

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

February 19, 2014 at 2:30 p.m.

1. [12-41713](#)-E-11 MARVIN/ARNELLE BROWN

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
12-20-12 [[1](#)]

Debtors' Atty: Stephen M. Reynolds

Final Ruling: The court having approved the Disclosure Statement in this case, **the Status Conference is continued to 3:00 p.m. on April 3, 2014**, to be conducted in conjunction with the hearing on confirmation of the proposed Chapter 11 Plan.

Notes:

Continued from 11/13/13

[RLC-1] Order denying Motion to Value Collateral of Wells Fargo Bank, N.A. filed 11/23/13 [Dckt 108]

[RLC-2] Motion for Order Valuing Collateral or in the Alternative Objection to Claim [Bank of America, N.A.] filed 11/26/13 [Dckt 110]; Order denying filed 1/23/14 [Dckt 130]

[RLC-3] Motion for Order Valuing Collateral [Bank of America, N.A.] filed 2/11/14 [Dckt 134], set for hearing 3/13/14 at 10:30 a.m.

Combined Plan of Reorganization and Disclosure Statement as Amended January 9, 2014 filed 1/17/14 [Dckt 126]

[RHS-1] Order Approving Disclosure Statement filed 2/12/14 [Dckt 139], set for hearing 4/3/14 at 3:00 p.m.

2. [14-20352-E-11](#) PATRICK GREENWELL

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

Debtor's Atty: Patrick B. Greenwell

Notes:

Status Report filed 2/3/14 [Dckt 25]

Operating Report filed: 2/4/14

STATUS CONFERENCE SUMMARY

2014 February 19 Status Conference

In his Status Conference Report, the Debtor in Possession notifies the court that there are only two general unsecured claims - the federal and state income taxing agencies. The Debtor in Possession intends to use a combined Disclosure Statement and Plan due to the very limited number of creditors and the nature of their claims. The Estate income is generated by the Debtor operating his professional corporation.

For creditors, there is one secured claim (airplane purchased as an investment). The two taxing agencies have non-priority general unsecured claims. There are no other creditors listed on the Schedules.

3. [13-35954-E-7](#) ICING ON THE CUPCAKE,
LLC

PRELIMINARY STATUS CONFERENCE
RE: VOLUNTARY PETITION
12-20-13 [[1](#)]

Final Ruling: The Case having been converted to one under Chapter 7, the Status Conference is removed from the calendar.

4. [09-46360-E-13](#) MARGUERITE GALVEZ
[13-2313](#)
GALVEZ V. WELLS FARGO BANK,
N.A.

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
10-9-13 [[1](#)]

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: David M. Newman; Matthew J. Pero

Adv. Filed: 10/9/13
Answer: 1/6/14

Nature of Action:
Recovery of money/property - other
Other (e.g. other actions that would have been brought in state court if
unrelated to bankruptcy case)

Notes:

Continued from 12/4/13. Motion to Dismiss Complaint dismissed without
prejudice; Wells Fargo Bank, N.A. to file and serve answer or other responsive
pleading on or before 1/6/14

Answer filed 1/6/14 [Dckt 21]

Joint Status Conference Report - Discovery Plan filed 2/3/14 [Dckt 26]

SUMMARY OF COMPLAINT

The complain alleges names Wells Fargo Bank, N.A. as the defendant, which is
asserted to be a creditor in the Plaintiff-Debtors Chapter 13 bankruptcy case.
It is alleged that the Debtors residence was encumbered by two deeds of trust
securing obligations owed to World Savings. The Complaint identifies the
creditor to whom the debts were owed as World Savings (now Wells Fargo Bank,
N.A.). It is further alleged that the court has determined that the claim
secured by the second deed of trust has a value of \$0.00. The Plaintiff-Debtor
has completed her Chapter 13 Plan and has received her discharge.

The following causes of action are alleged:

First Cause of Action: Judgment ratifying the courts order determining
the secured claim to have a value of \$0.00.

Second Cause of Action: Judgment ratifying the nature and extent of
the SECOND DEED OF TRUST on the (Real) Property as determined by [the court in
the January 17, 2013 Order].

Third Cause of Action: Judgment determining that the Second Deed of
Trust, upon completion of the Chapter 13 Plan, has been extinguished.

Fourth Cause of Action: Violation of California Civil Code § 2941(d)
damages for Defendants failure to reconvey the Second Deed of Trust upon
completion of the Chapter 13 Plan.

