

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Modesto, California

February 22, 2024 at 2:00 p.m.

1. 19-90461 -E-7	LORRAINE ESCOBAR	CONTINUED STATUS CONFERENCE RE:
19-9014	CAE-1	AMENDED COMPLAINT
REYES V. ESCOBAR		9-30-19 [25]

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

Adv. Filed: 8/12/19
Answer: 9/4/19
Amd. Answer: 9/6/19
Amd. Cmplt Filed: 9/30/19
Answer: none

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

Notes:
Continued from 6/15/23 by request of the Parties. Plaintiff and Debtor to file a short updated status report on or before 2/1/24 advising the court of any changes in scheduling and whether a further continuance is requested in light of the pending 5/16/24 trial scheduled in the State Court Action.

The Status Conference is XXXXXXX
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FEBRUARY 22, 2024 CONTINUED STATUS CONFERENCE

No updated Status Reports have been filed advising the court of the current status of the litigation in the Los Angeles Superior Court to which this Adversary Proceeding relates. In the last Status Report, as part of a request to continue the Status Conference, the court was advised that the Superior Court Action was set for trial on May 16, 2024.

In the order continuing the prior Status Conference (Dckt. 94), the court ordered the parties to file a short updated status report on or before February 1, 2024, advising the court of any changes in the State Court trial scheduling, and whether a further continuance of the February 22, 2024 Status Conference was requested. No such updated status reports have been filed.

At the Status Conference, **XXXXXXX**

2. 23-90224 -E-11	ALLDRIN ORCHARDS, INC. David Johnston	CONTINUED CONFIRMATION OF PLAN 8-22-23 [36]
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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, Subchapter V Trustee, equity security holders, creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2023. By the court's calculation, 54 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)(1) 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 denied.

February 22, 2024 Hearing

After the prior hearing held on December 7, 2024, the court issued an order setting the following deadlines, information to be provided, and documents to be filed:

IT IS FURTHER ORDERED:

February 22, 2024 at 2:00 p.m.
- Page 2 of 20 -

- A. On or before **December 28, 2024**, the Debtor/Debtor in Possession shall file the Amended Plan and serve a copy of this Order, a copy of the Amended Subchapter V Plan, a ballot for voting on the Amended Subchapter V Plan, and a copy of a notice of the confirmation hearing on the case or standing trustee, the United States Trustee, and all creditors and other parties in interest. Within three (3) days after service of the forgoing Plan Proponent shall file a certificate of service demonstrating compliance with the forgoing.
- B. On or before **January 29, 2024**, all holders of claims and interests as well as other parties in interest entitled to and choosing to vote on the Plan shall transmit their completed ballot stating their acceptance or rejection of the Plan to the Plan Proponent's counsel, or to the Plan Proponent if the Plan Proponent not represented by counsel.
- C. If the Debtor has equity security holders, **January 29, 2024**, is fixed as the date on which either an equity security holder or creditor whose claim is based on a security must be the holder of record of the security in order to be eligible to accept or reject the plan.
- D. On or before **January 29, 2024**, objections to confirmation of the proposed Amended Subchapter V Plan by any creditor or other party in interest shall be filed and served on the Plan Proponent, Plan Proponent's counsel, Subchapter V Trustee, U.S. Trustee, and Committee of Creditors (if ordered appointed in this case) and counsel thereto.
- E. Any creditor with a secured claim that wishes to make an election under 11 U.S.C. § 1111(b)(2) shall do so no later than 21 days after a copy of the Amended Plan, ballot, and Notice of Confirmation Hearing is served.
- F. Copies of all ballots and a ballot tabulation showing the percentages of acceptances and rejections for each impaired class, in number and dollar amount, must be filed on or before **February 12, 2024**. A copy of the ballot tabulation shall be served on the United States Trustee, the Subchapter V Trustee, and any parties in interest objecting to confirmation.
- G. Responses, if any, to objection to confirmation and evidence in support of confirmation shall be filed and served on the objecting party, the Subchapter V Trustee, and the U.S. Trustee on or before **February 12, 2024**.

Order, Docket 50. A review of the docket on February 20, 2024 reveals that not a single document has been filed in compliance with the court's Order.

