

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

January 28, 2021 at 2:00 p.m.

1.	<u>18-90600</u> -E-7 CORAZON HERNANDEZ <u>19-9016</u> MCGRANAHAN V. GARIBA	CONTINUED STATUS CONFERENCE RE: COMPLAINT 9-30-19 [1]
----	--	--

Final Ruling: No appearance at the January 28, 2021 Status Conference is required.

Plaintiff's Atty: Reno F.R. Fernandez; Daniel E. Vaknin
Defendant's Atty: unknown

Adv. Filed: 9/30/19
Answer: none
Nature of Action:
Approval of sale of property of estate and of a co-owner

Notes:
Continued from 11/5/20 by court order filed 10/28/20 [Dckt 42]

Status Report for Continued Status Conference filed 1/21/21 [Dckt 46]

The Status Conference has been continued to 2:00 p.m. on March 11, 2021, by prior order of the court.

JANUARY 28, 2021 STATUS CONFERENCE

On January 21, 2021, the Plaintiff Trustee filed an updated Status Report. Dckt. 46. Plaintiff Trustee reports that the Settlement has not yet been consummated. Though the escrow for the sale from which the Settlement would be funded was anticipated to close on or before January 15, 2021, that has not occurred. The escrow officer reports that they are awaiting the Buyer's loan documents, but no "ETA" has been provided.

Under the terms of the Settlement, the Plaintiff Trustee is to be paid \$57,000.00 by the Debtor, with payment in full due 120 after the court approves the Settlement. 18-90600; Settlement Agreement ¶ 3, Exhibit A, Dckt. 107. The obligation is secured by a deed of trust recorded against the Orangeburg Property. The court's order approving the Settlement was entered on October 26, 2020. *Id.*, Dckt. 123. The 120 days would run around the end of January 2021.

Plaintiff Trustee confirms in the Status Report that the Property has been abandoned and the deed of trust from the Debtor has been recorded to secure payment of the obligation owing on the \$57,000 note.

Plaintiff Trustee requests that the court continue the Status Conference an additional thirty-days to allow the Parties to continue in their efforts to consummate the Settlement through the payment of the Note.

The first available regular status conference date at least thirty-days out is March 11, 2021.

2. [20-90107-E-7](#) **PAUL DASILVA**
[20-9004](#)
WRIGHT ET AL V. DASILVA

CONTINUED STATUS CONFERENCE
RE: AMENDED COMPLAINT
5-26-20 [11]

Plaintiffs' Atty: Donna T. Parkinson; Steve M. Defilippis
Defendant's Atty: Jessica A. Dorn

Adv. Filed: 4/28/20
Answer: 6/24/20
Amd. Cmplt. Filed: 5/26/20
Answer: 6/24/20

Nature of Action:
Dischargeability - other

Notes:
Continued from 8/6/20. The Adversary Proceeding stayed pending further order of the court to allow the Parties to focus on the diligent prosecution of the State Court Action to final judgment.

Plaintiff's Status Conference Statement filed 1/13/21 [Dckt 29]

Defendant's Status Conference Statement filed 1/20/21 [Dckt 31]

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

JANUARY 28, 2021 STATUS CONFERENCE

Both Plaintiffs and Defendant have filed Supplemental Status Conference Statements. Dckts. 29, 31. This Adversary Proceeding has been stayed by prior order of the court, Dckt. 28, to allow for the prosecution of a pending State Court Action. The Parties report that the State Court Action is currently set for trial on March 22, 2021 in the Superior Court for Santa Clara County.

At the Status Conference, xxxxxxx

AUGUST 6, 2020 STATUS CONFERENCE

Defendant-Debtor and Plaintiff have filed their separate Status Conference Statements. Dckts. 23, 25. They each report the status of the State Court Action and concur with staying this Adversary Proceeding until final judgment is obtained in the State Court Action. Each party having

affirmatively stated/agreed for the time being to staying this Adversary Proceeding pending completion of the State Court Action, the court continues the Status Conference and stays all proceedings in this Adversary Proceedings pending further order of the court.

JULY 16, 2020 STATUS CONFERENCE

The court having modified the automatic stay to allow Plaintiff to adjudicate to a final judgment the claims in the state court action *Holly Wright et al v. Paul Alexander Dasilva, et al.*, Case No. 16CF296446 [20-90107; Order, Dckt. 35], staying this adversary proceeding until the final judgment may be proper.

If the parties agree that this Adversary Proceeding should be stayed, they may file a joint *ex parte* motion to stay this proceeding and continue the Status Conference to 2:00 p.m. on January 28, 2021 (the last currently scheduled status conference date), or a sooner date for review of the prosecution of the state court action and how much further this Adversary Proceeding be stayed. If such an ex-parte motion is filed, a proposed order shall also be lodged with the court.

Debtor's Atty: David C. Johnston

Notes:

Continued from 12/17/20. Debtor in Possession to file supplemental pleadings on or before 1/14/21 addressing the Debtor's eligibility to be a Chapter 12 debtor, including the issues identified by the Chapter 12 Trustee in his Status Conference Report [Dckt 36].

[RHS-1] Order Authorizing Counsel for Debtor in Possession to Provide Notice of Commencement of Case and Deadlines for Filing Objections to Discharge and for Determination that Debt is Nondischargeable (February 1, 2021 Deadline) and Extending Deadline for Filing Claims to February 5, 2021 filed 1/5/21 [Dckt 4]

Trustee Report at 341 Meeting lodged 1/6/21

Declaration of Steven F. Schroeder [re 1/28/21 status conference] filed 1/14/21 [Dckt 43]

Declaration of Mark Jordan [re 1/28/21 status conference] filed 1/14/21 [Dckt 44]

The Chapter 12 Status Conference is continued to 2:00 p.m. on XXXXXXX , 2021.

JANUARY 28, 2021 STATUS CONFERENCE

The Debtor in Possession was ordered to file supplemental pleadings addressing the Chapter 12 eligibility issues raised at the first Status Conference. Order, Dckt. 39. Two declarations have been filed by the Debtor in Possession.

The first is that of Mark Jordan, a CPA. Dckt. 44. He testifies to having done tax returns for the Debtor for decades, and states that all communications for the LLC have come from the Debtor, not from Lisa Jensen-Long, Debtor's sister. He also provides general recollections about capital accounts.

The second Declaration is provided by Steven Schroeder, who states he has multiple degrees and certifications. He provides his conclusion that notwithstanding the terms of the LLC Agreement that the two members of this LLC may agree to divide the assets or proceeds in a different manner. He further "testifies," without providing a basis, his legal conclusion that the members of this LLC have "agreed" to allocate 100% of the gross revenues to Debtor. It appears that his basis for this legal conclusion is that since the Debtor is the managing member, she is entitled to 100% of the LLC. He concludes with an apparent legal opinion, stating;

9. In my opinion, the agreement to allocate 100% of the LLC's gross revenues [however, he does not direct the court to any such agreement or personal knowledge of such agreement] to [Debtor] is permitted by the operating agreement and is not prohibited.

Declaration, Dckt. 43.

