

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

April 16, 2019 at 1:30 p.m.

1. **17-27918**-E-7 ADELINA/MARTIN CEJA
18-2045 David Collins
TIRE & WHEEL MASTER, INC. V.
CEJA ET AL

PRE-TRIAL CONFERENCE RE:
COMPLAINT TO DETERMINE
DISCHARGEABILITY OF DEBT
4-10-18 [1]

Plaintiff's Atty: D. Randall Ensminger

Defendant's Atty: David J. Collins

Adv. Filed: 4/10/18

Answer: 6/12/18

Nature of Action:

Dischargeability - false pretenses, false representation, actual fraud

Dischargeability - fraud as fiduciary, embezzlement, larceny

Dischargeability - willful and malicious injury

Recovery of money/property - fraudulent transfer

The Pretrial Conference is XXXXXXXXXXXXXXXXXXXX

Notes:

Pre-trial statements to be filed and served by each party no later than seven court days prior to the scheduled pre-trial conference.

SUMMARY OF COMPLAINT

Debtor (Dckt. 1) obtaining a discharge and for the Nondischargeability of debt, alleging:

1. Defendant-Debtors Adelina Vargas and Martin Barajas Ceja failed to disclose their ownership of The Tire Dealer, LP.

2. Defendant-Debtors obtained credit from Plaintiff, totaling \$312,645.97 as of October 18,

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2017, when Plaintiff obtained a judgment.

3. Defendant-Debtors, and each of them, guaranteed the above obligation, which Plaintiff asserts were "fraudulent inducements" for the \$312,645.97 in credit.

4. Defendant-Debtor failed to disclose that business and personal taxes were not being paid, as well as personal and property tax liens by county, state, and federal agencies.

5. It is asserted that the above guaranty obligations are nondischargeable pursuant to 11 U.S.C. § 523(a)(2) and (6).

6. It is further asserted that:

16. Defendants are not eligible for discharge as a debtor in their bankruptcy action pursuant to 11 U.S.C. § 727(a)(4)(A) and (5) as a result of Defendants knowingly and fraudulently making a false oath in connection with a bankruptcy and as a result of Defendants' failure to satisfactorily explain the loss of and/or deficiency of assets.

SUMMARY OF ANSWER

Adelina Vargas Ceja and Martin Barajas Ceja filed an Answer, Dckt. 7, to the Complaint which Admits being indebted to Plaintiff and "denies each and every other allegation of the complaint, other than the procedural facts regarding the filing of the bankruptcy petition." Answer ¶ 1, Dckt. 7.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. § 1334 and 157(b)(2), and 11 U.S.C. § 523. Further, that pursuant thereto this is a core proceeding. Complaint ¶ 3, Dckt. 1.

In the Answer, Defendant-Debtor does not clearly admit the allegations of jurisdiction and core proceedings. Answer ¶ 1, Dckt. 7. At the Status Conference Defendant-Debtors confirmed that federal court jurisdiction existed and that this Adversary Proceeding was a core matter proceeding.

The court shall issue an Trial Setting in this Adversary Proceeding setting the following dates and deadlines:

A. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1.

B. **Plaintiff** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2019**.

C. **Defendant** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2019**.

D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary

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Objections on or before -----, 2019.

E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, 2019.

F. The Trial shall be conducted at ----x.m. on -----, 201p.

The Parties in their respective Pretrial Conference Statements, Dckts. 26 and 24, and as stated on the record at the Pretrial Conference, have agreed to and establish for all purposes in this Adversary Proceeding the following facts and issues of law:

Plaintiff(s)

Defendant(s)

