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

Tuesday, May 02, 2017 **Hearing Room 303**

10:00 AM

: **Chapter 0**

Adv#: 1:16-01125 Speier v. SunCal Management LLC et al

#1.00 Motion For Summary Judgment , Or In The Alternative, For Partial Summary Adjudication

Docket 311

Tentative Ruling:

The hearing is continued by the Court to May 30, 2017 at 10:00 a.m. Appearances on May 2, 2017 are waived.

Party Information

Defendant(s):

Argent Management, LLC	Represented By Craig H Averch
SunCal Management LLC	Represented By Craig H Averch

Movant(s):

Argent Management, LLC	Represented By Craig H Averch
SunCal Management LLC	Represented By Craig H Averch

Plaintiff(s):

Steven M Speier	Represented By Mike D Neue Gary A Pemberton

10:00 AM
: **Chapter 11**
Adv#: 1:16-01125 Speier v. SunCal Management LLC et al

#2.00 Status Conference

fr. 11/15/16, 2/21/17, 4/4/17

Docket 1

Tentative Ruling:

The status conference is continued by the Court to May 30, 2017 at 10:00 a.m. Appearances on May 2, 2017 are waived.

SunCal Joint Status Conference Report – Summary and Highlights

Fact discovery has been completed. Expert discovery is scheduled to be completed by September 30, 2017 (per court order).

Pre-trial conference is currently scheduled for January 11, 2018.

Both parties anticipate bringing further rounds of motions for summary adjudication – 3 by the Trustee/Plaintiff and 7 by Defendant/SCM. (Because these are 12 separate adversary proceedings with sometimes differing facts, Defendants estimate that 24+ motions for summary adjudication will actually need to be heard.) Some of these motions will depend on expert testimony and thus need to be heard after September 30, 2017.

The Plaintiff objects to significant continuance of the January 2018 pre-trial date, while the Defendant believes significant continuance will be inevitable given the 12 separate proceedings and the numerous motions for summary adjudication yet to be heard.

Defendant does not consent to the bankruptcy court's entering a final judgment.

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

Both parties want the matter sent to mediation at this time.

tentative ruling:

Set up a mediation. Should each of these adversary proceedings be handled separately or should they be grouped before a mediator(s)?

Party Information

Defendant(s):

Argent Management, LLC	Represented By Craig H Averch
SunCal Management LLC	Represented By Craig H Averch

Plaintiff(s):

Steven M Speier	Represented By Mike D Neue Gary A Pemberton

10:00 AM
: **Chapter 0**
Adv#: 1:16-01120 Speier v. SunCal Management LLC et al

#3.00 Motion For Summary Judgment //Summary Adjudication on Restitution and/or Unjust Enrichment Claim for Relief

Docket 432

Tentative Ruling:

The hearing is continued by the Court to May 30, 2017 at 10:00 a.m. Appearances on May 2, 2017 are waived.

Party Information

Defendant(s):

Argent Management, LLC	Represented By Craig H Averch
SunCal Management LLC	Represented By Craig H Averch

Movant(s):

Steven M Speier	Represented By Mike D Neue Gary A Pemberton Heather B Dillion

Plaintiff(s):

Steven M Speier	Represented By Mike D Neue Gary A Pemberton Heather B Dillion

10:00 AM
: **Chapter 11**
Adv#: 1:16-01120 Speier v. SunCal Management LLC et al

#4.00 Status Conference

fr. 11/15/16, 2/21/17, 4/4/17

Docket 1

Tentative Ruling:

The status conference is continued by the Court to May 30, 2017 at 10:00 a.m. Appearances on May 2, 2017 are waived.

SunCal Joint Status Conference Report – Summary and Highlights

Fact discovery has been completed. Expert discovery is scheduled to be completed by September 30, 2017 (per court order).

Pre-trial conference is currently scheduled for January 11, 2018.

Both parties anticipate bringing further rounds of motions for summary adjudication – 3 by the Trustee/Plaintiff and 7 by Defendant/SCM. (Because these are 12 separate adversary proceedings with sometimes differing facts, Defendants estimate that 24+ motions for summary adjudication will actually need to be heard.) Some of these motions will depend on expert testimony and thus need to be heard after September 30, 2017.

The Plaintiff objects to significant continuance of the January 2018 pre-trial date, while the Defendant believes significant continuance will be inevitable given the 12 separate proceedings and the numerous motions for summary adjudication yet to be heard.

Defendant does not consent to the bankruptcy court's entering a final judgment.

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

Both parties want the matter sent to mediation at this time.

tentative ruling:

Set up a mediation. Should each of these adversary proceedings be handled separately or should they be grouped before a mediator(s)?

Party Information

Defendant(s):

Argent Management, LLC	Represented By Craig H Averch
SunCal Management LLC	Represented By Craig H Averch

Plaintiff(s):

Steven M Speier	Represented By Mike D Neue Gary A Pemberton Heather B Dillion

10:00 AM
: **Chapter 11**
Adv#: 1:16-01124 Speier v. SunCal Management LLC et al

#5.00 Status Conference

fr. 11/15/16, 2/21/17, 4/4/17

Docket 1

Tentative Ruling:

The status conference is continued by the Court to May 30, 2017 at 10:00 a.m. Appearances on May 2, 2017 are waived.

SunCal Joint Status Conference Report – Summary and Highlights

Fact discovery has been completed. Expert discovery is scheduled to be completed by September 30, 2017 (per court order).

Pre-trial conference is currently scheduled for January 11, 2018.

Both parties anticipate bringing further rounds of motions for summary adjudication – 3 by the Trustee/Plaintiff and 7 by Defendant/SCM. (Because these are 12 separate adversary proceedings with sometimes differing facts, Defendants estimate that 24+ motions for summary adjudication will actually need to be heard.) Some of these motions will depend on expert testimony and thus need to be heard after September 30, 2017.

The Plaintiff objects to significant continuance of the January 2018 pre-trial date, while the Defendant believes significant continuance will be inevitable given the 12 separate proceedings and the numerous motions for summary adjudication yet to be heard.

Defendant does not consent to the bankruptcy court's entering a final judgment.

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

Both parties want the matter sent to mediation at this time.

tentative ruling:

Set up a mediation. Should each of these adversary proceedings be handled separately or should they be grouped before a mediator(s)?

Party Information

Defendant(s):

Argent Management, LLC	Represented By Craig H Averch
SunCal Management LLC	Represented By Craig H Averch

Plaintiff(s):

Steven M Speier	Represented By Mike D Neue Gary A Pemberton Heather B Dillion

10:00 AM
: **Chapter 11**
Adv#: 1:16-01121 Speier v. SunCal Management, LLC et al

#6.00 Status Conference

fr. 11/15/16, 2/21/17, 4/4/17

Docket 1

Tentative Ruling:

The status conference is continued by the Court to May 30, 2017 at 10:00 a.m. Appearances on May 2, 2017 are waived.

SunCal Joint Status Conference Report – Summary and Highlights

Fact discovery has been completed. Expert discovery is scheduled to be completed by September 30, 2017 (per court order).

Pre-trial conference is currently scheduled for January 11, 2018.

Both parties anticipate bringing further rounds of motions for summary adjudication – 3 by the Trustee/Plaintiff and 7 by Defendant/SCM. (Because these are 12 separate adversary proceedings with sometimes differing facts, Defendants estimate that 24+ motions for summary adjudication will actually need to be heard.) Some of these motions will depend on expert testimony and thus need to be heard after September 30, 2017.

The Plaintiff objects to significant continuance of the January 2018 pre-trial date, while the Defendant believes significant continuance will be inevitable given the 12 separate proceedings and the numerous motions for summary adjudication yet to be heard.

Defendant does not consent to the bankruptcy court's entering a final judgment.

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

Both parties want the matter sent to mediation at this time.

tentative ruling:

Set up a mediation. Should each of these adversary proceedings be handled separately or should they be grouped before a mediator(s)?

Party Information

Defendant(s):

Argent Management, LLC	Represented By Craig H Averch
SunCal Management, LLC	Represented By Craig H Averch

Plaintiff(s):

Steven M Speier	Represented By Mike D Neue Gary A Pemberton Heather B Dillion

10:00 AM
: **Chapter 11**
Adv#: 1:16-01122 Speier v. SunCal Management LLC et al

#7.00 Status Conference

fr. 11/15/16, 2/21/17, 4/4/17

Docket 1

Tentative Ruling:

The status conference is continued by the Court to May 30, 2017 at 10:00 a.m. Appearances on May 2, 2017 are waived.

SunCal Joint Status Conference Report – Summary and Highlights

Fact discovery has been completed. Expert discovery is scheduled to be completed by September 30, 2017 (per court order).

Pre-trial conference is currently scheduled for January 11, 2018.

Both parties anticipate bringing further rounds of motions for summary adjudication – 3 by the Trustee/Plaintiff and 7 by Defendant/SCM. (Because these are 12 separate adversary proceedings with sometimes differing facts, Defendants estimate that 24+ motions for summary adjudication will actually need to be heard.) Some of these motions will depend on expert testimony and thus need to be heard after September 30, 2017.

The Plaintiff objects to significant continuance of the January 2018 pre-trial date, while the Defendant believes significant continuance will be inevitable given the 12 separate proceedings and the numerous motions for summary adjudication yet to be heard.

Defendant does not consent to the bankruptcy court's entering a final judgment.

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

Both parties want the matter sent to mediation at this time.

tentative ruling:

Set up a mediation. Should each of these adversary proceedings be handled separately or should they be grouped before a mediator(s)?

Party Information

Defendant(s):

Argent Management, LLC	Represented By Craig H Averch
SunCal Management LLC	Represented By Craig H Averch

Plaintiff(s):

Steven M Speier	Represented By Mike D Neue Gary A Pemberton Heather B Dillion

10:00 AM
: **Chapter 11**
Adv#: 1:16-01126 Speier v. SunCal Management LLC et al

#8.00 Status Conference

fr. 11/15/16, 2/21/17, 4/4/17

Docket 1

Tentative Ruling:

The status conference is continued by the Court to May 30, 2017 at 10:00 a.m. Appearances on May 2, 2017 are waived.

SunCal Joint Status Conference Report – Summary and Highlights

Fact discovery has been completed. Expert discovery is scheduled to be completed by September 30, 2017 (per court order).

Pre-trial conference is currently scheduled for January 11, 2018.

Both parties anticipate bringing further rounds of motions for summary adjudication – 3 by the Trustee/Plaintiff and 7 by Defendant/SCM. (Because these are 12 separate adversary proceedings with sometimes differing facts, Defendants estimate that 24+ motions for summary adjudication will actually need to be heard.) Some of these motions will depend on expert testimony and thus need to be heard after September 30, 2017.

The Plaintiff objects to significant continuance of the January 2018 pre-trial date, while the Defendant believes significant continuance will be inevitable given the 12 separate proceedings and the numerous motions for summary adjudication yet to be heard.

Defendant does not consent to the bankruptcy court's entering a final judgment.

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

Both parties want the matter sent to mediation at this time.

tentative ruling:

Set up a mediation. Should each of these adversary proceedings be handled separately or should they be grouped before a mediator(s)?

Party Information

Defendant(s):

Argent Management, LLC	Represented By Craig H Averch
SunCal Management LLC	Represented By Craig H Averch

Plaintiff(s):

Steven M Speier	Represented By Mike D Neue Gary A Pemberton

10:00 AM
: **Chapter 11**
Adv#: 1:16-01127 Speier v. SunCal Management LLC et al

#9.00 Status Conference

fr. 11/15/16, 2/21/17, 4/4/17

Docket 1

Tentative Ruling:

The status conference is continued by the Court to May 30, 2017 at 10:00 a.m. Appearances on May 2, 2017 are waived.

SunCal Joint Status Conference Report – Summary and Highlights

Fact discovery has been completed. Expert discovery is scheduled to be completed by September 30, 2017 (per court order).

Pre-trial conference is currently scheduled for January 11, 2018.

Both parties anticipate bringing further rounds of motions for summary adjudication – 3 by the Trustee/Plaintiff and 7 by Defendant/SCM. (Because these are 12 separate adversary proceedings with sometimes differing facts, Defendants estimate that 24+ motions for summary adjudication will actually need to be heard.) Some of these motions will depend on expert testimony and thus need to be heard after September 30, 2017.

The Plaintiff objects to significant continuance of the January 2018 pre-trial date, while the Defendant believes significant continuance will be inevitable given the 12 separate proceedings and the numerous motions for summary adjudication yet to be heard.

Defendant does not consent to the bankruptcy court's entering a final judgment.

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

Both parties want the matter sent to mediation at this time.

tentative ruling:

Set up a mediation. Should each of these adversary proceedings be handled separately or should they be grouped before a mediator(s)?

Party Information

Defendant(s):

Argent Management, LLC	Represented By Craig H Averch
SunCal Management LLC	Represented By Craig H Averch

Plaintiff(s):

Steven M Speier	Represented By Mike D Neue Gary A Pemberton

10:00 AM

: **Chapter 11**

Adv#: 1:16-01128 SPEIER v. SUNCAL MANAGEMENT, LLC et al

#10.00 Status Conference

fr. 11/15/16, 2/21/17, 4/4/17

Docket 1

Tentative Ruling:

The status conference is continued by the Court to May 30, 2017 at 10:00 a.m. Appearances on May 2, 2017 are waived.

SunCal Joint Status Conference Report – Summary and Highlights

Fact discovery has been completed. Expert discovery is scheduled to be completed by September 30, 2017 (per court order).

Pre-trial conference is currently scheduled for January 11, 2018.

Both parties anticipate bringing further rounds of motions for summary adjudication – 3 by the Trustee/Plaintiff and 7 by Defendant/SCM. (Because these are 12 separate adversary proceedings with sometimes differing facts, Defendants estimate that 24+ motions for summary adjudication will actually need to be heard.) Some of these motions will depend on expert testimony and thus need to be heard after September 30, 2017.

The Plaintiff objects to significant continuance of the January 2018 pre-trial date, while the Defendant believes significant continuance will be inevitable given the 12 separate proceedings and the numerous motions for summary adjudication yet to be heard.

Defendant does not consent to the bankruptcy court's entering a final judgment.

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

Both parties want the matter sent to mediation at this time.

tentative ruling:

Set up a mediation. Should each of these adversary proceedings be handled separately or should they be grouped before a mediator(s)?

Party Information

Defendant(s):

Argent Management LLC	Represented By Craig H Averch
SUNCAL MANAGEMENT, LLC	Represented By Craig H Averch

Plaintiff(s):

STEVEN M. SPEIER	Represented By Evan C Borges Mike D Neue William N Lobel Gary A Pemberton

10:00 AM

: **Chapter 11**

Adv#: 1:16-01129 SPEIER v. SUNCAL MANAGEMENT, LLC et al

#11.00 Status Conference

fr. 11/15/16, 2/21/17, 4/4/17

Docket 1

Tentative Ruling:

The status conference is continued by the Court to May 30, 2017 at 10:00 a.m. Appearances on May 2, 2017 are waived.

SunCal Joint Status Conference Report – Summary and Highlights

Fact discovery has been completed. Expert discovery is scheduled to be completed by September 30, 2017 (per court order).

Pre-trial conference is currently scheduled for January 11, 2018.

Both parties anticipate bringing further rounds of motions for summary adjudication – 3 by the Trustee/Plaintiff and 7 by Defendant/SCM. (Because these are 12 separate adversary proceedings with sometimes differing facts, Defendants estimate that 24+ motions for summary adjudication will actually need to be heard.) Some of these motions will depend on expert testimony and thus need to be heard after September 30, 2017.

The Plaintiff objects to significant continuance of the January 2018 pre-trial date, while the Defendant believes significant continuance will be inevitable given the 12 separate proceedings and the numerous motions for summary adjudication yet to be heard.

Defendant does not consent to the bankruptcy court's entering a final judgment.

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

Both parties want the matter sent to mediation at this time.

tentative ruling:

Set up a mediation. Should each of these adversary proceedings be handled separately or should they be grouped before a mediator(s)?

Party Information

Defendant(s):

Argent Management LLC	Represented By Craig H Averch
SUNCAL MANAGEMENT, LLC	Represented By Craig H Averch

Plaintiff(s):

STEVEN M. SPEIER	Represented By Evan C Borges Mike D Neue William N Lobel Gary A Pemberton

10:00 AM
: **Chapter 11**
Adv#: 1:16-01130 SPEIER v. SUNCAL MANAGEMENT, LLC et al

#12.00 Status Conference

fr. 11/15/16, 2/21/17, 4/4/17

Docket 1

Tentative Ruling:

The status conference is continued by the Court to May 30, 2017 at 10:00 a.m. Appearances on May 2, 2017 are waived.

SunCal Joint Status Conference Report – Summary and Highlights

Fact discovery has been completed. Expert discovery is scheduled to be completed by September 30, 2017 (per court order).

Pre-trial conference is currently scheduled for January 11, 2018.

