

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Modesto, California

**May 2, 2019 at 2:00 p.m.**

1. [19-90022-E-7](#)  
[MDM-1](#)

ASHLEY MILLER

**STATUS CONFERENCE RE: TRUSTEE'S  
MOTION TO DISMISS FOR FAILURE  
TO APPEAR AT SEC. 341(A)  
MEETING  
2-20-19 [20]**

**The Motion to Dismiss the Bankruptcy Case is **granted**.**

Debtor's Atty: Pro Se

Notes:

Set by order of the court dated 4/15/19 [Dckt 42]

Trustee's Report continuing Meeting of Creditors to 5/14/19 docketed 4/22/19

[MDM-1] Ex-Parte Motion to Extend Time to File Objection to Discharge filed 4/22/19 [Dckt 44]

On February 20, 2019, the Chapter 7 Trustee filed a Motion to Dismiss this case due to the failure of the Debtor to attend the First Meeting of Creditors on February 19, 2019. Dckt. 21. The First Meeting was continued to April 2, 2019.

When the Debtor did not respond to the Motion to Dismiss, the court set a hearing on the Motion to Dismiss. Order, Dckt. 42.

The court previously denied without prejudice the motion of PennyMac Loan Services, LLC for relief from the automatic stay. The court denied the motion without prejudice due to the failure of that movant to comply with the basic pleading rules for motions. Civil Minutes, Dckt. 34. The court did not rule on the merits of the motion for relief from the stay.

The motion for relief requested that not only should the stay be terminated in this case, but prospective relief be granted pursuant to 11 U.S.C. § 364(d)(4). Though not set out in the motion for relief, the court addressed what appears to be a potential abuse of the federal bankruptcy system that would not

**May 2, 2019 at 2:00 p.m.**

**- Page 1 of 7-**

only warrant relief pursuant to § 364(d)(4), but action by the U.S. Trustee. The court referred this matter to the U.S. Trustee. Civil Minutes, Dckt. 34; Order, Dckt. 35.

The court did not dismiss the case so as to maintain the status quo while the creditor, Chapter 7 Trustee, and U.S. Trustee determined what action, if any, they sought to take. Maintaining the status quo kept the property that was the subject of the purported transfers that PennyMac Loan Services, LLC would presumably state with particularity as grounds in a new motion seeking relief pursuant to 11 U.S.C. § 362(d)(4).

Though a month has passed since the court issued the order denying without prejudice the motion for relief from the stay, no new motion has been filed by PennyMac Loan Services, LLC.

In the order setting this Status Conference on the Motion to Dismiss, the court expressly noted these issues, stating in the Order:

Before dismissing this case, the court wants to have the benefit of input from PennyMac Loan Servicing, the Chapter 7 Trustee, and the U.S. Trustee concerning any pending and anticipated matters to be commenced which the dismissal of this case (and the abandonment of property from this bankruptcy estate) may be adversely effected.

Order, Dckt. 42.

Though three weeks have passed since the April 15, 2019 order setting this Status Conference, no motion has been filed by PennyMac Loan Services, LLC or any documents by the U.S. Trustee. The Chapter 7 Trustee has filed a motion to extend the time to object to Debtor's discharge.

The Trustee has further reported that Debtor failed to attend the Continued First Meeting of Creditors on April 2, 2019.

At the Status Conference it was reported ~~XXXXXXXXXXXXXXXXXX~~

~~—————The Debtor not prosecuting this case and no other action being taken by any creditor or other party in interest, the Trustee's Motion is granted and the bankruptcy case is dismissed.~~

~~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 filed by Michael McGranahan, the Chapter 7 Trustee, 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 is granted and this bankruptcy case is dismissed.~~

2. [18-90764-E-7](#)      DAWN CHRISTENSEN  
[19-9005](#)  
EDMONDS V. CHRISTENSEN ET AL

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
1-30-19 [\[1\]](#)

**Final Ruling: No appearance at the May 2, 2019 Status Conference is required.**  
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Plaintiff's Atty: Anthony D. Johnston  
Defendant's Atty: unknown

