

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

September 8, 2022 at 2:00 p.m.

1. 21-90378-E-11	MOBREWZ, LLC	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 8-18-21 [1]
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SUBCHAPTER V

Debtor's Atty: David C. Johnston, Brian S. Haddix

Notes:

Continued from 4/21/22. Parties in interest, if any, and Debtor/Debtor in Possession to file a status report at least one week prior to the 9/8/22 status conference.

Operating Report filed: 5/30/22

Modified Plan of Reorganization for Small Business Under Chapter 11 filed 5/18/22 [Dckt 85]; Order Confirming Plan as Modified filed 5/19/22 [Dckt 86]

Subchapter V Trustee's Notice of Unavailability filed 8/30/22 [Dckt 94]

**The Post-Confirmation Subchapter V Status Conference is continued to
XXXXXXX**

SEPTEMBER 8, 2022 POST-STATUS CONFERENCE

Counsel for the Debtor/Debtor in Possession reported **XXXXXXX**

The Subchapter V Trustee reported **XXXXXXX**

2. [19-90382-E-7](#) TRACY SMITH
[19-9012](#) CAE-1
ALVAREZ V. SMITH ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
7-26-19 [\[1\]](#)

Plaintiff's Atty: Shane Reich
Defendant's Atty:
Peter G. Macaluso [Tracy Emery Smith]
Unknown [Sharp Investor, Inc.]

Adv. Filed: 7/26/19
Answer: None

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - willful and malicious injury
Dischargeability - fraud as fiduciary, embezzlement, larceny
Recovery of money/property - other

Notes:
Continued from 5/5/22

The Status Conference is XXXXXXX
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DECEMBER 8, 2022 STATUS CONFERENCE

Defendant-Debtor reported that the Plaintiff and Judgment-Debtor have not met during the extended period granted by the court requested by the Parties for such.

Judgment was granted Plaintiff on May 26, 2020. Jdgt; Dckt. 48. The Judgment imposes a mandatory injunction to turn over specified property to Plaintiff and for \$19,000 in damages. It further provides that if the mandatory injunction is complied with, in addition to remedies in enforcing a mandatory injunction, Plaintiff may have it amended to be a \$93,643.84 monetary judgment. These judgment monetary obligations are also determined to be nondischargeable pursuant to 11 U.S.C. § 523(A)(2)(A), § 523(a)(4), and § 523(a)(6), as separate and independent bases for nondischargeability.

Plaintiff has not provided the court with Post-Judgment Status Reports documenting the diligent enforcement of this Judgment..

At the Post-Judgment Status Conference XXXXXXX

MAY 5, 2022 STATUS CONFERENCE

As of the court's May 3, 2022 review of the Docket, no updates have been filed by the Parties since the last hearing.

At the Status Conference counsel for Defendant Judgment Debtor reported that Judgment Creditor has delivered a check for \$5,000.00. There is a second check for \$1,000.00 that was not received and River City Bank is investigating. The Defendant Judgment Debtor has identified a mobile home to be transferred, but it will take at least five months.

For Plaintiff Judgment Creditor, the \$5,000 has been received, and he is working with Counsel for Judgment Debtor to find the missing \$1,000 check.

Defendant Judgment Creditor will pursue amending the judgment to make it for a monetary amount rather than the specific performance. In stating such, counsel for Plaintiff Judgment Creditor stated that they will continue in good faith settlement/payment discussions with Defendant Judgment Debtor and his counsel.

APRIL 7, 2022 STATUS CONFERENCE

The court's review of the Docket reflects that nothing has been filed by the Parties since the last hearing.

At the Status Conference, counsel for Judgment Debtor reported that the transfer of the home has been documented. June 29, 2019. The transferee was identified as Oliver Perry.

The Parties requested a further continuance.

MARCH 24, 2022 STATUS CONFERENCE

On March 23, 2022, twenty-four hours before this Status Conference, Defendant Judgment Debtor Tracy Smith filed his Third Post-Judgment Status Conference Statement. Dckt. 77. He states that Plaintiff Judgment Creditor and Defendant Judgment Debtor have met to discuss the transfer of a comparable home, and Judgment Debtor requests that the Status Conference be continued "until the completion of the location of such comparable home which the Defendant Judgment Debtor can deliver such to the Plaintiff Judgment Creditor. Apparently, the court is to delay the enforcement of it's judgment for however long the Defendant Judgment Debtor believes it would take him to comply with this court's Judgment and mandatory injunction.

