

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

August 6, 2020 at 2:00 p.m.

1. [20-90435](#)-E-11 CHARLES MACAWILE

**STATUS CONFERENCE RE:
VOLUNTARY PETITION
6-22-20 [1]**

SUBCHAPTER V case

Debtor's Atty: David C. Johnston

Notes:

[DCJ-1] Application of Debtor in Possession for Authority to Employ Attorney filed 7/21/20 [Dckt 22];
Order granting filed 7/23/20 [Dckt 29]

Debtor in Possession's Chapter 11 Status Report filed 7/23/20 [Dckt 26]

The Status Conference is XXXXXXXXXX

AUGUST 6, 2020 STATUS CONFERENCE

This Subchapter V case was commenced on June 22, 2020. David Sousa has been appointed as the Subchapter V Trustee in this case.

The Debtor and Debtor in Possession (Congress having referred to both in Subchapter V) filed the Chapter 11 Status Report on July 23, 2020. Dckt. 26. The estate includes a 32-bed assisted living facility that is encumbered. A balloon payment on the loan secured by the facility came due on April 1, 2020. Additionally, there was a default in August 2019, and a foreclosure was commenced.

The Debtor obtained a loan commitment to take out the obligation secured by the facility and to provide some additional operating capital. However, the Debtor and Debtor in Possession question when the proposed lender can perform.

At the Status Conference, XXXXXXXXXX

August 6, 2020 at 2:00 p.m.

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2. [19-90739-E-7](#) **JAMES/JEANNIE ABERNETHY** **CONTINUED STATUS CONFERENCE**
[20-9001](#) **ABERNETHY V. DEPT. OF** **RE: AMENDED COMPLAINT**
EDUCATION ET AL **5-8-20 [20]**

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

Adv. Filed: 1/27/20
Answer: none
Amd. Cmplt. Filed: 2/24/20
Answer: none
Reissued Summons: 3/25/20
Amd. Cmplt. Filed: 5/8/20
Answer: none

Nature of Action:
Dischargeability - student loan

Notes:

Continued from 6/18/20 to afford Plaintiff-Debtor the opportunity to seek assistance. At the 8/6/20 status conference the court may dismiss without prejudice this adversary proceeding unless Debtor can present the court with an explanation as to how this adversary proceeding can be effectively prosecuted.



AUGUST 6, 2020 STATUS CONFERENCE

A review of the file in this Adversary Proceeding discloses that nothing further has been filed by the Plaintiff since the June 18, 2020 Status Conference.

At the August 6, 2020 Status Conference, **XXXXXXXXXX**

JUNE 18, 2020 STATUS CONFERENCE

On May 8, 2020, a second amended Complaint (Dckt. 20) was filed by the Plaintiff-Debtor. Dckt. 20. On May 12, 2020 a certificate of service was filed, stating that service on the U.S. Department of Education was made by mailing it "c/o Nelnet" to an address in Lincoln, Nebraska. It was not served on the United States and was not served on the U.S. Attorney.

At the Status Conference, the court addressed with the Debtor-Plaintiff issues relating to the prosecution of this adversary proceedings, shortcomings identified by the U.S. Attorney, and the need for

Plaintiff to seek assistance from an attorney, consumer groups, or other sources that may exist to provide such assistance to persons obligated on student loans.

The continuance was to allow Plaintiff-Debtor the opportunity to seek such assistance, and that at the August 6, 2020 hearing the court is likely to dismiss without prejudice this adversary proceeding unless debtor can present the court with an explanation as to how this adversary proceeding can be effectively prosecuted.

April 23, 2020 Status Conference

Plaintiff-Debtor commenced this Adversary Proceeding in *pro se* on January 27, 2020. An Amended Complaint was filed on February 24, 2020, and a Reissued Summons was issued by the Clerk that same day. A new reissued summons was issued by the Clerk on March 25, 2020. Dckt. 14.

The Amended Complaint seeks to have the court determine that a student loan obligation is dischargeable as provided in 11 U.S.C. § 523(a)(8). Dckt. 8. The U.S. Department of Education is named as the defendant, but it is stated as “U.S. Dept. of Education c/o Nelnet.” The Certificate of Service does not state that service was made on the U.S. Department of Education and the U.S. Attorney.

No certificate of service is filed for the March 25, 2020 reissued summons.

At the Status Conference, Plaintiff-Debtor discussed his challenges in attempting to prosecute this litigation.

3. [18-90765-E-7](#) MIGUEL ORTEGA
[20-9003](#)
EDMONDS V. ORTEGA ET AL

CONTINUED STATUS CONFERENCE
RE: COMPLAINT
4-21-20 [1](#)

Plaintiff's Atty: Anthony D. Johnston
Defendants' Atty: Pro Se

Adv. Filed: 4/21/20
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property
Recovery of money/property - other
Injunctive relief - other

The Status Conference is continued to 10:30 a.m. on September 10, 2020 (specially set time) to be conducted in conjunction with the hearing on the Plaintiff-Trustee's Motion to Approve Compromise that resolves this Adversary Proceeding.

