

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

May 4, 2017, at 2:00 p.m.

1. <u>17-90213-E-12</u> J & B DAIRY Patrick Greenwell	STATUS CONFERENCE RE: VOLUNTARY PETITION 3-17-17 <u>1</u>
--	--

Debtor's Atty: Patrick B. Greenwell

The Status Conference is XXXXXXXXXXXXX.

Notes:

[PBG-1] Debtor's Motion for Authority to Use Cash Collateral filed 4/6/17 [Dckt 16]; motion granted and hearing continued to 5/4/17 at 10:30 a.m. by order filed 4/13/17 [Dckt 32]

Status Report filed 4/7/17 [Dckt 22]

Trustee Report at 341 Meeting docketed 4/12/17

[AAS-1] Creditor Bank of Stockton's Motion for Relief from Automatic Stay or, in the Alternative, Request for Adequate Protection filed 4/17/17 [Dckt 34], set for hearing 5/4/17 at 10:30 a.m.

MAY 4, 2017 STATUS CONFERENCE

On May 4, 2017, the court conducted hearings on the Debtor in Possession's ("DIP") motion to use cash collateral and the Bank of Stockton's motion for relief from the automatic stay (with the herd being the main collateral). At the Status Conference XXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

No 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.

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 Debtor, Debtor's Attorney, Chapter 12 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 30, 2017. By the court's calculation, 35 days' notice was provided. 28 days' notice is required. *Compare* Fed. R. Bankr. P. 2002(a)(8) (requiring 21 days' notice), with L.B.R. 9014-1(f)(1) (requiring 28 days' service).

The Motion to Confirm the Plan 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.

<p>The Motion to Confirm the Plan is XXXXX.</p>

11 U.S.C. § 1224 establishes that the court shall hold a confirmation hearing for a Chapter 12 plan, and any party in interest, the Chapter 12 Trustee, or the United States Trustee may object to confirmation.

TRUSTEE'S OPPOSITION

Jan Johnson, the Chapter 12 Trustee, filed an Opposition on April 13, 2017. Dckt. 37. The Trustee states that the \$3,115.00 plan payment does not equal the aggregate of the Trustee's fees, payment of other administrative claims at \$100.00 per month, payment of priority claims at \$107.00 per month, payment to Deutsche Bank at \$1,822.00 per month for principal and interest and \$500.00 per month for impound account, payment to USDA at \$430.00 per month, and payment to general unsecured claims at \$100.00 per month. The Trustee states that the aggregate amount is \$3,296.34. The Plan is not funded adequately.

Furthermore, the Trustee notes that Deutsche Bank holds a first deed of trust on Donna Porter and Lynn Porter's ("Debtor") primary residence, with plan payments beginning to the bank in June 2017.

Schedule I shows that Debtor's monthly net income after deducting non-mortgage basic living expenses is \$2,044.00. The Trustee argues that Debtor will not be able to make plan payments beginning June 1, 2017. *See* 11 U.S.C. § 1225(a)(6).

The Trustee notes that Debtor's Declaration provided in support of confirmation states that Debtor expects to increase the number of beehives from two hundred to five hundred before next year's pollination, but the Trustee argues that such statement does not provide sufficient information pertaining to specific changes in projected monthly income and expenses.

STIPULATION

On April 20, 2017, Deutsche Bank National Trust Company, as Trustee, in trust for the registered holders of Morgan Stanley ABS Capital I Inc. Trust 2004-NC3, Mortgage Pass-Through Certificates, Series 2004-NC3, by and through its servicing agent Select Portfolio Servicing, Inc., as its attorney in fact ("Creditor") and Debtor filed a Stipulation to resolve and agree to plan treatment for real property commonly known as 4249 Ellenwood Road, Oakdale, California ("Property").

The parties state that they have agreed to a treatment for Creditor's first deed of trust upon the following terms:

- A. The Property's value is \$330,000.00.
- B. Creditor will have a secured claim in the amount of \$330,000.00 and an unsecured claim of approximately \$51,779.39, and the unsecured claim will be reduced to \$0.00 upon confirmation of the Plan.
- C. Debtor agrees to pay the secured claim amount of \$330,000.00 at a 5.25% fixed interest rate with payments calculated on a 360-month amortization schedule, with all amounts due upon the maturity date of January 1, 2034.
- D. All amounts still outstanding upon the maturity date under the agreement will be due and owing in full on the maturity date.
- E. The principal and interest payment under the Stipulation is approximately \$1,822.28 per month.
- F. The loan will remain impounded for taxes and insurance on the Property in accordance with the terms of the deed of trust and note.
 - 1. The current amounts due are taxes at \$341.04 per month and insurance at \$157.50 per month.
- G. Debtor shall repay an advance of \$2,046.25 made by Creditor to Stanislaus County Tax Collector on March 7, 2017, through twelve monthly payments of \$170.52.