Bankruptcy being a statutory based area of the law, Congress provides a definition of what persons can qualify to be a Chapter 12 Debtor, stating in 11 U.S.C. § 109(f):

(f) Only a family farmer or family fisherman with regular annual income may be a debtor under chapter 12 of this title.

The term "family farmer" is defined in 11 U.S.C. § 101(18) and (19) [emphasis added]:

(18) The term "family farmer" **means—**

(A) **individual or individual and spouse engaged in a farming operation** whose aggregate debts do not exceed \$10,000,000 **and not less than 50 percent of whose aggregate noncontingent, liquidated debts** (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, **arise out of a farming operation owned or operated by such individual** or such individual and spouse, and **such individual** or such individual and spouse **receive from such farming operation more than 50 percent of such individual's** or such individual and spouse's **gross income** for—

(i) the **taxable year preceding**; or

(ii) each of **the 2d and 3d taxable years preceding**;
the taxable year in which the case concerning such individual or such individual and spouse was filed; or

(B) corporation or partnership in which more than 50 percent of the outstanding stock or equity is held by one family, or by one family and the relatives of the members of such family, and such family or such relatives conduct the farming operation, and

(i) more than 80 percent of the value of its assets consists of assets related to the farming operation;

(ii) its aggregate debts do not exceed \$10,000,000 and not less than 50 percent of its aggregate noncontingent, liquidated debts (excluding a debt for one dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a farming operation), on the date the case is filed, arise out of the farming operation owned or operated by such corporation or such partnership; and

(iii) if such corporation issues stock, such stock is not publicly traded.

(19) The term “family farmer with regular annual income” means family farmer whose annual income is sufficiently stable and regular to enable such family farmer to make payments under a plan under chapter 12 of this title.

Information Provided on Schedules

On Schedule I, Debtor states that she is a self employed attorney and appears to pay herself wages, salary, or commissions of \$5,500.00 a month. Debtor states that her “Employer,” for her employment is as a “Self-employed attorney” is Law Offices of Leslie F. Jensen. Dckt. 21 at 27.

On Schedule A/B Debtor does not list having any interest in or ownership of an unincorporated business with the name “Law Offices of Leslie F. Jensen.” *Id.* at 6-7. However, on Schedule A/B Debtor states that she has “Accounts receivable” owed to her personally, not to an entity named Law Offices of Leslie F. Jensen,” with a value of \$55,000. *Id.* at 9. Debtor also states that she has “Office equipment, computers, desks, chairs” that she owns, not some other entity, with a value of \$9,500.00. *Id.*

In response to Question 46 Debtor states that she has no interest in “any farm- or commercial fishing-related property?” *Id.* at 9.

Going back to Schedule I, Debtor states under penalty of perjury having no other income from any source, with the \$5,500 in “gross wages, salary, and commissions” from her “Employer” Law Office of Leslie F. Jensen, being her only income. *Id.* at 27. Debtor has no income other than from her “employment” as a lawyer. Though stated as “gross wages, salary, and commissions,” Schedule I states that there are no deduction from such “wages” for federal and state taxes, or Social Security tax.

On Form B6I attached to Schedule I, Debtor state that she is an “almond grower” who has been employed for seven years by L & L Investments, LLC. *Id.* at 29. No income from such employment by L & L Investments, LLC is shown on Schedule I.

On Schedule J, Debtor lists (\$10,479) in expenses, which include mortgage, taxes, and maintenance in Alabama, but no provision for payment of income taxes, Social Security taxes, or self-employment taxes (if Debtor is self-employed and not an employee of the “Law Offices of Leslie F. Jensen.” *Id.* at 30-31.

The above information is not changed on the Amended Schedule A/B filed on November 30, 2020, by Debtor, one day after the original Schedule A/B was filed by Debtor. Dckt. 22.

Information on Statement of Financial Affairs

In response to Question 1, Debtor states that she is married. *Id.* at 33. No information as to any income of her spouse is disclosed on Schedule I - other than stating “N/A.” There is no footnote to Schedule I or to Question 1 of the Statement of Financial Affairs as to why Debtor disclose her spouse’s income, even it if \$0.00 or if legally separated and there being no income, is “not applicable.”

On Schedule H, Debtor lists having the following co-debtors: “L&L Investments, LLC” on

five obligations. *Id.* at 26. There is no spouse listed as a co-debtor on any obligations.

In response to Question 4, which is “Income From Employment or From Operating a Business” during the year in which the bankruptcy case is filed and the two prior years, Debtor provides the following information:

2020, From January 1, 2020 to the October 29, 2020 filing of this Bankruptcy Case: Debtor states that she has no gross income from wages, and her gross income from operating a business is “Unknown.”

2019: No income from wages, \$486,671 from “Operating farm - gross,” and \$451,023 from “Operating law practice.”

2018: No income from wages, \$542,226 from “Operating farm - gross,” and \$396,058 from “Operating law practice.”

Id. at 33-34. No income information is provided for the spouse to whom Debtor is married.

Assuming that Debtor’s stating that she is paid gross wages of \$5,500 a month from her “Employer,” “The Law Offices of Leslie F. Jensen,” is really that is her new monthly profit from her law practice, it appears to be a very, very expensive law practice. Using the 2019 gross law practice income of \$451,000 and Debtor stating that she nets only \$5,500 a month, which is \$66,000, then her expenses would have to be (\$385,000) a year. Thus, her profit percentage on that income is only 14.6%, not a percentage that lawyers and law firms seek to have, nor what would appear to be a sufficient profit to warrant taking on the legal and financial risks of engaging in the practice of law.

Looking back to the Petition, Debtor provides some additional information. First, she states that she personally has used the business name L & L Investments, LLC as a business name. Petition ¶ 4, Dckt. 1. The use of a fictitious name identifying that individual as a LLC violates the prohibition of Cal. B&P § 17910.5(b). ^{FN.1.}

FN. 1.

§ 17910.5. Use of corporation designation by noncorporation prohibited

(a) No person shall adopt any fictitious business name which includes “Corporation,” “Corp.,” “Incorporated,” or “Inc.” unless that person is a corporation organized pursuant to the laws of this state or some other jurisdiction.

(b) No person shall adopt any fictitious business name that includes “Limited Liability Company” or “LLC” or “LC” unless that person is a limited liability company organized pursuant to the laws of this state or some other jurisdiction. A person is not prohibited from using the complete words “Limited” or “Company” or their abbreviations in the person’s business name as long as that use does not imply that the person is a limited liability company.

(c) A county clerk shall not accept a fictitious business name statement which would be in violation of this section.

In Paragraph 12 of the Petition Debtor states that she is a “sole proprietorship” with the name “Law Office of Leslie F. Jensen,” and that such business is not a corporation, partnership, or LLC. *Id.*

Status Conference Discussion

At the Status Conference, **XXXXXXX**

DECEMBER 17, 2020 STATUS CONFERENCE

This Chapter 12 Case was commenced on October 29, 2020. The Debtor in Possession filed her Amended Status Report on December 14, 2020. Dckt. 34. The Debtor in Possession reports that there is no cash collateral being held by the Debtor in Possession.

