

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Modesto, California

**August 10, 2017, at 2:00 p.m.**

1. [16-90500-E-11](#) ELENA DELGADILLO

**CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
6-9-16 [1]**

**The Status Conference is continued to 2:00 p.m. on xxxxxxxxxxxx, 20xx.**

Debtor's Atty: Len ReidReynoso

Trustee's Atty: Howard S. Nevins

Notes:

Continued from 2/23/17

Operating Reports filed: 4/5/17 [Jun-Dec 2016]; 4/5/17 [Jan-Feb 2017]; 4/18/17; 5/15/17; 6/26/17; 7/26/17

[HSM-12] Motion for Allowance of and Authorization to Pay Administrative Income Tax Obligations of Estate filed 7/21/17 [Dckt 205], set for hearing 8/24/17 at 10:30 a.m.

Trustee's Second Chapter 11 Status Report filed 8/3/17 [Dckt 211]

**AUGUST 10, 2017 STATUS CONFERENCE**

In her Status Report filed on August 3, 2017, the Chapter 11 Trustee reports that she has obtained authority to and has employed real estate brokers for the Vernalis ag property, 82nd Ave property, Bancroft Way property, and 17th Street property. With respect to Debtor's records, the Trustee indicates that she and the Estate's professionals have worked through the issues "to the greatest extent possible."

The Trustee has obtained orders authorizing the sale of the Vernalis ag property and the 82nd Ave property. The sale of the Bancroft property fell through, and the property will be put back on the market. The Trustee is moving forward with obtaining authorization to employ a broker to market the International Blvd. properties.

The Trustee has, pursuant to order of the court, made an interim distribution in this case as part of a compromise with creditor Sacramento Lopez.

**August 10, 2017, at 2:00 p.m.**

At the Status Conference, ~~XXXXXXXXXXXXXXXXXXXXXXX~~.

## FEBRUARY 22, 2017 STATUS CONFERENCE

The Chapter 11 Trustee filed her Status Report for this case on February 16, 2017. Dckt. 101. The Trustee reports an unusually challenging set of facts in assessing Debtor's finances due to her limited record keeping and operating on a cash basis, both pre and post-petition. The Trustee is continuing her investigation of Debtor's pre-petition transfers of assets and the ongoing reconveyance of the properties, now back to the Estate (which Debtor had commenced and was recovering as the debtor in possession prior to the appointment of the Trustee). However, the Trustee notes that while Debtor, acting as debtor in possession, was recovering the properties, she was not placing any insurance on the properties. The Trustee reports that the properties are now insured.

### Discussion of Parties at the Status Conference

Debtor is in the process of obtaining new counsel, Len Renoso, to assist her in resolving this bankruptcy case. This is a cooperative substitution with Debtor's current counsel, who consented on the record to the substitution.

2. [16-90309](#)-E-7      MARK/JULIANNA RUNYON      CONTINUED STATUS CONFERENCE  
[16-9011](#)      RE: COMPLAINT  
HERRA V. RUNYON ET AL      7-1-16 [1]

**The Status Conference is XXXXXXXXXXXXXXXXXXXXXXX.**

## AUGUST 10, 2017 STATUS CONFERENCE

Notwithstanding Defendant-Debtor not filing an answer in this Adversary Proceeding, Plaintiff Diego J. Herra has failed to seek to have a default judgment entered. This Adversary Proceeding was filed on July 1, 2016—having now been pending for fourteen months without active prosecution by Plaintiff.

On June 12, 2017, this court entered an order (Dckt. 25) that if Plaintiff has not filed and served a motion for entry of default judgment on or before July 24, 2017 (more than a year after the Complaint was filed), this adversary proceeding would be dismissed without prejudice.

No motion for entry of default judgement was filed by the deadline (and none had been filed as of this court's August 7, 2017 review of the Docket). The condition for dismissal having been satisfied and Plaintiff not prosecuting this Adversary Proceeding, it is dismissed without prejudice.

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 Court's Order (Dckt. 25) June 12, 2017, requiring the filing of a motion for entry of a default judgment by July 14, 2017, not having been complied with Plaintiff Diego J. Herra, there being no motion for default judgment filed as late as this court's August 7, 2017 review of the Docket (in preparation for the August 11, 2017 continued Status Conference), and no good cause having been given for relief from the June 12, 2017 Order, and good cause appearing,

**IT IS ORDERED** that the Complaint is dismissed without prejudice.

The Clerk of the Court shall close the file in this Adversary Proceeding, no leave being granted Plaintiff to file an amended complaint, this Adversary Proceeding not having been prosecuted by Plaintiff for fourteen months.

