

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

Monday, September 20, 2021

Hearing Room 302

1:30 PM

1:00-00000

Chapter

#0.00 The 1:30 pm calendar will be conducted remotely, using ZoomGov video and audio.

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Docket 0

Tentative Ruling:

- NONE LISTED -

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1:20-11006 Lev Investments, LLC

Chapter 11

#1.00 Debtor's Emergency Motion to be excused from complying with LBR 7026-1(c) and to issued Evidentiary and Monetary Sanctions in connection with discovery dispute with claimant FR, LLC and Kevin Moda.

Docket 0

Tentative Ruling:

The players: FR, LLC ("FR"), whose managing member is Kevin Moda and which is represented by Donald Reid.

Yevgeniya (Gina) Lisitsa, who is represented by Raymond Robinson. Kevin Moda, who is represented by Raymond Robinson.

This concerns claim #5 and discovery as to the authenticity of a promissory note, among other things, and the alleged loan made to the debtor Lev Investments, LLC. A copy of the note was not attached to the proof of claim, but was produced as exhibit 1 to document #388.

On July 23, 2021, Debtor served Mr. Reid with a request to produce documents and a notice of deposition of the person most knowledgeable at FR. On July 28, Mr. Reid agreed to accept service of a deposition notice and RFP for Kevin Moda. It was also agreed that the depositions would be conducted remotely due to the pandemic.

There was also a scheduled deposition for Ms. Lisitsa, which was set for August 20. On August 16, Mr. Robinson, her attorney, notified Mr. Golubchik that he would have to appear by zoom. The Zoom information was provided. The morning of the Lisitsa deposition, Mr. Moda called Mr. Golubchik at home and suggested that they drive together because they live close together. Mr. Golubchik said it was by Zoom and refused. That night Mr. Golubchik's father received a call from the same number that Mr. Moda had used (424)653-6918 – the call included cursing and a threat that Mr. Moda would come and see David Golubchik.

Mr. Moda appeared remotely at the Lisitsa deposition and frequently interrupted his counsel and others. After a warning from Mr. Golubchik, Mr. Moda was dropped from the Zoom proceeding.

During the deposition of Ms. Lisitsa, Mr. Robinson asserted various attorney-client objections, which movant calls frivolous, and instructed Ms. Lisitsa not to answer. This

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concerned the promissory note, the source of funding, etc. (Court comment: *The moving papers also say that Mr. Robinson was attorney for Mr. Moda, but elsewhere it says that he is the attorney for Ms. Lisitsa. So apparently he was at the deposition in both capacities.*)

That same day, Mr. Golubchik attempted to reach a resolution with Mr. Robinson as to the discovery dispute, but that did not happen. On August 25, Mr. Robinson advised Mr. Golubchik that Mr. Moda demands to appear in person for his deposition. Mr. Reid, attorney for FR, advised that he will not take a position on the Moda deposition. He also deferred to Mr. Robinson as to document production.

There was a dispute as to whether Mr. Moda has the right to appear in person for his deposition and Mr. Robinson cancelled the deposition, which was to be held on August 30.

On August 29, Mr. Golubchik found a shopping bag on his doorstep with three sheep [court comment: *later identified as lambs*] heads from the local market. He took this as a threat and filed a police report.

Mr. Moda and FR failed to appear at their depositions.

Mr. Golubchik also advises that Mr. Moda has been declared a vexatious litigant by the Los Angeles Superior Court.

The motion requests a variety of relief including (1) being excused from the local rule as to discovery disputes, (2) disallowing claim #5 or precluding from the evidentiary hearing the promissory note, testimony from FR and Mr. Moda as to the note, its source of funding, and other documents, and precluding testimony from Ms. Lisitsa as to the note, its source of funding, and other matter as to the note.

Opposition by Mr. Robinson

The attorney-client privilege between Mr. Moda and Ms. Lisitsa is owned by Mr. Moda. He has the right to assert it and did so. Ms. Lisitsa has been his attorney for many years and many of the questions asked are irrelevant to the current litigation between Lisitsa and Debtor or as to FR or Moda. Thus, the objections were appropriate. However, a few of the objections may have been because Mr. Robinson could not always hear the question (due to technical difficulties) and once he sees the transcript, he might withdraw those erroneous objections.

Because the movant has not provided a copy of the reporter's transcript, it is impossible to tell what issues are being discussed.

As to Mr. Moda's actions during the Lisitsa deposition, this Court does not have jurisdiction because he is a non-party to the Lisitsa adversary proceeding. He also cannot

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participate in a discovery stipulation as to Lisitsa.

The reason that Mr. Moda appeared at the Lisitsa deposition is because her counsel (who was provided by her insurance carrier) refused to assert any objection to the questions she was to be asked. Mr. Moda thus needed to specially appear to protect his right to secrecy as to confidential communications with Ms. Lisitsa, who was his attorney.

As to the deposition of Mr. Moda – He demanded to be physically present (with his driver) and did show up at Mr. Golubchik's office on August 30, but was denied admittance. Mr. Golubchik was advised of this on August 27. Mr. Robinson needed to appear by zoom because of his wife's health issues and so advised counsel for the Debtor. The deposition notice is in violation of Rule 30 and there is no court order modifying that rule.

Further, the meet and confer process is mandatory unless there is an exception. There is no exception in this case.

Mr. Moda filed his declaration that he did not leave Mr. Golubchik any sheephead. Also, he was disconnected from the Lisitsa deposition when he was silently listening and Mr. Robinson was asserting objections on his behalf.

As to appearing at the offices of LNBY&B, LLP, he went to the building, but was refused an elevator to take him to the 17th floor.

