UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

February 17, 2022 at 2:00 p.m.

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1. 21-90402-E-7 GURMEET SUNER
21-9015 CAE-1
BMO HARRIS BANK N.A. V. SUNER

STATUS CONFERENCE RE: COMPLAINT
12-7-21 [1]

Plaintiff's Atty: Raffi Khatchadourian
Defendant's Atty: Nicholas Wajda

Adv. Filed: 12/7/21
Answer: 1/11/11

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

Notes:
Joint Status Conference Report filed 2/2/22 [Dckt 10]

Discovery Plan filed 2/4/22 [Dckt 11]

The Status Conference is ~~concluded and removed from the Calendar.~~

SUMMARY OF COMPLAINT

The Complaint filed by BMO Harris Bank, N.A. ("Plaintiff"), Dckt. 1, asserts claims for nondischargeability of debt pursuant to 11 U.S.C. § 523(a)(2)(A), (4), and (6). The basis for the nondischargeability of debt include the following. Gurmeet Suner, the Defendant-Debtor, guaranteed an obligation of his business, GTX, LLC. The business defaulted on the obligations and Defendant-Debtor defaulted on his guarantee. Several vehicles secured these obligations that Defendant-Debtor guaranteed, and Defendant-Debtor did not list on his personal bankruptcy schedules the vehicles that GTX, LLC had purchased and which secured the GTX, LLC obligation.

Plaintiff was given relief from the automatic stay to recover its collateral, the two vehicles, but Defendant-Debtor refused to relinquish possession. When Plaintiff recovered the vehicles, there were not operational and had been stripped of parts.

For the First Claim for Relief, it is asserted that the obligations owing on the credit obtained by GTX, LLC and personally guaranteed by Defendant-Debtor are nondischargeable pursuant to 11 U.S.C. § 523(a)(6). It is asserted that the Defendant-Debtor did not have the two vehicles insured. It is alleged that Defendant-Debtor represented to Plaintiff that he would have the vehicles insured as part of obtaining the loans for GTX, LLC in 2015. The Complaint states that the credit was not obtained from Plaintiff, but other persons who subsequently assigned the notes and security interests to Plaintiff. It is asserted that the unpaid balance due on the two credit obligations of GTX, LLC, which Defendant-Debtor has personally guaranteed, are nondischargeable due to fraud.

The Second Cause of Action asserts that the balance due on the personally guaranteed credit obligations are nondischargeable pursuant to 11 U.S.C. § 523(a)(4) due to the failure to insure the vehicles and by absconding with the vehicles.

The Third Cause of Action is that the outstanding balance of the credit obligations personally guaranteed by Defendant-Debtor are nondischargeable pursuant to 11 U.S.C. § 523(a)(2) for fraud, Defendant-Debtor misrepresenting that Defendant-Debtor and GTX, LLC would pay the credit obligation, maintain possession and control of the vehicles, and insure the vehicles. Plaintiff's assignors, who extended the credit, relied upon the misrepresentations, and if the truth had been told they would not have extended the credit to GTX, LLC.

SUMMARY OF ANSWER

Gurmeet Singh Suner, Defendant-Debtor) have filed an Answer, Dckt. 8 , admitting and denying specific allegations. In Affirmative Defense 4, Defendant-Debtor asserts that he has never been an owner of the vehicles, that he personally was not obligated to insure or keep the vehicles, and that he was an officer of GTX, LLC, which entity was the owner of the vehicles.

MOTION FOR RELIEF FROM STAY

In the Complaint, Plaintiff includes the information that it obtained relief from the stay in Defendant-Debtor's bankruptcy case so it could obtain possession of the vehicles (its collateral). In the Motion, Plaintiff identifies that the assignors of the two credit obligations made the loans to GTX, LLC. 21-90402; Motion, Dckt. 11.. In the Motion, as in the Complaint, Plaintiff states that representations made by Defendant-Debtor in obtaining the loan were made to "Plaintiff." It is not clear how Plaintiff was involved in the transactions for loans made by its predecessors in interest. However, in looking at the exhibits filed with the Motion, there are loan modification agreements between Plaintiff and GTX, LLC, for which Defendant-Debtor signed a consent to the modification as a guarantor of the obligations. *Id.*; Exhibits Dckt. 14.

