

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Mark Wallace, Presiding
Courtroom 6C Calendar**

Wednesday, July 15, 2020

Hearing Room 6C

9:00 AM

8:15-14817 Tracy Lee Edwards

Chapter 7

Adv#: 8:16-01008 Marin et al v. Edwards

#1.00

STATUS CONFERENCE Hearing RE: Complaint
(Set per Order Entered 5/19/2020)

[Tele. appr., Robert J. Younger, repr., Martin Marin]

Docket 100

Tentative Ruling:

In view of the Pandemic, in-person appearances at hearings are expressly prohibited at the time, and any person who is required to appear at a hearing or who desires to appear at a hearing must appear telephonically through CourtCall. If a tentative ruling states "Appearances not required", this does not mean that appearances are prohibited, but if a person desires to appear, such appearance must be telephonic and cannot be in person.

APPEARANCES NOT REQUIRED.

The Court will direct the Clerk's office to close the main bankruptcy case and this adversary proceeding.

COURT TO PREPARE ORDER.

Party Information

Debtor(s):

Tracy Lee Edwards

Represented By
Dennis Connelly

Defendant(s):

Tracy Lee Edwards

Represented By
Dennis Connelly

**United States Bankruptcy Court
Central District of California
Santa Ana
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9:00 AM

CONT... Tracy Lee Edwards

Chapter 7

Plaintiff(s):

Martin Marin

Represented By
Robert J Younger

World Power Wrestling

Represented By
Robert J Younger

Trustee(s):

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, July 15, 2020

Hearing Room 6C

9:00 AM

8:15-15715 William John Murphy

Chapter 7

Adv#: 8:16-01147 Vohne Liche Kennels, Inc. et al v. Murphy et al

#2.00

CONT'D STATUS CONFERENCE Hearing RE: Complaint For
Nondischargeability Of Debt Pursuant To 11 U.S.C. Sections 523(a)(2)(A), And
(a)(6) And 727(a)(3), (a)(4), (a)(5) And (a)(7)
Complaint filed 6/7/16
(S/C set per Order Entered 6-23-17 - Docket No. [39])

FR: 8-24-16; 2-13-17; 9-20-17, 12-6-17, 7-11-18; 12-12-18; 7-17-19; 11-13-19;
5-13-20

Docket 1

***** VACATED *** REASON: CONTINUED TO NOVEMBER 4, 2020 AT
9:00 A.M. PER ORDER CONTINUING STATUS CONFERENCE
PURSUANT TO STIPULATION ENTERED 7-14-2020 - (DOCKET NO.
[80])**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

William John Murphy

Represented By
Sean A OKeefe
Michael N Nicastro

Defendant(s):

William John Murphy

Represented By
Sean A OKeefe

Cheryl Lynn Murphy

Represented By
Sean A OKeefe

Joint Debtor(s):

Cheryl Lynn Murphy

Represented By
Sean A OKeefe

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CONT... William John Murphy

Chapter 7

Plaintiff(s):

VLK Risk Consultants, Inc.

Represented By
Neal Salisian
Jack I Siegal

Vohne Liche Kennels, Inc.

Represented By
Neal Salisian
Jack I Siegal

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jason Balitzer
Steven Werth

**United States Bankruptcy Court
Central District of California
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Wednesday, July 15, 2020

Hearing Room 6C

9:00 AM

8:18-11792 Modern VideoFilm, Inc.

Chapter 11

#3.00

CONT'D Hearing RE: Approval Of Debtor's Disclosure Statement
Accompanying Debtor's First Amended Chapter 11 Plan
(D.S. filed 6/5/19)

FR: 7-17-19; 11-13-19; 2-19-20; 5-6-20

[Tele. appr., Garrick A. Hollander, repr., Modern VideoFilm, Inc.]

[Tele. appr., Emily A. Sanchirico, repr., Moshe Barkat]

[Tele. appr., Queenie Ng, repr., U.S. Trustee]

Docket 168

Tentative Ruling:

In view of the Pandemic, in-person appearances at hearings are expressly prohibited at the time, and any person who is required to appear at a hearing or who desires to appear at a hearing must appear telephonically through CourtCall. If a tentative ruling states "Appearances not required", this does not mean that appearances are prohibited, but if a person desires to appear, such appearance must be telephonic and cannot be in person.

TELEPHONIC APPEARANCES REQUIRED.

The Court will inquire as to the current status of the settlement negotiations.

Party Information

Debtor(s):

Modern VideoFilm, Inc.

Represented By
Garrick A Hollander

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Central District of California
Santa Ana
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Wednesday, July 15, 2020

Hearing Room 6C

9:00 AM

CONT...

Modern VideoFilm, Inc.

