

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

**Chief Bankruptcy Judge**

**Sacramento, California**

**March 9, 2022 at 2:00 p.m.**

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1. [22-20108-E-11](#) KAMCARE, LLC  
[CAE-1](#)

**STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
1-18-22 [1](#)**

Debtor's Atty: Gabriel E. Liberman

Notes:

[GEL-1] *Ex Parte* Application of Debtor and Proposed Debtor in Possession to Employ Gabriel E. Liberman as Bankruptcy Counsel filed 2/10/22 [Dckt 13]; Order granting filed 2/14/22 [Dckt 18]

Trustee Report at 341 Meeting lodged 2/22/22

[ELP-1] Motion for Relief from the Automatic Stay filed 3/2/22 [Dckt 19], set for hearing 4/7/22 at 10:00 a.m.

<p><b>The Status Conference is continued to 2:00 p.m. on <span style="color: red;">xxxxxxx</span> , 2022.</b></p>
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**MARCH 9, 2022 CHAPTER 11 STATUS CONFERENCE**

This Chapter 11 case was filed on January 18 ,2022. U.S. Bank, N.A., Trustee, filed on March 2, 2022, a Motion for Relief From the Automatic Stay to proceed with a foreclosure sale on the Estate's property commonly known as 9589 Mainline Dr., Elk Grove, California. Dckt. 19.

**Review of Schedules and  
Statement of Financial Affairs**

On Schedule A/B Debtor lists personal property assets totaling \$26,023 in value, with the office furniture, fixtures and equipment comprising \$20,335 of that amount.

Debtor also lists owning the real property commonly known as 9589 Mainline Drive, Elk Grove, California, stating it has a value of \$752,000. Dckt. 1 at 12.

**March 9, 2022 at 2:00 p.m.**

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On Schedule D Debtor lists the real property being encumbered by a disputed first deed of trust securing a claim in the amount of (\$377,662). In the Motion for Relief from the Stay, U.S. Bank, N.A., Trustee, alleges that there is a \$68,876.72 arrearage on its claim and that the bankruptcy case was filed on the eve of its scheduled nonjudicial foreclosure sale. However, the Motion does not state the total amount of the claim asserted in this case. Dckt. 19. In the Declaration filed in support of the Motion, no testimony is provided as to the total amount of the Bank's claim. Dckt 21.

Moving to the Statement of Financial Affairs, the Debtor states under penalty of perjury that for the 2021 calendar it had \$2,400 in gross revenues, for 2020 it had \$3,000 in gross revenues, and for 2019 it had 2,810 in gross revenues. Stmt Fin. Affrs., Question 1; Dckt. 1.

At the Status Conference, **XXXXXXX**

2.	<a href="#"><u>10-22378-E-13</u></a> <b>DEREK/ALISA FREEMAN</b> <a href="#"><u>21-2010</u></a> CAE-1 <b>FREEMAN ET AL V. HFC ET AL</b>	<b>CONTINUED STATUS CONFERENCE</b> <b>RE: COMPLAINT</b> <b>2-2-21 <a href="#"><u>[1]</u></a></b>
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Plaintiff's Atty: Timothy J. Walsh  
Defendant's Atty: unknown

Adv. Filed: 2/2/21 [Reissued Summons 6/22/21]  
Answer: none

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

Notes:  
Continued from 1/5/22 so Plaintiff may diligently prosecute the entry of a judgment in this Adversary Proceeding.

**The Status Conference is continued to 11:00 a.m. on April 7, 2022** (specially set day and time), to be conducted in conjunction with the Order to Show Cause why this Adversary Proceeding should not be dismissed without prejudice.

### **MARCH 9, 2022 STATUS CONFERENCE**

This Adversary Proceeding was commenced in February 2021, with COVID resurging as a pandemic, and has continue on not prosecuted in March 2022, with the pandemic being reduced to endemic status and the mask mandates disappearing.

Though the defaults of Defendants were entered in November 15, 2021, Plaintiff-Debtor has not sought the entry of a judgment in this federal court Adversary Proceeding.

Plaintiff-Debtor not desiring to prosecute this Adversary Proceeding, the court shall issue an order to show cause why this Adversary Proceeding should not be dismissed, without prejudice.

