

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 8, 2019

Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

#1.00 Status Conference re: Chapter 11 case

fr. 9/1/16(xfr from Judge Tighe's calendar), 9/27/16,
10/11/16; 10/26/16; 11/15/16, 12/6/16, 3/28/16,
4/4/17; 5/30/17, 8/29/17, 9/19/17, 1/23/18, 5/1/18,
9/18/18

Docket 1

Tentative Ruling:

Per the status report filed on 12/18, the Elkwood motions for summary judgment are being heard by Judge Tighe and are under submission. In the meantime, the Trustee is continuing to administer these cases. The next hearing on the MSJs is 1/25.

Continue without appearance to 4/16/19 at 10:00 a.m.

prior tentative ruling (9/18/18)

PLEASE NOTE THAT ALTHOUGH THE ELKWOOD ADVERSARY PROCEEDING WAS TRANSFERRED TO JUDGE TIGHE, I AM CONTINUING TO HANDLE ALL OTHER YASHOUAFAR MATTERS.

No status report received as of 9/16/18.

prior tentative ruling (1/23/18)

Per the status report filed on 1/16, there is a motion for summary judgment as to the JCBL Trust, set for hearing on 2/13/18 at 10:00 a.m. As to the Elkwood Associates adversary proceeding, Elkwood and Fieldbrook filed a motion to dismiss the second amended complaint, which is set for hearing on 2/27. The motion to withdraw the reference is still pending before Judge Walter. The Trustee is current with the OUST requirements.

Continue without appearance to May 1, 2018 at 10:00 a.m.

prior tentative ruling (/19/17)

**United States Bankruptcy Court
Central District of California
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10:00 AM

CONT...

Solyman Yashouafar

Chapter 11

On 9/6/17 the Trustee filed his status report. The Trustee is continuing to collect information about the Debtors and their estates.

The JCBL Trust is the subject of an adversary proceeding as to whether it is property of the estate. The Trustee expects to resolve this through a motion for summary judgment. [17-ap-01050 - status conference set on 10/17]

The settlement motion with the Abselets is pending.

The motion by defendants to dismiss the Elkwood adversary proceeding is pending [17-ap-01040 - cont. 10/3/17]

The Trustee is in compliance with OUST reporting requirements.

Continue without appearance to 1/23/18 at 10:00 a.m.

prior tentative ruling (5/30/17)

Per the Trustee's status report filed on 5/15/17, the Oklahoma action is proceeding and there is a status conference on 6/15/17. The Roosevelt Lofts proceeds are being held as various parties dispute ownership. There is a status conference in this court on that set for 7/11/17. The Trustee wants the Roosevelt Lofts' counsel to continue to hold the excess funds.

The Trustee filed 17-ap-01027 to determine the Debtor's estates' interest in the RLI stock. Abselet filed a motion to withdraw the reference, which is set for hearing in the district court on 5/22. Abselet's motion to dismiss is set for 6/27 in this court. The Trustee and Abselet have set a one day mediation in front of retired Judge Goldberg for 6/3.

Massoud's brother-in-law foreclosed on the Beverly Hills homes of Massoud and of Solyman and sold Solyman's for a substantial profit and rented Massoud's back to him at \$25,000/mo for two years. Massoud never paid any rent and the lease has expired. The Trustee filed 17-ap-1040 seeking quiet title to the Rexford home and to avoid the foreclosures of both homes.

Discovery is continuing in all matters. The Trustee requests a further status conference in 90 days.

It is probably wise to have appearances (in person or on the phone) on 5/30, but this will be continued to an agreeable date in August.

Party Information

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CONT... Solyman Yashouafar

Chapter 11

Debtor(s):

Solyman Yashouafar

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Tuesday, January 8, 2019

Hearing Room 303

10:00 AM

1:16-12408 Massoud Aron Yashouafar

Chapter 11

#2.00 Status Conference re: chapter 11 case

fr. 9/27/16, 10/25/16; 10/26/16; 11/15/16,
12/6/16, 3/28/17, 4/4/17; 5/30/17, 8/29/17,
9/19/17, 1/23/18, 5/1/18, 9/18/18

Docket 1

Tentative Ruling:

PLEASE NOTE THAT ALTHOUGH THE ELKWOOD ADVERSARY
PROCEEDING WAS TRANSFERRED TO JUDGE TIGHE, I AM
CONTINUING TO HANDLE ALL OTHER YASHOUAFAR MATTERS.

This case is being jointly administered with 16-12255. See calendar #1.

Party Information

Debtor(s):

Massoud Aron Yashouafar

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, January 8, 2019

Hearing Room 303

10:00 AM

1:16-12408 Massoud Aaron Yashouafar

Chapter 11

Adv#: 1:16-01168 Carino v. Yashouafar

#3.00 Status Conference Re: Complaint for
NonDischargeability of Debt Pursuant to
11 U.S.C. Sec. 523(a)(4) and 11 U.S.C.
Sec. 523(a)(6)

fr. 2/21/17, 3/21/17; 5/2/17, 5/30/17, 8/29/17,
1/23/18, 8/21/18; 12/4/18

Docket 1

Tentative Ruling:

Off calendar. The order dismissing this adversary was entered on 12/27.

Party Information

Debtor(s):

Massoud Aaron Yashouafar

Represented By
Brian L Davidoff
C John M Melissinos

Defendant(s):

Massoud Aaron Yashouafar

Pro Se

Plaintiff(s):

Raymund Carino

Represented By
Simon Aron

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards

**United States Bankruptcy Court
Central District of California
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Tuesday, January 8, 2019

Hearing Room 303

10:00 AM

1:10-26168 John Michael Licursi

Chapter 7

Adv#: 1:15-01236 California Bank & Trust v. Licursi et al

#4.00 Holding date : Trial re: Complaint

fr. 1/6/16; 1/12/16, 3/1/16, 6/7/16,
7/12/16, 10/11/16, 1/17/17; 3/21/17,
3/28/17; 6/27/17, 8/1/17, 9/12/17,
11/28/17, 3/27/18; 5/29/18; 9/26/18

Docket 1

***** VACATED *** REASON: Judgment was entered on 12/12/18, adv. was closed 12/31/18. (eg)**

Tentative Ruling:

Off calendar. Judgment was entered on 12/12/18. No appeal was taken.
The adversary case was closed on 12/31/18.

Party Information

Debtor(s):

John Michael Licursi

Represented By
Andrew Goodman
Yi S Kim
James R Felton

Defendant(s):

John Michael Licursi

Represented By
James R Felton
Yi S Kim

Susan Annette Licursi

Represented By
James R Felton
Yi S Kim

Joint Debtor(s):

Susan Annette Licursi

Represented By
Catherine Christiansen

**United States Bankruptcy Court
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10:00 AM

CONT... John Michael Licursi

Chapter 7

Andrew Goodman
Yi S Kim
James R Felton

Plaintiff(s):

California Bank & Trust

Represented By
Anthony J Napolitano

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Tuesday, January 8, 2019

Hearing Room 303

10:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#5.00 Application for issuance of order to show cause for failure to appear at trial pursuant to subpoena of custodian Jessica Pena, of records and for sanctions

fr. 12/18/18

Docket 454

Tentative Ruling:

Service was not completed and they are unable to serve Ms. Pena. Mr. DeNoce is attempting to obtain the report of Dr. Goldsmith, now deceased. The report itself if available, but it was not admitted because it could not meet the evidentiary requirements. However, if Dr. Goldsmith is deceased, what is needed to now admit it? Do we only need a witness from Canyon Medical Group to verify that this is a true and correct copy and that it meets the business record requirement? Fed. Rule of Evidence 803(6). Where does the SSA stand on this?

prior tentative ruling (12/18/18)

This is controlled by LBR 9020-1. Let's look at that rule and make sure that every step is properly taken. Remember that each time that service is required, it must be by personal service.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Movant(s):

Douglas Denoce

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
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Hearing Room 303

10:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#6.00 Application for issuance of order to show cause for failure to appear at trial pursuant to subpoena of witness Harvey Bilik and for sanctions

fr. 12/18/19

Docket 455

Tentative Ruling:

The SSA has now filed an explanation (see cal. #7). It is unfortunate that Dr. Bilik simply chose to ignore the prior subpoena, which was properly served. This has cost time and money and simply ignoring a subpoena may well be an act of contempt. However, if he told the SSA about the initial subpoena that was properly served and they advised him to ignore it, it is not contempt. [It should be noted that he was paid and accepted his witness fees.] But if he chose to ignore it without such advice, we may be dealing with civil contempt (given the position of the SSA) or criminal contempt (if he can no longer comply). These are issues to be discussed. Dr. Bilik is not represented by the SSA and is to appear in person or by phone so that we can look at these issues.

As to his report, it seems to qualify under FRE 803(6). What do we need to admit it under that section and does the SSA block this since they agree to providing a certified copy? Previously Mr. Neff agreed that the SSA records could be obtained by Mr. DeNoce under a confidentiality agreement. Is that still needed?

Per the SSA response, it appears that Dr. Bilik was merely reviewing the records of others. How does that fit in?

What does Mr. DeNoce need to finish this trial?

USCS Fed Rules Evid R 803:

The following are not excluded by the rule against hearsay, regardless of whether the

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CONT... Ronald Alvin Neff

Chapter 7

declarant is available as a witness: ...

(6) Records of a regularly conducted activity. A record of an act, event, condition, opinion, or diagnosis if:

(A) the record was made at or near the time by—or from information transmitted by—someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

prior tentative ruling (12/18/18)

This is controlled by LBR 9020-1. Let's look at that rule and make sure that every step is properly taken. Remember that each time that service is required, it must be by personal service.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Movant(s):

Douglas Denoce

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
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Hearing Room 302

10:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#7.00 Status of subpoena on social security administration re:
Dr. Bilik

fr.10/30/18; 11/9/18; 11/20/18; 12/18/18

Docket 0

Tentative Ruling:

The SSA has now actually appeared as to the testimony and records of Dr. Bilik. I expect their counsel to appear at the hearing (in person or by phone) so that a proper procedure can be worked out. It appears that the government is trying to protect itself, but that is not the issue here. There is a presumption that can only be overcome by evidence and that evidence appears to require a review of the records of Dr. Bilik along with his testimony.

Let's see how we can obtain the necessary evidence without much delay and contention.

See cal. 5, 6.

As to corresponding only with SSA counsel, unless I have something from Dr. Bilik that he desires this, he will also have to receive notices. It would help if he would agree to be served by first class mail or by certified mail instead of requiring personal service. I do agree that the counsel for the SSA must be sent all correspondence and pleadings related to this case as it deals with the SSA or its employees or contractors.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
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1:11-22424 Ronald Alvin Neff

Chapter 7

#8.00 Trial (date to deal with subpoena issues)

fr. 6/19/18, 8/27/18, 9/18/18; 11/20/18; 12/18/18

Docket 422

Tentative Ruling:

Two of the doctors are set to testify on Jan. 30 at 9:00 a.m., so that will be the trial date. If we need to then continue that further after their testimony, I will do so at that time.

prior tentative ruling (11/20/18)

Mr. DeNoce has filed copies of new subpoenas of Dr. Bilik and on Canyon Medical Group. Witness fees have been paid and these were personally served. Dr. Bilik is in Oakland. He can appear by phone for this initial appearance - although he was paid for a personal appearance. Records are to be produced in person or by mail. If by mail, with a declaration as required by law.

prior tentative ruling (9/18/18)

This is only as to Dr. Bilik and Canyon Medical Group, who did not appear on August 27.

The subpoenaed witnesses may appear by phone or in person and will be ordered back for January 30, 2019 at 9:00 a.m. when the continued trial will actually take place.

The Court has a copy of the proof of service on Doctor Bilik and on the Custodian of Records of Canyon Medical Group. If either of them do not appear, Mr. DeNoce will be required to provide evidence that at the time that the subpoena was served, each witness was offered a witness fee of \$40 and reasonable mileage. FRCP 45(b)(1) as incorporated by FRBP 9016. See *CF&I Steel Corp. v. Mitsui & Co.*, 713 F2d 494, 496 (9th Cir. 1983).

Party Information

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CONT... Ronald Alvin Neff

Chapter 7

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, January 29, 2019

Hearing Room 303

10:00 AM

1:95-19539 Ivds Interactive Acquisition Partners

Chapter 7

#1.00 Status of chapter 7 case

fr. 8/29/17, 1/23/18, 7/10/18, 7/17/18, 11/6/18

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Fee applications have been filed, but not ruled on . Per the 1/15/19 status report, the IRS has not released the Federal tax forms for tax year 2018, so there is a delay in filing the final tax returns. Once the IRS issues its tax clearance, the Trustee will file his final report (presumably the fees will be ruled on at that hearing) and this case can be closed. Continue the status conference without appearance to July 16, 2019 at 10:00 a.m.

prior tentative ruling (11/6/18)

The compromise motion is #1 on calendar. If it is granted, continue this without appearance to January 29, 2019 at 10:00 a.m. so that the Trustee can file the necessary papers to close the case.

prior tentative ruling (7/17/18)

Per the status report filed on 6/19/18, the trustee will file a motion to close this case. He is negotiating with the OUST as to this.

Continue the status conference without appearance to Nov. 6, 2018 at 10:00 a.m. Feel free to schedule your motion on or before that date.

prior tentative ruling (1/23/18)

Per the status report filed on 12/28/17, the Trustee has previously made two interim distributions and hopes to make another one in 2018. The Trustee hopes to sell Vickery's home through a forced sale or, in the alternative, to sell the USDC Judgment against Vickery. Once the settlement with Michael and David is approved by the Court and the situation with Vickery is resolved, the Trustee will close the case.

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Tuesday, January 29, 2019

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CONT...

Ivds Interactive Acquisition Partners

Chapter 7

Continue without appearance to 7/10/18 at 10:00 a.m.

prior tentative ruling (8/29/17)

This case was filed on December 1, 1995. It was originally filed as a Chapter 11. It was converted to Chapter 7 on November 3, 1997. The last activity on the docket was on October 20, 2016. On that date, an Order on Eighth Interim Application for Allowance of Fees to Green, Hasson & Janks was entered. On July 31, 2017, an Order Setting Status Conference Hearing was entered. On August 15, 2017, the Chapter 7 Trustee filed a Status Report in Bankruptcy Case. [dkt. 648]

Trustee's August 15, 2017 Status Report:

Debtor was a general partnership organized under Florida law and composed of approximately 645 individuals. Debtor was created by a group of organizers who used corporate entities controlled by them to raise money to exploit IVDS, a communications medium to be licensed by the FCC.

Trustee has always believed that Debtor was a fraudulent telemarketing scheme. Trustee commenced a lawsuit against the organizers of Debtor alleging fraudulent transfer claims. Trustee went to trial against three principal Defendants: David Dambro, Michael Dambro, and Terry Vickery. Trustee obtained judgments against all three Defendants: David: \$5.1 million; Michael: \$4.1 million; and Vickery: \$4.6 million. Judgment will remain enforceable until 2027. Trustee continues to pursue collection activities through special counsel as Trustee believes David, Michael, and Vickery have hidden millions of dollars. Trustee has currently made two interim distributions in this case and hopes to make at least one more distribution after Trustee sells Vickery's home. Thereafter, Trustee will evaluate the possibility of a sale of the judgment at the end of 2017, which would allow Trustee to close the case.

This matter is now off calendar. No appearance is required and no hearing will be held. In the future, please file a status report every 90-180 days.

Party Information

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10:00 AM

CONT... Ivds Interactive Acquisition Partners

Chapter 7

Debtor(s):

Ivds Interactive Acquisition Partners

Represented By

Grant L Simmons

Uzzi O Raanan ESQ

Trustee(s):

Richard K Diamond (TR)

Represented By

J Jeffrey Craven

Uzzi O Raanan ESQ

Howard Kollitz

Richard K Diamond (TR)

Richard K Diamond

Ruba M Forno

**United States Bankruptcy Court
Central District of California
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Tuesday, January 29, 2019

Hearing Room 303

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#2.00 Defendants' motion to modify or amend order
on unilateral pre-trial stipulation with proof of service

Docket 247

***** VACATED *** REASON: continued to 2/12/19 at 10:00 a.m.**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Glen E Pyle	Pro Se
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Defendant(s):

Glen E Pyle	Represented By Raymond H. Aver
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Sweetwater Management Company	Pro Se
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Glen E Pyle Irrevocable Trust	Represented By Raymond H. Aver
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Plaintiff(s):

Marc H Berry	Represented By Marc Berry
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Trustee(s):

Amy L Goldman (TR)	Represented By Amy L Goldman Amy L Goldman (TR) Leonard Pena
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**United States Bankruptcy Court
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Tuesday, January 29, 2019

Hearing Room 303

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#3.00 Plaintiff's motion for order allowing plaintiff to file second amended complaint.

fr. 12/18/18

Docket 238

***** VACATED *** REASON: continued to 2/12/19 at 10:00 a.m.**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

In the motion, Mr. Berry explains why he has delayed filing this amended complaint. It adds no new causes of action except those under bankruptcy law which correspond to the state law fraudulent conveyance ones. It also adds a claim for alter ego. It is still solely for the transfer of the property and does not seek non-dischargeability or denial of discharge.

No opposition received as of 12/16. Grant. Set a date for a response to the complaint.

Party Information

Debtor(s):

Glen E Pyle

Pro Se

Defendant(s):

Glen E Pyle

Represented By
Raymond H. Aver

Sweetwater Management Company

Pro Se

Glen E Pyle Irrevocable Trust

Represented By
Raymond H. Aver

**United States Bankruptcy Court
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CONT... Glen E Pyle

Chapter 7

Movant(s):

Marc H Berry

Represented By
Marc Berry

Plaintiff(s):

Marc H Berry

Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

**United States Bankruptcy Court
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10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#4.00 Trial setting conference re: complaint
to set aside or annul fraudulent conveyances
alter ego and for damages

fr. 4/27/11, 6/15/11, 10/4/11, 1/24/12, 4/10/12, 5/29/12,
6/19/12, 9/11/12, 10/2/12, 11/6/12, 3/19/13, 6/4/13, 8/27/13,
11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15;
1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17,
2/21/17, 3/28/17, 5/30/17; 7/25/17; 11/14/17; 2/27/18; 4/17/18,
6/26/18, 9/25/18; 12/18/18

Docket 1

***** VACATED *** REASON: continued to 2/12/19 at 10:00 a.m.**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Nothing further received as of 12/16/18.

prior tentative ruling (6/26/18)

The Trustee has filed a unilateral pretrial statement along with a declaration concerning the Defendant's failure to participate in the pretrial process. How does the Trustee wish to proceed? LBR 7016-1(f) lays out four options for sanctions for failure to comply with the pretrial statement process: continuance of the trial date (not relevant as no trial has been set); entry of the proposed pretrial order; an award of monetary sanctions against Pyle and/or Aver; or entry of judgment or striking of the answer and entering default.

prior tentative ruling (4/17/18)

It appears that the Trustee has taken over this adversary proceeding, which had been assigned to Mr. Berry. She now has counsel and a joint status report was filed. Pursuant to that status report, a settlement is in the works

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CONT... Glen E Pyle

Chapter 7

and is dependant on Mr. Pyle obtaining a reverse mortgage, which is in process. The parties stipulate to the following schedule:

5/10/18 - Trustee to submit a proposed Joint Pretrial Stipulation

5/24/18 - Defendants provide the Trustee with their portion of the Joint Pretrial Stipulation

6/1/18 - the Joint Pretrial Stipulation is filed.

Those dates are fine and the joint pretrial conference will be continue to June 26, 2018 at 10:00 a.m.

I would appreciate it if the parties would appear on 4/17 (phone is fine) just so that I can straighten out the status of the Berry motion(s) for sanctions.

Party Information

Debtor(s):

Glen E Pyle Pro Se

Defendant(s):

Glen E Pyle Represented By
Raymond H. Aver

Sweetwater Management Company Pro Se

Glen E Pyle Irrevocable Trust Represented By
Raymond H. Aver

Plaintiff(s):

Marc H Berry Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR) Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

**United States Bankruptcy Court
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Tuesday, January 29, 2019

Hearing Room 302

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

#5.00 Plaintiff's motion for order compelling responses to discovery

Docket 101

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Plaintiff filed this motion to compel responses to discovery and for sanctions. Given Mr. Pyle's history of non-cooperation in the Berry v. Pyle case, the movant does not want to spend the time or money with obtaining an order compelling responses, since this would be a waste of time.

On 11/16/18, Pyle was served with a Demand for Identification, Production and Inspection of Documents and Other Tangible Things (the Demand), with production due on 12/17/18. There has been no response.

The materials sought are to be used to show that Pyle and his Trust actively engaged in fraudulent conduct toward Campbell, his other creditors, and the Court. They deal with deeds and conveyances, property tax records, credit applications, loans, insurance policies, vehicles, etc.

Since there was no production, the depositions scheduled for 12/27/18 was taken off calendar.

The Movant requests sanctions under California Law. Given the repeat nature of Pyle's non-cooperation in the Berry case, Movant seeks terminating sanctions. *Liberty Mut. Fire Ins. Co. v. LcL Administrators, Inc.*, 163 CA4th 1093, 1106 (2008). Ifnot, he seeks issue and evidence sanctions. These might include deeming the promissory note (which is the subject of the stte court judgment) to be valid against Pyle and his trust and that it was fraudulently obtained against Campbell. The Court can also deem the Pyle Irrevocable Trust to be the alter ego of Glen Pyle individually and prohibit any evidence to the contrary. Pyle can also be prohibited from introducing any evidence at trial contradicting his fraudulent intent as to Campbell and other creditors. Monetary sanctions would total \$4,462.50.

Although Pyle does not deserve the opportunity to respond to the discovery, if the Court allows that it should be without objections and

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CONT... **Glen E Pyle**

Chapter 7

delivered to Counsel's office within 21 days of the Order. A deposition should be ordered to take place within 10 days of delivery of the documents to Counsel.

Opposition

Improper service of the discovery request and also of this motion. Only Mr. Aver was served, not the Debtor. Plaintiff was only authorized to serve Mr. Aver with discovery documents, not all documents including this request for sanctions.

The deposition set for 12/27 was continued by Plaintiff and no date has been set. There has been no meet and confer.

NO REPLY HAS BEEN RECEIVED AS OF 1/28 at 10:30 a.m..

Proposed Ruling:

Early in this case, I determined that all discovery in either case could be used in both cases. In particular, I believe that Mr. Campbell or his earlier counsel attended depositions of Mr. Pyle. I don't recall if there was a specific order or it was just stated at a hearing. But that is and was my intent and all parties were aware of it. Thus, before determining what documents, etc. are to be produced and what examination is to take place, Mr. King needs to review the fairly massive discovery in the *Berry v. Pyle* case. I believe that there were three deposition sessions there.

As to service, the reason for sending things to Mr. Aver is because of the difficulties with serving Mr. Pyle, who stated that he is not receiving his mail. He did receive this motion in time to respond, so those objections are overruled. To the extent that there needs to be an agreement or order as to how to serve in the future, let's get that on the record at the hearing.

As to the meet and confer - this is not needed given the prior actions of Mr. Pyle, who simply does not carry-through.

Monetary sanctions have not been effective in this case. So we can discuss what will work if there are discovery abuses.

Mr. King cites only to California law as to discovery sanctions. That is not useable in this court. Please review FRCP 37 (incorporated into FRBP 7037). Look at Rule 37(a)(5); (b)(2).

Party Information

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San Fernando Valley
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Courtroom 302 Calendar**

Tuesday, January 29, 2019

Hearing Room 302

10:00 AM

CONT... **Glen E Pyle**

Chapter 7

Debtor(s):

Glen E Pyle

Pro Se

Defendant(s):

Glen Pyle

Pro Se

Plaintiff(s):

Ian Campbell

Represented By
Barry P King

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 29, 2019

Hearing Room 303

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

#6.00 Status conference re: complaint for determination that debt is nondischargeable and/or to recover money

fr. 5/11/11, 6/22/11, 10/4/11, 1/24/12, 2/14/12, 4/24/12, 6/19/12, 9/11/12, 10/2/12, 11/6/12, 2/12/13, 3/19/13, 8/27/13, 8/27/13, 11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14, 12/16/14, 3/10/15; 5/12/15; 6/2/15, 9/1/15, 9/8/15, 11/17/15; 1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17, 2/21/17, 3/28/17, 1/14/17, 12/19/17, 1/23/18, 3/27/18, 7/17/18, 8/21/18, 9/25/18, 11/6/18; 12/18/18

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The case is now proceeding. Continue to a future date. HOWEVER, MR. KING SINCE THIS IS AN ACTIVELY LITIGATED CASE, PLEASE SIGN UP FOR CM/ECF ACCESS TO OUR COURT AND TO USE LOU (LODGED ORDER UPLOAD). See Court Manual Sec. 3.1, p. 3-3 and LBR 5005-4.

prior tentative ruling (7/17/18)

The order granting relief from the automatic stay was entered on 1/30/18. On 3/6 Mr. Campbell appeared in Court and wanted to know about the order. He had not been served with a copy of the order - our fault. I directed him to my law clerk, but he left without seeing her. On March 1, 2018, Judge Hammock continued his OSC re: Dismissal (BC416442) to July 5 so that Campbell could seek a judgment (he already has a default) on declaration. As soon as he has obtained his judgment, I will be ready to proceed. When will he be filing his declaration, etc. in the Superior Court? Should this status conference be

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CONT... Glen E Pyle

Chapter 7

continued until after July 5 or can we proceed before that?

prior tentative ruling (1/23/18)

Mr. Campbell has filed the motion for relief from stay to complete the superior court case. Continue this status conference to March 27, 2018 at 9:00 a.m. to allow him to obtain his judgment in the superior court.

prior tentative ruling (12/19/17)

I have been in contact with Judge. Hammock of the Superior Court. He advises me that all that is left to do in his case is for Mr. Campbell to file a motion for default judgment. The automatic stay is preventing this.

To move that case forward, Mr. Campbell is to file a motion in this court for relief from the automatic stay. This is to be filed and served no later than December 26. It is to be served by mail and by email on Mr. Pyle. The hearing will be on January 23, 2018 at 10:00 a.m. in courtroom 303. Mr. Campbell is to use the mandatory court form: F 4001-1.RFS.NONBK.MOTION. This is available on the Court website at www.cacb.uscourts.gov/forms/local_bankruptcy_rules_forms. Or you can obtain a copy at the filing window in the clerk's office.

prior tentative ruling (11/14/17)

The Court advised Mr. Campbell of the continuance of the Berry v. Pyle case. He does wish to appear on 11/14. The Court has called Mr. Aver's office and asked them to contact Mr. Pyle (who is pro se in this adversary proceeding) to advise him that the hearing on 11/14 is going forward and that Mr. Pyle is to appear on the phone or in person and instruct him on how to use Court Call. The Court was notified that he also wishes to appear.

What is the status of the state court matter?

prior tentative ruling (3/28/17)

This adversary proceeding has been trailing the Berry v. Pyle one, but it has some different issues. How does Mr. Campbell wish to proceed?

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CONT... Glen E Pyle

Chapter 7

prior tentative ruling (1/17/17)

I believe that Mr. Campbell was trying to obtain counsel. It is best to keep this together with Berry v. Pyle. Therefore continue it without appearance to 2/21/17 at 10:00 a.m. when I have a hearing on the motion for summary judgment in the Berry v. Pyle case.

prior tentative ruling (8/2/16)

Mr. Campbell is now representing himself. How does he wish to proceed to get this ready for trial?

prior tentative ruling (3/1/16)

Per the status report filed by Plaintiff on 2/23/16, discovery is not complete. Plaintiff wants to take Mr. Pyle's deposition and audit the records.

This was trailing the Berry v. Pyle matter, but given Mr. Berry's health, I think that it should go forward alone and complete the discovery. Feel free to appear by phone at the status conference and let's get some dates to complete discovery. Please advise Mr. Pyle, who is not represented by counsel in this case, to appear in person or by phone.

prior tentative ruling (1/12/16)

This has nothing to do with Mr. Berry's health and Mr. Pyle is not represented by counsel. The 1/5/16 status report said that plaintiff will be ready for trial on 2/1. He figures 2-3 days. Let's set a trial date. Possible dates when there is a courtroom available are Feb. 16-17 and Mar. 23-24.

prior tentative ruling (9/8/15)

This has been trailing Berry v. Pyle. On 8/18/18 Plaintiff filed a status report. He is ready to go to trial in February 2016. He needs another 4-6 months to complete discovery, which includes Mr. Pyle's deposition and an audit of the records.

In htis case Mr. Pyle is not represented by counsel. So let's get a deposition date and move forward.

prior tentative ruling (3/10/15)

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CONT... Glen E Pyle

Chapter 7

Mediation set for 3/24/15. Continue without appearance to 5/12/15 at 1:00 a.m

prior tentative ruling (10/7/14)

The mediation has been delayed. Continue without appearance to 12/16/14 at 10:00 a.m.

prior tentative ruling (8/5/14)

The Berry v. Pyle matter is scheduled for a settlement conference before Judge Ryan on 9/22/14. Is this case part of the settlement conference? If so, continue without appearance to 10/7/14 at 10:00 a.m. If not, the status report filed by Plaintiff on 7/21 requests mediation. How do you wish to proceed?

prior tentative ruling (4/22/14)

On 4/8/14, counsel for plaintiff filed a status report. He believes that he will be ready for trial in 6 months. There is still discovery to be done, including completing Debtor's deposition. A mediation will take place in May or June. **Continue without appearance to August 5, 2014 at 10:00 a.m.**

prior tentative ruling (3/11/14)

This complaint is both under §523 and §727 as well as §§547 and 548. This has been trailing the Berry v. Pyle adversary proceeding. Mr. Mendoza attended the 2/10/14 deposition of Mr. Pyle, which is a joint deposition in both this case and the Berry v. Pyle case. Pyle is not represented by counsel in this adversary proceeding.

Mr. Mendoza, should this continue to trail the Berry adversary or are you ready to go forward on your own?

prior tentative ruling (4/24)

The parties have stipulated that plaintiff will have until 4/20 to file a Second Amended Complaint. A second amended complaint was filed on 4/20. Per the status report, the parties think that they need 4-5 months to complete discovery. The parties wish to mediate. Plaintiff has no co-counsel and may wish to propound more discovery and seek relief from stay as to certain trust assets.

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CONT... Glen E Pyle

Chapter 7

Continue the status conference without appearance to June 19 at 10:00 a.m.
This will allow sufficient time for there to be a response to the second amended complaint and for new co-counsel to move forward. In the meantime, please complete a mediation order since it often takes weeks to schedule a mediation.

prior tentative ruling (2/14)

Per the status report filed on 1/24, the parties feel that they will not be ready for trial until late in 2012. Set a discovery cutoff date of 7/30/12. Although neither party wants mediation at this time, plaintiff's counsel is willing to attend mediation.

As of 2/12 there is no response to the amended complaint. What is the status of that? When do the parties think that mediation might be beneficial?

prior tentative ruling (1/24)

An answer was filed on 7/15. Plaintiff filed an amended complaint on 1/12, but this was done without leave to amend.

Counsel, in the future please confer with knowledgeable bankruptcy counsel before filing things in bankruptcy court. Your original cover sheet indicated that this was only a complaint to recover money under §§547 and 548. That is incorrect. The original complaint is under §523 and §727 (although that is not mentioned on the caption) and may include §§547 and 548 (although the uploaded copy has some pages missing, so I can't tell for sure). The amended complaint has all of these claims for relief. The court picked up that there was a §727 claim, but we should not have to review the complaint to do this.

prior tentative ruling (10/4)

Nothing further received as of 10/2.

prior tentative ruling (6/22)

As of 5/9 there has been no return on service on the summons. The plaintiff has counsel. There is no status report as of 5/8. If there is no appearance at the 5/11 hearing, I will issue and OSC re: dismissal for failure to prosecute.

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CONT... Glen E Pyle

Chapter 7

Party Information

Debtor(s):

Glen E Pyle

Pro Se

Defendant(s):

Glen Pyle

Pro Se

Plaintiff(s):

Ian Campbell

Represented By
Barry P King

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

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10:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#7.00 Motion to quash subpoenas

Docket 460

*** VACATED *** REASON: Per Order entered and cont. to 2/12/19 @
9am (eg)

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Initially this was continued to Jan. 30 at 9:00 a.m. However, due to the government shutdown, the SSA has requested a further continuance and that there should be a stay of the case as to the SSA and Dr. Bilik. I have continued this without appearance to Feb. 12 at 9:00 a.m.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
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Tuesday, January 29, 2019

Hearing Room 303

10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#8.00 Debtor's motion for reconsideration of John P. Reitman,
chapter 11 trustee for order approving settlement with
Barrett S. Litt, et al

fr. 12/18/18

Docket 1563

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Continued to 2/12/19 at 10:00 a.m.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Movant(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Andrew Goodman
Yi S Kim
Yi S Kim
Robert M Scholnick
Robert M Scholnick

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CONT... Shirley Foose McClure

Chapter 11

James R Felton
James R Felton
Faye C Rasch
Faye C Rasch
Faye C Rasch
Faye C Rasch
Lisa Nelson
Lisa Nelson
Michael G Spector
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

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10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#9.00 Status conference re: ch 11 case

fr. 1/24/2013, 4/30/13, 5/14/13, 7/23/13, 8/6/13,
9/17/13, 9/24/13, 11/19/13, 12/17/13, 1/21/14, 2/18/14,
3/11/14, 4/15/14, 5/6/14, 6/24/14, 9/9/14, 9/23/14,
10/7/14, 11/24/14, 1/6/15, 1/20/15, 2/10/15, 3/10/15,
4/28/15; 5/12/15; 9/29/15, 10/22/15, 12/8/15, 3/1/16,
6/7/16, 7/12/16, 8/16/16, 10/11/16; 12/20/16, 4/4/17,
5/16/17; 6/27/17, 7/11/17, 9/19/17, 11/14/17, 11/28/17,
12/19/17, 1/9/18, 3/19/18, 3/27/18, 5/1/18, 6/5/18; 6/26/18,
7/9/18; 8/7/18, 11/6/18; 12/18/18

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Continue without appearance to 2/12/19 at 10:00 a.m.

prior tentative ruling (11/6/18)

Ms. McClure has until Nov. 20 to file her motion for reconsideration. Meanwhile, she has filed an emergency motion for a stay pending the hearing on her motion for reconsideration. The Trustee opposes.

This would be a short stay, only so that the Court can adequately review the motion(s) to reconsider. While it took many months for the Court to do the detailed analysis and I believe that it is thorough and correct, it is appropriate to allow Ms. McClure to try to point out errors that may have been made. Given that the matters in the Superior Court are not immediate, the Court intends to grant the stay and will hear brief argument at the 11/6 status conference. It seems to me that the stay should expire 14 days after I enter my order on the motion(s) to reconsider.

Per the Trustee's status report filed on 10/31/18, the Maui property is in

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CONT... Shirley Foose McClure
escrow.

Chapter 11

Party Information

Debtor(s):

Shirley Foose McClure

Represented By

Andrew Goodman

Yi S Kim

Robert M Scholnick

James R Felton

Faye C Rasch

Faye C Rasch

Lisa Nelson

Michael G Spector

Trustee(s):

John P. Reitman

Represented By

John P Reitman

Jon L Dalberg

**United States Bankruptcy Court
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Tuesday, January 29, 2019

Hearing Room 303

10:00 AM

1:16-11387 Real Estate Short Sales Inc and Real Estate Short Sales, Inc.

Chapter 7

#10.00 Order to show cause why Nancy Cueva and debtor should not be held in contempt of court

Docket 0

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The OSC re: Contempt deals with three specific actions:

1. Violation of the compromise order (the "Compromise Order") [dkt. no. 226] that requires Parties to cooperate fully with the Chapter 7 Trustee's marketing and sale of that certain real property commonly known as 10351 Oklahoma Avenue, Chatsworth, California 91311 (the "Chatsworth Property") by failing to allow interior access to the Chatsworth Property for the purposes of an appraisal required by the lender for buyer Haya Sara Yavor ("Buyer");
2. Violation of the sale order (the "Sale Order") [dkt. no. 302] that requires Parties to vacate the Chatsworth Property by noon on Monday, December 17, 2018; and
3. Violation of the Compromise Order by opposing Trustee's sale motion for the Chatsworth Property and filing a notice of appeal of the Sale Order.

The details and background of these asserted violations are described below in more detail in the Trustee's reply.

Opposition

The reason that they did not move out on 12/17 was because the hearing on their stay motion was not set until 12/18. Also they believed (on their own and not from counsel) that the sale order violated the automatic stay of their chapter 13.

The Sale Order did not require the Debtor (as opposed to Cueva/Molica) to vacate the Chatsworth Property by noon on 12/17.

Molica was and is very sick, so the failure to allow the appraiser access on 12/12 and 12/13 and the failure to vacate on 12/17 should keep that in mind. However, after the Court ruled on 12/18, the appraiser was promptly

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CONT... Real Estate Short Sales Inc and Real Estate Short Sales, Inc. Chapter 7

granted access.

Cueva believed that the automatic stay of the chapter 13 case precluded the Trustee from pursuing the sale and obtaining possession of the property and thus her conduct was justified.

Cueva and the Debtor had a justified belief that the setting of the Stay Motion for 12/18 meant that they did not have to vacate Chatsworth on 12/17.

The Debtor and Cueva did not violate the Compromise Order by opposing the Sale Order due to the filing of the chapter 13 case. Nor did they do so by appealing the Sale Order based on issues that they believe to be valid. Requiring that they "cooperate fully with Trustee's marketing and sale of the Chatsworth Property, subject to the Court's approval" cannot be read as a waiver of their rights to oppose the Sale Order. The automatic stay cannot be waived in advance.

This OSC does not apply to Molica.

Reply

Although set forth in the application for this OSC, the Trustee again lays out the facts that support her contention of bad behaviour by Cueva and Molica - living cost-free in Chatsworth for 6 years before the Trustee was appointed (thus avoiding \$500,000 in mortgage payments); remaining in the property without payments for another year after the Trustee was appointed; interfering with the sale of estate property; negotiating in bad faith to purchase the property; increasing the estate's administrative expenses. They benefitted by \$85,000 by this 13-month extension after the Trustee was appointed. After a buyer was obtained, they would not vacate the property and would not allow access to the Trustee's appraiser. The Trustee was forced to petition the Court for an order to remove them, to which they responded by threatening the escrow and title officers with litigation pursuant to a bogus quitclaim deed.

The Trustee then lays out in detail the actions which interfered, delayed, and otherwise prejudiced the estate.

The Trustee states in her reply (filed on 1/22/19) that the sale has not yet closed due to the delays caused by Cueva and Molica. The Trustee is not sure that the short sale lender will agree to any further extensions if Cueva and Molica continue to block the sale by their contemptuous conduct.

As to the specific items in the OSC:

(1) refusal to provide access - Cueva did not act in good faith by failing to

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CONT... **Real Estate Short Sales Inc and Real Estate Short Sales, Inc.** Chapter 7

allow the appraiser access on 12/12 and 12/13. The Compromise Order required Cueva and the Debtor to cooperate with the Trustee's marketing and sale of the property. This included the appraisal appointment.

(2) refusal to vacate: they were to vacate by noon on 12/17/18, but Cueva and Molica refused to do so. They did not remove their personal property.

(3) violation of the Compromise Order by opposing the Sale Motion and filing a notice of appeal: These violated the provision of the Compromise Order requiring Cueva and the Debtor to cooperate fully with the Trustee's marketing and sale of the Chatsworth Property.

The Court has civil contempt power through 11 USC §105(a). Civil contempt occurs when a party "disobeys a specific and definite court order by failure to take all reasonable steps within the party's power to comply. The contempt 'need not be willful,' and there is no good faith exception to the requirement of obedience to a court order." *Go-Video v. Motion Picture Ass'n of America (In re Dual Deck Video Cassette Recorder Antitrust Litig.)*, 10 F.3d 693, 695 (9th Cir. 1993). A party must take all reasonable steps to comply with a court order. *Shuffler v. Heritage Bank*, 720 F.2d 1141, 1146-7 (9th Cir. 1983).

The Trustee has met her burden of proof in the application for the OSC and in the facts laid out in this reply. Now the burden of proof shifts to the contemnors and they have not met this. They have not put forth any evidence of an impossibility defense or of their inability to comply.

As to vacating the residence, Molica and Cueva may have moved out on 1/8, but they did not notify the Trustee and they left two inoperable vehicles. Thus the U.S. Marshal deputies appeared with a locksmith (cost \$3,000+ for the Marshals and \$1,146 for the locksmith). Cueva and Molica left the two cars and almost their entire personal property behind, and storage is likely to cost more than \$10,000 plus \$1,000 per month for insurance.

The Sale Order applies to all parties, including the Debtor. A corporation acts through its principals. Cueva and Molica claim to be equityholders, officers, and directors. Therefore they are responsible for the Debtor's compliance with the Compromise Order and the Sale Order.

There is no medical exception to the obligation to comply with a court order. There is also no evidence to verify the existence, extent, or duration of Molica's medical issues. Molica was fully engaged during the appraisal and was seen driving a car with Cueva as his passenger as well as walking around. They, in fact, have moved out and there is no showing that Molica's

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medical condition was an excuse for the delay.

The Chapter 13 filing was a procedural maneuver and not a good faith filing. They had no interest in the Chatsworth property, so the chapter 13 stay could not apply. Also, the automatic stay does not apply to the bankruptcy court where the debtor's bankruptcy is pending. *[Please note that I cannot tell where the quotation on p. 19-20 of the reply is from. It also appears to contain several mistakes as to the citations included - ie. according to Lexis, North Coast Village is at 135 B.R., not 132 and Maritime Elec. is at 959 F.3d, no 862.]*

Even if the stay could apply, the Court annulled it and dismissed the chapter 13 case.

There was no waiver of the Compromise Order. There was no right to waive and also because the cooperation was an obligation of the Order, the discussion of waiver does not apply.

The Debtor and Cueva had no standing to file an appeal of the Sale Order. There was no pecuniary interest of either in the property. There was no possibility of surplus.

The Court has the ability to impose civil contempt penalties, which must be either compensatory or designed to coerce compliance. The Trustee seeks the following compensatory sanctions:

Attorney's fees of no less than \$20,000 and increasing *[There does not appear to be any evidence to support this figure.]*

U.S. Marshal's fees of \$3,000+ subject to final invoice

Locksmith charge of \$1,146

Insurance of \$11,672.95 subject to increase

Moving and storage of personal property of at least \$10,000, to be determined based on whether Cueva and Molica pay and arrange for their own movers per Court Order or whether statutory notice applies

Misc. costs for certified copies, etc. of \$351.62 subject to increase

Supplemental Declaration of Nancy Cueva

Ms. Cueva pro se filed a supplemental declaration on 1/25. She describes a potential sale to an Argentinian buyer that did not go through because the Trustee required certain things. She then talks about her attempt at a loan modification, which she asserts the Trustee interfered with, but is actually still pending. She states that up to 2015 she and her husband paid \$234,180 and also improvements of \$250,000.

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CONT... **Real Estate Short Sales Inc and Real Estate Short Sales, Inc.** Chapter 7

As to the recent chapter 13, she asserts that she paid Jeffrey Hagen \$1,500 for his services, but he withdrew after he spoke with Ms. Zamora. Since they could not find another attorney on such short notice, they let the case be dismissed.

Cueva became ill and could not vacate the premises. On December 25 she was taken to the emergency department of West Hills Hospital for emergency surgery and her post-surgical care did not allow her to do any strenuous activity.

On January 3, U.S. Marshal Deputy Hugo Valdez trespassed and posted a notice to vacate that was defective because it did not attach the third page of the writ not the order attached to the writ. On January 8 they moved out. Deputy Valdez did not return. Cueva wanted to arrange to move the personal property, but Deputy Valdez never returned calls. On January 12 Cueva and Molica returned to pick up their mail and found 4 marshalls, a lock company, the realtor, and Zamora's assistant. None would tell them how to recover their personal property. Since then Cueva has called Zamora and filed a letter to her and to the Marshall, but not received an answer. Cueva refuses to pay the Marshall or attorney fees. Zamora has personal animosity against Cueva.

Analysis

Although not raised in the opposition, the OSC re: Contempt is on appeal (USDC CAC 2:19-cv-00120- DOC). Do I still have jurisdiction on this until the appeal is dealt with?

The sale has not closed. Is the Sale Order on appeal? If so, do I have jurisdiction on this OSC re: Contempt as to the Sale Order? However the Compromise Order is not on appeal.

11 USC §105(a) gives the bankruptcy court the power to punish for civil contempt. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178 (9th Cir. 2003). Beyond that, there is an inherent power to do so. *Caldwell v. United Capital Corp. (In re Rainbow Magazine, Inc.)*, 77 F.3d 278, 284 (9th Cir. 1996).

Civil contempt involves sanctioning a person until s/he complies with an affirmative command - in this case complying with the Compromise Order and also with vacating the property, etc., which has been partially done but

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CONT... **Real Estate Short Sales Inc and Real Estate Short Sales, Inc.** Chapter 7

personal property was not removed by the alleged contemnors. Criminal contempt is punitive because the act of disobedience has been completed and the contemnor cannot now act to comply with the prior order:

Since there is no positive action to be taken (except dealing with the personal property that is in storage), this could fall into the area of criminal contempt. However, the Trustee is not seeking a determination of criminal contempt, but merely sanctions for the expenses incurred by the violation of the Orders.

Civil contempt may be used to compensate the aggrieved party even if the action by the contemnor can no longer be undone:

Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained. *Gompers v. Bucks Stove & Range Co.*, *supra*, at 448, 449. Where compensation is intended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of complainant's actual loss, and his right, as a civil litigant, to the compensatory fine is dependent upon the outcome of the basic controversy. *United States v. United Mine Workers*, 330 U.S. 258, 303-304 (1947)

A contempt fine accordingly is considered civil and remedial if it either "coerces the defendant into compliance with the court's order, [or] . . . compensates the complainant for losses sustained." *United States v. Mine Workers*, 330 U.S. 258, 303-304, 91 L. Ed. 884, 67 S. Ct. 677 (1947). Where a fine is not compensatory, it is civil only if the contemnor is afforded an opportunity to purge. See *Penfield Co. of Cal. v. SEC*, 330 U.S. 585, 590, 91 L. Ed. 1117, 67 S. Ct. 918 (1947). Thus, a "flat, unconditional fine" totaling even as little as \$ 50 announced after a finding of contempt is criminal if the contemnor has no subsequent opportunity to reduce or avoid the fine through compliance. *Id.*, at 588.

Int'l Union v. Bagwell, 512 U.S. 821, 829 (1994)

Here the sanction would be compensatory since there is nothing left for Cueva and the Debtor to do (although they can reduce this by taking possession of their personal property). It appears that the proper result would be an order that Cueva pay the Trustee the sum necessary to compensate for the actions taken as a result of her contempt. Since the Trustee does not have counsel, the Court would need evidence of a proper amount to

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CONT... **Real Estate Short Sales Inc and Real Estate Short Sales, Inc.** **Chapter 7**

compensate the Trustee for her time and for incidental expenses. Then the Court must determine that Cueva has the ability to make the payment. There would be no such order as to the Debtor, since it owns nothing that is not property of the estate. While the Court has doubted Ms. Cueva's finances, she has never asserted that she did not have sufficient money to comply with the order to move. And she has hired counsel and paid him a retainer of \$20,000 and agreed to an hourly rate of \$650. (dkt. 324). Thus her ability to pay is not in issue.

One of the issues is who is bound by the Compromise Order and who is bound by the Sale Order. The Compromise Order (dkt. 226) approves the motion to compromise (dkt. 217). The compromise letter states that it is "reached between you ('Cueva') and me, as chapter 7 trustee ('Trustee').... (dkt. 217, p. 15). The Order approving the revised compromise states that it is between "Trustee and Nancy Cueva ('Cueva'), for the benefit of Debtor...." (dkt. 226). Ms. Zamora prepared both of these documents. The Sale Order (dkt. 302, p. 9) specifically provides in ¶¶N that "Nancy Cueva and Julio Molica (collectively 'Residents'), shall vacate the Real Property, without causing damage, no later than 12:00 noon on December 17, 2018, consistent with that certain Order Approving Revised Compromise...."

As to the assertion that she did not comply with the order to vacate by 12/17 because of the delay in the hearing on a stay until 12/18, it is clear that Cueva did not intend to vacate at any time and that she was doing all that she could to block the sale from consummating. See for example her recording of a quitclaim deed on 12/26/18 (dkt. 347, 349).

As to the issue of her belief that she was protected by the automatic stay of the new chapter 13 - the mere act of filing the chapter 13 was solely for the purpose of interfering with the sale and as a basis not to vacate the property. Concerning whether Jeffrey Hagen was her attorney in the chapter 13, she asserts that she hired him and paid him \$1,500, but provides no receipt for payment, he never appeared, the petition was filed pro se, and there is no declaration by Mr. Hagen.

Beyond that, she attempted to keep that case open by lying to the Court [though not under oath] and she had her attorney state that Cueva had timely filed a request to extend time to file schedules in that case [transcript of 12/18/18 hearing, dkt. 341] The document was never located in the clerk's office and thus the court dismissed the case. Although Cueva was given an opportunity to vacate the dismissal if she could present a conformed copy of

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her application to extend, she did not do so. The Court finds that no such application for extension was ever filed. Id. p. 62-63. Also, on December 4, Cueva represented to the Court that Jeffrey Hagen represented her in her chapter 13 case, but this was not true.

All of these efforts were undertaken so as to prevent the Trustee from completing the sale. They were obstructionist and not in good faith.

The Trustee has laid out sufficient facts to meet her burden that the actions by Cueva, Molica, and the Debtor were an intentional violation of prior orders of this Court - specifically Sale Order, though there is a question as to who was bound by the Compromise Order. The Trustee has met her burden.

As to the assertion that all of this was due to the poor health of Molica - the Court does not accept that as an excuse. Beyond the fact that the Compromise Order was many months before the Sale Order and thus Molica/Cueva had more than sufficient time to prepare to move, the declaration of Behnaz Tavakoli provides evidence that Molica was not unable to physically move out - he was able to walk and to drive. Even had he been immobile, this would not be an excuse since he had months to prepare.

Concerning Cueva's emergency surgery, apparently this occurred on or after December 25, a full week after the time to remove themselves from the property. There is also no evidence that Cueva and/or Molica made any preparations to move themselves or their furniture. They are or were living in a hotel and not an apartment, there is no indication that they hired a moving company or arranged for storage. It is obvious to the Court that they had no intention to move until and unless the Marshall took action. They had months to make preparations and their health issues are not an excuse.

The Court also finds it disturbing that Ms. Cueva presented an entirely new story of the delay in her supplemental opposition, since all of these assertions occurred before the Debtor's attorney filed the initial opposition.

As to the loan modification, that time has passed. The debtor (estate) owns the real property, not Cueva/Molica. They have no rights left to modify and their attempts may be interfering with the Sale Order and may be a continuing contempt.

As to the personal property, there needs to be an agreement as to how it is handled - remaining in storage, who pays the storage fees, etc.

Party Information

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CONT... Real Estate Short Sales Inc and Real Estate Short Sales, Inc.

Chapter 7

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Real Estate Short Sales, Inc.

Represented By
Daniel J McCarthy

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, January 29, 2019

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10:00 AM

1:16-11387 Real Estate Short Sales Inc

Chapter 7

#11.00 Motion for relief from stay

U.S. BANK NATIONAL ASSOC.

fr. 1/23/18, 2/27/18, 7/17/18, 9/18/18; 11/6/18; 12/18/18

Docket 190

***** VACATED *** REASON: Stip. cont. to 5/7/19 @ 10am (eg)**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Continued by stipulation to May 7, 2019 at 10:00 a.m.

prior tentative ruling (11/6/18):

Continued by stipulation to 12/18/18 at 10:00 a.m. Trustee is awaiting a short-sale approval.

prior tentative ruling (9/18/18)

THIS MOTION IS CONTINUED BY STIPULATION WITH THE TRUSTEE TO NOVEMBER 6, 2018 AT 10:00 A.M. HOWEVER, AS NOTED IN THE FOLLOWING WRITE-UP, THERE IS A SERIOUS QUESTION AS TO WHETHER THE OKLAHOMA STREET PROPERTY SHOULD BE ABANDONED. I ASSUME THAT MS. CUEVA WILL BE IN COURT ON SEPTEMBER 18. MS. ZAMORA, PLEASE ATTEND (BY PHONE IS FINE). I WANT TO SET A MOTION(S) TO ABANDON FOR NOVEMBER 18 AND WE NEED TO TALK ABOUT IT.

write-up for hearing on 9/18/18 created prior to the stipulation to continue

Per the statement filed on 9/7 by U.S. Bank, although the property is now in escrow, it is for a significantly lower sum than the payoff quote given by the Bank to the Trustee. There has been no request for a short sale proposal and the Bank has not approved a short sale. The Bank requests immediate relief from stay.

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The Debtor has filed a statement. Basically, Ms. Cueva is saying that the Debtor is working out a loan modification with U.S. Bank and that this will be approved if the Trustee will abandon the property. There are some insurance issues. The Debtor is asking that Ms. Zamora abandon the property.

Where does the Trustee stand on this? Is there any reason not to abandon? The automatic stay will end when that occurs.

prior tentative ruling (2/27/18)

At the hearing on 2/13, the Court was informed that Ms. Cueva had not made the payment of the settlement amount. Berendo has been vacated and is being put on the market. The Trustee and Ms. Cueva are attempting to work out a modified compromise motion on the Oklahoma Ave. property. Nothing further filed as of 2/25.

prior tentative ruling (1/23/18)

This concerns the Oklahoma Ave. property. U.S. Bank has a secured claim of \$1.439+ million. It recorded its notice of default in 2/15 and a sale was scheduled, but never held. The current monthly payments as of 11/17 are \$7,057.47. A total of 73 payments were not made. The fair market value of the property is \$1.1 million.

The property was transferred by Cueva to Debtor without the Bank's consent. The Bank received relief from stay in the prior bankruptcy case.

In this case, there was an adequate protection order on which the Debtor defaulted multiple times.

Proposed Ruling

Under the proposed compromise, the Oklahoma Property will be released from the Estate. As to the stay concerning the Debtor, relief from stay will be granted. It is up to Cueva, et al, to work out something with the Bank.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

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CONT... Real Estate Short Sales Inc

Chapter 7

Movant(s):

U.S. Bank National Association,

Represented By
Kristin A Zilberstein
Kelly M Raftery
Merdaud Jafarnia

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Tuesday, January 29, 2019

Hearing Room 302

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

#12.00 Chapter 11 trustee's first interim application for compensation and reimbursement of expenses period: 9/16/2016 to 12/22/2018

Docket 647

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The Abselets object to all fee applications, but only as to how they are actually payable. Let's clarify that at the hearing.

The amount of fees requested by the Trustee are \$72,627.42 and expenses of \$387.98. Approve as requested. However, there will be a holdback based on a decision to be made by the Court after consultation with the Trustee.

If you submit on this tentative ruling, no appearance is necessary. If you choose to appear and the final ruling is in conformance with the tentative ruling, no additional fees will be allowed for this appearance. If the trustee's firm is representing the trustee, no attorney's fees will be allowed for an appearance on this matter, as the trustee would be expected to be present as part of the trustee's duties.

THE TRUSTEE/DEBTOR IN POSSESSION IS TO NOTIFY ALL PROFESSIONALS OF THIS TENTATIVE RULING.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

**United States Bankruptcy Court
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Tuesday, January 29, 2019

Hearing Room 302

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

#13.00 Application for compensation for Pachulski Stang Ziehl & Jones LLP
period: 9/16/2016 to 11/30/2018

Docket 648

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Pachulski Stang, etc. has served as counsel for the Trustee since a trustee was appointed. It seeks fees of \$1,404,583.50 and costs of \$74,768.49.

Approve as requested. However, there will be a holdback based on a decision to be made by the Court after consultation with the Trustee and in light of the Abselet objection.

If you submit on this tentative ruling, no appearance is necessary. If you choose to appear and the final ruling is in conformance with the tentative ruling, no additional fees will be allowed for this appearance. If the trustee's firm is representing the trustee, no attorney's fees will be allowed for an appearance on this matter, as the trustee would be expected to be present as part of the trustee's duties.

THE TRUSTEE/DEBTOR IN POSSESSION IS TO NOTIFY ALL PROFESSIONALS OF THIS TENTATIVE RULING.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

**United States Bankruptcy Court
Central District of California
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Tuesday, January 29, 2019

Hearing Room 302

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

#14.00 Application for compensation for Berkeley Research Group LLC
accountant period: 9/21/2016 to 11/30/2018

Docket 649

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Berkeley Research seeks fees and expenses from 9/21/16 through 11/30/18 of \$123,312 fees and \$9,857.25 costs. The major task of this firm has been analysis of the complex business relationships of these debtors. They also filed tax returns.

Approve as requested. However, there will be a holdback based on a decision to be made by the Court after consultation with the Trustee.

If you submit on this tentative ruling, no appearance is necessary. If you choose to appear and the final ruling is in conformance with the tentative ruling, no additional fees will be allowed for this appearance. If the trustee's firm is representing the trustee, no attorney's fees will be allowed for an appearance on this matter, as the trustee would be expected to be present as part of the trustee's duties.

THE TRUSTEE/DEBTOR IN POSSESSION IS TO NOTIFY ALL PROFESSIONALS OF THIS TENTATIVE RULING.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

**United States Bankruptcy Court
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Tuesday, January 29, 2019

Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

#15.00 Application for payment of interim fees and expenses
for creditor; attorney period: 4/30/2018 to 12/31/2018

Docket 660

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

This is for counsel for the creditors' committee. Foley & Lardner seek \$35,235.50 in fees and \$1,154.46 in costs. The initial counsel for the Committee was Baker & Hostetler, LLP. When Ms. McDow moved to Foley & Lardner in summer 2018, that firm was appointed to represent the Committee. This application only covers the period from 4/30/18-12/31/18.

While it is hard to tell exactly how much time was spent in the transition from Baker & Hostetler to Foley & Lardner, this is not compensable. The Court's best estimate is \$5,000. Reduce the requested compensation by that amount.

Approve fees of \$30,235.50 and costs of \$1,154.46. However there will be a holdback to be discussed with the Trustee at the hearing.

If you submit on this tentative ruling, no appearance is necessary. If you choose to appear and the final ruling is in conformance with the tentative ruling, no additional fees will be allowed for this appearance. If the trustee's firm is representing the trustee, no attorney's fees will be allowed for an appearance on this matter, as the trustee would be expected to be present as part of the trustee's duties.

THE TRUSTEE/DEBTOR IN POSSESSION IS TO NOTIFY ALL PROFESSIONALS OF THIS TENTATIVE RULING.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

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Tuesday, January 29, 2019

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10:00 AM

CONT... Solyman Yashouafar

Chapter 11

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

**United States Bankruptcy Court
Central District of California
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Tuesday, January 29, 2019

Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

#16.00 First interim application of Development Specialists, Inc. for allowance and payment of compensation of Thomas Jeremiassen for Development Specialists Inc accountant period: 3/1/2018 to 12/31/2018

Docket 644

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

DSI was appointed as accountants and financial advisors to the Trustee, effective 3/1/18. It seeks fees in the amount of \$20,120.

Approve as requested. However, there will be a holdback based on a decision to be made by the Court after consultation with the Trustee. I also will need to know from the Trustee what the future division of work will be between this firm and Berkeley Research Group. For example, who will be preparing the tax returns?

If you submit on this tentative ruling, no appearance is necessary. If you choose to appear and the final ruling is in conformance with the tentative ruling, no additional fees will be allowed for this appearance. If the trustee's firm is representing the trustee, no attorney's fees will be allowed for an appearance on this matter, as the trustee would be expected to be present as part of the trustee's duties.

THE TRUSTEE/DEBTOR IN POSSESSION IS TO NOTIFY ALL PROFESSIONALS OF THIS TENTATIVE RULING.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Trustee(s):

David Keith Gottlieb (TR)

Represented By

**United States Bankruptcy Court
Central District of California
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10:00 AM

CONT...

Solyman Yashouafar

Jeremy V Richards
John W Lucas

Chapter 11

**United States Bankruptcy Court
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Wednesday, January 30, 2019

Hearing Room 303

9:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#1.00 Application for issuance of order to show cause for failure to appear at trial pursuant to subpoena of witness Harvey Bilik and for sanctions

fr. 12/18/19; 1/8/19

Docket 455

Courtroom Deputy:

Tentative holding date of cont. to 2/12/19 at 9am (eg)

Tentative Ruling:

The SSA has now filed an explanation (see cal. #7). It is unfortunate that Dr. Bilik simply chose to ignore the prior subpoena, which was properly served. This has cost time and money and simply ignoring a subpoena may well be an act of contempt. However, if he told the SSA about the initial subpoena that was properly served and they advised him to ignore it, it is not contempt. [It should be noted that he was paid and accepted his witness fees.] But if he chose to ignore it without such advice, we may be dealing with civil contempt (given the position of the SSA) or criminal contempt (if he can no longer comply). These are issues to be discussed. Dr. Bilik is not represented by the SSA and is to appear in person or by phone so that we can look at these issues.

As to his report, it seems to qualify under FRE 803(6). What do we need to admit it under that section and does the SSA block this since they agree to providing a certified copy? Previously Mr. Neff agreed that the SSA records could be obtained by Mr. DeNoce under a confidentiality agreement. Is that still needed?

Per the SSA response, it appears that Dr. Bilik was merely reviewing the records of others. How does that fit in?

What does Mr. DeNoce need to finish this trial?

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Wednesday, January 30, 2019

Hearing Room 303

9:00 AM

CONT... Ronald Alvin Neff

Chapter 7

USCS Fed Rules Evid R 803:

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness: ...

(6) Records of a regularly conducted activity. A record of an act, event, condition, opinion, or diagnosis if:

(A) the record was made at or near the time by—or from information transmitted by—someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

prior tentative ruling (12/18/18)

This is controlled by LBR 9020-1. Let's look at that rule and make sure that every step is properly taken. Remember that each time that service is required, it must be by personal service.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Movant(s):

Douglas Denoce

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Wednesday, January 30, 2019

Hearing Room 303

9:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#2.00 Trial (date to deal with subpoena issues)

fr. 6/19/18, 8/27/18, 9/18/18; 11/20/18; 12/18/18; 1/8/19

Docket 422

Courtroom Deputy:

Tentative holding date of cont. to 2/12/19 at 9am (eg)

CONTACT INFO FOR WITNESSES:

Dr. Mahyer Okhovat 818-918-2766 or 310-579-9082 (Dr. Okhovat's wife [atty])

Alexander Hersell 805-557-096 (ofc) 310-808-4308 (cell)

Tentative Ruling:

Two of the doctors are set to testify on Jan. 30 at 9:00 a.m., so that will be the trial date. If we need to then continue that further after their testimony, I will do so at that time.

prior tentative ruling (11/20/18)

Mr. DeNoce has filed copies of new subpoenae of Dr. Bilik and on Canyon Medical Group. Witness fees have been paid and these were personally served. Dr. Bilik is in Oakland. He can appear by phone for this initial appearance - although he was paid for a personal appearance. Records are to be produced in person or by mail. If by mail, with a declaration as required by law.

prior tentative ruling (9/18/18)

This is only as to Dr. Bilik and Canyon Medical Group, who did not appear on August 27.

The subpoenaed witnesses may appear by phone or in person and will be ordered back for January 30, 2019 at 9:00 a.m. when the continued trial will

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CONT... Ronald Alvin Neff
actually take place.

Chapter 7

The Court has a copy of the proof of service on Doctor Bilik and on the Custodian of Records of Canyon Medical Group. If the either of them do not appear, Mr. DeNoce will be required to provide evidence that at the time that the subpoena was served, each witness was offered a witness fee of \$40 and reasonable mileage. FRCP 45(b)(1) as incorporated by FRBP 9016. See *CF&I Steel Corp. v. Mitsui & Co.*, 713 F2d 494, 496 (9th Cir. 1983).

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
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San Fernando Valley
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Wednesday, January 30, 2019

Hearing Room 302

9:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#3.00 Trial - DAY ONE

fr. 8/17/18, 8/27/18

Docket 429

Courtroom Deputy:

Tentative holding date of cont. to 2/12/19 at 9am (eg)

will be heard in courtroom 302

CONTACT INFO FOR WITNESSES:

Dr. Mahyer Okhovat 818-918-2766 or 310-579-9082 (Dr. Okhovat's wife
[atty])

Alexander Hersell 805-557-096 (ofc) 310-808-4308 (cell)

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Movant(s):

Douglas Denoce

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Thursday, January 31, 2019

Hearing Room 302

10:00 AM

1:16-11387 Real Estate Short Sales Inc and Real Estate Short Sales, Inc.

Chapter 7

#1.00 Order to show cause why Nancy Cueva and debtor should not be held in contempt of court

fr. 1/29/19

Docket 329

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The OSC re: Contempt deals with three specific actions:

1. Violation of the compromise order (the "Compromise Order") [dkt. no. 226] that requires Parties to cooperate fully with the Chapter 7 Trustee's marketing and sale of that certain real property commonly known as 10351 Oklahoma Avenue, Chatsworth, California 91311 (the "Chatsworth Property") by failing to allow interior access to the Chatsworth Property for the purposes of an appraisal required by the lender for buyer Haya Sara Yavor ("Buyer");
2. Violation of the sale order (the "Sale Order") [dkt. no. 302] that requires Parties to vacate the Chatsworth Property by noon on Monday, December 17, 2018; and
3. Violation of the Compromise Order by opposing Trustee's sale motion for the Chatsworth Property and filing a notice of appeal of the Sale Order.

The details and background of these asserted violations are described below in more detail in the Trustee's reply.

Opposition

The reason that they did not move out on 12/17 was because the hearing on their stay motion was not set until 12/18. Also they believed (on their own and not from counsel) that the sale order violated the automatic stay of their chapter 13.

The Sale Order did not require the Debtor (as opposed to Cueva/Molica) to vacate the Chatsworth Property by noon on 12/17.

Molica was and is very sick, so the failure to allow the appraiser access

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10:00 AM

CONT... Real Estate Short Sales Inc and Real Estate Short Sales, Inc. Chapter 7

on 12/12 and 12/13 and the failure to vacate on 12/17 should keep that in mind. However, after the Court ruled on 12/18, the appraiser was promptly granted access.

Cueva believed that the automatic stay of the chapter 13 case precluded the Trustee from pursuing the sale and obtaining possession of the property and thus her conduct was justified.

Cueva and the Debtor had a justified belief that the setting of the Stay Motion for 12/18 meant that they did not have to vacate Chatsworth on 12/17.

The Debtor and Cueva did not violate the Compromise Order by opposing the Sale Order due to the filing of the chapter 13 case. Nor did they do so by appealing the Sale Order based on issues that they believe to be valid. Requiring that they "cooperate fully with Trustee's marketing and sale of the Chatsworth Property, subject to the Court's approval" cannot be read as a waiver of their rights to oppose the Sale Order. The automatic stay cannot be waived in advance.

This OSC does not apply to Molica.

Reply

Although set forth in the application for this OSC, the Trustee again lays out the facts that support her contention of bad behaviour by Cueva and Molica - living cost-free in Chatsworth for 6 years before the Trustee was appointed (thus avoiding \$500,000 in mortgage payments); remaining in the property without payments for another year after the Trustee was appointed; interfering with the sale of estate property; negotiating in bad faith to purchase the property; increasing the estate's administrative expenses. They benefitted by \$85,000 by this 13-month extension after the Trustee was appointed. After a buyer was obtained, they would not vacate the property and would not allow access to the Trustee's appraiser. The Trustee was forced to petition the Court for an order to remove them, to which they responded by threatening the escrow and title officers with litigation pursuant to a bogus quitclaim deed.

The Trustee then lays out in detail the actions which interfered, delayed, and otherwise prejudiced the estate.

The Trustee states in her reply (filed on 1/22/19) that the sale has not yet closed due to the delays caused by Cueva and Molica. The Trustee is not sure that the short sale lender will agree to any further extensions if Cueva and Molica continue to block the sale by their contemptuous conduct.

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CONT...

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Chapter 7

As to the specific items in the OSC:

- (1) refusal to provide access - Cueva did not act in good faith by failing to allow the appraiser access on 12/12 and 12/13. The Compromise Order required Cueva and the Debtor to cooperate with the Trustee's marketing and sale of the property. This included the appraisal appointment.
- (2) refusal to vacate: they were to vacate by noon on 12/17/18, but Cueva and Molica refused to do so. They did not remove their personal property.
- (3) violation of the Compromise Order by opposing the Sale Motion and filing a notice of appeal: These violated the provision of the Compromise Order requiring Cueva and the Debtor to cooperate fully with the Trustee's marketing and sale of the Chatsworth Property.

The Court has civil contempt power through 11 USC §105(a). Civil contempt occurs when a party "disobeys a specific and definite court order by failure to take all reasonable steps within the party's power to comply. The contempt 'need not be willful,' and there is no good faith exception to the requirement of obedience to a court order." *Go-Video v. Motion Picture Ass'n of America (In re Dual Deck Video Cassette Recorder Antitrust Litig.)*, 10 F.3d 693, 695 (9th Cir. 1993). A party must take all reasonable steps to comply with a court order. *Shuffler v. Heritage Bank*, 720 F.2d 1141, 1146-7 (9th Cir. 1983).

The Trustee has met her burden of proof in the application for the OSC and in the facts laid out in this reply. Now the burden of proof shifts to the contemnors and they have not met this. They have not put forth any evidence of an impossibility defense or of their inability to comply.

As to vacating the residence, Molica and Cueva may have moved out on 1/8, but they did not notify the Trustee and they left two inoperable vehicles. Thus the U.S. Marshal deputies appeared with a locksmith (cost \$3,000+ for the Marshals and \$1,146 for the locksmith). Cueva and Molica left the two cars and almost their entire personal property behind, and storage is likely to cost more than \$10,000 plus \$1,000 per month for insurance.

The Sale Order applies to all parties, including the Debtor. A corporation acts through its principals. Cueva and Molica claim to be equityholders, officers, and directors. Therefore they are responsible for the Debtor's compliance with the Compromise Order and the Sale Order.

There is no medical exception to the obligation to comply with a court order. There is also no evidence to verify the existence, extent, or duration of Molica's medical issues. Molica was fully engaged during the appraisal and

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was seen driving a car with Cueva as his passenger as well as walking around. They, in fact, have moved out and there is no showing that Molica's medical condition was an excuse for the delay.

The Chapter 13 filing was a procedural maneuver and not a good faith filing. They had no interest in the Chatsworth property, so the chapter 13 stay could not apply. Also, the automatic stay does not apply to the bankruptcy court where the debtor's bankruptcy is pending. *[Please note that I cannot tell where the quotation on p. 19-20 of the reply is from. It also appears to contain several mistakes as to the citations included - ie. according to Lexis, North Coast Village is at 135 B.R., not 132 and Maritime Elec. is at 959 F.3d, no 862.]*

Even if the stay could apply, the Court annulled it and dismissed the chapter 13 case.

There was no waiver of the Compromise Order. There was no right to waive and also because the cooperation was an obligation of the Order, the discussion of waiver does not apply.

The Debtor and Cueva had no standing to file an appeal of the Sale Order. There was no pecuniary interest of either in the property. There was no possibility of surplus.

The Court has the ability to impose civil contempt penalties, which must be either compensatory or designed to coerce compliance. The Trustee seeks the following compensatory sanctions:

Attorney's fees of no less than \$20,000 and increasing *[There does not appear to be any evidence to support this figure.]*

U.S. Marshal's fees of \$3,000+ subject to final invoice

Locksmith charge of \$1,146

Insurance of \$11,672.95 subject to increase

Moving and storage of personal property of at least \$10,000, to be determined based on whether Cueva and Molica pay and arrange for their own movers per Court Order or whether statutory notice applies

Misc. costs for certified copies, etc. of \$351.62 subject to increase

Supplemental Declaration of Nancy Cueva

Ms. Cueva pro se filed a supplemental declaration on 1/25. She describes a potential sale to an Argentinian buyer that did not go through because the Trustee required certain things. She then talks about her attempt at a loan modification, which she asserts the Trustee interfered with,

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but is actually still pending. She states that up to 2015 she and her husband paid \$234,180 and also improvements of \$250,000.

As to the recent chapter 13, she asserts that she paid Jeffrey Hagen \$1,500 for his services, but he withdrew after he spoke with Ms. Zamora. Since they could not find another attorney on such short notice, they let the case be dismissed.

Cueva became ill and could not vacate the premises. On December 25 she was taken to the emergency department of West Hills Hospital for emergency surgery and her post-surgical care did not allow her to do any strenuous activity.

On January 3, U.S. Marshal Deputy Hugo Valdez trespassed and posted a notice to vacate that was defective because it did not attach the third page of the writ not the order attached to the writ. On January 8 they moved out. Deputy Valdez did not return. Cueva wanted to arrange to move the personal property, but Deputy Valdez never returned calls. On January 12 Cueva and Molica returned to pick up their mail and found 4 marshalls, a lock company, the realtor, and Zamora's assistant. None would tell them how to recover their personal property. Since then Cueva has called Zamora and filed a letter to her and to the Marshall, but not received an answer. Cueva refuses to pay the Marshall or attorney fees. Zamora has personal animosity against Cueva.

Analysis

Although not raised in the opposition, the OSC re: Contempt is on appeal (USDC CAC 2:19-cv-00120- DOC). Do I still have jurisdiction on this until the appeal is dealt with?

The sale has not closed. Is the Sale Order on appeal? If so, do I have jurisdiction on this OSC re: Contempt as to the Sale Order? However the Compromise Order is not on appeal.

11 USC §105(a) gives the bankruptcy court the power to punish for civil contempt. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178 (9th Cir. 2003). Beyond that, there is an inherent power to do so. *Caldwell v. United Capital Corp. (In re Rainbow Magazine, Inc.)*, 77 F.3d 278, 284 (9th Cir. 1996).

Civil contempt involves sanctioning a person until s/he complies with

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an affirmative command - in this case complying with the Compromise Order and also with vacating the property, etc., which has been partially done but personal property was not removed by the alleged contemnors. Criminal contempt is punitive because the act of disobedience has been completed and the contemnor cannot now act to comply with the prior order:

Since there is no positive action to be taken (except dealing with the personal property that is in storage), this could fall into the area of criminal contempt. However, the Trustee is not seeking a determination of criminal contempt, but merely sanctions for the expenses incurred by the violation of the Orders.

Civil contempt may be used to compensate the aggrieved party even if the action by the contemnor can no longer be undone:

Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained. *Gompers v. Bucks Stove & Range Co.*, *supra*, at 448, 449. Where compensation is intended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of complainant's actual loss, and his right, as a civil litigant, to the compensatory fine is dependent upon the outcome of the basic controversy. *United States v. United Mine Workers*, 330 U.S. 258, 303-304 (1947)

A contempt fine accordingly is considered civil and remedial if it either "coerces the defendant into compliance with the court's order, [or] . . . compensates the complainant for losses sustained." *United States v. Mine Workers*, 330 U.S. 258, 303-304, 91 L. Ed. 884, 67 S. Ct. 677 (1947). Where a fine is not compensatory, it is civil only if the contemnor is afforded an opportunity to purge. See *Penfield Co. of Cal. v. SEC*, 330 U.S. 585, 590, 91 L. Ed. 1117, 67 S. Ct. 918 (1947). Thus, a "flat, unconditional fine" totaling even as little as \$ 50 announced after a finding of contempt is criminal if the contemnor has no subsequent opportunity to reduce or avoid the fine through compliance. *Id.*, at 588.

Int'l Union v. Bagwell, 512 U.S. 821, 829 (1994)

Here the sanction would be compensatory since there is nothing left for Cueva and the Debtor to do (although they can reduce this by taking possession of their personal property). It appears that the proper result would be an order that Cueva pay the Trustee the sum necessary to compensate for

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the actions taken as a result of her contempt. Since the Trustee does not have counsel, the Court would need evidence of a proper amount to compensate the Trustee for her time and for incidental expenses. Then the Court must determine that Cueva has the ability to make the payment. There would be no such order as to the Debtor, since it owns nothing that is not property of the estate. While the Court has doubted Ms. Cueva's finances, she has never asserted that she did not have sufficient money to comply with the order to move. And she has hired counsel and paid him a retainer of \$20,000 and agreed to an hourly rate of \$650. (dkt. 324). Thus her ability to pay is not in issue.

One of the issues is who is bound by the Compromise Order and who is bound by the Sale Order. The Compromise Order (dkt. 226) approves the motion to compromise (dkt. 217). The compromise letter states that it is "reached between you ('Cueva') and me, as chapter 7 trustee ('Trustee')...." (dkt. 217, p. 15). The Order approving the revised compromise states that it is between "Trustee and Nancy Cueva ('Cueva'), for the benefit of Debtor...." (dkt. 226). Ms. Zamora prepared both of these documents. The Sale Order (dkt. 302, p. 9) specifically provides in ¶1N that "Nancy Cueva and Julio Molica (collectively 'Residents'), shall vacate the Real Property, without causing damage, no later than 12:00 noon on December 17, 2018, consistent with that certain Order Approving Revised Compromise...."

As to the assertion that she did not comply with the order to vacate by 12/17 because of the delay in the hearing on a stay until 12/18, it is clear that Cueva did not intend to vacate at any time and that she was doing all that she could to block the sale from consummating. See for example her recording of a quitclaim deed on 12/26/18 (dkt. 347, 349).

As to the issue of her belief that she was protected by the automatic stay of the new chapter 13 - the mere act of filing the chapter 13 was solely for the purpose of interfering with the sale and as a basis not to vacate the property. Concerning whether Jeffrey Hagen was her attorney in the chapter 13, she asserts that she hired him and paid him \$1,500, but provides no receipt for payment, he never appeared, the petition was filed pro se, and there is no declaration by Mr. Hagen.

Beyond that, she attempted to keep that case open by lying to the Court [though not under oath] and she had her attorney state that Cueva had timely filed a request to extend time to file schedules in that case [transcript of 12/18/18 hearing, dkt. 341] The document was never located in the clerk's

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office and thus the court dismissed the case. Although Cueva was given an opportunity to vacate the dismissal if she could present a conformed copy of her application to extend, she did not do so. The Court finds that no such application for extension was ever filed. Id. p. 62-63. Also, on December 4, Cueva represented to the Court that Jeffrey Hagen represented her in her chapter 13 case, but this was not true.

All of these efforts were undertaken so as to prevent the Trustee from completing the sale. They were obstructionist and not in good faith.

The Trustee has laid out sufficient facts to meet her burden that the actions by Cueva, Molica, and the Debtor were an intentional violation of prior orders of this Court - specifically Sale Order, though there is a question as to who was bound by the Compromise Order. The Trustee has met her burden.

As to the assertion that all of this was due to the poor health of Molica - the Court does not accept that as an excuse. Beyond the fact that the Compromise Order was many months before the Sale Order and thus Molica/Cueva had more than sufficient time to prepare to move, the declaration of Behnaz Tavakoli provides evidence that Molica was not unable to physically move out - he was able to walk and to drive. Even had he been immobile, this would not be an excuse since he had months to prepare.

Concerning Cueva's emergency surgery, apparently this occurred on or after December 25, a full week after the time to remove themselves from the property. There is also no evidence that Cueva and/or Molica made any preparations to move themselves or their furniture. They are or were living in a hotel and not an apartment, there is no indication that they hired a moving company or arranged for storage. It is obvious to the Court that they had no intention to move until and unless the Marshall took action. They had months to make preparations and their health issues are not an excuse.

The Court also finds it disturbing that Ms. Cueva presented an entirely new story of the delay in her supplemental opposition, since all of these assertions occurred before the Debtor's attorney filed the initial opposition.

As to the loan modification, that time has passed. The debtor (estate) owns the real property, not Cueva/Molica. They have no rights left to modify and their attempts may be interfering with the Sale Order and may be a continuing contempt.

As to the personal property, there needs to be an agreement as to how it is handled - remaining in storage, who pays the storage fees, etc.

Party Information

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Chapter 7

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Real Estate Short Sales, Inc.