In reading the Motion, it is clear to the court that the statement that Defendant-Debtor did not list the vehicles as assets in his bankruptcy case is identifying that Defendant-Debtor did not claim to own the vehicles, not that Defendant-Debtor failed to list assets that he owned. The Exhibits to the Motion for Relief include copies of the Certificates of Title for both vehicles, which list GTS, LLC as the registered owner. *Id.*, Dckt. 14.

In the Declaration of Bryan Schrepel, a Litigation Specialist for Plaintiff, he testifies under penalty of perjury that Defendant-Debtor made representations to Plaintiff in 2015 for Plaintiff Loan Agreement no. 1, which is one of the vehicles loans. *Id.*; Declaration ¶ 7, Dckt. 13. Mr. Schrepel identifies Exhibit 1 as being Loan Agreement No. 1 that Plaintiff entered into. Loan Agreement No. 1 is dated May 12, 2015, and the parties to Loan Agreement No. 1 are GE Capital Commercial, Inc, and GTX, LLC. *Id.*; Exhibit 1, Dckt. 14. Plaintiff is not a party to the 2015 Loan Agreement No. 1. Plaintiff is a party to a 2016 Modification of Loan Agreement No. 1.

The same testimony under penalty of perjury that representations were made to Plaintiff to enter into Loan Agreement No.2. *Id.*; Declaration, ¶ 18; Dckt. 13. Loan Agreement No. 2 is provided as Exhibit 10 in support of the Motion for Relief, and the parties to Loan Agreement No. 2 are Transportation Truck and Trailer Solutions, LLC and GTX, LLC. *Id.*; Dckt. 14.

JOINT STATUS CONFERENCE STATEMENT

The Parties filed a Joint Status Conference Statement on February 2, 2022. Dckt. 10. They advise the court that discovery deadlines should be set and dispositive motions to be heard, with their recommended deadlines in the Discovery Plan. They request that the court continue the Status Conference for 120 days so the Parties may discuss potential settlement.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff BMO Harris Bank, N.A. alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 11 U.S.C. § 523. Plaintiff does not state whether this Adversary Proceeding is a core matter proceeding. Issues of dischargeability of debt arise under the Bankruptcy Code, are not rights that existed under common law, and are core matter proceedings (28 U.S.C. § 157(b)(2)(I). In the Answer, Defendant-Debtor Gurmeet Singh Suner admits the allegations of jurisdiction, but does not address whether an action to determine a debt is nondischargeable. Answer ¶ 1; Dckt. 8. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

a. Plaintiff BMO Harris Bank, N.A. alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 11 U.S.C. § 523. Plaintiff does not state whether this Adversary Proceeding is a core matter proceeding. Issues of dischargeability of debt arise under the Bankruptcy Code, are not rights that existed under common law, and are core matter proceedings (28 U.S.C. § 157(b)(2)(I). In the Answer, Defendant-Debtor Gurmeet Singh Suner admits the allegations of jurisdiction, but does not address whether an action to determine a debt is nondischargeable. Answer ¶ 1; Dckt. 8. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued in this Adversary Proceeding are "related to" matters, the

parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

b. Initial Disclosures shall be made on or before **February 16, 2021**.

c. Expert Witnesses shall be disclosed on or before **xxxxxxx , 2022**, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before **xxxxxxx, 2022**.

d. The scope of discovery in this Adversary Proceeding has been limited by the agreement of the Parties to:

i. The intent of the parties (hereinafter referred as "Plaintiff" or "Defendant" respectively or the "parties" collectively) with respect to the subject Loan & Security Agreement and the collateral which is the subject of this Action.\

ii. The respective burdens of the signatory parties under the terms and conditions of the Loan & Security Agreement.\

iii. The communications between the Parties regarding the Loan & Security Agreement and the collateral which is the subject of this Action.

iv. Whether the Defendant's alleged conduct in connection with the Loan & Security Agreement and the collateral which is the subject of this Action constitutes a breach of the terms of the Loan & Security Agreement and any other wrongdoing.

v. The extent of Defendant's liability, including but not limited to the non-dischargeability of Defendant's debt, to Plaintiff for the Loan & Security Agreement and the collateral which is the subject of this Action.

vi. The measure of Plaintiff's damages.

vii. Whether all necessary and/or indispensable parties have been joined in this action.

viii. The whereabouts of the collateral which is the subject of this Action.

