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/1617836427
Meeting ID: 161 783 6427
Password: 321002

Telephone Conference Lines: 1 (669) 254-5252 or 1 (646) 828-7666
Meeting ID: 161 783 6427
Password: 321002

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

Docket 0

Tentative Ruling:

- NONE LISTED -

10:00 AM

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

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

#1.00 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

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

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)

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

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:

10:00 AM
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

10:00 AM
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

10:00 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

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

10:00 AM

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

Trustee(s):

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

10:00 AM
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

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 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.

10:00 AM
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

10:00 AM
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

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.

<u>Opposition of Mary Casament as Success Trustee to the Campbell Trust</u>

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 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 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.

10:00 AM

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

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.

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

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

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

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. 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 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.

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 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.

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

Party Information

Debtor(s):

Glen E Pyle	Pro Se

Defendant(s):

Glen E Pyle	Represented By Raymond H. Aver
Sweetwater Management Company	Pro Se
Glen E Pyle Irrevocable Trust	Represented By Raymond H. Aver

Plaintiff(s):

Amy Goldman	Represented By Leonard Pena

Trustee(s):

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

10:00 AM

1:15-14213 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

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

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

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.

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 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 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 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 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

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 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 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 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.

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 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. 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 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.

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 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.

11:00 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

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

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.*]

11:00 AM
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

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

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

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

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