

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

March 8, 2018, at 2:00 p.m.

1. <u>15-90811</u> -E-7 ASSN., GOLD STRIKE	CONTINUED STATUS CONFERENCE RE:
<u>16-9002</u> HEIGHTS HOMEOWNERS	COMPLAINT
FARRAR V. MASSELLA ET AL	1-13-16 [<u>1</u>]

Final Ruling: No appearance at the March 8, 2018 hearing is required.

Plaintiff's Atty: Clifford W. Stevens

Defendant's Atty: James L. Brunello

Adv. Filed: 1/13/16

Answer: 2/23/16 [Robinson Enterprises Profit Sharing Plan]

2/23/16 [Johnny Massella; Mary Massella]

Counterclaim Filed: 2/23/16 [Robinson Enterprises Profit Sharing Plan]

Answer: None

Counterclaim Dismissed 5/2/16

Counterclaim Filed: 2/23/16 [Johnny Massella; Mary Massella]

Answer: None

Counterclaim Dismissed 5/2/16

Nature of Action:

Validity, priority or extent of lien or other interest in property

The Status Conference is continued to 2:00 p.m. on June 21, 2018, pursuant to the request of the Parties and in light of judgment having now been issued in another adversary proceeding relating to properties of the Gold Strike Heights Homeowners Association.

Notes:

Continued from 11/30/17; trial in adversary proceeding 15-9061 to be held 2/6/18

Plaintiff's Status Conference Statement filed 2/21/18 [Dckt 63]

March 8, 2018, at 2:00 p.m.

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2.

[16-90736](#)-E-11
TBG-8

RONALD/SUSAN SUNDBURG
Stephan Brown

CONTINUED CONFIRMATION OF
AMENDED PLAN OF REORGANIZATION
FILED BY DEBTORS
12-8-17 [[157](#)]

Final Ruling: No appearance at the February 15, 2018 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on September 28, 2017. By the court's calculation, 140 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Confirm the Amended Plan of Reorganization is denied without prejudice, the case having been converted to Chapter 7.

Ronald Sundburg and Susan Sundburg ("Debtor in Possession") seek to amend the proposed plan. Debtor in Possession filed a Motion to Convert Case to Chapter 7 on February 7, 2018, however. Dckt. 175. That motion was heard and granted at the March 8, 2018 hearing.

Debtor in Possession having moved to convert this case to one under Chapter 7, and the court having approved that request, there is no longer a pending Chapter 11 case in which to confirm a plan. The Motion is denied without prejudice.

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 Confirm the Amended Plan of Reorganization filed by Ronald Sundburg and Susan Sundburg (“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 Motion to Confirm is denied without prejudice.

3. [17-90346-E-7](#) **ENRIQUEZ/LISA SANCHEZ** **CONTINUED STATUS CONFERENCE RE:**
[17-9011](#) **SANCHEZ V. SANCHEZ ET AL** **COMPLAINT**
8-21-17 [1]

Plaintiff’s Atty: Mahanvir S. Sahota
Defendant’s Atty: Len ReidReynoso

Adv. Filed: 8/21/17
Answer: 9/18/17

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

Notes:
Continued from 10/19/17; all matters in this Adversary Proceeding stayed through 2/20/18 except as otherwise provided by subsequent order of this court.

MARCH 8, 2018 STATUS CONFERENCE

No further pleadings have been filed in this Adversary Proceeding. At the Status Conference it was reported **XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX**.

OCTOBER 19, 2017 STATUS CONFERENCE

SUMMARY OF COMPLAINT

Maria Sanchez (“Plaintiff”) has filed a Complaint seeking a determination of nondischargeability of the debt owed to her by Defendant-Debtors. Dckt. 1. The Complaint alleges that Defendant-Debtors’ conduct constitutes nondischargeable fraud pursuant to 11 U.S.C. § 523(a)(2). There is pending a state court action for fraud and to quiet title to the property to which the contentions of fraud relate.

It is also asserted that Defendant-Debtors’ conduct also renders the obligation nondischargeable pursuant to 11 U.S.C. § 523(a)(4) [fraud or defalcation in a fiduciary capacity, embezzlement, or larceny].

It is further alleged that the conduct renders the obligation nondischargeable pursuant to 11 U.S.C. § 523(a)(6) [willful and malicious injury].

SUMMARY OF ANSWER

Enriquez and Lisa Mona Sanchez (“Defendant-Debtors”) have filed an Answer admitting and denying specific allegations in the Complaint. Dckt. 7.

REQUIRED PLEADING OF CORE AND NON-CORE MATTERS, CONSENT OR NON-CONSENT TO NON-CORE MATTER

The basic pleading requirements of Federal Rule of Civil Procedure 8 for a complaint, including that the complaint “[m]ust contain: (1) a short and plain statement of the grounds for the court's jurisdiction...,” apply to complaints in Adversary Proceedings. In addition to incorporating Rule 8, Federal Rule of Bankruptcy Procedure 7008 adds the additional pleading requirement concerning whether the matters in the complaint are core or non-core:

Rule 8 F. R. Civ. P. applies in adversary proceedings. The allegation of jurisdiction required by Rule 8(a) shall also contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the Code is pending. In an adversary proceeding before a bankruptcy court, **the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the proceeding is core or non-core and, if non-core, that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy court.**

FED. R. BANKR. P. 7008 (emphasis added).

