

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

July 10, 2024 at 2:00 p.m.

1. <u>23-24382-E-13</u> <u>24-2023</u> CAE-1	VICTOR/ELMY HOPPER	STATUS CONFERENCE RE: COMPLAINT 3-11-24 [1]
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COMERICA BANK V. HOPPER

Plaintiff's Atty: Raffi Khatchadourian
Defendant's Atty: Douglas B. Jacobs

Adv. Filed: 3/11/24
Answer: 4/16/24

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

Notes:
Recusal Order filed 4/8/24 [Dckt 12]

Notice Rescheduling Status Conference filed 4/10/24 [Dckt 14]

Request for Entry of Default by Plaintiff(s) filed 4/11/24 [Dckt 18]; Memorandum Re: Default Papers filed 4/16/24 [Dckt 21]; Order denying request for entry of default filed 5/2/24 [Dckt 25]

Joint Status Conference Report filed 6/14/24 [Dckt 26]

The Status Conference is XXXXXXX

JULY 10, 2024 STATUS CONFERENCE

SUMMARY OF COMPLAINT

The Complaint filed by Comerica Bank (“Plaintiff”), Dckt. 1, asserts claims for nondischargeability of debt pursuant to 11 U.S.C. § 523(a)(2)(A) and (B), 11 U.S.C. § 523(a)(4), and 11 U.S.C. § 523(a)(6), and the award of a nondischargeable monetary judgment.

SUMMARY OF ANSWER

Victor Hopper (“Defendant-Debtor”) have filed an Answer, Dckt. 22, admitting and denying specific allegations in the Complaint.

JOINT STATUS REPORT

On June 14, 2024, the Parties filed a Joint Status Conference Report, stating that they are requesting that the Status Conference be continued approximately 90 days while the Parties continue in their settlement discussions. They report that a possible settlement may involve some third-parties.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Comerica Bank alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b), and that this is a core proceeding pursuant. Complaint ¶ 1, Dckt. 1. In the Answer, Defendant Victor Hopper admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶ 1; Dckt. 22. **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.**

At the Status Conference, **XXXXXXX**

2. [23-23620-E-11](#)
[CAE-1](#)

ROBERT P. OBREGON DDS
INC.

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
10-13-23 [\[1\]](#)

Debtor's Atty: Gabriel E. Liberman

Notes:

Continued from 5/1/24, Debtor/Debtor in Possession confirming that a consensual plan is near finalization.

Operating Reports filed: 6/10/24 [4/30/24 & 5/31/24]

[GEL-8] Debtor's Second Amended Plan of Reorganization, Dated May 15, 2024 filed 5/15/24 [Dckt 155]; set for hearing on 8/1/24 at 11:30 a.m.

[GEL-9] Withdrawal of Motion to Value Collateral of Banker's Healthcare Group, LLC filed 5/23/24 [Dckt 159]; Order dismissing motion to value collateral filed 5/24/24 [Dckt 160]

The Status Conference is XXXXXXX
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JULY 10, 2024 STATUS CONFERENCE

The confirmation hearing on the Debtor/Debtor in Possession's Debtor's Second Amended Subchapter V Plan is set for 11:30 a.m. on August 1, 2024. Amd Ord.; Dckt. 158. The deadline for filing oppositions to confirmation of the Second Amended Plan was July 3, 2023. *Id.* A review of the Docket on July 8, 2024, showed that no oppositions to confirmation were filed.

The Monthly Operating Report for May 2024, was timely filed on June 10, 2024. Dckt. 163. The Debtor/Debtor in Possession reports that the cash on hand at the end of May 2024, was \$37,100.13. This is an increase from the opening balance of \$27,644.16 as of May 1, 2024.

At the Status Conference, XXXXXXX

MAY 1, 2024 STATUS CONFERENCE

On April 15, 2024, the Debtor/Debtor in Possession filed a Notice of Withdrawal of the proposed First Amended Subchapter V Plan, for which a confirmation hearing was set for May 9, 2024. Ntc.; Dckt. 132. The Debtor/Debtor in Possession states in the Notice of Withdrawal that a Second Amended Plan will be filed to address various amendments.

On April 17, 2024, Debtor/Debtor in Possession filed its Monthly Operating Report for the Month of March 2024. Dckt. 150. In it the Debtor/Debtor in Possession states that for March 2024, there was a positive cash flow of \$12,071.92.

At the Status Conference, counsel for the Debtor/Debtor in Possession confirmed that a consensual plan is near finalization.

The Status Conference is continued to 2:00 p.m. on July 10, 2024.

3. [23-22217-E-13](#) **WLODZIMIERZ LITWIN** **STATUS CONFERENCE RE:**
[24-2042](#) **COMPLAINT**
CAE-1 **5-1-24 [1]**

LITWIN V. MEB TRUST IV, U.S.
BANK TRUST NATIONAL

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

Adv. Filed: 5/1/24
Answer: none

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

Notes:
[CAE-1] Plaintiff's Status Conference Statement filed 6/27/24 [Dckt 9]

The Status Conference is XXXXXXX
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JULY 10, 2024 STATUS CONFERENCE

This Adversary Proceeding was commenced on May 1, 2024, by Wlodzimierz Litwin, the Plaintiff-Debtor. Complaint; Dckt. 1. In the caption of the Complaint, Plaintiff-Debtor lists the following persons as Defendants:

MEB Trust IV, U.S.
Bank Trust National
Association, Bank of
America, N.A.,
Specialized Loan
Servicing, LLC

Id.; p. 1. This appears, and is repeated in the Complaint, to identify four defendants. In the Complaint Plaintiff-Debtor collectively refers to the multiple defendants as “Defendant” or “Defendants.”

