

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

**May 8, 2025 at 11:30 a.m.**

1. [24-20649-E-7](#)  
[25-2020](#)  
CAE-1

**SHANE SIEGEL**

**CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
1-31-25 [1]**

**BIRNBERG V. CARSON**

Plaintiff's Atty: Gabriel P. Herrera  
Defendant's Atty: Pro Se

Adv. Filed: 1/31/25  
Answer: 2/25/25

Nature of Action:  
Recovery of money/property - turnover of property  
Recovery of money/property - fraudulent transfer  
Approval of sale of property of estate and of a co-owner

Notes:  
Continued from 4/16/25. Counsel for the Plaintiff-Trustee reporting that they are requesting a two week continuance.

[CAE-1] Order continuing status conference and Order to for Debtor, Sean Carson, to appear filed 4/21/25 [Dckt 14]

<b>The Status Conference is <span style="color: red;">XXXXXXX</span></b>
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**MAY 8, 2025 STATUS CONFERENCE**

On April 21, 2025, the court issued an order requiring Defendant Sean Carson, or his attorney if he is so represented, attend the May 8, 2025 Status Conference – Telephonic Appearances Permitted.

At the May 8, 2025 Status Conference, XXXXXXX

## **APRIL 16, 2025 STATUS CONFERENCE**

### **SUMMARY OF COMPLAINT**

The Complaint filed by Ethan Birnberg, Chapter 7 Trustee in Bankruptcy Case 24-20649 (“Plaintiff-Trustee”), Dckt. 1, asserts claims to avoid alleged fraudulent transfers, turnover of property, and for the sale of real property. The legal basis for asserting the fraudulent transfers arises under Florida Law and the Bankruptcy Code. The Complaint seeks for court authorization pursuant to 11 U.S.C. § 363(h) to sell property in which the Bankruptcy Estate holds a partial interest and a third-party holds the other partial interest.

### **SUMMARY OF ANSWER**

Sean Carson (“Defendant”) filed an Answer in pro se, Dckt. 7, admitting and denying specific allegations. In the Answer, Defendant asserts having a lease/purchase option to purchase the property at issue.

### **STATUS CONFERENCE STATEMENT**

On April 9, 2025, the Plaintiff-Trustee filed a Status Conference Statement advising the court that the Parties have conferred and suggest the following dates and deadlines:

- A. Rule 26 disclosures April 30, 2025;
- B. Close of Discovery August 31, 2025;
- C. Expert Discovery September 26, 2025;
- D. Dispositive Motions September 26, 2025; and
- E. Pretrial Statements 14 days prior to pretrial conference.

### **April 16, 2025 Status Conference**

At the Status Conference, counsel for the Plaintiff-Trustee reported that they are requesting a two week continuance in light of Debtor’s counsel having some family matters that interfered with his being able to address the related issues.

2. [24-23053-E-7](#)  
[24-2187](#)  
CAE-1

NICHOLAS/KIMBERLY  
CORNETT

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
9-23-24 [\[1\]](#)

**SCHAMBER V. CORNETT**

Plaintiff's Atty: Robert D. Hillshafer; Kevin P. Carter  
Defendant's Atty: Pro Se

Adv. Filed: 9/23/24  
Answer: 10/23/24

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

Notes:  
Continued from 4/16/25

<b>The Status Conference is <span style="color: red;">XXXXXXX</span></b>
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**MAY 8, 2025 STATUS CONFERENCE**

No new pleadings have been filed since the April 16, 2025 Status Conference. No substitution of attorney has been filed.

At the Status Conference, XXXXXXX

**APRIL 16, 2025 STATUS CONFERENCE**

No updated Status Conference Statement has been filed and no counsel has substituted in to represent Defendant-Debtor.

**SUMMARY OF COMPLAINT**

The Complaint filed by Dayna Schmaber ("Plaintiff"), Dckt. 1, asserts claims for nondischargeability of debt pursuant to 11 U.S.C. § 523(a)(2)(A).

**SUMMARY OF ANSWER**

Nicholas Cornett ("Defendant-Debtor"), in *pro se*, filed an Answer, Dckt. 10. In it Defendant-Debtor provides denials of the allegations of fraud and misrepresentation.

## **STATUS REPORTS FILED BY THE PARTIES**

The Plaintiff and Defendant-Debtor have filed Status Conference Reports. Dckts. 45, 47, respectively.

Defendant-Debtor states that he has been contacting counsel to represent him in this Adversary Proceeding. Due to upcoming surgery (scheduled for March 19, 2025), Defendant-Debtor projects having counsel retained by May 1, 2025.