- H. Debtor agrees that is monthly payments are distributed by the Chapter 12 Trustee to Creditor, Debtor will be responsible for making up the increase payment and escrow payment directly to Creditor, or in the alternative, Debtor will work with the Chapter 12 Trustee to cover and cure the increase in payments and escrow payments to Creditor.
1. Creditor is not required to file payment change notices.
- I. The first payment under the Stipulation is due on the first day of the first month following entry of an order confirming the Plan, and the payment amount is \$2,491.34 per month—comprised of \$1,822.28 principal and interest; \$341.04 taxes; \$157.50 insurance; and \$170.52 escrow repayment.
1. Debtor agrees to make payments in the above amount until permanent loan adjustments are made and post-confirmation mortgage statement is sent out reflecting new loan terms and a new monthly payment amount.
 2. Debtor agrees to pay the amounts reflected in those statements and to coordinate with the Chapter 12 Trustee as needed to accommodate any fluctuations with respect to the amounts due each month.
- J. Debtor will make all payments directly to the Chapter 12 Trustee until directed otherwise by the Court or the Chapter 12 Trustee.
1. All payments whether sent in by the Trustee or by Debtor shall be made directly to:

Select Portfolio Servicing
Attn: Remittance Processing
P.O. Box 65450
Salt Lake City, Utah 84165-0450

with reference to the last four digits of Loan Number 1261, or as otherwise directed.
- K. All post-petition escrow advances will remain due and owing on the loan and will be repaid through an escrow shortage payment post-confirmation.
1. The payment agreed to in the Stipulation does not include an escrow shortage payment.
 2. The escrow shortage will be calculated and added to the monthly payment after the permanent loan adjustments are made and post-confirmation mortgage statement is sent to Debtor reflecting the new loan terms and monthly payment amount.

3. Debtor is responsible for coordinating with the Chapter 12 Trustee to make sure the amounts are covered by the monthly payments disbursed to Creditor.
- L. All other terms of the deed of trust and note not directly altered by the Stipulation will remain in full force and effect.
- M. Creditor has relief from the automatic stay as to the Property as of the date of Debtor's discharge order is entered by the court.
- N. If Debtor defaults on payments to Creditor under the terms of the Stipulation prior to discharge, then Creditor shall notify Debtor and Debtor's counsel in writing.
 1. Debtor shall have ten calendar days from the date of the written notification to cure the default or to provide evidence to Creditor that timely payments have been made to the Chapter 12 Trustee.
 2. If Debtor fails to cure the default, then Creditor may file a motion for relief or motion to dismiss the case for failure to maintain plan payments.
- O. If Debtor defaults on payments to Creditor under the terms of the Stipulation after discharge, then Creditor may proceed pursuant to the terms of the deed of trust and note, and state and federal law, to obtain complete possession of the Property, including unlawful detainer, without further court order or proceeding being necessary.
 1. Any and all default provisions included in Debtor's Chapter 12 Plan are not applicable to Creditor with regard to the Property, and Creditor is only bound by the terms included in the Stipulation.
- P. Debtor agrees to incorporate the Stipulation's terms into any and all existing and future proposed Chapter 12 plans through either exact language or by attaching the Stipulation to the plan as an exhibit, and if any terms in the plan conflict with the Stipulation, then the terms of the Stipulation will control.
 1. If a Chapter 12 plan proposed by Debtor does not reflect the language of the Stipulation, then Debtor agrees that the Stipulation terms will be incorporated into the confirmation order through exact language, attachment of the Stipulation as an exhibit, or by reference to the docket number.
- Q. Creditor agrees to vote for confirmation of Debtor's Chapter 12 Plan provided Debtor complies with all provisions of the Stipulation.
- R. If Debtor's Chapter 12 bankruptcy case is dismissed or converted to another chapter, then Creditor's lien shall remain a valid secured lien for the full amount due under the

original promissory note, and all payments received under the Stipulation will be applied contractually under the original terms of the deed of trust and promissory note.