It is stated that prior to filing this case, the Debtor, “acting through a family entity L&L Investments, LLC” grew almonds on property in western Stanislaus County. Presumably, the Debtor in Possession is now continuing to grow almonds “acting through the family entity.”

Bank of Stockton is identified as a creditor with three different loans made to L&L Investments, LLC, which total more than \$1,600,000.00. Debtor personally guaranteed the three loans. The production line of creditor, for which there is owed \$500,00, is secured by the LLC’s accounts, crops, crop proceeds, and “etc.” Further, for the almonds sold, the processor pays the Bank of Stockton directly the proceeds from the sale of the almonds.

By Debtor’s calculation, she has few assets that were not fully encumbered or exempt.

A review of Debtor’s Schedules shows two residential properties owned by Debtor, a law office checking account with a \$25,000 balance, accounts receivable of \$55,000, and Debtor’s 50% interest in L&L Investments, LLC with a value of \$50,000 as the Debtor’s assets of significant value.

On Schedule D, Debtor lists the Briarwood Point property as having a value of \$425,000 and being encumbered by a claim in the amount of (\$195,420). Dckt. 21 at 13. No exemption is claimed in this property. For the Legend Drive property, Debtor’s residence, a value of \$477,000 is given, with there being debt of (\$297,439) encumbering this property. *Id.* at 14. On Schedule C Debtor claims an exemption of \$175,000.

On Schedule I Debtor lists income only from a law practice. *Id.* at 27. The current law practice income is substantially less than reported on the Schedules for 2019 and 2018 gross income. On Form B 6I Debtor states that she has the additional occupation of “almond grow” and is employed by L&L Investments, LLC, and has been so employed for seven years. *Id.* at 29. On Schedule J Debtor shows having negative cash flow of (\$4,979) per month. *Id.* at 31.

On the Statement of Financial Affairs Debtor shows that her gross income from her business

(the law practice) is unknown for 2020 (though this case was filed at the end of October 2020), and no farming income is shown for 2020. For both 2019 and 2018 Debtor lists having mid-six figure gross income from her law practice and mid six figure gross income from farming operations. *Id.*, 33-34.

Chapter 12 Trustee Comments

At the hearing, the Chapter 12 Trustee addressed issues concerning Debtor's eligibility to be a Chapter 12 debtor. See Trustee's Status Conference Report, Dckt. 36.

4. [15-90811-E-7](#) **ASSN., GOLD STRIKE**
[16-9002](#) **HEIGHTS HOMEOWNERS**
FARRAR V. MASSELLA ET AL

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
1-13-16 [1](#)

Plaintiff's Atty: Clifford W. Stevens; Ricardo Z. Aranda
Defendant's Atty: James L. Brunello

Adv. Filed: 1/13/16
Answer: 2/23/16 [Robinson Enterprises Profit Sharing Plan]
2/23/16 [Johnny Massella; Mary Massella]
Counterclaim Filed: 2/23/16 [Robinson Enterprises Profit Sharing Plan]
Answer: None
Counterclaim Dismissed 5/2/16
Counterclaim Filed: 2/23/16 [Johnny Massella; Mary Massella]
Answer: None
Counterclaim Dismissed 5/2/16

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

Notes:
Continued from 7/16/20. Plaintiff-Trustee to file an updated status report 14 days prior to continued status conference.

Status Conference Statement [by Plaintiff-Trustee] filed 1/13/21 [Dckt 98]

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

JANUARY 28, 2021 STATUS CONFERENCE

Plaintiff-Trustee filed an updated Status Conference Statement on January 13, 2021. Dckt. 98. With respect to the related matter appeals Plaintiff-Trustee reports that on September 22, 2020, the Ninth Circuit Court of Appeals affirmed this court's judgment in Adversary Proceeding 15-9061, *Indian Village Estates, LLC v. Gold Strike Heights Association et al.* The Plaintiff-Trustee reports that on October 14, 2020 the Appellants filed a Petition for Rehearing, which was denied on October 14, 2020.

The judgment of this court that was affirmed includes determining that Gold Strike Heights Homeowners Association successfully foreclosed on Lots 2, 3, 4, 6, 7, 9, 10, 14, 15, 16, 17, 18, 20, 21, 22, 23, 25, 28, 31, 34, 36, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47 in Gold Strike Heights, and that said properties are property of the bankruptcy estate in the Gold Strike Heights Homeowners Association bankruptcy case. 15-9061; Judgment, Dckt. 201.

The Complaint seeks to avoid pursuant to 11 U.S.C. § 544 (hypothetical BFP status for Plaintiff-Trustee) deed of trust asserting that such deeds of trust were not properly recorded. Defendants

Answer includes defenses of constructive notice, that any defects may be corrected, and that the Debtor's corporate powers were suspended when the bankruptcy case was filed and state law prohibitions on an suspended corporation transferring property trumps the application of federal law, 11 U.S.C. § 541(a) and § 541(c), providing that all property of a debtor become property of the bankruptcy estate without any transfer from the debtor.

Plaintiff-Trustee counsel reports that Plaintiff-Trustee has not had an opportunity to meet and confer with Defendants and Defendant's counsel since the October 14, 2020 denial of the Motion to Reconsider.

At the Status Conference, **XXXXXX**

JUNE 27, 2019 STATUS CONFERENCE

On June 17, 2019, the Plaintiff-Trustee filed his updated Status Report. Dckt. 77. Plaintiff-Trustee reports that the judgment in the related Adversary Proceeding, No. 15-9061, was affirmed on appeal by the District Court. That decision has not been appealed to the Ninth Circuit Court of Appeals.

The briefing schedule for the Ninth Circuit is stated to be completed by the end of September 2019. It is requested that the court continue this Status Conference until after the anticipated completion of the appeal in the related matter which should be in the fourth quarter of 2019.

The court continues the Status Conference to 2:00 p.m. on January 23, 2020. Updated Status Report(s) shall be filed on or before January 16, 2020.

JANUARY 19, 2019 STATUS CONFERENCE

On December 27, 2018, Plaintiff-Trustee filed an updated Status Conference Report. Dckt. 73. The Plaintiff-Trustee reports that the appeal in related Adversary Proceeding No. 19-9061 is pending before the United States District Court, with an amended Appellant Opening Brief having been filed on November 29, 2018, and the Appellee's Opening Brief to be filed by December 28, 2018. The Appellant's Reply Brief is due by January 31, 2019.

Plaintiff-Trustee requests that this Status Conference be further continued to allow the issues on appeal be determined before these parties spend further time, money, and judicial resources in this Adversary Proceeding. This is consistent with the Stipulation filed in this Adversary Proceeding to stay this matter pending final resolution of the appeal. Stipulation, Dckt. 69.

The Status Conference is continued to 2:00 p.m. on June 27, 2019

JUNE 21, 2018 STATUS CONFERENCE

The Status Conference was continued to June 21, 2018, in light of the pending trial in the related adversary proceeding. That litigation has been concluded at the trial court, with judgment for the Chapter 7 Trustee. That judgment is now on appeal before the United States District Court. E.D. Cal. 2:18-CV-00973-JAM.