Represented By
Daniel J McCarthy

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:16-11387 Real Estate Short Sales Inc

Chapter 7

#2.00 Emergency motion for Order Determining Mechanics Liens Recorded January 8, 2019 and January 16, 2019 Null and Void, and of No Force or Effect; and Authorizing Title Company to Disregard Mechanics Liens for Purposes of Insuring Title to Real Property

Docket 386

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton
Daniel J McCarthy

Trustee(s):

Nancy J Zamora (TR)

Represented By
Jessica L Bagdanov
David Seror

**United States Bankruptcy Court
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1:11-22424 Ronald Alvin Neff

Chapter 7

#1.00 Application for issuance of order to show cause for failure to appear at trial pursuant to subpoena of witness Harvey Bilik and for sanctions

fr. 12/18/19; 1/8/19, 1/30/19

Docket 455

Tentative Ruling:

On 2/6/19, Dr. Bilik filed his declaration as to the OSC and the Motion to Quash. He followed the procedures set down by the SSA. Further, he shredded the witness fee check.

Based on this and the motion to quash (cal. #4), the Court withdraws its OSC re: contempt as to Dr. Bilik.

prior tentative ruling (1/30/19)

The SSA has now filed an explanation (see cal. #7). It is unfortunate that Dr. Bilik simply chose to ignore the prior subpoena, which was properly served. This has cost time and money and simply ignoring a subpoena may well be an act of contempt. However, if he told the SSA about the initial subpoena that was properly served and they advised him to ignore it, it is not contempt. [It should be noted that he was paid and accepted his witness fees.] But if he chose to ignore it without such advice, we may be dealing with civil contempt (given the position of the SSA) or criminal contempt (if he can no longer comply). These are issues to be discussed. Dr. Bilik is not represented by the SSA and is to appear in person or by phone so that we can look at these issues.

As to his report, it seems to qualify under FRE 803(6). What do we need to admit it under that section and does the SSA block this since they agree to providing a certified copy? Previously Mr. Neff agreed that the SSA records could be obtained by Mr. DeNoce under a confidentiality agreement. Is that still needed?

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Per the SSA response, it appears that Dr. Bilik was merely reviewing the records of others. How does that fit in?

What does Mr. DeNoce need to finish this trial?

USCS Fed Rules Evid R 803:

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness: ...

(6) Records of a regularly conducted activity. A record of an act, event, condition, opinion, or diagnosis if:

(A) the record was made at or near the time by—or from information transmitted by—someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

prior tentative ruling (12/18/18)

This is controlled by LBR 9020-1. Let's look at that rule and make sure that every step is properly taken. Remember that each time that service is required, it must be by personal service.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Movant(s):

Douglas Denoce

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

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#2.00 Trial - DAY ONE

fr. 8/17/18, 8/27/18, 1/30/19

Docket 429

Tentative Ruling:

This is mislabeled in that it is the continued trial, but not "Day One."

On January 30, Mr. DeNoce examined both Doctor Hersel and Doctor Ohovahat. I have a clear recollection that he had stated at an earlier date that his examination of each would not exceed one hour, but I cannot easily locate that reference. However, it is time to limit the completion of the examination of each of these doctors and schedule them so that they do not have to spend hours waiting to testify. The Court has the authority to do this.

Mr. DeNoce will have up to one hour to examine Dr. Hersel and one hour to examine Dr. Ohovahat. Mr. Kwasigroch will have up to one hour to examine each. Mr. DeNoce will then have up to an additional 30 minutes for redirect examination of each (limited to matters raised in the examination by Mr. Kwasigroch). Mr. Kwasigroch can then have an additional 10 minutes for recross examination of each (limited to matters raised in the redirect examination by Mr. DeNoce). This back-and-forth will then be limited to 5 minutes each until one party ceases asking questions. For ease of the witnesses, one will be scheduled for 9:00 a.m. and the other for 1:00 pm.

Let's find a series of available dates for counsel and the court and then we can contact the doctors and set the schedule. Both have been ordered back for a time to be mutually agreed on.

At the conclusion of the two examinations, should either party wish to recall Mr. Neff, he may do so. But the examination will be limited to the testimony of the doctors (both that on Jan. 30 and on the continued hearing date). However, the parties can defer the recall of Mr. Neff until after the issue of the psychiatric report is resolved and any psychiatric evidence is concluded.

Possible dates are as follows:
February 25

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March 21, 25, 28
April 11, 12, 15, 18

Chapter 7

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Movant(s):

Douglas Denoce

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

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#3.00 Trial (date to deal with subpoena issues)

fr. 6/19/18, 8/27/18, 9/18/18; 11/20/18; 12/18/18; 1/8/19;
1/30/19

Docket 422

Tentative Ruling:

This is now off calendar. The issues of further testimony are dealt with on calendar #2.

prior tentative ruling (1/30/19):

Two of the doctors are set to testify on Jan. 30 at 9:00 a.m., so that will be the trial date. If we need to then continue that further after their testimony, I will do so at that time.

prior tentative ruling (11/20/18)

Mr. DeNoce has filed copies of new subpoenae of Dr. Bilik and on Canyon Medical Group. Witness fees have been paid and these were personally served. Dr. Bilik is in Oakland. He can appear by phone for this initial appearance - although he was paid for a personal appearance. Records are to be produced in person or by mail. If by mail, with a declaration as required by law.

prior tentative ruling (9/18/18)

This is only as to Dr. Bilik and Canyon Medical Group, who did not appear on August 27.

The subpoenaed witnesses may appear by phone or in person and will be ordered back for January 30, 2019 at 9:00 a.m. when the continued trial will actually take place.

The Court has a copy of the proof of service on Doctor Bilik and on the Custodian of Records of Canyon Medical Group. If either of them do not appear, Mr. DeNoce will be required to provide evidence that at the time that

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the subpoena was served, each witness was offered a witness fee of \$40 and reasonable mileage. FRCP 45(b)(1) as incorporated by FRBP 9016. See *CF&I Steel Corp. v. Mitsui & Co.*, 713 F2d 494, 496 (9th Cir. 1983).

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
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1:11-22424 Ronald Alvin Neff

Chapter 7

#4.00 Motion to quash subpoenas

fr. 1/29/19

Docket 460

Tentative Ruling:

The Social Security Administration ("SSA") moves to quash a subpoena served by creditor Douglas DeNoce ("DeNoce") seeking the testimony of SSA medical contractor Harvey Bilik ("Bilik"). DeNoce is seeking Bilik's testimony regarding his review of the medical records of debtor Ronald Neff ("Neff") for the SSA and his opinion about Neff's mental capacity.

In a separate application, DeNoce is seeking an order to show cause and sanctions against Bilik for his failure to appear.

Background

Because DeNoce sought Bilik's testimony in his official capacity as a medical contractor for the SSA, DeNoce must obtain approval of the SSA, pursuant to its *Touhy* procedures. See *Touhy v. Ragen*, 340 U.S. 462, 469 (1951). In October 2018, DeNoce submitted a *Touhy* application to the SSA, seeking the testimony of Bilik. On December 10, 2018, the SSA denied DeNoce's application on following grounds:

- The Privacy Act prohibited disclosure of Bilik's testimony without Neff's consent. 5 U.S.C. 552a(b).
- Permitting a medical contractor to testify in a non-SSA-related action would be unduly burdensome because the disruption would deter doctors from working with the SSA.
- The SSA could, with Neff's consent, provide certified copies of Neff's SSA records for use in the bankruptcy court proceeding, as an alternative,
- Providing such testimony would be inconsistent with SSA's strict policy of impartiality among private litigants.

While his application was pending, DeNoce applied for an order to show cause ("OSC") and sanctions to compel Bilik's testimony. He had this OSC application served on Bilik at his home on January 2, 2019.

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Motion

Under *Touhy*, federal employees, which includes contractors under SSA regulations, cannot be compelled to comply with subpoenas when they have not been authorized to release the requested information under governing regulations. Under federal law and SSA regulations, an employee can testify about information/records created or acquired by the SSA only with prior authorization of the Commissioner. 20 C.F.R. 403.100, 403.110(b)(2).

The remedy for challenging the SSA's decision not to authorize testimony is a separate action in federal court under the Administrative Procedures Act ("APA"). Under the APA, the agency's decision can only be overturned if it is arbitrary, capricious, or otherwise not in accordance with the law. 5 U.S.C. 706(2)(A).

In this case, the SSA's decision is more than reasonable. Bilik did not have a legal basis to disclose Neff's sensitive and confidential information. Allowing SSA consultants to testify in non-SSA proceedings would be disruptive to the SSA's adjudication of disability claims: SSA Region IX receives approximately 500 subpoenas a year. The possibility of being forced into court would also discourage medical practitioners from working with the SSA.

DeNoce has less burdensome alternatives. With Neff's consent, the SSA can certify Neff's records so that DeNoce can use them in this proceeding. Bilik only reviewed the SSA records; he did not work directly with Neff. DeNoce can hire his own expert to review the SSA records.

A subpoena must be quashed if it requires disclosure of privileged or protected matter. Fed. R. Civ. P. 45(d)(3)(A)(iii).

As of noon on 2/7/19 DeNoce has not filed a response to this motion, However on 1/7/19 he filed a response concerning the interactions with Bilik and discussed the facts raised here, but not the law. [dkt. 462] This is not relevant to the motion to quash.

Analysis

Bilik cannot be compelled - or even allowed - to testify about his review of Neff's SSA file and his conclusions based on that review without the approval of the SSA. 42 U.S.C.1306(a)(1); C.F.R. 403.100; 403.110(b)(2).

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Chapter 7

The SSA has denied DeNoce's *Touhy* application for such approval. Thus, this court must grant the SSA's motion to quash and deny DeNoce's application for an OSC.

Going forward, DeNoce may obtain a certified copy of the SSA files and hire an expert to review Neff's SSA file and offer his own opinion. However, the opinion of the expert may be limited to a review of the psychiatric report in that this was all that Dr. Bilik did and DeNoce has previously been granted access to a copy of the SSA file and chose to destroy it. [The Court is aware that DeNoce contends that he was not given the file SSA file to review and this might be an issue, depending on what that file contains and what was previously provided to him.]

DeNoce does have the option of challenging the SSA's denial of his *Touhy* application under the APA, although the scope of review under 5 U.S.C. 706 suggests that reversal would be highly unlikely. The appropriate federal court for judicial review of the SSA's decision was not clear from the face of 5 U.S.C. 706. I would appreciate input from the SSA as to whether this court is a proper venue under section 703. Judicial review in this court could reduce further delays in this proceeding.

Ruling

The SSA's motion to quash is granted. DeNoce's application for an OSC is denied. Neff has orally agreed to sign a release of his SSA file and I need to ascertain that this has or will be done in writing, that the proper form is being used, etc. I need a copy of the file to go directly from the SSA to Neff's attorney and to DeNoce - as well as to the Court so that there will be no dispute that the entire file was sent with the appropriate declaration(s) so that it can be admitted into evidence if either party should so wish.

Initially this was continued to Jan. 30 at 9:00 a.m. However, due to the government shutdown, the SSA has requested a further continuance and that there should be a stay of the case as to the SSA and Dr. Bilik. I have continued this without appearance to Feb. 12 at 9:00 a.m.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 12, 2019

Hearing Room 303

9:00 AM

CONT... Ronald Alvin Neff

Michael D Kwasigroch

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 12, 2019

Hearing Room 303

10:00 AM

1:09-18345 Narine Gumuryan

Chapter 7

#4.01 Amended Motion to Reopen Chapter 7 Case .

Docket 18

Tentative Ruling:

Movant Bag Fund LLC ("Movant") seeks to reopen the chapter 7 case of Narine Gumuryan ("Debtor") in order to file a complaint to determine the dischargeability of a debt.

Factual Background

Movant's assignor L&J Assets, LLC ("L&J") brought an action (the "State Court Action") to avoid the Debtor's transfer of real property at 7751 Allot Avenue, Van Nuys, CA (the "Property") against the Debtor and other defendants.

In December 2006 L&J obtained a judgment against the Debtor and two other defendants. In May 2017 an abstract of judgment was recorded against the Property.

On July 7, 2009, the Debtor filed for chapter 7 relief. L&J was not included in the schedules of creditors and the State Court Action was not listed in #4 (suits) in the statement of affairs. Neither L&J nor the Movant were included on the creditor mailing list.

On August 6, 2009, the Debtor filed an Amended Schedule F and Statement of Affairs. Neither L&J nor the Movants were listed in this amended Schedule F, but a "Larion Krayzman" was included in the list of unsecured creditors along with a reference to the case number of the State Court Action and a reference to another state court action - L&J Assets, LLC v. Krayzman. The State Court Action was included in the list of lawsuits in #4 of the statement of financial affairs. Larion Krayzman was included in the proof of service, but there is no evidence of service on L&J or the Movant.

October 5, 2009 was the deadline for filing complaints to determine dischargeability in the Debtor's Chapter 7 case. No bar date was ever set.

The Debtor's discharge was entered on February 5, 2010.

Motion

In 2016, the court in the State Court Action issued an order with

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CONT... Narine Gumuryan

Chapter 7

findings that: (i) it appeared that the Debtor's debt to L&J was discharged in bankruptcy and (ii) plaintiff's attorney was invited to seek a determination from the bankruptcy court on whether the debt was discharged. The same order lifted a temporary restraining order that was in place but allowed a default against the defendants in the State Court Action, including the Debtor, to remain. The defendants have sought to set aside the default against the Debtor and other defendants, but the issue of the dischargeability remains uncertain. Thus, the Movant seeks to reopen this case to determine the dischargeability of the Debtor's debt to L&J (now assigned to Movant).

This debt is nondischargeable because the debt was not in the Debtor's schedules.

Opposition

The Movant has not provided grounds for non-dischargeability. The Movant was listed on the Debtor's amended schedules filed on August 6, 2009. Furthermore, the Movant was aware of the Debtor's chapter 7, because it was disclosed in the State Court Action.

Analysis

Section 523(a)(3) provides that the following type of debt is non-dischargeable:

(3) neither listed nor scheduled under section 521(a)(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit--

(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;
11 U.S.C. § 523.

The Debtor's chapter 7 was a no assets case in which no bar date

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CONT... Narine Gumuryan

Chapter 7

was ever set. Thus, if the Movant's claim fell under ((A), there would be no grounds for non-dischargeability.

Section 727(b) provides that, except as provided in Section 523, the discharge under Section 727(a) discharges the debtor from all debts that arose prior to the commencement of the case, regardless of whether a proof of claim has been filed or whether the claim has been allowed. The broad scope of this section makes it clear that discharge is not dependent upon scheduling of the claim, filing a proof of the claim, or other affirmative act either by the creditor or the debtor. However, Section 523(a)(3) provides that the discharge does not extend to a debt which is "neither listed nor scheduled" in time to permit timely filing of a proof of claim. In this case, no bar date was ever set for the filing of a proof of claim; therefore the exception under Section 523(a)(3) does not apply. Therefore, under the terms of the Bankruptcy Code, the debt owed to the Respondent has been discharged.

This result has been expressly affirmed by the Ninth Circuit in *In re Beezley*, 994 F.2d 1433 (9th Cir.1993). As Beezley says, "If the omitted debt is of a type covered by 11 U.S.C. § 523(a)(3)(A), it has already been discharged pursuant to 11 U.S.C. § 727." 994 F.2d at 1434.

In re Maroney, 195 B.R. 452, 454 (Bankr. D. Ariz. 1996).

However, the underlying judgment is in a fraudulent transfer action, so it may well fall within 523(a)(2), (4), or (6), and thus under 523(3)(b). In that case, the question is whether the obligation was scheduled or the creditor had actual knowledge or notice of the Debtor's chapter 7 prior to the October 5, 2009 deadline for filing non-dischargeability complaints.

The answer to that question is not clear from the facts before the court. If Larion Krayzman is sufficiently connected with the Movant or L&J, then the debt may be considered scheduled, or the Movant/L&J may have had notice or actual knowledge. The Case Summary attached to the Debtor's opposition as Exhibit B does not provide the requisite notice because the entries referring to the bankruptcy case are from 2015, well after the deadline for filing non-dischargeability actions.

It should be noted that the Movant could bring an action to

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CONT... Narine Gumuryan

Chapter 7

determine non-dischargeability without reopening the bankruptcy case. See *Staffer v. Predovich (In re Staffer)*, 306 F.3d 967, 972 (9th Cir.2002) (“[A] separate motion to reopen is not a jurisdictional requirement, or even a prerequisite for commencing an action for nondischargeability of a debt under § 523(a)(3)(B).”); *In re Stanwyck*, 450 B.R. 181, 192 (Bankr. C.D. Cal. 2011).

Further, the state court has concurrent jurisdiction with the bankruptcy court for cases brought under § 523(a)(3)(B). While it is not 100% clear that the state court can determine whether §523(a)(3)(B) applies, it is clear that if that section applies, the determination of whether the debt falls under §523(a)(2), (4), and/or (6) can be made by either the bankruptcy court or the state court.

Conclusion

This is a motion to reopen, not a filing of an adversary complaint. Although reopening is not required, it seems appropriate in this case. Since the underlying facts are set out and there is a detailed opposition, the Court will grant the motion to reopen and hold this hearing on whether the Movant may file a complaint under §523(a)(3)(B). If granted as to filing the complaint, the Court believes that the complaint should be filed in the state court, which has already granted judgment as to fraudulent transfer, etc. The state court has jurisdiction to determine whether the actions fall under §523(a)(2), (4), and/or (6).

At the hearing, the Movant should be prepared to discuss Mr. Krayzman's relationship to the Movant and L&J.

Party Information

Debtor(s):

Narine Gumuryan

Represented By
Elena Steers

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Courtroom 303 Calendar**

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CONT... Narine Gumuryan

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Represented By
David Keith Gottlieb

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 12, 2019

Hearing Room 303

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#5.00 Plaintiff's motion for order allowing plaintiff to file second amended complaint.

fr. 12/18/18, 1/29/19

Docket 238

Tentative Ruling:

In the motion, Mr. Berry explains why he has delayed filing this amended complaint. It adds no new causes of action except those under bankruptcy law which correspond to the state law fraudulent conveyance ones. It also adds a claim for alter ego. It is still solely for the transfer of the property and does not seek non-dischargeability or denial of discharge.

Opposition by Debtor

Berry handled the prosecution of this adversary proceeding until 9/18/17 when the Court modified the order (dkt. 50, 53 in main case). Since then the Trustee has had the "sole authority and discretion" to undertake all actions concerning this adversary proceeding.

Further, the motion does not comply with LBR 9013-1 (c)(3) and (c)(4) since there is no written statement of all of the reasons in support of the motion and a memorandum of points and authorities upon which the moving party will rely. There is no demonstration of excuse for this failure.

Beyond that, the delay in filing this is prejudicial because of trial preparations and ongoing settlement discussions with the Trustee.

No Reply received as of 2/10.

Proposed Ruling

Deny the motion unless the Trustee adopts it. Then if might still be denied, but I will need to know the potential impact. There does not seem to be justification for the delay.

Mr. Berry needs to let go and deal only through the Trustee and her counsel..

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Tuesday, February 12, 2019

Hearing Room 303

10:00 AM

CONT... Glen E Pyle

Chapter 7

Party Information

Debtor(s):

Glen E Pyle Pro Se

Defendant(s):

Glen E Pyle Represented By
Raymond H. Aver

Sweetwater Management Company Pro Se

Glen E Pyle Irrevocable Trust Represented By
Raymond H. Aver

Movant(s):

Marc H Berry Represented By
Marc Berry

Plaintiff(s):

Marc H Berry Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR) Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

**United States Bankruptcy Court
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10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#6.00 Defendants' motion to modify or amend order
on unilateral pre-trial stipulation with proof of service

fr. 1/29/19

Docket 247

Tentative Ruling:

The Defendants {herein sometimes referred to as "Pyle"} seek to modify the pretrial order entered on January 2, 2019, which was entered based on the unilateral pretrial stipulation filed by the Plaintiff. Until the day before the pretrial conference, the Defendants were in good-faith negotiations with the Trustee and creditors on the final terms of a Global Settlement and Mutual Release Agreement. The Defendants failed to submit their portion of the pretrial stipulation due to inadvertence, surprise and excusable neglect because their focus was entirely on settlement of creditors' claims and they believed that the matter would settle before trial.

Mr. Aver and Mr. Pena were in active negotiations. On 12/12/18, Pena sent an email to Aver that he would delay filing the unilateral stipulation and declaration of non-cooperation if Pyle agreed to the terms of the settlement agreement by the next morning, which Pyle did. Defendants had every reason to believe that the Trustee was agreeable to the proposed settlement agreement and the only remaining issue was whether Mr. King (counsel for the Campbell Probate Estate) would dismiss the 727 claim in the Campbell case. The parties worked over the weekend trying to finalize a deal. On the morning of 12/18, Aver tried to reach Pena without success.

Aver then sets forth details of the proposed settlement.

His proposed changes to the Pretrial Stipulation are as follows:

He Contests:

- (1) on 1/12/00 Pyle was not on title and did not own Sunland
- (2) that the transfer of Sunland from Pyle to the trust was without consideration and was with actual intent to hinder, delay, or defraud his creditors
- (3) that the transfer of the Lot Property from Pyle to the trust was

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CONT...

Glen E Pyle

Chapter 7

without consideration and was with actual intent to hinder, delay, or defraud his creditors

(4) on 7/14/06 Pyle obtained a \$60,000 loan from Maitland and Gomez secured by a trust deed against Newhall and the Lot Property and that was recorded on 7/14/06

(5) on July 11, 2006, Pyle transferred the Lot Property to the Trust and that the transfer was without consideration and was with actual intent to hinder, delay, or defraud his creditors

(6) at the time of the transfers of Sunland, Newhall, and Lot, Pyle was aware and understood that Berry had commenced a lawsuit against him for payment of attorney's fees and he made those transfers without consideration and with the actual intent to hinder, delay, or defraud his creditors.

(7) Pyle objects to including a claim under Cal. Probate Code §16009 because it was never pled or raised until after the discovery cutoff. [this claim is that the Trust is invalid because Pyle failed to keep trust property separate from the other property and failed to designate property as property of the trust]

(8) Pyle is asserting a statute of limitations defense.

(9) Pyle attaches an exhibit list and a witness list.

(10) He notes that this is expected to be a 3-4 day trial.

Opposition

This motion fails to meet the requirements of Rule 59 or 60. There has been a pattern of failure to meet court deadlines. This stipulation has been in the works since last May. As recently as 12/14, Pena reminded Aver about the pre-trial and told him that there was no stipulation because King was not on board.

It has cost the estate at least \$18,000 in attorneys' fees due to the multiple continuances of the pretrial hearing, the preparation of the unilateral pretrial stipulation, and the 9 months of delay.

Pyle and Aver have not acted in good faith.

Reply

The cases cited by Plaintiff are distinguishable. Pyle is not alleging that the Court made a manifest error of law or that there is an intervening change of controlling law. Instead he is arguing that there will be a manifest injustice if relief is not granted since he will be deprived of a fair trial.

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CONT... Glen E Pyle

Chapter 7

Defendants acted in good faith and will be subject to unfair prejudice if the relief is not granted.

As to Rule 60, the Plaintiff meets the four factors of the Pioneer Test: there is little prejudice to the Trustee, there is a very short delay in seeking this relief (only 8 days), the reason for the delay is justified, and the Defendant acted in good faith.

Beyond that, Aver was laid up for a while because he was in pain and had to attend doctors' appointments and take therapy for his leg.

While the Trustee objects to the purpose of the motion, she does not object to the specific changes to the pretrial order that are proposed.

Proposed Ruling

The history of this case is as described by Mr. Pena. Even before the Trustee took the case back, it was like pulling teeth to get both Mr. Pyle and Mr. Aver to timely respond to motions and discovery. This is just a continuance of that behavior. But this time the burden is all on the attorney since there was no information needed from Pyle to allow Aver to act in the joint pretrial activity. The proposed changes are mostly to change certain "facts" from "not contested" to "contested." Beyond that he added the statute of limitations affirmative defense and questioned the inclusion of the Probate Code provision. I doubt that it would have taken more than an hour (total) for Aver to review the proposed pretrial, make those comments, respond to the Trustee, and file his comments.

Unfortunately the person(s) being hurt would be Pyle and his entities, not Aver. But Pyle did nothing wrong. He meets all the requirements of Rule 60(b)(1) except as to the prejudice to the Estate, which has had to incur fees and costs because Pyle's attorney did not act in a timely manner. As to Mr. Aver, not only did he cause prejudice to the Estate, but the history of delays and the fact that Mr. King has been adamant about not dropping his §727 cause of action show that Aver did not have a justification for the delay. Technically this motion should not be granted, but I can do so if there is sufficient compensation to the Estate for the fees and costs that is has incurred. And that is the better way to go because of this level of impact on Pyle if the motion is denied.

I will not go back to May 2018, but will start after November 25 and continue until and including the court appearance for this motion. Mr. Pena is to provide the Court and Mr. Aver with a declaration and itemized fees

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CONT... **Glen E Pyle**

Chapter 7

concerning the pretrial stipulation and this motion from November 26, 2018 including an estimate of the cost for the appearance on 2/12/19. I will grant this motion and order that Mr. Aver pay the Estate the amount of fees and costs incurred. He is to pay it within 30 days. He is NOT to charge Mr. Pyle for this or take it from any retainer or fees paid or to be paid to him by or on behalf of Mr. Pyle.

If the payment is not timely made, I will file a report with the state bar that he has violated this order and also sign a writ of execution if the Trustee lodges one. Meanwhile, since I am sure that this will exceed \$1,000 and is not a discovery sanction, Mr. Aver is required to self-report it to the State Bar.

The joint pretrial will be amended as proposed by Mr. Aver. He is to bring a motion in limine as to the Probate Code inclusion. Let's set the trial dates

Party Information

Debtor(s):

Glen E Pyle	Pro Se
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Defendant(s):

Glen E Pyle	Represented By Raymond H. Aver
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Sweetwater Management Company	Pro Se
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Glen E Pyle Irrevocable Trust	Represented By Raymond H. Aver
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Plaintiff(s):

Marc H Berry	Represented By Marc Berry
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Trustee(s):

Amy L Goldman (TR)	Represented By Amy L Goldman Amy L Goldman (TR) Leonard Pena
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10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#7.00 Trial setting conference re: complaint
to set aside or annul fraudulent conveyances
alter ego and for damages

fr. 4/27/11, 6/15/11, 10/4/11, 1/24/12, 4/10/12, 5/29/12,
6/19/12, 9/11/12, 10/2/12, 11/6/12, 3/19/13, 6/4/13, 8/27/13,
11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15;
1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17,
2/21/17, 3/28/17, 5/30/17; 7/25/17; 11/14/17; 2/27/18; 4/17/18,
6/26/18, 9/25/18; 12/18/18, 1/29/19

Docket 1

Tentative Ruling:

The trial estimate is between two and four days. Here are some possible dates. Counsel need to work these out:

the week of March 25-29
the week of April 8-12
the week of April 15-19
the week of April 29-May 3

Some dates during each of these weeks will be excluded due to my motion calendars and the possibility that there will not be a courtroom available. When you are told me which week(s) work for you. I can set the exact dates. BTW, I do not believe that this trial will take more than three days and may well be over in two days.

Party Information

Debtor(s):

Glen E Pyle

Pro Se

Defendant(s):

Glen E Pyle

Represented By

**United States Bankruptcy Court
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CONT... Glen E Pyle

Chapter 7

Raymond H. Aver

Sweetwater Management Company

Pro Se

Glen E Pyle Irrevocable Trust

Represented By
Raymond H. Aver

Plaintiff(s):

Marc H Berry

Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#7.01 Debtor's motion for reconsideration of John P. Reitman, chapter 11 trustee for order approving settlement with Barrett S. Litt, et al

fr. 12/18/18; 1/29/19

Docket 1563

Tentative Ruling:

Continued to 3/5/19 at 10:00 a.m. Although documents are being filed for 2/12, there will be no hearing at that time. I am also advising the parties by email of this.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Movant(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Andrew Goodman
Yi S Kim
Yi S Kim
Robert M Scholnick
Robert M Scholnick
James R Felton

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CONT... Shirley Foose McClure

Chapter 11

James R Felton
Faye C Rasch
Faye C Rasch
Faye C Rasch
Faye C Rasch
Lisa Nelson
Lisa Nelson
Michael G Spector
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

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10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#7.02 Status conference re: ch 11 case

fr. 1/24/2013, 4/30/13, 5/14/13, 7/23/13, 8/6/13,
9/17/13, 9/24/13, 11/19/13, 12/17/13, 1/21/14, 2/18/14,
3/11/14, 4/15/14, 5/6/14, 6/24/14, 9/9/14, 9/23/14,
10/7/14, 11/24/14, 1/6/15, 1/20/15, 2/10/15, 3/10/15,
4/28/15; 5/12/15; 9/29/15, 10/22/15, 12/8/15, 3/1/16,
6/7/16, 7/12/16, 8/16/16, 10/11/16; 12/20/16, 4/4/17,
5/16/17; 6/27/17, 7/11/17, 9/19/17, 11/14/17, 11/28/17,
12/19/17, 1/9/18, 3/19/18, 3/27/18, 5/1/18, 6/5/18; 6/26/18,
7/9/18; 8/7/18, 11/6/18; 12/18/18; 1/29/19

Docket 1

Tentative Ruling:

Continue without appearance to 3/5/19 at 10:00 a.m. Although documents are being filed for 2/12, there will be no hearing at that time. I am also adviseing the parties by email of this.

prior tentative ruling (11/6/18)

Ms. McClure has until Nov. 20 to file her motion for reconsideration. Meanwhile, she has filed an emergency motion for a stay pending the hearing on her motion for reconsideration. The Trustee opposes.

This would be a short stay, only so that the Court can adequately review the motion(s) to reconsider. While it took many months for the Court to do the detailed analysis and I believe that it is thorough and correct, it is appropriate to allow Ms. McClure to try to point out errors that may have been made. Given that the matters in the Superior Court are not immediate, the Court intends to grant the stay and will hear brief argument at the 11/6 status conference. It seems to me that the stay should expire 14 days after I enter my order on the motion(s) to reconsider.

Per the Trustee's status report filed on 10/31/18, the Maui property is in

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CONT... Shirley Foose McClure
escrow.

Chapter 11

Party Information

Debtor(s):

Shirley Foose McClure

Represented By

Andrew Goodman

Yi S Kim

Robert M Scholnick

James R Felton

Faye C Rasch

Faye C Rasch

Lisa Nelson

Michael G Spector

Trustee(s):

John P. Reitman

Represented By

John P Reitman

Jon L Dalberg

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, February 12, 2019

Hearing Room 303

10:00 AM

1:16-11538 Majestic Air, Inc.

Chapter 11

Adv#: 1:18-01133 Majestic Air, Inc. et al v. Lufthansa Technik Philippines, Inc.

#8.00 Motion to seal document.

Docket 2

Tentative Ruling:

Majestic Air and Tessie Cue (Cue) have filed suit against Lufthansa Technik Philipines (LTP), objecting to LTP's claim (#3) and seeking contractual indemnification as to the amount that Majestic and Tessie Cue (its sole shareholder) have to pay the Ansett Airlines claim, which was determined in a settlement of a state court action, as well as its fees in defending the claim, etc. In support of the objection to the claim, Majestic/Cue seek to file under seal exhibits 1, 2, and 5 to the declaration of Cue. The basis of the motion is that exhibits 1 and 2 are trade secrets and have been found to be such by the state court and exhibit 5 is a settlement agreement that has a confidentiality provision.

Objection

LTP objects as to exhibits 1 and 2 in that the agreement between Majestic, Cue, and LTP states that none of them will be "bound by the factual findings made during the underlying action and [they] specifically reserve the right to present additional evidence in any further proceeding, action, or separate trial." Further, there is no showing that the consignment agreement form contains any information that would cause unfair advantage to competitors as to the commercial operation of Majestic or Cue.

As to exhibit 5, a mere statement of confidentiality in a settlement agreement is not grounds for sealing. Beyond that this settlement agreement is already a part of the public record in that Majestic filed it as an exhibit to its motion to approve the settlement agreement with Ansett (16-11538, dkt. 226).

Reply

When LTP filed its proof of claim #3 on 9/20/16 - the claim that is being objected to in this adversary proceeding - counsel for LTP acknowledged that the consignment contract with LTP (titled an Inventory Management and

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Courtroom 303 Calendar**

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Hearing Room 303

10:00 AM

CONT... **Majestic Air, Inc.**

Chapter 11

Marketing Agreement ("IMMA:)) is the subject of a protective order which prohibits its filing except under seal. [claim #3-1 part 2, ex.1, page 4] It also acknowledged that in the Infinity case. It is not required to have a final judgment that determines that this to be kept under seal. Commercial information need not be a trade secret to qualify to file under seal.

As to exhibit 5 - the settlement agreement - if the Court grants the motion to file it under seal, Majestic and Cue requests that the Court apply that ruling to exhibit 1 of the motion to settle.

Analysis

11 USC § 107 states:

(a) Except as provided in subsections (b) and (c) and subject to section 112 [11 USCS § 112], a paper filed in a case under this title and the dockets of a bankruptcy court are public records and open to examination by an entity at reasonable times without charge.

(b) On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may--

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or

(2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

As to Exhibits 1 and 2, the Court would normally defer to the state court finding that the consignment form is a trade secret. However the movant has not given the Court a copy of that order or anything supporting it. Time has passed and it is not clear that - even if it was a trade secret when the state court made its finding - it is still in use or that it remains a trade secret. Without this, I cannot rule on the matter based on the finding of the state court. Further, it may only need some redaction to resolve the issue of trade secret. However, it appears that LTP may have agreed or failed to object in the state court and that could play a role in my finding.

As to Exhibit 5, this has been part of the public record for months and no one objected at the time that it had to be kept confidential and put under seal. Ansett was well aware of the motion, which was filed in July 2018. It never requested that the settlement agreement that was the subject of that motion be put under seal. It would be difficult if not impossible for Ansett to now claim that filing a copy in an adversary proceeding in the same bankruptcy case is a breach of the agreement. As to "unringing the bell," the

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CONT... **Majestic Air, Inc.**

Chapter 11

Court finds no basis at this time to seal the motion to approve the settlement agreement.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Defendant(s):

Lufthansa Technik Philippines, Inc.

Represented By
Dawn M Coulson

Plaintiff(s):

Tessie Cue

Represented By
Stella A Havkin

Majestic Air, Inc.

Represented By
Stella A Havkin

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Courtroom 303 Calendar**

Tuesday, February 12, 2019

Hearing Room 303

10:00 AM

1:16-11538 Majestic Air, Inc.

Chapter 11

#9.00 Status and Case Management Conference

fr. 8/4/16(xfr from Judge Tighe's calendar); 8/30/16,
9/27/16; 10/25/16; 11/15/16, 2/21/17, 5/16/17; 6/27/17,
8/29/17, 1/23/18; 6/19/18, 9/18/18; 12/4/18

Docket 1

Tentative Ruling:

Per the status report, the parites (LTP and the Debtor) have narrowed down the list of mediators and expect to schedule a mediation within the next 30 days. The sale of the building has been completed and is now owned by the Debtor's principal's children. The Debtor is continuing to make lease payments.

If there are no objections, continue without appearance to April 16, 2019 at 10:00 a.m.

prior tentative ruling (12/4/18)

Per the status report filed on 11/20, the remaining issues involve LTP. The parties are discussing mediation. If not, Debtor will file a objection to the LTP claim.

Continue without appearance to February 12, 2019 at 10:00 a.m.

prior tentative ruling (9/18)

Special counsel is being employed to resolve or litigate the LTP claim. This status conference will be continued.

prior tentative ruling (6/19/18)

Per the status report filed on 6/5, on 5/30/18 the California Court of Appeal affirmed the decision of the Superior Court in the Ansett Aircraft v. Cue appeal, but remanded the case for further proceedings.

Continue without appearance to Sept. 18, 2018 at 10:00 a.m. so that the Ansett claim can be finalized.

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CONT... Majestic Air, Inc.

Chapter 11

prior tentative ruling (1/23/18)

There is a state court appeal pending. Continue without appearance to June 19, 2018 at 10:00 a.m.

prior tentative ruling (2/21/17)

Per the status report filed on 2/7/17, the LTP parts have been sold and Debtor has moved to its new, less expensive, location. The appeal with the California Court of Appeal as to LTP is continuing. The Debtor expects to file a disclosure statement within the next 60 days.

The Debtor filed a month-by-month comparison of actual revenue and expenses and budgeted revenue and expenses for November, December, and January. They show a slight net profit of \$1,500-\$2,200 per month.

If there is no objection, I will continue this without appearance to May 16, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Monday, February 25, 2019

Hearing Room 302

9:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#1.00 Trial - DAY ONE

fr. 8/17/18, 8/27/18, 1/30/19; 2/12/19

Docket 429

Tentative Ruling:

At the hearing on February 12, the Court issued the following order:
Mr. DeNoce will have up to one hour to examine Dr. Hersel and one hour to examine Dr. Ohovahat. Mr. Kwasigroch will have up to one hour to examine each. Mr. DeNoce will then have up to an additional 30 minutes for redirect examination of each (limited to matters raised in the examination by Mr. Kwasigroch). Mr. Kwasigroch can then have an additional 10 minutes for recross examination of each (limited to matters raised in the redirect examination by Mr. DeNoce). This back-and-forth will then be limited to 5 minutes each until one party ceases asking questions. Should the witnesses be scheduled for the same date, for their convenience one will be scheduled for 9:00 a.m. and the other for 1:00 pm.

At the conclusion of the two examinations, should either party wish to recall Mr. Neff, he may do so. But the examination will be limited to the testimony of the doctors (both that on Jan. 30 and on the continued hearing date(s)). However, the parties can defer the recall of Mr. Neff until after the issue of the psychiatric report is resolved and any psychiatric evidence is concluded.

Both doctors have been ordered back for a time to be mutually agreed on. Counsel and the Court have agreed that the following dates are possible: April 11, 12, and 15.

ON FEBRUARY 25, 2019 AT 9:00 AM, THERE WILL BE A TELEPHONIC HEARING FOR DR. HERSEL AND DR. OKOVAHAT TO INFORM THE COURT AND THE PARTIES OF THEIR AVAILABILITY ON ONE OR MORE OF THE ABOVE DATES. THEY NEED NOT BE AVAILABLE ON THE SAME DATE.

The Court will provide Dr. Hersel and Dr. Okovahat with a copy of this Order and with information as to how to access the Court via telephone for

**United States Bankruptcy Court
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Judge Geraldine Mund, Presiding
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Monday, February 25, 2019

Hearing Room 302

9:00 AM

CONT...

Ronald Alvin Neff

Chapter 7

the February 25 hearing. Should either doctor be unavailable on all of the above possible trial dates, we will choose another date for his appearance. Should either doctor be unavailable for the telephonic hearing on February 25, he can designate in writing someone to call in for him so long as that person has the authority to agree to an appearance date including one not listed above if that becomes necessary.

For further clarification, on January 30, Dr. Ohovahat brought copies of the records provided to him by Dr. Hersel. On the continued trial date that we will be setting, he is to bring copies of any other records that he has in his possession concerning Mr. Neff.

prior tentative ruling (2/12/19)

This is mislabeled in that it is the continued trial, but not "Day One."

On January 30, Mr. DeNoce examined both Doctor Hersel and Doctor Ohovahat. I have a clear recollection that he had stated at an earlier date that his examination of each would not exceed one hour, but I cannot easily locate that reference. However, it is time to limit the completion of the examination of each of these doctors and schedule them so that they do not have to spend hours waiting to testify. The Court has the authority to do this.

Mr. DeNoce will have up to one hour to examine Dr. Hersel and one hour to examine Dr. Ohovahat. Mr. Kwasigroch will have up to one hour to examine each. Mr. DeNoce will then have up to an additional 30 minutes for redirect examination of each (limited to matters raised in the examination by Mr. Kwasigroch). Mr. Kwasigroch can then have an additional 10 minutes for recross examination of each (limited to matters raised in the redirect examination by Mr. DeNoce). This back-and-forth will then be limited to 5 minutes each until one party ceases asking questions. For ease of the witnesses, one will be scheduled for 9:00 a.m. and the other for 1:00 pm.

Let's find a series of available dates for counsel and the court and then we can contact the doctors and set the schedule. Both have been ordered back for a time to be mutually agreed on.

At the conclusion of the two examinations, should either party wish to recall Mr. Neff, he may do so. But the examination will be limited to the testimony of the doctors (both that on Jan. 30 and on the continued hearing

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CONT... Ronald Alvin Neff

Chapter 7

date). However, the parties can defer the recall of Mr. Neff until after the issue of the psychiatric report is resolved and any psychiatric evidence is concluded.

Possible dates are as follows:

February 25

March 21, 25, 28

April 11, 12, 15, 18

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Movant(s):

Douglas Denoce

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 26, 2019

Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:16-01166 Barlava et al v. Yashouafar

#1.00 Status Conference re: Complaint

fr. 2/21/17, 3/28/17; 5/30/17; 5/30/17,
10/3/17, 1/23/18; 4/17/18; 8/7/18; 8/21/18; 2/26/19

Docket 1

***** VACATED *** REASON: Order cont. to 4/16/19, @ 10am**

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Massoud Aaron Yashouafar

Represented By
C John M Melissinos
Mark M Sharf

Defendant(s):

Massoud Aaron Yashouafar

Pro Se

Plaintiff(s):

Simon Barlava

Represented By
Andrew V Jablon

Morris Barlava

Represented By
Andrew V Jablon

Nasser Barlava

Represented By
Andrew V Jablon

Kefayat Barlava

Represented By
Andrew V Jablon

Figueroa Tower II, LP

Represented By
Andrew V Jablon

First National Buildings II, LLC

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 26, 2019

Hearing Room 303

10:00 AM

CONT... Solyman Yashouafar

Chapter 11

Carla Ridge, LLC

Andrew V Jablon

Represented By
Andrew V Jablon

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Monday, March 4, 2019

Hearing Room 302

9:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#1.00 Status Conference re: Trial

fr. 8/17/18, 8/27/18, 1/30/19; 2/12/19; 2/25/19

Docket 429

Tentative Ruling:

The some reason, neither doctor was prepared for the 2/25/19 hearing - I believe that there was some problem with the notice. Thus this was continued to 3/4 at 9:00 and each doctor will be prepared to set a deate for his continued testimony. Notice of the continued hearing along with a copy of the original notice of hearing was mailed by the court to each doctor on 2/25 - at an address provided by each doctor.

After the scheduling has taken place and the doctors have hung up, the Court will discuss with the parties the content of the notice to the used to provide the doctors with copies of the Decision of the Dental Board. My initial draft is as follows:

In preparation for your testimony at the continued hearing on the objection to the enhanced claim of exemption filed by Ronald Neff, the Court is hereby providing each of you with a copy of the Decision of the Dental Board of California dated December 21, 2009 concerning Ronald Neff. This is in evidence as exhibit 8.

Please review it before the continued hearing. Please disregard any underlining, highlighting, or other markings as these are not part of the document and they were added later, apparently by Mr. DeNoce as part of this ongoing litigation.

The sole purpose to have you read this document is so that the parties can inquire as to whether you were fully aware of the events detailed in this document and, if not, if you had known would it have made a difference in your report that was used as part of the basis of the findings of disability by the Social Security Administration and/or the Insurance Company

prior tentative ruling (2/25/19)

At the hearing on February 12, the Court issued the following order:

**United States Bankruptcy Court
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San Fernando Valley
Judge Geraldine Mund, Presiding
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Monday, March 4, 2019

Hearing Room 302

9:00 AM

CONT...

Ronald Alvin Neff

Chapter 7

Mr. DeNoce will have up to one hour to examine Dr. Hersel and one hour to examine Dr. Ohovahat. Mr. Kwasigroch will have up to one hour to examine each. Mr. DeNoce will then have up to an additional 30 minutes for redirect examination of each (limited to matters raised in the examination by Mr. Kwasigroch). Mr. Kwasigroch can then have an additional 10 minutes for recross examination of each (limited to matters raised in the redirect examination by Mr. DeNoce). This back-and-forth will then be limited to 5 minutes each until one party ceases asking questions. Should the witnesses be scheduled for the same date, for their convenience one will be scheduled for 9:00 a.m. and the other for 1:00 pm.

At the conclusion of the two examinations, should either party wish to recall Mr. Neff, he may do so. But the examination will be limited to the testimony of the doctors (both that on Jan. 30 and on the continued hearing date(s)). However, the parties can defer the recall of Mr. Neff until after the issue of the psychiatric report is resolved and any psychiatric evidence is concluded.

Both doctors have been ordered back for a time to be mutually agreed on. Counsel and the Court have agreed that the following dates are possible: April 11, 12, and 15.

ON FEBRUARY 25, 2019 AT 9:00 AM, THERE WILL BE A TELEPHONIC HEARING FOR DR. HERSEL AND DR. OKOVAHAT TO INFORM THE COURT AND THE PARTIES OF THEIR AVAILABILITY ON ONE OR MORE OF THE ABOVE DATES. THEY NEED NOT BE AVAILABLE ON THE SAME DATE.

The Court will provide Dr. Hersel and Dr. Okovahat with a copy of this Order and with information as to how to access the Court via telephone for the February 25 hearing. Should either doctor be unavailable on all of the above possible trial dates, we will choose another date for his appearance. Should either doctor be unavailable for the telephonic hearing on February 25, he can designate in writing someone to call in for him so long as that person has the authority to agree to an appearance date including one not listed above if that becomes necessary.

For further clarification, on January 30, Dr. Ohovahat brought copies of the records provided to him by Dr. Hersel. On the continued trial date that we will be

**United States Bankruptcy Court
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Monday, March 4, 2019

Hearing Room 302

9:00 AM

CONT... Ronald Alvin Neff

Chapter 7

setting, he is to bring copies of any other records that he has in his possession concerning Mr. Neff.

prior tentative ruling (2/12/19)

This is mislabeled in that it is the continued trial, but not "Day One."

On January 30, Mr. DeNoce examined both Doctor Hersel and Doctor Ohovahat. I have a clear recollection that he had stated at an earlier date that his examination of each would not exceed one hour, but I cannot easily locate that reference. However, it is time to limit the completion of the examination of each of these doctors and schedule them so that they do not have to spend hours waiting to testify. The Court has the authority to do this.

Mr. DeNoce will have up to one hour to examine Dr. Hersel and one hour to examine Dr. Ohovahat. Mr. Kwasigroch will have up to one hour to examine each. Mr. DeNoce will then have up to an additional 30 minutes for redirect examination of each (limited to matters raised in the examination by Mr. Kwasigroch). Mr. Kwasigroch can then have an additional 10 minutes for recross examination of each (limited to matters raised in the redirect examination by Mr. DeNoce). This back-and-forth will then be limited to 5 minutes each until one party ceases asking questions. For ease of the witnesses, one will be scheduled for 9:00 a.m. and the other for 1:00 pm.

Let's find a series of available dates for counsel and the court and then we can contact the doctors and set the schedule. Both have been ordered back for a time to be mutually agreed on.

At the conclusion of the two examinations, should either party wish to recall Mr. Neff, he may do so. But the examination will be limited to the testimony of the doctors (both that on Jan. 30 and on the continued hearing date). However, the parties can defer the recall of Mr. Neff until after the issue of the psychiatric report is resolved and any psychiatric evidence is concluded.

Possible dates are as follows:

February 25

March 21, 25, 28

April 11, 12, 15, 18

Party Information

**United States Bankruptcy Court
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9:00 AM

CONT... Ronald Alvin Neff

Chapter 7

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Movant(s):

Douglas Denoce

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 5, 2019

Hearing Room 303

10:00 AM

1:06-12243 Edwin Perry Hinds

Chapter 7

#1.00 [holding date]

Motion to Clarify the Order for Immediate Turnover of Funds to the Chapter 7 Trustee [Docket No. 21]; and for an Order Directing the Clerk to Issue an Abstract of Judgment and Writ of Execution Against Lon B. Isaacson in Accordance Therewith

fr. 8/21/18; 12/4/18

Docket 46

Tentative Ruling:

The appeal has been dismissed. There is no reason to continue this matter. Unless there is an objection, this will go off calendar. No appearance is needed.

prior tentative ruling (12/4/18)

This is on appeal and the district court has denied a motion for stay. Because of the delay in enforcement due to the motion to stay, the Trustee requests that this be continued for about 90 days.

Continue to March 5, 2019 at 10:00 a.m.

Please check in by phone on December 4 to make sure that there is no opposing appearance.

Party Information

Debtor(s):

Edwin Perry Hinds

Represented By
Jonathan R Ellowitz - DISBARRED -

Trustee(s):

David R Hagen (TR)

Represented By
David Seror

**United States Bankruptcy Court
Central District of California
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Tuesday, March 5, 2019

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10:00 AM

CONT... Edwin Perry Hinds

Reagan E Boyce

Chapter 7

**United States Bankruptcy Court
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Tuesday, March 5, 2019

Hearing Room 303

10:00 AM

1:06-12243 Edwin Perry Hinds

Chapter 7

#2.00 Status of Chapter 7 Case

fr. 8/29/17, 1/23/18; 6/19/18, 9/18/18; 12/4/18

Docket 1

Tentative Ruling:

Per the Trustee's unilateral status report filed on 2/14/19, the Isaacson parties filed an appeal of the 8/23/18 Clarifying Memorandum and the 1/09 Turnover Order (2:18-cv-07794-SVW). The Isaacson parties requested a stay pending appeal, but that was denied. The District Court entered an OSC re dismissal and on 1/22/19 the District Court dismissed the appeal. The time for the Isaacson Parties to appeal the dismissal has passed and no appeal was filed.

An ORAP was issued on 12/6, but Isaacson could not be located and served. Another request for an ORAP has been filed.

The Trustee is continuing to monitor the Claim against Isaacson at the California State Bar Security Fund. The Trustee requests an additional continuance.

Unless there is an objection, the status conference will be continued without appearance to June 11, 2019 at 10:00 a.m.

prior tentative ruling (12/4/18):

Per the revised status report filed on 11/29, continue without appearance to March 5, 2019 at 10:00 a.m.

prior tentative ruling (9/18/18):

The motion as to Lon Isaacson was heard on 8/21/18 and continued to 12/4/18 at 10:00 as a holding date. The order on the motion was entered on 8/23/18. The motion was granted. This status conference is continued without appearance to 12/4/18 at 10:00 a.m. to give the Trustee a chance to start collecting on its order and to advise the Court as to the status of those efforts.

**United States Bankruptcy Court
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Tuesday, March 5, 2019

Hearing Room 303

10:00 AM

CONT... Edwin Perry Hinds

Chapter 7

prior tentative ruling (6/19/18)

Per the status report filed on 3/13/18, a claim has been submitted to the California State Bar Client Fund in an attempt to collect the \$100,000 from Mr. Isaacson. A current address for him has been found and he has been filed with a copy of the prior status reports.

Mr. Isaacson is being represented by Brian McMahan and there are ongoing settlement conferences. A settlement was reached in February 2018 and there will be a 9019 motion filed. At the State Bar, the claim is still under submission.

On June 12, 2018 the Trustee filed a further status report. Discussions with Mr. Isaacson have reached an impasse and there is no settlement likely. Mr. Isaacson is disputing the Trustee's claim in the Client Security Fund.

I will continue this without appearance to September 18, 2018 at 10:00 a.m.

prior tentative ruling (1/23/18)

On November 28, 2017, counsel for the Trustee filed a status report. The only update was that he believes that he located a current address for Mr. Isaacson. Then in late December, the Court received a copy of a letter addressed to the State Bar Client Security Fund Commission and sent by the Law Offices of Brian D. McMahan, attorney for Mr. Isaacson. While it requests that I recuse myself, at this point I have no part of these proceedings.

Continue this status conference without appearance to June 19, 2018 at 10:00 a.m.

prior tentative ruling (8/29/17)

This Chapter 7 case was filed on November 29, 2006. Debtor was discharged on October 24, 2012. On May 15, 2017, an Order was entered granting application to employ Brutzkus Gubner as Trustee's General Counsel effective March 31, 2017. Thereafter, on July 31, 2017, an Order Setting Status Conference Hearing was entered.

**United States Bankruptcy Court
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Tuesday, March 5, 2019

Hearing Room 303

10:00 AM

CONT...

Edwin Perry Hinds

Chapter 7

On August 10, 2017, Trustee filed a Unilateral Status Report. According to Trustee, Lon B. Issacson (the "Isaacson Creditors") had obtained a judgment over an attorneys' fees dispute with Debtor pre-petition. The judgment was for \$107,969.16 plus interest. Thereafter, the Isaacson Creditors filed an adversary proceeding in this case. The parties reached a settlement and the Court set a hearing on the settlement. At the hearing, the Court determined that the Debtor would pay the \$100,000 settlement to the estate instead of directly to the Isaacson Creditors. Also, the Court entered an Order directing the Isaacson Creditors to turn over \$100,000 to the Trustee. The Isaacson Creditors failed to comply and thereafter, most recently, the Trustee learned that Lon Isaacson had begun to misappropriate client funds from his trust accounts. He was formally disbarred in May 2013. Trustee has been attempting to reach Mr. Isaacson but has not been successful. Trustee's counsel advised Trustee that it may be most cost efficient to attempt to collect the \$100,000 by submitting a claim to the California State Bar Client Fund. Trustee believes the case should remain open for approximately 90 to 180 days pending a response from the State Bar Client Fund.

This matter is now off calendar. No appearance is required and no hearing will be held. In the future, please file a status report every 90-180 days.

Party Information

Debtor(s):

Edwin Perry Hinds

Represented By

Jonathan R Ellowitz - DISBARRED -

Trustee(s):

David R Hagen (TR)

Represented By

David Seror

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 5, 2019

Hearing Room 303

10:00 AM

1:09-18345 Narine Gumuryan

Chapter 7

#3.00 Amended Motion to Reopen Chapter 7 Case

fr. 2/12/19

Docket 18

Tentative Ruling:

Movant Bag Fund LLC ("Movant") seeks to reopen the chapter 7 case of Narine Gumuryan ("Debtor") in order to file a complaint to determine the dischargeability of a debt.

Factual Background

Movant's assignor L&J Assets, LLC ("L&J") brought an action (the "State Court Action") to avoid the Debtor's transfer of real property at 7751 Allot Avenue, Van Nuys, CA (the "Property") against the Debtor and other defendants.

In December 2006 L&J obtained a judgment against the Debtor and two other defendants. In May 2017 an abstract of judgment was recorded against the Property.

On July 7, 2009, the Debtor filed for chapter 7 relief. L&J was not included in the schedules of creditors and the State Court Action was not listed in #4 (suits) in the statement of affairs. Neither L&J nor the Movant were included on the creditor mailing list.

On August 6, 2009, the Debtor filed an Amended Schedule F and Statement of Affairs. Neither L&J nor the Movants were listed in this amended Schedule F, but a "Larion Krayzman" was included in the list of unsecured creditors along with a reference to the case number of the State Court Action and a reference to another state court action - L&J Assets, LLC v. Krayzman. The State Court Action was included in the list of lawsuits in #4 of the statement of financial affairs. Larion Krayzman was included in the proof of service, but there is no evidence of service on L&J or the Movant.

October 5, 2009 was the deadline for filing complaints to determine dischargeability in the Debtor's Chapter 7 case. No bar date was ever set.

The Debtor's discharge was entered on February 5, 2010.

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Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 5, 2019

Hearing Room 303

10:00 AM

CONT... Narine Gumuryan

Chapter 7

Motion

In 2016, the court in the State Court Action issued an order with findings that: (i) it appeared that the Debtor's debt to L&J was discharged in bankruptcy and (ii) plaintiff's attorney was invited to seek a determination from the bankruptcy court on whether the debt was discharged. The same order lifted a temporary restraining order that was in place but allowed a default against the defendants in the State Court Action, including the Debtor, to remain. The defendants have sought to set aside the default against the Debtor and other defendants, but the issue of the dischargeability remains uncertain. Thus, the Movant seeks to reopen this case to determine the dischargeability of the Debtor's debt to L&J (now assigned to Movant).

This debt is nondischargeable because the debt was not in the Debtor's schedules.

Opposition

The Movant has not provided grounds for non-dischargeability. The Movant was listed on the Debtor's amended schedules filed on August 6, 2009. Furthermore, the Movant was aware of the Debtor's chapter 7, because it was disclosed in the State Court Action.

Analysis

Section 523(a)(3) provides that the following type of debt is non-dischargeable:

(3) neither listed nor scheduled under section 521(a)(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit--

(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;

11 U.S.C. § 523.

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10:00 AM

CONT... Narine Gumuryan

Chapter 7

The Debtor's chapter 7 was a no assets case in which no bar date was ever set. Thus, if the Movant's claim fell under (A), there would be no grounds for non-dischargeability.

Section 727(b) provides that, except as provided in Section 523, the discharge under Section 727(a) discharges the debtor from all debts that arose prior to the commencement of the case, regardless of whether a proof of claim has been filed or whether the claim has been allowed. The broad scope of this section makes it clear that discharge is not dependent upon scheduling of the claim, filing a proof of the claim, or other affirmative act either by the creditor or the debtor. However, Section 523(a)(3) provides that the discharge does not extend to a debt which is "neither listed nor scheduled" in time to permit timely filing of a proof of claim. In this case, no bar date was ever set for the filing of a proof of claim; therefore the exception under Section 523(a)(3) does not apply. Therefore, under the terms of the Bankruptcy Code, the debt owed to the Respondent has been discharged.

This result has been expressly affirmed by the Ninth Circuit in *In re Beezley*, 994 F.2d 1433 (9th Cir.1993). As Beezley says, "If the omitted debt is of a type covered by 11 U.S.C. § 523(a)(3)(A), it has already been discharged pursuant to 11 U.S.C. § 727." 994 F.2d at 1434.

In re Maroney, 195 B.R. 452, 454 (Bankr. D. Ariz. 1996).

However, the underlying judgment is in a fraudulent transfer action, so it may well fall within 523(a)(2), (4), or (6), and thus under 523(3)(b). In that case, the question is whether the obligation was scheduled or the creditor had actual knowledge or notice of the Debtor's chapter 7 prior to the October 5, 2009 deadline for filing non-dischargeability complaints.

The answer to that question is not clear from the facts before the court. If Larion Krayzman is sufficiently connected with the Movant or L&J, then the debt may be considered scheduled, or the Movant/L&J may have had notice or actual knowledge. The Case Summary attached to the Debtor's opposition as Exhibit B does not provide the requisite notice because the entries referring to the bankruptcy case are from 2015, well after the deadline for filing non-dischargeability actions.

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Chapter 7

It should be noted that the Movant could bring an action to determine non-dischargeability without reopening the bankruptcy case. See *Staffer v. Predovich (In re Staffer)*, 306 F.3d 967, 972 (9th Cir.2002) (“[A] separate motion to reopen is not a jurisdictional requirement, or even a prerequisite for commencing an action for nondischargeability of a debt under § 523(a)(3)(B).”); *In re Stanwyck*, 450 B.R. 181, 192 (Bankr. C.D. Cal. 2011).

Further, the state court has concurrent jurisdiction with the bankruptcy court for cases brought under § 523(a)(3)(B). While it is not 100% clear that the state court can determine whether §523(a)(3)(B) applies, it is clear that if that section applies, the determination of whether the debt falls under §523(a)(2), (4), and/or (6) can be made by either the bankruptcy court or the state court.

Conclusion

This is a motion to reopen, not a filing of an adversary complaint. Although reopening is not required, it seems appropriate in this case. Since the underlying facts are set out and there is a detailed opposition, the Court will grant the motion to reopen and hold this hearing on whether the Movant may file a complaint under §523(a)(3)(B). If granted as to filing the complaint, the Court believes that the complaint should be filed in the state court, which has already granted judgment as to fraudulent transfer, etc. The state court has jurisdiction to determine whether the actions fall under §523(a)(2), (4), and/or (6).

At the hearing, the Movant should be prepared to discuss Mr. Krayzman's relationship to the Movant and L&J.

Party Information

Debtor(s):

Narine Gumuryan

Represented By
Elena Steers

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CONT... Narine Gumuryan

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Represented By
David Keith Gottlieb

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1:13-10386 Shirley Foose McClure

Chapter 11

#4.00 Debtor's motion for reconsideration of John P. Reitman, chapter 11 trustee for order approving settlement with Barrett S. Litt, et al

fr. 12/18/18; 1/29/19; 2/12/19

Docket 1563

***** VACATED *** REASON: cont. to 3/26/19 @ 10am (eg)**

Tentative Ruling:

Continued to 3/5/19 at 10:00 a.m. Although documents are being filed for 2/12, there will be no hearing at that time. I am also advising the parties by email of this.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Movant(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Andrew Goodman
Yi S Kim
Yi S Kim
Robert M Scholnick
Robert M Scholnick
James R Felton

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CONT... Shirley Foose McClure

Chapter 11

James R Felton
Faye C Rasch
Faye C Rasch
Faye C Rasch
Faye C Rasch
Lisa Nelson
Lisa Nelson
Michael G Spector
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

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10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#5.00 Motion of John P. Reitman, Chapter 11 Trustee,
For Entry of An Order Authorizing Sale of Real
Property Located At 4365 Lower Honoapiilani
Road, #120, Lahaina, Hawaii Free And Clear
of Liens, Claims And Interests

Docket 1596

Tentative Ruling:

Due to the payoff of the PMB loans, the Maui property is held free and clear. There are unpaid real estate taxes of \$10,388.85, which will be paid through the escrow, as will the prorated taxes of the current fiscal year.

Jason McClure has a 5% undivided interest in the property with Shirley McClure holding 95% as tenants in common. The Trustee tried to reach an agreement with Jason, but failed. Thereafter the Trustee brought an adversary proceeding (18-01050) and received summary judgment authorizing the Trustee to sell the property free and clear of Jason's interest and granting the Trustee injunctive relief.

During the marketing of the Maui property, two sales were terminated during the contingency periods.

The most recent failed sale was on 10/30/18 when the Trustee entered into a sale agreement with Meredith Krekelberg and Jeff Krekelberg for an aggregate purchase price of \$420,000 subject to overbid. The Krekelbergs gave notice of termination within the contingency period. There was another negotiation with a different potential purchaser, but the offer was inadequate.

The offer contained in this motion is from Thomas J. Flynn and Vera S. Flynn in the amount of \$431,000. The \$10,000 deposit has been received. At closing, the Trustee will credit the Flynn's with \$30,000 in return for their agreement to bear all responsibility for any remediation and to remove all contingencies. This sale is subject to overbid. The Trustee will seek an order that the successful bidder is a good faith purchaser under §363(m). The buyers have filed declarations that they have no connection to the Trustee or any potential buyer.

The sale will be free and clear of all taxes and liens. Any claims against the property will attach to the proceeds of the sale.

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CONT... Shirley Foose McClure Chapter 11

The Trustee requests a waiver of the 14 day stay under FRBP 6004(h) so that the sale can promptly close and there will be no continuing administrative costs.

Ms. McClure has indicated that she has no opposition to this motion and no opposition has been filed by any other party as of 2/27.

Grant as requested.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

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1:13-10386 Shirley Foose McClure

Chapter 11

#6.00 Status conference re: ch 11 case

fr. 1/24/2013, 4/30/13, 5/14/13, 7/23/13, 8/6/13,
9/17/13, 9/24/13, 11/19/13, 12/17/13, 1/21/14, 2/18/14,
3/11/14, 4/15/14, 5/6/14, 6/24/14, 9/9/14, 9/23/14,
10/7/14, 11/24/14, 1/6/15, 1/20/15, 2/10/15, 3/10/15,
4/28/15; 5/12/15; 9/29/15, 10/22/15, 12/8/15, 3/1/16,
6/7/16, 7/12/16, 8/16/16, 10/11/16; 12/20/16, 4/4/17,
5/16/17; 6/27/17, 7/11/17, 9/19/17, 11/14/17, 11/28/17,
12/19/17, 1/9/18, 3/19/18, 3/27/18, 5/1/18, 6/5/18; 6/26/18,
7/9/18; 8/7/18, 11/6/18; 12/18/18; 1/29/19; 2/12/19

Docket 1

Tentative Ruling:

Per the Trustee's status report, McClure withdrew her appeal of the Pacific Merchantile settlement and the Ninth Circuit has dismissed the appeal.

As to the settlement with Litt, Judge Wu has continued the status conference in the consolidated Litt appeals to March 7, 2019 and has indicated that he is not inclined to grant further continuances. The Trustee therefore requests a speedy determination of the motion for reconsideration so as to avoid unnecessary litigation costs in the consolidated Litt appeals. Because of the death of Ms. McClure's son Jeff, the motion to reconsider has been continued to 3/26.

The motion to sell the Maui property is set to be heard on 3/5/19.

I sent an email to Judge Wu, advising him of the situation and that I am continuing the motion to reconsider to 3/26. I also advised him that I expect to rule soon thereafter as no other papers may be filed. As of 3/4 at 10:00 a.m., I have not had a response from Judge Wu.

The status conference is continued to 3/26/19 at 10:00 a.m. I don't see any reason that anyone should appear in person or by phone on March 5.

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10:00 AM

CONT... Shirley Foose McClure

Chapter 11

Cont

prior tentative ruling (2/12/19)

Continue without appearance to 3/5/19 at 10:00 a.m. Although documents are being filed for 2/12, there will be no hearing at that time. I am also adviseing the parties by email of this.

prior tentative ruling (11/6/18)

Ms. McClure has until Nov. 20 to file her motion for reconsideration. Meanwhile, she has filed an emergency motion for a stay pending the hearing on her motion for reconsideration. The Trustee opposes.

This would be a short stay, only so that the Court can adequately review the motion(s) to reconsider. While it took many months for the Court to do the detailed analysis and I believe that it is thorough and correct, it is appropriate to allow Ms. McClure to try to point out errors that may have been made. Given that the matters in the Superior Court are not immediate, the Court intends to grant the stay and will hear brief argument at the 11/6 status conference. It seems to me that the stay should expire 14 days after I enter my order on the motion(s) to reconsider.

Per the Trustee's status report filed on 10/31/18, the Maui property is in escrow.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By

Andrew Goodman

Yi S Kim

Robert M Scholnick

James R Felton

Faye C Rasch

Faye C Rasch

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CONT... Shirley Foose McClure

Chapter 11

Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

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10:00 AM

1:16-11538 Majestic Air, Inc.

Chapter 11

Adv#: 1:18-01133 Majestic Air, Inc. et al v. Lufthansa Technik Philippines, Inc.

#7.00 Status Conference Re: Complaint
Objecting to Proof of Claim No. 3; and
for Contractual Indemnification

Docket 1

***** VACATED *** REASON: Stip. cont. to 6/11/19 @ 10am (eg)**

Tentative Ruling:

Continued by stipulation to June 11, 2019 at 10:00 a.m.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Defendant(s):

Lufthansa Technik Philippines, Inc.

Pro Se

Plaintiff(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Tessie Cue

Represented By
Stella A Havkin

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10:00 AM

1:16-11387 Real Estate Short Sales Inc

Chapter 7

#8.00 Motion for approval of Nancy Cueva and Julio C. Molica Substituting in to the represent themselves and for approval of withdrawal as counsel for Real Estate Short Sales, Inc.

Docket 427

Tentative Ruling:

Because of the short notice, opposition is allowed at the hearing. Thus this tentative ruling is prepared without knowing whether any opposition exists as none has been filed as of 3/4 at 10:00 a.m.

Although it appears on the docket that Stephen Burton is the attorney for the debtor, he has not appeared since this was converted to chapter 7 on 9/19/17. Nancy Cueva has made all appearances until HF&B filed its limited scope of appearance on 12/13/18. Because this is a chapter 7, no formal order of employment was requested or give. Hill, Farrer & Burrill, LLP, did not really substitute in but gave notice that it was appearing to represent Ms. Cueva, Mr. Molica, and Real Estate Short Sales, Inc. in the appeal of the order to sell the property on Oklahoma. Mr. McCarthy has been the attorney involved.

This motion seeks to approve the withdrawal of McCarthy and the firm as counsel for Ms. Cueva and Mr. Molica (and that they would now represent themselves). It also seeks approval of withdrawal as counsel for the debtor corporation. Ms. Cueva and Mr. Molica have each signed a substitution of attorney.

First of all, it does not appear that HF&B really substituted in - certainly not for all purposes. They were making appearances and filings only as to the sale of the Oklahoma St. property. And then only for the appeal of my order. The appeal has ended in this court and appears to now be at the appellate court. However, there is a motion for contempt as to the debtor, Cueva, and Molica and that is pending here. HF&B has filed papers opposing the contempt motion (see dkt. 368).

Since this is a chapter 7 case, there is no need for the Court to

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CONT... Real Estate Short Sales Inc

Chapter 7

approve this as to the individuals. Mr. McCarthy need only file the two substitutions of attorney, copies of which are attached to this motion. Since Cueva and Molica are only shareholders of this debtor, I do not believe that LBR 2091-1 applies.

As to the corporation, as noted, it appears that Mr. Burton is still the attorney of record. This needs to be straightened out. Since the conversion, except for the work of HF&B in recent months, Ms. Cueva has always filed documents and appeared in court or behalf of the closely held family corporation and the Court has allowed this.

I need to know whether Mr. Burton is continuing as counsel of record for Real Estate Short Sales, Inc. If so, there is no issue. If not, the Trustee and any other parties must know who represents the Debtor and who to deal with.

As noted, the Court has allowed Ms. Cueva to act on behalf of the corporation, given that this is a closely held company and all owners are members of the family (Cueva, her husband, and their son). I am willing to continue to allow this as there does not appear to be corporate assets sufficient to pay an attorney - although the son may be able to pay fees for the corporation. So if the Trustee has no objection, I will allow HF&B to withdraw and will treat this as an entity that is represented by Ms. Cueva, who will have the authority to file documents on behalf of the Debtor and appear and argue before this court. The only matter currently pending here is the contempt issue, which is both as to the individuals (Cueva and Molica) and the corporation.

HOWEVER, there is at least one appeal pending and the Court does not have the power to make the determination for the appellate court as to whether counsel will be required. If the Cueva/Molica family wish Ms. Cueva to continue in the appellate court in the representative capacity that I am allowing, it must petition the appellate court for permission to do so. If HF&B filed the appeal, it may need to file a similar motion there in order to be relieved as counsel for the corporation. I simply do not know about this.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

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CONT... Real Estate Short Sales Inc

Chapter 7

Trustee(s):

Nancy J Zamora (TR)

Represented By
Jessica L Bagdanov
David Seror

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10:00 AM

1:06-10306 Functional Restoration Medical Ctr Inc and Vengroff.

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

Docket 777

Tentative Ruling:

This case was converted to chapter 7 and there is not enough money to pay anything on chapter 11 administrative expenses. Therefore those items will not be reviewed by the Court.

On 10/1/09, the Court entered its order on the first interim request for compensation by the Trustee's counsel and his accountant. He was authorized to pay these at that time:

Ezra Brutzkus & Gubner - \$912,362.16 fees; \$29,159.41 costs

Crowe Horwath - \$380,561.50 fees; \$4,927.11 costs

On 11/11/15, Ezra Brutzkus & Gubner filed its second interim and final request for compensation and on 1/8/16 Grobstein Horwath filed its final request for compensation. On 6/20/16 the Court entered its order allowing total fees as follows:

Ezra Brutzkus & Gubner - \$1,589,398.16 fees (balance remaining to be paid of \$332,622.61)

\$44,778.92 costs (balance remaining to be paid of \$8,459.89)

Crowe Horwath - \$71,332.50 fees (balance remaining to be paid of \$25,727.97)

\$66 costs (balance remaining to be paid of \$23.81)

Grobstein Horwath - \$380,561.50 fees (balance remaining to be paid of \$36,886.26)

\$4,927.11 costs (balance remaining to be paid of \$477.56)

David Gottlieb, Trustee - \$47,707.88 fees (balance remaining to be paid of \$17,207.12)

\$139.98 costs (balance remaining to be paid of \$50.49)

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CONT... Functional Restoration Medical Ctr Inc and Vengroff.

Chapter 7

The case was closed, but reopened to administer additional funds that the Trustee was able to collect. In this amended final report, the Trustee is requesting slightly higher fees and costs. No other administrative creditor has filed an application for fees. The proposed payment to administrative creditors (other than the Court, the OUST, the Franchise Tax Board and International Sureties) is prorated so that they receive approximately 37% of their authorized fees/costs.

I assume that none of them object to the higher payout (100%) to the Court, the OUST, the Franchise Tax Board and International Sureties. If they do, the Trustee will have to seek reimbursement from those creditors.

Unfortunately this was a very expensive and difficult case to administer and in the end no lower-priority creditors are being paid.

Approve as requested.

No appearance necessary if you submit on the tentative ruling. Except in the case of a trustee's final report and simultaneous hearing on applications for approval of professional fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling within seven court days after the hearing, serving all interested parties with a copy of the proposed order.

Party Information

Debtor(s):

Functional Restoration Medical Ctr

Represented By
Daniel A Lev
Michael S Kogan

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Richard Burstein
Lesley Davis
Steven T Gubner
Jeffrey P Nolan

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1:09-18345 Narine Gumuryan

Chapter 7

#2.00 Amended Motion to Reopen Chapter 7 Case

fr. 2/12/19; 3/5/19

Docket 18

Tentative Ruling:

Movant Bag Fund LLC ("Movant") seeks to reopen the chapter 7 case of Narine Gumuryan ("Debtor") in order to file a complaint to determine the dischargeability of a debt.

Factual Background

Movant's assignor L&J Assets, LLC ("L&J") brought an action (the "State Court Action") to avoid the Debtor's transfer of real property at 7751 Allot Avenue, Van Nuys, CA (the "Property") against the Debtor and other defendants.

In December 2006 L&J obtained a judgment against the Debtor and two other defendants. In May 2017 an abstract of judgment was recorded against the Property.

On July 7, 2009, the Debtor filed for chapter 7 relief. L&J was not included in the schedules of creditors and the State Court Action was not listed in #4 (suits) in the statement of affairs. Neither L&J nor the Movant were included on the creditor mailing list.

On August 6, 2009, the Debtor filed an Amended Schedule F and Statement of Affairs. Neither L&J nor the Movants were listed in this amended Schedule F, but a "Larion Krayzman" was included in the list of unsecured creditors along with a reference to the case number of the State Court Action and a reference to another state court action - L&J Assets, LLC v. Krayzman. The State Court Action was included in the list of lawsuits in #4 of the statement of financial affairs. Larion Krayzman was included in the proof of service, but there is no evidence of service on L&J or the Movant.

October 5, 2009 was the deadline for filing complaints to determine dischargeability in the Debtor's Chapter 7 case. No bar date was ever set.

The Debtor's discharge was entered on February 5, 2010.

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CONT... Narine Gumuryan

Chapter 7

Motion

In 2016, the court in the State Court Action issued an order with findings that: (i) it appeared that the Debtor's debt to L&J was discharged in bankruptcy and (ii) plaintiff's attorney was invited to seek a determination from the bankruptcy court on whether the debt was discharged. The same order lifted a temporary restraining order that was in place but allowed a default against the defendants in the State Court Action, including the Debtor, to remain. The defendants have sought to set aside the default against the Debtor and other defendants, but the issue of the dischargeability remains uncertain. Thus, the Movant seeks to reopen this case to determine the dischargeability of the Debtor's debt to L&J (now assigned to Movant).

This debt is nondischargeable because the debt was not in the Debtor's schedules.

Opposition

The Movant has not provided grounds for non-dischargeability. The Movant was listed on the Debtor's amended schedules filed on August 6, 2009. Furthermore, the Movant was aware of the Debtor's chapter 7, because it was disclosed in the State Court Action.

Reply

No excuse was given for the failure to notify this creditor. Debtor still resides in the Allot Ave. property, which is vested in the names of her "coconspirators," though she enjoys all the caveats of ownership and also fraudulently obtained a bankruptcy discharge.

The underlying judgment is because the Debtor applied for a Citibank line of credit and represented that she was a California homeowner, which was required. She made the same representation to the movant's predecessor in interest, also asserting a substantial income. Movant predecessor made her the loan based on these false pretenses.. Shortly after movant's predecessor obtained a state court judgment, Debtor gifted her real property to family members and then filed bankruptcy without giving notice to the movant.

Movant then cites to the relevant sections for non-dischargeability and also notes that the movant was not included in the schedules. On the amended schedules there is a case of L&J Assets, LLC v. Larion Krayzman, case LC091603. This case is not related at all to the Debtor. Larion Krayzman has never been an officer, employee or agent of the movant. If

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CONT... Narine Gumuryan

Chapter 7

Krayzman did receive notice of the bankruptcy, the claim made no reference to the Gumuryan state court matter, which was case LC074976. If the Krayzman address is correct, he would have had no way of correspondence to Movant.

Analysis

Section 523(a)(3) provides that the following type of debt is non-dischargeable:

(3) neither listed nor scheduled under section 521(a)(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit--

(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or

(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;
11 U.S.C. § 523.

The Debtor's chapter 7 was a no assets case in which no bar date was ever set. Thus, if the Movant's claim fell under (A), there would be no grounds for non-dischargeability.

Section 727(b) provides that, except as provided in Section 523, the discharge under Section 727(a) discharges the debtor from all debts that arose prior to the commencement of the case, regardless of whether a proof of claim has been filed or whether the claim has been allowed. The broad scope of this section makes it clear that discharge is not dependent upon scheduling of the claim, filing a proof of the claim, or other affirmative act either by the creditor or the debtor. However, Section 523(a)(3) provides that the discharge does not extend to a debt which is "neither listed nor scheduled" in time to permit timely filing of a proof of claim. In this case, no bar date was ever set for the filing of a proof of

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CONT...

Narine Gumuryan

Chapter 7

claim; therefore the exception under Section 523(a)(3) does not apply. Therefore, under the terms of the Bankruptcy Code, the debt owed to the Respondent has been discharged.

This result has been expressly affirmed by the Ninth Circuit in *In re Beezley*, 994 F.2d 1433 (9th Cir.1993). As Beezley says, "If the omitted debt is of a type covered by 11 U.S.C. § 523(a)(3)(A), it has already been discharged pursuant to 11 U.S.C. § 727." 994 F.2d at 1434.

In re Maroney, 195 B.R. 452, 454 (Bankr. D. Ariz. 1996).

However, the underlying judgment is in a fraudulent transfer action, so it may well fall within 523(a)(2), (4), or (6), and thus under 523(3)(b). In that case, the question is whether the obligation was scheduled or the creditor had actual knowledge or notice of the Debtor's chapter 7 prior to the October 5, 2009 deadline for filing non-dischargeability complaints.

The answer to that question is not clear from the facts before the court. If Larion Krayzman is sufficiently connected with the Movant or L&J, then the debt may be considered scheduled, or the Movant/L&J may have had notice or actual knowledge. The Case Summary attached to the Debtor's opposition as Exhibit B does not provide the requisite notice because the entries referring to the bankruptcy case are from 2015, well after the deadline for filing non-dischargeability actions.

The Reply states that Krayzman has had and does not have any connection to the Movant. There is no supporting declaration as to this. It appears that that the

It should be noted that the Movant could bring an action to determine non-dischargeability without reopening the bankruptcy case. See *Staffer v. Predovich (In re Staffer)*, 306 F.3d 967, 972 (9th Cir.2002) ("[A] separate motion to reopen is not a jurisdictional requirement, or even a prerequisite for commencing an action for nondischargeability of a debt under § 523(a)(3)(B)."); *In re Stanwyck*, 450 B.R. 181, 192 (Bankr. C.D. Cal. 2011).

Further, the state court has concurrent jurisdiction with the bankruptcy court for cases brought under § 523(a)(3)(B). While it is not 100% clear that the state court can determine whether §523(a)(3)(B) applies, it is

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clear that if that section applies, the determination of whether the debt falls under §523(a)(2), (4), and/or (6) can be made by either the bankruptcy court or the state court.

Conclusion

This is a motion to reopen, not a filing of an adversary complaint. Although reopening is not required, it seems appropriate in this case. Since the underlying facts are set out and there is a detailed opposition, the Court will grant the motion to reopen and hold this hearing on whether the Movant may file a complaint under §523(a)(3)(B). If granted as to filing the complaint, the Court believes that the complaint should be filed in the state court, which has already granted judgment as to fraudulent transfer, etc. The state court has jurisdiction to determine whether the actions fall under §523(a)(2), (4), and/or (6).

At the hearing, the **Movant** should be prepared to discuss Mr. Krayzman's relationship to the Movant and L&J. It appears that he named both in his short-lived chapter 13 case filed in 2013 (1:13-bk-16697-AA) and they were co-defendants in the superior court case against him.