Adv. Filed: 1/30/19  
Reissued Summons: 2/19/19  
Reissued Summons: 3/14/19  
Answer: none

Nature of Action:  
Recovery of money/property - fraudulent transfer

Notes:  
Set from Reissued Summons and Notice of Status Conference in An Adversary Proceeding filed 3/14/19  
[Dckt 12]

<p><b>The Status Conference is continued to 2:00 p.m. on May 2, 2019.</b></p>
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### **MAY 2, 2019 STATUS CONFERENCE**

#### **Entry of Default and Continuance of Status Conference**

On April 25, 2019, the defaults of Defendants Gary Christensen and Frances Ann Christensen, individually and as trustees, were entered by the Clerk of the Court. Dckts. 17, 20. They are the only defendants in this Adversary Proceeding.

The defaults having been entered, Plaintiff-Trustee must now proceed with the filing of a motion for entry of a default judgment in this Adversary Proceeding. That is to be filed on or before May 24, 2019.

The court continues the Status Conference to July 18, 2019 at 2:00 p.m. to afford the Plaintiff-Trustee the opportunity to prosecute such Motions.

## **Review of Complaint**

On January 30, 2019, Irma Edmonds, the Chapter 7 Trustee in the Dawn Christensen Chapter 7 case, ("Plaintiff-Trustee") filed the Complaint in this Adversary Proceeding seeking to avoid the transfer of and recover assets pursuant to 11 U.S.C. § 548(a)(1)(A) and (B), § 544(b), and § 550. The allegations in the Complaint state that a "Family Trust" was set up in 1998. Trustees of the Family Trust hold title to real property in Stockton, California (the "Property"). In 2017 the Trustees of the Family Trust transferred title to the Property to themselves as Trustees and Dawn Christensen, the Chapter 7 debtor ("Debtor").

It is further alleged that Debtor was sued on March 2, 2018, for an alleged breach of contract. Four days later on March 6, 2018, Debtor executed a grant deed purporting to transfer her 50% interest in the Property back to the Trustees of the Family Trust. The grant deed includes the statement that no transfer taxes were due because no consideration was paid for the 50% interest in the Property transferred by Debtor.

In June of 2018, the Trustees of the Family Trust purported to sell the Property, with net sales proceeds in the amount of \$249,222.68 received by said Trustees. The Plaintiff-Trustee asserts that 50% of the proceeds are property of the Chapter 7 bankruptcy estate or are proceeds of a transfer that may be avoided and recovered for the benefit of the Chapter 7 bankruptcy estate.

On March 14, 2019, the Clerk of the Court reissued the summons in this Adversary Proceeding. Dckt. 12. The Certificate of Service filed by Plaintiff-Trustee attests to the service of the Reissued Summons, Complaint, and related documents on March 14, 2019. Dckt. 13.

The Reissued Summons states that the Status Conference in this Adversary Proceeding shall be conducted at 2:00 p.m. on May 2, 2019.

3. [18-90494-E-7](#)            **MELINDA BROOME**  
[18-9015](#)  
**BILLINGTON WELDING & MFG.,**  
**INC. V. BROOME**

**CONTINUED STATUS CONFERENCE RE:**  
**COMPLAINT**  
**10-22-18 [1]**

Plaintiff's Atty: Anthony D. Johnston  
Defendant's Atty: Pro Se

Adv. Filed: 10/22/18  
Answer: 1/18/19

Nature of Action:  
Objection/revocation of discharge  
Dischargeability - false pretenses, false representation, actual fraud  
Dischargeability - priority tax claims  
Dischargeability - fraud as fiduciary, embezzlement, larceny  
Dischargeability - willful and malicious injury

Notes:  
Continued from 3/14/19 to allow the Parties to meet and confer to establish discovery and pretrial conference deadlines.

[ADJ-2] Order denying Motion for Entry of Default Judgment and Order for Sanctions filed 3/22/19 [Dckt 55]

Joint Status Report and Discovery Plan filed 4/15/19 [Dckt 61]

### **MAY 2, 2019 STATUS CONFERENCE**

The Parties have filed their Joint Status Report and Discovery Plan, prepared to diligently prosecute this Adversary Proceeding. Dckt. 61.

