

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Sacramento, California

September 18, 2024 at 2:00 p.m.

1. <u>23-23523-E-7</u> <u>23-2098</u> CAE-1 FARRIS V. THE RETREAT AT ROYAL GREEN LLC ET AL	THE RETREAT AT ROYAL GREEN, LLC.	CONTINUED STATUS CONFERENCE RE: NOTICE OF REMOVAL 11-27-23 [1]
--	---	---

Plaintiff's Atty: Michael J. Harrington

Defendant's Atty: unknown

Adv. Filed: 11/27/23

Answer: none

Nature of Action:

Determination of removed claim or cause

Notes:

Continued from 8/1/24 to have the amended complaint filed (or motion to amend complaint filed and set for hearing, if necessary), and the prosecution of this Adversary Proceeding ready to proceed with due diligence.

[DNL-3] Joint Motion for Stay filed 8/12/24 [Dckt 48]

[DNL-3] Order Staying Adversary Proceeding and Dismissing Defendant Antonio B. Tin filed 8/16/24 [Dckt 50]

The Status Conference is continued to 2:00 p.m. on XXXXXXX
--

SEPTEMBER 18, 2024 STATUS CONFERENCE

On August 16, 2024, the court entered its order staying this Adversary Proceeding while the Parties address these issues in related adversary proceedings Order; Dckt. 50. The Order provides that the

September 18, 2024 at 2:00 p.m.

Page 1 of 23

respective counsel shall address at the September 18, 2024 Status Conference how this matter should be continued to allow for the court’s adversary proceeding management.

At the Status Conference, **XXXXXXX**

2. [24-21235](#)-E-13 **ASHLEY/JEFF VANHEE**

S T A T U S C O N F E R E N C E R E :
COMPLAINT
7-8-24 [1]

[24-2158](#)

CAE-1

PIMOR ET AL V. VANHEE ET AL

Item 2 thru 3

Plaintiff’s Atty: Christopher Crowell

Defendant’s Atty: Joe M. Laub

Adv. Filed: 7/8/24

Answer: 8/13/24

Nature of Action:

Dischargeability - false pretenses, false representation, actual fraud

Notes:

SUMMARY OF COMPLAINT

The Complaint filed by Clement Pimor and Emilie Cappella (“Plaintiff”), Dckt. 1 , assert claims for determination that the Debtor’s obligations to Plaintiff are nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A), and the entry of a monetary judgment for such nondischargeable amounts.

SUMMARY OF ANSWER

Ashley and Jeffrey Vanhee (“Defendant-Debtor”) have filed an Answer, Dckt. 7, admitting and denying specific allegations. The Answer states ten Affirmative Defenses.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, 523, and 1328. Complaint ¶¶ 1; Dckt. 1. In the Answer, Defendant admit the

allegations of jurisdiction and that this is a core proceeding. Answer ¶ 1; Dckt. 7. Adversary Proceedings are core matter proceedings as provided in 28 U.S.C. § 157(b). **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.**

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- a. Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334, 523, and 1328. Complaint ¶¶ 1; Dckt. 1. In the Answer, Defendant admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶ 1; Dckt. 7. Adversary Proceedings are core matter proceedings as provided in 28 U.S.C. § 157(b). **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 **xxxxxxx, 2024**.
- c. Expert Witnesses shall be disclosed on or before **xxxxxxx, 2024**, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before **xxxxxxx, 2024**.
- d. Discovery closes, including the hearing of all discovery motions, on **xxxxxxx, 2024**.
- e. Dispositive Motions shall be heard before **xxxxxxx, 2024**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on xxxxxx, 2024**.

3. [24-21235](#)-E-13 ASHLEY/JEFF VANHEE

STATUS CONFERENCE RE:
COMPLAINT
7-8-24 [\[1\]](#)

[24-2159](#)

CAE-1

TAHOE KOYUKON, LLC ET AL V.
VANHEE ET AL

Plaintiff's Atty: Stephen T. Cammack
Defendant's Atty: Joe M. Laub

Adv. Filed: 7/8/24
Answer: 8/12/24

Nature of Action:

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

Notes:

The Status Conference is xxxxxxx
--

SUMMARY OF COMPLAINT

The Complaint filed by Tshoe Koyukon, LLC, Kenneth Ho, and Linfeng Ou ("Plaintiff"), Dckt. 1, asserts claims for nondischargeable claims pursuant to 11 U.S.C. § 523(a)(2), (a)(4), and (a)(6). Plaintiff also requests punitive damages.

