

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

August 5, 2020 at 2:00 p.m.

1. **19-26112-E-13** **MARCO PEDRAZA**
20-2030

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
3-24-20 [1]

PEDRAZA V. WELLS FARGO BANK,
N.A. ET AL

ADVERSARY PROCEEDING
DISMISSED: 7/16/20

Plaintiff's Atty: Peter G. Macaluso

Defendant's Atty:

Adam N. Barasch [Wells Fargo Bank, N.A., dba Wells Fargo Auto]

John D. Rochelle [Auto Star Motors, Inc.]

Adv. Filed: 3/24/20

Answer: none [stipulated to deadline of 5/26/20]

Nature of Action:

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

Notes:

Continued from 7/1/20

Stipulation to Dismiss Adversary Proceeding filed 7/13/20 [Dckt 18]; Order approving filed 7/16/20 [Dckt 19]

The Adversary Proceeding having been dismissed, the Status Conference is concluded and removed from the calendar.

The Clerk of the Court may close the file for this Adversary Proceeding.

August 5, 2020 at 2:00 p.m.

Page 1 of 41

MIZYED V. FAY SERVICING, LLC

Plaintiff's Atty: Arasto Farsad; Nancy Weng
Defendant's Atty: Jana Logan

Adv. Filed: 2/14/20; Demand for Jury Trial
Answer: None

1st Amd Cmplt Filed: 6/8/20; Demand for Jury Trial
Answer: None

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

Notes:
First Amended Complaint filed 6/8/20 [Dckt 25]; Demand for Jury Trial

Scheduling Order for Pretrial Conference filed 6/24/20 [Dckt 30]; set in Dept E

Judge Reassignment 6/30/20

[JL-2] Motion by Defendant Fay Servicing, LLC to Dismiss Plaintiff's First Amended Complaint filed 7/9/20 [Dckt 34], set for hearing 9/3/20 at 11:00 a.m.

Status Conference Statement [Plaintiff] filed 7/26/20 [Dckt 40]

The Status Conference is XXXXXXXXXX

AUGUST 5, 2020 STATUS CONFERENCE

The Amended Complaint was filed in this Adversary Proceeding on June 8, 2020. Dckt. 25. Fay Servicing, Inc. filed a Motion to Dismiss the original Complaint in this Adversary. Dckt. 10. The Motion to Dismiss was denied without prejudice as being moot. Order, Dckt. 39. It appears to have been rendered moot because Plaintiff Fouad Afif Mizyed filed the Amended Complaint. ^{FN. 1}

FN. 1. The court says "appears" because the Civil Minutes for the hearing state that the ruling by the judge to whom this Adversary Proceeding was assigned is stated on the record, which transcript is not in the court's file in this Adversary Proceeding.

Fay Servicing, LLC, the Defendant, has filed a Motion to Dismiss the Amended Complaint. Motion, Dckt. 34. The court reviews the Amended Complaint and Motion to Dismiss below.

Review of Amended Complaint

The First Amended Complaint identifies three Causes of Action upon which relief is sought: Unfair or Deceptive Practices, Cal. B&P §§ 17200 et seq.; Fraud by Deceit, Cal. Civ. §§ 11709 and 1710 et seq.; Accounting; and Wrongful Foreclosure. First Amended Complaint, p. 1; Dckt. 25. The court summarizes the general allegations stated in the First Amended Complaint as the basis by which Plaintiff shows that he is entitled to the relief (Fed. R. Civ. P. 8(a), Fed. R. Bankr. P. 7008, *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)) as follows:

- A. Jurisdiction exists pursuant to 28 U.S.C. § 1334, this Adversary Proceeding relates to Plaintiff's pending bankruptcy case (20-20715), and that this is a core proceeding pursuant to 28 U.S.C. § 157 (but does not identify which provision is asserted to be the basis for this being a core proceeding). First Amended Complaint, ¶¶ 10-12; Dckt. 25.
- B. Plaintiff has owed the identified real property (the "Property") since March 2005. *Id.*, ¶ 15.
- C. Plaintiff obtained a loan ("Loan") that is secured by a deed of trust ("Deed of Trust") against the Property. *Id.*, ¶ 16.
- D. Defendant is the successor servicer of the Loan. *Id.*, ¶ 17.
- E. Plaintiff filed a prior Chapter 13 bankruptcy case in 2014, No. 14-29036 ("Prior Chapter 13 Case"). The plan in the Prior Chapter 13 Case required Plaintiff to make the current monthly payment and an arrearage cure payments ("Cure Payments") to Defendant as the loan servicer for the creditor holding the Loan. *Id.*, ¶ 18.
- F. Debtor performed the Plan in the prior Chapter 13 case for 54 Months, at which time Plaintiff's sister gifted him sufficient monies to cure the Loan. The remaining cure amount was \$19,829.67. Plaintiff elected to dismiss the bankruptcy case rather than complete the cure through the bankruptcy plan. *Id.*, ¶ 19.^{FN. 2}

FN. 2. Though not stated, the court presumes that Plaintiff's decision was driven by the desired to minimize the Chapter 13 trustee fees, which on \$20,000.00 would have been approximately \$1,200 at that time.

- G. Plaintiff mailed a check in the amount of \$20,000.00 to Defendant, which Defendant cashed in May 2019. A copy of the check with the deposit endorsement by Defendant is attached to the Amended Complaint as Exhibit C.^{FN. 3}

Additionally, a copy of a statement from Defendant is provided as Exhibit D stating that the \$20,000.00 was applied to the Loan. An image of the referenced portion of Exhibit D is:

Activity Since Your Last Statement (04/11/2019 - 05/11/2019)			
Date	Description	Charges	Payments
04/18/19	PAYMENT CORRECTION		-\$1,982.99
04/18/19	PAYMENT CORRECTION		-\$1,982.99
04/26/19	PAYMENT APPLIED		\$1,961.47
04/26/19	PAYMENT APPLIED		\$2,938.45
05/04/19	PAYMENT APPLIED		\$20,000.00

Id., ¶ 20.

FN. 3. The Exhibits are filed separately from the Amended Complaint, Dckt. 26.

- H. On July 19, 2020, Defendant issued a “Notice of Default and Intent to Accelerate” stating that the necessary amount to cure the default was \$23,914.04. A copy of the Notice of Default is filed with the Amended Complaint as Exhibit E. The text from Exhibit E reference in the Amended Complaint is:

As of the date of this notice, the total amount required to cure the default is \$23,941.04, which consists of the following:	
Next Payment Due Date:	07/01/2018
Total Monthly Payments Due:	\$25,691.27
Late Charges:	\$0.00
Unapplied Balance:	<u>(\$1,750.23)</u>
TOTAL YOU MUST PAY TO CURE DEFAULT:	\$23,941.04

Plaintiff further alleges that he requested from Defendant 30 times an account of how the default of \$23,941.04 was computed, but none was provided. *Id.*, ¶ 21.

The Complaint then states separate causes of action for the various relief requested in the Amended Complaint. The court summarizes these separately stated causes of action as follows:

[The paragraph numbering in the Amended Complaint jumps from paragraph 22 which is the last general allegation to paragraph 87, which is the first paragraph of the First Cause of Action.]

- I. First Cause of Action - Unfair or Deceptive Practices, California Business & Professions §§ 17200 et seq.
- A. California Business & Professions §§ 17200 et seq. prohibits acts of unfair competition, including any “unlawful, unfair, . . . or deceptive act or practice” as well as “unfair, deceptive, untrue or misleading advertising.” *Id.*, ¶ 88.

