UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

October 22, 2018 at 10:00 a.m.

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1. 16-24304-A-7 CHRISTOPHER JOHNSON — MOTION FOR EXAMINATION AND FOR PRODUCTION OF DOCUMENTS
17-2007 SHB-2
MILES V. JOHNSON
5-8-18 [34]

Tentative Ruling: The judgment debtor Christopher Johnson shall appear immediately prior to the start of the 10:00 a.m. calendar and be sworn by the courtroom deputy clerk. The parties shall then retire to a conference room for the examination.

2. 13-25330-A-12 PAUL MENNICK — MOTION TO DISMISS CASE
JPJ-2
9-6-18 [186]

Tentative Ruling: The case will be dismissed.

The chapter 12 trustee moves for dismissal because the debtor's chapter 12 plan has matured and the debtor is $16,089.56 delinquent under its payment terms. Under the plan, the final plan payment was due August 25, 2018. The debtor has not made plan payments since June 25, 2018.

The plan was confirmed on August 5, 2015. Plan payments, however, commenced on August 25, 2013.

According to the opposition's factual assertions, which are unsupported by evidence, the debtor has encountered some unanticipated circumstances. He lost three clients, one of his pasture lease tenants defaulted on a $9,600 semiannual payment, and an employer in Perth, Australia breached his contract with the debtor, costing him approximately $20,000.

11 U.S.C. § 1208(c) provides that "on request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including . . . (6) material default by the debtor with respect to a term of a confirmed plan."

The defaults by the debtor under the terms of the existing plan are material for purposes of section 1208(c)(6). It has been approximately two months since the plan term expired. And, because no chapter 13 plan may extend beyond five years from the date of the first plan payment, no modification is possible.

Accordingly, the case will be dismissed.

3. 16-20774-A-12 TIMOTHY/JILL PEDROZO — MOTION TO DISMISS CASE
JPJ-3 — 9-7-18 [176]

Tentative Ruling: The case will be dismissed.

The chapter 12 trustee moves for dismissal because the debtors are $6,123 delinquent under the terms of their plan, representing 1.95 plan payments. Before the hearing on the motion, another $3,140 will come due under the plan.

11 U.S.C. § 1208(c) provides that "on request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including . . . (6) material default by the debtor with respect to a term of a confirmed plan."

The debtors do not dispute that they are in default. They promise to cure the default but there is no evidence of a cure. The debtors' delinquency is a material default for purposes of 11 U.S.C. § 1208(c)(6). This is cause for dismissal.

4. 18-21176-A-7 VINA FAUGHT — MOTION TO DISMISS ADVERSARY PROCEEDING, FOR SUMMARY JUDGMENT AND FOR SANCTIONS
18-2065 GEL-1 — 9-6-18 [13]
SPURLOCK, JR. V. FAUGHT ET AL

Tentative Ruling: The motion will be granted in part.

One of the defendants in this adversary proceeding, Vina Faught, the debtor in the underlying chapter 7 case, seeks dismissal under Fed. R. Civ. P. 12(b)(6) of the claims asserted in the complaint by plaintiff Edward Spurlock, Jr. The claims asserted here are for nondischargeability under 11 U.S.C. § 523(a)(2) and (a)(4), and for actual and constructive fraud under Cal. Civ. Code §§ 1572 and 1573. In the alternative, the movant defendant seeks summary judgment on the claims.

According to the plaintiff's amended complaint, filed on September 26, 2018, the defendants Vina Faught and Mission Mortgage had a business relationship with the plaintiff's father, Edward Spurlock, Sr., who passed away on June 15, 2013. Docket 26. The relationship involved Ms. Faught's referral to Mr. Spurlock, Sr., of: borrowers for the obtaining of loans from Mr. Spurlock, Sr.; or loans with existing borrowers for assignment to Mr. Spurlock, Sr. The borrowers Ms. Faught referred to Mr. Spurlock, Sr., were her relatives, friends or associates, in distressed financial situations, offering "distressed collateral" (real property) as security for the loans. Ms. Faught was herself the borrower on one loan (for $38,000) and was the co-borrower on another loan with her daughter Debra Dillon (for $300,000).