That decision now on appeal, this Status Conference is continued to August 2, 2018, to allow the parties the opportunity to consider such matters, the appeal, and whether they desire to stipulate to staying this Adversary Proceeding pending resolution of the appeal and the entry of the final judgment in the related adversary proceeding.

NOVEMBER 30, 2017 STATUS CONFERENCE

The Plaintiff-Trustee filed an updated Status Report on November 14, 2017. Dckt. 57. The Plaintiff-Trustee believes that the need for the litigation of the Complaint in this Adversary Proceeding is impacted by the completion of the trial in *Indian Village Estate, LLC v. Gold Strike Homeowners Association*, Adv. 15-9061. The Parties to this Adversary Proceeding requested at the April 26, 2017 Status Conference to continue the Status Conference to this November 30, 2017 date, anticipating that the scheduled trial in Adv. 15-9061 would be completed by that time. Due to circumstances outside of that Adversary Proceeding, the trial was continued to February 6, 2018.

It is requested that this Status Conference be continued to early March 2018. The court's closest available hearing date is at 2:00 p.m. on March 8, 2018. That will give the Parties a month to consider the rulings of the court from the trial in Adv. 15-9061.

APRIL 25, 2017 STATUS CONFERENCE

The parties agreed to continue the Status Conference to allow the Trustee to litigate the Indian Village Estates Adversary Proceeding, the resolution of which should significantly reduce the issues in this Adversary Proceeding.

Summary of Complaint

Gary Farrar, the Chapter 7 Trustee in the Gold Strike Heights Homeowners Association bankruptcy case, ("Plaintiff-Trustee") filed a complaint to avoid various liens filed by Defendants. The Plaintiff-Trustee asserts that the liens may be avoided pursuant to 11 U.S.C. § 544 (hypothetical BFP status for Plaintiff-Trustee) based on the deeds of trust not having been properly recorded.

Summary of Answers

Johnny Massella and Mary Massella, Trustees, and Robinson Enterprises, Inc., Employee Profit sharing Plan ("Defendants") have filed an answer that admits and denies specific allegations in the Complaint. Dckts. 9, 11.

The Answers assert nine affirmative defenses, including:

- (1) The interests of the estate were obtained through wrongful foreclosures,
- (2) The Debtor had constructive notice at the time of the foreclosure sales, the deeds of trust are subject to treatment as equitable deeds of trust,
- (3) Defendants may seek to have defects in the deeds of trust corrected, and
- (4) The nonjudicial foreclosure sales were void because Debtor's corporate powers were

suspended at the time of the sales.

Counterclaims of Defendants

In the Counterclaims, Defendants seek reformation of the Deeds of Trust. On May 2, 2016, the court issued its order dismissing without prejudice the counterclaim. Dckt. 44

5. [12-92723-E-7](#) JOHN/KRISTINE ROBINSON
[13-9004](#)
GRANT BISHOP MOTORS, INC. V.
ROBINSON, IV ET AL

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
1-17-13 [\[1\]](#)

DEBTOR DISMISSED: 1/7/2021

Final Ruling: No appearance at the January 28, 2021 Status Conference is required.

Plaintiff's Atty: Steven S. Altman
Defendant's Atty: William M. Woolman

Adv. Filed: 1/17/13
Answer: 2/15/13
Nature of Action:
Objection /Revocation of Discharge, Dischargeability

Notes:
Stipulation for Dismissal of Adversary Proceeding with Prejudice filed 1/6/21 [Dckt 148]; Order dismissing adversary filed 1/7/21 [Dckt 149]

The Adversary Proceeding having been dismissed (Order, Dckt. 149), **the Status Conference is concluded and removed from the Calendar.**

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

SUBCHAPTER V

Debtor's Atty: David C. Johnston

Notes:

Continued from 11/19/20. Court ordering that the Debtor is removed as Debtor in Possession.

Order removing Charles Macawile, Jr., the Debtor, as Debtor in Possession and ordering David M. Souza, the Subchapter V Trustee, to continue as Trustee filed 11/22/20 [Dckt 54]

Order continuing Motion to Dismiss and/or Motion to Convert to 2/11/21 at 10:30 a.m. filed 12/23/20 [Dckt 57]

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

JANUARY 28, 2021 STATUS CONFERENCE

In this Subchapter V case the court has ordered the removal of the Debtor as Debtor in Possession and that the Subchapter V Trustee continues as the Chapter 11 trustee, exercising all rights and powers thereof. Order, Dckt. 54. This was done with the concurrence of parties in interest and there being an offer to purchase property of the estate that would generate substantial surplus proceeds for the estate. *Id.* As addressed in the Civil Minutes from the November 18, 2020 Status Conference (Dckt. 53), the court concluded that the Debtor was unable to fulfill the duties and obligations of a debtor in possession in this case. Dckt. 53.

Creditors Scott R. Williams and Anastesie C. Martins, Trustee of The Williams Trust, agreed to continue the hearing on their motion to covert this case to February 11, 2021, in light of the removal of the Debtor as the debtor in possession and the Subchapter V Trustee having the power to liquidate property of the estate. It appears that doing so the parties in interest will reduce the possible administrative expenses by not converting the case, which will enhance the surplus for the Debtor.

On January 25, 2021, the court entered orders authorizing the employment of counsel and a real estate professional by the Subchapter V Trustee. Orders, Dckts. 72, 71.

At the Status Conference, xxxxxxx

7. [20-90349](#)-E-11 **R. MILLENNIUM TRANSPORT, INC.** **CONFIRMATION OF PLAN OF REORGANIZATION**
David Johnston 12-2-20 [\[116\]](#)

SUBCHAPTER V

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession, Debtor's Attorney, Chapter 11 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on December 8, 2020. By the court's calculation, 51 days' notice was provided. 42 days' notice is required.

The Confirmation of Plan of Reorganization has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Confirmation of Plan of Reorganization is XXXXX.
--

R. Millennium Transport, Inc., the Subchapter V Debtor and Debtor in Possession in this case has set for hearing confirmation of its Subchapter V Plan (Dckt. 116). The Debtor/Debtor in Possession has complied with the Service and Filing Requirements for Confirmation:

December 9, 2020 Plan, Disclosure Statement, Disclosure Statement Order, and Ballot Mailed

January 6, 2021 Last Day for Submitting Written Acceptances or Rejections

January 6, 2021 Last Day to File Objections to Confirmation

The Summary of the Classes and creditors acceptance/nonacceptance/failure to cast a ballot is as follows:

