

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Sacramento, California

October 18, 2023 at 2:00 p.m.

1. [23-21407-E-11](#) **BELLA VIEW CAPITAL, LLC** **CONTINUED STATUS CONFERENCE RE:**
[CAE-1](#) **VOLUNTARY PETITION**
4-28-23 [[1](#)]

Debtor's Atty: Peter G. Macaluso

Notes:

Continued from 6/21/23

Operating Reports filed: 9/7/23 [6/30/23 & 7/31/23]

Trustee Report at 341 Meeting lodged 6/23/23; 7/12/23; 7/28/23; 8/14/23

[PGM-1] Application to Employ Peter G. Macaluso as Bankruptcy Counsel filed 7/12/23 [Dckt 52]; Order granting filed 8/30/23 [Dckt 117]

[TRF-1] Motion for Relief from Stay, to Proceed with Foreclosure Sale and to Obtain Possession of Real Property at 5425 Bacon Road, Oakland, CA 94619 filed 7/19/23 [Dckt 61]; continued to 11/21/23 at 1:30 p.m.

[TRF-2] Motion for Relief from Stay, to Proceed with Foreclosure Sale and to Obtain Possession of Real Property at 1396 Summit Rd., Berkeley, CA 94619 filed 7/21/23 [Dckt 73]; Order granting filed 9/22/23 [Dckt 137]

[BRL-1] Creditor Scott Capital Management Fund 1, LLC's Motion for Order Terminating Automatic Stay or Requiring Adequate Protection filed 8/16/23 [Dckt 101]; Order granting filed 9/22/23 [Dckt 135]

[PGM-2] Motion to Sell Rel Property and Request to Waive Rule 6004(h) filed 9/26/23 [Dckt 138], set for hearing 11/2/23 at 10:30 a.m.

The Status Conference is continued to 2:00 p.m. on XXXXXXX , 202XXXXXXX
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OCTOBER 18, 2023 STATUS CONFERENCE

On September 26, 2023, the Debtor in Possession filed a Motion to sell the real property commonly known as 1396 Summit Road and the 5425 Bacon Road properties (collectively, the “Properties”). The sales prices are stated in the Motion to Sell (Dckt. 138) to be \$1,316,000 and \$3,140,000, respectively. The hearing on the Motion to Sell is set for November 2, 2023. The Estimated Escrow Closing Statements filed as exhibits in support of the Motion to Sell (Exhibits B and C; Dckt. 140) project after the payment of all secured claims and expenses the Summit Road Property sale to be a break even sale, but for the Bacon Road to generate \$81,900 in net proceeds for the Bankruptcy Estate.

As noted below, the unsecured claims in this case are modest, and the amount is consistent with the proofs of claim filed in this case.

At the Status Conference, **XXXXXXX**

JUNE 2023 STATUS CONFERENCE

Debtor initially commenced this case as one under Chapter 7, but shortly after filing sought conversion to Chapter 11. The court issued its order converting this case to one under Chapter 11. Order, Dckt. 15.

On Schedule A/B Debtor lists \$3.7MM in real property assets. Dckt. 26. Debtor’s other assets that are now property of the bankruptcy estate consists of \$69 in cash and \$500 in office furniture and equipment. *Id.*

On Schedule D, Debtor lists (\$5,280,375) of claims secured by the real property. Debtor lists (\$17,111) in unsecured claims on Schedules E/F. *Id.*

At the Status Conference, counsel for the Debtor reported that they are getting the documents and filings completed.

2.	<u>17-26064-E-13</u>	MARTIN/MARIA ORTEGA	CONTINUED STATUS CONFERENCE RE:
	<u>23-2023</u>		COMPLAINT
	CAE-1		2-27-23 <u>[1]</u>

ORTEGA ET AL V. TEDESCHI

Plaintiff’s Atty: Peter G. Macaluso
Defendant’s Atty: Anthony Asebedo

Adv. Filed: 2/27/23
Answer: 9/27/23
Counterclaim Filed: 9/27/23
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 7/19/23. The court continued the status conference to allow for prosecution of the Motion for Default Judgment.

