

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

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

Pursuant to District Court General Order 612, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall, which advises the court that it is waiving the fee for the use of its service by *pro se* (not represented by an attorney) parties through April 30, 2020. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.**

**April 9, 2020 at 11:00 a.m.**

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| 1. | <a href="#"><u>18-27720-E-13</u></a> <b>DAVID RYNDA</b><br><a href="#"><u>19-2023</u></a> <b>TLW-8 Tracy Wood</b><br><b>RYNDA V. MACHADO ET AL</b> | <b>MOTION FOR SUMMARY JUDGMENT</b><br><b>2-22-20 [<a href="#"><u>121</u></a>]</b> |
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant, Chapter 13 Trustee, and Office of the United States Trustee on March 11, 2020 By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion for Summary Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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). The defaults of the non-responding parties and other parties in interest are entered.

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| <b>The Motion for Summary Judgment is denied.</b> |
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David Jerome Rynda ("Plaintiff") filed this adversary proceeding on February 11, 2019. Dckt. 1. Plaintiff filed the instant motion on November 18, 2019.

On November 18, 2019, Plaintiff filed the instant Motion for a Judgment on the Pleadings pursuant to Federal Rule of Civil Procedure 12(c). Dckt. 85. The court first reviews the Complaint, Answer, Cross-Complaint and Cross-Answer.

### **Summary of Complaint**

The Third Amended Verified Complaint to Quiet Title was filed by David Rynda, the Plaintiff-Debtor on October 16, 2019. Dckt. 72. The Third Amended Complaint is summarized as follows:

- A. The Plaintiff-Debtor is the Chapter 13 debtor in his bankruptcy case (No. 18-2770).
- B. The First Cause of Action is to quiet title to the real property commonly known as 9436 Windrunner Lane, Elk Grove, California ("Property").
- C. The Defendants are Elina Machado and Gabriel Machado (collectively "Defendants").
- D. Plaintiff-Debtor asserts that on November 22, 2014, Defendants executed and had notarized a quitclaim for the Property to Plaintiff-Debtor.
- E. The Quitclaim provisions include:

For and in consideration of the sum of Ten Dollars (\$10,00) [sic] and other good and valuable consideration, the receipt of which is hereby acknowledged, we hereby Remise, Release, AND FOREVER Quitclaim: David Rynda, a single person, who address is 14620 East 14th St., San Leandro, California 94578, the following real property in the City of Elk Grove, County of Sacramento, State of California, with the following legal description: See attached exhibit A. 9436 Windrunner Lane, Elk Grove, CA
- F. Plaintiff-Debtor asserts that he, pursuant to the Quitclaim, is the owner of the Property.
- G. Defendants claim an interest adverse to that of Debtor.
- H. Plaintiff-Debtor seeks a determination that he is the owner of the Property, and that Defendants, and each of them, have no interest in the Property.
- I. The Second Cause of Action is to quiet title against Defendants, asserting such right

pursuant to the doctrine of adversary possession.

- J. Plaintiff-Debtor asserts that he has been in actual, open, hostile, continuous, and exclusive possession of the Property since November 22, 2014. Further, that there has been more than five years of such possession.
- K. Plaintiff-Debtor has been in such possession by virtue of the Quitclaim executed on November 22, 2014, which was recorded by Plaintiff-Debtor on November 27, 2018.
- L. Plaintiff-Debtor's possession of the Property for more than five years, being adverse to all other persons, is curative of any defects in the Quitclaim.
- M. Plaintiff-Debtor asserts that he has paid all taxes and assessments that have been levied or assessed against the Property during the five years of possession.

### **Summary of Answer**

On November 16, 2019, Defendant Elina Machado ("Defendant-Elina") filed an Answer to the Third Amended Complaint. Dckt. 76. Defendant-Elina's Answer is summarized as follows:

- 1. Defendant-Elina admits and denies specific allegations in the Complaint.
- 2. With respect to the Quitclaim, she alleges "the document was signed with conditions and agreements made between the parties that were never performed and the document was not delivered or signed with any intent to transfer the Property.
- 3. The Answer states twenty five (25) affirmative defenses.

### **Counter-Claim Filed by Defendant-Elina (identified as Counter-Claimant Elina for purposes of the Counter-Claim)**

- 1. The First Counter-Claim filed by Counter-Claimant Elina alleges that Defendant-Debtor David Rynda (as Plaintiff-Debtor is reference for the Counter-Claim) has created waste and destruction of the Property while in his possession.
- 2. Counter-Claimant has suffered financial damages caused by Defendant-Debtor's possession and waste on the Property.
- 3. The Second Counter-Claim is for cancellation of the Quitclaim.
- 4. Counter-Claimant asserts that the Quitclaim and other documents have been recorded against the Property without Counter-Claimant's permission.
- 5. In addition to the Quitclaim, Counter-Claimant asserts that a deed of trust against the Property given to the Defendant-Debtor's brother is for no valid obligation and has been recorded solely to cloud Counter-Claimant's title to the Property.

6. Counter-Claimant seeks a determination that the various instruments recorded against the Property by Defendant-Debtor or with his permission are void.
7. The Third Counter-Claim is for declaratory relief. This relates to liens asserted by third-parties, some of which pre-date Defendant-Debtor's asserted interest in the Property, and some after that time.

It is not clear from the Counter-Claim whether this seeks just a determination as to between Counter-Claimant and Defendant-Debtor, or attempts to obtain an enforceable determination against the third-parties who are not included in the Counter-Claim.

8. For the Fourth Counter-Claim, Counter-Claimant seeks to quiet title to the Property, with a determination that Defendant-Debtor has no interest therein.

Defendant/Counter-Claimant Elina makes a demand for a jury trial at the end of the Counter-Claim for this action.