SUMMARY OF ANSWER

Ashley Vanhee and Jeffrey Vanee ("Defendant-Debtor") have filed an Answer, Dckt. 8, admitting and denying specific allegations. Defendant-Debtor asserts twelve Affirmative Defenses.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and that this is a core proceeding as provided in 28 U.S.C. § 157(b)(2)(h). Complaint ¶¶ 1; Dckt. 1. In the Answer, Defendant admit the allegations of jurisdiction. Answer ¶ 1; 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 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.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- a. Plaintiff alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and that this is a core proceeding as provided in 28 U.S.C. § 157(b)(2)(h). Complaint ¶¶ 1; Dckt. 1. In the Answer, Defendant admit the allegations of jurisdiction. Answer ¶ 1; 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 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 **xxxxxxx, 2024**.
- c. Expert Witnesses shall be disclosed on or before **xxxxxxx, 2024**, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before **xxxxxxx, 2024**.
- d. Discovery closes, including the hearing of all discovery motions, on **xxxxxxx, 2024**.
- e. Dispositive Motions shall be heard before **xxxxxxx, 2024**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on xxxxxx, 2024**.

4. [24-22538-E-11](#) **PLAZA ESTATES LLC**
[CAE-1](#)

**CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
6-11-24 [1]**

Debtor's Atty: Lewis Phon

Notes:
Continued from 8/1/24

Trustee Report at 341 Meeting filed: 8/5/24

[BAL-1] Order granting motion for relief from the automatic stay filed by Arixia Institutional Lending Partners, LLC filed 8/2/24 [Dckt 84]

[LP-2] Order authorizing employment of attorney [for Debtor] filed 8/26/24 [Dckt 86]

The Status Conference is XXXXXXX
--

SEPTEMBER 18, 2024 STATUS CONFERENCE

No updated Status Report has been filed by the Debtor in Possession. The 341 Meeting was continued to August 14, 2024, however, no updated report of that 341 Meeting is on the Docket. On August 2, 2024, the court entered an order granting relief from the automatic stay with respect to Debtor's single real estate asset.

At the Status Conference, XXXXXXX

AUGUST 1, 2024 STATUS CONFERENCE

The Debtor commenced this voluntary Chapter 11 Case on June 11, 2024. A review of the Docket on July 30, 2024, indicates that no Status Report has been filed and no Monthly Operating Report for June, 2024, has been filed.

At the Status Conference and related Motion for Relief Proceeding, at which the court granted the Motion to allow the creditor to proceed with a nonjudicial foreclosure sale against the Bankruptcy Estate's sole asset, the court addressed with the respective counsel the challenges faced in this Case and the failure of the Debtor in Possession to file Monthly Operating Reports and to provide insurance for the property of the Bankruptcy Estate.

The Status Conference is continued 2:00 p.m. on September 18, 2024.

5. [23-23242-E-7](#) **BRYAN GALLINGER**
[24-2038](#)
RHS-1
GALLINGER V. LEVICK FAMILY
TRUST ET AL

CONTINUED ORDER TO SHOW CAUSE
7-15-24 [13]

Items 5 thru 6

Plaintiff's Atty: Matthew V. Brady; Peter G. Macaluso
Defendant's Atty: unknown

Adv. Filed: 4/19/24
Reissued Summons: 6/10/24
Answer: none
Amd Complaint Filed: 7/31/24
Reissued Summons: 7/31/24

Nature of Action:
Recovery of money/property - other

Notes:

Continued from 8/14/24. Matthew V. Brady, counsel of record for the Plaintiff-Debtor in filing the original Complaint and the post Chapter 7 conversion Amended Complaint, Plaintiff-Debtor Bryan G Gallinger, and Peter Macaluso, Chapter 7 bankruptcy counsel for the Plaintiff-Debtor, to appear in person at the continued status conference - No Telephonic Appearance Permitted.

The Order to Show Cause is XXXXXXX
--

SEPTEMBER 18, 2024 HEARING

As the court has previously addressed, when the related Bankruptcy Case was converted to one under Chapter 7, the real party in interest plaintiff became the Chapter 7 Trustee. As of the August 14, 2024 prior Status Conference, there did not appear to be any communications between the counsel for the Plaintiff-Debtor and the Chapter 7 Trustee.

At the September 18, 2024 continued hearing, XXXXXXX

ORDER TO SHOW CAUSE

This Adversary Proceeding was commenced on April 19, 2024 by the filing of a Complaint by Plaintiff-Debtor Bryan Gallinger. Plaintiff-Debtor has engaged Matthew Brady, Esq. as his "Special

Counsel” in this Adversary Proceeding. Dckt. 1. Plaintiff-Debtor’s bankruptcy counsel in Chapter 13 Case 23-23242 is Peter Macaluso, Esq.

