

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

January 8, 2014 at 2:30 p.m.

1. [11-37725-E-13](#) **THAN PHUNG**
[11-2684](#)
ZHANG V. PHUNG ET AL

**CONTINUED PRE-TRIAL CONFERENCE
RE: COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT
10-24-11 [[1](#)]**

Plaintiff's Atty: Alexander Chen
Defendant's Atty: Aldon L. Bolanos

Adv. Filed: 10/24/11
Answer: 11/23/11

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

Notes:

Continued from 11/13/13. On or before 12/16/13 the parties are to file their respective pretrial conference statements or a notice of the partial or full settlement of the issues in this Adversary Proceeding.

Pretrial Conference Statement of Xu Ling Zhang filed 12/16/13 [Dckt 125]

Defense Pretrial Conference Statement filed 12/16/13 [Dckt 126]

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

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

B. Xu Ling Zhang, Plaintiff, shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, 201x.

C. Than Boi Phung and Ace Auto Wrecking, dba as Than Boi Phung, Defendants, shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, 201x.

D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, 201x.

E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, 201x.

January 8, 2014 at 2:30 p.m.

F. The Trial shall be conducted at ----x.m. on -----, 201x.

The Parties in their respective Pretrial Conference Statements, Dckts. 125, 126, and as stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

Plaintiff

Defendant(s)

<p>Jurisdiction and Venue:</p> <ol style="list-style-type: none">1. 28 U.S.C. § 1334.2. 28 U.S.C. § 157. Complaint, ¶ 1.3. This is a core proceeding to determine the dischargeability of debt. 11 U.S.C. § 157(a)	<p>Jurisdiction and Venue:</p> <ol style="list-style-type: none">1. Pro se general denial.2. No statement in Pre-Trial Conference Statement.
<p>Undisputed Facts:</p> <ol style="list-style-type: none">1. Defendant Phung incorporated an entity, Gamtco, Inc., in or about March 2007.2. Defendant Phung solicited money from Plaintiff to initially capitalize Gamtco.3. This initial capitalization, in or about April 2007, was in the amount of \$100,000.00 ("initial investment"), for which Gamtco was to issue 200,000 shares of stock to Plaintiff.4. The 200,000 shares of stock have not been issued to Plaintiff.5. Defendant Phung has not provided an accounting for the use of the \$100,000.00 initial investment.6. Defendant Phung solicited a loan from Plaintiff to fund a Gamtco payroll.7. This payroll loan was made in	<p>Undisputed Facts:</p> <ol style="list-style-type: none">1. Plaintiff invested in Gamtco, Inc.2. The business was to purchase scrap vehicles in Sacramento, California; dismantle them; and ship the parts to China.3. The property to be used for the business was not zone for such use.4. The property owner, Hoang, was an investor in the business. Gamtco was evicted from the property owned by Hoang. Hoang then began a competing business.5. Gamtco shipped some parts through Los Angeles, but the valuable parts (catalytic converters) were stolen.

<p>or about June 2007, in the amount of \$50,000.00</p> <p>8. Defendant Phung personally guaranteed this loan.</p> <p>9. Gamtco has not repaid the \$50,000.00 loan.</p> <p>10. Defendant Phung has not repaid the \$50,000.00 loan which he personally guaranteed.</p> <p>11. Defendant Phung solicited a capital contribution from Plaintiff to be used to procure warehouse facilities in The Peoples Republic of China.</p> <p>12. In or about May 2007, Defendant Phung asked Plaintiff to enter into a general partnership.</p> <p>13. Defendant Phung represented that he would purchase used automobile parts from Gamtco and ship them to China.</p> <p>14. Defendant Phung stated that he would do this if Plaintiff would lease warehouse space in China.</p> <p>15. Plaintiff leased two warehouse facilities in China based on the representations of Defendant Phung.</p> <p>16. Defendant Phung never shipped any automobile parts to China.</p>	
<p>Disputed Facts:</p> <p>1. None Identified</p>	<p>Disputed Facts:</p> <p>1. Dispute misappropriation of money.</p> <p>2. Though admitted that the money was used by Defendant Phung for his own purpose (Request for Admission not denied), it is contended that such "own purpose" was to advance Gamtco, in which Defendant Phung</p>

