

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

November 10, 2022 at 2:00 p.m.

1.	<u>13-90435-E-7</u> <u>22-9002</u>	SEAN AMIN CAE-1	STATUS CONFERENCE RE: NOTICE OF REMOVAL 9-12-22 [1]
ELLIOTT ET AL V. NEVAREZ ET AL			

Plaintiffs' Atty: Unknown

Defendants' Atty:

David C. Johnston [Sean Afshin Amin]

Unknown [Kevin Amin; California Shade, Inc.; Ellen Nevarez]

Adv. Filed: 9/12/22

Answer: 9/19/22

Counterclaim Filed: 9/19/22

Answer: none

Nature of Action:

Determination of removed claim or cause

Dischargeability - other

Notes:

The Status Conference is XXXXXXX
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NOVEMBER 10, 2022 STATUS CONFERENCE

On September 12, 2022, the Defendant-Debtor Sean Afshin Amin filed a Notice of Removal, removing the California Superior Court for the County of Nevada Case No. CU0000191 titled:

David Elliott and Angelina Elliott, Plaintiffs, vs. Ellen Nevarez, Kevin Amin and Sean Afshin Amin, individually and as owners of California Shade Inc. dba A-TEK Window & Door, and Does 1 to 20 inclusive, Defendants

and the related cross-action entitled

Ellen Nevarez, Cross-Complainant, vs. David Elliott, Kevin Amin, Sean Amin, individually and as owners of California Shade Inc. DbA A-TEK Window & Door, and Moes 1 to 25, inclusive, Cross-Defendants,

to this federal court. The Complaint, Cross-Complaint, and related documents are filed as Exhibits 1-8, Dckt. 5.

Review of Complaint

The Complaint filed by David and Angelina Elliott, Judicial Counsel Complaint for PLD-PI001, checks the boxes identifying that the Complaint is one for Personal Injury, with claims for:

- A. Property Damage,
- B. Personal Injury,
- C. Premises Liability and General Negligence, and
- D. Loss of Consortium

Exhibit 2; Dckt. 5.

With respect to the Defendant Debtor, the allegations state:

Defendants KEVIN and SEAN AFSHIN AMIN, both individually and as owners of Defendant CALIFORNIA SHADE, INC. dba A-TEK Window & Door purchased materials from patio cover manufacturer. Duralum. representing to the manufacturer they understood that as a condition of their purchase of the materials they would obtain the necessary permitting, engineering and perform the required installation as licensed contractors and owners of the business. Notwithstanding Defendants KEVIN and SEAN AFSHIN AMIN negligently provided the materials to unlicensed personnel, namely the homeowners and failed to supervise and/or perform the required installation, obtain and/or confirm that the necessary permitting and engineering of the subject patio cover was done.

As a result of the weather for the days leading up to the incident, snow had accumulated on the patio cover such that the negligent conduct of the Defendants, each and every one of them, resulted in the patio cover failing to support the reasonably foreseeable weight from the snow load, which caused the patio cover to collapse on top of Plaintiff DAVID ELLIOTT and his dog. As a result of the Defendants negligence, each and every one of them. Plaintiff DAVID ELLIOTT suffered significant permanent Injuries, including but not limited to Quadriplegia. The negligent

conduct of the Defendants, each and every one of them, as outlined above, was a substantial factor in causing the harm to the Plaintiffs.

Exhibit 2, Dckt. 5 at 7.

Review of Cross-Complaint

Ellen Nevarez has filed a Cross-Complaint against David Elliott, Kevin Amin, and Sean Afshin Amin, individually and as owners of California Shade Inc., dba A-Tek Window & Door. *Id.*, Exhibit 8. The claims stated in the Cross-Complaint are for: (1) Equitable/Implied Indemnity from Cross-Defendants (which includes Defendant-Debtor) and unidentified future “MOES;” (2) Apportionment and Contribution from Cross-Defendants and unidentified future “MOES;” and (3) Declaratory Relief against unidentified future “MOES.”

