

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Sacramento, California

January 20, 2016 at 2:30 p.m.

1. [09-44001-E-13](#) BARRY/LISA STOELTING  
[15-2189](#)  
STOELTING ET AL V. TRI  
COUNTIES BANK

STATUS CONFERENCE RE: COMPLAINT  
9-24-15 [[1](#)]

Plaintiff's Atty: Scott J. Sagaria  
Defendant's Atty: unknown

Adv. Filed: 9/24/15  
Answer: none

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

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXXXX~~.

Notes:

**SUMMARY OF COMPLAINT**

In the Complaint the Plaintiff-Debtors seek a declaration that (1) the court's prior order determining the value of a secured claim pursuant to 11 U.S.C. § 506(a) is a final order, (2) that Plaintiff-Debtors have completed their Chapter 13 Plan, and (3) Plaintiff-Debtors are entitled to a release of the lien asserted by Tri Counties Bank on the real property commonly known as 5108 Archcrest Way, Sacramento, California.

The Complaint further requests that the court "extinguish" the deed of trust in which Tri Counties Bank asserted a lien for the secured claim which was valued at \$0.00 pursuant to 11 U.S.C. § 506(a). As part of the Second Cause of Action Plaintiff-Debtors assert the right to attorneys' fees under the terms of the Deed of Trust.

The Third Cause of Action seeks a statutory damages award pursuant to California Civil Code § 2941(b)(1) for the failure to reconvey the Deed of Trust upon the completion of the plan. The Fourth Cause of Action seeks recovery of statutory attorneys' fees.

**SUMMARY OF ANSWER**

No answer has been filed. No proof of service of the summons and complaint has been filed.

January 20, 2016 at 2:30 p.m.

2. [15-28108](#)-E-11 WILLARD BLANKENSHIP

STATUS CONFERENCE RE: VOLUNTARY  
PETITION  
10-17-15 [[1](#)]

Debtor's Atty: Stephen M. Reynolds

**The Status Conference is continued to ~~XXXXXXXXXXXXXXXXXXXX~~.**

Notes:

Operating Reports filed: 11/16/15, 12/15/15

Report of Trustee at 341 Meeting docketed 11/19/15

[RLC-3] Debtor's Motion for Authority to Incur Debt filed 12/6/15 [Dckt 28];  
Order granting filed 12/8/15 [Dckt 35]

Chapter 11 Status Report filed 12/16/15 [Dckt 40]

3. [15-20810](#)-E-13 VASILIIY/YELENA KUMANSKIY  
[15-2056](#)  
WELLS FARGO CARD SERVICES V.  
KUMANSKIY ET AL

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
3-13-15 [[1](#)]

**Final Ruling: No appearance at the January 20, 2016 Status Conference is required.**

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Plaintiff's Atty: Austin P. Nagel  
Defendant's Atty: Mitchell L. Abdallah  
Adv. Filed: 3/13/15  
Answer: 4/16/15

Nature of Action:

Dischargeability - false pretenses, false representation, actual fraud

**The parties having filed a Stipulation Dismissing this Adversary Proceeding pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) and Federal Rule of Bankruptcy Procedure 7041 (Dckt. 16), the Status Conference is removed from the Calendar**

Notes:

Continued from 9/22/15 to allow the Debtor to propose and confirm a plan which incorporates the settlement of this adversary proceeding.

4. [11-26716](#)-E-13 ROLANDO/NYMPHA ZAPANTA  
[11-2440](#)  
SEHR V. ZAPANTA ET AL

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
6-20-11 [[1](#)]

*CASE DISMISSED: 1/9/2016*

**Final Ruling: No appearance at the January 20, 2016 Status Conference is required.**

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Plaintiff's Atty: Mark Gorton; Domenic D. Spinelli  
Defendant's Atty: Pro Per

Adv. Filed: 6/20/11  
Answer: 8/10/11

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud

The Complaint having been dismissed pursuant to the stipulation of the parties, **the Status Conference is removed from the Calendar.**

Notes:  
Plaintiff's Fifth Status Conference Statement and Request for Dismissal filed 1/7/16 [Dckt 38]

5. [07-27123](#)-E-13 DOREEN GASTELUM  
PGM-6

CONTINUED MOTION TO MODIFY  
ORDER FOR EVIDENTIARY HEARING  
6-12-15 [[186](#)]

**Final Ruling: No appearance at the January 20, 2016 Status Conference is required.**  
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Debtor's Atty: Peter G. Macaluso  
Creditor's Atty: Marc B. Koenigsberg

**The Status Conference is continued to 9:30 a.m. on January 28, 2016, to be conducted in conjunction with the hearing on the Motion to Approve Stipulation.**

Notes:

Continued from 9/22/16 as status conference. The Parties are to prepare a written stipulation and file a motion to have it approved, with the hearing to be conducted prior to the January 2016 continued status conference.