In general, all loans (except the $300,000 loan to Ms. Fraught and Ms. Dillon) had terms as follows: interest-only payments for short period of time (1 to 13 months); the interest was high (such as 9%, 9.5%, 10%, 15%, 18%); the loans matured when the period for the interest-only payments ceased; each loan was secured by a real property, which was ultimately transferred via a foreclosure, deed in lieu of foreclosure, or sale.

Ms. Faught allegely failed to disclose material facts and made false representations to Mr. Spurlock, Sr., in connection with each loan transaction, including failing to disclose her relationship with each of the borrowers,

falsely promising to record the deeds of trust, not disclosing the transfers of collateral. She encouraged Mr. Spurlock, Sr., to purchase or fund the loans despite knowing "of the instability of the property securing [each] loan."

As to the loans on which Ms. Faught is a borrower (the $38,000 loan made solely to Ms. Faught and the $300,000 loan made to both Debra Dillon and Ms. Faught), in early 2013 Ms. Faught made representations to Mr. Spurlock, Jr., inducing him to extend the interest-only loan terms of the loans.

Mr. Spurlock, Sr., passed away on June 15, 2013.

In 2014, Ms. Faught represented to Mr. Spurlock, Jr., that she would list for sale as a real estate broker real property in the probate estate of Mr. Spurlock, Sr., applying her commission to the principal debt owed on the $38,000 loan and partially on the $300,000 loan. She represented she would contribute future sale commissions to the debts as well. Ms. Faught also represented that the properties securing the loans "were secured."

In August 2014, Ms. Faught told Mr. Spurlock, Jr., that she would not serve as the broker for the sale of the real property in Mr. Spurlock, Sr.'s probate estate. In July 2016, Mr. Spurlock, Jr., became aware that the property securing the $300,000 loan was being sold.

On August 4, 2016, Mr. Spurlock, Jr., filed a state court action against Ms. Faught and Patricia Chavez and Douglas Chavez, borrowers on two of the other loans purchased or funded by Mr. Spurlock, Sr., via Ms. Faught. The state court action contained at least one claim for fraud. The property securing the $300,000 loan was sold for $1,210,000 on approximately August 26, 2016.

After serving the state court complaint on Ms. Faught in December 2016, she stopped making the interest-only payments on the $38,000 loan.

Ms. Faught filed the underlying chapter 7 bankruptcy case on February 28, 2018. The trustee filed a report of no distribution on April 30, 2018. The deadline for filing complaints to determine the dischargeability of debts was May 25, 2018. The plaintiff filed this adversary proceeding on May 11, 2018. The chapter 7 discharge was entered on June 4, 2018.

The plaintiff filed an amended complaint on September 26, 2018, prior to the filing of an answer. The amended complaint contends that Ms. Faught was a broker with Mission Mortgage at all times referenced in the complaint. The claims in the amended complaint are as follows:

Against Ms. Faught:

1) a claim under 11 U.S.C. § 523(a)(2);

2) a claim for fraud under 11 U.S.C. § 523(a)(4);

3) a claim for actual fraud under Cal. Civ. Code § 1572; and

4) a claim for constructive fraud under Cal. Civ. Code § 1573.

Against Mission Mortgage:

1) a claim under 11 U.S.C. § 523(a)(2);

2) a claim for fraud under 11 U.S.C. § 523(a)(4);

3) a claim for actual fraud under Cal. Civ. Code § 1572; and

4) a claim for constructive fraud under Cal. Civ. Code § 1573.

Rule 12(b)(6) permits dismissal when a complaint fails to state a claim upon which relief can be granted. Dismissal is appropriate where there is either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. Saldate v. Wilshire Credit Corp., 686 F. Supp. 2d 1051, 1057 (E.D. Cal. 2010) (citing Balisteri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990)(as amended)).

