

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

November 30, 2022 at 2:00 p.m.

1. <u>22-21314-E-13</u> NADIA ZHIRY	STATUS CONFERENCE RE:
<u>22-2089</u>	COMPLAINT
CAE-1	9-5-22 [1]

KEENA, II V. ZHIRY

Plaintiff's Atty: Kirk Steven Rimmer
Defendant's Atty: Peter G. Macaluso

Adv. Filed: 9/5/22
Answer: 10/25/22

Nature of Action:
Dischargeability - other

Notes:
Joint Status Report and Discovery Plan filed 10/25/22 [Dckt 9]

The Status Conference is XXXXXXX

NOVEMBER 30, 2022 STATUS CONFERENCE

At the Status Conference, XXXXXXX

SUMMARY OF COMPLAINT

The Complaint filed by Gerard Keena II, Receiver ("Plaintiff-Receiver"), Dckt. 1 , asserts claims that debts relating to the state court receivership, including the Receiver's fees and costs, and fines, are nondischargeable. 11 U.S.C. § 523(a)(7)(A) and (B).

SUMMARY OF ANSWER

Nadia Zhiry (“Defendant-Debtor”) have filed an Answer, Dckt. 7, admitting and denying specific allegations.

JOINT STATUS CONFERENCE REPORT AND DISCOVERY PLAN

On October 25, 2022, the Parties filed a Joint Status Report and Discovery Plan. Dckt. 9. In it they have specified specific dates and deadlines which the court incorporates into the Pre-Trial Conference Order.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Receiver Gerard F. Keena II alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 3, 4, Dckt. 1. In the Answer, Defendant Nadia Zhiry admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ 3, 4; Dckt. 4. **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. Plaintiff-Receiver Gerard F. Keena II alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). Complaint ¶¶ 3, 4, Dckt. 1. In the Answer, Defendant Nadia Zhiry admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶¶ 3, 4; Dckt. 4. **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 and disclosure of non-expert witnesses shall be made on or before **December 15, 2022.**
- c. Disclosure of non-expert documents and reports shall be delivered on or before **December 15, 2022.**
- d. Information concerning damages and copies of Insurance Policies shall be delivered on or before **December 15, 2022.**

- e. Expert Witnesses shall be disclosed and Expert Witness Reports shall be disclosed and Reports delivered on or before **April 14, 2023**.
- f. The Parties are allowed a total of 40 interrogatories and two depositions per Party, unless otherwise ordered by the court.
- g. Discovery closes, including the hearing of all discovery motions, on **xxxxxxx, 2023**.
- h. Dispositive Motions shall be heard before **xxxxxxx, 2023**.
- i. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on xxxxxx, 2023**.

2. [18-25851-E-13](#) **ROBERT HUNTER** **STATUS CONFERENCE RE:**
[22-2087](#) **COMPLAINT**
CAE-1 **9-1-22 [1]**

HUNTER V. FILLMORE GROUP TRUST

Items 5 & 6

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: Unknown

Adv. Filed: 9/1/22
Summons Reissued: 9/15/22 [Dckt 6]
Answer: none

Nature of Action:
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:

The Status Conference is xxxxxx
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NOVEMBER 30, 2022 STATUS CONFERENCE

The Plaintiff-Debtor has commenced this Adversary Proceeding to quiet title with respect to a deed of trust naming Fillmore Group Trust, *et al.*, as the beneficiary. Plaintiff-Debtor alleges that he has not authorized the deed of trust, is the victim of identity theft, and the deed of trust is void.

On September 15, 2022, a Reissued Summons was issued for Plaintiff. Dckt. 6. No certificate of service has been filed.

At the Status Conference, **XXXXXXX**

3. [18-25851](#)-E-13 **ROBERT HUNTER**
[22-2088](#)
CAE-1

STATUS CONFERENCE RE:
COMPLAINT
9-1-22 [[1](#)]

**HUNTER V. PEACHTREE GROUP
TRUST**

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: Unknown

Adv. Filed: 9/1/22
Summons Reissued: 9/15/22 [Dckt 6]
Answer: none

Nature of Action:
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

Notes:

The Status Conference is XXXXXXX
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NOVEMBER 30, 2022 STATUS CONFERENCE

The Plaintiff-Debtor has commenced this Adversary Proceeding to quiet title with respect to a deed of trust naming Peachtree Group Trust et al., as the beneficiary. Plaintiff-Debtor alleges that he has not authorized the deed of trust, is the victim of identity theft, and the deed of trust is void.

On September 15, 2022, a Reissued Summons was issued for Plaintiff. Dckt. 6. No certificate of service has been filed.