The **Debtor** should be prepared to describe the reason that she included the L&J v. Krayzman reference in her schedules, particularly since she is not a named party in that case and is not named in his bankruptcy case. [It should be noted that Bag Fund LLC and L&J are named defendants in the Krayzman case, though I don't know if there is any connection here.] **Debtor** also asserts that the Movant had actual notice of the bankruptcy in the state court action. There is no proof of this. Please explain this assertion.

Again, the argument must focus on whether notice was received or movant or movant's predecessor had notice or knowledge of the bankruptcy case in time to file a complaint under §523(a)(2), (4), or (6) - not on the underlying alleged fraudulent transfer, etc.

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Debtor(s):

Narine Gumuryan

Represented By
Elena Steers

Trustee(s):

David Keith Gottlieb (TR)

Represented By
David Keith Gottlieb

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1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

#3.00 Plaintiff's motion for order compelling responses to discovery

fr. 1/29/19

Docket 101

Tentative Ruling:

Thank you, Mr. King, for starting to use our electronic filing system.

Per the declaration filed on 3/22, Mr. Pyle did not comply with my order and no documents were delivered by 3/1. I believe that it is time for significant sanctions under Federal Rule of Civil Procedure 37(b)(2), incorporated into Federal Rule of Bankruptcy Procedure 7037. Thus, I am considering terminating sanctions, which means that Mr. Pyle cannot put on any evidence in support of a defense. Mr. King will still have to present his case-in-chief and I would allow Mr. Pyle to examine those witnesses, but not to testify (except as a witness for Mr. King, if he is called) or to present any witnesses or evidence on his own behalf. We need to talk about this to see if Mr. King will have sufficient evidence without this discovery to present his prima-facie case. Other sanctions are possible - we can discuss this at the hearing.

prior tentative ruling (1/29/19)

Plaintiff filed this motion to compel responses to discovery and for sanctions. Given Mr. Pyle's history of non-cooperation in the Berry v. Pyle case, the movant does not want to spend the time or money with obtaining an order compelling responses, since this would be a waste of time.

On 11/16/18, Pyle was served with a Demand for Identification, Production and Inspection of Documents and Other Tangible Things (the Demand), with production due on 12/17/18. There has been no response.

The materials sought are to be used to show that Pyle and his Trust actively engaged in fraudulent conduct toward Campbell, his other creditors, and the Court. They deal with deeds and conveyances, property tax records, credit applications, loans, insurance policies, vehicles, etc.

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Glen E Pyle

Chapter 7

Since there was no production, the depositions scheduled for 12/27/18 was taken off calendar.

The Movant requests sanctions under California Law. Given the repeat nature of Pyle's non-cooperation in the Berry case, Movant seeks terminating sanctions. *Liberty Mut. Fire Ins. Co. v. LcL Administrators, Inc.,* 163 CA4th 1093, 1106 (2008). Ifnot, he seeks issue and evidence sanctions. These might include deeming the promissory note (which is the subject of the stte court judgment) to be valid against Pyle and his trust and that it was fraudulently obtained against Campbell. The Court can also deem the Pyle Irrevocable Trust to be the alter ego of Glen Pyle individually and prohibit any evidence to the contrary. Pyle can also be prohibited from introducing any evidence at trial contradicting his fraudulent intent as to Campbell and other creditors. Monetary sanctions would total \$4,462.50.

Although Pyle does not deserve the opportunity to respond to the discovery, if the Court allows that it should be without objections and delivered to Counsel's office within 21 days of the Order. A deposition should be ordered to take place within 10 days of delivery of the documents to Counsel.

Opposition

Improper service of the discovery request and also of this motion. Only Mr. Aver was served, not the Debtor. Plaintiff was only authorized to serve Mr. Aver with discovery documents, not all documents including this request for sanctions.

The deposition set for 12/27 was continued by Plaintiff and no date has been set. There has been no meet and confer.

NO REPLY HAS BEEN RECEIVED AS OF 1/28 at 10:30 a.m..

Proposed Ruling:

Early in this case, I determined that all discovery in either case could be used in both cases. In particular, I believe that Mr. Campbell or his earlier counsel attended depositions of Mr. Pyle. I don't recall if there was a specific order or it was just stated at a hearing. But that is and was my intent and all parties were aware of it. Thus, before determining what documents, etc. are to be produced and what examination is to take place, Mr. King needs to review the fairly massive discovery in the *Berry v. Pyle* case. I believe that

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there were three deposition sessions there.

As to service, the reason for sending things to Mr. Aver is because of the difficulties with serving Mr. Pyle, who stated that he is not receiving his mail. He did receive this motion in time to respond, so those objections are overruled. To the extent that there needs to be an agreement or order as to how to serve in the future, let's get that on the record at the hearing.

As to the meet and confer - this is not needed given the prior actions of Mr. Pyle, who simply does not carry-through.

Monetary sanctions have not been effective in this case. So we can discuss what will work if there are discovery abuses.

Mr. King cites only to California law as to discovery sanctions. That is not useable in this court. Please review FRCP 37 (incorporated into FRBP 7037). Look at Rule 37(a)(5); (b)(2).

Party Information

Debtor(s):

Glen E Pyle	Pro Se
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Defendant(s):

Glen Pyle	Pro Se
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Plaintiff(s):

Ian Campbell	Represented By Barry P King
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Trustee(s):

Amy L Goldman (TR)	Represented By Amy L Goldman Amy L Goldman (TR) Leonard Pena
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1:10-24968 Glen E Pyle

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Adv#: 1:11-01181 Campbell v. Pyle

#4.00 Status conference re: complaint for determination that debt is nondischargeable and/or to recover money

fr. 5/11/11, 6/22/11, 10/4/11, 1/24/12, 2/14/12, 4/24/12, 6/19/12, 9/11/12, 10/2/12, 11/6/12, 2/12/13, 3/19/13, 8/27/13, 8/27/13, 11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14, 12/16/14, 3/10/15; 5/12/15; 6/2/15, 9/1/15, 9/8/15, 11/17/15; 1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17, 2/21/17, 3/28/17, 1/14/17, 12/19/17, 1/23/18, 3/27/18, 7/17/18, 8/21/18, 9/25/18, 11/6/18; 12/18/18; 1/29/19

Docket 1

Tentative Ruling:

A third amended complaint was filed on 2/20/19. No response has been filed as of 3/22. The response was due on or about 3/13.

prior tentative ruling (1/29/19)

The case is now proceeding. Continue to a future date. HOWEVER, MR. KING SINCE THIS IS AN ACTIVELY LITIGATED CASE, PLEASE SIGN UP FOR CM/ECF ACCESS TO OUR COURT AND TO USE LOU (LODGED ORDER UPLOAD). See Court Manual Sec. 3.1, p. 3-3 and LBR 5005-4.

prior tentative ruling (7/17/18)

The order granting relief from the automatic stay was entered on 1/30/18. On 3/6 Mr. Campbell appeared in Court and wanted to know about the order. He had not been served with a copy of the order - our fault. I directed him to my law clerk, but he left without seeing her. On March 1, 2018, Judge Hammock continued his OSC re: Dismissal (BC416442) to July 5 so that Campbell could seek a judgment (he already has a default) on declaration. As soon as he has obtained his judgment, I will be ready to proceed. When will he be filing his

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declaration, etc. in the Superior Court? Should this status conference be continued until after July 5 or can we proceed before that?

prior tentative ruling (1/23/18)

Mr. Campbell has filed the motion for relief from stay to complete the superior court case. Continue this status conference to March 27, 2018 at 9:00 a.m. to allow him to obtain his judgment in the superior court.

prior tentative ruling (12/19/17)

I have been in contact with Judge. Hammock of the Superior Court. He advises me that all that is left to do in his case is for Mr. Campbell to file a motion for default judgment. The automatic stay is preventing this.

To move that case forward, Mr. Campbell is to file a motion in this court for relief from the automatic stay. This is to be filed and served no later than December 26. It is to be served by mail and by email on Mr. Pyle. The hearing will be on January 23, 2018 at 10:00 a.m. in courtroom 303. Mr. Campbell is to use the mandatory court form: F 4001-1.RFS.NONBK.MOTION. This is available on the Court website at www.cacb.uscourts.gov/forms/local_bankruptcy_rules_forms. Or you can obtain a copy at the filing window in the clerk's office.

prior tentative ruling (11/14/17)

The Court advised Mr. Campbell of the continuance of the Berry v. Pyle case. He does wish to appear on 11/14. The Court has called Mr. Aver's office and asked them to contact Mr. Pyle (who is pro se in this adversary proceeding) to advise him that the hearing on 11/14 is going forward and that Mr. Pyle is to appear on the phone or in person and instruct him on how to use Court Call. The Court was notified that he also wishes to appear.

What is the status of the state court matter?

prior tentative ruling (3/28/17)

This adversary proceeding has been trailing the Berry v. Pyle one, but it has

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some different issues. How does Mr. Campbell wish to proceed?

prior tentative ruling (1/17/17)

I believe that Mr. Campbell was trying to obtain counsel. It is best to keep this together with Berry v. Pyle. Therefore continue it without appearance to 2/21/17 at 10:00 a.m. when I have a hearing on the motion for summary judgment in the Berry v. Pyle case.

prior tentative ruling (8/2/16)

Mr. Campbell is now representing himself. How does he wish to proceed to get this ready for trial?

prior tentative ruling (3/1/16)

Per the status report filed by Plaintiff on 2/23/16, discovery is not complete. Plaintiff wants to take Mr. Pyle's deposition and audit the records.

This was trailing the Berry v. Pyle matter, but given Mr. Berry's health, I think that it should go forward alone and complete the discovery. Feel free to appear by phone at the status conference and let's get some dates to complete discovery. Please advise Mr. Pyle, who is not represented by counsel in this case, to appear in person or by phone.

prior tentative ruling (1/12/16)

This has nothing to do with Mr. Berry's health and Mr. Pyle is not represented by counsel. The 1/5/16 status report said that plaintiff will be ready for trial on 2/1. He figures 2-3 days. Let's set a trial date. Possible dates when there is a courtroom available are Feb. 16-17 and Mar. 23-24.

prior tentative ruling (9/8/15)

This has been trailing Berry v. Pyle. On 8/18/18 Plaintiff filed a status report. He is ready to go to trial in February 2016. He needs another 4-6 months to complete discovery, which includes Mr. Pyle's deposition and an audit of the records.

In htis case Mr. Pyle is not represented by counsel. So let's get a deposition date and move forward.

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prior tentative ruling (3/10/15)

Mediation set for 3/24/15. Continue without appearance to 5/12/15 at 1:00 a.m

prior tentative ruling (10/7/14)

The mediation has been delayed. Continue without appearance to 12/16/14 at 10:00 a.m.

prior tentative ruling (8/5/14)

The Berry v. Pyle matter is scheduled for a settlement conference before Judge Ryan on 9/22/14. Is this case part of the settlement conference? If so, continue without appearance to 10/7/14 at 10:00 a.m. If not, the status report filed by Plaintiff on 7/21 requests mediation. How do you wish to proceed?

prior tentative ruling (4/22/14)

On 4/8/14, counsel for plaintiff filed a status report. He believes that he will be ready for trial in 6 months. There is still discovery to be done, including completing Debtor's deposition. A mediation will take place in May or June. **Continue without appearance to August 5, 2014 at 10:00 a.m.**

prior tentative ruling (3/11/14)

This complaint is both under §523 and §727 as well as §§547 and 548. This has been trailing the Berry v. Pyle adversary proceeding. Mr. Mendoza attended the 2/10/14 deposition of Mr. Pyle, which is a joint deposition in both this case and the Berry v. Pyle case. Pyle is not represented by counsel in this adversary proceeding.

Mr. Mendoza, should this continue to trail the Berry adversary or are you ready to go forward on your own?

prior tentative ruling (4/24)

The parties have stipulated that plaintiff will have until 4/20 to file a Second Amended Complaint. A second amended complaint was filed on 4/20. Per the status report, the parties think that they need 4-5 months to complete discovery. The parties wish to mediate. Plaintiff has no co-counsel and may wish to propound more discovery and seek relief from stay as to certain trust

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CONT... Glen E Pyle
assets.

Chapter 7

Continue the status conference without appearance to June 19 at 10:00 a.m.
This will allow sufficient time for there to be a response to the second amended complaint and for new co-counsel to move forward. In the meantime, please complete a mediation order since it often takes weeks to schedule a mediation.

prior tentative ruling (2/14)

Per the status report filed on 1/24, the parties feel that they will not be ready for trial until late in 2012. Set a discovery cutoff date of 7/30/12. Although neither party wants mediation at this time, plaintiff's counsel is willing to attend mediation.

As of 2/12 there is no response to the amended complaint. What is the status of that? When do the parties think that mediation might be beneficial?

prior tentative ruling (1/24)

An answer was filed on 7/15. Plaintiff filed an amended complaint on 1/12, but this was done without leave to amend.

Counsel, in the future please confer with knowledgeable bankruptcy counsel before filing things in bankruptcy court. Your original cover sheet indicated that this was only a complaint to recover money under §§547 and 548. That is incorrect. The original complaint is under §523 and §727 (although that is not mentioned on the caption) and may include §§547 and 548 (although the uploaded copy has some pages missing, so I can't tell for sure). The amended complaint has all of these claims for relief. The court picked up that there was a §727 claim, but we should not have to review the complaint to do this.

prior tentative ruling (10/4)

Nothing further received as of 10/2.

prior tentative ruling (6/22)

As of 5/9 there has been no return on service on the summons. The plaintiff

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has counsel. There is no status report as of 5/8. If there is no appearance at the 5/11 hearing, I will issue and OSC re: dismissal for failure to prosecute.

Party Information

Debtor(s):

Glen E Pyle Pro Se

Defendant(s):

Glen Pyle Pro Se

Plaintiff(s):

Ian Campbell Represented By
Barry P King

Trustee(s):

Amy L Goldman (TR) Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

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10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#5.00 Debtor's motion for reconsideration of John P. Reitman, chapter 11 trustee for order approving settlement with Barrett S. Litt, et al

fr. 12/18/18; 1/29/19; 2/12/19; 3/5/19

Docket 1563

Tentative Ruling:

Because of the length of the tentative ruling, it is being emailed to the parties and will not be posted here.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Movant(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Andrew Goodman
Yi S Kim
Yi S Kim
Robert M Scholnick
Robert M Scholnick
James R Felton
James R Felton

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Chapter 11

Faye C Rasch
Faye C Rasch
Faye C Rasch
Faye C Rasch
Lisa Nelson
Lisa Nelson
Michael G Spector
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

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1:13-10386 Shirley Foose McClure

Chapter 11

#6.00 Status conference re: ch 11 case

fr. 1/24/2013, 4/30/13, 5/14/13, 7/23/13, 8/6/13,
9/17/13, 9/24/13, 11/19/13, 12/17/13, 1/21/14, 2/18/14,
3/11/14, 4/15/14, 5/6/14, 6/24/14, 9/9/14, 9/23/14,
10/7/14, 11/24/14, 1/6/15, 1/20/15, 2/10/15, 3/10/15,
4/28/15; 5/12/15; 9/29/15, 10/22/15, 12/8/15, 3/1/16,
6/7/16, 7/12/16, 8/16/16, 10/11/16; 12/20/16, 4/4/17,
5/16/17; 6/27/17, 7/11/17, 9/19/17, 11/14/17, 11/28/17,
12/19/17, 1/9/18, 3/19/18, 3/27/18, 5/1/18, 6/5/18; 6/26/18,
7/9/18; 8/7/18, 11/6/18; 12/18/18; 1/29/19; 2/12/19; 3/5/19

Docket 1

Tentative Ruling:

Continue without appearance to April 16, 2019 at 10:00 a.m. No new status report will be needed for that hearing.

prior tentative ruling (2/8/19)

Per the Trustee's status report, McClure withdrew her appeal of the Pacific Merchantile settlement and the Ninth Circuit has dismissed the appeal.

As to the settlement with Litt, Judge Wu has continued the status conference in the consolidated Litt appeals to March 7, 2019 and has indicated that he is not inclined to grant further continuances. The Trustee therefore requests a speedy determination of the motion for reconsideration so as to avoid unnecessary litigation costs in the consolidated Litt appeals. Because of the death of Ms. McClure's son Jeff, the motion to reconsider has been continued to 3/26.

The motion to sell the Maui property is set to be heard on 3/5/19.

I sent an email to Judge Wu, advising him of the situation and that I am continuing the motion to reconsider to 3/26. I also advised him that I expect to rule soon thereafter as no other papers may be filed. As of 3/4 at 10:00

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Chapter 11

a.m., I have not had a response from Judge Wu.

The status conference is continued to 3/26/19 at 10:00 a.m. I don't see any reason that anyone should appear in person or by phone on March 5.

Cont

prior tentative ruling (2/12/19)

Continue without appearance to 3/5/19 at 10:00 a.m. Although documents are being filed for 2/12, there will be no hearing at that time. I am also adviseing the parties by email of this.

prior tentative ruling (11/6/18)

Ms. McClure has until Nov. 20 to file her motion for reconsideration. Meanwhile, she has filed an emergency motion for a stay pending the hearing on her motion for reconsideration. The Trustee opposes.

This would be a short stay, only so that the Court can adequately review the motion(s) to reconsider. While it took many months for the Court to do the detailed analysis and I believe that it is thorough and correct, it is appropriate to allow Ms. McClure to try to point out errors that may have been made. Given that the matters in the Superior Court are not immediate, the Court intends to grant the stay and will hear brief argument at the 11/6 status conference. It seems to me that the stay should expire 14 days after I enter my order on the motion(s) to reconsider.

Per the Trustee's status report filed on 10/31/18, the Maui property is in escrow.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim

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Chapter 11

Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

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1:13-10386 Shirley Foose McClure

Chapter 11

#7.00 Motion of John P. Reitman for sale of property
of the estate under section 363(b)

Docket 1604

Tentative Ruling:

This is as to the Tidus litigation. It is continued without appearance at the request of Ms. McClure and will be heard on 4/16/19 at 10:00 a.m. All further papers are to be filed under seal.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

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10:00 AM

1:16-11387 Real Estate Short Sales Inc and Real Estate Short Sales, Inc.

Chapter 7

#8.00 Order to show cause why Nancy Cueva and debtor should not be held in contempt of court

fr. 1/29/19; 1/31/19

Docket 329

***** VACATED *** REASON: continued to 4/16/19 at 10:00 a.m. per hrg.
held on 3/5/19**

Tentative Ruling:

The OSC re: Contempt deals with three specific actions:

1. Violation of the compromise order (the "Compromise Order") [dkt. no. 226] that requires Parties to cooperate fully with the Chapter 7 Trustee's marketing and sale of that certain real property commonly known as 10351 Oklahoma Avenue, Chatsworth, California 91311 (the "Chatsworth Property") by failing to allow interior access to the Chatsworth Property for the purposes of an appraisal required by the lender for buyer Haya Sara Yavor ("Buyer");
2. Violation of the sale order (the "Sale Order") [dkt. no. 302] that requires Parties to vacate the Chatsworth Property by noon on Monday, December 17, 2018; and
3. Violation of the Compromise Order by opposing Trustee's sale motion for the Chatsworth Property and filing a notice of appeal of the Sale Order.

The details and background of these asserted violations are described below in more detail in the Trustee's reply.

Opposition

The reason that they did not move out on 12/17 was because the hearing on their stay motion was not set until 12/18. Also they believed (on their own and not from counsel) that the sale order violated the automatic stay of their chapter 13.

The Sale Order did not require the Debtor (as opposed to Cueva/Molica) to vacate the Chatsworth Property by noon on 12/17.

Molica was and is very sick, so the failure to allow the appraiser access on 12/12 and 12/13 and the failure to vacate on 12/17 should keep that in mind. However, after the Court ruled on 12/18, the appraiser was promptly

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CONT... Real Estate Short Sales Inc and Real Estate Short Sales, Inc. Chapter 7

granted access.

Cueva believed that the automatic stay of the chapter 13 case precluded the Trustee from pursuing the sale and obtaining possession of the property and thus her conduct was justified.

Cueva and the Debtor had a justified belief that the setting of the Stay Motion for 12/18 meant that they did not have to vacate Chatsworth on 12/17.

The Debtor and Cueva did not violate the Compromise Order by opposing the Sale Order due to the filing of the chapter 13 case. Nor did they do so by appealing the Sale Order based on issues that they believe to be valid. Requiring that they "cooperate fully with Trustee's marketing and sale of the Chatsworth Property, subject to the Court's approval" cannot be read as a waiver of their rights to oppose the Sale Order. The automatic stay cannot be waived in advance.

This OSC does not apply to Molica.

Reply

Although set forth in the application for this OSC, the Trustee again lays out the facts that support her contention of bad behaviour by Cueva and Molica - living cost-free in Chatsworth for 6 years before the Trustee was appointed (thus avoiding \$500,000 in mortgage payments); remaining in the property without payments for another year after the Trustee was appointed; interfering with the sale of estate property; negotiating in bad faith to purchase the property; increasing the estate's administrative expenses. They benefitted by \$85,000 by this 13-month extension after the Trustee was appointed. After a buyer was obtained, they would not vacate the property and would not allow access to the Trustee's appraiser. The Trustee was forced to petition the Court for an order to remove them, to which they responded by threatening the escrow and title officers with litigation pursuant to a bogus quitclaim deed.

The Trustee then lays out in detail the actions which interfered, delayed, and otherwise prejudiced the estate.

The Trustee states in her reply (filed on 1/22/19) that the sale has not yet closed due to the delays caused by Cueva and Molica. The Trustee is not sure that the short sale lender will agree to any further extensions if Cueva and Molica continue to block the sale by their contemptuous conduct.

As to the specific items in the OSC:

(1) refusal to provide access - Cueva did not act in good faith by failing to

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allow the appraiser access on 12/12 and 12/13. The Compromise Order required Cueva and the Debtor to cooperate with the Trustee's marketing and sale of the property. This included the appraisal appointment.

(2) refusal to vacate: they were to vacate by noon on 12/17/18, but Cueva and Molica refused to do so. They did not remove their personal property.

(3) violation of the Compromise Order by opposing the Sale Motion and filing a notice of appeal: These violated the provision of the Compromise Order requiring Cueva and the Debtor to cooperate fully with the Trustee's marketing and sale of the Chatsworth Property.

The Court has civil contempt power through 11 USC §105(a). Civil contempt occurs when a party "disobeys a specific and definite court order by failure to take all reasonable steps within the party's power to comply. The contempt 'need not be willful,' and there is no good faith exception to the requirement of obedience to a court order." *Go-Video v. Motion Picture Ass'n of America (In re Dual Deck Video Cassette Recorder Antitrust Litig.)*, 10 F.3d 693, 695 (9th Cir. 1993). A party must take all reasonable steps to comply with a court order. *Shuffler v. Heritage Bank*, 720 F.2d 1141, 1146-7 (9th Cir. 1983).

The Trustee has met her burden of proof in the application for the OSC and in the facts laid out in this reply. Now the burden of proof shifts to the contemnors and they have not met this. They have not put forth any evidence of an impossibility defense or of their inability to comply.

As to vacating the residence, Molica and Cueva may have moved out on 1/8, but they did not notify the Trustee and they left two inoperable vehicles. Thus the U.S. Marshal deputies appeared with a locksmith (cost \$3,000+ for the Marshals and \$1,146 for the locksmith). Cueva and Molica left the two cars and almost their entire personal property behind, and storage is likely to cost more than \$10,000 plus \$1,000 per month for insurance.

The Sale Order applies to all parties, including the Debtor. A corporation acts through its principals. Cueva and Molica claim to be equityholders, officers, and directors. Therefore they are responsible for the Debtor's compliance with the Compromise Order and the Sale Order.

There is no medical exception to the obligation to comply with a court order. There is also no evidence to verify the existence, extent, or duration of Molica's medical issues. Molica was fully engaged during the appraisal and was seen driving a car with Cueva as his passenger as well as walking around. They, in fact, have moved out and there is no showing that Molica's

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medical condition was an excuse for the delay.

The Chapter 13 filing was a procedural maneuver and not a good faith filing. They had no interest in the Chatsworth property, so the chapter 13 stay could not apply. Also, the automatic stay does not apply to the bankruptcy court where the debtor's bankruptcy is pending. *[Please note that I cannot tell where the quotation on p. 19-20 of the reply is from. It also appears to contain several mistakes as to the citations included - ie. according to Lexis, North Coast Village is at 135 B.R., not 132 and Maritime Elec. is at 959 F.3d, no 862.]*

Even if the stay could apply, the Court annulled it and dismissed the chapter 13 case.

There was no waiver of the Compromise Order. There was no right to waive and also because the cooperation was an obligation of the Order, the discussion of waiver does not apply.

The Debtor and Cueva had no standing to file an appeal of the Sale Order. There was no pecuniary interest of either in the property. There was no possibility of surplus.

The Court has the ability to impose civil contempt penalties, which must be either compensatory or designed to coerce compliance. The Trustee seeks the following compensatory sanctions:

Attorney's fees of no less than \$20,000 and increasing *[There does not appear to be any evidence to support this figure.]*

U.S. Marshal's fees of \$3,000+ subject to final invoice

Locksmith charge of \$1,146

Insurance of \$11,672.95 subject to increase

Moving and storage of personal property of at least \$10,000, to be determined based on whether Cueva and Molica pay and arrange for their own movers per Court Order or whether statutory notice applies

Misc. costs for certified copies, etc. of \$351.62 subject to increase

Supplemental Declaration of Nancy Cueva

Ms. Cueva pro se filed a supplemental declaration on 1/25. She describes a potential sale to an Argentinian buyer that did not go through because the Trustee required certain things. She then talks about her attempt at a loan modification, which she asserts the Trustee interfered with, but is actually still pending. She states that up to 2015 she and her husband paid \$234,180 and also improvements of \$250,000.

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As to the recent chapter 13, she asserts that she paid Jeffrey Hagen \$1,500 for his services, but he withdrew after he spoke with Ms. Zamora. Since they could not find another attorney on such short notice, they let the case be dismissed.

Cueva became ill and could not vacate the premises. On December 25 she was taken to the emergency department of West Hills Hospital for emergency surgery and her post-surgical care did not allow her to do any strenuous activity.

On January 3, U.S. Marshal Deputy Hugo Valdez trespassed and posted a notice to vacate that was defective because it did not attach the third page of the writ not the order attached to the writ. On January 8 they moved out. Deputy Valdez did not return. Cueva wanted to arrange to move the personal property, but Deputy Valdez never returned calls. On January 12 Cueva and Molica returned to pick up their mail and found 4 marshalls, a lock company, the realtor, and Zamora's assistant. None would tell them how to recover their personal property. Since then Cueva has called Zamora and filed a letter to her and to the Marshall, but not received an answer. Cueva refuses to pay the Marshall or attorney fees. Zamora has personal animosity against Cueva.

Analysis

Although not raised in the opposition, the OSC re: Contempt is on appeal (USDC CAC 2:19-cv-00120- DOC). Do I still have jurisdiction on this until the appeal is dealt with?

The sale has not closed. Is the Sale Order on appeal? If so, do I have jurisdiction on this OSC re: Contempt as to the Sale Order? However the Compromise Order is not on appeal.

11 USC §105(a) gives the bankruptcy court the power to punish for civil contempt. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178 (9th Cir. 2003). Beyond that, there is an inherent power to do so. *Caldwell v. United Capital Corp. (In re Rainbow Magazine, Inc.)*, 77 F.3d 278, 284 (9th Cir. 1996).

Civil contempt involves sanctioning a person until s/he complies with an affirmative command - in this case complying with the Compromise Order and also with vacating the property, etc., which has been partially done but

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personal property was not removed by the alleged contemnors. Criminal contempt is punitive because the act of disobedience has been completed and the contemnor cannot now act to comply with the prior order:

Since there is no positive action to be taken (except dealing with the personal property that is in storage), this could fall into the area of criminal contempt. However, the Trustee is not seeking a determination of criminal contempt, but merely sanctions for the expenses incurred by the violation of the Orders.

Civil contempt may be used to compensate the aggrieved party even if the action by the contemnor can no longer be undone:

Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained. *Gompers v. Bucks Stove & Range Co., supra*, at 448, 449. Where compensation is intended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of complainant's actual loss, and his right, as a civil litigant, to the compensatory fine is dependent upon the outcome of the basic controversy. *United States v. United Mine Workers*, 330 U.S. 258, 303-304 (1947)

A contempt fine accordingly is considered civil and remedial if it either "coerces the defendant into compliance with the court's order, [or] . . . compensates the complainant for losses sustained." *United States v. Mine Workers*, 330 U.S. 258, 303-304, 91 L. Ed. 884, 67 S. Ct. 677 (1947). Where a fine is not compensatory, it is civil only if the contemnor is afforded an opportunity to purge. See *Penfield Co. of Cal. v. SEC*, 330 U.S. 585, 590, 91 L. Ed. 1117, 67 S. Ct. 918 (1947). Thus, a "flat, unconditional fine" totaling even as little as \$ 50 announced after a finding of contempt is criminal if the contemnor has no subsequent opportunity to reduce or avoid the fine through compliance. *Id.*, at 588.

Int'l Union v. Bagwell, 512 U.S. 821, 829 (1994)

Here the sanction would be compensatory since there is nothing left for Cueva and the Debtor to do (although they can reduce this by taking possession of their personal property). It appears that the proper result would be an order that Cueva pay the Trustee the sum necessary to compensate for the actions taken as a result of her contempt. Since the Trustee does not have counsel, the Court would need evidence of a proper amount to

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compensate the Trustee for her time and for incidental expenses. Then the Court must determine that Cueva has the ability to make the payment. There would be no such order as to the Debtor, since it owns nothing that is not property of the estate. While the Court has doubted Ms. Cueva's finances, she has never asserted that she did not have sufficient money to comply with the order to move. And she has hired counsel and paid him a retainer of \$20,000 and agreed to an hourly rate of \$650. (dkt. 324). Thus her ability to pay is not in issue.

One of the issues is who is bound by the Compromise Order and who is bound by the Sale Order. The Compromise Order (dkt. 226) approves the motion to compromise (dkt. 217). The compromise letter states that it is "reached between you ('Cueva') and me, as chapter 7 trustee ('Trustee').... (dkt. 217, p. 15). The Order approving the revised compromise states that it is between "Trustee and Nancy Cueva ('Cueva'), for the benefit of Debtor...." (dkt. 226). Ms. Zamora prepared both of these documents. The Sale Order (dkt. 302, p. 9) specifically provides in ¶¶N that "Nancy Cueva and Julio Molica (collectively 'Residents'), shall vacate the Real Property, without causing damage, no later than 12:00 noon on December 17, 2018, consistent with that certain Order Approving Revised Compromise...."

As to the assertion that she did not comply with the order to vacate by 12/17 because of the delay in the hearing on a stay until 12/18, it is clear that Cueva did not intend to vacate at any time and that she was doing all that she could to block the sale from consummating. See for example her recording of a quitclaim deed on 12/26/18 (dkt. 347, 349).

As to the issue of her belief that she was protected by the automatic stay of the new chapter 13 - the mere act of filing the chapter 13 was solely for the purpose of interfering with the sale and as a basis not to vacate the property. Concerning whether Jeffrey Hagen was her attorney in the chapter 13, she asserts that she hired him and paid him \$1,500, but provides no receipt for payment, he never appeared, the petition was filed pro se, and there is no declaration by Mr. Hagen.

Beyond that, she attempted to keep that case open by lying to the Court [though not under oath] and she had her attorney state that Cueva had timely filed a request to extend time to file schedules in that case [transcript of 12/18/18 hearing, dkt. 341] The document was never located in the clerk's office and thus the court dismissed the case. Although Cueva was given an opportunity to vacate the dismissal if she could present a conformed copy of

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her application to extend, she did not do so. The Court finds that no such application for extension was ever filed. Id. p. 62-63. Also, on December 4, Cueva represented to the Court that Jeffrey Hagen represented her in her chapter 13 case, but this was not true.

All of these efforts were undertaken so as to prevent the Trustee from completing the sale. They were obstructionist and not in good faith.

The Trustee has laid out sufficient facts to meet her burden that the actions by Cueva, Molica, and the Debtor were an intentional violation of prior orders of this Court - specifically Sale Order, though there is a question as to who was bound by the Compromise Order. The Trustee has met her burden.

As to the assertion that all of this was due to the poor health of Molica - the Court does not accept that as an excuse. Beyond the fact that the Compromise Order was many months before the Sale Order and thus Molica/Cueva had more than sufficient time to prepare to move, the declaration of Behnaz Tavakoli provides evidence that Molica was not unable to physically move out - he was able to walk and to drive. Even had he been immobile, this would not be an excuse since he had months to prepare.

Concerning Cueva's emergency surgery, apparently this occurred on or after December 25, a full week after the time to remove themselves from the property. There is also no evidence that Cueva and/or Molica made any preparations to move themselves or their furniture. They are or were living in a hotel and not an apartment, there is no indication that they hired a moving company or arranged for storage. It is obvious to the Court that they had no intention to move until and unless the Marshall took action. They had months to make preparations and their health issues are not an excuse.

The Court also finds it disturbing that Ms. Cueva presented an entirely new story of the delay in her supplemental opposition, since all of these assertions occurred before the Debtor's attorney filed the initial opposition.

As to the loan modification, that time has passed. The debtor (estate) owns the real property, not Cueva/Molica. They have no rights left to modify and their attempts may be interfering with the Sale Order and may be a continuing contempt.

As to the personal property, there needs to be an agreement as to how it is handled - remaining in storage, who pays the storage fees, etc.

Party Information

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Chapter 7

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Real Estate Short Sales, Inc.

Represented By
Daniel J McCarthy

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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1:16-11387 Real Estate Short Sales Inc

Chapter 7

#9.00 Emergency motion for Order Determining Mechanics Liens Recorded January 8, 2019 and January 16, 2019 Null and Void, and of No Force or Effect; and Authorizing Title Company to Disregard Mechanics Liens for Purposes of Insuring Title to Real Property

fr. 1/31/19

Docket 386

Tentative Ruling:

Two mechanics liens were recorded at the the Oklahoma Avenue property - both in January 2019 and both by Team Champion Exterminators, Inc. The Trustee seeks to remove these as having been filed in violation of the automatic stay. *In re Schwartz*, 954 F.2d 569 (9th Cir. 1992). She also seeks a waiver of the 14 day stay.

On 2/26/19, the Trustee filed a supplement to her motion. She recounted the hearing on Jan. 31 when Albet Salazar and Jim Loera testified as to the work done and the filing of the mechanics liens. They made it clear that both liens refer to the same work, which was performed in summer of 2017. After that hearing, the Court expunged the mechanics liens from the property and ordered that they attach to the proceeds of sale of that property. So the issue now is whether Team Champion has a secured or a unsecured claim.

To be a secured claim, the mechanics liens must meet the requirements of Cal. Civ. Code §8412. This requires that the contractor record a claim of lien one the work is complete and that this must be recorded before the earlier of 90 days after completion of the work of improvement or 60 days after the owner records a notice of completion or cessation. Cal. Civ. Code §8180 defines the meaning of "completion of the work of improvement."

Given the testimony and evidence of Team Champion, the work was completed about August 1, 2017 or maybe as late of August 31, 2017. Either way, the recording of the liens in January 2019 is well beyond the statutory limit.

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The Trustee goes on to deal with where the proceeds would come from to pay the mechanics liens had they been properly perfected. Since this was a "short sale," the junior liens received nothing and the mechanics liens would fall into that category.

The Trustee also argues that because Nancy Cueva contracted with Team Champion in her individual capacity, there is no claim by Team Champion against the Estate, even though the work benefitted Estate property.

No opposition received as of 3/21.

No appearance necessary if you submit on the tentative ruling. Except in the case of a trustee's final report and simultaneous hearing on applications for approval of professional fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling within seven court days after the hearing, serving all interested parties with a copy of the proposed order.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton
Daniel J McCarthy

Trustee(s):

Nancy J Zamora (TR)

Represented By
Jessica L Bagdanov
David Seror

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Courtroom 302 Calendar**

Thursday, April 11, 2019

Hearing Room 302

9:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#1.00 Status Conferece re: Testimony for Dr. Okovahat

fr. 8/17/18, 8/27/18, 1/30/19; 2/12/19; 2/25/19; 3/4/19

Docket 429

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Movant(s):

Douglas Denoce

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
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Monday, April 15, 2019

Hearing Room 302

1:00 PM

1:11-22424 Ronald Alvin Neff

Chapter 7

#1.00 Status Conference re: Testimony of Dr. Hersel

fr. 8/17/18, 8/27/18, 1/30/19; 2/12/19; 2/25/19; 3/4/19

Docket 429

Courtroom Deputy:

Tentative holding date of cont. to 2/12/19 at 9am (eg)

will be heard in courtroom 302

CONTACT INFO FOR WITNESSES:

Dr. Mahyer Okhovat 818-918-2766 or 310-579-9082 (Dr. Okhovat's wife [atty])

Alexander Hersell 805-557-096 (ofc) 310-808-4308 (cell)

Tentative Ruling:

Dr. Hersel will give the balance of his testimony on 4/15. He has advised by email that he has already produced all of the records in his possession.

Counsel are to appear at 12:30 to deal with procedural issues.

As to the objections filed by Mr. Kwasigroch (dkt. 508), here are my rulings (by objection number):

Overruled - #1,4, 5, 10, 12

Ruled on at 4/11 continued trial and the same rulings apply to Dr. Hetsel's testimony - #2, 3, 6, 7, 8, 9

As to #11 and #13 - this is not an objection but is closing argument and will be heard at that time if Debtor wishes to raise it.

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THE FOLLOWING WILL BE DEALT WITH AFTER DR. HERSEL HAS COMPLETED HIS TESTIMONY

As to the Objection and Statement, which go to the issue of whether Mr. Neff will sign a release for the SSA, DeNoce had received a disc from the SSA, but he reviewed it and found that the material was incomplete. He then destroyed the disc and neither sent them to Kwasigroch or sought instruction from the Court. Although Neff had said that he would sign a new release (the old one having become stale through the passage of time), he has now changed his mind. He is not bound by his prior statement as DeNoce has not relied on it to his detriment. There are no actions that he could have taken and did not take. He is still allowed to hire his own psychiatrist to review the review report by Dr. Bilik and can appeal the denial of Dr. Bilik's testimony by the SSA.

It was DeNoce's decision to destroy the SSA records. Whether he read them in detail or not before he destroyed the disc is not known and will never be known for sure. But obviously he looked at what types of documents were included or he could not have decided that the file was "incomplete." If he believed that the SSA did not give him the full file, he had options at that time, but failed to proceed. There is no reason to believe that a new SSA production would be any different than the first one.

Kwasigroch raises the evidentiary issue of spoliation (which he incorrectly writes a spoilation). This is a presumption that the destruction of evidence relevant to the litigated issue shows that the evidence was unfavorable to that party. *Weinstein' Federal Evidence §301.06*. That does not apply in this case since the SSA file is even more accessible to Neff, who need merely request it. Thus, he has the ability to know what is in it and to produce it to the Court.

DeNoce was allowed to hire an independent psychiatrist to examine Neff as well as to hire another psychiatrist to review the Bilik report. He cancelled the examination of Neff and never sought to go forward with it. He will be allowed to hire an expert to review the Bilik report because Bilik cannot be called to testify, but there needs to be a time limit to do this. This case has dragged on a considerable length of time and it was incumbent on DeNoce to proceed without delay. If he is seeking to appeal that SSA decision, he can go forward

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CONT... Ronald Alvin Neff

Chapter 7

with that, too, but I will not delay the hiring of a review psychiatrist any further.
Both can proceed simultaneously.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Movant(s):

Douglas Denoce

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
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1:00 PM

1:11-22424 Ronald Alvin Neff

Chapter 7

#2.00 Status Conferece re: Testimony for Dr. Okovahat

fr. 8/17/18, 8/27/18, 1/30/19; 2/12/19; 2/25/19; 3/4/19,
4/11/19

Docket 429

Courtroom Deputy:

Tentative holding date of cont. to 2/12/19 at 9am (eg)

will be heard in courtroom 302

CONTACT INFO FOR WITNESSES:

Dr. Mahyer Okhovat 818-918-2766 or 310-579-9082 (Dr. Okhovat's wife
[atty])

Alexander Hersell 805-557-096 (ofc) 310-808-4308 (cell)

Tentative Ruling:

Vacated, This testimony was completed on April 11.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Movant(s):

Douglas Denoce

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
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Tuesday, April 16, 2019

Hearing Room 303

10:00 AM

1:06-12243 Edwin Perry Hinds

Chapter 7

#1.00 Application and Order for Appearance and Examination

Docket 68

Tentative Ruling:

Per the status report filed on 4/12, Mr. Isaacson has not been served. Isaacson has a new attorney, who will not accept service for him. The attorney said the Isaacson is out of the state until April. The new attorney (Mr. Totaro) has filed a motion for reconsideration of the district court dismiss of the appeal and it is awaiting a determination by the district court. The Trustee requests a 90 day continuance.

Continue without appearance to August 6, 2019 at 10:00 a.m.

Party Information

Debtor(s):

Edwin Perry Hinds

Represented By
Jonathan R Elowitz - DISBARRED -

Trustee(s):

David R Hagen (TR)

Represented By
David Seror
Reagan E Boyce

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, April 16, 2019

Hearing Room 303

10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#2.00 Motion of John P. Reitman for sale of property
of the estate under section 363(b)

fr. 3/26/19

Docket 1604

Tentative Ruling:

Because the Court intends to order mandatory mediation in this case, at this time there will be no argument or tentative ruling on this motion.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

**United States Bankruptcy Court
Central District of California
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Courtroom 303 Calendar**

Tuesday, April 16, 2019

Hearing Room 303

10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#3.00 Status conference re: ch 11 case

fr. 1/24/2013, 4/30/13, 5/14/13, 7/23/13, 8/6/13,
9/17/13, 9/24/13, 11/19/13, 12/17/13, 1/21/14, 2/18/14,
3/11/14, 4/15/14, 5/6/14, 6/24/14, 9/9/14, 9/23/14,
10/7/14, 11/24/14, 1/6/15, 1/20/15, 2/10/15, 3/10/15,
4/28/15; 5/12/15; 9/29/15, 10/22/15, 12/8/15, 3/1/16,
6/7/16, 7/12/16, 8/16/16, 10/11/16; 12/20/16, 4/4/17,
5/16/17; 6/27/17, 7/11/17, 9/19/17, 11/14/17, 11/28/17,
12/19/17, 1/9/18, 3/19/18, 3/27/18, 5/1/18, 6/5/18; 6/26/18,
7/9/18; 8/7/18, 11/6/18; 12/18/18; 1/29/19; 2/12/19; 3/5/19
3/26/19

Docket 1

Tentative Ruling:

At the 4/16 status conference the Court will determine which - if any - filed exhibits are to be kept under seal. On April 12 an email with a list was sent to Ms. McClure and the attorneys for the Litt Parties and for the Trustee. Also, the Court will discuss my intent to send this out for a global mediation before Judge Jury (ret). A copy of that notice was forwarded to Mr. Dahlberg, Ms. McClure, and Mr. Shulman and Mr. Dahlberg is was asked to make sure that it is sent to the other parties named in the notice.

prior tentative ruling (3/26/19)

Continue without appearance to April 16, 2019 at 10:00 a.m. No new status report will be needed for that hearing.

prior tentative ruling (2/8/19)

Per the Trustee's status report, McClure withdrew her appeal of the Pacific Merchantile settlement and the Ninth Circuit has dismissed the appeal.

As to the settlement with Litt, Judge Wu has continued the status conference in the consolidated Litt appeals to March 7, 2019 and has indicated that he is not inclined to grant further continuances. The Trustee therefore requests a

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CONT... Shirley Foose McClure

Chapter 11

speedy determination of the motion for reconsideration so as to avoid unnecessary litigation costs in the consolidated Litt appeals. Because of the death of Ms. McClure's son Jeff, the motion to reconsider has been continued to 3/26.

The motion to sell the Maui property is set to be heard on 3/5/19.

I sent an email to Judge Wu, advising him of the situation and that I am continuing the motion to reconsider to 3/26. I also advised him that I expect to rule soon thereafter as no other papers may be filed. As of 3/4 at 10:00 a.m., I have not had a response from Judge Wu.

The status conference is continued to 3/26/19 at 10:00 a.m. I don't see any reason that anyone should appear in person or by phone on March 5.

Cont

prior tentative ruling (2/12/19)

Continue without appearance to 3/5/19 at 10:00 a.m. Although documents are being filed for 2/12, there will be no hearing at that time. I am also adviseing the parties by email of this.

prior tentative ruling (11/6/18)

Ms. McClure has until Nov. 20 to file her motion for reconsideration. Meanwhile, she has filed an emergency motion for a stay pending the hearing on her motion for reconsideration. The Trustee opposes.

This would be a short stay, only so that the Court can adequately review the motion(s) to reconsider. While it took many months for the Court to do the detailed analysis and I believe that it is thorough and correct, it is appropriate to allow Ms. McClure to try to point out errors that may have been made. Given that the matters in the Superior Court are not immediate, the Court intends to grant the stay and will hear brief argument at the 11/6 status conference. It seems to me that the stay should expire 14 days after I enter my order on the motion(s) to reconsider.

Per the Trustee's status report filed on 10/31/18, the Maui property is in

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escrow.

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Party Information

Debtor(s):

Shirley Foose McClure

Represented By

Andrew Goodman

Yi S Kim

Robert M Scholnick

James R Felton

Faye C Rasch

Faye C Rasch

Lisa Nelson

Michael G Spector

Trustee(s):

John P. Reitman

Represented By

John P Reitman

Jon L Dalberg

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1:16-11387 Real Estate Short Sales Inc and Real Estate Short Sales, Inc.

Chapter 7

#4.00 Order to show cause why Nancy Cueva and debtor should not be held in contempt of court

fr. 1/29/19; 1/31/19; 3/5/19

Docket 329

Tentative Ruling:

The Court has entered a Notice of Status in Bankruptcy Court, which has also been sent to the district court to be filed in the consolidated appeal (2:18-cv-10689-DSF). This is #451 on the bankruptcy case docket. The district court docket does not reflect any future hearing date, though the opening brief is to be filed by 5/13/19. We have mailed it to be filed in the district court and I have sent a copy to Judge Fischer to be sure that she is aware of it.

I think that the contempt hearing needs to be continued until some or all of the appeals are resolved, as described in my notice. Let's discuss how best to proceed.

prior tentative ruling (1/31/19)

The OSC re: Contempt deals with three specific actions:

1. Violation of the compromise order (the "Compromise Order") [dkt. no. 226] that requires Parties to cooperate fully with the Chapter 7 Trustee's marketing and sale of that certain real property commonly known as 10351 Oklahoma Avenue, Chatsworth, California 91311 (the "Chatsworth Property") by failing to allow interior access to the Chatsworth Property for the purposes of an appraisal required by the lender for buyer Haya Sara Yavor ("Buyer");
2. Violation of the sale order (the "Sale Order") [dkt. no. 302] that requires Parties to vacate the Chatsworth Property by noon on Monday, December 17, 2018; and
3. Violation of the Compromise Order by opposing Trustee's sale motion for the Chatsworth Property and filing a notice of appeal of the Sale Order.

The details and background of these asserted violations are described

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Chapter 7

below in more detail in the Trustee's reply.

Opposition

The reason that they did not move out on 12/17 was because the hearing on their stay motion was not set until 12/18. Also they believed (on their own and not from counsel) that the sale order violated the automatic stay of their chapter 13.

The Sale Order did not require the Debtor (as opposed to Cueva/Molica) to vacate the Chatsworth Property by noon on 12/17.

Molica was and is very sick, so the failure to allow the appraiser access on 12/12 and 12/13 and the failure to vacate on 12/17 should keep that in mind. However, after the Court ruled on 12/18, the appraiser was promptly granted access.

Cueva believed that the automatic stay of the chapter 13 case precluded the Trustee from pursuing the sale and obtaining possession of the property and thus her conduct was justified.

Cueva and the Debtor had a justified belief that the setting of the Stay Motion for 12/18 meant that they did not have to vacate Chatsworth on 12/17.

The Debtor and Cueva did not violate the Compromise Order by opposing the Sale Order due to the filing of the chapter 13 case. Nor did they do so by appealing the Sale Order based on issues that they believe to be valid. Requiring that they "cooperate fully with Trustee's marketing and sale of the Chatsworth Property, subject to the Court's approval" cannot be read as a waiver of their rights to oppose the Sale Order. The automatic stay cannot be waived in advance.

This OSC does not apply to Molica.

Reply

Although set forth in the application for this OSC, the Trustee again lays out the facts that support her contention of bad behaviour by Cueva and Molica - living cost-free in Chatsworth for 6 years before the Trustee was appointed (thus avoiding \$500,000 in mortgage payments); remaining in the property without payments for another year after the Trustee was appointed; interfering with the sale of estate property; negotiating in bad faith to purchase the property; increasing the estate's administrative expenses. They benefitted by \$85,000 by this 13-month extension after the Trustee was appointed. After a buyer was obtained, they would not vacate the property

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and would not allow access to the Trustee's appraiser. The Trustee was forced to petition the Court for an order to remove them, to which they responded by threatening the escrow and title officers with litigation pursuant to a bogus quitclaim deed.

The Trustee then lays out in detail the actions which interfered, delayed, and otherwise prejudiced the estate.

The Trustee states in her reply (filed on 1/22/19) that the sale has not yet closed due to the delays caused by Cueva and Molica. The Trustee is not sure that the short sale lender will agree to any further extensions if Cueva and Molica continue to block the sale by their contemptuous conduct.

As to the specific items in the OSC:

(1) refusal to provide access - Cueva did not act in good faith by failing to allow the appraiser access on 12/12 and 12/13. The Compromise Order required Cueva and the Debtor to cooperate with the Trustee's marketing and sale of the property. This included the appraisal appointment.

(2) refusal to vacate: they were to vacate by noon on 12/17/18, but Cueva and Molica refused to do so. They did not remove their personal property.

(3) violation of the Compromise Order by opposing the Sale Motion and filing a notice of appeal: These violated the provision of the Compromise Order requiring Cueva and the Debtor to cooperate fully with the Trustee's marketing and sale of the Chatsworth Property.

The Court has civil contempt power through 11 USC §105(a). Civil contempt occurs when a party "disobeys a specific and definite court order by failure to take all reasonable steps within the party's power to comply. The contempt 'need not be willful,' and there is no good faith exception to the requirement of obedience to a court order." *Go-Video v. Motion Picture Ass'n of America (In re Dual Deck Video Cassette Recorder Antitrust Litig.)*, 10 F.3d 693, 695 (9th Cir. 1993). A party must take all reasonable steps to comply with a court order. *Shuffler v. Heritage Bank*, 720 F.2d 1141, 1146-7 (9th Cir. 1983).

The Trustee has met her burden of proof in the application for the OSC and in the facts laid out in this reply. Now the burden of proof shifts to the contemnors and they have not met this. They have not put forth any evidence of an impossibility defense or of their inability to comply.

As to vacating the residence, Molica and Cueva may have moved out on 1/8, but they did not notify the Trustee and they left two inoperable vehicles. Thus the U.S. Marshal deputies appeared with a locksmith (cost

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\$3,000+ for the Marshals and \$1,146 for the locksmith). Cueva and Molica left the two cars and almost their entire personal property behind, and storage is likely to cost more than \$10,000 plus \$1,000 per month for insurance.

The Sale Order applies to all parties, including the Debtor. A corporation acts through its principals. Cueva and Molica claim to be equityholders, officers, and directors. Therefore they are responsible for the Debtor's compliance with the Compromise Order and the Sale Order.

There is no medical exception to the obligation to comply with a court order. There is also no evidence to verify the existence, extent, or duration of Molica's medical issues. Molica was fully engaged during the appraisal and was seen driving a car with Cueva as his passenger as well as walking around. They, in fact, have moved out and there is no showing that Molica's medical condition was an excuse for the delay.

The Chapter 13 filing was a procedural maneuver and not a good faith filing. They had no interest in the Chatsworth property, so the chapter 13 stay could not apply. Also, the automatic stay does not apply to the bankruptcy court where the debtor's bankruptcy is pending. *[Please note that I cannot tell where the quotation on p. 19-20 of the reply is from. It also appears to contain several mistakes as to the citations included - ie. according to Lexis, North Coast Village is at 135 B.R., not 132 and Maritime Elec. is at 959 F.3d, no 862.]*

Even if the stay could apply, the Court annulled it and dismissed the chapter 13 case.

There was no waiver of the Compromise Order. There was no right to waive and also because the cooperation was an obligation of the Order, the discussion of waiver does not apply.

The Debtor and Cueva had no standing to file an appeal of the Sale Order. There was no pecuniary interest of either in the property. There was no possibility of surplus.

The Court has the ability to impose civil contempt penalties, which must be either compensatory or designed to coerce compliance. The Trustee seeks the following compensatory sanctions:

Attorney's fees of no less than \$20,000 and increasing *[There does not appear to be any evidence to support this figure.]*

U.S. Marshal's fees of \$3,000+ subject to final invoice

Locksmith charge of \$1,146

Insurance of \$11,672.95 subject to increase

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Moving and storage of personal property of at least \$10,000, to be determined based on whether Cueva and Molica pay and arrange for their own movers per Court Order or whether statutory notice applies

Misc. costs for certified copies, etc. of \$351.62 subject to increase

Supplemental Declaration of Nancy Cueva

Ms. Cueva pro se filed a supplemental declaration on 1/25. She describes a potential sale to an Argentinian buyer that did not go through because the Trustee required certain things. She then talks about her attempt at a loan modification, which she asserts the Trustee interfered with, but is actually still pending. She states that up to 2015 she and her husband paid \$234,180 and also improvements of \$250,000.

As to the recent chapter 13, she asserts that she paid Jeffrey Hagen \$1,500 for his services, but he withdrew after he spoke with Ms. Zamora. Since they could not find another attorney on such short notice, they let the case be dismissed.

Cueva became ill and could not vacate the premises. On December 25 she was taken to the emergency department of West Hills Hospital for emergency surgery and her post-surgical care did not allow her to do any strenuous activity.

On January 3, U.S. Marshal Deputy Hugo Valdez trespassed and posted a notice to vacate that was defective because it did not attach the third page of the writ not the order attached to the writ. On January 8 they moved out. Deputy Valdez did not return. Cueva wanted to arrange to move the personal property, but Deputy Valdez never returned calls. On January 12 Cueva and Molica returned to pick up their mail and found 4 marshalls, a lock company, the realtor, and Zamora's assistant. None would tell them how to recover their personal property. Since then Cueva has called Zamora and filed a letter to her and to the Marshall, but not received an answer. Cueva refuses to pay the Marshall or attorney fees. Zamora has personal animosity against Cueva.

Analysis

Although not raised in the opposition, the OSC re: Contempt is on appeal (USDC CAC 2:19-cv-00120- DOC). Do I still have jurisdiction on this until the appeal is dealt with?

The sale has not closed. Is the Sale Order on appeal? If so, do I have

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jurisdiction on this OSC re: Contempt as to the Sale Order? However the
Compromise Order is not on appeal.

11 USC §105(a) gives the bankruptcy court the power to punish for civil contempt. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178 (9th Cir. 2003). Beyond that, there is an inherent power to do so. *Caldwell v. United Capital Corp. (In re Rainbow Magazine, Inc.)*, 77 F.3d 278, 284 (9th Cir. 1996).

Civil contempt involves sanctioning a person until s/he complies with an affirmative command - in this case complying with the Compromise Order and also with vacating the property, etc., which has been partially done but personal property was not removed by the alleged contemnors. Criminal contempt is punitive because the act of disobedience has been completed and the contemnor cannot now act to comply with the prior order:

Since there is no positive action to be taken (except dealing with the personal property that is in storage), this could fall into the area of criminal contempt. However, the Trustee is not seeking a determination of criminal contempt, but merely sanctions for the expenses incurred by the violation of the Orders.

Civil contempt may be used to compensate the aggrieved party even if the action by the contemnor can no longer be undone:

Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained. *Gompers v. Bucks Stove & Range Co., supra*, at 448, 449. Where compensation is intended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of complainant's actual loss, and his right, as a civil litigant, to the compensatory fine is dependent upon the outcome of the basic controversy. *United States v. United Mine Workers*, 330 U.S. 258, 303-304 (1947)

A contempt fine accordingly is considered civil and remedial if it either "coerces the defendant into compliance with the court's order, [or] . . . compensates the complainant for losses sustained." *United States v. Mine Workers*, 330 U.S. 258, 303-304, 91 L. Ed. 884, 67 S. Ct. 677 (1947). Where a fine is not compensatory, it is civil only if the contemnor is afforded an opportunity to purge. See *Penfield Co. of*

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Cal. v. SEC, 330 U.S. 585, 590, 91 L. Ed. 1117, 67 S. Ct. 918 (1947). Thus, a "flat, unconditional fine" totaling even as little as \$ 50 announced after a finding of contempt is criminal if the contemnor has no subsequent opportunity to reduce or avoid the fine through compliance. *Id.*, at 588.

Int'l Union v. Bagwell, 512 U.S. 821, 829 (1994)

Here the sanction would be compensatory since there is nothing left for Cueva and the Debtor to do (although they can reduce this by taking possession of their personal property). It appears that the proper result would be an order that Cueva pay the Trustee the sum necessary to compensate for the actions taken as a result of her contempt. Since the Trustee does not have counsel, the Court would need evidence of a proper amount to compensate the Trustee for her time and for incidental expenses. Then the Court must determine that Cueva has the ability to make the payment. There would be no such order as to the Debtor, since it owns nothing that is not property of the estate. While the Court has doubted Ms. Cueva's finances, she has never asserted that she did not have sufficient money to comply with the order to move. And she has hired counsel and paid him a retainer of \$20,000 and agreed to an hourly rate of \$650. (dkt. 324). Thus her ability to pay is not in issue.

One of the issues is who is bound by the Compromise Order and who is bound by the Sale Order. The Compromise Order (dkt. 226) approves the motion to compromise (dkt. 217). The compromise letter states that it is "reached between you ('Cueva') and me, as chapter 7 trustee ('Trustee')...." (dkt. 217, p. 15). The Order approving the revised compromise states that it is between "Trustee and Nancy Cueva ('Cueva'), for the benefit of Debtor...." (dkt. 226). Ms. Zamora prepared both of these documents. The Sale Order (dkt. 302, p. 9) specifically provides in ¶¶N that "Nancy Cueva and Julio Molica (collectively 'Residents'), shall vacate the Real Property, without causing damage, no later than 12:00 noon on December 17, 2018, consistent with that certain Order Approving Revised Compromise...."

As to the assertion that she did not comply with the order to vacate by 12/17 because of the delay in the hearing on a stay until 12/18, it is clear that Cueva did not intend to vacate at any time and that she was doing all that she could to block the sale from consummating. See for example her recording of a quitclaim deed on 12/26/18 (dkt. 347, 349).

As to the issue of her belief that she was protected by the automatic stay

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of the new chapter 13 - the mere act of filing the chapter 13 was solely for the purpose of interfering with the sale and as a basis not to vacate the property. Concerning whether Jeffrey Hagen was her attorney in the chapter 13, she asserts that she hired him and paid him \$1,500, but provides no receipt for payment, he never appeared, the petition was filed pro se, and there is no declaration by Mr. Hagen.

Beyond that, she attempted to keep that case open by lying to the Court [though not under oath] and she had her attorney state that Cueva had timely filed a request to extend time to file schedules in that case [transcript of 12/18/18 hearing, dkt. 341] The document was never located in the clerk's office and thus the court dismissed the case. Although Cueva was given an opportunity to vacate the dismissal if she could present a conformed copy of her application to extend, she did not do so. The Court finds that no such application for extension was ever filed. Id. p. 62-63. Also, on December 4, Cueva represented to the Court that Jeffrey Hagen represented her in her chapter 13 case, but this was not true.

All of these efforts were undertaken so as to prevent the Trustee from completing the sale. They were obstructionist and not in good faith.

The Trustee has laid out sufficient facts to meet her burden that the actions by Cueva, Molica, and the Debtor were an intentional violation of prior orders of this Court - specifically Sale Order, though there is a question as to who was bound by the Compromise Order. The Trustee has met her burden.

As to the assertion that all of this was due to the poor health of Molica - the Court does not accept that as an excuse. Beyond the fact that the Compromise Order was many months before the Sale Order and thus Molica/Cueva had more than sufficient time to prepare to move, the declaration of Behnaz Tavakoli provides evidence that Molica was not unable to physically move out - he was able to walk and to drive. Even had he been immobile, this would not be an excuse since he had months to prepare.

Concerning Cueva's emergency surgery, apparently this occurred on or after December 25, a full week after the time to remove themselves from the property. There is also no evidence that Cueva and/or Molica made any preparations to move themselves or their furniture. They are or were living in a hotel and not an apartment, there is no indication that they hired a moving company or arranged for storage. It is obvious to the Court that they had no intention to move until and unless the Marshall took action. They had months to make preparations and their health issues are not an excuse.

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The Court also finds it disturbing that Ms. Cueva presented an entirely new story of the delay in her supplemental opposition, since all of these assertions occurred before the Debtor's attorney filed the initial opposition.

As to the loan modification, that time has passed. The debtor (estate) owns the real property, not Cueva/Molica. They have no rights left to modify and their attempts may be interfering with the Sale Order and may be a continuing contempt.

As to the personal property, there needs to be an agreement as to how it is handled - remaining in storage, who pays the storage fees, etc.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Real Estate Short Sales, Inc.

Represented By
Daniel J McCarthy

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:16-01166 Barlava et al v. Yashouafar

#5.00 Status Conference re: Complaint

fr. 2/21/17, 3/28/17; 5/30/17; 5/30/17,
10/3/17, 1/23/18; 4/17/18; 8/7/18; 8/21/18; 2/26/19

Docket 1

Tentative Ruling:

On 4/2/19 Barlava filed a unilateral status report. The two state court actions are stayed. Barlava v. Roosevelt Loftrs has a status conference on 6/25/19; Carla Ridge LLC v. Milbank Holdings Corp has a status conference on 8/27/19. The Trustee has not notified Barlava of any likelihood of objection to the claim..

Continue without appearance to August 20, 2019 at 10:00 a.m.

prior tentative ruling (8/21/18)

A stipulation to stay the action was filed on 8/3/18. Basically, there is a question whether the Plaintiffs would be able to collect on their claims even if they win a non-dischargeable judgment. So rather than continue to battle over discovery, the parties agree to stay this adversary complaint until the Trustee decides whether to challenge the Plaintiffs' claims. As I understand it, to the extent that the Trustee does not object to a claim or a portion of a claim, the claim or part thereof, will be dismissed from the §523 adversary and the claimant will accept whatever (if anything) it receives through the bankruptcy case. Also, to the extent that any claim is adjudicated by the Court or settled by the Plaintiffs, those claims will be dismissed from this §523 action. If the Trustee objects to a claim, the stay will be lifted and ex parte application to the Court and discovery will be completed within 6 months after the stay is lifted. While the Plaintiff cannot seek to lift the stay prematurely, the Defendant can do so at any time through an application to the Court.

This will be approved. So that the Court will not drop this case from the calendar, the status conference is continued without appearance to February

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CONT... **Solyman Yashouafar**
12, 2019 at 10:00 a.m.

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prior tentative ruling (4/17/18)

On 4/12/18 the Plaintiff filed a unilateral status report. Apparently there is a motion to compel that is being prepared and is ready for filing, but has not been filed as of 4/12/18. When will that be set for hearing?

prior tentative ruling (1/23/18)

The parties filed unilateral status reports. In the future, please try to file a joint status report. Plaintiffs anticipates a 2 week trial starting after June and wants this matter sent to mediation. Plaintiffs consent to this court entering a final judgment. Defendant, on the other hand, expects to complete discovery at the end of June and wants trial after 11/15/18. He expects a 3-5 day trial. Defendant is not interested in mediation, but also consents to this court entering a final judgment.

Let's talk about what can be done to try to resolve this matter. You are talking about expensive discovery and an expensive trial.

prior tentative ruling (10/3/17)

Nothing further received as of 9/28/17. What is the status of discovery?

prior tentative ruling (5/30/17)

Per the joint status report filed 5/11/17, set a discovery cutoff date of 9/11/17. The parties agree to do their initial disclosures by 6/5/17. There may be some objections to discovery.

Continue without appearance to 10/3/17 at 10:00 a.m.

prior tentative ruling (3/28/17)

The parties stipulated that Massoud has until 2/17/17 to respond to the complaint. On 2/17, Massoud filed his answer. No status report has been filed as of 3/26.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By

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Chapter 11

Massoud Aaron Yashouafar

Mark E Goodfriend

Represented By
C John M Melissinos
Mark M Sharf

Defendant(s):

Massoud Aaron Yashouafar

Pro Se

Plaintiff(s):

Simon Barlava

Represented By
Andrew V Jablon

Morris Barlava

Represented By
Andrew V Jablon

Nasser Barlava

Represented By
Andrew V Jablon

Kefayat Barlava

Represented By
Andrew V Jablon

Figueroa Tower II, LP

Represented By
Andrew V Jablon

First National Buildings II, LLC

Represented By
Andrew V Jablon

Carla Ridge, LLC

Represented By
Andrew V Jablon

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

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1:16-12255 Solyman Yashouafar

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#6.00 Status Conference re: Chapter 11 case

fr. 9/1/16(xfr from Judge Tighe's calendar), 9/27/16,
10/11/16; 10/26/16; 11/15/16, 12/6/16, 3/28/16,
4/4/17; 5/30/17, 8/29/17, 9/19/17, 1/23/18, 5/1/18,
9/18/18; 1/8/19

Docket 1

Tentative Ruling:

Per the status report filed on 3/28/19, Judge Tighe ruled in favor of the Trustee on the Elkwood summary judgment motion. The defendants disputed that ruling and it is under submission. UST reports are current.

Continue without appearance to July 16, 2019 at 10:00 a.m.

prior tentative ruling (1/8/19):

Per the status report filed on 12/18, the Elkwood motions for summary judgment are being heard by Judge Tighe and are under submission. In the meantime, the Trustee is continuing to administer these cases. The next hearing on the MSJs is 1/25.

Continue without appearance to 4/16/19 at 10:00 a.m.

prior tentative ruling (9/18/18)

PLEASE NOTE THAT ALTHOUGH THE ELKWOOD ADVERSARY PROCEEDING WAS TRANSFERRED TO JUDGE TIGHE, I AM CONTINUING TO HANDLE ALL OTHER YASHOUAFAR MATTERS.

No status report received as of 9/16/18.

prior tentative ruling (1/23/18)

Per the status report filed on 1/16, there is a motion for summary judgment as to the JCBL Trust, set for hearing on 2/13/18 at 10:00 a.m. As to the Elkwood Associates adversary proceeding, Elkwood and Fieldbrook filed a motion to

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CONT... Solyman Yashouafar

Chapter 11

dismiss the second amended complaint, which is set for hearing on 2/27. The motion to withdraw the reference is still pending before Judge Walter. The Trustee is current with the OUST requirements.

Continue without appearance to May 1, 2018 at 10:00 a.m.

prior tentative ruling (/19/17)

On 9/6/17 the Trustee filed his status report. The Trustee is continuing to collect information about the Debtors and their estates.

The JCBL Trust is the subject of an adversary proceeding as to whether it is property of the estate. The Trustee expects to resolve this through a motion for summary judgment. [17-ap-01050 - status conference set on 10/17]

The settlement motion with the Abselets is pending.

The motion by defendants to dismiss the Elkwood adversary proceeding is pending [17-ap-01040 - cont. 10/3/17]

The Trustee is in compliance with OUST reporting requirements.

Continue without appearance to 1/23/18 at 10:00 a.m.

prior tentative ruling (5/30/17)

Per the Trustee's status report filed on 5/15/17, the Oklahoma action is proceeding and there is a status conference on 6/15/17. The Roosevelt Lofts proceeds are being held as various parties dispute ownership. There is a status conference in this court on that set for 7/11/17. The Trustee wants the Roosevelt Lofts' counsel to continue to hold the excess funds.

The Trustee filed 17-ap-01027 to determine the Debtor's estates' interest in the RLI stock. Abselet filed a motion to withdraw the reference, which is set for hearing in the district court on 5/22. Abselet's motion to dismiss is set for 6/27 in this court. The Trustee and Abselet have set a one day mediation in front of retired Judge Goldberg for 6/3.

Massoud's brother-in-law foreclosed on the Beverly Hills homes of Massoud and of Solyman and sold Solyman's for a substantial profit and rented Massoud's back to him at \$25,000/mo for two years. Massoud never paid any rent and the lease has expired. The Trustee filed 17-ap-1040 seeking quiet title to the Rexford home and to avoid the foreclosures of both homes.

Discovery is continuing in all matters. The Trustee requests a further

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 16, 2019

Hearing Room 303

10:00 AM

CONT... Solyman Yashouafar
status conference in 90 days.

Chapter 11

It is probably wise to have appearances (in person or on the phone) on 5/30, but this will be continued to an agreeable date in August.

Party Information

Debtor(s):

Solyman Yashouafar

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 16, 2019

Hearing Room 303

10:00 AM

1:16-12408 Massoud Aron Yashouafar

Chapter 11

#7.00 Status Conference re: chapter 11 case

fr. 9/27/16, 10/25/16; 10/26/16; 11/15/16,
12/6/16, 3/28/17, 4/4/17; 5/30/17, 8/29/17,
9/19/17, 1/23/18, 5/1/18, 9/18/18; 1/8/19

Docket 1

Tentative Ruling:

PLEASE NOTE THAT ALTHOUGH THE ELKWOOD ADVERSARY
PROCEEDING WAS TRANSFERRED TO JUDGE TIGHE, I AM
CONTINUING TO HANDLE ALL OTHER YASHOUAFAR MATTERS.

This case is being jointly administered with 16-12255. See calendar #6.

Party Information

Debtor(s):

Massoud Aron Yashouafar

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Monday, April 29, 2019

Hearing Room 303

11:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#1.00 Motion to Continue Hearing On
(related documents 246 Pre Trial Stipulation)
Continue Trial and Related Deadlines

Docket 263

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Glen E Pyle	Pro Se
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Defendant(s):

Glen E Pyle	Represented By Raymond H. Aver
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Sweetwater Management Company	Pro Se
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Glen E Pyle Irrevocable Trust	Represented By Raymond H. Aver
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Plaintiff(s):

Marc H Berry	Represented By Marc Berry
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Trustee(s):

Amy L Goldman (TR)	Represented By Amy L Goldman Amy L Goldman (TR) Leonard Pena
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 30, 2019

Hearing Room 303

9:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#1.00 Trial

re: complaint
to set aside or annul fraudulent conveyances
alter ego and for damages

fr. 4/27/11, 6/15/11, 10/4/11, 1/24/12, 4/10/12, 5/29/12,
6/19/12, 9/11/12, 10/2/12, 11/6/12, 3/19/13, 6/4/13, 8/27/13,
11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15;
1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17,
2/21/17, 3/28/17, 5/30/17; 7/25/17; 11/14/17; 2/27/18; 4/17/18,
6/26/18, 9/25/18; 12/18/18, 1/29/19; 2/12/19

Docket 1

***** VACATED *****

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The trial estimate is between two and four days. Here are some possible dates. Counsel need to work these out:

the week of March 25-29
the week of April 8-12
the week of April 15-19
the week of April 29-May 3

Some dates during each of these weeks will be excluded due to my motion calendars and the possibility that there will not be a courtroom available. When you are told me which week(s) work for you. I can set the exact dates. BTW, I do not believe that this trial will take more than three days and may well be over in two days.

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 30, 2019

Hearing Room 303

9:00 AM

CONT... Glen E Pyle

Chapter 7

Debtor(s):

Glen E Pyle

Pro Se

Defendant(s):

Glen E Pyle

Represented By
Raymond H. Aver

Sweetwater Management Company

Pro Se

Glen E Pyle Irrevocable Trust

Represented By
Raymond H. Aver

Plaintiff(s):

Marc H Berry

Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Tuesday, April 30, 2019

Hearing Room 302

9:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

#2.00 Plaintiff's motion for order compelling responses to discovery

fr. 1/29/19; 3/26/19

Docket 101

***** VACATED *****

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Thank you, Mr. King, for starting to use our electronic filing system.

Per the declaration filed on 3/22, Mr. Pyle did not comply with my order and no documents were delivered by 3/1. I believe that it is time for significant sanctions under Federal Rule of Civil Procedure 37(b)(2), incorporated into Federal Rule of Bankruptcy Procedure 7037. Thus, I am considering terminating sanctions, which means that Mr. Pyle cannot put on any evidence in support of a defense. Mr. King will still have to present his case-in-chief and I would allow Mr. Pyle to examine those witnesses, but not to testify (except as a witness for Mr. King, if he is called) or to present any witnesses or evidence on his own behalf. We need to talk about this to see if Mr. King will have sufficient evidence without this discovery to present his prima-facie case. Other sanctions are possible - we can discuss this at the hearing.

prior tentative ruling (1/29/19)

Plaintiff filed this motion to compel responses to discovery and for sanctions. Given Mr. Pyle's history of non-cooperation in the Berry v. Pyle case, the movant does not want to spend the time or money with obtaining an order compelling responses, since this would be a waste of time.

On 11/16/18, Pyle was served with a Demand for Identification, Production and Inspection of Documents and Other Tangible Things (the Demand), with production due on 12/17/18. There has been no response.

The materials sought are to be used to show that Pyle and his Trust

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Tuesday, April 30, 2019

Hearing Room 302

9:00 AM

CONT...

Glen E Pyle

Chapter 7

actively engaged in fraudulent conduct toward Campbell, his other creditors, and the Court. They deal with deeds and conveyances, property tax records, credit applications, loans, insurance policies, vehicles, etc.

Since there was no production, the depositions scheduled for 12/27/18 was taken off calendar.

The Movant requests sanctions under California Law. Given the repeat nature of Pyle's non-cooperation in the Berry case, Movant seeks terminating sanctions. *Liberty Mut. Fire Ins. Co. v. LcL Administrators, Inc.*, 163 CA4th 1093, 1106 (2008). If not, he seeks issue and evidence sanctions. These might include deeming the promissory note (which is the subject of the stte court judgment) to be valid against Pyle and his trust and that it was fraudulently obtained against Campbell. The Court can also deem the Pyle Irrevocable Trust to be the alter ego of Glen Pyle individually and prohibit any evidence to the contrary. Pyle can also be prohibited from introducing any evidence at trial contradicting his fraudulent intent as to Campbell and other creditors. Monetary sanctions would total \$4,462.50.

Although Pyle does not deserve the opportunity to respond to the discovery, if the Court allows that it should be without objections and delivered to Counsel's office within 21 days of the Order. A deposition should be ordered to take place within 10 days of delivery of the documents to Counsel.

Opposition

Improper service of the discovery request and also of this motion. Only Mr. Aver was served, not the Debtor. Plaintiff was only authorized to serve Mr. Aver with discovery documents, not all documents including this request for sanctions.

The deposition set for 12/27 was continued by Plaintiff and no date has been set. There has been no meet and confer.

NO REPLY HAS BEEN RECEIVED AS OF 1/28 at 10:30 a.m..

Proposed Ruling:

Early in this case, I determined that all discovery in either case could be used in both cases. In particularl, I believe that Mr. Campbell or his earlier counsel attended depositions of Mr. Pyle. I don't recall if there was a specific order or it was just stated at a hearing. But that is and was my intent and all

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Tuesday, April 30, 2019

Hearing Room 302

9:00 AM

CONT...

Glen E Pyle

Chapter 7

parties were aware of it. Thus, before determining what documents, etc. are to be produced and what examination is to take place, Mr. King needs to review the fairly massive discovery in the *Berry v. Pyle* case. I believe that there were three deposition sessions there.

As to service, the reason for sending things to Mr. Aver is because of the difficulties with serving Mr. Pyle, who stated that he is not receiving his mail. He did receive this motion in time to respond, so those objections are overruled. To the extent that there needs to be an agreement or order as to how to serve in the future, let's get that on the record at the hearing.

As to the meet and confer - this is not needed given the prior actions of Mr. Pyle, who simply does not carry-through.

Monetary sanctions have not been effective in this case. So we can discuss what will work if there are discovery abuses.

Mr. King cites only to California law as to discovery sanctions. That is not useable in this court. Please review FRCP 37 (incorporated into FRBP 7037). Look at Rule 37(a)(5); (b)(2).

Party Information

Debtor(s):

Glen E Pyle

Pro Se

Defendant(s):

Glen Pyle

Pro Se

Plaintiff(s):

Ian Campbell

Represented By
Barry P King

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 30, 2019

Hearing Room 303

9:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

#3.00 Status conference re: Third Amended complaint for nondischargeability and/or to deny Bankruptcy Discharge; Alter Ego; and for Damages

fr. 5/11/11, 6/22/11, 10/4/11, 1/24/12, 2/14/12
4/24/12, 6/19/12, 9/11/12, 10/2/12, 11/6/12,
2/12/13, 3/19/13, 8/27/13, 8/27/13, 11/19/13,
2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15; 5/12/15; 6/2/15, 9/1/15,
9/8/15, 11/17/15; 1/12/16, 3/1/16, 6/7/16,
8/2/16, 9/27/16, 10/11/16, 1/17/17, 2/21/17,
3/28/17, 1/14/17, 12/19/17, 1/23/18, 3/27/18,
7/17/18, 8/21/18, 9/25/18, 11/6/18; 12/18/18; 1/29/19
3/26/19

Docket 111

***** VACATED *****

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

A third amended complaint was filed on 2/20/19. No response has been filed as of 3/22. The response was due on or about 3/13.

prior tentative ruling (1/29/19)

The case is now proceeding. Continue to a future date. HOWEVER, MR. KING SINCE THIS IS AN ACTIVELY LITIGATED CASE, PLEASE SIGN UP FOR CM/ECF ACCESS TO OUR COURT AND TO USE LOU (LODGED ORDER UPLOAD). See Court Manual Sec. 3.1, p. 3-3 and LBR 5005-4.

prior tentative ruling (7/17/18)

The order granting relief from the automatic stay was entered on 1/30/18. On 3/6

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 30, 2019

Hearing Room 303

9:00 AM

CONT...

Glen E Pyle

Chapter 7

Mr. Campbell appeared in Court and wanted to know about the order. He had not been served with a copy of the order - our fault. I directed him to my law clerk, but he left without seeing her. On March 1, 2018, Judge Hammock continued his OSC re: Dismissal (BC416442) to July 5 so that Campbell could seek a judgment (he already has a default) on declaration. As soon as he has obtained his judgment, I will be ready to proceed. When will he be filing his declaration, etc. in the Superior Court? Should this status conference be continued until after July 5 or can we proceed before that?

prior tentative ruling (1/23/18)

Mr. Campbell has filed the motion for relief from stay to complete the superior court case. Continue this status conference to March 27, 2018 at 9:00 a.m. to allow him to obtain his judgment in the superior court.

prior tentative ruling (12/19/17)

I have been in contact with Judge. Hammock of the Superior Court. He advises me that all that is left to do in his case is for Mr. Campbell to file a motion for default judgment. The automatic stay is preventing this.

To move that case forward, Mr. Campbell is to file a motion in this court for relief from the automatic stay. This is to be filed and served no later than December 26. It is to be served by mail and by email on Mr. Pyle. The hearing will be on January 23, 2018 at 10:00 a.m. in courtroom 303. Mr. Campbell is to use the mandatory court form: F 4001-1.RFS.NONBK.MOTION. This is available on the Court website at www.cacb.uscourts.gov/forms/local_bankruptcy_rules_forms. Or you can obtain a copy at the filing window in the clerk's office.

prior tentative ruling (11/14/17)

The Court advised Mr. Campbell of the continuance of the Berry v. Pyle case. He does wish to appear on 11/14. The Court has called Mr. Aver's office and asked them to contact Mr. Pyle (who is pro se in this adversary proceeding) to advise him that the hearing on 11/14 is going forward and that Mr. Pyle is to appear on the phone or in person and instruct him on how to use Court Call. The Court was notified that he also wishes to appear.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 30, 2019

Hearing Room 303

9:00 AM

CONT... Glen E Pyle

Chapter 7

What is the status of the state court matter?

prior tentative ruling (3/28/17)

This adversary proceeding has been trailing the Berry v. Pyle one, but it has some different issues. How does Mr. Campbell wish to proceed?

prior tentative ruling (1/17/17)

I believe that Mr. Campbell was trying to obtain counsel. It is best to keep this together with Berry v. Pyle. Therefore continue it without appearance to 2/21/17 at 10:00 a.m. when I have a hearing on the motion for summary judgment in the Berry v. Pyle case.

prior tentative ruling (8/2/16)

Mr. Campbell is now representing himself. How does he wish to proceed to get this ready for trial?

prior tentative ruling (3/1/16)

Per the status report filed by Plaintiff on 2/23/16, discovery is not complete. Plaintiff wants to take Mr. Pyle's deposition and audit the records.