- B. Defendant's conduct was unlawful on the basis that:
1. Defendant is illegally demanding money from Plaintiff by the Notice of Default because:
 - a. Plaintiff was not in default,
 - b. Plaintiff had paid \$20,000.00 to Defendant, which Defendant's records and the copy of the check show that Defendant received, and
 - c. Defendant demanded payment of \$20,000.00 which Plaintiff had already paid to Defendant.
 - d. Defendant initiated nonjudicial foreclosure sale proceeding against the Property as part of demanding payment of the \$20,000.00 which Plaintiff had previously paid to, and Defendant acknowledged receipt of. *Id.*, ¶ 89.
- C. Plaintiff has been damaged by the alleged unlawful conduct by damage to Plaintiff's credit rating, attorney's fees and costs, having to commence the current bankruptcy case to protect the Property and rights of Plaintiff, and significant stress from the asserted Notice of Default that failed to account for the \$20,000.00 paid by Plaintiff to Defendant. *Id.*, ¶ 90.
- D. Defendant has been unjustly enriched by the mortgage payments made to Defendant and restitution should be ordered. *Id.*, ¶ 91.
- E. Defendant is continuing in the unlawful acts, continuing to in asserting the default and not accounting for the \$20,000.00 paid to Defendant. *Id.*, ¶ 92.
- F. Plaintiff seeks both restitution and injunctive relief, including requiring Defendant to correct their records to account for all monies paid and to correct inaccurate information concerning such payment with credit reporting agencies. *Id.*, ¶ 93.
- G. Plaintiff seeks attorney's fees and costs. *Id.* ¶ 94.

II. Second Cause of Action - Fraud by Deceit, California Civil Code §§ 1709 and 1710 et seq.

- A. Plaintiff states the legal elements for fraud in paragraph 97 of the Complaint.
- B. Plaintiff has been harmed by the misrepresentations by which Defendant has improperly attempted to proceed with a nonjudicial foreclosure sale, which include Defendant assessing Plaintiff costs in connection with the bankruptcy case which were not reasonable or necessary costs. *Id.*, ¶ 98.
- C. Plaintiff relied on the representations by Defendant and Plaintiff relied on the information of obligations of Plaintiff for such costs in the mortgage statements,

collection notices, and delinquency notices sent by Defendant. *Id.*, ¶ 99.

D. Plaintiff states California Civil Code § 1709 in Paragraph 100.

E. Plaintiff states California Civil Code § 2710 in Paragraph 102.

III. Third Cause of Action - Accounting

A. Based on the General Allegations, Plaintiff demands that Defendant provide an account of the monies received from Plaintiff and how they were applied to the Loan and the obligations owed thereunder. *Id.*, ¶ 104.

IV. Fourth Cause of Action - Wrongful Foreclosure

A. Plaintiff states the legal elements of wrongful foreclose in Paragraph 106.

B. Plaintiff asserts that the Notice of Default to commence the nonjudicial foreclosure proceeding that is based on an asserted non-payment of the \$20,000.00 paid to Defendant is wrongful. *Id.*, ¶ 107.

Review of Motion to Dismiss Filed by Defendant

Defendant filed a combined Notice of Motion-Motion-Points and Authorities on July 9, 2020. Dckt. 34. Such Frankensteinian Pleading is not proper under the long standing Local Bankruptcy Rules that have been in existence for decades in this District. As provided in Local Bankruptcy Rule 9004-2(c)(1) [bold emphasis added]:

(c) Organization.

1) Filing of Separate Documents. Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings **shall be filed as separate documents.**

Local Bankruptcy Rule 9004-2 continues, specifying what the various separate pleadings are to include. With respect to the separate notice of Motion, the Rule provides:

(d) Format and Content of Motions and Notices.

3) Component Parts.

...

B) Notice.

(i) The notice of hearing **shall advise** potential respondents **whether and when written opposition must be filed**, the deadline for filing and serving it, and the names and addresses of the persons who must be served with any opposition.

(ii) If **written opposition is required**, the notice of hearing **shall advise potential respondents that the failure to file timely written opposition may result in the motion being resolved without oral argument** and the striking of untimely written opposition.

(iii) The notice of hearing **shall advise respondents that they can determine** whether the matter has been resolved without oral argument or whether the court has issued a tentative ruling, and **can view [any] pre-hearing dispositions by checking the Court's website at www.caeb.uscourts.gov** after 4:00 P.M. the day before the hearing, and that parties appearing telephonically must view the pre-hearing dispositions prior to the hearing.

L.B.R. 9004-1(d)(3) [bold emphasis added].

These requirements for there to be separate pleadings are repeated in Local Bankruptcy Rule 9014-1(d)(4).

Beginning with the Notice portion of the Notice-Motion-Points and Authorities document, it states that a hearing on the Motion will be conducted at 11:00 a.m. The Notice portion then states the legal conclusions why Defendant believes that it will prevail. None of the other required disclosures for a notice are given by Defendant.

Moving to the Motion portion of the Notice-Motion-Points and Authorities document - there is no motion.

For the Points and Authorities portion of the Notice-Motion-Points and Authorities document, there are fourteen pages of stated facts, arguments, citations and contentions.

Filed with the Notice-Motion-Points and Authorities document is a sixty-eight (68) page Request for Judicial Notice. Dckt. 35. These twelve (12) documents for which judicial notice pursuant to Federal Rules of Evidence 201 include:

- A. The recorded Deed of Trust, recorded Notice of Default, recorded Notice of Trustee's Sale; recorded Assignment of Deed of Trust, recorded Notice of Trustee's Sale, recorded Assignment of Deed of Trust, recorded Notice of Election to Sell, recorded Notice of Trustee's Sale. Exhibits 1, 2, 3, 5, 7, 9, 10, and 11; Dckt. 35.
- B. Other exhibits which are documents filed in the Bankruptcy Court or copy of the court's docket.

For the recorded documents Defendant cites to an unreported decision out of the Southern District of California and a published decision out of the Northern District of California.

Federal Rule of Evidence 201 provides:

Rule 201. Judicial Notice of Adjudicative Facts

(a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court's territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

A review of the unreported decision discloses that there was no opposition to the request to take judicial notice of documents that were recorded with the county recorder. *Warren v. Wells Fargo & Co.*, 2017 WL 4876212 (S.D. Cal. 2017). In *Kelly v. Mortgage Electronic Registration Systems, Inc.*, 642 F.Supp 1048, 1053, (N.D. Cal. 2009), the District Court's analysis of the applicable law and the basis for taking judicial notice of unauthenticated recorded documents consists of "The Court finds that these documents are suitable matter for judicial notice and GRANTS defendants' request pursuant to Federal Rule of Evidence 201."

For the various recorded documents, Defendant has not provided any person to authenticate them or to make them self-authenticating as provided in Federal Rules of Evidence 901 et seq.

It is not clear from the request what "adjudicative facts" relate to the recorded documents. That they were recorded? That they are true and accurate copies of what is recorded? The terms of the documents?

It may well be that there is no *bona fide* dispute as to the documents or the authenticity of those documents. It is not clear how it is "generally" known in the District that these documents are recorded or can be accurately determined from some "source" that what is attached are the true and accurate documents.

Defendant could have had someone employed by it authenticate the documents if they came from Defendant's files. Defendant could have had the recorded documents certified by the County Recorder as provided in Federal Rule of Evidence 902(2).

The missing element here is that the court has no idea of whether these exhibits are true and accurate copies of what is recorded with the county recorder. No person has come forward to state under penalty of perjury that these are true and accurate copies of documents obtained from the county recorder. For all the court knows, these are copies, taken of copies, that someone obtained from someone who copied them, from copies, that were made from earlier copies. Each step of the way could result in unintentional errors in the documents or intentional changes. Nobody has been willing to step up and commit under penalty of perjury that these are accurate copies of the originals.

