

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Modesto, California

December 2, 2021 at 2:00 p.m.

1. [21-90409-E-7](#) **JOSHUA CATON**
[21-9011](#)
MESSIER ET AL V. CATON

STATUS CONFERENCE RE:
COMPLAINT
9-27-21 [1]

Plaintiff's Atty: Pro Se
Defendant's Atty: Thomas P. Hogan

Adv. Filed: 9/27/21
Answer: 10/26/21

Nature of Action:
Recovery of money/property - preference
Objection/revocation of discharge
Revocation of confirmation
Dischargeability - false pretenses, false representation
Dischargeability- fraud as fiduciary, embezzlement, larceny

Notes:
Status Conference Statement [Defendant] filed 11/23/21 [Dckt 11]

DECEMBER 2, 2021 STATUS CONFERENCE

An unsigned document titled "Complaint Form Item 11" has been filed by a person identified as tmessier1692@aol.com. Dckt. 1. It states that "we" signed a contract with Central Valley Fiberglass pool company ("CVF") for a pool. It states that a payment of \$43,604.20 was made for the pool and a hole was dug. Then, another payment of \$14,534.73 was made, with the total payments being \$59,138.93.

It states that CVF advised that the pool had been ordered and would arrive on April 1, 2021. A person named "Josh" stated that they had a permit. No pool arrived and no permit was obtained.

It is stated that Josh subsequently admitted there was no permit. Subsequently, no pool has been installed, though having been promised on several further occasions "Josh" stated it would be installed.

No prayer for relief is stated.

Attached to the Complaint Form is a copy of a contract, copies of checks, and several email correspondence.

Answer

On October 26, 2021 an Answer was filed by Joshua Ronald Caton. Dckt. 9. This self-identified Defendant admits and denies specific allegations and states an affirmative defense that he has a good reputation, but has been going through a divorce and COVID.

Bankruptcy Dispute Resolution Program

On October 18, 2021, the court entered an order appointing J. Russell Cunningham as a Bankruptcy Dispute Advocate as requested by Tom and Cathy Messier, and Joshua Caton. Dckt. 7. In Defendant's Status Report it is stated that the BDRP mediation is set for December 9, 2021.

At the Status Conference **XXXXXXX**

2. [20-90115-E-7](#) **ALIMUTHANA**
[21-9008](#)
MCGRANAHAN V. SUWAID ET AL

**CONTINUED STATUS CONFERENCE RE:
COMPLAINT
7-26-21 [1]**

Plaintiff's Atty: Daniel L. Egan

Defendant's Atty:

David C. Johnston [Bader Alikassim Suwait]

Timothy J. Silverman [GNN Real Estate and Mortgage, Inc.]

Adv. Filed: 7/26/21

Answer:

8/27/21 [Bader Alikassim Suwait]

9/20/21 [GNN Real Estate and Mortgage, Inc.]

Nature of Action:

Recovery of money/property - other

Validity, priority or extent of lien or other interest in property

Declaratory judgment

Notes:

Continued from 9/30/21 re Plaintiff's *Ex Parte* Motion to Continue Status Conference and Other Related Deadlines filed 9/13/21 [Dckt 9]

Defendant GNN Real Estate and Mortgage, Inc.'s Substitution of Attorney filed 10/28/21 [Dckt 17]; Order approving filed 11/3/21 [Dckt 19]

The Status Conference is XXXXXXX
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SUMMARY OF COMPLAINT

The Complaint filed by Michael D. McGranahan (“Plaintiff-Trustee”), Dckt. 1 , asserts claims for Avoidance of Unauthorized Post-Petition Transfers (11 U.S.C. §549) and recovery of such transferred property (11 U.S.C. § 550). The property transferred at issue is identified as 2022 White Fall Court, Ceres, California and the subsequent encumbrance of the property (second transfer).

SUMMARY OF ANSWERS

Defendant Suwaid

Bader Suwaid, Defendant (“Defendant Suwaid”) has filed an Answer, Dckt. 7 , admitting and denying specific allegations, and alleging affirmative defenses of good faith, payment of equivalent value, that he paid the lender who would have foreclosed on the Property, and asserting a lien on the property for the debt incurred to prevent the foreclosure.

Defendant GNN Real Estate and Mortgage, Inc.

