

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

October 12, 2022 at 2:00 p.m.

1. [17-25403-E-13](#) **BYLLIE DEE**
[21-2070](#)

**DEE V. BDM MORTGAGE SERVICES,
INC. ET AL**

**PRE-TRIAL CONFERENCE RE:
FIRST AMENDED COMPLAINT -
VIOLATION OF AUTOMATIC
STAY
9-28-21 [68]**

Plaintiff's Atty: Pro Se

Defendant's Atty: Eric A. Handler; Jessica M. Takano

Adv. Filed: 9/28/21

Answer: 12/22/21

Amd. Cmplt. Filed: 7/14/22

Answer: 8/1/22

Nature of Action:

Recovery of money/property - turnover of property

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

Notes:

Scheduling Order -

Initial disclosures by 1/20/22

Close of discovery 7/8/22

Dispositive motions heard by 8/18/22

First Amended Complaint filed 7/17/22 [Dckt 68]; Answer to First Amended Complaint filed 8/1/22 [Dckt 74]

Order Approving Resolution Advocate and Assignment to the Bankruptcy Dispute Resolution Program filed 9/30/22 [Dckt 75]

[DON-2] Defendants' Pretrial Statement filed 9/30/22 [Dckt 78]

SUMMARY OF COMPLAINT

Byllie Dee, Plaintiff-Debtor, filed the First Amended Complaint on Jul 17, 2022. Dckt. 68. In the First Amended Complaint Plaintiff-Debtor asserts having a 33 1/3 ownership interest in Saints' Rest Missionary Baptist Church Inc. ("Church"). Church is asserted to be the real owner of "Real Property." Plaintiff-Debtor asserts to be the holder of a Note issued by Church, for which he was given a deed of trust against the Properties ("P-DOT"). The P-DOT was recorded subsequent to Defendants' deed of trust ("D-DOT"), which it is alleged that Defendants requested.

On November 1, 2017 Defendants posted a Notice of Sale for the D-DOT. On November 22, 2017 a nonjudicial foreclosure sale was conducted on the D-DOT. This was without seeking relief from the automatic stay in Plaintiff-Debtor's bankruptcy case. ^{Fn.1.}

FN. 1. Plaintiff-Debtor's Chapter 13 Bankruptcy Case was filed on August 15, 2017 and dismissed on March 26, 2018. 17-25403. On Schedule A/B filed on August 29, 2017, Plaintiff-Debtor did not list any Notes issued by Church as an asset of the Debtor. *Id.*, Dckt. 10.

On November 16, 2017, an Amended Schedule A/B was filed. *Id.*, Dckt. 42. No Notes issued by Church are listed as an asset of Debtor.

On Original Schedule D (filed August 29, 2017) Defendants are not listed as a creditor having a secured claim. *Id.*, Dckt. 10. On Amended Schedule D (filed November 16, 2017) Defendant BDM is listed as having a contingent secured claim in the amount of (\$58,000), for which the collateral is identified as "COMM." *Id.*, Dckt. 42. On Amended Schedule A/B Plaintiff-Debtor added a new real property not listed on Original Schedule A/B, which is identified as 5600 International Blvd, Oakland, California, and the type of property is described as "COMM." *Id.* Plaintiff-Debtor states that he owns that property in fee simple and there are other persons who have an interest in the Property.

The Complaint alleges that Defendants were listed on Schedule D in Plaintiff-Debtor's Bankruptcy Case and noticed of the filing of the Bankruptcy Case. The Amended Complaint directs the court to "Docket 1" as the source of this information.

In the Chapter 13 Bankruptcy Case, Dckt. 1 is just the Petition and Certificate of Credit Counseling. 17-25403; Dckt. 1. In this Adversary Proceeding Docket 1 is the Original Complaint, to which there are a number of attachments, but they do not include Schedule D or the mailing matrix in the Bankruptcy case.