Stipulation to Set Aside Default and for Dismissal of Motion for Default Judgment filed 8/17/23 [Dckt 36];
Order Vacating Default of Defendant filed 8/30/23 [Dckt 39]

Answer/Counterclaim filed 9/27/23

Defendant Adrian G. Tedeschi's Status Conference Statement filed 10/9/23 [Dckt 45]

The Status Conference is XXXXXXX
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Summary of Complaint

The Complaint filed by Martin and Maria Ortega ("Plaintiff-Debtor"), Dckt. 1, asserts claims to determine the extent of a lien and breach of contract. It is alleged that Defendant George Tedeschi has a secured claim which was provided for in Plaintiff-Debtor's Chapter 13 Case. Plaintiff-Debtor made plan payments to Defendant. Plaintiff-Debtor has completed the Chapter 13 Plan, has proceeded with a sale of the property securing Defendant's claim, and disputes the amount of the balance remaining on Defendant's secured obligation.

For the First Cause of Action Plaintiff-Debtor seeks the determination of the extent, validity, and priority of Defendant's lien and the proper application of the Chapter 13 Plan payments received by Defendant. This focuses on \$85,218.00 which Plaintiff-Debtor states were principal payments made pursuant to the confirmed Chapter 13 Plan on the obligation owed to Defendant as amended by the confirmed Chapter 13 Plan.

The Second Cause of Action asserts a breach of contract claim against Defendant for the failure to properly apply the Chapter 13 Plan payments on the secured claim as amended by the confirmed Chapter 13 Plan.

Plaintiff-Debtor seeks recovery of contractual attorney's fees.

Summary of Answer

Defendant Adrian G. Tedeschi (named as "George Tedeschi" in the Complaint) filed an Answer admitting and denying specific allegations in the Complaint. Answer; Dckt. 42. The Answer also asserts affirmative defenses stated as Defendant's true mailing address is not included in the Master Address List filed by Debtor in the Chapter 13 Case and Defendant did not learn of the Bankruptcy Case until after the Plan was confirmed. Thus, Defendant asserts that the Plan terms are not enforceable against Defendant.

Counterclaim and Plaintiff-Debtor Response

Defendant has filed a Counterclaim with the Answer seeking relief in the form of a judgment regarding the extent and validity of Defendant's lien and the amount secured by such lien. Defendant-Debtor filed a Response denying the allegations in the Counterclaim.

Review of Bankruptcy Case File

The court has conducted an initial review of the Bankruptcy Case file for the Plan that was confirmed. 17-26064. Plaintiff-Debtor's Chapter 13 case was filed on September 12, 2017, with the order confirming the Amended Plan entered on March 13, 2018. 17-26064; Order, Dckt. 100.

On August 2, 2018, Plaintiff-Debtor filed Proof of Claim 10-1 for creditor "George Tedeschi" in the amount of a (\$16,000) secured claim. This is stated to be a claim for "arrear." Defendant does not appear to have filed a proof of claim in that case. The address listed on Proof of Claim 10-1 for Defendant is 190 15th Street, San Francisco, California.

The confirmed Amended Chapter 13 Plan provides for Defendant having a Class 1 secured claim in the amount of \$16,000.00 for arrearage, with an arrearage monthly payment of \$270.00 and a post-petition monthly payment of \$1,306.00. *Id.*; Plan, ¶ 3.07(c), Dckt. 80.

The Certificate of Service for the Amended Plan and Motion to Confirm state that Defendant was served at the 109 15th Street, San Francisco, California address. *Id.*; Dckt. 81.

The Trustee reflects that the Chapter 13 Trustee disbursed to Defendant \$69,218 in principal payments and \$16,000.00 in arrearage payments over the sixty (60) months of the Plan. *Id.*; Dckt. 133 at 2. The Trustee does not report that the payments made by the Trustee were not cashed, and presumably Defendant received each of the checks from the Chapter 13 Trustee for payment of the arrearage and the currently monthly post-petition payment.

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)(I). Complaint ¶¶ 3, 4, Dckt. 1. Further, that this Action necessarily requires the enforcement of this court's order confirming the Chapter 13 Plan, enforcement of the provisions of the Plan, and determination of the proper application of the payments as provided in the Chapter 13 Plan.