SUMMARY OF COMPLAINT

In the First Cause of Action, Plaintiff-Debtor alleges that he and all four defendant were parties to a real estate contract that included a note and deed of trust. *Id.*; ¶ 32. It is further alleged that the Plaintiff-Debtor completed his performance under the contract by issuing a 1099-C. ^{FN.1.}

FN. 1. The IRS Form 1099-C is for the cancellation of a debt which is issued by a creditor who forgives a debt. <https://www.irs.gov/forms-pubs/about-form-1099-c>. In the related Bankruptcy Case (23-22217) Plaintiff-Debtor has stated that he was the borrower, not the creditor. It is unclear how Plaintiff-Debtor could have issued a Form 1099-C. In the general allegations, Plaintiff-Debtor alleges that “Defendant” issued a Release of Obligation in 2019 for the debt secured by Plaintiff-Debtor’s Property. *Id.*; ¶ 17.

In the Second Cause of Action, Plaintiff-Debtor seeks an accounting by “Defendant,” asserting that when “Defendant” transferred the account that “Defendant” failed to “credit the 1099-C that was previously issued to [Plaintiff-Debtor]. *Id.*; ¶¶ 38-39.

In the Third Cause of Action, Plaintiff-Debtor states that everything alleged in the Complaint is incorporated in the Third Cause of Action, which is titled as requesting “Declaratory Relief.” *Id.*; p. 7:5-10. For the “Declaratory Relief,” Plaintiff-Debtor states that “Defendant seeks compliance by the Defendants with the validly issued 1099-C.” *Id.*; ¶ 42. Putting aside the clerical error, there is no declaration sought of possible future rights and interests that may be effected, and may appear to seek injunctive relief. ^{FN.2.}

FN. 2. Declaratory relief is an equitable remedy distinctive in that it allows adjudication of rights and obligations on disputes regardless of whether claims for damages or injunction have arisen. *See* Declaratory Relief Act, 28 U.S.C. § 2201. “In effect, it brings to the present a litigable controversy, which otherwise might only be tried in the future.” *Societe de Conditionnement v. Hunter Eng. Co., Inc.*, 655 F.2d 938, 943 (9th Cir. 1981). The party seeking declaratory relief must show (1) an actual controversy and (2) a matter within federal court subject matter jurisdiction. *Calderon v. Ashmus*, 523 U.S. 740, 745 (1998). There is an implicit requirement that the actual controversy relate to a claim upon which relief can be granted. *Earnest v. Lowentritt*, 690 F.2d 1198, 1203 (5th Cir. 1982).

The Fourth Cause of Action seeks relief against “Defendants” pursuant to California Business and Professions Code § 17200 for unfair business practices.

The Fifth Cause of Action seeks cancellation of a “written instrument” pursuant to California Civil Code § 3412. After the words “written instrument” in ¶ 46 of the Complaint are the words “(1099-C). It is asserted that this “written instrument” will cause injury to the Plaintiff-Debtor and requests that it be “Ordered to be delivered up or cancelled.

It appears that if the 1099-C is cancelled it would appear to document that there has been no debt forgiveness and that the debt secured by the second deed of trust is still owed and must be paid by Plaintiff-Debtor or, if not paid, the holder of such debt would then foreclose on Plaintiff-Debtor's Property.

For the Sixth Cause of Action, titled "Breach of Implied Covenant of Good Faith and Fair Dealing," Plaintiff-Debtor alleges that this duty has been breached by "defendant" having denied the issuance of the 1099-C.

In the prayer for relief, Plaintiff-Debtor requests that the court: (a) issue a judgment that the 1099-C is valid and enforceable (as opposed to having it cancelled pursuant to California Civil Code § 3412); (b) Issue a judgment that Plaintiff-Debtor is a prevailing party under the contract; (c) consequential damages, (d) statutory damages, (e) Prejudgment interest; (f) attorneys fees and costs pursuant to the contract and "pursuant to Code;" (g) Release of the Lien of the subject loan; (h) Such other relief as proper.

Exhibit 1 to the Complaint is a copy of a "Release of Obligation from Bank of America - 9/16/19." Dckt. 6. This document is titled "RELEASE OF OBLIGATION" and states:

We want to inform you that on September 27, 2019 we will release obligation from your home equity line of credit.

*Loan Processing Department
Megan Heffron*

Id.

Exhibit B is a document titled "TAX STATEMENT FOR YEAR 2019," which in the upper left hand corner states that it is from Bank of America, N.A., Tax Report, in Tampa, Florida. In the body of the this document it states that it is "2019 - 1099-C, CANCELLATION OF MORTGAGE LOAN." It includes information that the mortgage was originated on July 11, 2006, and the date of the "identifiable event" was 09/27/19. It further states that the amount of the debt discharged was \$188,462.28. For the "Debtor Description" it states "Cancellation of Debt." The Larkspur Lane property is identified as that securing the mortgage. It stated that the Identifiable Event Code is "F," which code is stated by the Internal Revenue Service to be:

Code F—By agreement. Code F is used to identify cancellation of debt as a result of an agreement between the creditor and the debtor to cancel the debt at less than full consideration.

https://www.irs.gov/publications/p4681#en_US_2022_publink1000192640.

The Complaint does not include any allegations about Plaintiff-Debtor reporting this debt forgiveness on his 2019 tax return or any follow up from the Internal Revenue Service about the \$188,426.28 debt forgiveness income if the debt forgiveness was reported to the Internal Revenue Service.

SUMMARY OF ANSWER

No answers or other responses to the Complaint have been filed by any persons named in the Complaint.

SERVICE OF THE COMPLAINT

Federal Rule of Bankruptcy Procedure 7004 sets the requirements for service of a summons and complaint in an adversary proceeding. Rule 7004 provides in pertinent part:

(a) Summons; service; proof of service. [by physical personal service on a defendant]

(b) Service by first class mail. Except as provided in subdivision (h), in addition to the methods of service authorized by Rule 4(e)–(j) F.R.Civ.P., service may be made within the United States by first class mail postage prepaid as follows:

(1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession.

...

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

...

(8) Upon any defendant, it is also sufficient if a copy of the summons and complaint is mailed to an agent of such defendant authorized by appointment or by law to receive service of process, at the agent's dwelling house or usual place of abode or at the place where the agent regularly carries on a business or profession and, if the authorization so requires, by mailing also a copy of the summons and complaint to the defendant as provided in this subdivision.

...