## **FINAL BANKRUPTCY COURT JUDGMENT**

Plaintiff Schamber alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 2, 3, Dckt. 1. In the Answer, Defendant does not directly admit or deny the Federal Court jurisdiction, and request relief from the court.

Federal Court jurisdiction for an action to determine the nondischargeability of debt (11 U.S.C. § 523) exists pursuant to 28 U.S.C. § 1334 and § 157, and this is a core matter proceeding for with the bankruptcy judge issues all final orders and judgment, 28 U.S.C. § 157(b)(2)(I).

## **MARCH 5, 2025 STATUS CONFERENCE**

At the Status Conference the Defendant-Debtor addressed with the court his health issues, upcoming procedures, and his active efforts to obtain counsel. Upon such information Plaintiff agreed to continue the Status Conference to allow Defendant-Debtor to get counsel on board, discussion possible mediation, and make sure that the proceeding was advancing properly.

The Proposed Schedule pre-trial schedule for this Adversary Proceeding is:

- i. Close of Fact Discovery: On or about June 3, 2025
- ii. Expert Disclosure Deadline: On or about July 3, 2025
- iii. Close of Expert Discovery: On or about August 4, 2025
- iv. Dispositive Motion Filing Deadline: On or about September 3, 2025
- v. Pretrial Conference: November 17, 2025
- vi. Trial: Per the Court's schedule

Trustee's Status Conference Statement; Dckt. 11.

The Status Conference is continued to 2:00 p.m. on April 16, 2025.

Debtor's Atty: Robert S. Marticello; Mark S. Melickian; David M. Madden

Notes:  
Continued from 3/5/25

Operating Reports filed: 3/24/25; 4/10/25

[RFL-8] Motion for an Order Extending Exclusivity Periods filed 3/14/25 [Dckt 101]; Order granting filed 4/11/25 [Dckt 113]

Notice of Withdrawal of General Unsecured Claim Nos. 14-1, 15-1, and 17-1 filed 3/26/25

<b>The Status Conference is <span style="color: red;">xxxxxxx</span></b>
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### **MAY 8, 2025 STATUS CONFERENCE**

The Chapter 11 Cases for Kamaljit Kalkat, 24-25180, and Diamond K, LLC, 24-25181, are being jointly administered, with the Kamaljit Kaur Kalkat case being the lead case in which substantially all ongoing pleadings are to be filed. Joint Administration Orders; 24-25180, Dckt. 61, and 24-25181, Dckt. 101.

At the Status Conference, xxxxxxx

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No Status Reports have been filed by either Debtor in Possession.

At the Status Conference, counsel for the Debtors in Possession reported that the Brokers are marketing the properties. The Debtors in Possession have obtained insurance for the orchard properties.

Counsel for AgWest, whose claims are secured by the orchards, expressed concerns about the Debtors in Possession not having their financial records straightened out yet. This is an issue which they

have been discussing for a year. AgWest also expressed concerns that the orchards are not being properly maintained. They will oppose a request to extend the disclosure statement and plan exclusively deadlines.

Counsel for Arch West noted that they have only received proof of insurance for one property, but not the other.

Counsel for Frank Lorelz Trust stated that an inspection of the properties is scheduled for the next two weeks. Concern was also raised that the Debtor Kamaljit Kalkat are operating the orchards but not paying rents.

Counsel for the Debtors in Possession noted that Rabo Agrifinance has liens on the operating revenues of the two related limited liability companies operating the orchards.

The Status Conference is continued to 11:30 a.m. on May 8, 2025 (Specially Set Day and Time).

### **January 15, 2025 Status Conference**

At the Status Conference, counsel for the two Debtors in Possession whose cases are being jointly administered reported that the individual Debtor has operated real estate ventures through two entities. They are working on a liquidation plan from which the two Debtors in Possession can reorganize and fund the plan through the operation of the orchards.

Counsel for the U.S. Trustee reported that the 341 Meeting has been continued. The proof of insurance has not yet been provided. Counsel for the Debtors in Possession reported that they are working to get insurance, and their agent tells them that they should have a quote within a week. Some of the properties are insured.

Counsel for Creditor Arch West reported that they have forced place insurance in plan. This Creditor is discussing the with the Debtor in Possession whether this property should be sold.

Counsel for Rabo Agrifinance reported that on their loans with the individual Debtor and two other persons.

The two Debtors in Possession are now prosecuting the two jointly administered cases.