### **Defendant Gabriel Machado Response**

Defendant-Debtor Gabriel Machado has not filed an answer or other responsive pleading to the Complaint.

### **MOTION FOR SUMMARY JUDGMENT**

On February 22, 2020, Plaintiff-Debtor filed the instant Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56, and as incorporated to the Federal Rules of Bankruptcy Procedure, Rule 7056. Dckt. 121. Plaintiff alleges the following:

- A. Plaintiff is in need of an order declaring Quiet Title in favor of Plaintiff for the property commonly known as 9436 Windrunner Lane, Elk Grove, California ("Property").
- B. Plaintiff needs the order on an emergency because two tenants and six squatters have taken up residence in his home since July 2019, refuse to pay rent or leave, and have fought eviction by telling the judge that Plaintiff-Debtor does not own his home and therefore cannot evict them.
- C. State Court judge refuses to rule in favor of Debtor in two unlawful detainer proceedings after checking the County Recorder's office website where the Property is listed as owned by Defendants.
- D. This is despite Plaintiff having recorded a copy of the original quitclaim received from the Defendants.
- E. Until Debtor can record an original quitclaim deed or receive an order from this court for quiet title, Defendants's names will continue to show as the owners and

Plaintiff will be unable to evict those not paying rent.

- F. Plaintiff needs this rent so that he can make Chapter 13 plan payments.
- G. Without an order for quiet title, Debtor is at risk of having his case dismissed and his home foreclosed.
- H. Statement of Undisputed Facts according to Plaintiff-Debtor (The court attempts to the best of its ability to keep track of the numbering as there are numbering problems in sequencing after Undisputed Statement No. 17):
  - 1. Defendants reside in California and the alleged acts of Defendants occurred within Sacramento County and concern real property within Sacramento County.
  - 2. On November 22, 2014, Defendants executed and had notarized a Quitclaim for the Property. (Exhibit A, Dckt. 124).
  - 3. Quitclaim was notarized by Lucerito Meza-Baez. (Exhibit B, *Id.*).
  - 4. Defendants' signatures and right thumb prints appear on the notary journal. (Exhibit C, *Id.*).
  - 5. The quitclaim states on its face that Defendants whose address is the Property declare that for consideration of Ten Dollars (\$10,00) and other good and valuable consideration, Defendants "remise, release, and forever quitclaim" to Plaintiff the Property. (This is a summary of Plaintiff's Exhibit A provided by the court.)
  - 6. Attached to the Quitclaim itself is an Exhibit A, which is the legal description of the Property.
  - 7. Defendant Elina Machado has admitted in court that she signed the quitclaim, had it notarized, and gave it to Plaintiff-Debtor.
  - 8. Such admissions can be found in Defendant Elina's Answer to the Complaint.
  - 9. Although Defendant Elina admits she signed the Quitclaim, she claims to lack sufficient knowledge to admit or deny what is written on the face of the quitclaim as described in paragraph 5 above. Defendant's refusal to admit what is stated in paragraph 5 is true indicates she is "dishonest and paying [sic] games with this court in her attempt to drag out her meritless claim and bankrupt Plaintiffs [sic] attorney in the process."

10. Plaintiff admits that he received and accepted the original Quitclaim deed from Defendants.
11. Defendant claims that she did not deliver the original quitclaim with the intent to convey her interest in the Property. If that was not her intention, Plaintiff asks if her intention was to defraud Plaintiff. Defendants action in delivering the quitclaim to Plaintiff “speak louder than words can only be interpreted as her intent to convey her interest in the property.”
12. There are six elements to prove valid conveyance: Identity, Consideration, Words of Conveyance, Land Description, Signature, and Deliverance.
14. **Identity:** the quitclaim Defendant Elina admits to signing identified Defendants as the parties giving up ownership and Plaintiff, the party acquiring ownership.
16. **Consideration:** the quitclaim Defendant Elina admits to signing states “in consideration of the sum of Ten Dollars (\$10,00) and other good and valuable consideration, the receipt of which is hereby acknowledged.”
3. **Words of Conveyance:** the quitclaim Defendant Elina admits to signing states “The Undersigned Grantors [ . . . ] declare that: [ . . . ] we hereby Remise, release, AND FOREVER Quitclaim [ . . . ] the following real property in the City of Elk Grove, County of Sacramento, State of California, with the following legal description: See attached exhibit A. 9436 Windrunner Lane, Elk Grove, CA.”
5. **Land Description:** the quitclaim Defendant Elina admits to signing states: “the following real property in the City of Elk Grove, County of Sacramento, State of California, with the following legal description: See attached exhibit A. 9436 Windrunner Lane, Elk Grove, CA.”
7. **Signature:** Defendant admits to signing the quitclaim in the presence of the notary who recorded her ID and fingerprints in the process.
9. **Delivery and Acceptance:** Though Defendant does not admit to having delivered the Quitclaim to plaintiff, Plaintiff copies his original quitclaim receded from Defendant before it was lost or stolen, and he moved into the Property upon paying Defendant the agreed upon consideration and

receiving from her the original quitclaim.