DISCUSSION

Upon review of the proposed Chapter 12 Plan, as amended by the Stipulation, the evidence in the form of the declaration of Lynn Porter, Debtor, and arguments of counsel, the court makes the following findings of fact and conclusions of law in support of confirmation of the Chapter 12 Plan pursuant to 11 U.S.C. § 1225:

- A. The Plan complies with the provisions of Chapter 12 of the Bankruptcy Code and with the other applicable provisions of this title;
- B. Any fee, charge, or amount required under chapter 123 of title 28 [28 U.S.C. §§ 1911 et seq.], or by the plan, to be paid before confirmation, has been paid;
- C. The Plan has been proposed in good faith and not by any means forbidden by law;
- D. The value, as of the effective date of the Plan, of property to be distributed under the Plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of Debtor were liquidated under Chapter 7 of the Bankruptcy Code on such date;
- E. With respect to each allowed secured claim provided for by the Plan—
 - 1. The holder of such claim has accepted the Plan;
 - 2. The
 - a. Plan provides that the holder of such claim retain the lien securing such claim; and
 - b. The value, as of the effective date of the Plan, of property to be distributed by the Trustee or Debtor under the Plan on account of such claim is not less than the allowed amount of such claim; or
 - 3. Debtor surrenders the property securing such claim to such holder;
- F. Debtor will be able to make all payments under the Plan and will be able to comply with the Plan; and
- G. Debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if Debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation.

If the Trustee or the holder of an allowed unsecured claim objects to confirmation of the Plan, then the court may not approve the Plan unless, as of the effective date of the Plan—

(A) the value of the property to be distributed under the Plan on account of such claim is not less than the amount of such claim;

(B) the Plan provides that all of Debtor's projected disposable income to be received in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first payment is due under the Plan will be applied to make payments under the Plan; or

(C) the value of the property to be distributed under the Plan in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the Plan is not less than Debtor's projected disposable income for such period.

(2) For purposes of this subsection, "disposable income" means income that is received by Debtor and that is not reasonably necessary to be expended—

(A) for the maintenance or support of Debtor or a dependent of Debtor or for a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(B) for the payment of expenditures necessary for the continuation, preservation, and operation of Debtor's business.

May 4, 2017 Hearing

At the May 4, 2017 hearing, **XXXXXXXXXXXXXXXXXX**.

Confirmation of the Chapter 12 Plan is **XXXXXXXXXX**.

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 Confirm the Chapter 12 Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm is **XXXXXX**.

3. [10-94960-E-7](#) [17-9003](#) **GUADALUPE CAMPOS**

**STATUS CONFERENCE RE:
COMPLAINT
2-1-17 [1]**

FARRAR V. JIMENEZ

Plaintiff's Atty: Dana A. Suntag

Defendant's Atty: Steven S. Altman

Adv. Filed: 2/1/17

Answer: none

Nature of Action:

Recovery of money/property - fraudulent transfer

Recovery of money/property - turnover of property

Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:

[SSA-1] Motion of Defendant Vanessa Jimenez to Dismiss Plaintiff's Complaint or in the Alternative Require More Definite Statement filed 3/9/17 [Dckt 9]; WITHDRAWAL of Motion filed 3/30/17 [Dckt 14]

Discovery Plan filed 4/17/17 [Dckt 16]

The Status Conference is XXXXXXXXXXXXXXXXXXXXXX.

SUMMARY OF COMPLAINT

Gary Farrar, the Chapter 7 Trustee in the Campos bankruptcy case, ("Plaintiff-Trustee") filed a complaint to recover a fraudulent conveyance from the Defendant. The assets are the monies that were in three bank accounts owned by Debtor. The amount of money at issue is at least \$90,000.00. It is further alleged that Defendant use the monies to purchase real properties.

Plaintiff-Trustee asserts that Debtor falsely stated under penalty of perjury the information on her Schedules and Statement of Financial Affairs, not disclosing these transfers. It is asserted that due to Debtor's false statements under penalty of perjury that the statute of limitations on fraudulent conveyance actions is equitably tolled.

The Plaintiff-Trustee also asserts claims for turnover of the money or property, as well as the imposition of a constructive trust.

MOTION TO DISMISS

On March 9, 2017, Vanessa Jimenez, the Defendant, filed a Motion to Dismiss this Adversary Proceeding. Dckt. 9. On March 30, 2017, Defendant filed a dismissal of the Motion to Dismiss. Dckt. 14, deemed to be a notice of dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rule of Bankruptcy Procedure 7041.

