

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

August 4, 2021 at 11:40 a.m.

1. <u>19-22653-E-7</u> REECE/RODINA VENTURA <u>19-2156</u> GAUNIA V. VENTURA ET AL	MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL 7-27-21 [32]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor-Defendant, Debtor-Defendant's Attorney, Plaintiff's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on August 3, 2021. The court set the hearing for August 4, 2021. Dckt. 35.

The Order Setting Hearing was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----

**The Order Setting Hearing for the Motion to Dismiss Adversary Proceeding is
XXXXX.**

On April 1, 2021, this court entered its Order setting trial in this Adversary Proceeding for August 24-26, 2021. Order, Dckt. 30. The Complaint in this Adversary Proceeding seeks a determination that alleged obligations owed by Debtor are nondischargeable under alternative theories as provided in 11U.S.C. § 523(a). Complaint, Dckt. 1. The complaint also seeks entry of a monetary judgment for the asserted debts for which nondischargeability is sought.

On July 27, 2021, Adela Gaunia, the Plaintiff, filed a pleading titled “Request for Dismissal of Adversary Complaint.” Dckt. 32. Though titled as a “Request,” the text of the pleading states that “Plaintiff dismisses the above captioned adversary matter, only.” Id, p. 1:23-24.

Though in some other non-federal forums a plaintiff may have the unilateral right to dismiss a complaint up to trial, such is not provided under the Federal Rules of Civil Procedure, as incorporated into the Federal Rules of Bankruptcy Procedure, promulgated by the U.S. Supreme Court. As provided in Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rule of Bankruptcy Procedure 7041, a plaintiff may voluntarily unilaterally dismiss an action as follows:

(a) Voluntary Dismissal.

(1) By the Plaintiff.

(A) Without a Court Order. Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; . . .

If the answer or summary judgment motion has been filed, then the action may be dismissed by stipulation of the parties or order of the court. Fed. R. Civ. P. 41(a)(1)(A)(ii), (a)(2).

Here, the Answer was filed on January 20, 2020, and no stipulation for dismissal has been filed. The filing of the “Request For Dismissal” stating that the action was dismissed was filed on July 27, 2021, one month before the scheduled trial date.

No concurrence or non-opposition to the “Request to Dismiss” has been filed by the Defendant-Debtor.

Treating the “Request for Dismissal” as a motion (Fed. R. Civ. 7(b), Fed. R. Bankr. P. 7007) for dismissal of this Adversary Proceeding, and in light of the impending trial date, the court sets an expedited hearing on this “motion.” All responses and replies may be presented orally at the hearing.

The court notes that in the related bankruptcy case, 19-22653, Defendant-Debtors Reece Ventura and Rodina Ventura, and each of them, have been granted their discharge on March 5, 2020. 19-22653; Order of Discharge, Dckt. 270.

The court notes that Defendant-Debtors have also filed an Objection to Plaintiff’s Claim in the bankruptcy case. *Id.*; Objection, Dckt. 375. Thus, it appears that to the extent there is a dispute as to the underlying debt, such could be addressed in the Objection to Claim process. Further, if this Adversary Proceeding was dismissed, the “nondischargeability bell” will have rung back on March 5, 2020, precluding that issue being reasserted by Plaintiff.