

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

October 22, 2020 at 2:00 p.m.

1. <u>20-90373</u> -E-7	THOMAS SWARTZ	STATUS CONFERENCE RE:
<u>20-9010</u>		COMPLAINT
WRIGHT ET AL V. SWARTZ		8-20-20 [1]

Plaintiff's Atty: Charles L. Hastings
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 8/20/20
Answer: 10/8/20

Nature of Action:
Objection/revocation of discharge

Notes:
Substitution of Attorney for Defendant filed 10/7/20 [Dckt 9]; Order granting filed 10/8/20 [Dckt 13]

The Status Conference is XXXXXXX
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SUMMARY OF COMPLAINT

The Complaint, Dckt. 1, filed by Jane Wright, Ron Skrbina, Christina Tripp, and Gaylord Skrbina ("Plaintiff"), asserts claims for the denial of the Defendant-Debtor's discharge in his bankruptcy case. It is alleged that as of the filing of this case, the Defendant-Debtor owned a partnership interest of no less than 23.2558% in the Estate of Walter F. Swartz, a General Partnership.

It is alleged that Defendant-Debtor failed to disclose his partnership interest on Schedule A/B filed in this case, and such is a false oath done to hinder, delay, and defraud the Trustee and creditors. The First Cause of Action seeks to have Defendant-Debtor's discharge denied pursuant to 11 U.S.C. § 727(a)(2) for the concealment of property of the bankruptcy estate. The Second Cause of Action seeks to have Defendant-Debtor's discharge denied pursuant to 11 U.S.C. § 727(a)(4) for having made a false oath.

SUMMARY OF ANSWER

Thomas Swartz (“Defendant-Debtor”) has filed an Answer (Dckt. 11), admitting and denying specific allegations.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiffs Jane Wright, Ron Skrbina, Christina Tripp, and Gaylord Skrbina allege in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), 11 U.S.C. § 727, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(J). Complaint ¶¶ 4, 5, Dckt. 1. In the Answer, Defendant Thomas Swartz admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ 4, 5; Dckt. 11. **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.**

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- a. Plaintiffs Jane Wright, Ron Skrbina, Christina Tripp, and Gaylord Skrbina allege in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), 11 U.S.C. § 727, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(J). Complaint ¶¶ 4, 5, Dckt. 1. In the Answer, Defendant Thomas Swartz admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ 4, 5; Dckt. 11. **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 **October 31, 2020**.
- c. Expert Witnesses shall be disclosed on or before **xxxxxxx, 2020**, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before **xxxxxxx, 2020**.
- d. Discovery closes, including the hearing of all discovery motions, on **January 31, 2021**.
- e. Dispositive Motions shall be heard before **March 12, 2021**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on April 8, 2021**.

Debtor's Atty: David C. Johnston

Notes:
Continued from 8/27/20

Total Payoff [Creditor, U.S. Department of Agriculture] filed 9/23/20 [Dckt 31]

Trustee Report at 341 Meeting lodged 9/24/20. Debtor did not appear. Continued to 10/8/20.

[DCJ-2] Debtor's Motion to Extend Deadline for Filing Chapter 12 Plan filed 10/7/20 [Dckt 32]; set for hearing 11/5/20 at 10:30 a.m.

Trustee Report at 341 Meeting lodged 10/8/20. Debtor and counsel appeared. Meeting concluded.

The Status Conference is continued to 2:00 p.m. on xxxxxxx , 2021.
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OCTOBER 22, 2020 STATUS CONFERENCE

The Trustee's October 8, 2020 Docket Entry Report states that the First Meeting of Creditors was concluded. On October 9, 2020, the Debtor in Possession filed a Motion requesting that the time for filing a plan in this case be extended to November 6, 2020 (a 30-day extension). Dckt. 32. The hearing on that Motion is set for November 5, 2020.

At the Status Conference, counsel for the Debtor in Possession reported xxxxxxx

AUGUST 27, 2020 STATUS CONFERENCE

Joe Machado, the Debtor and now serving as the Debtor in Possession, commenced this voluntary Chapter 12 bankruptcy case on July 9, 2020. The Debtor in Possession filed a Status Report on August 13, 2020. Dckt. 19. The Debtor in Possession reports that he anticipates filing a Chapter 12 plan before the October 7, 2020 deadline.

Michael Meyers, the Chapter 12 Trustee, filed his Comments concerning the Status Report filed by the Debtor in Possession. The Trustee has reviewed the operations and believes that Debtor had a farming operation.

In looking at the Schedules, Debtor states having \$5,050 net income from his business operations and an additional \$1,128 in Social Security benefits. Schedule I, Dckt. 15 at 26-27. On Schedule J, Debtor states having only (\$2,928) a month in expenses. *Id.* at 27-28. These are expenses for both Debtor and his

non-debtor spouse. Interestingly, Debtor does not have any expenses for self-employment taxes or state or federal income taxes on Schedule J. *Id.* Debtor also lists no expenses for real estate taxes, property insurance, or home maintenance and upkeep. *Id.*

However, the Trustee states that without evidence that the obligation to American Farm Mortgage arose out of farming operations, it is unclear if this is a farming debt. This debt is identified as relating back to a 1997 refinance.

The Trustee states that it appears that the Debtor in Possession is using cash collateral without court authorization. Specifically, proceeds of collateral of creditor Farm Services Agency.

Based on information provided at the First Meeting of Creditors, the Trustee states that it does not appear that the estate has sufficient income for restructuring the debt, but that a sale of property would be necessary. But Debtor reports that he does not have records to establish the cost basis of assets.

At the Status Conference, counsel for the Debtor in Possession states that the Debtor is a farmer and it can be documented.

The Chapter 12 Trustee said that there does not appear to be an issue of whether the Debtor meets the requirement of being a “farmer” in light of the additional documentation provided. For the use of cash collateral, the Chapter 12 Trustee noted that it had not been documented, while counsel for the Debtor in Possession states that Debtor did not possess any cash collateral as defined by 11 United States Code § 363(a).

With respect to a plan, the Trustee noted that the Debtor acquired this property through a 1031 exchange. Though there will be tax consequences, the Trustee believes the plan should be pretty straight-forward.

FINAL RULINGS

3. [18-90765-E-7](#) MIGUEL ORTEGA
[20-9003](#)
EDMONDS V. ORTEGA ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
4-21-20 [\[1\]](#)

Final Ruling: No appearance at the October 20, 2020 Status Conference is required.

Plaintiff's Atty: Anthony D. Johnston
Defendants' Atty: Pro Se

Adv. Filed: 4/21/20
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property
Recovery of money/property - other
Injunctive relief - other

Notes:
Continued from 9/10/20 to afford the Plaintiff-Trustee the opportunity to dismiss this matter upon performance of the Stipulation approved by the court.

[ADJ-2] Request for Dismissal of Adversary Action filed 10/13/20 [Dckt 50]; order pending.

<p>The court having dismissed the Adversary Proceeding (Order, Dckt. 52), the Status Conference is concluded and removed from the Calendar.</p>
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