Fifth Cause of Action: Judgment for violation of the California Rosenthal Fair Debt Collection Practices Act based on, Defendant calling the Plaintiff-Debtor, who is represented by counsel, demanding payment of the debt which has now been discharged in bankruptcy.

Defendant sending notices to Plaintiff-Debtor stating that an amount is owed to be paid for the debt which has been discharged in bankruptcy.

Defendant refusing to reconvey the Second Deed of Trust notwithstanding the valuation of the secured claim and the completion of the Plaintiff-Debtors Chapter 13 Plan.

Fifth Cause of Action: Violation of the California Constitutional Right to Privacy by Defendant contacting Plaintiff-Debtor for payment of the debt which has been discharged in bankruptcy.

Seventh Cause of Action: Violation of the Federal Fair Credit Reporting Act by Defendant for reporting derogatory information and failure to notify the consumer reporting agencies that the Plaintiff-Debtors dispute the reported information.

SUMMARY OF ANSWER

Defendant Wells Fargo Bank, N.A. admits and denies specific allegations in the Complaint. The affirmative defenses include a Federal Preemption defense based on 12 U.S.C. §§ 1461 et seq., including 12 U.S.C. § 1464 and Regulations 12 C.F.R. § 560.2.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶¶ 1,2, Dckt. 1. In its answer, Wells Fargo Bank, N.A. contends that it is without sufficient information or belief as to the federal jurisdiction and denies the allegations in paragraph 1 of the Complaint. Answer ¶¶ 1,2.

The Federal Rules of Bankruptcy Procedure do not allow a party to ignore the issue of federal court jurisdiction. Federal Rule of Bankruptcy Procedure 7012(b) requires that the responsible pleading admit or deny that the allegation is a core or non-core proceeding. Further, the court is unsure how the Defendant is has neither information or belief as to whether there is Constitutional Article III federal court jurisdiction for this Adversary Proceeding. **To the extent that any issues 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.**

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

- a. The Plaintiff 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, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2). Complaint, ¶¶ 1,2, Dckt. 1. **To the extent that any**

issues in this Adversary Proceeding are related to proceedings, 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 claims and issues in this Adversary Proceeding referred to the bankruptcy court.

b. Initial Disclosures shall be made on or before February 25, 2014.

c. Expert Witnesses shall be disclosed on or before July 1, 2014, and Expert Witness Reports, if any, shall be exchanged on or before July 1, 2014.

d. Non-Expert Discovery closes, including the hearing of all discovery motions, on July 1, 2014.

e. Dispositive Motions shall be heard before August 29, 2014.

f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at 2:30 p.m. on October 15, 2014.

5. 11-47181-E-7 ARTHURO AGUILAR
13-2391
SCOTT V. AGUILAR, JR.

STATUS CONFERENCE RE: COMPLAINT
12-20-13 [[1](#)]

Plaintiff's Atty: Gregory Wayland
Defendant's Atty: Scott A. CoBen

Adv. Filed: 12/20/13
Answer: none

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

Final Ruling: The Defendant having filed a Motion to Dismiss which is set for hear, **the Status Conference is continued to 1:30 p.m. on February 27, 2014**, to be heard in conjunction with that Motion. No opposition to the Motion to Dismiss appear on the court's docket as of February 15, 2014. Opposition was required to be filed on or before February 13, 2014 (14 days before February 27, 2014 hearing, Local Bankruptcy Rule 9014-1(f)(1)).

Notes:

[SAC-1] Motion to Dismiss Complaint for Failure to State a Claim Upon Which Relief Can Be Granted filed 1/10/14 [Dckt 6], set for hearing 2/27/14 at 1:30 p.m.

6. 12-36884-E-7 JENNY PETTENGILL
MF-2 Richard A. Hall

CONTINUED MOTION TO APPROVE
STIPULATION TO CONSOLIDATION
AND CONDUCT OF PROCEEDINGS RE
CLAIMS AGAINST CORRIGAN FINANCE
LIMITED, COUNTERCLAIMS AND
LEASING AND SALE OF REAL

PROPERTY
12-17-13 [[166](#)]

Final Ruling: The court having approved the Stipulation to Consolidation and Conduct of Proceedings Re Claims Against Corrigan Finance Limited, Counterclaims and Leasing and Sale of Real Property, by Order signed February 18, 2014, the hearing on this matter is removed from the calendar.