Andrew B Levin
Peter W Lianides

Chapter 11

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Mark Wallace, Presiding
Courtroom 6C Calendar**

Wednesday, July 15, 2020

Hearing Room 6C

9:00 AM

8:18-11997 QDOS, Inc

Chapter 11

#4.00

CONT'D STATUS CONFERENCE Hearing RE: Chapter 11 Involuntary Petition
(Petition filed 5/31/18)

FR: 6-25-18; 8-1-18; 9-19-18; 10-24-18; 7-8-19; 10-16-19; 3-11-20

[Tele. appr., Patrick M. Costello, repr., Carl Wiese]

Docket 1

Tentative Ruling:

In view of the Pandemic, in-person appearances at hearings are expressly prohibited at the time, and any person who is required to appear at a hearing or who desires to appear at a hearing must appear telephonically through CourtCall. If a tentative ruling states "Appearances not required", this does not mean that appearances are prohibited, but if a person desires to appear, such appearance must be telephonic and cannot be in person.

APPEARANCES NOT REQUIRED.

In view of the pending appeal of the BAP's decision to the Ninth Circuit and the COVID-19 pandemic, the Court will continue the status conference to January 27, 2021 at 9:00 a.m.

An updated status report by the alleged Debtor QDOS is due January 13, 2021.

COURT TO PREPARE ORDER.

Party Information

Debtor(s):

QDOS, Inc

Represented By
Damian D Capozzola

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Santa Ana
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CONT... QDOS, Inc

Chapter 11

**United States Bankruptcy Court
Central District of California
Santa Ana
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Courtroom 6C Calendar**

Wednesday, July 15, 2020

Hearing Room 6C

9:00 AM

8:19-13571 Anthony Afshin Kashani

Chapter 11

Adv#: 8:19-01210 Kashani v. Lewis et al

#5.00

CONT'D STATUS CONFERENCE RE: Debtor's Complaint For:
(1) Avoidance Of Untitled Interest In Estate Property;
(2) Quiet Title;
(3) Breach Of The Covenant Of Good Faith And Fair Dealing;
Emergency and Injunctive Relief Requested
(Complaint filed 10/29/19)

FR: 1-22-20; 6-3-20

Docket 1

Tentative Ruling:

In view of the Pandemic, in-person appearances at hearings are expressly prohibited at the time, and any person who is required to appear at a hearing or who desires to appear at a hearing must appear telephonically through CourtCall. If a tentative ruling states "Appearances not required", this does not mean that appearances are prohibited, but if a person desires to appear, such appearance must be telephonic and cannot be in person.

APPEARANCES NOT REQUIRED.

The Court will set an order to show cause hearing for September 21, 2020 as to why this adversary proceeding should not be dismissed for failure to prosecute, namely, failure to serve the summons and complaint. FRBP 7004, FRCP 4(m).

Any interested party who desires to assert a position on this matter shall file a brief on or before August 14, 2020.

COURT TO PREPARE ORDER

Party Information

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9:00 AM

CONT... Anthony Afshin Kashani

Chapter 11

Debtor(s):

Anthony Afshin Kashani

Represented By
Saied Kashani

Defendant(s):

Jeff Lewis

Pro Se

Patty Lewis

Pro Se

Plaintiff(s):

Anthony Afshin Kashani

Represented By
Mirsaied Kashani

**United States Bankruptcy Court
Central District of California
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Wednesday, July 15, 2020

Hearing Room 6C

9:00 AM

8:19-14527 Anthony Afshin Kashani

Chapter 7

Adv#: 8:20-01030 Golden, Chapter 7 Trustee v. Lewis et al

#6.00

CONT'D Hearing RE: Plaintiff Chapter 7 Trustee's Motion For Summary Judgment
(Motion filed 4/22/2020)

FR: 6-3-20

[Tele. appr., Roye Zur, repr., Jeffrey I. Golden (Trustee)]

[Tele. appr., Craig J. Beauchamp, repr., Jeff and Patty Lewis (Defendants)]

Docket 9

Tentative Ruling:

In view of the Pandemic, in-person appearances at hearings are expressly prohibited at the time, and any person who is required to appear at a hearing or who desires to appear at a hearing must appear telephonically through CourtCall. If a tentative ruling states "Appearances not required", this does not mean that appearances are prohibited, but if a person desires to appear, such appearance must be telephonic and cannot be in person.

TELEPHONIC APPEARANCES REQUIRED.

Before the Court is Plaintiff Chapter 7 Trustee's Motion for Summary Judgment (the "Motion"). The Motion seeks a determination by this Court that chapter 7 trustee Jeffrey Golden (the "Plaintiff") is entitled to exercise his strong-arm powers under 11 U.S.C. § 544(a)(3) to avoid an alleged interest in real property located at 420 South Zion Ridge Drive, Lot #33, Mt. Carmel, Utah 84741 (the "Property") held by Jeff and Patti Lewis ("Defendants") and to recover such interest for the benefit of

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CONT... Anthony Afshin Kashani

Chapter 7

the bankruptcy estate of Anthony Afshin Kashani "Mr. Kashani") pursuant to 11 U.S.C. § 551. Defendants oppose the Motion.