At the Status Conference, **XXXXXXX**

#### **JANUARY 5, 2022 STATUS CONFERENCE**

On November 15, 2021, the default of Defendant HSB Bank USA, N.A. was entered. Dckt. 36. As stated in the Entry of Default Order, Plaintiff was required to file a motion for entry of default judgment within 30 days of November 13, 2021.

A review of the Docket discloses that Plaintiff has not sought the entry of a judgment in this Adversary Proceeding. Possibly this is because the matter has been resolved and Plaintiff is dismissing this Adversary Proceeding and no judgment is necessary.

At the Status Conference, counsel for Plaintiff reported that he would be filing a motion for entry of default judgment. It appears he misread the order entering the default and did not understand that a noticed hearing and motion is required. The Court continues the Status Conference so Plaintiff may now diligently prosecute the entry of a judgment in this Adversary Proceeding

#### **AUGUST 4, 2021 STATUS CONFERENCE**

On August 2, 2021, Plaintiff filed a Status Conference Report. Dckt. 13. The report that though served, the named Defendants have not responded, and Plaintiff will be seeking the entry of their defaults and then filing a noticed motion for entry of a default judgment.

#### **MAY 19, 2021 STATUS CONFERENCE**

##### **Summary of Complaint**

The Complaint filed by Derek and Alisa Freeman ("Plaintiff-Debtor"), Dckt. 1, asserts that Plaintiff-Debtor valued Defendant's Secured Claim in Plaintiff-Debtor's Chapter 13 case at \$0.00, Plaintiff-Debtor's Chapter 13 Plan provided for the \$0.00 secured claim, that the Plan has been completed and Plaintiff Debtor granted a discharge.

Plaintiff-Debtor asserts that Defendant's deed of trust is void and has not been reconveyed as required under applicable California law and the deed of trust itself.

##### **Summary of Answer**

No answer has been filed. No certificate of service has been filed by Plaintiff-Debtor.

## **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)(K) and (L). Complaint ¶ 3, Dckt. 1

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 Court having conducted the continued Status Conference on March 9, 2022, this Adversary Proceeding having been pending since its filing on February 2, 2021, the defaults of Defendants having been entered in November 2021, Plaintiff-Debtor previously reporting to the court that they would seek the entry of judgment, no Motion for Entry of Default Judgment having been filed four months since the defaults were entered; and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Status Conference is continued to 11:00 a.m. on April 7, 2022 (specially set day and time).

**IT IS FURTHER ORDERED** that Plaintiff Derek Freeman and Plaintiff Alisa Freeman shall show cause why this Adversary Proceeding should not be dismissed for failure to prosecute the Adversary Proceeding, with the hearing on the Order to Show Cause set for 11:00 a.m. on April 7, 2022. Responsive pleadings to the Order to Show cause shall be filed on or before March 31, 2022.

**IT IS FURTHER ORDERED** that Plaintiff Derek Freeman, Plaintiff Alisa Freeman, and Timothy J. Walsh, Esq., and each of them, shall appear in person at the April 7, 2022 Status Conference and the hearing on the Order to Show Cause - **NO TELEPHONIC APPEARANCES PERMITTED.**

Debtor's Atty: Pro Se

Notes:

Set by order of the court filed 2/25/22 [Dckt 64]. Debtor to appear in person, No Telephonic Appearance Permitted.

Declaration of Vernon Ray Deck filed 3/4/22 [Dckt 68]

<b>The Status and Scheduling Conference in this Bankruptcy Case is <span style="color: red;">XXXXXXX</span></b>
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#### MARCH 9, 2022 STATUS AND SCHEDULING CONFERENCE

On March 4, 2022, Vernon Ray Deck filed a declaration in advance of the Status and Scheduling Conference. Dckt. 68. He states that on March 2, 2022, he contacted attorney for Wells Fargo Bank Trust, N.A. of the Status and Scheduling Conference, and told counsel that the parties must appear personally at that Conference. The Court's Order only orders Mr. Deck to appear personally, not other persons, that having been done because no Certificate of Service had been filed. Order, p. 12:21-22; Dckt. 64. Additionally, as set forth in the Order,

The court orders Mr. Deck to appear at the Status and Scheduling Conference to ensure that he has the opportunity to raise with the court any preliminary points concerning these matters before he advances with concluding his research and addressing these preliminary issues in supplemental pleadings to be filed with the court.

