

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

MODESTO DIVISION CALENDAR
January 9, 2020 at 2:00 p.m.

1. [18-90906-E-7](#) **MELISSA VASQUEZ** **CONTINUED STATUS CONFERENCE RE:**
[19-9007](#) **COMPLAINT**
UNITED STATES V. VASQUEZ 3-19-19 [\[1\]](#)

Plaintiff's Atty: Jeffrey J. Lodge
Defendant's Atty: Frank M. Pacheco

Adv. Filed: 3/19/19
Answer: 5/23/19
7/8/19

Nature of Action:

Dischargeability - false pretenses, false representation, actual fraud

Dischargeability - other

Notes:

Continued from 11/7/19. The Parties reporting that they desire to attempt and mediate the matter utilizing the court's BDRP process.

Order Appointing Resolution Advocate and Assignment to the Bankruptcy Dispute Resolution Program filed 11/14/19 [Dckt 17]

The Status Conference is XXXXXXXXXX

JANUARY 9, 2020 STATUS CONFERENCE

The Status Conference was continued, the parties seeking to resolve this matter using the Bankruptcy Dispute Resolution Program. No updated pleadings have been filed.

At the Status Conference, the Parties reported XXXXXXXXXX

SUMMARY OF COMPLAINT

The United States of America, “Plaintiff” commenced this Adversary Proceeding on March 19, 2019 with the filing of the Complaint (Dckt. 1), which allegations include:

1. Defendant Debtor received payments from the Social Security Administration based on her alleged disability.
2. Defendant Debtor filed her application for disability benefits in April 2006 and began receiving benefits in May 2006. Plaintiff-Debtor is obligated to notify the Social Security Administration in changes concerning her eligibility for benefits as stated in her application.
3. Though receiving disability benefits, Defendant Debtor was actually employed and working during the period July 2007 through January 2008, and January 2009 through February 2011.
4. Defendant Debtor received \$56,882.70 in benefits to which she was not entitled. These were obtained by Debtor not reporting the changes in her condition that she presented
5. It is alleged that the obligation to repay the \$56,882 is nondischargeable pursuant to 11 U.S.C. § 523(a)(2).
6. The Complaint also request that the court issue a “mere” Declaratory Judgment that the United States may seek to recouped against future benefits (as opposed to a judgment affirmatively authorizing the recoupment).

SUMMARY OF ANSWER

Melissa Vasquez, the Defendant-Debtor, filed a *pro se* Answer on July 8, 2019 (a prior answer document was filed in *pro se*, the court using the last filed as Defendant-Debtor’s answer). This was filed a week before counsel substituted in to represent the Defendant-Debtor. The *pro se* Answer filed by Defendant-Debtor’ includes:

1. Defendant-Debtor addresses conditions of her disability.
2. Defendant-Debtor alleges communications with the Social Security Administration.
3. The Answer admits and denies specific allegations in the Complaint.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff United States 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)(A), (I), (O). Complaint ¶ 1, Dckt. 1. In her *pro se* Answer, Defendant does not expressly admit or deny these allegations. Answer, Dckt. 11.

The determination of the nondischargeability of debt is a core matter proceeding arising under the Bankruptcy Code, 11 U.S.C. § 523(a). To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are

“related to” matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

2. [19-90739-E-7](#)

JAMES/JEANNIE ABERNETHY

STATUS CONFERENCE RE: MOTION TO
KEEP BANKRUPTCY CASE OPEN
12-12-19 [\[44\]](#)

Debtors' Atty: Pro Se

Notes:

Discharged 12/9/19

The Status Conference is XXXXXXXXXX

On December 12, 2019, a letter was received by the court from the Debtors requesting that their case remain open so that they could do a reaffirmation agreement with the lien holder on their Silverado. Dckt. 44.

The Debtors' discharge was entered on December 9, 2019. If the Debtors are doing a reaffirmation agreement, then the court will have to address the issue of there being a discharge. 11 U.S.C. § 524(c)(1), requiring that such an agreement must be made before the granting of a discharge.

No further documents have been filed by Debtor.

At the Status Conference XXXXXXXXXX

3. [19-90659-E-13](#) **ARTIE RAZO**
[19-9019](#)
NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURG V. RAZO

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
10-31-19 [1]

Plaintiff's Atty: Jacob J. Stettin
Defendant's Atty: David C. Johnston

Adv. Filed: 10/31/19
Answer: 12/2/19

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

Notes:
Continued from 12/17/19 due to transfer of adversary proceeding.