BACKGROUND FACTS

In 2012, Mr. Kashani acquired a deed to the Property, which appears to be a cabin in the vicinity of Zion National Park in Utah. The Warranty Deed showing Mr. Kashani as grantee is dated May 26, 2012 and was recorded on June 6, 2012. A deed of trust encumbering the Property was recorded on this same date (the "Deed of Trust"). The Deed of Trust shows Mr. Kashani as the "Borrower" and Academy Mortgage Corporation as the "Lender." The Deed of Trust states that it secures a loan of \$160,000.

Prior to the recording of deed on June 6, 2012, Mr. Kashani entered into an "Ownership Agreement" with Defendants generally providing that Defendants would pay about \$50,000 toward the down payment, existing lien payoff and closing costs and, additionally, would contribute \$100,000 "in the form of cash, furnishing and maintenance of any kind." In exchange therefor, the Ownership Agreement" recites that "Ownership of said property is as follows: 50% Anthony Kashani and 50% Jeff & Patti Lewis."

The Ownership Agreement was never recorded. However, on or about August 24, 2018, Defendants recorded a document entitled "Notice Intrest" [sic]. This document states as follows: JEFF AND PATTI LEWIS CLAIM AND INTREST [sic] IN THE FLOWING [sic] PROPERTY ON LOT 33, ZION RIDGE PLANNED UNIT DEVELOPMENT— PHASE 1 AMENDED AND EXTENDED, ACCORDING TO THE OFFICIAL PLAT THEREOF, IN THE OFFICE OF THE RECORDED [sic] OF KANE COUNTY, STATE OF UTAH.

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CONT... Anthony Afshin Kashani

Chapter 7

PLAINTIFF'S CONTENTIONS

Plaintiff contends in the Motion that he is entitled to summary judgment that he may avoid any interest in the Property held by the Defendants using his strong-arm powers under 11 U.S.C. § 544(a)(3) and recover such interest (if any) for the bankruptcy estate's benefit pursuant to 11 U.S.C. 551. Plaintiff argues that by having the status of a bona fide purchaser under Utah law he takes the Property free and clear of any alleged interest held by Defendants.

SUMMARY JUDGMENT REQUIREMENTS

Federal Rule of Bankruptcy Procedure 7056 provides that, with an exception not relevant here, Federal Rule of Civil Procedure 56 applies in this adversary proceeding. Rule 56, in turn, provides in relevant part that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." The party moving for summary judgment has the initial burden of showing entitlement to judgment as a matter of law. *Tranchitella v. Bank of Illinois in DuPage*, 198 B.R. 679 (N.D. Ill. 1996).

TRUSTEE'S AVOIDANCE POWERS AS A DEEMED BONA FIDE PURCHASER UNDER 11 U.S.C. § 544(a)(3)

A bankruptcy trustee such as Plaintiff has the power to avoid any interest in property that a hypothetical bona fide purchaser for value could have avoided under the law of the state in which the property is located. *Chase Manhattan Bank v. Taxel (In re Deuel)*, 594 F.3d 1073, 1076 (9th Cir. 2010); *Probasco v. Eads (In re*

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CONT... **Anthony Afshin Kashani**

Chapter 7

Probasco), 839 F.2d 1352, 1354 (9th Cir. 1988) ("The powers of a bona fide purchaser for purposes of section 544(a) are defined by state law"). Here, the Property is located in Utah, so the Court will look to Utah law to determine whether Plaintiff has shown that as a deemed bona fide purchaser for value, he can avoid the interest claimed in the Property by Defendants.

Under Utah law, a purchaser must take title to property without notice of a prior unrecorded interest in property in order to qualify as a bona fide purchaser (who would take title free and clear of such unrecorded interest). *Morris v. Off-Piste Capital LLC*, 418 P.3d 66, 74 (Utah Ct. of Appeals 2018). Bankruptcy Code section 544(a) expressly states that a trustee's strong-arm powers are determine "without regard to any knowledge of the trustee," so it might seem on first impression that whether the trustee had notice or did not have notice of the prior unrecorded interest would be wholly irrelevant. However, this is not entirely correct. The statutory language of section 544(a) refers to actual knowledge but not to constructive notice. *McCannon v. Marston*, 679 F.2d 13, 16-17 (3d Cir. 1982). If a trustee has constructive notice of an interest of property and applicable state law denies bona fide purchaser status to a buyer who has constructive notice of such interest, the trustee loses his strong-arm power to avoid the interest because he fails to qualify as a bona fide purchaser. *Probasco v. Eads (In re Probasco)*, 839 F.2d 1352, 1354-55 (9th Cir. 1988) ("The language of [section 544(a)(3)] renders the trustee's or any creditor's knowledge irrelevant. [footnote omitted] It does not, however, make irrelevant notice constructively given . . .").