GNN Real Estate and Mortgage, Inc. (“Defendant GNN”) has filed an Answer, Dckt. 12, admitting and denying specific allegations, and alleging affirmative defenses of good faith, payment of equivalent value, that he paid the lender who would have foreclosed on the Property, and asserting a lien on the property for the debt incurred to prevent the foreclosure.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Trustee alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a) and (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 5, 6, Dckt. 1. In the Answer, Defendant Suwaid admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶ 1; Dckt. 7. In the Answer filed by Defendant GNN, admits the allegations of jurisdiction and core matter proceeding. Answer ¶ 1; Dckt. 12. **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.**

JOINT DISCOVERY PLAN

The Parties filed their Joint Discovery Plan on September 20, 2021. Dckt. 12.

ISSUANCE OF PRE-TRIAL SCHEDULING ORDER

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

- a. Plaintiff-Trustee alleges in the Complaint that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a) and (b), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Complaint ¶¶ 5, 6, Dckt. 1. In

the Answer, Defendant Suwaid admit the allegations of jurisdiction and that this is a core proceeding. Answer ¶ 1; Dckt. 7. In the Answer filed by Defendant GNN, admits the allegations of jurisdiction and core matter proceeding. Answer ¶ 1; Dckt. 12. **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 **December 31, 2021**.
- c. Expert Witnesses shall be disclosed on or before **xxxxxxx** , **2022**, and Rebuttal Expert Witnesses, if any, shall be disclosed on or before **xxxxxxx**, **2022**.
- d. Discovery closes, including the hearing of all discovery motions, on **xxxxxxx**, **2022**.
- e. Dispositive Motions shall be heard before **xxxxxxx**, **2022**.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at **2:00 p.m. on xxxxxx** , **2022**.

3. [19-90461-E-7](#) **LORRAINE ESCOBAR**
[19-9014](#)
REYES V. ESCOBAR

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
9-30-19 [25]

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 12/17/20. This is 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.

Superior Court of California, County of Los Angeles, Civil Division Ruling to Grant Defendant Lorraine Escobar's Special Motion to Strike Each of the Six Causes of Actions of Plaintiff Emilio Reyes' First Amended Complaint filed 6/7/21 [Dckt 71]

Plaintiff's Statement to Lorraine Escobar's Letter Dated June 6, 2021 filed 6/21/21 [Dckt 74]

The Status Conference is XXXXXXX
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DECEMBER 2, 2021 STATUS CONFERENCE

On June 7, 2021, *pro se* Defendant Lorraine Escobar filed a pleading to which is attached what is identified as a ruling, which is identified as a minute order, in the State Court Action dismissing the Plaintiff Emilio Reyes' six causes of action in the State Court Action. It states that leave to amend is given for the first five causes of action. Dckt. 71.

On June 21, 2021, *pro se* Plaintiff filed a pleading that the "untimely" motion to strike filed by Defendant in the State Court Action was granted. Dckt. 74. Plaintiff states that he has appealed that order and that the appeal will take two years.

Nothing further has been filed concerning the status of the appeal.

At the Status Conference, **XXXXXXX**

DECEMBER 17, 2020 STATUS CONFERENCE

The court has stayed this Adversary Proceeding to allow the parties to diligently prosecute their state court action in the Superior Court, Los Angeles County. Order, Dckt. 50.

On December 7, 2020, Plaintiff Emilio Reyes filed his Status Report to update the court regarding the state court proceedings. Dckt. 64. Plaintiff states that he has requested the entry of a default judgment in the state court action in October 2020, but does not tell the court that it has been entered.

On December 7, 2020, Defendant Lorraine Escobar filed her Objection to Plaintiff's Statement dated December 2, 2020 (which is the one stated above filed on December 7, 2020). Dckt. 65. Defendant takes exception to what Plaintiff stated and requests that Defendant be instructed to file the next status report.

Defendant-Debtor states there have been delays in the state court litigation due to events beyond her control. Defendant-Debtor states that there is a hearing pending on her motion to vacate the default in the state court action.

Plaintiff filed on December 14, 2020, a Motion to Continue the Status Conference. Dckt. 66. Plaintiff states that due to serious health issues, he has an appointment at 4:30 p.m. on the same afternoon as the December 17, 2020 Status Conference. He requests that the this matter be heard at the start of the calendar or be continued to another day.

In light of the December 17, 2020 Status Conference being nothing more than setting a follow up date for next year concerning the status of the Los Angeles litigation, the court took this matter up first on the calendar.