10. The quitclaim has an acknowledgment of acceptance attached and signed by Plaintiff-Debtor, with his signature and fingerprints on the notary journal, thereby providing delivery and acceptance.
11. Additionally, Defendant did not file a quiet title action by way of a counterclaim until November 16, 2019, six days short of five years after she conveyed the property to plaintiff.
12. Plaintiff alleges: “Would a person who had no intent to convey her interest in real property, and who never in fact delivered a quitclaim to the buyer, allow the buyer to move in and live in the home, and pay the mortgage for five years, if she had not in fact delivered the quitclaim to the buyer? Of course not.”
13. Adding: “Would a buyer who had not received an original quitclaim move into sellers’ home, pay agreed upon consideration, live in the home and pay the mortgage for five years if he had not in fact received the original, notarized quitclaim? Of course not.”
14. And that “The conduct of the parties and the passage of time clearly indicate the quitclaim was delivery and accepted, whether Defendant admits it or not.
15. Thus, Plaintiff argues that all of the six elements of valid conveyance have been met.
18. Since purchasing the Property, Plaintiff has occupied it and is the undisputed owner and/or entitled to possession of the Property.
19. After the Plaintiff purchased the Property, the original quitclaim deed was lost or stolen before he could record it and therefore requires a court order for quiet title.
20. Defendant’s counter claims allege that she had an oral agreement with Plaintiff concerning the sale of the Property to him, which has not been fulfilled and this claims an interest in the Property that is adverse to Plaintiff. However, Defendant’s claims are without merit and Defendant has no legal or equitable right,

claim or interest in the Property.

21. Defendant's counter claims are barred by at least five Affirmative Defenses, asserted in Plaintiff's Answer to Counter Claims.

I. Plaintiff's Affirmative Defenses to Defendant's Counter Claims (as asserted in Plaintiff's Answer to Counter Claims):

1. CA Statute of Frauds- Civil Code 1624 Plaintiff asserts that Defendant's allegation that there were "conditions and agreements made between the parties that were never performed" must be stricken because there is no mention of such on the quitclaim.
2. CA Statute of Limitations Civil Code 339- CA Statute of Limitations Civil Code 339 has a two-year statute of limitations on claims not founded upon an instrument of writing. Defendant did not file her counterclaims within the two years of any alleged breach of her alleged oral agreement, for she did not file a complaint will November 16, 2019.
3. CA Statute of Limitations Civil Code 337- CA Statute of Limitations Civil Code 337 has a four-year statute of limitations on claims arising from a written contract. Plaintiff asserts that Defendant's affirmative defenses and counterclaims are barred by the Statute of Limitations because the quitclaim, dated November 22, 2014, is the contract and more than five years have passed since it was signed.
4. Judicial Estoppel- Plaintiff asserts Defendant's affirmative defenses and counter claims are barred by judicial estoppel because claimed to own and reside in the property at issue in her Chapter 13 bankruptcy petition, Case No. 15-21423, dated 2/25/2015. Plaintiff alleges Defendant did not list in her schedules any claims against Plaintiff.
5. CA Statute of Frauds- Civil Code 1624- Plaintiff asserts that Defendant's delay in filing indicates that whatever oral agreement she thought she had with Debtor, it clearly could not have been performed in less than one year, or she would have filed a claim for quiet title no later than one to two years of the breach occurred.
6. Defendant's affirmative defenses and counterclaims



are barred by California Statute of Limitations Civil Code 337, 339, 1624, and Judicial Estoppel and must be stricken.

- J. Plaintiff seeks a declaration that the title to the Property is vested in Plaintiff alone and that Defendants be declared to have no estate, right, title, or interest in the Property and that said Defendants be forever enjoined from asserting any estate, right, title or interest in the Property adverse to Plaintiff-Debtor.

### **Prayer for Relief**

Plaintiff requests the following relief:

- A. That the Court grant Plaintiff's Motion for Summary Judgment;
- B. That the Court hold an evidentiary hearing at a later date to determine damages and sanctions;
- C. That the Court enter an order declaring Defendant's Counter Claims are dismissed; and
- D. That the Plaintiff have such other and further relief as the Court may deem just and proper.

### **APPLICABLE LAW TO DETERMINE A MOTION FOR SUMMARY JUDGMENT**

In an adversary proceeding, summary judgment is proper when "[t]he movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a), incorporated by Fed. R. Bankr. P. 7056. The key inquiry in a motion for summary judgment is whether a genuine issue of material fact remains for trial. Fed. R. Civ. P. 56(c), incorporated by Fed. R. Bankr. P. 7056; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–50 (1986); 11 JAMES WM. MOORE ET AL., *MOORE'S FEDERAL PRACTICE* § 56.11[1][b] (3d ed. 2000). "[A dispute] is 'genuine' only if there is a sufficient evidentiary basis on which a reasonable fact finder could find for the nonmoving party, and a dispute [over a fact] is 'material' only if it could affect the outcome of the suit under the governing law." *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 707 (9th Cir. 2008), citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248 (1986).

The party moving for summary judgment bears the burden of showing the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). To support the assertion that a fact cannot be genuinely disputed, the moving party must "cit[e] to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations ..., admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c)(1)(A), incorporated by Fed. R. Bankr. P. 7056.

In response to a sufficiently supported motion for summary judgment, the burden shifts to the nonmoving party to set forth specific facts showing that there is a genuine dispute for trial. *Barboza*, 545 F.3d at 707, citing *Henderson v. City of Simi Valley*, 305 F.3d 1052, 1055–56 (9th Cir. 2002). The

nonmoving party cannot rely on allegations or denials in the pleadings but must produce specific evidence, through affidavits or admissible discovery materials, to show that a dispute exists. *Id.* (citing *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991)). The nonmoving party “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

In ruling on a summary judgment motion, the court must view all of the evidence in the light most favorable to the nonmoving party. *Barboza*, 545 F.3d at 707 (citing *County of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001)). The court “generally cannot grant summary judgment based on its assessment of the credibility of the evidence presented.” *Agosto v. INS*, 436 U.S. 748, 756 (1978). “[A]t the summary judgment stage [,] the judge’s function is not himself to weigh the evidence and determine the truth of the matter[,], but to determine whether there is a genuine issue for trial.” *Anderson*, 477 U.S. at 249.

## DISCUSSION

On February 21, 2020, the court filed an Order denying Plaintiff’s *Ex Parte* Emergency Motion for Summary Judgment or in the Alternative an Order Providing Debtor with Exclusive Dominion, Control, and Use of the Home. Dckt. 116. The court denied on the basis that the relief sought by Plaintiff through his *ex parte* motion would deny Defendant Elina of her due process rights.

