

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

Honorable Fredrick E. Clement  
Bankruptcy Judge

Bakersfield Federal Courthouse  
510 19<sup>th</sup> Street, Second Floor  
Bakersfield, California

**WEDNESDAY**

**JULY 8, 2015**

**11:00 A.M. CHAPTER 7 ADVERSARY PROCEEDINGS**

**PRE-HEARING DISPOSITIONS**

**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.

**MATTERS RESOLVED BEFORE HEARING**

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party 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 to be dropped from calendar 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.

**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 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 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. [14-13805](#)-A-7      KIRKSEY/TERESA NEWTON      PRETRIAL CONFERENCE RE:  
[14-1110](#)      COMPLAINT  
LBS FINANCIAL CU V. NEWTON,  
JR.  
THOMAS PRENOVOST/Atty. for pl.  
RESPONSIVE PLEADING  
9-11-14 [[1](#)]

**No tentative ruling**

2. [12-11008](#)-A-7      RAFAEL ALONSO      STATUS CONFERENCE RE: COMPLAINT  
[15-1044](#)      4-14-15 [[1](#)]  
GORSKI V. CAMACHO  
PHILLIP GILLET/Atty. for pl.

**Final Ruling**

The status conference is continued to September 2, 2015, at 10:30 a.m.

3. [12-11008](#)-A-7      RAFAEL ALONSO      MOTION TO DISMISS ADVERSARY  
[15-1044](#)      DMG-1      PROCEEDING/NOTICE OF REMOVAL  
GORSKI V. CAMACHO      6-10-15 [[10](#)]  
D. GARDNER/Atty. for mv.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Dismiss Pursuant to Rule 12(b)(6)

**Notice:** LBR 9014-1(f)(2); no written opposition required

**Disposition:** Granted with leave to amend the complaint

**Order:** Civil minute order

**DISMISSAL**

The defendant Alejandra Camacho moves to dismiss the complaint filed by the chapter 7 trustee, Vincent A. Gorski. The motion is directed at the factual allegations of the complaint to the extent those allegations assert post-petition transfers as the basis for both federal and state law avoidance actions, which actions necessarily assume the existence of a pre-petition transfer.

The plaintiff concedes that the allegations for post-petition transfers should be dismissed. The court relies on this concession in granting the motion to the extent the complaint alleges post-petition transfers. The trustee also requests leave to amend the complaint to allege an action under § 549 for avoidance of the postpetition transfers.

Because the allegations of postpetition transfers are interwoven into the complaint's claims for avoidance, the court will dismiss the entire complaint with leave to amend the complaint pursuant to the deadlines imposed by the court below.

**CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially

The status conference is continued to September 2, 2015, at 10:30 a.m. If the plaintiff has not served the complaint by that date, the court will dismiss the action. Fed. R. Civ. P. 4(m), *incorporated by* Fed. R. Bankr. P. 7004(a). Absent a court order, the parties may not

enlarge time for filing a responsive pleading or motion. If the defendant fails to respond to the complaint, the plaintiff shall forthwith and without delay seek the entry of default.

6. [12-11008](#)-A-7      RAFAEL ALONSO      STATUS CONFERENCE RE: COMPLAINT  
[15-1047](#)      4-14-15 [[1](#)]  
GORSKI V. MEXIA  
PHILLIP GILLET/Atty. for pl.  
RESPONSIVE PLEADING

**No tentative ruling**

7. [12-11008](#)-A-7      RAFAEL ALONSO      STATUS CONFERENCE RE: COMPLAINT  
[15-1048](#)      4-14-15 [[1](#)]  
GORSKI V. GEVE  
PHILLIP GILLET/Atty. for pl.

**Final Ruling**

The status conference is continued to September 2, 2015, at 10:30 a.m. If the plaintiff has not served the complaint by that date, the court will dismiss the action. Fed. R. Civ. P. 4(m), *incorporated by* Fed. R. Bankr. P. 7004(a). Absent a court order, the parties may not enlarge time for filing a responsive pleading or motion. If the defendant fails to respond to the complaint, the plaintiff shall forthwith and without delay seek the entry of default.

8. [12-11008](#)-A-7      RAFAEL ALONSO      STATUS CONFERENCE RE: COMPLAINT  
[15-1049](#)      4-14-15 [[1](#)]  
GORSKI V. ANGULO  
PHILLIP GILLET/Atty. for pl.

