

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

February 9, 2017, at 2:00 p.m.

1. <u>16-90500</u> -E-11	ELENA DELGADILLO David Johnston	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 6-9-16 <u>1</u>
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Final Ruling: No appearance at the February 9, 2017 Status Conference is required.

Debtor's Atty: David C. Johnston

Notes:

Continued from 10/20/16. The Debtor in Possession's counsel will review hiring a bilingual accountant to make sure the reports are accurate and filed.

Supplemental Status Conference re Motion to Appoint a Chapter 11 Trustee filed 11/15/16 [Dckt 63]; heard 11/22/16 and continued to 12/15/16; further continued to 2/23/17 at 2:00 p.m.

Motion to Appoint Chapter 11 Trustee, or, in the Alternative, to Convert Action to Chapter 7 filed 11/23/16 [Dckt 65]; Order granting the appointment of trustee filed 12/21/16 [Dckt 80]

[UST-1] Application for Order Approving the Appointment of Chapter 11 Trustee filed 12/21/16 [Dckt 81]; Order granting filed 12/22/16 [Dckt 89]

[HSM-1] Application to Employ Hefner, Stark & Marois, LLP as Counsel for Trustee filed 12/23/16 [Dckt 90]; Order granting filed 1/2/17 [Dckt 98]

[JES-1] Trustee Irma Edmonds Application for Authority to Employ Certified Public Accountant, Combined with Declaration in Support Thereof filed 12/29/16 [Dckt 95]; Order granting filed 1/2/17 [Dckt 99]

The Status Conference has been continued by prior order of the court (Dckt. 85) to 2:00 p.m. on February 23, 2017.

February 9, 2017, at 2:00 p.m.

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2. [16-90002-E-11](#) 1263 INVESTORS LLC
Stephen Reynolds

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
1-5-16 [\[1\]](#)

Final Ruling: No appearance at the February 9, 2017 Status Conference is required.

Notes:

Continued from 12/1/16

Operating Reports filed: 1/3/17 [Oct, Nov, Dec]

[RLC-9] Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof filed 1/9/17 [Dckt 100], set for hearing 2/16/17 at 11:30 a.m.

Continued Chapter 11 Status Report filed 2/1/17 [Dckt 103]

The Post-Confirmation Status Conference is continued to 2:00 p.m. on February 23, 2017.

FEBRUARY 9, 2017 STATUS CONFERENCE

The court has set a hearing on the confirmation of the Debtor in Possession's proposed Chapter 11 Plan at 2:00 p.m. on February 23, 2017. The Status Conference is continued to that time and date.

However, the court notes that the Debtor in Possession has been chronically late in the filing of monthly operating reports. On January 3, 2017, the Debtor in Possession untimely filed the monthly operating reports for November and October 2016. On October 25, 2016, the Debtor in Possession untimely filed the monthly operating report for August 2016. It may appear that the Debtor in Possession has developed an inability to fulfill its obligations as the debtor in possession, which may indicate that it cannot fulfill the obligations as the proposed Chapter 11 plan administrator.

Counsel for the Debtor in Possession, and the principals of the debtor in possession can through declarations under penalty of perjury, address for the court this deficiencies and why they do not portend an inability to serve as the plan administrator.

3. [16-90513-E-7](#) **TIRZAH HAMILTON**
[16-9012](#)
EDMONDS V. HAYES ET AL

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

Plaintiff's Atty: Steven S. Altman
Defendant's Atty: unknown

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

Nature of Action:
Recovery of money/property - fraudulent transfer
Turnover of real property or personal property or its current value

Notes:
Continued from 12/1/16 to afford Defendants the opportunity to confer with counsel and communicate further with the Plaintiff-Trustee and counsel for the Plaintiff-Trustee.

Plaintiff's Second Status Conference Statement filed 1/27/17 [Dckt 22]

The Status Conference is XXXXXXXXXXXXXXXXXXXXX.

FEBRUARY 9, 2017 STATUS CONFERENCE

The Plaintiff-Trustee filed a Second Status Conference Statement on January 27, 2017. Dckt. 22. The Plaintiff-Trustee reports that it does not appear that this Adversary Proceeding will be resolved through settlement, and the Plaintiff-Trustee will proceed with discovery. It is further reported that the Defendants have not provided the Plaintiff-Trustee with any initial disclosures.