This was trailing the Berry v. Pyle matter, but given Mr. Berry's health, I think that it should go forward alone and complete the discovery. Feel free to appear by phone at the status conference and let's get some dates to complete discovery. Please advise Mr. Pyle, who is not represented by counsel in this case, to appear in person or by phone.

prior tentative ruling (1/12/16)

This has nothing to do with Mr. Berry's health and Mr. Pyle is not represented by counsel. The 1/5/16 status report said that plaintiff will be ready for trial on 2/1. He figures 2-3 days. Let's set a trial date. Possible dates when there is a courtroom available are Feb. 16-17 and Mar. 23-24.

prior tentative ruling (9/8/15)

This has been trailing Berry v. Pyle. On 8/18/18 Plaintiff filed a status report. He is ready to go to trial in February 2016. He needs another 4-6 months to

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 30, 2019

Hearing Room 303

9:00 AM

CONT...

Glen E Pyle

Chapter 7

complete discovery, which includes Mr. Pyle's deposition and an audit of the records.

In htis case Mr. Pyle is not represented by counsel. So let's get a deposition date and move forward.

prior tentative ruling (3/10/15)

Mediation set for 3/24/15. Continue without appearance to 5/12/15 at 1:00 a.m

prior tentative ruling (10/7/14)

The mediation has been delayed. Continue without appearance to 12/16/14 at 10:00 a.m.

prior tentative ruling (8/5/14)

The Berry v. Pyle matter is scheduled for a settlement conference before Judge Ryan on 9/22/14. Is this case part of the settlement conference? If so, continue without appearance to 10/7/14 at 10:00 a.m. If not, the status report filed by Plaintiff on 7/21 requests mediation. How do you wish to proceed?

prior tentative ruling (4/22/14)

On 4/8/14, counsel for plaintiff filed a status report. He believes that he will be ready for trial in 6 months. There is still discovery to be done, including completing Debtor's deposition. A mediation will take place in May or June.

Continue without appearance to August 5, 2014 at 10:00 a.m.

prior tentative ruling (3/11/14)

This complaint is both under §523 and §727 as well as §§547 and 548. This has been trailing the Berry v. Pyle adversary proceeding. Mr. Mendoza attended the 2/10/14 deposition of Mr. Pyle, which is a joint deposition in both this case and the Berry v. Pyle case. Pyle is not represented by counsel in this adversary proceeding.

Mr. Mendoza, should this continue to trail the Berry adversary or are you ready to go forward on your own?

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 30, 2019

Hearing Room 303

9:00 AM

CONT... **Glen E Pyle**

Chapter 7

prior tentative ruling (4/24)

The parties have stipulated that plaintiff will have until 4/20 to file a Second Amended Complaint. A second amended complaint was filed on 4/20. Per the status report, the parties think that they need 4-5 months to complete discovery. The parties wish to mediate. Plaintiff has no co-counsel and may wish to propound more discovery and seek relief from stay as to certain trust assets.

Continue the status conference without appearance to June 19 at 10:00 a.m.

This will allow sufficient time for there to be a response to the second amended complaint and for new co-counsel to move forward. In the meantime, please complete a mediation order since it often takes weeks to schedule a mediation.

prior tentative ruling (2/14)

Per the status report filed on 1/24, the parties feel that they will not be ready for trial until late in 2012. Set a discovery cutoff date of 7/30/12. Although neither party wants mediation at this time, plaintiff's counsel is willing to attend mediation.

As of 2/12 there is no response to the amended complaint. What is the status of that? When do the parties think that mediation might be beneficial?

prior tentative ruling (1/24)

An answer was filed on 7/15. Plaintiff filed an amended complaint on 1/12, but this was done without leave to amend.

Counsel, in the future please confer with knowledgeable bankruptcy counsel before filing things in bankruptcy court. Your original cover sheet indicated that this was only a complaint to recover money under §§547 and 548. That is incorrect. The original complaint is under §523 and §727 (although that is not mentioned on the caption) and may include §§547 and 548 (although the uploaded copy has some pages missing, so I can't tell for sure). The amended complaint has all of these claims for relief. The court picked up that there was a §727 claim, but we should not have to review the complaint to do this.

prior tentative ruling (10/4)

Nothing further received as of 10/2.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 30, 2019

Hearing Room 303

9:00 AM

CONT... **Glen E Pyle**

Chapter 7

prior tentative ruling (6/22)

As of 5/9 there has been no return on service on the summons. The plaintiff has counsel. There is no status report as of 5/8. If there is no appearance at the 5/11 hearing, I will issue and OSC re: dismissal for failure to prosecute.

Party Information

Debtor(s):

Glen E Pyle	Pro Se
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Defendant(s):

Glen Pyle	Pro Se
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Plaintiff(s):

Ian Campbell	Represented By Barry P King
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Trustee(s):

Amy L Goldman (TR)	Represented By Amy L Goldman Amy L Goldman (TR) Leonard Pena
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Wednesday, May 1, 2019

Hearing Room 303

9:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#1.00 2nd day Trial

re: complaint
to set aside or annul fraudulent conveyances
alter ego and for damages

fr. 4/27/11, 6/15/11, 10/4/11, 1/24/12, 4/10/12, 5/29/12,
6/19/12, 9/11/12, 10/2/12, 11/6/12, 3/19/13, 6/4/13, 8/27/13,
11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15;
1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17,
2/21/17, 3/28/17, 5/30/17; 7/25/17; 11/14/17; 2/27/18; 4/17/18,
6/26/18, 9/25/18; 12/18/18, 1/29/19; 2/12/19

Docket 1

***** VACATED *****

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The trial estimate is between two and four days. Here are some possible dates. Counsel need to work these out:

the week of March 25-29
the week of April 8-12
the week of April 15-19
the week of April 29-May 3

Some dates during each of these weeks will be excluded due to my motion calendars and the possibility that there will not be a courtroom available. When you are told me which week(s) work for you. I can set the exact dates. BTW, I do not believe that this trial will take more than three days and may well be over in two days.

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Wednesday, May 1, 2019

Hearing Room 303

9:00 AM

CONT... Glen E Pyle

Chapter 7

Debtor(s):

Glen E Pyle

Pro Se

Defendant(s):

Glen E Pyle

Represented By
Raymond H. Aver

Sweetwater Management Company

Pro Se

Glen E Pyle Irrevocable Trust

Represented By
Raymond H. Aver

Plaintiff(s):

Marc H Berry

Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Thursday, May 2, 2019

Hearing Room 303

9:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#1.00 3rd day Trial

re: complaint
to set aside or annul fraudulent conveyances
alter ego and for damages

fr. 4/27/11, 6/15/11, 10/4/11, 1/24/12, 4/10/12, 5/29/12,
6/19/12, 9/11/12, 10/2/12, 11/6/12, 3/19/13, 6/4/13, 8/27/13,
11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15;
1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17,
2/21/17, 3/28/17, 5/30/17; 7/25/17; 11/14/17; 2/27/18; 4/17/18,
6/26/18, 9/25/18; 12/18/18, 1/29/19; 2/12/19

Docket 1

***** VACATED *****

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The trial estimate is between two and four days. Here are some possible dates. Counsel need to work these out:

the week of March 25-29
the week of April 8-12
the week of April 15-19
the week of April 29-May 3

Some dates during each of these weeks will be excluded due to my motion calendars and the possibility that there will not be a courtroom available. When you are told me which week(s) work for you. I can set the exact dates. BTW, I do not believe that this trial will take more than three days and may well be over in two days.

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Thursday, May 2, 2019

Hearing Room 303

9:00 AM

CONT... Glen E Pyle

Chapter 7

Debtor(s):

Glen E Pyle

Pro Se

Defendant(s):

Glen E Pyle

Represented By
Raymond H. Aver

Sweetwater Management Company

Pro Se

Glen E Pyle Irrevocable Trust

Represented By
Raymond H. Aver

Plaintiff(s):

Marc H Berry

Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, May 7, 2019

Hearing Room 303

10:00 AM

1:09-23807 Shellie Melissa Halper

Chapter 7

Adv#: 1:19-01021 Halper v. Jerome Bennett Friedman, an individual et al

- #1.00** Status Conference re: Complaint for 1) Fraudulent Concealment; 2) Fraudulent Misrepresentation; 3) Constructive Fraud; 4) Breach of Fiduciary Duty; 5) Aiding and Abetting Breach of Fiduciary Duty 6) Fraud on the court; 7) Declaratory Relief.

Docket 1

Tentative Ruling:

Thank you for the joint status report. Continue the status conference without appearance to June 11, 2019 at 1:30 p.m. No further status report is needed for that hearing, which will coincide with other motions set for that date.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Defendant(s):

Jerome Bennett Friedman, an	Pro Se
Friedman Law Group, P.C.	Pro Se
Twin Palms Lending Group, LLC, a	Pro Se
Solomon Cohen, an individual	Pro Se
Does 1 Through 25, Inclusive	Pro Se

Plaintiff(s):

Shellie Melissa Halper

Represented By
Michelangelo Tatone

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, May 7, 2019

Hearing Room 303

10:00 AM

CONT... Shellie Melissa Halper

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, May 7, 2019

Hearing Room 303

10:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#2.00 Motion to release undisputed homestead funds.

Docket 511

Tentative Ruling:

The Trustee is holding sufficient funds to release the \$75,000 undisputed homestead amount to Mr. Neff. Neff requests that he do so in that there has been no objection to this basic homestead exemption.

DeNoce wants only \$37,500 to be released. He wants the Trustee to hold back enough to cover the fees and costs in the dispute on the enhanced objection as well as enough to cover the costs to the estate of continued administration. [In his email on this he asserts that he is entitled to be paid his fees and costs, but in the written objection he does not claim personal reimbursement.]

I see no reason to require a holdback. There is no basis upon which Neff would be entitled to attorney fees and/or costs and certainly not from exempt funds. If he is somehow entitled to fees and costs as an administrative claim, that is against property of the estate. The \$75,000 which is exempt is not property of the estate in that no one timely objected to that amount - only to the enhanced objection.

Grant the motion. The Trustee is to release to the debtor the basic \$75,000 homestead objection.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Tuesday, May 7, 2019

Hearing Room 302

10:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#3.00 Continued Status Conference as to continued Trial

fr. 8/17/18, 8/27/18, 1/30/19; 2/12/19; 2/25/19; 3/4/19
4/15/19

Docket 429

Tentative Ruling:

Mr. DeNoce has filed a document as to the matters that were admitted into evidence. See tentative ruling on motion to close evidence and issue final ruling.

prior tentative ruling (4/15/19):

Dr. Hersel will give the balance of his testimony on 4/15. He has advised by email that he has already produced all of the records in his possession.

Counsel are to appear at 12:30 to deal with procedural issues.

As to the objections filed by Mr. Kwasigroch (dkt. 508), here are my rulings (by objection number):

Overruled - #1,4, 5, 10, 12

Ruled on at 4/11 continued trial and the same rulings apply to Dr. Hetsel's testimony - #2, 3, 6, 7, 8, 9

As to #11 and #13 - this is not an objection but is closing argument and will be heard at that time if Debtor wishes to raise it.

THE FOLLOWING WILL BE DEALT WITH AFTER DR. HERSEL HAS COMPLETED HIS TESTIMONY

As to the Objection and Statement, which go to the issue of whether Mr. Neff will sign a release for the SSA, DeNoce had received a disc from the SSA, but he reviewed it and found that the material was incomplete. He then destroyed the disc and neither sent them to Kwasigroch or sought instruction

**United States Bankruptcy Court
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Tuesday, May 7, 2019

Hearing Room 302

10:00 AM

CONT...

Ronald Alvin Neff

Chapter 7

from the Court. Although Neff had said that he would sign a new release (the old one having become stale through the passage of time), he has now changed his mind. He is not bound by his prior statement as DeNoce has not relied on it to his detriment. There are no actions that he could have taken and did not take. He is still allowed to hire his own psychiatrist to review the review report by Dr. Bilik and can appeal the denial of Dr. Bilik's testimony by the SSA.

It was DeNoce's decision to destroy the SSA records. Whether he read them in detail or not before he destroyed the disc is not known and will never be known for sure. But obviously he looked at what types of documents were included or he could not have decided that the file was "incomplete." If he believed that the SSA did not give him the full file, he had options at that time, but failed to proceed. There is no reason to believe that a new SSA production would be any different than the first one.

Kwasigroch raises the evidentiary issue of spoliation (which he incorrectly writes a spoilation). This is a presumption that the destruction of evidence relevant to the litigated issue shows that the evidence was unfavorable to that party. *Weinstein' Federal Evidence §301.06*. That does not apply in this case since the SSA file is even more accessible to Neff, who need merely request it. Thus, he has the ability to know what is in it and to produce it to the Court.

DeNoce was allowed to hire an independent psychiatrist to examine Neff as well as to hire another psychiatrist to review the Bilik report. He cancelled the examination of Neff and never sought to go forward with it. He will be allowed to hire an expert to review the Bilik report because Bilik cannot be called to testify, but there needs to be a time limit to do this. This case has dragged on a considerable length of time and it was incumbent on DeNoce to proceed without delay. If he is seeking to appeal that SSA decision, he can go forward with that, too, but I will not delay the hiring of a review psychiatrist any further. Both can proceed simultaneously.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, May 7, 2019

Hearing Room 302

10:00 AM

CONT... Ronald Alvin Neff

Chapter 7

Michael D Kwasigroch

Movant(s):

Douglas Denoce

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, May 7, 2019

Hearing Room 303

10:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#4.00 Application to close evidence and for final ruling

Docket 510

Tentative Ruling:

Because my tentative ruling uses footnotes, it will not transfer well to Ciao!
therefore I am sending it by email to the parties and putting it on the docket.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, May 7, 2019

Hearing Room 303

10:00 AM

1:16-11387 Real Estate Short Sales Inc

Chapter 7

#5.00 Motion for relief from stay

U.S. BANK NATIONAL ASSOC.

fr. 1/23/18, 2/27/18, 7/17/18, 9/18/18; 11/6/18; 12/18/18; 1/29/19

Docket 190

Tentative Ruling:

This property has been sold and is no longer property of the estate. Thus, this motion is moot. If there is no appearance or opposition, the Court will do an order that the motion is denied as moot.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Movant(s):

U.S. Bank National Association,

Represented By
Kristin A Zilberstein
Kelly M Raftery
Merdaud Jafarnia

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, May 7, 2019

Hearing Room 303

10:00 AM

1:16-11538 Majestic Air, Inc.

Chapter 11

#6.00 Status and Case Management Conference

fr. 8/4/16(xfr from Judge Tighe's calendar); 8/30/16,
9/27/16; 10/25/16; 11/15/16, 2/21/17, 5/16/17; 6/27/17,
8/29/17, 1/23/18; 6/19/18, 9/18/18; 12/4/18; 2/12/19

Docket 1

Tentative Ruling:

Objection to claims of Franklin Tan is set for hearing on 6/11. Continue this status conference without appearance to 6/11/19 at 1:30 p.m. No updated status report will be needed at that time.

prior tentative ruling (2/12/19)

Per the status report, the parties (LTP and the Debtor) have narrowed down the list of mediators and expect to schedule a mediation within the next 30 days. The sale of the building has been completed and is now owned by the Debtor's principal's children. The Debtor is continuing to make lease payments.

If there are no objections, continue without appearance to April 16, 2019 at 10:00 a.m.

prior tentative ruling (12/4/18)

Per the status report filed on 11/20, the remaining issues involve LTP. The parties are discussing mediation. If not, Debtor will file a objection to the LTP claim.

Continue without appearance to February 12, 2019 at 10:00 a.m.

prior tentative ruling (9/18)

Special counsel is being employed to resolve or litigate the LTP claim. This status conference will be continued.

prior tentative ruling (6/19/18)

Per the status report filed on 6/5, on 5/30/18 the California Court of

**United States Bankruptcy Court
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10:00 AM

CONT... Majestic Air, Inc.

Chapter 11

Appeal affirmed the decision of the Superior Court in the Ansett Aircraft v. Cue appeal, but remanded the case for further proceedings.

Continue without appearance to Sept. 18, 2018 at 10:00 a.m. so that the Ansett claim can be finalized.

prior tentative ruling (1/23/18)

There is a state court appeal pending. Continue without appearance to June 19, 2018 at 10:00 a.m.

prior tentative ruling (2/21/17)

Per the status report filed on 2/7/17, the LTP parts have been sold and Debtor has moved to its new, less expensive, location. The appeal with the California Court of Appeal as to LTP is continuing. The Debtor expects to file a disclosure statement within the next 60 days.

The Debtor filed a month-by-month comparison of actual revenue and expenses and budgeted revenue and expenses for November, December, and January. They show a slight net profit of \$1,500-\$2,200 per month.

If there is no objection, I will continue this without appearance to May 16, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, May 7, 2019

Hearing Room 303

10:00 AM

1:17-10853 Joseph Daniel Beam

Chapter 7

Adv#: 1:17-01046 Henderson v. Beam

#7.00 Status Conference Re:
Complaint for Fraudulent Activity in
Bankruptcy Case.

Docket 1

Tentative Ruling:

This arises out of a family law case. According to the Debtor's status report, the family law judge is requiring briefs as to marital debts and the proposed division between the parties. The family law trial setting conference is set for 6/12/19. In this court, the defendant estimates one hour to present his case-in-chief.

This is a §727 case to deny discharge and the family law division of property may not be relevant. The crux of the complaint is that the debtor (sometimes through his attorney) knowingly filed improper paperwork; that this was a careless and frivolous bankruptcy case meant to delay and frustrate the divorce proceedings; that debtor failed to notify creditors of "intention to file bankruptcy;" and that debtor failed to disclose his true income and assets. The complaint also specifies the following reasons to deny discharge as to what items are listed on or omitted from the schedules and statement of affairs:

- (1) He declared debts that were solely owed by plaintiff and are not community debts
- (2) He claimed to own no property - the complaint lists a series of personal property, particularly automation. It also specifies income received from a pre-petition art sale and money he removed from an education fund for their son. There is also a pension account that was not revealed.
- (3) There were unsecured debts that he did not disclose, specifically for a previously repossessed car, a judgment by American Express, and a City of Los Angeles tax bill.
- (4) He did not reveal past spousal support paid or owed and other related family support payments made in 2014 through April 2016.
- (5) He did not list any expenses, though he has paid them.

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Tuesday, May 7, 2019

Hearing Room 303

10:00 AM

CONT... **Joseph Daniel Beam**

Chapter 7

- (6) He did not list gifts from his mother and friends in the approximate sum of \$50,000. He lives rent free and does not pay utilities or living costs.
- (7) There are a lot of debts from the marriage, but he did not declare them as codebtor obligations.
- (8) He declared a lower income than he actual receives.
- (9) He under-reported the attorney fees that he has paid to his counsel.

Plaintiff is also complaining of fraudulent activity of counsel (Kathleen Moreno) in that she knowingly filed this case "with no intent not to file proper documents." [Note that the complaint does not actually name Ms. Moreno as a co-defendant and she would not be subject to §727 as she is not the debtor.]

Debtor's answer denies all allegations.

Since filing, this case has been largely on hold pending the state court dissolution proceedings.

As I review the complaint, it may not be worthwhile to wait until the family law court has acted - or it may be the best way. Clearly some of these actions were prepetition and non-financial or may have been too early to be included in the schedules. Perhaps it is best to rule on those specifics. Some of the others may be resolved in the family law proceeding - such as assets actually owned and debts actually owed.

Plaintiff has to realize that a §727 action will block the discharge of ALL debts, not just of those owed to her (which are already protected under §523). This means that other creditors will have as much right to seek payment as she does and that may prevent her from actually timely collecting future spousal support, etc. However, this is a §727 complaint and if she decides to dismiss it, the Trustee must be notified and may wish to take over the case.

Let's talk.

Party Information

Debtor(s):

Joseph Daniel Beam

Represented By
Kathleen A Moreno

**United States Bankruptcy Court
Central District of California
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Tuesday, May 7, 2019

Hearing Room 303

10:00 AM

CONT... Joseph Daniel Beam

Chapter 7

Defendant(s):

Joseph Daniel Beam

Represented By
Kathleen A Moreno

Plaintiff(s):

Ellen Henderson

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, June 11, 2019

Hearing Room 303

10:00 AM

1:06-12243 Edwin Perry Hinds

Chapter 7

#1.00 Status of Chapter 7 Case

fr. 8/29/17, 1/23/18; 6/19/18, 9/18/18; 12/4/18;
3/5/19

Docket 1

***** VACATED *** REASON: Moved to 1:30 p.m.**

Tentative Ruling:

Per the Trustee's unilateral status report filed on 2/14/19, the Isaacson parties filed an appeal of the 8/23/18 Clarifying Memorandum and the 1/09 Turnover Order (2:18-cv-07794-SVW). The Isaacson parties requested a stay pending appeal, but that was denied. The District Court entered an OSC re dismissal and on 1/22/19 the District Court dismissed the appeal. The time for the Isaacson Parties to appeal the dismissal has passed and no appeal was filed.

An ORAP was issued on 12/6, but Isaacson could not be located and served. Another request for an ORAP has been filed.

The Trustee is continuing to monitor the Claim against Isaacson at the California State Bar Security Fund. The Trustee requests an additional continuance.

Unless there is an objection, the status conference will be continued without appearance to June 11, 2019 at 10:00 a.m.

prior tentative ruling (12/4/18):

Per the revised status report filed on 11/29, continue without appearance to March 5, 2019 at 10:00 a.m.

prior tentative ruling (9/18/18):

The motion as to Lon Isaacson was heard on 8/21/18 and continued to 12/4/18 at 10:00 as a holding date. The order on the motion was entered on 8/23/18. The motion was granted. This status conference is continued without appearance to 12/4/18 at 10:00 a.m. to give the Trustee a chance to start collecting on its order and to advise the Court as to the status of those

**United States Bankruptcy Court
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Tuesday, June 11, 2019

Hearing Room 303

10:00 AM

CONT... Edwin Perry Hinds
efforts.

Chapter 7

prior tentative ruling (6/19/18)

Per the status report filed on 3/13/18, a claim has been submitted to the California State Bar Client Fund in an attempt to collect the \$100,000 from Mr. Isaacson. A current address for him has been found and he has been filed with a copy of the prior status reports.

Mr. Isaacson is being represented by Brian McMahon and there are ongoing settlement conferences. A settlement was reached in February 2018 and there will be a 9019 motion filed. At the State Bar, the claim is still under submission.

On June 12, 2018 the Trustee filed a further status report. Discussions with Mr. Isaacson have reached an impasse and there is no settlement likely. Mr. Isaacson is disputing the Trustee's claim in the Client Security Fund.

I will continue this without appearance to September 18, 2018 at 10:00 a.m.

prior tentative ruling (1/23/18)

On November 28, 2017, counsel for the Trustee filed a status report. The only update was that he believes that he located a current address for Mr. Isaacson. Then in late December, the Court received a copy of a letter addressed to the State Bar Client Security Fund Commission and sent by the Law Offices of Brian D. McMahon, attorney for Mr. Isaacson. While it requests that I recuse myself, at this point I have no part of these proceedings.

Continue this status conference without appearance to June 19, 2018 at 10:00 a.m.

prior tentative ruling (8/29/17)

This Chapter 7 case was filed on November 29, 2006. Debtor was discharged on October 24, 2012. On May 15, 2017, an Order was entered granting application to employ Brutzkus Gubner as Trustee's General Counsel effective March 31, 2017. Thereafter, on July 31, 2017, an Order Setting Status Conference Hearing was entered.

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Tuesday, June 11, 2019

Hearing Room 303

10:00 AM

CONT... Edwin Perry Hinds

Chapter 7

On August 10, 2017, Trustee filed a Unilateral Status Report. According to Trustee, Lon B. Issacson (the "Isaacson Creditors") had obtained a judgment over an attorneys' fees dispute with Debtor pre-petition. The judgment was for \$107,969.16 plus interest. Thereafter, the Isaacson Creditors filed an adversary proceeding in this case. The parties reached a settlement and the Court set a hearing on the settlement. At the hearing, the Court determined that the Debtor would pay the \$100,000 settlement to the estate instead of directly to the Isaacson Creditors. Also, the Court entered an Order directing the Isaacson Creditors to turn over \$100,000 to the Trustee. The Isaacson Creditors failed to comply and thereafter, most recently, the Trustee learned that Lon Isaacson had begun to misappropriate client funds from his trust accounts. He was formally disbarred in May 2013. Trustee has been attempting to reach Mr. Isaacson but has not been successful. Trustee's counsel advised Trustee that it may be most cost efficient to attempt to collect the \$100,000 by submitting a claim to the California State Bar Client Fund. Trustee believes the case should remain open for approximately 90 to 180 days pending a response from the State Bar Client Fund.

This matter is now off calendar. No appearance is required and no hearing will be held. In the future, please file a status report every 90-180 days.

Party Information

Debtor(s):

Edwin Perry Hinds

Represented By
Jonathan R Ellowitz - DISBARRED -

Trustee(s):

David R Hagen (TR)

Represented By
David Seror

**United States Bankruptcy Court
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Tuesday, June 11, 2019

Hearing Room 303

10:00 AM

1:09-23807 Shellie Melissa Halper

Chapter 7

Adv#: 1:19-01021 Halper v. Jerome Bennett Friedman, an individual et al

#2.00 Motion to Dismiss Plaintiff's Complaint for
Failure to State a Claim.

Docket 5

***** VACATED *** REASON: Moved to 1:30 p.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Defendant(s):

Jerome Bennett Friedman, an

Pro Se

Friedman Law Group, P.C.

Represented By
J. Bennett Friedman

Twin Palms Lending Group, LLC, a

Represented By
J. Bennett Friedman

Solomon Cohen, an individual

Pro Se

Does 1 Through 25, Inclusive

Pro Se

Plaintiff(s):

Shellie Melissa Halper

Represented By
Michelangelo Tatone

Trustee(s):

David Keith Gottlieb (TR)

Represented By

**United States Bankruptcy Court
Central District of California
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Tuesday, June 11, 2019

Hearing Room 303

10:00 AM

CONT... Shellie Melissa Halper

Chapter 7

Michael H Weiss
Laura J Meltzer

**United States Bankruptcy Court
Central District of California
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Tuesday, June 11, 2019

Hearing Room 303

10:00 AM

1:09-23807 Shellie Melissa Halper

Chapter 7

Adv#: 1:19-01021 Halper v. Jerome Bennett Friedman, an individual et al

#3.00 Motion and Anti-SLAPP Special Motion to
Strike Plaintiff's Complaint

Docket 8

***** VACATED *** REASON: Moved to 1:30 p.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Defendant(s):

Jerome Bennett Friedman, an

Pro Se

Friedman Law Group, P.C.

Represented By
J. Bennett Friedman

Twin Palms Lending Group, LLC, a

Represented By
J. Bennett Friedman

Solomon Cohen, an individual

Pro Se

Does 1 Through 25, Inclusive

Pro Se

Plaintiff(s):

Shellie Melissa Halper

Represented By
Michelangelo Tatone

Trustee(s):

David Keith Gottlieb (TR)

Represented By

**United States Bankruptcy Court
Central District of California
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Tuesday, June 11, 2019

Hearing Room 303

10:00 AM

CONT... Shellie Melissa Halper

Chapter 7

Michael H Weiss
Laura J Meltzer

**United States Bankruptcy Court
Central District of California
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Tuesday, June 11, 2019

Hearing Room 303

10:00 AM

1:16-11538 Majestic Air, Inc.

Chapter 11

Adv#: 1:18-01133 Majestic Air, Inc. et al v. Lufthansa Technik Philippines, Inc.

#4.00 Status Conference Re: Complaint
Objecting to Proof of Claim No. 3; and
for Contractual Indemnification

fr. 3/5/19

Docket 1

***** VACATED *** REASON: Moved to 1:30 p.m.**

Tentative Ruling:

Continued by stipulation to June 11, 2019 at 10:00 a.m.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Defendant(s):

Lufthansa Technik Philippines, Inc.

Pro Se

Plaintiff(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Tessie Cue

Represented By
Stella A Havkin

**United States Bankruptcy Court
Central District of California
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Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Tuesday, June 11, 2019

Hearing Room 302

10:00 AM

1:16-11538 Majestic Air, Inc.

Chapter 11

#4.01 Objection to Scheduled Claims of Franklin Tan
(listed as no. 3.3 adn 3.4 in part of 2 of amended
schedule E/F, docket no. 24

Docket 0

***** VACATED *** REASON: Reset to 1:30 pm (eg)**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

**United States Bankruptcy Court
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Tuesday, June 11, 2019

Hearing Room 303

1:30 PM

1:06-12243 Edwin Perry Hinds

Chapter 7

#5.00 Status of Chapter 7 Case

fr. 8/29/17, 1/23/18; 6/19/18, 9/18/18; 12/4/18;
3/5/19

Docket 1

Tentative Ruling:

On 4/30/19 Isaacson asked the Court to enter a written order denying his motion to extend time to file a notice of appeal, etc. The Court entered the order on 5/8/19 (dkt. 73).

Per the Trustee's status report filed on 6/4 (in the adversary proceeding), the judgment debtor examination is now scheduled for August 6, 2109. The Trustee is trying to serve Isaacson, who may be out of state. The District Court has granted a motion to reconsider its dismissal of the appeal as to the turnover order as clarified by the 8/23/18 memorandum. The opening brief is due at the end of June.

Unless the parties think otherwise, continue the status conference without appearance to August 6 at 10:00 a.m.

prior tentative ruling (3/5/19)

Per the Trustee's unilateral status report filed on 2/14/19, the Isaacson parties filed an appeal of the 8/23/18 Clarifying Memorandum and the 1/09 Turnover Order (2:18-cv-07794-SVW). The Isaacson parties requested a stay pending appeal, but that was denied. The District Court entered an OSC re dismissal and on 1/22/19 the District Court dismissed the appeal. The time for the Isaacson Parties to appeal the dismissal has passed and no appeal was filed.

An ORAP was issued on 12/6, but Isaacson could not be located and served. Another request for an ORAP has been filed.

The Trustee is continuing to monitor the Claim against Isaacson at the California State Bar Security Fund. The Trustee requests an additional

**United States Bankruptcy Court
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1:30 PM

CONT... Edwin Perry Hinds
continuance.

Chapter 7

Unless there is an objection, the status conference will be continued without appearance to June 11, 2019 at 10:00 a.m.

prior tentative ruling (12/4/18):

Per the revised status report filed on 11/29, continue without appearance to March 5, 2019 at 10:00 a.m.

prior tentative ruling (9/18/18):

The motion as to Lon Isaacson was heard on 8/21/18 and continued to 12/4/18 at 10:00 as a holding date. The order on the motion was entered on 8/23/18. The motion was granted. This status conference is continued without appearance to 12/4/18 at 10:00 a.m. to give the Trustee a chance to start collecting on its order and to advise the Court as to the status of those efforts.

prior tentative ruling (6/19/18)

Per the status report filed on 3/13/18, a claim has been submitted to the California State Bar Client Fund in an attempt to collect the \$100,000 from Mr. Isaacson. A current address for him has been found and he has been filed with a copy of the prior status reports.

Mr. Isaacson is being represented by Brian McMahon and there are ongoing settlement conferences. A settlement was reached in February 2018 and there will be a 9019 motion filed. At the State Bar, the claim is still under submission.

On June 12, 2018 the Trustee filed a further status report. Discussions with Mr. Isaacson have reached an impasse and there is no settlement likely. Mr. Isaacson is disputing the Trustee's claim in the Client Security Fund.

I will continue this without appearance to September 18, 2018 at 10:00 a.m.

prior tentative ruling (1/23/18)

On November 28, 2017, counsel for the Trustee filed a status report. The only update was that he believes that he located a current address for Mr.

**United States Bankruptcy Court
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Tuesday, June 11, 2019

Hearing Room 303

1:30 PM

CONT... Edwin Perry Hinds

Chapter 7

Isaacson. Then in late December, the Court received a copy of a letter addressed to the State Bar Client Security Fund Commission and sent by the Law Offices of Brian D. McMahon, attorney for Mr. Isaacson. While it requests that I recuse myself, at this point I have no part of these proceedings.

Continue this status conference without appearance to June 19, 2018 at 10:00 a.m.

prior tentative ruling (8/29/17)

This Chapter 7 case was filed on November 29, 2006. Debtor was discharged on October 24, 2012. On May 15, 2017, an Order was entered granting application to employ Brutzkus Gubner as Trustee's General Counsel effective March 31, 2017. Thereafter, on July 31, 2017, an Order Setting Status Conference Hearing was entered.

On August 10, 2017, Trustee filed a Unilateral Status Report. According to Trustee, Lon B. Isaacson (the "Isaacson Creditors") had obtained a judgment over an attorneys' fees dispute with Debtor pre-petition. The judgment was for \$107,969.16 plus interest. Thereafter, the Isaacson Creditors filed an adversary proceeding in this case. The parties reached a settlement and the Court set a hearing on the settlement. At the hearing, the Court determined that the Debtor would pay the \$100,000 settlement to the estate instead of directly to the Isaacson Creditors. Also, the Court entered an Order directing the Isaacson Creditors to turn over \$100,000 to the Trustee. The Isaacson Creditors failed to comply and thereafter, most recently, the Trustee learned that Lon Isaacson had begun to misappropriate client funds from his trust accounts. He was formally disbarred in May 2013. Trustee has been attempting to reach Mr. Isaacson but has not been successful. Trustee's counsel advised Trustee that it may be most cost efficient to attempt to collect the \$100,000 by submitting a claim to the California State Bar Client Fund. Trustee believes the case should remain open for approximately 90 to 180 days pending a response from the State Bar Client Fund.

This matter is now off calendar. No appearance is required and no hearing will be held. In the future, please file a status report every 90-180 days.

Party Information

**United States Bankruptcy Court
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CONT... Edwin Perry Hinds

Chapter 7

Debtor(s):

Edwin Perry Hinds

Represented By
Jonathan R Elowitz - DISBARRED -

Trustee(s):

David R Hagen (TR)

Represented By
David Seror

**United States Bankruptcy Court
Central District of California
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1:30 PM

1:16-11538 Majestic Air, Inc.

Chapter 11

Adv#: 1:18-01133 Majestic Air, Inc. et al v. Lufthansa Technik Philippines, Inc.

#6.00 Status Conference Re: Complaint
Objecting to Proof of Claim No. 3; and
for Contractual Indemnification

fr. 3/5/19

Docket 1

***** VACATED *** REASON: cont. to 7/16/19 @10am (eg)**

Tentative Ruling:

There is a mediation between Majestic Air and Lufthansa Technik Philippines set for June 13. The parties wish the status conference to be continued without appearance to July 16. Continue to July 16, 2019 at 10:00 a.m. and extend the dates to meet and confer and file a joint status report as per the stipulation.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Defendant(s):

Lufthansa Technik Philippines, Inc.

Pro Se

Plaintiff(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Tessie Cue

Represented By
Stella A Havkin

**United States Bankruptcy Court
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1:30 PM

1:16-11538 Majestic Air, Inc.

Chapter 11

#6.01 Objection to Scheduled Claims of Franklin Tan
(listed as no. 3.3 and 3.4 in part of 2 of amended
schedule E/F, docket no. 24)

Docket 0

Tentative Ruling:

This objection is brought by Lufthansa Technik Philippines, Inc (LTP), a creditor of Majestic Air, and concerns scheduled claims #3.3 and 3.4 (amended schedules). Scheduled claim 3.3 is as to Franklin Tan in the amount of \$350,000 for an "investment into Amplespares in Phillipines through a loan from Franklin Tan." It is is not contingent, unliquidated or disputed. Scheduled claim 3.4 in for Franklin Tan in the sum of \$350,000 and is for a "guaranty of investment into a joint venture for Ampleshares." It is also not disputed, contingent, or unliquidated. Mr. Tan is listed as having an address at 1677 Quezon Avenue, 4th Floor Nexor Building, Quezon City, Metro Manila, Phillipines. Tan has not filed a proof of claim or appeared in this case.

Tan and Cue are longtime friends. Tan asserted in the opposition to the motion to dismiss her personal bankruptcy that Tan loaned Majestic Air \$350,000 and an additional \$350,000 to Amplespares, who is Majestic's joint venturer and this was guaranteed by Cue. It has not been repaid. This motion asserts that all \$700,000 was transferred to Amplespares, whose mailing address is the same as Tan's.

The motion then goes through a set of conflicting testimony as to the status of Amplespares and its relation to Majestic Air. The declaration of Gabriel Courey states that it contains copies of the corporate documents of Amplespares, but it does not. There is no admissible evidence as to the statements that Cue is alleged to have made and upon which much of this motion is based.

Beyond that, there is an issue of service. Mr. Tan's address is outside of the United States. The proof of services says that he was served by U.S. Mail at that address. He has never appeared and there is no information that service complies with FRBP 7004, which incorporates much of FRCP 4.

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CONT...

Majestic Air, Inc.

Chapter 11

FRCP 4(f) applies to service of a person in a foreign country.

Continue to July 16, 2019 at 10:00 a.m. for proper service and for the submission of admissible evidence in support of this motion.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

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1:16-11538 Majestic Air, Inc.

Chapter 11

#7.00 Status and Case Management Conference

fr. 8/4/16(xfr from Judge Tighe's calendar); 8/30/16,
9/27/16; 10/25/16; 11/15/16, 2/21/17, 5/16/17; 6/27/17,
8/29/17, 1/23/18; 6/19/18, 9/18/18; 12/4/18; 2/12/19; 5/7/19

Docket 1

***** VACATED *** REASON: Stip. cont. to 7/16/19 @10am (eg)**

Tentative Ruling:

Objection to claims of Franklin Tan is set for hearing on 6/11. Continue this status conference without appearance to 6/11/19 at 1:30 p.m. No updated status report will be needed at that time.

prior tentative ruling (2/12/19)

Per the status report, the parties (LTP and the Debtor) have narrowed down the list of mediators and expect to schedule a mediation within the next 30 days. The sale of the building has been completed and is now owned by the Debtor's principal's children. The Debtor is continuing to make lease payments.

If there are no objections, continue without appearance to April 16, 2019 at 10:00 a.m.

prior tentative ruling (12/4/18)

Per the status report filed on 11/20, the remaining issues involve LTP. The parties are discussing mediation. If not, Debtor will file a objection to the LTP claim.

Continue without appearance to February 12, 2019 at 10:00 a.m.

prior tentative ruling (9/18)

Special counsel is being employed to resolve or litigate the LTP claim. This status conference will be continued.

prior tentative ruling (6/19/18)

Per the status report filed on 6/5, on 5/30/18 the California Court of

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CONT...

Majestic Air, Inc.

Chapter 11

Appeal affirmed the decision of the Superior Court in the Ansett Aircraft v. Cue appeal, but remanded the case for further proceedings.

Continue without appearance to Sept. 18, 2018 at 10:00 a.m. so that the Ansett claim can be finalized.

prior tentative ruling (1/23/18)

There is a state court appeal pending. Continue without appearance to June 19, 2018 at 10:00 a.m.

prior tentative ruling (2/21/17)

Per the status report filed on 2/7/17, the LTP parts have been sold and Debtor has moved to its new, less expensive, location. The appeal with the California Court of Appeal as to LTP is continuing. The Debtor expects to file a disclosure statement within the next 60 days.

The Debtor filed a month-by-month comparison of actual revenue and expenses and budgeted revenue and expenses for November, December, and January. They show a slight net profit of \$1,500-\$2,200 per month.

If there is no objection, I will continue this without appearance to May 16, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

**United States Bankruptcy Court
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Hearing Room 303

1:30 PM

1:09-23807 Shellie Melissa Halper

Chapter 7

Adv#: 1:19-01021 Halper v. Jerome Bennett Friedman, an individual et al

#8.00 Motion to Dismiss Plaintiff's Complaint for
Failure to State a Claim.

Docket 5

Tentative Ruling:

Continued without appearance to July 16, 2019 at 10:00 a.m. If this date is not convenient to the parties, please notify my clerk and we can continue it to August 6 at 10:00 a.m. if both parties agree to that date.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Defendant(s):

Jerome Bennett Friedman, an

Pro Se

Friedman Law Group, P.C.

Represented By
J. Bennett Friedman

Twin Palms Lending Group, LLC, a

Represented By
J. Bennett Friedman

Solomon Cohen, an individual

Pro Se

Does 1 Through 25, Inclusive

Pro Se

Plaintiff(s):

Shellie Melissa Halper

Represented By
Michelangelo Tatone

**United States Bankruptcy Court
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1:30 PM

CONT... Shellie Melissa Halper

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

**United States Bankruptcy Court
Central District of California
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1:30 PM

1:09-23807 Shellie Melissa Halper

Chapter 7

Adv#: 1:19-01021 Halper v. Jerome Bennett Friedman, an individual et al

#9.00 Motion and Anti-SLAPP Special Motion to
Strike Plaintiff's Complaint

Docket 8

Tentative Ruling:

Continued without appearance to July 16, 2019 at 10:00 a.m. If this date is not convenient to the parties, please notify my clerk and we can continue it to August 6 at 10:00 a.m. if both parties agree to that date.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Defendant(s):

Jerome Bennett Friedman, an

Pro Se

Friedman Law Group, P.C.

Represented By
J. Bennett Friedman

Twin Palms Lending Group, LLC, a

Represented By
J. Bennett Friedman

Solomon Cohen, an individual

Pro Se

Does 1 Through 25, Inclusive

Pro Se

Plaintiff(s):

Shellie Melissa Halper

Represented By
Michelangelo Tatone

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CONT... Shellie Melissa Halper

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

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1:09-23807 Shellie Melissa Halper

Chapter 7

Adv#: 1:19-01021 Halper v. Jerome Bennett Friedman, an individual et al

#10.00 Status Conference re: Complaint for 1) Fraudulent Concealment; 2) Fraudulent Misrepresentation; 3) Constructive Fraud; 4) Breach of Fiduciary Duty; 5) Aiding and Abetting Breach of Fiduciary Duty 6) Fraud on the court; 7) Declaratory Relief.

fr. 5/7/19

Docket 1

Tentative Ruling:

Continued without appearance to July 16, 2019 at 10:00 a.m. If this date is not convenient to the parties, please notify my clerk and we can continue it to August 6 at 10:00 a.m. if both parties agree to that date.

prior tentative ruling (5/7/19)

Thank you for the joint status report. Continue the status conference without appearance to June 11, 2019 at 1:30 p.m. No further status report is needed for that hearing, which will coincide with other motions set for that date.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Defendant(s):

Jerome Bennett Friedman, an	Pro Se
Friedman Law Group, P.C.	Pro Se
Twin Palms Lending Group, LLC, a	Pro Se

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CONT... Shellie Melissa Halper Chapter 7

Solomon Cohen, an individual Pro Se

Does 1 Through 25, Inclusive Pro Se

Plaintiff(s):

Shellie Melissa Halper

Represented By
Michelangelo Tatone

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

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1:09-23807 Shellie Melissa Halper

Chapter 7

Adv#: 1:19-01021 Halper v. Jerome Bennett Friedman, an individual et al

#11.00 Motion For Sanctions Against Plaintiff and
Her Counsel Pursuant to FRBP 9011

Docket 17

Tentative Ruling:

Continued without appearance to July 16, 2019 at 10:00 a.m. If this date is not convenient to the parties, please notify my clerk and we can continue it to August 6 at 10:00 a.m. if both parties agree to that date.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Defendant(s):

Jerome Bennett Friedman, an

Represented By
Michelle J Correll

Friedman Law Group, P.C.

Represented By
J. Bennett Friedman
Michelle J Correll

Twin Palms Lending Group, LLC, a

Represented By
J. Bennett Friedman
Michelle J Correll

Solomon Cohen, an individual

Represented By
Michelle J Correll

Does 1 Through 25, Inclusive

Pro Se

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CONT... Shellie Melissa Halper

Chapter 7

Plaintiff(s):

Shellie Melissa Halper

Represented By
Michelangelo Tatone

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

**United States Bankruptcy Court
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1:30 PM

1:11-22424 Ronald Alvin Neff

Chapter 7

#1.00 Order Setting Hearing on Objections to Ruling/Order
entered May 9, 2019

Docket 0

Tentative Ruling:

On May 31, the Court entered an order setting a hearing on Mr. DeNoce's objections to the ruling/order entered May 9. That ruling/order is docket 527 and the order setting a hearing is docket 541. Mr. Kwasigroch had until June 10 to file an opposition and Mr. DeNoce had until June 14 to file a reply. No opposition was received as of June 17 at 11:30 a.m. No reply is allowed if there is no written opposition.

I am ready to rule on the papers received, but am concerned that somehow this order was not received by the parties. The BNC Certificate of Notice shows that it was sent by first class mail to Mr. Neff in care of Mr. Kwasigroch's office. It was also sent by email to Mr. Kwasigroch. As to Mr. DeNoce, it only shows notice to his prior attorney and not to him. Mr. DeNoce, you need to make sure that you are on the list of electronic notices. You also need to make sure that Mr. Koenig no longer appears as your attorney. Please work with Emma in the clerk's office on this. I have notified her of the problem.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

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1:11-22424 Ronald Alvin Neff

Chapter 7

#2.00 Continued Status Conference as to continued Trial

fr. 8/17/18, 8/27/18, 1/30/19; 2/12/19; 2/25/19; 3/4/19
4/15/19; 5/7/19

Docket 429

Tentative Ruling:

Mr. DeNoce has filed a document as to the matters that were admitted into evidence. See tentative ruling on motion to close evidence and issue final ruling.

prior tentative ruling (4/15/19):

Dr. Hersel will give the balance of his testimony on 4/15. He has advised by email that he has already produced all of the records in his possession.

Counsel are to appear at 12:30 to deal with procedural issues.

As to the objections filed by Mr. Kwasigroch (dkt. 508), here are my rulings (by objection number):

Overruled - #1,4, 5, 10, 12

Ruled on at 4/11 continued trial and the same rulings apply to Dr. Hetsel's testimony - #2, 3, 6, 7, 8, 9

As to #11 and #13 - this is not an objection but is closing argument and will be heard at that time if Debtor wishes to raise it.

THE FOLLOWING WILL BE DEALT WITH AFTER DR. HERSEL HAS COMPLETED HIS TESTIMONY

As to the Objection and Statement, which go to the issue of whether Mr. Neff will sign a release for the SSA, DeNoce had received a disc from the SSA, but he reviewed it and found that the material was incomplete. He then destroyed the disc and neither sent them to Kwasigroch or sought instruction

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CONT...

Ronald Alvin Neff

Chapter 7

from the Court. Although Neff had said that he would sign a new release (the old one having become stale through the passage of time), he has now changed his mind. He is not bound by his prior statement as DeNoce has not relied on it to his detriment. There are no actions that he could have taken and did not take. He is still allowed to hire his own psychiatrist to review the review report by Dr. Bilik and can appeal the denial of Dr. Bilik's testimony by the SSA.

It was DeNoce's decision to destroy the SSA records. Whether he read them in detail or not before he destroyed the disc is not known and will never be known for sure. But obviously he looked at what types of documents were included or he could not have decided that the file was "incomplete." If he believed that the SSA did not give him the full file, he had options at that time, but failed to proceed. There is no reason to believe that a new SSA production would be any different than the first one.

Kwasigroch raises the evidentiary issue of spoliation (which he incorrectly writes a spoilation). This is a presumption that the destruction of evidence relevant to the litigated issue shows that the evidence was unfavorable to that party. *Weinstein' Federal Evidence §301.06*. That does not apply in this case since the SSA file is even more accessible to Neff, who need merely request it. Thus, he has the ability to know what is in it and to produce it to the Court.

DeNoce was allowed to hire an independent psychiatrist to examine Neff as well as to hire another psychiatrist to review the Bilik report. He cancelled the examination of Neff and never sought to go forward with it. He will be allowed to hire an expert to review the Bilik report because Bilik cannot be called to testify, but there needs to be a time limit to do this. This case has dragged on a considerable length of time and it was incumbent on DeNoce to proceed without delay. If he is seeking to appeal that SSA decision, he can go forward with that, too, but I will not delay the hiring of a review psychiatrist any further. Both can proceed simultaneously.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By

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CONT... Ronald Alvin Neff

Chapter 7

Michael D Kwasigroch

Movant(s):

Douglas Denoce

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
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Tuesday, July 2, 2019

Hearing Room 303

1:30 PM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#1.00 Status Conference Re:
Motion to Continue Hearing On
(related documents 246 Pre Trial Stipulation)
Continue Trial and Related Deadlines

fr. 4/29/19

Docket 263

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Nothing new filed as of 6/26. The trial had been scheduled for 4/30. It went off calendar. When is it to take place? This needs to be coordinated with Campbell v. Pyle.

Party Information

Debtor(s):

Glen E Pyle Pro Se

Defendant(s):

Glen E Pyle Represented By
Raymond H. Aver

Sweetwater Management Company Pro Se

Glen E Pyle Irrevocable Trust Represented By
Raymond H. Aver

Plaintiff(s):

Marc H Berry Represented By
Marc Berry

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CONT... Glen E Pyle

Chapter 7

Trustee(s):

Amy L Goldman (TR)

Represented By

Amy L Goldman

Amy L Goldman (TR)

Leonard Pena

**United States Bankruptcy Court
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1:30 PM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

#2.00 Plaintiff's motion for order compelling responses to discovery

fr. 1/29/19; 3/26/19, 4/30/19

Docket 101

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Nothing further received as of 6/26. I continued this to make sure that the documents that Mr. Pyle said he turned over to Mr. Pena and Mr. Aver are turned over to Mr. King and that there are not any big gaps. Pyle has already been sanctioned monetarily for faulte to turnover documents in the Berry v. Pyle case.

prior tentative ruling (3/26/19)

Thank you, Mr. King, for starting to use our electronic filing system.

Per the declaration filed on 3/22, Mr. Pyle did not comply with my order and no documents were delivered by 3/1. I believe that it is time for significant sanctions under Federal Rule of Civil Procedure 37(b)(2), incorporated into Federal Rule of Bankruptcy Procedure 7037. Thus, I am considering terminating sanctions, which means that Mr. Pyle cannot put on any evidence in support of a defense. Mr. King will still have to present his case-in-chief and I would allow Mr. Pyle to examine those witnesses, but not to testify (except as a witness for Mr. King, if he is called) or to present any witnesses or evidence on his own behalf. We need to talk about this to see if Mr. King will have sufficient evidence without this discovery to present his prima-facie case. Other sanctions are possible - we can discuss this at the hearing.

prior tentative ruling (1/29/19)

Plaintiff filed this motion to compel responses to discovery and for

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CONT...

Glen E Pyle

Chapter 7

sanctions. Given Mr. Pyle's history of non-cooperation in the Berry v. Pyle case, the movant does not want to spend the time or money with obtaining an order compelling responses, since this would be a waste of time.

On 11/16/18, Pyle was served with a Demand for Identification, Production and Inspection of Documents and Other Tangible Things (the Demand), with production due on 12/17/18. There has been no response.

The materials sought are to be used to show that Pyle and his Trust actively engaged in fraudulent conduct toward Campbell, his other creditors, and the Court. They deal with deeds and conveyances, property tax records, credit applications, loans, insurance policies, vehicles, etc.

Since there was no production, the depositions scheduled for 12/27/18 was taken off calendar.

The Movant requests sanctions under California Law. Given the repeat nature of Pyle's non-cooperation in the Berry case, Movant seeks terminating sanctions. *Liberty Mut. Fire Ins. Co. v. LcL Administrators, Inc.,* 163 CA4th 1093, 1106 (2008). Ifnot, he seeks issue and evidence sanctions. These might include deeming the promissory note (which is the subject of the stte court judgment) to be valid against Pyle and his trust and that it was fraudulently obtained against Campbell. The Court can also deem the Pyle Irrevocable Trust to be the alter ego of Glen Pyle individually and prohibit any evidence to the contrary. Pyle can also be prohibited from introducing any evidence at trial contradicting his fraudulent intent as to Campbell and other creditors. Monetary sanctions would total \$4,462.50.

Although Pyle does not deserve the opportunity to respond to the discovery, if the Court allows that it should be without objections and delivered to Counsel's office within 21 days of the Order. A deposition should be ordered to take place within 10 days of delivery of the documents to Counsel.

Opposition

Improper service of the discovery request and also of this motion. Only Mr. Aver was served, not the Debtor. Plaintiff was only authorized to serve Mr. Aver with discovery documents, not all documents including this request for sanctions.

The deposition set for 12/27 was continued by Plaintiff and no date has been set. There has been no meet and confer.

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CONT... **Glen E Pyle**

Chapter 7

NO REPLY HAS BEEN RECEIVED AS OF 1/28 at 10:30 a.m..

Proposed Ruling:

Early in this case, I determined that all discovery in either case could be used in both cases. In particular, I believe that Mr. Campbell or his earlier counsel attended depositions of Mr. Pyle. I don't recall if there was a specific order or it was just stated at a hearing. But that is and was my intent and all parties were aware of it. Thus, before determining what documents, etc. are to be produced and what examination is to take place, Mr. King needs to review the fairly massive discovery in the *Berry v. Pyle* case. I believe that there were three deposition sessions there.

As to service, the reason for sending things to Mr. Aver is because of the difficulties with serving Mr. Pyle, who stated that he is not receiving his mail. He did receive this motion in time to respond, so those objections are overruled. To the extent that there needs to be an agreement or order as to how to serve in the future, let's get that on the record at the hearing.

As to the meet and confer - this is not needed given the prior actions of Mr. Pyle, who simply does not carry-through.

Monetary sanctions have not been effective in this case. So we can discuss what will work if there are discovery abuses.

Mr. King cites only to California law as to discovery sanctions. That is not useable in this court. Please review FRCP 37 (incorporated into FRBP 7037). Look at Rule 37(a)(5); (b)(2).

Party Information

Debtor(s):

Glen E Pyle

Pro Se

Defendant(s):

Glen Pyle

Pro Se

Plaintiff(s):

Ian Campbell

Represented By
Barry P King

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1:30 PM

CONT... Glen E Pyle

Chapter 7

Trustee(s):

Amy L Goldman (TR)

Represented By

Amy L Goldman

Amy L Goldman (TR)

Leonard Pena

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, July 2, 2019

Hearing Room 303

1:30 PM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

#3.00 Status conference re: Third Amended complaint for nondischargeability and/or to deny Bankruptcy Discharge; Alter Ego; and for Damages

fr. 5/11/11, 6/22/11, 10/4/11, 1/24/12, 2/14/12
4/24/12, 6/19/12, 9/11/12, 10/2/12, 11/6/12,
2/12/13, 3/19/13, 8/27/13, 8/27/13, 11/19/13,
2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15; 5/12/15; 6/2/15, 9/1/15,
9/8/15, 11/17/15; 1/12/16, 3/1/16, 6/7/16,
8/2/16, 9/27/16, 10/11/16, 1/17/17, 2/21/17,
3/28/17, 1/14/17, 12/19/17, 1/23/18, 3/27/18,
7/17/18, 8/21/18, 9/25/18, 11/6/18; 12/18/18; 1/29/19
3/26/19, 4/30/19

Docket 111

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

On 6/28, Plaintiff filed a request for entry of default. This will be handled by the clerk's office. However, Mr. Pyle had answered the second amended complaint, so I am not sure that there should be a total default as to the third amended complaint except as to any new allegations or claims for relief. The same claims for relief exist, but new facts are alleged in ¶¶ 13-25 of the third amended complaint. There would still have to be a prove-up as to these, though some are the basis of the state court judgment of which the court can take judicial notice.

Even if default is entered, that does not automatically lead to a judgment. But it might make a difference in the timing. At the hearing on 3/26/19, I decided to bifurcate this case and take the fraudulent conveyance portion forward with

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the Berry v.Pyle trial, which was set for 4/30. That was continued. At the 3/26 hearing, Mr. King stated that he would obtain documents that Mr. Pyle had turned over and are in the possession of Mr. Pena or Mr. Aver. He can go forward without further production.

Because of the default - if entered - it might be possible to proceed without delay as to the §523 and §727 matters. This would require a prove-up. Mr. Pyle could object to evidence, but would be prevented from putting on a defense. Meanwhile the fraudulent conveyance trial could proceed in the other adversary and it is possible that Mr. King would not participate. Let's talk about this and move everything forward.

prior tentative ruling (3/26/19):

A third amended complaint was filed on 2/20/19. No response has been filed as of 3/22. The response was due on or about 3/13.

prior tentative ruling (1/29/19)

The case is now proceeding. Continue to a future date. HOWEVER, MR. KING SINCE THIS IS AN ACTIVELY LITIGATED CASE, PLEASE SIGN UP FOR CM/ECF ACCESS TO OUR COURT AND TO USE LOU (LODGED ORDER UPLOAD). See Court Manual Sec. 3.1, p. 3-3 and LBR 5005-4.

prior tentative ruling (7/17/18)

The order granting relief from the automatic stay was entered on 1/30/18. On 3/6 Mr. Campbell appeared in Court and wanted to know about the order. He had not been served with a copy of the order - our fault. I directed him to my law clerk, but he left without seeing her. On March 1, 2018, Judge Hammock continued his OSC re: Dismissal (BC416442) to July 5 so that Campbell could seek a judgment (he already has a default) on declaration. As soon as he has obtained his judgment, I will be ready to proceed. When will he be filing his declaration, etc. in the Superior Court? Should this status conference be continued until after July 5 or can we proceed before that?

prior tentative ruling (1/23/18)

Mr. Campbell has filed the motion for relief from stay to complete the superior

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court case. Continue this status conference to March 27, 2018 at 9:00 a.m. to allow him to obtain his judgment in the superior court.

prior tentative ruling (12/19/17)

I have been in contact with Judge. Hammock of the Superior Court. He advises me that all that is left to do in his case is for Mr. Campbell to file a motion for default judgment. The automatic stay is preventing this.

To move that case forward, Mr. Campbell is to file a motion in this court for relief from the automatic stay. This is to be filed and served no later than December 26. It is to be served by mail and by email on Mr. Pyle. The hearing will be on January 23, 2018 at 10:00 a.m. in courtroom 303. Mr. Campbell is to use the mandatory court form: F 4001-1.RFS.NONBK.MOTION. This is available on the Court website at www.cacb.uscourts.gov/forms/local_bankruptcy_rules_forms. Or you can obtain a copy at the filing window in the clerk's office.

prior tentative ruling (11/14/17)

The Court advised Mr. Campbell of the continuance of the Berry v. Pyle case. He does wish to appear on 11/14. The Court has called Mr. Aver's office and asked them to contact Mr. Pyle (who is pro se in this adversary proceeding) to advise him that the hearing on 11/14 is going forward and that Mr. Pyle is to appear on the phone or in person and instruct him on how to use Court Call. The Court was notified that he also wishes to appear.

What is the status of the state court matter?

prior tentative ruling (3/28/17)

This adversary proceeding has been trailing the Berry v. Pyle one, but it has some different issues. How does Mr. Campbell wish to proceed?

prior tentative ruling (1/17/17)

I believe that Mr. Campbell was trying to obtain counsel. It is best to keep this together with Berry v. Pyle. Therefore continue it without appearance to 2/21/17 at 10:00 a.m. when I have a hearing on the motion for summary

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judgment in the Berry v. Pyle case.

prior tentative ruling (8/2/16)

Mr. Campbell is now representing himself. How does he wish to proceed to get this ready for trial?

prior tentative ruling (3/1/16)

Per the status report filed by Plaintiff on 2/23/16, discovery is not complete. Plaintiff wants to take Mr. Pyle's deposition and audit the records.

This was trailing the Berry v. Pyle matter, but given Mr. Berry's health, I think that it should go forward alone and complete the discovery. Feel free to appear by phone at the status conference and let's get some dates to complete discovery. Please advise Mr. Pyle, who is not represented by counsel in this case, to appear in person or by phone.

prior tentative ruling (1/12/16)

This has nothing to do with Mr. Berry's health and Mr. Pyle is not represented by counsel. The 1/5/16 status report said that plaintiff will be ready for trial on 2/1. He figures 2-3 days. Let's set a trial date. Possible dates when there is a courtroom available are Feb. 16-17 and Mar. 23-24.

prior tentative ruling (9/8/15)

This has been trailing Berry v. Pyle. On 8/18/18 Plaintiff filed a status report. He is ready to go to trial in February 2016. He needs another 4-6 months to complete discovery, which includes Mr. Pyle's deposition and an audit of the records.

In htis case Mr. Pyle is not represented by counsel. So let's get a deposition date and move forward.

prior tentative ruling (3/10/15)

Mediation set for 3/24/15. Continue without appearance to 5/12/15 at 1:00 a.m

prior tentative ruling (10/7/14)

The mediation has been delayed. Continue without appearance to 12/16/14

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CONT... Glen E Pyle
at 10:00 a.m.

Chapter 7

prior tentative ruling (8/5/14)

The Berry v. Pyle matter is scheduled for a settlement conference before Judge Ryan on 9/22/14. Is this case part of the settlement conference? If so, continue without appearance to 10/7/14 at 10:00 a.m. If not, the status report filed by Plaintiff on 7/21 requests mediation. How do you wish to proceed?

prior tentative ruling (4/22/14)

On 4/8/14, counsel for plaintiff filed a status report. He believes that he will be ready for trial in 6 months. There is still discovery to be done, including completing Debtor's deposition. A mediation will take place in May or June.
Continue without appearance to August 5, 2014 at 10:00 a.m.

prior tentative ruling (3/11/14)

This complaint is both under §523 and §727 as well as §§547 and 548. This has been trailing the Berry v. Pyle adversary proceeding. Mr. Mendoza attended the 2/10/14 deposition of Mr. Pyle, which is a joint deposition in both this case and the Berry v. Pyle case. Pyle is not represented by counsel in this adversary proceeding.

Mr. Mendoza, should this continue to trail the Berry adversary or are you ready to go forward on your own?

prior tentative ruling (4/24)

The parties have stipulated that plaintiff will have until 4/20 to file a Second Amended Complaint. A second amended complaint was filed on 4/20. Per the status report, the parties think that they need 4-5 months to complete discovery. The parties wish to mediate. Plaintiff has no co-counsel and may wish to propound more discovery and seek relief from stay as to certain trust assets.

Continue the status conference without appearance to June 19 at 10:00 a.m.

This will allow sufficient time for there to be a response to the second amended complaint and for new co-counsel to move forward. In the meantime, please complete a mediation order since it often takes weeks to

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schedule a mediation.

Chapter 7

prior tentative ruling (2/14)

Per the status report filed on 1/24, the parties feel that they will not be ready for trial until late in 2012. Set a discovery cutoff date of 7/30/12. Although neither party wants mediation at this time, plaintiff's counsel is willing to attend mediation.

As of 2/12 there is no response to the amended complaint. What is the status of that? When do the parties think that mediation might be beneficial?

prior tentative ruling (1/24)

An answer was filed on 7/15. Plaintiff filed an amended complaint on 1/12, but this was done without leave to amend.

Counsel, in the future please confer with knowledgeable bankruptcy counsel before filing things in bankruptcy court. Your original cover sheet indicated that this was only a complaint to recover money under §§547 and 548. That is incorrect. The original complaint is under §523 and §727 (although that is not mentioned on the caption) and may include §§547 and 548 (although the uploaded copy has some pages missing, so I can't tell for sure). The amended complaint has all of these claims for relief. The court picked up that there was a §727 claim, but we should not have to review the complaint to do this.

prior tentative ruling (10/4)

Nothing further received as of 10/2.

prior tentative ruling (6/22)

As of 5/9 there has been no return on service on the summons. The plaintiff has counsel. There is no status report as of 5/8. If there is no appearance at the 5/11 hearing, I will issue and OSC re: dismissal for failure to prosecute.

Party Information

Debtor(s):

Glen E Pyle

Pro Se

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Chapter 7

Defendant(s):

Glen Pyle

Pro Se

Plaintiff(s):

Ian Campbell

Represented By
Barry P King

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

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10:00 AM

1:95-19539 Ivds Interactive Acquisition Partners

Chapter 7

#1.00 Status of chapter 7 case

fr. 8/29/17, 1/23/18, 7/10/18, 7/17/18, 11/6/18; 1/29/19

Docket 1

Tentative Ruling:

Per the Trustee's status report, the case is ready to conclude. He has sent his final report to the OUST and once it has been reviewed it will be set for hearing. Continue without appearance to January 7, 2020 at 10:00. Hopefully the final report will be set for hearing prior to that time.

prior tentative ruling (1/29/19)

Fee applications have been filed, but not ruled on . Per the 1/15/19 status report, the IRS has not released the Federal tax forms for tax year 2018, so there is a delay in filing the final tax returns. Once the IRS issues its tax clearance, the Trustee will file his final report (presumably the fees will be ruled on at that hearing) and this case can be closed. Continue the status conference without appearance to July 16, 2019 at 10:00 a.m.

prior tentative ruling (11/6/18)

The compromise motion is #1 on calendar. If it is granted, continue this without appearance to January 29, 2019 at 10:00 a.m. so that the Trustee can file the necessary papers to close the case.

prior tentative ruling (7/17/18)

Per the status report filed on 6/19/18, the trustee will file a motion to close this case. He is negotiating with the OUST as to this.

Continue the status conference without appearance to Nov. 6, 2018 at 10:00 a.m. Feel free to schedule your motion on or before that date.

prior tentative ruling (1/23/18)

Per the status report filed on 12/28/17, the Trustee has previously made two interim distributions and hopes to make another one in 2018. The Trustee hopes to sell Vickery's home through a forced sale or, in the

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CONT... Ivds Interactive Acquisition Partners Chapter 7

alternative, to sell the USDC Judgment against Vickery. Once the settlement with Michael and David is approved by the Court and the situation with Vickery is resolved, the Trustee will close the case.

Continue without appearance to 7/10/18 at 10:00 a.m.

prior tentative ruling (8/29/17)

This case was filed on December 1, 1995. It was originally filed as a Chapter 11. It was converted to Chapter 7 on November 3, 1997. The last activity on the docket was on October 20, 2016. On that date, an Order on Eighth Interim Application for Allowance of Fees to Green, Hasson & Janks was entered. On July 31, 2017, an Order Setting Status Conference Hearing was entered. On August 15, 2017, the Chapter 7 Trustee filed a Status Report in Bankruptcy Case. [dkt. 648]

Trustee's August 15, 2017 Status Report:

Debtor was a general partnership organized under Florida law and composed of approximately 645 individuals. Debtor was created by a group of organizers who used corporate entities controlled by them to raise money to exploit IVDS, a communications medium to be licensed by the FCC.

Trustee has always believed that Debtor was a fraudulent telemarketing scheme. Trustee commenced a lawsuit against the organizers of Debtor alleging fraudulent transfer claims. Trustee went to trial against three principal Defendants: David Dambro, Michael Dambro, and Terry Vickery. Trustee obtained judgments against all three Defendants: David: \$5.1 million; Michael: \$4.1 million; and Vickery: \$4.6 million. Judgment will remain enforceable until 2027. Trustee continues to pursue collection activities through special counsel as Trustee believes David, Michael, and Vickery have hidden millions of dollars. Trustee has currently made two interim distributions in this case and hopes to make at least one more distribution after Trustee sells Vickery's home. Thereafter, Trustee will evaluate the possibility of a sale of the judgment at the end of 2017, which would allow Trustee to close the case.

This matter is now off calendar. No appearance is required and no hearing will be held. In the future, please file a status report every 90-180 days.

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CONT... Ivds Interactive Acquisition Partners

Chapter 7

Debtor(s):

Ivds Interactive Acquisition Partners

Represented By
Grant L Simmons
Uzzi O Raanan ESQ

Trustee(s):

Richard K Diamond (TR)

Represented By
J Jeffrey Craven
Uzzi O Raanan ESQ
Howard Kollitz
Richard K Diamond (TR)
Richard K Diamond
Ruba M Forno

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:
Adv#: 1:19-01054 Kalmenson et al v. HSBC BANK (USA) N.A. et al

Chapter 0

#2.00 Status Conference re: First Amended Complaint
for Declaratory Judgment

Docket 2

Tentative Ruling:

This was continued by stipulation to October - the Court is setting it on 10/29/19 at 10:00 a.m.

Note that Defendants HSBC and Select Portfolio have filed a motion to dismiss the adversary proceeding, which is set for hearing on 8/6. Is that going forward?

Party Information

Defendant(s):

HSBC BANK (USA) N.A.	Pro Se
SELECT PORTFOLIO	Pro Se
First American Title Ins Co.	Pro Se

Plaintiff(s):

Harvey Kalmenson	Represented By Joon M Khang
Catherine R Kalmenson	Represented By Joon M Khang

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Hearing Room 302

10:00 AM

1:11-18629 Robert Vilas Johnson and Linda Joyce Johnson

Chapter 7

#3.00 Final Application for Compensation and Reimbursement of Expenses of Baker & Hostetler LLP for the Period of January 28, 2017 through May 7, 2018; Trustee's Attorney, Period: 1/28/2017 to 5/7/2018, Fee: \$42,148.00, Expenses: \$1,973.40.

Docket 662

Tentative Ruling:

See calendar #4. Continued to August 6, 2019 at 10:00 a.m.

Party Information

Debtor(s):

Robert Vilas Johnson

Represented By
Andrew P Altholz
Gavin L Greene
Ashley M McDow
Leslie A Cohen

Joint Debtor(s):

Linda Joyce Johnson

Represented By
Andrew P Altholz
Gavin L Greene
Ashley M McDow
Leslie A Cohen

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden (TR)
Ashley M McDow
Michael T Delaney
Fahim Farivar
Andrew P Altholz
Gavin L Greene

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CONT...

Robert Vilas Johnson and Linda Joyce Johnson
Leslie A Cohen

Chapter 7

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1:11-18629 Robert Vilas Johnson and Linda Joyce Johnson

Chapter 7

#4.00 Trustee's Final Report and Application for
Compensation and Deadline to Objection

Trustee:
Jeffrey I. Golden

Attorney for Trustee:
Baker & Hostetler, LLP

Accountant for Trustee:
Hahn Fife & Company LLP

Docket 652

Tentative Ruling:

Given the extensive objection of the Franchise Tax Board to the Baker & Hostetler fee application and the fact that no reply has been received as of 7/12 at noon, the Court is continuing this without appearance to August 6 at 10:00 a.m.

Please note that Foley & Lardner filed a supplemental fee application on 7/8/19. No opposition was received as to its initial fee application (dkt. 644). If there is an opposition to either, it must be filed by 7/24.

As to the opposition to the Baker application, I have not yet fully reviewed it. However, I agree that a summary of fees/costs by project is needed. Given the length and complexity of this case (in part due to its relationship to the Internet Specialties case and the principals of that entity), it is very difficult to ascertain how much time was incurred for each of the noted "projects." Since all of the interim fee applications are on the docket, it does not appear necessary to require that they be filed again. However, there should be a compilation by project from all of the applications, with a reference back to which interim/final application contains them. Thus, a project might be titled the "second amended plan and disclosure statement" and under that would be each task related to that. If the applicant wishes, it can also add a brief

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CONT... Robert Vilas Johnson and Linda Joyce Johnson Chapter 7

explanation of the work done, the outcome, and the benefit to the estate.
This is to be filed and served by July 29.

No tentative ruling is being made at this time as to the other issues raised in the objection.

If possible, Mr. Golden is to attempt to have the parties resolve the fee dispute.

Party Information

Debtor(s):

Robert Vilas Johnson

Represented By
Andrew P Altholz
Gavin L Greene
Ashley M McDow
Leslie A Cohen

Joint Debtor(s):

Linda Joyce Johnson

Represented By
Andrew P Altholz
Gavin L Greene
Ashley M McDow
Leslie A Cohen

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden (TR)
Ashley M McDow
Michael T Delaney
Fahim Farivar
Andrew P Altholz
Gavin L Greene
Leslie A Cohen

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1:11-22424 Ronald Alvin Neff

Chapter 7

#5.00 Continued Status Conference as to continued Trial

fr. 8/17/18, 8/27/18, 1/30/19; 2/12/19; 2/25/19; 3/4/19
4/15/19; 5/7/19; 6/18/19

Docket 429

Tentative Ruling:

Mr. DeNoce filed a status report. He notes the credentials of his expert witness and asks that he be provided with the Dental Board Decision, parts of the Neff deposition, some Northwestern Mutual Disability records, and some Okhovat/Hersel records. We will discuss this at the 7/16 hearing.

On July 1 I sent an email to everyone asking that they coordinate possible trial dates: In August: August 5, 7, 8, 9, 12, 13, 14, 15, 16, 23, 27. In September: September 3, 4, 6, 9, 13, 17, 18, 25

I have received no response. Let's get that resolved. Mr. DeNoce, please try to have a phone number for your expert's scheduling person so that we can finalize this at the hearing.

prior tentative ruling (6/18/19)

Mr. DeNoce has filed a document as to the matters that were admitted into evidence. See tentative ruling on motion to close evidence and issue final ruling.

prior tentative ruling (4/15/19):

Dr. Hersel will give the balance of his testimony on 4/15. He has advised by email that he has already produced all of the records in his possession.

Counsel are to appear at 12:30 to deal with procedural issues.

As to the objections filed by Mr. Kwasigroch (dkt. 508), here are my rulings (by objection number):

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CONT... Ronald Alvin Neff

Chapter 7

Overruled - #1,4, 5, 10, 12

Ruled on at 4/11 continued trial and the same rulings apply to Dr. Hetsel's testimony - #2, 3, 6, 7, 8, 9

As to #11 and #13 - this is not an objection but is closing argument and will be heard at that time if Debtor wishes to raise it.

THE FOLLOWING WILL BE DEALT WITH AFTER DR. HERSEL HAS COMPLETED HIS TESTIMONY

As to the Objection and Statement, which go to the issue of whether Mr. Neff will sign a release for the SSA, DeNoce had received a disc from the SSA, but he reviewed it and found that the material was incomplete. He then destroyed the disc and neither sent them to Kwasigroch or sought instruction from the Court. Although Neff had said that he would sign a new release (the old one having become stale through the passage of time), he has now changed his mind. He is not bound by his prior statement as DeNoce has not relied on it to his detriment. There are no actions that he could have taken and did not take. He is still allowed to hire his own psychiatrist to review the review report by Dr. Bilik and can appeal the denial of Dr. Bilik's testimony by the SSA.

It was DeNoce's decision to destroy the SSA records. Whether he read them in detail or not before he destroyed the disc is not known and will never be known for sure. But obviously he looked at what types of documents were included or he could not have decided that the file was "incomplete." If he believed that the SSA did not give him the full file, he had options at that time, but failed to proceed. There is no reason to believe that a new SSA production would be any different than the first one.

Kwasigroch raises the evidentiary issue of spoliation (which he incorrectly writes a spoilation). This is a presumption that the destruction of evidence relevant to the litigated issue shows that the evidence was unfavorable to that party. *Weinstein' Federal Evidence §301.06*. That does not apply in this case since the SSA file is even more accessible to Neff, who need merely request it. Thus, he has the ability to know what is in it and to produce it to

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the Court.

Chapter 7

DeNoce was allowed to hire an independent psychiatrist to examine Neff as well as to hire another psychiatrist to review the Bilik report. He cancelled the examination of Neff and never sought to go forward with it. He will be allowed to hire an expert to review the Bilik report because Bilik cannot be called to testify, but there needs to be a time limit to do this. This case has dragged on a considerable length of time and it was incumbent on DeNoce to proceed without delay. If he is seeking to appeal that SSA decision, he can go forward with that, too, but I will not delay the hiring of a review psychiatrist any further. Both can proceed simultaneously.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Movant(s):

Douglas Denoce

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

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1:14-15182 Mark Alan Shoemaker

Chapter 7

#6.00 Trustee's Final Report and Applications for
Compensation

Docket 191

Tentative Ruling:

The only money in this estate after payment of the Trustee's fee is less than \$5,000. This would be divided pro rata between the Bankruptcy Court, United Records Management, and Bret Lewis.

Debtor objects to the Trustee report stating that (1) Alfred Siegel was incompetent, (2) there are errors, (3) the appeals are not final as to discharge, so the case should not be closed, and (4) that Debtor has until July 29 to file his Application for Writ of Certiorari with the U.S. Supreme Court in the Siegel action.

Trustee's reply: the objection was late. Siegel and his counsel have both waived their fees and the other three administrative parties are only receiving 26% of their claims. This is an insolvent case, so the Debtor has no right to object to the final report. The pending appeals have no relevance.

Proposed Ruling - The issue of Debtor's discharge is not relevant to the order on the final report, payment of claims, and closing of the case. However, it is possible that if the Supreme Court were to grant Cert, that would have an effect because (although not pleaded as such) should Shoemaker prevail in 16-1142 there would be assets for distribution. I do not know if the July 29 date is the last date to file for Cert, but there is no harm in continuing this **without appearance** to September 10, 2019 at 10:00 a.m. Unless Shoemaker can show that he has timely filed for Cert and the successful status of that application (or that it is still pending and unresolved), the Trustee's final report will be granted at that time.

Please note that Shoemaker has filed a stack of objections to claims against creditors in this estate. He has set the hearings for 8/20/19 at 10:00 a.m. The Court is suspending all action on these objections. Unless Cert is

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CONT... Mark Alan Shoemaker

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granted, the objections to claims are moot since there is no money to distribute in this case. Also, unless Cert is granted, the Debtor has no standing to object since there is no possibility of it being a surplus estate and thus he does not have a pecuniary interest in the outcome. It appears that these were filed because of the BAP ruling denying discharge. To the extent that Shoemaker believes that he does not owe money to these individuals/entities, he needs to deal with that in state court.

Party Information

Debtor(s):

Mark Alan Shoemaker

Represented By
William H Brownstein

Trustee(s):

Alfred H Siegel (TR)

Pro Se

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10:00 AM

1:16-11387 Real Estate Short Sales Inc and Real Estate Short Sales, Inc.

Chapter 7

#7.00 Order to show cause why Nancy Cueva and debtor should not be held in contempt of court

fr. 1/29/19; 1/31/19; 3/5/19; 4/16/19

Docket 329

Tentative Ruling:

As to the appeal, the Trustee brought a motion to dismiss. Judge Fischer took the motion under submission, but dismissed as to RESS, since it did not appear by counsel. As to Cueva and Molica, Judge Fischer gave them until July 8, 2019 to file an opposition. Cueva and Molica filed an opposition on 7/8. Any reply is due on July 15, 2019.

I am continuing the July 16 hearing on the contempt motion to August 20, 2019 at 10:00 a.m. in the hope that Judge Fischer will have ruled by that point. As to any further papers, I have received the contempt motion, the opposition, the reply, the supplemental opposition, and the supplemental reply. Once Judge Fischer rules, the following timeline will go into effect:

The Trustee will have 7 days after the date of the ruling to file an addendum to her motion - limited solely to the status of the appeal and the impact on this motion.

If Judge Fischer grants the Trustee's motion to dismiss, then Cueva/Molica will have 14 days after the Trustee files her addendum to file a second supplemental opposition - limited solely to matters raised by the Trustee in her addendum and the impact of the dismissal on this motion.

If Cueva/Molica file a second supplemental opposition, the Trustee will have seven days after that is filed to file a second supplemental reply, which is to be limited solely to matters raised by the Cueva/Molica second supplemental opposition.

Depending on the substance and timing of Judge Fischer's ruling on the motion to dismiss the appeal, the hearing in August 20 may be on the merits

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CONT... **Real Estate Short Sales Inc and Real Estate Short Sales, Inc.**
or may be a status conference.

Chapter 7

prior tentative ruling (4/16/19)

The Court has entered a Notice of Status in Bankruptcy Court, which has also been sent to the district court to be filed in the consolidated appeal (2:18-cv-10689-DSF). This is #451 on the bankruptcy case docket. The district court docket does not reflect any future hearing date, though the opening brief is to be filed by 5/13/19. We have mailed it to be filed in the district court and I have sent a copy to Judge Fischer to be sure that she is aware of it.

