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

Tuesday, January 7, 2020 **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; 1/29/19; 7/16/19

Docket 1

***** VACATED *** REASON: Cont'd to 1/14/20 per order #708. lf**

Party Information

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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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; 7/16/19
1/7/20

Docket 1

***** VACATED *** REASON: Per tentative.**

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Off calendar. This case is now closed.

Party Information

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
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar

Tuesday, January 14, 2020 **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, 11/19/19

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Per the Trustee's status report filed on 1/7/20, there is a settlement in principle. Continue without appearance to March 24, 2020 at 10:00 a.m.

Prior tentative ruling (11/19/19)
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):

10:00 AM

CONT... Edwin Perry Hinds **Chapter 7**

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 on12/6, 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):

10:00 AM

CONT... Edwin Perry Hinds **Chapter 7**

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. 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)

10:00 AM

CONT... Edwin Perry Hinds **Chapter 7**

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. 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

10:00 AM
1:09-18345 Narine Gumuryan **Chapter 7**
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, 11/19/19

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

On 12/5/19 Narine Gumuryan filed an anwer to the complaint. No status report has been filed. How do the parties intend to proceed from here?

Prior tentative ruling (11/19/19)
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.

10:00 AM

CONT... Narine Gumuryan **Chapter 7**

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.

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

10:00 AM
1:15-14213 Michael Robert Goland **Chapter 7**

#4.00 Motion for Order Authorizing Sale of Certain Assets of the Estate Pursuant to 11 U.S.C. § 363

Docket 377

Matter Notes:

- NONE LISTED -

Tentative Ruling:

On 10/18/19 the Trustee filed a notice of proposed abandonment of property of the estate. On 10/30/19 she withdrew it as to the real property located at 5711-5721 S. Compton Ave. This motion is for sale of that property (identified in the motion as 5721 S. Compton Ave.) to Triple Images LLC for $45,000. The proposed buyer is the current occupant of the property. The Trustee has been collecting rents, but now wants to close the estate as there are no other remaining assets. Thus, this sale motion.

Title is clouded, the Trustee does not believe that a sale is wise. There may also be contamination issues. Property taxes have not been paid in over 20 years and the Trustee stipulated to allow a tax sale to take place. The tax sale will not occur until about October 2020. Tenant has expressed an interest in remaining in the property and in purchasing whatever interests the estate holds, which at minimum is the right to collect rent.

The sale is subject to overbid and overbid procedures are set out. The initial overbid must be no less than $55.000. The potential overbidder has until Dec. 2, 2019 to notify the Trustee of its intention to overbid and to provide the Trustee with a cashier's check of $55,000.

The Trustee requests that the buyer be found to be a good faith purchaser under §363(m).

Opposition by Bezad Cohen

Mr. Cohen opposes the sale and also requests permission to sue the Trustee for conversion of assets that he claims belong to him. He asserts that Michael Goland's bankruptcy schedules do not list any interest of Michael Goland in this property. He asserts that because the Court has no jurisdiction to administer this property (which is not property of the Estate), the Court has

10:00 AM

CONT... Michael Robert Goland **Chapter 7**

no right to issue an advisory opinion and approving the sale would constitute an advisory opinion.

In support of his claim that the property belongs to him, Mr. Cohen attaches a series of documents, including his petition that he filed in the superior court (case 16STPB00431), which is verified under penalty of perjury. In the petition, Cohen asserts that a trust was established by Goland with Cohen as the beneficiary ("the Cohen Trust") and Gerry Burk as the Trustee.

Goland was the agent of Compton Slauson Property Enterprises, Inc. whose sole shareholder was CSPEI Trust. The Trust identifies its corpus as the "property owned by Compton Slauson Property Enterprises, Inc." This was given to the Trust by a quitclaim deed from the Settlor/Trustee, which was Compton Slauson Property Enterprises, Inc. In the Certification of Trust attached to the Petition, Michael Goland is identified as the settlor and also as the person who could revoke the Trust. Gerry Burk is identified as the trustee. The Trust Property was 5722-5721 Compton Ave.

There was a trust deed given by Cohen (aka Bezad Kahoolyzadeh) to Kings Canyon Partner (of which Michael Goland was a/the partner). Kings Canyon assigned this to Burk as Trustee for the Cohen Trust. Cohen states that the trust deed was thus terminated. On November 25, 2013, Burk, as Trustee of the Cohen Trust, issued a grant deed to Burk as Trustee of the 5721 Trust. Then on June 2014, Burk as the Trustee of the January 10, 1989 trust deed, held a foreclosure sale of the Property and sold it to Kings Canyon for a bid of $300,000. [There is some confusion in the documents since the promissory note was dated 1/10/89 for $135,000 and secured by deeds of trust on two properties (2450 E. Eighth St. and 5711-5721 Compton Ave.) The foreclosure was only as to the Compton Ave. property and said that the unpaid balance on the debt was $1+ million.]

Burk breached his fiduciary duty by transferring the Trust Property (5721 and 5711 S. Compton Ave.), but did not distribute the proceeds to Cohen, who is the beneficiary of the Trust. The Property eventually ended up in the name of Burk's company (KCC) and then Burk leased it to Triple Images, LLC and collected rent from 2005 on. He kept this money.

Cohen also contends that the real property at 5721 S. Compton Ave. was abandoned to National Resources, Inc. in the case of 2:01-bk-26407-VZ and that National Resources, Inc. was his corporation and he succeeded to the rights of that entity.

10:00 AM
CONT... Michael Robert Goland **Chapter 7**

Reply

The motion does not request permission to sign a quitclaim deed to transfer the Property to the buyer. While the motion seeks to transfer everything at the Estate owns, the only known asset held by the Estate is the right to collect rent generated by the Property. This is contained in the order authorizing the Trustee to operate the Property by collecting rents. [dkt/ 299]

Cohen was listed in the petition for "notice purposes only." He has not filed a proof of claim. Title to the Property is in dispute and severely clouded. The only right that the Estate clearly holds is to collect rent and that is all that is being sold. Cohen has the right to seek to unwind the title – but should do it in another forum.

Proposed ruling

The first notice of the sale was filed on 11/26/19. Any overbidder only had a week to act. Even if the sale had been on the original proposed date of 12/17, this is a short period of time. Has the Trustee had any contacts from possible overbidders?

As to the Cohen opposition. The Trustee is only selling what the estate owns. If the estate has no legal rights to the Property, then no legal rights pass to the buyer by virtue of the sale. The buyer has to be put on notice of the claims of Mr. Cohen and the assertion by the Trustee that the only thing that the estate owns is the right to collect rents (although the quitclaim deed will be broader than that and will state that the estate is selling all its right, title, and interest to the Property). Does Triple Images wish to go forward with the sale?

As to the request to sue the Trustee, Cohen can file suit to recover the rents collected, but that must be filed in the bankruptcy court. Or he can put a claim into the estate. The Trustee has whatever defenses exist. As to title to the Property, he can take what action is needed to further assert his interest, but the Trustee is not to be a party to that since she will have sold whatever the estate owns.

Grant the motion to sell subject to overbid. If the proposed buyer is the successful bidder, grant the motion under §363(m).

Party Information

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

Tuesday, January 14, 2020 **Hearing Room 303**

10:00 AM

CONT... Michael Robert Goland **Chapter 7**

Debtor(s):

Michael Robert Goland — Represented By
David S Hagen

Trustee(s):

Nancy J Zamora (TR) — Represented By
Jessica L Bagdanov
David Seror
Ezra Brutzkus Gubner

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

Tuesday, January 14, 2020 **Hearing Room 303**

10:00 AM

1:16-11387 Real Estate Short Sales Inc **Chapter 7**

Adv#: 1:19-01139 Yavor v. City One Locksmith

#5.00 Status Conference re: Notice of Removal

Docket 0

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Per the tentative ruling on the motion to dismiss, this is continued to March 24 at 10:00 a.m.

Party Information

Debtor(s):

Real Estate Short Sales Inc	Represented By Stephen L Burton

Defendant(s):

City One Locksmith	Pro Se

Plaintiff(s):

Haya Sara Yavor	Pro Se

Trustee(s):

Nancy J Zamora (TR)	Represented By Jessica L Bagdanov David Seror

10:00 AM
1:16-11387 Real Estate Short Sales Inc **Chapter 7**
Adv#: 1:19-01139 Yavor v. City One Locksmith

#6.00 Motion to Dismiss Complaint with Prejudice

Docket 4

Matter Notes:

- NONE LISTED -

Tentative Ruling:

On October 8, 2019, Haya Sara Yavor (Yavor or Buyer or Plaintiff), who was the buyer of the real property at 10351 Oklahoma Ave., filed suit in state court against City One Locksmith (City One), Case #: 19 STLC09304. No activity has taken place in the case.

On December 2, 2019, Nancy Zamora (Trustee or Zamora), who is the chapter 7 trustee in the Real Estate Short Sales, Inc. (RESS) bankruptcy case, removed the case to the bankruptcy court. The trustee asserts that this is a core matter and consents to final judgment in the bankruptcy court.

The complaint asserts that when the U.S. Marshal was employed to evict the prior owner, City One Locksmith was sent to change the locks to secure the property and to ensure that there would be no reentry. Rather than change the locks to the front door, City One screwed the doors shut, which caused significant damage to the doors. These were upscale luxury doors and very costly and valuable. Plaintiff seeks general damages of at least $20,000, costs of suit, prejudgment interest, etc.

Although the complaint tries to avoid asserting a claim against the Trustee (referring to the U,S, Marshal in such a way that it appears that that person/entity hired City One, in paragraph 5 it states the true state of affairs: "In light of these sequence of events, Plaintiff Yavor brings this lawsuit to recover damages caused by Defendant Trustee's negligent actions."

The history of this action is as follows:

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

On April 19, 2019, Haya Sara Yavor filed a complaint in the state court against Nancy Zamora for negligence and fraudulent concealment (19STCV13803). Included in that complaint was the assertion at paragraph 16 and 17 that "on December 17, 2018 … Defendant Trustee employed the U.S. Marshal to evict the Occupants from the Property. In or around January of 2019, Defendant Trustee further proceeded to cause City One to screw the doors of the Property shut. The screws on the door caused significant damage to the Property."

On May 30, 2019, the Trustee removed the complaint to this court as Adv. #1:19-ap-01064. The Trustee then filed a motion to dismiss the complaint and on July 16, 2019 the Court granted that motion without prejudice. The tentative ruling, which became the final ruling, is as follows:

> 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.

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

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.

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

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

"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 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

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

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.

On August 6, 2019, Yavor filed a first amended complaint asserting that the Trustee had acted with gross negligence as to damage to the doors and mold damage. She did not name City One, but asserted that the Trustee breached her duty of care by "causing the doors to the Property to be negligently screwed shut, and in doing so, caused substantial damages to the doors of the Property." (paragraph 24).

On August 20, 2019, the Trustee filed a motion to dismiss the first amended complaint with prejudice. In part this was because the facts did not support the negligence claims against the Trustee or City One. Also, there was a prior reduction in price to account for mold and water damages to the property.

On September 5, 2019, the parties stipulated to "Dismiss Entire Action with Prejudice for Case No. 1:19-01064-GM in its entirety." (dkt. 21) The dismissal order was entered on September 23, 2019 (dkt. 24).

As noted above, shortly thereafter Yavor filed a complaint solely against City One for negligence. The Trustee asserts that since City One has indemnification claims against the Estate, the Trustee is the real party in interest and has removed the suit and will defend it.

The Motion to Dismiss

The complaint is barred by res judicata. The initial adversary proceeding was dismissed with prejudice and the Trustee cannot be forced to defend the same action again just because the Buyer has named a Doe defendant (City One). A final judgment on the merits of an action precludes the parties or persons in privity with the parties from relitigating the same claim that was raised in the prior action. *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008). A voluntary dismissal with prejudice operates as an adjudication on the merits, barring further action on the same claims. *See Semtek International Inc. v. Lockheed Martin Corp*., 531 U.S. 497, 505 (2001).

This new complaint involves the same parties or persons in privity with the same parties to the First Adversary Proceeding. The Buyer is the Plaintiff

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

in both, the First Adversary Proceeding named not only the Trustee, but Doe defendants and the Plaintiff knew that City One was one of those Doe defendants. The claim of negligence asserted against City One arises out of the same transaction and occurrence – City One's conduct in changing the locks at the Property for the Trustee's benefit. Dismissals have res judicata effect as to Doe defendants.

Beyond that, City One owed no duty to the Plaintiff, who was the buyer. *John B. v. Superior Court*, 38 Cal. 4th 1177, 1188 (2006). On its face the complaint shows that City One was sent to do the work and not hired or employed by the Buyer. In fact, at that time the Trustee was the owner of the property since escrow had not yet closed. Closing occurred on or about January 29, 2019. The complained-of action took place on about January 12.

The purchase agreement states that the Buyer purchased the property "as-is where-is." Yavor accepted the property with full knowledge of the issues of the doors. She had plenty of time to inspect the property prior to closing, some two weeks after City One had performed its work.

Opposition

The prior complaint was dismissed without prejudice and the Plaintiff filed a first amended complaint. During the course of "preliminary internal discovery," the Plaintiff discovered that the true tortfeasor was City One Locksmith and not the Trustee. Also that the Trustee was covered by immunity, so she must proceed against the actual tortfeasor. Thus she decided to dismiss with prejudice as to the Trustee and proceed against City One.

The alleged indemnity agreement does not give jurisdiction to the court and the Plaintiff will be moving to remand. The Trustee has no standing to bring this motion to dismiss.

Res judicata does not apply because the Trustee and City One are not the same party or privies. City One was never a party to the prior lawsuit and the Trustee is not a party to this one. The Trustee is attempting to transfer her trustee-immunity to City One. The purported indemnity agreement is not signed and is not enforceable. It is merely some pre-printed boilerplate language on a written invoice by City One. The locksmith cannot unilaterally waive the indemnification requirement of a Trustee's signature. *Lockheed Missiles & Space Co., v. Gilmore Industries, Inc.*, 135 Cal.App.3d 556. *Paul Gonya v. Kenneth Stroud*, 2013 WL 5861489 (2013).

10:00 AM

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

Under *Taylor v. Sturgell*, 553 U.S. 880 (2008), a non-party is subject to claims preclusion. It holds that in general a person is not subject to an *in personam* ruling in a case in which "he is not designated as a party or to which he has not been made a party by service of process." *Id.* at 893. There are six exceptions:

1. *A person agrees to be bound by the determination of the issues* – this did not happen.
2. *There are sufficient pre-existing substantive legal relations between the person to be bound and the party to the judgment* – here the only relationship is the indemnity agreement, which is unenforceable.
3. *The non-party is adequately represented by someone with the same interests who is a party to the suit*– there needs to be something in the record to show that the interests of the parties are aligned. Here the interests of the Trustee and City One are in conflict in that the Trustee was holding the property for the benefit of the buyer (Plaintiff) and the locksmith damaged it.
4. *The non-party assumed control over the litigation* – this did not happen.
5. *The non-party is litigating through its proxy* – here City One is not a proxy to the Trustee.
6. *A specific statutory scheme forecloses future successive litigation by non-litigants* – there is no such statutory scheme.

Damjanovic v. Ambrose, 951 F.2d 359 (9th Cir. 1992)(unpublished decision), which is cited by the Trustee, held that the subsequent claim was barred because the same party was being sued in both lawsuits. Here City One and the Trustee are not the same party. City One was not named in both lawsuits. And they are not privies. The Trustee's argument that City One should have been added as a Doe Defendant is not supported by the law.

Even though escrow had not closed and there was no employment relationship between City One and the buyer, there is a duty to the buyer if there was foreseeability of harm to the buyer. Whether this existed in this case is to be determined during the case itself and not at this stage. Discovery will show whether City One's performance was negligent and caused damages to the door and whether City One actually foresaw the risk

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

of harm to the buyer.

The purchase of the property "as-is where-is" does not apply. Buyer inspected the property in September 2018. The tortious conduct occurred after that, during the escrow. The buyer did not have control of the property and could not safeguard it. This was a significant change to the property.

Trustee's Reply

Because of the indemnification language in the invoice, the Trustee is the real party in interest and has standing to seek dismissal. *Lockheed Missiles* deals with CA Labor Code §3864 and is limited to that context. This is not a suit under the Labor Code. Similarly the other cases cited by the Plaintiff do not apply. In fact, if the Trustee had not appeared, City One would likely have filed a third party complaint against the Trustee and the Trustee would have been required to defend the action.

City One was a known Doe defendant in the first adversary proceeding and is in privity with the Trustee. The dismissal of the first adversary proceeding with prejudice included a dismissal of all known Doe defendants, including City One.

The Trustee and City One have a relationship of principal and agent. This allows claim preclusion to apply. The indemnity liability is sufficient to allow legal privity for claims preclusion. *Lamphere Enterprises, Inc. v. Koorknob Enterprises, LLC*, 145 F.App'x 589, 5992 (9th Cir. 2005) (citing *Am. Safety Flight Sys., Inc. v. Garrett Corp.*, 528 F.2d 288, 289 n.1 (9th Cir. 1975).

Damjanovic v. Ambrose, 951 F.2d 359 (1991) (unpublished) affirmed dismissal of an action and sanctions when the plaintiff tried to name a Doe defendant in a subsequent action after dismissal of the prior-filed case.

For the case to go forward, the Plaintiff must show (and plead) that the Defendant owed a duty to the Plaintiff. This is not sufficiently alleged in the complaint. It is merely a legal conclusion, not based on pleaded factual allegations. The existence of a duty is a matter of law. The case must be prosecuted in the name of the real party in interest. *Krusi v. S.J. Amoroso Constr. Co.* 81 Cal. App. 4th 995, 1003 (2000), etc. concerned a suit against a contractor who had allegedly damaged real property prior to the transfer of ownership to the plaintiff. The Court of Appeal held that the negligence claim belonged to the party who had suffered the injury, which was the prior owner. Here the injury, if there was one, belongs to the Trustee since the Trustee was the owner of the property at the time of the alleged negligence.

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

This is an "as-is where-is" contract and that cannot be avoided by the Plaintiff. Plaintiff argues that the Trustee had a duty to protect the property during escrow., but the complaint alleges that City One has a duty to the Buyer/Plaintiff as the owner of the Property (¶19). It does not reveal that she did not own the property at the time of the alleged negligence. The purchase agreement (¶15) specifically states that the quitclaim deed transfers title, which "shall be subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters which are of record or are disclosed to Buyer prior to Close of Escrow." The Buyer's action lies against the Trustee as the former owner of the Property and the Buyer cannot plead sufficient claims against the Trustee.

Analysis and Proposed Ruling

The initial issue to be resolved is whether the dismissal of the prior adversary proceeding with prejudice included the dismissal of all Doe defendants who were known to Yavor but not actually named in that adversary proceeding. Here it is certain or at least highly likely that the Trustee had notified City One of the pending action. But City One was not an actual party and could rely on the fact of the indemnification clause to sit back and let the Trustee resolve that adversary proceeding. Unlike the *Damjanovic* case cited by the Trustee, City One was never actually named in another lawsuit. There is no caselaw or statute that supports the theory that an unnamed person who would qualify as a Doe defendant and is known to the Plaintiff prior to dismissal of an initial lawsuit is then forever barred from being a named defendant in a later lawsuit for the same alleged negligent action.

The indemnity agreement is probably enforceable between City One and the Trustee. This is a matter of contact and both parties appear to agree to the validity of the contract. This creates a few interesting issues given that this lawsuit is for simple negligence and the Trustee is immune from such claims. If the Buyer were to prevail against City One for negligence and City One sues the Trustee, that is under contract and it is possible (probable?) that the Estate will be liable to City One for the tort damages for which the Estate is not directly liable to the Buyer. It is also possible that if this case goes forward, City One will bring a third party complaint against the Trustee for indemnification. That may or may not survive a motion to dismiss by the Trustee. While all of this is interesting, the Court need not and will not decide it at this point in time. When such motions are brought or suits are filed, the

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

issues will be ripe for decision. Not now.

The issue of "as-is where-is" and the language of the quitclaim deed are factual matters to be determined in the lawsuit. The inspection is alleged to have taken place in September 2018, months before the alleged damage to the property. The alleged damage took place after the prior owners had vacated, so they (RESS and Cueva) are not liable for it. The Trustee was the owner of the property at that point in time. There will be factual issues of the knowledge of the Buyer prior to the close of escrow, the negotiations for reduced price, etc. But that is part of the lawsuit and not to be determined in a motion to dismiss.

While the Trustee may be able to claim some form of privity due to the indemnification and perhaps even some form of principal/agent relationship and the dismissal of the first adversary proceeding is deemed to have been on the merits, those merits are personal to the Trustee by nature of her immunity from suit. They do not deal with whether there was actual negligence by her agent. An agent is not relieved from personal responsibility to the Plaintiff just because the principal cannot be held personally responsible for the agent's acts. [Please note that I am not deciding whether the timing of the alleged negligence (prior to escrow closing) relieves the agent of liability to the Buyer. This motion was not brought by City One.]

The complaint needs to be cleaned up a little bit. Note the reference to the Trustee in paragraph 5. The fact that the Trustee owned the property at the time of City One's work and that it is the Trustee (not the U.S. Marshal) who hired City One should be explicitly stated. Please do better than a sloppy redrafting of the initial adversary complaint.

The motion to dismiss is granted only to allow a cleaned-up amended complaint as noted in the prior paragraph. This is due by January 28. City One and/or the Trustee will have until February 14 to respond. The status conference will be held on March 24 at 10:00 a.m.

As to the request to remand, if a motion is filed it would likely be denied. The Trustee is inherently involved in this case and this Court has extensive knowledge of the facts surrounding the sale. The critical documents have all been filed here and are easily accessible. The relation of

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

City One to the Trustee will likely lead to more questions of the legal responsibilities of the Trustee. All of these can best be decided here.

Party Information

Debtor(s):

Real Estate Short Sales Inc	Represented By Stephen L Burton

Defendant(s):

City One Locksmith	Pro Se

Plaintiff(s):

Haya Sara Yavor	Pro Se

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, January 28, 2020 **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; 4/16/19, 8/20/19

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Nothing new received as of 1/27/20.

Prior tentative ruling (8/20/19)
Per the Plantiffs' 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

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CONT... Solyman Yashouafar **Chapter 11**

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 dismiss 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

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CONT... Solyman Yashouafar **Chapter 11**

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 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

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CONT... Solyman Yashouafar **Chapter 11**

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

10:00 AM
1:17-10853 Joseph Daniel Beam **Chapter 7**
Adv#: 1:17-01046 Henderson v. Beam

#2.00 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; 12/23/19

Docket 49

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Nothing further received as of 1/27/20.

Prior tentative ruling (12/23/19)
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

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CONT... Joseph Daniel Beam **Chapter 7**

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 this, the motion must be granted to the extent that the allegations are actionable and the amount justifed. 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.

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CONT... Joseph Daniel Beam **Chapter 7**

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.

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

10:00 AM
1:17-10853 Joseph Daniel Beam **Chapter 7**
Adv#: 1:17-01046 Henderson v. Beam

#3.00 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; 12/23/19

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Nothing further received as of 1/27/20.

Prior tentative ruling (12/23/19)
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.

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CONT... Joseph Daniel Beam **Chapter 7**

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. 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

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CONT... Joseph Daniel Beam **Chapter 7**

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 familiy 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) knowlingly 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 reaons 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 reveeal 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 utilites or living costs.

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CONT... Joseph Daniel Beam **Chapter 7**

(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 knowlingly 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

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

Tuesday, January 28, 2020 **Hearing Room 303**

10:00 AM

CONT... Joseph Daniel Beam **Chapter 7**

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 302 Calendar

Tuesday, February 11, 2020 **Hearing Room 302**

10:00 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; 11/18/19

Docket 429

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Off calendar. The opinion and order were entered on 1/6/20.

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 11, 2020 **Hearing Room 303**

10:00 AM

1:16-11538 Majestic Air, Inc. **Chapter 11**

#2.00 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; 12/23/2019

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Continue with the adversary proceeding.

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, February 11, 2020 **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 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, 12/23/19

Docket 82

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Counsel for plaintiffs has advised the Court that Ms. Cue passed away. While her husband will be seeking to be appointed as the personal representative of her estate, Counsel does not believe that the hearing or case need be delayed. The Court agrees in that Parker, Milliken represents both Majestic Air and Ms. Cue and presumably has the consent of Mr. Cue to proceed.

The status conference will be set on a date to be determined at the 2/11 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

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

Tuesday, February 11, 2020 **Hearing Room 303**

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

Tessie Cue

Represented By
Stella A Havkin

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

fr. 12/17/19, 12/23/19

Docket 85

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Defendant Lufthansa Technik Philippines ("LTP") moves to dismiss the operative Second Amended Complaint ("SAC") 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), asserts (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 has been informed by Majestic that Ms. Cue died on January 24, 2020 and that her husband is seeking authority to prosecute this proceeding on behalf of her estate. Dkt. 115. Majestic has requested that this hearing go forward as calendared on February 11, 2020.

Background

LTP provides aircraft maintenance, repair, and overhaul services to aviation companies and, to provide these services, maintains a limited inventory of spare aircraft parts. Cue had been an employee of Ansett Aircraft Spares & Services, Inc. ("Ansett"), which sells and distributes aircraft parts. Ansett and LTP were negotiating – but did not ultimately enter into - an agreement under which Ansett would sell LTP's excess inventory of spare parts on a consignment basis (the "Ansett Agreement"). Ansett used a template consignment agreement called the Inventory Management and Marketing Agreement (the "IMMA") that it considered to be a trade secret. In 2009, while Ansett and LTP were still negotiating, Cue left Ansett and went to

work for Infinity Air, Inc. ("Infinity"). She negotiated an agreement between Infinity and LTP, substantially in the same form as the IMMA, under which Infinity sold LTP's excess inventory of spare parts on a consignment basis (the "Infinity Agreement"). In 2010, Cue then left Infinity, formed Majestic, and negotiated an agreement between Majestic and LTP, again substantially in the same form as the IMMA, under which Majestic sold LTP's excess inventory of spare parts on a consignment basis (the "Majestic Agreement").

- In ¶10.2 of both the Infinity Agreement and the Majestic Agreement (the "Consignment Agreements") LTP agreed to indemnify, defend, and hold harmless Majestic [or Infinity] and its officers, directors, employees, authorized agents and contractors from claims "arising out of or in connection with" (a) any breach by LTP of its representations and warranties in each Agreement or (b) any negligence or misconduct by LTP "except to the extent that the Claim is caused by the negligence or misconduct of [Majestic, Infinity, or their officers, etc.]."
- In ¶15.2 of the Consignment Agreements, LTP warranted and represented that entering into the Agreements would not contravene any laws or any other agreement with another party.
- In ¶6.4 of the Consignment Agreements, LTP warranted and represented that it had good and marketable title to the aircraft parts it consigned to Infinity and Majestic and that it had "full power and lawful authority to transfer title to" those parts.

On April 12, 2012, Ansett commenced an action against Majestic, Cue, and Infinity (the "Ansett Case"). On February 16, 2016, Ansett obtained a judgment awarding Ansett $1,846,443 against Cue, $1,846,443 against Majestic, and $2,461,924 against Infinity – with an additional $80,983 of plaintiff's costs allocated among the defendants (the "Ansett Judgment"). Exh. B to RJN, Judgment on Special Verdict in Ansett. (References made in this "Background" section to the RJN are to the RJN filed in connection with LTP's earlier motion to dismiss the first amended complaint. Dkt. 33.) The jury found that (i) Cue, Majestic, and Infinity were liable for misappropriation of trade secrets and for intentionally interfering with prospective economic relations between LTP and Ansett, (ii) Majestic and Infinity were liable for intentionally interfering with Cue's employment contract with Ansett, and (iii) Cue was liable for breaching her employment contract with Ansett. *Id*.

On May 5, 2016, the Debtor filed an appeal of the Ansett Judgment

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(the "Ansett Appeal") but did not post a bond. The Superior Court had stayed the enforcement of the Ansett Judgment until May 24, 2016. In the Ansett Appeal, the California Court of Appeal held that the judgment against Cue should be amended so that Ansett was entitled to recover $3.85 million from Cue alone for breaching her employment contract with Ansett, and the remaining $2,339,810.40 of the judgment would be allocated among Cue, Majestic and Infinity according to their percentages of fault: $701,943.12 from each of Cue and Majestic, and $935,924.16 from Infinity. Exh. A to RJN, "Ansett Appellate Opinion" at p. 23.

The "Infinity Case" was filed by Infinity against LTP, Majestic, Cue, and Cue's husband Hong Boi Cue, in Los Angeles County Superior Court on October 31, 2011. Exh. C to RJN, Infinity Appellate Opinion at pp. 4-5. Multiple cross-claims by the Cues and Majestic were filed. The trial court sustained LTP's demurrer to Majestic and the Cues' cross-claims for equitable indemnity, express contractual indemnity, and contribution without leave to amend. *Id*. at p. 5; LTP RJN Ex. O. The Cues and Majestic filed an amended cross-complaint against LTP with claims for statutory indemnity/tort of another, declaratory relief, and breach of contract. Ex. C to LTP's RJN at 5. In September 2015, LTP and Infinity settled their claims against each other, with both parties agreeing to dismiss their claims against the Cues and Majestic as a part of that settlement. The trial court determined that this settlement was in "good faith" under California Code of Civil Procedure § 877.6. *Id.* at p. 7. The Cues and Majestic appealed the demurrer of their contractual indemnity claims against LTP, the dismissal of their contract claim against LTP pursuant to §877.6, and the good faith finding, but lost on appeal (the "Infinity Appeal"). Exh. C to RJN.

Cue and Majestic filed for chapter 11 relief on May 23, 2016, one day before the stay of enforcement of the Ansett Judgment expired. Cue's case was dismissed by this Court in September 2016, pursuant to Bankruptcy Code §1112(b).

In July 2018, Ansett, Majestic, and Cue entered into a settlement agreement, under which Cue relinquished her shares of stock in Ansett and the right to collect dividends owed on that stock in exchange for a satisfaction of the Ansett Judgment.

LTP has filed a claim against Majestic in its bankruptcy (the "LTP Claim"), in the amount of $3.7 million for the following: (1) $2,814,140 for spare aircraft parts LTP had delivered to Majestic in 2010 that were never returned; (2)

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$782,106.90 in attorney's fees and costs incurred by LTP in the Infinity Action; and (3) $164,485.59 in unpaid commissions Majestic owes LTP (the "LTP Claim"). Exh. G to RJN, LTP Proof of Claim, Pt. 1 at p. 2; Exh. H to RJN, LTP Proof of Claim Pt. 2 at pp. 3-4, ¶¶ 10-13, pp. 45-47, ¶¶ 15-2, pp. 31-40.

In December 2018, Majestic and the Cues commenced this action. The FAC, filed in April 2019, asserted a claim for contractual indemnification of Cue and Majestic's obligations under the Ansett Judgment and objects to the LTP Claim. The indemnification claim is made pursuant to the indemnification provisions of the Consignment Agreements. The objection to the LTP Claim is based on LTP's failure to attach a copy of the Majestic Agreement, and also asserts that (1) the Court has already determined that the value of the spare parts is only $40,000; (2) LTP was not the prevailing party in the Infinity Action and so is not entitled to attorneys' fees and costs; and (3) any claim should be offset by Majestic's right to indemnification from LTP.

Motion to Dismiss FAC and Response to Objection to Claim by LTP

LTP moved to dismiss the FAC on the grounds that Cue and Majestic's liability under the Ansett Judgment was beyond the scope of the indemnification provisions in the Consignment Agreements, because the indemnification provisions in both agreements expressly except liabilities "caused by the negligence or misconduct of [Majestic or Cue]".

LTP opposed Cue and Majestic's objection to its claim on three grounds:

1. LTP repeatedly demanded the return of its spare parts, but Majestic refused to do so. LTP is asserting a claim for conversion and appropriately valuing the parts as of 2013 – at a time when Majestic was first exercising wrongful control - at $2,814,140. The Court's $40,000 valuation – asserted as correct by Majestic - was a fire-sale valuation in 2016, years after the parts had lost significant value.
2. LTP was the prevailing party in the Infinity Case and entitled to its $726,025 in fees and $56,081 in costs incurred in that case.
3. Majestic and Cue's objection to the LTP Claim based on the failure to attach the Majestic Agreement is disingenuous, given that Cue and Majestic do not lack access to or dispute the terms of the Majestic Agreement.

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Cue and Majestic opposed this motion and response. After a hearing on September 24, 2019, the Court concluded that:

i. With respect to §10.2(b) of the Consignment Agreements, the language of the that provision required a comparative fault analysis and, while the Ansett Judgment and subsequent appellate opinion determined that Cue and Majestic were at fault, they did not address LTP's fault. The Court also rejected LTP's assertion that it could not be liable for interference with economic relations with itself under California law, but agreed that the FAC had not asserted any basis for LTP to be liable for Cue's breach of her employment agreement.

ii. With respect to §10.2(a) of the Consignment Agreements, Cue and Majestic had not sufficiently alleged causation, *i.e.,* that their liability under the Ansett Judgment arose from LTP's breach of representations and warranties under the Consignment Agreements.

iii. With respect to the claims objection, (a) LTP had agreed to the dismissal of the spare parts claims in the settlement of the Infinity Action, so these claims are barred by res judicata, (b) the award of attorney's fees and costs in the Infinity Action would require further information and briefing, and (c) no purpose would be served by requiring LTP to annex the Majestic Agreement to its proof of claim, as the agreement is considered a trade secret by Ansett and Majestic has a copy of the Agreement.

Accordingly, the Court ruled as follows:

The First Amended Complaint was dismissed with leave to amend as follows:

- Allege causation with respect to breach of Majestic Agreement § 10.2(a) (breach of representations and warranties*, i.e.,* allege reliance on alleged misrepresentations in that the alleged statements induced Cue/Majestic to take action which they might otherwise not have taken, or would have taken in a different manner.
- Claims under Majestic Agreement §10.2(b) for (i) Cue and Majestic's liability for misappropriation of trade secrets, (ii) Majestic's liability for intentional interference with contractual relations (regarding Cue's employment contract with Ansett), and (iii) Cue and Majestic's liability for intentional interference with prospective relations (between Ansett and LTP), might be asserted

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as set forth in the First Amended Complaint.

- With respect to Majestic Agreement §10.2(b) and Cue's liability for breach of her employment agreement with Ansett, allege facts indicating that Cue's breach of her employment agreement arose out of or in connection with LTP's negligence or misconduct.

With respect to the Objections to Claim:

- Majestic's objection to the claim for aircraft parts was sustained;
- Majestic's objection to the claim for attorney's fees would require an evidentiary hearing to address the issues outlined above; and
- Majestic might 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.

Dkt. 51 & 52, as amended by 90 & 91.

Appeal to the District Court and Second Amended Complaint

On or about October 8, 2019, LTP appealed the Court's ruling on LTP's motion to dismiss the FAC to the District Court. Dkt. 60. On October 25, Cue and Majestic filed the SAC. Dkt. 82. The SAC continues to assert a claim for contractual indemnification based on §10.2(a)&(b) of the Consignment Agreements. It also asserts two of the three claims objections found in the FAC: against LTP's claim for the value of spare aircraft parts based on res judicata and against LTP's claim for attorney's fees and costs in the Infinity Case on the grounds that LTP was not the prevailing party.

Motion to Dismiss the SAC and Response to Objection to LTP Claim

On November 15, 2019, LTP filed this motion to dismiss the SAC, which also includes a response to Majestic's objection to LTP's proof of claim. Dkt. 85. (The hearing on this motion was continued until February 11, 2020.) In each, LTP argues as follows:

Motion to Dismiss

The SAC asserts a single cause of action for contractual indemnity, which sounds in fraud because it alleges that LTP made knowingly false representations to Majestic and Cue in the Consignment Agreements and that Cue and Majestic relied on these representations to their detriment.

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Under §10.2(a) the misrepresentations are the representations that LTP had good title to the consigned goods and that entering into the Consignment Agreements would not contravene laws or other agreements. LTP's "misconduct" alleged under 10.2(b) is providing Cue and Majestic with the consignment agreement form and the list of parts, without informing them of the substance of negotiations with Ansett or Ansett's claims that these documents were proprietary or confidential in nature.

Fraud claims must plead the elements of fraud – which include justifiable reliance - with particularity. Fed. R. Civ. P. 9(b). The allegations of reliance must be facially plausible. However, the plaintiffs do not, and cannot, plausibly allege that they justifiably relied on LTP's allegedly fraudulent statements, because in the Ansett case it was conclusively established that Cue (whose knowledge is imputed to Majestic) knew: that LTP's negotiations with Ansett were ongoing and that the parts lists, the form of Consignment Agreements, and the negotiations themselves were proprietary to Ansett. This determination is entitled to issue preclusion. Because Cue and Majestic knew that LTP's alleged misrepresentations were false, their reliance can never be justifiable. and this claim should be dismissed without leave to amend because amendment is futile.

Cue and Majestic also failed to satisfy the notice requirements for the express contractual indemnity in the Consignment Agreements. Article 11 of the Consignment Agreements requires Majestic and Cue to notify LTP promptly in writing after the commencement of an action subject to indemnification. Section16.5 set requirements for such writings, including that they be sent to LTP's Philippines address to the attention of Stanley Chiu. Article 11 also gives LTP entitlement to sole control over defense or settlement of such an action. Cue and Majestic failed to provide the required notice of Ansett's April 12, 2012 complaint, so a condition precedent to their indemnification liability failed. The notice is crucial, because it would give LTP the ability to assume control over the litigation. Cue and Majestic's counsel sent an email to LTP on October 10, 2012, demanding indemnification, based on an implied indemnification theory. This notice was inadequate because it did not mention contractual indemnification and was not addressed to Stanley Chiu.

Objections to LTP's Claim

LTP is entitled to the $2.8 million value of its spare parts that Majestic

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refused to return to LTP. LTP's voluntary dismissal of its spare parts cross-claim in the Infinity Case does not bar the assertion of this claim here, because LTP did not manifest an intent to be collaterally bound by that stipulated judgment, as required under California law *See California State Auto. Assn. Inter-Ins. Bureau v. Superior Court,* 50 Cal. 3d 658, 664, 788 P.2d 1156 (1990)("a stipulated judgment may properly be given collateral estoppel effect, at least when the parties manifest an intent to be collaterally bound by its terms"). This spare parts cross-claim was pending concurrently in the Ansett Case and the Infinity Case. The fact that LTP did not dismiss it in the Ansett Case indicates that it did not intend to dismiss this claim. LTP and Cue/Ansett entered into a stipulation in the Ansett case, in which they agreed to preserve their respective claims against each other. Ex. K to Motion To Dismiss FAC RJN. The Motions for Determination of Good Faith Settlement confirm this: in the Infinity Case LTP's spare parts cross claim was listed as an affected pleading, in the Ansett Case it was not.

The Bankruptcy Court's order valuing the spare parts in connection with their sale in December 2016 is not entitled to preclusive effect because the issue in the claim is their value in 2013, not 2016.

LTP was the prevailing party in the Infinity Case and is thus entitled to recover its attorney's fees and costs in that case. Section 16.9 of the Consignment Agreements provides that the prevailing party in any action "arising from or related to this Agreement" is entitled to recover attorneys' fees, costs and expenses. California Civil Code §1032(a)(4) defines a prevailing party to include "a party in whose favor a dismissal has been entered." In Infinity, LTP obtained a dismissal of Majestic and Cue's cross-claim for express indemnity when the court sustained LTP's demurrer on this cause of action. Majestic and Cue's remaining claims against LTP were dismissed pursuant to the court's §877.6 good faith order.

Majestic argues it was the prevailing party because it was dismissed from the case pursuant to the settlement between Infinity and LTP, but Majestic and Cue were dismissed – despite their utter refusal to settle - as fortunate beneficiaries of LTP and Infinity's desire to globally settle the case. Allowing them to claim attorney's fees as a prevailing party would discourage future settlements. Majestic and Cue also argue that they are the prevailing party because their claim for contractual indemnification remains in the Ansett Case, but LTP's cross-claims against Cue and Majestic also remain in Ansett.

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Jurisdiction

On December 5, 2019, the Court entered an order requesting that the parties provide additional briefing on the questions of (i) whether the Court has jurisdiction to hear this motion to dismiss the SAC in light of LTP's pending appeal of the Court's ruling on LTP's motion to dismiss the FAC and (ii) even if the Court had jurisdiction, whether hearing this motion would be prudent. Dkt. 100.

Cue and Majestic provided such briefing. Dkt. 107. They note that LTP appealed the Court's ruling on LTP's Proof of Claim, but not the ruling on Majestic and Cue's affirmative indemnity claim against LTP. Thus, they argue, the Court does not have jurisdiction to hear the portion of the motion dealing with proof of claim issues, but can and should hear the portion of the motion dealing with the affirmative indemnity claim, because doing so would advance the resolution of these proceedings. The Court agrees with Cue and Majestic on this issue.

LTP made the same arguments regarding its claim in this Motion to Dismiss the SAC that it made in its Motion to Dismiss the FAC, which is now on appeal to the District Court. Issuing a second ruling on these same arguments that are before the District Court could only create confusion and a waste of time and resources. *See In re Padilla*, 222 F.3d 1184, 1190 (9TH Cir. 2000). Thus, the Court lacks jurisdiction to hear argument regarding the proof of claim and to do so would be highly imprudent in any event.

On the other hand, hearing arguments regarding the contractual indemnification claim would advance this proceeding. If the parties choose to appeal the Court's ruling, that appeal could go forward and possibly be consolidated with the pending appeal.

Thus, the remainder of this ruling will only summarize and consider arguments regarding Cue and Majestic's affirmative contractual indemnification claim against LTP.

Opposition to Motion to Dismiss (Dkt. 102) Cue and Majestic argue as follows:

This Motion to Dismiss should be denied, pursuant to Fed. R. Civ. P. 12(g)(2), because it is based on arguments that LTP failed to raise in its Motion to dismiss the FAC. This motion attacks the SAC on the grounds that (i) the contractual indemnification claim sounds in fraud and fails to meet the pleading requirements for fraud and (ii) Cue and Majestic's demand for

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indemnification failed to meet the requirements of the Consignment Agreements. Both of these arguments were available to LTP in the Motion to Dismiss the FAC, but it failed to make them. Rule 12(g)(2) provides:

> Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

Fed. R. Civ. P. 12. A court has discretion to excuse a Rule 12(g)(2) violation, but only if it does not prejudice the plaintiff and expedites resolution of the proceedings. LTP's violation should not be excused because the new defenses were brought for strategically abusive purposes and will result in a delay prejudicial to Cue and Majestic. They are abusive because they could have been brought in the Motion to Dismiss the FAC but were not, and because they were rejected by the Superior Court in the Ansett Case. LTP is attacking the contractual indemnification claim in a piecemeal fashion. Considering these additional arguments seven months after Cue and Majestic filed their FAC and nearly a year after the original complaint was filed will delay these proceedings, prolonging resolution of the pleadings and possibly delaying the pending appeal.

In any event, this motion should be denied on the merits.

This contractual indemnification claim does not sound in fraud, so Rule 9 pleading standards do not apply. LTP's caselaw is inapplicable, as it involves deceptive and fraudulent practices under California's Consumer Legal Remedies Act and Unfair Competition Law. LTP argues that the SAC fails to plead all the elements of fraud, but that is because this contractual indemnification claim does not allege fraud. Majestic and Cue are not claiming an intent to deceive by LTP, only that LTP's representations and warranties were not true and that LTP knew or should have known of Ansett's proprietary interest in the form of the Consignment Agreements and the list of parts, as well as the status of its talks with Ansett. Furthermore, Rule 9(b)'s purpose of protecting a defendant from reputational harm has no application in a contract action. Further, in a fraud action, the plaintiffs can seek punitive damages, which Cue and Majestic have not.

Even if Rule 9 applied, the claim is adequately pled. Cue and Majestic have sufficiently alleged reliance, and that reliance has not been contradicted as a matter of undisputed fact. The Ansett Judgment and appellate opinion do not support LTP's argument that Cue knew of the proprietary nature of the

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Consignment Agreements and list of consigned parts. LTP has pointed to no findings in the Ansett Judgment about what representations LTP made to Cue/Majestic, whether Cue/Majestic knew that Ansett claimed the Consignment Agreements and list of parts were proprietary, or that Cue was aware the Ansett/LTP was still being pursued. The appellate opinion merely concluded that "Cue knew Ansett's deal with LTP was still pending." LTP RJN Exh B at 15. LTP relies on its own brief in the Ansett Case, quotes extensively from Cue's employment agreement and cites it to draw unsupported conclusions. The issues regarding Cue and Majestic's reliance and its reasonableness were not adjudicated in the Ansett Case and remain disputed issues of fact.

Cue and Majestic have sufficiently alleged that their reliance was justifiable. The reasonableness of reliance is almost always a question of fact, and recovery is denied only if it is manifestly unreasonable. Unlike the inapplicable case law cited by LTP, Cue and Majestic have not "closed [their] eyes to the discovery of the truth." *Martinez v. Hammer Corp.*, 2010 Westlaw 11507562, at *11 (C.D. Cal. Jan. 29, 2010).

Finally, LTP has already raised, and lost, the argument that Cue and Majestic's demand for indemnification under the Consignment Agreements failed to meet the requirements of those agreements. The Superior Court in the Ansett Case denied LTP's motion for summary adjudication, concluding that triable issues of material fact existed on the question of whether Majestic and Cue's counsel's October 10, 2012 email to LTP's counsel satisfied the notice requirements of the Consignment Agreements. LTP is seeking reconsideration of this ruling, which is improper under Fed. R. Civ. P. 59(e). LTP knows or should have known that the adequacy of Cue and Majestic's demand for indemnification involves questions of fact and cannot be grounds for a motion to dismiss.

If the Court finds that grounds to dismiss the SAC exist, Cue and Majestic seek leave to file an amended complaint.

Reply re: Motion to Dismiss LTP argues as follows:

Rule 12(g)(2) only applies to arguments that were available to the motioning party at the time the earlier motion was made. In this case, the SAC contained 15 new paragraphs of material allegations that made it clear that the SAC sounds in fraud. Thus, Rule 12(g)(2) and case law cited by Cue/.Majestic is not applicable.

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In any event, the court should exercise its discretion to consider LTP's fraud argument. This dispute has been litigated since 2011 and Cue/Majestic are the ones keeping it alive. In fact, addressing LTP's motion to dismiss would expedite resolution of this matter. The motion to dismiss can be decided based on facts developed in prior litigation of this matter. If LTP's arguments are not heard now, they will be heard at a motion for summary judgment, further delaying this proceeding and causing unnecessary litigation.

The SAC sounds in fraud because its basis for relief are the elements of fraud. Cue/Majestic concede that they have sufficiently alleged the elements of fraud: misrepresentation, scienter, reliance, and resulting damage.

Cue and Majestic have failed to show that they reasonably relied on LTP's alleged misrepresentations or that there are any disputed facts relevant to justifiable reliance.

The Ansett Appellate Opinion sets forth detailed facts demonstrating Cue's (and therefore Majestic's) knowledge that Ansett was pursuing a consignment deal at the same time that Cue and Infinity were doing so. Ansett Appellate Opinion (Ex. 3 to the RJN for this motion) at 5, 15. For instance, "Defendant's communications with Infinity during the relevant time period demonstrate that they knew Ansett's deal with LTP was still pending." *Id.* at 15. The Ansett Appellate Opinion also establishes that Cue worked for Ansett from 1999 to 2009, her employment agreement and the IMMA had confidentiality provisions, and that Ansett employees were not allowed to circulate the IMMA to potential customers without prior approval. *Id.* at 2, 11-12. Her employment agreement confidentiality provision covered information regarding "[s]uppliers and their production … and the price of their products to Ansett." *Id.* 3. This would cover LTP's parts list.

Cue and Majestic's attempts to preserve justifiable reliance by distinguishing LTP's case relies on immaterial distinctions.

Finally, Cue and Majestic's response to LTP's lack of notice argument incorrectly concludes that LTP is moving for reconsideration of the Superior Court's determination in the Ansett Case that this question of proper notice involved material issues of fact that could not be resolved in a motion to dismiss.

Finally, Cue and Majestic should not be given leave to amend because any amendment would be futile.

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Analysis

Rule 12(g)(2)

Even if the Court were to deny LTP's motion under Rule 12(b)(6), LTP could still raise these arguments at a later point.

> If a failure-to-state-a-claim defense under Rule 12(b)(6) was not asserted in the first motion to dismiss under Rule 12, Rule 12(h)(2) tells us that it can be raised, but only in a pleading under Rule 7, in a post-answer motion under Rule 12(c), or at trial. *See*, *e.g.*, *English v. Dyke*, 23 F.3d 1086, 1091 (6th Cir. 1994) (correctly describing the operation of the rule).

In re Apple iPhone Antitrust Litig., 846 F.3d 313, 318 (9th Cir. 2017), *cert. granted sub nom.* Apple Inc. v. Pepper, 138 S. Ct. 2647, 201 L. Ed. 2d 1049 (2018), and *aff'd sub nom. Apple Inc. v. Pepper*, 139 S. Ct. 1514, 203 L. Ed. 2d 802 (2019). As the Ninth Circuit further observed, "relegating defendants to the three procedural avenues specified in Rule 12(h)(2) can produce unnecessary and costly delays, contrary to the direction of Rule 1." 846 F.3d at 318. Thus, the Ninth Circuit has concluded that "we should generally be forgiving of a district court's ruling on the merits of a late-filed Rule 12(b)(6) motion." 846 F.3d at 319.

This motion will not cause substantial delay, it was made only a few months after the first Motion to Dismiss and will most likely be resolved before the appeal of the LTP's proof of claim will be heard. While the Court regrets that LTP did not make all of its available arguments in its Motion to Dismiss the FAC, this is not yet an abusive series of piecemeal pleadings that Rule 12(g)(2) was designed to address. Finally, as the Ninth Circuit observes, denying this motion on 12(g)(2) grounds will only leave these arguments for a later point in the case. Doing that would be much more likely to lead to delay and waste.

Rule 9(b)

> Rule 9(b) applies when (1) a complaint specifically alleges fraud as an essential element of a claim, (2) when the claim "sounds in fraud" by alleging that the defendant engaged in fraudulent conduct, but the claim itself does not contain fraud as an essential element, and (3) to

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any allegations of fraudulent conduct, even when none of the claims in the complaint "sound in fraud." *Vess v. Ciba–Geigy Corp. USA*, 317 F.3d 1097, 1102–06 (9th Cir.2003). Rule 9(b) requires that a plaintiff set forth what is false or misleading about a statement, why it is false, including the "who, what, when, where, and how of the misconduct charged." Id. at 1106.

Davis v. Chase Bank U.S.A., N.A., 650 F. Supp. 2d 1073, 1089–90 (C.D. Cal. 2009)

This claim for contractual indemnity does not specifically allege fraud as an essential element of the claim, it does not sound in fraud, and does not allege fraudulent conduct. Two elements of fraud are missing from the allegations in the SAC.

The elements of a cause of action for fraud in California are: "(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage."

Kearns v. Ford Motor Co., 567 F.3d 1120, 1126 (9th Cir. 2009).

Section 10.2(a) of the Consignment Agreements provides that LTP will indemnify Cue and Majestic for liabilities "arising out of or in connection with" any breach by LTP of its representations and warranties in each of the Consignment Agreements. Cue and Majestic must allege (i) breaches of the representations and warranties and (ii) facts satisfying "arising out of" language: *i.e.,* causation – that they relied on the representations and warranties resulting in the Ansett Judgment for which they seek indemnification. Unlike fraud, this contract claim does not require that LTP knew of the falsity of the representations and warranties or intended to defraud LTP.

Section 10.2(b) of the Consignment Agreement provides that LTP will indemnify Cue and Majestic for claims "arising out of or in connection with" any negligence or misconduct by LTP "except to the extent that the Claim is caused by the negligence or misconduct of [Majestic, Infinity, or their officers, etc.]." The Plaintiff's are alleging that LTP knew or should have known of Ansett's proprietary interest in the form of the Consignment Agreements and the list of parts, as well as the status of its talks with Ansett, and did not disclose this information to Cue or Majestic. Again, actual knowledge and intent to deceive are not part of this claim.

Reliance

Cue and Majestic will nonetheless need to prove reliance on the representations and warranties for §10.2(a) to apply. If they knew the relevant representations and warranties were false when they entered into the Consignment Agreements, they cannot establish that reliance. (Their knowledge of the facts will also be relevant to the allocation of fault under § 10.2(b), as will LTP's. As discussed in the Tentative Ruling, the Court cannot allocate fault as a matter of law and undisputed fact.)

As discussed in the prior Memorandum, the Ansett Judgment, as amended by the Ansett Appellate Opinion, is entitled to *res judicata/collateral estoppel* effect in this proceeding to the extent that it is relevant. The question is what issues were actually litigated and necessarily decided in the Ansett Case that are relevant to this action, *i.e.,* whether the Ansett Judgment and appellate opinion established that Cue and Majestic knew that some of the representations and warranties in the Consignment Agreements were false when they entered into them. (Cue and Majestic in the case of the Majestic Agreement, and Cue in the case of the Infinity Agreement.)

The SAC is alleging the following breaches of representations and warranties by LTP: (i) that entering into the Consignment Agreements would not contravene any laws or any other agreement with another party (¶15.2) and (ii) that LTP had good and marketable title to the aircraft parts if consigned to Infinity and Majestic and that it had "full power and lawful authority to transfer title to" those parts (¶6.4). LTP breached its representation in ¶15.2, because supplying the form of the IMMA and the list of consignable parts to Infinity and then Majestic violated obligations to Ansett and the California Uniform Trade Secrets Act. LTP breached its representation in ¶6.4, because Ansett claimed an interest in those parts. Cue relied on these representations and warranties in forwarding the form of the IMMA and list of parts to be consigned to Infinity. Cue and Majestic relied on these representations and warranties in entering into the Majestic Agreement.

In determining Cue and Majestic to be liable to Ansett, the Ansett Judgment and appellate opinion draw factual conclusions that are wholly inconsistent with such reliance. The Ansett Judgment found that Cue and Majestic "knew of the prospective economic relationship between Ansett and LTP," so Cue and Majestic could not have relied on LTP's "good and

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

marketable title" representation in ¶6.4. There is not a similarly unequivocal finding regarding Cue (and thus Majestic's) knowledge of the proprietary nature of the IMMA form and the list of consigned parts. However, reading the factual findings in the Ansett Judgment and Appellate Opinion as a whole, it is beyond doubt that Cue, as the controller of Ansett for 10 years until May 2009, knew of the confidential nature of the form of the IMMA and the list of consigned parts. Ansett's stringent secrecy procedures and the confidentiality provisions in Cue's employment agreement evidence this, as does the fact that Cue was the Ansett employee who provided LTP with a copy of the IMMA. Cue left Ansett's employ while the Ansett Agreement was in negotiation and provided Infinity with a copy of the agreement and a list of parts. She further asked Infinity to keep its agreement with LTP "in strict confidence" so that Ansett would not "go after them." Thus, the Court concludes that the contractual indemnification claim based on §10.2(a) is simply not plausible on its face and should be removed from the contractual indemnity claim.

Proper Notice under the Consignment Agreements

Like the Superior Court in the Ansett Case, this Court concludes that that triable issues of material fact exist on the question of whether Majestic and Cue's counsel's October 10, 2012 email to LTP's counsel satisfied the notice requirements of the Consignment Agreements. This provision cannot be interpreted without context, which will be a matter of disputed fact.

Proposed Ruling

The Court lacks jurisdiction to issue any ruling with respect to Majestic's objection to LTP's proof of claim, as the Court's earlier ruling on this objection is pending at the District Court.

The SAC will be dismissed with leave to amend, as follows. The claim for contractual indemnity may be made, but only under §10.2(b).

Cue and Majestic's Evidentiary Objections

Exhibit A (regarding the Appellate Brief in Ansett Case) – Sustained

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

Exhibits C and E were submitted in support of LTP's response to Majestic's Objection to LTP's Claim. As the Court no longer has jurisdiction on the Objection to Claim, it will not address these evidentiary objections.

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, February 18, 2020 **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 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; 11/20/19

Docket 263

Matter Notes:

- NONE LISTED -

Tentative Ruling:

This trial needs to be coordinated with the Campell one. See the tentative ruling for Campbell v. Pyle on Feb. 18.

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

9:00 AM
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, February 18, 2020 **Hearing Room 303**

9:00 AM

1:10-24968 Glen E Pyle **Chapter 7**

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

#2.00 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; 11/20/19

Docket 111

Matter Notes:

- NONE LISTED -

Tentative Ruling:

On 1/29/20 a stipulation was filed to continue this for 60 days as a status conference (and not a trial) because the parties are in active settlement negotiations. Counsel for the plaintiff and for the Trustee signed the stipulation, but Mr. Pyle did not. He is not represented by counsel in this case, but is in the Berry v. Pyle case. Mr. Nachimson called the court on 2/7 to advise that there might be an objection to the stipulation (presumably by Mr. Pyle) and request that this be only a status conference and that he be allowed to appear by phone.

Unless I receive some written documentation to the contrary, the trial set for 2/18 and 2/19 will be vacated and the hearing on 2/18 at 9:00 will be a status conference. Any party can appear by phone. Whether I will continue this a

9:00 AM

CONT... Glen E Pyle **Chapter 7**

full 60 days is yet to be decided. This case (or the Berry v. Pyle one where Mr. Pyle is represented by counsel) has been on the verge of settlement many times and it has always fallen through. Any settlement in the Campbell v. Pyle case needs to involve Mr. Aver, who represents Pyle in the Berry v. Pyle case. So Mr. Aver also needs to be on the phone on 2/18 (and he is supposed to be since I also have a status conference at that time in the Berry v. Pyle case).

If I determine that the trial should go forward without substantial delay, it will be held on the week of March 2: March 2, 3, and/or 5.

Prior tentative ruling (11/20/19)
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 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, 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

9:00 AM

CONT... Glen E Pyle **Chapter 7**

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 a 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.

9:00 AM
CONT... Glen E Pyle **Chapter 7**

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 judgment in the Berry v. Pyle case.

9:00 AM

CONT... Glen E Pyle **Chapter 7**

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 at 10:00 a.m.

9:00 AM

CONT... Glen E Pyle **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 schedule a mediation.

9:00 AM

CONT... Glen E Pyle **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 knowledgable 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

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

Tuesday, February 18, 2020 **Hearing Room 303**

9:00 AM

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

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

Wednesday, February 19, 2020 **Hearing Room 303**

9:00 AM

1:10-24968 Glen E Pyle **Chapter 7**

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

#1.00 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; 2/18/19

Docket 111

Tentative Ruling:

Off calendar. See the tentative ruling for 2/18/20.

Party Information

Debtor(s):

Glen E Pyle — Pro Se

Defendant(s):

Glen Pyle — Pro Se

Plaintiff(s):

Ian Campbell — Represented By Barry P King

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

Wednesday, February 19, 2020 **Hearing Room 303**

9:00 AM

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

Monday, March 2, 2020 **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 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; 11/20/19; 2/18/20

Docket 263

Tentative Ruling:

This is trailing 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

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

Monday, March 2, 2020 **Hearing Room 303**

9:00 AM

CONT... Glen E Pyle **Chapter 7**

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

Monday, March 2, 2020 **Hearing Room 303**

9:00 AM
1:10-24968 Glen E Pyle **Chapter 7**
Adv#: 1:11-01181 Campbell v. Pyle

#2.00 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; 11/20/19; 2/18/20

Docket 111

Tentative Ruling:

- NONE LISTED -

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

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

Monday, March 2, 2020 **Hearing Room 303**

9:00 AM

CONT... **Glen E Pyle** **Chapter 7**

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, March 3, 2020 **Hearing Room 303**

10:00 AM

: Gallegos **Chapter 0**

Misc#: 1:15-00105 Gallegos

#1.00 Order for Appearance and Examination

Docket 31

Tentative Ruling:

Service was not completed, so the moving party has requested a new date (or continued hearing date). This has been set for April 28 at 10:00 a.m.

10:00 AM
1:09-18345 Narine Gumuryan **Chapter 7**
Adv#: 1:19-01081 Bag Fund LLC v. Gumuryan

#2.00 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, 11/19/19, 1/14/20

Docket 1

Tentative Ruling:

Thank you for the joint status report. Please feel free to attend the 3/3 hearing by phone or file an agreed to scheduling order in compliance with this tentative ruling. The status conference will be continued to May 19, 2020 at 10:00 a.m. Discovery cutoff will be on May 8. This means that discovery is complete, not that it is the last day to send out new discovery. Depending on what happens at the May 19 status conference, I may require a pretrial order and set a pretrial hearing at some later date. A July trial date is possible if you do not settle.

Prior tentative ruling (1/14/20)
On 12/5/19 Narine Gumuryan filed an anwer to the complaint. No status report has been filed. How do the parties intend to proceed from here?

Prior tentative ruling (11/19/19)
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

10:00 AM

CONT... Narine Gumuryan **Chapter 7**

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.

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

10:00 AM
CONT... Narine Gumuryan **Chapter 7**

Plaintiff(s):

Bag Fund LLC — Represented By Vincent J Quigg

Trustee(s):

David Keith Gottlieb (TR) — Represented By David Keith Gottlieb

10:00 AM
1:16-11387 Real Estate Short Sales Inc **Chapter 7**
Adv#: 1:19-01139 Yavor v. City One Locksmith

#3.00 Motion to Dismiss Complaint with Prejudice

fr. 1/14/20

Docket 4

Tentative Ruling:

At the hearing on January 14, I discussed the tentative ruling. The issues of indemnification and privity as well as dismissal of an unnamed Doe defendant were reviewed and I determined that the tentative ruling was correct as to those. However, the question of whether the Buyer has standing to sue the locksmith for negligence committed while the Trustee was the owner of the property was left open. The Trustee had cited the case of *Krusi v. S.J. Amoroso Constr. Co.* 81 Cal. App. 4th 995, 1003 (2000) in the reply. The Plaintiff was given until February 3 to file a brief on that single issue. The Trustee had until February 10 to file a reply brief. The motion to dismiss was continued to March 3, 2020 at 10:00 a.m.

Plaintiff's Brief

Plaintiff analyzed both *Krusi* and *Keru Investments, Inc. v. Cube Co.,* 63 Cal. App. 4th 1412 (1998), which is cited by *Krusi*. In *Krusi*, the property was built in 1985 and the original owner had a dispute with the architect. This went to arbitration in 1988 and the arbitrator ruled in favor of the architect on the defective work claims. In 1995 the buyers purchased the property. Prior to the sale closing, the seller became aware of leaks and repaired them as well as other defects. When the buyers sued the seller, the court affirmed the dismissal due to the prior arbitration and the longstanding existence of the defects.

In *Keru*, Moross Group, the owner of the property, hired GL & Assoc. to do a seismic retrofit. The 1994 Northridge earthquake damaged the property. Later in 1994, the Moross Group conveyed the property to Keru Investments, who sued the sellers, the retrofitters and others. The court determined that the buyer did not own the cause of action simply because they discovered the reason for the damage after the property was transferred

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to them. But it also noted that in other situations a subsequent purchaser would be a foreseeable plaintiff. For example in *Sumitomo Bank v. Taurus Developers, Inc.*, 185 Cal. App. 3d 211 (1986), the court found that a purchaser at a trustee's sale could state a negligence claim against a builder. See also *Huang v. Garner* 157 Cal.App.3d 404, 423 (1984) which held that a developer's duty of reasonable care is logically owed to those who are subsequent buyers of a structure allegedly designed or constructed in a defective manner.

In the present case, the reason that City One Locksmith did the work was so that Yavor would purchase the property. This was necessary to complete the transfer. The damage was not present at the time of the purchase agreement or when the court approved the sale.

Citing to *Connor v. Great Western Sav. & Loan Assn*, 69 Cal.2d 850, 865 (1968), Yavor sets forth the public policy of balancing certain factors to determine whether a defendant will be held liable to a third person not in privity: "[1] the extent to which the transaction was intended to affect the plaintiff, [2] the foreseeability of harm to him, [3] the degree of certainty that the plaintiff suffered injury, [4] the closeness of the connection between the defendant's conduct and the injury suffered, [5] the moral blame attached to the defendant's conduct, and [6] the policy of preventing future harm."

Yavor contends that at trial she will be able to prove that City One chose to damage multiple French Doors instead of just changing the locks on them. Because of this, she received the property in a worse condition than it was at the time of the purchase agreement.

Trustee's Brief

The Locksman is a tradesman, not a developer, builder, engineer, or housing planner and as a matter of public policy it would be unfair to hold him to a foreseeability standard exposing him to unlimited liability towards subsequent purchasers of the property. Because he owed no duty to Yavor, the complaint must fail.

Under *Krusi*, "a cause of action for damage to real property accrues when the
defendant's act causes 'immediate and permanent injury' to the property or, to put it another way, when there is '[a]ctual and appreciable harm' to the property." 81 Cal.App.4th at 1005. Because the negligence cause of action accrued before the sale closed, it belongs to the Trustee, not to the Buyer.

Keru actually holds the same: "Choses in action belong to the party who suffered the injury. In this case the injury was suffered by Keru Investments' predecessor, the Moross Group. In the absence of assignment, Keru Investments does not have standing to pursue it." 63 Cal.App.4th at 1423-25. In fact, *Keru* explains that builders and developers are treated differently because they are constructing projects for resale. Therefore they are held closer to a products liability standard. *Huang* and *Sumitomo* both deal with negligence claims against a builder or developer. They do not apply to a single contract employee like a locksmith.

Looking at the *Connor* tests (also cited in *Biakanja v. Irving*, 49 Cal.2d 647, 650 (1958)), factors 1, 2, 5 and 6 weigh heavily against finding that the locksmith is liable to the Buyer. The transaction between the Trustee and City One was to protect the property pending the closing of the sale and to prevent the prior owners from entering. This was for the benefit of creditors, not only because of the Buyer. And thus the hiring of the locksmith would have occurred whether or not the property was in escrow.

City One was hired for a singular purpose – to secure the property. The locksmith worked under the narrow instruction of the owner (the Trustee). The relationship of the locksmith and the Buyer is too attenuated to impose a duty from the locksmith to the Buyer. Public policy would not be served by imposition on such tradesmen absent privity of contract.

Case Analysis

It should be noted that all of the real property construction cases placed before this court are at the court of appeal level and are not definitive California law. Thus none is a binding determination of California law on the issue before this court. Under this situation, it is usual that the latest decision will be followed unless it is deemed erroneous. Cal. Jur 3d, Courts, §302. However, "where there is more than one appellate court decision, and such appellate decisions are in conflict … the court exercising inferior jurisdiction can and must make a choice between the conflicting decisions." *Auto Equity Sales, Inc. v. Superior Court*, 57 Cal.2d 450, 456 (1962).

These cases are very fact specific. Reviewing them in chronological order, they can be summarized as follows:

Huang v. Garner 157 Cal.App.3d 404 (1984): The Caroline Apartments was constructed in 1965. Apparently the plans and specifications were

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defective and in violation of the building code. The owner-builder owned the property until 1970 and then sold it to the Bartels, who sold it to the Huangs in 1974. The Huangs wanted to convert the building to condominiums and hired an engineer who discovered the defective construction issues. The Huangs sued a whole variety of defendants and most settled. But the original owner-builder went to trial.

The Court held that the the professional designer and engineer, etc. could be liable for the damage because the building code and the issue of professional negligence are meant to protect those who are hurt by the actions of the professional. As to the claims against the original owner-builder, the Court held that the developer has a duty of reasonable care that is owed to subsequent purchasers, even if those subsequent purchasers do not live in the building but purchase it solely as an investment. There is a foreseeability factor that the owner-builder had that it would sell the property at a future date and that the purchasers and subsequent residents would be damaged by the defects. As to the owner-builder, "we conclude that the risk of harm in this case was foreseeable and that injury to plaintiffs' economic interests may legally be compensated if plaintiffs prevail in their cause of action for negligence." Id. at 425

Sumitomo Bank v. Taurus Developers, Inc., 185 Cal. App. 3d 211 (1986): The plaintiff was the bank which made the construction loan to the defendant builder. After default the bank gained title to the property at the trustee's sale. It then sued the developer for a variety of claims after discovering latent defects in the property. [The claims for fraud in the loan transaction are not discussed here due to lack of relevance.] As to the claims for negligence, just because this was a foreclosure sale, the lender-buyer was not barred from seeking to recover damages for negligence. And the "as is" provision in the trustee's deed on sale did not bar a negligence claim. There is a duty to construct properly and the eventual sale of the property is foreseeable. Citing to *Biakanja v. Irving*, the Court set forth the general rule of reasonable care towards the purchaser of a housing structure and notes that this has been applied even to a subcontractor. And it applies to a builder who is not the seller. And an "as is" clause does not affect liability based on breach of a duty of care.

Vaughn v. Dame Construction Co. (1990) 223 Cal.App.3d 144 (1990):

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The plaintiff was the owner of a condominium and during that time she had construction work done by the defendant. She filed suit for damages due to defective construction and while the suit was pending, she sold the condominium to a third party. The issue on this motion for summary judgment was whether the plaintiff continued to have standing to sue even though she no longer owned the property. The Court found that it was undisputed as to the plaintiff's ownership at the time of the negligence and that she suffered damages due to it. It held that the plaintiff was the real party in interest and thus owned the cause of action. However, the Court goes on to hold that "[w]hile ordinarily the owner of the real property is the party entitled to recover for injury to the property, the essential element of the cause of action is injury to one's interests in the property—ownership of the property is not. It has been recognized in many instances that one who is not the owner of the property nonetheless may be the real party in interest if that person's interests in the property are injured or damaged." Id. at 148.

The cause of action is not real property, but personal property and can be transferred. But the transfer of the real property does not automatically transfer the related personal property. When the owner conveyed the condominium, she did not automatically transfer the personal property cause of action.

> No one other than plaintiff can recover for the damages she sustained as owner of the property at the time the injury occurred. The fact that the property was sold after the damage occurred does not mean the new owners are now the parties entitled to recover for the damage suffered by plaintiff while she was the owner. In order for the new owners to maintain an action, they would first have to establish damage to their interests in the property. If, as plaintiff's counsel represents, the new owners bought the property with full knowledge of the defective construction and presumably paid no more than the fair market value of the property in its defective condition, there is little likelihood that the new owners would or could assert the same claim as plaintiff. Id. at 149.

The *Vaughn* court discounted the case of *Kriegler v. Eichler Homes, Inc*, 269 Cal.App.2d 224 (1969) in which the faulty construction took place in 1951, the property was sold to the original buyers in 1952 and the plaintiffs did not purchase it until 1957. The court allowed the plaintiffs to sue the builder, who cross-complained against the suppliers of the faulty heating

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system. Because of the strict liability doctrine, the plaintiff could proceed to prove that he was injured by the faulty construction, which, apparently, only became obvious after the plaintiff had bought the home.

Keru Investments, Inc. v. Cube Co., 63 Cal. App. 4th 1412 (1998): Viljo Kaila owned the 35 unit apartment building in Hollywood and sold it to the Morosses, et. al (Moross Group) in 1985, taking back a deed of trust. In 1988 the Moross Group hired GL & Associates to engineer a seismic retrofit of the building and the Cube Company was hired to perform the work. In January 1994 the building was severely damaged by the Northridge earthquake. In October 1994 Keru Investments, a company wholly owned by Kaila, bought the property subject to the first deed of trust, relieving the Moross Group from their obligations under the note.

Reviewing the prior cases (cited above), *Keru* makes a distinction as to the type of defendant, noting the *Huang* and *Sumitomo* both concerned defendants who were builder/developers who had constructed the projects for purposes of resale. Thus they were similar to manufacturers who placed dangerously defective products into the stream of commerce. Here the defendant "was not a developer and had not retrofitted the building with the expectation that it would be transferred by the Moross Group to a third party." Id. at 1423

The work was done for the prior owner and the damage was sustained during the ownership of the prior owner. The cause of action accrued when Moross Group was entitled to prosecute it. This was prior to the ownership of Keru. Citing to the *Vaughn* case, the Court held that it was Moross Group who held the cause of action for negligent construction and not Keru, who was a transferee of the property. This is personal property of the Moross Group and did not transfer to Keru with the land.

> The injury was sustained by the Moross Group which owned the property when the earthquake devastated the building. Respondents cannot claim to own the cause of action simply because they discovered the reason for the damage after the building was transferred. Under respondents' reasoning, every party who purchased a hulk of a building would automatically have a right to bring a lawsuit if they could find some previously unknown factor which contributed to the building's destruction. That is simply not the law. Choses in action belong to the party who suffered the injury. In this case the injury was

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suffered by Keru Investments' predecessor, the Moross Group. In the absence of assignment, Keru Investments does not have standing to pursue it. Id at 1424-5

Krusi v. S.J. Amoroso Constr. Co. 81 Cal. App. 4th 995 (2000): The most recent case is that of *Krusi*, which tried to find a path between the prior conflicting decisions. In *Krusi*, a commercial building was constructed 8 years earlier and the current owners were the fourth owners. They sued the architects and contractors for negligence due to water leaks in the garage headwall. The original owner had sued the architect for this issue, but the arbitrator favored the architect. The seller to the current owner knew of the leaks and expected to reduce the sale price by $15,000 for the cost of repair. The new owner discovered substantial damage due to the leaks and the construction. They lost on summary judgment for lack of standing.

The *Krusi* opinion reviews the prior case holdings (*Huang, Sumitomo Bank v. Taurus Developers, Keru. Vaughn*). The *Krusi* court notes that the prior cases split: two for liability to a subsequent owner, two against liability. The *Krusi* court harmonized the four opinions and then decided that this case should follow the *Keru* holding, but not on the same reasoning.

The first distinction make by *Keru* is the purpose of the owner-defendant. Were they builders/developers who intended to resell the property at issue or was the defendant a mere contractor who had no such intention. *Krusi* was not impressed with this in this day and age. In the prior cases, three of the properties were multifamily projects (2 apartment buildings and one condominium complex). In *Vaughn* it was a single condominium unit. *Krusi* concerns an office building. Also, *Krusi* is concerned that the decision might rest on the nature of the defendant. So it does not follow this first distinction.

But *Krusi* does embrace the concept that accrual of a cause of action for damage to real property occurs when "the defendant's act causes '*immediate* and *permanent* injury' to the property or, to put it another way, when there is '[a]ctual and appreciable harm' to the property." *Krusi*, 81 Cal.App.4th at 1005 (Citing *CAMSI IV v. Hunter Technology Corp.,* 230 Cal.App.3d 1525, 1534 (1991)). The cause of action is not transferred to a subsequent owner unless the current owner clearly manifests the intent to transfer it.

Krusi then goes on to discuss the *Biakanja* case [discussed below]

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dealing with privity:

> It is, of course, clear that a tort duty runs from an architect, designer, or contractor to not only the original owner for whom real property improvement services are provided, but also to subsequent owners of the same property. We made this point in Huang and, as we noted there, it is a basic rule deriving from the seminal case of *Biakanja v. Irving, supra*, 49 Cal.2d 647. There, our unanimous Supreme Court, through Chief Justice Gibson, held that an action in negligence may be maintained against one not in privity with the plaintiff if, inter alia, the transaction was designed to affect the plaintiff, the injury to the plaintiff was foreseeable and his or her harm certain, and there was a close connection between the defendant's conduct and the harm which occurred. (*Id*. at p. 650, 320 P.2d 16.)
>
> But, as applied to a case such as this, the *Biakanja* rule simply means that a duty may run from an architect, engineer or contractor to a subsequent owner of real property. It does not mean that, in a case implicating damage to such property, once a cause of action in favor of a prior owner accrues, another cause of action against the same defendant or defendants can accrue to a subsequent property owner—unless, of course, the damage suffered by that subsequent owner is fundamentally different from the earlier type. Thus, if owner number one has an obviously leaky roof and suffers damage to its building on account thereof, a cause of action accrues to it against the defendant or defendants whose deficient design or construction work caused the defect. But, if that condition goes essentially unremedied over a period of years, owners two and three of the same building have no such right of action against those defendants, unless such was explicitly (and properly) transferred to them by owner number one. But owners two and three could well have a cause of action against those same defendants for, e.g., damage caused by an earthquake if it could be shown that inadequate seismic safeguards were designed and constructed into the building. Such is, patently, a new and different cause of action.

Krusi, 81 Cal.App.4th at 1005-6.

Krusi then applies this to the facts before it and finds that although the issue of when damage occurs is a question of fact, because there was a prior litigation against the architect, this is now undisputed and because of that it

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affirmed the grant of summary judgment against the new owner.

Application of the Caselaw to the Yavor v. Zamora situation

Following the general procedure in dealing with conflicting appellate decisions, the Court finds that *Krusi* has analyzed the prior cases and that its decision is not clearly erroneous given the facts before the *Krusi* court. The summary and analysis of *Krusi* is very helpful … to a point. However, the facts before this court are quite different from those of *Krusi*.