*Id.*, p. 12:23, 13:1-3. The court envisioned that Mr. Deck would find this Conference his opportunity to identify some fundamental issues arising concerning what and how he could prosecute any rights he believed were proper consistent with federal law and Rules of Procedure.

Mr. Deck further states that he provided the same information to a person at another counsel for U.S. Bank Trust, N.A., providing the same information.

At the Status Conference, XXXXXXX

## REVIEW OF PLEADINGS AND ISSUES IDENTIFIED

On July 25, 2016, Vernon Ray Deck, the Debtor, commenced this voluntary Chapter 7 Case (the “Bankruptcy Case”), and on December 27, 2016, the bankruptcy Discharge for Debtor was entered (Order, Dckt. 43). This Bankruptcy Case was closed on December 1, 2017 (Dckt. 54). Mr. Deck was represented by counsel in his Bankruptcy Case, but unfortunately his counsel passed away several years ago.

On January 14, 2022, Mr. Deck filed a Motion to Reopen this Bankruptcy Case. Dckt. 56. Mr. Deck has now filed a Motion titled “Motion to Void Assignments During Stay; Void Wrongful Foreclosure Sale; and Quiet Title to Vernon Ray Deck 11 U.S.C. §§ 727, 362, 544, 547, 548, 105; 28 U.S.C. §§ 157; 1367; CA Penal Code § 115.” Dckt. 62. Mr. Deck has filed this Motion in *pro se*.

The Motion and attachments are one hundred twenty-eight pages in length. The court summarizes the grounds and relief requested as follows (which are not intended to be an exhaustive statement of Mr. Deck’s pleading in light of the court ordering this matter being set for an expedited status conference and focuses on those relating to the automatic stay arguments):

- a. It is stated that it is urgent for the court to address this matter as “[u]nlawful successors have cut down trees, painted the house and is making modification while litigation of this California homeowner fights their Void assignment and cries out for justice.” Motion, p. 1:23-26; Dckt. 62.
- b. Mr. Deck’s bankruptcy attorney in 2016 refused to commence an adversary proceeding while the bankruptcy case was still open. *Id.*, p. 5:3-5.
- c. Mr. Deck has addressed the “[V]OID assignments as a *pro se*, in Family Law Court; California Superior Court – Santa Maria, CA; The Eastern District Court (EDC) - Sacramento; the NINTH Circuit Court of Appeals-San Francisco; Appealed to the Supreme Court Of The United States (SCOTUS); Petitioned SCOTUS for a Rehearing; and now petitions this court to halt the successive avalanche of violations against Deck and his only residence, . . . .” *Id.*, p. 5:6-11.
- d. Mr. Deck states that there were transfers of the note and deed of trust<sup>1</sup> secured by

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<sup>1</sup> The court notes that in the Motion and the Schedules reference is made to there being a “mortgage.” A “mortgage” is a type of consensual real property lien transaction in which the creditor must commence a court proceeding to foreclose on the real property securing the obligation. In such a judicial foreclosure, the creditor may obtain a deficiency judgment if the property is sold for less than the obligation secured by the property (with a significant exception being if it was a purchase money mortgage, for which there can be no deficiency).

The term deed of trust is a lien put on real property, in the same manner as a mortgage, but that it includes a power allowing the creditor to have the property sold by the trustee under the deed of trust without any judicial proceeding – commonly called a nonjudicial foreclosure sale. The tradeoff is that even if it was not a purchase money mortgage, the creditor cannot assert

his real property by Sand Canyon (previously Option One Mortgage Company, Wells Fargo Bank, N.A., and U.S. Bank, N.A. during Mr. Deck's Chapter 7 case when the automatic stay was in effect. *Id.*, p. 5:11-17.

- e. Mr. Decks states that frauds have occurred, including filing of void real estate documents with the Placer County Recorder's Office, slander of title, and a process to rob Mr. Deck of his residence, which was previously protected by 11 U.S.C. § 727. *Id.*, p. 5:25-30.
- f. Wells Fargo Bank, N.A. filed a motion for relief from the stay, which was withdrawn, the court "vehemently" denying the requested relief in a tentative decision. *Id.* p. 7:24.