At the Status Conference the court addressed with the parties that at this juncture the only issues for this court are the status of the Los Angeles litigation. That does not include who did what to whom, or why the other person is acting badly.

DECEMBER 19, 2019 STATUS CONFERENCE

On December 19, 2019, the court conducted the continued hearing on the request of the Defendant-Debtor to dismiss her bankruptcy case and Order to Show Cause why this Adversary Proceeding should not be dismissed.

In connection with the Order to Show Cause, Plaintiff stated on the record that he was dismissing his causes of action objecting to discharge pursuant to 11 U.S.C. § 727 and was instead proceeding only for his claims that the state court judgment, once obtained, will be determined nondischargeable pursuant to 11 U.S.C. § 523.

The court, pursuant to the Order to Show Cause has dismissed the § 727 claims and the Clerk of the Court will enter Debtor's discharge. The court will also stay this Adversary Proceeding to allow the Plaintiff and Defendant-Debtor to litigate the State Court Action (in which Defendant-Debtor is represented by counsel) to a final judgment (including all appeals).

Plaintiff confirmed at the hearing on this Motion and the Order to Show Cause that he concurs with these proceedings being stayed and the Plaintiff and Defendant-Debtor put all of their efforts into the State Court litigation. Then, when a final judgment is obtained, if it is in favor of the Plaintiff, he can bring back to this court for the application of the Doctrine of *Res Judicata*/Collateral Estoppel, and prosecute his § 523 nondischargeability claims. If Defendant-Debtor prevails and nothing is owed, she can have this Adversary Proceeding dismissed.

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 conducted by the court, no judgment having been entered in the Los Angeles County State Court Action, 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 **XXXXXXX**, 2022. This is 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.

SUBCHAPTER V

Debtor's Atty: David C. Johnston; Brian S. Haddix

Notes:

Continued from 9/30/21. The First Meeting of Creditors continued from 9/22/21 to 10/7/21.

First Meeting of Creditors held 10/7/21 - Debtor did not appear; continued to 10/22/21. First Meeting of Creditors concluded 10/22/21.

Plan of Reorganization for Small Business Under Chapter 11/ MoBrewz, LLC's Plan of Reorganization Dated November 16, 2021, filed 11/16/21 [Dckt 33]; set for hearing on 1/13/22 at 2:00 p.m.

Notice of Hearing on Confirmation of Plan of Reorganization and Related Deadlines filed 11/23/21 [Dckt 35], set for hearing 1/13/22 at 2:00 p.m.

Debtor's Status Report filed 11/26/21 [Dckt 37]

The Status Conference is XXXXXXX
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DECEMBER 2, 2021 STATUS CONFERENCE

On November 16, 2021, the Debtor/Debtor in Possession filed a Chapter 11 Small Business Plan. The Plan terms state that the Class 1 priority claims, and the Class 2 and Class 3 secured claims, on the terms of the loan documents, will be paid in full. For general unsecured claims a 30% dividend or \$1,500 a month for 60 months, whichever occurs first. Dckt. 33. The confirmation hearing for the Chapter 11 Plan is set for 2:00 p.m. on January 13, 2022. Dckt. 34.

The Debtor/Debtor in Possession filed a Status Report on November 26, 2021 (Dckt. 37) confirming that the plan, notice of confirmation hearing, and related documents have been sent.

At the Status Conference, XXXXXXX

SEPTEMBER 30, 2021 STATUS CONFERENCE

Through a Status Report in an unrelated adversary proceeding, the court has learned that counsel for the Debtor has been diagnosed with COVID-19 and has been hospitalized. Also, that counsel for Debtor will be unable to practice law for the period from late September 2021 through late November 2021.

The Debtor/Debtor in Possession filed a Status Report on September 17, 2021. Dckt. 22. In it the Debtor/Debtor in Possession recounts the current status of the business and the difficulties in updating the facilities and getting the business open due to COVID-19 issues.

It is projected in the Report that the Debtor/Debtor in Possession will have a Chapter 11 plan filed on or before November 15, 2021, which is the 90th day after the filing of the Plan. Given counsel for the Debtor/Debtor in Possession disruption of his legal practice, such appears to be in question.

The Trustee's report of the First Meeting of Creditors states that the Debtor/Debtor in Possession appeared and counsel for the Debtor/Debtor in Possession appeared at the Meeting on September 22, 2021. September 23, 2021 Trustee Docket Entry Report. The First Meeting has been continued to October 7, 2021.

