



As of the court's December 31, 2020 review of the Docket no further pleadings have been filed. At the Status Conference, the Parties advised the court **XXXXXXX**

The court shall issue an 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 conducted, the Parties reporting that they are in the process of documenting their settlement which resolves the issues in this Adversary Proceeding; and upon review of the pleadings, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Status Conference is continued to 2:00 p.m. on **XXXXXXX**, 2021.

Debtor's Atty: David Foyil

Notes:

Continued from 11/18/20 by request of the Debtor; *Ex Parte* Motion to Continue Status Conference filed 9/23/20 [Dckt 250]; Order granting filed 10/5/20 [Dckt 253]

Operating Reports filed: 8/14/20; 9/15/20; 10/14/20; 11/14/20; 12/14/20

[AP-1] Motion for Relief from Automatic Stay [Kondaur Capital Corporation, not in its individual capacity but solely in its capacity as Separate Trustee of Matawin Ventures Trust Series 2019-4] filed 11/12/20 [Dckt 256]; Stipulation to Withdraw filed 12/1/20 [Dckt 269]; Order Dismissing Motion filed 12/3/20 [Dckt 270]

Status Report filed 12/17/20 [Dckt 274]

<b>The Status Conference is continued to 2:00 p.m. on <span style="color: red;">XXXXXXX</span>, 2021.</b>
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#### **JANUARY 6, 2021 STATUS CONFERENCE**

On December 17, 2020, the Debtor in Possession filed an updated Status Report. Dckt. 274. Debtor in Possession reports that due to the COVID-19 limitations and the restricted access to the State Court the ability to generate income to fund a plan is currently impaired.

At the Status Conference, XXXXXXX

3. [17-26125-E-7](#) **FIRST CAPITAL RETAIL,**  
[18-2030](#) **LLC**

**CONTINUED STATUS CONFERENCE**  
**RE: AMENDED COMPLAINT**  
**5-17-18 [\[39\]](#)**

**FIRST DATA MERCHANT SERVICES**  
**LLC V. MCA RECOVERY, LLC ET AL**

Plaintiff's Atty: Randy B. Soref; Andrew Joseph Nazar

Defendants' Atty:

Robert S. McWhorter [MCA Recovery, LLC]

Gabriel E. Liberman [First Capital Retail, LLC]

Jeffrey D. Ganz; J. Russell Cunningham [13<sup>th</sup> Floor/Pilot, LLC]

Adv. Filed: 3/22/18

Answer: 4/23/18 [First Capital Retail, LLC]

Amd. Cmpl. Filed: 5/17/18

Answer: 7/20/18 [13<sup>th</sup> Floor/Pilot, LLC]

7/20/18 [First Capital Retail, LLC]

7/20/18 [MCA Recovery, LLC]

Amd. Answer: 8/3/18 [MCA Recovery, LLC]

Cross-Claim Filed [by 13<sup>th</sup> Floor/Pilot, LLC]: 7/20/18

Answer: none

Cross-Claim Filed [by MCA Recovery, LLC]: 8/3/18

Answer: 8/22/18 [13<sup>th</sup> Floor/Pilot, LLC]

Amd. Cross-Claim Filed [by 13<sup>th</sup> Floor/Pilot, LLC]: 8/22/18

Answer: 10/23/18 [MCA Recovery, LLC]

Notes:

Continued from 11/18/20 to allow the Parties additional time to consummate the Settlement and dismiss this Adversary Proceeding.

**The Status Conference is XXXXXXX.**

### **JANUARY 6, 2021 STATUS CONFERENCE**

The Parties have entered into a Settlement that resolves all issues in this Adversary Proceeding and will allow them to dismiss it. As of the Court's December 31, 2020 review of the Docket, a dismissal had not yet been filed. At the Status Conference the Parties reported XXXXXXX

4. [19-25168-E-7](#) MATHEW LAKOTA  
[19-2140](#)  
LUCAS V. LAKOTA

PRE-TRIAL CONFERENCE RE:  
COMPLAINT TO DETERMINE  
DISCHARGEABILITY OF DEBT  
11-14-19 [\[1\]](#)

Plaintiff's Atty: Raymond L. Sandelman  
Defendant's Atty:

Adv. Filed: 11/14/19  
Answer: 11/26/19

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

Notes:  
Scheduling Order -  
File initial disclosures by 3/15/20  
Close of Discovery 9/4/20  
Dispositive motions heard by 10/30/20

<b>The Pretrial Conference is <span style="color: red;">XXXXXXX</span></b>
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The court's December 31, 2020 review of the Docket discloses that neither party has filed a pre-trial conference statement. This may be because of disruptions caused by the COVID-19 pandemic, including the Federal Courthouse being closed to the public. Alternatively, it may be that the Parties have resolved their disputes.

At the Pretrial Conference, XXXXXXX

## SUMMARY OF COMPLAINT

Lisa Lucas ("Plaintiff") has filed a complaint seeking to have alleged obligations to be determined nondischargeable in connection with Defendant-Debtor's bankruptcy case. Plaintiff obtained a judgement against her ex-husband, and assigned the judgment to Defendant-Debtor for collection. Under the terms of the assignment, 33% of the monies collected would be paid to Defendant-Debtor and 67% to Plaintiff.

Plaintiff's ex-husband filed a Chapter 13 bankruptcy case, the confirmed plan in which provided for 100% payment of Plaintiff's judgment. Plaintiff alleges that Defendant-Debtor improperly retained and took \$3,931.71 of Plaintiff's portion of the monies paid on the judgment that was assigned for collection. Plaintiff commenced and was prosecuting a state court action asserting her claims when Defendant-Debtor commenced his Chapter 7 bankruptcy case. Plaintiff asserts that her claims are

nondischargeable pursuant to 11 U.S.C. § 523(a)(4), embezzlement, breach of fiduciary duty; (a)(6), willful and malicious injury; and her claim for punitive damages.

## **SUMMARY OF ANSWER**

Mathew Lakota (“Defendant”), in *pro se*, filed an Answer (Dckt. 8) that admits and denies specific allegations in the Complaint.

## **FINAL BANKRUPTCY COURT JUDGMENT**

Plaintiff Lisa Lucas alleges in the Complaint 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)(B) and (I). Complaint ¶¶ 2, Dckt. 1. In the Answer, Defendant Mathew Lakota admits the allegations of jurisdiction and core proceedings. Answer ¶ 2, Dckt. 8.

