UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

October 29, 2013 at 9:32 A.M.

1.	13-20645-B-7 13-2126 GONZALEZ V. KITAY ET AL	ROBERT/TRISTINA KITAY DEG-1	MOTION FOR ENTRY OF DEFAULT JUDGMENT 9-20-13 [27]

Tentative Ruling: The motion is granted in part. The movant, plaintiff Daniel Gonzalez, shall recover $5,000.00 from defendant Robert N. Kitay ("Kitay," or "Debtor"), plus costs in the amount of $293.00. The foregoing amount shall be nondischargeable pursuant to 11 U.S.C. § 523(a)(4). To the extent the plaintiff requests entry of judgment with respect to defendant Law Offices of Robert N. Kitay, PC ("LORK"), the motion is denied without prejudice. Plaintiff's requests for entry of default judgment against the Debtor pursuant to 11 U.S.C. §§ 523(a)(2)(A), (a)(6), 727(a)(3) and (a)(4) are denied, and those claims are dismissed pursuant to Fed. R. Civ. P. 12(b)(6) with leave given to the plaintiff to amend the complaint. On or before November 19, 2013, the plaintiff shall file and serve on both defendants consistent with the requirements of Fed. R. Bankr. P. 7004 an amended complaint. If the plaintiff does not file an amended complaint by the foregoing deadline, the plaintiff's claims under 11 U.S.C. §§ 523(a)(2)(A), (a)(6), 727(a)(3) and (a)(4) will be dismissed without further notice or hearing. Judgment will not be entered until all of the plaintiff's claims, including those that may be asserted in an amended complaint, are resolved. Except as so ordered, the motion is denied.

As an initial matter, to the extent the plaintiff seeks entry of default judgment against, LORK, the motion is denied without prejudice because 1.) LORK's default has never been entered in this case, and 2.) there is no evidence in the form of a certificate of service on the court's docket that the summons and complaint were ever served on LORK.

As for the plaintiff's claims against the Debtor, the court finds that the Plaintiff has in his complaint sufficiently pled his claim for recovery of a nondischargeable debt pursuant to 11 U.S.C. § 523(a)(4). "Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading." Fed. R. Bankr. P. 7008(a), incorporating Fed. R. Civ. P. 8(d); Geddes v. United Financial Group, 559 F.2d 557, 560 (9th Cir.1977). In this case, the court finds that the allegations in the complaint that the plaintiff paid $5,000.00 to the debtor for legal services to be performed, and that the debtor did not perform those services but instead diverted the funds for his personal use are sufficient for the plaintiff to obtain default judgment on his claim under 11 U.S.C. § 523(a)(4) in the amount of $5,000.00, the amount

embezzled. The court also finds that it is appropriate to award the plaintiff $293.00 in costs for the filing fee for this adversary proceeding.

As for the plaintiffs remaining claims under §§ 523(a)(2)(A), (a)(5), and 727(a)(3) and (a)(4), the court does not find that the plaintiff has alleged facts which state a claim upon which relief may be granted, and dismisses those claims under Fed. R. Civ. P. 12(b)(6), made applicable here by Fed. R. Bankr. P. 7012.

The following sets forth the legal standard for evaluating whether a complaint states a claim upon which relief may be granted:

> The purpose of a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, made applicable here under Fed. R. Bankr. P. 7012, is to test the legal sufficiency of a plaintiff's claims for relief. In determining whether a plaintiff has advanced potentially viable claims, the complaint is to be construed in a light most favorable to the plaintiff and its allegations taken as true. Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974); Church of Scientology of Cal. v. Flynn, 744 F.2d 694, 696 (9th Cir.1984). . .