I think that the contempt hearing needs to be continued until some or all of the appeals are resolved, as described in my notice. Let's discuss how best to proceed.

prior tentative ruling (1/31/19)

The OSC re: Contempt deals with three specific actions:

1. Violation of the compromise order (the "Compromise Order") [dkt. no. 226] that requires Parties to cooperate fully with the Chapter 7 Trustee's marketing and sale of that certain real property commonly known as 10351 Oklahoma Avenue, Chatsworth, California 91311 (the "Chatsworth Property") by failing to allow interior access to the Chatsworth Property for the purposes of an appraisal required by the lender for buyer Haya Sara Yavor ("Buyer");
2. Violation of the sale order (the "Sale Order") [dkt. no. 302] that requires Parties to vacate the Chatsworth Property by noon on Monday, December 17, 2018; and
3. Violation of the Compromise Order by opposing Trustee's sale motion for the Chatsworth Property and filing a notice of appeal of the Sale Order.

The details and background of these asserted violations are described below in more detail in the Trustee's reply.

Opposition

The reason that they did not move out on 12/17 was because the hearing on their stay motion was not set until 12/18. Also they believed (on their own and not from counsel) that the sale order violated the automatic

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stay of their chapter 13.

The Sale Order did not require the Debtor (as opposed to Cueva/Molica) to vacate the Chatsworth Property by noon on 12/17.

Molica was and is very sick, so the failure to allow the appraiser access on 12/12 and 12/13 and the failure to vacate on 12/17 should keep that in mind. However, after the Court ruled on 12/18, the appraiser was promptly granted access.

Cueva believed that the automatic stay of the chapter 13 case precluded the Trustee from pursuing the sale and obtaining possession of the property and thus her conduct was justified.

Cueva and the Debtor had a justified belief that the setting of the Stay Motion for 12/18 meant that they did not have to vacate Chatsworth on 12/17.

The Debtor and Cueva did not violate the Compromise Order by opposing the Sale Order due to the filing of the chapter 13 case. Nor did they do so by appealing the Sale Order based on issues that they believe to be valid. Requiring that they "cooperate fully with Trustee's marketing and sale of the Chatsworth Property, subject to the Court's approval" cannot be read as a waiver of their rights to oppose the Sale Order. The automatic stay cannot be waived in advance.

This OSC does not apply to Molica.

Reply

Although set forth in the application for this OSC, the Trustee again lays out the facts that support her contention of bad behaviour by Cueva and Molica - living cost-free in Chatsworth for 6 years before the Trustee was appointed (thus avoiding \$500,000 in mortgage payments); remaining in the property without payments for another year after the Trustee was appointed; interfering with the sale of estate property; negotiating in bad faith to purchase the property; increasing the estate's administrative expenses. They benefitted by \$85,000 by this 13-month extension after the Trustee was appointed. After a buyer was obtained, they would not vacate the property and would not allow access to the Trustee's appraiser. The Trustee was forced to petition the Court for an order to remove them, to which they responded by threatening the escrow and title officers with litigation pursuant to a bogus quitclaim deed.

The Trustee then lays out in detail the actions which interfered, delayed, and otherwise prejudiced the estate.

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The Trustee states in her reply (filed on 1/22/19) that the sale has not yet closed due to the delays caused by Cueva and Molica. The Trustee is not sure that the short sale lender will agree to any further extensions if Cueva and Molica continue to block the sale by their contemptuous conduct.

As to the specific items in the OSC:

(1) refusal to provide access - Cueva did not act in good faith by failing to allow the appraiser access on 12/12 and 12/13. The Compromise Order required Cueva and the Debtor to cooperate with the Trustee's marketing and sale of the property. This included the appraisal appointment.

(2) refusal to vacate: they were to vacate by noon on 12/17/18, but Cueva and Molica refused to do so. They did not remove their personal property.

(3) violation of the Compromise Order by opposing the Sale Motion and filing a notice of appeal: These violated the provision of the Compromise Order requiring Cueva and the Debtor to cooperate fully with the Trustee's marketing and sale of the Chatsworth Property.

The Court has civil contempt power through 11 USC §105(a). Civil contempt occurs when a party "disobeys a specific and definite court order by failure to take all reasonable steps within the party's power to comply. The contempt 'need not be willful,' and there is no good faith exception to the requirement of obedience to a court order." *Go-Video v. Motion Picture Ass'n of America (In re Dual Deck Video Cassette Recorder Antitrust Litig.)*, 10 F.3d 693, 695 (9th Cir. 1993). A party must take all reasonable steps to comply with a court order. *Shuffler v. Heritage Bank*, 720 F.2d 1141, 1146-7 (9th Cir. 1983).

The Trustee has met her burden of proof in the application for the OSC and in the facts laid out in this reply. Now the burden of proof shifts to the contemnors and they have not met this. They have not put forth any evidence of an impossibility defense or of their inability to comply.

As to vacating the residence, Molica and Cueva may have moved out on 1/8, but they did not notify the Trustee and they left two inoperable vehicles. Thus the U.S. Marshal deputies appeared with a locksmith (cost \$3,000+ for the Marshals and \$1,146 for the locksmith). Cueva and Molica left the two cars and almost their entire personal property behind, and storage is likely to cost more than \$10,000 plus \$1,000 per month for insurance.

The Sale Order applies to all parties, including the Debtor. A corporation acts through its principals. Cueva and Molica claim to be equityholders, officers, and directors. Therefore they are responsible for the

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Debtor's compliance with the Compromise Order and the Sale Order.

There is no medical exception to the obligation to comply with a court order. There is also no evidence to verify the existence, extent, or duration of Molica's medical issues. Molica was fully engaged during the appraisal and was seen driving a car with Cueva as his passenger as well as walking around. They, in fact, have moved out and there is no showing that Molica's medical condition was an excuse for the delay.

The Chapter 13 filing was a procedural maneuver and not a good faith filing. They had no interest in the Chatsworth property, so the chapter 13 stay could not apply. Also, the automatic stay does not apply to the bankruptcy court where the debtor's bankruptcy is pending. *[Please note that I cannot tell where the quotation on p. 19-20 of the reply is from. It also appears to contain several mistakes as to the citations included - ie. according to Lexis, North Coast Village is at 135 B.R., not 132 and Maritime Elec. is at 959 F.3d, no 862.]*

Even if the stay could apply, the Court annulled it and dismissed the chapter 13 case.

There was no waiver of the Compromise Order. There was no right to waive and also because the cooperation was an obligation of the Order, the discussion of waiver does not apply.

The Debtor and Cueva had no standing to file an appeal of the Sale Order. There was no pecuniary interest of either in the property. There was no possibility of surplus.

The Court has the ability to impose civil contempt penalties, which must be either compensatory or designed to coerce compliance. The Trustee seeks the following compensatory sanctions:

Attorney's fees of no less than \$20,000 and increasing *[There does not appear to be any evidence to support this figure.]*

U.S. Marshal's fees of \$3,000+ subject to final invoice

Locksmith charge of \$1,146

Insurance of \$11,672.95 subject to increase

Moving and storage of personal property of at least \$10,000, to be determined based on whether Cueva and Molica pay and arrange for their own movers per Court Order or whether statutory notice applies

Misc. costs for certified copies, etc. of \$351.62 subject to increase

Supplemental Declaration of Nancy Cueva

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CONT...

Real Estate Short Sales Inc and Real Estate Short Sales, Inc.

Chapter 7

Ms. Cueva pro se filed a supplemental declaration on 1/25. She describes a potential sale to an Argentinian buyer that did not go through because the Trustee required certain things. She then talks about her attempt at a loan modification, which she asserts the Trustee interfered with, but is actually still pending. She states that up to 2015 she and her husband paid \$234,180 and also improvements of \$250,000.

As to the recent chapter 13, she asserts that she paid Jeffrey Hagen \$1,500 for his services, but he withdrew after he spoke with Ms. Zamora. Since they could not find another attorney on such short notice, they let the case be dismissed.

Cueva became ill and could not vacate the premises. On December 25 she was taken to the emergency department of West Hills Hospital for emergency surgery and her post-surgical care did not allow her to do any strenuous activity.

On January 3, U.S. Marshal Deputy Hugo Valdez trespassed and posted a notice to vacate that was defective because it did not attach the third page of the writ not the order attached to the writ. On January 8 they moved out. Deputy Valdez did not return. Cueva wanted to arrange to move the personal property, but Deputy Valdez never returned calls. On January 12 Cueva and Molica returned to pick up their mail and found 4 marshalls, a lock company, the realtor, and Zamora's assistant. None would tell them how to recover their personal property. Since then Cueva has called Zamora and filed a letter to her and to the Marshall, but not received an answer. Cueva refuses to pay the Marshall or attorney fees. Zamora has personal animosity against Cueva.

Analysis

Although not raised in the opposition, the OSC re: Contempt is on appeal (USDC CAC 2:19-cv-00120- DOC). Do I still have jurisdiction on this until the appeal is dealt with?

The sale has not closed. Is the Sale Order on appeal? If so, do I have jurisdiction on this OSC re: Contempt as to the Sale Order? However the Compromise Order is not on appeal.

11 USC §105(a) gives the bankruptcy court the power to punish for civil contempt. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178 (9th Cir. 2003). Beyond that, there is an inherent power to do so. *Caldwell v. United*

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Capital Corp. (In re Rainbow Magazine, Inc.), 77 F.3d 278, 284 (9th Cir. 1996).

Civil contempt involves sanctioning a person until s/he complies with an affirmative command - in this case complying with the Compromise Order and also with vacating the property, etc., which has been partially done but personal property was not removed by the alleged contemnors. Criminal contempt is punitive because the act of disobedience has been completed and the contemnor cannot now act to comply with the prior order:

Since there is no positive action to be taken (except dealing with the personal property that is in storage), this could fall into the area of criminal contempt. However, the Trustee is not seeking a determination of criminal contempt, but merely sanctions for the expenses incurred by the violation of the Orders.

Civil contempt may be used to compensate the aggrieved party even if the action by the contemnor can no longer be undone:

Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained. *Gompers v. Bucks Stove & Range Co.*, *supra*, at 448, 449. Where compensation is intended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of complainant's actual loss, and his right, as a civil litigant, to the compensatory fine is dependent upon the outcome of the basic controversy. *United States v. United Mine Workers*, 330 U.S. 258, 303-304 (1947)

A contempt fine accordingly is considered civil and remedial if it either "coerces the defendant into compliance with the court's order, [or] . . . compensates the complainant for losses sustained." *United States v. Mine Workers*, 330 U.S. 258, 303-304, 91 L. Ed. 884, 67 S. Ct. 677 (1947). Where a fine is not compensatory, it is civil only if the contemnor is afforded an opportunity to purge. See *Penfield Co. of Cal. v. SEC*, 330 U.S. 585, 590, 91 L. Ed. 1117, 67 S. Ct. 918 (1947). Thus, a "flat, unconditional fine" totaling even as little as \$ 50 announced after a finding of contempt is criminal if the contemnor has no subsequent opportunity to reduce or avoid the fine through compliance. *Id.*, at 588.

Int'l Union v. Bagwell, 512 U.S. 821, 829 (1994)

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Here the sanction would be compensatory since there is nothing left for Cueva and the Debtor to do (although they can reduce this by taking possession of their personal property). It appears that the proper result would be an order that Cueva pay the Trustee the sum necessary to compensate for the actions taken as a result of her contempt. Since the Trustee does not have counsel, the Court would need evidence of a proper amount to compensate the Trustee for her time and for incidental expenses. Then the Court must determine that Cueva has the ability to make the payment. There would be no such order as to the Debtor, since it owns nothing that is not property of the estate. While the Court has doubted Ms. Cueva's finances, she has never asserted that she did not have sufficient money to comply with the order to move. And she has hired counsel and paid him a retainer of \$20,000 and agreed to an hourly rate of \$650. (dkt. 324). Thus her ability to pay is not in issue.

One of the issues is who is bound by the Compromise Order and who is bound by the Sale Order. The Compromise Order (dkt. 226) approves the motion to compromise (dkt. 217). The compromise letter states that it is "reached between you ('Cueva') and me, as chapter 7 trustee ('Trustee').... (dkt. 217, p. 15). The Order approving the revised compromise states that it is between "Trustee and Nancy Cueva ('Cueva'), for the benefit of Debtor...." (dkt. 226). Ms. Zamora prepared both of these documents. The Sale Order (dkt. 302, p. 9) specifically provides in ¶11 that "Nancy Cueva and Julio Molica (collectively 'Residents'), shall vacate the Real Property, without causing damage, no later than 12:00 noon on December 17, 2018, consistent with that certain Order Approving Revised Compromise...."

As to the assertion that she did not comply with the order to vacate by 12/17 because of the delay in the hearing on a stay until 12/18, it is clear that Cueva did not intend to vacate at any time and that she was doing all that she could to block the sale from consummating. See for example her recording of a quitclaim deed on 12/26/18 (dkt. 347, 349).

As to the issue of her belief that she was protected by the automatic stay of the new chapter 13 - the mere act of filing the chapter 13 was solely for the purpose of interfering with the sale and as a basis not to vacate the property. Concerning whether Jeffrey Hagen was her attorney in the chapter 13, she asserts that she hired him and paid him \$1,500, but provides no receipt for payment, he never appeared, the petition was filed pro se, and there is no declaration by Mr. Hagen.

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Beyond that, she attempted to keep that case open by lying to the Court [though not under oath] and she had her attorney state that Cueva had timely filed a request to extend time to file schedules in that case [transcript of 12/18/18 hearing, dkt. 341] The document was never located in the clerk's office and thus the court dismissed the case. Although Cueva was given an opportunity to vacate the dismissal if she could present a conformed copy of her application to extend, she did not do so. The Court finds that no such application for extension was ever filed. Id. p. 62-63. Also, on December 4, Cueva represented to the Court that Jeffrey Hagen represented her in her chapter 13 case, but this was not true.

All of these efforts were undertaken so as to prevent the Trustee from completing the sale. They were obstructionist and not in good faith.

The Trustee has laid out sufficient facts to meet her burden that the actions by Cueva, Molica, and the Debtor were an intentional violation of prior orders of this Court - specifically Sale Order, though there is a question as to who was bound by the Compromise Order. The Trustee has met her burden.

As to the assertion that all of this was due to the poor health of Molica - the Court does not accept that as an excuse. Beyond the fact that the Compromise Order was many months before the Sale Order and thus Molica/Cueva had more than sufficient time to prepare to move, the declaration of Behnaz Tavakoli provides evidence that Molica was not unable to physically move out - he was able to walk and to drive. Even had he been immobile, this would not be an excuse since he had months to prepare.

Concerning Cueva's emergency surgery, apparently this occurred on or after December 25, a full week after the time to remove themselves from the property. There is also no evidence that Cueva and/or Molica made any preparations to move themselves or their furniture. They are or were living in a hotel and not an apartment, there is no indication that they hired a moving company or arranged for storage. It is obvious to the Court that they had no intention to move until and unless the Marshall took action. They had months to make preparations and their health issues are not an excuse.

The Court also finds it disturbing that Ms. Cueva presented an entirely new story of the delay in her supplemental opposition, since all of these assertions occurred before the Debtor's attorney filed the initial opposition.

As to the loan modification, that time has passed. The debtor (estate) owns the real property, not Cueva/Molica. They have no rights left to modify and their attempts may be interfering with the Sale Order and may be a

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continuing contempt.

As to the personal property, there needs to be an agreement as to how it is handled - remaining in storage, who pays the storage fees, etc.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Real Estate Short Sales, Inc.

Represented By
Daniel J McCarthy

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:16-11387 Real Estate Short Sales Inc

Chapter 7

Adv#: 1:19-01064 Zamora v. Yavor

#8.00 Status Conference Re:
Notice of Removal

Docket 1

Tentative Ruling:

See cal. #8.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Defendant(s):

Haya Sara Yavor

Pro Se

Plaintiff(s):

Nancy Zamora

Represented By
Jessica L Bagdanov

Trustee(s):

Nancy J Zamora (TR)

Represented By
Jessica L Bagdanov
David Seror

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1:16-11387 Real Estate Short Sales Inc

Chapter 7

Adv#: 1:19-01064 Zamora v. Yavor

#9.00 Motion to Dismiss Complaint with Prejudice

Docket 5

Tentative Ruling:

The Plaintiff is the buyer who bought the home at 10351 Oklahoma Ave., Chatsworth from the estate of Real Estate Short Sales, Inc. Nancy Zamora is the trustee of that estate. The essence of the complaint is that in the process of evicting Cueva and Molica (the residents, who are also principals of RESS), the Trustee negligently hired a locksmith to screw the doors shut and that caused significant damage to the doors.

When Haya Yavor's agent inspected the property, the Trustee intentionally and fraudulently covered up the floor with tarp and personal property (heavy furniture) so that Haya Yavor would not discover that the floor was plagued with mold. This inspection took place on or about September 2, 2018. The damage was discovered only after Plaintiff took possession.

The estimate for repairs is \$50,000.

The motion to dismiss is based on several grounds:

The Plaintiff cannot commence a lawsuit against a chapter 7 trustee in a nonbankruptcy forum without first obtaining leave of the bankruptcy court. However, in the Ninth Circuit, the subsequent removal of this action to the bankruptcy court cures the initial jurisdictional defect. Nonetheless, the Trustee argues that the Court should dismiss on this ground because the Trustee should not have to spend time and resources defending an action that the Court did not approve.

The Trustee has broad semi-judicial immunity from suit when she acts in her official capacity. Even if her business judgment was unwise, she is not liable. *Curry v. Castillo (In re Castillo)*, 297 F.3d 940, 950 (9th Cir. 2002).

As to the claim of fraudulent concealment, while the Trustee is not absolutely immune, the complaint fails to include specific allegations sufficient to satisfy Rule 9. In fact, the Plaintiff's agent noticed the apparent defects in his inspection (complaint ¶ 18) and Plaintiff failed to inquire further before accepting possession.

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CONT...

Real Estate Short Sales Inc

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As to the elements of fraud, there is no allegation that the Trustee ever personally visited the property or did so for a long enough period to move all of the heavy furniture, etc. As to the assurances that the floor below the tarps was okay, there is no identity of who made them, when they were made, etc. Also there was no duty to disclose. Under the purchase agreement, the sale was As-Is, Where-Is and the Trustee made no investigation of nor makes any representation or warranty regarding the condition of the real property. There was an inspection contingency in the purchase agreement.

Since the Complaint cannot be saved by any amendment, it should be dismissed with prejudice.

Opposition

Plaintiff intends to add City One Locksmith to the complaint. *[Court: Please note that there are no "doe" defendants in federal court pleadings. If you wish to add a defendant, you need to file an amended complaint. See Fed.R.Bank.Proc. 7015, which incorporates Fed.R.Civ.Proc. 15.]*

The Trustee is not immune from grossly negligent acts, but is liable for these and also for intentional acts.

The facts of *Bennett v. Williams*, 892 F.2d 822 (9th Cir. 1989) are clearly differentiated from the facts in this case. The hiring of, supervision of, and directions to the locksmith were grossly negligent. This will be shown in discovery. As to fraudulent concealment, the complaint adequately states facts that, if proven, would show liability.

Reply

The Trustee thinks that the opposition was not filed with the Court. *[Court: It was not electronically filed, but was filed on 7/5/19.]*

The beliefs of the Plaintiff are not relevant – you need to look at the "facts" pleaded in the complaint. The allegations are for simple negligence, not gross negligence. There are not enough facts alleged to uphold a claim of gross negligence.

Because the Trustee has court authority to take over the property (by force, if necessary, through the use of the U.S. Marshals), the Trustee cannot be held responsible for the resulting damage (ie. if the Marshals had broken down the door).

As to fraudulent concealment, this was an as-is-where-is sale. The Trustee made no representations of the condition of the Property and the

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CONT... **Real Estate Short Sales Inc**

Chapter 7

Buyer acknowledged this. Also the agent of the Buyer inspected, saw the tarp, and failed to look under it. As to assurances to the Buyer that the floor had no issues, there are no facts alleged as required by Rule 9 (who said it, when, who was present, was the Trustee even in the house?). Plaintiff has not alleged that the Trustee had a duty to disclose – and she did not because of the Purchase Agreement and Sale Order specifically removed any duty to disclose by the Trustee.

Proposed Ruling

Note my comment above as to the locksmith.

The Complaint must be amended. As to negligence, there must be sufficient facts stated that the would support a finding that the Trustee acted in a grossly negligent fashion as to the damage to the doors. Merely hiring a locksmith who may (or may not) have been negligent is not sufficient as to Cause of Action 1.

As to the fraudulent concealment cause of action, the Trustee is correct that FRBP 7009 (incorporating FRCP 9) and the cases that discuss it requires that fraud be pleaded with particularity. This has not been done in this case. The tarp may have covered damaged floors. That is not the issue at this point (though it is relevant to damages). The question here is liability. What representations did the Trustee make? What representations did her agent(s) make? When were these representations made and to whom? If the agent or Cueva/Molica made the representations, was the Trustee or her agent present? Were the representations reasonable? Should the buyer have relied on them under the circumstances?

Grant the motion to dismiss with leave to amend. The amended complaint is to be filed and served by July 30. Any response is to be filed and served by August 16. Opposition to the response by August 30 and Reply by September 13. The status conference will be continued to September 24 at 10:00 a.m.

I would like to hasten this and will shorten these dates if the parties agree to that.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

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CONT... Real Estate Short Sales Inc

Chapter 7

Defendant(s):

Haya Sara Yavor

Pro Se

Plaintiff(s):

Nancy Zamora

Represented By
Jessica L Bagdanov

Trustee(s):

Nancy J Zamora (TR)

Represented By
Jessica L Bagdanov
David Seror

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1:16-11538 Majestic Air, Inc.

Chapter 11

Adv#: 1:18-01133 Majestic Air, Inc. et al v. Lufthansa Technik Philippines, Inc.

#10.00 Status Conference Re: Complaint
Objecting to Proof of Claim No. 3; and
for Contractual Indemnification

fr. 3/5/19; 6/11/19

Docket 1

***** VACATED *** REASON: Stip. cont. to 8/20/19 @10am (eg)**

Tentative Ruling:

There is a mediation between Majestic Air and Lufthansa Technik Philippines set for June 13. The parties wish the status conference to be continued without appearance to July 16. Continue to July 16, 2019 at 10:00 a.m. and extend the dates to meet and confer and file a joint status report as per the stipulation.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Defendant(s):

Lufthansa Technik Philippines, Inc.

Pro Se

Plaintiff(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Tessie Cue

Represented By
Stella A Havkin

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1:16-11538 Majestic Air, Inc.

Chapter 11

#11.00 Objection to Scheduled Claims of Franklin Tan
(listed as no. 3.3 adn 3.4 in part of 2 of amended
schedule E/F, docket no. 24

fr. 6/11/19

Docket 275

***** VACATED *** REASON: Order entered continued to 8/20/19 @10am
(eg)**

Tentative Ruling:

LTP and the Debtor filed a stipulation to continue this to 8/20/19. I changed the order to include the following:

1. That Franklin Tan has never been served with this objection to his claim and he is not a party to this stipulation. If he has not been properly served (as noted in the prior tentative ruling) by August 10 and proof of service filed prior to the August 20 hearing, this objection to claim will be overruled.

2. Assuming that Debtor has standing to file a response to the objection, its deadline to file and serve a response to the Objection is extended to August 6, 2019. No further extensions will be granted without appearance. As to Franklin Tan, he will have 21 days after proper service to respond.

It is continued to 8/20/19 at 10:00 a.m.

prior tentative ruling (6/11/19):

This objection is brought by Lufthansa Technik Philippines, Inc (LTP), a creditor of Majestic Air, and concerns scheduled claims #3.3 and 3.4 (amended schedules). Scheduled claim 3.3 is as to Franklin Tan in the

**United States Bankruptcy Court
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Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Tuesday, July 16, 2019

Hearing Room 302

10:00 AM

CONT... Majestic Air, Inc.

Chapter 11

amount of \$350,000 for an "investment into Ampleshares in Phillipines through a loan from Franklin Tan." It is is not contingent, unliquidated or disputed. Scheduled claim 3.4 in for Franklin Tan in the sum of \$350,000 and is for a "guaranty of investment into a joint venture for Ampleshares." It is also not disputed, contingent, or unliquidated. Mr. Tan is listed as having an address at 1677 Quezon Avenue, 4th Floor Nexor Building, Quezon City, Metro Manila, Phillippines. Tan has not filed a proof of claim or appeared in this case.

Tan and Cue are longtime friends. Tan asserted in the opposition to the motion to dismiss her personal bankruptcy that Tan loaned Majestic Air \$350,000 and an additonal \$350,000 to Ampleshares, who is Majestic's joint venturer and this was guaranteed by Cue. It has not been repaid. This motion asserts that all \$700,000 was transferred to Ampleshares, whose mailing address is the same as Tan's.

The motion then goes through a set of conflicting testimony as to the status of Ampleshares and its relation to Majestic Air. The declaration of Gabriel Courey states that it contains copies of the corporate documents of Ampleshares, but it does not. There is no admissible evidence as to the statements that Cue is alleged to have made and upon which much of this motion is based.

Beyond that, there is an issue of service. Mr. Tan's address is outside of the United States. The proof of services says that he was served by U.S. Mail at that address. He has never appeared and there is no information that service complies with FRBP 7004, which incorporates much of FRCP 4. FRCP 4(f) applies to service of a person in a foreign country.

Continue to July 16, 2019 at 10:00 a.m. for proper service and for the submission of admissible evidence in support of this motion.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

**United States Bankruptcy Court
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Courtroom 303 Calendar**

Tuesday, July 16, 2019

Hearing Room 303

10:00 AM

1:16-11538 Majestic Air, Inc.

Chapter 11

#12.00 Status and Case Management Conference

fr. 8/4/16(xfr from Judge Tighe's calendar); 8/30/16,
9/27/16; 10/25/16; 11/15/16, 2/21/17, 5/16/17; 6/27/17,
8/29/17, 1/23/18; 6/19/18, 9/18/18; 12/4/18; 2/12/19; 5/7/19
6/11/19

Docket 1

Tentative Ruling:

Continued by stipulation to 8/20/19 at 10:00 a.m.

prior tentative ruling (5/7/19)

Objection to claims of Franklin Tan is set for hearing on 6/11. Continue this status conference without appearance to 6/11/19 at 1:30 p.m. No updated status report will be needed at that time.

prior tentative ruling (2/12/19)

Per the status report, the parties (LTP and the Debtor) have narrowed down the list of mediators and expect to schedule a mediation within the next 30 days. The sale of the building has been completed and is now owned by the Debtor's principal's children. The Debtor is continuing to make lease payments.

If there are no objections, continue without appearance to April 16, 2019 at 10:00 a.m.

prior tentative ruling (12/4/18)

Per the status report filed on 11/20, the remaining issues involve LTP. The parties are discussing mediation. If not, Debtor will file a objection to the LTP claim.

Continue without appearance to February 12, 2019 at 10:00 a.m.

prior tentative ruling (9/18)

Special counsel is being employed to resolve or litigate the LTP claim. This

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10:00 AM

CONT... Majestic Air, Inc.

Chapter 11

status conference will be continued.

prior tentative ruling (6/19/18)

Per the status report filed on 6/5, on 5/30/18 the California Court of Appeal affirmed the decision of the Superior Court in the Ansett Aircraft v. Cue appeal, but remanded the case for further proceedings.

Continue without appearance to Sept. 18, 2018 at 10:00 a.m. so that the Ansett claim can be finalized.

prior tentative ruling (1/23/18)

There is a state court appeal pending. Continue without appearance to June 19, 2018 at 10:00 a.m.

prior tentative ruling (2/21/17)

Per the status report filed on 2/7/17, the LTP parts have been sold and Debtor has moved to its new, less expensive, location. The appeal with the California Court of Appeal as to LTP is continuing. The Debtor expects to file a disclosure statement within the next 60 days.

The Debtor filed a month-by-month comparison of actual revenue and expenses and budgeted revenue and expenses for November, December, and January. They show a slight net profit of \$1,500-\$2,200 per month.

If there is no objection, I will continue this without appearance to May 16, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

**United States Bankruptcy Court
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San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, July 16, 2019

Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

#13.00 Status Conference re: Chapter 11 case

fr. 9/1/16(xfr from Judge Tighe's calendar), 9/27/16,
10/11/16; 10/26/16; 11/15/16, 12/6/16, 3/28/16,
4/4/17; 5/30/17, 8/29/17, 9/19/17, 1/23/18, 5/1/18,
9/18/18; 1/8/19; 4/16/19

Docket 1

Tentative Ruling:

Per the status report filed on 7/1/19 by the Trustee, Judge Tighe ordered that the Trustee cannot sell the Rexford property until all claims in the Elkwood adversary proceeding are adjudicated. The defendants in the Rexford/Chalette Action moved to withdraw the reference, but Judge Walter denied that motion. Judge Tighe scheduled a trial for the remaining claims for October 16. 17. 18. 21. and 25.

Continue the status conference without appearance to October 8, 2019 at 10:00 a.m.

prior tentative ruling (4/16/19):

Per the status report filed on 3/28/19, Judge Tighe ruled in favor of the Trustee on the Elkwood summary judgment motion. The defendants disputed that ruling and it is under submission. UST reports are current.

Continue without appearance to July 16, 2019 at 10:00 a.m.

prior tentative ruling (1/8/19):

Per the status report filed on 12/18, the Elkwood motions for summary judgment are being heard by Judge Tighe and are under submission. In the meantime, the Trustee is continuing to administer these cases. The next hearing on the MSJs is 1/25.

Continue without appearance to 4/16/19 at 10:00 a.m.

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10:00 AM

CONT... Solyman Yashouafar

Chapter 11

prior tentative ruling (9/18/18)

PLEASE NOTE THAT ALTHOUGH THE ELKWOOD ADVERSARY PROCEEDING WAS TRANSFERRED TO JUDGE TIGHE, I AM CONTINUING TO HANDLE ALL OTHER YASHOUAFAR MATTERS.

No status report received as of 9/16/18.

prior tentative ruling (1/23/18)

Per the status report filed on 1/16, there is a motion for summary judgment as to the JCBL Trust, set for hearing on 2/13/18 at 10:00 a.m. As to the Elkwood Associates adversary proceeding, Elkwood and Fieldbrook filed a motion to dismiss the second amended complaint, which is set for hearing on 2/27. The motion to withdraw the reference is still pending before Judge Walter. The Trustee is current with the OUST requirements.

Continue without appearance to May 1, 2018 at 10:00 a.m.

prior tentative ruling (/19/17)

On 9/6/17 the Trustee filed his status report. The Trustee is continuing to collect information about the Debtors and their estates.

The JCBL Trust is the subject of an adversary proceeding as to whether it is property of the estate. The Trustee expects to resolve this through a motion for summary judgment. [17-ap-01050 - status conference set on 10/17]

The settlement motion with the Abselets is pending.

The motion by defendants to dismiss the Elkwood adversary proceeding is pending [17-ap-01040 - cont. 10/3/17]

The Trustee is in compliance with OUST reporting requirements.

Continue without appearance to 1/23/18 at 10:00 a.m.

prior tentative ruling (5/30/17)

Per the Trustee's status report filed on 5/15/17, the Oklahoma action is proceeding and there is a status conference on 6/15/17. The Roosevelt Lofts proceeds are being held as various parties dispute ownership. There is a status conference in this court on that set for 7/11/17. The Trustee wants the Roosevelt Lofts' counsel to continue to hold the excess funds.

The Trustee filed 17-ap-01027 to determine the Debtor's estates'

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10:00 AM

CONT... Solyman Yashouafar

Chapter 11

interest in the RLI stock. Abselet filed a motion to withdraw the reference, which is set for hearing in the district court on 5/22. Abselet's motion to dismiss is set for 6/27 in this court. The Trustee and Abselet have set a one day mediation in front of retired Judge Goldberg for 6/3.

Massoud's brother-in-law foreclosed on the Beverly Hills homes of Massoud and of Solyman and sold Solyman's for a substantial profit and rented Massoud's back to him at \$25,000/mo for two years. Massoud never paid any rent and the lease has expired. The Trustee filed 17-ap-1040 seeking quiet title to the Rexford home and to avoid the foreclosures of both homes.

Discovery is continuing in all matters. The Trustee requests a further status conference in 90 days.

It is probably wise to have appearances (in person or on the phone) on 5/30, but this will be continued to an agreeable date in August.

Party Information

Debtor(s):

Solyman Yashouafar

Pro Se

**United States Bankruptcy Court
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Tuesday, July 16, 2019

Hearing Room 303

10:00 AM

1:16-12408 Massoud Aron Yashouafar

Chapter 11

#14.00 Status Conference re: chapter 11 case

fr. 9/27/16, 10/25/16; 10/26/16; 11/15/16,
12/6/16, 3/28/17, 4/4/17; 5/30/17, 8/29/17,
9/19/17, 1/23/18, 5/1/18, 9/18/18; 1/8/19; 4/16/19

Docket 1

Tentative Ruling:

PLEASE NOTE THAT ALTHOUGH THE ELKWOOD ADVERSARY
PROCEEDING WAS TRANSFERRED TO JUDGE TIGHE, I AM
CONTINUING TO HANDLE ALL OTHER YASHOUAFAR MATTERS.

This case is being jointly administered with 16-12255. See calendar #13.

Party Information

Debtor(s):

Massoud Aron Yashouafar

Pro Se

**United States Bankruptcy Court
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Tuesday, July 16, 2019

Hearing Room 303

10:00 AM

1:17-10853 Joseph Daniel Beam

Chapter 7

Adv#: 1:17-01046 Henderson v. Beam

#15.00 Status Conference Re:
Complaint for Fraudulent Activity in
Bankruptcy Case.

fr. 5/7/19

Docket 1

Tentative Ruling:

On 7/10/19, Plaintiff filed a status report. She said that she failed to appear because the superior court issues were delayed, so she thought that the hearing in the bankruptcy court was cancelled. She then set a last minute job interview. She wishes the court to continue prior court orders (10/4/17) lifting the automatic stay on the Debtor. She then goes through the facts in the superior court dissolution case.

The property division did not take place before the bankruptcy, so Judge Barash properly entered an order lifting the automatic stay. She goes on to argue that the delays in the superior court were due to Debtor's counsel. She wants this hearing continued until after the superior court trial (no date set for that) and wants sanctions against Attorney Moreno for causing the delays in the state and federal courts.

Proposed ruling: The order lifting the automatic stay does not have to be renewed. It continues in effect as set forth therein. I am still not convinced that I should wait for the superior court ruling. I think that it would be a good idea for me to either talk to the superior court judge as to scheduling or hold a joint status conference with the superior court judge. I am not just going to continue this on with no end in sight. As to sanctions against counsel, I have no authority to grant them as to the state court case and - as of this point - no reason to grant them as to this case.

prior tentative ruling (5/7/19)

This arises out of a family law case. According to the Debtor's status

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10:00 AM

CONT... Joseph Daniel Beam

Chapter 7

report, the family law judge is requiring briefs as to marital debts and the proposed division between the parties. The family law trial setting conference is set for 6/12/19. In this court, the defendant estimates one hour to present his case-in-chief.

This is a §727 case to deny discharge and the family law division of property may not be relevant. The crux of the complaint is that the debtor (sometimes through his attorney) knowingly filed improper paperwork; that this was a careless and frivolous bankruptcy case meant to delay and frustrate the divorce proceedings; that debtor failed to notify creditors of "intention to file bankruptcy;" and that debtor failed to disclose his true income and assets. The complaint also specifies the following reasons to deny discharge as to what items are listed on or omitted from the schedules and statement of affairs:

- (1) He declared debts that were solely owed by plaintiff and are not community debts
- (2) He claimed to own no property - the complaint lists a series of personal property, particularly automation. It also specifies income received from a pre-petition art sale and money he removed from an education fund for their son. There is also a pension account that was not revealed.
- (3) There were unsecured debts that he did not disclose, specifically for a previously repossessed car, a judgment by American Express, and a City of Los Angeles tax bill.
- (4) He did not reveal past spousal support paid or owed and other related family support payments made in 2014 through April 2016.
- (5) He did not list any expenses, though he has paid them.
- (6) He did not list gifts from his mother and friends in the approximate sum of \$50,000. He lives rent free and does not pay utilities or living costs.
- (7) There are a lot of debts from the marriage, but he did not declare them as codebtor obligations.
- (8) He declared a lower income than he actual receives.
- (9) He under-reported the attorney fees that he has paid to his counsel.

Plaintiff is also complaining of fraudulent activity of counsel (Kathleen Moreno) in that she knowingly filed this case "with no intent not to file proper documents." [Note that the complaint does not actually name Ms. Moreno as a co-defendant and she would not be subject to §727 as she is not the

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CONT... Joseph Daniel Beam
debtor.]

Chapter 7

Debtor's answer denies all allegations.

Since filing, this case has been largely on hold pending the state court dissolution proceedings.

As I review the complaint, it may not be worthwhile to wait until the family law court has acted - or it may be the best way. Clearly some of these actions were prepetition and non-financial or may have been too early to be included in the schedules. Perhaps it is best to rule on those specifics. Some of the others may be resolved in the family law proceeding - such as assets actually owned and debts actually owed.

Plaintiff has to realize that a §727 action will block the discharge of ALL debts, not just of those owed to her (which are already protected under §523). This means that other creditors will have as much right to seek payment as she does and that may prevent her from actually timely collecting future spousal support, etc. However, this is a §727 complaint and if she decides to dismiss it, the Trustee must be notified and may wish to take over the case.

Let's talk.

Party Information

Debtor(s):

Joseph Daniel Beam

Represented By
Kathleen A Moreno

Defendant(s):

Joseph Daniel Beam

Represented By
Kathleen A Moreno

Plaintiff(s):

Ellen Henderson

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, July 16, 2019

Hearing Room 303

1:30 PM

1:95-19539 Ivds Interactive Acquisition Partners

Chapter 7

#16.00 Status of chapter 7 case

fr. 8/29/17, 1/23/18, 7/10/18, 7/17/18, 11/6/18; 1/29/19

Docket 1

*** VACATED *** REASON: moved back to 10am (eg)

Tentative Ruling:

Fee applications have been filed, but not ruled on . Per the 1/15/19 status report, the IRS has not released the Federal tax forms for tax year 2018, so there is a delay in filing the final tax returns. Once the IRS issues its tax clearance, the Trustee will file his final report (presumably the fees will be ruled on at that hearing) and this case can be closed. Continue the status conference without appearance to July 16, 2019 at 10:00 a.m.

prior tentative ruling (11/6/18)

The compromise motion is #1 on calendar. If it is granted, continue this without appearance to January 29, 2019 at 10:00 a.m. so that the Trustee can file the necessary papers to close the case.

prior tentative ruling (7/17/18)

Per the status report filed on 6/19/18, the trustee will file a motion to close this case. He is negotiating with the OUST as to this.

Continue the status conference without appearance to Nov. 6, 2018 at 10:00 a.m. Feel free to schedule your motion on or before that date.

prior tentative ruling (1/23/18)

Per the status report filed on 12/28/17, the Trustee has previously made two interim distributions and hopes to make another one in 2018. The Trustee hopes to sell Vickery's home through a forced sale or, in the alternative, to sell the USDC Judgment against Vickery. Once the settlement with Michael and David is approved by the Court and the situation with Vickery is resolved, the Trustee will close the case.

Continue without appearance to 7/10/18 at 10:00 a.m.

prior tentative ruling (8/29/17)

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1:30 PM

CONT... Ivds Interactive Acquisition Partners

Chapter 7

This case was filed on December 1, 1995. It was originally filed as a Chapter 11. It was converted to Chapter 7 on November 3, 1997. The last activity on the docket was on October 20, 2016. On that date, an Order on Eighth Interim Application for Allowance of Fees to Green, Hasson & Janks was entered. On July 31, 2017, an Order Setting Status Conference Hearing was entered. On August 15, 2017, the Chapter 7 Trustee filed a Status Report in Bankruptcy Case. [dkt. 648]

Trustee's August 15, 2017 Status Report:

Debtor was a general partnership organized under Florida law and composed of approximately 645 individuals. Debtor was created by a group of organizers who used corporate entities controlled by them to raise money to exploit IVDS, a communications medium to be licensed by the FCC.

Trustee has always believed that Debtor was a fraudulent telemarketing scheme. Trustee commenced a lawsuit against the organizers of Debtor alleging fraudulent transfer claims. Trustee went to trial against three principal Defendants: David Dambro, Michael Dambro, and Terry Vickery. Trustee obtained judgments against all three Defendants: David: \$5.1 million; Michael: \$4.1 million; and Vickery: \$4.6 million. Judgment will remain enforceable until 2027. Trustee continues to pursue collection activities through special counsel as Trustee believes David, Michael, and Vickery have hidden millions of dollars. Trustee has currently made two interim distributions in this case and hopes to make at least one more distribution after Trustee sells Vickery's home. Thereafter, Trustee will evaluate the possibility of a sale of the judgment at the end of 2017, which would allow Trustee to close the case.

This matter is now off calendar. No appearance is required and no hearing will be held. In the future, please file a status report every 90-180 days.

Party Information

Debtor(s):

Ivds Interactive Acquisition Partners

Represented By

Grant L Simmons

Uzzi O Raanan ESQ

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CONT... Ivds Interactive Acquisition Partners

Chapter 7

Trustee(s):

Richard K Diamond (TR)

Represented By

J Jeffrey Craven

Uzzi O Raanan ESQ

Howard Kollitz

Richard K Diamond (TR)

Richard K Diamond

Ruba M Forno

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Tuesday, July 16, 2019

Hearing Room 303

1:30 PM

Chapter 0

:
Adv#: 1:19-01054 Kalmenson et al v. HSBC BANK (USA) N.A. et al

#17.00 Status Conference re: First Amended Complaint
for Declaratory Judgment

Docket 2

***** VACATED *** REASON: moved up to 10am (eg)**

Tentative Ruling:

- NONE LISTED -

Party Information

Defendant(s):

HSBC BANK (USA) N.A.	Pro Se
SELECT PORTFOLIO	Pro Se
First American Title Ins Co.	Pro Se

Plaintiff(s):

Harvey Kalmenson	Represented By Joon M Khang
Catherine R Kalmenson	Represented By Joon M Khang

**United States Bankruptcy Court
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Judge Geraldine Mund, Presiding
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Tuesday, July 16, 2019

Hearing Room 303

1:30 PM

1:11-18629 Robert Vilas Johnson and Linda Joyce Johnson

Chapter 7

#18.00 Trustee's Final Report and Application
for Compensation

Docket 0

***** VACATED *** REASON: moved up to 10am (eg)**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Vilas Johnson

Represented By
Andrew P Altholz
Gavin L Greene
Ashley M McDow
Leslie A Cohen

Joint Debtor(s):

Linda Joyce Johnson

Represented By
Andrew P Altholz
Gavin L Greene
Ashley M McDow
Leslie A Cohen

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden (TR)
Ashley M McDow
Michael T Delaney
Fahim Farivar
Andrew P Altholz
Gavin L Greene
Leslie A Cohen

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, July 16, 2019

Hearing Room 302

1:30 PM

1:16-11387 Real Estate Short Sales Inc and Real Estate Short Sales, Inc.

Chapter 7

#19.00 Order to show cause why Nancy Cueva and debtor should not be held in contempt of court

fr. 1/29/19; 1/31/19; 3/5/19; 4/16/19

Docket 329

***** VACATED *** REASON: Moved up to 10am (eg)**

Tentative Ruling:

The Court has entered a Notice of Status in Bankruptcy Court, which has also been sent to the district court to be filed in the consolidated appeal (2:18-cv-10689-DSF). This is #451 on the bankruptcy case docket. The district court docket does not reflect any future hearing date, though the opening brief is to be filed by 5/13/19. We have mailed it to be filed in the district court and I have sent a copy to Judge Fischer to be sure that she is aware of it.

I think that the contempt hearing needs to be continued until some or all of the appeals are resolved, as described in my notice. Let's discuss how best to proceed.

prior tentative ruling (1/31/19)

The OSC re: Contempt deals with three specific actions:

1. Violation of the compromise order (the "Compromise Order") [dkt. no. 226] that requires Parties to cooperate fully with the Chapter 7 Trustee's marketing and sale of that certain real property commonly known as 10351 Oklahoma Avenue, Chatsworth, California 91311 (the "Chatsworth Property") by failing to allow interior access to the Chatsworth Property for the purposes of an appraisal required by the lender for buyer Haya Sara Yavor ("Buyer");
2. Violation of the sale order (the "Sale Order") [dkt. no. 302] that requires Parties to vacate the Chatsworth Property by noon on Monday, December 17, 2018; and
3. Violation of the Compromise Order by opposing Trustee's sale motion for the Chatsworth Property and filing a notice of appeal of the Sale Order.

The details and background of these asserted violations are described

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CONT... Real Estate Short Sales Inc and Real Estate Short Sales, Inc.
below in more detail in the Trustee's reply.

Chapter 7

Opposition

The reason that they did not move out on 12/17 was because the hearing on their stay motion was not set until 12/18. Also they believed (on their own and not from counsel) that the sale order violated the automatic stay of their chapter 13.

The Sale Order did not require the Debtor (as opposed to Cueva/Molica) to vacate the Chatsworth Property by noon on 12/17.

Molica was and is very sick, so the failure to allow the appraiser access on 12/12 and 12/13 and the failure to vacate on 12/17 should keep that in mind. However, after the Court ruled on 12/18, the appraiser was promptly granted access.

Cueva believed that the automatic stay of the chapter 13 case precluded the Trustee from pursuing the sale and obtaining possession of the property and thus her conduct was justified.

Cueva and the Debtor had a justified belief that the setting of the Stay Motion for 12/18 meant that they did not have to vacate Chatsworth on 12/17.

The Debtor and Cueva did not violate the Compromise Order by opposing the Sale Order due to the filing of the chapter 13 case. Nor did they do so by appealing the Sale Order based on issues that they believe to be valid. Requiring that they "cooperate fully with Trustee's marketing and sale of the Chatsworth Property, subject to the Court's approval" cannot be read as a waiver of their rights to oppose the Sale Order. The automatic stay cannot be waived in advance.

This OSC does not apply to Molica.

Reply

Although set forth in the application for this OSC, the Trustee again lays out the facts that support her contention of bad behaviour by Cueva and Molica - living cost-free in Chatsworth for 6 years before the Trustee was appointed (thus avoiding \$500,000 in mortgage payments); remaining in the property without payments for another year after the Trustee was appointed; interfering with the sale of estate property; negotiating in bad faith to purchase the property; increasing the estate's administrative expenses. They benefitted by \$85,000 by this 13-month extension after the Trustee was appointed. After a buyer was obtained, they would not vacate the property

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CONT... **Real Estate Short Sales Inc and Real Estate Short Sales, Inc.** Chapter 7

and would not allow access to the Trustee's appraiser. The Trustee was forced to petition the Court for an order to remove them, to which they responded by threatening the escrow and title officers with litigation pursuant to a bogus quitclaim deed.

The Trustee then lays out in detail the actions which interfered, delayed, and otherwise prejudiced the estate.

The Trustee states in her reply (filed on 1/22/19) that the sale has not yet closed due to the delays caused by Cueva and Molica. The Trustee is not sure that the short sale lender will agree to any further extensions if Cueva and Molica continue to block the sale by their contemptuous conduct.

As to the specific items in the OSC:

(1) refusal to provide access - Cueva did not act in good faith by failing to allow the appraiser access on 12/12 and 12/13. The Compromise Order required Cueva and the Debtor to cooperate with the Trustee's marketing and sale of the property. This included the appraisal appointment.

(2) refusal to vacate: they were to vacate by noon on 12/17/18, but Cueva and Molica refused to do so. They did not remove their personal property.

(3) violation of the Compromise Order by opposing the Sale Motion and filing a notice of appeal: These violated the provision of the Compromise Order requiring Cueva and the Debtor to cooperate fully with the Trustee's marketing and sale of the Chatsworth Property.

The Court has civil contempt power through 11 USC §105(a). Civil contempt occurs when a party "disobeys a specific and definite court order by failure to take all reasonable steps within the party's power to comply. The contempt 'need not be willful,' and there is no good faith exception to the requirement of obedience to a court order." *Go-Video v. Motion Picture Ass'n of America (In re Dual Deck Video Cassette Recorder Antitrust Litig.)*, 10 F.3d 693, 695 (9th Cir. 1993). A party must take all reasonable steps to comply with a court order. *Shuffler v. Heritage Bank*, 720 F.2d 1141, 1146-7 (9th Cir. 1983).

The Trustee has met her burden of proof in the application for the OSC and in the facts laid out in this reply. Now the burden of proof shifts to the contemnors and they have not met this. They have not put forth any evidence of an impossibility defense or of their inability to comply.

As to vacating the residence, Molica and Cueva may have moved out on 1/8, but they did not notify the Trustee and they left two inoperable vehicles. Thus the U.S. Marshal deputies appeared with a locksmith (cost

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CONT... **Real Estate Short Sales Inc and Real Estate Short Sales, Inc.** Chapter 7

\$3,000+ for the Marshals and \$1,146 for the locksmith). Cueva and Molica left the two cars and almost their entire personal property behind, and storage is likely to cost more than \$10,000 plus \$1,000 per month for insurance.

The Sale Order applies to all parties, including the Debtor. A corporation acts through its principals. Cueva and Molica claim to be equityholders, officers, and directors. Therefore they are responsible for the Debtor's compliance with the Compromise Order and the Sale Order.

There is no medical exception to the obligation to comply with a court order. There is also no evidence to verify the existence, extent, or duration of Molica's medical issues. Molica was fully engaged during the appraisal and was seen driving a car with Cueva as his passenger as well as walking around. They, in fact, have moved out and there is no showing that Molica's medical condition was an excuse for the delay.

The Chapter 13 filing was a procedural maneuver and not a good faith filing. They had no interest in the Chatsworth property, so the chapter 13 stay could not apply. Also, the automatic stay does not apply to the bankruptcy court where the debtor's bankruptcy is pending. *[Please note that I cannot tell where the quotation on p. 19-20 of the reply is from. It also appears to contain several mistakes as to the citations included - ie. according to Lexis, North Coast Village is at 135 B.R., not 132 and Maritime Elec. is at 959 F.3d, no 862.]*

Even if the stay could apply, the Court annulled it and dismissed the chapter 13 case.

There was no waiver of the Compromise Order. There was no right to waive and also because the cooperation was an obligation of the Order, the discussion of waiver does not apply.

The Debtor and Cueva had no standing to file an appeal of the Sale Order. There was no pecuniary interest of either in the property. There was no possibility of surplus.

The Court has the ability to impose civil contempt penalties, which must be either compensatory or designed to coerce compliance. The Trustee seeks the following compensatory sanctions:

Attorney's fees of no less than \$20,000 and increasing *[There does not appear to be any evidence to support this figure.]*

U.S. Marshal's fees of \$3,000+ subject to final invoice

Locksmith charge of \$1,146

Insurance of \$11,672.95 subject to increase

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Moving and storage of personal property of at least \$10,000, to be determined based on whether Cueva and Molica pay and arrange for their own movers per Court Order or whether statutory notice applies

Misc. costs for certified copies, etc. of \$351.62 subject to increase

Supplemental Declaration of Nancy Cueva

Ms. Cueva pro se filed a supplemental declaration on 1/25. She describes a potential sale to an Argentinian buyer that did not go through because the Trustee required certain things. She then talks about her attempt at a loan modification, which she asserts the Trustee interfered with, but is actually still pending. She states that up to 2015 she and her husband paid \$234,180 and also improvements of \$250,000.

As to the recent chapter 13, she asserts that she paid Jeffrey Hagen \$1,500 for his services, but he withdrew after he spoke with Ms. Zamora. Since they could not find another attorney on such short notice, they let the case be dismissed.

Cueva became ill and could not vacate the premises. On December 25 she was taken to the emergency department of West Hills Hospital for emergency surgery and her post-surgical care did not allow her to do any strenuous activity.

On January 3, U.S. Marshal Deputy Hugo Valdez trespassed and posted a notice to vacate that was defective because it did not attach the third page of the writ not the order attached to the writ. On January 8 they moved out. Deputy Valdez did not return. Cueva wanted to arrange to move the personal property, but Deputy Valdez never returned calls. On January 12 Cueva and Molica returned to pick up their mail and found 4 marshalls, a lock company, the realtor, and Zamora's assistant. None would tell them how to recover their personal property. Since then Cueva has called Zamora and filed a letter to her and to the Marshall, but not received an answer. Cueva refuses to pay the Marshall or attorney fees. Zamora has personal animosity against Cueva.

Analysis

Although not raised in the opposition, the OSC re: Contempt is on appeal (USDC CAC 2:19-cv-00120- DOC). Do I still have jurisdiction on this until the appeal is dealt with?

The sale has not closed. Is the Sale Order on appeal? If so, do I have

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jurisdiction on this OSC re: Contempt as to the Sale Order? However the Compromise Order is not on appeal.

11 USC §105(a) gives the bankruptcy court the power to punish for civil contempt. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178 (9th Cir. 2003). Beyond that, there is an inherent power to do so. *Caldwell v. United Capital Corp. (In re Rainbow Magazine, Inc.)*, 77 F.3d 278, 284 (9th Cir. 1996).

Civil contempt involves sanctioning a person until s/he complies with an affirmative command - in this case complying with the Compromise Order and also with vacating the property, etc., which has been partially done but personal property was not removed by the alleged contemnors. Criminal contempt is punitive because the act of disobedience has been completed and the contemnor cannot now act to comply with the prior order:

Since there is no positive action to be taken (except dealing with the personal property that is in storage), this could fall into the area of criminal contempt. However, the Trustee is not seeking a determination of criminal contempt, but merely sanctions for the expenses incurred by the violation of the Orders.

Civil contempt may be used to compensate the aggrieved party even if the action by the contemnor can no longer be undone:

Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained. *Gompers v. Bucks Stove & Range Co., supra*, at 448, 449. Where compensation is intended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of complainant's actual loss, and his right, as a civil litigant, to the compensatory fine is dependent upon the outcome of the basic controversy. *United States v. United Mine Workers*, 330 U.S. 258, 303-304 (1947)

A contempt fine accordingly is considered civil and remedial if it either "coerces the defendant into compliance with the court's order, [or] . . . compensates the complainant for losses sustained." *United States v. Mine Workers*, 330 U.S. 258, 303-304, 91 L. Ed. 884, 67 S. Ct. 677 (1947). Where a fine is not compensatory, it is civil only if the contemnor is afforded an opportunity to purge. See *Penfield Co. of*

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Cal. v. SEC, 330 U.S. 585, 590, 91 L. Ed. 1117, 67 S. Ct. 918 (1947). Thus, a "flat, unconditional fine" totaling even as little as \$ 50 announced after a finding of contempt is criminal if the contemnor has no subsequent opportunity to reduce or avoid the fine through compliance. *Id.*, at 588.

Int'l Union v. Bagwell, 512 U.S. 821, 829 (1994)

Here the sanction would be compensatory since there is nothing left for Cueva and the Debtor to do (although they can reduce this by taking possession of their personal property). It appears that the proper result would be an order that Cueva pay the Trustee the sum necessary to compensate for the actions taken as a result of her contempt. Since the Trustee does not have counsel, the Court would need evidence of a proper amount to compensate the Trustee for her time and for incidental expenses. Then the Court must determine that Cueva has the ability to make the payment. There would be no such order as to the Debtor, since it owns nothing that is not property of the estate. While the Court has doubted Ms. Cueva's finances, she has never asserted that she did not have sufficient money to comply with the order to move. And she has hired counsel and paid him a retainer of \$20,000 and agreed to an hourly rate of \$650. (dkt. 324). Thus her ability to pay is not in issue.

One of the issues is who is bound by the Compromise Order and who is bound by the Sale Order. The Compromise Order (dkt. 226) approves the motion to compromise (dkt. 217). The compromise letter states that it is "reached between you ('Cueva') and me, as chapter 7 trustee ('Trustee')...." (dkt. 217, p. 15). The Order approving the revised compromise states that it is between "Trustee and Nancy Cueva ('Cueva'), for the benefit of Debtor...." (dkt. 226). Ms. Zamora prepared both of these documents. The Sale Order (dkt. 302, p. 9) specifically provides in ¶¶N that "Nancy Cueva and Julio Molica (collectively 'Residents'), shall vacate the Real Property, without causing damage, no later than 12:00 noon on December 17, 2018, consistent with that certain Order Approving Revised Compromise...."

As to the assertion that she did not comply with the order to vacate by 12/17 because of the delay in the hearing on a stay until 12/18, it is clear that Cueva did not intend to vacate at any time and that she was doing all that she could to block the sale from consummating. See for example her recording of a quitclaim deed on 12/26/18 (dkt. 347, 349).

As to the issue of her belief that she was protected by the automatic stay

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of the new chapter 13 - the mere act of filing the chapter 13 was solely for the purpose of interfering with the sale and as a basis not to vacate the property. Concerning whether Jeffrey Hagen was her attorney in the chapter 13, she asserts that she hired him and paid him \$1,500, but provides no receipt for payment, he never appeared, the petition was filed pro se, and there is no declaration by Mr. Hagen.

Beyond that, she attempted to keep that case open by lying to the Court [though not under oath] and she had her attorney state that Cueva had timely filed a request to extend time to file schedules in that case [transcript of 12/18/18 hearing, dkt. 341] The document was never located in the clerk's office and thus the court dismissed the case. Although Cueva was given an opportunity to vacate the dismissal if she could present a conformed copy of her application to extend, she did not do so. The Court finds that no such application for extension was ever filed. Id. p. 62-63. Also, on December 4, Cueva represented to the Court that Jeffrey Hagen represented her in her chapter 13 case, but this was not true.

All of these efforts were undertaken so as to prevent the Trustee from completing the sale. They were obstructionist and not in good faith.

The Trustee has laid out sufficient facts to meet her burden that the actions by Cueva, Molica, and the Debtor were an intentional violation of prior orders of this Court - specifically Sale Order, though there is a question as to who was bound by the Compromise Order. The Trustee has met her burden.

As to the assertion that all of this was due to the poor health of Molica - the Court does not accept that as an excuse. Beyond the fact that the Compromise Order was many months before the Sale Order and thus Molica/Cueva had more than sufficient time to prepare to move, the declaration of Behnaz Tavakoli provides evidence that Molica was not unable to physically move out - he was able to walk and to drive. Even had he been immobile, this would not be an excuse since he had months to prepare.

Concerning Cueva's emergency surgery, apparently this occurred on or after December 25, a full week after the time to remove themselves from the property. There is also no evidence that Cueva and/or Molica made any preparations to move themselves or their furniture. They are or were living in a hotel and not an apartment, there is no indication that they hired a moving company or arranged for storage. It is obvious to the Court that they had no intention to move until and unless the Marshall took action. They had months to make preparations and their health issues are not an excuse.

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The Court also finds it disturbing that Ms. Cueva presented an entirely new story of the delay in her supplemental opposition, since all of these assertions occurred before the Debtor's attorney filed the initial opposition.

As to the loan modification, that time has passed. The debtor (estate) owns the real property, not Cueva/Molica. They have no rights left to modify and their attempts may be interfering with the Sale Order and may be a continuing contempt.

As to the personal property, there needs to be an agreement as to how it is handled - remaining in storage, who pays the storage fees, etc.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Real Estate Short Sales, Inc.

Represented By
Daniel J McCarthy

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:16-12255 Solyman Yashouafar

Chapter 11

#20.00 Status Conference re: Chapter 11 case

fr. 9/1/16(xfr from Judge Tighe's calendar), 9/27/16,
10/11/16; 10/26/16; 11/15/16, 12/6/16, 3/28/16,
4/4/17; 5/30/17, 8/29/17, 9/19/17, 1/23/18, 5/1/18,
9/18/18; 1/8/19; 4/16/19

Docket 1

*** VACATED *** REASON: moved up to 10am (eg)

Tentative Ruling:

Per the status report filed on 3/28/19, Judge Tighe ruled in favor of the Trustee on the Elkwood summary judgment motion. The defendants disputed that ruling and it is under submission. UST reports are current.

Continue without appearance to July 16, 2019 at 10:00 a.m.

prior tentative ruling (1/8/19):

Per the status report filed on 12/18, the Elkwood motions for summary judgment are being heard by Judge Tighe and are under submission. In the meantime, the Trustee is continuing to administer these cases. The next hearing on the MSJs is 1/25.

Continue without appearance to 4/16/19 at 10:00 a.m.

prior tentative ruling (9/18/18)

PLEASE NOTE THAT ALTHOUGH THE ELKWOOD ADVERSARY PROCEEDING WAS TRANSFERRED TO JUDGE TIGHE, I AM CONTINUING TO HANDLE ALL OTHER YASHOUAFAR MATTERS.

No status report received as of 9/16/18.

prior tentative ruling (1/23/18)

Per the status report filed on 1/16, there is a motion for summary judgment as to the JCBL Trust, set for hearing on 2/13/18 at 10:00 a.m. As to the Elkwood Associates adversary proceeding, Elkwood and Fieldbrook filed a motion to

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CONT... Solyman Yashouafar

Chapter 11

dismiss the second amended complaint, which is set for hearing on 2/27. The motion to withdraw the reference is still pending before Judge Walter. The Trustee is current with the OUST requirements.

Continue without appearance to May 1, 2018 at 10:00 a.m.

prior tentative ruling (/19/17)

On 9/6/17 the Trustee filed his status report. The Trustee is continuing to collect information about the Debtors and their estates.

The JCBL Trust is the subject of an adversary proceeding as to whether it is property of the estate. The Trustee expects to resolve this through a motion for summary judgment. [17-ap-01050 - status conference set on 10/17]

The settlement motion with the Abselets is pending.

The motion by defendants to dismiss the Elkwood adversary proceeding is pending [17-ap-01040 - cont. 10/3/17]

The Trustee is in compliance with OUST reporting requirements.

Continue without appearance to 1/23/18 at 10:00 a.m.

prior tentative ruling (5/30/17)

Per the Trustee's status report filed on 5/15/17, the Oklahoma action is proceeding and there is a status conference on 6/15/17. The Roosevelt Lofts proceeds are being held as various parties dispute ownership. There is a status conference in this court on that set for 7/11/17. The Trustee wants the Roosevelt Lofts' counsel to continue to hold the excess funds.

The Trustee filed 17-ap-01027 to determine the Debtor's estates' interest in the RLI stock. Abselet filed a motion to withdraw the reference, which is set for hearing in the district court on 5/22. Abselet's motion to dismiss is set for 6/27 in this court. The Trustee and Abselet have set a one day mediation in front of retired Judge Goldberg for 6/3.

Massoud's brother-in-law foreclosed on the Beverly Hills homes of Massoud and of Solyman and sold Solyman's for a substantial profit and rented Massoud's back to him at \$25,000/mo for two years. Massoud never paid any rent and the lease has expired. The Trustee filed 17-ap-1040 seeking quiet title to the Rexford home and to avoid the foreclosures of both homes.

Discovery is continuing in all matters. The Trustee requests a further

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CONT... **Solyman Yashouafar**
status conference in 90 days.

Chapter 11

It is probably wise to have appearances (in person or on the phone) on 5/30, but this will be continued to an agreeable date in August.

Party Information

Debtor(s):

Solyman Yashouafar

Pro Se

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1:30 PM

1:16-12408 Massoud Aron Yashouafar

Chapter 11

#21.00 Status Conference re: chapter 11 case

fr. 9/27/16, 10/25/16; 10/26/16; 11/15/16,
12/6/16, 3/28/17, 4/4/17; 5/30/17, 8/29/17,
9/19/17, 1/23/18, 5/1/18, 9/18/18; 1/8/19; 4/16/19

Docket 1

***** VACATED *** REASON: moved back to 10am (eg)**

Tentative Ruling:

PLEASE NOTE THAT ALTHOUGH THE ELKWOOD ADVERSARY
PROCEEDING WAS TRANSFERRED TO JUDGE TIGHE, I AM
CONTINUING TO HANDLE ALL OTHER YASHOUAFAR MATTERS.

This case is being jointly administered with 16-12255. See calendar #6.

Party Information

Debtor(s):

Massoud Aron Yashouafar

Pro Se

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Tuesday, July 30, 2019

Hearing Room 303

11:00 AM

1:17-10853 Joseph Daniel Beam

Chapter 7

Adv#: 1:17-01046 Henderson v. Beam

#1.00 Status Conference Re:
Complaint for Fraudulent Activity in
Bankruptcy Case.

fr. 5/7/19; 7/16/19

Docket 1

Tentative Ruling:

On 7/10/19, Plaintiff filed a status report. She said that she failed to appear because the superior court issues were delayed, so she thought that the hearing in the bankruptcy court was cancelled. She then set a last minute job interview. She wishes the court to continue prior court orders (10/4/17) lifting the automatic stay on the Debtor. She then goes through the facts in the superior court dissolution case.

The property division did not take place before the bankruptcy, so Judge Barash properly entered an order lifting the automatic stay. She goes on to argue that the delays in the superior court were due to Debtor's counsel. She wants this hearing continued until after the superior court trial (no date set for that) and wants sanctions against Attorney Moreno for causing the delays in the state and federal courts.

Proposed ruling: The order lifting the automatic stay does not have to be renewed. It continues in effect as set forth therein. I am still not convinced that I should wait for the superior court ruling. I think that it would be a good idea for me to either talk to the superior court judge as to scheduling or hold a joint status conference with the superior court judge. I am not just going to continue this on with no end in sight. As to sanctions against counsel, I have no authority to grant them as to the state court case and - as of this point - no reason to grant them as to this case.

prior tentative ruling (5/7/19)

This arises out of a family law case. According to the Debtor's status

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CONT... Joseph Daniel Beam

Chapter 7

report, the family law judge is requiring briefs as to marital debts and the proposed division between the parties. The family law trial setting conference is set for 6/12/19. In this court, the defendant estimates one hour to present his case-in-chief.

This is a §727 case to deny discharge and the family law division of property may not be relevant. The crux of the complaint is that the debtor (sometimes through his attorney) knowingly filed improper paperwork; that this was a careless and frivolous bankruptcy case meant to delay and frustrate the divorce proceedings; that debtor failed to notify creditors of "intention to file bankruptcy;" and that debtor failed to disclose his true income and assets. The complaint also specifies the following reasons to deny discharge as to what items are listed on or omitted from the schedules and statement of affairs:

- (1) He declared debts that were solely owed by plaintiff and are not community debts
- (2) He claimed to own no property - the complaint lists a series of personal property, particularly automation. It also specifies income received from a pre-petition art sale and money he removed from an education fund for their son. There is also a pension account that was not revealed.
- (3) There were unsecured debts that he did not disclose, specifically for a previously repossessed car, a judgment by American Express, and a City of Los Angeles tax bill.
- (4) He did not reveal past spousal support paid or owed and other related family support payments made in 2014 through April 2016.
- (5) He did not list any expenses, though he has paid them.
- (6) He did not list gifts from his mother and friends in the approximate sum of \$50,000. He lives rent free and does not pay utilities or living costs.
- (7) There are a lot of debts from the marriage, but he did not declare them as codebtor obligations.
- (8) He declared a lower income than he actual receives.
- (9) He under-reported the attorney fees that he has paid to his counsel.

Plaintiff is also complaining of fraudulent activity of counsel (Kathleen Moreno) in that she knowingly filed this case "with no intent not to file proper documents." [Note that the complaint does not actually name Ms. Moreno as a co-defendant and she would not be subject to §727 as she is not the

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CONT... Joseph Daniel Beam
debtor.]

Chapter 7

Debtor's answer denies all allegations.

Since filing, this case has been largely on hold pending the state court dissolution proceedings.

As I review the complaint, it may not be worthwhile to wait until the family law court has acted - or it may be the best way. Clearly some of these actions were prepetition and non-financial or may have been too early to be included in the schedules. Perhaps it is best to rule on those specifics. Some of the others may be resolved in the family law proceeding - such as assets actually owned and debts actually owed.

Plaintiff has to realize that a §727 action will block the discharge of ALL debts, not just of those owed to her (which are already protected under §523). This means that other creditors will have as much right to seek payment as she does and that may prevent her from actually timely collecting future spousal support, etc. However, this is a §727 complaint and if she decides to dismiss it, the Trustee must be notified and may wish to take over the case.

Let's talk.

Party Information

Debtor(s):

Joseph Daniel Beam

Represented By
Kathleen A Moreno

Defendant(s):

Joseph Daniel Beam

Represented By
Kathleen A Moreno

Plaintiff(s):

Ellen Henderson

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, August 6, 2019

Hearing Room 303

10:00 AM

1:06-12243 Edwin Perry Hinds

Chapter 7

#1.00 Application and Order for Appearance and Examination

fr.4/16/19

Docket 68

Tentative Ruling:

Per the Trustee's status report, Isaacson has not been served and will probably not appear. See calendar #2 for details.

prior tentative ruling (4/16/19)

Per the status report filed on 4/12, Mr. Isaacson has not been served. Isaacson has a new attorney, who will not accept service for him. The attorney said the Isaacson is out of the state until April. The new attorney (Mr. Totaro) has filed a motion for reconsideration of the district court dismiss of the appeal and it is awaiting a determination by the district court. The Trustee requests a 90 day continuance.

Continue without appearance to August 6, 2019 at 10:00 a.m.

Party Information

Debtor(s):

Edwin Perry Hinds

Represented By
Jonathan R Ellowitz - DISBARRED -

Trustee(s):

David R Hagen (TR)

Represented By
David Seror
Reagan E Boyce

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10:00 AM

1:06-12243 Edwin Perry Hinds

Chapter 7

#2.00 Status of Chapter 7 Case

fr. 8/29/17, 1/23/18; 6/19/18, 9/18/18; 12/4/18;
3/5/19; 6/11/19

Docket 1

Tentative Ruling:

Per the status report filed by the Trustee on 7/31, it is unlikely that Isaacson will appear on August 6 for the ORAP and the Trustee will need to apply for a further ORAP order and additional relief from the court. Isaacson's attorney has not been willing to accept service on behalf of Isaacson although he has filed numerous pleadings with the bankruptcy court, district court, and BAP. Isaacson is evading service. Obviously Isaacson and Totaro are in contact. The Trustee asserts that the money paid by Isaacson to Totaro as fees should, in equity, belong to the Trustee pursuant to the 2009 and 2018 turnover orders.

prior tentative ruling (6/11/19):

On 4/30/19 Isaacson asked the Court to enter a written order denying his motion to extend time to file a notice of appeal, etc. The Court entered the order on 5/8/19 (dkt. 73).

Per the Trustee's status report filed on 6/4 (in the adversary proceeding), the judgment debtor examination is now scheduled for August 6, 2109. The Trustee is trying to serve Isaacson, who may be out of state. The District Court has granted a motion to reconsider its dismissal of the appeal as to the turnover order as clarified by the 8/23/18 memorandum. The opening brief is due at the end of June.

Unless the parties think otherwise, continue the status conference without appearance to August 6 at 10:00 a.m.

prior tentative ruling (3/5/19)

Per the Trustee's unilateral status report filed on 2/14/19, the Isaacson parties

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CONT... Edwin Perry Hinds

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filed an appeal of the 8/23/18 Clarifying Memorandum and the 1/09 Turnover Order (2:18-cv-07794-SVW). The Isaacson parties requested a stay pending appeal, but that was denied. The District Court entered an OSC re dismissal and on 1/22/19 the District Court dismissed the appeal. The time for the Isaacson Parties to appeal the dismissal has passed and no appeal was filed.

An ORAP was issued on 12/6, but Isaacson could not be located and served. Another request for an ORAP has been filed.

The Trustee is continuing to monitor the Claim against Isaacson at the California State Bar Security Fund. The Trustee requests an additional continuance.

Unless there is an objection, the status conference will be continued without appearance to June 11, 2019 at 10:00 a.m.

prior tentative ruling (12/4/18):

Per the revised status report filed on 11/29, continue without appearance to March 5, 2019 at 10:00 a.m.

prior tentative ruling (9/18/18):

The motion as to Lon Isaacson was heard on 8/21/18 and continued to 12/4/18 at 10:00 as a holding date. The order on the motion was entered on 8/23/18. The motion was granted. This status conference is continued without appearance to 12/4/18 at 10:00 a.m. to give the Trustee a chance to start collecting on its order and to advise the Court as to the status of those efforts.

prior tentative ruling (6/19/18)

Per the status report filed on 3/13/18, a claim has been submitted to the California State Bar Client Fund in an attempt to collect the \$100,000 from Mr. Isaacson. A current address for him has been found and he has been filed with a copy of the prior status reports.

Mr. Isaacson is being represented by Brian McMahon and there are ongoing settlement conferences. A settlement was reached in February 2018 and there will be a 9019 motion filed. At the State Bar, the claim is still under

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CONT... Edwin Perry Hinds
submission.

Chapter 7

On June 12, 2018 the Trustee filed a further status report. Discussions with Mr. Isaacson have reached an impasse and there is no settlement likely. Mr. Isaacson is disputing the Trustee's claim in the Client Security Fund.

I will continue this without appearance to September 18, 2018 at 10:00 a.m.

prior tentative ruling (1/23/18)

On November 28, 2017, counsel for the Trustee filed a status report. The only update was that he believes that he located a current address for Mr. Isaacson. Then in late December, the Court received a copy of a letter addressed to the State Bar Client Security Fund Commission and sent by the Law Offices of Brian D. McMahon, attorney for Mr. Isaacson. While it requests that I recuse myself, at this point I have no part of these proceedings.

Continue this status conference without appearance to June 19, 2018 at 10:00 a.m.

prior tentative ruling (8/29/17)

This Chapter 7 case was filed on November 29, 2006. Debtor was discharged on October 24, 2012. On May 15, 2017, an Order was entered granting application to employ Brutzkus Gubner as Trustee's General Counsel effective March 31, 2017. Thereafter, on July 31, 2017, an Order Setting Status Conference Hearing was entered.

On August 10, 2017, Trustee filed a Unilateral Status Report. According to Trustee, Lon B. Isaacson (the "Isaacson Creditors") had obtained a judgment over an attorneys' fees dispute with Debtor pre-petition. The judgment was for \$107,969.16 plus interest. Thereafter, the Isaacson Creditors filed an adversary proceeding in this case. The parties reached a settlement and the Court set a hearing on the settlement. At the hearing, the Court determined that the Debtor would pay the \$100,000 settlement to the estate instead of directly to the Isaacson Creditors. Also, the Court entered an Order directing the Isaacson Creditors to turn over \$100,000 to the Trustee. The Isaacson Creditors failed to comply and thereafter, most

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CONT... Edwin Perry Hinds

Chapter 7

recently, the Trustee learned that Lon Isaacson had begun to misappropriate client funds from his trust accounts. He was formally disbarred in May 2013. Trustee has been attempting to reach Mr. Isaacson but has not been successful. Trustee's counsel advised Trustee that it may be most cost efficient to attempt to collect the \$100,000 by submitting a claim to the California State Bar Client Fund. Trustee believes the case should remain open for approximately 90 to 180 days pending a response from the State Bar Client Fund.

This matter is now off calendar. No appearance is required and no hearing will be held. In the future, please file a status report every 90-180 days.

Party Information

Debtor(s):

Edwin Perry Hinds

Represented By
Jonathan R Elowitz - DISBARRED -

Trustee(s):

David R Hagen (TR)

Represented By
David Seror

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10:00 AM

1:09-23807 Shellie Melissa Halper

Chapter 7

Adv#: 1:19-01021 Halper v. Jerome Bennett Friedman, an individual et al

#3.00 Motion to Dismiss Plaintiff's Complaint for
Failure to State a Claim.

fr. 6/11/19

Docket 5

Tentative Ruling:

On July 29 the tentative ruling was emailed to both attorneys.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Defendant(s):

Jerome Bennett Friedman, an

Pro Se

Friedman Law Group, P.C.

Represented By
J. Bennett Friedman

Twin Palms Lending Group, LLC, a

Represented By
J. Bennett Friedman

Solomon Cohen, an individual

Pro Se

Does 1 Through 25, Inclusive

Pro Se

Plaintiff(s):

Shellie Melissa Halper

Represented By
Michelangelo Tatone

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CONT... Shellie Melissa Halper

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

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1:09-23807 Shellie Melissa Halper

Chapter 7

Adv#: 1:19-01021 Halper v. Jerome Bennett Friedman, an individual et al

#4.00 Motion and Anti-SLAPP Special Motion to
Strike Plaintiff's Complaint

fr. 6/11/19

Docket 8

Tentative Ruling:

On July 29 the tentative ruling was emailed to both attorneys.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Defendant(s):

Jerome Bennett Friedman, an

Pro Se

Friedman Law Group, P.C.

Represented By
J. Bennett Friedman

Twin Palms Lending Group, LLC, a

Represented By
J. Bennett Friedman

Solomon Cohen, an individual

Pro Se

Does 1 Through 25, Inclusive

Pro Se

Plaintiff(s):

Shellie Melissa Halper

Represented By
Michelangelo Tatone

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CONT... Shellie Melissa Halper

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

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1:09-23807 Shellie Melissa Halper

Chapter 7

Adv#: 1:19-01021 Halper v. Jerome Bennett Friedman, an individual et al

#5.00 Status Conference re: Complaint for 1) Fraudulent Concealment; 2) Fraudulent Misrepresentation; 3) Constructive Fraud; 4) Breach of Fiduciary Duty; 5) Aiding and Abetting Breach of Fiduciary Duty 6) Fraud on the court; 7) Declaratory Relief.

fr. 5/7/19; 6/11/19

Docket 1

Tentative Ruling:

On July 29 the tentative rulings on the motions were emailed to both attorneys.

prior tentative ruling (5/7/19)

Thank you for the joint status report. Continue the status conference without appearance to June 11, 2019 at 1:30 p.m. No further status report is needed for that hearing, which will coincide with other motions set for that date.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Defendant(s):

Jerome Bennett Friedman, an	Pro Se
Friedman Law Group, P.C.	Pro Se
Twin Palms Lending Group, LLC, a	Pro Se
Solomon Cohen, an individual	Pro Se

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CONT... Shellie Melissa Halper

Chapter 7

Does 1 Through 25, Inclusive

Pro Se

Plaintiff(s):

Shellie Melissa Halper

Represented By
Michelangelo Tatone

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

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1:09-23807 Shellie Melissa Halper

Chapter 7

Adv#: 1:19-01021 Halper v. Jerome Bennett Friedman, an individual et al

#6.00 Motion For Sanctions Against Plaintiff and
Her Counsel Pursuant to FRBP 9011

fr. 6/11/19

Docket 17

Tentative Ruling:

On July 29 the tentative ruling was emailed to both attorneys.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Defendant(s):

Jerome Bennett Friedman, an

Represented By
Michelle J Correll

Friedman Law Group, P.C.

Represented By
J. Bennett Friedman
Michelle J Correll

Twin Palms Lending Group, LLC, a

Represented By
J. Bennett Friedman
Michelle J Correll

Solomon Cohen, an individual

Represented By
Michelle J Correll

Does 1 Through 25, Inclusive

Pro Se

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CONT... Shellie Melissa Halper

Chapter 7

Plaintiff(s):

Shellie Melissa Halper

Represented By
Michelangelo Tatone

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

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10:00 AM

1:10-17601 Harvey Kalmenson

Chapter 11

Adv#: 1:19-01054 Kalmenson et al v. HSBC BANK (USA) N.A. et al

#7.00 Motion to Dismiss Adversary Proceeding

Docket 9

Tentative Ruling:

The crux of this complaint is that the Kalmensons confirmed a chapter 11 plan to cure a default on their home loan over a five year period. They actually did it earlier and moved for a discharge, which was granted. HSBC never raised the issue of a default or missed payment on the Loan. Then, 1 1/2 years after the discharge, SPS (on behalf of HSBC) contacted Debtors about missed payments and for the first time referenced a "separate pay back agreement." The Debtors continued to make their regular payments to HSBC, but HSBC stopped accepting them on Nov. 2018, claiming that the Debtors needed to pay \$58,147 to bring the Loan current. On March 22, 2019, SPS served Debtors with a Notice of Sale, setting a trustee's sale for April 23, 2019. Debtors have not be able to find out the basis of the alleged default.

Service has been made on First American Title Ins., Co., HSBC, and SPS.

The motion to dismiss is on varous grounds. First is that the title to the property is Harvey Kalmenson and Catherine Kalmenson, as trustees of the Harvey and Catherin Kalmenson Trust dated December 2, 1005. This is an indispensable party and so the complaint must be dismissed.

Also a security interest may be enforced post-discharge. The personal liability was discharged, but not the security interest of the lender.