ix. A maximum of 75 interrogatories by each party to any other party; responses thereto due 35 days after date of service, unless the undersigned counsel stipulate to a longer period.

x. A maximum of 75 requests for admission by each party to any other party; responses thereto due 35 days after date of service.

xi. A maximum of 10 depositions by Plaintiff and a maximum of 10 depositions by Defendant; this shall not include witness interviews conducted by either

or both Parties, whether or not said interviews, if any, are transcribed. Each deposition is limited to a maximum duration, not including breaks, of ten (10) hours unless extended by agreement of the Parties and their counsel.

xii. Supplementations under Bankruptcy Rule 7026 and Federal Rule of Civil Procedure 26(e) are to be made by the affected party to opposing party within thirty (30) days of discovery of same by the affected party.

e. Plaintiff and Defendant are each allowed until July 1, 2022, to join additional parties and amend the pleadings.

f. Discovery closes, including the hearing of all discovery motions, on **June 16, 2022**.

g. Dispositive Motions shall be heard before **August 5, 2022**.

h. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on September 8 , 2022.**

2. **20-90210-E-11** **JOHN YAP AND IRENE LOKE** **STATUS CONFERENCE RE:**
21-9016 **CAE-1** **COMPLAINT**
YAP ET AL V. PNC FINANCIAL SERVICES GROUP, INC. ET AL **12-10-21 [1]**

Plaintiff's Atty: Arasto Farsad, Nancy W. Weng
Defendant's Atty: unknown

Adv. Filed: 12/10/21
Answer: none

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

Notes:
Request for Entry of Default by Plaintiff(s) filed 2/5/22 [Dckt 9]; Memorandum re Default Papers filed 2/10/22 [Dckt 11]

[CAE-1] Status Conference Statement [Plaintiff/Debtors] filed 2/8/22 [Dckt 10]

The Status Conference is xxxxxxx

FEBRUARY 17, 2022 STATUS CONFERENCE

Plaintiff-Debtor John Yap and Irene Loke filed a Complaint to determine the extent, validity, and priority of lien (Quiet Title) on December 10, 2021. Dckt. 1 The named defendants in the Complaint are PNC Financial Services Group, Inc. and Dreambuilder Investments, LLC. Plaintiff-Debtor states that an agreement was reached with Bank of New York Mellon, the senior lien holder on the 1106 Lovell Avenue, Campbell, California property (the "Property") that it had a value of $900,000.

It is alleged that PNC Financial Services Group, Inc. ("PNC") has a claim in the amount of $154,950 secured by a second deed of trust recorded against the Property.

In their bankruptcy case, Plaintiff-Debtor filed a Motion to Value Collateral on April 9, 2020. 20-90210; Motion, Dckt. 33. The Motion sought to value the secured claims of Bank of New York Mellon and PNC. The Court's Order on the Motion to Value determines:

a. The value of the Property is $900,000.00.

b. The Stipulation with Bank of New York Mellon does not modify Bank of New York Mellon's claim in the bankruptcy case.

Id.; Order, Dckt. 139.

While providing a value, as agreed between the Bank of New York Mellon and Plaintiff-Debtor, the order does not value pursuant to 11 U.S.C. § 506(a) the secured claim of PNC. The Order, prepared by Plaintiff-Debtor's counsel only references the secured claim of Bank of New York Mellon, and states that it is not altered.

The Complaint then states that in Debtor's confirmed plan, provision is made for payment of the PNC claim in Class 2 of the Plan with a "3% payout."

The prayer requests a judgment "voiding the lien of PNC/Dreambuilders."

The Confirmed Chapter 11 Plan, dated April 15, 2021, provides for the treatment of the PNC claim as an unsecured claim as follows:

The PNC Financial Services Group, Inc./ Dreambuilder Investments, LLC (No Claim Filed) (Motion to Value at Docket # 33 with a Stipulation at docket # 139 for a $900,000.00 valuation)[3]	$154,950.00	N	$7,747.50	$64.56
	$1,414,681.03		$68,651.20	$572.10

Allowed claims of general unsecured creditors (including allowed claims of creditors whose executory contracts or unexpired leases are being rejected under this Plan) shall be paid as follows:

Pot Plan. Creditors will receive a pro-rata share of a fund totaling **$68,651.20, created by Debtor's payment of $572.10 per month for a period of 120 months, starting Effective Date**. Pro-rata means the entire amount of the fund divided by the entire amount owed to creditors with allowed claims in this class.

