

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

January 14, 2021 at 2:00 p.m.

1. [19-90110-E-7](#)
[SHA-2](#)

CAMPBELL WINGS, INC.

**STATUS CONFERENCE RE: MOTION
FOR ADMINISTRATIVE EXPENSES
6-26-19 [40]**

Debtor's Atty: Reno F.R. Fernandez

Trustee's Atty: Anthony D. Johnston

Creditor's [Hamilton and Bascom, LLC] Atty: Stanford H. Atwood, Jr.

Notes:

Set by order of the court filed 11/23/20 [Dckt 119] for the Parties to identify and diligently undertake discovery, identify the issues in dispute, and diligently prosecute this contested matter.

The Scheduling Conference is concluded and removed from the calendar.

The Final Hearing on this Motion shall be conducted at 10:30 a.m. on **June 3, 2021.**

JANUARY 14, 2021 CONFERENCE

The Parties filed their Joint Status Report on January 7, 2021. Dckt. 120. The Parties report that all pending discovery has been withdrawn and suggest the following briefing and final hearing schedule:

- A. Supplemental Brief of Hamilton & Bascom, in response to the Trustee's Supplemental Brief previously filed, to be filed and served on or before **March 1, 2021.**
- B. Trustee's Response to Supplemental Brief, to be filed and served on or before **April 1, 2021.**
- C. Hamilton & Bascom's Reply to Trustee's Response, to be filed and served on or before **April 19, 2021.**

January 14, 2021 at 2:00 p.m.

- Page 1 of 12 -

D. Final hearing for oral argument to be conducted at 10:30 a.m. on **June 3, 2021 (that being a Modesto law and motion calendar date).**

At the hearing, **XXXXXXX**

NOVEMBER 19, 2020 HEARING

The Parties filed their updated Status Report on October 30, 2020. In it they advise the court of continuing absence from the United States of the Managing Member of Hamilton and Bascom, LLC, and the restrictions on his ability to return to the United States due to COVID-19. Dckt. 115. The Parties state that it is not expected for him to return until Spring or Summer 2021.

This Motion for Allowance of Administrative Expenses (Dckt. 40) was filed on June 26, 2019. The hearing on this Motion was continued pursuant to a Stipulation of the Parties, in which they advised the court:

Good cause exists for the continuance in that the parties are engaged in a global compromise of all matters including the potential sale of the estate's liquor license to the landlord and settlement of the state court litigation between the Debtor and landlord.

Stipulation, p. 2:1-3. The Parties requested a modest continuance from August 29, 2019 to October 17, 2019.

Then, on October 3, 2019, the Parties filed a Second Stipulation to Continue (Dckt. 63), requesting a modest continuance from the October 17, 2019 hearing date to December 19, 2019. The stated reason was that counsel for Hamilton and Bascom, LLC had a conflict that arose for the October 17, 2019 date they previously picked.

Then, on November 15, 2019, the Parties filed their Third Stipulation to Continue (Dckt. 73), advising the court that counsel for Hamilton and Bascom, LLC another conflict arose for the December 19, 2019 date they had picked. However, for the Third Stipulation, rather than a short continuance, the Parties requested that the court push it out to April 23, 2020.

Then, on March 11, 2020, the Parties filed a Joint Motion and Fourth Stipulation to further continue the hearing. Dckt. 87. For a third time, the stated grounds were that counsel for Hamilton and Bascom, LLC had a scheduling conflict for the April 23, 2020 hearing date the Parties had selected. The Parties requested that it be continued to August 6, 2020.

The court, as it had for the prior three requests, continued the hearing, this time to August 6, 2020.

Then, on July 21, 2020, the Parties filed a Joint Motion and Fifth Stipulation to Continue the hearing that was set for August 6, 2020. Dckt. 109. The Joint Motion states:

Good cause exists for the continuance in that counsel for the Trustee intends to take the deposition of Barton C. Dorsa, Managing Member of Hamilton and Bascom,

LLC, who is currently out of the country with no clear idea of when he may be permitted to return, given current COVID-19 concerns and travel restrictions, but who is not expected to return until 2021, at the earliest. In addition, counsel for Hamilton and Bascom, LLC seeks to conduct several depositions in connection with this hearing and said extension will allow for such depositions and other discovery to be conducted prior to the hearing.

Id., p. 2:6-12.

Now, with this Sixth Request to Continue, the Parties are basing it on the Managing Member's absence from the Country. No evidence has been provided as to the reason for his absence, his inability to return, or the lack of ability of Hamilton and Bascom, LLC to diligently prosecute this Motion. These proceedings have been delayed for multiple times, first with Hamilton and Bascom, LLC's counsel being unable to attend the continued hearing dates, and now the extended absence from the Country by the Managing Member.