Class	Voting	Claim Amount	Claim Treatment/ Percentage Calculation
Class 1 (Unimpaired): Priority Claims	No ballots cast.	N/A	100% Upon Confirmation
Class 2 (Impaired): BMO Harris Bank, N.A.	No ballots cast.	\$81,795.49 (POC ????)	100% plus 5% interest, \$4,300 monthly for 60 months
Class 3 (Impaired): Crossroads Equipment Lease & Finance	For: 1 Against: 0	\$315,184.96 (POC 13-1)	100% plus 5% interest, \$5,900 monthly for 60 months
Class 4 (Impaired): Hitachi Capital Group	For: 0 Against: 0	(POC ????)	100% plus 5% interest, \$420 monthly for 60 months
Class 5 (Impaired): Mercedes-Benz Financial Services USA	For: 0 Against: 0	(POC ????)	100% plus 5% interest, \$840 monthly for 60 months
Class 6 (Impaired): PNC Equipment Finance LLC	For: 1 Against: 0	(POC?????)	100% plus 4% interest, \$5,000 monthly for 60 months
Class 7 (Impaired): Rolling F. Credit Union	No ballots cast.	(POC ????)	100% plus 5% interest, \$820 monthly for 60 months
Class 8 (Impaired): Sumitomo Mitsui Finance and Lease Company	For: 1 Against: 0	\$246,000.00 (POC 8-1)	100% plus 5% interest, \$4,650 monthly for 60 months
Class 9 (Impaired): U.S. Bank, N.A. (GPS system)	No ballots cast.	\$27,475.19 (POC 10-1)	100% plus 5% interest, \$520 monthly for 60 months
Class 10 (Impaired): U.S. Bank Equipment Finance (Rolling stock)	No ballots cast.	\$143,304.32 (POC 11-1)	100% plus 5% interest, \$2,700 monthly for 60 months

Class 11 (Impaired): Non-priority unsecured claims held by non-insiders	For: 1 Against: 2	(\$22,655.95) (\$70,076.21)	100% plus 5% interest; \$2,320 monthly payment for 60 months
Class 12 (Impaired): Non-priority unsecured claims held by insiders	No ballots cast.	N/A	100% after all non-insider claims paid in full.
Class 13 (Impaired): Equity interests in the Debtor	No ballots cast.	N/A	Retained under the Plan

The Declaration of Surjit Singh Malhi filed in support of confirmation provides evidence of compliance with the necessary elements for confirmation in 11 U.S.C. § 1129 applicable under 11 U.S.C. § 1191:

11 U.S.C. § 1129(a)

1. The plan complies with the applicable provisions of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

Evidence: Dckt. 123, pg. 1, and the court's review of the Plan at the confirmation hearing.

2. The proponent of the plan complies with the applicable provisions of the Bankruptcy Code.

The court's review of the Plan at the confirmation hearing.

3. The plan has been proposed in good faith and not by any means forbidden by law.

Evidence: Dckt. 123, pg. 2

4. Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

Evidence: Dckt. 123, pg. 2

5. (A)(i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

Evidence: Dckt. 123, pg. 2

6. Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

Evidence: Not applicable.

7. With respect to each impaired class of claims or interests—

(A) each holder of a claim or interest of such class—

(i) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective dates of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 701 et seq., on such date; or

(B) if section 1111(b)(2) of this title [11 U.S.C. § 1111(b)(2)] applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan an account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

Evidence: Dckt. 123, pg. 2-3 and Tabulation of Ballots - not all impaired classes have accepted the Plan.

8. With respect to each class of claims or interests—

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

This section is not required pursuant to 1191(b).

9. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

(A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of the Bankruptcy Code, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

Evidence: Dckt. 123, pg. 3

(B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of the Bankruptcy Code, each holder of a claim of such class will receive—

(i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;

Evidence: Dckt. 123, pg. 3

(C) with respect to a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code, the holder of such claim will receive on account of such claim regular installment payments in cash—

(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b); and

(D) with respect to a secured claim that would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

Evidence: Dckt. 123, pg. 3

10. If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

Not required pursuant to 1191(b).

11. Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

Evidence: Dckt. 123, pg. 3

12. All fees payable under section 1930 of title 28, as determined by the court at the hearing on

confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

Evidence: Dckt. 123, pg. 3

13. The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title [11 U.S.C. § 1114], at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title [11 U.S.C. § 1114], at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

Evidence: Not applicable.

14. If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first becomes payable after the date of the filing of the petition.

Evidence: Not Applicable

15. In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim;
or

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

Not required pursuant to 1191(b).

16. All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

This section is not applicable.

DISCUSSION

Federal Rule of Bankruptcy Procedure 3020(b)(2) states:

The court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by

law without receiving evidence on such issues.

No creditor has objected to the Plan of Reorganization. Debtor in Possession has presented evidence in support of confirmation.

Section 1191(b) which governs the confirmation of a subchapter V plan, requires confirmation of the plan “notwithstanding the requirements of [section 1129(a) paragraphs] if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.”

Here, two creditors under Class 11 for non-priority unsecured claims held by non-insiders have rejected the plan. These two creditor hold claims for a total of \$70,076.21. According to Debtor, creditors under this class would receive 75.57% in dollars and 66.67% in number. Debtor testifies that the plan does not discriminate unfairly against this class as all non-insiders will be paid in full with interest and the rejecting class will be paid the same schedule as almost every class. Moreover, Debtor argues that the plan is fair and equitable as to all classes, including Class 11, who will be paid in full with interest.

The court determines that Debtor making a good effort to pay creditors in full, which would be more than if the Debtor were to no longer be under the protections of a bankruptcy case, including those rejecting the plan under Class 11, the plan is fair and equitable.

At the hearing, **XXXXXXXXXX**

The Plan of Reorganization is confirmed.

Debtor's Atty: David C. Johnston

Notes:

Continued from 11/5/20. Counsel for the Debtor in Possession reported that a plan is intended to address the large tax claims and generate something for creditors with general unsecured claims.

[SSA-2] Stipulation Extending Deadline to File Complaint to Determine Dischargeability of Debts filed 12/9/20 [Dckt 38]; Order approving filed 12/9/20 [Dckt 40]

[SSA-1] Joint Request to Continue Hearing on Motion for Relief from Stay [To Pursue State Court Litigation] filed 12/11/20 [Dckt 41]; Order granting filed 12/14/20 [Dckt 42]

[SSA-1] Order granting motion for relief from stay filed 1/14/21 [Dckt 55]

SUBCHAPTER V

Debtor's Atty: David C. Johnston

Notes:

Continued from 12/3/20 to be heard in conjunction with the confirmation hearing.

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

JANUARY 28, 2021 STATUS CONFERENCE

At the Status Conference, xxxxxxx

DECEMBER 3, 2020 STATUS CONFERENCE

On November 12, 2020, the court issued an adequate protection order relating to the secured claim of PNC Equipment Finance, LLC. Dckt. 113.

The Court has now set a confirmation hearing for a plan in this case, and the Status Conference is continued to the date and time of the confirmation hearing.

OCTOBER 1, 2020 STATUS CONFERENCE

This Chapter 11 Subchapter V case was filed on May 15, 2020. The court extended the deadline for the Debtor in Possession/Debtor to file the Chapter 11 plan through and including September 30, 2020. In the August 2020 Monthly Operating Report filed September 24, 2020 (Dckt. 101), the Debtor in Possession/Debtor reports \$1,864,845 in cash receipts and (\$1,885,736) in cash disbursement since the commencement of this case for the Bankruptcy Estate.

At the Status Conference, counsel for the Debtor in Possession/Debtor reported that the Subchapter V plan was filed on September 30, 2020.

The Subchapter V Trustee stated that he has been assisting the Debtor and believes that this should be a consensual plan.