#### **JUNE 8, 2017 STATUS CONFERENCE**

At the June 8, 2017 Status conference counsel for Plaintiff reported that he should shortly file a motion for entry of a default judgment. Due to the failure to act, though, the court continues the status conference one last time, if the motion for entry of a default judgment and supporting pleadings are not filed and served on or before July 14, 2017, the court shall dismiss this Adversary Proceeding without prejudice, with no further notice or hearing.

#### **Summary of Complaint**

Diego Herra, the Plaintiff, filed a Complaint objecting to the discharge of Mark Runyon and Julianna Runyon ("Defendant-Debtor"). The grounds for denying Defendant-Debtor a discharge in the bankruptcy case are summarized as: (1) Defendant-Debtor failed to disclose prior bankruptcy cases filed. It is alleged that Defendant-Debtor filed and received a discharge in a Chapter 7 bankruptcy case filed in the Central District of California in 2008. C.D. Cal. Bankr. 08-120155.

Plaintiff alleges that federal court jurisdiction exists pursuant to 28 U.S.C. § 1334(a) and the reference of the bankruptcy case to the bankruptcy judges in this District. It is further alleged that this is a core proceeding as provided in 28 U.S.C. § 157(b)(2)(J), the claims asserted arising under the Bankruptcy Code, 11 U.S.C. § 727(a)(4)(A) and (a)(8).

#### **Summary of Answer**

No answers or other responsive pleadings have been filed.

## **FEBRUARY 22, 2017 STATUS CONFERENCE**

This Adversary Proceeding was commenced on July 1, 2016. The Defaults of Defendant-Debtor were entered on September 6, 2016. Dckts. 12, 13. The Status Conference has been continued twice, the first time to allow for the filing of a motion for entry of a default judgement. The second time (December 1, 2016) it was continued due to the illness of Plaintiff's counsel.

Notwithstanding the continuances, no motion for entry of default judgment has been filed. Counsel requested a further continuance, in light of his recent medical issues, to now address the filing of the motion for entry of default judgment.

## **DECEMBER 1, 2017 STATUS CONFERENCE**

On September 7, 2016, the default of the Defendant-Debtor was entered. The court continued the September 8, 2016 Status Conference to December 1, 2016, to allow for the filing of a motion for entry of default judgment. The court has been advised in other cases of an illness affecting Plaintiff's counsel and his inability to work during the Fall of 2016. Courtesy counsel appeared, and communicated that Plaintiff's counsel of record was preparing the motion for entry of default judgment, while home ill, and would have it filed in the next two weeks.

3. [17-90213](#)-E-12      **J & B DAIRY**  
[17-9006](#)  
**BANK OF STOCKTON V. J & B**  
**DAIRY**

**STATUS CONFERENCE RE:**  
**COMPLAINT**  
**6-12-17 [1]**

<b>The Status Conference is <span style="color: red;">XXXXXXXXXXXXXXXXXXXXXX</span>.</b>
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Plaintiff's Atty: Arthur A. Small  
Defendant's Atty: unknown

Adv. Filed: 6/12/17  
Answer: none

Nature of Action:  
Dischargeability - willful and malicious injury

Notes:

## **AUGUST 10, 2017 STATUS CONFERENCE**

The Complaint in this Adversary Proceeding was filed on Jun3 12, 2017. Dckt. 1. No certificate of service has been filed for the Summons and Complaint. The Complaint seeks that the obligations owed

to Plaintiff Bank of Stockton are nondischargeable because: (1) Debtor used cash collateral in this and prior bankruptcy cases without court authorization, constituting fraud or defalcations in a fiduciary capacity, larceny, or embezzlement; (2) Debtor has sold or transferred Plaintiff's Collateral, which conduct constitutes willful and malicious conduct of Debtor.

On August 10, 2017, the court ordered dismissal of the Chapter 12 bankruptcy case of J&B Dairy.

At the Status Conference, **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**.

4. [17-90213](#)-E-12      **J & B DAIRY**

**CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
3-17-17 [1]**

**The Status Conference is **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**.**

**AUGUST 10, 2017 STATUS CONFERENCE**

Debtor in Possession did not file a Status Conference Statement for the August 10, 2017 Status Conference. The court has granted the Motion to Dismiss this bankruptcy case, by final ruling, which was on the court's August 10, 2017 10:30 calendar.