At the Status Conference, the Subchapter V Trustee reported that the Meeting of Creditors has been conducted. An issue exists whether Debtor can obtain the additional capital.

The U.S. Trustee has a continued 341 Meeting scheduled for next week.

5. [20-90479-E-12](#) **JOE MACHADO** **CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
7-9-20 [1]**

Debtor's Atty: David C. Johnston

Notes:

Continued from 8/19/21

Debtor's Status Report filed 11/26/21 [Dckt 130]

The Status Conference is XXXXXXX
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On November 26, 2021, Joe Machado, the Debtor, as the Plan Administrator, filed a Status Report. Dckt. 130. In it the Debtor/Plan Administrator under the terms of the confirmed Plan escrow closed for the sale of Debtor's ranch on or about June 4, 2021. Further that the Debtor/Plan Administrator has sold some the non-exempt farm equipment required to be sold under the confirmed Plan, and has transmitted the \$18,000 in sales proceeds to the Chapter 12 Trustee.

Michael Meyer, the Chapter 12 Trustee, filed his Status Report (Dckt. 131) which includes a report of the personal property to be sold and identifies the personal property which has been sold (6 of the 35 items to be sold).

As did Debtor/Plan Administrator's counsel, the Trustee also notes that if Debtor can get the personal property sold in 2021, then the monies can be distributed as soon as the 2021 tax returns are prepared. However, if the sales do not occur until sometime in 2022, then the full distributions on unsecured claims will have to wait until the 2022 tax returns are paid. The Trustee cites to 11 U.S.C. § 1232 which allows the Debtor/Plan Administrator to treat the government claim (post-petition IRS taxes) as a general unsecured claim, so long as that obligation arises prior to discharge.

The Trustee suggests that the court, in addition to Debtor/Plan Administrator's counsel and the Trustee, impress upon the Debtor/Plan Administrator the need to get the personal property sold in 2021 so the Plan may be promptly completed, the monies disbursed, and there not be further substantial other administrative expenses that would drain the unsecured claims fund (in addition to unnecessarily delaying the disbursement to creditors with unsecured claims).

At the hearing, **XXXXXXX**

6. [20-90779-E-11](#) **PRIMO FARMS, LLC**

**CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
12-3-20 [1]**

SUBCHAPTER V

Debtor's Atty: David C. Johnston

Notes:

Continued from 9/30/21

[DL-1] Order granting Motion for Allowance of Fees and Expenses filed by Walter R. Dhal, Subchapter V Trustee filed 10/4/21 [Dckt 89]

Debtor's Status Report filed 11/26/21 [Dckt 94]

The Status Conference is XXXXXXX
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DECEMBER 2, 2021 STATUS CONFERENCE

The Debtor/Plan Administrator filed a Status Report on November 26, 2021. Dckt. 94. The Debtor/Plan Administrator reports that the Confirmed Plan provided for the sale of three houses by July 31, 2021, after which date the creditor with the secured claim(s) could foreclose.

Unfortunately, the sales escrows were delayed to numerous issues, and the lenders have foreclosed on all three homes. The Debtor/Plan Administrator identifies several of these issues as:

A. A dissolution of the Debtor, without the consent of the managing member, that occurred on May 28, 2021.

It is unclear to the court how a Debtor, in a bankruptcy case, can be "dissolved," as well as how such "dissolved" Debtor could purport to continue to serve as a plan administrator and a party in these federal court proceedings.

The Plan in this case was confirmed by an order entered on June 10, 2021. Dckt. 76.

B. That the lenders submitted payoff demands into escrow that violated/breached the terms of the confirmed plan. This violation/breach is stated to be making demands for default interest, which was not the interest provided in the Plan that bound these lenders and the Debtor/Plan Administrator.

The Status Report does not identify what action the Debtor/Plan Administrator took to enforce the Plan or intends to take with respect to the breach of the Plan.

At the Status Conference, **XXXXXXX**

C. That when the title companies ran the preliminary title reports there were junior liens on the homes, which if paid, would consumer all of the proceeds, leaving nothing for the Plan.

The Status Report does not identify these persons who were owed debts secured by the homes (property of the bankruptcy estate and subject to the plan) and what such debts (secured claims) were. It also does not state how such creditors with secured claims were unknown to the Debtor/Debtor in Possession and not included in the Plan.

