

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

May 18, 2016 at 2:30 p.m.

1. [15-28108](#)-E-11 WILLARD BLANKENSHIP
RLC-6

CONTINUED APPROVAL OF
DISCLOSURE STATEMENT FILED BY
DEBTOR
4-1-16 [[82](#)]

No Tentative Ruling: The Motion to Approve Disclosure Statement 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 - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors, parties requesting special notice, and Office of the United States Trustee on April 4, 2016. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion to Approve Disclosure Statement 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).

The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Approve Disclosure Statement is xxxxx.

MAY 18, 2016 HEARING

May 18, 2016 at 2:30 p.m.

- Page 1 of 18 -

To date, no supplemental papers have been filed in connection with the instant Motion.

At the hearing on May 18, 2016, ~~XXXXX~~.

MAY 5, 2016 HEARING

At the May 5, 2016 hearing the Debtor in Possession requested, and the appearing creditor concurred, to have the hearing continued so the parties could continue to work on agreed terms to a plan and disclosure statement.

REVIEW OF THE DISCLOSURE STATEMENT

Case filed: October 17, 2015

Background: Debtor-in-Possession is an eighty-two year old retired physician. His career involved medical research and teaching. He helped found U.C. Davis School of Medicine. Debtor-in-Possession receives monthly social security benefits of \$1,627.50 and monthly annuity benefits from a TIAA-CREF account in the amount of \$694.22. He also receives occasional dividends on account of an 8% interest in Apnea Analysis Center, Inc. A closely held California Corporation.

From October 1997 onward, Mr. Charles Hoffmeister maintained Debtor-in-Possession's home. This was a significant benefit to the Debtor-in-Possession as his career often demanded extended stays away from Laguna Beach. The agreement between the Debtor-in-Possession and Mr. Hoffmeister was that upon retirement, Debtor-in-Possession would provide Mr. Hoffmeister with a small property. After selling his Laguna Beach home, Debtor-in-Possession provided that property in the form of a small farm (39.83 acres) located in Spencer, Indiana. Debtor-in-Possession purchased the farm in 2009 for \$135,000.00, subsequently made improvements to it and harvested timber. The farm does not generate crop income and the primary revenue associated with the farm is the occasional timber sales. Mr. Hoffmeister has lived on the farm since 2009 and has maintained it. Debtor-in-Possession transferred title to Mr. Hoffmeister in June 2015. Mr. Hoffmeister has deeded his interest in the property back to Debtor-in-Possession. Spencer, Indiana is a very rural community and there is not an active market for property.

In 2008, Debtor-in-Possession decided to leave Laguna Beach and move to Davis, California. At the time, he was 74 years old. He listed and sold his residence located at 31401 Holly Drive, Laguna Beach, California to Michael Kletchko and Patrick Ruedin. Debtor-in-Possession used a licensed realtor Susan Neely associated with Prudential a real estate brokerage firm. Mr. Kletchko and Mr. Ruedin sued Debtor-in-Possession on a variety of tort theories regarding failures to disclose defects in the former residence in the Superior Court of California, County of Orange in 2010. A trial was held in February 2015 and a judgment in the amount of \$664,000.00 for economic damages on theories of breach of contract, negligence, intentional misrepresentation, and concealment was entered on March 18, 2015. The jury specifically found that Debtor-in-Possession did not engage in the conduct with malice, oppression or fraud. The judgment was increased to include attorney's fees (\$175,000.00), costs (\$40,468.56) and interest (\$37,293.60) on October 30, 2015 for a total of \$916,762.16. The fees were reduced from \$312,272.27 and the costs were reduced from \$38,974.61. Mr. Kletchko and Mr. Ruedin filed an abstract of judgment

against Debtor-in-Possession's Davis residence on July 22, 2015, within 90 days of the date of the present case. Debtor-in-Possession is seeking the avoidance of the abstract of judgment. Kletchko and Ruedin have filed a proof of claim in this case on December 22, 2015, in the amount of \$1,164,436.00. If the claim is not reduced to the amount awarded by the Orange County Superior Court on October 30, 2015, the Debtor-in-Possession will need to file a claim objection.