The court, believing that the Parties and their counsel were attempting to prosecute this Contested Matter in good faith, has granted their requests. At this juncture, they will now have to establish that they are prosecuting this Contested Matter in good faith and provide evidence of the Managing Member's inability to return to this Country and prosecute the Contested Matter that he had commenced.

Additionally, the Parties will have to show why they have not been able to proceed with discovery. Why depositions can not be conducted using Zoom or other virtual conferencing technology. They need to show why document productions, whether physically or electronically, cannot be pursued.

Continuance of Hearing

At the hearing, the court addressed with the parties the court's perception as to the lack of prosecution of the Motion and the opposition to the Motion. Additionally, the court questioned whether this Motion may be determined prior to the State Court Action to determine the easements which the objecting Trustee has asserted.

The court continues the hearing to a January 14, 2021 Scheduling Conference for the parties to identify and diligently undertake discovery (using 21st Century when necessary), identify the issues in dispute, and diligently prosecute this now 17 month old Contested Matter.

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 Scheduling Conference for the Motion for Allowance of Administrative Expense filed by Hamilton & Bascom, LLC having been conducted by the court, the Parties having filed the Joint Status Report (Dckt. 120), presented to the court, and upon review of the pleadings, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Final Hearing on the Motion shall be conducted at **10:30 a.m. on June 3, 2021.**

IT IS FURTHER ORDERED that the supplemental pleadings, if any, shall be filed and served as follows:

- A. Supplemental Brief of Hamilton & Bascom, in response to the Trustee's Supplemental Brief previously filed, to be filed and served on or before **March 1, 2021.**
- B. Trustee's Response to Supplemental Brief, to be filed and served on or before **April 1, 2021.**
- C. Hamilton & Bascom's Reply to Trustee's Response, to be filed and served on or before **April 19, 2021.**

2. [20-90544-E-7](#) MICHELLE PIMENTEL-MONTEZ STATUS CONFERENCE RE:
[20-9012](#) COMPLAINT
LIONUDAKIS ET AL V.
PIMENTEL-MONTEZ 11-2-20 [\[1\]](#)

Plaintiff's Atty: Jamie P. Dreher
Defendant's Atty: David C. Johnston

Adv. Filed: 11/2/20
Answer: 11/28/20

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

Notes:

Joint Status Conference Statement filed 12/28/20 [Dckt 10]

The Status Conference is XXXXXXX
--

SUMMARY OF COMPLAINT

The Complaint filed by Phillip Lionudakis, Lionudakis Firewood, Inc., and Lionudakis Orchard Remove, Inc. (collectively "Plaintiff"), Dckt. 1, asserts claims seeking for the determination for nondischargeability of debt pursuant to 11 U.S.C. § 523(a)(2)(A), (a)(4), and (a)(6). The Complaint alleges that the Defendant-Debtor provided accounting services for Plaintiff. It is alleged that Defendant-Debtor obtained a loan from Plaintiff and material misrepresentations were made in the procuring thereof.

The damages asserted by the Debtor are in the amount of at least \$200,000.

SUMMARY OF ANSWER

Michelle Pimentel-Montez ("Defendant-Debtor") filed an Answer, Dckt. 8, admitting and denying specific allegations made in the Complaint. The Answer also states seven affirmative defenses.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Phillip Lionudakis, Lionudakis Firewood, Inc., and Lionudakis Orchard Remove, Inc. 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)(I), and expressly consents to the bankruptcy judge issuing all final orders and judgment in this Adversary Proceeding.

Complaint ¶¶ 5, 6, 8; Dckt. 1. In the Answer, Defendant-Debtor Michelle Pimentel-Montez admits the allegations of jurisdiction and that this is a core proceeding and expressly consents to the entry of all final orders and judgment in this adversary proceeding by the bankruptcy judge. Answer ¶¶ 2, 3; Dckt. 8.

