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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re) Case No. 14-91565-E-11
)
RICHARD CARROLL SINCLAIR,)
)
Debtor.)
)
_____)
)
ANDREW KATAKIS, et al.,) Adv. Proc. No. 15-9009
) Docket Control No. HAR-1
Plaintiffs,)
)
v.)
)
RICHARD CARROLL SINCLAIR,)
)
Defendant.)
_____)

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.

MEMORANDUM OPINION AND DECISION
DENYING WITHOUT PREJUDICE MOTION FOR SUMMARY JUDGMENT

Andrew Katakis, California Equity Management Group, Inc., and Fox Hollow of Turlock Owners' Association ("Movant") filed the instant Motion for Summary Judgment or in the Alternative Summary Adjudication Against Defendant Richard Sinclair on April 23, 2015. Dckt. 11. Proper notice was provided and Richard Sinclair, the defendant ("Defendant-Debtor"), timely filed his opposition.

As set forth in this Memorandum Opinion and Decision, upon

1 consideration of the Motion, Supporting Pleadings, Opposition,
2 arguments of the parties, and applicable law, the Motion is denied
3 without prejudice.

4 **OVERVIEW OF LITIGATION**

5 This Adversary Proceeding was filed on February 23, 2015. The
6 complaint seeks a determination that a judgment obtained against
7 Defendant-Debtor in Stanislaus County Superior Court ("State
8 Court"), Case No. 332233 ("State Court Action") in the amount of
9 \$1,337,073.72 ("State Court Judgment") is a nondischargeable debt
10 pursuant to "11 U.S.C. § 523(a)(2)(A), (4), and (6)." A copy of
11 the ruling of the State Court ("State Court Ruling") and the
12 California Court of Appeal Decision affirming the State Court
13 Ruling are filed in support of the Motion as Exhibits 1 and 2,
14 respectively, to Movant's Request for Judicial Notice, Dckt. 15.

15 As a preliminary matter, the court notes that these parties
16 continue to be locked in what appears to be a litigation death
17 spiral that has been going on for more than a decade. The
18 litigation spiral has twisted from the California Superior Court to
19 the U.S. District Court, and now from the California Court of
20 Appeal to the U.S. Bankruptcy Court. It appears that litigation
21 fatigue has set in, with the parties numb to what is being
22 presented to the court - having lived the case for more than ten
23 years, they do not appreciate that judges do not "know" what the
24 parties "know."

25 Further, the parties appear destined to a path of importing
26 ineffective litigation strategies from the State Court to the
27 federal courts. As this court has admonished the parties
28 previously, the federal courts enforce the Federal Rules of Civil

1 Procedure and Bankruptcy Procedure, the Federal Rules of Evidence,
2 and the Local Bankruptcy Rules. Merely "dumping" on the court more
3 than 700 pages of unauthenticated exhibits does not provide the
4 court with evidence to support a party. Inundating the court with
5 cut-and-pasted text from various treatises does not present the
6 court with focused, persuasive arguments. Rehashing old battles
7 for which this court cannot vacate or ignore final orders and
8 judgments of the state court or district court does not advance
9 one's position. Throwing a potpourri of State Court findings at a
10 court (not identifying where in the record are such findings), and
11 merely telling the court that somewhere in those findings there is
12 some combination of findings which could support relief, is not a
13 recipe for success. Not providing the court with the legal
14 elements for relief sought under the Bankruptcy Code and not
15 identify the evidence, acts, and exhibits which support those
16 grounds will not win a motion.

17 REVIEW OF MOTION

18 Movant states that summary judgment is appropriate in the
19 instant Adversary Proceeding because there is no triable issue of
20 fact. The Motion states with particularity the following grounds
21 (Fed. R. Civ. P. 7(b) and Fed. R. Bankr. 7007) upon which such
22 relief is based:

- 23 A. Movant seeks from this court Summary Judgement or, in the
24 alternative, Partial Summary Adjudication against
25 Defendant-Debtor.
26 B. Movant seeks a determination that the State Court
27 Judgment obtained against Defendant-Debtor in the amount
28 of \$1,337,073.72 is nondischargeable pursuant to
11 U.S.C. § 523(a)(2)(A), (4), and (6).

