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

Tuesday, January 12, 2021 **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.

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Video/audio web address: https://cacb.zoomgov.com/j/1617836427
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United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar

Tuesday, January 12, 2021 **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, January 12, 2021 **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

fr. 11/17/20

Docket 44

Tentative Ruling:

Off calendar - settled

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, January 12, 2021 **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, 11/17/20

Docket 1

Tentative Ruling:

This is settled, but we still need the money actually deposited. Continue to 2/2/21 at 10:00 to make sure that everything is completed.

prior tentative ruling - 11/17/20

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

10:00 AM

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

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 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, January 12, 2021 **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
1:09-18345 Narine Gumuryan **Chapter 7**
Adv#: 1:19-01081 Bag Fund LLC v. Gumuryan

#3.00 Status Conference Re: Amended Complaint to Determine Non-Dischargeability

Docket 13

Tentative Ruling:

A dismissal was filed on 1/4/21. Although not signed by the defendant, it states that this was ordered by Judge Keeny due to the settlement. It also states that Judge Keeny's order was to dismiss the request to reopen the bankruptcy case. This adversary proceeding is not a request to reopen the bankruptcy case, but is for non-dischargeability. The bankruptcy case itself was reopened on 3/27/19.

Mr. Quigg is an experienced bankruptcy attorney and presumably understands that the debt was discharged and that unless there is a stipulation of non-dischargeable debt it will remain discharged and the state court settlement will not revive it. However, if there is no objection to the dismissal of the adversary proceeding or other filing by January 25, 2021, the Court will enter its order to that effect as to the adversary proceeding and will close the bankruptcy case.

This is continued to February 2, 2021 at 10:00 a.m. to review any objection or other possible filings.

Party Information

Debtor(s):

Narine Gumuryan — Represented By
Elena Steers
Martin Fox

Defendant(s):

Narine Gumuryan — Represented By
Jovi Usude

10:00 AM

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

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**

#4.00 Debtor's Opposition to all claims against 25226 Vermont Dr., and 9466 Sunland Blvd and Glen Pyle Petitioner and Pyle Irrevocable Trust

Docket 173
***** VACATED *** REASON: Moved to be heard at 11am (eg)**

Tentative Ruling:

This is a compilation of a series of arguments with some supporting documents. Some were previously decided and the time to appeal has expired. Rather than repeating all of the arguments in those situations, the Court will make its comments in *italics*.

The Court had no right to sell the Vermont property because it and Sunland belong to the Trust:

This was decided by a final ruling. The Order granting the motion for turnover of both properties was entered on June 24, 2020 (dkt. 78), which determined that both properties are property of the bankruptcy estate. No appeal was filed and the time has passed to do so. There will be no further analysis of this issue.

Other matters presented by Mr. Pyle:

(1) Linda Daniel has not been in possession of Vermont since April 1991 and thus her claim of ownership is barred by Cal. Code of Civil Procedure (CCP) 318 and 319 as well as the adverse possession provisions of CCP 325, which provide title to the Trust's trustee on Jan. 12, 2000.

(2) Mr. Berry lacks standing to be in the case. At the sec. 341(a)

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

meeting, the Trustee told Berry that his claim is not good under Cal. Civ. Code (CC) 3439. His claim was extinguished by CC 3439.09 since there was no legal action for over 4 years (from 2000 through 2004 when he filed the abstract). Then he waited another 5 years to file the renewal, which prompted this bankruptcy. That was over 10 years from the transfer of the property to the Trust, which occurred on Jan. 12, 2000. 11 USC 548(e) states that the bankruptcy trustee may avoid a transfer made within 10 years of the date of the filing of the bankruptcy petition. The transfer on 1/12/00 is 10 years and 10 months before the bankruptcy filing on 11/30/10. Beyond that, real estate title litigation is within the purview of the superior court, not the bankruptcy court, which has no experience in these matters.

(3) Mr. Berry violated the rules of the State Bar when he represented the Trustee against Pyle, who was his former client. Mr. Nachimson brought this to the Court's attention in his objection to the Berry claim in the Vermont sales proceeds. Berry only handled this to line his own pockets and his suit was neither proper nor necessary.

(4) The Maitland claim is based on a fraudulent claim by Renaud Valuzet. Case 01U00166. Service on that case was made on an empty building owned by Valuzet while Pyle was in jail. The judgment entered in 10/17/01 was not enforced until 1/18/06, which is 5 years. This was extinguished by CC 3439.09 after 4 years. The title report was wrong as was the court that issued the writ of execution because the judgment had been extinguished.

They should have known that the transfer from an irrevocable trust is not legally possible for a grantor to obtain a loan on property granted to an irrevocable trust. The escrow/title company entered

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

on the deed regarding the loan to Maitland that "in violation of CC 1710, the transfer was not taxable because it was to a 'revocable trust.'"

The loan amount was changed at the last minute. The judgment was for $23,000 and this was changed to $32,000 on a $3,000 debt. It was inflated by Valuzet and his attorney. Pyle's attorney abandoned him after Mr. Salvato threatened him with sanctions. But he should have known that the Valuzet claim was void under CC 3439.09. The LA Sheriff also threatened to sell Sunland within hours even though he should have known that it was in the name of the Trust.

Because of all this, Pyle was forced to take out the Maitland loan. It went from $23,000 to the final loan amount of $60,000. He was told that the loan was not secured by Vermont because that property was not in Pyle's name.. He found this out from a real estate attorney after he filed bankruptcy and that is why he stopped making payments to Maitland. Judge Mund lifted the automatic stay in December 2015. Maitland did file suit and over 4 years passed, so her claim was extinguished under CC 3439.09.

The proceeds of Vermont should not be distributed to anyone and the sale should be cancelled and reversed as a violation of CC 1381.1, etc. [*This is now Probate Code 610, etc. and deals with trusts.*] *There is no contention that the Irrevocable Trust is not valid, merely that the purported transfer of the two real properties to the trust was an unenforceable transfer.*]

COURT ANALYSIS:

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

Because Mr. Pyle puts forth lots of dates, it is best to have a settled chronology of events.

Date	Event	Source
1/12/2000	Irrevocable Trust created - Pyle is the grantor and the trustee. His children are the beneficiaries.	11-ap-01180
2/24/2000	Grant deed on Vermont from Pyle to Trust and Sweetwater dated	11-ap-01180
8/1/2000	Trust Deed from Pyle to Sweetwater as to Vermont dated	11-ap-01180
8/7/2000	Berry obtains judgment in 99C00380	Proof of claim
3/8/2001	Trust Deed from Pyle to Sweetwater as to Vermont signed	11-ap-01180
4/12/2001	Trust Deed from Pyle to Sweetwater as to Vermont recorded	11-ap-01180
8/11/2003	Grant deed on Vermont from Pyle to Trust and Sweetwater notarized	11-ap-01180
6/28/2004	Grant deed on Vermont from Pyle to Trust and Sweetwater recorded	11-ap-01180
6/28/2004	Grant deed on Sunland from Pyle to Trust and Sweetwater recorded	11-ap-01180
3/25/2005	Berry records abstract of judgment in 99C00380	Proof of claim
6/28/2010	Berry renews judgment in 99C00380	Proof of claim
11/30/2010	Bankruptcy Case filed	
3/7/2011	Berry adversary filed	11-ap-01180

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

3/7/2011	Campbell v. Pyle filed for nondischargeable judgment and denial of discharge	11-ap-01181
3/29/2011	First amended complaint filed by Berry under state law	11-ap-01180
4/6/2011	Berry starts discovery	11-ap-01180
5/6/2011	Pyle's attorney (Richard Singer) files answer to complaint asserting statute of limiations as an affirmative defense under state law	11-ap-01180
6/17/2011	Order granting Trustee's motion for authority to sell estate's interest in the avoidance action to Berry	10-bk-24968
10/3/2012	Richard Singer withdraws as attorney for Pyle in the adversary	11-ap-01180
3/18/2013	Ray Aver substitutes in for Pyle as attorney in the adversary	11-ap-01180
9/28/2016	Order on partial decision on Pyle motion for summary judgment, deals with when discovery of transfer took place	11-ap-01180
9/18/2017	Stipulation modifying 6/17/11 order selling estate's interest to Berry	10-bk-24968
3/13/2019	Campbell's attorney receives the title reports that he had ordered on both properties	
5/4/2020	Judgment denying discharge	11-ap-01181
5/11/2020	Title report filed with Court that shows that the 2/24/2000 deed on Vermont to the Trust is invalid since the deed does not identify the trustee of the Trust	10-bk-24968

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

5/11/2020	Title report filed with Court that shows that the 6/28/04 deed on Sunland to the Trust is invalid since the deed does not identify the trustee of the Trust	10-bk-24968
5/26/2020	Amy Goldman moves to substitute in as plaintiff for Berry	11-ap-01180
6/25/2020	Order for turnover of Vermont and Sunland	10-bk-24968
9/30/2020	Default judgment against Sweetwater under 11 USC 548(e) and Civ Code 3439.04 and 3439.09	11-ap-01180
5/11/2011	Trustee motion to sell to Berry	11-ap-01180

As to Linda Daniels, the adverse possession, etc. provisions of CCP 318, 319, 325 do not apply. She was a title owner. The concept of "recovering" possession does not apply to someone who is on title, but to someone who has been removed from title or possession.

As to the action brought by Mr. Berry (11-ap-01180), the statute of limitations was dealt with in the Memorandum of Opinion on Pyle's Motion for Summary Judgment (dkt. 169). The evidence is that this adversary proceeding was commenced within the time limit, although that was not a final ruling but merely a finding of a disputed fact. Nonetheless, this was entered in April 2017 and Pyle has not pursued it since then. Thus the Court will not reopen that issue at this late date.

As to the Maitland claim, Pyle asserts that it is due to a loan to pay off the judgment obtained by Veluzat against Pyle for a commercial eviction action. A review of the superior court docket shows that the Veluzat case was filed on 3/14/2001 and a default judgment was entered on 10/17/01 for past due

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

rents and terminating Pyle's lease or rental agreement. An abstract of judgment was issue on 12/3/01, creating a lien on all off Pyle's real properties in Los Angeles County. On 12/8/05 a writ of execution was issued. The writ was lost and replaced and an order to sell real property was requested. Pyle sought to vacate the default judgment, but that was denied. In 2006 a new writ of execution was issued as was a notice to sell Pyle's residence.

As noted, Pyle asserts that the Maitland loan was used to pay off this judgment. There is no evidence that Maitland had any connection to Veluzat, so any complaints against Veluzat do not apply to Maitland. But beyond that, the Veluzat case is done and all defenses claimed by Pyle are now moot. He raised them in the superior court and they were denied. No appeal was taken. Thus they are irrelevant to the Maitland claim.

As to Berry prosecuting this action, while it is true that in general an attorney cannot represent a party against his former client, there is an exception when an attorney is seeking to collect unpaid fees. The California Bar requires that the attorney institute an arbitration process, but if the client refuses to participate, the attorney can go forward in court. The failure of the attorney to follow the rules as to arbitration is a defense to the lawsuit continuing until that has been completed. There is no indication that Berry did not follow the rules in his superior court case against Pyle. And, at this time some 10 years after the judgment, it is irrelevant as to his pursuit of this adversary proceeding. Further, this is an issue that should have been raised earlier, not over 10 years after the adversary was filed.

Overrule all objections. The Court will prepare the order.

Party Information

Debtor(s):

Glen E Pyle Pro Se

United States Bankruptcy Court
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CONT... Glen E Pyle **Chapter 7**

Trustee(s):

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

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1:10-24968 Glen E Pyle **Chapter 7**
Adv#: 1:11-01180 Goldman v. Pyle et al

#5.00 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; 12/8/20

Docket 296
***** VACATED *** REASON: Moved to be heard at 11am (eg)**

Tentative Ruling:

I have read all of the briefs submitted on the issue of the amount to be distributed to Mr. Berry. Before I rule, there are some issues of law that need to be resolved. I have set forth a list of questions that are to be answered by the parties. Please provide case or statute citations, if they exist. If you wish to make arguments not based on case law or code, you may do so, but limit it to one paragraph per issue – remember that I have read all of the briefs and am very familiar with everyone's position. At the hearing on January 12, I will set dates for the briefs and also a continued hearing date. I intend to read all cited cases/statutes and do not think that it will be necessary for reply briefs. But we can discuss this on January 12.

The Questions:

1. What is the maximum judgment that Berry could have attained if he had completed the adversary proceeding with a judgment against Pyle, the Trust, and Sweetwater Management?
    a. Would it make a difference if the fraudulent transfer action was only as to Sweetwater?
2. The adversary proceeding was brought solely under the Uniform Voidable Transactions Act and only for the judgment held by Berry. It

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

never mentions the bankruptcy or the claims of the bankruptcy estate. Under these circumstances, can the Court give a judgment for more than is owed to Berry on his state court judgment?

a. When the Trustee substituted in, she did not file an amended complaint to expand the first amended complaint to include her status as the bankruptcy trustee. If this went to judgment, what is the maximum amount of the judgment under these circumstances?

3. What is the effect of the sale by the Trustee of her avoiding powers to Berry?

a. Would it have made a difference if she had no sold them to Berry? Could he still have proceeded with the fraudulent transfer action?

b. Would it have made a difference in how much could be recovered in the current adversary proceeding?

c. Would it have made a difference if Berry had not sold them back to the Trustee?

4. As a creditor pursuing his own claim, is Berry entitled to any amount beyond his judgment, accrued interest, and costs?

5. Since this was a sale of rights to Berry and Berry was his own attorney for his own claim, is he entitled to any attorney fees from the recovery and, if he is, is this limited to "reasonable attorney fees"?

a. Even though there is an agreement and a court order dividing the proceeds of the adversary proceeding, can the Court now determine that it is giving Berry too little or too much money and this is no "reasonable"?

6. Because Berry also owned the rights of the Trustee, would he have been entitled to a judgment that is sufficient to cover all unsecured claims?

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

a. In a chapter 7 case, can that judgment also include enough to cover all administrative claims?

prior tentative ruling 12/8/21
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 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.

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

(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 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

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

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 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

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

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

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

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

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

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

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

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 VERMONT

Campbell Opposition filed 11/3/20

The sale price of the Vermont property was for $542,000. After

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

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. 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

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

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 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,

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

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. (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

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

(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 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

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

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 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

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

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 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

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

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, January 12, 2021 **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

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

Tuesday, January 12, 2021 **Hearing Room 303**

10:00 AM
1:15-14213 Michael Robert Goland **Chapter 7**
Adv#: 1:20-01063 Burk v. Zamora

#6.00 Status Conference Re: First Amended Complaint for

1) Declaratory Judgment
2) Breach of Fiduciary Duty - Seizure of Rent and Failure to Manage Asset Property
3) Breach of Fiduciary Duty - Failure to Manage Estate Assets Property for Benefit of Creditors

Docket 32

Tentative Ruling:

Continued without appearance to 2/23/21 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 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 12, 2021 **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

#7.00 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, 11/17/20

Docket 1

Tentative Ruling:

Nothing new received as of 1/10/21

prior tentative ruling 11/17/21

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, January 12, 2021 **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, January 12, 2021 **Hearing Room 303**

11:00 AM
1:10-24968 Glen E Pyle **Chapter 7**
Adv#: 1:11-01180 Goldman v. Pyle et al

#8.00 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; 12/8/20

Docket 296

Tentative Ruling:

I have read all of the briefs submitted on the issue of the amount to be distributed to Mr. Berry. Before I rule, there are some issues of law that need to be resolved. I have set forth a list of questions that are to be answered by the parties. Please provide case or statute citations, if they exist. If you wish to make arguments not based on case law or code, you may do so, but limit it to one paragraph per issue – remember that I have read all of the briefs and am very familiar with everyone's position. At the hearing on January 12, I will set dates for the briefs and also a continued hearing date. I intend to read all cited cases/statutes and do not think that it will be necessary for reply briefs. But we can discuss this on January 12.

The Questions:

1. What is the maximum judgment that Berry could have attained if he had completed the adversary proceeding with a judgment against Pyle, the Trust, and Sweetwater Management?
    a. Would it make a difference if the fraudulent transfer action was only as to Sweetwater?
2. The adversary proceeding was brought solely under the Uniform Voidable Transactions Act and only for the judgment held by Berry. It never mentions the bankruptcy or the claims of the bankruptcy estate.

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

Under these circumstances, can the Court give a judgment for more than is owed to Berry on his state court judgment?

a. When the Trustee substituted in, she did not file an amended complaint to expand the first amended complaint to include her status as the bankruptcy trustee. If this went to judgment, what is the maximum amount of the judgment under these circumstances?

3. What is the effect of the sale by the Trustee of her avoiding powers to Berry?

   a. Would it have made a difference if she had no sold them to Berry? Could he still have proceeded with the fraudulent transfer action?

   b. Would it have made a difference in how much could be recovered in the current adversary proceeding?

   c. Would it have made a difference if Berry had not sold them back to the Trustee?

4. As a creditor pursuing his own claim, is Berry entitled to any amount beyond his judgment, accrued interest, and costs?

5. Since this was a sale of rights to Berry and Berry was his own attorney for his own claim, is he entitled to any attorney fees from the recovery and, if he is, is this limited to "reasonable attorney fees"?

   a. Even though there is an agreement and a court order dividing the proceeds of the adversary proceeding, can the Court now determine that it is giving Berry too little or too much money and this is no "reasonable"?

6. Because Berry also owned the rights of the Trustee, would he have been entitled to a judgment that is sufficient to cover all unsecured claims?

   a. In a chapter 7 case, can that judgment also include enough to

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

cover all administrative claims?

prior tentative ruling 12/8/21
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 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

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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 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.

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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 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

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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 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

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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 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

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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. Berry was no longer capable for completing it, he and the Trustee modified

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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 judgment in the adversary proceeding against Sweetwater as to its

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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. So the proceeds mentioned in paragraph 3 of the second stipulation

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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 case until the end. It was the second stipulation that was entered into

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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 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

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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. 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

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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 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.

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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. (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

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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 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

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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 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

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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 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

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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.

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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, January 12, 2021 **Hearing Room 303**

11:00 AM
1:10-24968 Glen E Pyle **Chapter 7**

#9.00 Debtor's Opposition to all claims against 25226 Vermont Dr., and 9466 Sunland Blvd and Glen Pyle Petitioner and Pyle Irrevocable Trust

Docket 173

Tentative Ruling:

This is a compilation of a series of arguments with some supporting documents. Some were previously decided and the time to appeal has expired. Rather than repeating all of the arguments in those situations, the Court will make its comments in *italics*.

The Court had no right to sell the Vermont property because it and Sunland belong to the Trust:

This was decided by a final ruling. The Order granting the motion for turnover of both properties was entered on June 24, 2020 (dkt. 78), which determined that both properties are property of the bankruptcy estate. No appeal was filed and the time has passed to do so. There will be no further analysis of this issue.

Other matters presented by Mr. Pyle:

(1) Linda Daniel has not been in possession of Vermont since April 1991 and thus her claim of ownership is barred by Cal. Code of Civil Procedure (CCP) 318 and 319 as well as the adverse possession provisions of CCP 325, which provide title to the Trust's trustee on Jan. 12, 2000.

11:00 AM

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

(2) Mr. Berry lacks standing to be in the case. At the sec. 341(a) meeting, the Trustee told Berry that his claim is not good under Cal. Civ. Code (CC) 3439. His claim was extinguished by CC 3439.09 since there was no legal action for over 4 years (from 2000 through 2004 when he filed the abstract). Then he waited another 5 years to file the renewal, which prompted this bankruptcy. That was over 10 years from the transfer of the property to the Trust, which occurred on Jan. 12, 2000. 11 USC 548(e) states that the bankruptcy trustee may avoid a transfer made within 10 years of the date of the filing of the bankruptcy petition. The transfer on 1/12/00 is 10 years and 10 months before the bankruptcy filing on 11/30/10. Beyond that, real estate title litigation is within the purview of the superior court, not the bankruptcy court, which has no experience in these matters.

(3) Mr. Berry violated the rules of the State Bar when he represented the Trustee against Pyle, who was his former client. Mr. Nachimson brought this to the Court's attention in his objection to the Berry claim in the Vermont sales proceeds. Berry only handled this to line his own pockets and his suit was neither proper nor necessary.

(4) The Maitland claim is based on a fraudulent claim by Renaud Valuzet. Case 01U00166. Service on that case was made on an empty building owned by Valuzet while Pyle was in jail. The judgment entered in 10/17/01 was not enforced until 1/18/06, which is 5 years. This was extinguished by CC 3439.09 after 4 years. The title report was wrong as was the court that issued the writ of execution because the judgment had been extinguished.

They should have known that the transfer from an irrevocable trust is not legally possible for a grantor to obtain a loan on property

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

granted to an irrevocable trust. The escrow/title company entered on the deed regarding the loan to Maitland that "in violation of CC 1710, the transfer was not taxable because it was to a 'revocable trust.'"

The loan amount was changed at the last minute. The judgment was for $23,000 and this was changed to $32,000 on a $3,000 debt. It was inflated by Valuzet and his attorney. Pyle's attorney abandoned him after Mr. Salvato threatened him with sanctions. But he should have known that the Valuzet claim was void under CC 3439.09. The LA Sheriff also threatened to sell Sunland within hours even though he should have known that it was in the name of the Trust.

Because of all this, Pyle was forced to take out the Maitland loan. It went from $23,000 to the final loan amount of $60,000. He was told that the loan was not secured by Vermont because that property was not in Pyle's name.. He found this out from a real estate attorney after he filed bankruptcy and that is why he stopped making payments to Maitland. Judge Mund lifted the automatic stay in December 2015. Maitland did file suit and over 4 years passed, so her claim was extinguished under CC 3439.09.

The proceeds of Vermont should not be distributed to anyone and the sale should be cancelled and reversed as a violation of CC 1381.1, etc. [*This is now Probate Code 610, etc. and deals with trusts.*] *There is no contention that the Irrevocable Trust is not valid, merely that the purported transfer of the two real properties to the trust was an unenforceable transfer.*]

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

COURT ANALYSIS:

Because Mr. Pyle puts forth lots of dates, it is best to have a settled chronology of events.

Date	Event	Source
1/12/2000	Irrevocable Trust created - Pyle is the grantor and the trustee. His children are the beneficiaries.	11-ap-01180
2/24/2000	Grant deed on Vermont from Pyle to Trust and Sweetwater dated	11-ap-01180
8/1/2000	Trust Deed from Pyle to Sweetwater as to Vermont dated	11-ap-01180
8/7/2000	Berry obtains judgment in 99C00380	Proof of claim
3/8/2001	Trust Deed from Pyle to Sweetwater as to Vermont signed	11-ap-01180
4/12/2001	Trust Deed from Pyle to Sweetwater as to Vermont recorded	11-ap-01180
8/11/2003	Grant deed on Vermont from Pyle to Trust and Sweetwater notarized	11-ap-01180
6/28/2004	Grant deed on Vermont from Pyle to Trust and Sweetwater recorded	11-ap-01180
6/28/2004	Grant deed on Sunland from Pyle to Trust and Sweetwater recorded	11-ap-01180
3/25/2005	Berry records abstract of judgment in 99C00380	Proof of claim
6/28/2010	Berry renews judgment in 99C00380	Proof of claim
11/30/2010	Bankruptcy Case filed	
3/7/2011	Berry adversary filed	11-ap-01180

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

3/7/2011	Campbell v. Pyle filed for nondischargeable judgment and denial of discharge	11-ap-01181
3/29/2011	First amended complaint filed by Berry under state law	11-ap-01180
4/6/2011	Berry starts discovery	11-ap-01180
5/6/2011	Pyle's attorney (Richard Singer) files answer to complaint asserting statute of limiations as an affirmative defense under state law	11-ap-01180
6/17/2011	Order granting Trustee's motion for authority to sell estate's interest in the avoidance action to Berry	10-bk-24968
10/3/2012	Richard Singer withdraws as attorney for Pyle in the adversary	11-ap-01180
3/18/2013	Ray Aver substitutes in for Pyle as attorney in the adversary	11-ap-01180
9/28/2016	Order on partial decision on Pyle motion for summary judgment, deals with when discovery of transfer took place	11-ap-01180
9/18/2017	Stipulation modifying 6/17/11 order selling estate's interest to Berry	10-bk-24968
3/13/2019	Campbell's attorney receives the title reports that he had ordered on both properties	
5/4/2020	Judgment denying discharge	11-ap-01181
5/11/2020	Title report filed with Court that shows that the 2/24/2000 deed on Vermont to the Trust is invalid since the deed does not identify the trustee of the Trust	10-bk-24968

11:00 AM
CONT... Glen E Pyle **Chapter 7**

5/11/2020	Title report filed with Court that shows that the 6/28/04 deed on Sunland to the Trust is invalid since the deed does not identify the trustee of the Trust	10-bk-24968
5/26/2020	Amy Goldman moves to substitute in as plaintiff for Berry	11-ap-01180
6/25/2020	Order for turnover of Vermont and Sunland	10-bk-24968
9/30/2020	Default judgment against Sweetwater under 11 USC 548(e) and Civ Code 3439.04 and 3439.09	11-ap-01180
5/11/2011	Trustee motion to sell to Berry	11-ap-01180

As to Linda Daniels, the adverse possession, etc. provisions of CCP 318, 319, 325 do not apply. She was a title owner. The concept of "recovering" possession does not apply to someone who is on title, but to someone who has been removed from title or possession.

As to the action brought by Mr. Berry (11-ap-01180), the statute of limitations was dealt with in the Memorandum of Opinion on Pyle's Motion for Summary Judgment (dkt. 169). The evidence is that this adversary proceeding was commenced within the time limit, although that was not a final ruling but merely a finding of a disputed fact. Nonetheless, this was entered in April 2017 and Pyle has not pursued it since then. Thus the Court will not reopen that issue at this late date.

As to the Maitland claim, Pyle asserts that it is due to a loan to pay off the judgment obtained by Veluzat against Pyle for a commercial eviction action. A review of the superior court docket shows that the Veluzat case was filed on 3/14/2001 and a default judgment was entered on 10/17/01 for past due

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

rents and terminating Pyle's lease or rental agreement. An abstract of judgment was issue on 12/3/01, creating a lien on all off Pyle's real properties in Los Angeles County. On 12/8/05 a writ of execution was issued. The writ was lost and replaced and an order to sell real property was requested. Pyle sought to vacate the default judgment, but that was denied. In 2006 a new writ of execution was issued as was a notice to sell Pyle's residence.

As noted, Pyle asserts that the Maitland loan was used to pay off this judgment. There is no evidence that Maitland had any connection to Veluzat, so any complaints against Veluzat do not apply to Maitland. But beyond that, the Veluzat case is done and all defenses claimed by Pyle are now moot. He raised them in the superior court and they were denied. No appeal was taken. Thus they are irrelevant to the Maitland claim.

As to Berry prosecuting this action, while it is true that in general an attorney cannot represent a party against his former client, there is an exception when an attorney is seeking to collect unpaid fees. The California Bar requires that the attorney institute an arbitration process, but if the client refuses to participate, the attorney can go forward in court. The failure of the attorney to follow the rules as to arbitration is a defense to the lawsuit continuing until that has been completed. There is no indication that Berry did not follow the rules in his superior court case against Pyle. And, at this time some 10 years after the judgment, it is irrelevant as to his pursuit of this adversary proceeding. Further, this is an issue that should have been raised earlier, not over 10 years after the adversary was filed.

Overrule all objections. The Court will prepare the order.

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, January 12, 2021 **Hearing Room 303**

11:00 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 2, 2021 **Hearing Room 303**

10:00 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/1611905756
Meeting ID: 161 190 5756
Password: 305087

Telephone Conference Lines: 1 (669) 254-5252 or 1 (646) 828-7666
Meeting ID: 161 190 5756
Password: 305087

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, February 2, 2021 **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 Motion For Summary Judgment or in the Alternative, Summary Adjudicationof Issues

Docket 6

***** VACATED *** REASON: Cont'd to 2/23/21 at 10:00 a.m. per order #16. lf**

Tentative Ruling:

Continued to February 23, 2021 at 10:00 a.m.

Party Information

Debtor(s):

Mahboob Talukder	Represented By Andrew Edward Smyth William H Brownstein

Defendant(s):

Mahboob Talukder	Represented By William H Brownstein

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

1:08-11669 Mahboob Talukder **Chapter 7**

Adv#: 1:20-01069 Chicago Title Insurance Company v. Talukder

10:00 AM

CONT... Mahboob Talukder **Chapter 7**

#2.00 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, 12/22/20

Docket 1

Tentative Ruling:

Continued to February 23, 2021 at 10:00 a.m. to be heard with the motion for summary judgment. No status report is needed.

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.