At the Status Conference, **XXXXXXX**

The Debtor/Plan Administrator suggests in the Status Report that the Status Conference to continued in light of the Debtor/Plan Administrator having lost all of the property that was part of the Bankruptcy Estate and became property under the Confirmed Plan, so that Debtor/Plan Administrator can file a motion to dismiss this case.

In looking at the California Secretary of State's website, she report that Primo Farms, LLC, which was registered September 19, 2013, was "Cancelled." The documents provided on the Secretary of State's Website include the following:

A. Cancellation Statement is signed by Mark McManis, which has a file date of May 27, 2021.

1. It states that the cancellation was made by a vote of "ALL" of the members of Primo Farms, LLC.
2. It states that upon the effective date of the Certificate of Cancellation, Primo Farms, LLC's "registration is cancelled and **its powers, rights and privileges will cease in California.**"

B. Statement of Information filed on April 27, 2020, for Primo Farms, LLC states that the manager is "nef alberto," who is located at 2405 Kansas Ave, Modesto, California. It also identifies the agent for service of process as being Mark McManis, located at 9634 Cabernet Court, Patterson, California. Mr. McManis is not identified as a managing member of the LLC. The Statement of Information is signed by Mark McManis, whose title is "agent," and not by "nef alberto," the managing member.

The Secretary of State reports that another entity named Primo Farms, LLC was registered on July 15, 2021. The LLC Registration - Articles of Organization filed on July 15, 2021, identifies a Neftali

J. Alberto, located at 2405 Kansas Avenue, Modesto California as the sole managing member and the agent for service of process. Consistent information is provided on the Statement of Information for the new Primo Farms, LLC filed on July 20, 2021.^{FN.1.}

FN. 1.

<https://businesssearch.sos.ca.gov/CBS/SearchResults?filing=&SearchType=LPLLC&SearchCriteria=pri+mo+farms&SearchSubType=Keyword>

The court does not reference the Secretary of State Official Website information and documents as “evidence” being submitted to the court, but to provide such publically available information in connection with the discussion at the Status Conference.

The Chapter 11 Petition is signed by Neftali Alberto, as the managing member of Debtor. Dckt. 1 at 4. Mr. Alberto signed the Statement Regarding Authority to Sign and File Petition and Resolution of the Members of Primo Farms, LLC to file the bankruptcy case. *Id.* at 5, 6.

On the Statement of Financial Affairs, the sole managing member of Debtor identified as Neftali Alberto, who has a 50% interest. The other member, but not a managing member, is identified as Mark McManis, who has a 50% interest. Stmt. Fin. Affairs, Question 28; Dckt. 22 at 7.

In the Status Report, it states that the Debtor/Plan Administrator was dissolved without the consent of the 50% managing member, Mr. Alberto. That would mean that Mr. McManis, who held 50% of the member interests in the Debtor forced the immediate dissolution of the Debtor/Plan Administrator – with the fiduciary Debtor/Plan Administrator helpless to protect the assets to be used in the Plan to pay creditors. See Cal. Corp. Code § 17707.01(b) providing that dissolution of an LLC can be done by a vote of 50% or more of the membership.

If the Debtor/Plan Administrator was dissolved by the act of Mark McManis in May 27, 2021, then that may well have left the fiduciary Debtor/Plan Administrator neutered and unable to fulfill its, and its members’, fiduciary duties arising under Federal Law and the Confirmed Chapter 13 Plan (which confirmation order was entered on June 10, 2021, after the Debtor/Plan Administrator is stated to have been dissolved.^{FN.2.}

FN. 2. Since the member chose to dissolve the Debtor/Debtor in Possession prior to confirmation, then such attempt may have been in violation of the stay and void.

Additionally, failing to disclose that the Debtor/Debtor in Possession had been dissolved before the court entered the order confirming the Plan, which rendered the information provided to the court upon which confirmation was based to be incorrect.

While California Corporations Code § 17707.06 allows a dissolve limited liability to prosecute actions by or against it in order to collect and discharge obligation, disposing of and conveying its property, and collecting and dividing its assets, here it was serving as the fiduciary plan administrator. Additionally,

by being “dissolved,” rather than an active, operating entity, it may not have had the assets or ability to perform its fiduciary duties.