Order Transferring Adversary Proceeding [from Judge Jaime to Judge Sargis] filed 12/10/19 [Dckt 10]

Joint Status Report and Discovery Plan filed 12/10/19 [Dckt 13]

The Status Conference is XXXXXXXXXX

SUMMARY OF COMPLAINT

National Union Fire Insurance Company of Pittsburgh ("Plaintiff") has filed a Complaint (Dckt. 1) seeking to have obligations owed by Defendant-Debtor determined nondischargeable pursuant to 11 U.S.C. § 524(a)(2), (4), and (6). It is alleged that Defendant-Debtor worked for a company insured by Plaintiff. In the course of that employment, it is alleged that Defendant-Debtor stole assets having a value of approximately \$221,655.17 from the employer, that such was an insured loss, and that Plaintiff may seek to recover such amounts from Defendant-Debtor. It is further alleged that Defendant-Debtor was convicted of Grand Theft under California law, with a restitution order in the amount of \$227,517.02 entered, which restitution order being assigned to Plaintiff.

Plaintiff asserts that in 2011 it obtained a judgment determining that the obligation under the restitution order is nondischargeable in Defendant-Debtor's prior bankruptcy case, 10-93639, Adv. Proceeding 10-09095. A copy of the nondischargeable judgment is provided as Exhibit 2 to the Complaint.

Defendant-Debtor has commenced a new Chapter 13 case, 19-90659, and the present Adversary Proceeding has been brought in connection with the Chapter 13 case.

SUMMARY OF ANSWER

Artie Razo, the Defendant-Debtor has filed an Answer. Dckt. 7. The Answer admits and denies specific allegations in the Complaint. Defendant-Debtor asserts five Affirmative Defenses, including asserting that Plaintiff is bound by the terms of the Chapter 13 Plan in his current case, for the duration of the case.

STATUS REPORT

The Parties have filed a Status Report, requesting that the court set a discovery schedule and that they proceed with this litigation - to determine that the prior judgment determining that the Defendant-Debtor's obligations on the Restitution Order are nondischargeable is still a judgment determining that the obligations are nondischargeable.

EFFECT OF PRIOR JUDGMENT DETERMINING THAT THE OBLIGATION IS NONDISCHARGEABLE

This court entered a final judgment on September 30, 2011, stating:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Restitution Order, previously assigned to plaintiff National Union Fire Insurance Company of Pittsburgh, PA., and filed February 10, 2010 in Stanislaus County (California) Superior Court Case Number 1252274 against defendant Artie Alexander Razo, in the principal amount of \$227,517.02, plus all accrued and accruing interest and costs and fees permitted to be added thereon, is declared to be non-dischargeable under each of 11 U.S.C. § 523 (a) (2), 11 U.S.C. § 523 (a)(4) and 11 U.S.C. § 523 (a)(6).

10-9095; Final Judgment, Dckt. 30.

The final judgment having been entered, it is unclear to this court why and how the parties are going to re-litigate a final judgment.

Defendant-Debtor is pursuing a Chapter 13 case. The discharge in a Chapter 13 case is enhanced from the discharge under other Chapters, with 11 U.S.C. § 1328(a) providing (emphasis added):

(a) Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, **the court shall grant the debtor a discharge of all debts** provided for by the plan or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1322(b)(5);

(2) of the kind specified in section 507(a)(8)(C) or in paragraph (1)(B), (1)(C), (2), (3), (4), (5), (8), or (9) of section 523(a);

(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; or

(4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.

This court has determined that the Debtor's obligation under the Restitution Order is nondischargeable pursuant to 11 U.S.C. § 523(a)(1) and (a)(4), thus excluding it from a discharge in Debtor's current Chapter 13 case. Further, any restitution order as part of a criminal conviction is not discharged through a Chapter 13 case.

The final judgment determining that Debtor's obligation under the Restitution Order is not limited merely to one bankruptcy case, but is a final judgment standing independently from any one case.

At the hearing, the Parties directed the court to the legal authority that a final judgment determining an obligation nondischargeable was subject to retrial on the same issues when the debtor filed a subsequent case, citing **XXXXXXXXXX**

Debtor's Atty: Jessica A. Dorn
Creditor's Atty: Cort V. Wiegand

Notes:

Continued from 9/19/19. Updated pre-evidentiary hearing statements to be filed on or before 12/20/19. As of 1/1/20, no updated statements filed.