///
28

1 C. After a 36-day trial, the State Court Judgment was
2 entered against Defendant-Debtor for attorneys' fees
based on a theory of "unclean hands."

3 D. The State Court Judgment has been affirmed on appeal.

4 E. The State Court Action had been filed by Defendant-Debtor
5 to recover lots from Movant in the Fox Hollow Project
from the purchasers at foreclosure sales.

6 F. The security instruments and formation documents of the
7 Fox Hollow Home Owner's Association contained attorneys'
fees provisions.

8 G. The State Court found that the acts of Defendant-Debtor
9 in bringing the State Court Action to avoid the transfers
"was initiated following acts by [Defendant-Debtor] that
10 resulted in a finding by the State Court of unclean hands
which in turn resulted in the award of attorney' fees,
11 based on the documents involved in the foreclosures."

12 H. "Many of the [unidentified by Movant in the Motion]
wrongful acts found by the State Court fit within the
13 elements of § 523(a)(A), (4), and (6)."

14 I. "The wrongful acts that fit within the elements of
§ 523(a)(2)(A), (4) and (6) establish a pattern of fraud,
15 misrepresentation and wilful malicious acts that resulted
in the finding of unclean hands."¹

16 Motion, Dckt. 11.

17 Movant has filed a 13-page Points and Authorities (Dckt. 13)
18 which provides extensive legal quotations, citations, and
19 arguments. The Points and Authorities does not provide the court
20 with the legal authorities of how the Doctrine of Unclean Hands is
21

22 ¹ The Motion does not state with particularity the grounds,
23 acts, findings, or events which are alleged to "fit within elements"
for nondischargeability or assert the grounds therefore. Rather, it
24 merely combines the very diverse nondischargeability requirements for
fraud (§ 523(a)(2)(a)), breach of fiduciary duty/embezzlement/larceny
25 (§ 523(a)(4)), and willful and malicious injury to the person or
property of another (§ 523(a)(6)) into one composite basis. The
26 Motion does not state what conduct constituted the "unclean hands"
upon which the Motion appears to be based as the sole grounds for
27 relief under "11 U.S.C. § 523(a)(2)(A), (4) and (6))." Movant does
not identify these separate and independent bases for
28 nondischargeability of a debt, but merely lumps them together as if
they are one combined basis for such relief.

1 a basis for the relief requested pursuant to "11 U.S.C.
2 § 523(a)(2)(A), (4) and (6)." The court understands from the
3 Points and Authorities the following legal analysis on this point:

4 A. A judgment for attorneys' fees was based on a theory of
5 "unclean hands."

6 B. The "unclean hands" basis presents this bankruptcy court
7 with the issue of "if some, but not all of the findings
8 of wrongful acts that are within the scope of
§ 523(a)(2)(A), (4) and (6) establish a pattern that
results in the entire Judgment being a non-dischargeable
debt."

9 C. The court is requested to take judicial notice of the
10 decision of the Fifth District Court of Appeal in
affirming the State Court finding of "unclean hands."

11 D. The District Court of Appeal decision cited by Movant
12 includes the following:

13 1. Defendant-Debtor failed to cite to the record any
14 evidence to the first 20 instances of "unclean
hands" the State Court found to be "untrue
representations or a partial truth."²

15 2. The pre-2002 misconduct of Defendant-Debtor
16 included:

17 a. Failure to complete the subdivision work for
Fox Hollow to create a PUD.

18 b. The misrepresentation of, or failure to
19 disclose, the noncompliance to the City of
Turlock and to lenders, which permitted
20 Defendant-Debtor to encumber Fox Hollow in
excess of its true value.

21 c. It also included failure to form and operate
22 the FHOA once the subdivision map was filed,
to maintain the property while it was over-
23 encumbered, and to make payments to lenders.

24 d. It included filing a petition in bankruptcy to
delay foreclosure, filing state court actions

25
26 ² In the District Court of Appeal decision cited to the court,
27 the court collection refers to the Defendant-Debtor and other parties
as the "plaintiffs" in the State Court Action. For consistency in
28 this ruling, this court specifically refers to the Defendant-Debtor
individually, as he is included in the group that the Court of Appeal
identifies as "plaintiffs."

1 to further delay foreclosure and, finally,
2 making misrepresentations in various court
proceedings.