Utah law recognizes two types of constructive notice that, if applicable, can defeat a buyer's right to take free and clear of an interest in property: record notice and inquiry notice. *U.P.C., Inc. v. R.O.A. General, Inc.*, 990 P.2d 945, 953-54 (1999); *First American Title Ins. Co. v. J.B. Ranch, Inc.*, 966 P.2d 834, 837 (1998). Inquiry notice occurs when circumstances arise that should put a reasonable person on guard so as to require further inquiry on his part. *First American Title Ins. Co. v. J.B. Ranch, Inc.*,

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CONT... **Anthony Afshin Kashani**

Chapter 7

966 P.2d 834, 838 (1998). Inquiry notice does not arise from a record. *Id.*

The inquiry notice standard in force under Utah law is tied to what would put a reasonably prudent person on notice. *Salt Lake, Garfield & Western Railway Co. v. Allied Materials Co.*, 291 P.2d 883, 885 (1955). A reasonably prudent buyer certainly would inspect real property prior to purchasing it. *Id.* (party seeking bona fide purchaser status charged with knowledge of poles, guy wires and trolley wires on land). What a buyer knows or does not know about the condition of the Property being purchased is of prime importance in determining whether or not the buyer is on inquiry notice.

In this case, the Motion fails to establish what the Plaintiff-trustee knew or did not know about the possession, condition or occupancy of the Property. The Motion is supported by a Declaration by the Plaintiff-trustee's counsel, but not by any declaration by the Plaintiff-trustee himself. In the absence of any evidence as to what the Plaintiff-trustee knew or did not know about the Property, the Court cannot reach the conclusion that the Plaintiff-trustee was not on inquiry notice or was the type of hypothetical reasonably prudent buyer who could qualify as a bona fide purchaser under Utah law. Just as a buyer of real property cannot close his eyes to the Property's condition and still qualify as a bona fide purchaser under Utah law, neither can a bankruptcy trustee keep a bankruptcy court in the dark as to what the trustee knew or did not know as it pertains to inquiry notice and still prevail on a motion for summary judgment pursuant to Bankruptcy Code section 544(a)(3).

To phrase the matter differently, if the Plaintiff is to prevail on the Motion, the Plaintiff must show that he did not have inquiry notice with respect to Defendants' alleged interest in the Property. Because the Court has no evidence before it regarding what the Plaintiff knew or did not know about the Property, Plaintiff has failed to meet his initial burden of showing he is entitled to judgment as a matter of law.

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CONT... Anthony Afshin Kashani

Chapter 7

The Court denies the Motion with prejudice.

Because the Court believes there is a possibility that this adversary proceeding can be consensually resolved without the necessity of a trial, the Court orders the proceeding into mediation. The parties shall file a mediation stipulation and lodge an order thereon on or prior to July 31, 2020.

The Court sets a status conference for January 13, 2020 at 9:00 a.m.

DEFENDANT TO LODGE ORDER VIA LOU WITHIN 7 DAYS.

Party Information

Debtor(s):

Anthony Afshin Kashani

Represented By
Mirsaied Kashani

Defendant(s):

Jeff Lewis

Represented By
Craig J Beauchamp

Patti Lewis

Represented By
Craig J Beauchamp

Movant(s):

Jeffrey I. Golden, Chapter 7 Trustee

Represented By
Roye Zur

Plaintiff(s):

Jeffrey I. Golden, Chapter 7 Trustee

Represented By
Roye Zur

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Roye Zur

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9:00 AM

CONT... Anthony Afshin Kashani

Chapter 7

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Hearing Room 6C

9:00 AM

8:19-14527 Anthony Afshin Kashani

Chapter 7

Adv#: 8:20-01030 Golden, Chapter 7 Trustee v. Lewis et al

#6.10

CONT'D STATUS CONFERENCE Hearing RE: Complaint For:
(1) Avoidance Of Unrecorded Interest In Property Of The Estate Pursuant To 11 U.S.C. Section 544(a)(3);
(2) Recovery Of Avoided Unrecorded Interest Pursuant To 11 U.S.C. Section 550;
(3) Preservation Of Avoided Unrecorded Interest Pursuant To 11 U.S.C. Section 551; And
(4) Declaratory Relief
(Complaint filed 3/18/2020)

FR: 7-8-20

[Tele. appr., Roye Zur, repr., Jeffrey I. Golden (Trustee)]

[Tele. appr., Craig J. Beauchamp, repr., Jeff and Patty Lewis (Defendants)]

Docket 1

Tentative Ruling:

In view of the Pandemic, in-person appearances at hearings are expressly prohibited at the time, and any person who is required to appear at a hearing or who desires to appear at a hearing must appear telephonically through CourtCall. If a tentative ruling states "Appearances not required", this does not mean that appearances are prohibited, but if a person desires to appear, such appearance must be telephonic and cannot be in person.

TELEPHONIC APPEARANCES REQUIRED.

The Court will send this adversary proceeding into mediation. The Parties shall file a mediation stipulation and lodge an order thereon on or before August 31, 2020.