7. [13-21893](#)-E-7 STANISLAV LAZUTKINE CONTINUED MOTION TO APPROVE
MF-2 Andrew B. Reisinger STIPULATION TO CONSOLIDATION
AND CONDUCT OF PROCEEDINGS RE:
CLAIMS AGAINST CORRIGAN FINANCE
LIMITED, COUNTERCLAIMS AND
LEASING AND SALE OF REAL
PROPERTY
12-17-13 [[92](#)]

Final Ruling: The court having approved the Stipulation to Consolidation and Conduct of Proceedings Re Claims Against Corrigan Finance Limited, Counterclaims and Leasing and Sale of Real Property, by Order signed February 18, 2014, the hearing on this matter is removed from the calendar.

8. [11-37725-E-13](#) THAN PHUNG
[11-2684](#)
ZHANG V. PHUNG ET AL

MOTION RE: JURISDICTION
1-14-14 [[129](#)]

Notice Provided: The Order Setting Hearing on Motion Re Jurisdiction was served by the Clerk of the Court through the Bankruptcy Noticing Center on Plaintiff, Defendant and Office of the U.S. Trustee on February 11, 2014. 8 days notice of the hearing was provided.

Tentative Ruling: The court's tentative ruling is to deny the Motion to Dismiss the Adversary Proceeding.

MOTION RE: JURISDICTION

On January 14, 2014, Defendants Than Boi Phung and Ace Auto Wrecking ("Defendants") filed a "Memorandum Re: Jurisdiction" arguing that this case should be dismissed on jurisdictional grounds. FN.1. Defendants argue that the underlying bankruptcy case, No. 11-37725-E-13 has been dismissed and therefore, the court should abstain from hearing this case.

FN.1. The clerk of the court issued a Memo to File Re: Calendar Correction on February 7, 2014, stating that the Motion had not been calendared correctly and therefore, was never placed on the court's calendar. Dckt. 139. The court issued an Order Setting Hearing on Motion Re Jurisdiction to set the matter for the date and time originally noticed. Dckt. 141.

OPPOSITION

On February 5, 2014, Plaintiff Xu Ling Zhang ("Plaintiff") filed an opposition to the Motion, arguing that the court had jurisdiction and that the factors of judicial economy, convenience, fairness and comity weigh in favor of the court retaining jurisdiction to hear the case.

DISCUSSION

Jurisdiction was granted to the district courts and bankruptcy courts to the extent that issues arise under the Bankruptcy Code, in the bankruptcy case (such as administration of an asset), or relate to the (administration or outcome of a) bankruptcy case. 28 U.S.C. § 1334(a) and (b). However, recognizing this broad reach of federal court jurisdiction, Congress also provided that federal judges may, and in some situations are required to, abstain from hearing matters though federal court jurisdiction under § 1334 may exist. See 28 U.S.C. § 1334(c).

As provided in 28 U.S.C. § 1334(c)(1),

(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity

with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

A bankruptcy judge's exercise of the federal judicial power is considered in light of core and non-core (related to) jurisdiction created by Congress and limited by the United States Constitution. See *Stern v. Marshall*, 564 U.S. ____ , 131 S. Ct. 2594 (2011). This court has previously addressed the issue of when a bankruptcy court judge should utilize federal bankruptcy jurisdiction to adjudicate issues between parties which determination will have no bearing on the bankruptcy case and do not concern Bankruptcy Code issues. See *Pineda v. Bank of America, N.A. (In re Pineda)*, 2011 Bankr. LEXIS 5609 (Bankr. E.D. Cal 2011), *affrm. Pineda v. Bank of America, N.A. (In re Pineda)*, 2013 Bankr. LEXIS 1888 (B.A.P. 9th Cir. 2013). Such jurisdiction should be carefully used by the federal courts to the extent necessary and appropriate to effectuate the goals, policies, and rights relating to bankruptcy cases, and not as a device to usurp state courts of general jurisdiction or the district as the trial court for federal matter and diversity jurisdiction.