The Pre-Evidentiary Hearing Conference is XXXXXXXXXX
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JANUARY 9, 2020 PRE-EVIDENTIARY HEARING CONFERENCE

On January 3, 2020, the Parties filed an Updated Joint Pre-Evidentiary Hearing Statement. In it the Parties state:

- A. They identify “probably witnesses.”
- B. There are “numerous documents” from the dissolution action that can be admitted.
- C. Counsel stipulate that the Trust Deed for the Orangeburg Avenue Property and “various other documents” would be admissible.
- D. Two Deposition Transcripts of Creditor, Scarlett Severson Fiorini were provided by counsel for Debtor. If counsel for Debtor “feels” any parts are relevant, she will notify counsel for Creditor “as soon as possible.”
- E. Creditor contends that the issue before the court is covered by 11 U.S.C. § 523(a)(15) as a nondischargeable debt, which Debtor disputes.

In continuing this Pre-Evidentiary Hearing Conference the court ordered the parties to file “updated pre-evidentiary hearing statements” by December 20, 2019. The one document filed does not constitute an updated pre-evidentiary hearing statement.

The court issued its Pre-Evidentiary Hearing Conference Order on April 4, 2019. Dckt. 52. That Order requires the Parties to provide specific information, including specific witnesses, documents, discovery evidence, points of law, and statement of undisputed facts.

Movant-Debtor filed an original Pre-Evidentiary Hearing Statement on April 17, 2019. Dckt. 57. The court does not find one for the Respondent-Creditor.

At the Pre-Evidentiary Hearing Conference, **XXXXXXXXXXXX**

SEPTEMBER 19, 2019 PRE-EVIDENTIARY HEARING CONFERENCE

At the Pre-Evidentiary Hearing Conference the parties reported that they are assembling the information for an undisputed statement of facts and need some additional time for new counsel to review deposition transcripts from other proceedings.

JUNE 27, 2019 PRE-EVIDENTIARY HEARING CONFERENCE

The court has been advised, and in connection with other cases new attorney's have substituted in the place of, that Michael Babitzke, counsel for the Respondent, has passed away. Order, Dckt. 61.

Respondent Scarlett Severson-Fiorini has not substituted in counsel to replace the late Mr. Babitzke. As of the court's June 26, 2019 review of the file in this case, Respondent was proceeding in *pro se*.

At the Pre-Evidentiary hearing Conference, Respondent appeared and advised the court that Cort Wiegand, an attorney who has regularly appeared in this court will be substituting in as her counsel in place of the late Mr. Babitzke.

Jessica Dorn, counsel for the Debtor, concurred in the request to continue the Pre-Evidentiary Hearing Conference to late August to allow Mr. Wiegand to substitute in, meet and confer, and prepare for the Conference.

FINAL RULINGS

5. [19-91034-E-11](#) LORENA ALVARADO STATUS CONFERENCE RE:
VOLUNTARY PETITION
11-22-19 [\[1\]](#)

Final Ruling: No appearance at the January 9, 2020 Status Conference is required.

Debtor's Atty: Anh V. Nguyen

Notes:

Order Scheduling Deadlines filed 11/29/19 [Dckt 12]

[AVN-1] Debtor's Motion to Convert Case to Case Under Chapter 13 filed 12/11/19 [Dckt 17], set for hearing 1/23/20 at 10:30 a.m.

Trustee Report at 341 Meeting lodged 12/30/19

<p>The Status Conference is continued to 10:30 a.m. on January 23, 2020, to be conducted in conjunction with the Motion to Convert this Case to one under Chapter 13</p>

JANUARY 9, 2020 STATUS CONFERENCE

This Voluntary Chapter 11 case was commenced on November 22, 2019. On December 11, 2019, nineteen days later, a motion was filed to convert this Chapter 11 case to one under Chapter 13. Dckt. 17. The hearing on the Motion to Convert is set for January 23, 2020.

The Motion states that this was filed as a Chapter 11 case in error by counsel, and Debtor should be proceeding under Chapter 13. A review of the Schedules indicate that this appears to be a Chapter 13 situation.

In reviewing the Declaration in support of the Motion to Convert, it appears that another error has occurred, and the Declaration of Angelo Oliva, another person represented by Debtor's counsel, that has the case number for a different case, was filed as the Declaration in support of conversion.