At the Status Conference, **XXXXXXX**

Debtor's Atty: David Foyil

Notes:
Continued from 9/13/22

Operating Reports filed: 9/21/22 [ending 8/31/22 & 7/31/22], 10/21/22 [ending 9/30/22], 11/21/22 [ending 10/31/22]

U.S. Trustee Report at 341 Meeting lodged 9/30/22

Status Report filed 11/4/22 [Dckt 46]

The Status Conference is continued to 2:00 p.m. on XXXXXXX , 2023.
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NOVEMBER 30, 2022 STATUS CONFERENCE

On November 4, 2022, the Debtor in Possession filed an Updated Status Report. Dckt. 46. The Debtor in Possession states that he will continue his law practice to fund a plan. Debtor in Possession states that the federal and state tax liens exceed the value of the estate's assets, and he will seek to value the secured claims pursuant to 11 U.S.C. § 506(a).

At the Status Conference, XXXXXXX

SEPTEMBER 13, 2022 STATUS CONFERENCE

The U.S. Trustee reports that the Debtor did not appear at the First Meeting of Creditors on September 2, 2022. September 2, 2022 Docket Entry Report. The meeting has been continued to September 12, 2022. The U.S. Trustee reports that the continued meeting was held, and is further continued to September 30, 2022. The U.S. Trustee reported that the debtor in possession accounts have not been set up, and that his law corporation has been suspended.

On August 17, 2022, Debtor in Possession filed a Status Report. Dckt. 18. He reports that the Chapter 11 Plan is to be funded through the operation of his law practice. Additionally, Debtor has been able to resolve his other creditors, modified the loan secured by his residence so that it is current pursuant to a loan modification, and has little in unsecured debt, but for secured tax claims, which the Debtor in Possession sees to address through increased revenues in his law practice.

At the Status Conference, the Debtor in Possession stated that he does not disagree with the amendments that were identified by the U.S. Trustee at the First Meeting of Creditors.

FINAL RULINGS

5. [22-20106-E-13](#) **BARBAREE JERNIGAN AND** **STATUS CONFERENCE RE:**
[CAE-1](#) **LANCE LIGHTHALL** **VOLUNTARY PETITION**
1-18-22 [1]

Final Ruling: No appearance at the November 30, 2022 Status Conference is required.

Debtors' Atty: David Foyil

Notes:

Order granting Trustee's Motion for Status Conference filed 9/14/22 [Dckt 72]. On or before 11/23/22, Debtor to file a short status report providing an update on the prosecution of the plan in this case, status of any confirmed plan, and other matters which Debtor determines material to the status of this Case.

[DEF-3] Motion to Confirm First Amended Chapter 13 Plan filed 10/20/22 [Dckt 73], set for 12/3/22 at 2:00 p.m.

[DEF-5] *Ex Parte* Motion to Employ Real Estate Agent and Broker and for Compensation to Real Estate Agent and Broker filed 11/14/22 [Dckt 80]; Order granting filed 11/16/22 [Dckt 87]

[CAE-1] Status Report filed 11/22/22 [Dckt 88]

[DEF-6] *Ex Parte* to Continue Status Conference [from 11/30/22 to 12/13/22 -specially set] filed 11/22/22 [Dckt 89]; order pending

The Status Conference is continued to 2:00 p.m. on December 13, 2022.

NOVEMBER 30, 2022 STATUS CONFERENCE

On November 22, 2022, Debtor filed a Status Report. Dckt. 88. The Debtor reports that the Motion to Confirm the Amended Chapter 13 Plan in this case is set for hearing on December 13, 2022. Further, the Trustee has filed a Response to the Motion to Confirm and supports confirmation.

Debtor has filed a Motion to continue this Status Conference to December 13, 2022, to be conducted in conjunction with the Motion to Confirm Chapter 13 Plan.

SEPTEMBER 13, 2022 STATUS CONFERENCE

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks a Status Conference regarding the Court’s order entered May 31, 2022, Dckt. 57, with respect to a Motion to Sell Real Property at 6470 Ridgeway Drive (“Property”) for \$350,000.00.

Trustee seeks a Status Conference as no plan has been confirmed so Trustee is not able to disburse funds received from the sale of the Property.

Additionally, Navigate Realty was representing the buyer and seller, and Trustee is not certain whether the funds held for buyer and seller were intended by the court to both be paid to Navigate Realty. Additionally, Debtor has not yet sought authority to employ and pay Navigate Realty.

Pursuant to 11 U.S.C. § 105(d), the court finds a status conference is necessary to further the expeditious and economical resolution of the case.