SANDERS ET AL V. TREANOR ET AL

**TO BE HEARD AT 11:00 A.M. IN CONJUNCTION  
WITH OTHER MATTERS ON THE CALENDAR**

Plaintiff's Atty: Steven C. Sanders  
Defendant's Atty: Pro Se

Adv. Filed: 10/2/20  
Answer: 10/23/20  
Amd. Answer: 11/2/20

Nature of Action:  
Recovery of money/property - preference  
Validity, priority or extent of lien or other interest in property

Notes:

<b>The Status Conference is continued to <span style="color: red;">xxxxxxx</span>, 2021.</b>
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**JANUARY 6, 2021 STATUS CONFERENCE**

At the Status Conference, xxxxxxx

**Discussion of Complaint, Claims Asserted, Responsive Pleadings,  
and Identification of Real Parties in Interest**

On October 2, 2020, Steven C. Sanders, Esq., commenced this Adversary Proceeding in which he lists himself and Sanders & Associates, his law firm as Plaintiffs. Dckt. 1. The Defendants stated in the Complaint are Shon Treanor and Jill Treanor, individuals who commenced a voluntary Chapter 7 case (20-23267) on June 30, 2020. Hank Spacone was appointed as the successor Chapter 7 Trustee by the U.S. Trustee on October 20, 2020. 20-23267; Dckt. 30.

The relief sought in the Complaint is stated in the prayer to be that this court "recognize Plaintiff's charging lien as a priority secured creditor against all funds and proceeds of the Gortemiller estate." Complaint, p. 9:12-13; Dckt. 1. The language used in the prayer is imprecise as to federal bankruptcy law. There are claims - secured, priority unsecured, and general unsecured. Creditors hold claims. 11 U.S.C. § 101(5), defining "claim," and 101(10), defining "creditor." Secured claims are those for which there are liens against property of the bankruptcy estate for which there is value attributable to that lien. 11 U.S.C. § 506(a).

In the Complaint, Plaintiffs state that they dispute Defendant-Debtor listing Plaintiff's Claim on Schedule E/F as an unsecured claim. Plaintiffs assert they have a lien on all assets of the Cheryl Gortemiller Living Trust, for which Plaintiffs represented the Defendant-Debtors in a trial in the California Superior Court for the County of Solano in 2017. Complaint, p. 2:4-9. It is stated that Plaintiffs have a "charging lien." *Id.* Plaintiffs incorporate by reference the Modified Agreement, which is filed as Exhibit B with the Complaint. Dckt. 6.

The "charging lien" is asserted to arise out of an April 1, 2016 modification of the fee agreement between Plaintiffs and Defendant-Debtors. Plaintiffs assert being entitled to recover a 35% contingent fee for the services provided. Complaint, p. 3:5-10; Dckt. 1. <sup>Fn.1.</sup>

-----  
FN.1. Pages 2 through 6 of the Complaint are formatted as if they are quotations from another source. It may be that this portion of the Complaint has been cut and pasted from other pleadings.  
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The Complaint includes a points and authorities concerning liens, and specifically attorney liens in the form of a "charging lien." Complaint, p. 6-9; *Id.* <sup>Fn.2.</sup>

-----  
FN. 2. While the court could construe what is being stated as relief in the form of a judgment determining the extent of Plaintiffs' interests in the property, as shown from other pleadings in the Adversary Proceeding, the potential exists for the pleadings to spin out of control. Defendant-Debtors have filed extensive pleadings in response and the Chapter 7 Trustee from Defendant-Debtors case is seeking to intervene.  
-----

### **Responsive Pleadings Filed by Defendant-Debtors**

Defendant-Debtors have filed several pleadings in response to the Complaint. On October 23, 2020, an 88-page pleading was filed by Defendant-Debtors which is titled "Complaint." Dckt. 17. The first fourteen pages are a narrative of various asserted facts and events. Some may be responsive to the allegations in the Complaint and some asserting claims against Plaintiffs.

On October 27, 2020, Defendant-Debtors filed a second pleading titled "Prayer for Relief." Dckt. 20. The first four pages are a narrative of alleged improper conduct by Plaintiffs and assert that he did not represent them in successfully prosecuting the probate action.

Then, on November 2, 2020, Defendant-Debtors filed a third pleading that is 98-pages in length and titled "Amended and Combined Petition of Original From Robert McCanu's Phone Call Made to Threaten a Motion to Strike. This is an Amended Copy for the Court to be Accurate. Includes a Prayer for Relief." Dckt. 22.

These pleadings filed by Defendant-Debtors promoted Plaintiffs to file a motion titled "Motion and Notice of Motion to Dismiss Defendants' Answers as Non-Responsive or to Strike All Redundant, Immaterial, Impertinent, or Scandalous Matters From Defendant's Answer." Dckt. 23.



## IDENTIFICATION OF REAL PARTIES IN INTEREST

On December 2, 2020, Hank Spacone, the Chapter 7 Trustee in Defendant-Debtors' bankruptcy case, filed a Motion to Intervene. Dckt. 29. The Trustee asserts that Defendant-Debtors are the beneficiaries of the Cheryl Gortemiller Living Trust (the "CGL Trust"), and the Defendant-Debtors state their interest has a value of \$2,500,000.00 on their Schedules filed in the Chapter 7 case.<sup>FN.3.</sup>

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FN. 3. On November 20, 2020, the Chapter 7 Trustee's Notice to File Proof of Claim Due to Possible Recovery of Assets was filed and served in Defendant-Debtors' Chapter 7 case. 20-23267; Dckts. 52, 53. This was filed because the Trustee has identified assets which are property of the bankruptcy estate to be administered by the Trustee.  
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The Trustee states that all rights and interests of the Defendant-Debtors in the CGL Trust and all property therefrom in which Defendant-Debtors have any rights and interest are property of the bankruptcy estate as a matter of federal law pursuant to 11 U.S.C. § 541(a). The Trustee seeks to intervene in this Adversary Proceeding to protect the property of the bankruptcy estate.

As provided in 11 U.S.C. § 541(a) upon filing the Chapter 7 bankruptcy case, an estate is created - the bankruptcy estate - which is comprised of all property of the bankruptcy debtor wherever located and by whomever held (subject to specific statutory exceptions in 11 U.S.C. § 541(b) and (c)). As provided in 11 U.S.C. § 542, all property of the bankruptcy estate shall be delivered to the bankruptcy trustee.

In a Chapter 7 case, the Chapter 7 trustee's duties include collecting all property of the bankruptcy estate. 11 U.S.C. § 704(a)(1).