At the hearing, **XXXXXXX**

A REVIEW OF THE MOTION

Alldrin Orchards, Inc. (“Debtor/Debtor in Possession”) seeks confirmation of its Chapter 11 Subchapter V Plan filed on August 8, 2023. The following dates and deadlines relate to the matter now before the court:

August 22, 2023: Plan filed.

August 25, 2023: Order Setting Confirmation Hearing for October 19, 2023, entered. Order; Dckt. 37.

October 5, 2023: Last day to file Objections to Confirmation. *Id.*

October 5, 2023: Last day to file Replies to Objections, Tabulation of Ballots, and Proof of Service. *Id.*

October 12, 2023: Last Day to file the Tabulation of Ballots. Debtor did not file a Tabulation of Ballots.

Table of Classes

Creditor/Class	Treatment	
Class 1: Priority Claims	Claim Amount	Unknown
	Impairment	Unimpaired
	Priority claims will be paid in full, in cash, upon the effective date. Debtor is not aware of any priority claims.	
Class 2: Ally Bank	Claim Amount	\$44,725.90
	Impairment	Unimpaired
	Debtor states that the class will be paid according to the terms of the original loan documents with no modification by this Plan	
Class 3: Yosemite Production Credit, PCA	Claim Amount	\$2,077,823.32
	Impairment	Impaired
	Debtor states that the class will be paid the sum of \$125,000, the value of the collateral owned by the Debtor, together with an interest of 7% annum from the effective date as follows: \$2,700 on the first day of November 2023, and the first day of each successive month until May 1, 2028. The Debtor notes that because the holder of this claim has substantial collateral owned by other entities, it will receive nothing from the Debtor other than the foregoing.	

Class 4: Non-priority unsecured claims	Claim Amount	Estimated \$522,500
	Impairment	Impaired
	Debtor states that the holders of the claims will receive a dividend of 10% of their claims as follows: \$1,000 on the first day of November 2023, and the first day of each successive month until May 1, 2028.	
Class 5: Equity interests in the Debtor	Claim Amount	Unknown
	Impairment	Unimpaired.
	Debtor states that the present shareholder will retain her shares in the Debtor.	

Debtor intends to make monthly payments on the plan from future income, but has not stated any projected future income. Plan, Dckt. 36.

In the court's Order to Set the Hearing on confirmation of the Plan, the Debtor in Possession was to file with the court a tabulation of ballots no later than seven days before the hearing. Order, Dckt. 37. A review of the docket on October 17, 2023 reveals that Debtor in Possession has not filed a Tabulation of Ballots with the court.

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 Declaration, supporting documents, or authenticated exhibits have been filed in support of confirmation of the Plan. No creditor has objected to the Plan of Reorganization; however, the Debtor in Possession has not presented evidence in support of confirmation. The court is unable to determine whether the elements of the are in compliance with 11 U.S.C. § 1129(a) and cannot confirm the Plan.

Requirements of 11 U.S.C. § 1129(a)

1. The plan complies with the applicable provisions of the Bankruptcy Code Chapter 11, Subchapter V.

Evidence: Dckt. xx, pg. x

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

Evidence: Dckt. xx, pg. x

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

Evidence: Dckt. xx, pg. x

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. xx, pg. x

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.

Only if this section is applicable.

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: Dckt. xx, pg. x

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. xx, pg. x

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 inapplicable 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. xx, pg. x

(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. xx, pg. x

(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. xx, pg. x

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. xx, pg. x

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. xx, pg. x

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: Dckt. xx, pg. x

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: Dckt. xx, pg. x

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.

Review of the Plan

The Debtor in Possession must show that it will have enough cash over the life of the Plan to make the required plan payments. 7 COLLIER ON BANKRUPTCY ¶ 1129.08 (“[T]o confirm its plan, the debtor must also show it can make the payments scheduled in the plan. . .”). Here, the court has not been provided enough evidence from the Debtor in Possession to determine whether it can make plan payments, or whether the Plan has been proposed in good faith and not by any means forbidden by law. In fact, Debtor in Possession admits in its proposed Plan, “[b]ecause Debtor has had no significant operations since the petition was filed, and because it is uncertain what its future income and expenses will be, it is premature to include projections in this Plan.” Plan, Dckt. 36, p. 3. Needless to say, such admission does not provide the court with much confidence that the Plan can be confirmed in its present condition.