Both parties anticipate bringing further rounds of motions for summary adjudication – 3 by the Trustee/Plaintiff and 7 by Defendant/SCM. (Because these are 12 separate adversary proceedings with sometimes differing facts, Defendants estimate that 24+ motions for summary adjudication will actually need to be heard.) Some of these motions will depend on expert testimony and thus need to be heard after September 30, 2017.

The Plaintiff objects to significant continuance of the January 2018 pre-trial date, while the Defendant believes significant continuance will be inevitable given the 12 separate proceedings and the numerous motions for summary adjudication yet to be heard.

Defendant does not consent to the bankruptcy court's entering a final judgment.

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

Both parties want the matter sent to mediation at this time.

tentative ruling:

Set up a mediation. Should each of these adversary proceedings be handled separately or should they be grouped before a mediator(s)?

Party Information

Defendant(s):

Argent Management LLC	Represented By Craig H Averch
SUNCAL MANAGEMENT, LLC	Represented By Craig H Averch

Plaintiff(s):

STEVEN M. SPEIER	Represented By Evan C Borges Mike D Neue William N Lobel Gary A Pemberton

10:00 AM
: **Chapter 11**
Adv#: 1:16-01131 Speier v. SunCal Management LLC et al

#13.00 Status Conference

fr. 11/15/16, 2/21/17, 4/4/17

Docket 1

Tentative Ruling:

The status conference is continued by the Court to May 30, 2017 at 10:00 a.m. Appearances on May 2, 2017 are waived.

SunCal Joint Status Conference Report – Summary and Highlights

Fact discovery has been completed. Expert discovery is scheduled to be completed by September 30, 2017 (per court order).

Pre-trial conference is currently scheduled for January 11, 2018.

Both parties anticipate bringing further rounds of motions for summary adjudication – 3 by the Trustee/Plaintiff and 7 by Defendant/SCM. (Because these are 12 separate adversary proceedings with sometimes differing facts, Defendants estimate that 24+ motions for summary adjudication will actually need to be heard.) Some of these motions will depend on expert testimony and thus need to be heard after September 30, 2017.

The Plaintiff objects to significant continuance of the January 2018 pre-trial date, while the Defendant believes significant continuance will be inevitable given the 12 separate proceedings and the numerous motions for summary adjudication yet to be heard.

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

Defendant does not consent to the bankruptcy court's entering a final judgment.

Both parties want the matter sent to mediation at this time.

tentative ruling:

Set up a mediation. Should each of these adversary proceedings be handled separately or should they be grouped before a mediator(s)?

Party Information

Defendant(s):

Argent Management, LLC	Represented By Craig H Averch
SunCal Management LLC	Represented By Craig H Averch

Plaintiff(s):

Steven M Speier	Represented By Mike D Neue Gary A Pemberton

10:00 AM
1:06-10306 Functional Restoration Medical Ctr Inc and Vengroff. **Chapter 7**

#14.00 Motion for Release of Funds Deposited with Bankruptcy Court Clerk

fr. 4/4/17

Docket 762

Tentative Ruling:

On 4/3/17, the Manjunaths served attorney Timothy Donahue per the Court's instructions in the Tentative Ruling. Motion is granted.

prior tentative ruling (4/4/17)
Madhure and Shakuntala Manjunath seek the release of funds deposited with the court in this case. This motion was served on the Trustee, the UST, the Debtor, and the U.S. Attorney. The Court gave notice to all interested parties. **However, the prior attorney - Timothy Donahue - was not served with this motion.**

Unless he was served in a timely fashion, this will be continued to May 2, 2017 at 10:00 so that the movant can serve him.

Party Information

Debtor(s):

Functional Restoration Medical Ctr — Represented By
Daniel A Lev
Michael S Kogan

Movant(s):

Madhure Manjunath and Shakuntala — Represented By
Michael J Hemming

Trustee(s):

David Keith Gottlieb (TR) — Represented By

10:00 AM
CONT... **Functional Restoration Medical Ctr Inc and Vengroff.** **Chapter 7**
Richard Burstein
Lesley Davis
Steven T Gubner
Jeffrey P Nolan

10:00 AM
1:07-13259 Home Savings Mortgage **Chapter 7**

#15.00 Objection To Claim No. 56 Of Terwin Warehouse Management, LLC, And 59-62 Of Terwin Advisors, LLC

Docket 137

Tentative Ruling:

Service: Appears ok. On March 30, 2017, Terwin Advisors, LLC was served by mail at the notice address on the proofs of claims: c/o Aaron Malo, Esq., Sheppard Mullin Richter & Hampton 650 Town Center Drive, 4th Floor, Irvine, CA 92626.
On March 31, 2017, Terwin Warehouse Managment LLC was served by mail at the notice address (Sheppard Mullin) on the proof of claim.

Objection by Chapter 7 Trustee:

Pursuant to FRBP 3007, the Chapter 7 Trustee, David Hagen, objects to the proofs of claims filed by Terwin Warehouse Management LLC and Terwin Advisors LLC ("Terwin") in January 2008. Specifically, the Trustee objects to Claims Numbers 56, 59, 60, 61, and 62. The Trustee contends that Claims 60, 61, and 62 are duplicative of each other. As to Claims 56 and 59, they purport to be secured, priority claims but there is no supporting documentation to support this secured, priority status.

Background re the claims:

Claims 59, 60, 61, and 62 are based on pre-petition debts in which Terwin purchased various loans from Debtor. The claims are based on liability for certain early payment defaults. As for Claim 56, this relates to amounts owed by Home Savings Trust, and not Debtor.

Specifically, Trustee argues as follows with respect to each Claim:

Claim 56:
Trustee contends that at the time of the bankruptcy, Debtor's loans

were liquidated in connection with two mortgage loan securitization transactions. The proceeds from Debtor's loans were applied to amounts owed by Home Savings Trust. A balance of $277,586.19 is owed by Home Savings Trust and not Debtor. With respect to this claim, the Trustee objects on the grounds that (1) Terwin has failed to attach any supporting documentation with respect to exact amounts owed; and (2) there is no support for its administrative priority status.

Claim 59:
This claim is based on a pre-petition debt whereby Terwin purchased various loans from Debtor. Amounts are owed due to the liability for certain early payment defaults with respect to the loans.
The Trustee objects on the grounds that (1) Terwin fails to attach adequate supporting documentation to demonstrate the reason for the administrative priority status; and (2) Terwin fails to specify exact amounts owed.

Claim 60:
Trustee's grounds for objection are identical to Claim 59. Moreover, Trustee contends that Claim 60 is duplicative of Claim 59.

Claim 61:
Trustee's grounds for objection are identical to Claim 59. Moreover, Trustee contends that Claim 61 is duplicative of Claim 59.

Claim 62:
Trustee's grounds for objection are identical to Claim 59. Moreover, Trustee contends that Claim 62 is duplicative of Claim 59.

Per 11 U.S.C. Section 704(5), Trustee may object to claims. Section 507(a) restricts priority status to certain types of claims. Moreover, an administrative claim may only be classified as such if the claimant has established its priority treatment.
Here, with respect to Claims 56 and 59, the documents attached to the Claims do not support an administrative priority claim against the Debtor for breach of contract. Moreover, the documents do not demonstrate any sort of priority status for these claims. Therefore, these claims should be disallowed

in their entirety.

As for Claims 60, 61, and 62, Trustee contends these claims are duplicative of Claim 59 and so must be disallowed.

As of April 27, 2017, no opposition filed.

Analysis:

Under Section 502(a), "a claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest objects."

Objections are governed by FRBP Rule 3007. Rule 3007(a) provides "an objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession, and the trustee at least 30 days prior to the hearing."

Here, claimant Terwin has filed five proofs of claims, Claims 56, 59, 60, 61, and 62. Each proof of claim attaches certain documentation. Trustee argues that the attached documentation lacks the support to uphold each Claim.

A proof of claim lacking documentation does not qualify for the evidentiary benefit of Rule 3001(f), but that by itself is not a basis to disallow the claim. *In re Heath,* 331 B.R. 424 (BAP 9th Cir. 2005). The objecting party may overcome the presumptive validity of a proof of claim only by offering evidence of equally probative value in rebutting the evidence offered by the proof of claim. *Ashford v. Consolidated Pioneer Mortgage (In re Consolidated Pioneer Mortgage),* 178 B.R. 222, 226-27 (BAP 9th Cir. 1995). With such an objection, the burden shifts back to the claimant to produce evidence meeting the objection and establishing the claim by a preponderance of the evidence. *Consolidated Pioneer Mortgage,* 178 B.R. at 226.

In this case, Terwin's Claim 56 states "see attached" in regards to the amount owed and basis for the claim. Moreover, Terwin classifies the claim as secured and that it is entitled to priority. Terwin attaches a supplement to

the proof of claim form which states that the balance owed by Debtor to the Home Savings Trust (Terwin is the program administrator for the Trust) was in excess of $217,586.19 plus attorneys' fees and costs as of October 2007. In addition, Terwin attaches a UCC-1 Financing Statement which was filed on June 20, 2006.

Terwin's proof of claim is definitely lacking in that it does not state a specific amount of the claim, nor does it provide support as to why the claim is entitled to priority. As to the secured nature of the claim, there is a UCC Financing Statement, which may suffice, but the servicing agreement is not attached and no specific collateral is identified. Thus it appears to be a simple breach of contract unsecured claim. Further, the supplement simply states the balance owed "was in excess of $217,586.19 plus attorneys' fees and certain other costs...Subsequently, this amount has increased as additional legal fees, costs, interest, and other amounts have accrued." Thus, in the Court's view, this proof of claim is not prima facie evidence of the validity and amount of the claim. While Rule 3001(c)(2)(A) requires, in individual bankruptcies, that a creditor attach an itemized statement of the interest, fees, and expenses to its proof of claim, the Court finds this would be helpful in this bankruptcy as well, despite the fact this is not an individual bankruptcy. Moreover, without more, the Court cannot allow this claim priority status.

To date, Terwin has not filed a response. The Court will allow Terwin to file an amended proof of claim 56 within 30 days of the entry of the order on this motion.

Like Claim 56, Claim 59 states "see attached" in regards to the amount owed and basis for the claim. Moreover, Terwin classifies the claim as secured and that it is entitled to priority. Terwin attaches a supplement to the proof of claim form which states that Terwin purchased certain loans from Debtor in 2006 and 2007. Terwin also attaches a Seller's Purchase, Waranties and Interim Service Agreement dated March 21, 2006 as evidence that Debtor is liable on these amounts The supplement adds that under the agreement, Debtor is liable to Terwin for any early payment defaults. The supplement then includes amounts for the early payment defaults for four separate loans, with the total being $299,336.07. Presumably there is a UCC

10:00 AM
CONT... **Home Savings Mortgage** **Chapter 7**

1 filing, though none is provided.

It appears that this is to be treated as an unsecired claim in the amount of $299,336.07.

To date, Terwin has not filed a response. However, the Court will allow Terwin to file an amended proof of claim within 30 days of the entry of an order on this objection.

Objection to Claim 60 is sustained. Claim 60 appears to be identical to Claim 59 as argued by the Trustee.

Objection to Claim 61 is sustained. Claim 61 appears to be identical to Claim 59 as argued by the Trustee.

Objection to Claim 62 is sustained. Claim 62 appears to be identical to Claim 59 as argued by the Trustee.

Party Information

Debtor(s):

Home Savings Mortgage — Represented By
David S Hagen
Annie Verdries

Movant(s):

David R Hagen (TR) — Represented By
Frank X Ruggier
Walter K Oetzell

Trustee(s):

David R Hagen (TR) — Represented By
Frank X Ruggier
Walter K Oetzell

10:00 AM
1:09-23807 Shellie Melissa Halper **Chapter 7**
Adv#: 1:11-01317 Cohen v. Halper

#16.00 Status Conference re Complaint to Object to Discharge of Debt due to Fraud 11 USC 523(a)(2)(A)

fr. 7/6/11, 8/31/11, 10/18/11, 12/13/11, 1/3/12, 1/17/12, 2/7/12, 1/8/13; 6/4/13, 11/19/13, 3/11/14, 7/8/14; 1/13/15, 1/20/14, 5/26/15; 6/2/15; 10/20/15, 12/8/15; 2/9/16; 4/5/16, 6/21/16, 8/16/16, 9/27/16; 11/15/16, 12/6/16, 2/21/17; 3/21/17

Docket 1

Tentative Ruling:

See motion for default judgment - calendar #32.

prior tentative ruling (2/21/17)
On 1/30/17 an order was entered striking the Debtor's answer and entering default against her. This was a result of the Order on Contempt, dkt. 95, and Halper's failure to make the required payments. Cohen was to file any necessary supplemental evidence in support of damages and lodge and order for default judgment. Nothing new has been filed as of 2/13/17. When will that be done?

Party Information

Debtor(s):

Shellie Melissa Halper — Represented By
Mark M Sharf
Alan W Forsley

Defendant(s):

Shellie Melissa Halper — Represented By
Mark M Sharf
Alan W Forsley

10:00 AM
CONT... **Shellie Melissa Halper** **Chapter 7**

Plaintiff(s):

Solomon M Cohen — Pro Se

Trustee(s):

David Keith Gottlieb (TR) — Represented By
Michael H Weiss
Laura J Meltzer

David Keith Gottlieb (TR) — Pro Se

US Trustee(s):

United States Trustee (SV) — Pro Se

10:00 AM
1:10-15070 60th & K, LLC **Chapter 11**

#17.00 Post Confirmation Status Conference

fr. 12/14/10, 3/8/10, 9/20/11, 12/13/11, 1/3/12, 4/10/12
7/3/12, 10/9/12, 1/15/13, 4/9/13, 7/9/13, 11/19/13, 2/4/14,
3/25/14, 4/22/14, 6/3/14, 9/2/14, 11/10/14, 2/10/15, 310/15,
4/14/15, 5/26/15, 7/21/15, 9/29/15, 11/17/15, 12/22/15,
2/9/16; 4/5/16; 6/21/16, 10/11/16; 12/20/16

Docket 1

Tentative Ruling:

The Debtor and the LACTTC have reached a stipulation on the treatment of the LACTTC claim that takes care of the additional amounts from the date of filing to the effective date. All payments under the plan appear to be current.

Continue without appearance to 9/12/17 at 10:00 a.m.

prior tentative ruling (12/20/16)
Per the status report filed 12/16, the Debtor is current under the plan.
Continue without appearance to 5/2/17 at 10:00 a.m.

prior tentative ruling (10/11/6)
Per the status report, the effective date of the Plan is 11/5/16. The Debtor has sufficient cash to comply with the Plan and pay its post-confirmation expenses.

Party Information

Debtor(s):

60th & K, LLC Represented By
Raymond H Aver

Movant(s):

60th & K, LLC Represented By
Raymond H Aver

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1:11-18629 Robert Vilas Johnson and Linda Joyce Johnson **Chapter 11**

#18.00 Hearing re: Allowance of Professional Fees and Expenses

fr. 2/21/17, 3/1/17

Docket 556

Tentative Ruling:

On 3/3/17 this case was converted to chapter 7. Basically the same players are involved on the professional level: Jeffrey Golden is trustee and he is employing Baker Hostetler as his counsel.

As to the application for chapter 11 fees (which will, of course, be subordinated to the chapter 7 ones):

Crowe Horwath - I approve the agreement with the UST that the entire amount will be $50,000.

Baker & Hostetler - I do not agree with the settlement reached with the UST. I am reducing the fifth application period (8/1/15-1/27/17) by $40,000, so the total will be $110,455 fees, plus costs as requested). There is no allowance for anticipated work after that date. The reductions are made as follows:

asset analysis and recovery - $2,000
plan and disclosure statement - $25,000
pleadings - 13,000

prior tentative ruling (3/1/17):

Background:

Mr. Johnson owned and operated (in part) IS West, an internet service provider. In February 2011, the California Superior Court entered a substantial judgment against Mr. Johnson and IS West in favor of Kenneth Cleveland and William Bickley (the "Judgment Creditors") relating to, among other things, a breach of contract. Shortly thereafter, Drew Kaplan (Mr. Johnson's business partner) commenced an arbitration proceeding against Mr. Johnson seeking damages arising out of Mr. Johnson's purported misconduct in his dealings with the Judgment Creditors.

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CONT... **Robert Vilas Johnson and Linda Joyce Johnson** **Chapter 11**

On July 18, 2011, the Debtors filed for chapter 11 relief. After two failed attempts by the Debtors to confirm a plan of reorganization, the court *sua sponte* ordered the appointment of a chapter 11 trustee. Mr. Golden was appointed as chapter 11 trustee on November 14, 2012. The Trustee has employed (each with court approval) Mirman, Bubman & Namahias, LLP and then Baker & Hostetler, LLP ("Baker"), as counsel, and Crowe Horwath LLP ("Crowe"), as accountants.