3 e. Defendant-Debtor's pre-2002 misconduct led to
4 the foreclosures that resulted in Katakis
5 acquiring lots 3, 7, 9, and 14 and related
directly to Defendant-Debtor's claim that the
foreclosures were wrongful.

6 f. Under the unclean hands doctrine, it was
7 inequitable to grant Defendant-Debtor the
8 relief sought in the State Court Action,
because it was Defendant-Debtor's conduct that
resulted in the foreclosure sales.

9 g. Under the unclean hands doctrine, it was
10 inequitable to grant Defendant-Debtor the
11 relief he sought - monetary damages and
avoiding the foreclosure sales - because of
Defendant-Debtor's misconduct.

12 h. The alleged misconduct of Movant in the State
13 Court Action was not relevant to whether
14 Defendant-Debtor's claim in the State Court
Action was barred by the unclean hands
doctrine.

15 i. The State Court found that Defendant-Debtor's
16 claims in the State Court Action were barred
by misconduct that included:

17 (1) fraud in securing the underlying notes
18 and deeds of trust;

19 (2) refusing to make mortgage payments and
20 misrepresentations regarding those
payments;

21 (3) refusal to pay dues and special
assessments to the FHOA; and

22 (4) misuse of the courts to delay the
23 foreclosures.

24 j. Under the unclean hands doctrine, Defendant-
25 Debtor was not entitled to recover the lots or
any lost rents because of the wrongful acts in
relation to those lots.

26 k. Defendant-Debtor failed to show that the State
27 Court abused its discretion in concluding that
all of Defendant-Debtor's claims were barred
28 by the doctrine of unclean hands.

1 Points and Authorities, Dckt. 13, p. 3:11-28, 4:1-15.

2 Later in the Points and Authorities, the Movant cites to the
3 State Court stating that the pattern of "unclean hands" conduct of
4 Defendant-Debtor (one of the multiple "plaintiffs" in the State
5 Court Action) was so pervasive that the unclean hands defense
6 defeated all of Defendant-Debtor's claim against Movant.

7 Nowhere in the Points and Authorities does Movant provide the
8 court with the explanation of the Unclean Hands Doctrine (an
9 affirmative defense) in California, the elements for the defense,
10 and how the affirmative defense is made into an offensive claim for
11 attorneys' fees and nondischargeability of debt.

12 While the Motion does not state with particularity any
13 specific conduct which would be the basis for the relief requested
14 (only stating that it's "unclean hands"), the Points and
15 Authorities state (and Movant confirmed at oral argument) that
16 Findings (a), (f), (g), (h), and (p) are the basis for the court to
17 determine that a judgment determining the award of attorneys' fees
18 pursuant to "11 U.S.C. § 523(a)(2)(A), (4) and (6)" is proper. The
19 court discusses these specific findings and how they apply, or do
20 not apply, to the present Motion in the Discussion portion of this
21 Decision.

22 **OPPOSITION**

23 The Defendant-Debtor filed an opposition on May 7, 2015.
24 Dckt. 18. The Opposition is 48 pages in length. This includes a
25 declaration appended to the Opposition rather than being filed as
26 a separate document as required by the Local Rules and Guidelines
27 for Preparation of Documents. It appears that sections of the
28 Opposition consists of copies from treatises or articles which have

1 been cut and pasted into the opposition.

2 Defendant-Debtor has filed approximately 100 exhibits, without
3 an index. These exhibits run 734 pages. It appears that few, if
4 any, of these exhibits have been authenticated. Fed. R. Evid. 901,
5 902.

6 The gist of Defendant-Debtor's Opposition is that Movant has
7 lied to the State Court and the State Court Judgment should not be
8 valid. The State Court Ruling was issued on August 17, 2009,
9 almost six years ago. The District Court of Appeal Decision was
10 issued January 23, 2013, two and one-half years ago. Defendant-
11 Debtor contends that he, now six years after the State Court
12 Ruling, intends to prepare and file a motion to vacate the judgment
13 (which is a final judgment after prosecution of an appeal) due to
14 fraud on the State Court. Further, in the Opposition Defendant-
15 Debtor states that he suffers from medical illnesses.