Creditor/Class	Treatment	
Administrative Expenses: Expenses arising in the Ordinary Course of Business After the Petition Date	Claim Amount	Estimated \$30,000.00
	Impairment	
	<p>(1) Expenses arising in the Ordinary Course of Business After the Petition Date; Estimated current at confirmation; Paid in full on the Effective Date of the Plan, or according to terms of obligation if later.</p> <p>(2) Professional Fees, as approved by the Court; Estimated to be \$30,000.00; Paid in full upon the refinance of Debtor's residence.</p> <p>(3) Clerk's Office Fees; Estimated None; Paid in full on the Effective Date of the Plan.</p> <p>(4) Other administrative expenses; Estimated None; Paid in full on the Effective Date of the Plan or according to separate written agreement</p>	
Priority Tax Claim	Claim Amount	Estimated \$4,218.19
	Impairment	
	The Internal Revenue Service has filed a proof of claim for 2012 taxes in the estimated amount of \$4,218.19. The proof of claim alleges that no return was filed in 2012. Debtor-in-Possession is reviewing his records to either find a copy of the filed return or will file the return.	
Class 1: Amerihome Mortgage Co. LLC	Claim Amount	
	Impairment	Unimpaired
	The secured claim of Amerihome Mortgage Co. LLC is a first priority deed of trust secured by 1304 Aspen Place, Davis, CA. This is Debtor-in-Possession's residence. Debtor-in-Possession shall continue to make monthly payments until the residence is refinanced and this claim is paid in full. It is anticipated that the refinance will occur in June 2016.	

Class 2: Michael Letchko and Patrick Ruedin	Claim Amount	
	Impairment	
	<p>The secured claim of Michael Kletchko and Mr. Ruedin is second priority abstract of judgment secured by 1304 Aspen Place, Davis, CA and recorded July 22, 2015. Debtor will seek to avoid the secured claim pursuant to 11 U.S.C. § 547(b)(2). To the extent allowed the unsecured claim will share pro rata with allowed Class 3 claims. Debtor estimates that the allowed unsecured claim will be \$916,762.16. Payment to Class 2 shall be made in part upon the completion of the reverse mortgage, estimated within thirty days of the Effective Date of this Plan, with the balance of the reverse mortgage proceeds twelve months after the initial payment when the loan facility of the reverse mortgage is available and upon the sale of the Indiana property estimated to be within twelve months of the Effective Date. Class 2 claims will be paid pro rata with allowed Class 3 Claims.</p>	
Class 3: General Unsecured Claims	Claim Amount	
	Impairment	Impaired
	<p>The allowed general unsecured claims will be paid as follows: Payment to Class 2 shall be made in part upon the completion of the reverse mortgage, estimated within thirty days of the Effective Date of this Plan, with the balance of the reverse mortgage proceeds twelve months after the initial payment when the loan facility of the reverse mortgage is available and upon the sale of the Indiana property estimated to be within twelve months of the Effective Date. Class 3 claims will be paid pro rata with allowed Class 2 claims.</p>	
Class 4: Interest of the Debtor	Claim Amount	
	Impairment	Impaired
	<p>The Debtor shall retain his interest in his post-petition social security and TIAA-CREF income. He shall also retain his interest in his residence subject to the Class 1 secured claim of Amerihome Mortgage and the contemplated reverse mortgage. The property of the estate shall revert to the Debtor upon the Plan Effective Date.</p>	

A. C. WILLIAMS FACTORS PRESENT

 Y Incidents that led to filing Chapter 11

☐Y ☐ Description of available assets and their value

☐ Anticipated future of the Debtor

☐Y ☐ Source of information for D/S

☐Y ☐ Disclaimer

☐Y ☐ Present condition of Debtor in Chapter 11

☐Y ☐ Listing of the scheduled claims

☐Y ☐ Liquidation analysis

☐ Identity of the accountant and process used

☐N ☐ Future management of the Debtor

☐Y ☐ The Plan is attached

In re A. C. Williams, 25 B.R. 173 (Bankr. N.D. Ohio 1982); see also *In re Metrocraft*, 39 B.R. 567 (Bankr. N.D. Ga. 1984).

