

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
Bankruptcy Judge  
Modesto, California

**February 16, 2023 at 2:00 p.m.**

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1. <a href="#"><u>13-90435-E-7</u></a> <b>SEAN AMIN</b> <a href="#"><u>22-9002</u></a> <b>CAE-1</b> <b>ELLIOTT ET AL V. NEVAREZ ET AL</b>	<b>CONTINUED STATUS CONFERENCE RE:</b> <b>NOTICE OF REMOVAL</b> <b>9-12-22 [<a href="#">1</a>]</b>	
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Plaintiffs' Atty: Unknown

Defendants' Atty:

David C. Johnston [Sean Afshin Amin]

Unknown [Kevin Amin; California Shade, Inc.; Ellen Nevarez]

Adv. Filed: 9/12/22

Answer: 9/19/22

Counterclaim Filed: 9/19/22

Answer: none

Nature of Action:

Determination of removed claim or cause

Dischargeability - other

Notes:

Continued from 11/10/22 to allow the Parties to complete the settlement that resolves the 11 U.S.C. § 524 issue in the Counterclaim, the issuance of a judgment or order relating to the Counterclaim, and the remand of the balance of the removed matter back to the State Court.

<b>The Status Conference is continued to 2:00 p.m. on <span style="color:red">xxxxxxx</span>, 2023</b>
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**FEBRUARY 16, 2023 CONTINUED STATUS CONFERENCE**

Though the Parties reported that insurance policy funded settlement was in the works, nothing further has been filed in this Adversary Proceeding. At the Continued Status Conference xxxxxxx

February 16, 2023 at 2:00 p.m.

- Page 1 of 11 -

## NOVEMBER 10, 2022 STATUS CONFERENCE

On September 12, 2022, the Defendant-Debtor Sean Afshin Amin filed a Notice of Removal, removing the California Superior Court for the County of Nevada Case No. CU0000191 titled:

*David Elliott and Angelina Elliott, Plaintiffs, vs. Ellen Nevarez, Kevin Amin and Sean Afshin Amin, individually and as owners of California Shade Inc. dba A-TEK Window & Door, and Does 1 to 20 inclusive, Defendants*

and the related cross-action entitled

*Ellen Nevarez, Cross-Complainant, vs. David Elliott, Kevin Amin, Sean Amin, individually and as owners of California Shade Inc. DbA A-TEK Window & Door, and Moes 1 to 25, inclusive, Cross-Defendants,*

to this federal court. The Complaint, Cross-Complaint, and related documents are filed as Exhibits 1-8, Dckt. 5.

### Review of Complaint

The Complaint filed by David and Angelina Elliott, Judicial Counsel Complaint for PLD-PI001, checks the boxes identifying that the Complaint is one for Personal Injury, with claims for:

- A. Property Damage,
- B. Personal Injury,
- C. Premises Liability and General Negligence, and
- D. Loss of Consortium

Exhibit 2; Dckt. 5.

With respect to the Defendant Debtor, the allegations state:

Defendants KEVIN and SEAN AFSHIN AMIN, both individually and as owners of Defendant CALIFORNIA SHADE, INC. dba A-TEK Window & Door purchased materials from patio cover manufacturer, Duralum, representing to the manufacturer they understood that as a condition of their purchase of the materials they would obtain the necessary permitting, engineering and perform the required installation as licensed contractors and owners of the business. Notwithstanding Defendants KEVIN and SEAN AFSHIN AMIN negligently provided the materials to unlicensed personnel, namely the homeowners and failed to supervise and/or perform the required installation, obtain and/or confirm that the necessary permitting and engineering of the subject patio cover was done.

As a result of the weather for the days leading up to the incident, snow had accumulated on the patio cover such that the negligent conduct of the Defendants, each and every one of them, resulted in the patio cover failing to support the reasonably foreseeable weight from the snow load,

which caused 'the patio cover to collapse on top of Plaintiff DAVID ELLIOTT and his dog. As a result of the Defendants negligence, each and every one of them. Plaintiff DAVID ELLIOTT suffered significant permanent Injuries, including but not limited to Quadriplegia. The negligent conduct of the Defendants, each and every one of them, as outlined above, was a substantial factor in causing the harm to the Plaintiffs.

Exhibit 2, Dckt. 5 at 7.

### **Review of Cross-Complaint**

Ellen Nevarez has filed a Cross-Complaint against David Elliott, Kevin Amin, and Sean Afshin Amin, individually and as owners of California Shade Inc., dba A-Tek Window & Door. *Id.*, Exhibit 8. The claims stated in the Cross-Complaint are for: (1) Equitable/Implied Indemnity from Cross-Defendants (which includes Defendant-Debtor) and unidentified future “MOES;” (2) Apportionment and Contribution from Cross-Defendants and unidentified future “MOES;” and (3) Declaratory Relief against unidentified future “MOES.”