The stipulated payments did not modify the Debtor's obligations under the Note and Deed of Trust. There was no waiver by HSBC to declare a default or enforce the Trust Deed.

Opposition

The Debtors agree that the Trust must be added as an indispensable

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CONT... Harvey Kalmenson

Chapter 11

party and ask leave to amend to do so.

As to the other issues, the Defendants were not relieved of their duty to provide written notice of a default under the Stipulation and they failed to give such notice. HSBC continued to accept payments even after they claim that the default occurred. During that delay, HSBC accumulated and assessed significant penalties and interest without giving the Debtors an opportunity to avoid these.

If additional facts are needed, the Debtors ask leave to amend to include them.

Reply

The motion should be granted on the basis of the failure to include an indispensable party. Also, there is not actual controversy. HSBC did not waive any right to enforce the trustee deed and foreclosure is permitted on Debtors' default. This is agreed to by the Debtors in their opposition. The only issue that they raise is that they did not receive written notice as required after their default. This is a past event and declaratory relief is not available to redress past wrongs. Since declaratory relief is the only claim pleaded, the complaint must be dismissed. There must be an underlying substantive basis for liability.

Proposed Ruling

Grant motion as to indispensable party. As to the issue of whether the complaint must be amended because the only cause of action is for declaratory relief, the law seems to support the movant, but this is not certain. For example, in footnote 21 of *TransWorld Airlines, Inc. v. American Coupon Exchange, Inc.*, 913 F.2d 676 (1990), the Ninth Circuit states: "We hope it is clear that, strictly speaking, the distinction we draw turns not upon the remedy, but rather upon the nature of the rights vindicated and the conduct affected thereby. In this case, the claim for declaratory relief vindicates rights which have not yet been violated and governs future transactions only. We do not mean to intimate, however, that ACE's defenses would be similarly inapplicable to a prayer for a declaration that ACE committed a tort, unaccompanied by a prayer for damages; nor, for example, a request for a declaration that such-and-such a contract or obligation (coverage under an insurance policy, for example) had never existed.."

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CONT... Harvey Kalmenson

Chapter 11

The better way to approach this is to add a claim for breach of the Plan provisions of other agreement and allege damages - if there are any or at least seek a determination that the breach occurred and that the Notice of Default, etc. is void. You can then have another claim seeking declaratory relief that this breach occurred and that no further payments are due or for a determination of the balance owing (or whatever you wish to seek).

An amended complaint is to be filed by August 20, 2019 and a response is due by September 10. The status conference was continued to October 29, but that date will be vacated and the status conference will be set for October 8 at 10:00 a.m. If there is a further motion to dismiss, it can be set on that date or on September 24 if it is filed sufficiently early.

However, this is a case that is yelling for mediation. The Debtors want to keep their house; the creditor wants to be paid. The exact amount should be able to be resolved. I suggest that this case be stayed (except to add the Trust) and that the parties seek mediation through the court's mediation panel. Let's talk about this.

Party Information

Debtor(s):

Harvey Kalmenson

Represented By
Joon M Khang

Defendant(s):

HSBC BANK (USA) N.A.

Represented By
Rebecca L Wilson

SELECT PORTFOLIO

Represented By
Rebecca L Wilson

First American Title Ins Co.

Pro Se

Joint Debtor(s):

Catherine R Kalmenson

Represented By
Joon M Khang

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Chapter 11

Plaintiff(s):

Harvey Kalmenson

Represented By
Joon M Khang

Catherine R Kalmenson

Represented By
Joon M Khang

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Hearing Room 302

10:00 AM

1:11-18629 Robert Vilas Johnson and Linda Joyce Johnson

Chapter 7

#8.00 Final Application for Compensation and Reimbursement of Expenses of Baker & Hostetler LLP for the Period of January 28, 2017 through May 7, 2018; Trustee's Attorney, Period: 1/28/2017 to 5/7/2018, Fee: \$42,148.00, Expenses: \$1,973.40.

fr. 7/16/19

Docket 662

Tentative Ruling:

Per a call from the Trustee, the objection of the FTB as to the Baker fees has been settled. This can be put on the record at the hearing.

As to Foley & Lardner, a stipulation was filed on 8/5. The stipulation is approved.

BTW, I have already worked up The Baker fee application and know the general range that the settlement must fall into and I need to independently approved them.

You can appear by phone, if you wish.

Party Information

Debtor(s):

Robert Vilas Johnson

Represented By
Andrew P Altholz
Gavin L Greene
Ashley M McDow
Leslie A Cohen

Joint Debtor(s):

Linda Joyce Johnson

Represented By
Andrew P Altholz
Gavin L Greene

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10:00 AM

CONT... Robert Vilas Johnson and Linda Joyce Johnson
Ashley M McDow
Leslie A Cohen

Chapter 7

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden (TR)
Ashley M McDow
Michael T Delaney
Fahim Farivar
Andrew P Altholz
Gavin L Greene
Leslie A Cohen

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10:00 AM

1:11-18629 Robert Vilas Johnson and Linda Joyce Johnson

Chapter 7

#9.00 Trustee's Final Report and Application for
Compensation and Deadline to Objection

Trustee:
Jeffrey I. Golden

Attorney for Trustee:
Baker & Hostetler, LLP

Accountant for Trustee:
Hahn Fife & Company LLP

fr. 7/16/19

Docket 652

Tentative Ruling:

This case was originally filed as a chapter 11. On 11/14/12, a chapter 11 Trustee was appointed. On March 3, 2017, the case was converted to chapter 7. The administrative fees are being paid in full. Also priority tax claims will receive a partial distribution. No money is available for other creditors.

The Franchise Tax Board filed an opposition to the Trustee's final report, to the amended final fee application of Baker & Hostetler, and to the fee application of Foley & Lardner.

Except as to fees for the Trustee, Foley & Lardner, and Baker & Hostetler, approve all fees and payments as requested and set forth in the notice.

As to the Trustee, the FTB opposition does not give any details. Approve the fees as requested unless the FTB provides some specifics.

As to Foley & Lardner and Baker & Hostetler, see cal. #8.

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CONT... Robert Vilas Johnson and Linda Joyce Johnson

Chapter 7

prior tentative ruling (7/16/19):

Given the extensive objection of the Franchise Tax Board to the Baker & Hostetler fee application and the fact that no reply has been received as of 7/12 at noon, the Court is continuing this without appearance to August 6 at 10:00 a.m.

Please note that Foley & Lardner filed a supplemental fee application on 7/8/19. No opposition was received as to its initial fee application (dkt. 644). If there is an opposition to either, it must be filed by 7/24.

As to the opposition to the Baker application, I have not yet fully reviewed it. However, I agree that a summary of fees/costs by project is needed. Given the length and complexity of this case (in part due to its relationship to the Internet Specialties case and the principals of that entity), it is very difficult to ascertain how much time was incurred for each of the noted "projects." Since all of the interim fee applications are on the docket, it does not appear necessary to require that they be filed again. However, there should be a compilation by project from all of the applications, with a reference back to which interim/final application contains them. Thus, a project might be titled the "second amended plan and disclosure statement" and under that would be each task related to that. If the applicant wishes, it can also add a brief explanation of the work done, the outcome, and the benefit to the estate. This is to be filed and served by July 29.

No tentative ruling is being made at this time as to the other issues raised in the objection.

If possible, Mr. Golden is to attempt to have the parties resolve the fee dispute.

Party Information

Debtor(s):

Robert Vilas Johnson

Represented By
Andrew P Altholz
Gavin L Greene
Ashley M McDow

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10:00 AM

CONT... Robert Vilas Johnson and Linda Joyce Johnson
Leslie A Cohen

Chapter 7

Joint Debtor(s):

Linda Joyce Johnson

Represented By
Andrew P Altholz
Gavin L Greene
Ashley M McDow
Leslie A Cohen

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden (TR)
Ashley M McDow
Michael T Delaney
Fahim Farivar
Andrew P Altholz
Gavin L Greene
Leslie A Cohen

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10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#10.00 Motion of John P. Reitman for sale of property
of the estate under section 363(b)

fr. 3/26/19; 4/16/19

Docket 1604

Tentative Ruling:

The tentative ruling was sent to the parties by email on July 29.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

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10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#11.00 Status conference re: ch 11 case

fr. 1/24/2013, 4/30/13, 5/14/13, 7/23/13, 8/6/13,
9/17/13, 9/24/13, 11/19/13, 12/17/13, 1/21/14, 2/18/14,
3/11/14, 4/15/14, 5/6/14, 6/24/14, 9/9/14, 9/23/14,
10/7/14, 11/24/14, 1/6/15, 1/20/15, 2/10/15, 3/10/15,
4/28/15; 5/12/15; 9/29/15, 10/22/15, 12/8/15, 3/1/16,
6/7/16, 7/12/16, 8/16/16, 10/11/16; 12/20/16, 4/4/17,
5/16/17; 6/27/17, 7/11/17, 9/19/17, 11/14/17, 11/28/17,
12/19/17, 1/9/18, 3/19/18, 3/27/18, 5/1/18, 6/5/18; 6/26/18,
7/9/18; 8/7/18, 11/6/18; 12/18/18; 1/29/19; 2/12/19; 3/5/19
3/26/19; 4/16/19

Docket 1

Tentative Ruling:

Ms. McClure filed (under seal) a reort on her health and her personal claims against the Litt parties. There is no reason for this to be under seal and unless McClure convinces me otherwise, I will unseal it.

In short, she intends to bring a motion to determine which claims with Litt were not property of the estate.

She also filed an amended Schedule C claiming the Litt and Tidus claims as exempt. Will the Trustee be objecting to this?

Litt also filed a status report. This addresses the McClure issue of the effect of the settlement order.

If either party seeks a "clarification" or other modification of my settlement order, please bring that through a proper motion or other means. I am not sure that there is such a thing as a motion to clarify, but I am sure that there is a method to obtain a ruling as to what was sold (what is property of the estate).

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CONT... Shirley Foose McClure

Chapter 11

prior tentative ruling (4/16/19):

At the 4/16 status conference the Court will determine which - if any - filed exhibits are to be kept under seal. On April 12 an email with a list was sent to Ms. McClure and the attorneys for the Litt Parties and for the Trustee. Also, the Court will discuss my intent to send this out for a global mediation before Judge Jury (ret). A copy of that notice was forwarded to Mr. Dahlberg, Ms. McClure, and Mr. Shulman and Mr. Dahlberg is was asked to make sure that it is sent to the other parties named in the notice.

prior tentative ruling (3/26/19)

Continue without appearance to April 16, 2019 at 10:00 a.m. No new status report will be needed for that hearing.

prior tentative ruling (2/8/19)

Per the Trustee's status report, McClure withdrew her appeal of the Pacific Merchantile settlement and the Ninth Circuit has dismissed the appeal.

As to the settlement with Litt, Judge Wu has continued the status conference in the consolidated Litt appeals to March 7, 2019 and has indicated that he is not inclined to grant further continuances. The Trustee therefore requests a speedy determination of the motion for reconsideration so as to avoid unnecessary litigation costs in the consolidated Litt appeals. Because of the death of Ms. McClure's son Jeff, the motion to reconsider has been continued to 3/26.

The motion to sell the Maui property is set to be heard on 3/5/19.

I sent an email to Judge Wu, advising him of the situation and that I am continuing the motion to reconsider to 3/26. I also advised him that I expect to rule soon thereafter as no other papers may be filed. As of 3/4 at 10:00 a.m., I have not had a response from Judge Wu.

The status conference is continued to 3/26/19 at 10:00 a.m. I don't see any reason that anyone should appear in person or by phone on March 5.

Cont

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CONT... Shirley Foose McClure

Chapter 11

prior tentative ruling (2/12/19)

Continue without appearance to 3/5/19 at 10:00 a.m. Although documents are being filed for 2/12, there will be no hearing at that time. I am also advising the parties by email of this.

prior tentative ruling (11/6/18)

Ms. McClure has until Nov. 20 to file her motion for reconsideration. Meanwhile, she has filed an emergency motion for a stay pending the hearing on her motion for reconsideration. The Trustee opposes.

This would be a short stay, only so that the Court can adequately review the motion(s) to reconsider. While it took many months for the Court to do the detailed analysis and I believe that it is thorough and correct, it is appropriate to allow Ms. McClure to try to point out errors that may have been made. Given that the matters in the Superior Court are not immediate, the Court intends to grant the stay and will hear brief argument at the 11/6 status conference. It seems to me that the stay should expire 14 days after I enter my order on the motion(s) to reconsider.

Per the Trustee's status report filed on 10/31/18, the Maui property is in escrow.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

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CONT... Shirley Foose McClure

Chapter 11

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

1:16-12388 Major Textile Imports Inc.

Chapter 7

#12.00 Trustee's Final Report and Application for
Compensation and Deadline to Object.

Docket 191

Tentative Ruling:

It appears that all administrative expenses for professionals have been previously approved except for the trustee herself and some recent ones for the accountant for the trustee. A prior interim distribution to creditors was made.

Approve the second and final fee application for LEA Accounting. Approve the Trustee's fees and costs as requested.

If you submit on this tentative ruling, no appearance is necessary. If you choose to appear and the final ruling is in conformance with the tentative ruling, no additional fees will be allowed for this appearance. If the trustee's firm is representing the trustee, no attorney's fees will be allowed for an appearance on this matter, as the trustee would be expected to be present as part of the trustee's duties.

THE TRUSTEE/DEBTOR IN POSSESSION IS TO NOTIFY ALL PROFESSIONALS OF THIS TENTATIVE RULING.

Party Information

Debtor(s):

Major Textile Imports Inc.

Represented By
Jaenam J Coe

Trustee(s):

Carolyn A Dye (TR)

Represented By
Christian T Kim
James A Dumas Jr

**United States Bankruptcy Court
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Tuesday, August 20, 2019

Hearing Room 303

10:00 AM

1:09-18345 Narine Gumuryan

Chapter 7

#1.00 Motion for relief from stay

BAG FUND, LLC

Docket 38

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Movant is the assignee from L&J Assets of a cause of action for breach of a credit card agreement and fraudulent conveyance which was filed in the LA Superior Court. The debtor received her discharge and the bankruptcy case was closed. It was reopened on 3/27/19 to allow movant to file a complaint objecting to the dischargeability of this debt due to Debtor's failure to give notice of the bankruptcy. That adversary proceeding is 1:19-ap-01081.

L&J obtained a default judgment against Debtor and her two co-defendants for all causes of action. It was then assigned to Bag Fund. The chapter 7 bankruptcy case was filed after that. The bankruptcy was closed before Bag Fund received any notice of the bankruptcy - which notice was in about 2015. The state court then required Bag Fund to deal with the bankruptcy issue. Bag Fund asked its attorney to seek relief from stay, but the attorney failed to do so because of health issues.

The state court issued sanctions against Bag Fund. Bag Fund has brought a motion to reconsider (set for 9/20/19) in the superior court as to those sanctions and for clarification of a ruling on whether the Bag Fund underlying judgment against the non-debtor defendants was withdrawn.

Bag Fund seeks relief from stay as a precaution since it intends to seek a prove-up of its judgment against the Debtor and the other defendants in the state court action. It will not seek to collect any judgment against the Debtor until the Court determines that the debt owned by Debtor to Movant is non-dischargeable.

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CONT... Narine Gumuryan

Chapter 7

NO OPPOSITION RECEIVED AS OF 11:00 am ON AUGUST 19. PROOF OF SERVICE APPEARS IN ORDER.

Court

Reviewing the motion and the complaint, etc. it appears that the timeline is as follows:

2/1/99 - credit card application with Citibank - must be a CA homeowner

3/01 - Debtor acquired 7751 Allott

12/3/04 - Debtor breached the credit agreement

8/22/05 - Debtor deeds Allot to her son Andranik Gumuryan for no consideration

10/5/05 - Andranik Gumuryan borrowed \$300,000 against Allott

3/21/06 - Andranik Gumuryan deed and interest in Allott to Katrdzhyan for no consideration

4/13/06 - Katrdzhyan borrowed \$416,000 against Allot for no consideration (used to buy Bellaire)

a few months later - a trust deed was recorded against Allot to secure repayment of a loan of \$65,800 to Katrdzhyan and her husband, who are related to Debtor and her son

6/8/06 - Citibank assigned account to L&J Assets

6/16/06 - L&J filed suit against Debtor and others for breach of contract and fraudulent transfer (LC074976)

12/15/06 - L&J obtained default judgment against transferees of Allot (Gumuryan and Katrdzhyan)

5/21/07- abstract of judgment recorded against Allot

L&J assigned its judgment to Bag Fund

8/23/07 - Katrdzhyan transferred Allot to Mkrtyan for no consideration.

at some time - lien recorded on Allot in favor of Boyadjyab for \$37,000

10/20/08 - Mkrtyan transferred Allot to Manuk Gumuryan (Debtor's son) for no consideration

12/10/08 - per superior court docket, judgment assigned by L&J Assets

7/7/09 - Debtor files chapter 7, debt to Bag Fund not listed nor are L&J or Bag Fund on creditor's matrix or on her schedules.

10/5/09 - Kalfayan filed §523 case for fraud and fraudulent transfer - (1:09-ap-01418)

2/4/10 - discharge entered

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CONT... Narine Gumuryan Chapter 7

1/5/11 - Kalfayan and Debtor stipulate that the debt owed Kalfayan of about \$17,000 is non-dischargeable
2015 - Bag Fund receives notice of the bankruptcy
2015-2016 - there is a request to enter default judgment in the state court and an opposition by non-debtor defendants - per superior court docket
3/11/16 - motion to set aside judgment by non-debtor defendants - per superior court docket
6/28/16 - property transferred from the other interest holders to Andranik Gumuryan for no consideration and he borrows \$460,000 against it from United Wholesale Mortgage
11/21/18 - application for OSC re contempt filed by non-debtor parties in superior court - per superior court docket
11/28/18 - Bag Fund filed notice of bankruptcy in superior court - per superior court docket
1/29/19 - superior court hearing on OSC (why sanctions should not be imposed for engaging in bad faith tactics and violation of court orders) - taken under submission - per superior court docket
3/12/19 - superior court hearing on OSC re dismissal - taken under submission - per superior court docket
3/18/19 - superior court ruling on OSC re: dismissal and sanctions - per superior court docket
3/27/19 - bankruptcy case reopened
3/28/19 - motion to reconsider filed in superior court - per superior court docket
7/12/19 - §523 complaint filed - 1:19-ap-01081

I simply do not understand what your are seeking in this motion and how it impacts the superior court case. Please explain.

Party Information

Debtor(s):

Narine Gumuryan

Represented By
Elena Steers
Martin Fox

Movant(s):

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CONT... Narine Gumuryan

Chapter 7

Bag Fund LLC

Represented By
Edie Walters
Leo Fasen
Vincent J Quigg

Trustee(s):

David Keith Gottlieb (TR)

Represented By
David Keith Gottlieb

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Tuesday, August 20, 2019

Hearing Room 303

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#2.00 Status Conference Re:
Motion to Continue Hearing On
(related documents 246 Pre Trial Stipulation)
Continue Trial and Related Deadlines

fr. 4/29/19, 6/2/19

Docket 263

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Nothing new filed as of 8/19 at noon. This trial needs to be coordinated with the Campell one.

Party Information

Debtor(s):

Glen E Pyle Pro Se

Defendant(s):

Glen E Pyle Represented By
Raymond H. Aver

Sweetwater Management Company Pro Se

Glen E Pyle Irrevocable Trust Represented By
Raymond H. Aver

Plaintiff(s):

Marc H Berry Represented By
Marc Berry

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CONT... Glen E Pyle

Chapter 7

Trustee(s):

Amy L Goldman (TR)

Represented By

Amy L Goldman

Amy L Goldman (TR)

Leonard Pena

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Hearing Room 302

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

#3.00 Plaintiff's motion for order compelling responses to discovery

fr. 1/29/19; 3/26/19, 4/30/19, 7/2/19

Docket 101

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

On 8/16 Mr. King filed a status report that critical documents have not been turned over. There is no ability for a settlement conference under these circumstances. The documents turned over by Mr. Aver have major gaps. How does Mr. King wish to proceed - I think that the proper way is to declare that Mr. Pyle cannot introduce into evidence anything not yet produced and let's just hold the trial. It is on him to prove the existence, etc. as to the Trust.

prior tentative ruling (7/2/19)

Nothing further received as of 6/26. I continued this to make sure that the documents that Mr. Pyle said he turned over to Mr. Pena and Mr. Aver are turned over to Mr. King and that there are not any big gaps. Pyle has already been sanctioned monetarily for failure to turnover documents in the Berry v. Pyle case.

prior tentative ruling (3/26/19)

Thank you, Mr. King, for starting to use our electronic filing system.

Per the declaration filed on 3/22, Mr. Pyle did not comply with my order and no documents were delivered by 3/1. I believe that it is time for significant sanctions under Federal Rule of Civil Procedure 37(b)(2), incorporated into Federal Rule of Bankruptcy Procedure 7037. Thus, I am considering terminating sanctions, which means that Mr. Pyle cannot put on any evidence in support of a defense. Mr. King will still have to present his case-in-chief and I would allow Mr. Pyle to examine those witnesses, but not to testify (except as a witness for Mr. King, if he is called) or to present any

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CONT... Glen E Pyle

Chapter 7

witnesses or evidence on his own behalf. We need to talk about this to see if Mr. King will have sufficient evidence without this discovery to present his prima-facie case. Other sanctions are possible - we can discuss this at the hearing.

prior tentative ruling (1/29/19)

Plaintiff filed this motion to compel responses to discovery and for sanctions. Given Mr. Pyle's history of non-cooperation in the Berry v. Pyle case, the movant does not want to spend the time or money with obtaining an order compelling responses, since this would be a waste of time.

On 11/16/18, Pyle was served with a Demand for Identification, Production and Inspection of Documents and Other Tangible Things (the Demand), with production due on 12/17/18. There has been no response.

The materials sought are to be used to show that Pyle and his Trust actively engaged in fraudulent conduct toward Campbell, his other creditors, and the Court. They deal with deeds and conveyances, property tax records, credit applications, loans, insurance policies, vehicles, etc.

Since there was no production, the depositions scheduled for 12/27/18 was taken off calendar.

The Movant requests sanctions under California Law. Given the repeat nature of Pyle's non-cooperation in the Berry case, Movant seeks terminating sanctions. *Liberty Mut. Fire Ins. Co. v. LcL Administrators, Inc.*, 163 CA4th 1093, 1106 (2008). Ifnot, he seeks issue and evidence sanctions. These might include deeming the promissory note (which is the subject of the stte court judgment) to be valid against Pyle and his trust and that it was fraudulently obtained against Campbell. The Court can also deem the Pyle Irrevocable Trust to be the alter ego of Glen Pyle individually and prohibit any evidence to the contrary. Pyle can also be prohibited from introducing any evidence at trial contradicting his fraudulent intent as to Campbell and other creditors. Monetary sanctions would total \$4,462.50.

Although Pyle does not deserve the opportunity to respond to the discovery, if the Court allows that it should be without objections and delivered to Counsel's office within 21 days of the Order. A deposition should be ordered to take place within 10 days of delivery of the documents to Counsel.

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CONT... **Glen E Pyle**
Opposition

Chapter 7

Improper service of the discovery request and also of this motion. Only Mr. Aver was served, not the Debtor. Plaintiff was only authorized to serve Mr. Aver with discovery documents, not all documents including this request for sanctions.

The deposition set for 12/27 was continued by Plaintiff and no date has been set. There has been no meet and confer.

NO REPLY HAS BEEN RECEIVED AS OF 1/28 at 10:30 a.m..

Proposed Ruling:

Early in this case, I determined that all discovery in either case could be used in both cases. In particular, I believe that Mr. Campbell or his earlier counsel attended depositions of Mr. Pyle. I don't recall if there was a specific order or it was just stated at a hearing. But that is and was my intent and all parties were aware of it. Thus, before determining what documents, etc. are to be produced and what examination is to take place, Mr. King needs to review the fairly massive discovery in the *Berry v. Pyle* case. I believe that there were three deposition sessions there.

As to service, the reason for sending things to Mr. Aver is because of the difficulties with serving Mr. Pyle, who stated that he is not receiving his mail. He did receive this motion in time to respond, so those objections are overruled. To the extent that there needs to be an agreement or order as to how to serve in the future, let's get that on the record at the hearing.

As to the meet and confer - this is not needed given the prior actions of Mr. Pyle, who simply does not carry-through.

Monetary sanctions have not been effective in this case. So we can discuss what will work if there are discovery abuses.

Mr. King cites only to California law as to discovery sanctions. That is not useable in this court. Please review FRCP 37 (incorporated into FRBP 7037). Look at Rule 37(a)(5); (b)(2).

Party Information

Debtor(s):

Glen E Pyle

Pro Se

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CONT... Glen E Pyle

Chapter 7

Defendant(s):

Glen Pyle

Pro Se

Plaintiff(s):

Ian Campbell

Represented By
Barry P King

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

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1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

#4.00 Status conference re: Third Amended complaint for nondischargeability and/or to deny Bankruptcy Discharge; Alter Ego; and for Damages

fr. 5/11/11, 6/22/11, 10/4/11, 1/24/12, 2/14/12
4/24/12, 6/19/12, 9/11/12, 10/2/12, 11/6/12,
2/12/13, 3/19/13, 8/27/13, 8/27/13, 11/19/13,
2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15; 5/12/15; 6/2/15, 9/1/15,
9/8/15, 11/17/15; 1/12/16, 3/1/16, 6/7/16,
8/2/16, 9/27/16, 10/11/16, 1/17/17, 2/21/17,
3/28/17, 1/14/17, 12/19/17, 1/23/18, 3/27/18,
7/17/18, 8/21/18, 9/25/18, 11/6/18; 12/18/18; 1/29/19
3/26/19, 4/30/19, 7/2/19

Docket 111

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Per the status report filed by Mr. King on 8/16, there are major gaps in the documents that were turned over. While I don't necessarily need to declare a default (although I can do that), it seems that the best way to prevent Mr. Pyle from providing any further documents and lets just take this to trial.

prior tentative ruling (7/2/19)

On 6/28, Plaintiff filed a request for entry of default. This will be handled by the clerk's office. However, Mr. Pyle had answered the second amended complaint, so I am not sure that there should be a total default as to the third amended complaint except as to any new allegations or claims for relief. The same claims for relief exist, but new facts are alleged in ¶¶ 13-25 of the third amended complaint. There would still have to be a prove-up as to these,

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CONT... Glen E Pyle

Chapter 7

though some are the basis of the state court judgment of which the court can take judicial notice.

Even if default is entered, that does not automatically lead to a judgment. But it might make a difference in the timing. At the hearing on 3/26/19, I decided to bifurcate this case and take the fraudulent conveyance portion forward with the Berry v.Pyle trial, which was set for 4/30. That was continued. At the 3/26 hearing, Mr. King stated that he would obtain documents that Mr. Pyle had turned over and are in the possession of Mr. Pena or Mr. Aver. He can go forward without further production.

Because of the default - if entered - it might be possible to proceed without delay as to the §523 and §727 matters. This would require a prove-up. Mr. Pyle could object to evidence, but would be prevented from putting on a defense. Meanwhile the fraudulent conveyance trial could proceed in the other adversary and it is possible that Mr. King would not participate. Let's talk about this and move everything forward.

prior tentative ruling (3/26/19):

A third amended complaint was filed on 2/20/19. No response has been filed as of 3/22. The response was due on or about 3/13.

prior tentative ruling (1/29/19)

The case is now proceeding. Continue to a future date. HOWEVER, MR. KING SINCE THIS IS AN ACTIVELY LITIGATED CASE, PLEASE SIGN UP FOR CM/ECF ACCESS TO OUR COURT AND TO USE LOU (LODGED ORDER UPLOAD). See Court Manual Sec. 3.1, p. 3-3 and LBR 5005-4.

prior tentative ruling (7/17/18)

The order granting relief from the automatic stay was entered on 1/30/18. On 3/6 Mr. Campbell appeared in Court and wanted to know about the order. He had not been served with a copy of the order - our fault. I directed him to my law clerk, but he left without seeing her. On March 1, 2018, Judge Hammock continued his OSC re: Dismissal (BC416442) to July 5 so that Campbell could seek a judgment (he already has a default) on declaration. As soon as he has obtained his judgment, I will be ready to proceed. When will he be filing his

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CONT... Glen E Pyle

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declaration, etc. in the Superior Court? Should this status conference be continued until after July 5 or can we proceed before that?

prior tentative ruling (1/23/18)

Mr. Campbell has filed the motion for relief from stay to complete the superior court case. Continue this status conference to March 27, 2018 at 9:00 a.m. to allow him to obtain his judgment in the superior court.

prior tentative ruling (12/19/17)

I have been in contact with Judge. Hammock of the Superior Court. He advises me that all that is left to do in his case is for Mr. Campbell to file a motion for default judgment. The automatic stay is preventing this.

To move that case forward, Mr. Campbell is to file a motion in this court for relief from the automatic stay. This is to be filed and served no later than December 26. It is to be served by mail and by email on Mr. Pyle. The hearing will be on January 23, 2018 at 10:00 a.m. in courtroom 303. Mr. Campbell is to use the mandatory court form: F 4001-1.RFS.NONBK.MOTION. This is available on the Court website at www.cacb.uscourts.gov/forms/local_bankruptcy_rules_forms. Or you can obtain a copy at the filing window in the clerk's office.

prior tentative ruling (11/14/17)

The Court advised Mr. Campbell of the continuance of the Berry v. Pyle case. He does wish to appear on 11/14. The Court has called Mr. Aver's office and asked them to contact Mr. Pyle (who is pro se in this adversary proceeding) to advise him that the hearing on 11/14 is going forward and that Mr. Pyle is to appear on the phone or in person and instruct him on how to use Court Call. The Court was notified that he also wishes to appear.

What is the status of the state court matter?

prior tentative ruling (3/28/17)

This adversary proceeding has been trailing the Berry v. Pyle one, but it has

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CONT... Glen E Pyle

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some different issues. How does Mr. Campbell wish to proceed?

prior tentative ruling (1/17/17)

I believe that Mr. Campbell was trying to obtain counsel. It is best to keep this together with Berry v. Pyle. Therefore continue it without appearance to 2/21/17 at 10:00 a.m. when I have a hearing on the motion for summary judgment in the Berry v. Pyle case.

prior tentative ruling (8/2/16)

Mr. Campbell is now representing himself. How does he wish to proceed to get this ready for trial?

prior tentative ruling (3/1/16)

Per the status report filed by Plaintiff on 2/23/16, discovery is not complete. Plaintiff wants to take Mr. Pyle's deposition and audit the records.

This was trailing the Berry v. Pyle matter, but given Mr. Berry's health, I think that it should go forward alone and complete the discovery. Feel free to appear by phone at the status conference and let's get some dates to complete discovery. Please advise Mr. Pyle, who is not represented by counsel in this case, to appear in person or by phone.

prior tentative ruling (1/12/16)

This has nothing to do with Mr. Berry's health and Mr. Pyle is not represented by counsel. The 1/5/16 status report said that plaintiff will be ready for trial on 2/1. He figures 2-3 days. Let's set a trial date. Possible dates when there is a courtroom available are Feb. 16-17 and Mar. 23-24.

prior tentative ruling (9/8/15)

This has been trailing Berry v. Pyle. On 8/18/18 Plaintiff filed a status report. He is ready to go to trial in February 2016. He needs another 4-6 months to complete discovery, which includes Mr. Pyle's deposition and an audit of the records.

In htis case Mr. Pyle is not represented by counsel. So let's get a deposition date and move forward.

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CONT... Glen E Pyle

Chapter 7

prior tentative ruling (3/10/15)

Mediation set for 3/24/15. Continue without appearance to 5/12/15 at 1:00 a.m

prior tentative ruling (10/7/14)

The mediation has been delayed. Continue without appearance to 12/16/14 at 10:00 a.m.

prior tentative ruling (8/5/14)

The Berry v. Pyle matter is scheduled for a settlement conference before Judge Ryan on 9/22/14. Is this case part of the settlement conference? If so, continue without appearance to 10/7/14 at 10:00 a.m. If not, the status report filed by Plaintiff on 7/21 requests mediation. How do you wish to proceed?

prior tentative ruling (4/22/14)

On 4/8/14, counsel for plaintiff filed a status report. He believes that he will be ready for trial in 6 months. There is still discovery to be done, including completing Debtor's deposition. A mediation will take place in May or June. **Continue without appearance to August 5, 2014 at 10:00 a.m.**

prior tentative ruling (3/11/14)

This complaint is both under §523 and §727 as well as §§547 and 548. This has been trailing the Berry v. Pyle adversary proceeding. Mr. Mendoza attended the 2/10/14 deposition of Mr. Pyle, which is a joint deposition in both this case and the Berry v. Pyle case. Pyle is not represented by counsel in this adversary proceeding.

Mr. Mendoza, should this continue to trail the Berry adversary or are you ready to go forward on your own?

prior tentative ruling (4/24)

The parties have stipulated that plaintiff will have until 4/20 to file a Second Amended Complaint. A second amended complaint was filed on 4/20. Per the status report, the parties think that they need 4-5 months to complete discovery. The parties wish to mediate. Plaintiff has no co-counsel and may wish to propound more discovery and seek relief from stay as to certain trust

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CONT... Glen E Pyle
assets.

Chapter 7

Continue the status conference without appearance to June 19 at 10:00 a.m.
This will allow sufficient time for there to be a response to the second amended complaint and for new co-counsel to move forward. In the meantime, please complete a mediation order since it often takes weeks to schedule a mediation.

prior tentative ruling (2/14)

Per the status report filed on 1/24, the parties feel that they will not be ready for trial until late in 2012. Set a discovery cutoff date of 7/30/12. Although neither party wants mediation at this time, plaintiff's counsel is willing to attend mediation.

As of 2/12 there is no response to the amended complaint. What is the status of that? When do the parties think that mediation might be beneficial?

prior tentative ruling (1/24)

An answer was filed on 7/15. Plaintiff filed an amended complaint on 1/12, but this was done without leave to amend.

Counsel, in the future please confer with knowledgeable bankruptcy counsel before filing things in bankruptcy court. Your original cover sheet indicated that this was only a complaint to recover money under §§547 and 548. That is incorrect. The original complaint is under §523 and §727 (although that is not mentioned on the caption) and may include §§547 and 548 (although the uploaded copy has some pages missing, so I can't tell for sure). The amended complaint has all of these claims for relief. The court picked up that there was a §727 claim, but we should not have to review the complaint to do this.

prior tentative ruling (10/4)

Nothing further received as of 10/2.

prior tentative ruling (6/22)

As of 5/9 there has been no return on service on the summons. The plaintiff

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CONT... Glen E Pyle Chapter 7

has counsel. There is no status report as of 5/8. If there is no appearance at the 5/11 hearing, I will issue and OSC re: dismissal for failure to prosecute.

Party Information

Debtor(s):

Glen E Pyle	Pro Se
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Defendant(s):

Glen Pyle	Pro Se
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Plaintiff(s):

Ian Campbell	Represented By Barry P King
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Trustee(s):

Amy L Goldman (TR)	Represented By Amy L Goldman Amy L Goldman (TR) Leonard Pena
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1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

#5.00 Request for Clerk to Enter Default

Docket 119

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The clerk could not enter default because the third amended complaint does not match the records for his address.

Please note that an answer to the thrid amended complaint was filed on July 1.

There is no reason to go forward with this.

Party Information

Debtor(s):

Glen E Pyle Pro Se

Defendant(s):

Glen Pyle Pro Se

Plaintiff(s):

Ian Campbell Represented By
Barry P King

Trustee(s):

Amy L Goldman (TR) Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

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1:14-15182 Mark Alan Shoemaker

Chapter 7

#6.00 Motion and Notice of Motion Re: Objection
to Claim Number 14-1 by Claimant Lilie Burton
and Elizabeth Quinn.

Docket 200

*** VACATED *** REASON: Order entered denying temporay obj.
7/15/19 (eg)

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mark Alan Shoemaker

Represented By
William H Brownstein

Trustee(s):

Alfred H Siegel (TR)

Pro Se

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1:14-15182 Mark Alan Shoemaker

Chapter 7

#7.00 Motion and Notice of Motion RE: Objection to Claim Number 5-1 by Claimant Internal Revenue Service.

Docket 202

***** VACATED *** REASON: Order entered denying temporay obj.
7/15/19 (eg)**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mark Alan Shoemaker

Represented By
William H Brownstein

Trustee(s):

Alfred H Siegel (TR)

Pro Se

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1:14-15182 Mark Alan Shoemaker

Chapter 7

#8.00 Motion and Notice of Motion RE: Objection
to Claim Number 5-2 by Claimant Internal
Revenue Service.

Docket 204

*** VACATED *** REASON: Order entered denying temporay obj.
7/15/19 (eg)

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mark Alan Shoemaker

Represented By
William H Brownstein

Trustee(s):

Alfred H Siegel (TR)

Pro Se

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Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Tuesday, August 20, 2019

Hearing Room 302

10:00 AM

1:14-15182 Mark Alan Shoemaker

Chapter 7

#9.00 Motion to Remove Alfred Siegel as Trustee

Docket 218

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The Motion

This motion to remove Alfred Siegel as trustee is brought on two bases: (1) that Siegel failed to marshal assets and (2) that he "engaged in fraud to the detriment of the debtor and the estate." The Court previously found that Siegel has a limited fiduciary duty to Shoemaker which is created in a surplus case. In the adversary proceeding against Siegel, the Court found causation and injury. (1:16-ap-01142-GM ("BK adv"), dkt. 55 at 15:2-3) The Court dismissed the adversary proceeding on other grounds, but did not find that there was no duty to Shoemaker and that that duty would be breached by the Trustee's alleged misconduct in administering the estate.

It is a myth that the Trustee failed to bring substantial value into the estate due to Shoemaker's failure to disclose assets. In fact the original schedule B listed \$1.2+ million in accounts receivables and Siegel did nothing to recover these. In 2010 Shoemaker disclosed the litigation claims, but the Trustee failed to act. Shoemaker urged action, but no action was taken. In 2011 there was a letter regarding a settlement of one of Shoemaker's cases, but the Trustee took no action to marshal that asset, but rather files a no asset report that he later withdraws. Only in 11/13 does the Trustee file an application to appoint special counsel, which was after a 17-month delay. Special counsel is appointed in January 2014 and the collection cases adversary is filed in May 2014.

At the 6/12 status conference, Siegel instructed Shoemaker to amend his petition and add the litigation claims, which Shoemaker had proposed as a means of settlement with Siegel of Siegel's §727 complaint. "Thus, Siegel,

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on the record advised Shoemaker to commit fraud. This must be so, since this Court found the June 20, 2012 filing as a basis for fraud under 11 USC 727(a)(4)(A) denial of discharge." When Siegel and his agents pursue the litigation claims, they knew that there was a basis for fraud and they prompted and perpetrated that.

The entire bankruptcy is void because the Court found that the original petition and schedules was a basis of the fraud finding under §727(a)(4)(A).

At the trial in case 14-01296, Siegel admitted that he was apprised at the Advocate assets at the 7/6/10 meeting of creditors, that he had a duty to investigate them even if they were not listed on the formal schedules, that he practice as a trustee was to contact the trustee in a related corporate chapter 7 case, that he withdrew his initial no-asset report so he could determine whether the amended claims were legitimate or not and would benefit creditors, that he had to filed the litigation claims 24 months after 6/14/12 to determine that they had no value of any materiality, and that he separately analyzed the claims set forth in the amended schedules.

The Opposition

This motion is an improper collateral attack on the Court's Order dismissing with prejudice the *Shoemaker v. Siegel* adversary proceeding (1:16-ap-01142). The issue of marshalling the assets is directly from that lawsuit. That lawsuit asserted the Siegel acted with gross negligence and with fraud.

The Debtor has no standing to file this motion. The motion is also time-barred as were the identical allegations in the adversary proceeding. The allegations are baseless in law and fact. There would be no benefit to the estate to remove the Trustee at this time.

There is no cause for removal. Under the totality of the circumstances test, the burden is on the movant to show cause, which is a required element. Here the Debtor has not standing because this is not a surplus estate and thus the Trustee does not owe a fiduciary duty to the Debtor. Also Siegel did not somehow advise Shoemaker to commit fraud and thereby lead to the

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denial of discharge. The Court discussed this fully in the Memorandum of Decision denying Shoemaker's discharge. (1:14-ap-01206, dkt. 278).

Removing the Trustee would merely mean appointing another trustee in his place. It would not void the bankruptcy or the denial of discharge. There is no benefit to the estate since the new trustee would have any collections actions barred by the statute of limitations.

There are no conflicts of interest here and the Trustee has not personally benefitted from this case. In fact, the Trustee is not receiving any payment from this case.

NO REPLY RECEIVED AS OF 8/19 AT NOON.

Proposed Ruling

Adversary proceeding 1-16-ap.01142 was opened on October 7, 2016, when counsel for Levene, Neale, Bender, Yoo & Brill, LLP and Anthony Friedman removed the state court complaint. That complaint had been filed on July 28, 2016 and was for fraud, negligent misrepresentation, breach of fiduciary duty, and negligence. While the original complaint did not segregate the claims against the various defendants, it contained most of the allegations in this motion.

The First Amended Complaint (dkt. 24, filed 11/14/16) as to Siegel is specifically for fraud and breach of fiduciary duty. It includes all or substantially all of the allegations made in this motion to remove Siegel. The Second Amended Complaint (dkt. 44, filed 12/20/16) is solely against Siegel and goes into the allegations of gross negligence and fraud in great detail. This was dismissed with prejudice on February 27, 2017 for failure to state a claim. (dkt. 55, 58).

Thereafter, Shoemaker appealed to the district court, which affirmed the ruling (2:17-cv-2033, dkt. 19). The Ninth Circuit also affirmed (18-55182). No motion for a writ of certiorari was filed and thus these findings and rulings are final.

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Since this is not a surplus case, Shoemaker does not have standing and the Trustee has no duty to him. But even if he did, this motion to dismiss is untimely. The actions complained of occurred in and before 2012. Shoemaker clearly knew of them when he brought the adversary proceeding in 2016 (and the case docket will show that he was aware of them long before that time). The case has been fully administered and is ready for closing. The Trustee is receiving no compensation.

Shoemaker has had his chance (which he has taken several times, but to no avail) to challenge the Trustee's handling of this case. He has been unsuccessful and the Court will not sanction yet another bite of the apple.

As to the unique theory that if Siegel is removed it would affect Shoemaker's discharge or somehow lead to a dismissal of the bankruptcy case. Not only do no grounds exist in law or fact for such a contention, but the denial of Shoemaker's discharge was in an adversary proceeding brought by the United States Trustee and not by Siegel (1-14-ap-01206). Removing Siegel would have no impact on that final judgment.

As noted in the opposition, to the extent that Shoemaker believes that a newly appointed trustee would resurrect the attempt to collect money for the estate, that is wrong. The statute of limitations has run on any claims that Shoemaker or his estate would have on persons who he asserts directly or indirectly owed him money prepetition. Over nine years have passed since this case was filed on May 25, 2010 (it received a 2014 case number when transferred from the Los Angeles Division to the San Fernando Valley Division of the Bankruptcy Court). The related case of Advocate for Fair Lending was filed a few days later (2-10-bk-32494, filed June 2, 2010). Even the most scrupulous and aggressive new trustee could not increase the assets of this estate.

It should also be noted that the OUST, which is responsible for the performance of the trustees that it appoints and supervises, has been aware of Shoemaker's assertions against Siegel – for years. The OUST has taken no action and has not joined into this motion.

Deny the Motion to Remove Alfred Siegel as trustee.

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Party Information

Debtor(s):

Mark Alan Shoemaker

Represented By
William H Brownstein

Trustee(s):

Alfred H Siegel (TR)

Pro Se

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1:16-11387 Real Estate Short Sales Inc and Real Estate Short Sales, Inc.

Chapter 7

#10.00 Order to show cause why Nancy Cueva and debtor should not be held in contempt of court

fr. 1/29/19; 1/31/19; 3/5/19; 4/16/19; 7/16/19

Docket 329

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

On 7/18, Judge Fischer entered an order granting Nancy Zamora's motion to dismiss the appeal. (CV 18-10689). Nothing further was filed in the district court and no appeal has been taken as of 8/18. The Trustee has not filed anything further. This was the appeal of the sale order. The 1/31/19 tentative ruling is not complete. All papers have been filed. I think that I should just continue this for some period of time so that I can complete my tentative ruling and then set it for oral argument.

prior tentative ruling (7/16/19)

As to the appeal, the Trustee brought a motion to dismiss. Judge Fischer took the motion under submission, but dismissed as to RESS, since it did not appear by counsel. As to Cueva and Molica, Judge Fischer gave them until July 8, 2019 to file an opposition. Cueva and Molica filed an opposition on 7/8. Any reply is due on July 15, 2019.

I am continuing the July 16 hearing on the contempt motion to August 20, 2019 at 10:00 a.m. in the hope that Judge Fischer will have ruled by that point. As to any further papers, I have received the contempt motion, the opposition, the reply, the supplemental opposition, and the supplemental reply. Once Judge Fischer rules, the following timeline will go into effect:

The Trustee will have 7 days after the date of the ruling to file an addendum to her motion - limited solely to the status of the appeal and the impact on this motion.

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If Judge Fischer grants the Trustee's motion to dismiss, then Cueva/Molica will have 14 days after the Trustee files her addendum to file a second supplemental opposition - limited solely to matters raised by the Trustee in her addendum and the impact of the dismissal on this motion.

If Cueva/Molica file a second supplemental opposition, the Trustee will have seven days after that is filed to file a second supplemental reply, which is to be limited solely to matters raised by the Cueva/Molica second supplemental opposition.

Depending on the substance and timing of Judge Fischer's ruling on the motion to dismiss the appeal, the hearing in August 20 may be on the merits or may be a status conference.

prior tentative ruling (4/16/19)

The Court has entered a Notice of Status in Bankruptcy Court, which has also been sent to the district court to be filed in the consolidated appeal (2:18-cv-10689-DSF). This is #451 on the bankruptcy case docket. The district court docket does not reflect any future hearing date, though the opening brief is to be filed by 5/13/19. We have mailed it to be filed in the district court and I have sent a copy to Judge Fischer to be sure that she is aware of it.

I think that the contempt hearing needs to be continued until some or all of the appeals are resolved, as described in my notice. Let's discuss how best to proceed.

prior tentative ruling (1/31/19)

The OSC re: Contempt deals with three specific actions:

1. Violation of the compromise order (the "Compromise Order") [dkt. no. 226] that requires Parties to cooperate fully with the Chapter 7 Trustee's marketing and sale of that certain real property commonly known as 10351 Oklahoma Avenue, Chatsworth, California 91311 (the "Chatsworth Property") by failing to allow interior access to the Chatsworth Property for the purposes of an appraisal required by the lender for buyer Haya Sara Yavor ("Buyer");
2. Violation of the sale order (the "Sale Order") [dkt. no. 302] that requires

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Parties to vacate the Chatsworth Property by noon on Monday, December 17, 2018; and

3. Violation of the Compromise Order by opposing Trustee's sale motion for the Chatsworth Property and filing a notice of appeal of the Sale Order.

The details and background of these asserted violations are described below in more detail in the Trustee's reply.

Opposition

The reason that they did not move out on 12/17 was because the hearing on their stay motion was not set until 12/18. Also they believed (on their own and not from counsel) that the sale order violated the automatic stay of their chapter 13.

The Sale Order did not require the Debtor (as opposed to Cueva/Molica) to vacate the Chatsworth Property by noon on 12/17.

Molica was and is very sick, so the failure to allow the appraiser access on 12/12 and 12/13 and the failure to vacate on 12/17 should keep that in mind. However, after the Court ruled on 12/18, the appraiser was promptly granted access.

Cueva believed that the automatic stay of the chapter 13 case precluded the Trustee from pursuing the sale and obtaining possession of the property and thus her conduct was justified.

Cueva and the Debtor had a justified belief that the setting of the Stay Motion for 12/18 meant that they did not have to vacate Chatsworth on 12/17.

The Debtor and Cueva did not violate the Compromise Order by opposing the Sale Order due to the filing of the chapter 13 case. Nor did they do so by appealing the Sale Order based on issues that they believe to be valid. Requiring that they "cooperate fully with Trustee's marketing and sale of the Chatsworth Property, subject to the Court's approval" cannot be read as a waiver of their rights to oppose the Sale Order. The automatic stay cannot be waived in advance.

This OSC does not apply to Molica.

Reply

Although set forth in the application for this OSC, the Trustee again lays out the facts that support her contention of bad behaviour by Cueva and Molica - living cost-free in Chatsworth for 6 years before the Trustee was

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appointed (thus avoiding \$500,000 in mortgage payments); remaining in the property without payments for another year after the Trustee was appointed; interfering with the sale of estate property; negotiating in bad faith to purchase the property; increasing the estate's administrative expenses. They benefitted by \$85,000 by this 13-month extension after the Trustee was appointed. After a buyer was obtained, they would not vacate the property and would not allow access to the Trustee's appraiser. The Trustee was forced to petition the Court for an order to remove them, to which they responded by threatening the escrow and title officers with litigation pursuant to a bogus quitclaim deed.

The Trustee then lays out in detail the actions which interfered, delayed, and otherwise prejudiced the estate.

The Trustee states in her reply (filed on 1/22/19) that the sale has not yet closed due to the delays caused by Cueva and Molica. The Trustee is not sure that the short sale lender will agree to any further extensions if Cueva and Molica continue to block the sale by their contemptuous conduct.

As to the specific items in the OSC:

- (1) refusal to provide access - Cueva did not act in good faith by failing to allow the appraiser access on 12/12 and 12/13. The Compromise Order required Cueva and the Debtor to cooperate with the Trustee's marketing and sale of the property. This included the appraisal appointment.
- (2) refusal to vacate: they were to vacate by noon on 12/17/18, but Cueva and Molica refused to do so. They did not remove their personal property.
- (3) violation of the Compromise Order by opposing the Sale Motion and filing a notice of appeal: These violated the provision of the Compromise Order requiring Cueva and the Debtor to cooperate fully with the Trustee's marketing and sale of the Chatsworth Property.

The Court has civil contempt power through 11 USC §105(a). Civil contempt occurs when a party "disobeys a specific and definite court order by failure to take all reasonable steps within the party's power to comply. The contempt 'need not be willful,' and there is no good faith exception to the requirement of obedience to a court order." *Go-Video v. Motion Picture Ass'n of America (In re Dual Deck Video Cassette Recorder Antitrust Litig.)*, 10 F.3d 693, 695 (9th Cir. 1993). A party must take all reasonable steps to comply with a court order. *Shuffler v. Heritage Bank*, 720 F.2d 1141, 1146-7 (9th Cir. 1983).

The Trustee has met her burden of proof in the application for the OSC

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and in the facts laid out in this reply. Now the burden of proof shifts to the contemnors and they have not met this. They have not put forth any evidence of an impossibility defense or of their inability to comply.

As to vacating the residence, Molica and Cueva may have moved out on 1/8, but they did not notify the Trustee and they left two inoperable vehicles. Thus the U.S. Marshal deputies appeared with a locksmith (cost \$3,000+ for the Marshals and \$1,146 for the locksmith). Cueva and Molica left the two cars and almost their entire personal property behind, and storage is likely to cost more than \$10,000 plus \$1,000 per month for insurance.

The Sale Order applies to all parties, including the Debtor. A corporation acts through its principals. Cueva and Molica claim to be equityholders, officers, and directors. Therefore they are responsible for the Debtor's compliance with the Compromise Order and the Sale Order.

There is no medical exception to the obligation to comply with a court order. There is also no evidence to verify the existence, extent, or duration of Molica's medical issues. Molica was fully engaged during the appraisal and was seen driving a car with Cueva as his passenger as well as walking around. They, in fact, have moved out and there is no showing that Molica's medical condition was an excuse for the delay.

The Chapter 13 filing was a procedural maneuver and not a good faith filing. They had no interest in the Chatsworth property, so the chapter 13 stay could not apply. Also, the automatic stay does not apply to the bankruptcy court where the debtor's bankruptcy is pending. *[Please note that I cannot tell where the quotation on p. 19-20 of the reply is from. It also appears to contain several mistakes as to the citations included - ie. according to Lexis, North Coast Village is at 135 B.R., not 132 and Maritime Elec. is at 959 F.3d, no 862.]*

Even if the stay could apply, the Court annulled it and dismissed the chapter 13 case.

There was no waiver of the Compromise Order. There was no right to waive and also because the cooperation was an obligation of the Order, the discussion of waiver does not apply.

The Debtor and Cueva had no standing to file an appeal of the Sale Order. There was no pecuniary interest of either in the property. There was no possibility of surplus.

The Court has the ability to impose civil contempt penalties, which must be either compensatory or designed to coerce compliance. The Trustee

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seeks the following compensatory sanctions:

Attorney's fees of no less than \$20,000 and increasing [*There does not appear to be any evidence to support this figure.*]

U.S. Marshal's fees of \$3,000+ subject to final invoice

Locksmith charge of \$1,146

Insurance of \$11,672.95 subject to increase

Moving and storage of personal property of at least \$10,000, to be determined based on whether Cueva and Molica pay and arrange for their own movers per Court Order or whether statutory notice applies

Misc. costs for certified copies, etc. of \$351.62 subject to increase

Supplemental Declaration of Nancy Cueva

Ms. Cueva pro se filed a supplemental declaration on 1/25. She describes a potential sale to an Argentinian buyer that did not go through because the Trustee required certain things. She then talks about her attempt at a loan modification, which she asserts the Trustee interfered with, but is actually still pending. She states that up to 2015 she and her husband paid \$234,180 and also improvements of \$250,000.

As to the recent chapter 13, she asserts that she paid Jeffrey Hagen \$1,500 for his services, but he withdrew after he spoke with Ms. Zamora. Since they could not find another attorney on such short notice, they let the case be dismissed.

Cueva became ill and could not vacate the premises. On December 25 she was taken to the emergency department of West Hills Hospital for emergency surgery and her post-surgical care did not allow her to do any strenuous activity.

On January 3, U.S. Marshal Deputy Hugo Valdez trespassed and posted a notice to vacate that was defective because it did not attach the third page of the writ not the order attached to the writ. On January 8 they moved out. Deputy Valdez did not return. Cueva wanted to arrange to move the personal property, but Deputy Valdez never returned calls. On January 12 Cueva and Molica returned to pick up their mail and found 4 marshalls, a lock company, the realtor, and Zamora's assistant. None would tell them how to recover their personal property. Since then Cueva has called Zamora and filed a letter to her and to the Marshall, but not received an answer. Cueva refuses to pay the Marshall or attorney fees. Zamora has personal animosity against Cueva.

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Analysis

Although not raised in the opposition, the OSC re: Contempt is on appeal (USDC CAC 2:19-cv-00120- DOC). Do I still have jurisdiction on this until the appeal is dealt with?

The sale has not closed. Is the Sale Order on appeal? If so, do I have jurisdiction on this OSC re: Contempt as to the Sale Order? However the Compromise Order is not on appeal.

11 USC §105(a) gives the bankruptcy court the power to punish for civil contempt. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178 (9th Cir. 2003). Beyond that, there is an inherent power to do so. *Caldwell v. United Capital Corp. (In re Rainbow Magazine, Inc.)*, 77 F.3d 278, 284 (9th Cir. 1996).

Civil contempt involves sanctioning a person until s/he complies with an affirmative command - in this case complying with the Compromise Order and also with vacating the property, etc., which has been partially done but personal property was not removed by the alleged contemnors. Criminal contempt is punitive because the act of disobedience has been completed and the contemnor cannot now act to comply with the prior order:

Since there is no positive action to be taken (except dealing with the personal property that is in storage), this could fall into the area of criminal contempt. However, the Trustee is not seeking a determination of criminal contempt, but merely sanctions for the expenses incurred by the violation of the Orders.

Civil contempt may be used to compensate the aggrieved party even if the action by the contemnor can no longer be undone:

Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the defendant into compliance with the court's order, and to compensate the complainant for losses sustained. *Gompers v. Bucks Stove & Range Co., supra*, at 448, 449. Where compensation is intended, a fine is imposed, payable to the complainant. Such fine must of course be based upon evidence of complainant's actual loss, and his right, as a civil litigant, to the compensatory fine is dependent upon the outcome of the basic controversy. *United States v. United Mine Workers*, 330 U.S. 258, 303-304 (1947)

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A contempt fine accordingly is considered civil and remedial if it either "coerces the defendant into compliance with the court's order, [or] . . . compensates the complainant for losses sustained." *United States v. Mine Workers*, 330 U.S. 258, 303-304, 91 L. Ed. 884, 67 S. Ct. 677 (1947). Where a fine is not compensatory, it is civil only if the contemnor is afforded an opportunity to purge. See *Penfield Co. of Cal. v. SEC*, 330 U.S. 585, 590, 91 L. Ed. 1117, 67 S. Ct. 918 (1947). Thus, a "flat, unconditional fine" totaling even as little as \$ 50 announced after a finding of contempt is criminal if the contemnor has no subsequent opportunity to reduce or avoid the fine through compliance. *Id.*, at 588.

Int'l Union v. Bagwell, 512 U.S. 821, 829 (1994)

Here the sanction would be compensatory since there is nothing left for Cueva and the Debtor to do (although they can reduce this by taking possession of their personal property). It appears that the proper result would be an order that Cueva pay the Trustee the sum necessary to compensate for the actions taken as a result of her contempt. Since the Trustee does not have counsel, the Court would need evidence of a proper amount to compensate the Trustee for her time and for incidental expenses. Then the Court must determine that Cueva has the ability to make the payment. There would be no such order as to the Debtor, since it owns nothing that is not property of the estate. While the Court has doubted Ms. Cueva's finances, she has never asserted that she did not have sufficient money to comply with the order to move. And she has hired counsel and paid him a retainer of \$20,000 and agreed to an hourly rate of \$650. (dkt. 324). Thus her ability to pay is not in issue.

One of the issues is who is bound by the Compromise Order and who is bound by the Sale Order. The Compromise Order (dkt. 226) approves the motion to compromise (dkt. 217). The compromise letter states that it is "reached between you ('Cueva') and me, as chapter 7 trustee ('Trustee')...." (dkt. 217, p. 15). The Order approving the revised compromise states that it is between "Trustee and Nancy Cueva ('Cueva'), for the benefit of Debtor...." (dkt. 226). Ms. Zamora prepared both of these documents. The Sale Order (dkt. 302, p. 9) specifically provides in ¶1N that "Nancy Cueva and Julio Molica (collectively 'Residents'), shall vacate the Real Property, without causing damage, no later than 12:00 noon on December 17, 2018, consistent with that certain Order Approving Revised Compromise...."

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As to the assertion that she did not comply with the order to vacate by 12/17 because of the delay in the hearing on a stay until 12/18, it is clear that Cueva did not intend to vacate at any time and that she was doing all that she could to block the sale from consummating. See for example her recording of a quitclaim deed on 12/26/18 (dkt. 347, 349).

As to the issue of her belief that she was protected by the automatic stay of the new chapter 13 - the mere act of filing the chapter 13 was solely for the purpose of interfering with the sale and as a basis not to vacate the property. Concerning whether Jeffrey Hagen was her attorney in the chapter 13, she asserts that she hired him and paid him \$1,500, but provides no receipt for payment, he never appeared, the petition was filed pro se, and there is no declaration by Mr. Hagen.

Beyond that, she attempted to keep that case open by lying to the Court [though not under oath] and she had her attorney state that Cueva had timely filed a request to extend time to file schedules in that case [transcript of 12/18/18 hearing, dkt. 341] The document was never located in the clerk's office and thus the court dismissed the case. Although Cueva was given an opportunity to vacate the dismissal if she could present a conformed copy of her application to extend, she did not do so. The Court finds that no such application for extension was ever filed. Id. p. 62-63. Also, on December 4, Cueva represented to the Court that Jeffrey Hagen represented her in her chapter 13 case, but this was not true.

All of these efforts were undertaken so as to prevent the Trustee from completing the sale. They were obstructionist and not in good faith.

The Trustee has laid out sufficient facts to meet her burden that the actions by Cueva, Molica, and the Debtor were an intentional violation of prior orders of this Court - specifically Sale Order, though there is a question as to who was bound by the Compromise Order. The Trustee has met her burden.

As to the assertion that all of this was due to the poor health of Molica - the Court does not accept that as an excuse. Beyond the fact that the Compromise Order was many months before the Sale Order and thus Molica/Cueva had more than sufficient time to prepare to move, the declaration of Behnaz Tavakoli provides evidence that Molica was not unable to physically move out - he was able to walk and to drive. Even had he been immobile, this would not be an excuse since he had months to prepare.

Concerning Cueva's emergency surgery, apparently this occurred on or after December 25, a full week after the time to remove themselves from the

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property. There is also no evidence that Cueva and/or Molica made any preparations to move themselves or their furniture. They are or were living in a hotel and not an apartment, there is no indication that they hired a moving company or arranged for storage. It is obvious to the Court that they had no intention to move until and unless the Marshall took action. They had months to make preparations and their health issues are not an excuse.

The Court also finds it disturbing that Ms. Cueva presented an entirely new story of the delay in her supplemental opposition, since all of these assertions occurred before the Debtor's attorney filed the initial opposition.

As to the loan modification, that time has passed. The debtor (estate) owns the real property, not Cueva/Molica. They have no rights left to modify and their attempts may be interfering with the Sale Order and may be a continuing contempt.

As to the personal property, there needs to be an agreement as to how it is handled - remaining in storage, who pays the storage fees, etc.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Real Estate Short Sales, Inc.

Represented By
Daniel J McCarthy

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:16-11538 Majestic Air, Inc.

Chapter 11

#11.00 Objection to Scheduled Claims of Franklin Tan
(listed as no. 3.3 adn 3.4 in part of 2 of amended
schedule E/F, docket no. 24

fr. 6/11/19; 7/16/19

Docket 275

***** VACATED *** REASON: Order to cont. to 9/24/19 @10am (eg)**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Continued by order of the court to 9/24/19 at 10:00 a.m.

prior tentative ruling (7/16/19):

LTP and the Debtor filed a stipulation to continue this to 8/20/19. I changed the order to include the following:

1. That Franklin Tan has never been served with this objection to his claim and he is not a party to this stipulation. If he has not been properly served (as noted in the prior tentative ruling) by August 10 and proof of service filed prior to the August 20 hearing, this objection to claim will be overruled.

2. Assuming that Debtor has standing to file a response to the objection, its deadline to file and serve a response to the Objection is extended to August 6, 2019. No further extensions will be granted without appearance. As to Franklin Tan, he will have 21 days after proper service to respond.

It is continued to 8/20/19 at 10:00 a.m.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Tuesday, August 20, 2019

Hearing Room 302

10:00 AM

CONT... Majestic Air, Inc.

Chapter 11

prior tentative ruling (6/11/19):

This objection is brought by Lufthansa Technik Philippines, Inc (LTP), a creditor of Majestic Air, and concerns scheduled claims #3.3 and 3.4 (amended schedules). Scheduled claim 3.3 is as to Franklin Tan in the amount of \$350,000 for an "investment into Amplespares in Phillipines through a loan from Franklin Tan." It is is not contingent, unliquidated or disputed. Scheduled claim 3.4 in for Franklin Tan in the sum of \$350,000 and is for a "guaranty of investment into a joint venture for Ampleshares." It is also not disputed, contingent, or unliquidated. Mr. Tan is listed as having an address at 1677 Quezon Avenue, 4th Floor Nexor Building, Quezon City, Metro Manila, Phillipines. Tan has not filed a proof of claim or appeared in this case.

Tan and Cue are longtime friends. Tan asserted in the opposition to the motion to dismiss her personal bankruptcy that Tan loaned Majestic Air \$350,000 and an additonal \$350,000 to Amplespares, who is Majestic's joint venturer and this was guaranteed by Cue. It has not been repaid. This motion asserts that all \$700,000 was transferred to Amplespares, whose mailing address is the same as Tan's.

The motion then goes through a set of conflicting testimony as to the status of Amplespares and its relation to Majestic Air. The declaration of Gabriel Courey states that it contains copies of the corporate documents of Amplespares, but it does not. There is no admissible evidence as to the statements that Cue is alleged to have made and upon which much of this motion is based.

Beyond that, there is an issue of service. Mr. Tan's address is outside of the United States. The proof of services says that he was served by U.S. Mail at that address. He has never appeared and there is no information that service complies with FRBP 7004, which incorporates much of FRCP 4. FRCP 4(f) applies to service of a person in a foreign country.

Continue to July 16, 2019 at 10:00 a.m. for proper service and for the submission of admissible evidence in support of this motion.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, August 20, 2019

Hearing Room 303

10:00 AM

1:16-11538 Majestic Air, Inc.

Chapter 11

#12.00 Status and Case Management Conference

fr. 8/4/16(xfr from Judge Tighe's calendar); 8/30/16,
9/27/16; 10/25/16; 11/15/16, 2/21/17, 5/16/17; 6/27/17,
8/29/17, 1/23/18; 6/19/18, 9/18/18; 12/4/18; 2/12/19; 5/7/19
6/11/19; 7/16/19

Docket 1

***** VACATED *** REASON: Order cont. to 9/24/19 @ 10am (eg)**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Continued by order of the court to 9/24/19 at 10:00 a.m.

prior tentative ruling (7/16/19):

Continued by stipulation to 8/20/19 at 10:00 a.m.

prior tentative ruling (5/7/19)

Objection to claims of Franklin Tan is set for hearing on 6/11. Continue this status conference without appearance to 6/11/19 at 1:30 p.m. No updated status report will be needed at that time.

prior tentative ruling (2/12/19)

Per the status report, the parties (LTP and the Debtor) have narrowed down the list of mediators and expect to schedule a mediation within the next 30 days. The sale of the building has been completed and is now owned by the Debtor's principal's children. The Debtor is continuing to make lease payments.

If there are no objections, continue without appearance to April 16, 2019 at 10:00 a.m.

prior tentative ruling (12/4/18)

Per the status report filed on 11/20, the remaining issues involve LTP.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, August 20, 2019

Hearing Room 303

10:00 AM

CONT... Majestic Air, Inc.

Chapter 11

The parties are discussing mediation. If not, Debtor will file a objection to the LTP claim.

Continue without appearance to February 12, 2019 at 10:00 a.m.

prior tentative ruling (9/18)

Special counsel is being employed to resolve or litigate the LTP claim. This status conference will be continued.

prior tentative ruling (6/19/18)

Per the status report filed on 6/5, on 5/30/18 the California Court of Appeal affirmed the decision of the Superior Court in the Ansett Aircraft v. Cue appeal, but remanded the case for further proceedings.

Continue without appearance to Sept. 18, 2018 at 10:00 a.m. so that the Ansett claim can be finalized.

prior tentative ruling (1/23/18)

There is a state court appeal pending. Continue without appearance to June 19, 2018 at 10:00 a.m.

prior tentative ruling (2/21/17)

Per the status report filed on 2/7/17, the LTP parts have been sold and Debtor has moved to its new, less expensive, location. The appeal with the California Court of Appeal as to LTP is continuing. The Debtor expects to file a disclosure statement within the next 60 days.

The Debtor filed a month-by-month comparison of actual revenue and expenses and budgeted revenue and expenses for November, December, and January. They show a slight net profit of \$1,500-\$2,200 per month.

If there is no objection, I will continue this without appearance to May 16, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, August 20, 2019

Hearing Room 303

10:00 AM

1:16-11538 Majestic Air, Inc.

Chapter 11

Adv#: 1:18-01133 Majestic Air, Inc. et al v. Lufthansa Technik Philippines, Inc.

#13.00 Motion to Dismiss Adversary Proceeding

Docket 32

***** VACATED *** REASON: Order cont. to 9/24/19 @ 10am (eg)**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Continued by order of the court to 9/24/19 at 10:00 a.m.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Defendant(s):

Lufthansa Technik Philippines, Inc.

Represented By
Dawn M Coulson
Scott D Cunningham

Plaintiff(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Tessie Cue

Represented By
Stella A Havkin

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, August 20, 2019

Hearing Room 303

10:00 AM

1:16-11538 Majestic Air, Inc.

Chapter 11

Adv#: 1:18-01133 Majestic Air, Inc. et al v. Lufthansa Technik Philippines, Inc.

#14.00 Status Conference Re: Complaint
Objecting to Proof of Claim No. 3; and
for Contractual Indemnification

fr. 3/5/19; 6/11/19; 7/16/19

Docket 1

***** VACATED *** REASON: Order cont. to 9/24/19 @ 10am (eg)**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Continued by order of the court to 9/24/19 at 10:00 a.m.

prior tentative ruling (6/11/19):

There is a mediation between Majestic Air and Lufthansa Technik Philippines set for June 13. The parties wish the status conference to be continued without appearance to July 16. Continue to July 16, 2019 at 10:00 a.m. and extend the dates to meet and confer and file a joint status report as per the stipulation.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Defendant(s):

Lufthansa Technik Philippines, Inc.

Pro Se

Plaintiff(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Tessie Cue

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, August 20, 2019

Hearing Room 303

10:00 AM

CONT... Majestic Air, Inc.

Stella A Havkin

Chapter 11

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, August 20, 2019

Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:16-01166 Barlava et al v. Yashouafar

#15.00 Status Conference re: Complaint

fr. 2/21/17, 3/28/17; 5/30/17; 5/30/17,
10/3/17, 1/23/18; 4/17/18; 8/7/18; 8/21/18; 2/26/19; 4/16/19

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Per the Plaintiffs; status report filed on 8/12/19, the state court status conferences are now set for Barlava v. Roosevelt Lofts (9/17/19) an Carla Ridge v. Milbank (8/27/19). These state court proceedings are stayed. There Trustee has not notified the Plaintiffs of the likelihood of an objection to the claim. Plaintiffs request a 90 day continuance of this status conference, based on the prior stipulation (dkt. 18).

If there is no objection to this continuance, continue the status conference without appearance to January 28, 2020 at 10:00 a.m. It is my understanding that this adversary proceeding would be moot if (1) there is no finding of liability in the state court action(s) and/or (2) the Trustee does not object to the Plaintiffs' claim(s). I'm not sure why the Trustee's objection is relevant, but I will continue this anyway. In the next status report, please expand on this.

prior tentative ruling (4/16/19)

On 4/2/19 Barlava filed a unilateral status report. The two state court actions are stayed. Barlava v. Roosevelt Loftrs has a status conference on 6/25/19; Carla Ridge LLC v. Milbank Holdings Corp has a status conference on 8/27/19. The Trustee has not notified Barlava of any likelihood of objection to the claim..

Continue without appearance to August 20, 2019 at 10:00 a.m.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, August 20, 2019

Hearing Room 303

10:00 AM

CONT... Solyman Yashouafar

Chapter 11

prior tentative ruling (8/21/18)

A stipulation to stay the action was filed on 8/3/18. Basically, there is a question whether the Plaintiffs would be able to collect on their claims even if they win a non-dischargeable judgment. So rather than continue to battle over discovery, the parties agree to stay this adversary complaint until the Trustee decides whether to challenge the Plaintiffs' claims. As I understand it, to the extent that the Trustee does not object to a claim or a portion of a claim, the claim or part thereof, will be dismissed from the §523 adversary and the claimant will accept whatever (if anything) it receives through the bankruptcy case. Also, to the extent that any claim is adjudicated by the Court or settled by the Plaintiffs, those claims will be dismissed from this §523 action. If the Trustee objects to a claim, the stay will be lifted and ex parte application to the Court and discovery will be completed within 6 months after the stay is lifted. While the Plaintiff cannot seek to lift the stay prematurely, the Defendant can do so at any time through an application to the Court.

This will be approved. So that the Court will not drop this case from the calendar, the status conference is continued without appearance to February 12, 2019 at 10:00 a.m.

prior tentative ruling (4/17/18)

On 4/12/18 the Plaintiff filed a unilateral status report. Apparently there is a motion to compel that is being prepared and is ready for filing, but has not been filed as of 4/12/18. When will that be set for hearing?

prior tentative ruling (1/23/18)

The parties filed unilateral status reports. In the future, please try to file a joint status report. Plaintiffs anticipates a 2 week trial starting after June and wants this matter sent to mediation. Plaintiffs consent to this court entering a final judgment. Defendant, on the other hand, expects to complete discovery at the end of June and wants trial after 11/15/18. He expects a 3-5 day trial. Defendant is not interested in mediation, but also consents to this court entering a final judgment.

Let's talk about what can be done to try to resolve this matter. You are talking about expensive discovery and an expensive trial.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, August 20, 2019

Hearing Room 303

10:00 AM

CONT... Solyman Yashouafar

Chapter 11

prior tentative ruling (10/3/17)

Nothing further received as of 9/28/17. What is the status of discovery?

prior tentative ruling (5/30/17)

Per the joint status report filed 5/11/17, set a discovery cutoff date of 9/11/17. The parties agree to do their initial disclosures by 6/5/17. There may be some objections to discovery.

Continue without appearance to 10/3/17 at 10:00 a.m.

prior tentative ruling (3/28/17)

The parties stipulated that Massoud has until 2/17/17 to respond to the complaint. On 2/17, Massoud filed his answer. No status report has been filed as of 3/26.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Massoud Aaron Yashouafar

Represented By
C John M Melissinos
Mark M Sharf

Defendant(s):

Massoud Aaron Yashouafar

Pro Se

Plaintiff(s):

Simon Barlava

Represented By
Andrew V Jablon

Morris Barlava

Represented By
Andrew V Jablon

Nasser Barlava

Represented By
Andrew V Jablon

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, August 20, 2019

Hearing Room 303

10:00 AM

CONT... Solyman Yashouafar

Chapter 11

Kefayat Barlava

Represented By
Andrew V Jablon

Figueroa Tower II, LP

Represented By
Andrew V Jablon

First National Buildings II, LLC

Represented By
Andrew V Jablon

Carla Ridge, LLC

Represented By
Andrew V Jablon

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 10, 2019

Hearing Room 303

10:00 AM

1:09-18345 Narine Gumuryan

Chapter 7

Adv#: 1:19-01081 Bag Fund LLC v. Gumuryan

#1.00 Status Conference re: Complaint to determine nondischargeability under 1) 11 U.S.C. 523(a)(2)(A) 2) 11 U.S.C. 523(a)(3)(A) and (B); and 3) 11 U.S.C. 523 (a)(6)

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Continue without appearance to 9/24 at 10:00 a.m. to be heard with the motion to dismiss this adversary proceeding.

Party Information

Debtor(s):

Narine Gumuryan

Represented By
Elena Steers
Martin Fox

Defendant(s):

Narine Gumuryan

Pro Se

Plaintiff(s):

Bag Fund LLC

Represented By
Vincent J Quigg

Trustee(s):

David Keith Gottlieb (TR)

Represented By
David Keith Gottlieb

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 10, 2019

Hearing Room 303

10:00 AM

: Gallegos
Misc#: 1:15-00105 Gallegos

Chapter 0

#2.00 Application and Order for Appearance and Examination to
Enforcement of Judgment

Docket 19

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The order for the service of process by the U.S. Marshall was signed on 9/3. It is likely that no service was timely made. If not, let's continue this to a convenient date. If service was made, check in with the court recorder, who will swear the witness. Then go into one of the attorney rooms and conduct your examination. At the conclusion of the examination, come back to the courtroom so that the witness can be excused or ordered back. If the courtroom is locked, please come to my chambers.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 10, 2019

Hearing Room 303

10:00 AM

1:09-19105 Francisco Xavier Pedroza and Jody Lynn Pedroza

Chapter 7

#3.00 Trustee's Final Report and Applications for Compensation

Docket 85

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

D. Gottlieb & Assoc., LLC, Trustee - Approve as requested.

Levene, Neale, Bender, Yoo & Brill, Attorney for the Trustee - Approve as requested. Thank you for the partial waiver of fees.

Berkeley Research Group, LLC, accountant for the Trustee - Approve as requested.

If you submit on this tentative ruling, no appearance is necessary. If you choose to appear and the final ruling is in conformance with the tentative ruling, no additional fees will be allowed for this appearance. If the trustee's firm is representing the trustee, no attorney's fees will be allowed for an appearance on this matter, as the trustee would be expected to be present as part of the trustee's duties.

THE TRUSTEE/DEBTOR IN POSSESSION IS TO NOTIFY ALL PROFESSIONALS OF THIS TENTATIVE RULING.

Party Information

Debtor(s):

Francisco Xavier Pedroza

Represented By
Charles J Brash
Steven Steven Diamond

Joint Debtor(s):

Jody Lynn Pedroza

Represented By
Charles J Brash
Steven Steven Diamond

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 10, 2019

Hearing Room 303

10:00 AM

CONT... Francisco Xavier Pedroza and Jody Lynn Pedroza

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 10, 2019

Hearing Room 303

10:00 AM

1:14-15182 Mark Alan Shoemaker

Chapter 7

#4.00 Trustee's Final Report and Applications for
Compensation

fr. 7/16/19

Docket 191

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The only money in this estate after payment of the Trustee's fee is less than \$5,000. This would be divided pro rata between the Bankruptcy Court, United Records Management, and Bret Lewis.

Debtor objects to the Trustee report stating that (1) Alfred Siegel was incompetent, (2) there are errors, (3) the appeals are not final as to discharge, so the case should not be closed, and (4) that Debtor has until July 29 to file his Application for Writ of Certiorari with the U.S. Supreme Court in the Siegel action.

Trustee's reply: the objection was late. Siegel and his counsel have both waived their fees and the other three administrative parties are only receiving 26% of their claims. This is an insolvent case, so the Debtor has no right to object to the final report. The pending appeals have no relevance.

Proposed Ruling - The issue of Debtor's discharge is not relevant to the order on the final report, payment of claims, and closing of the case. No petition for a writ of certiorari was filed. The motion to remove Alfred Siegel as trustee was denied. Approve the Trustee's final report as submitted.

Party Information

Debtor(s):

Mark Alan Shoemaker

Represented By
William H Brownstein

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 10, 2019

Hearing Room 303

10:00 AM

CONT... Mark Alan Shoemaker

Chapter 7

Trustee(s):

Alfred H Siegel (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Tuesday, September 24, 2019

Hearing Room 302

10:00 AM

1:95-19539 Ivds Interactive Acquisition Partners

Chapter 7

**#1.00 Trustee's Final Report and Applications for
Compensation and Deadline to Objection**

Docket 699

Tentative Ruling:

There are over \$6 million in unsecured claims. The general unsecured creditors have received a 5% interim distribution. There will be no further distribution to the unsecured creditors as this estate is administratively insolvent.

Richard Diamond, Trustee - Approve as requested.

Interim distribution was made to the chapter 7 administrative creditors and the balance of their administrative claims will be paid in full. The firm taking the big hit is Danning, Gill, Diamond & Kollitz, of which the Trustee is a member. Thus they are deemed to consent. However, I do not understand the second claim of Burr & Forman, which is for \$12,245.92 of which there is a balance owing of \$4,456.24, which is not being paid. This is the only administrative claim (other than DGDK) that is not being paid in full.

All fees and costs for professionals are approved as noted on the Trustee's final report.

If you submit on this tentative ruling, no appearance is necessary. If you choose to appear and the final ruling is in conformance with the tentative ruling, no additional fees will be allowed for this appearance. If the trustee's firm is representing the trustee, no attorney's fees will be allowed for an appearance on this matter, as the trustee would be expected to be present as part of the trustee's duties.

THE TRUSTEE/DEBTOR IN POSSESSION IS TO NOTIFY ALL PROFESSIONALS OF THIS TENTATIVE RULING.

Party Information

Debtor(s):

Ivds Interactive Acquisition Partners

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Tuesday, September 24, 2019

Hearing Room 302

10:00 AM

CONT... Ivds Interactive Acquisition Partners

Chapter 7

Grant L Simmons
Uzzi O Raanan ESQ

Trustee(s):

Richard K Diamond (TR)

Represented By
J Jeffrey Craven
Uzzi O Raanan ESQ
Howard Kollitz
Richard K Diamond (TR)
Richard K Diamond
Ruba M Forno

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 24, 2019

Hearing Room 303

10:00 AM

1:09-18345 Narine Gumuryan

Chapter 7

Adv#: 1:19-01081 Bag Fund LLC v. Gumuryan

#2.00 Amended Motion and Notice to Dismiss
Complaint.

Docket 10

Tentative Ruling:

The complaint concerns a debt created through a credit card with Citibank. In February 1999, Narine Gumuryan (Narine) [incorrectly referred to as "Nadine" on ¶4 of the complaint] submitted her application for a credit card that was only available to California homeowners. In 2006, L&J Assets LLC (L&J) was assigned all of Citibank's rights in the credit card account. Debtor defaulted on 12/3/2004.