Creditors in this class may not take any collection action against Debtor so long as Debtor is not in material default under the Plan (defined in Part 6(c)). **This class is impaired and is entitled to vote on confirmation of the Plan.** Debtor has indicated above whether a particular claim is disputed.

20-90210; Confirmation Order, Plan attached, p. 10-11 of Plan, Dckt. 229.

In the Prayer Plaintiff-Debtor now seeks an order through the Complaint in the Adversary Proceeding ""Finding" that the second deed of trust be wholly unsecured and treated as an unsecured claim that was discharged. Complaint, p. 5:13-15; Dckt. 1. With respect to determining the amount of a secured claim, such determination is made pursuant to 11 U.S.C. § 506(a). The court cannot identify an order determining the amount of PNC's secured claim. The Complaint also requests an "order" finding that second deed of trust is of no force and effect. Such relief is commonly obtained by a judgment in a quiet title action.

At the Status Conference, the court addressed with Plaintiff's counsel how and what relief could be granted in this Adversary Proceeding in light of the order entered concerning the Property and confirmed Chapter 11 Plan.

In the Civil Minutes for the hearing on the Motion to Value (DCN: AF-3), the court states that the secured claim of New York Mellon is valued at $900,000. 20-90210; Civil Minutes, Dckt. 153. In the Civil Minutes, the court makes Federal Rule of Civil Procedure 20 and Federal Rule of Bankruptcy Procedure 7020 effective for the Motion to Value, thereby allowing for the joinder of multiple parties in the one Contested Matter. *Id*., p. 2.

In discussing the Motion and how it related to PNC, at the first hearing on the Motion the court states in the Civil Minutes:

> There is a significant missing piece to the puzzle - who is the creditor who actually holds the note secured by the second deed of trust. It could be PNC Financial Services Group, Inc. Or, it could be Dreambuilder Investments, LLC. No evidence of the record title is provided and it appears that no discovery has been done for Debtor in Possession to identify the real party in interest.

Id., p. 5. Then, the court addresses the Declaration of Nancy Weng, Esq., counsel for Debtor and her testimony concerning the owner of the note secured by the second deed of trust:

> Ms. Weng has done her due diligence and has reviewed title, the recorder's office and Debtor's billing statements. She has also researched the FDIC website showing that PNC acquired National City Bank without government assistance and a copy of this information is filed as Exhibit A (Dckt. 75). Ms. Weng has also researched the Federal Research showing that PNC Bank is a "wholly-owned indirect subsidiary of the PNC Financial Services Group, Inc., and a copy of the research is attached as Exhibit B (Dckt. 75). While the title report Ms. Weng reviewed only lists National City Bank as the originating lender with no recorded assignments to PNC or any other entity, her research indicates that National City Bank merged with PNC Bank in 2009. Thus, she caused service to both via certified mail. She has not received any correspondence or heard from either National City Bank or PNC.

Id. Thus, Debtor and Debtor's counsel addressed for the court the apparent ownership of the note and deed of trust.

From the balance of the Civil Minutes, PNC and the valuation of its secured claim disappear and were not determined by the court. While Debtor achieved a Stipulation with Bank of New York Mellon and had the order entered with respect to its secured claim, it appears the PNC claim has been left out of the order, and that portion of the relief not addressed by the court.

At the Status Conference, **XXXXXXX**

3. 20-90479-E-12 CAE-1 **JOE MACHADO** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 7-9-20 [1]**

Debtor's Atty: David C. Johnston

Notes:
Continued from 12/2/21

The Status Conference is xxxxxxx

FEBRUARY 17, 2022 STATUS CONFERENCE

No updated status report has been filed by any party in interest. At the Status Conference, xxxxxxx

DECEMBER 2, 2021 STATUS CONFERENCE

On November 26, 2021, Joe Machado, the Debtor, as the Plan Administrator, filed a Status Report. Dckt. 130. In it the Debtor/Plan Administrator under the terms of the confirmed Plan escrow closed for the sale of Debtor's ranch on or about June 4, 2021. Further that the Debtor/Plan Administrator has sold some the non-exempt farm equipment required to be sold under the confirmed Plan, and has transmitted the $18,000 in sales proceeds to the Chapter 12 Trustee.