"*In resolving a Rule 12(b)(6) motion, the court must (1) construe the complaint in the light most favorable to the plaintiff; (2) accept all well pleaded factual allegations as true; and (3) determine whether plaintiff can prove any set of facts to support a claim that would merit relief.*" See Stoner v. Santa Clara County Office of Educ., 502 F.3d 1116, 1120-21 (9th Cir. 2007); see also Schwarzer, Tashmina & Wagstaffe, California Practice Guide: Federal Civil Procedure Before Trial, § 9.187, p. 9-46, 9-47 (The Rutter Group 2002).

"*To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' . . . A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. . . . The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. . . . Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of "entitlement to relief."'*"

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (Citations omitted).

"In sum, for a complaint to survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009) (quoting Iqbal at 678).

The Supreme Court has applied a "two-pronged approach" to address a motion to dismiss:

"*First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. . . . Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. . . . Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. . . . But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'-'that the pleader is entitled to relief.'*

"*In keeping with these principles a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than*

conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief."

Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009) (Citations omitted).

"*Generally, the scope of review on a motion to dismiss for failure to state a claim is limited to the contents of the complaint. See Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1141 n.5 (9th Cir. 2003)."*

Marder v. Lopez, 450 F.3d 445, 448 (9th Cir. 2006).

"*In reviewing the dismissal of a complaint, we inquire whether the complaint's factual allegations, together with all reasonable inferences, state a plausible claim for relief. Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937, 1949–50, 173 L. Ed. 2d 868 (2009). The heightened pleading standard of Rule 9(b) governs FCA claims. Bly–Magee v. California, 236 F.3d 1014, 1018 (9th Cir. 2001). Rule 9(b) provides that '[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.' Fed.R.Civ.P. 9(b). To satisfy Rule 9(b), a pleading must identify 'the who, what, when, where, and how of the misconduct charged,' as well as 'what is false or misleading about [the purportedly fraudulent] statement, and why it is false.' Ebeid ex rel. United States v. Lungwitz, 616 F.3d 993, 998 (9th Cir. 2010) (internal quotation marks and citations omitted)."*

Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc., 637 F.3d 1047, 1055-56 (9th Cir. 2011).

The court questions why the parties do not resolve the liability and damages portion of the fraud litigation in the state court action and then come back to this court to determine nondischargeability of the debt. This is especially important because the claims against the other defendant in this proceeding, Mission Mortgage, have nothing to do with this bankruptcy case and the court's subject matter jurisdiction is doubtful. The state court action was filed on August 4, 2016, the action was pending on the petition date of Ms. Faught's underlying chapter 7 bankruptcy case, both defendants here (Ms. Faught and Mission Mortgage) are named as defendants in the state court action, and the state court action contains claims for fraud already. Docket 26 at 4 & 22; Case No. 18-21176, Docket 1, SOFA, Part 4.

Turning to the merits of this motion, the amended complaint is plagued with deficiencies.

First, as alluded to above, the two fraud claims against Ms. Faught will be dismissed without leave to amend. The complaint already pleads the fraud that is relevant here, namely, the fraud embodied in 11 U.S.C. § 523(a)(2) and (a)(4). It makes no sense for the plaintiff to litigate fraud under California law when only the fraud prescribed under the Bankruptcy Code is excepted from discharge. See 11 U.S.C. § 523(a)(2) and (a)(4). While fraud under California law is almost identical to fraud under 11 U.S.C. § 523(a)(2), there is a difference between the reliance elements. See Younie v. Gonya (In re Younie), 211 B.R. 367, 373 (B.A.P. 9th Cir. 1997); see also Providian Bancorp. (In re Bixel), 215 B.R. 772, 776-77 (Bankr. S.D. Cal. 1997) (citing Field v. Mans, 516 U.S. 59, 59-60 (1995) (holding that "§ 523(a)(2)(A) requires justifiable, but not reasonable, reliance")).

Second, the two California fraud claims against Mission Mortgage will be dismissed without leave to amend as they are derivative of California fraud claims against Ms. Faught, which are being dismissed. Moreover, the court does not have subject matter jurisdiction over the plaintiff's claims against Mission Mortgage. Those claims have nothing to do with the underlying bankruptcy case. And, those claims are still pending in a pre-petition state court action. That is where they should be resolved.