Grounds Stated In the Points and Authorities

As is well known, Federal Rule of Civil Procedure 7 (c) requires that a motion must state with particularity the grounds upon which the relief is requested. Rule 7 is incorporated into Federal Rule of Bankruptcy Procedure 7007, and the Supreme Court has placed identical language in Federal Rule of Bankruptcy Procedure 9013 relating to motions in bankruptcy cases.

Wading through the Points and Authorities portion of the Notice-Motion-Points (“N-M-P”) and authorities document, the court has attempted to distill the “grounds” from the citations, quotations, arguments, and speculation of Defendant.

On page four of the Points and Authorities in the section titled “Argument,” Defendant first addresses what appears to be the grounds upon which the requested relief is based. For the Second Cause of Action for Fraud, the grounds upon which dismissal is requested appear to be:

- A. The Amended Complaint does not state with particularity of the alleged fraud, but asserts the legal conclusion. N-M-P, p. 4-5.
- B. The N-M-P states the conclusion there is insufficient pleading, states the elements required for fraud, but neglects to state which are missing. *Id.*, p. 6:9.

For the Third Cause of Action for Accounting, Defendant’s Argument appears to include the following grounds:

- A. An accounting is a “remedy” and not a separate cause of action. *Id.*, p. 6.
- B. “To state a claim for accounting, Plaintiffs must ‘allege a fiduciary relationship or other circumstances appropriate to the remedy; and a balance due from the defendant to the plaintiff that can only be ascertained by an accounting.’” *Id.*
- C. “In *Flowers, supra*, the district court explained that “a lender does not owe a borrower or third party any duties beyond those expressed in the loan agreement, excepting those imposed due to special circumstance or a finding that a joint venture exists,” and is thus not subject to an accounting claim. *Flowers v. Wells Fargo Bank, N.A.*, 2011 WL 2748650, at *8 (quoting *Resolution Trust Corp. v. BVS Development, Inc.*, 42 F.3d 1206, 1214 (9th Cir. 1994)). . . .” *Id.*, p.7.
- D. “Plaintiff does not set forth factual allegations to establish that his account is so complicated that an accounting is necessary, nor does he allege facts to establish a special relationship between himself and Fay which would require an accounting.” *Id.*

For the Fourth Cause of Action - Wrongful Foreclosure, Defendant’s argument appears to include the following grounds:

- A. “The elements of a claim for wrongful foreclosure are as follows: (1) an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale was prejudiced or

harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering. *Id.*, p. 8.”

- B. “As an initial matter, this cause of action is premature as no foreclosure sale is alleged to have occurred. Plaintiff does not have standing to sue on a preemptive basis, to pursue these theories of wrongful nonjudicial foreclosure and related claims of invalidity.” *Id.*

For the First Cause of Action - Unfair or Deceptive Practices - California Business & Professions Code §§ 17200 et seq., the Argument appears to state the following grounds:

- A. “Plaintiff cannot state a claim under either the unlawful or unfair prongs of the UCL, as the other causes of action upon which this claim is based all fail.” *Id.*, p. 10.
- B. “Plaintiff cannot challenge the authority of Fay to pursue foreclosure, based upon allegations Fay is illegally demanding money from Plaintiff and did not apply \$20,000 to his defaulted Loan.” *Id.*
- C. “There is no allegation that Plaintiff reached out to Fay for a current reinstatement quote in 2019 before purportedly sending a check to Fay, and Plaintiff himself alleges that his calculations of his own default were not accurate.” *Id.*, p. 11.

Proof of Claim Filed

Defendant filed Proof of Claim No. 9-1 for U.S. Bank, National Association as “Legal Title Trustee” for Truman 2016 SC6 Title Trust. At the hearing, the court asked Defendant’s counsel what is a “Legal Title Trustee,” and counsel advised the court **XXXXXXXXXX**

Proof of Claim No. 9-1 is in the amount of \$458,332.30, with the pre-petition default stated to be \$27,390.05. Proof of Claim (“POC”) 9-1, p. 2. The pre-petition arrearage is stated to consist of the following on the Mortgage Proof of Claim Attachment:

Principal & Interest.....	\$17,223.05
Pre-Petition Fees.....	\$ 4,255.24
Escrow Advances.....	\$ 3,641.16
Less Funds on Hand.....	(\$1,750.23)

Total Pre-Petition Arrearage.....	\$27,390.05

POC 9-1, p.4.

The Loan Payment History (“LPH”) attached to POC 9-1 states that a \$20,000.00 was received on May 4, 2019, that there was a \$39,423.08 arrearage, that \$1,982.99 was applied to principal, interest, and escrow, and that the Unapplied Funds Balance was \$19,597.14.

Amended Proof of Claim No. 9-2 was filed by Defendant for U.S. Bank, National Association as “Legal Trustee” on April 24, 2020. The amount of the claim and arrearage amounts are the same as in POC 9-1. The Loan Payment History shows the same \$20,000 payment information and the \$19,597.14 in Unapplied Funds Balance as of May 4, 2019. POC 9-2, p. 9. It appears that the amendment is for an additional payment and application of the previously Unapplied Funds. The past due balance is stated to be \$26,037.28.

It appears that the Proof of Claim and the Loan Payment History attachments are the “accounting” that has been provided by Defendant under penalty of perjury and subjecting “A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.”

At the Status Conference **XXXXXXXXXX**

**FIRST DATA MERCHANT SERVICES
LLC V. MCA RECOVERY, LLC ET AL**

Plaintiff's Atty: Randy B. Soref; Andrew Joseph Nazar

Defendants' Atty:

Robert S. McWhorter [MCA Recovery, LLC]

Gabriel E. Liberman [First Capital Retail, LLC]

Jeffrey D. Ganz; J. Russell Cunningham [13th Floor/Pilot, LLC]

Adv. Filed: 3/22/18

Answer: 4/23/18 [First Capital Retail, LLC]

Amd. Cmpl. Filed: 5/17/18

Answer: 7/20/18 [13th Floor/Pilot, LLC]

7/20/18 [First Capital Retail, LLC]

7/20/18 [MCA Recovery, LLC]

Amd. Answer: 8/3/18 [MCA Recovery, LLC]

Cross-Claim Filed [by 13th Floor/Pilot, LLC]: 7/20/18

Answer: none

Cross-Claim Filed [by MCA Recovery, LLC]: 8/3/18

Answer: 8/22/18 [13th Floor/Pilot, LLC]

Amd. Cross-Claim Filed [by 13th Floor/Pilot, LLC]: 8/22/18

Answer: 10/23/18 [MCA Recovery, LLC]

Notes:

Continued from 5/27/20, the Parties reporting they have resolved all issues in this Adversary Proceeding.

The Status Conference is continued to 2:00 p.m. on September 23, 2020 in order to allow the parties to consummate the settlement and for the Clerk of the Court to release the funds.

AUGUST 5, 2020 STATUS CONFERENCE

On May 26, 2020, the Parties filed their Settlement Agreement. Dckt. 174. On June 25, 2020, the court approved the Settlement between the Plaintiff-Trustee, 13th Floor/Pilot, LLC, MCA Recovery, LLC, and West Coast Business Capital, LLC. 17-26125; Order, Dckt. 610.

The Parties have not provided the court with an updated Status Report and the Adversary Proceeding has not been dismissed.

