UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

March 10, 2016 at 1:30 p.m.

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1. 15-29555-E-13 DIANNE AKZAM
15-2247
U.S. TRUSTEE V. AKZAM

CONTINUED STATUS CONFERENCE RE: COMPLAINT
12-18-15 [1]

Plaintiff's Atty: Allen C. Massey
Defendant's Atty: Pro Se

Adv. Filed: 12/18/15
Answer: none

Nature of Action:
Injunctive relief - other

The Status Conference is xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

Notes:
Continued from 2/17/16 by request of Defendant [Order, Dckt 10]; Defendant to file and serve on or before 2/19/16 an answer to the complaint

Defendant's Motion to Dismiss Adversary Complaint filed 2/19/16 [Dckt 12], set for hearing 4/14/16 at 1:30 p.m.

MARCH 10, 2016 STATUS CONFERENCE

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SUMMARY OF COMPLAINT

The U.S. Trustee seeks an injunction against Diane Akzam (Defendant-Debtor) to bar, for a period of three years, her from filing further bankruptcy cases without first obtaining authorization from the court in the district in which she seeks to file a future case. The Complaint alleges that in filing her currently pending Chapter 13 case; E.D. Cal. No. 15-29555; Defendant-Debtor did not disclose five prior cases she had filed (and which were dismissed in the six year preceding the filing of the current case. The U.S. Trustee further alleges that since 2010 the Defendant-Debtor and her brother have filed a series of ten prior, interlocking cases in which no bankruptcy plan has been performed.

In the Complaint, it is alleged:

A. "14. Defendant filed her Voluntary Petition for the Current Case in bad faith."

B. "15. In commencing the Current Case, Defendant has unfairly manipulated, and is unfairly manipulating, the Bankruptcy Code."

C. "16. Defendant filed the Current Case to invoke the automatic stay, to cause delay, and to hinder creditors and other interested parties, with no legitimate intent or attempt to perform her duty as debtor under the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, or as required by orders of the Court; to reorganize or otherwise discharge her dischargeable debts; or to effectuate any legitimate purpose under the Bankruptcy Code."

D. "18. The Current Case presently remains open. However, there is a substantial and strong likelihood that the Defendant will continue to file abusive bankruptcies that are marked by an intentional disregard of the law and failure to perform her legal duties as a debtor."

E. "19. Defendant's misconduct in filing abusive bankruptcy petitions is capable of repetition. Any such future filing by Defendant, at the instant the filing occurs, will have evaded review by Plaintiff and other interested parties."

F. "20. Monetary damages and other legal remedies would be insufficient to remedy the abuses described in paragraphs 1 through 19 inclusive, *supra*."

G. "21. Pursuant to 11 U.S.C. §§ 105 and 349, it is appropriate and warranted, under the circumstances described above, that the Court issue an injunction prohibiting Defendant, for a period of three years, from filing or causing to be filed, singly or jointly, any petition for relief under the Bankruptcy Code in any district without first obtaining permission from the bankruptcy court for the district in which the case would be filed."

H.

MOTION TO DISMISS

On February 19, 2016 Defendant-Debtor filed a pleading titled "Motion to Dismiss Adversary Complaint w/Memorandum of Points and Authorities." Dckt. 12. As Defendant-Debtor is aware, due to her significant litigation in this court since 2010, the Local Bankruptcy Rules (Rule 9004-1) and the Revised Guidelines for Preparation of Documents require the motion (which must state with particularity the grounds upon which the requested relief is based – Fed. R. Civ. P. 7(b) and Fed. R. Bankr. P. 7007, 9014), the points and authorities, each declaration, and the exhibit documents (all exhibits may be combined into one document) must be filed as separate pleadings.

Defendant-Debtor states in the Motion that relief is sought pursuant to Federal Rule of Civil Procedure 12(b), asserting that the Complaint states a claim for which no relief is available. The grounds stated with particularity in the Motion are:

A. "The complaint has one cause of action, for Injunction Against filing Another Bankruptcy Case, under 11 U.S.C. 105 and 349."

B. "Defendant contends that the Complaint fails to state any cause of action under any statute applicable to the relief requested, and that it fails to allege with particularity the circumstances of any fraud as required by Rule 9 (b)."

C. "Also, it is so vague and ambiguous that Defendant cannot reasonably prepare a proper response as Plaintiff's allegations are based on inaccurate information and supposing this or that will happen without any supporting information."

D. "Plaintiff has failed to allege the required elements of fraud as is required in California."

E. "Plaintiff's claim for injunctive relief fails because injunctive relief is not considered to be a viable claim. See, *Guessous v. Chrome Hearts, LLC*, 179 Cal. App. 4th 1177, 1187 (2009) (Injunctive relief is a remedy, not a claim)."

F. "Defendant does not know if this is a core or noncore proceeding."

Motion, Dckt. 12. The hearing on the Motion is set for 1:30 p.m. on April 14, 2016.