City of Chicago's Fourth Pre-Evidentiary Hearing Statement filed 12/18/15 [Dckt 198]

Status Conference Statement re Order to Show Cause/Motion for Contempt filed 1/13/16 [Dckt 200]

6. [14-29231](#)-E-11 MIZU JAPANESE SEAFOOD  
BUFFET, INC.

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
9-15-14 [[1](#)]

Debtor's Atty: Stephen M. Reynolds

**The Post-Confirmation Status Conference is  
XXXXXXXXXXXXXXXXXXXXXXX.**

Notes:

Continued from 9/9/15

[RLC-19] Motion for Turnover filed 11/4/15 [Dckt 181]; Order granted pursuant to stipulation filed 12/11/15 [Dckt 190]

7. [14-27045](#)-E-13 HARINDER SINGH  
[14-2237](#)  
SACRAMENTO SIKH SOCIETY  
BRADSHAW TEMPLE V. SINGH

CONTINUED PRE-TRIAL RE:  
COMPLAINT TO DETERMINE  
DISCHARGEABILITY OF DEBT  
8-13-14 [[1](#)]

**Final Ruling: No appearance at the January 20, 2016 Status Conference is required.**  
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Plaintiff's Atty: Peter J. Pullen  
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 8/13/14  
Answer: 9/12/14

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud

<b>The Complaint having been dismissed, the Status Conference is removed from the Calendar.</b>
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Notes:

Continued from 11/4/15, the status report stating that a settlement has been reached.

Plaintiff's Request for Dismissal with Prejudice filed 12/30/15 [Dckt 51];  
Order granting filed 12/31/15 [Dckt 53]

8. [14-27045](#)-E-13 HARINDER SINGH  
DMA-1

CONTINUED STATUS CONFERENCE RE:  
MOTION TO AVOID LIEN OF  
SACRAMENTO SIKH SOCIETY  
BRADSHAW TEMPLE  
8-2-14 [[15](#)]

**Final Ruling: No appearance at the January 20, 2016 Status Conference is required.**  
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Debtor's Atty: David M. Alden, Peter G. Macaluso

<b>The Bankruptcy Case having been dismissed, the Status Conference is removed from the Calendar.</b>
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Notes:

[DPC-2] Order granting Trustee's motion to dismiss filed 11/9/15 [Dckt 133]

Trustee's Final Report and Account filed 1/13/16 [Dckt 136]

9. [11-27845-E-11](#) IVAN/MARETTA LEE  
[15-2194](#)  
LEE ET AL V. SHELLPOINT  
MORTGAGE SERVICING ET AL

STATUS CONFERENCE RE: COMPLAINT  
9-30-15 [[1](#)]

Plaintiff's Atty: Raymond E. Willis  
Defendant's Atty:

Tim G. Ceperley [Bank of America, N.A.]  
Beau E. Parkhurst [City of Sacramento; City of Sacramento Community  
Development Department]  
Gregory K. Jones [CIT Bank, N.A.-formerly known as OneWest Bank, N.A.]  
B. Ben Mohandesi [New Penn Financial, LLC dba Shellpoint Mortgage  
Servicing]

The Status Conference is <del>XXXXXXXXXXXXXXXXXXXXXXXXXXXX</del> .
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Adv. Filed: 9/30/15  
Answer: 10/30/15 [City of Sacramento; City of Sacramento Community  
Development Department]  
11/18/15 [CIT Bank, N.A.-formerly known as OneWest Bank, N.A.]  
11/18/15 [New Penn Financial, LLC dba Shellpoint Mortgage  
Servicing]

Amd. Complt. Filed: 1/8/16  
Answer: none

Nature of Action:  
Injunctive relief - other  
Declaratory judgment

Notes:  
Stipulation for Extension of Time to Respond to Complaint filed by CIT Bank,  
N.A. (formerly known as OneWest Bank, N.A.) filed 10/27/15 [Dckt 9]; Order  
approving filed 10/27/15 [Dckt 10]