OBJECTIONS:

No objections to date have been filed.

DISCUSSION:

1. Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).

2. "Adequate information" means information of a kind, and in sufficient detail, so far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a).

3. Courts have developed lists of relevant factors for the determination of adequate disclosure. *E.g.*, *In re A. C. Williams*, *supra*.

4. There is no set list of required elements to provide adequate information per se. A case may arise where previously enumerated factors are not sufficient to provide adequate information. Conversely, a case may arise where previously enumerated factors are not required to provide adequate information. *In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567 (Bank. N.D. Ga. 1984). "Adequate information" is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented. *In re Michelson*, 141 B.R. 715, 718-19 (Bankr. E.D. Cal. 1992).

5. The court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D. Pa. 1982).

Determination of whether there is "adequate information" is a subjective determination made by the bankruptcy court on a case by case basis. *In re Texas Extrusion Corp.*, 844 F.2d 1142 (5th Cir. 1988), cert. denied 488 U.S. 926 (1988). Non-bankruptcy rules and regulations concerning disclosures do not govern the determination of whether a disclosure statement provides adequate information. 11 U.S.C. § 1125(d), *Yell Forestry Products, Inc. v. First State Bank*, 853 F.2d 582 (8th Cir. 1988).

~~Here, upon the court's review of the Disclosure Statement and there being no objections as to the Disclosure Statement, the court finds that there is adequate information for a hypothetical reasonable investor to make a decision as to the proposed plan. Therefore, the Motion for Approval of the Disclosure Statement is granted.~~

~~The court shall issue an order approving the Disclosure Statement and setting the following dates and deadlines:~~

- ~~A. The Plan, Disclosure Statement, Order Approving Disclosure Statement, Ballot, and Notice of Confirmation Hearing shall be served on or before xxxxxxxxxx, 2016.~~
- ~~B. Opposition to the confirmation of the Plan shall be filed and served, and ballots served on counsel for the Debtor in Possession on or before [28 days] xxxxxxxxxx, 2016.~~
- ~~C. Responses to Opposition, Evidence in support of confirmation, and tabulation of ballots shall be filed and serve on or before xxxxxxxxxx, 2016.~~
- ~~D. The Confirmation Hearing shall be conducted at 3:00 p.m. on xxxxxxxxxx, 2016.~~

2. [10-33944-E-13](#) ALAN/JILL MORI
[16-2027](#)
MORI ET AL V. WELLS FARGO
BANK, N.A.

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
2-15-16 [[1](#)]

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: unknown

Adv. Filed: 2/15/16
Answer: none

Nature of Action:
Declaratory judgment
Recovery of money/property - fraudulent transfer
Other (e.g. other actions that would have been brought in state court if
unrelated to bankruptcy case)

The Status Conference is XXXXXXXXXXXXXXXXXXXX.
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Notes:

Continued from 4/20/16 to allow Parties to continue in good faith efforts to
resolve the dispute.

Plaintiffs' 2nd Status Statement filed 5/11/16 [Dckt 12]

MAY 18, 2016 STATUS CONFERENCE

This Adversary Proceeding was commenced on February 15, 2016.
It was served on Defendant Wells Fargo Bank, N.A. on February 23, 2016. An
answer or other responsive pleading was required to be filed by Wells Fargo
Bank, N.A. on or before March 16, 2016. Summons, Dckt. 3.

No answer or other responsive pleading has been filed. In the
most recent Status Report, Plaintiff-Debtor represents that communications with
the Defendant has occurred and Plaintiff-Debtor believes that this matter may
be resolved through a loan modification.

Unfortunately, no action has been taken in this case, that the
court can observe, by Wells Fargo Bank, N.A. or Plaintiff-Debtor. Though
filed, the Adversary Proceeding is not being prosecuted.