On August 10, 2017, the court ordered dismissal of the Chapter 12 bankruptcy case of J&B Dairy.

5. [13-91315](#)-E-7      **APPLEGATE JOHNSTON, INC.**  
[15-9021](#)  
**MCGRANAHAN V. BAY CITY  
MECHANICAL, INCORPORATED**

**PRE-TRIAL CONFERENCE RE:  
COMPLAINT FOR (1) AVOIDANCE OF  
PREFERENTIAL TRANSFERS; AND (2)  
RECOVERY OF AVOIDED TRANSFERS  
6-30-15 [1]**

**The Status Conference is **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**.**

On August 10, 2017, the court granted the Plaintiff-Trustee's motion filed in the Applegate Johnston, Inc. bankruptcy case (parent case) that fully resolves all issues in this Adversary Proceeding.

6. [13-91315](#)-E-7      APPLGATE JOHNSTON, INC.      STATUS CONFERENCE RE: AMENDED COMPLAINT  
[15-9032](#)  
MCGRANAHAN V. GRAYBAR ELECTRIC COMPANY, INC.      7-13-15 [7]

**The Status Conference is XXXXXXXXXXXXXXXXXXXX.**

On August 10, 2017, the court granted the Plaintiff-Trustee's motion filed in the Applegate Johnston, Inc. bankruptcy case (parent case), which fully resolves all issues in this Adversary Proceeding.

7. [17-90347](#)-E-7      MARJORIE SHAMGOCHIAN      CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION  
4-27-17 [1]

**Final Ruling:** No appearance at the August 10, 2017 hearing is required.  
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**The Status Conference has been is continued to 2:00 p.m. on August 24, 2017, by prior order of the court (Dckt. 20).**

8. [16-91155](#)-E-12      LYNN/DONNA PORTER      CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION  
12-30-16 [1]

**Final Ruling:** No appearance at the August 10, 2017 hearing is required.  
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**The Status Conference is concluded and removed from the Calendar.**

#### **AUGUST 10, 2017 STATUS CONFERENCE**

On August 10, 2017, this court issued a final ruling dismissing this Chapter 12 case on the Motion of the Chapter 12 Trustee. Motion, Dckt. 47. The Motion was based on a lack of prosecution. On August 8, 2017, Debtor in Possession filed their own "Verified Application to Dismiss" this Chapter 12 case. Debtor in Possession asserted their right to have the case dismissed pursuant to 11 U.S.C. § 1208(b).

This is Debtors' second recent Chapter 12 case, the first (16-90113) having been filed on February 16, 2016, and dismissed on March 8, 2016. The current Chapter 12 case was filed on December 30, 2016, and is now being dismissed in August 2017.

The Chapter 12 case having been dismissed by order of the court, the Status Conference is concluded and removed from the calendar.

9. [10-94960-E-7](#)      **GUADALUPE CAMPOS**      **CONTINUED STATUS CONFERENCE**  
[17-9003](#)      **FARRAR V. JIMENEZ**      **RE: COMPLAINT**  
2-1-17 [1]

**The Status Conference is XXXXXXXXXXXXXXXXXXXXX.**

#### **AUGUST 10, 2017 STATUS CONFERENCE**

The Plaintiff-Trustee's Motion to Approve a Compromise was heard by the court on August 10, 2017, (10:30 a.m. calendar) in the Guadalupe Campos bankruptcy case. The court ordered XXXXXXXXXXXXX.

#### **SUMMARY OF COMPLAINT**

Gary Farrar, the Chapter 7 Trustee in the Campos bankruptcy case, ("Plaintiff-Trustee") filed a complaint to recover a fraudulent conveyance from Defendant. The assets are the monies that were in three bank accounts owned by Debtor. The amount of money at issue is at least \$90,000.00. It is further alleged that Defendant use the monies to purchase real properties.

Plaintiff-Trustee asserts that Debtor falsely stated under penalty of perjury the information on her Schedules and Statement of Financial Affairs, not disclosing these transfers. It is asserted that due to Debtor's false statements under penalty of perjury that the statute of limitations on fraudulent conveyance actions is equitably tolled.

The Plaintiff-Trustee also asserts claims for turnover of the money or property, as well as the imposition of a constructive trust.

#### **FINAL BANKRUPTCY COURT JUDGMENT**

Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), (H), and (O). Complaint 2, 3, Dckt. 1.