Third, the 11 U.S.C. § 523(a)(2) and (a)(4) claims against Mission Mortgage will be dismissed without leave to amend. The claims make no sense. Mission Mortgage is not a debtor in the underlying bankruptcy case. Mission Mortgage is not receiving a bankruptcy discharge. Therefore, there is no reason to except anything from a discharge it is not getting.

Fourth, with respect to the 11 U.S.C. § 523(a)(2) and (a)(4) claims against Ms. Faught, the complaint is plagued with deficiencies.

11 U.S.C. § 523(a)(2) provides that an individual is not discharged "*from any debt for money . . . , to the extent obtained by- (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition; [or] (B) use of a statement in writing- (i) that is materially false; (ii) respecting the debtor's or an insider's financial condition; (iii) on which the creditor to whom the debtor is liable for such money . . . reasonably relied; and (iv) that the debtor caused to be made or published with intent to deceive.*"

11 U.S.C. § 523(a)(2)(A) requires a showing that: (1) the defendant made representations; (2) the defendant knew them to be false, when he made them; (3) he made the representations with the intent and purpose to deceive the plaintiff; (4) the plaintiff justifiably relied on the representations; and (5) as a result, the plaintiff sustained damage. Younie v. Gonya (In re Younie), 211 B.R. 367, 373 (B.A.P. 9th Cir. 1997); see also Providian Bancorp. (In re Bixel), 215 B.R. 772, 776-77 (Bankr. S.D. Cal. 1997) (citing Field v. Mans, 516 U.S. 59, 59-60 (1995) (holding that "§ 523(a)(2)(A) requires justifiable, but not reasonable, reliance")). These elements are virtually identical to the elements of common law or actual fraud. Younie, 211 B.R. at 374; Advanta Nat'l Bank v. Kong (In re Kong), 239 B.R. 815, 820 (B.A.P. 9th Cir. 1999).

11 U.S.C. § 523(a)(4) provides that an individual is not discharged "from any debt for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny."

The complaint is not clear about whether the plaintiff is invoking section 523(a)(2)(A) or (a)(2)(B) or both.

The complaint is not clear about many aspects of the described financial transactions.

The complaint is ambiguous as to whether the plaintiff is seeking damages related to any of the loans on which Ms. Faught is not a borrower. Ms. Faught is alleged to be a borrower only on two loans, a $38,000 loan and a $300,000 loan (on which Debra Dillon is a co-borrower). The complaint references six other loans, on which Ms. Faught is not a borrower, but which she brokered. The complaint says that the plaintiff is seeking at least $200,000 in damages, but it does not say whether the sought damages involve the six other loans.

The complaint omits important information about the loans. The complaint says

nothing about how each of the loans was structured. The complaint does not say whether escrow was involved in the making of each loan or whether deeds of trust were even executed.

The complaint is silent as to the maturity dates for the loans made to Douglas Chavez and Patricia Chavez. The complaint is unclear as to whether the plaintiff is receiving payments on the loans (with the exception of the $38,000 loan to Ms. Faught). The complaint does not say when payments on the loans stopped.

On the $300,000 loan to Ms. Faught and Ms. Dillon, the maturity date is October 1, 2019. The complaint does not say whether payments are being made on account of that loan.

The complaint also does not state the amounts owed on each of the loans. While principal appears to be owed on each loans, the complaint fails to state whether anything else, such as interest, is owed.

Further, according to the complaint, Mr. Spurlock, Sr., and Mr. Spurlock, Jr., were partners with E&E Investments when the loan transactions took place. But, the complaint says very little about E&E Investments. In some places, the complaint reads as if Ms. Faught was dealing personally with Mr. Spurlock, Sr. In other places, the complaint reads as if Ms. Faught was dealing with E&E Investments. For instance, the complaint states that Mr. Spurlock, Jr., and Ms. Faught communicated as early as June 2011 about her role in the "brokering" of loans, well-before Mr. Spurlock, Sr. passed away in June 2013. Docket 26 at 16. It appears from this that it was Mr. Spurlock, Sr., on behalf of E&E Investments, and not on his own behalf, that was dealing with Ms. Faught. This begs the question of why E&E Investments is not a plaintiff.