(h) Service of process on an insured depository institution. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless—

(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;

(2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or

(3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

For Objections to Claims (for which an adversary proceeding is not required), Federal Rule of Bankruptcy Procedure 3007 provides:

Rule 3007. Objections to Claims [Effective until December 1, 2024]

(a) Time and manner of service.

...

(2) Manner of Service.

(A) The objection and notice shall be served on a claimant by first-class mail to the person most recently designated on the claimant's original or amended proof of claim as the person to receive notices, at the address so indicated; and

(i) if the objection is to a claim of the United States, or any of its officers or agencies, in the manner provided for service of a summons and complaint by Rule 7004(b)(4) or (5); or

(ii) if the objection is to a claim of an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act, in the manner provided in Rule 7004(h).

(B) Service of the objection and notice shall also be made by first-class mail or other permitted means on the debtor or debtor in possession, the trustee, and, if applicable, the entity filing the proof of claim under Rule 3005.

(b) Demand for relief requiring an adversary proceeding. A party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding.

In this Complaint, Plaintiff-Debtor seeks relief, including, to quiet title to the Property, have the deed of trust declared invalid, enforce contract rights, and seek monetary relief against "Defendants." These are claims for which Federal Rule of Bankruptcy Procedure 7001(1), (2), and (9) require an adversary proceeding and not a "mere" objection to claim.

Trust as Defendant

From the Complaint, the current entity asserting an obligation owed that is secured by the second deed of trust is "MEB Loan Trust IV, U.S. Bank Trust National Association, not in its individual capacity but solely as trustee." Proof of Claim 25-1.

While naming "MEB Loan Trust IV," it appears that U.S. Bank Trust National Association is the trustee of the MEB Loan Trust IV. As addressed in *Presta v. Tepper*, 179 Cal.App. 4th 909, 914 (2009), it is the trustee of the trust that is the real party in interest and must be named as the plaintiff or defendant in any legal proceeding (emphasis added):

Most importantly for our purposes, "an ordinary express trust is not an entity separate from its trustees...." (*Powers v. Ashton* (1975) 45 Cal.App.3d 783, 787, 119 Cal.Rptr. 729, italics added.) "In contrast to a corporation which is a '... distinct legal entity separate from its stockholder and from its officers' [citation]" (*Merco Constr. Engineers, Inc. v. Municipal Court* [(1978)] 21 Cal.3d [724,] 729) and deemed a person within many legal constructs (Code Civ. Proc., § 17), a **'... trust is not a person but rather "a fiduciary relationship with respect to property."** [Citations.] Indeed, " "an ordinary express trust is not an entity separate

from its trustees” ’ [citation].’ (*Moeller v. Superior Court* (1997) 16 Cal.4th 1124, 1132, fn. 3, italics added; *Pillsbury v. Karmgard* (1994) 22 Cal.App.4th 743, 753; see also Evid.Code, § 951.)” (*Ziegler v. Nickel* (1998) 64 Cal.App.4th 545, 548, 75 Cal.Rptr.2d 312.)

It is for this reason that a trust itself can neither sue nor be sued in its own name. Instead, **the real party in interest in litigation involving a trust is always the trustee.** (*Powers v. Ashton*, supra, 45 Cal.App.3d at p. 787, 119 Cal.Rptr. 729; Code Civ. Proc., § 369.)

See also, *Jo Redland Trust, U.A.D. 4-6-05 v. CIT Bank, N.A.*, 92 Cal.App. 5th 142, 156-157 (2023), holding that a complaint filed in the name of the trust may be amended to state the trustee of the trust as plaintiff, it concurs with *Presta*, stating:

MAM correctly points out that a trust is simply a collection of assets held for the benefit of designated beneficiaries (*Smith v. Cimmet* (2011) 199 Cal.App.4th 1381, 1390–1391), and as such, has no ability to sue or otherwise act independently from a trustee. (*Portico Management Group, LLC v. Harrison* (2011) 202 Cal.App.4th 464, 473; *Greenspan v. LADT LLC* (2010) 191 Cal.App.4th 486, 521–522 [“because “[a] trust is not a legal entity,” it “cannot sue or be sued, but rather legal proceedings are properly directed at the trustee””]; Code Civ. Proc., § 680.280 [definition of “Person” does not include trust].) According to MAM, the problem here runs deeper than lack of capacity to sue. A trust lacks capacity to sue because it has no independent legal existence. As a Fourth District, Division Three panel explained in *Presta v. Tepper* (2009) 179 Cal.App.4th 909, 913–914, while a corporation is considered a jural person (Code Civ. Proc., § 17, subd. (b)(6)), a trust is not. A trust is merely ““a fiduciary relationship with respect to property.””” (*Presta*, at p. 914; accord, *Moeller v. Superior Court* (1997) 16 Cal.4th 1124, 1132, fn. 3.) Under no circumstances can a trust be legally vivified and given capacity to sue or be sued.

Service Documented on Certificate of Service

Plaintiff-Debtor’s Certificate of Service documents the following persons having been served by Plaintiff-Debtor:

A. Electronic Service via the Clerk of the Court

Office of the U.S. Trustee

David Cusick, Chapter 13 Trustee

Peter Macaluso, Esq.

Wendy Locke, Esq.

Adam Barasch, Esq.

Kirsten Martinez, Esq.

B. First Class Mail (not Certified Mail)

Wlodzimierz Jan Litwin
3704 Larkspur Ln
Cameron Park, CA 95682

Bonial & Associates P.C.
Natalie E. Lea Authorized Agent for SLS
P.O. Box 9013
Addison, T 75001

Specialized Loan Servicing LLC
6200 S Quebec Street #300
Greenwood Village, CO 80111

Specialized Loan Servicing, LLC
Severson & Werson, P.C.
595 Market St #2600
San Francisco, CA 94105

No results were found at
<https://bizfileonline.sos.ca.gov/search/business> for;
MEB Loan Trsut IV (*sic*)
U.S. Bank Trust National Association

No results were found at
<https://banks.data.fdic.gov/bankfind-suite> for;
MEB Loan Trust IV
U.S. Bank Trust National Association

Dckt. 8. No trustees of any trusts appear to have been served and it appears that Specialized Loan Servicing has been served at the Greenwood Village, Colorado address.