At the Status Conference, the Parties provided vague references to their discussion. Judgment Debtor now asserts, two years after the judgment was entered and the mandatory injunction issued, that the property to be transferred had been "sold" and Judgment Debtor cannot transfer it. Plaintiff Judgment Creditor disputes that it was "sold," stating that title is in the same name since 1980. Clearly something is amiss.

The court addressed with counsel for the Defendant Judgment Debtor the potential consequences of failing to comply with the order of a federal judge, which not only is the corrective sanction power in this court, but the corrective and punitive sanction power of the Article III judges from whom this bankruptcy case has been referred.

FEBRUARY 17, 2022 STATUS CONFERENCE

On February 7, 2022, Judgment Debtor Tracy Smith, filed his Second Post Judgment Status Conference Statement. In it he states that the Judgment has been entered in this Adversary Proceeding, and requests that the file now be closed.

The Judgment in this Adversary Proceeding is a monetary one for \$19,000.00, and also a Mandatory Injunction for Judgment Debtor to turn over a Mobile Home. The Status Report does not state that Judgment Debtor has turned over the property as ordered by this court. The Judgment provides for alternative relief in the form of a \$93,643.84 if the specific performance required by the Mandatory Injunction is not or can not be done.

Finally, the Judgement determines that the monetary amounts are nondischargeable.

At the Status Conference, Judgment Creditor reported that Defendant Judgement Debtor has not provided information about the asset. Counsel for Defendant Judgment Debtor did not know whether his client has complied with the court's mandatory injunction, which is now almost two years old, to turn over the mobile home to Judgment Creditor Plaintiff. Counsel for Judgment Creditor Plaintiff could not cite to the court any efforts made to enforce the mandatory injunction in light of Judgment Debtor Defendant's failure to comply with the injunction.

The court continued the Status Conference and ordered the parties and their counsel to appear in person at the continued hearing, and all further hearings unless relief is granted pursuant to a future order of the court, at the Status Conference and all further hearings, conference, and proceedings in this Adversary Proceeding.

Debtor's Atty: Stephen M. Reynolds

Notes:
Continued from 6/16/22

Operating Reports filed: 7/18/22, 8/17/22

Chapter 12 Plan of Reorganization Dated July 18, 2022 filed 7/18/22 [Dckt 37]

The Status Conference is XXXXXXX
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SEPTEMBER 8, 2022 STATUS CONFERENCE

No updated Status Report has been provided by the Debtor in Possession as of the court's September 4, 2022 review of the Docket. Two Operating Reports have been filed:

- A. June 2022 Monthly Operating Report, filed July 18, 2022; Dckt. 36.
 - 1. The bank account for the Bankruptcy had a June 30, 2022 balance of \$201.43 (having been reduced by a \$10 service charge from the May 31, 2022 balance).
 - 2. Debtor in Possession states having received \$350.00 in receipts in June 2022.
 - 3. Debtor in Possession states that there have been no disbursements in this case since it was commenced.
- B. July 2022 Monthly Operating Report, filed August 17, 2022; Dckt. 38.
 - 1. The bank account for the Bankruptcy had a June 30, 2022 balance of \$191.43 (having been reduced by a \$10 service charge from the June 30, 2022 balance).
 - 2. Debtor in Possession states having received \$350.00 in receipts in June 2022.
 - 3. Debtor in Possession states that there have been no disbursements in this case since it was commenced.

Though stating that the fiduciary Debtor in Possession is receiving small cash payments each month for selling firewood, those monies are not being deposited into the bank account maintained for the Bankruptcy Estate by the fiduciary Debtor in Possession.

Chapter 12 Plan Filed

On July 18, 2022, the Debtor in Possession filed a Chapter 12 Plan. For the secured claim of SBN V Ag I, LLC, the (\$8,922,789) claim. This claim is to be sold through the sale of other property or refinance of some unidentified other property. Plan ¶ 2.02; Dckt. 37. This claim is to be excluded from the Plan and paid in some way outside of the knowledge of the Chapter 12 Trustee or the court.