Quad-Cities Constr., Inc. v. Advanta Bus. Servs. Corp. (In re Quad-Cities Constr., Inc.), 254 B.R. 459, 465 (Bankr. D. Idaho 2000). In addition, under the Supreme Court's most recent formulation of Rule 12(b)(6), a plaintiff cannot "plead the bare elements of his cause of action, affix the label 'general allegation,' and expect his complaint to survive a motion to dismiss." Ashcroft v. Iqbal,129 S .Ct 1937, 1954 (2009). Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. See Bell Atl. Corp. v. Twombly, 127 S.Ct. 1955, 1964-66 (2007). ("[A] plaintiff's obligation to provide 'grounds' of his 'entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do."). Factual allegations must be enough to raise a right to relief above the speculative level. Id., citing to 5 C. Wright & A. Miller, Fed. Practice and Procedure § 1216, at 235-36 (3d ed. 2004) ("[T]he pleading must contain something more. . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action"). In addition, the court notes the following:

> A dismissal under Rule 12(b)(6) may be based on the lack of cognizable legal theory or on the absence of sufficient facts alleged under a cognizable legal theory. Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001); Balistreri v. Pacifica Police Dep't., 901 F.2d 696, 699 (9th Cir. 1988). . . the Court is not required "to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001). Courts will not "assume the truth of legal conclusions merely because they are cast in the form of factual allegations." Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003); accord W. Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981). Furthermore, courts will not assume that plaintiffs "can prove facts which [they have] not alleged, or that the defendants have violated . . . laws in ways that have not been alleged." Assoc. Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters, 459 U.S. 519, 526; 103 S. Ct. 897, 74 L. Ed. 2d 723 (1983). . .

Toscano v. Ameriquest Mortg. Co., 2007 U.S. Dist. LEXIS 81884 (E.D. Cal. 2007). If a Fed. R. Civ. P. 12(b)(6) motion to dismiss is granted, "[the] court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc), quoting Doe v. United States, 58 F.3d 494, 497 (9th Cir. 1995). In other words, the court is not required to grant leave to amend when an amendment would be futile. See Toscano, 2007 U.S. Dist. LEXIS 81884 (citing Gompper v. VISX, Inc., 298 F.3d 893, 898 (9th Cir. 2002)).

The court finds that the plaintiff's claims for relief under § 523(a)(2)(A), (a)(6) and 727(a)(3) merely recite the elements of those statutes without alleging facts which support a plausible claim under those statutes. Furthermore, in surveying the plaintiff's general allegations consisting of a summary of allegations made in a state court lawsuit against the Debtor, the court does not find the plaintiff's allegation that the "Debtor acting as LORK made misrepresentations, both negligent and intentional, personally to plaintiff which result in injury and prejudice to plaintiff resulting in damages of over $200,000.00 or more" is sufficient to state a claim under § 523(a)(2)(A). The plaintiff, for instance, fails to identify the nature of the misrepresentations, when they were made, or the nature of the injury and prejudice to the plaintiff.

As for the plaintiff's claim under § 727(a)(4)(A), a plaintiff states a claim upon which relief may be granted under § 727(a)(4)(A) if he alleges facts which, if proven, would show that the debtor knowing and fraudulently, in or in connection with the case, made a false oath or account. "A fact is material 'if it bears a relationship to the debtor's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of the debtor's property.'" In re Khalil, 379 B.R. at 173 (quoting In re Wills, 243 B.R. at 62). An omission or misstatement that "detrimentally affects administration of the estate" is material. In re Wills, 243 B.R. at 63 (citing 6 Lawrence P. King et al., Collier on Bankruptcy ¶ 727.04[1][b] (15th ed. rev.1998)).

In this case, the plaintiff alleges that the Debtor knowingly and fraudulently made a false oath or account in representing on his Statement of Financial Affairs that his income from employment or operation of a business in 2003 was $66,000.00 and that his income from employment or the operation of a business in 2012 was $59,000.00 "when in fact his actual income was much greater." The plaintiff, however, does not allege facts which support the materiality of the alleged false oaths or statements, particularly where the plaintiff alleges that the debtor understated income from ten years prior to the commencement of the case.