Party Information

Debtor(s):

Mahboob Talukder Represented By
Andrew Edward Smyth

10:00 AM
CONT... Mahboob Talukder **Chapter 7**
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

1:15-14213 Michael Robert Goland **Chapter 7**
Adv#: 1:20-01115 Cohen v. Gerry Burk, an individual and as Trustee of the 57

#3.00 Trustee's Motion to Dismiss Complaint with Prejudice

Docket 5

Tentative Ruling:

Background and Allegations in the Complaint

The Complaint names Gerry Burk as an individual and as trustee of the 5721 Trust, and Nancy Zamora as Chapter 7 trustee. Burk has filed an answer. Zamora seeks to dismiss. The basic questions here are who has the rights to the rents collected by the estate, whether there should be a new trustee appointed, whether Zamora breached her fiduciary duty of care, and whether there should be exemplary damages awarded for this breach. To some extent this is a companion to the adversary proceeding brought by Burk against the Trustee (*Burk v. Zamora*, 1:20-ap-01063). Both cases seek a determination of who owned the real property at 5721 and 5711 S. Compton

10:00 AM

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

Ave., Los Angeles, CA. ("the Property") It is undisputed in both cases that the Trustee collected rents and that this was in compliance with an order of the Court. It is also undisputed that the Trustee has retained those rents as property of the estate. It is further undisputed that the Trustee initially informed the Court that she would be bringing an adversary proceeding to establish the right to title and that she never did so. The Property was sold on order of the Court.

Because the Trustee failed to file the expected adversary proceeding to establish title, the Court is left with two separate adversary proceedings, both of which involve Burk and Zamora and one also includes Cohen.

The allegations in the Burk v. Zamora case are laid out in the motion to dismiss that case and the tentative ruling therein (*Burk v. Zamora*, Aug. 25, 2020). In the current complaint, the basic facts alleged are as follows:

Cohen (referred to as Bezad Cohen aka Bezad Kahoolyzadeh) was the owner of National Resources, Inc ("NR"), which filed bankruptcy in 2008. Cohen infers that NR owned the Property, which was abandoned to NR in that bankruptcy case and that NR then transferred the Property to Cohen, who never transferred it.

In 2005 the Bezadeh Kahoolyzadeh/Bezed Cohen Trust (the Trust) was established by Compton Slauson Property Enterprises, Inc, ("Settlor"). Gerry Burk ("Burk") was the trustee to the Trust. This is a revocable charitable trust and could have been revoked by the Trustee (Zamora). Burk is asserted to be a professional fiduciary and is required to be licensed. Cohen is the beneficiary of the Trust, but was never notified of it by the Settlor or Burk or any other party.

The Property was transferred to the Trust through a quitclaim deed on 2/8/05.

There was a trust deed executed by Cohen in 1989 to First American Title Insurance Company. Cohen is alleging that the owner or beneficiary of the trust deed was Kings Canyon Partner, which assigned all of its interest to the Trust on 4/20/05. This merged the trust deed into the quitclaim deed and extinguished the trust deed.

On 11/26/13, Burk transferred the Property to himself as Trustee of the 5721 Trust, which was self-dealing and not within the purpose of the Trust. Burk then foreclosed on the trust deed on 6/25/14 and recorded a Trustee's

10:00 AM

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

Deed Upon Sale transferring the Property to KCC, which is a company that he owned and controlled.

Between 2005 and 11/2015 Burk leased the Property to Triple Images, Inc. and collected rent totaling $281,600, which he applied to his own account and kept the excess beyond allowed expenses.

Beginning in 11/2015 Burk gave notice to Triple Images that starting in January 2016 the rent would be $5,000 per month, which was the fair rental value for the Property at that time.

On 12/30/15 Goland filed this chapter 7 petition and did not identify any interest in the Property.

On 3/2/17 KCC issued a grant deed to Burk as trustee of the 5721 Trust and at some time thereafter the 5721 Trust assigned to Burk its right to the rent from the Property. Cohen did not discover this until 11/5/20.

On 6/21/17 Zamora filed a motion to operate the Property asserting that it is property of the estate. The Court approved this on 8/8/17, but made no findings concerning the estate's interest in the Property. Zamora indicated that at some future date she would file an adversary complaint to establish the estate's right to the Property and the rent. She never filed the complaint and on 11/26/19 Zamora abandoned the estate's claims to the Property and the rent and petitioned the Court to sell the estate's interest (if any) to Triple Images. This was approved on 1/19/20. On 4/13/30, Zamora petitioned the Court to close the bankruptcy case and distribute the assets.

The complaint seeks a declaration as to ownership of the Property. As to Zamora, it assets that she only collected $21 per month [*paragraph 44: this may be a typo since the Operate Order was for $2,100 per month*] from the tenant since April 2017 and this was far below fair rental value and that the proper amount was another $110,000. Beyond that, this additional amount should have gone to the estate for the benefit of all creditors.

Motion to Dismiss

The issue of ownership was determined by the Court at the motion to sell in that Cohen filed an objection with the same claims and the same exhibits as are in this complaint. The Court allowed the sale and Cohen never filed an appeal. Thus, this is the law of the case and cannot be altered.

Cohen has no standing, as he is not a creditor of this case and has

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

never filed a claim. Whatever interest he had was terminated by Burk and was prepetition. The Trustee has no culpability for these prepetition actions by Burk. None of these arise out of this bankruptcy, they are non-core, and this court lacks the jurisdiction to rule on them. The proper venue against Burk is the state court.

Beyond that, Cohen has had actual notice of the Trustee's actions in this bankruptcy for over 3 years and the Trustee is thus shielded from any liability to Cohen.

The complaint cannot be saved by amendment, but should be dismissed with prejudice. Although the Operate Order did not specifically state that the rents were property of the estate, the Lewis Settlement Motion, which preceded the Operate Order, expressly stated that future rent would be paid to the Trustee and that the Trustee would hold such rent for the benefit of the estate. Cohen received actual notice of that proposal and did not object or reserve any rights. This is all an improper collateral attack on prior orders.

The Trustee is immune from suit for any alleged wrongdoing as to the Compton property. This was a business decision and was done with court authorization.

Opposition

In the tentative ruling on the sale of Compton, which was adopted by the Court on 1/17/20, the Court specifically allowed Cohen to file suit to recover the rents, but specified that this suit must be filed in the bankruptcy court. The Court made a similar ruling as to the adversary proceeding filed by Burk. At that time the Court ruled that there was no collateral estoppel because the Trustee had stated that she would file suit to determine ownership rights. She never filed that and until she would, there was no requirement that claimants to the rent had to act. And the settlement with Lewis was just a settlement with a creditor who claimed a right to collect rents and not a determination as to the interests of other parties. The Court ruled as to Burk that it was only when the Trustee filed her final report and sought a determination that the estate could keep the rent money that it became incumbent on Burk to act. There was no statute of limitations or laches defense as to Burk and none exists as to Cohen.

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

Also in the Burk tentative ruling, the Court held that if the Property is not property of the estate, the Trustee has no judicial immunity for management of the Property – including collecting below market rent. Cohen asserts that he is a creditor of the estate by virtue of being listed as a creditor in this bankruptcy case (Ex. 4 to the opposition).

The Court should set its own OSC re: sanctions as to the Trustee for filing the motion to dismiss, which flagrantly denied prior rulings.

Trustee's Reply

The opposition is based entirely on earlier tentative rulings in the Burk v. Zamora lawsuit, which were never argued and are not a final ruling. That lawsuit is settled and the Trustee will be filing a motion to approve that settlement.

Although the Court was not inclined to grant the Trustee qualified immunity, Cohen's claims are much more tenuous than Burk's. Although Cohen also seeks declaratory judgment as to the rents, he has no ownership in the Property. As of the petition date, the Burk-controlled entities held record title to the Property and even Cohen's exhibits confirm that.

The issue in this case is whether the Debtor had a prepetition right to collect rents and, if so, that right became property of the Debtor's estate on the petition date. This has been settled with Burk. Cohen cannot lay a similar claim because he has no legal interest in the Property and is not a creditor of this estate. If he has claims against Burk, those do not involve the estate or the Trustee. They are non-core claims against Burk and have nothing to do with the estate. They belong in state court between Burk and Cohen.

The Trustee owes no fiduciary duty to Cohen since he is not a creditor of this estate and is not entitled to any distribution from this case. Thus he cannot claim that the Trustee failed to collect market rent.

Further, the Court specifically authorized the Trustee to collect $2,100 per month in rent. The Trustee has qualified judicial immunity. And the Court limited the Trustee's operation to collection of rent due to possible contamination and environmental issues. Besides that, Cohen has not asserted any facts as to the fair rental value.

10:00 AM

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

ANALYSIS

The Court has not seen the proposed settlement between the Trustee and Burk as to the adversary between them and does not know how that would impact this adversary proceeding. Burk has filed an answer in this adversary proceeding and is not seeking to dismiss. It appears that the motion to dismiss, which is brought solely by the Trustee and only on behalf of the Trustee, does not mean that the entire adversary complaint will be dismissed, but the litigation would continue between Cohen and Burk.

In fact the critical issue to Cohen is his relationship with Burk – did Burk act improperly to "steal" the Property from Cohen? If so, Cohen would step into Burk's shoes and reap any benefit that Burk has as a creditor in this case and have the standing that Burk has against the Trustee since the Trustee would then owe Cohen (rather and Burk) a duty. Thus it is the relationship between Cohen and Burk that is critical and needs to be resolved, not that between Cohen and the Trustee.

The Trustee is correct that the prior tentative ruling was limited to Burk's complaint and to a motion to dismiss in that adversary proceeding. It may not have been fully argued, but it was created after a full briefing of the motion. There is nothing in this motion that creates a major change in the Court's opinion as to statute of limitations, laches, etc.

The first issue here is one of timing. As is clear from the prior tentative ruling, the Court was cognizant that the Trustee had stated that she would adjudicate the various ownership rights and claims to the Property and the rents and she never did. It is also aware that her reason for not proceeding seemed - at the time – to make good business sense. Thus a significant period of time passed without any action to resolve the disputes that were out there. For that reason the issues of statute of limitations and laches did not arise. The issue faced now is where the dispute between Cohen and Burk should be resolved and what is the impact on this estate.

The Trustee is incorrect when she asserts that this is not a core issue. It arises in a case under title 11 in that it concerns the ownership of an asset that is claimed by the estate. 11 USC sec. 1334(a). As to Cohen's standing because he did not file a proof of claim, originally was a no-asset case there was no deadline to file proofs of claim and, in fact, notice was given to those on the creditor's list that proofs of claim were not to be filed (15-bk-14213,

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

dkt. 5: "No property appears to be available to pay creditors. Therefore, please do not file a proof of claim now. If it later appears that assets are available to pay creditors, the clerk will send you another notice telling you that you may file a proof of claim and stating the deadline.") However on January 4, 2017 the Trustee filed a notice that this was an asset case and the court set April 10, 2017 as the last day to file a proof of claim (dkt.164). Cohen is listed on the petition as an unsecured creditor (owed $0) and on the creditors' matrix (dkt. 1) and is presumed to have received that notice. He never filed a proof of claim. But that is not dispositive of his standing to assert ownership of property that the Trustee claims is property of the estate, but may not really belong to the estate. It only means that he cannot receive a distribution from the estate prorata with other creditors. It does not mean that he must forfeit his ownership interest in the Property and its rents to the Trustee.

If at the time that the bankruptcy was filed Cohen owned the interest that Burk asserts, he is clearly a party-in-interest and while the Trustee may not be in a fiduciary relationship with him or owe him a duty specified under the bankruptcy code, she is still responsible for the care of his property that came into her possession and to turnover of that property to him.

I would like nothing better than to send the parties on their way, but I cannot do so. I cannot make the Cohen issue simply disappear. It must be resolved before there is a settlement between the Trustee and Burk and before there is a final report and distribution. We need to determine what the estate owns that can, in fact, be distributed or applied to administrative expenses. The determination of what is property of the estate is clearly a core issue.

The Trustee in her motion to dismiss the Burk adversary proceeding explained that it was not an efficient use of estate resources to challenge legal title to the Property. In general the Court agrees with this. But because of Cohen's claim there must be a decision made as to who is entitled to the rents and who has standing to challenge the Trustee's action in collecting them. This adversary complaint has teed it up and the Trustee need do no more than wait. The litigation can continue between Burk and Cohen (the first cause of action) and I will stay it as to the Trustee (the second and third causes of action). Once title is resolved, I can deal with the assertion that

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

insufficient rents were collected and also the question of what amount – if any – the estate is entitled to keep for its administrative claims and for any distribution to creditors. Perhaps this will take months or years to resolve, but until that time the Trustee can simply hold the money and delay further action by the estate.

Party Information

Debtor(s):

Michael Robert Goland	Represented By David S Hagen

Defendant(s):

Gerry Burk, an individual and as	Represented By Michael N Sofris
Nancy Zamora, as Chapter 7 Trustee	Represented By David Seror

Plaintiff(s):

David Cohen	Pro Se

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#: 1:20-01115 Cohen v. Gerry Burk, an individual and as Trustee of the 57

#4.00 Status Conference re Complaint for (a) Declaratory Relief; (b) Breach of Fiduciary Dutiy-Seizure of Rent and Failure to Mange Asset Propety; and (c) Breach of Fiduciary Duity-Failure to Mange Estate Assets Properly for Benefit of Creditors;

10:00 AM
CONT... Michael Robert Goland **Chapter 7**
Docket 1

Tentative Ruling:

See calendar #3. This adversary will need to proceed simultaneously with Burk v. Zamora, which is currently set for 2/23/21.

Party Information

Debtor(s):

Michael Robert Goland	Represented By David S Hagen

Defendant(s):

Gerry Burk, an individual and as	Pro Se
Nancy Zamora, as Chapter 7 Trustee	Pro Se

Plaintiff(s):

David Cohen	Pro Se

Trustee(s):

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

1:16-11538 Majestic Air, Inc. **Chapter 11**
Adv#: 1:18-01133 Majestic Air, Inc. et al v. Lufthansa Technik Philippines, Inc. et al

#5.00 Motion to Dismiss Adversary Proceeding
First Amended Counter-Claim

Docket 193

Tentative Ruling:

This case and adversary proceeding have be reassigned to Judge Tighe.

10:00 AM
CONT... Majestic Air, Inc. **Chapter 11**

This motion is now set for her calendar on 2/9/21 at 10:00 a.m.

Party Information

Debtor(s):

Majestic Air, Inc.	Represented By Stella A Havkin

Defendant(s):

Aaron Cue	Pro Se
Mariz Cue	Pro Se
Highbury Asia Inc.	Pro Se
Metro Aerospares	Pro Se
Amplespares Corp.	Pro Se
Mercy Ministry	Pro Se
Joy Air LLC	Pro Se
AMC Industries, LLC	Pro Se
Aaron Cue	Pro Se
DOES 1 through 10	Pro Se
Highbury Asia Inc.	Pro Se
Metro Aerospares	Pro Se
Amplespares Corp.	Pro Se
Lord's Grace and Mercy Ministry	Pro Se
Joy Air LLC	Pro Se
AMC Industries, LLC	Pro Se
DOES 1 through 10	Pro Se
Lufthansa Technik Philippines, Inc.	Represented By Dawn M Coulson

10:00 AM
CONT... Majestic Air, Inc. **Chapter 11**

Scott D Cunningham
Andrew C Johnson

Mariz Cue — Pro Se

Plaintiff(s):

Tessie Cue — Represented By
Stella A Havkin

Majestic Air, Inc. — Represented By
Stella A Havkin

Hiongbo Cue Special Administrator — Represented By
William E Weinberger
Stella A Havkin

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

#6.00 Status Conference Re:
Complaint for Fraudulent Activity in
Bankruptcy Case.

fr. 5/7/19; 7/16/19; 7/30/19; 9/24/19, 11/19/19; 12/23/19, 1/28/20, 3/3/20, 4/7/20, 6/23/20, 9/15/20, 10/13/20, 11/17/20

Docket 1

Tentative Ruling:

THE HEARING WILL BE BY ZOOM. SEE THE NOTICE FOR THE 9:30 CALENDAR.

Nothing further has been filed as of Jan. 30, 2021.

prior tentative ruling (11/17/20)
On 10/24/20 Ms. Moreno filed a substitution of attorney for Mr. Beam,

10:00 AM

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

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.
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

10:00 AM

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

concern is that there will be a determination that some portion of the community debt is attributable to Mr. Beam alone, but that this will be discharged as to him in this bankruptcy and that she would be left subject to that portion of the debt as well as to the part attributable to her. Thus, she wants to deny him the discharge so that he is liable for all of the community debt or that she can seek to collect his portion from him.

Once the support issue is resolved, this adversary proceeding should either be dismissed or go to trial.

prior tentative ruling (7/30/19)
On 7/10/19, Plaintiff filed a status report. She said that she failed to appear because the superior court issues were delayed, so she thought that the hearing in the bankruptcy court was cancelled. She then set a last minute job interview. She wishes the court to continue prior court orders (10/4/17) lifting the automatic stay on the Debtor. She then goes through the facts in the superior court dissolution case.

The property division did not take place before the bankruptcy, so Judge Barash properly entered an order lifting the automatic stay. She goes on to argue that the delays in the superior court were due to Debtor's counsel. She wants this hearing continued until after the superior court trial (no date set for that) and wants sanctions against Attorney Moreno for causing the delays in the state and federal courts.

Proposed ruling: The order lifting the automatic stay does not have to be renewed. It continues in effect as set forth therein. I am still not convinced that I should wait for the superior court ruling. I think that it would be a good idea for me to either talk to the superior court judge as to scheduling or hold a joint status conference with the superior court judge. I am not just going to continue this on with no end in sight. As to sanctions against counsel, I have no authority to grant them as to the state court case and - as of this point - no reason to grant them as to this case.

prior tentative ruling (5/7/19)
This arises out of a family law case. According to the Debtor's status report, the familiy law judge is requiring briefs as to marital debts and the

10:00 AM

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

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.
(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

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

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

Tuesday, February 2, 2021 **Hearing Room 302**

10:00 AM

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

#7.00 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, 11/17/20; 1/12/21

Docket 1

Tentative Ruling:

Off calendar. The funds have been deposited and the Court has signed an order dismissing this adversary proceeding.

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

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

#8.00 Status Conference Re: Amended Complaint to Determine Non-Dischargeability

fr.1/12/21

Docket 13

Tentative Ruling:

Nothing further filed as of 1/26 so the Court has dismissed the adversary proceeding and the bankruptcy case will be closed. This hearing is off calendar.

Prior tentative ruling (1/12/21)
A dismissal was filed on 1/4/21. Although not signed by the defendant, it states that this was ordered by Judge Keeny due to the settlement. It also states that Judge Keeny's order was to dismiss the request to reopen the bankruptcy case. This adversary proceeding is not a request to reopen the bankruptcy case, but is for non-dischargeability. The bankruptcy case itself was reopened on 3/27/19.

Mr. Quigg is an experienced bankruptcy attorney and presumably understands that the debt was discharged and that unless there is a stipulation of non-dischargeable debt it will remain discharged and the state court settlement will not revive it. However, if there is no objection to the dismissal of the adversary proceeding or other filing by January 25, 2021, the Court will enter its order to that effect as to the adversary proceeding and will close the bankruptcy case.

This is continued to February 2, 2021 at 10:00 a.m. to review any objection or other possible filings.

Party Information

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

Tuesday, February 2, 2021 **Hearing Room 303**

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

Debtor(s):

Narine Gumuryan	Represented By Elena Steers Martin Fox

Defendant(s):

Narine Gumuryan	Represented By Jovi Usude

Plaintiff(s):

Bag Fund LLC	Represented By Vincent J Quigg Atyria S Clark

Trustee(s):

David Keith Gottlieb (TR)	Represented By David Keith Gottlieb

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

Tuesday, February 9, 2021 **Hearing Room 302**

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. et al

#1.00 Motion to Dismiss Adversary Proceeding First Amended Counter-Claim

Docket 193

***** VACATED *** REASON: Matter transferred to Judge Tighe**

Party Information

Debtor(s):

Majestic Air, Inc.	Represented By Stella A Havkin

Defendant(s):

Aaron Cue	Pro Se
Mariz Cue	Pro Se
Highbury Asia Inc.	Pro Se
Metro Aerospares	Pro Se
Amplespares Corp.	Pro Se
Mercy Ministry	Pro Se
Joy Air LLC	Pro Se
AMC Industries, LLC	Pro Se
Aaron Cue	Pro Se
DOES 1 through 10	Pro Se
Highbury Asia Inc.	Pro Se
Metro Aerospares	Pro Se
Amplespares Corp.	Pro Se
Lord's Grace and Mercy Ministry	Pro Se
Joy Air LLC	Pro Se

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

Tuesday, February 9, 2021 **Hearing Room 302**

10:00 AM

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

AMC Industries, LLC	Pro Se
DOES 1 through 10	Pro Se
Lufthansa Technik Philippines, Inc.	Represented By Dawn M Coulson Scott D Cunningham Andrew C Johnson
Mariz Cue	Pro Se

Plaintiff(s):

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

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

Tuesday, February 23, 2021 **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/1618934310
Meeting ID: 161 893 4310
Password: 781272

Telephone Conference Lines: 1 (669) 254-5252 or 1 (646) 828-7666
Meeting ID: 161 893 4310
Password: 781272

Docket 0

Matter Notes:

- NONE LISTED -

9:30 AM
CONT... **Chapter**

Tentative Ruling:

- NONE LISTED -

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

Tuesday, February 23, 2021 **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 Motion For Summary Judgment or in the Alternative, Summary Adjudicationof Issues

fr. 2/2/21

Docket 6

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Plaintiff's proposed facts are set out in plain type. OPPOSITION IS NOTED IN THIS TYPEFACE. *Rulings are in italics.*

The real property in question is located at 7059 Alcove Ave., North Hollywood. CA. ("the Property").

April 2, 2002 – Penny Martin-Dougherty (Dougherty), the owner of the Property, obtained a trust deed (DOT #1) in the principal amount of $31,500 in favor of American Mutual Mortgage. UNDISPUTED

December 1, 2002 - Dougherty obtained another trust deed (DOT #2) in the principal amount of $7,500 in favor of American Mutual Mortgage Profit Sharing Plan Scott K.L. Saks, Trustee. UNDISPUTED

April 15, 2003 – due to Dougherty's default on DOT #2, that lender recorded its notice of default (NOD #1). UNDISPUTED

April 28, 2003 - Mahboob Talukder (aka David Talukder) (hereafter "Talukder" or "Debtor") came to the Property unsolicited and advised Dougherty that they "routinely" helped homeowners to avoid foreclosure of their property with a reverse mortgage. NOTHING SUPPORTS THAT TALUKDER EVER APPEARED

10:00 AM

CONT... Mahboob Talukder **Chapter 7**

AT THE PROPERTY. *Overruled: Dougherty's declaration is competent evidence and no contrary evidence has been submitted to raise a triable issue of fact.*

Talukder visited Dougherty at the Property a few times and represented that "they" worked for a company named GIT, Inc. It was further represented that "they" were experts in securing reverse mortgages for homeowners who had substantial equity in their homes.[1] DISPUTED. NO SUPPORT EXCEPT FOR DOUGHERTY'S DECLARATION. *Overruled: Dougherty's declaration is competent evidence and no contrary evidence has been submitted to raise a triable issue of fact.*

Talukder represented that since Dougherty owed only $30,000 on the Property that she could do a reverse mortgage program with him. It was further represented that the default would be paid off on the two Deeds of Trust on the Property and that he *would be paid* (typo) her the amount of $500 a month for 15 years. DISPUTED. NO SUPPORT EXCEPT FOR DOUGHERTY'S DECLARATION. *Overruled: Dougherty's declaration is competent evidence and no contrary evidence has been submitted to raise a triable issue of fact.*

Talukder also represented to Dougherty that she would remain the title owner of the Property and that after 15 years she could refinance or sell the Property to pay back the reverse mortgage. DISPUTED. NO SUPPORT EXCEPT FOR DOUGHERTY'S DECLARATION. *Overruled: Dougherty's declaration is competent evidence and no contrary evidence has been submitted to raise a triable issue of fact.*

May 2, 2003 – Talukder, along with a notary named Angela Hernandez, came to the Property to have Dougherty sign the papers for the reverse mortgage. DISPUTED. NO SUPPORT EXCEPT FOR DOUGHERTY'S DECLARATION. *Overruled: Dougherty's declaration is competent evidence and no contrary evidence has been submitted to raise a triable issue of fact.*

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CONT... Mahboob Talukder **Chapter 7**

Dougherty signed the documents where she was told to sign. Talukder represented that she would be provided copies of the documents that she signed on May 2. DISPUTED. NO SUPPORT EXCEPT FOR DOUGHERTY'S DECLARATION. *Overruled: Dougherty's declaration is competent evidence and no contrary evidence has been submitted to raise a triable issue of fact.*

Talukder promised to provide Dougherty with copies of the documents, but never did provide copies of these documents to her. DISPUTED. NO SUPPORT EXCEPT FOR DOUGHERTY'S DECLARATION. *Overruled: Dougherty's declaration is competent evidence and no contrary evidence has been submitted to raise a triable issue of fact.*

Dougherty did not observe the notary stamp her journal because she claimed that she [did] not have it with her that evening. DISPUTED. NO SUPPORT EXCEPT FOR DOUGHERTY'S DECLARATION. *Overruled: Dougherty's declaration is competent evidence and no contrary evidence has been submitted to raise a triable issue of fact.*

Dougherty received monthly payments of $500 from Talukder for 6 months, but he never returned any of the calls from her regarding the Property. DISPUTED THAT SHE NEVER RECEIVED RETURN CALLS IF SHE MADE CALLS. DEFENDANT DOES NOT RECALL CALLS MADE MORE THAN 10 YEARS AGO. *Overruled: Dougherty's declaration is competent evidence and no contrary evidence has been submitted to raise a triable issue of fact. Defendant's memory of past calls is not relevant to the memory of Dougherty.*

Dougherty never discussed a grant deed with Talukder and she never intended on transferring title of the Property to GIT, Inc. DISPUTED. NO SUPPORT EXCEPT FOR DOUGHERTY'S DECLARATION. *Overruled: Dougherty's declaration is competent evidence and no contrary evidence has been submitted to raise a triable issue of fact.*

On May 2, 2003, the Grant Deed allegedly signed by Dougherty conveyed the

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CONT... Mahboob Talukder **Chapter 7**

Property to GIT, Inc. UNDISPUTED.

Dougherty learned after the visit from Detective Michael Deck, that the Property had been transferred to GIT, Inc. by the deed she signed that was presented to her by the Debtor and had been notarized by Angela Hernandez. DISPUTED. NO SUPPORT EXCEPT FOR DOUGHERTY'S DECLARATION. *Overruled: Dougherty's declaration is competent evidence and no contrary evidence has been submitted to raise a triable issue of fact.*

The representations regarding curing the default on the DOT #1 and DOT #2 made by the Defendant were false in that on July 23 2003, American Mutual Mortgage recorded its Notice of Default (hereafter "NOD #2") on the Property. DISPUTED. THERE IS NO EVIDENCE TO SHOW THAT TALUKDER MADE THE PURPORTED REPRESENTATIONS. *See rulings above as to Dougherty Declaration.* THE GITTELMAN DECLARATION IS OBJECTED TO. *Copies of the American Mutual notices of default are exhibits to the Gittelman declaration. There is no dispute that these are true and correct copies of those documents and the objection is overruled.*

September 17, 2003 - Cristina Talukder ("Cristina" – debtor's spouse) executed a Deed of Trust in favor of People's Choice Home Loans, Inc. UNDISPUTED

October 2, 2003 - GIT conveyed the Property to Cristina. UNDISPUTED. *[It stated that she was a "single woman."]*

May 10, 2004 - Cristina conveyed the Property to Absara, LLC, as Trustee of the Alcove Trust by executing a Corporate Grant Deed. UNDISPUTED

Absara was a Nevada Limited Liability Company and Talukder was a member of Absara. UNDISPUTED

May 9, 2005 - Absara conveyed the Property to Carmen Echeverria by executing a Grant Deed. UNDISPUTED

10:00 AM

CONT... Mahboob Talukder **Chapter 7**

May 16, 2005 - Echeverria obtained a loan in the principal amount of $344,000 in favor of Resmae Mortgage Corp. ("Insured"), which is secured by a deed of trust on the Property. UNDISPUTED

In connection with this loan transaction. Chicago Title issued an ATLA Loan Policy of Title Insurance to Resmae on the Property. UNDISPUTED

June 9, 2006 - Dougherty filed suit in LASC against Debtor and included Resmae (the insured) and other defendants. BC 353648. ("the Lawsuit") This included sixteen causes of action, including fraud, breach of contract and undue influence. UNDISPUTED

June 15, 2007 – a felony complaint was filed against Talukder with respect to his acts surrounding the unlawful acquisition of the Property from Dougherty, case. BA 323835 in Los Angeles Superior Court. UNDISPUTED THAT THE COMPLAINT WAS FILED.