In reviewing the Complaint, there are several deviations from Federal court adversary proceeding litigation. Only the Plaintiff-Debtor is listed in the caption as the “Debtor” and there is no second caption listing the plaintiff and the defendants. *Id.*; p. 1. The Adversary Complaint states the following Causes of Action being asserted as part of the Objection to Claim:

- A. First Cause of Action.....Breach of Written Contract
- B. Second Cause of Action.....Fraud

Id.

The claims are being asserted against the “Levick Family Trust.” *Id.*, ¶ 1. The Adversary Complaint does not list the trustee of the Levick Family Trust as a defendant. The court has addressed in an unrelated adversary proceeding that a “trust” is not a separate legal entity that has standing or can hold property, but it is the trustee of the trust who has such rights, powers and duties. This includes the trustee, and not the trust, being either a plaintiff or defendant in a legal proceeding.

As addressed in *Presta v. Tepper*, 179 Cal.App. 4th 909, 914 (2009), it is the trustee of the trust that is the real party in interest and must be named as the plaintiff or defendant in any legal proceeding (emphasis added):

Most importantly for our purposes, “an ordinary express trust is not an entity separate from its trustees....” (*Powers v. Ashton* (1975) 45 Cal.App.3d 783, 787, 119 Cal.Rptr. 729, italics added.) “In contrast to a corporation which is a ‘... distinct legal entity separate from its stockholder and from its officers’ [citation]’ (*Merco Constr. Engineers, Inc. v. Municipal Court* [(1978)] 21 Cal.3d [724,] 729) and deemed a person within many legal constructs (Code Civ. Proc., § 17), **a ‘... trust is not a person but rather “a fiduciary relationship with respect to property.”** [Citations.] Indeed, “ ‘ “an ordinary express trust is not an entity separate from its trustees” ’ [citation].’ (*Moeller v. Superior Court* (1997) 16 Cal.4th 1124, 1132, fn. 3, italics added; *Pillsbury v. Karmgard* (1994) 22 Cal.App.4th 743, 753; see also Evid.Code, § 951.)” (*Ziegler v. Nickel* (1998) 64 Cal.App.4th 545, 548, 75 Cal.Rptr.2d 312.)

It is for this reason that a trust itself can neither sue nor be sued in its own name. Instead, **the real party in interest in litigation involving a trust is always the trustee.** (*Powers v. Ashton*, supra, 45 Cal.App.3d at p. 787, 119 Cal.Rptr. 729; Code Civ. Proc., § 369.)

See also, *Jo Redland Trust, U.A.D. 4-6-05 v. CIT Bank, N.A.*, 92 Cal.App. 5th 142, 156-157 (2023), holding that a complaint filed in the name of the trust may be amended to state the trustee of the trust as plaintiff, it concurs with *Presta*, stating:

MAM correctly points out that a trust is simply a collection of assets held for the benefit of designated beneficiaries (*Smith v. Cimmet* (2011) 199 Cal.App.4th 1381, 1390–1391), and as such, has no ability to sue or otherwise act independently from

a trustee. (*Portico Management Group, LLC v. Harrison* (2011) 202 Cal.App.4th 464, 473; *Greenspan v. LADT LLC* (2010) 191 Cal.App.4th 486, 521–522 [“because “[a] trust is not a legal entity,” it “cannot sue or be sued, but rather legal proceedings are properly directed at the trustee””]; Code Civ. Proc., § 680.280 [definition of “Person” does not include trust].) According to MAM, the problem here runs deeper than lack of capacity to sue. A trust lacks capacity to sue because it has no independent legal existence. As a Fourth District, Division Three panel explained in *Presta v. Tepper* (2009) 179 Cal.App.4th 909, 913–914, while a corporation is considered a jural person (Code Civ. Proc., § 17, subd. (b)(6)), a trust is not. A trust is merely “““a fiduciary relationship with respect to property.””” (*Presta*, at p. 914; accord, *Moeller v. Superior Court* (1997) 16 Cal.4th 1124, 1132, fn. 3.) Under no circumstances can a trust be legally vivified and given capacity to sue or be sued.

It appears that in addition to correcting the Caption, the complaint needs to be amended to name the trustee of the Levick Family Trust as the defendant in this Adversary Proceeding. A copy of the Sales Agreement is provided as an exhibit to the Complaint (Dckt. 6). On page 4 of 4 of the Sales Agreement it appears to be signed by Douglas Levick and Mel[illegible] Levick for the Levick Family Trust, and Ronald G Levick individually. Dckt. 6.

