

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman

Bankruptcy Judge

Sacramento, California

September 24, 2014 at 9:30 A.M.

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| 1. | <u>13-30420</u> -B-7 STEPAN KIRCHU
<u>13-2348</u>
LEE V. KIRCHU | CONTINUED STATUS CONFERENCE RE:
COMPLAINT
11-4-13 [<u>1</u>] |
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Tentative Ruling: None.

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| 2. | <u>14-21034</u> -B-7 RICHARD FECTION
<u>14-2175</u>
NGUYEN V. FECTION ET AL | STATUS CONFERENCE RE: AMENDED
COMPLAINT
7-24-14 [<u>7</u>] |
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Tentative Ruling: The status conference is concluded. On or before October 3, 2014, the plaintiff shall obtain a reissued summons. On or before October 3, 2014, the plaintiff shall serve the reissued summons, the first amended complaint (the "FAC") and the Order to Confer on Initial Disclosures and Setting Deadlines (the "OTC") (Dkt. 5) on the defendants in accordance with Fed. R. Bankr. P. 7004. This adversary proceeding will next appear on the court's calendar on the date set for a status conference in the reissued summons. Failure to comply with the orders herein may result in the imposition of sanctions under Fed. R. Bankr. P. 7016, incorporating Fed. R. Civ. P. 16(f). Such sanctions may include any of the sanctions listed in F.R.Civ.P. 37(b)(2)(A)(ii)-(vii), including dismissal of the action for plaintiffs' failure to comply.

The FAC names the debtor, Copia Investing, Inc., Christopher Scott, and chapter 7 trustee Hank Spacone as defendants in the adversary proceeding. The plaintiff's certificates of service of the reissued summons (Dkt. 8) and FAC (Dkt. 10, 11) do not show that Christopher Scott or Hank Spacone were served. The certificates of service also do not show that Copia Investing, Inc. was properly served pursuant to Fed. R. 7004(b)(3), i.e. to the attention of an officer, a managing or general agent or to any other agent authorized by law to receive service of process. Finally, the certificates of service show that service was effected on August 19, 2014 and August 20, 2014, 26 days and 27 days, respectively, after issuance of the reissued summons. The reissued summons was stale at the time it was served because it was not served within 14 days of its issuance. Fed. R. Bankr. P. 7004(e). Therefore, the status conference is continued to allow the plaintiff to obtain a reissued summons and to properly serve it, the FAC and the OTC.

The court will issue a minute order.

3. [14-21034](#)-B-7 RICHARD FECTEAU STATUS CONFERENCE RE: COMPLAINT
[14-2218](#) 7-28-14 [[1](#)]
U.S. TRUSTEE V. FECTEAU

Tentative Ruling: The status conference is concluded. The court will issue a scheduling order based on the schedule set forth in the plaintiff United States trustee's supplemental status conference statement filed on September 17, 2014 (Dkt. 14).

4. [11-21435](#)-B-13 KIRK/LENA CHAMBERS STATUS CONFERENCE RE: COMPLAINT
[14-2207](#) 7-17-14 [[1](#)]
CHAMBERS ET AL V. HSBC
MORTGAGE SERVICES INC.
ADV. DISMISSED 9/9/14

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The status conference is removed from the calendar. The adversary proceeding was dismissed by notice of dismissal filed on September 9, 2014 (Dkt. 9).

5. [14-21946](#)-B-7 DESIREE LEWIS STATUS CONFERENCE RE: COMPLAINT
[14-2126](#) 5-9-14 [[1](#)]
BROWN ET AL V. LEWIS

Tentative Ruling: The status conference is continued to November 19, 2014, at 9:30 a.m. If the adversary proceeding is not resolved by October 21, 2014, the parties shall comply with the court's Order to Confer on Initial Disclosures and Setting Deadlines (Dkt. 5) (the "OTC") as if the date of the continued status conference was the status conference date set in the original summons (Dkt. 3), including, inter alia, development of a joint proposed discovery plan. Failure to comply with the orders herein or with the OTC may result in the imposition of sanctions under Fed. R. Bankr. P. 7016, incorporating Fed. R. Civ. P. 16(f). Such sanctions may include any of the sanctions listed in F.R.Civ.P. 37(b)(2)(A)(ii)-(vii), including dismissal of the action for plaintiff's failure to comply or the striking of defendant's answer and the entry of defendant's default for defendant's failure to comply.

