

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

August 29, 2024 at 2:00 p.m.

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| 1. <u>23-90021</u> -E-7 <u>24-9005</u> MENDOZA V. FRANCHISE TAX BOARD | MARTHA MENDOZA CAE-1 | CONTINUED STATUS CONFERENCE RE: COMPLAINT 4-30-24 [1] |
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Plaintiff's Atty: Henry D. Nunez

Defendant's Atty: Donny P. Le

Adv. Filed: 4/30/24

Answer: 6/14/24

Nature of Action:

Declaratory judgment

Notes:

Continued from 6/27/24. The Parties reporting they are working on a consensual resolution of this matter and requested a continuance of the Status Conference.

[CAE-1] Defendant California Franchise Tax Board's Supplemental Status Report filed 8/15/24 [Dckt 14]

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| The Status Conference is XXXXXXX |
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AUGUST 29, 2024 STATUS CONFERENCE

On August 15, 2024, Defendant Franchise Tax Board filed an updated Status Report. Dckt. 14. It appears that there is no settlement of this Adversary Proceeding. As requested by the court, Defendant-FTB has provided an analysis for asserting that no federal court jurisdiction exists for this court to determine whether the asserted tax debt is nondischargeable.

The court only summarizes the points raised by Defendant-FTB for discussion at the Status Conference. Defendant-FTB filed its proof of claim in this case, asserting a Claim in the amount of \$936,902.35. POC 5-1. The Tax Years identified in Proof of Claim 5-1 are 2012 and 2013. The basis of the claim is an "Audit Assessment" and a tax lien has been recorded.

August 29, 2024 at 2:00 p.m.

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Proof of Claim 5-1 states that it is not entitled to priority under 11 U.S.C. § 507(a). POC 5-1, ¶ 12.

On March 30, 2023, the Trustee Report of No Distribution was filed, and there are no assets to be administered for payment of claims in this Case. Dckt. 21. In the Adversary Proceeding, Defendant-FTB asserts that Plaintiff-Debtor is not seeking only a determination of whether the tax debt is nondischargeable, but for the court to also determine the amount of the tax debt (requesting the court to determine that there is no tax obligation owing). As the court summarizes below, the Complaint also seeks for the court to determine the extent, validity, and priority of any tax lien asserted by Defendant-FTB.

While Defendant-FTB does not dispute the federal court jurisdiction to determine the dischargeability of the tax debt, this jurisdictional issues arise when Plaintiff-Debtor seeks to adjudicate the amount of the tax debt. Defendant-FTB asserts that the substance of the Complaint is for the court to adjudicate the tax assessment.

With the respect to the issue of dischargeability of debt, the Complaint asserts that the asserted tax debt is for the 2012 and 2013 tax years, and that those are outside of nondischargeability grounds set forth in 11 U.S.C. § 523(a)(1)(ii). This appears to be a clerical error, the Bankruptcy Code tax nondischargeability provisions are set forth in 11 U.S.C. § 523(a)(1)(B)(ii), which states [emphasis added]:

(a) A discharge under section 727, 1141, 1192, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(1) for a tax or a customs duty—

(A) of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;

(B) with respect to which a return, or equivalent report or notice, if required—

(i) was not filed or given; or

(ii) was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or

(C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax; . . .

If the issue presented to the court is whether the filing of a tax return for the 2012 and 2013 returns was properly filed, then there are only bankruptcy law issues to decide.

In looking at the Second Claim for Relief in Plaintiff-Debtor's Complaint, it is titled "Disallowance of Claim" Complaint, p. 2; Dckt. 1. However, the "disallowance" of the "claim" does not request the court to determine the amount of the tax debts asserted, but that any such tax debt has been

discharged by Plaintiff-Debtor's Bankruptcy Discharge. *Id.*; ¶ 31. This paragraph continues with the statement, "The debtor does not owe the claimed liability and is not responsible for her ex-spouse's taxes." This may be a request for the court to make a determination of Plaintiff-Debtor's liability, but also appears to be consistent with the assertion that the debt has been discharged so the "Claim" (debt) should not be allowed (enforced) post-discharge against Plaintiff-Debtor.

In the Third Claim for Relief Plaintiff-Debtor seeks to have the court "Determine Nature, Extent, and Validity of Secured Claim." *Id.*; p. 6:13. This Claim for Relief request that the court in the form of a judgment that secured claim/tax debt is "invalid, void, rescinded and/or unenforceable," and that the "secured claim be deemed satisfied in full."

A Fourth Claim requesting Declaratory Relief is asserted by Plaintiff-Debtor. *Id.*; ¶¶ 42-49. In this Claim for Relief, Plaintiff-Debtor recounts a substitute tax return for the 2012 and 2013 years having been filed (to include income from Plaintiff-Debtor's ex-husband). These were in addition to the tax returns filed by Plaintiff-Debtor for those years.