	had an interest.
Disputed Evidentiary Issues: 1. None Identified	Disputed Evidentiary Issues: 1. None Identified
Relief Sought: 1. That obligations of Defendant Phung to Plaintiff be determined nondischargeable. 2. An award of punitive damages for the conduct of Defendant Phung.	Relief Sought: 1. None Identified
Points of Law: 1. 11 U.S.C. § 523(a)(2)(A), Fraud. \$200,000 in damages. 2. 11 U.S.C. § 523(a)(4), breach of fiduciary duty. Initial Investment, Payroll Loan.	Points of Law: 1. None Identified
Abandoned Issues: 1. None Identified	Abandoned Issues: 1. None Identified
Witnesses: 1. Xu Ling Zhang 2. Than Boi Phung 3. James Anh Hoang 4. Han Voqui 5. Arnold J. Lim	Witnesses: 1. Than Boi Phung 2. James Hoang 3. Han Voqui 4. Mihn Tran 5. Kahn Vong 6. Ha Tran Zhou 7. Mei Yi Fu 8. James Macy

	9. John Koo
<p>Exhibits:</p> <ol style="list-style-type: none"> 1. Gamtco Bank Statements, Business Records, Accounting Records, Corporate Documents, Correspondence, and Counsel's Correspondence. 2. Documents concerning Xu Ling Zhang's China Investment. 3. Documents concerning <i>Zhang v. Phung</i> Superior Court proceeding. 4. Deposition transcript of Zhaojiao Huang. 5. Deposition transcript of Yhaozhong Lin. 6. Deposition transcript of James Hoang. 7. Deposition transcript of Han Voqui. 	<p>Exhibits:</p> <ol style="list-style-type: none"> 1. Zhang's initial disclosures. 2. Phung's second amended cross-complaint in Sacramento County Superior Court, Case Number 34-2007-00881644. 3. Zhang's complaint for rescission and damages against Gamtco, Inc., Sacramento County Superior Court Case No. 34-2008-00000732. 4. Phung's mandatory settlement conference statement of July 2, 2010, in the case ending in 1644. 5. Articles of incorporation and meeting minutes. 6. Lease with Voqui dated March 1, 2007. 7. Sacramento County violation documents related to property at Elder Creek. 8. Eviction documents related to the property. 9. Business notes regarding the transfer of vehicles to Los Angeles. 10. Zhang's responses to request for production of documents dated April 28, 2010, in the case ending in 1644, and attached documents bates-stamped 1 through 276. 11. Zhang's mandatory settlement conference statement for the case ending in 1644, dated July 8, 2010. 12. Court order sustaining demurrer and dismissals with prejudice entered in the case ending in 1644 for defendants Ace Auto Wrecking and Gamtco, Inc. 13. Requests for admission by Phung and responses by Voqui, set one, case ending in 1644.

	<p>14. Form interrogatories by Phung and responses by Voqui, set two, case ending in 1644.</p> <p>15. Request for production of documents by Phung and responses by Voqui, set two, case ending in 1644.</p> <p>16. Special interrogatories by Phung and responses by Voqui, set one, case ending in 1644.</p> <p>17. Form interrogatories by Phung and responses by Hoang, set one, case ending in 1644.</p> <p>18. Form interrogatories by Phung and responses by Tran, set one, case ending in 1644.</p> <p>19. Special interrogatories by Hoang and responses by Voqui, set one, case ending in 1644.</p> <p>20. Letter of January 9, 2008, from James Macy, Esq., to John Koo, Esq.</p> <p>21. Letter of January 15, 2008, from John Koo, Esq., to James Macy, Esq., responding to the January 9, 2008 letter and enclosing the shares of stock issued to Zhang.</p> <p>22. Deposition transcripts of Messrs. Voqui and Hoang.</p> <p>23. Bank Statements and records of Gamtco, Inc.</p>
<p>Discovery Documents:</p> <p>1. Rule 26 Initial Disclosures filed by Plaintiff.</p>	<p>Discovery Documents:</p> <p>1. None Identified (except as listed in exhibits above)</p>
<p>Further Discovery or Motions:</p> <p>1. None Identified</p>	<p>Further Discovery or Motions:</p> <p>1. None Identified</p>
<p>Stipulations:</p> <p>1. None Achieved from Meet and Confer.</p>	<p>Stipulations:</p> <p>1. None Identified</p>

