

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Ronald H. Sargis  
Bankruptcy Judge  
Modesto, California

**April 10, 2014 at 2:30 p.m.**

1. [13-91409-E-7](#) **SERGIO NOLASCO**  
[13-9037](#)  
**RODRIGUEZ V. NOLASCO**

**CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
11-4-13 [[1](#)]**

Plaintiff's Atty: Robert D. Rodriguez  
Defendant's Atty: unknown

Adv. Filed: 11/4/13  
Reissued Summons: 12/30/13

Answer: none

Nature of Action:  
Objection/revocation of discharge  
Dischargeability - domestic support  
Dischargeability - divorce or separation obligation (other than domestic support)

**The Status Conference is XXXXXXXXXXXXXXXXXXXX**

Notes:

Continued from 1/16/14 to allow the parties to prosecute an attorneys' fee motion in the state court. Parties to file on or before 1/23/14 a stipulation to modify the stay and Plaintiff to lodge a proposed order granting relief, or Plaintiff to file an *ex parte* motion to modify the stay if no stipulation between the parties.

*Ex Parte* Motion to Modify the Automatic Stay filed 1/23/14 [Dckt 16]; Order granting filed 2/4/14 [Dckt 20]

**APRIL 10, 2014 STATUS CONFERENCE**

As of the court's April 8, 2014 review of the Docket no updates status reports had been filed. The court filed the order modifying the automatic stay on February 4, 2014, to allow the parties to go back to state court to obtain further orders for attorneys' fees, if any.

**JANUARY 16, 2014 STATUS CONFERENCE**

The Defendant-Debtor appeared at the Status Conference. No award has been made in the state court dissolution proceeding for attorneys' fees to be paid by the Defendant-Debtor to counsel (the Plaintiff) for his ex-wife.

No order has been entered transferring any right to attorneys' fees from the Defendant-Debtor's ex-wife to her counsel or for the Defendant-Debtor to pay any attorneys' fees to the ex-wife's counsel.

The court continues the Status Conference to allow the Plaintiff and his client, the Defendant-Debtor's ex-wife, to commence such proceedings as are necessary and appropriate to determine what, if any, attorneys' fees obligation is owed by the Defendant-Debtor, and if so, to whom the fees are owed. Then the court can address the alleged non-dischargeability of such fees.

This federal court is not going to intrude on the proceedings in the state court on this family law matter. Further, this court is not going to make a determination of whether under state law fees, if any, should be ordered to be paid to the ex-wife or her counsel by the Defendant-Debtor for the family law proceeding in state court.

The parties shall either file on or before January 23, 2014, a stipulation to modify the automatic stay to allow such a determination to be made or Plaintiff shall file an ex parte motion for such relief.

Notes:

Jury demand made by Plaintiff in Complaint [Dckt 1]

#### **SUMMARY OF COMPLAINT**

The Complaint seeks a determination that the debt or \$9,348.00 asserted to be owed by the named Defendant-Debtor, Sergio Nolasco, is nondischargeable pursuant to 11 U.S.C. § 523(a)(5) [domestic support obligation] and § 523(a)(15) [debt to spouse/former spouse/child incurred in course of a divorce or separation in connection with a separation agreement, divorce decree, or other court of record]. Further, that the Defendant-Debtor should be denied his discharge pursuant to 11 U.S.C. § 727(a)(4) for making false statements in his bankruptcy schedules.

Plaintiffs are the attorneys for the Defendant-Debtor's wife in the state court family law proceedings. In those proceedings Plaintiffs obtained an order for \$1,043.00 monthly spousal support and an award of \$11,473.00 for arrearage spousal support payments. Though Plaintiffs requested an award of \$9,348.00 in attorneys' fees, but no award was made prior to the commencement of this bankruptcy case.

The First Cause of Actions to seek to have the \$9,348.00 in attorneys' fees to be determined nondischargeable pursuant to 11 U.S.C. § 523(a)(5). (The state court has the discretion to order that an award of attorneys' fees be made directly to the attorney, but must order such. CALIFORNIA FAMILY LAW PRACTICE AND PROCEDURE 2<sup>ND</sup> EDITION, MATTHEW BENDER & COMPANY, § 62.06.)

The Second Cause of Action asserts that the asserted \$9,348.00 in attorneys' fees should be nondischargeable pursuant to 11 U.S.C. § 523(a)(15).

The Third Cause of Action seeks to have the Defendant-Debtor's discharge

denied pursuant to 11 U.S.C. § 727(a)(4)(A). It is alleged the income and expenses listed by the Defendant-Debtor on the Original Schedules I and J, and Amended Schedule J are false. It is alleged that the Defendant-Debtor provided conflicting testimony in the state court dissolution proceedings and that the state court has found the Defendant-Debtor's income and expenses to be different than as stated on Schedules I and J.