On the California Secretary of State's website to "Specialized Loan Servicing, LLC" (one in all capital letters) are listed as having active status in California. <https://bizfileonline.sos.ca.gov/search/business>. One has the Colorado address listed on the Certificate of Service as its principal address. It's agent for service of process is listed as United Agent Group Inc., with the registered agent employees listed with a Sacramento, California mailing address.

It appears that Plaintiff-Debtor could not find an address for U.S. Bank Trust National Association. No such entity is identified on the California Secretary of State's website. An internet search reveals that U.S. Bank Trust National is identified by Dun and Bradstreet Business Directory as being part of U.S. Bank, National Association. From the Court's informal internet search, it appears that identifying this entity is a bit "challenging."

At the Status Conference, **XXXXXXX**

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Debtor 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.. Complaint ¶¶ 2,3, Dckt. 1. In the Answer, Defendant **xx** admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ **xx, xx, xx**; Dckt. **Xx**. **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. 23-23523 -E-7 23-2098 CAE-1	THE RETREAT AT ROYAL GREEN, LLC.	STATUS CONFERENCE RE: NOTICE OF REMOVAL 11-27-23 [1]
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FABROS ET AL V. THE RETREAT AT ROYAL GREEN LLC ET AL

Plaintiff's Atty: Michael J. Harrington
Defendant's Atty: unknown

Adv. Filed: 11/27/23
Answer: none

Nature of Action:
Determination of removed claim or cause

Notes:
Order Transferring Adversary Proceeding [from Chief Judge Clement to Judge Sargis] filed 3/29/24 [Dckt 20]; Notice of Transferred Adversary Proceeding filed 3/29/24 [Dckt 23]

Order re Captioning of Adversary Proceeding Pleadings filed 5/9/24 [Dckt 26]

The Status Conference is xxxxxxx
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JULY

10, 2024 STATUS CONFERENCE

On November 27, 2023, Chapter 7 Trustee Nichole Farris, filed a Notice of Removal of a State Court Action to Federal Court. Dckt. 1. The Plaintiff-Trustee has so removed the State Court Action as the successor in interest to the plaintiffs named in the State Court Complaint.

The basis for removal includes that the State Court Complaint seeks to avoid transfers and seeks damages for transfers of assets made by Debtor Antonette Tin, Debtor Royal Green LLC, and several others.

Status Reports

A Joint Status Report was filed by Plaintiff-Trustee and Defendants Erlinda B. Lynch, Alfred B. Tin, Antonio B. Tin, and Exequiel Allan Fernando on July 3, 2024.

These Parties suggest the following dates and deadlines in this Adversary Proceeding:

1. Rule 24 Disclosures.....July 31, 2024
2. Discovery
 - a. Opens.....July 31, 2024
 - b. Closes, including the hearing of any Discovery Motions.....December 31, 2024
3. Experts
 - a. Disclosure of Experts as provided in Federal Rule of Civil Procedure 26(a)(2).
 - (1) Fed. R. Civ.P. 26(a)(2):
 - (a) Allows disclosure of experts to be made at least 90 before the date set for trial.
 - (b) Allows disclosure of experts to contradict or rebut other party's expert within 30 days of the other party's expert.
4. Dispositive Motions set for hearing before.....March 31, 2025.

In the Notice of Removal, Plaintiff-Trustee states that federal court jurisdiction exists for the Removed Action pursuant to 28 U.S.C. § 1334(b) in that it is related to the consolidated Bankruptcy Case of Antoinette Tin and The Retreat at Royal Green, LLC, consolidated Case Number 23-23834.

The Notice of Removal estates that Plaintiff-Trustee consents to entry of final orders and the judgment by the Bankruptcy Court. Notice, ¶ 3; Dckt. 1. The Action seeks to avoid transfers of real properties, or recover the economic value thereof, transferred by Debtor The Retreat at Royal Green and Debtor Antoinette Tin.

At the Status Conference, **XXXXXXX**

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Trustee Nichole B. Farris in the Notice of Removal that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334(b), and pursuant to Federal Rule of Bankruptcy Procedure 9027(a)(1) consents to the Bankruptcy Court entering final orders and judgment in this Adversary Proceeding. Notice of Removal, ¶¶ 1, 3, Dckt. 1. In the Response, Defendant **xx** admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ **xx, xx, xx**; Dckt. **Xx**. **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.**

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

a. Plaintiff-Trustee Nichole B. Farris in the Notice of Removal that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334(b), and pursuant to Federal Rule of Bankruptcy Procedure 9027(a)(1) consents to the Bankruptcy Court entering final orders and judgment in this Adversary Proceeding. Notice of Removal, ¶¶ 1, 3, Dckt. 1. In the Response, Defendant **xx** admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ **xx, xx, xx**; Dckt. **Xx**. **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.**

b. Rule 24 Disclosures on or before July 31, 2024.

c. Discovery

- i. Opens July 31, 2024
- ii. Closes, including the hearing of any
Discovery Motions.....December 31, 2024

d. Experts

- i. Disclosure of Experts as provided in Federal Rule of Civil Procedure 26(a)(2).