[TGC-1] Bank of America, N.A.'s Motion to Dismiss the Adversary Complaint filed  
10/29/15 [Dckt 11]; Order dismissing as to Bank of America, N.A. filed 12/11/15  
[Dckt 28], Plaintiffs amended complaint to be filed and served on or before  
1/15/16

Stipulation for Extension of Time to Respond to Complaint filed by New Penn  
Financial, LLC dba Shellpoint Mortgage Servicing filed 10/30/15 [Dckt 15];  
Order approving filed 11/1/15 [Dckt 18]

Stipulation Resolving Complaint Filed by Debtors Against CIT Bank, N.A.  
(Incorrectly Named as IndyMac Mortgage Services) filed 12/7/15 [Dckt 25]; Order  
dismissing as to CIT Bank, N.A. filed 12/13/15 [Dckt 31]

10. [09-43956-E-13](#) RAFAEL/ELSA MARTINEZ  
[15-2131](#)  
MARTINEZ, JR. ET AL V. LITTON  
LOAN SERVICING

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
6-18-15 [[1](#)]

Plaintiff's Atty: Douglas B. Jacobs  
Defendant's Atty: Phillip Barilovits

Adv. Filed: 6/18/15  
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)

<b>The Status Conference is <del>XXXXXXXXXXXXXXXXXXXX</del>.</b>
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Notes:  
Continued from 11/4/15

Plaintiff's Status Conference Statement filed 1/11/16 [Dckt 23]

11. [14-29361](#)-E-7 WALTER SCHAEFER  
[15-2214](#)  
HUSTED V. SCHAEFER

STATUS CONFERENCE RE: COMPLAINT  
11-6-15 [[1](#)]

Plaintiff's Atty: J. Russell Cunningham  
Defendant's Atty: Douglas B. Jacobs

Adv. Filed: 11/6/15  
Answer: 11/24/15  
Nature of Action:  
Objection/revocation of discharge

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXX~~.

Notes:

Status Conference Statement filed by Defendant 1/11/16 [Dckt 9]

12. [15-25168](#)-E-13 DEBRA MCCLAIN  
[15-2152](#)  
MCCLAIN V. SULLIVAN ET AL

STATUS CONFERENCE RE: AMENDED  
COMPLAINT  
11-3-15 [[18](#)]

Plaintiff's Atty: Peter L. Cianchetta  
Defendant's Atty: Kirk Steven Rimmer

Adv. Filed: 8/3/15  
Answer: 9/11/15  
Amd. Cmplt. Filed: 11/3/15  
Answer: 11/15/15

Nature of Action:  
Declaratory judgment  
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)

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXX~~.

Notes:

Status Conference re Complaint filed 8/3/15 held 10/14/15 [Dckt 15]; concluded  
and removed from calendar; pre-trial scheduled for 11/16/16 at 2:30 p.m.

Stipulation of Parties to File First Amended Complaint for Objection to Claim;  
Declaratory Relief; and Related State Cause of Action filed 11/3/15  
[Dckt 19]



13. [13-31975](#)-E-13 JACK/LINDA GANAS  
PLC-3

CONTINUED OBJECTION TO NOTICE  
OF MORTGAGE PAYMENT CHANGE  
AND/OR MOTION FOR ATTORNEY'S  
FEES  
11-13-14 [[55](#)]

**The Objection to Notice of Mortgage Payment Change is**  
**XXXXXX**

Jack and Linda Ganas ("Debtors") filed the instant Objection to Notice of Mortgage Payment Change and Request for Attorney's Fees on November 13, 2014. Dckt. 55.

Debtors state that Wells Fargo Bank, N.A. filed Proof of Claim No. 4 on January 15, 2014 where they claimed an arrearage existed at the time of the bankruptcy filing. The escrow shortage they listed was \$529.34 as of the petition date. On October 28, 2014, Wells Fargo Bank, N.A. filed a Notice of Payment Change. The documents submitted with their Notice of Mortgage Payment Change state that there was an escrow shortage on the date of the petition of (\$8,977.23). Debtors argue that this pre-petition shortage was not listed on Wells Fargo's Proof of Claim and is unsupported by any explanation on an amended proof of claim or on the Notice of Mortgage Payment Change.

Wells Fargo Bank, N.A.'s Notice of Mortgage Payment Change requests that the current escrow payment change from \$167.74 to \$348.05.