The Real Estate Transfer Disclosure Statement is signed by Douglas Levick for the Levick Family Trust (again indicating that he is a trustee of the Levick Family Trust) and Ronald Levick individually. Dckt. 6 at p. 21.

The Exhibits also include a Request to Initiate Mediation, on which Douglas F. Levick and Melba Levick, are identified as the Trustee of the Levick Family Trust. Ronald G Levick is identified as an additional party to the dispute.

On June 10, 2024, the Clerk of the Court Reissued the Summons in this Adversary Proceeding, which lists the Status Conference to be held on August 14, 2024. Dckt. 9. No certificate of service has been filed documenting the service of the reissued summons and Complaint.

Plaintiff-Debtor filed a Certificate of Service on May 15, 2024, relating to the service of the Complaint and original Summons that was issued on April 22, 2024, Dckt. 8, which identifies the following persons (other than the U.S. Trustee, Chapter 13 Trustee, and three counsel having been served electronically) having been served:

Melba Levick
c/o Terence Kilpatrick
3550 Watt Avenue, Suite 140
Sacramento, CA 95821

Ron Levick
c/o Terence Kilpatrick
3550 Watt Avenue, Suite 140
Sacramento, CA 95821

Douglas Levick
c/o Terence Kilpatrick

3550 Watt Avenue, Suite 140
Sacramento, CA 95821

Levick Family Trust
5426 Ydra Ct
Fair Oaks, CA 95628

Federal Rule of Bankruptcy Procedure 7004 specifies the service requirements for a Complaint and Summons. The real party in interest or its agent for service of process must be served. It may be that Terence Kilpatrick, Esq. has been designated by the three individuals and two trustees (though not expressly identified as being served as the trustee of the Levick Family Trust) as their respective agent for service of process. However, such attorney having “merely” appeared in the bankruptcy case does not make that attorney the agent for service of process for adversary proceedings or other motions filed in the bankruptcy case.¹

At the Status Conference, no appearance was made by the Plaintiff-Debtor. No Certificate of Service for the Reissued Summons (reissued on June 10, 2024) or Complaint to be served with the Reissued Summons has been filed.

**Dismissal Without Prejudice Pursuant
to Federal Rule of Civil Procedure 4(m)**

Federal Rule of Civil Procedure 4(m), which is incorporated into Federal Rule of Bankruptcy Procedure 7004 (a)(1), provides:

(m) Time Limit for Service. If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).

As stated above, the summons and complaint must be served within seven days of the issuance of the summons for service to be effective. In this Adversary Proceeding the Original Summons, issued on April 22, 2024, is stated to have been served by mail on May 10, 2024. Cert. of Serv., ¶ 4; Dckt. 8. That is eighteen (18) days after it was issued.

For the Reissued Summons that was issued by the Clerk on June 10, 2024, as of the court’s July 12, 2024 review of the Docket, no Certificate of Service has been filed.

¹ The Certificate of Service states that service was made pursuant to Federal Rule of Civil Procedure 5 and Federal Rule of Bankruptcy Procedure 9014. However, in commencing an adversary proceeding the complaint and summons must be served as required by Federal Rule of Civil Procedure 4 and Federal Rule of Bankruptcy Procedure 7004. Federal Rule of Bankruptcy Procedure 7004(3) requires that service of the summons and complaint must be made within 7 days of the issuance of the summons (which includes depositing it in the U.S. Mail when service may be made by mail).

This Adversary Proceeding was commenced on April 19, 2024. As of the July 12, 2024 review of the Docket, there is no Certificate of Service documenting timely service on any legally recognizable legal defendant. July 12, 2024 is eighty-one (81) days after the filing of the Complaint. That is nine days short of the 90-day period after which the court must dismiss the adversary proceeding (or for good cause shown, set a deadline for service).

August 14, 2024 Hearing

On July 31, 2024, in response to this Order to Show Cause, Plaintiff-Debtor's counsel Mr. Brady submitted a response. Mr. Brady states:

1. Mr. Brady used the names of the Sellers as depicted on the California Residential Purchase Agreement when naming defendants in the original complaint. Resp. 1:28-2:10, Docket 16.
2. His legal services ended with the conversion of the case from Chapter 13 to Chapter 7 and he has been waiting to find out if the property is being sold which might eliminate the need to have the adversary. Resp. 2:11-13, Docket 16.
3. Counsel intends to file an amendment to the complaint, simultaneously with the filing of this responsive pleading. *Id.* at 2:18-19.
4. As it relates to the process of service, the original adversary was achieved using service on Mr. Kilpatrick as the court file only had Mr. Kilpatrick's address for each of the named defendants, Douglas, Melba, and Ron. *Id.* at 2:20-23.
5. When he learned that the process he was following was wrong, he had the court reissue the summons. Mr. Brady then re-served everyone interested in his case. *Id.* at 2:23-24.