Notes:

Continued from 6/18/20 to allow the Plaintiff-Trustee to prosecute this Adversary Proceeding for the entry of the default judgments.

[ADJ-1] *Ex Parte* Application for Omnibus Order Modifying Entry of Default and Order re: Default Judgment Proceedings filed 6/26/20 [Dckt. 33]; Order granting filed 7/5/20 [Dckt. 35]

[ADJ-2] Motion for Approval of Settlement Agreement filed 7/17/20 [Dckt 36], set for hearing 9/10/20 at 10:30 a.m.

AUGUST 6, 2020 STATUS CONFERENCE

On July 17, 2020, the Plaintiff-Trustee filed a Motion in this Adversary Proceeding for Approval of a Compromise or Settlement with the Defendants. It appears that Plaintiff-Trustee has served the motion and related pleadings, to approve settlement on all the parties in interest in the bankruptcy case. Dckt. 41.

A Motion to Approve Compromise is properly filed in the bankruptcy case, not the adversary proceeding, as the Trustee is seeking authorization to use property of the estate. In light of the service being completed, the court will proceed with the Motion being addressed within this Adversary Proceeding.

4. [20-90373-E-7](#) THOMAS SWARTZ
[20-9006](#)

STATUS CONFERENCE RE:
COMPLAINT
6-9-20 [\[1\]](#)

SWARTZ V. ROSSETTI ET AL

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

Adv. Filed: 6/9/20
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property
Dischargeability - willful and malicious injury
Dischargeability - other
Injunctive relief - imposition of stay
Declaratory judgment

Notes:

The Status Conference is XXXXXXXXXX

This Adversary Proceeding was commenced on June 9, 2020. No certificate of service has been filed and no answer or other responsive pleadings has been filed.

The "Complaint" is titled as a "Counter Complaint" and appears to be a pleading brought over from another court proceeding.

At the Status Conference XXXXXXXXXX

Debtor's Atty: David C. Johnston

Notes:

Continued from 6/4/20. Debtor in Possession plans to have a plan on file by 7/26/20.

U.S. Trustee Report at 341 Meeting lodged 6/26/20

The Status Conference is XXXXXXXXXX

AUGUST 6, 2020 STATUS CONFERENCE

The Debtor in Possession has not filed an updated status report. At the Status Conference, XXXXXXXXXX

JUNE 4, 2020 STATUS CONFERENCE

Debtor IGB Group, Inc. commenced this voluntary Chapter 11 case on April 27, 2020, and is serving as the Debtor in Possession. The First Meeting of Creditors has been continued to June 26, 2020. In a Status Report filed on May 19, 2020, the Debtor in Possession states that the property of the estate consists of 6.9 acres of property that has a 3,600 square foot home, 6,000 square foot barn, and a former koi farm. This property was purchased eighteen months before the filing of this case. However, the principals of the Debtor are stated to have been the victims of unrelated fraud, which has impaired the ability to proceed with the development of the property.

The 90th day period after the commencement is July 26, 2020, and the Debtor in Possession intends to have a plan on file by that time. The plan is intended to be one of reorganization, not liquidation.

At the Status Conference the Debtor in Possession reported that an agreement has been reached to modify the loan to extend its due date (it all having come due).

FINAL RULINGS

6. [18-90600](#)-E-7 CORAZON HERNANDEZ CONTINUED STATUS CONFERENCE
[19-9016](#) RE: COMPLAINT
MCGRANAHAN v. GARIBA 9-30-19 [[1](#)]

Final Ruling: No appearance at the August 6, 2020 Status Conference is required.

Plaintiffs' Atty: Reno Fernandez

Adv. Filed: 4/28/20

Answer: 6/24/20

Amd. Cmplt. Filed: 5/26/20

Answer: 6/24/20

Nature of Action:

Dischargeability - other

Notes:

Continued from 7/16/20 to address if this Adversary Proceeding should be stayed pending completion of the litigation for which Plaintiff has been given relief from the stay to pursue.

The Status Conference is continued to 2:00 p.m. on September 10, 2020, to afford the parties the time to obtain approval of and consummate the reported settlement.

AUGUST 6, 2020 STATUS CONFERENCE

The Plaintiff-Trustee filed an updated Status Report (Dckt. 35) advising the court that the terms of a settlement have been negotiated and that the Plaintiff-Trustee is in the process of seeking court approval of the settlement. The Plaintiff-Trustee requests that the court continue the Status Conference.