As is clear from the context of the court’s comments above, this situation where creditors are stated to have violated the Plan, the Debtor/Plan Administrator having been purportedly “dissolved” out from under this federal court, the “dissolved” Debtor/Plan Administrator purporting to be the plan administrator and continuing to appear in this case, no action taken to address breaches of the Plan by creditors, and there being undisclosed creditors with secured claims, a swift dismissal of this case may be premature. It may be that the Subchapter V Trustee, reporting these events to the U.S. Trustee, may necessitate the U.S. Trustee investigating what has occurred.

At the Status Conference, **XXXXXXX**

7. [19-90382-E-7](#) **TRACY SMITH**
[19-9012](#)
ALVAREZ V. SMITH ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
7-26-19 [1]

Plaintiff’s Atty: Shane Reich

Defendant’s Atty:

Peter G. Macaluso [Tracy Emery Smith]

Unknown [Sharp Investor, Inc.]

Adv. Filed: 7/26/19

Answer: None

Nature of Action:

Dischargeability - false pretenses, false representation, actual fraud

Dischargeability - willful and malicious injury

Dischargeability - fraud as fiduciary, embezzlement, larceny

Recovery of money/property - other

Notes:

Continued from 9/30/21 as a Post-Judgment Status Conference

Defendant’s Post Judgment Status Conference Report filed 11/23/21 [Dckt 64]

The Status Conference is XXXXXXX
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The default judgment against Tracy Emery Smith and Sharp Investor, Inc., and in favor of Tina Alvarez. Judgment, Dckt. 48. The Judgment awards:

A. A monetary judgment of \$19,000, and

B. Imposes a Mandatory Injunction requiring Defendants Tracy Emery Smith and Sharp Investor, Inc. to immediately transfer clear title, free and clear of all liens and encumbrances, the “Mobile Home” (which is expressly identified in the Judgment).

The Judgment further provides that if title is not transferred, then an amended judgment for \$93,643.84 will be granted Plaintiff.

The Judgment further provides for the court to conduct post-judgment status conferences concerning the Defendants compliance with this court’s Mandatory Injunction.

Neither party appeared, nor filed a Status Report, for the September 30, 2021 Status Conference. Defendant Tracy Smith filed a Status Report for the December 2, 2021 continued Status Conference. Dckt. 64. In the Status Report Defendant Tracy Smith:

A. Does not state whether he has, or has not, complied with this court’s Mandatory Injunction that was issued by this court.

At the July 29, 2021 Status Conference, it was reported that Mr. Macaluso had substituted in that month as counsel for Defendant Tracy Smith, and the parties requested a 60 day continuance so that he could get up to speed and address Defendant’s obligations under the judgment.

B. Though one hundred twenty-five (125) days have passed since the July 20, 2021 Status Conference, the Defendant reports that “Plaintiff and Defendant have not yet met to discuss this adversary proceeding.” Status Report, ¶ B; Dckt. 64.

Though Plaintiff sought, the court issued, and Defendant is subject to this court’s Mandatory Injunction, Defendant’s counsel reports that in the past one hundred and twenty-five days, the Plaintiff and Defendant have “not yet” met. This apparent lack of action, or concern regarding, in light of this court’s Judgment and Mandatory Injunction does concern the court.

C. Defendant then states that the court having “Entered the Default of Defendant” (actually a Judgment and Mandatory have been entered, not “merely” a default), the court should just close its file.

The Plaintiff has not filed a Status Report and does not report as to the diligence in the prosecution the enforcement of the Judgment and Mandatory Injunction obtained from this court.

The court does not cavalierly issue Mandatory Injunctions, and compliance with such Mandatory Injunctions is not optional.

At the Status Conference, **XXXXXXX**

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 conducted, ~~Shane Reich, Esq., counsel for Plaintiff, and Peter Macaluso, Esq., counsel for Defendant Tracy Smith,~~ having appeared for their respective clients, and upon consideration of the oral reports by Plaintiff regarding the diligent prosecution of this Adversary Proceeding and enforcement of the Judgment and Mandatory Injunction, and by Defendant concerning the compliance with the Mandatory Injunction,, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to 2:00 p.m. on ~~xxxxxxx~~, 20XX.

