting filed 10/24/19 [Dckt 1028]

[MF-44] Reorganized Debtor's Motion to Sell Real Property Free and Clear of Liens (224.7-Acre Portion of Arambel Business Park) filed 10/31/19 [Dckt 1034]; Order Dismissing Motion as Moot filed 11/29/19 [Dckt 1062]

[MF-45] First and Final Application for Approval of Compensation and Reimbursement of Expenses of Jay D. Crom of Bachecki, Crom & Co., LLP as Accountants for Debtor-In-Possession filed 11/26/19 [Dckt 1052], set for hearing 12/19/19 at 10:30 a.m.

[MF-46] First and Final Application for Approval of Compensation and Reimbursement of Expenses of Braun International as Appraiser for Debtor in Possession filed 11/26/19 [Dckt 1052], set for hearing 12/19/19 at 10:30 a.m.

The Status Conference is continued to 2:00 p.m. on xxxxxxxx, 2020.

F. Suit was filed in Sonoma Superior Court, with a fraud judgment being entered in favor of Plaintiff.

G. The Exhibits attached to the Adversary Complaint include:

1. Calculation of Judgment Obligation to be \$107,044.59, computed to May 13, 2019. Dckt. 1 at 3.
2. Abstract of Judgment, showing Judgment Renewal date of April 14, 2011. Id. at 9.
3. Notice of Renewal of Judgment. Id. at 19.
4. Default Judgment. Id. at 27-28.

a. The Default Judgment includes specific findings of the State Court of fraud.

Though one could divine what relief Plaintiff may be seeking, the Adversary Complaint does not stated any specific relief requested.

SUMMARY OF ANSWER

Leslie Henry Kinsey (“Defendant-Debtor”) filed an Answer on November 25, 2019. Dckt. 5. The Answer includes:

- A. An assertion that the Complaint fails to state a claim upon which relief can be granted, citing Federal Rule of Civil Procedure 12(b)(6).
- B. Plaintiff has unclean hands.
- C. Plaintiff did not provide money, property or services, or an extension of credit as a result of any fraud, false pretenses, or misrepresentation by Defendant-Debtor.
- D. Defendant-Debtor is not a fiduciary of Plaintiff in connection with any fraud or defalcation, and Defendant-Debtor did not embezzle any monies or commit larceny.
- E. Defendant-Debtor never had any intent to injury or damage Plaintiff, and never believed that harm or damage would be cause to Plaintiff or Plaintiff’s property due to any wrongful act of Defendant.
- F. Plaintiff was “*in pari delicto*” in connection with the facts and transactions underlying the State Court default judgment. Further, Plaintiff actively participated in, and/or directly benefitted from any wrongdoing by Defendant-Debtor.

G. Plaintiff did each and all of the following:

1. Consented to all acts or omissions by Defendant Debtor (Cal. Civ. § 3515);

2. Took advantage of his own wrong in connection giving rise to the State Court default judgment against Defendant-Debtor (Cal. Civ. § 3517);
3. Acquiesced in Defendant-Debtor's errors (Cal. Civ. § 3516); and
4. Received the benefit without taking the burden of the transactions giving rise to the State Court default judgment against Defendant-Debtor (Cal. Civ. § 3521).

REQUIRED PLEADING OF CORE AND NON-CORE MATTERS, CONSENT OR NON-CONSENT TO NON-CORE MATTER

Neither the Complaint nor the Answer include the required statements of the basis for federal court jurisdiction, whether this is a core proceeding, and if non-core whether they consent to the bankruptcy judge issuing all orders and the final judgment in this Adversary Proceeding.

The basic pleading requirements of Federal Rule of Civil Procedure 8 for a complaint, including that the complaint “[m]ust contain: (1) a short and plain statement of the grounds for the court's jurisdiction...,” apply to complaints in Adversary Proceedings. In add to incorporating Rule 8, Federal Rule of Bankruptcy Procedure 7008 adds the addition pleading requirement concerning whether the matters in the complaint are core or non-core:

“Rule 8 F.R.Civ.P. applies in adversary proceedings. The allegation of jurisdiction required by Rule 8(a) shall also contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the Code is pending. In an adversary proceeding before a bankruptcy judge, **the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the proceeding is core or non-core and, if non-core, that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy judge.**”

Fed. R. Bankr. P. 7008 (emphasis added).