The Complaint appears to seek a determination of the extent and priority of the lien asserted in property of the Defendant-Debtors that is now property of the bankruptcy estate. The lien asserted by Plaintiffs is stated in the Modified Agreement to be a lien granted by Defendant-Debtors on any and all claims or causes of action that are the subject of representation by Plaintiffs under the terms of the Modified Agreement. The Modified Agreement states that the agreement is for "Representation of [Defendant-Debtors] in Probate case #FPR046489 Cheryl Gortemiller Living Trust March 12, 2014 up to and including Trial." Exhibit B, p. 1; Dckt. 6.

Also filed with the Complaint is Exhibit E, Dckt. 6, which appears to be a Decision from the Superior Court for Solano County captioned *Steven Sanders v. Shon Treanor*, with case numbers FCS051596 and FCM164714. It states that the cases arise out of Plaintiffs' representation of Defendant-Debtors in a contested probate action (In the Matter of the Cheryl Gortemiller Living Trust, Solano Superior Court Case No. FPR046489), in which Defendant-Debtors prevailed as the successors in interest to an estate with a value in excess of \$2,600,000. Exhibit E, Decision, p. 1:24-26 and FN. 1.; Dckt. 9. The Decision reviews the various proceedings and litigation between Plaintiffs and Defendant-Debtors, including Defendant-Debtors' assertions that they believed:

[t]hat a criminal conspiracy existed; that [Defendants] were the victims of a fraud perpetuated upon them by all of the attorney who have either represented them, acted on behalf of others or opposed them in the probate matter and the two matters here; that the professional fiduciary administering the estate acted fraudulently; and that

the court including all of the judges who have come into contact with their cases have also participated in fraudulent and/or criminal behavior with regard to them.

*Id.*, p. 4:15-21. The Decision concludes, determining “The total sum of \$1,001,372,60 is due and payable by Defendant-Debtors to Plaintiffs within 30 days of the date of this order.” *Id.*, p. 8:14-15.

### **Adjudication of Claim and Interests in Property of the Bankruptcy Estate**

Thus, it appears that any litigation concerning any liens granted by Defendant-Debtors concerning property of the Defendant-Debtors that became property of the bankruptcy case when the Chapter 7 case was filed necessary require the Chapter 7 Trustee as the real party in interest, not the Defendant-Debtors.

Further, to the extent that the Defendant-Debtors assert that they have claims against Plaintiffs (in the Motion to Intervene, the Trustee states that Defendant-Debtors list such claims on their Amended Schedule A/B in their bankruptcy case), then the real party in interest who can assert and enforce such rights is the Chapter 7 Trustee. <sup>FN.4.</sup>

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FN. 4. In Amended Schedule A/B Defendant-Debtors list the following assets relating to claims, rights and interests they had as of the commencement of this bankruptcy case:

Question 25, Amended Schedule A/B “Trusts, equitable or future interests in property (other than anything listed in line 1), and rights or powers exercisable for your benefit, Defendant-Debtors state the following:

Beneficiaries of Estate of Cheryl Gortemiller  
Estimated value: \$2-3M  
Solano County Superior Court, Probate case no. FPR 046489

#### **ASSETS:**

1. Real Property located at 4390 Emerald Ridge Lane, Fairfield, CA 94534, APN 0153-250-200. Value based off appraisal in March 2020 for \$1.450M

2. Estate bond: \$1M

3. 11/23/2005 Straight promissory note executed by Michael Sorenson valued at \$115,000 w/interest at 6%.

4. Potential claims related to BP Oil Spill a/k/a In re: Oil Spill by the Oil Rig "Deepwater Horizon" est value: \$3,000

5. Unverified loan to Donald Gortemiller valued at \$41,000

6. Claims against former successor trustee, Karen L. Fisher for misappropriation of approximately \$300,000 from estate funds

7. Potential malpractice claim against former attorneys representing estate: Steven

DEBTS

8. 1st DOT against Emerald Ridge Lane property for \$30,000

9. Disputed attorney fees/lien in connection with Steven C. Sander's representation and contingency fee agreement

10. Solano County Property tax against Emerald Ridge Lane property estimated at \$22,000

11. American Express credit card \$5,800

20-23267; Dckt. 19 at 6.

Question 33 on Amended Schedule A/B, "Claims against third parties, whether or not you have filed a lawsuit or made a demand for payment," Defendant-Debtors state the following:

Identification of Asset	Value of Asset
Malpractice claim against former attorney, Steven C. Sanders, whom represented Debtors in the probate of the Estate of Gortemiller.	Unknown
Potential damages and claims related to the Estate of Gortemiller, which at one time valued at \$5 million.	Unknown
County of Fresno related to poisoning of Great Aunt and forgery of estate documents.	Unknown

*Id.* at 7.

Question 33 on Amended Schedule A/B, "Other contingent and unliquidated claims of every nature, including counterclaims of the debtor and rights to set off claims," Defendant-Debtors state the following:

Potential claim against attorney Gary Fraley, in connection with disputed work performed for preparing a chapter 7 bankruptcy that was not filed and payment of those fees with transferring title and ownership of a 2019 Keystone Trailer, VIN 4YDT2402XKB451120, estimated FMV of \$21,620.00.

Value based on FMV: \$23,000 minus 6% cost of sale [\$1,380] SEE SOFA #16, 18

*Id.*

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A basic principal of American Jurisprudence is that the real parties in interest whose rights and interests are put at issue must be the parties to the federal court litigation. One is not allowed to assert claims or rights in which he or she has no interest. In the federal courts, this is the Constitutional requirement of “standing.”

Article III of the Constitution confines federal courts to decisions of “Cases” or “Controversies.” Standing to sue or defend is an aspect of the case-or-controversy requirement. (Citations omitted.) To qualify as a party with standing to litigate, a person must show, first and foremost, “an invasion of a legally protected interest” that is “concrete and particularized” and “actual or imminent.” (Citations omitted.)...Standing to defend on appeal in the place of an original defendant, no less than standing to sue, demands that the litigant possess ‘a direct stake in the outcome.’ (Citations omitted.)

*Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997).

The court may (and must in exercising federal judicial power) raise it *sua sponte*, Rule 12(h)(3), Federal Rules of Civil Procedure. A person must have a legally protected interest, for which there is a direct stake in the outcome. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997). The Supreme Court provides a detailed explanation of the Constitutional case in controversy requirement in *Northeastern Florida Chapter of Associated General Contractors of America v. City of Jacksonville Florida*, 508 U.S. 656, 663 (1993).