The work done by City One was during the ownership of the Trustee, but for the direct benefit of the Buyer. And this was not an unknown buyer, but was for a property in escrow at that time. The price had been set, the buyer was only awaiting the ability of the Trustee to evict the prior owners and close. [The Court is aware that the parties reduced the price to cover some damages to the property, but whether this prevents the Buyer from proceeding is a matter of fact to be determined at a later stage in the litigation.]

This is not a situation where the damage was done at a time when the owner had hopes of sale or did not know the identity of some future purchaser. The Trustee was working for the benefit of the estate and Yavor was the person who would provide that benefit. To that extent, Yavor was as close to being in privity as one can be while not actually being in privity. It seems to the Court that the concept set forward in *Biakanja* is the most relevant to this case.

Biakanja v. Irving, 49 Cal.2d 647 (1958) involved the negligent preparation of a will by a notary public. Because he failed to create a document that was legally valid, the decedent was deemed to die intestate and his brother, who was intended as the sole beneficiary, sued the notary public for negligence. The court held that even through the plaintiff and the notary were not in privity, the brother could sue:

> The determination whether in a specific case the defendant will be held liable to a third person not in privity is a matter of policy and involves the balancing of various factors, among which are the extent to which the transaction was intended to affect the plaintiff, the foreseeability of harm to him, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, and the policy of preventing future harm. Cf. Prosser, Torts (2d ed.

> 1955), ss 36, 88, 107, pp. 168, 172, 544-545, 747; 2 Harper and James, Torts (1956), s 18.6, p. 1052. Here, the 'end and aim' of the transaction was to provide for the passing of Maroevich's estate to plaintiff. See *Glanzer v. Shepard*, 233 N.Y. 236, 135 N.E. 275, 23 A.L.R. 1425. Defendant must have been aware from the terms of the will itself that, if faulty solemnization caused the will to be invalid, plaintiff would suffer the very loss which occurred. As Maroevich died without revoking his will, plaintiff, but for defendant's negligence, would have received all of the Maroevich estate, and the fact that she received only one-eight [sic] of the estate was directly caused by defendant's conduct.

Biakanja, 49 Ca.2d at 650-1

Ten years after *Biakanja*, the California Supreme Court again adopted the *Biakanja* test in *Connor v. Great Western Sav. & Loan Ass'n*, 60 Cal.2d 850, 865 (1968), this time dealing with real estate construction. In that case, the entity that financed the real estate development had a duty to the ultimate buyers and was held liable to the buyers for damages due to the construction defects created by the contractor.

There is no hard and fast rule that applies to this case. The Court has to balance the factors including those enumerated in *Biakanja*. The work on changing the locks was for the benefit of both the Trustee (to protect property of the estate) and the Buyer (to receive property that was not damaged by an intruder). It was foreseeable by City One that if it damaged the doors, this would harm either the Trustee or the ultimate owner or both (depending on who would undertake the repair or replacement needed). Damage to the doors certainly injured the Buyer, though the amount of injury is yet to be determined. The alleged injury is directly due to the actions of City One. There is no moral blame. While the Court has no indication as to whether City One actually was negligent, if they were, the fact that they are found to have acted improperly could prevent future harm to others. Beyond that, this is not a situation when the Buyer was new to the property, had time to inspect before making an offer, and that offer then included knowledge of the alleged damage. Under such circumstances, the Court might find that public policy would prevent the Buyer from pursuing this cause of action against the locksmith. But this is not the factual situation here.

The Court needs to discuss other factors and that deal with the bankruptcy process. One is that it was obvious to City One that the Trustee

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was not the ultimate owner of the property, but was in the process of selling it in the very near future. This might equally apply to a situation where the person hiring the locksmith or other workman is the owner (or the real estate agent) of a property that has a "for sale sign" on it. It is a question of fact as to whether or not City One was aware of the nature of a bankruptcy and that the property would soon be transferred to a new owner. And this is not something that the Court can resolve at the motion to dismiss stage.

As to the affect on trustees in future sales, it is doubtful that a locksmith or other craftsman would refuse the engagement because of potential liability to the ultimate buyer. Even if a few such craftsmen decided not to engage in trustee work, there are many such persons available and this is not a unique set of skills held only be a few.

Deny the motion to dismiss. An answer is due by March 17, 2020. The status conference is continued to April 28, 2020 at 10:00 a.m..

Prior tentative ruling (1/14/20)

On October 8, 2019, Haya Sara Yavor (Yavor or Buyer or Plaintiff), who was the buyer of the real property at 10351 Oklahoma Ave., filed suit in state court against City One Locksmith (City One), Case #: 19 STLC09304. No activity has taken place in the case.

On December 2, 2019, Nancy Zamora (Trustee or Zamora), who is the chapter 7 trustee in the Real Estate Short Sales, Inc. (RESS) bankruptcy case, removed the case to the bankruptcy court. The trustee asserts that this is a core matter and consents to final judgment in the bankruptcy court.

The complaint asserts that when the U.S. Marshal was employed to evict the prior owner, City One Locksmith was sent to change the locks to secure the property and to ensure that there would be no reentry. Rather than change the locks to the front door, City One screwed the doors shut, which caused significant damage to the doors. These were upscale luxury doors and very costly and valuable. Plaintiff seeks general damages of at least $20,000, costs of suit, prejudgment interest, etc.

Although the complaint tries to avoid asserting a claim against the

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Trustee (referring to the U,S, Marshal in such a way that it appears that that person/entity hired City One, in paragraph 5 it states the true state of affairs: "In light of these sequence of events, Plaintiff Yavor brings this lawsuit to recover damages caused by Defendant Trustee's negligent actions."

The history of this action is as follows:

On April 19, 2019, Haya Sara Yavor filed a complaint in the state court against Nancy Zamora for negligence and fraudulent concealment (19STCV13803). Included in that complaint was the assertion at paragraph 16 and 17 that "on December 17, 2018 … Defendant Trustee employed the U.S. Marshal to evict the Occupants from the Property. In or around January of 2019, Defendant Trustee further proceeded to cause City One to screw the doors of the Property shut. The screws on the door caused significant damage to the Property."

On May 30, 2019, the Trustee removed the complaint to this court as Adv. #1:19-ap-01064. The Trustee then filed a motion to dismiss the complaint and on July 16, 2019 the Court granted that motion without prejudice. The tentative ruling, which became the final ruling, is as follows:

> 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:

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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.

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

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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 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

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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.

On August 6, 2019, Yavor filed a first amended complaint asserting that the Trustee had acted with gross negligence as to damage to the doors and mold damage. She did not name City One, but asserted that the Trustee breached her duty of care by "causing the doors to the Property to be negligently screwed shut, and in doing so, caused substantial damages to the doors of the Property." (paragraph 24).

On August 20, 2019, the Trustee filed a motion to dismiss the first amended complaint with prejudice. In part this was because the facts did not support the negligence claims against the Trustee or City One. Also, there was a prior reduction in price to account for mold and water damages to the property.

On September 5, 2019, the parties stipulated to "Dismiss Entire Action with Prejudice for Case No. 1:19-01064-GM in its entirety." (dkt. 21) The dismissal order was entered on September 23, 2019 (dkt. 24).

As noted above, shortly thereafter Yavor filed a complaint solely against City One for negligence. The Trustee asserts that since City One has indemnification claims against the Estate, the Trustee is the real party in interest and has removed the suit and will defend it.

The Motion to Dismiss

The complaint is barred by res judicata. The initial adversary proceeding was dismissed with prejudice and the Trustee cannot be forced to defend the same action again just because the Buyer has named a Doe defendant (City One). A final judgment on the merits of an action precludes

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the parties or persons in privity with the parties from relitigating the same claim that was raised in the prior action. *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008). A voluntary dismissal with prejudice operates as an adjudication on the merits, barring further action on the same claims. *See Semtek International Inc. v. Lockheed Martin Corp*., 531 U.S. 497, 505 (2001).

This new complaint involves the same parties or persons in privity with the same parties to the First Adversary Proceeding. The Buyer is the Plaintiff in both, the First Adversary Proceeding named not only the Trustee, but Doe defendants and the Plaintiff knew that City One was one of those Doe defendants. The claim of negligence asserted against City One arises out of the same transaction and occurrence – City One's conduct in changing the locks at the Property for the Trustee's benefit. Dismissals have res judicata effect as to Doe defendants.

Beyond that, City One owed no duty to the Plaintiff, who was the buyer. *John B. v. Superior Court*, 38 Cal. 4th 1177, 1188 (2006). On its face the complaint shows that City One was sent to do the work and not hired or employed by the Buyer. In fact, at that time the Trustee was the owner of the property since escrow had not yet closed. Closing occurred on or about January 29, 2019. The complained-of action took place on about January 12.

The purchase agreement states that the Buyer purchased the property "as-is where-is." Yavor accepted the property with full knowledge of the issues of the doors. She had plenty of time to inspect the property prior to closing, some two weeks after City One had performed its work.

Opposition

The prior complaint was dismissed without prejudice and the Plaintiff filed a first amended complaint. During the course of "preliminary internal discovery," the Plaintiff discovered that the true tortfeasor was City One Locksmith and not the Trustee. Also that the Trustee was covered by immunity, so she must proceed against the actual tortfeasor. Thus she decided to dismiss with prejudice as to the Trustee and proceed against City One.

The alleged indemnity agreement does not give jurisdiction to the court and the Plaintiff will be moving to remand. The Trustee has no standing to bring this motion to dismiss.

Res judicata does not apply because the Trustee and City One are not the same party or privies. City One was never a party to the prior lawsuit and

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

the Trustee is not a party to this one. The Trustee is attempting to transfer her trustee-immunity to City One. The purported indemnity agreement is not signed and is not enforceable. It is merely some pre-printed boilerplate language on a written invoice by City One. The locksmith cannot unilaterally waive the indemnification requirement of a Trustee's signature. *Lockheed Missiles & Space Co., v. Gilmore Industries, Inc.*, 135 Cal.App.3d 556. *Paul Gonya v. Kenneth Stroud*, 2013 WL 5861489 (2013).

Under *Taylor v. Sturgell*, 553 U.S. 880 (2008), a non-party is subject to claims preclusion. It holds that in general a person is not subject to an *in personam* ruling in a case in which "he is not designated as a party or to which he has not been made a party by service of process." *Id.* at 893. There are six exceptions:

1. *A person agrees to be bound by the determination of the issues* – this did not happen.
2. *There are sufficient pre-existing substantive legal relations between the person to be bound and the party to the judgment* – here the only relationship is the indemnity agreement, which is unenforceable.
3. *The non-party is adequately represented by someone with the same interests who is a party to the suit*– there needs to be something in the record to show that the interests of the parties are aligned. Here the interests of the Trustee and City One are in conflict in that the Trustee was holding the property for the benefit of the buyer (Plaintiff) and the locksmith damaged it.
4. *The non-party assumed control over the litigation* – this did not happen.
5. *The non-party is litigating through its proxy* – here City One is not a proxy to the Trustee.
6. *A specific statutory scheme forecloses future successive litigation by non-litigants* – there is no such statutory scheme.

Damjanovic v. Ambrose, 951 F.2d 359 (9th Cir. 1992)(unpublished decision), which is cited by the Trustee, held that the subsequent claim was barred because the same party was being sued in both lawsuits. Here City One and the Trustee are not the same party. City One was not named in both lawsuits. And they are not privies. The Trustee's argument that City One should have been added as a Doe Defendant is not supported by the

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

law.

Even though escrow had not closed and there was no employment relationship between City One and the buyer, there is a duty to the buyer if there was foreseeability of harm to the buyer. Whether this existed in this case is to be determined during the case itself and not at this stage. Discovery will show whether City One's performance was negligent and caused damages to the door and whether City One actually foresaw the risk of harm to the buyer.

The purchase of the property "as-is where-is" does not apply. Buyer inspected the property in September 2018. The tortious conduct occurred after that, during the escrow. The buyer did not have control of the property and could not safeguard it. This was a significant change to the property.

Trustee's Reply

Because of the indemnification language in the invoice, the Trustee is the real party in interest and has standing to seek dismissal. *Lockheed Missiles* deals with CA Labor Code §3864 and is limited to that context. This is not a suit under the Labor Code. Similarly the other cases cited by the Plaintiff do not apply. In fact, if the Trustee had not appeared, City One would likely have filed a third party complaint against the Trustee and the Trustee would have been required to defend the action.

City One was a known Doe defendant in the first adversary proceeding and is in privity with the Trustee. The dismissal of the first adversary proceeding with prejudice included a dismissal of all known Doe defendants, including City One.

The Trustee and City One have a relationship of principal and agent. This allows claim preclusion to apply. The indemnity liability is sufficient to allow legal privity for claims preclusion. *Lamphere Enterprises, Inc. v. Koorknob Enterprises, LLC*, 145 F.App'x 589, 5992 (9th Cir. 2005) (citing *Am. Safety Flight Sys., Inc. v. Garrett Corp.*, 528 F.2d 288, 289 n.1 (9th Cir. 1975).

Damjanovic v. Ambrose, 951 F.2d 359 (1991) (unpublished) affirmed dismissal of an action and sanctions when the plaintiff tried to name a Doe defendant in a subsequent action after dismissal of the prior-filed case.

For the case to go forward, the Plaintiff must show (and plead) that the Defendant owed a duty to the Plaintiff. This is not sufficiently alleged in the complaint. It is merely a legal conclusion, not based on pleaded factual allegations. The existence of a duty is a matter of law. The case must be

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

prosecuted in the name of the real party in interest. *Krusi v. S.J. Amoroso Constr. Co.* 81 Cal. App. 4th 995, 1003 (2000), etc. concerned a suit against a contractor who had allegedly damaged real property prior to the transfer of ownership to the plaintiff. The Court of Appeal held that the negligence claim belonged to the party who had suffered the injury, which was the prior owner. Here the injury, if there was one, belongs to the Trustee since the Trustee was the owner of the property at the time of the alleged negligence.

This is an "as-is where-is" contract and that cannot be avoided by the Plaintiff. Plaintiff argues that the Trustee had a duty to protect the property during escrow., but the complaint alleges that City One has a duty to the Buyer/Plaintiff as the owner of the Property (¶19). It does not reveal that she did not own the property at the time of the alleged negligence. The purchase agreement (¶15) specifically states that the quitclaim deed transfers title, which "shall be subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters which are of record or are disclosed to Buyer prior to Close of Escrow." The Buyer's action lies against the Trustee as the former owner of the Property and the Buyer cannot plead sufficient claims against the Trustee.

Analysis and Proposed Ruling

The initial issue to be resolved is whether the dismissal of the prior adversary proceeding with prejudice included the dismissal of all Doe defendants who were known to Yavor but not actually named in that adversary proceeding. Here it is certain or at least highly likely that the Trustee had notified City One of the pending action. But City One was not an actual party and could rely on the fact of the indemnification clause to sit back and let the Trustee resolve that adversary proceeding. Unlike the *Damjanovic* case cited by the Trustee, City One was never actually named in another lawsuit. There is no caselaw or statute that supports the theory that an unnamed person who would qualify as a Doe defendant and is known to the Plaintiff prior to dismissal of an initial lawsuit is then forever barred from being a named defendant in a later lawsuit for the same alleged negligent action.

The indemnity agreement is probably enforceable between City One and the Trustee. This is a matter of contact and both parties appear to agree to the validity of the contract. This creates a few interesting issues given that this lawsuit is for simple negligence and the Trustee is immune from such claims. If the Buyer were to prevail against City One for negligence and City

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

One sues the Trustee, that is under contract and it is possible (probable?) that the Estate will be liable to City One for the tort damages for which the Estate is not directly liable to the Buyer. It is also possible that if this case goes forward, City One will bring a third party complaint against the Trustee for indemnification. That may or may not survive a motion to dismiss by the Trustee. While all of this is interesting, the Court need not and will not decide it at this point in time. When such motions are brought or suits are filed, the issues will be ripe for decision. Not now.

The issue of "as-is where-is" and the language of the quitclaim deed are factual matters to be determined in the lawsuit. The inspection is alleged to have taken place in September 2018, months before the alleged damage to the property. The alleged damage took place after the prior owners had vacated, so they (RESS and Cueva) are not liable for it. The Trustee was the owner of the property at that point in time. There will be factual issues of the knowledge of the Buyer prior to the close of escrow, the negotiations for reduced price, etc. But that is part of the lawsuit and not to be determined in a motion to dismiss.

While the Trustee may be able to claim some form of privity due to the indemnification and perhaps even some form of principal/agent relationship and the dismissal of the first adversary proceeding is deemed to have been on the merits, those merits are personal to the Trustee by nature of her immunity from suit. They do not deal with whether there was actual negligence by her agent. An agent is not relieved from personal responsibility to the Plaintiff just because the principal cannot be held personally responsible for the agent's acts. [Please note that I am not deciding whether the timing of the alleged negligence (prior to escrow closing) relieves the agent of liability to the Buyer. This motion was not brought by City One.]

The complaint needs to be cleaned up a little bit. Note the reference to the Trustee in paragraph 5. The fact that the Trustee owned the property at the time of City One's work and that it is the Trustee (not the U.S. Marshal) who hired City One should be explicitly stated. Please do better than a sloppy redrafting of the initial adversary complaint.

The motion to dismiss is granted only to allow a cleaned-up amended complaint as noted in the prior paragraph. This is due by January 28. City One and/or the Trustee will have until February 14 to respond. The status conference will be held on March 24 at 10:00 a.m.

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

As to the request to remand, if a motion is filed it would likely be denied. The Trustee is inherently involved in this case and this Court has extensive knowledge of the facts surrounding the sale. The critical documents have all been filed here and are easily accessible. The relation of City One to the Trustee will likely lead to more questions of the legal responsibilities of the Trustee. All of these can best be decided here.

Party Information

Debtor(s):

Real Estate Short Sales Inc	Represented By Stephen L Burton

Defendant(s):

City One Locksmith	Pro Se

Plaintiff(s):

Haya Sara Yavor	Pro Se

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, March 3, 2020 **Hearing Room 303**

10:00 AM

1:16-11387 Real Estate Short Sales Inc **Chapter 7**

Adv#: 1:19-01139 Yavor v. City One Locksmith

#4.00 Status Conference re: Notice of Removal

fr. 1/14/20

Docket 0

Tentative Ruling:

Per the tentative ruling on the motion to dismiss, this will be continued to April 28 at 10:00 a.m.

Party Information

Debtor(s):

Real Estate Short Sales Inc	Represented By Stephen L Burton

Defendant(s):

City One Locksmith	Pro Se

Plaintiff(s):

Haya Sara Yavor	Pro Se

Trustee(s):

Nancy J Zamora (TR)	Represented By Jessica L Bagdanov David Seror

10:00 AM
1:17-10853 Joseph Daniel Beam **Chapter 7**
Adv#: 1:17-01046 Henderson v. Beam

#5.00 Order to Show Cause why Kathleen Moreno should not be Sanctioned for Failure to Appear.

Docket 54

Tentative Ruling:

Because of Ms. Moreno's failure to appear at the January 28, 2000 hearing (a date that she stipulated to for the continued status conference and motion of Ms. Henderson for sanctions), the Court prepared and served this Order to Show Cause. While the Court understands that it is possible that Ms. Moreno left town to visit her mother, personal physical appearance was not required. It was incumbent on Ms. Moreno, an experienced attorney, to make arrangements with Court Call and appear by phone. If, for some reason, this was not possible, she was required to notify the Court and Ms. Henderson of her unavailability. It appears that her mother is in Houston, She did not leave any instructions at her office (which is presumably the location of the phone number that she has provided to the Court (562-612-4041). However, it is not required that the Court try to track her down.

As of noon on March 2, 2020, Mr. Moreno has not provided a written response to this OSC. This was to be filed by February 18. Thus, the Court will award the sanctions without considering an oral explanation or late-filed explanation. The sanctions for the failure to appear on January 28, 2020 will be $500 to Ms. Henderson and an additional $100 to the Court. The $500 to Ms. Henderson will resolve her amended motion as to the January 28 hearing, but not as to prior failures on the part of Ms. Moreno (cal. #6). The sanction is to be paid no later than Aporil 2, 2020. Failure to do so will result in granting Ms. Henderson a judgment upon which a writ can be issued to seek to collect from assets of Ms. Moreno. Failure to pay the $100 to the Court in a timely fashion will result in a report to the United States Trustee. Further, because the sanctions awards for the OSC (cal. #5) and the original motion for sanctions (cal. #6) are linked, totalling the amount of $1,100, they

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CONT... Joseph Daniel Beam **Chapter 7**

will be reported to the State Bar of California. They will also be reported to Judge Dordi of the Superior Court who is presiding over the Family Law matter.

Should there be further unprofessional behaviour such as failure to timely respond or failure to appear, the Court will consider recommending that disciplinary action be taken against Ms. Moreno as set forth in Appendix II to the Local Rules.

and to the California State Bar.

The Court will be providing a copy of the OSC and the Order to Judge Dordi in the Superior Court.

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

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; 12/23/19, 1/28/20

Docket 49

Tentative Ruling:

On Feb. 3, 2020 Ms. Henderson filed an amended motion for an order to show cause and sanctions against Ms. Moreno for failure to appear. The amended motion deals with the Jan. 28, 2020 hearing in which Ms. Moreno failed to appear, file a response to the prior sanctions motion, or advise Ms. Henderson or the Court that she would not be appearing.

The amended motion (dkt. 57) deals with a separate matter from the original motion for sanctions (dkt. 49), but the Court allowed that at the Jan. 28 hearing. The Court also prepared and served its own OSC (cal. #5, dkt. 54).

As of noon on 3/2, there has been no response from Ms. Moreno. Ms. Henderson filed a supplemental reply that Ms. Moreno has been in touch with her with an offer to settle. She rejected the offer.

The Court is dealing with the amended motion as part of the OSC (cal. #5). The tentative ruling is to award Ms. Henderson $500 in sanctions, payable no later than April 2. As to the original motion, the tentative ruling on 12/23/19 stands. It seems approoriate that Ms. Henderson be awarded the amount of $500 for Ms. Moreno's failure to appear on 12/23. This would compensate her for having to appear multiple times with no resolution. This is to be paid no later than April 2, 2020 or a judgment and writ will issue. Further, because the sanctions awards for this motion and for the OSC (cal. #5) are linked, totalling the amount of $1,100, they will be reported to the State Bar of California. They will also be reported to Judge Dordi of the Superior Court who is presiding over the Family Law matter.

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CONT... Joseph Daniel Beam **Chapter 7**

Should there be further issues of failure to appear in this case or similar unprofessional behaviour, the Court will

The Court is

Prior tentative ruling (12/23/19)
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 this, the motion must be granted to the extent that the allegations are actionable and the amount justifed. 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

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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.

(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.

Party Information

Debtor(s):

Joseph Daniel Beam Represented By

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

Tuesday, March 3, 2020 **Hearing Room 303**

10:00 AM

CONT... Joseph Daniel Beam **Chapter 7**

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

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; 12/23/19, 1/28/20

Docket 1

Tentative Ruling:

Nothing further received as of 1/27/20.

Prior tentative ruling (12/23/19)
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 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

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CONT... Joseph Daniel Beam **Chapter 7**

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 familiy 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) knowlingly 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 reaons 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 reveeal 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 utilites or living costs.
(7) There are a lot of debts from the marriage, but he did not declare them as codebtor obligations.

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CONT... Joseph Daniel Beam **Chapter 7**

(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 knowlingly 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

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

Tuesday, March 3, 2020 **Hearing Room 303**

10:00 AM

CONT... Joseph Daniel Beam **Chapter 7**

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

Tuesday, March 24, 2020 **Hearing Room 303**

10:00 AM

1:16-12255 Solyman Yashouafar **Chapter 7**

#0.00 Application to Employ Hilton & Hyland as Real Estate Brokers

Docket 743

Tentative Ruling:

Continued without appearance to April 7, 2020 at 10:00 a.m. It is anticipated that the hearing at that time will be telephonic.

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

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; 6/11/19, 8/6/19, 11/19/19, 1/14/20

Docket 1

Tentative Ruling:

Per the Trustee's status report filed on 3/10/10, the settlement is being delayed by Mr. Isaacson's counsel's health issues. The Trustee requests a 60 day continuance.

Continue without appearance to May 19, 2020 at 10:00 a.m.

Prior tentative ruling (1/14/20)
Per the Trustee's status report filed on 1/7/20, there is a settlement in principle. Continue without appearance to March 24, 2020 at 10:00 a.m.

Prior tentative ruling (11/19/19)
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

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CONT... Edwin Perry Hinds **Chapter 7**

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 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 on12/6, 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):

10:00 AM

CONT... Edwin Perry Hinds **Chapter 7**

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. 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.

10:00 AM

CONT... Edwin Perry Hinds **Chapter 7**

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. 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 -

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

Tuesday, March 24, 2020 **Hearing Room 303**

10:00 AM
CONT... Edwin Perry Hinds **Chapter 7**

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 302 Calendar

Tuesday, March 24, 2020 **Hearing Room 302**

10:00 AM

1:11-22424 Ronald Alvin Neff **Chapter 7**

#2.00 Motion for attorney fees and costs against Douglas Denoce and the Bankruptcy estate as costs and as a sanction in the Sum of $77,547

Docket 578

Tentative Ruling:

Continued without appearance to April 7, 2020 at 10:00 a.m. It is anticipated that the hearing at that time will be telephonic.

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, March 24, 2020 **Hearing Room 302**

10:00 AM

1:11-22424 Ronald Alvin Neff **Chapter 7**

#3.00 Creditor's Notice of Motion and Motion for New Trial, to Amend/Alter Judgement, for Relief from Judgement/Order of January 6, 2020

Docket 575

Tentative Ruling:

Off calendar. Order denying this motion was entered on 1/29/20 (dkt. 580, 581) and is on appeal.

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, April 7, 2020 **Hearing Room 302**

10:00 AM

1:05-13556 Linda Widdowson **Chapter 7**

Adv#: 1:20-01023 Fidelity National Title Company v. Widdowson et al

#1.00 Status Conference Re: Complaint for Interpleader and Declaratory Relief.

Docket 1

Tentative Ruling:

Due to the response to the coronavirus pandemic, this matter is continued without appearance to **June 2, 2020 at 10:00 a.m**. Should you need an emergency hearing before that time, please file a motion requesting that and stating the reason. Plaintiff is to give notice of this continuance to all defendants.

Party Information

Debtor(s):

Linda Widdowson	Represented By Michael E Mahurin David A Tilem Susan I Montgomery

Defendant(s):

Linda Widdowson	Pro Se
DAVID SEROR ESQ	Pro Se
Citibank (South Dakota) N.A.	Pro Se
FORD CREDIT TITLING TRUST	Pro Se

Plaintiff(s):

Fidelity National Title Company	Represented By Sheri Kanesaka

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

Tuesday, April 7, 2020 **Hearing Room 302**

10:00 AM
CONT... Linda Widdowson **Chapter 7**

Trustee(s):

David Seror (TR) Represented By
Anthony A Friedman
Anthony A Friedman
Susan I Montgomery

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

Tuesday, April 7, 2020 **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 (523 Action)

fr. 4/29/19, 6/2/19, 8/20/19; 11/20/19; 2/18/20; 3/2/20

Docket 263

Tentative Ruling:

Due to the response to the coronavirus pandemic, this matter is continued without appearance to **June 2, 2020 at 10:00 a.m.** Should you need an emergency hearing before that time, please file a motion requesting that and stating the reason.

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

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

Tuesday, April 7, 2020 **Hearing Room 303**

10:00 AM

CONT... **Glen E Pyle** **Chapter 7**

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 7, 2020 **Hearing Room 303**

10:00 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; 11/20/19; 2/18/20; 03/2/20

Docket 111

Tentative Ruling:

The trial occurred and the Court is preparing a memorandum and order. Due to the response to the coronavirus pandemic, this matter is continued without appearance to **June 2, 2020 at 10:00 a.m.** Should you need an emergency hearing before that time, please file a motion requesting that and stating the reason.

Party Information

Debtor(s):

Glen E Pyle Pro Se

Defendant(s):

Glen Pyle Pro Se

10:00 AM
CONT... Glen E Pyle **Chapter 7**

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 302 Calendar

Tuesday, April 7, 2020 **Hearing Room 302**

10:00 AM
1:11-22424 Ronald Alvin Neff **Chapter 7**

#4.00 Motion for attorney fees and costs against Douglas Denoce and the Bankruptcy estate as costs and as a sanction in the Sum of $77,547.

fr.3/24/20

Docket 578

Tentative Ruling:

Because of the COVID-19 shutdown, this motion is **continued without appearance to June 23, 2020 at 10:00 a.m.** No further papers will be accepted as to this motion (as ot March 31, Mr. Kwasigroch has not filed a reply and none will now be accepted).

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, April 7, 2020 **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; 12/23/2019; 2/11/20

Docket 1

Tentative Ruling:

Due to the response to the coronavirus pandemic, this matter is continued without appearance to **June 23, 2020 at 10:00 a.m**. Should you need an emergency hearing before that time, please file a motion requesting that and stating the reason.

Party Information

Debtor(s):

Majestic Air, Inc. Represented By
Stella A Havkin

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.

#6.00 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, 12/23/19; 2/11/20

Docket 82
***** VACATED *** REASON: Stip cont. to 6/23/20 at 10am (eg)**

Tentative Ruling:

Due to the response to the coronavirus pandemic, this matter is continued without appearance to **June 23, 2020 at 10:00 a.m**. Should you need an emergency hearing before that time, please file a motion requesting that and stating the reason.

Prior tentative ruling (2/11/20)
Counsel for plaintiffs has advised the Court that Ms. Cue passed away. While her husband will be seeking to be appointed as the personal representative of her estate, Counsel does not believe that the hearing or case need be delayed. The Court agrees in that Parker, Milliken represents both Majestic Air and Ms. Cue and presumably has the consent of Mr. Cue to proceed.

The status conference will be set on a date to be determined at the 2/11 hearing.

Party Information

Debtor(s):

Majestic Air, Inc. Represented By
Stella A Havkin

Defendant(s):

Lufthansa Technik Philippines, Inc. Pro Se

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

Tuesday, April 7, 2020 **Hearing Room 303**

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

Plaintiff(s):

Majestic Air, Inc.	Represented By Stella A Havkin
Tessie Cue	Represented By Stella A Havkin

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 Motion to Dismiss Adversary Proceeding

fr. 12/17/19, 12/23/19; 2/11/20

Docket 85

***** VACATED *** REASON: Stip cont. to 6/23/20 at 10am (eg)**

Tentative Ruling:

At the 2/11 hearing, this matter was continued without argument to 4/7 at 10:00 to give time for the estate of Tessie Cue to enter probate and have a representative appointed. Due to the response to the coronavirus pandemic, this matter is continued without appearance to **June 23, 2020 at 10:00 a.m**. Should you need an emergency hearing before that time, please file a motion requesting that and stating the reason. If no representative has been appointed by that date, this matter will again be continued without appearance. The parties are to file a joint status report no later than June 12 to advise the court concerning the appointment of the representative and as to any other relevant matters.

Prior tentative ruling (2/11/20)

Defendant Lufthansa Technik Philippines ("LTP") moves to dismiss the operative Second Amended Complaint ("SAC") 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), asserts (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 has been informed by Majestic that Ms. Cue died on January 24, 2020 and that her husband is seeking authority to prosecute this proceeding on behalf of her estate. Dkt. 115. Majestic has requested that this hearing go forward as calendared on February 11, 2020.

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

Background

LTP provides aircraft maintenance, repair, and overhaul services to aviation companies and, to provide these services, maintains a limited inventory of spare aircraft parts. Cue had been an employee of Ansett Aircraft Spares & Services, Inc. ("Ansett"), which sells and distributes aircraft parts. Ansett and LTP were negotiating – but did not ultimately enter into - an agreement under which Ansett would sell LTP's excess inventory of spare parts on a consignment basis (the "Ansett Agreement"). Ansett used a template consignment agreement called the Inventory Management and Marketing Agreement (the "IMMA") that it considered to be a trade secret. In 2009, while Ansett and LTP were still negotiating, Cue left Ansett and went to work for Infinity Air, Inc. ("Infinity"). She negotiated an agreement between Infinity and LTP, substantially in the same form as the IMMA, under which Infinity sold LTP's excess inventory of spare parts on a consignment basis (the "Infinity Agreement"). In 2010, Cue then left Infinity, formed Majestic, and negotiated an agreement between Majestic and LTP, again substantially in the same form as the IMMA, under which Majestic sold LTP's excess inventory of spare parts on a consignment basis (the "Majestic Agreement").

- In ¶10.2 of both the Infinity Agreement and the Majestic Agreement (the "Consignment Agreements") LTP agreed to indemnify, defend, and hold harmless Majestic [or Infinity] and its officers, directors, employees, authorized agents and contractors from claims "arising out of or in connection with" (a) any breach by LTP of its representations and warranties in each Agreement or (b) any negligence or misconduct by LTP "except to the extent that the Claim is caused by the negligence or misconduct of [Majestic, Infinity, or their officers, etc.]."
- In ¶15.2 of the Consignment Agreements, LTP warranted and represented that entering into the Agreements would not contravene any laws or any other agreement with another party.
- In ¶6.4 of the Consignment Agreements, LTP warranted and represented that it had good and marketable title to the aircraft parts it consigned to Infinity and Majestic and that it had "full power and lawful authority to transfer title to" those parts.

On April 12, 2012, Ansett commenced an action against Majestic, Cue, and Infinity (the "Ansett Case"). On February 16, 2016, Ansett obtained a

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CONT... Majestic Air, Inc. **Chapter 11**

judgment awarding Ansett $1,846,443 against Cue, $1,846,443 against Majestic, and $2,461,924 against Infinity – with an additional $80,983 of plaintiff's costs allocated among the defendants (the "Ansett Judgment"). Exh. B to RJN, Judgment on Special Verdict in Ansett. (References made in this "Background" section to the RJN are to the RJN filed in connection with LTP's earlier motion to dismiss the first amended complaint. Dkt. 33.) The jury found that (i) Cue, Majestic, and Infinity were liable for misappropriation of trade secrets and for intentionally interfering with prospective economic relations between LTP and Ansett, (ii) Majestic and Infinity were liable for intentionally interfering with Cue's employment contract with Ansett, and (iii) Cue was liable for breaching her employment contract with Ansett. *Id*.

On May 5, 2016, the Debtor filed an appeal of the Ansett Judgment (the "Ansett Appeal") but did not post a bond. The Superior Court had stayed the enforcement of the Ansett Judgment until May 24, 2016. In the Ansett Appeal, the California Court of Appeal held that the judgment against Cue should be amended so that Ansett was entitled to recover $3.85 million from Cue alone for breaching her employment contract with Ansett, and the remaining $2,339,810.40 of the judgment would be allocated among Cue, Majestic and Infinity according to their percentages of fault: $701,943.12 from each of Cue and Majestic, and $935,924.16 from Infinity. Exh. A to RJN, "Ansett Appellate Opinion" at p. 23.

The "Infinity Case" was filed by Infinity against LTP, Majestic, Cue, and Cue's husband Hong Boi Cue, in Los Angeles County Superior Court on October 31, 2011. Exh. C to RJN, Infinity Appellate Opinion at pp. 4-5. Multiple cross-claims by the Cues and Majestic were filed. The trial court sustained LTP's demurrer to Majestic and the Cues' cross-claims for equitable indemnity, express contractual indemnity, and contribution without leave to amend. *Id*. at p. 5; LTP RJN Ex. O. The Cues and Majestic filed an amended cross-complaint against LTP with claims for statutory indemnity/tort of another, declaratory relief, and breach of contract. Ex. C to LTP's RJN at 5. In September 2015, LTP and Infinity settled their claims against each other, with both parties agreeing to dismiss their claims against the Cues and Majestic as a part of that settlement. The trial court determined that this settlement was in "good faith" under California Code of Civil Procedure § 877.6. *Id.* at p. 7. The Cues and Majestic appealed the demurrer of their contractual indemnity claims against LTP, the dismissal of their contract claim

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

against LTP pursuant to §877.6, and the good faith finding, but lost on appeal (the "Infinity Appeal"). Exh. C to RJN.

Cue and Majestic filed for chapter 11 relief on May 23, 2016, one day before the stay of enforcement of the Ansett Judgment expired. Cue's case was dismissed by this Court in September 2016, pursuant to Bankruptcy Code §1112(b).

In July 2018, Ansett, Majestic, and Cue entered into a settlement agreement, under which Cue relinquished her shares of stock in Ansett and the right to collect dividends owed on that stock in exchange for a satisfaction of the Ansett Judgment.

LTP has filed a claim against Majestic in its bankruptcy (the "LTP Claim"), in the amount of $3.7 million for the following: (1) $2,814,140 for spare aircraft parts LTP had delivered to Majestic in 2010 that were never returned; (2) $782,106.90 in attorney's fees and costs incurred by LTP in the Infinity Action; and (3) $164,485.59 in unpaid commissions Majestic owes LTP (the "LTP Claim"). Exh. G to RJN, LTP Proof of Claim, Pt. 1 at p. 2; Exh. H to RJN, LTP Proof of Claim Pt. 2 at pp. 3-4, ¶¶ 10-13, pp. 45-47, ¶¶ 15-2, pp. 31-40.

In December 2018, Majestic and the Cues commenced this action. The FAC, filed in April 2019, asserted a claim for contractual indemnification of Cue and Majestic's obligations under the Ansett Judgment and objects to the LTP Claim. The indemnification claim is made pursuant to the indemnification provisions of the Consignment Agreements. The objection to the LTP Claim is based on LTP's failure to attach a copy of the Majestic Agreement, and also asserts that (1) the Court has already determined that the value of the spare parts is only $40,000; (2) LTP was not the prevailing party in the Infinity Action and so is not entitled to attorneys' fees and costs; and (3) any claim should be offset by Majestic's right to indemnification from LTP.

Motion to Dismiss FAC and Response to Objection to Claim by LTP

LTP moved to dismiss the FAC on the grounds that Cue and Majestic's liability under the Ansett Judgment was beyond the scope of the indemnification provisions in the Consignment Agreements, because the indemnification provisions in both agreements expressly except liabilities "caused by the negligence or misconduct of [Majestic or Cue]".

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

LTP opposed Cue and Majestic's objection to its claim on three grounds:

1. LTP repeatedly demanded the return of its spare parts, but Majestic refused to do so. LTP is asserting a claim for conversion and appropriately valuing the parts as of 2013 – at a time when Majestic was first exercising wrongful control - at $2,814,140. The Court's $40,000 valuation – asserted as correct by Majestic - was a fire-sale valuation in 2016, years after the parts had lost significant value.
2. LTP was the prevailing party in the Infinity Case and entitled to its $726,025 in fees and $56,081 in costs incurred in that case.
3. Majestic and Cue's objection to the LTP Claim based on the failure to attach the Majestic Agreement is disingenuous, given that Cue and Majestic do not lack access to or dispute the terms of the Majestic Agreement.

Cue and Majestic opposed this motion and response. After a hearing on September 24, 2019, the Court concluded that:

i. With respect to §10.2(b) of the Consignment Agreements, the language of the that provision required a comparative fault analysis and, while the Ansett Judgment and subsequent appellate opinion determined that Cue and Majestic were at fault, they did not address LTP's fault. The Court also rejected LTP's assertion that it could not be liable for interference with economic relations with itself under California law, but agreed that the FAC had not asserted any basis for LTP to be liable for Cue's breach of her employment agreement.
ii. With respect to §10.2(a) of the Consignment Agreements, Cue and Majestic had not sufficiently alleged causation, *i.e.,* that their liability under the Ansett Judgment arose from LTP's breach of representations and warranties under the Consignment Agreements.
iii. With respect to the claims objection, (a) LTP had agreed to the dismissal of the spare parts claims in the settlement of the Infinity Action, so these claims are barred by res judicata, (b) the award of attorney's fees and costs in the Infinity Action would require further information and briefing, and (c) no purpose would be served by requiring LTP to annex the Majestic Agreement to its proof of claim, as the agreement is considered a trade secret by Ansett and Majestic has a copy of the Agreement.

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

Accordingly, the Court ruled as follows:

The First Amended Complaint was dismissed with leave to amend as follows:

- Allege causation with respect to breach of Majestic Agreement § 10.2(a) (breach of representations and warranties*, i.e.,* allege reliance on alleged misrepresentations in that the alleged statements induced Cue/Majestic to take action which they might otherwise not have taken, or would have taken in a different manner.
- Claims under Majestic Agreement §10.2(b) for (i) Cue and Majestic's liability for misappropriation of trade secrets, (ii) Majestic's liability for intentional interference with contractual relations (regarding Cue's employment contract with Ansett), and (iii) Cue and Majestic's liability for intentional interference with prospective relations (between Ansett and LTP), might be asserted as set forth in the First Amended Complaint.
- With respect to Majestic Agreement §10.2(b) and Cue's liability for breach of her employment agreement with Ansett, allege facts indicating that Cue's breach of her employment agreement arose out of or in connection with LTP's negligence or misconduct.

With respect to the Objections to Claim:

- Majestic's objection to the claim for aircraft parts was sustained;
- Majestic's objection to the claim for attorney's fees would require an evidentiary hearing to address the issues outlined above; and
- Majestic might 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.

Dkt. 51 & 52, as amended by 90 & 91.

Appeal to the District Court and Second Amended Complaint

On or about October 8, 2019, LTP appealed the Court's ruling on LTP's motion to dismiss the FAC to the District Court. Dkt. 60. On October 25, Cue and Majestic filed the SAC. Dkt. 82. The SAC continues to assert a claim for contractual indemnification based on §10.2(a)&(b) of the

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

Consignment Agreements. It also asserts two of the three claims objections found in the FAC: against LTP's claim for the value of spare aircraft parts based on res judicata and against LTP's claim for attorney's fees and costs in the Infinity Case on the grounds that LTP was not the prevailing party.

Motion to Dismiss the SAC and Response to Objection to LTP Claim

On November 15, 2019, LTP filed this motion to dismiss the SAC, which also includes a response to Majestic's objection to LTP's proof of claim. Dkt. 85. (The hearing on this motion was continued until February 11, 2020.) In each, LTP argues as follows:

Motion to Dismiss

The SAC asserts a single cause of action for contractual indemnity, which sounds in fraud because it alleges that LTP made knowingly false representations to Majestic and Cue in the Consignment Agreements and that Cue and Majestic relied on these representations to their detriment. Under §10.2(a) the misrepresentations are the representations that LTP had good title to the consigned goods and that entering into the Consignment Agreements would not contravene laws or other agreements. LTP's "misconduct" alleged under 10.2(b) is providing Cue and Majestic with the consignment agreement form and the list of parts, without informing them of the substance of negotiations with Ansett or Ansett's claims that these documents were proprietary or confidential in nature.

Fraud claims must plead the elements of fraud – which include justifiable reliance - with particularity. Fed. R. Civ. P. 9(b). The allegations of reliance must be facially plausible. However, the plaintiffs do not, and cannot, plausibly allege that they justifiably relied on LTP's allegedly fraudulent statements, because in the Ansett case it was conclusively established that Cue (whose knowledge is imputed to Majestic) knew: that LTP's negotiations with Ansett were ongoing and that the parts lists, the form of Consignment Agreements, and the negotiations themselves were proprietary to Ansett. This determination is entitled to issue preclusion. Because Cue and Majestic knew that LTP's alleged misrepresentations were false, their reliance can never be justifiable. and this claim should be dismissed without leave to amend because amendment is futile.

Cue and Majestic also failed to satisfy the notice requirements for the

express contractual indemnity in the Consignment Agreements. Article 11 of the Consignment Agreements requires Majestic and Cue to notify LTP promptly in writing after the commencement of an action subject to indemnification. Section16.5 set requirements for such writings, including that they be sent to LTP's Philippines address to the attention of Stanley Chiu. Article 11 also gives LTP entitlement to sole control over defense or settlement of such an action. Cue and Majestic failed to provide the required notice of Ansett's April 12, 2012 complaint, so a condition precedent to their indemnification liability failed. The notice is crucial, because it would give LTP the ability to assume control over the litigation. Cue and Majestic's counsel sent an email to LTP on October 10, 2012, demanding indemnification, based on an implied indemnification theory. This notice was inadequate because it did not mention contractual indemnification and was not addressed to Stanley Chiu.

Objections to LTP's Claim

LTP is entitled to the $2.8 million value of its spare parts that Majestic refused to return to LTP. LTP's voluntary dismissal of its spare parts cross-claim in the Infinity Case does not bar the assertion of this claim here, because LTP did not manifest an intent to be collaterally bound by that stipulated judgment, as required under California law *See California State Auto. Assn. Inter-Ins. Bureau v. Superior Court,* 50 Cal. 3d 658, 664, 788 P.2d 1156 (1990)("a stipulated judgment may properly be given collateral estoppel effect, at least when the parties manifest an intent to be collaterally bound by its terms"). This spare parts cross-claim was pending concurrently in the Ansett Case and the Infinity Case. The fact that LTP did not dismiss it in the Ansett Case indicates that it did not intend to dismiss this claim. LTP and Cue/Ansett entered into a stipulation in the Ansett case, in which they agreed to preserve their respective claims against each other. Ex. K to Motion To Dismiss FAC RJN. The Motions for Determination of Good Faith Settlement confirm this: in the Infinity Case LTP's spare parts cross claim was listed as an affected pleading, in the Ansett Case it was not.

The Bankruptcy Court's order valuing the spare parts in connection with their sale in December 2016 is not entitled to preclusive effect because the issue in the claim is their value in 2013, not 2016.

LTP was the prevailing party in the Infinity Case and is thus entitled to

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CONT... Majestic Air, Inc. **Chapter 11**

recover its attorney's fees and costs in that case. Section 16.9 of the Consignment Agreements provides that the prevailing party in any action "arising from or related to this Agreement" is entitled to recover attorneys' fees, costs and expenses. California Civil Code §1032(a)(4) defines a prevailing party to include "a party in whose favor a dismissal has been entered." In Infinity, LTP obtained a dismissal of Majestic and Cue's cross-claim for express indemnity when the court sustained LTP's demurrer on this cause of action. Majestic and Cue's remaining claims against LTP were dismissed pursuant to the court's §877.6 good faith order.

Majestic argues it was the prevailing party because it was dismissed from the case pursuant to the settlement between Infinity and LTP, but Majestic and Cue were dismissed – despite their utter refusal to settle - as fortunate beneficiaries of LTP and Infinity's desire to globally settle the case. Allowing them to claim attorney's fees as a prevailing party would discourage future settlements. Majestic and Cue also argue that they are the prevailing party because their claim for contractual indemnification remains in the Ansett Case, but LTP's cross-claims against Cue and Majestic also remain in Ansett.

Jurisdiction

On December 5, 2019, the Court entered an order requesting that the parties provide additional briefing on the questions of (i) whether the Court has jurisdiction to hear this motion to dismiss the SAC in light of LTP's pending appeal of the Court's ruling on LTP's motion to dismiss the FAC and (ii) even if the Court had jurisdiction, whether hearing this motion would be prudent. Dkt. 100.

Cue and Majestic provided such briefing. Dkt. 107. They note that LTP appealed the Court's ruling on LTP's Proof of Claim, but not the ruling on Majestic and Cue's affirmative indemnity claim against LTP. Thus, they argue, the Court does not have jurisdiction to hear the portion of the motion dealing with proof of claim issues, but can and should hear the portion of the motion dealing with the affirmative indemnity claim, because doing so would advance the resolution of these proceedings. The Court agrees with Cue and Majestic on this issue.

LTP made the same arguments regarding its claim in this Motion to Dismiss the SAC that it made in its Motion to Dismiss the FAC, which is now

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CONT... Majestic Air, Inc. **Chapter 11**

on appeal to the District Court. Issuing a second ruling on these same arguments that are before the District Court could only create confusion and a waste of time and resources. *See In re Padilla*, 222 F.3d 1184, 1190 (9TH Cir. 2000). Thus, the Court lacks jurisdiction to hear argument regarding the proof of claim and to do so would be highly imprudent in any event.

On the other hand, hearing arguments regarding the contractual indemnification claim would advance this proceeding. If the parties choose to appeal the Court's ruling, that appeal could go forward and possibly be consolidated with the pending appeal.

Thus, the remainder of this ruling will only summarize and consider arguments regarding Cue and Majestic's affirmative contractual indemnification claim against LTP.

Opposition to Motion to Dismiss (Dkt. 102) Cue and Majestic argue as follows:

This Motion to Dismiss should be denied, pursuant to Fed. R. Civ. P. 12(g)(2), because it is based on arguments that LTP failed to raise in its Motion to dismiss the FAC. This motion attacks the SAC on the grounds that (i) the contractual indemnification claim sounds in fraud and fails to meet the pleading requirements for fraud and (ii) Cue and Majestic's demand for indemnification failed to meet the requirements of the Consignment Agreements. Both of these arguments were available to LTP in the Motion to Dismiss the FAC, but it failed to make them. Rule 12(g)(2) provides:

> Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

Fed. R. Civ. P. 12. A court has discretion to excuse a Rule 12(g)(2) violation, but only if it does not prejudice the plaintiff and expedites resolution of the proceedings. LTP's violation should not be excused because the new defenses were brought for strategically abusive purposes and will result in a delay prejudicial to Cue and Majestic. They are abusive because they could have been brought in the Motion to Dismiss the FAC but were not, and because they were rejected by the Superior Court in the Ansett Case. LTP is attacking the contractual indemnification claim in a piecemeal fashion. Considering these additional arguments seven months after Cue and Majestic

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CONT... Majestic Air, Inc. **Chapter 11**

filed their FAC and nearly a year after the original complaint was filed will delay these proceedings, prolonging resolution of the pleadings and possibly delaying the pending appeal.

In any event, this motion should be denied on the merits.

This contractual indemnification claim does not sound in fraud, so Rule 9 pleading standards do not apply. LTP's caselaw is inapplicable, as it involves deceptive and fraudulent practices under California's Consumer Legal Remedies Act and Unfair Competition Law. LTP argues that the SAC fails to plead all the elements of fraud, but that is because this contractual indemnification claim does not allege fraud. Majestic and Cue are not claiming an intent to deceive by LTP, only that LTP's representations and warranties were not true and that LTP knew or should have known of Ansett's proprietary interest in the form of the Consignment Agreements and the list of parts, as well as the status of its talks with Ansett. Furthermore, Rule 9(b)'s purpose of protecting a defendant from reputational harm has no application in a contract action. Further, in a fraud action, the plaintiffs can seek punitive damages, which Cue and Majestic have not.

Even if Rule 9 applied, the claim is adequately pled. Cue and Majestic have sufficiently alleged reliance, and that reliance has not been contradicted as a matter of undisputed fact. The Ansett Judgment and appellate opinion do not support LTP's argument that Cue knew of the proprietary nature of the Consignment Agreements and list of consigned parts. LTP has pointed to no findings in the Ansett Judgment about what representations LTP made to Cue/Majestic, whether Cue/Majestic knew that Ansett claimed the Consignment Agreements and list of parts were proprietary, or that Cue was aware the Ansett/LTP was still being pursued. The appellate opinion merely concluded that "Cue knew Ansett's deal with LTP was still pending." LTP RJN Exh B at 15. LTP relies on its own brief in the Ansett Case, quotes extensively from Cue's employment agreement and cites it to draw unsupported conclusions. The issues regarding Cue and Majestic's reliance and its reasonableness were not adjudicated in the Ansett Case and remain disputed issues of fact.

Cue and Majestic have sufficiently alleged that their reliance was justifiable. The reasonableness of reliance is almost always a question of fact, and recovery is denied only if it is manifestly unreasonable. Unlike the inapplicable case law cited by LTP, Cue and Majestic have not "closed [their]

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CONT... Majestic Air, Inc. **Chapter 11**

eyes to the discovery of the truth." *Martinez v. Hammer Corp.*, 2010 Westlaw 11507562, at *11 (C.D. Cal. Jan. 29, 2010).

Finally, LTP has already raised, and lost, the argument that Cue and Majestic's demand for indemnification under the Consignment Agreements failed to meet the requirements of those agreements. The Superior Court in the Ansett Case denied LTP's motion for summary adjudication, concluding that triable issues of material fact existed on the question of whether Majestic and Cue's counsel's October 10, 2012 email to LTP's counsel satisfied the notice requirements of the Consignment Agreements. LTP is seeking reconsideration of this ruling, which is improper under Fed. R. Civ. P. 59(e). LTP knows or should have known that the adequacy of Cue and Majestic's demand for indemnification involves questions of fact and cannot be grounds for a motion to dismiss.

If the Court finds that grounds to dismiss the SAC exist, Cue and Majestic seek leave to file an amended complaint.

Reply re: Motion to Dismiss LTP argues as follows:

Rule 12(g)(2) only applies to arguments that were available to the motioning party at the time the earlier motion was made. In this case, the SAC contained 15 new paragraphs of material allegations that made it clear that the SAC sounds in fraud. Thus, Rule 12(g)(2) and case law cited by Cue/.Majestic is not applicable.

In any event, the court should exercise its discretion to consider LTP's fraud argument. This dispute has been litigated since 2011 and Cue/Majestic are the ones keeping it alive. In fact, addressing LTP's motion to dismiss would expedite resolution of this matter. The motion to dismiss can be decided based on facts developed in prior litigation of this matter. If LTP's arguments are not heard now, they will be heard at a motion for summary judgment, further delaying this proceeding and causing unnecessary litigation.

The SAC sounds in fraud because its basis for relief are the elements of fraud. Cue/Majestic concede that they have sufficiently alleged the elements of fraud: misrepresentation, scienter, reliance, and resulting damage.

Cue and Majestic have failed to show that they reasonably relied on LTP's alleged misrepresentations or that there are any disputed facts

relevant to justifiable reliance.

The Ansett Appellate Opinion sets forth detailed facts demonstrating Cue's (and therefore Majestic's) knowledge that Ansett was pursuing a consignment deal at the same time that Cue and Infinity were doing so. Ansett Appellate Opinion (Ex. 3 to the RJN for this motion) at 5, 15. For instance, "Defendant's communications with Infinity during the relevant time period demonstrate that they knew Ansett's deal with LTP was still pending." *Id.* at 15. The Ansett Appellate Opinion also establishes that Cue worked for Ansett from 1999 to 2009, her employment agreement and the IMMA had confidentiality provisions, and that Ansett employees were not allowed to circulate the IMMA to potential customers without prior approval. *Id.* at 2, 11-12. Her employment agreement confidentiality provision covered information regarding "[s]uppliers and their production … and the price of their products to Ansett." *Id.* 3. This would cover LTP's parts list.

Cue and Majestic's attempts to preserve justifiable reliance by distinguishing LTP's case relies on immaterial distinctions.

Finally, Cue and Majestic's response to LTP's lack of notice argument incorrectly concludes that LTP is moving for reconsideration of the Superior Court's determination in the Ansett Case that this question of proper notice involved material issues of fact that could not be resolved in a motion to dismiss.

Finally, Cue and Majestic should not be given leave to amend because any amendment would be futile.

Analysis

Rule 12(g)(2)

Even if the Court were to deny LTP's motion under Rule 12(b)(6), LTP could still raise these arguments at a later point.

> If a failure-to-state-a-claim defense under Rule 12(b)(6) was not asserted in the first motion to dismiss under Rule 12, Rule 12(h)(2) tells us that it can be raised, but only in a pleading under Rule 7, in a post-answer motion under Rule 12(c), or at trial. *See*, *e.g.*, *English v. Dyke*, 23 F.3d 1086, 1091 (6th Cir. 1994) (correctly describing the operation of the rule).

In re Apple iPhone Antitrust Litig., 846 F.3d 313, 318 (9th Cir. 2017), *cert. granted sub nom.* Apple Inc. v. Pepper, 138 S. Ct. 2647, 201 L. Ed. 2d 1049 (2018), and *aff'd sub nom. Apple Inc. v. Pepper*, 139 S. Ct. 1514, 203 L. Ed. 2d 802 (2019). As the Ninth Circuit further observed, "relegating defendants to the three procedural avenues specified in Rule 12(h)(2) can produce unnecessary and costly delays, contrary to the direction of Rule 1." 846 F.3d at 318. Thus, the Ninth Circuit has concluded that "we should generally be forgiving of a district court's ruling on the merits of a late-filed Rule 12(b)(6) motion." 846 F.3d at 319.

This motion will not cause substantial delay, it was made only a few months after the first Motion to Dismiss and will most likely be resolved before the appeal of the LTP's proof of claim will be heard. While the Court regrets that LTP did not make all of its available arguments in its Motion to Dismiss the FAC, this is not yet an abusive series of piecemeal pleadings that Rule 12(g)(2) was designed to address. Finally, as the Ninth Circuit observes, denying this motion on 12(g)(2) grounds will only leave these arguments for a later point in the case. Doing that would be much more likely to lead to delay and waste.

Rule 9(b)

> Rule 9(b) applies when (1) a complaint specifically alleges fraud as an essential element of a claim, (2) when the claim "sounds in fraud" by alleging that the defendant engaged in fraudulent conduct, but the claim itself does not contain fraud as an essential element, and (3) to any allegations of fraudulent conduct, even when none of the claims in the complaint "sound in fraud." *Vess v. Ciba–Geigy Corp. USA*, 317 F.3d 1097, 1102–06 (9th Cir.2003). Rule 9(b) requires that a plaintiff set forth what is false or misleading about a statement, why it is false, including the "who, what, when, where, and how of the misconduct charged." Id. at 1106.

Davis v. Chase Bank U.S.A., N.A., 650 F. Supp. 2d 1073, 1089–90 (C.D. Cal. 2009)

This claim for contractual indemnity does not specifically allege fraud as an essential element of the claim, it does not sound in fraud, and does not allege fraudulent conduct. Two elements of fraud are missing from the allegations in the SAC.

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CONT... Majestic Air, Inc. **Chapter 11**

> The elements of a cause of action for fraud in California are: "(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage."

Kearns v. Ford Motor Co., 567 F.3d 1120, 1126 (9th Cir. 2009).

Section 10.2(a) of the Consignment Agreements provides that LTP will indemnify Cue and Majestic for liabilities "arising out of or in connection with" any breach by LTP of its representations and warranties in each of the Consignment Agreements. Cue and Majestic must allege (i) breaches of the representations and warranties and (ii) facts satisfying "arising out of" language: *i.e.,* causation – that they relied on the representations and warranties resulting in the Ansett Judgment for which they seek indemnification. Unlike fraud, this contract claim does not require that LTP knew of the falsity of the representations and warranties or intended to defraud LTP.

Section 10.2(b) of the Consignment Agreement provides that LTP will indemnify Cue and Majestic for claims "arising out of or in connection with" any negligence or misconduct by LTP "except to the extent that the Claim is caused by the negligence or misconduct of [Majestic, Infinity, or their officers, etc.]." The Plaintiff's are alleging that LTP knew or should have known of Ansett's proprietary interest in the form of the Consignment Agreements and the list of parts, as well as the status of its talks with Ansett, and did not disclose this information to Cue or Majestic. Again, actual knowledge and intent to deceive are not part of this claim.

Reliance

Cue and Majestic will nonetheless need to prove reliance on the representations and warranties for §10.2(a) to apply. If they knew the relevant representations and warranties were false when they entered into the Consignment Agreements, they cannot establish that reliance. (Their knowledge of the facts will also be relevant to the allocation of fault under § 10.2(b), as will LTP's. As discussed in the Tentative Ruling, the Court cannot allocate fault as a matter of law and undisputed fact.)

As discussed in the prior Memorandum, the Ansett Judgment, as amended by the Ansett Appellate Opinion, is entitled to *res judicata/collateral*

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CONT... Majestic Air, Inc. **Chapter 11**

estoppel effect in this proceeding to the extent that it is relevant. The question is what issues were actually litigated and necessarily decided in the Ansett Case that are relevant to this action, *i.e.,* whether the Ansett Judgment and appellate opinion established that Cue and Majestic knew that some of the representations and warranties in the Consignment Agreements were false when they entered into them. (Cue and Majestic in the case of the Majestic Agreement, and Cue in the case of the Infinity Agreement.)

The SAC is alleging the following breaches of representations and warranties by LTP: (i) that entering into the Consignment Agreements would not contravene any laws or any other agreement with another party (¶15.2) and (ii) that LTP had good and marketable title to the aircraft parts if consigned to Infinity and Majestic and that it had "full power and lawful authority to transfer title to" those parts (¶6.4). LTP breached its representation in ¶15.2, because supplying the form of the IMMA and the list of consignable parts to Infinity and then Majestic violated obligations to Ansett and the California Uniform Trade Secrets Act. LTP breached its representation in ¶6.4, because Ansett claimed an interest in those parts. Cue relied on these representations and warranties in forwarding the form of the IMMA and list of parts to be consigned to Infinity. Cue and Majestic relied on these representations and warranties in entering into the Majestic Agreement.

In determining Cue and Majestic to be liable to Ansett, the Ansett Judgment and appellate opinion draw factual conclusions that are wholly inconsistent with such reliance. The Ansett Judgment found that Cue and Majestic "knew of the prospective economic relationship between Ansett and LTP," so Cue and Majestic could not have relied on LTP's "good and marketable title" representation in ¶6.4. There is not a similarly unequivocal finding regarding Cue (and thus Majestic's) knowledge of the proprietary nature of the IMMA form and the list of consigned parts. However, reading the factual findings in the Ansett Judgment and Appellate Opinion as a whole, it is beyond doubt that Cue, as the controller of Ansett for 10 years until May 2009, knew of the confidential nature of the form of the IMMA and the list of consigned parts. Ansett's stringent secrecy procedures and the confidentiality provisions in Cue's employment agreement evidence this, as does the fact that Cue was the Ansett employee who provided LTP with a copy of the IMMA. Cue left Ansett's employ while the Ansett Agreement was in

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CONT... Majestic Air, Inc. **Chapter 11**

negotiation and provided Infinity with a copy of the agreement and a list of parts. She further asked Infinity to keep its agreement with LTP "in strict confidence" so that Ansett would not "go after them." Thus, the Court concludes that the contractual indemnification claim based on §10.2(a) is simply not plausible on its face and should be removed from the contractual indemnity claim.

Proper Notice under the Consignment Agreements

Like the Superior Court in the Ansett Case, this Court concludes that that triable issues of material fact exist on the question of whether Majestic and Cue's counsel's October 10, 2012 email to LTP's counsel satisfied the notice requirements of the Consignment Agreements. This provision cannot be interpreted without context, which will be a matter of disputed fact.

Proposed Ruling

The Court lacks jurisdiction to issue any ruling with respect to Majestic's objection to LTP's proof of claim, as the Court's earlier ruling on this objection is pending at the District Court.

The SAC will be dismissed with leave to amend, as follows. The claim for contractual indemnity may be made, but only under §10.2(b).

Cue and Majestic's Evidentiary Objections

Exhibit A (regarding the Appellate Brief in Ansett Case) – Sustained

Exhibits C and E were submitted in support of LTP's response to Majestic's Objection to LTP's Claim. As the Court no longer has jurisdiction on the Objection to Claim, it will not address these evidentiary objections.

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, April 7, 2020 **Hearing Room 303**

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

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

10:00 AM
1:16-12152 Massrock Inc **Chapter 7**

#8.00 Trustee's Final Report and Applications for Compensation and Deadline to Object.

Docket 166

Tentative Ruling:

This is mislabeled. It is the hearing on the Trustee;s amended final report. This is an administratively insolvent case. Unless there is an objection, the Trustee's report will be approved as requested, as will the fees and costs of the professionals.

If there is no objection, the matter will not have a hearing and the Trustee can submit the appropriate order on or after April 7, 2020. If there is an objection, this matter will be continued without appearance to June 2, 2020 at 10:00 a.m.

Party Information

Debtor(s):

Massrock Inc — Represented By
John Saba - SUSPENDED -

Trustee(s):

David M Goodrich (TR) — Represented By
Jeffrey S Shinbrot

10:00 AM
1:16-12255 Solyman Yashouafar **Chapter 7**

#9.00 Application to Employ Hilton & Hyland as Real Estate Brokers

fr. 3/24/20

Docket 743

Tentative Ruling:

The Trustee seeks to employ Hilton & Hyland as real estate brokers for the property at 910 N. Rexford Dr., Beverly Hills. The listing price will be $12 million and the total sales commission will be 4.5% (2% for the listing broker and 2.5% for the purchaser's broker). This will be a 5 month listing period. If the sale, settlement, or other transactions results in title remaining with or being reconveyed to Elkwood, any affiliate of Elkwood, or Jack Nourafshan, the listing broker will only receive reasonable costs and expenses incurred prior to such settlement. This will be subject to review and approval by the court.

The Trustee notes that at the present time the qiuet title action is still not final as the district court granted the motion to vacate and the final briefing is only due by March 9, 2020.

Elkwood objects to this motion on several grounds. First the motion is premature since the district court has not yet issued its final judgment. Also, it is unclear when the "notice date" actually occurs. If the application is granted, it should not be effective until the Trustee has an unstayed judgment entitling him to possession. Until then the broker should not be allowed to list the property or market it in any way and if it does, the listing agreement should be deemed cancelled and the broker should have no right to a commission.

Although Elkwood requested that the Trustee include the above, the Trustee rejected it. A delay of a few weeks to bring a proper employment application is not harmful.

The Trustee replied that the order can be conditioned on the entry of the judgment by the district court and if that judgment is stayed, the marketing would also be stayed.

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CONT... Solyman Yashouafar **Chapter 7**

The District Court has now reentered its judgment (as of 3/20/20) and title is now in the Trustee.

Proposed Ruling

Given the present circumstances, a brief delay will do not harm. The lockdown is set to continue until at least April 30. For the ease of the Court (as I am learning how to do telephonic hearings) this is continued without appearance to April 28 at 10:00 a.m. This will also give time for anyone who is seeking a stay of the district court judgment.

However, my proposed ruling is to grant the motion knowing that if the judgment is stayed, the marketing will also be stayed. I suggest that the parties enter into a written stipulation to that effect and thereby remove the need for a hearing.

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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1:17-10853 Joseph Daniel Beam **Chapter 7**
Adv#: 1:17-01046 Henderson v. Beam

#10.00 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; 12/23/19,
1/28/20, 3/3/20

Docket 1

Tentative Ruling:

Due to the response to the coronavirus pandemic, this matter is continued without appearance to **June 23, 2020 at 10:00 a.m.** Should you need an emergency hearing before that time, please file a motion requesting that and stating the reason.

Prior tentative ruling (12/23/19)
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

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CONT... Joseph Daniel Beam **Chapter 7**

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. 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.

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CONT... Joseph Daniel Beam **Chapter 7**

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 familiy 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) knowlingly 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 reaons 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 reveeal past spousal support paid or owed and other related

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CONT... Joseph Daniel Beam **Chapter 7**

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 utilites 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 knowlingly 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

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

Tuesday, April 7, 2020 **Hearing Room 303**

10:00 AM

CONT... Joseph Daniel Beam **Chapter 7**

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

Tuesday, April 28, 2020 **Hearing Room 303**

10:00 AM

: GallegosJudgement **Chapter 0**

Misc#: 1:15-00105 GallegosJudgement

#1.00 Order for Appearance and Examination

fr. 3/3/20

Docket 37

Matter Notes:

- NONE LISTED -

Tentative Ruling:

No proof of service had been filed as of 4/23/20. If service was made, the parties are to appear by phone through Court Call and the Judgment Debtor will be ordered back at a period after the shelter-in-place order has been lifted. If there is no service, this will be continued to July 21, 2020 at 10:00 a.m. You will probably need a new order for that date. SINCE YOU DID NOT ADVISE THE COURT BY APRIL 21 WHETHER SERVICE HAS BEEN COMPLETED, THIS WILL BE CONTINUED WITHOUT APPEARANCE TO JULY 21, 2020.

prior tentative ruling (3/3/20)
Service was not completed, so the moving party has requested a new date (or continued hearing date). This has been set for April 28 at 10:00 a.m.

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

Tuesday, April 28, 2020 **Hearing Room 303**

10:00 AM

1:08-11669 Mahboob Talukder and Robert Smith **Chapter 7**

#2.00 Motion by Creditor Chicago Title Insurance Company to Confirm that the Post-Discharge Stay Does Not Apply to its Debt of Creditor.

Docket 50

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Continue without appearance to June 23, 2020 at 10:00 a.m.

Party Information

Debtor(s):

Mahboob Talukder — Represented By Andrew Edward Smyth

Joint Debtor(s):

Cristina Talukder — Represented By Andrew Edward Smyth

Trustee(s):

Amy L Goldman (TR) — Pro Se

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

Tuesday, April 28, 2020 **Hearing Room 303**

10:00 AM

1:16-11387 Real Estate Short Sales Inc **Chapter 7**

Adv#: 1:19-01139 Yavor v. City One Locksmith

#3.00 Status Conference re: Notice of Removal

fr. 1/14/20, 3/3/20

Docket 0

***** VACATED *** REASON: Stip and order entered Dismissing adv. 4/1/20 (eg)**

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Off calendar. Adversary dismissed by stipulation.

Party Information

Debtor(s):

Real Estate Short Sales Inc	Represented By Stephen L Burton

Defendant(s):

City One Locksmith	Pro Se

Plaintiff(s):

Haya Sara Yavor	Pro Se

Trustee(s):

Nancy J Zamora (TR)	Represented By Jessica L Bagdanov David Seror

10:00 AM
1:16-12255 Solyman Yashouafar **Chapter 7**

#4.00 Application to Employ Hilton & Hyland as Real Estate Brokers

fr. 3/24/20, 4/7/20

Docket 743

Matter Notes:

- NONE LISTED -

Tentative Ruling:

CONTINUED BY STIPULATION TO JUNE 23, 2020 AT 10:00 A.M.

Tentative Ruling for 3/24/20

The Trustee seeks to employ Hilton & Hyland as real estate brokers for the property at 910 N. Rexford Dr., Beverly Hills. The listing price will be $12 million and the total sales commission will be 4.5% (2% for the listing broker and 2.5% for the purchaser's broker). This will be a 5 month listing period. If the sale, settlement, or other transactions results in title remaining with or being reconveyed to Elkwood, any affiliate of Elkwood, or Jack Nourafshan, the listing broker will only receive reasonable costs and expenses incurred prior to such settlement. This will be subject to review and approval by the court.

The Trustee notes that at the present time the qiuet title action is still not final as the district court granted the motion to vacate and the final briefing is only due by March 9, 2020.

Elkwood objects to this motion on several grounds. First the motion is premature since the district court has not yet issued its final judgment. Also, it is unclear when the "notice date" actually occurs. If the application is granted, it should not be effective until the Trustee has an unstayed judgment entitling him to possession. Until then the broker should not be allowed to list the property or market it in any way and if it does, the listing agreement should be deemed cancelled and the broker should have no right to a commission.

Although Elkwood requested that the Trustee include the above, the Trustee rejected it. A delay of a few weeks to bring a proper employment

10:00 AM

CONT... Solyman Yashouafar **Chapter 7**

application is not harmful.

The Trustee replied that the order can be conditioned on the entry of the judgment by the district court and if that judgment is stayed, the marketing would also be stayed.

The District Court has now reentered its judgment (as of 3/20/20) and title is now in the Trustee.

Proposed Ruling

Given the present circumstances, a brief delay will do not harm. The lockdown is set to continue until at least April 30. For the ease of the Court (as I am learning how to do telephonic hearings) this is continued without appearance to April 28 at 10:00 a.m. This will also give time for anyone who is seeking a stay of the district court judgment.

However, my proposed ruling is to grant the motion knowing that if the judgment is stayed, the marketing will also be stayed. I suggest that the parties enter into a written stipulation to that effect and thereby remove the need for a hearing.

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
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar

Tuesday, May 19, 2020 **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; 6/11/19, 8/6/19, 11/19/19, 1/14/20, 3/24/20

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

In his 5/14/20 status report, the Trustee states that neither Issacson nor his counsel have approved the final version of the settlement documents and have not provided any substantive response about them. He requests that the Court issue an Order to Show Cause to require Issacson and his counsel to appear and provide an update as to the status of the settlement documents.

No response has been received as of 5/18. I am willing to issue the requested OSC. Please prepare it. You can set the hearing for June 2 or June 23 at 10:00 a.m.

You should appear on 5/19/20 at 10:00 a.m. by phone just in case there is an appearance by Mr. Isaacson or his counsel.

Prior tentative ruling (3/24/20)
Per the Trustee's status report filed on 3/10/10, the settlement is being delayed by Mr. Isaacson's counsel's health issues. The Trustee requests a 60 day continuance.

Continue without appearance to May 19, 2020 at 10:00 a.m.

Prior tentative ruling (1/14/20)
Per the Trustee's status report filed on 1/7/20, there is a settlement in principle. Continue without appearance to March 24, 2020 at 10:00 a.m.

10:00 AM

CONT... Edwin Perry Hinds **Chapter 7**

Prior tentative ruling (11/19/19)
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 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

10:00 AM

CONT... Edwin Perry Hinds **Chapter 7**

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 on12/6, 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

10:00 AM

CONT... Edwin Perry Hinds **Chapter 7**

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. 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

10:00 AM

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 Ellowitz - DISBARRED -

Trustee(s):

David R Hagen (TR)	Represented By David Seror

10:00 AM
1:09-18345 Narine Gumuryan **Chapter 7**
Adv#: 1:19-01081 Bag Fund LLC v. Gumuryan

#2.00 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, 11/19/19, 1/14/20, 3/3/20

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Nothing new has been filed as of 5/18. Please appear by phone and tell me the status of discovery.

Prior tentative ruling (3/3)
Thank you for the joint status report. Please feel free to attend the 3/3 hearing by phone or file an agreed to scheduling order in compliance with this tentative ruling. The status conference will be continued to May 19, 2020 at 10:00 a.m. Discovery cutoff will be on May 8. This means that discovery is complete, not that it is the last day to send out new discovery. Depending on what happens at the May 19 status conference, I may require a pretrial order and set a pretrial hearing at some later date. A July trial date is possible if you do not settle.

Prior tentative ruling (1/14/20)
On 12/5/19 Narine Gumuryan filed an anwer to the complaint. No status report has been filed. How do the parties intend to proceed from here?

Prior tentative ruling (11/19/19)
See cal. #2.01 as to the motion to dismiss.

10:00 AM

CONT... Narine Gumuryan **Chapter 7**

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.

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

10:00 AM
CONT... Narine Gumuryan **Chapter 7**

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, May 19, 2020 **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; 4/16/19, 8/6/19, 10/8/19; 10/22/19, 11/19/19

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

I have reviewed the Trustee's status report filed on 5/6/20. It appears that there is nothing left for me to do on this case until the appeals are resolved. Unless there is an objection, I will continue the 5/19/20 hearing without appearance to Nov. 17, 2020 at 10:00 a.m. Should there be rulings in any of the appeals so that it would be useful to have a hearing prior to that date, please file a request to advance the status conference.

Prior tentative ruling (11/19/19)
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:

10:00 AM

CONT... Shirley Foose McClure **Chapter 11**

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 restructuing 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 rason, 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.

10:00 AM

CONT... Shirley Foose McClure **Chapter 11**

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 we 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 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.

10:00 AM

CONT... Shirley Foose McClure **Chapter 11**

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 inclided to grant further continuances. The Trustee therefore requests a speedy determination of the motion for reconsideration so as to avoid unneccessary 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 propety 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)

10:00 AM

CONT... Shirley Foose McClure **Chapter 11**

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

Trustee(s):

John P. Reitman	Represented By John P Reitman Jon L Dalberg

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 by Hiongbo Cue Special Administrator of Estate of Deceased Plaintiff Tessie Cue for Substitution of Party Pursuant to FRCP 25 and FRBP 7025

Docket 117

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Tessie Cue died on January 24, 2020 and on March 27, Hiongbo Cue (Mr. Cue) was appointed Special Administrator of her probate estate. He now seeks to substitute in as plaintiff in this adversary proceeding. On or about July 31, 2020 he expects to be appointed as executor of Ms. Cue's estate.

Cal. Code Civ. Proc. Sec. 377.20 provides that a cause of action is not lost by a person's death. Mr. Cue has been appointed Special Administrator by the Superior Court to act on behalf of Ms. Cue's interest in this adversary proceeding. When he is appointed as executor, he requests that he will be authorized to substitute in as plaintiff in this adversary proceeding. He will submit the Superior Court order and then request this Court to issue an OSC regarding representation of the interests of the estate of Tessie Cue in this adversary proceeding. He is using this two step process because of the motion to dismiss the second amended complaint.

LTP Opposition

[filed 4/13/20] This motion is premature and should be deferred until the ruling in the probate proceeding, which is set for July 31. There is no certainty that Mr. Cue will be appointed as executor. The Court should set the hearing on this motion for either August 4 or August 25. There is no harm in the delay. There is no copy of the will attached and there is no declaration as to whether the will named an executor or administrator and whether the person named is Mr. Cue.