Among other actions, the Trustee prevented a below-market sale of IS West (by a receiver appointed by the Superior Court for the benefit of the Judgment Creditors), sold IS West for approximately $3 million more, commenced a chapter 11 case for IS West, and confirmed a plan of reorganization for IS West – ultimately resulting in a distribution of nearly $1 million to this estate. The Trustee also commenced an adversary proceeding against Mr. Kaplan (the "Kaplan Adversary") and objected to Mr. Kaplan's $8.6 million claim, resulting in the subordination of that claim. The Trustee has also proposed three plans of reorganization. The most recent, the Fourth Amended Plan of Reorganization and Disclosure Statement, were filed on October 24, 2016. The Fourth Amended Disclosure Statement was not approved at a December 6, 2016 hearing (on grounds of both disclosure and feasibility) and the hearing on this disclosure statement has been continued until March 21, 2017.

The principal remaining assets of the estate are: (i) claims and causes of action asserted against Mr. Kaplan in the Kaplan Adversary and (ii) $245,000 in cash.

The unsecured claims against the estate are:

- Professional administrative claims (including projected fees through the closure of the case) of $290,000, consisting of $5,000 for the Trustee, $190,000 for Baker, and $95,000 for Crowe
- Other administrative claims (held by the IRS, the FTB, and the US Trustee) of $4,000
- Priority tax claims (held by the IRS and the FTB) of $210,000
- General unsecured claims of $657,000
- Mr. Kaplan's subordinated claim of $8.6 million and subordinated tax claims of $11,000

All secured claims relate to (i) the Debtors' residence, which the Trustee has abandoned, or (ii) the Debtors' automobiles and have been satisfied.

The following interim fees and expenses have been court approved

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CONT... Robert Vilas Johnson and Linda Joyce Johnson **Chapter 11**

and paid to date:

- Mirman, Bubman & Nahmias - $36,000
- Baker - $309,000
- Jeffrey Golden, Trustee - $68,000 [*Note from the Court: this amount is from the Debtors' opposition, and I was not able to verify it against any figures in the Motion.*]

Motion

After repeated attempts to confirm a plan of reorganization and two rounds of mediation with Judge Meredith Jury, the Trustee has concluded that dismissal of this chapter 11 case, subject to certain conditions, is in the best interests of the estate. These conditions are:

- approval of professional administrative claims,
- distribution of cash on hand to holders of administrative and priority claims,
- dismissal of the chapter 11 case and related adversary proceedings,
- affirmation of all orders issued in the chapter 11 case, and
- retention of jurisdiction by the Court to resolve certain disputes related to the chapter 11 case.

Such a dismissal will provide the greatest distributions to creditors in the circumstances.

Abandoning pending matters and dismissing the case will avoid the incurrence of additional administrative expenses. Even if successful in the Kaplan Adversary, the Trustee has concerns about recovering from Mr. Kaplan. The Debtors do not appear to be willing to make the contributions required to fund the proposed plan.

Conversion to chapter 7 would add administrative expenses without any corresponding benefit and merely delay conclusion of this case.

Bankruptcy Code §§105(a), 305(a), and 1112(b) provide the Court with the authority to achieve the goals of bankruptcy in a conditional dismissal. Dismissal is warranted under §§1112(b) and 305(a), as serving the best interests of creditors and the Debtors. It maximizes the amounts available to satisfy the claims of creditors and in doing so reduces the Debtors' overall debt.

Under §349(b) dismissal vacates any orders of this court, "[u]nless the court, for cause, orders otherwise . . . ." As the purposes of the Bankruptcy Code and interests of creditors are best served by a structured dismissal, an

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CONT... Robert Vilas Johnson and Linda Joyce Johnson **Chapter 11**

order mooting §§349(b) is warranted under §§105(a) and 349(b).

The Court should retain jurisdiction to resolve disputes concerning its orders in this bankruptcy case, as it is in the best position to interpret and enforce its orders. Seeking the guidance of other courts or reopening this case would entail substantial and unnecessary expense and diminish the finality of the dismissal order.

The Court should approve the professional fees. Payment of administrative claims of estate professional is warranted upon dismissal where, as here, the trustee has rendered services that will unjustly enrich the debtor upon dismissal. The work of the Trustee and his professionals resulted in the distribution of $1 million to this estate from the estate of IS West. The Trustee has also addressed and reduced substantial tax liabilities. Finally, the Trustee and his professionals have substantially furthered the potential claims against Mr. Kaplan, which the Trustee is abandoning to the Debtors. If the administrative professional claims are not paid, the Debtors will receive these benefits without bearing any of the costs.

The Trustee is also in negotiations with his professionals to reduce the amount of their fees. Furthermore, although the Trustee has billed at his regular hourly rate in excess of $400,000, he is recovering solely his statutory fee to which he is entitled under §326.

United States Trustee's Objection

Bankruptcy Code §330(a)(1) authorizes the bankruptcy court to award to professionals employed under §327(a) "reasonable compensation for actual, necessary services" and "reimbursement for actual, necessary expense. This authority includes the discretion, upon motion or *sua sponte*, to award less than has been requested. [This objection then lists "all relevant factors" (from §330(a) and case law) to be considered by the bankruptcy court in assessing "the nature, extent, and value of services rendered."]

A significant percentage of Crowe's compensation request includes entries for duplicative services, time lumping and objectionable overhead charges in violation of LBRs and other authority.

50% of the time Baker billed for the disclosure statement should be disallowed as not necessary or beneficial to the estate. Further, Baker is seeking $15,000 of additional compensation incurred after filing the motion until dismissal of the case, without specifying the services to be rendered.

The US Trustee understands that the Trustee may have further

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CONT... Robert Vilas Johnson and Linda Joyce Johnson **Chapter 11**

objections to fees and is negotiating with the professionals. Crowe and Baker have given the US Trustee additional time to supplement this objection if the US Trustee's concerns are not addressed.

Franchise Tax Board's Opposition

Section 330 allows professionals reasonable compensation for actual, necessary services that are reasonably likely to benefit the estate or are necessary to administration of the estate. The applicant bears the burden of establishing entitlement to the compensation and reimbursement.

The Court cannot conclude that any structured dismissal is in the best interests of the estate, because the professional fees and expenses, and thus distributions to creditors, are uncertain.

The Trustee's final fee application does not conform to the Federal Rules of Bankruptcy Procedure and the US Trustee Guidelines, by failing to submit contemporaneous time records and a narrative of the services performed. The Trustee computes the requested compensation based on a percentage calculation under §326(a), but the Trustee is not automatically entitled to the statutory cap.

Baker has been paid fees and expenses under four interim fee applications. Baker's final fee application only covers services for the last period for which fees were sought, instead of all services performed in this case (contrary to the LBRs). Baker also fails to arrange its fees and expenses by project category, which would enable creditors and the Court to evaluate the necessity and benefit of its services. Among other things, the FTB is concerned about the amount of time spent on chapter 11 plans, even though some plans were patently nonconfirmable, the cost-benefit of pursuing claims against Kaplan, and duplicative work

Crowe's final fee application includes services not reasonably likely to benefit the estate and not necessary to the administration of the estate. For instance, 39.6 hours for "research and analysis" on cash disbursements, cash receipts, and the petition, schedules and case docket was unnecessary and not likely to benefit the estate in a case with only major asset. Further, 24.8 hours for "research and analysis" supporting the Trustee's plan, including projected tax liability, was neither necessary nor beneficial where the plans did not contain any significant tax information.

The Court should deny this motion or continue it for six months to allow the FTB to conduct discovery. Any structured dismissal should state that the

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CONT... Robert Vilas Johnson and Linda Joyce Johnson **Chapter 11**

FTB may move all payments the FTB has received on estate tax liabilities to the Debtors' FTB individual account so that such payments can be applied to the tax obligations that the debtor will incur upon dismissal.

Debtors' Response

The Debtors were in possession of this estate for only sixteen months, while it has been four years and three months since the Trustee's appointment. The Trustee is responsible for the progress of this bankruptcy case.

The Trustee received a deposit of $846,000 from the sale of the estate's largest asset – 50% of IS West. The professional administrative claims of $290,000 exceed the $249,000 of remaining funds on hand by $45,000. The Trustee and the Trustee's attorneys have already received a substantial portion of this estate: Mirman, Bubman & Nahmias - $36,000; Baker - $309,000; and the Trustee - $68,000.

The fees sought by Crowe are for duplicative and unnecessary work.

The US Trustee and the FTB's oppositions sufficiently address the issues regarding the professionals' claims, although the Debtors believe denying the motion or continuing this hearing for discovery will only lead to further cost and delay.

This Court has discretion in approving conditions to dismissal. The Debtors ask the Court to use the discretion to apportion the remaining $249,000 among non-professional administrative claims, priority unsecured claims, and nonpriority unsecured claims, or convert this case to a chapter 7.

Omnibus Reply by the Trustee

The Trustee has worked diligently throughout this case. Despite numerous successes, Mr. Johnson's announcement that he intended to retire has left the Trustee with few options: conversion or the proposed conditional dismissal. The conditional dismissal best serves the interests of the estate and creditors because it avoids the additional administrative expenses that would be created by conversion.

The US Trustee's objection has been resolved by stipulation: Baker has agreed to reduce fees and expenses by $20,000 and Crowe has agreed to accept $50,000 on account of services rendered to the estate. Baker has also agreed to file billing statements for all fees and expenses for the period between January 28, 2017 and the hearing. As a result, the US Trustee has

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agreed to withdraw the US Trustee Objection.

In addition to this reduction in professional fees, the estate is presently amending its tax returns, which the Trustee understands will result in a tax refund to the estate of $40,000-$60,000.

The FTB Opposition lacks merit:

- The amount of distributions is not unknown. Due to the reductions agreed to by Baker and Crowe, priority creditors will receive approximately $15,000. The Trustee anticipates making a second, larger distribution to priority creditors after receiving the tax refund.
- **Trustee Fees:** The Trustee's compensation under §326 is not based on hours worked, but is a commission based on distributions. The US Trustee Guidelines are not applicable to commissions and, in any event, are internal guidelines not binding on the Court.
- **Baker Fees:** The Trustee incorporated by reference Baker's interim fee applications, to avoid the expenditure of further fees and expenses in this case. There is no need for a final fee application. The billing invoices comply with the US Trustee Guidelines, which is the reason why the US Trustee has not objected to the form of the invoices. As to the reasonableness of the fees and expenses incurred, the Court should be careful to avoid using hindsight to second guess actions of counsel. Fees are not unreasonable simply due to the length of time the Trustee has been involved or the changes in approach necessitated by changes in facts (like Mr. Johnson's retirement decision) and/or law (like the Ninth Circuit decision in *Zachary* that the absolute priority rule applies to individual debtors) or the failure of negotiations. Fees incurred in objecting the Kaplan's claim were reasonable: they led to the subordination of the claim. The FTB argues that Baker's work was duplicative of that or the Trustee or Crowe, without offering any substantiation.
- **Crowe Fees:** Crowe has agreed to reduce its requested fees by approximately $45,000 (almost 50%), which addresses any potential deficiencies in its fee request.
- There is no cause to continue the hearing on this motion for six months, which would only increase administrative expenses and benefit no one.

The Debtors' request that the Court alter the distribution scheme to apportion the remaining $249,000 in the estate among the non-professional

creditors violates the priority scheme of §507, and is thus impermissible. It is also unfairly prejudicial to the Trustee and his professionals who have worked diligently in an effort to realize a tangible benefit for creditors. While the Trustee had envisioned a different result for this chapter 11, the Trustee's failure to confirm a plan was due to circumstances beyond the Trustee's ability to control.

Analysis

There is case law supporting this Court's authority to order a conditional (or structured) dismissal, pursuant to §§105(a), 305(a), and 1112 (b). However, the Court must find that such dismissal would better serve both creditors and the debtor. *In re Eastman*, 188 B.R. 621, 625 (B.A.P. 9th Cir. 1995)(dismissal under §305(a)).

This Court has abundant respect for Judge Jury, who "strongly recommended" that the Trustee move for conditional dismissal of this case [motion ¶11]. However, as set forth below, the Court has serious concerns about this conditional dismissal. The parties should come to court prepared to address these concerns.

The proposed structured dismissal does not appear to be in the best interests of the Debtors, who would not receive a discharge and would remain liable for the unpaid portion of the $210,000 of priority tax claims, the full $657,000 of general unsecured claims and the full $8.6 million of subordinated unsecured claims. In a chapter 7, by contrast, while the unpaid portion of $210,000 of priority tax claims would most likely be both larger - due to chapter 7 administrative expenses - and non-dischargeable under § 523(a)(1), the Debtors would be discharged from over $9 million of general and subordinated debt. This dismissal would not provide the Debtors with the "fresh start" that is one of the major policy goals of the Bankruptcy Code.

(It does then seem almost inevitable that this dismissal would be followed by a chapter 7 filing by the Johnsons. Is there a reason why this structured dismissal followed by a chapter 7 would be preferable to conversion of this case to chapter 7? The Court is aware that there is a §523 action brought by Kaplan, which would most likely be filed anew if there is a later chapter 7 case.)

It is also far from clear that the advantages to the creditors and the estate are substantial enough to justify such a denial of a fresh start. The only advantage of a structured settlement over conversion to a chapter 7 is

avoiding the cost and delay of a chapter 7. With respect to delay, the liquidation of assets and claims in this case has progressed to the point that a chapter 7 would not consume significant time, especially relative to the amount of time this case has already consumed. With respect to costs, the assets of this estate are presently sufficient to pay only a portion of administrative claims, although the reduction in administrative claims and/or the tax refund (as discussed in the Reply) potentially could result in the full payment of administrative claims and some payment to priority creditors. Thus, the increased costs of a chapter 7 would reduce the payout to the administrative claims (mostly the professionals) and/or the priority tax claims. (It should be noted that one of these priority tax claim holders – the FTB – opposes this structured dismissal.)

This dismissal would not benefit the general unsecured creditors, who would receive nothing in the dismissal but could pursue their remedies against the Debtors post-dismissal. The Motion argues that these creditors would be benefited by the reduction in the overall debt. However, given the prospects of recovering from a couple of individuals without any substantial assets, who are on the verge of retirement, a small reduction in claims would have little effect on unsecured creditor recoveries.

However, the Debtors do not oppose dismissal of this case. They only object to the amount of fees and the apportionment of the remaining assets.

Even if the Court concludes that dismissal is appropriate, the Court cannot approve the professional administrative claims in the amounts advocated by the Trustee. The Trustee argues that these claims should be paid under a theory of unjust enrichment of the Debtors. This is a very different standard from the approval of professional fees under §330 in a successful chapter 11 plan or at the completion of a chapter 7 liquidation. All of the fees must be re-assessed for post-dismissal benefit to the Debtors. Many of the Trustee's counsel's activities do not appear to have provided benefit to the *Debtors*. For instance, the Trustee's counsel has spent substantial amounts of time compelling the Debtor to turn over the 2011 Ford Flex, which was sold for $9,400. Time and money spent subordinating Kaplan's claim does not benefit the Debtors, who would remain liable on that claim post-dismissal. Likewise, the Trustee argues that the Debtors will benefit from the Trustee's work on the Kaplan Adversary (which the Trustee is abandoning to the Debtors), but this very motion, in supporting the Trustee's proposed abandonment of the Kaplan Adversary, concluded recovery was

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unlikely.

Whether under an unjust enrichment standard or under §330, the Court probably will need further time to fully and properly evaluated the requested fees and expenses. The six months continuance for discovery requested by the FTB, on the other hand, would only lead to increased fees and decreased recoveries and will not be granted.

Party Information

Debtor(s):

Robert Vilas Johnson — Represented By
Andrew P Altholz
Gavin L Greene
Ashley M McDow
Leslie A Cohen
Fahim Farivar

Joint Debtor(s):

Linda Joyce Johnson — Represented By
Andrew P Altholz
Gavin L Greene
Ashley M McDow
Leslie A Cohen
Fahim Farivar

Trustee(s):

Jeffrey I Golden (TR) — Represented By
Jeffrey I Golden (TR)
Ashley M McDow
Michael T Delaney
Fahim Farivar
Andrew P Altholz
Gavin L Greene
Leslie A Cohen

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1:11-18629 Robert Vilas Johnson and Linda Joyce Johnson **Chapter 11**

#19.00 Evidentiary Hearing re: Motion to Disallow Claims No. 14-1 filed by Drew Kaplan

fr. 2/4/14, 3/11/14, 5/6/14, 7/22/14, 11/18/14, 12/1/14, 1/20/15, 3/31/15, 5/26/15; 6/2/18, 8/18/15, 9/22/15, 11/17/15, 12/22/15, 1/26/16; 3/15/16, 5/17/16; 7/12/16; 9/13/16; 10/25/16; 12/6/16, 1/17/17; 3/21/17

Docket 196

Tentative Ruling:

This case was converted to chapter 7. The parties need to decide how to proceed. Nothing new has been filed as of 4/27.

prior tentative ruling (8/18/15)
On 5/26 I continued this to 6/2 as a holding date to make sure that either Judge Jury or Judge Bluebond would be willing to serve as mediator. Judge Jury has agreed, so the June 2 hearing is continued without appearance to 8/18/15 at 10:00 a.m. On 7/28 there is a status conference in the main case and a UST motion and perhaps other things. As we get closer to the date, the parties can agree to advance this status conference to 7/28 or delay the other matters to 8/18 or just to leave the calendar as it is.

prior tentative ruling (5/26/15)
Everything else in this case was continued to 7/28/15 at 10:00 a.m. Nothing has been filed as to this claim. Should this also be continued to that date?

prior tentative ruling (3/31/15)
Continued by stipulation to 5/26/15 at 10:00 a.m.

prior tentative ruling (1/20/15)
On 1/8/15 the Court entered its order granting in part and denying in part claim as to the issues of statute of limitations and of the derivative nature of the claim. The fraud claims survived, but the breach of fiduciary duty one did

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not. The parties were ordered to provide the Court with a discovery schedule and proposed trial dates. Mediation was suggested.