### **Review of Answer filed by Defendant-Debtor**

On September 19, 2022, Defendant-Debtor filed his Answer and Counterclaim. Dckt. 7. The Answer admits and denies specific allegations in the Complaint, and includes five affirmative defenses (including statute of limitations and contributory negligence of Plaintiff, asserting that Defendant-Debtor and California Shade Inc. did not sell to Plaintiffs the patio cover or install it, that Plaintiffs made all the measurements and purchased the patio cover directly from the manufacturer, and that Defendant Debtor and California Shade, Inc. have even been on Plaintiff's premises nor have seen the installation of the patio cover.

The Counterclaim by Defendant-Debtor is against the Plaintiffs and asserts that any obligation asserted was discharged in Defendant-Debtor's 2013 bankruptcy case (EDC 13-90435). Counterclaim, Dckt. 7.

### **Federal Court Jurisdiction**

Congress provides for wide and deep federal court jurisdiction for bankruptcy cases and matters related to bankruptcy cases. 28 U.S.C. § 1334 provides:

§ 1334. Bankruptcy cases and proceedings

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

In addressing the referral of all bankruptcy cases, matters arising in a bankruptcy case, and all matters related to a bankruptcy case to the Bankruptcy Judges (who are judicial officers of and constitute a unit of the District Court; 28 U.S.C. § 151) the following mandatory caveat is imposed by Congress:

(b)

...

(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

28 U.S.C. § 157(b)(5).

In looking at the Complaint removed to this court, it appears to be asserting, at least in part, a personal injury claim.

### **Core Matter Violation of Discharge Jurisdiction**

In Defendant-Debtor's Counterclaim it is asserted that Plaintiffs have violated the discharge injunction established by Congress in 11 U.S.C. § 524 and which Defendant-Debtor was granted in his 2013 Bankruptcy Case. While filed as a Counterclaim, a complaint (or motion) seeking to have a person held in contempt for violating the statutory injunction created by Congress does not require the adjudication of the underlying liability asserted by Plaintiffs.

A complaint or motion for violation of the discharge injunction is a core matter proceeding arising under the Bankruptcy Code (not merely in the case or related to the bankruptcy case) for which the Bankruptcy Judge issues all final orders and judgment. 28 U.S.C. § 157. There are no rights to a jury trial or having this issue arising under the statute enacted by Congress to be tried before a District Court Judge.

The counter claim is a severable claim from the Complaint and can be promptly adjudicated in the Bankruptcy Court.

At the Status Conference, counsel for the Defendant-Debtor reported that there is a settlement, with any recovery from the State Court Action coming from insurance, if any.

The Status Conference is continued to allow the parties to complete the settlement that resolves the 11 U.S.C. § 524 issue in the Counterclaim, the issuance of a judgment or order relating to the counterclaim, and the remand of the balance of the removed matter back to the State Court.

Debtors' Atty: David C. Johnston

Notes:

[DCJ-1] Debtors' Application for 14 Additional Days to File New Case Documents filed 1/9/23 [Dckt 11];  
Order granting filed 1/10/23 [Dckt 15]

[DCJ-2] Application of Debtors In Possession for Authority to Employ Attorney filed 2/6/23 [Dckt 27];  
Order granting filed 2/6/23 [Dckt 30]

<b>The Status Conference is continued to 2:00 p.m. on <span style="color: red;">XXXXXXX</span>, 2023</b>
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### **FEBRUARY 16, 2023 STATUS CONFERENCE**

This Voluntary Chapter 11 Case was filed on December 25, 2022. On February 9, 2023, Debtor in Possession filed a Status Report. Dckt. 31. The information in the Status Report includes:

A. On the date the Chapter 12 case was commenced, the Debtors had delivered approximately \$100,000 worth of walnuts to Delmar Farms, which was subject to the lien of Yosemite Farm Credit ("Yosemite"). As the walnuts, Yosemite's collateral is sold, the proceeds are to be paid to Yosemite.