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

[filed 5/5/20] State law controls who is a proper party to be the decedent's successor in interest. That party is required to have a fiduciary relationship to all parties having an interest in the estate. As a creditor, LTP has standing to object to Mr. Cue's appointment as executor and LTP intends to file an opposition in the probate to Mr. Cue's appointment as executor. The only items that will occur in this court prior to August is the status conference and the hearing on the motion to dismiss the second amended complaint. There is also an outstanding request for production of documents that LTP is to produce and which are due May 26, 2020. As to the documents concerning the Infinity and Ansett cases, Majestic was a party to those cases and therefore has received all of the voluminous documents that they are now demanding that LTP produce. LTP and counsel for Majestic have met concerning this production and the resolution of it does not require participation of whoever will ultimately substitute in for Tessie Cue.

Reply

The second opposition filed 5/5/20 is improper and should be stricken. As to the first opposition, the attack on the Probate Court is improper. That Court issued a valid order appointing Mr Cue as special administrator and it is entitled to full faith and credit by this court. No grounds are stated that Mr. Cue will not be appointed as executor, but if this court wishes to substitute him in as plaintiff in his present capacity as Special Administrator, that would be fine.

As of 5/14, LTP has not filed a claim in the probate or any opposition to Mr. Cue's appointment. It's time to hear the motion to dismiss the second amended complaint as this has been continued four times from Dec. 2019 .

Proposed Ruling

At this time there is a valid order of the LASC that Mr. Cue is the Special Administrator of the Estate of Tessie Cue. That order should be given full faith and credit and this Court will do so. However, that is not a final order that Mr. Cue will be the executor or administrator of his wife's estate – that hearing and order will take place at a future date (probably in July, but it is always possible that the Superior Court will delay ruling). So long as Mr. Cue retains the powers of Special Administrator, he can act in that capacity in

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

this case. Once someone is appointed as executor or administrator, this Court will entertain a motion to substitute that person in as representative or to extend Mr. Cue's tenure in that capacity. The Court is not sure that this means that the order should be that Mr. Cue is "plaintiff" or that he has some other title. We can discuss this at the hearing. Whatever the title, his capacity will be to serve as the representative of the Estate of Tessie Cue in his interim capacity as appointed by the Probate Court.

The hearing will be by phone – please use Court Call.

It should be noted that there is no change of counsel for the plaintiff, so no delays are expected. The status conferences and hearing on the motion to dismiss the second amended complaint, which are scheduled on June 23 at 10:00, will be held at that time. These will also be by phone.

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 302 Calendar

Tuesday, June 2, 2020 **Hearing Room 302**

10:00 AM

1:05-13556 Linda Widdowson **Chapter 7**

Adv#: 1:20-01023 Fidelity National Title Company v. Widdowson et al

#1.00 Motion Interpleader Deposit

Docket 14

***** VACATED *** REASON: Ntc. of w/drawal filed 4/21/20 (eg)**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Linda Widdowson	Represented By Michael E Mahurin David A Tilem Susan I Montgomery

Defendant(s):

Linda Widdowson	Pro Se
DAVID SEROR ESQ	Pro Se
Citibank (South Dakota) N.A.	Pro Se
FORD CREDIT TITLING TRUST	Pro Se

Plaintiff(s):

Fidelity National Title Company	Represented By Sheri Kanesaka

Trustee(s):

David Seror (TR)	Represented By Anthony A Friedman Anthony A Friedman Susan I Montgomery

10:00 AM
1:05-13556 Linda Widdowson **Chapter 7**
Adv#: 1:20-01023 Fidelity National Title Company v. Widdowson et al

#2.00 Status Conference Re:
Complaint for Interpleader and Declaratory Relief.

fr. 4/7/20

Docket 1

Tentative Ruling:

In 2007 Trustee sold the debtor's single family resident at 194 Saddlebow Rd., Bell Canyon. This was free and clear of liens. Fidelity National Title Co (Fidelity) was the sub-agent of Valley Escrow. Two abstracts of judgment were discovered: $35,332.29 recorded on 9/16/03 in favor of Ford and $21,870.53 recorded on 10/1/03 in favor of Citibank. Fidelity is holding $57,202.82 in the sub-escrow account and has never received further instructions from the Trustee. Fidelity wants to turn these over to the Trustee.

Ford has until July 24 to respond. David Seror, the trustee, has filed an answer. Seror asserts that to the extent that Citibank and Ford each have a valid, perfected, non-avoidable security interest in the funs, that is superior to the Estate's interest, but the Estate's interest is superior to that of the Debtor

The status report is that Fidelity will file a motion to deposit the funds and to be dismissed. [It previously filed such a motion, but withdrew it.] The Trustee, who joined the status report, sees trial in 90 days and that it will take about 30 minutes. The motion to deposit funds is set for July 21 at 10:00 a.m.

Why no response by Citibank? Did Widdowson get notice (I can't open the proof of service). Once the money is deposited, will the Trustee take over the prosecution of this case?

Prior tentative ruling (4/7/20)
Due to the response to the coronavirus pandemic, this matter is continued without appearance to **June 2, 2020 at 10:00 a.m**. Should you need an

10:00 AM

CONT... Linda Widdowson **Chapter 7**

emergency hearing before that time, please file a motion requesting that and stating the reason. Plaintiff is to give notice of this continuance to all defendants.

Party Information

Debtor(s):

Linda Widdowson	Represented By Michael E Mahurin David A Tilem Susan I Montgomery

Defendant(s):

Linda Widdowson	Pro Se
DAVID SEROR ESQ	Pro Se
Citibank (South Dakota) N.A.	Pro Se
FORD CREDIT TITLING TRUST	Pro Se

Plaintiff(s):

Fidelity National Title Company	Represented By Sheri Kanesaka

Trustee(s):

David Seror (TR)	Represented By Anthony A Friedman Anthony A Friedman Susan I Montgomery

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

Tuesday, June 2, 2020 **Hearing Room 302**

10:00 AM

1:05-13556 Linda Widdowson **Chapter 7**

Adv#: 1:20-01023 Fidelity National Title Company v. Widdowson et al

#3.00 Status Conference Re:
Complaint for Interpleader and Declaratory Relief.

fr. 4/7/20

Docket 1

Tentative Ruling:

I think this is a duplicate of calendar #2

Party Information

Debtor(s):

Linda Widdowson	Represented By Michael E Mahurin David A Tilem Susan I Montgomery

Defendant(s):

Linda Widdowson	Pro Se
DAVID SEROR ESQ	Pro Se
Citibank (South Dakota) N.A.	Pro Se
FORD CREDIT TITLING TRUST	Pro Se

Plaintiff(s):

Fidelity National Title Company	Represented By Sheri Kanesaka

Trustee(s):

David Seror (TR)	Represented By Anthony A Friedman

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

Tuesday, June 2, 2020 **Hearing Room 302**

10:00 AM

CONT... Linda Widdowson **Chapter 7**

Anthony A Friedman
Susan I Montgomery

10:00 AM
1:10-24968 Glen E Pyle **Chapter 7**

#4.00 Motion for Turnover of Property

Docket 66

Tentative Ruling:

The Trustee seeks turnover of two parcels: 25226 Vermont Dr., Santa Clarita (Vermont) and 9466 Sunland Blvd., Sun Valley (Sunland). The Debtor failed to disclose his interest in these properties in his bankruptcy petition. His discharge has been denied.

Vermont is worth about $661,000 and is encumbered by a first mortgage of $42,935 and junior mortgages and abstracts of judgment of approximately $465,000. Of this amount, at least $175,000 are loans purportedly owed to entities controlled by the Debtor and the Trustee would object to them in a sale unless there is proof of deeds that were supported by consideration.

Sunland is worth approximately $882,000 and is encumbered by a first mortgage of $20,000 and junior mortgages and liens of approximately $178,230.

The debts disclosed in the Debtor's bankruptcy petition total $90.270. Thus, all creditors would receive a substantial dividend.

According to the title reports, the title to each of the properties is in the name of "Glen E. Pyle," although the title to Vermont is "Linda L. Daniel, an unmarried man, as to an undivided 50% interest and Glen E. Pyle, an unmarried man, as to an undivided 50% interest." [By the Court: *The title report does identify Linda L. Daniel as an unmarried* man*, but the deed of trust she gave in June 1988 states that she is an unmarried* woman.] The Debtor contends that the properties do not belong to him, but he maintains control over the properties, resides in one, collects rents on the other, and used the properties to serve as security for the attorneys' fees he owes his attorney.

The deeds of trust to Raymond Aver, his attorney, were signed in Mr. Pyle's individual capacity.

The Trustee requests an Order that the Debtor and all other occupants turnover the Properties to the Trustee and/or her agents no later than noon PST on June 12, 2020 [By the Court: *it is presumed that the Trustee mean PDT*]. If the properties are not turned over by that time, the Trustee requests that the

10:00 AM

CONT... Glen E Pyle **Chapter 7**

Clerk of the Court issue a writ of possession and that if the properties are not vacated within five days after the issuance and service of the writ of possession, the Marshal would be authorized to make a forced entry and remove the occupants. Further, that the service may be by first class mail to the address on the petition and that the Marshal shall be held harmless of any wrongdoing arising out of the eviction. If there is personal property remaining in the property, ten days after the eviction the Trustee may sell it or dispose or it. All fees and costs will be administrative claims of the estate and may be paid from the proceeds of the sale of the properties.

The Trustee has the authority to act under 11 USC sections 521(a)(3) and 521(a)(4); 542(a); and 105(a) and the caselaw interpreting those provisions. In this case the Trustee will be unable to properly market and sell the properties because the Debtor has been uncooperative throughout the case and has been unwilling to comply with his obligations under the bankruptcy code. It is unknown whether the Debtor has been paying the property taxes, mortgage payments, and the expenses to maintain the properties.

Opposition

Title to the properties is vested in the Glen E. Pyle Irrevocable Trust. They were not listed in the bankruptcy for that reason. The Trust is making the mortgage payments as well as paying property taxes and maintenance expenses to the extent that it has funds to do so.

The Trustee has never requested access to the properties. Pyle was never ben asked to cooperate with the Trustee, but if he was, he did cooperate.

Copies of the Trust and the deed are attached to Mr. Pyle's declaration filed as doc. #116 in the Berry v. Pyle adversary proceeding.

Reply

The deeds are ineffective since they purport to transfer the properties to a party that is legally incapable of receiving the grant of the properties. California law holds that only a "person" can own property. A trust is not a "person" and therefore it cannot hold title to property. *Portico Mgmt. Group LLC v. Harrison* (2011) 202 CA4th 464, 473. A trust is not separate from its trustees. It is actually a fiduciary relationship with respect to property. This is regardless of whether it is a revocable or an irrevocable trust. *Galdjie v. Darwish* (2003) 113 CA 4th 1331, 1343. *Presta v. Tepper* (2009) 179 CA 4th 909

10:00 AM

CONT... Glen E Pyle **Chapter 7**

Had the transfers been to "Glen Pyle, as the Trustee of the Glen Pyle Irrevocable Trust," then the transfers might have been successful, though still probably avoidable as fraudulent transfers.

Analysis

Title reports are hearsay and the Court does not find that the analysis of the title company as to ownership is dispositive. The reports themselves don't seem to support the conclusion. As to Vermont, there is no recorded transfer of any interest from Linda Daniel to Pyle. I may be missing this since the title report does not dispute the later granting of trust deeds by Pyle.

As to the deeds presented by Pyle, which were recorded in 2004, they do not appear to transfer title to the Trust. Cal. Code of Civ. Proc. Sec. 654 states that the "ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this code, the thing of which there may be ownership is called property." Cal. Code of Civ. Proc. Sec. 680.280 states that the word "person" includes "a natural person, a corporation, a partnership or other unincorporated association, a general partner of a partnership, a limited liability company, and a public entity." A trust does not qualify as any of these categories. Therefore it cannot actually own any "property." "And the term [property] is a generic one, and its meaning in any case must be determined by ascertaining the sense in which it was used. When unqualified the term is sufficiently comprehensive to include every species of estate, both real and personal, whether choate or inchoate." *Ponsonby v. Sacramento Suburban Fruit Lands Co.*, (1930) 210 Cal. 229, 232.

The deeds in question each are to "(The Pyle Irrevocable Trust) Sweetwater Management Co." Since the Trust cannot own property, the transfer to the Trust is without legal effect. As to Sweetwater, there has never been any evidence that this entity actually exists or that it is the type of entity that qualifies as a "person" under Cal. Code of Civ. Proc. Sec. 680.280/

While it is true that the trust deeds signed to Mr. Aver are signed by Mr. Pyle both as an individual and as Trustee of the Pyle Irrevocable Trust, that is not dispositive. Given the question of title, I am sure that Mr. Aver was being cautious as any sophisticated creditor would be.

10:00 AM

CONT... Glen E Pyle **Chapter 7**

Service by mail has always been a problem. Since Mr. Pyle filed his opposition pro se (though I have reason to believe that he did not actually prepare it himself), the address on the opposition will now be used as a proper service address and the Court will no longer accept any excuse of non-receipt of things sent to that address. If Mr. Pyle has a problem with mail delivery, he is to get a post-office-box and provide the Court and the parties with that information.

Grant the motion as to taking possession of the properties and the rights to turnover of Sunland. However, there is a tenant in Vermont. What does the Trustee plan to do as to the tenant and what notice needs to be given before any action is taken as to the tenant since this motion seeks to terminate the tenant's rights and have turnover of the property.

Party Information

Debtor(s):

Glen E Pyle	Pro Se

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, June 2, 2020 **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 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; 11/20/19; 2/18/20; 3/2/20; 4/7/20

Docket 263

Tentative Ruling:

Continued without appearance to June 23 at 10:00 a.m at which time there is a motion for substitution of Plaintiff and a motoin to strike the answer of Sweetwater Management. That hearing will be conducted by phone.

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

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

Tuesday, June 2, 2020 **Hearing Room 303**

10:00 AM

CONT... **Glen E Pyle** **Chapter 7**

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, June 2, 2020 **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: 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; 11/20/19; 2/18/20; 03/2/20, 4/7/20

Docket 111

Tentative Ruling:

Off calendar. Trial was completed and Judgment entered. As of May 29, no appeal was filed.

Party Information

Debtor(s):

Glen E Pyle — Pro Se

Defendant(s):

Glen Pyle — Pro Se

Plaintiff(s):

Ian Campbell — Represented By Barry P King

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

Tuesday, June 2, 2020 **Hearing Room 303**

10:00 AM

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, June 2, 2020 **Hearing Room 303**

10:00 AM
1:10-24968 Glen E Pyle **Chapter 7**
Adv#: 1:11-01181 Campbell v. Pyle

#7.00 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; 11/20/19; 2/18/20; 03/2/20 4/7/20

Docket 111

Tentative Ruling:

Memorandum of Opinion and Judgment denying discharge to Mr. Pyle were entered on 5/4/20 (dkt. 150, 151). This is now off calendar.

Party Information

Debtor(s):

Glen E Pyle — Pro Se

Defendant(s):

Glen Pyle — Pro Se

Plaintiff(s):

Ian Campbell — Represented By Barry P King

10:00 AM
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, June 2, 2020 **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 Application of Debtor/Plaintiff Majestic Air and Plaintiff Hiongbo Cue, as Special Administrator of the Estate of Tessie Cue for Leave to File Supplemental Legal Authority in Opposition to Lufthansa Technik Philippines, Inc.'s Motion to Dismiss Second Amended Adversarial Complaint

Docket 134

Tentative Ruling:

Due to the short time to prepare this motion, it will be continued for hearing. My suggested dates are June 8 or June 12, since I will have a courtroom available at those times.

As to the motion to dismiss, I assume that there will be a supplemental reply by LTP since there is a supplemental opposition to the motion that was filed on 5/19. Let's set a date for that reply and any other papers. Thus, the motion to dismiss will not be heard on June 23, but perhaps on June 29 or July 6 or July 7.

At the hearing on June 2, we will set all of these dates. The hearing will be by phone.

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

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

Tuesday, June 2, 2020 **Hearing Room 303**

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

Andrew C Johnson

Movant(s):

Majestic Air, Inc.	Represented By Stella A Havkin
Hiongbo Cue Cue	Pro Se

Plaintiff(s):

Hiongbo Cue Special Administrator	Represented By William E Weinberger
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

Friday, June 12, 2020 **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.

#1.00 Application of Debtor/Plaintiff Majestic Air and Plaintiff Hiongbo Cue, as Special Administrator of the Estate of Tessie Cue for Leave to File Supplemental Legal Authority in Opposition to Lufthansa Technik Philippines, Inc.'s Motion to Dismiss Second Amended Adversarial Complaint

fr. 6/2/20

Docket 134

Tentative Ruling:

Plaintiffs Hiongbo Cue as special administrator for the estate of Tessie Cue and Majestic Air ("Majestic") apply for leave to file supplemental legal authority in opposition to the motion to dismiss the operative Second Amended Complaint ("SAC"), filed by Defendant Lufthansa Technik Philippines ("LTP").

The motion to dismiss the SAC (the "Motion to Dismiss") was filed by LTP on November 15, 2019. The Plaintiffs had filed an opposition to the Motion to Dismiss, and LTP had filed a reply to that opposition. The Motion to Dismiss was calendared to be heard by the Court on February 11, 2020.

Tessie Cue died on January 24, 2020. Majestic requested that the hearing go forward as calendared on February 11, 2020, while her husband Hiongbo Cue sought authority to prosecute this action on behalf of her estate. The Court had posted a tentative ruling for the February 11 hearing on the Motion to Dismiss (the "Tentative Ruling"), but ultimately concluded that the February 11 hearing would need to be continued without argument until Mr. Cue had received authority from the appropriate state court to prosecute this action on behalf of Mrs. Cue's estate. No ruling was made. (The Tentative Ruling had dismissed the portion of the Plaintiffs' express contractual indemnity claim that was based

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

on alleged breaches of express contractual representations and warranties, based on a lack of reliance by the Plaintiffs). All defined terms not defined herein are as defined in that Tentative Ruling.

On March 27, 2020 Mr. Cue was appointed Special Administrator of Mrs. Cue's estate by the Los Angeles Superior Court. On May 19, 2020, after notice and hearing, this Court ordered that Mr. Cue could act on behalf of Cue's estate under his Special Administrator powers.

A hearing on the Motion to Dismiss was re-calendared for June 23, 2020. On May 29, 2020 the Plaintiffs filed this application for leave to file supplemental legal authority in opposition to the Motion to Dismiss (the "Application"), along with the proposed supplemental memorandum of points and authorities (the "Supplemental Memorandum"). LTP has filed an opposition to the Application (the "Opposition"), the Plaintiffs have filed a reply to the Opposition (the "Reply"), LTP has filed a sur-reply to the Reply (the "Sur-Reply"), and the Plaintiffs have filed a further reply to the Sur-Reply (the "Further Reply").

The Application – The Plaintiffs argue as follows:

The main argument behind the Motion to Dismiss is that the Plaintiffs have not alleged and cannot, as a matter of law, show reasonable reliance on LTP's express warranties and representations in the Consignment Agreements.

In preparing the Opposition, Plaintiffs' attorney had focused on the arguments in the Motion to Dismiss – that the claims in the SAC were akin to fraud claims that required a more specific pleading of reliance pursuant to Fed. R. Civ. P. 9 – and thus inadvertently failed to focus on the issue of whether reliance is even required in claims for breach of express representations and warranties.

Thus, the Plaintiffs seek leave to file a supplemental memorandum of points and authorities arguing that under §2313 of the California Commercial Code a purchaser need not show reliance on a seller's representations regarding goods sold, only that the representations were part of the "basis of the bargain." Under this statute and applicable case law, Majestic and Cue would not be required to show reliance to succeed on their indemnity claim based on breach of express representations and warranties in the Consignment Agreements. LTP's representations that it had "good and sufficient legal and marketable title to" the

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

spare aircraft parts and that entering into the Consignment Agreements would not contravene applicable laws or other agreements were an integral part of what LTP agreed to sell in the Consignment Agreements. Under this legal authority, the burden is on LTP to show "by clear and affirmative proof" that the representations and warranties were removed from the Consignment Agreements.

The June 23 hearing on the Motion to Dismiss is 35 days hence, so LTP will not be prejudiced by this filing and the hearing will not need to be continued. All parties and the Court would benefit from consideration of legal authorities central to the issues in the Motion to Dismiss.

Bankruptcy Rule 9006(b)(1) allows the Court to enlarge the time to file papers after the expiration of a specified time upon a showing of excusable neglect. In keeping with Ninth Circuit precedent, Rule 9006(b)(1) should be liberally construed to effectuate the purpose that cases be tried on the merits. In *Ahanchian v. Xenon Pictures*, 624 F.3d 1253, 1259 (9th Cir. 2010), the Court noted that good cause for an extension is a non-rigorous standard, and then considered counsel's lack of bad faith, potential prejudice to the other party, and whether the requesting counsel had stipulated to the other parties' prior requests for extensions of time. Counsel for the Plaintiffs are acting in good faith and they have previously agreed to LTP's request for a continuance of the Motion to Dismiss.

Furthermore, LTP filed a second opposition to Mr. Cue's motion to substitute – without asking the Court's permission.

Opposition – LTP argues as follows:

Plaintiffs should be judicially estopped from making the arguments in the Supplemental Memorandum. Judicial Estoppel requires: the party's later position is inconsistent with its earlier position, (ii) the party succeeded in achieving judicial acceptance of its earlier position, and (iii) asserting the inconsistent position would be unfair. The argument the Plaintiffs assert in their proposed Supplemental Memorandum – that by virtue of the California UCC reliance is not an element of their claim for contractual indemnification based on LTP's alleged breach of representations and warranties – is inconsistent with the position pled in the SAC – that LTP is liable on the indemnity because the Plaintiffs relied. The Court accepted the Plaintiff's original position on reliance in the February 7, 2020 tentative ruling. Now the Plaintiffs are changing their position due to

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

exigencies of the moment. Asserting this new contradictory theory months after briefing on the original theory deprives LTP of the reasonable opportunity to evaluate the new theory, which is presented without context as to how if relates to the SAC. It also puts LTP in the nearly impossible position of proving by "clear affirmative proof" that the representations and warranties were not part of the basis of the bargain in the Consignment Agreements. Ms. Cue's death deprives LTP of the opportunity to depose and cross-examine Ms. Cue in carrying that burden.

Plaintiffs' fast, loose, and contradictory positions have led them to blame LTP for their own strategic decisions. Rule 9006(b)(1) cases typically involve late-filed documents due to counsel's inadvertent mistake (mis-calendaring, misinterpretation of rules, etc.), not the "do-over" Plaintiff's counsel is seeking after his original legal arguments failed.

Even if Rule 9006(b) (1) applies, this request fails under the four factors used to evaluate such requests: danger of prejudice to the other party, length of delay and impact on proceeding, reason for delay, and good faith of applicant. *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P'ship*, 507 U.S. 380, 391 (1993). The Plaintiffs sole stated reason for failing to present this new legal theory earlier is that they focused on the authorities cited in LTP's moving papers. Plaintiffs' deliberate selection of legal arguments and authorities lies squarely in their control and cannot constitute excusable neglect. Plaintiffs' eleventh hour filing of this Application deprives LTP of the opportunity to respond and delays this proceeding. Plaintiffs acted in bad faith: they first informed LTP's counsel of their intent to file the Application at a May 19 hearing, even though the brief was already drafted at that point.

Contrary to Plaintiffs' assertions, the proposed Supplemental Memorandum is not analogous to LTP's filing of two oppositions to the motion to substitute Mr. Cue for Ms. Cue. LTP's two oppositions did not assert new contradictory theories and were substantively identical. The second opposition was filed on cautious and good faith belief that the first opposition/request for hearing might not have been considered an opposition for the actual hearing.

Reply – The Plaintiffs argue as follows:

Judicial estoppel does not apply in this case. LTP's own cases show that the doctrine is applied when a party to litigation has taken an inconsistent position that has been accepted by a court in a prior litigation, not where a party has been

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alleged to take inconsistent position in the same case.

Even if judicial estoppel were applicable, LTP has not shown that the factors for application of judicial estoppel have been met. One, Majestic and Cue's positions have been consistent throughout the proceedings. Two, acceptance of the Supplemental Memorandum would not create the impression the Court has been misled. The Tentative Ruling was not a final ruling, and the Court addressed LTP's argument on reliance, not Cue and Majestic's. Three, Cue and Majestic will not obtain an unfair advantage if they are given leave to file the Supplemental Memorandum because it was submitted 35 days prior to the hearing on the Motion to Dismiss and well before the trial on this matter. LTP had ample time to seek discovery from Tessie Cue before she died. Judicial estoppel is not needed to protect the integrity of the courts, a requirement for its application.

LTP has not supported its improper accusations – that the Plaintiffs are playing fast and loose and are in bad faith. The Plaintiffs have been straightforward about their inadvertence/neglect in not bringing this central authority to the Court's attention earlier, and are not blaming LTP. They never represented that reliance was an element of their contractual indemnification claim until the Court raised this issue in its ruling on the motion to dismiss the FAC. They have consistently asserted that LTP's breaches of the representations and warranties in the Consignment Agreements triggers its indemnification obligations.

The Ninth Circuit in *Ahanchian* has stated that Rule 9006(b)(1) should be "liberally construed to effectuate the general purpose of seeing that cases are tried on the merits." 624 F.3d at 1259. The rule covers "neglect" (as the Supreme Court pointed out in *Pioneer)* and thus necessarily includes circumstances within a party's control.

Sur-Reply – LTP argues as follows:

LTP has argued that Plaintiffs' new theory on reliance would put LTP in a nearly impossible position of proving what representations and warranties Tessie Cue did and did not rely on many years ago. The Plaintiffs responded that LTP could have sought Ms. Cue's testimony during the thirteen months this proceeding has been pending or could have sought her testimony on reliance when she was deposed in the underlying state court actions. The argument is wrong on two counts.

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One, LTP has repeatedly sought Ms. Cue's testimony while this adversary action has been pending, but her counsel always refused to provide a date for a deposition.

Two, LTP could not depose Ms. Cue in prior state court proceedings on a new theory that Plaintiffs first raised on May 19, 2020 – months after Ms. Cue's death.

Further Reply – The Plaintiffs argue as follows:

Sur-replies are highly disfavored by courts and LTP filed its Sur-reply without leave of the Court in contravention of the Local Bankruptcy Rules.

LTP cannot show prejudice because reliance is not an element of contractual indemnification claims in the statutes and cases cited in the Supplemental Memorandum. Under §2313 of the California Commercial Code, no particular reliance need be shown; the focus is actually on the seller's behavior.

LTP's counsel was at all three sessions of Ms. Cue's deposition in the Ansett and Infinity Cases. It had a year in this case to take her deposition, and, despite its emails demanding Ms. Cue's deposition, LTP has failed to show it took real action – either by motion or notice of deposition – to seek Ms. Cue's attendance at a deposition.

The Sur-reply fails to address the compelling reasons to grant this Application. One, the Supplemental Memorandum presents legal authority directly pertinent to the Motion to Dismiss. Two, given that pertinence, the lack of prejudice to LTP, the showing of excusable neglect, and the liberal construction courts give to Rule 9006, the Court should exercise its discretion to grant the Application. Three, judicial estoppel is inapplicable here: LTP has not shown that the Plaintiffs would be taking a position inconsistent with a position they took and which a court adopted in a prior proceeding.

Analysis

Judicial estoppel is not relevant to this Application. Judicial estoppel is designed to prevent a party from taking a position that is inconsistent with a position they took, and succeeded in having a court adopt, in a prior litigation. (LTP's own quoted standard refers to "either the first or second court being misled."). It is not designed to prevent a party from asserting a new legal

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CONT... Majestic Air, Inc. **Chapter 11**

argument within the same proceeding. Furthermore, this Court has not adopted any position yet; the Tentative Ruling is just that, a tentative ruling. As a matter of usual practice, the Court will offer the Plaintiffs (and LTP) the opportunity to argue why the tentative ruling should be changed at the hearing on the Motion to Dismiss.

Contrary to LTP's argument, the Court concludes that LTP will have a reasonable opportunity to evaluate and defend against this new theory. The Application and the Supplemental Memorandum were filed on May 19 - 35 days prior to the June 23 hearing date on the Motion to Dismiss. That hearing date has now been continued to July 7 to provide additional time to resolve this Application. LTP argues that the theory of the Application is presented without context as to how it relates to the SAC, but the relation is quite straightforward: under the legal authorities cited in the Supplemental Memorandum, the Plaintiffs would not need to allege/prove reliance to recover under their contractual indemnification claim based on breach or representations and warranties. Moreover, the Supplemental Memorandum itself is only seven pages long, with only five of actual argument.

LTP argues that it will be almost impossible to prove that the relevant representations and warranties were not part of the basis of the bargain of the Consignment Agreements, especially given Ms. Cue's death. This argument reads as though the Plaintiffs' proposed supplemental legal authority raises the issue of Ms. Cue's reliance for the first time. As discussed in the Court's ruling on the motion to dismiss the FAC and the Tentative Ruling, Cue and Majestic's reliance on the representations and warranties in the Consignment Agreements has already been at issue in both the motion to dismiss the FAC and this Motion to Dismiss – well before Ms. Cue's death. The statutory and case law the Plaintiffs seek to put before the Court creates a presumption of reliance, and thus shifts the burden of proof from the Plaintiffs to LTP.

> In adopting the Uniform Commercial Code ("UCC"), California has shifted its view of whether a plaintiff must allege reliance on specific promises to sustain express warranty claims. Comment 3 to the analogous UCC provision, UCC § 2–313, provides:
>
> > The present section deals with affirmations of fact by the seller, descriptions of the goods or exhibitions of samples, exactly as any other part of a negotiation which ends in a contract is dealt with. No specific intention to make a warranty is necessary if any of

these factors is made part of the basis of the bargain. In actual practice affirmations of fact made by the seller about the goods during a bargain are regarded as part of the description of those goods; hence *no particular reliance on such statements need be shown in order to weave them into the fabric of the agreement.* Rather, any fact which is to take such affirmations, once made, out of the agreement requires clear affirmative proof. The issue normally is one of fact.

UCC § 2–313, cmt. 3 (emphasis added). While pre-UCC California law required proof of reliance on specific promises, comment 3 to UCC § 2–313 expressly signals a departure from that requirement. *See Keith v. Buchanan*, 173 Cal. App. 3d 13, 220 Cal. Rptr. 392, 397-98 (1985) (explaining that, under the UCC, "the concept of reliance has been purposefully abandoned"). Because California's express warranty statute conforms to the UCC, the California Court of Appeal has held that a buyer need not show reliance because the California statute "creates a presumption that the seller's affirmations go to the basis of the bargain." *Weinstat v. Dentsply Int'l, Inc.*, 180 Cal.App.4th 1213, 103 Cal.Rptr.3d 614, 626 (2010). The court reasoned that the statute focuses not on the buyer's actions, but on "*the seller*'s behavior and obligation—his or her affirmations, promises, and descriptions of the goods—all of which help define what the seller 'in essence' agreed to sell." *Id.* at 627. Therefore, "[a]ny affirmation, once made, is part of the agreement unless there is 'clear affirmative proof' that the affirmation has been taken out of the agreement." *Id.*

In re Nexus 6P Prod. Liab. Litig., 293 F. Supp. 3d 888, 914–15 (N.D. Cal. 2018).

The law requires that the burden on the Plaintiff to show reliance is shifted to the Defendant to show that the representation was taken out of the agreement. The focus moves from the intention of Cue to the words and actions of LTP. While this burden may be difficult for LTP to meet, the fact that relevant legal authority worsens LTP's legal position is not a good reason to ignore it.

Given that the motion to dismiss had not been decided or even argued, the Court has complete flexibility to allow additional briefing. But even if LTP

seems to want this treated as if it were a motion to reconsider, because we are dealing with a tentative ruling there was no order and thus there is no statutory time limit. But just to respond to the LTP arguments, the Court notes the following:

Federal Rule of Bankruptcy Procedure 9006(b)(1) provides that this Court may grant additional time in its discretion for cause shown:

> Except as provided in paragraphs (2) and (3) of this subdivision [not applicable], when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

Fed. R. Bankr. P. 9006. Under Rule 9006(b)(1), this Court has considerable discretion in managing its calendar. *In re Aroonsakool*, No. ADV 11-90299-LA, 2014 WL 1273696, at *6 (B.A.P. 9th Cir. Mar. 28, 2014).

The Ninth Circuit has emphasized that Rule 9024(b)'s analogue - Fed. R. Civ. P. 6(b) - should be "liberally construed to effectuate the general purpose of seeing that cases are tried on the merits." *Ahanchian v. Xenon Pictures*, 624 F.3d 1253, 1259 (9th Cir. 2010). Although the language of Rule 6(b) and Rule 9024(b) differ and *Ahanchian* is thus not directly applicable to Rule 9006 (*see, e.g., N. Cal. Small Bus. Fin. Dev. Corp. v. Arnold Bellow (In re Bellow),* 2011 WL 4502916, at *5 (9th Cir. BAP 2011), *aff'd, In re Bellow,* 544 Fed. Appx. 732 (9th Cir.2013)), I remain guided by that general principle of seeing cases are tried on their merits, if necessary, I apply Rule 9006(b)(1) and wouid grant a motion under Rule 6(b)(6). It would be foolish to try this case under an incorrect legal provision in California law and would certainly lead to a reversal and remand if LTP prevails without consideration of the prevailing law. The issue of exactly what statute is binding will be taken up at a later time through pretrial motions or the trial itself. But it will clearly be on the table and not swept under the rug only to arise for a remanded trial.

If Rule 9006(b)(1) does not apply to the issue of whether the Plaintiffs

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CONT... Majestic Air, Inc. **Chapter 11**

should be granted leave to file their Supplemental Memorandum, then this Application would fall more generally within this Court's management of litigation, an area where the Court also has considerable discretion. *See Preminger v. Peake,* 552 F.3d 757, 769 n. 11 (9th Cir.2008) (the abuse of discretion standard applies to a district court's decisions concerning management of litigation).

The Court concludes that the Plaintiffs have shown cause to grant them leave to file the Supplemental Memorandum. Giving the Plaintiffs leave to file the Supplemental Memorandum will effectuate the objective of seeing that the adversary proceeding is tried on the merits – with little countervailing cost. The Plaintiffs have requested that this new case law be considered at a very early stage of this proceeding – a month before the Motion to Dismiss was to be heard and well before any motions for summary judgment and trial. As discussed more fully above, LTP has sufficient time and opportunity to prepare a response to the new authority and the delay to the proceeding is no more than the time it has taken for this application to be heard.

The parties have filed five briefs comprised of over 100 pages to resolve the issue of whether LTP should be permitted to file an additional five pages of briefing - at a significant expenditure of time for both parties and the Court. The Court urges the parties to treat each other with the "civility and respect" that the Ninth Circuit urged in *Ahanchian.* 624 F.3d at 1263 (a plea to grant reasonable requests by the other party).

Application granted.

Let's set the dates for any additional papers before the hearing on the motion to dismiss the second amended complaint.

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

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

Friday, June 12, 2020 **Hearing Room 303**

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

Andrew C Johnson

Movant(s):

Majestic Air, Inc.	Represented By Stella A Havkin
Hiongbo Cue Cue	Pro Se

Plaintiff(s):

Majestic Air, Inc.	Represented By Stella A Havkin
Tessie Cue	Represented By Stella A Havkin
Hiongbo Cue Special Administrator	Represented By William E Weinberger Stella A Havkin

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

Tuesday, June 23, 2020 **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; 6/11/19, 8/6/19, 11/19/19, 1/14/20, 3/24/20 5/19/20

Docket 1

Tentative Ruling:

Nothing further received as of 6/18. See cal. #2.

Prior tentative ruling (5/19/20)

In his 5/14/20 status report, the Trustee states that neither Issacson nor his counsel have approved the final version of the settlement documents and have not provided any substantive response about them. He requests that the Court issue an Order to Show Cause to require Issacson and his counsel to appear and provide an update as to the status of the settlement documents.

No response has been received as of 5/18. I am willing to issue the requested OSC. Please prepare it. You can set the hearing for June 2 or June 23 at 10:00 a.m.

You should appear on 5/19/20 at 10:00 a.m. by phone just in case there is an appearance by Mr. Isaacson or his counsel.

Prior tentative ruling (3/24/20)

Per the Trustee's status report filed on 3/10/10, the settlement is being delayed by Mr. Isaacson's counsel's health issues. The Trustee requests a 60 day continuance.

Continue without appearance to May 19, 2020 at 10:00 a.m.

Prior tentative ruling (1/14/20)

Per the Trustee's status report filed on 1/7/20, there is a settlement in principle. Continue without appearance to March 24, 2020 at 10:00 a.m.

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CONT... Edwin Perry Hinds **Chapter 7**

Prior tentative ruling (11/19/19)
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 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)

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CONT... Edwin Perry Hinds **Chapter 7**

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 on12/6, 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

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CONT... Edwin Perry Hinds **Chapter 7**

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. 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

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CONT... Edwin Perry Hinds **Chapter 7**

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, June 23, 2020 **Hearing Room 303**

10:00 AM

1:06-12243 Edwin Perry Hinds **Chapter 7**

#2.00 Order to Show Casue After Hearing Re: Status of Settlement and Continued Status Conference.

Docket 82

Tentative Ruling:

On May 26, 2020 the Court issued an order to show cause as to the status fo the settlement. It required Lon B. Isaacson and Lon B. Isaacson Associates to file and serve a written response and provide a written report on the status of the settlement to later than June 9, 2020. It also required the Isaacson parties and Maureen J. Shanahan (their counsel) to appear on June 23 via Court Call and provide the Court with a report as to the status of settlement.

As of June 18, no written response or report has been filed. Mr. Isaacson was sent noitce by email, but I am not sure that Ms. Shanahan was served. If there is no response or appearance on June 23, I would like to hear from the Trustee as to how he recommends proceeding - such as continuing this and making sure that Ms. Shanahan is served.

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
Michael W Davis

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1:08-11669 Mahboob Talukder and Robert Smith **Chapter 7**

#3.00 Motion by Creditor Chicago Title Insurance Company to Confirm that the Post-Discharge Stay Does Not Apply to its Debt of Creditor.

fr. 4/28/20

Docket 50

Tentative Ruling:

The real property ("the property") is at 7059 Alcove Ave., North Hollywood.

April 2003 – property owned by Penny Martin-Dougherty. Two trust deeds were in default

April 28, 2003 - Mahboob Talukder (aka David Talukder), Frank Gonzalez, and John Castaneda came to the property and suggested a reverse mortgage since there was equity in the property. This would pay off the mortgages and give her monthly payments with no requirement to make payments on the reverse mortgage. They returned later that day to talk to Dougherty and her husband and represented that she would remain the title owner of the property and would receive $500 per month for 15 years.

April 30, 2003 - Dougherty signed the documents presented by David, Gonzalez, and Casteneda, which included a blank grant deed. Dougherty was not given copies of the documents.

May 2, 2003 - the grant deed was completed and conveyed the property to GIT, Inc., one of David and Cristina's limited liability companies.

May 29, 2003 - the grant deed was recorded.

July 23, 2003 - the senior mortgage holder recorded a notice of default because the payments were not made on the existing mortgages.

September 17, 2003 - David, Castaneda, and Cristina executed a trust deed

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CONT... Mahboob Talukder and Robert Smith **Chapter 7**

which purported to encumber the property in the principal amount of $240,000.

October 2, 2003 - GIT conveyed the property to Cristina (who was David's spouse). It stated that she was a "single woman."

October 14, 2003 - the deed to Cristina was recorded.

April 29, 2004 - Cristina conveyed the property to Absara, LLC, as Trustee of the Alcove Trust dated 1994 (typo says 2994).

May 12, 2004 - deed to Absara was recorded. Absara was a limited liability company of David and Cristina.

May 9, 2005 - Absara conveyed the property to Carmen Echeverria.

May 16, 2005 - Echeverria obtained a loan in the principal amount of $344,000 from Resmae Mortgage Corp. secured by a deed of trust, which was insured by Chicago Title.

May 24, 2005 - deed to Echeverria was recorded.

May 25, 2005 - deed of trust to Resmae was recorded.

June 9, 2006, Dougherty filed suit in LASC against David, et al and included Resmae (the insured). BC 353648. Thereafter, Resmae made a claim under the title insurance policy.

March 21. 2008 – David Talukder files a chapter 7 bankruptcy case.

July 2008 – David Talukder receives his discharge.

November 12, 2008 - the superior court issued summary judgment against David, GIT, Cristina, and Absara. The judgment also cancelled the Resmae deed of trust. Dougherty also obtained a non-dischargeable judgment against David.

April 25, 2012 - the insured deed of trust was assigned to LaSalle Bank.

July 23, 2015 - Chicago paid LaSalle $344,000 as satisfaction of the LaSalle claim. Chicago has incurred $40,498 in costs and fees.

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CONT... Mahboob Talukder and Robert Smith **Chapter 7**

June 2, 2016 - Chicago filed suit against David in LASC EC 065396. Chicago obtained a judgment, but that was set aside on Oct. 2018. The hearing on a motion for summary judgment was set for Jan. 24, 2020, but that was continued to July 17, 2020 to allow Chicago time to seek remedies in the bankruptcy court.

The Motion

The debt is post-petition in that Chicago Title did not pay LaSalle until 2015, which was seven years after the bankruptcy was filed. If it is considered a pre-petition debt, then under the Ninth Circuit "fair contemplation" test it is still not discharged as to Chicago because the parties could not reasonably contemplate the potential existence of this future claim prior to their bankruptcy filing.

As to it being a pre-petition debt, a debt is "liability on a claim," a claim is a "right to payment," and a "right to payment" is an enforceable obligation. 11 USC sec. 101(12), sec. 101(5). A claim does not include future rights to payment that are unknown and not foreseeable. A contingent claim is one "which the debtor will be called upon to pay only upon the occurrence or happening of an extrinsic event which will trigger the liability of the debtor to the alleged creditor and if the triggering event or occurrence was one reasonably contemplated by the debtor and creditor at the time the event arising rise to the claim occurred." *In re: Dill*, 731 F.2d 629 (9th Cir. 1984)

As to the "fair contemplation" test, even if the conduct of the Debtor occurred pe-petition, he will not be discharged if the parties could not fairly or reasonably contemplate the potential existence of the future claim. *In re: ZiLOG, Inc*., 450 F.3d 996, 1000 (9th Cir.2006); *In re: Hexcel Corp*., 239 B.R.564 (1999). The claim only arises when the creditor can fairly or reasonably contemplate the existence of a claim. Then the plaintiff must act. *In re: SNTL Corp*., 571 F.3d 826 (2009).. *In re: Hellman*,

430 B.R.213 (2010), *In re: Cool Fuel, Inc*. 210 F.3d 999 (9th Cir. 2000).

Because the payment was not made to the insured until after the

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CONT... Mahboob Talukder and Robert Smith **Chapter 7**

bankruptcy was filed, this could not have been reasonably contemplated by Chicago and it is not discharged. Neither Chicago or Resmae were listed on the bankruptcy schedules. Minimally there are due process issues because of this.

Even the Debtor would not reasonably contemplate that years after the bankruptcy there would be a title insurance claim that would arise.

If this is a prepetition debt, Chicago wants to file a sec. 523(a)(3)(B) action. There is no time limit on this. And Chicago did not become aware of the bankruptcy until January 2020 when David filed an opposition to the motion for summary judgment in the state court action. He never mentioned it in his Motion to Set Aside the Default Judgment that was filed in July 2018, as an affirmative defense, or in response to written discovery.

Discharged Debtor's Response

The actual claim was filed by Dougherty, the person insured by Chicago, and it was supported by the Dougherty lawsuit against Debtor and others in the state court and a non-dischargeability judgment against the Debtor, which was entered on 7/27/09.

Although Chicago seems to assert that it did not know of the bankruptcy case, Chicago was a party to the Dougherty action. It was named as a defendant in that action and had every right to seek contribution from Dougherty for her judgment against Talukder. Chicago now tries to step in as an additional claimant on the same claim in that it paid on an insurance policy and claiming that the Debtor did not list it on his bankruptcy petition.

Chicago's claim is for contribution against its insured and it is not a third party beneficiary to the contract between Talukder and Dougherty. Any action against Talukder would be precluded under Cal. Code Civ. Proc. 307 – one form of action rule – since it was already litigated in state court. Dougherty was the proper party to litigating this fully litigated case and Chicago is not the beneficiary under the contract. Cal Civ. Code 1559.

Reply

Dougherty was not the insured fo Chicago. Dougherty was the victim

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CONT... Mahboob Talukder and Robert Smith **Chapter 7**

of the fraudulent acts committed by the Debtor as to the property at 7059 Alcove Ave. There was no contractual relationship between Dougherty and Chicago. Resmae Mortgage was the insured. After a series of transfers, on May 16, 2005 Echeverria obtained a loan of $344,000 from Resmae, which was Chicago's insured. Chicago issued the title insurance policy to Resmae, which was the sole insured of Chicago.

The knowledge of Dougherty of the bankruptcy cannot be imputed to Chicago. Dougherty had no duty to notify Chicago. There was no agency relationship between Dougherty and Chicago.

There is no evidence that this is a pre-petition debt. It did not arise until after the bankruptcy was filed. The payment under the policy was not made until July 2015.

If this is determined to be a pre-petition debt, Chicago asks for the opportunity to file a complaint under sec. 523(a)(3)(B).

ANALYSIS

All of the actions in this case occurred pre-petition. The fraud was in 2003. The interest obtained by Resmae and insured by LaSalle/Chicago was in 2005. The bankruptcy was filed in 2008. Whether LaSalle or Chicago had any notice or involvement prior to the bankruptcy does not transmute this to a post-petition debt.

11 USC §523(a)(3)(B) specifically deals with this type of situation. That section requires that the debt is not listed or scheduled in the bankruptcy documents with the name of the creditor (if that name is known to the debtor) in time for the creditor to timely file a proof of claim and timely file a §523(a)(2), (4) or (6) adversary complaint. This is so unless the creditor had notice or actual knowledge of the case in order to timely file a claim and an adversary proceeding.

Although Resmae made its claim on the title insurance policy in 2006, given the facts set forth in this motion, there is no showing that Chicago or its predecessor (LaSalle) or its insured (Resmae) had notice or actual

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CONT... Mahboob Talukder and Robert Smith **Chapter 7**

knowledge of the Talukder bankruptcy on or before June 20, 2008, which was the deadline for filing a §523 complaint. There is no deadline to file a claim as this was a no-asset case. But that is not significant.

Thus, the question here is whether LaSalle or Chicago had notice or any knowledge of the bankruptcy filing before June 20, 2008. If either of them did, then a complaint will have to be dismissed. But that will be decided within the litigation.

The bankruptcy court shares jurisdiction with the state court as to § 523(a)(3) matters. *In re Franklin*, 179 B.R. 913, 924 (Bankr. E.D.CA 1995). Since there is a suit pending in the LASC, that can proceed if that judge wishes to go forward. Although a new complaint can be filed here, since the state court lawsuit is four years old, I suggest that it proceed, adding a cause of action under §523(a)(3)(B).

Party Information

Debtor(s):

Mahboob Talukder — Represented By Andrew Edward Smyth

Joint Debtor(s):

Cristina Talukder — Represented By Andrew Edward Smyth

Trustee(s):

Amy L Goldman (TR) — Pro Se

10:00 AM
1:10-24968 Glen E Pyle **Chapter 7**
Adv#: 1:11-01180 Berry v. Pyle et al

#4.00 Application/Motion For Substitution Of Party Under F.R.C.P. 25(c)

Docket 272

Tentative Ruling:

Trustee Amy Goldman seeks to substitute herself as plaintiff instead of Marc H. Berry. This will be in her capacity as Trustee for the estate of Glen Pyle. On October 4. 2017 the Court entered an order approving the stipulation between Goldman and Berry that transferred from Berry to Goldman all of the rights, title, and interest in the claims asserted in this adversary proceeding. Although FRCP 25 allows the action to continue in the name of the original party after ownership is transferred, Berry is not longer the real party in interest and the plaintiff. Berry has no ownership interest in the claims being asserted other than as a creditor in the main case.

Berry Declaration

Mr. Berry has no opposition to the relief requested, but he does have a substantial property interest in the claims. The stipulation referred to above agreed that Berry would receive all of his costs associated with the adversary proceeding up to $8,000 and the balance would be divided 50/50 between the estate and Berry. This will not affect Berry's claim in the main case. Berry also keeps the sanctions award against Pyle and Pyle's counsel. Berry also reserves the right to request an award of attorney's fees for the period of his representation of the Trustee in this case.

Proposed Ruling

Grant the motion. The Trustee is to prepare the order and run it past Mr. Berry. It would be best if the order reflects the agreement with Mr. Berry so that there is no confusion later on.

Party Information

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

Tuesday, June 23, 2020 **Hearing Room 303**

10:00 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

10:00 AM
1:10-24968 Glen E Pyle **Chapter 7**
Adv#: 1:11-01180 Berry v. Pyle et al

#5.00 Motion To Strike Answer Filed On Behalf Of Defendant Sweetwater Management Company, Inc.

Docket 273

Tentative Ruling:

The Answer to the First Amended Complaint was by Glen E. Pyle (Pyle), the Glen E. Pyle Irrevocable Trust (Trust) and Sweetwater Management Company, Inc. (Sweetwater). This motion seeks to strike the answer of Sweetwater since it is a suspended California corporation and therefore lacks capacity to defend an action (FRCP 17(b), which is incorporated in FRBP 7017. Further, Sweetwater is unrepresented by counsel.

Sweetwater was suspended in 2000 and, as of May 26, 2020 it remains suspended.

No opposition has been received as of June 18, 2020. The motion will be granted.

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

Tuesday, June 23, 2020 **Hearing Room 303**

10:00 AM
CONT... Glen E Pyle **Chapter 7**

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

10:00 AM
1:11-22424 Ronald Alvin Neff **Chapter 7**

#6.00 Motion for attorney fees and costs against Douglas Denoce and the Bankruptcy estate as costs and as a sanction in the Sum of $77,547.

fr.3/24/20, 4/7/20

Docket 578

Tentative Ruling:

THE HEARING WILL BE BY COURT CALL.

PLEASE NOTE THAT FOR SOME REASON THE MOVING PAPERS AND THE TRUSTEE'S RESPONSE SPELL MR. DENOCE AS Denoce. HOWEVER HE USES THE SPELLING AS DeNoce. THE COURT IS ADOPTING THE LATTER.

The Motion

Ronald Neff seeks at least $77,547 for attorney fees and costs and as a sanction based on the court's inherent power and as reserved by the court in its ruling on the motion for new trial granted by the court after trial in November 2017. This is directed at both Douglas DeNoce and the bankruptcy estate. The court is requested to take judicial notice of the entire file. Neff asserts that this is due to the improper and bad faith conduct of DeNoce on behalf of himself and of the Trustee.

The motion refers to 11 USC §105(a); Fed.R.Bank.P. 9011, *Chambers v. Nasco, Inc.*, 501 U.S. 32 (1991) and *Leon v. IDX Sys. Corp.*, 464 F.3d 951 (9th Cir. 2006).

DeNoce's actions show a continued pattern and practice of bad faith conduct. He was not intending to get to the heart of the matter or of the present case, but to use the proceedings to harass, delay, and vex the Debtor due to the personal animosity that DeNoce has for Neff.

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CONT... Ronald Alvin Neff **Chapter 7**

As shown in the Memorandum of Opinion (entered 1/6/20), there were numerous instances of "destruction of evidence, breach of court orders, misrepresentations to the court, blatant inconsistencies in Mr. DeNoce's representations." Beyond that, the court allowed DeNoce to subpoena Doctors Okhovat and Hersel. Their testimony bolstered the Debtor's claim of disability. DeNoce has stated his extensive experience as a medical malpractice attorney with much claimed trial experience. Thus the purpose in having Doctors Okhovat and Hersel appear twice – in that they hurt DeNoce's case - was only harassment and bad faith.

DeNoce chose to try to prove that Neff had hoodwinked the Social Security Administration and that they did not do their job. He didn't come close because the overwhelming evidence was that Neff had been disabled for years before he filed bankruptcy in 2011.

The Trustee authorized DeNoce to act as he did. [*The Court notes that Mr. Kwasigroch contended that DeNoce was disbarred and has a felony record. The Court is aware that DeNoce is no longer a licensed attorney, but has no evidence that this is because he was disbarred and also has no information about a felony record. Even if true, criminal convictions that occurred over 10 years ago are generally not admissible. FRE 609. Thus this comment is not being considered.*]

This case has dragged on for seven years, during which Neff has been denied funds that he desperately needed. Rather than obtain the direct evidence to rebut the presumption, DeNoce went on a "wild goose chase" hoping to find that the SSA made a mistake or that Neff got his disability payments by fraud. Even if he had obtained this, the burden still required proof of employment and the amount of income that Neff was likely to earn. No evidence was presented except that the Debtor might earn $7,200 per year, which is below the poverty level.

While Neff requests an award of the full amount incurred, minimally he seeks the fees for the time spent since the first trial because this was, ultimately, as waste of time. The attached time records start with the first status conference after the case was remanded back from the BAP. It can be

argued that the objection to the enhanced homestead was a valid claim prior to the BAP decision, but DeNoce never attempted to present evidence on the second prong (employability and potential income from jobs for the Debtor).

Trustee's Opposition

There are no allegations or evidence of sanctionable conduct by the Trustee or estate. There is no legal theory as to why the entire creditor body should be liable for the unilateral actions of one creditor. The Trustee never filed an objection to Neff's claim of exemption and never authorized DeNoce to do anything on his or the estate's behalf. The settlement agreement with DeNoce reduced and resolved all claims that DeNoce had against the estate. As a creditor, DeNoce is a "party in interest" and has a right to litigate the homestead exemption in that capacity. If DeNoce acted wrongly, it is solely his responsibility.

The original objection to claim(s) was filed by DeNoce in August 2012 (dkt. 87) and included objections to other claims as well as the homestead one. The court granted in part and denied in part DeNoce's objections. (dkt. 147) This was appealed, reversed and remanded as to the homestead exemption.

In January 2013 the Trustee and DeNoce entered into a settlement agreement to resolve DeNoce's claims against the estate and to "significantly limit DeNoce's standing to continue to be an active creditor in the bankruptcy case." (dkt. 151) It was approved by the Court (dkt. 172). It specifically allowed DeNoce in his individual capacity as a creditor to continue to object to the homestead exemption.

DeNoce was never an agent or representative of the Trustee. The agreement as to the objection to the homestead exemption was only to calculate how much DeNoce would receive from the bankruptcy estate depending on the ultimate resolution of the homestead exemption issue. Creditors have standing to litigate exemption issues on their own behalf and DeNoce has chosen to do so. FRBP 4003. The settlement did not give DeNoce any more rights than he already had. He never did anything on

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CONT... Ronald Alvin Neff **Chapter 7**

behalf of the Trustee.

Beyond that, the settlement agreement was approved by the Court and the Trustee cannot be held in bad faith for complying with it. *J&S Properties, LLC*, 545 B.R. 91 (Bankr. WD PA 2015).

As to Rule 9011, the motion did not comply with the safe harbor requirements as to the Trustee and thus must be denied.

As to §105 – this is really a 9011 motion and should be declined for that reason. Here the debtor's complaint lies solely with the actions of DeNoce and not the Trustee or the estate. It must be denied.

DeNoce's Opposition

Mr. DeNoce starts with the background prior to this bankruptcy. He lays out a pattern of abuse by Neff and Kwasigroch. He asserts that prior courts have ruled that their actions denied DeNoce a fair trial and that these were more egregious than what DeNoce is being accused of.

For a year and a half, Neff wasted everyone's time and money through two chapter 13 cases for which he did not qualify and for which he never had a viable plan.

In the present chapter 7 case, the BAP sanctioned Kwasigroch $10,000 for a frivolous appeal in 2012. Kwasigroch altered pleadings in a effort to mislead the appellate court. "Creditor has never done anything even approaching this in the history of these parties."

The motion exclusively relies on the Court's 1/6/20 Memorandum of Opinion (dkt. 572). The errors in the opinion have led to unwarranted conclusions about DeNoce.

As the Trustee pointed out, the movant failed to provide a "safe harbor" notice. Thus he cannot use Rule 9011. This motion sounds like one under Rule 9011 and that is prohibited. The sanctions motion really begins at the Motion for New Trial and the safe harbor warning is due at that point. It was not given.

Debtor filed six motions to terminate, some requesting sanctions. All of these were denied by the Court, which infers that the Court continued to find

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CONT... Ronald Alvin Neff **Chapter 7**

that the prosecution of the new trial was warranted. This is also res judicata as to issues of the wrongful behavior of the creditor.

It is not intended that the failure to properly pursue sanctions under Rule 9011 then allows the Court to use §105 in its place.[Citing to *In re Proteva, Inc.*, 271 B.R. 569, 573 (Bankr. N.D. Ill. 2001) and *In re Bavelis*, 563 B.R. 672, 689 (Bankr. S.D. Ohio 2017).]

As to the motion for sanctions for the entire case, in the new trial Order, the Court actually deferred ruling on the sanctions issue and allowed Kwasigroch to raise it again if DeNoce's actions warrant it. [dkt. 412, 14: 1-2]

A lot of the delays were due to Neff's behavior. He blocked obtaining the SSA records; he opposed the admission of evidence in the first trial; he required numerous motions and court hearings to have him cooperate by answering discovery and signing a release, etc. Neff's answers to discovery were boilerplate objections. It took a year to get responses and then Neff refused to meet and confer with DeNoce to resolve it. This forced numerous discovery motions. When DeNoce prevailed, Neff still did not produce the discovery that was ordered. So DeNoce had to bring more discovery motions and even a motion for contempt. This was incredible stonewalling. Eventually the Court ordered that DeNoce receive reasonable expenses due to the need to file multiple motions to obtain the documents. Neff strung everything out at very little cost because if DeNoce won a sanctions order it would not include attorney fees since he was in pro se.

DeNoce then details the very serious damage done to him by Neff's dentistry while Neff was on drugs. He explains that the damages are continuing to accrue since more surgery is needed, but his current physical condition prevents that. He did not engage in bad faith conduct to pursue his claim, but hoped for recovery of some money to enable him to repair the damage that Neff did to him.

The Court wanted the parties to mediate with Judge Clarkson just before trial. Obviously the Court felt that DeNoce had a meritorious case. But Neff refused to mediate. DeNoce offered a way to allow Neff to keep his homestead as to all other creditors but that Neff would apparently pay

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CONT... Ronald Alvin Neff **Chapter 7**

DeNoce enough to fix his mouth. Thus, the trial took place.

DeNoce then goes into the details of the trial. The new trial was forced because Neff unreasonably would not stipulate to the admission of the doctors' records, even though he had already produce them. Because of Neff's hearsay objections, DeNoce had to subpoena the doctors at a new trial. Neff was not a debtor who was seeking to speed up the process and avoid fees. He could have done so by allowing the records to come in. This required the new trial.

The cost of trying to examine the records of Dr. Bilik was required by the Court – which was an incorrect process set forth by the Court. Evidence at the new trial established that Neff may never have been entitled to SSA disability benefits due to his continued illegal drug use. This was not addressed by the Court. Dr. Hersel testified that Neff injects himself with Versed, which is a powerful illegal drug and has not been prescribed. This alone disqualified Neff from SSA benefits. [*Court: DeNoce refers to a private meeting that he had with Dr. Hersel. This is hearsay and is not admissible at trial or in this motion. Mr. Meyers' opinion as to what an administrative law judge would rule is also outside the record and will not be considered in this matter.*] The Versed is recent and continues. Neff hoodwinked the SSA and continues to do so. [*Court: DeNoce says that there is a further report of Mr. Meyers filed concurrently*. *The Court does not consider it. At best this is post-trial evidence and is not relevant to the lack of evidence and actions of DeNoce leading up to the trial.*]

DeNoce goes on to argue that the SSA file would show that Neff is not entitled to the presumption. The evidence and witnesses that he brought to the new trial assisted the Court to a resolution of this case, even though it was not in DeNoce's favor.

The American Rule requires each party to bear his own fees and expenses. DeNoce also had a lot of costs. There is no reason to breach the American Rule in this case. DeNoce had every reason to pursue this. Judge Kaufman had ruled in his favor. The BAP did not reverse, but remanded for further findings, which was what Mr. Meyers provided.

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CONT... Ronald Alvin Neff **Chapter 7**

DeNoce recovered an added $330,000 for the estate and his pursuit of this objection to exemption saved the estate and other creditors money. The other creditors were primarily other patients of Neff. Neff did a fraudulent transfer on the day that he was supposed to be at the Meeting of Creditors. This should prevent him from being awarded any sanctions. Judge Kaufman knew that Neff and Kwasigroch were not credible. Kwasigroch should have been brought up on charges. DeNoce does not know why this Court has not done so. This was a bankruptcy crime and pales compared to anything that DeNoce has done. DeNoce paid his own attorneys to recover the property and never sought recovery of his fees for this. His zealous spirit that obtained that recovery continued in this lawsuit.

DeNoce then goes into alleged errors made by the Court in its Memorandum of Opinion. [*Court: The following is a summary of the topics, but not a discussion of the content. The ruling on the objection to enhanced homestead is now on appeal and will not be discussed in this motion except as to whether the behavior of DeNoce in the case is sanctionable*.] (1) the first defective SSA release was prepared by Kwasigroch and not by DeNoce. Neff caused a lot of motions around this and should have just signed the first release that DeNoce prepared with the confidentiality agreement. Instead, DeNoce was forced to accept the release prepared by Kwasigroch and that was insufficient. (2) Neff refused to sign the second release, which was prepared in the proper form, even though he had agreed in open court that he would sign it. (3) Kwasigroch filed a last minute motion to exclude Mr. Meyers' testimony.

[*Court: On 3/13/20,DeNoce filed a supplemental declaration so as to put on the record portions of the Debtor's Rule 2004 Examination , Vol II. This is annotated and is part of his argument and deals with evidence of Neff's and Kwasigroch's actions concerning the fraudulent transfer, which is discussed in DeNoce's opposition to this sanctions motion.*]

[*Court: On 3/18/20 DeNoce filed an additional supplemental declaration so as to put on the record the Declaration of Detective Nick Scinocca. Most of this was not admitted into evidence. DeNoce is using it to*

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CONT... Ronald Alvin Neff **Chapter 7**

attempt to show that Neff is or was using Versed.]

Neff Reply to Trustee

Under the settlement agreement, DeNoce was charged with opposing the enhanced homestead exemption. He acted as the agent of the Trustee for DeNoce's own benefit and for the benefit of the estate. Had he prevailed, the estate would have benefited. Since he did not, the estate should bear the burden.

Neff Reply to DeNoce

None received as of June 18, 2020.

Analysis

FRBP 9011(c)(1) requires a 21 day "safe harbor" period before a motion for sanctions can be filed with the court. Both the Trustee and DeNoce assert that this was not complied with and thus the motion is void. In this case, the motion for sanctions is for past behavior and it is impossible for the "challenged paper, claim, defense, contention, allegation, or denial" to be withdrawn. At best the Trustee and/or DeNoce could offer to settle this. However, this does not relieve the movant from having acted timely when the motion for new trial was filed or granted or when the discovery motions, etc. in preparation for the new trial were taken.

> Parties who ask for sanctions under this rule are not permitted to circumvent the safe harbor by waiting until it is too late to withdraw or correct the offending matter." (citations omitted). A movant cannot deprive the target of the opportunity to escape sanctions by withdrawal or correction.
>
> Since appellants did not have the mandatory opportunity to withdraw or correct the offending papers, Bankruptcy Rule 9011(c)(1)(A) sanctions imposed on Rakita's motion cannot be sustained. *Polo Bldg. Grp., Inc. v. Rakita (In re Shubov)*, 253 B.R. 540, 545 (B.A.P. 9th Cir. 2000)

Had movant given the safe harbor warning at those times, this could be considered under FRBP 9011. Since he did not, the motion for sanctions under FRBP 9011 is denied.

As to the use of the court's inherent powers under 11 USC §105, there is no definitive case preventing the granting of these just because the movant failed to comply with the Rule 9011 "safe harbor" provisions. Section 105 has a bad faith standard that is separate from the Rule 9011 standard. See for example, *Levinson v. Pengilly (In re Maris)*, 2012 Bankr. LEXIS 2845 (9th Cir. BAP 2012), which considers both provisions even though the movant failed to comply with the Rule 9011 requirements.

Section 105 requires that the Court make explicit findings of bad faith. FRBP 9011(b)(1) is the most relevant section under Rule 9011 [that the document is not being presented for an improper purpose "such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.") These are two separate standards and can be considered separately.

Neff raises the issue of his prior request for attorney fees, made at the time of DeNoce's motion for a new trial. In his opposition to the motion for new trial, Kwasigroch states as an alternative to denying the motion "should the court be inclined to grant any part of Mr. Denoce's motion/motions, the court is asked to reserve the right of debtor and his counsel to seek attorney fees for having to 're-do' what has already, with much painstaking effort, been done." [dkt. 409, p. 10] In my ruling on the motion for a new trial I state: "[a]s to Kwasigroch's request for attorney fees due to this motion, there will be no ruling at this time. It may be raised again in the future if DeNoce's actions warrant it." [Dkt. 412, p. 14]

While this certainly gives warning that Neff may seek sanctions in the future, it is not the kind of warning that complies with FRBP 9011. DeNoce did a poor job of trying this case and – as noted – dragged it out as long as possible, but he did move forward and brought in the evidence that the Court excluded at the trial. He lost, but that alone is not sanctionable under this warning.

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CONT... Ronald Alvin Neff **Chapter 7**

Much of DeNoce's opposition is an attempt to put evidence before the Court that he contends should have been considered during the evidentiary hearing and should have led to a conclusion in his favor. This is not relevant to this motion except to Neff's argument that DeNoce had no meaningful underlying case and thus the objection was filed or pursued in bad faith. This argument of good faith is dealt with below. The Court need not and will not consider evidence not before it in the trial, which is now on appeal.

One of DeNoce's arguments is that my denial of the motions to terminate are a res judicata decision of the validity of his case. They are not. I believed that once the case was remanded and I took it over, a full evidentiary hearing was required so that all of the evidence would be put before the Court. Unfortunately, this took two separate sets of evidentiary hearings because DeNoce failed to comply with the rules of evidence, etc. in the first one in that he had not subpoenaed the doctors involved. Although Kwasigroch was not willing to waive this error and allow hearsay to be admitted, I initially ruled in favor of Neff for lack of evidence. I soon granted DeNoce's motion for a new trial and that only ended in late 2019. This is covered in prior rulings and will not be repeated here. The errors were made by DeNoce and it was not Kwasigroch's responsibility to dig him out of the hole that he had dug for himself.

But once I granted the motion for a new trial, it was obvious that the new trial needed to be completed with all of the evidence that the parties could properly put before the court. Anything less would only lead to more appeals and possibly more litigation if the appellate court believed that DeNoce had not had a fair chance to fully present his case. He was entitled to that chance and he received it.

However, that does not mean that I agreed with the delaying tactics used by DeNoce. Until the evidentiary hearing was complete, I was not aware of what evidence he had or did not have. Therefore, I could not rule and thus would not terminate the proceedings. But I was aware that DeNoce was stringing things out as long as possible. As noted in the Memorandum of Opinion [dkt. 572], the critical evidence was never obtained. DeNoce focused

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CONT... Ronald Alvin Neff **Chapter 7**

on the psychological reports, which were not dispositive of the SSA determination. The records and testimony of Doctors Hersel and Okhovat showed a strong underlying justification for the SSA determination and that Neff is physically disabled from most substantial employment. DeNoce never brought in any evidence of the kind of work that Neff could do and the income that he could earn. But this was not apparent until the conclusion of the evidentiary hearing.

This is all set forth in the Memorandum of Opinion. What is not set forth and what has never been ruled on are the methods used by DeNoce to delay the trial. He constantly asked for continuances. He sought evidence that was not relevant to his case. He destroyed evidence. Among other things, DeNoce set and then continued or cancelled at least one deposition, he set and then cancelled a psychological examination and he delayed obtaining his expert(s).

These are two men who hate each other. DeNoce clearly intended to make Neff pay the maximum in attorney fees and to disrupt his life by keeping the litigation going. He was punishing Neff for the damage that Neff did to him.

Although Kwasigroch also used improper tactics (and was punished for it), this does not relieve DeNoce of his own improper behavior. This is not a seesaw or scale where you put Kwasigroch's bad acts on one side and DeNoce's on the other side and the one who is lighter can walk away scot-free. Each must bear responsibility for his own actions.

But at the same time, Neff was not cooperative and Kwasigroch played "hard ball" throughout this case. This added to the toxic atmosphere.

While I am convinced that DeNoce drew this out as long as possible, I am also convinced that some of or at least part of this was in reaction to Neff and Kwasigroch's lack of cooperation. Unfortunately cooperation is not always required and – while sanctionable under some circumstance – it is not sanctionable in general. It is hard to measure how much of Neff's lack of cooperation led to DeNoce's frustration and his desire to keep this case alive as long as possible.

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CONT... Ronald Alvin Neff **Chapter 7**

Looking at the big picture, the Court does not find that DeNoce acted in bad faith by pursuing this objection to the claim of exemption. Although the Court ultimately ruled against him, there were real issues here and if DeNoce had done proper discovery and amassed critical evidence, it is possible that he could have prevailed. The Court will never know whether Neff's SSA disability claim should have been denied and, if so, what Neff could actually earn. DeNoce's focus and actions failed to develop and present this evidence in an admissible fashion. DeNoce suffered the consequences.

Although he argues to the contrary, it should be noted that DeNoce was not being solely altruistic in pursuing this objection as he would have personally received a monetary benefit had he prevailed. Pursuant to the agreement with the OUST, DeNoce would receive a 60% stake in any eventual reduction in the Debtor's claimed homestead exemption. This is higher than he would receive as a pro rata creditor. [dkt. 151] This also gave DeNoce a personal stake in aggressively pursuing his objection. Yes, he hates Neff and did not want to make life easy for him. But the objection was not brought in bad faith or pursued solely in bad faith. DeNoce did a poor job of litigating and personally suffered because of it.

Deny the Motion for Sanctions.

prior tentative ruling (4/7/20)

Because of the COVID-19 shutdown, this motion is **continued without appearance to June 23, 2020 at 10:00 a.m.** No further papers will be accepted as to this motion (as ot March 31, Mr. Kwasigroch has not filed a reply and none will now be accepted).

Party Information

Debtor(s):

Ronald Alvin Neff — Represented By Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR) — Represented By M Douglas Flahaut

10:00 AM
1:15-14213 Michael Robert Goland **Chapter 7**

#7.00 Trustee's Final Report and Hearing on Applications for Compensation

Docket 406

Tentative Ruling:

The Trustee's final report anticipated a zero percent distribution to unsecured creditors. Also no payment would be made on the allowed secured claims of the Wicklunds. All monies would be paid to the chapter 7 administrative creditors, each of which would be paid about 96% of its claim. Included in the proposed distribution would be that of $9,602.71 fees and $165.10 costs for S.L. Biggs, the accountant for the Trustee.

The Trustee entered into an agreement with her counsel and with Biggs that each would reduce their fee applications so that the Trustee would have $3,000 to be distributed to allowed timely filed unsecured claimants. This was filed on May 18, 2020 but the final report filed on May 19 does not reflect any distribution to unsecured creditors.

Goland Opposition

On May 4, the Debtor filed an opposition to the Biggs' "unserved" final fee application and also one to the fee application of Brutzkus Gubner, the attorney for the Trustee.

Biggs Application – Filed 3/12/20. There was an order of 9/13/16 (dkt. 117) that service on Mr. Goland be by email. This application for fees was not served in accordance with that order. For various health reasons, Debtor requests a hearing at the end of the lockdown since he is self-quarantined and also his computer is out for repair and cannot be recovered at this time since the repair shop is closed due to the quarantine.. He needs a computer that can be used by only the right hand.

Brutzkus Gubner Application - The application mis-described and mischaracterized services that they performed. When Goland recovers his

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CONT... Michael Robert Goland **Chapter 7**

computer, he will file a more detailed description.

Burk Opposition – Because the Court is closed, he has not been able to view the final report. He has contacted the court in an attempt to get a copy, but to no avail. He requests that the hearing be delayed until he can obtain a copy.

Biggs Response – Biggs was not aware of the order to send email copies. The Debtor has never sent them his email and it is not referenced on the front page of the court docket. This response was sent to Goland's email address.

Bret Lewis Opposition and Request to File an Action Against the Trustee

Goland repeatedly disclaimed any interest in 5711-5721 Compton Ave. and he did not list it in his schedules. Lewis complained to the Trustee and offered to assist and/or handle a quiet title or non-dischargeability action for this purpose. The Trustee told Lewis that Goland's activities in this case probably rose to the level of criminal activity and that she made a criminal referral and that her counsel was going to file a quiet title action. Neither the Trustee nor her counsel took any action to block Goland's discharge. So none of the fees earned by the Trustee or her counsel are justifiable or reasonable. They were either incompetent or colluded in failing to act and this was a fraud on the court at the expense of the creditors and of Lewis.

Beyond that, Lewis is a secured creditor and should be treated as such and his claims should come prior to administrative claims because he had served the debtor with a judgment debtor's examination prior to his bankruptcy. Thus Lewis has a security interest in all of Goland's personal property. CCP 708.110(d); *Daff v. Good (In re Swintek)*, 906 F.3d 1100 (9th Cir. 2018).

This opposition was one day late because of health issues.

Alternatively, Lewis requests leave to file an action for fraud and

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CONT... Michael Robert Goland **Chapter 7**

breach of fiduciary duty against the Trustee and her counsel.

Trustee Reply to Lewis Opposition, Debtor's Opposition, and Debtor's Opposition to Accountant

As to Lewis

Lewis does not explain how he was harmed by reliance on the Trustee's failure to pursue litigation to quiet title the Compton Property. He had multiple opportunities to purchase the litigation rights and declined to do so. Lewis also had standing to file an action to deny Goland a discharge. As to seeking permission to sue the Trustee, he has not submitted a draft complaint or indicated where that suit would be filed.

The Trustee and her counsel spent a great deal of effort in investigating the nature of the Debtor's right in Compton. Litigation would have been astronomically expensive with no promise of recovery. These were addressed in the Sale motion, which was approved by the Court. Lewis attended that hearing and orally objected, but did not make an overbid. Early on Lewis negotiated with the Trustee to buy the Trustee's rights in Compton, but decided not to go forward because of possible contamination issues.

Lewis filed a dischargeability action, but he also had standing to file a complaint to deny discharge. He chose not to do so. He could have done so in conjunction with asserting that title was in Goland. He also could have sought revocation of discharge. But he declined to do any of these.

Lewis seeks a reconsideration of the order approving his settlement with the Trustee. This is a final order and not subject to further challenge. Lewis was paid under the settlement and is no longer a secured creditor. As to his unsecured claim, he will receive his pro rata share of distribution of the amount that the professionals are leaving in this administratively insolvent estate.

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CONT... Michael Robert Goland **Chapter 7**
As to Goland

Goland lacks standing to object to the fee applications because there is no chance that this will be a surplus estate. Also, he has had over a month to provide supplemental responses, but has failed to do so.

Concerning the accountant's fee application, Goland provides no evidence to support his claim that the billing is excessive and wasteful or that the services were not actually performed. There is no reason to doubt the accountant's extensive detailed records.

Similarly, the objection to the attorney's fees lack standing and the fees are supported by extensive billing detail. Much of the fees reflect the time and effort that the Trustee put in to investigate the Compton Property and the best way for resolving those issues.

Proposed Ruling

As to the fees for the accountant and the attorney – Goland has had at least six weeks to file a detailed objection. He could have done so without a computer – handwriting it or typing it. He was able to prepare and file his oppositions. But even if he had, the Trustee is correct that he lacks standing. This is clearly an insolvent estate and even if it wasn't there would be no surplus for Goland. The Trustee has the duty to review the fees of her professionals and the detailed billing reflects the work done. The Compton property was an asset worth investigating and this took time and effort. This was not an easy case and the fees were justified.

As to Mr. Burk, his opposition was signed on June 5. The BNC certificate of service shows that the notice was sent to him on May 21, 2020 at the address on his opposition. Although the clerk's office may have been closed to the walk-in public, PACER was available and he could have obtained a copy through that service or from the Trustee. Mr. Burk is not a stranger to this Court.

As to Mr. Lewis, the Court does not find his objections to be actionable. He certainly had the standing to take the actions complained of. The Trustee

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CONT... Michael Robert Goland **Chapter 7**

has wide discretion to act in what she considers the best interest of the estate. Mr. Lewis was an active creditor in this case. He entered into a stipulation with the Trustee as to the status of his claim. That is now final and will not be reopened. Concerning filing a complaint against the Trustee. I believe that he only needs permission if the complaint is to be filed in another court than the bankruptcy court. There is no need to allow it to be filed elsewhere. While an adversary complaint may or may not be warranted, if it is to be filed it must be done so by a date certain and in this court. It is time for this case to move to closure.

It should be noted that on June 16, 2020, Mr. Burk filed an adversary proceeding against Ms. Zamora (1:20-ap-01063). That is not Michael N. Sofris is his counsel in that case.