JOINT STATUS REPORT

The Parties filed their Joint Status Report on December 28, 2020. Dckt. 10. In the Report the Parties suggest the dates and deadlines for the Scheduling Order in this Adversary Proceeding.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

- a. Plaintiff Phillip Lionudakis, Lionudakis Firewood, Inc., and Lionudakis Orchard Remove, Inc. 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)(I), and expressly consents to the bankruptcy judge issuing all final orders and judgment in this Adversary Proceeding. Complaint ¶¶ 5, 6, 8; Dckt. 1. In the Answer, Defendant-Debtor Michelle Pimentel-Montez admits the allegations of jurisdiction and that this is a core proceeding and expressly consents to the entry of all final orders and judgment in this adversary proceeding by the bankruptcy judge. Answer ¶¶ 2, 3; Dckt. 8.
- b. Initial Disclosures shall be made on or before **January 8, 2021**.
- c. Expert Witnesses shall be disclosed on or before **May 30, 2021**, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before **June 30, 2021**.
- d. **Non-Expert** Discovery closes, including the hearing of all discovery motions, on **April 30, 2021**.
- e. Dispositive Motions shall be heard before **August 31, 2021**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on September 30, 2021**.

3. [19-90464-E-7](#) **RICHARD RICKS**
[20-9013](#)
EDMONDS V. HUGHES

STATUS CONFERENCE RE:
COMPLAINT
11-19-20 [1]

Plaintiff's Atty: Mark A. Serlin
Defendant's Atty: Michael E. Dietrick

Adv. Filed: 11/19/20
Answer: 12/15/20

Nature of Action:
Recovery of money/property - fraudulent transfer

Notes:

The Status Conference is XXXXXXX
--

SUMMARY OF COMPLAINT

The Complaint filed by Irma Edmonds, the Chapter 7 Trustee ("Plaintiff-Trustee"), Dckt. 1, asserts claims for avoidance of the transfer of property of the Debtor within two years of Debtor commencing a Chapter 7 case. It is asserted that the transferred property had a value in excess of \$100,000, the transfer may be avoided pursuant to 11 U.S.C. § 548 and § 544, and California Civil Code §§ 3439.01 et seq., and that the value of the transfer may be recovered by Plaintiff-Trustee pursuant to 11 U.S.C. § 550.

SUMMARY OF ANSWER

Joy Hughes ("Defendant"), in *pro se*, filed an Answer, Dckt. 7, admitting and denying specific allegations alleged in the Complaint. The Answer included five affirmative defenses.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Trustee Irma Edmonds 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), and expressly consents to the bankruptcy judge issuing all final orders and judgment in this Adversary Proceeding. Complaint ¶¶ 3, 4, 6, Dckt. 1. In the Answer, Defendant Joy Hughes, in *pro se*, admits the allegations of jurisdiction, but does not admit that this is a core proceeding, and does not expressly consent to the bankruptcy judge issuing all final orders and judgments for non-core matters. Answer ¶¶ 3, 4, 6; Dckt. 7. 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.

On December 29, 2020, a substitution of attorney was filed, substituting Michael Dietrick in as counsel for Defendant.

JOINT REPORT

On January 7, 2021, the Parties filed their Joint Discovery Plan which requests that the court set June 15, 2021, as the close of discovery. Dckt. 9.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

- a. Plaintiff-Trustee Irma Edmonds 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), and expressly consents to the bankruptcy judge issuing all final orders and judgment in this Adversary Proceeding. Complaint ¶¶ 3, 4, 6, Dckt. 1. In the Answer, Defendant Joy Hughes, *in pro se*, admits the allegations of jurisdiction, but does not admit that this is a core proceeding, and does not expressly consent to the bankruptcy judge issuing all final orders and judgments for non-core matters. Answer ¶¶ 3, 4, 6; Dckt. 7. **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.** On December 29, 2020, a substitution of attorney was filed, substituting Michael Dietrick in as counsel for Defendant, and represented Defendant at the January 14, 2021 Status Conference.
- b. Initial Disclosures shall be made on or before **January 19, 2021**.
- c. Expert Witnesses shall be disclosed on or before **xxxxxxx, 2021**, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before **xxxxxxx, 2021**.
- d. Discovery closes, including the hearing of all discovery motions, on **June 15, 2021**.
- e. Dispositive Motions shall be heard before **July 30, 2021**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on September 9, 2021**.

See Item 5 - Objection to Confirmation

Debtor's Atty: David C. Johnston

Notes:

Continued from 10/22/20

[DCJ-2] Order granting Motion to Extend Deadline to File a Chapter 12 Plan filed 11/12/20 [Dckt 44]

[DCJ-3] Chapter 12 Plan filed 11/13/20 [Dckt 47]

Withdrawal of Claim [U.S. Dept. of Agriculture] filed 12/15/20 [Dckt 50]

[JLG-1] American Farm Mortgage Company Inc.'s Objection and Opposition to Confirmation of Chapter 12 Plan filed 12/16/20 [Dckt 51], set for hearing 1/14/21 at 2:00 p.m.