On June 10, 2006, L&J filed suit against Narine, Andranik Gumuryan (Andranik), and Louisine Katrdzhyan (Louisine) for fraudulent conveyance, breach of contract, account stated, and open book account, LASC LC74976 (the State Court Action). The fraudulent conveyance alleged that Narine had fraudulently conveyed her home at 7751 Allott (Allott) to Andranik, who later conveyed it to Louisine.

In 2007, L&J obtained a default judgment against all three defendants and recorded an abstract of judgment on May 21, 2007. L&J later assigned the judgment to Bag Fund, LLC (Bag Fund). Later Narine filed this bankruptcy case on July 7, 2009, but did not list the debt to Bag Fund or include L&J or Bag Fund in the creditor matrix. There is no claim of exemption. Discharge was entered on February 4, 2010.

Based on the complaint and the motion for relief from stay, it appears that the timeline asserted is as follows:

2/1/99 - credit card application with Citibank - must be a CA homeowner

3/01 - Narine acquired 7751 Allott

12/3/04 - Debtor breached the credit agreement

8/22/05 - Debtor deeded Allott to her son Andranik for no consideration

10/5/05 - Andranik borrowed \$300,000 against Allott

**United States Bankruptcy Court
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Tuesday, September 24, 2019

Hearing Room 303

10:00 AM

CONT... Narine Gumuryan Chapter 7

3/21/06 - Andranik deed an interest in Allot to Louisine Katrdzhyan (Louisine) for no consideration
4/13/06 - Louisine borrowed \$416,000 against Allot for no consideration (used to buy Bellaire)
a few months later - a trust deed was recorded against Allot to secure repayment of a loan of \$65,800 to Louisine and her husband Arthur Katrdzhyan (Arthur), who are related to Debtor and her son Andranik
6/8/06 - Citibank assigned account to L&J Assets
6/16/06 - L&J filed suit against Debtor and others for breach of contract and fraudulent transfer (LC074976)
12/15/06 - L&J obtained default judgment against transferees of Allot (Narine and Louisine)
5/21/07- abstract of judgment recorded against Allot
L&J assigned its judgment to Bag Fund
8/23/07 - Louisine transferred Allot to Louiza Mkrtchyan (Louiza) for no consideration.
at some time - lien recorded on Allot in favor of Boyadjyab for \$37,000
10/20/08 - Louiza transferred Allot to Manuk Gumuryan (Manuk, who is Debtor's son) for no consideration
12/10/08 - per superior court docket, judgment assigned by L&J Assets
7/7/09 - Debtor files chapter 7, debt to Bag Fund not listed nor are L&J or Bag Fund on creditor's matrix or on her schedules.
10/5/09 - Kalfayan filed §523 case for fraud and fraudulent transfer - (1:09-ap-01418)
2/4/10 - discharge entered
1/5/11 - Kalfayan and Debtor stipulate that the debt owed Kalfayan of about \$17,000 is non-dischargeable
5/23/14 – Allot transferred from Manuk, Arthur, and Louisine to Manuk, Andranik, and Louisine for no consideration.
2015 - Bag Fund receives notice of the bankruptcy
2015-2016 - there is a request to enter default judgment in the state court and an opposition by non-debtor defendants - per superior court docket
3/11/16 - motion to set aside judgment by non-debtor defendants - per superior court docket
6/28/16 - property transferred from the Manuk, Andranik, and Louisine to Andranik for no consideration and he borrows \$460,000 against it from United Wholesale Mortgage

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 24, 2019

Hearing Room 303

10:00 AM

CONT... Narine Gumuryan

Chapter 7

11/21/18 - application for OSC re contempt filed by non-debtor parties in superior court - per superior court docket
11/28/18 - Bag Fund filed notice of bankruptcy in superior court - per superior court docket
1/29/19 - superior court hearing on OSC (why sanctions should not be imposed for engaging in bad faith tactics and violation of court orders) - taken under submission - per superior court docket
3/12/19 - superior court hearing on OSC re dismissal - taken under submission - per superior court docket
3/18/19 - superior court ruling on OSC re: dismissal and sanctions - per superior court docket
3/27/19 - bankruptcy case reopened
3/28/19 - motion to reconsider filed in superior court - per superior court docket
7/12/19 - §523 complaint filed - 1:19-ap-01081

The Motion

This motion is brought to dismiss the Bag Fund adversary proceeding (1:19-ap-0108), but also tries to dismiss the one brought by Matt Kalfyan 1:(09-ap-01418). *[Note by Court: This motion is improperly filed to deal with the Kalfyan matter for several reasons: it is not filed in that adversary case; that adversary proceeding has a judgment and thus the proper procedure is to move to dismiss the judgment; and no notice was given to the owner of that judgment, which was assigned in April 2019 to REEL EM IN INC (see dkt.13). Thus, the Court is ignoring any matters concerning the Kalfyan judgment.]*

As to Bag Fund, the motion asserts that Bag Fund wants to relitigate "an old settled matter' in this court on the same argument made in the previous case which was ruled closed." The claim is barred by the statute of limitations.

The discharge was entered on February 4, 2010. 18 USC §3284 creates a five year statute of limitations on concealment of assets of a debtor and that starts running at the time of the entry of final discharge. Thus, the statute of limitations terminated in February 2015 and Bag Fund was given

**United States Bankruptcy Court
Central District of California
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Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 24, 2019

Hearing Room 303

10:00 AM

CONT...

Narine Gumuryan

Chapter 7

notice of the bankruptcy prior to that date. They admit that they obtained notice through Matt Kalfayan's adversary proceeding in October 2009. *[By the Court: Please point out where in the complaint Bag Fund admits receiving notice at that time,]*

Also, Plaintiff failed to advise the bankruptcy court of all of the prior proceedings that happened in state court and its conduct prohibits it from pursuing its claims.

Movant refers to Exhibit A – Judge Virginia Keeney's order declaring the renewed judgment to be void – but this is not attached to the motion.

The Opposition

The Complaint was filed under §523(a)(2)(A), §523(a)(3)(A), and § 523(a)(6). The statute referred to the moving papers relates to criminal prosecution of bankruptcy crimes and is not applicable to this case. Thus the complaint was timely filed.

The opposition points out several factual errors in the motion. *[By the Court: most of these were discovered by the Court in setting out the timeline and are reflected above.]*

While Mr. Kalfyan did have actual notice of the chapter 7 filing, Bag Fund did not. The only reason that Bag Fund referred to the Kalfyan adversary proceeding was because Debtor stipulated that she had fraudulently transferred Allot and that the transferees had acquired it with knowledge that the transfer was do with intent to hinder, delay, and defraud Defendant's creditors. There is no showing that Bag Fund knew of the Kalfyan case or of the bankruptcy in 2009.

Bag Fund did not have notice until after the discharge was entered. It is the fault of the Debtor, who failed to include L&J or Bag Fund in her schedules or amended schedules.

The facts cited in the Complaint must be presumed to be true. This Complaint contains sufficient facts to meet this standard.

The Reply

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Tuesday, September 24, 2019

Hearing Room 303

10:00 AM

CONT... Narine Gumuryan
WAIT FOR REPLY

Chapter 7

Analysis

This is a motion to dismiss a complaint, not a motion for summary judgment.

"A motion to dismiss [pursuant to Rule 12(b)(6)] will only be granted if the complaint fails to allege enough facts to state a claim to relief that is plausible on its face." *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (internal quotation marks omitted)(citing, *inter alia*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009)).

"Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Twombly*, 550 U.S. at 555 (citations omitted). "[F]acts must be alleged to sufficiently apprise the defendant of the complaint against him" *Kubick v. Fed. Dep. Ins. Corp. (In re Kubick)*, 171 B.R. 658, 660 (B.A.P. 9th Cir. 1994).

Federal Rule of Civil Procedure 9(b) imposes heightened pleading requirements for claims of fraud. Under Rule 9(b), a plaintiff "must state with particularity the circumstances constituting fraud," but can allege generally "[m]alice, intent, knowledge, and other conditions of a person's mind." Rule 9(b) ensures that allegations of fraud are specific enough to give defendants notice of the particular misconduct which is alleged to constitute fraud so that they can defend against the charge and not just deny that they have done anything wrong. *Semegen v. Weidner*, 780 F.2d 727, 731 (9th Cir. 1985). The complaint must specify such facts as the times, dates, places, benefits received, and other details of the alleged fraudulent activity. *Neubronner v. Milken*, 6 F.3d 666, 671-72 (9th Cir. 1993).

While the consideration of materials beyond the pleadings is generally not appropriate in a motion to dismiss (and may convert a motion to dismiss to a motion to summary judgment pursuant to Fed. R. Civ. P. 12(d)), the court considering a motion to dismiss may take judicial notice of matters of public record (including court records) and materials "submitted with and attached to the Complaint." *U.S. v. Corinthian Colleges*, 655 F.3d 984, 999 (9th Cir. 2011); see also *Retrophin, Inc. v. Questcor Pharm., Inc.*, 41 F. Supp. 3d 906, 911 (C.D. Cal. 2014); *Dunlap v. Neven*, 2014 WL 3000133, at *5 (D. Nev.

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CONT... Narine Gumuryan
June 30, 2014).

Chapter 7

Leave to amend a complaint should be liberally granted. Fed. R. Civ. P. 15(a)(2). However, the Court will not grant such leave if such an amendment would be futile. Futile. See, e.g., *Adorno v. Crowley Towing And Transp. Co.*, 443 F.3d 122 (1st Cir. 2006).

The real issue here is when Bag Fund or L&J had actual (or even constructive) notice of the bankruptcy case. The complaint states that the chapter 7 case commenced on July 7, 2009 and that the debt to Bag Fund was not listed in the Defendant's schedules. Also that the Defendant did not include L&J or Bag Fun on the creditor matrix and that the Defendant did not inform L&J or Bag Fund of the filing. (¶¶ 19, 32, 33). It discusses the Kalfayan adversary proceeding, but does not indicate that it had any knowledge of it. (¶¶ 39-44). Nowhere in the complaint does it say when or how Bag Fund or L&J became aware of the bankruptcy.

The statute of limitations is generally an affirmative defense, but a complaint is required to include information as to the time or place when testing the sufficiency of the complaint. Fed.R.Bank.P. 7009 applying Fed.R.Bank.P 9(f). This complaint fails that requirement. There is no information in is as to the time that Bag Fund or its predecessor became aware of the bankruptcy case. It must be amended to include this information.

As to the other allegations that are asserted to be factually incorrect, they would be resolved by a motion for summary judgment. However, Plaintiff is urged to review the chronology above and to the extent that it is correct and differs from that in the complaint, to make those corrections in the amended complaint.

The Motion to Dismiss is granted with leave to amend. An amended complaint is to be filed and served by October 11, 2019. Defendant will have until October 29 to file and serve a response. The status conference will be continued to November 19, 2019 at 10:00 a.m.

Party Information

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10:00 AM

CONT... Narine Gumuryan

Chapter 7

Debtor(s):

Narine Gumuryan

Represented By
Elena Steers
Martin Fox

Defendant(s):

Narine Gumuryan

Represented By
Jovi Usude

Plaintiff(s):

Bag Fund LLC

Represented By
Vincent J Quigg
Atyria S Clark

Trustee(s):

David Keith Gottlieb (TR)

Represented By
David Keith Gottlieb

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, September 24, 2019

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10:00 AM

1:09-18345 Narine Gumuryan

Chapter 7

Adv#: 1:19-01081 Bag Fund LLC v. Gumuryan

#2.01 Status Conference re: Complaint to determine
nondischargeability under 1) 11 U.S.C. 523(a)(2)(A)
2) 11 U.S.C. 523(a)(3)(A) and (B); and
3) 11 U.S.C. 523 (a)(6)

fr. 9/10/19

Docket 1

Tentative Ruling:

See calender #2

Party Information

Debtor(s):

Narine Gumuryan

Represented By
Elena Steers
Martin Fox

Defendant(s):

Narine Gumuryan

Pro Se

Plaintiff(s):

Bag Fund LLC

Represented By
Vincent J Quigg

Trustee(s):

David Keith Gottlieb (TR)

Represented By
David Keith Gottlieb

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Tuesday, September 24, 2019

Hearing Room 302

10:00 AM

1:09-18409 Lenny Kyle Dykstra

Chapter 7

#3.00 Trustee's Final Report and Applications for
Compensation and Deadline to Object.

Docket 571

Tentative Ruling:

This was a very expensive estate to administer. The only distribution will be made to the chapter 7 administrative claimants. This is unfortunate, but was made necessary by the behavior of the Debtor. However, Mr. Dykstra's discharge has been denied, so his creditors are not barred from seeking to recover directly from him.

Some of the chapter 7 administrative creditors will be paid in full and others will only receive a portion of their request. I assume that Shulman, Hodges & Bastion LLP agrees to this since this is the Trustee's attorney. But what about the others in this category: Sulmeyer Kupetz, Berkeley Research Group, International Sureties LTD?

Once this is straightened out, I will approve the final report as well as the joinder of Mr. Cisneros, former trustee (dkt. 569).

Party Information

Debtor(s):

Lenny Kyle Dykstra

Represented By
Michael T Pines - DISBARRED -
Moshe Mortner

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Howard M Ehrenberg
SulmeyerKupetz
Irena L Norton
Robert E Huttenhoff
Victor A Sahn

**United States Bankruptcy Court
Central District of California
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CONT... Lenny Kyle Dykstra

Leonard M Shulman
Ryan D O'Dea

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Tuesday, September 24, 2019

Hearing Room 302

10:00 AM

1:16-11387 Real Estate Short Sales Inc and Real Estate Short Sales, Inc.

Chapter 7

#4.00 Order to show cause why Nancy Cueva and debtor should not be held in contempt of court

fr. 1/29/19; 1/31/19; 3/5/19; 4/16/19; 7/16/19, 8/20/19

Docket 329

Tentative Ruling:

Off calendar. Memorandum and Order entered 9/3/19 (dkt. 464, 465)

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Real Estate Short Sales, Inc.

Represented By
Daniel J McCarthy

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 24, 2019

Hearing Room 303

10:00 AM

1:16-11387 Real Estate Short Sales Inc

Chapter 7

Adv#: 1:19-01064 Zamora v. Yavor

#5.00 Motion to Dismiss First Amended Complaint
with Prejudice

Docket 17

Tentative Ruling:

Off calendar. The Plaintiff filed a notice of dismissal of the entire action. (dkt. 19). A stipulation was filed and an order has been lodged and will be signed.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Defendant(s):

Haya Sara Yavor

Represented By
Ken Ichi Ito

Plaintiff(s):

Nancy Zamora

Represented By
Jessica L Bagdanov

Trustee(s):

Nancy J Zamora (TR)

Represented By
Jessica L Bagdanov
David Seror

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 24, 2019

Hearing Room 303

10:00 AM

1:16-11387 Real Estate Short Sales Inc

Chapter 7

Adv#: 1:19-01064 Zamora v. Yavor

#6.00 Status Conference Re:
Notice of Removal

fr. 7/16/19

Docket 1

Tentative Ruling:

Off calendar. Complaint dismissed.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Defendant(s):

Haya Sara Yavor

Pro Se

Plaintiff(s):

Nancy Zamora

Represented By
Jessica L Bagdanov

Trustee(s):

Nancy J Zamora (TR)

Represented By
Jessica L Bagdanov
David Seror

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 24, 2019

Hearing Room 303

10:00 AM

1:16-11538 Majestic Air, Inc.

Chapter 11

#7.00 Objection to Scheduled Claims of Franklin Tan
(listed as no. 3.3 and 3.4 in part 2 of amended
schedule E/F, docket no. 24

fr. 6/11/19; 7/16/19; 8/20/19

Docket 275

Tentative Ruling:

On September 16, the Court filed and served its tentative ruling raising certain issues on which it needed further information. Written responses were due by noon on September 20. LTP has filed a response as to the statute of frauds (dkt. 306). Debtor objects that the Philippine law is not properly before the court. Only on that basis does it argue that the tentative ruling should not become the final ruling. (dkt. 307)

The Court finds that the evidence of the Philippine law is sufficient. It appears that the statute of frauds is the same in the Philippines as in California. Thus it is not relevant as to the question of operative law. The Court will sustain the objection to scheduled claim 3.4 and overrule it without prejudice as to scheduled claim 3.3.

The Tentative Ruling (dkt. 303) is as follows:

Lufthansa Technik Philippines, Inc (LTP) objects to scheduled claims 3.3 and 3.4 in Part 2 of the Amended Schedule E/F, dkt. #24). The objection is based on the lack of facts sufficient to support them, the statute of frauds, and that "Tan is a non-statutory insider helping Cue to fabricate claims."

The objection was filed on April 24, 2019 and continued various times for service on Franklin Tan, who is in the Philippines. After much delay, Tan was properly served by personal service on August 9, 2019. Prior to that time, on August 6, 2019, the Debtor filed an opposition and on August 13, 2019 LTP filed its reply to the Debtor's opposition.

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10:00 AM

CONT...

Majestic Air, Inc.

Chapter 11

In the amended schedules, Franklin Tan is listed as follows:

Claim 3.3 for \$350,000 for an "Investment into Amplespares in Phillipines [sic] through a loan from Franklin Tan."

Claim 3.4 for \$350,000 for "Guaranty of investment into a joint venture for Amplespares." (dkt. 24, p. 8)

Neither claim is contingent, unliquidated, disputed, or subject to offset.

Motion

In Cue's personal bankruptcy, which this court dismissed "because of her fraudulent transfers and failure to disclose, and misrepresentation of, certain real estate transactions with her family, this Court noted that Tan is very questionable as a creditor." Cue and Tan are long time personal friends since elementary school. The only factual allegations are set forth in Tan's declaration in Cue's personal bankruptcy:

I loaned [Cue's] company, Majestic Air, \$350,000 and an additional \$350,000 to Amplespares who is Majestic's joint venturer for their joint venture in the Philippines. [Cue] personally guaranteed my loans. The expectation was that I would be repaid by [Cue] for both loans by end of July, 2016. The loans were not an investment by myself. I believe that my claim is accurately listed on the Schedule F filed by [Cue].

Amplespares is a Philippines company (incorporated on June 8, 2015). Its principal office is the same as Tan's individual mailing address. Neither Cue nor Tan is a shareholder of Amplespares, which are held by Rebecca Tan Chua, Henry Kue Chua, Roberto Mejia Que, Jr., Ceferino Corpuz Espiritu, and Amalia Mendoza Surbano. Amplespares and Majestic engage in the same line of business – to import, repair, and maintain parts and supplies from aircraft, motor vehicle, and ships.

Cue has given conflicting accounts of the relation of Majestic and Amplespares – once saying that Majestic was a shareholder of Amplespares and other times says that they were joint venturers.

Cue's testimony at various times is equally confusing as to the claim of

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CONT... Majestic Air, Inc.

Chapter 11

Tan. She has said that it was a loan to Majestic that was paid directly to Amplespares to invest in the joint venture. At other times she said that repayment is dependent on Amplespares' performance – that if it performed well, she was thinking of paying it back in a year, but if not she would spread it over five years. And she also said that there is no repayment date and a few weeks later she said that repayment was due on July 30, 2016.

Cue further testified that she has never seek the written loan agreement and does not know if one exists. She testified that she guaranteed the loan, but at various times said that it was only oral or that she gave a power of attorney to Amplespare's accountant, who might have signed a guaranty.

Then she testified to a second loan from Tan to Amplespares for \$350,000 that she might have guaranteed. She then amended her schedules to include this second claim for \$350,000.

Her last statement on the Amplespares venture is that Majestic invested \$350,000, but the venture failed and there will be no recovery.

Because this claim fails allege facts that are sufficient to support the claim, the claim is deprived of any prima facie validity and the claimant has the burden of proof. According to Cue, the repayment of the alleged loan was dependent on the performance of Amplespares and Amplespares was a failed investment and no repayment is expected. Therefore there is nothing due to Tan. Further, there is nothing to corroborate the validity of the alleged oral agreements as to the loans and the guarantees. Do the claims represent financing or equity – Tan's claims have been referred to as an "investment."

Cue has taken "horribly" inconsistent positions under oath as to these alleged claims.

Under Cal.Civ. Code §1624(a)(1)-(2), since this is a contract not to be performed within one year from its effective date and also a promise to answer for a debt of another and thus they are invalid unless in writing and signed by the party charged. Everything here was verbal. The repayment was to be over five years or an unspecified time.

If someone did not have an arms-length transaction, they can be a

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CONT... **Majestic Air, Inc.**

Chapter 11

non-statutory insider, even if not listed in that category in 11 USC §101(31). This requires two conditions: "(1) the closeness of its relationship with the debtor is comparable to that of the enumerated insider classification in [the Code], and (2) the relevant transaction is negotiated at less than arm's length." *U.S. Bank Nat'l Ass'n v. Vill. At Lakeridge, LLC*. 138 S.Ct. 960, 993 (2018) [quoting *In re Village Lakeridge, LLC*, 814 F.3d 993, 1001 (2016)]. An arm's-length transaction is a transaction conducted as though the two parties were strangers. *Id.*, at 967-68.

Here Tan's relationship is comparable to being a general partner or a relative of a general partner of the debtor. Tan and Cue were associated as partners in a joint venture. Amplespares used Tan's mailing address. Tan and Cue are longtime personal friends and appears to be that of a relative. Also, it is possible that Tan is related to Rebecca Tan Chua, one of the shareholders, directors, and incorporators of Amplespares, who is also associated with Cue's charity "that facilitated fraudulent transfers." And this was certainly not conducted as through Tan and Cue were strangers.

Opposition by Debtor

The claimed exhibits to the objection were not attached. The objection is based on suppositions and claims against Cue, not Tan. Tan owns the building where Amplespares operates. This building has many tenants, including HSBC Bank.

Although Cue and Tan have known each other for many years, the loan for Majestic to invest in a joint venture with Amplespares was a business arrangement between Majestic and Tan. Being a friend does not make someone an insider of Majestic. Tan was not involved in the business of the joint venture or a Majestic.

It is common in the Philippines for there to be an oral agreement and for funds to be tendered in cash. The terms of the agreement were that Tan would be repaid for the Majestic loan by the end of July 2016. The bankruptcy was filed in May 2016, so Tan did not make any demand for repayment since he was listed as an undisputed creditor in the schedules.

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CONT...

Majestic Air, Inc.

Chapter 11

Tan lives in the Philippines, not in the U.S., where Cue resides. They rarely communicate.

Rebecca Tan Chua is not a relative of Franklin Tan. Tan is a very popular surname in the Philippines.

Reply

The Debtor lacks standing to oppose.

The two terse declarations are insufficient to provide competent proof of the validity of Tan's claim.

The opposition does not deal with the statute of frauds or the non-statutory insider test.

Analysis

The claims are set forth on the petition and thus there is no requirement for Mr. Tan to file an actual proof of claim. While he has now appeared by virtue of his declaration filed in opposition to this objection, he was not actually served with the objection until at or around that date. Although his declaration is provided as part of the Debtor's response, it is Tan's opposition and the opposition filed on 8/6/19 that will be considered the opposition of Franklin Tan. Thus, the standing issue is moot.

As to the statute of frauds, this is a California law and the Court does not see why it applies to an oral agreement entered into in the Philippines (assuming that this is where the agreement was entered into and consummated). The Court lacks any detailed information on this.

Majestic does not do business in the Philippines. (ex. 2, 78:17-18) . Amplespares is incorporated in the Philippines (ex. 11). In explaining her lack of knowledge about whether documents exist, Cue says that she gave her power of attorney to the accountant for Amplespares. It is not clear whether this was Cue's individual power of attorney or also allowed the accountant to act on behalf of Majestic. And this is not really relevant since there are no signed documents under the power of attorney. Tan asserts that his agreement(s) were oral. Unless someone can show me that the agreement

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CONT... Majestic Air, Inc.

Chapter 11

was made in California or that the Philippines has a law similar to the statute of frauds, that argument is moot.

As to the exhibits, they have now been filed and the opposition may file additional information in response thereto. However, they are merely excerpts from documents that the Debtor has access to or has filed.

This is an objection to two scheduled claims, each in the amount of \$350,000:

Claim 3.3 for \$350,000 for an "Investment into Amplespares in Phillipines [sic] through a loan from Franklin Tan."

Claim 3.4 for \$350,000 for "Guaranty of investment into a joint venture for Amplespares."

The opposition only discusses the \$350,000 loan for an investment into Amplespares (scheduled claim 3.3) and not the \$350,000 guaranty of the investment into the joint venture for Amplespares (scheduled claim 3.4). The opposition does not make it clear whether the loan was to Cue, who then used it for the benefit of Majestic Air, or whether it was to Majestic Air. The opposition does not say whose investment into the joint venture is being described. It only talks of one transfer of money, which was done in cash and on a handshake deal. It says that the loan was due in July 2016, which was after the bankruptcy was filed.

Reviewing Tan's declaration in the Cue bankruptcy, it is clear that the additional \$350,000 described in claim 3.4 is mischaracterized. At best it relates to the loan that he made directly to Amplespares, which he describes as a joint venturer with Majestic Air. Further, the personal guaranty was by Cue, not by Majestic Air. Majestic Air is not legally liable for the investors in its joint venture or for guarantees made by Cue. While that loan (claim 3.4) indirectly was for the benefit of Majestic in that Majestic would and did suffer when the joint venture failed, it was not directly for or to Majestic and Majestic has no liability for it. Thus, I will sustain the objection to scheduled claim 3.4.

Claim 3.3 is a different situation. The motion – while well-written –

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CONT... **Majestic Air, Inc.**

Chapter 11

takes pieces of Cue's §341(a) testimony and this is somewhat confusing. Reading her testimony in sequence (and remembering that this was in her personal bankruptcy), the story is much clearer.

Majestic and Amplespares were each separate entities, but they entered into a joint venture agreement as joint venturers. Amplespares is owned by a group of shareholders. Neither Cue, Majestic, nor Tan are among the shareholders of Amplespares.

Money was needed to fund the joint venture (and perhaps to serve as Majestic's contribution to participate in the joint venture). Cue went to Tan, a longtime friend who had available assets. Tan agreed to loan Majestic \$350,000 for this purpose and he worked it out with Amplespares to pay that money directly to Amplespares on behalf of Majestic. It is possible that Majestic agreed to repay the loan, but it is just as likely that it was Cue who personally guaranteed repayment.

Without more information, I will sustain the objection to scheduled claim 3.4, but will overrule it without prejudice to scheduled claim 3.3.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

**United States Bankruptcy Court
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1:16-11538 Majestic Air, Inc.

Chapter 11

#8.00 Status and Case Management Conference

fr. 8/4/16(xfr from Judge Tighe's calendar); 8/30/16,
9/27/16; 10/25/16; 11/15/16, 2/21/17, 5/16/17; 6/27/17,
8/29/17, 1/23/18; 6/19/18, 9/18/18; 12/4/18; 2/12/19; 5/7/19
6/11/19; 7/16/19; 8/20/19

Docket 1

Tentative Ruling:

Continue to a date to be set at the hearing.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

**United States Bankruptcy Court
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1:16-11538 Majestic Air, Inc.

Chapter 11

Adv#: 1:18-01133 Majestic Air, Inc. et al v. Lufthansa Technik Philippines, Inc.

#9.00 Motion to Dismiss Adversary Proceeding

fr. 8/20/19

Docket 32

Tentative Ruling:

The tentative ruling was emailed to counsel on 9/18.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Defendant(s):

Lufthansa Technik Philippines, Inc.

Represented By
Dawn M Coulson
Scott D Cunningham

Plaintiff(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Tessie Cue

Represented By
Stella A Havkin

**United States Bankruptcy Court
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1:16-11538 Majestic Air, Inc.

Chapter 11

Adv#: 1:18-01133 Majestic Air, Inc. et al v. Lufthansa Technik Philippines, Inc.

#10.00 Status Conference Re: Complaint
Objecting to Proof of Claim No. 3; and
for Contractual Indemnification

fr. 3/5/19; 6/11/19; 7/16/19; 8/20/19

Docket 1

Tentative Ruling:

To be continued to a date to be set at the hearing.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Defendant(s):

Lufthansa Technik Philippines, Inc.

Pro Se

Plaintiff(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Tessie Cue

Represented By
Stella A Havkin

**United States Bankruptcy Court
Central District of California
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Tuesday, September 24, 2019

Hearing Room 303

10:00 AM

1:17-10853 Joseph Daniel Beam

Chapter 7

Adv#: 1:17-01046 Henderson v. Beam

#11.00 Status Conference Re:
Complaint for Fraudulent Activity in
Bankruptcy Case.

fr. 5/7/19; 7/16/19; 7/30/19

Docket 1

Tentative Ruling:

On July 30, there was a joint status conference with Judge Dordi of the Superior Court. This status conference on Sept. 24 is to update me on the status of the dissolution case. It also includes a claim for support and that would effect the dischargeability of the support amount ruled in favor of Ms. Henderson. As to this adversary proceeding, Henderson explained that her concern is that there will be a determination that some portion of the community debt is attributable to Mr. Beam alone, but that this will be discharged as to him in this bankruptcy and that she would be left subject to that portion of the debt as well as to the part attributable to her. Thus, she wants to deny him the discharge so that he is liable for all of the community debt or that she can seek to collect his portion from him.

Once the support issue is resolved, this adversary proceeding should either be dismissed or go to trial.

prior tentative ruling (7/30/19)

On 7/10/19, Plaintiff filed a status report. She said that she failed to appear because the superior court issues were delayed, so she thought that the hearing in the bankruptcy court was cancelled. She then set a last minute job interview. She wishes the court to continue prior court orders (10/4/17) lifting the automatic stay on the Debtor. She then goes through the facts in the superior court dissolution case.

The property division did not take place before the bankruptcy, so Judge Barash properly entered an order lifting the automatic stay. She goes on to

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10:00 AM

CONT... **Joseph Daniel Beam**

Chapter 7

argue that the delays in the superior court were due to Debtor's counsel. She wants this hearing continued until after the superior court trial (no date set for that) and wants sanctions against Attorney Moreno for causing the delays in the state and federal courts.

Proposed ruling: The order lifting the automatic stay does not have to be renewed. It continues in effect as set forth therein. I am still not convinced that I should wait for the superior court ruling. I think that it would be a good idea for me to either talk to the superior court judge as to scheduling or hold a joint status conference with the superior court judge. I am not just going to continue this on with no end in sight. As to sanctions against counsel, I have no authority to grant them as to the state court case and - as of this point - no reason to grant them as to this case.

prior tentative ruling (5/7/19)

This arises out of a family law case. According to the Debtor's status report, the family law judge is requiring briefs as to marital debts and the proposed division between the parties. The family law trial setting conference is set for 6/12/19. In this court, the defendant estimates one hour to present his case-in-chief.

This is a §727 case to deny discharge and the family law division of property may not be relevant. The crux of the complaint is that the debtor (sometimes through his attorney) knowingly filed improper paperwork; that this was a careless and frivolous bankruptcy case meant to delay and frustrate the divorce proceedings; that debtor failed to notify creditors of "intention to file bankruptcy;" and that debtor failed to disclose his true income and assets. The complaint also specifies the following reasons to deny discharge as to what items are listed on or omitted from the schedules and statement of affairs:

- (1) He declared debts that were solely owed by plaintiff and are not community debts
- (2) He claimed to own no property - the complaint lists a series of personal property, particularly automation. It also specifies income received from a pre-petition art sale and money he removed from an education fund for their son. There is also a pension account that was not revealed.
- (3) There were unsecured debts that he did not disclose, specifically for a

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Chapter 7

previously repossessed car, a judgment by American Express, and a City of Los Angeles tax bill.

(4) He did not reveal past spousal support paid or owed and other related family support payments made in 2014 through April 2016.

(5) He did not list any expenses, though he has paid them.

(6) He did not list gifts from his mother and friends in the approximate sum of \$50,000. He lives rent free and does not pay utilities or living costs.

(7) There are a lot of debts from the marriage, but he did not declare them as codebtor obligations.

(8) He declared a lower income than he actual receives.

(9) He under-reported the attorney fees that he has paid to his counsel.

Plaintiff is also complaining of fraudulent activity of counsel (Kathleen Moreno) in that she knowingly filed this case "with no intent not to file proper documents." [Note that the complaint does not actually name Ms. Moreno as a co-defendant and she would not be subject to §727 as she is not the debtor.]

Debtor's answer denies all allegations.

Since filing, this case has been largely on hold pending the state court dissolution proceedings.

As I review the complaint, it may not be worthwhile to wait until the family law court has acted - or it may be the best way. Clearly some of these actions were prepetition and non-financial or may have been too early to be included in the schedules. Perhaps it is best to rule on those specifics. Some of the others may be resolved in the family law proceeding - such as assets actually owned and debts actually owed.

Plaintiff has to realize that a §727 action will block the discharge of ALL debts, not just of those owed to her (which are already protected under §523). This means that other creditors will have as much right to seek payment as she does and that may prevent her from actually timely collecting future spousal support, etc. However, this is a §727 complaint and if she decides to dismiss it, the Trustee must be notified and may wish to take over the case.

Let's talk.

Party Information

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CONT... Joseph Daniel Beam

Chapter 7

Debtor(s):

Joseph Daniel Beam

Represented By
Kathleen A Moreno

Defendant(s):

Joseph Daniel Beam

Represented By
Kathleen A Moreno

Plaintiff(s):

Ellen Henderson

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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Hearing Room 302

10:00 AM

1:09-23807 Shellie Melissa Halper

Chapter 7

Adv#: 1:19-01021 Halper v. Jerome Bennett Friedman, an individual et al

#12.00 Emergency Motion to Withdraw as Attorney
Michelangelo tatone

Docket 54

Tentative Ruling:

On September 17 the Court issued its order as to this Motion to Withdraw as Counsel for Shellie Melissa Halper (dkt 47) as follows: Mr. Tatone *described a breakdown in communications with his client and also that he was not being paid according to their contract. The time to appeal the orders granting the motion to dismiss, the motion for sanctions, and the Anti_SLAPP motion has passed, but the upcoming Motion for Anti-SLAPP Fees and Costs (dkt. 44), which is set for October 22, 2019, may set up a conflict between Tatone and Halper in that it does not specify whether it seeks a joint or several award and against whom. Unlike the FRBP 9011 ruling, which limits sanctions to the attorney when a client is represented, it is possible that there may be different arguments and defenses by Mr. Tatone and by Ms. Halper. Therefore it is necessary that Ms. Halper have time to seek a new attorney or prepare to represent herself. Throughout the bankruptcy case and the various adversary proceedings she has sometimes been represented and sometimes acted in pro se. The Hearing on the Motion to Withdraw will take place on September 24, 2019 at 10:00 a.m. in courtroom 303. Any opposition may be filed and served by 5:00 p.m. on September 20. Mr. Tatone is to give immediate notice of this to Ms. Halper by overnight mail, email, and phone and to file a proof of service to that effect. Mr. Tatone is to give immediate notice of this to Ms. Correll by email.*

Mr. Tatone has filed a document incorrectly labeled as a Notice of Lodgement of the above order (rather than an a proof of seservice of this order. Attached to this document is the order and a proof of service of it showing electronic service on Ms. Correll and "personal delivery, overnight mail, facsimile transmisson or email" on Ms. Correll and on Ms. Hapler

No opposition has been received as of 9/23 at 11:00 a.m. If there is no

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CONT... **Shellie Melissa Halper** **Chapter 7**

appearance in opposition at the hearing, this will be granted and Ms. Halper will be dealt with as a defendant representing herself. Mr. Tatone is to appear in person or by phone.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Defendant(s):

Jerome Bennett Friedman, an

Represented By
Michelle J Correll

Friedman Law Group, P.C.

Represented By
J. Bennett Friedman
Michelle J Correll

Twin Palms Lending Group, LLC, a

Represented By
J. Bennett Friedman
Michelle J Correll

Solomon Cohen, an individual

Represented By
Michelle J Correll

Does 1 Through 25, Inclusive

Pro Se

Plaintiff(s):

Shellie Melissa Halper

Represented By
Michelangelo Tatone

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

**United States Bankruptcy Court
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Tuesday, October 8, 2019

Hearing Room 303

10:00 AM

:
Adv#: 1:19-01054 Kalmenson et al v. HSBC BANK (USA) N.A. et al

Chapter 0

#1.00 Status Conference re: First Amended Complaint
for Declaratory Judgment

fr. 7/16/19; 10/29/19

Docket 2

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Continued by stipulation to Dec. 17 at 10:00 a.m.

Party Information

Defendant(s):

HSBC BANK (USA) N.A.	Pro Se
SELECT PORTFOLIO	Pro Se
First American Title Ins Co.	Pro Se

Plaintiff(s):

Harvey Kalmenson	Represented By Joon M Khang
Catherine R Kalmenson	Represented By Joon M Khang

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10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#2.00 Motion Objecting to McClure's Amended
Claims of Exemption in Amended Schedule C

Docket 1700

*** VACATED *** REASON: Cont'd to 10/22/19 per order #1711. If

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Continued to October 22 at 10:00 a.m.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By

Andrew Goodman

Yi S Kim

Robert M Scholnick

James R Felton

Faye C Rasch

Faye C Rasch

Lisa Nelson

Michael G Spector

Trustee(s):

John P. Reitman

Represented By

John P. Reitman

Jon L. Dalberg

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1:13-10386 Shirley Foose McClure

Chapter 11

#3.00 Status conference re: ch 11 case

fr. 1/24/2013, 4/30/13, 5/14/13, 7/23/13, 8/6/13,
9/17/13, 9/24/13, 11/19/13, 12/17/13, 1/21/14, 2/18/14,
3/11/14, 4/15/14, 5/6/14, 6/24/14, 9/9/14, 9/23/14,
10/7/14, 11/24/14, 1/6/15, 1/20/15, 2/10/15, 3/10/15,
4/28/15; 5/12/15; 9/29/15, 10/22/15, 12/8/15, 3/1/16,
6/7/16, 7/12/16, 8/16/16, 10/11/16; 12/20/16, 4/4/17,
5/16/17; 6/27/17, 7/11/17, 9/19/17, 11/14/17, 11/28/17,
12/19/17, 1/9/18, 3/19/18, 3/27/18, 5/1/18, 6/5/18; 6/26/18,
7/9/18; 8/7/18, 11/6/18; 12/18/18; 1/29/19; 2/12/19; 3/5/19
3/26/19; 4/16/19, 8/6/19

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Continued to Oct. 22 at 10:00 a.m.

for 10/22/19

On 9/27/19 the Trustee filed a status report that he has considered the options. It is clear to him that the Tidus defendants will not offer more than the \$100,000, though they do continue to discuss restructuring the settlement. Abandonment to McClure is not in the best interest of the estate and the offer of a contingent recovery is unlikely to bring in any money since there is not a strong potential that the Debtor will recover more than \$100,000 in the litigation, in fact there will likely be no damages. For that same reason, the Trustee does not believe that it will be in the best interest of the estate for him to litigate it.

For those reasons the Trustee has taken an appeal. It is assigned to Judge Wu, 2:19-cv-07780.

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CONT... Shirley Foose McClure

Chapter 11

Court: because of the appeal, I really can't do anything further on the Tidus matter. I need to await a decision by Judge Wu and, perhaps the Ninth Circuit. Is there anything else that the Trustee needs to do to administer this estate?

prior tentative ruling (8/6/19)

Ms. McClure filed (under seal) a report on her health and her personal claims against the Litt parties. There is no reason for this to be under seal and unless McClure convinces me otherwise, I will unseal it.

In short, she intends to bring a motion to determine which claims with Litt were not property of the estate.

She also filed an amended Schedule C claiming the Litt and Tidus claims as exempt. Will the Trustee be objecting to this?

Litt also filed a status report. This addresses the McClure issue of the effect of the settlement order.

If either party seeks a "clarification" or other modification of my settlement order, please bring that through a proper motion or other means. I am not sure that there is such a thing as a motion to clarify, but I am sure that there is a method to obtain a ruling as to what was sold (what is property of the estate).

prior tentative ruling (4/16/19):

At the 4/16 status conference the Court will determine which - if any - filed exhibits are to be kept under seal. On April 12 an email with a list was sent to Ms. McClure and the attorneys for the Litt Parties and for the Trustee. Also, the Court will discuss my intent to send this out for a global mediation before Judge Jury (ret). A copy of that notice was forwarded to Mr. Dahlberg, Ms. McClure, and Mr. Shulman and Mr. Dahlberg is was asked to make sure that it is sent to the other parties named in the notice.

prior tentative ruling (3/26/19)

Continue without appearance to April 16, 2019 at 10:00 a.m. No new status report will be needed for that hearing.

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CONT... Shirley Foose McClure

Chapter 11

prior tentative ruling (2/8/19)

Per the Trustee's status report, McClure withdrew her appeal of the Pacific Merchantile settlement and the Ninth Circuit has dismissed the appeal.

As to the settlement with Litt, Judge Wu has continued the status conference in the consolidated Litt appeals to March 7, 2019 and has indicated that he is not inclined to grant further continuances. The Trustee therefore requests a speedy determination of the motion for reconsideration so as to avoid unnecessary litigation costs in the consolidated Litt appeals. Because of the death of Ms. McClure's son Jeff, the motion to reconsider has been continued to 3/26.

The motion to sell the Maui property is set to be heard on 3/5/19.

I sent an email to Judge Wu, advising him of the situation and that I am continuing the motion to reconsider to 3/26. I also advised him that I expect to rule soon thereafter as no other papers may be filed. As of 3/4 at 10:00 a.m., I have not had a response from Judge Wu.

The status conference is continued to 3/26/19 at 10:00 a.m. I don't see any reason that anyone should appear in person or by phone on March 5.

Cont

prior tentative ruling (2/12/19)

Continue without appearance to 3/5/19 at 10:00 a.m. Although documents are being filed for 2/12, there will be no hearing at that time. I am also advising the parties by email of this.

prior tentative ruling (11/6/18)

Ms. McClure has until Nov. 20 to file her motion for reconsideration. Meanwhile, she has filed an emergency motion for a stay pending the hearing on her motion for reconsideration. The Trustee opposes.

This would be a short stay, only so that the Court can adequately review the motion(s) to reconsider. While it took many months for the Court to do the

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CONT... Shirley Foose McClure

Chapter 11

detailed analysis and I believe that it is thorough and correct, it is appropriate to allow Ms. McClure to try to point out errors that may have been made. Given that the matters in the Superior Court are not immediate, the Court intends to grant the stay and will hear brief argument at the 11/6 status conference. It seems to me that the stay should expire 14 days after I enter my order on the motion(s) to reconsider.

Per the Trustee's status report filed on 10/31/18, the Maui property is in escrow.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By

Andrew Goodman

Yi S Kim

Robert M Scholnick

James R Felton

Faye C Rasch

Faye C Rasch

Lisa Nelson

Michael G Spector

Trustee(s):

John P. Reitman

Represented By

John P Reitman

Jon L Dalberg

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Hearing Room 303

10:00 AM

1:14-15182 Mark Alan Shoemaker

Chapter 7

#4.00 Motion to Reconsider of Order Overruling Objections to Claims pursuant to rule 3008, Rule 9023

Docket 229

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Hearing vacated. Motion denied without hearing. (dkt. 231)

Party Information

Debtor(s):

Mark Alan Shoemaker

Represented By
William H Brownstein

Trustee(s):

Alfred H Siegel (TR)

Represented By
Jessica L Bagdanov

**United States Bankruptcy Court
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Tuesday, October 8, 2019

Hearing Room 302

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

#5.00 Motion to Convert Case From Chapter 11 to 7.

Docket 710

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Each of the Yashouafars has moved to convert from chapter 11 to chapter 7. If these were debtors in possession and these were voluntary cases, they would have an absolute right to convert. But there is a trustee and these began as involuntary cases. Thus, this needs to be a noticed motion.

Over two years ago they moved to convert, but this was opposed by the Creditors' Committee (dkt. 472, 484). There has been no exit strategy or plan and the prospects of a plan being confirmed are remote at best. Without a plan in a chapter 11, there is no way for the debtors to obtain a discharge. Cause exists because the Yashouafars are unable to confirm a plan, no one else has stepped up to propose a plan, and a chapter 7 trustee can more efficiently pursue and liquidate the remaining assets.

Without a discharge, Massoud cannot restart his business since investors will not invest for fear that his pre-bankruptcy creditors might continue to pursue him and this will impact any future investment that he is involved in.

Statement by Creditor Howard Abselet

The motion does not disclose that Abselet has filed a §523 complaint to declare the debts owed him to be non-dischargeable. This is based on a judgment, which exceeds \$10 million. Thus any future investors/partners would probably be deterred from doing business with the debtors due to this large potential pre-petition debt. Also, debtors presume that there will be no § 727 action filed - though it is likely that one will be.

Opposition by the Creditors' Committee

The Debtors seek to obtain a discharge and return to real estate

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CONT... **Solyman Yashouafar**

Chapter 11

investing. But this would be at the expense of the creditors, who would be denied a voice in the cases through the Committee. These are not innocent, but unfortunate, debtors. Instead they were forced into involuntary bankruptcy to prevent them from shielding their assets from their creditors.

The involuntary filings were because the Yashouafars had "unsavory and fraudulent business practices." There was a "complex and sophisticated scheme to conceal and disguise assets in an effort to frustrate the collections of various claims and/or judgments against" them and certain related entities. The involuntaries were specifically filed under chapter 11 because that was in the best interest of creditors.

While the Committee has worked diligently, it has been careful not to duplicate the work of the Trustee - thus its total fees for 2018 [incorrectly stated as 2019] were \$36,389.96 and for 2019 have been even less. However it is important to have the Committee's voice in these cases.

Under the prior motion to convert, the stipulation freed the post-petition earnings of the Debtors so that these are not property of the estate. Thus they are free to work and earn money that is not property of the estate.

Under §1112(b)(1), conversion must be based on cause. Once the debtor shows cause, the court must decide whether the appointment of a chapter 11 trustee would be better. Here Debtors' desire for a discharge is not cause. This is merely a matter of convenience for the Debtors. The enumerated reasons and caselaw point to the conclusion that cause is because of a debtor's failure to perform in some way. None are for the benefit or convenience of the debtor.

Here the Yashouafars' prior conduct cuts against helping them to go forward with more real estate dealings.

Also, it is likely that many creditors will file §727 or §523 actions against them, so their immediate discharge is far from assured. In his declaration, Vincent James Romeo states that he would expect to file a complaint under §523 and/or §727.

Further, §1112(b)(4)(A) does not apply. *In re Citi-Toledo Partners* concerns a motion to convert back to chapter 7 (which was the original involuntary filing chapter) and was brought by several creditors, not by the debtor.

Had a creditor brought a motion under this section, there is no doubt that cause would exist due to continuing diminution of the estate combined with an absence of a reasonable likelihood of rehabilitation. But this was not

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CONT... Solyman Yashouafar

Chapter 11

brought by a creditor. Also there is no showing of "substantial or continuing loss to or diminution of the estate." In fact, the Trustee and his counsel are continuing to work to improve the position of the creditors.

Reply by Massoud and Solyman Yashouafar

The opposition was filed late and should be ignored. So is the statement by Mr. Abselet. Debtor moves to strike both documents from the record.

The Trustee has not opposed the motion, he did not oppose the prior motion, and he filed his own prior motion to convert (dkt. 192). He signed the stipulation to convert, which the Committee has "stubbornly" refused to sign.

Granting a discharge would benefit those creditors who have potentially non-dischargeable claims because it would allow the Debtors to improve their financial position and thus it "may provide a source of payment."

No one has ever given an indication that they will file a plan or take any other action to bring this case to an end.

Massoud is ready to disprove the "unfounded allegations of improprieties alleged by the Committee." Conversion will move that process forward.

The Committee does not explain why it believes that remaining in Chapter 11 is of benefit to the creditors.

Proposed Ruling

The motion to strike the opposition, etc. as untimely is denied. There was plenty of time for the Debtors to respond and more time would have been given if needed.

The main differences between chapter 7 and chapter 11 in this case are the following:

(1) In chapter 11, the Committee has an expanded role, though it might still exist in chapter 7. (§§705, 1103) [The Court is not sure whether a new Committee would need to be formed or even if there could be a Committee since such an entity is voted in by the creditors at the §341(a) meeting and I assume that this has been completed.] But assuming that this Committee could continue, whereas in chapter 11, the Committee can investigate (independent of the Trustee), formulate a plan, and undertake a wide range of actions that are in the interest of the creditors, in chapter 7 it only has the power to make recommendations to the Trustee and the UST or bring

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CONT... Solyman Yashouafar

Chapter 11

administration issues to the UST or the court. But the most important difference is that a chapter 7 Committee cannot be reimbursed its expenses for members or for counsel. This means that the creditors are "on their own" except as represented by the Trustee or individual counsel paid for by that individual creditor. The Trustee does not specifically represent the interest of the unsecured creditors.

(2) Once the conversion order takes place, the clock will start running on filing complaints to deny a general discharge or dischargeability of specific debts. Even if a plan is confirmed, the §523 and §727 issues will have to be resolved by individual adversary proceedings (§1141(d)). Thus, only the timing is a valid issue unless it is at least somewhat likely that a plan would provide a sufficient dividend to unsecured creditors that they would not want to proceed against either or both of the Yashouafars to deny a complete discharge or discharge of individual debts. At this point, the Court does not have any information as to the likely outcome of some of the litigation and what sort of dividend is probable under a plan or whether anyone is intending to propose a plan.

(3) In chapter 11, the Trustee, the Committee, the Debtor, or an individual creditor has the power to propose a plan. I don't know if anyone is likely to do so. If not, the end result of this case will be conversion to chapter 7 so that the Trustee can deal with claims and make distribution. At that time the discharge issues would be ripe. So, at best, the motion only deals with a matter of timing.

The Trustee has not objected. Except to propose a plan or to trigger the time to file a §727 action, he is not harmed by a conversion. In fact, he can stop doing his monthly operating reports. There would be a subordination of the chapter 11 administrative expenses to the new ones under chapter 7, but he has not raised this as an issue

As to the question of whether the Debtors have standing to bring this motion under the intent of Congress and the current caselaw, it seems that § 1112(b) is really set up to protect creditors. Since there is already a trustee in place, that is not an alternative to conversion. The entire §1112, except for § 1112(a), is aimed at protecting creditors and not the debtor. Once an order for relief on an involuntary petition is entered, the debtor loses his right to convert and the scale tips to the creditors.

We then look at §1112(b)(1), which requires "cause." Although the list

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Chapter 11

under §1112(b)(4) is not exclusive, it is extensive and it is almost completely a list of improper or negligent actions by the debtor as a debtor-in-possession. The only one that can be expanded is §1112(b)(4)(A) - the concept of continuing loss or diminution and the absence of a reasonable likelihood of rehabilitation. This could allow the court to consider the effect on the debtor of prolonging the chapter 11 aspect of the case. But it is clear that when a debtor has a chance to control the case, if he fails to do so properly, the creditors' direct protections expand by removing him from control through the appointment of a trustee under chapter 11 or the conversion to chapter 7. So while one can say that §1112(b)(4)(A) gives some standing to the debtor when he is not in possession, at best it just means that the court must consider the effect on the debtor to see if it overcomes any detriment to the creditors.

In this case, the maximum benefit to the Debtors is that the determination of their possible discharge will take place sooner rather than later. My experience tells me that there will not be a final decision for at best four years (perhaps 18 months here, another year at the district court or six months at the BAP, and one to two years at the Ninth Circuit). So I am balancing that "speedy" determination (rather than one that starts a few years from now and still takes some four years to finality) against the loss to the unsecured creditors of a substantial role carried out by compensated counsel. The scale tips heavily in favor of the creditors.

The motion will be denied without prejudice. If things change at a later date, a new motion – based on new facts – can be brought.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards

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CONT...

Solyman Yashouafar

John W Lucas

Chapter 11

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1:16-12255 Solyman Yashouafar

Chapter 11

#6.00 Motion by Solyman Yashouafar to Convert
Case to Chapter 7

Docket 714

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

See calendar #5

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

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1:16-12255 Solyman Yashouafar

Chapter 11

#7.00 Status Conference re: Chapter 11 case

fr. 9/1/16(xfr from Judge Tighe's calendar), 9/27/16,
10/11/16; 10/26/16; 11/15/16, 12/6/16, 3/28/16,
4/4/17; 5/30/17, 8/29/17, 9/19/17, 1/23/18, 5/1/18,
9/18/18; 1/8/19; 4/16/19; 7/16/19

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

No tentative ruling for 10/8/19.

prior tentative ruling (7/16/19)

Per the status report filed on 7/1/19 by the Trustee, Judge Tighe ordered that the Trustee cannot sell the Rexford property until all claims in the Elkwood adversary proceeding are adjudicated. The defendants in the Rexford/Chalette Action moved to withdraw the reference, but Judge Walter denied that motion. Judge Tighe scheduled a trial for the remaining claims for October 16. 17. 18. 21. and 25.

Continue the status conference without appearance to October 8, 2019 at 10:00 a.m.

prior tentative ruling (4/16/19):

Per the status report filed on 3/28/19, Judge Tighe ruled in favor of the Trustee on the Elkwood summary judgment motion. The defendants disputed that ruling and it is under submission. UST reports are current.

Continue without appearance to July 16, 2019 at 10:00 a.m.

prior tentative ruling (1/8/19):

Per the status report filed on 12/18, the Elkwood motions for summary

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San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 8, 2019

Hearing Room 303

10:00 AM

CONT... Solyman Yashouafar

Chapter 11

judgment are being heard by Judge Tighe and are under submission. In the meantime, the Trustee is continuing to administer these cases. The next hearing on the MSJs is 1/25.

Continue without appearance to 4/16/19 at 10:00 a.m.

prior tentative ruling (9/18/18)

PLEASE NOTE THAT ALTHOUGH THE ELKWOOD ADVERSARY PROCEEDING WAS TRANSFERRED TO JUDGE TIGHE, I AM CONTINUING TO HANDLE ALL OTHER YASHOUAFAR MATTERS.

No status report received as of 9/16/18.

prior tentative ruling (1/23/18)

Per the status report filed on 1/16, there is a motion for summary judgment as to the JCBL Trust, set for hearing on 2/13/18 at 10:00 a.m. As to the Elkwood Associates adversary proceeding, Elkwood and Fieldbrook filed a motion to dismiss the second amended complaint, which is set for hearing on 2/27. The motion to withdraw the reference is still pending before Judge Walter. The Trustee is current with the OUST requirements.

Continue without appearance to May 1, 2018 at 10:00 a.m.

prior tentative ruling (/19/17)

On 9/6/17 the Trustee filed his status report. The Trustee is continuing to collect information about the Debtors and their estates.

The JCBL Trust is the subject of an adversary proceeding as to whether it is property of the estate. The Trustee expects to resolve this through a motion for summary judgment. [17-ap-01050 - status conference set on 10/17]

The settlement motion with the Abselets is pending.

The motion by defendants to dismiss the Elkwood adversary proceeding is pending [17-ap-01040 - cont. 10/3/17]

The Trustee is in compliance with OUST reporting requirements.

Continue without appearance to 1/23/18 at 10:00 a.m.

prior tentative ruling (5/30/17)

**United States Bankruptcy Court
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San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, October 8, 2019

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10:00 AM

CONT...

Solyman Yashouafar

Chapter 11

Per the Trustee's status report filed on 5/15/17, the Oklahoma action is proceeding and there is a status conference on 6/15/17. The Roosevelt Lofts proceeds are being held as various parties dispute ownership. There is a status conference in this court on that set for 7/11/17. The Trustee wants the Roosevelt Lofts' counsel to continue to hold the excess funds.

The Trustee filed 17-ap-01027 to determine the Debtor's estates' interest in the RLI stock. Abselet filed a motion to withdraw the reference, which is set for hearing in the district court on 5/22. Abselet's motion to dismiss is set for 6/27 in this court. The Trustee and Abselet have set a one day mediation in front of retired Judge Goldberg for 6/3.

Massoud's brother-in-law foreclosed on the Beverly Hills homes of Massoud and of Solyman and sold Solyman's for a substantial profit and rented Massoud's back to him at \$25,000/mo for two years. Massoud never paid any rent and the lease has expired. The Trustee filed 17-ap-1040 seeking quiet title to the Rexford home and to avoid the foreclosures of both homes.

Discovery is continuing in all matters. The Trustee requests a further status conference in 90 days.

It is probably wise to have appearances (in person or on the phone) on 5/30, but this will be continued to an agreeable date in August.

Party Information

Debtor(s):

Solyman Yashouafar

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 8, 2019

Hearing Room 303

10:00 AM

1:16-12408 Massoud Aron Yashouafar

Chapter 11

#8.00 Status Conference re: chapter 11 case

fr. 9/27/16, 10/25/16; 10/26/16; 11/15/16,
12/6/16, 3/28/17, 4/4/17; 5/30/17, 8/29/17,
9/19/17, 1/23/18, 5/1/18, 9/18/18; 1/8/19; 4/16/19
7/16/19

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

This case is being jointly administered with 16-12255. See calendar #7.

Party Information

Debtor(s):

Massoud Aron Yashouafar

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Monday, October 21, 2019

Hearing Room 302

9:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#1.00 Trial

fr. 8/17/18, 8/27/18, 1/30/19; 2/12/19; 2/25/19; 3/4/19
4/15/19; 5/7/19; 6/18/19

Docket 429

Tentative Ruling:

The continued trial will encompass the testimony of the review psychiatrist and the recross of Mr. Neff. Then we will go through which exhibits are admitted into evidence. We may do final arguments or these may be done in writing.

prior tentative ruling (6/18/19)

Mr. DeNoce filed a status report. He notes the credentials of his expert witness and asks that he be provided with the Dental Board Decision, parts of the Neff deposition, some Northwestern Mutual Disability records, and some Okhovat/Hersel records. We will discuss this at the 7/16 hearing.

On July 1 I sent an email to everyone asking that they coordinate possible trial dates: In August: August 5, 7, 8, 9, 12, 13, 14, 15, 16, 23, 27. In September: September 3, 4, 6, 9, 13, 17, 18, 25

I have received no response. Let's get that resolved. Mr. DeNoce, please try to have a phone number for your expert's scheduling person so that we can finalize this at the hearing.

prior tentative ruling (6/18/19)

Mr. DeNoce has filed a document as to the matters that were admitted into evidence. See tentative ruling on motion to close evidence and issue final ruling.

prior tentative ruling (4/15/19):

Dr. Hersel will give the balance of his testimony on 4/15. He has advised by

**United States Bankruptcy Court
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San Fernando Valley
Judge Geraldine Mund, Presiding
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Monday, October 21, 2019

Hearing Room 302

9:00 AM

CONT... Ronald Alvin Neff

Chapter 7

email that he has already produced all of the records in his possession.

Counsel are to appear at 12:30 to deal with procedural issues.

As to the objections filed by Mr. Kwasigroch (dkt. 508), here are my rulings (by objection number):

Overruled - #1,4, 5, 10, 12

Ruled on at 4/11 continued trial and the same rulings apply to Dr. Hetsel's testimony - #2, 3, 6, 7, 8, 9

As to #11 and #13 - this is not an objection but is closing argument and will be heard at that time if Debtor wishes to raise it.

THE FOLLOWING WILL BE DEALT WITH AFTER DR. HERSEL HAS COMPLETED HIS TESTIMONY

As to the Objection and Statement, which go to the issue of whether Mr. Neff will sign a release for the SSA, DeNoce had received a disc from the SSA, but he reviewed it and found that the material was incomplete. He then destroyed the disc and neither sent them to Kwasigroch or sought instruction from the Court. Although Neff had said that he would sign a new release (the old one having become stale through the passage of time), he has now changed his mind. He is not bound by his prior statement as DeNoce has not relied on it to his detriment. There are no actions that he could have taken and did not take. He is still allowed to hire his own psychiatrist to review the review report by Dr. Bilik and can appeal the denial of Dr. Bilik's testimony by the SSA.

It was DeNoce's decision to destroy the SSA records. Whether he read them in detail or not before he destroyed the disc is not known and will never be known for sure. But obviously he looked at what types of documents were included or he could not have decided that the file was "incomplete." If he believed that the SSA did not give him the full file, he had options at that time, but failed to proceed. There is no reason to believe that a new SSA production would be any different than the first one.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Monday, October 21, 2019

Hearing Room 302

9:00 AM

CONT... **Ronald Alvin Neff**

Chapter 7

Kwasigroch raises the evidentiary issue of spoliation (which he incorrectly writes a spoilation). This is a presumption that the destruction of evidence relevant to the litigated issue shows that the evidence was unfavorable to that party. *Weinstein' Federal Evidence §301.06*. That does not apply in this case since the SSA file is even more accessible to Neff, who need merely request it. Thus, he has the ability to know what is in it and to produce it to the Court.

DeNoce was allowed to hire an independent psychiatrist to examine Neff as well as to hire another psychiatrist to review the Bilik report. He cancelled the examination of Neff and never sought to go forward with it. He will be allowed to hire an expert to review the Bilik report because Bilik cannot be called to testify, but there needs to be a time limit to do this. This case has dragged on a considerable length of time and it was incumbent on DeNoce to proceed without delay. If he is seeking to appeal that SSA decision, he can go forward with that, too, but I will not delay the hiring of a review psychiatrist any further. Both can proceed simultaneously.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Movant(s):

Douglas Denoce

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Tuesday, October 22, 2019

Hearing Room 302

9:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#1.00 2nd day Trial

fr. 8/17/18, 8/27/18, 1/30/19; 2/12/19; 2/25/19; 3/4/19
4/15/19; 5/7/19; 6/18/19; 7/16/19

Docket 429

***** VACATED *** REASON: Continued to 11/18/19 @9am (eg)**

Tentative Ruling:

Mr. DeNoce filed a status report. He notes the credentials of his expert witness and asks that he be provided with the Dental Board Decision, parts of the Neff deposition, some Northwestern Mutual Disability records, and some Okhovat/Hersel records. We will discuss this at the 7/16 hearing.

On July 1 I sent an email to everyone asking that they coordinate possible trial dates: In August: August 5, 7, 8, 9, 12, 13, 14, 15, 16, 23, 27. In September: September 3, 4, 6, 9, 13, 17, 18, 25

I have received no response. Let's get that resolved. Mr. DeNoce, please try to have a phone number for your expert's scheduling person so that we can finalize this at the hearing.

prior tentative ruling (6/18/19)

Mr. DeNoce has filed a document as to the matters that were admitted into evidence. See tentative ruling on motion to close evidence and issue final ruling.

prior tentative ruling (4/15/19):

Dr. Hersel will give the balance of his testimony on 4/15. He has advised by email that he has already produced all of the records in his possession.

Counsel are to appear at 12:30 to deal with procedural issues.

As to the objections filed by Mr. Kwasigroch (dkt. 508), here are my rulings (by objection number):

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Tuesday, October 22, 2019

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9:00 AM

CONT... Ronald Alvin Neff

Chapter 7

Overruled - #1,4, 5, 10, 12

Ruled on at 4/11 continued trial and the same rulings apply to Dr. Hetsel's testimony - #2, 3, 6, 7, 8, 9

As to #11 and #13 - this is not an objection but is closing argument and will be heard at that time if Debtor wishes to raise it.

THE FOLLOWING WILL BE DEALT WITH AFTER DR. HERSEL HAS COMPLETED HIS TESTIMONY

As to the Objection and Statement, which go to the issue of whether Mr. Neff will sign a release for the SSA, DeNoce had received a disc from the SSA, but he reviewed it and found that the material was incomplete. He then destroyed the disc and neither sent them to Kwasigroch or sought instruction from the Court. Although Neff had said that he would sign a new release (the old one having become stale through the passage of time), he has now changed his mind. He is not bound by his prior statement as DeNoce has not relied on it to his detriment. There are no actions that he could have taken and did not take. He is still allowed to hire his own psychiatrist to review the review report by Dr. Bilik and can appeal the denial of Dr. Bilik's testimony by the SSA.

It was DeNoce's decision to destroy the SSA records. Whether he read them in detail or not before he destroyed the disc is not known and will never be known for sure. But obviously he looked at what types of documents were included or he could not have decided that the file was "incomplete." If he believed that the SSA did not give him the full file, he had options at that time, but failed to proceed. There is no reason to believe that a new SSA production would be any different than the first one.

Kwasigroch raises the evidentiary issue of spoliation (which he incorrectly writes a spoliation). This is a presumption that the destruction of evidence relevant to the litigated issue shows that the evidence was unfavorable to that party. *Weinstein' Federal Evidence §301.06*. That does not apply in this case since the SSA file is even more accessible to Neff, who need merely request it. Thus, he has the ability to know what is in it and to produce it to

**United States Bankruptcy Court
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Tuesday, October 22, 2019

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9:00 AM

CONT... Ronald Alvin Neff
the Court.

Chapter 7

DeNoce was allowed to hire an independent psychiatrist to examine Neff as well as to hire another psychiatrist to review the Bilik report. He cancelled the examination of Neff and never sought to go forward with it. He will be allowed to hire an expert to review the Bilik report because Bilik cannot be called to testify, but there needs to be a time limit to do this. This case has dragged on a considerable length of time and it was incumbent on DeNoce to proceed without delay. If he is seeking to appeal that SSA decision, he can go forward with that, too, but I will not delay the hiring of a review psychiatrist any further. Both can proceed simultaneously.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Movant(s):

Douglas Denoce

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 22, 2019

Hearing Room 303

10:00 AM

1:09-23807 Shellie Melissa Halper

Chapter 7

Adv#: 1:19-01021 Halper v. Jerome Bennett Friedman, an individual et al

#2.00 Motion to Dismiss Plaintiff's Complaint for
Failure to State a Claim.

fr. 6/11/19, 8/6/19

Docket 5

Tentative Ruling:

Off calendar. Order entered on 8/26/19.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Defendant(s):

Jerome Bennett Friedman, an

Pro Se

Friedman Law Group, P.C.

Represented By
J. Bennett Friedman

Twin Palms Lending Group, LLC, a

Represented By
J. Bennett Friedman

Solomon Cohen, an individual

Pro Se

Does 1 Through 25, Inclusive

Pro Se

Plaintiff(s):

Shellie Melissa Halper

Represented By
Michelangelo Tatone

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 22, 2019

Hearing Room 303

10:00 AM

CONT... Shellie Melissa Halper

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 22, 2019

Hearing Room 303

10:00 AM

1:09-23807 Shellie Melissa Halper

Chapter 7

Adv#: 1:19-01021 Halper v. Jerome Bennett Friedman, an individual et al

#3.00 Motion and Anti-SLAPP Special Motion to
Strike Plaintiff's Complaint

fr. 6/11/19, 8/6/19

Docket 8

Tentative Ruling:

Off calendar. Order entered on 8/26/19.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Defendant(s):

Jerome Bennett Friedman, an

Pro Se

Friedman Law Group, P.C.

Represented By
J. Bennett Friedman

Twin Palms Lending Group, LLC, a

Represented By
J. Bennett Friedman

Solomon Cohen, an individual

Pro Se

Does 1 Through 25, Inclusive

Pro Se

Plaintiff(s):

Shellie Melissa Halper

Represented By
Michelangelo Tatone

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 22, 2019

Hearing Room 303

10:00 AM

CONT... Shellie Melissa Halper

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 22, 2019

Hearing Room 303

10:00 AM

1:09-23807 Shellie Melissa Halper

Chapter 7

Adv#: 1:19-01021 Halper v. Jerome Bennett Friedman, an individual et al

#4.00 Motion for Anti-SLAPP Fees and Costs
and to Amend Order Granting Anti-SLAPP
Motion

Docket 44

Tentative Ruling:

On August 26, 2019, the Court granted the Defendants' anti-SLAPP motion to strike. They now seek an award of \$23,419.75 as their reasonable attorney fees and costs incurred in bringing the anti-SLAPP motion and this fee motion. Although the Court originally found that the Defendants had not asked for fees in their anti-SLAPP motion, in fact there was such a request at 5:10-11 and 26:6-7 of the motion (dkt. 8). They now seek an amendment to the order to reflect that request.

Cal.Civ.Proc.Code §425.16(c)(1) specifically requires that the prevailing defendant shall recover its attorney's fees and costs and this includes the fees incurred to bring a motion to enforce its right to fees. *Ketchum v. Moses*, 24 Cal.4th 112, 1141 (2001). The fact that the Defendants did not specify the amount of fees in the motion does not preclude them from seeking the full amount in a separate motion. *Am. Humane Ass'n v. L.A. Times Commc'ns*, 92 Cal.App.4th 1095, 1103 (2001).

The Defendants tracked the time for each motion separately to the extent possible (the motion to dismiss, the motion for sanctions, the anti-SLAPP motion). The request is divided into several groupings:
(1) work on Anti-SLAPP motion, and on motion for fees - \$21,720
(2) work done on sanctions motion and used in Anti-SLAPP motion (in excess of the \$5,000 sanctions awarded - \$1,560
(3) costs - \$139.75

The motion goes on to explain why the amount of time spent was reasonable.

This motion is solely against Ms. Halper and not her prior attorney. At the hearing on Sept. 24, 2019 on Mr. Tatone's motion to withdraw counsel for the defendants represented to the Court that their motion for fees under anti-

**United States Bankruptcy Court
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Tuesday, October 22, 2019

Hearing Room 303

10:00 AM

CONT... **Shellie Melissa Halper**

Chapter 7

SLAPP was only against Ms. Halper and not against Mr. Tatone and that this was a matter of law. I have not found any legal provision or case specifying this, but will take the statement on the record as a bar to proceeding against Mr. Tatone.

In the order allowing Mr. Tatone's withdrawal, the Court stated:

3. Ms. Halper is now required to either retain new counsel or defend herself in this Action, including in the upcoming October 22, 2019 hearing on Defendants' Motion for Anti-SLAPP Fees and Costs and to Amend Order Granting Anti-SLAPP Motion;
4. Unless Counsel for Defendants, Michelle Correll, presents law to the contrary, she shall give notice that the Motion for Anti-SLAPP Fees and Costs and to Amend Order Granting Anti-SLAPP Motion [Docket No. 44], currently set to be heard on October 22, 2019, is as against Shellie Melissa Halper only, and not as against Michelangelo Tatone or Tatone Law, APC. Defendants are to serve Shellie Halper with a copy of the Motion for Anti-SLAPP Fees and Costs. [dkt. 58]

As of Oct. 20, there is no proof of service on Ms. Halper as ordered. She has filed no opposition.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Defendant(s):

Jerome Bennett Friedman, an

Represented By
Michelle J Correll

Friedman Law Group, P.C.

Represented By
J. Bennett Friedman
Michelle J Correll

Twin Palms Lending Group, LLC, a

Represented By
J. Bennett Friedman
Michelle J Correll

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 22, 2019

Hearing Room 303

10:00 AM

CONT... **Shellie Melissa Halper**
Solomon Cohen, an individual

Represented By
Michelle J Correll

Chapter 7

Does 1 Through 25, Inclusive

Pro Se

Plaintiff(s):

Shellie Melissa Halper

Represented By
Michelangelo Tatone

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 22, 2019

Hearing Room 303

10:00 AM

1:09-23807 Shellie Melissa Halper

Chapter 7

Adv#: 1:19-01021 Halper v. Jerome Bennett Friedman, an individual et al

#5.00 Motion For Sanctions Against Plaintiff and
Her Counsel Pursuant to FRBP 9011

fr. 6/11/19, 8/6/19

Docket 17

Tentative Ruling:

Off calendar. Order entered on 8/26/19.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Defendant(s):

Jerome Bennett Friedman, an

Represented By
Michelle J Correll

Friedman Law Group, P.C.

Represented By
J. Bennett Friedman
Michelle J Correll

Twin Palms Lending Group, LLC, a

Represented By
J. Bennett Friedman
Michelle J Correll

Solomon Cohen, an individual

Represented By
Michelle J Correll

Does 1 Through 25, Inclusive

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 22, 2019

Hearing Room 303

10:00 AM

CONT... Shellie Melissa Halper

Chapter 7

Plaintiff(s):

Shellie Melissa Halper

Represented By
Michelangelo Tatone

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, October 22, 2019

Hearing Room 303

10:00 AM

1:09-23807 Shellie Melissa Halper

Chapter 7

Adv#: 1:19-01021 Halper v. Jerome Bennett Friedman, an individual et al

#6.00 Status Conference re: Complaint for 1) Fraudulent Concealment; 2) Fraudulent Misrepresentation; 3) Constructive Fraud; 4) Breach of Fiduciary Duty; 5) Aiding and Abetting Breach of Fiduciary Duty 6) Fraud on the court; 7) Declaratory Relief.

fr. 5/7/19; 6/11/19, 8/6/19

Docket 1

Tentative Ruling:

Off calendar. Complaint dismissed by Order entered on 8/26/19.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Defendant(s):

Jerome Bennett Friedman, an	Pro Se
Friedman Law Group, P.C.	Pro Se
Twin Palms Lending Group, LLC, a	Pro Se
Solomon Cohen, an individual	Pro Se
Does 1 Through 25, Inclusive	Pro Se

Plaintiff(s):

Shellie Melissa Halper

Represented By
Michelangelo Tatone

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 22, 2019

Hearing Room 303

10:00 AM

CONT... Shellie Melissa Halper

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Tuesday, October 22, 2019

Hearing Room 302

10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#7.00 Trustee's Motion Objecting to Debtor's Amended Schedule C Exemptions and Joinder of Litt's Objection to Amended Claims of Exemption.

Docket 1701

Tentative Ruling:

A pre-hearing tentative ruling (dkt. 1729) was emailed to all parties on Friday. On Monday the Trustee filed a supplement in response to questions raised in that tentative ruling (dkt. 1731). The Trustee clarified that the disbursements were made by check 1036 dated 10/11/16 in the amount of \$3,324, which was for two social security checks that the Trustee received and were the only social security checks that the Trustee received.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By

Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman

Represented By

John P. Reitman
Jon L. Dalberg

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Hearing Room 302

10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#8.00 Motion Objecting to McClure's Amended
Claims of Exemption in Amended Schedule C

fr. 10/8/19

Docket 1700

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shirley Foose McClure

Represented By

Andrew Goodman

Yi S Kim

Robert M Scholnick

James R Felton

Faye C Rasch

Faye C Rasch

Lisa Nelson

Michael G Spector

Trustee(s):

John P. Reitman

Represented By

John P. Reitman

Jon L. Dalberg

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, October 22, 2019

Hearing Room 303

10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#9.00 Status conference re: ch 11 case

fr. 1/24/2013, 4/30/13, 5/14/13, 7/23/13, 8/6/13,
9/17/13, 9/24/13, 11/19/13, 12/17/13, 1/21/14, 2/18/14,
3/11/14, 4/15/14, 5/6/14, 6/24/14, 9/9/14, 9/23/14,
10/7/14, 11/24/14, 1/6/15, 1/20/15, 2/10/15, 3/10/15,
4/28/15; 5/12/15; 9/29/15, 10/22/15, 12/8/15, 3/1/16,
6/7/16, 7/12/16, 8/16/16, 10/11/16; 12/20/16, 4/4/17,
5/16/17; 6/27/17, 7/11/17, 9/19/17, 11/14/17, 11/28/17,
12/19/17, 1/9/18, 3/19/18, 3/27/18, 5/1/18, 6/5/18; 6/26/18,
7/9/18; 8/7/18, 11/6/18; 12/18/18; 1/29/19; 2/12/19; 3/5/19
3/26/19; 4/16/19, 8/6/19, 10/8/19

Docket 1

Tentative Ruling:

On 9/27/19 the Trustee filed a status report that he has considered the options. It is clear to him that the Tidus defendants will not offer more than the \$100,000, though they do continue to discuss restructuring the settlement. Abandonment to McClure is not in the best interest of the estate and the offer of a contingent recovery is unlikely to bring in any money since there is not a strong potential that the Debtor will recover more than \$100,000 in the litigation, in fact there will likely be no damages. For that same reason, the Trustee does not believe that it will be in the best interest of the estate for him to litigate it.

For those reasons the Trustee has taken an appeal. It is assigned to Judge Wu, 2:19-cv-07780.

Court: because of the appeal, I really can't do anything further on the Tidus matter. I need to await a decision by Judge Wu and, perhaps the Ninth Circuit. Is there anything else that the Trustee needs to do to administer this estate?

On 10/10, Ms. McClure filed a status report as to the Tidus case. Because of the Trustee's appeal, she is moving forward on an alternate path

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Tuesday, October 22, 2019

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10:00 AM

CONT... Shirley Foose McClure

Chapter 11

to prepare the case evidence. She then details that some of the claims belong to the estate and some are personal. She wants to add a personal separate intentional breach of fiduciary duty and intentional inflictions on emotional distress claim to the state court action against the Tidus defendants. She only found out about these with the 2017 discovery production.

She seeks the Court's permission to speak with and obtain documents from the Farley Firm, the Plaintiff's expert, and the Trustee. These parties need authority from the bankruptcy court to cooperate with McClure. Because the appeal is pending, she feels that she needs bankruptcy court permission to appear in the Tidus case.

Litt takes no position since this does not involve him. He is not aware that Litt or Schulman have been listed as non-retained expert witnesses in the Tidus case. As of 10/18, the Court has not received a response by the Trustee.

I do not believe that this is dependant on whether McClure has an exemption in the Tidus case since, if my order denying the motion is not reversed on appeal, it is possible that the Tidus case will be abandoned or that McClure will take control on behalf of the estate or that the Trustee will move forward and this discovery will assist him.

prior tentative ruling (8/6/19)

Ms. McClure filed (under seal) a report on her health and her personal claims against the Litt parties. There is no reason for this to be under seal and unless McClure convinces me otherwise, I will unseal it.

In short, she intends to bring a motion to determine which claims with Litt were not property of the estate.

She also filed an amended Schedule C claiming the Litt and Tidus claims as exempt. Will the Trustee be objecting to this?

Litt also filed a status report. This addresses the McClure issue of the effect of the settlement order.

If either party seeks a "clarification" or other modification of my settlement

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CONT... Shirley Foose McClure

Chapter 11

order, please bring that through a proper motion or other means. I am not sure that there is such a thing as a motion to clarify, but I am sure that there is a method to obtain a ruling as to what what sold (wht is property of the estate).

prior tentative ruling (4/16/19):

At the 4/16 status conference the Court will determine which - if any - filed exhibits are to be kept under seal. On April 12 an email with a list was sent to Ms. McClure and the attorneys for the Litt Parties and for the Trustee. Also, the Court will discuss my intent to send this out for a global mediation before Judge Jury (ret). A copy of that notice was forwarded to Mr. Dahlberg, Ms. McClure, and Mr. Shulman and Mr. Dahlberg is was asked to make sure that it is sent to the other parties named in the notice.

prior tentative ruling (3/26/19)

Continue without appearance to April 16, 2019 at 10:00 a.m. No new status report will be needed for that hearing.

prior tentative ruling (2/8/19)

Per the Trustee's status report, McClure withdrew her appeal of the Pacific Merchantile settlement and the Ninth Circuit has dismissed the appeal.

As to the settlement with Litt, Judge Wu has continued the status conference in the consolidated Litt appeals to March 7, 2019 and has indicated that he is not inclined to grant further continuances. The Trustee therefore requests a speedy determination of the motion for reconsideration so as to avoid unnecessary litigation costs in the consolidated Litt appeals. Because of the death of Ms. McClure's son Jeff, the motion to reconsider has been continued to 3/26.

The motion to sell the Maui property is set to be heard on 3/5/19.

I sent an email to Judge Wu, advising him of the situation and that I am continuing the motion to reconsider to 3/26. I also advised him that I expect to rule soon thereafter as no other papers may be filed. As of 3/4 at 10:00 a.m., I have not had a response from Judge Wu.

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CONT... Shirley Foose McClure

Chapter 11

The status conference is continued to 3/26/19 at 10:00 a.m. I don't see any reason that anyone should appear in person or by phone on March 5.

Cont

prior tentative ruling (2/12/19)

Continue without appearance to 3/5/19 at 10:00 a.m. Although documents are being filed for 2/12, there will be no hearing at that time. I am also advising the parties by email of this.

prior tentative ruling (11/6/18)

Ms. McClure has until Nov. 20 to file her motion for reconsideration. Meanwhile, she has filed an emergency motion for a stay pending the hearing on her motion for reconsideration. The Trustee opposes.