Review of Answer filed by Defendant-Debtor

On September 19, 2022, Defendant-Debtor filed his Answer and Counterclaim. Dckt. 7. The Answer admits and denies specific allegations in the Complaint, and includes five affirmative defenses (including statute of limitations and contributory negligence of Plaintiff, asserting that Defendant-Debtor and California Shade Inc. did not sell to Plaintiffs the patio cover or install it, that Plaintiffs made all the measurements and purchased the patio cover directly from the manufacturer, and that Defendant Debtor and California Shade, Inc. have even been on Plaintiff’s premises nor have seen the installation of the patio cover.

The Counterclaim by Defendant-Debtor is against the Plaintiffs and asserts that any obligation asserted was discharged in Defendant-Debtor’s 2013 bankruptcy case (EDC 13-90435). Counterclaim, Dckt. 7.

Federal Court Jurisdiction

Congress provides for wide and deep federal court jurisdiction for bankruptcy cases and matters related to bankruptcy cases. 28 U.S.C. § 1334 provides:

§ 1334. Bankruptcy cases and proceedings

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

In addressing the referral of all bankruptcy cases, matters arising in a bankruptcy case, and all matters related to a bankruptcy case to the Bankruptcy Judges (who are judicial officers of and constitute a unit of the District Court; 28 U.S.C. § 151) the following mandatory caveat is imposed by Congress:

(b)

...

(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

28 U.S.C. § 157(b)(5).

In looking at the Complaint removed to this court, it appears to be asserting, at least in part, a personal injury claim.

Core Matter Violation of Discharge Jurisdiction

In Defendant-Debtor's Counterclaim it is asserted that Plaintiffs have violated the discharge injunction established by Congress in 11 U.S.C. § 524 and which Defendant-Debtor was granted in his 2013 Bankruptcy Case. While filed as a Counterclaim, a complaint (or motion) seeking to have a person held in contempt for violating the statutory injunction created by Congress does not require the adjudication of the underlying liability asserted by Plaintiffs.

A complaint or motion for violation of the discharge injunction is a core matter proceeding arising under the Bankruptcy Code (not merely in the case or related to the bankruptcy case) for which the Bankruptcy Judge issues all final orders and judgment. 28 U.S.C. § 157. There are no rights to a jury trial or having this issue arising under the statute enacted by Congress to be tried before a District Court Judge.

The counter claim is a severable claim from the Complaint and can be promptly adjudicated in the Bankruptcy Court.

At the Status Conference, **XXXXXXX**

Debtor's Atty: David C. Johnston

Notes:

Continued from 8/4/22. Status Reports to be filed by the Chapter 7 Trustee and by any other party in interest, if such party in interest so desires, on or before seven (7) days before the 11/10/22 status conference.

[DL-2] Order granting Motion to Convert to Chapter 7 filed 8/5/22 [Dckt 123]

[DNL-1] Trustee's Application to Employ Desmond, Nolan, Livaich & Cunningham Pursuant to an Hourly Fee Agreement filed 8/16/22 [Dckt 130]; Order granting filed 8/19/22 [Dckt 134]

Trustee Report at 341 Meeting lodged 9/8/22

Amended Chapter 7 Trustee's Notice of Assets and Continued 341 Meeting lodged 9/12/22

Chapter 7 Trustee's Notice of Assets and 341 Meeting Concluded lodged 9/20/22

The Status Conference is XXXXXXX
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NOVEMBER 10, 2022 STATUS CONFERENCE

This formerly Chapter 11 case with a confirmed plan was converted to one under Chapter 7 on August 5, 2022. Order, Dckt. 123; Civil Minutes, Dckt. 121. The Chapter 7 Trustee has filed a Notice of Assets and has engaged the services of counsel to assist in the administration of this case.

Given some of the more "unique" and "special" issues concerning this Case, the court has maintained this Status Conference notwithstanding the conversion of the case. The Chapter 7 Trustee was ordered to file a Status Report by November 3, 2022. Order, Dckt. 128. It appears that this may have been lost in all of the other activity in this case, with no Status Report having been filed.