Mr. Brady also filed an Amended Complaint (Docket 20), Reissued Summons (Docket 21), and Certificate of Service for the Reissued Summons and Complaint (Docket 23) on July 31, 2024.

The only change in the Amended Complaint appears to be in the header of the Amended Complaint where Mr. Brady properly names the Defendants. Docket 20. The court notes that Fed. R. Civ. P. 15 states:

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course no later than:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

This Amended Complaint is outside the 21-day window prescribed in this Rule.

The Certificate of Service for the Amended Complaint shows that service was effectuated on the necessary parties at their address. Docket 18.

**Plaintiff-Debtor Not the
Real Party in Interest**

The court notes that Mr. Brady as Special Counsel for Brian Gallinger as the Plaintiff-Debtor, no longer represents is a party in interest who may bring an Amended Complaint in this Adversary Proceeding.

11 U.S.C. § 541(a)(1) states:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

Collier's Treatise on Bankruptcy explains, "[p]aragraph (1) is broad. It includes all kinds of property, tangible and intangible, causes of action, and all other forms of property." 5 COLLIER ON BANKRUPTCY ¶ 541.03. Therefore, the cause of action in this case is now property of the bankruptcy estate, of which is property only a trustee may exercise control over.

11 U.S.C. § 704(a)(1) states:

(a) The trustee shall—

(1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest. . .

Collier's Treatise on Bankruptcy again explains:

Trustees should bear in mind at all times that they are representatives of the estate, charged with doing whatever is necessary to advance its interests. Rights of action arising upon the contracts or property of the debtor, not yet resolved into suit, pass to the trustee, and should be asserted in the proper tribunal whenever necessary for the collection or preservation of the estate.

In reading 11 U.S.C. § 704 in conjunction with 11 U.S.C. § 541, it is clear only the Chapter 7 Trustee has rights to prosecute this lawsuit. In the event the Chapter 7 Trustee in this case decides the lawsuit is of inconsequential value to the Estate, a Motion to Abandon would put the lawsuit back in debtor's control, if granted by the court. There is no Motion to Abandon on the Docket as of August 9, 2024, and there is no indication that the Chapter 7 Trustee intends to prosecute this lawsuit.

Geoffrey Richards, the Chapter 7 Attorney for Plaintiff-Debtor's bankruptcy case, is the real party in interest, but did not appear at the August 14, 2024 hearing on the Order to Show Cause and related Status Conference for this Adversary Proceeding. Though it is early in the converted Chapter 7 Case, the court must have real parties in interest before it.

The hearing on the Order to Show Cause is continued to 2:00 p.m. on September 18, 2024. The court shall order that the Chapter 7 Trustee, Geoffrey Richards and his counsel (if any) shall attend the continued hearing on the Order to Show Cause and the related Status Conference in this Adversary Proceeding.

The court also orders Matthew V. Brady, Esq., counsel of record for the Plaintiff-Debtor in filing the original Complaint and the post Chapter 7 conversion Amended Complaint for Plaintiff-Debtor, Plaintiff-Debtor Bryan G. Gallinger, and Peter Macaluso, Esq., Chapter 7 Bankruptcy Counsel for the Plaintiff-Debtor, and each of them, to appear in person at the continued hearing on September 18, 2024 – NO TELEPHONIC APPEARANCE PERMITTED for the forgoing persons ordered to appear at the September 18, 2024 continued Hearing.

The court by separate order extends the deadline for Defendants to file an answer or other response pleading to and including October 4, 2024.

6. [23-23242-E-7](#) **BRYAN GALLINGER**
[24-2038](#)
CAE-1
GALLINGER V. LEVICK FAMILY
TRUST ET AL

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
7-31-24 [\[20\]](#)

Plaintiff's Atty: Matthew V. Brady; Peter G. Macaluso
Defendant's Atty: unknown

Adv. Filed: 4/19/24
Reissued Summons: 6/10/24
Answer: none
Amd Complaint Filed: 7/31/24
Reissued Summons: 7/31/24

Nature of Action:
Recovery of money/property - other

Notes:

Continued from 8/14/24. Matthew V. Brady, counsel of record for the Plaintiff-Debtor in filing the original Complaint and the post Chapter 7 conversion Amended Complaint, Plaintiff-Debtor Bryan G Gallinger, and Peter Macaluso, Chapter 7 bankruptcy counsel for the Plaintiff-Debtor, to appear in person at the continued status conference - No Telephonic Appearance Permitted.