(Debtor's discharge was entered on December 27, 2016.)

- g. Though the stay was not lifted, Wells Fargo Bank, N.A. "illegally assigned" on September 27, 2017, the deed of trust to U.S. Bank, N.A., as trustee. *Id.*, p. 8:1-3.

(The Bankruptcy Case was closed on December 1, 2017.)

- h. Then, U.S. Bank, N.A., trustee, subsequently assigned the deed of trust to MTGLQ on December 13, 2017. *Id.*, p. 8:4-5.
- i. On March 12, 2019, MTGLQ returned the deed of trust to US Bank Chalet Series III Trust, which then transferred the deed of trust into The Lodge Series III Trust. *Id.*, p. 8:6-8.
- j. It is asserted that the assignments have no legal effect due to "Wells Fargo had already broken the Chain of Title (COT) during the Automatic Stay of Mr. Deck's Bankruptcy Chapter-7, under Protections of 11 USC sections 727, 362, 544, 547, and 548. All successive actions fail accordingly, by rule of law." *Id.*, p. 8:9-14 (emphasis in original).
- k. US Bank, on March 1, 2021, allegedly sold the property, with the broken chain of title to Redwood Holdings, LLC. *Id.*, p. 8:14-16.
- l. Mr. Deck protested the nonjudicial foreclosure sales on the courthouse steps, both orally and in written correspondence. *Id.*, p. 8:19-29.

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any personal liability against the person who owes the debt secured by the real property. The creditor electing to do a nonjudicial foreclosure sale "gets what he gets" from the sale and cannot seek to recovery any amounts from the person owing the obligation if the proceeds are not enough to pay the obligation in full.

Mr. Deck describes the foreclosure sale at issue as being conducted by a trustee on the courthouse steps. This indicates that it was a nonjudicial foreclosure sale. Thus, the court uses the term deed of trust in this order, rather than "mortgage."

- m. The nonjudicial sales price produced nothing for Mr. Deck, but released his ex-wife of her personal liability on the debt secured by Mr. Deck's residence (which he obtained sole ownership of as part of the marital settlement agreement in the divorce proceedings). *Id.*, p. 7:6-12.
- n. The provisions of 11 U.S.C. § 548(a)(1)(b) require that value be received by a Debtor, not just "someone" in exchange for the transfer of a debtor's property. Here, Mr. Deck says he received nothing. *Id.*, p. 14:1-5.

### **SETTING OF SCHEDULING CONFERENCE AND PRELIMINARY ISSUES TO BE ADDRESSED**

From the Motion and detailed information provided therein, it is clear that Mr. Deck has struggled and fought long and hard in attempting to rectify wrongs he believes have been visited upon him by various persons, leading to the claimed loss of his residence. From an initial review of the Motion pleading, it appears that the court is presented with some procedural and legal issues to be addressed.

First, as the Supreme Court has directed federal judges, while the federal judges must take only the evidence presented to them by the parties (and not conduct independent evidentiary investigations), federal judges have the obligation to apply the correct law, even if the parties do not state the correct law. *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 278, FN. 14, 15 (2010).

#### **Contested Matter and Adversary Proceeding Requirements**

The Motion requests two types of relief. The first being to assert and seek damages for violation of the automatic stay (11 U.S.C. § 362) and the discharge injunction (11 U.S.C. § 727, § 524). These relate to the transfers of the deed of trust that encumbered Mr. Deck's property while the automatic stay was in effect in his case, which he asserts renders the actions based on the transfers void, in violation of the automatic stay, and then in violation of the discharge injunction when Mr. Deck obtained his discharge. This relief is properly sought by motion, it being in the nature of being a "contempt" proceeding for violation of the bankruptcy injunctions created by Congress as a matter of law. *See Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 507 (9th Cir. 2002).

However, the Supreme Court has enacted Federal Rule of Bankruptcy Procedure 7001 which specifies when an adversary proceeding (a separate lawsuit) must be commenced to assert and enforce certain rights, rather than there be "merely" a motion filed in a bankruptcy case. The types of relief stated in Federal Rule of Bankruptcy Procedure 7001 for which an adversary proceeding is required, as appear relevant to this Motion, include:

#### **Rule 7001. Scope of Rules of Part VII**

An adversary proceeding is governed by the rules of this Part VII. The following are adversary proceedings:

- (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002;



(2) a proceeding to determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d);

...