B. No budget and use of cash collateral has been discussed by the Debtor in Possession and counsel.

C. No objections to claims are anticipated.

D. The Debtor in Possession intends to assume a lease of farm property from the Khatri Family.

E. The Debtor in Possession plan on filing a Chapter 12 Plan before the March 28, 2023 deadline.

At the Status Conference, XXXXXXX

**SUBCHAPTER V**

Debtor's Atty: David C. Johnston, Brian S. Haddix

Notes:  
Continued from 9/8/22

Operating Reports filed: 2/6/23

[DL-1] Motion for Approval of First and Final Allowance of Compensation to Chapter 11 Subchapter V Trustee filed 9/15/22 [Dckt 102]; Order granting filed 11/16/22 [Dckt 108]

Chapter 11 Subchapter V Trustee's Report of No Distribution filed 2/1/23 [Dckt 109]

**The Post-Confirmation Status Conference is continued to 2:00 p.m. on  
XXXXXXX, 2023**

**FEBRUARY 16, 2023 POST-CONFIRMATION STATUS CONFERENCE**

The Subchapter V Plan was confirmed on May 19, 2022. Order, Dckt. 86. On November 16, 2022, the court entered its order allowing fees for the Subchapter V Trustee. Dckt. 108. No fees have been allowed by the court for counsel for the Debtor/Debtor in Possession.

On February 1, 2023, the Subchapter V Trustee filed a Report of No Distribution. Dckt. 109. The Subchapter V Trustee reports that he was paid his allowed fees, but there are no other payments to be made to the Subchapter V Trustee for distribution under the plan.

On February 6, 2023, the Debtor/Debtor in Possession Plan Administrator filed a Profit and Loss Statement showing that in 2022 the business lost (\$60,364.85) from the operation of the reorganized business.

The court notes that in computing this loss, there is (\$61,830) in "Depreciation Expense and ((\$44,567.55) in rent and lease. Dckt. 112, p. 2. Looking at the Profit and Loss Statement included with the April 2022 Monthly Operating Report (Dckt. 91), there are no depreciation expenses.

The Debtor/Debtor in Possession Plan Administrator then states that it is unable to propose a modification in light of the 2022 losses.

At the Status Conference, XXXXXXX

Debtor's Atty: David C. Johnston

Notes:

Continued from 10/27/22. Counsel for the Chapter 12 Debtor/Plan Administrator reporting that the FTB had not yet filed a claim for the capital gains taxes from the sale of the farm.

**The Post-Confirmation Status Conference is continued to 2:00 p.m. on  
XXXXXXX , 2023.**

### **FEBRUARY 16, 2023 POST-CONFIRMATION STATUS CONFERENCE**

The court's order confirming the Chapter 12 Plan was entered on May 24, 2021. Dckt. 121. The Status Conference was continued to allow for the California Franchise Tax Board to file its Proof of Claim for capital gains sales taxes from the sale of equipment.

The court's review of the Docket on February 15, 2023, disclosed that no Proof of Claim has been filed and there is no motion/order for payment of an administrative expense.

At the Status Conference, XXXXXXX

### **OCTOBER 27, 2022 STATUS CONFERENCE**

No updated status report has been filed. At the Status Conference, counsel for the Chapter 12 Debtor/Plan Administrator reported that the FTB has not yet filed a claim for the capital gains taxes from the sale of the farm, but is working on it.

The Chapter 12 Trustee reported that the fee applications need to be filed.

The Parties concurred with an extended continuance date to allow for the filing of the Franchise Tax Board claim and finding an economic solution to the remaining pigeons and related pigeon asset.

### **JUNE 30, 2022 STATUS CONFERENCE**

The Chapter 12 Debtor/Plan Administrator filed an Updated Status Report on June 27, 2022. Dckt. 142. He indicates that the tax issues have been addressed, that the California Franchise Tax Board has been requested to get its claim on file so that the Chapter 12 Trustee can get monies disbursed, and suggests that the Status Conference be continued for ninety (90) days.

The Chapter 12 Trustee's report, filed on June 24, 2022, states that all of the property has been liquidated, and that the Debtor/Plan Administrator reports that the only remaining property consists of pigeons. The Trustee raises a question whether the provisions of 11 U.S.C. § 1232(d)(2) has been followed and if amended tax returns are required.

The Trustee states that the question of whether 11 U.S.C. § 1232(d)(2) has been satisfied (directing that the court should *sua sponte* investigate this), the court should *sua sponte* order the Debtor/Plan Administrator to sell unidentified remaining assets, and that counsel for the Debtor/Plan Administrator needs to get a fee application on file.

At the Status Conference, counsel for the Debtor/Plan Administrator reported that this should be wrapped up in the next 90 days.

The Chapter 12 Trustee reported that the pigeons and a mower need to be sold, the final fee application filed, and the FTB tax claim filed.

Counsel for the Debtor/Plan Administrator will affirmatively reach out to the FTB, including specific counsel who have represented it in other cases, to get a proof of claim filed by the FTB so the Trustee can disburse the \$50,000 on that tax obligation.