(1) As provided in Federal Rule of Civil Procedure 26(a)(2):

- (a) Allows disclosure of experts to be made at least 90
before the date set for trial.
- (b) Allows disclosure of experts to contradict or rebut other
party’s expert within 30 days of the other party’s expert.

e. Dispositive Motions set for hearing before March 31, 2025.

f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on
XXXXXX , 2024.**

5. [21-21429-E-7](#) **JAMIE HOWELL**
[22-2099](#)

**PRE-TRIAL CONFERENCE RE:
COMPLAINT FOR TURNOVER
7-26-22 [1]**

FARRIS V. HOWELL

Plaintiff's Atty: J. Russell Cunningham
Defendant's Atty: Stacie L. Power

Adv. Filed: 7/26/22
Answer: 8/4/22

Nature of Action:
Recovery of money/property

Notes:
Scheduling Order -
Initial disclosures by 1/10/24
Expert witness discovery opens 4/1/24
Close of non-expert witness discovery 4/30/24
Close of expert witness discovery 5/10/24
Dispositive motions heard by 5/21/24

Trustee's Pretrial Conference Statement filed 6/27/24 [Dckt 25]

The Pretrial Conference is XXXXXX
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SUMMARY OF COMPLAINT

The Complaint (originally filed as a Motion and deemed to be a complaint by the Court; 21-21429, Order, Dckt. 152) Nikki Farris, the Chapter 7 Trustee, ("Plaintiff-Trustee"), Dckt. 1, asserts claims for determining that title to the Forbestown Property and the Charley Lynds Property are property of the Bankruptcy Estate and not of the Debtor's revocable trust (alleging that Debtor attempted to make it irrevocable, but such attempt was ineffective). Additionally, the Plaintiff Trustee asserts claim against the Debtor for post-petition rental of the Properties.

SUMMARY OF ANSWER

Jamie Howell (“Defendant-Debtor”) has filed an Answer, Dckt. 4, (the Answer being the Defendant-Debtor’s Opposition to the Motion, which the court has deemed to be an Answer). The Answer opposed the Motion on the grounds that Defendant-Debtor was converting her case to one under Chapter 13.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Trustee alleges in the Complaint that the Bankruptcy Estate has title to the Properties and seeks a judgment determining such and for turnover of the Properties. 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)(A), (E), (H). The Complaint seeks a determination that the Properties are property of the Bankruptcy Estate as provided in 11 U.S.C. § 541. Actions seeking to determine the rights and interests in property are adjudicated through adversary proceedings. Fed. R. Bankr. P. 7001(2).

IDENTIFICATION OF DEFENDANT PARTY

In the Complaint, Plaintiff-Trustee seeks recovery of the property from Jamie Howell, the Debtor. In the Complaint, ¶ 5, the Plaintiff-Trustee asserts that title to the properties are “vested solely in the Debtor who holds it in fee, purportedly through the Jamie Lee Howell Living Trust dated January 19, 2018. Dckt. 1.

As the Parties prepare for trial, the court addressed with Plaintiff-Trustee and Defendant whether the defendants in this Adversary Proceeding are Jamie Howell, the Debtor, individually, and Jamie Howell, Trustee of the Jamie Lee Howell Living Trust dated January 19, 2018.

At the Pretrial Conference, **XXXXXXX**

The court shall issue an Trial Setting in this Adversary Proceeding setting the following dates and deadlines:

- A. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1.
- B. **Plaintiff** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2024**.
- C. **Defendant** shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, **2024**.
- D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, **2024**.
- E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, **2024**.
- F. The Trial shall be conducted at ----**x.m. on** -----, **2024**.

Defendant Jamie Howell, in *pro se*, did not file a Pretrial Conference Statement.

The Plaintiff-Trustee filed her Pretrial Conference Statement, Dckt. 25, which states:

Plaintiff(s)	Defendant(s)
<p>Jurisdiction and Venue:</p> <ol style="list-style-type: none">1. The statement that the court has jurisdiction over this adversary proceeding and it is a core matter proceeding.	<p>Jurisdiction and Venue:</p> <ol style="list-style-type: none">1.2.3.
<p>Undisputed Facts:</p> <ol style="list-style-type: none">1. On April 19, 2024, Debtor commenced her voluntary Chapter 7 Case.2. On July 26, 2022, Plaintiff-Trustee filed her motion for turnover of properties.3. Debtor opposed the Motion.4. On October 29, 2022, the court ordered the Motion for Turnover converted to an Adversary Proceeding.5. Title to the properties at issue are held by “the Jamie Lee Howell Living Trust, dated January 19, 2018.”6.7.	<p>Undisputed Facts:</p> <ol style="list-style-type: none">1.2.3.
<p>Disputed Facts:</p> <ol style="list-style-type: none">1. There is an issue as to how title to the Properties is held.	<p>Disputed Facts:</p> <ol style="list-style-type: none">1.2.3.
<p>Disputed Evidentiary Issues:</p> <ol style="list-style-type: none">1. None	<p>Disputed Evidentiary Issues:</p> <ol style="list-style-type: none">1.

	2. 3.
Relief Sought: 1. Turnover of the Properties so Plaintiff-Trustee may liquidate for the benefit of the Bankruptcy Estate	Relief Sought: 1. 2. 3.
Points of Law: 1. 11 U.S.C. § 542(a). 2. 11 U.S.C. § 521(a)(4). 3. 11 U.S.C. § 363. 4. 11 U.S.C. § 541(a).	Points of Law: 1. 2. 3.
Abandoned Issues: 1. Claims for recovery of rent, without prejudice, which the Plaintiff-Trustee will investigate further.	Abandoned Issues: 1. 2. 3.
Witnesses: 1. Jamie Howell (Roberson) 2. Jeromy Heston 3. Taylor Heston 4. Nikki Farris 5. Reed Block	Witnesses: 1. 2. 3.
Exhibits:	Exhibits:

<ol style="list-style-type: none"> 1. Complaint (original motion) dated July 24, 2022. 2. Answer (opposition to motion) amended August 4, 2022. 3. Schedules and Amended Schedules of Debtor in her Bankruptcy Case. 4. Preliminary Title Reports for the Properties that are the subject of the Turnover. 5. Grant Deeds for the Properties that are the subject of the Turnover. 	<ol style="list-style-type: none"> 1. 2. 3.
<p>Discovery Documents:</p> <ol style="list-style-type: none"> 1. Transcript of the deposition for Jamie Howell a/k/a Jamie Roberson, dated May 30, 2024. 	<p>Discovery Documents:</p> <ol style="list-style-type: none"> 1. 2. 3.
<p>Further Discovery or Motions:</p> <ol style="list-style-type: none"> 1. None. 	<p>Further Discovery or Motions:</p> <ol style="list-style-type: none"> 1. 2. 3.
<p>Stipulations:</p> <ol style="list-style-type: none"> 1. None. 	<p>Stipulations:</p> <ol style="list-style-type: none"> 1. 2. 3.
<p>Amendments:</p> <ol style="list-style-type: none"> 1. None. 	<p>Amendments:</p> <ol style="list-style-type: none"> 1. 2.