For a responsive pleading, Federal Rule of Bankruptcy Procedure 12(b) applies in adversary proceeding. Fed. R. Bankr. P. 7012(b). The Bankruptcy Rules add a further responsive pleading requirement concerning whether the matter are core or non-core, as well as the consent or non-consent for non-core matters by the responding party:

“(b) Applicability of Rule 12(b)-(i) F.R.Civ.P. Rule 12(b)-(i) F.R.Civ.P. applies in adversary proceedings. A responsive pleading **shall admit or deny an allegation that the proceeding is core or non-core.** If the response is that the proceeding is **non-core, it shall include a statement that the party does or does not consent** to entry of final orders or judgment by the bankruptcy judge. In non-core proceedings final orders and judgments shall not be entered on the bankruptcy judge's order except with the express consent of the parties.”

Fed. R. Bank. P. 7012(b) (emphasis added).

REVIEW OF STATE COURT DEFAULT JUDGMENT

The State Court Default Judgment attached to the Complaint was issued by the Superior Court on October 9, 2001. Dckt. 1 at 27-28. The Judgment is in the amount of \$30,200.18. In addition, the Judgment states:

[t]he Court hereby makes a specific finding that defendant LES KINSEY committed fraud by making the following factual misrepresentations to plaintiff::

- (a) That he was a licensed contractor, holding California license number 7021
- (b) That he had liability insurance;
- (c) That he had worker's compensation insurance;
- (d) That he would pay prevailing wages to employees.

The evidence establishes that none of these misrepresentations were true and were in fact false.

Id. Documents relating to a renewal of the State Court Judgment in 2011 are attached to the Complaint and Plaintiff's computation that the amount owing on the State Court Judgment is now \$107,044.59, now almost two decades after it was entered.

In Defendant-Debtor's Answer, he responds and denies that the Judgment is not for acts that would be nondischargeable for fraud, embezzlement or larceny, or willful and malicious injury to Plaintiff or Plaintiff's property. Defendant-Debtor frames the answer as one for nondischargeability of debt, which is a core proceeding for which federal court jurisdiction exists and is a core proceeding for which the bankruptcy judge issues all orders and the final judgment. 28 U.S.C. §§ 1334 and 157(b)(2)(I), and the referral of bankruptcy matters by the District Court in the Eastern District of California to the Bankruptcy Judges in this District.

DISCUSSION

At the Status Conference, **XXXXXXXXXX**

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.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(c).

Local Rule 9014-1(f)(2) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff, Defendant, Defendant’s Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 18, 2019. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

The Motion for Leave to File Second Amended Complaint has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Plaintiff and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

The Motion for Leave to File First Amended Complaint is XXXXXXXXXX.

Pending Order to Show Cause re Dismissal of Adversary Proceeding

On December 17, 2019, the court conducted the continued hearing on the request of the Defendant-Debtor to dismiss her bankruptcy case and Order to Show Cause why this Adversary Proceeding should not be dismissed. The Court determined XXXXXXXXXX

REVIEW OF MOTION

The Plaintiff, Emilio Reyes (“Plaintiff”), filed this Motion seeking an order allowing the filing of a first amended complaint (“FAC”), in this Adversary Proceeding against the defendant, Lorraine Escobar (“Defendant-Debtor”). Plaintiff argues amending the complaint is necessary to include new allegations of fraudulent behavior of Defendant-Debtor and her attorney, as well as misconduct and bad faith by Defendant-Debtor’s attorney.

Federal Rule of Civil Procedure 15, incorporated into adversary proceedings through Federal Rule of Bankruptcy Procedure 7015, states the following with respect to amending a complaint:

(a) Amendments Before Trial.

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

(3) Time to Respond. Unless the court orders otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later.

FED. R. CIV. P. 15.

Here, Plaintiff seeks leave to file a First Complaint to include new allegations. Defendant-Debtor has filed her answer to the Complaint. Dckt. 18. The answer is a “general denial” form answer that pro se defendants may use, and includes seventeen (17) affirmative defenses (demonstrating a level of legal sophistication above that of the average consumer debtor).

The proposed First Amended Complaint appears as Docket Entry No. 25. It is one hundred and forty-six (146) pages in length. Of this, the first twenty-eight pages are the Complaint, with the balance consisting of exhibits. The original complaint was ninety-one pages in length. Dckt. 1.

At the hearing, **xxxxxxxxxx**

5. [19-90461-E-7](#) LORRAINE ESCOBAR
[19-9014](#)
REYES V. ESCOBAR

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
9-30-19 [25]

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

Adv. Filed: 8/12/19
Answer: 9/4/19
Amd. Answer: 9/6/19

Amd. Cmplt Filed: 9/30/19
Answer: none

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

Notes:
Continued from 10/17/19

[RHS-1] Order to Show Cause Why Adversary Proceeding Should Not be Dismissed Without Prejudice filed 10/24/19 [Dckt 37]

[RHS-1] Order Continuing Hearing on Order to Show Cause re: Reimbursement of Filing Fee and Dismissal of Adversary Proceeding Without Prejudice filed 11/15/19 [Dckt 39], set for hearing 12/19/19 at 10:30 a.m.