In the Bankruptcy Case, Docket 4 is the Mailing Matrix filed by Plaintiff Debtor. 17-25403; Dckt. 4. Defendants are not listed on the Mailing Matrix. An Amended Mailing was filed on October 30, 2017, and Defendant BDM is included on that list. *Id.*, Dckt. 23.

Following the nonjudicial foreclosure sale Defendants caused the locks to be changed on the "property" (not specifically identified). Plaintiff-Debtor filed police reports, including for items missing from the Real Property.

Then Defendants commenced an unlawful detainer proceeding to remove Plaintiff-Debtor from the Real Property. This was in January 2018 (while Plaintiff-Debtor's bankruptcy case was still pending).

In the Amended Complaint Plaintiff-Debtor does not allege that he was the owner of the Real Property, but had an unrecorded deed of trust on the Real Property. Church is not alleged to be a debtor in the Bankruptcy Case.

SUMMARY OF ANSWER

BDM Mortgage Services, Inc., Rudy Grant Wilson, BDM Loan Services, Inc., Christopher M. Herrmann, Pamela Herrmann, Andrea Michele Eluting, George Stetler Warrick, Jr., Melodia Loquinario Warrick, Robert C. Gaby, Dennis D. Johnson, Carol A. Johnson, Mark A. Henn, Debra L. Henn, Amy H. Isabella, Pensco Trust Company, Robert R. Dizon, Cristina V. Dizon, and Rodolfo G. De Leon (collectively "Defendants") filed their Answer to the First Amended Complaint. Dckt. 74. They admit and deny specific allegations in the First Amended Complaint. Several Affirmative Defenses are stated.

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)(K), (L). First Amended Complaint ¶ 2; Dckt. 68. In its Answer, Defendants do not deny, and thereby admit (Fed. R. Civ. P. 8(b)(6), Fed. R. Bankr. P. 7008) admit the allegations of jurisdiction and core proceedings. Answer ¶ 2; Dckt. 74. (This is confirmed in Defendants Pretrial Conference Statement. To the extent that any issues in the existing Complaint as of the Status Conference at which the Pretrial 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

The court shall issue an Trial Setting in this Adversary Proceeding setting the following dates and deadlines:

- A. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1.
- B. Plaintiff shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, 2022.
- C. Defendant shall lodge with the court and serve their Direct Testimony Statements and Exhibits on or before -----, 2022.
- D. The Parties shall lodge with the court, file, and serve Hearing Briefs and Evidentiary Objections on or before -----, 2022.
- E. Oppositions to Evidentiary Objections, if any, shall be lodged with the court, filed, and served on or before -----, 2022.
- F. The Trial shall be conducted at ----x.m. on -----, 2022.

Defendants filed the required Pretrial Statement on September 30, 2022. Dckt. 78. Plaintiff-Debtor has not filed the required Pretrial Statement.