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CONT... Anthony Afshin Kashani

Chapter 7

The Court continues the status conference to February 10, 2021 at 9:00 a.m.

COURT TO PREPARE ORDER.

Party Information

Debtor(s):

Anthony Afshin Kashani

Represented By
Mirsaied Kashani

Defendant(s):

Jeff Lewis

Represented By
Craig J Beauchamp

Patti Lewis

Represented By
Craig J Beauchamp

Plaintiff(s):

Jeffrey I. Golden, Chapter 7 Trustee

Represented By
Roye Zur

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Roye Zur

**United States Bankruptcy Court
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Wednesday, July 15, 2020

Hearing Room 6C

9:00 AM

8:19-14723 James Alvin Grove

Chapter 7

Adv#: 8:20-01026 Nigolian et al v. Grove

#7.00

CONT'D STATUS CONFERENCE Hearing RE: Complaint To Determine Nondischargeability Of Debt, To Deny Debtor's Discharge And For Entry Of Judgment
(Complaint filed 3/12/20)

FR: 6-3-20

**[Tele. appr., Grant A. Nigolian, repr., Self and Sarine Sabounjian
(Plaintiffs)]**

[Tele. appr., Michael G. Spector, repr., James Grove (Defendants)]

Docket 1

Tentative Ruling:

In view of the Pandemic, in-person appearances at hearings are expressly prohibited at the time, and any person who is required to appear at a hearing or who desires to appear at a hearing must appear telephonically through CourtCall. If a tentative ruling states "Appearances not required", this does not mean that appearances are prohibited, but if a person desires to appear, such appearance must be telephonic and cannot be in person.

TELEPHONIC APPEARANCES REQUIRED.

Based upon the Parties' request as set forth in the Joint Status Report, the Court will send this adversary proceeding into mediation. The Parties shall file a mediation stipulation on or before August 15, 2020 (and lodge an order thereon).

The Court will continue the status conference to January 20, 2021 at 9:00 a.m.

COURT TO PREPARE ORDER.

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Central District of California
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9:00 AM

CONT... James Alvin Grove

Chapter 7

Party Information

Debtor(s):

James Alvin Grove

Represented By
Michael N Nicaastro
Michael G Spector

Defendant(s):

James Alvin Grove

Represented By
Michael G Spector

Plaintiff(s):

Sarine Nigolian

Represented By
Grant A Nigolian

Grant Nigolian

Represented By
Grant A Nigolian

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Wednesday, July 15, 2020

Hearing Room 6C

9:00 AM

8:18-11759 Chester Davenport

Chapter 7

Adv#: 8:18-01155 Naylor v. Sun et al

#8.00

PRE-TRIAL STATUS CONFERENCE Hearing RE: Chapter 7 Trustee's First Amended Complaint Against Bianca Sun And Yan Yu Sun For:

- (1) Imposition Of Resulting Trust;
 - (2) Imposition Of Constructive Trust;
 - (3) Avoidance Of Actual Intent Fraudulent Transfer Under 11 U.S.C. Section 548(a)(1)(A) Of An Interest In Real Property;
 - (4) Avoidance Of Constructive Fraudulent Transfer Under 11 U.S.C. Section 548(a)(1)(B) Of An Interest In Real Property;
 - (5) Avoidance Of Preferential Transfer Under 11 U.S.C. Section 547;
 - (6) Avoidance Of Actual Intent Fraudulent Transfer Under 11 U.S.C. Section 544 And 28 U.S.C. Section 3304 Of An Interest In Real Property;
 - (7) Recovery Of Transfers from Bianca Of An Interest In Real Property Per 11 U.S.C. Section 550;
 - (8) Recovery Of Transfer from Yan Of An Interest In Real Property Per 11 U.S.C. Section 550;
 - (9) Judgment Quieting Title;
 - (10) Declaratory Relief;
 - (11) Turnover Of Rental Value Pursuant To 11 U.S.C. Section 542;
 - (12) Turnover Of Interest In Real Property Which Is Property Of The Estate Pursuant To 11 U.S.C. Section 542;
 - (13) Avoidance Of Post-Petition Transfer Pursuant To 11 U.S.C. Section 549(a) Against Bianca Regarding 2014 Land Rover;
 - (14) Avoidance Of Actual Intent Fraudulent Transfer Under 11 U.S.C. Sections 548, 550 And CCCP Section 3439 Et Seq Against Bianca Regarding 2014 Land Rover;
 - (15) Avoidance Of Constructive Fraudulent Transfer Under 11 U.S.C. Sections 544, 548 And CCCP Section 3439 Et Seq Against Bianca Regarding 2014 Land Rover; And,
 - (16) Recovery Of Transfer Of An Interest In A 2014 Land Rover Per 11 U.S.C. Section 550
- (Complaint filed 8/3/18)
(Amended Complaint filed 3/25/19)
(Summons Issued On Amended Complaint On 3/25/19)
(PTC set at S/C held 7/17/19)