September 26, 2007 – Dougherty filed a motion for summary judgment in the Lawsuit against Talukder. The motion was accompanied by her declaration in support of the motion as well as declarations of Robert Smith, Jr.; Carmen Echevarria, and John Casteneda. THIS WAS THE RESULT OF A DEFAULT JUDGMENT AND TALUKDAR NEVER EXAMINED DOUGHERTY. *Overruled: There is no showing that this was a default judgment. The superior court docket provided in the Ragland declaration demonstrates that Debtor participated in the superior court action in that he filed an answer to the complaint on September 25, 2006 and an opposition to a motion to compel on April 12, 2007. The format of the superior court docket does not allow this court to ascertain whether he was later declared in default, but if he was it was due to his own actions or inactions. Because this was a judgment on a motion for summary judgment (and apparently also on a motion for judgment on the pleadings), it had to be supported by admissible evidence to show that there was no reasonably disputed facts.*

March 21. 2008 – David and Cristina Talukder filed a chapter 7 bankruptcy

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CONT... Mahboob Talukder **Chapter 7**

case. UNDISPUTED

April 1, 2008 and May 9, 2008 – Talukder amended his bankruptcy schedules. UNDISPUTED

April 2008 onward – the superior court case continues to have filings and although the parties were aware of the bankruptcy petition, there is no notice of bankruptcy on the superior court docket. [Ragland declaration in support of reply (adv. dkt 19) and the Court review of the superior court docket from March 21, 2008.]

April 10, 2008– On January 26, 2007, Talukder and his wife had executed a note and deed of trust on a different property for $903,000 to Bear Stearns which was later assigned to Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee, who filed a motion for relief from the automatic stay (bankruptcy dkt. 13).

May 2, 2008 – On February 28, 2006, Talukder and his wife had executed a note and trust deed on a different property to Classic Home Lending for $91,350. (opp. RJN #2), which was later assigned to MERS as nominee, who filed a motion for relief from the automatic stay (bankruptcy dkt. 18).

May 12, 2008 – hearing held in superior court and amended judgment filed [Ragland declaration in support of reply (adv. dkt 19)]

June 17, 2008 – Dougherty filed a non-dischargeability complaint against Debtor (adv. # 1-08-ap-01385GM). UNDISPUTED

July 1, 2008 – Talukder bankruptcy discharge

August 14, 2008 – EMC filed a motion in the superior court to set aside the amended judgment. This is opposed and argued, but on 10/8/08 the court sets aside the amended judgment. [Ragland declaration in support of reply (adv. dkt 19)] There are no filings in this court as to the grounds to set aside

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CONT... Mahboob Talukder **Chapter 7**

the amended judgment.

November 12, 2008 – second amended summary judgment in superior court for $176,461.26 in favor of EMC Mortgage and La Salle Bank. Cancelled trust deed in favor of Resmae Mortgage and all grant deeds. Not specifically on fraud, but several causes of action included. (RJN #14)

November 19, 2008 - Talukder pled guilty to some of the charges in the felony complaint. UNDISPUTED *Convicted on Count 2 as to Dougherty for failure to provide Equity Purchase Contract to Dougherty. (RJN #16, 17)*

August 26, 2009 - Dougherty obtained a non-dischargeable judgment against Debtor. UNDISPUTED

April 25, 2012 – MERS, as the nominee for Resmae Mortgage Company, assigned the Deed of Trust to LaSalle Bank. UNDISPUTED

November 15, 2013 - The court in the criminal case issued an Order of Restitution for $175,835.02 in favor of Dougherty against Talukder. UNDISPUTED

July 23, 2015 –Chicago Title paid $344,000 to Select Portfolio Servicing in satisfaction of the claim made on the title insurance policy that it had issued to Resmae. OBJECTION TO DECLARATION OF GITTELMAN. *Overruled. Ex. 20 to the Gittelman declaration is a copy of the check and the declaration meets the business records exception to the hearsay rule.*

Chicago Title has incurred $40,498 in attorney's fees for the defense of the Action filed by Dougherty. OBJECTION TO DECLARATION OF GITTELMAN. *Overruled. Ex. 21 to the Gittelman declaration is a copy of the supporting documents and the declaration meets the business records exception to the hearsay rule.*

Chicago is entitled to judgment against Talukder in the amount of $344,000

10:00 AM

CONT... Mahboob Talukder **Chapter 7**

plus attorney fees of $40,498.00 plus interest at the legal rate of 10% per annum from July 23, 2015 and court costs. DISPUTED. THE DISCHARGEABILITY ACTION IS TIME-BARRED. *Discussed below.*

Because of the delay in the filing of the opposition, the parties agreed to postpone the hearing on the motion. The Court took the opportunity to order that the parties provide law and facts concerning the timing of notice to the plaintiff:

BECAUSE THE MOTION FOR SUMMARY JUDGMENT CANNOT BE RESOLVED IN FULL WITHOUT DEALING WITH THE STATUTE OF LIMITATIONS DEFENSE, IN ORDER TO ALLOW THE COURT TO
MAKE A FULL DETERMINATION OF THIS MOTION AND DUE TO THE ADDITIONAL THREE WEEKS BEFORE THE HEARING, IT IS ORDERED AS FOLLOWS:
(3) By February 5, 2021, Plaintiff is to provide the appropriate evidence and law as to the issue of the statute of limitations which has been
raised as a defense. Specifically, Plaintiff is to file copies of the various recorded documents between the Deed of Trust from Echeverria to Resmae
(Ex. 11 on the Gittelman declaration) and the Assignment of Deed of Trust
from MERS as nominee for Resmae to US Bank (Ex. 19 to the Gittelman
declaration) so as to demonstrate the chain of title from Resmae to MERS as
nominee. Plaintiff is also file a copy of the claim by Resmae on the Plaintiff
which is referred to in paragraph 17 of the Gittelman declaration.
(4) If Plaintiff files the additional documents and legal arguments as ordered, by February 12, 2021 the Defendant is to file additional

10:00 AM

CONT... Mahboob Talukder **Chapter 7**

evidence (if any) and law as to the issue of the statute of limitations on this adversary
proceeding. (dkt. 16)

The parties complied by providing the following additional information:

Lawrence Gittelman, Recoupment Counsel for Fidelity National Title Group, submitted his declaration as custodian of records of the books, records, and files of Chicago Title Insurance Company. He states that these were made at or about the time of the events recorded and maintained in the ordinary course of Chicago Title's business at or near the time of the acts, conditions, and events to which they relate. They were prepared in the ordinary course of business of Chicago Title by a person with actual knowledge of the event being recorded and who had a business duty to accurately record the event.

He has reviewed these business records to locate documents or communications that would show any notification from Resmae (its insured) that would indicate Resmae's knowledge of the filing of the petition in March 2008. There were none. The records indicate that counsel was retained to represent Resmae after service of Dougherty's verified complaint in LASC cse BC 353648, which was filed on June 9, 2006. That case was still open in the LASC in 2008 when the bankruptcy was filed. Resmae's records do not indicate that there was any communication received as to the bankruptcy filing from MERS in 2008. Had there been one, the LASC action would have been stayed until action was brought in the bankruptcy court.

Chicago Title has no relationship with MERS with respect to this policy, which was issued to Resmae.

The Chicago Title records show no knowledge of the **summary** judgment granted in the Dougherty action until Resmae provided a copy. That **summary** judgment vacated the deed of trust of Resmae and resulted in Chicago Title paying Resmae $344,000 in satisfaction of its claim.

Talukder Objection to Gittelman declaration: there is no declaration of

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CONT... Mahboob Talukder **Chapter 7**

personal knowledge. However there is no objection to the exhibits. MERS received timely notice and Chicago Title acquired its claim from MERS. Since a default judgment was already rendered in favor of Resmae, which Chicago Title insured. Chicago Title isprecluded from proceeding since it would be a double recovery.

Not only does Gittelman not have personal knowledge, the lack of documents that are 13 years old does no render his testimony credible.

This is discussed below.

Plaintiff objection to the Debtor's Request for Judicial Notice in opposition to the motion for summary judgment – *overruled. These documents are relevant to MERS having timely notice to participate in the bankruptcy.*

Analysis

The facts are really not in dispute. The critical issue here is whether this complaint is time-barred and therefore cannot proceed under 11 USC sec. 523(a)(3)(B).

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.

Most of the evidence and argument by Chicago Title deals when it (Chicago Title) received notice. While this is relevant, it is not dispositive. Chicago Title obtains its rights through its insured (Resmae), which it paid off on the title insurance policy. So the issue is when did Resmae receive actual or constructive notice. The objections to the declarations of Lawrence Gittelman are somewhat well-taken. To the extent that they identify

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CONT... Mahboob Talukder **Chapter 7**

undisputed documents or documents of Chicago Title, he serves as the custodian of records and has met the business records exception to the hearsay rule. But he has not set forth what business records he has from Resmae or any other entity and he does not have the knowledge to meet the business records exception unless he was employed by them or there are other circumstances as to personal knowledge of their record-keeping and record-preparation practices. Thus, while many of the documents can be admitted and are not objected to or are subject to judicial notice, a statement as to the absence of documents is not admissible.

Another missing piece is any document or information as to notice that MERS may have received as an interest holder in the deed of trust to Resmae or on behalf of Resmae. The original trust deed was in the name of Resme (RJN ex. 11), but the assignment of the trust deed from Resmae to LaSalle was done by MERS as nominee of Resmae (Gittelman declaration ex. 19). There is no information on when MERS obtained the authority as nominee or as the holder of any other power or interest in the Resme deed of trust. It is hard to believe that there is nothing in the Resmae file on this, but there must be a paper trail somewhere. There is no doubt that this was not an oral transaction.

However, having said that, it appears to be irrelevant that MERS was listed on the master matrix and would have received notice of the bankruptcy filing. But what notice would it have received that might have alerted it to the Resmae interest in this property? Even if MERS kept records by property address - and there is no showing that it did – there was no evidence that at the time of the filing of the bankruptcy David or Cristina had any interest in the property. The deed of trust had been executed by Carmen E. Echeverria to Resmae Mortgage Corporation with Chicago Title Company as trustee. The Talukders appear nowhere on the Resmae loan – David had never been on title and Cristina was merely a prior owner of the property that had been transferred through various entities to Echeverria.

Thus, unless there is some other evidence that Resmae or Chicago Title received actual or constructive notice, Chicago Title qualifies as a proper

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plaintiff in this §523(a)(3) adversary proceeding. The only other evidence is the status of the state court action. Resmae was a defendant, but it appears that Widdowson never filed a notice of bankruptcy in that case. There is no notice on the docket and the judge proceeded to judgment without relief from the automatic stay. But this still leaves unanswered questions. Clearly Dougherty knew about the bankruptcy since she was named on the petition and received notice of the filing from the clerk's office. The attorneys involved were also knowledgeable about bankruptcy law. The bankruptcy petition was filed by Andrew E. Smith, a long-time bankruptcy practitioner. He listed the superior court case along with the case number. [bankruptcy case dkt. 1]. Dougherty was represented in the superior court by Gerald Egbase, who appears to be in practice with Anthony Egbase, an experienced bankruptcy attorney. Notice was given to Ms. Dougherty c/o Gerald Egbase at 6720 Tampa Ave., Reseda CA 91355, which appears to be a single family residence and may be where Ms. Dougherty lived at the time. Nonetheless, it is hard to believe that the notice of bankruptcy was ignored by the plaintiff in the state court action and that no notice was given to Resmae, which was a defendant in that case. But these are facts that are still undecided and subject to discovery.

Another defense is that this would result in a double recovery – effectively the Debtor would have to pay twice for a single wrongful act. This is not the situation. Here there were two separate wrongful acts by the Debtor: first he took the property from Dougherty through the final transfer from Dougherty to GIT in in May 2003 and later, through the actions of his wife and also on behalf of entities in which he had an interest, he transferred the Property to Echevarria and received the loan proceeds from the Resmae loan. This was in May 2005. Had he defrauded Dougherty and then kept possession of the Property, he would have had to return it to her (with whatever other damages for his wrongful actions). But he monetized the Property to his own benefit and thus was liable to Dougherty for the value of what he took from her but no longer had and also to Chicago Title for the monetary loss that Chicago Title suffered from his action in creating a chain

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of title that was due to fraudulent behavior.

The one action rule has been raised by the Defendant, but does not apply in this case. Chicago/Resmae cannot exhaust their security – there is no security because the trust deed was transferred in the superior court case.

Party Information

Debtor(s):

Mahboob Talukder	Represented By Andrew Edward Smyth William H Brownstein

Defendant(s):

Mahboob Talukder	Represented By William H Brownstein

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, February 23, 2021 **Hearing Room 303**

10:00 AM

1:08-11669 Mahboob Talukder **Chapter 7**

Adv#: 1:20-01069 Chicago Title Insurance Company v. Talukder

#2.00 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, 12/22/20, 2/2/21

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

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, February 23, 2021 **Hearing Room 303**

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CONT... Mahboob Talukder **Chapter 7**

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

Tuesday, February 23, 2021 **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

#3.00 Order to Leonid Zaks to Appear to Set a Date and Time for a Judgment Debtor Examination.

Docket 61

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Was this served? This is to set up the date and method of the examination.

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
1:10-24968 Glen E Pyle **Chapter 7**
Adv#: 1:11-01180 Goldman v. Pyle et al

#4.00 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; 12/8/20; 1/12/21

Docket 296
***** VACATED *** REASON: Cont'd to 3/16/21 per order #192. lf**

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Continued by stipulation to 3/16/212 at 10:00 a.m.

prior tentative ruling (1/12/21)

I have read all of the briefs submitted on the issue of the amount to be distributed to Mr. Berry. Before I rule, there are some issues of law that need to be resolved. I have set forth a list of questions that are to be answered by the parties. Please provide case or statute citations, if they exist. If you wish to make arguments not based on case law or code, you may do so, but limit it to one paragraph per issue – remember that I have read all of the briefs and am very familiar with everyone's position. At the hearing on January 12, I will set dates for the briefs and also a continued hearing date. I intend to read all cited cases/statutes and do not think that it will be necessary for reply briefs. But we can discuss this on January 12.

The Questions:

1. What is the maximum judgment that Berry could have attained if he

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

had completed the adversary proceeding with a judgment against Pyle, the Trust, and Sweetwater Management?

a. Would it make a difference if the fraudulent transfer action was only as to Sweetwater?

2. The adversary proceeding was brought solely under the Uniform Voidable Transactions Act and only for the judgment held by Berry. It never mentions the bankruptcy or the claims of the bankruptcy estate. Under these circumstances, can the Court give a judgment for more than is owed to Berry on his state court judgment?

    a. When the Trustee substituted in, she did not file an amended complaint to expand the first amended complaint to include her status as the bankruptcy trustee. If this went to judgment, what is the maximum amount of the judgment under these circumstances?

3. What is the effect of the sale by the Trustee of her avoiding powers to Berry?

    a. Would it have made a difference if she had no sold them to Berry? Could he still have proceeded with the fraudulent transfer action?

    b. Would it have made a difference in how much could be recovered in the current adversary proceeding?

    c. Would it have made a difference if Berry had not sold them back to the Trustee?

4. As a creditor pursuing his own claim, is Berry entitled to any amount beyond his judgment, accrued interest, and costs?

5. Since this was a sale of rights to Berry and Berry was his own attorney for his own claim, is he entitled to any attorney fees from the recovery and, if he is, is this limited to "reasonable attorney fees"?

    a. Even though there is an agreement and a court order dividing

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

the proceeds of the adversary proceeding, can the Court now determine that it is giving Berry too little or too much money and this is no "reasonable"?

6. Because Berry also owned the rights of the Trustee, would he have been entitled to a judgment that is sufficient to cover all unsecured claims?

    a. In a chapter 7 case, can that judgment also include enough to cover all administrative claims?

prior tentative ruling 12/8/21
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 belonged to the estate. Ms. Daniels was entitled to her full 50%

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

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 any exemptions claimed."); *In re Hunt*, No. BAP CC-13-1148, 2014 WL

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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 market value of $661,000 or higher to give room for negotiations.

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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 percentage compensation.

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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 Estate. Berry also disputes the Trustee's calculations of the amount of liens

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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:

It is further ORDERED that the Trustee is authorized to sell the

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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 the Debtor's counsel shall remain Berry's property to

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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 the litigation is not yet resolved as to Sunland, it is reasonable to deal with

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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).

The stipulation is clear. Once the propert(ies) are sold, Berry gets

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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 of sale and payment of property taxes or any other costs necessary to

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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 adversary proceeding.

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

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 Trustee's motion to sell including the settlement with Linda Daniel. [*Court:*

10:00 AM

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

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.

10:00 AM
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.

10:00 AM

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

10:00 AM

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

10:00 AM

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, February 23, 2021 **Hearing Room 303**

10:00 AM

1:13-10386 Shirley Foose McClure **Chapter 11**

#5.00 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, 4/20/21(vacated - moved to 2/23/21)

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Based on Judge Wu's affirmation, it appears that all matters in this court as to the Litt parties are completed. There is still a superior court action brought by Jason McClure, but that is not an asset of this estate.

The Trustee's status report indicates that he is seeking to explore another settlement with the insurance companies in the Tidus action and is also attempting to identify qualified contingency counsel to represent the estate in that case. He has also requested that Ms. McClure retain bankruptcy counsel and meet with the Trustee and his counsel to discuss disposition of the estate's remaining assets, the Debtor's homestead exemption, and the Trustee's intent to windup the bankruptcy case.

The Trustee is also obtaining estimates of the amounts due to administrative claimants. It appears that the aggregate amount will slightly exceed the estate's current available cash.

10:00 AM
CONT... Shirley Foose McClure **Chapter 11**

The Trustee is moving to dispose of the remaining assets. Hewitt appears to have no equity and the Trustee is attempting to contact the trust deed holder to discuss its disposition. Gregory, which is the Debtor's residence and 95% is owned by the Debtor with 5% by Jason, will be marketed and sold.

That further actions - if any - does Ms. McClure plan to take?

Party Information

Debtor(s):

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

Trustee(s):

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

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

Tuesday, February 23, 2021 **Hearing Room 303**

10:00 AM
1:15-14213 Michael Robert Goland **Chapter 7**
Adv#: 1:20-01063 Burk v. Zamora

#6.00 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, 12/22/20

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Off calendar. A first amended complaint has been filed.

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, February 23, 2021 **Hearing Room 303**

10:00 AM
1:15-14213 Michael Robert Goland **Chapter 7**
Adv#: 1:20-01063 Burk v. Zamora

#7.00 Status Conference Re: First Amended Complaint for

1) Declaratory Judgment
2) Breach of Fiduciary Duty - Seizure of Rent and Failure to Manage Asset Property
3) Breach of Fiduciary Duty - Failure to Manage Estate Assets Property for Benefit of Creditors

fr. 1/12/21

Docket 32

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Continued without appearance to 4/20/21 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
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Tuesday, February 23, 2021 **Hearing Room 303**

10:00 AM

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

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, March 16, 2021 **Hearing Room 303**

10:00 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/1614537835
Meeting ID: 161 453 7835
Password: 853639

Telephone Conference Lines: 1 (669) 254-5252 or 1 (646) 828-7666
Meeting ID: 161 453 7835
Password: 853639

Docket 0

Matter Notes:

- NONE LISTED -

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

Tuesday, March 16, 2021 **Hearing Room 303**

10:00 AM

CONT... **Chapter**

Tentative Ruling:

- NONE LISTED -

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

#1.00 Motion by Former Plaintiff to Enforce Stipulation and Order of 10-4-2017 for Disbursal of Gross Proceeds, and for an Award of Attorneys Fees and Costs
Filed by Creditor Marc H Berry

fr. 8/25/20, 11/17/20; 12/8/20; 1/12/21, 2/23/21

Docket 196

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Thank you for the briefs that I requested. I have read them and am working on a ruling. If there is anything that you wish to add, feel free to do so at the hearing on 3/16. But please do not reargue what is in your brief. I will leave this motion on calendar, but expect to provide my ruling long before the next hearing. The next calendar date will be June 29, 2021 at 10:00 a.m. Once the ruling is given, there will be no further hearings.

I also received the Trustee's status report. This is a chapter 7 case and therefore I do not generally hold status conferences. But I think that this case warrants continued updating. To that end, I will set a status conference for June 29, 2021 at 10:00 a.m. Please submit an updated status report for that hearing.

prior tentative ruling (1/12/21)

I have read all of the briefs submitted on the issue of the amount to be distributed to Mr. Berry. Before I rule, there are some issues of law that need to be resolved. I have set forth a list of questions that are to be answered by

10:00 AM

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

the parties. Please provide case or statute citations, if they exist. If you wish to make arguments not based on case law or code, you may do so, but limit it to one paragraph per issue – remember that I have read all of the briefs and am very familiar with everyone's position. At the hearing on January 12, I will set dates for the briefs and also a continued hearing date. I intend to read all cited cases/statutes and do not think that it will be necessary for reply briefs. But we can discuss this on January 12.

The Questions:

1. What is the maximum judgment that Berry could have attained if he had completed the adversary proceeding with a judgment against Pyle, the Trust, and Sweetwater Management?
    a. Would it make a difference if the fraudulent transfer action was only as to Sweetwater?
2. The adversary proceeding was brought solely under the Uniform Voidable Transactions Act and only for the judgment held by Berry. It never mentions the bankruptcy or the claims of the bankruptcy estate. Under these circumstances, can the Court give a judgment for more than is owed to Berry on his state court judgment?
    a. When the Trustee substituted in, she did not file an amended complaint to expand the first amended complaint to include her status as the bankruptcy trustee. If this went to judgment, what is the maximum amount of the judgment under these circumstances?
3. What is the effect of the sale by the Trustee of her avoiding powers to Berry?
    a. Would it have made a difference if she had no sold them to Berry? Could he still have proceeded with the fraudulent transfer action?
    b. Would it have made a difference in how much could be

recovered in the current adversary proceeding?

c. Would it have made a difference if Berry had not sold them back to the Trustee?

4. As a creditor pursuing his own claim, is Berry entitled to any amount beyond his judgment, accrued interest, and costs?

5. Since this was a sale of rights to Berry and Berry was his own attorney for his own claim, is he entitled to any attorney fees from the recovery and, if he is, is this limited to "reasonable attorney fees"?

   a. Even though there is an agreement and a court order dividing the proceeds of the adversary proceeding, can the Court now determine that it is giving Berry too little or too much money and this is no "reasonable"?

6. Because Berry also owned the rights of the Trustee, would he have been entitled to a judgment that is sufficient to cover all unsecured claims?

   a. In a chapter 7 case, can that judgment also include enough to cover all administrative claims?

prior tentative ruling 12/8/21
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

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

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 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

10:00 AM

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

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 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

10:00 AM

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

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 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

10:00 AM

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

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 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

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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 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

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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. 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 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

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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. 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

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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 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.

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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 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

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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. 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 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.

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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. (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

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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 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 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.

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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 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

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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.

Party Information

Debtor(s):

Glen E Pyle — Pro Se

Movant(s):

Marc H Berry — Pro Se

Trustee(s):

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

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

#2.00 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, 11/17/20, 2/2/21

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

THE HEARING WILL BE BY ZOOM. SEE THE NOTICE

On March 15, Mr. Beam filed a letter that raises some issues as to the content of the proposed order. Let's discuss it.

prior tentative ruling (11/17/20)
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

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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.
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.

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

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

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

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 deny discharge as to what items are listed on or omitted from the schedules and statement of affairs:

10:00 AM

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

(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. 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).

10:00 AM

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

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, March 16, 2021 **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

#3.00 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, 11/17/20; 1/12/21

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Nothing new received as of 3/13/21.

prior tentative ruling 11/17/21

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

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

Tuesday, March 16, 2021 **Hearing Room 303**

10:00 AM
CONT... Marshall Scott Stander **Chapter 7**

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

10:00 AM
1:14-15182 Mark Alan Shoemaker **Chapter 7**

#4.00 Order setting hearing date and ordering debtor to serve notice and a copy of the objections on each claimant to whose claim he objects.

Docket 0

Matter Notes:

- NONE LISTED -

Tentative Ruling:

On February 27, 2021, Freddy Ramirez filed a response to the objection to the claim held by him and his wife. (dkt. 278) This concerned the original objection and argued - in part - that Mr. Shoemaker should file a new objection. In fact, the Court has ordered Mr. Shoemaker to file new objections and he has done so as to three prrofs of claim - but not as to claim 8, which is the Ramirez claim. The Ramirez response was served on Mr. Shoemaker at his current address. Because there is no new objection to the Ramirez claim, there is nothing for the Court to act on. Should a new objection be filed, the Court will consider the substance of this response. Notice will be given to the Ramirez attorney of this tentative ruling after the March 16 hearing when Mr. Shoemaker has advised the Court as to his intention concerning the Ramirez claim.

On March 8, Mr. Shoemaker filed an objection and declaration "to order in excess of constitutional authority." The only relevant issue here concerns giving notice. There are only three objections to claims currently before the Court - claims 11, 13 and 14. His mailings to any other claimants were ineffective since there is nothing pending as to their claims. Further, it is not necessary or desired to use certified mail because some people do not pick up certified letters. Unless ordered by the Court, Mr. Shoemaker should use first class mail for giving notice.

Party Information

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

Tuesday, March 16, 2021 **Hearing Room 303**

10:00 AM

CONT... Mark Alan Shoemaker **Chapter 7**

Debtor(s):

Mark Alan Shoemaker — Represented By
William H Brownstein

Trustee(s):

Alfred H Siegel (TR) — Represented By
Jessica L Bagdanov

10:00 AM
1:14-15182 Mark Alan Shoemaker **Chapter 7**

#5.00 Motion RE: Objection to Claim Number 11-1 by Claimant Yolanda Ortega.

Docket 271

Matter Notes:

- NONE LISTED -

Tentative Ruling:

THE FOLLOWING WAS PREPARED ON 3/14. ON 3/15 MR SHOEMAKER FILED A SUPPLEMENTAL DECLARATION THAT THE MOTION SENT TO MS. ORTEGA WAS RETURNED TO HIM. WAS IT SENT FIRST CLASS (AS NOTED BELOW) AS WELL AS CERTIFIED? LET'S DISCUSS HOW TO MAKE SURE THAT SHE GETS SERVED.

On January 22, 2010, Ms. Ortega obtained a judgment against both Advocate for Fair Lending, LLC. and Shoemaker in LASC LB 09593308 for $3,000 and costs of $110. On May 28, 2010 Ms. Ortega conducted (or obtained an order for) a judgment debtor examination of Mr. Shoemaker. No other enforcement effort is reflected on the state court docket.

Mr. Shoemaker objects on several grounds, including that Ms. Ortega did not attempt to collect from Advocate. As to that theory, there is no requirement that she pursue any remedy against Advocate for Fair Lending, LLC., including filing a proof of claim in that no-asset bankruptcy case (2:10-bk-32494-PC). Further, he asserts that the claim "only applies to the Advocate bankruptcy." This is a false statement since the judgment in state court is against both Advocate and Shoemaker. Shoemaker is attempting to reargue the grounds of the state court judgment and that is prohibited.

As to the statute of limitations on enforcement of a judgment, Shoemaker is legally correct. A summary of California law is as follows:

Cal. Code of Civ. Proc. §683.020 states that a money judgment may not be enforced after the expiration of 10 years after the date of entry. The issue here is that there was a stay of enforcement due to the automatic stay, which ran from the date of filing of the Shoemaker bankruptcy (May 25, 2010) until the date that his discharge was denied (January 14, 2018). And although there was no stay, that

10:00 AM

CONT... Mark Alan Shoemaker **Chapter 7**

denial of discharge unquestionably became final no later than the dismissal of his appeal (December 5, 2019). 11 USC §362(c)(2)(C).

California law allows a judgment creditor to extend the enforcement date of a judgment by renewing it within the 10 year effective time and this can be done even though a stay of enforcement is in effect. Cal. Code Civ. Proc. §683.210. "Renewal during a stay of enforcement does not affect the stay, but merely prevents the termination of the period of enforceability." [16 Cal.L.Rev.Comm. Reports 1219 (1982)]

There is a conflict in the interpretation of how the automatic stay affects the act of filing a renewal of a California judgment. The one thing that is clear is that the running of the 10 year period is not stayed by the automatic stay. Rather, if the 10 years expires during the existence of the automatic stay, there is a 30 day extension after notice of the termination of the stay or its expiration under 11 USC §362. 11 USC §108(c). In this case, although the operative date of the denial of discharge occurred on either the date of judgment in the adversary case (January 14, 2018) or the dismissal of the appeal (December 5, 2019), the court did not send out notice until March 2, 2021 (dkt. 270) and there is nothing on the docket showing that notice of the denial of discharge was given to Ms. Ortega or any other claimant prior to that date. Even the original objections to the Ortega claims, which were filed on July 10, 2019, do not mention the denial of discharge. (dkt. 214, 216)

Thus the first notice to Ms. Ortega of the denial of discharge, which would start the clock running on her ability to renew the judgment due to the termination of the automatic stay, occurred with the filing and mailing of the current objections to her claims or the notice by the court. The objections were served by mail on her on February 18, 2021 at 1510 Carnation Way, Upland, CA 91786, which is the address on her proof of claim. The notice by the court used that same address. Assuming that this is a valid current address for Ms. Ortega, her judgment remains enforceable until April 1, 2021, although it is possible that there might be an additional 3 days due to the mailing of the motion which gave notice (11 USC § 9006(f)). Either way, unless Mr. Shoemaker can show that notice was received prior to his mailing of this objection to claim, the time has not yet expired to renew the judgment, though it will do so in a few days. Therefor this motion must be continued.