Plaintiff-Debtor

Defendants

<p>Jurisdiction and Venue:</p> <p>1. 28 U.S.C. 157(a) and § 1334; and the claims asserted are core proceedings pursuant to 28 U.S.C. § 157(b)(2)(K) and (L). First Amended Complaint, ¶ 2.</p>	<p>Jurisdiction and Venue:</p> <p>1. 28 U.S.C. §§ 157(a) and 1334 are the bases of federal jurisdiction and venue. There are no pending disputes concerning jurisdiction or venue. Counts I and II are core claims</p>
<p>Plaintiff-Debtor's Asserted Undisputed Facts: None</p>	
<p>Defendants Asserted Undisputed Facts:</p> <p>1. Defendants made the loan (the "Loan") to the Saints Rest Missionary Baptist Church (the "Church"), secured by the real property at 5600 International Boulevard in Oakland, California (the "Property").</p> <p>2. Defendant BDM Mortgage Services, Inc. ("BDM") was the Appointed Trustee in the deed of trust for the Loan.</p> <p>3. Debtor Byllie Dee, who is also known as James Lawson, Jr. ("Debtor"), filed for bankruptcy under Chapter 13 of Title 11 of the United States Code on August 15, 2017.</p> <p>4. Debtor's Chapter 13 bankruptcy case was first dismissed by the Court on March 26, 2018 (No. 17-25403, Doc. 145), then reopened on November 14, 2018 (No. 17-25403, Doc. 208), and finally terminated on January 4, 2019 (No. 17-25403, Doc. 215).</p> <p>5. Debtor sent BDM a notice of his bankruptcy on or around November 22, 2017.</p> <p>6. Debtor is not in the chain of title and has never had a recorded interest in the Property</p> <p>7. When BDM received the bankruptcy notice, BDM responded that it did not know who "Byllie Dee" was and that "Byllie Dee" does not appear as having an ownership interest in the property.</p> <p>8. BDM asked for further documentation and explained that without further documentation the foreclosure sale would proceed.</p> <p>9. The foreclosure sale took place on November 22, 2017.</p> <p>10. The Church, Debtor, and certain tenants refused to vacate the Property after the foreclosure.</p> <p>11. BDM filed an unlawful detainer action against the Church, Debtor, and certain tenants. Debtor was dismissed from the case shortly thereafter. BDM, the Church, and tenants</p>	

<p>reached a settlement.</p> <p>12. Debtor still resides at the Property</p>	
<p>Plaintiff-Debtor Disputed Facts:</p> <p>1. None Stated</p>	<p>Defendants Disputed Facts:</p> <p>1. Whether Debtor ever had any ownership interest in the Property.</p> <p>2. Whether BDM was ever provided with or shown any unrecorded document(s) indicating that Debtor had an ownership interest in the Property.</p> <p>3. The reasons Debtor waited almost four years after the foreclosure sale to bring this adversary proceeding.</p> <p>4. Whether Debtor behaved inequitably and has unclean hands.</p> <p>5. In the event a violation of the automatic stay is found, whether Debtor suffered any compensable damages attributable to acts of BDM.</p>
<p>Disputed Evidentiary Issues:</p> <p>1. None Stated</p>	<p>Disputed Evidentiary Issues:</p> <p>1. None Identified</p>
<p>Relief Sought:</p> <p>1. None Stated</p>	<p>Relief Sought:</p> <p>1. Dismissal of all of Plaintiff-Debtor's claims.</p>
<p>Points of Law:</p> <p>1. None Stated</p>	<p>Points of Law:</p> <p>1. Ownership of property by a corporation does not create ownership of the property by shareholders of the corporation.</p> <p>2. Laches. <i>In re Bostanian</i>, 41 F. App'x 66, 67 (9th Cir. 2002); <i>see also In re Alta Gold Co.</i>, 236 F. App'x 266, 267 (9th Cir. 2007)</p>