Michael Meyer, the Chapter 12 Trustee, filed his Status Report (Dckt. 131) which includes a report of the personal property to be sold and identifies the personal property which has been sold (6 of the 35 items to be sold).

As did Debtor/Plan Administrator's counsel, the Trustee also notes that if Debtor can get the personal property sold in 2021, then the monies can be distributed as soon as the 2021 tax returns are prepared. However, if the sales do not occur until sometime in 2022, then the full distributions on unsecured claims will have to wait until the 2022 tax returns are paid. The Trustee cites to 11 U.S.C. § 1232 which allows the Debtor/Plan Administrator to treat the government claim (post-petition IRS taxes) as a general unsecured claim, so long as that obligation arises prior to discharge.

The Trustee suggests that the court, in addition to Debtor/Plan Administrator's counsel and the Trustee, impress upon the Debtor/Plan Administrator the need to get the personal property sold in 2021 so the Plan may be promptly completed, the monies disbursed, and there not be further substantial other administrative expenses that would drain the unsecured claims fund (in addition to unnecessarily delaying the disbursement to creditors with unsecured claims).

At the hearing, counsel for the Debtor/Plan Administrator reported that Debtor has sold a number of items, with a $30,000 in proceeds being delivered to the Chapter 12 Trustee this week. There is only a mower left to be sold.

4. **19-90382-E-7** **TRACY SMITH** **CONTINUED STATUS CONFERENCE RE:**
19-9012 **CAE-1** **COMPLAINT**
ALVAREZ V. SMITH ET AL **7-26-19 [1]**

Plaintiff's Atty: Shane Reich
Defendant's Atty:
Peter G. Macaluso [Tracy Emery Smith]
Unknown [Sharp Investor, Inc.]

Adv. Filed: 7/26/19
Answer: None

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

Notes:
Continued from 12/2/21

[CAE-1] Defendant's Second Post Judgment Status Conference Statement filed 2/7/22 [Dckt 69]

The Status Conference is xxxxxxx.

FEBRUARY 17, 2022 STATUS CONFERENCE

On February 7, 2022, Judgment Debtor Tracy Smith, filed his Second Post Judgment Status Conference Statement. In it he states that the Judgment has been entered in this Adversary Proceeding, and requests that the file now be closed.

The Judgment in this Adversary Proceeding is a monetary one for $19,000.00, and also a Mandatory Injunction for Judgment Debtor to turn over a Mobile Home. The Status Report does not state that Judgment Debtor has turned over the property as ordered by this court.

The Judgment provides for alternative relief in the form of a $93,643.84 if the specific performance required by the Mandatory Injunction is not or can not be done.

Finally, the Judgement determines that the monetary amounts are nondischargeable.

At the Status Conference, xxxxxxx

FINAL RULINGS

5. 19-24134-E-7 FELIX/DEBORAH KIARSIS
CONTINUED STATUS CONFERENCE RE:

21-2036 CAE-1
FARRIS V. CARUSO ET AL
COMPLAINT
6-1-21 [1]

Final Ruling: No appearance at the February 17, 2022 Status Conference is required.

Plaintiff's Atty: J. Russell Cunningham
Defendant's Atty:
Shanna M. Kaminiski, Timothy W. Evanston [Troy Caruso; Radium2 Capital, LLC; Boris Yankovich]
Bernard J. Lomberg [Wells Fargo Bank, N.A.]

Adv. Filed: 6/1/21
Reissued Summons: 6/14/21
Answer:
7/28/21 [Troy Caruso; Radium2 Capital, LLC; Boris Yankovich]
7/28/21 [Wells Fargo Bank, N.A.]
Cross-Claim filed: 7/28/21 [by Wells Fargo Bank, N.A.]
Answer: none

Nature of Action:
Recovery of money/property - preference

Notes:
Continued from 1/5/22. The Trustee waiting to receive settlement funds requested a continuance.

[DNL-1] Request for an Order Dismissing Radium Defendants From the Trustee's Claims with Prejudice filed 2/1/22 [Dckt 33]; Order granting filed 2/4/22 [Dckt 36]

The court having dismissed all Defendants, the stipulation resolving all claims having been approved by the court, and the court dismissing this adversary proceeding (Order, Dckt. 42), **the Status Conference is concluded and removed from the Calendar.**