At the hearing, counsel for the Debtor/Debtor in Possession reported that there have been no oppositions and no ballots, either yes or no, presented to the Debtor/Debtor in Possession. Counsel for the Debtor/Debtor in Possession discussed the challenges with “bringing in” the 2023 crop and having the financial information relating thereto.

Debtor/Debtor in Possession requested a continuance of the hearing. The Subchapter V Trustee did not oppose such a continuance to afford Debtor/Debtor in Possession the opportunity to get the crop in and have current financial information for the 2023 crop.

December 7, 2023 Hearing

February 22, 2024 at 2:00 p.m.

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A Review of the Docket on December 6, 2023 reveals no new supporting documents or pleadings have been filed in this case to support a Plan's confirmation. At the hearing, counsel for the Debtor/Debtor in Possession reported that the Fall harvest numbers are in and they indicate a profit of around \$290,000 (September - November 2023).

The Internal Revenue Service claim has been amended to be (\$154,611.02), a reduction of approximately (\$500,000) from the earlier filed proof of claim.

The Debtor/Debtor in Possession requested that the hearing be continued to allow Debtor/Debtor in Possession to file an amended plan. Counsel for the Debtor in Possession related the financial information about the current business operations of the Debtor.

The court set the following dates and deadlines:

- A. On or before **December 28, 2024**, the Debtor/Debtor in Possession shall file the Amended Plan and serve a copy of this Order, a copy of the Amended Subchapter V Plan, a ballot for voting on the Amended Subchapter V Plan, and a copy of a notice of the confirmation hearing on the case or standing trustee, the United States Trustee, and all creditors and other parties in interest. Within three (3) days after service of the forgoing Plan Proponent shall file a certificate of service demonstrating compliance with the forgoing.
- B. On or before **January 29, 2024**, all holders of claims and interests as well as other parties in interest entitled to and choosing to vote on the Plan shall transmit their completed ballot stating their acceptance or rejection of the Plan to the Plan Proponent's counsel, or to the Plan Proponent if the Plan Proponent not represented by counsel.
- C. If the Debtor has equity security holders, **January 29, 2024**, is fixed as the date on which either an equity security holder or creditor whose claim is based on a security must be the holder of record of the security in order to be eligible to accept or reject the plan.
- D. On or before **January 29, 2024**, objections to confirmation of the proposed Amended Subchapter V Plan by any creditor or other party in interest shall be filed and served on the Plan Proponent, Plan Proponent's counsel, Subchapter V Trustee, U.S. Trustee, and Committee of Creditors (if ordered appointed in this case) and counsel thereto.
- E. Any creditor with a secured claim that wishes to make an election under 11 U.S.C. § 1111(b)(2) shall do so no later than 21 days after a copy of the Amended Plan, ballot, and Notice of Confirmation Hearing is served.
- F. Copies of all ballots and a ballot tabulation showing the percentages of acceptances and rejections for each impaired class, in number and dollar amount, must be filed on or before **February 12, 2024**. A copy of the ballot tabulation shall be served on the United States Trustee, the Subchapter V Trustee, and any parties in interest objecting to confirmation.

- G. Responses, if any, to objection to confirmation and evidence in support of confirmation shall be filed and served on the objecting party, the Subchapter V Trustee, and the U.S. Trustee on or before **February 12, 2024**.

The court shall issue an 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 Confirmation of Plan filed by Alldrin Orchards, Inc. (“Debtor in Possession”) 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 Confirmation of Plan of Reorganization is denied.

3. [23-90224-E-11](#) **ALLDRIN ORCHARDS, INC.** **CONTINUED STATUS CONFERENCE RE:**
[CAE-1](#) **VOLUNTARY PETITION**
5-22-23 [1]

SUBCHAPTER V

Debtor’s Atty: David C. Johnston

Notes:

Continued from 12/7/23 to be heard in conjunction of the continued hearing on the Motion to Confirm Plan.

The Status Conference is XXXXXXX

FEBRUARY 22, 2024 STATUS CONFERENCE

A review of the Docket reflects that no pleadings, documents, or other information required by this court’s December 11, 2024 Order (Dckt. 50) continuing the hearing on the Confirmation of Debtor/Debtor in Possession’s Plan have been filed.

No updated Status Report has been filed by the Debtor/Debtor in Possession.

At the status conference, **XXXXXXX**

February 22, 2024 at 2:00 p.m.