Citation to State Law

In the reference to *Guessous*, Defendant-Debtor cites the court to the brief statement that injunctive relief is a remedy for a wrong, not a cause of action. This is a citation to California law, not federal law. However, the court considers it for purposes of this Status Conference giving Defendant-Debtor the benefit of a more thoughtful discussion in light of her *pro se* status. The shorthand reference in *Guessous* is cited to an earlier District Court of Appeal decision, holding,

> "Injunctive relief is a remedy, not a cause of action. (*Art Movers, Inc. v. Ni West, Inc.* (1992) 3 Cal. App. 4th 640, 646.) 'A permanent injunction is an equitable remedy for certain torts or wrongful acts of a defendant where a damage remedy is inadequate. A permanent injunction is a determination on the merits that a plaintiff has prevailed on a cause of action for tort or other wrongful act against a defendant and that equitable relief is appropriate. A permanent injunction is not issued to maintain the status quo but is a final judgment on the merits. (6 Witkin, Cal. Procedure (3d ed. 1985) Provisional Remedies, § 250, 251, pp. 216-218.) It is reviewed on appeal for the sufficiency of the evidence to support the judgment. (Richards v. Dower (1883) 64 Cal. 62, 64.)' (*Ibid.*) 'A permanent injunction is merely a remedy for a proven cause of action. It may not be issued if the underlying cause of action is not established.' (*Id.* at p. 647.)
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> To qualify for a permanent injunction, the plaintiff must prove (1) the elements of a cause of action involving the wrongful act sought to be enjoined and (2) the grounds for equitable relief, such as, inadequacy of the remedy at law. (5 Witkin, Cal. Procedure (3d ed. 1985) Pleading, § 774, p. 218.)"

City of South Pasadena v. Department of Transportation, 29 Cal. App. 4th 1280 (1994).

The Complaint alleges that Debtor has engaged in the repetitive, non-productive filing of bankruptcy cases. Further, that the filings and access to the federal courts have not been made for purposes permitted under the Bankruptcy Code. Finally, that monetary sanctions to correct the misuse of the federal courts will be ineffective.

For the benefit of Defendant-Debtor who may not be aware, on several prior occasions this court has addressed the issue of repetitive filing of non-productive bankruptcy cases which were determined to constitute an abuse of the federal judicial process. In ruling on these prior matters, the court's review of federal law has included the following. The court believes that this information of federal law may help the pro se Defendant-Debtor better understand the pending litigation and federal law at issue.

Text of Court's Ruling in Other Unrelated Cases Concerning Enjoining Future Filings and Pre-Filing Review

The Ninth Circuit Court of Appeals re-stated the grounds and methodology for pre-filing review requirements as an appropriate method for the federal courts in effectively managing serial filers or vexatious litigants in *Molski v. Evergreen Dynasty Corp, et al*, 500 F.3d 1047 (9th Cir. 2007), *en banc* hearing denied, 521 F.3d 1215 (9th Cir. 2008); and *In re Fillbach*, 223 F.3d 1089 (9th Cir. 2000). While maintaining the free and open access to the courts, it is also necessary to have that access be properly utilized and not abused. The abusive filing of bankruptcy petitions, motions, and adversary proceedings for purposes other than as allowed by law diminishes the quality of and respect for the judicial system and laws of this country.

As addressed by the Ninth Circuit Court of Appeals in *Molski*, the ordering of a pre-filing review requirement is not to be entered with undue haste because such orders can tread on a litigant's due process right of access to the courts. *Moliski*, 500 F.3d at 1047. As discussed in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429, 102 S. Ct. 1148, 71 L. Ed. 2d 265 (1982), the right to seek redress from the court is a protected right civil litigants. The issuing of a prefiling review requirement for commencing future proceeding is to be made only after a cautious review of the pertinent circumstances.

However, the Ninth Circuit Court of Appeals clearly draws the line that a person's right to present claims and assert rights before the federal courts is a not a license to abuse the judicial process and treat the courts merely as a tool to abuse others.

> Nevertheless, "[f]lagrant abuse of the judicial process cannot be tolerated because it enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants." *De Long, 912 F.2d at 1148*; *see O'Loughlin v. Doe, 920 F.2d 614, 618 (9th Cir. 1990)*.

Molski, 500 F.3d at 1057. In the Ninth Circuit, the trial courts apply a four factor analysis in determining if and what type of pre-filing or other order should properly be issued based on the conduct of the party at issue.

1. First, the litigant must be given notice and a chance to be heard before the order is entered;

2. Second, the district court must compile "an adequate record for review;"

3. Third, the district court must make substantive findings about the frivolous or harassing nature of the plaintiff's litigation; and

4. Finally, the vexatious litigant order "must be narrowly tailored to closely fit the specific vice encountered.

Id.

As discussed by the Ninth Circuit Panel in *Kelmar v. Bank of Am. Corp.*, 599 Fed. Appx. 806, 807 (9th Cir. 2015),

> We review the district court's vexatious litigant order for abuse of discretion. See *De Long v. Hennessey*, 912 F.2d 1144, 1146 (9th Cir. 1990). "Normally, we reverse under the abuse of discretion standard only when the district court reaches a result that is illogical, implausible, or without support in the inferences that may be drawn from the record." *Kode v. Carlson*, 596 F.3d 608, 612 (9th Cir. 2010) (*per curiam*).

In discussing a bar on a person re-re-re-litigating issues, the Ninth Circuit Court of Appeals stated,

> Here, Wood has shown his intention continually to relitigate claims that have been previously dismissed. In the action discussed above, for example, Wood sought to reopen claims of fraud and bias that were rejected in *Wood v. McEwen*, 644 F.2d 797 (9th Cir. 1981), cert. denied, 455 U.S. 942, 71 L. Ed. 2d 654, 102 S. Ct. 1437 (1982). Moreover, an injunction against relitigation need not be premised on exact repetition of an earlier lawsuit. **The general pattern of litigation in a particular case may be vexatious enough to warrant an injunction in anticipation of future attempts to relitigate old claims.** See *Pavilonis v. King*, 626 F.2d 1075 (1st Cir. 1980); *Ruderer v. United States*, 462 F.2d 897 (8th Cir. 1972). In evaluating the exercise of discretion in this case, then, we turn to the specific facts of this case, assessed against the general advantages and disadvantages afforded by enjoining relitigation.

Wood v. Santa Barbara Chamber of Commerce, Inc., 705 F.2d 1515, 1525 (9th Cir. 1982) (emphasis added).