As of 1/15, nothing more has been filed.

prior tentative ruling (7/22/14)
The Trustee filed this motion objecting to the claim of Drew Kaplan in the principal amount of $8.6 million for damages and loss of value of shares and investment in IS West. The claim has no substantiating evidence and merely attaches an unauthenticated chart relating to the value of an unidentified company and also attaches a copy of the §523 complaint.

The claim is also untimely and the adversary proceeding does not meet the requirements of an informal claim. The claims bar date was 2/1/12. The adversary complaint was filed on 12/29/11. The proof of claim was filed on 10/22/13.

On 4/18/11 Kaplan filed an arbitration seeking to remove Johnson as a director of ISW and impose liability for conduct similar to that alleged in the AP complaint. This was not attached to the proof of claim and has been stayed by the bankruptcy case.

The proof of claim is deficient in that it does not show that the debt is related to ISW and it does not demonstrate that Kaplan owned any interest in ISW. Although this is alleged in the adversary complaint, that is not evidence. There are various other deficiencies.

As to timeliness, there is no doubt that Kaplan was aware of the bankruptcy and the bar date.

The adversary complaint does not constitute an informal proof of claim because it does not meet the two prong test of M.J. Waterman & Associates, Inc., 227 F.3d 604 (6th Cir. 2000): it must meet the technical requirements of a proof of claim and the allowance of the claim must be equitable. The complaint failed to explicitly state the nature and amount of the claim in that it merely points to the judgment against Johnson and ISW in favor of third parties and then concludes that the judgment diminished the value of ISW. It

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does not explicitly establish that Johnson is liable to Kaplan for his allegedly wrongful conduct or that Kaplan is entitled to compensation for the diminution in value of ISW,if any. It does not establish a legal theory or agreement under which Johnson is liable to Kaplan for the alleged damages. The complaint is against Johnson and does not show an intention to hold the estate liable.

It would be inequitable to allow the claimant to assert the claim. The Trustee has worked tirelessly to obtain control over ISW and to liquidate it for an amount sufficient to pay the allowed claims of both this estate and of ISW in full. Kaplan was well aware of this and never demonstrated an intention to hold the estate liable for Johnson's misconduct. Allowing Kaplan a prorata distribution would substantially diminish the amounts that the other claimants will receive. These claimants timely filed their proofs of claim and were accounted for when the sale price of ISW was negotiated.

Kaplan has received and holds fund obtained from ISW and this is a potential fraudulent transfer. This precludes Kaplan from recovering from the ISW estate.

Kaplan's claim is barred by the statute of limitations. The actions complained of occurred in 1998. The three-year statute of limitations started running when Kaplan discovered that he had a cause of action. This was no later than 12/2/05 when the state court lawsuit was filed by Cleveland, et. al. The bankruptcy petition was filed in 2011, well after the statute of limitations had run.

Opposition
The objection is premature since it is unknown whether this is a surplus case. If so, Kaplan would be entitled to payment under §726(a)(3). Beyond that, the IRS has filed multiple motions to dismiss or convert. Further, the adjucation of the §523 complaint should occur before the validity of the claim is dealt with.

This proof of claim is not like that in M.J.Waterman since there is a valid proof of claim and the written demands are clear and have undeniably put all parties on notice. Further, Kaplan held a 50% interest in the timely filed ISW

proof of claim, which was released in the settlement after the bar date. Kaplan did not participate in the settlement. Unlike Waterman, there is no pending plan of reorganization so there has been no effort to get creditors paid. Thus the POC should be given presumptive validity.

There is no requirement that a proof of claim comply with the official form. The complaint attached to the POC provides all of the necessary information. There has never been a question of Kaplan's 50% ownership in ISW. This is also set forth in the equity holders list the Trustee's counsel prepared for the ISW case.

The complaint provides a sufficiently detailed description of the basis of Johnson's liability. The claim arises from a tort and need not be based on a writing *per se*. It also gives a date and an amount.

The Kaplan claim was timely filed following ISW's withdrawal of its claim - claim 12-1, which was based on the 2011 judgment against Johnson and ISW. That claim was withdrawn on 9/18/13 and Kaplan filed his formal POC on 10/22/13. Not only did Kaplan not agree to the withdrawal of the claim, but he specifically reserved his rights to maintain his claim against ISW and Johnson.

The adversary complaint, which was filed before the bar date, comprises an informal proof of claim. It meets the requirement that it "must state an explicit demand showing the nature and amount of the claim against the estate, and evidence an intent to hold the debtor liable." Sambo's Rest., Inc. v. Sheeler (In re Sambo's Rest., Inc.) 754 F.2d 811, 815 (9th Cir. 1985). The adversary complaint clearly brought the attention of the court to the nature and amount of the claim. See Franciscan Vineyards, Inc., 597 F.2d 181, 183 (9th Cir. 1979). Mulltiple courts have held that the filing of a §523 complaint qualifies as an informal proof of claim. See, for example, In re Hayes, 327 B.R. 453 (Bankr. C.D. Cal. 2005).

The two part test of M.J. Waterman has not been adopted by the 9th circuit. The 9th circuit follows Sambo's. And even the equity arguments do not support the Trustee's position.

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As to the statute of limitations, this is a defense to the adversary. Beyond that the judgment on the Judgment Creditors' lawsuit was not entered until 3/25/11, the Johnson bankruptcy was filed in July 2011 and the adversary was filed in Dec. 2011, which was nine months after the state court judgment. In the complaint, Kaplan alleges that during the lawsuit, Johnson intentionally prevented him from learning or discovering the nature of the lawsuit or its magnitude. It appeared that the Judgment Creditors gave Johnson money for a different entity and not ISW.

Reply
The Trustee repeats his arguments from the motion itself. As to the contention that Kaplan was reserving his right to filed a proof of claim until ISW withdrew its claim, that if wholly unsupported by the law. The proof of claim has no presumption of validity. And the adversary complaint is not a proof of claim.

As to the statute of limitations, there is no disoute that it is three years from when Kaplan discovered the cause of action or by reasonable diligence should have discovered it. Unpingco v. Hong Kong Macau Corp., 935 F.2d 1043 (9th Cir. 1991). It is not when the judgment was entered. Here the lawsuit was commenced against ISW in 2005, at which time Kaplan was a 50% owener of ISW and heaviily involved in its operations. He admits that he knew of the lawsuit from it initiation. Kaplan asserts in his adversary complaint that Johanson had concealed from him possible liability to the Judgment Creditors when he induced Kaplan to enter into the Shareholder Cross-Purchase Agreement in 1998. Thus, when the lawsuit was filed in 2005, Kaplan found out that Johnson had concealed from him this potential liability of ISW. The burden is on Kaplan to show that he did not discover this and that the failure to discover it was not due to his negligence and that he had no actual of presumptive knowledge of facts that would have put him on notice to inquire.

Once the statute of limitations expired in 12/08, the claim ended.

If the Court does not grant the motion, the Trustee would like this converted to an adversary proceeding and taken to trial without delay. This is needed so that the Trustee can determine the amount to be distributed to general

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unsecured creditors and whether the Debtor will receive any surplus. Further, even if this is deemed to be a valid informal proof of claim, the Court must determine whether it should be subordinated to other general unsecured claims, which requires an adversary proceeding. FRBP 3007(b), 7001(8).

proposed ruling
Deny in part and grant in part. The adversary complaint is sufficient to serve as an informal pleading. This meets the requirements of Sambo's, which is the controlling case.

It seems that the objection to claim and the adversary against Johnson should be handled together. I am not sure that I can "convert" the objection to the claim into an adversary so as to satisfy FRBP 3007(b) if the Trustee decides to seek to subordinate this claim. So the Trustee may need to file a new adversary proceeding and I will handle that and the objection to claim together.

But since the issue here is fraud, etc., won't Kaplan still have to prove his claim by obtaining a judgment in the adversary case against Johnson? It seems that the amount of that judgment (if any) will determine his claim. Therefore it is appropriate to handle the Johnson adversary and the objection to claim together, even if the Trustee does not bring his own adversary proceeding against Kaplan.

As to the equities, Kaplan has made it clear that he is looking to Johnson and the Johnson estate to recover. No one is hurt by this and it is his right as a potential unsecured creditor.

However, the issue of the statute of limitations is a critical first step. It seems that I should set a short discovery schedule and set this one issue for an evidentiary hearing. If the statute of limitations began running anytime before mid-July 2008, the objection to the claim must be sustained and perhaps the adversary proceeding against Johnson must be dismissed.

Party Information

Debtor(s):

Robert Vilas Johnson Represented By

10:00 AM
CONT... **Robert Vilas Johnson and Linda Joyce Johnson** **Chapter 11**

Andrew P Altholz
Gavin L Greene
Ashley M McDow
Leslie A Cohen
Fahim Farivar

Joint Debtor(s):

Linda Joyce Johnson — Represented By
Andrew P Altholz
Gavin L Greene
Ashley M McDow
Leslie A Cohen
Fahim Farivar

Movant(s):

Jeffrey I Golden (TR) — Represented By
Jeffrey I Golden (TR)
Ashley M McDow
Michael T Delaney
Fahim Farivar
Andrew P Altholz
Gavin L Greene
Leslie A Cohen

Trustee(s):

Jeffrey I Golden (TR) — Represented By
Jeffrey I Golden (TR)
Ashley M McDow
Michael T Delaney
Fahim Farivar
Andrew P Altholz
Gavin L Greene
Leslie A Cohen

10:00 AM
1:11-18629 Robert Vilas Johnson **Chapter 11**
Adv#: 1:11-01679 Kaplan v. Johnson et al

#20.00 Status Conference Re: Complaint to determine dischargeabilityof debt [11 U.S.C. §523(a)(2)(A); 11 U.S.C. §523(a)(4) and 11 U.S.C. §523(a)(6)

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

Docket 1

Tentative Ruling:

This case was converted to chapter 7. The parties need to decide how to proceed. Nothing new has been filed as of 4/30.

prior tentative ruling (5/17/16)
Because of the *Zachary v. CB&T* case, the Trustee is preparing an Amended Plan. The Trustee requests that this be continued to 7/12/16. Unless Kaplan wants to appear on May 17, continue without appearance to 7/12/16 at 10:00 a.m.

prior tentative ruling (5/6/14)
On 4/22 each side filed its own status report and on 4/28 the Trustee filed his. According to the Plaintiff, he has attempted to meet with counsel for the Trustee and with counsel for Johnson. To no avail. He asserts that the Cross-Complaint alleges claims that belong to the estate and cannot be brought by Johnson. He requests that the Court issue and OSC re dismissal of the cross-complaint.

Defendant's counsel asserts that he met with Trustee's counsel, but Plaintiff's counsel was unavailable to meet. Discovery cutoff has occurred except for Kaplan's written discovery responses, which are due shortly. He anticipates

10:00 AM
CONT... **Robert Vilas Johnson** **Chapter 11**

a3-5 day trial, would like to set this for mediation and have a pretrial conference.

The Trustee will be ready for trial in October and wishes to take depositions and written discovery. He would like a mediation. He is the successor to the claims in the adversary proceeding and is evaluating his course of action as to those brought by the Debtor.

proposed ruling
We need to talk.
(1) is a formal settlement conference of all issues (including the Kaplan claim in the bankruptcy case) warranted? If so, who should be the mediator? [There was one formal mediation, but it did not resolve the matter.]
(2) should the Court issue an OSC on the counterclaim, cross-claim, and third party claim? What is left of these?
(3) what remains to be done before I can bring this matter to trial?
(4) when will the remaining Kaplan discovery responses by completed?
(5) what discovery does the Trustee want and does he need to bring a motion to extend the discovery cutoff?
(6) exactly what is the Trustee's involvement? Does he (as the estate) own Johnson's cross-claim and counterclaim? What about the one against ISW where he could be both Plaintiff and Defendant?
(7) how does this fit into the objection to the Kaplan proof of claim?

prior tentative ruling (3/11/14)
The discovery cutoff was extended by stipulation to 2/21/14. No status report has been filed as of 3/10 at 11:30 a.m. Should this trail the objection to Kaplan's claim? I don't think it needs to although that lawsuit will establish the damages amount.

prior tentative ruling (8/6/13)
Continued to 9-17-13 at 10:00 a.m. pursuant to stipulation approved 8-6-13.

prior tentative ruling (6/11/13)
This is resolved by the compromise. Should the status conference be continued to be sure that the order is entered?

10:00 AM
CONT... Robert Vilas Johnson **Chapter 11**

prior tentative ruling (2/12)
This is a §523 action by Kaplan against Johnson, with a counterclaim by Johnson against Kaplan and a third part complaint by Johnson against David Pasternak, Internet Specialties West, and Imagine Technologies. Pasternak has been dismissed as a third party defendant by order entered on 5/10. It appears that all other parties have answered. This was assigned to mediation in May 2012, but obviously has not settled. The status conference has been continued from time-to-time since then.

No status conference report has been received as of 3/3.

Party Information

Debtor(s):

Robert Vilas Johnson	Represented By Andrew P Altholz Gavin L Greene Ashley M McDow Leslie A Cohen Fahim Farivar

Defendant(s):

Robert Vilas Johnson	Represented By Andrew P Altholz

Joint Debtor(s):

Linda Joyce Johnson	Represented By Andrew P Altholz Gavin L Greene Ashley M McDow Leslie A Cohen Fahim Farivar

Plaintiff(s):

Drew Kaplan	Represented By Teri T Pham

10:00 AM
CONT... **Robert Vilas Johnson** **Chapter 11**

Trustee(s):

Jeffrey I Golden (TR)	Represented By Jeffrey I Golden (TR) Ashley M McDow Michael T Delaney Fahim Farivar Andrew P Altholz Gavin L Greene Leslie A Cohen

10:00 AM
1:11-18629 Robert Vilas Johnson **Chapter 11**
Adv#: 1:14-01095 Golden v. Kaplan et al

#21.00 Status Conference Re Complaint for:
Avoidance of Fraudulent Transfers (Actual Intent);
Avoidance of Fraudulent Transfers (Constructive Fraud); Recovery of Unlawful Corporate Distributions;
Recovery of Avoided Transers; and
Constructive Trust

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

Docket 1

Tentative Ruling:

The chapter 11 case was converted to chapter 7. This is continued without appearance to 5/2/17 at 10:00 a.m. so that the parties can decide how to proceed. Nothing new has been filed as of 4/30..

prior tentative ruling (5/17/16)
Because of the *Zachary v. CB&T* case, the Trustee is preparing an Amended Plan. The Trustee requests that this be continued to 7/12/16. Unless Kaplan wants to appear on May 17, continue without appearance to 7/12/16 at 10:00 a.m.

prior tentative ruling (2/15/15)
On 1/29/15 the Trustee filed a unilateral status report. I am not sure what is being asked of the Court. On Jan. 8, 2015 the Court issued its ruling as to certain issues of the objection ot claim, which is tied to this adversary proceeding. The Court ruled that
(1) the claims for fraud as to both the initial investment and the promises allegedly made in 2005 have been brought within the statute of limitations and are not derivative, but that they have been subordinated to the claims of the other unsecured creditors. and
(2) the claim was breach of fiduciary duty was brought within the statute of

10:00 AM
CONT... **Robert Vilas Johnson** **Chapter 11**

llimitations, but is derivative, belongs to the Trustee, and has been waived by the Trustee as part of the settlement.

The status conference on this Kaplan claim has been continued to 3/31/15 at 10:00 a.m.

Continue this status conference on the adversary proceeding without appearance to 3/31/15 at 10:00 a.m. I think that this and the claims objection should proceed together.

Party Information

Debtor(s):

Robert Vilas Johnson	Represented By Andrew P Altholz Gavin L Greene Ashley M McDow Leslie A Cohen Fahim Farivar

Defendant(s):

Imagine Technologies, Inc.	Represented By Teri T Pham Ashley M McDow
Drew Kaplan	Represented By Teri T Pham Ashley M McDow

Joint Debtor(s):

Linda Joyce Johnson	Represented By Andrew P Altholz Gavin L Greene Ashley M McDow Leslie A Cohen Fahim Farivar

10:00 AM
CONT... **Robert Vilas Johnson** **Chapter 11**

Plaintiff(s):

Jeffrey I Golden — Represented By
Michael T Delaney
Ashley M McDow
Teri T Pham

Trustee(s):

Jeffrey I Golden (TR) — Represented By
Jeffrey I Golden (TR)
Ashley M McDow
Michael T Delaney
Fahim Farivar
Andrew P Altholz
Gavin L Greene
Leslie A Cohen

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

#22.00 Motion for Ruling on Objection of Douglas DeNoce to the Homestead of Debtor

fr. 3/21/17

Docket 319

Tentative Ruling:

This was filed before all of the events about the SSA records. It needs to wait until those are produced and DeNoce has a reasonable time to review. Then it needs to be set for hearing.