The Fourth Claim for Relief concludes that the 2012 and 2013 tax obligations have been discharged pursuant to 11 U.S.C. § 727.

It appears that the first issue to be addressed is whether the tax debts for the 2012 and 2013 tax year, whatever the amounts may be, are nondischargeable, and if so, what provisions of the Bankruptcy Code such nondischargeability is based.

In the Answer, Defendant-FTB asserts in the Fourth Affirmative Defense that Plaintiff-Debtor failed to "file or give an equivalent report or notice related to tax years 2012 and 2013." Answer, p. 8:18-20; Dckt. 8. This conflicts with Plaintiff-Debtor stating that such returns were filed.

The court also notes that with respect to the asserted tax lien, to the extent it was properly perfected, then the discharge does not remove the lien from pre-petition assets. However, the discharge would prevent it from attaching to future property acquired by Plaintiff-Debtor or property that Plaintiff-Debtor could assert an exemption in against Defendant-FTB's lien.

At the Status Conference, **XXXXXXX**

JUNE 27, 2024 STATUS CONFERENCE

SUMMARY OF COMPLAINT

The Complaint filed by Martha Mendoza ("Plaintiff-Debtor"), Dckt. 1, asserts claims for: (1) determination of dischargeability of asserted tax obligations of the California Franchise Tax Board (Defendant-FTB), (2) disallowance in its entirety the proofs of claim filed by Defendant-FTB, and (3) determination of the extent, validity, and priority of any lien asserted by Defendant-FTB.

SUMMARY OF ANSWER

The California Franchise Tax Board (“Defendant-FTB”) has filed an Answer, Dckt. 8, admitting and denying specific allegations in the Complaint. The Answer asserts six Affirmative Defenses.

STATUS CONFERENCE STATEMENT

Plaintiff-Debtor filed a Status Conference Statement on June 21, 2024. Dckt. 9. Plaintiff-Debtor reports that the Parties are currently in negotiations concerning the claims asserted and will be requesting that the court continue the Status Conference sixty days before setting deadlines and a pre-trial conference in this Adversary Proceeding.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff -Debtor alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (I), and (K). Complaint ¶¶ 1-3, Dckt. 1. In the Answer, Defendant-FTB admits the allegations of jurisdiction, except as stated in the following sentence, and that this is a core proceeding. Answer ¶¶ 1-3; Dckt. 8. Defendant-FTB asserts that there is not jurisdiction for this court to determine the amount of nondischargeable tax debt because this is a no asset Chapter 7 Bankruptcy Case. *Id.*

Continuance of Status Conference

The Parties reported that they are working on a consensual resolution of this matter and requested the court continue the Status Conference rather than set discovery and other deadlines, and the pretrial conference at this point. The court concurs with this request.

If the matter is not resolved, Defendant shall provide the court the basis for asserting that jurisdiction does not exist for this court to adjudicate the amount of tax debt, if any, that is nondischargeable, prior to the Status Conference.

Status Conference is continued to 2:00 p.m. on August 29, 2024.

2. [22-90296-E-11](#)
[CAE-1](#)

PROVIDENT CARE, INC.

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
8-29-22 [\[1\]](#)

SUBCHAPTER V

Debtor's Atty: David C. Johnston

Notes:

Continued from 6/27/24 to be conducted in conjunction with counsel for the Debtor/Debtor in Possession request for allowance of attorney's fees and costs.

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| The Post-Confirmation Status Conference is XXXXXXX. |
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AUGUST 29, 2024 STATUS CONFERENCE

On August 23, 2024, the Subchapter V Trustee filed a report stating that she has received the \$9,402.15 in fees allowed her as Subchapter V Trustee.

At the Status Conference, XXXXXXX

JUNE 27, 2024 POST-CONFIRMATION STATUS CONFERENCE

The court's June 25, 2024 review of the Docket indicates that nothing further has been filed in this case since the court allowed the fees of the Subchapter V Trustee.

At the Status Conference, counsel for the Debtor/Debtor in Possession reported that the only remaining matter is counsel's fee application, which has been delayed due to health issues. The Plan has been completed, with a 100% dividend to creditors holding general unsecured claims.

The Status Conference is continued to 2:00 p.m. on August 29, 2024.20

MARCH 28, 2024 POST-CONFIRMATION STATUS CONFERENCE

On January 26, 2024, the court entered its order allowing compensation for the Subchapter V Trustee. Dckt. 146. No compensation has been allowed for counsel for the Debtor/Debtor in Possession.