The complaint is unclear whether Mr. Spurlock, Jr., is asserting the claims on his own behalf or on behalf of the probate estate or trust of Mr. Spurlock, Sr. The heading of the complaint references Mr. Spurlock, Jr., in his individual capacity. On the other hand, the complaint also says that Mr. Spurlock, Jr., is the personal representative of the estate and trust of Mr. Spurlock, Sr.

The complaint accuses Ms. Faught of making misrepresentations but it contains very little specifics about them. For instance, it says that Ms. Faught made representations that induced Mr. Spurlock, Jr., to extend the maturity date on her two loans. But, the complaint does not specify these representations. The complaint also fails to detail when each representation was made, what was stated, to whom was the representation made, and what was false or misleading. For example, the complaint repeatedly states that Ms. Faught made representations about recording of deeds of trust, but it does not state when and where she made these representations.

The complaint says nothing about the relationship between Ms. Faught and Mr. Spurlock, Sr. Was that relationship based on a written agreement or series of written agreements, or was it based on oral agreements? Were the agreements between Ms. Faught and Mr. Spurlock, Sr., or between Ms. Faught and E&E Investments? The facts in the complaint do not rise to the level of a plausible fiduciary relationship between the plaintiff and Ms. Faught.

"*Whether a debtor is a fiduciary for the purposes of § 523(a)(4) is a question of federal law. Lewis v. Scott (In re Lewis), 97 F.3d 1182, 1185 (9th Cir. 1996). The definition is construed narrowly, requiring that the fiduciary relationship arise from an express or technical trust that was imposed prior to*

the wrongdoing that caused the debt. Ragsdale v. Haller, 780 F.2d 794, 796 (9th Cir. 1986) ('The broad, general definition of fiduciary—a relationship involving confidence, trust and good faith—is inapplicable in the dischargeability context.'); see also Otto v. Niles (In re Niles), 106 F.3d 1456, 1459 (9th Cir. 1997)."

Natalia Plyam v. Precision Dev., L.L.C. (In re Plyam), 530 B.R. 456, 471 (B.A.P. 9th Cir. 2015).

With the foregoing information missing, the complaint does not state plausible claims for relief under 11 U.S.C. § 523(a)(2) or (a)(4).

Fifth, Ms. Faught's principal argument is that the California statute of limitations prohibits the plaintiff's prosecution of the fraud nondischargeability claims. The complaint does not plead facts showing a plausible compliance with the statute of limitations.

"*[T]here are two distinct issues to consider in the dischargeability analysis: first, the establishment of the debt itself, which is subject to the applicable state statute of limitations; and, second, a determination as to the nature of that debt, an issue within the exclusive jurisdiction of the bankruptcy court.*"

Banks v. Gill Distribution Centers, Inc., 263 F.3d 862, 868 (9th Cir. 2001) (referring to this as the McKendry test); see also Resolution Trust Corp. v. McKendry (In re McKendry), 40 F.3d 331, 337 (10th Cir. 1994).

"*The first prong of this analysis, the establishment of a debt, is critical because satisfying this element provides the creditor with the access key to an adjudication of dischargeability of that debt.*"

Gill Distribution Ctrs., Inc. v. Banks (In re Banks), 225 B.R. 738, 745 (Bankr. C.D. Cal. 1998), aff'd, 246 B.R. 452 (B.A.P. 9th Cir. 1999), aff'd sub nom. Banks v. Gill Distribution Centers, Inc., 263 F.3d 862 (9th Cir. 2001), and aff'd, 246 B.R. 452 (B.A.P. 9th Cir. 1999); see also Wilcox v. Dopson (In re Dopson), Case No. 17-51476-JRS, Adv. Pro. No. 18-05020-JRS, 2018 WL 4183197, at *2 (Bankr. N.D. Ga, Aug. 30, 2018).