This time around, Defendant was able to respond. In her Opposition, Defendant argues that Plaintiff has not met his burden under FRCP 56 and thus has failed to shift the burden of proof to non-moving party Defendant. Defendant contends that Plaintiff’s declaration lacks personal knowledge and is conclusory and contains irrelevant statements. Further, Defendant asserts that Plaintiff cannot prove he has legal title and cannot meet the elements of continuous and exclusive use of the property for five years as required for adverse possession in the state of California. Moreover, Defendant alleges that Plaintiff fails to provide legal authority for the elements of valid conveyance and fails to support his allegations with any evidence. Finally, Defendant asserts that even if the court were to find that Plaintiff has indeed shifted the burden, Defendant argues that delivery is more than physical delivery but is also a question of intent; and that manual delivery is not conclusive evidence of intent. Defendant cites to *Luna v. Brownwell*, 185 Cal.App.4th 668, 673 (2010) and contends that both the issue of intent and the validity of the quitclaim are in dispute.

Defendant requests the court to consider that Defendant has been unable to conduct discovery and that the parties have not conducted their Rule 26(f) status conference. The conference has been set for April 22, 2020. Parties have agreed to meet and confer to set a discovery schedule on April 1, 2020.

As to Plaintiff’s Statement of Undisputed Facts, Defendant states the following (matching each of Plaintiff’s undisputed fact by number):

1. Defendant admits being a Defendant individual residing in Sacramento, that the events alleged occurred in Sacramento, and concern real property within Sacramento.
2. Defendant admits that a document was executed and notarized by Defendants relating to the property but denies that Defendant executed a quitclaim for the property and points the court to her declaration and contends that discovery is

needed regarding the authenticity of Exhibit A (Quitclaim)

3. Defendant admits that the quitclaim was notarized by Lucerito Meza-Baez but that discovery is needed regarding the authenticity of Exhibit B (notary page).

4. Defendant admits that a document was executed and notarized by Defendants relating to the property but denies that the a quitclaim was delivered to Plaintiff and Plaintiff accepted it. Defendant again points the court to the declaration, states that discovery is needed regarding the authenticity of Exhibit C (notary's journal entry) and whether Plaintiff's right thumb prints appear on the document.

5. Defendant admits the language of the face of the quitclaim deed but notes that in addition the quitclaim contains other statements not set forth in Plaintiff's Fact No. 5.

6. Defendant admits as to the provided language of the legal description of the property as Exhibit A of the quitclaim.

7. Defendant denies that she admitted to the court though her counsel that Defendant did sign the quitclaim and gave it to Plaintiff.

8. Defendant denies that by admitting to three (3) statements under the First Cause of Action in her Answer to the Complaint constitutes admission that she signed and had notarized a quitclaim to sell her former home to Plaintiff. Further noting again, that discovery is needed as to the authenticity of Exhibit A.

9. Defendant denies that she is dishonest and is playing games with this court in her attempt to drag out her meritless claim and bankrupt Plaintiffs attorney in the process. Adding that Defendant is not aware of Plaintiff's attorney financial condition. Further noting again, that discovery is needed as to the authenticity of Exhibit A.

10. As to Undisputed Fact, Defendant denies, and states that discovery is needed as to what Plaintiff "admits," the agreements, and intentions between the parties and the authenticity, legal delivery and acceptance of the quitclaim.

11. Defendant admits that Defendant claims in her Answer she did not deliver the original quitclaim with the intent to convey her interest in the Property but denies the balance of the statement. Again, Defendant states that discovery is needed as to the agreements, and intentions between the parties and the authenticity, legal delivery and acceptance of the quitclaim.

18. Defendant denies this statement as it pertains to Plaintiff purchasing the house, occupying it and his status as the undisputed owner and/or entitled to possession of the Property. Again, Defendant states that discovery is needed as to the agreements, and intentions between the parties and the authenticity, legal delivery and acceptance of the quitclaim.

According to Defendant, there are material issues in dispute and Defendant requests discovery. As noted by Defendant a status conference has been set for April 22, 2020.

## **AFFIRMATIVE DEFENSES**

Plaintiff-Debtor seeks to knock out Defendant's Counterclaim on the following asserted affirmative defenses:

First Affirmative Defense - Statute of Frauds, asserting that since Defendant is asserting that the agreement goes beyond the face of the copy of the asserted quitclaim, such contentions are barred.

Second Affirmative Defense - two year statute of limitations for oral contract, asserting that the counterclaims were not filed in this Adversary Proceeding until 2019, which the asserted transfer was in 2014.

Third Affirmative defense - four year Statute of Limitations for claims arising on a written contract.

Fourth Affirmative Defense - Judicial Estoppel, Defendant not disclosing the purported interest in her bankruptcy case, No. 15-21423, filed in 2015.

Fifth Affirmative Defense - Repeats Statute of Frauds.

At issue before the court is what was signed and what representations were made to induce Defendant to sign such documents. Defendant provides her testimony, which includes:

4. Gabriel then approached me and said that his friend David Rynda could "help us" and that I needed to hear him out. . . To the best of my recollection David told me that he wanted to "help us." He knew that Gabriel and I were going through divorce and he offered to move into the Real Property to live and that he would pay all mortgage, taxes insurance and the home owners association dues while our divorced finalized and that Gabriel would be able to stay there without making payments. David stated that after a year the home would be sold and that the parties would divide the profits.

5. Sometime soon thereafter, Gabriel and I went to David Rynda's office at Rynda's Insurance Agency on 16th Street in Sacramento. We were greeted by one of David Rynda's staff who presented me with a document to sign related to the property and it was signed in front of a notary, but I have no specific recollection of the document I signed. It was only myself, Gabriel, Rynda's employee and the notary which I understood worked at the insurance agency.