At the Status Conference, **XXXXXXXXXX**

MAY 27, 2020 STATUS CONFERENCE

On May 21, 2020, the Parties filed a Joint Updated Status Report advising the court that the remaining issues in this Adversary Proceeding have been resolved by stipulation, the written documentation of which is being circulated for signature and for which a motion pursuant to Federal Rule of Bankruptcy Procedure 9019 will be filed. The Parties request that the court continue the Status Conference to allow them to consummate their resolution of this matter.

The court continued the Status Conference to August 5, 2020.

4. [17-26125-E-7](#) **FIRST CAPITAL RETAIL,
[19-2117](#) LLC**

**CONTINUED STATUS CONFERENCE
RE: COMPLAINT
9-11-19 [1](#)**

**HUSTED V. ACE FUNDING SOURCE
LLC**

**ADVERSARY PROCEEDING CLOSED:
7/21/20**

Final Ruling: No appearance at the August 5, 2020 Status Conference is required.

Plaintiff's Atty: Aaron A. Avery
Defendant's Atty: Stephen C. Breuer

Adv. Filed: 9/11/29
Answer: none

Nature of Action:
Recovery of money/property - preference
Recovery of money/property - fraudulent transfer
Recovery of money/property - other

Notes:
Continued from 7/1/20

Notice of Dismissal of Adversary Proceeding, With Prejudice filed 6/30/20 [Dckt 21]

Adversary Proceeding closed 7/21/20

<p>The Status Conference is Concluded and Removed From the Calendar, the Adversary Proceeding having been dismissed by the parties.</p>
--

PADILLA-ANGEL V. JACKSON

Plaintiff's Atty: Joseph M. Canning
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 5/23/20
Answer: 7/14/20

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

Notes:
Judge Reassignment 6/30/20

Defendant's Status Conference Statement filed 7/16/20 [Dckt 9]

The Status Conference is ~~XXXXXXXXXX~~

AUGUST 5, 2020 STATUS CONFERENCE

SUMMARY OF COMPLAINT

Maria Padilla-Angel ("Plaintiff") filed a Complaint (Dckt. 1) asserting that debt should be nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A), with the allegations in the Complaint summarized as follows:

- A. Deandra Renee Jackson, "Defendant-Debtor," submitted to Plaintiff an Application to rent property.
- B. In reliance on the information provided therein, Plaintiff rented the property to Defendant-Debtor.
- C. The lease commenced on November 15, 2019, and Defendant-Debtor pre-paid rent through December 31, 2019.
- D. Defendant-Debtor has made no further rent payments and continues in possession of the property.
- E. On January 10, 2020, Plaintiff served a three-day notice to pay rent or quit on Defendant-Debtor.

- F. At the time of giving the three-day notice, Plaintiff discovered that Defendant-Debtor had filed three bankruptcy cases in less than one year. One was filed prior to the rental agreement being signed on October 10, 2019, and two after, those cases filed on October 11, 2019, and November 18, 2019. The pre-Rental Agreement bankruptcy was not disclosed to Plaintiff on the Rental Application.
- G. Defendant-Debtor did not list Plaintiff as a creditor in the two post-Rental Agreement cases filed. However, after the three-day notice was given, Defendant-Debtor amended her Schedules to list Plaintiff.
- H. The unlawful detainer trial was set for March 10, 2020. Defendant-Debtor's third bankruptcy case was dismissed on February 17, 2020, ten days after Plaintiff filed a motion for a "comfort order" concerning the automatic stay.
- I. Defendant-Debtor commenced her current Chapter 13 case, 20-20938, ("Current Case") on February 20, 2020.
- J. Defendant-Debtor requested that the bankruptcy court impose the stay in the Current Case. No stay had been imposed as of the March 10, 2020 unlawful detainer trial, but the state court continued the trial until after the bankruptcy court could rule on the motion to impose the stay.
- K. The bankruptcy court granted the motion to impose the stay as to all persons, except the Plaintiff.
- L. Due to the COVID-19 pandemic, the State Court has not been able to set a trial in the unlawful detainer.
- M. In reviewing the Defendant-Debtor's Schedules and Statement of Financial Affairs, Plaintiff has determined that the income information Defendant-Debtor provided in the Rental Application was not accurate.
- N. Plaintiff has identified a dozen bankruptcy cases that Defendant-Debtor has filed in the Eastern District of California, with five cases having been filed within seven years of the Rental Application given to Plaintiff, which Application did not disclose those cases.
- O. In the First Cause of Action, Plaintiff asserts that the obligations owed to Plaintiff relating to the rental are nondischargeable for fraud pursuant to 11 U.S.C. § 523(a)(2)(A). The alleged misrepresentation are as to the Defendant-Debtor's income and the failure to disclose the multiple bankruptcy cases filed.
- P. In the Second Cause of Action Plaintiff asserts that Defendant-Debtor has injured Plaintiff's property, converting the rental Property, and the damages relating to that conduct is nondischargeable pursuant to 11 U.S.C. § 523(a)(6).

SUMMARY OF ANSWER

Deandra Renee Jackson (“Defendant-Debtor”) filed an Answer (Dckt. 7) to the Complaint, which the court summarizes as follows:

A. The Defendant-Debtor begins with a “general denial,” which states:

Defendant hereby **denies, both generally and specifically, each and every allegation in the Complaint**, and specifically denies any allegation that Plaintiff has been, is, or will be damaged in the amount alleged, or any manner or sum whatsoever, or entitled to any recovery or remedy of any type whatsoever, by reason or any act, conduct, or omission of Defendant.

Answer, p. 2:4-9; Dckt. 7. ^{FN. 1}

FN. 1. The U.S. Supreme Court provides in Federal Rule of Civil Procedure 8(b)(3), incorporated into Federal Rule of Bankruptcy Procedure 7008, that a party may make a general denial only as follows:

(3) General and Specific Denials. A party that intends in **good faith to deny all the allegations** of a **pleading—including the jurisdictional grounds**—may do so by a general denial. A party that does **not intend to deny** all the allegations must **either specifically deny designated allegations or generally deny all except those specifically admitted**.

By this general denial, Defendant-Debtor is denying that federal court jurisdiction exists for adjudicating claims that debt is nondischargeable under the Bankruptcy Code based on the specific grounds stated in the Bankruptcy Code.

B. In Paragraph 1 of the Answer Defendant-Debtor provides the conflicting admission that federal court jurisdiction exists for this Adversary Proceeding.

C. Defendant-Debtor denies that she is “a residential tenant” of the Property.

FINAL BANKRUPTCY COURT JUDGMENT

The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint, ¶¶ 1, 2, Dckt. 1. The Defendant admits the jurisdiction and that this is a core proceeding. Answer, ¶¶ 1, 2 (notwithstanding denying it in the “general denial” in Section I of the Answer), Dckt. 7. **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 is 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.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- a. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. § 1334 and 157, and the referral to this bankruptcy court from the United States District Court for the Eastern District of California. Further, that this is a core proceeding before this bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint, ¶¶ 1, 2, Dckt. 1. The Defendant admits the jurisdiction and that this is a core proceeding. Answer, ¶¶ 1, 2 (notwithstanding denying it in the “general denial” in Section I of the Answer), Dckt. 7. **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 is 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 -----, **2020**.
- c. Expert Witnesses shall be disclosed on or before -----, **2020**, and Expert Witness Reports, if any, shall be exchanged on or before -----, **2020**.
- d. Discovery closes, including the hearing of all discovery motions, on -----, **2020**.
- e. Dispositive Motions shall be heard before -----, **2020**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- **p.m. on -----, 2020**.

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Final Hearing.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 7 Trustee, Trustee's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on April 16, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Compel Abandonment was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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.

The court continued the matter setting it for a final hearing.

The Motion to Compel Abandonment is granted.