JULY 16, 2020 STATUS CONFERENCE

The Debtor in Possession filed a Status Report on July 10, 2020. The Report discusses the estate's trucking business and the impact caused by the COVID-19 pandemic. Dckt. 57. The Debtor in Possession projects filing a plan and disclosure statement before August 13, 2020.

At the Status Conference counsel for the Debtor in Possession reported that a resolution has been reached for the claim that is the subject of the pending motion for relief from the stay, and that resolution will be the template for addressing other secured claims.

Moreover, the bookkeeper at the business is new and is working to clean up what was left by the prior bookkeeper.

The deadline for claims is in a week, and to date, no "surprise" claims have been filed. David Souza, the Subchapter V Trustee, reports that he and the Debtor in Possession counsel are working with creditors. The Subchapter V Trustee is concerned over the books and records.

There were several loans taken out by the Debtor prior to the bankruptcy, which have a substantial interest rate that may be usurious. The payments to these high interest creditors without 90 days of the filing is \$289,000.

Final Ruling: No appearance at the January 28, 2021 Status Conference is required.

Debtor's Atty: David C. Johnston
Trustee's Atty: Aaron A. Avery

Notes:
Continued from 7/16/20

Operating Reports filed: 8/11/20; 9/11/20; 10/13/20; 11/12/20; 12/20/20; 1/13/21

[HSM-2] First Interim Application for Allowance of Compensation and Reimbursement of Expenses to Counsel for the Chapter 11 Trustee filed 9/16/20 [Dckt 110]; Order granting filed 10/26/20 [Dckt 120]

[HSM-3] Trustee's Motion for Approval of Compromises of Controversies filed 11/20/20 [Dckt 123]; Order granting filed 12/23/20 [Dckt 131]

The Status Conference has been continued to 2:00 p.m. on March 25, 2021, by prior Order (Dckt. 137) of the court.

JANUARY 28, 2021 STATUS CONFERENCE

On January 21, 2021, the Chapter 11 Trustee filed an updated Third Status Report. Dckt. 135. In it, the Trustee reports that the secured claim of the one creditor identified by Debtor in filing this case has been resolved, the settlement having been approved by the court. Under the terms of the Settlement, the Trustee has disbursed \$38,0000.00 to Wells Fargo Bank, N.A. in full satisfaction of its claim. Wells Fargo Bank, N.A. is in the process of reconveying the deed of trust asserted to secure that claim which is recorded against property of the Bankruptcy Estate.

The Trustee reports that there are no other creditors in this case, and the only remaining obligations of the Estate are the administrative expenses in this case. Motions for allowance of administrative expenses are being prepared.

The Trustee reports currently holding \$119,438.00, and that this is a substantially surplus case, with multiple real properties to revest in the Debtor upon conclusion of this case. The Trustee anticipates filing a motion to dismiss this case and minimize further administrative expenses in this case.

It is requested that the court continue the Status Conference for a sufficient period to allow

for the filing and adjudication of motions for allowance of administrative expenses, as well as a motion to dismiss being diligently prosecuted by the Trustee.

JULY 16, 2020 STATUS CONFERENCE

The Chapter 11 Trustee filed an updated Status Report on July 8, 2020. Dckt. 101. She reports continuing to operate the rental property of the bankruptcy estate and is holding \$121,186 in funds. The Debtor's managing member has not turned over payment of the fair rental value and use by her of the Fiesta Property.

At the Status Conference, counsel for the Trustee reported that the focus of the case is on the litigation with Wells Fargo Bank, N.A. The Trustee has been able to collect rent from all of the tenants, except one, the managing member.

11. [18-90764](#)-E-7 DAWN CHRISTENSEN
[19-9002](#)
JONES V. CHRISTENSEN

ADVERSARY PROCEEDING
DISMISSED: 12/29/2020

PRE-TRIAL CONFERENCE RE:
COMPLAINT OBJECTING TO
DISCHARGE OF DEBTOR
1-17-19 [\[1\]](#)

Final Ruling: No appearance at the January 28, 2021 Pre-Trial Conference is required.

Plaintiff's Atty: *Pro Se*
Defendant's Atty: Richard Kwun

Adv. Filed: 1/17/19
Answer: 9/11/19

Notes:

[RK-3] Order Authorizing Dismissal of Objection to Discharge Causes of Action and for Entry of Judgment Pursuant to Settlement filed 12/29/20 [Dckt 113]

[RK-2] Order Dismissing Without Prejudice Motion in Limine filed 12/29/20 [Dckt 115]

Judgment for Nondischargeable Debt filed 1/4/21 [Dckt 117]

Judgment having been entered in this Adversary Proceeding (Judgment, Dckt. 117), the Pre-Trial Conference is removed from the Calendar.
--

12. [18-90764](#)-E-7 DAWN CHRISTENSEN
[19-9002](#)
JONES V. CHRISTENSEN

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
1-17-19 [\[1\]](#)

ADVERSARY PROCEEDING
DISMISSED: 12/29/2020

Final Ruling: No appearance at the January 28, 2021 Status Conference is required.

Plaintiff's Atty: *Pro Se*
Defendant's Atty: Richard Kwun

Adv. Filed: 1/17/19
Answer: 9/11/19

Notes:

[RK-3] Order Authorizing Dismissal of Objection to Discharge Causes of Action and for Entry of Judgment Pursuant to Settlement filed 12/29/20 [Dckt 113]

[RK-2] Order Dismissing Without Prejudice Motion in Limine filed 12/29/20 [Dckt 115]

Judgment for Nondischargeable Debt filed 1/4/21 [Dckt 117]

Judgment having been entered in this Adversary Proceeding (Judgment, Dckt. 117), the Status Conference is removed from the Calendar.

13. [20-90478-E-7](#) **TRICIA DODSON**
[20-9011](#)
ANDERSON LITFIN, INC. V.
DODSON ET AL

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
9-11-20 [1]

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

Adv. Filed: 9/11/20
Answer: 12/3/20

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

Notes:
Continued from 12/17/20 by request of the Parties. Two Defendants and Plaintiff have discussed possible mediation. Defendants advised the court that they were attempting to re-engage counsel.

The Status Conference is XXXXXXX
--

JANUARY 28, 2021 STATUS CONFERENCE

At the Status Conference, XXXXXXX

DECEMBER 17, 2020 STATUS CONFERENCE

At the Status Conference, the parties requested a continuance. The two Defendants and Plaintiff discussed possible mediation. Defendants advised the court that they were attempting to re-engage counsel, and that in January 2021 Defendant William Dodson would likely be filing bankruptcy too.

SUMMARY OF COMPLAINT

The Complaint filed by Anderson Litfin, Inc. ("Plaintiff"), asserts claims for nondischargeability of obligations owed by Tricia Dodson and William Dodson, the "Defendant Debtor" and William Dodson, the non-debtor "Defendant-Spouse." In the First Claim for Relief, it is asserted

that Defendant-Debtor was Plaintiff's bookkeeper and in that position engaged in fraudulent conducting cause damages of at least \$360,547.17 to Plaintiff. It is alleged that such damages are nondischargeable as provided in 11 U.S.C. § 523(a)(2)(A) and (B)(i)-(iv).