The Status Conference is XXXXXXX
--

SEPTEMBER 18, 2024 STATUS CONFERENCE

As of the court's September 16, 2024 review of the Docket, nothing further has been filed in this Adversary Proceeding.

At the Status Conference, XXXXXXX

AUGUST 14, 2024 STATUS CONFERENCE

No appearance was made at the Status Conference by Matthew V. Brady, Esq., counsel of record for Plaintiff-Debtor Bryan G. Gallinger. The related Bankruptcy Case for Bryan Gallinger, which was converted to one under Chapter 7 on July 1, 2024, it appears that Geoffrey Richards, Chapter 7 Trustee, is

the real party in interest to either prosecute this Adversary Proceeding, settle the claims asserted therein, or abandon the claims to the Debtor. No appearance was made by Geoffrey Richards at the Status Conference.

The Status Conference is continued to 2:00 p.m. on September 18, 2024. The court shall order that the Chapter 7 Trustee, Geoffrey Richards and his counsel (if any) shall attend the continued Status Conference in this Adversary Proceeding.

The court also orders Matthew V. Brady, Esq., counsel of record for the Plaintiff-Debtor in filing the original Complaint and the post Chapter 7 conversion Amended Complaint for Plaintiff-Debtor, Plaintiff-Debtor Bryan G. Gallinger, and Peter Macaluso, Esq., Chapter 7 Bankruptcy Counsel for the Plaintiff-Debtor, and each of them, to appear in person at the continued Status Conference on September 18, 2024 – NO TELEPHONIC APPEARANCE PERMITTED for the forgoing persons ordered to appear at the September 18, 2024 continued Status Conference.

7. [24-22846-E-11](#) ISMOIL KASIMOV
[CAE-1](#)

**CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
6-28-24 [1]**

Debtor's Atty: David Foyil

Notes:

Continued from 8/14/24 by prior order of the court.

Trustee Report at 341 Meeting lodged: 8/20/24

[DEF-3] Debtor's Motion to Employ Bankruptcy Counsel filed 8/23/24 [Dckt 56]

Order to Show Case Re Dismissal of Case re filing fees filed 9/4/24 [Dckt 68], set for hearing 10/3/24 at 10:30 a.m.

The Status Conference is XXXXXXX
--

SEPTEMBER 18, 2024 STATUS CONFERENCE

Debtor Ismoil Kasimov commenced this voluntary Chapter 11 case on June 28, 2024. At the September 12, 2024 hearing, the court announced its Ruling that relief from the stay is granted as to two vehicles which the Debtor in Possession stated would be used in the business. Civ. Min.; Dckt. 77.

At the Status Conference, **XXXXXXX**

8. [23-23292-E-7](#) IAN LONG
[23-2105](#)
CAE-1
TRUSTED BRIDGE, LLC V. LONG

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
12-18-23 [\[1\]](#)

Item 8 thru 9

Plaintiff's Atty: Barry H. Spitzer, Christopher W. Peterman, Keith D. Ropp
Defendant's Atty: Patricia Wilson

Adv. Filed: 12/18/23

Answer: 1/22/24

Nature of Action:

Dischargeability - false pretenses, false representation, actual fraud

Dischargeability - fraud as fiduciary, embezzlement, larceny

Dischargeability - willful and malicious injury

Notes:

Continued from 7/2/24. Counsel for Plaintiff reporting that other causes of action will be dismissed, whether by Stipulation or Motion, and a proposed judgment will be lodged with the court.

[KDR-1] Order granting motion for summary judgment and summary adjudication filed 7/3/24 [Dckt 42]

The Status Conference is XXXXXXX
--

SEPTEMBER 18, 2024 STATUS CONFERENCE

On July 3, 2024, this court entered an Order granting the Motion for Summary Judgment for Plaintiff Trusted Bridge, LLC on the First Cause of Action for the obligation and that it is nondischargeable. Order; Dckt. 42. The Parties were to lodge with the court a proposed judgment pursuant thereto, with the other claims for relief being dismissed by the Parties.

At the Status Conference, **XXXXXXX**

MARCH 20, 2024 STATUS CONFERENCE

Pursuant to the Stipulation of the Parties the court continued the Status Conference to March 20, 2024. The continuance had been requested as the Parties and their counsel in conducting their Discovery Conference and other communications recognized that additional time to prepare for the scheduling in this Adversary Proceeding was required. The Stipulation provided for a discovery plan to be filed by March 19, 2024.

At the March 20, 2024 Status Conference the issue was raised that Plaintiff will be seeking the entry of a judgment determining that a State Court Judgment for Fraud is nondischargeable. The Parties agreed that before proceeding with discovery and setting other dates and deadlines, adjudication of such a motion was appropriate.