	3. Unclean Hands; Estoppel. <i>In re Cinematronics, Inc.</i> , 111 B.R. 892, 901 (Bankr. S.D. Cal. 1990).																																	
Abandoned Issues: 1. None Stated	Abandoned Issues: 1. None Identified																																	
Witnesses: 1. None for Plaintiff-Debtor’s case in chief.	Witnesses: 1. Rudy De Leon 2. Dan Aranda																																	
Plaintiff-Debtor’s Exhibits: 1. None for Plaintiff-Debtor’s case in chief.																																		
Defendants’ Exhibits: <table><tr><td>#</td><td>Date</td><td>Documents</td></tr><tr><td>1</td><td>November 27, 1972</td><td>Grant Deed (BDM000103-04)</td></tr><tr><td>2</td><td>November 27, 1972</td><td>Deed of Trust and Assignment of Rents (BDM000105-06)</td></tr><tr><td>3</td><td>April 25, 1975</td><td>Grant Deed (BDM000101-02)</td></tr><tr><td>4</td><td>August 9, 2012</td><td>Deed of Trust, Assignment of Leases and Tents, Fixture Filing, and Security Agreement; Request for Notice (BDM000068-100)</td></tr><tr><td>5</td><td>October 14, 2014</td><td>Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing for Equity Revolving Line of Credit (BDM000042-67)</td></tr><tr><td>6</td><td>December 30, 2015</td><td>Loan Documents Sent to BDM (BDM000182-200)</td></tr><tr><td>7</td><td>February 2, 2016</td><td>Email from Dan Aranda to Pastor Lawson</td></tr><tr><td>8</td><td>February 11, 2016</td><td>Deed of Trust</td></tr><tr><td>9</td><td>February 24, 2016</td><td>Deed of Trust (BDM000033-41)</td></tr><tr><td>10</td><td>June 15, 2016</td><td>Email exchange between Dan Aranda and Pastor Lawson</td></tr></table>		#	Date	Documents	1	November 27, 1972	Grant Deed (BDM000103-04)	2	November 27, 1972	Deed of Trust and Assignment of Rents (BDM000105-06)	3	April 25, 1975	Grant Deed (BDM000101-02)	4	August 9, 2012	Deed of Trust, Assignment of Leases and Tents, Fixture Filing, and Security Agreement; Request for Notice (BDM000068-100)	5	October 14, 2014	Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing for Equity Revolving Line of Credit (BDM000042-67)	6	December 30, 2015	Loan Documents Sent to BDM (BDM000182-200)	7	February 2, 2016	Email from Dan Aranda to Pastor Lawson	8	February 11, 2016	Deed of Trust	9	February 24, 2016	Deed of Trust (BDM000033-41)	10	June 15, 2016	Email exchange between Dan Aranda and Pastor Lawson
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11	August 15, 2017	Bankruptcy Petition with Summary of Assets
12	November 1, 2017	Notice of Trustee's Sale (BDM000124-26)
13	November 16, 2017	Amended Summary of Assets
14	November 22, 2017	Email exchange between S. Lieber and Pastor Lawson
15	November 29, 2017	Trustee's Deed Upon Sale (BDM000027-32)
16	December 5, 2017	Corrective Trustee's Deed (BDM000020-26)
17	December 30, 2017	Incident Report 17-067776 (BDM000134-40)
18	December 30, 2017	Incident Report 17-067777 (BDM000141-45)
19	December 30, 2017	Five Videos from Police Body Cameras
20	January 10, 2018	Three Days Notice to Quit Due to Foreclosure (BDM000151)
21	September 23, 2018	Settlement Agreement and Mutual General Release (BDM000109-14)
22	September 23, 2018	Declaration of Rudy De Leon in Support of Request for Default Judgment Against Saints Rest Missionary Baptist Church, Inc. (BDM000115-17)
23	April 23, 2020	Loan Master Report (BDM000178-81)
24	February 2, 2021	Grant Deed (BDM000001-19)
25	September 28, 2021	Complaint in Adversary Proceeding
Exhibit A: Lender Identification Chart		
Exhibit B: Email from Stan Lieber to Byllie Dee re: foreclosure, November 22, 2017		
Exhibit C: Notice of Default and Election to Sell, July 24, 2017		
Exhibit D: Notice of Trustee's Sale, October 27, 2017		
Exhibit E: Trustee's Deed Upon Sale, November 29, 2017		
Exhibit F: Incident Report, Oakland Police Department, December 28, 2017		
Exhibit G: Notice to Quit Due to Foreclosure, January 10, 2018		