The Status Conference is XXXXXXXXXX

DECEMBER 19, 2019 STATUS CONFERENCE

At the Status Conference, XXXXXXXXXX

6. [19-90382-E-7](#) TRACY SMITH
[19-9012](#)
ALVAREZ V. SMITH ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
7-26-19 [1]

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

Adv. Filed: 7/26/19
Answer: none

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - willful and malicious injury
Dischargeability - fraud as fiduciary, embezzlement, larceny
Recovery of money/property - other

Notes:
Continued from 10/17/19

The Status Conference is ~~XXXXXXXXXX~~

DECEMBER 19, 2019 STATUS CONFERENCE

On October 16, 2019, the default of Tracy Smith (Dckt. 13) and the default of Sharp Investor, Inc. (Dckt. 15) were entered. The orders entering the two defaults require that Plaintiff file motion for entry of a default judgment.

No further action has been taken by Plaintiff and the thirty-day period in which to request the entry of the default judgments has expired.

It appears that Plaintiff has resolved the claims asserted in this Adversary Proceeding and no longer needs to prosecute it.

The court shall issue an Order to Show Cause why this Adversary Proceeding should not be dismissed for lack of prosecution by Plaintiff.

OCTOBER 17, 2019 STATUS CONFERENCE

On October 11, 2019, Plaintiff filed requests for entry of defaults against the two named defendants. Dckts. 9, 10. The defaults have not been entered, the documents required for entry of the defaults not being complete. Memorandum, Dckt. 12.

No answers or other responsive pleadings having been filed and the deficiency in the entry of defaults appearing to be clerical, the court continued the Status Conference.

7. [17-90492-E-7](#) **JED GLADSTEIN**
[17-9020](#)
**GLADSTEIN V. DEPARTMENT OF
EDUCATION**

**CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
10-20-19 [71]**

Plaintiff's Atty: Randall K. Walton
Defendant's Atty: unknown [Department of Education]

Adv. Filed: 11/12/17

Nature of Action:
Dischargeability - student loan

Notes:

Continued from 10/17/19, the Parties not appearing. Order for personal appearances of Parties filed 10/21/19 [Dckt 76]

[MH-2] *Ex Parte* Application for Relief from Order Dated October 21 Requiring Personal Appearance of Dismissed Party Educational Credit Management and Its Counsel on December 19, 2019 filed 10/29/19 [Dckt 82]; Order granting filed 10/30/19 [Dckt 83]

DECEMBER 19, 2019 STATUS CONFERENCE

The court ordered that counsel for Plaintiff and the Plaintiff appear at this continued Status Conference. Order, Dckt. 76.

The Amended Complaint in this Adversary Proceeding was filed on October 20, 2019. Though an attempt was made to have defaults entered, none have been entered, the deficiencies in the requests being set forth in the Memorandum re Default Papers. Dckt. 77. No action has been taken in this Adversary Proceeding since the October 17, 2019 Status Conference.

At the Status Conference for the First Amended Complaint, Plaintiff's Counsel reported to the court **XXXXXXXXXX**

OCTOBER 17, 2019 STATUS CONFERENCE

Though the filing of a Second Amended Complaint was authorized and ordered to be filed by August 1, 2019 (Order, Dckt. 67), one has not been filed. With the Department of Education having been substituted in as the real party in interest, it may be that the Parties have revolved the issues, resulting in this Adversary Proceeding not needing to consume the time and resources of the Parties.

At the Status Conference nobody appeared.

FEBRUARY 14, 2019 PRETRIAL CONFERENCE

Request for Continuance

The Parties filed a Joint Pre-Trial Conference Statement on February 12, 2019. Dckt. 41.

In it they report that the Parties productive settlement discussions were derailed by the Government Shutdown in January 2019. The Parties report that they believe that a settlement will be forthcoming based upon their respective investigation of the underlying facts.

The Parties request to continue the Pre-Trial Conference to a date in April 2019. This request is reasonable and consistent with the Parties' diligent prosecution and resolution of this Adversary Proceeding.

9. [16-90513-E-7](#) TIRZAH HAMILTON
[16-9012](#)
EDMONDS V. HAYES ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
8-24-16 [1]

Final Ruling: No appearance at the December 19, 2019 Status Conference is required.