Debtors allege that the inconsistencies are the result of pre-petition arrearage escrow amounts not being properly credited in the analysis which result in the pre-petition arrearage also being paid post-petition, thereby resulting in a duplicate payment. The deed of trust only provides for payment of collection fees in to protect their security interest as stated in paragraph 18 of the deed of trust note attached to Proof of Claim 4.

Debtor additionally requests that the court grant reasonable attorney's fees pursuant to California Civil Code § 1717.

#### **WELLS FARGO BANK, N.A.'S OPPOSITION**

Wells Fargo Bank, N.A. filed an opposition to the instant Objection on February 4, 2015. Dckt. 68. Wells Fargo Bank, N.A. objects on the following basis:

1. Debtors' objection should be overruled because it lacks merit as it fails to accurately represent Wells Fargo Bank, N.A.'s escrow analysis and has failed to establish an inconsistencies with Wells Fargo Bank, N.A. Proof of Claim.

Debtors misstate the escrow shortage as provided in Wells Fargo Bank, N.A.'s Notice. Debtors contend that the escrow shortage

totals \$8,977.23. However, the quoted amount is the actual escrow balance, not the escrow shortage. The correct escrow shortage is \$1,998.08 (Notice, pg. 6). The reason for this escrow shortage was that Wells Fargo Bank, N.A. made several post-petition tax and hazard disbursements on the subject loan. As the Debtors have misinterpreted the escrow analysis, their premise that the Notice is inconsistent with Wells Fargo Bank, N.A.'s Proof of Claim is misrepresented.

Furthermore, Debtors contend that inconsistencies between the Notice and Proof of Claim are the result of pre-petition arrearage escrow amounts not being properly credited to Debtors' account. The alleged result of pre-petition escrow amounts not being properly credited is pre-petition arrears are being collected post-petition, resulting in a duplicate payment. However, there are no inconsistencies between the Proof of Claim and the Notice. In addition the Debtors have not offered any evidence the pre-petition arrearage escrow amounts not being properly credited to their account. As provided in the Proof of Claim, the pre-petition escrow shortage is \$529.34. This amount was not included in the post-petition escrow analysis. It was included on the Notice as a negative balance since it was claimed in the pre-petition arrears and also notes that "an escrow adjustment of \$529.34 is scheduled to be repaid through the bankruptcy."

2. Debtors' Objection is substantially related to the adversary proceeding and should be continued until the Adversary Proceeding is concluded. The sole remaining cause of action is Debtors' objection to Wells Fargo Bank, N.A.'s Proof of Claim. Specifically, Debtors are alleging that the pre-petition accounting regarding the loan is incorrect. The resolution of this matter directly relates to the issues raised in the instant Objection. Wells Fargo Bank, N.A.'s counsel and Debtor's counsel are working towards a potential resolution of the Adversary Proceeding which will likely result in a global resolution of the Objection. Wells Fargo Bank, N.A. requests that the court continue the hearing so that the parties may reach a global resolution regarding Debtor's Adversary Proceeding and Objection.

#### **TRUSTEE'S RESPONSE**

The Trustee filed a response on May 28, 2015. Dckt. 75. The Trustee first states that he does not oppose the matter being continued as being substantially related to the pending adversary proceeding.

The Trustee agrees that the Escrow Analysis may be insufficient without further explanation. The Trustee states that he has examined the Notice of Mortgage Payment change filed on October 28, 2014 and notes that on page 6, a starting December 2014 balance of -<\$2,153.75> in the Projected Escrow balance column. This number appears to be the actual escrow balance as of November 2014, which appears to include pre-petition amounts as the analysis commences July 2013. No explanation is provided for the \$7,203.85 payment to escrow posted September 2014. Additionally, the Trustee notes the Projected Payments

to escrow do not agree with the Escrow Disclosure Statement filed with Proof of Claim No. 4-1.

The Trustee states that the projected disbursements from escrow total \$2,178.50 or \$181.54 per month. The new monthly escrow payment computed per the Notice is \$348.05. Property taxes and insurance appear escrowed in the payment, and for 2014 were \$736.75 x 2 (\$1,473.50) and \$705.00 for a total of \$2,178.50; this would require payments of \$181.55 per month on average.

#### REVIEW OF NOTICE OF MORTGAGE PAYMENT CHANGE

Wells Fargo Bank, N.A. filed Proof of Claim 4 on January 1, 2014. In the Proof of Claim, Wells Fargo Bank, N.A. states that the "Escrow shortage or deficiency" as of the petition date is \$529.34.