I will approve the fees of the Trustee's counsel and of her accountant. As to the final report, I think that this must wait until the Burk adversary is resolved and – if Lewis files one – until that is also resolved.

Party Information

Debtor(s):

Michael Robert Goland	Represented By David S Hagen

Trustee(s):

Nancy J Zamora (TR)	Represented By Jessica L Bagdanov David Seror Ezra Brutzkus Gubner

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

Tuesday, June 23, 2020 **Hearing Room 303**

10:00 AM
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; 9/24/19, 12/17/19; 12/23/2019; 2/11/20, 4/7/20

Docket 1

Tentative Ruling:

Continued without appearance to July 7, 2020 at 10:00 a.m. This will trail the adversary proceeding. No appearance is needed on July 7 and no further status report is needed until you are notified by the Court that one is necessary.

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, June 23, 2020 **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; 2/12/19; 5/7/19
6/11/19; 7/16/19; 8/20/19; 9/24/19, 12/17/19; 12/23/2019; 2/11/20
4/7/20

Docket 1

Tentative Ruling:

Duplicate of calendar #8

Party Information

Debtor(s):

Majestic Air, Inc. Represented By
Stella A Havkin

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.

#10.00 Motion to Dismiss Adversary Proceeding

fr. 12/17/19, 12/23/19; 2/11/20; 4/7/20

Docket 85
***** VACATED *** REASON: Matter cont. to 7/7/20 @ 10 am (eg)**

Tentative Ruling:

At the 2/11 hearing, this matter was continued without argument to 4/7 at 10:00 to give time for the estate of Tessie Cue to enter probate and have a representative appointed. Due to the response to the coronavirus pandemic, this matter is continued without appearance to **June 23, 2020 at 10:00 a.m**. Should you need an emergency hearing before that time, please file a motion requesting that and stating the reason. If no representative has been appointed by that date, this matter will again be continued without appearance. The parties are to file a joint status report no later than June 12 to advise the court concerning the appointment of the representative and as to any other relevant matters.

Prior tentative ruling (2/11/20)
Defendant Lufthansa Technik Philippines ("LTP") moves to dismiss the operative Second Amended Complaint ("SAC") 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), asserts (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 has been informed by Majestic that Ms. Cue died on January 24, 2020 and that her husband is seeking authority to prosecute this proceeding on behalf of her estate. Dkt. 115. Majestic has requested that this hearing go forward as calendared on February 11, 2020.

Background

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CONT... Majestic Air, Inc. **Chapter 11**

LTP provides aircraft maintenance, repair, and overhaul services to aviation companies and, to provide these services, maintains a limited inventory of spare aircraft parts. Cue had been an employee of Ansett Aircraft Spares & Services, Inc. ("Ansett"), which sells and distributes aircraft parts. Ansett and LTP were negotiating – but did not ultimately enter into - an agreement under which Ansett would sell LTP's excess inventory of spare parts on a consignment basis (the "Ansett Agreement"). Ansett used a template consignment agreement called the Inventory Management and Marketing Agreement (the "IMMA") that it considered to be a trade secret. In 2009, while Ansett and LTP were still negotiating, Cue left Ansett and went to work for Infinity Air, Inc. ("Infinity"). She negotiated an agreement between Infinity and LTP, substantially in the same form as the IMMA, under which Infinity sold LTP's excess inventory of spare parts on a consignment basis (the "Infinity Agreement"). In 2010, Cue then left Infinity, formed Majestic, and negotiated an agreement between Majestic and LTP, again substantially in the same form as the IMMA, under which Majestic sold LTP's excess inventory of spare parts on a consignment basis (the "Majestic Agreement").

- In ¶10.2 of both the Infinity Agreement and the Majestic Agreement (the "Consignment Agreements") LTP agreed to indemnify, defend, and hold harmless Majestic [or Infinity] and its officers, directors, employees, authorized agents and contractors from claims "arising out of or in connection with" (a) any breach by LTP of its representations and warranties in each Agreement or (b) any negligence or misconduct by LTP "except to the extent that the Claim is caused by the negligence or misconduct of [Majestic, Infinity, or their officers, etc.]."
- In ¶15.2 of the Consignment Agreements, LTP warranted and represented that entering into the Agreements would not contravene any laws or any other agreement with another party.
- In ¶6.4 of the Consignment Agreements, LTP warranted and represented that it had good and marketable title to the aircraft parts it consigned to Infinity and Majestic and that it had "full power and lawful authority to transfer title to" those parts.

On April 12, 2012, Ansett commenced an action against Majestic, Cue, and Infinity (the "Ansett Case"). On February 16, 2016, Ansett obtained a judgment awarding Ansett $1,846,443 against Cue, $1,846,443 against Majestic, and $2,461,924 against Infinity – with an additional $80,983 of

plaintiff's costs allocated among the defendants (the "Ansett Judgment"). Exh. B to RJN, Judgment on Special Verdict in Ansett. (References made in this "Background" section to the RJN are to the RJN filed in connection with LTP's earlier motion to dismiss the first amended complaint. Dkt. 33.) The jury found that (i) Cue, Majestic, and Infinity were liable for misappropriation of trade secrets and for intentionally interfering with prospective economic relations between LTP and Ansett, (ii) Majestic and Infinity were liable for intentionally interfering with Cue's employment contract with Ansett, and (iii) Cue was liable for breaching her employment contract with Ansett. *Id*.

On May 5, 2016, the Debtor filed an appeal of the Ansett Judgment (the "Ansett Appeal") but did not post a bond. The Superior Court had stayed the enforcement of the Ansett Judgment until May 24, 2016. In the Ansett Appeal, the California Court of Appeal held that the judgment against Cue should be amended so that Ansett was entitled to recover $3.85 million from Cue alone for breaching her employment contract with Ansett, and the remaining $2,339,810.40 of the judgment would be allocated among Cue, Majestic and Infinity according to their percentages of fault: $701,943.12 from each of Cue and Majestic, and $935,924.16 from Infinity. Exh. A to RJN, "Ansett Appellate Opinion" at p. 23.

The "Infinity Case" was filed by Infinity against LTP, Majestic, Cue, and Cue's husband Hong Boi Cue, in Los Angeles County Superior Court on October 31, 2011. Exh. C to RJN, Infinity Appellate Opinion at pp. 4-5. Multiple cross-claims by the Cues and Majestic were filed. The trial court sustained LTP's demurrer to Majestic and the Cues' cross-claims for equitable indemnity, express contractual indemnity, and contribution without leave to amend. *Id*. at p. 5; LTP RJN Ex. O. The Cues and Majestic filed an amended cross-complaint against LTP with claims for statutory indemnity/tort of another, declaratory relief, and breach of contract. Ex. C to LTP's RJN at 5. In September 2015, LTP and Infinity settled their claims against each other, with both parties agreeing to dismiss their claims against the Cues and Majestic as a part of that settlement. The trial court determined that this settlement was in "good faith" under California Code of Civil Procedure § 877.6. *Id.* at p. 7. The Cues and Majestic appealed the demurrer of their contractual indemnity claims against LTP, the dismissal of their contract claim against LTP pursuant to §877.6, and the good faith finding, but lost on appeal (the "Infinity Appeal"). Exh. C to RJN.

Cue and Majestic filed for chapter 11 relief on May 23, 2016, one day

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before the stay of enforcement of the Ansett Judgment expired. Cue's case was dismissed by this Court in September 2016, pursuant to Bankruptcy Code §1112(b).

In July 2018, Ansett, Majestic, and Cue entered into a settlement agreement, under which Cue relinquished her shares of stock in Ansett and the right to collect dividends owed on that stock in exchange for a satisfaction of the Ansett Judgment.

LTP has filed a claim against Majestic in its bankruptcy (the "LTP Claim"), in the amount of $3.7 million for the following: (1) $2,814,140 for spare aircraft parts LTP had delivered to Majestic in 2010 that were never returned; (2) $782,106.90 in attorney's fees and costs incurred by LTP in the Infinity Action; and (3) $164,485.59 in unpaid commissions Majestic owes LTP (the "LTP Claim"). Exh. G to RJN, LTP Proof of Claim, Pt. 1 at p. 2; Exh. H to RJN, LTP Proof of Claim Pt. 2 at pp. 3-4, ¶¶ 10-13, pp. 45-47, ¶¶ 15-2, pp. 31-40.

In December 2018, Majestic and the Cues commenced this action. The FAC, filed in April 2019, asserted a claim for contractual indemnification of Cue and Majestic's obligations under the Ansett Judgment and objects to the LTP Claim. The indemnification claim is made pursuant to the indemnification provisions of the Consignment Agreements. The objection to the LTP Claim is based on LTP's failure to attach a copy of the Majestic Agreement, and also asserts that (1) the Court has already determined that the value of the spare parts is only $40,000; (2) LTP was not the prevailing party in the Infinity Action and so is not entitled to attorneys' fees and costs; and (3) any claim should be offset by Majestic's right to indemnification from LTP.

Motion to Dismiss FAC and Response to Objection to Claim by LTP

LTP moved to dismiss the FAC on the grounds that Cue and Majestic's liability under the Ansett Judgment was beyond the scope of the indemnification provisions in the Consignment Agreements, because the indemnification provisions in both agreements expressly except liabilities "caused by the negligence or misconduct of [Majestic or Cue]".

LTP opposed Cue and Majestic's objection to its claim on three grounds:

1. LTP repeatedly demanded the return of its spare parts, but Majestic refused to do so. LTP is asserting a claim for conversion and

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appropriately valuing the parts as of 2013 – at a time when Majestic was first exercising wrongful control - at $2,814,140. The Court's $40,000 valuation – asserted as correct by Majestic - was a fire-sale valuation in 2016, years after the parts had lost significant value.

2. LTP was the prevailing party in the Infinity Case and entitled to its $726,025 in fees and $56,081 in costs incurred in that case.
3. Majestic and Cue's objection to the LTP Claim based on the failure to attach the Majestic Agreement is disingenuous, given that Cue and Majestic do not lack access to or dispute the terms of the Majestic Agreement.

Cue and Majestic opposed this motion and response. After a hearing on September 24, 2019, the Court concluded that:

i. With respect to §10.2(b) of the Consignment Agreements, the language of the that provision required a comparative fault analysis and, while the Ansett Judgment and subsequent appellate opinion determined that Cue and Majestic were at fault, they did not address LTP's fault. The Court also rejected LTP's assertion that it could not be liable for interference with economic relations with itself under California law, but agreed that the FAC had not asserted any basis for LTP to be liable for Cue's breach of her employment agreement.
ii. With respect to §10.2(a) of the Consignment Agreements, Cue and Majestic had not sufficiently alleged causation, *i.e.,* that their liability under the Ansett Judgment arose from LTP's breach of representations and warranties under the Consignment Agreements.
iii. With respect to the claims objection, (a) LTP had agreed to the dismissal of the spare parts claims in the settlement of the Infinity Action, so these claims are barred by res judicata, (b) the award of attorney's fees and costs in the Infinity Action would require further information and briefing, and (c) no purpose would be served by requiring LTP to annex the Majestic Agreement to its proof of claim, as the agreement is considered a trade secret by Ansett and Majestic has a copy of the Agreement.

Accordingly, the Court ruled as follows:

The First Amended Complaint was dismissed with leave to amend as follows:

- Allege causation with respect to breach of Majestic Agreement § 10.2(a) (breach of representations and warranties*, i.e.,* allege

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reliance on alleged misrepresentations in that the alleged statements induced Cue/Majestic to take action which they might otherwise not have taken, or would have taken in a different manner.

- Claims under Majestic Agreement §10.2(b) for (i) Cue and Majestic's liability for misappropriation of trade secrets, (ii) Majestic's liability for intentional interference with contractual relations (regarding Cue's employment contract with Ansett), and (iii) Cue and Majestic's liability for intentional interference with prospective relations (between Ansett and LTP), might be asserted as set forth in the First Amended Complaint.
- With respect to Majestic Agreement §10.2(b) and Cue's liability for breach of her employment agreement with Ansett, allege facts indicating that Cue's breach of her employment agreement arose out of or in connection with LTP's negligence or misconduct.

With respect to the Objections to Claim:

- Majestic's objection to the claim for aircraft parts was sustained;
- Majestic's objection to the claim for attorney's fees would require an evidentiary hearing to address the issues outlined above; and
- Majestic might 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.

Dkt. 51 & 52, as amended by 90 & 91.

Appeal to the District Court and Second Amended Complaint

On or about October 8, 2019, LTP appealed the Court's ruling on LTP's motion to dismiss the FAC to the District Court. Dkt. 60. On October 25, Cue and Majestic filed the SAC. Dkt. 82. The SAC continues to assert a claim for contractual indemnification based on §10.2(a)&(b) of the Consignment Agreements. It also asserts two of the three claims objections found in the FAC: against LTP's claim for the value of spare aircraft parts based on res judicata and against LTP's claim for attorney's fees and costs in the Infinity Case on the grounds that LTP was not the prevailing party.

Motion to Dismiss the SAC and Response to Objection to LTP Claim

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On November 15, 2019, LTP filed this motion to dismiss the SAC, which also includes a response to Majestic's objection to LTP's proof of claim. Dkt. 85. (The hearing on this motion was continued until February 11, 2020.) In each, LTP argues as follows:

Motion to Dismiss

The SAC asserts a single cause of action for contractual indemnity, which sounds in fraud because it alleges that LTP made knowingly false representations to Majestic and Cue in the Consignment Agreements and that Cue and Majestic relied on these representations to their detriment. Under §10.2(a) the misrepresentations are the representations that LTP had good title to the consigned goods and that entering into the Consignment Agreements would not contravene laws or other agreements. LTP's "misconduct" alleged under 10.2(b) is providing Cue and Majestic with the consignment agreement form and the list of parts, without informing them of the substance of negotiations with Ansett or Ansett's claims that these documents were proprietary or confidential in nature.

Fraud claims must plead the elements of fraud – which include justifiable reliance - with particularity. Fed. R. Civ. P. 9(b). The allegations of reliance must be facially plausible. However, the plaintiffs do not, and cannot, plausibly allege that they justifiably relied on LTP's allegedly fraudulent statements, because in the Ansett case it was conclusively established that Cue (whose knowledge is imputed to Majestic) knew: that LTP's negotiations with Ansett were ongoing and that the parts lists, the form of Consignment Agreements, and the negotiations themselves were proprietary to Ansett. This determination is entitled to issue preclusion. Because Cue and Majestic knew that LTP's alleged misrepresentations were false, their reliance can never be justifiable. and this claim should be dismissed without leave to amend because amendment is futile.

Cue and Majestic also failed to satisfy the notice requirements for the express contractual indemnity in the Consignment Agreements. Article 11 of the Consignment Agreements requires Majestic and Cue to notify LTP promptly in writing after the commencement of an action subject to indemnification. Section16.5 set requirements for such writings, including that they be sent to LTP's Philippines address to the attention of Stanley Chiu. Article 11 also gives LTP entitlement to sole control over defense or settlement of such an action. Cue and Majestic failed to provide the required

notice of Ansett's April 12, 2012 complaint, so a condition precedent to their indemnification liability failed. The notice is crucial, because it would give LTP the ability to assume control over the litigation. Cue and Majestic's counsel sent an email to LTP on October 10, 2012, demanding indemnification, based on an implied indemnification theory. This notice was inadequate because it did not mention contractual indemnification and was not addressed to Stanley Chiu.

Objections to LTP's Claim

LTP is entitled to the $2.8 million value of its spare parts that Majestic refused to return to LTP. LTP's voluntary dismissal of its spare parts cross-claim in the Infinity Case does not bar the assertion of this claim here, because LTP did not manifest an intent to be collaterally bound by that stipulated judgment, as required under California law *See California State Auto. Assn. Inter-Ins. Bureau v. Superior Court,* 50 Cal. 3d 658, 664, 788 P.2d 1156 (1990)("a stipulated judgment may properly be given collateral estoppel effect, at least when the parties manifest an intent to be collaterally bound by its terms"). This spare parts cross-claim was pending concurrently in the Ansett Case and the Infinity Case. The fact that LTP did not dismiss it in the Ansett Case indicates that it did not intend to dismiss this claim. LTP and Cue/Ansett entered into a stipulation in the Ansett case, in which they agreed to preserve their respective claims against each other. Ex. K to Motion To Dismiss FAC RJN. The Motions for Determination of Good Faith Settlement confirm this: in the Infinity Case LTP's spare parts cross claim was listed as an affected pleading, in the Ansett Case it was not.

The Bankruptcy Court's order valuing the spare parts in connection with their sale in December 2016 is not entitled to preclusive effect because the issue in the claim is their value in 2013, not 2016.

LTP was the prevailing party in the Infinity Case and is thus entitled to recover its attorney's fees and costs in that case. Section 16.9 of the Consignment Agreements provides that the prevailing party in any action "arising from or related to this Agreement" is entitled to recover attorneys' fees, costs and expenses. California Civil Code §1032(a)(4) defines a prevailing party to include "a party in whose favor a dismissal has been entered." In Infinity, LTP obtained a dismissal of Majestic and Cue's cross-claim for express indemnity when the court sustained LTP's demurrer on this cause of action. Majestic and Cue's remaining claims against LTP were

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dismissed pursuant to the court's §877.6 good faith order.

Majestic argues it was the prevailing party because it was dismissed from the case pursuant to the settlement between Infinity and LTP, but Majestic and Cue were dismissed – despite their utter refusal to settle - as fortunate beneficiaries of LTP and Infinity's desire to globally settle the case. Allowing them to claim attorney's fees as a prevailing party would discourage future settlements. Majestic and Cue also argue that they are the prevailing party because their claim for contractual indemnification remains in the Ansett Case, but LTP's cross-claims against Cue and Majestic also remain in Ansett.

Jurisdiction

On December 5, 2019, the Court entered an order requesting that the parties provide additional briefing on the questions of (i) whether the Court has jurisdiction to hear this motion to dismiss the SAC in light of LTP's pending appeal of the Court's ruling on LTP's motion to dismiss the FAC and (ii) even if the Court had jurisdiction, whether hearing this motion would be prudent. Dkt. 100.

Cue and Majestic provided such briefing. Dkt. 107. They note that LTP appealed the Court's ruling on LTP's Proof of Claim, but not the ruling on Majestic and Cue's affirmative indemnity claim against LTP. Thus, they argue, the Court does not have jurisdiction to hear the portion of the motion dealing with proof of claim issues, but can and should hear the portion of the motion dealing with the affirmative indemnity claim, because doing so would advance the resolution of these proceedings. The Court agrees with Cue and Majestic on this issue.

LTP made the same arguments regarding its claim in this Motion to Dismiss the SAC that it made in its Motion to Dismiss the FAC, which is now on appeal to the District Court. Issuing a second ruling on these same arguments that are before the District Court could only create confusion and a waste of time and resources. *See In re Padilla*, 222 F.3d 1184, 1190 (9TH Cir. 2000). Thus, the Court lacks jurisdiction to hear argument regarding the proof of claim and to do so would be highly imprudent in any event.

On the other hand, hearing arguments regarding the contractual indemnification claim would advance this proceeding. If the parties choose to appeal the Court's ruling, that appeal could go forward and possibly be consolidated with the pending appeal.

Thus, the remainder of this ruling will only summarize and consider

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arguments regarding Cue and Majestic's affirmative contractual indemnification claim against LTP.

Opposition to Motion to Dismiss (Dkt. 102) Cue and Majestic argue as follows:

This Motion to Dismiss should be denied, pursuant to Fed. R. Civ. P. 12(g)(2), because it is based on arguments that LTP failed to raise in its Motion to dismiss the FAC. This motion attacks the SAC on the grounds that (i) the contractual indemnification claim sounds in fraud and fails to meet the pleading requirements for fraud and (ii) Cue and Majestic's demand for indemnification failed to meet the requirements of the Consignment Agreements. Both of these arguments were available to LTP in the Motion to Dismiss the FAC, but it failed to make them. Rule 12(g)(2) provides:

> Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

Fed. R. Civ. P. 12. A court has discretion to excuse a Rule 12(g)(2) violation, but only if it does not prejudice the plaintiff and expedites resolution of the proceedings. LTP's violation should not be excused because the new defenses were brought for strategically abusive purposes and will result in a delay prejudicial to Cue and Majestic. They are abusive because they could have been brought in the Motion to Dismiss the FAC but were not, and because they were rejected by the Superior Court in the Ansett Case. LTP is attacking the contractual indemnification claim in a piecemeal fashion. Considering these additional arguments seven months after Cue and Majestic filed their FAC and nearly a year after the original complaint was filed will delay these proceedings, prolonging resolution of the pleadings and possibly delaying the pending appeal.

In any event, this motion should be denied on the merits.

This contractual indemnification claim does not sound in fraud, so Rule 9 pleading standards do not apply. LTP's caselaw is inapplicable, as it involves deceptive and fraudulent practices under California's Consumer Legal Remedies Act and Unfair Competition Law. LTP argues that the SAC fails to plead all the elements of fraud, but that is because this contractual indemnification claim does not allege fraud. Majestic and Cue are not claiming an intent to deceive by LTP, only that LTP's representations and

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warranties were not true and that LTP knew or should have known of Ansett's proprietary interest in the form of the Consignment Agreements and the list of parts, as well as the status of its talks with Ansett. Furthermore, Rule 9(b)'s purpose of protecting a defendant from reputational harm has no application in a contract action. Further, in a fraud action, the plaintiffs can seek punitive damages, which Cue and Majestic have not.

Even if Rule 9 applied, the claim is adequately pled. Cue and Majestic have sufficiently alleged reliance, and that reliance has not been contradicted as a matter of undisputed fact. The Ansett Judgment and appellate opinion do not support LTP's argument that Cue knew of the proprietary nature of the Consignment Agreements and list of consigned parts. LTP has pointed to no findings in the Ansett Judgment about what representations LTP made to Cue/Majestic, whether Cue/Majestic knew that Ansett claimed the Consignment Agreements and list of parts were proprietary, or that Cue was aware the Ansett/LTP was still being pursued. The appellate opinion merely concluded that "Cue knew Ansett's deal with LTP was still pending." LTP RJN Exh B at 15. LTP relies on its own brief in the Ansett Case, quotes extensively from Cue's employment agreement and cites it to draw unsupported conclusions. The issues regarding Cue and Majestic's reliance and its reasonableness were not adjudicated in the Ansett Case and remain disputed issues of fact.

Cue and Majestic have sufficiently alleged that their reliance was justifiable. The reasonableness of reliance is almost always a question of fact, and recovery is denied only if it is manifestly unreasonable. Unlike the inapplicable case law cited by LTP, Cue and Majestic have not "closed [their] eyes to the discovery of the truth." *Martinez v. Hammer Corp.*, 2010 Westlaw 11507562, at *11 (C.D. Cal. Jan. 29, 2010).

Finally, LTP has already raised, and lost, the argument that Cue and Majestic's demand for indemnification under the Consignment Agreements failed to meet the requirements of those agreements. The Superior Court in the Ansett Case denied LTP's motion for summary adjudication, concluding that triable issues of material fact existed on the question of whether Majestic and Cue's counsel's October 10, 2012 email to LTP's counsel satisfied the notice requirements of the Consignment Agreements. LTP is seeking reconsideration of this ruling, which is improper under Fed. R. Civ. P. 59(e). LTP knows or should have known that the adequacy of Cue and Majestic's demand for indemnification involves questions of fact and cannot be grounds

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CONT... Majestic Air, Inc. **Chapter 11**

for a motion to dismiss.

If the Court finds that grounds to dismiss the SAC exist, Cue and Majestic seek leave to file an amended complaint.

Reply re: Motion to Dismiss LTP argues as follows:

Rule 12(g)(2) only applies to arguments that were available to the motioning party at the time the earlier motion was made. In this case, the SAC contained 15 new paragraphs of material allegations that made it clear that the SAC sounds in fraud. Thus, Rule 12(g)(2) and case law cited by Cue/.Majestic is not applicable.

In any event, the court should exercise its discretion to consider LTP's fraud argument. This dispute has been litigated since 2011 and Cue/Majestic are the ones keeping it alive. In fact, addressing LTP's motion to dismiss would expedite resolution of this matter. The motion to dismiss can be decided based on facts developed in prior litigation of this matter. If LTP's arguments are not heard now, they will be heard at a motion for summary judgment, further delaying this proceeding and causing unnecessary litigation.

The SAC sounds in fraud because its basis for relief are the elements of fraud. Cue/Majestic concede that they have sufficiently alleged the elements of fraud: misrepresentation, scienter, reliance, and resulting damage.

Cue and Majestic have failed to show that they reasonably relied on LTP's alleged misrepresentations or that there are any disputed facts relevant to justifiable reliance.

The Ansett Appellate Opinion sets forth detailed facts demonstrating Cue's (and therefore Majestic's) knowledge that Ansett was pursuing a consignment deal at the same time that Cue and Infinity were doing so. Ansett Appellate Opinion (Ex. 3 to the RJN for this motion) at 5, 15. For instance, "Defendant's communications with Infinity during the relevant time period demonstrate that they knew Ansett's deal with LTP was still pending." *Id.* at 15. The Ansett Appellate Opinion also establishes that Cue worked for Ansett from 1999 to 2009, her employment agreement and the IMMA had confidentiality provisions, and that Ansett employees were not allowed to circulate the IMMA to potential customers without prior approval. *Id.* at 2, 11-12. Her employment agreement confidentiality provision covered information regarding "[s]uppliers and their production … and the price of their products to Ansett." *Id.* 3. This would cover LTP's parts list.

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CONT... Majestic Air, Inc. **Chapter 11**

Cue and Majestic's attempts to preserve justifiable reliance by distinguishing LTP's case relies on immaterial distinctions.

Finally, Cue and Majestic's response to LTP's lack of notice argument incorrectly concludes that LTP is moving for reconsideration of the Superior Court's determination in the Ansett Case that this question of proper notice involved material issues of fact that could not be resolved in a motion to dismiss.

Finally, Cue and Majestic should not be given leave to amend because any amendment would be futile.

Analysis

Rule 12(g)(2)

Even if the Court were to deny LTP's motion under Rule 12(b)(6), LTP could still raise these arguments at a later point.

> If a failure-to-state-a-claim defense under Rule 12(b)(6) was not asserted in the first motion to dismiss under Rule 12, Rule 12(h)(2) tells us that it can be raised, but only in a pleading under Rule 7, in a post-answer motion under Rule 12(c), or at trial. *See*, *e.g.*, *English v. Dyke*, 23 F.3d 1086, 1091 (6th Cir. 1994) (correctly describing the operation of the rule).

In re Apple iPhone Antitrust Litig., 846 F.3d 313, 318 (9th Cir. 2017), *cert. granted sub nom.* Apple Inc. v. Pepper, 138 S. Ct. 2647, 201 L. Ed. 2d 1049 (2018), and *aff'd sub nom. Apple Inc. v. Pepper*, 139 S. Ct. 1514, 203 L. Ed. 2d 802 (2019). As the Ninth Circuit further observed, "relegating defendants to the three procedural avenues specified in Rule 12(h)(2) can produce unnecessary and costly delays, contrary to the direction of Rule 1." 846 F.3d at 318. Thus, the Ninth Circuit has concluded that "we should generally be forgiving of a district court's ruling on the merits of a late-filed Rule 12(b)(6) motion." 846 F.3d at 319.

This motion will not cause substantial delay, it was made only a few months after the first Motion to Dismiss and will most likely be resolved before the appeal of the LTP's proof of claim will be heard. While the Court regrets that LTP did not make all of its available arguments in its Motion to Dismiss the FAC, this is not yet an abusive series of piecemeal pleadings that Rule

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CONT... Majestic Air, Inc. **Chapter 11**

12(g)(2) was designed to address. Finally, as the Ninth Circuit observes, denying this motion on 12(g)(2) grounds will only leave these arguments for a later point in the case. Doing that would be much more likely to lead to delay and waste.

Rule 9(b)

> Rule 9(b) applies when (1) a complaint specifically alleges fraud as an essential element of a claim, (2) when the claim "sounds in fraud" by alleging that the defendant engaged in fraudulent conduct, but the claim itself does not contain fraud as an essential element, and (3) to any allegations of fraudulent conduct, even when none of the claims in the complaint "sound in fraud." *Vess v. Ciba–Geigy Corp. USA*, 317 F.3d 1097, 1102–06 (9th Cir.2003). Rule 9(b) requires that a plaintiff set forth what is false or misleading about a statement, why it is false, including the "who, what, when, where, and how of the misconduct charged." Id. at 1106.

Davis v. Chase Bank U.S.A., N.A., 650 F. Supp. 2d 1073, 1089–90 (C.D. Cal. 2009)

This claim for contractual indemnity does not specifically allege fraud as an essential element of the claim, it does not sound in fraud, and does not allege fraudulent conduct. Two elements of fraud are missing from the allegations in the SAC.

> The elements of a cause of action for fraud in California are: "(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage."

Kearns v. Ford Motor Co., 567 F.3d 1120, 1126 (9th Cir. 2009).

Section 10.2(a) of the Consignment Agreements provides that LTP will indemnify Cue and Majestic for liabilities "arising out of or in connection with" any breach by LTP of its representations and warranties in each of the Consignment Agreements. Cue and Majestic must allege (i) breaches of the representations and warranties and (ii) facts satisfying "arising out of" language: *i.e.,* causation – that they relied on the representations and warranties resulting in the Ansett Judgment for which they seek indemnification. Unlike fraud, this contract claim does not require that LTP knew of the falsity of the representations and warranties or intended to

defraud LTP.

Section 10.2(b) of the Consignment Agreement provides that LTP will indemnify Cue and Majestic for claims "arising out of or in connection with" any negligence or misconduct by LTP "except to the extent that the Claim is caused by the negligence or misconduct of [Majestic, Infinity, or their officers, etc.]." The Plaintiff's are alleging that LTP knew or should have known of Ansett's proprietary interest in the form of the Consignment Agreements and the list of parts, as well as the status of its talks with Ansett, and did not disclose this information to Cue or Majestic. Again, actual knowledge and intent to deceive are not part of this claim.

Reliance

Cue and Majestic will nonetheless need to prove reliance on the representations and warranties for §10.2(a) to apply. If they knew the relevant representations and warranties were false when they entered into the Consignment Agreements, they cannot establish that reliance. (Their knowledge of the facts will also be relevant to the allocation of fault under § 10.2(b), as will LTP's. As discussed in the Tentative Ruling, the Court cannot allocate fault as a matter of law and undisputed fact.)

As discussed in the prior Memorandum, the Ansett Judgment, as amended by the Ansett Appellate Opinion, is entitled to *res judicata/collateral estoppel* effect in this proceeding to the extent that it is relevant. The question is what issues were actually litigated and necessarily decided in the Ansett Case that are relevant to this action, *i.e.,* whether the Ansett Judgment and appellate opinion established that Cue and Majestic knew that some of the representations and warranties in the Consignment Agreements were false when they entered into them. (Cue and Majestic in the case of the Majestic Agreement, and Cue in the case of the Infinity Agreement.)

The SAC is alleging the following breaches of representations and warranties by LTP: (i) that entering into the Consignment Agreements would not contravene any laws or any other agreement with another party (¶15.2) and (ii) that LTP had good and marketable title to the aircraft parts if consigned to Infinity and Majestic and that it had "full power and lawful authority to transfer title to" those parts (¶6.4). LTP breached its representation in ¶15.2, because supplying the form of the IMMA and the list of consignable parts to Infinity and then Majestic violated obligations to Ansett and the California Uniform Trade Secrets Act. LTP breached its

representation in ¶6.4, because Ansett claimed an interest in those parts. Cue relied on these representations and warranties in forwarding the form of the IMMA and list of parts to be consigned to Infinity. Cue and Majestic relied on these representations and warranties in entering into the Majestic Agreement.

In determining Cue and Majestic to be liable to Ansett, the Ansett Judgment and appellate opinion draw factual conclusions that are wholly inconsistent with such reliance. The Ansett Judgment found that Cue and Majestic "knew of the prospective economic relationship between Ansett and LTP," so Cue and Majestic could not have relied on LTP's "good and marketable title" representation in ¶6.4. There is not a similarly unequivocal finding regarding Cue (and thus Majestic's) knowledge of the proprietary nature of the IMMA form and the list of consigned parts. However, reading the factual findings in the Ansett Judgment and Appellate Opinion as a whole, it is beyond doubt that Cue, as the controller of Ansett for 10 years until May 2009, knew of the confidential nature of the form of the IMMA and the list of consigned parts. Ansett's stringent secrecy procedures and the confidentiality provisions in Cue's employment agreement evidence this, as does the fact that Cue was the Ansett employee who provided LTP with a copy of the IMMA. Cue left Ansett's employ while the Ansett Agreement was in negotiation and provided Infinity with a copy of the agreement and a list of parts. She further asked Infinity to keep its agreement with LTP "in strict confidence" so that Ansett would not "go after them." Thus, the Court concludes that the contractual indemnification claim based on §10.2(a) is simply not plausible on its face and should be removed from the contractual indemnity claim.

Proper Notice under the Consignment Agreements

Like the Superior Court in the Ansett Case, this Court concludes that that triable issues of material fact exist on the question of whether Majestic and Cue's counsel's October 10, 2012 email to LTP's counsel satisfied the notice requirements of the Consignment Agreements. This provision cannot be interpreted without context, which will be a matter of disputed fact.

Proposed Ruling

The Court lacks jurisdiction to issue any ruling with respect to Majestic's objection to LTP's proof of claim, as the Court's earlier ruling on

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

this objection is pending at the District Court.

The SAC will be dismissed with leave to amend, as follows. The claim for contractual indemnity may be made, but only under §10.2(b).

Cue and Majestic's Evidentiary Objections

Exhibit A (regarding the Appellate Brief in Ansett Case) – Sustained

Exhibits C and E were submitted in support of LTP's response to Majestic's Objection to LTP's Claim. As the Court no longer has jurisdiction on the Objection to Claim, it will not address these evidentiary objections.

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, June 23, 2020 **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.

#11.00 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, 12/23/19; 2/11/20; 4/7/20

Docket 82

Tentative Ruling:

Continued without appearance to July 7, 2020 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

10:00 AM
1:16-12255 Solyman Yashouafar **Chapter 7**

#12.00 Application to Employ Hilton & Hyland as Real Estate Brokers

fr. 3/24/20, 4/7/20, 4/28/20

Docket 743

Tentative Ruling:

If the settlement agreement is approved, this will be moot.

Tentative Ruling for 3/24/20

The Trustee seeks to employ Hilton & Hyland as real estate brokers for the property at 910 N. Rexford Dr., Beverly Hills. The listing price will be $12 million and the total sales commission will be 4.5% (2% for the listing broker and 2.5% for the purchaser's broker). This will be a 5 month listing period. If the sale, settlement, or other transactions results in title remaining with or being reconveyed to Elkwood, any affiliate of Elkwood, or Jack Nourafshan, the listing broker will only receive reasonable costs and expenses incurred prior to such settlement. This will be subject to review and approval by the court.

The Trustee notes that at the present time the qiuet title action is still not final as the district court granted the motion to vacate and the final briefing is only due by March 9, 2020.

Elkwood objects to this motion on several grounds. First the motion is premature since the district court has not yet issued its final judgment. Also, it is unclear when the "notice date" actually occurs. If the application is granted, it should not be effective until the Trustee has an unstayed judgment entitling him to possession. Until then the broker should not be allowed to list the property or market it in any way and if it does, the listing agreement should be deemed cancelled and the broker should have no right to a commission.

Although Elkwood requested that the Trustee include the above, the Trustee rejected it. A delay of a few weeks to bring a proper employment application is not harmful.

The Trustee replied that the order can be conditioned on the entry of the judgment by the district court and if that judgment is stayed, the marketing

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CONT... Solyman Yashouafar **Chapter 7**

would also be stayed.

The District Court has now reentered its judgment (as of 3/20/20) and title is now in the Trustee.

Proposed Ruling

Given the present circumstances, a brief delay will do not harm. The lockdown is set to continue until at least April 30. For the ease of the Court (as I am learning how to do telephonic hearings) this is continued without appearance to April 28 at 10:00 a.m. This will also give time for anyone who is seeking a stay of the district court judgment.

However, my proposed ruling is to grant the motion knowing that if the judgment is stayed, the marketing will also be stayed. I suggest that the parties enter into a written stipulation to that effect and thereby remove the need for a hearing.

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

10:00 AM
1:16-12255 Solyman Yashouafar **Chapter 7**

#13.00 Motion of Chapter 7 Trustee for Order Approving Settlement with the Elkwood Parties and for Sale of Rexford Home Free and Clear of Liens, Claims and Encumbrances

Docket 761

Tentative Ruling:

The settlement motion has been signed off by the Trustee, Israel Abselet, Howard Abselet, Elkwood, Fieldbrook, Reliable Properties, and Nourafshan. This will resolve the Elkwood adversary proceeding. The settlement affirms, transfers or vests Elkwood with title to the Rexford Home, subject to the Tax Liens and the Chase Lien. This will occur on payment to the Massoud Yashouafar Estate of $5.525 million. The Trustee will release any and all claims to the Chalette Home. Elkwood will withdraw all proofs of claim and any other claims against the Estates. And there will be broad releases.

The adversary proceeding resulted in a report and recommendation in favor of the Trustee to the district court, which entered a judgment thereon. Elkwood filed a motion with the district court to reconsider and that motion is pending. Abselet is a party to the Settlement Agreement for the purpose of dismissing their action against Elkwood in the district court.

The specific details are not included in this tentative ruling because there is no opposition. However, they meet the Rule 9019(a) standards concerning probability of success, difficulties of collection, complexity of litigation, and interests of creditors.

There is a procedural contingency in that the district court will have to vacate its judgment and finding of fact and conclusions of law entered on March 20, 2020 and to enter a proposed stipulated judgment. Copies of the proposed orders for the bankruptcy court and the district court are attached.

The Trustee also filed a "Reply" in support of the Motion. There has been no formal opposition, but he received an informal objection from Soda Partners,

10:00 AM

CONT... Solyman Yashouafar **Chapter 7**

which has a secured claim against Rexford by virtual of an abstract of judgment. This is junior to the lien securing a note in favor of Sin Abselet (now held by Israel Abselet) and it is senior to the Abselet judgment lien. The original lien of $25,000+ is fully secured and entitled to payment. To deal with this, the parties to the Settlement Agreement agree that the Trustee will pay Soda Partners $48,260 plus accrued interest.

Proposed Ruling: Grant the motion.

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
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar

Tuesday, June 23, 2020 **Hearing Room 303**

10:00 AM
1:17-10853 Joseph Daniel Beam **Chapter 7**
Adv#: 1:17-01046 Henderson v. Beam

#14.00 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; 12/23/19, 1/28/20, 3/3/20, 4/7/20

Docket 1

Tentative Ruling:

Nothing new filed as of 6/18/20. The hearing will be by Court Call. Ms. Beam can attend without charge. Check with the clerk's office if you need information on how to do this. I assume that nothing has happened in the superior court. If you both agree to a continuance without appearance to 9/15/20 at 10:00, please advise me.

prior tentative ruling (4/7/20)
Due to the response to the coronavirus pandemic, this matter is continued without appearance to **June 23, 2020 at 10:00 a.m.** Should you need an emergency hearing before that time, please file a motion requesting that and stating the reason.

Prior tentative ruling (12/23/19)
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

10:00 AM

CONT... Joseph Daniel Beam **Chapter 7**

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. 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

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CONT... Joseph Daniel Beam **Chapter 7**

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 report, the familiy 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) knowlingly 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 reaons 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.

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CONT... Joseph Daniel Beam **Chapter 7**

(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 reveeal 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 utilites 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 knowlingly 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

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

Tuesday, June 23, 2020 **Hearing Room 303**

10:00 AM

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

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

Tuesday, July 7, 2020 **Hearing Room 303**

10:00 AM
1:16-11538 Majestic Air, Inc. **Chapter 11**

#1.00 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; 12/23/2019; 2/11/20, 4/7/20; 6/23/20;

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

This will trail the adversary proceeding. No appearance is needed on July 7 and no further status report is needed until you are notified by the Court that one is necessary.

Party Information

Debtor(s):

Majestic Air, Inc. Represented By
Stella A Havkin

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.

#2.00 Motion to Dismiss Adversary Proceeding

fr. 12/17/19, 12/23/19; 2/11/20; 4/7/20; 6/2/20

Docket 85

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Defendant Lufthansa Technik Philippines ("LTP") moves to dismiss the operative Second Amended Complaint ("SAC") in this action, pursuant to Fed. R. Civ. P. 12(b)(6). The SAC, filed by plaintiffs Majestic Air ("Majestic") and Tessie Cue ("Cue", the owner and CEO of Majestic), asserts (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 was informed by Majestic that Ms. Cue died on January 24, 2020. Dkt. 115. On March 27, her husband Hiongbo Cue was appointed by the Los Angeles Superior Court as Special Administrator of Ms. Cue's probate estate. On May 19, 2020, this Court entered an order substituting in Mr. Cue "as Special Administrator of the estate of Tessie Cue, plaintiff." Dkt. 133. (This ruling uses "Cue" to refer to Tessie Cue unless it is clear that her estate is being referred to.)

Background

LTP provides aircraft maintenance, repair, and overhaul services to aviation companies and, to provide these services, maintains a limited inventory of spare aircraft parts. Ms. Cue had been an employee of Ansett Aircraft Spares & Services, Inc. ("Ansett"), which sells and distributes aircraft parts. Ansett and LTP were negotiating – but did not ultimately enter into - an agreement under which Ansett would sell LTP's excess inventory of spare parts on a consignment basis (the "Ansett Agreement"). Ansett used a

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template consignment agreement called the Inventory Management and Marketing Agreement (the "IMMA") that it considered to be a trade secret. In 2009, while Ansett and LTP were still negotiating, Cue left Ansett and went to work for Infinity Air, Inc. ("Infinity"). She negotiated an agreement between Infinity and LTP, substantially in the same form as the IMMA, under which Infinity sold LTP's excess inventory of spare parts on a consignment basis (the "Infinity Agreement"). In 2010, Cue then left Infinity, formed Majestic, and negotiated an agreement between Majestic and LTP, again substantially in the same form as the IMMA, under which Majestic sold LTP's excess inventory of spare parts on a consignment basis (the "Majestic Agreement").

- In ¶10.2 of both the Infinity Agreement and the Majestic Agreement (the "Consignment Agreements") LTP agreed to indemnify, defend, and hold harmless Majestic [or Infinity] and its officers, directors, employees, authorized agents, and contractors from claims "arising out of or in connection with" (a) any breach by LTP of its representations and warranties in each Consignment Agreement or (b) any negligence or misconduct by LTP "except to the extent that the Claim is caused by the negligence or misconduct of [Majestic, Infinity, or their officers, etc.]."
- In ¶15.2 of the Consignment Agreements, LTP warranted and represented that entering into the Consignment Agreements would not contravene any laws or any other agreement with another party.
- In ¶6.4 of the Consignment Agreements, LTP warranted and represented that it had good and marketable title to the aircraft parts it consigned to Infinity and to Majestic and that it had "full power and lawful authority to transfer title to" those parts.

On April 12, 2012, Ansett commenced an action against Majestic, Cue, and Infinity (the "Ansett Case"). On February 16, 2016, Ansett obtained a judgment awarding Ansett $1,846,443 against Cue, $1,846,443 against Majestic, and $2,461,924 against Infinity – with an additional $80,983 of plaintiff's costs allocated among the defendants (the "Ansett Judgment"). Exh. B to RJN, Judgment on Special Verdict in Ansett. [References made in this "Background" section to the RJN are to the RJN filed in connection with LTP's earlier motion to dismiss the first amended complaint. Dkt. 33.] The jury found that (i) Cue, Majestic, and Infinity were liable for misappropriation of trade secrets and for intentionally interfering with prospective economic relations between LTP and Ansett, (ii) Majestic and Infinity were liable for intentionally

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interfering with Cue's employment contract with Ansett, and (iii) Cue was liable for breaching her employment contract with Ansett. *Id*.

On May 5, 2016, the Debtor filed an appeal of the Ansett Judgment (the "Ansett Appeal") but did not post a bond. The Superior Court had stayed the enforcement of the Ansett Judgment until May 24, 2016. In the Ansett Appeal, the California Court of Appeal held that the judgment against Cue should be amended so that Ansett was entitled to recover $3.85 million from Cue alone for breaching her employment contract with Ansett, and the remaining $2,339,810.40 of the judgment would be allocated among Cue, Majestic and Infinity according to their percentages of fault: $701,943.12 from each of Cue and Majestic, and $935,924.16 from Infinity. Exh. A to RJN, "Ansett Appellate Opinion" at p. 23.

The "Infinity Case" was filed by Infinity against LTP, Majestic, Cue, and Cue's husband Hiongbo Cue, in Los Angeles County Superior Court on October 31, 2011. Exh. C to RJN, Infinity Appellate Opinion at pp. 4-5. Multiple crossclaims by the Cues and Majestic were filed. The trial court sustained LTP's demurrer to Majestic and the Cues' crossclaims for equitable indemnity, express contractual indemnity, and contribution without leave to amend. *Id*. at p. 5; Ex. O to LTP's RJN. The Cues and Majestic filed an amended cross-complaint against LTP with claims for statutory indemnity/tort of another, declaratory relief, and breach of contract. Ex. C to LTP's RJN at 5. In September 2015, LTP and Infinity settled their claims against each other, with both parties agreeing to dismiss their claims against the Cues and Majestic as a part of that settlement. The trial court determined that this settlement was in "good faith" under California Code of Civil Procedure § 877.6. *Id.* at p. 7. The Cues and Majestic appealed the demurrer of their contractual indemnity claims against LTP, the dismissal of their contract claim against LTP pursuant to §877.6, and the good faith finding, but lost on appeal (the "Infinity Appeal"). Exh. C to RJN.

Cue and Majestic filed for chapter 11 relief on May 23, 2016, one day before the stay of enforcement of the Ansett Judgment expired. Cue's case was dismissed by this Court in September 2016, pursuant to Bankruptcy Code §1112(b).

In July 2018, Ansett, Majestic, and Cue entered into a settlement agreement, under which Cue relinquished her shares of stock in Ansett and the right to collect dividends owed on that stock in exchange for a satisfaction of the Ansett Judgment.

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LTP has filed a claim against Majestic in its bankruptcy (the "LTP Claim"), in the amount of $3.7 million for the following: (1) $2,814,140 for spare aircraft parts LTP had delivered to Majestic in 2010 that were never returned; (2) $782,106.90 in attorney's fees and costs incurred by LTP in the Infinity Action; and (3) $164,485.59 in unpaid commissions Majestic owes LTP (the "LTP Claim"). Exh. G to RJN, LTP Proof of Claim, Pt. 1 at p. 2; Exh. H to RJN, LTP Proof of Claim Pt. 2 at pp. 3-4, ¶¶ 10-13, pp. 45-47, ¶¶ 15-2, pp. 31-40.

In December 2018, Majestic and the Cues commenced this action. The First Amended Complaint (the "FAC") filed in April 2019, asserted a claim for contractual indemnification of Cue and Majestic's obligations under the Ansett Judgment and objected to the LTP Claim. The indemnification claim was made pursuant to the indemnification provisions of the Consignment Agreements. The objection to the LTP Claim was based on LTP's failure to attach a copy of the Majestic Agreement, and also asserted that (1) the Court had already determined that the value of the spare parts was only $40,000; (2) LTP was not the prevailing party in the Infinity Action and so was not entitled to attorneys' fees and costs; and (3) any claim should be offset by Majestic's right to indemnification from LTP.

Motion to Dismiss FAC and Response to Objection to Claim by LTP

LTP moved to dismiss the FAC on the grounds that Cue and Majestic's liability under the Ansett Judgment was beyond the scope of the indemnification provisions in the Consignment Agreements, because the indemnification provisions in both agreements expressly except liabilities "caused by the negligence or misconduct of [Majestic or Cue]".

LTP opposed Cue and Majestic's objection to its claim on three grounds:

1. LTP repeatedly demanded the return of its spare parts, but Majestic refused to do so. LTP is asserting a claim for conversion and appropriately valuing the parts as of 2013 – at a time when Majestic was first exercising wrongful control - at $2,814,140. The Court's $40,000 valuation – asserted as correct by Majestic - was a fire-sale valuation in 2016, years after the parts had lost significant value.
2. LTP was the prevailing party in the Infinity Case and entitled to its $726,025 in fees and $56,081 in costs incurred in that case.
3. Majestic and Cue's objection to the LTP Claim based on the failure to

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attach the Majestic Agreement is disingenuous, given that Cue and Majestic do not lack access to or dispute the terms of the Majestic Agreement.

Cue and Majestic opposed this motion and response. After a hearing on September 24, 2019, the Court concluded that:

i. With respect to §10.2(b) of the Consignment Agreements, the language of the that provision required a comparative fault analysis and, while the Ansett Judgment and subsequent appellate opinion determined that Cue and Majestic were at fault, they did not address LTP's fault. The Court also rejected LTP's assertion that it could not be liable for interference with economic relations with itself under California law, but agreed that the FAC had not asserted any basis for LTP to be liable for Cue's breach of her employment agreement.

ii. With respect to §10.2(a) of the Consignment Agreements, Cue and Majestic had not sufficiently alleged causation, *i.e.,* that their liability under the Ansett Judgment arose from LTP's breach of representations and warranties under the Consignment Agreements.

iii. With respect to the claims objection, (a) LTP had agreed to the dismissal of the spare parts claims in the settlement of the Infinity Action, so these claims are barred by *res judicata*, (b) the award of attorney's fees and costs in the Infinity Action would require further information and briefing, and (c) no purpose would be served by requiring LTP to annex the Majestic Agreement to its proof of claim, as the agreement is considered a trade secret by Ansett and Majestic has a copy of the Agreement.

Accordingly, the Court ruled as follows:

The FAC was dismissed with leave to amend as follows:

- Allege causation with respect to breach of Majestic Agreement § 10.2(a) (breach of representations and warranties)*, i.e.,* allege reliance on alleged misrepresentations in that the alleged statements induced Cue/Majestic to take action which they might otherwise not have taken, or would have taken in a different manner.
- Claims under Majestic Agreement §10.2(b) for (i) Cue and Majestic's liability for misappropriation of trade secrets, (ii) Majestic's liability for intentional interference with contractual relations (regarding Cue's employment contract with Ansett), and

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(iii) Cue and Majestic's liability for intentional interference with prospective relations (between Ansett and LTP), might be asserted as set forth in the FAC.

- With respect to Majestic Agreement §10.2(b) and Cue's liability for breach of her employment agreement with Ansett, allege facts indicating that Cue's breach of her employment agreement arose out of or in connection with LTP's negligence or misconduct.

With respect to the Objections to Claim:

- Majestic's objection to the claim for aircraft parts was sustained;
- Majestic's objection to the claim for attorney's fees would require an evidentiary hearing; and
- Majestic might waive its objection based on the failure to file the Majestic Agreement, or the Court would enter an order for LTP to file the Majestic Agreement under seal.

Dkt. 51 & 52, as amended by 90 & 91 (collectively, the "Ruling on Motion to Dismiss the FAC").

Appeal to the District Court and Second Amended Complaint

On or about October 8, 2019, LTP appealed the Court's ruling on LTP's motion to dismiss the FAC to the District Court. Dkt. 60. On October 25, Cue and Majestic filed the SAC. Dkt. 82. The SAC continues to assert a claim for contractual indemnification based on §10.2(a)&(b) of the Consignment Agreements. It also asserts two of the three claims objections found in the FAC: against LTP's claim for the value of spare aircraft parts based on *res judicata* and against LTP's claim for attorney's fees and costs in the Infinity Case on the grounds that LTP was not the prevailing party.

Motion to Dismiss the SAC and Response to Objection to LTP Claim

On November 15, 2019, LTP filed this motion to dismiss the SAC, which also includes a response to Majestic's objection to LTP's proof of claim. Dkt. 85. In each, LTP argues as follows:

Motion to Dismiss

The SAC asserts a single cause of action for contractual indemnity, which sounds in fraud because it alleges that LTP made knowingly false

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representations to Majestic and Cue in the Consignment Agreements and that Cue and Majestic relied on these representations to their detriment. Under §10.2(a) the misrepresentations are the representations that LTP had good title to the consigned goods and that entering into the Consignment Agreements would not contravene laws or other agreements. LTP's "misconduct" alleged under 10.2(b) is providing Cue and Majestic with the consignment agreement form and the list of parts, without informing them of the substance of negotiations with Ansett or Ansett's claims that these documents were proprietary or confidential in nature.

Fraud claims must plead the elements of fraud – which include justifiable reliance - with particularity. Fed. R. Civ. P. 9(b). The allegations of reliance must be facially plausible. However, the plaintiffs do not, and cannot, plausibly allege that they justifiably relied on LTP's allegedly fraudulent statements, because in the Ansett case it was conclusively established that Cue (whose knowledge is imputed to Majestic) knew that LTP's negotiations with Ansett were ongoing and that the parts lists, the form of Consignment Agreements, and the negotiations themselves were proprietary to Ansett. This determination is entitled to issue preclusion. Because Cue and Majestic knew that LTP's alleged misrepresentations were false, their reliance can never be justifiable. and this claim should be dismissed without leave to amend because amendment is futile.

Cue and Majestic also failed to satisfy the notice requirements for the express contractual indemnity in the Consignment Agreements. Article 11 of the Consignment Agreements requires Majestic and Cue to notify LTP promptly in writing after the commencement of an action subject to indemnification. Paragraph 16.5 set requirements for such writings, including that they be sent to LTP's Philippines address to the attention of Stanley Chiu. Article 11 also gives LTP entitlement to sole control over defense or settlement of such an action. Cue and Majestic failed to provide the required notice of Ansett's April 12, 2012 complaint, so a condition precedent to LTP's indemnification liability failed. The notice is crucial, because it would give LTP the ability to assume control over the litigation. Cue and Majestic's counsel sent an email to LTP on October 10, 2012, demanding indemnification, based on an implied indemnification theory. This notice was inadequate because it did not mention contractual indemnification and was not addressed to Stanley Chiu.

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Objections to LTP's Claim

LTP is entitled to the $2.8 million value of its spare parts that Majestic refused to return to LTP. LTP's voluntary dismissal of its spare parts crossclaim in the Infinity Case does not bar the assertion of this claim here, because LTP did not manifest an intent to be collaterally bound by that stipulated judgment, as required under California law See *California State Auto. Assn. Inter-Ins. Bureau v. Superior Court,* 50 Cal. 3d 658, 664, 788 P.2d 1156 (1990)("a stipulated judgment may properly be given collateral estoppel effect, at least when the parties manifest an intent to be collaterally bound by its terms"). This spare parts crossclaim was pending concurrently in the Ansett Case and the Infinity Case. The fact that LTP did not dismiss it in the Ansett Case indicates that it did not intend to dismiss this claim. LTP and Cue/Majestic entered into a stipulation in the Ansett case, in which they agreed to preserve their respective claims against each other. Ex. K to Motion to Dismiss FAC RJN. The Motions for Determination of Good Faith Settlement confirm this: in the Infinity Case LTP's spare parts cross claim was listed as an affected pleading, in the Ansett Case it was not.

The Bankruptcy Court's order valuing the spare parts in connection with their sale in December 2016 is not entitled to preclusive effect because the issue in the claim is their value in 2013, not 2016.

LTP was the prevailing party in the Infinity Case and is thus entitled to recover its attorney's fees and costs in that case. Paragraph 16.9 of the Consignment Agreements provides that the prevailing party in any action "arising from or related to this Agreement" is entitled to recover attorneys' fees, costs and expenses. California Civil Code §1032(a)(4) defines a prevailing party to include "a party in whose favor a dismissal has been entered." In the Infinity Case, LTP obtained a dismissal of Majestic and Cue's crossclaim for express indemnity when the court sustained LTP's demurrer on this cause of action. Majestic and Cue's remaining claims against LTP were dismissed pursuant to the court's §877.6 good faith order.

Majestic argues it was the prevailing party because it was dismissed from the case pursuant to the settlement between Infinity and LTP, but Majestic and Cue were dismissed – despite their utter refusal to settle - as fortunate beneficiaries of LTP and Infinity's desire to globally settle the case. Allowing them to claim attorney's fees as a prevailing party would discourage future settlements. Majestic and Cue also argue that they are the prevailing party because their claim for contractual indemnification remains in the Ansett

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Case, but LTP's crossclaims against Cue and Majestic also remain in Ansett.

Jurisdiction

On December 5, 2019, the Court entered an order requesting that the parties provide additional briefing on the questions of (i) whether the Court has jurisdiction to hear this motion to dismiss the SAC in light of LTP's pending appeal of the Court's ruling on LTP's motion to dismiss the FAC and (ii) even if the Court has jurisdiction, whether hearing this motion would be prudent. Dkt. 100.

Cue and Majestic provided such briefing. Dkt. 107. They note that LTP appealed the Court's ruling on LTP's Proof of Claim, but not the ruling on Majestic and Cue's affirmative indemnity claim against LTP. Thus, they argue, the Court does not have jurisdiction to hear the portion of the motion dealing with proof of claim issues but can and should hear the portion of the motion dealing with the affirmative indemnity claim, because doing so would advance the resolution of these proceedings. The Court agrees with Cue and Majestic on this issue.

LTP made the same arguments regarding its claim in this Motion to Dismiss the SAC that it made in its Motion to Dismiss the FAC, which is now on appeal to the District Court. Issuing a second ruling on these same arguments that are before the District Court could only create confusion and waste time and resources. *See In re Padilla*, 222 F.3d 1184, 1190 (9TH Cir. 2000). Thus, the Court lacks jurisdiction to hear argument regarding the proof of claim and to do so would be highly imprudent in any event.

On the other hand, hearing arguments regarding the contractual indemnification claim would advance this proceeding. If the parties choose to appeal the Court's ruling, that appeal could go forward and possibly be consolidated with the pending appeal.

Thus, the remainder of this ruling will only summarize and consider arguments regarding Cue and Majestic's affirmative contractual indemnification claim against LTP.

Opposition to Motion to Dismiss (Dkt. 102) Cue and Majestic argue as follows:

This Motion to Dismiss should be denied, pursuant to Fed. R. Civ. P. 12(g)(2), because it is based on arguments that LTP failed to raise in its Motion to Dismiss the FAC. This motion attacks the SAC on the grounds that

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(i) the contractual indemnification claim sounds in fraud and fails to meet the pleading requirements for fraud and (ii) Cue and Majestic's demand for indemnification failed to meet the requirements of the Consignment Agreements. Both of these arguments were available to LTP in the Motion to Dismiss the FAC, but it failed to make them. Rule 12(g)(2) provides:

> Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

Fed. R. Civ. P. 12(g)(2). A court has discretion to excuse a Rule 12(g)(2) violation, but only if it does not prejudice the plaintiff and expedites resolution of the proceedings. LTP's violation should not be excused because the new defenses were brought for strategically abusive purposes and will result in a delay prejudicial to Cue and Majestic. They are abusive because they could have been brought in the Motion to Dismiss the FAC but were not, and because they were rejected by the Superior Court in the Ansett Case. LTP is attacking the contractual indemnification claim in a piecemeal fashion. Considering these additional arguments seven months after Cue and Majestic filed their FAC and nearly a year after the original complaint was filed will delay these proceedings, prolonging resolution of the pleadings and possibly delaying the pending appeal.

In any event, this motion should be denied on the merits.

This contractual indemnification claim does not sound in fraud, so Rule 9 pleading standards do not apply. LTP's caselaw is inapplicable, as it involves deceptive and fraudulent practices under California's Consumer Legal Remedies Act and Unfair Competition Law. LTP argues that the SAC fails to plead all the elements of fraud, but that is because this contractual indemnification claim does not allege fraud. Majestic and Cue are not claiming an intent to deceive by LTP, only that LTP's representations and warranties were not true and that LTP knew or should have known of Ansett's proprietary interest in the form of the Consignment Agreements and the list of parts, as well as the status of its talks with Ansett. Furthermore, Rule 9(b)'s purpose of protecting a defendant from reputational harm has no application in a contract action. Further, in a fraud action, the plaintiffs can seek punitive damages, which Cue and Majestic have not.

Even if Rule 9 applied, the claim is adequately pled. Cue and Majestic have sufficiently alleged reliance, and that reliance has not been contradicted

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as a matter of undisputed fact. The Ansett Judgment and appellate opinion do not support LTP's argument that Cue knew of the proprietary nature of the Consignment Agreements and list of consigned parts. LTP has pointed to no findings in the Ansett Judgment about what representations LTP made to Cue/Majestic, whether Cue/Majestic knew that Ansett claimed the Consignment Agreements and list of parts were proprietary, or that Cue was aware the Ansett/LTP deal was still being pursued. The appellate opinion merely concluded that "Cue knew Ansett's deal with LTP was still pending." LTP RJN Exh B at 15. LTP relies on its own brief in the Ansett Case, quotes extensively from Cue's employment agreement and cites it to draw unsupported conclusions. The issues regarding Cue and Majestic's reliance and its reasonableness were not adjudicated in the Ansett Case and remain disputed issues of fact.

Cue and Majestic have sufficiently alleged that their reliance was justifiable. The reasonableness of reliance is almost always a question of fact, and recovery is denied only if it is manifestly unreasonable. Unlike the inapplicable case law cited by LTP, Cue and Majestic have not "closed [their] eyes to the discovery of the truth." *Martinez v. Hammer Corp.*, 2010 Westlaw 11507562, at *11 (C.D. Cal. Jan. 29, 2010).

Finally, LTP has already raised, and lost, the argument that Cue and Majestic's demand for indemnification under the Consignment Agreements failed to meet the requirements of those agreements. The Superior Court in the Ansett Case denied LTP's motion for summary adjudication, concluding that triable issues of material fact existed on the question of whether Majestic and Cue's counsel's October 10, 2012 email to LTP's counsel satisfied the notice requirements of the Consignment Agreements. LTP is seeking reconsideration of this ruling, which is improper under Fed. R. Civ. P. 59(e). LTP knows or should have known that the adequacy of Cue and Majestic's demand for indemnification involves questions of fact and cannot be grounds for a motion to dismiss.

If the Court finds that grounds to dismiss the SAC exist, Cue and Majestic seek leave to file an amended complaint.

Reply re: Motion to Dismiss LTP argues as follows:

Rule 12(g)(2) only applies to arguments that were available to the moving party at the time the earlier motion was made. In this case, the SAC contained 15 new paragraphs of material allegations that made it clear that

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the SAC sounds in fraud. Thus, Rule 12(g)(2) and case law cited by Cue/.Majestic is not applicable.

In any event, the court should exercise its discretion to consider LTP's fraud argument. This dispute has been litigated since 2011 and Cue/Majestic are the ones keeping it alive. In fact, addressing LTP's motion to dismiss would expedite resolution of this matter. The motion to dismiss can be decided based on facts developed in prior litigation of this matter. If LTP's arguments are not heard now, they will be heard at a motion for summary judgment, further delaying this proceeding and causing unnecessary litigation.

The SAC sounds in fraud because its basis for relief are the elements of fraud. Cue/Majestic concede that they have sufficiently alleged the elements of fraud: misrepresentation, scienter, reliance, and resulting damage.

Cue and Majestic have failed to show that they reasonably relied on LTP's alleged misrepresentations or that there are any disputed facts relevant to justifiable reliance.

The Ansett Appellate Opinion sets forth detailed facts demonstrating Cue's (and therefore Majestic's) knowledge that Ansett was pursuing a consignment deal at the same time that Cue and Infinity were doing so. Ansett Appellate Opinion (Ex. 3 to the RJN for this motion) at 5, 15. For instance, "Defendant's communications with Infinity during the relevant time period demonstrate that they knew Ansett's deal with LTP was still pending." *Id.* at 15. The Ansett Appellate Opinion also establishes that Cue worked for Ansett from 1999 to 2009, her employment agreement and the IMMA had confidentiality provisions, and that Ansett employees were not allowed to circulate the IMMA to potential customers without prior approval. *Id.* at 2, 11-12. Her employment agreement's confidentiality provision covered information regarding "[s]uppliers and their production … and the price of their products to Ansett." *Id.* 3. This would cover LTP's parts list.

Cue and Majestic's attempts to preserve justifiable reliance by distinguishing LTP's case relies on immaterial distinctions.

Cue and Majestic's response to LTP's lack of notice argument incorrectly concludes that LTP is moving for reconsideration of the Superior Court's determination in the Ansett Case that this question of proper notice involved material issues of fact that could not be resolved in a motion to dismiss.

Finally, Cue and Majestic should not be given leave to amend because

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any amendment would be futile.

Supplemental Memorandum of Points and Authorities – Plaintiffs argue as follows:

Under applicable California law governing the sale of goods – in particular §2313 of the California Commercial Code – reliance need not be proven to recover for breach of express warranties and representations about goods. All that is necessary is that the relevant representation or warranty be "part of the basis of the bargain." It need only be a part or a factor in the bargain. *Keith v. Buchanan*, 173 Cal. App. 3d 12, 22 (Cal. Ct. App. 1985). A representation or warranty statement made by the seller is presumptively part of pf the basis of the bargain, and the burden is on the seller to prove by "clear, affirmative proof" that the resulting bargain did not rely at all on the representation or warranty (or, put alternatively, was taken out of the agreement). *Weinstat v. Dentsply Int'l, Inc.,* 180 Cal. App. 4th 1213, 1229 (Cal. Ct. App. 2010).

Thus, Majestic and Cue need not show reliance on LTP's breached representations and warranties to plead their contractual indemnification claim under §10.2(a). The burden is on LTP to show by "clear, affirmative proof" that the representatives and warranties regarding power and authority to transfer title and no contravention of laws and other agreements were removed from the Consignment Agreements.

The fact that the Plaintiffs' claim is one for contractual indemnification – not a claim for damages for breach – does not change the applicability of §2313.

Supplemental Reply – LTP argues as follows:

California Commercial Code §2313 does not apply. The only even arguably applicable definition of "express warranties" covered by the section are (1)(a) "[a]ny affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain" or (1)(b) "[a]ny description of the goods which is made part of the basis of the bargain." Subsection (1)(a) is not applicable because Majestic and Infinity were not "buyers" of the spare aircraft parts. Their duties under ¶4.1 of the Consignments Agreements are providing storage, management, and selling services to LTP. Paragraphs 6.2 & 6.3 of the Consignment Agreements make clear that the parts were sold through - not to – Majestic and Infinity:

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title passed to Majestic/Infinity immediately prior to passing to the third-party purchaser. Furthermore, neither definition (a) nor (b) applies to the representations in ¶15.2 of the Consignment Agreements [execution and performance of the Consignment Agreements does not contravene laws or other contracts, etc.], because they are neither affirmations/promises "relating to the goods" (a) nor a "description of the goods" (b). The representation refers to the Consignment Agreements themselves and LTP's duties under them – not the spare parts.

The relevant representations and warranties of the Consignment Agreements - ¶6.5 and ¶15.2 – cannot be part of the basis of the bargain in the Consignment Agreements, because Cue and Majestic knew them to be untrue. Section 2313 is clear that an affirmation of fact that the buyer knows to be untrue cannot form part of the basis of the bargain. It can be shown from the record in the state court cases that Cue knew these representations/warranties were untrue because she knew that (i) Ansett was continuing to pursue a deal with LTP when Infinity and then Majestic negotiated their own deals and (ii) Ansett considered its IMMA, the parts list and LTP's interest to be proprietary.

Furthermore, because of that knowledge, the Plaintiffs cannot prove the alleged breaches of the representations and warranties caused them harm. Cue and Majestic cannot plausibly assert they entered into the Consignment Agreements because of affirmations or promises they knew to be false.

The claim for contractual indemnity under ¶10.2(a) should be dismissed without leave to amend. Because of Cue and Majestic's undisputed knowledge of the falsity of the relevant representations and warranties, any further amendment would be an exercise in futility.

Analysis

Rule 12(g)(2)

Even if the Court were to deny LTP's motion under Rule 12(b)(6), LTP could still raise these arguments at a later point.

> If a failure-to-state-a-claim defense under Rule 12(b)(6) was not asserted in the first motion to dismiss under Rule 12, Rule 12(h)(2) tells us that it can be raised, but only in a pleading under Rule 7, in a

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post-answer motion under Rule 12(c), or at trial. *See*, *e.g.*, *English v. Dyke*, 23 F.3d 1086, 1091 (6th Cir. 1994) (correctly describing the operation of the rule).

In re Apple iPhone Antitrust Litig., 846 F.3d 313, 318 (9th Cir. 2017), *aff'd sub nom. Apple Inc. v. Pepper*, 139 S. Ct. 1514 (2019). As the Ninth Circuit further observed, "relegating defendants to the three procedural avenues specified in Rule 12(h)(2) can produce unnecessary and costly delays, contrary to the direction of Rule 1." 846 F.3d at 318. Thus, the Ninth Circuit has concluded that "we should generally be forgiving of a district court's ruling on the merits of a late-filed Rule 12(b)(6) motion." 846 F.3d at 319.

This motion will not cause substantial delay, it was made only a few months after the Motion to Dismiss the FAC and may be resolved before the appeal on LTP's proof of claim is heard. While the Court regrets that LTP did not make all of its available arguments in its Motion to Dismiss the FAC, this is not yet an abusive series of piecemeal pleadings that Rule 12(g)(2) was designed to address. Finally, as the Ninth Circuit observes, denying this motion on 12(g)(2) grounds will only leave these arguments for a later point in the case. Doing that would be much more likely to lead to delay and waste.

Rule 9(b)

Rule 9(b) applies when (1) a complaint specifically alleges fraud as an essential element of a claim, (2) when the claim "sounds in fraud" by alleging that the defendant engaged in fraudulent conduct, but the claim itself does not contain fraud as an essential element, and (3) to any allegations of fraudulent conduct, even when none of the claims in the complaint "sound in fraud." *Vess v. Ciba–Geigy Corp. USA*, 317 F.3d 1097, 1102–06 (9th Cir.2003). Rule 9(b) requires that a plaintiff set forth what is false or misleading about a statement, why it is false, including the "who, what, when, where, and how of the misconduct charged." Id. at 1106.

Davis v. Chase Bank U.S.A., 650 F. Supp. 2d 1073, 1089–90 (C.D. Cal. 2009)

This claim for contractual indemnity does not specifically allege fraud as an essential element of the claim, it does not sound in fraud, and does not allege fraudulent conduct. Two elements of fraud are missing from the allegations in the SAC.

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> The elements of a cause of action for fraud in California are: "(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud*, i.e.,* to induce reliance; (d) justifiable reliance; and (e) resulting damage."

Kearns v. Ford Motor Co., 567 F.3d 1120, 1126 (9th Cir. 2009).

Paragraph 10.2(a) of the Consignment Agreements provides that LTP will indemnify Cue and Majestic for liabilities "arising out of or in connection with" any breach by LTP of its representations and warranties in each of the Consignment Agreements. Cue and Majestic must allege (i) breaches of the representations and warranties and (ii) facts satisfying "arising out of or in connection with" language: *i.e.,* causation – that they relied on the representations and warranties resulting in the Ansett Judgment for which they seek indemnification. Unlike fraud, this contract claim does not require that LTP knew of the falsity of the representations and warranties or intended to defraud LTP.

Paragraph 10.2(b) of the Consignment Agreement provides that LTP will indemnify Cue and Majestic for claims "arising out of or in connection with" any negligence or misconduct by LTP "except to the extent that the Claim is caused by the negligence or misconduct of [Majestic, Infinity, or their officers, etc.]." The Plaintiffs are alleging that LTP knew or should have known of Ansett's proprietary interest in the form of the Consignment Agreements and the list of parts, as well as the status of its talks with Ansett, and did not disclose this information to Cue or Majestic. Again, actual knowledge and intent to deceive are not part of this claim.

Reliance

Cue and Majestic will nonetheless need to prove reliance on the representations and warranties for ¶10.2(a) to apply; without their reliance, LTP's alleged breach of the representations and warranties would not have caused them any injury. If they knew the relevant representations and warranties were false when they entered into the Consignment Agreements, they cannot establish that reliance. (Their knowledge of the facts will also be relevant to the allocation of fault under ¶10.2(b), as will LTP's. As discussed in the Ruling on the Motion to Dismiss the FAC, the Court cannot allocate fault as a matter of law and undisputed fact.)

As discussed in the Ruling on the Motion to Dismiss the FAC, the

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

Ansett Judgment, as amended by the Ansett appellate opinion, is entitled to *res judicata/collateral estoppel* effect in this proceeding to the extent that it is relevant. The question is what issues were actually litigated and necessarily decided in the Ansett Case that are relevant to this action, *i.e.,* whether the Ansett Judgment and appellate opinion established that Cue and Majestic knew that some of the representations and warranties in the Consignment Agreements were false when they entered into them. (Cue and Majestic in the case of the Majestic Agreement, and Cue in the case of the Infinity Agreement.)

The SAC is alleging the following breaches of representations and warranties by LTP: (i) that entering into the Consignment Agreements would not contravene any laws or any other agreement with another party (¶15.2) and (ii) that LTP had good and marketable title to the aircraft parts it consigned to Infinity and Majestic and that it had "full power and lawful authority to transfer title to" those parts (¶6.4). LTP breached its representation in ¶15.2, because supplying the form of the IMMA and the list of consignable parts to Infinity and then Majestic violated obligations to Ansett and the California Uniform Trade Secrets Act. LTP breached its representation in ¶6.4, because Ansett claimed an interest in those parts. Cue relied on these representations and warranties in forwarding the form of the IMMA and list of parts to be consigned to Infinity. Cue and Majestic relied on these representations and warranties in entering into the Majestic Agreement.

In determining Cue and Majestic to be liable to Ansett, the Ansett Judgment and appellate opinion draw factual conclusions that are wholly inconsistent with such reliance. The Ansett Judgment found that Cue and Majestic "knew of the prospective economic relationship between Ansett and LTP," so Cue and Majestic could not have relied on LTP's "good and marketable title" representation in ¶6.4. There is not a similarly unequivocal finding regarding Cue's (and thus Majestic's) knowledge of the proprietary nature of the IMMA form and the list of consigned parts. However, reading the factual findings in the Ansett Judgment and appellate opinion as a whole, it is beyond doubt that Cue, as the controller of Ansett for 10 years until May 2009, knew of the confidential nature of the form of the IMMA and the list of consigned parts. Ansett's stringent secrecy procedures and the confidentiality provisions in Cue's employment agreement evidence this, as does the fact that Cue was the Ansett employee who provided LTP with a copy of the

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

IMMA. Cue left Ansett's employ while the Ansett Agreement was in negotiation and provided Infinity with a copy of the agreement and a list of parts. She further asked Infinity to keep its agreement with LTP "in strict confidence" so that Ansett would not "go after them." Thus, the Court concludes that the contractual indemnification claim based on ¶10.2(a) is simply not plausible on its face and should be removed from the contractual indemnity claim.

The Plaintiffs have cited §2313 of the California Commercial Code, arguing that if it is applicable, they need not establish reliance – as long as ¶ 6.4 and ¶15.2 were part of the basis of the bargain (with the burden of proof on LTP to prove that they were not). Section 2313 provides as follows:

> (1) Express warranties by the seller are created as follows:
>
> (a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.
>
> (b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.
>
> (c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.
>
> (2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

Cal. Com. Code § 2313. However, §2313 does not relieve the Plaintiffs from the requirement of showing they relied on the representations and warranties.

First, §2313 does not apply to ¶15.2 of the Consignment Agreements (that the execution and performance of the Consignment Agreements will not contravene applicable laws and other agreements), because the text of § 2313 applies to statements relating to goods or descriptions of goods.

Second, California law is clear that representations/warranties cannot be part of the basis of the bargain if the buyer knew them to be untrue.

> The buyer's actual knowledge of the true condition of the goods

> prior to the making of the contract may make it plain that the seller's statement was not relied upon as one of the inducements for the purchase, but the burden is on the seller to demonstrate such knowledge on the part of the buyer. Where the buyer inspects the goods before purchase, he may be deemed to have waived the seller's express warranties. But, an examination or inspection by the buyer of the goods does not necessarily discharge the seller from an express warranty if the defect was not actually discovered and waived. (*Doak Gas Engine Co. v. Fraser* (1914) 168 Cal. 624, 627 [143 P. 1024]; *Munn v. Earle C. Anthony, Inc*. (1918) 36 Cal.App. 312, 315 [171 P. 1082]; *Capital Equipment Enter., Inc. v. North Pier Terminal Co.* (1969) 117 Ill.App.2d 264 [254 N.E.2d 542, 545].)

Keith v. Buchanan, 173 Cal. App. 3d 13, 23–24 (Cal. Ct. App. 2d Dist. 1985); *see McDonnell Douglas Corp. v. Thiokol Corp., 124 F.3d 1173 (9th Cir. 1997).* As discussed in detail a few paragraphs above, it is not plausible that Cue (and thus Majestic) were not aware of the falsity of ¶6.4 and ¶15.2. Thus, these representations/warranties cannot be part of the basis of the bargain between LTP and Cue/Majestic.