In the Answer, Defendant admit the allegations of federal court jurisdiction for this Adversary Proceeding and that the First Cause of Action to Determine the Extent, Validity, and Priority of Defendant's lien and secured claim is a Core Matter Proceeding, but denies the allegation that the Second Cause of Action for Breach of Contract and the Third Cause of Action requesting attorney's fees and costs (while stated as a cause of action, the request for prevailing party attorney's fees and costs are made by post-judgment motion) are core proceedings. Answer ¶¶ 2, 3, 4; Dckt. 42. 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 judgment 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 Second Cause of Action for Breach of Contract alleges that Defendant has failed to properly apply the Bankruptcy Plan payments made to Defendant pursuant to the terms of the Bankruptcy Code also breaches the contractual obligations of Defendant to properly apply payments made on the obligation. The damages requested by Plaintiff-Debtor are stated as:

50. Plaintiffs hereby request damages, as allowed for under the contract between the parties, equal to all attorney's fees and costs they will sustain as a result of bringing an action to the Chapter 13 Plan.

Complaint, ¶ 50.

STATUS CONFERENCE STATEMENTS

Plaintiff-Debtor's Status Report (Dckt. 47) states that the parties are discussing possible resolution and requests that the court continue the Status Conference approximately forty-five (45) days.

Defendant's Status Report, filed one day before Plaintiff-Debtor's, states that the Parties have communicated and suggests the court set the following deadlines and Pretrial Conference (with the court tweaking some dates to fit the court's calendar):

1. Deadline to Designate Expert Witnesses.....November 1, 2023.
2. Deadline to Designate Rebuttal Expert Witnesses....November 15, 2023.
3. Deadline to Exchange Expert Reports.....November 29, 2023.
4. Close of Expert and Non-Expert Discovery and Hearing
Of Discovery Motions.....January 12, 2024
(the court combining the dates)
5. Dispositive Motions Heard by.....March 1, 2024.
5. Pre-Trial Conference.....March 20, 2024

2:00 p.m.

At the Status Conference, **XXXXXX**

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- a. 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)(I). Complaint ¶¶ 3, 4, Dckt. 1. Further, that this Action necessarily requires the enforcement of this court's order confirming the Chapter 13 Plan, enforcement of

the provisions of the Plan, and determination of the proper application of the payments as provided in the Chapter 13 Plan.

In the Answer, Defendant admit the allegations of federal court jurisdiction for this Adversary Proceeding and that the First Cause of Action to Determine the Extent, Validity, and Priority of Defendant's lien and secured claim is a Core Matter Proceeding, but denies the allegation that the Second Cause of Action for Breach of Contract and the Third Cause of Action requesting attorney's fees and costs (while stated as a cause of action, the request for prevailing party attorney's fees and costs are made by post-judgment motion) are core proceedings. Answer ¶¶ 2, 3,4; Dckt. 42. 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 November 1, 2023.
- c. Expert Witnesses shall be disclosed on or before **November 1, 2023**, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before **November 15, 2023**.
- d. Expert Witness Reports shall be exchanged on or before **November 29, 2023**.
- e. Discovery closes, including the hearing of all discovery motions, on **January 12, 2024**.
- f. Dispositive Motions shall be heard before **March 1, 2024**.
- g. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on March 20, 2024**.

FINAL RULINGS

3. [17-27077-E-13](#) MICHAEL SCALLIN
[23-2022](#)
CAE-1

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
2-16-23 [\[1\]](#)

SCALLIN V. U.S. DEPARTMENT OF
EDUCATION

Final Ruling: No appearance at the October 18, 2023 Status Conference is required.

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: unknown

Adv. Filed: 2/16/23
Summons Reissued: 3/7/23
Answer: none

Nature of Action:
Dischargeability - student loan

Notes:
Continued from 7/19/23 to allow Plaintiff-Debtor to prosecute the entry of a default judgment in this Adversary Proceeding.

[PLC-2] Order continuing Motion for Entry of Default Judgment filed 8/30/23 [Dckt 31], hearing set for 11/2/23 at 11:00 a.m.

The Status Conference is continued to 11:00 a.m. on November 2, 2023, to be conducted in conjunction with the hearing on the Plaintiff-Debtor's Motion for Entry of Default Judgment.

OCTOBER 17, 2023 STATUS CONFERENCE

The court continued the hearing on the Motion for Entry of Default Judgment to accommodate counsel for Plaintiff-Debtor. The Status Conference is continued to the time and date of the hearing on the Motion for Entry of Default Judgment.

JULY 19, 2023 CONTINUED STATUS CONFERENCE

Plaintiff-Debtor has filed a Motion for Entry of Default Judgment, with the hearing thereon set at 11:00 a.m. on August 24, 2023. Mtn.; Dckt. 17.

