

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 25, 2018 at 11:00 a.m.

1. [18-90258-E-7](#) **ANDREAS ABRAMSON** **CONTINUED STATUS CONFERENCE**
[JCW-1](#) **RE: MOTION FOR RELIEF FROM**
 AUTOMATIC STAY
 5-29-18 [36]

**SELECT PORTFOLIO SERVICING,
INC. VS.**

Debtor's Atty: Iain A. MacDonald

The Status Conference is XXXXXXXXXXXXXXXXXXXX

Notes:

Set by order re adequate protection payments filed 7/13/18 [Dckt 80]

[JCW-1] Debtor's Status Conference Statement re Select Portfolio Servicing, Inc.'s Motion for Relief from Stay filed 10/11/18 [Dckt 211]

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

The Motion for Sanctions for Violation of the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion for Judgement Awarding Corrective Sanctions is xxxxxxx.
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The present Motion for Judgement Awarding Corrective Sanctions has been filed by the Chapter 7 Trustee, Kimberly Husted (“Plaintiff-Trustee”). Plaintiff-Trustee seeks an Order (judgement) in the amount of \$15,000.00 entered against Michael Pechbrenner, the Defendant, for failing to comply with the judgment of this court in Adversary Proceeding, No. 17-02178. The Judgement in favor of Plaintiff-Trustee, and requiring Defendant to pay Plaintiff-Trustee, for corrective sanctions was filed March 22, 2018. See Order, Bankr. E.D. Cal. No. 17-02178, Dckt. 37, March 22, 2018.

Though filed in the bankruptcy case itself, this request for sanctions flows from the judgment of the court in Adversary Proceeding No. 17-02178 and is part of the damages being incurred by the Plaintiff-Trustee by Defendant’s continuing failure to comply with the judgment of this court. This Motion should properly have been filed in the Adversary Proceeding.

The ministerial act of filing this Motion in the bankruptcy case rather than the Adversary Proceeding is addressed by the court. The Clerk of the Court will transfer this Motion and all rulings thereon to the file for Adversary Proceeding 17-02178.

ADVERSARY PROCEEDING

The present Motion stems from matters litigated in the Adversary Proceeding referenced, *supra*, which was filed on September 20, 2017. *See* Complaint, Dckt. 1, September 20, 2017^{FN.1}.

FN.1. References to the docket within the subheading “Adversary Proceeding” are to the Adversary Proceeding, No. 17-02178, unless stated otherwise.

Summons was issued by the Clerk of the United States Bankruptcy Court on September 20, 2017. Dckt. 3. The complaint and summons were properly served on Defendant. Dckt. 66.

Defendant failed to file a timely answer or response or request for an extension of time. Default was entered against Defendant pursuant to Federal Rule of Bankruptcy Procedure 7055 by the Clerk of the United States Bankruptcy Court on November 30, 2017. Dckt. 10. Plaintiff-Trustee filed its initial Motion for Default Judgement on December 12, 2017. Dckt. 12.

At the January 25, 2018, hearing, the court found Defendant was served personally in accordance with the Federal Rules of Civil Procedure and the Hague Convention, and sufficient time has elapsed for Defendant to appear in this case. Dckt. 20. The court granted Plaintiff-Trustee’s Motion for Entry of Default Judgement on January 31, 2018. Judgement, Dckt. 26.

The Court’s judgment provides in pertinent part concerning the property commonly known as 184 Los Delfines, Tambor, Costa Rica:

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Michael Pechbrenner, and his agents and representatives, shall immediately vacate and turnover possession of the real property commonly known as 184 Los Delfines, Tambor, Costa Rica, to Kimberly Husted, the Plaintiff Chapter 7 Trustee, and her agents and representatives, as directed by Ms. Husted.

. . .

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the request for the issuance of a prospective corrective sanction in the event of the failure of Defendant Michael Pechbrenner, and his agents and representatives’ failure, to forthwith comply with the above mandatory injunction, is reserved for consideration by post-judgment motion for the entry of an order imposing compensatory and corrective sanctions or incarceration (to induce compliance with the mandatory injunction). . . .

