

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

September 21, 2017, at 11:00 a.m.

1. [11-27845-E-11](#) IVAN/MARETTA LEE
[15-2194](#) BMV-4
LEE ET AL V. CITY OF
SACRAMENTO COMMUNITY

**CONTINUED MOTION TO DISMISS
COUNTERCLAIM
7-27-17 [[162](#)]**

Final Ruling: No appearance at the September 21, 2017 hearing is required.

The Motion to Dismiss Counterclaim is granted.

City of Sacramento Community Development Department Housing and Dangerous Building Division and City of Sacramento and Bank of America, N.A., (“Defendants”) move for the court to dismiss their counterclaim in this Adversary Proceeding pursuant to Federal Rule of Civil Procedure 41(a)(2). Defendants argue that the court has already adjudicated their claims in the underlying complaint in Defendants’ favor against Ivan Lee and Maretta Lee (“Plaintiffs”).

AUGUST 31, 2017 HEARING

At the hearing, the court granted a request for the matter to be continued to 11:00 a.m. on September 21, 2017. Dckt. 179.

RULING

Defendants having requested that their counterclaim be dismissed; no prejudice to Plaintiffs appearing by dismissal of the counterclaim; Defendants having the right to request dismissal of the counterclaim pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 7041; the Motion is granted, and Defendants’ counterclaim 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.

September 21, 2017, at 11:00 a.m.

The Motion to Dismiss filed by City of Sacramento Community Development Department Housing and Dangerous Building Division and City of Sacramento and Bank of America, N.A., (“Defendants”) having been presented to the court, the City requesting that the hearing be continued, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss Counterclaim is granted, and Defendants’ counterclaim in Adversary Proceeding 15-02194 is dismissed without prejudice.

2. [11-27845-E-11](#) IVAN/MARETTA LEE
[15-2194](#) BMV-5
LEE ET AL V. CITY OF
SACRAMENTO COMMUNITY

**CONTINUED MOTION FOR SUMMARY
JUDGMENT**
7-27-17 [[166](#)]

Final Ruling: No appearance at the September 21, 2017 hearing is required.

The Motion is granted, and judgment shall be entered in this Adversary Proceeding as set forth in the prior Orders granting Summary Judgment for the Defendants herein.

City of Sacramento Community Development Department Housing and Dangerous Building Division and City of Sacramento and Bank of America, N.A., (“Defendants”) move for summary judgment in this Adversary Proceeding against Ivan Lee and Maretta Lee (“Plaintiffs”). Defendants assert that the court has already granted a motion for summary judgment in this adversary proceeding for Bank of America, N.A., and has already granted a motion for judgment on the pleadings for City of Sacramento Community Development Department Housing and Dangerous Building Division and City of Sacramento. Additionally, Defendants argue that the court did not enter separate judgments for Defendants because of pending crossclaims and counterclaims.

The court has granted the motions as stated by Defendants. At the February 2, 2017 hearing, the court entertained a motion for judgment on the pleadings brought by City of Sacramento Community Development Department Housing and Dangerous Building Division and City of Sacramento and treated it like a motion for summary judgment. Dckt. 142. The court granted the motion and entered judgment for

City of Sacramento Community Development Department Housing and Dangerous Building Division and City of Sacramento against Plaintiffs. Dckt. 144.

The court has granted Bank of America N.A.'s Motion for Summary Judgment as set forth in the Civil Minutes from the March 9, 2017 hearing on that Motion. Dckt. 151. As set forth in the Civil Minutes, claims against Bank of America, N.A., are stated only in the second, third, and fourth causes of action in the Second Amended Complaint. Summary Judgment has been granted for Bank of America, N.A., and against the Plaintiff-Debtors for all claims asserted against Bank of America, N.A., in the Second Amended Complaint. Order, Dckt. 157.

In granting the Summary Judgment Motions for both of the two defendants, the court noted that crossclaims and counterclaims were pending and that the court would not enter separate judgments for the defendants at that time. However, if either defendant believed that proper grounds existed for entry of the judgment, then they could make such a request by noticed motion pursuant to Federal Rule of Civil Procedure 54(b) and Federal Rule of Bankruptcy Procedure 7054. Orders, Dckts, 144 and 157.

Request for Entry of Judgment

Though presented as a Motion for Summary Judgment, there do not appear to be any issues upon which the court is called on to make any findings of fact or conclusions of law that are at issue in this Adversary Proceeding. The court has granted summary judgment for each of the defendants in this Adversary Proceeding on all claims made against them in this Adversary Proceeding.

The only remaining unresolved claims asserted were those in the Counterclaim against Plaintiff-Debtor and in the Crossclaim against Bank of America, N.A., filed by the City of Sacramento. Answer with Counter and Crossclaim, p. 16–21; Dckt. 100.

Pursuant to the Motion to Dismiss Without Prejudice, the Counterclaim against Plaintiff-Debtor has been dismissed. DCN: BMV-4.

Additionally, on September 19, 2017, the City of Sacramento and Bank of America, N.A., filed a Stipulation pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) and Federal Rule of Bankruptcy Procedure 7041 dismissing the City of Sacramento's Cross-Claim against Bank of America, N.A. With that dismissal confirmed on the record, no claims remain to be adjudicated in this Adversary Proceeding.

The Motion is granted, and judgment shall be entered for the City of Sacramento and Bank of America, N.A., and each of them, the Defendants, and against Ivan and Maretta Lee, and each of them, the Plaintiff-Debtor.

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 Motion filed by City of Sacramento Community Development Department Housing and Dangerous Building Division and City of Sacramento and Bank of America, N.A., (“Defendants”) having been presented to the court, upon review of the prior orders granting summary judgment for both the Defendants on all claims asserted in the complaint and the dismissals of the counterclaim and the cross-claim, there being no unresolved issues or claims in this Adversary Proceeding, and good cause appearing,

IT IS ORDERED that the Motion is granted, and judgment shall be entered for the named defendants Sacramento Community Development Department Housing and Dangerous Building Division and City of Sacramento and Bank of America, N.A., and each of them, and against Ivan Lee and Maretta Lee (“Plaintiff-Debtors”) in this Adversary Proceeding 15-02194 pursuant to the Orders granting each of the Defendants summary judgment on the respective claims against them (Orders, Dckts. 144 and 157).