IT IS FURTHER ORDERED that Tina Alvarez, the Plaintiff; Shane Reich, Esq., counsel for Plaintiff; Tracy Emery Smith, the Judgment Debtor; and Peter Macaluso, Esq, counsel for Judgment Debtor; and each of them, shall appear in person at the continued Status Conference, and Each and Every Other Hearing or Proceeding in this Adversary Proceeding - **No Telephonic Appearances Permitted for the persons ordered to appear in person.**

SUBCHAPTER V

Debtor's Atty: Brian S. Haddix

Notes:

Operating Reports filed: 10/11/21; 11/16/21

[BSH-1] Application for Employment of Brian S. Haddix As Counsel filed 10/18/21 [Dckt 24]; Order granting filed 10/20/21 [Dckt 32]

[BSH-2] Application for Employment of James Bielenberg as Accountant filed 10/18/21 [Dckt 27]; Order granting filed 10/20/21 [Dckt 33]

Debtor's Chapter 11 (Subchapter V) Status Report filed 11/18/21 [Dckt 39]

The Status Conference is XXXXXXX
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DECEMBER 2, 2021 STATUS CONFERENCE

On November 18, 2021, Twisted Oak Winery, LLC, the Debtor/Debtor in Possession, filed a Status Report. Dckt. 39. The information reported includes the following. The Debtor/Debtor in Possession is current on lease payment, the SBA insured loan, payroll, and tax obligations. The Debtor/Debtor in Possession foresees the Plan in this case providing for a 100% dividend for creditors holding general unsecured claims. It is projected that the Chapter 11 Plan will be filed by January 4, 2022.

At the Status Conference, XXXXXXX

FINAL RULINGS

9. [94-92001-E-7](#) STEVEN FORD
[21-9009](#)
FORD V. SIMMONS ET AL

STATUS CONFERENCE RE:
COMPLAINT
9-21-21 [[1](#)]

Final Ruling: No appearance at the December 2, 2021 Status Conference is required.

Plaintiff's Atty: David C. Johnston
Defendant's Atty: unknown

Adv. Filed: 9/21/21
Answer: none

Nature of Action:
Dischargeability - other
Injunctive relief - other

Notes:
Request for Entry of Default by Plaintiff [Thomas E. Simmons] filed 11/24/21 [Dckt 7]

Request for Entry of Default by Plaintiff [LaDonna Simmons] filed 11/24/21 [Dckt 8]

Plaintiff's Status Report filed 11/26/21 [Dckt 9]

The Status Conference is continued to 2:00 p.m. on January 27, 2022.

DECEMBER 2, 2021 STATUS CONFERENCE

The Plaintiff-Debtor filed a Status Report on November 26, 2021. He reviews various attorneys who have spoken with Plaintiff-Debtor's counsel about this Adversary Proceeding, with each ultimately advising him that they would not be appearing as counsel for the Defendants. Dckt. 9.

The defaults of each of the two Defendants were entered on November 30, 2021. Dckts. 10, 11. Counsel for Plaintiff-Debtor requests a continuance to allow for the prosecution for entry of default judgments.

The Complaint seeks relief in the form of a determination that a debt has been discharged in this bankruptcy case filed in 1994. The Complaint also seeks to enforce the discharge injunction.

The court continues the Status Conference to allow Plaintiff-Debtor the opportunity to prosecute motions for entry of default judgments.

10. [20-90710](#)-E-12 LESLIE JENSEN

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
10-29-20 [\[1\]](#)

DEBTOR DISMISSED: 11/8/2021

Final Ruling: No appearance at the December 2, 2021 Status Conference is required.

Debtor's Atty: David C. Johnston

Notes:

Order Granting Debtor's Motion to Dismiss Chapter 12 Case filed 11/8/21 [Dckt 198]

<p>The Bankruptcy Case having been dismissed (Order, Dckt. 198), the Status Conference is concluded and the matter removed from the Calendar.</p>
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11. [20-90710](#)-E-12 LESLIE JENSEN
[DCJ-3](#)

CONTINUED STATUS CONFERENCE RE:
MOTION TO CONFIRM CHAPTER 12
PLAN
3-18-21 [[69](#)]

DEBTOR DISMISSED: 11/8/2021

Final Ruling: No appearance at the December 2, 2021 hearing is required.

Debtor's Atty: David C. Johnston

Notes:

Order Granting Debtor's Motion to Dismiss Chapter 12 Case filed 11/8/21 [Dckt 198]

<p>The Bankruptcy Case having been dismissed (Order, Dckt. 198), the Motion to confirm a Chapter 12 Plan is dismissed without prejudice.</p>

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 Motion to Confirm Chapter 12 Plan filed by former Debtor in Possession Leslie Jensen having been presented to the court, this bankruptcy case having been dismissed on the Motion of the then Debtor in Possession, and upon review of the files in this Case, and good cause appearing

IT IS ORDERED that the Motion is dismissed without prejudice.