Prior Motion for Contempt

Plaintiff filed a prior motion seeking an order holding Defendant in contempt for violating the court’s Judgment and granting compensatory and corrective sanctions on February 22, 2018. 17-2178, Dckt. 31. The court granted the motion on March 22, 2018, noting that Defendant not only failed to comply with the court’s judgement, but apparently had filed a lawsuit in Costa Rica contradicting what this court has adjudged already. Dckts. 36 and 37.

The court issued an Order holding Defendant in contempt, requiring Defendant to deliver possession of the Property by April 10, 2018, at 12:30 p.m. or have judgement entered against Defendant in the amount of \$15,000.00 in corrective sanctions. Order, Dckt. 37. The Order also notified Defendant that further noncompliance with the court's January 31, 2018, judgment may result in referral of this Adversary Proceeding to the United States District Court for the exercise of the district court judge's Article III civil and criminal contempt powers. *Id.*

REVIEW OF THE MOTION

The grounds stated within the Motion now before the court include:

Pechbrenner has not delivered possession of Condo 184 to the Trustee, and presently occupies and exercises control over it in defiance of the Judgement and Order. Dckt. 452, at ¶ 10.

By this Motion, Trustee seeks an order awarding her corrective sanctions in the amount of \$15,000.00 against Pechbrenner due to his failure to comply with the Order. A party may be sanctioned for civil contempt for failing to comply with any order of this Court. *Id.* at 3:15-17.

The Order specifically provides that Pechbrenner was to deliver possession of Condo 184 to the Trustee by April 10, 2018 or a judgement in the amount of \$15,000.00 would be entered against Pechbrenner and in favor of the Trustee for corrective sanctions due to Pechbrenner's failure to comply with the Order. Pechbrenner has refused to comply with the Order and remains in possession of Condo 184, obfuscating the Trustee's efforts to market and sell the property for the benefit of the estate and creditors. *Id.* at 3:27-4:4.

Since the Trustee has shown by clear and convincing evidence that Pechbrenner has violated a specific and definite order of the Court, the burden now shifts to him to demonstrate inability to comply. *Id.* at 4:8-10.

OCTOBER 4, HEARING

At the October 4, 2018 hearing on the Motion, Michael Pechbrenner, the Defendant, appeared telephonically. A discussion ensued in which the liquidation of assets, payment of secured claims, and the rights to property of the bankruptcy estate were addressed.

In the discussion, a possible misunderstanding of Mr. Pechbrenner was unearthed. He repeatedly made reference to his being told to "release" his lien and just "trust" that the trustee would do the right thing. The court and parties discussed the process by which a trustee sells property subject to liens, with the liens being paid through escrow. Alternatively, if a dispute exists, the property being sold free and clear of the lien, and the lien attaching to the proceeds and not disbursed until the court determines the validity, extent, priority, and amount of the lien.

The parties agreed to a three week continuance. Mr. Pechbrenner is to immediately contact his Costa Rican counsel to communicate the basis, extent, and perfection of his asserts liens. Additionally, Mr. Pechbrenner is to address with his Costa Rican counsel the merits of engaging United States bankruptcy counsel to insure that the lien rights, if any, of Mr. Pechbrenner are preserved.

APPLICABLE LAW

The bankruptcy court judge has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); *see* 11 U.S.C. § 105(a).

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemnor must have an opportunity to reduce or avoid the fine through compliance. *Id.*

The party seeking contempt sanctions has the burden of proving by clear and convincing evidence that the contemnors violated a specific and definite order of the court. *Bennett*, 298 F.3d at 1069. The burden then shifts to the contemnors to demonstrate why they were unable to comply. *Id.* The requesting party must prove that the creditor (1) knew the discharge injunction was applicable and (2) intended the actions that violated the injunction. *Id.* For the second prong, the court employs an objective test, and the focus of the inquiry is not on the subjective beliefs or intent of the alleged contemnor in complying with the order, but whether in fact the conduct complied with the order at issue. *Bassett v. Am. Gen. Fin., Inc. (In re Bassett)*, 255 B.R. 747, 758 (9th Cir. B.A.P. 2000), *rev'd on other grounds*, 285 F.3d 882 (9th Cir. 2002).