Plaintiff's Atty: Steven S. Altman
Defendants' Atty: Pro Se

Adv. Filed: 8/24/16
Answer: 9/22/16

Nature of Action: Recovery of Money/Property

Notes:

Continued from 12/20/18, the Parties informing the court that a settlement in this matter is being performed.

Status Report filed 10/30/19 [Dckt 93]; Parties request continuance of the 12/19/19 status conference to December 2020 to monitor the progress of payment in this matter.

The Status Conference is continued to 2:00 p.m. on December 17, 2020.

DECEMBER 19, 2019 STATUS CONFERENCE

On October 30, 2019, the Plaintiff-Trustee filed a Status Report. Dckt. 93. The Plaintiff-Trustee reports that the Defendant is performing the settlement in this Adversary Proceeding by making the payments required thereunder to the Plaintiff-Trustee. It is requested that the court continue the Status Conference for case management purposes to December 2020 to allow for the continued performance under the Settlement Agreement.

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 Status Conference having been scheduled, the Plaintiff-Trustee having filed and set for hearing a Motion for Entry of Default Judgment, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to 2:00 p.m. on December 17, 2020.

10. [18-90339-E-7](#) KIMBERLY SOLARIO
[18-9014](#)
DE JONG V. SOLARIO

PRE-TRIAL CONFERENCE RE:
COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT
8-17-18 [1]

Final Ruling: No appearance at the December 17, 2019 Pre-Trial is required.

Plaintiff's Atty: Michael R. Tener
Defendant's Atty: Pro Se

Adv. Filed: 8/17/18
Answer: 9/7/18
Nature of Action:
Dischargeability - priority tax claims
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

Notes:
Scheduling Order -
Initial disclosures by 4/25/19
Close of discovery 9/30/19
Dispositive motions heard by 11/22/19

[NEU-3] Plaintiff Craig De Jong's Motion for Summary Judgment or Partial Summary Judgment filed 10/10/19 [Dckt 30]; Motion Taken Under Submission 11/21/19 [Dckt 44]

The court having taken under submission the Motion for Summary Judgment and in the process of issuing a ruling granting the Motion, **the Status Conference is continued to 2:00 p.m. on February 6, 2020, for proceeding management purposes.**

11. [19-90382-E-7](#) TRACY SMITH
[19-9013](#)
KALRA V. SMITH

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
7-29-19 [1]

Final Ruling: No appearance at the December 19, 2019 Status Conference is required.

Plaintiff's Atty: Mark W. Hostetter
Defendant's Atty: unknown

Adv. Filed: 7/29/19
Answer: none

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

Notes:
Continued from 10/17/19 to afford Plaintiff the opportunity to prosecute the pending Motion for Entry of Default Judgment set for hearing on 11/7/19.

[MWH-3] Plaintiff Paul Kalra's Motion for Default Judgment filed 11/29/19 [Dckt 22], set for hearing 1/9/20 at 10:30 a.m.

The Plaintiff's Motion for Entry of a Default Judgment set for hearing, **the Status Conference is continued to 2:00 p.m. on February 6, 2020.**

12. [19-90382-E-7](#) TRACY SMITH
[19-9017](#)
KAUFMAN ET AL V. SMITH

STATUS CONFERENCE RE:
COMPLAINT
10-24-19 [1]

Final Ruling: No appearance at the December 19, 2019 Status Conference is required.

Plaintiff's Atty: Hagop T. Bedoyan
Defendant's Atty: unknown

Adv. Filed: 10/24/19
Answer: none

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

Notes:
[MB-1] Substitution of Attorneys [Creditors] filed 11/22/19 [Dckt 7]; Order approving filed 11/29/19 [Dckt 9]

Entry of Default and Order Re: Default Judgment Procedures filed 12/6/19 [Dckt 16]

The Default of Defendant having been entered and ex parte motion to extend time for filing motion for entry of default judgment being before the court, **the Status Conference is continued to 2:00 p.m. on February 27, 2020.**

13. [19-90382-E-7](#) TRACY SMITH
[19-9018](#)
U.S. TRUSTEE V. SMITH

STATUS CONFERENCE RE:
COMPLAINT
10-24-19 [1]

Final Ruling: No appearance at the December 19, 2019 Status Conference is required.

Plaintiff's Atty: Jason Blumberg
Defendant's Atty: unknown

Adv. Filed: 10/24/19
Answer: none

Nature of Action:
Objection/revocation of discharge

Notes:
Request for Entry of Default by Plaintiff filed 12/9/19 [Dckt 8]

The Default of the Defendant having been entered, **the Status conference is continued to 2:00 p.m. on February 27, 2020**, to allow for the filing of and hearing on a motion for entry of default judgment.