The status conference is continued because there is no evidence of compliance with the OTC on the court's docket. The OTC contains specific instructions requiring, inter alia, the parties to meet at a discovery

conference, to make initial disclosures to one another and to develop a joint discovery plan. This aids the court in resolving the adversary proceeding by establishing a schedule and procedure by which the parties may discover evidence necessary to support their respective positions.

The court will issue a minute order.

6. [07-29855-B-13](#) GWENDOLYN/HORACE SIMPSON STATUS CONFERENCE RE: COMPLAINT
[14-2213](#) 7-22-14 [[1](#)]
SIMPSON ET AL V. CHASE BANK,
N.A. ET AL

Tentative Ruling: The plaintiff debtors shall appear at the status conference prepared to discuss the following:

1.) The identity of the defendant "Chase Bank, N.A.," named as a defendant in the complaint. The court takes judicial notice that the national bank which does business as "Chase" is JPMorgan Chase Bank, N.A., a subsidiary of JPMorgan Chase & Co. The debtor alleges in the complaint that "Chase Bank, N.A." is formerly known as "Chase Manhattan Mortgage." The court also takes judicial notice that in their parent chapter 13 case the debtors filed a motion to value the collateral of "Chase Home Finance, LLC," with respect to a claim secured by a second priority deed of trust on their residence, which motion was also served on "Chase Home Finance LLC."

The debtors appear to treat these entities as one and the same, even though they appear to be separate entities, insofar as one is identified as a limited liability company and the other as a national bank. This raises potential due process concerns regarding proper service of the motion to value collateral and/or the complaint. The debtors shall appear at the status conference prepared to discuss the identity of the "Chase" entity against whom they intend to proceed in this adversary proceeding.

2.) The identity of the defendant "WMC Mortgage Corp.," named as a defendant in the complaint. The debtors allege in the complaint that WMC Mortgage Corp. holds a second deed of trust on the debtors' residence, and also refer in the complaint to "Chase/WMC Mortgage Corp." as though they are the same entity. However, the court notes that the debtors did not serve any motion to value collateral on "WMC Mortgage Corp." or "Chase/WMC Mortgage Corp." in the parent chapter 13 case. Furthermore, the court notes that the summons and complaint in this adversary proceeding were not served on WMC Mortgage Corp. Again, this raises potential due process concerns regarding proper service of the motion to value collateral and/or the complaint. The debtors shall appear at the status conference prepared to discuss the identity of WMC Mortgage Corp. and whether they intend to proceed against it in this adversary proceeding.

7. [08-32280](#)-B-7 HEAVEN INVESTMENT
[14-2215](#) HOLDING CORP.
SMITH V. SELECT REV. MTG., LLC

STATUS CONFERENCE RE: COMPLAINT
7-24-14 [[1](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The status conference is continued to November 19, 2014, at 9:30 a.m. If the adversary proceeding is not resolved by October 21, 2014, the parties shall comply with the court's Order to Confer on Initial Disclosures and Setting Deadlines (Dkt. 5) (the "OTC") as if the date of the continued status conference was the status conference date set in the original summons (Dkt. 3), including, inter alia, development of a joint proposed discovery plan. Failure to comply with the orders herein or with the OTC may result in the imposition of sanctions under Fed. R. Bankr. P. 7016, incorporating Fed. R. Civ. P. 16(f). Such sanctions may include any of the sanctions listed in F.R.Civ.P. 37(b)(2)(A)(ii)-(vii), including dismissal of the action for plaintiff's failure to comply or the striking of defendant's answer and the entry of defendant's default for defendant's failure to comply.

The status conference is continued because there is no evidence of compliance with the OTC on the court's docket.

The court will issue a minute order.