DECEMBER 1, 2016 CONTINUED STATUS CONFERENCE

Defendants failed to appear at the October 20, 2016 Status Conference. Civil Minutes, Dckt. 13. On October 25, 2016, the court issued an order continuing the Status Conference and ordering the parties to appear. Order, Dckt. 14.

The Plaintiff-Trustee filed an updated Status Conference Statement on November 17, 2016. Dckt. 19. Defendants have again failed to file a Status Conference Statement.

At the Status Conference the pro se Defendants addressed for the court their contentions as to the value of the property. The court reviewed the judicial process and the duties of a person representing themselves in court. The court continues the Status Conference to afford Defendants the opportunity to confer with counsel and communicate further with the Plaintiff-Trustee and counsel for the Plaintiff-Trustee.

SUMMARY OF COMPLAINT

Irma Edmonds, the Chapter 7 Trustee in the Tirzah Hamilton bankruptcy case (“Plaintiff-Trustee”), has filed a Complaint to avoid transfers and recover the value of property from Brian Hayes, Delores Hamilton, and Valerie Tan (“Defendants”). It is alleged that within one year of the commencement of the Chapter 7 bankruptcy case by Tirzah Hamilton (“Debtor”), real property commonly known as 2401 Walnut Park Drive, Modesto, California, was transferred by Debtor to Defendants for less than adequate consideration. It is alleged that the consideration paid was \$180,000.00, and from the proceeds a gift of \$8,600.47 was made by Debtor to defendant Valerie Tan. It is further alleged that the property had a value of at least \$195,000.00 at the time of the transfer. Plaintiff-Trustee seeks to have the two transfers avoided and the property and money recovered by the bankruptcy estate.

SUMMARY OF ANSWER

The Defendants have filed an Answer, each in pro se. Dckt. 10. In answer to the Complaint, Defendants provide detailed responses or counter allegations, including:

- A. Defendant Hayes is the ex-boyfriend and father of two children with Debtor.
- B. Defendant Tan was the former owner of the property transferred and was rightfully owed the money she was paid from escrow as the seller of the property to Debtor earlier in the year prior to the filing of bankruptcy.
- C. Wells Fargo Bank, N.A. “denied” the transfer of the property from Defendant Tan to Debtor. (This appears to be a statement that Wells Fargo Bank, N.A. did not consent to the sale and chose to exercise its due on sale clause, as a creditor cannot prevent a person from exercising the right to alienate (transfer) real property.)
- D. It is asserted that the quitclaim deed by which Debtor acquired title was “invalid.”
- E. When the property was transferred to Defendants, the obligation owed to Wells Fargo Bank, N.A. had to be satisfied and a new loan obtained by Defendants.
- F. It is asserted that the transfer did not make Debtor insolvent, but she did not have any gainful employment for a significant period of time prior to and after the transfer.
- G. Based on appraisals, the value of the property was \$180,000.00 when transferred.
- H. The \$10,000 held in escrow for Ms. Tan was pursuant to the 2013 contract by which the property was transferred to Debtor.

Attached to the Answer are several documents which include the following:

- A. Exhibit 1b is a letter from Wells Fargo Bank, N.A. asserting the right to accelerate the obligation secured by the property pursuant to the due on sale clause in the deed of trust.
- B. Exhibit 4 is an appraisal concluding that the property has a value of \$180,000.00.

What is not clear to the court is how much of an obligation was owed to Wells Fargo Bank, N.A. that was secured by the property (assuming that there was an obligation and the lien on the property was properly perfected—11 U.S.C. § 544).

FINAL BANKRUPTCY COURT JUDGMENT

The Plaintiff-Trustee alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. §§ 1334 and 157 and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, it is alleged that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(E), (H), (K), and (O). Plaintiff-Trustee consents to the bankruptcy judge determining any non-core issues. Complaint, 3, Dckt. 1.