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DECEMBER 7, 2023 STATUS CONFERENCE

The court having set the continued hearing on the Motion to Confirm the Plan in this case, the Status Conference is continued to that same date and time - 2:00 p.m. on February 22, 2024.

JULY 13, 2023 STATUS CONFERENCE

This Subchapter V case was commenced on May 22, 2023. The Status Conference Report filed by the Debtor/Debtor in Possession states that the business of Debtor is to provide management and cultivation services to other persons who own almond orchards. Debtor's assets of significant value consist of farm equipment.

At the Status Conference, counsel for the Debtor in Possession reported that the First Meeting of Creditors should be concluded shortly.

The Subchapter V Trustee reported that he is reviewing the information provided. He stated that it appears that the IRS claim appears to be due to a clerical issue and that claim should drop away.

4. [21-90378-E-11](#) **MOBREWZ, LLC** **CONTINUED STATUS CONFERENCE RE:**
[CAE-1](#) **VOLUNTARY PETITION**
8-18-21 [\[1\]](#)

SUBCHAPTER V

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

Notes:

Continued from 2/16/23

The Post-Confirmation Status Conference is XXXXXXX
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FEBRUARY 22, 2024 POST-CONFIRMATION STATUS CONFERENCE

No updated Status Conference Report has been filed. On February 16, 2024, the Debtor/Debtor in Possession filed a Profit and Loss Comparison for Calendar Year 2023. Dckt. 119. The information provided on the Profit and Loss Comparison includes:

- A. The Debtor/Debtor in Possession operating under the Subchapter V Plan had sales income of \$190,556.69.
- B. After deducting (\$38,660) for costs of goods sold, the Debtor/Debtor in Possession shows a gross profit of \$151,895.

February 22, 2024 at 2:00 p.m.

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- C. However, the Debtor/Debtor in Possession lists having (\$221,465.94) in additional expenses, which results in the Debtor/Debtor in Possession having a Net Operating Loss of (\$69,570.08) for the 2023 Calendar Year.
- D. The Debtor/Debtor in Possession then lists “Other Income” (Reimbursement for Payroll) of \$8,702.30, which reduces the Net Operating Loss to (\$60,867.78).
- E. The Expenses listed include:
 - 1. (\$47,839.00) for Depreciation Expense.
 - 2. (\$14,495.84) for Interest Expenses
 - a. At the hearing, counsel for the Debtor/Debtor in Possession explained this Interest Expense as being **XXXXXXX**
 - 3. (\$45,445.25) for Rent & Lease
 - 4. (\$6,334.03) for Property Tax
 - 5. (\$9,770.46) for Repairs & Maintenance
 - 6. (\$20,058.13) for Utilities

Looking at the 2023 Profit and Loss Comparison, it appears that even after removing the depreciation as a expense, the operation of the Debtor/Debtor in Possession’s resulted in an actual negative cash flow of (\$13,028.78). Thus, it appears that the Debtor/Debtor in Possession has been operating the business at a loss and has no source of monies to fund the Plan. The Confirmed Plan provides for the Debtor/Debtor in Possession to fund the Plan with the positive cash flow from operating the business. Modified Plan, Article 7; Dckt. 86.

At the hearing, counsel for the Debtor/Debtor in Possession explained, **XXXXXXX**

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, counsel for the Debtor/Debtor in Possession Plan Administrator that payments are current. No addition “profit” dividend on general unsecured claims is due for 2022.

5.	<u>19-90382</u> -E-7 <u>19-9012</u> ALVAREZ V. SMITH ET AL	TRACY SMITH CAE-1	CONTINUED STATUS CONFERENCE RE: COMPLAINT 7-26-19 [<u>1</u>]
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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 3/9/23, counsel for the Judge Creditor reporting that some additional post-judgment enforcement proceedings may be required.

[CAE-1] Defendant's Fifth Status Conference Statement filed 2/15/24 [Dckt 102]

[CAE-1] Plaintiff's Post-Judgment Status Conference Statement filed 2/15/24 [Dckt 104]

The Status Conference is XXXXXXX
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FEBRUARY 22, 2024 STATUS CONFERENCE

February 22, 2024 at 2:00 p.m.
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On February 15, 2024, the Plaintiff/Judgment Creditor Tina Alvarez filed an updated Status Report (Dckt. 104) stating that the Judgment has not been satisfied and Plaintiff/Judgment Creditor “reserves the right to request post-judgment remedies or actions by the Court at a later date.”