The plaintiff also alleges that the Debtor made a false oath or account where the debtor allegedly "failed in the Statement of Financial Affairs attached to his Petition to provide required information about the nature, names, taxpayer identification numbers, locations and beginning and end date of all businesses in which the Debtor was an officer, director, partner or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession or other activity either full or part-time within six years immediately preceding the commencement of the case." (Dkt. 1 at 8). However, the plaintiff fails to allege facts which support the falsity of the alleged omission from the Statement of Financial Affairs because the plaintiff

does not allege that the Debtor in fact had an interest in entities which was not listed in the Statement of Financial Affairs. The plaintiff's allegations require the court to draw an inference, which it declines to draw.

The court recognizes that the plaintiff's motion and his declaration in support thereof seek to add more specificity or additional facts to those alleged in the complaint. The evidence presented with the motion, however, can only lend support to facts already alleged and cannot add allegations of fact not already alleged in the complaint. Therefore, the court gives the plaintiff leave to amend the complaint to allege facts supporting his claims for relief under §§ 523(a)(2)(A), (a)(6) and 727(a)(3) and (a)(4)(A). As set forth above, both defendants must be given an opportunity to respond to the amended claims.

As set forth above, although the court has granted the motion with respect to plaintiff's claim under 11 U.S.C. § 523(a)(4), judgment will not be entered on that claim until all of the plaintiff's claims, including those that may be asserted in an amended complaint, are resolved.

The court will issue a minute order.

2. 12-29353-B-11 DANIEL EDSTROM — MOTION TO DISMISS CASE
13-2132 ATL-2 — 9-6-13 [63]
EDSTROM V. AUBURN LAKE TRAILS PROPERTY OWNERS ASSOCIATION ET

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The matter is deemed submitted on the papers. The court will issue a written disposition and order.

3. 12-29353-B-11 DANIEL EDSTROM — MOTION TO DISMISS CASE
13-2132 LDH-2 — 9-6-13 [59]
EDSTROM V. AUBURN LAKE TRAILS PROPERTY OWNERS ASSOCIATION ET

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The matter is deemed submitted on the papers. The court will issue a written disposition and order.

4. 09-35885-B-7 VENUS LILLYBRIDGE
VL-1

MOTION FOR RECONSIDERATION OF DEBTOR DISMISSAL AND MOTION FOR RECONSIDERATION OF OBJECTION TO TRUSTEE'S FINAL REPORT AND APPLICAITON FOR FINAL COMPENSATION AND/OR REIMBURSEMENT OF EXPENSES
9-17-13 [587]

Tentative Ruling: The chapter 7 trustee's opposition is sustained. The motion is denied.

The debtor seeks reconsideration of the court's order entered September 9, 2013 (Dkt. 586), overruling the debtor's objection to the chapter 7 trustee's final report and account and request for compensation, and denying, with prejudice, her fourth request to dismiss this bankruptcy case since its conversion to chapter 7 on January 12, 2012. The court treats the motion as one made under Fed. R. Civ. P. 59, made applicable to this case by Fed. R. Bankr. P. 9023.

Reconsideration under Rule 59(e) is appropriate "if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in the controlling law." School Dist. No. 1J, Multnomah County, Oregon v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir.1993). A Rule 59(e) motion "should not be granted[ ] absent highly unusual circumstances." 389 Orange St. Partners v. Arnold, 179 F.3d 656, 665 (9th Cir.1999). A motion to reconsider is not another opportunity for the losing party to make its strongest case, reassert arguments, or revamp previously unmeritorious arguments. Reconsideration motions do not give parties a "second bite at the apple." They "are not vehicles permitting the unsuccessful party to 'rehash' arguments previously presented.... Nor is a motion to reconsider justified on the basis of new evidence which could have been discovered prior to the court's ruling.... Finally, 'after thoughts' or 'shifting of ground' do not constitute an appropriate basis for reconsideration." United States v. Navarro, 972 F.Supp. 1296, 1299 (E.D.Cal.1999), rev'd on other grounds, 160 F.3d 1254 (9th Cir.1998) (internal citations omitted); accord United States v. Westlands Water Dist., 134 F.Supp.2d 1111, 1130 (E.D.Cal.2001); see also Backlund v. Barnhart, 778 F.2d 1386, 1388 (9th Cir.1985).