For the Class 3 secured claim of Stanislaus County for property taxes, stated to be in the amount of (\$102,949.43) shall be paid as provided in Exhibit 1 to the Plan. *Id.*, ¶ 2.03. Exhibit 1 provides for payments of \$32,920.95 on the following dates: January 16, 2023, November 15, 2024, October 15, 2025, October 15, 2026, and October 15, 2027. These payments may be accelerated.

For the Class 4 unsecured claims, the only claims provided for are West Stanislaus Irrigation District and “the Wager Jones” as set forth on Exhibit 1. *Id.*, ¶ 2.04. Exhibit 1 provides for the Wagner Jones claim of (\$8,733.44) to be paid in 3 installments: \$4,000 on January 16, 2023; \$4,000 on October 15, 2024; and \$734.44 on October 15, 2025.

The (\$180,141.00) shall be paid in one lump sum on October 15, 2027, with no payments being made for almost five years.

The means for executing the Plan are stated in paragraphs 4.01 and 4.02 of the Plan, *Id.*, which states:

IV. MEANS FOR EXECUTING THE PLAN

4.01. Debtor will farm and will use the proceeds of that farming to make the payments required by this Plan. Debtor will use farm income to make the Chapter 12 Plan payments. Debtor reserves the right to finance or sell to pay the creditors of the estate.

4.02. Any money generated by Debtor in excess of that required by the Plan may be used to meet other business needs of Debtor.

On the Statement of Financial Affairs the Responsible Representative of the Debtor states under penalty of perjury that the Debtor had the following gross income for:

January 1, 2022 to the April 19, 2022	
Commencement of this Bankruptcy Case.....	\$2,100.00
2021.....	\$ 0.00
2020.....	\$ 0.00

Stmt Fin Affrs, Part 1, §§ 1, 2; Dckt. 15.

Going back to the Schedules filed in this Bankruptcy Case by the Responsible Representative under penalty of perjury include the following information:

- A. Debtor has only \$2,100 in cash on hand and the Debtor maintained no bank accounts. Schedule A/B, ¶¶ 1, 2, 3, 4, 5; Dckt. 15.
- B. Debtor had no accounts receivable. *Id.* ¶ 10.
- C. Debtor has no inventory. *Id.* ¶ 18.
- D. Debtor had “crops” of \$35,000. These crops are stated to be dead trees on Debtor’s property that can be sold for firewood.
- E. Debtor has no office furniture or equipment. *Id.*, ¶¶ 238, 39, 40, 41.
- F. Debtor does not own or lease any machinery, equipment, or vehicles. *Id.*, ¶ 46.
- G. Debtor owned 154 Acres of Almond Orchard (which has “crops” of dead trees to be cut for firewood). *Id.* ¶ 55. The value of the Orchard is stated to be \$15,495,000.

Debtor does not list any other assets. There does not appear to be “farming operations” to generate the millions of dollar to pay claims. Rather, it appears that there is a fire wood liquidation operation.

At the Status Conference, the Chapter 12 Trustee provided an oral updated report, stating
XXXXXXX .

Counsel for the Debtor in Possession reported **XXXXXXX**

Counsel for the US Trustee stated **XXXXXXX**

Amended Plan and Motion to Confirm Filed

On September 4, 2022, an Amended Chapter 12 Plain was filed, along with a Motion to Confirm, and Declaration in support thereof. Dckts. 42, 40, 43, respectively.

For the Class 2 Claim of SBN V Ag I, LLC, they will continue to be paid outside of the Plan.

For the Class 3 Claim of Stanislaus County Property Taxes, no Exhibit 1 is attached to the Plan showing when this claim will be paid.

For executing the Amended Plan, Debtor is to farm the property and use the farm proceeds to fund the Plan. Debtor’s “farming” operation is to enter into leases of the property, for which Debtor is to receive cash plus crop shares.

Declaration of Responsible Representative of the Debtor in Possession

Jeffery Arambel, the Responsible Representative of the Debtor in Possession first provides his legal conclusion testimony that the Amended Plan complies with the provisions of chapter 12. This conclusion appears to be based on communicating what counsel for the Debtor in Possession has told Mr. Arambel.