(6) a proceeding to determine the dischargeability of a debt;

(7) a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief;

...

(9) a proceeding to obtain a declaratory judgment relating to any of the foregoing; .

...

Additionally, when there is additional relief which could be sought by motion in the bankruptcy case relating to the same facts and parties, that additional relief can be sought through the adversary proceeding rather than having a separate parallel motion proceeding.

In addition to the violation of the automatic stay and discharge injunction, the Motion includes a request for the court to determine that the purported assignments of the deed of trust and the nonjudicial foreclosure are void, and to quiet title to Mr. Deck's residence, clearing it of the recorded documents are slandering his title to the residence. He further asserts that any purported transfer is in violation of 11 U.S.C. § 548 as a fraudulent conveyance.

Thus, it appears that Mr. Deck has combined relief which must be requested through an adversary proceedings (summons and complaint and trial process the same as in the District Court) with the contempt proceedings for violation of the automatic stay and discharge injunction which may be prosecuted through a motion.

### **Legal Issues Presented by Mr. Deck**

The court recognizes that Mr. Deck is prosecuting this in *pro se*. While it appears that Mr. Deck is very knowledgeable of state and federal trial and appellate court proceedings, he is not an attorney. The court wants to ensure that he is aware of these issues initially identified by the court and respond proactively (as opposed to receiving them in a tentative ruling and then have to reactively respond on short notice).

### **Scope of Automatic Stay**

Congress created the automatic stay to provide protection for a debtor, the bankruptcy estate, and even creditors (protect them from other over active creditors). With respect to the debtor in bankruptcy, the automatic stay provisions of 11 U.S.C. § 362(a) provide (emphasis added):

(a) Except as provided in subsection (b) of this section, a **[bankruptcy] petition filed** under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or **proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose**

**before the commencement of the case under this title;**

**(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;**

...

**(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;**

**(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;**

**(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; . . . .**

Once the bankruptcy case is filed, the automatic stay is then in effect and proceedings or enforcement of a debt against the debtor are stayed. Additionally, acts to create or enforce a lien against property of the debtor, or to set off a debt owed to the debtor against an obligation of the debtor that arose before the commencement of the bankruptcy case are stayed. The above stay applies to property of the debtor that is not property of the bankruptcy estate (such as property obtained by the debtor after the case is filed or pre-bankruptcy filing property that became property of the bankruptcy estate, but is abandoned to the debtor).

For the bankruptcy estate, Congress provides in 11 U.S.C. § 362(a) the following additional statutory automatic stay provisions (emphasis added):

**(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;**

**(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;**

**(4) any act to create, perfect, or enforce any lien against property of the estate;**

...

**(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; . . . .**

These focus on property of the bankruptcy estate, creation or enforcement of liens against property of the bankruptcy estate, or taking action against property of the bankruptcy estate – as distinguished from taking action against the debtor or property of the debtor.

Congress provides for the creation and what is included in the bankruptcy estate in 11 U.S.C. § 541, which states in pertinent part:

**(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:**

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

(3) Any interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title.

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.

(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—

(A) by bequest, devise, or inheritance;

(B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or

(C) as a beneficiary of a life insurance policy or of a death benefit plan.

(6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.

(7) Any interest in property that the estate acquires after the commencement of the case.

To summarize, just about everything a debtor owns as of the time of filing the bankruptcy case is transferred by operation of law to the bankruptcy estate, which is under control of the Chapter 7 trustee. Additionally, if fraudulent (11 U.S.C. § 548 or state law) or preferential (11 U.S.C. § 547) transfers are avoided, then they are recovered for the bankruptcy estate (11 U.S.C. §§ 510, 551) and not the debtor (with certain exceptions provided in 11 U.S.C. § 522 for liens that may be avoided by debtor). Also, inheritances, life insurance proceeds, and marital property settlements a debtor acquires or is entitled to within 180 days after the bankruptcy case is filed are pulled into the bankruptcy estate as a matter of federal law. Even if property is claimed as exempt, it is transferred into the bankruptcy estate, subject to the exemption. *Schwab v. Reilly*, 560 U.S. 770 (2010)

In 11 U.S.C. § 541(b), Congress provides specified exceptions to certain identified property not becoming property of the bankruptcy estate. The property at issue in this Motion is Mr. Deck's residence, which type of property is not the subject of such exclusions.