In summary, the enforceability of the state court judgment would have

10:00 AM

CONT... Mark Alan Shoemaker **Chapter 7**

terminated on January 22, 2020, but for the 30 day extension allowed by 11 USC § 108. It appears that Ms. Ortega had no notice of the denial of discharge (and therefore the termination of the automatic stay) until served with this objection to her claim, which occurred on February 18, 2021 or perhaps the notice from the court served on March 2, 2021. If there is evidence that the objection was mailed to the correct address and therefore she is deemed to have received it, the judgment is still enforceable until March 20, 2021.

The proof of service on the objection states that service was made by first class mail, but Mr. Shoemaker's declaration states that he sent it by certified mail (dkt. 282). This may make a difference on whether she received it since some people do not pick up items sent by certified mail. The court is attempting to monitor returned unopened mail addressed to the creditors in this case, but cannot be certain that it will be successful. However, this is the best that we can do. So, unless the envelope mailed by the court is returned, I will assume that the address is correct and that Ms. Ortega received notice of the discharge no later than March 5, 2021 (allowing 3 days for mailing). If Mr. Shoemaker did not send the objection by first class mail, he is to do so with the new hearing date, which will be April 20, 2021 at 10:00 a.m. The hearing will be by Zoom.

Party Information

Debtor(s):

Mark Alan Shoemaker — Represented By William H Brownstein

Trustee(s):

Alfred H Siegel (TR) — Represented By Jessica L Bagdanov

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

Tuesday, March 16, 2021 **Hearing Room 303**

10:00 AM

1:14-15182 Mark Alan Shoemaker **Chapter 7**

#6.00 Motion RE: Objection to Claim Number 13-1 by Claimant Yolanda Ortega.

Docket 273

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Sustain. Although not included in the objection, this is a duplicate claim to claim 11 and the objection is sustained on that ground.

Party Information

Debtor(s):

Mark Alan Shoemaker — Represented By William H Brownstein

Trustee(s):

Alfred H Siegel (TR) — Represented By Jessica L Bagdanov

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

Tuesday, March 16, 2021 **Hearing Room 303**

10:00 AM

1:14-15182 Mark Alan Shoemaker **Chapter 7**

#7.00 Motion RE: Objection to Claim Number 14 by Claimant Lillie Burton.

Docket 275

Matter Notes:

- NONE LISTED -

Tentative Ruling:

On October 28, 2010, Ms. Burton obtained a judgment in the superior court against Mr. Shoemaker for $13,097.37 to which were added costs of $70 and accrued interest of $1,626.27 through January 17, 2012 when an abstract of judgment was recorded. No other enforcement action was taken. (LASC NC052415) This judgment was solely against Mr. Shoemaker, who originally filed the complaint in his own name in what might have been a collection action against Ms. Burton. A copy of the judgment is attached to the declaration of Elizabeth Quinn (dkt. 281) and although it does not state the reason for the arbitration award, it seems that this may be for attorney fees in defending against Mr. Shoemaker's complaint. But this is not relevant.

The enforcement power of the judgment ended on October 28, 2020. Because of the bankruptcy, this is extended for 30 days after Ms. Burton receives notice that Mr. Shoemaker's discharge was denied. The law as to the extension to renew a judgment due to a bankruptcy stay is set forth below.

The first critical question here is that the state court judgment was granted about 5 months after this bankruptcy case was filed and there is no evidence that Ms. Burton was granted relief from the automatic stay. Although Shoemaker raised this as the basis for his original objection to the Burton claim (dkt. 200), his current objection is solely on the basis that the claim is barred because she failed to renew her judgment after 10 years. Nonetheless, the validity of the judgment is important and needs to be dealt this.

It is not surprising that there was no notice of the bankruptcy in the state court action or that Shoemaker did not attempt to stop it due to the bankruptcy. Because Shoemaker was the plaintiff in the state court action, there was no

10:00 AM

CONT... Mark Alan Shoemaker **Chapter 7**

requirement that it be stayed. Assuming that Burton's judgment was merely the result of Shoemaker losing his case against her (and there does not appear to have been a cross-complaint), there was no need for her to seek relief from the automatic stay, even if she had known about the bankruptcy. There is no notice of the bankruptcy on the state court docket. The lawsuit was not listed as an asset of Shoemaker's estate (schedule B) or as litigation pending (statement of affairs). Ms. Burton is not on the original mailing matrix. Given these circumstances, the automatic stay did not void this judgment. However, it is possible that the Court is incorrect on the facts or the law and Mr. Shoemaker can amend his objection to deal with this.

Cal. Code of Civ. Proc. §683.020 states that a money judgment may not be enforced after the expiration of 10 years after the date of entry. The issue here is that there was a stay of enforcement due to the automatic stay, which ran from the date of filing of the Shoemaker bankruptcy (May 25, 2010) until the date that his discharge was denied (January 14, 2018). And although there was no stay, that denial of discharge unquestionably became final no later than the dismissal of his appeal (December 5, 2019). 11 USC §362(c)(2)(C).

California law allows a judgment creditor to extend the enforcement date of a judgment by renewing it within the 10 year effective time and this can be done even though a stay of enforcement is in effect. Cal. Code Civ. Proc. §683.210. "Renewal during a stay of enforcement does not affect the stay, but merely prevents the termination of the period of enforceability." [16 Cal.L.Rev.Comm. Reports 1219 (1982)] Ms. Quinn, original counsel for Ms. Burton, argues that the 10 year period can be further extended per CCP 683.040. This is incorrect as to the facts of this case.

There is a conflict in the interpretation of how the automatic stay affects the act of filing a renewal of a California judgment. The one thing that is clear is that the running of the 10 year period is not stayed by the automatic stay. Rather, if the 10 years expires during the existence of the automatic stay, there is a 30 day extension after notice of the termination of the stay or its expiration under 11 USC §362. 11 USC §108(c).

There is no question that – as of March 1, 2021 (the date of Ms. Quinn's declaration) that Ms. Burton had not had notice of the denial of discharge or of this objection to her claim. The only address known to Mr. Shoemaker or the court is

10:00 AM

CONT... Mark Alan Shoemaker **Chapter 7**

that of Ms. Quinn, as this is the address on the proof of claim. Ms. Quinn asks for a 120 day extension to respond so that she has time to locate Ms. Burton and then give Ms. Burton time to find legal counsel, if she so wishes. Obviously a continuance is needed to locate and give notice to Ms. Burton.

I will continue this hearing to May 4, 2021 at 10:00 a.m. Ms. Quinn is to make her best efforts to locate a proper mailing address for Ms. Burton and is to have her file a change of address with the court. Ms. Quinn is also to provide Mr. Shoemaker and the court with the current mailing address for Ms. Burton and to send Ms. Burton copies of the notice of discharge and of the objection to claim and of any other documents served by Mr. Shoemaker or the court on Ms. Burton. Ms. Quinn need not respond to anything on behalf of Ms. Burton unless Ms. Burton authorizes her to do so. Unless Ms. Burton has filed a change of address, by April 20, Ms. Quinn is to file a response as to her attempts to locate Ms. Burton.

Objections to the Declaration of Elizabeth Quinn are overruled; however, she is incorrect as to the effect of CCP 683.040. In this case there is not possible reason that the issuance of a writ was barred until the CCP. The bankruptcy is not a reason. There is no evidence that Ms. Burton or her attorney ever tried to enforce the judgment other than filing a proof of claim.

Party Information

Debtor(s):

Mark Alan Shoemaker — Represented By
William H Brownstein

Trustee(s):

Alfred H Siegel (TR) — Represented By
Jessica L Bagdanov

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

Tuesday, April 6, 2021 **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/1605024526
Meeting ID: 160 502 4526
Password: 140859

Telephone Conference Lines: 1 (669) 254-5252 or 1 (646) 828-7666
Meeting ID: 160 502 4526
Password: 140859

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, April 6, 2021 **Hearing Room 303**

9:30 AM
CONT... **Chapter**

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

Tuesday, April 6, 2021 **Hearing Room 303**

10:00 AM
1:06-12243 Edwin Perry Hinds **Chapter 7**

#1.00 Notice of Trustee's Final Report and Application for Compensation and Deadline to Objection

Trustee:
David R. Hagen

Attorney for Trustee
Ezra Brutzkus Gubner LLP

Accountant for Trustee:
Hahn Fife & Company, LLP

Docket 110

Tentative Ruling:

David Hagen, trustee - approve as requested. Thank you for the reduction in fees to allow return to unsecured creditors.

Brutzkus Gubner, attorney for Trustee - Thank you for the reduction of $30,867. Approve in the amount of $75,000 fees, costs as requested.

Hahn Fife & Company, accountant for Trustee - approve as requested

No opposition receive as of April 4. No appearance required.

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, April 6, 2021 **Hearing Room 303**

10:00 AM

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

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, April 20, 2021 **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/1605624704
Meeting ID: 160 562 4704
Password: 106069

Telephone Conference Lines: 1 (669) 254-5252 or 1 (646) 828-766
Meeting ID: 160 562 4704
Password: 106069

Docket 0

Matter Notes:

- NONE LISTED -

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

Tuesday, April 20, 2021 **Hearing Room 303**

9:30 AM
CONT... **Chapter**

Tentative Ruling:

- NONE LISTED -

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

Tuesday, April 20, 2021 **Hearing Room 303**

10:00 AM

1:13-10386 Shirley Foose McClure **Chapter 11**

#1.00 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

***** VACATED *** REASON: Moved to 2/23/21 at 10:00 per order #1784.**
lf

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

10:00 AM

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

to prepare the case evidence. She then details that some of the claims belong to the estate and some are personal. She wants to add a personal separate intentional breach of fiduciary duty and intentional inflictions on emotional distress claim to the state court action against the Tidus defendants. She only found out about these with the 2017 discovery production.

She seeks the Court's permission to speak with and obtain documents from the Farley Firm, the Plaintiff's expert, and the Trustee. These parties need authority from the bankruptcy court to cooperate with McClure. Because the appeal is pending, she feels that she needs bankruptcy court permission to appear in the Tidus case.

Litt takes no position since this does not involve him. He is not aware that Litt or Schulman have been listed as non-retained expert witnesses in the Tidus case. As of 10/18, the Court has not received a response by the Trustee.

I do not believe that this is dependant on whether McClure has an exemption in the Tidus case since, if my order denying the motion is not reversed on appeal, it is possible that the Tidus case will be abandoned or that McClure will take control on behalf of the estate or that the Trustee will move forward and this discovery will assist him.

prior tentative ruling (8/6/19)

Ms. McClure filed (under seal) a report on her health and her personal claims against the Litt parties. There is no reason for this to be under seal and unless McClure convinces me otherwise, I will unseal it.

In short, she intends to bring a motion to determine which claims with Litt were not property of the estate.

She also filed an amended Schedule C claiming the Litt and Tidus claims as exempt. Will the Trustee 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

10:00 AM

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

order, please bring that through a proper motion or other means. I am not sure that there is such a thing as a motion to clarify, but I am sure that there is a method to obtain a ruling as to what what sold (wht is property of the estate).

prior tentative ruling (4/16/19):
At the 4/16 status conference the Court will determine which - if any - filed exhibits are to be kept under seal. On April 12 an email with a list was sent to Ms. McClure and the attorneys for the Litt Parties and for the Trustee. Also, the Court will discuss my intent to send this out for a global mediation before Judge Jury (ret). A copy of that notice was forwarded to Mr. Dahlberg, Ms. McClure, and Mr. Shulman and Mr. Dahlberg is was asked to make sure that it is sent to the other parties named in the notice.

prior tentative ruling (3/26/19)
Continue without appearance to April 16, 2019 at 10:00 a.m. No new status report will be needed for that hearing.

prior tentative ruling (2/8/19)
Per the Trustee's status report, McClure withdrew her appeal of the Pacific Merchantile settlement and the Ninth Circuit has dismissed the appeal.

As to the settlement with Litt, Judge Wu has continued the status conference in the consolidated Litt appeals to March 7, 2019 and has indicated that he is not 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.

10:00 AM

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

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

Cont

prior tentative ruling (2/12/19)
Continue without appearance to 3/5/19 at 10:00 a.m. Although documents are being filed for 2/12, there will be no hearing at that time. I am also 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

10:00 AM
CONT... Shirley Foose McClure **Chapter 11**

Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

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

10:00 AM

1:15-14213 Michael Robert Goland **Chapter 7**

Adv#: 1:20-01115 Cohen v. Gerry Burk, an individual and as Trustee of the 57

#2.00 Status Conference re Complaint for (a) Declaratory Relief; (b) Breach of Fiduciary Dutiy-Seizure of Rent and Failure to Mange Asset Propety; and (c) Breach of Fiduciary Duity-Failure to Mange Estate Assets Properly for Benefit of Creditors;

fr. 2/2/21

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

On 4/14/21, the Gerry Burk defendants filed a unilateral status report. This is stayed as to the Traustee. Because the plaintiff is in proper, there is no one to reach out to for a Rule 26 meeting. As to moving this case forward, Mr. Burk and Triple Images are subject ot a criminal proceeding for fire code violations. It may be necessary to stay these proceedings until that is completed so as to deal with a 5th amendment claim by the Burk defendants in that proceeding. The Burk defendants anticipate a 1-2 day trial in this case and need until December to complete discovery. Gerry Burk and the Trustee resolved their adverary proceeding through a mediation in November 2021.

This case involves the issue of ownership of the property on Compton Ave.

While some discovery might be limited due to the criminal action, it seems that there is discovery from third parties that can go forward. How does Mr. Cohen intend to proceed? Will he be hiring an attorney?

Party Information

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

Tuesday, April 20, 2021 **Hearing Room 303**

10:00 AM

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

Debtor(s):

Michael Robert Goland	Represented By David S Hagen

Defendant(s):

Gerry Burk, an individual and as	Pro Se
Nancy Zamora, as Chapter 7 Trustee	Pro Se

Plaintiff(s):

David Cohen	Pro Se

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, April 20, 2021 **Hearing Room 303**

10:00 AM
1:15-14213 Michael Robert Goland **Chapter 7**
Adv#: 1:20-01063 Burk v. Zamora

#3.00 Status Conference Re: First Amended Complaint for

1) Declaratory Judgment
2) Breach of Fiduciary Duty - Seizure of Rent and Failure to Manage Asset Property
3) Breach of Fiduciary Duty - Failure to Manage Estate Assets Property for Benefit of Creditors

fr. 1/12/21, 2/23/21

Docket 32

Matter Notes:

- NONE LISTED -

Tentative Ruling:

A mediator's certificate of settlement was filed on 2/4/21. but there are no further filings. When will the settlement agreement be documented and filed?

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

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

Tuesday, April 20, 2021 **Hearing Room 303**

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

Trustee(s):

Nancy J Zamora (TR)

Represented By
Jessica L Bagdanov
David Seror
Ezra Brutzkus Gubner

10:00 AM
1:16-12255 Solyman Yashouafar **Chapter 11**
Adv#: 1:16-01166 Barlava et al v. Yashouafar

#4.00 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, 12/22/20

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Nothing further received as of 4/16/21.

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

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

#5.00 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, 11/17/20, 2/2/21, 3/16/21

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

THE HEARING WILL BE BY ZOOM. SEE THE NOTICE

for the hearing on 4/20/21 - prepared on 4/6/21 and mailed to the parties. No response as of 4/18 at noon:

This adversary proceeding was brought by Ellen Henderson so that she would be assured that she would not be liable for debts incurred by Joseph Beam during their marriage in conformance with any dissolution judgment in Henderson v. Bean, Los Angeles Superior Court case LD068179. The parties have basically agreed to this outcome.

On March 22, 2021, Judge Dordi entered his amended judgment in the family law case on reserved issues, which includes the allocation of debts and the issue of spousal support. He does not specify that the allocation of certain debts to Mr. Beam are in the nature of support.

10:00 AM
CONT... Joseph Daniel Beam **Chapter 7**

It appears that proceeding to litigate the denial of discharge is not the best way to handle this. If the parties will stipulate that the awarding of responsibility for those specific debts set forth in the family law judgment to Mr. Beam is in the nature of support under 11 USC §523(a)(5), this adversary proceeding can be resolved.

Unless they advise me otherwise at or before the status conference on April 20, 2021 at 10:00 a.m., I will determine that the purpose of the adversary complaint is to obtain relief under 11 USC §523(a)(5) and will dismiss all other claims in this adversary proceeding. I will then enter a limited judgment specifically as to the items in Judge Dordi's order for which Mr. Beam is liable. The chapter 7 Trustee is being served with a copy of this proposed ruling because the adversary complaint asserts that it seeks to deny discharge under 11 USC §727.

If either party or the chapter 7 Trustee fails to appear at the 4/20/21 status conference or has not filed a written opposition to this proposal, I will deem that to be a consent to this tentative ruling. I will then prepare and enter the limited order and this adversary proceeding will be resolved.

prior tentative ruling (3/16/21)
On March 15, Mr. Beam filed a letter that raises some issues as to the content of the proposed order. Let's discuss it.

prior tentative ruling (11/17/20)
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

10:00 AM

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

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.
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)

10:00 AM

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

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 community debt is attributable to Mr. Beam alone, but that this will be

10:00 AM

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

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 is set for 6/12/19. In this court, the defendant estimates one hour to present

10:00 AM

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

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.]

Debtor's answer denies all allegations.

10:00 AM
CONT... Joseph Daniel Beam **Chapter 7**

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

10:00 AM
1:19-13099 Marshall Scott Stander **Chapter 7**
Adv#: 1:20-01025 Rob Kolson Creative Productions, Inc. v. Stander

#6.00 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, 11/17/20; 1/12/21 3/16/21

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

On 4/5/21 a joint status conference report was filed. Counsel for defendant does not give any time estimates because she is waiting for the ruling on the motion to dismiss.

The tentative ruling is to deny that motion. There needs to be a discovery cutoff. It is Plaintiff's burden of proof and he suggests that it be in 45 days. He wishes to depose the Defendant and Rita McKenzie and will propound written discovery. The cutoff means that all discovery is complete, not the last day to mail it out. Unless the Defendant wants a later date, discovery cutoff will be June 15, 2021. That will be sufficient time for written discovery to be served and responded to.

This Court does not set trial dates until discovery is complete. However, once that occurs, the trial can happen without much delay. Since the trial is anticipated at 2 days, I am not sure that a pretrial is needed - but if either party wants one, I will order it. I suggest that the next hearing (if a status and trial setting conference) should be on June 29 at 10:00 a.m. If it is a pretiral conference, it should be on July 13 at 10:00 a.m.

prior tentative ruling 11/17/21

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

10:00 AM

CONT... Marshall Scott Stander **Chapter 7**

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

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 302 Calendar

Tuesday, April 20, 2021 **Hearing Room 302**

10:00 AM

1:19-13099 Marshall Scott Stander **Chapter 7**

Adv#: 1:20-01025 Rob Kolson Creative Productions, Inc. v. Stander

#7.00 Motion to Dismiss Adversary Proceeding

Docket 21

Matter Notes:

- NONE LISTED -

Tentative Ruling:

BACKGROUND AND MOTION TO DISMISS

Kolson obtained a breach of contract judgment against Stander in Sept. 10, 2014. He did not commence a collection attempt until 2018. On December 13, 2019, Standar filed this chapter 7 case. The chapter 7 Trustee filed a no-asset report. On January 30, 2010, Kolson filed a fraudulent transfer adversary proceeding against Stander (20-01011-MT). There was a safe harbor warning under Rule 9011 and that adversary proceeding was voluntarily dismissed on May 27, 2020 after a motion to dismiss for violation of the automatic stay and the limitation of California law as to reverse alter ego claims.

This adversary proceeding was filed on March 3, 2020 objecting to discharge under §727(a)(2)(A), (a)(3), (a)(4), and (a)(5). On April 2, 2020, the Debtor filed a motion to dismiss this adversary, but neither Kolson nor his counsel appeared at the hearing on July 21, 2020. The same thing happened at the status conference on October 27, 2020. The status conference was continued to November 17, 2020 and counsel for Kolson did not sent Debtor's counsel a joint status report to complete.

At the November 17, 2020 status conference, Kolson's counsel represented to the Court that within two week he would be filing a motion to take the deposition of Standar's state court counsel since he needed to deal with the issue of privilege. No motion was ever filed.

At the next status conference, on January 21, 2021, Kolson's counsel said that he had changed his mind as to the deposition. The status conference was continued to March 16, 2021, but Debtor's counsel never received a proposed joint status report. Neither Kolson nor his counsel appeared at the March 16 status conference.

Kolson has done nothing to move this case forward. This is a failure to prosecute under Fed.R.Civ.Proc. 41(b). A dismissal under this rule is deemed to be a dismissal on the

10:00 AM

CONT... Marshall Scott Stander **Chapter 7**

merits. Using the *Henderson v. Duncan* factors and the guidance set out in *Hernandez v. City of El Monte*, this case should be dismissed.

OPPOSITION TO MOTION TO DISMISS

There is good cause to allow this adversary proceeding to move forward. The Debtor has acted in violation of §727 and this should not be condoned.

As to the specific appearances, etc.. counsel's conduct was not frivolous as they were due to reasonable mistake and/or excusable neglect.. Plaintiff has always been willing to allow this matter to be set for trial at each status conference and was not aware that discovery must be completed first.

As to the October 27 status conference, there was an error in counsel's office. They still used Judge Tighe's initials (from the prior adversary proceeding) and counsel logged into courtroom 302 about 10 minutes before the hearing time and was not aware that this was not on her calendar until she had called the majority of the calendar. By that time this case had already been called in courtroom 303.

On March 26, counsel attempted to log into the zoom hearing, but was not able to do so. By the time that counsel rebooted his computer and was able to log in, it was 10:09 and he was told that the matter had been continued to April 20.

Plaintiff's counsel did consider deposing Mr. Standar's state court counsel, but decided not to go forward and thus did not file the necessary motion. This was an act of restraint, not of dilatory tactics.

Defendant also has not moved forward with discovery, although he does not bear the burden of proof.

Plaintiff has compiled 1467 bate stamped documents as a result of a third-party subpoena directed to CitiBank. These have been electronically transmitted to Defendant's counsel, which was done at Defendant's counsel's request. This was done on February 17, 2021 and there has been no response by Defendant's counsel.

In the litigation in the District Court, it is Standar who has acted to forestall and frustrate the Kolson efforts to prosecute the action.

As to the status conference reports, Plaintiff believed that since the January and March hearings were continued status conferences, no joint status reports were required. When Plaintiff failed to file these, it was Defendant's duty to file a unilateral status report or a supporting declaration. She did not do so. And prior to this motion, counsel for defendant never mentioned to lack of a status conference report.

There are alternatives to dismissal and the Court should consider these. *In re PPA*,

10:00 AM
CONT... Marshall Scott Stander **Chapter 7**

460 F.3d 1217 (9th Cir. 2006).

REPLY TO OPPOSITION TO MOTION TO DISMISS

There is still no progress in this case. Plaintiff's counsel has not even responded to the settlement offer made 8 months ago. Dumping some 1500 check copies on Debtor's counsel a year into the case is not diligence and will not overcome this motion to dismiss. There is no excuse for lack of discovery and Plaintiff's counsel does not address the *Henderson* factors. Plaintiff's counsel still has not taken any discovery in this case.

Ms. Cohen then provides more detail of contacts made with Mr. Uss, etc.

ANALYSIS AND PROPOSED RULING

Beyond the facts and arguments of the parties, the Court has reviewed its tentative rulings for the hearings in question:

A Status report was filed for 11/17/20 and the tentative ruling for that date reads as follows:

> 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-bankruptcy 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.

Nothing new was filed after that. There was nothing on the tentative ruling indicating that a new status report was needed, nor is there any indication that it was

10:00 AM

CONT... Marshall Scott Stander **Chapter 7**

waived. Local Rule 7016-1(a) governs the issue of status conference reports and requires one unless that is otherwise waived by the court:

> (2) Contents of Joint Status Report. ***Unless otherwise ordered by the court***, at least 14 days before the date set for each status conference the parties are required to file a joint status report using mandatory court form F 7016-1.STATUS.REPORT (and F 7016-1.STATUS.REPORT.ATTACH, if applicable).
>
> (3) Unilateral Status Report. If any party fails to cooperate in the preparation of a joint status report and a response has been filed to the complaint, each party must file a unilateral status report not less than 7 days before the date set for each status conference, unless otherwise ordered by the court. The unilateral status report must contain a declaration setting forth the attempts made by the party to contact or obtain the cooperation of the non-complying party. The format of the unilateral status report must substantially comply with mandatory court form F 7016-1.STATUS.REPORT. [Emphasis added]

The Court has not ordered a discovery cut-off.

There are four factors that the Court needs to consider as set forth in *Henderson v. Duncan*, 779 F.2d 1421 (9th Cir. 1986). Very briefly they are as follows:

Public Interest in the Expeditious Resolution of Litigation – While it would be good to resolve this, particularly if the Debtor prevails and obtains his discharge, the delays so far have not been prejudicial. Even under normal circumstances, it is not unusual for a matter to reach resolution in a one year period. But given the very unusual situation due to the pandemic and the closing down of in-person hearings, etc., it is hard to find prejudice in this delay. The courts are only starting to come back to somewhat normal processes and have recently become equipped for video trials and will soon be allowing in-person matters to take place. Nonetheless, the lack of discovery by Plaintiff is causing and has caused unnecessary delays and this must end. If the Plaintiff intends to prosecute this case, his counsel must move forward without further delay.

The Court's Need to Manage its Docket – It would have been beneficial to the Court and to the parties to have moved the case forward more expeditiously and to have followed the process of regular status reports and communications between the parties. But this is not grounds to dismiss in this case and the Court never specifically ordered that renewed status reports needed to be filed, although that is the usual procedure without the necessity for an order. However, I am surprised that Mr. Uss seems unaware to do things like check

10:00 AM

CONT... Marshall Scott Stander **Chapter 7**

the tentative rulings in advance of the hearings. I do not recall that he has appeared before me on other cases, but Wayne Abb is very familiar with the practices of this court. All of the judges in the SFV division (and perhaps throughout our district court) regularly use tentative rulings. And the calendars for all of the judges in CA(C) are posted well in advance. Obviously neither he nor his staff ever looked at the calendar for Judge Tighe for October 27 or they would have seen that she did not have a 10:00 calendar, that the posted calendar was for 11:00, and this matter was not on the calendar for her courtroom, which was a chapter 13 calendar. This was obvious from the zoom instructions, which were set forth on the 8:00 calendar as published online by the court. I must assume that when Mr. Uss zoomed into her calendar, it was in the middle of the 9:30 chapter 13 calendar – this is not posted as part of the court's webpage system. It should have been very obvious that this was a chapter 13 calendar and not one that concerned this case. But I can see where there might have been confusion as to whether my calendar would be called after hers, given that I am not assigned a regular courtroom, but use whichever is available for my hearings. Nonetheless, I have a hard time making sense of Mr. Uss's excuse as to the October 27 hearing. But as to the hearing on March 26, unfortunately it is not unknown for technical glitches to occur.

Prejudice to Defendant – As noted above, there is some prejudice in the delay to determine whether Mr. Standar will receive his discharge. But his attorney has been gently reactive until the motion. She could have filed a unilateral status report and requested a discovery cutoff. But she did not do so. Given the use of Zoom appearances rather than in-person appearances and the lack of necessary preparation in this case, it seems that the cost to the Debtor is minimal – probably a total of 30 minutes (since it is inconceivable to me that an attorney of Ms. Cohen's experience would merely sit in her office/home and listen to the other hearings rather than spend the time working on other matters as she waited for her case to be called). In fact, if my memory is correct, she kept her camera off until her matter was called. This is not only acceptable conduct on her part, but a wise use of time.

Availability of Less Drastic Measures – Movant does not suggest any less drastic measures, but the Court believes that a slap on the wrist would be sufficient in the amount of $750. This is sufficiently high to make an impact, but below he $1,000 state bar reporting requirement. While it is insufficient to fully compensate Debtor for the cost of his attorney bringing this motion, the Court does not believe that the motion was necessary. Had Ms. Cohen filed a unilateral status report as set forth in the local rules, the Court could have set a discovery cutoff. At trial Mr. Uss would have had to "fish or cut bait" and prove his case

10:00 AM

CONT... Marshall Scott Stander **Chapter 7**

from whatever he had. But he has provided the CitiBank checks and obviously means to move this case forward. As to this motion to dismiss, the Court does not believe that this motion was the only way (and perhaps not even the best way) to handle this matter. Further, on February 17, 2021, Mr. Uss sent Ms. Cohen copies of the checks received from CitiBank. The motion was not filed until March 30 and no mention of those was made - although she deals with it in the reply brief.

Public Policy Favoring Disposition of Cases on Their Merits – Dismissal at this point would violate this policy. Let's finish discovery and go to trial.

Proposed Ruling: Deny the Motion. Award sanctions of $750 payable to Debtor's counsel and to be applied by that counsel toward any fees owed he by the Debtor. This is not to be charged back to the Plaintiff in this adversary proceeding, but is due from the Nussbaum law firm. This is payable within 30 days.