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CONT... Chester Davenport

Chapter 7

FR: 10-24-18; 3-27-19; 6-19-19; 7-17-19; 4-15-20

Docket 1

***** VACATED *** REASON: CONTINUED TO AUGUST 19, 2020 AT
9:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE
PRE-TRIAL CONFERENCE ENTERED 6-22-2020 - (DOCKET NO. [159])**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chester Davenport

Represented By
Michael Jay Berger

Defendant(s):

Bianca Sun

Represented By
Victor S Korechoff
Eugene S Fu

Yan Yu Sun

Represented By
Victor S Korechoff
Eugene S Fu

Plaintiff(s):

Karen Sue Naylor

Represented By
Thomas H Casey
Kerry A. Moynihan

Trustee(s):

Karen S Naylor (TR)

Represented By
Thomas H Casey

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Wednesday, July 15, 2020

Hearing Room 6C

9:00 AM

8:18-11759 Chester Davenport

Chapter 7

Adv#: 8:18-01193 Basho Technologies Holdco C, LLC et al v. Chester

#9.00

CONT'D PRE-TRIAL CONFERENCE Hearing RE: Complaint To Determine Dischargeability Of Debt Under 11 U.S.C. Section 523(a)(4) And Objection To Discharge Under 11 U.S.C. Sections 727(a)(2) And (a)(3)
(Complaint filed 10/26/18)
(PTC set at S/C held 4/24/19)

FR: 1-16-19; 1-23-19; 3-27-19; 4-24-19; 12-18-19

Docket 1

***** VACATED *** REASON: CONTINUED TO OCTOBER 21, 2020 AT 9:00 A.M. PER ORDER APPROVING SECOND STIPULATION TO AMEND SCHEDULING ORDER ENTERED 4-17-2020 - (DOCKET NO. [81])**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chester Davenport

Represented By
Michael Jay Berger

Defendant(s):

Davenport C. Chester

Represented By
Michael Jay Berger

Plaintiff(s):

Basho Technologies Holdco C, LLC

Represented By
Bradley Gardner
Randye B Soref
Tanya Behnam

Basho Technologies Holdco E, LLC

Represented By
Bradley Gardner

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CONT... Chester Davenport

Chapter 7

Randye B Soref
Tanya Behnam

Hunoby Enterprises, LLC

Represented By
Bradley Gardner
Randye B Soref
Tanya Behnam

Earl P. Galleher III

Represented By
Bradley Gardner
Randye B Soref
Tanya Behnam

Basho Technologies Holdco B, LLC

Represented By
Randye B Soref
Bradley Gardner
Tanya Behnam

Trustee(s):

Karen S Naylor (TR)

Represented By
Thomas H Casey

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Mark Wallace, Presiding
Courtroom 6C Calendar**

Wednesday, July 15, 2020

Hearing Room 6C

9:00 AM

8:19-14162 Eric Daniel Merrell

Chapter 7

Adv#: 8:20-01012 Lohr v. Merrell et al

#10.00

Hearing RE: Defendants' Motion To (1) Compel Plaintiff To Provide The Actual Production Of Documents By Plaintiff To Defendant's First Request For Production Of Documents; (2) Compel Plaintiff To Provide Her Tax Returns; And (3) Compel Plaintiff To Comply With Rule 7026 And Provide Initial Disclosures; And Request For Attorney's Fees, Costs And Sanctions (Motion filed 6/23/2020)

[Tele. appr., Stephen W. Berger, repr., Kathy Lohr (Plaintiffs)]

[Tele. appr., David B. Lally, repr., Eric and Julie Merrell (Debtor)]

Docket 20

Tentative Ruling:

In view of the Pandemic, in-person appearances at hearings are expressly prohibited at the time, and any person who is required to appear at a hearing or who desires to appear at a hearing must appear telephonically through CourtCall. If a tentative ruling states "Appearances not required", this does not mean that appearances are prohibited, but if a person desires to appear, such appearance must be telephonic and cannot be in person.

TELEPHONIC APPEARANCES REQUIRED.

Plaintiff Kathy Lohr ("Plaintiff") filed a complaint for determination of dischargeability of debt against Chapter 7 debtors Eric Merrell and Julie Merrell ("Defendants") on February 3, 2020. Plaintiff is Julie Merrell's mother. The complaint's gravamen is that (1) Plaintiff provided \$200,000 to Defendants to enable them to purchase residential real property located at 8655 Raintree, Whittier, California 90605 (the "Property") in exchange for Defendants' promise to

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give Plaintiff a one-half interest in the Property and to permit her to occupy a so-called "mother in law unit" on the Property's premises and to provide her with assistance with her daily living needs, (2) Defendants reneged on these promises, and (3) Defendants' promises were false and fraudulent, thereby rendering Defendants' alleged obligation to Plaintiff excepted from discharge under 11 U.S.C. § 523(a)(2)(A) and 11 U.S.C. § 523(a)(6). Defendants answered the complaint on February 25, 2020, substantially denying its material allegations.