6. I have reviewed the quitclaim deed that David Rynda has provided the court and I simply do not recall this specific document and I do not know whether this is the document that I signed. However, in reviewing the document and the declaration of Lucerito Meza-Baez I can state that David Rynda was not present when I signed the document at Rynda's agency. I can state that I do not recall initialing the document with an "EM." I can also state that I signed a document

relating to the Real Property in Sacramento at Rynda's agency on 16th Street and not in Alameda County as the document states. David Rynda did not sign or notarize any document in my presence on November 22, 2014. As the court can see there are three separate pages.

7. Whatever document I did sign at David Rynda's office was signed with my agreement that the home would be sold and the profits divided as stated above. It was never my intent to transfer title or ownership of the Real Property to David Rynda. At the time I signed the document I fully expected and intended David Rynda to pay the mortgage, insurance, taxes and associations dues, and that after a year we would sell and divide profits, not that I would transfer ownership to Rynda. . .

. . .

10. The constant late bill notifications continued for months and I waited for the year to pass as it was my expectation that the home would be sold. Despite my continuous requests to Mr. Rynda and Gabriel Machado to move forward with the sale of the home nothing happened.

11. In approximately 2016 I confronted David Rynda about not moving forward with the sale and for the first time he told me that the house was his and that he would not sell it and divide profits as we agreed. . . .

12. In May 2017 I filed for divorce. As part of the divorce proceedings I moved to join David Rynda as a person who controlled and claimed an interest in a community asset that was subject to the disposition of the family court. See California Family Code 2021.

13. David Rynda was joined in the family law proceeding and served with summons and petition. David Rynda never responded to service of process and his default was taken. Attached as Exhibit A is the petition for joinder that was filed on June 1, 2017 asking the family law court to determine the respective rights of the parties with regard to the Real Property and pursuant to the parties' agreement.

Declaration (identified by paragraph numbers used in Declaration), Dckt. 137.

Defendant puts at issue whether she signed the original of the document for which Plaintiff-Debtor has presented an asserted copy. Additionally, Defendant puts at issue the accuracy and truthfulness of the purported notarization.

In looking at the declaration provided by Lucerito Meza-Baez, the person identified by Plaintiff-Debtor as the notary, she does not testify just as to having notarized the document. Ms. Meza-Baez then becomes an advocate for Plaintiff-Debtor "testifying" that her conclusion from the document is that it grants all right title and interest to the Plaintiff-Debtor. Declaration, attached as Exhibit B, Dckt. 124.

Defendant asserts that Plaintiff-Debtor represented that the property would be sold after the divorce and the profits split. Defendant testifies that it was "sometime" in 2016 that Plaintiff-Debtor

told her that he was not going to perform the asserted agreement to sell the Property. Then in May 2017, Defendant commence a divorce proceeding and joined the Plaintiff to assert Defendant's interest and challenge Plaintiff-Debtor's asserted interest.

Defendant goes further to testify that in the state court dissolution action the state court judge "granted me relief to sell the Real Property and deposit funds in my attorney's trust account," but Plaintiff-Debtor commenced his bankruptcy case, which derailed the state court judge's order. Declaration ¶ 14; Dckt. 137.

Defendant's testimony is that she began prosecuting claims against the Plaintiff-Debtor within two years of allegedly learning that Plaintiff-Debtor would not perform as represented/agreed.

Defendant also provides the court with Plaintiff-Debtor's testimony in the bankruptcy case, with a copy of his Declaration filed in support of confirmation of the Chapter 13 Plan. Exhibit A, Dckt. 140. Plaintiff-Debtor's testimony is that he did not have an original quitclaim deed, but had multiple quitclaim deeds, which he kept in a box under his bed. Declaration, p. 5:23-25; *Id.* Though stating that he purchased the property in 2014 and considered himself to be the owner, no explanation is provided as to why Plaintiff-Debtor did not record the quitclaim deed. No explanation as to why there would be two "Original" deeds. The extensive declaration omits any time frame for actions taken for Plaintiff-Debtor, if he believed he owned the property, to record his deed.

He does say that at some time he asked his former attorney, Earnest Anderson, to record the second "Original" Quitclaim deed and to represent him in his fight with Defendant. However, Mr. Anderson could not so represent the Plaintiff-Debtor because his law license was suspended before he could appear in the state court action. There is a disbarred attorney, "Ernest Anderson" in Hayward, California whose license was suspended in October 2017.

In reviewing this Declaration, the court was reminded of another bone of contention - Plaintiff-Debtor having placed deeds of trust on the Property, one for his brother and one for a friend. In his declaration, Plaintiff-Debtor explains the obligations for which these deed of trust were recorded:

As for my secured debts owed to my brother, John Rynda, and Erika Leyva, I am attaching copies of the recorded liens hereto, and I will explain the reason for them below. Exhibit D, E, F.

My brother paid over \$100,000 to help me with a situation that occurred ten years ago, and I owe him more than that for his help, therefore, as soon as I found a way to record my name on the title of my home by attaching a copy of my quitclaim received from the Machados to a conveyance from me to my living trust. I also recorded with that a Declaration of Homestead, and a lien to secure the debt I owe my brother. Exhibit G.

As for the debts I owe Erika Leyva, she is a friend and former employee, and she purchased my former business when I could not continue to run the business in my disabled state; my pain and depression were too much to bear.

Declaration, p. 3:21.5-27, 4:1.5-4.5; *Id.*

Exhibit D is a deed of trust given by Plaintiff-Debtor, individually, to secure a \$100,000 obligation. This has a recording date of November 30, 2018 and dated and notarized that same date. Plaintiff-Debtor states that this is a decade old obligation. The deed of trust was recorded eleven (11) days before the bankruptcy case was commenced on December 12, 2018.