#### Property Asserted to be Subject to the Automatic Stay

Mr. Deck asserts that Wells Fargo Bank, N.A., transferring the deed of trust which secured a monetary obligation of his ex-wife, that encumbered the residence which Mr. Deck received through his dissolution proceedings, and then recording of such assignment were in violation of the automatic stay and void, and thereby any other subsequent transfers were void as the "fruit of the poisonous violation of stay tree."

Upon initial review, the property transferred was the deed of trust, and the underlying note since a lien always stays with the debt it secures. The deed of trust encumbered Mr. Deck's residence, but the note and the deed of trust are not asserted to be Mr. Deck's property. On Schedule A/B, Mr. Deck lists owing the residence (Dckt. 17 at 3) but does not state that he owns a note or other obligation that is secured by a deed of trust recorded against the residence he owns. On Schedule D (secured claims), Mr. Deck lists Ocwen Loan Servicing, LLC has a claim for \$274,805.32 that is secured by his residence (*Id.* at 11).

From the Motion and the Schedules filed in this case, it appears that the objected to transfer asserted to be in violation of the stay was not a transfer of property of the bankruptcy estate or property of the debtor, but property owned by a creditor - a note secured by a deed of trust encumbering the residence.

The complained of conduct is not putting a lien on the residence or enforcing the lien against the residence, but the selling and transferring of the note and deed of trust. This does not appear to fall within the automatic stay provisions of 11 U.S.C. § 362(a).

#### **Discharge Injunction**

In his Motion, p. 18:10-21, Mr. Deck argues that the obligation secured by the deed of trust recorded against his residence "was fully addressed and discharged along with another \$10,000 entry on the schedule of debts, not otherwise challenged, and ultimately discharged by this court." What Mr. Deck appears to argue is that the discharge granted pursuant to 11 U.S.C. § 727 removed the deed of trust from the residence property.

Congress provides in 11 U.S.C. § 524(a) the legal effect of a debtor obtaining a discharge in bankruptcy, which states (emphasis added):

§ 524. Effect of discharge

(a) A discharge in a case under this title —

(1) **voids any judgment at any time obtained**, to the extent that such judgment is a determination of the **personal liability of the debtor with respect to any debt discharged** under section 727, 944, 1141, 1192, 1228, or 1328 of this title, whether or not discharge of such debt is waived;

(2) operates as an **injunction against** the commencement or continuation of an

action, the employment of process, or an act, **to collect, recover or offset** any **such [discharged] debt** as a **personal liability of the debtor**, whether or not discharge of such debt is waived; and

(3) operates as an **injunction against** the commencement or continuation of an action, the employment of process, or an act, to **collect or recover** from, or offset **against, property of the debtor** of the kind specified in section 541(a)(2) of this title that is **acquired after the commencement of the case**, on account of any **allowable community claim**, except a community claim that is excepted from discharge under section 523, 1192, 1228(a)(1), or 1328(a)(1), or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

In paragraph (1) a judgment obligation that is discharged cannot be enforced against the debtor personally. In paragraph (2) the discharge operates as an injunction preventing the creditor from attempting to enforce a discharged debt as a personal liability of the debtor. Then, in paragraph (3) future community property is protected if there is an obligation owed by the debtor's spouse, who has not obtained a discharge and is still obligated to pay the obligation.

The discharge is not a novation or cancellation of the debt, but protects the debtor from future personal liability for the debt – such as wage garnishment, levy on assets, new encumbrances on future acquired property. However, the discharge does not work to remove the pre-petition lien from property that was obtained before the bankruptcy case was filed. This is discussed in Collier on Bankruptcy, Sixteenth Fifth Edition, as follows:

#### [d] Postdischarge Enforcement of Liens

Creditors are not prevented from postdischarge enforcement of a valid lien on property of the debtor that existed at the time of the entry of the order for relief, if the lien was not avoided under the Code. Section 522(c)(2) states that a lien may be enforced against exempt property if the lien was not avoided under specified sections of the Code or voided under section 506(d). The legislative history to section 522(c) states in part:

The bankruptcy discharge will not prevent enforcement of valid liens. The rule of *Long v. Bullard*, 117 U.S. 617 (1886), is accepted with respect to the enforcement of valid liens on nonexempt property as well as exempt property.