The court continues the Status Conference to allow Plaintiff-Debtor to prosecute the entry of a default judgment in this Adversary Proceeding.

SUMMARY OF COMPLAINT

The Complaint filed by Michael Scallin (“Plaintiff-Debtor”), Dckt. 1, asserts claims to determine the dischargeability of a student loan debt. Claims have been filed by the United States Department of Education in Plaintiff-Debtor’s Bankruptcy Case which total \$85,803.08. It is further alleged that the total student loan debt is in excess of \$95,193.14. The Complaint states detailed factual allegations (not mere conclusions) relating to the asserted undue hardship caused Plaintiff-Debtor by these student loan obligations.

SERVICE OF SUMMONS AND COMPLAINT

A reissued summons was obtained by Plaintiff-Debtor on March 7, 2023 (Dckt. 6). No Certificate of Service has been filed by Plaintiff-Debtor. No answer or other responsive pleading has been filed by the United States Department of Education.

On April 5, 2023, A Certificate of Service for the Reissued Summons and Complaint was filed. Dckt. 7. Service was made on March 7, 2023 on:

US Department of Education
50 United Nations Plz Ste 1200
San Francisco, CA 94102
(Certified Mail)

This is the address provided on the Roster of Governmental Agencies maintained by the Clerk of the Court and posted on the Court’s website.

Answer

No answer or other responsive pleading has been filed by Defendant. The answer or other responsive pleading was to be filed on or before April 11, 2023.

At the Status Conference, counsel for the Plaintiff-Debtor reported that the request for entry of default has been uploaded. Counsel for Plaintiff-Debtor reported that he had delayed filing the request for entry of default until today, believing that someone from the Department of Education would contact him. However, no such contact was made and nobody appeared for the Department of Education at the May 10, 2023 Status Conference.

The court continues the Status Conference in light of Plaintiff-Debtor prosecuting this Adversary Proceeding.

4. [23-20878](#)-E-13 **BROOK/LONELL HARRIS**
[23-2058](#)
CAE-1

**STATUS CONFERENCE RE:
COMPLAINT**
7-27-23 [[1](#)]

**HARRIS V. GOLDMAN SACHS BANK
USA**

Final Ruling: No appearance at the October 18, 2023 Status Conference is required.

Plaintiff's Atty: Elliot Gale
Defendant's Atty: Gurinder Singh Grewal

Adv. Filed: 7/27/23
Answer: none

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

Notes:
Joint Stipulation Enlarging Time for Goldman Sachs Bank USA to Respond to Adversary Complaint filed 8/28/23 [Dckt 7]

Notice of Settlement filed 9/25/23 [Dckt 8]

This Adversary Proceeding having been dismissed on October 13, 2023 (Notice of Dismissal; Dckt. 9), **the Status Conference is concluded and removed from the Calendar.**

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

5. [23-21822](#)-E-12 **RUSSELL LESTER**
[23-2049](#)
CAE-1

**STATUS CONFERENCE RE:
COMPLAINT**
6-5-23 [[1](#)]

**LESTER V. HOWELL
ADVERSARY PROCEEDING
DISMISSED: 09/27/23**

Final Ruling: No appearance at the October 18, 2023 Status Conference is required.

Plaintiff's Atty: Brian S. Haddix
Defendant's Atty: unknown

Adv. Filed: 6/5/23
Answer: none

Nature of Action:
Recovery of money/property
Injunctive relief - other

Notes:
Notice of Voluntary Dismissal of Adversary Proceeding filed 9/27/23 [Dckt 6]

This Adversary Proceeding having been dismissed, the Status Conference is concluded and removed from the Calendar.

6. [23-21822](#)-E-12 RUSSELL LESTER CONTINUED STATUS CONFERENCE RE:
[CAE-1](#) VOLUNTARY PETITION
DEBTOR DISMISSED: 09/22/23 6-2-23 [\[1\]](#)

Final Ruling: No appearance at the October 18, 2023 Status Conference is required.

Debtor's Atty: Brian S. Haddix

Notes:
[GB-4] Order Granting Motion to Dismiss filed by Creditor First Northern Bank of Dixon filed 9/22/23
[Dckt 186]

This Bankruptcy Case having been dismissed, the Status Conference is concluded and removed from the Calendar.