		Exhibit H: Complaint from Unlawful Detainer Action, January 23, 2018
		Exhibit I: Answer from Unlawful Detainer Action
		Exhibit J: Request for Dismissal
26	October 27, 2021	RealQuest Property Detail Report (BDM000146-50)
27	November 22, 2021	Plaintiff-Debtor Responses to Order to Show Cause
		Exhibit A: Declaration of Loydleon Revels in Support of Plaintiff-Debtor Response to Show Cause
		Exhibit B: Subject Property Photo Addendum
		Exhibit C: Sales Comparison Analysis
		Exhibit D: Deed of Trust
		Exhibit E: Email from Dan Aranda to “Pastor Lawson”
		Exhibit F: Declaration of Dan Aranda in Support of Request for Default Judgment
		Exhibit G: Answer – Unlawful Detainer
		Exhibit H: Docket for Case No. RG18890361, County of Alameda
		Exhibit I: Docket for Case No. RG18890361, County of Alameda
28	December 7, 2021	Opposition to Motion to Dismiss Complaint
		Exhibit A: Declaration of Loydleon Revels In Support of Plaintiff-Debtor Response to Show Cause
		Exhibit B: Subject Property Photo Addendum
		Exhibit C: Sales Comparison Analysis
		Exhibit D: Deed of Trust
		Exhibit E: Email from Dan Aranda to “Pastor Lawson”
		Exhibit F: Declaration of Dan Aranda in Support of Request for Default Judgment
		Exhibit G: Answer – Unlawful Detainer

Exhibit H: Docket for Case No. RG18890361, County of Alameda

Exhibit I: Docket for Case No. RG18890361, County of Alameda

29	December 7, 2021	Motion to Reopen
30	December 8, 2021	Order Regarding Order to Show Cause
31	January 5, 2022	Motion for Sanctions
32	January 5, 2022	Byllie Dee's Declaration in Support of Motion for Sanctions
33	February 15, 2022	Civil Minutes dismissing Motion for Sanctions
34	February 16, 2022	Order dismissing Motion for Sanctions
35	July 12, 2022	First Amended Complaint
36	Undated	BDM Mortgage Services, Inc. Lender List (BDM000107-08)
37	Undated	Property Records in Alameda County, California (BDM000152-56)
38	Undated	Photographs of Property (BDM000795-803)

Plaintiff-Debtor's Discovery Documents:

1. None

Defendant's Discovery Documents:

1. Plaintiff's Response to Defendants' Interrogatories to Debtor/Plaintiff Byllie Dee

a. Interrogatory No. 1 and Response to Interrogatory No. 1, page 3:18-5:13

Further Discovery or Motions:

1. None

Further Discovery or Motions:

1. None Identified

Stipulations:

1. None

Stipulations:

1. None Identified

Amendments:

1. None

Amendments:

1. None Identified

Dismissals:	Dismissals:
1. None	1. None Identified
Agreed Statement of Facts:	Agreed Statement of Facts:
1. None	1. Asserts that such is possible.
Attorneys' Fees Basis:	Attorneys' Fees Basis:
1. None	1. None Identified
Additional Items	Additional Items
1. None	1. None Identified
Trial Time Estimation:	Trial Time Estimation: Two (2) Days, but shorter if an agreed statement of facts not in dispute.

FINAL RULINGS

2. [22-20108-E-7](#) KAMCARE, LLC
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
1-18-22 [\[1\]](#)

CASE CONVERTED: 9/26/22

Final Ruling: No appearance at the October 11, 2022 Status Conference is required.

Debtor's Atty: Gabriel E. Liberman

Notes:

[UST-1] Motion of the United States Trustee, Pursuant to 11 U.S.C. § 1112(b) and Federal Rules of Bankruptcy Procedure 1017(f) and 9014, to Convert or Dismiss Chapter 11 Case filed 8/16/22 [Dckt 56]; Order granting Motion to Convert filed 9/23/22 [Dckt 65]

Appointment of Interim Trustee and Notice of Selection filed 9/26/22 [Dckt 66]

Notice of Conversion to Chapter 7 Bankruptcy Case filed 9/26/22 [Dckt 67]

[DNL-1] Trustee's Application to Employ Desmond, Nolan, Livaich & Cunningham Pursuant to an Hourly Fee Agreement filed 9/30/22 [Dckt 69]; Order approving filed 9/30/22 [Dckt 73]

The Bankruptcy Case having been converted to one under Chapter 7, the Status Conference is concluded and removed from the Calendar.