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Debtor's Atty: Robert S. Marticello; Mark S. Melickian; David M. Madden

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Continued from 3/5/25

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The Debtor in Possession's Report of Sale for the 623 N. Rexford Dr. Property was filed on May 5, 2025. Dckt. 114. It states that the purchase price of \$5,500,000 was paid: (1) \$5,537,646.07 was paid by the purchase and (2) the balance of "37,646.07" was paid through a credit by the broker. It appears that the "balance" amount is a clerical error.

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The two Debtors in Possession are now prosecuting the two jointly administered cases.

The Status Conference is continued to 2:00 p.m. on March 5, 2025



**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.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on parties in interest on April 28, 2025. By the court's calculation, 3 days' notice was provided. The court set the hearing for May 1, 2025. Dckt. 135.

#### **NO OFFICIAL CERTIFICATE OF SERVICE SHEET USED**

Though notice was provided, Movant has not complied with Local Bankruptcy Rule 7005-1 which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rule of Bankruptcy Procedure 7005, 7007, and 9014(c).

The Motion to Vacate was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing Opposition was stated.

**The Motion to Extend the Effective Date or Vacate the Relief From Stay Order is  
XXXXXXX.**

#### **MAY 8, 2025 HEARING**

The court continued the hearing on this Motion after engaging in substantive and constructive dialogue with the Parties at the prior hearing. The court was able to reach an agreement on the record with

the Parties at the prior hearing, delaying Summit foreclosing on certain properties until after May 8, 2025.

At the hearing, **XXXXXXX**

### **REVIEW OF THE MOTION**

Debtor in Possession Jeffery Edward Arambel seeks an order of the court vacating its prior order entered on April 1, 2025, granting relief from the automatic stay (“Relief From Stay Order”). Order, Docket 110. The Relief From Stay Order granted relief from stay to creditor SBN V Ag I LLC (“Summit”), but the court also delayed the effective date and time of the Relief From Stay Order to 12:01 p.m. on May 1, 2025.

The court discussed in the Civil Minutes for the hearing on the Motion for Relief From the Stay its rationale for tossing out a possible life preserver for the Debtor and any surplus equity that could exist, stating:

#### **Delayed Effective Date of the Order**

Though the court did not address with the Parties when the relief from stay order is effective, the court concludes that having it effective thirty(ish) days after entry is appropriate. This is because, in preparing this Ruling, several factors stand out to the court, including:

- ▶ There are substantial real property assets which the Debtor in Possession and the Real Estate Broker can be actively marketing and bring a property or two quickly (now five months into the case with no bankruptcy plan, or possible bankruptcy plans terms, being explained to the court and parties in interest), commercially reasonable sales transactions be brought before the court.
- ▶ The Debtor in Possession and the Real Estate Broker can provide a status report showing how the properties are being aggressively, commercially reasonably marketed.
- ▶ The Debtor in Possession and his counsel can, in conjunction with the marketing of the properties, some commercially reasonably aggressively marketed, a proposed plan and show how this Bankruptcy Case will not languish.
- ▶ This will require the Debtor, as the Debtor in Possession and Debtor in Possession counsel presenting the court and parties in interest financially and bankruptcy reasonable reorganization plans, showing how such will be diligently prosecute.
- ▶ Debtor in Possession, Debtor, and Debtor in Possession’s counsel may be in “shock” with this court having granted relief from the stay pursuant to 11 U.S.C. § 362(d)(1), notwithstanding the Debtor having a belief that the properties of the Bankruptcy Estate have great values in excess of the encumbrances (notwithstanding the

Debtor in the two years before filing this Bankruptcy Case or the Debtor in Possession during the five months of this Bankruptcy Case being able to find a buyer for any of the properties or show how the properties are being marketed at fair market value).

The court concludes that a thirty (30) day delay in this order granting relief from the stay being effective is proper and warranted. Given the passage of time and the nature of the real property collateral, such additional delay is not of prejudice to Movant. Further, it gives the Debtor in Possession and counsel for the Debtor in Possession to recover from their “shock” and begin actively prosecuting this case and documenting how they are doing so. A mere continuance of the hearing on the Motion with direction from the court to do such would not, and has not, produced such results. This Motion has been pending since December 2014, having been continued by the court.

Civil Minutes; Dckt .109 at 14-15.