<p>Jurisdiction and Venue:</p> <p>This is an adversary proceeding in the debtor's Case No. 17-27918 under Chapter 7 of Title 11 of the United States Bankruptcy Code, now pending in this Court. This Court has jurisdiction of this adversary proceeding pursuant to 11 U.S.C. §§ 727, 523 and 365. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(I) and (J).</p>	
<p>Undisputed Facts:</p> <ol style="list-style-type: none">1. Defendants did not list Plaintiff as a creditor in the above referenced Chapter 7 bankruptcy.2. Defendants did not list the litigation between Plaintiff and Defendant in Sutter County Superior Court in the above referenced Chapter 7 bankruptcy.3. Defendants owed Plaintiff the sum of \$312,645.97 as of the entry of a Default Judgment against them in Sutter County Superior Court plus 10% post judgment interest from and after that time.4. Defendants had personally guaranteed the obligation to Plaintiff prior to filing their Chapter 7 bankruptcy.5. During the time that Defendants were continuing to purchase tires on credit from Plaintiff that they and their business, The Tire Dealer, were in debt to the IRS, the Franchise Tax Board, EDD and other tax creditors in an amount that by the time they filed the instant bankruptcy totaled \$1,927,619.02 of priority debt.	<p>Undisputed Facts:</p> <ol style="list-style-type: none">1. Defendants did not list Plaintiff as a creditor in the above referenced Chapter 7 bankruptcy.2. By obtaining and/or accepting an extension of credit from Plaintiff and incurring charges on their account, Defendants made payments on said account.3. Defendants agree that they owed this debt at the time of filing the current bankruptcy.

<p>6. Defendants' tire purchases from Plaintiff were encumbered by a security interest in the goods, (i.e. the tires).</p> <p>7. Defendants were required by the terms of their purchase of tires on credit from Plaintiff that they pay Plaintiff when each tire was sold.</p> <p>8. Defendants did not disclose their past ownership of several tire shops.</p> <p>9. By obtaining and/or accepting an extension of credit from Plaintiff and incurring charges on their account, Defendants represented an intention to repay the amounts charged.</p> <p>10. Defendants were the two owners of The Tire Dealer, LP at the date of filing this Chapter 7 bankruptcy on December 4, 2017.</p> <p>11. Defendants agree that they owed this debt at the time of filing the current bankruptcy.</p>	
<p>Disputed Facts:</p> <p>1. Whether Defendants purchased tires from Plaintiff with the intention of not paying Plaintiff.</p> <p>2. Whether Defendants purchased tires from Plaintiff at and after a time when they had determined to file Chapter 7 bankruptcy.</p> <p>3. Whether Defendants listed all of their assets in their Chapter 7, in particular, any silent partner shares in any or debtors' recently sold tire shops.</p> <p>4. Whether Defendants listed all of their assets in their Chapter 7 bankruptcy, in particular, any undisclosed accounts receivable owed Defendants in conjunction with the sales of any of their tire shops.</p> <p>5. Whether Defendants incurred this debt to Plaintiffs when they had no ability or objective intent to repay them.</p>	<p>Disputed Facts:</p> <p>1. Whether Defendants obtained credit extended from the Plaintiff by false pretenses, false representations and/or actual fraud.</p>

6. Whether Defendants obtained credit extended from the Plaintiff by false pretenses, false representations and/or actual fraud.	
<p>Disputed Evidentiary Issues:</p> <p>1. None</p>	<p>Disputed Evidentiary Issues:</p> <p>1. None</p>
<p>Relief Sought:</p> <p>1. Plaintiff is seeking the denial/revocation of Defendants' discharge or in the alternative for a finding that Plaintiff's debt is non-dischargeable.</p>	<p>Relief Sought:</p> <p>1. Defendants are seeking attorney fees</p>
<p>Abandoned Issues:</p> <p>1. None</p>	<p>Abandoned Issues:</p> <p>1. None</p>
<p>Witnesses:</p> <p>1. Ammad Hussain</p> <p>2. Ana Becerril</p> <p>3. Unidentified Persons Who Purchased Tire shops from the Defendant-Debtors.</p>	<p>Witnesses:</p> <p>1. Adelina Ceja</p> <p>2. Martin Ceja</p>
<p>Exhibits:</p> <p>1. Accounting records of Plaintiff regarding The Tire Dealer, LP account;</p> <p>2. The contract documents existing between Plaintiff and The Tire Dealer, LP;</p> <p>3. Defendant-Debtors' personal guarantees.</p> <p>4. Non-consensual tax liens that had been recorded against Defendant-Debtors at the time of their filing this Chapter 7 including those that were in place during the time that Defendant-Debtors' continued to purchase tires on credit from Plaintiff and then selling them without</p>	<p>Exhibits:</p> <p>1. Payments to plaintiffs</p> <p>2. Schedules</p> <p>3. Tax Liens</p>