**Final Ruling**

The status conference is continued to September 2, 2015, at 10:30 a.m.

9. [12-11008](#)-A-7      RAFAEL ALONSO      MOTION TO DISMISS ADVERSARY  
[15-1049](#)      DMG-1      PROCEEDING/NOTICE OF REMOVAL  
GORSKI V. ANGULO      6-9-15 [[10](#)]  
D. GARDNER/Atty. for mv.  
RESPONSIVE PLEADING

**Tentative Ruling**

**Motion:** Dismiss Pursuant to Rule 12(b)(6)

**Notice:** LBR 9014-1(f)(2); no written opposition required

**Disposition:** Granted with leave to amend the complaint

**Order:** Civil minute order

## **DISMISSAL**

The defendant Jenny Angulo moves to dismiss the complaint filed by the chapter 7 trustee, Vincent A. Gorski. The motion is directed at the factual allegations of the complaint to the extent those allegations assert post-petition transfers as the basis for both federal and state law avoidance actions, which actions necessarily assume the existence of a pre-petition transfer.

The plaintiff concedes that the allegations for post-petition transfers should be dismissed. The court relies on this concession in granting the motion. The trustee also requests leave to amend the complaint to allege an action under § 549 for avoidance of the postpetition transfers.

Because the allegations of postpetition transfers are interwoven into the complaint's claims for avoidance, the court will dismiss the entire complaint with leave to amend the complaint pursuant to the deadlines imposed by the court below.

## **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.

Defendant Jenny Angulo's Rule 12(b)(6) motion to dismiss has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted and the complaint dismissed with leave to amend.

IT IS FURTHER ORDERED that the plaintiff Vincent A. Gorski, chapter 7 trustee, shall have 21 days after service of the order on this motion to amend the complaint. When the amended complaint is filed, a red-lined copy shall be filed simultaneously with the amended complaint showing all changes made.

IT IS FURTHER ORDERED that the defendant shall have 21 days after service of the order on this motion to file either an answer to the complaint or a motion under Federal Rule of Civil Procedure 12(b) that is directed at the amended complaint.

IT IS FURTHER ORDERED that no enlargement of the periods established by this order shall be made by the parties without leave of court. In the event that defendant fails to file a timely responsive pleading, plaintiff shall immediately and without delay seek an entry of default and a default judgment.

10. [12-11008](#)-A-7      RAFAEL ALONSO      STATUS CONFERENCE RE: COMPLAINT  
[15-1050](#)      4-14-15 [[1](#)]  
GORSKI V. MELENDEZ  
PHILLIP GILLET/Atty. for pl.

**Final Ruling**

The status conference is continued to September 2, 2015, at 10:30 a.m. If the plaintiff has not served the complaint by that date, the court will dismiss the action. Fed. R. Civ. P. 4(m), *incorporated by* Fed. R. Bankr. P. 7004(a). Absent a court order, the parties may not enlarge time for filing a responsive pleading or motion. If the defendant fails to respond to the complaint, the plaintiff shall forthwith and without delay seek the entry of default.

11. [14-11429](#)-A-7      STEPHEN DAKE      PRETRIAL CONFERENCE RE:  
[14-1068](#)      COMPLAINT  
GBC INTERNATIONAL BANK V. DAKE      7-14-14 [[1](#)]  
JUSTIN SANTAROSA/Atty. for pl.  
ORDER 3/27/15

**No tentative ruling**

12. [14-10279](#)-A-7      DONNIE PRICE      PRETRIAL CONFERENCE RE: AMENDED  
[14-1044](#)      COMPLAINT -  
EXPRESS SERVICES, INC. V.      10-24-14 [[56](#)]  
PRICE  
RICHARD MONAHAN/Atty. for pl.  
ORDER 2/11/15

**No tentative ruling**

13. [14-10279](#)-A-7      DONNIE PRICE      MOTION TO AMEND  
[14-1044](#)      RM-2      6-29-15 [[100](#)]  
EXPRESS SERVICES, INC. V.  
PRICE  
RICHARD MONAHAN/Atty. for mv.

**Final Ruling**

The motion is denied. The motion was not set in conformance with LBR 9014-1(f)(1),(2). It is accompanied by a "Motion Shortening Time," filed June 29, 2015, ECF # 105. But that motion fails to show cause, i.e. why the motion could not have been set as required by LBR 9014-1(f)(1),(2). As consequence, the motion is denied. A civil minute order will issue.