At the Status Conference, XXXXXXX

FINAL RULINGS

3. [10-90281-E-7](#) LORRAINE/GARY ERWIN CONTINUED STATUS CONFERENCE RE:
[21-9005](#) CAE-1 COMPLAINT
ERWIN ET AL V. U.S. BANK, 5-24-21 [\[1\]](#)
NATIONAL ASSOCIATION ET AL

Final Ruling: No appearance at the November 10, 2022 Status Conference is required.

Plaintiff's Atty: Darren Marcus Salvin; Laine T. Wagenseller
Defendant's Atty: unknown

Adv. Filed: 5/24/21
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property

Notes:
Continued from 8/4/22 to afford Plaintiff-Debtor to ensure that all necessary parties are named, sufficient notice by publication provided, and to file a motion for entry of a default judgment quieting title.

Motion for Default Judgment filed 10/5/22 [Dckt 69]; Order granting Motion for Default Judgment filed 10/31/22 [Dckt 79]; attorney file a proposed judgment

The Status Conference is continued to 10:30 a.m. on December 15, 2022, to be conducted in conjunction with the Motion for Attorney's Fees and Costs for the Prevailing Plaintiff-Debtor.

NOVEMBER 10, 2022 STATUS CONFERENCE

On October 31, 2022, the court entered an order granting Plaintiff's Motion for Entry of Default Judgment. Dckt. 79. Pursuant to that Order, Plaintiff's counsel shall be lodging with the court a proposed judgment.

On November 9, 2022, Plaintiff filed a Motion for an award attorney's fees in the amount of \$61,415.00 and costs of \$661.06. Dckt. 81. The Motion lays out the contractual and statutory basis for Plaintiff recovering attorney's fees.

The court shall issue an 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 Status Conference in this Adversary Proceeding having been scheduled, Plaintiff being in the process of lodging with the court a proposed judgment (based on the court having granted the Motion for Entry of Default Judgment on October 31, 2022), there being a Motion for Prevailing Party Attorney's Fees set for December 15, 2022, and upon review of the pleadings, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to **10:30 a.m. on December 15, 2022**, to be conducted in conjunction with the Motion for Attorney's Fees and Costs for the Prevailing Plaintiff-Debtor.

4. [19-90003](#)-E-7 NATHAN DAMIGO CONTINUED STATUS CONFERENCE RE:
[19-9006](#) CAE-1 COMPLAINT
1-30-19 [\[1\]](#)

SINES ET AL V. DAMIGO

CONTINUED TO MAY 4, 2023

Final Ruling: No appearance at the November 10, 2022 Status Conference is required.

Plaintiff's Atty: Robert L. Eisenbach
Defendant's Atty: *Pro Se*

Adv. Filed: 1/30/19
Answer: none

Nature of Action:
Dischargeability - willful and malicious injury

Notes:
Continued from June 30, 2022. Parties to file updated status reports on or before 11/3/22.

Motion to Continue Status Conference [Defendant] filed 10/28/22 [Dckt 43]

Status Report [Plaintiffs] filed 10/31/22 [Dckt 44]

Order Continuing Status Conference filed 10/31/22 [Dckt 45], set for hearing 5/4/23 at 2:00 p.m.

Pursuant to prior Order of this Court (Dckt. 45), the Status Conference has been continued to 2:00 p.m. on May 4, 2023.

5. [20-90210-E-11](#) **JOHN YAP AND IRENE LOKE** **CONTINUED STATUS CONFERENCE RE:**
[21-9016](#) **CAE-1** **COMPLAINT**
YAP ET AL V. PNC FINANCIAL **12-10-21 [1]**
SERVICES GROUP, INC. ET AL

Final Ruling: No appearance at the November 10, 2022 Status Conference is required.

Plaintiff's Atty: Arasto Farsad, Nancy W. Weng
Defendant's Atty: unknown

Adv. Filed: 12/10/21
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property

Notes:
Continued from 8/4/22 to afford Plaintiff-Debtor time to lodge and have entered the proposed judgment relating to the amended order granting the Motion for Entry of Default.

The Status Conference is continued to 2:00 p.m. on December 15, 2022.
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The court notes that Plaintiff-Debtor's Counsel has not yet lodge the proposed judgment with the court. It appears that this may be due to a calendaring error. To allow Counsel to address any such error, the court continues the Status Conference, presuming that Counsel is now aware of the error.