3. [11-27845-E-11](#) IVAN/MARETTA LEE
[15-2194](#)
LEE ET AL V. CITY OF
SACRAMENTO COMMUNITY

CONTINUED STATUS CONFERENCE
AMENDED COMPLAINT
3-14-16 [[92](#)]

Plaintiff's Atty: Raymond E. Willis
Defendant's Atty:
Tim G. Ceperley [Bank of America, N.A.]
Beau E. Parkhurst [City of Sacramento; City of Sacramento Community
Development Department]
Gregory K. Jones [CIT Bank, N.A.-formerly known as OneWest Bank, N.A.]
B. Ben Mohandesi [New Penn Financial, LLC dba Shellpoint Mortgage
Servicing]

Adv. Filed: 9/30/15
Answer: 10/30/15 [City of Sacramento; City of Sacramento Community
Development Department]
11/18/15 [CIT Bank, N.A.-formerly known as OneWest Bank, N.A.]
11/18/15 [New Penn Financial, LLC dba Shellpoint Mortgage
Servicing]

Amd. Compl. Filed: 1/8/16
Answer: none

2nd Amd. Compl. Filed: 3/14/16
Answer: 3/31/16 [City of Sacramento; City of Sacramento Community
Development Department]
Counter-Claim/Cross-Claim Filed: 3/31/16 [City of Sacramento; City of
Sacramento Community Development Department]
Answer: 4/12/16 [Ivan Lee and Maretta Lee]

Nature of Action:
Injunctive relief - other
Declaratory judgment

The Status Conference is XXXXXXXXXXXXXXXXXXXXXXXXXXXX.
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Notes:
Continued from 1/20/16. Amended complaint to be filed and served on or before
3/18/16.

[TGC-3] Bank of America, N.A.'s Motion to Dismiss the Second Amended Adversary
Complaint filed 3/31/16 [Dckt 98], set for hearing 5/26/16 at 1:30 p.m.

Plaintiffs' Status Conference Statement filed 5/11/16 [Dckt 104]

MAY 18, 2016 STATUS CONFERENCE

SUMMARY OF COMPLAINT

Ivan and Maretta Lee, the Plaintiff-Plan Administrators under the confirmed Chapter 11 Plan, have filed their Second Amended Complaint in this Adversary Proceeding. The allegations in the Second Amended Complaint are summarized as follows. The surrender of the Property, in light of the 11 U.S.C. § 1111(b) election of Bank of America, N.A., worked a full satisfaction of that creditor's secured claim, with no unsecured claim to be paid the Bank.

Neither the Chapter 11 Plan nor the court ordered the Plaintiff-Plan Administrators to execute a deed to effectuate the surrender or abandonment. The order confirming the Chapter 11 Plan also terminated the automatic stay. As the then Debtor in Possession, the Plaintiff-Plan Administrators confirmed a Chapter 11 Plan which provided for the "surrender" and "abandonment" of the real property commonly known as 2323-2331 Grove Avenue, Sacramento, California.

It is further alleged that after confirmation of the Chapter 11 Plan, Bank of America, N.A. failed to transfer the title to the property from the Debtors to Bank of America, N.A. This transfer was to be made by a non-judicial foreclosure sale.

It is further alleged that after confirmation, Bank of American, N.A. purported to transfer the note and deed of trust, which were satisfied by the surrender and abandonment, to IndyMAC and Shellpoint.

By Letter dated July 14, 2015, the City of Sacramento, California has made demand that the Plaintiff-Plan Administrator pay \$2,500.00 for the surrendered and abandoned property as monitoring fee.

It is further alleged that the foreclosure proceedings were in violation of the Chapter 11 Plan and have been placed on the Plaintiff-Plan Administrator's credit report.

The City of Sacramento has commenced a legal proceeding against Maretta Lee for penalties and equitable relief after the property was surrendered and abandoned.

First Claim for Relief

The first claim seeks injunction relief against the City of Sacramento, enjoining it from proceeding with the litigation against Maretta Lee.

Second Claim for Relief

This claim for relief appears to sound in declaratory relief, requesting a determination of the respective rights and obligations of the parties arising under the confirmed Chapter 11 plan as they relate to the "surrender" and "abandonment" of the Property.

Third Claim for Relief

It is asserted that "Plaintiffs" do not have a valid lien or interest in the surrendered Property. The Chapter 11 Plan binds Bank of America, N.A., which requires the Bank to conduct a non-judicial foreclosure sale on the Property. The Plan, which provides for the "surrender" and "abandonment" of the Property also binds the City of Sacramento. No specific relief is

requested.

