

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: THURSDAY
DATE: APRIL 28, 2016
CALENDAR: 10:00 A.M. CHAPTERS 13 AND 12 ADVERSARY PROCEEDINGS

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [15-14945](#)-A-12 GREGER BRANNSTROM
[16-1027](#) AFW-2
FRANCESCHI TRUST V. BRANNSTROM

MOTION TO DISMISS ADVERSARY
PROCEEDING/NOTICE OF REMOVAL
AND/OR MOTION FOR REMAND
3-11-16 [[13](#)]

ANNA WELLS/Atty. for mv.

Final Ruling

Motion: Dismiss or Remand Removed Action

Notice: LBR 9014-1(f)(1); no written opposition filed

Disposition: Granted in part (remand action to state court and close adversary); denied in part (as to dismissal)

Order: Civil Minute Order

Debtor Greger Brannstrom has filed a notice of removal of an unlawful detainer action filed in the Kern County Superior Court, entitled Franceschi Trust v. Greger Brannstrom, case no. SCL-CL-000086. The amended complaint and other pertinent documents were attached to the Notice of Removal filed by Debtor. Attached to the complaint is a Farming Lease that is the written agreement that forms the basis of the unlawful detainer complaint. The Farming Lease is between Franceschi Trust as Lessor and Greger Brannstrom as Lessee. The premises comprised 400 acres located in Wasco, CA with APNs described in paragraph 1 of the lease. In the Notice of Removal, the Debtor indicates that his default was taken—albeit without notice to him.

The motion filed by Franceschi Trust seeks dismissal but also seeks remand in the memorandum of points and authorities. The Debtor has not filed opposition to the relief requested.

LBR 9014-1(f)(1) provides that no party shall be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Further, the court deems the Debtor's lack of timely written opposition as a waiver of any opposition to the granting of the motion.

A copy of the state court docket reveals that a judgment was entered in the state court proceeding and a writ of possession issued. The court also takes judicial notice of a judgment by default for plaintiff Franceschi Trust and against Greger Brannstrom. This judgment is an exhibit to the motion for stay relief filed by Franceschi Trust. This default judgment awarded possession of the premises to Franceschi Trust.

After a claim or cause of action is removed, "The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground." 28 U.S.C.A. § 1452(b). The Debtor has not removed a claim or cause of action but a judgment. This constitutes an equitable ground for remand. "In line with considerations of comity and in order to lessen the possibility of an inconsistent result, bankruptcy courts have held that where a state court has entered a judgment in the case, remand is appropriate because the parties should not relitigate the same issues again in the bankruptcy court, nor should the bankruptcy court be used as an alternative to a state court appeal." *Matter of Wild Oaks Utilities*

Inc., 18 B.R. 959, 964 (Bankr. S.D.N.Y. 1982). Accordingly, the court will remand this action to the Kern County Superior Court and close this adversary proceeding. Because the action is remanded, the court will not address the other relief requested, which was dismissal of the action.

CIVIL MINUTE ORDER

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

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

IT IS ORDERED that this action is remanded to the Kern County Superior Court, and the adversary proceeding will be closed.