SUBCHAPTER V

Final Ruling: No appearance at the November 10, 2022 Status Conference is required.

Debtor's Atty: David C. Johnston

Notes:
Continued from 8/25/22

Trustee Report at 341 Meeting lodged: 8/29/22; 9/7/22; 9/15/22

Periodic Reports filed by Debtor: 10/28/22 (7/31/22; 7/31/22; 8/31/22; 8/31/22; 9/30/22; 9/30/22)

Monthly Operating Reports filed: 10/30/22 (July; Aug; Sep)

[SSA-1] Motion for Relief from Stay to Pursue Continued Nonjudicial Foreclosure [253 Tissot Drive, Patterson, CA] filed 9/13/22 [Dckt 36]; Order granting filed 10/7/22 [Dckt 56]

[UST-1] Motion of the United States Trustee to Dismiss or Convert Chapter 11 Case filed 9/30/22 [Dckt 48], set for hearing 11/10/11 at 10:30 a.m.; *Ex Parte* Application to Continue Hearing filed 11/2/22 [Dckt 71]; Order granting filed 11/2/22 [Dckt 77], set for hearing 12/15/22 at 2:00 p.m.

Avinash Singh's Plan of Reorganization Dated October 4, 2022 filed 10/4/22 [Dckt 54], set for hearing 12/15/22 at 2:00 p.m.

Notice of Change in Designation of Counsel of Record [for U.S. Trustee] filed 11/2/22 [Dckt 76]

The Status Conference is continued to 2:00 p.m. on December 15, 2022, to be conducted in conjunction with the Confirmation Hearing and the U.S. Trustee's Motion to Dismiss or convert.

NOVEMBER 10, 2022 STATUS CONFERENCE

The confirmation hearing on the Debtor/Debtor in Possession Subchapter V Plan is set for December 15, 2022. Pursuant to the request of the U.S. Trustee, the U.S. Trustee's Motion to Dismiss or Convert this case has been continued to December 15, 2022, to be considered in conjunction with the confirmation hearing. Order; Dckt. 77.

Creditors Usha Sharma and Vikash Sharma have filed an Objection to Confirmation of the Subchapter V Plan. Dckt. 72.

From the court's review of the Docket, it is clear that this case is proceeding, the parties are communicating, and that the substantive issues are set to be addressed at the December 15, 2022 hearings.

The Status Conference is continued to 2:00 p.m. on December 15, 2022, to be conducted in conjunction with the Confirmation Hearing and the U.S. Trustee's Motion to Dismiss or convert.

The court shall issue an 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 Status Conference in this case being scheduled for November 10, 2022, there being the hearings on Confirmation of the Subchapter V Plan and the U.S. Trustee's Motion to Dismiss or Convert set for 2:00 p.m. on December 15, 2022, the court review of the Docket disclosing that the Parties are actively prosecuting this case to the December 15, 2022 focal point, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to 2:00 p.m. on December 15, 2022.

HATMAKER V. SMITH

Final Ruling: No appearance at the November 10, 2022 Status Conference is required.

Plaintiff's Atty: Bashar S. Ahmad
Defendant's Atty: Pro Se

Adv. Filed: 5/25/22
Answer: none

Nature of Action:
Dischargeability - willful and malicious injury

Notes:
Continued from 8/4/22. Plaintiff reported that the state court mediation will be conducted in September 2022, and will include all of the State Court defendants, including the employer of Defendant-Debtor.

Status Conference Statement of Plaintiff Johnny Hatmaker filed 11/3/22 [Dckt 17]

<p>The Status Conference is continued to 2:00 p.m. on January 12, 2023.</p>
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NOVEMBER 11, 2022 STATUS CONFERENCE

On November 3, 2022, Plaintiff Johnny Hatmaker filed an updated Status Conference Statement. Dckt. 17. The updated information includes the following:

A. Plaintiff and Defendant-Debtor entered into a Stipulation extending the time for Defendant to respond to the Complaint to July 22, 2022. Order, Dckt. 10.