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 Leslie A Cohen

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, May 4, 2021 **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/1607607629
Meeting ID: 160 760 7629
Password: 394333

Telephone Conference Lines: 1 (669) 254-5252 or 1 (646) 828-766
Meeting ID: 160 760 7629
Password: 394333

Docket 0

Matter Notes:

- NONE LISTED -

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

Tuesday, May 4, 2021 **Hearing Room 303**

9:30 AM
CONT... **Chapter**

Tentative Ruling:

- NONE LISTED -

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

Tuesday, May 4, 2021 **Hearing Room 303**

10:00 AM
1:13-10386 Shirley Foose McClure **Chapter 11**

#1.00 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, 4/20/21(vacated - moved to 2/23/21), 2/23/21

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

CONTINUE WITHOUT APPEARANCE TO MAY 25, 2021 AT 10:00 A.M. TO BE HEARD WITH THE MOTION(S) SCHEDULED AT THAT TIME. NO FURTHER STATUS REPORT IS REQUIRED FOR THAT HEARING.

Prior tentative ruling (2/23/21)
Based on Judge Wu's affirmation, it appears that all matters in this court as to the Litt parties are completed. There is still a superior court action brought by Jason McClure, but that is not an asset of this estate.

The Trustee's status report indicates that he is seeking to explore another settlement with the insurance companies in the Tidus action and is also attempting to identify qualified contingency counsel to represent the estate in that case. He has also requested that Ms. McClure retain bankruptcy counsel and meet with the Trustee and his counsel to discuss disposition of the estate's remaining assets, the Debtor's homestead exemption, and the

10:00 AM

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

Trustee's intent to windup the bankruptcy case.

The Trustee is also obtaining estimates of the amounts due to administrative claimants. It appears that the aggregate amount will slightly exceed the estate's current available cash.

The Trustee is moving to dispose of the remaining assets. Hewitt appears to have no equity and the Trustee is attempting to contact the trust deed holder to discuss its disposition. Gregory, which is the Debtor's residence and 95% is owned by the Debtor with 5% by Jason, will be marketed and sold.

That further actions - if any - does Ms. McClure plan to take?

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
1:14-15182 Mark Alan Shoemaker **Chapter 7**

#2.00 Motion RE: Objection to Claim Number 2-1
by Claimant Russell Coffill, DB Servicing Corp..

Docket 302

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Has this been served to the correct address in that the mailing envelope was not returned to Mr. Shoemaker?

For some reason Mr. Shoemaker identifies the creditor as Russell Coffill, while the actual creditor is Discover Bank. But the notice address is on the proof of claim. This is a credit card claim for $7,816.31. The last payment was on Sept. 12, 2007. There is a four year statute of limitations to start the action and that expired on Sept. 12, 2011.

On February 18, 2010, Shoemaker filed a petition under chapter 13 (1:10-bk-15744), which was dismissed on March 15, 2010. The current chapter 7 case was filed on May 25, 2010. Shoemaker filed a motion to extend the automatic stay on May 26, 2010 and set it for hearing on June 23, 2010 (dkt. 3). Apparently there was some problem with that hearing date and on June 24, 2010 he filed an application to shorten time for a hearing on that motion (dkt. 9). The application to shorten time was denied on July 6, 2010 (dkt. 11) and the hearing was set for August 4, 2010. The court entered its order denying the motion to impose the stay on November 17, 2010 (dkt. 32).

11 USC §362(c)(3) applies when a second bankruptcy case is filed by an individual within a one year period of a prior case that was dismissed. Under these circumstances, the automatic stay terminates 30 days after the filing of the current chapter 7 petition unless the stay is extended by the court. The motion to extend requires notice and a hearing that is completed within the 30 day period after the subsequent case is filed. In this case the hearing was not completed within the 30 day period and, even if it had been, the motion to extend the stay was denied. Thus, the automatic stay in the current case terminated by force of law on June 24, 2010, even though the

10:00 AM

CONT... Mark Alan Shoemaker **Chapter 7**

order denying the motion to extend was not entered until November 17, 2010. The record clearly shows that there was no hearing within the 30 days – in fact the application to shorten time was filed the day before the last day of the stay and no hearing was held on that day. Thus the stay terminated as a matter of law on June 24, 2010. Without dealing with the issue of whether the court should count the days when there was no stay before June 24, 2010, even if we add the 30 days under §108, more than 4 years has passed since July 24, 2010. And unlike the issue of giving notice to creditors of the denial of discharge, no notice was required concerning the termination of the automatic stay because this occurred as a matter of law when no timely extension was granted. No collection action was taken within the statute of limitations period and so this debt is no longer subject to collection. SUSTAIN THE OBJECTION.

Party Information

Debtor(s):

Mark Alan Shoemaker — Represented By William H Brownstein

Trustee(s):

Alfred H Siegel (TR) — Represented By Jessica L Bagdanov

10:00 AM
1:14-15182 Mark Alan Shoemaker **Chapter 7**

#3.00 Motion RE: Objection to Claim Number 3-1
by Claimant Maria Contreras.

Docket 290

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Has this been served to the correct address in that the mailing envelope was not returned to Mr. Shoemaker?

For some reason, the claims docket shows the creditor to be March Eang at a Santa Ana address. This is incorrect since the claim itself is definitely by Ms. Contreras, who had an agreement with Mr. Shoemaker for him to provide legal services. The clerk's office has corrected the error. Ms. Contreras asserts that she paid $15,000 and did not receive the services. The attachments appear to verify the payments, most of which were to the Law Office of Mark Shoemaker with some to Advocate For Fair Lending. Shoemaker asserts that his Law Office and he only received $2,500 and that Advocates is a separate entity. The last payment was in 2010 and then Shoemaker was suspended from practice. Claimant got a new attorney.

The opposition evidence shows that Ms. Contreras received $11,552.17 on May 2, 2014 from the California Bar Client Security Fund for Case #12-F-17624, leaving an unpaid balance of about $3,500. Shoemaker asserts that the one year statute of limitations started running when he no longer represented Ms. Contreras and this began on May 31, 2010. There was never a judgment.

In reviewing this case, the Court finds that on February 18, 2010, Shoemaker filed a petition under chapter 13 (1:10-bk-15744), which was dismissed on March 15, 2010. The current chapter 7 case was filed on May 25, 2010. Shoemaker filed a motion to extend the automatic stay on May 26, 2010 and set it for hearing on June 23, 2010 (dkt. 3). Apparently there was

10:00 AM

CONT... Mark Alan Shoemaker **Chapter 7**

some problem with that hearing date and on June 24, 2010 he filed an application to shorten time for a hearing on that motion (dkt. 9). The application to shorten time was denied on July 6, 2010 (dkt. 11) and the hearing was set for August 4, 2010. The court entered its order denying the motion to impose the stay on November 17, 2010 (dkt. 32).

11 USC §362(c)(3) applies when a second bankruptcy case is filed by an individual within a one year period of a prior case that was dismissed. Under these circumstances, the automatic stay terminates 30 days after the filing of the current chapter 7 petition unless the stay is extended by the court. The motion to extend requires notice and a hearing that is completed within the 30 day period after the subsequent case is filed. In this case the hearing was not completed within the 30 day period and, even if it had been, the motion to extend the stay was denied. Thus, the automatic stay in the current case terminated by force of law on June 24, 2010, even though the order denying the motion to extend was not entered until November 17, 2010. The record clearly shows that there was no hearing within the 30 days – in fact the application to shorten time was filed the day before the last day of the stay and no hearing was held on that day. Thus the stay terminated as a matter of law on June 24, 2010.

No action was brought by Ms. Contreras against Shoemaker within the year after June 24, 2010 and the statute of limitations expired at that time.

SUSTAIN THE OBJECTION.

Party Information

Debtor(s):

Mark Alan Shoemaker — Represented By
William H Brownstein

Trustee(s):

Alfred H Siegel (TR) — Represented By
Jessica L Bagdanov

10:00 AM
1:14-15182 Mark Alan Shoemaker **Chapter 7**

#4.00 Motion RE: Objection to Claim Number 4
by Claimant Pedro Napoles.

Docket 292

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Has this been served to the correct address in that the mailing envelope was not returned to Mr. Shoemaker?

The claim is for $8,500. The attachments show that $1,000 was paid to the Law Offices of Mark Shoemaker; there were three checks to Advocate For Fair Lending, totaling $7,500. Shoemaker was suspended from practice on May 31, 2010 and he sent Mr. Naples a notice to that effect on June 1, 2010.

On February 18, 2010, Shoemaker filed a petition under chapter 13 (1:10-bk-15744), which was dismissed on March 15, 2010. The current chapter 7 case was filed on May 25, 2010. Shoemaker filed a motion to extend the automatic stay on May 26, 2010 and set it for hearing on June 23, 2010 (dkt. 3). Apparently there was some problem with that hearing date and on June 24, 2010 he filed an application to shorten time for a hearing on that motion (dkt. 9). The application to shorten time was denied on July 6, 2010 (dkt. 11) and the hearing was set for August 4, 2010. The court entered its order denying the motion to impose the stay on November 17, 2010 (dkt. 32). 11 USC §362(c)(3) applies when a second bankruptcy case is filed by an individual within a one year period of a prior case that was dismissed. Under these circumstances, the automatic stay terminates 30 days after the filing of the current chapter 7 petition unless the stay is extended by the court. The motion to extend requires notice and a hearing that is completed within the 30 day period after the subsequent case is filed. In this case the hearing was not completed within the 30 day period and, even if it had been, the motion to extend the stay was denied. Thus, the automatic stay in the current case

10:00 AM

CONT... Mark Alan Shoemaker **Chapter 7**

terminated by force of law on June 24, 2010, even though the order denying the motion to extend was not entered until November 17, 2010. The record clearly shows that there was no hearing within the 30 days – in fact the application to shorten time was filed the day before the last day of the stay and no hearing was held on that day. Thus the stay terminated as a matter of law on June 24, 2010. The longest statute of limitations would be 4 years for breach of a written contract. That expired no later than June 2014. No legal action was filed by Mr. Napoles, so his claim is unenforceable. SUSTAIN THE OBJECTION.

Party Information

Debtor(s):

Mark Alan Shoemaker — Represented By William H Brownstein

Trustee(s):

Alfred H Siegel (TR) — Represented By Jessica L Bagdanov

10:00 AM
1:14-15182 Mark Alan Shoemaker **Chapter 7**

#5.00 Motion RE: Objection to Claim Number 6
by Claimant David Carranza.

Docket 294

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Has this been served to the correct address in that the mailing envelope was not returned to Mr. Shoemaker?

The claim is for $7,600. There is a check from Brenda Jeanette Carranza to Shoemaker's Law Office for $1,000. There are checks for an additional $6,600 made out to Advocate For Fair Lending, but given to Shoemaker. Mr. Carranza says that he received a small claims judgment. But does not attach that or the agreement with Mr. Shoemaker.

Mr. Shoemaker attaches a list of payments to his former clients by the California Bar Client Security Fund that shows that Mr. Carranza received $7,600 for case 11-F-12095 on June 14, 2013. So this claim has been paid in full.

SUSTAIN THE OBJECTION.

Party Information

Debtor(s):

Mark Alan Shoemaker — Represented By
William H Brownstein

Trustee(s):

Alfred H Siegel (TR) — Represented By
Jessica L Bagdanov

10:00 AM
1:14-15182 Mark Alan Shoemaker **Chapter 7**

#6.00 Motion RE: Objection to Claim Number 7 by Claimant George Castro c/o Andrew H. Griffin.

Docket 304

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Has this been served to the correct address in that the mailing envelope was not returned to Mr. Shoemaker?

The claim is for $330,000. The payments to Shoemaker's law office was $1,000 and there were three payments to Advocate For Fair Lending totaling $9,162.66. Mr. Castro filed bankruptcy in the Southern District of CA and failed to list this claim (09-17551). The Trustee in that case did not abandon the claims. But Mr. Castro filed this proof of claim over three years after he received his discharge. This claim is for sanctions. Because the claim was not listed in the schedules, it was not abandoned on the closing of the case. Thus Mr. Castro has no standing to pursue this claim, since it still belongs to the Trustee in his case. Castro acted in such a way as to deny his discharge under §727(a)(4) since this is a false oath in his bankruptcy case.

Service was made on George Castro % Andrew H. Griffin, who was Castro's attorney in his bankruptcy case as well as on filing the proof of claim. A review of the CA(S) docket shows that Castro's bankruptcy case was still open and active until April 2010 at which point it was closed as a no-asset case.

There is no documentation attached to the claim to support the $330,000 figure. Notice of this objection to claim was served on Mr. Griffin at his address on both the proof of claim and as registered at the State Bar of CA. But no notice was given to the Trustee in the bankruptcy case (Richard Kipperman). The CA(S) dockets do not show him on any cases filed after 2018. Therefore notice must be given to him and also to the United States

10:00 AM

CONT... Mark Alan Shoemaker **Chapter 7**

Trustee for the Southern District of California.

Continue this to June 29, 2021 at 10:00 a.m. so that Mr. Shoemaker can give notice to Mr. Kipperman and to the Office of the United States Trustee for the Southern District of California.

Party Information

Debtor(s):

Mark Alan Shoemaker — Represented By William H Brownstein

Trustee(s):

Alfred H Siegel (TR) — Represented By Jessica L Bagdanov

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

Tuesday, May 4, 2021 **Hearing Room 303**

10:00 AM
1:14-15182 Mark Alan Shoemaker **Chapter 7**

#7.00 Motion RE: Objection to Claim Number 9 by Claimant Madana Shoemaker c/o Stuart Walker.

Docket 296

Matter Notes:

- NONE LISTED -

Tentative Ruling:

This claim arises out of a family law dissolution matter brought by Mark Shoemaker (LASC ND055378), which resulted in a judgment for Ms. Shoemaker on August 11, 2008. An abstract of judgment was issued on Sept. 23, 2009 and a writ of execution for support arrearages was issued on Oct.1, 2009. This judgment was for $43,000 in lieu of spousal support.

Mr. Shoemaker asserts that the judgment has expired under CCP § 683.020 because more than 10 years has passed since its entry and it has never been renewed. The current bankruptcy was filed on May 25, 2010 and the automatic stay terminated either on June 25, 2010 or on October 15, 2010 (which the motion to extend the stay was denied). Even adding 30 days as provided in §108, the judgment expired in 2018.

In response, Ms. Shoemaker's attorney points out that CCP §683.020 does not apply to Family Law order and judgments made or entered pursuant to the Family Code. CCP §683.10. Also, California Family Law §291 provides that a Family Law judgment is enforceable until paid in full or otherwise satisfied and that it need not be renewed

Cal. Fam. Code §291

(a) A money judgment or judgment for possession or sale of property that is made or entered under this code, including a judgment for child, family, or spousal support, is enforceable until paid in full or otherwise satisfied.

(b) A judgment described in this section is exempt from any requirement that a judgment be renewed. Failure to renew a judgment described in this section has no effect on the enforceability of the judgment.

OVERRULE THE OBJECTION.

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

Tuesday, May 4, 2021 **Hearing Room 303**

10:00 AM

CONT... Mark Alan Shoemaker **Chapter 7**

Party Information

Debtor(s):

Mark Alan Shoemaker — Represented By William H Brownstein

Trustee(s):

Alfred H Siegel (TR) — Represented By Jessica L Bagdanov

10:00 AM
1:14-15182 Mark Alan Shoemaker **Chapter 7**

#8.00 Motion RE: Objection to Claim Number 10
by Claimant Thompson Attorney Service.

Docket 306

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Has this been served to the correct address in that the mailing envelope was not returned to Mr. Shoemaker?

The claim is for $17,101.50. Shoemaker says that this was a credit card obligation, but it looks like a breach of contract to pay an attorney service. The claim shows $10,300 to Shoemaker and apparently credits $5,000 for "advanced fee deducted," for the May 31, 2010 statement shows a balance of $17,101.50. Shoemaker asserts that the last payment was Sept. 12, 2007, but no documentation supports this.

On February 18, 2010, Shoemaker filed a petition under chapter 13 (1:10-bk-15744), which was dismissed on March 15, 2010. The current chapter 7 case was filed on May 25, 2010. Shoemaker filed a motion to extend the automatic stay on May 26, 2010 and set it for hearing on June 23, 2010 (dkt. 3). Apparently there was some problem with that hearing date and on June 24, 2010 he filed an application to shorten time for a hearing on that motion (dkt. 9). The application to shorten time was denied on July 6, 2010 (dkt. 11) and the hearing was set for August 4, 2010. The court entered its order denying the motion to impose the stay on November 17, 2010 (dkt. 32).

11 USC §362(c)(3) applies when a second bankruptcy case is filed by an individual within a one year period of a prior case that was dismissed. Under these circumstances, the automatic stay terminates 30 days after the filing of the current chapter 7 petition unless the stay is extended by the court. The motion to extend requires notice and a hearing that is completed within the 30 day period after the subsequent case is filed. In this case the hearing was not completed within the 30 day period and, even if it had been,

10:00 AM

CONT... Mark Alan Shoemaker **Chapter 7**

the motion to extend the stay was denied. Thus, the automatic stay in the current case terminated by force of law on June 24, 2010, even though the order denying the motion to extend was not entered until November 17, 2010. The record clearly shows that there was no hearing within the 30 days – in fact the application to shorten time was filed the day before the last day of the stay and no hearing was held on that day. Thus the stay terminated as a matter of law on June 24, 2010. And unlike the issue of giving notice to creditors of the denial of discharge, no notice was required concerning the termination of the automatic stay because this occurred as a matter of law when no timely extension was granted.

Using the May 31, 2010 date as the operative one, the four year statute of limitations would have ended in 2014. No collection action was filed by that time. SUSTAIN THE OBJECTION.

Party Information

Debtor(s):

Mark Alan Shoemaker — Represented By William H Brownstein

Trustee(s):

Alfred H Siegel (TR) — Represented By Jessica L Bagdanov

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

Tuesday, May 4, 2021 **Hearing Room 303**

10:00 AM

1:14-15182 Mark Alan Shoemaker **Chapter 7**

#9.00 Motion RE: Objection to Claim Number 11-1
by Claimant Yolanda Ortega.

fr. 3/16/21

Docket 271

Matter Notes:

- NONE LISTED -

Tentative Ruling:

An amended objection has been filed and so the tentative ruling on this objection and that one are both set forth in cal. #10.

Party Information

Debtor(s):

Mark Alan Shoemaker	Represented By William H Brownstein

Trustee(s):

Alfred H Siegel (TR)	Represented By Jessica L Bagdanov

10:00 AM
1:14-15182 Mark Alan Shoemaker **Chapter 7**

#10.00 Amended Motion objection to claim no. 11-1 from Yolanda Ortega (related document(s): 271 Motion RE: Objection to Claim Number 11 by Claimant Yolanda Ortega. filed by Debtor Mark Alan Shoemaker)

Docket 298

Matter Notes:

- NONE LISTED -

Tentative Ruling:

This is an amended objection to the claim of Yolanda Ortega. This tentative ruling incorporates the one for the initial objection. THE INITIAL TENTATIVE RULING WAS PREPARED ON 3/14. ON 3/15 MR SHOEMAKER FILED A SUPPLEMENTAL DECLARATION THAT THE MOTION SENT TO MS. ORTEGA WAS RETURNED TO HIM. WAS IT SENT FIRST CLASS (AS NOTED BELOW) AS WELL AS CERTIFIED? HAS PROPER SERVICE BEEN COMPLETED? WAS THE ENVELOPE RETURNED TO HIM?

Initial Tentative Ruling on Objection to Claim #11 (dkt. 271)

On January 22, 2010, Ms. Ortega obtained a judgment against both Advocate for Fair Lending, LLC. and Shoemaker in LASC LB 09593308 for $3,000 and costs of $110. On May 28, 2010 Ms. Ortega conducted (or obtained an order for) a judgment debtor examination of Mr. Shoemaker. No other enforcement effort is reflected on the state court docket.

Mr. Shoemaker objects on several grounds, including that Ms. Ortega did not attempt to collect from Advocate. As to that theory, there is no requirement that she pursue any remedy against Advocate for Fair Lending, LLC., including filing a proof of claim in that no-asset bankruptcy case (2:10-bk-32494-PC). Further, he asserts that the claim "only applies to the Advocate bankruptcy." This is a false statement since the judgment in state court is against both Advocate and Shoemaker. Shoemaker is attempting to

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CONT... Mark Alan Shoemaker **Chapter 7**

reargue the grounds of the state court judgment and that is prohibited.

As to the statute of limitations on enforcement of a judgment, Shoemaker is legally correct. A summary of California law is as follows:

Cal. Code of Civ. Proc. §683.020 states that a money judgment may not be enforced after the expiration of 10 years after the date of entry. The issue here is that there was a stay of enforcement due to the automatic stay, which ran from the date of filing of the Shoemaker bankruptcy (May 25, 2010) until the date that his discharge was denied (January 14, 2018). And although there was no stay, that denial of discharge unquestionably became final no later than the dismissal of his appeal (December 5, 2019). 11 USC §362(c)(2)(C).

California law allows a judgment creditor to extend the enforcement date of a judgment by renewing it within the 10 year effective time and this can be done even though a stay of enforcement is in effect. Cal. Code Civ. Proc. §683.210. "Renewal during a stay of enforcement does not affect the stay, but merely prevents the termination of the period of enforceability." [16 Cal.L.Rev.Comm. Reports 1219 (1982)]

There is a conflict in the interpretation of how the automatic stay affects the act of filing a renewal of a California judgment. The one thing that is clear is that the running of the 10 year period is not stayed by the automatic stay. Rather, if the 10 years expires during the existence of the automatic stay, there is a 30 day extension after notice of the termination of the stay or its expiration under 11 USC §362. 11 USC §108(c). In this case, although the operative date of the denial of discharge occurred on either the date of judgment in the adversary case (January 14, 2018) or the dismissal of the appeal (December 5, 2019), the court did not send out notice until March 2, 2021 (dkt. 270) and there is nothing on the docket showing that notice of the denial of discharge was given to Ms. Ortega or any other claimant prior to that date. Even the original objections to the Ortega claims, which were filed on July 10, 2019, do not mention the denial of discharge. (dkt. 214, 216)

Thus the first notice to Ms. Ortega of the denial of discharge, which would start the clock running on her ability to renew the judgment due to the termination of the automatic stay, occurred with the filing and mailing of the current objections to her claims or the notice by the court. The objections were served by mail on her on February 18, 2021 at 1510 Carnation Way, Upland, CA 91786, which is the address on her proof of claim. The notice by the court used that same address. Assuming that this is a valid current

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CONT... Mark Alan Shoemaker **Chapter 7**

address for Ms. Ortega, her judgment remains enforceable until April 1, 2021, although it is possible that there might be an additional 3 days due to the mailing of the motion which gave notice (11 USC §9006(f)). Either way, unless Mr. Shoemaker can show that notice was received prior to his mailing of this objection to claim, the time has not yet expired to renew the judgment, though it will do so in a few days. Therefor this motion must be continued.

In summary, the enforceability of the state court judgment would have terminated on January 22, 2020, but for the 30 day extension allowed by 11 USC §108. It appears that Ms. Ortega had no notice of the denial of discharge (and therefore the termination of the automatic stay) until served with this objection to her claim, which occurred on February 18, 2021 or perhaps the notice from the court served on March 2, 2021. If there is evidence that the objection was mailed to the correct address and therefore she is deemed to have received it, the judgment is still enforceable until March 20, 2021.

The proof of service on the objection states that service was made by first class mail, but Mr. Shoemaker's declaration states that he sent it by certified mail (dt. 282). This may make a difference on whether she received it since some people do not pick up items sent by certified mail. The court is attempting to monitor returned unopened mail addressed to the creditors in this case, but cannot be certain that it will be successful. However, this is the best that we can do. So, unless the envelope mailed by the court is returned, I will assume that the address is correct and that Ms. Ortega received notice of the discharge no later than March 5, 2021 (allowing 3 days for mailing). If Mr. Shoemaker did not send the objection by first class mail, he is to do so with the new hearing date, which will be May 4, 2021 at 10:00 a.m. The hearing will be by Zoom.

Tentative Ruling on Amended Objection to the claim of Yolanda Ortega (dkt. 298)

Mr. Shoemaker now raises the issue of the timing of the termination of the automatic stay due to his prior chapter 13 case. On February 18, 2010, Shoemaker filed a petition under chapter 13 (1:10-bk-15744), which was dismissed on March 15, 2010. The current chapter 7 case was filed on May 25, 2010. Shoemaker filed a motion to extend the automatic stay on May 26, 2010 and set it for hearing on June 23, 2010 (dkt. 3). Apparently there was some problem with that hearing date and on June 24, 2010 he filed an

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CONT... Mark Alan Shoemaker **Chapter 7**

application to shorten time for a hearing on that motion (dkt. 9). The application to shorten time was denied on July 6, 2010 (dkt. 11) and the hearing was set for August 4, 2010. The court entered its order denying the motion to impose the stay on November 17, 2010 (dkt. 32).

11 USC §362(c)(3) applies when a second bankruptcy case is filed by an individual within a one year period of a prior case that was dismissed. Under these circumstances, the automatic stay terminates 30 days after the filing of the current chapter 7 petition unless the stay is extended by the court. The motion to extend requires notice and a hearing that is completed within the 30 day period after the subsequent case is filed. In this case the hearing was not completed within the 30 day period and, even if it had been, the motion to extend the stay was denied. Thus, the automatic stay in the current case terminated by force of law on June 24, 2010, even though the order denying the motion to extend was not entered until November 17, 2010. The record clearly shows that there was no hearing within the 30 days – in fact the application to shorten time was filed the day before the last day of the stay and no hearing was held on that day. Thus the stay terminated as a matter of law on June 24, 2010. Without dealing with the issue of whether the court should count the days when there was no stay before June 24, 2010, even if we add the 30 days under §108, more than 10 years has passed since July 24, 2010. And unlike the issue of giving notice to creditors of the denial of discharge, no notice was required concerning the termination of the automatic stay because this occurred as a matter of law when no timely extension was granted. The judgment was not renewed in that period of time and is no longer subject to collection. SUSTAIN THE OBJECTION.

Party Information

Debtor(s):

Mark Alan Shoemaker — Represented By
William H Brownstein

Trustee(s):

Alfred H Siegel (TR) — Represented By
Jessica L Bagdanov

10:00 AM
1:14-15182 Mark Alan Shoemaker **Chapter 7**

#11.00 Motion RE: Objection to Claim Number 13
by Claimant Yolanda Ortega.

Docket 308

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Off calendar. This is a duplicate claim to claim #11. The prior objection was sustained and the order was entered on March 31, 2021 as docket #288.

Party Information

Debtor(s):

Mark Alan Shoemaker	Represented By William H Brownstein

Trustee(s):

Alfred H Siegel (TR)	Represented By Jessica L Bagdanov

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

Tuesday, May 4, 2021 **Hearing Room 303**

10:00 AM

1:14-15182 Mark Alan Shoemaker **Chapter 7**

#12.00 Motion RE: Objection to Claim Number 14 by Claimant Lillie Burton.

fr. 3/16/21

Docket 275

Matter Notes:

- NONE LISTED -

Tentative Ruling:

There is an amended objection to the claim of Lillie Burton. See cal. #13 for the tentative ruling on the original objection, which was not overruled, but merely continued to this date.

Party Information

Debtor(s):

Mark Alan Shoemaker — Represented By William H Brownstein

Trustee(s):

Alfred H Siegel (TR) — Represented By Jessica L Bagdanov

10:00 AM
1:14-15182 Mark Alan Shoemaker **Chapter 7**

#13.00 Amended Motion objection to claim no. 14-1 Lillie Burton c/o Elizabeth Quinn (related document(s): 275 Motion RE: Objection to Claim Number 14 by Claimant Lillie Burton. filed by Debtor Mark Alan Shoemaker)

Docket 300

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Initial Tentative Ruling on objection to claim #14 (dkt. 275)

On October 28, 2010, Ms. Burton obtained a judgment in the superior court against Mr. Shoemaker for $13,097.37 to which were added costs of $70 and accrued interest of $1,626.27 through January 17, 2012 when an abstract of judgment was recorded. No other enforcement action was taken. (LASC NC052415) This judgment was solely against Mr. Shoemaker, who originally filed the complaint in his own name in what might have been a collection action against Ms. Burton. A copy of the judgment is attached to the declaration of Elizabeth Quinn (dkt. 281) and although it does not state the reason for the arbitration award, it seems that this may be for attorney fees in defending against Mr. Shoemaker's complaint. But this is not relevant.

The enforcement power of the judgment ended on October 28, 2020. Because of the bankruptcy, this is extended for 30 days after Ms. Burton receives notice that Mr. Shoemaker's discharge was denied. The law as to the extension to renew a judgment due to a bankruptcy stay is set forth below.

The first critical question here is that the state court judgment was granted about 5 months after this bankruptcy case was filed and there is no evidence that Ms. Burton was granted relief from the automatic stay. Although

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CONT... Mark Alan Shoemaker **Chapter 7**

Shoemaker raised this as the basis for his original objection to the Burton claim (dkt. 200), his current objection is solely on the basis that the claim is barred because she failed to renew her judgment after 10 years. Nonetheless, the validity of the judgment is important and needs to be dealt this.