"*[T]he debt is . . . deemed 'established' pre-petition, if the creditor has taken a timely affirmative act which is necessary to the creditor's ability to collect the debt in a manner provided by law.*" Robertson v. Denton (In re Denton), Case No. 06-02073-SSC, 2009 WL 399437, at *17 (Bankr. D. Ariz., Feb. 17, 2009), amended in part, No. 06-02073-SSC, 2009 WL 1097533 (Bankr. D. Ariz. Mar. 24, 2009) (quoting Banks, 225 B.R. at 745); Fledderman v. Glunk (In re Glunk), 343 B.R. 754, 761 (Bankr. E.D. Pa. 2006).

The court looks to state law to determine whether a debt has been established.

The complaint does not seek damages for the default on any of the loans. The complaint is asking for damages based on fraud, under both 11 U.S.C. § 523(a)(2) and (a)(4), for Ms. Faught's alleged fraudulent inducement of Mr. Spurlock, Sr., to purchase or fund the loans and later inducing Mr. Spurlock, Jr., to extend the terms of repayment on her two loans.

The statute of limitations on fraud claims in California is three years.

"*Within three years: An action for relief on the ground of fraud or mistake. The cause of action in that case is not deemed to have accrued until the*

discovery, by the aggrieved party, of the facts constituting the fraud or mistake."

Cal. Civ. Pro. Code § 338(d).

The complaint is not asking for damages for the defaults on any of the loans. The complaint is asking for damages based on fraud, under both 11 U.S.C. § 523(a)(2) and (a)(4), for Ms. Faught fraudulently inducing Mr. Spurlock, Sr., to purchase or fund the loans.

The complaint says that the fraud claims were discovered by Mr. Spurlock, Jr., after Mr. Spurlock, Sr., passed away on June 15, 2013. But, it does not say exactly when the fraud claims were discovered. The complaint does not give sufficient information on this point.

And, while Mr. Spurlock, Jr., filed a state court complaint against Ms. Faught and two other individuals (Douglas Chaves and Patricia Chavez, the borrowers on two other loans), that complaint was not filed until August 4, 2016, *over* three years after Mr. Spurlock, Sr.'s passing on June 15, 2013. The complaint does not give the current status of the state court litigation. Nor does it give sufficient information about the claims and allegations in the state court action. The complaint says only that one cause of action in state court is for fraud but fails to identify the defendant to that cause of action. Docket 26 at 22.

The same issue arises in connection with whether Mr. Spurlock, Sr., had sufficient information to discover the fraud prior to his passing. Some of the loans matured in 2006, 2007, and 2008, at least five years prior to Mr. Spurlock, Sr.'s passing. The complaint is silent on what, if anything, Mr. Spurlock, Sr., after these loans matured.

Subject to being convinced that the establishment of the fraud-based debt should be litigated in this court, this court will grant the motion to dismiss, with leave for the plaintiff to amend the complaint to correct the above deficiencies pertaining to the 11 U.S.C. § 523(a)(2) and (a)(4) claims against Ms. Faught. The remaining claims will be dismissed without leave to amend.

Finally, summary judgment will be denied. Courts are hesitant to grant summary judgment on issues involving motive or intent, including 11 U.S.C. § 523(a)(2) and (a)(4) claims, as such issues are provable only by circumstantial evidence. See, e.g., Poller v. Columbia Broad. Sys., Inc., 368 U.S. 464, 473 (1962); see also Maffei v. N. Ins. Co. of New York, 12 F.3d 892, 898 (9th Cir. 1993); Morgan Creek Prods., Inc. v. Franchise Pictures LLC (In re Franchise Pictures LLC), 389 B.R. 131, 144-45 (Bankr. C.D. Cal. 2008). This is even more true here because the parties have not even conducted discovery. The motion will be granted in part.

5. 18-21176-A-7 VINA FAUGHT — STATUS CONFERENCE
18-2065 — 9-26-18 [26]
SPURLOCK, JR. V. FAUGHT ET AL

Tentative Ruling: None.