Here, with respect to her request for reconsideration of the denial of her request to dismiss the case, debtor argues that the court's finding that nothing new was presented in the debtor's request that could not have been presented in prior motions (Dkt. 584 at 2) was incorrect because the debtor's argument for dismissal of the case that the chapter 7 trustee's alleged "failure" to "inform" the court that the debtor had retained counsel in March, 2013, was not in fact an argument that could not have been presented in prior motions. The court disagrees. According to the debtor, she retained replacement bankruptcy counsel on March 5, 2012, and attended the meeting of creditors with counsel on March 8, 2012; the court notes that debtor's replacement counsel never formally substituted in as counsel of record for the case. The meeting of creditors was continued several times to March 21, 2012, April 4, 2012

and April 18, 2012. Debtor states that on April 18, 2012, she was informed by the chapter 7 trustee that the trustee had spoken with debtor's counsel and that the trustee would be closing the debtor's former debtor-in-possession bank accounts. Debtor subsequently filed, in pro per, a motion to dismiss the case on April 19, 2012 (Dkt. 441), two and one half months after she allegedly retained replacement counsel, in which she complained about the closure of the accounts by the trustee. If the debtor was unsatisfied with the performance of her counsel, she could have done so in the motion to dismiss filed on April 19, 2012. The court was not incorrect in its finding that the debtor's motion to dismiss filed on July 8, 2013, did not raise any argument or present any evidence that could not have been presented in her prior motions. The court's application of the doctrine of claim preclusion to her fourth request to dismiss her case was appropriate.

Moreover, the debtor's "new legal counsel" theory is irrelevant to the issue of whether the bankruptcy case should be dismissed. Even if the chapter 7 trustee had a duty to inform the court as to whether the debtor was represented by counsel – and she was under no such duty -- the debtor has not shown any evidence that the outcome of the bankruptcy case would be any different if the trustee had stated in her reports of the meetings of creditors that debtor was represented by counsel.

The debtor also requests that the court reconsider her objection to the trustee's final report and request for compensation, on the ground that the debtor wishes to make additional objections to distributions to be made to certain creditors. However, as the trustee points out, the debtor has shown absolutely no evidence that these arguments could not have been made in her objection to the final report filed on July 8, 2013. As stated above, a motion for reconsideration is not a vehicle for the debtor to refine prior arguments or make new arguments because she was previously unsuccessful.

The court will issue a minute order.

5. 12-30434-B-7 DMW-2 — SHARON BARCELLOS-TSUTSUI — MOTION FOR COMPENSATION FOR GABRIELSON AND COMPANY, ACCOUNTANT(S), FEES: $1,267.50, EXPENSES: $112.04
9-17-13 [32]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of $1267.50 in fees and $112.04 in expenses, for a total of $1379.54, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered on August 27, 2013 (Dkt. 31), the court authorized the debtor to retain the applicant as accounting firm for the trustee in this case. No effective date of employment was specified in the order, and therefore the effective date of the accountant's employment was August

27, 2013, the date of the entry of the order. This department does not approve compensation for work prior to the effective date of a professional's employment. DeRonde v. Shirley (In re Shirley), 134 B.R. 930, 943-944 (B.A.P. 9th Cir. 1992). However, the court construes the present application as requesting an effective date in the order approving the applicant's employment retroactive to May 14, 2013, the date on which the applicant first performed services for the estate. The request for that effective date is granted. Due to the administrative requirements for obtaining court approval of professional employment, this department allows in an order approving a professional's employment to state an effective date that is not more than thirty (30) days prior to the filing date of the employment application without a detailed showing of compliance with the requirements of In re THC Financial Corp, 837 F.2d 389 (9th Cir. 1988)(extraordinary or exceptional circumstances to justify retroactive employment). Here, the employment application was filed on May 17, 2013, three (3) days prior to the filing date of the employment application.