Exhibit E and Exhibit F are deeds of trust given by Plaintiff-Debtor, individually, to Erika Leyva, the friend, to secure obligations of \$10,000 and \$15,000, respectively. These deeds of trust are recorded, signed and notarized, and notarized on November 30, 2018 - eleven days before Plaintiff-Debtor commenced his bankruptcy case.

Exhibit F is a "Trust Transfer Deed" by which title to the Property is stated to have been transferred from Plaintiff-Debtor individually, to Debtor as the Trustee of the David J. Rynda Revocable Trust. This was recorded on November 27, 2018 - three days before the Plaintiff-Debtor purported to transfer title in his individual capacity, not as the trustee of the trust.

Exhibit G provided by the Plaintiff-Debtor in his bankruptcy case is identified as the state court complaint filed by the Defendant against Plaintiff-Debtor in the State Court. It has a filed date of June 1, 2017. In this State Court Pleading, Defendant asserts her interests in the Property against the Defendant-Debtor.

The above Exhibits D - G are found at Dckts. 123-126 in Bankruptcy Case 18-27720.

In the Bankruptcy Case, Plaintiff-Debtor's counsel filed a proof of claim for Debtor's Brother, John Rynda. Proof of Claim No. 10, filed on April 16, 2019. It is for \$100,000, and a copy of the deed of trust recorded eleven days before the bankruptcy case was filed is attached. No note or other documentation of an obligation is provided. It is stated as the basis for the claim as follows:

Creditor incurred \$100,000 in debt assisting Debtor to purchase shares of Rynda's #1 Insurance, Corp. from Carolina Rynda's Ch. 7 Trustee's auction sale on behalf of Debtor in 2009. Debtor is liable to creditor for reimbursement, and therefore executed a note and deed of trust once Debtor found a way to record his interest in his home at 9436 Windrunner Ln, Elk Grove, CA 95758 just prior to filing his bankruptcy.

Counsel for Plaintiff-Debtor confirms that the obligation was a least ten years antecedent to the November 30, 2018 recording of the deed of trust.

An Amended Proof of Claim No. 10-2 was filed on July 30, 2019, again signed by counsel for the Plaintiff-Debtor. The basis for the claim is not changed and it is state stated to be \$100,000. Attached to Amended Proof of Claim 10-2 is the deed of trust recorded on November 30, 2018, and a Promissory Note dated November 30, 2018.

Plaintiff-Debtor's counsel filed similar Proofs of Claim No. 9 and Amended 9-1 for Erika Leyva. Ms. Leyva's include her declaration stating that she loaned the Plaintiff-Debtor monies on July 20, July 21, July 26, July 31, and August 1, 2018, for which she was then given the deed of trust that was recorded on November 30, 2018 - eleven days before Plaintiff-Debtor commenced his bankruptcy case. In the Declaration Ms. Leyva's states that she cannot afford a lawyer, but that she could afford to give/loan \$25,000 to the Plaintiff-Debtor.

Plaintiff-Debtor directs the court to the Defendant's Chapter 13 bankruptcy case that was filed on February 25, 2015 and dismissed on September 9, 2016. Bankr. E.D. Cal. 15-21423. Defendant lists the 9436 Windrunner Lane, Elk Grove, California Property as property which she owns.

Plaintiff-Debtor asserts that asserting such ownership was "fraudulent" and that Defendant did not list any "claims" against Plaintiff-Debtor in the case. Therefore, Judicial Estoppel should bar her from asserting any interest in the Property.

To the contrary, Plaintiff-Debtor has provided the court with evidence that in 2015 Defendant believed that she owned the property and did not believe that she had transferred any interest in the Property to Plaintiff-Debtor. This is consistent with Defendant now testifying that she did not believe that she quitclaimed the Property to Plaintiff-Debtor for \$10.00.

What is clear from these parties, and their respective attorneys, is that the court's decisions can be made only upon making credibility determinations of the various witnesses. Nobody has clear, undisputable evidence. Every breathing moment between these parties is subject to genuine dispute on every material fact.

### **POSSIBLE REAL PARTIES IN INTEREST**

The Plaintiff-Debtor has been diligently prosecuting his Chapter 13 case since commencing it on December 12, 2018 – eleven days after recording the deeds of trust, including the one to secure an asserted ten-plus year old obligation to Plaintiff-Debtor's brother. Unfortunately, Plaintiff-Debtor's diligence has not resulted in a confirmed plan. Rather, Debtor has not only failed to confirm a Plan, but is now more than \$20,000 delinquent in plan payments. 18-27720; Motion to Dismiss, Declaration; Dckts. 256, 258.

As addressed above, Plaintiff-Debtor conveyed interests in the Property on the eve of bankruptcy for the antecedent debts. Debtor's Plan does not provide for, and Debtor and Debtor's counsel, as fiduciary of the bankruptcy estate, have not taken any action with respect to the rights and interests of the bankruptcy pursuant to 11 U.S.C. § 544(a), § 547, and § 548, with respect to the eve of bankruptcy deeds of trust.

There is pending a motion to dismiss filed by the Chapter 13 Trustee. Given what Debtor has repeatedly represented to be a substantial asset for the bankruptcy estate, it appears likely that the court will be converting the case to one under Chapter 7 rather than dismissing it. Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9<sup>th</sup> Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9<sup>th</sup> Cir. 2002)).