	3.
Dismissals: 1. None	Dismissals: 1. 2. 3.
Agreed Statement of Facts: 1. None	Agreed Statement of Facts: 1. 2. 3.
Attorneys' Fees Basis: 1. No attorney's fees requested.	Attorneys' Fees Basis: 1. 2. 3.
Additional Items 1. None	Additional Items 1. 2. 3.
Trial Time Estimation: One-half to One Full Day.	Trial Time Estimation:

6. [23-23242-E-13](#) **BRYAN GALLINGER**
[24-2038](#)
CAE-1

STATUS CONFERENCE RE:
COMPLAINT
4-19-24 [[1](#)]

**GALLINGER V. LEVICK FAMILY
TRUST**

Plaintiff's Atty: Matthew V. Brady
Defendant's Atty: unknown

Adv. Filed: 4/19/24
Reissued Summons: 6/10/24
Answer: none

Nature of Action:
Recovery of money/property - other

Notes:

The Status Conference is XXXXXXX
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JULY 10, 2024 STATUS CONFERENCE

On April 19, 2024, Plaintiff-Debtor Bryan Gallinger filed a pleading titled "Adversary Complaint in Opposition to Claim of Secured Creditors Levick Family Trust." Dckt. 1. Only the Plaintiff-Debtor is listed in the caption as the "Debtor" and there is no second caption listing the plaintiff and the defendants. *Id.*; p. 1. The Adversary Complaint states the following Causes of Action being asserted as part of the Objection to Claim:

A. First Cause of Action.....Breach of Written Contract

B. Second Cause of Action.....Fraud

Id.

The claims are being asserted against the "Levick Family Trust." *Id.*, ¶ 1. The Adversary Complaint does not list the trustee of the Levick Family Trust. The court has addressed in an unrelated adversary proceeding that a "trust" is not a separate legal entity that has standing or can hold property, but it is the trustee of the trust who has such rights, powers and duties. This includes the trustee, and not the trust, being either a plaintiff or defendant in a legal proceeding.

As addressed in *Presta v. Tepper*, 179 Cal.App. 4th 909, 914 (2009), it is the trustee of the trust that is the real party in interest and must be named as the plaintiff or defendant in any legal proceeding (emphasis added):

Most importantly for our purposes, “an ordinary express trust is not an entity separate from its trustees....” (*Powers v. Ashton* (1975) 45 Cal.App.3d 783, 787, 119 Cal.Rptr. 729, italics added.) “In contrast to a corporation which is a ‘... distinct legal entity separate from its stockholder and from its officers’ [citation]’ (*Merco Constr. Engineers, Inc. v. Municipal Court* [(1978)] 21 Cal.3d [724,] 729) and deemed a person within many legal constructs (Code Civ. Proc., § 17), **a ‘... trust is not a person but rather “a fiduciary relationship with respect to property.”** [Citations.] Indeed, “ ‘ “an ordinary express trust is not an entity separate from its trustees” ’ ‘[citation].’ (*Moeller v. Superior Court* (1997) 16 Cal.4th 1124, 1132, fn. 3, italics added; *Pillsbury v. Karmgard* (1994) 22 Cal.App.4th 743, 753; see also Evid.Code, § 951.)” (*Ziegler v. Nickel* (1998) 64 Cal.App.4th 545, 548, 75 Cal.Rptr.2d 312.)

It is for this reason that a trust itself can neither sue nor be sued in its own name. Instead, **the real party in interest in litigation involving a trust is always the trustee.** (*Powers v. Ashton*, supra, 45 Cal.App.3d at p. 787, 119 Cal.Rptr. 729; Code Civ. Proc., § 369.)

See also, *Jo Redland Trust, U.A.D. 4-6-05 v. CIT Bank, N.A.*, 92 Cal.App. 5th 142, 156-157 (2023), holding that a complaint filed in the name of the trust may be amended to state the trustee of the trust as plaintiff, it concurs with *Presta*, stating:

MAM correctly points out that a trust is simply a collection of assets held for the benefit of designated beneficiaries (*Smith v. Cimmet* (2011) 199 Cal.App.4th 1381, 1390–1391), and as such, has no ability to sue or otherwise act independently from a trustee. (*Portico Management Group, LLC v. Harrison* (2011) 202 Cal.App.4th 464, 473; *Greenspan v. LADT LLC* (2010) 191 Cal.App.4th 486, 521–522 [“‘because “[a] trust is not a legal entity,” it “cannot sue or be sued, but rather legal proceedings are properly directed at the trustee”’]; Code Civ. Proc., § 680.280 [definition of “‘Person”’ does not include trust].) According to MAM, the problem here runs deeper than lack of capacity to sue. A trust lacks capacity to sue because it has no independent legal existence. As a Fourth District, Division Three panel explained in *Presta v. Tepper* (2009) 179 Cal.App.4th 909, 913–914 , while a corporation is considered a jural person (Code Civ. Proc., § 17, subd. (b)(6)), a trust is not. A trust is merely “““a fiduciary relationship with respect to property.”””” (*Presta*, at p. 914; accord, *Moeller v. Superior Court* (1997) 16 Cal.4th 1124, 1132, fn. 3.) Under no circumstances can a trust be legally vivified and given capacity to sue or be sued.

It appears that in addition to correcting the Caption, the complaint needs to be amended to name the trustee of the Levick Trust as the defendant in this Adversary Proceeding. A copy of the Sales Agreement is provided as an exhibit to the Complaint (Dckt. 6). On page 4 of 4 of the Sales Agreement it appears to be signed by Douglas Levick and Mel[illegible] Levick for the Levick Family Trust, and Ronald G Levick individually. Dckt. 6.

The Real Estate Transfer Disclosure Statement is signed by Douglas Levick for the Trust (again indicating that he is a trustee of the Trust) and Ronald Levick individually. Dckt. 6 at p. 21.