Thus, a mortgagee's lien survives and is unaffected by the discharge, regardless of whether the mortgagee files a proof of claim or otherwise asserts its interest during the course of a bankruptcy case. Further, a secured creditor is permitted to proceed with postdischarge foreclosure proceedings without any prior application to the bankruptcy court. In this connection, courts have held that it is not *per se* improper for a secured creditor to contact a debtor to send payment coupons, determine whether payments will be made on the secured debt or inform the debtor of a possible

foreclosure or repossession, as long as it is clear the creditor is not attempting to collect the debt as a personal liability. However, a creditor whose debt is discharged is not permitted to obtain a lien, even by operation of law, if it did not hold a lien when the petition was filed. Some courts have permitted a creditor to renew a lien if that is done within the time permitted by state law. However, if a judgment lien lapses due to a creditor failing to renew it in time, obtaining a new lien based on the judgment would violate the discharge injunction.

Section 522(f) enables the debtor to avoid certain liens, including judicial liens, to the extent they impair an exemption. The debtor or trustee may also avoid liens under other avoiding powers. Liens may also be paid or otherwise dealt with under a bankruptcy plan, or by the debtor's power to redeem property under section 722. However, to the extent liens are not avoided, paid or otherwise eliminated as part of the bankruptcy case, congressional intent is clear that valid liens may be enforced.

4 Collier on Bankruptcy P 524.02 (16th 2021). (There are a number of footnotes to this section, with extensive case citations. If Mr. Deck reviews this section at a local library or other resource he uses for his legal research, it will provide him with significant cases that he can read to understand the distinction of a discharge providing protection from personal liability but not "stripping" off liens and other property rights a creditor may have in collateral.) In the text above, reference is made to 11 U.S.C. § 522(f) which provides a debtor with the power to avoid (have removed from property abandoned back to the debtor) judicial liens and certain nonpossessory, nonpurchase-money security interests in personal property.

For this part of the Motion, it appears Mr. Deck will need to address the legal basis for asserting that the discharge removed the deed of trust from the residence.

### **11 U.S.C. § 548 Fraudulent Conveyance**

Mr. Deck asserts that to the extent that the nonjudicial foreclosure took place, it was a fraudulent conveyance in that he, the debtor, did not receive anything from the sale. Congress provides federal fraudulent conveyance law in 11 U.S.C. § 548 (in addition to incorporating in 11 U.S.C. § 544(a) state fraudulent conveyance law and *bona fide* purchaser for value protections for the bankruptcy trustee to exercise for the benefit of the bankruptcy estate), which states (emphasis added):

§ 548. Fraudulent transfers and obligations  
(a)

(1) The **trustee may avoid any transfer** (including any transfer to or for the benefit of an insider under an employment contract) **of an interest of the debtor** in property, or any obligation (including any obligation to or for the benefit of an insider under an employment contract) incurred by the debtor, that was **made or incurred on or within 2 years before the date of the filing of the petition**, if the debtor voluntarily or involuntarily—

(A) made such transfer or incurred such obligation with **actual intent to hinder, delay, or defraud** any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or

(B)

(i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(ii)

(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;

(III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or

(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

For an 11 U.S.C. § 548 fraudulent conveyance, the transfer at issue must have been made within two years before the bankruptcy case was filed. Here, the transferred referenced is the asserted nonjudicial foreclosure sale in which the creditor was paid and Mr. Deck's ex-wife had her personal liability satisfied, but there was nothing paid to Mr. Deck, the debtor. In the Motion, Mr. Deck states that the purported sale occurred March 1, 2021. This would be almost five (5) years after the bankruptcy case was filed (July 25, 2016), not in the period two years prior to Mr. Deck filing bankruptcy.