Defendants served Rule 26 disclosures on Plaintiff on or about February 27, 2020. Plaintiff's Rule 26 disclosures were not served on Defendants until about July 1, 2020.

On or about March 4, 2020, Defendants served a request for production of documents on Plaintiff (the "Document Request"). The Document Request makes 33 requests for document production over five pages (excluding the proof of service). 22 of the 33 requests ask the Plaintiff to produce "any and all documents evidencing and establishing your allegations in Paragraph [___] of the Complaint" (referring to Complaint paragraphs 2, 4, 8-14, 16-27 and 29). Production was due within 30 days of the date of service, on or about April 3, 2020. Defendants then granted Plaintiff an extension of time to on or about May 5, 2020 to respond to the Document Request.

Plaintiff responded to the Document Request on or about April 30, 2020 (the "Response"). The Response did not provide even a single document to Defendants. The Response states that Plaintiff intends to produce documents responsive to the Document Request "at the earliest possible time after the coronavirus pandemic quarantines, closures, and restrictions are ended and/or lifted" and after Plaintiff and her attorney can meet personally and review the documents in Plaintiff's possession or control that would be responsive.

Plaintiff alleges that she is legally blind and that her attorney, Stephen W. Berger,

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Esq., is working from home, lives with a spouse who "has several health co-morbidities and is vulnerable to the virus" and is going into the office once a week. Discovery Stipulation, Docket No. 19, filed June 23, 2020 at page 5 of 51 (the "Discovery Stipulation") (allegedly unsigned by Mr. Berger, but the Court would guess that Mr. Berger wrote the words quoted above).

The record shows an exchange of emails between Mr. Berger and David Lally, Esq., Defendants' attorney, beginning around May 24, 2020 concerning the absence of document production by Plaintiff. Some of these emails are quite vitriolic. No documents seem to have been produced while this email exchange was in progress. On June 23, 2020, Defendants filed a motion to compel the production of documents referenced in the Document Request (the "Motion"). The Discovery Stipulation was filed the same day. Plaintiff filed an opposition (the "Opposition") on July 1, 2020 along with Rule 26 disclosures.

The Opposition argues that the Motion should be denied because (1) Local Bankruptcy Rule 7026-1 was violated because Defendants did not timely file the Discovery Stipulation, (2) the Motion is moot because Plaintiff produced 817 pages of documents on or about June 29, 2020 responsive to the Document Request, and (3) Plaintiff's tax returns are privileged.

Each party asks for an award of attorney's fees and costs against the opposing party. Defendants request an award of sanctions in addition to attorney's fees and costs.

ANALYSIS

The Court recognizes that the Covid-19 pandemic has made it difficult to conduct business as usual and, more to the point, has substantially increased the difficulties of complying with document production requests. However, the pandemic does not excuse Plaintiff's failure to timely produce even a single document responsive to the

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Document Request. Plaintiff had almost two months to ferret out and deliver to Defendants at least a handful of the documents requested. Instead, Plaintiff refused to produce anything. Although Plaintiff can plausibly contend she should not be required to produce all the documents Defendants requested by the May 5 deadline, this does not excuse her failure to produce anything. A refusal to provide any documents leads the Court to wonder whether Plaintiff is showing good faith in the discovery process.

As of this writing the pandemic is still extant, and restrictions are still in effect. Business is most definitely not back to normal. (The Court takes judicial notice of these generally known matters pursuant to Federal Rule of Evidence 201(b)(1) and (c)(1)). Despite these conditions, Plaintiff managed to produce 817 pages of documents responsive to the Document Request, leading the Court to wonder why at least some of these documents could not have been produced in a timely fashion several months ago.

Plaintiff's tax returns, filed under penalty of perjury, would clearly appear to be relevant. See Internal Revenue Code § 7872 (generally requiring a person who makes a gift loan [a loan with no stated interest or below-market interest] to pick up and report income in the form of original issue discount on such loan). However, the issue of privilege with respect to the tax returns is not sufficiently briefed so as to enable the Court to determine whether or not production of the tax returns should be compelled.

The Discovery Stipulation filed by Defendants, strictly speaking, is not a stipulation because it does not bear Mr. Berger's signature. Technically speaking, it is not the type of stipulation envisioned by Local Bankruptcy Rule 7026-1. Nevertheless, it seems highly likely that Mr. Berger or someone acting under his direction wrote the portion of the Discovery Stipulation entitled "Plaintiff's Introductory Statement." Based upon the rancor between attorneys for the parties, the Court determines that there has been substantial compliance with Local Bankruptcy Rule 7026-1 by

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Defendants and will waive the requirement of Mr. Berger's signature on the Discovery Stipulation as a precondition to hearing and deciding the Motion. In the Court's experience, disputes can occasionally be so acrimonious that parties are barely able to agree on anything. The Court sometimes sees this in connection with the requirement of a joint proposed pretrial order or stipulation.