Applicant seeks compensation for services rendered and costs incurred during the period May 14, 2013, through September 16, 2013. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The trustee shall submit a proposed amended form of employment order that is consistent with the foregoing ruling. After entry of the amended employment order, the court will issue a minute order granting the motion for approval of compensation.

6. 08-31840-B-7 CLINTON MYERS — MOTION TO SELL
MLG-108 — 10-1-13 [1103]

Tentative Ruling: The motion is granted in part. Pursuant to 11 U.S.C. § 363(b), the chapter 7 trustee is authorized to sell the estate's interest in water hookup rights related to various lots of the Sun Peak subdivision and Park City, Utah (the "Property") in an "as-is" and "where-is" condition to Mountain Regional Water District for $16,000.00 pursuant to the terms of the Purchase and Sale Agreement file this Exhibit "A" to the motion (Dkt. 1105). The net proceeds of the sale shall be administered for the benefit of the estate. The trustee is authorized to execute all documents necessary to complete the approved sale. Except as so ordered, the motion is denied.

The sale will be subject to overbidding on terms approved by the court at the hearing.

The trustee has made no request for a finding of good faith under 11 U.S.C. § 363(m), and the court makes no such finding.

Counsel for the trustee shall submit an order that conforms to the foregoing ruling.

7. 12-34345-B-7 GJH-4 — ROGER LEASURE — MOTION FOR COMPENSATION BY THE LAW OFFICE OF HUGHES LAW CORPORATION FOR GREGORY J. HUGHES, TRUSTEE'S ATTORNEY(S), FEES: $12,831.50, EXPENSES: $73.60
10-8-13 [81]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

8. 13-29151-B-7 SAC-3 — JUAN CORONA — MOTION BY JINGMING CAI TO WITHDRAW AS ATTORNEY
9-19-13 [19]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. The movant, Schein & Cai LLP, is permitted to withdraw as counsel for debtor, Juan Corona, in this case. The movant shall forward to the debtor any documents or correspondence that are related to this case and received by the movant in the future. Except as so ordered, the motion is denied.

Movant alleges without dispute that the debtor voluntarily terminated the movant's employment as bankruptcy counsel after the date of the filing of the petition and obtained different counsel. In the absence of opposition, movant has shown sufficient grounds for permissive withdrawal under California Rule of Professional Conduct 3-700(C)(5)(client knowingly and freely assents to the termination of the employment).

The court will issue a minute order.

9. 13-24055-B-11 KG-16 — JESUS/ANGELICA MEDINA — CONTINUED MOTION TO VALUE COLLATERAL AND TO AVOID LIEN OF GMAC
4-21-13 [53]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is removed from the calendar, as resolved by the stipulation of the parties filed on October 4, 2013 (Dkt. 552), which stipulation was approved by order signed October 24, 2013.

10. 13-24055-B-11 KG-484 — JESUS/ANGELICA MEDINA — CONTINUED MOTION TO USE CASH COLLATERAL
9-10-13 [494]

Tentative Ruling: None.

11. 13-30807-B-7 JCO-1 — RAYMUND/KLARENE OLIVAREZ — CONTINUED MOTION TO COMPEL ABANDONMENT
8-27-13 [9]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

12. 13-32563-B-7 LRR-1 — HECTOR CARRILLO AND MARIA PARRA — MOTION TO ABANDON
10-9-13 [12]

Disposition Without Oral Argument: The motion is continued to December 17, 2013, at 9:32 a.m., for conclusion of the meeting of creditors under 11 U.S.C. § 341 and expiration of the period to object to claims of exemption established by Fed. R. Bankr. P. 4003(b).

13. 13-29865-B-7 — DAVID/COCO KELLY — OPPOSITION TO TRUSTEE'S REPORT OF NO DISTRIBUTION BY JOHN JOHNSON
9-24-13 [14]

Tentative Ruling: The objection is overruled.

The objection is overruled because it is not supported by any admissible evidence establishing its factual allegations. LBR 9014-1(d)(6). A failure to comply with the requirements of the Local Bankruptcy Rules constitutes grounds to overrule the opposition. LBR 1001-1(g).