#### SUMMARY OF ANSWER

None Filed.

#### REISSUANCE OF SUBPOENA

On December 30, 2013 the Clerk of the court reissued the subpoena in this Adversary Proceeding. No Certificate of Service has been filed.

2. [13-91675-E-7](#) SHAWN/CORINNE MOOY  
[13-9038](#)  
MOOY ET AL V. U. S. DEPARTMENT  
OF EDUCATION

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
11-18-13 [[1](#)]

Plaintiffs' Atty: Pro Se  
Defendant's Atty: Jeffrey J. Lodge, Asst. U.S. Attorney

Adv. Filed: 11/18/13  
Summons Reissued: 11/20/13; 1/29/14

Answer: none

Nature of Action:  
Dischargeability - student loan

**Final Ruling:** The court having granted the Defendant's motion to dismiss and given the Plaintiff leave through April 30, 2014, file a motion to file an amended complaint, **the Status Conference is continued to 2:30 p.m. on June 12, 2014.** No appearance at the April 10, 2014 Status Conference is required.

Notes:

Continued from 1/16/14 to allow the Plaintiffs to properly serve and communicate with the United States of America concerning the claims asserted in the Complaint.

[USA-1] United States' Motion to Dismiss filed 3/5/14 [Dckt 18]; set for hearing 4/10/14 at 10:30 a.m.

3. [13-91999-E-7](#) JESSE/WENDY WYLIE  
[14-9009](#)  
FALTON CUSTOM CABINETS, INC V.  
WYLIE

STATUS CONFERENCE RE: COMPLAINT  
2-10-14 [[1](#)]

Plaintiff's Atty: James A. Fonda  
Defendant's Atty: Cort V. Wiegand

Adv. Filed: 2/10/14  
Summons Reissued: 2/11/14

Answer: 3/10/14

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

**The Status Conference is XXXXXXXXXXXXXXXXXX**

Notes:

#### **SUMMARY OF COMPLAINT**

The Complaint alleges a claim that a debt in the amount of \$50,634.62 is nondischargeable based on fraud (11 U.S.C. § 523(a)(2)). The short and plain statement of the claim, Fed. R. Civ. P. 8 and Fed. R. Bank. P. 7008, stated in the Complaint is,

A. Defendant is a debtor in a Chapter 7 case.

B. Between June 2011 and October 2011, Plaintiff provided labor and materials at Defendant's request.

C. The labor and materials were obtained by "false representations" by Defendant to Plaintiff which "were materially false respecting Defendant's financial condition." It is alleged that Plaintiff "reasonably" relied on the misrepresentations which were made by Defendant with the intent to deceive Plaintiff.

D. Plaintiff obtained a civil judgment against Defendant in the amount of \$50,634.62.

#### **SUMMARY OF ANSWER**

The Defendant filed an answer denying each and every allegation of the Complaint, except for (unidentified by paragraph number or allegation) "the procedural facts regarding the filing of the bankruptcy petition herein." It is also alleged that Plaintiff did not have a valid California State Contractor's license and is barred from collecting any money for the underlying agreements.

## **FINAL BANKRUPTCY COURT JUDGMENT**

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. § 157(b), and does not contain an allegation that this is a core proceeding. Complaint ¶ 1, Dckt. 1. In the Answer, Defendant denies the allegations relating to jurisdiction, but alleges that this is a "core proceeding." Answer ¶ 1, Dckt. 7. To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

## **PRETRIAL CONFERENCE STATEMENTS**

No Pretrial Conference Statements were filed by either of the parties.

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

- a. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 157(b), and does not contain an allegation that this is a core proceeding. Complaint ¶ 1, Dckt. 1. In the Answer, Defendant denies the allegations relating to jurisdiction, but alleges that this is a "core proceeding." Answer ¶ 1, Dckt. 7. The court finds that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and the referral of bankruptcy cases and all related matters to the bankruptcy judges in this District. ED Cal. Gen Order 182, 223. This Adversary Proceeding is a core matter arising under Title 11, including 11 U.S.C. § 523. 28 U.S.C. § 157(b)(2)(I). To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.
- b. Initial Disclosures shall be made on or before ----, 2014.
- c. Expert Witnesses shall be disclosed on or before -----, 2014, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2014.
- d. Discovery closes, including the hearing of all discovery motions, on -----, 2014.
- e. Dispositive Motions shall be heard before -----, 2014.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2014.