Wells Fargo Bank, N.A. filed a Notice of Mortgage Payment Change on October 28, 2014. The Notice states the following:

1. Date of payment change: 12/1/2014
2. New total payment: \$1,138.35
3. Part 1: Escrow Account Payment Adjustment:
  - a. Current escrow payment: \$167.74
  - b. New escrow payment: \$348.05

The Notice of Mortgage Payment Change also has attached an escrow statement that, in part, outlines the Debtors' escrow account history. In relevant part, for September 2013, the statement provides:

Payments to escrow			Payments from escrow		Escrow balance	
Date	Projected	Actual	Projected	Actual	Projected	Actual
Sep. 2013	\$164.01	\$348.54	\$0.00	\$0.00	\$772.50	(\$8,977.23)

A review of the Objection, Proof of Claim No. 7, and the Notice of Mortgage Payment Change shows that there is no evidentiary basis for the substantial increase in escrow shortage. Wells Fargo Bank, N.A. does not explain how they calculated the escrow shortage to determine that, at the time of the petition, the (\$529.34) listed on the Proof of Claim 4 (filed on January 15, 2014) is actually (\$1,998.23) as listed on the Notice of Mortgage Payment Change (filed on October 28, 2014).

While Wells Fargo Bank, N.A. gives generic, nonspecific answers such as "several post-petition tax and hazard disbursements on the subject loan" were the cause of the recalculated escrow shortage, Wells Fargo Bank, N.A. gives no evidence or specifics of how the escrow shortage nearly quadrupled in amount. Instead, Wells Fargo Bank, N.A. attempts to shift the burden onto the Debtors.

The Escrow Analysis attached to the Notice of Mortgage Payment Change provides the following information. Page 4 of the Escrow Analysis provides the actual payments made during the period July 2013 through August 2014, and estimates for September - November 2014. Through August 2014, Wells Fargo Bank, N.A. reports receiving actual escrow payments totaling \$3,921.70. For these fourteen months, escrow payments of \$2,296.98 (14 x \$164.07 a month) were required.

For the period December 2014 through November 2015, Wells Fargo Bank, N.A. projects disbursements from escrow for taxes and insurance to total \$2,178.50. Escrow Analysis, pg. 3. During that period, monthly escrow payments of \$181.54 would be required. This portion of the Escrow Analysis states, "Scheduled escrow payment \$181.54." *Id.*

However, Wells Fargo Bank, N.A. then states on page 1 of the Escrow Analysis that the monthly principal and interest payment is \$790.30 and the Escrow payment will be \$348.54. The court cannot identify the basis for the additional \$167.00 a month in escrow payments for the twelve months through November 2015 - which total \$2,004.00 (12 x \$167.00).

Wells Fargo Bank, N.A.'s response concentrates on the fact that the pending Adversary Proceeding deals with the treatment and calculation of the pre-petition payments has a direct effect on the outcome of the instant Objection. As part of this foundational argument, Wells Fargo Bank, N.A. does not provide any specific pieces of evidence or explanation as to how the escrow shortage was calculated and instead just points to the same information the court initially reviewed at the first hearing on the Objection.

#### **REQUEST FOR ATTORNEYS' FEES**

As to the Debtor's request for attorney's fees under California Civil Code § 1717, the Debtor has not pleaded with particularity under Local Bankr. R. 9013 to justify such relief.

In support for attorney fees, the Objection states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

- A. California Civil Code Section 1717 provides for attorney fees for the prevailing party whenever there is an attorney fee provision, there has been notice and a hearing, wherein the reasonable attorney's fees shall be fixed by the Court.

The Objection does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 for attorneys' fees because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states the code section. This is not sufficient.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering

whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

*Weatherford*, 434 B.R. at 649-650; see also *In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals

rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the grounds therefor, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

*Martinez v. Trainor*, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities - buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

While the Debtor's counsel does provide for a time sheet, the Debtor failed to provide the specific contract provisions that justify an award for attorneys' fees nor does Debtor provide how the applicable statute applies to the instant case. The court does not have the resources to fill-in the blanks for Debtor and Debtor's counsel.

#### **DECEMBER 16, 2014 HEARING**

At the hearing, the court continued to 2:30 p.m. on February 18, 2015 to be heard in conjunction with the Status Conference in Adversary case number 14-2080-E. Dckt. 67.