Continuance of April 28, 2020 Hearing

At the hearing, opposition was presented by several creditors and the Trustee. What developed was that the Parties need to conduct discovery in this Contested Matter. The court continues the hearing to 2:00 p.m. on August 5, 2020, for a Scheduling Conference. If the parties narrow (or resolve) the issues and are prepared to proceed sooner, they may request by *ex parte* motion the court reset the Scheduling Conference to an earlier date.

REVIEW OF MOTION

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Reece Ventura and Rodina Cordero Ventura (“Debtors”) requests the court to order Geoffrey Richards (“the Chapter 7 Trustee”) to abandon the following property:

1. Real property commonly known as 10171 McCarron Way, Sacramento, CA, and
2. Personal property listed on Schedule B- Three vehicles: 2006 Ford F250; 2008 Harley Davidson Roadglide; 2006 Ford Econoline E50;
3. Personal Property to be identified as Household Items:
 - a. Household goods and furnishings including “furniture, beds, tables, etc.”;
 - b. Electronics including “TV and radios, cellphones”;
 - c. Clothing including “misc. clothes”;
 - d. Jewelry including “costume and valuables”;
 - e. Other household goods including “household good and effects worth \$5k times 2 homes”; and
 - f. Inventory of Safe: 4 passports, 38 special, 3 bullet cartridges, motorcycle glasses,. old rock n republic key chain, airsoft lubricant, last stand parts, mother's personal bible, winchester bullets, fiocchi long rifle bullets, m-223 mount for platform rifles, pearl handles for the 38 special, 2 laser binoculars, pad lock and key, pearl necklaces, pearl costume jewelry, kids costume jewelry, 22 bullets, rifle scope, gun drum, gun nozzle, small safe, marriage certificate, birth certificates, social security cards, bombay jewelry box, and office box full of mother's: bills and personal documents, medical bills, medical records, taxes, household bills, mother's purse, wallet, passport, cell-phone, and calendar.
3. Interest in the Inheritance Interest in other Property than Phillippines Property Interest. (See Chapter 7 Trustee’s Motion to Approve Sale and Assignment. Exhibit D.) (“Property”).

According to Debtors, the Property listed above is exempted as evidenced in schedules A/B and C, and that more than 30 days have passed since the filing of the Schedules and no objection to the claimed exemptions have been filed.

OPPOSITION

Trustee filed an Opposition on April 27, 2020. Dckt. 289. Trustee objects on the basis that:

- A. As it pertains to the real property 10171 McCarron Way, Sacramento, CA- Trustee has not had the opportunity to evaluate the fair market value of the Property and requests a 60 days continuance to allow him to consult with a real estate professional and determine whether a liquidation would result in a meaningful return to unsecured creditors.
- B. As it pertains to the personal property of the 3 vehicles- Trustee has not an opportunity to evaluate the fair market value of the Vehicles and requests a 60 days continuance to allow him to consult with an auctioneer and determine whether a liquidation would result in a meaningful return to unsecured creditors.
- C. As it pertains to the personal property identified above as “Household Items- Trustee has no opposition to abandoning these items.
- D. As to the Inheritance Interest in other Property than Philippines Property Interest- Trustee asserts that as the entire Inheritance Interest is the subject of a pending sale motion, abandonment of any portion of the same is improper.

Thus, Trustee requests that the motion be denied in part and continued in part.

Creditors Benjamin Zamora Villanueva and Adela Bon Gaunia (“Creditors”) filed an Opposition on April 27, 2020. Dckt. 291. Creditor objects on the following basis:

- A. There are ongoing investigation into Debtors’ misuse of funds from the operation of their business, as well as the obfuscation of the value of assets such as their motor vehicles, and assets which may constitute assets of the probate estate which is subject to a motion to sell.
- B. Debtors do not provide evidence to support their assertion that the assets described are burdensome to the estate.
- C. Debtors assert that the assets have no value to the estate, but Creditors and Trustee are seeking additional time to determine if they are of value to the estate. That discovery is being adversely affected by the current health emergency and Creditors assert that the discovery needed will likely take several months.

Therefore, Creditors request deny the motion as premature and allow Trustee a minimum of six (6) months to complete his review.

Response of Chapter 7 Trustee

On July 29, 2020, the Chapter 7 Trustee filed additional responsive pleadings. In his Response, the Trustee states he has no objection to the abandonment of:

- 10171 McCarron Way Property
- 2006 Ford F-250
- 2006 Ford Econoline E-50, and
- Scheduled Household Items

Response, p. 2:1-6, 20-21; Dckt. 333.

On June 15, 2020, the court approved the sale of the estate's interest in the estate of Rebecca Alda Cordero (Order, Dckt. 328). *Id.*, p. 3:1-4. The sale having been approved, there are no inheritance interests to be abandoned.

The Trustee opposes abandonment of 2008 Harley Davidson Road Glide, the Trustee believing that sufficient value exists in the Harley to be administered by the Trustee for the benefit of the bankruptcy estate.

DISCUSSION

Household Items

The court determines that the following is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property:

1. Personal Property to be identified as Household Items:
 - a. Household goods and furnishings including “furniture, beds, tables, etc.”;
 - b. Electronics including “TV and radios, cellphones”;
 - c. Clothing including “misc. clothes”;
 - d. Jewelry including “costume and valuables”;
 - e. Other household goods including “household good and effects worth \$5k times 2 homes”; and
 - f. Inventory of Safe: 4 passports, 38 special, 3 bullet cartridges, motorcycle glasses,. old rock n republic key chain, airsoft lubricant, last stand parts, mother's personal bible, winchester bullets, fiocchi long rifle

bullets, m-223 mount for platform rifles, pearl handles for the 38 special, 2 laser binoculars, pad lock and key, pearl necklaces, pearl costume jewelry, kids costume jewelry, 22 bullets, rifle scope, gun drum, gun nozzle, small safe, marriage certificate, birth certificates, social security cards, bombay jewelry box, and office box full of mother's: bills and personal documents, medical bills, medical records, taxes, household bills, mother's purse, wallet, passport, cell-phone, and calendar.

2. Real property commonly known as 10171 McCarron Way, Sacramento, CA, and
3. The 2006 Ford F250 and 2006 Ford Econoline E50.

The court shall issue a chambers prepared Order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Compel Abandonment filed by Reece Ventura and Rodina Cordero Ventura ("Debtors") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is granted and that the Property identified as:

1. Personal Property to be identified as Household Items:
 - a. Household goods and furnishings including "furniture, beds, tables, etc.";
 - b. Electronics including "TV and radios, cellphones";
 - c. Clothing including "misc. clothes";
 - d. Jewelry including "costume and valuables";
 - e. Other household goods including "household good and effects worth \$5k times 2 homes"; and
 - f. Inventory of Safe: 4 passports, 38 special, 3 bullet cartridges, motorcycle glasses,. old rock n republic key chain, airsoft lubricant, last stand parts, mother's personal bible,

winchester bullets, fiocchi long rifle bullets, m-223 mount for platform rifles, pearl handles for the 38 special, 2 laser binoculars, pad lock and key, pearl necklaces, pearl costume jewelry, kids costume jewelry, 22 bullets, rifle scope, gun drum, gun nozzle, small safe, marriage certificate, birth certificates, social security cards, bombay jewelry box, and office box full of mother's: bills and personal documents, medical bills, medical records, taxes, household bills, mother's purse, wallet, passport, cell-phone, and calendar.

2. Real property commonly known as 10171 McCarron Way, Sacramento, CA, and
3. The 2006 Ford F250 and 2006 Ford Econoline E50.

and listed on Schedule A/B by Debtor is abandoned to Reece Ventura and Rodina Cordero Ventura ("Debtors") by this order, with no further act of the Trustee required.