6. [20-23267](#)-E-7 SHON/JILL TREANOR  
[20-2160](#)  
SANDERS ET AL V. TREANOR ET AL

**SPECIAL STATUS CONFERENCE RE:  
(1) IDENTIFICATION OF THE REAL  
PRARTIES IN INTEREST, AND (2)  
IDENTIFICATION OF RELIEF  
REQUESTED  
10-2-20 [1]**

**TO BE HEARD AT 11:00 A.M. IN CONJUNCTION  
WITH OTHER MATTERS ON THE CALENDAR**

Plaintiff's Atty: Steven C. Sanders  
Defendant's Atty: Pro Se

Adv. Filed: 10/2/20  
Answer: 10/23/20  
Amd. Answer: 11/2/20

Nature of Action:  
Recovery of money/property - preference  
Validity, priority or extent of lien or other interest in property

Notes:  
Set by order of the court filed 12/18/20 [Dckt 40] re (1) Identification of the Real Parties in Interest and (2) Identification of Relief Requested. Parties ordered to appear: Steven C. Sanders, Esq., Sanders & Associates, Shon Treanor and Jill Treanor, Hank Spacone, Russell Cunningham, Esq. Special Status Reports to be filed on or before 12/24/20.

Special Status Report [Hank Spacone, Trustee] filed 12/23/20 [Dckt 44]

Response to Order for Status Conference Re: Identification of the Real Parties in Interest and Identification of Relief Requested [Plaintiffs] filed 12/24/20 [Dckt 46]

**The Special Status Conference is XXXXXXX.**

**JANUARY 6, 2021 STATUS CONFERENCE**

At the Status Conference, XXXXXXX

**Discussion of Complaint, Claims Asserted, Responsive Pleadings,  
and Identification of Real Parties in Interest**

On October 2, 2020, Steven C. Sanders, Esq., commenced this Adversary Proceeding in which he lists himself and Sanders & Associates, his law firm as Plaintiffs. Dckt. 1. The Defendants stated in the Complaint are Shon Treanor and Jill Treanor, individuals who commenced a voluntary

Chapter 7 case (20-23267) on June 30, 2020. Hank Spacone was appointed as the successor Chapter 7 Trustee by the U.S. Trustee on October 20, 2020. 20-23267; Dckt. 30.

The relief sought in the Complaint is stated in the prayer to be that this court “recognize Plaintiff’s charging lien as a priority secured creditor against all funds and proceeds of the Gortemiller estate.” Complaint, p. 9:12-13; Dckt. 1. The language used in the prayer is imprecise as to federal bankruptcy law. There are claims - secured, priority unsecured, and general unsecured. Creditors hold claims. 11 U.S.C. § 101(5), defining “claim,” and 101(10), defining “creditor.” Secured claims are those for which there are liens against property of the bankruptcy estate for which there is value attributable to that lien. 11 U.S.C. § 506(a).

In the Complaint, Plaintiffs state that they dispute Defendant-Debtor listing Plaintiff’s Claim on Schedule E/F as an unsecured claim. Plaintiffs assert they have a lien on all assets of the Cheryl Gortemiller Living Trust, for which Plaintiffs represented the Defendant-Debtors in a trial in the California Superior Court for the County of Solano in 2017. Complaint, p. 2:4-9. It is stated that Plaintiffs have a “charging lien.” *Id.* Plaintiffs incorporate by reference the Modified Agreement, which is filed as Exhibit B with the Complaint. Dckt. 6.

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The Complaint includes a points and authorities concerning liens, and specifically attorney liens in the form of a “charging lien.” Complaint, p. 6-9; *Id.* <sup>Fn.2.</sup>

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FN. 2. While the court could construe what is being stated as relief in the form of a judgment determining the extent of Plaintiffs’ interests in the property, as shown from other pleadings in the Adversary Proceeding, the potential exists for the pleadings to spin out of control. Defendant-Debtors have filed extensive pleadings in response and the Chapter 7 Trustee from Defendant-Debtors case is seeking to intervene.  
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These pleadings filed by Defendant-Debtors promoted Plaintiffs to file a motion titled “Motion and Notice of Motion to Dismiss Defendants’ Answers as Non-Responsive or to Strike All Redundant, Immaterial, Impertinent, or Scandalous Matters From Defendant’s Answer.” Dckt. 23.

### **IDENTIFICATION OF REAL PARTIES IN INTEREST**

On December 2, 2020, Hank Spacone, the Chapter 7 Trustee in Defendant-Debtors’ bankruptcy case, filed a Motion to Intervene. Dckt. 29. The Trustee asserts that Defendant-Debtors are the beneficiaries of the Cheryl Gortemiller Living Trust (the “CGL Trust”), and the Defendant-Debtors state their interest has a value of \$2,500,000.00 on their Schedules filed in the Chapter 7 case.<sup>FN.3.</sup>

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FN. 3. On November 20, 2020, the Chapter 7 Trustee's Notice to File Proof of Claim Due to Possible Recovery of Assets was filed and served in Defendant-Debtors' Chapter 7 case. 20-23267; Dckts. 52, 53. This was filed because the Trustee has identified assets which are property of the bankruptcy estate to be administered by the Trustee.  
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The Trustee states that all rights and interests of the Defendant-Debtors in the CGL Trust and all property therefrom in which Defendant-Debtors have any rights and interest are property of the bankruptcy estate as a matter of federal law pursuant to 11 U.S.C. § 541(a). The Trustee seeks to intervene in this Adversary Proceeding to protect the property of the bankruptcy estate.

As provided in 11 U.S.C. § 541(a) upon filing the Chapter 7 bankruptcy case, an estate is created - the bankruptcy estate - which is comprised of all property of the bankruptcy debtor wherever located and by whomever held (subject to specific statutory exceptions in 11 U.S.C. § 541(b) and (c)). As provided in 11 U.S.C. § 542, all property of the bankruptcy estate shall be delivered to the bankruptcy trustee.

In a Chapter 7 case, the Chapter 7 trustee’s duties include collecting all property of the bankruptcy estate. 11 U.S.C. § 704(a)(1).

The Complaint appears to seek a determination of the extent and priority of the lien asserted in property of the Defendant-Debtors that is now property of the bankruptcy estate. The lien asserted by Plaintiffs is stated in the Modified Agreement to be a lien granted by Defendant-Debtors on any and all claims or causes of action that are the subject of representation by Plaintiffs under the terms of the Modified Agreement. The Modified Agreement states that the agreement is for “Representation of [Defendant-Debtors] in Probate case #FPR046489 Cheryl Gortemiller Living Trust March 12, 2014 up to and including Trial.” Exhibit B, p. 1; Dckt. 6.