Plaintiff-Debtor is not the only party to this litigation who has not "advanced the ball." While both the Plaintiff-Debtor and the Defendant purport to just want to get the property sold, neither of them has demonstrated the slightest effort to have the court order the sale of the property, the monies placed in a blocked account after getting the mortgage paid, and the parties litigating over the money. Congress provides, as a matter of federal law, that a bankruptcy judge may order the sale of property in which there are disputed liens and interests. 11 U.S.C. § 363(f)(4). Federal law recognizes that property



should not be allowed to wither and die in value while litigation plods forward. Further, 11 U.S.C. § 362(f)(4) does not require the consent of the parties, but only the order of the court.

In his Addendum to the Eight Amended Proposed Plan, Debtor will only sell the Property after this litigation is concluded, and more and more interest accrues on the mortgage secured by the Property. 18-27720; Addendum to Eight Amended Plan, Dckt. 245. As presented by the Trustee, Debtor has not made any plan payments for six months, but continues to refuse to sell the Property sooner, rather than financially detrimentally later.

Defendant equally sits resolute in refusing to move forward and force a sale of the Property. Though professing to want to get the Property sold and mortgage paid, Defendant and her counsel are mute when it comes to any sale of the property sooner, rather than financially detrimentally later.

The court has commented on prior occasions that neither the Plaintiff-Debtor nor the Defendant should think that the case being converted is to their “advantage.” They will find that bankruptcy law savvy trustees and bankruptcy litigation experienced attorneys can efficiently and effectively use the extraordinary powers and rights created by Congress under the Bankruptcy Code, powers and rights which both the Defendant and Plaintiff-Debtor have ignored (or chosen not to use as part of a costly, delaying litigation strategy).

At the end of the day, it is likely that there will be a new real party in interest substituting into this Adversary Proceeding. Such real party in interest, acting consistent with the trustee’s fiduciary duties and counsel for the trustee, should not be hobbled with what Plaintiff-Debtor and Defendant have constructed.

The Motion is denied.

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 for Summary Judgment filed by David Rynda (“Plaintiff”) 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 Dismiss is denied.

2. [19-20284-E-7](#) [19-2047](#) DUANE/CAROL ZANON

STATUS CONFERENCE RE:  
COMPLAINT  
4-1-19 [1](#)

ZANON ET AL V. EDUCATIONAL  
CREDIT MANAGEMENT CORPORATION

**Final Ruling: No appearance at the April 9, 2020 Status Conference is required.**  
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Plaintiff's Atty: David N. Chandler  
Defendant's Atty: Barry H. Spitzer

Adv. Filed: 4/1/19  
Answer: 4/25/19

Nature of Action:  
Dischargeability - student loan

**The Status Conference is concluded and removed from the calendar, the court having pending an Order to Show Cause for consolidation of related adversary proceedings to effectuate the global settlement of the Parties.**

Notes:

Telephonic Status Conference set by order of the court filed 3/17/20 [Dckt 30]. Status Reports, if any, to be filed and served by 4/1/20.

[joint] Status Conference Statement Re: Entry of Judgment filed 3/25/20 [Dckt 32]

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:  
-----

The Order to Show Cause was served by the Clerk of the Court on Plaintiff, Chapter 13 Trustee, and Office of the United States Trustee as stated on the Certificate of Service on January 15, 2020. The court computes that 49 days' notice has been provided.

**The Order to Show Cause is XXXXX.**

#### **MARCH 4, 2020 HEARING**

Though ordered to appear at the March 4, 2020 hearing on this Order to Show Cause, Kai'la Redmond sent a Response to the court on February 19, 2020, advising the court that she would not comply with the court's order because she "will be out of the state and previously arranged commitments." Response, p. 1; Dckt. 16. Ms. Redmond also requested that the court postpone the ordered hearing for thirty days.

In reviewing the file in this case the court notes that Ms. Redmond failed to appear at the January 8, 2020 Status Conference, or the November 20, 2019 Status Conference in this Adversary Proceeding that Ms. Redmond commenced.

No information is provided about the "previously arranged commitments" that Kai'la Redmond references in the Response. Also, she offers no testimony as to why there needs to be a further thirty day delay requested in the Response.

The court continues the hearing on the Order to Show Cause and the related Status Conference to 11:00 a.m. on April 9, 2020. The court further orders that on or before March 26, 2020, Kai'la Redmond shall file and serve on the U.S. Trustee for Region 17 testimony and properly authenticated documents to establish the "previously arranged commitments" that prevented her from attending and responding to the Order to Show Cause set for hearing on March 4, 2020. This evidence shall include documentation of how far in advance the "previously arranged" commitments were so "arranged." Kai'la Redmond shall also provide the reasons why she failed to attend the January 8, 2020, and the November 20, 2019 Status Conferences.

Failure to provide the evidence of the "previously arranged commitments" shall result in the court imposing a \$2,500.00 corrective sanction for such non-compliance with the order of this court.

Failure of Kai'la Redmond to appear at the April 9, 2020 hearing as ordered will result in the court further continuing the hearing and issuing an order for the U.S. Marshals to take Kai'la Redmond into custody and present Kai'la Redmond in court at the continued hearing.

### **ORDER TO SHOW CAUSE**

This Adversary Proceeding was filed on September 11, 2019, with the Plaintiff identified in the caption as "Kai'la Cynthia Redmond: Family of Redmond as Heir apparent for Howard James Redmond Sr, Plaintiff/Debtor." Dckt. 1 at 1. The Complaint states that it is an action to avoid a preferential transfer as provided in 11 U.S.C. § 547(a)(b). *Id.*

The bankruptcy case to which this Adversary Proceeding relates is Case No. 19-24755, for which Howard James Redmond, Sr. is the named Debtor, with the bankruptcy case filed in *pro se*. The Bankruptcy Petition is not signed by Mr. Redmond, but by "Kaila Cynthia Redmond, Heir-Apparent." 19-24755; Petition, Dckt. 1 at 6.

The Chapter 13 bankruptcy case filed in the name of Howard James Redmond, Sr. was dismissed on September 27, 2019. *Id.* at 30.