On April 14 Mr. DeNoce filed an opposition to Debtor's motion to terminate discovery (dkt. 343), which is meant to be the opposition to this motion. As noted, it will be delayed until DeNoce has a reasonable time to review the records.

Party Information

Debtor(s):

Ronald Alvin Neff — Represented By Michael D Kwasigroch

Movant(s):

Ronald Alvin Neff — Represented By Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR) — Represented By M Douglas Flahaut

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

#23.00 Status conference after remand and vacature of order regarding claim of exemption by Ninth Circuit Bankruptcy Appellate Panel

fr. 5/14/15; 7/23/15; 8/20/15; 10/22/15; 1/14/16; 2/10/16; 2/17/16; 4/13/16 8/10/16; 8/30/16; 10/25/16, 12/20/16, 2/7/17, 2/21/17; 3/1/17

Docket 87

Tentative Ruling:

prior tentative ruling (3/1/17)
At the 2/7/17 status conference, Mr. DeNoce appeared by phone and said that he had received a letter from the Social Security Disability Department that they require the Debtor to sign the request for records. Mr. DeNoce was instructed (and agreed) to send a copy of that letter to Mr. Kwasigroch and file it with the court with whatever motion he wished. He was also instructed and agreed to file an undated status report on this matter, which concerns an objection to the homestead exemption.

Mr. DeNoce said that he had problems in the past when he mailed things to the court in that they were not docketed. He was bedridden at the time of the 2/7 hearing and will be having surgery in March.

On 5/16, DeNoce filed a status report that he will be ready for trial after the SSA Disability records are obtained and he has filed a motio0n for an independent medical evaulation. He also filed his declaration concerning his attempts to obtain the disability records. The balance of the declaration deals with he relations with Kwasigroch. At this time, the Court is not particularly interested in the past relations of these parties and has only scanned that materials enough to be aware of the subject matter.

Getting down to the real question-at-hand, obtaining the records, unlike the representations made on the phone, the only correspondence is the the California Department of Social Services, which no longer has the records. They informed DeNoce that these are being held by the Social Security

10:00 AM
CONT... **Ronald Alvin Neff** **Chapter 7**

Administration, probably at the Thousand Oaks filed office. The operative paragraph from Todd Eberle, Senior Staff Counsel at the California DSS, states: "In the meantime, if you contact the Thousand Oaks SSA field office, I would suggest that you have Mr. Neff sign the SSA's Consent for Release of Information (Form SSA-3288,[link given]). You could try and use the subpoena you provided Mr. Reilley, but from my experience SSA does not consider California subpoenas to be of a court of competent jurisdiction. A signed 3288 makes the process simple, although I understand it can often be problematic to convince an uncooperative party to sign the form." [Emphais added]

(1) This is not as DeNoce represented at the last hearing since this is not a communication from the SSA, which is a federal agency. It is from the DDS, which is a state agency.
(2) The subpoena in question was not from a California court, but from a Federal Bankruptcy Court, so the comment by Mr. Eberle has no relevance.
(3) There is no showing that DeNoce ever tried to obtain this by subpoena on the SSA.

If Neff wishes to agree to sign the form 3288, that would move this case along. However, unless the SSA itself refuses to provide the information through the subpoena process, I am not going to order that he sign it.

At the request of DeNoce, the Court will issue a new subpoena as to the SSA. I will continue this status conference to let him serive that and receive a response. When is DeNoce having his surgery.

prior tentative ruling (2/7/17)
Nothing further received as of 2/5/17. This status conference was on the bankruptcy case, not the adversary proceedings. It is now off calendar.

prior tentative ruling (12/20/16)
Off calendar. The memorandum and order were entered on 12/15/16.

A status conference on this adversary case will be held on Feb. 7, 2017 at 10:00 a.m. The Court will give notice.

Party Information

10:00 AM
CONT... **Ronald Alvin Neff** **Chapter 7**

Debtor(s):

Ronald Alvin Neff — Represented By
Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR) — Represented By
M Douglas Flahaut
Aram Ordubegian

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

Tuesday, May 02, 2017 **Hearing Room 303**

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

#23.01 Order Setting Hearing on Douglas Denoce's Objection to Order of March 28, 2017 and Request for Leave to submit new confidentialy order with additional terms

Docket 0

Tentative Ruling:

The issue here is whether Dr. Neff has grounds to claim the homestead amount due to someone with a disability. To obtain discovery, Mr. DeNoce has sought records from the Social Security Administration (SSA). It is important that these be kept confidential and that they not be disseminated except to those who (1) have need of them to advise DeNoce or be part of the eventual evidentiary hearing and (2) who also have signed a confidentiality agreement.

The exact wording of the confidentiality agreement and order have been hotly contested and on March 3, 2017 the Court issued its order, specifying the terms of the confidentiality agreement, etc. [dkt. 329] Among other things, the order requires DeNoce to obtain a signed confidentiality agreement from each person to whom he reveals "private information" or data. Each such person must sign a document that contains the provisions set forth on ¶6 of the order.

On March 28 the Court issued is order on the DeNoce ex parte application as to execution and release to obtain disability records. [Dkt. 339] It required DeNoce to provide Debtor's counsel with a signed statement as in the March 3 order. It made no other changes to the March 3 order.

By this motion, DeNoce states that this creates a conflict in that the statement in ¶6 of the March 3 order does not really apply to him. Nonetheless, he includes such a statement in this motion.

DeNoce is correct that he is covered by the order and does not need to sign a further confidentiality agreement.

Has the release been provided?

Party Information

10:00 AM
CONT... **Ronald Alvin Neff** **Chapter 7**

Debtor(s):

Ronald Alvin Neff — Represented By
Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR) — Represented By
M Douglas Flahaut

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

Tuesday, May 02, 2017 **Hearing Room 303**

10:00 AM
1:13-11566 Nelly R. Randin **Chapter 11**

#24.00 Post Confirmation Status Conference

fr. 5/14/2013, 9/17/13,10/1/13,10/29/13, 12/17/13, 3/11/14, 3/25/14, 5/6/14, 6/3/14, 6/24/14, 9/9/14, 9/23/14, 1/6/15, 2/10/15; 3/31/15, 5/26/15; 6/2/15, 6/30/15, 7/21/15, 9/1/15; 9/29/15; 10/20/15; 11/17/15 12/8/15; 1/12/16; 1/26/16; 6/21/16, 10/11/16; 11/15/16, 12/20/16, 1/17/17, 2/21/17

Docket 1

Tentative Ruling:

Off calendar. Order for entry of final decree and closing the case was entered on 3/28/17.

Party Information

Debtor(s):

Nelly R. Randin Represented By
Dana M Douglas

10:00 AM
1:13-15929 KSL MEDIA INC **Chapter 7**

#25.00 Motion for order approving settlement with the Shenson Law Group PC and Harold Cohen

Docket 2473

Tentative Ruling:

Service: Ok.

Motion:

By way of this Motion to Approve Settlement, Trustee David Gottlieb ('Trustee") seeks approval of a settlement agreement between the Trustee and The Shenson Law Group ("Shenson") and Harold Cohen ("Cohen"). The parties entered into the Settlement Agreement on March 29, 2017. The Settlement Agreement is attached to the Declaration of David Gottlieb. [dkt. 2474]

The Settlement Agreement is the result of a dispute among the Trustee, Cohen (Debtor's former President and CEO) or KSL, and Shenson. Trustee contends that the year prior to the petition filing, Cohen paid Shenson $98,313.50 in connection with Shenson's representation of Cohen. Also, during that time, KSL made payments totaling $218,433.26 to Cohen or Shenson for Cohen's benefit. Trustee asserts that all of these payments are recoverable as preferential or fraudulent transfers. Cohen and Shenson deny any liability on Trustee's claims.

Pursuant to Rule 9019(a), the Trustee requests the Court approve the Settlement Agreement as follows:
*Cohen and Shenson will pay $20,000 to the Trustee;
*Cohen will waive the Cohen claims;
*Cohen and Shenson will waive its right to assert a claim under Section 502(h); and
*The parties will sign off on mutual releases, except for the breach of fiduciary duty claims and the right to enforce the Settlement Agreement.

10:00 AM
CONT... KSL MEDIA INC **Chapter 7**

Trustee applies the *Woodson* factors, as adopted by the Ninth Circuit, to demonstrate that the proposed settlement is fair and reasonable under the circumstances and in the best interest of the estate. Trustee argues that (1) the uncertainties of the litigation weigh in favor of settlement; (2) the settlement amount and the fact that Trustee will not have to pursue further expensive litigation is in the best interest of the creditors; and (3) if the Trustee prevailed on the lawsuit, he may have difficulties collecting on the judgment.

Therefore, Trustee requests the Court approve the Settlement Agreement as it is in the best interest of the estate.

No opposition received as of 4/26/17.

Grant.

Party Information

Debtor(s):

KSL MEDIA INC	Represented By Rodger M Landau Monica Rieder Jon L Dalberg

Trustee(s):

David Keith Gottlieb (TR)	Represented By Jeffrey W Dulberg Steven J Kahn Scotta E McFarland Eric R Wilson Jason S Pomerantz Philip D Robben Andrew W Caine Jeffrey P Nolan

10:00 AM
1:13-15929 KSL MEDIA INC **Chapter 7**

#25.01 Motion for Indicative Ruling Pursuant to Bankruptcy Rule 8008 Regarding Joint Motion under Bankruptcy Rule 9019 to Approve Settlement Agreement

Docket 2476

Tentative Ruling:

Service: Appears ok. Interested parties were served with the Motion on March 30, 2017.

Motion:

By way of this Motion for Indicative Ruling ("Motion"), Chapter 7 Trustee David Gottlieb, Pachulski Stang Ziehl & Jones ("Pachulski"), Kelley Drye & Warren ("Kelley"), Province, Rodger Landau ("Landau"), and Landau Gottfried & Berger ("Landau Gottfried") request a Bankruptcy Rule 8008 indicative ruling from this Court regarding their Joint Motion under Rule 9019.

The instant adversary proceeding [1:15-ap-01212-GM] deals with the Trustee's claims against Landau and Landau Gottfried ("Defendants") relating to their representation of the Debtors prior to the bankruptcy filings and during the bankruptcy. During the pendancy of the adversary, the Bankruptcy Court granted in part Defendants' motion to dismiss and granted in part Defendants' motion to strike. Trustee appealed the rulings. As to the order on the motion to dismiss, leave to appeal was denied. As to the request for leave to appeal the order on the motion to strike, that is pending before the District Court.

Also, the Defendants objected to fee applications filed by Pachulski, Province, and Kelley. Pachulski, Province, and Kelley obtained sanctions against Defendants with respect to the fee objections. Defendants appealed these sanctions to the District Court.

In an effort to resolve the matters on appeal, the parties paricipated in a mediation before Judge Bluebond. The parties have agreed to a settlement that will fully resolve the matters. As such, on March 20, 2017, the parties

executed a settlement agreement. In conjunction with the settlement agreement, the parties filed a Joint Rule 9019 Motion whereby they seek this Court's approval of the settlement agreement. However, because of the pending sanctions appeal before the District Court, this Court lacks the authority to grant the 9019 Motion. Therefore, the parties request relief under Rule 8008 so that this Court may ultimately rule on the 9019 Motion.

As of 4/26/17, no opposition filed.

Analysis:

Rule 8008, Indicative Rulings, provides in part:

(a) Relief Pending Appeal. If a party files a timely motion in the bankruptcy court for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the bankruptcy court may:

(1) defer considering the motion;
(2) deny the motion;
(3) state that the court would grant the motion if the court where the appeal is pending remands for that purpose, or state that the motion raises a substantial issue.

This Court notes that the "filing of an appeal divests a bankruptcy court of jurisdiction over all aspects of the case that are the subject of the appeal." *Geron v. Holding Capital Grp., Inc. (In re PBS Foods, LLC),* 549 B.R. 586, 596 (Bankr. S.D.N.Y. 2016); *citing In re Millenium Global Emerging Credit Master Fund Ltd.,* 471 B.R. 342, 348 (Bankr. S.D.N.Y. 2012). Thus, "a lower court may take no action which interferes with the appeal process or with the jurisdiction of the appellate court." *Id.; citing Dicola v. American Steamship Owners Mut. Prot. and Indem. Assoc., Inc. (In re Prudential Lines, Inc.),* 170 B.R. 222, 243 (S.D.N.Y. 1994).

However, Rule 8008 provides a procedure for the issuance of an indicative ruling when a bankruptcy court determines that, because of a pending appeal, the court lacks jurisdiction to grant a request for relief that the court concludes is meritorious or raises a substantial issue. *Delaware*

10:00 AM
CONT... KSL MEDIA INC **Chapter 7**

Trust Company v. Wilmington Trust, N.A., et al. (In re Energy Future Holdings Corp.), 2016 Bankr. LEXIS 4002, *8 (Bankr. Del. November 2016).

Since the parties are seeking to resolve the matters concerning Trustee's claims, as well as Defendants' counterclaim against Debtors' estates, the Court finds that Rule 8008 is applicable and warranted in this circumstance. Entry of the Memorandum of Indicative Ruling by this Court will provide the District Court with notice that this Court intends to approve the settlement agreement amongst the parties, should there be no opposition to it.

Specifically and based on a review of the Joint Motion to approve settlement agreement (settlement agreement is attached to David Gottlieb's Declaration), the settlement agreement would be in the best interest of the estate. The settlement agreement will provide a cash recovery to the estates in the amount of $450,000; withdrawal of the First and Final Fee Application of Landau Gottfried; and it seeks vacatur of the Sanctions Order.

Therefore, the Court grants the parties' request to sign the Memorandum of Indicative Ruling.

Party Information

Debtor(s):

KSL MEDIA INC	Represented By Rodger M Landau Monica Rieder Jon L Dalberg

Movant(s):

Province, Inc.	Represented By David B Golubchik
Kelley Drye & Warren LLP	Represented By Eric R Wilson David B Golubchik
Pachulski Stang Ziehl & Jones LLP	Represented By Jeffrey W Dulberg

10:00 AM
CONT... **KSL MEDIA INC** **Chapter 7**

David B Golubchik

Trustee(s):

David Keith Gottlieb (TR) Represented By
Jeffrey W Dulberg
Steven J Kahn
Scotta E McFarland
Eric R Wilson
Jason S Pomerantz
Philip D Robben
Andrew W Caine
Jeffrey P Nolan

10:00 AM
1:13-15929 KSL MEDIA INC **Chapter 7**
Adv#: 1:15-01212 Gottlieb v. Landau et al

#25.02 Status Conference re: Counterclaim of Defendant of Landau Gottfriend & Berger LLP

fr. 7/12/16, 8/2/16, 10/11/16; 12/20/16, 2/21/17; 4/18/17

Docket 102

Tentative Ruling:

The first step in approving the settlement is the Joint Motion for Indicative Ruling Pursuant to Bankruptcy Rule 8008. If this is granted, I will continue the status conference without appearance to June 27 at 10:00 a.m. to make sure that the District Court acts so that I can hear the motion for compromise. That motion can be set of June 27 at 10:00 a.m. However, the parties can set the motion before that time if the District Court has ruled or it can be set at a later date if there is a delay in the District Court.

Party Information

Counter-Claimant(s):

Landau Gottfriend & Berger LLP Pro Se

Counter-Defendant(s):

David K Gottlieb Pro Se

Debtor(s):

KSL MEDIA INC Represented By
Rodger M Landau
Monica Rieder
Jon L Dalberg

Defendant(s):

Landau Gottfriend & Berger LLP Represented By
Kyle Kveton
Edith R Matthai

10:00 AM
CONT... KSL MEDIA INC **Chapter 7**

T. John Fitzgibbons

Rodger M Landau — Represented By
Kyle Kveton
Edith R Matthai
T. John Fitzgibbons

Interested Party(s):

Courtesy NEF — Represented By
John P Reitman
Jennifer A Landau

Plaintiff(s):

David K Gottlieb — Represented By
Eric R Wilson

Respondent(s):

Peter I. Isola — Represented By
William K Mills
Peter L Isola

John P. Reitman — Represented By
John P Reitman

Trustee(s):

David Keith Gottlieb (TR) — Represented By
Eric R Wilson

David Keith Gottlieb (TR) — Represented By
Jeffrey W Dulberg
Steven J Kahn
Scotta E McFarland
Eric R Wilson
Jason S Pomerantz
Philip D Robben
Andrew W Caine
Jeffrey P Nolan

10:00 AM
CONT... KSL MEDIA INC **Chapter 7**
US Trustee(s):

United States Trustee (SV) Pro Se

10:00 AM
1:15-12380 Lanker Partnership and First American Title Insurance **Chapter 11**

#26.00 Scheduling and case management conference re Chapter 11 Voluntary Petition

fr. 8/11/15, 12/15/15, 4/26/16; 4/27/16, 9/13/16(xfr from Judge Barash calendar); 9/13/16; 10/25/16, 2/21/17

Docket 1

Tentative Ruling:

Per the status report filed on 4/26, the settlement with First America Title has been completed and the Debtor has received the settlement check for $80,000. Settlement discussions are continuing with Deitsche/WAMU/SLS. Until settlement is reached or fails, the Debtor cannot file a disclosure statement and plan.