Third, and more fundamentally, even if reliance is not required to establish the existence and breach of express warranties under California law, it is required to establish the right to indemnification under the Consignment Agreements. In ¶10.2(a), LTP agreed to indemnify Majestic and Cue for claims "arising out of or in connection with" any breach by LTP of its representations and warranties in each Consignment Agreement. This provision requires Cue and Majestic to establish a causal connection between their liability under the Ansett Judgment and LTP's representations and warranties in ¶6.4 and ¶15.2. Because they knew these representations to be false, they did not rely on them in entering into the Consignment Agreements and their liability under the Ansett Judgment did not arise out of or in connection with those representations and warranties.

Proper Notice under the Consignment Agreements

Like the Superior Court in the Ansett Case, this Court concludes that triable issues of material fact exist on the question of whether Majestic and Cue's counsel's October 10, 2012 email to LTP's counsel satisfied the notice requirements of the Consignment Agreements. This provision cannot be interpreted without context, which will be a matter of disputed fact.

10:00 AM
CONT... Majestic Air, Inc. **Chapter 11**

Proposed Ruling

The Court lacks jurisdiction to issue any ruling with respect to Majestic's objection to LTP's proof of claim, as the Court's earlier ruling on this objection is pending at the District Court.

The SAC will be dismissed with leave to amend, as follows. The claim for contractual indemnity may be made, but only under §10.2(b).

Cue and Majestic's Evidentiary Objections

Exhibit A (regarding the Appellate Brief in Ansett Case) – Sustained

Exhibits C and E were submitted in support of LTP's response to Majestic's Objection to LTP's Claim. As the Court no longer has jurisdiction on the Objection to Claim, it will not address these evidentiary objections.

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, July 7, 2020 **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 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, 12/23/19; 2/11/20; 4/7/20; 6/23/20

Docket 82

Matter Notes:

- NONE LISTED -

Tentative Ruling:

The adversary is proceeding very slowly. Please note that there is less than $100,000 in the estate and the Court cannot tell the chances of an actual reorganization. Is this still an operating company? Will it be operating in the future? It seems from the last report that it has less than $50,000 worth of inventory for resale.

What is the amount available from the Tessie Cue Estate?

There are very few claims in this case - and it appears that the LTP and Tessie Cue claims are the only unsecured ones.

Looking at this there is a serious question of whether you should settle this without further expenditure.

Party Information

Debtor(s):

Majestic Air, Inc. Represented By
Stella A Havkin

Defendant(s):

Lufthansa Technik Philippines, Inc. Pro Se

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

Tuesday, July 7, 2020 **Hearing Room 303**

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

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, July 21, 2020 **Hearing Room 303**

10:00 AM

: GallegosJudgement **Chapter 0**

Misc#: 1:15-00105 GallegosJudgement

#1.00 Order for Appearance and Examination

fr. 3/3/20, 4/28/20

Docket 37

Tentative Ruling:

Nothing futher received. Off calendar.

Prior tentative ruling (4/28/20)
No proof of service had been filed as of 4/23/20. If service was made, the parties are to appear by phone through Court Call and the Judgment Debtor will be ordered back at a period after the shelter-in-place order has been lifted. If there is no service, this will be continued to July 21, 2020 at 10:00 a.m. You will probably need a new order for that date. SINCE YOU DID NOT ADVISE THE COURT BY APRIL 21 WHETHER SERVICE HAS BEEN COMPLETED, THIS WILL BE CONTINUED WITHOUT APPEARANCE TO JULY 21, 2020.

prior tentative ruling (3/3/20)
Service was not completed, so the moving party has requested a new date (or continued hearing date). This has been set for April 28 at 10:00 a.m.

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

Tuesday, July 21, 2020 **Hearing Room 303**

10:00 AM

1:05-13556 Linda Widdowson **Chapter 7**

Adv#: 1:20-01023 Fidelity National Title Company v. Widdowson et al

#2.00 Motion to Deposit Funds into Court Registry

Docket 27

***** VACATED *** REASON: Stip. cont. to 6/15/20 @10am (eg)**

Tentative Ruling:

Continued by stipulation to September 15, 2020 at 10:00 a.m. to allow the service by publication on Widdowson to be completed.

Party Information

Debtor(s):

Linda Widdowson	Represented By Michael E Mahurin David A Tilem Susan I Montgomery

Defendant(s):

Linda Widdowson	Pro Se
DAVID SEROR ESQ	Pro Se
Citibank (South Dakota) N.A.	Pro Se
FORD CREDIT TITLING TRUST	Represented By Adam N Barasch

Plaintiff(s):

Fidelity National Title Company	Represented By Sheri Kanesaka

Trustee(s):

David Seror (TR)	Represented By Anthony A Friedman Anthony A Friedman Susan I Montgomery

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

Tuesday, July 21, 2020 **Hearing Room 302**

10:00 AM

1:05-13556 Linda Widdowson **Chapter 7**

Adv#: 1:20-01023 Fidelity National Title Company v. Widdowson et al

#3.00 Status Conference Re:
Complaint for Interpleader and Declaratory Relief.

fr. 4/7/20; 6/2/20

Docket 1

Tentative Ruling:

On July 1 the clerk's office issue another summons on Citibank. The answer is due on 7/31. On 6/22 the court entered its order allowing service by publication on the debtor. Continue by stipulation to September 15, 2020 at 10:00 a.m. to allow the service by publication on Widdowson to be completed.

Prior tentative ruling (6/2/20)

In 2007 Trustee sold the debtor's single family resident at 194 Saddlebow Rd., Bell Canyon. This was free and clear of liens. Fidelity National Title Co (Fidelity) was the sub-agent of Valley Escrow. Two abstracts of judgment were discovered: $35,332.29 recorded on 9/16/03 in favor of Ford and $21,870.53 recorded on 10/1/03 in favor of Citibank. Fidelity is holding $57,202.82 in the sub-escrow account and has never received further instructions from the Trustee. Fidelity wants to turn these over to the Trustee.

Ford has until July 24 to respond. David Seror, the trustee, has filed an answer. Seror asserts that to the extent that Citibank and Ford each have a valid, perfected, non-avoidable security interest in the funs, that is superior to the Estate's interest, but the Estate's interest is superior to that of the Debtor

The status report is that Fidelity will file a motion to deposit the funds and to be dismissed. [It previously filed such a motion, but withdrew it.] The Trustee, who joined the status report, sees trial in 90 days and that it will take about 30 minutes. The motion to deposit funds is set for July 21 at 10:00

10:00 AM
CONT... Linda Widdowson **Chapter 7**
a.m.

Why no response by Citibank? Did Widdowson get notice (I can't open the proof of service). Once the money is deposited, will the Trustee take over the prosecution of this case?

Prior tentative ruling (4/7/20)
Due to the response to the coronavirus pandemic, this matter is continued without appearance to **June 2, 2020 at 10:00 a.m**. Should you need an emergency hearing before that time, please file a motion requesting that and stating the reason. Plaintiff is to give notice of this continuance to all defendants.

Party Information

Debtor(s):

Linda Widdowson	Represented By Michael E Mahurin David A Tilem Susan I Montgomery

Defendant(s):

Linda Widdowson	Pro Se
DAVID SEROR ESQ	Pro Se
Citibank (South Dakota) N.A.	Pro Se
FORD CREDIT TITLING TRUST	Pro Se

Plaintiff(s):

Fidelity National Title Company	Represented By Sheri Kanesaka

Trustee(s):

David Seror (TR)	Represented By Anthony A Friedman Anthony A Friedman

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

Tuesday, July 21, 2020 **Hearing Room 302**

10:00 AM

CONT... Linda Widdowson **Chapter 7**

Susan I Montgomery

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

Tuesday, July 21, 2020 **Hearing Room 302**

10:00 AM
1:06-12243 Edwin Perry Hinds **Chapter 7**

#4.00 Order to appear and show cause why Lon B. Isaacson, Lon B. Isaacson Associates and Maureen J. Shanahan should not be held in contempt for failure to comply with The OSC issued on May 26, 2020.

Docket 0

Tentative Ruling:

See cal. #6.

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
Michael W Davis

10:00 AM
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; 6/11/19, 8/6/19, 11/19/19, 1/14/20, 3/24/20
5/19/20; 6/23/20

Docket 1

Tentative Ruling:

See cal. #6.

Prior tentative ruling (5/19/20)

In his 5/14/20 status report, the Trustee states that neither Issacson nor his counsel have approved the final version of the settlement documents and have not provided any substantive response about them. He requests that the Court issue an Order to Show Cause to require Issacson and his counsel to appear and provide an update as to the status of the settlement documents.

No response has been received as of 5/18. I am willing to issue the requested OSC. Please prepare it. You can set the hearing for June 2 or June 23 at 10:00 a.m.

You should appear on 5/19/20 at 10:00 a.m. by phone just in case there is an appearance by Mr. Isaacson or his counsel.

Prior tentative ruling (3/24/20)
Per the Trustee's status report filed on 3/10/10, the settlement is being delayed by Mr. Isaacson's counsel's health issues. The Trustee requests a 60 day continuance.

Continue without appearance to May 19, 2020 at 10:00 a.m.

Prior tentative ruling (1/14/20)
Per the Trustee's status report filed on 1/7/20, there is a settlement in principle. Continue without appearance to March 24, 2020 at 10:00 a.m.

10:00 AM
CONT... Edwin Perry Hinds **Chapter 7**

Prior tentative ruling (11/19/19)
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 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)

10:00 AM

CONT... Edwin Perry Hinds **Chapter 7**

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 on12/6, 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

10:00 AM

CONT... Edwin Perry Hinds **Chapter 7**

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. 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

10:00 AM

CONT... Edwin Perry Hinds **Chapter 7**

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, July 21, 2020 **Hearing Room 303**

10:00 AM

1:06-12243 Edwin Perry Hinds **Chapter 7**

#6.00 Order to Show Casue After Hearing Re: Status of Settlement and Continued Status Conference.

fr. 6/23/20

Docket 82

Tentative Ruling:

Ms. Shanahan, counsel for the Isaacson parties, explains the problems in her filing of 7/15. It sounds like the settlement is ready to go, though it has been previously delayed by a variety of factors. Assuming that Mr. Seror (now counsel for the Trustee) agrees, I will continue this to a time for the hearing on the motion to compromise. Both parties need to appear by phone on 7/21 so that I know that the settlement is ready to go and so that we can set the date for the hearing on the motion to compromise.

Thank you, Ms. Shanahan, for the detailed response.

Prior tentative ruling (6/23/20)

On May 26, 2020 the Court issued an order to show cause as to the status fo the settlement. It required Lon B. Isaacson and Lon B. Isaacson Associates to file and serve a written response and provide a written report on the status of the settlement to later than June 9, 2020. It also required the Isaacson parties and Maureen J. Shanahan (their counsel) to appear on June 23 via Court Call and provide the Court with a report as to the status of settlement.

As of June 18, no written response or report has been filed. Mr. Isaacson was sent noitce by email, but I am not sure that Ms. Shanahan was served. If there is no response or appearance on June 23, I would like to hear from the Trustee as to how he recommends proceeding - such as continuing this and making sure that Ms. Shanahan is served.

Party Information

Debtor(s):

Edwin Perry Hinds Represented By

10:00 AM
CONT... Edwin Perry Hinds **Chapter 7**
Jonathan R Ellowitz - DISBARRED -

Trustee(s):

David R Hagen (TR) Represented By
David Seror
Reagan E Boyce
Michael W Davis

10:00 AM
1:10-17601 Harvey Kalmenson and Catherine R Kalmenson **Chapter 11**

#7.00 U.S. Trustee Motion to dismiss or convert case

Docket 234

Tentative Ruling:

THE HEARING WILL BY HELD THROUGH COURT CALL. NO PERSONAL APPEARANCES IN COURT.

This case was reopened on 4/23/19. Since then the Debtor has not filed the required quarterly reports. There are aso an estimated amount of UST quarterly fees of $325 and more will be due.

In opposition the Debtors assert that since this case was fully administered and a final decree was entered, as was the discharge, there is nothing more that needs doind except to re-close the case.

Court: This was reopened at the request of the Debtors to straighten out the status of their loan with HSBC as to their real property on Wish Ave, Encino. On 5/6/19 the Kalmensons filed an adversary proceeding againt HSBC (19-01054). A stipulation was reached and the adversary proceeding was dismissed with prejudice and the adversary proceeding was closed on 12/23/19. Thus there is no need to continue to keep this chapter 11 case open. Debtor should move to close it.

There was nothing for the OUST to do in this case since it was fully administered and the Debtors received their discharge. Thus no fees should be required or reports given. If there is a statute or rule requiring such items, please file a reply that sets them forth at the hearing. Otherwise I will deny the motion.

The Debtors are to move to reclose this case forthwith.

Party Information

Debtor(s):

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

Tuesday, July 21, 2020 **Hearing Room 302**

10:00 AM

CONT... Harvey Kalmenson and Catherine R Kalmenson **Chapter 11**

Joint Debtor(s):

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

Tuesday, July 21, 2020 **Hearing Room 303**

10:00 AM
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; 9/24/19, 12/17/19; 12/23/2019; 2/11/20, 4/7/20; 6/23/20; 7/7/20

Docket 1

Tentative Ruling:

Prior Tentative Ruling (7/7/20)
This will trail the adversary proceeding. No appearance is needed on July 7 and no further status report is needed until you are notified by the Court that one is necessary.

Party Information

Debtor(s):

Majestic Air, Inc. Represented By
Stella A Havkin

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.

#9.00 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, 12/23/19; 2/11/20; 4/7/20; 6/23/20, 7/7/20

Docket 82

Tentative Ruling:

APPEARANCES ARE TO BE BY PHONE.

This is just to find out if there is any possibility of settlement. The estate has very few assets and most of those will go to LTP or perhaps be eaten up in attorney fees. While LTP apparently has substantial assets, the Plantiffs would have to win a large judgment in order to collect on those, given the amount of the judgments against them. This will also be a hard-fought and expensive case. Because Ms. Havkin is counsel for the estate, I requested that she appear as any settlement would have to be on behalf of the estate as well as the Tessie Cue probate.

So please update me on the settlement possibility. Meanwhile, I am working on the motion to dismiss. That hearing is set for 9/15/20 at 10:00 a.m.

Prior tentative ruling (7/7/20)
The adversary is proceeding very slowly. Please note that there is less than $100,000 in the estate and the Court cannot tell the chances of an actual reorganization. Is this still an operating company? Will it be operating in the future? It seems from the last report that it has less than $50,000 worth of inventory for resale.

What is the amount available from the Tessie Cue Estate?

10:00 AM
CONT... Majestic Air, Inc. **Chapter 11**

There are very few claims in this case - and it appears that the LTP and Tessie Cue claims are the only unsecured ones.

Looking at this there is a serious question of whether you should settle this without further expenditure.

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

Tuesday, July 21, 2020 **Hearing Room 303**

11:00 AM

1:19-13099 Marshall Scott Stander **Chapter 7**

Adv#: 1:20-01025 Rob Kolson Creative Productions, Inc. v. Stander

#10.00 Status Conference Re: Complaint Objecting to Discharge Pursuant to Section 727 of the Bankruptcy Code.

fr. 5/6/20; 6/24/20(MT)

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marshall Scott Stander	Represented By Leslie A Cohen

Defendant(s):

Marshall Scott Stander	Pro Se

Plaintiff(s):

Rob Kolson Creative Productions,	Represented By Lane M Nussbaum

Trustee(s):

David Keith Gottlieb (TR)	Pro Se

11:00 AM

1:19-13099 Marshall Scott Stander **Chapter 7**

Adv#: 1:20-01025 Rob Kolson Creative Productions, Inc. v. Stander

#11.00 Motion to Dismiss Adversary Proceeding and Complaint Objecting to Debtor's Discharge Pursuant to Bankruptcy code sec. 727.

fr. 6/24/20 (MT's calendar)

Docket 7

Tentative Ruling:

On December 13, 2019, Marshall Scott Stander ("Debtor" or "Defendant") filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code. Debtor is the sole shareholder and owner of The Stander Group, Inc. ("TSG"), a business dedicated to talent management for stage and theater. On March 2, 2020, Rob Kolson Creative Productions Inc. ("Kolson" or "Plaintiff") filed a Complaint ("Complaint") requesting denial of discharge under §§ 727(a)(2)(A), 727(a)(3), 727(a)(4)(A), and 727(a)(5).

Plaintiff is based in Chicago, Illinois and obtained a $354,069.45 breach of contract judgment against Debtor in 2014. Since 2014, Debtor has made zero payments to satisfy the judgment. Generally speaking, Plaintiff alleges that Debtor has underreported his income on his Schedules by failing to include income earned from TSG. Debtor has allegedly done this by using TSG's funds to directly issue checks to Debtor's ex-wife, mother, and sister. These parties in turn would funnel the money issued to them back to Debtor—who failed to include such money as income on his Schedules.

Plaintiff alleges the following transfers/concealment occurred during 2017-2019:

TSG directly paid Defendant $143,811.81

TSG directly paid American Express $196,951.11
credit card ("AMEX") that is in Debtor's
ex-wife's name, Rita McKenzie ("Rita")

11:00 AM
CONT... Marshall Scott Stander **Chapter 7**

TSG directly paid Defendant's sister, Jacqueline Stander ("Jacqueline")	$93,273.76
TSG directly paid Defendant's mother, Marianne Stander ("Marianne")	$25,050
TSG issued checks made payable to "Cash"	$18,950
TSG paid Defendant's attorney's fees	$70,900
Defendant's income listed on Schedules	$29,902

Except for Defendant, and intermittently Jacqueline, none of the parties worked for or provided services for TSG. Such a scheme, Plaintiff asserts, warrants a global denial of Debtor's discharge under § 727. On April 2, 2020, Defendant filed the operative FRCP 12(b)(6) motion to dismiss ("Motion"). Defendant argues that the Complaint should be dismissed because it is inadequately pled, the allegations are conclusory, and Plaintiff impermissibly seeks reverse-piercing of the corporate veil of TSG

Further, the complaint alleges that Defendant failed to include his actual income in his Statement of Financial Affairs (SOFA). The alleged transfers and payments are laid out in detail in the Complaint.

The Motion to Dismiss, the Opposition, and the Reply are set forth by each claim for relief:

First Claim For Relief, Objection To Debtor's Discharge Under § 727(a)(2)(A)

Section 727(a) states that the court shall grant the debtor a discharge, unless—
(2) the debtor, with the intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed—
(A) property of the debtor, within one year before the date of

11:00 AM
CONT... Marshall Scott Stander **Chapter 7**

the filing of the petition.

The burden of proof is on the creditor/objector to show that: (1) the debtor transferred or concealed property; (2) the property belonged to the debtor; (3) the transfer or concealment occurred within one year before the bankruptcy filing; and (4) the debtor executed the transfer with the intent to hinder, delay or defraud a creditor. In re Aubrey, 111 B.R. 268, 273 (B.A.P. 9th Cir. 1990). Heightened pleading requirements that require particularity are applicable only to "defraud[ing] a creditor." In re Retz, 606 F.3d 1189, 1200 (9th Cir. 2010). Intent to "hinder or delay" can be alleged generally. See Id.

The complaint fails to identify what property was transferred or concealed and only makes blanket statements reciting the provision of section 727(a)(2). This is insufficient. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007).

All funds that were transferred belonged to TSG and not to the Debtor.

The complaint is vague as to which transfers occurred within the one year period before bankruptcy.

The complaint fails to plead fraud with specificity as required by FRCP 9. The allegations in paragraphs 35-36 are accusatory, but not with specific facts such as name, time, place, and specific content of the false representations and the identities of the parties to the misrepresentation.

There are no facts to support the notion that the various payments issued by TSG were not reported as income to the Debtor and correctly accounted for in his SOFA and personal tax returns, assuming that they were income as payments to third parties for Debtor's personal expenses.

Finally, the chapter 7 Trustee fully investigated this case and the financials and did not find any concealment.

Opposition to Motion as to the First Claim for Relief

The Plaintiff is accusing Defendant of *concealing* funds. It is not an assertion of reverse piercing and it is not based on whether the TSG property belonged to the Debtor. Rather, Plaintiff alleges that Defendant concealed the funds that he received - which became his *own funds* - through transferring funds from TSG to himself [Defendant], and from TSG to Defendant's relatives and associates who then ultimately transferred those funds to Defendant, without Defendant claiming the funds as income in bankruptcy

11:00 AM
CONT... Marshall Scott Stander **Chapter 7**

schedules.

Concerning the requirement that payments must be made within one year before the petition date, Plaintiff alleges that in 2019 Debtor received $25,251 from TSG but only stated income of $13,000. This is enough to meet the one-year requirement. There are information and belief statements based on earlier income and those will be fleshed out through discovery of the total activity in late 2018 and 2019.

Although not all of the details are yet known, the complaint states enough specificity to be far from conclusory and to provide the Defendant with enough information to file his answer to the allegations. In fact, the Defendant is not required to meet the higher pleading standard because it is alleged that the intent was to hinder or delay a creditor.

Reply

The information and belief allegations are insufficient. These are unsupported by any facts.

The allegations are, in fact, an attempt to do reverse piercing. These were the same ones in Kolson's fraudulent transfer adversary 20-01011. As to the TSG payments received by Debtor, there are no facts alleged to show that these were not for TSG related expenses. There are also no facts alleged that the TSG transfers were made to Debtor's "relatives and associates who then ultimately transferred those funds to Defendant."

TSG property was not property of the estate or of the Debtor as of the commencement of the case and there are no facts alleged that the non-debtor recipients of the fund then transferred them to the Debtor.

Second Claim For Relief, Objection To Debtor's Discharge Under § 727(a)(3)

A Chapter 7 discharge may be denied if

> "the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case."

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CONT... Marshall Scott Stander **Chapter 7**

11 U.S.C. § 727(a)(3). A creditor establishes a prima facie case under § 727(a)(3) by showing: " '(1) that the debtor failed to maintain and preserve adequate records, and (2) that such failure makes it impossible to ascertain the debtor's financial condition and material business transactions.'" In Re Caneva, 550 F.3d 755, 761 (9th Cir. 2008) (quoting In Re Cox, F.3d 1294, 1296 (9th Cir. 1994).

The second claim merely contains a statutory recitation which is an insufficient pleading. There are no facts to support the conclusory assertion that the Debtor failed to maintain or preserve adequate records. In fact Kolson obtained records through the judgment debtor process. He fails to allege what is missing.

There are no facts alleged to support the assertion that it is impossible to ascertain the Debtor's financial condition or material business transactions. In fact the Complaint relies on those very transaction.

Paragraph 69 asserts that Debtor destroyed, etc. information in his 2017 tax return and his 2014, 2015, 2016, and 2018 tax returns. It is unclear how he allegedly did this and this is the only mention of his 2014-2016 and 2018 tax returns.

As noted above, the Trustee has fully investigated all of this.

Opposition to Motion as to Second Claim

The purpose of §727(a)(3) is to ensure that the trustee and creditors are provided with sufficient information to ascertain the debtor's financial history. In Re Caneva, 550 F.3d 755, 761 (9th Cir. 2008).

When a Debtor owns and controls numerous business entities and engages in substantial financial transactions, if there is a complete absence of recorded information related to those entities and transactions, there is a prima facie case under sec. 727(a)(3). Likewise, when a debtor transfers a substantial amount of money to a third party, a lack of documentation creates a prima facie case. Calneva, 550 F.3d 775, 761.

Plaintiff alleged that the various transfers from TSG to Debtor and to his relatives and his use of TSG credit cards, etc. ultimately resulted in income for himself and he did not keep records of these transfers. Defendant's ownership and control of TSG (which typically generates over $1 million per

year in revenue) results in a violation of sec. 727(a)(3) when these transfers were made. The complaint describes these transfers in detail.

While there are records, none of these adequately reflect the Debtor's true income. They falsify and conceal it. The TSG records of transfers to Debtor's relatives do not show that they were really transfers to Debtor via third parties.

Reply

Kolson has the records of the Debtor and of TSG and those are the basis of this complaint. Therefore he cannot contend that the Debtor failed to keep or destroyed, etc. records.

As to the contention that the Debtor falsified his 2014-2016 tax returns, that is without any facts to support this allegation. Similarly as to the issue of the historical figures in the SOFA.

Third Claim For Relief, Objection To Debtor's Discharge Under § 727(a)(4)(A)

Section 727(a)(4)(A) provides that a debtor may not be granted a discharge if:

(4) the debtor knowingly and fraudulently, in or in connection with the case--
(A) made a false oath or account;

Discharge will be denied where: (1) the debtor made a false oath in connection with the bankruptcy case; (2) the oath related to a material fact; (3) the oath was made knowingly; and (4) the oath was made fraudulently. In re Retz, 606 F.3d 1189, 1197 (9th Cir. 2010). A false statement or an omission in the debtor's bankruptcy schedules can constitute a false oath. Id.

A false statement or omission that has no impact on the bankruptcy case is not "material." If the assets described have little or no value, they have no impact. If they are not property of the estate, they have no impact. Further, there must be specific facts pleaded as to fraud.

The Complaint at paragraph 21 confirms that the amount of income reflected on the SOFA for 2017 matches the Debtors Adjusted Gross Income on his 2017 tax return. There are no facts alleged that the various payments by TSG were not reported as income.

11:00 AM

CONT... Marshall Scott Stander **Chapter 7**

Plaintiff cannot allege that any failure to report income from TSG is a material misstatement because this is a consumer case and the amount of income does not affect the bankruptcy case.

There are no facts as to fraudulent intent and this was all investigated by the Trustee.

Opposition to Motion on Third Claim

"The fundamental purpose of sec. 727(a)(4)(A) is to insure that the trustee and creditors have accurate information without having to conduct costly investigations." In re Khalil, 379 B.R. 163, 172 (BAP 9th Cir. 2007) A false statement or an omission in the debtor's bankruptcy schedules or statement of financial affairs can constitute a false oath." Retz, at 1196.

The complaint asserts that the Debtor's income was substantially higher than reported in his bankruptcy schedules. This is clearly material to the bankruptcy and his relationship to the bankruptcy estate and its administration. This was done knowingly and this is supported by the details of the Debtor's actions on years of funneling money from TSG through his relatives. This started after the Plaintiff obtained the judgment against the Defendant. It was to hide Debtor's income from his creditors.

There is adequate detail stated to support this claim for relief.

Reply

Even if the historical income figures in the SOFA were inaccurate, there is no way that Kolson can demonstrate that this had an impact on the estate or would result in creditors receiving a higher distribution. There is no substantiation that the Trustee's ability to investigate and administer the estate was or could be impacted. And there are no facts to show intentional fraud.

Fourth Claim For Relief, Objection To Debtor's Discharge Under § 727(a)(5)

Section 727(a)(5) provides that a debtor may not be granted a discharge if:

(5) the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities.

This section requires:

(1) debtor at one time, not too remote from the bankruptcy petition date, owned identifiable assets; (2) on the date the bankruptcy petition

11:00 AM
CONT... Marshall Scott Stander **Chapter 7**

was filed or order of relief granted, the debtor no longer owned the assets; and (3) the bankruptcy pleadings or statement of affairs do not reflect an adequate explanation for the disposition of the assets.

In re Retz, 606 F.3d at 1206.

Denial of discharge cannot be based on a failure to explain loss of assets owned by a debtor's corporation rather than assets of the debtor himself. Lorber v. FTC Commer. Corp. (In re Lorber), 2015 U.S. Dist. LEXIS 179405 *39 (C.D. Cal. Oct. 19, 205) aff'd Lorber v. FTC Commer. Code (In re Lorber), 692 Fed.Appx. 321 (9th Cir. Cal., May 15, 2017).

There are no specific facts and there are no allegations that the Debtor owned assets that he no longer owned on the petition date. There are no allegations that he lost assets. This is based entirely on the assertion that Debtor underreported income from TSG. It is impermissible to extend sec. 727(a)(5) to allege that a non-debtor corporation lost assets.

Opposition to Motion to Dismiss Fourth Claim

The court may deny a discharge under sec. 727(a)(5) when there is no basis in the record from which anyone could explain satisfactorily a debtor's deficiency of assets to meet his liabilities. A petitioner cannot omit items from his schedules and force the trustee and the creditors to guess that he has done so and to require them to search through a paperwork jungle in the hope of locating them. Retz at 1206.

Here, Defendant has failed to explain the loss of significant assets. Plaintiff alleges that from 2017-2019, TSG issued checks to Defendant amounting to $143,811.81. However, Defendant's income on his Schedules provides: 2017-$0.00; 2018-$7,902; and 2019- $13,000. Defendant has not adequately explained the additional amount not reported on his Schedules. Moreover, there are plausible inferences that Defendant received funds from his relatives that are also not reflected in Defendant's Schedules.
Thus, a plausible claim exists under § 727(a)(5).

Reply

The complaint is unintelligible in asserting that "masquerading income" somehow equals a failure to explain loss or deficiency of assets. There are no facts alleged that the Debtor was asked about a loss or deficiency

and failed to explain that. There are not facts alleged that Debtor owned the income before the petition and then no longer owned them on the petition date.

Analysis

Standard

"A motion to dismiss in an adversary bankruptcy proceeding is governed by Federal Rule of Bankruptcy Procedure 7012(b), which incorporates [FRCP] 12(b)-9(i)." In re Tracht Gut, LLC, 836 F.3d 1146, 1150 (9th Cir. 2016). In examining a motion to dismiss, the court engages in a two-step inquiry. First, a court accepts all factual allegations in the complaint as true and sets aside legal conclusions. Ashcroft v. Iqbal, 556 U.S. 662, 678-79 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). The court reads these allegations in the light most favorable to the non-moving party to see whether the facts state a claim for relief. Id. Second, the court determines whether the claim is plausible. A claim is plausible if it is more than speculative. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-56, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). A claim moves from mere speculation and into the realm of plausibility when the facts alleged "allows the court to draw the **reasonable inference** that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678 (emphasis added). The court may look to the "allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." Swartz v. KPMG LLP, 476 F.3d 756, 763 (9th Cir. 2007). Lastly, the judge draws on her own judicial experience and common sense to determine plausibility. Id. at 679.

Causes of Action Under § 727

In general, the bankruptcy court must grant a discharge to an individual Chapter 7 debtor unless one of the twelve enumerated grounds in § 727(a) is satisfied. In the spirit of the "fresh start" principles that the Bankruptcy Code embodies, claims for denial of discharge are liberally construed in favor of the debtor and against the objector to discharge. Khalil v. Developers Sur. & Indem. Co. (In re Khalil), 379 B.R. 163, 172 (B.A.P. 9th Cir. 2007) aff'd, 578 F.3d 1167 (9th Cir. 2009). The objector to discharge, thus, bears the burden to prove by a preponderance of the evidence that the debtor's discharge should be denied under an enumerated ground of § 727(a). Id.

This motion is unusual because it sounds like one for summary

11:00 AM

CONT... Marshall Scott Stander **Chapter 7**

judgment rather than a motion to dismiss a complaint. Although the complaint alleges many facts, those "facts" are only tested to see if the claim is plausible, not whether it is provable.

As to Claim Under Sec. 727(a)(2)(A)

Here, construing the complaint in the light most favorable to Plaintiff, and accepting all well-pleaded factual allegations as true, Plaintiff's complaint is sufficient. At the 12(b)(6) stage, the claim merely must be plausible. Plaintiff has plausibly stated a claim because he has stated that TSG has transferred funds to Defendant's relatives, whereupon they then transferred such funds to Defendant. At trial (or a motion for summary judgment), Plaintiff will have to offer evidence of any property or benefit Debtor received from his relatives. See In Re Shapow, 599 B.R. at 76-77. Moreover, Plaintiff alleges that TSG directly issued checks to Defendant. Paragraph 23 of the Complaint states that in 2018, "Debtor received from TSG $30,205.00 in checks made out to him." These would be direct payments to Defendant and, if proven, that income is property of Defendant, and Plaintiff alleges that Defendant has concealed it on his Schedules because Defendant reported a 2018 income of only $7,902.

Actual intent to hinder or delay is required. In re Adeeb, 787 F.2d 1339, 1343 (9th Cir. 1986). A finding of intent to defraud is not required. In re Retz, 606 F.3d 1189, 1200 (9th Cir. 2010). The intent to hinder or delay can be inferred from circumstantial evidence. In re Adeeb, 787 F.2d at 1343.

Here, there are numerous transfers within the one-year petition date to the Debtor's relatives. As to the one-year limit, the transactions during that time are a matter for discovery. Discovery is not yet complete. The allegations show a pattern that adds plausibility to the complaint. These relatives do not work for TSG yet it is alleged that they have been paid substantial sums by TSG. At this stage, it is plausible to infer that this was for Debtor's benefit. This is not a situation of reverse piercing. The issue is whether the Debtor received monies that he failed to reveal. If he was the one who ordered TSG to make these payments that allegedly ended up in his possession, that would go to his knowledge and intent. It is not dispositive whether he "owned" the assets of TSG. Had he been an employee of corporation XYZ (a fictitious entity used here as an example) and embezzled

XYZ's property for his own benefit and concealed it, he would still be liable under section 727(a)(2)(A).

Reading the allegations in the light most favorable to the non-moving party, Plaintiff has stated a claim for relief pursuant to § 727(a)(2)(A).

As to Claim under Sec. 727(a)(3)

Here, Plaintiff argues that Debtor has concealed, destroyed, mutilated, or failed to preserve recorded information in his "2014, 2015, 2016, and 2018 tax return[s]…" Complaint, ¶ 69. In his Opposition, Plaintiff clarifies that all alleged concealment resulted in income to the Defendant, but defendant did not keep records of those transfers made to him. Thus, "it is impossible to ascertain Defendant's actual financial condition." Opposition, 10:9-10. This is evidenced in Debtor's schedules, which states a monthly wage of $200 from TSG, yet TSG's revenues show $864,000 in 2017, $1,207,500 in 2018, and $597,000 in 2019. Further, when a business is involved, producing a bottom-line number as to income earned in a calendar year may be insufficient. See In re Hussain, 508 B.R. 417, 425 (B.A.P. 9th Cir. 2014)

At this point, there are sufficient alleged facts that, if proven, can result in a judgment under section 727(a)(3). The issue will be the paper trail of money from TSG (which is asserted to be under Debtor's control) to the initial recipients and, through them, to the Debtor. While there is also a question of what was revealed in his tax returns, that would be relevant, but does not appear to be the crux of the complaint. The information here is less direct than in the first claim for relief, but does pass the standard set forth to overcome a motion to dismiss.

As to the Claim under Sec. 727(a)(4)(a)

Here, Plaintiff has plausibly alleged that Defendant made a false oath in connection with the bankruptcy case by alleging that Defendant falsely underreported his income in his bankruptcy Schedules. Complaint, ¶73. Defendant reported only $200 in monthly income from TSG on his Schedules. Given the amount of TSG's yearly revenues and substantial amount of checks given to close relatives, it is plausible to infer that Defendant received additional income that he did not report on his Schedules. Later, Plaintiff must offer evidence that shows additional income or expenses of Defendant that directly conflict with the paltry income stated on Defendant's schedules. For now, Plaintiff has pleaded a plausible claim for relief.

11:00 AM

CONT... Marshall Scott Stander **Chapter 7**

Should the allegations in this complaint be proven, the statements by the Debtor in his SOFA would be actionable under this provision.

As to the Claim under Sec. 727(a)(5)

If proven, the allegations that the Debtor failed to reveal his true income from TSG (directly and through others) as well as certain other income will need to be explained. Perhaps the Debtor will have a satisfactory explanation in which case he will prevail. But as noted above, this is not a motion for summary judgment and thus this claim will stand.

Conclusion

It should be noted that the fact that the Trustee did not pursue a 727 action may be a piece of evidence in the trial, but is not dispositive or even relevant in a motion to dismiss a complaint.
Plausible claims exist under §§ 727(a)(2)(A), 727(a)(3), 727(a)(4)(A), and 727(a)(5).
Defendant's Motion is DENIED.

Party Information

Debtor(s):

Marshall Scott Stander	Represented By Leslie A Cohen

Defendant(s):

Marshall Scott Stander	Represented By Leslie A Cohen

Plaintiff(s):

Rob Kolson Creative Productions,	Represented By Lane M Nussbaum

Trustee(s):

David Keith Gottlieb (TR)	Pro Se

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

Tuesday, August 4, 2020 **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: 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, 11/19/19, 1/14/20, 3/3/20, 5/19/20

Docket 1

Tentative Ruling:

Nothing new has been filed as of 7/30/20. Discovery should be complete and I want to set this for trial.

prior tentative ruling (5/19/20)
Nothing new has been filed as of 5/18. Please appear by phone and tell me the status of discovery.

Prior tentative ruling (3/3)
Thank you for the joint status report. Please feel free to attend the 3/3 hearing by phone or file an agreed to scheduling order in compliance with this tentative ruling. The status conference will be continued to May 19, 2020 at 10:00 a.m. Discovery cutoff will be on May 8. This means that discovery is complete, not that it is the last day to send out new discovery. Depending on what happens at the May 19 status conference, I may require a pretrial order and set a pretrial hearing at some later date. A July trial date is possible if you do not settle.

Prior tentative ruling (1/14/20)
On 12/5/19 Narine Gumuryan filed an anwer to the complaint. No status report has been filed. How do the parties intend to proceed from here?

Prior tentative ruling (11/19/19)

10:00 AM

CONT... Narine Gumuryan **Chapter 7**

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.

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

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

10:00 AM
1:10-24968 Glen E Pyle **Chapter 7**

#2.00 Motion for Turnover of Property as to Sunland
determine to date

Docket 66

Tentative Ruling:

An order was entered on 6/25/20 (dkt 78). Why is this on calendar?

prior tentative ruling

The Trustee seeks turnover of two parcels: 25226 Vermont Dr., Santa Clarita (Vermont) and 9466 Sunland Blvd., Sun Valley (Sunland). The Debtor failed to disclose his interest in these properties in his bankruptcy petition. His discharge has been denied.

Vermont is worth about $661,000 and is encumbered by a first mortgage of $42,935 and junior mortgages and abstracts of judgment of approximately $465,000. Of this amount, at least $175,000 are loans purportedly owed to entities controlled by the Debtor and the Trustee would object to them in a sale unless there is proof of deeds that were supported by consideration.

Sunland is worth approximately $882,000 and is encumbered by a first mortgage of $20,000 and junior mortgages and liens of approximately $178,230.

The debts disclosed in the Debtor's bankruptcy petition total $90.270. Thus, all creditors would receive a substantial dividend.

According to the title reports, the title to each of the properties is in the name of "Glen E. Pyle," although the title to Vermont is "Linda L. Daniel, an unmarried man, as to an undivided 50% interest and Glen E. Pyle, an unmarried man, as to an undivided 50% interest." [By the Court: *The title report does identify Linda L. Daniel as an unmarried* man*, but the deed of trust she gave in June 1988 states that she is an unmarried* woman.] The Debtor contends that the properties do not belong to him, but he maintains control over the properties, resides in one, collects rents on the other, and used the properties to serve as security for the attorneys' fees he owes his

10:00 AM

CONT... Glen E Pyle **Chapter 7**

attorney.

The deeds of trust to Raymond Aver, his attorney, were signed in Mr. Pyle's individual capacity.

The Trustee requests an Order that the Debtor and all other occupants turnover the Properties to the Trustee and/or her agents no later than noon PST on June 12, 2020 [By the Court: *it is presumed that the Trustee mean PDT*]. If the properties are not turned over by that time, the Trustee requests that the Clerk of the Court issue a writ of possession and that if the properties are not vacated within five days after the issuance and service of the writ of possession, the Marshal would be authorized to make a forced entry and remove the occupants. Further, that the service may be by first class mail to the address on the petition and that the Marshal shall be held harmless of any wrongdoing arising out of the eviction. If there is personal property remaining in the property, ten days after the eviction the Trustee may sell it or dispose or it. All fees and costs will be administrative claims of the estate and may be paid from the proceeds of the sale of the properties.

The Trustee has the authority to act under 11 USC sections 521(a)(3) and 521(a)(4); 542(a); and 105(a) and the caselaw interpreting those provisions. In this case the Trustee will be unable to properly market and sell the properties because the Debtor has been uncooperative throughout the case and has been unwilling to comply with his obligations under the bankruptcy code. It is unknown whether the Debtor has been paying the property taxes, mortgage payments, and the expenses to maintain the properties.

Opposition

Title to the properties is vested in the Glen E. Pyle Irrevocable Trust. They were not listed in the bankruptcy for that reason. The Trust is making the mortgage payments as well as paying property taxes and maintenance expenses to the extent that it has funds to do so.

The Trustee has never requested access to the properties. Pyle was never ben asked to cooperate with the Trustee, but if he was, he did cooperate.

Copies of the Trust and the deed are attached to Mr. Pyle's declaration filed as doc. #116 in the Berry v. Pyle adversary proceeding.

10:00 AM

CONT... Glen E Pyle **Chapter 7**

Reply

The deeds are ineffective since they purport to transfer the properties to a party that is legally incapable of receiving the grant of the properties. California law holds that only a "person" can own property. A trust is not a "person" and therefore it cannot hold title to property. *Portico Mgmt. Group LLC v. Harrison* (2011) 202 CA4th 464, 473. A trust is not separate from its trustees. It is actually a fiduciary relationship with respect to property. This is regardless of whether it is a revocable or an irrevocable trust. *Galdjie v. Darwish* (2003) 113 CA 4th 1331, 1343. *Presta v. Tepper* (2009) 179 CA 4th 909

Had the transfers been to "Glen Pyle, as the Trustee of the Glen Pyle Irrevocable Trust," then the transfers might have been successful, though still probably avoidable as fraudulent transfers.

Analysis

Title reports are hearsay and the Court does not find that the analysis of the title company as to ownership is dispositive. The reports themselves don't seem to support the conclusion. As to Vermont, there is no recorded transfer of any interest from Linda Daniel to Pyle. I may be missing this since the title report does not dispute the later granting of trust deeds by Pyle.

As to the deeds presented by Pyle, which were recorded in 2004, they do not appear to transfer title to the Trust. Cal. Code of Civ. Proc. Sec. 654 states that the "ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this code, the thing of which there may be ownership is called property." Cal. Code of Civ. Proc. Sec. 680.280 states that the word "person" includes "a natural person, a corporation, a partnership or other unincorporated association, a general partner of a partnership, a limited liability company, and a public entity." A trust does not qualify as any of these categories. Therefore it cannot actually own any "property." "And the term [property] is a generic one, and its meaning in any case must be determined by ascertaining the sense in which it was used. When unqualified the term is sufficiently comprehensive to include every species of estate, both real and personal, whether choate or

10:00 AM

CONT... Glen E Pyle **Chapter 7**

inchoate." *Ponsonby v. Sacramento Suburban Fruit Lands Co.*, (1930) 210 Cal. 229, 232.

The deeds in question each are to "(The Pyle Irrevocable Trust) Sweetwater Management Co." Since the Trust cannot own property, the transfer to the Trust is without legal effect. As to Sweetwater, there has never been any evidence that this entity actually exists or that it is the type of entity that qualifies as a "person" under Cal. Code of Civ. Proc. Sec. 680.280/

While it is true that the trust deeds signed to Mr. Aver are signed by Mr. Pyle both as an individual and as Trustee of the Pyle Irrevocable Trust, that is not dispositive. Given the question of title, I am sure that Mr. Aver was being cautious as any sophisticated creditor would be.

Service by mail has always been a problem. Since Mr. Pyle filed his opposition pro se (though I have reason to believe that he did not actually prepare it himself), the address on the opposition will now be used as a proper service address and the Court will no longer accept any excuse of non-receipt of things sent to that address. If Mr. Pyle has a problem with mail delivery, he is to get a post-office-box and provide the Court and the parties with that information.

Grant the motion as to taking possession of the properties and the rights to turnover of Sunland. However, there is a tenant in Vermont. What does the Trustee plan to do as to the tenant and what notice needs to be given before any action is taken as to the tenant since this motion seeks to terminate the tenant's rights and have turnover of the property.

Party Information

Debtor(s):

Glen E Pyle	Pro Se

Movant(s):

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

Trustee(s):

Amy L Goldman (TR)	Represented By

10:00 AM
CONT... Glen E Pyle **Chapter 7**

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, August 4, 2020 **Hearing Room 303**

10:00 AM
1:10-24968 Glen E Pyle **Chapter 7**
Adv#: 1:11-01180 Goldman v. Pyle et al

#3.00 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; 11/20/19; 2/18/20; 3/2/20; 4/7/20; 6/2/20

Docket 263

Tentative Ruling:

Continued without appearance to August 25 at 10:00 a.m. at which time there is a motion by Mr. Berry to "Enforce stipulation and order of October 4, 2017, for disbursal of gross proceeds, and for an award of attorney's fees and costs."

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):

Amy L Goldman (TR)	Represented By Leonard Pena

Plaintiff(s):

Amy Goldman	Represented By

10:00 AM
CONT... Glen E Pyle **Chapter 7**

Leonard Pena

Trustee(s):

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

10:00 AM
1:11-22424 Ronald Alvin Neff **Chapter 7**

#4.00 The Trustee To Distribute Funds Covered By The Debtor's Homestead Exemption To The Debtor And Directing Disgorgement As Necessary From Estate Professionals.

Docket 610

Tentative Ruling:

This concerns two interlinked motions: (1) the Trustee filed his motion seeking authorization to distribute the remaining homestead funds to the Debtor and directing disgorgement as necessary from estate professionals; (2) Douglas DeNoce's motion for a stay pending appeal and that the Trustee continue to hold the homestead funds until the appeal has been resolved.

TRUSTEE'S MOTION TO DISTRIBUTE

In summary, the Debtor claimed an enhanced homestead exemption of $175,000. By prior order of the Court, the Trustee distributed the undisputed $75,000 to him and now seeks to distribute the remaining $100,000 based on the order overruling Creditor DeNoce's objection to the enhanced exemption (dkt. 571). DeNoce filed an appeal [CC 20-1030], which is pending at the BAP and no stay has been issued. Thus the Trustee believes that he is required to pay the remaining amount to the Debtor.

Because of the significant bank fees and bond premiums that have been charged against the funds – which were held by the Trustee for almost eight years since the house was sold – the remaining balance is now about $99,902.59. To cover the shortfall, the Trustee seeks disgorgement of fees previously awarded and paid to the Trustee and to professionals on an interim basis, but no more than $500 from any one party.

Analysis

No opposition to the disgorgement has been received except that DeNoce opposes on the grounds that he is seeking a stay of execution and will prevail on appeal.

Reviewing the Financial History attached to the Trustee's motion, the amounts distributed to the Trustee and his professionals vary in size. Unless one or more party agrees to cover the entire amount, the Trustee is to seek

10:00 AM

CONT... Ronald Alvin Neff **Chapter 7**

disgorgement on a pro rata share from the professionals and himself. [Given the amount needed and the amount paid out to counsel, it is probable that the Trustee's counsel will cover the entire deficit, but that is between the Trustee and his counsel.]

GRANT THE MOTION TO DISTRIBUTE THE BALANCE OF THE HOMESTEAD PROCEEDS AS REQUESTED.

Party Information

Debtor(s):

Ronald Alvin Neff — Represented By Michael D Kwasigroch

Movant(s):

David Keith Gottlieb (TR) — Represented By M Douglas Flahaut

Trustee(s):

David Keith Gottlieb (TR) — Represented By M Douglas Flahaut

10:00 AM
1:11-22424 Ronald Alvin Neff **Chapter 7**

#5.00 Motion for Stay

Docket 614

Tentative Ruling:

DeNoce opposes the distribution and seeks a stay pending appeal of the January judgment and an order that the Trustee continue to hold the homestead funds until the appeal has been resolved. Neff opposes this motion for a stay and supports the motion by the Trustee to distribute the remaining homestead amount.

DeNoce Motion for a Stay of Execution

DeNoce asserts that he has a high likelihood of success on the appeal, that he will suffer irreparable harm if the disputed homestead funds are released to the Debtor, and that the stay will cause little harm to the Debtor. The crux of the argument is that the BAP will "remand and allow Creditor to get the SSA records and to have expert Meyers review them." If the funds are disbursed, there is no chance that DeNoce or the Estate will ever get any money since Neff will surely use it. This is particularly true because of Neff's history of drug abuse, criminal conviction for fraud, a fraudulent transfer while in bankruptcy, and other conduct designed to cheat creditors.

DeNoce has contacted the BAP, which will allow him to file a motion to expedite an appeal and then it should be concluded in less than 45 days. If this stay is granted, DeNoce will immediately file such a motion with the BAP. All BAP briefing will be complete by the time that this motion is heard.

The standard for a stay is that the court should consider the following:

> Under [the traditional] standard, a court considers four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Hilton v. Braunskill*, 481 U.S. 770, 776, 107 S. Ct. 2113, 95 L. Ed. 2d 724 (1987

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CONT... Ronald Alvin Neff **Chapter 7**

Nken v. Holder, 556 U.S. 418, 425-6 (2009)

DeNoce then provides some 50+ pages of facts, assertions, and argument that the stay should be imposed and attaches his appellate brief as an exhibit. Some of these arguments are largely set forth in his motion for new trial (dkt. 577)

The basic issue is that the Court did not allow admission of testimony of Mr. Meyers and that DeNoce was not allowed to obtain the SSA file through actions of the Court and of Neff. Further, it is asserted that the Court did not find that Neff lacked credibility and did not find that Neff should not qualify for SSI benefits because he is a drug addict and therefore he must have lied on his SSA application.

DeNoce goes on to assert that there will be irreparable harm to him should he prevail on appeal (or presumably a retrial) because the source of recovery will be gone by that time. Because Neff recently received the $75,000 undisputed portion of his homestead exemption, he should be able to wait for the rest of the money.

Neff Opposition to Stay

Neff notes that granting of a stay is discretionary and that the party requesting the stay has the burden of showing that the circumstances justify it. *Nken v. Holder*, id. at 433-434

DeNoce has been given eight years and two trials to prove his case. His appeal and motion are based on speculation of if the SSA record had been obtained, there might be proof to rebut the presumption of disability. There is no reasonable chance of success on appeal. Any hardship that DeNoce claims is overwhelmed by the delays and attorney fees incurred by the Debtor.

Alternatively, Neff requests a $200,000 bond be posted.

Reply to Opposition to Stay

The opposition does not deal with the issues raised in the motion for a stay. This is a violation of LBR 9013-1(f)(2), which required a complete written statement of all of the reasons in the opposition. It is insufficient just to say that there will be forthcoming extensive oral argument presented. This would be an ambush and should not be allowed.

No evidence of irreparable harm is given, not even the Debtor's declaration.

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CONT... Ronald Alvin Neff **Chapter 7**

The SSA record is key and the opposition downplays that. And it does not address the Meyers issues, which alone should warrant a reversal or remand.

If the stay is not granted, DeNoce requests a 10 day period to have this motion for stay reviewed by the BAP.

On July 31, DeNoce filed a notice of Debtor's Default on Appeal, arguing that Neff appears to have no intent to participate in the appeal and has no standing to request that a bond be posted. In short, the responsive brief was due on July 30 and was not filed and Neff has not filed any papers in the appeal. He goes on to argue that he cannot afford to pay for a bond and because he is likely to succeed on the appeal, a bond is not justified. Further, Neff has not followed the proper procedures to request a bond.

ANALYSIS AND TENTATIVE RULING

A stay pending appeal is initially presented to and determined by the bankruptcy court. F.R.B.P. 8005. The Ninth Circuit has described the requirements for a stay pending appeal as follows:

> There are four factors we consider when presented with a motion for a stay pending appeal:
>
> > (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceedings; and (4) where the public interest lies.
>
> *Golden Gate Restaurant v. City and County of San Francisco*, 512 F.3d 1112, 1115 (9th Cir. 2008) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776, 107 S. Ct. 2113, 95 L. Ed. 2d 724 (1987)). We have recently explained that to satisfy steps (1) and (2), we will accept proof either that the applicant has shown "a *strong* likelihood of success on the merits [and] . . . a *possibility* of irreparable injury to the [applicant]," or "that *serious* legal questions are raised and that the balance of hardships tips *sharply* in its favor." *Id.* at 1115-16 (emphasis added; citations omitted). We have described these alternative formulations as

"'two interrelated legal tests' that 'represent the outer reaches of a single continuum.'" *Id.* at 1115 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir. 1983)).

Stormans Inc. v. Selecky, 526 F.3d 406, 408 (9th Cir. 2008) (emphasis in the original)

Although this preceded the 2009 case of *Nken*, that case did not change the law or process for a stay pending appeal.

Did DeNoce make a strong showing that he is likely to succeed on the merits or has he raise serious legal questions?

This case has had many twists and turns – moving from judgment for DeNoce (under Judge Kaufman) to judgment for Neff (under me). While I am convinced that my decision was absolutely correct, there is a small possibility that an appellate court will disagree with that determination. So while DeNoce has not made a strong showing that he is likely to prevail through reversal or remand, it is not impossible that this will occur. As to the issue of "serious legal questions," a large part of DeNoce's appeal revolves around his inability to obtain and review the SSA file. Ultimately he could have or actually may have had access, but his own behavior prevented him from proceeding. As to the attempted testimony of Mr. Meyers, this is a question of basic evidentiary law and is doubtful as a serious legal question, but in the context of this case it might turn out to be one. However, this factor alone is not sufficient to grant the requested stay. But if the balance of hardships tips sharply in DeNoce's favor, It is enough to meet the minimum requirements for a stay.

Will DeNoce be irreparably injured absent a stay?

There is a high likelihood that once the money is distributed to Neff, it will be used or otherwise made unavailable to the Estate. Neff has no substantial assets, is unable to work, and has various health issues. He has not shown any ability to refund the exemption if he loses and the Court is not aware of any ability to do so. Of course this money would go back to the Estate, but DeNoce is a major creditor and is also entitled to a set distribution if he is the prevailing party on the enhanced exemption issue.

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CONT... Ronald Alvin Neff **Chapter 7**

Would the issuance of the stay substantially injure Neff?

While the Court can assume that a further delay in obtaining this $100,000 would be at least an inconvenience to Neff, he has not put forth any argument or evidence of substantial injury. The house in question is located on Lake Harbor Lane, Westlake Village. The sale of this property closed in October 2012, but Debtor's motion to release the undisputed portion of the homestead exemption was not filed until April 2019 (dkt. 511), about 6 ½ years after the property was sold. The judgment in the trial was entered in January 2020 and the appeal was filed in February 2020. Yet the Trustee did not file his motion to disburse the remaining money until July. Whether Neff pushed for earlier action is unknown.

I have reviewed the BAP docket and spoken to a staff person at the BAP as to the expected timing of this appeal. DeNoce's brief has been filed and Neff had until the end of July to file his (these dates are approximate). Then DeNoce will have a few weeks to respond. Assuming that there are no delays, it is expected that oral argument will take place in mid-October or mid-November 2020. In general the BAP is very prompt on issuing its opinions and that should occur no later than early 2021. Thus we are talking about a stay of approximately six months or even less.

While it might be inconvenient to Neff if there is a further delay in distribution, it does not appear that he will suffer a substantial injury. Further, professionals (including and especially the Trustee's attorneys) have been paid a substantial amount in interim fees and any further diminution of the proceeds through time and fees will be easily recoverable from them.

Where does the public interest lie?

This is not an issue of public interest.

Should Neff prevail on appeal, DeNoce will certainly appeal to the Ninth Circuit. Should DeNoce prevail through reversal or remand, there will be no need for a stay. Because of the fairly short time-frame until oral argument and determination by the BAP, it is my intent to grant a stay. While I find that DeNoce has a very slim chance to prevail given the evidence

10:00 AM

CONT... Ronald Alvin Neff **Chapter 7**

before me in this motion, in its opposition, and in the history of this case, it is clear that the harm to DeNoce and the Estate is much greater than the harm to Neff. Reviewing the guidelines for a stay pending appeal, this motion barely meets the minimum requirements. But the balancing of harm is strongly in favor of DeNoce and that tips the scales in favor of granting the stay

While it is disturbing that Neff has not filed a timely response in the appeal - which was due on July 30 - that does not indicate that he will not be part of the appeal. Response times are not jurisdictional and the BAP has flexibility to deal with this.

As to a bond, I see no need for one. The fact that the Trustee is holding the money means that it is safe. The fact that Neff does not seems to need the money at this time or in the next few months also weighs against requiring DeNoce to post a bond.

However, I do not intend this stay to be indefinite nor do I wish to force the BAP judges to review the voluminous papers before them on some sort of shortened timeframe. Thus, I will grant a stay pending appeal. It will terminate ten days after the entry of the BAP opinion.

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

10:00 AM
1:15-14213 Michael Robert Goland **Chapter 7**

#6.00 Status Conferenecere: Trustee's Final Report and Hearing on Applications for Compensation

fr. 06/23/20

Docket 406

Tentative Ruling:

Continue without appearance to August 25, 2020 at 10:00 a.m., which is the status conference on the Burk v. Zamora adversary proceeding. This will trail that case.

prior tentative ruling (6/23/20)

The Trustee's final report anticipated a zero percent distribution to unsecured creditors. Also no payment would be made on the allowed secured claims of the Wicklunds. All monies would be paid to the chapter 7 administrative creditors, each of which would be paid about 96% of its claim. Included in the proposed distribution would be that of $9,602.71 fees and $165.10 costs for S.L. Biggs, the accountant for the Trustee.

The Trustee entered into an agreement with her counsel and with Biggs that each would reduce their fee applications so that the Trustee would have $3,000 to be distributed to allowed timely filed unsecured claimants. This was filed on May 18, 2020 but the final report filed on May 19 does not reflect any distribution to unsecured creditors.

Goland Opposition

On May 4, the Debtor filed an opposition to the Biggs' "unserved" final fee application and also one to the fee application of Brutzkus Gubner, the attorney for the Trustee.

Biggs Application – Filed 3/12/20. There was an order of 9/13/16 (dkt.

10:00 AM

CONT... Michael Robert Goland **Chapter 7**

117) that service on Mr. Goland be by email. This application for fees was not served in accordance with that order. For various health reasons, Debtor requests a hearing at the end of the lockdown since he is self-quarantined and also his computer is out for repair and cannot be recovered at this time since the repair shop is closed due to the quarantine.. He needs a computer that can be used by only the right hand.

Brutzkus Gubner Application - The application mis-described and mischaracterized services that they performed. When Goland recovers his computer, he will file a more detailed description.

Burk Opposition – Because the Court is closed, he has not been able to view the final report. He has contacted the court in an attempt to get a copy, but to no avail. He requests that the hearing be delayed until he can obtain a copy.

Biggs Response – Biggs was not aware of the order to send email copies. The Debtor has never sent them his email and it is not referenced on the front page of the court docket. This response was sent to Goland's email address.

Bret Lewis Opposition and Request to File an Action Against the Trustee

Goland repeatedly disclaimed any interest in 5711-5721 Compton Ave. and he did not list it in his schedules. Lewis complained to the Trustee and offered to assist and/or handle a quiet title or non-dischargeability action for this purpose. The Trustee told Lewis that Goland's activities in this case probably rose to the level of criminal activity and that she made a criminal referral and that her counsel was going to file a quiet title action. Neither the Trustee nor her counsel took any action to block Goland's discharge. So none of the fees earned by the Trustee or her counsel are justifiable or reasonable. They were either incompetent or colluded in failing to act and this was a fraud on the court at the expense of the creditors and of Lewis.

Beyond that, Lewis is a secured creditor and should be treated as such

10:00 AM

CONT... Michael Robert Goland **Chapter 7**

and his claims should come prior to administrative claims because he had served the debtor with a judgment debtor's examination prior to his bankruptcy. Thus Lewis has a security interest in all of Goland's personal property. CCP 708.110(d); *Daff v. Good (In re Swintek)*, 906 F.3d 1100 (9th Cir. 2018).

This opposition was one day late because of health issues.

Alternatively, Lewis requests leave to file an action for fraud and breach of fiduciary duty against the Trustee and her counsel.

Trustee Reply to Lewis Opposition, Debtor's Opposition, and Debtor's Opposition to Accountant

As to Lewis

Lewis does not explain how he was harmed by reliance on the Trustee's failure to pursue litigation to quiet title the Compton Property. He had multiple opportunities to purchase the litigation rights and declined to do so. Lewis also had standing to file an action to deny Goland a discharge. As to seeking permission to sue the Trustee, he has not submitted a draft complaint or indicated where that suit would be filed.

The Trustee and her counsel spent a great deal of effort in investigating the nature of the Debtor's right in Compton. Litigation would have been astronomically expensive with no promise of recovery. These were addressed in the Sale motion, which was approved by the Court. Lewis attended that hearing and orally objected, but did not make an overbid. Early on Lewis negotiated with the Trustee to buy the Trustee's rights in Compton, but decided not to go forward because of possible contamination issues.

Lewis filed a dischargeability action, but he also had standing to file a complaint to deny discharge. He chose not to do so. He could have done so in conjunction with asserting that title was in Goland. He also could have sought revocation of discharge. But he declined to do any of these.

Lewis seeks a reconsideration of the order approving his settlement

10:00 AM

CONT... Michael Robert Goland **Chapter 7**

with the Trustee. This is a final order and not subject to further challenge. Lewis was paid under the settlement and is no longer a secured creditor. As to his unsecured claim, he will receive his pro rata share of distribution of the amount that the professionals are leaving in this administratively insolvent estate.

As to Goland

Goland lacks standing to object to the fee applications because there is no chance that this will be a surplus estate. Also, he has had over a month to provide supplemental responses, but has failed to do so.

Concerning the accountant's fee application, Goland provides no evidence to support his claim that the billing is excessive and wasteful or that the services were not actually performed. There is no reason to doubt the accountant's extensive detailed records.

Similarly, the objection to the attorney's fees lack standing and the fees are supported by extensive billing detail. Much of the fees reflect the time and effort that the Trustee put in to investigate the Compton Property and the best way for resolving those issues.

Proposed Ruling

As to the fees for the accountant and the attorney – Goland has had at least six weeks to file a detailed objection. He could have done so without a computer – handwriting it or typing it. He was able to prepare and file his oppositions. But even if he had, the Trustee is correct that he lacks standing. This is clearly an insolvent estate and even if it wasn't there would be no surplus for Goland. The Trustee has the duty to review the fees of her professionals and the detailed billing reflects the work done. The Compton property was an asset worth investigating and this took time and effort. This was not an easy case and the fees were justified.

As to Mr. Burk, his opposition was signed on June 5. The BNC

10:00 AM

CONT... Michael Robert Goland **Chapter 7**

certificate of service shows that the notice was sent to him on May 21, 2020 at the address on his opposition. Although the clerk's office may have been closed to the walk-in public, PACER was available and he could have obtained a copy through that service or from the Trustee. Mr. Burk is not a stranger to this Court.

As to Mr. Lewis, the Court does not find his objections to be actionable. He certainly had the standing to take the actions complained of. The Trustee has wide discretion to act in what she considers the best interest of the estate. Mr. Lewis was an active creditor in this case. He entered into a stipulation with the Trustee as to the status of his claim. That is now final and will not be reopened. Concerning filing a complaint against the Trustee. I believe that he only needs permission if the complaint is to be filed in another court than the bankruptcy court. There is no need to allow it to be filed elsewhere. While an adversary complaint may or may not be warranted, if it is to be filed it must be done so by a date certain and in this court. It is time for this case to move to closure.

It should be noted that on June 16, 2020, Mr. Burk filed an adversary proceeding against Ms. Zamora (1:20-ap-01063). That is not Michael N. Sofris is his counsel in that case.

I will approve the fees of the Trustee's counsel and of her accountant. As to the final report, I think that this must wait until the Burk adversary is resolved and – if Lewis files one – until that is also resolved.

Party Information

Debtor(s):

Michael Robert Goland	Represented By David S Hagen

Trustee(s):

Nancy J Zamora (TR)	Represented By Jessica L Bagdanov David Seror Ezra Brutzkus Gubner

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

Tuesday, August 25, 2020 **Hearing Room 303**

8:00 AM
1:00-00000 **Chapter**

#0.00 **You will not be permitted to be physically present in the courtroom.**

All appearances for the August 25, 2020 calendar will be by Court Call, dial dial 1-886-582-6878 or 1-888-882-6878

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Tuesday, August 25, 2020 **Hearing Room 303**

10:00 AM

1:10-24968 Glen E Pyle **Chapter 7**

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

#1.00 Motion to Enforce Stipulation and Order of 10-4-2017 for Disbursal of Gross Proceeds and for an Award of Attorney's Fees and Costs

Docket 296

Tentative Ruling:

It appears that the Trustee will sell Vermont and abandon Sunland to Pyle. Vermont appears to have a net equity of $195,000; Sunland has a net equity of $703,770. There will be enough money from the sale of either or both properties to pay the $90,270 allegedly due to creditors plus the estate requirements of commission and fees. Without elimination of interest for the creditors, the amount to be paid would be about twice as much since the bankruptcy is over 10 years old. The avoidance action requires that interest not be eliminated.

Berry has a state court judgment of about $22,582, which is now in the amount of about $48,378. Campbell's civil judgment now exceeds $170,000.

The Trustee should not acquiesce to receiving only $90,270 and should not abandon Sunland to Pyle since the cost of sale of Vermont will reduce the probably net from $195,000 to $167,000.

Vermont was listed for too little and should have been listed for its fair market value of $661,000 or higher to give room for negotiations.

By allowing Pyle to retain Sunland, he is not being admonished for his 10 years of frivolous litigation and fraudulent activity in concealing his assets. The $175,000 trust deed had not consideration and is unenforceable.

Mr. Berry requests that the Court require the Trustee to follow the terms of the 2017 order despite the change from a avoidance action to a turnover case. This would mean that Berry would receive $8,000 plus 50% of the gross proceeds, plus about $17,378 (Berry's creditor's share from the bankruptcy Trustee's 50% share. This would mean an award to Berry of

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CONT... Glen E Pyle **Chapter 7**

about $200,000. Further, the Trustee should not distribute any amount to Sweetwater Management Co., Inc. or any other recipient or beneficiary of that voidable trust deed.

Berry filed the avoidance action. The Trustee allowed Berry to continue to prosecute that action and that he could retain 60% of the gross proceeds after payment of attorney's fees and costs. Berry has expended $283,000 in attorney and paralegal fees and costs. During the prosecution of this case, Berry took three depositions of Pyle, reviewed hundreds of documents, successfully defended a motion for summary judgment, and spent time in settlement conferences which Pyle's counsel never memorialized and produced. When Berry fell ill, there was an 18 month delay. Then Pyle was ill and that caused a one year delay. More settlements were offered, but never memorialized.

By Oct. 4, 2017, Berry was sick enough that he had to give up his law practice and close his office. He stipulated with the Trustee to turn the prosecution over to new counsel. It was agreed that Berry's share would be reduced from 60% of the proceeds to 50% of the proceeds after payment to Berry of up to $8,000 in costs that he had fronted. This was approved by the Court (dkt. 50).

Berry attended the Campbell trial and found out about two title reports that shows three technical defects in the June 24, 2004 deeds that Pyle claimed had transferred titles to his irrevocable trust. Berry provided that to Mr. Pena who used it to file the motion for turnover of property. It was Berry's research that allowed this to happen.

Pena claims that the original adversary was mooted by the turnover order and thus Berry is limited to his rights as a creditor with no additional percentage compensation.

Opposition of Mary Casament as Success Trustee to the Campbell Trust

Campbell is the largest creditor. The Berry motion is confusing since there is no sale of Vermont at this time. Thus it is premature It is also confusing as to how much Berry is requesting since at one point he states that he should get $334,878 from the proposed sale of Vermont.

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Opposition of Trustee

The motion was improperly served since it needed to go to the debtor, the debtor's attorny, the trustee, and all creditors: FRBP 2002(a)(6). Also, the property has not yet sold and so there is no way to calculate how much – if anything – Berry is entitled to.

Berry never served as Trustee's counsel and never was employed as such. Thus he cannot seek compensation under 11 USC sec. 350. His actual status was as a purchaser of the avoidance actions against Pyle and his related entities. Berry purchased the Estate's claims and if he recovered, he would share proceeds with the Estate. But once Berry was physically unable to continue prosecuting the claims, he turned them back to the Trustee, who employed counsel to resolve the avoidance actions.

At this point the Estate has not recovered any monies from a sale of the Estate's interest in the properties.

Reply

Berry's abstract of judgment is prior to the Campbell one.

The sec. 363 issues were resolved when the Court approved the stipulation between Berry and the Trustee. The rights of other creditors were compromised by the stipulation, which the Trustee drafted. The other creditors will receive their shares of from the 40% that the Trustee retains.

Berry is not ignoring the claims of Maitland, Campbell, and the child support. If the Trustee does not abandon Sunland, the Estate will not be insolvent.

Under the terms of the Stipulation, it was contemplated that Berry would be able to hire counsel and that these would be paid out of the gross proceeds before calculating the amount to be divided between Berry and the Estate. Berry also disputes the Trustee's calculations of the amount of liens on the property.

Analysis

To a certain extent this motion is premature since the properties have not been liquidated and there is no motion to sell or motion to distribute. But it is best to resolve the issues of the terms of Berry's compensation or the formula for his claim.

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The First Amended Complaint (dkt. 4) is the operative pleading in this adversary proceeding. Berry filed this in pro per on 3/29/11. His standing was as a judgment creditor of Pyle. The complaint deals with both Vermont and Sunland and claims that Pyle conveyed a deed of trust to Sweetwater Management on Vermont and title by grant deed to Pyle's irrevocable trust and to Sweetwater Management on Sunland. The complaint goes on to state the legal basis of the fraudulent transfer claim and also an alter ego assertion. The asserted remedy is to annul the transfers, restraining Sweetwater and the trust from transferring their interest, and creating a judgment lien on the property. He also asks for costs of suit and general damages of $22,580, special damages of $22,580, and punitive damages of $75,000. The complaint does not seek turnover of the property. [presumably the judgment lien would allow Berry to execute in order to recover his damage claim.]

Due to the health of both parties, there were gaps of many months, but Berry diligently prosecuted this complaint for years. As a secured creditor, he had standing to proceed. In May 2011, the Trustee filed a motion to sell to Berry the Estate's interest in the avoidance action (bk10:24968, dkt. 18). The purchase price was described as "40% of the net proceeds of any recovery minus attorneys fees and costs." What was being sold was a right to prosecute the fraudulent transfer action (dkt. 18, p. 2:23-24). But later on this is identified as the "Estate's Interest in the Pyle Transfer." (dkt. 18, p. 3:7-8) And it also states that the Trustee is seeking Court authorization for "the sale of the Trustee's avoidance powers pursuant to the Buyer 11 USC sec. 363(b)." (dkt. 18, p. 5:5-6)

Notice was given to all creditors, no opposition was received, and the order was entered (dkt. 24). The operative language of this very short order stated:

> It is further ORDERED that the Trustee is authorized to sell the Trustee's avoiding power rights to creditor, Marc Berry ("Mr. Berry" or "Buyer"), to recover business assets sold by the Debtor to an employee pre-petition for less than reasonable equivalent value ("Pyle Transfer"), for 40% of the net proceeds of any recovery after payment of attorney fees and costs, ("Purchase Amount"). Further, Mr. Berry will provide quarterly updates on the status of litigation as set in accordance with the terms and conditions set forth in the Motion.

Litigation went forward in the adversary proceeding, but when Mr.

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Berry was no longer capable for completing it, he and the Trustee modified the prior order by the stipulation in question, which was sent to all creditors. (dkt. 50)

> 1. Berry hereby unconditionally and irrevocably assigns, grants, and transfers all rights, title, interest, and obligation in, to and under the Adversary Proceeding and the claims asserted therein to the Trustee, solely in her capacity as the bankruptcy trustee of the above captioned estate.
>
> 2. The Trustee has sole authority and discretion, subject to Court approval, to prosecute or not, compromise, settle, dismiss or take any other action related to the Adversary Proceeding.
>
> 3. The Trustee and Berry agree to distribute the gross proceeds of any settlement, judgment or proceeds from the Adversary Proceeding as follows:
>
> a. First, upon satisfactory proof to the Trustee, all of Berry's costs associated with this Adversary Proceeding up to $8,000.00;
>
> b. After payment of the costs in paragraph "a." fifty percent (50%) to Berry and fifty percent (50%) to the bankruptcy estate.
>
> 4. Berry's claims in the Debtor's bankruptcy case shall be unaffected by this Stipulation.
>
> 5. Berry's sanctions awards against the Debtor and or the Debtor's counsel shall remain Berry's property to enforce as he deems appropriate.

There were no objections and the Court entered a brief order approving the stipulation (dkt. 53). At that same time the Trustee hired Pena and Soma, APC as her general counsel After a bit of confusion, Mr. Pena took over prosecuting the adversary proceeding and proceeded through two paths: (1) seeking a turnover order as to both Vermont and Sunland in the main bankruptcy case (dkt. 66, 78)and (2) seeking a default

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judgment in the adversary proceeding against Sweetwater as to its asserted interest in Vermont (dkt. 306). [Pyle and the Trustee have stipulated to avoiding the transfer as to Vermont. (dkt. 303)] As of this point in time the Trustee has taken possession of Vermont, but Sunland will be delayed for an unknown period of time due to the covid crisis and the inability of the Sheriff to execute on that property. The Trustee has not yet brought a motion to sell the Estate's interest in either or both of these properties., although she has employed a real estate broker for Vermont. (dkt. 74, 83) Mr. Berry is seeking a determination of his rights to the proceeds of any sale.

Mr. Berry was not hired as counsel, so this is not an application for fees although that is how he frames his motion. Rather, the deal that he made with the Trustee is that he would own the litigation rights for the avoidance action. If he brought it to a successful conclusion, he would split the eventual proceeds of sale with the Estate in a predetermined ratio. Berry, who is an attorney, represented himself and did not need an order of employment by the Court. He is not an employed professional under sec. 327.

Since he did not represent the Estate, his sole participation was to prosecute the adversary proceeding. Once he would obtain judgment, that judgment would belong to the Trustee. The properties would be properties of the Estate without the claims of the Pyle Trust or Sweetwater Management.

The litigation as to the transfer of Vermont has now been concluded by a stipulation with Pyle which will void the transfer of Vermont. Although the litigation is not yet resolved as to Sunland, it is reasonable to deal with any issues as to the award that Berry is entitled to. As assets are liquidated, the Trustee can then make the appropriate distribution.

First of all, the turnover motion was not part of Berry's portfolio. That it was brought while the adversary was still unresolved is not relevant to the agreement with the Trustee. It was filed in the main bankruptcy case – as it had to be – and not in the adversary proceeding. Berry had no standing to move forward in the bankruptcy case itself.

The adversary proceeding deals with both Vermont and Sunland.

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So the proceeds mentioned in paragraph 3 of the second stipulation concerns both properties. There is no mention of what might happen if the Trustee abandons Sunland. That issue and the sales price of both properties will be faced when the Trustee brings a motion to sell or to abandon each property. Berry is a secured creditor and an administrative creditor (secured by his abstract of judgment to the extent of his state court judgment and an administrative creditor under the terms of his stipulation with the Trustee). Because there appears to be sufficient equity in these properties (once the Trustee cleans title), it is likely that he will receive his secured claim with all accrued interest as provided for under the law of California.

The administrative portion of his claim is based on a post-petition contract with the Trustee. It is not a prepetition unsecured claim. It has been approved by the Court on notice to all creditors, etc. and should be honored in full. In part, this appears to be a claim under 11 USC sec. 503(b)(3)(B): "the actual, necessary expenses, other than compensation and reimbursement in paragraph (4) of this subsection, incurred by a creditor that recovers, after the court's approval, for the benefit of the estate any property transferred or concealed by the debtor." That would cover Mr. Berry's request for reimbursement of costs.

As to the balance of the stipulation, the Court really does not see the difference between the Trustee entering into a contingency agreement to sell estate property and this contingent agreement to own the fraudulent transfer cause of action and pay a percent to the Trustee on successfully completing the transaction (sale of property in the case of the real estate agent or removal of the transfer in this case).

The stipulation is clear. Once the propert(ies) are sold, Berry gets up to $8,000 for costs and then 50% of the remainder. His liens will stay on the property and be paid under the regular distribution as a secured claim. This means a lot less money for the Trustee's professionals and other creditors, but that is the terms of the deal. The only question here is whether the Court should reduce it by some amount because the Trustee obtained the default judgment/stipulation as to Vermont and will complete the litigation as to Sunland. But these were anticipated in the stipulation. It was not the first stipulation when it looked as if Berry would handle this

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case until the end. It was the second stipulation that was entered into because it was clear that Berry needed to exit the case and turn it back to the Trustee and her professionals.

Having said that, the Court does have the power to adjust the amount of the award if it would be unreasonable. Mr. Berry did not bring this adversary proceeding for altruistic reasons. If I remember correctly, at some point in time he was Mr. Pyle's attorney and his state court judgment was for fees that Pyle owed to him. By removing the fraudulent transfer, which preceded his judgment lien, he was able to find an asset that would allow him to collect on his judgment. The level of animosity that was plain in this case meant that Berry would have proceeded for his own benefit if there had been no bankruptcy. Under state law he would not have been entitled to more than his judgment, plus some minor costs such as deposition fees.