Creditor John Johnson ("Johnson") states that debtor Coco Kelly has a long history of tax evasion and unsavory business practices designed to shelter her assets from the federal government and her creditors. However, Johnson has provided the court with no admissible evidence supporting his statements.

The chapter 7 trustee states in his response to the objection that he

filed a report of no distribution on August 28, 2013 following an interview with the debtors at the section 341 meeting of creditors held on August 27, 2013. The chapter 7 trustee further states in his response that after receiving the objection, he performed an additional investigation of the debtors' various businesses and that his additional research failed to uncover new, nonexempt assets of the estate available for distribution to creditors.

The court will issue a minute order.

14. 13-32865-B-7 DNL-2 — APNA INVESTMENTS, INC., A CALIFORNIA CORPORATION — MOTION TO REJECT LEASES OR EXECUTORY CONTRACTS 10-15-13 [21]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

15. 13-32865-B-7 DNL-3 — APNA INVESTMENTS, INC., A CALIFORNIA CORPORATION — MOTION TO ABANDON ESTATE PROPERTY 10-15-13 [26]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

16. 11-42866-B-11 GWK-10 — DAVID ZACHARY AND ANNMARIE SNORSKY — MOTION FOR COMPENSATION FOR GREGG W. KOECHLEIN, DEBTOR'S ATTORNEY(S), FEES: $10,619.00, EXPENSES: $1,125.81 9-18-13 [310]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. The application is approved on an interim basis in the amount of $10,619.00 in fees and $1,125.81 in expenses, for a total of $11,744.81, for services rendered during the period of March 1, 2013, through August 31, 2013. The total allowed fees and expenses shall be paid, to the extent not previously paid, as a chapter 11 administrative expense. Except as so ordered, the motion is denied.

On September 22, 2011, the debtors filed a chapter 11 petition. By order entered on March 7, 2012 (Dkt. 109) (the "Order"), the court authorized employment of the applicant as counsel for the debtors effective September 22, 2011. Applicant now seeks compensation for services rendered and costs incurred during the period of March 1, 2013, through

August 31, 2013. As set forth in the application, the approved fees and expenses are reasonable compensation for actual, necessary and beneficial services. 11 U.S.C. § 330(a)(1).

The court will issue a minute order.

17. 12-33980-B-7 LARRY WALLER
HSM-7

MOTION FOR ORDER APPROVING STIPULATION AND EXTENDING TIME TO FILE A COMPLAINT OBJECTING TO DISCHARGE OF DEBTOR AND/OR SEEKING A DETERMINATION OF NON-DISHCARGEABILITY OF A PARTICULAR DEBT
9-27-13 [85]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. The stipulation between the debtor and the chapter 7 trustee (Dkt. 88) is approved. Pursuant to the approved stipulation, the deadline for the chapter 7 trustee to file an objection to the debtor's discharge under 11 U.S.C. § 727 or challenge the dischargeability of certain debts under 11 U.S.C. § 523 is extended to November 26, 2013.

The chapter 7 trustee requests an extension of the deadline to file an objection to the debtor's discharge under 11 U.S.C. § 727 or challenge the dischargeability of certain debts under 11 U.S.C. § 523. When a request for an enlargement of time to file a complaint to objecting to discharge or dischargeability of certain debts is made before the time has expired, as it was here, the court may enlarge time for cause shown. Fed. R. Bankr. P. 4004(b) and 4007(c). Here, the chapter 7 trustee alleges that he needs additional time to investigate certain pre-petition transactions as well as continue settlement talks with the debtor. This constitutes "cause" for purposes of Fed. R. Bankr. P. 4004(b) and 4007(c). The debtor, through his counsel, and the chapter 7 trustee have entered into a stipulation to extend the deadline (Dkt. 88).

Nothing in this ruling constitutes a ruling that the trustee, as opposed to an individual creditor, has standing to object under 11 U.S.C. § 523 to the dischargeability of a particular debt.

The court will issue a minute order.