Continue without appearance to 9/12/17 at 10:00 a.m.

prior tentative ruling (2/21/17)
Since you are appearing on the motion to compromise, let's talk about this case at that time. I am new to the case and don't know if anything can happen before the litigation is completed. The motion for relief from stay was withdrawn. What is the status of this property? Are taxes, etc. being paid? Is it listed for sale? Is it being rented out?

prior tentative ruling (9/15/16)
Per the status report filed on 9/6/16, Debtor is employing a new special counsel for the adversary proceeding. The adversary proceeding should go to trial in the early spring.

This should trail the adversary proceeding. I will continue it to the same date as the continued status conference on cal. #14. No appearance is necessary on 10/25/16 by counsel for the Debtor in the main case since the adversary has special counsel.

10:00 AM

CONT... Lanker Partnership and First American Title Insurance **Chapter 11**

prior tentative ruling (9/13/16)

It looks like this should be continued to 10/25 because of the continued status conference on the adversary proceeding. Although the status report filed 9/6 requests a longer continuance, I would llike to keep this together with the adversary.

Continue without appearance to 10/25/16 at 10:00 a.m. No further status report is required for that hearing.

Party Information

Debtor(s):

Lanker Partnership

Represented By
Charles Shamash
Joseph Caceres
Nedda Haeri
Stuart I Koenig

10:00 AM
1:15-12380 Lanker Partnership **Chapter 11**
Adv#: 1:16-01059 Lanker Partnership v. Washington Mutual Bank, FA, a corporation et al

#27.00 Status conference and order to show cause re:
Remand in a removed proceeding

fr. 5/26/16, 6/16/16, 9/15/16(xfr from
Judge Barash's calendar), 9/13/16; 10/25/16; 2/21/17

Docket 1

Tentative Ruling:

Per the status report filed on 4/26/17 in the bankruptcy case, settlement has been consumated with First American Title and settlement discussions are proceeding with Deutsche/WAMU/SLS. Continue the status conference without appearance to September 12, 2017 at 10:00 a.m.

prior tentative ruling (2/21/17)
The motion for remand was decided by order entered on 7/1/16, dkt. 30. The issues concerning First American Title Insurance Co. have been remanded to the superior court. As to all other defendants, the motion for remand has been denied.

Per the joint status report filed on 10/11/16, the parties agree to a discovery cutoff of 1/17, with a 1-3 day trial to begin in March. A pretrial conference is requested for some date after 1/15/17. Plaintiff wishes to mediate. Defendant does not indicate a preference. Plaintiff consents to a final judgment in the bankruptcy court, Defendant does not.

As I understand the basic issue in this case, the Lanker Partnership purchase a single family residence to sell or rent, paid $400,000, and then had an offer to buy it for $600,000. There was a title insurance policy which showed no liens. However, during the due diligence period it was discovered that WAMU had a truat deed executed by Youval Ziv (apparently a prior owner) for $980,000. Lanker made demand on the title insurance policy, but that was turned down. The lawsuit against the title insurance company has been

10:00 AM
CONT... Lanker Partnership **Chapter 11**

remanded, but the suit against WAMU, etc. is continuing this this court for negligently recording (failng to record?) the trust deed prior to the Lanker purchase.

It appears that copies of all of the state court papers have not been filed in this adversary proceeding. See LBR 9027-1(d). Please do so at once. Also, has the remaining defendant(s) filed a response to the complaint such as an answer?

Party Information

Debtor(s):

Lanker Partnership	Represented By Charles Shamash Joseph Caceres Nedda Haeri Stuart I Koenig

Defendant(s):

Deutsche Bank National Trust	Represented By Matt Nazareth Shiva D. Beck
Select Portfolio Servicing, Inc.	Represented By Matt Nazareth Shiva D. Beck
Quality Loan Service Corporation, a	Represented By Matt Nazareth
Washington Mutual Bank, FA, a	Represented By Matt Nazareth Shiva D. Beck
DOES 1-100	Pro Se

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

Tuesday, May 02, 2017 **Hearing Room 303**

10:00 AM
CONT... Lanker Partnership **Chapter 11**

Plaintiff(s):

Lanker Partnership Represented By
Joseph Caceres
Stuart I Koenig

10:00 AM
1:15-14213 Michael Robert Goland **Chapter 7**
Adv#: 1:16-01046 Lewis v. Goland

#28.00 Motion to Reconsider Portions of Judgment Pursuant to Rule 59(e)

fr. 4/18/17, 4/4/17

Docket 80

Tentative Ruling:

[Note: The Court had entered an amended order setting this motion for hearing on shortened time (April 4) stating that it would not consider any reply by Mr. Lewis, as Mr. Lewis had agreed to waive his right to a reply [dkt. 87]. Mr. Lewis objected to this amendment. As the hearing on this motion was ultimately continued until May 2, the Court has considered Mr. Lewis's reply.]

Plaintiff Bret D. Lewis (Plaintiff") moves for partial reconsideration of the Court's Order and Memorandum of Decision granting in part and denying in part Plaintiff's Motion for Summary Judgment.

Background

Debtor/Defendant Michael Goland ("Defendant") filed for chapter 7 relief on December 30, 2015.

On March 29, 2016, the Plaintiff commenced this adversary proceeding by filing his complaint seeking to have two judgments for attorney's fees and costs declared nondischargeable, pursuant to §523(a)(6) of the Bankruptcy Code.

On November 14, 2016, the Plaintiff filed a motion for summary judgment (the "MSJ"). On March 3, 2017, the Court entered a memorandum of decision (dkt. 70; the "Memorandum") and an order (dkt. 71; the "Order"), granting summary adjudication to the Plaintiff as to the "Contempt Judgment" but denying it as to the "Vexatious Litigant Judgment." (The Contempt Judgment and Vexatious Litigation Judgment are described and defined in the Memorandum and Order.) The Memorandum and Order also denied the Plaintiff's request that the Defendant be found in contempt and/or sanctioned under Rule 9011 or Rule 56(h). With respect to the Vexatious Litigant

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

Judgment and the issues of contempt and sanctions, the Memorandum concluded as follows.

Vexatious Litigant Judgment

The Superior Court found that Goland had filed "at least six cases, other than small claims cases" against Marlowe and Dog at Home that "attempted to litigate *in propria persona* the validity of the judgment in" the Contempt Matter. This finding is entitled to collateral estoppel effect, for the same reasons as the findings in the Contempt Matter. The finding supports malice – filing these suits had to be done knowingly, it was wrongful and without excuse, and it necessarily caused injury to Marlowe and Dog at Home in the form of attorney's fees and costs. It was also subjectively willful because the filing of six lawsuits relitigating the same judgment was deliberate and Goland intended - or at least knew - that these lawsuits would result in harm to the defendants in the form of attorney's fees and costs.

The Vexatious Litigant Judgment was awarded to Marlowe and Dog at Home. Lewis has submitted evidence that Marlowe and Dog at Home assigned the Vexatious Litigant Judgment to him. However, while Dog at Home has the ability to assign its right to the Vexatious Litigant Judgment to Lewis, Marlowe does not. Goland had commenced the Vexatious Litigant Matter on March 30, 2009, prior to the commencement of Marlowe's chapter 7 case on August 4, 2009. The attorney's fees and expenses were incurred both pre- and post-petition [ex. 29]. Thus, Marlowe's right to attorney's fees and expenses from Goland was property of the estate – an unliquidated, contingent chose in action. There is no indication from the record that Marlowe's chapter 7 trustee abandoned this property right. This issue prevents the Court from granting summary judgment to Lewis on this claim.

Violation of the Injunction and Other Sanctions Sought Against Goland and his Attorney

Goland's answer and his opposition to this motion for summary judgment do not violate the Injunction. The phrase "action adverse" in the original 2006 injunction is ambiguous, but the "expanded" 2009 injunction refers filing "actions" against Marlowe and her affiliates –

which clearly does not bar the filing of an answer or an opposition to a motion for summary judgment in an action in which Goland is a defendant. Even the ambiguous "action adverse" cannot be meant to bar Goland from defending himself in an action commenced against him: this would leave Goland completely defenseless and liable in any action Marlowe or her affiliates chose to bring. Such a reading flouts common sense and equity.

Likewise, this Court cannot conclude that by listing claims against Marlowe in his schedules, Goland violated the Injunction. Bankruptcy law penalizes debtors who do not fully disclose their assets. Listing claims in a schedule is not the same as pursuing them in court and, in any event, any such claims now belong to the estate and would be pursued by the chapter 7 trustee, not by Goland.

More to the point, these alleged violations of the Injunction are irrelevant to this proceeding and this motion, which is limited to the facts of the Contempt Judgment and the Vexatious Litigant Judgment.

Lewis also seeks sanctions under Rule 9011 and Rule 56(h) for positions taken by Goland and his attorney in opposing this motion. Although (as set forth above) the Court disagreed [with] many of with Goland's arguments, none of the arguments were so unsupported by facts and law as to give rise to sanctions. And in fact, Mr. Hagen's calm and succinct arguments in the opposition and his rational and not-overreaching positions taken in the Statement of Genuine Issues and Additional Facts in Support of the Opposition were a high point in the papers submitted in this litigation.

[Dkt. 70 at 14:25-16:24].

Motion

The Plaintiff has brought this motion for reconsideration of both the denial of summary adjudication on the Vexatious Litigant Judgment and the denial of his requested contempt/sanctions. The Plaintiff asserts that the grounds for reconsideration under Rule 59(e) are the "need to correct clear error of law or prevent manifest injustice."

The Plaintiff contends that Marlowe's chapter 7 does not prevent the effective assignment of the Vexatious Litigant Judgment to the Plaintiff, despite the fact that both Dog at Home and Marlowe were awarded the Vexatious Litigant Judgment. Dog at Home and Marlowe were *joint* creditors

on the Vexatious Litigant Judgment:

> An obligation imposed upon several persons, or a right created in favor of several persons, is presumed to be joint, and not several, except as provided in Section 1431.2, and except in the special cases mentioned in the title on the interpretation of contracts. This presumption, in the case of a right, can be overcome only by express words to the contrary.

Cal. Civ. Code §1431. As a joint creditor, the Plaintiff has the right to direct payment to himself and to discharge the entire claim:

> If a creditor, or any one of two or more joint creditors, at any time directs the debtor to perform his obligation in a particular manner, the obligation is extinguished by performance in that manner, even though the creditor does not receive the benefit of such performance.

Cal. Civ. Code §1476. Thus, as the valid assignee of Dog at Home, the Plaintiff is entitled to have the Vexatious Litigant Judgment declared nondischargeable and to be paid the full amount of that judgment, regardless of the assignability of Marlowe's rights.

The Plaintiff also argues that Marlowe listed claims against the Defendant for malicious prosecution in her bankruptcy schedules, so the Court should have found her assignment to the Plaintiff valid in her individual capacity as a matter of *res judicata*. The Plaintiff then cites several cases for the proposition that, while a state court judgment may serve to establish a debt, the nature of the debt is to be decided by the bankruptcy court and is not limited by the state court judgment. Thus, the Plaintiff concludes, claims related to fraud and willful and malicious injury may be resurrected by a bankruptcy petition. The Plaintiff has a valid debt even based on the Marlowe assignment.

With respect to contempt and sanctions, the Plaintiff argues that it was not the filing of *an* opposition to the MSJ that was harassment (and thus in violation of the Injunction); rather, the particular opposition filed by the Defendant was harassment. Furthermore, if the Court reconsiders and finds that there are no material issues of fact and law as to the nondischargeability of both judgments, then how could the opposition be anything other than harassment. Given the history of abuse, the Court should protect the Plaintiff and Marlowe by requiring pre-approval by the Court before the Defendant files any pleadings (much like the California vexatious litigant statute, Cal. Civ. Proc. Code §391.7(a)).

Opposition

Marlowe's general description of "claims against Michael Goland … and related parties for malicious prosecution and abuse of process" was too general to disclose Marlowe's specific rights to attorney's fees and expenses.

The Plaintiff's motion is merely rehashing arguments from the original MSJ and thus is not providing grounds for relief under Rule 59(e) – new law, newly discovered facts, or error by the court.

The Defendant has merely replied to and asserted defenses to the complaint against him and has done none of enumerated items barred by the Injunction.

Reply

The opposition does not address the Plaintiff's argument that the Vexatious Litigant Judgment was jointly awarded to Dog at Home and Marlowe, so that Dog at Home can transfer all rights.

Marlowe's listing of claims against the Defendant for malicious prosecution was not so defective as to forestall a proper investigation of the asset.

Finally, The Defendant's opposition does nothing to address the import of the cases standing for the proposition that it is the nature of the debt that is determinative for nondischargeability purposes, not the actual judgment. Here, the Court has found that the nature of the debt for all intents and purposes was a malicious prosecution.

Analysis

The Court has determined (in the portion of the Memorandum set forth above) that all of the requirements for nondischargeability of the Vexatious Litigant Judgment were met -- except for the issue of the effect of Marlowe's bankruptcy. Marlowe's interest in the Vexatious Litigant Judgment belonged to her bankruptcy estate (whether or not it was scheduled by Marlowe). Unless the trustee abandons it to Marlowe, the Judgment can only be assigned by her chapter 7 trustee on behalf of her estate; it cannot be assigned by Marlowe herself.

The Court did refer to a potential remedy of this situation [dkt. 72, p. 5] and the Plaintiff filed a request for clarification of that remedy [dkt. 79]. Quite simply, this issue could be remedied by establishing that

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

1. Dog at Home was legally entitled to recover the full amount of the Vexatious Litigant Judgment from the Defendant (which the Plaintiff now argues, but did not raise in the MSJ) or
2. Marlowe has the legal ability to transfer her rights in the Vexatious Litigant Judgment (which could be established by Marlowe's trustee's abandonment of the Vexatious Litigant Judgment).

In this motion, the Plaintiff is presenting legal authority and analysis that does establish alternative 1, *i.e.*, that Dog at Home – or now the Plaintiff as Dog At Home's assignee – is legally entitled to recover the full amount of the Vexatious Litigant Judgment from the Defendant. Dog at Home and Marlowe had joint rights in the Vexatious Litigant Judgment, as this judgment did not expressly provide otherwise. Cal. Civ. Code §1431. Either holder of a joint right may bring an action to recover on the entire right:

> Performance to one of joint creditors. An obligation in favor of several persons is extinguished by performance rendered to any of them, except in the case of a deposit made by owners in common, or in joint ownership, which is regulated by the Title on Deposit.

Cal. Civ. Code §1475; *see also* Cal. Civ. Code §1476; 1 Witkin, Summary 10th Contracts § 114 (2005). Thus, if the Vexatious Litigant Judgment is determined to be nondischargeable and the Plaintiff is paid by the Defendant, it discharges both his rights (through Dog at Home) and Marlowe's trustee's rights (through Marlowe). (Marlowe's trustee would then have whatever rights California law gives to a joint creditor against the other joint creditor in this situation.)

This is not a change in controlling law. While the Plaintiff could have presented this authority and argued this legal point in the MSJ, as a necessary part of establishing his entitlement to relief without issues of material fact, he did not. However, the need to do so was not completely evident at the time of the filing of the MSJ and there is no real purpose to be served by now ignoring California law on this point (causing the Plaintiff to bring a new motion for summary judgment). Accordingly, in order to avoid manifest injustice, the Court will reconsider and grant summary adjudication to the Plaintiff on the Vexatious Litigant Judgment, as well as the Contempt Judgment.

The Court will not reconsider its conclusions on contempt and sanctions. It stands by the conclusions as set forth in the Memorandum. With respect to the Plaintiff's new argument on sanctions, it is absurd to suggest

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

that the grant of a motion for summary judgment in and of itself means that the opposing parties' arguments are so unsupported by facts and law as to be sanctionable under Rule 9011. With respect to contempt, in addition to the reasons set forth in the Memorandum for why this Court *will not* find the Defendant in contempt for violating the Injunction, it should be noted that this Court *cannot* declare the Defendant in contempt for violating another court's orders:

> Thus, the court that issued the injunctive order alone possesses the power to enforce compliance with and punish contempt of that order. *In re Debs*, 158 U.S. at 595, 15 S.Ct. at 910; *see also Waffenschmidt*, 763 F.2d at 716 ("Enforcement of an injunction through a contempt proceeding must occur in the issuing jurisdiction because contempt is an affront to the court issuing the order."); *Suntex Dairy v. Bergland,* 591 F.2d 1063, 1068 (5th Cir.1979) ("If [conduct] is found by the Missouri court to be in violation of its injunction, it may be in contempt of that court. The appropriate response to such contempt, if it exists, is a matter for the Missouri district court under that court's continuing jurisdiction to enforce or protect its injunction order."); *Sullivan v. United States*, 4 F.2d 100, 101 (8th Cir.1925) ("[T]he court which issues the injunction is the court against which the contempt is committed and the court which has jurisdiction to deal with it."). Other courts are without jurisdiction to do so.