For a responsive pleading, Federal Rule of Bankruptcy Procedure 12(b) applies in adversary proceedings. FED. R. BANKR. P. 7012(b). The Bankruptcy Rules add a further responsive pleading requirement concerning whether the matters are core or non-core, as well as the consent or non-consent for non-core matters by the responding party:

“(b) Applicability of Rule 12(b)-(I) F.R.Civ.P. Rule 12(b)-(I) F.R.Civ.P. applies in adversary proceedings. A responsive pleading **shall include a statement that the party does or does not consent** to entry of final orders or judgment by the bankruptcy court.”

FED. R. BANK. P. 7012(b) (emphasis added).

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, 523 and 727 (no claim for relief under 11 U.S.C. § 727 is pled in the Complaint). Complaint ¶ 5, Dckt. 1. Plaintiff does not allege, as required in Federal Rule of Bankruptcy Procedure 7008

whether this is a core proceeding. The court notes that the claims for relief arising pursuant to 11 U.S.C. § 523(a)(2)(A), (a)(4), and (a)(5) are claims arising under the Bankruptcy Code and are statutorily and Constitutionally core proceedings. 28 U.S.C. § 157(b)(I).

In its Answer, Enriquez and Lisa Mona Sanchez, Defendant-Debtors admit the allegations of jurisdiction. Answer ¶ 5, Dckt. 7. Defendant-Debtors do not affirmatively plead whether this is a core proceeding, and if not, whether they consent to the bankruptcy judge issuing the final orders and judgment herein.

At the hearing, the Parties confirmed that the Complaint seeking relief pursuant to 11 U.S.C. § 523(a)(2)(A), (a)(4), and (a)(6) asserts claims for which these are core matters.

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 judgment 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.

JOINT DISCOVERY PLAN

The Parties filed their Joint Discovery Plan on October 11, 2017. Dckt. 9. In the Joint Discovery Plan, the Parties request that the court stay these proceedings for four months in light of the actions being taken by the Chapter 7 Trustee in Defendant-Debtors’ case to recover property for the bankruptcy estate. The Parties believe that such recoveries may be sufficient to produce an adequate dividend for Plaintiff on her claim in the bankruptcy case, rendering this Adversary Proceeding unnecessary.

ISSUANCE OF ORDER CONTINUING INITIAL STATUS CONFERENCE AND STAYING THIS ADVERSARY PROCEEDING

The court shall issue an Order staying this Adversary Proceeding and Continuing the Initial Status Conference to 2:00 p.m. on March 8, 2018.

4. [17-90492-E-7](#) **JED GLADSTEIN**
[17-9020](#)
GLADSTEIN V. EDUCATIONAL
CREDIT MANAGEMENT CORPORATION

STATUS CONFERENCE RE: AMENDED
COMPLAINT
1-10-18 [15]

Plaintiff's Atty: Randall K. Walton
Defendant's Atty: Miriam E. Hiser

Adv. Filed: 11/12/17
Answer: 12/6/17

Amd. Cmplt Filed: 1/10/18
Answer:
1/25/18 [Educational Credit Management Corporation]

Nature of Action:
Dischargeability - student loan

Notes:
Ex Parte Application and Stipulation and Order Granting Leave to File First Amended Complaint to Add a Party Defendant filed 1/3/18 [Dckt 12]; Order approving filed 1/4/18 [Dckt 14]

Stipulation for Dismissal of Current Defendants and to Add Educational Credit Management Corporation as a Defendant in this Adversary Proceeding filed 1/10/18 [Dckt 17]; Order granting filed 2/3/18 [Dckt 21]

Plaintiff's Status Conference Statement filed 2/22/18 [Dckt 25]

Ex Parte Application and Order Granting Leave to File a Signed Copy of the First Amended Complaint filed 2/22/18 [Dckt 27]; Order granting filed 2/28/18 [Dckt 29]

SUMMARY OF FIRST AMENDED COMPLAINT

Jed Rackson Gladstein ("Plaintiff-Debtor") filed his First Amended Complaint on January 10, 2018. Dckt. 15. Debtor seeks relief in the form of discharge of his student loans. Plaintiff-Debtor asserts that due to his age (70 years old) and medical disabilities, discharge of the debts are proper.

SUMMARY OF ANSWER

Education Credit Management Corporation ("Defendant") has filed an answer admitting and denying specific allegations in the First Amended Complaint. Dckt. 20.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Debtor alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). First Amended Complaint ¶¶ 1,2, Dckt. 15. In its Answer, Defendant admits the allegations of jurisdiction and core proceedings. Answer ¶ 1, Dckt. 20. **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. The Plaintiff-Debtor alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). First Amended Complaint ¶¶ 1,2, Dckt. 15. In its Answer, Defendant admits the allegations of jurisdiction and core proceedings. Answer ¶ 1, Dckt. 20. **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 -----, **2018.**
- c. Expert Witnesses shall be disclosed on or before -----, **2018**, and Expert Witness Reports, if any, shall be exchanged on or before -----, **2018.**
- d. Discovery closes, including the hearing of all discovery motions, on -----, **2018.**
- e. Dispositive Motions shall be heard before -----, **2018.**
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- **p.m. on -----, 2018.**