Fourth Claim for Relief

The Fourth Claim seeks avoidance of fraudulent transfer of surrendered properties and lawsuit. Plaintiff-Plan Administrators appear to be requesting that the court "avoid" the transfer of any alleged interest of Plaintiff-Plan Administrators in the notes and deeds of trust transferred by Bank of America, N.A. to Indymac and Shellpoint.

RESPONSE OF BANK OF AMERICA, N.A.

Bank of America, N.A. has filed a Motion to Dismiss the Second Amended Complaint. Dckt. 98. Unfortunately, the "motion" consists of little more than a notice that the Bank is seeking such generic relief, and the grounds are stated as:

"The grounds for this motion are that Plaintiffs have failed to state a claim against Defendant upon which relief can be granted under Fed. Rule Civ. P. 12(b)(6). The Adversary Complaint's defects are such that they are incurable and incapable of amendment; and Plaintiffs can prove no set of facts in support of their claims which would entitle them to relief."

Dckt. 98.

Though the Second Amended Complaint may suffer from serious challenges, the "motion" is nothing more than a mere legal conclusions stated by the Bank. Federal Rule of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure 7007 require that the motion itself *shall* "state with particularity the grounds" upon which the requested relief is based, not merely the legal conclusions of the movant. Local Bankruptcy Rule 9004-1 and the Revised Guidelines for Preparation of Documents require that a motion, the points and authorities, each declaration, other pleadings, and the exhibits (which exhibits may be combined into one document) be filed as separate documents.

Attached to the Motion as an addendum is what is identified as a "Points and Authorities." This ten page addendum contains extensive factual allegations, citations, quotations, arguments, and contentions in support of the motion. Most likely this is pages 7-9, the Introduction, in which the grounds upon which relief is based would be stated. Additional possible grounds may be found on page 10-11, 12, and 13.

SUMMARY OF ANSWER, CITY OF SACRAMENTO,

The City of Sacramento ("Defendant-City") filed an Answer on March 31, 2016. Dckt. 100. The Defendant-City specifically admits and denies the allegations of the Second Amended Complaint. The City of Sacramento also asserts twenty affirmative defenses.

COUNTERCLAIM AND CROSS-CLAIM OF CITY OF SACRAMENTO

The City of Sacramento has filed a Counter Claim against Maretta Lee, one of the Plaintiff-Plan Administrators and a Cross Claim against Bank of America, N.A. Dckt. 100, starting on page 16. The City alleges that federal

jurisdiction exists pursuant to 28 U.S.C. § 1334 and § 157, and further alleges that the Counterclaim and Cross-Claim are non-core proceedings. The City of Sacramento does not consent to a bankruptcy judge issuing the final orders and judgment for the Counter and Cross Claims.

The City first seeks a determination of whether it is Maretta Lee or Bank of America, N.A. which is responsible for the Property which is the subject of the "surrender" and "abandonment." The City asserts that the Property is a public nuisance, and whichever person is the owner, that person is responsible for abatement of the nuisance.

Answer of Plaintiff-Plan Administrators

Maretta Lee has filed an Answer to the Counterclaim, specifically denying and admitting allegations of the Counter Complaint. Answer, Dckt. 102. Ms. Lee alleges seventeen affirmative defenses.

CONFIRMED CHAPTER 11 PLAN

The following provisions are found in Plaintiff-Debtor's confirmed April 20, 2012 Modified Plan, confirmed May 4, 2012, in the parent bankruptcy case:

ARTICLE 4: TREATMENT OF CLAIMS UNDER THE PLAN

...

C. Classified Claims

...

2d. Bank of America, NA for 272 Christine Dr., Sacramento, CA

Debtor will surrender the collateral at 272 Christine Dr., Sacramento, CA, to Bank of America, NA, on the Effective Date of the Plan. The confirmation order would constitute an order for relief from stay. Any secured claim is satisfied in full through surrender of the collateral. Due to the 11 U.S.C. Section 1111(b) election of [BANA], there will be no deficiency claim treated as a general unsecured claim.