Amendments:	Amendments:
1. None Identified	1. None Identified
Dismissals:	Dismissals:
1. None Identified	1. None Identified
Agreed Statement of Facts:	Agreed Statement of Facts:
1. None Identified.	1. None Identified
Attorneys' Fees Basis:	Attorneys' Fees Basis:
1. Not stated in Pre-Trial Conference Statement.	1. Not State in Pre-Trial Conference Statement.
2. Not pleaded as a claim in the Complaint. Fed. R. Bankr. P. 7008(b), just stated in prayer.	2. Not pleaded in form answer.
Additional Items	Additional Items
1. On November 19, 2013, the Court dismissed the Defendant Phung's Chapter 13 case. Order, Dckt. 123.	1. Defendants require a Cantonese language interpreter.
2. The dismissal was for Defendant Phung's \$521.00 default in required plan payments. Notice of Default and Application to Dismiss, Dckt. 120.	
Trial Time Estimation: 1.5 days	Trial Time Estimation: 1 day

2. [10-53637](#)-E-13 G./KATHLEEN ULBERG
[11-2122](#)
ULBERG, JR. ET AL V. BANK OF
AMERICA, N.A. ET AL

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
3-15-11 [[11](#)]

Final Ruling: The Status Conference is continued to 2:30 p.m. on March 19, 2014. No appearance at the January 8, 2014 Status Conference is required.

The court submitted proposed findings of fact and conclusions of law to the United States District Court for the Defendants Bank of America, N.A. and Recontrust. 28 U.S.C. § 157(c)(1), not all parties having consented to the bankruptcy judge entering the final orders and judgment in this Adversary Proceeding. The proposed findings and conclusions are to grant the motion and enter judgment for these Defendants on all claims. The District Court judge has not issue the ruling and order on the Defendants' Motion for Summary Judgment.

Plaintiffs' Atty: John G. Downing

Defendants' Atty:

Adam N. Barasch [Bank of America, N.A.]

Scott A. CoBen [Pacific Crest Partners, Inc.; John Mudgett]

unknown [Recontrust Company, N.A.]

Adv. Filed: 2/22/11

Amd Cmplt Filed: 3/15/11

Answer: 5/10/11 [Pacific Crest Partners, Inc.; John Mudgett]

Counterclaim: 5/10/11

Nature of Action:

Recovery of money/property - other

Injunctive relief - other

Declaratory judgment

Notes:

Pretrial Conference continued from 9/4/13

[SW-4] Proposed Memorandum Opinion and Decision Constituting Findings of Fact and Conclusions of Law filed 10/22/13 [Dckt 206]

3. [11-46148-E-7](#) ASHWINDAR KAUR
[13-2342](#)
EDMONDS V. MATHFALLU ET AL

STATUS CONFERENCE RE: COMPLAINT
10-31-13 [[1](#)]

Plaintiff's Atty: Carl W. Collins
Defendant's Atty: unknown

Adv. Filed: 10/31/13
Answer: none

Nature of Action:
Recovery of money/property - other

Final Ruling: The Status Conference is continued to 2:30 p.m. on March 19, 2014. The Plaintiff Chapter 7 Trustee has requested that the Status Conference be continued, the Defendants having been granted a reasonable extension of time to file an answer. No appearance at the January 8, 2014 Status Conference is required.

Notes:

Plaintiff's Status Conference Statement filed 12/30/13 [Dckt 8]

4. [11-46148-E-7](#) ASHWINDAR KAUR
[13-2343](#)
EDMONDS V. KAUR ET AL

STATUS CONFERENCE RE: COMPLAINT
11-1-13 [[1](#)]

Plaintiff's Atty: Carl W. Collins
Defendant's Atty: unknown

Final Ruling: The Status Conference is continued to 2:30 p.m. on March 19, 2014. The Plaintiff Chapter 7 Trustee has requested that the Status Conference be continued to afford the Plaintiff the time to locate the new address for the Defendant. No appearance at the January 8, 2014 Status Conference is required.