The Exhibits also include a Request to Initiate Mediation, on which Douglas F. Levick and Melba Levick, are identified as the Trustee of the Levick Family Trust. Ronald G Levick is identified as an additional party to the dispute.

On June 10, 2024, the Clerk of the Court Reissued the Summons in this Adversary Proceeding, which lists the Status Conference to be held on August 14, 2024. Dckt. 9. Plaintiff-Debtor's Certificate of Service, Dckt. 8, identifies the following persons (other than the U.S. Trustee, Chapter 13 Trustee, and three counsel having been served electronically) having been served:

Melba Levick
c/o Terence Kilpatrick
3550 Watt Avenue, Suite 140
Sacramento, CA 95812

Ron Levick
c/o Terence Kilpatrick
3550 Watt Avenue, Suite 140
Sacramento, CA 95812

Douglas Levick
c/o Terence Kilpatrick
3550 Watt Avenue, Suite 140
Sacramento, CA 95812

Levick Family Trust
c/o Terence Kilpatrick
3550 Watt Avenue, Suite 140
Sacramento, CA 95812

Federal Rule of Bankruptcy Procedure 7004 specifies the service requirements for a Complaint and Summons. The real party in interest or its agent for service of process must be served. It may be that Terence Kilpatrick, Esq. has been designated by the three individuals and two trustee's (thought no expressly identified as being served as the trustee of the Levick Family Trust) as their respective agent for service of process. However, such attorney having "merely" appeared in the bankruptcy case does not make that attorney the agent for service of process for adversary proceeding or other motions filed in the bankruptcy Case.

At the Status Conference, **XXXXXXX**

Debtors' Atty: Ryan C. Wood

Notes:

Continued from 3/20/24, the Parties in Interest appearing concurred with the continuance of the Status Conference.

Trustee Report at 341 Meeting lodged: 4/19/24; 5/17/24; 6/14/24

[POL-1] HD Owner LLC's Motion for Relief from the Automatic Stay filed 4/1/24 [Dckt 55]; Order granting filed 5/14/24 [Dckt 99]

Application for Pro Hac Vice and Proposed Order [for Jane Pearson] filed 4/3/24 [Dckt 68]

Order Approving Final Report and Account and Discharging Trustee filed 4/11/24 [Dckt 70]

[RCW-3] Chapter 12 Plan filed 4/21/24 [Dckt 75]; Motion to Confirm Chapter 12 Plan Dated April 21, 2024, filed 4/26/24 [Dckt 82]; NOTICE OF WITHDRAWAL filed 6/5/24 [Dckt 116]

Order Approving Final Report and Account and Discharging Resigning Chapter 12 Trustee filed 4/25/24 [Dckt 81]

[RCW-4] Motion to Assume Lease or Executory Contract filed 5/6/24 [Dckt 88]; Order granting filed 5/24/24 [Dckt 111]

[RCW-5] Motion to Value Collateral of HD Owner, LLC filed 5/21/24 [Dckt 102]; Order denying filed 6/24/24 [Dckt 134]

[RCW-6] Ex Parte Stipulation re Treatment of Claim No. 8 filed 5/25/24 [Dckt 112]; NOTICE OF WITHDRAWAL filed 6/18/24 [Dckt 128]; Order dismissing motion filed 6/24/24 [Dckt 133]

Notice of Withdrawal of Claim No. 17 [Sutter County Tax Collector] filed 6/12/24

[RCW-7] Chapter 12 Plan filed 6/17/24 [Dckt 127]

The Status Conference is XXXXXXX
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JULY 10, 2024 STATUS CONFERENCE

On July 2, 2024, the Debtor in Possession (though in the Status Report they are referenced as "Debtors") filed an updated Status Conference Statement. Dckt. 135. The Debtor in Possession states that

an amended Chapter 12 Plan will be filed before the July 10, 2024 Status Conference. *Id.*; ¶ 2. The Debtor in Possession is obtaining expert testimony and evidence in support of their valuation of the property that secures the claim of HD Owner, LLC, “as soon as possible.” *Id.*; ¶ 3.

The Debtor in Possession has an amended lease agreement with AgWest and are in the process of drafting an filing a Motion to Assume the Amended Lease Agreement. *Id.*; ¶ 4.

The Debtor in Possession states that they are in the process of providing the Internal Revenue Service with proof of payment to reduce the IRS’s Claim 6 or eliminate it entirely. *Id.*, ¶ 5.

In the court’s Order Setting Chapter 12 Status Conference, the Debtor in Possession has been ordered to file monthly operating reports:

IT IS FURTHER ORDERED, the debtor-in-possession shall prepare, file, and serve Monthly Operating Reports as required by LBR 2015-1 using the form found on the court's website.

Order, p. 3; Dckt. 10.

No monthly operating reports have been filed by the Debtor in Possession.

At the July 10, 2024 Status Conference, **XXXXXXX**

MARCH 20, 2024 CHAPTER 12 STATUS CONFERENCE

On January 23, 2024, Debtor Hardave Dulai and Sukbinder Dulai commenced this voluntary Chapter 12 Case. Debtor’s prior Chapter 12 case that was filed on December 8, 2022, was dismissed on July 21, 2023. 22-23180.

In the Debtor in Possession Status Conference Report, it is stated that the Debtor has amended and updated the schedules and reports in this case to list all claims against third-parties. The Debtor in Possession is obtaining an appraisal of the real property in this bankruptcy case.

Debtor in Possession did not address in the Status Report as to Debtor qualifying for relief under Chapter 12. See, Order Setting Status Conference, p. 2, second full paragraph; Dckt. 10. An updated Status Report was filed by the Debtor in Possession addressing the basis for eligibility for relief under Chapter 12. Dckt. 47. No other party in interest asserted that Debtor may not qualify for such relief.

Counsel for the Debtor in Possession reported that the claims bar date is nearing and Debtor in Possession is working on the Plan.

The Chapter 12 Trustee reported that the 341 Meeting was conducted on March 20, 2024, and it was continued. The Debtor is to provide a copy of the 2022-2023 tax return, which is being prepared now.