2e. Bank of America, NA for 2323/2331 Grove Ave., Sacramento, CA

Debtor will surrender and abandon the collateral at 2323-2331 Grove Avenue to [BNYM], its assignees and/or successors in interest on the effective date of the Plan. The confirmation order would constitute an order for relief from stay, with the Federal Rule of Bankruptcy procedure 4001(a)(3) 14-day stay waived. Any secured claim is satisfied in full through surrender of the collateral. Due to the 11 U.S.C. Section 1111(b) election of [BNYM], there will be no deficiency claim treated as a general unsecured claim.

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ARTICLE 15: GENERAL PROVISIONS

...

O. Successors And Assigns

The rights, duties and obligations of any Entity named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, the successors and assigns of such Entity.

E.D. Cal. Bankr. Case No. 2011-27845, Dckt. 279, pp. 10, 20.

4. [10-49649](#)-E-13 NANCY ROBERTS
[16-2044](#)
ROBERTS V. WELLS FARGO BANK,
N.A.

STATUS CONFERENCE RE: COMPLAINT
3-9-16 [[1](#)]

Plaintiff's Atty: David M. Brady
Defendant's Atty: unknown

Adv. Filed: 3/9/16
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

The Status Conference is XXXXXXXXXXXXXXXXXXXX .
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Notes:

MAY 18, 2016 STATUS CONFERENCE

At the Status Conference ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

SUMMARY OF COMPLAINT

Nancy Roberts ("Plaintiff-Debtor") has filed The Complaint seeking a determination that the Deed of Trust securing the claim of Wells Fargo Bank, N.A. is void, the secured claim having been valued pursuant to 11 U.S.C. § 506(a) and the secured value thereof having been provided for in full through the Plaintiff Debtor's Chapter 13 Plan in E.D. Cal. Case no. 10-49649. On January 24, 2016, the Bankruptcy Court sent the Notice of Plan Completion to all the creditors, including Wells Fargo Bank, N.A.

It is alleged that Wells Fargo Bank, N.A. has failed to reconvey the void deed of trust, and that Plaintiff-Debtor is entitled to a judgment quieting title with respect to the deed of trust, damages pursuant to California Civil Code § 2941, and attorneys' fees.

SUMMARY OF ANSWER

No Answer has been filed.

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 that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K) and (L). Complaint ¶ 3, Dckt. 1.

- a. Discovery closes, including the hearing of all discovery motions, on -----, 2016.
- b. Dispositive Motions shall be heard before -----, 2016.
- c. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2016.

5. [15-29555](#)-E-13 DIANNE AKZAM
[15-2247](#)
U.S. TRUSTEE V. AKZAM

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
12-18-15 [[1](#)]

Final Ruling: No appearance at the May 17, 2016 Status Conference is required.

Plaintiff's Atty: Allen C. Massey
Defendant's Atty: Pro Se

Adv. Filed: 12/18/15
Answer: none

Nature of Action:
Injunctive relief - other

The Status Conference is continued to 2:30 p.m. on June 22, 2016.
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Notes:
Continued from 3/10/16

Order denying Motion to Dismiss filed 4/18/16 [Dckt 20]; Defendant Dianne Akzam to file and serve an answer to the Complaint on or before 5/17/16.

MAY 18, 2016 STATUS CONFERENCE

The court having denied Defendant's Motion to Dismiss and ordering that the answer need not be filed until May 17, 2016 (and there being no answer on the docket as of May 16, 2016), the court continues the Status Conference to allow for a review of the Answer, if filed, prior to the Status Conference, or the further prosecution of this Adversary Proceeding if no answer is filed.

6. [12-20173-E-7](#) LAVALLE/MARILYN GARY
[16-2039](#)
GARY ET AL V. AT&T ET AL

STATUS CONFERENCE RE: COMPLAINT
3-2-16 [[1](#)]

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: unknown

Adv. Filed: 3/2/16
Answer: none

Nature of Action:
Declaratory judgment
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

The Chapter 11 Status Conference is XXXXXXXXXXXXXXXXXXXX.