<p>paying for them.</p> <p>5. Defendant-Debtors' Voluntary Petition, Schedules and Statement of Financial Affairs filed by Defendants in both of their recent Chapter 7 bankruptcies, (i.e. 17-27918 and 17-24799).</p> <p>6. California Secretary of State documents to show that at the time of the filing of the current Chapter 7 their business partnership known as The Tire Dealer was still an active Limited Partnership yet it was not listed on the Statement of Financial Affairs.</p> <p>7. Court records from the Sutter County Case known as <i>Tire & Wheel Master, Inc. v. The Tire Dealer, LP; Martin Ceja and Adeline Ceja</i>, Case No. CVCS 17-0001073.</p>	
<p>Discovery Documents:</p> <p>1. None Identified</p>	<p>Discovery Documents:</p> <p>1. None Identified</p>
<p>Further Discovery or Motions:</p> <p>1. None</p>	<p>Further Discovery or Motions:</p> <p>1.</p> <p>2.</p> <p>3.</p>
<p>Stipulations:</p> <p>1. None as of the filing of the Pre-Trial Conference Statement</p>	<p>Stipulations:</p> <p>1. None as of the filing of the Pre-Trial Conference Statement</p>
<p>Amendments:</p> <p>1. None</p>	<p>Amendments:</p> <p>1. None</p>
<p>Dismissals:</p>	<p>Dismissals:</p>

1. None	1. None
<p>Agreed Statement of Facts:</p> <p>1. None as of the filing of the Pre-Trial Conference Statement</p>	<p>Agreed Statement of Facts:</p> <p>1. None as of the filing of the Pre-Trial Conference Statement</p>
<p>Attorneys' Fees Basis:</p> <p>1. 11 U.S.C. § 327 (professional hired by trustee/debtor in possession);</p> <p>2. 11 U.S.C. § 330 (final fees allowed for a professional employed pursuant to an 11 U.S.C. § 327 authorization)</p> <p>3. Fed. R. Bankr. P. 2014 (employment of professional persons by trustee or debtor in possession).</p>	<p>Attorneys' Fees Basis:</p> <p>1. Defendants seeks an award of attorney fees</p>
Trial Time Estimation: one-half day	Trial Time Estimation: one-half day

2. [18-26585-E-13](#)
[JCW-1](#)

JULIAN PEREZ
Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-13-19 [[53](#)]

MIDFIRST BANK VS.

No Tentative Ruling: The Motion For Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Chapter 13 Trustee on March 13, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The hearing on the Motion for Relief from the Automatic Stay ~~is continued to~~
~~May 7, 2019 at 1:30 p.m.~~**

MidFirst Bank (“Movant”) seeks relief from the automatic stay with respect to Julian Perez’s (“Debtor”) real property commonly known as 4412 Pinckney Way, Mather, California (“Property”). Movant has provided the Declaration of Crystal Baker to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Baker Declaration states that there are 4 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$8,550.44 in post-petition payments past due.

CHAPTER 13 TRUSTEE’S RESPONSE

The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response on April 2, 2019. Dckt. 60. Trustee requests the court consider the petition in this case was filed incomplete and remains as such; Debtor has made no payments into the plan; Debtor has not appeared at any Meeting of Creditors; and the court’s Order To Show Cause was continued to April 4, 2019.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on April 11, 2019. Dckt. 67. Debtor requests a continuance to file an opposition to the Motion, and states the following:

1. Debtor filed this case with the assistance of Mr. Alan Davis, who Debtor hired to assist him in resolving a mortgage delinquency. Debtor did not realize until attending the hearing on the court’s Order To Show Cause that Mr. Davis was scamming him.
2. Debtor now wishes to proceed with the Chapter 13 case, and is represented by counsel. Debtor is meeting with his new counsel April 15, 2019 to complete the filing documents.
3. Debtor was advised this case was dismissed.
4. Debtor desires to continue the Chapter 13 case to pay his mortgage and cure arrearages, as well as pay other claims totaling \$8,000.00. Debtor believes there is equity in the Property, and can afford to make the plan payments.

