

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

April 7, 2022 at 11:30 a.m.

1.	<u>19-90382</u> -E-7 TRACY SMITH <u>19-9012</u> CAE-1 Peter Macaluso ALVAREZ V. SMITH ET AL	CONTINUED STATUS CONFERENCE RE: COMPLAINT 7-26-19 [1]
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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 3/24/22. Judgment Creditor Tina Alvarez may appear telephonically.

The Status Conference is XXXXXXXXXX

APRIL 7, 2022 STATUS CONFERENCE

The court's review of the Docket reflects that nothing has been filed by the Parties since the last hearing.

At the Status Conference, XXXXXXX

April 7, 2022 at 11:30 a.m.

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MARCH 24, 2022 STATUS CONFERENCE

On March 23, 2022, twenty-four hours before this Status Conference, Defendant Judgment Debtor Tracy Smith filed his Third Post-Judgment Status Conference Statement. Dckt. 77. He states that Plaintiff Judgment Creditor and Defendant Judgment Debtor have met to discuss the transfer of a comparable home, and Judgment Debtor requests that the Status Conference be continued “until the completion of the location of such comparable home which the Defendant Judgment Debtor can deliver such to the Plaintiff Judgment Creditor. Apparently, the court is to delay the enforcement of it’s judgment for however long the Defendant Judgment Debtor believes it would take him to comply with this court’s Judgment and mandatory injunction.

At the Status Conference, the Parties provided vague references to their discussion. Judgment Debtor now asserts, two years after the judgment was entered and the mandatory injunction issued, that the property to be transferred had been “sold” and Judgment Debtor cannot transfer it. Plaintiff Judgment Creditor disputes that it was “sold,” stating that title is in the same name since 1980. Clearly something is amiss.

The court addressed with counsel for the Defendant Judgment Debtor the potential consequences of failing to comply with the order of a federal judge, which not only is the corrective sanction power in this court, but the corrective and punitive sanction power of the Article III judges from whom this bankruptcy case has been referred.

FEBRUARY 17, 2022 STATUS CONFERENCE

On February 7, 2022, Judgment Debtor Tracy Smith, filed his Second Post Judgment Status Conference Statement. In it he states that the Judgment has been entered in this Adversary Proceeding, and requests that the file now be closed.

The Judgment in this Adversary Proceeding is a monetary one for \$19,000.00, and also a Mandatory Injunction for Judgment Debtor to turn over a Mobile Home. The Status Report does not state that Judgment Debtor has turned over the property as ordered by this court. The Judgment provides for alternative relief in the form of a \$93,643.84 if the specific performance required by the Mandatory Injunction is not or can not be done.

Finally, the Judgement determines that the monetary amounts are nondischargeable.

At the Status Conference, Judgment Creditor reported that Defendant Judgement Debtor has not provided information about the asset. Counsel for Defendant Judgment Debtor did not know whether his client has complied with the court’s mandatory injunction, which is now almost two years old, to turn over the mobile home to Judgment Creditor Plaintiff. Counsel for Judgment Creditor Plaintiff could not cite to the court any efforts made to enforce the mandatory injunction in light of Judgment Debtor Defendant’s failure to comply with the injunction.

The court continued the Status Conference and ordered the parties and their counsel to appear in person at the continued hearing, and all further hearings unless relief is granted pursuant to a future order of the court, at the Status Conference and all further hearings, conference, and proceedings in this Adversary Proceeding.

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 Status Conference having been conducted by the court, and upon review of the pleadings, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Status Conference is **xxxxxxxxxxxx**