Plaintiff shall file and serve its Motion for Summary Judgment (or other proper motion) in this Adversary Proceeding based on the principles of Res Judicata and its sub-principles of Collateral Estoppel, and issue preclusion (and such other legal theories based on the State Court Judgment) the week of April 29, 2024.

Defendant-Debtor shall file and serve his Opposition pleadings to Plaintiff's Motion on or before May 24, 2024.

Plaintiff's Reply, if any, to the Opposition shall be filed and served on or before June 5, 2024.

The hearing on the Plaintiff's Motion for Judgment based on the State Court Judgment shall be conducted at 10:00 a.m. on June 25, 2024.

The court stays setting discovery and other dates and deadlines in this Adversary proceeding until after conclusion on the Plaintiff's forgoing Motion for Judgment.

9. [23-23292-E-7](#) IAN LONG
[24-2025](#)
CAE-1
HAMILTON V. LONG

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
3-21-24 [\[1\]](#)

Final Ruling: No appearance at the September 18, 2024 Status Conference is required.

Plaintiff's Atty: Robert L. Hamilton
Defendant's Atty: unknown

Adv. Filed: 3/21/24
Reissued Summons: 7/18/24
Answer: none

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

Notes:
Continued from 7/10/24.

[CAE-1] Reissued Summons 7/18/24 [Dckt 11]; Served 7/20/24 [Dckt 12]

Request for Entry of Default by Plaintiff(s) filed 9/4/24 [Dckt 13]; Entry of Default and Order Re: Default Judgment Procedures filed 9/5/24 [Dckt 15]

The Status Conference is continued to 2:00 p.m. on November 13, 2024, to afford Plaintiff the opportunity to prosecute the Motion for Entry of Default Judgment.

SEPTEMBER 18, 2024 STATUS CONFERENCE

On September 9, 2024, the default of Defendant Ian Long was entered. Dckt. 15. Plaintiff must now file a motion for entry of default judgment and set it for hearing.

The Status Conference is continued to 2:00 p.m. on November 13, 2024, to afford Plaintiff the opportunity to prosecute the Motion for Entry of Default Judgment.

The court shall issue an order in substantially the following form:

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

The Adversary Proceeding Status Conference having been conducted by the court, and upon review of the pleadings, reports of counsel, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to **2:00 p.m. on November 13, 2024**, to afford Plaintiff the opportunity to prosecute the Motion for Entry of Default Judgment.

FINAL RULINGS

10. [23-22217-E-13](#) WLODZIMIERZ LITWIN CONTINUED STATUS CONFERENCE RE:
[24-2042](#) COMPLAINT
CAE-1 5-1-24 [1]
LITWIN V. MEB TRUST IV, U.S.
BANK TRUST NATIONAL

Final Ruling: No appearance at the September 18, 2024 Status Conference is required.

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: unknown

Adv. Filed: 5/1/24
Answer: none

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

Notes:
Continued from 7/10/24. Counsel for the Plaintiff-Debtor reported that a settlement of the State Court Litigation and this litigation are being finalized and requested the court continue the Status Conference.

Statement of Information [As Ordered By the Court] filed 8/19/24 [Dckt 17]

Updated Plaintiff's Status Conference Statement filed 9/9/24 [Dckt 19]

The Status Conference is continued to 2:00 p.m. on November 13, 2024.
--

SEPTEMBER 18, 2024 STATUS CONFERENCE

On September 9, 2024, Plaintiff Wlodzimierz Litwin filed an Updated Status Report advising the court that this matter has been settled and a Motion to Approve the Settlement is set for hearing on October 3, 2024, in the related Chapter 7 case. The settlement fully resolves this dispute, clears title to Plaintiff-Debtor's property, and provides for a withdrawal of Proof of Claim 28 in the Chapter 7 Case. 23-22217; Motion to Approve Settlement, Dckt. 119.

The court continues the Status Conference to 2:00 p.m. on November 13, 2024.

The court shall issue an 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 Adversary Proceeding Status Conference having been continued to September 18, 2024, the Plaintiff-Debtor having filed an Updated Status Report notifying the court that this Adversary Proceeding has been settled, the hearing on the Motion to Approve Settlement being set for October 3, 2024, in the related Chapter 7 Case, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to **2:00 p.m. on November 13, 2024.**

11. [24-22531](#)-E-11 R & A ENTERPRISES, LLC **CONTINUED STATUS CONFERENCE RE:**
[CAE-1](#) **VOLUNTARY PETITION**
6-10-24 [[1](#)]

SUBCHAPTER V

Final Ruling: No appearance at the September 18, 2024 Status Conference is required.