#### **JUNE 24, 2015 HEARING**

At the hearing, Plaintiff-Debtor's counsel reported that a settlement offer has been presented. There is a \$1,500.00 issue, which the parties are now investigating. Based on the representation of the various attorneys for the parties that this matter has been resolved, the court continues the status conference.

#### **FEBRUARY 18, 2015 STATUS CONFERENCE**

The parties reported that due to illness of counsel they have not been able

to advance their settlement discussions. However, all attorneys are now available and actively addressing the issues. The court continues the Status Conference as requested. At the Status Conference, the court continued the hearing to 2:30 p.m. on June 24, 2015 to be heard in conjunction with the Status Conference. Dckt. 71.

#### **OCTOBER 14, 2015 HEARING**

The Motion to Approve Compromise and Motion to Approve Loan Modification are being finalized by the parties. Plaintiff-Debtor has filed a motion to confirm the plan in their Chapter 13 case. The court continues this hearing and the status conference in the related Adversary Proceeding to allow the parties to consummate the settlement to 2:30 p.m. on January 20, 2016.

#### **JANUARY 20, 2016 HEARING**

To date, nothing has been filed in connection with the instant motion.  
xxxxxx

14. [13-31975-E-13](#) JACK/LINDA GANAS  
[14-2080](#)  
GANAS ET AL V. WELLS FARGO  
BANK, N.A.

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
3-14-14 [[1](#)]

Plaintiff's Atty: Peter L. Cianchetta  
Defendant's Atty: Eddie R. Jimenez

Adv. Filed: 3/14/14  
Answer: none

Nature of Action:  
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 10/14/15

#### **JANUARY 20, 2016 STATUS CONFERENCE**

To date, nothing has been filed in connection with the instant motion. **XXXXXXXXXXXXXXXXXX**

15. [10-31088-E-13](#) JODY/CRAIG POE  
[15-2204](#)  
POE ET AL V. U.S. BANK, N.A.

STATUS CONFERENCE RE: COMPLAINT  
10-23-15 [[1](#)]

**Final Ruling: No appearance at the January 20, 2016 Status Conference is required.**

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Plaintiff's Atty: John G. Downing  
Defendant's Atty: unknown

Adv. Filed: 10/23/15  
Answer: none

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

<b>The Motion for Entry of Default Judgement having been filed, the Status Conference is continued to 2:30 p.m. on April 20, 2016.</b>
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Notes:

Request for Entry of Default by Plaintiff [US Bank, N.A.] filed 12/9/15 [Dckt 9]

[JGD-6] Application for Default Judgment Voiding Lien [US Bank, N.A.] filed 1/10/16 [Dckt 13], set for hearing 2/25/16 at 1:30 p.m. [Dckt 17]



16. [13-32494-E-13](#) THEODORE/MOLLY MCQUEEN  
[14-2004](#)  
G & K HEAVEN'S BEST, INC. V.  
MCQUEEN ET AL

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
1-4-14 [[1](#)]

**Final Ruling: No appearance at the January 20, 2016 Status Conference is required.**

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Plaintiff's Atty: Peter G. Macaluso  
Defendant's Atty: C. Anthony Hughes

Adv. Filed: 1/4/14  
Answer: 2/5/14  
Crossclaim Filed: 2/5/14  
Answer: 2/24/14

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

<p><b>The Status Conference is continued to 1:30 p.m. on January 28, 2016, to be conducted in conjunction with the Motion to Approve Settlement.</b></p>
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Notes:  
Continued from 9/9/15

[CAH-9] Motion to Approve Settlement filed 12/23/15 [Dckt 80], set for hearing 1/28/16 at 1:30 p.m.

17. [13-32494-E-13](#) THEODORE/MOLLY MCQUEEN  
[14-2027](#)  
MCQUEEN ET AL V. G & K  
HEAVEN'S BEST, INC.

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
1-21-14 [[1](#)]

**Final Ruling: No appearance at the January 20, 2016 Status Conference is required.**

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Plaintiff's Atty: C. Anthony Hughes  
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 1/21/14  
Answer: 2/17/14

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

<p><b>The Status Conference is continued to 1:30 p.m. on January 28, 2016, to be conducted in conjunction with the Motion to Approve Settlement.</b></p>
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Notes:

Continued from 9/9/15

[CAH-9] Motion to Approve Settlement filed 12/23/15 [Dckt 81], set for hearing 1/28/16 at 1:30 p.m.