Debtor's Atty: John G. Downing

Notes:

Continued from 4/22/20

Operating Reports Filed: 7/14/20 [Jan, Feb, Mar]

The Status Conference is XXXXXXXXXX

AUGUST 5, 2020 STATUS REPORT

No updated Status Report has been filed by the Debtor in Possession. On July 14, 2020, the Debtor in Possession filed the Monthly Operating Reports for March 2020 (Dckt. 51), February 2020 (Dckt. 50), and January 2020 (Dckt. 49). The March report was due no later than April 14, 2020, the February report was due no later than March 14, 2020, and the January 2020 report was due no later than February 14, 2020. L.B.R. 2015-1. These reports were 3 months, 4 months, and 5 months delinquent, respectively. Dckts. 51, 50, 49.

The Debtor in Possession, the fiduciary of the bankruptcy estate, did not fare better for the December 2019 Monthly Operating Report, which was not filed until April 22, 2020 - three months delinquent. Dckt. 47. (An earlier Monthly Operating Report for December 2019 was filed on February 11, 2020, one month delinquent. Dckt. 42.)

The November 2019 Monthly Operating Report was not filed until February 11, 2020, which was two months delinquent. Dckt. 41.

The continuing defaults demonstrate that the Debtor does not have the ability to serve as a debtor in possession. The Docket is devoid of any action being taken by the Debtor in Possession to prosecute this case. Rather, it is a placid, static lake of nothing being done, except monthly operating reports being delinquent filed on the eve of Status Conferences.

For the March 2020 Monthly Report (which was filed in July 2020), Debtor reports having \$20,827 in income from business. On the Statement of Financial Affairs Debtor stated having wage income for 2017 and 2018, and no income for 2019 prior to the October 1, 2019 commencement of this case. Amended Statement of Financial Affairs Question 4; Dckt. 33 at 1-2.

On Schedule I Debtor lists her income being \$15,000.00 a month, with her occupation being "Business Owner" and employed by "Tahoe Maintenance, Inc." Dckt. 19 at 28. On the Original Statement of Financial Affairs and the Amended Statement of Financial Affairs, Debtor states that she owns and is an officer of Tahoe Maintenance, Inc. Statement of Financial Affairs Question 27, Dckt. 33 at 7.

However, on Schedule A/B Debtor states under penalty of perjury that she does not own any interests in any incorporated or unincorporated businesses, or any interests in an LLC, partnership, or joint venture. Schedule A/B Question 19, Dckt. 19 at 10; Amended Schedule A/B Question 19, Dckt. 32 at 6.

Conflicting with this is information on the Petition where Debtor states under penalty of perjury that she is a “sole proprietorship of a business with the name Tahoe Maintenance, Inc.” Petition, Question 12; Dckt. 1 at 4.

Looking at the Monthly Operating Report for March 2020, Debtor’s wage income was \$20,827, but her personal expenses were (\$27,972). How Debtor has (\$27,972) in personal expenses is not explained. But as in prior months, there are numerous transfers to Daniel Nunez, Carman Garcia, Victor Nunez and Karina Nunez.

A review of the claims filed in this case show that there is a very exclusive group of creditors, consisting of:

Proof of Claim 1-1.....Internal Revenue Service.....\$6,301,861.....Secured, Priority

Proof of Claim 2-1.....Franchise Tax Board.....\$ 809,894.81...Secured, Priority

Proof of Claim 3-1.....Franchise Tax Board.....\$ 5,732.45...General Unsecured

Proof of Claim 5-1.....Employment Development Dept.....\$ 134,857.60.....Priority

Proof of Claim 4-1.....Bank of New York.....\$ 350,978.47.....Secured

After five months of operation, the latest Monthly Operating Report having been filed for March 2020, and no information has been provided for April, May, or June 2020, the cumulative cash balance since the start of this case is \$2.00. Dckt. 51 at 5. Every dollar coming into the bankruptcy estate is being spent for Debtor’s “personal expenses.”

During this case, the Debtor in Possession has not filed any Status Reports. Due to the benign acting creditors, the Debtor in Possession has managed to exist during this case to pay her personal expenses, and apparently take no steps to reorganize (at least what Debtor in Possession would have been willing to tell the court and parties in interest in a Status Report).

At the Status Conference, **XXXXXXXXXX**

APRIL 22, 2020 STATUS CONFERENCE

The latest Monthly Operating Report filed by the Debtor in Possession is for December 2019, which was filed on February 11, 2020. On February 11, 2020, the Debtor in Possession filed the Monthly Operating Report for November 2019. These are filed two and three months late, respectively. No report has been filed for January, February, or March 2020, all of the last day to file have passed.

The December 2019 Monthly Operating Report states that there was income of \$26,213 for

that month. However, the Debtor in Possession has (\$25,854) in monthly expenses that one month, resulting in there being nothing more than an nominal financial improvement for the bankruptcy estate.

With respect to the (\$25,854) in monthly expenses for the Debtor in Possession, one is directed to “See Attachment.” Dckt. 42 at 4. The only attachment is a copy of a Wells Fargo Bank statement. Other than a few purchases at stores, the vast majority of transactions are money transfers between the Debtor in Possession and the following persons (identifying the amount transferred to them as a negative number and the amount transferred from them as a positive number):

Debtor	M Chavez	Karina Nunez	Victor Nunez	Britt Johnson	Pullen Rental Group	Cash	Daniel Nunez	Salvador Chavez
\$1,390	\$600	(\$900)	(\$1,600)	\$750	\$900	(\$600)		
\$1,790	(\$275)	(\$300)						
		(\$300)	(\$750)				(\$100)	
\$118								
\$1,032			(\$200)			\$470	(\$100)	
			(\$950)					
						\$500		\$300
\$99			\$350			\$200		
						\$120	(\$900)	
\$301		(\$700)	\$1,200			\$400	(\$100)	
		(\$100)				\$700		
						(\$335)	(\$180)	
\$841	\$520	(\$200)	(\$900)			(\$400)	(\$400)	
	\$250							\$300
	(\$10)							\$275
\$74			(\$850)			\$1,940	(\$30)	
							(\$80)	
							(\$500)	
						(\$300)		
						\$200		
						\$900	(\$50)	

\$342							(\$350)	
						(\$300)		
						\$200		
						\$900	(\$50)	
		(\$200)					(\$350)	
\$99						\$200		
								\$200
								\$334
						(\$300)		\$850
						(\$545)		
\$49	\$200		\$200			(\$800)		
						\$620	(\$40)	
						(\$140)	(\$150)	
						(\$43)		
\$410	(\$35)		(\$300)				(\$120)	
			(\$100)				(\$60)	
	(\$300)					(\$300)	(\$200)	
	(\$150)						(\$50)	
							(\$10)	
							(\$30)	
\$99		\$30				\$366		
\$148		(\$30)	(\$200)				(\$100)	
\$643	(\$20)					(\$870)		
\$49								
\$110								
\$99							(\$24)	
\$445								
\$74						\$838		

=====	=====	=====	=====	=====	=====	=====	=====	=====
\$8,212	\$780	(\$2,700)	(\$4,100)	\$750	\$900	\$3,621	(\$3,974)	\$2,259
Debtor	M Chavez	Karina Nunez	Victor Nunez	Britt Johnson	Pullen Rental Group	Cash	Daniel Nunez	Salvador Chavez

Loraine Crussell	Carman Garcia	Deforest Slyck	Frank Flores	Pullen Rental Group	Rafael Miranda	
	(\$500)					
	(\$200)					
	(\$220)					
	(\$420)					
	(\$200)					
\$575						
	(\$500)					
	(\$500)					
\$270						
	(\$450)		(\$600)			
\$1,055	(\$50)	\$225		\$350		
	(\$85)				(\$241)	
		\$75				
	(\$50)					
=====	=====	=====	=====	=====	=====	

\$1,900	(\$3,175)	\$300	(\$600)	\$350	(\$241)	
Loraine Crussell	Carman Garcia	Deforest Slyck	Frank Flores	Pullen Rental Group	Rafael Miranda	

It is not clear what these “personal expenses” are that have dissipated all of the revenues in December 2019.