Defendant-Debtor Tracy Smith filed his Fifth Status Conference Statement on February 14, 2024. Dckt. 102. Defendant-Debtor’s counsel advises that he has been unable to communicate with his client. Additional that Defendant-Debtor’s Counsel and Plaintiff/Judgement Creditor’s counsel have not met and conferred about the post-judgment status of this Adversary Proceeding. Defendant-Debtor’s counsel also requests that the court allow ninety (90) days for discovery and then “set dates accordingly.” *Id.*, p. 2:5-7. No indication of what post-judgment discovery would be conducted.

The Judgment was entered in this Adversary Proceeding on May 26, 2020. Dckt. 48. On September 20, 2022, the Court entered an Amended Judgment providing that Defendant-Debtor and Sharp Investors, Inc, and each of them, are jointly and severally liable to Plaintiff/Judgment Creditor in the amount of \$88,643.84. Dckt. 96. It further provides that the Judgment obligation of Defendant-Debtor is nodischargeable.

Reviewing the file, no post September 20, 2022, judgment enforcement action has been taken by Plaintiff/Judgment Creditor. In the nineteen (19) months since the Amended Judgment was entered, the Docket reflects that the only events occurring in this Adversary Proceeding are repeatedly continued Status Conferences.

At this juncture, it appears to the court that this Adversary Proceeding should be closed, and if Plaintiff/Judgment Creditor desires to engage in any post judgment enforcement efforts, Plaintiff/Judgment Creditor can reopen the file for this Adversary Proceeding and then proceed to enforce the Amended Judgement.

At the Status Conference, **XXXXXXX**

SUBCHAPTER V

Debtor's Atty: Brian S. Haddix

Notes:

Continued from 7/13/23

[BSH-11] Notice of Substantial Consummation of the Plan filed 1/24/24 [Dckt 227]

The Status Conference is XXXXXXX
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FEBRUARY 22, 2024 STATUS CONFERENCE

On January 24, 2024, the Debtor/Debtor in Possession filed a Notice of Substantial Consummation of the Subchapter V Plan. Dckt. 227.

At the Status Conference, XXXXXXX

JULY 13, 2023 STATUS CONFERENCE

A review of the Docket reflect that yet again no updated Status Report has been filed by the Debtor/Debtor in Possession. No updated Status Report has been filed by the Subchapter V Trustee. No updated Status report has been filed by any creditor. No updated Status Report has been filed by the US Trustee. Thus, it appears that these parties are admitting there is nothing remaining to be filed or done in this case under Chapter 11.

The Debtor/Debtor in Possession, Subchapter V Trustee, and Creditors have been "Struggling" for five months to draft an order confirming the Subchapter V Plan in this case. For the past five months, the Debtor/Debtor in Possession, Subchapter V Trustee, and Creditors appears to have been operating outside of the Bankruptcy Code, having their own "private plan," dispensing with the "need" to have a mere order confirming a Subchapter V Plan issued by the court.

At this juncture, with the inability of the Parties to provide the court with an order confirming the Subchapter V Plan, little remains to do but convert this case to one under Chapter 7.

On July 11, 2023, at 6:29 p.m. the Debtor/Debtor in Possession filed a Status Report. Dckt. 219. It advises the court that a proposed order was circulated. The U.S. Trustee's Office stated that it does not

take a position on the Motion and will not sign off on the form of the order. Additionally, that counsel for the Debtor/Debtor in Possession had not heard back from Mechanics Bank about the form of the order.

On July 12, 2023, a proposed Order confirming the Subchapter V Plan was lodged with the court. It has both the Subchapter V Trustee and Mechanics Bank approving it as to form.

7. [21-90584-E-7](#) **MARIA CUEVAS LEMUS** **CONTINUED STATUS CONFERENCE RE:**
[22-9004](#) **CAE-1** **COMPLAINT**
CUEVAS LEMUS V. MARTINEZ, **10-6-22 [1]**

Plaintiff's Atty: Marc Voisenat
Defendant's Atty: Arnold L. Graff

Adv. Filed: 10/6/22
Answer: 11/28/22

Nature of Action:
Validity, priority or extent of lien or other interest in property
Injunctive relief - imposition of stay
Declaratory judgment

Notes:
Continued from 3/9/23. Counsel for Plaintiff reported that the Plaintiff is appealing the court's order annulling the stay. The court stayed this proceeding pending the final ruling on the appeal(s).