Notes:
Plaintiffs' Status Statement filed 5/11/16 [Dckt 8]

MAY 18, 2016 STATUS CONFERENCE

SUMMARY OF COMPLAINT

Lavalle and Marilyn Gary ("Plaintiff-Debtor") filed this Complaint alleging a violation of the discharge injunction. It is alleged that one of the Defendants (the Complaint is not clear) has attempted to collect payment on a discharged debt. The First Cause of Action is for "declaratory relief." The court is unsure how an alleged violation of the discharge injunction is a basis for "declaratory relief." The Complaint also seeks to recover damages for violation of the discharge entered pursuant to 11 U.S.C. § 1328. However, the Complaint alleges that while filed as a Chapter 13 case, the Plaintiff-Debtor's bankruptcy case was converted to one under Chapter 7 and the discharge therein was under Chapter 7.

SUMMARY OF ANSWER

No answer has been filed.

7. [16-22487](#)-E-11 MARTY/RONDA BOONE

STATUS CONFERENCE RE: VOLUNTARY
PETITION
4-20-16 [[1](#)]

Debtors' Atty: Pro Se

The Status Conference is ~~XXXXXXXXXXXXXXXXXXXX~~.

Notes:

Deadline to file missing documents extended to 5/18/16

MAY 18, 2016 STATUS CONFERENCE

This Chapter 11 case was commenced on April 20, 2016. Debtor's prior Chapter 7 case, filed on March 31, 2016, was dismissed on April 18, 2016. Bankr. E.D. Cal. No. 16-21985. The case was dismissed because of Debtor's failure to file Schedules and the Statement of Financial Affairs.

Debtor has not filed Schedules or the Statement of Financial Affairs in this Chapter 11 case. The court has granted Debtor an extension of time until May 18, 2016, to file the Schedules, Statement of Financial Affairs, and other required documents in this case.

8. [16-21089](#)-E-13 STEPHEN MAR
[16-2051](#)
MAR V. UNIFUND CCR, LLC ET AL

STATUS CONFERENCE RE: COMPLAINT
3-15-16 [[1](#)]

Final Ruling: No appearance at the April 28, 2016 Status Conference is required.

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: unknown

Adv. Filed: 3/15/16
Answer: none

Nature of Action:
Declaratory judgment
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

The Status Conference is continued to 2:30 p.m. on August 10, 2016.
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Notes:

MAY 18, 2016 STATUS CONFERENCE

In her Status Conference Statement, Plaintiff-Debtor advises the court that the Parties are in active settlement negotiations and anticipate that his matter will be resolved. A request for a continuance of the Status Conference for sixty days has been made on behalf of all parties by the Plaintiff-Debtor. None of the Defendants have filed a response to the Complaint.

SUMMARY OF COMPLAINT

The Complaint relates to a debt owed to Citibank, N.A. It is alleged that Plaintiff-Debtor settled the debt with Allied Interstate, LLC, acting as the agent for Citibank, N.A., on November 3, 2010, with no amount remaining owing. It is alleged that Unifund CCR, LLC, filed a complaint in October 2014 seeking to enforce the debt which had been settled. It is alleged that a judgment was therein obtained, and Unifund CCR, LLC has filed a proof of claim in Plaintiff-Debtor's bankruptcy case.

The First Cause of Action is an objection to the Proof of Claim. Though not clearly stated, it appears that the objection is that there was no obligation owing on the Citibank, N.A. debt. The First Cause of Action appears to contain language concerning misconduct in filing the proof of claim and sanctions. Such are not an "objection to claim" grounds.

The Second Cause of Action is for "declaratory relief" as to what obligation may exist. It does not appear that there is a basis for "declaratory relief," as the issue of the debt is included in the objection to claim.

The Third Cause of Action is under the California Civil Code for Fraud.

It is alleged that, if there is an obligation owing for the Citibank, N.A. debt, then Allied Interstate, LLC and its principal, Citibank, N.A., misrepresented to Plaintiff-Debtor that payment of the settlement amount would result in there being no remaining obligation owing to Citibank, N.A.

Finally, Plaintiff-Debtor states that she intends to recover attorneys' fees. The fees will be sought pursuant to contract and California Civil Code § 1717.