SUMMARY OF ANSWER

No answer has been filed by Vanessa Jimenez, the Defendant.

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(a), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), (H), and (O). Complaint ¶¶ 2, 3, Dckt. 1. In its answer, ----- admits the allegations of jurisdiction and core proceedings. Answer ¶¶ X, X, Dckt. X. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pre-Trial Conference Order was issued 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.

4. [14-91565-E-7](#) **RICHARD SINCLAIR**
[15-9007](#)
KATAKIS ET AL V. SINCLAIR

**CONTINUED STATUS CONFERENCE RE:
COMPLAINT
2-20-15 [1]**

Final Ruling: No appearance at the May 4, 2017 Status Conference is required.

Plaintiff's Atty: Kimberley V. Deede
Defendant's Atty: Pro Se
Chapter 7 Trustee Atty: Aaron A. Avery

Adv. Filed: 2/20/15
Answer: 3/30/15; 11/25/15

Nature of Action:
Dischargeability - willful and malicious injury

Status Conference continued to 2:00 p.m. on July 13, 2017.

Notes:
Continued from 2/23/17 by the request of Parties

Notice of Association of Counsel filed 4/11/17 [Dckt 80]
Plaintiffs' Unilateral Status Report filed 4/25/17 [Dckt 81]

MAY 4, 2017 STATUS CONFERENCE

Plaintiff has provided the court with a Status Report that upon the court ruling on the Motion to Reconsider the order approving the settlement between Plaintiff and the Chapter 7 Trustee, the parties will know how to proceed. If the court denies the motion to reconsider, then this adversary proceeding will be dismissed. If the court grants the motion to reconsider and vacates the order approving the settlement, then the issues for Plaintiff raised in this complaint remain open for litigation.

5. [14-91565-E-7](#) **RICHARD SINCLAIR**
[15-9007](#)
KATAKIS ET AL V. SINCLAIR

**CONTINUED STATUS CONFERENCE RE:
MOTION FOR SUMMARY JUDGMENT
10-28-16 [53]**

Final Ruling: No appearance at the May 4, 2017 Status Conference is required.

Plaintiff's Atty: Kimberley V. Deede
Defendant's Atty: Pro Se
Chapter 7 Trustee Atty: Aaron A. Avery

Adv. Filed: 2/20/15
Answer: 3/30/15; 11/25/15

Nature of Action:
Dischargeability - willful and malicious injury

Status Conference continued to 2:00 p.m. on July 13, 2017.

Notes:
Continued from 2/23/17
Notice of Association of Counsel filed 4/11/17 [Dckt 80]
Plaintiffs' Unilateral Status Report filed 4/25/17 [Dckt 81]

MAY 4, 2017 STATUS CONFERENCE

Plaintiff has provided the court with a Status Report that upon the court ruling on the Motion to Reconsider the order approving the settlement between Plaintiff and the Chapter 7 Trustee, the parties will know how to proceed. If the court denies the motion to reconsider, then this adversary proceeding will be dismissed. If the court grants the motion to reconsider and vacates the order approving the settlement, then the issues for Plaintiff raised in this complaint remain open for litigation.

6. [14-91565-E-7](#) **RICHARD SINCLAIR**
[15-9008](#)
CALIFORNIA EQUITY MANAGEMENT
GROUP, INC. ET AL V. SINCLAIR

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
2-23-15 [1]

Final Ruling: No appearance at the May 4, 2017 Status Conference is required.

Plaintiff's Atty: Hilton A. Ryder; D. Greg Durbin
Defendant's Atty: Pro Se

Adv. Filed: 2/23/15
Answer: 3/30/15; 4/8/16

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

Notes:
Status Report by Plaintiffs filed 4/11/17 [Dckt 67]

Status Conference continued to 2:00 p.m. on July 13, 2017.

MAY 4, 2017 STATUS CONFERENCE

In their April 11, 2017 Status Report, Dckt. 67, Plaintiffs report that judgment has been granted Plaintiffs and against Defendant-Debtor on the RICO claim, with that judgment in excess of \$5.8 Million. Plaintiffs state that with that judgment entered, they will proceed with a motion for summary judgment, asserting the doctrine of collateral estoppel.

No Status Report has been filed by Defendant-Debtor. The court has been continuing proceedings in this action pending a judgment being entered, or not entered, in the district court. The court further continues the Status Conference to afford the parties the opportunity to evaluate the district court judgment and file such motions as appropriate in this court.