16 The Opposition continues, asserting that the State Court
17 findings of "unclean hands" is untrue. He does not contend that
18 this was not the State Court finding, but disputes that the
19 findings of the State Court truly represent the actual facts.
20 (Essentially arguing that the State Court's findings and
21 conclusions are in error, and this court should not accept them,
22 notwithstanding the State Court Ruling having been affirmed on
23 appeal.) Much of the Opposition argues the facts which have been
24 determined in the State Court Action.

25 The State Court Judgment has not been vacated, and as of oral
26 argument on this Motion, there was no motion to vacate pending. An
27 opposition of "the judgment is unfair and I want to re-litigate it
28 further" is not an effective opposition to a well pleaded and

1 evidentiary supported motion for summary judgment.

2 **DISCUSSION**

3 The first troubling aspect to the Motion is that Movant fails
4 to state with particularity, as required by Federal Rule of Civil
5 Procedure 7(b) and Federal Rule of Bankruptcy Procedure 7007, the
6 grounds for relief. The grounds stated in the Motion effectively
7 state that there is some judgment which is based on "unclean hands"
8 and possibly some of the grounds upon which that judgment is based
9 (those grounds not stated) could be the basis for relief under
10 11 U.S.C. "§ 523(a)(2)(A), (4) and (6)." The Motion does not state
11 the legal elements for any of the three separate statutory bases
12 for nondischargeability of debt, and therefore does not explain how
13 the "findings" fulfill those elements.

14 Going to the Points and Authorities (which is not the Motion)
15 and the court taking the laboring oar to plumb the depths for
16 grounds, little more is offered. The Points and Authorities
17 continues the mantra of "unclean hands," as if it is a specially
18 defined term under the Bankruptcy Code which automatically makes a
19 debt nondischargeable. The various findings stated in the Points
20 and Authorities primarily discuss the Defendant-Debtor's claims in
21 the State Court Action and why the Doctrine of Unclean Hands is a
22 defense to such claims. There are no findings identified by Movant
23 sufficient for the court to determine what findings and conclusions
24 of the State Court exist to apply in this bankruptcy law
25 nondischargeability proceeding.

26 The Points and Authorities fails to provide the court with the
27 elements of a California Unclean Hands affirmative defense and how
28 an affirmative defense becomes the basis for a claim in the

1 bankruptcy case.³ Defendant-Debtor does not provide the court with
2 an analysis of why the asserted grounds are not sufficient. The
3 court will not research, identify, and plead these key factual and
4 legal matters for the parties.

5 At oral argument, Movant pointed the court to page 11 of the
6 Points and Authorities, advising the court that Movant was relying
7 on findings (a), (f), (g), (h), and (p) for the Motion. In the
8 Statement of Undisputed Facts filed by Movant there are thirty-
9 seven purported undisputed facts, but Movant does not identify
10 where in the record the findings relied upon can be located.
11 Rather, Movant merely advised the court that they can be found
12 somewhere in the thirty-seven "State Court Findings." As pointed
13

14 ³ See 5 Witkin California Procedure, Fifth Edition, § 1126,
Unclean Hands, stating:

15 The objection that the plaintiff does not come into equity
16 with clean hands means that the plaintiff is guilty of
wrongful conduct in connection with the transaction or
17 subject matter of the action. (See 13 Summary (10th),
Equity, §9 et seq.; 2 California Affirmative Defenses, §45:1
18 et seq.) The defense is available in legal as well as
equitable actions. (See *Fibreboard Paper Products Corp. v.*
19 *East Bay Union of Machinists, Local 1304, United*
Steelworkers of America, AFL-CIO (1964) 227 C.A.2d 675, 728,
20 39 C.R. 64; 13 Summary (10th), Equity, §9.)

21 This defense is not likely to appear on the face of the
complaint. Moreover, the defense does not directly challenge
22 the statement of the cause of action; it is essentially a
plea in confession and avoidance. Hence, it will ordinarily
23 be raised affirmatively in the answer. (See *Allstead v.*
Laumeister (1911) 16 C.A. 59, 62, 116 P. 296 [allegation
24 that property was conveyed by plaintiff in fraud of
creditors]; *Fibreboard Paper Products Corp. v. East Bay*
25 *Union of Machinists, supra*, 227 C.A.2d 726 [defense must be
raised in trial court, and should ordinarily be pleaded; but
26 denial of leave to amend was not error where alleged unclean
hands was not in transaction before court]; *Santoro v.*
27 *Carbone* (1972) 22 C.A.3d 721, 731, 99 C.R. 488, citing the
text; for forms, see Cal. Civil Practice, 2 Procedure,
28 §9:114; Cal. Civil Practice, 1 Real Property Litigation,
§§1:70, 5:65.)