Thus, an issue for Mr. Deck to address is how the provisions of 11 U.S.C. § 548 would apply to the 2021 sale. Additionally, the right to have the sale avoided in the bankruptcy is trustee's right, not the debtor.<sup>2</sup>

### **SERVICE OF PROCESS**

No certificate of service documenting that the Motion and supporting documents have been served on any persons.

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<sup>2</sup> Congress does provide in 11 U.S.C. § 522(h) for the debtor to exercise certain avoiding powers of a trustee, if the trustee elects not to seek to avoid a transfer. Generally, a debtor exercises this power when the property transferred is subject to an exemption that could be claimed by the debtor and not of sufficient value for the estate to recover after paying the debtor the exemption. One of the conditions to the debtor claiming an exemption in property for which the pre-petition transfer may be avoided is that the debtor must not have voluntarily transferred the property.

# FINAL RULINGS

4. [21-23301](#)-E-7      **BRIAN ROYER**      **STATUS CONFERENCE RE:**  
[22-2002](#)      **CAE-1**      **COMPLAINT**  
**BARNES V. ROYER**      **1-10-22** [\[1\]](#)

**Final Ruling:** No appearance at the March 9, 2022 Status Conference is required.  
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Plaintiff's Atty: Cheryl C. Rouse  
Defendant's Atty: Carl R. Gustafson

Adv. Filed: 1/20/22  
Answer: none

Nature of Action:  
Dischargeability - false pretenses, false representation, actual fraud

Notes:  
[CCR-1] Stipulation to Extend Time for Response to Complaint for 30 Days filed 1/25/22 [Dckt 8]

**The Status Conference is continued to 11:00 a.m. on April 7, 2022 (specially set day and time).**

## MARCH 9, 2022 STATUS CONFERENCE

On January 25, 2022, the Parties filed a Stipulation in which Plaintiff agreed to an extension of thirty (30) days for Defendant to file a responsive pleading to the Complaint. The extended deadline expires on March 11, 2022.

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 Initial Status Conference having been set to be conducted on March 9, 2022, Plaintiff having granted Defendant a one time extension of 30 days to file a responsive pleading to the Complaint, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Status Conference is continued to **11:00 a.m. on April 7, 2022.** (Specially set day and time due to limited availability of regular adversary proceeding status conference dates.)



5. [18-20964-E-7](#) **BRADLEY GILBREATH**  
[21-2084](#) CAE-1  
**HUSTED V. GILBREATH**

**CONTINUED STATUS CONFERENCE**  
**RE: COMPLAINT**  
**12-2-21 [1]**

**Final Ruling:** No appearance at the March 9, 2022 Status Conference is required.  
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Plaintiff's Atty: Estela O. Pino  
Defendant's Atty: unknown

Adv. Filed: 12/2/21  
Answer: none

Nature of Action:  
Recovery of money/property - turnover of property

Notes:  
Continued from 2/9/22

[PA-1] Plaintiff, Kimberly J. Husted's Motion for Default Judgment filed 2/17/22 [Dckt 27]; set for hearing 3/17/22 at 11:00 a.m.

[CAE-1] Status Conference Statement [Kimberly J. Husted, Chapter 7 Trustee] filed 3/2/22 [Dckt 32]

**The Status Conference is continued to 2:00 p.m. on May 4, 2022, to allow for the prosecution and conclusion of the Motion for Entry of Default Judgment.**

### **MARCH 9, 2020 STATUS CONFERENCE**

On March 2, 2022, the Plaintiff-Trustee, Kimberly Husted, filed her Status Conference Statement. Dckt. 32. Plaintiff-Trustee reports that her Motion for Entry of Default Judgment is set for hearing on March 17, 2022. Additionally, the Plaintiff-Trustee and her counsel have not received any communications from Defendant.

### **FEBRUARY 9, 2022, STATUS CONFERENCE**

The Plaintiff-Trustee, filed a Status Conference Statement on February 2, 2022. Dckt. 21. She reports that no responsive pleading having been filed by Cynthia Glibreath, the Defendant, Defendant's default has been entered February 1, 2022 (Dckt. 17) and Plaintiff-Trustee is preparing a Motion for Entry of Default Judgment.

In the Complaint, the Plaintiff-Trustee is seeking to recover property of the bankruptcy estate from a non-debtor.