Adv. Filed: 11/1/13
Answer: none

Nature of Action:
Recovery of money/property - other

Notes:

Plaintiff's Status Conference Statement filed 12/30/13 [Dckt 8]

5. [11-46148-E-7](#) ASHWINDAR KAUR
[13-2344](#)
EDMONDS V. SINGH

STATUS CONFERENCE RE: COMPLAINT
11-1-13 [[1](#)]

Plaintiff's Atty: Carl W. Collins
Defendant's Atty: unknown

Adv. Filed: 11/1/13
Answer: none

Final Ruling: The Status Conference is continued to 2:30 p.m. on March 19, 2014. The Plaintiff Chapter 7 Trustee has requested that the Status Conference be continued to afford the Plaintiff the time to locate the new address for the Defendant. No appearance at the January 8, 2014 Status Conference is required.

Nature of Action:
Recovery of money/property - preference
Recovery of money/property - other

Notes:

Plaintiff's Status Conference Statement filed 12/30/13 [Dkct 8]

6. [10-45051](#)-E-13 RONALD/JUANITA TYESKEY
[13-2352](#)
TYESKEY ET AL V. JPMORGAN
CHASE BANK N.A.

STATUS CONFERENCE RE: COMPLAINT
11-6-13 [[1](#)]

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

Adv. Filed: 11/6/13
Summons Reissued: 12/18/13

Answer: none

Final Ruling: The Status Conference is continued to 2:30 p.m. on March 19, 2014. No appearance at the January 8, 2014 Status Conference is required.

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:

January 8, 2014 Status Conference

Plaintiffs' Status Conference Statement notifies the court that it has been determined that the original summons and complaint were not properly served. On December 18, 2013, a Reissued Summons was obtained, with proper service having been made on December 19, 2013. No certificate of service has been filed relating to the Reissued Summons.

Plaintiffs also report that on January 3, 2014, counsel for Plaintiffs was contacted by an attorney for Defendant JPMorgan Chase Bank, N.A. In the course of that conversation the parties discussed being able to resolve the reconveyance on the Deed of Trust without having to pursue further litigation. Plaintiffs request that the Status Conference be continued to allow the parties to address these issues and possible settlement.

In light of this adversary proceeding relating to the lien of the defendant in light of the Chapter 13 Plan having been completed, the court will grant Plaintiffs' request. Though Plaintiffs have not shown that they timely and properly served the Reissued summons and the complaint, they have completed their Chapter 13 Plan. In light of the holidays in December, such a filing error is not inexcusable.

The court continues the status conference to 2:30 p.m. on March 19, 2014. However, this Adversary Proceeding must be diligently prosecuted. As a condition of continuing the hearing. On or before February 1, 2014, the Plaintiffs shall file proof that a Reissued Summons and the Complaint were served on the Defendant on or before January 31, 2014. If such certificate of service is not timely filed or the Reissued Summons and Complaint not timely served, this Adversary Proceeding shall be dismissed without prejudice, without further notice or hearing.

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 Statement filed by Plaintiffs having been reviewed by the court, no certificate of service for the Reissued Summons and the Complaint having been filed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Status Conference in this Adversary Proceeding is continued to 2:30 p.m. on March 19, 2014.

IT IS FURTHER ORDERED that if the Plaintiffs fails to file, on or before February 1, 2014, a certificate of service documenting that the a Reissued Summons and the Complaint were served on the Defendant on or before January 31, 2014, this Adversary Proceeding shall be dismissed without prejudice. If the then current Reissued Summons and Complaint have not been timely served by January 31, 2014, this Adversary Proceeding shall be dismissed without prejudice. No further notice or hearing of the dismissal without prejudice shall be provided.

7. [10-30359-E-13](#) ELIZABETH LUCHINI
[13-2321](#)
LUCHINI V. JPMORGAN CHASE BANK
N.A.