At the Status Conference, the Parties in Interest appearing concurred with the continuance of the Status Conference to 2:00 p.m. on July 10, 2024.

8. [23-23292-E-7](#) IAN LONG
[24-2025](#)
CAE-1

STATUS CONFERENCE RE:
COMPLAINT
3-21-24 [\[1\]](#)

HAMILTON V. LONG

Plaintiff's Atty: Robert L. Hamilton
Defendant's Atty: unknown

Adv. Filed: 3/21/24
Answer: none

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

Notes:

The Status Conference is xxxxxxx
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SUMMARY OF COMPLAINT

The Complaint filed by Robert Hamilton ("Plaintiff"), Dckt. 1, asserts claims for nondischargeability of debt pursuant to 11 U.S.C. § 523(a)(2), (a)(4), and (a)(6). The grounds for the Complaint relate to work done by the Defendant, who represented that he was a licensed contractor.

Ian Christopher Long, who is the Debtor in Case 23-23292, is named as the Defendant.

SUMMARY OF ANSWER

No answer or other responsive pleading has been filed.

SERVICE OF SUMMONS AND COMPLAINT

This Adversary Proceeding was commenced on March 21, 2024 and the Clerk of the Court issued the Summons on March 22, 2024. A Certificate of Service was filed on June 18, 2024, attesting to service of the Complaint and Summons in this Adversary Proceeding on May 16, 2024. Cert. of Serv.; Dckt 6.

The Summons in this Adversary Proceeding that was issued on March 22, 2024, states that the Summons and Complaint must be served within 7 days of the issuance of the Summons. Seven (7) days

after the issuance of the Summons expired on March 29, 2024. With such expiration a new summons is required.

Federal Rule of Bankruptcy Procedure 7004(e) sets the seven (7) day service requirement for the Summons and Complaint.

Federal Rule of Civil Procedure 4(m), which is incorporated into Federal Rule of Bankruptcy Procedure 7004(a)(1), provides that if the defendant is not serve within ninety (90) days after the filing of the complaint, the court must dismiss the action without prejudice or order that service be made within a specified time period.

At the Status Conference, **XXXXXXX**

REQUIRED PLEADING OF JURISDICTION AND CONSENT OR NON-CONSENT TO NON-CORE MATTER

The basic pleading requirements of Federal Rule of Civil Procedure 8 for a complaint, including that the complaint “[m]ust contain: (1) a short and plain statement of the grounds for the court's jurisdiction...,” apply to complaints in Adversary Proceedings. In addition to incorporating Rule 8, Federal Rule of Bankruptcy Procedure 7008 adds the additional pleading requirement concerning whether the matters in the complaint are core or non-core:

Rule 8 F.R.Civ.P. applies in adversary proceedings. The **allegation of jurisdiction required by Rule 8(a)** shall also contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the Code is pending. In an adversary proceeding before a bankruptcy court, **the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy court.**

Fed. R. Bankr. P. 7008 (emphasis added).

Federal Rule of Civil Procedure 8(a) requires that the Plaintiff expressly plead the basis for federal court jurisdiction:

(a) Claim for Relief. **A pleading that states a claim for relief *must* contain:**

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

...

Fed. R. Civ. P. 8(a) (emphasis added).

As discussed below, Federal Rule of Civil Procedure 8(b) requires that a responding party must, in good faith, respond to each claim asserted, and if generally denying, such general denial must also be

denying that federal jurisdiction exists. There is not an “except for allegations of jurisdiction” exclusion in Rule 8.

For a responsive pleading, Federal Rule of Bankruptcy Procedure 12(b) applies in adversary proceeding. Fed. R. Bankr. P. 7012(b). The Bankruptcy Rules add a further responsive pleading requirement concerning whether the party consents or does not consent for the bankruptcy judge to issue final orders and judgment for non-core matters:

(b) Applicability of Rule 12(b)–(i) F.R.Civ.P. Rule 12(b)-(i) F.R.Civ.P. applies in adversary proceedings. A responsive pleading shall include a statement that **the party does or does not consent to entry of final orders or judgment by the bankruptcy court.**

Fed. R. Bank. P. 7012(b) (emphasis added).

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Robert Hamilton alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(1), (2)(I), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶¶ 3, 4, Dckt. 1. In the Answer, Defendant **xx** admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ **xx, xx, xx**; Dckt. **Xx**. **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.**

Debtor's Atty: David C. Johnston

Notes:

Continued from 5/9/24, The Trustee reporting that the issue of feasibility is not known, but will be addressed in connection with the continued 341 Meeting of Creditors.

Trustee's Report at 341 Meeting lodged: 5/24/24; 6/21/24

[DCJ-3] Debtor's Motion to Extend Deadline for Filing Chapter 12 Plan filed 6/18/24 [Dckt 29]

The Status Conference is XXXXXXXX

JULY 10, 2024 STATUS CONFERENCE

Debtor Rhett Burgess commenced this Chapter 12 Bankruptcy Case on March 20, 2024. The Debtor in Possession filed his Status Report on July 5, 2024. Dckt. 33. The Debtor in Possession reports that there is no cash collateral in this case and no creditor have liens to assert against any cash.

The Debtor and the Non-Debtor Spouse are in a pending dissolution of marriage proceeding, which has been stayed as the only remaining issues being economic ones that are impacted by the Bankruptcy Case. Debtor provides his declaration stating the grounds by which he is eligible to be a debtor under Chapter 12. Dec.; Dckt. 34.

The Debtor in Possession reports that this should be a straightforward case and expects to have a proposed Chapter 12 Plan filed on or before July 18, 2024. Status Report, ¶ 10; Dckt. 33.

The court reminds the Debtor in Possession and counsel that in the Order Setting Chapter 12 Status Conference, that the Debtor in Possession is ordered to file Monthly Operating Reports, stating:

IT IS FURTHER ORDERED, the debtor-in-possession shall prepare, file, and serve Monthly Operating Reports as required by LBR 2015-1 using the form found on the court's website.

Order, p. 2; Dckt. 5.

At the Status Conference, XXXXXXXX