

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Tuesday, July 20, 2021

Hearing Room 1539

10:00 AM

2:11-61640 Ramesh Akhtarzad and Sina Akhtarzad

Chapter 11

#1.00 Evidentiary Hearing on Status Conference re: Claim 14 (Allocation Issue)

fr. 11-18-20, 1-12-21, 2-24-21, 5-25-21

Docket 519

***** VACATED *** REASON: CONT'D. TO 8/25/21 @ 10AM**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Final Ruling from January 12, 2021:

Court rejected claimants' argument that damages arising from the debtor's abandonment of the lease, as represented by the state court judgment, are not capped by 502(b)(6). Judge Neiter calculated the maximum amount of damage for lease termination damages under section 502(b)(6) and this amount will not increase because the state court judgment came out higher. There is nothing to litigate on these issues. Judge Neiter's order capping the damages at \$1,066,000 remains the law of the case.

Judge Neiter did not enter an order that was intended to be final on the issue of the extent to which the legal fees should be included within the cap (*i.e.*, the 90/10 split). Give parties an opportunity to conduct discovery before court conducts an evidentiary hearing on this issue.

State court's decision to make an award of fees and costs jointly and severally in favor of Melrose and Simantob does not make the cap of section 502(b)(6) inapplicable. With regard to both claimants, court will need to determine extent to which fees relate to litigation over lease termination damages (and are therefore within cap) and extent to which fees relate to other disputes (and are therefore not capped).

Court set a discovery cutoff of May 28, 2021 with regard to the attorneys' fees and costs component of the claim.

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Court ordered parties to brief whether or not cap of section 502(b)(6) would still apply to the claim if claimant asserts that it was defrauded into entering into the lease and whether the determination made by the state court that claimant's fraud claim is barred by the statute of limitation should be given preclusive effect in this contested matter. Court instructed parties to file simultaneous briefs on these issues not later than February 3, 2021 and instructed them to file reply briefs not later than February 16, 2021. Court set a continued hearing for February 24, 2021 at 11:00 a.m.

Tentative Ruling for February 24, 2021:

The fraud claim that Melrose seeks to assert is that it was fraudulently induced to enter into the lease. Its damage claims therefore remain subject to the 502(b)(6) cap. The additional tort theory of recovery does not change the amount of the damage that may be allowed as against the estate. (See tentative ruling for matter no. 103 as to whether a claim in excess of this amount may be asserted against the debtors on the theory that it is nondischargeable.)

Therefore, the only remaining issues to be resolved in the context of this claim objection are the allocation of attorneys' fees as between the capped and uncapped portion of the claim and the interest accrual calculation (and whether interest can accrue from and after November 21, 2013 on fees that were incurred after this date or whether interest should start to accrue on the later of November 21, 2013 and the date on which the relevant fees were incurred or awarded).

The portion of the fees attributable to litigation over lease termination damages is within the cap (and therefore will not be allowed). The portion that is attributable to something other than litigation over the lease termination damages is not within the cap and may therefore be allowed.

Discuss with the parties how to move forward with the resolution of these issues. (Court has already set discovery cutoff of May 28, 2021 with regard to attorneys' fee issues.)

Tentative Ruling for May 25, 2021:

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Sustain debtor's evidentiary objections to exhibits 4, 5, 6 and 7 of the claimant's request for judicial notice to the extent that claimant seeks to introduce these documents to prove the truth of the contents of the documents. In response to a request for judicial notice (or even sua sponte), court can take judicial notice of the fact that a document was filed. Court can also take judicial notice of admissions made by a party in prior filings with the court, but that is different from admitting the documents to prove the truth of the matters asserted therein.

Parties agree that the relevant interest rate is 5 percent, as that is what the plan provided. With regard to the dates on which interest began to accrue on the attorneys' fees awarded, under Lucky United Properties Investment Inc. v. Lee, 213 Cal. App. 4th (2013), post judgment interest on a fee award runs from the date the amount of the fee award is fixed, not from the date of the original judgment. Therefore, interest on the amounts awarded for fees incurred at trial begins to accrue on the date the trial fees order was entered (June 14, 2018) and interest on the amounts awarded for fees incurred in connection with the appeal begins to accrue on the date the appellate fees were awarded (November 12, 2020). Sustain objection to the extent that claimant seeks to bar claimant from recovering interest on its attorneys' fees for any period prior to these dates.