The Status Conference is continued to 2:00 p.m. on xxxxxxx, 2021.

The Debtor in Possession filed an updated Status Report on January 7, 2021. Dckt. 56. He reports that he has not proceeded with prosecution of the plan due to amendments being negotiated with the Farm Services Agency and "challenges" in engaging a broker (due to illness of the original intended broker) to market the property.

At the Status Conference, xxxxxxx

Sufficient Notice Provided. The Objection to Confirmation was set for hearing on twenty-nine days notice. It has been served only on the Debtor in Possession, Debtor in Possession's counsel, the Chapter 12 Trustee, U.S. Trustee, and two parties who requested special notice. Cert. of Serv., Dckt. 55. For purposes of the Objection for a Plan which the Debtor in Possession had not set for hearing, that is sufficient, with the court addressing this as a Status Conference concerning the grounds asserted and possible steps to be taken by the Debtor in Possession to address the concerns.

The Objection to Confirmation is xxxxxxx

American Farm Mortgage Company, Inc. ("Creditor") has filed a pleading titled "Objection and Opposition to Confirmation of Chapter 12 Plan." Dckt. 51. Though a Chapter 12 Plan was filed on November 13, 2020, no motion to confirm has been filed by the Debtor in Possession. The Bankruptcy Code provides in 11 U.S.C. § 1224 that an expedited hearing on the Plan is to be conducted not later than forty-five days after the filing of the Plan. Federal Rule of Bankruptcy Procedure 3015(f) provides that objections to confirmation shall be served at least seven days prior to the noticed hearing date. Though not set for hearing, Creditor filed the Objection to insure that it would not miss the window if it was set for hearing.

FN. 1. The Local Bankruptcy Rules in this District do not have a "scream or die" automatic confirmation if nobody objects to confirmation of a Chapter 12 Plan.

Creditor's objection is that while it believes that there was an agreement with Debtor in Possession of how the claim was to be provided for, the Debtor in Possession has not complied with that agreement.

The Debtor in Possession filed an updated Status Report on January 7, 2021. Dckt. 56. He reports that he has not proceeded with prosecution of the plan due to amendments being negotiated with the Farm Services Agency and "challenges" in engaging a broker (due to illness of the original intended broker) to market the property.

Creditor has set for hearing on February 11, 2021, a hearing on a motion for relief from the automatic stay. Dckt. 58. The gist of the Motion is that the Debtor in Possession has not been moving forward with the marketing of the property as part of the proposed liquidated plan and has missed required benchmarks.

A review of the Docket in this case on January 12, 2021, reveals that the Debtor in Possession has not yet filed a motion to employ a real estate broker.

At the hearing, **XXXXXXX**

6. [20-90779-E-11](#) PRIMO FARMS, LLC

STATUS CONFERENCE RE:
VOLUNTARY PETITION
12-3-20 [\[1\]](#)

SUBCHAPTER V

Debtor's Atty: David C. Johnston

Notes:

[DCJ-1] Application of Debtor in Possession for Authority to Employ Attorney filed 12/25/20 [Dckt 29];
Order granting filed 12/28/20 [Dckt 33]

Debtor in Possession's Chapter 11 Status Report filed 12/31/20 [Dckt 41]

The Status Conference is continued to 2:00 p.m. on XXXXXXX, 2021.

JANUARY 14, 2021 STATUS CONFERENCE

Debtor commenced this Subchapter V case on December 3, 2020, and serves as the Debtor in Possession. Walter Dahl is the Subchapter V Trustee appointed in this case.

The Debtor/Debtor in Possession filed a Status Report on December 31, 2020. Dckt. 41. Debtor/Debtor in Possession reports that the plan in this case is "quite simple" – the Debtor/Debtor in Possession will renovate the three real properties of the bankruptcy estate to net sales proceeds of approximately \$1,000,000. With these proceeds and existing loan funds, the plan will include the construction of three new homes.

At the Status Conference, **XXXXXXX**

FINAL RULINGS

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

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

Final Ruling: No appearance at the January 14, 2021 Status Conference is required.

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

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

Nature of Action: Recovery of Money/Property

Notes:

Continued from 12/27/20 to afford Plaintiff-Trustee the opportunity to dismiss this Adversary Proceeding pursuant to the terms of the Stipulation.

Ex Parte Application Re: Stipulation for Dismissal of Adversary Proceeding With Prejudice filed 1/5/21 [Dckt 105]; order pending

This Adversary Proceeding having been dismissed pursuant to the order of the court (Dckt. 106), **the Status Conference is concluded and removed from the Calendar.**

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