The Motion contains a fair amount of material that is not, strictly speaking, germane to the Motion and instead relates to the general merits (or alleged lack thereof) of Plaintiff's case. It is not appropriate to make the Plaintiff pay for this work by way of discovery sanctions. In regard to the email exchanges beginning around May 24, 2020, the Court recognizes that the parties were attempting to resolve matters consensually (certainly a good thing). As the emails became more vitriolic, however, it should have become apparent that the prospect of a consensual resolution was extremely remote. For these reasons, the Court declines to award sanctions in the full amount requested by Defendants.

The Court grants the Motion in part. Plaintiff shall fully comply with the Document Request on or before July 31, 2020 (taking into account documents already produced – double production is not required), except that at this point the Plaintiff's tax returns are not required to be produced. Leave is granted to Defendants to file an additional brief on or before August 7, 2020 discussing statutes and case law regarding the alleged privilege relating to tax returns under California law. Plaintiff may file a responsive pleading on or before August 28, 2020. The Court will then set the matter for hearing.

Attorney's fees and costs are awarded to Defendants pursuant to Federal Rule of Bankruptcy Procedure 7037 and Federal Rule of Civil Procedure 37(a)(5)(A) in the amount of \$6,000.00. Plaintiff shall pay Defendants \$6,000.00 in full in cash on or before August 14, 2020. The Court declines to impose sanctions against Plaintiff in addition to the foregoing award of attorney's fees and costs.

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DEFENDANTS TO LODGE ORDER VIA LOU WITHIN 7 DAYS.

Chapter 7

Party Information

Debtor(s):

Eric Daniel Merrell	Represented By Heather J Canning
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Defendant(s):

Eric Daniel Merrell	Represented By David Brian Lally
Julie Mary Angeline Merrell	Represented By David Brian Lally

Joint Debtor(s):

Julie Mary Angeline Merrell	Represented By Heather J Canning
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Movant(s):

Eric Daniel Merrell	Represented By David Brian Lally
Julie Mary Angeline Merrell	Represented By David Brian Lally

Plaintiff(s):

Kathy Lohr	Represented By Stephen W Berger
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Trustee(s):

Karen S Naylor (TR)	Represented By Nanette D Sanders
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**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Mark Wallace, Presiding
Courtroom 6C Calendar**

Wednesday, July 15, 2020

Hearing Room 6C

2:00 PM

8:15-15311 Freedom Communications, Inc.

Chapter 11

#1.00

Hearing RE: Approval Of Disclosure Statement For Joint Chapter 11 Plan Of Liquidation Proposed By Debtors And Official Committee Of Unsecured Creditors
(D.S. filed 6/4/2020)
(OST Entered 6-9-2020)

[Tele. appr., Frank Cadigan, repr., Frank Cadigan, (U.S. Trustee)]

[Tele. appr., Jeffrey W. Dulberg, repr., Official Committee of Unsecured Creditors]

[Tele. appr., Alan J. Friedman, repr., Freedom Communications, Inc. (Debtor)]

[Tele. appr., Donny P. Le, repr., California Department of Tax and Fee Administration (Creditor)]

[Tele. appr., Michael Weiland, repr., Former Counsel To Debtor (Interested Party) - LISTEN ONLY]

Docket 1653

Tentative Ruling:

In view of the Pandemic, in-person appearances at hearings are expressly prohibited at the time, and any person who is required to appear at a hearing or who desires to appear at a hearing must appear telephonically through CourtCall. If a tentative ruling states "Appearances not required", this does not mean that appearances are prohibited, but if a person desires to appear, such appearance must be telephonic and cannot be in person.

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Chapter 11

TELEPHONIC APPEARANCES REQUIRED.

The disclosure statement is severely deficient in terms of providing financial information relating to the amount of cash available for distribution on a plan effective date, accrued administrative expenses, proposed distributions under the plan to holders of administrative expense claims, proposed distributions to holders of secured and priority claims and then remaining waterfall distributions. If major claims are being disputed, one projection should show what happens in terms of the distribution waterfall if such claim objections are fully sustained and another showing results if such claim objections are fully overruled (e.g., objections to CDTFA administrative and priority claims). If the debtors hope to bring additional moneys into the estate through, for example, tax refund litigation, that should be discussed in the disclosure statement.

The Court overrules the CDTFA's objection as to liquidation analysis in view of the liquidation set forth in Debtors' reply to CDTFA objections but sustains the CDTFA's objection as to the need for greater visibility on the sources and uses of funds regarding payment of administrative and priority claims.

The Court will set a deadline for the filing and service of an amended disclosure statement.

Party Information

Debtor(s):

Freedom Communications, Inc.

Represented By
William N Lobel
Beth Gaschen
Alan J Friedman
Christopher J Green
Caroline Djang
Scott D Fink
Reed M Mercado

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Freedom Communications, Inc.

Jeffrey W Dulberg

Chapter 11