Alderwoods Grp., Inc. v. Garcia, 682 F.3d 958, 970–71 (11th Cir. 2012); *see also Gray v. Petoseed Co*., 985 F. Supp. 625, 628 (D.S.C. 1996), *aff'd*, 129 F.3d 1259 (4th Cir. 1997); *United States v. Barnett*, 330 F.2d 369, 385 (5th Cir. 1963), certified question answered, 376 U.S. 681 (1964).

Proposed ruling: Motion is partially granted to award summary adjudication to the Plaintiff as to the Vexatious Litigant Judgment. Motion is otherwise denied. The Court will put this tentative ruling on the docket as the memorandum of decision and will prepare a new order on the MSJ.

Party Information

Debtor(s):

Michael Robert Goland Represented By
David S Hagen

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

Defendant(s):

Michael Goland	Represented By David S Hagen

Plaintiff(s):

Bret D Lewis	Represented By Bret D Lewis

Trustee(s):

Nancy J Zamora (TR)	Pro Se
Amy L Goldman (TR)	Pro Se

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

Tuesday, May 02, 2017 **Hearing Room 303**

10:00 AM
1:15-14213 Michael Robert Goland **Chapter 7**
Adv#: 1:16-01046 Lewis v. Goland

#28.01 Status Conference re: complaint to determine non-dischargeability of debt under 11 USC 523(a)(6)

fr. 6/8/16; 7/20/16, 12/14/16(xfr from Judge Kaufman's calendar) 12/20/16, 2/21/17; 4/18/17

Docket 1

Tentative Ruling:

Summary judgment is being granted. What is left in this adversary case?

Party Information

Debtor(s):

Michael Robert Goland	Represented By David S Hagen

Defendant(s):

Michael Goland	Pro Se

Plaintiff(s):

Bret D Lewis	Represented By Bret D Lewis

Trustee(s):

Diane Weil (TR)	Pro Se

US Trustee(s):

United States Trustee (SV)	Pro Se

10:00 AM
1:15-14213 Michael Robert Goland **Chapter 7**
Adv#: 1:16-01159 Burk v. Goland

#28.02 Motion to Intervene

fr. 1/17/17; 4/18/17

Docket 3

Tentative Ruling:

On 4/6/17, Burk filed two proofs of claim:
#7 - $15,393 - as an unsecured claim based on a 2010 settlement agreement between Rinat Tal, Goland, and Kings Canyon Consortium (Burk is/was president of Kings Canyon Consortium and was plaintiff in the state court case against Goland - LASC 13K06402).
#8 - $78,958 - as an unsecured claim based on a 2014 settlement agreement between Burk and Goland. This apparently concerns the settlement of the § 523(a)(2) complaint (presumably this adversary matter), though the settlement agreement preceded the filing of the complaint.

Goland has not filed a motion to dismiss based on timeliness, so the Court will bring an OSC on that. The Motion to Intervene will be trailed as to that date.

prior tentative ruling (1/17/17)

Gerry Burk filed this complaint under ¶523(a)(2) to declare some $79,000 to be non-dischargeable. The complaint alleges that Goland and Rinat Tal sought consulting services from Burk as to developing real property, etc. Tal later sought to terminate the relationship with Goland and with Burk and Goland prepared evaluations and calculations of various claims and a settlement was reached based on those. Also, Goland and Tal said that they had personal knowledge of the collectability of the claims and would assist Burk in collection actions. This never happened and Burk alleges that he was defrauded because the settlement was actually based on worthless or non-existent assets.

After this, Burk threatened to sue Goland for fraud and they agreed to

settle if Goland would pay Burk $30,615, at 10% interest per annum. This settlement was contingent on the receipt of the money. The payment was not made and the amount owed on the date of bankruptcy was $49,906.64. Burk also asserts an extra $16,301.37 (no basis is stated for this amount) and another $12,750 (for legal fees and costs).

The Motion

Bret Lewis filed this motion to intervene, claiming that Burk is a strawman for Goland and this is a scheme to hide assets of Goland. Lewis then goes on to lay out a history of Goland's use of strawmen. He claims that this complaint was filed late because the Court did not grant a noticed motion to extend the time to file this complaint, which had to have been filed before the §523(a) deadline. This is a violation of FRBP 4007(c) and *Anwar v. Johnson*, 720 F.3d 1183 (9th Cir. 2013). This was brought to the attention of Diane Weil, the Trustee, but she did not act. Later she disqualified herself.

Lewis goes on to assert that this complaint was done solely to harass and impair Lewis's interests and therefore is a violation of the permanent injunction and the vexatious litigant injunction. Lewis wants to prove that this action is a conspiracy of Goland, Burk, and others.

Lewis relies on FRCP 24(a)(2) and *Prete v.Bradbury*, 438 F.3d 949 (9th Cir. 2006), agreeing that he has the burden of showing that

(1) The intervention is timely
(2) He has a significant protectable interest regarding the property or transaction that is the subject of the action
(3) His ability to protect his interest would be impaired or impeded on disposition of the action
(4) The existing parties may not adequately represent his interest.

Lewis also seeks permissive intervention under FRCP 24(b) in that his claim or defense and the adversary proceeding have a common question of law of fact.

It's hard to tell exactly how Lewis is placing himself under FRCP 24,

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

but it seems that he is claiming that this adversary proceeding is a collusion between Burk and Goland so that Burk will hold an unwarranted and illegal non-dischargeable judgment that can be used to protect about $79,000+ of Goland's assets from other creditors who may also obtain a non-dischargeable judgment. The only other creditor who is situated in this manner is Lewis since no one else has timely filed a §523(a) complaint pending.

Opposition

There is no federal statute that gives Lewis standing to intervene as a matter of right and Lewis does not quote one. The only common question of law and fact that is asserted is whether Burk has a right to commence the adversary proceeding. This is not a significant protectable interest related to the subject matter of the proceeding. Lewis also sets forth no explanation on why his interest would be impeded or impaired. As to the fourth prong, it is not Lewis's interest that will not be protected, but the interest of the Court and Lewis cannot have standing to protect this.

As to permissive intervention, there is no showing of a conditional right to intervene by federal statute or a common question of law or fact.

The motion was not timely filed.

Reply

Lewis repeats that the Court should allow intervention because

(1) The complaint is incomprehensible and should be dismissed under Rule 12;
(2) Goland has shown an absence of desire to challenge Burk's claim;
(3) There is an unusual cooperation between Burk and Goland and a convergence of interests;
(4) The Chapter 7 Trustee had a conflict of interest at all relevant times;
(5) Lewis has an interest in the estate and in manufactured judgments that will survive bankruptcy;

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

(6) The failure to join will result in further litigation including challenges to the Burk proof of claim; and
(7) Burk failed to submit a declaration under penalty of perjury.

Analysis

There are two issues here that are significant: (1) was this complaint timely filed and (2) is there a debt owed to Burk that qualifies under §523(a)(2) and in what amount.

The Court is well-aware of the issue of whether the complaint was timely filed and this is a matter of law and of interpretation of the documents filed in this bankruptcy case as well as the orders given by the Court. If Goland does not seek to dismiss on the issue of timeliness, the Court will bring its own motion to do so.

As to any harm to Lewis, assuming that Lewis prevails in his own adversary proceeding, harm would result only if Burk obtains an unwarranted non-dischargeable judgment and then competes with Lewis to obtain payment from Goland's assets.

At this time the Court is not willing to allow Lewis to intervene. Although the Court has the same two issues of timeliness and validity, at this time there are other ways to deal with those.

As to timeliness, if Goland does not file a motion to dismiss, the Court will do so.

As to validity, the Trustee has given a notice that this is an asset case and a claims bar date has been set for 4/10/17. If Burk files a proof of claim, the Trustee or any creditor can object. That will be the proper vehicle for Lewis to make sure that his concerns are met. If Burk does not file a timely proof of claim, the Court will again review this motion to intervene. The §523(a) complaint – if it survives the motion to dismiss – will be handled simultaneously with or trail the objection to claim.

Continue to April 18, 2017 at 10:00 a.m. so that the Court can see whether a proof of claim has been filed by Burk.

Party Information

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

Debtor(s):

Michael Robert Goland	Represented By David S Hagen

Defendant(s):

Michael Robert Goland	Pro Se

Plaintiff(s):

Gerry Burk	Pro Se

Trustee(s):

Nancy J Zamora (TR)	Pro Se
Amy L Goldman (TR)	Pro Se

10:00 AM
1:15-14213 Michael Robert Goland **Chapter 7**
Adv#: 1:16-01159 Burk v. Goland

#28.03 Status Conference re: Complaint

fr. 2/21/17; 4/18/17

Docket 1

Tentative Ruling:

See cal.#28.02

Party Information

Debtor(s):

Michael Robert Goland	Represented By David S Hagen

Defendant(s):

Michael Robert Goland	Pro Se

Plaintiff(s):

Gerry Burk	Pro Se

Trustee(s):

Nancy J Zamora (TR)	Pro Se
Amy L Goldman (TR)	Pro Se

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

Tuesday, May 02, 2017 **Hearing Room 303**

10:00 AM
1:16-11670 The Automart, Inc. **Chapter 11**

#29.00 Status and Case Management Conference

fr. 10/11/16, 12/6/16

Docket 1

Tentative Ruling:

Continue without appearance to 5/16 at 10:00 a.m. when there is a hearing on a motion for final decree and to close the case.

Party Information

Debtor(s):

The Automart, Inc.	Represented By
	Blake J Lindemann
	Blake J Lindemann
	Blake J Lindemann
	Blake J Lindemann
	Jonathan Shenson
	Jonathan Shenson
	Jonathan Shenson
	Jonathan Shenson
	Lauren N Gans
	Lauren N Gans
	Lauren N Gans
	Lauren N Gans

10:00 AM
1:16-11670 The Automart, Inc. **Chapter 11**
Adv#: 1:16-01098 West Marine Products, Inc v. The Automart, Inc. et al

#30.00 Status Conference re: Amended First Complaint
by Shani Williams on behalf of West Marine Products, Inc
against all defendants

fr. 9/27/16, 10/11/16; 10/25/16, 1/17/17, 4/4/17

Docket 18

Tentative Ruling:

Continue without appearance to 5/16/17 at 10:00 a.m.

prior tentative ruling (4/4/17)
Plaintiff has substituted in new counsel. Per the joint status report filed on 3/21/17, discovery is underway, but the parties expect to go to trial relatively soon. Both expect a 3-4 day trial and request a pretrial conference. Plaintiff wants to mediate, but defendant does not. Both sides are frustrated with the actions of the other. It appears that they are starting to discuss settlement.

Set a discovery cutoff date of July 14, 2017. Continue the status conference to July 25 or August 1, whichever is better for the parties. At that time, I will determine a date for a joint pretrial conference and I expect to take this to trial - if it does not settle - in the early Fall.

prior tentative ruling (1/17/17)
I am a little confused. According to the joint status report filed on 1/4/17, the parties expect to complete discovery in March 2107. But according to the joint status report filed on 12/9, they have worked out a joint discovery plan, which involves two stages of discovery. The first stage relates to the alter ego issues. Stage two concerns the balance of the issues. There are quite a few depositions contemplated by both sides. They anticipate completion of discovery by 7/31/17.

In the 1/4/17 status report they will be ready for trial in May 2017 and want a pretrial conference after 4/18/17.

10:00 AM
CONT... The Automart, Inc. **Chapter 11**

Unless the parties believe that there is a reason to appear (in person or by phone) on 1/17, I will continue the status conference without appearance to April 4, 2017 at 10:00 a.m. Hopefully you will then be ready for a pretrial date and/or to set a mediation.

Party Information

Debtor(s):

The Automart, Inc.	Represented By Blake J Lindemann Jonathan Shenson Lauren N Gans

Defendant(s):

Martin Spiegel	Represented By Lauren N Gans Jonathan Shenson
The Automart, Inc.	Represented By Lauren N Gans Jonathan Shenson

Plaintiff(s):

West Marine Products, Inc	Represented By Shani Williams

10:00 AM
1:16-12408 Massoud Aaron Yashouafar **Chapter 11**
Adv#: 1:16-01168 Carino v. Yashouafar

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

fr. 2/21/17, 3/21/17

Docket 1

Tentative Ruling:

Nothing further received as of 4/30/17.

prior tentative ruling (3/21/17)
This is a §523(a)(4) and (a)(6) complaint solely against Massoud. There is a class action pending in the Nevada State Court (Paradise Spa Owners Assn. v. Jim Pazargad). Carino filed this on behalf of the PSOA. Massud had served as Treasurere of the HOA and he caused significant damages to the class of homeowners. Discovery in the class action is closed and it is awaiting trial. Pre-petition the Nevada State Court adjudicated liabilty against the Debtor via summary judgment. It found that Massod committed fraud by concealing material facts that he had a duty to disclose regarding his personal use of PSOA insurance proceeds and by failing to pursue collection of assessments on some of the condominiums that he owned. It also found a breach of fiduciary duty. Although the amount of damages has not yet been adjudicated, it is over $2.5 million.

The Debtor filed an answer and admits that the findings set forth were as the State Court held. Debtor is representing himself pro per in this adversary proceeding.

No status report has been received as of 3/16. Has relief from stay been granted to proceed? Is it necessary?

It seems that the best thing would be to delay acting on this case until the

10:00 AM
CONT... **Massoud Aaron Yashouafar** **Chapter 11**

resolution of the Nevada action, including all appeals. But if the parties believe that something should go forward here, I am willing to allow it.

Party Information

Debtor(s):

Massoud Aaron Yashouafar	Represented By Brian L Davidoff C John M Melissinos

Defendant(s):

Massoud Aaron Yashouafar	Pro Se

Plaintiff(s):

Raymund Carino	Represented By Simon Aron

Trustee(s):

David Keith Gottlieb (TR)	Represented By Jeremy V Richards

10:00 AM
1:09-23807 Shellie Melissa Halper **Chapter 7**
Adv#: 1:11-01317 Cohen v. Halper

#32.00 Motion for Default Judgment Under LBR 7055-1

Docket 112

Tentative Ruling:

Service: Ok. Per FRCP 55(b)(2), Defendant must be served with written notice of the application at least 7 days before the hearing. Defendant was served with the Motion on April 13, 2017.

Procedural Background:

On April 22, 2011, Solomon Cohen ("Plaintiff" or "Cohen") filed a Complaint objecting to discharge under Section 523(a)(2)(A) against Debtor Shellie Halper ("Defendant" or "Halper"). The Complaint lists one claim for relief for fraud. The underlying basis for the fraud claim is that Plaintiff made ten loans to Defendant totaling a principal amount of $2,936,000. Plaintiff contends that he relied on Defendant's misrepresentations and for that reason consented to loaning Defendant the money. Based on the amounts loaned, plus damages, the Complaint seeks judgment of at least $6,254,681.29.

On April 29, 2011, summons was issued on Defendant. An answer was due by May 31, 2011. Defendant filed her answer on May 31, 2011. On February 3, 2012, the Court entered an Order Granting Motion to Stay Case and Proceeding under 5th Amendment Privilege Against Self-Incrimination and for Protective Order. Thereafter, on June 16, 2015, an Order Terminating Stay as to Adversary Proceeding was entered.

After numerous requests for continuances of Defendant's deposition, as well as the status conferences, Plaintiff filed a Motion for Issuance of an Order to Show Cause Why Defendant Shellie Melissa Halper Should Not be Held in Contempt for Failure to Appear at Her Court Ordered Deposition. On

10:00 AM
CONT... Shellie Melissa Halper **Chapter 7**

November 21, 2016, the Court issued an Order to Show Cause Why Shellie Melissa Halper Should Not be Held in Contempt. The Order to Show Cause hearing was set for December 6, 2016. On December 19, 2016, the Court entered an Order Finding Shellie Melissa Halper in Contempt, Awarding Sanctions, Ordering Sanctions Paid, and Further Continuing Contempt Hearing ("Contempt Order").

The Contempt Order required Defendant to pay sanctions in the amount of $40,000 over the course of approximately two months with the final payment being due on February 24, 2017. Moreover, the Contempt Order required Defendant to appear at a deposition on January 31, 2017. If Defendant failed to comply with the Order, the Court would then enter an Order providing for terminating sanctions. As Defendant failed to comply with the Contempt Order, an Order Entering Terminating Sanctions was entered on January 30, 2017 ("Terminating Order"). On February 23, 2017, the Court entered a Notice that Clerk has Entered Default Against Defendants. Thereafter, the Plaintiff filed the instant Motion.