He testifies that all fees have been paid, and that the Amended Plan provides for payment of all claims in full.

Mr. Arambel further testifies that the equity ownership in Debtor has been abandoned by the Plan Administrator in Mr. Arambel's personal bankruptcy case because such interest was burdensome to that Plan Estate. The Plan Administrator in that case determined that the value of the real property owned by Debtor, which is now property of this Bankruptcy Estate, is worth less than the obligations secured by that property.

Mr. Arambel provides his conclusion that the Debtor, revested through the Chapter 12 Plan, will be able to make the payments required under the Plan. No testimony is provided as to the farming operations to be created, financial projections from such operations, or other information concerning this Debtor creating revenue.

Counsel for the Debtor in Possession **XXXXXXX**

XXXXXXX

JUNE 16, 2022 STATUS CONFERENCE

This Voluntary Chapter 12 Case was commenced on April 19, 2022. The Schedules (Dckt. 15) include the following information. Debtor's personal property consisted as of the filing of \$2,100 in cash accounts and \$35,000 in crops. Debtor has no farming or office equipment or tools. Debtor does own real property stated to have a value of \$15,459,000.

On Schedule D, the secured debt encumbering the real property is stated to be (\$8,922,789) owed to SBN V Ag I, LLC and (\$102,949) in property taxes owed to Stanislaus County for tax years 2017, 2018, 2019, 2020, and 2021. On Schedule E/F, the only unsecured claim listed is in the amount of (\$180,141) owed to the West Stanislaus Irrigation District.

On June 9, 2022, the Debtor in Possession (misidentified as the "Debtor" and not the debtor in possession exercising the rights, power, and fiduciary duties of a bankruptcy trustee), filed a Status Conference Report (Dckt. 29), which information includes (identified by paragraph number in the Status Report):

1. "Debtor" is not using cash collateral.
4. No claims objections are anticipated.
10. "Debtor" intends to file a Chapter 12 Plan no later than July 18, 2022.

The Responsible Representative of the Debtor in Possession provides his testimony under penalty of perjury in his Declaration (Dckt. 30) filed with the Status Report, which includes the following (identified by paragraph number in the Declaration):

¶ 2. Jeffery Arambel is the sole member and managing member of the Debtor. He states that all business of the Debtor, and now the business of the Bankruptcy Estate

in this case, is conducted by Mr. Arambel. Mr. Arambel continues, providing his legal opinion that the limited liability company debtor “considered as a corporation for purposes of the Bankruptcy Code.

¶ 2.(i). The Debtor’s assets consisted on 155 acres of flat crop land, firewood to be harvested, and a small amount of cash.

Second ¶ 1. Mr. Arambel either performs or supervises the actual cultivation, husbandry, and harvesting as required.

¶ 3. Debtor’s, and now the Bankruptcy Estate’s, only source of income is farming. The Debtor’s farm income “has been very limited since I [Jeffery Arambel] filed by Chapter 11 case.”

Chapter 12 Trustee Status Report

On June 13, 2022, Michael Meyer, the Chapter 12 Trustee filed his Status Report. Dckt. 31.

At the Status conference, counsel for the Debtor in Possession states that the monthly operating reports are ready to be filed next week. On the issue of whether the LLC Debtor qualifies as a family farmer in light of the property not being actively farmed now, but it is to be renovated to be farmed going forward.

FINAL RULINGS

4. [21-90402-E-7](#) GURMEET SUNER
[21-9015](#)
BMO HARRIS BANK N.A. V. SUNER
12-7-21 [1]

PRE-TRIAL CONFERENCE RE:
COMPLAINT FOR DETERMINATION OF
NONDISCHARGEABILITY OF DEBT

DISMISSED 8/26/22

Plaintiff's Atty: Raffi Khatchadourian
Defendant's Atty: Nicholas Wajda

Adv. Filed: 12/7/21
Answer: 1/11/22

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

Notes:
Plaintiff's Request to Dismiss Adversary Proceeding filed 8/25/22 [Dckt 17]; Order granting filed 8/26/22 [Dckt 19]

This Adversary Proceeding having been dismissed (Order, Dckt. 19), the Status Conference is concluded and removed from the Calendar.

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