DISCUSSION

Here, the court's Order was explicit:

IT IS FURTHER ORDERED that if Defendant fails to timely deliver possession of the Property, an Order (judgment) in the amount of \$15,000.00 shall be entered against Defendant and in favor of Plaintiff, and Defendant shall pay Plaintiff, for corrective sanctions due to Defendant's failure to comply with this Order

See Order, Bankr. E.D. Cal. No. 17-02178, Dckt. 37, March 22, 2018.

At the hearing, ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

~~Defendant is still in possession of the 184 Condo. Plaintiff-Trustee has shown by clear and convincing evidence that Defendant failed to abide by the court's March 20, 2018 Order. The Motion is granted.~~

~~The court shall issue a minute order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

The Motion for Sanctions for Violation of the Automatic Stay by Chapter 7 Trustee, Kimberly Husted ("Plaintiff-Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~**IT IS ORDERED** that the Motion is granted, and judgment in the amount of \$15,000.00 shall be entered against Defendant in Adversary Proceeding, No. 17-02178 , Michael Pechbrenner (“Defendant”) and in favor of Plaintiff-Trustee. This Order constitutes a judgment (Federal Rule of Civil Procedure 54(a) and Federal Rules of Bankruptcy Procedure 7054 and 9014) and may be enforced pursuant to the Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure (including Federal Rule of Civil Procedure 69 and Federal Rules of Bankruptcy Procedure 7069 and 9014).~~

3. [17-27397-E-13](#) **GEVORG/ARMINE POLADYAN** **CONTINUED STATUS CONFERENCE**
[18-2130](#) **RE: COMPLAINT**
8-8-18 [1]

POLADYAN ET AL V. TRIVEDI

Final Ruling: No appearance at the October 25, 2018 Status Conference is required.

Plaintiff's Atty: Peter L. Cianchetta
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 8/8/18

Answer: 9/6/18

Nature of Action:
Declaratory judgment

The Status Conference is continued to 11:00 a.m. on November 15, 2018, to be conducted in conjunction with the hearing on the Motion to Consolidate Adversary Proceedings.

Notes:

Continued from 10/10/18 to be conducted in conjunction with a Motion to Consolidate this Adversary Proceeding with another adversary proceeding.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The court having continued the hearing on the Motion to Consolidate this Adversary Proceeding with a related proceeding, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to 11:00 a.m. on November 15, 2018.

4. [17-27397](#)-E-13 GEVORG/ARMINE POLADYAN MOTION TO CONSOLIDATE LEAD
18-2130 CASE 18-02130 WITH 18-02014
9-12-18 [\[14\]](#)

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POLADYAN ET AL V. TRIVEDI

Final Ruling: No appearance at the October 25, 2018, hearing is required.

<p>The hearing on the Motion has been continued to 11:00 a.m. on November 15, 2018, pursuant to prior order of the court (Dckt. 28).</p>

Tapan Trivedi, Administrator for the estate of Ortansa Ambrus-Cernat (“Defendant”) in this Adversary Proceeding filed this Motion on September 12, 2018. Dckt. 14. On October 4, 2018, the court issued an Order requiring the appearances of Armine Asatryan, Gevorg G. Poladyan, Tapan Trivedi, Peter L. Cianchetta, Esq., and Peter G. Macaluso, Esq at the 11:00a.m. October 25, 2018 hearing. Order, Dckt. 21. On October 17, 2018.

The court granted the Application to Continue and continued the hearing to November 15, 2018 at 11:00 by prior order of the court. Order, Dckt. 28.