Motion:

The history of these loans and of the construction that they were allegedly to finance is long and convoluted. The declaration of Solomon Cohen lays out the details in an evidentiarily sufficient manner and those transactions are not repeated in this tentative ruling.

Plaintiff argues that the Court may enter default judgment against Defendant pursuant to FRCP Rule 55(b)(2), which is incorporated by FRBP Rule 7055. Plaintiff contends that based on a review of the facts of this case, default judgment is appropriate.

Here, Plaintiff argues that the Terminating Order striking Defendant's Answer results in Defendant's deemed admission to all of the averments in the Complaint. Moreover, Plaintiff asserts the Complaint satisfies all of the elements of a Section 523(a)(2)(A) claim for relief as follows: (1) Defendant made several misrepresentations that the ten loans would be repaid; (2) Defendant's misrepresentations were made with the intent to induce Plaintiff into lending the money; (3) Defendant received proceeds from a lawsuit (the Flynt litigation), however despite the ability to repay Plaintiff, Defendant never did. Thus, the Court may conclude that Defendant never had the intention of

repaying Plaintiff; (4) Plaintiff justifiably relied on Defendant's representations because Defendant is a licensed real estate and mortgage broker who made numerous written and oral representations that the loans were secured and would be repaid with the proceeds from the Flynt litigation; and (5) Plaintiff incurred monetary damages, in the amount of $9,483,862.73, as a result of Defendant's misrepresentations.

Based on the above, Plaintiff asks the Court to enter default judgment in the amount of $9,483,862.73 plus punitive damages.

As of 4/26/17, no Opposition filed.

Analysis:

FRCP Rule 55 governs default judgments. Rule 55 provides, in part, as follows:

(b) Entering a Default Judgment.

(2) By the Court. In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals- preserving any federal statutory right to a jury trial- when, to enter or effectuate judgment, it needs to:

(A) conduct an accounting;

(B) determine the amount of damages;

(C) establish the truth of any allegation by evidence;

(D) investigate any other matter.

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CONT... Shellie Melissa Halper **Chapter 7**

Local Bankruptcy Rule 7055-1(b) provides:

"(1) Form of Motion. A motion for default judgment must state:

(A) The identity of the party against whom default was entered and the date of entry of default;

(B) Whether the defaulting party is an infant or incompetent person and, if so, whether that person is represented by a general guardian, committee, conservator, or other representative;

(C) Whether the individual defendant in default is currently on active duty in the armed forces of the United States, based upon an appropriate declaration in compliance with Servicemembers Civil Relief Act;

(D) Whether the individual defendant is the debtor, the party seeking the default may rely upon the debtor's sworn statements contained in a statement of financial affairs, by following the appropriate procedure for requesting judicial notice of that document pursuant to F.R.Evid. 201; and

(E) That notice of the motion has been served on the defaulting party, if required by F.R. Civ. P. 55(b)(2).

(2) Evidence of Amount of Damages. Unless otherwise ordered, if the amount claimed in a motion for judgment by default is unliquidated, the movant must submit evidence of the amount of damages by declarations in lieu of live testimony. Notice must be given to the defaulting party of the amount requested. Any opposition to the amount of damages by the party against whom the judgment is sought must be in writing and supported by competent evidence.

Is entry of default judgment by the Court appropriate?

The power to grant a default judgment is within the broad discretion of

the trial court. *Kubick v. FDIC (In re Kubick),* 171 B.R. 658 659 (9th Cir. BAP 1994). A default judgment should not be entered on a complaint that fails to support a claim for relief. *Kubick v. FDIC,* 171 B.R. at 661. Further, the court prior to entry of a default judgment, has an independent duty to determine the sufficiency of a claim. *Id.* at 662.

Factors the court may consider in exercising its discretion include: (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. *Eitel v. McCool,* 782 F.2d 1470, 1471-72 (9th Cir. 1986).

Here, the Motion provides a summary of the case. It provides the procedural background including the dates the Complaint was served on Defendant, the date Defendant answered, as well as the reasons for the Order to Show Cause and the ultimate Contempt Order and Terminating Order entered by the Court. Also, Plaintiff filed a Declaration in support of the Motion which includes details of the loans made to Defendant, copies of promissory notes, copies of wire transfer requests, and copies of checks to The Mortgage Center Services, an entity owned by Defendant. [dkt. 113]

The Court, in considering the factors laid out by the *Eitel* case, finds that Plaintiff will be severely prejudiced should the Court fail to enter default judgment. Here, the final Order entered in Plaintiff's favor provided for terminating sanctions. Per the Terminating Order, the Court found that "Plaintiff is entitled to a Default Judgment in this Adversary Proceeding and shall file any necessary supplemental evidence in support of damages and lodge an order for entry of Default Judgment against Debtor/Defendant." [dkt. 101] In addition to the Terminating Order which supports entry of default judgment, Defendant has failed to comply with numerous orders and has delayed the progression of this action, which is to the detriment of the Plaintiff

10:00 AM
CONT... **Shellie Melissa Halper** **Chapter 7**

and of the Court. Moreover, while the Federal Rules encourage and favor decisions on the merits, Defendant has made it extremely difficult for the Plaintiff, as well as the Court, to proceed to a decision on the merits. The docket reflects the numerous times Plaintiff failed to comply with this Court's orders, including failing to attend depositions and respond to discovery. Based on the circumstances of this case, the Court cannot justify denial of the Motion. Therefore, the Court finds that granting the Motion for Default Judgment is within its discretion

As to punitive damages, these are based on evidence of a scheme that defrauds some 30 individuals, not merely Cohen and Twin Palms. None of the others have sought a §362(a) judgment. There is no showing that the Debtor has the ability to pay the $11,000,000+ judgments in these two adversary proceedings, let alone additional amounts for exemplary damages. Since the Plaintiffs in the two adversaries are being made whole thorough an award of interest and professional fees, the Court - in its discretion - chooses not to award further damages.

Party Information

Debtor(s):

Shellie Melissa Halper	Represented By Mark M Sharf Alan W Forsley Yi S Kim

Defendant(s):

Shellie Melissa Halper	Pro Se

Plaintiff(s):

Solomon M Cohen	Represented By Craig G Margulies Nina Z Javan Meghann A Triplett

Trustee(s):

David Keith Gottlieb (TR)	Represented By

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

Tuesday, May 02, 2017 **Hearing Room 303**

10:00 AM
CONT... **Shellie Melissa Halper** **Chapter 7**

Michael H Weiss
Laura J Meltzer

10:00 AM
1:09-23807 Shellie Melissa Halper **Chapter 7**
Adv#: 1:11-01319 Twin Palms Lending Group, LLC v. Halper

#33.00 Motion for Default Judgment Under LBR 7055-1

Docket 123

Tentative Ruling:

Service: Ok. Per FRCP 55(b)(2), Defendant must be served with written notice of the application at least 7 days before the hearing. Defendant was served with written notice on April 13, 2017.

Procedural Background:

On April 23, 2011, Twin Palms Lending Group ("Plaintiff" or "Twin Palms") filed a Complaint objecting to discharge under Section 523(a)(2)(A) against Debtor Shellie Halper ("Defendant" or "Halper"). The Complaint lists one claim for relief for fraud. The underlying basis for the fraud claim is that Plaintiff made loans to Defendant in the principal amount of $455,000. Plaintiff contends that it relied on Defendant's misrepresentations and for that reason consented to loaning Defendant the money. According to the Complaint, as a result of Defendant's fraud, Plaintiff has been damaged in an amount no less than $455,000.

On April 29, 2011, summons was issued on Defendant. An answer was due by May 31, 2011. Defendant filed her answer on May 31, 2011. On February 3, 2012, the Court entered an Order Granting Motion to Stay Case and Proceeding under 5th Amendment Privilege Against Self-Incrimination and for Protective Order. Thereafter, on June 16, 2015, an Order Terminating Stay as to Adversary Proceeding was entered.

After numerous requests for continuances of Defendant's deposition, as well as the status conferences, Plaintiff filed a Motion for Issuance of an Order to Show Cause Why Defendant Shellie Melissa Halper Should Not be Held in Contempt for Failure to Appear at Her Court Ordered Deposition. On

10:00 AM
CONT... Shellie Melissa Halper **Chapter 7**

November 21, 2016, the Court issued an Order to Show Cause Why Shellie Melissa Halper Should Not be Held in Contempt. The Order to Show Cause hearing was set for December 6, 2016. On December 19, 2016, the Court entered an Order Finding Shellie Melissa Halper in Contempt, Awarding Sanctions, Ordering Sanctions Paid, and Further Continuing Contempt Hearing ("Contempt Order").

The Contempt Order required Defendant to pay sanctions in the amount of $40,000 over the course of approximately two months with the final payment being due on February 24, 2017. Moreover, the Contempt Order required Defendant to appear at a deposition on January 31, 2017. If Defendant fails to comply with the Order, the Court would then enter an Order providing for terminating sanctions, which will include the "Court striking the Debtor/Defendant's Answer in the above-captioned Adversary Proceeding and entering a Default Judgment against Debtor/Defendant." Contempt Order, p. 2, dkt. 107. As Defendant failed to comply with the Contempt Order, an Order Entering Terminating Sanctions was entered on January 30, 2017 ("Terminating Order"). On February 23, 2017, the Court entered a Notice that Clerk has Entered Default Against Defendants. Thereafter, the Plaintiff filed the instant Motion.

Motion:

The history of these loans and of the construction that they were allegedly to finance is long and convoluted. The declaration of Solomon Cohen lays out the details in an evidentiarily sufficient manner and those transactions are not repeated in this tentative ruling.

Plaintiff argues that the Court may enter default judgment against Defendant pursuant to FRCP Rule 55(b)(2), which is incorporated by FRBP Rule 7055. Plaintiff contends that based on a review of the facts of this case, default judgment is appropriate.

Here, Plaintiff argues that the Terminating Order striking Defendant's Answer results in Defendant's deemed admission to all of the averments in the Complaint. Moreover, Plaintiff asserts the Complaint satisfies all of the elements of a Section 523(a)(2)(A) claim for relief as follows: (1) Defendant made several misrepresentations that the ten loans would be repaid; (2) Defendant's misrepresentations were made with the intent to induce Plaintiff

into lending the money; (3) Defendant received proceeds from a lawsuit (the Flynt litigation), however despite the ability to repay Plaintiff, Defendant never did. Thus, the Court may conclude that Defendant never had the intention of repaying Plaintiff; (4) Plaintiff justifiably relied on Defendant's representations because Defendant is a licensed real estate and mortgage broker who made numerous written and oral representations that the loans were secured and would be repaid with the proceeds from the Flynt litigation; and (5) Plaintiff incurred monetary damages, in the amount of $2,358.906.17 (per the terms of the second loan modification), as a result of Defendant's misrepresentations.

Based on the above, Plaintiff asks the Court to enter default judgment in the amount of $2,358,906.17 plus punitive damages.

As of 4/26/17, no Opposition filed.

Analysis:

FRCP Rule 55 governs default judgments. Rule 55 provides, in part, as follows:

(b) Entering a Default Judgment.

(2) By the Court. In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals- preserving any federal statutory right to a jury trial- when, to enter or effectuate judgment, it needs to:

(A) conduct an accounting;

(B) determine the amount of damages;

10:00 AM
CONT... **Shellie Melissa Halper** **Chapter 7**

(C) establish the truth of any allegation by evidence;

(D) investigate any other matter.

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(C) Whether the individual defendant in default is currently on active duty in the armed forces of the United States, based upon an appropriate declaration in compliance with Servicemembers Civil Relief Act;

(D) Whether the individual defendant is the debtor, the party seeking the default may rely upon the debtor's sworn statements contained in a statement of financial affairs, by following the appropriate procedure for requesting judicial notice of that document pursuant to F.R.Evid. 201; and

(E) That notice of the motion has been served on the defaulting party, if required by F.R. Civ. P. 55(b)(2).

(2) Evidence of Amount of Damages. Unless otherwise ordered, if the amount claimed in a motion for judgment by default is unliquidated, the movant must submit evidence of the amount of damages by declarations in lieu of live testimony. Notice must be given to the defaulting party of the amount requested. Any opposition to the amount of damages by the party against whom the judgment is sought must be in writing and supported by competent evidence.

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CONT... **Shellie Melissa Halper** **Chapter 7**
Is entry of default judgment by the Court appropriate?

The power to grant a default judgment is within the broad discretion of the trial court. *Kubick v. FDIC (In re Kubick),* 171 B.R. 658 659 (9th Cir. BAP 1994). A default judgment should not be entered on a complaint that fails to support a claim for relief. *Kubick v. FDIC,* 171 B.R. at 661. Further, the court prior to entry of a default judgment, has an independent duty to determine the sufficiency of a claim. *Id.* at 662.

Factors the court may consider in exercising its discretion include: (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action, (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. *Eitel v. McCool,* 782 F.2d 1470, 1471-72 (9th Cir. 1986).

Here, the Motion provides a summary of the case. It provides the procedural background including the dates the Complaint was served on Defendant, the date Defendant answered, as well as the reasons for the Order to Show Cause and the ultimate Contempt Order and Terminating Order entered by the Court. Also, Scott Ferguson, one of the Managing Members of Plaintiff, filed a Declaration in support of the Motion which includes details of the loans made to Defendant plus a calculation of damages, copies of promissory notes, and copies of loan modification agreements. [dkt. 124]

The Court, in considering the factors laid out by the *Eitel* case, finds that Plaintiff will be severely prejudiced should the Court fail to enter default judgment. Here, the final Order entered in Plaintiff's favor provided for terminating sanctions. Per the Terminating Order, the Court found that "Plaintiff is entitled to a Default Judgment in this Adversary Proceeding and shall file any necessary supplemental evidence in support of damages and lodge an order for entry of Default Judgment against Debtor/Defendant." In

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CONT... **Shellie Melissa Halper** **Chapter 7**

addition to the Terminating Order which supports entry of default judgment, Defendant has failed to comply with numerous orders and has delayed the progression of this action, to the Plaintiff and the Court's detriment. Moreover, while the Federal Rules encourage and favor decisions on the merits, Defendant has made it extremely difficult for the Plaintiff, as well as the Court, to proceed to a decision on the merits. The docket reflects the numerous times Plaintiff failed to comply with this Court's orders, including failing to attend depositions and respond to discovery. Based on the circumstances of this case, the Court cannot justify denial of the Motion. Therefore, the Court finds that granting the Motion for Default Judgment is within its discretion.

As to punitive damages, these are based on evidence of a scheme that defrauds some 30 individuals, not merely Cohen and Twin Palms. None of the others have sought a §362(a) judgment. There is no showing that the Debtor has the ability to pay the $11,000,000+ judgments in these two adversary proceedings, let alone additional amounts for exemplary damages. Since the Plaintiffs in the two adversaries are being made whole thorough an award of interest and professional fees, the Court - in its discretion - chooses not to award further damages.

Party Information

Debtor(s):

Shellie Melissa Halper	Represented By Mark M Sharf Alan W Forsley Yi S Kim

Defendant(s):

Shellie Melissa Halper	Pro Se

Plaintiff(s):

Twin Palms Lending Group, LLC	Represented By Jerome Bennett Friedman Craig G Margulies Nina Z Javan

10:00 AM
CONT... **Shellie Melissa Halper** **Chapter 7**

Meghann A Triplett

Trustee(s):

David Keith Gottlieb (TR) Represented By
Michael H Weiss
Laura J Meltzer

10:00 AM
1:09-23807 Shellie Melissa Halper **Chapter 7**
Adv#: 1:11-01319 Twin Palms Lending Group, LLC v. Halper

#34.00 Status Conference re Complaint to Object to Discharge of Debt due to Fraud 11 USC sec 523(a)(2)(A)

fr. 7/6/11, 8/31/11,10/18/11, 12/13/11, 1/3/12, 1/17/12, 2/7/12, 1/8/13, 6/4/13, 11/19/13, 3/11/14, 7/8/14; 1/13/15, 1/20/15, 5/26/15; 6/2/15; 10/20/15, 12/8/15; 2/9/16; 4/5/16, 6/21/16, 8/16/16, 9/27/16; 11/15/16, 12/6/16, 2/21/17; 3/21/17

Docket 1

Tentative Ruling:

Off calendar.

Party Information

Debtor(s):

Shellie Melissa Halper	Represented By Mark M Sharf Alan W Forsley

Defendant(s):

Shellie Melissa Halper	Pro Se

Plaintiff(s):

Twin Palms Lending Group, LLC	Pro Se

Trustee(s):

David Keith Gottlieb (TR)	Represented By Michael H Weiss Laura J Meltzer
David Keith Gottlieb (TR)	Pro Se

10:00 AM
CONT... **Shellie Melissa Halper** **Chapter 7**
US Trustee(s):

United States Trustee (SV) Pro Se