It is not surprising that there was no notice of the bankruptcy in the state court action or that Shoemaker did not attempt to stop it due to the bankruptcy. Because Shoemaker was the plaintiff in the state court action, there was no requirement that it be stayed. Assuming that Burton's judgment was merely the result of Shoemaker losing his case against her (and there does not appear to have been a cross-complaint), there was no need for her to seek relief from the automatic stay, even if she had known about the bankruptcy. There is no notice of the bankruptcy on the state court docket. The lawsuit was not listed as an asset of Shoemaker's estate (schedule B) or as litigation pending (statement of affairs). Ms. Burton is not on the original mailing matrix. Given these circumstances, the automatic stay did not void this judgment. However, it is possible that the Court is incorrect on the facts or the law and Mr. Shoemaker can amend his objection to deal with this.

Cal. Code of Civ. Proc. §683.020 states that a money judgment may not be enforced after the expiration of 10 years after the date of entry. The issue here is that there was a stay of enforcement due to the automatic stay, which ran from the date of filing of the Shoemaker bankruptcy (May 25, 2010) until the date that his discharge was denied (January 14, 2018). And although there was no stay, that denial of discharge unquestionably became final no later than the dismissal of his appeal (December 5, 2019). 11 USC §362(c)(2)(C).

California law allows a judgment creditor to extend the enforcement date of a judgment by renewing it within the 10 year effective time and this can be done even though a stay of enforcement is in effect. Cal. Code Civ. Proc. §683.210. "Renewal during a stay of enforcement does not affect the stay, but merely prevents the termination of the period of enforceability." [16 Cal.L.Rev.Comm. Reports 1219 (1982)] Ms. Quinn, original counsel for Ms. Burton, argues that the 10 year period can be further extended per CCP 683.040. This is incorrect as to the facts of this case.

There is a conflict in the interpretation of how the automatic stay affects the act of filing a renewal of a California judgment. The one thing that is clear is that the running of the 10 year period is not stayed by the automatic

10:00 AM

CONT... Mark Alan Shoemaker **Chapter 7**

stay. Rather, if the 10 years expires during the existence of the automatic stay, there is a 30 day extension after notice of the termination of the stay or its expiration under 11 USC §362. 11 USC §108(c).

There is no question that – as of March 1, 2021 (the date of Ms. Quinn's declaration) that Ms. Burton had not had notice of the denial of discharge or of this objection to her claim. The only address known to Mr. Shoemaker or the court is that of Ms. Quinn, as this is the address on the proof of claim. Ms. Quinn asks for a 120 day extension to respond so that she has time to locate Ms. Burton and then give Ms. Burton time to find legal counsel, if she so wishes. Obviously a continuance is needed to locate and give notice to Ms. Burton.

I will continue this hearing to May 4, 2021 at 10:00 a.m. Ms. Quinn is to make her best efforts to locate a proper mailing address for Ms. Burton and is to have her file a change of address with the court. Ms. Quinn is also to provide Mr. Shoemaker and the court with the current mailing address for Ms. Burton and to send Ms. Burton copies of the notice of discharge and of the objection to claim and of any other documents served by Mr. Shoemaker or the court on Ms. Burton. Ms. Quinn need not respond to anything on behalf of Ms. Burton unless Ms. Burton authorizes her to do so. Unless Ms. Burton has filed a change of address, by April 20, Ms. Quinn is to file a response as to her attempts to locate Ms. Burton.

Objections to the Declaration of Elizabeth Quinn are overruled; however, she is incorrect as to the effect of CCP 683.040. In this case there is no possible reason that the issuance of a writ was barred until the CCP. The bankruptcy is not a reason. There is no evidence that Ms. Burton or her attorney ever tried to enforce the judgment other than filing a proof of claim.

Tentative Ruling on Amended Objection to claim #14 (dkt. 300)

Has Ms. Burton located Ms. Quinn and has Ms. Quinn been given notice?

On February 18, 2010, Shoemaker filed a petition under chapter 13 (1:10-bk-15744), which was dismissed on March 15, 2010. The current chapter 7 case was filed on May 25, 2010. Shoemaker filed a motion to extend the automatic stay on May 26, 2010 and set it for hearing on June 23,

10:00 AM

CONT... Mark Alan Shoemaker **Chapter 7**

2010 (dkt. 3). Apparently there was some problem with that hearing date and on June 24, 2010 he filed an application to shorten time for a hearing on that motion (dkt. 9). The application to shorten time was denied on July 6, 2010 (dkt. 11) and the hearing was set for August 4, 2010. The court entered its order denying the motion to impose the stay on November 17, 2010 (dkt. 32).

11 USC §362(c)(3) applies when a second bankruptcy case is filed by an individual within a one year period of a prior case that was dismissed. Under these circumstances, the automatic stay terminates 30 days after the filing of the current chapter 7 petition unless the stay is extended by the court. The motion to extend requires notice and a hearing that is completed within the 30 day period after the subsequent case is filed. In this case the hearing was not completed within the 30 day period and, even if it had been, the motion to extend the stay was denied. Thus, the automatic stay in the current case terminated by force of law on June 24, 2010, even though the order denying the motion to extend was not entered until November 17, 2010. The record clearly shows that there was no hearing within the 30 days – in fact the application to shorten time was filed the day before the last day of the stay and no hearing was held on that day. Thus the stay terminated as a matter of law on June 24, 2010, so there was no stay in effect when Ms. Burton obtained her judgment on October 28, 2010. And unlike the issue of giving notice to creditors of the denial of discharge, no notice was required concerning the termination of the automatic stay because this occurred as a matter of law when no timely extension was granted. The judgment was not renewed prior to October 29, 2010 and is no longer subject to collection. SUSTAIN THE OBJECTION.

Party Information

Debtor(s):

Mark Alan Shoemaker — Represented By
William H Brownstein

Trustee(s):

Alfred H Siegel (TR) — Represented By
Jessica L Bagdanov

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

Tuesday, May 25, 2021 **Hearing Room 303**

10:00 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/1612223336
Meeting ID: 161 222 3336
Password: 292046

Telephone Conference Lines: 1 (669) 254-5252 or 1 (646) 828-766
Meeting ID: 161 222 3336
Password: 292046

Docket 0

Matter Notes:

- NONE LISTED -

Tentative Ruling:

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

Tuesday, May 25, 2021 **Hearing Room 303**

10:00 AM

CONT... **Chapter**

- NONE LISTED -

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

Tuesday, May 25, 2021 **Hearing Room 302**

10:00 AM
1:13-10386 Shirley Foose McClure **Chapter 11**

#1.00 Application of John P. Reitman, Chapter 11 Trustee, for Order Authorizing Employment of Coldwell Banker (William Friedman and Greg Bingham) as Broker and Agents in Connection with the Listing and Sale of 3401 Gregory Avenue, Fullerton, California

Docket 1798

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Continued without appearance to July 13, 2021 at 10:00 a.m.

Party Information

Debtor(s):

Shirley Foose McClure

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

Trustee(s):

John P. Reitman

Represented By
John P. Reitman
Jon L. Dalberg

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

Tuesday, May 25, 2021 **Hearing Room 303**

10:00 AM
1:13-10386 Shirley Foose McClure **Chapter 11**

#2.00 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, 4/20/21(vacated - moved to 2/23/21), 2/23/21; 5/4/21

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Continued without appearance to July 13, 2021 at 10:00 a.m. Mr. Reitman, if you are going to object to the Amended Schedule C filed on 5/13, please file that no later than June 22 so that it can be heard with all the other matters on July 13.

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

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

Tuesday, May 25, 2021 **Hearing Room 303**

10:00 AM
CONT... Shirley Foose McClure **Chapter 11**

Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

10:00 AM
1:16-12255 Solyman Yashouafar **Chapter 7**
Adv#: 1:16-01166 Barlava et al v. Yashouafar

#3.00 Order to appear at the upcoming Status Conference

Docket 0

Matter Notes:

- NONE LISTED -

Tentative Ruling:

A status report was filed by Plaintiffs on 5/6/21, so this OSC is withdrawn. The Court will do an order.

Party Information

Debtor(s):

Solyman Yashouafar	Represented By Mark E Goodfriend

Defendant(s):

Massoud Aaron Yashouafar	Pro Se

Plaintiff(s):

Simon Barlava	Represented By Andrew V Jablon
Morris Barlava	Represented By Andrew V Jablon
Nasser Barlava	Represented By Andrew V Jablon
Kefayat Barlava	Represented By Andrew V Jablon
Figueroa Tower II, LP	Represented By Andrew V Jablon
First National Buildings II, LLC	Represented By

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

Tuesday, May 25, 2021 **Hearing Room 302**

10:00 AM

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

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
Gail S Greenwood

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

Tuesday, May 25, 2021 **Hearing Room 303**

10:00 AM
1:16-12255 Solyman Yashouafar **Chapter 11**
Adv#: 1:16-01166 Barlava et al v. Yashouafar

#4.00 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, 12/22/20; 4/20/21

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Per the status report filed by Plaintiffs on 5/6/21, they are still waiting on rhe Trustee to determine whether he will object to their claims. The Court is aware that at this point in time the Trustee and his professionals have filed their applications for compensation and these have been heard and orders entered. The Trustee has also obtained an order to destroy the records. Thus it appears that the Trustee is concluding this bankruptcy case and no objections to claims will be filed. The Trustee's first interim application for fees (filed on 12/1/20) states that there is $2,277.932.34 in funds for the Massoud Yashouafar Estate and $99.86 in funds for the Solyman Yashouafar Estate. He also states that all that is left to do is to prepare the estate returns, prepare his final report, and make a final distribution to creditors. [dkt. 795]

Unless the Trustee intends to appear or file something for the May 25, 2021 hearing, I will continue this to June 29, 2021 at 10:00 a.m. so that Mr. Baum can give notice to the Trustee to file a statement as to his plans concerning an objection to the Barlava group claim(s).

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.

10:00 AM
CONT... Solyman Yashouafar **Chapter 11**

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).

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

10:00 AM

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

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 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?

10:00 AM

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

prior tentative ruling (5/30/17)
Per the joint status report filed 5/11/17, set a discovery cutoff date of 9/11/17. The parties agree to do their initial disclosures by 6/5/17. There may be some objections to discovery.

Continue without appearance to 10/3/17 at 10:00 a.m.

prior tentative ruling (3/28/17)
The parties stipulated that Massoud has until 2/17/17 to respond to the complaint. On 2/17, Massoud filed his answer. No status report has been filed as of 3/26.

Party Information

Debtor(s):

Solyman Yashouafar	Represented By Mark E Goodfriend
Massoud Aaron Yashouafar	Represented By C John M Melissinos Mark M Sharf

Defendant(s):

Massoud Aaron Yashouafar	Pro Se

Plaintiff(s):

Simon Barlava	Represented By Andrew V Jablon
Morris Barlava	Represented By Andrew V Jablon
Nasser Barlava	Represented By Andrew V Jablon
Carla Ridge, LLC	Represented By Andrew V Jablon
First National Buildings II, LLC	Represented By Andrew V Jablon

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

Tuesday, May 25, 2021 **Hearing Room 303**

10:00 AM

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

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

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

Tuesday, June 8, 2021 **Hearing Room 303**

10:00 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/1604510084
Meeting ID: 160 451 0084
Password: 821069

Telephone Conference Lines: 1 (669) 254-5252 or 1 (646) 828-766
Meeting ID: 160 451 0084
Password: 821069

Docket 0
***** VACATED *****

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

Tuesday, June 8, 2021 **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, 12/22/20, 2/2/21, 2/23/21

Docket 1

***** VACATED *** REASON: matter cont. to 8/24/21 @11am, per Judge's requested, order to follow.**

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, June 29, 2021 **Hearing Room 303**

10:00 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.

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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/1618753076
Meeting ID: 161 875 3076
Password: 381471

Telephone Conference Lines: 1 (669) 254-5252 or 1 (646) 828-766
Meeting ID: 161 875 3076
Password: 381471

Docket 0

Tentative Ruling:

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

Tuesday, June 29, 2021 **Hearing Room 303**

10:00 AM

CONT... **Chapter**

- NONE LISTED -

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

Tuesday, June 29, 2021 **Hearing Room 303**

10:00 AM

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

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

#1.00 Order to Show Cause Why The Court Should Not Dismiss The Fraudulent Transfer Claim and Proceed to Close This Adversary Proceeding.

Docket 0

Tentative Ruling:

No opposition has been received as of 6/26/21. Unless the Court is notified of an opposition prior to the hearing, the fraudulent transfer cause of action will be dismissed and this adversary procceding will be closed. The Court will prepare the order.

Party Information

Debtor(s):

Glen E Pyle	Pro Se

Defendant(s):

Glen Pyle	Pro Se

Plaintiff(s):

Ian Campbell	Represented By Benjamin Nachimson

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 29, 2021 **Hearing Room 303**

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

#2.00 Motion by Former Plaintiff to Enforce Stipulation and Order of 10-4-2017 for Disbursal of Gross Proceeds, and for an Award of Attorneys Fees and Costs
Filed by Creditor Marc H Berry

fr. 8/25/20, 11/17/20; 12/8/20; 1/12/21, 2/23/21, 3/16/21

Docket 196

Tentative Ruling:

Off calendar. A memorandum of opinion and order were entered on 4/6/21. No appeal has been taken.

Party Information

Debtor(s):

Glen E Pyle	Pro Se

Movant(s):

Marc H Berry	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 29, 2021 **Hearing Room 303**

10:00 AM
1:13-10386 Shirley Foose McClure **Chapter 11**
Adv#: 1:21-01021 Reitman v. McClure

#3.00 Motion for Summary Judgment Against Defendant Jason McClure

Docket 4
***** VACATED *** REASON: Ntc. of w/drawal filed 6/2/21 (eg)**

Tentative Ruling:

Continued without appearance to July 13, 2021 at 10:00 a.m.

Party Information

Debtor(s):

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

Defendant(s):

Jason McClure	Pro Se

Plaintiff(s):

John P. Reitman	Represented By Jon L. Dalberg

Trustee(s):

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

10:00 AM
1:14-15182 Mark Alan Shoemaker **Chapter 7**

#4.00 Motion RE: Objection to Claim Number 7 by Claimant George Castro c/o Andrew H. Griffin.

fr. 5/4/21

Docket 304

Tentative Ruling:

This was continued to June 29, 2021 at 10:00 a.m. so that Mr. Shoemaker can give notice to Mr. Kipperman and to the Office of the United States Trustee for the Southern District of California. As of 6/22. there is a proof of service that on May 28 Mr. Shoemaker mailed a copy of the tentative ruling and notice to Richard Kipperman and to Tiffany L. Carroll (Acting U.S. Trustee). No opposition has been received as of 6/27. Unless there is an opposition by the 6/29 hearing, the Court will sustain the objection because the proof of claim provides no documentation to meet the test of a prima facie claim. The Court will prepare the order.

prior tentative ruling (5/4/21)

The claim is for $330,000. The payments to Shoemaker's law office was $1,000 and there were three payments to Advocate For Fair Lending totaling $9,162.66. Mr. Castro filed bankruptcy in the Southern District of CA and failed to list this claim (09-17551). The Trustee in that case did not abandon the claims. But Mr. Castro filed this proof of claim over three years after he received his discharge. This claim is for sanctions. Because the claim was not listed in the schedules, it was not abandoned on the closing of the case. Thus Mr. Castro has no standing to pursue this claim, since it still belongs to the Trustee in his case. Castro acted in such a way as to deny his discharge under §727(a)(4) since this is a false oath in his bankruptcy case.

Service was made on George Castro % Andrew H. Griffin, who was Castro's attorney in his bankruptcy case as well as on filing the proof of claim. A review of the CA(S) docket shows that Castro's bankruptcy case was still

10:00 AM

CONT... Mark Alan Shoemaker **Chapter 7**

open and active until April 2010 at which point it was closed as a no-asset case.

There is no documentation attached to the claim to support the $330,000 figure. Notice of this objection to claim was served on Mr. Griffin at his address on both the proof of claim and as registered at the State Bar of CA. But no notice was given to the Trustee in the bankruptcy case (Richard Kipperman). The CA(S) dockets do not show him on any cases filed after 2018. Therefore notice must be given to him and also to the United States Trustee for the Southern District of California.

Continue this to June 29, 2021 at 10:00 a.m. so that Mr. Shoemaker can give notice to Mr. Kipperman and to the Office of the United States Trustee for the Southern District of California.

Party Information

Debtor(s):

Mark Alan Shoemaker — Represented By William H Brownstein

Trustee(s):

Alfred H Siegel (TR) — Represented By Jessica L Bagdanov

10:00 AM
1:14-15182 Mark Alan Shoemaker **Chapter 7**

#5.00 Amended Motion objection to claim no. 11-1 from Yolanda Ortega (related document(s): 271 Motion RE: Objection to Claim Number 11 by Claimant Yolanda Ortega. filed by Debtor Mark Alan Shoemaker)

fr. 5/4/21

Docket 298
***** VACATED *** REASON: Order sustaining obj, entered 5/26/21**

Tentative Ruling:

Off calendar. The matter had been continued for service, but I decided that service would be difficult or impossible and that service by publication would be ineffective and that there are no apparent defenses, the objection was sustained and an order has been entered.

Party Information

Debtor(s):

Mark Alan Shoemaker — Represented By William H Brownstein

Trustee(s):

Alfred H Siegel (TR) — Represented By Jessica L Bagdanov

10:00 AM
1:14-15182 Mark Alan Shoemaker **Chapter 7**

#5.01 Motion/Amended RE: Objection to Claim Number 1 by Claimant Franchise Tax Board.

Docket 348

Tentative Ruling:

Mr. Shoemaker was instructed by email to serve a copy of the objection on the address in the proof of claim. He has filed an amended notice of objection, which appears to be served on the correct address. No response has been received. However, the Court must review the claim on its face.

The proof of claim states that Mr. Shoemaker filed his tax return each year, but did not pay the taxes due. He states that he did not receive any notice of deficiency from the FTB within four years after filing his returns for the periods from 12/31/05 through 12/31/09. This case was originally filed in 2010. The proof of claim states that no unsecured general taxes were due for 2005-2009 and only shows interest and penalties in this category, apparently for failure to pay taxes for the prior years. However, it does show priority unsecured taxes for those due 12/31/05-12/31/09.

Mr. Shoemaker asserts that no notice of deficiency was given within 4 years after the year for which the return was filed and therefore no collection can be made on these 5 years of unpaid taxes. Cal. Rev. & Tax. Code §19057(a) states:

(a) Except in the case of a false or fraudulent return and except as otherwise expressly provided in this part, every notice of a proposed deficiency assessment shall be mailed to the taxpayer within four years after the return was filed. No deficiency shall be assessed or collected with respect to the year for which the return was filed unless the notice is mailed within the four-year period or the period otherwise provided. For purposes of this chapter, the term “return” means the return required to be filed by the taxpayer and does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit.

10:00 AM

CONT... Mark Alan Shoemaker **Chapter 7**

However, the Court must also look to §19057(b), which states:
(b) The running of the period of limitations provided in subdivision (a) on mailing a notice of proposed deficiency assessment shall, in a case under Title 11 of the United States Code, be suspended for any period during which the Franchise Tax Board is prohibited by reason of that case from mailing the notice of proposed deficiency assessment and for 60 days thereafter.

Because Judge Donovan did not extend the automatic stay,it terminated 30 days after the case was filed, which was on June 24, 2010. Even if it could be shown that the stay should have continued until the motion was ruled on (which really is not the law), the latest would have been November 17, 2010. 11 USC §362(c)(3).

Cal. Rev. & Tax. Code §19034 describes what is necessary in a deficiency notice:
(a) Each notice shall set forth the reasons for the proposed deficiency assessment and the computation thereof.
(b) Each notice shall include the date determined by the Franchise Tax Board as the last day on which the taxpayer may file a written protest pursuant to Section 19041. Failure to include this date shall not invalidate a notice that is otherwise valid.

Therefore the proof of claim is deemed to fulfill the role of a Notice of Deficiency, it was not filed until May 21, 2013. By that time, the only part of the tax claim that was still collectible was the amount for the return that was filed for the period ending 12/31/09.

Sustain the objection as to all amounts except the taxes due for the calendar year ending 12/31/09, which are listed on the claim as $211.93 unsecured priority and $12.66 unsecured general. If these m=amounts continued to accrue interest and penalties after 12/31/09, this Court will not make a determination of those amounts. Because there is no distribution from the estate, the only issue here is the viability of the proof of claim that was filed.

Party Information

Debtor(s):

Mark Alan Shoemaker Represented By

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

Tuesday, June 29, 2021 **Hearing Room 303**

10:00 AM

CONT... Mark Alan Shoemaker **Chapter 7**

William H Brownstein

Trustee(s):

Alfred H Siegel (TR) Represented By
Jessica L Bagdanov

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

Tuesday, June 29, 2021 **Hearing Room 303**

10:00 AM

1:15-14213 Michael Robert Goland **Chapter 7**

#6.00 Motion to Approve Compromise and for Authority for the Estate to Pay the Costs of Mediation.

Docket 426

Tentative Ruling:

Continue without appearance to July 13, 2021 at 10:00 am because Michael Sofris, attorney for plaintiff in the adversary proceeding, has filed a notice of unavailability for June 29.

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 29, 2021 **Hearing Room 303**

10:00 AM

1:15-14213 Michael Robert Goland **Chapter 7**

#7.00 Motion Under LBR 2016-2 for Approval of Cash Disbursements by the Trustee

Docket 428

Tentative Ruling:

Continue without appearance to July 13, 2021 at 10:00 am because Michael Sofris, attorney for plaintiff in the adversary proceeding, has filed a notice of unavailability for June 29.

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 29, 2021 **Hearing Room 303**

10:00 AM
1:15-14213 Michael Robert Goland **Chapter 7**
Adv#: 1:20-01063 Burk v. Zamora

#8.00 Status Conference Re: First Amended Complaint for

1) Declaratory Judgment
2) Breach of Fiduciary Duty - Seizure of Rent and Failure to Manage Asset Property
3) Breach of Fiduciary Duty - Failure to Manage Estate Assets Property for Benefit of Creditors

fr. 1/12/21, 2/23/21; 4/20/21

Docket 32

Tentative Ruling:

Continue without appearance to July 13, 2021 at 10:00 am because Michael Sofris, attorney for plaintiff in the adversary proceeding, has filed a notice of unavailability for June 29.

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, June 29, 2021 **Hearing Room 303**

10:00 AM

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

Jessica L Bagdanov
David Seror
Ezra Brutzkus Gubner

10:00 AM

1:15-14213 Michael Robert Goland **Chapter 7**

Adv#: 1:20-01115 Cohen v. Gerry Burk, an individual and as Trustee of the 57

#9.00 Status Conference re Complaint for (a) Declaratory Relief; (b) Breach of Fiduciary Dutiy-Seizure of Rent and Failure to Mange Asset Propety; and (c) Breach of Fiduciary Duity-Failure to Mange Estate Assets Properly for Benefit of Creditors;

fr. 2/2/2; 4/20/21

Docket 1

Tentative Ruling:

Continue without appearance to July 13, 2021 at 10:00 am because Michael Sofris, attorney for Burk in the adversary proceeding, has filed a notice of unavailability for June 29.

Prior tentative ruling (4/20/21)
On 4/14/21, the Gerry Burk defendants filed a unilateral status report. This is stayed as to the Traustee. Because the plaintiff is in proper, there is no one to reach out to for a Rule 26 meeting. As to moving this case forward, Mr. Burk and Triple Images are subject ot a criminal proceeding for fire code violations. It may be necessary to stay these proceedings until that is completed so as to deal with a 5th amendment claim by the Burk defendants in that proceeding. The Burk defendants anticipate a 1-2 day trial in this case and need until December to complete discovery. Gerry Burk and the Trustee resolved their adverary proceeding through a mediation in November 2021.

This case involves the issue of ownership of the property on Compton Ave.

While some discovery might be limited due to the criminal action, it seems that there is discovery from third parties that can go forward. How does Mr. Cohen intend to proceed? Will he be hiring an attorney?

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

Tuesday, June 29, 2021 **Hearing Room 303**

10:00 AM

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

Party Information

Debtor(s):

Michael Robert Goland	Represented By David S Hagen

Defendant(s):

Gerry Burk, an individual and as	Pro Se
Nancy Zamora, as Chapter 7 Trustee	Pro Se

Plaintiff(s):

David Cohen	Pro Se

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 29, 2021 **Hearing Room 303**

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, 9/15/20
11/17/20, 12/22/20; 4/20/21, 5/25/21

Docket 1

Tentative Ruling:

The Trustee is rehiring his counsel and beginning the work to resolve disputed claims and will be doing so with the Barlava parties. Continue without appearance to October 5, 2021 at 10:00 a.m. I will expect an updated report from the Trustee before that date.

Prior tentative ruling (5/25/21)
Per the status report filed by Plaintiffs on 5/6/21, they are still waiting on rhe Trustee to determine whether he will object to their claims. The Court is aware that at this point in time the Trustee and his professionals have filed their applications for compensation and these have been heard and orders entered. The Trustee has also obtained an order to destroy the records. Thus it appears that the Trustee is concluding this bankruptcy case and no objections to claims will be filed. The Trustee's first interim application for fees (filed on 12/1/20) states that there is $2,277.932.34 in funds for the Massoud Yashouafar Estate and $99.86 in funds for the Solyman Yashouafar Estate. He also states that all that is left to do is to prepare the estate returns, prepare his final report, and make a final distribution to creditors. [dkt. 795]

Unless the Trustee intends to appear or file something for the May 25, 2021 hearing, I will continue this to June 29, 2021 at 10:00 a.m. so that Mr. Baum can give notice to the Trustee to file a statement as to his plans concerning an objection to the Barlava group claim(s).

Prior tentative ruling (9/15/20)

10:00 AM

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

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).

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.

10:00 AM

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

prior tentative ruling (8/21/18)
A stipulation to stay the action was filed on 8/3/18. Basically, there is a question whether the Plaintiffs would be able to collect on their claims even if they win a non-dischargeable judgment. So rather than continue to battle over discovery, the parties agree to stay this adversary complaint until the Trustee decides whether to challenge the Plaintiffs' claims. As I understand it, to the extent that the Trustee does not object to a claim or a portion of a claim, the claim or part thereof, will be 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 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.

10:00 AM

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

prior tentative ruling (10/3/17)
Nothing further received as of 9/28/17. What is the status of discovery?

prior tentative ruling (5/30/17)
Per the joint status report filed 5/11/17, set a discovery cutoff date of 9/11/17. The parties agree to do their initial disclosures by 6/5/17. There may be some objections to discovery.

Continue without appearance to 10/3/17 at 10:00 a.m.

prior tentative ruling (3/28/17)
The parties stipulated that Massoud has until 2/17/17 to respond to the complaint. On 2/17, Massoud filed his answer. No status report has been filed as of 3/26.

Party Information

Debtor(s):

Solyman Yashouafar	Represented By Mark E Goodfriend
Massoud Aaron Yashouafar	Represented By C John M Melissinos Mark M Sharf

Defendant(s):

Massoud Aaron Yashouafar	Pro Se

Plaintiff(s):

Simon Barlava	Represented By Andrew V Jablon
Morris Barlava	Represented By Andrew V Jablon
Nasser Barlava	Represented By Andrew V Jablon
Carla Ridge, LLC	Represented By

10:00 AM
CONT... Solyman Yashouafar **Chapter 11**

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

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

Tuesday, July 13, 2021 **Hearing Room 303**

10:00 AM
1:00-00000 **Chapter**

#0.00 **he 10:00 am calendar will be conducted remotely, using ZoomGov video and audio.**

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Meeting ID: 161 349 7622
Password: 205185

Telephone Conference Lines: 1 (669) 254-5252 or 1 (646) 828-766
Meeting ID: 161 349 7622
Password: 205185

Docket 0

Matter Notes:

- NONE LISTED -

Tentative Ruling:

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

Tuesday, July 13, 2021 **Hearing Room 303**

10:00 AM

CONT... **Chapter**

- NONE LISTED -

10:00 AM
1:13-10386 Shirley Foose McClure **Chapter 11**

#1.00 Trustees Motion Objecting to Debtors Second Amended Schedule C Exemptions [Docket No. 1806]; Memorandum of Points and Authorities

Docket 1821

Matter Notes:

- NONE LISTED -

Tentative Ruling:

THE FOLLOWING TENTATIVE RULING WAS POSTED FOR 7/13, HOWEVER THE PARTIES HAVE STIPULATED TO A CONTINUANCE. THEREFORE THE HEARING ON THIS MATTER WILL TAKE PLACE ON AUGUST 24, 2021 AT 10:00 A.M.

Ms. McClure has previously sought to amend her exemption claims. In her initial filing, she did not claim a homestead exemption in her residence at 3401 Gregory Ave., Fullerton. She filed an amended schedule of exemptions in 8/1/2019, which also did not claim a homestead exemption in any real property. The Trustee objected to this First Amended Exemptions, which was sustained and later affirmed by the district court.

The Trustee is also seeking to hire a broker to list the Gregory Ave property and to sell it free and clear of Jason McClure's interest.

While the appeal from the prior exemption order was pending, Debtor requested a disbursement of $16,750 in exempt funds that she had claimed in her original schedule C, which the Trustee paid to her after an order of the Court was entered.