18. 11-36395-B-7 GURJIT JOHL
GJH-2

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH BALJIT JOHL AND SUKHJIT JOHL
10-8-13 [52]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

19. 13-29696-B-7 VERONICA RAMIREZ — MOTION TO COMPEL ABANDONMENT
TOG-8 — 10-1-13 [35]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

Pursuant to 11 U.S.C. § 554(b), the motion is granted, and the estate's interest in the business known as "Antonio Freight and Express, Inc.," listed at item number 35 on Schedule B (Dkt. 15, p.5), as well as a 2002 Freightliner Century used by the business and listed at item number 25 on Schedule B (Dkt. 15, p.4) (collectively, the "Business") are deemed abandoned by the estate. Except as so ordered, the motion is denied.

The debtor alleges without dispute that the Business, after accounting for all encumbrances and claimed exemptions, has no equity available for distribution to creditors. The debtor has proven that the Business is of inconsequential value and benefit to the estate.

The court will issue a minute order.

20. 12-20174-B-13 DEBRA LAWSON
13-2111 PGM-1
LAWSON V. LAW OFFICE OF GOLDSMITH & HULL — MOTION FOR SUMMARY JUDGMENT
10-1-13 [26]

Tentative Ruling: The motion is denied.

Plaintiff debtor Debra Ann Lawson ("Plaintiff") seeks summary judgment that defendant Goldsmith & Hull, APC ("Defendant")'s failure to refund pre-petition wage garnishments totaling $939.28 constitutes a continuing, willful violation of the automatic stay pursuant to 11 U.S.C. § 362(a). As a result of this alleged violation, the Plaintiff seeks actual and punitive damages, including attorney's fees and costs and emotional distress damages, pursuant to 11 U.S.C. § 362(k). Federal Rule of Civil Procedure 56, made applicable to this proceeding by Bankruptcy Rule 7056, provides that summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, admissions on file, and declarations, if any, show that there is "no genuine issue of fact and that the moving party is entitled to judgment as a matter of law." "The initial burden of showing the absence of a material factual issue is on the moving party. Once that burden is met, the opposing party must come forward with specific facts, and not allegations, to show a genuine factual issue remains for trial." DeHorney v. Bank of America N.T.&S.A., 879 F.2d 459, 464 (9th Cir. 1989). See, also, Celotex Corp. v. Catrett, 477 U.S. 317, 323-324, 106 S.Ct. 2548, 2553, 91 L.Ed.2d 265, 278-280 (1986).

The court finds that the Plaintiff has failed to meet her initial burden in this instance. First, the court finds that the Plaintiff has failed to establish that she is entitled to judgment as a matter of law. The

motion states that the Defendant must refund $939.28 in pre-petition wage garnishments and all post-petition wage garnishments. The motion and its supporting documents provide no evidence that a post-petition wage garnishment has occurred in this case. The motion also fails to cite to a specific subsection of 11 U.S.C. § 362(a) or any other authority that proves that continuing to hold onto a pre-petition wage garnishment after the petition date constitutes a willful violation of the automatic stay. Additionally, the Plaintiff has cited to no authority in support of her contention that these pre-petition wage garnishments must be refunded to her in order to cure the alleged automatic stay violation.

Second, even if the Plaintiff had provided adequate legal support for her position, the motion would be denied because it fails to even address the seventeen (17) affirmative defenses raised by the Defendant in its answer to the complaint (Dkt. 12, p.3-8). In order to prevail on a motion for summary judgment, all issues must be resolved in the Plaintiff's favor. This includes a showing by the Plaintiff that it would be impossible for the Defendant to prevail on any of its affirmative defenses.

Finally, the court finds that there are triable issues of fact relating to damages in this case. The parties dispute the total amount of the pre-petition wage garnishments that were allegedly in possession of the Defendant as of the petition date. Also, the Plaintiff seeks emotional distress damages but fails to cite to or analyze the relevant Ninth Circuit authority on proving damages for emotional distress under 11 U.S.C. § 362(k).

The court will issue a minute order.