STATUS CONFERENCE RE: COMPLAINT
10-21-13 [[1](#)]

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

Adv. Filed: 10/21/13
Answer: none

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)

Final Ruling: The Status Conference is continued to 2:30 p.m. on March 19, 2014. Plaintiff reports that no answer has been filed, the Reissued Summons and Complaint having been served on December 18, 2013. The time to file an answer or other responsive pleading does not expire until January 17, 2014. No appearance at the January 8, 2014 Status Conference is required.

Notes:

8. [13-29769](#)-E-13 JOHN JAMES
[13-2331](#)
THOMAS V. JAMES, II
ADV. DISMISSED 12/10/13

STATUS CONFERENCE RE: COMPLAINT
10-28-13 [[1](#)]

Dismissed 12/10/13

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

Final Ruling: the Adversary Proceeding having been dismissed, Dckt. 11, **the Status Conference is removed from the calendar.** No appearance at the January 8, 2014 Status Conference is required.

Adv. Filed: 10/28/13

Notes:

9. [10-35270](#)-E-13 DOROTHY HOCKING
[13-2325](#)
HOCKING V. CITIFINANCIAL
SERVICES, INC.

STATUS CONFERENCE RE: COMPLAINT
10-22-13 [[1](#)]

Plaintiff's Atty: Douglas B. Jacobs
Defendant's Atty: unknown

Adv. Filed: 10/22/13
Answer: none

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)

Final Ruling: The Status Conference is continued to 2:30 p.m. on March 19, 2014. The Plaintiff reports that the adversary proceeding has been settled and the Defendant is reconveying the deed of trust at issue. No appearance at the January 8, 2014 Status Conference is required.

Notes:

Plaintiff's Status Conference Statement filed 12/23/13 [Dckt 8]

10. [10-23577](#)-E-11 GLORIA FREEMAN
[13-2027](#)
FREEMAN V. FLEMMER

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
1-29-13 [[1](#)]

Plaintiff's Atty: Craig A. Simmermon
Defendant's Atty: Daniel L. Egan

Adv. Filed: 1/29/13
Answer: 2/27/13

Final Ruling: The court having scheduled for February 5, 2014, an evidentiary hearing to determine whether Laurence Freeman may personally be a party or there must be a Rule 25(b) personal representative for him, **the Status Conference is continued to 2:30 p.m. on March 19, 2014.** No appearance at the January 8, 2014 Status Conference is required.

Counterclaim Filed: 2/27/13
Answer to Counterclaim:
3/20/13 [Laurence Freeman]
3/27/13 [Gloria Freeman]
4/24/13 [Gloria Freeman - First Amended]

Nature of Action:
Declaratory judgment

Notes:

Continued from 10/24/13 to allow the Parties to address the legal competency of Laurence Freeman, and whether a personal representative pursuant to Federal Rule of Civil Procedure 25(b) and Federal Rule of Bankruptcy Procedure 7025 should be appointed.

11. [12-34482](#)-E-13 PETER BOWLING AND MARILYN
LRR-8 MOWRY

CONTINUED STATUS CONFERENCE RE:
OBJECTION TO CLAIM OF ROBERTO
MADRIGAL VALEZ, CLAIM NUMBER 20
2-15-13 [[93](#)]

Debtors' Atty: Len ReidReynoso

Notes:

Continued from 11/13/13 to allow the executed settlement agreement to be filed with the court and order entered thereon re DCN LRR-8.

12. [08-35291](#)-E-13 VICTOR/PATRICIA GUZMAN
[10-2141](#)
GUZMAN ET AL V. ONEWEST BANK,
FSB ET AL

CONTINUED PRE-TRIAL CONFERENCE
RE: FIRST AMENDED COMPLAINT
5-29-12 [[87](#)]

Plaintiff's Atty: Mark A. Wolff
Defendant's Atty:
Joshua A. del Castillo [OneWest Bank, FSB; IndyMac Mortgage Servicing]
unknown [IndyMac Federal Bank]

Adv. Filed: 3/15/10
Amd Cmplt filed: 5/29/12

Answer: 4/14/10 [OneWest Bank, FSB; IndyMac Mortgage Servicing]
Answer to Amd Cmplt: 6/29/12 [OneWest Bank, FSB; IndyMac Mortgage Servicing]

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

Notes:

Continued from 11/13/13.