Now, for the first time, McClure claims an exemption as to Gregory. She is doing this to prevent the sale of Gregory as it would remove all equity that might benefit the estate. The exemption is claimed under CCP § 1704.730(a)(3) and California law applies. Under California law, the Debtor is prevented from claiming a homestead exemption at this late stage. By accepting payment of the Exempt Funds, she shows that she was relying on her original exemption claim. The Trustee has relied on the absence of an exemption claim as to Gregory in that he has paid property taxes and

10:00 AM

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

insurance premiums on that property. He also expended time and resources preparing and prosecuting the Application as to the Gregory MSJ, etc. Only then was it made clear that the Debtor suddenly decided to amend her exemption yet again.

Because the Debtor claimed an exemption based on state law, the exemption's scope and allowability is determined by state law and certain misconduct can warrant denial of the exemption under state law. *Law v. Siegel*, 571 U.S. 4125, 421 (2014).

In California, equitable estoppel may be used. There must be concealment or representation of material facts, made with the knowledge (actual or virtual) of the fact, to a party who is actually and permissibly ignorant of the truth, with the intention (actual or virtual) that the ignorant party will act on it, and that party was induced to act on it. *In re Aubrey*, 558 B.R. 333, 345 (Bankr. C.D. Cal. 2016) (quoting *Simmons v. Ghaderi*, 44 Cal. 4th 570, 584 (Cal. 2008).

Here the case is over 9 years old and the Trustee was appointed in 8/16. At no time did McClure indicate an intention of claim this exemption and she affirmatively relied on her original exemptions to be paid. She attempted to amend and then appealed it although she sought payment under her original exemptions, which the appeal called into question. The Trustee relied on the original exemptions to pay property taxes and insurance.

Opposition

The Debtor has resided at Gregory since May 2012. McClure and Jason acquired the property in March 2009 and made monthly payments. The title was 95% Shirley and 5% Jason. Jason then remodeled the residential portion. Shirley and Jason moved in in May 2012 and have resided there ever since. This case was filed in December 2012.

McClure understood from her prior attorney that the homestead exemption ws was automatic, so she did not specifically claim it. Throughout the case, the Gregory property has been excluded from valuation etc. because it was the Debtor's home and everyone acted as if it would be exempt. Litt never objected to this (the Trustee was not yet appointed). In fact, there has never been an objection to the understanding that the Debtor held a homestead in this property. The prior amendment was only as to the Litt and Tidus adversaries. The payout of exemption was for the wildcard

10:00 AM

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

exemption and Debtor has now returned that to the Trustee.

The Debtor filed her amended Schedule C on May 13, 2021 and the Trustee objected on June 22, 2021. This is outside the allowed period. The trigger to this amended objection was the motion of the Trustee to hire a broker to sell Gregory and for the first time McClure became aware that the Trustee would be taking the position that she is not entitled to her exemption.

Throughout the bankruptcy, Jason has maintained the property (about $300,000) and the only expense paid by the Trustee was insurance. Property taxes, maintenance and repair costs, and utility bills were all paid by McClure.

Debtor is 78 years old and would suffer tremendous burdens if she is denied her homestead exemption. Beyond the monetary loss, Debtor has End Stage Renal Disease and gets dialysis three to four times per week. Jason cares for her and transports her. Only the administrative creditors would benefit from this denying the exemption.

Reply

In its tentative ruling on May 24, the Court set June 22, 2021 as the last day to file an objection and that was the day this objection was filed. And the opposition was filed late because it should have been filed on June 29, which was 14 days before the hearing on July 13.

The Debtor is incorrect in that *Lau v. Miller* does not deal with the use of state law or state case law as a basis for disallowing a claimed homestead exemption. Later cases within the Ninth Circuit have recognized that the California law of estoppel may be used to bar and exemption sought under California law.

Lau dealt with a change of circumstances that justified the amendment. There is no change of circumstance here. An error in the advice given to McClure by her former attorney is not sufficient to prevent estoppel. The Trustee relied on the exemptions as claimed, including paying her the wildcard exempt funds. Only the Court questioned whether McClure had a homestead exemption, but deferred that issue and the effect that it might have on the Litt liens. The Trustee has not acknowledged that McClure had an exemption. Even in the Feb. 21, 2021 email, the Trustee did not acknowledge that McClure had a valid homestead exemption.

Although McClure sent back the wildcard money, the Trustee did not accept it and has not deposited the check.

10:00 AM

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

Analysis and Conclusion

The objection is timely. The relevant dates are as follows:

April 27, 2021 – The Trustee files an application to employ a real estate broker to sell Gregory. This is set for hearing on May 25.

May 11, 2021 – the McClures file a join opposition to the motion to employ a real estate broker to sell Gregory. In the opposition they assert that McClure has a $175,000 homestead exemption in that property and says that she will be amending her exemptions to claim the Section 704 exemptions and will return to the Trustee the previous amount received

May 13, 2021 – McClure files her amended Schedule C

May 18, 2021 – The Trustee files his reply to McClures' opposition to employ a broker. He requests a continuance so that he can meet with McClure's new attorney. He notes the filing of the amended Schedule C and resrves his right to object, noting that the "validity of the Amendment is not before the Court at this time, and the Trustee reserves his right to object to the Amendment, including on the ground that the Debtor's prior claimed exempotions were in the maximum amount allowable and have been paid b the Trustee."

May 25, 2021 – The Court continues without appearance to July 13 the Trustee's motion to employ a real estate broker to sell Gregory. There is also a status conference set for May 25, which the Court continues without appearance to July 13: "Continued without appearance to July 13, 2021 at 10:00 a.m. Mr. Reitman, if you are going to object to the Amended Schedule C filed on 5/13, please file that no later than June 22 so that it can be heard with all the other matters on July 13."

June 22, 2021 – the Trustee files his objection to the amended Schedule C.

FRBP Rule 4003 (b)(1) requires an objection to an amended claim of exemption be filed within 30 days after the amendment is filed. The court can only extend that time if, before the time to object expires, a party in interest filed a request for an extension. The Trustee filed such a request on May 18 and the Court granted that through June 22. So the objection was timely filed.

The issue here is estoppel. Under California law,

A valid claim for equitable estoppel requires: (a) a representation or

10:00 AM

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

concealment of material facts; (b) made with knowledge, actual or virtual, of the facts; (c) to a party ignorant, actually and permissibly, of the truth; (d) with the intention, actual or virtual, that the ignorant party act on it; and (e) that party was induced to act on it. (13 Witkin, Summary of Cal. Law (10th ed. 2005) Equity, § 191, pp. 527–528.) There can be no estoppel if one of these elements is missing. (Id. at p. 528.) *Simmons v. Ghaderi, supra.*

As to each requirement, the Court finds as follows:

(a) a representation or concealment of material facts – While it is possible that the failure of Ms. McClure to make her homestead claim in Schedule C, the history of this case shows that she asserted and the Court agreed that Gregory should be treated in a different fashion from other properties that she owned. To a large extent this was less about the $175,000 exempt amount than about the desire not to dispossess her unless it became absolutely necessary. But at no time did she conceal that this was her home and that she intended to keep it, if possible.

(b) made with knowledge, actual or virtual, of the facts – At one time and maybe even now, California has had two types of homestead exemption – the recorded homestead and the automatic homestead. It is not surprising that Ms. McClure's initial attorney gave her incorrect advise as to the effect of a bankruptcy on the automatic homestead. It appears that she did not have actual or virtual knowledge of the need to make the claim in Schedule C.

(c) to a party ignorant, actually and permissibly, of the truth – the Trustee knew that McClure was asserting that she is and was entitled to her exempt amount. This appears many times, particularly in calculations regarding the settlement with Litt. But as one example, on 6/19/18, (dkt. 1474) McClure stated in her calculation of surplus estate that she was claiming a homestead exemption in Gregory in the amount of $150,000. This assertion of exemption was well known to one and all.

(d) with the intention, actual or virtual, that the ignorant party act on it – McClure certainly did not intend the Trustee or anyone to market Gregory and then suddenly assert her rights. Her whole strategy was to keep Gregory

10:00 AM

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

from being sold.

(e) that party was induced to act on it – It is not improper for the Trustee to have brought this to a head by seeking to hire a broker, but that was a small inconvenience and could have been avoided by simply demanding that McClure file her amended claim by a certain date. Beyond that, if Gregory sells for enough money, McClure will be paid her homestead amount and the estate will get the difference.

Overrule the objection to the amended Schedule C. The Trustee is to deposit the check for the returned funds. Please clarify the amount of the homestead since earlier Ms. McClure stated $150,000 and now she states $175,000.

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 Rodger M. Landau

10:00 AM
1:13-10386 Shirley Foose McClure **Chapter 11**

#2.00 Application of John P. Reitman, Chapter 11 Trustee, for Order Authorizing Employment of Coldwell Banker (William Friedman and Greg Bingham) as Broker and Agents in Connection with the Listing and Sale of 3401 Gregory Avenue, Fullerton, California

fr. 5/25/21

Docket 1798

Matter Notes:

- NONE LISTED -

Tentative Ruling:

THE FOLLOWING TENTATIVE RULING WAS POSTED FOR 7/13, HOWEVER THE PARTIES HAVE STIPULATED TO A CONTINUANCE. THEREFORE THE HEARING ON THIS MATTER WILL TAKE PLACE ON AUGUST 24, 2021 AT 10:00 A.M.

It appears that the parties now agree that Jason McClure has a 50% interest in the property. There is an adversary action to allow the Trustee to sell the Gregory property free and clear of his interest (also to seek reimbursement of estate funds expended on the property). It appears that the actual amount paid by the estate was for insurance ($6,187.52) and that property taxes will have to be paid as part of the sale (ca. $27,000). There is a status conference on that adversary proceeding.

As to the listing, the Trustee's Reply estimated sale proceeds of $580.00 with a net equity of $512,400. He asserts that the estate would receive $273,000 and Jason would keep about $256,000. However, this does not take into consideration the homestead exemption of Shirley McClure. If it is $175,000 (and the Court is not sure of this amount), the estate would net about $100,000.

Although Ms. McClure contends that this would all go to administrative

10:00 AM

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

expenses and also that it would be a tremendous hardship for her to move due to her physical condition, I believe that I must allow the listing unless the McClures are able to "buy out" the estate's interest in the amount of about $100,000. We can talk about this at the hearing.

Party Information

Debtor(s):

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

Trustee(s):

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

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

Tuesday, July 13, 2021 **Hearing Room 303**

10:00 AM

1:13-10386 Shirley Foose McClure **Chapter 11**

#3.00 First Interim Fee Application for Allowance of Fees by Swicker & Associates, Accountancy Corporation, Accountants for the Chapter 11 Trustee for Swicker & Associates Accountancy,

Accountant, Period: 4/23/2018 to 5/31/2021,
Fee: $161,386.00,
Expenses: $2,108.79.

Docket 1811

***** VACATED *** REASON: Cont'd to 8/24/21 at 10:00 per Order #1836.**

lf

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

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

Trustee(s):

John P. Reitman — Represented By
John P. Reitman
Jon L. Dalberg
Rodger M. Landau

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

Tuesday, July 13, 2021 **Hearing Room 303**

10:00 AM

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

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

Tuesday, July 13, 2021 **Hearing Room 303**

10:00 AM

1:13-10386 Shirley Foose McClure **Chapter 11**

#4.00 Second and Final Fee Application for Allowance of Fees and Reimbursement of Expenses of Weintraub & Selth, Apc;

Period: 12/9/2015 to 5/17/2016,
Fee: $184,586.00,
Expenses: $4,279.26.

Docket 1813

***** VACATED *** REASON: Cont'd to 8/24/21 at 10:00 per Order #1836.**
lf

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

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

Trustee(s):

John P. Reitman	Represented By John P. Reitman Jon L. Dalberg Rodger M. Landau

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

Tuesday, July 13, 2021 **Hearing Room 303**

10:00 AM
1:13-10386 Shirley Foose McClure **Chapter 11**

#5.00 Third and Final Application for Allowance and Payment of Fees.

Period: 11/24/2015 to 5/6/2016,
Fee: $25,080.00,
Expenses: $.

Docket 1320
***** VACATED *** REASON: Cont'd to 8/24/21 at 10:00 per Order #1836.**
lf

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

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

Trustee(s):

John P. Reitman — Represented By
John P. Reitman
Jon L. Dalberg
Rodger M. Landau

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

Tuesday, July 13, 2021 **Hearing Room 303**

10:00 AM
1:13-10386 Shirley Foose McClure **Chapter 11**

#6.00 First Interim Fee Application of Force Ten Partners, LLC For Allowance and Payment of Fees and Reimbursement of Expenses Incurred as Financial Advisors and Accountants to John P. Reitman, Chapter 11 Trustee; Declaration of Brian Weiss in Support Thereof

Period: 8/10/2016 to 5/31/2021,
Fee: $116,435.00,
Expenses: $32.67.

Docket 1816

***** VACATED *** REASON: Cont'd to 8/24/21 at 10:00 per Order #1836.**
lf

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

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

Trustee(s):

John P. Reitman — Represented By

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

Tuesday, July 13, 2021 **Hearing Room 303**

10:00 AM

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

John P. Reitman
Jon L. Dalberg
Rodger M. Landau

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

Tuesday, July 13, 2021 **Hearing Room 303**

10:00 AM
1:13-10386 Shirley Foose McClure **Chapter 11**

#7.00 Application of Landau Law LLP as Counsel to the Chapter 11 Trustee, John P. Reitman, for Approval of Compensation and Reimbursement of Fees and Expenses; Declaration of Jon L.R. Dalberg In Support

Period: 8/3/2016 to 4/30/2021,
Fee: $1,455,033.00,
Expenses: $25,029.36.

Docket 1818

***** VACATED *** REASON: Cont'd to 8/24/21 at 10:00 per Order #1836.**
lf

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

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

Trustee(s):

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

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

Tuesday, July 13, 2021 **Hearing Room 303**

10:00 AM

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

Rodger M. Landau

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

Tuesday, July 13, 2021 **Hearing Room 302**

10:00 AM
1:13-10386 Shirley Foose McClure **Chapter 11**

#8.00 Application for Compensation for Robert W Wood , Special Counsel, for Shirley F. McClure Period: Fee: $95902.27, Expenses: $1097.05.

Docket 1825

***** VACATED *** REASON: Cont'd to 8/24/21 at 10:00 per Order #1836.**
lf

Matter Notes:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

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

Trustee(s):

John P. Reitman — Represented By
John P. Reitman
Jon L. Dalberg
Rodger M. Landau

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

Tuesday, July 13, 2021 **Hearing Room 303**

10:00 AM

1:13-10386 Shirley Foose McClure **Chapter 11**

#9.00 Status conference re: ch 11 case

fr. 1/24/2013, 4/30/13, 5/14/13, 7/23/13, 8/6/13, 9/17/13, 9/24/13, 11/19/13, 12/17/13, 1/21/14, 2/18/14, 3/11/14, 4/15/14, 5/6/14, 6/24/14, 9/9/14, 9/23/14, 10/7/14, 11/24/14, 1/6/15, 1/20/15, 2/10/15, 3/10/15, 4/28/15; 5/12/15; 9/29/15, 10/22/15, 12/8/15, 3/1/16, 6/7/16, 7/12/16, 8/16/16, 10/11/16; 12/20/16, 4/4/17, 5/16/17; 6/27/17, 7/11/17, 9/19/17, 11/14/17, 11/28/17, 12/19/17, 1/9/18, 3/19/18, 3/27/18, 5/1/18, 6/5/18; 6/26/18, 7/9/18; 8/7/18, 11/6/18; 12/18/18; 1/29/19; 2/12/19; 3/5/19 3/26/19; 4/16/19, 8/6/19, 10/8/19; 10/22/19, 11/19/19, 11/17/20, 4/20/21(vacated - moved to 2/23/21), 2/23/21; 5/4/21, 5/25/21

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Continued without appearance to August 24, 2021 at 10:00 a.m.

Party Information

Debtor(s):

Shirley Foose McClure

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

10:00 AM
CONT... Shirley Foose McClure **Chapter 11**
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, July 13, 2021 **Hearing Room 303**

10:00 AM
1:13-10386 Shirley Foose McClure **Chapter 11**
Adv#: 1:21-01021 Reitman v. McClure

#10.00 Status Conference Re: Amended Complaint for (1) for Declaratory Relief that the Trustee May Sell Real Property of the Estate Located at 3401 Gregory Avenue, Fullerton, California Free and Clear of 5% Tenant in Common Interest of Jason McClure Pursuant to 11 U.S.C. § 363(h), (i)) and (j)); (2) Reimbursement of Estate Funds Expended to the Benefit of Such Interest; and (3) for Associated Injunctive Relief Nature of Suit: (31 (Approval of sale of property of estate and of a co-owner - 363(h))),(14 (Recovery of money/property - other)),(72 (Injunctive relief - other))

Docket 11

Matter Notes:

- NONE LISTED -

Tentative Ruling:

Continued without appearance to August 24, 2021 at 10:00 a.m.

Party Information

Debtor(s):

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

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

Tuesday, July 13, 2021 **Hearing Room 303**

10:00 AM

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

Defendant(s):

Jason McClure	Pro Se

Plaintiff(s):

John P. Reitman	Represented By Jon L. Dalberg

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, July 13, 2021 **Hearing Room 303**

10:00 AM
1:13-10386 Shirley Foose McClure **Chapter 11**
Adv#: 1:21-01021 Reitman v. McClure

#10.01 Motion for Summary Judgment Against Defendant Jason McClure

fr. 6/29/21

Docket 4

Matter Notes:

- NONE LISTED -

Tentative Ruling:

This was withdrawn on June 2, 2021.

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

Defendant(s):

Jason McClure — Pro Se

Plaintiff(s):

John P. Reitman — Represented By
Jon L. Dalberg

10:00 AM
CONT... Shirley Foose McClure **Chapter 11**

Trustee(s):

John P. Reitman

Represented By
John P. Reitman
Jon L. Dalberg

10:00 AM
1:19-13099 Marshall Scott Stander **Chapter 7**
Adv#: 1:20-01025 Rob Kolson Creative Productions, Inc. v. Stander

#11.00 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, 11/17/20; 1/12/21 3/16/21; 4/20/21

Docket 1

***** VACATED *** REASON: Cont'd to 9/14/21 @10:30 a.m. per Ord. #32.**
lf

Matter Notes:

- NONE LISTED -

Tentative Ruling:

On 4/5/21 a joint status conference report was filed. Counsel for defendant does not give any time estimates because she is waiting for the ruling on the motion to dismiss.

The tentative ruling is to deny that motion. There needs to be a discovery cutoff. It is Plaintiff's burden of proof and he suggests that it be in 45 days. He wishes to depose the Defendant and Rita McKenzie and will propound written discovery. The cutoff means that all discovery is complete, not the last day to mail it out. Unless the Defendant wants a later date, discovery cutoff will be June 15, 2021. That will be sufficient time for written discovery to be served and responded to.

This Court does not set trial dates until discovery is complete. However, once that occurs, the trial can happen without much delay. Since the trial is anticipated at 2 days, I am not sure that a pretrial is needed - but if either party wants one, I will order it. I suggest that the next hearing (if a status and trial setting conference) should be on June 29 at 10:00 a.m. If it is a pretiral conference, it should be on July 13 at 10:00 a.m.

prior tentative ruling 11/17/21

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

10:00 AM

CONT... Marshall Scott Stander **Chapter 7**

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

Plaintiff(s):

Rob Kolson Creative Productions,	Represented By Lane M Nussbaum

Trustee(s):

David Keith Gottlieb (TR)	Pro Se

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

#12.00 Motion to Approve Compromise and for Authority for the Estate to Pay the Costs of Mediation.

fr. 6/29/21

Docket 426

Matter Notes:

- NONE LISTED -

Tentative Ruling:

The Trustee collected post-petition rents from the Compton property. It has never been resolved what interest Debtor Goland held in the Compton property, but he was collecting rent pre-petition. The Court had approved the rent collection by the Trustee, who ultimately collected approximately $65,100. Later the Trustee sold the estate's interest (if any) in the property and the right to collect rent to the tenant. All of this was approved by the Court on notice to the creditor body. Mr. Burk received notice of all of these things and never filed an objection.

On May 19, 2020 the Trustee filed her final report and on June 16, 2020 Gerald Burk filed this adversary proceeding. Thereafter the parties went to mediation and entered into a term sheet. Although the Trustee sent several emails to Burk's attorney to finalize the settlement documents, she received no response. So she filed this motion for the Court to approve the term sheet as a settlement agreement and – per the term sheet – to pay $5,000 to Jason Pomerantz for the costs of the mediation. Under the term sheet, Burk would receive $37,500 from the Estate's account that holds the rent money and the adversary proceeding would be dismissed.

Opposition by Bret Lewis, et al

This is not property of the estate and thus the Court has no jurisdiction to administer it. It is the Court's responsibility to determine what is property of the estate. The various claimants all deny that it is property of the estate: Goland, Burk, and Cohen.

As to the claim by Burk, his deed of trust merged as previously determined in the

10:00 AM

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

Rule 11 motion (dkt. 249). [*Note that dkt. 249 is a motion filed by Keith L. Hokanson individually and as trustee of the ROL (a charitable trust) and not a ruling by the Court.]*

Opposition of Bezad Cohen

Cohen claims that he is the owner of 5721 S. Compton and therefore Burk is not entitled to any rents, nor is the Trustee. He intends to seek to amend his adversarial complaint to file an action for quiet title and constructive trust over the rents. He joins the other objections.

Response filed by Triple Images, LLC – Triple Images, now the owner of the property, has no objection to the settlement except to the extent that it appears to give Burk the right to seek rents, compensation, or damages from Triple Images to the extent that such rents, compensation and damages are recoverable in equity or in law. Neither Burk nor the Trustee have any ownership or other legal or equitable rights in the property, including the right to collect rent, raise rent, evict Triple Images, etc. Triple Images requests that any order approving the settlement does not constitute a ruling or determination regarding whether Burk has any legal and/or equitable right, title or interest in the Compton property or in the rents being paid by Triple Images.

Reply by the Trustee – There was no opposition to the cash disbursement motion, so that should be granted. This $5,000 is not coming from the collection of rents, but from other monies received by the Trustee.

Bret Lewis is arguing both sides of the ownership interest. He and Hokanson have claimed that Goland had an interest and also that the Property never was property of the estate. As to the issue of Burk's interest, Lewis could have sought to buy the Estate's interest and then go litigate it in state court. He didn't and now he should not be allowed to challenge this compromise.

The Court need not analyze the ownership interest prior to approving the settlement. The Court needs to canvas the issues to determine whether the settlement meets the lowest range of reasonableness. This settlement is a reasonable exercise of busines judgment. The Trustee recognizes that Goland had a beneficial ownership interest in the Compton Property as of the petition date. But litigation of that exact interest would

10:00 AM

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

be highly complex, heavily disputed, and expensive. Burk and the Trustee engaged in a good faith mediation of the issues and they determined that further litigation would not be beneficial to anyone.

Lewis has attempted to require the Trustee to litigate the ownership interest in the hopes that the property would be quiet titled to Goland. The Court previously held that Lewis could have sought to enforce rights against Goland, but chose to do nothing. [dkt. 415].

The issues raised by Cohen deal with a tort claim that he has against Burk, and are not a real property ownership claim. This is not a claim that belongs in this bankruptcy case. Cohen can litigate against Burk outside of this Court as to the ownership of the monies that Burk will receive from this settlement.

PROPOSED RULING

The title to the Compton Property has always been an extremely messy issue that the Trustee has not been willing to litigate it. While the Court prefers to resolve as many issues as possible during the bankruptcy case, the cost of litigation of title would far exceed the amount of rents collected by the Trustee and might end up with the Estate holding only a small interest in the property itself. However, the various claimants have not sought to go forward in state court to determine title.

The Trustee collected these rents with the approval of the Court after notice to all known creditors/claimants. This was allowed to proceed for years. As to the Burk claim, there is sufficient documentation to show that he has some legal rights to assert. The question that I have is how will this settlement affect the Cohen v. Burk and Trustee adversary proceeding? What is the impact of the criminal action against Burk? Should the Court approve the settlement, but delay payment for 60 days to allow Cohen to seek a lien on the money? Does this need to be done in state court?

It seems that settling with Burk does not resolve the issue of sorting out title unless the Cohen adversary proceeding is also dealt with.

Party Information

Debtor(s):

Michael Robert Goland — Represented By
David S Hagen

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

Tuesday, July 13, 2021 **Hearing Room 303**

10:00 AM

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

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, July 13, 2021 **Hearing Room 303**

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

#13.00 Motion Under LBR 2016-2 for Approval of Cash Disbursements by the Trustee

fr. 6/29/21

Docket 428

Matter Notes:

- NONE LISTED -

Tentative Ruling:

No opposition received as of 7/10. Grant.

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

10:00 AM
1:15-14213 Michael Robert Goland **Chapter 7**
Adv#: 1:20-01115 Cohen v. Gerry Burk, an individual and as Trustee of the 57

#14.00 Status Conference re Complaint for (a) Declaratory Relief; (b) Breach of Fiduciary Dutiy-Seizure of Rent and Failure to Mange Asset Propety; and (c) Breach of Fiduciary Duity-Failure to Mange Estate Assets Properly for Benefit of Creditors;

fr. 2/2/2; 4/20/21, 7/13/21

Docket 1

Matter Notes:

- NONE LISTED -

Tentative Ruling:

See tentative ruling on motion to compromise. Where do we go from here? I wonder whether the Trustee should just step out of this and let the parties fight it out in state court. I would be willing to award the Trustee a reasonable reimbursement for administering the rents and she can interplead the rest. It will have nothing to do with the bankruptcy.

Prior tentative ruling (4/20/21)
On 4/14/21, the Gerry Burk defendants filed a unilateral status report. This is stayed as to the Traustee. Because the plaintiff is in proper, there is no one to reach out to for a Rule 26 meeting. As to moving this case forward, Mr. Burk and Triple Images are subject ot a criminal proceeding for fire code violations. It may be necessary to stay these proceedings until that is completed so as to deal with a 5th amendment claim by the Burk defendants in that proceeding. The Burk defendants anticipate a 1-2 day trial in this case and need until December to complete discovery. Gerry Burk and the Trustee resolved their adverary proceeding through a mediation in November 2021.

This case involves the issue of ownership of the property on Compton Ave.

10:00 AM

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

While some discovery might be limited due to the criminal action, it seems that there is discovery from third parties that can go forward. How does Mr. Cohen intend to proceed? Will he be hiring an attorney?

Party Information

Debtor(s):

Michael Robert Goland	Represented By David S Hagen

Defendant(s):

Gerry Burk, an individual and as	Pro Se
Nancy Zamora, as Chapter 7 Trustee	Pro Se

Plaintiff(s):

David Cohen	Pro Se

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, July 13, 2021 **Hearing Room 303**

10:00 AM
1:15-14213 Michael Robert Goland **Chapter 7**
Adv#: 1:20-01063 Burk v. Zamora

#15.00 Status Conference Re: First Amended Complaint for

1) Declaratory Judgment
2) Breach of Fiduciary Duty - Seizure of Rent and Failure to Manage Asset Property
3) Breach of Fiduciary Duty - Failure to Manage Estate Assets Property for Benefit of Creditors

fr. 1/12/21, 2/23/21; 4/20/21, 7/13/21

Docket 32

Matter Notes:

- NONE LISTED -

Tentative Ruling:

See tentative ruling on motion to compromise. Where do we go from here? I wonder whether the Trustee should just step out of this and let the parties fight it out in state court. I would be willing to award the Trustee a reasonable reimbursement for administering the rents and she can interplead the rest. It will have nothing to do with the bankruptcy.

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

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

Tuesday, July 13, 2021 **Hearing Room 303**

10:00 AM

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

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, August 3, 2021 **Hearing Room 303**

10:00 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/1605794547
Meeting ID: 160 579 4547
Password: 756532

Telephone Conference Lines: 1 (669) 254-5252 or 1 (646) 828-766
Meeting ID: 160 579 4547
Password: 756532

Docket 0

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

Tuesday, August 24, 2021 **Hearing Room 303**

10:00 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/1607684608
Meeting ID: 160 768 4608
Password: 834047

Telephone Conference Lines: 1 (669) 254-5252 or 1 (646) 828-766
Meeting ID: 160 768 4608
Password: 834047

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 24, 2021 **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, 12/22/20, 2/2/21, 2/23/21; 6/8/21

Docket 1

Tentative Ruling:

Based on the joint status report and the declaration of Karen Ragland, it seems appropriate to continue the status conference. But both parties also want this assigned to mediation. The remaining critical issue is that of notice of the bankruptcy to Resame or Chicago Title or whoever held an interest in the mortgage account at the time that the bankruptcy was filed or between then an the running of the statute of limitations. Ms. Ragland describes the attempts to track down the proper party/parties and that is ongoing.

So while I am willing to continue the status conference for 45 days, I also want to start the mediation process. Ms. Ragland, please fill out a mediation request and start that process. Let's take a minute at the Zoom status conference to pin that down and agree to a continued status conference date.