In stating the above, the court is clear that this is not just a “delay tactic” in which the Debtor (not fulfilling his duties as the fiduciary Debtor in Possession) fails to actively and aggressively (in a commercially reasonable manner) to promptly get some properties sold and creditors paid, but merely to continue in the pattern of conduct that over the last decade has led to multiple bankruptcies for Debtor and related entities. The Debtor in Possession must be a “man of action” and get properties marketed and sold - again, in a commercially reasonable matter - to get creditors paid.

### **RELIEF REQUESTED BY THE DEBTOR IN POSSESSION**

The Debtor in Possession now moves for the court to vacate the Relief From stay Order and pleads as follows:

1. Debtor in Possession has proposed a Plan of Reorganization to immediately list the ranch properties that are commonly known as: (1) Lismer Ranch, (2) Rogers Ranch contiguous, (3) Begun Ranch and (4) Carlile Ranch with Solven Grosz of Pearson Realty with a deadline to sell those properties of December 31, 2025. Mot. 2:10-13.
2. In addition, the Plan provides that the Judy Gail Ranch property and the 601 Rogers Road property will continue to be marketed by the employed real estate broker, Colliers International Inc. with a deadline to sell those properties of June 1, 2026. *Id.* at 2:14-16.
3. During the listing and marketing of these properties, the Debtor will provide Summit will full access to any and all information it requests regarding the listing, marketing and sale of the real properties. *Id.* at 2:17-19.
4. Debtor in Possession has taken to heart the court’s comments that meaningful progress in moving the case forward through a plan to sell the properties as quickly as possible may be grounds to vacate or modify the Relief From Stay Order. *Id.* at 3:19-21.

5. From the Debtor's perspective and as reflected in the Debtor evidence of value of the properties, there is significant value in the assets subject to the Relief From Stay Order. If Summit is allowed to foreclose that value will be lost. *Id.* at 3:22-25.

## APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is “a grand reservoir of equitable power to do justice in a particular case.” *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App'x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); *see also Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: “(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default.” *Falk*, 739 F.2d at 463 (citations omitted).

## DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers “the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties.” *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App’x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

In this case, Debtor in Possession argues that the court would be amenable to vacating or further delaying the effective date of the Relief From Stay Order if it saw progress in the case. While this may be true to an extent, the court needs to see real, meaningful progress in the case, including with concrete commercially reasonable deadlines. Debtor in Possession has provided the court with a time line and a proposed Plan of Reorganization attached as Exhibit A to Mr. Arambel’s Declaration, Docket 132. The Plan attached as an Exhibit is not signed by Mr. Arambel.

Debtor in Possession indicates that the properties will be marketed and sold by Solven Grosz of Pearson Realty and Colliers International Inc. There are no Motions to Employ on file for these brokers.

The Debtor in Possession is not clear what additional checks and safeguards will be put in place with respect to the marketing and sale of these properties. In Debtor’s prior bankruptcy case there is a Plan Administrator who is responsible for the marketing and sale of the properties under that Plan (the Debtor’s involvement having been terminated due to his conduct in that Case).

While it appears that the Debtor may be making progress, it may be prudent for the court to consider appointing a third party to sell the various parcels in a commercially reasonable manner or other constructive, reasonable checks and balances to put in place to, the court already affording Mr. Arambel a number of years to sell these properties.

At the hearing, an extensive discussion occurred between the court and the respective counsel. Counsel for SBN V Ag I, LLC (“Summit”) stated opposition to modification of the prior Order, citing to the extended proceedings in this Case and Debtor’s prior Bankruptcy Case.

As shown on the Record, a constructive discussion occurred, in which it was agreed:

- A. Summit will proceed with its foreclosure sales on the properties identified as the 601 Rogers Road Property and the Judy Gail Property.
- B. The Debtor in Possession and his counsel, and each of them, orally stated on the record at the May 1, 2025 hearing that they would not dispute the foreclosure on the 601 Rodgers Road Property because Summit proceeded with a foreclosure on it, while delaying foreclosure on the Rogers Ranch contiguous Property, which is included in the deed of trust with the 601 Rogers Road Property, to a later date.
- C. The hearing on the Motion is continued to 11:30 a.m. on May 8, 2025, specially set to be conducted in the Sacramento Division Courthouse for this Bankruptcy Court.

D. Summit will not conduct foreclosure sales on any other properties of the Bankruptcy Estate in this Case until after the May 8, 2025 continued hearing.

With the agreement stated on the Record, the hearing is continued to 11:30 a.m. on May 8, 2025.

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 to Vacate filed by Debtor in Possession Jeffery Edward Arambel 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 to Extend the Effective Date or Vacate Order Granting Relief From the Stay is **XXXXXXX**.