1. No response to the Complaint has been filed by Defendant-Debtor.

B. Plaintiff, Defendant-Debtor, and another party engaged in a mediation in the underlying State Court Action.

C. The mediation was successful, with the parties have agreed to a settlement, the terms of which are confidential.

D. There is a condition in the settlement to the dismissal of the Complaint in this Adversary Proceeding.

1. That condition precedent is schedule to be satisfied on or about November 30, 2022.

E. Plaintiff requests that the Status Conference be continue approximately 60 days to provide some flexibility in satisfying the condition precedent, the holidays, and afford time for Plaintiff to dismiss the Complaint.

No contrary information has been provided by Defendant-Debtor. It appearing that the Parties are diligently working to consummate the underlying settlement and conclude this matter, the court continues the Status Conference.

The court shall issue an 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 Status Conference in this Adversary Proceeding having been set for November 10, 2022; Plaintiff having filed a timely Updated Status Report informing the court that a settlement has been reached and that the condition precedent to the dismissal of the Complaint should be satisfied by late November 2022, Plaintiff requesting a continuance of the Status Conference, and upon review of the pleadings, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to **2:00 p.m. on January 12, 2023.**

Final Ruling: No appearance at the November 10, 2022 Status Conference is required.

Plaintiff's Atty: *Pro Se*
Defendant's Atty: *Pro Se*

Adv. Filed: 8/12/19
Answer: 9/4/19
Amd. Answer: 9/6/19
Amd. Cmplt Filed: 9/30/19
Answer: none

Nature of Action:
Objection/revocation of discharge
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

Notes:
Continued from 6/16/22. Without prejudice to either party seeking relief as is appropriate after the entry of a final judgment or other adjudication in the Los Angeles County State Court Action.

The Status Conference is continued to 2:00 p.m. on May 25, 2023.

NOVEMBER 10, 2022 STATUS CONFERENCE

On November 7, 2022, Plaintiff Emilio Reyes filed an Updated Status Report (Dckt. 87), advising the court that the Second District Court of Appeal reversed the ruling on the Motion to Strike the State Court Action, and that Plaintiff will now proceed with prosecuting that State Court Action to establish the asserted liability of Defendant-Debtor. A copy of the District Court of Appeal Decision (which is 33 pages in length) is filed as Exhibit A. Dckt. 87.

Defendant-Debtor Lorraine Escobar filed her Updated Status Report and Request for a Continuance on November 8, 2022. Dckt. 88. Defendant-Debtor states that she suffered from COVID-19 which has delayed her ability to request a rehearing before the District Court of Appeal, but she intends to pursue such request.

In her Status Report Defendant-Debtor takes "swipes" at the Plaintiff, asserting he is making misstatements, obfuscating the facts, and argues some of the underlying facts.

Adversary Proceeding Stayed

By prior Order of this Court, this Adversary Proceeding has been stated pending entry of a final judgment in the State Court Action in which Plaintiff asserts his claims against Defendant-Debtor for which he seeks to have this court determine that such claims are nondischargeable. Order, Dckt. 50; Civil Minutes, Dckt. 49.

Further Continuance of the Status Conference

The one thing that Plaintiff and Defendant-Debtor agree on is that there is ongoing litigation in the State Court Action which must be completed to final judgment before this court can proceed on the issue of whether any obligation of Defendant-Debtor determined therein is nondischargeable in Defendant-Debtor's bankruptcy case.

The court continues the Status Conference to 2:00 p.m. on May 25, 2023.

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

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the November 20, 2022 Status Conference.

The Status Conference having been conducted by the court, the District Court of Appeal having issued its Decision, both Parties stating how they are continuing prosecution of the State Court Action and the Decision of the District Court of Appeal, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to **2:00 p.m. on May 25, 2023**. This is without prejudice to either party seeking relief in this Adversary Proceeding as is appropriate after the entry of a final judgment or other adjudication in the Los Angeles County State Court Action.

IT IS FURTHER ORDERED that Updated Status Reports shall be filed and served by Plaintiff and Defendant-Debtor on or before May 15, 2023.