This would be a short stay, only so that the Court can adequately review the motion(s) to reconsider. While it took many months for the Court to do the detailed analysis and I believe that it is thorough and correct, it is appropriate to allow Ms. McClure to try to point out errors that may have been made. Given that the matters in the Superior Court are not immediate, the Court intends to grant the stay and will hear brief argument at the 11/6 status conference. It seems to me that the stay should expire 14 days after I enter my order on the motion(s) to reconsider.

Per the Trustee's status report filed on 10/31/18, the Maui property is in escrow.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton

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CONT... Shirley Foose McClure

Chapter 11

Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

**United States Bankruptcy Court
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Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 29, 2019

Hearing Room 303

10:00 AM

:
Adv#: 1:19-01054 Kalmenson et al v. HSBC BANK (USA) N.A. et al

Chapter 0

#1.00 Status Conference re: First Amended Complaint
for Declaratory Judgment

fr. 7/16/19

Docket 2

***** VACATED *** REASON: Matter moved to 10/8/19 @10am (eg)**

Tentative Ruling:

This was continued by stipulation to October - the Court is setting it on 10/29/19 at 10:00 a.m.

Note that Defendants HSBC and Select Portfolio have filed a motion to dismiss the adversary proceeding, which is set for hearing on 8/6. Is that going forward?

Party Information

Defendant(s):

First American Title Ins Co.	Pro Se
SELECT PORTFOLIO	Pro Se
HSBC BANK (USA) N.A.	Pro Se

Plaintiff(s):

Catherine R Kalmenson	Represented By Joon M Khang
Harvey Kalmenson	Represented By Joon M Khang

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Monday, November 18, 2019

Hearing Room 302

9:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#1.00 Trial (In courtroom no. 302)

fr. 8/17/18, 8/27/18, 1/30/19; 2/12/19; 2/25/19; 3/4/19
4/15/19; 5/7/19; 6/18/19; 10/21/2019

Docket 429

Tentative Ruling:

The continued trial will encompass the testimony of the review psychiatrist and the recross of Mr. Neff. Then we will go through which exhibits are admitted into evidence. We may do final arguments or these may be done in writing.

prior tentative ruling (6/18/19)

Mr. DeNoce filed a status report. He notes the credentials of his expert witness and asks that he be provided with the Dental Board Decision, parts of the Neff deposition, some Northwestern Mutual Disability records, and some Okhovat/Hersel records. We will discuss this at the 7/16 hearing.

On July 1 I sent an email to everyone asking that they coordinate possible trial dates: In August: August 5, 7, 8, 9, 12, 13, 14, 15, 16, 23, 27. In September: September 3, 4, 6, 9, 13, 17, 18, 25

I have received no response. Let's get that resolved. Mr. DeNoce, please try to have a phone number for your expert's scheduling person so that we can finalize this at the hearing.

prior tentative ruling (6/18/19)

Mr. DeNoce has filed a document as to the matters that were admitted into evidence. See tentative ruling on motion to close evidence and issue final ruling.

prior tentative ruling (4/15/19):

Dr. Hersel will give the balance of his testimony on 4/15. He has advised by

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9:00 AM

CONT... Ronald Alvin Neff

Chapter 7

email that he has already produced all of the records in his possession.

Counsel are to appear at 12:30 to deal with procedural issues.

As to the objections filed by Mr. Kwasigroch (dkt. 508), here are my rulings (by objection number):

Overruled - #1,4, 5, 10, 12

Ruled on at 4/11 continued trial and the same rulings apply to Dr. Hetsel's testimony - #2, 3, 6, 7, 8, 9

As to #11 and #13 - this is not an objection but is closing argument and will be heard at that time if Debtor wishes to raise it.

THE FOLLOWING WILL BE DEALT WITH AFTER DR. HERSEL HAS COMPLETED HIS TESTIMONY

As to the Objection and Statement, which go to the issue of whether Mr. Neff will sign a release for the SSA, DeNoce had received a disc from the SSA, but he reviewed it and found that the material was incomplete. He then destroyed the disc and neither sent them to Kwasigroch or sought instruction from the Court. Although Neff had said that he would sign a new release (the old one having become stale through the passage of time), he has now changed his mind. He is not bound by his prior statement as DeNoce has not relied on it to his detriment. There are no actions that he could have taken and did not take. He is still allowed to hire his own psychiatrist to review the review report by Dr. Bilik and can appeal the denial of Dr. Bilik's testimony by the SSA.

It was DeNoce's decision to destroy the SSA records. Whether he read them in detail or not before he destroyed the disc is not known and will never be known for sure. But obviously he looked at what types of documents were included or he could not have decided that the file was "incomplete." If he believed that the SSA did not give him the full file, he had options at that time, but failed to proceed. There is no reason to believe that a new SSA production would be any different than the first one.

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CONT... Ronald Alvin Neff

Chapter 7

Kwasigroch raises the evidentiary issue of spoliation (which he incorrectly writes a spoliation). This is a presumption that the destruction of evidence relevant to the litigated issue shows that the evidence was unfavorable to that party. *Weinstein' Federal Evidence §301.06*. That does not apply in this case since the SSA file is even more accessible to Neff, who need merely request it. Thus, he has the ability to know what is in it and to produce it to the Court.

DeNoce was allowed to hire an independent psychiatrist to examine Neff as well as to hire another psychiatrist to review the Bilik report. He cancelled the examination of Neff and never sought to go forward with it. He will be allowed to hire an expert to review the Bilik report because Bilik cannot be called to testify, but there needs to be a time limit to do this. This case has dragged on a considerable length of time and it was incumbent on DeNoce to proceed without delay. If he is seeking to appeal that SSA decision, he can go forward with that, too, but I will not delay the hiring of a review psychiatrist any further. Both can proceed simultaneously.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Movant(s):

Douglas Denoce

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
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Tuesday, November 19, 2019

Hearing Room 303

10:00 AM

:

Chapter 0

Adv#: 1:19-01054 Kalmenson et al v. HSBC BANK (USA) N.A. et al

#1.00 Status Conference re: First Amended Complaint
for Declaratory Judgment

fr. 7/6/19

Docket 2

***** VACATED *** REASON: Per order #28. If**

Tentative Ruling:

Continued by stipulation to 12/17/19 at 10:00 a.m.

Party Information

Defendant(s):

HSBC BANK (USA) N.A.	Pro Se
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SELECT PORTFOLIO	Pro Se
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First American Title Ins Co.	Pro Se
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Plaintiff(s):

Harvey Kalmenson	Represented By Joon M Khang
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Catherine R Kalmenson	Represented By Joon M Khang
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Tuesday, November 19, 2019

Hearing Room 303

10:00 AM

1:06-12243 Edwin Perry Hinds

Chapter 7

#2.00 Status of Chapter 7 Case

fr. 8/29/17, 1/23/18; 6/19/18, 9/18/18; 12/4/18;
3/5/19; 6/11/19, 8/6/19

Docket 1

Tentative Ruling:

Per the status report filed by the Trustee on 11/13/19, Mr. Isaacson prepared a joint status report, which the Trustee signed. This has not been filed, but is attached as Ex. A. The parties have entered into substantial settlement discussions.

The status conference is continued without appearance to January 14, 2020 at 10:00 a.m.

prior tentative ruling (8/6/19)

Per the status report filed by the Trustee on 7/31, it is unlikely that Isaacson will appear on August 6 for the ORAP and the Trustee will need to apply for a further ORAP order and additional relief from the court. Isaacson's attorney has not been willing to accept service on behalf of Isaacson although he has filed numerous pleadings with the bankruptcy court, district court, and BAP. Isaacson is evading service. Obviously Isaacson and Totaro are in contact. The Trustee asserts that the money paid by Isaacson to Totaro as fees should, in equity, belong to the Trustee pursuant to the 2009 and 2018 turnover orders.

prior tentative ruling (6/11/19):

On 4/30/19 Isaacson asked the Court to enter a written order denying his motion to extend time to file a notice of appeal, etc. The Court entered the order on 5/8/19 (dkt. 73).

Per the Trustee's status report filed on 6/4 (in the adversary proceeding), the judgment debtor examination is now scheduled for August 6, 2109. The Trustee is trying to serve Isaacson, who may be out of state. The District

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CONT... Edwin Perry Hinds

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Court has granted a motion to reconsider its dismissal of the appeal as to the turnover order as clarified by the 8/23/18 memorandum. The opening brief is due at the end of June.

Unless the parties think otherwise, continue the status conference without appearance to August 6 at 10:00 a.m.

prior tentative ruling (3/5/19)

Per the Trustee's unilateral status report filed on 2/14/19, the Isaacson parties filed an appeal of the 8/23/18 Clarifying Memorandum and the 1/09 Turnover Order (2:18-cv-07794-SVW). The Isaacson parties requested a stay pending appeal, but that was denied. The District Court entered an OSC re dismissal and on 1/22/19 the District Court dismissed the appeal. The time for the Isaacson Parties to appeal the dismissal has passed and no appeal was filed.

An ORAP was issued on 12/6, but Isaacson could not be located and served. Another request for an ORAP has been filed.

The Trustee is continuing to monitor the Claim against Isaacson at the California State Bar Security Fund. The Trustee requests an additional continuance.

Unless there is an objection, the status conference will be continued without appearance to June 11, 2019 at 10:00 a.m.

prior tentative ruling (12/4/18):

Per the revised status report filed on 11/29, continue without appearance to March 5, 2019 at 10:00 a.m.

prior tentative ruling (9/18/18):

The motion as to Lon Isaacson was heard on 8/21/18 and continued to 12/4/18 at 10:00 as a holding date. The order on the motion was entered on 8/23/18. The motion was granted. This status conference is continued without appearance to 12/4/18 at 10:00 a.m. to give the Trustee a chance to start collecting on its order and to advise the Court as to the status of those efforts.

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CONT... Edwin Perry Hinds

Chapter 7

prior tentative ruling (6/19/18)

Per the status report filed on 3/13/18, a claim has been submitted to the California State Bar Client Fund in an attempt to collect the \$100,000 from Mr. Isaacson. A current address for him has been found and he has been filed with a copy of the prior status reports.

Mr. Isaacson is being represented by Brian McMahon and there are ongoing settlement conferences. A settlement was reached in February 2018 and there will be a 9019 motion filed. At the State Bar, the claim is still under submission.

On June 12, 2018 the Trustee filed a further status report. Discussions with Mr. Isaacson have reached an impasse and there is no settlement likely. Mr. Isaacson is disputing the Trustee's claim in the Client Security Fund.

I will continue this without appearance to September 18, 2018 at 10:00 a.m.

prior tentative ruling (1/23/18)

On November 28, 2017, counsel for the Trustee filed a status report. The only update was that he believes that he located a current address for Mr. Isaacson. Then in late December, the Court received a copy of a letter addressed to the State Bar Client Security Fund Commission and sent by the Law Offices of Brian D. McMahon, attorney for Mr. Isaacson. While it requests that I recuse myself, at this point I have no part of these proceedings.

Continue this status conference without appearance to June 19, 2018 at 10:00 a.m.

prior tentative ruling (8/29/17)

This Chapter 7 case was filed on November 29, 2006. Debtor was discharged on October 24, 2012. On May 15, 2017, an Order was entered granting application to employ Brutzkus Gubner as Trustee's General Counsel effective March 31, 2017. Thereafter, on July 31, 2017, an Order Setting Status Conference Hearing was entered.

On August 10, 2017, Trustee filed a Unilateral Status Report.

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CONT... Edwin Perry Hinds

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According to Trustee, Lon B. Issacson (the "Isaacson Creditors") had obtained a judgment over an attorneys' fees dispute with Debtor pre-petition. The judgment was for \$107,969.16 plus interest. Thereafter, the Isaacson Creditors filed an adversary proceeding in this case. The parties reached a settlement and the Court set a hearing on the settlement. At the hearing, the Court determined that the Debtor would pay the \$100,000 settlement to the estate instead of directly to the Isaacson Creditors. Also, the Court entered an Order directing the Isaacson Creditors to turn over \$100,000 to the Trustee. The Isaacson Creditors failed to comply and thereafter, most recently, the Trustee learned that Lon Isaacson had begun to misappropriate client funds from his trust accounts. He was formally disbarred in May 2013. Trustee has been attempting to reach Mr. Isaacson but has not been successful. Trustee's counsel advised Trustee that it may be most cost efficient to attempt to collect the \$100,000 by submitting a claim to the California State Bar Client Fund. Trustee believes the case should remain open for approximately 90 to 180 days pending a response from the State Bar Client Fund.

This matter is now off calendar. No appearance is required and no hearing will be held. In the future, please file a status report every 90-180 days.

Party Information

Debtor(s):

Edwin Perry Hinds

Represented By
Jonathan R Ellowitz - DISBARRED -

Trustee(s):

David R Hagen (TR)

Represented By
David Seror

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10:00 AM

1:09-18345 Narine Gumuryan

Chapter 7

Adv#: 1:19-01081 Bag Fund LLC v. Gumuryan

#2.01 Defendant's Motion to Dismiss Complaint

Docket 15

Tentative Ruling:

On 10/15/19 the Plaintiff filed an amended complaint. The initial complaint had been dismissed with leave to amend. The summary of the factual allegations as described in the prior tentative ruling [amended here by changes highlighted in bold] is as follows:

The complaint concerns a debt created through a credit card with Citibank. In February 1999, Narine Gumuryan (Narine) submitted her application for a credit card that was only available to California homeowners. In 2006, L&J Assets LLC (L&J) was assigned all of Citibank's rights in the credit card account. Debtor defaulted on 12/3/2004.

On June 10, 2006, L&J filed suit against Narine, Andranik Gumuryan (Andranik), and Louisine Katrdzhyan (Louisine) for fraudulent conveyance, breach of contract, account stated, and open book account, LASC LC74976 (the State Court Action). The fraudulent conveyance alleged that Narine had fraudulently conveyed her home at 7751 Allott (Allott) to Andranik, who later conveyed it to Louisine.

In 2007, L&J obtained a default judgment against all three defendants and recorded an abstract of judgment on May 21, 2007. L&J later assigned the judgment to Bag Fund, LLC (Bag Fund). Later, Narine filed this bankruptcy case on July 7, 2009, but did not list the debt to Bag Fund or include L&J or Bag Fund in the creditor matrix. There is no claim of exemption. Discharge was entered on February 4, 2010.

Based on the complaint and the motion for relief from stay, it appears that the timeline asserted is as follows:

2/1/99 - credit card application with Citibank - must be a CA homeowner

3/01 - Narine acquired 7751 Allott

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CONT... **Narine Gumuryan**

Chapter 7

12/3/04 - Debtor breached the credit agreement
8/22/05 - Debtor deeds Allot to her son Andranik for no consideration
10/5/05 - Andranik borrowed \$300,000 against Allott
3/21/06 - Andranik deed an interest in Allott to Louisine Katrdzhyan (Louisine) for no consideration
4/13/06 - Louisine borrowed \$416,000 against Allot (used to buy Bellaire)
***7/24/06** - a trust deed was recorded against Allot to secure repayment of a loan of **\$56,800** to Louisine and her husband Arthur Katrdzhyan (Arthur), who are related to Debtor and her son Andranik*
6/8/06 - Citibank assigned account to L&J Assets
6/16/06 - L&J filed suit against Debtor and others for breach of contract and fraudulent transfer (LC074976)
*12/15/06 - L&J obtained default judgment against **Narine and** transferees of Allot (**Andranik** and Louisine)*
5/21/07- abstract of judgment recorded against Allot
L&J assigned its judgment to Bag Fund
8/23/07 - Louisine transferred Allot to Louiza Mkrтчyan (Louiza) for no consideration.
at some time - lien recorded on Allot in favor of Boyadjyab for \$37,000
10/20/08 - Louiza transferred Allot to Manuk Gumuryan (Manuk, who is Debtor's son) for no consideration
12/10/08 - per superior court docket, judgment assigned by L&J Assets
7/7/09 - Debtor files chapter 7, debt to Bag Fund not listed nor are L&J or Bag Fund on creditor's matrix or on her schedules.
10/5/09 - Kalfayan filed §523 case for fraud and fraudulent transfer - (1:09-ap-01418).
2/4/10 - discharge entered
1/5/11 - Kalfayan and Debtor stipulate that the debt owed Kalfayan of about \$17,000 is non-dischargeable
5/23/14 – Allot transferred from Manuk, Arthur, and Louisine to Manuk, Andranik, and Louisine for no consideration.
2015 - Bag Fund receives notice of the bankruptcy
2015-2016 - there is a request to enter default judgment in the state court and an opposition by non-debtor defendants - per superior court docket
3/11/16 - motion to set aside judgment by non-debtor defendants - per superior court docket
6/28/16 - property transferred from the Manuk, Andranik, and Louisine to

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CONT... Narine Gumuryan Chapter 7

Andranik for no consideration and he borrows \$460,000 against it from United Wholesale Mortgage

11/21/18 - application for OSC re contempt filed by non-debtor parties in superior court - per superior court docket

11/28/18 - Bag Fund filed notice of bankruptcy in superior court - per superior court docket

1/29/19 - superior court hearing on OSC (why sanctions should not be imposed for engaging in bad faith tactics and violation of court orders) - taken under submission - per superior court docket

3/12/19 - superior court hearing on OSC re dismissal - taken under submission - per superior court docket

3/18/19 - superior court ruling on OSC re: dismissal and sanctions - per superior court docket

3/27/19 - bankruptcy case reopened

3/28/19 - motion to reconsider filed in superior court - per superior court docket

7/12/19 - §523 complaint filed - 1:19-ap-01081

The tentative ruling, which was adopted by the Court, was as follows:

The real issue here is when Bag Fund or L&J had actual (or even constructive) notice of the bankruptcy case. The complaint states that the chapter 7 case commenced on July 7, 2009 and that the debt to Bag Fund was not listed in the Defendant's schedules. Also that the Defendant did not include L&J or Bag Fun on the creditor matrix and that the Defendant did not inform L&J or Bag Fund of the filing. (¶¶ 19, 32, 33). It discusses the Kalfayan adversary proceeding, but does not indicate that it had any knowledge of it. (¶¶ 39-44). Nowhere in the complaint does it say when or how Bag Fund or L&J became aware of the bankruptcy.

The statute of limitations is generally an affirmative defense, but a complaint is required to include information as to the time or place when testing the sufficiency of the complaint. Fed.R.Bank.P. 7009 applying Fed.R.Bank.P 9(f). This complaint fails that requirement. There is no information in is as to the time that Bag Fund or its predecessor became aware of the bankruptcy case. It must be amended to include this

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CONT... Narine Gumuryan
information.

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As to the other allegations that are asserted to be factually incorrect, they would be resolved by a motion for summary judgment. However, Plaintiff is urged to review the chronology above and to the extent that it is correct and differs from that in the complaint, to make those corrections in the amended complaint.

The amended complaint has made only one factual change to include a date or information as to when L&J and/or Bag Fund received actual or constructive notice. In paragraph 36, the amended complaint states that "Bag Fund did not become aware of Defendant's bankruptcy filing until on or around November 28, 2018." There is no statement as to when or if L&J became aware or how Bag Fund became aware of the bankruptcy.

The Motion to Dismiss

The Motion to Dismiss is on several grounds.

(1) The amended complaint was not timely filed: The Court had ordered that an amended complaint is to be filed and served by October 11, 2019.

However this was filed on 10/15/19.

(2) L&J was aware of this bankruptcy by 5/25/16: On that date the Judge Brown issued a minute order that the bankruptcy court's record appears to indicate that Narine's debt to L&J was discharged. L&J's attorney was instructed to seek a determination of this from the bankruptcy court. This is in direct conflict with Bag Fund's statement that it was not aware of the bankruptcy until 11/28/18.

(3) Bag Fund's forgery and wrongful actions in the state court should bar it from proceeding in this court. - A list and evidence of false statements and forged documents in the state court are set forth.

Opposition

The discharge (2010) did not occur before the plaintiff had notice of the bankruptcy (whether 2016 or 2018). [*the Court is ignoring the various issues*

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CONT... Narine Gumuryan

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as to the content of the motion to dismiss and concentrating on what is relevant to whether the amended complaint is sufficient.]

While Kalfyan had actual notice of the bankruptcy prior to discharge since his complaint was filed in 2009, there is not link between Kalfyan and Bag Fund or L&J. So this is irrelevant. Kalfyan is included in the complaint only to support the allegations that Narine had fraudulently conveyed the Allott Property.

Failure to file on 10/11/19 was due to closure of the court on that day because of the Saddleridge Fire. The complaint was filed on the next day that the court was open.

While it appears that Bag Fund's counsel knew about the bankruptcy in 2015, he failed to notify Bag Fund of this. In fact, he withdrew due to illness. New counsel did not learn until 2018. Either way, this was long after the statute of limitations had run and of discharge. The only statute of limitations here is as to the fraudulent transfer and that only begins as a crime when the debtor has been granted or denied a discharge. But 18 USC §3284 does not apply - it only deals with concealment of assets because the malfeasance does not always come to light until after discharge. This does not deal with § 523(a) dischargeability. There is no statute of limitations on §523(a)(3) as set forth in FRBP 4007(b).

The amended complaint meets the requirements of Ashcroft v. Iqbal in that it contains sufficient matter, which is accepted as true, to state of claim for relief that is plausible on its face.

The opposition then includes the declaration of Conrad Otani as to whether the two documents circled on the Superior Court Case Summary (ex. A to the motion) exist and whether Ex. A was altered.

There is also a declaration of Karin Tan, counsel for BAG in 2015, that she had signed the request for renewal of judgment in 2015 and had never represented L&J.

Further, there is a declaration of Barry Coleman, who replaced Karin Tan in June 2015. She had authorized him to sign her name and he did so on the renewal of judgment. He became aware of this bankruptcy in June

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CONT... Narine Gumuryan

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2015 [*he does not state how he became aware of this*] and filed a notice of bankruptcy in the state court, but did not disclose this knowledge to his client.

The declaration by Ron Hacker, managing member of BAG, states that Coleman had not informed him or anyone in his office of the bankruptcy filing and that he only became aware of this in November 2018 when Debtor's counsel contacted him.

No Reply received as of 11/14/19/

Analysis and Proposed Ruling

This motion to dismiss can be determined on very narrow grounds: did the Plaintiff have actual or constructive notice of the bankruptcy within the time limit to file an adversary complaint under §523(a)(2), (4), or (6)? Because this is a motion to dismiss and not a motion for summary judgment, the Court considers all well-pleaded facts and matters presented for judicial notice. External evidence would convert this into a motion for summary judgment.

There is no dispute at this time that about 2015 Bag Fund received notice through its attorney that the bankruptcy case existed. The declarations that the attorney(s) did not inform the client of this is irrelevant since (1) the attorney was the agent of Bag Fund and (2) even if this was not actual knowledge (which it was), it constitutes constructive knowledge. To the extent that the amended complaint states that Bag Fund did not become aware of the filing until 2018 (¶36), it is incorrect and the Court can and does take judicial notice that the proper allegation must be 2015. Since L&J is alleged to have assigned the state court judgment to Bag Fund in 2007 or 2008, this was prepetition, so the knowledge of L&J is irrelevant.

FRBP 4007 and §523(a)(3)(B) apply and there is no statute of limitations for bringing this action. Thus the motion to dismiss on that ground is denied except that the first amended complaint is hereby amended as to ¶ 36 to replace "November 28, 2018" with "2015."

Party Information

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Debtor(s):

Narine Gumuryan

Represented By
Elena Steers
Martin Fox

Defendant(s):

Narine Gumuryan

Represented By
Jovi Usude

Plaintiff(s):

Bag Fund LLC

Represented By
Vincent J Quigg
Atyria S Clark

Trustee(s):

David Keith Gottlieb (TR)

Represented By
David Keith Gottlieb

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1:09-18345 Narine Gumuryan

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Adv#: 1:19-01081 Bag Fund LLC v. Gumuryan

#3.00 Status Conference re: Amended Complaint to determine nondischargeability under 1) 11 U.S.C. 523(a)(2)(A) 2) 11 U.S.C. 523(a)(3)(A) and (B); and 3) 11 U.S.C. 523 (a)(6)

fr. 9/10/19; 9/24/19

Docket 1

Tentative Ruling:

See cal. #2.01 as to the motion to dismiss.

Because of the motion to dismiss, I will excuse the participation of Mr. Usude on the joint status process. However, both sides are to participate as required in future status reports.

We have several matters to discuss. The first is where this trial is to take place. There is a dispute as to whether the bankruptcy court has exclusive jurisdiction over §523(a)(3)(B) matters or whether there is concurrent jurisdiction with the state court. This matter has proceeded to judgment in the state court and thus it might be proper to allow the state court to determine this - though I am not sure whether that means that the complaint is actually transferred to the state court (I don't think that there is a procedure for doing this) or deferred or dismissed with an instruction that this is to be tried by the state court (though that may mean that my decision in the motion to dismiss is irrelevant). Probably best to keep it here.

But that does not mean that the state court findings, etc. are irrelevant. Perhaps Plaintiff will be bringing a motion for summary judgment based on the state court determination, which is done in such cases. Or even a motion for summary or partial adjudication since so much of the complaint is based on recorded documents.

If not, it appears that we need a discovery schedule.

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As to the assertion that Exhibit A to the motion to dismiss was doctored. It does appear to be the case. How did Mr. Usude obtain the copy that he filed? It is clearly a printout from the superior court website, but he has removed the date of printing from the bottom of the page. I have just read and printed the same information from the superior court website (done 11/13/19) and find that the two dates in question (6/16/15 and 4/3/15) each merely state "Miscellaneous" with no text following that. This is an important issue and I want a declaration from Mr. Usude, a copy of what was actually printed out, and a declaration from anyone else involved in preparing Exhibit A.

Party Information

Debtor(s):

Narine Gumuryan

Represented By
Elena Steers
Martin Fox

Defendant(s):

Narine Gumuryan

Pro Se

Plaintiff(s):

Bag Fund LLC

Represented By
Vincent J Quigg

Trustee(s):

David Keith Gottlieb (TR)

Represented By
David Keith Gottlieb

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1:13-10386 Shirley Foose McClure

Chapter 11

#3.01 Status conference re: ch 11 case

fr. 1/24/2013, 4/30/13, 5/14/13, 7/23/13, 8/6/13,
9/17/13, 9/24/13, 11/19/13, 12/17/13, 1/21/14, 2/18/14,
3/11/14, 4/15/14, 5/6/14, 6/24/14, 9/9/14, 9/23/14,
10/7/14, 11/24/14, 1/6/15, 1/20/15, 2/10/15, 3/10/15,
4/28/15; 5/12/15; 9/29/15, 10/22/15, 12/8/15, 3/1/16,
6/7/16, 7/12/16, 8/16/16, 10/11/16; 12/20/16, 4/4/17,
5/16/17; 6/27/17, 7/11/17, 9/19/17, 11/14/17, 11/28/17,
12/19/17, 1/9/18, 3/19/18, 3/27/18, 5/1/18, 6/5/18; 6/26/18,
7/9/18; 8/7/18, 11/6/18; 12/18/18; 1/29/19; 2/12/19; 3/5/19
3/26/19; 4/16/19, 8/6/19, 10/8/19; 10/22/19

Docket 1

Tentative Ruling:

Having posted the tentative ruling and receiving responses, I sent a followup email that "I have now heard from all of the "players." I will continue the status conference without appearance to May 19, 2020 at 10:00 a.m. I know that Mr. Schulman did not include this, but if he actively needs to appear, we can deal with that closer to the date. So please put the May 19 date on your calendars and provide me with a joint status report prior to that hearing."

Original tentative ruling for 11/19/20:

On 10/24/19 the Court entered its order sustaining the objections to the Amended and Second Amended Schedule C. Ms. McClure filed an appeal of that order, which is now pending in the district court. Is there any reason to have a further status conference for at least the next six months? Please feel free to attend this by phone or stipulate to a continued date (suggested dates would be May 19, June 2, or June 23). Of course, if anything comes up in the meantime, you can always set a hearing.

prior tentative ruling (10/22/19):

On 9/27/19 the Trustee filed a status report that he has considered the options. It is clear to him that the Tidus defendants will not offer more than the \$100,000, though they do continue to discuss restructuring the settlement.

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Abandonment to McClure is not in the best interest of the estate and the offer of a contingent recovery is unlikely to bring in any money since there is not a strong potential that the Debtor will recover more than \$100,000 in the litigation, in fact there will likely be no damages. For that same reason, the Trustee does not believe that it will be in the best interest of the estate for him to litigate it.

For those reasons the Trustee has taken an appeal. It is assigned to Judge Wu, 2:19-cv-07780.

Court: because of the appeal, I really can't do anything further on the Tidus matter. I need to await a decision by Judge Wu and, perhaps the Ninth Circuit. Is there anything else that the Trustee needs to do to administer this estate?

On 10/10, Ms. McClure filed a status report as to the Tidus case. Because of the Trustee's appeal, she is moving forward on an alternate path to prepare the case evidence. She then details that some of the claims belong to the estate and some are personal. She wants to add a personal separate intentional breach of fiduciary duty and intentional inflictions on emotional distress claim to the state court action against the Tidus defendants. She only found out about these with the 2017 discovery production.

She seeks the Court's permission to speak with and obtain documents from the Farley Firm, the Plaintiff's expert, and the Trustee. These parties need authority from the bankruptcy court to cooperate with McClure. Because the appeal is pending, she feels that she needs bankruptcy court permission to appear in the Tidus case.

Litt takes no position since this does not involve him. He is not aware that Litt or Schulman have been listed as non-retained expert witnesses in the Tidus case. As of 10/18, the Court has not received a response by the Trustee.

I do not believe that this is dependant on whether McClure has an exemption in the Tidus case since, if my order denying the motion is not reversed on appeal, it is possible that the Tidus case will be abandoned or that McClure will take control on behalf of the estate or that the Trustee will move forward and this discovery will assist him.

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prior tentative ruling (8/6/19)

Ms. McClure filed (under seal) a report on her health and her personal claims against the Litt parties. There is no reason for this to be under seal and unless McClure convinces me otherwise, I will unseal it.

In short, she intends to bring a motion to determine which claims with Litt were not property of the estate.

She also filed an amended Schedule C claiming the Litt and Tidus claims as exempt. Will the Trustee be objecting to this?

Litt also filed a status report. This addresses the McClure issue of the effect of the settlement order.

If either party seeks a "clarification" or other modification of my settlement order, please bring that through a proper motion or other means. I am not sure that there is such a thing as a motion to clarify, but I am sure that there is a method to obtain a ruling as to what was sold (what is property of the estate).

prior tentative ruling (4/16/19):

At the 4/16 status conference the Court will determine which - if any - filed exhibits are to be kept under seal. On April 12 an email with a list was sent to Ms. McClure and the attorneys for the Litt Parties and for the Trustee. Also, the Court will discuss my intent to send this out for a global mediation before Judge Jury (ret). A copy of that notice was forwarded to Mr. Dahlberg, Ms. McClure, and Mr. Shulman and Mr. Dahlberg was asked to make sure that it is sent to the other parties named in the notice.

prior tentative ruling (3/26/19)

Continue without appearance to April 16, 2019 at 10:00 a.m. No new status report will be needed for that hearing.

prior tentative ruling (2/8/19)

Per the Trustee's status report, McClure withdrew her appeal of the Pacific Merchantile settlement and the Ninth Circuit has dismissed the appeal.

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CONT... Shirley Foose McClure

Chapter 11

As to the settlement with Litt, Judge Wu has continued the status conference in the consolidated Litt appeals to March 7, 2019 and has indicated that he is not inclined to grant further continuances. The Trustee therefore requests a speedy determination of the motion for reconsideration so as to avoid unnecessary litigation costs in the consolidated Litt appeals. Because of the death of Ms. McClure's son Jeff, the motion to reconsider has been continued to 3/26.

The motion to sell the Maui property is set to be heard on 3/5/19.

I sent an email to Judge Wu, advising him of the situation and that I am continuing the motion to reconsider to 3/26. I also advised him that I expect to rule soon thereafter as no other papers may be filed. As of 3/4 at 10:00 a.m., I have not had a response from Judge Wu.

The status conference is continued to 3/26/19 at 10:00 a.m. I don't see any reason that anyone should appear in person or by phone on March 5.

Cont

prior tentative ruling (2/12/19)

Continue without appearance to 3/5/19 at 10:00 a.m. Although documents are being filed for 2/12, there will be no hearing at that time. I am also advising the parties by email of this.

prior tentative ruling (11/6/18)

Ms. McClure has until Nov. 20 to file her motion for reconsideration. Meanwhile, she has filed an emergency motion for a stay pending the hearing on her motion for reconsideration. The Trustee opposes.

This would be a short stay, only so that the Court can adequately review the motion(s) to reconsider. While it took many months for the Court to do the detailed analysis and I believe that it is thorough and correct, it is appropriate to allow Ms. McClure to try to point out errors that may have been made. Given that the matters in the Superior Court are not immediate, the Court intends to grant the stay and will hear brief argument at the 11/6 status

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CONT... Shirley Foose McClure Chapter 11

conference. It seems to me that the stay should expire 14 days after I enter my order on the motion(s) to reconsider.

Per the Trustee's status report filed on 10/31/18, the Maui property is in escrow.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

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1:16-11538 Majestic Air, Inc.

Chapter 11

#4.00 Application for Compensation Fifth Interim Application by Havkin & Shrago

Period: 9/21/2018 to 10/21/2019,
Fee: \$12,292.50, Expenses: \$65.88.

Docket 318

Tentative Ruling:

No opposition received as of 11/17/19. Approve as requested. Appearance waived.

If you submit on this tentative ruling, no appearance is necessary. If you choose to appear and the final ruling is in conformance with the tentative ruling, no additional fees will be allowed for this appearance. If the trustee's firm is representing the trustee, no attorney's fees will be allowed for an appearance on this matter, as the trustee would be expected to be present as part of the trustee's duties.

THE TRUSTEE/DEBTOR IN POSSESSION IS TO NOTIFY ALL PROFESSIONALS OF THIS TENTATIVE RULING.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Movant(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

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1:16-11538 Majestic Air, Inc.

Chapter 11

Adv#: 1:18-01133 Majestic Air, Inc. et al v. Lufthansa Technik Philippines, Inc.

#5.00 Lufthansa Technik Philippines Inc.'s Motion
to Clarify the Order Granting Motion to
Dismiss the Complaint With Leave to Amend

Docket 73

Tentative Ruling:

PLEASE NOTE THAT ON 11/15/19 LTP FILED A MOTION TO DISMISS THE SECOND AMENDED COMPLAINT, WHICH IS SET FOR 12/17/19. LET'S DISCUSS THE STATUS OF THAT AS IT DEALS WITH THE APPEAL.

Defendant Lufthansa Technik Philippines ("LTP") moves to clarify the Order Granting Motion to Dismiss the Complaint with Leave to Amend (the "Order"), entered by the Court on September 25, 2019.

Background

LTP moved to dismiss the operative first Amended Complaint ("FAC") in this action, pursuant to Fed. R. Civ. P. 12(b)(6). The FAC, filed by plaintiffs Majestic Air ("Majestic") and Tessie Cue ("Cue", the owner and CEO of Majestic), asserted (i) an indemnity cause of action against LTP and (ii) four objections to LTP's proof of claim filed in Majestic's chapter 11 case.

The Court heard LTP's motion to dismiss on September 24, 2019. At the conclusion of the hearing, the Judge advised the parties that she intended to adopt her tentative ruling that had been posted prior to the hearing (the "Tentative Ruling").

On September 25, 2019, the Court entered (i) the Order (Dkt. 52) and (ii) the Tentative Ruling (Dkt. 52). The Order stated that based on the Tentative Ruling, "the Motion to Dismiss the Complaint is granted with leave to amend." The Tentative Ruling not only ruled that the FAC was dismissed with leave to amend, it also ruled on Majestic's objections to LTP's claim, as follows:

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CONT...

Majestic Air, Inc.

Chapter 11

- Majestic's objection to the claim for aircraft parts is sustained;
- Majestic's objection to the claim for attorney's fees will require an evidentiary hearing to address the issues outlined above; and
- Majestic may waive its objection based on the failure to file the Majestic Agreement, or the Court will enter an order for LTP to file the Majestic Agreement under seal.

Tentative Ruling (Dkt.51) at 25:25 – 26:3.

On October 7, 2019, LTP filed a Notice of Appeal (Dkt. 55) from "The Order (ECF No. 52) in which the Court adopted the Tentative Ruling (ECF No. 51) sustaining Majestic and Cue's objection to Lufthansa's Proof of Claim re: consigned parts, as described in ECF No. 51, 21:5-21; 25:24-25."

Motion

LTP has filed this motion to clarify the Order and Tentative Ruling sustaining Majestic's objection to LTP's claim for spare aircraft parts. LTP argues that clarification is necessary as the Tentative Ruling sustained the objection, but the Order did not address LTP's claim for spare parts.

Opposition

The opposition agrees that the Order does not address the portion of the Tentative Ruling dealing with the claim for spare aircraft parts. However, it sees no reason to amend since the record is clear. But if the Court does wish to amend, it suggests that the Court should adopt its Tentative Ruling in full, except as modified by the Order.

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CONT... **Majestic Air, Inc.**

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Reply

There needs to be a separate document from the memorandum or opinion under FRCP 58(a). This clarification is needed because there is no separate order that includes the part of the Tentative Ruling on the spare parts.

The ruling on the spare parts claim is not interlocutory because it finally determined that discrete issue.

Analysis

As LTP filed an appeal prior to this motion to clarify, the Court must address whether it has the jurisdiction to hear this motion. Generally, the timely filing of a notice of appeal divests the trial court of jurisdiction. *Rains v. Flinn (In re Rains)*, 428 F.3d 893, 903 (9th Cir.2005).

However, this divesture rule is not absolute. *Rains*, 428 F.3d at 903. Rather, "it is a judge-made doctrine that is designed to promote judicial economy and to avoid the confusion and ineptitude resulting when two courts are dealing with the same issue at the same time." *In re Mirzai*, 236 B.R. 8, 10 (B.A.P. 9th Cir. 1999)(citing *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982)). As a result, a number of courts in the Ninth Circuit have stated that the trial court remains able to "correct clerical errors, take steps to maintain the status quo, take steps that aid in the appeal, award attorney's fees, impose sanctions, and proceed with matters not involved in the appeal." See *Mirzai*, 236 B.R. at 10 (B.A.P. 9th Cir. 1999)(citing *Pyrodyne Corp. v. Pyrotronics Corp.*, 847 F.2d 1398, 1403 (9th Cir.1988)); *In re Den Beste*, 2012 WL 2122341, at *11 (B.A.P. 9th Cir. June 12, 2012); *Mastro v. Rigby (In re Imperial Real Estate Corp.)*, 234 B.R. 760, 762 (9th Cir. BAP 1999); *In re Price*, 410 B.R. 51, 56 (Bankr. E.D. Cal. 2009).

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CONT... **Majestic Air, Inc.**

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In this case, the Court can correct its clerical error and take steps to aid in the pending appeal. The Tentative Ruling ruled on Majestic's objection to LTP's claim, but that ruling was inadvertently omitted in the Order. Without the Court correcting this error, the Order and the Tentative Ruling will remain inconsistent. This can only cause confusion, wasting the time of the District Court and the parties, and possibly causing the District Court to remand the appeal to this Court only to answer the question posed by this pending motion. Granting this motion to clarify will promote judicial economy.

Proposed Ruling:

The "Order Granting Motion to Dismiss the Complaint with Leave to Amend (DKT.32)", number 52 on the docket of this adversary proceeding, hereby clarified by the addition on the following language at the end of the Order:

Based on the tentative ruling filed concurrently with this order (the "Tentative Ruling") and the arguments made at the hearing, Majestic's objection to the claim for aircraft parts is sustained; Majestic's objection to the claim for attorney's fees will require an evidentiary hearing to address the issues outlined in the Tentative Ruling; and Majestic may waive its objection based on the failure to file the Majestic Agreement (as defined in the Tentative Ruling), or the Court will enter an order for LTP to file the Majestic Agreement under seal.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Defendant(s):

Lufthansa Technik Philippines, Inc.

Represented By
Dawn M Coulson
Scott D Cunningham

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Plaintiff(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Tessie Cue

Represented By
Stella A Havkin

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1:17-10853 Joseph Daniel Beam

Chapter 7

Adv#: 1:17-01046 Henderson v. Beam

#6.00 Status Conference Re:
Complaint for Fraudulent Activity in
Bankruptcy Case.

fr. 5/7/19; 7/16/19; 7/30/19; 9/24/19

Docket 1

Tentative Ruling:

Ms. Henderson has submitted a copy of the minute order of Judge Dordi on August 22, 2019. Was this served on Ms. Moreno?

Per Judge Dordi's order:

(1) The Naviant student loans of Henderson are her sole and separate debt.

(2) All debts accumulated from the date of marriage until the separation in 2010 are confirmed to Beam as his separate debts under Family Code §2622(b) and he is to hold Henderson harmless from them.

(3) There are a list of debts accumulated by Henderson after the date of separation and they are for her necessities of life under Family Code 2523 and are awarded to Beam to pay and he is to hold Henderson harmless from them [5 accounts are listed].

(4) Beam is to pay spousal support of \$1,100 per month starting 9/15/19.

How does this impact on the §727 complaint? Does Henderson intend to proceed? If so, what discovery needs to be done?

prior tentative ruling (9/24/19)

On July 30, there was a joint status conference with Judge Dordi of the Superior Court. This status conference on Sept. 24 is to update me on the status of the dissolution case. It also includes a claim for support and that would effect the dischargeability of the support amount ruled in favor of Ms.

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CONT... **Joseph Daniel Beam**

Chapter 7

Henderson. As to this adversary proceeding, Henderson explained that her concern is that there will be a determination that some portion of the community debt is attributable to Mr. Beam alone, but that this will be discharged as to him in this bankruptcy and that she would be left subject to that portion of the debt as well as to the part attributable to her. Thus, she wants to deny him the discharge so that he is liable for all of the community debt or that she can seek to collect his portion from him.

Once the support issue is resolved, this adversary proceeding should either be dismissed or go to trial.

prior tentative ruling (7/30/19)

On 7/10/19, Plaintiff filed a status report. She said that she failed to appear because the superior court issues were delayed, so she thought that the hearing in the bankruptcy court was cancelled. She then set a last minute job interview. She wishes the court to continue prior court orders (10/4/17) lifting the automatic stay on the Debtor. She then goes through the facts in the superior court dissolution case.

The property division did not take place before the bankruptcy, so Judge Barash properly entered an order lifting the automatic stay. She goes on to argue that the delays in the superior court were due to Debtor's counsel. She wants this hearing continued until after the superior court trial (no date set for that) and wants sanctions against Attorney Moreno for causing the delays in the state and federal courts.

Proposed ruling: The order lifting the automatic stay does not have to be renewed. It continues in effect as set forth therein. I am still not convinced that I should wait for the superior court ruling. I think that it would be a good idea for me to either talk to the superior court judge as to scheduling or hold a joint status conference with the superior court judge. I am not just going to continue this on with no end in sight. As to sanctions against counsel, I have no authority to grant them as to the state court case and - as of this point - no reason to grant them as to this case.

prior tentative ruling (5/7/19)

This arises out of a family law case. According to the Debtor's status

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CONT... Joseph Daniel Beam

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report, the family law judge is requiring briefs as to marital debts and the proposed division between the parties. The family law trial setting conference is set for 6/12/19. In this court, the defendant estimates one hour to present his case-in-chief.

This is a §727 case to deny discharge and the family law division of property may not be relevant. The crux of the complaint is that the debtor (sometimes through his attorney) knowingly filed improper paperwork; that this was a careless and frivolous bankruptcy case meant to delay and frustrate the divorce proceedings; that debtor failed to notify creditors of "intention to file bankruptcy;" and that debtor failed to disclose his true income and assets. The complaint also specifies the following reasons to deny discharge as to what items are listed on or omitted from the schedules and statement of affairs:

- (1) He declared debts that were solely owed by plaintiff and are not community debts
- (2) He claimed to own no property - the complaint lists a series of personal property, particularly automation. It also specifies income received from a pre-petition art sale and money he removed from an education fund for their son. There is also a pension account that was not revealed.
- (3) There were unsecured debts that he did not disclose, specifically for a previously repossessed car, a judgment by American Express, and a City of Los Angeles tax bill.
- (4) He did not reveal past spousal support paid or owed and other related family support payments made in 2014 through April 2016.
- (5) He did not list any expenses, though he has paid them.
- (6) He did not list gifts from his mother and friends in the approximate sum of \$50,000. He lives rent free and does not pay utilities or living costs.
- (7) There are a lot of debts from the marriage, but he did not declare them as codebtor obligations.
- (8) He declared a lower income than he actual receives.
- (9) He under-reported the attorney fees that he has paid to his counsel.

Plaintiff is also complaining of fraudulent activity of counsel (Kathleen Moreno) in that she knowingly filed this case "with no intent not to file proper documents." [Note that the complaint does not actually name Ms. Moreno as a co-defendant and she would not be subject to §727 as she is not the

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10:00 AM

CONT... Joseph Daniel Beam
debtor.]

Chapter 7

Debtor's answer denies all allegations.

Since filing, this case has been largely on hold pending the state court dissolution proceedings.

As I review the complaint, it may not be worthwhile to wait until the family law court has acted - or it may be the best way. Clearly some of these actions were prepetition and non-financial or may have been too early to be included in the schedules. Perhaps it is best to rule on those specifics. Some of the others may be resolved in the family law proceeding - such as assets actually owned and debts actually owed.

Plaintiff has to realize that a §727 action will block the discharge of ALL debts, not just of those owed to her (which are already protected under §523). This means that other creditors will have as much right to seek payment as she does and that may prevent her from actually timely collecting future spousal support, etc. However, this is a §727 complaint and if she decides to dismiss it, the Trustee must be notified and may wish to take over the case.

Let's talk.

Party Information

Debtor(s):

Joseph Daniel Beam

Represented By
Kathleen A Moreno

Defendant(s):

Joseph Daniel Beam

Represented By
Kathleen A Moreno

Plaintiff(s):

Ellen Henderson

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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10:00 AM

1:17-10853 Joseph Daniel Beam

Chapter 7

Adv#: 1:17-01046 Henderson v. Beam

#7.00 Motion for Order to Show Cause re: Counsel for debtor defendant to be subject to sanctions for failure to personally appear at status conference pursuant to LBR 7016-1(f)&(g)

Docket 49

Tentative Ruling:

THERE IS NO PROOF OF SERVICE AND NO RESPONSE HAS BEEN RECEIVED AS OF 11/17. IF THIS WAS PROPERLY SERVED, THE FOLLOWING WOULD BE THE TENTATIVE RULING:

Ms. Henderson, the plaintiff in this §727 adversary proceeding, seeks a Order to Show Cause why the Kathleen Moreno, attorney for the defendant, should not be sanctioned for failure to personally appear at the September 24, 2019 status conference. Not only did counsel not appear, but she did not even file a status report. A substitute attorney appeared for her, but that counsel came 2 hours late and testified that she only received a phone call from Ms. Moreno late that morning asking her to appear. The substitute counsel did not know the name of the case, the case number, or the purpose of the hearing. Thus the hearing could not proceed and had to be delayed.

Previously Ms. Moreno was subject to an osc re:contempt for failure to appear on July 13, 2017 and for an osc for failure to file disclosure of compensation (11 USC §329) on defendant's first case (16-13291), which was dismissed for failure to file the required documents.

This motion seeks sanctions of up to \$1,000 under LBR 7016-1(a)(1) & (2), and (f)(3).

No opposition received as of 11/14. Was this properly served? No proof of service has been filed.

Analysis

I am somewhat confused by the issue of Ms. Moreno's disclosure of

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CONT... Joseph Daniel Beam

Chapter 7

compensation in the 2016 case. That case was dismissed three years ago. There is a statement of compensation in this 2017 case (doc. 16, p. 45). It shows that she is working without compensation.

As to the failure to appear at the September 24, 2019 status conference and to file a status report, this does seem to be a pattern. It must stop. Ms. Henderson is not an attorney and is not entitled to attorney fees, but LBR 7016-1(f) states:

In addition to the sanctions authorized by F.R.Civ.P. 16(f), if a status conference statement or a joint proposed pretrial stipulation is not filed or lodged within the times set forth in subsections (a), (b), or (e), respectively, of this rule, the court may order one or more of the following:

- (1) A continuance of the trial date, if no prejudice is involved to the party who is not at fault;
- (2) Entry of a pretrial order based conforming party's proposed description of the facts and law;
- (3) An award of monetary sanctions including attorneys' fees against the party at fault and/or counsel, payable to the party not at fault; and/or
- (4) An award of non-monetary sanctions against the party at fault including entry of judgment of dismissal or the entry of an order striking the answer and entering a default.

It is appropriate that Ms. Henderson be compensated for her time, effort, and irritation due to the failure of Ms. Moreno to carry out her required duties as counsel for the Debtor/Defendant. However, \$1,000 seems to be excessive.

Party Information

Debtor(s):

Joseph Daniel Beam

Represented By
Kathleen A Moreno

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CONT... Joseph Daniel Beam

Chapter 7

Defendant(s):

Joseph Daniel Beam

Represented By
Kathleen A Moreno

Plaintiff(s):

Ellen Henderson

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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9:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#1.00 Trial

re: complaint
to set aside or annul fraudulent conveyances
alter ego and for damages

fr. 4/27/11, 6/15/11, 10/4/11, 1/24/12, 4/10/12, 5/29/12,
6/19/12, 9/11/12, 10/2/12, 11/6/12, 3/19/13, 6/4/13, 8/27/13,
11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15;
1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17,
2/21/17, 3/28/17, 5/30/17; 7/25/17; 11/14/17; 2/27/18; 4/17/18,
6/26/18, 9/25/18; 12/18/18, 1/29/19; 2/12/19, 8/20/19

Docket 1

Tentative Ruling:

Trial has not been set except as to the issues in Campbell v. Pyle. That trial is being delayed due to the substitution of attorney for Campbell.

prior tentative ruling (8/20/19):

The trial estimate is between two and four days. Here are some possible dates. Counsel need to work these out:

- the week of March 25-29
- the week of April 8-12
- the week of April 15-19
- the week of April 29-May 3

Some dates during each of these weeks will be excluded due to my motion calendars and the possibility that there will not be a courtroom available. When you are told me which week(s) work for you. I can set the exact dates. BTW, I do not believe that this trial will take more than three days and may well be over in two days.

Party Information

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CONT... Glen E Pyle

Chapter 7

Debtor(s):

Glen E Pyle

Pro Se

Defendant(s):

Glen E Pyle

Represented By
Raymond H. Aver

Sweetwater Management Company

Pro Se

Glen E Pyle Irrevocable Trust

Represented By
Raymond H. Aver

Plaintiff(s):

Marc H Berry

Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

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9:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#2.00 Status Conference Re:
Motion to Continue Hearing On
(related documents 246 Pre Trial Stipulation)
Continue Trial and Related Deadlines (523 Action)

fr. 4/29/19, 6/2/19, 8/20/19

Docket 263

Tentative Ruling:

This trial needs to be coordinated with the Campell one.

Party Information

Debtor(s):

Glen E Pyle Pro Se

Defendant(s):

Glen E Pyle Represented By
Raymond H. Aver

Sweetwater Management Company Pro Se

Glen E Pyle Irrevocable Trust Represented By
Raymond H. Aver

Plaintiff(s):

Marc H Berry Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR) Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

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CONT...

Glen E Pyle

Chapter 7

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9:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

#3.00 Trial Re: Third Amended complaint for nondischargeability and/or to deny Bankruptcy Discharge; Alter Ego; and for Damages (727 Action)

fr. 5/11/11, 6/22/11, 10/4/11, 1/24/12, 2/14/12, 4/24/12, 6/19/12, 9/11/12, 10/2/12, 11/6/12, 2/12/13, 3/19/13, 8/27/13, 8/27/13, 11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14, 12/16/14, 3/10/15; 5/12/15; 6/2/15, 9/1/15, 9/8/15, 11/17/15; 1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17, 2/21/17, 3/28/17, 1/14/17, 12/19/17, 1/23/18, 3/27/18, 7/17/18, 8/21/18, 9/25/18, 11/6/18; 12/18/18; 1/29/19, 3/26/19, 4/30/19, 7/2/19, 8/20/19

Docket 111

Tentative Ruling:

Trial was scheduled for 11/20/19 however Mr. King needed to substitute out for health reasons. Therefore this will be a status conference to reset the trial date and discuss settlement.

prior tentative ruling (8/20/19):

Per the status report filed by Mr. King on 8/16, there are major gaps in the documents that were turned over. While I don't necessarily need to declare a default (although I can do that), it seems that the best way to prevent Mr. Pyle from providing any further documents and lets just take this to trial.

prior tentative ruling (7/2/19)

On 6/28, Plaintiff filed a request for entry of default. This will be handled by the clerk's office. However, Mr. Pyle had answered the second amended complaint, so I am not sure that there should be a total default as to the third amended complaint except as to any new allegations or claims for relief. The

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CONT...

Glen E Pyle

Chapter 7

same claims for relief exist, but new facts are alleged in ¶¶ 13-25 of the third amended complaint. There would still have to be a prove-up as to these, though some are the basis of the state court judgment of which the court can take judicial notice.

Even if default is entered, that does not automatically lead to a judgment. But it might make a difference in the timing. At the hearing on 3/26/19, I decided to bifurcate this case and take the fraudulent conveyance portion forward with the Berry v.Pyle trial, which was set for 4/30. That was continued. At the 3/26 hearing, Mr. King stated that he would obtain documents that Mr. Pyle had turned over and are in the possession of Mr. Pena or Mr. Aver. He can go forward without further production.

Because of the default - if entered - it might be possible to proceed without delay as to the §523 and §727 matters. This would require a prove-up. Mr. Pyle could object to evidence, but would be prevented from putting on a defense. Meanwhile the fraudulent conveyance trial could proceed in the other adversary and it is possible that Mr. King would not participate. Let's talk about this and move everything forward.

prior tentative ruling (3/26/19):

A third amended complaint was filed on 2/20/19. No response has been filed as of 3/22. The response was due on or about 3/13.

prior tentative ruling (1/29/19)

The case is now proceeding. Continue to a future date. HOWEVER, MR. KING SINCE THIS IS AN ACTIVELY LITIGATED CASE, PLEASE SIGN UP FOR CM/ECF ACCESS TO OUR COURT AND TO USE LOU (LODGED ORDER UPLOAD). See Court Manual Sec. 3.1, p. 3-3 and LBR 5005-4.

prior tentative ruling (7/17/18)

The order granting relief from the automatic stay was entered on 1/30/18. On 3/6 Mr. Campbell appeared in Court and wanted to know about the order. He had not been served with a copy of the order - our fault. I directed him to my law clerk, but he left without seeing her. On March 1, 2018, Judge Hammock continued his OSC re: Dismissal (BC416442) to July 5 so that Campbell could

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CONT...

Glen E Pyle

Chapter 7

seek a judgment (he already has a default) on declaration. As soon as he has obtained his judgment, I will be ready to proceed. When will he be filing his declaration, etc. in the Superior Court? Should this status conference be continued until after July 5 or can we proceed before that?

prior tentative ruling (1/23/18)

Mr. Campbell has filed the motion for relief from stay to complete the superior court case. Continue this status conference to March 27, 2018 at 9:00 a.m. to allow him to obtain his judgment in the superior court.

prior tentative ruling (12/19/17)

I have been in contact with Judge. Hammock of the Superior Court. He advises me that all that is left to do in his case is for Mr. Campbell to file a motion for default judgment. The automatic stay is preventing this.

To move that case forward, Mr. Campbell is to file a motion in this court for relief from the automatic stay. This is to be filed and served no later than December 26. It is to be served by mail and by email on Mr. Pyle. The hearing will be on January 23, 2018 at 10:00 a.m. in courtroom 303. Mr. Campbell is to use the mandatory court form: F 4001-1.RFS.NONBK.MOTION. This is available on the Court website at www.cacb.uscourts.gov/forms/local_bankruptcy_rules_forms. Or you can obtain a copy at the filing window in the clerk's office.

prior tentative ruling (11/14/17)

The Court advised Mr. Campbell of the continuance of the Berry v. Pyle case. He does wish to appear on 11/14. The Court has called Mr. Aver's office and asked them to contact Mr. Pyle (who is pro se in this adversary proceeding) to advise him that the hearing on 11/14 is going forward and that Mr. Pyle is to appear on the phone or in person and instruct him on how to use Court Call. The Court was notified that he also wishes to appear.

What is the status of the state court matter?

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CONT... Glen E Pyle

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prior tentative ruling (3/28/17)

This adversary proceeding has been trailing the Berry v. Pyle one, but it has some different issues. How does Mr. Campbell wish to proceed?

prior tentative ruling (1/17/17)

I believe that Mr. Campbell was trying to obtain counsel. It is best to keep this together with Berry v. Pyle. Therefore continue it without appearance to 2/21/17 at 10:00 a.m. when I have a hearing on the motion for summary judgment in the Berry v. Pyle case.

prior tentative ruling (8/2/16)

Mr. Campbell is now representing himself. How does he wish to proceed to get this ready for trial?

prior tentative ruling (3/1/16)

Per the status report filed by Plaintiff on 2/23/16, discovery is not complete. Plaintiff wants to take Mr. Pyle's deposition and audit the records.

This was trailing the Berry v. Pyle matter, but given Mr. Berry's health, I think that it should go forward alone and complete the discovery. Feel free to appear by phone at the status conference and let's get some dates to complete discovery. Please advise Mr. Pyle, who is not represented by counsel in this case, to appear in person or by phone.

prior tentative ruling (1/12/16)

This has nothing to do with Mr. Berry's health and Mr. Pyle is not represented by counsel. The 1/5/16 status report said that plaintiff will be ready for trial on 2/1. He figures 2-3 days. Let's set a trial date. Possible dates when there is a courtroom available are Feb. 16-17 and Mar. 23-24.

prior tentative ruling (9/8/15)

This has been trailing Berry v. Pyle. On 8/18/18 Plaintiff filed a status report. He is ready to go to trial in February 2016. He needs another 4-6 months to complete discovery, which includes Mr. Pyle's deposition and an audit of the records.

In htis case Mr. Pyle is not represented by counsel. So let's get a deposition

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CONT... Glen E Pyle

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date and move forward.

prior tentative ruling (3/10/15)

Mediation set for 3/24/15. Continue without appearance to 5/12/15 at 1:00 a.m

prior tentative ruling (10/7/14)

The mediation has been delayed. Continue without appearance to 12/16/14 at 10:00 a.m.

prior tentative ruling (8/5/14)

The Berry v. Pyle matter is scheduled for a settlement conference before Judge Ryan on 9/22/14. Is this case part of the settlement conference? If so, continue without appearance to 10/7/14 at 10:00 a.m. If not, the status report filed by Plaintiff on 7/21 requests mediation. How do you wish to proceed?

prior tentative ruling (4/22/14)

On 4/8/14, counsel for plaintiff filed a status report. He believes that he will be ready for trial in 6 months. There is still discovery to be done, including completing Debtor's deposition. A mediation will take place in May or June.

Continue without appearance to August 5, 2014 at 10:00 a.m.

prior tentative ruling (3/11/14)

This complaint is both under §523 and §727 as well as §§547 and 548. This has been trailing the Berry v. Pyle adversary proceeding. Mr. Mendoza attended the 2/10/14 deposition of Mr. Pyle, which is a joint deposition in both this case and the Berry v. Pyle case. Pyle is not represented by counsel in this adversary proceeding.

Mr. Mendoza, should this continue to trail the Berry adversary or are you ready to go forward on your own?

prior tentative ruling (4/24)

The parties have stipulated that plaintiff will have until 4/20 to file a Second Amended Complaint. A second amended complaint was filed on 4/20. Per the status report, the parties think that they need 4-5 months to complete

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CONT...

Glen E Pyle

Chapter 7

discovery. The parties wish to mediate. Plaintiff has no co-counsel and may wish to propound more discovery and seek relief from stay as to certain trust assets.

Continue the status conference without appearance to June 19 at 10:00 a.m.
This will allow sufficient time for there to be a response to the second amended complaint and for new co-counsel to move forward. In the meantime, please complete a mediation order since it often takes weeks to schedule a mediation.

prior tentative ruling (2/14)

Per the status report filed on 1/24, the parties feel that they will not be ready for trial until late in 2012. Set a discovery cutoff date of 7/30/12. Although neither party wants mediation at this time, plaintiff's counsel is willing to attend mediation.

As of 2/12 there is no response to the amended complaint. What is the status of that? When do the parties think that mediation might be beneficial?

prior tentative ruling (1/24)

An answer was filed on 7/15. Plaintiff filed an amended complaint on 1/12, but this was done without leave to amend.

Counsel, in the future please confer with knowledgeable bankruptcy counsel before filing things in bankruptcy court. Your original cover sheet indicated that this was only a complaint to recover money under §§547 and 548. That is incorrect. The original complaint is under §523 and §727 (although that is not mentioned on the caption) and may include §§547 and 548 (although the uploaded copy has some pages missing, so I can't tell for sure). The amended complaint has all of these claims for relief. The court picked up that there was a §727 claim, but we should not have to review the complaint to do this.

prior tentative ruling (10/4)

Nothing further received as of 10/2.

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CONT... Glen E Pyle

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prior tentative ruling (6/22)

As of 5/9 there has been no return on service on the summons. The plaintiff has counsel. There is no status report as of 5/8. If there is no appearance at the 5/11 hearing, I will issue and OSC re: dismissal for failure to prosecute.

Party Information

Debtor(s):

Glen E Pyle

Pro Se

Defendant(s):

Glen Pyle

Pro Se

Plaintiff(s):

Ian Campbell

Represented By
Barry P King

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

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Hearing Room 303

10:00 AM

: Gallegos
Misc#: 1:15-00105 Gallegos

Chapter 0

#1.00 Application and Order for Appearance and Examination

Docket 27

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

This was continued from September because the movant had not been able to make service. Assuming that service was made for the December 3 hearing, check in with the court recorder, who will swear the witness. Then go into one of the attorney rooms and conduct your examination. At the conclusion of the examination, come back to the courtroom so that the witness can be excused or ordered back. If the courtroom is locked, please come to my chambers and we will reopen the courtroom.

If service has not been made, please notify Emma Gonzalez at 818-597-2832. If it was made and the judgment debtor does not appear, wait 15 minutes and let Emma know.

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Hearing Room 303

10:00 AM

1:09-19088 Tariq Kahn Afridi and Elizabeth Rose Afridi

Chapter 7

#2.00 Trustee's third status report

fr. 8/29/17, 1/23/18; 6/19/18; 12/18/18

Docket 30

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

This is a chapter 7 and the status conference was originally set because of the age of the case. Since then the Trustee has filed a final report, which is now set for hearing on 12/23/19. There is no reason for future satus conferences. Therefore this is off calendar without appearance.

prior tentative ruling (6/19/18)

Per the status report filed on 5/31/18, the estate is continuing to receive period payments from the Circuit City bankruptcy case. Continue without appearance to Dec. 18, 2018 at 10:00 a.m.

prior tentative ruling (1/23/18)

Per the status report filed on 12/27/17, the Trustee is receiving payments from the Circuit City bankruptcy estate and he does not know when these will cease. Continue without appearance to June 19, 2018 at 10:00 a.m.

Party Information

Debtor(s):

Tariq Kahn Afridi

Represented By
John D Monte

Joint Debtor(s):

Elizabeth Rose Afridi

Represented By
John D Monte

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CONT... Tariq Kahn Afridi and Elizabeth Rose Afridi

Chapter 7

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Brad D Krasnoff (TR)

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Tuesday, December 17, 2019

Hearing Room 303

10:00 AM

:
Adv#: 1:19-01054 Kalmenson et al v. HSBC BANK (USA) N.A. et al

Chapter 0

#1.00 Status Conference re: First Amended Complaint
for Declaratory Judgment

fr. 7/6/19, 11/19/19, 10/8/19

Docket 2

***** VACATED *** REASON: Cont'd to 12/23/19 per order #35. If**

Party Information

Defendant(s):

HSBC BANK (USA) N.A.	Pro Se
SELECT PORTFOLIO	Pro Se
First American Title Ins Co.	Pro Se

Plaintiff(s):

Harvey Kalmenson	Represented By Joon M Khang
Catherine R Kalmenson	Represented By Joon M Khang

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10:00 AM

1:09-19088 Tariq Kahn Afridi and Elizabeth Rose Afridi

Chapter 7

#2.00 Trustee's Final Report and Application for
Compensation and Deadline to Object

Docket 46

***** VACATED *** REASON: Cont'd to 12/23/19 per order #51. If**

Party Information

Debtor(s):

Tariq Kahn Afridi

Represented By
John D Monte

Joint Debtor(s):

Elizabeth Rose Afridi

Represented By
John D Monte

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Brad D Krasnoff (TR)

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Tuesday, December 17, 2019

Hearing Room 303

10:00 AM

1:16-11538 Majestic Air, Inc.

Chapter 11

#3.00 Status and Case Management Conference

fr. 8/4/16(xfr from Judge Tighe's calendar); 8/30/16,
9/27/16; 10/25/16; 11/15/16, 2/21/17, 5/16/17; 6/27/17,
8/29/17, 1/23/18; 6/19/18, 9/18/18; 12/4/18; 2/12/19; 5/7/19
6/11/19; 7/16/19; 8/20/19; 9/24/19

Docket 1

***** VACATED *** REASON: Cont'd to 12/23/19 per order #322. If**

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

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Hearing Room 303

10:00 AM

1:16-11538 Majestic Air, Inc.

Chapter 11

Adv#: 1:18-01133 Majestic Air, Inc. et al v. Lufthansa Technik Philippines, Inc.

#4.00 Motion to Dismiss Adversary Proceeding

Docket 85

***** VACATED *** REASON: Cont'd to 12/23/19 per order #96. If**

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Defendant(s):

Lufthansa Technik Philippines, Inc.

Represented By
Dawn M Coulson
Scott D Cunningham
Andrew C Johnson

Plaintiff(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Tessie Cue

Represented By
Stella A Havkin

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, December 17, 2019

Hearing Room 303

10:00 AM

1:16-11538 Majestic Air, Inc.

Chapter 11

Adv#: 1:18-01133 Majestic Air, Inc. et al v. Lufthansa Technik Philippines, Inc.

#5.00 Status Conference Re: Amended Complaint
Objecting to Proof of Claim No. 3; and
for Contractual Indemnification

fr. 3/5/19; 6/11/19; 7/16/19; 8/20/19; 9/24/19

Docket 82

***** VACATED *** REASON: Cont'd to 12/23/19 per order #95. If**

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Defendant(s):

Lufthansa Technik Philippines, Inc.

Pro Se

Plaintiff(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Tessie Cue

Represented By
Stella A Havkin

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Monday, December 23, 2019

Hearing Room 303

10:00 AM

:

Chapter 0

Adv#: 1:19-01054 Kalmenson et al v. HSBC BANK (USA) N.A. et al

#1.00 Status Conference re: First Amended Complaint
for Declaratory Judgment

fr. 7/6/19, 11/19/19, 10/8/19, 12/17/19

Docket 2

***** VACATED *** REASON: Stip. and order adv. dismissed 10/25/19 (eg)**

Tentative Ruling:

Continued by stipulation to 12/17/19 at 10:00 a.m.

Party Information

Defendant(s):

HSBC BANK (USA) N.A.	Pro Se
SELECT PORTFOLIO	Pro Se
First American Title Ins Co.	Pro Se

Plaintiff(s):

Harvey Kalmenson	Represented By Joon M Khang
Catherine R Kalmenson	Represented By Joon M Khang

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Monday, December 23, 2019

Hearing Room 303

10:00 AM

1:09-19088 Tariq Kahn Afridi and Elizabeth Rose Afridi

Chapter 7

#2.00 Trustee's Final Report and Application for
Compensation and Deadline to Object

fr. 12/17/19

Docket 46

Tentative Ruling:

The Trustee proposes a distribution of 16.7% to general unsecured creditors and payment of his statutory fee and costs of \$3,647.54. However, in his status report filed on 10/22/19, he states that the estate is receiving period payments from the Circuit City bankruptcy. Is that case closed? If not, what does he intend to do about future distributions from Circuit City?

Party Information

Debtor(s):

Tariq Kahn Afridi

Represented By
John D Monte

Joint Debtor(s):

Elizabeth Rose Afridi

Represented By
John D Monte

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Brad D Krasnoff (TR)

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Monday, December 23, 2019

Hearing Room 303

10:00 AM

1:16-11538 Majestic Air, Inc.

Chapter 11

Adv#: 1:18-01133 Majestic Air, Inc. et al v. Lufthansa Technik Philippines, Inc.

#3.00 Motion to Dismiss Adversary Proceeding

fr. 12/17/19

Docket 85

***** VACATED *** REASON: Cont'd to 2/11/20 per order #110. If**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Defendant(s):

Lufthansa Technik Philippines, Inc.

Represented By
Dawn M Coulson
Scott D Cunningham
Andrew C Johnson

Plaintiff(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Tessie Cue

Represented By
Stella A Havkin

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Monday, December 23, 2019

Hearing Room 303

10:00 AM

1:16-11538 Majestic Air, Inc.

Chapter 11

Adv#: 1:18-01133 Majestic Air, Inc. et al v. Lufthansa Technik Philippines, Inc.

#4.00 Status Conference Re: Amended Complaint
Objecting to Proof of Claim No. 3; and
for Contractual Indemnification

fr. 3/5/19; 6/11/19; 7/16/19; 8/20/19; 9/24/19,
12/17/19

Docket 82

***** VACATED *** REASON: Cont'd to 2/11/20 per order #110. If**

Tentative Ruling:

To be continued to a date to be set at the hearing.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Defendant(s):

Lufthansa Technik Philippines, Inc.

Pro Se

Plaintiff(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Tessie Cue

Represented By
Stella A Havkin

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Monday, December 23, 2019

Hearing Room 303

10:00 AM

1:16-11538 Majestic Air, Inc.

Chapter 11

#5.00 Status and Case Management Conference

fr. 8/4/16(xfr from Judge Tighe's calendar); 8/30/16,
9/27/16; 10/25/16; 11/15/16, 2/21/17, 5/16/17; 6/27/17,
8/29/17, 1/23/18; 6/19/18, 9/18/18; 12/4/18; 2/12/19; 5/7/19
6/11/19; 7/16/19; 8/20/19; 9/24/19, 12/17/19

Docket 1

Tentative Ruling:

Continue without appearance to 2/11/20 at 10:00 a.m.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Monday, December 23, 2019

Hearing Room 303

10:00 AM

1:17-10853 Joseph Daniel Beam

Chapter 7

Adv#: 1:17-01046 Henderson v. Beam

#6.00 Motion for Order to Show Cause re: Counsel for debtor defendant to be subject to sanctions for failure to personally appear at status conference pursuant to LBR 7016-1(f)&(g)

fr. 11/19/19

Docket 49

***** VACATED *** REASON: Stipulation cont. to 1/28/20 @ 10am (eg)**

Tentative Ruling:

Ms. Henderson, the plaintiff in this §727 adversary proceeding, seeks a Order to Show Cause why the Kathleen Moreno, attorney for the defendant, should not be sanctioned for failure to personally appear at the September 24, 2019 status conference. Not only did counsel not appear, but she did not even file a status report. A substitute attorney appeared for her, but that counsel came 2 hours late and testified that she only received a phone call from Ms. Moreno late that morning asking her to appear. The substitute counsel did not know the name of the case, the case number, or the purpose of the hearing. Thus the hearing could not proceed and had to be delayed.

Previously Ms. Moreno was subject to an osc re:contempt for failure to appear on July 13, 2017 and for an osc for failure to file disclosure of compensation (11 USC §329) on defendant's first case (16-13291), which was dismissed for failure to file the required documents.

This motion seeks sanctions of up to \$1,000 under LBR 7016-1(a)(1) & (2), and (f)(3).

This was served on 11/19 and Ms. Moreno was in court on 11/19 and knows about this. On 11/19 I ordered that Ms. Moreno file her opposition by 11/26 and Ms. Henderson file her reply brief by 12/5. No opposition received as of 12/18.

Analysis

Since there has been no written opposition, unless the parties have settled

**United States Bankruptcy Court
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Monday, December 23, 2019

Hearing Room 303

10:00 AM

CONT... Joseph Daniel Beam

Chapter 7

this, the motion must be granted to the extent that the allegations are actionable and the amount justified. My concerns are set forth below and I need Ms. Henderson to clarify the issues that I raise.

(1) I am somewhat confused by the issue of Ms. Moreno's disclosure of compensation in the 2016 case. That case was dismissed three years ago. There is a statement of compensation in this 2017 case (doc. 16, p. 45). It shows that she is working without compensation.

(2) As to the failure to appear at the September 24, 2019 status conference and to file a status report, this does seem to be a pattern. It must stop. Ms. Henderson is not an attorney and is not entitled to attorney fees, but LBR 7016-1(f) states:

In addition to the sanctions authorized by F.R.Civ.P. 16(f), if a status conference statement or a joint proposed pretrial stipulation is not filed or lodged within the times set forth in subsections (a), (b), or (e), respectively, of this rule, the court may order one or more of the following:

- (1) A continuance of the trial date, if no prejudice is involved to the party who is not at fault;
- (2) Entry of a pretrial order based conforming party's proposed description of the facts and law;
- (3) An award of monetary sanctions including attorneys' fees against the party at fault and/or counsel, payable to the party not at fault; and/or
- (4) An award of non-monetary sanctions against the party at fault including entry of judgment of dismissal or the entry of an order striking the answer and entering a default.

It is appropriate that Ms. Henderson be compensated for her time, effort, and irritation due to the failure of Ms. Moreno to carry out her required duties as counsel for the Debtor/Defendant. However, \$1,000 seems to be excessive. Let's discuss the proper amount.

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Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Monday, December 23, 2019

Hearing Room 303

10:00 AM

CONT... Joseph Daniel Beam

Chapter 7

Party Information

Debtor(s):

Joseph Daniel Beam

Represented By
Kathleen A Moreno

Defendant(s):

Joseph Daniel Beam

Represented By
Kathleen A Moreno

Plaintiff(s):

Ellen Henderson

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Monday, December 23, 2019

Hearing Room 303

10:00 AM

1:17-10853 Joseph Daniel Beam

Chapter 7

Adv#: 1:17-01046 Henderson v. Beam

#7.00 Status Conference Re:
Complaint for Fraudulent Activity in
Bankruptcy Case.

fr. 5/7/19; 7/16/19; 7/30/19; 9/24/19, 11/19/19

Docket 1

***** VACATED *** REASON: Stipulation cont. to 1/28/20 @ 10am (eg)**

Tentative Ruling:

Nothing new received as of 12/18.

prior tentative ruling

Ms. Henderson has submitted a copy of the minute order of Judge Dordi on August 22, 2019.

Per Judge Dordi's order:

(1) The Naviant student loans of Henderson are her sole and separate debt.

(2) All debts accumulated from the date of marriage until the separation in 2010 are confirmed to Beam as his separate debts under Family Code §2622(b) and he is to hold Henderson harmless from them.

(3) There are a list of debts accumulated by Henderson after the date of separation and they are for her necessities of life under Family Code 2523 and are awarded to Beam to pay and he is to hold Henderson harmless from them [5 accounts are listed].

(4) Beam is to pay spousal support of \$1,100 per month starting 9/15/19.

How does this impact on the §727 complaint? Does Henderson intend to proceed? If so, what discovery needs to be done?

prior tentative ruling (9/24/19)

On July 30, there was a joint status conference with Judge Dordi of the

**United States Bankruptcy Court
Central District of California
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Monday, December 23, 2019

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10:00 AM

CONT... Joseph Daniel Beam

Chapter 7

Superior Court. This status conference on Sept. 24 is to update me on the status of the dissolution case. It also includes a claim for support and that would effect the dischargeability of the support amount ruled in favor of Ms. Henderson. As to this adversary proceeding, Henderson explained that her concern is that there will be a determination that some portion of the community debt is attributable to Mr. Beam alone, but that this will be discharged as to him in this bankruptcy and that she would be left subject to that portion of the debt as well as to the part attributable to her. Thus, she wants to deny him the discharge so that he is liable for all of the community debt or that she can seek to collect his portion from him.

Once the support issue is resolved, this adversary proceeding should either be dismissed or go to trial.

prior tentative ruling (7/30/19)

On 7/10/19, Plaintiff filed a status report. She said that she failed to appear because the superior court issues were delayed, so she thought that the hearing in the bankruptcy court was cancelled. She then set a last minute job interview. She wishes the court to continue prior court orders (10/4/17) lifting the automatic stay on the Debtor. She then goes through the facts in the superior court dissolution case.

The property division did not take place before the bankruptcy, so Judge Barash properly entered an order lifting the automatic stay. She goes on to argue that the delays in the superior court were due to Debtor's counsel. She wants this hearing continued until after the superior court trial (no date set for that) and wants sanctions against Attorney Moreno for causing the delays in the state and federal courts.

Proposed ruling: The order lifting the automatic stay does not have to be renewed. It continues in effect as set forth therein. I am still not convinced that I should wait for the superior court ruling. I think that it would be a good idea for me to either talk to the superior court judge as to scheduling or hold a joint status conference with the superior court judge. I am not just going to continue this on with no end in sight. As to sanctions against counsel, I have no authority to grant them as to the state court case and - as of this point - no reason to grant them as to this case.

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CONT... Joseph Daniel Beam

Chapter 7

prior tentative ruling (5/7/19)

This arises out of a family law case. According to the Debtor's status report, the family law judge is requiring briefs as to marital debts and the proposed division between the parties. The family law trial setting conference is set for 6/12/19. In this court, the defendant estimates one hour to present his case-in-chief.

This is a §727 case to deny discharge and the family law division of property may not be relevant. The crux of the complaint is that the debtor (sometimes through his attorney) knowingly filed improper paperwork; that this was a careless and frivolous bankruptcy case meant to delay and frustrate the divorce proceedings; that debtor failed to notify creditors of "intention to file bankruptcy;" and that debtor failed to disclose his true income and assets. The complaint also specifies the following reasons to deny discharge as to what items are listed on or omitted from the schedules and statement of affairs:

- (1) He declared debts that were solely owed by plaintiff and are not community debts
- (2) He claimed to own no property - the complaint lists a series of personal property, particularly automation. It also specifies income received from a pre-petition art sale and money he removed from an education fund for their son. There is also a pension account that was not revealed.
- (3) There were unsecured debts that he did not disclose, specifically for a previously repossessed car, a judgment by American Express, and a City of Los Angeles tax bill.
- (4) He did not reveal past spousal support paid or owed and other related family support payments made in 2014 through April 2016.
- (5) He did not list any expenses, though he has paid them.
- (6) He did not list gifts from his mother and friends in the approximate sum of \$50,000. He lives rent free and does not pay utilities or living costs.
- (7) There are a lot of debts from the marriage, but he did not declare them as codebtor obligations.
- (8) He declared a lower income than he actual receives.
- (9) He under-reported the attorney fees that he has paid to his counsel.

Plaintiff is also complaining of fraudulent activity of counsel (Kathleen

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CONT... **Joseph Daniel Beam** **Chapter 7**

Moreno) in that she knowingly filed this case "with no intent not to file proper documents." [Note that the complaint does not actually name Ms. Moreno as a co-defendant and she would not be subject to §727 as she is not the debtor.]

Debtor's answer denies all allegations.

Since filing, this case has been largely on hold pending the state court dissolution proceedings.

As I review the complaint, it may not be worthwhile to wait until the family law court has acted - or it may be the best way. Clearly some of these actions were prepetition and non-financial or may have been too early to be included in the schedules. Perhaps it is best to rule on those specifics. Some of the others may be resolved in the family law proceeding - such as assets actually owned and debts actually owed.

Plaintiff has to realize that a §727 action will block the discharge of ALL debts, not just of those owed to her (which are already protected under §523). This means that other creditors will have as much right to seek payment as she does and that may prevent her from actually timely collecting future spousal support, etc. However, this is a §727 complaint and if she decides to dismiss it, the Trustee must be notified and may wish to take over the case.

Let's talk.

Party Information

Debtor(s):

Joseph Daniel Beam

Represented By
Kathleen A Moreno

Defendant(s):

Joseph Daniel Beam

Represented By
Kathleen A Moreno

Plaintiff(s):

Ellen Henderson

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Monday, December 23, 2019

Hearing Room 303

10:00 AM

CONT... Joseph Daniel Beam

Chapter 7