12. [20-90710](#)-E-12
[HLG-1](#)

LESLIE JENSEN

**CONTINUED MOTION TO CONVERT
CASE FROM CHAPTER 12 TO CHAPTER
7 AND/OR MOTION TO DISMISS CASE
4-27-21 [96]**

DEBTOR DISMISSED: 11/8/2021

Final Ruling: No appearance at the December 2, 2021 hearing is required.

Debtor's Atty: David C. Johnston

Notes:

Order Granting Debtor's Motion to Dismiss Chapter 12 Case filed 11/8/21 [Dckt 198]

<p>The Bankruptcy Case having been dismissed (Order, Dckt. 198), the Motion to Convert or Dismiss the case is dismissed without prejudice.</p>

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 Motion to Convert or Dismiss this Chapter 12 case filed by Krista Osmer and the Dyer Law Firm having been presented to the court, this bankruptcy case having been dismissed on the Motion of the then Debtor in Possession, and upon review of the files in this Case, and good cause appearing,

IT IS ORDERED that the Motion is dismissed without prejudice.

13. [20-90710](#)-E-12 LESLIE JENSEN
[RHS-2](#)

**CONTINUED ORDER TO SHOW CAUSE
WHY THE COURT SHOULD
DETERMINE THAT DEBTOR LESLIE
JENSEN IS A FAMILY FARMER WHO
MAY COMMENCE A CHAPTER 12 CASE
5-3-21 [\[105\]](#)**

DEBTOR DISMISSED: 11/8/2021

Final Ruling: No appearance at the December 2, 2021 hearing is required.

Debtor's Atty: David C. Johnston

Notes:

Order Granting Debtor's Motion to Dismiss Chapter 12 Case filed 11/8/21 [Dckt 198]

<p>The Bankruptcy Case having been dismissed (Order, Dckt. 198), the Order to Show Cause re Whether Debtor is a Family Farmer is discharged, with no determination having been made by the court.</p>
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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 Order to Show Cause that Debtor is a family farmer who may commence a Chapter 12 case, having been presented to the court, this bankruptcy case having been dismissed on the Motion of the then Debtor in Possession, and upon review of the files in this Case, and good cause appearing,

IT IS ORDERED that the Motion is discharged, with no determination having been made by the court

14. [20-90710-E-12](#) LESLIE JENSEN
[21-9002](#)
OSMERS (MASELLIS) V. JENSEN ET
AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
2-1-21 [\[1\]](#)

ADVERSARY DISMISSED: 11/18/2021

Final Ruling: No appearance at the December 2, 2021 Status Conference is required.

Plaintiff's Atty: Michael Dyer
Defendant's Atty: Cort V. Wiegand

Adv. Filed: 2/1/21
Answer: none

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - willful and malicious injury
Declaratory judgment

Notes:
Order Dismissing Adversary Proceeding With Prejudice filed 11/18/21 [Dckt 40]

<p>The Adversary Proceeding having been dismissed (Order, Dckt. 40), the Status Conference is concluded and removed from the Calendar.</p>

15. [20-90710-E-12](#) **LESLIE JENSEN**
[21-9002](#) **CVW-1**
OSMERS (MASELLIS) V. JENSEN ET
AL

CONTINUED MOTION TO DISMISS
ADVERSARY PROCEEDING/NOTICE OF
REMOVAL
6-14-21 [21]

ADVERSARY DISMISSED: 11/18/2021

Final Ruling: No appearance at the December 2, 2021 hearing is required.

Plaintiff's Atty: Michael Dyer
Defendant's Atty: Cort V. Wiegand

Adv. Filed: 2/1/21
Answer: none

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - willful and malicious injury
Declaratory judgment

Notes:
Order Dismissing Adversary Proceeding With Prejudice filed 11/18/21 [Dckt 40]

<p>The Adversary Proceeding having been dismissed (Order, Dckt. 40), the Motion to Dismiss is dismissed as moot.</p>

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 Motion to Dismiss the Adversary Proceeding filed by Debtor in Possession Leslie Jensen having been presented to the court, the Adversary Proceeding having been previously dismissed (Order, Dckt. 40) and upon review of the file in this Adversary Proceeding and good cause appearing,

IT IS ORDERED that the Motion is dismissed without prejudice as moot.