5.	<a href="#"><u>10-90281</u></a> -E-7 <a href="#"><u>21-9005</u></a> ERWIN ET AL V. U.S. BANK, NATIONAL ASSOCIATION ET AL	LORRAINE/GARY ERWIN CAE-1	CONTINUED STATUS CONFERENCE RE: COMPLAINT 5-24-21 <a href="#"><u>1</u></a>
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Plaintiff's Atty: Darren Marcus Salvin; Laine T. Wagenseller  
Defendant's Atty: unknown

Adv. Filed: 5/24/21  
Answer: none

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

Notes:  
Continued from 12/15/22 for post-judgment administrative purposes (including possible post-judgment motions).

[WLF-6] Order granting Motion for an Award of Attorneys' Fees and Costs filed 12/18/22 [Dckt 98]

<b>The Post-Judgment Status Conference is <span style="color: red;">XXXXXXX</span></b>
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## FEBRUARY 16, 2023 POST-JUDGMENT STATUS CONFERENCE

On November 29, 2022, the Judgment was entered in this Adversary Proceeding. Dckt. 89. Prevailing party attorneys fees and costs were awarded Plaintiff-Debtor by order entered on December 18, 2022. Dckt. 98.

At the Status Conference, **XXXXXXX**

6. [18-90090-E-7](#)      **CLIFFORD BARBERA**      **CONTINUED STATUS CONFERENCE RE:**  
[18-9010](#)      **CAE-1**      **COMPLAINT**  
**BOWERS ET AL V. BARBERA**      **6-11-18 [1]**

Plaintiff's Atty: Bryan Silverman  
Defendant's Atty: Pro Se

Adv. Filed: 6/11/18  
Answer: 7/18/18

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

Notes:  
Continued from 8/4/22 to allow the Parties to focus on the State Court actions.

Updated Status Report filed 2/1/23 [Dckt 56]

**The Status Conference is continued to 2:00 p.m. on **XXXXXXX**, 2023**

## FEBRUARY 16, 2023 STATUS CONFERENCE

On February 1, 2023, Plaintiffs filed an Updated Status Report. Dckt. 56. The Status Reports provides update of the *Bower, et al. v. Priceless Kitchen & Bank, Inc., et al.* State Court litigation (for which there is a settlement that is still be performed and must be completed before dismissal), and *Chekene v. Bowers et al.* State Court litigation (the trial has been continued to March 3, 2023).

Plaintiffs request that this Status Conference be continued at least six months to allow the State Court Actions to go to trial.

At the Status Conference, **XXXXXXX**

SUBCHAPTER V

Debtor's Atty: David C. Johnston

Notes:

Continued from 10/27/22

Operating Reports filed: 10/27/22; 11/21/22

[DCJ-2] Order Approving Employment of Attorney for Debtor in Possession filed 10/28/22 [Dckt 43]

Plan of Reorganization for Small Business Under Chapter 11 filed 11/27/22 [Dckt 50]; Order Setting Confirmation Hearing and Related Deadlines filed 11/29/22 [Dckt 51]

U.S. Trustee Report at 341 Meeting lodged 12/2/22

[DCJ-3] *Ex Parte* Application to Limit Notice of Hearing on Confirmation of Plan and Related Deadlines filed 12/6/22 [Dckt 52]; Order granting filed 12/9/22 [Dckt 57]

U.S. Trustee Report at 341 Meeting lodged 12/12/22

U.S. Trustee Report at 341 Meeting lodged 1/9/23

Order Continuing Confirmation Hearing and Extending Deadlines for Ballots, Objections, and Related Matters filed 1/24/23 [Dckt 63]; Confirmation hearing to be held 4/6/23 at 2:00 p.m.

<b>The Status Conference is continued to 2:00 p.m. on <span style="color: red;">xxxxxxx</span>, 2023</b>
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**FEBRUARY 18, 2023 STATUS CONFERENCE**

On November 27, 2022, Debtor/Debtor in Possession filed its Subchapter V Small business Plan. Dckt. 50. The confirmation hearing has been continued to April 6, 2023. Order, Dckt. 63. Civil Minutes, Dckt. 65. This continuance was requested by the Debtor/Debtor in Possession, Subchapter V Trustee, and other parties in interest. Dckt. 61.

On February 10, 2023, Ally Bank filed a Motion for Relief From the Automatic Stay. Dckt. 68. The Motion relates to collateral identified as a Dodge Grand Caravan Passenger Minivan.

On February 13, 2023, the Debtor/Debtor in Possession filed the Monthly Operating Report for November 2022. This showed a middle five figure negative cash flow for the November 2022.

On February 13, 2023, the Debtor/Debtor in Possession also filed the Monthly Operating Report for December 2022. Dckt .75. This shows the cash flow for December 2022 is only (\$100).

At the Status Conference, **XXXXXXX**