1 out to Movant at oral argument, there are no findings (a), (f),
2 (g), (h), and (p) in the State Court Ruling or the District Court
3 of Appeal Decision.

4 At oral argument, Movant advised the court that the alphabetic
5 identification of the findings in the Points and Authorities was
6 caused by error of counsel and his assistant in preparing the
7 Points and Authorities, and the alphabetic listing corresponds to
8 the numeric listing in the State Court Ruling and District Court of
9 Appeal Decision. [(a) = 1, (b) = 2, etc.]. These findings relied
10 upon by Movant are identified by the court from Exhibit 2,
11 Dckt. 15, Request for Judicial Notice to be:

12 (a) = Finding 1, Statement of Decision, Dckt. 15, p. 6:14.5-16.5:

13 In April 1994, Mr. Sinclair wrote to the City of Turlock
14 to advise them that there were sufficient funds in the
15 HOA. (D022.) Mr. Sinclair testified that he never told
16 the City that there was an HOA before 1998 (687:5-15) and
that there was no HOA before 2000. (689:6-9.)
Mr. Sinclair's 1994 letter to the City of Turlock that
there was an HOA was false.

17 (f) = Finding 6, *Id.*, p. 6:27.5-28, 7:1-2.5:

18 On or about July 21, 1998, Plaintiffs [including the
19 Defendant-Debtor] caused Subdivision Map No. 2 to be
20 recorded creating an additional 15 lots. (J031.)
21 Plaintiffs [including Defendant-Debtor] knew that they
22 had failed to complete the conditions imposed by the City
23 for recording such a map. (D010, D012, D013.)
24 Plaintiffs [including Defendant-Debtor] also knew that
25 the City had previously rejected their request to
26 complete the required work after the map was recorded.
27 (D016, D018, D021.)

28 (g) = Finding 7, *Id.*, p. 7:3.5-5:

29 In July 1998, immediately upon recording Map No. 2,
30 Plaintiffs [including Defendant-Debtor] caused 15 loans
31 to be placed against the 15 new lots. Mr. Mauchley
32 signed fifteen deeds of trust (J032, J033, J034, J035,
33 J037, J039, J041, J043 to J050) that contained Planned
34 Unit Development riders representing that there was an
35 HOA. Yet, "there was no intention to start it then."
36 (687:5-15)

1 (h) = Finding 8, *Id.*, p. 7:6.5-8:

2 In July 1998, Plaintiffs [including Defendant-Debtor]
3 obtained these 15 new loans based on values that were
4 "subject final completion of subdivision firewalls and
5 underground relocation of utilities to accommodate
6 individual ownership" (J349; 4:11-14.) This
7 material information was not disclosed to the lenders.
8 Plaintiffs' [including Defendant-Debtor's] secured these
9 loans was [sic.] on a false premise.

10 and

11 (p) = Finding 16, *Id.* p. 8:5-8:

12 Although Plaintiffs [including Defendant-Debtor] prepared
13 HOA minutes indicating that Mr. Mauchley was present at
14 the first two HOA meetings (P002), Mr. Mauchley testified
15 that he did not attend meetings. Plaintiffs' minutes
16 indicate work was being done on and Mr. Sinclair billed
17 Fox Hollow for doing work on Articles of Incorporation
18 (P001) during the time period of August 2000 to December
19 2000. Yet, the Articles of Incorporation were signed and
20 completed in July 2000, but simply not filed with the
21 secretary of state until December 2000. (D069.)

22 Neither the Motion nor the Points and Authorities state the
23 elements for relief pursuant to 11 U.S.C. § 523(a)(2)(A) for fraud;
24 § 523(a)(4) for breach of fiduciary duty, larceny, or embezzlement;
25 or § 523(a)(6) for willful and malicious injury. Each has its
26 separate elements and requirements, and do not constitute an
27 unified "catch-all" exception to discharge.