Counsel for the Debtor states that a plan has been drafted and was being reviewed by Debtor. Debtor was in court, with their counsel appearing telephonically. Debtor addressed the court, expressing some frustration of trying to meet with their attorney. Counsel for the Debtor orally set an attorney-client meeting with them for noon on Saturday September 17, 2022, at counsel’s office to go over the possible plan in this case and the alternative of converting the case to one under Chapter 7.

Debtor’s counsel reported that any plan in this case, or a Chapter 7 liquidation would provide for a 100% dividend on all claims. This may be a mitigating factor in the court considering the pending motion for retroactive employment of a real estate broker and a real estate agent who provided representation not only of the Debtor, as the fiduciary of the bankruptcy estate, but also the buyer of real property of the Bankruptcy Estate.

The court set the hearing on the motion for retroactive employment sufficiently far enough out so that it can be coordinated with the prosecution of this case and documentation of the 100% dividend for all claims.

HUSTED V. MEPCO LABEL SYSTEMS
ET AL

6 thru 7

Plaintiff's Atty: J. Russell Cunningham; Kristen Ditlevsen

Defendant's Atty:

Charles L. Hastings [Laura Strombom]

Scott G. Beattie [Carol L. Gassner; Alfred M. Gassner; Mepco Label Systems]

Nature of Action:

Recovery of money/property - turnover of property

Notes:

Continued from 5/4/22

Joint Status Report filed 11/21/22 [Dckt 208]

The Pre-Trial Conference is continued to 2:00 p.m. on March 7, 2023.

NOVEMBER 30, 2022 CONFERENCE

On November 21, 2022, the Parties filed a Joint Status Report. Dckt. 208. They report that their participation in the BDRP mediation has resulted in a settlement that will be presented to the court for approval. This settlement is to resolve the disputes relating to the Settlers' Proofs of Claim 3-1 and 4-1.

The Parties report that the anticipated hearing date for a motion to approve the settlement will be set for January 2023 and that performance of the settlement, once it is approved, will be completed by February 17, 2023. The Parties request that the Status Conference be continued until after February 17, 2023.

The court is pleased that the Parties and their respective counsel have been able to use the BDRP process and acknowledges the substantial time and effort all have contributed to that process.

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 Pre-Trial Conference having been set by the court, the Parties having filed a Status Report that a settlement has been reached and a Motion to Approve the

IT IS ORDERED that the Pre-Trial Conference is continued to **2:00 p.m. on March 7, 2023**.

**CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
7-12-19 [20]**

Notes:
Continued from 8/24/22

November 30, 2022 at 2:00 p.m.
Page 9 of 11

In the Updated Status Report Plaintiff summarizes the various conduct of Defendants asserted to be in violation of the Automatic Stay in the Late Debtor Thomas Gassner's bankruptcy case. In it, Plaintiff states that is considering renewing a motion for summary judgment, citing to authorities that the automatic stay can be violated if there is an arguable interest of the debtor in property, even if it is later determined that there was no interest of the debtor or the bankruptcy estate in such property.

Plaintiff's Updated Status Report continues, advancing the discussion to focusing on not the ultimate conclusion as to whether the property is ultimately determined to be property of the estate as determinative, but whether there were asserted interests in the property for which the termination of such interests or determination of such interests were asserted and action taken in a forum other than the bankruptcy court without the other party obtaining relief from the automatic stay.

Plaintiff reviews some of the conduct of Defendant, noting that the actions taken included a Petition to Modify the Irrevocable Trust in State Court after the bankruptcy case had been filed. They note that such an action is to modify what were the then existing rights and interests of the bankruptcy estate going forward. This would indicate that there were rights of the bankruptcy estate, and Defendants sought to change those rights.

Plaintiff notes that the Chapter 7 Trustee and Defendants in a related proceeding have stated that action which the Chapter 7 Trustee is marketing for sale the property interests in dispute.

Plaintiff also states that for the limited discovery being conducted in this Adversary Proceeding at this time, there have been disputes concerning certain claims of privilege and that documents and an updated privilege log has been produced by Defendants.

Plaintiff states that upon a review of the evidence and declarations filed in this Adversary Proceeding, Plaintiff anticipates additional persons will need to be added as defendants. So far, these persons are identified as Jennifer Gassner-Tracy, Alfred Karl Gassner, MEPCO, and Mis Pasadena Properties, LLC.

Plaintiff recommends continuing the Status Conference to 2:00 p.m. on November 30, 2022, to be conducted in conjunction with the Status Conference in the Related Adversary Proceeding.

Defendant Laura Strombom's Updated Status Report

Defendant Laura Strombom states that she is agreeable to a joint mediation to be conducted in conjunction with the Related Adversary Proceeding being conducted by the Chapter 13 Trustee.

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 having been set by the court, the Parties having filed a Status Report that a settlement has been reached in related adversary proceedings, 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 March 7, 2023.**