Debtor's Atty: Stephen M. Reynolds

Notes:

Continued from 8/1/24. Counsel for the Debtor/Debtor in Possession reporting that a stipulation has been reached for further use of cash collateral.

Operating Reports filed: 8/16/24; 9/5/24

Trustee Report at 341 Meeting lodged: 8/13/24; 9/6/24

[RLC-1] Stipulation for Use of Cash Collateral filed 8/13/24 [Dckt 44]; Order granting filed 8/16/24 [Dckt 46]

[RLC-3] Stipulation to Continue Hearing on Motion to Confirm Plan filed 8/15/24 [Dckt 45]; Order granting filed 8/16/24 [Dckt 47]

The Status Conference is continued to 2:00 p.m. on November 13, 2024.
--

SEPTEMBER 18, 2024 STATUS CONFERENCE

Pursuant to a Stipulation between the Debtor/Debtor in Possession, the Subchapter V Trustee and Patriot Bank, N.A., the confirmation hearing has been continued to 10:30 a.m. on October 3, 2024.

Order; Dckt. 46. The court has entered its order authorizing the use of cash collateral through October 31, 2024.

The U.S. Trustee reports that the 341 Meeting has now been concluded. Sept. 6, 2024 Docket Entry Report.

The Status Conference is continued to 2:00 p.m. on November 13, 2024.

AUGUST 1, 2024 STATUS CONFERENCE

The Debtor commenced this voluntary Subchapter V Case on June 10, 2024. The court has entered an Interim Order authorizing the use of cash collateral through and including September 30, 2024. Order; Dckt. 37.

The Subchapter V Plan was filed on June 17, 2024, and the confirmation hearing is set for August 22, 2024. The deadline for filing Oppositions to Confirmation is August 8, 2024.

The Debtor/Debtor in Possession filed a Status Conference Report on July 18, 2024. Dckt. 39. In it the Debtor/Debtor in Possession summarizes the economic events which led up to the filing of the current Bankruptcy Case.

It is further stated that while the liquidation value for the automated carwash business and property is \$3,700,000, the Debtor/Debtor in Possession asserts that its operating value is much higher. The Debtor/Debtor in Possession does not anticipate filing any motions to value the secured claims of creditors.

The main creditor in this Bankruptcy is Patriot Bank, which has a secured claim which is asserted by the Bank to be in excess of \$3,750,000 (Opposition to Motion to Use Cash Collateral, ¶ A.2.; Dckt. 25) and the Debtor/Debtor in Possession is working with the Bank to achieve a consensual Plan.

At the Status Conference, counsel for the Debtor/Debtor in Possession reported that a stipulation has been reached for further use of cash collateral.

A Motion requesting relief from U.S. Trustee approved banks requirement in light of there not being any such banks in Yreka that will open an account for the Debtor in Possession.

The Status Conference is continued to 2:00 p.m. on September 18, 2024.

The court shall issue an order in substantially the following form:

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

The Subchapter V Status Conference having been scheduled by the court, the confirmation hearing having been continued, and upon review of the pleadings, reports of counsel, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to **2:00 p.m. on November 13, 2024.**

Final Ruling: No appearance at the September 18, 2024 Status Conference is required.

Debtor's Atty: David C. Johnston

Notes:

Continued from 7/10/24

Trustee Report at 341 Meeting lodged: 7/22/24; 8/2/24

[DCJ-4] Debtor's Motion to Confirm Chapter 12 Plan (July 25, 2024) filed 7/25/24 [Dckt 43], set for hearing 9/12/24 at 11:30 a.m.

[DCJ-4] Chapter 12 Plan (July 25, 2024) filed 7/25/24 [Dckt 45], set for hearing 9/12/24 at 11:30 a.m.

[DCJ-4] Stipulation Between Debtor and Chapter 12 Trustee Extending Time for Objection to Debtor's Plan filed 8/27/24 [Dckt 48]

<p>The Status Conference is continued to 2:00 p.m. on November 13, 2024.</p>

SEPTEMBER 18, 2024 STATUS CONFERENCE

The confirmation hearing for Debtor in Possession's Chapter 12 Plan has been continued to October 3, 2024. Order; Dckt. 49. This was pursuant to a stipulation and joint *ex parte* motion of the Debtor in Possession and the Chapter 12 Trustee.

The Status Conference is continue to 2:00 p.m. on November 13, 2024.

The court shall issue an order in substantially the following form:

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

The Chapter 12 Status Conference having been conducted by the court, and upon review of the pleadings, reports of counsel, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to **2:00 p.m. on November 13, 2024.**