Here he is claiming attorney fees as the Trustee's attorney. He is not entitled to those as he was never employed in that capacity. He acted pro se. But he did spend an enormous amount of time on this case and the Trustee recognized this by implication in signing the second stipulation. In fact, the second stipulation provides a different split of the net proceeds and that seems to take into account the extensive effort that Berry has been required to make. But, anyway, it was a negotiated agreement of the interests involved and the Trustee has not provided any information that shows changed circumstances since she entered into the second stipulation. Thus the Court holds that this agreement should stand.

The exact amounts to be paid to Mr. Berry will be determined after the sale of both properties. It will only apply to the net proceeds after costs of sale and payment of property taxes or any other costs necessary to transfer the properties to the new owners.

Party Information

Debtor(s):

Glen E Pyle — Pro Se

Defendant(s):

Glen E Pyle — Represented By
Raymond H. Aver

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Sweetwater Management Company	Pro Se
Glen E Pyle Irrevocable Trust	Represented By Raymond H. Aver

Plaintiff(s):

Amy Goldman	Represented By Leonard Pena

Trustee(s):

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

1:15-14213 Michael Robert Goland **Chapter 7**
Adv#: 1:20-01063 Burk v. Zamora

#2.00 Motion to Dismiss Complaint with Prejudice

Docket 9

Tentative Ruling:

Complaint –

Burk seeks declaratory judgment that he is the proper owner of the Property at 5721-5711 Compton Ave, LA, that the Trustee breached her fiduciary duty by failing to collect and pay taxes, that the Trustee failed to collect fair market rent for the Estate in an amount exceeding $110,000, and that the Trustee failed to collect fair market rent for Burk and interfered with his possessory rights to the Property.

The complaint sets forth the chain of title. Goland's bankruptcy petition was filed 12/20/15, but Goland never showed ownership in the Property. In 2014, KCC purchased the property at foreclosure. On 3/2/17 KCC issued a grant deed to Burk as trustee for the 5721 Trust. On 6/21/17 the Trustee filed a motion to operate the Property claiming that the Estate owned the Property

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and had the right to collect rent.. This was approved by the Court. The Trustee indicated that she would later file an adversary complaint to determine title. She never did and on 11/26/19 she abandoned all Estate claims to the Property. On 1/19/20 the Court approved the sale of all Estate rights to the tenant, Triple Images, LLC (TI).

Motion to Dismiss

Burk had actual notice of the Trustee actions as to the Property and has not complained during the three years. The Trustee originally obtained the right to collect rent through the settlement with Bret Lewis, which was approved by the Court. That was a final order and Burk should have objected at the time. This lawsuit is an improper, very late attempted collateral attach on the Rent Settlement Order as well as later orders allowing the Trustee to collect rent. The Trustee is immune from potential liability arising from breaches of fiduciary duties owed to creditors of the Estate since she was acting with the authority of Court orders.

As creditor, Burk will receive a pro rata distribution from the Estate.

As to payment of taxes, the property taxes had not been paid for more than 20 years and as of Oct. 2019 there was $350,000+ owing to the LACTTC. In Oct. 2019 the Trustee and the LACTTC stipulated to relief from the automatic stay so that the LACTTC could hold a tax sale. They had already tried to hold such a sale in 2005, 2007, and 2014. Burk was served with this stipulation. Burk received the tax bills and never forwarded them to the Trustee. The Trustee had been authorized to pay taxes, but not directed to do so.

The Trustee decided to sell the Estate's interest (whatever that was) because it was not an efficient use of resources to challenge legal title to the property. The Sale Motion took place and Burk did not file an objection or appeal.

A complaint may be dismissed under Rule 12(b)(6) when an affirmative defense appears on the face of the complaint. In this case the affirmative defenses of laches and the Trustee's quasi-judicial immunity are clear. This complaint should be dismissed with prejudice.

Opposition to Motion to Dismiss

The Trustee never filed the adversary proceeding to determine the ownership of the Property and the rental income, but sought to use that

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money to pay herself and her professionals. This money belongs to Burk. Further, at least $118,000 or the $131,900 collected by the Trustee during the three years is not property of the Estate, but belongs to Burk.

As to the stipulation with the LACTTC, there would be no tax sale if the Trustee had used the rents to pay the taxes.

The motion to dismiss includes additional facts which are outside the complaint itself and cannot be considered. This motion ignores these additional facts.

As to laches, the Court never decided that the rents belong to the Estate. The Trustee was allowed to collect rent, but not necessarily own them. Thus laches as to the ownership of the Property and of the rents has never been decided. This is clear from the tentative ruling on the sale of the Property when it dealt with the Cohen opposition and claim of ownership.

Laches requires to pongs: that there was a significant delay without justifiable reason and that the delay is prejudicial to defendant's ability to respond. One rule of thumb is to compare the claim to the statute of limitations with additional time added. You look at it in the context of the ongoing litigation and whether evidence and witnesses will be lost or tainted or no longer available.

That is not the situation in the Trustee's motion. The three year delay is not shown to be unreasonable, particularly since the statute of limitations is four years (CCP sec. 337.2).and probably would not have started running until the Trustee sold the interest in the Property or the motion to make distribution. Given the length of a bankruptcy proceeding, three years is not unreasonable.

Burk also had a justifiable reason for delay because the Trustee had planned to bring an adversary action to determine ownership of the Property.

The Trustee has not shown any actual prejudice such as witnesses or documents having become unavailable.

There was no final determination that the rent belonged to the Estate and there was no prior litigation on the issue, so collateral estoppel cannot apply. The settlement with Lewis only dealt with the Estate's interest in rent Lewis had collected, not future rents. Being put on notice of the settlement is simply not enough to create collateral estoppel.

The Trustee does not enjoy absolute immunity, only qualified immunity under the business judgment rule. The Trustee never made a business judgment or attempted to hire an experienced property manager. Also what

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the Trustee did was a routine duty, not a task that is judicial in nature. And if the Property is not property of the Estate, there is no immunity.

Litigation privilege does not exist to bar causes of action involving fiduciary duty, negligence and ownership of estate assets.

Reply

The Trustee has immunity from the claims for breach of fiduciary duty. Beyond the various orders, the Trustee file monthly operating reports that showed the rent collected and expenses paid. So all actions were under court order, which allowed the Trustee to receive rent of $2,100 per month. There were allegations of hazardous waste and no appraisal was required. Bringing the motion to collect rents and to continue to operate the Property were business decisions of the Trustee.

As to property taxes, the Trustee did not pay these since she received no bills. This is a judicially noticeable fact. The Trustee had authority to pay property taxes, but was not ordered to do so. In fact, Burk was the one who received the property tax bills. Burk was lying in wait and concealed facts from the Trustee. Thus the Court can treat this issue as a motion for summary judgment and rule in that manner.

As to the declaratory relief claim, that is barred by collateral estoppel and equitable estoppel. Burk has said nothing while the Trustee collected the rents. No matter who legal owns the rents, the question is whether Burk should be collaterally estopped from challenging whether the Trustee was authorized to collect them for the benefit of the estate. This was actually litigated in connection with the Motion to Operate. At that time, no one objected to the Trustee's right to operate the property. The Trustee never intended to collect the rents for Burk's benefit.

Laches applies even if the statute of limitations has not run. Burk knew or should have known of the Trustee's claim to an interest in the rents as early as February 2017 when Burk and his attorney received actual notice of the Lewis settlement. The Trustee employed professionals and incurred significant expense in this case and they all believed that they would be at least partially paid from the rents collected.

The Trustee's statements as to payment of taxes or ascertain title is cannot be the basis of the action.

ANALYSIS

Evidentiary Objections to Burk Declaration

Paragraph 3 – Overruled as to whether Burk actually told the tenant that the rent was being raised in that it is not admitted for the truth that this was the fair market value at the time it was said.

Paragraph 4 – Sustained. Irrelevant. Does not show foundation or personal knowledge.

Paragraph 5 – Sustained.

Paragraph 6 – Overruled. This goes to Burk's basis of action at this time, not the truth of the third party statement.

The initial claim for relief is for declaratory relief to determine the rights of the Estate in the Property and in the rent generated from the Property. This is a critical determination. If Goland does not have rights in the Property, the Estate has no rights or interest in the rent. If Burk is, in fact, the owner of the Property (either as an individual or through an entity that he owns), the rents are not property of the Estate.

As to the issue of collateral estoppel, no final determination has been made. From the beginning, the Trustee asserted that she would bring an adversary proceeding to determine ownership rights, but she did not do so. She – and the Court – just assumed that the rents could be collected by the Trustee and used to fund the Estate because no one else came forward to dispute this. But that did not mean that silence at that time was consent. Until the Trustee triggered something, Burk or any other owner could sit back and allow the Trustee to collect the rents, knowing that eventually there would be a judicial determination of his/their rights. But that determination never came.

The settlement with Bret Lewis was just that – a settlement with a creditor who claimed a right to collect rent. It was not a determination that other parties did not have any rights in the Property.

Only when the Trustee filed her final report and did seek a determination that the Estate could keep the rent money did it become incumbent on Burk to act. That only happened within the last year. No statute of limitations has run and there is no automatic determination of

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laches. The argument that the Trustee and her professionals depended on the pot of rent for their fees is just an argument at this time. Perhaps in the litigation the Trustee can show the detriment that she or the Estate suffered due to the timing, but this is not a given and grounds for dismissal as an affirmative defense. The motion to dismiss the first cause of action is denied.

As to the issue of fiduciary duty for failure to pay taxes, the Estate does not seem to be liable for the collection and payment of taxes. The owner of the Property is responsible for the payment of property taxes. If the property is sold at a tax sale, that is not a loss to the Estate since it sold its interest (if any) at a noticed sale. Burk and his attorney had notice of this sale and the order is final. If Burk is, in fact, the owner, taxes are his responsibility whether there was rent collected or not. Under the circumstances of this case, the Trustee did not owe a fiduciary duty to Burk as the purported owner of the Property or to the Estate. Thus the motion to dismiss the Second Cause of Action with prejudice will be granted.

The third and fourth causes of action concern the failure of the Trustee to collect fair market rent for the use of the property – the third claim is as to the Estate and the fourth is as to Burk. In his opposition brief, Burk asserts that he advised the Trustee of the fair market rental value and, in fact, had given the tenant notice of this prior to the filing of the bankruptcy. But this is not included in the complaint itself and the statements in his declaration are only partially admissible. Assuming that the complaint is amended to include sufficient facts to show that the amount collected by the Trustee was below fair market rental value, the third and fourth causes of action can survive. As a creditor of this Estate, Burk has standing to bring the third cause of action. As the purported owner of the Property and the rents collected, he also has standing to bring the fourth cause of action. The motion to dismiss the Third Cause of Action is granted with leave to amend. The motion to dismiss the Fourth Cause of Action is granted with leave to amend.

The amended complaint is to be filed by September 11, 2020. The Trustee will have until September 28, 2020 to respond. The status conference will be continued to October 27, 2020 at 10:00 a.m.

Party Information

Debtor(s):

Michael Robert Goland — Represented By
David S Hagen

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CONT... Michael Robert Goland **Chapter 7**

Defendant(s):

Nancy Zamora — Represented By Jessica L Bagdanov

Plaintiff(s):

Gerry Burk — Represented By Michael N Sofris

Trustee(s):

Nancy J Zamora (TR) — Represented By Jessica L Bagdanov, David Seror, Ezra Brutzkus Gubner

1:15-14213 Michael Robert Goland **Chapter 7**
Adv#: 1:20-01063 Burk v. Zamora

#3.00 Motion for Sanctions Pursuant to Rule 11 of the Federal Rules of Civil Procedure and Rule 9011 of the Federal Rules of Bankruptcy Procedure

Docket 10

Tentative Ruling:

The motion is based on an assertion that the lawsuit is improper because it is extremely late, is a collateral attack on the Rent Settlement Order, and because the Trustee is immune from all potential liability arising from this adversary proceeding. The complaint was filed for an improper purpose and sanctions are warranted. [The background and reasoning are as set out in the motion to dismiss.]

The Trustee complied with the safe harbor provisions of FRBP 9011(c)(1)(A) by sending a letter and a copy of the unfiled motion to Plaintiff's counsel on June 30, 2020. The motion for sanctions was filed on July 31.

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The Trustee seeks $5924,66 for fees and expenses and additional sanctions to deter future behavior. Also that these be jointly and severally imposed against Burk and his attorney.

Opposition

These are not frivolous claims. As to declaratory relief, the issue is who owns the rent, not the collecting or management of the rent or of the property and not the sale of the alleged rights. This issue of ownership has never been decided by the Court. The affirmative defenses of laches and collateral estoppel do not make the Plaintiff's claim frivolous. They must be proven and simply listing them is not sufficient. [The arguments as to laches and collateral estoppel are set out in the opposition to the motion to dismiss the complaint.]

As to the assertion of breach of fiduciary duty by failure to pay taxes and to collect fair market rent, the Trustee knew it was her duty to pay taxes and that was part of her motion to collect the rents. That she failed to contact the L.A. County Assessor's Office to find out the amount is not a defense to her failure to do her duty and pay the taxes. An ordinary prudent person under the circumstances would have done this. As to market value, the Plaintiff informed the Trustee that the amount of rent being charged was below market value given the Trustee's valuation of the property at $1.8 million.

The rent was the only source of income for the Estate. The Trustee could have collected $3,000 per month more if she had only written a letter to the tenant.

The Trustee is not protected by immunity. [See the opposition to the motion to dismiss the complaint for the basis of this.]

Although only some of the defenses are for the benefit of the Estate as opposed to those for the benefit of the Trustee personally, the Estate is handling all legal costs. There is also an inherent conflict of interest between the interest of the Estate and the personal interest of the Trustee.

Burk's declaration states that he had discussed with the Trustee the value of the property, the payment of taxes, and the low rent. He told the Trustee that prior to the bankruptcy, he had notified the tenant that the rent was being raised to $5,000 a month. After the Trustee ceased operating the

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property in January 2020, he notified the tenant that the rent would be $6,600 per month.

In October 2109 he contacted the Trustee's attorney about the LA County Assessor wanting to sell the Property for back taxes. They never responded to his emails. That was when he realized that the Trustee was not going to bring a quiet title action. At the beginning of 2020 he contacted the Trustee's attorney and requested that the postpone selling the Estate's rights to Triple Image and told them that the rents belong to him and he would like to resolve the matter with them. They rebuffed his efforts.

Reply

The Trustee never promised the Court that she would be filing an adversary proceeding. She has always asserted that the rents belong to the Estate. The ownership interest of the Estate was open until the Trustee sold the rights to the tenant. When Burk and the Trustee met early in the case, the Trustee asked Burk if he would be willing to buy the Estate's interest in the property to avoid future disputes (at that time to the state of legal title). Burk did not make an offer and decided to wait until the Trustee operated the property for over three years.

Burk's actions indicate an intent to harass and intimidate the Trustee and this action was brought for an improper purpose and subject to Rule 11. Burk's reference to prior cases before this court in which Zamora was the trustee shows his intent to pursue this and his intentional delays. He never disputes that he got the property tax bills. The contention that Brutzkus Gubner is conflicted from representing the Trustee is ridiculous. The case is administratively insolvent and counsel will be paid nothing for defending this case.

The balance is largely a repeat of the issues raised in opposition to the motion to dismiss.

Ms. Zamora includes her declaration that she met with Burk in January 2017 and that there were discussions for months thereafter in an attempt to mediate with Mr. Burk a result that would benefit the Estate. The mediation never took place and there were no in person meetings after Jan. 20, 2017. He she been aware in 2017 that Burk would seek to obtain all of the rents collected, she would probably have not continued to operate this property.

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PROPOSED RULING
For the reasons stated in the tentative ruling on the Motion to Dismiss, this Motion for Sanctions is denied.

Party Information

Debtor(s):

Michael Robert Goland — Represented By David S Hagen

Defendant(s):

Nancy Zamora — Represented By Jessica L Bagdanov

Plaintiff(s):

Gerry Burk — Represented By Michael N Sofris

Trustee(s):

Nancy J Zamora (TR) — Represented By Jessica L Bagdanov, David Seror, Ezra Brutzkus Gubner

1:15-14213 Michael Robert Goland **Chapter 7**
Adv#: 1:20-01063 Burk v. Zamora

#4.00 Status Conference Re Complaint for
1 - Declaratory Judgment
2 - Breach of Fiduciary Duty - Taxes
3 - Failure to Collect Rent - Estate
4 - Failure to Collect Rent - Plaintiff

Docket 1

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Tentative Ruling:

Continue to Oct. 27, 2020 at 10:00 a.m. In the meantime, would it be worthwhile for the parties to enter into a mediation?

Party Information

Debtor(s):

Michael Robert Goland	Represented By David S Hagen

Defendant(s):

Nancy Zamora	Pro Se

Plaintiff(s):

Gerry Burk	Represented By Michael N Sofris

Trustee(s):

Nancy J Zamora (TR)	Represented By Jessica L Bagdanov David Seror Ezra Brutzkus Gubner

1:16-11387 Real Estate Short Sales Inc **Chapter 7**

#5.00 Trustee's Final Report and Applications for Compensation

Trustee:
Nancy Zamora

Attorney for Trustee:
Brutzkus Gubner

Accountant for Trustee:
SLBIGGS

10:00 AM
CONT... Real Estate Short Sales Inc **Chapter 7**
Docket 480

Tentative Ruling:

This is an administratively insolvent estate.

Trustee: Nancy Zamora - approve final report and Trustee's fees and costs

Attorney for Trustee: Brutzkus Gubner - approve fees and costs as requested

Accountant for Trustee: SLBIGGS - approve fees and costs as requested

No appearance necessary.

Party Information

Debtor(s):

Real Estate Short Sales Inc — Represented By
Stephen L Burton

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 15, 2020 **Hearing Room 303**

10:00 AM
1:00-00000 **Chapter**

#0.00 **You will not be permitted to be physically present in the courtroom.**

The 10:00 A.M. Calendar Hearing will be by Court Call, dial 1-886-582-6878 or 1-888-882-6878

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Tuesday, September 15, 2020 **Hearing Room 303**

10:00 AM

1:05-13556 Linda Widdowson **Chapter 7**

Adv#: 1:20-01023 Fidelity National Title Company v. Widdowson et al

#1.00 Motion to Deposit Funds into Court Registry

fr. 7/21/20

Docket 27

Tentative Ruling:

In 2007 Trustee sold the debtor's single family residence at 194 Saddlebow Rd., Bell Canyon. This was free and clear of liens. Fidelity National Title Co (Fidelity) was the sub-agent of Valley Escrow. Two abstracts of judgment were discovered: $35,332.29 recorded on 9/16/03 in favor of Ford and $21,870.53 recorded on 10/1/03 in favor of Citibank. Fidelity is holding $57,202.82 in the sub-escrow account and has never received further instructions from the Trustee. Fidelity wants to turn these over to the Trustee.

David Seror, the trustee, has filed an answer. Seror asserts that to the extent that Citibank and Ford each have a valid, perfected, non-avoidable security interest in the funds, that is superior to the Estate's interest, but the Estate's interest is superior to that of the Debtor.

Per the status report filed on 9/3, Widdowson was served by publication. On 9/11, Fidelity filed a request for entry of default as to Citibank, but there were technical errors. This was resubmitted on 9/14. Per the status report, Plaintiff will be submitting a request to default Widdowson.

Ford Credit Titling Trust filed an answer and a crossclaim against Citibank on 9/3. That status conference is set for 11/17.

Once the money is deposited, will the Trustee take over the prosecution of this case or will it all be decided by the Ford v. Citibank matter?

Continue this to 11/17 at 10:00 a.m. If there is no objection to the continuance, no appearance is needed on 9/15.

Party Information

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

Tuesday, September 15, 2020 **Hearing Room 303**

10:00 AM

CONT... Linda Widdowson **Chapter 7**

Debtor(s):

Linda Widdowson	Represented By Michael E Mahurin David A Tilem Susan I Montgomery

Defendant(s):

Linda Widdowson	Pro Se
DAVID SEROR ESQ	Pro Se
Citibank (South Dakota) N.A.	Pro Se
FORD CREDIT TITLING TRUST	Represented By Adam N Barasch

Plaintiff(s):

Fidelity National Title Company	Represented By Sheri Kanesaka

Trustee(s):

David Seror (TR)	Represented By Anthony A Friedman Anthony A Friedman Susan I Montgomery

10:00 AM

1:05-13556 Linda Widdowson **Chapter 7**

Adv#: 1:20-01023 Fidelity National Title Company v. Widdowson et al

#2.00 Status Conference Re:
Complaint for Interpleader and Declaratory Relief.

fr. 4/7/20; 6/2/20, 7/21/20

Docket 1

Tentative Ruling:

Ford Credit Titling Trust filed an answer and a crossclaim against Citibank on 9/3. The status conference for the cross-claim is set for 11/17. Continue this without appearance to 11/17 at 10:00 a.m.

Prior tentative ruling (7/21/20)

On July 1 the clerk's office issue another summons on Citibank. The answer is due on 7/31. On 6/22 the court entered its order allowing service by publication on the debtor. Continue by stipulation to September 15, 2020 at 10:00 a.m. to allow the service by publication on Widdowson to be completed.

Prior tentative ruling (6/2/20)

In 2007 Trustee sold the debtor's single family resident at 194 Saddlebow Rd., Bell Canyon. This was free and clear of liens. Fidelity National Title Co (Fidelity) was the sub-agent of Valley Escrow. Two abstracts of judgment were discovered: $35,332.29 recorded on 9/16/03 in favor of Ford and $21,870.53 recorded on 10/1/03 in favor of Citibank. Fidelity is holding $57,202.82 in the sub-escrow account and has never received further instructions from the Trustee. Fidelity wants to turn these over to the Trustee.

Ford has until July 24 to respond. David Seror, the trustee, has filed an answer. Seror asserts that to the extent that Citibank and Ford each have a valid, perfected, non-avoidable security interest in the funs, that is superior

10:00 AM

CONT... Linda Widdowson **Chapter 7**

to the Estate's interest, but the Estate's interest is superior to that of the Debtor

The status report is that Fidelity will file a motion to deposit the funds and to be dismissed. [It previously filed such a motion, but withdrew it.] The Trustee, who joined the status report, sees trial in 90 days and that it will take about 30 minutes. The motion to deposit funds is set for July 21 at 10:00 a.m.

Why no response by Citibank? Did Widdowson get notice (I can't open the proof of service). Once the money is deposited, will the Trustee take over the prosecution of this case?

Prior tentative ruling (4/7/20)
Due to the response to the coronavirus pandemic, this matter is continued without appearance to **June 2, 2020 at 10:00 a.m**. Should you need an emergency hearing before that time, please file a motion requesting that and stating the reason. Plaintiff is to give notice of this continuance to all defendants.

Party Information

Debtor(s):

Linda Widdowson	Represented By Michael E Mahurin David A Tilem Susan I Montgomery

Defendant(s):

Linda Widdowson	Pro Se
DAVID SEROR ESQ	Pro Se
Citibank (South Dakota) N.A.	Pro Se
FORD CREDIT TITLING TRUST	Pro Se

Plaintiff(s):

Fidelity National Title Company	Represented By

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

Tuesday, September 15, 2020 **Hearing Room 302**

10:00 AM
CONT... Linda Widdowson **Chapter 7**

Sheri Kanesaka

Trustee(s):

David Seror (TR) Represented By
Anthony A Friedman
Anthony A Friedman
Susan I Montgomery

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

Tuesday, September 15, 2020 **Hearing Room 303**

10:00 AM

1:06-12243 Edwin Perry Hinds **Chapter 7**

#3.00 Order to Show Casue After Hearing Re: Status of Settlement and Continued Status Conference.

fr. 6/23/20, 7/21/20

Docket 82

Tentative Ruling:

The settlement has been documented and a motion and notice and opportunity were filed on 8/17/20. On 9/9 a declaration of non-opposition to the setllement was filed. The order approving will be signed.

This hearing is off calendar.

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
Michael W Davis

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

Tuesday, September 15, 2020 **Hearing Room 303**

10:00 AM

1:06-12243 Edwin Perry Hinds **Chapter 7**

#4.00 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, 11/19/19, 1/14/20, 3/24/20
5/19/20; 6/23/20, 7/21/20

Docket 1

Tentative Ruling:

Now that the settlement has been reached and the money paid, it appears that all that is left is for the Trustee to make sure that all claims are resolved and file a final report. Because this is a chapter 7 case, there will be no further status conferences unless the Trustee or some other party requests one.

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, September 15, 2020 **Hearing Room 303**

10:00 AM
1:08-11669 Mahboob Talukder **Chapter 7**
Adv#: 1:20-01069 Chicago Title Insurance Company v. Talukder

#5.00 Status Conference Re Complaint to Determine Dischargeability Under 11 U.S.C. Sec. 523(a)(2)(A) and 523(a)(3)(B)

Docket 1

Tentative Ruling:

The facts alleged in this case are as laid out in the tentative ruling on the motion by Chicago Title to confirm that the post-discharge stay does not apply to this debt (bankruptcy case, dkt. 57). The Court determined that this was a pre-petition matter and suggested that it might qualify for a rememdy under 11 USC sec. 523(a)(3)(B) if LasSalle or Chicago did not have notice or actual knowledge of the bankrutpcy case in order to timely file a claim and an adversary proceeding. This could take place in state court of bankruptcy court. The plaintiff has chosen to file this adversary proceeding.

An answer was filed. In the joint status report, Chicago says that it will file a motion for summary judgment and requests a discovery cutoff after November 2020 with a trial in January 2021. The defendant requests a three month continuance of the status conference.

The Court agrees that there is no reason to hold the status conference at this time. If the parties agree there will be no appearance on Sept. 15, 2020. The discovery cutoff will occur on 12/4/20. The status conference will be continued to Dec. 22, 2020 at 10:00 a.m. The Plainiff can file its motion for summary judgment at any date that it wishes.

Party Information

Debtor(s):

Mahboob Talukder — Represented By
Andrew Edward Smyth
William H Brownstein

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

Tuesday, September 15, 2020 **Hearing Room 303**

10:00 AM

CONT... Mahboob Talukder **Chapter 7**

Defendant(s):

Mahboob Talukder — Pro Se

Joint Debtor(s):

Cristina Talukder — Represented By
Andrew Edward Smyth

Plaintiff(s):

Chicago Title Insurance Company — Represented By
Karen A Ragland

Trustee(s):

Amy L Goldman (TR) — Pro Se

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

Tuesday, September 15, 2020 **Hearing Room 303**

10:00 AM

1:08-16001 Leonid Zaks **Chapter 7**

Adv#: 1:08-01593 Wells Fargo Merchant Services LLC v. Proaudio America et al

#5.01 Order to Tamara Zaks to Appear by Telephone for Examination

Docket 50

Tentative Ruling:

This is to set a time and method for a judgment debtor examination. Ms. Zaks had to choice to contact the counsel for Wells Fargo and work this out or to appear by phone at this hearing. Nothing more has been received from either party as of 9/10.

Party Information

Debtor(s):

Leonid Zaks	Represented By Creighton A Stephens

Defendant(s):

Proaudio America	Pro Se
Leonid Zaks	Represented By Creighton A Stephens

Joint Debtor(s):

Tamara Zaks	Represented By Creighton A Stephens

Plaintiff(s):

Wells Fargo Merchant Services LLC	Represented By Allan Herzlich

Trustee(s):

David Seror (TR)	Pro Se

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

Tuesday, September 15, 2020 **Hearing Room 303**

10:00 AM

1:08-16001 Leonid Zaks **Chapter 7**

Adv#: 1:08-01593 Wells Fargo Merchant Services LLC v. Proaudio America et al

#5.02 Order to Leonid Zaks to Appear by Telephone for Examination

Docket 51

Tentative Ruling:

This is to set a time and method for a judgment debtor examination. Mr. Zaks had to choice to contact the counsel for Wells Fargo and work this out or to appear by phone at this hearing. Nothing more has been received from either party as of 9/10.

Party Information

Debtor(s):

Leonid Zaks	Represented By Creighton A Stephens

Defendant(s):

Proaudio America	Pro Se
Leonid Zaks	Represented By Creighton A Stephens

Joint Debtor(s):

Tamara Zaks	Represented By Creighton A Stephens

Plaintiff(s):

Wells Fargo Merchant Services LLC	Represented By Allan Herzlich

Trustee(s):

David Seror (TR)	Pro Se

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; 5/7/19 6/11/19; 7/16/19; 8/20/19; 9/24/19, 12/17/19; 12/23/2019; 2/11/20, 4/7/20; 6/23/20; 7/7/20, 7/21/20

Docket 1

Tentative Ruling:

Continued without appearance to 10/27/20 at 10:00 a.m.

Prior Tentative Ruling (7/7/20)
This will trail the adversary proceeding. No appearance is needed on July 7 and no further status report is needed until you are notified by the Court that one is necessary.

Party Information

Debtor(s):

Majestic Air, Inc. Represented By
Stella A Havkin

10:00 AM
1:16-11538 Majestic Air, Inc. **Chapter 11**

#7.00 Amended Application for Compensation Supplement to Motion and Declarations for Stella A Havkin, Debtor's Attorney

Period: 10/22/2019 to 8/17/2020,
Fee: $7572.50, Expenses: $12.14.

Docket 353

Tentative Ruling:

This is the sixth application for fees by counsel for the debtor-in-possession. She seeks $7,572.50 in fees and $12.14 in costs. The DIP has sufficient funds to pay this.

No opposition received as of 9/13. Approve as requested.

No appearance necessary.

Party Information

Debtor(s):

Majestic Air, Inc. Represented By
Stella A Havkin

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 Dismiss Adversary Proceeding

fr. 12/17/19, 12/23/19; 2/11/20; 4/7/20; 6/2/20, 7/7/20

Docket 85
***** VACATED *** REASON: Second amended complaint dismissed 8/5/20 (eg)**

Tentative Ruling:

A memorandum and order on the motion to dismiss the second amended complaint have been entered. Therefore this is off calendar.

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

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.

#9.00 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, 12/23/19; 2/11/20; 4/7/20; 6/23/20, 7/7/20, 7/21/20

Docket 82

***** VACATED *** REASON: Order cont., s/c to 10/27/20 @ 10am (eg)**

Tentative Ruling:

for 9/15/20-
Continued without appearance to October 27, 2020 at 10:00 a.m. per the order granting the motion to dismiss the second amended complaint with leave to amend.

Prior tentative ruling (7/21/20)
This is just to find out if there is any possibility of settlement. The estate has very few assets and most of those will go to LTP or perhaps be eaten up in attorney fees. While LTP apparently has substantial assets, the Plantiffs would have to win a large judgment in order to collect on those, given the amount of the judgments against them. This will also be a hard-fought and expensive case. Because Ms. Havkin is counsel for the estate, I requested that she appear as any settlement would have to be on behalf of the estate as well as the Tessie Cue probate.

So please update me on the settlement possibility. Meanwhile, I am working on the motion to dismiss. That hearing is set for 9/15/20 at 10:00 a.m.

Prior tentative ruling (7/7/20)
The adversary is proceeding very slowly. Please note that there is less than $100,000 in the estate and the Court cannot tell the chances of an actual

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

reorganization. Is this still an operating company? Will it be operating in the future? It seems from the last report that it has less than $50,000 worth of inventory for resale.

What is the amount available from the Tessie Cue Estate?

There are very few claims in this case - and it appears that the LTP and Tessie Cue claims are the only unsecured ones.

Looking at this there is a serious question of whether you should settle this without further expenditure.

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

10:00 AM
1:16-12255 Solyman Yashouafar **Chapter 11**
Adv#: 1:16-01166 Barlava et al v. Yashouafar

#10.00 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, 8/20/19, 1/28/20

Docket 1

Tentative Ruling:

Per the status report filed on 9/2/20, a status conference is set for 10/5/20 in the LASC case of Barlava v. Roosevelt Lofts and one is set for 10/15/20 in the LASC case of Carla Ridge v. Milbank Holdings. These are both stayed.

The Plaintiffs have no received any notification from the Trustee as to the likelihood he will object to Barlava's claim. Barlava requests a 120 day continuance.

Continue without appearance to 11/17/10 at 10:00 a.m. At that time I will also be holding a status conference on the bankruptcy case to get a timeline from the Trustee.

Prior tentative ruling (8/20/19)
Per the Plantiffs' 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

10:00 AM

CONT... Solyman Yashouafar **Chapter 11**

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.

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 dismiss 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

10:00 AM

CONT... Solyman Yashouafar **Chapter 11**

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 Mark E Goodfriend
Massoud Aaron Yashouafar	Represented By C John M Melissinos

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

Tuesday, September 15, 2020 **Hearing Room 303**

10:00 AM
CONT... Solyman Yashouafar **Chapter 11**

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

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

Tuesday, September 15, 2020 **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; 9/24/19, 11/19/19; 12/23/19, 1/28/20, 3/3/20, 4/7/20, 6/23/20

Docket 1

Tentative Ruling:

Nothing new filed as of 9/11/20. The hearing will be by Court Call. Ms. Beam can attend without charge. Check with the clerk's office if you need information on how to do this. I need an update on what is happening in the superior court.

Prior tentative ruling (6/23/20)
Nothing new filed as of 6/18/20. The hearing will be by Court Call. Ms. Beam can attend without charge. Check with the clerk's office if you need information on how to do this. I assume that nothing has happened in the superior court. If you both agree to a continuance without appearance to 9/15/20 at 10:00, please advise me.

prior tentative ruling (4/7/20)
Due to the response to the coronavirus pandemic, this matter is continued without appearance to **June 23, 2020 at 10:00 a.m.** Should you need an emergency hearing before that time, please file a motion requesting that and stating the reason.

Prior tentative ruling (12/23/19)
Nothing new received as of 12/18.

prior tentative ruling
Ms. Henderson has submitted a copy of the minute order of Judge Dordi on

10:00 AM

CONT... Joseph Daniel Beam **Chapter 7**

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 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)

10:00 AM

CONT... Joseph Daniel Beam **Chapter 7**

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 report, the familiy 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) knowlingly 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 reaons to

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CONT... Joseph Daniel Beam **Chapter 7**

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 reveeal 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 utilites 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 knowlingly 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.

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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
Courtroom 303 Calendar

Tuesday, September 15, 2020 **Hearing Room 303**

10:00 AM

1:10-24968 Glen E Pyle **Chapter 7**

#12.00 Trustee's Motion For Clarification Of The Courts January 30, 2018 Order Granting Motion For Relief From The Automatic Stay

Docket 90

***** VACATED *** REASON: Moved to 10:30.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Glen E Pyle — Pro Se

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, September 15, 2020 **Hearing Room 303**

10:00 AM

1:10-24968 Glen E Pyle **Chapter 7**

#13.00 Trustee's Motion for Order Approving:
(1) Settlement Agreement with Linda Daniel;
and (2) Approving form of Settlement Agreement

Docket 92

***** VACATED *** REASON: Moved to 10:30.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Glen E Pyle — Pro Se

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, September 15, 2020 **Hearing Room 303**

10:00 AM

1:10-24968 Glen E Pyle **Chapter 7**

#14.00 Trustee's Motion for Order:
(1) Authorizing Sale of Estate's and Co-Owner, Linda Daniel's Right, Title and Interest in the Real Property Commonly Known as 25226 Vermont Drive, Santa Clarita, CA 91321 Free and Clear of Liens;
(2) Approving Overbid Procedure;
(3)Approving Payment of Real Estate Brokers' Commissions;
and
(4) Finding Purchaser is a Good Faith Purchaser

Docket 93

***** VACATED *** REASON: Moved to 10:30.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Glen E Pyle — Pro Se

Movant(s):

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

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, September 15, 2020 **Hearing Room 303**

10:00 AM

1:10-24968 Glen E Pyle **Chapter 7**

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

#15.00 Motion for Default Judgment Under LBR 7055-1

Docket 306

***** VACATED *** REASON: Moved to 10:30.**

Tentative Ruling:

- NONE LISTED -

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):

Amy Goldman	Represented By Leonard Pena

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, September 15, 2020 **Hearing Room 303**

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1:00-00000 **Chapter**

#0.00 **The 10:30 am calendar will be conducted remotely, using ZoomGov video and audio.**

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address: https://cacb.zoomgov.com/j/1609903326

Meeting ID: 160 990 3326
Password: 616725

Dial by your location: 1 -669-254-5252 OR 1-646-828-7666

Meeting ID: 160 990 3326
Password: 616725

Docket 0

Tentative Ruling:

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

Tuesday, September 15, 2020 **Hearing Room 303**

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CONT... **Chapter**

- NONE LISTED -

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1:10-24968 Glen E Pyle **Chapter 7**

#16.00 Trustee's Motion For Clarification Of The Courts January 30, 2018 Order Granting Motion For Relief From The Automatic Stay

Docket 90

Tentative Ruling:

Although Ian Campbell passed away and his claim and judgment are now legally in the possession of Mary Casamento as the successor trustee of the Campbell Trust, for ease in this write-up the name Campbell is used to refer to that claim and judgment at all times.

On 1/30/18 the Court entered an order granting the Campbell relief from stay to proceed to liquidate its state court claims. The order does not contain the restrictions in the motion that there will be no enforcement of the judgment other than filing a proof of claim. After obtaining the state court judgment, Campbell filed an abstract of judgment, which attached to the prepetition interests of the Debtor in property, which is now property of the estate. This would convert the unsecured Campbell claim to a secured claim. Campbell now asserts a claim in excess of $202,000 purportedly secured by the Vermont and Sunland properties.

Opposition by Campbell Estate

The thrust of this opposition is that the Court intended this lien to come into existence. The order for relief from stay (rfs) had no limitation on it and in subsequent hearings the Court acknowledged that Campbell was foreclosing on Sunland and Vermont. At the time of the Campbell judgment, the bankruptcy estate did not hold title. This was no clerical error by the Court.

The rfs motion was prepared by Ian Campbell pro se and had numerous ambiguities and contradictions. It declared that the stay would remain in effect as to enforcement of the judgment and did not seek annulment. The Court granted the motion and prepared the order itself. The Court did not check the box as to limitations on enforcement of the judgment. Even though this did not match the prayer, it was fully within the discretion of the Court to leave it unlimited.

At the non-dischargeability status conference, the Court noted that although

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CONT... Glen E Pyle **Chapter 7**

Campbell was trying to bring the properties into the bankruptcy estate, at that time title was in the Pyle Trust and so Campbell could go against the Pyle Trust (against which Campbell had a judgment) without delay. Campbell's attorney explained that he was seeking the 523(a) judgment as a protection in case there was a title issue as to the Pyle Trust due to the multiple transfers concerning Sunland and Vermont. Although all parties now realize that the properties belong to the bankruptcy estate and not the Pyle Trust, that should not stop Campbell from retaining the lien.

There is also an argument concerning the Berry amended lis pendens, which Campbell states shows that the Trustee did not intend to prevent Campbell from enforcing his liens and the bankruptcy estate would receive what remained. But because it appears that the sale price for Vermont and the proposed abandonment of Sunland will not yield sufficient money, the Trustee is attacking Campbell's secured claim.

Reply

The reason for this motion is to determine whether Campbell's claim is secured or unsecured. It was filed as an unsecured claim of $75,103 (claim 3-1). Later Campbell filed a judgment lien for $154,342.58. These are both based on the same underlying debt. The motion for RFS and the order do not support the assertion that this was converted from an unsecured to a secured claim

As to the issue of Campbell's intent, the motion itself states that the stay will remain in effect as to enforcement of any judgment against the Debtor or property of the Debtor's bankruptcy estate. Because of this, the Order was unclear as to whether Campbell was being authorized to enforce his judgment against the Properties. This clarification order is needed to direct the Trustee as to what to pay. Beyond that, Campbell now asserts that the amount owed is more than $202, and if the Court grants this motion, Campbell should be required to amend or withdraw its claim to comport with the nature of its debt.

Analysis and Proposed Ruling

The motion for rfs is a standard motion which allows the movant to proceed to liquidate his claim, but not to execute on it – either as to Pyle individually or property of this bankruptcy estate. The Order only granted what was requested in the motion. This allowed Campbell to proceed to judgment, but did not allow any enforcement mechanism since boxes 5(a) or 5(b) were not checked. There was no confusion at that point in time. No enforcement was allowed. There is no question of the Court's "original intent,' since the Order is absolutely clear.

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Thereafter there were a series of status conferences, held at the time that the title to Vermont and Sunland were both believed to be in the Pyle Trust and not the bankruptcy estate. The discussion allowing the Campbell judgment to proceed against the properties was based on the timing in that they were not then property of the bankruptcy estate. But it was understood by Mr. King that if there was a title issue as to the properties, it was important that they proceed to declare the debt owed to Campbell will not be discharged in the bankruptcy. And Campbell prevailed on that as well as on the cause of action that denied Pyle his discharge (second amended complaint).

It was known by Campbell and all parties that Mr. Berry was prosecuting a case to bring the properties into the bankruptcy estate. If he did not prevail, then Campbell would be doubly protected – by his judgment lien and by the non-dischargeable nature of his debt [and ultimately the denial of discharge as to Pyle]. So it was appropriate at that time to allow Campbell to record his abstract of judgment so that his priority would be obtained in case the Berry case failed.

But once these properties came into the bankruptcy estate, Campbell's pre-petition unsecured claim was not transformed into a secured claim. The lien cannot remain on the properties except as to any surplus that may exist after all bankruptcy claims have been paid. Exactly how that is to be documented is something that the Trustee and the title insurance company will need to resolve. But as to this motion. The Campbell judgment is an unsecured claim and for bankruptcy purposes its amount is set at the time that this bankruptcy case was filed. Unless this is a surplus estate with a dividend to be paid to unsecured creditors, because there is no discharge, the unpaid amount of the judgment will actually accrue interest and costs that can be enforced against Pyle and any surplus or property that is not property of the bankruptcy estate.

Party Information

Debtor(s):

Glen E Pyle — Pro Se

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, September 15, 2020 **Hearing Room 303**

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1:10-24968 Glen E Pyle **Chapter 7**

#17.00 Trustee's Motion for Order Approving:
(1) Settlement Agreement with Linda Daniel;
and (2) Approving form of Settlement Agreement

Docket 92

Tentative Ruling:

The Trustee wishes to sell the entire property at 225226 Vermont Dr., Santa Clarita (the Property). Linda Daniel is a 50% owner of record. It is uncertain as to how this 50% relationship of Pyle and Daniel came into being. Daniel says that in 1990 she sold to Pyle, but he never paid her and in 1991 he illegally locked her out of the Property and asserted complete control of the Property. She also asserts that he collected rents and never shared them with her nor paid her for the 50% interest that he purchased from her. Daniel had judgments from the LA Superior Court from 1992 for $56,000 and $1,200 respectively.

The Trustee is informed and believes that Pyle denies all of these allegations and asserts that he paid Daniel everything owed to her and that she has no interest in the Property.

Neither Daniel nor Pyle has presented to the Trustee any evidence to support their allegations. Nonetheless there are multiple title reports that show Daniel's interest.

The four factors to consider in approving a compromise are as follow:

1. The probability of success in the litigation
2. The difficulties, if any, to be encountered in the matters of collection
3. The complexity of the litigation and the expense, inconvenience, and delay necessarily attending to it
4. The paramount interest of creditors and the proper deference to their reasonable views.

In this case, the Trustee has determined that the estate has at least a 50% interest in the Property and that the other 50% is owned by Daniel. But the Trustee believes that there is a strong claim that the estate owns 100% of the Property and that Daniel is an unsecured creditor. This is based on her delays and failures in acting as an owner such as paying taxes and failing to enforce the judgments against the Debtor. But the judgment that Daniel has shows that Pyle failed to make a $56,000 payment and there is no evidence of this payment or of payment of any other amount.

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CONT... Glen E Pyle **Chapter 7**

Beyond that, in a litigation the only witness that the Trustee would have is the Debtor who has been unreliable and uncooperative.

Because of all this, the fees and costs of a litigation make settlement an excellent option. The approval of the settlement is of significant value to the estate and its creditors because Daniel is paying the lion's share of her proceeds to the estate and the Trustee can consummate the sale without having to commence an adversary proceeding under sec. 363(h) and FRBP 7001, which would be costly. This settlement is in the best interest of creditors in that the estate will realize $169,000 without the uncertainties and costs of litigation.

The terms of the settlement are that the Trustee can sell Daniel's co-ownership interest. She will instruct escrow to pay the Trustee 80% of her 50% share. This will become property of the estate free and clear of any liens and encumbrances and of Daniel's interest. This carved out amount is to be used solely for unpaid professional fees and expenses of the legal advisors of the Trustee, fees payable to the clerk of court or the OUST, and holders of general unsecured claims. There will be mutual releases. [Other professionals of the Trustee are not included in the carve out.]

Pyle Opposition

On August 14, 2020, August 23, 2020, and August 24, 2020 Glen Pyle sent emails and documents to Leonard Pena, counsel for Trustee. Pena has sent these to the Court and apparently attempted to file them, but they are not on the docket. Mr. Pyle asserts shows that he had paid off Linda Daniel for her interest in Vermont. On about September 10, the Court received a batch of documents from Mr. Pyle. Because I am not working from my office, I have not yet seen these and will only look at them just before the hearing. These may or may not be duplicates of the documents that Mr. Pena received and mailed to the Court. It is assumed that they are without an actual accounting, as has been the habit of Mr. Pyle when he produced documents in the past. It is also assumed that he is submitting these as evidence of payments that he made to Linda Daniel. On September 3, Pyle filed his opposition to this motion and to the sale, which is a declaration that contains the following facts and arguments:

The 1992 judgment is void as it was never enforced. As to the background to the 1992 judgment, in 1990 Daniel owed $65,000 on the loan that she had received in 1988. Daniel asked Pyle to bail her out of the foreclosure and if he did she would grant him a 50%

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interest in the Vermont Property. Pyle brought the loan current and did it again three more times. In April 1991 Pyle received a notice that Daniel was again in default. Daniel's mother and brother had been living in the Vermont Property, but they moved out due to Daniel's irresponsible behavior. Daniel also moved out.

On October 4, 1991 Pyle leased the house to Linda Hunter for $950 a month and Pyle states that he has the check for first and last month's rent of $1,900. Meanwhile, Pyle heard nothing from Daniel and on October 30, 1992 he filed a quiet title case (PC03296). The stipulated agreement/judgment was that he was to pay $56,000 for her interest and when he paid she was to transfer that interest to Pyle.

Daniel's 50% interest was encumbered by a loan to her from Coast S&L in the amount of $65,000, which was recorded against the Property. Thus she could not transfer her 50% interest without paying off the $65,000 loan. After the hearing [apparently the stipulation in case PC03296], Daniel indicated that she was not going to pay the Coast S&L debt. So Pyle had no choice but to pay that mortgage even though it was recorded only against Daniel and there was no co-signer and Pyle was not a party to the loan and under no obligation to pay it.

The stipulated judgment does not state how or when Pyle would pay Daniel the $56,000.

Because Pyle paid the Coast mortgage, "Linda received all the proceeds of that loan all $65,000 thus Linda would get another $56,000 plus the $30,000 or so that I paid out for my 50% before and after the first default 3 X for a maybe $100,000 house at that time."

There was adverse possession in that Pyle paid Coast, WAMU, Chase Bank, all property taxes, insurance, maintenance, and remodel (new windows, doors, kitchen floors, 2 new bathrooms, added a shower in one, new garage door, etc.) Pyle had complete possession from 1996 through 2000 when the property was transferred to the Pyle Irrevocable Trust on 1/2000. This constitutes adverse possession under Civ. Code 325.

Pyle can go to state court and resolve this with Daniel for a filing fee and very little additional cost (not over $2,500).

Analysis and Proposed Ruling

There is no proof of service on the Pyle opposition and no indication that the Trustee has received it. It was filed on Sept.3 (dkt. 113) and as of Sept. 13 no reply has been received.

Mr. Pyle has raised some important questions, some or all of which may be clarified in the stacks of documents that he has provided to the Court. Not only is there the issue of

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CONT... Glen E Pyle **Chapter 7**

whether Ms. Daniel is entitled to any of all of the approximately $42,000 that she would receive from the proposed sale, but also whether the Trustee is entitled to a carve out of the $169,400 from her alleged interest. While it is important to protect professionals employed by the Court (in this case the attorneys), it is more important to make sure that the various classes of creditors are treated within the parameters of the bankruptcy law. If this $200,000+ really belongs to the Estate as owners of the 50% that Ms. Daniel claims, that will be a major benefit to all creditors.

Mr. Pyle has provided a plausible story which may be supported by the evidence and the law. There is no reason to go forward in state court as these issues can be decided here, though it appears that it must be by and adversary proceeding.

Because all that has been provided is a stack of documents, the Court does not have the staff or ability to do a proper organization and calculation. I have found from past dealings with Mr. Pyle that ordering him to prepare such accountings is a very time consuming affair and would not work well at the present time. I suggest that the Trustee provide these and any other documents that Pyle has (there would be a definite deadline for providing additional documents) to her accountant to prepare the initial accounting. Mr. Pyle needs to understand that this will then be an administrative expense of the estate and will reduce the amount, if any, that he will recover from the sale of these properties. If he has an accounting, he should provide this forthwith since it is in his benefit to do so.

As to the two legal issues that Pyle raises, even though the judgment may not be enforceable due to its age, it does not change the outcome of the state court quiet title case and vest Pyle with title to 100% of the property.

As to adverse possession, that is a matter that the Court has not seen in many years. It will need to be briefed as part of the adversary proceeding and the Trustee might find it worthwhile to her case.

In the meantime, if Ms. Daniel agrees, the sale (if approved) can go forward and her alleged 50% can be held by the Trustee until the issue of her actual interest is resolved. The Court is aware that she may decide to withdraw from the stipulation due to this and that would be acceptable. If there is no agreement to go forward, the Trustee will need to bring an adversary proceeding to allow the sale and also to determine the exact interest (if any) that Ms. Daniel owns.

Party Information

Debtor(s):

Glen E Pyle Pro Se

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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**

#18.00 Trustee's Motion for Order:
(1) Authorizing Sale of Estate's and Co-Owner, Linda Daniel's Right, Title and Interest in the Real Property Commonly Known as 25226 Vermont Drive, Santa Clarita, CA 91321 Free and Clear of Liens;
(2) Approving Overbid Procedure;
(3)Approving Payment of Real Estate Brokers' Commissions;
and
(4) Finding Purchaser is a Good Faith Purchaser

Docket 93

Tentative Ruling:

Sale covers the entire property at 25226 Vermont Dr, Santa Clarita (the Property), which includes the interest of Linda Daniel, who is the co-owner, as well as those of the Estate. There is an overbid process, the motion asks *that* the commissions to the real estate brokers be paid, and that the purchaser be found in good faith.

The Trustee has received and offer of $465,000 (all cash) from Catamount Properties 2018 LLC. Overbids require an initial overbid of at least $5.000 and successive overbids of at least $1,000. The initial deposit was $25,000 and any overbidder must provide $30,000 to the Trustee at least two calendar days before the auction.

The brokers were employed by an order entered in July 2020. They would be entitled to a 6% commission.

The title report shows that Linda Daniel is a 50% co-owner; the Pyle Irrevocable Trust and/or Sweetwater Management Co. have the other 50% ownership interest. There is a settlement agreement with Daniel that she will pay the Trustee 80% of her 50% interest in the sale proceeds for payment of the estate's administrative fees and costs and for payment of the estate's unsecured creditors. If the sale price is $465,000, the estate would receive about $169,400 from Daniel's interest and she will receive about $42,350.

As to the other 50%, there is an adversary pending against Sweetwater and a motion for default judgment in that case which, if approved, will avoid all of that company's

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purported interests in the Property and preserve them for the estate.

The liens per the title report are as follows:

Lienholder	Nature and Amount of Lien or Interest	Treatment
LACTT	Property taxes - $2,178.71	Paid through escrow
Ernest J. Daniel	Trust deed recorded 1988 – for about $42,935	Disputed. Daniel provided Trustee with a release of lien, which will be recorded
County of Los Angeles	Judgment lien for domestic support	Disputed. County provided Trustee with a release of lien, which will be recorded
Sweetwater Management	Lien recorded 2000 for about $175,000	Disputed. To be avoided in the adversary
Marc H. Berry	Judgment lien for $34,092.65	Paid through escrow
Maitland and Gomez	Lien recorded in 2006 for about $100,000	Paid through escrow
Law Offices of Raymond Aver	Lien recorded on 1/4/16 for an unknown amount of attorney fees	Disputed and not paid. It is an unauthorized post-petition transfer that the Trustee may seek to avoid
Ian Campbell	Judgment lien recorded on 3/19/19 for $154,342.58	Disputed and not paid. It is an unauthorized post-petition transfer that the Trustee may seek to avoid

The amount that would remain in the estate would be about $67,835. The Trustee's accountant advises that the capital gains tax will be approximately $100,000.

Trustee's Supplement to her Motion

The Trustee recently learned that on July 30 and July 31, 2020 Marc Berry had recorded three new encumbrances. The July 30 document appears to be a duplicate of the judgment lien recorded in 2006 – which lien will be paid through escrow. The two July 31 documents appear to be for post-petition sanctions orders that have not been paid. These will not be paid through the sale of the property. Since these were post-petition, they do not make Berry a creditor as defined by 11 USC. Sec. 101(10). Also these were recorded in violation of the automatic stay.

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The Trustee asks that an order be entered disallowing these three instruments.

Campbell Trust Limited Opposition to the Sale Motion

The Campbell Trust opposes the proposed distribution because it does not pay off its judgment lien. Beyond the reasons stated in its opposition to the Motion to Clarify the RFS Order, the lien is actually $258,826.21, which includes post-judgment interest of $30,442.62 and post-judgment attorney fees of $74,041.

Issues Raised by Mr. Pyle in opposition to Motion to Sell Vermont

In August, Mr. Pyle sent a stack of documents and emails to Mr. Pena. Then on September 3 he filed a declaration in opposition to this motion. The Court has reviewed his arguments in his email to Mr. Pena senton August 14, 2020 at 6:41 pm and his declaration filed on September 3, (dkt. 113). These can be divided into three major categories: (1) whether the bankruptcy estate has the title to the properties and is entitled to sell them, (2) whether the sale is an appropriate business judgment by the Trustee, and (3) the validity of each lien on the Vermont Property.

Ownership of the Property:

1. No deed is required to transfer property between a grantor and trustees (Probate Code 3900-3915, 3911. A copy of the Pyle Trust Agreement is attached.
2. The property is with the "Trust's Trustee not Glen Pyle the individual that is in bankruptcy."
3. The transfers were adequate and complete at the time that the Trust was created on Jan.12, 2000. The title to the properties has been with the Trustee of the Pyle Irrevocable Trust since the Trust was created and the only transfer was supported by the Probate Code and case law as noted above.
4. "The 3 deed are void, they are just as invalid as if you signed them, they were not signed by the Trustee/Custodian for the Beneficiary of the Pyle Irrevocable Trust." [*It is not clear to the Court exactly what this refers to.*]
5. The property was transferred and assigned to the Trust when it was created as confirmed by the first page of the Trust Agreement. It never left the custody of the Trust's Trustee. The deeds referred to are not signed by Glen Pyle Trustee or any

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such signature as used by a Trustee.

6. The statute of limitations ran before this. Under 11 USC sec. 548(e)(1) the transfer had to have taken place within 10 years before the petition date. Here the Trust was created 10 years and 10 months pre-petition (1/12/2000; 11/20/2010).

7. The Trust was planned in 1996, 4 years before it was implemented. The Berry judgment was in 8/7/00, 7 months after the Trust was created. There is no action to collect by Berry during 4 years, so it was extinguished by law (CC 3439.09).
8. Mr. Pyle also disputes the title report.

Business Judgment of the Trustee:

1. The property is worth $661,000, so it is unreasonable to sell it for $465,000 particularly when the capital gains tax would be $100,000.
2. This is a hot real estate market, so there is no excuse for the reduced sales price.
3. The Trustee paid four times the going rate for insurance on Vermont. Pyle had Safeco at $850 per year and the Trustee paid $1,750 for six months.

Payment of Liens and Claims:

1. Marc Berry should not receive any compensation since Pyle was his client and it is against Cal. Bar Rule 1.9 and 1.10 for him to represent an adverse interest to Pyle.
2. Berry's secured claim, renewed in 2019, is void under Cal. Civ. Code 3439.09. It was recorded on an extinguished judgment, which was extinguished on 8/8/04, 4 years after the judgment was obtained. It also was renewed in 2010 and in 2019, even though it was extinguished. At the 3/10 341(a) meeting of creditors, the Trustee informed Berry that his claim was void under CC 3439.09.
3. As to the Maitland claim, the Valuzet case is a fraud. Pyle was not served. He was in jail. Pyle lists a series of events that show that it is void, voidable, or inflated. Beyond that, they executed on the Sunland Property, which was in the Trust and not in Pyle's name.

[The Court: *Mr. Pyle's opposition contains a great many other allegations and issues as to the handling of this case, which are not relevant to the current sale motion. He also objects to the hiring of the accounting firm. That objection is overruled. The Trustee need an accountant, not just an IRS employee.*]

10:30 AM

CONT... Glen E Pyle **Chapter 7**

Berry Opposition to Sale of Vermont

If only Vermont is sold, Berry's 50% agreement will be greatly reduced. She also ignores the $8,000 for costs. Also, beyond receiving 80% of Linda Daniel's 50% share, she will receive 100% of the Estate's 50% share. Therefor the Trustee's calculation is wrong and the Estate will receive $380,700, not $67,835. The stipulation requires that first Berry receives $8,000 and then the remainder is divided into two pots: Berry get one of these and the other pot (50% of the remainder) is used by the Trustee to pay each unsecured creditor its share, including the $48,000 to Berry. Thus Berry would receive $246,350.

The Trustee should require the Maitland claim to be proven. Berry seems to recall that Pyle's accounting shows some payments made.

The stipulation with Daniel requires that each party pay its own taxes, so 50% of the net proceeds of the sale should be liable for Daniel's share of taxes. And any withholding for Pyle's income taxes should come out of the Trustee's administrative share after Berry gets his 50% share.

Analysis and Proposed Ruling

The initial question is whether the Trustee has the right to sell the Vermont Property. The issue of Linda Daniel's interest is discussed in the motion to settle with her. As to the other claims of ownership (Sweetwater and the Pyle Trust), the motion for default judgment as to Sweetwater (11-ap-01180, dkt. 306) is pending and no judgment has been entered. Mr. Pyle attempts to oppose this on factual grounds in his filing in opposition to the sale motion (10-bk-24968, dkt. 113). The proposed judgment is against "Sweetwater Management Company, Inc. aka Sweetwater Management Company" and not against Pyle or the Pyle Irrevocable Trust. Sweetwater's answer was stricken and default was entered on July 1, 2020 (dkt. 287) and this prevents the defendant (be it Pyle or Sweetwater) from putting in evidence as to Sweetwater. Beyond that Sweetwater may not participate since it is a suspended corporation.

However, this did not resolve the ownership issue as to the Pyle Trust and Glen Pyle. That is still pending in the adversary action. So what authority does the Trustee have to sell Vermont until that is resolved?

Assuming that the Trustee does have the authority to sell the Vermont Property, the Court needs to consider whether the initial sales price is a proper business judgment of the Trustee. The Trustee states in her declaration that her brokers did active marketing and that she received 7 offers and this was the highest, but because of Pyle's objection, that may not be enough evidence. I would like a declaration (or declarations) by the brokers as to the

10:30 AM

CONT... Glen E Pyle **Chapter 7**

marketing efforts, the details of the offers received (though not the name of the offerors), how they arrived at the listing price, etc. It should be noted that Pyle claims the value is $661,000, but gives no basis for this. Although not evidence, Zillow states that the fair market value is just under $600,000, which is still well in excess of the $465,000 offer.

Once that is straightened out and the sale (to the initial bidder or through overbid) is approved, the question will be the distribution of the sale proceeds. It seems that this is a multi-step process. Assuming that proper notice allows the Trustee to sell this free and clear of liens (and there is a serious question whether this is the case since the Trustee states that she will pay off certain liens through escrow), then each lien will have to be resolved. A few – such as the tax liens – may be quick and easy. Others will take longer.

Party Information

Debtor(s):

Glen E Pyle	Pro Se

Movant(s):

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

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, September 15, 2020 **Hearing Room 303**

10:30 AM
1:10-24968 Glen E Pyle **Chapter 7**
Adv#: 1:11-01180 Goldman v. Pyle et al

#19.00 Motion for Default Judgment Under LBR 7055-1

Docket 306

Tentative Ruling:

Default was entered on 7/16/20. The evidence attached to the motion for entry of default judgment shows that Debtor Glen Pyle made the following transfers:

Sunland:
6/21/04 to the Pyle Irrevocable Trust and Sweetwater Management Company. This grant deed was recorded on 6/28/04. [States that this is an exempt transfer to trust and no tax was paid]

Vermont:
3/8/2000 to Sweetwater Management Company, Inc. A deed of trust was recorded on 4/21/01 for $175,000.
8/11/03 to The Pyle Irrevocable Trust and Sweetwater Management Company. This grant deed was recorded on 6/28/04. [States that this is a transfer to trust and no tax was paid].

No evidence has been presented showing that any consideration was made for these transfers. Mr. Pyle put forth some arguments concerning the transfers to Sweetwater, but this was both after default was entered and also does not vitiate the legal status of Sweetwater.

Grant entry of judgment as to Sweetwater on both properties. How does the Trustee intend to proceed as to the Pyle Trust?

Party Information

Debtor(s):

Glen E Pyle Pro Se

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

Tuesday, September 15, 2020 **Hearing Room 303**

10:30 AM
CONT... Glen E Pyle **Chapter 7**

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):

Amy Goldman	Represented By Leonard Pena

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, October 6, 2020 **Hearing Room 303**

10:00 AM

1:15-14213 Michael Robert Goland **Chapter 7**

Adv#: 1:20-01063 Burk v. Zamora

#1.00 Motion to Dismiss Complaint with Prejudice

fr. 8/25/20

Docket 9

***** VACATED *** REASON: Cont'd to 10/27/20 at 10:00 per order #25. lf**

Party Information

Debtor(s):

Michael Robert Goland	Represented By David S Hagen

Defendant(s):

Nancy Zamora	Represented By Jessica L Bagdanov

Plaintiff(s):

Gerry Burk	Represented By Michael N Sofris

Trustee(s):

Nancy J Zamora (TR)	Represented By Jessica L Bagdanov David Seror Ezra Brutzkus Gubner

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

Tuesday, October 6, 2020 **Hearing Room 303**

10:00 AM
1:15-14213 Michael Robert Goland **Chapter 7**
Adv#: 1:20-01063 Burk v. Zamora

#2.00 Status Conference Re Complaint for
1 - Declaratory Judgment
2 - Breach of Fiduciary Duty - Taxes
3 - Failure to Collect Rent - Estate
4 - Failure to Collect Rent - Plaintiff

fr. 8/25/20

Docket 1
***** VACATED *** REASON: Cont'd to 10/27/20 at 10:00 per order #25. lf**

Party Information

Debtor(s):

Michael Robert Goland	Represented By David S Hagen

Defendant(s):

Nancy Zamora	Pro Se

Plaintiff(s):

Gerry Burk	Represented By Michael N Sofris

Trustee(s):

Nancy J Zamora (TR)	Represented By Jessica L Bagdanov David Seror Ezra Brutzkus Gubner

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

Tuesday, October 13, 2020 **Hearing Room 303**

9:00 AM
1: - **Chapter**

#0.00 **You will not be permitted to be physically present in the courtroom.**

The 10:00 A.M. Calendar Hearing will be by Court Call, dial 1-886-582-6878 or 1-888-882-6878

Docket 0

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

10:00 AM

1:05-13556 Linda Widdowson **Chapter 7**

Adv#: 1:20-01023 Fidelity National Title Company v. Widdowson et al

#1.00 Motion to Deposit Funds into Court Registry

fr. 7/21/20, 9/15/20

Docket 27

Matter Notes:

- NONE LISTED -

Tentative Ruling:

THE HEARING WILL BE BY PHONE THROUGH COURT CALL.

It is clear that this motion should be granted and Fidelity should be out of this case. However, Citibank has named Fidelity as a cross-defendant. Everyone is seeking the same thing - that Fidelity turnover the money, which Fidelity wants to do. There is a default against Widdowson. I just need to know how to proceed properly so that the loose ends are tied up. As I understand it, the Court will hold the money, Fidelity will seek payment for its expenses and fees for bringing this motion, Citibank and Ford will litigate against each other to determine which of them is entitled to the money, the Trustee will not be involved unless there is a decision that neither Citibank nor Ford is entitled to the money or there is some surplus left for the estate. That would go to the Trustee, but there needs to be a judgment against Widdowson to remove her from this case.

It seems best to continue this without hearing to the 11/17 at 10:00 time when there is a status conference. Please figure out the above and advise me prior to that time how this will proceed.

Prior tentative ruling (9/15/20)

In 2007 Trustee sold the debtor's single family residence at 194 Saddlebow Rd., Bell Canyon. This was free and clear of liens. Fidelity National Title Co (Fidelity) was the sub-agent of Valley Escrow. Two abstracts of judgment were discovered: $35,332.29 recorded on 9/16/03 in favor of Ford and $21,870.53 recorded on 10/1/03 in favor of Citibank. Fidelity is holding $57,202.82 in the sub-escrow account and has never

10:00 AM

CONT... Linda Widdowson **Chapter 7**

received further instructions from the Trustee. Fidelity wants to turn these over to the Trustee.

David Seror, the trustee, has filed an answer. Seror asserts that to the extent that Citibank and Ford each have a valid, perfected, non-avoidable security interest in the funds, that is superior to the Estate's interest, but the Estate's interest is superior to that of the Debtor.

Per the status report filed on 9/3, Widdowson was served by publication. On 9/11, Fidelity filed a request for entry of default as to Citibank, but there were technical errors. This was resubmitted on 9/14. Per the status report, Plaintiff will be submitting a request to default Widdowson.

Ford Credit Titling Trust filed an answer and a crossclaim against Citibank on 9/3. That status conference is set for 11/17.

Once the money is deposited, will the Trustee take over the prosecution of this case or will it all be decided by the Ford v. Citibank matter?

Continue this to 11/17 at 10:00 a.m. If there is no objection to the continuance, no appearance is needed on 9/15.

Party Information

Debtor(s):

Linda Widdowson	Represented By Michael E Mahurin David A Tilem Susan I Montgomery

Defendant(s):

Linda Widdowson	Pro Se
DAVID SEROR ESQ	Pro Se
Citibank (South Dakota) N.A.	Pro Se
FORD CREDIT TITLING TRUST	Represented By Adam N Barasch

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

Tuesday, October 13, 2020 **Hearing Room 303**

10:00 AM
CONT... Linda Widdowson **Chapter 7**

Plaintiff(s):

Fidelity National Title Company — Represented By
Sheri Kanesaka

Trustee(s):

David Seror (TR) — Represented By
Anthony A Friedman
Anthony A Friedman
Susan I Montgomery

10:00 AM
1:05-13556 Linda Widdowson **Chapter 7**
Adv#: 1:20-01023 Fidelity National Title Company v. Widdowson et al

#2.00 Status Conference Re:
Complaint for Interpleader and Declaratory Relief.

fr. 4/7/20; 6/2/20, 7/21/20, 9/15/20

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Ford Credit Titling Trust filed an answer and a crossclaim against Citibank on 9/3. The status conference for the cross-claim is set for 11/17. Continue this without appearance to 11/17 at 10:00 a.m.

Prior tentative ruling (7/21/20)

On July 1 the clerk's office issue another summons on Citibank. The answer is due on 7/31. On 6/22 the court entered its order allowing service by publication on the debtor. Continue by stipulation to September 15, 2020 at 10:00 a.m. to allow the service by publication on Widdowson to be completed.

Prior tentative ruling (6/2/20)

In 2007 Trustee sold the debtor's single family resident at 194 Saddlebow Rd., Bell Canyon. This was free and clear of liens. Fidelity National Title Co (Fidelity) was the sub-agent of Valley Escrow. Two abstracts of judgment were discovered: $35,332.29 recorded on 9/16/03 in favor of Ford and $21,870.53 recorded on 10/1/03 in favor of Citibank. Fidelity is holding $57,202.82 in the sub-escrow account and has never received further instructions from the Trustee. Fidelity wants to turn these over to the Trustee.

Ford has until July 24 to respond. David Seror, the trustee, has filed

10:00 AM

CONT... Linda Widdowson **Chapter 7**

an answer. Seror asserts that to the extent that Citibank and Ford each have a valid, perfected, non-avoidable security interest in the funs, that is superior to the Estate's interest, but the Estate's interest is superior to that of the Debtor

The status report is that Fidelity will file a motion to deposit the funds and to be dismissed. [It previously filed such a motion, but withdrew it.] The Trustee, who joined the status report, sees trial in 90 days and that it will take about 30 minutes. The motion to deposit funds is set for July 21 at 10:00 a.m.

Why no response by Citibank? Did Widdowson get notice (I can't open the proof of service). Once the money is deposited, will the Trustee take over the prosecution of this case?

Prior tentative ruling (4/7/20)
Due to the response to the coronavirus pandemic, this matter is continued without appearance to **June 2, 2020 at 10:00 a.m**. Should you need an emergency hearing before that time, please file a motion requesting that and stating the reason. Plaintiff is to give notice of this continuance to all defendants.

Party Information

Debtor(s):

Linda Widdowson	Represented By Michael E Mahurin David A Tilem Susan I Montgomery

Defendant(s):

Linda Widdowson	Pro Se
DAVID SEROR ESQ	Pro Se
Citibank (South Dakota) N.A.	Pro Se
FORD CREDIT TITLING TRUST	Pro Se

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

Tuesday, October 13, 2020 **Hearing Room 302**

10:00 AM
CONT... Linda Widdowson **Chapter 7**

Plaintiff(s):

Fidelity National Title Company — Represented By
Sheri Kanesaka

Trustee(s):

David Seror (TR) — Represented By
Anthony A Friedman
Anthony A Friedman
Susan I Montgomery

10:00 AM
1:08-16001 Leonid Zaks **Chapter 7**
Adv#: 1:08-01593 Wells Fargo Merchant Services LLC v. Proaudio America et al

#3.00 Order to Tamara Zaks to Appear by Telephone for Examination

fr. 9/15/20

Docket 50

Matter Notes:

- NONE LISTED -

Tentative Ruling:

OFF CALENDAR
Counsel for Wells Fargo and Ms. Zaks both appeared by phone on 9/15 and the parties were to deal with this. Per the report filed on 10/6 the examination took place on 10/5 and the motion was been withdrawn.

Prior tentative ruling (9/15/20)
This is to set a time and method for a judgment debtor examination. Ms. Zaks had to choice to contact the counsel for Wells Fargo and work this out or to appear by phone at this hearing. Nothing more has been received from either party as of 9/10.

Party Information

Debtor(s):

Leonid Zaks	Represented By Creighton A Stephens

Defendant(s):

Proaudio America	Pro Se
Leonid Zaks	Represented By Creighton A Stephens

10:00 AM
CONT... Leonid Zaks **Chapter 7**

Joint Debtor(s):

Tamara Zaks	Represented By Creighton A Stephens

Plaintiff(s):

Wells Fargo Merchant Services LLC	Represented By Allan Herzlich

Trustee(s):

David Seror (TR)	Pro Se

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

Tuesday, October 13, 2020 **Hearing Room 303**

10:00 AM

1:17-10853 Joseph Daniel Beam **Chapter 7**

Adv#: 1:17-01046 Henderson v. Beam

#4.00 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; 12/23/19, 1/28/20, 3/3/20, 4/7/20, 6/23/20, 9/15/20

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

THE HEARING WILL BE BY PHONE THROUGH COURT CALL.
Ms. Henderson appeared by phone on 9/15. No appearance by Ms. Moreno, which has been a pattern of hers. On 9/17 the Court issued an order to appear by phone at this status conference. Because Ms. Henderson said that Mr. Beam may be obtaining bankruptcy counsel. the order directed the appearance of Ms. Henderson, Ms. Moreno, Mr. Beam, and any bankruptcy counsel that Mr. Beam obtained. Nothing new filed as of 10/8.

Prior tentative ruling (9/15/20)
Nothing new filed as of 9/11/20. The hearing will be by Court Call. Ms. Henderson can attend without charge. Check with the clerk's office if you need information on how to do this. I need an update on what is happening in the superior court.

Prior tentative ruling (6/23/20)
Nothing new filed as of 6/18/20. The hearing will be by Court Call. Ms. Henderson can attend without charge. Check with the clerk's office if you need information on how to do this. I assume that nothing has happened in the superior court. If you both agree to a continuance without appearance to 9/15/20 at 10:00, please advise me.

10:00 AM

CONT... Joseph Daniel Beam **Chapter 7**

prior tentative ruling (4/7/20)
Due to the response to the coronavirus pandemic, this matter is continued without appearance to **June 23, 2020 at 10:00 a.m.** Should you need an emergency hearing before that time, please file a motion requesting that and stating the reason.

Prior tentative ruling (12/23/19)
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 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

10:00 AM

CONT... Joseph Daniel Beam **Chapter 7**

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 report, the familiy law judge is requiring briefs as to marital debts and the proposed division between the parties. The family law trial setting conference

10:00 AM

CONT... Joseph Daniel Beam **Chapter 7**

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) knowlingly 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 reaons 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 reveeal 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 utilites 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 knowlingly 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.]

10:00 AM

CONT... Joseph Daniel Beam **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
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar

Tuesday, October 27, 2020 **Hearing Room 303**

9:00 AM
1: - **Chapter**

#0.01 **The 10:00 am calendar will be conducted remotely, using ZoomGov video and audio.**

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address: https://cacb.zoomgov.com/j/16184052371

Meeting ID: 161 8405 2371

Password: 479916

Dial by your location: 1 -669-254-5252 OR 1-646-828-7666

Meeting ID: 161 8405 2371

Password: 479916

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

Tuesday, October 27, 2020 **Hearing Room 303**

9:00 AM
CONT... **Chapter**

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Tuesday, October 27, 2020 **Hearing Room 303**

10:00 AM

1:10-24968 Glen E Pyle **Chapter 7**

#1.00 Trustee's Motion For Clarification Of The Courts January 30, 2018 Order Granting Motion For Relief From The Automatic Stay

fr. 9/15/20

Docket 90

Tentative Ruling:

Nothing new received as of 10/24/20.

prior tentative ruling (9/15/20)

Although Ian Campbell passed away and his claim and judgment are now legally in the possession of Mary Casamento as the successor trustee of the Campbell Trust, for ease in this write-up the name Campbell is used to refer to that claim and judgment at all times.

On 1/30/18 the Court entered an order granting the Campbell relief from stay to proceed to liquidate its state court claims. The order does not contain the restrictions in the motion that there will be no enforcement of the judgment other than filing a proof of claim. After obtaining the state court judgment, Campbell filed an abstract of judgment, which attached to the prepetition interests of the Debtor in property, which is now property of the estate. This would convert the unsecured Campbell claim to a secured claim. Campbell now asserts a claim in excess of $202,000 purportedly secured by the Vermont and Sunland properties.

Opposition by Campbell Estate

The thrust of this opposition is that the Court intended this lien to come into existence. The order for relief from stay (rfs) had no limitation on it and in subsequent hearings the Court acknowledged that Campbell was foreclosing on Sunland and Vermont. At the time of the Campbell judgment, the bankruptcy estate did not hold title. This was no clerical error by the Court.

The rfs motion was prepared by Ian Campbell pro se and had numerous ambiguities and contradictions. It declared that the stay would remain in effect as to enforcement of

10:00 AM

CONT... Glen E Pyle **Chapter 7**

the judgment and did not seek annulment. The Court granted the motion and prepared the order itself. The Court did not check the box as to limitations on enforcement of the judgment. Even though this did not match the prayer, it was fully within the discretion of the Court to leave it unlimited.

At the non-dischargeability status conference, the Court noted that although Campbell was trying to bring the properties into the bankruptcy estate, at that time title was in the Pyle Trust and so Campbell could go against the Pyle Trust (against which Campbell had a judgment) without delay. Campbell's attorney explained that he was seeking the 523(a) judgment as a protection in case there was a title issue as to the Pyle Trust due to the multiple transfers concerning Sunland and Vermont. Although all parties now realize that the properties belong to the bankruptcy estate and not the Pyle Trust, that should not stop Campbell from retaining the lien.

There is also an argument concerning the Berry amended lis pendens, which Campbell states shows that the Trustee did not intend to prevent Campbell from enforcing his liens and the bankruptcy estate would receive what remained. But because it appears that the sale price for Vermont and the proposed abandonment of Sunland will not yield sufficient money, the Trustee is attacking Campbell's secured claim.