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

10:00 AM
CONT... Mahboob Talukder **Chapter 7**

Andrew Edward Smyth

Plaintiff(s):

Chicago Title Insurance Company — Represented By
Karen A Ragland

Trustee(s):

Amy L Goldman (TR) — Pro Se

10:00 AM
1:13-10386 Shirley Foose McClure **Chapter 11**

#2.00 First Interim Fee Application for Allowance of Fees by Swicker & Associates, Accountancy Corporation, Accountants for the Chapter 11 Trustee for Swicker & Associates Accountancy,

Accountant, Period: 4/23/2018 to 5/31/2021,
Fee: $161,386.00,
Expenses: $2,108.79.

fr. 7/13/21

Docket 1811

Tentative Ruling:

Ms. McClure seeks a continuance to object to this fee application due to a delay in receiving documents that she requested from the Trustee. It appears to the Court that she is seeking information as to whether the various tax returns and tax basis of fixed assets were correctly calculated. The Trustee has turned over some documents and noted that the tax returns have been finalized and are now done and not subject to appeal. But this does not resolve whether those involved in filing them did it correctly and should be fully compensated for the work.

Beyond that, Ms. McClure questions the hourly rate and overall charge when compared to that of Squar Milner, her prior accountant for the estate.

At the hearing, I will need Ms. McClure to walk me through the specific issues that she is raising and what is located in the "missing" documents that will help her analyze the issues. And we will also look at the comparative hourly rate and overall charge. As to the "missing" documents, If she cannot show their relevance, I will overule that portion of the opposition.

This is an interim application since I appears that there is more work that may need to be done.

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

Tuesday, August 24, 2021 **Hearing Room 303**

10:00 AM

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

Party Information

Debtor(s):

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

Trustee(s):

John P. Reitman	Represented By John P. Reitman Jon L. Dalberg Rodger M. Landau

10:00 AM
1:13-10386 Shirley Foose McClure **Chapter 11**

#3.00 Second and Final Fee Application for Allowance of Fees and Reimbursement of Expenses of Weintraub & Selth, Apc;

Period: 12/9/2015 to 5/17/2016,
Fee: $184,586.00,
Expenses: $4,279.26.

fr. 7/13/21

Docket 1813

Tentative Ruling:

As to the Trustee's objection to this and several other fee applications on the basis that they are "final" and that their timing is premature, I do not agree with his reading of LBR 2016-1(c)(3)(A) as a limit on the earliest time to file. It is a limit on the latest time to file if there is a confirmed plan. However there may be some special ramification to a final fee award that he is seeking to prevent. If so, please explain it because no fees (interim or final) are being distributed at this time and I certainly do not want these applicants to have to file another application in that they have long-since completed their employment.

This is the second and final fee application of Weintraub & Selth (WS), which served as Debtor's general bankrupcy counsel from 12/9/15 through 5/17/16. The initial application covered 12/9/15 through 2/29/16 and was for $100,336 fees and $2,714.53 costs. This was granted in full as an interim order. The second period, which is presented in this fee application is from 3/1/16 though 5/17/16 and is in the amount of $84,250 fees and $1,564.73 costs. Thus the total final request is for $184,586 fees and $4,279.26 costs. Per the first interim order, WS was allowed to apply $51,525.26 in estate fund to its allowed fees and costs, which it did.

The employment order authorized Debtor to provide WS with a deed of trust as to the Dalmation property and the balance of the first interim order was

10:00 AM

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

paid from the proceeds of the sale of Dalmation.

Ms. McClure objects to the amount of fees and also requests a continuance to obtain more discovery. WS objects to both a continuance and to any fee reduction.

As to a continuance, the Court is not aware of any grounds concerning discovery. WS was the attorney for Ms. McClure when she was debtor in possession. While the relationship broke down and resulted in a ternination of their representation, the knowledge of what was or was not done, etc. is within Ms. McClure's grasp. So I will review the specific objections that Ms. McClure filed and the WS response.

The major objection seems to be representations made to Judge Wu in the Litt appeal as to WS securing tak-out loans to pay-off and remove the Litt liens. Also, there was some confusion about representing that McClure was proposing to sell Corbett and pay off Litt, but rather it was WS who suggested that. However, Ms. McClure does say that she was willing to do this and was looking for a real estate agent to market that property. I don't understand what damage this engendered. Further, Ms. McClure did not object to the first interim fee application, but stated that she had been reviewing the bills each month [dkt. 957].

Looking at the 5 months of WS's employment, a lot was accomplished. A plan was filed (but never confirmed), Benton was marketed and sold, a forebearance agreement was crafted with City National Bank, Pacific Mercantile Bank had to be held off, and Litt's objections to many motions and actions had to be responded to.

I do not understand whether Ms. McClure is stating that she did not approve of the proposed plan. She did not sign the Plan or Disclosure Statement, nor the amended version, but it is hard to believe that she did not preapprove its terms. Had she not done so, she would certainly have advised the Court. And since the Plan had the sale of Corbin as a back-up to the inability to refinance PMB, I am not sure what her issue is as to that. Also, there was never a time when she voluntarily advised the Court that she was willing to sell Corbin (or any other property) and pay Litt off. She always kept the state

10:00 AM

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

court case tied to the ultimate payment of Litt as to his lien. So, once again, I do not understand the basis of her objection.

At the hearing, please go through this with me. Otherwise I will approve the fees and costs as requested. They are a lot of money, but that was the terms of Ms. McClure hiring this firm and WS appears to have done a competent (though not very successful) job.

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 Rodger M. Landau

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

Tuesday, August 24, 2021 **Hearing Room 303**

10:00 AM

1:13-10386 Shirley Foose McClure **Chapter 11**

#4.00 Third and Final Application for Allowance for Faye C. Rasch and Payment of Fees.

Period: 11/24/2015 to 5/6/2016,
Fee: $25,080.00,
Expenses: $.

fr. 7/13/21

Docket 1320

Tentative Ruling:

Other than this being a final application, there is no objection and the Court finds that this is an appropriate sum. Approve as requested. Appearance waived. Check with the Trustee about whether separate orders are to be lodged or is he going to do a single order.

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 Rodger M. Landau

10:00 AM
1:13-10386 Shirley Foose McClure **Chapter 11**

#5.00 First Interim Fee Application of Force Ten Partners, LLC For Allowance and Payment of Fees and Reimbursement of Expenses Incurred as Financial Advisors and Accountants to John P. Reitman, Chapter 11 Trustee; Declaration of Brian Weiss in Support Thereof

Period: 8/10/2016 to 5/31/2021,
Fee: $116,435.00,
Expenses: $32.67.

fr. 7/13/21

Docket 1816

Tentative Ruling:

Force Ten has handled the bookkeeping and OUST reports, analyzed real property assets and assessed the equity in each, and prepared financial projections. Most of the work was performed by accountants with a billing rate of $225, $325, and $450. The monthly operating reports account for over half of the total bill.

Force Ten began work in August 2016, some two years before Swicker was employed to do the tax work. Specifically Ms. McClure seems to be seeking information as to the tax basis of the various properties such as rent received and expenses incurred. The Court does need to understand the relevance to the fee application of Force Ten. The bookkeeping work that they did was and is necessary to the administration of the estate. The request for all of their backup documents seems to be a fishing expedition. If the Debtor can show me exactly what is missing and relevant to the taxes on these properties or on the estate or on her, I will grant a motion for that. But given that this is an interim fee application, I see no reason to delay it since the assertion does not deal with wrongdoing by Force Ten. If Ms. McClure does find wrongdoing or sloppy work, she can raise that in an attack on a final fee application.

10:00 AM
CONT... Shirley Foose McClure **Chapter 11**

Approve as requested as an interim fee application. Is the Trustee intending to distribute any amounts on these interim applications? If so, in what percent?

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 Rodger M. Landau

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

Tuesday, August 24, 2021 **Hearing Room 303**

10:00 AM
1:13-10386 Shirley Foose McClure **Chapter 11**

#6.00 Application of Landau Law LLP as Counsel to the Chapter 11 Trustee, John P. Reitman, for Approval of Compensation and Reimbursement of Fees and Expenses; Declaration of Jon L.R. Dalberg In Support

Period: 8/3/2016 to 4/30/2021,
Fee: $1,455,033.00,
Expenses: $25,029.36.

fr. 7/13/21

Docket 1818

Tentative Ruling:

This, of course, is the largest fee application. I have some issues that I will need to work through as to the work done by the law firm as opposed to that done by the Trustee. Also, I seem to remember major delays in this case due to Mr. Reitman's health. I wonder whether the firm stepped in to fill the gap and whether the estate should pay for that. And over time Ms. McClure has complained that Mr.Reitman did not meet with her (and perhaps her attorney) to discuss the case and work with her for the best outcome as to the disposition of properties and the status of the Litt and the Tidus matters. While this might be directed to the Trustee's fees (which are not before the Court at this time), I am willing to deal with all of these, but need to do so in an organized fashion. Ms. MClure points out that in the tentative ruling for the 8/16/16 hearing I advised Mr. Reitman of the need to keep a close handle on fees and not pass on to attorneys work that is property done by the Trustee himself. I also indicated that Ms. McClure might be able to provide some assistance, but I did not order her to do so or him to accept.

In his application for appointment, Mr. Reitman agrees that Landau, Gottfied, and Berger (LGB) will not provide any services for the Le Faoubourg-St. Gilles condominium owners' assn in connection with this case. The real issue here is that in 2010, McClure sought representation by LGB because Lisa

10:00 AM

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

Nobles, had represented Ms. McClure while Ms. Noble was at SulmeyerKupetz. Ms. Nobles moved to LGB and Ms. McClure wanted her to continue her representation. LGB declined that representation in 2010 and again in 2012 and 2014. In 2013, Ms. Nobles left LGB and moved to Colorado. Ms. Nobles did not provide any privileged information to Mr. Reitman. Similarly, Mr. Landau and Mr. Dahlberg received no such information. Mr. Reitman states that in "an abundance of caution, Mr. Landau, the managing partner who made the determinatin to decline the representation of the Debtor, will not work on this matter or participate in anyeay." [dkt. 1107, p. 10-11] This is largely because Mr. Landau was the managing partner and made the determination to decline representing Ms. McClure. There is no indication that he had any privileged information or even any memory of why he declined representation.

Ms. McClure wishes the Court to take judiicial notice of the above and, although the Trustee and LGB object, the Court will do so. The issue is whether the participation of Roger Landau, as shown on the time sheets of LBG, is material and a conflict of interest. Please note that the Court never ruled as to the conflict of interest issue given the willingness of the Trustee and of LBG to exclude Mr. Landau from participation in this case.

A main objection today concerns the involvement of Roger Landau and a possible conflict of interest, which could substantially impact whether the Court should and will award any or all fees requested by this firm. The examples given by Ms. McClure do not arise to the level of a conflict. Perhaps if Ms. McClure puts out a list of each event along with its description and the amount of time, the Court may find otherwise. But it is not up to the Court to search the multiple entries in the time sheets looking for these.

As to the issue of what work should have been done by the Trustee and what by his counsel - that is very important. But the Court will take this up when the Trustee puts in his fee application. The Court want to compare the two time sheets before making a determination. there are other issues raised in the preliminary objection which go to actions by the Trustee in managing the properties and the case. These are also important, but they go to the fees to be awarded to the Trustee, although perhaps also to those of his counsel.

10:00 AM

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

The Court will defer making a determination on the Landau application. When the Trustee files his own application, the Court intends to take sufficient time and work through both of these. It will also give Ms. McClure a reasonable amount of time to describe each issue and provide the specific details as well as the references in the fee applications.

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 Rodger M. Landau

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

Tuesday, August 24, 2021 **Hearing Room 302**

10:00 AM
1:13-10386 Shirley Foose McClure **Chapter 11**

#7.00 Application for Compensation for Robert W Wood , Special Counsel, for Shirley F. McClure Period: Fee: $95902.27, Expenses: $1097.05.

fr. 7/13/21

Docket 1825

Tentative Ruling:

Other than this being a final application, there is no objection and the Court finds that this is an appropriate sum. Approve as requested. Appearance waived. Check with the Trustee about whether separate orders are to be lodged or is he going to do a single order.Other than this being a final application, there is no objection and the Court finds that this is an appropriate sum. Approve as requested. Appearance waived. Check with the Trustee about whether separate orders are to be lodged or is he going to do a single order.

Party Information

Debtor(s):

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

Trustee(s):

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

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

Tuesday, August 24, 2021 **Hearing Room 302**

10:00 AM

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

Rodger M. Landau

10:00 AM
1:13-10386 Shirley Foose McClure **Chapter 11**

#8.00 Application of John P. Reitman, Chapter 11 Trustee, for Order Authorizing Employment of Coldwell Banker (William Friedman and Greg Bingham) as Broker and Agents in Connection with the Listing and Sale of 3401 Gregory Avenue, Fullerton, California

fr. 5/25/21, 7/13/21

Docket 1798

Tentative Ruling:

THE FOLLOWING TENTATIVE RULING WAS POSTED FOR 7/13, HOWEVER THE PARTIES HAVE STIPULATED TO A CONTINUANCE. THEREFORE THE HEARING ON THIS MATTER WILL TAKE PLACE ON AUGUST 24, 2021 AT 10:00 A.M. But it appears that there are still settlement discussions taking place. What is the status?

It appears that the parties now agree that Jason McClure has a 50% interest in the property. There is an adversary action to allow the Trustee to sell the Gregory property free and clear of his interest (also to seek reimbursement of estate funds expended on the property). It appears that the actual amount paid by the estate was for insurance ($6,187.52) and that property taxes will have to be paid as part of the sale (ca. $27,000). There is a status conference on that adversary proceeding.

As to the listing, the Trustee's Reply estimated sale proceeds of $580.00 with a net equity of $512,400. He asserts that the estate would receive $273,000 and Jason would keep about $256,000. However, this does not take into consideration the homestead exemption of Shirley McClure. If it is $175,000 (and the Court is not sure of this amount), the estate would net about $100,000.

Although Ms. McClure contends that this would all go to administrative expenses and also that it would be a tremendous hardship for her to move

10:00 AM

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

due to her physical condition, I believe that I must allow the listing unless the McClures are able to "buy out" the estate's interest in the amount of about $100,000. We can talk about this at the hearing.

Party Information

Debtor(s):

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

Trustee(s):

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

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

Tuesday, August 24, 2021 **Hearing Room 303**

10:00 AM
1:13-10386 Shirley Foose McClure **Chapter 11**

#9.00 Trustees Motion Objecting to Debtors Second Amended Schedule C Exemptions [Docket No. 1806]; Memorandum of Points and Authorities

fr. 7/13/21

Docket 1821

Tentative Ruling:

THE FOLLOWING TENTATIVE RULING WAS POSTED FOR 7/13, HOWEVER THE PARTIES HAVE STIPULATED TO A CONTINUANCE. THEREFORE THE HEARING ON THIS MATTER WILL TAKE PLACE ON AUGUST 24, 2021 AT 10:00 A.M. But it appears that there are still settlement discussions taking place. What is the status?

Ms. McClure has previously sought to amend her exemption claims. In her initial filing, she did not claim a homestead exemption in her residence at 3401 Gregory Ave., Fullerton. She filed an amended schedule of exemptions in 8/1/2019, which also did not claim a homestead exemption in any real property. The Trustee objected to this First Amended Exemptions, which was sustained and later affirmed by the district court.

The Trustee is also seeking to hire a broker to list the Gregory Ave property and to sell it free and clear of Jason McClure's interest.

While the appeal from the prior exemption order was pending, Debtor requested a disbursement of $16,750 in exempt funds that she had claimed in her original schedule C, which the Trustee paid to her after an order of the Court was entered.

Now, for the first time, McClure claims an exemption as to Gregory. She is doing this to prevent the sale of Gregory as it would remove all equity that might benefit the estate. The exemption is claimed under CCP § 1704.730(a)(3) and California law applies. Under California law, the Debtor is prevented from claiming a homestead exemption at this late stage. By accepting payment of the Exempt Funds, she shows that she was relying on her original exemption claim. The Trustee has relied on the absence of an exemption claim as to Gregory in that he has paid property taxes and

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insurance premiums on that property. He also expended time and resources preparing and prosecuting the Application as to the Gregory MSJ, etc. Only then was it made clear that the Debtor suddenly decided to amend her exemption yet again.

Because the Debtor claimed an exemption based on state law, the exemption's scope and allowability is determined by state law and certain misconduct can warrant denial of the exemption under state law. *Law v. Siegel*, 571 U.S. 4125, 421 (2014).

In California, equitable estoppel may be used. There must be concealment or representation of material facts, made with the knowledge (actual or virtual) of the fact, to a party who is actually and permissibly ignorant of the truth, with the intention (actual or virtual) that the ignorant party will act on it, and that party was induced to act on it. *In re Aubrey*, 558 B.R. 333, 345 (Bankr. C.D. Cal. 2016) (quoting *Simmons v. Ghaderi*, 44 Cal. 4th 570, 584 (Cal. 2008).

Here the case is over 9 years old and the Trustee was appointed in 8/16. At no time did McClure indicate an intention of claim this exemption and she affirmatively relied on her original exemptions to be paid. She attempted to amend and then appealed it although she sought payment under her original exemptions, which the appeal called into question. The Trustee relied on the original exemptions to pay property taxes and insurance.

Opposition

The Debtor has resided at Gregory since May 2012. McClure and Jason acquired the property in March 2009 and made monthly payments. The title was 95% Shirley and 5% Jason. Jason then remodeled the residential portion. Shirley and Jason moved in in May 2012 and have resided there ever since. This case was filed in December 2012.

McClure understood from her prior attorney that the homestead exemption ws was automatic, so she did not specifically claim it. Throughout the case, the Gregory property has been excluded from valuation etc. because it was the Debtor's home and everyone acted as if it would be exempt. Litt never objected to this (the Trustee was not yet appointed). In fact, there has never been an objection to the understanding that the Debtor held a homestead in this property. The prior amendment was only as to the Litt and Tidus adversaries. The payout of exemption was for the wildcard

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exemption and Debtor has now returned that to the Trustee.

The Debtor filed her amended Schedule C on May 13, 2021 and the Trustee objected on June 22, 2021. This is outside the allowed period. The trigger to this amended objection was the motion of the Trustee to hire a broker to sell Gregory and for the first time McClure became aware that the Trustee would be taking the position that she is not entitled to her exemption.

Throughout the bankruptcy, Jason has maintained the property (about $300,000) and the only expense paid by the Trustee was insurance. Property taxes, maintenance and repair costs, and utility bills were all paid by McClure.

Debtor is 78 years old and would suffer tremendous burdens if she is denied her homestead exemption. Beyond the monetary loss, Debtor has End Stage Renal Disease and gets dialysis three to four times per week. Jason cares for her and transports her. Only the administrative creditors would benefit from this denying the exemption.

Reply

In its tentative ruling on May 24, the Court set June 22, 2021 as the last day to file an objection and that was the day this objection was filed. And the opposition was filed late because it should have been filed on June 29, which was 14 days before the hearing on July 13.

The Debtor is incorrect in that *Lau v. Miller* does not deal with the use of state law or state case law as a basis for disallowing a claimed homestead exemption. Later cases within the Ninth Circuit have recognized that the California law of estoppel may be used to bar and exemption sought under California law.

Lau dealt with a change of circumstances that justified the amendment. There is no change of circumstance here. An error in the advice given to McClure by her former attorney is not sufficient to prevent estoppel. The Trustee relied on the exemptions as claimed, including paying her the wildcard exempt funds. Only the Court questioned whether McClure had a homestead exemption, but deferred that issue and the effect that it might have on the Litt liens. The Trustee has not acknowledged that McClure had an exemption. Even in the Feb. 21, 2021 email, the Trustee did not acknowledge that McClure had a valid homestead exemption.

Although McClure sent back the wildcard money, the Trustee did not accept it and has not deposited the check.

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Analysis and Conclusion

The objection is timely. The relevant dates are as follows:

April 27, 2021 – The Trustee files an application to employ a real estate broker to sell Gregory. This is set for hearing on May 25.

May 11, 2021 – the McClures file a join opposition to the motion to employ a real estate broker to sell Gregory. In the opposition they assert that McClure has a $175,000 homestead exemption in that property and says that she will be amending her exemptions to claim the Section 704 exemptions and will return to the Trustee the previous amount received

May 13, 2021 – McClure files her amended Schedule C

May 18, 2021 – The Trustee files his reply to McClures' opposition to employ a broker. He requests a continuance so that he can meet with McClure's new attorney. He notes the filing of the amended Schedule C and resrves his right to object, noting that the "validity of the Amendment is not before the Court at this time, and the Trustee reserves his right to object to the Amendment, including on the ground that the Debtor's prior claimed exempotions were in the maximum amount allowable and have been paid b the Trustee."

May 25, 2021 – The Court continues without appearance to July 13 the Trustee's motion to employ a real estate broker to sell Gregory. There is also a status conference set for May 25, which the Court continues without appearance to July 13: "Continued without appearance to July 13, 2021 at 10:00 a.m. Mr. Reitman, if you are going to object to the Amended Schedule C filed on 5/13, please file that no later than June 22 so that it can be heard with all the other matters on July 13."

June 22, 2021 – the Trustee files his objection to the amended Schedule C.

FRBP Rule 4003 (b)(1) requires an objection to an amended claim of exemption be filed within 30 days after the amendment is filed. The court can only extend that time if, before the time to object expires, a party in interest filed a request for an extension. The Trustee filed such a request on May 18 and the Court granted that through June 22. So the objection was timely filed.

The issue here is estoppel. Under California law,

A valid claim for equitable estoppel requires: (a) a representation or

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concealment of material facts; (b) made with knowledge, actual or virtual, of the facts; (c) to a party ignorant, actually and permissibly, of the truth; (d) with the intention, actual or virtual, that the ignorant party act on it; and (e) that party was induced to act on it. (13 Witkin, Summary of Cal. Law (10th ed. 2005) Equity, § 191, pp. 527–528.) There can be no estoppel if one of these elements is missing. (Id. at p. 528.) *Simmons v. Ghaderi, supra.*

As to each requirement, the Court finds as follows:

(a) a representation or concealment of material facts – While it is possible that the failure of Ms. McClure to make her homestead claim in Schedule C, the history of this case shows that she asserted and the Court agreed that Gregory should be treated in a different fashion from other properties that she owned. To a large extent this was less about the $175,000 exempt amount than about the desire not to dispossess her unless it became absolutely necessary. But at no time did she conceal that this was her home and that she intended to keep it, if possible.

(b) made with knowledge, actual or virtual, of the facts – At one time and maybe even now, California has had two types of homestead exemption – the recorded homestead and the automatic homestead. It is not surprising that Ms. McClure's initial attorney gave her incorrect advise as to the effect of a bankruptcy on the automatic homestead. It appears that she did not have actual or virtual knowledge of the need to make the claim in Schedule C.

(c) to a party ignorant, actually and permissibly, of the truth – the Trustee knew that McClure was asserting that she is and was entitled to her exempt amount. This appears many times, particularly in calculations regarding the settlement with Litt. But as one example, on 6/19/18, (dkt. 1474) McClure stated in her calculation of surplus estate that she was claiming a homestead exemption in Gregory in the amount of $150,000. This assertion of exemption was well known to one and all.

(d) with the intention, actual or virtual, that the ignorant party act on it – McClure certainly did not intend the Trustee or anyone to market Gregory and then suddenly assert her rights. Her whole strategy was to keep Gregory

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from being sold.

(e) that party was induced to act on it – It is not improper for the Trustee to have brought this to a head by seeking to hire a broker, but that was a small inconvenience and could have been avoided by simply demanding that McClure file her amended claim by a certain date. Beyond that, if Gregory sells for enough money, McClure will be paid her homestead amount and the estate will get the difference.

Overrule the objection to the amended Schedule C. The Trustee is to deposit the check for the returned funds. Please clarify the amount of the homestead since earlier Ms. McClure stated $150,000 and now she states $175,000.

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 Rodger M. Landau

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#10.00 First and Final Application of Greenberg & Bass, LLP for Payment of Fees and Reimbursement of Expenses by Former Attorneys for Debtor and Debtor-in-Possession for the Period December 21, 2012 through the Date of the Filing of this Application for Greenberg & Bass, LLP, Debtor's Attorney,

Period: 12/21/2012 to 3/22/2016,
Fee: $257,228.00,
Expenses: $33,053.52.

Docket 966

Tentative Ruling:

Ms. McClure hired Greenberg and Bass (G&B) as her attorneys before this chapter 11 case was filed and they were the attorneys who filed the case on her behalf She substituted them out and replaced them with herself *in pro per* about 18 months after the case was filed. They filed their fee application in 2016 (dkt. 996) and it was to be heard on 4/12/16, but the notice of hearing was withdrawn and it was never reset until now.

At the April 5, 2016 hearing on various other matters, I stated that *"I do depend in this case, more than I ever have in almost any case, on Ms. McClure monitoring her counsel's fees because she is very active, she's very sophisticated. She's worked effectively as a paralegal on her own cases here for over a decade. So I'm depending very highly on this."* [dkt. 992, p. 5]

The tentative ruling for 4/12/16 began with the following:
Greenberg and Bass are the Debtor's former attorneys. They seek $257,228 in fees and $33,053.52 in costs. This is their first and final fee application. $98,647.40 remains from their retainer.

This has been a difficult case and has required a lot of administrative work by McClure's general counsel. I have no doubt that the work was done. Some was very effective and some may not have been. It was difficult early on in

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this case to make decisions while the Litt fee appeal was pending.

The Court has great confidence in Ms. McClure to advise it of any issues concerning the fees of her professionals. Throughout both of her cases, she has acted as a paralegal and been much more active than a normal client. That may not have been the wisest choice on her part in this case, but it does mean that she has unique knowledge of the services provided to her by her professionals.

Because no hearing was set until now, Ms. McClure did not file an opposition until now.

Per the errata filed on 6/24/21, G&B received a retainer of $126,046.46 and $26,398.60 was drawn down from the trust prior to filing of the petition and those fees and costs are not part of this application. The application is for a total of $290,281.52 of which $191,634.12 is still unpaid.

Ms. McClure requests more time to do an item-by-item review and object to specific charges. She states that she needs that additional time to obtain items from the Trustee in order to evaluate how the "negative" work of G&B impacted the outcome on the estate.

The one specific objection is that G&B charged too much to prepare "simple" real estate broker and attorney employment applications and that these should have been done by a paralegal or a legal secretary. The application states that G&B prepared and filed 14 employment applications for other professionals (including varous real estate brokers), which took 70.30 hours and totalled $19,997.50 and that they responded to the U.S. Trustee objections to their application and Litt's objections to those of two other attorneys for 13.90 hours and $3,842. They did not request any compensation for preparing their own fee application or for preparing or defending their application to be employed - see, for example the listings on dkt. 966, p. 22-23, 27-28 though they were certainly entitled to it.

A review of the billing records shows that some of the work on applications for employment was done by Andrew Goodman, who was the lead attorney on the case, but it appears that most was done by Yi Sun Kim, who was an

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associate at a billing rate of $145 below that of Mr. Goodman. The Court understands the impression that much of this work may be "rote" and can be done by a paralegal or legal assistant, but that is not necessarily the case. The forms certainly existed, but tailoring them to each specific person and how that person fits into the case requires a detailed knowledge of the case ... particularly when there is an active creditor like Litt, who is ready to object. And as to the objection of the OUST to the G&B employment, the firm did not charge for that work.

Reviewing the general work categories, all of this was necessary and most needed to be done by an attorney. As to the OUST reports, the work on those were largely done by Stephen Baumgarten and Theresa Krant. Mr. Baumgarten is listed as a paralegal and Ms. Krant, who did most of the work, appears to be a paralegal and has a much lower billing rate than Mr. Baumgarten.

Ms. McClure had multiple properties that needed to be dealt with and it was hoped to confirm a plan early in this case - though that was not meant to be. The Court is not sure whether there would have been a better outcome had Ms. McClure stuck with this firm or the next attorney or the one after that. Her desire to fight Litt tooth-and-nail and use her own skill as a paralegal to second-guess her counsel and remove them in an attempt to save money or maintain control ended up costing her dearly.

The Court does not see how obtaining discovery from the Trustee is relevant to Ms. McClure preparing objections to this application. Counsel cannot be held responsible for the failure to confirm a plan given the circumstances of this case, the matters on appeal (particularly the Litt judgment for fees) and the desires of Ms. McClure.

Approve the fee request as filed subject to a clarification by the Trustee as to the fact that this is a final application for fees rather than an interim one.

Party Information

Debtor(s):

Shirley Foose McClure — Represented By
Andrew Goodman

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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
Rodger M. Landau

United States Bankruptcy Court
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#11.00 Notice of motion/application for payment of final fees/expenses Filed by Special Counsel The Farley Law Firm. (Attachments: # 1 Exhibit Application for Payment of Final Fees)

Docket 1824

Tentative Ruling:

This was originally noticed for July 13, but did not get on that calendar because the applicant attached the application to its notice of hearing rather than filing it as a separate document. Thus it was not continued with all the other applications to today's hearing. No opposition has been received and the Court does not expect any because this was the attorney for Ms. McClure prior to the appointment of the Trustee. Unless someone wishes me to continue this for new notice or for an objection, I will approve it at the August 24 hearing, subject to determining whether it is to be allowed as an interim or as a final award. I will need the Trustee to explain his blanket objection to applications on this basis.

Party Information

Debtor(s):

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

Movant(s):

The Farley Law Firm	Represented By Michael L Schulte

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

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Trustee(s):

John P. Reitman	Represented By John P. Reitman Jon L. Dalberg Rodger M. Landau