Also filed with the Complaint is Exhibit E, Dckt. 6, which appears to be a Decision from the Superior Court for Solano County captioned *Steven Sanders v. Shon Treanor*, with case numbers FCS051596 and FCM164714. It states that the cases arise out of Plaintiffs’ representation of Defendant-Debtors in a contested probate action (In the Matter fo the Cheryl Gortemiller Living Trust, Solano Superior

Court Case No. FPR046489), in which Defendant-Debtors prevailed as the successors in interest to an estate with a value in excess of \$2,600,000. Exhibit E, Decision, p. 1:24-26 and FN. 1.; Dckt. 9. The Decision reviews the various proceedings and litigation between Plaintiffs and Defendant-Debtors, including Defendant-Debtors' assertions that they believed:

[t]hat a criminal conspiracy existed; that [Defendants] were the victims of a fraud perpetuated upon them by all of the attorney who have either represented them, acted on behalf of others or opposed them in the probate matter and the two matters here; that the professional fiduciary administering the estate acted fraudulently; and that the court including all of the judges who have come into contact with their cases have also participated in fraudulent and/or criminal behavior with regard to them.

*Id.*, p. 4:15-21. The Decision concludes, determining "The total sum of \$1,001,372,60 is due and payable by Defendant-Debtors to Plaintiffs within 30 days of the date of this order." *Id.*, p. 8:14-15.

### **Adjudication of Claim and Interests in Property of the Bankruptcy Estate**

Thus, it appears that any litigation concerning any liens granted by Defendant-Debtors concerning property of the Defendant-Debtors that became property of the bankruptcy case when the Chapter 7 case was filed necessary require the Chapter 7 Trustee as the real party in interest, not the Defendant-Debtors.

Further, to the extent that the Defendant-Debtors assert that they have claims against Plaintiffs (in the Motion to Intervene, the Trustee states that Defendant-Debtors list such claims on their Amended Schedule A/B in their bankruptcy case), then the real party in interest who can assert and enforce such rights is the Chapter 7 Trustee. <sup>FN.4.</sup>

-----  
FN. 4. In Amended Schedule A/B Defendant-Debtors list the following assets relating to claims, rights and interests they had as of the commencement of this bankruptcy case:

Question 25, Amended Schedule A/B "Trusts, equitable or future interests in property (other than anything listed in line 1), and rights or powers exercisable for your benefit, Defendant-Debtors state the following:

Beneficiaries of Estate of Cheryl Gortemiller  
Estimated value: \$2-3M  
Solano County Superior Court, Probate case no. FPR 046489

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3. 11/23/2005 Straight promissory note executed by Michael Sorenson valued at \$115,000 w/interest at 6%.
4. Potential claims related to BP Oil Spill a/k/a In re: Oil Spill by the Oil Rig



"Deepwater Horizon" est value: \$3,000

5. Unverified loan to Donald Gortemiller valued at \$41,000

6. Claims against former successor trustee, Karen L. Fisher for misappropriation of approximately \$300,000 from estate funds

7. Potential malpractice claim against former attorneys representing estate: Steven C. Sanders, Morton and Russo, Matthew Bishop, Karen Goodman, BPE Law Group

#### DEBTS

8. 1st DOT against Emerald Ridge Lane property for \$30,000

9. Disputed attorney fees/lien in connection with Steven C. Sander's representation and contingency fee agreement

10. Solano County Property tax against Emerald Ridge Lane property estimated at \$22,000

11. American Express credit card \$5,800

20-23267; Dckt. 19 at 6.

Question 33 on Amended Schedule A/B, "Claims against third parties, whether or not you have filed a lawsuit or made a demand for payment," Defendant-Debtors state the following:

Identification of Asset	Value of Asset
Malpractice claim against former attorney, Steven C. Sanders , whom represented Debtors in the probate of the Estate of Gortemiller.	Unknown
Potential damages and claims related to the Estate of Gortemiller, which at one time valued at \$5 million.	Unknown
County of Fresno related to poisoning of Great Aunt and forgery of estate documents.	Unknown

*Id.* at 7.

Question 33 on Amended Schedule A/B, "Other contingent and unliquidated claims of every nature, including counterclaims of the debtor and rights to set off claims," Defendant-Debtors state the following:

Potential claim against attorney Gary Fraley, in connection with disputed work

performed for preparing a chapter 7 bankruptcy that was not filed and payment of those fees with transferring title and ownership of a 2019 Keystone Trailer, VIN 4YDT2402XKB451120, estimated FMV of \$21,620.00.

Value based on FMV: \$23,000 minus 6% cost of sale [\$1,380] SEE SOFA #16, 18

*Id.*

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A basic principal of American Jurisprudence is that the real parties in interest whose rights and interests are put at issue must be the parties to the federal court litigation. One is not allowed to assert claims or rights in which he or she has no interest. In the federal courts, this is the Constitutional requirement of “standing.”

Article III of the Constitution confines federal courts to decisions of “Cases” or “Controversies.” Standing to sue or defend is an aspect of the case-or-controversy requirement. (Citations omitted.) To qualify as a party with standing to litigate, a person must show, first and foremost, “an invasion of a legally protected interest” that is “concrete and particularized” and “actual or imminent.” (Citations omitted.)...Standing to defend on appeal in the place of an original defendant, no less than standing to sue, demands that the litigant possess ‘a direct stake in the outcome.’ (Citations omitted.)

*Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997).

The court may (and must in exercising federal judicial power) raise it *sua sponte*, Rule 12(h)(3), Federal Rules of Civil Procedure. A person must have a legally protected interest, for which there is a direct stake in the outcome. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997). The Supreme Court provides a detailed explanation of the Constitutional case in controversy requirement in *Northeastern Florida Chapter of Associated General Contractors of America v. City of Jacksonville Florida*, 508 U.S. 656, 663 (1993).

**PETER MACALUSO, ESQ., COUNSEL FOR PLAINTIFF-DEBTOR  
AND ALL PARALEGALS OR OTHER SUPPORT STAFF  
INVOLVED IN PREPARING  
THE MOTION FOR ENTRY OF DEFAULT JUDGMENT  
AND SUPPORTING PLEADINGS THERETO  
ARE REQUIRED TO APPEAR  
TELEPHONICALLY AT THE STATUS CONFERENCE**

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

Adv. Filed: 9/8/20  
Answer: none

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

Notes:  
Continued from 11/18/20 to afford Plaintiff the opportunity to have Defendant's default entered and a motion for entry of default judgment filed.

Motion for Default Judgment filed 12/18/20 [Dckt 20], set for hearing 1/21/21 at 11:00 a.m.