Defendant admits that this court has “jurisdiction” for this Adversary Proceeding. Answer, 3, Dckt. 1. The allegations of paragraph 3 of the Complaint concerning a statement of jurisdiction and the adjudication of non-core proceedings by the bankruptcy judge have been admitted to by the Defendants, and each of them. The court accepts this, after several continued Status Conference and Defendants proceeding in this Adversary Proceeding based on the admissions to the statement of jurisdiction, core proceeding, and consent to adjudication of all non-core matters by the bankruptcy judge, the court accepts the continued prosecution of the defense of this Adversary Proceeding without any objection by Defendants, and each of them by the bankruptcy judge, to manifest Defendants’, and each of their, consents for all non-core matters.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- A. The Plaintiff-Trustee alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. §§ 1334 and 157 and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, it is alleged that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(E), (H), (K), and (O). Plaintiff-Trustee consents to the bankruptcy judge determining any non-core issues. Complaint, 3, Dckt. 1.
- B. Defendant admits that this court has “jurisdiction” for this Adversary Proceeding. Answer, 3, Dckt. 1. The allegations of paragraph 3 of the Complaint concerning a statement of jurisdiction and the adjudication of non-core proceedings by the bankruptcy judge have been admitted to by the Defendants, and each of them. The court accepts this, after several continued Status Conference and Defendants proceeding in this Adversary Proceeding based on the admissions to the statement of jurisdiction, core proceeding, and consent to adjudication of all non-core matters by the bankruptcy judge, the court accepts the continued prosecution of the defense of this Adversary Proceeding without any objection by Defendants, and each of them by the bankruptcy judge, to manifest Defendants’, and each of their, consents for all non-core matters.
- C. The time for making Initial Disclosures has closed.

- D. Discovery closes, including the hearing of all discovery motions, on **March 24, 2017**.
- E. Dispositive Motions shall be heard before **May 4, 2017**.
- F. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. June 8, 2017**.

4. [16-90424-E-7](#) SANDRA ESPINO-ORTEGA STATUS CONFERENCE RE: AMENDED
[16-9013](#) PACIFIC MOTORS, INC. V. COMPLAINT
ESPINO-ORTEGA 9-12-16 [6]
ADV. PROCEEDING DISMISSED

Final Ruling: No appearance at the February 9, 2017 Status Conference is required.

Plaintiff's Atty: Pro Se
Defendant's Atty: unknown
Adv. Filed: 9/9/16
Answer: none
Amd Cmplt Filed: 9/22/16
Answer: none
Nature of Action:
Objection/revocation of discharge

Notes:

[RHS-1] Order to Show Cause re failure to prosecute filed 12/16/16 [Dckt 13]; heard 1/26/17, sustained and case dismissed

The Adversary Proceeding Having Been Dismissed, the Status Conference is removed from the Calendar.

5. [16-91155](#)-E-12 LYNN/DONNA PORTER
David Johnston

STATUS CONFERENCE RE:
VOLUNTARY PETITION
12-30-16 [\[1\]](#)

Final Ruling: No appearance at the February 9, 2017 Status Conference is required.

Debtors' Atty: David C. Johnston

Notes:

Notice of Incomplete Filing filed 1/4/17 [Dckt 6]

Trustee Report at 341 Meeting lodged 1/24/17; Debtors did not appear at 341 meeting; continued to 2/1/17 at 11:00 a.m.

[RHS-1] Order to Show Cause [failure to file documents] filed 1/31/17 [Dckt 16], set for hearing 2/23/17 at 2:00 p.m.

Trustee Report at 341 Meeting lodged 2/1/17; Debtors did not appear at 341 meeting; continued to 2/15/17 at 11:00 a.m.

The Status Conference is continued to 2:00 p.m. on February 28, 2017, to be conducted in conjunction with the court's Order to Show Cause why this Bankruptcy Case should not be dismissed for lack of prosecution (OSC, Dckt. 16).

**CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
1-31-12 [1]**

Notes:
Continued from 12/15/16

Debtors' Chapter 12 Plan was confirmed on September 17, 2013. On July 14, 2017, Debtor Tricia Peller sent a letter to the court requesting that the court "schedule an order of discharge" and close Debtors' case. Debtor's counsel had not responded to the Trustee's final report or requested the entry of a discharge. No motion for entry of discharge in this Chapter 12 case has been filed.