In the Second Claim for Relief it is asserted that the damages cause by Debtor's conduct are nondischargeable pursuant to 11 U.S.C. § 523(a)(4) and in the Third Claim for Relief that the damages are nondischargeable as provided in 11 U.S.C. § 523(a)(6).

In the Fourth Claim of Action Plaintiff seeks to recover attorney's fees and costs. No specific basis for a right to attorney's fees is stated. However, as provided in Federal Rule of Civil Procedure 54 and Federal Rule of Bankruptcy Procedure 7054, a request for attorney's fees is made pursuant to a post-judgment motion.

In the Fifth Claim for Relief Plaintiff seeks to assert an equitable lien or constructive trust against certain real property in Stanislaus County.

Further, in the Sixth Claim for Relief, asserts that the obligations at issue are community claims and are nondischargeable as to the non-debtor Defendant-Spouse. 11 U.S.C. § 524(a)(3).

SUMMARY OF ANSWER

Tricia Dodson ("Defendant-Debtor") and William Dodson ("Defendant-Spouse") have filed an EDC Form Answer (Dckt. 13), denying each and every allegation of the Complaint, other than the procedural facts regarding the filing of the bankruptcy petition by Defendant-Debtor.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 (by reference in citing to 28 U.S.C. § 157) and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(E), (I), and (J). Complaint ¶ 4, Dckt. 1. In the Answer, Defendant-Debtor and Defendant-Spouse do not admit the allegations of jurisdiction and that this is a core proceeding.

The First Claim for Relief pursuant to 11 U.S.C. § 523(a)(2)(A) and (B), the Second Claim for Relief pursuant to 11 U.S.C. § 523(a)(4), the Third Claim for Relief pursuant to 11 U.S.C. § 523(a)(6), the Sixth Claim for Relief pursuant to 11 U.S.C. § 523(A)(3), and the related requests for attorneys' fees in the Fourth Claim for relief are core matter proceedings arising under the Bankruptcy Code for which the bankruptcy judge issues the final orders and judgment.

The Fifth Claim for Relief is for an equitable lien or construct trust against property of the Debtor. Currently, that property is property of the bankruptcy estate in Defendant-Debtor's Chapter 7 case, 20-90478. No exemption is claimed in this property by Defendant-Debtor on amended Schedule C. 20-90478; Dckt. 24. On Schedule D Defendant-Debtor lists the property having a value of \$312,400 and being encumber by an obligation in the amount of (\$240,583.82). *Id.*; Dckt. 1 at 19.

With respect to the property in which the equitable lien or constructive trust is asserted and whether the Chapter 7 Trustee is a necessary party, Plaintiff is addressing that with counsel for the Trustee.

14. [10-90281](#)-E-7

LORRAINE/GARY ERWIN

RHS-1

STATUS CONFERENCE RE:
MOTION
FOR PAYMENT OF UNCLAIMED
FUNDS IN THE AMOUNT OF \$
47805.58
1-4-21 [[240](#)]

Debtor's Atty: Martha Lynn Passalaqua

Notes:

Set by order filed 1/11/21 [Dckt 243]. Parties ordered to appear.

The Status Conference is XXXXXXX

JANUARY 28, 2021 CONFERENCE

This bankruptcy case was commenced as a Chapter 13 case by Lorraine Erwin and Gary Erwin (the "Debtors"), but converted to one under Chapter 7 on August 31, 2010. Order, Dckt. 89. On January 4, 2021, Lorraine Erwin, one of the two debtors in this case, filed an Application for Unclaimed Funds. Dckt. 240.

The amount of unclaimed funds requested to be paid to Lorraine Erwin is \$47,805.58. Application, § 1. The basis asserted in the Application for the payment of the \$47,805.58 is stated to be:

Claimant [Lorraine Erwin] is the Owner of Record entitled to the unclaimed funds appearing on the records of the court.

Application, § 2.

The supporting documents stated to be filed with the Application are:

Proof of Identity of Owner of Record;
Notarized signature of Owner of Record; and
Completed Form AO 213P (Payee tax information).

Application, § 3. The Application is signed by Lorraine Erwin.

Attached to the Application is a Turnover of Unclaimed Dividend(s) that was filed by the Chapter 7 Trustee in this case on August 17, 2020. Application, Dckt. 240 at 6. This pleading filed by the Trustee states that he is turning over three checks, representing unclaimed creditor dividends in the case. One of the checks relates to Proof of Claim No. 21-1 ("Claim No. 21-1"), for which the Creditor is identified as U.S. Bank National Assn. ("Creditor"), for which the unclaimed dividend amount is \$47,805.58. This appears to be the unclaimed funds that are the subject of this Application filed by

Debtor Lorraine Erwin.

Also attached to the Application is a copy of a Motion for Approval of Settlement Agreement and the Order granting the Motion. The Motion and Order are Docket Entries 165 and 184 in this bankruptcy case. The Settlement that is the subject of the Motion and Order relates to a medical treatment claim that was property of the bankruptcy estate. The Settlement provides for the bankruptcy estate in this case to receive the gross sum of \$200,000.00, which after payment of fees and expenses, would net \$116,388.26 for the bankruptcy estate.

Objection to Unsecured Claim of U.S. Bank National Association

Attached to the Application is the copy of an objection filed by Debtor Lorraine Erwin to the Claim No. 21-1 that was filed by Creditor. The Objection to Claim is filed as Docket Entry 226 in this case. The Objection was that Claim No. 21-1 was a duplicate of Claim No. 3-1 previously filed by Creditor. As addressed in the Civil Minutes from the hearing on the Objection to Claim (Dckt. 235), Claim No. 21-1 was an unsecured claim allowed pursuant to a stipulation between the Debtors and Creditor in connection with the confirmation of the Chapter 13 Plan in this case. For purposes of the Chapter 13 Plan and the valuation of Creditor's claim, the unsecured claim replaced the secured claim (Claim No. 3-1). However, such unsecured claim was allowed only for the Chapter 13 case, and Creditor would retain its lien, and its secured claim, if the bankruptcy case was converted or dismissed. The bankruptcy case being converted, Claim No. 21-1 was disallowed, and Creditor now holds only the secured claim asserted in Claim No. 3-1.

Entitlement to the \$47,805.58 Relating to Disallowed Claim No. 21-1

The court's order sustaining the Objection and not allowing the Creditor's unsecured claim for which the Trustee had previously attempted to disburse the \$47,805.58 to Creditor, was entered on November 23, 2020. Order, Dckt. 237. The Chapter 7 Trustee turned over to the Clerk of the Court the \$47,805.58 on August 6, 2020 – three months before the court disallowed Claim No. 21-1. Disallowing the claim resulted in Creditor having no right to the distribution of \$47,805.58. Thus, it appears that rather than being "unclaimed funds," the \$47,805.58 appears to be monies that have not been administered by the Chapter 7 Trustee.

The Trustee's Account and Distribution Report states that \$74,375.68 was distributed to claimants with unsecured claims and that \$163,558.45 in claims were discharged without payment. Dckt. 223 at 1. The Trustee's Report identifies there being a total of \$188,677.85 in general unsecured claims allowed, which includes Creditor's (now disallowed) unsecured claim for \$121,274.24. *Id.* at 6-9. Backing out the \$121,274.24 disallowed unsecured claim, there is only \$67,403.61 of allowed unsecured claims based on the Trustee's Report.