28 The best Movant states in the Points and Authorities is that
Movant alleges that Defendant-Debtor "[c]ommitted wrongful acts
that fall within § 523(a)(2)(A), (4) and (6) that resulted in his
loss in the State Court Action and the award of attorneys' fees
based on his 'unclean hands' in manipulating the Fox Hollow project
and the filing of the State Court Action." Dckt. 13. The court
has no idea what "wrongful acts" Movant asserts to support its
claim for each of the various and greatly divergent grounds of

§ 523(a)(2)(A), § 523(a)(4), and § 523(a)(6) to render the attorneys' fee award nondischargeable.

Issues of Collateral Estoppel

In the Motion, Movant does not identify what specific prior findings of the non-bankruptcy courts made which should not be relitigated in this court. In the Points and Authorities, Movant cites *Migra v. Warren City School Dist. Bd. Of Ed.*, 465 U.S. 75, 81 (1984), for the proposition, "If the former judgment is a state court judgment, federal courts must apply the *res judicata* and collateral estoppel rules of the state that rendered the underlying judgment." Points and Authorities, Dckt. 13, p. 12:25-27. Further, Movant cites to the court authorities for the following legal propositions: (1) factual or legal issues necessarily and finally adjudicated in an earlier action or proceeding may be entitled to preclusive; (2) once a judgment on the award becomes final, *res judicata* and collateral estoppel apply; (3) state court judgments are entitled to full faith and credit; and (4) federal courts give the state court's resolution of the *res judicata* issue the same preclusive effect it would have had in another court of the same state. *Id.*, p. 12-13.

There is no discussion or analysis of the requirements for collateral estoppel to apply or how a state court order or judgment could have "*res judicata*" effect on the federal issue of nondischargeability of debt. No discussion of, or citation to any authorities explaining, California issue or claim preclusion law is provided by Movant. Rather, the analysis upon which Movant wants the court to utilize is,

As set forth above and as evidenced by the State Court

1 Findings, this adversary proceeding presents no genuine
2 issue of fact for trial and the Judgement should be
determined to be a non-dischargeable debt of Defendant.

3
4 *Id.*

5 Movant does not tie any of the "findings" to nondischargeable
6 claims based on fraud, or based on breach of fiduciary or larceny,
7 or for willful and malicious injury.⁴ As addressed above, the
8 necessary elements of each of these federal law nondischargeable
9 claims are not addressed by Movant.

10 **Movant Fails to Establish What Damages, If Any, Were Cause**
11 **by the "Some of the Above Conduct" Which is Asserted to Constitute**
12 **"11 U.S.C. § 523(a)(2)(A), (4) and (6) Nondischargeability**

13 Even if the court were to construct the grounds stated with
14 particularity from the other pleadings and exhibits, Movant fails
15 to show that the asserted conduct is (1) the basis of the
16 attorneys' fees award and (2) that the conduct is sufficient for
17 nondischargeability. Movant consists of Andrew Katakis, California
18 Equity Management Group, Inc., and Fox Hollow of Turlock Owners'
19 Association. Many of the cited findings relate to Defendant-
20 Debtor's conduct with third-parties, such as the stated
21 misrepresentations to the City of Turlock. Other findings relate
22 to misrepresentations made to lenders. Neither the City of Turlock
23 nor the lenders are before this court. It appears that Movant's

24 ⁴ The litigation fatigue between the parties is further
25 evidenced in the court being unable to find in the record a judgment
26 or an order for attorneys' fees, or the findings by the court awarding
27 the attorneys' fees. The court has no idea of the actual basis for
28 the attorneys' fees awarded by the State Court. Merely because there
was an award of attorneys' fees referenced in an appellate decision
does not make it an undisputable, determined fact that there was a
determination by the State Court of grounds that establish fraud,
breach of fiduciary duty or larceny, or willful and malicious injury
for purposes of federal law.

1 contention is that since Defendant-Debtor was improper in his
2 dealings with others, then Movant can take advantage of the harm
3 done to others. That is not a theory by which a nondischargeability
4 judgment may be granted in this Adversary Proceeding.

5 Quite possibly, the court and court staff could provide legal
6 services to Movant and assemble from the 89 pages of the District
7 Court of Appeal Decision and the State Court Ruling how a claim for
8 nondischargeability could be stated. But such "services to a
9 litigant" is not the proper role of the court. Just as the court
10 will not assemble a shield for Defendant-Debtor, it will not forge
11 a sword for Movant.

12 In wading through the State Court Ruling, the court notes that
13 there is no determination of attorneys' fees and the State Court
14 Ruling expressly states in that ruling, "The court makes no finding
15 at this time as to which party/parties is/are the prevailing
16 party." Exhibit 2, Request for Judicial Notice, Dckt. 15,
17 Statement of Decision, p. 25:4.5-5.5.

18 Exhibit 1 to the Request for Judicial Notice is the 61-page
19 Court of Appeal Decision. It includes a discussion of dense facts
20 and findings by the State Court. On page 17 of the Court of Appeal
21 Decision, footnote 6 states that "Posttrial orders are the subject
22 of separate appeals." It would not be uncommon that an award of
23 attorneys fees would be the subject of a post-trial motion.

24 The court notes that on page 55 of the Court of Appeal's
25 Decision there is a discussion of sanctions requested by Movant
26 against one of the other parties aligned with the Defendant-Debtor.
27 The Court of Appeal denied the request for sanctions.

28 The District Court of Appeal Decision concludes with the

1 following statement:

2 The judgment is affirmed. The defendants' motion for
3 reconsideration, deemed a renewed motion to dismiss the
4 appeal, is denied. The defendants' motion for sanctions
5 is denied. The defendants' motion to dismiss Lairtrust,
6 LLC, is denied as moot. The Flake plaintiffs' request
7 that we take judicial notice is denied. The defendants
8 are awarded their costs on appeal. **The trial court is
9 directed to determine the amount of attorney fees to be
10 awarded to defendants for legal services on appeal.**
11 (*Abdallah v. United Savings Bank* (1996) 43 Cal.App,4th 1
12 101, I 112.)

13 Dckt. 15; Exhibit 1, Request for Judicial Notice, p. 61 (emphasis
14 added).

15 From the Motion, Points and Authorities, and Exhibits
16 presented by Movant, the best the court can tell is that the award
17 of attorneys' fees, and the grounds for it, are stated in other
18 orders, findings, rulings, and judgment not presented to this
19 court.⁵

20 CONCLUSION

21 While the parties have the right to litigate their claims and
22 utilize the strategy they choose, the court emphasizes that the
23 parties shall comply with the Federal Rules of Civil Procedure,
24 Federal Rules of Bankruptcy Procedure, Federal Rules of Evidence,
25 and Local Bankruptcy Rules. Here, the instant Motion fails to
26 state with particularity the grounds for summary judgment as
27 required by Fed. R. Civ. P. 7(b), and even the "Mothorities" fails
28 to show grounds for the relief generally requested under 11 U.S.C.

25 ⁵ The court went so far as to word search the PDF filed Request
26 for special notice for: "attorneys' fees," "attorneys fees," "attorney
27 fee." In doing so the court mined a reference to a post-trial order
28 in which the State Court amended the judgment and awarded Movant
\$750,000.00 in attorneys' fees ("attorney fees"). District Court
Decision, p. 47. The court has not been provided with that amended
judgment and the State Court's findings of fact and conclusions of law
in issuing that amended judgment.

1 § 523(a)(2)(A), (4), and (6). The court has not been presented
2 with a judgment or order for attorneys' fees and findings of the
3 State Court upon which any such judgment or order is based.

4 Therefore, as set forth above in this Memorandum Opinion and
5 Decision, the Motion for Summary Judgment or in the Alternative
6 Summary Adjudication is denied without prejudice.

7 Dated: June , 2015

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RONALD H. SARGIS, Judge
United States Bankruptcy Court
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Instructions to Clerk of Court

Service List - Not Part of Order/Judgment

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith to the parties below. The Clerk of Court will send the Order via the BNC or, if checked _____, via the U.S. mail.

Debtor(s), Attorney for the Debtor(s), Bankruptcy Trustee (if appointed in the case),
and XX Other Persons Specified Below:

Office of the U.S. Trustee
Robert T. Matsui United States Courthouse
501 I Street, Room 7-500
Sacramento, CA 95814

Hilton A. Ryder
7647 N. Fresno Street
Fresno, CA 93720

Richard Carroll Sinclair
P.O. Box 1628
Oakdale, CA 95361