As to the video deposition: "I have never been deposed vis video and I object to having a video deposition taken of me as it is against my religious beliefs to be recorded. I have never appeared via video at any deposition, court hearing, etc. and I have no social media and there exists no video of me."

Opposition by Mr. Reid [dkt. 442, 442]

This opposition deals with the underlying facts of the case as asserted by the claimant. He notes that the basic issue is whether Mr. Moda contributed \$119,000 toward Debtor's purchase of the Evergreen Loan. Mr. Moda and Ms. Lisitsa have both testified that he did; Mr. Lioudkouski denies this. The promissory note is a critical document.

The deposition of Ms. Lisitsa took place by zoom and Mr. Robinson objected to some questions due to attorney-client privilege. At some point Mr. Golubchik removed Mr. Moda from the zoom conference and the deposition proceeded and concluded.

The notice of deposition in question stated that the deposition would be at the offices of Levene Neale, etc and did not specify that it would be by zoom. When Mr. Robinson responded to an emailed zoom link that Mr. Moda would not appear by zoom and did not agree to a remote deposition under FRCP 30(b)(4), Mr. Reid did not appear on behalf of FR because the FR one and the Moda one were scheduled for the same time and

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date.

Mr. Reid then goes through a list of reasons that the relief requested cannot be granted. [court comment: these are the same bases as in the Robinson opposition and will not be repeated here.]

In Mr. Reid's declaration in support of the corrected opposition to this motion [dkt. 443], he focuses on a set of requests to produce that FR served on the Debtor and have not been responded to

Reply to the Opposition

FR an Mr. Moda failed to serve written objections or responses to the Debtor's requests for production of documents that was served on July 23 and July 30, 2021. Because of this, sanctions should be ordered. Rule 37(d)(1)(A). [Court comment: *these rules are incorporated in the Federal Rules of Bankruptcy Procedure, but are being referred to by the number in Federal Rules of Civil Procedure.*] They also failed to appear for their scheduled depositions on August 30, 2021. The depositions had been agreed to as taking place on Zoom and Mr. Moda unilaterally demanded an in-person deposition. Although he claims that he came to the building of Mr. Golubchik's firm and was not admitted, this cannot be verified by the building staff.

As to the lambs' heads, security cameras at the market where they were purchased show Mr. Moda doing that act.

Further, Mr. Golubchik saw Mr. Moda's phone number on his father's phone.

Proposed Ruling

I am new to this case and so I have no history of what led up to this. But I am deeply disturbed by Mr. Moda's perjury. It is clear that he bought the lambs' heads and placed them on Mr. Golubchik's doorstep as a threat or a warning or harassment. And then he lied about it in his declaration dated 9/6/21 when he said "I did not leave Mr. Golubchik any sheepshead." [dkt. 431] Perhaps he will argue that these were lambs' heads and not sheeps' heads. That is not sufficient. First of all, lambs are baby sheep. Second, this statement was meant for the Court to rely on the assertion that he was not involved in the complained-of act. I also have reason to believe that he made the calls described by Mr. Golubchik to him and his father. If so, it is a sad statement about Mr. Moda. If not, he would be wise to be very upright in his actions as this case proceeds.

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For the moment, I will ignore whether he tried to appear at the office of Levene Neale, etc. on the day of his deposition. There is no record that he attempted to call Mr. Golubchik or anyone to ask to be let in. But the video deposition was as a result of the request of his attorney. As to whether Mr. Moda has a good-faith reason not to appear on a video deposition, I will also ignore that for the moment but wish to note that zoom hearings are not recorded unless one consents and the recording is clearly indicated.

At this point, I am sorry to say that Mr. Moda's perjury does and will influence my level of belief as to his truth and veracity. I have never seen or heard of him before, so this is a sad statement for me to have to make. Nonetheless, I do not believe that it is time for terminating sanctions and it might not even be time for monetary ones. I will probably decide those issues in the future, depending on what happens from now on.

So here are my issues:

As to Ms. Lisista's deposition, Mr. Moda is represented by counsel and therefore he is not to interrupt or object. Should he do anything via zoom or other virtual means, I will remove him from the hearing if he attempts to participate as anything other than a client. As in any deposition or evidentiary hearing, if he is not testifying he can consult with his counsel. I will honor the vexatious litigant finding of the state court and therefore he must be represented by counsel unless he sits quietly as an observer.

If the Debtor wishes to seek further answers in the Lisista deposition, it must bring a motion and provide the Court with a copy of the transcript. Without the transcript I cannot determine whether the objections were warranted.

As to the depositions of FR and Moda, I think that they should be in person, but special arrangements will have to be made to allow Mr. Robinson to attend by video and to represent Mr. Moda. Fortunately, our courtrooms are properly equipped for this. No one will sit closer to another than 6 feet and more likely 10-12 feet. Exhibits in the courtroom can be projected so that Mr. Robinson can review them at home. We will schedule it on a day when I am working in the courthouse so that I can be contacted in my chambers to resolve major discovery disputes on the spot. The witness (Mr. Moda) will turnover his mobile phone and any Bluetooth device to the Court Security Officer who will be sitting in the back of the courtroom. In that way all can be assured that he is not receiving any prompting. Should he need to consult with one of the lawyers, he can do so off-the-record in the hallway with Mr. Reid or he can take back his phone to do so in the hallway with Mr. Robinson. As to Mr. Moda's desire not to be recorded, zoom does not record unless everyone consents. Since there will be a court reporter taking an oral transcript, there is no need to record the zoom session.

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The evidentiary hearing set for September 27 will be continued to a mutually agreeable date. I will also hear the issue of any other outstanding discovery on either side.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By

David B Golubchik

Juliet Y Oh

Richard P Steelman Jr

Trustee(s):

Caroline Renee Djang (TR)

Pro Se