NOVEMBER 20, 2019 STATUS CONFERENCE

This bankruptcy case was commenced on October 1, 2019. At the Status Conference, counsel for the Debtor in Possession (the court notes that no application has been filed for the Debtor in Possession to employ counsel) reported that the Debtor’s father died recently.

The tax claim is at the root of the filing of this case.

The U.S. Trustee reports that the 341 Meeting has been continued, indicating that a number of items of information had not been provided.

SUMMARY OF SCHEDULES

Real Property Schedule A/B	FMV
Truckee Property	\$632,000

Personal Property Schedule B/B	FMV
2 Vehicles	\$12,000
Boat	\$5,000
2 Snowmobiles	\$700
Business Accounts Receivable	\$30,000
6 High Mileage Trucks	\$15,000

Secured Claims Schedule D	TOTAL CLAIM AMOUNT	FMV	UNSECURED CLAIM PORTION
Bayview Loan Servicing (Truckee Property)	(\$346,506)	\$632,000	\$0
IRS (Truckee Property)	(\$6,005,407)	Above	

PRIORITY UNSECURED CLAIMS SCHEDULE E/F	TOTAL CLAIM AMOUNT	PRIORITY	GENERAL UNSECURED
EDD	(\$131,903)	(\$102,000)	(\$29,903)
FTB	(\$790,803)		(\$790,803)

GENERAL UNSECURED CLAIMS SCHEDULE /FF	TOTAL CLAIMS AMOUNT	
	(\$72,996)	
David Silber		(\$31,000)
National Business Factors		(\$20,204)

INCOME, SCHEDULE I	
Total Average Monthly Income	
Wages	\$15,000
Deductions/Taxes	(\$2,830)

EXPENSES, SCHEDULE J	
Total Average Monthly Expenses	

Total for Family of Three (Debtor and Two Adult Dependent Children)	(\$4,116)
Rent/Mortgage	\$0
Food/Housekeeping Supplies	(\$600)
Transportation	(\$500)
Health Ins	(\$1,100)
Electricity/Heat/Gas	(\$699)

KELLY V. ANDERSEN ET AL

Plaintiff's Atty: Pro Se
Defendant's Atty: unknown

Adv. Filed: 6/1/20; Jury Trial Demanded
Answer: none

1st Amd Cmplt. Filed: 6/22/20; Jury Trial Demanded
Answer: 7/16/20

Nature of Action:

Dischargeability - false pretenses, false representation, actual fraud

Dischargeability - fraud as fiduciary, embezzlement, larceny

Declaratory judgment

Notes:

The Status Conference is XXXXXXXXXX

AUGUST 5, 2020 STATUS CONFERENCE

SUMMARY OF COMPLAINT

Gregory Kelly ("Plaintiff"), in *pro se* filed the First Amended Complaint on June 22, 2020. Dckt. 11. The claims and relief sought in the Complaint are summarized by the court as follows:

- A. Defendant-Debtor Jeffrey Andersen was a registered securities broker.
- B. After his securities licenses expired, Defendant-Debtor set up an unregistered investment Fund, which accepted investment under the name Andersen Enterprises ("AE"), which was a dba of Defendant-Debtor.
- C. Robert Beck invested money with the Defendant-Debtor through AE.
- D. Robert Beck invested \$20,000.00 through AE, which Defendant-Debtor reported as having increased in value to \$32,032.20.
- E. It is alleged that Defendant-Debtor diverted the \$20,000.00 that was given to him to invest, and Defendant-Debtor used it for his personal expenses.
- F. Defendant-Debtor provided false information about the investment.

- G. A confession of judgment was signed by Defendant-Debtor to Plaintiff for \$6,655, which was entered in Sacramento Superior Court Case No. 2015-0017-6019. This obligation has been assigned to Plaintiff.
- H. No payments have been made on the judgment.
- I. Defendant-Debtor did not disclose on his bankruptcy schedules assets.
- J. Defendant-Debtor and Brigitte Anderson, “Co-Defendant,” established a network of bank accounts to prevent collection by creditors.
- K. Defendant-Debtor and Co-Defendant have filed false financial statements in the bankruptcy case.
- L. For the First Cause of Action seeks to have the obligation determined nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) [fraud].
- M. For the Second Cause of Action, Plaintiff seeks to have the obligation determined nondischargeable pursuant to 11 U.S.C. § 523(a)(4) [fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny].
- N. For the Third Cause of Action, Plaintiff seeks a declaration that if the discharge is denied as to Defendant-Debtor, then there is no discharge that can be asserted by the non-debtor spouse Co-Defendant.
- O. For the Fourth Cause of Action, Plaintiff seeks to have the Defendant-Debtor denied a discharge based on 11 U.S.C. § 727(a)(2)(A) [concealment of assets].
- P. For the Fifth Cause of Action, Plaintiff seeks to have the Defendant-Debtor denied a discharge based on 11 U.S.C. § 727(a)(3) [concealment, destroyed, or failed to maintain records].
- Q. For the Sixth Cause of Action, Plaintiff seeks to have Defendant-Debtor’s discharge denied pursuant to 11 U.S.C. § 727(a)(4)(A) [false oath in the bankruptcy case and documents filed therein].
- R. For the Seventh Cause of Action, Plaintiff seeks to have Defendant-Debtor’s discharge denied pursuant to 11 U.S.C. § 727(a)(4)(B) [false claim, listing “potential lawsuit” against Plaintiff on the Schedules].
- S. For the Eight Cause of Action Plaintiff seeks a declaration that Defendant-Debtor owes Plaintiff \$11,171.79.

SUMMARY OF ANSWER

Jeffrey Anderson, “Defendant-Debtor,” and Bridgette Anderson, Co-Defendant, filed a *pro se* general denial form answer. Dckt. 21. Subsequently, Richard Kwun, Esq., has substituted in as the

attorney of record for both Defendant-Debtor and Co-Defendant. Substitutions filed July 30, 2020; Dckts. 22, 23.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff Gregory Kelly alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 523 and 727, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(J). First Amended Complaint ¶¶ 4, 5, Dckt. 11. In referencing jurisdiction pursuant to 11 U.S.C. §§ 523 and 727, the actual grant of federal jurisdiction is made by Congress in 28 U.S.C. § 1334 for bankruptcy cases and matters relating to bankruptcy cases. In the Answer, Defendant Jeffery Andersen and Co-Defendant Bridgette Andersen admit that the debt was owed to Plaintiff, but deny the other allegations. *Pro Se* Form Answer. Dckt. 21.

The claims stated in the First Amended Complaint arise under the Bankruptcy Code, for which jurisdiction has been granted as provided in 28 U.S.C. § 1334(a), and is a core matter arising under the Bankruptcy Code for which the bankruptcy judge issues all final orders and judgment. 28 U.S.C. § 157(b) and the referral of bankruptcy cases and all related matters to the bankruptcy judges in this District. ED Cal. Gen Order 182, 223.