Reply

The reason for this motion is to determine whether Campbell's claim is secured or unsecured. It was filed as an unsecured claim of $75,103 (claim 3-1). Later Campbell filed a judgment lien for $154,342.58. These are both based on the same underlying debt. The motion for RFS and the order do not support the assertion that this was converted from an unsecured to a secured claim

As to the issue of Campbell's intent, the motion itself states that the stay will remain in effect as to enforcement of any judgment against the Debtor or property of the Debtor's bankruptcy estate. Because of this, the Order was unclear as to whether Campbell was being authorized to enforce his judgment against the Properties. This clarification order is needed to direct the Trustee as to what to pay. Beyond that, Campbell now asserts that the amount owed is more than $202, and if the Court grants this motion, Campbell should be required to amend or withdraw its claim to comport with the nature of its debt.

Analysis and Proposed Ruling

The motion for rfs is a standard motion which allows the movant to proceed to liquidate his claim, but not to execute on it – either as to Pyle individually or property of this

10:00 AM

CONT... Glen E Pyle **Chapter 7**

bankruptcy estate. The Order only granted what was requested in the motion. This allowed Campbell to proceed to judgment, but did not allow any enforcement mechanism since boxes 5(a) or 5(b) were not checked. There was no confusion at that point in time. No enforcement was allowed. There is no question of the Court's "original intent,' since the Order is absolutely clear.

Thereafter there were a series of status conferences, held at the time that the title to Vermont and Sunland were both believed to be in the Pyle Trust and not the bankruptcy estate. The discussion allowing the Campbell judgment to proceed against the properties was based on the timing in that they were not then property of the bankruptcy estate. But it was understood by Mr. King that if there was a title issue as to the properties, it was important that they proceed to declare the debt owed to Campbell will not be discharged in the bankruptcy. And Campbell prevailed on that as well as on the cause of action that denied Pyle his discharge (second amended complaint).

It was known by Campbell and all parties that Mr. Berry was prosecuting a case to bring the properties into the bankruptcy estate. If he did not prevail, then Campbell would be doubly protected – by his judgment lien and by the non-dischargeable nature of his debt [and ultimately the denial of discharge as to Pyle]. So it was appropriate at that time to allow Campbell to record his abstract of judgment so that his priority would be obtained in case the Berry case failed.

But once these properties came into the bankruptcy estate, Campbell's pre-petition unsecured claim was not transformed into a secured claim. The lien cannot remain on the properties except as to any surplus that may exist after all bankruptcy claims have been paid. Exactly how that is to be documented is something that the Trustee and the title insurance company will need to resolve. But as to this motion. The Campbell judgment is an unsecured claim and for bankruptcy purposes its amount is set at the time that this bankruptcy case was filed. Unless this is a surplus estate with a dividend to be paid to unsecured creditors, because there is no discharge, the unpaid amount of the judgment will actually accrue interest and costs that can be enforced against Pyle and any surplus or property that is not property of the bankruptcy estate.

Party Information

Debtor(s):

Glen E Pyle Pro Se

Trustee(s):

10:00 AM

CONT... Glen E Pyle **Chapter 7**

Amy L Goldman (TR)

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

10:00 AM
1:10-24968 Glen E Pyle **Chapter 7**

#2.00 Trustee's Motion for Order Approving:
(1) Settlement Agreement with Linda Daniel;
and (2) Approving form of Settlement Agreement

fr. 9/15/20

Docket 92

Tentative Ruling:

Nothing new received as of 10/24.

prior tentative ruling (9/15)

The Trustee wishes to sell the entire property at 225226 Vermont Dr., Santa Clarita (the Property). Linda Daniel is a 50% owner of record. It is uncertain as to how this 50% relationship of Pyle and Daniel came into being. Daniel says that in 1990 she sold to Pyle, but he never paid her and in 1991 he illegally locked her out of the Property and asserted complete control of the Property. She also asserts that he collected rents and never shared them with her nor paid her for the 50% interest that he purchased from her. Daniel had judgments from the LA Superior Court from 1992 for $56,000 and $1,200 respectively.

The Trustee is informed and believes that Pyle denies all of these allegations and asserts that he paid Daniel everything owed to her and that she has no interest in the Property.

Neither Daniel nor Pyle has presented to the Trustee any evidence to support their allegations. Nonetheless there are multiple title reports that show Daniel's interest.

The four factors to consider in approving a compromise are as follow:

1. The probability of success in the litigation
2. The difficulties, if any, to be encountered in the matters of collection
3. The complexity of the litigation and the expense, inconvenience, and delay necessarily attending to it
4. The paramount interest of creditors and the proper deference to their reasonable views.

In this case, the Trustee has determined that the estate has at least a 50% interest in the Property and that the other 50% is owned by Daniel. But the Trustee believes that

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CONT... Glen E Pyle **Chapter 7**

there is a strong claim that the estate owns 100% of the Property and that Daniel is an unsecured creditor. This is based on her delays and failures in acting as an owner such as paying taxes and failing to enforce the judgments against the Debtor. But the judgment that Daniel has shows that Pyle failed to make a $56,000 payment and there is no evidence of this payment or of payment of any other amount.

Beyond that, in a litigation the only witness that the Trustee would have is the Debtor who has been unreliable and uncooperative.

Because of all this, the fees and costs of a litigation make settlement an excellent option. The approval of the settlement is of significant value to the estate and its creditors because Daniel is paying the lion's share of her proceeds to the estate and the Trustee can consummate the sale without having to commence an adversary proceeding under sec. 363(h) and FRBP 7001, which would be costly. This settlement is in the best interest of creditors in that the estate will realize $169,000 without the uncertainties and costs of litigation.

The terms of the settlement are that the Trustee can sell Daniel's co-ownership interest. She will instruct escrow to pay the Trustee 80% of her 50% share. This will become property of the estate free and clear of any liens and encumbrances and of Daniel's interest. This carved out amount is to be used solely for unpaid professional fees and expenses of the legal advisors of the Trustee, fees payable to the clerk of court or the OUST, and holders of general unsecured claims. There will be mutual releases. [Other professionals of the Trustee are not included in the carve out.]

Pyle Opposition

On August 14, 2020, August 23, 2020, and August 24, 2020 Glen Pyle sent emails and documents to Leonard Pena, counsel for Trustee. Pena has sent these to the Court and apparently attempted to file them, but they are not on the docket. Mr. Pyle asserts shows that he had paid off Linda Daniel for her interest in Vermont. On about September 10, the Court received a batch of documents from Mr. Pyle. Because I am not working from my office, I have not yet seen these and will only look at them just before the hearing. These may or may not be duplicates of the documents that Mr. Pena received and mailed to the Court. It is assumed that they are without an actual accounting, as has been the habit of Mr. Pyle when he produced documents in the past. It is also assumed that he is submitting these as evidence of payments that he made to Linda Daniel. On September 3, Pyle filed his opposition to this motion and to the sale, which is a declaration that contains the following

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CONT... Glen E Pyle **Chapter 7**

facts and arguments:

The 1992 judgment is void as it was never enforced. As to the background to the 1992 judgment, in 1990 Daniel owed $65,000 on the loan that she had received in 1988. Daniel asked Pyle to bail her out of the foreclosure and if he did she would grant him a 50% interest in the Vermont Property. Pyle brought the loan current and did it again three more times. In April 1991 Pyle received a notice that Daniel was again in default. Daniel's mother and brother had been living in the Vermont Property, but they moved out due to Daniel's irresponsible behavior. Daniel also moved out.

On October 4, 1991 Pyle leased the house to Linda Hunter for $950 a month and Pyle states that he has the check for first and last month's rent of $1,900. Meanwhile, Pyle heard nothing from Daniel and on October 30, 1992 he filed a quiet title case (PC03296). The stipulated agreement/judgment was that he was to pay $56,000 for her interest and when he paid she was to transfer that interest to Pyle.

Daniel's 50% interest was encumbered by a loan to her from Coast S&L in the amount of $65,000, which was recorded against the Property. Thus she could not transfer her 50% interest without paying off the $65,000 loan. After the hearing [apparently the stipulation in case PC03296], Daniel indicated that she was not going to pay the Coast S&L debt. So Pyle had no choice but to pay that mortgage even though it was recorded only against Daniel and there was no co-signer and Pyle was not a party to the loan and under no obligation to pay it.

The stipulated judgment does not state how or when Pyle would pay Daniel the $56,000.

Because Pyle paid the Coast mortgage, "Linda received all the proceeds of that loan all $65,000 thus Linda would get another $56,000 plus the $30,000 or so that I paid out for my 50% before and after the first default 3 X for a maybe $100,000 house at that time."

There was adverse possession in that Pyle paid Coast, WAMU, Chase Bank, all property taxes, insurance, maintenance, and remodel (new windows, doors, kitchen floors, 2 new bathrooms, added a shower in one, new garage door, etc.) Pyle had complete possession from 1996 through 2000 when the property was transferred to the Pyle Irrevocable Trust on 1/2000. This constitutes adverse possession under Civ. Code 325.

Pyle can go to state court and resolve this with Daniel for a filing fee and very little additional cost (not over $2,500).

Analysis and Proposed Ruling

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CONT... Glen E Pyle **Chapter 7**

There is no proof of service on the Pyle opposition and no indication that the Trustee has received it. It was filed on Sept.3 (dkt. 113) and as of Sept. 13 no reply has been received.

Mr. Pyle has raised some important questions, some or all of which may be clarified in the stacks of documents that he has provided to the Court. Not only is there the issue of whether Ms. Daniel is entitled to any of all of the approximately $42,000 that she would receive from the proposed sale, but also whether the Trustee is entitled to a carve out of the $169,400 from her alleged interest. While it is important to protect professionals employed by the Court (in this case the attorneys), it is more important to make sure that the various classes of creditors are treated within the parameters of the bankruptcy law. If this $200,000+ really belongs to the Estate as owners of the 50% that Ms. Daniel claims, that will be a major benefit to all creditors.

Mr. Pyle has provided a plausible story which may be supported by the evidence and the law. There is no reason to go forward in state court as these issues can be decided here, though it appears that it must be by and adversary proceeding.

Because all that has been provided is a stack of documents, the Court does not have the staff or ability to do a proper organization and calculation. I have found from past dealings with Mr. Pyle that ordering him to prepare such accountings is a very time consuming affair and would not work well at the present time. I suggest that the Trustee provide these and any other documents that Pyle has (there would be a definite deadline for providing additional documents) to her accountant to prepare the initial accounting. Mr. Pyle needs to understand that this will then be an administrative expense of the estate and will reduce the amount, if any, that he will recover from the sale of these properties. If he has an accounting, he should provide this forthwith since it is in his benefit to do so.

As to the two legal issues that Pyle raises, even though the judgment may not be enforceable due to its age, it does not change the outcome of the state court quiet title case and vest Pyle with title to 100% of the property.

As to adverse possession, that is a matter that the Court has not seen in many years. It will need to be briefed as part of the adversary proceeding and the Trustee might find it worthwhile to her case.

In the meantime, if Ms. Daniel agrees, the sale (if approved) can go forward and her alleged 50% can be held by the Trustee until the issue of her actual interest is resolved. The Court is aware that she may decide to withdraw from the stipulation due to this and that would be acceptable. If there is no agreement to go forward, the Trustee will need to bring an adversary proceeding to allow the sale and also to determine the exact interest (if any)

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CONT... Glen E Pyle **Chapter 7**
that Ms. Daniel owns.

Party Information

Debtor(s):

Glen E Pyle — Pro Se

Trustee(s):

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

10:00 AM
1:10-24968 Glen E Pyle **Chapter 7**

#3.00 Trustee's Motion For An Order Directing The Law Offices Of Raymond H. Aver APC and Marc H. Berry To Discharge Liens As Violating Automatic Stay

Docket 124

Tentative Ruling:

The liens in question are as follows:

Jan. 4, 2016	Law Offices of Raymond Aver	Unknown amount (trust deed)
July 30, 2020	Marc H. Berry	$42,747.50 (abstract of judgment)
July 31, 2020	Marc H. Berry	$ 8,000 (abstract of judgment)
July 31, 2020	Marc H. Berry	$ 4,000 (abstract of judgment)

As to all of these, the Trustee seeks a determination that the automatic stay prevented the filing of these post-petition liens under 11 USC §362(a)(3) and (4). The automatic stay applies because these are actions against property of the estate and seek to improve the lienholders' status post-petition from a post-petition creditor to a secured creditor. Because they are in violation of the stay, they are void.

Beyond that, the filing of the bankruptcy gave the Trustee the status of a hypothetical judgment lien creditor who has levied as of the date of the petition and therefore she has priority over these liens. 11 USC §544(a). The Trustee may avoid these transfers under §549.

Also, these lienholders are not creditors of the estate because their claims did not exist pre-petition or arise at the time that the petition was filed. §101(10).

Berry Opposition

The Court intended Pyle to pay the sanctions immediately after they were awarded without regard to the automatic stay. The payments were not made and no repayment plan was negotiated. There was a deadline of 3/26/12 for repayment and this was while the automatic stay was in effect. Had Berry thought of it, he would have sought relief from the automatic stay at that time.

The second sanctions award was made on 12/18/18 and was to be paid "forthwith." The Court did not intend this to be stayed by the automatic stay and this is an implied

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CONT... Glen E Pyle **Chapter 7**

waiver of the automatic stay.

But the automatic stay only applies to pre-petition debts and this was a new obligation that arose after the bankruptcy was filed.

Beyond that, the automatic stay had expired before Berry recorded his two abstracts and therefore should have terminated by a notice of termination of stay. Once the discharge was denied, the rationale for the stay disappeared. There should have been a notice of the order denying discharge from the clerk of court per Rule 2002, but this was not received by Berry. However, he was well aware that the denial of discharge took place on 5/4/20 and these three liens were not recorded for an additional three months.

As to the 7/30/20 lien being duplicative, Berry does not dispute that he only seeks to collect once on his 2001 civil judgment and does not care which lien is deemed to protect that right.

Aver Opposition (the Court uses the term "Aver" and "Aver firm" interchangeably)

To force removal of a lien, one must use an adversary proceeding. Rule 7001 states that an action to remove a lien requires an adversary proceeding. This would have to be a separate free-standing lawsuit, subject to the rules set forth in the 7000 section of the FRBP. This requires denial of this motion.

The Aver firm has represented Pyle in the adversary proceeding for fraudulent transfer. Some of the motions, etc. are attached to this opposition.

Equitable considerations require leaving the lien. At the time of the Vermont trust deed, the Debtor contended that it was property of the irrevocable trust and not of Pyle. Aver took this trust deed to be sure that he would be paid because Pyle did not have the money to pay his fees. It was not property of the estate at the time that the trust deed was taken. And even if it was and there was an automatic stay, the court has the power to retroactively relieve Aver of the stay. This requires a balancing test of weighing the equities on a case-by-case basis and that decision will only be overturned on an abuse of discretion.

This trust deed was recorded in 2016 and no one challenged it until now. Minimally, Aver should be allowed to seek retroactive relief from the stay.

The statute of limitations has run for the Trustee to use his strong-arm powers since more than 2 years have passed since the trust deed was recorded. Sec. 549(d).

The Aver Firm became part of this case when he substituted in as a defense counsel for Pyle and for the Pyle Irrevocable Trust in the Berry adversary for fraudulent transfer.

Trustee Reply

As to the Berry liens:

While there is no stay to collect a post-petition debt from property of the debtor,

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CONT... Glen E Pyle **Chapter 7**

there is a stay as to property of the estate. This remains in effect until the property is no longer property of the estate. Vermont is property of the estate. As to the effect of the denial of discharge, this only terminates the stay as to property of the debtor, not as to property of the estate.

As to the 7/30/20 lien, Berry admits that this is a duplicate and therefor it should be discharged as the Trustee requests.

As to the Aver Firm lien:

First of all, the recording of the trust deed was a void act, not a voidable one, because it violated the automatic stay. *In re Schwartz*, 954 F.2d 569 (9th Cir. 1992). It is not necessary for the Trustee to bring a section 549 action. Since it was void ab initio, there is no statute of limitations to prevent the court from removing it. To hold otherwise would defeat the purpose of the automatic stay. *In re Garcia*, 109 B.R. 335, 339 (D.C.N.D. Ill. 1989).

The time limitations of sec. 549(d) only apply to actions to recover property brought under sec. 549. The only way that the lien can be protected retroactively is by annulling the stay on an appropriate motion. *In re Schwartz*, supra. There is no conceivable way that Aver could justify collecting its post-petition debt from property of the estate.

Proposed Ruling

As to the Berry Liens:

There is no dispute that the July 30 lien is duplicative and will be removed. The history of the state court judgment is that the original judgment in the case of *Berry v. Pyle*, 99CK0380, was entered on 8/7/00 and recorded on 3/25/05. The original judgment was for $11,369.45 and the renewed judgment was for $22,582. The secured proof of claim that was filed on 4/6/15 was for $23,515.83, which included all interest through 11/29/10. Apparently Mr. Berry renewed the judgment again on 5/31/19. The original abstract and, thus, the amount of that claim would have increased over time and needs to be calculated. The sale motion states that Mr. Berry will receive the amount of $34,092.65. Obviously this will increase until it is actually paid.

The two abstracts filed on 7/31 are for payment of sanctions orders. The sanctions orders cannot be collected from property of the estate because they were never against the estate. They were personally against Mr. Pyle and are collectable only at to his property. Vermont is not his property, but is property of the estate.

It is probable that there was no automatic stay as to collecting from Mr. Pyle because these were post-petition obligations. Thus, if a chapter 7 debtor went out and used

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CONT... Glen E Pyle **Chapter 7**

a credit card between filing and discharge, the creditor could seek to collect from his property, but not from property of the estate. To the extent that the automatic stay may have applied, the Trustee is correct that the automatic stay terminated ONLY as to Mr. Pyle when his discharge was denied. It did not terminate as to the estate or property of the estate. Mr. Berry can seek payment directly from Mr. Pyle (but not from property of the estate). To the extent that he is not willing or able to pursue Pyle's own property, he can seek an administrative claim, though the Court does not know whether these qualify for that. But these sanctions orders do not create a secured claim against property of the estate. Grant the motion as to all three of the liens recorded in July 2020. Within 30 days of the entry of the order, Mr. Berry is to file the appropriate papers to discharge these liens.

As to the Aver trust deed:

The law is quite clear that a lien or act taken when the automatic stay is in effect is void ab initio. Section 549(d) does not create a statute of limitations as to violations of the automatic stay.

As to the necessity to bring an adversary proceeding under these circumstances, the parties are entitled to the process described in Part VII of the FRBP, such as discovery. But in this case there is no discovery or other issues to be resolved. It is undisputed that the trust deed was recorded post-petition. If Vermont was property of the estate, recording a lien on that property is a violation of the automatic stay and was void ab initio – see *In re Schwartz,* supra. The only questions are as follows: (1) was the Aver firm granted relief from stay? There is no dispute that this did not occur; and (2) was Vermont property of the estate. Although title appeared to be in the name of the Pyle Trust at the time, it has since been judged by final order that Vermont was and is property of the estate and not of the Pyle Trust. It does not matter that title was unclear at the time that the Aver firm recorded its lien. Vermont was always property of the estate.

Mr. Aver argues that because a review of the legal documents at the time of the recording of the trust deed appeared to show title in the Pyle Trust, his lien should stand as though the actual ownership at that instant was in the Pyle Trust. It was not. Had property that was owned by Pyle as an individual actually been owned by the Pyle Trust at that moment in time, the retransfer to Mr. Pyle would not have removed the Aver lien since the recording of the lien would not have violated the automatic stay. But this is not the fact of this case. Vermont was always the property of Glen Pyle, individually, and thus became property of the estate upon the filing of this bankruptcy case. Grant the motion. Within 30 days of the entry of the order, the Aver firm and Mr. Aver are to file the appropriate paperwork to discharge the lien.

The Aver firm did not intentionally breach the automatic stay. Thus the Trustee has

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not asked for sanctions and the Court would not have awarded them had they been requested. Mr. Aver acted reasonably under the circumstances, but that did not protect him from losing the lien.

As to his indication that he will seek to retroactively annul the stay, no such motion has been filed. Should this occur, the Court will deal with it. If the Aver firm intends to bring such a motion, it is to be filed within one week and be set for hearing on shortened notice for Nov. 17 at 10:00. Both parties have had ample time to be prepared to deal with this without delay.

Party Information

Debtor(s):

Glen E Pyle	Pro Se

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, October 27, 2020 **Hearing Room 303**

10:00 AM
1:15-14213 Michael Robert Goland **Chapter 7**
Adv#: 1:20-01063 Burk v. Zamora

#4.00 Status Conference Re Complaint for
1 - Declaratory Judgment
2 - Breach of Fiduciary Duty - Taxes
3 - Failure to Collect Rent - Estate
4 - Failure to Collect Rent - Plaintiff

fr. 8/25/20, 10/6/20

Docket 1

Tentative Ruling:

Continued by stipulation to December 22 at 10:00 a.m. The parties are seeking to mediate.

Party Information

Debtor(s):

Michael Robert Goland	Represented By David S Hagen

Defendant(s):

Nancy Zamora	Pro Se

Plaintiff(s):

Gerry Burk	Represented By Michael N Sofris

Trustee(s):

Nancy J Zamora (TR)	Represented By Jessica L Bagdanov David Seror Ezra Brutzkus Gubner

10:00 AM
1:15-14213 Michael Robert Goland **Chapter 7**
Adv#: 1:20-01063 Burk v. Zamora

#5.00 Motion to Dismiss Complaint with Prejudice

fr. 8/25/20, 10/6/20

Docket 9

Tentative Ruling:

Off calendar. The motion to dismiss was withdrawn by stipulation and a first amended complaint is to be filed.

Complaint –

Burk seeks declaratory judgment that he is the proper owner of the Property at 5721-5711 Compton Ave, LA, that the Trustee breached her fiduciary duty by failing to collect and pay taxes, that the Trustee failed to collect fair market rent for the Estate in an amount exceeding $110,000, and that the Trustee failed to collect fair market rent for Burk and interfered with his possessory rights to the Property.

The complaint sets forth the chain of title. Goland's bankruptcy petition was filed 12/20/15, but Goland never showed ownership in the Property. In 2014, KCC purchased the property at foreclosure. On 3/2/17 KCC issued a grant deed to Burk as trustee for the 5721 Trust. On 6/21/17 the Trustee filed a motion to operate the Property claiming that the Estate owned the Property and had the right to collect rent.. This was approved by the Court. The Trustee indicated that she would later file an adversary complaint to determine title. She never did and on 11/26/19 she abandoned all Estate claims to the Property. On 1/19/20 the Court approved the sale of all Estate rights to the tenant, Triple Images, LLC (TI).

Motion to Dismiss

Burk had actual notice of the Trustee actions as to the Property and has not complained during the three years. The Trustee originally obtained the right to collect rent through the settlement with Bret Lewis, which was approved by the Court. That was a final order and Burk should have objected at the time. This lawsuit is an improper, very late attempted collateral attach

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CONT... Michael Robert Goland **Chapter 7**

on the Rent Settlement Order as well as later orders allowing the Trustee to collect rent. The Trustee is immune from potential liability arising from breaches of fiduciary duties owed to creditors of the Estate since she was acting with the authority of Court orders.

As creditor, Burk will receive a pro rata distribution from the Estate.

As to payment of taxes, the property taxes had not been paid for more than 20 years and as of Oct. 2019 there was $350,000+ owing to the LACTTC. In Oct. 2019 the Trustee and the LACTTC stipulated to relief from the automatic stay so that the LACTTC could hold a tax sale. They had already tried to hold such a sale in 2005, 2007, and 2014. Burk was served with this stipulation. Burk received the tax bills and never forwarded them to the Trustee. The Trustee had been authorized to pay taxes, but not directed to do so.

The Trustee decided to sell the Estate's interest (whatever that was) because it was not an efficient use of resources to challenge legal title to the property. The Sale Motion took place and Burk did not file an objection or appeal.

A complaint may be dismissed under Rule 12(b)(6) when an affirmative defense appears on the face of the complaint. In this case the affirmative defenses of laches and the Trustee's quasi-judicial immunity are clear. This complaint should be dismissed with prejudice.

Opposition to Motion to Dismiss

The Trustee never filed the adversary proceeding to determine the ownership of the Property and the rental income, but sought to use that money to pay herself and her professionals. This money belongs to Burk. Further, at least $118,000 or the $131,900 collected by the Trustee during the three years is not property of the Estate, but belongs to Burk.

As to the stipulation with the LACTTC, there would be no tax sale if the Trustee had used the rents to pay the taxes.

The motion to dismiss includes additional facts which are outside the complaint itself and cannot be considered. This motion ignores these additional facts.

As to laches, the Court never decided that the rents belong to the Estate. The Trustee was allowed to collect rent, but not necessarily own them. Thus laches as to the ownership of the Property and of the rents has never been decided. This is clear from the tentative ruling on the sale of the

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CONT... Michael Robert Goland **Chapter 7**

Property when it dealt with the Cohen opposition and claim of ownership.

Laches requires to pongs: that there was a significant delay without justifiable reason and that the delay is prejudicial to defendant's ability to respond. One rule of thumb is to compare the claim to the statute of limitations with additional time added. You look at it in the context of the ongoing litigation and whether evidence and witnesses will be lost or tainted or no longer available.

That is not the situation in the Trustee's motion. The three year delay is not shown to be unreasonable, particularly since the statute of limitations is four years (CCP sec. 337.2).and probably would not have started running until the Trustee sold the interest in the Property or the motion to make distribution. Given the length of a bankruptcy proceeding, three years is not unreasonable.

Burk also had a justifiable reason for delay because the Trustee had planned to bring an adversary action to determine ownership of the Property.

The Trustee has not shown any actual prejudice such as witnesses or documents having become unavailable.

There was no final determination that the rent belonged to the Estate and there was no prior litigation on the issue, so collateral estoppel cannot apply. The settlement with Lewis only dealt with the Estate's interest in rent Lewis had collected, not future rents. Being put on notice of the settlement is simply not enough to create collateral estoppel.

The Trustee does not enjoy absolute immunity, only qualified immunity under the business judgment rule. The Trustee never made a business judgment or attempted to hire an experienced property manager. Also what the Trustee did was a routine duty, not a task that is judicial in nature. And if the Property is not property of the Estate, there is no immunity.

Litigation privilege does not exist to bar causes of action involving fiduciary duty, negligence and ownership of estate assets.

Reply

The Trustee has immunity from the claims for breach of fiduciary duty. Beyond the various orders, the Trustee file monthly operating reports that showed the rent collected and expenses paid. So all actions were under court order, which allowed the Trustee to receive rent of $2,100 per month. There were allegations of hazardous waste and no appraisal was required. Bringing

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CONT... Michael Robert Goland **Chapter 7**

the motion to collect rents and to continue to operate the Property were business decisions of the Trustee.

As to property taxes, the Trustee did not pay these since she received no bills. This is a judicially noticeable fact. The Trustee had authority to pay property taxes, but was not ordered to do so. In fact, Burk was the one who received the property tax bills. Burk was lying in wait and concealed facts from the Trustee. Thus the Court can treat this issue as a motion for summary judgment and rule in that manner.

As to the declaratory relief claim, that is barred by collateral estoppel and equitable estoppel. Burk has said nothing while the Trustee collected the rents. No matter who legal owns the rents, the question is whether Burk should be collaterally estopped from challenging whether the Trustee was authorized to collect them for the benefit of the estate. This was actually litigated in connection with the Motion to Operate. At that time, no one objected to the Trustee's right to operate the property. The Trustee never intended to collect the rents for Burk's benefit.

Laches applies even if the statute of limitations has not run. Burk knew or should have known of the Trustee's claim to an interest in the rents as early as February 2017 when Burk and his attorney received actual notice of the Lewis settlement. The Trustee employed professionals and incurred significant expense in this case and they all believed that they would be at least partially paid from the rents collected.

The Trustee's statements as to payment of taxes or ascertain title is cannot be the basis of the action.

ANALYSIS

Evidentiary Objections to Burk Declaration

Paragraph 3 – Overruled as to whether Burk actually told the tenant that the rent was being raised in that it is not admitted for the truth that this was the fair market value at the time it was said.

Paragraph 4 – Sustained. Irrelevant. Does not show foundation or personal knowledge.

Paragraph 5 – Sustained.

Paragraph 6 – Overruled. This goes to Burk's basis of action at this time, not the truth of the third party statement.

The initial claim for relief is for declaratory relief to determine the rights of the Estate in the Property and in the rent generated from the Property. This is a critical determination. If Goland does not have rights in the Property, the Estate has no rights or interest in the rent. If Burk is, in fact, the owner of the Property (either as an individual or through an entity that he owns), the rents are not property of the Estate.

As to the issue of collateral estoppel, no final determination has been made. From the beginning, the Trustee asserted that she would bring an adversary proceeding to determine ownership rights, but she did not do so. She – and the Court – just assumed that the rents could be collected by the Trustee and used to fund the Estate because no one else came forward to dispute this. But that did not mean that silence at that time was consent. Until the Trustee triggered something, Burk or any other owner could sit back and allow the Trustee to collect the rents, knowing that eventually there would be a judicial determination of his/their rights. But that determination never came.

The settlement with Bret Lewis was just that – a settlement with a creditor who claimed a right to collect rent. It was not a determination that other parties did not have any rights in the Property.

Only when the Trustee filed her final report and did seek a determination that the Estate could keep the rent money did it become incumbent on Burk to act. That only happened within the last year. No statute of limitations has run and there is no automatic determination of laches. The argument that the Trustee and her professionals depended on the pot of rent for their fees is just an argument at this time. Perhaps in the litigation the Trustee can show the detriment that she or the Estate suffered due to the timing, but this is not a given and grounds for dismissal as an affirmative defense. The motion to dismiss the first cause of action is denied.

As to the issue of fiduciary duty for failure to pay taxes, the Estate does not seem to be liable for the collection and payment of taxes. The owner of the Property is responsible for the payment of property taxes. If the property is sold at a tax sale, that is not a loss to the Estate since it sold its interest (if any) at a noticed sale. Burk and his attorney had notice of this sale and the order is final. If Burk is, in fact, the owner, taxes are his responsibility whether there was rent collected or not. Under the circumstances of this

10:00 AM

CONT... Michael Robert Goland **Chapter 7**

case, the Trustee did not owe a fiduciary duty to Burk as the purported owner of the Property or to the Estate. Thus the motion to dismiss the Second Cause of Action with prejudice will be granted.

The third and fourth causes of action concern the failure of the Trustee to collect fair market rent for the use of the property – the third claim is as to the Estate and the fourth is as to Burk. In his opposition brief, Burk asserts that he advised the Trustee of the fair market rental value and, in fact, had given the tenant notice of this prior to the filing of the bankruptcy. But this is not included in the complaint itself and the statements in his declaration are only partially admissible. Assuming that the complaint is amended to include sufficient facts to show that the amount collected by the Trustee was below fair market rental value, the third and fourth causes of action can survive. As a creditor of this Estate, Burk has standing to bring the third cause of action. As the purported owner of the Property and the rents collected, he also has standing to bring the fourth cause of action. The motion to dismiss the Third Cause of Action is granted with leave to amend. The motion to dismiss the Fourth Cause of Action is granted with leave to amend.

The amended complaint is to be filed by September 11, 2020. The Trustee will have until September 28, 2020 to respond. The status conference will be continued to October 27, 2020 at 10:00 a.m.

Party Information

Debtor(s):

Michael Robert Goland	Represented By David S Hagen

Defendant(s):

Nancy Zamora	Represented By Jessica L Bagdanov

Plaintiff(s):

Gerry Burk	Represented By Michael N Sofris

Trustee(s):

Nancy J Zamora (TR)	Represented By

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

Tuesday, October 27, 2020 **Hearing Room 303**

10:00 AM

CONT... Michael Robert Goland **Chapter 7**

Jessica L Bagdanov
David Seror
Ezra Brutzkus Gubner

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.

#6.00 Status Conference Re: Third 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, 12/23/19; 2/11/20; 4/7/20; 6/23/20, 7/7/20, 7/21/20; 9/15/20

Docket 159

Tentative Ruling:

The third amended complaint was filed on 8/25/20. On 9/29/10 LTP filed an answer and countclaim against Hiongbo Cue and Majestic Air. On 10/23, LTP filed an amended counterclaim against Majestic Air. No status report has been filed as of 10/24. Where do we go from here?

Prior tentative ruling (7/21/20)
This is just to find out if there is any possibility of settlement. The estate has very few assets and most of those will go to LTP or perhaps be eaten up in attorney fees. While LTP apparently has substantial assets, the Plantiffs would have to win a large judgment in order to collect on those, given the amount of the judgments against them. This will also be a hard-fought and expensive case. Because Ms. Havkin is counsel for the estate, I requested that she appear as any settlement would have to be on behalf of the estate as well as the Tessie Cue probate.

So please update me on the settlement possibility. Meanwhile, I am working on the motion to dismiss. That hearing is set for 9/15/20 at 10:00 a.m.

Prior tentative ruling (7/7/20)
The adversary is proceeding very slowly. Please note that there is less than $100,000 in the estate and the Court cannot tell the chances of an actual

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

reorganization. Is this still an operating company? Will it be operating in the future? It seems from the last report that it has less than $50,000 worth of inventory for resale.

What is the amount available from the Tessie Cue Estate?

There are very few claims in this case - and it appears that the LTP and Tessie Cue claims are the only unsecured ones.

Looking at this there is a serious question of whether you should settle this without further expenditure.

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

Tuesday, October 27, 2020 **Hearing Room 303**

10:00 AM
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 6/11/19; 7/16/19; 8/20/19; 9/24/19, 12/17/19; 12/23/2019; 2/11/20, 4/7/20; 6/23/20; 7/7/20, 7/21/20, 9/15/20

Docket 1

Tentative Ruling:

This will trail the adversary proceeding. No status reports are needed. No appearances are needed. Please check the future tentative rulings to see whether and appearance and/or status report will be required.

Prior Tentative Ruling (7/7/20)
This will trail the adversary proceeding. No appearance is needed on July 7 and no further status report is needed until you are notified by the Court that one is necessary.

Party Information

Debtor(s):

Majestic Air, Inc. Represented By
Stella A Havkin

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 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, 12/23/19; 2/11/20; 4/7/20; 6/23/20, 7/7/20, 7/21/20, 9/15/20

Docket 82

Tentative Ruling:

Off calendar. This is now a duplicate of the status conference on the third amended complaint.

for 9/15/20-
Continued without appearance to October 27, 2020 at 10:00 a.m. per the order granting the motion to dismiss the second amended complaint with leave to amend.

Prior tentative ruling (7/21/20)
This is just to find out if there is any possibility of settlement. The estate has very few assets and most of those will go to LTP or perhaps be eaten up in attorney fees. While LTP apparently has substantial assets, the Plantiffs would have to win a large judgment in order to collect on those, given the amount of the judgments against them. This will also be a hard-fought and expensive case. Because Ms. Havkin is counsel for the estate, I requested that she appear as any settlement would have to be on behalf of the estate as well as the Tessie Cue probate.

So please update me on the settlement possibility. Meanwhile, I am working on the motion to dismiss. That hearing is set for 9/15/20 at 10:00 a.m.

Prior tentative ruling (7/7/20)

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

The adversary is proceeding very slowly. Please note that there is less than $100,000 in the estate and the Court cannot tell the chances of an actual reorganization. Is this still an operating company? Will it be operating in the future? It seems from the last report that it has less than $50,000 worth of inventory for resale.

What is the amount available from the Tessie Cue Estate?

There are very few claims in this case - and it appears that the LTP and Tessie Cue claims are the only unsecured ones.

Looking at this there is a serious question of whether you should settle this without further expenditure.

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

Tuesday, October 27, 2020 **Hearing Room 303**

10:00 AM
1:19-13099 Marshall Scott Stander **Chapter 7**
Adv#: 1:20-01025 Rob Kolson Creative Productions, Inc. v. Stander

#9.00 Status Conference Re: Complaint Objecting to Discharge Pursuant to Section 727 of the Bankruptcy Code.

fr. 5/6/20; 6/24/20(MT); 7/21/20

Docket 1

Tentative Ruling:

Per the status report filed on 10/16, an answer was filed. Both parties think that discovery cut-off at the end of March is workable and that the trial will be ready in June. Both sides want to do discovery. Both sides want a pretrial conference in late May. Plaintiff does not want mediation at this time, though Defendant does. Given that Plaintiff needs to determine the strength of its case as noted immediately below, it seems that an order to mediation at this time is premature. Though, of course, the parties can always agree to mediate.

There seems to be a discovery issue concerning communications that may be covered by attorney-client privilege. That may be key to settlement. Plaintiff intends to depose Peter Babos, Defendant's non-bankrutpcy counsel, and that may give Plaintiff grounds to attack the attorney-client privilege.

It seems that this is such a key issue that it needs to be resolved first. Let's talk about how Plaintiff intends to proceed on it and set some dates and continuances.

Party Information

Debtor(s):

Marshall Scott Stander — Represented By Leslie A Cohen

Defendant(s):

Marshall Scott Stander — Pro Se

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

Tuesday, October 27, 2020 **Hearing Room 303**

10:00 AM
CONT... Marshall Scott Stander **Chapter 7**

Plaintiff(s):

Rob Kolson Creative Productions, Represented By
Lane M Nussbaum

Trustee(s):

David Keith Gottlieb (TR) Pro Se

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

Tuesday, November 17, 2020 **Hearing Room 303**

8:00 AM
1:00-00000 **Chapter**

#0.00 **The 8:30 am Reaffirmation hearing calendar will be conducted remotely, using ZoomGov video and audio. ALL OTHER MATTERS ON JUDGE MUND'S CALENDAR WILL BE HEARD PURSUANT TO THE NOTICE THEREOF.**

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address: https://cacb.zoomgov.com/j/1600517495

Meeting ID: 160 051 7495

Password: 111720GM

Telephone Conference Lines: 1 (669) 254-5252 or 1 (646) 828-7666

Meeting ID: 160 051 7495

Password: 45552184

8:00 AM
CONT... **Chapter**

Docket 0

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

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

Tuesday, November 17, 2020 **Hearing Room 303**

9:30 AM
1:00-00000 **Chapter**

#0.00 **The 10:00 am calendar will be conducted remotely, using ZoomGov video and audio.**

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address: https://cacb.zoomgov.com/j/1615614374

Meeting ID: 161 561 4374

Password: 843398

Telephone Conference Lines: 1 (669) 254-5252 or 1 (646) 828-7666

Meeting ID: 161 561 4374

Password: 843398

Docket 0

9:30 AM
CONT... **Chapter**

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

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

Tuesday, November 17, 2020 **Hearing Room 303**

10:00 AM

1:05-13556 Linda Widdowson **Chapter 7**

Adv#: 1:20-01023 Fidelity National Title Company v. Widdowson et al

#1.00 Status Conference: Crossclaim by FORD CREDIT TITLING TRUST against Citibank (South Dakota) N.A., Fidelity National Title Company, David Seror, Chapter 7 Trustee, Linda Widdowson

Docket 44

Matter Notes:

- NONE LISTED -

Tentative Ruling:

See tentative ruling for calendar #2

Party Information

Debtor(s):

Linda Widdowson	Represented By Michael E Mahurin David A Tilem Susan I Montgomery

Defendant(s):

Linda Widdowson	Pro Se
DAVID SEROR ESQ	Pro Se
Citibank (South Dakota) N.A.	Pro Se
FORD CREDIT TITLING TRUST	Represented By Adam N Barasch

Plaintiff(s):

Fidelity National Title Company	Represented By Sheri Kanesaka

Trustee(s):

David Seror (TR)	Represented By

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

Tuesday, November 17, 2020 **Hearing Room 303**

10:00 AM

CONT... Linda Widdowson **Chapter 7**

Anthony A Friedman
Anthony A Friedman
Susan I Montgomery

10:00 AM
1:05-13556 Linda Widdowson **Chapter 7**
Adv#: 1:20-01023 Fidelity National Title Company v. Widdowson et al

#2.00 Status Conference Re:
Complaint for Interpleader and Declaratory Relief.

fr. 4/7/20; 6/2/20, 7/21/20, 9/15/20, 10/13/20

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

The order to deposit funds was entered on 11/2. Fidelity National Title Co. filed and anwer to Citibank's cross claim. Citbank filed an answer to Ford Credit's cross claim. It appears that all pleadings have been filed. There are not status reports. How do the parties plan to go forward? Is the a matter that can be resolved through a motion for summary judgment? Would a settlement conference help?

Prior tentative ruling (10/12/20)
Ford Credit Titling Trust filed an answer and a crossclaim against Citibank on 9/3. The status conference for the cross-claim is set for 11/17. Continue this without appearance to 11/17 at 10:00 a.m.

Prior tentative ruling (7/21/20)
On July 1 the clerk's office issue another summons on Citibank. The answer is due on 7/31. On 6/22 the court entered its order allowing service by publication on the debtor. Continue by stipulation to September 15, 2020 at 10:00 a.m. to allow the service by publication on Widdowson to be completed.

Prior tentative ruling (6/2/20)
In 2007 Trustee sold the debtor's single family resident at 194 Saddlebow Rd., Bell Canyon. This was free and clear of liens. Fidelity

10:00 AM

CONT... Linda Widdowson **Chapter 7**

National Title Co (Fidelity) was the sub-agent of Valley Escrow. Two abstracts of judgment were discovered: $35,332.29 recorded on 9/16/03 in favor of Ford and $21,870.53 recorded on 10/1/03 in favor of Citibank. Fidelity is holding $57,202.82 in the sub-escrow account and has never received further instructions from the Trustee. Fidelity wants to turn these over to the Trustee.

Ford has until July 24 to respond. David Seror, the trustee, has filed an answer. Seror asserts that to the extent that Citibank and Ford each have a valid, perfected, non-avoidable security interest in the funs, that is superior to the Estate's interest, but the Estate's interest is superior to that of the Debtor

The status report is that Fidelity will file a motion to deposit the funds and to be dismissed. [It previously filed such a motion, but withdrew it.] The Trustee, who joined the status report, sees trial in 90 days and that it will take about 30 minutes. The motion to deposit funds is set for July 21 at 10:00 a.m.

Why no response by Citibank? Did Widdowson get notice (I can't open the proof of service). Once the money is deposited, will the Trustee take over the prosecution of this case?

Prior tentative ruling (4/7/20)
Due to the response to the coronavirus pandemic, this matter is continued without appearance to **June 2, 2020 at 10:00 a.m**. Should you need an emergency hearing before that time, please file a motion requesting that and stating the reason. Plaintiff is to give notice of this continuance to all defendants.

Party Information

Debtor(s):

Linda Widdowson — Represented By
Michael E Mahurin
David A Tilem
Susan I Montgomery

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

Tuesday, November 17, 2020 **Hearing Room 302**

10:00 AM
CONT... Linda Widdowson **Chapter 7**

Defendant(s):

Linda Widdowson	Pro Se
DAVID SEROR ESQ	Pro Se
Citibank (South Dakota) N.A.	Pro Se
FORD CREDIT TITLING TRUST	Pro Se

Plaintiff(s):

Fidelity National Title Company	Represented By Sheri Kanesaka

Trustee(s):

David Seror (TR)	Represented By Anthony A Friedman Anthony A Friedman Susan I Montgomery

10:00 AM
1:10-24968 Glen E Pyle **Chapter 7**

#3.00 Trustee's Motion for Order Approving:
(1) Settlement Agreement with Linda Daniel;
and (2) Approving form of Settlement Agreement

fr. 9/15/20, 10/27/20

Docket 92

Matter Notes:

- NONE LISTED -

Tentative Ruling:

The Trustee's accountant has reviewed the documents provided to him by Mr. Pyle. These show that no part of the $56,000 was paid to Ms. Daniel. Both the Trustee and Ms. Daniel wish to proceed with the settlement agreement. The Court agrees that it is in the best interest of the estate to do so. Grant the motion.

prior tentative ruling (9/15)

The Trustee wishes to sell the entire property at 225226 Vermont Dr., Santa Clarita (the Property). Linda Daniel is a 50% owner of record. It is uncertain as to how this 50% relationship of Pyle and Daniel came into being. Daniel says that in 1990 she sold to Pyle, but he never paid her and in 1991 he illegally locked her out of the Property and asserted complete control of the Property. She also asserts that he collected rents and never shared them with her nor paid her for the 50% interest that he purchased from her. Daniel had judgments from the LA Superior Court from 1992 for $56,000 and $1,200 respectively.

The Trustee is informed and believes that Pyle denies all of these allegations and asserts that he paid Daniel everything owed to her and that she has no interest in the Property.

Neither Daniel nor Pyle has presented to the Trustee any evidence to support their allegations. Nonetheless there are multiple title reports that show Daniel's interest.

The four factors to consider in approving a compromise are as follow:

1. The probability of success in the litigation
2. The difficulties, if any, to be encountered in the matters of collection
3. The complexity of the litigation and the expense, inconvenience, and delay

10:00 AM
CONT... Glen E Pyle **Chapter 7**

necessarily attending to it

4. The paramount interest of creditors and the proper deference to their reasonable views.

In this case, the Trustee has determined that the estate has at least a 50% interest in the Property and that the other 50% is owned by Daniel. But the Trustee believes that there is a strong claim that the estate owns 100% of the Property and that Daniel is an unsecured creditor. This is based on her delays and failures in acting as an owner such as paying taxes and failing to enforce the judgments against the Debtor. But the judgment that Daniel has shows that Pyle failed to make a $56,000 payment and there is no evidence of this payment or of payment of any other amount.

Beyond that, in a litigation the only witness that the Trustee would have is the Debtor who has been unreliable and uncooperative.

Because of all this, the fees and costs of a litigation make settlement an excellent option. The approval of the settlement is of significant value to the estate and its creditors because Daniel is paying the lion's share of her proceeds to the estate and the Trustee can consummate the sale without having to commence an adversary proceeding under sec. 363(h) and FRBP 7001, which would be costly. This settlement is in the best interest of creditors in that the estate will realize $169,000 without the uncertainties and costs of litigation.

The terms of the settlement are that the Trustee can sell Daniel's co-ownership interest. She will instruct escrow to pay the Trustee 80% of her 50% share. This will become property of the estate free and clear of any liens and encumbrances and of Daniel's interest. This carved out amount is to be used solely for unpaid professional fees and expenses of the legal advisors of the Trustee, fees payable to the clerk of court or the OUST, and holders of general unsecured claims. There will be mutual releases. [Other professionals of the Trustee are not included in the carve out.]

Pyle Opposition

On August 14, 2020, August 23, 2020, and August 24, 2020 Glen Pyle sent emails and documents to Leonard Pena, counsel for Trustee. Pena has sent these to the Court and apparently attempted to file them, but they are not on the docket. Mr. Pyle asserts shows that he had paid off Linda Daniel for her interest in Vermont. On about September 10, the Court received a batch of documents from Mr. Pyle. Because I am not working from my office, I have not yet seen these and will only look at them just before the hearing. These

10:00 AM

CONT... Glen E Pyle **Chapter 7**

may or may not be duplicates of the documents that Mr. Pena received and mailed to the Court. It is assumed that they are without an actual accounting, as has been the habit of Mr. Pyle when he produced documents in the past. It is also assumed that he is submitting these as evidence of payments that he made to Linda Daniel. On September 3, Pyle filed his opposition to this motion and to the sale, which is a declaration that contains the following facts and arguments:

The 1992 judgment is void as it was never enforced. As to the background to the 1992 judgment, in 1990 Daniel owed $65,000 on the loan that she had received in 1988. Daniel asked Pyle to bail her out of the foreclosure and if he did she would grant him a 50% interest in the Vermont Property. Pyle brought the loan current and did it again three more times. In April 1991 Pyle received a notice that Daniel was again in default. Daniel's mother and brother had been living in the Vermont Property, but they moved out due to Daniel's irresponsible behavior. Daniel also moved out.

On October 4, 1991 Pyle leased the house to Linda Hunter for $950 a month and Pyle states that he has the check for first and last month's rent of $1,900. Meanwhile, Pyle heard nothing from Daniel and on October 30, 1992 he filed a quiet title case (PC03296). The stipulated agreement/judgment was that he was to pay $56,000 for her interest and when he paid she was to transfer that interest to Pyle.

Daniel's 50% interest was encumbered by a loan to her from Coast S&L in the amount of $65,000, which was recorded against the Property. Thus she could not transfer her 50% interest without paying off the $65,000 loan. After the hearing [apparently the stipulation in case PC03296], Daniel indicated that she was not going to pay the Coast S&L debt. So Pyle had no choice but to pay that mortgage even though it was recorded only against Daniel and there was no co-signer and Pyle was not a party to the loan and under no obligation to pay it.

The stipulated judgment does not state how or when Pyle would pay Daniel the $56,000.

Because Pyle paid the Coast mortgage, "Linda received all the proceeds of that loan all $65,000 thus Linda would get another $56,000 plus the $30,000 or so that I paid out for my 50% before and after the first default 3 X for a maybe $100,000 house at that time."

There was adverse possession in that Pyle paid Coast, WAMU, Chase Bank, all property taxes, insurance, maintenance, and remodel (new windows, doors, kitchen floors, 2 new bathrooms, added a shower in one, new garage door, etc.) Pyle had complete possession from 1996 through 2000 when the property was transferred to the Pyle

10:00 AM

CONT... Glen E Pyle **Chapter 7**

Irrevocable Trust on 1/2000. This constitutes adverse possession under Civ. Code 325.

Pyle can go to state court and resolve this with Daniel for a filing fee and very little additional cost (not over $2,500).

Analysis and Proposed Ruling

There is no proof of service on the Pyle opposition and no indication that the Trustee has received it. It was filed on Sept.3 (dkt. 113) and as of Sept. 13 no reply has been received.

Mr. Pyle has raised some important questions, some or all of which may be clarified in the stacks of documents that he has provided to the Court. Not only is there the issue of whether Ms. Daniel is entitled to any of all of the approximately $42,000 that she would receive from the proposed sale, but also whether the Trustee is entitled to a carve out of the $169,400 from her alleged interest. While it is important to protect professionals employed by the Court (in this case the attorneys), it is more important to make sure that the various classes of creditors are treated within the parameters of the bankruptcy law. If this $200,000+ really belongs to the Estate as owners of the 50% that Ms. Daniel claims, that will be a major benefit to all creditors.

Mr. Pyle has provided a plausible story which may be supported by the evidence and the law. There is no reason to go forward in state court as these issues can be decided here, though it appears that it must be by and adversary proceeding.

Because all that has been provided is a stack of documents, the Court does not have the staff or ability to do a proper organization and calculation. I have found from past dealings with Mr. Pyle that ordering him to prepare such accountings is a very time consuming affair and would not work well at the present time. I suggest that the Trustee provide these and any other documents that Pyle has (there would be a definite deadline for providing additional documents) to her accountant to prepare the initial accounting. Mr. Pyle needs to understand that this will then be an administrative expense of the estate and will reduce the amount, if any, that he will recover from the sale of these properties. If he has an accounting, he should provide this forthwith since it is in his benefit to do so.

As to the two legal issues that Pyle raises, even though the judgment may not be enforceable due to its age, it does not change the outcome of the state court quiet title case and vest Pyle with title to 100% of the property.

As to adverse possession, that is a matter that the Court has not seen in many years. It will need to be briefed as part of the adversary proceeding and the Trustee might find it worthwhile to her case.

10:00 AM

CONT... Glen E Pyle **Chapter 7**

In the meantime, if Ms. Daniel agrees, the sale (if approved) can go forward and her alleged 50% can be held by the Trustee until the issue of her actual interest is resolved. The Court is aware that she may decide to withdraw from the stipulation due to this and that would be acceptable. If there is no agreement to go forward, the Trustee will need to bring an adversary proceeding to allow the sale and also to determine the exact interest (if any) that Ms. Daniel owns.

Party Information

Debtor(s):

Glen E Pyle	Pro Se

Trustee(s):

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

10:00 AM
1:10-24968 Glen E Pyle **Chapter 7**

#4.00 Motion RE: Objection to Claim Number 1
by Leila Maitland.

Docket 128

Matter Notes:

- NONE LISTED -

Tentative Ruling:

The Trustee objects to claim no. 1-2 on the grounds that the underlying debt instrument is usurious and a *violation* to the California Constitution. This would reduce the claim amount by $138,809.35 for the usurious interest and another $19,850 for attorneys' fees. Thus the claim would be reduced from $218,659.35 to $60,000.

The original note and trust deed were entered into between Steve Maitland, Eloise Maitland, and Maria Louise Gomez with Glen Pyle. This occurred on 7/11/06. Prior to that, on 1/8/06, the three original lenders assigned their interest to Leila Maitland, and this assignment was recorded on 1/12/07.

The note provides for 12% annual rate of interest.

The California Constitution, sec. 1, Art. XV limits the interest rate to the higher of 10% or 5% plus the then-prevailing rate established by the Federal Reserve Bank of San Francisco unless there is an exemption. Anything greater is usurious.

Among the exemptions are loans "made or arranged by any person licensed as a real estate broker by the State of California and secured in whole or in part by liens on real property, or any bank…."

Beyond looking at the stated interest rate, one must add in any charges, which is defined in Cal. Fin. Code sec. 22500. In the schedule of payments due, which was received from Maitland, the demand is for $60,000 principal and an additional $158,659.35 in fees and costs. Ex. 4 shows that this includes attorney fees and late fees of $30 per month. This clearly exceeds the statutory maximum interest rate.

California Civ. Code sec. 1916.1 defines who is acting as a licensed real estate broker for purposes of the usury exemption. A loan is "made" by a licensee only if the licensee is

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CONT... Glen E Pyle **Chapter 7**

lending its own money. Here Leila Maitland is not named as one of the lenders and none of the lenders are licensed real estate brokers. A loan is "arranged by" a broker where the broker acts for another in an agency capacity with the expectation of payment. There is no evidence that this loan was "arranged" by a broker.

Further, a finance lender or broker must obtain a license from the commissioner. Cal. Fin. Code sec. 22059. Just having a real estate broker's license is not enough – the broker also needs to be licensed as a finance lender or working on behalf of a finance lender. Cal. Fin. Code sec. 22100.

There is no evidence that this loan meets these requirements and thus it is usurious as a question of fact and also as a question of law if the interest rate is easily determinable. *Domarad v. Fisher & Borke, Inc.*, (1969) 270 Cal. App. 2d 543, 560

Upon finding that it is usurious, Maitland must disgorge all interest and other charges received and may collect only the principal balance of the debt. Cal. Civ. Code sec. 1916.12-3. This limits the lien to $60,000.

In this case the original interest rate was 12%, but the schedule provided by Maitland has charges of an additional $158,659.35 in fees and costs. The attorney fees are uncollectible as charges and also because the note only allows them for a suit on the note or a foreclosure of the deed of trust – and neither of these have occurred.

Opposition

Steven Maitland declares that he was one of the three lenders and was solely responsible for the negotiation and execution of the loan agreement with Pyle. At that time he was working as a licensed real estate agent in California. He did not believe the interest rate of 12% to be usurious because he was working as a real estate agent employed with a real estate company. If there was a mistake, he intended that the interest would be reduced to the 10% rate.

The note has an interest "savings clause" that states that "[i]n no event shall the interest rate charge under this note exceed the maximum rate permitted under applicable law." The note provides that it shall be construed under California law. The maximum annual interest rate allowed under California law, absent a usury exemption, is 10%. Payments were made at $600 per month from August 2006 until November 2010. The Debtor filed bankruptcy on November 30, 2010 and no payments were made thereafter.

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The case of *Dominguez v. Miller*, 995 F.2d 883 (9th Cir. 1993) had similar facts and determined that when there is a "savings clause" of the kind here, the Court looks to the intent of the parties to see what interest rate they intended to apply. The savings clause creates an ambiguity and it is appropriate for the Court to take evidence as to the intent and thus ensure that it is merely a sham to get around the law. The conduct of a party after the agreement is strong evidence as to intent on entering the agreement, but this does not exclude other reliable evidence. In the *Dominguez* case, the testimony of the maker of the note and his agent convinced the bankruptcy court that they intended the savings clause to limit the amount of interest to the maximum non-usurious rate. This was accepted by the Court of Appeals.

Steven Maitland includes a declaration that when he made the loan, he assumed that it fit under one of California's many exemptions to usury loans. He thought that the real estate broker's exemption applied because he was a real estate agent and worked for a real estate company. He had a real estate broker approve the deals of the real estate company. But the company, which now has new ownership, no longer has any documentation on this. Maitland is now retired and living in South Carolina and has no documentation on this 14 year old transaction.

The balance should be recalculated at 10%, which totals a balance of $144,893.10.

Trustee's Reply

Steve Maitland, who arranged the loan, admits that his intent was to have a 12% interest rate, but he thought that interest rate was acceptable as he believed that it fell under one of the usury exemptions. There was never any confusion or ambiguity as to the note's interest rate and that this would be usurious. The error was that Maitland believed that the transaction was exempt. The savings clause is intended to "save" a loan where there is ambiguity as to the interest rate and the lender did not intend to charge a usurious interest. That did not happen here.

Dominguez limits the effect of the savings clause. It is not to operate if it is a "subterfuge or a sham, designed to permit the collection of a usurious rate of interest without an appearance of violation of the law." *Id.* at 887. In *Dominguez* the lender did not know that the interest rate was usurious. The court found that the lender intended to charge a non-usurious rate. That is not the situation here since Maitland knew that the loan

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was usurious on its face and so his intent is irrelevant.

Leila Maitland admits to receiving usurious interest payments. California's usury law imposes strict liability and "the only intent necessary on the part of the lender is to take the amount of the interest he receives; if that amount is more than the law allows, the offense is complete." *Ghirardo v. Antonioli*, 8 CA4th 791, 798 (1994).

Campbell Joinder to Trustee's Reply

In *Dominguez*, the lender misconstrued the Federal Reserve Rate and attempted to add five percent to that rate and thus inadvertently charged a usurious interest rate of 17% instead of 16.5%. Because the contract was not usurious on its face, the court could consider evidence as to the intent of the parties. Here the Maitlands intended to charge 12%, which was usurious.

In *Kissell Co. v. Gressley*, 591 F.2d 47, 51 (9th Cir. 1979) the lender thought that part of the amount charged was due to a "commitment fee" instead of interest. But the Ninth Circuit ruled that the lender could not use the savings clause simply because the lender did not have a specific intent to commit usury. "Rather, if the lender intends to charge the fees he does, and those fees are in fact usurious, the intent element is satisfied." *Id.* at 53.

The savings clause is to protect lenders from miscalculating the appropriate rate or passively charging a usurious rate due to the fluctuating Federal Reserve Rate. This applies when the transaction is not clearly usurious at the outset but only becomes usurious on a future contingency. *Jersey Palm-Gross v. Paper*, 658 So. 2d 531 (Fla. 1995).

Maitland Response to Trustee and Campbell Replies

The arguments being made are that the loan is usurious on its face and that this should be dispositive. This is rejected by *Dominguez*. It ruled that it is appropriate to take evidence to find intent and to find out whether the savings clause is a subterfuge or a sham. The declaration of Steven Maitland provides extrinsic evidence that this was not a subterfuge or a sham. He clearly intended to stay within California law and the savings clause was inserted for that purpose. Thus the claim should be amended to $143,695.64.

Analysis

This motion rests of the evidence provided by Steven Maitland. He was one of the

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lenders and also was a licensed real estate agent. His declaration indicates that at the time that the loan was made he was employed in a real estate office, presumably working as a licensed agent under someone's real estate broker's license. There is no evidence that the real estate broker made this loan, and approving it is not enough to meet the law of usury. As a licensed real estate agent, Steven Maitland had to be aware that as a real estate agent or salesperson, he did not have the authority to act independently of the broker who employs him. The salesperson acts on behalf of the broker who is the agent of the principal. This is so basic that Steven Maitland had to have known that he was not acting for a principal through his broker since he was not acting for anyone but himself and his fellow lenders. Thus it is inconceivable that he had a good faith belief that the broker exemption applied.

Even if he had "forgotten" that for the exemption to apply the broker must be a finance lender or acting on behalf of a finance lender, there is no evidence that Steven Maitland was acting on behalf of the broker. He does not claim to be doing so nor does he assert that the money lent was from a finance institution or from the broker. This was a private loan from him and his co-lenders. Therefore it does not fall under a usury exemption and the court finds no evidence that an innocent mistake was made so as to activate the saving clause.

Grant the motion to reduce the claim to $60,000.

Party Information

Debtor(s):

Glen E Pyle	Pro Se

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**

#5.00 Motion RE: Objection to Claim Number 4 by Claimant Marc H. Berry.

Docket 137

Matter Notes:

- NONE LISTED -

Tentative Ruling:

This deals with the amount of accrued interest on the claim. Mr. Berry contends that he is entitled to $47,983.98, but the Trustee disputes $2,028.25 of this.

The original judgment was for $11,369.45; it was entered on 8/7/00. Under California law, it accrued simple interest at 10%. On renewal, the accrued and unpaid interest is added to the principal and the renewed judgment will accrue simple interest on that total amount at 10%.

8/7/00 Judgment of $11,369.45
6/28/10 Renewed judgment adds $11,212.55 to become $22,582.00.
11/30/10 – Mr. Pyle files this bankruptcy case.

The Trustee asserts that the interest of 10% accrues on the $22,582 at 10% per annum until paid. If the payment were to be on 10/31/20, the accrued interest would be $23,373.73, creating a total claim of $45,955.73.

The difference seems to be that Berry renewed his judgment post-petition on 5/31/19 and then calculated his interest on the larger amount of the renewed judgment. This action was barred by the automatic stay. *In re Basil N. Spiritos*, 221 F.3d 1079 (9th Cir. 2000).

Mr. Berry has not responded directly to this, but in his supplemental declaration as to his stipulation with the Trustee he repeats that he is entitled to $47,983.98 as of June 30, 2020 and attaches the same calculation chart as previously presented. (dkt. 324)

Proposed Ruling – Sustain the objection. The Trustee is correct under the law.

Party Information

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

Tuesday, November 17, 2020 **Hearing Room 303**

10:00 AM

CONT... Glen E Pyle **Chapter 7**

Debtor(s):

Glen E Pyle	Pro Se

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#: 1:11-01180 Goldman v. Pyle et al

#6.00 Motion to Enforce Stipulation and Order of 10-4-2017 for Disbursal of Gross Proceeds and for an Award of Attorney's Fees and Costs

fr. 8/25/20

Docket 296

Matter Notes:

- NONE LISTED -

Tentative Ruling:

ORIGINAL TENTATIVE RULING

It appears that the Trustee will sell Vermont and abandon Sunland to Pyle. Vermont appears to have a net equity of $195,000; Sunland has a net equity of $703,770. There will be enough money from the sale of either or both properties to pay the $90,270 allegedly due to creditors plus the estate requirements of commission and fees. Without elimination of interest for the creditors, the amount to be paid would be about twice as much since the bankruptcy is over 10 years old. The avoidance action requires that interest not be eliminated.

Berry has a state court judgment of about $22,582, which is now in the amount of about $48,378. Campbell's civil judgment now exceeds $170,000.

The Trustee should not acquiesce to receiving only $90,270 and should not abandon Sunland to Pyle since the cost of sale of Vermont will reduce the probable net from $195,000 to $167,000.

Vermont was listed for too little and should have been listed for its fair market value of $661,000 or higher to give room for negotiations.

By allowing Pyle to retain Sunland, he is not being admonished for his 10 years of frivolous litigation and fraudulent activity in concealing his assets. The $175,000 trust deed had no consideration and is unenforceable.

Mr. Berry requests that the Court require the Trustee to follow the

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terms of the 2017 order despite the change from a avoidance action to a turnover case. This would mean that Berry would receive $8,000 plus 50% of the gross proceeds, plus about $17,378 (Berry's creditor's share from the bankruptcy Trustee's 50% share). This would mean an award to Berry of about $200,000. Further, the Trustee should not distribute any amount to Sweetwater Management Co., Inc. or any other recipient or beneficiary of that voidable trust deed.

Berry filed the avoidance action. The Trustee allowed Berry to continue to prosecute that action and that he could retain 60% of the gross proceeds after payment of attorney's fees and costs. Berry has expended $283,000 in attorney and paralegal fees and costs. During the prosecution of this case, Berry took three depositions of Pyle, reviewed hundreds of documents, successfully defended a motion for summary judgment, and spent time in settlement conferences which Pyle's counsel never memorialized and produced. When Berry fell ill, there was an 18 month delay. Then Pyle was ill and that caused a one year delay. More settlements were offered, but never memorialized.

By Oct. 4, 2017, Berry was sick enough that he had to give up his law practice and close his office. He stipulated with the Trustee to turn the prosecution over to new counsel. It was agreed that Berry's share would be reduced from 60% of the proceeds to 50% of the proceeds after payment to Berry of up to $8,000 in costs that he had fronted. This was approved by the Court (dkt. 50).

Berry attended the Campbell trial and found out about two title reports that show three technical defects in the June 24, 2004 deeds that Pyle claimed had transferred titles to his irrevocable trust. Berry provided that to Mr. Pena who used it to file the motion for turnover of property. It was Berry's research that allowed this to happen.

Pena claims that the original adversary was mooted by the turnover order and thus Berry is limited to his rights as a creditor with no additional percentage compensation.

Opposition of Mary Casament as Success Trustee to the Campbell Trust

Campbell is the largest creditor. The Berry motion is confusing since there is no sale of Vermont at this time. Thus it is premature It is also

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confusing as to how much Berry is requesting since at one point he states that he should get $334,878 from the proposed sale of Vermont.

Opposition of Trustee

The motion was improperly served since it needed to go to the debtor, the debtor's attorney, the trustee, and all creditors: FRBP 2002(a)(6). Also, the property has not yet sold and so there is no way to calculate how much – if anything – Berry is entitled to.

Berry never served as Trustee's counsel and never was employed as such. Thus he cannot seek compensation under 11 USC sec. 350. His actual status was as a purchaser of the avoidance actions against Pyle and his related entities. Berry purchased the Estate's claims and if he recovered, he would share proceeds with the Estate. But once Berry was physically unable to continue prosecuting the claims, he turned them back to the Trustee, who employed counsel to resolve the avoidance actions.

At this point the Estate has not recovered any monies from a sale of the Estate's interest in the properties.

Reply

Berry's abstract of judgment is prior to the Campbell one.

The sec. 363 issues were resolved when the Court approved the stipulation between Berry and the Trustee. The rights of other creditors were compromised by the stipulation, which the Trustee drafted. The other creditors will receive their shares from the 40% that the Trustee retains.

Berry is not ignoring the claims of Maitland, Campbell, and the child support. If the Trustee does not abandon Sunland, the Estate will not be insolvent.

Under the terms of the Stipulation, it was contemplated that Berry would be able to hire counsel and that these would be paid out of the gross proceeds before calculating the amount to be divided between Berry and the Estate. Berry also disputes the Trustee's calculations of the amount of liens on the property.

Analysis

To a certain extent this motion is premature since the properties have

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not been liquidated and there is no motion to sell or motion to distribute. But it is best to resolve the issues of the terms of Berry's compensation or the formula for his claim.

The First Amended Complaint (dkt. 4) is the operative pleading in this adversary proceeding. Berry filed this in pro per on 3/29/11. His standing was as a judgment creditor of Pyle. The complaint deals with both Vermont and Sunland and claims that Pyle conveyed a deed of trust to Sweetwater Management on Vermont and title by grant deed to Pyle's irrevocable trust and to Sweetwater Management on Sunland. The complaint goes on to state the legal basis of the fraudulent transfer claim and also an alter ego assertion. The asserted remedy is to annul the transfers, restraining Sweetwater and the trust from transferring their interest, and creating a judgment lien on the property. He also asks for costs of suit and general damages of $22,580, special damages of $22,580, and punitive damages of $75,000. The complaint does not seek turnover of the property. [presumably the judgment lien would allow Berry to execute in order to recover his damage claim.]

Due to the health of both parties, there were gaps of many months, but Berry diligently prosecuted this complaint for years. As a secured creditor, he had standing to proceed. In May 2011, the Trustee filed a motion to sell to Berry the Estate's interest in the avoidance action (bk10:24968, dkt. 18). The purchase price was described as "40% of the net proceeds of any recovery minus attorneys fees and costs." What was being sold was a right to prosecute the fraudulent transfer action (dkt. 18, p. 2:23-24). But later on this is identified as the "Estate's Interest in the Pyle Transfer." (dkt. 18, p. 3:7-8) And it also states that the Trustee is seeking Court authorization for "the sale of the Trustee's avoidance powers pursuant to the Buyer 11 USC sec. 363(b)." (dkt. 18, p. 5:5-6)

Notice was given to all creditors, no opposition was received, and the order was entered (dkt. 24). The operative language of this very short order stated:

> It is further ORDERED that the Trustee is authorized to sell the Trustee's avoiding power rights to creditor, Marc Berry ("Mr. Berry" or "Buyer"), to recover business assets sold by the Debtor to an employee pre-petition for less than reasonable equivalent value ("Pyle Transfer"), for 40% of the net proceeds of any recovery after payment

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of attorney fees and costs, ("Purchase Amount"). Further, Mr. Berry will provide quarterly updates on the status of litigation as set in accordance with the terms and conditions set forth in the Motion.

Litigation went forward in the adversary proceeding, but when Mr. Berry was no longer capable for completing it, he and the Trustee modified the prior order by the stipulation in question, which was sent to all creditors. (dkt. 50):

> 1. Berry hereby unconditionally and irrevocably assigns, grants, and transfers all rights, title, interest, and obligation in, to and under the Adversary Proceeding and the claims asserted therein to the Trustee, solely in her capacity as the bankruptcy trustee of the above captioned estate.
>
> 2. The Trustee has sole authority and discretion, subject to Court approval, to prosecute or not, compromise, settle, dismiss or take any other action related to the Adversary Proceeding.
>
> 3. The Trustee and Berry agree to distribute the gross proceeds of any settlement, judgment or proceeds from the Adversary Proceeding as follows:
>
> a. First, upon satisfactory proof to the Trustee, all of Berry's costs associated with this Adversary Proceeding up to $8,000.00;
>
> b. After payment of the costs in paragraph "a." fifty percent (50%) to Berry and fifty percent (50%) to the bankruptcy estate.
>
> 4. Berry's claims in the Debtor's bankruptcy case shall be unaffected by this Stipulation.
>
> 5. Berry's sanctions awards against the Debtor and or the Debtor's counsel shall remain Berry's property to enforce as he deems appropriate.

There were no objections and the Court entered a brief order approving the stipulation (dkt. 53). At that same time the Trustee hired

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Pena and Soma, APC as her general counsel After a bit of confusion, Mr. Pena took over prosecuting the adversary proceeding and proceeded through two paths: (1) seeking a turnover order as to both Vermont and Sunland in the main bankruptcy case (dkt. 66, 78)and (2) seeking a default judgment in the adversary proceeding against Sweetwater as to its asserted interest in Vermont (dkt. 306). [Pyle and the Trustee have stipulated to avoiding the transfer as to Vermont. (dkt. 303)] As of this point in time the Trustee has taken possession of Vermont, but Sunland will be delayed for an unknown period of time due to the covid crisis and the inability of the Sheriff to execute on that property. The Trustee has not yet brought a motion to sell the Estate's interest in either or both of these properties, although she has employed a real estate broker for Vermont. (dkt. 74, 83) Mr. Berry is seeking a determination of his rights to the proceeds of any sale.

Mr. Berry was not hired as counsel, so this is not an application for fees although that is how he frames his motion. Rather, the deal that he made with the Trustee is that he would own the litigation rights for the avoidance action. If he brought it to a successful conclusion, he would split the eventual proceeds of sale with the Estate in a predetermined ratio. Berry, who is an attorney, represented himself and did not need an order of employment by the Court. He is not an employed professional under sec. 327.

Since he did not represent the Estate, his sole participation was to prosecute the adversary proceeding. Once he would obtain judgment, that judgment would belong to the Trustee. The properties would be properties of the Estate without the claims of the Pyle Trust or Sweetwater Management.

The litigation as to the transfer of Vermont has now been concluded by a stipulation with Pyle which will void the transfer of Vermont. Although the litigation is not yet resolved as to Sunland, it is reasonable to deal with any issues as to the award that Berry is entitled to. As assets are liquidated, the Trustee can then make the appropriate distribution.

First of all, the turnover motion was not part of Berry's portfolio. That it was brought while the adversary was still unresolved is not relevant

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to the agreement with the Trustee. It was filed in the main bankruptcy case – as it had to be – and not in the adversary proceeding. Berry had no standing to move forward in the bankruptcy case itself.

The adversary proceeding deals with both Vermont and Sunland. So the proceeds mentioned in paragraph 3 of the second stipulation concerns both properties. There is no mention of what might happen if the Trustee abandons Sunland. That issue and the sales price of both properties will be faced when the Trustee brings a motion to sell or to abandon each property. Berry is a secured creditor and an administrative creditor (secured by his abstract of judgment to the extent of his state court judgment and an administrative creditor under the terms of his stipulation with the Trustee). Because there appears to be sufficient equity in these properties (once the Trustee cleans title), it is likely that he will receive his secured claim with all accrued interest as provided for under the law of California.

The administrative portion of his claim is based on a post-petition contract with the Trustee. It is not a prepetition unsecured claim. It has been approved by the Court on notice to all creditors, etc. and should be honored in full. In part, this appears to be a claim under 11 USC sec. 503(b)(3)(B): "the actual, necessary expenses, other than compensation and reimbursement in paragraph (4) of this subsection, incurred by a creditor that recovers, after the court's approval, for the benefit of the estate any property transferred or concealed by the debtor." That would cover Mr. Berry's request for reimbursement of costs.

As to the balance of the stipulation, the Court really does not see the difference between the Trustee entering into a contingency agreement to sell estate property and this contingent agreement to own the fraudulent transfer cause of action and pay a percent to the Trustee on successfully completing the transaction (sale of property in the case of the real estate agent or removal of the transfer in this case).

The stipulation is clear. Once the propert(ies) are sold, Berry gets up to $8,000 for costs and then 50% of the remainder. His liens will stay on the property and be paid under the regular distribution as a secured claim. This means a lot less money for the Trustee's professionals and other creditors, but that is the terms of the deal. The only question here is

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whether the Court should reduce it by some amount because the Trustee obtained the default judgment/stipulation as to Vermont and will complete the litigation as to Sunland. But these were anticipated in the stipulation. It was not the first stipulation when it looked as if Berry would handle this case until the end. It was the second stipulation that was entered into because it was clear that Berry needed to exit the case and turn it back to the Trustee and her professionals.

Having said that, the Court does have the power to adjust the amount of the award if it would be unreasonable. Mr. Berry did not bring this adversary proceeding for altruistic reasons. If I remember correctly, at some point in time he was Mr. Pyle's attorney and his state court judgment was for fees that Pyle owed to him. By removing the fraudulent transfer, which preceded his judgment lien, he was able to find an asset that would allow him to collect on his judgment. The level of animosity that was plain in this case meant that Berry would have proceeded for his own benefit if there had been no bankruptcy. Under state law he would not have been entitled to more than his judgment, plus some minor costs such as deposition fees.

Here he is claiming attorney fees as the Trustee's attorney. He is not entitled to those as he was never employed in that capacity. He acted pro se. But he did spend an enormous amount of time on this case and the Trustee recognized this by implication in signing the second stipulation. In fact, the second stipulation provides a different split of the net proceeds and that seems to take into account the extensive effort that Berry has been required to make. But, anyway, it was a negotiated agreement of the interests involved and the Trustee has not provided any information that shows changed circumstances since she entered into the second stipulation. Thus the Court holds that this agreement should stand.

The exact amounts to be paid to Mr. Berry will be determined after the sale of both properties. It will only apply to the net proceeds after costs of sale and payment of property taxes or any other costs necessary to transfer the properties to the new owners.

TENTATIVE RULING FOR CONTINUED HEARING AFTER SALE OF

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VERMONT

Campbell Opposition filed 11/3/20

The sale price of the Vermont property was for $542,000. After deducting the costs of sale, distributions to secured creditors, and the Trustee's administrative expense, there remains $252,369.35 for unsecured creditors. The Campbell Trust has a valid unsecured claim of $258,826.21, Siphoning off the sale proceeds to pay Berry would unduly harm the Campbell Trust.

Berry should not receive any funds from the Stipulation because he was only entitled to proceeds from the adversary proceeding, which had no merit and was dismissed by the Court. The adversary proceeding sought avoidance of a transfer that never occurred because the Pyle Irrevocable Trust is not a legal entity and cannot hold or convey title. Berry had the responsibility to review the title report and understand that no litigation was necessary rather than spending a decade litigating this and incurring substantial fees and expenses.

Under California law, a trust is not a legal entity and cannot hold or convey title. Only the trustee can convey title. Thus the property never left the bankruptcy estate and the complaint to avoid transfer was completely unnecessary. The title reports should have alerted him to this. It specifically says that "the grantee/one of the grantees names in the deed does not appear to be an entity capable of acquiring title to real property. The requirement that a deed be recorded that identifies the trustee of said trust." This is the deed from Pyle to "(the Pyle Irrevocable Trust) Sweetwater Management Co…."