At the Status Conference **XXXXXXXXXXXXXXXXXX**

### **MARCH 14, 2019 STATUS CONFERENCE**

On February 14, 2019, Plaintiff Billington Welding & MFG., Inc. filed a Motion for Entry of Default Judgment. Dckt. 35. The hearing on that Motion was set for the court's 10:30 a.m. calendar on March 14, 2019. At the hearing on the Motion for Entry of Default, the court denied the Motion without prejudice, vacated the default, and addressed with the Parties the prosecution of this Adversary Proceeding. The court also ordered Defendant to pay \$750.00 in compensatory sanctions to Plaintiff as partial reimbursement for the legal fees incurred due to how Defendant-Debtor has not prosecuted her defense.

Defendant-Debtor has not set for hearing or prosecuted a motion to vacate her default in this Adversary Proceeding. Defendant-Debtor did file a fill in the blank pleading titled "DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO SET ASIDE CLERK'S ENTRY OF DEFAULT." Dckt. 28. The "Points and Authorities" can be read as also including grounds upon which the pro se Defendant-Debtor could base requesting an order vacating the default. The "Points and Authorities" states that there is a declaration filed with it. No declaration is attached to the Points and Authorities no filed by Defendant-Debtor with the Points and Authorities.

The court, erring on the side of caution, ordered Defendant-Debtor to set her Motion for hearing and serve the opposing Party, not merely file it *ex parte*, without notice, with the court. Order, Dckt. 30. Defendant-Debtor has not taken any action to set her Motion for hearing or serve it on Plaintiff.

## **FEBRUARY 14, 2019 STATUS CONFERENCE**

The court denied without prejudice Plaintiff's Motion for Entry of Default Judgment. Order, Dckt. 25. On January 18, 2019, Defendant-Debtor, after her default was entered, filed a form document titled "Answer." The "Answer" is a general denial, denying everything in the Complaint other than the filing of the bankruptcy petition. Answer, Dckt. 20.

Defendant-Debtor has not vacated her default in this Adversary Proceeding. On February 7, 2019, Defendant-Debtor filed a pleadings titled "Memorandum of Points and Authorities in Support of a Motion to Set Aside Clerk's Entry of Default." The Points and Authorities includes a multi-page statement of various facts.

The Court issued an order that Defendant-Debtor set her motion to set aside the default for a noticed hearing, and file and serve all supporting documents. Order, Dckt. 30. That Order was issued on February 11, 2019.

## **FINAL BANKRUPTCY COURT JUDGMENT**

Plaintiff Billington Welding & MFG, Inc. alleges in the Complaint that this Adversary Proceeding is to determine the nondischargeability of certain debts and have Defendant-Debtor denied her discharge pursuant to 11 U.S.C. § 523 and § 727. Federal Court jurisdiction exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(E), (I), and (J). The determination of nondischargeability of debts and denial of discharge are core matter proceedings for which the bankruptcy judge issues all final orders and judgment.

## **ISSUANCE OF PRE-TRIAL SCHEDULING ORDER**

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

- a. Plaintiff Billington Welding & MFG, Inc. alleges in the Complaint that this Adversary Proceeding is to determine the nondischargeability of certain debts and have Defendant-Debtor denied her discharge pursuant to 11 U.S.C. § 523 and § 727. Federal Court jurisdiction exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(E), (I), and (J). The determination of nondischargeability of debts and denial

of discharge are core matter proceedings for which the bankruptcy judge issues all final orders and judgment.

b. Initial Disclosures shall be made on or before **May 10, 2019**.

c. Expert Witnesses shall be disclosed and Expert Witness Reports exchanged on or before **May 24, 2019**.

d. Discovery closes, including the hearing of all discovery motions, on **July 26, 2019**.

e. Dispositive Motions shall be heard before **August 2, 2019**.

f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ~~2:00 p.m. on October 17, 2019~~.