**The Status Conference is ~~xxxxxxx~~**

**JANUARY 6, 2021 STATUS CONFERENCE**

Plaintiff-Debtor has filed a pleading titled "Motion For Default Judgment." Dckt. 20. However, while titled "motion," this 11 page pleading appears to merely be the Complaint with several headings removed. *See* Complaint, Dckt. 1.

To create the appearance that testimony is being provided in support of the Motion for Entry of the Default Judgment, Plaintiff-Debtor files a pleading titled "Affidavit of Amount Due in Support of Motion for Default Judgment." This "Affidavit" states Plaintiff-Debtor is knowingly filing it to support the request for the court (relying on the "Affidavit") to enter judgment in this Adversary Proceeding.

The "Affidavit" consists of merely restating the relief requested, with no testimony being

provided. The “Affidavit” is not signed by Plaintiff-Debtor, but by Plaintiff-Debtor’s counsel. It does not purport to be made under penalty of perjury and is not notarized that the person providing the affidavit has been sworn to make the statements therein under penalty of perjury as being truthful.

Beginning with the latter, merely titling something as an “Affidavit” does not turn it into testimony provided under penalty of perjury. As discussed by the Seventh Circuit Court of Appeals:

"An affidavit is a statement reduced to writing and the truth of which is sworn to before someone who is authorized to administer an oath." *Farm Bureau Mut. Auto Ins. Co. v. Hammer*, 83 F. Supp. 383, 386 (W.D. Va.), rev'd. on other grounds, 177 F.2d 793 (4th Cir. 1949), *cert. denied*, 339 U.S. 914, 70 S. Ct. 575, 94 L. Ed. 1339 (1950); *see also Egger v. Phillips*, 710 F.2d 292, 311 n.19 (7th Cir.), *cert. denied*, 464 U.S. 918, 104 S. Ct. 284, 78 L. Ed. 2d 262 (1983). Affidavits are admissible in summary judgment proceedings if they are made under penalties of perjury; only unsworn documents purporting to be affidavits may be rejected. 28 U.S.C.A. § 1746 (West Supp. 1984); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 n.16, 26 L. Ed. 2d 142, 90 S. Ct. 1598 (1970). "The absence of the formal requirements of a *jurat* in . . . sworn affidavits [does] not invalidate the statements or render them inadmissible [if] they were actually sworn to before an officer authorized to administer an oath." *Peters v. United States*, 187 Ct. Cl. 63, 408 F.2d 719, 722 (1969); accord *Dickinson v. Wainwright*, 626 F.2d 1184 (5th Cir. 1980) (*per curiam*).

*Pfeil v. Rogers*, 757 F.2d 850, 859 (7th Cir. 1985).

The “Affidavit” provided by counsel does not provide any factual testimony, is not made under penalty of perjury, and is not sworn before an officer authorized to administer an oath to make statements under penalty of perjury.

The “Motion” and the “Affidavit” raise serious issues and concerns for the court concerning this Adversary Proceeding, Complaint, pleadings, and the good faith of Plaintiff-Debtor and Plaintiff-Debtor’s representatives.

The court addressed at the hearing these concerns and whether this Adversary Proceeding should continue or be dismissed without prejudice. Because the court’s tentative rulings are posted and available on the internet, the court does not publicize those concerns in the tentative ruling.

At the Status Conference, the court addressed with counsel for Plaintiff-Debtor, **XXXXXXX**

## **NOVEMBER 18, 2020 STATUS CONFERENCE**

Van Gordon and Kathleen Gordon, the “Plaintiff-Debtor,” filed the Complaint in this Adversary Proceeding to clear title to real property of a deed of trust stated to have been the subject of Plaintiff-Debtor’s completed Chapter 13 Plan and for which no obligation remains secured. Bankruptcy, State Law, and contractual claims are stated, and the recovery of attorney’s fees and costs sought.

No answer has been filed by Defendant U.S. Bank, N.A., Trustee. Cert. of Serv., Dckt. 7.

## FINAL RULINGS

8. [11-37800-E-13](#) STEVEN/CATHY BARRIE  
[20-2154](#)

BARRIE ET AL V. SUNTRUST  
MORTGAGE INC.

CONTINUED STATUS CONFERENCE  
RE: AMENDED COMPLAINT  
9-24-20 [6]

ADVERSARY PROCEEDING  
DISMISSED: 12/17/20

**Final Ruling:** No appearance at the January 6, 2021 Status Conference is required.

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Plaintiff's Atty: Rick Morin  
Defendant's Atty: Daniel K. Fujimoto

Adv. Filed: 9/23/20  
Answer: none  
1<sup>st</sup> Amd. Cmplt Filed: 9/24/20  
Answer: 10/14/20

Nature of Action:  
Validity, priority or extent of lien or other interest in property  
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:  
Continued from 11/18/20 to allow the Parties to document and consummate the reported settlement.

Stipulation for Dismissal of Adversary Proceeding With Prejudice filed 12/16/20 [Dckt 12]; Order dismissing adversary filed 12/17/20 [Dckt 13]

<p>The Adversary Proceeding having been dismissed (Order, Dckt. 13), <b>the Status Conference is concluded and removed from the Calendar.</b></p>
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**Final Ruling:** No appearance at the January 6, 2021 Status Conference is required.

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Plaintiff's Atty: Aaron A. Avery  
Defendant's Atty: Michael W. Davis; Thomas R. Phinney

Adv. Filed: 9/11/19  
Answer: none  
Amd. Cmplt. Filed: 3/20/20  
Answer: none

Nature of Action:  
Recovery of money/property - preference  
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 11/12/20 to allow the Parties additional time to consummate the Settlement and dismiss this Adversary Proceeding.

Status Report filed 12/23/20 [Dckt 64]

<b>The Status Conference is continued to 2:00 p.m. on May 19, 2021.</b>
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#### **JANUARY 6, 2021 STATUS CONFERENCE**

The Plaintiff-Trustee filed an updated Status Report on December 23, 2020. Dckt. 64. The Plaintiff-Trustee reports that the Defendant is performing the settlement and requests a continuance of at least 90 days so the settlement may be consummated and this Adversary Proceeding will be dismissed.

The court shall issue an 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 conducted without a hearing, the Plaintiff-Trustee reporting that the settlement is being performed and requesting the Status Conference be continue approximately 90 days, and upon review of the pleadings, and good cause appearing,

**IT IS ORDERED** that the Status Conference is continued to 2:00 p.m. on May 19, 2021, to afford the parties the opportunity to conclude the settlement and dismiss this Adversary Proceeding before said continued Status Conference.