The stipulation with the Trustee only provides for Berry to receive money from "the gross proceeds of any settlement, judgment or proceeds from the Adversary Proceeding…" There were no monies from the adversary proceeding. In fact the Trustee obtained a dismissal of the adversary proceeding.

The Campbell Trust objects to the tentative ruling as to the following:

(1) Defining "proceeds" to mean proceeds from the sale of the property or the completion of the adversary proceeding is incurred.

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The stipulation is limited to proceeds from the adversary proceeding.
(2) The Trustee's counsel was provided with the necessary research as to the flaws in title before Berry contacted Trustee's counsel about it.
(3) The stipulation with Pyle as to the transfer of Vermont was withdrawn. There was never an order voiding the transfer of Vermont because no order was needed.
(4) Berry does not hold a valid administrative claim because no real property ever left the estate and Berry did not benefit the estate because it was the counsel for the Campbell Trust who discovered the defect in the alleged transfers.
(5) There is a major difference between the Trustee entering into a contingency agreement to retain Berry to sell estate property or to prosecute the adversary proceeding. Berry initiated the adversary proceeding and the Trustee relied on his assessment of its value – that is the basis of the stipulation between the Trustee and Berry. But since the adversary proceeding had no merit, Berry was working on a contingency basis and must bear the consequences of the result.

Berry Supplemental Declaration

There has been no action by the Trustee to sell the Sunland Property and it appears that the Trustee does not intend to do so. If the Trustee does sell Sunland, there will be a net equity of $700,000, so there will be sufficient money to pay the Campbell claim and the Berry settlement. As of this point, there is no distribution allocation to unsecured creditors. The Trustee has only distributed to costs of sale and secured creditors. The Campbell claim to be paid from the estate is limited to about $75,000 (the pre-petition amount) and that would be paid from the estate's 50%, Berry being the owner of the other 50% per the stipulation.

Mr. Berry goes on to deal with the proposed distribution in the Trustee's motion to sell including the settlement with Linda Daniel. [*Court: this has not yet been approved, so the Court is ignoring this part of the declaration*. *The thrust of the Campbell opposition is whether the stipulation should stand and whether Berry has an administrative claim in that Berry did not benefit the estate and because the stipulation specifically*

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refers to a judgment in the adversary action, which Campbell asserts was ultimately dismissed.]

Damages are not capped at the aggregate total of unsecured claims. This was not addressed in the tentative ruling. In the complaint, Berry sought punitive damages of up to $75,000.

The Berry adversary was never dismissed by the Court. It was renamed, but not dismissed. Although it was resolved by a turnover order rather than an avoidance, this did not mean that it lacked merit. The turnover order avoided the deed to both Vermont and Sunland. This was part of the stipulation for judgment as to Vermont, which avoided that transfer. [*Court: this is adversary dkt. #303 and it was withdrawn on 8/5/20, dkt. #304.*]

Berry filed the avoidance action in June 2011 and the Trustee allowed Berry to continue to prosecute it for 60% of the gross proceeds after payment of fees and costs. During that time, Berry expended $283,000 in attorney and paralegal fees, took three deposition, reviewed hundreds of documents, successfully defended a motion for summary judgment, and spent hours and days in uneventful settlement discussions. A settlement was actually reached, but Mr. Aver refused to document it.

Due to health reasons of both Pyle and Berry, the matter dragged on for 2.5 years. When Mr. Berry became too sick to proceed, he turned the matter back to the Trustee and agreed to the stipulation, which reduced his share to 50%. The $8,000 in costs also remained.

Berry learned of the two title reports showing several technical defects in the 6/24/04 deeds, but was not aware of the third, which was devastating to Pyle's position. Berry notified Mr. Pena and sent him copies of the title reports and his research. Mr. Pena then used the facts to obtain the turnover order. The turnover order did not "moot" the avoidance action.

Revised Tentative Ruling as of Nov. 17, 2020

Factual Summary:

(1) In 2011, the Trustee sold an avoidance action to Marc Berry for 40% of the net recovery after payment of attorney fees and costs.

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(dkt. ## 20, 24). Berry agreed to provide the Trustee with quarterly status reports as to the litigation.

(2) Berry filed the adversary proceeding. Berry is an attorney, represented himself, and diligently prosecuted the case for 7 years (delays due, in part, to health issues on both sides as well as ongoing discovery disputes and delays caused by Pyle).

(3) After 7 years, Berry was no longer in sufficiently good health to continue. He and the Trustee entered into a new agreement which modified the June 17, 2011 sale order. The new agreement states that Berry "unconditionally and irrevocably assigns, grants, and transfers all rights, title, interest, and obligation in, to and under the Adversary Proceeding and the claims asserted therein to the Trustee, solely in her capacity as the bankruptcy trustee of the above captioned estate." (dkt. ##50, 53). Under the terms of the stipulation, the Trustee now owned the adversary proceeding and Berry would get 50% of the net proceeds plus $8,000 in costs if the Trustee prevailed.

(4) The Trustee changed the adversary proceeding to go forward in her name, hired counsel, and prosecuted for over two years. On September 30, 2020, the Trustee obtained a default against Sweetwater as a suspended corporation (adv. dkt. ## 273, 287) and then judgment against Sweetwater Management Co., (adv. dkt. ## 306, 321). The adversary proceeding is still open and no final action has been taken as to the Pyle Irrevocable Trust, the remaining defendant.

(5) Campbell filed his adversary proceeding simultaneously with the Berry one. During the years that followed, he liquidated his claim in superior court and obtained a denial of discharge in a §727 adversary proceeding. (1:11-ap-01181, dkt. ##150, 151).

(6) The Berry v. Pyle adversary proceeding (1:11-ap-01180) rested on the theory that the transfer of two properties from Pyle to his irrevocable trust was fraudulent and without consideration, etc. Berry obtained massive amounts of discovery, which he turned over to the Trustee. Part of that was used to obtain the default judgment against Sweetwater.

(7) At some point, someone – perhaps the Campbell counsel – had Coldwell Banker obtain a title report, but did not act on it for over a

10:00 AM
CONT... Glen E Pyle **Chapter 7**

year. (adv. dkt. #323),

(8) Suddenly, Campbell's counsel realized the legal effect of the title report in that the transfer to and from an irrevocable trust is void under California law. Campbell's counsel then brought this to the attention of the Trustee, who basically abandoned the fraudulent transfer adversary and moved in the main case for turnover and sale of the property. I granted that motion and the Vermont property has been sold.

(9) The title report did not question the validity of the Sweetwater Trust Deed on Vermont (4/12/2001) or the deed as to Sweetwater (6/28/2004). (adv. dkt. #323)

There are two questions to resolve:

(1) what was the nature of the transactions between Mr. Berry and the Trustee as to the recovery of the property for the benefit of the estate and

(2) did the work of Mr. Berry benefit the estate so that he should have an administrative claim or the stipulation be enforced.

As to the first question, this was a sale. The Trustee sold the avoidance action to Berry. The price was 40% of the net recovery. In 2017, Mr. Berry sold the avoidance action back to the Trustee. Berry took a 10% loss in that he would only be able to obtain 50% of the net recovery rather than 60%. But both of these were sales of the adversary proceeding. However, it was not really limited to the four corners of the adversary proceeding. It involved the total method of recovery of Vermont and Sunland.

But even if it was limited to the adversary proceeding, the Sweetwater judgment was obtained and both properties could not be sold without having removed that interest. Mr. Nachimson is incorrect in asserting that the adversary proceeding was dismissed. Judgment was obtained against Sweetwater and that was necessary. The adversary proceeding is still active, though it is likely that the Trustee will seek to

10:00 AM
CONT... Glen E Pyle **Chapter 7**

dismiss it.

Mr. Nachimson provides a set of emails that show that on May 7, 2020 he notified Mr. Pena that "[a]ccording to the title report for the Sunland property, title is still in Pyle's name and not the trust. " The Trustee decided to do a turnover motion because it put Pyle in a difficult position – either he agreed to turnover or Campbell could sell it to satisfy his state court judgment if Pyle contended that it belongs to the irrevocable trust.

Mr. Berry certainly had copies of the deeds in issue, as did everyone. In fact they are attached to the original complaint in the adversary proceeding. What he missed, the Trustee missed, and Campbell missed was the legal effect of the transfers involving the Pyle Irrevocable Trust. The title report is dated 3/8/19 and was obtained by Coldwell Banker Residential Brokerage, attn. Rick Barrett. It is unclear to the Court as to who actually requested the title report since Coldwell Banker was not employed until June 2020. But since the Nachimson emails were in early May 2020, it appears that he was the only one in possession of the title report prior to that date.

Regardless of who initially got the title report, it was only because of the title report that the legal issue of the ownership came to light. And, assuming that it was Campbell, it took a year for the Campbell counsel to realize the significance of the analysis by the title company.

So the question raised is whether Mr. Berry or the Trustee should have gotten and understood a title report much earlier in the case, thus avoiding years of litigation. Also, had the Trustee been aware of this legal error by Mr. Berry in not knowing California real property law, would the Trustee have entered into the stipulation? And had the Trustee or her counsel known at the outset of this case that the transfers were void, would she have "sold" the avoidance action to Mr. Berry in the first place? Also, was there any damage or loss to the estate due to the ongoing litigation and delays?

There are certainly enough errors in this case to go around.

These are all interesting questions, but not dispositive of this motion. There was a good-faith, arms-length SALE of the avoiding powers as to Vermont and Sunland. Berry was not the Trustee's attorney. So long as

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CONT... Glen E Pyle **Chapter 7**

he acted in good faith in the prosecution of the adversary proceeding, there is no justification to set the sale aside. And the Court finds that he acted diligently and professionally. The fact that he missed the legal issue of transfer to a trust is not grounds to punish him. Everyone missed this issue until the title company pointed it out. Berry had the critical documents and there was no reason that he was required to obtain a title report. Thus the sale stands.

When Berry was no longer physically able to prosecute, he sold the avoiding powers back to the Trustee and look a reasonable loss, given the amount of time and energy and costs that he had put into the case. This was also a good-faith, arms-length SALE. The 50% + $8,000 is the sale price, not an administrative claim as such. It is not to be set aside. Actually, the estate benefitted by the second sale agreement in that it gained an additional 10% of the net proceeds at no cost or detriment to itself.

Both sales were approved by order of the court after proper notice. Mr. Campbell (or his estate) were actively involved and attended most hearings since the Court trailed the Campbell adversary proceeding with the Berry one.

As to my second question, that really does not apply because this was a sale of a cause of action and then a purchase of an asset by the Trustee. It may fall under some category as an administrative claim, but it is more in the cost of administration. It is very similar to the situation where the Trustee would buy materials to fix up a house before it is put on the market and agree to pay after the sale closes. Here there was a great benefit to the estate. The work that Mr. Berry did led to the judgment against Sweetwater. Vermont could not have been sold without that judgment.

So the only remaining question is when and how does the estate apply the 50% + $8,000 formula to pay Mr. Berry. As it stands, this cannot be finalized until Sunland is sold and that means that the Campbell claim also cannot be paid until Sunland is sold. I think that it is best for the Trustee to sit down with Mr. Berry, Mr. Nachimson, and Mr. Pena and work out a process to distribute money in light of this ruling.

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

Tuesday, November 17, 2020 **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

Plaintiff(s):

Amy Goldman	Represented By Leonard Pena

Trustee(s):

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

10:00 AM
1:13-10386 Shirley Foose McClure **Chapter 11**

#7.00 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; 10/22/19, 11/19/19, 11/17/20

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

The two appeals are still pending before Judge Wu. There is nothing more to do on this case until those are resolved. Unless someone feels that it is necessary to have a status conference at this time, I will continue the 11/17/20 status conference without appearance to April 20, 2021 at 10:00 a.m. If something happens and there needs to be a hearing before that date, please let me know.

Prior tentative ruling (5/19/20)
I have reviewed the Trustee's status report filed on 5/6/20. It appears that there is nothing left for me to do on this case until the appeals are resolved. Unless there is an objection, I will continue the 5/19/20 hearing without appearance to Nov. 17, 2020 at 10:00 a.m. Should there be rulings in any of the appeals so that it would be useful to have a hearing prior to that date, please file a request to advance the status conference.

10:00 AM

CONT... Shirley Foose McClure **Chapter 11**

Prior tentative ruling (11/19/19)

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 restructuing 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 rason, 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

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CONT... Shirley Foose McClure **Chapter 11**

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 we 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

10:00 AM

CONT... Shirley Foose McClure **Chapter 11**

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 inclided to grant further continuances. The Trustee therefore requests a speedy determination of the motion for reconsideration so as to avoid unneccessary 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 propety 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

10:00 AM

CONT... Shirley Foose McClure **Chapter 11**

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
Robert M Scholnick
James R Felton
Faye C Rasch

10:00 AM
CONT... Shirley Foose McClure **Chapter 11**

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
Courtroom 303 Calendar

Tuesday, November 17, 2020 **Hearing Room 303**

10:00 AM

1:16-12255 Solyman Yashouafar **Chapter 7**

#8.00 Status Conference on chapter 7 case

Docket 774

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Per the trustee's report, administrative fees and costs will be determined at a hearing on 12/22/20, after which there will be a final report. It is anticipated that there will be no distribution in the Solyman estate and that the general unsecured creditors in the Massoud estate will receive about 1%. I will continue this status conference without appearance to 12/22/20 at 10:00 a.m. No further status report is needed for that hearing. At that time, I will likely terminate status conferences in this chapter 7 jointly administered case.

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
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar

Tuesday, November 17, 2020 **Hearing Room 303**

10:00 AM
1:16-12255 Solyman Yashouafar **Chapter 11**
Adv#: 1:16-01166 Barlava et al v. Yashouafar

#9.00 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, 8/20/19, 1/28/20, 9/15/20

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Nothing further received as of 11/13.

Prior tentative ruling (9/15/20)
Per the status report filed on 9/2/20, a status conference is set for 10/5/20 in the LASC case of Barlava v. Roosevelt Lofts and one is set for 10/15/20 in the LASC case of Carla Ridge v. Milbank Holdings. These are both stayed.

The Plaintiffs have not received any notification from the Trustee as to the likelihood he will object to Barlava's claim. Barlava requests a 120 day continuance.

Continue without appearance to 11/17/10 at 10:00 a.m. At that time I will also be holding a status conference on the bankruptcy case to get a timeline from the Trustee.

Prior tentative ruling (8/20/19)
Per the Plantiffs' 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).

10:00 AM
CONT... Solyman Yashouafar **Chapter 11**

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.

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 dismiss 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.

10:00 AM
CONT... Solyman Yashouafar **Chapter 11**

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
Mark E Goodfriend

10:00 AM

CONT... Solyman Yashouafar **Chapter 11**

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
Carla Ridge, LLC	Represented By Andrew V Jablon
First National Buildings II, LLC	Represented By Andrew V Jablon
Figueroa Tower II, LP	Represented By Andrew V Jablon
Kefayat Barlava	Represented By Andrew V Jablon

Trustee(s):

David Keith Gottlieb (TR)	Represented By Jeremy V Richards John W Lucas

10:00 AM
1:17-10853 Joseph Daniel Beam **Chapter 7**
Adv#: 1:17-01046 Henderson v. Beam

#10.00 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; 12/23/19, 1/28/20, 3/3/20, 4/7/20, 6/23/20, 9/15/20, 10/13/20

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

THE HEARING WILL BE BY ZOOM. SEE THE NOTICE FOR THE 9:30 CALENDAR.
On 10/24/20 Ms. Moreno filed a substitution of attorney for Mr. Beam, withdrawing as his attorney and substituting him in representing himself. This was signed on 9/7/20, but not filed for some 6 weeks. Meanwhile, the Court sent a copy of the OSC to Judge Dordi in the superior court. Nothing new has been filed.

I simply cannot move this forward without some action. I have urged Ms. Henderson to consult with bankruptcy counsel. I do not know if she has done this.

If Mr. Beam and Ms. Moreno do not appear on 11/17, I am tempted to hold them in contempt and have them arrested and brought to court. This is a difficult thing given the pandemic. I am more likely to strike Mr. Beam's answer and declare a default. Then I will set a date for a prove-up hearing and have Ms. Henderson put her evidence before the Court wither in writing or through her testimony. Either way, this is going to come to a conclusion.

Prior tentative ruling (10/13/20)
THE HEARING WILL BE BY PHONE THROUGH COURT CALL.

10:00 AM

CONT... Joseph Daniel Beam **Chapter 7**

Ms. Henderson appeared by phone on 9/15. No appearance by Ms. Moreno, which has been a pattern of hers. On 9/17 the Court issued an order to appear by phone at this status conference. Because Ms. Henderson said that Mr. Beam may be obtaining bankruptcy counsel. the order directed the appearance of Ms. Henderson, Ms. Moreno, Mr. Beam, and any bankruptcy counsel that Mr. Beam obtained. Nothing new filed as of 10/8.

Prior tentative ruling (9/15/20)
Nothing new filed as of 9/11/20. The hearing will be by Court Call. Ms. Henderson can attend without charge. Check with the clerk's office if you need information on how to do this. I need an update on what is happening in the superior court.

Prior tentative ruling (6/23/20)
Nothing new filed as of 6/18/20. The hearing will be by Court Call. Ms. Henderson can attend without charge. Check with the clerk's office if you need information on how to do this. I assume that nothing has happened in the superior court. If you both agree to a continuance without appearance to 9/15/20 at 10:00, please advise me.

prior tentative ruling (4/7/20)
Due to the response to the coronavirus pandemic, this matter is continued without appearance to **June 23, 2020 at 10:00 a.m.** Should you need an emergency hearing before that time, please file a motion requesting that and stating the reason.

Prior tentative ruling (12/23/19)
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

10:00 AM

CONT... Joseph Daniel Beam **Chapter 7**

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. 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.

10:00 AM

CONT... Joseph Daniel Beam **Chapter 7**

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 report, the familiy 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) knowlingly 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 reaons 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

10:00 AM

CONT... Joseph Daniel Beam **Chapter 7**

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 reveeal 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 utilites 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 knowlingly 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

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

Tuesday, November 17, 2020 **Hearing Room 303**

10:00 AM

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

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

Tuesday, November 17, 2020 **Hearing Room 303**

10:00 AM

1:17-10853 Joseph Daniel Beam **Chapter 7**

Adv#: 1:17-01046 Henderson v. Beam

#11.00 Order to Show Cause why Kathleen A. Moreno and Joseph Daniel Beam Should not be Held in Contempt for Failure to Appear on October 13, 2020

Docket 73

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

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

Tuesday, November 17, 2020 **Hearing Room 303**

10:00 AM

1:19-13099 Marshall Scott Stander **Chapter 7**

Adv#: 1:20-01025 Rob Kolson Creative Productions, Inc. v. Stander

#12.00 Status Conference Re: Complaint Objecting to Discharge Pursuant to Section 727 of the Bankruptcy Code.

fr. 5/6/20; 6/24/20(MT); 7/21/20, 10/27/20

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Per the status report filed on 10/16, an answer was filed. Both parties think that discovery cut-off at the end of March is workable and that the trial will be ready in June. Both sides want to do discovery. Both sides want a pretrial conference in late May. Plaintiff does not want mediation at this time, though Defendant does. Given that Plaintiff needs to determine the strength of its case as noted immediately below, it seems that an order to mediation at this time is premature. Though, of course, the parties can always agree to mediate.

There seems to be a discovery issue concerning communications that may be covered by attorney-client privilege. That may be key to settlement. Plaintiff intends to depose Peter Babos, Defendant's non-bankrutpcy counsel, and that may give Plaintiff grounds to attack the attorney-client privilege.

It seems that this is such a key issue that it needs to be resolved first. Let's talk about how Plaintiff intends to proceed on it and set some dates and continuances.

Party Information

Debtor(s):

Marshall Scott Stander Represented By
Leslie A Cohen

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

Tuesday, November 17, 2020 **Hearing Room 303**

10:00 AM
CONT... Marshall Scott Stander **Chapter 7**

Defendant(s):

Marshall Scott Stander — Pro Se

Plaintiff(s):

Rob Kolson Creative Productions, — Represented By
Lane M Nussbaum

Trustee(s):

David Keith Gottlieb (TR) — Pro Se

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

Tuesday, December 8, 2020 **Hearing Room 303**

9:30 AM
1:00-00000 **Chapter**

#0.00 **The 10:00 am calendar will be conducted remotely, using ZoomGov video and audio.**

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address: https://cacb.zoomgov.com/j/1618307788

Meeting ID: 161 830 7788

Password: 442196

Telephone Conference Lines: 1 (669) 254-5252 or 1 (646) 828-7666

Meeting ID: 161 830 7788

Password: 442196

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

Tuesday, December 8, 2020 **Hearing Room 303**

9:30 AM
CONT... **Chapter**

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Tuesday, December 8, 2020 **Hearing Room 303**

10:00 AM

1:10-24968 Glen E Pyle **Chapter 7**

#1.00 Motion RE: Objection to Claim Number 1
by Leila Maitland.

fr. 11/17/20

Docket 128

Tentative Ruling:

At the 11/17 hearing, the matter was continued to 12/8 to allow the Trustee and the Maitland attorney to calculate the amount of the claim once the prepetition interest payments were considered. This has been done and I have signed an order allowing $28,800. Thus this hearing is off calendar.

Prior tentative ruling (11/17/20)

The Trustee objects to claim no. 1-2 on the grounds that the underlying debt instrument is usurious and a *violation* to the California Constitution. This would reduce the claim amount by $138,809.35 for the usurious interest and another $19,850 for attorneys' fees. Thus the claim would be reduced from $218,659.35 to $60,000.

The original note and trust deed were entered into between Steve Maitland, Eloise Maitland, and Maria Louise Gomez with Glen Pyle. This occurred on 7/11/06. Prior to that, on 1/8/06, the three original lenders assigned their interest to Leila Maitland, and this assignment was recorded on 1/12/07.

The note provides for 12% annual rate of interest.

The California Constitution, sec. 1, Art. XV limits the interest rate to the higher of 10% or 5% plus the then-prevailing rate established by the Federal Reserve Bank of San Francisco unless there is an exemption. Anything greater is usurious.

Among the exemptions are loans "made or arranged by any person licensed as a real estate broker by the State of California and secured in whole or in part by liens on real property, or any bank…."

Beyond looking at the stated interest rate, one must add in any charges, which is defined in Cal. Fin. Code sec. 22500. In the schedule of payments due, which was received from Maitland, the demand is for $60,000 principal and an additional $158,659.35 in fees

10:00 AM

CONT... Glen E Pyle **Chapter 7**

and costs. Ex. 4 shows that this includes attorney fees and late fees of $30 per month. This clearly exceeds the statutory maximum interest rate.

California Civ. Code sec. 1916.1 defines who is acting as a licensed real estate broker for purposes of the usury exemption. A loan is "made" by a licensee only if the licensee is lending its own money. Here Leila Maitland is not named as one of the lenders and none of the lenders are licensed real estate brokers. A loan is "arranged by" a broker where the broker acts for another in an agency capacity with the expectation of payment. There is no evidence that this loan was "arranged" by a broker.

Further, a finance lender or broker must obtain a license from the commissioner. Cal. Fin. Code sec. 22059. Just having a real estate broker's license is not enough – the broker also needs to be licensed as a finance lender or working on behalf of a finance lender. Cal. Fin. Code sec. 22100.

There is no evidence that this loan meets these requirements and thus it is usurious as a question of fact and also as a question of law if the interest rate is easily determinable. *Domarad v. Fisher & Borke, Inc.*, (1969) 270 Cal. App. 2d 543, 560

Upon finding that it is usurious, Maitland must disgorge all interest and other charges received and may collect only the principal balance of the debt. Cal. Civ. Code sec. 1916.12-3. This limits the lien to $60,000.

In this case the original interest rate was 12%, but the schedule provided by Maitland has charges of an additional $158,659.35 in fees and costs. The attorney fees are uncollectible as charges and also because the note only allows them for a suit on the note or a foreclosure of the deed of trust – and neither of these have occurred.

Opposition

Steven Maitland declares that he was one of the three lenders and was solely responsible for the negotiation and execution of the loan agreement with Pyle. At that time he was working as a licensed real estate agent in California. He did not believe the interest rate of 12% to be usurious because he was working as a real estate agent employed with a real estate company. If there was a mistake, he intended that the interest would be reduced to the 10% rate.

The note has an interest "savings clause" that states that "[i]n no event shall the interest rate charge under this note exceed the maximum rate permitted under applicable

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CONT... Glen E Pyle **Chapter 7**

law." The note provides that it shall be construed under California law. The maximum annual interest rate allowed under California law, absent a usury exemption, is 10%. Payments were made at $600 per month from August 2006 until November 2010. The Debtor filed bankruptcy on November 30, 2010 and no payments were made thereafter.

The case of *Dominguez v. Miller*, 995 F.2d 883 (9th Cir. 1993) had similar facts and determined that when there is a "savings clause" of the kind here, the Court looks to the intent of the parties to see what interest rate they intended to apply. The savings clause creates an ambiguity and it is appropriate for the Court to take evidence as to the intent and thus ensure that it is merely a sham to get around the law. The conduct of a party after the agreement is strong evidence as to intent on entering the agreement, but this does not exclude other reliable evidence. In the *Dominguez* case, the testimony of the maker of the note and his agent convinced the bankruptcy court that they intended the savings clause to limit the amount of interest to the maximum non-usurious rate. This was accepted by the Court of Appeals.

Steven Maitland includes a declaration that when he made the loan, he assumed that it fit under one of California's many exemptions to usury loans. He thought that the real estate broker's exemption applied because he was a real estate agent and worked for a real estate company. He had a real estate broker approve the deals of the real estate company. But the company, which now has new ownership, no longer has any documentation on this. Maitland is now retired and living in South Carolina and has no documentation on this 14 year old transaction.

The balance should be recalculated at 10%, which totals a balance of $144,893.10.

Trustee's Reply

Steve Maitland, who arranged the loan, admits that his intent was to have a 12% interest rate, but he thought that interest rate was acceptable as he believed that it fell under one of the usury exemptions. There was never any confusion or ambiguity as to the note's interest rate and that this would be usurious. The error was that Maitland believed that the transaction was exempt. The savings clause is intended to "save" a loan where there is ambiguity as to the interest rate and the lender did not intend to charge a usurious interest. That did not happen here.

Dominguez limits the effect of the savings clause. It is not to operate if it is a

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CONT... Glen E Pyle **Chapter 7**

"subterfuge or a sham, designed to permit the collection of a usurious rate of interest without an appearance of violation of the law." *Id.* at 887. In *Dominguez* the lender did not know that the interest rate was usurious. The court found that the lender intended to charge a non-usurious rate. That is not the situation here since Maitland knew that the loan was usurious on its face and so his intent is irrelevant.

Leila Maitland admits to receiving usurious interest payments. California's usury law imposes strict liability and "the only intent necessary on the part of the lender is to take the amount of the interest he receives; if that amount is more than the law allows, the offense is complete." *Ghirardo v. Antonioli*, 8 CA4th 791, 798 (1994).

Campbell Joinder to Trustee's Reply

In *Dominguez*, the lender misconstrued the Federal Reserve Rate and attempted to add five percent to that rate and thus inadvertently charged a usurious interest rate of 17% instead of 16.5%. Because the contract was not usurious on its face, the court could consider evidence as to the intent of the parties. Here the Maitlands intended to charge 12%, which was usurious.

In *Kissell Co. v. Gressley*, 591 F.2d 47, 51 (9th Cir. 1979) the lender thought that part of the amount charged was due to a "commitment fee" instead of interest. But the Ninth Circuit ruled that the lender could not use the savings clause simply because the lender did not have a specific intent to commit usury. "Rather, if the lender intends to charge the fees he does, and those fees are in fact usurious, the intent element is satisfied." *Id.* at 53.

The savings clause is to protect lenders from miscalculating the appropriate rate or passively charging a usurious rate due to the fluctuating Federal Reserve Rate. This applies when the transaction is not clearly usurious at the outset but only becomes usurious on a future contingency. *Jersey Palm-Gross v. Paper*, 658 So. 2d 531 (Fla. 1995).

Maitland Response to Trustee and Campbell Replies

The arguments being made are that the loan is usurious on its face and that this should be dispositive. This is rejected by *Dominguez*. It ruled that it is appropriate to take evidence to find intent and to find out whether the savings clause is a subterfuge or a sham. The declaration of Steven Maitland provides extrinsic evidence that this was not a subterfuge or a sham. He clearly intended to stay within California law and the savings

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CONT... Glen E Pyle **Chapter 7**

clause was inserted for that purpose. Thus the claim should be amended to $143,695.64.

Analysis

This motion rests of the evidence provided by Steven Maitland. He was one of the lenders and also was a licensed real estate agent. His declaration indicates that at the time that the loan was made he was employed in a real estate office, presumably working as a licensed agent under someone's real estate broker's license. There is no evidence that the real estate broker made this loan, and approving it is not enough to meet the law of usury. As a licensed real estate agent, Steven Maitland had to be aware that as a real estate agent or salesperson, he did not have the authority to act independently of the broker who employs him. The salesperson acts on behalf of the broker who is the agent of the principal. This is so basic that Steven Maitland had to have known that he was not acting for a principal through his broker since he was not acting for anyone but himself and his fellow lenders. Thus it is inconceivable that he had a good faith belief that the broker exemption applied.

Even if he had "forgotten" that for the exemption to apply the broker must be a finance lender or acting on behalf of a finance lender, there is no evidence that Steven Maitland was acting on behalf of the broker. He does not claim to be doing so nor does he assert that the money lent was from a finance institution or from the broker. This was a private loan from him and his co-lenders. Therefore it does not fall under a usury exemption and the court finds no evidence that an innocent mistake was made so as to activate the saving clause.

Grant the motion to reduce the claim to $60,000.

Party Information

Debtor(s):

Glen E Pyle — Pro Se

Trustee(s):

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

10:00 AM
1:10-24968 Glen E Pyle **Chapter 7**
Adv#: 1:11-01180 Goldman v. Pyle et al

#2.00 Motion to Enforce Stipulation and Order of 10-4-2017 for Disbursal of Gross Proceeds and for an Award of Attorney's Fees and Costs

fr. 8/25/20, 11/17/20

Docket 296

Tentative Ruling:

Marc Berry's Request for Clarification to Specify that he will receive 50% of the Daniel's carve-out

On Dec. 1 the court received a document entitled "Marc Berry's Brief Requesting Clarification to Specify that he will receive 50% of the Daniel's carve-out; Declaration of Marc H. Berry." For some reason it is not on either the main case docket nor the adversary docket as of the morning of 12/5. No responses have been filed as of that time. In the adversary proceeding, Mr. Berry filed a declaration as to his belief and position on calculations for distribution of the Vermont proceeds. He states that although he has had contact with Mr. Nachimson, there has been contact with the Trustee or her counsel although the Court urged settlement discussions.

The following is the Court's write-up and analysis of the Clarification request. I am not dealing with the proposed distribution calculations brief at this time.

This is a ongoing matter and little new is added. There are three arguments that will be ruled on.

(1) Whether Mr. Berry is entitled to 50% of the money carved out in the settlement with Mr. Daniels – he is not. This was not money that

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CONT... Glen E Pyle **Chapter 7**

belonged to the estate. Ms. Daniels was entitled to her full 50% interest in the property and it is her right to give some part of it back. This she did and it is usual for such money to be directed to certain destinations – often the payment of professional fees. This money is not part of the money that falls under the settlement formula between Mr. Berry and the Trustee.

(2) Whether the remainder from the Daniels settlement (after payment of professional and fees to the Court and UST) will be divided in half with half going to unsecured creditors and half going to Mr. Berry – this is an interesting issue and I would like to see the calculations involved. This is not money that is property of the estate except as something like a gift. It does not really fall under the settlement agreement with Mr. Berry, but it seems unfair that – to the extent that unsecured creditors would not otherwise be paid in full through the 50% of Vermont that is definitely property of the estate – that they should get a higher distribution than Mr. Berry. The calculations may make this a non-issue.

(3) Whether the Trustee should immediately commence the levy process on the Sunland property – the timing issue raised is the enhancement of the amount of the homestead exemption, which increases substantially on January 1, 2021. The amount of the homestead is set as of the date of the filing of the bankruptcy petition. An exemption law or amendment enacted or made effective after the date when a debtor filed a bankruptcy petition is not considered the "applicable" law for purposes of determining the debtor's exemptions. See *In re Jacobson*, 676 F.3d 1193, 1199 (9th Cir. 2012) (finding bankruptcy exceptions must be determined in accordance with the state law applicable on the date of filing; it is the entire state law applicable that on the filing date that is determinative of whether an exemption applies); *In re Konnoff*, 356 B.R. 201, 204 (B.A.P. 9th Cir. 2006) ("The facts of the case and the law, as they exist on the date of the filing of the petition, determine

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CONT... Glen E Pyle **Chapter 7**

any exemptions claimed."); *In re Hunt*, No. BAP CC-13-1148, 2014 WL 1229647, at *2 (B.A.P. 9th Cir. Mar. 26, 2014) ("Typically, the debtor's entitlement to an exemption is determined based on the facts and law as they existed at the time of the debtor's bankruptcy filing.").

Beyond that, I am not sure whether and how the homestead exemption applies as to Sunland. Once the adversary is concluded, does the Estate own the property? Since this was a voluntary transfer by the Debtor, is he entitled to a homestead exemption under 11 USC sec. 522? If the Estate owns the property, why would it levy on it? If the issue is disposing of the property, this would be done by sale by the Trustee, not an execution sale. Perhaps the Trustee can clarify this as to what interest the Estate has, what interest Mr. Pyle has, and how she intends to proceed.

This was continued so that the parties could work out a method to calculate the amount due to Mr. Berry and the future of the Sunland property.

prior tentative ruling (11/17/20)

ORIGINAL TENTATIVE RULING

It appears that the Trustee will sell Vermont and abandon Sunland to Pyle. Vermont appears to have a net equity of $195,000; Sunland has a net equity of $703,770. There will be enough money from the sale of either or both properties to pay the $90,270 allegedly due to creditors plus the estate requirements of commission and fees. Without elimination of interest for the creditors, the amount to be paid would be about twice as much since the bankruptcy is over 10 years old. The avoidance action requires that interest not be eliminated.

Berry has a state court judgment of about $22,582, which is now in the amount of about $48,378. Campbell's civil judgment now exceeds $170,000.

The Trustee should not acquiesce to receiving only $90,270 and should not abandon Sunland to Pyle since the cost of sale of Vermont will reduce the probable net from $195,000 to $167,000.

Vermont was listed for too little and should have been listed for its fair

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CONT... Glen E Pyle **Chapter 7**

market value of $661,000 or higher to give room for negotiations.

By allowing Pyle to retain Sunland, he is not being admonished for his 10 years of frivolous litigation and fraudulent activity in concealing his assets. The $175,000 trust deed had no consideration and is unenforceable.

Mr. Berry requests that the Court require the Trustee to follow the terms of the 2017 order despite the change from a avoidance action to a turnover case. This would mean that Berry would receive $8,000 plus 50% of the gross proceeds, plus about $17,378 (Berry's creditor's share from the bankruptcy Trustee's 50% share). This would mean an award to Berry of about $200,000. Further, the Trustee should not distribute any amount to Sweetwater Management Co., Inc. or any other recipient or beneficiary of that voidable trust deed.

Berry filed the avoidance action. The Trustee allowed Berry to continue to prosecute that action and that he could retain 60% of the gross proceeds after payment of attorney's fees and costs. Berry has expended $283,000 in attorney and paralegal fees and costs. During the prosecution of this case, Berry took three depositions of Pyle, reviewed hundreds of documents, successfully defended a motion for summary judgment, and spent time in settlement conferences which Pyle's counsel never memorialized and produced. When Berry fell ill, there was an 18 month delay. Then Pyle was ill and that caused a one year delay. More settlements were offered, but never memorialized.

By Oct. 4, 2017, Berry was sick enough that he had to give up his law practice and close his office. He stipulated with the Trustee to turn the prosecution over to new counsel. It was agreed that Berry's share would be reduced from 60% of the proceeds to 50% of the proceeds after payment to Berry of up to $8,000 in costs that he had fronted. This was approved by the Court (dkt. 50).

Berry attended the Campbell trial and found out about two title reports that show three technical defects in the June 24, 2004 deeds that Pyle claimed had transferred titles to his irrevocable trust. Berry provided that to Mr. Pena who used it to file the motion for turnover of property. It was Berry's research that allowed this to happen.

Pena claims that the original adversary was mooted by the turnover order and thus Berry is limited to his rights as a creditor with no additional

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CONT... Glen E Pyle **Chapter 7**

percentage compensation.

Opposition of Mary Casament as Success Trustee to the Campbell Trust

Campbell is the largest creditor. The Berry motion is confusing since there is no sale of Vermont at this time. Thus it is premature It is also confusing as to how much Berry is requesting since at one point he states that he should get $334,878 from the proposed sale of Vermont.

Opposition of Trustee

The motion was improperly served since it needed to go to the debtor, the debtor's attorney, the trustee, and all creditors: FRBP 2002(a)(6). Also, the property has not yet sold and so there is no way to calculate how much – if anything – Berry is entitled to.

Berry never served as Trustee's counsel and never was employed as such. Thus he cannot seek compensation under 11 USC sec. 350. His actual status was as a purchaser of the avoidance actions against Pyle and his related entities. Berry purchased the Estate's claims and if he recovered, he would share proceeds with the Estate. But once Berry was physically unable to continue prosecuting the claims, he turned them back to the Trustee, who employed counsel to resolve the avoidance actions.

At this point the Estate has not recovered any monies from a sale of the Estate's interest in the properties.

Reply

Berry's abstract of judgment is prior to the Campbell one.

The sec. 363 issues were resolved when the Court approved the stipulation between Berry and the Trustee. The rights of other creditors were compromised by the stipulation, which the Trustee drafted. The other creditors will receive their shares from the 40% that the Trustee retains.

Berry is not ignoring the claims of Maitland, Campbell, and the child support. If the Trustee does not abandon Sunland, the Estate will not be insolvent.

Under the terms of the Stipulation, it was contemplated that Berry would be able to hire counsel and that these would be paid out of the gross proceeds before calculating the amount to be divided between Berry and the

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CONT... Glen E Pyle **Chapter 7**

Estate. Berry also disputes the Trustee's calculations of the amount of liens on the property.

Analysis

To a certain extent this motion is premature since the properties have not been liquidated and there is no motion to sell or motion to distribute. But it is best to resolve the issues of the terms of Berry's compensation or the formula for his claim.

The First Amended Complaint (dkt. 4) is the operative pleading in this adversary proceeding. Berry filed this in pro per on 3/29/11. His standing was as a judgment creditor of Pyle. The complaint deals with both Vermont and Sunland and claims that Pyle conveyed a deed of trust to Sweetwater Management on Vermont and title by grant deed to Pyle's irrevocable trust and to Sweetwater Management on Sunland. The complaint goes on to state the legal basis of the fraudulent transfer claim and also an alter ego assertion. The asserted remedy is to annul the transfers, restraining Sweetwater and the trust from transferring their interest, and creating a judgment lien on the property. He also asks for costs of suit and general damages of $22,580, special damages of $22,580, and punitive damages of $75,000. The complaint does not seek turnover of the property. [presumably the judgment lien would allow Berry to execute in order to recover his damage claim.]

Due to the health of both parties, there were gaps of many months, but Berry diligently prosecuted this complaint for years. As a secured creditor, he had standing to proceed. In May 2011, the Trustee filed a motion to sell to Berry the Estate's interest in the avoidance action (bk10:24968, dkt. 18). The purchase price was described as "40% of the net proceeds of any recovery minus attorneys fees and costs." What was being sold was a right to prosecute the fraudulent transfer action (dkt. 18, p. 2:23-24). But later on this is identified as the "Estate's Interest in the Pyle Transfer." (dkt. 18, p. 3:7-8) And it also states that the Trustee is seeking Court authorization for "the sale of the Trustee's avoidance powers pursuant to the Buyer 11 USC sec. 363(b)." (dkt. 18, p. 5:5-6)

Notice was given to all creditors, no opposition was received, and the order was entered (dkt. 24). The operative language of this very short order stated:

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CONT... Glen E Pyle **Chapter 7**

It is further ORDERED that the Trustee is authorized to sell the Trustee's avoiding power rights to creditor, Marc Berry ("Mr. Berry" or "Buyer"), to recover business assets sold by the Debtor to an employee pre-petition for less than reasonable equivalent value ("Pyle Transfer"), for 40% of the net proceeds of any recovery after payment of attorney fees and costs, ("Purchase Amount"). Further, Mr. Berry will provide quarterly updates on the status of litigation as set in accordance with the terms and conditions set forth in the Motion.

Litigation went forward in the adversary proceeding, but when Mr. Berry was no longer capable for completing it, he and the Trustee modified the prior order by the stipulation in question, which was sent to all creditors. (dkt. 50):

> 1. Berry hereby unconditionally and irrevocably assigns, grants, and transfers all rights, title, interest, and obligation in, to and under the Adversary Proceeding and the claims asserted therein to the Trustee, solely in her capacity as the bankruptcy trustee of the above captioned estate.
>
> 2. The Trustee has sole authority and discretion, subject to Court approval, to prosecute or not, compromise, settle, dismiss or take any other action related to the Adversary Proceeding.
>
> 3. The Trustee and Berry agree to distribute the gross proceeds of any settlement, judgment or proceeds from the Adversary Proceeding as follows:
>
> a. First, upon satisfactory proof to the Trustee, all of Berry's costs associated with this Adversary Proceeding up to $8,000.00;
>
> b. After payment of the costs in paragraph "a." fifty percent (50%) to Berry and fifty percent (50%) to the bankruptcy estate.
>
> 4. Berry's claims in the Debtor's bankruptcy case shall be unaffected by this Stipulation.
>
> 5. Berry's sanctions awards against the Debtor and or

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CONT... Glen E Pyle **Chapter 7**

the Debtor's counsel shall remain Berry's property to enforce as he deems appropriate.

There were no objections and the Court entered a brief order approving the stipulation (dkt. 53). At that same time the Trustee hired Pena and Soma, APC as her general counsel After a bit of confusion, Mr. Pena took over prosecuting the adversary proceeding and proceeded through two paths: (1) seeking a turnover order as to both Vermont and Sunland in the main bankruptcy case (dkt. 66, 78)and (2) seeking a default judgment in the adversary proceeding against Sweetwater as to its asserted interest in Vermont (dkt. 306). [Pyle and the Trustee have stipulated to avoiding the transfer as to Vermont. (dkt. 303)] As of this point in time the Trustee has taken possession of Vermont, but Sunland will be delayed for an unknown period of time due to the covid crisis and the inability of the Sheriff to execute on that property. The Trustee has not yet brought a motion to sell the Estate's interest in either or both of these properties, although she has employed a real estate broker for Vermont. (dkt. 74, 83) Mr. Berry is seeking a determination of his rights to the proceeds of any sale.

Mr. Berry was not hired as counsel, so this is not an application for fees although that is how he frames his motion. Rather, the deal that he made with the Trustee is that he would own the litigation rights for the avoidance action. If he brought it to a successful conclusion, he would split the eventual proceeds of sale with the Estate in a predetermined ratio. Berry, who is an attorney, represented himself and did not need an order of employment by the Court. He is not an employed professional under sec. 327.

Since he did not represent the Estate, his sole participation was to prosecute the adversary proceeding. Once he would obtain judgment, that judgment would belong to the Trustee. The properties would be properties of the Estate without the claims of the Pyle Trust or Sweetwater Management.

The litigation as to the transfer of Vermont has now been concluded by a stipulation with Pyle which will void the transfer of Vermont. Although

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CONT... Glen E Pyle **Chapter 7**

the litigation is not yet resolved as to Sunland, it is reasonable to deal with any issues as to the award that Berry is entitled to. As assets are liquidated, the Trustee can then make the appropriate distribution.

First of all, the turnover motion was not part of Berry's portfolio. That it was brought while the adversary was still unresolved is not relevant to the agreement with the Trustee. It was filed in the main bankruptcy case – as it had to be – and not in the adversary proceeding. Berry had no standing to move forward in the bankruptcy case itself.

The adversary proceeding deals with both Vermont and Sunland. So the proceeds mentioned in paragraph 3 of the second stipulation concerns both properties. There is no mention of what might happen if the Trustee abandons Sunland. That issue and the sales price of both properties will be faced when the Trustee brings a motion to sell or to abandon each property. Berry is a secured creditor and an administrative creditor (secured by his abstract of judgment to the extent of his state court judgment and an administrative creditor under the terms of his stipulation with the Trustee). Because there appears to be sufficient equity in these properties (once the Trustee cleans title), it is likely that he will receive his secured claim with all accrued interest as provided for under the law of California.

The administrative portion of his claim is based on a post-petition contract with the Trustee. It is not a prepetition unsecured claim. It has been approved by the Court on notice to all creditors, etc. and should be honored in full. In part, this appears to be a claim under 11 USC sec. 503(b)(3)(B): "the actual, necessary expenses, other than compensation and reimbursement in paragraph (4) of this subsection, incurred by a creditor that recovers, after the court's approval, for the benefit of the estate any property transferred or concealed by the debtor." That would cover Mr. Berry's request for reimbursement of costs.

As to the balance of the stipulation, the Court really does not see the difference between the Trustee entering into a contingency agreement to sell estate property and this contingent agreement to own the fraudulent transfer cause of action and pay a percent to the Trustee on successfully completing the transaction (sale of property in the case of the real estate agent or removal of the transfer in this case).

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CONT... Glen E Pyle **Chapter 7**

The stipulation is clear. Once the propert(ies) are sold, Berry gets up to $8,000 for costs and then 50% of the remainder. His liens will stay on the property and be paid under the regular distribution as a secured claim. This means a lot less money for the Trustee's professionals and other creditors, but that is the terms of the deal. The only question here is whether the Court should reduce it by some amount because the Trustee obtained the default judgment/stipulation as to Vermont and will complete the litigation as to Sunland. But these were anticipated in the stipulation. It was not the first stipulation when it looked as if Berry would handle this case until the end. It was the second stipulation that was entered into because it was clear that Berry needed to exit the case and turn it back to the Trustee and her professionals.

Having said that, the Court does have the power to adjust the amount of the award if it would be unreasonable. Mr. Berry did not bring this adversary proceeding for altruistic reasons. If I remember correctly, at some point in time he was Mr. Pyle's attorney and his state court judgment was for fees that Pyle owed to him. By removing the fraudulent transfer, which preceded his judgment lien, he was able to find an asset that would allow him to collect on his judgment. The level of animosity that was plain in this case meant that Berry would have proceeded for his own benefit if there had been no bankruptcy. Under state law he would not have been entitled to more than his judgment, plus some minor costs such as deposition fees.

Here he is claiming attorney fees as the Trustee's attorney. He is not entitled to those as he was never employed in that capacity. He acted pro se. But he did spend an enormous amount of time on this case and the Trustee recognized this by implication in signing the second stipulation. In fact, the second stipulation provides a different split of the net proceeds and that seems to take into account the extensive effort that Berry has been required to make. But, anyway, it was a negotiated agreement of the interests involved and the Trustee has not provided any information that shows changed circumstances since she entered into the second stipulation. Thus the Court holds that this agreement should stand.

The exact amounts to be paid to Mr. Berry will be determined after the sale of both properties. It will only apply to the net proceeds after costs

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CONT... Glen E Pyle **Chapter 7**

of sale and payment of property taxes or any other costs necessary to transfer the properties to the new owners.

TENTATIVE RULING FOR CONTINUED HEARING AFTER SALE OF VERMONT

Campbell Opposition filed 11/3/20

The sale price of the Vermont property was for $542,000. After deducting the costs of sale, distributions to secured creditors, and the Trustee's administrative expense, there remains $252,369.35 for unsecured creditors. The Campbell Trust has a valid unsecured claim of $258,826.21, Siphoning off the sale proceeds to pay Berry would unduly harm the Campbell Trust.

Berry should not receive any funds from the Stipulation because he was only entitled to proceeds from the adversary proceeding, which had no merit and was dismissed by the Court. The adversary proceeding sought avoidance of a transfer that never occurred because the Pyle Irrevocable Trust is not a legal entity and cannot hold or convey title. Berry had the responsibility to review the title report and understand that no litigation was necessary rather than spending a decade litigating this and incurring substantial fees and expenses.

Under California law, a trust is not a legal entity and cannot hold or convey title. Only the trustee can convey title. Thus the property never left the bankruptcy estate and the complaint to avoid transfer was completely unnecessary. The title reports should have alerted him to this. It specifically says that "the grantee/one of the grantees names in the deed does not appear to be an entity capable of acquiring title to real property. The requirement that a deed be recorded that identifies the trustee of said trust." This is the deed from Pyle to "(the Pyle Irrevocable Trust) Sweetwater Management Co…."

The stipulation with the Trustee only provides for Berry to receive money from "the gross proceeds of any settlement, judgment or proceeds from the Adversary Proceeding…" There were no monies from the adversary proceeding. In fact the Trustee obtained a dismissal of the

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CONT... Glen E Pyle **Chapter 7**

adversary proceeding.

The Campbell Trust objects to the tentative ruling as to the following:

(1) Defining "proceeds" to mean proceeds from the sale of the property or the completion of the adversary proceeding is incurred. The stipulation is limited to proceeds from the adversary proceeding.
(2) The Trustee's counsel was provided with the necessary research as to the flaws in title before Berry contacted Trustee's counsel about it.
(3) The stipulation with Pyle as to the transfer of Vermont was withdrawn. There was never an order voiding the transfer of Vermont because no order was needed.
(4) Berry does not hold a valid administrative claim because no real property ever left the estate and Berry did not benefit the estate because it was the counsel for the Campbell Trust who discovered the defect in the alleged transfers.
(5) There is a major difference between the Trustee entering into a contingency agreement to retain Berry to sell estate property or to prosecute the adversary proceeding. Berry initiated the adversary proceeding and the Trustee relied on his assessment of its value – that is the basis of the stipulation between the Trustee and Berry. But since the adversary proceeding had no merit, Berry was working on a contingency basis and must bear the consequences of the result.

Berry Supplemental Declaration

There has been no action by the Trustee to sell the Sunland Property and it appears that the Trustee does not intend to do so. If the Trustee does sell Sunland, there will be a net equity of $700,000, so there will be sufficient money to pay the Campbell claim and the Berry settlement. As of this point, there is no distribution allocation to unsecured creditors. The Trustee has only distributed to costs of sale and secured creditors. The Campbell claim to be paid from the estate is limited to about $75,000 (the pre-petition amount) and that would be paid from the estate's 50%, Berry being the owner of the other 50% per the stipulation.

Mr. Berry goes on to deal with the proposed distribution in the

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CONT... Glen E Pyle **Chapter 7**

Trustee's motion to sell including the settlement with Linda Daniel. [*Court: this has not yet been approved, so the Court is ignoring this part of the declaration*. *The thrust of the Campbell opposition is whether the stipulation should stand and whether Berry has an administrative claim in that Berry did not benefit the estate and because the stipulation specifically refers to a judgment in the adversary action, which Campbell asserts was ultimately dismissed.*]

Damages are not capped at the aggregate total of unsecured claims. This was not addressed in the tentative ruling. In the complaint, Berry sought punitive damages of up to $75,000.

The Berry adversary was never dismissed by the Court. It was renamed, but not dismissed. Although it was resolved by a turnover order rather than an avoidance, this did not mean that it lacked merit. The turnover order avoided the deed to both Vermont and Sunland. This was part of the stipulation for judgment as to Vermont, which avoided that transfer. [*Court: this is adversary dkt. #303 and it was withdrawn on 8/5/20, dkt. #304.*]

Berry filed the avoidance action in June 2011 and the Trustee allowed Berry to continue to prosecute it for 60% of the gross proceeds after payment of fees and costs. During that time, Berry expended $283,000 in attorney and paralegal fees, took three deposition, reviewed hundreds of documents, successfully defended a motion for summary judgment, and spent hours and days in uneventful settlement discussions. A settlement was actually reached, but Mr. Aver refused to document it.

Due to health reasons of both Pyle and Berry, the matter dragged on for 2.5 years. When Mr. Berry became too sick to proceed, he turned the matter back to the Trustee and agreed to the stipulation, which reduced his share to 50%. The $8,000 in costs also remained.

Berry learned of the two title reports showing several technical defects in the 6/24/04 deeds, but was not aware of the third, which was devastating to Pyle's position. Berry notified Mr. Pena and sent him copies of the title reports and his research. Mr. Pena then used the facts to obtain the turnover order. The turnover order did not "moot" the avoidance action.

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CONT... Glen E Pyle **Chapter 7**

Revised Tentative Ruling as of Nov. 17, 2020

Factual Summary:

(1) In 2011, the Trustee sold an avoidance action to Marc Berry for 40% of the net recovery after payment of attorney fees and costs. (dkt. ## 20, 24). Berry agreed to provide the Trustee with quarterly status reports as to the litigation.

(2) Berry filed the adversary proceeding. Berry is an attorney, represented himself, and diligently prosecuted the case for 7 years (delays due, in part, to health issues on both sides as well as ongoing discovery disputes and delays caused by Pyle).

(3) After 7 years, Berry was no longer in sufficiently good health to continue. He and the Trustee entered into a new agreement which modified the June 17, 2011 sale order. The new agreement states that Berry "unconditionally and irrevocably assigns, grants, and transfers all rights, title, interest, and obligation in, to and under the Adversary Proceeding and the claims asserted therein to the Trustee, solely in her capacity as the bankruptcy trustee of the above captioned estate." (dkt. ##50, 53). Under the terms of the stipulation, the Trustee now owned the adversary proceeding and Berry would get 50% of the net proceeds plus $8,000 in costs if the Trustee prevailed.

(4) The Trustee changed the adversary proceeding to go forward in her name, hired counsel, and prosecuted for over two years. On September 30, 2020, the Trustee obtained a default against Sweetwater as a suspended corporation (adv. dkt. ## 273, 287) and then judgment against Sweetwater Management Co., (adv. dkt. ## 306, 321). The adversary proceeding is still open and no final action has been taken as to the Pyle Irrevocable Trust, the remaining defendant.

(5) Campbell filed his adversary proceeding simultaneously with the Berry one. During the years that followed, he liquidated his claim in superior court and obtained a denial of discharge in a §727 adversary proceeding. (1:11-ap-01181, dkt. ##150, 151).

(6) The Berry v. Pyle adversary proceeding (1:11-ap-01180) rested on the theory that the transfer of two properties from Pyle to his irrevocable trust was fraudulent and without consideration, etc.

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CONT... Glen E Pyle **Chapter 7**

Berry obtained massive amounts of discovery, which he turned over to the Trustee. Part of that was used to obtain the default judgment against Sweetwater.

(7) At some point, someone – perhaps the Campbell counsel – had Coldwell Banker obtain a title report, but did not act on it for over a year. (adv. dkt. #323),

(8) Suddenly, Campbell's counsel realized the legal effect of the title report in that the transfer to and from an irrevocable trust is void under California law. Campbell's counsel then brought this to the attention of the Trustee, who basically abandoned the fraudulent transfer adversary and moved in the main case for turnover and sale of the property. I granted that motion and the Vermont property has been sold.

(9) The title report did not question the validity of the Sweetwater Trust Deed on Vermont (4/12/2001) or the deed as to Sweetwater (6/28/2004). (adv. dkt. #323)

There are two questions to resolve:

(1) what was the nature of the transactions between Mr. Berry and the Trustee as to the recovery of the property for the benefit of the estate and

(2) did the work of Mr. Berry benefit the estate so that he should have an administrative claim or the stipulation be enforced.

As to the first question, this was a sale. The Trustee sold the avoidance action to Berry. The price was 40% of the net recovery. In 2017, Mr. Berry sold the avoidance action back to the Trustee. Berry took a 10% loss in that he would only be able to obtain 50% of the net recovery rather than 60%. But both of these were sales of the adversary proceeding. However, it was not really limited to the four corners of the adversary proceeding. It involved the total method of recovery of Vermont and Sunland.

But even if it was limited to the adversary proceeding, the Sweetwater judgment was obtained and both properties could not be sold

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CONT... Glen E Pyle **Chapter 7**

without having removed that interest. Mr. Nachimson is incorrect in asserting that the adversary proceeding was dismissed. Judgment was obtained against Sweetwater and that was necessary. The adversary proceeding is still active, though it is likely that the Trustee will seek to dismiss it.

Mr. Nachimson provides a set of emails that show that on May 7, 2020 he notified Mr. Pena that "[a]ccording to the title report for the Sunland property, title is still in Pyle's name and not the trust. " The Trustee decided to do a turnover motion because it put Pyle in a difficult position – either he agreed to turnover or Campbell could sell it to satisfy his state court judgment if Pyle contended that it belongs to the irrevocable trust.

Mr. Berry certainly had copies of the deeds in issue, as did everyone. In fact they are attached to the original complaint in the adversary proceeding. What he missed, the Trustee missed, and Campbell missed was the legal effect of the transfers involving the Pyle Irrevocable Trust. The title report is dated 3/8/19 and was obtained by Coldwell Banker Residential Brokerage, attn. Rick Barrett. It is unclear to the Court as to who actually requested the title report since Coldwell Banker was not employed until June 2020. But since the Nachimson emails were in early May 2020, it appears that he was the only one in possession of the title report prior to that date.

Regardless of who initially got the title report, it was only because of the title report that the legal issue of the ownership came to light. And, assuming that it was Campbell, it took a year for the Campbell counsel to realize the significance of the analysis by the title company.

So the question raised is whether Mr. Berry or the Trustee should have gotten and understood a title report much earlier in the case, thus avoiding years of litigation. Also, had the Trustee been aware of this legal error by Mr. Berry in not knowing California real property law, would the Trustee have entered into the stipulation? And had the Trustee or her counsel known at the outset of this case that the transfers were void, would she have "sold" the avoidance action to Mr. Berry in the first place? Also, was there any damage or loss to the estate due to the ongoing litigation and delays?

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CONT... Glen E Pyle **Chapter 7**

There are certainly enough errors in this case to go around.

These are all interesting questions, but not dispositive of this motion. There was a good-faith, arms-length SALE of the avoiding powers as to Vermont and Sunland. Berry was not the Trustee's attorney. So long as he acted in good faith in the prosecution of the adversary proceeding, there is no justification to set the sale aside. And the Court finds that he acted diligently and professionally. The fact that he missed the legal issue of transfer to a trust is not grounds to punish him. Everyone missed this issue until the title company pointed it out. Berry had the critical documents and there was no reason that he was required to obtain a title report. Thus the sale stands.

When Berry was no longer physically able to prosecute, he sold the avoiding powers back to the Trustee and look a reasonable loss, given the amount of time and energy and costs that he had put into the case. This was also a good-faith, arms-length SALE. The 50% + $8,000 is the sale price, not an administrative claim as such. It is not to be set aside. Actually, the estate benefitted by the second sale agreement in that it gained an additional 10% of the net proceeds at no cost or detriment to itself.

Both sales were approved by order of the court after proper notice. Mr. Campbell (or his estate) were actively involved and attended most hearings since the Court trailed the Campbell adversary proceeding with the Berry one.

As to my second question, that really does not apply because this was a sale of a cause of action and then a purchase of an asset by the Trustee. It may fall under some category as an administrative claim, but it is more in the cost of administration. It is very similar to the situation where the Trustee would buy materials to fix up a house before it is put on the market and agree to pay after the sale closes. Here there was a great benefit to the estate. The work that Mr. Berry did led to the judgment against Sweetwater. Vermont could not have been sold without that judgment.

So the only remaining question is when and how does the estate apply the 50% + $8,000 formula to pay Mr. Berry. As it stands, this cannot be finalized until Sunland is sold and that means that the Campbell claim

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CONT... Glen E Pyle **Chapter 7**

also cannot be paid until Sunland is sold. I think that it is best for the Trustee to sit down with Mr. Berry, Mr. Nachimson, and Mr. Pena and work out a process to distribute money in light of this ruling.

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):

Amy Goldman	Represented By Leonard Pena

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, December 15, 2020 **Hearing Room 303**

8:00 AM
1:00-00000 **Chapter**

#0.00 **The 8:30 am Reaffirmation hearing calendar will be conducted remotely, using ZoomGov video and audio.**

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address: https://cacb.zoomgov.com/j/1616474539

Meeting ID: 161 647 4539

Password: 950400

Telephone Conference Lines: 1 (669) 254-5252 or 1 (646) 828-7666

Meeting ID: 161 647 4539

Password: 950400

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

Tuesday, December 15, 2020 **Hearing Room 303**

8:00 AM
CONT... **Chapter**

Docket 0

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

Tuesday, December 22, 2020 **Hearing Room 303**

9:30 AM
1:00-00000 **Chapter**

#0.00 **The 10:00 am calendar will be conducted remotely, using ZoomGov video and audio.**

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address: https://cacb.zoomgov.com/j/1611265972

Meeting ID: 161 126 5972

Password: 545217

Telephone Conference Lines: 1 (669) 254-5252 or 1 (646) 828-7666

Meeting ID: 161 126 5972

Password: 545217

Docket 0

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

Tuesday, December 22, 2020 **Hearing Room 303**

9:30 AM

CONT... **Chapter**

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

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

Tuesday, December 22, 2020 **Hearing Room 303**

10:00 AM

1:08-11669 Mahboob Talukder **Chapter 7**

Adv#: 1:20-01069 Chicago Title Insurance Company v. Talukder

#1.00 Status Conference Re Complaint to Determine Dischargeability Under 11 U.S.C. Sec. 523(a)(2)(A) and 523(a)(3)(B)

fr. 9/15/20

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

A motion for summary judgment was filed and is set for hearing on Feb. 2, 2021. Continue this hearing without appearance to that date - 2/2/21 at 10:00 a.m.

Prior tentative ruling (9/15)

The facts alleged in this case are as laid out in the tentative ruling on the motion by Chicago Title to confirm that the post-discharge stay does not apply to this debt (bankruptcy case, dkt. 57). The Court determined that this was a pre-petition matter and suggested that it might qualify for a rememdy under 11 USC sec. 523(a)(3)(B) if LasSalle or Chicago did not have notice or actual knowledge of the bankrutpcy case in order to timely file a claim and an adversary proceeding. This could take place in state court of bankruptcy court. The plaintiff has chosen to file this adversary proceeding.

An answer was filed. In the joint status report, Chicago says that it will file a motion for summary judgment and requests a discovery cutoff after November 2020 with a trial in January 2021. The defendant requests a three month continuance of the status conference.

The Court agrees that there is no reason to hold the status conference at this time. If the parties agree there will be no appearance on Sept. 15, 2020. The discovery cutoff will occur on 12/4/20. The status conference will be continued to Dec. 22, 2020 at 10:00 a.m. The Plainiff can file its motion for summary judgment at any date that it wishes.

10:00 AM
CONT... Mahboob Talukder **Chapter 7**

Party Information

Debtor(s):

Mahboob Talukder	Represented By Andrew Edward Smyth William H Brownstein

Defendant(s):

Mahboob Talukder	Pro Se

Joint Debtor(s):

Cristina Talukder	Represented By Andrew Edward Smyth

Plaintiff(s):

Chicago Title Insurance Company	Represented By Karen A Ragland

Trustee(s):

Amy L Goldman (TR)	Pro Se

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

Tuesday, December 22, 2020 **Hearing Room 303**

10:00 AM
1:15-14213 Michael Robert Goland **Chapter 7**
Adv#: 1:20-01063 Burk v. Zamora

#2.00 Status Conference Re Complaint for
1 - Declaratory Judgment
2 - Breach of Fiduciary Duty - Taxes
3 - Failure to Collect Rent - Estate
4 - Failure to Collect Rent - Plaintiff

fr. 8/25/20, 10/6/20, 10/27/20

Docket 1
***** VACATED *** REASON: Cont'd to 2/23/21 at 10:00 per Ord. #37. lf**

Matter Notes:

- NONE LISTED -

Tentative Ruling:

This was assigned by Jason Pomerantz as mediator. Agreement in principle was reached. Continued by stipulation ot Feb. 23, 2021 at 10:00 a.m.

Party Information

Debtor(s):

Michael Robert Goland	Represented By David S Hagen

Defendant(s):

Nancy Zamora	Pro Se

Plaintiff(s):

Gerry Burk	Represented By Michael N Sofris

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, December 22, 2020 **Hearing Room 303**

10:00 AM

CONT... **Michael Robert Goland** **Chapter 7**

Ezra Brutzkus Gubner

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

Tuesday, December 22, 2020 **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, 12/17/19; 12/23/2019; 2/11/20, 4/7/20; 6/23/20; 7/7/20, 7/21/20, 9/15/20, 10/27/20

Docket 1

***** VACATED *** REASON: Cont'd to 2/9/21 at 10:00 w/ Judge Tighe per Order #371. lf**

Matter Notes:

- NONE LISTED -

Tentative Ruling:

This will trail the adversary proceeding. No status reports are needed. No appearances are needed. Please check the future tentative rulings to see whether and appearance and/or status report will be required.

Prior Tentative Ruling (7/7/20)
This will trail the adversary proceeding. No appearance is needed on July 7 and no further status report is needed until you are notified by the Court that one is necessary.

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, December 22, 2020 **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: Counterclaim by Lufthansa Technik Philippines, Inc.

Docket 163

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Continued to Judge Tighe's calendar on February 9, 2021 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 Andrew C Johnson

Plaintiff(s):

Majestic Air, Inc.	Represented By Stella A Havkin
Tessie Cue	Represented By Stella A Havkin
Hiongbo Cue Special Administrator	Represented By William E Weinberger Stella A Havkin

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: Third 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, 12/23/19; 2/11/20; 4/7/20; 6/23/20, 7/7/20, 7/21/20; 9/15/20, 10/27/20

Docket 159

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Continued to Judge Tighe's calendar on February 9, 2021 at 10:00 a.m.

prior tentative ruling (10/27/20)
The third amended complaint was filed on 8/25/20. On 9/29/10 LTP filed an answer and countclaim against Hiongbo Cue and Majestic Air. On 10/23, LTP filed an amended counterclaim against Majestic Air. No status report has been filed as of 10/24. Where do we go from here?

Prior tentative ruling (7/21/20)
This is just to find out if there is any possibility of settlement. The estate has very few assets and most of those will go to LTP or perhaps be eaten up in attorney fees. While LTP apparently has substantial assets, the Plantiffs would have to win a large judgment in order to collect on those, given the amount of the judgments against them. This will also be a hard-fought and expensive case. Because Ms. Havkin is counsel for the estate, I requested that she appear as any settlement would have to be on behalf of the estate as well as the Tessie Cue probate.

So please update me on the settlement possibility. Meanwhile, I am working

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

on the motion to dismiss. That hearing is set for 9/15/20 at 10:00 a.m.

Prior tentative ruling (7/7/20)

The adversary is proceeding very slowly. Please note that there is less than $100,000 in the estate and the Court cannot tell the chances of an actual reorganization. Is this still an operating company? Will it be operating in the future? It seems from the last report that it has less than $50,000 worth of inventory for resale.

What is the amount available from the Tessie Cue Estate?

There are very few claims in this case - and it appears that the LTP and Tessie Cue claims are the only unsecured ones.

Looking at this there is a serious question of whether you should settle this without further expenditure.

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

Tuesday, December 22, 2020 **Hearing Room 303**

10:00 AM
1:16-12255 Solyman Yashouafar **Chapter 7**

#6.00 Status Conference on chapter 7 case

fr. 11/17/20

Docket 774

Matter Notes:

- NONE LISTED -

Tentative Ruling:

No futher status conferences are needed. But I appreciate the work of the OUST, the Trustee, and all professionals in reaching an agreement as to professional fees and creating a sum of money for unsecured creditors. It is a small percent, but still it is appeciated. This has been an expensive case, but it resolved many important issues and did result in recovery by secured creditors.

Prior tentative ruling (11/17/20)
Per the trustee's report, administrative fees and costs will be determined at a hearing on 12/22/20, after which there will be a final report. It is anticipated that there will be no distribution in the Solyman estate and that the general unsecured creditors in the Massoud estate will receive about 1%. I will continue this status conference without appearance to 12/22/20 at 10:00 a.m. No further status report is needed for that hearing. At that time, I will likely terminate status conferences in this chapter 7 jointly administered case.

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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CONT... Solyman Yashouafar **Chapter 7**

United States Bankruptcy Court
Central District of California
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Tuesday, December 22, 2020 **Hearing Room 303**

10:00 AM

1:16-12255 Solyman Yashouafar **Chapter 7**

#7.00 First and Final Application of Baker & Hostetler for Allowance and Payment of Compensation and Reimbursement of Expenses as Counsel to the Official Committee of Unsecured Creditors

Period: 11/3/2016 to 2/28/2018
Fee: $184,706.00
Expenses: $3,778.17

Docket 782

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Baker & Hoestetler LLP was the former counsel for the Creditors' Committee from 11/3/16 to 2/28/18. Applicant seeks $184,706 in fees and $3,778.17 in costs. This was originally an invooluntary chapter 11 case. The Debtors stipulated to the entry of the order for relief and the appointment of a chapter 11 trustee. Ms. McDow was the lead attorney for the Committee and when she left Baker & Hoestetler, the Committee requested thate she continued to handle the case, so she took it with her to Foley & Lardner. LLP. Exhibit D, the detailed time records, is attached to the errata.

This was all during the chapter 11 period.

There is no comment from the chair of the Creditors' Committee.

There is a stipulation among the professionals and the OUST that this amount will be allowed. The Court will honor this agreement upon receipt of a comment from the chair of the Creditor's Committee.

Party Information

Debtor(s):

Solyman Yashouafar Represented By

10:00 AM
CONT... Solyman Yashouafar **Chapter 7**

Mark E Goodfriend

Trustee(s):

David Keith Gottlieb (TR) Represented By
Jeremy V Richards
John W Lucas
Gail S Greenwood

10:00 AM
1:16-12255 Solyman Yashouafar **Chapter 7**

#8.00 Second and Final Chapter 11 Period Application of Development Specialists, Inc. for Allowance and Payment of Compensation

Period: 3/1/2018 to 10/24/2019
Fee: $26747.50
Expenses: $40.36

Docket 785

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Development Specialists, Inc. is the accountant for the Trustee. This is their second and final application for fees. The first period was from 3/1/18 through 12/31/18 and was in the amount of $20,120. This second period is from 1/1/19 through 10/24/19 and is for $6,627.50 plus $40.36 costs. DSI has received $10,000 and the remaining approved amount for the first period is $10,210. THIS IS FOR THE CHAPTER 11 PERIOD.

There is a stipulation among the professionals and the OUST that this amount will be allowed and unpaid prior approved fees will be paid. The Court will honor this agreement.

Approve as requested. No appearance necessary.

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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Tuesday, December 22, 2020 **Hearing Room 303**

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CONT... **Solyman Yashouafar** **Chapter 7**

John W Lucas
Gail S Greenwood

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

Tuesday, December 22, 2020 **Hearing Room 303**

10:00 AM

1:16-12255 Solyman Yashouafar **Chapter 7**

#9.00 First and Final Chapter 7 Period Application of Development Specialists, Inc. for Allowance and Payment of Compensation

Period: 10/25/2019 to 10/31/2020
Fee: $7365
Expenses: $0.

Docket 786

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Per the stipulation with the Trustee, etc., this will be disallowed as DSI was never employed by the Court for the chapter 7 portion of the case.

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
Gail S Greenwood

10:00 AM
1:16-12255 Solyman Yashouafar **Chapter 7**

#10.00 Application for Compensation Submission of Second and Final Application of Berkeley Research Group for Allowance and Payment of Compensation and Reimbursement of Expenses;
Period: 12/1/2018 to 11/20/2020,
Fee: $90,971.50,
Expenses: $26,088.75.

Docket 789

Matter Notes:

- NONE LISTED -

Tentative Ruling:

This is the second fee request in the chapter 11 case. It requests $11,010 in fees and $4,008.08 in expenses. It also requests $18,305.50 in fees and $22,080.67 in expenses during the chapter 7 period.

There is a stipulation among the professionals and the OUST that the amount requested for the chapter 11 period will be allowed and unpaid prior approved fees will be paid. The Court will honor this agreement. As to the chapter 7 period, BRG was not employed and no fees will be allowed. There are $22,080.67 in actual expenses of the estates relating to the storage of estate documents during the chapter 7 period and this will be reimbursed to BRG by the Trustee.

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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CONT... **Solyman Yashouafar** **Chapter 7**

Gail S Greenwood

United States Bankruptcy Court
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Tuesday, December 22, 2020 **Hearing Room 303**

10:00 AM

1:16-12255 Solyman Yashouafar **Chapter 7**

#11.00 Chapter 7 Trustee's First Interim Application for Compensation and Reimbursement of Expenses for David Keith Gottlieb (TR), Trustee Chapter 7, Period: 10/25/2019 to 10/31/2020, Fee: $178,768.10, Expenses: $133.30.

Docket 795

Matter Notes:

- NONE LISTED -

Tentative Ruling:

For the chapter 7 period, the Trustee is seeking $178,768.10 in fees and $133.30 in expenses. For some reason on the exhibit to the stipulation (dkt. 805), it shows that Mr. Gottlieb is seeking $200,145.68 in fees and $133.30 in expenses. Please explain this discrepancy.

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, Gail S Greenwood

United States Bankruptcy Court
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Courtroom 303 Calendar

Tuesday, December 22, 2020 **Hearing Room 303**

10:00 AM

1:16-12255 Solyman Yashouafar **Chapter 7**

#12.00 Chapter 11 Trustee's Second and Final Application for Compensation and Reimbursement of Expenses for David Keith Gottlieb (TR), Trustee Chapter 9/11, Period: 9/16/2016 to 10/24/2019, Fee: $62,220.09, Expenses: $465.54.

Docket 796

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Mr. Gottlieb, as chapter 11 trustee, is seeking fees of $9,676.07 and expenses of $77.56 as a second application and final approval of his prior fee award of $52,544.02 as well as his prior expense award.

Approve as requested.

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
Gail S Greenwood

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San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, December 22, 2020 **Hearing Room 303**

10:00 AM
1:16-12255 Solyman Yashouafar **Chapter 7**

#13.00 Application for Compensation for Pachulski Stang Ziehl & Jones LLP, Trustee's Attorney,
Period: 9/16/2016 to 12/22/2020,
Fee: $1,853,068.00,
Expenses: $92,975.57.

Docket 797

Matter Notes:

- NONE LISTED -

Tentative Ruling:

PSZ&J, counsel for the Trustee, did not easily break down the portion of their request between work done in the chapter 11 case and work done in the chapter 7 case. The supplemental request, which deals with recent work during the chapter 7 period, does not help. For that reason, the Court is relying on Exhibit A to dkt. 805. Approve the additonal chapter 11 fees of $310,285.50 in fees and $9,680.38 in expenses. Approve the prior request as a final order an allow the balance to be paid.

As to the chapter 7, the firm was never employed so deny all fees and expenses. This is reflected in the agreement between the OUST and the professionals.

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
Gail S Greenwood

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Tuesday, December 22, 2020 **Hearing Room 303**

10:00 AM

1:16-12255 Solyman Yashouafar **Chapter 7**

#14.00 Application for Compensation Second and Final Application of Foley & Lardner LLP for Payment of Fees and Expenses for Ashley M McDow, Creditor Comm. Aty, Period: 1/1/2019 to 12/22/2020, Fee: $66,817.75, Expenses: $961.96.

Docket 799

Matter Notes:

- NONE LISTED -

Tentative Ruling:

This is an application for chapter 7 fees. There does not seem to be an application for additional fees in the chapter 11 case. Prior fees will be given final approval. As to the chapter 7, the request is for $66,817.75 fees and $1,154.46 costs. The firm was never employed in the chapter 7 case, so these will be denied.

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, Gail S Greenwood

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, 8/20/19, 1/28/20, 9/15/20
11/17/20

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Nothing further received as of 12/17/20..

Prior tentative ruling (9/15/20)
Per the status report filed on 9/2/20, a status conference is set for 10/5/20 in the LASC case of Barlava v. Roosevelt Lofts and one is set for 10/15/20 in the LASC case of Carla Ridge v. Milbank Holdings. These are both stayed.

The Plaintiffs have not received any notification from the Trustee as to the likelihood he will object to Barlava's claim. Barlava requests a 120 day continuance.

Continue without appearance to 11/17/10 at 10:00 a.m. At that time I will also be holding a status conference on the bankruptcy case to get a timeline from the Trustee.

Prior tentative ruling (8/20/19)
Per the Plantiffs' 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,

10:00 AM

CONT... Solyman Yashouafar **Chapter 11**

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.

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 dismiss 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

10:00 AM
CONT... Solyman Yashouafar **Chapter 11**

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.

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

10:00 AM
CONT... Solyman Yashouafar **Chapter 11**

	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
Carla Ridge, LLC	Represented By Andrew V Jablon
First National Buildings II, LLC	Represented By Andrew V Jablon
Figueroa Tower II, LP	Represented By Andrew V Jablon
Kefayat Barlava	Represented By Andrew V Jablon

Trustee(s):

David Keith Gottlieb (TR)	Represented By Jeremy V Richards John W Lucas