JULY 16, 2020 STATUS CONFERENCE

The court having modified the automatic stay to allow Plaintiff to adjudicate to a final judgment the claims in the state court action *Holly Wright et al v. Paul Alexander Dasilva, et al.*, Case

No. 16CF296446 [20-90107; Order, Dckt. 35], staying this adversary proceeding until the final judgment may be proper.

If the parties agree that this Adversary Proceeding should be stayed, they may file a joint *ex-parte* motion to stay this proceeding and continue the Status Conference to 2:00 p.m. on January 28, 2021 (the last currently scheduled status conference date), or a sooner date for review of the prosecution of the state court action and how much further this Adversary Proceeding be stayed. If such an *ex-parte* motion is filed, a proposed order shall also be lodged with the court.

7. [20-90107](#)-E-7 PAUL DASILVA **CONTINUED STATUS CONFERENCE**
 [20-9004](#) **RE: AMENDED COMPLAINT**
 WRIGHT ET AL V. DASILVA **5-26-20 [\[11\]](#)**

Final Ruling: No appearance at the August 6, 2020 Status Conference is required.

Plaintiffs' Atty: Donna T. Parkinson; Steve M. Defilippis
Defendant's Atty: Jessica A. Dorn

Adv. Filed: 4/28/20
Answer: 6/24/20
Amd. Cmplt. Fild: 5/26/20
Answer: 6/24/20

Nature of Action:
Dischargeability - other

Notes:
Continued from 7/16/20 to address if this Adversary Proceeding should be stayed pending completion of the litigation for which Plaintiff has been given relief from the stay to pursue.

<p>The Status Conference is continued to 2:00 p.m. on January 28, 2021. The court stays this Adversary Proceeding pending completion of the Santa Clara County Superior Court Action.</p>
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AUGUST 6, 2020 STATUS CONFERENCE

Defendant-Debtor and Plaintiff have filed their separate Status Conference Statements. Dckts. 23, 25. They each report the status of the State Court Action and concur with staying this Adversary Proceeding until final judgment is obtained in the State Court Action.

Each party having affirmatively stated/agreed for the time being to staying this Adversary

Proceeding pending completion of the State Court Action, the court continues the Status Conference and stays all proceedings in this Adversary Proceedings pending further order of the court.

JULY 16, 2020 STATUS CONFERENCE

The court having modified the automatic stay to allow Plaintiff to adjudicate to a final judgment the claims in the state court action *Holly Wright et al v. Paul Alexander Dasilva, et al.*, Case No. 16CF296446 [20-90107; Order, Dckt. 35], staying this adversary proceeding until the final judgment may be proper.

If the parties agree that this Adversary Proceeding should be stayed, they may file a joint *ex-parte* motion to stay this proceeding and continue the Status Conference to 2:00 p.m. on January 28, 2021 (the last currently scheduled status conference date), or a sooner date for review of the prosecution of the state court action and how much further this Adversary Proceeding be stayed. If such an *ex-parte* motion is filed, a proposed order shall also be lodged with the court.

The court shall issue a minute 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 Status Conference in this Adversary Proceeding having been conducted, the Parties have filed their affirmative statements agreeing that this Adversary Proceeding should be stayed while they prosecute the California Superior Court, County of Santa Clara, Action, *Holly Wright et al v. Paul Alexander Dasilva, et al.*, Case No. 16CF296446, (the “State Court Action”) and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to 2:00 p.m. January 28, 2021.

IT IS FURTHER ORDERED that this Adversary Proceeding is stayed, pending further of the court, to allow the Parties to focus on the diligent prosecution of the State Court Action to final judgment. This is without prejudice to either party filing a motion requesting the court to vacate the stay order.

Final Ruling: No appearance at the August 6, 2020 Status Conference is required.

Plaintiff's Atty: Bryan Silverman
Defendant's Atty: Diana J. Cavanaugh

Adv. Filed: 6/11/18
Answer: 7/18/18

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

Notes:
Continued from 2/6/20. Parties to file and serve Updated Status Reports on or before 7/23/20.

Joint Status Report filed 7/23/20 [Dckt 35]

The Status Conference is continued to 2:00 p.m. on January 28, 2021.

AUGUST 6, 2020 STATUS CONFERENCE

The Parties filed their Joint Status Report on July 23, 2020. Dckt. 35. They report that the State Court Actions are still being prosecuted and they request further continuance. The parties will file an updated status report prior to the January 28, 2021 continued Conference.

FEBRUARY 6, 2020 STATUS CONFERENCE

By prior order, the court has stayed this Adversary Proceeding to allow the parties to complete their state court litigation to final judgment. Order, Dckt. 28. By that Order, updated status reports were to be filed by January 13, 2020.

No Status Reports have been filed by either Party, and each of the Parties are in violation of the court's prior order.

One of the related actions has proceeded to arbitration in August 2019. The arbitrator has prepared, but has not yet issued the final award.

The second action, in state court, has a case management conference on February 24, 2020, but no trial date has been set.