Are parties on track to complete discovery re allocation issues by May 28, 2021? If not, when will the parties be in a position to schedule an evidentiary hearing to resolve allocation issues?

6/2/21 -- Court approved stipulation continuing evidentiary hearing to August 25, 2021 at 10:00 a.m. (See order for revised briefing dates.)

Party Information

Debtor(s):

Ramesh Akhtarzad

Represented By

David L. Neale

John-patrick M Fritz

Jeffrey S Kwong

Richard P Steelman Jr

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Joint Debtor(s):

Sina Akhtarzad

Represented By
David L. Neale
John-patrick M Fritz
Jeffrey S Kwong
Richard P Steelman Jr

Movant(s):

Jack Simantob, 8451 Melrose

Represented By
Dean G Rallis Jr
Kyra E Andrassy
Lewis R Landau

Trustee(s):

Thomas C Hebrank (TR)

Represented By
J. Barrett Marum
Robert K Sahyan
Aaron J Malo

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Adv#: 2:12-01538 8451 Melrose Property, LLC v. Akhtarzad

#2.00 Status Conference re: Complaint by 8451 Melrose Property, LLC against Ramesh Akhtarzad to Determine Non-Dischargeability of Debt Pursuant to 11 U.S.C. Sections 523(a)(2)(A) & (B) and 523(a)(6) Nature of Suit: (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury))

fr. 11-18-20, 1-12-21, 2-24-21, 5-25-21

Docket 1

***** VACATED *** REASON: CONT'D. TO 8/25/21 @ 10AM**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

12/22/20 -- Court approved stipulation confirming that nothing precludes claimants from liquidating the amount of their claim in state court.

Tentative Ruling for January 12, 2021 (to the extent applicable to adversary proceeding):

The fraud claim that Melrose seeks to assert is that it was fraudulently induced to enter into the lease. Its damage claims therefore remain subject to the 502(b)(6) cap. If Melrose can demonstrate that it was fraudulently induced to enter into the lease (if this claim is not barred by any applicable statute of limitations), the capped claim would become nondischargeable, but the amount of the claim would remain capped to the same extent as its breach of lease claim. The additional tort theory of recovery does not change the amount of the damage. If the capped claim has already been or will be paid in full, there is no need to determine whether or not the claim should be excepted from the discharge.

The court recently approved a stipulation between the parties. Is it their intention to resolve the extent to which a fraud claim is or is not barred by the statute of limitations in state court? Similarly, is it the parties' intention to

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litigate the malicious prosecution claims in state court?

Final Ruling for January 12, 2021 (insofar as it relates to adversary proceeding):

Before it can determine how to adjudicate this adversary proceeding, court needs to resolve the following issues: (1) whether the cap of 502(b)(6) applies to any nondischargeable liability that the debtors may have for fraud in the inducement; and (2) whether the state court's finding that the plaintiff's fraud claim is barred by the statute of limitations should be given preclusive effect in this adversary proceeding.

Parties are to file simultaneous briefs with regard to these issues not later than February 2, 2021. Reply briefs will be due not later than February 16, 2021. Court will conduct a continued hearing on February 24, 2021 at 11:00 a.m.

Tentative Ruling for February 24, 2021:

Adversary proceeding was never actually dismissed by Judge Neiter. He merely took the hearing off calendar to permit litigation to proceed in state court as between the parties, anticipating that they would return to bankruptcy court once they had reduced the claims to judgment for a determination as to dischargeability. That never happened, as Judge Neither retired and, there being no further hearings on calendar, the court "closed" the adversary proceeding. It was never dismissed. (This is why Judge Bluebond never takes a matter "off calendar" until it has been resolved--so that it will not fall through the cracks.)

This court is bound by the state court's determination as to when the statute of limitations began to run on the plaintiff's fraud claim. According to the state court, the statute of limitations began to run when plaintiff learned that the representations upon which it had relied were untrue, namely on October 22, 2010 when the debtor testified in a deposition that he did not own any property.

This adversary proceeding, including a claim for fraud in the inducement, was

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filed in a timely manner for nondischargeability purposes on April 2, 2012. The underlying state law statute of limitations had not run on the fraud claim as of that date. Conversely, in state court, the plaintiff attempted to add a fraud claim for the first time in its motion to amend complaint in August of 2014. The state court found that the three year statute of limitations had run on October 22, 2013. As this adversary proceeding, including the fraud claims, had been filed by then, there is no statute of limitations problem with this action.