In the court's Civil Minutes for the hearing on the dismissal, the court addresses the estate of a decedent not being a proper bankruptcy estate debtor, there being no plan advanced, reviews the Complaint in this Adversary Proceeding, and a related District Court action that has been dismissed. *Id.*; Dckt. 29. A copy of the Docket in the District Court Action is attached as an exhibit to the Complaint.

The related District Court Action is titled *Hakeim El By v. Accredited Home Lenders, Inc. and Wells Fargo Bank*. E.D. Cal. 17-02237. Judgment was entered for the defendants in the District Court Action. Orders and Findings, E.D. Cal. 17-02237; Dckts. 44, 43, 42. The findings include:

- A. Plaintiff Hakeim El Bey was dead. The family members who appeared at the Status Conference were Kalia El Bey and Brian El Bey. *Id.*; Dckt. 21 Minutes.
- B. The family members were given thirty days to obtain counsel and seek an order substituting in as a personal representative as permitted under L.R. 230 and the Federal Rules of Civil Procedure. The court addressed that an executor or representative of an estate of a decedent cannot appear in *pro se*.
- C. The thirty days expired and no substitution was sought.
- D. The judgment was to dismiss the District Court Action without prejudice.

A review of the Docket indicates that the Plaintiff is not taking any action to prosecute this Adversary Proceeding. The Bankruptcy Case to which it relates was dismissed on September 27, 2019. Chapter 13 Case No. 19-24755; Order, Dckt. 30. The court's findings and conclusions concerning the dismissal of the Chapter 13 case are stated in the Civil Minutes from the hearing on the Motion to Dismiss. *Id.*; Dckt. 29.

The Bankruptcy Case having been dismissed, the basis for this court exercising federal court

jurisdiction pursuant to 28 U.S.C. § 1334 is not warranted. Further, the Bankruptcy Case was improperly filed for a “probate estate,” which cannot be a debtor under the Bankruptcy Code.

The named plaintiff, purporting to have standing to file the Complaint and prosecute the Adversary Proceeding has failed to appear in this Adversary Proceeding.

## **PLAINTIFF’S RESPONSE**

Plaintiff filed a response on February 19, 2020. Dckt. 16. Plaintiff requests the hearing on this Order be postponed for thirty (30) days from March 4, 2020 as Plaintiff will be out of state and previously arranged commitments. Plaintiff also requests that Defendants be order to respond to the Affidavit of Facts submitted on September 11, 2019.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:  
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The Order to Setting Hearing on Motion to Dismiss Adversary Complaint was served by the Clerk of the Court on Debtor, Defendant, Chapter 13 Trustee, and Office of the United States Trustee as stated on the Certificate of Service on April 7, 2020. The court computes that 2 days' notice has been provided.

**The Motion to Dismiss Adversary Proceeding is XXXXXXXXXX.**

Kai'la Cynthia Redmond: Family of Redmond as Heir Apparent for Howard James Redmond Sr. Plaintiff ("Plaintiff") moves for the court to dismiss the instant adversary proceeding again Accredited Home Lenders, Inc., et al..

#### **DISCUSSION**

Movant's Motion to Dismiss filed in Pro Se, is one paragraph long. It simply states the following:

I, Kai'la Cynthia Redmond: Family of Redmond as Heir Apparent for Howard James Redmond Sr. Plaintiff, is requesting that the above listed adversary case be dismissed. Plaintiff, being of sound mind does not wish to proceed with this adversary case. The Chapter 13 case was dismissed on September 27, 2019.

Respectfully submitted this 7<sup>th</sup> day of April 2020.

(Signature)

Kai'la Redmond, living woman, heir apparent to  
Howard Redmond aka Hakeim El Bey  
Donor, Grantor, Beneficiary, Executor,  
Authorized Signatory/Representative for  
Kai'la Redmond - Estate Trust  
U.C.C1-207/308; U.C.C. 1-103.6 All Rights Reserved.

Motion, at 1.

This Adversary Proceeding was filed on September 11, 2019, with the Plaintiff identified in the caption as "Kai'la Cynthia Redmond: Family of Redmond as Heir apparent for Howard James

Redmond Sr, Plaintiff/Debtor.” Dckt. 1 at 1. The Complaint states that it is an action to avoid a preferential transfer as provided in 11 U.S.C. § 547(a)(b). *Id.*

On January 21, 2020, the court filed an Order to Show Cause for Plaintiff to show why the instant Adversary Proceeding should not be dismissed without prejudice. Dckt. 14. Plaintiff was to attend the hearing set for February 2020. However, Plaintiff filed a Response informing the court that she would be unable to attend. Thus, the court continued the hearing on the Order to Show Cause for April 9, 2020. Dckt. 19.

The Motion to Dismiss Adversary Proceeding is **XXXXXX**.

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 Dismiss Adversary Proceeding filed by Kai’la Cynthia Redmond: Family of Redmond as Heir Apparent for Howard James Redmond Sr. Plaintiff (“Plaintiff”) 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 Dismiss is **XXXXXX**.

5. [19-24755-E-13](#)      **HOWARD REDMOND**  
[19-2111](#)  
**REDMOND V. ACCREDITED HOME**  
**LENDERS INC. ET AL**

**CONTINUED STATUS CONFERENCE**  
**RE: COMPLAINT**  
**9-11-19 [1]**

Plaintiff’s Atty: Pro Se  
Defendant’s Atty: unknown

Adv. Filed: 9/11/19  
Answer: none

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

Notes:  
Continued from 3/4/20 to be heard in conjunction with the court’s Order to Show Cause re Dismissal of this Adversary Proceeding [RHS-1].

|  |
|--|
| <b>The Status Conference is XXXXXXXXXXXX</b> |
|--|