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 judgment 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 Gregory Kelly alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 523 and 727, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(J). First Amended Complaint ¶¶ 4, 5, Dckt. 11. In referencing jurisdiction pursuant to 11 U.S.C. §§ 523 and 727, the actual grant of federal jurisdiction is made by Congress in 28 U.S.C. § 1334 for bankruptcy cases and matters relating to bankruptcy cases. In the Answer, Defendant Jeffery Andersen and Co-Defendant Bridgette Andersen admit that the debt was owed to Plaintiff, but deny the other allegations. ~~Pro Se~~ Form Answer. Dckt. 21.

The claims stated in the First Amended Complaint arise under the Bankruptcy Code, for which jurisdiction has been granted as provided in 28 U.S.C. § 1334(a), and is a core matter arising under the Bankruptcy Code for which the bankruptcy judge issues all final orders and judgment. 28 U.S.C. § 157(b) and the referral of bankruptcy cases and all related matters to the bankruptcy judges in this District. ED Cal. Gen Order 182, 223.

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. Initial Disclosures shall be made on or before -----, **2020**.
- c. Expert Witnesses shall be disclosed on or before -----, **2020**, and Expert Witness Reports, if any, shall be exchanged on or before -----, **2020**.
- d. Discovery closes, including the hearing of all discovery motions, on -----, **2020**.
- e. Dispositive Motions shall be heard before -----, **2020**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- **p.m. on -----, 2020**.

9.

[20-20992-E-7](#)
[20-2108](#)

SARA/CHARLES GRESHAM

STATUS CONFERENCE RE:
COMPLAINT
5-29-20 [\[1\]](#)

LARKINS V. GRESHAM ET AL

Plaintiff's Atty: Pro Se
Defendant's Atty: Pro Se

Adv. Filed: 5/29/20
Answer: 6/25/20

Nature of Action:

Notes:
Order Regarding Letter/Pleading Filed filed 5/29/20 [Dckt 5]

Motion/Application to Waive Filing Fee filed 6/15/20 [Dckt 10]; pending

The Status Conference is XXXXXXXXXX

On May 29, 2020, Amanda Larkins, Plaintiff, sent a letter to the Bankruptcy Court, in which she stated that she objected to having her debt included in the Sarh Gresham and Charles Gresham bankruptcy case. Plaintiff stated that the Greshams rented a room in her home, defaulted on the rent, and Plaintiff prosecuted an unlawful detainer action to have them evicted from her home. There is \$3,500.00 owed from the unlawful detainer proceeding.

Sara Gresham ("Defendant- Sara") and Charles Gresham ("Defendant-Charles") have filed a *pro se* form Answer (Dckt. 11), which admits the debt and denies the rest of the allegations of the complaint other than the filing of the bankruptcy petition.

At the Status Conference, XXXXXXXXXX

FINAL RULINGS

10. [10-27435-E-7](#) THOMAS GASSNER STATUS CONFERENCE RE: AMENDED
[19-2006](#) COMPLAINT
6-3-20 [\[98\]](#)

**HUSTED V. MEPCO LABEL SYSTEMS
ET AL**

Final Ruling: No appearance at the August 5, 2020 Status Conference is required.

Plaintiff's Atty: J. Russell Cunningham; Kristen Ditlevsen

Defendant's Atty:

Charles L. Hastings [Laura Strombom]

Scott G. Beattie [Carol L. Gassner; Alfred M. Gassner; Mepco Label Systems]

Adv. Filed: 1/7/19

Answer:

2/5/19 [Alfred M. Gassner; Carol L. Gassner; Mepco Label Systems]

2/5/19 [Laura Strombom]

1st Amd Cmplt Filed: 6/3/20

Answer:

6/17/20 [Laura Strombom]

6/19/20 [Alfred M. Gassner; Carol L. Gassner; Mepco Label Systems]

Counterclaim of Alfred M. Gassner; Carol L. Gassner; Mepco Label Systems filed 6/19/20

Answer: 7/9/20

Nature of Action:

Recovery of money/property - turnover of property

Notes:

Status Conference set by Reissued Summons [Dckt 100]

[RHS-1] Order for Determination of Core or Non-Core Status of Counts 1 and 2 of Counterclaim Relating to Tock Asserted to be Property of the Bankruptcy Estate filed 7/10/20 [Dckt 129], set for hearing 8/13/20 at 10:30 a.m.

The Status Conference has been removed from the Calendar by prior Order of the Court (Dckt. 141), with the court to address any status issues at the August 13, 2020 hearing on the hearing on the core matter determination for Counterclaim Counts 1 and 2.

GASSNER V. GASSNER ET AL

Final Ruling: No appearance at the August 5, 2020 Status Conference is required.

Plaintiff's Atty: Holly A. Estioko

Defendant's Atty:

Scott G. Beattie [Carol L. Gassner; Alfred M. Gassner]

Charles L. Hastings [Laura Strombom]

Adv. Filed: 3/12/19

Answer: 4/11/19 [Laura Strombom]

4/11/19 [Alfred M. Gassner; Carol L. Gassner]

Amd. Cmplt. Filed: 7/12/19

Answer: 8/5/19 [Alfred M. Gassner; Carol L. Gassner]

8/13/19 [Laura Strombom]

Amd. Answer: 8/13/19 [Alfred M. Gassner; Carol L. Gassner]

8/26/19 [Alfred M. Gassner; Carol L. Gassner]

Nature of Action:

Sanctions for willful violation of automatic stay (against Settlers and Strombom)

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

Declaratory judgment

Injunctive relief - other

Notes:

Continued from 7/1/20. The Court continuing to stay this Adversary Proceeding.

The Status Conference is continued to be conducted at 10:30 a.m. on August 13, 2020, in conjunction with the hearing on the determination of whether Counts 1 and 2 of the Counterclaim are core matter proceeding in the related Adversary Proceeding *Husted v. Mepco et al.*

The court continues the Status Conference for the convenience of the parties and reduce the number of appearances they need to make in this and the related Adversary Proceeding.

12. [20-20972](#)-E-11 ROBERT/SHERRY MCLEAN
[20-2097](#)

STATUS CONFERENCE RE:
COMPLAINT
5-11-20 [[1](#)]

MCLEAN ET AL V. SWAIN

ADVERSARY PROCEEDING CLOSED:
7/20/20

Final Ruling: No appearance at the August 5, 2020 Status Conference is required.

Plaintiff's Atty: Stephen M. Reynolds
Defendant's Atty: Heidi Coad-Hermelin

Adv. Filed: 5/11/20
Answer: 6/10/20

Nature of Action:
Recovery of money/property - preference
Recovery of money/property - fraudulent transfer
Validity, priority or extent of lien or other interest in property

Notes:
Stipulation of Dismissal filed 6/30/20 [Dckt 8]; Order dismissing filed 6/30/20 [Dckt 9]

Adversary Proceeding closed 7/20/20

<p>The Adversary Proceeding having been dismissed (Order, Dckt. 9), the Status Conference is concluded and removed from the Calendar.</p>
--

CAMPOS ET AL V. ALLY BANK

ADVERSARY PROCEEDING
DISMISSED: 7/16/20

Final Ruling: No appearance at the August 5, 2020 Status Conference is required.

Plaintiff's Atty: Douglas B. Jacobs
Defendant's Atty: Stuart B. Wolfe

Adv. Filed: 1/29/20
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)

Notes:
Continued from 7/1/20 to afford the Parties the time to have this Adversary Proceeding dismissed.

Stipulation to Dismiss Complaint and Adversary Proceeding as to Ally Bank with Prejudice filed 7/16/20 [Dckt 13]; Order granting filed 7/16/20 [Dckt 15]

<p>The Adversary Proceeding having been dismissed (Order, Dckt. 15), the Status Conference is concluded and removed from the Calendar.</p>
