



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California**

**Chief Judge Fredrick E. Clement**  
Sacramento Federal Courthouse  
501 I Street, 7<sup>th</sup> Floor  
Courtroom 28, Department A  
Sacramento, California

**DAY: TUESDAY**  
**DATE: APRIL 9, 2024**  
**CALENDAR: 10:30 A.M. ADVERSARY PROCEEDINGS**

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Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be simultaneously: (1) **IN PERSON** at Sacramento Courtroom No. 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business** day prior to the hearing.

Information regarding how to sign up can be found on the **Remote Appearances** page of our website at:

<https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>.

Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by **ZoomGov** may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to the trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

- Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
- Review the court's [Zoom Procedures and Guidelines](#) for these, and additional instructions.
- Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

**Unauthorized Recording is Prohibited:** Any recording of a court proceeding held by video or teleconference, including screen shots or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

## PRE-HEARING DISPOSITION INSTRUCTIONS

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### RULINGS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling.

**"No Ruling"** means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

**"Tentative Ruling"** means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. However, non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

**"Final Ruling"** means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

### CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

### ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

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1. [23-24331](#)-A-7    **IN RE: JAYATON THOMAS**  
[24-2001](#)    [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: AMENDED COMPLAINT  
1-3-2024    [[7](#)]

MARY ALICE NELSON ROGERS TRUST  
PRE-1933 PRIVATE AM V.

**Final Ruling**

The status conference is continued to July 16, 2024, at 10:30 a.m.

2. [23-24331](#)-A-7    **IN RE: JAYATON THOMAS**  
[24-2001](#)    [MH-1](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL  
3-6-2024    [[48](#)]

MARY ALICE NELSON ROGERS TRUST  
PRE-1933 PRIVATE AM V.  
JENNIFER WONG/ATTY. FOR MV.

**Final Ruling**

**Motion:** Dismiss

**Notice:** LBR 9014-1(f) (1); written opposition required

**Disposition:** Granted with Leave to Amend

**Order:** Civil minute order

Defendants move to dismiss the adversary proceeding against them.

**FACTS**

The complaint is all but devoid of facts. Amend. Compl., ECF No. 7. The court is able to discern that the plaintiff contends that he: (1) is the "attorney-in-fact" and "sole beneficiary" of the "Nelson Rogers Trust"; and (2) that the trust holds a cause of action against the defendants arising out of the defendants' foreclosure in December 2021 of real property in which the plaintiff claims an interest. Ex. C to Am. Complaint, ECF No. 7. The plaintiff appears to contend that the defendants breached their fiduciary duties to him. Am. Compl. p. 6, ECF No. 7.

In December 2023, plaintiff filed a Chapter 7 bankruptcy. The asset, i.e., the cause of action is unsecured. Schedule A/B, ECF No. 17. The Chapter 7 case remains open.

**PROCEDURE**

Thereafter, he filed the instant adversary proceeding against the lender and associated parties. The defendants move to dismiss,

citing Rule 12(b)(6) and res judicata (based on prior district court proceedings).

## **DISCUSSION**

The amended complaint fails to show that he has standing to pursue this action. All pre-petition assets are property of the estate. 11 U.S.C. § 541 (estate includes all legal and equitable interests); *In re Dunning Bros. Co.*, 410 B.R. 877, 888 (Bankr. E.D. Cal. 2009). Property in which the debtor has no beneficial interest is not property of the estate. 11 U.S.C. § 541(d); *In re Advent Mgmt. Corp.*, 104 F.3d 293, 295 (9th Cir. 1997); *In re Unicom Computer Corp.*, 13 F.3d 321, 324 (9th Cir. 1994). Moreover, that the property is unsecured does not remove it from the estate. *In re Blixseth*, 684 F.3d 865, 871 (9th Cir. 2012). Here, the debtor contends he owns both a legal and a beneficial interest in the Nelson Rogers Trust.

Generally, scheduled property leaves the estate upon closure or by affirmative abandonment or by sale of the asset. 11 U.S.C. §§ 363, 554. As long as the property remains property of the estate, the Chapter 7 trustee, and only the trustee, has standing to pursue the cause of action. 11 U.S.C. § 323; *Koch Refining v. Farmers Union Central Exch., Inc.*, 831 F.2d 1339, 1343 (7th Cir. 1987). Unless and until the standing issue is resolved, plaintiff cannot pursue this cause of action. Finding no standing, the adversary proceeding will be dismissed with leave to amend.

## **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Defendants' motions have been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is granted with leave to amend; and

IT IS FURTHER ORDERED that not later than June 11, 2024, the plaintiff may file a first amended complaint, provided he has resolved the issue of standing.

3. [23-24331](#)-A-7     **IN RE: JAYATON THOMAS**  
[24-2001](#)     [MSH-2](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL  
3-6-2024     [\[45\]](#)

MARY ALICE NELSON ROGERS TRUST  
PRE-1933 PRIVATE AM V.  
MATTHEW HENDERSON/ATTY. FOR MV.

### **Final Ruling**

**Motion:** Dismiss

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted with Leave to Amend

**Order:** Civil minute order

Defendants move to dismiss the adversary proceeding against them.

### **FACTS**

The complaint is all but devoid of facts. Amend. Compl., ECF No. 7. The court is able to discern that the plaintiff contends that he: (1) is the "attorney-in-fact" and "sole beneficiary" of the "Nelson Rogers Trust"; and (2) that the trust holds a cause of action against the defendants arising out of the defendants' foreclosure in December 2021 of real property in which the plaintiff claims an interest. Ex. C to Am. Complaint, ECF No. 7. The plaintiff appears to contend that the defendants breached their fiduciary duties to him. Am. Compl. p. 6, ECF No. 7.

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### **PROCEDURE**

Thereafter, he filed the instant adversary proceeding against the lender and associated parties. The defendants move to dismiss, citing Rule 12(b)(6) and res judicata (based on prior district court proceedings).

### **DISCUSSION**

The amended complaint fails to show that he has standing to pursue this action. All pre-petition assets are property of the estate. 11 U.S.C. § 541 (estate includes all legal and equitable interests); *In re Dunning Bros. Co.*, 410 B.R. 877, 888 (Bankr. E.D. Cal. 2009). Property in which the debtor has no beneficial interest is not property of the estate. 11 U.S.C. § 541(d); *In re Advent Mgmt. Corp.*, 104 F.3d 293, 295 (9th Cir. 1997); *In re Unicom Computer Corp.*, 13 F.3d 321, 324 (9th Cir. 1994). Moreover, that the property is unsecured does not remove it from the estate. *In re Blixseth*, 684 F.3d 865, 871 (9th Cir. 2012). Here, the debtor contends he owns both a legal and a beneficial interest in the Nelson Rogers Trust.

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#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Defendants' motions have been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is granted with leave to amend; and

IT IS FURTHER ORDERED that not later than June 11, 2024, the plaintiff may file a first amended complaint, provided he has resolved the issue of standing.

4. [23-23846](#)-A-7    **IN RE: EBONEE MARTIN**  
[24-2008](#)    [CAE-1](#)

STATUS CONFERENCE RE: COMPLAINT  
2-8-2024    [[1](#)]

KELSTIN GROUP, INC. V. MARTIN  
THOMAS GRIFFIN/ATTY. FOR PL.

#### **Final Ruling**

The status conference is continued to June 18, 2024, at 10:30 a.m. to allow the plaintiff to seek entry of the defendant's default and to prove up the judgment. If a judgment has not been entered, not later than June 4, 2024, the plaintiff shall file a status report. A civil minute order shall issue.