The only authority this Court has been able to locate so far on the issue of whether or not the cap of section 502(b)(6) applies with regard to a nondischargeable claim that may be asserted as against the debtors, as distinguished from a claim that may be asserted against the debtors' estate, is a comment in dicta in a concurrence by former bankruptcy judge Bruce Markell. According to Judge Markell, "claims by landlords for fraud in procuring a lease would be limited by § 502(b)(6)'s limitation on landlords' claims against the estate, with amounts in excess of the limitations being valid against the debtor but unnecessary to the administration of the bankruptcy case." Deitz v. Ford (In re Deitz), 469 B.R. 11, 29 (B.A.P. 9th Cir. 2012).

The rationale behind limiting the amount of a damage claim for breach of lease (ensuring that the landlord's claim does not dwarf the claims of other creditors, entitling the landlord to a disproportionate share of available assets) does not apply in the context of a nondischargeability action as against the debtor, and section 502(b)(6) appears in a section of the code that discusses allowance of claims against the estate, not in section 523 as a limitation on a debtor's nondischargeable liability. Moreover, the introductory language of section 523 says that a discharge does not discharge an individual debtor "from any debt," not from liability for any *allowed claim*. There is nothing in the statutory language to suggest that any of the limitations of section 502 on the claims that may be allowed affect the amount of any debt that may be excepted from discharge under section 523.

Therefore, in the absence of authority to the contrary, this Court is inclined to agree with Judge Markell that the cap of 502(b)(6) should not apply to limit the size of a claim that can be asserted as against the debtors outside of the administration of the bankruptcy case. As a result, even if the entirety of the

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plaintiff's allowed claims as against the estate are paid in full, this action is not moot in that the debtors have potential exposure for liability in excess of these amounts, provided an appropriate showing can be made under section 523(a).

The state court judgment determines the amount of the lender's damages, but does not have any bearing on whether or not these amounts can be excepted from the discharge. Set discovery cutoff and schedule continued status conference for approximately 90 days. Explore with parties whether this is an appropriate matter to be sent to mediation at this juncture. (Discuss other issues/problems the court has observed with plaintiff's theories of recovery.)

Final Ruling for February 24, 2021:

Tentative ruling became final ruling: (1) 502(b)(6) cap does not limit amount of nondischargeable liability; (2) there is no statute of limitations problem: this action was filed before the applicable statute of limitations ran; (3) plaintiff is not precluded from attempting to prove that the amount of the state court judgment should be treated as nondischargeable, but it cannot increase the amount of that judgment or add a claim for punitive damages.

Continue status conference to May 25, 2021 at 2:00 p.m. Parties are to file an updated status report by May 11, 2021.

Tentative Ruling for May 25, 2021:

Set discovery cutoff for late 2021. Discuss with parties why they don't want this matter sent to mediation.

6/1/21 -- Court approved scheduling order setting discovery cutoff for December 17, 2021. Status conference continued to July 20, 2021 at 10:00 a.m. to coincide with evidentiary hearing. Joint status report due July 6, 2021.

6/2/21 -- Court approved stipulation continuing evidentiary hearing to August 25, 2021 at 10:00 a.m. Continue status conference in adversary proceeding to same date and time. APPEARANCES WAIVED ON JULY 20, 2021.

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Debtor(s):

Ramesh Akhtarzad

Represented By
David L. Neale
John-patrick M Fritz
Jeffrey S Kwong
Richard P Steelman Jr

Defendant(s):

Sina Akhtarzad

Represented By
John-patrick M Fritz
David L. Neale
Richard P Steelman Jr

Joint Debtor(s):

Sina Akhtarzad

Represented By
David L. Neale
John-patrick M Fritz
Jeffrey S Kwong
Richard P Steelman Jr

Plaintiff(s):

8451 Melrose Property, LLC

Represented By
Jeffrey I Golden
Beth Gaschen
Kyra E Andrassy
Michael A. Taitelman
Lewis R Landau

Trustee(s):

Thomas C Hebrank (TR)

Represented By
J. Barrett Marum
Robert K Sahyan
Aaron J Malo