10.    [20-20430-E-13](#)      **RAFAEL DE LA TORRE**                      **CONTINUED STATUS CONFERENCE**  
         [20-2147](#)                      **RE: COMPLAINT**  
         **DE LA TORRE V. INDEPENDENCE**                      **8-31-20 [1]**  
         **BANK**

**Final Ruling:** No appearance at the January 6, 2021 Status Conference is required.  
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Plaintiff's Atty: Chad M. Johnson  
Defendant's Atty: Kristofer R. McDonald

Adv. Filed: 8/31/20  
Answer: none

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

Notes:  
Continued from 12/10/20 to allow the Parties to implement their Settlement.

Judgment Determining Ownership of Property and Nondischargeability of Debt filed 12/18/20 [Dckt 20]

Judgment having been entered in this Adversary Proceeding (Dckt. 20) pursuant to the Settlement Agreement, **the Status Conference is concluded and removed from the Calendar.**

The Clerk of the Court may close the file for this Adversary Proceeding.

**Final Ruling:** No appearance at the January 6, 2021 Status Conference is required.

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

Adv. Filed: 9/15/20  
Answer: none

Nature of Action:  
Recovery of money/property - preference

Notes:  
Continued from 11/18/20 to allow Plaintiff-Trustee to obtain the entry of default and file a motion for entry of default judgment.

Plaintiff's Application for Default Judgment filed 11/25/20 [Dckt 25], set for hearing 1/6/21 at 11:00 a.m.

The Plaintiff-Trustee prosecuting the entry of a default judgment and reporting that a settlement is being prosecuted, **the Status Conference is continued to 2:00 p.m. on March 3, 2021.**

#### **JANUARY 6, 2021 STATUS CONFERENCE**

The Plaintiff-Trustee has set for hearing on January 6, 2021 a motion for entry of a default judgment. Plaintiff-Trustee reports in a Supplemental Declaration filed in support of the motion for entry of default judgment that a relative of Defendant has made a partial payment on the asserted preference and that a final payment is to be made in February 2021.

The court continues the Status Conference to allow the Plaintiff-Trustee and other parties to address the payment of the claim or the entry of judgment.

#### **NOVEMBER 18, 2020 STATUS CONFERENCE**

Sheri Carello, the Plaintiff-Trustee, commenced this Adversary Proceeding to avoid a preferential transfer as provided in 11 U.S.C. § 547 and obtain a judgment for \$12,000.00 against Defendant Ashvin Nisha. Dckt. 1. It is alleged in the Complaint that Chapter 7 Debtor Nur Bano on August 15, 2019 and September 4, 2019, made payments totaling \$12,000.00 to Defendant. Further, that Defendant is an insider of the Debtor. Debtor filed for bankruptcy on September 23, 2019, which is within 40 days of the two transfers.



No answer has been filed and an Amended Request for Entry of Default was filed by Plaintiff on November 6, 2020. Dckt. 19

The court shall issue an 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 conducted without hearing, Plaintiff-Trustee seeking the entry of a default judgment and reporting that a settlement is also in process, and upon review of the pleadings, and good cause appearing,

**IT IS ORDERED** that the Status Conference is continued to 2:00 p.m. on March 3, 2021.

12. [18-27755-E-7](#)      MARK/RENEE EVANS  
[19-2042](#)  
SCHREIBER V. EVANS ET AL

CONTINUED STATUS CONFERENCE  
RE: COMPLAINT  
3-22-19 [\[1\]](#)

**Final Ruling:** No appearance at the January 6, 2021 Status Conference is required.  
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Plaintiff's Atty: Peter L. Cianchetta  
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 3/22/19  
Answer: 4/17/19

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

Notes:  
Continued from 11/18/20, counsel for Defendant reporting that the Parties were close to a settlement, with a revised proposal being circulated.

[PLC-5] Motion for Order Approving Settlement Agreement and Assignment Between Plaintiff Gazelle Schreiber and Defendants Mark W. Evans and Renee Evans filed 12/2/20 [Dckt 42]; Order granting filed 12/13/20 [Dckt 53]

The court having entered its order approving the Settlement that resolves this Adversary Proceeding (Order, Dckt. 53; Entered December 13, 2020), **the Status Conference is continued to 2:00 p.m. on March 3, 2021**, to allow the Parties to consummate the Settlement.

13. [20-20175-E-11](#)      HERBERT MILLER  
[20-2115](#)  
MILLER V. JPMORGAN CHASE BANK,  
N.A. ET AL

CONTINUED STATUS CONFERENCE  
RE: COMPLAINT  
6-15-20 [\[1\]](#)

**Final Ruling:** No appearance at the January 6, 2021 Status Conference is required.

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Plaintiff's Atty: Judson H. Henry

Defendant's Atty:

Unknown [JPMorgan Chase Bank, N.A.]

John C. Steele [MTC Financial, Inc.; Trustee Corps]

Ofunne Edoziem [Caliber Home Loans, Inc.; U.S. Bank Trust, N.A.]

Adv. Filed: 6/15/20

Answer: none

Nature of Action:

Recovery of money/property - turnover of property

Validity, priority or extent of lien or other interest in property

Declaratory judgment

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

Notes:

Continued from 10/29/20

Order to Show Cause filed 12/9/20 [Dckt 68], set for hearing 1/6/21 at 2:00 p.m.

The Court having issued its order to stay matters in this Adversary Proceeding and to Abstain pursuant to 28 U.S.C. § 1334(c)(1), **the Status Conference is concluded and removed from the calendar.**

**Final Ruling:** No appearance at the January 6, 2020 hearing is required.

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**Sufficient Notice Provided:** The court's Order to Show Cause was served on parties and their respective counsel on December 11, 2020. BNC POS, Dckt. 70. Responsive pleadings, if any, were required to be filed and served on or before December 20, 2020. Order, p. 5:4-10; Dckt. 68. No responsive pleadings were required and none were filed.

**The Order to Show Cause is sustained and: (1) the court stays this Adversary Proceeding, and (2) the court abstains pursuant to 28 U.S.C. § 1334(c)(1) from adjudicating all claims stated in the Complaint, with the exception of claims for alleged violation of the automatic stay, which would be addressed in a contested matter in the bankruptcy case, if so prosecuted by the Plaintiff-Debtor.**

On January 13, 2020, Plaintiff-Debtor Herbert Miller commenced his voluntary Chapter 11 case in this District. 20-20175 ("Chapter 11 Case"). He then commenced this related Adversary Proceeding and a second related Adversary Proceeding, 20-02137, both asserting non-bankruptcy claims relating to properties which Plaintiff asserted were property of the bankruptcy estate in the Chapter 11 Case.