Before a federal court exercises its jurisdiction over parties, it must determine that there is a sufficient "case" or "controversy as required by the United States Constitution, Article III, Section 2, Clause 1, which states,

Sec. 2, Cl 1. Subjects of jurisdiction.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States,--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

As stated by the Ninth Circuit Court of Appeals in *Southern Pacific Company v. McAdoo*, 82 F.2d 121, 121-122 (9th Cir. 1936),

Unless this proceeding was within the original jurisdiction of the District Court, it could not be brought within that jurisdiction by removal. *In re Winn*, 213 U.S. 458, 464, 29 S. Ct. 515, 53 L. Ed. 873. Unless it presents a "case" or "controversy," within the meaning of section 2, art. 3 of the Constitution, it is not within the jurisdiction of any federal court. *Nashville, C. & St. L. Ry. Co. v. Wallace*, 288 U.S. 249, 259, 53 S. Ct. 345, 77 L. Ed. 730, 87 A.L.R. 1191; *Willing v. Chicago Auditorium Ass'n*, 277 U.S. 274, 289, 48 S. Ct. 507, 72 L. Ed. 880; *Liberty Warehouse Co. v. Grannis*, 273 U.S. 70, 74, 47 S. Ct. 282, 71 L. Ed. 541.

While very broad in scope, the exercise of federal judicial power pursuant to 28 U.S.C. § 1334 is limited to the matters arising under the Bankruptcy Code, arising in the bankruptcy case, or related to the bankruptcy case (which raises it's own constitutional issues as addressed by the Supreme Court in *Stern*).

While serious issues of jurisdiction arise in an adversary proceeding filed in bankruptcy court when an underlying bankruptcy case is dismissed, this does not appear to be an issue in this case for one very significant reason - the Defendant is currently a debtor in a bankruptcy case pending in the Eastern District of California.

The Defendant commenced his voluntary Chapter 13 in case number 11-37725 on July 19, 2011. This Adversary Proceeding was commenced on October 24, 2011. The Parties to the instant Adversary Proceeding and the court have expended substantial time, financial resources, and judicial resources in prosecuting this Adversary Proceeding. The parties engaged in a judicially supervised mediation, which unfortunately did not lead to resolution of this case. Trial is set for July 7th and 8th, 2014 in this court.

Though the Defendant had been making his \$192.00 a month payments in this case (Second Modified Plan, 11-37725 Dckt. 107), On October 11, 2013, the Chapter 13 Trustee filed a notice of default in plan payments. Notice, 11-37725 Dckt. 120. The Defendant did not respond to the Notice of Default and on November 19, 2013 the court filed its order dismissing the Chapter 13 case. This dismissal coincided with the judicially supervised mediation having been concluded without settlement and the Pre-Trial Conference set (having been continued to allow for the judicially supervised mediation) conducted in this Adversary Proceeding to set the trial date.

After having not attempted to cure the default or save his almost 3 year old Chapter 13 case, No. 11-37725, and it being dismissed (it has not yet been closed), the Defendant commenced a new Chapter 13 case on December 30, 2013 - Case No. 13-36132.

On January 14, 2014, fifteen days after the Defendant commenced his new bankruptcy case, the Defendant filed the present motion to dismiss this Adversary Proceeding premised on "There is no estate for the bankruptcy court to litigate because the bankruptcy proceeding has been dismissed." Motion, Dckt. 129. The court cannot identify in the Motion any reference to the Defendant filing a new bankruptcy case a month after he let the prior bankruptcy case being dismissed.

The Plaintiff was required to respond to the Motion to Dismiss this Adversary Proceeding. This Opposition addressed the various contentions that dismissal was proper because there was no bankruptcy case pending for the Defendant. The Opposition asserts and Supporting Declaration provides evidence that counsel for Defendant was notified of Bankruptcy Case 13-36132 on January 14, 2014, the same day the Motion to Dismiss was filed. Though notified on the second bankruptcy case the Motion to Dismiss was not itself dismissed, requiring the time and resources spent by the Plaintiff in presenting the opposition.

On February 12, 2014, the Defendant filed a pleading titled "Notice of Withdrawal of Motion." Dckt. 143. Other than merely stating that the Motion was "Withdrawn," the document does not state any basis for a party unilaterally removing a contested motion matter from the court's calendar. No stipulation executed by all parties in this Adversary Proceeding to dismiss the Motion has been filed.

While it may be a mere coincidence, the "Notice of Withdrawal of Motion" was filed three days after the judge to whom the second bankruptcy case had been assigned transferred the case to this judge. 13-36132.

With respect to federal court jurisdiction, to the extent that any deficiency could have existed, the Defendant has remedied that with the filing of his current bankruptcy case - Case No. 13-36132. No good faith basis has been shown why this Adversary Proceeding should not be prosecuted and trial conducted to determine whether the claim, if any, be determined nondischargeable. The court will realign the case so that it is tied as a core proceeding to Case No. 13-36132.

The Motion to Dismiss is denied.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss filed by Defendants having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied.