

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

July 24, 2014 at 1:36 p.m.

1. [13-91409-E-7](#) **SERGIO NOLASCO**
[13-9037](#)
RODRIGUEZ V. NOLASCO

**CONTINUED STATUS CONFERENCE RE:
COMPLAINT
11-4-13 [[1](#)]**

Plaintiff's Atty: Robert D. Rodriguez
Defendant's Atty: Armando S. Mendez

Adv. Filed: 11/4/13
Reissued Summons: 12/30/13

Answer: none

Nature of Action:
Objection/revocation of discharge
Dischargeability - domestic support
Dischargeability - divorce or separation obligation (other than domestic support)

Notes:

Continued from 5/1/14. Plaintiff reported that the hearing in the family law state court proceedings re determination of attorney's fees was scheduled for 6/11/14.

Substitution of Attorney for Defendant filed 7/12/14 [Dckt 40]

JULY 24, 2014 STATUS CONFERENCE

XXXXXXX

APRIL 10, 2014 STATUS CONFERENCE

Plaintiff Robert Rodriguez shall on or before April 24, 2014:

1. File and serve the necessary and appropriate required state court proceedings to have his asserted right to attorneys' fees determined in the family law action;
2. Have the hearing for the state court proceedings promptly set for a reasonable hearing date;
3. File with this court copies of the state court pleadings and notice of

hearing; and

4. File with this court a status report of the state court proceedings set for hearing.

If the above is not done on or before April 24, 2014, the Complaint shall be dismissed for failure to prosecute this Adversary Proceeding in good faith and the Clerk of the Court shall close the file for this Adversary Proceeding.

APRIL 24, 2014 DECLARATION OF THE PLAINTIFF

On April 24, 2014, the Plaintiff filed his declaration with exhibits attached of state court pleadings seeking a determination of whether attorneys' fees have been awarded Plaintiff by the state court judge in the family law proceedings. Declaration, Dckt. 27. In the Declaration Plaintiff reports that the hearing in the state court has been scheduled for June 11, 2014.

JANUARY 16, 2014 STATUS CONFERENCE

The Defendant-Debtor appeared at the Status Conference. No award has been made in the state court dissolution proceeding for attorneys' fees to be paid by the Defendant-Debtor to counsel (the Plaintiff) for his ex-wife. No order has been entered transferring any right to attorneys' fees from the Defendant-Debtor's ex-wife to her counsel or for the Defendant-Debtor to pay any attorneys' fees to the ex-wife's counsel.

The court continues the Status Conference to allow the Plaintiff and his client, the Defendant-Debtor's ex-wife, to commence such proceedings as are necessary and appropriate to determine what, if any, attorneys' fees obligation is owed by the Defendant-Debtor, and if so, to whom the fees are owed. Then the court can address the alleged non-dischargeability of such fees.

This federal court is not going to intrude on the proceedings in the state court on this family law matter. Further, this court is not going to make a determination of whether under state law fees, if any, should be ordered to be paid to the ex-wife or her counsel by the Defendant-Debtor for the family law proceeding in state court.

The parties shall either file on or before January 23, 2014, a stipulation to modify the automatic stay to allow such a determination to be made or Plaintiff shall file an ex parte motion for such relief.

Notes:

Jury demand made by Plaintiff in Complaint [Dckt 1]

SUMMARY OF COMPLAINT

The Complaint seeks a determination that the debt of \$9,348.00 asserted to be owed by the named Defendant-Debtor, Sergio Nolasco, is

nondischargeable pursuant to 11 U.S.C. § 523(a)(5) [domestic support obligation] and § 523(a)(15) [debt to spouse/former spouse/child incurred in course of a divorce or separation in connection with a separation agreement, divorce decree, or other court of record]. Further, that the Defendant-Debtor should be denied his discharge pursuant to 11 U.S.C. § 727(a)(4) for making false statements in his bankruptcy schedules.

Plaintiffs are the attorneys for the Defendant-Debtor's wife in the state court family law proceedings. In those proceedings Plaintiffs obtained an order for \$1,043.00 monthly spousal support and an award of \$11,473.00 for arrearage spousal support payments. Though Plaintiffs requested an award of \$9,348.00 in attorneys' fees, but no award was made prior to the commencement of this bankruptcy case.

The First Cause of Actions to seek to have the \$9,348.00 in attorneys' fees to be determined nondischargeable pursuant to 11 U.S.C. § 523(a)(5). (The state court has the discretion to order that an award of attorneys' fees be made directly to the attorney, but must order such. CALIFORNIA FAMILY LAW PRACTICE AND PROCEDURE 2ND EDITION, MATTHEW BENDER & COMPANY, § 62.06.)

The Second Cause of Action asserts that the asserted \$9,348.00 in attorneys' fees should be nondischargeable pursuant to 11 U.S.C. § 523(a)(15).

The Third Cause of Action seeks to have the Defendant-Debtor's discharge denied pursuant to 11 U.S.C. § 727(a)(4)(A). It is alleged the income and expenses listed by the Defendant-Debtor on the Original Schedules I and J, and Amended Schedule J are false. It is alleged that the Defendant-Debtor provided conflicting testimony in the state court dissolution proceedings and that the state court has found the Defendant-Debtor's income and expenses to be different than as stated on Schedules I and J.

SUMMARY OF ANSWER

None Filed.

REISSUANCE OF SUBPOENA

On December 30, 2013 the Clerk of the court reissued the subpoena in this Adversary Proceeding. No Certificate of Service has been filed.

2. [14-90521](#)-E-7 DAVID RICE
[14-9019](#)
TURLOCK IRRIGATION DISTRICT V.
RICE

STATUS CONFERENCE RE: COMPLAINT
5-22-14 [[1](#)]

Final Ruling: No appearance at the July 22, 2014 Status Conference is required.

Plaintiff's Atty: Ken R. Whittall-Scherfee
Defendant's Atty: unknown

Adv. Filed: 5/22/14
Answer: none

Nature of Action:
Dischargeability - fraud as fiduciary, embezzlement, larceny

The court having entered the Defendant's default, the Status Conference is continued to 2:30 p.m. on October 2, 2014 , to afford Plaintiff the opportunity to prosecute a motion for entry of a default judgment.
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Notes:

Entry of Default and Order re Default Judgment Procedures filed 7/17/14
[Dckt 11]

3. [13-91438-E-7](#) KHOI MAI AND THAO DANG
[14-9015](#)
INTERNAL REVENUE SERVICE V.
MAI ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
3-28-14 [[1](#)]

Plaintiff's Atty: Nithya Senra
Defendant's Atty: Anh V. Nguyen

Adv. Filed: 3/28/14
Answer: 5/27/14

Nature of Action:
Dischargeability - priority tax claims

Notes:

Continued from 6/12/14

Discovery Plan filed 7/7/14 [Dckt 22]

JULY 22, 2014 STATUS CONFERENCE

Discovery Plan

On July 7, 2014, the United States (IRS) and Defendants filed a Joint Discovery Plan. Dckt. 22.

SUMMARY OF COMPLAINT

The United States ("IRS") asserts that the Defendant-Debtors' tax liabilities for tax years 2004, 2005, 2006, 2008, 2009, and 2010 are nondischargeable in their Chapter 7 bankruptcy case. For the various tax years, the IRS asserts the following tax obligations:

2004 - \$38,000.00 tax and \$8,000.00 penalties (against each Defendant-Debtor)

2005 - \$60,000.00 tax and \$13,000.00 penalties were assessed (against each Defendant-Debtor)

2007 - \$44,000.00 tax and \$7,000.00 penalties were assessed (against each Defendant-Debtor)

2008 - Taxes shown on the joint return and penalties were assessed (against each Defendant-Debtor)

2009 - Defendant-Debtor Khoi Mai filed a individual tax return, with taxes shown on the returns and penalties were assessed against this Defendant-Debtor)

2009 - Defendant-Debtor Thao Dang filed a individual amended tax return, with taxes shown on the returns and penalties were assessed against this Defendant-Debtor)

2010 - Taxes shown on the joint return and penalties were assessed (against each Defendant-Debtor)

The IRS asserts that the tax, penalties, and interest for the above tax years have not been paid. As of the date of the Petition, the IRS computes the tax obligation to be \$301,871.99, plus accrued but unassessed penalties and interest.

Allegations of Fraud

The IRS asserts that Defendant-Debtors underreported their income for at least the 2004, 2005, and 2006 tax years. In addition, it is asserted that Defendant-Debtors overstated their deductions for those tax years.

From at least 2003 through 2013, Defendant-Debtor Khoi Mai operated a mobile car wash. Until 2009 this was run as a sole proprietorship. Defendant-Debtors received non-employee compensation from this business.

It is asserted that these tax obligations are nondischargeable pursuant to 11 U.S.C. § 523(a)(1)(C) for fraudulent tax returns or willful intent to evade the taxes.

SUMMARY OF ANSWER

The Defendant-Debtors filed an answer which specifically admits and denies allegations in the Complaint.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 1345 (original federal for proceedings commenced by the United States), this adversary proceeding having commenced seeking relief pursuant to 11 U.S.C. §§ 523(a) and 272(b). Further, that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (I). Complaint ¶¶ 1, 2, 4, Dckt. 1. In their Answer, Khoi Van Mai and Thao T. Dang, the Defendant-Debtors, admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 1, 2, Dckt. 4. **To the extent that any issues 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.**

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

- a. The Plaintiff alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 1345 (original

federal for proceedings commenced by the United States), this adversary proceeding having commenced seeking relief pursuant to 11 U.S.C. §§ 523(a) and 272(b). Further, that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (I). Complaint ¶¶ 1, 2, 4, Dckt. 1. In their Answer, Khoi Van Mai and Thao T. Dang, the Defendant-Debtors, admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 1, 2, Dckt. 4. **To the extent that any issues in this Adversary Proceeding are related to proceedings, 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 claims and issues in this Adversary Proceeding referred to the bankruptcy court.**

b. Initial Disclosures shall be made on or before July 10, 2014.

c. Discovery closes, including the hearing of all discovery motions, on January 12, 2015.

d. Dispositive Motions shall be heard before February 28, 2015.

e. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at 2:30 p.m. on **March/April TBD**, 2014.

4. [14-90299](#)-E-7 LORENS BETMIRZA
[14-9020](#)
FIRST NATIONAL BANK OF OMAHA
V. BETMIRZA

STATUS CONFERENCE RE: COMPLAINT
5-27-14 [[1](#)]

Final Ruling: No appearance at the July 24, 2014 Status Conference is required.

Plaintiff's Atty: Cory J. Rooney
Defendant's Atty: unknown

Adv. Filed: 5/27/14
Answer: none

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

The Status Conference is continued to 2:30 p.m. on October 4, 2014, to afford Plaintiff the opportunity to have a hearing on a motion for entry of default judgment.

Notes:

Request for Entry of Default filed 7/16/14 [Dckt 8]