On November 16, 2020, the court entered its order dismissing Plaintiff-Debtor's Chapter 11 Case. 20-20175; Memorandum Opinion and Decision and Order, Dckts. 208, 210. As part of the dismissal, the court ordered a one hundred and eighty (180) day prefiling review bar on filing another bankruptcy case by Plaintiff-Debtor.

In the related Adversary Proceeding 20-2137, after dismissal of Plaintiff-Debtor's Chapter 11 Case, Plaintiff-Debtor and defendants in that Adversary Proceeding filed their Stipulation for Dismissal without prejudice. 20-2137; Stipulation and Order, Dckts. 32, 34.

Plaintiff-Debtor and the Defendants in this Adversary Proceeding, 20-2115, have not yet filed a stipulation or motion to dismiss this Adversary Proceeding without prejudice. As the court addressed at the hearing on the Motion to Dismiss the Plaintiff-Debtor's Chapter 11 Case and in the Memorandum Opinion and Decision dismissing the Chapter 11 Case, with said dismissal, there did not appear to be a proper basis for this federal court to continue to exercise jurisdiction pursuant to 28 U.S.C. § 1334(a) over this related to Adversary Proceeding 20-2115. Further, that grounds exist for this court to abstain from adjudicating the claims in this Adversary Proceeding as provided in 28 U.S.C. § 1334(c)(1).

## ORDER TO SHOW CAUSE

This Adversary Proceeding is one in which Plaintiff-Debtor seeks to challenge the validity of an asserted non-judicial foreclosure sale and the validity of the deed issued therefrom. In the Memorandum Opinion and Decision in the Chapter 11 Bankruptcy Case for dismissal of that Case, the court addresses various state and district court actions in which Plaintiff-Debtor has attempted to litigate claims relating to nonjudicial foreclosure sales for several properties.

The court incorporates herein that discussion by this reference.

Congress provides in 28 U.S.C. § 1334 that the federal court may abstain from exercising federal court jurisdiction from hearing a particular proceeding arising under title 11 (the Bankruptcy Code) or arising in or related to a case under title 11. 28 U.S.C. § 1334(c)(1), (d).<sup>1</sup>

This Adversary Proceeding is one in which the Plaintiff-Debtor seeks to invoke federal court related to jurisdiction pursuant to 28 U.S.C. § 1334(a) for purposes of adjudicating whether the foreclosure deed is void and assert other affirmative rights claims, which do not arise under the Bankruptcy Code or in the bankruptcy case, against the Defendants. Rather, these claims are “related to” proceedings based on California state law.<sup>2</sup>

The creation of federal court jurisdiction (based on the U.S. Constitution Article I, § 8, Clause 4 granting Congress the power to create a uniform national law) for cases arising under the Bankruptcy Code, arising in the bankruptcy case, and related to the bankruptcy case, is the exception to the normal limited federal jurisdiction found in Article III of the U.S. Constitution.

Non-bankruptcy, non-federal law issues flood the bankruptcy courts because they arise in the bankruptcy case (such as claim objections) or relate to the bankruptcy case (determination of zoning

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<sup>1</sup> 28 U.S.C. § 1334(c)(1), which provides:

(c)

(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

...

(d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

<sup>2</sup> The California state law claims are stated in the Complaint (Dckt. 1) to be: (1) Intentional Interference with Economic Relationship; (2) Negligent Interference with Economic Relationship; (3) Wrongful Foreclosure; (4) Negligent Misrepresentation; (5) Quiet Title; and (6) Conversion. The Seventh Claim is for alleged violation of the automatic stay, which may properly be addressed through a contested matter.

ordinances, property rights, and the like). Such is a necessary and proper exercise of federal jurisdiction granted by Congress to make the Bankruptcy Code work for debtors and creditors. However, it is not a device or artifice to circumvent the U.S. Constitution and slip non-bankruptcy related matters into federal court.

With the dismissal of the Chapter 11 Bankruptcy Case, for Plaintiff-Debtor there is no bankruptcy reorganization to take place, but only the litigation of the non-bankruptcy issues he desires to pursue over the alleged void foreclosure deeds.

Beyond that, as discussed in the Memorandum Opinion and Decision, there have been multiple state court actions, and at least one district court action (a state court action removed to district court) that relate to Plaintiff-Debtor's challenge to the nonjudicial foreclosure that is the subject of this Adversary Proceeding and the one that is the subject of related Adversary Proceeding 20-2137. There have been dismissals with prejudice.

Here, Plaintiff-Debtor has chosen to litigate, though not successfully, in the California state courts. It appears that after multiple attempts in state court, Plaintiff-Debtor is seeking a new forum to assert his non-bankruptcy law claims. While the grant by Congress of related to federal court jurisdiction under 28 U.S.C. § 1334(a) is broad, it must be exercised as it relates to a bankruptcy case being properly prosecuted, and not as a device or artifice to inappropriately wrench state law claims improperly from the California Superior Court. Here, after multiple state court attempts, and adverse rulings, Plaintiff-Debtor's use of an adversary proceeding is an improper attempt to bring these non-bankruptcy law matters into federal court through the side door, rather than through the district court front door.

The court concludes that the use of 28 U.S.C. § 1334 for purposes of the non-bankruptcy litigation under the circumstances as Plaintiff-Debtor, is an abuse of the federal jurisdiction granted thereunder.

Therefore, the Order to Show Cause is sustained and: (1) the court stays this Adversary Proceeding, and (2) the court abstains pursuant to 28 U.S.C. § 1334(c)(1) from adjudicating all claims stated in the Complaint, with the exception of claims for alleged violation of the automatic stay, which would be addressed in a contested matter in the bankruptcy case, if so prosecuted by the Plaintiff-Debtor.

The court shall issue an 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 Order to Show Cause having been issued by the court, no parties filing any responsive pleadings, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that a hearing on this Order to Show Cause is sustained and:

- (1) All matters in this Adversary Proceeding are stayed, and the Clerk of the Court may close this Adversary Proceeding; and
- (2) The court abstains pursuant to 28 U.S.C. § 1334(c)(1) from adjudicating any and all claims stated by Plaintiff-Debtor Herbert Miller in

the Complaint, except for any claims for alleged violation of the automatic stay, which would be adjudicated by contested matter in Plaintiff-Debtor's bankruptcy case, if Plaintiff-Debtor files such motion.