\$74,375.68 was discussed for the general unsecured claims (including the \$47,805.58 for Creditor's now disallowed claim) appears to be approximately a 61.13% dividend paid to creditors with general unsecured claims. It appears that having disallowed Claim No. 21-1, this may be a surplus case.

Basis For Debtor Lorraine Erwin's Claim of Ownership of the \$47,805.58

Debtor Lorraine Erwin does not state in the Application the basis for asserting ownership of the \$47,805.58 that the Chapter 7 Trustee formerly attempted to disburse to Creditor prior to the court disallowing Creditor's Claim No. 21-1. Given that Creditor was not entitled to the \$47,805.58 once the court disallowed Claim No. 21-1, Debtor Lorraine Erwin cannot be heard to say that she stands in the shoes of, and can assert the rights of, Creditor.

The Bankruptcy Code addresses unclaimed property in 11 U.S.C. § 347. It provides that in a Chapter 7 case, ninety (90) days after the final distribution, the Trustee shall stop payment on any check remaining unpaid and any remaining property of the bankruptcy estate shall be deposited with the Trustee as provided under Chapter 129 of Title 28. It appears that the \$47,805.58 is not property of the estate the Trustee attempted to distribute to a creditor entitled to payment. Rather, Claim No. 21-1 having been disallowed, the Trustee has not yet distributed it.

In Debtors' Objection to Claim No. 21-1 filed on October 1, 2020 (approximately two months after the Trustee filed his Turnover of Unclaimed Funds), Debtors not only objected to Creditor's unsecured claim, asserting that Creditor held a secured claim because the case had been converted to one under Chapter 7, but Debtors went further, stating in the Objection:

12. Because there is still a lien on the house [Creditor's collateral], those funds could have been applied to the outstanding balance as a secured claim but instead those funds have been dispersed as part of the unsecured claims but for whatever reason are now sitting in the unclaimed funds pool doing no good for Debtors or the creditors.

Wherefore, Debtors are requesting an order that sustains the objections to the Amended Claim and would therefore identify the Original Claim (a secured claim) as the only claim for Servicer on behalf of Claimant. If the Court does sustain the objection the Debtors are requesting that the unclaimed funds be deemed property of the estate and that the Trustee be required to disperse those funds according the dispersal schedule.

Objection, p. 3:3-12; Dckt. 226. It appears that Debtor could be seeking to have the \$47,805.58 of unencumbered monies that related to disallowed unsecured Claim No. 21-1 be diverted to pay the secured claim (Claim No. 3-1) of Creditor. The court's order sustaining the Objection just disallows Claim No. 21-1 and does not purport to allocate the \$47,805.58 to the secured claim of Creditor or any other person.

Joint Status Conferences

The Application For Unclaimed Funds filed by Debtor is not accompanied by a Certificate of Service. However, presumably the Chapter 7 Trustee has been electronically served by the Clerk of the Court as provided in Federal Rule of Bankruptcy Procedure 9036.

Debtor Lorraine Erwin does not provide with the Application any basis for showing that she is the owner of the \$47,805.58 that formerly was to be distributed to Creditor on its general unsecured

claim (disallowed Claim No. 21-1). This claiming of unclaimed distributions in a Chapter 7 case pursuant to 28 U.S.C. § 2042 is discussed in Collier on Bankruptcy, ¶ 347.02[4], which includes (emphasis added):

The claimant must file a petition for an order directing payment to the claimant. Notice must be given to the United States Attorney and a full proof of the right to the funds must be furnished by the claimant. Assuming that the claimant is entitled to the funds, the court does not have the discretion to deny the petition. The statute does, however, require that the **claimant must show “full proof of the right thereto,” so an application that does not clearly show that the claimant is the creditor entitled to payment and that the debt remains unpaid cannot be granted.**

Debtor Lorraine Erwin has not presented the court with a basis for asserting ownership of monies of the bankruptcy estate that is part of the disbursement to creditors holding general unsecured claims. This court noted a possible problem with trying to divert monies through the Debtors to Creditor on its secured claim, stating in the Civil Minutes for the hearing on the Objection to Claim:

What is interesting at this point is why the Debtor and Debtor’s counsel could not contact the Creditor, tell Creditor that there is \$47,805.58 in monies that were paid on the claim (whether secured or unsecured, it is the same debt) and that Debtor has that amount in a cashier’s check for Creditor, and ask to whom should it be paid so the check is cashed and Creditor gets almost \$50,000 in one lump sum.

Civil Minutes, p. 3; Dckt. 235. Possibly the ethics of Creditor, Debtor, and counsel precluded such a behind the scenes distribution of the monies through the unsecured claim (Debtor not objecting to it) and to pay down the secured claim.

At this juncture, the court does not see any proof that Debtor Lorraine Erwin has a right to the \$47,805.58. The court does not know whether the Chapter 7 Trustee is aware that Claim No. 21-1 has been disallowed and the \$47,805.58 of unencumbered monies he was attempting to disburse to Creditor does not relate to any allowed unsecured claim of Creditor.

Discussion at January 28, 2021 Conference

XXXXXXX

DEBTORS DISMISSED: 1/19/21

Final Ruling: No appearance at the January 28, 2021 Status Conference is required.

Debtors' Atty: David C. Johnston

Notes:

[DCJ-2] Debtors' Verified Application to Dismiss Chapter 12 Case filed 1/16/21 [Dckt 28]; Order granting filed 1/19/21 [Dckt 30]

The case having been dismissed (Order, Dckt. 30), the Status Conference is concluded and removed from the Calendar.

The court has not authorized the payment of any fees and cost to counsel for the Debtor in Possession.

[18-9010](#)

BOWERS ET AL V. BARBERA

Plaintiff's Atty:
Defendant's Atty:

Adv. Filed:
Answer:

Nature of Action:

Notes:

Continued from 8/6/20. Parties reported that the State Court Actions are still being prosecuted and requested a continuance. An updated status report to be filed prior to the 1/28/21 continued Status Conference..

The Status Conference is XXXXXXX

JANUARY 28, 2021 STATUS CONFERENCE

As of the court's January 25, 2021 review of the Docket, no updated status reports had been filed by the Parties. At the Status Conference, XXXXXXX

AUGUST 6, 2020 STATUS CONFERENCE

The Parties filed their Joint Status Report on July 23, 2020. Dckt. 35. They report that the State Court Actions are still being prosecuted and they request further continuance. The parties will file an updated status report prior to the January 28, 2021 continued Conference.

FEBRUARY 6, 2020 STATUS CONFERENCE

By prior order, the court has stayed this Adversary Proceeding to allow the parties to complete their state court litigation to final judgment. Order, Dckt. 28. By that Order, updated status reports were to be filed by January 13, 2020.

No Status Reports have been filed by either Party, and each of the Parties are in violation of the court's prior order.

One of the related actions has proceeded to arbitration in August 2019. The arbitrator has prepared, but has not yet issued the final award.

The second action, in state court, has a case management conference on February 24, 2020, but no trial date has been set.