The Status Conference is XXXXXXX
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FEBRUARY 22, 2024 STATUS CONFERENCE

No updated Status Conference Reports have been filed.

At the Status Conference, XXXXXXX

MARCH 9, 2023 STATUS CONFERENCE

No updated Status Report has been filed by the Parties. At the Status Conference, counsel for Plaintiff reported that the Plaintiff is appealing the court's order annulling the stay. The court stays this proceeding pending the final ruling on the appeal(s).

SUMMARY OF COMPLAINT

The Complaint filed by Maria Dolores Cuevas Lemus (“Plaintiff-Debtor”), Dckt. 1, asserts claims for alleged violation of the automatic stay (post-petition foreclosure), a determination that the alleged foreclosure is void, and injunctive relief to prevent Defendant from taking any other action to control or dispose of the property which is the subject of the alleged void foreclosure.

SUMMARY OF ANSWER

Arturo Martinez (“Defendant”) have filed an Answer, Dckt. 11, admitting and denying specific allegations. Twenty-One Affirmative Defenses are stated.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Debtor Maria Dolores Cuevas Lemus alleges in the Complaint 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)(I). Complaint ¶¶ 2, Dckt. 1. In the Answer, Defendant Arturo Martinez admits the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ 3; Dckt. 11. 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.

DECEMBER 15, 2022 STATUS CONFERENCE

The Parties are actively negotiating a possible settlement and requested a continuance of the Status Conference. The Status Conference is continued to January 26, 2023 at 10:00 a.m. (Specially Set Time) to be conducted in conjunction with a motion for relief from the stay.

JANUARY 26, 2023 STATUS CONFERENCE

In light of the court having granted the Motion to Annul the Stay, the Status Conference is continued to March 9, 2023, at 2:00 p.m. at the request of the Parties

FINAL RULINGS

8. [22-90415](#)-E-7 **JOHN MENDOZA** **CONTINUED EVIDENTIARY HEARING**
[BLF](#)-9 Peter Macaluso **RE: OBJECTION TO HOMESTEAD**
 EXEMPTION
 10-16-23 [[189](#)]

Final Ruling: No appearance at the February 22, 2024 Hearing is required.

The Hearing on the Objection to Homestead Exemption has been continued by the court to 2:00 p.m. on March 7, 2024.

The court has continued the hearing further in light of the extensive evidence provided, including deposition/2004 Exam transcript which the court must review in greater detail to make the necessary factual finding and evidentiary determinations. The court misjudged the depth of review that was necessary to prepare the Decision on these matters, as well as several nonjudicial events which impacted the judge's time available to review some evidence.

9. [23-90626](#)-E-12 **JOHN BRASIL** **STATUS CONFERENCE RE:**
[CAE](#)-1 **VOLUNTARY PETITION**
 12-31-23 [[1](#)]

DISMISSED: 02/01/24

Final Ruling: No appearance at the February 22, 2024 Status Conference is required.

Debtor's Atty: Brian S. Haddix

Notes:

Dismissed 2/1/24 for failure to timely file documents [Dckt 28]

The court having dismissed this Chapter 12 Case on February 1, 2024 (Order; Dckt. 20), the Status Conference is concluded and removed from the Calendar.

10. [23-90029](#)-E-11 RAMIL/MELINA ABALKHAD
[23-9005](#) CAE-1
SEROR V. ABALKHAD ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
4-28-23 [\[1\]](#)

ADVERSARY PROCEEDING CLOSED:
02/06/24

Final Ruling: No appearance at the February 22, 2024 Status Conference is required.

Plaintiff's Atty: David Seror; Jessica S. Wellington
Defendant's Atty: James R. Selth

Adv. Filed: 4/28/23
Answer: none

Nature of Action:
Objection/revocation of discharge
Dischargeability - priority tax claims
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

Notes:
Stipulated Judgment filed 1/17/24 [Dckt 26]

Adversary proceeding closed 2/6/24

<p>This Adversary Proceeding having been closed, the Status Conference is concluded and removed from the Calendar.</p>