DISCUSSION

At the April 4, 2019 hearing on the court’s Order To Show Cause (Dckt. 40), Debtor appeared and discussed details about the filing of this case, why the case appeared to not be prosecuted, and why there appeared to be a fraudulent scheme to delay creditors holding a secured interest in property not belonging to the Debtor or Estate. Civil Minutes, Dckt. 63.

Debtor has now filed his Declaration testifying that he believes he was scammed by Mr. Alan Davis, that he intends to prosecute this Chapter 13 case, that he has the ability to make plan payments, and that he has equity in the Property. Declaration, Dckt. 68.

Debtor has retained experienced bankruptcy counsel well known in this District. Substitution

of Attorney, Dckt. 66.

Debtor having engaged counsel and meeting with a representative of the U.S. Trustee, he is manifesting conduct that would be consistent with someone attempting to obtain relief under the Bankruptcy Code in good faith.

The Declaration filed in support of the Motion provides evidence that the monthly plan payments are \$2,137.61, with four not having been made as of February 26, 2019. Dec. ¶ 11, Dckt. 55. With a fifth and six such payment having come due in March and April 2019, that would mean the Debtor has \$12,825.66 in monies for payments not to creditor. Even after deducting \$750 a month for the Mr. Davis payments for six months, that would leave more than \$8,000.00 (or a substantial part thereof) to be used for an adequate protection payment to Movant as part of Debtor's good faith prosecution of this case.

Proof of Claim No. 3 filed by Movant states that the pre-petition arrearage of \$41,506.81. It appears that the "assistance" provided by Mr. Davis at \$750.00 a month has put Debtor in a serious hole, but not one that he hopefully cannot extricate himself with the assistance of counsel. ^{FN. 1}

FN. 1. It appears that the bankruptcy estate may have another significant asset in connection with the monies paid by the Debtor for the mortgage, pre-bankruptcy, and bankruptcy advice and services. It may well be that given the broader public policy issues and what appears to be a multi-district "mortgage and bankruptcy service" that may be preying on consumers, the U.S. Trustee and U.S. Attorney may pursue such civil recovery (in addition to whatever, if any, criminal investigation and prosecution the U.S. Attorney may believe is warranted, if any).

Debtor's request for time to file an opposition so that he may work with counsel not only in opposing the Motion but in filing completed Schedules and a Statement of Financial Affairs, prosecuting a Chapter 13 Plan, and recovering for the benefit of the bankruptcy estate claims that are property of said estate, is not unreasonable.

However, it is not unreasonable to couple with that request an adequate protection payment pending the final hearing. If the adequate protection payment, or series of payments, is significant enough Movant may be willing to stipulate to continue the hearing for more than the thirty-day period specified in 11 U.S.C. § 362(e)(1) to allow Debtor and counsel to focus on righting the ship, getting the Schedules, Statement of Financial Affairs, and Plan filed, and engaging in productive discussions with Movant. ^{FN.2.}

FN. 2. Debtor and Debtor's counsel are fortunate to have experienced counsel representing Movant, with said counsel having demonstrated good economic sense in prosecuting their client's rights in a way to achieve the right economic resolution rather than merely litigating for academic purposes.

At the hearing, for adequate protection for Movant, Debtor addressed the court, stating

XXXXXXX

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 Motion for Relief from the Automatic Stay filed by MidFirst Bank (“Movant”) 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 hearing on the Motion is continued to May 7, 2019, at 1:30 p.m.

IT IS FURTHER ORDERED that the debtor, Julian Perez, shall file an opposition on or before April 23, 2019, and Replies, if any, shall be filed on or before April 30, 2019.

IT IS FURTHER ORDERED that as adequate protection for Movant’s interests **xxxxxxx**