

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 13, 2016

Hearing Room 5B

10:00 AM

8:13-20028 Tara Jakubaitis

Chapter 7

Adv#: 8:14-01007 Padilla, III v. Wecosign, Inc., et al

■

#1.00 STATUS CONFERENCE RE: Complaint: 1. Nondischargeability of debt under 11 USC 523; 2. Declaration relief under FRBP(9); 3. Injunction under FRBP 7001(7)
(cont'd from 8-11-16)

Docket No: 1

Tentative Ruling:

Tentative for 10/13/16:

Motion to Amend Complaint filed on September 20, 2016 without a hearing. So when are we going to be at issue? Continue to date following.

Tentative for 8/11/16:

This was supposed to be resolved by summary judgment motion. What happened?

Tentative for 1/28/16:

Status conference continued to August 11, 2016 at 10:00 a.m. to allow hearing on summary judgment to be determined and then to evaluate effect on this case. The court is not pleased with the apparent failure of cooperation.

Tentative for 9/24/15:

Continue to January 28, 2016 to allow for Rule 56 motion, as appropriate.

Tentative for 3/12/15:

Status conference continued to September 24, 2015 at 10:00 a.m.

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CONT... Tara Jakubaitis

Chapter 7

Tentative for 9/25/14:
No updated status report? Has Superior Court ruled?

Tentative for 3/27/14:
Status conference continued to September 25, 2014 at 10:00 a.m. Court is inclined to allow Superior Court to make factual determinations, and if suitable findings are made, can be collateral estopped here.

Party Information

Debtor(s):

Tara Jakubaitis

Represented By
Christopher P Walker

Defendant(s):

Frank Jakubaitis

Pro Se

Tara Jakubaitis

Pro Se

PNC National, Inc.,

Pro Se

Wecosign, Inc.,

Pro Se

Wecosign Services, Inc.,

Pro Se

Plaintiff(s):

Carlos Padilla III

Represented By
Arash Shirdel

Trustee(s):

David L Hahn (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

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8:16-10053 Gregory P Carr

Chapter 13

Adv#: 8:16-01092 Carr v. Juggernaut Tactical Inc.

■

#2.00 STATUS CONFERENCE RE: Complaint for Turnover of Estate Property
(cont'd from 6-23-16)

Docket No: 1

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED 8-25-16**

Tentative Ruling:

Tentative for 6/23/16:

Status conference continued to July 28, 2016 at 10:00 a.m. The court is interested to see how much of this case can be resolved by stipulation given that turnover is not opposed. Would mediation assist particularly in view of # 22?

Party Information

Debtor(s):

Gregory P Carr

Represented By
Catherine Christiansen

Defendant(s):

Juggernaut Tactical Inc.

Pro Se

Plaintiff(s):

Gregory P Carr

Represented By
Catherine Christiansen

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

Amrane (SA) Cohen (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

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8:16-10053 Gregory P Carr

Chapter 13

Adv#: 8:16-01097 Juggernaut Tactical Inc. v. Carr et al

■

#3.00 STATUS CONFERENCE RE: Complaint for Damages, to Avoid Fraudulent Transfers, for Injunctive Relief, for Imposition of a Constructive Trust, to Determine the Dischargeability of a Debt, and for Sanctions.
(cont'd from 6-23-16)

Docket No: 1

Tentative Ruling:

Tentative for 10/13/16:

This is dismissed? The stipulation was filed in adversary 8:16-ap-01092-TA.

Tentative for 6/23/16:

Deadline for completing discovery: September 1, 2016

Last date for filing pre-trial motions: September 19, 2016

Pre-trial conference on: October 6, 2016 at 10:00 a.m.

Joint pre-trial order due per local rules.

Mediation? Particularly in view of #21?

Party Information

Debtor(s):

Gregory P Carr

Represented By
Catherine Christiansen

Defendant(s):

Cathy Carr

Pro Se

Gregory P Carr

Pro Se

Plaintiff(s):

Juggernaut Tactical Inc.

Represented By
Stephen C Durringer

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CONT... Gregory P Carr

Chapter 13

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

Amrane (SA) Cohen (TR) Pro Se

U.S. Trustee(s):

United States Trustee (SA) Pro Se

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8:09-22699 Cheri Fu

Chapter 7

Adv#: 8:16-01182 Joseph v. Best Ascent Investments, Inc.,

■

#4.00 STATUS CONFERENCE RE: Trustee's Complaint For: (1) Breach of Contract;
(2) Common; and (3) Conversion

Docket No: 1

***** VACATED *** REASON: CONTINUED TO DECEMBER 15, 2016
AT 10:00 A.M. PER ORDER APPROVING STIPULATION ENTERED
8/25/16**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cheri Fu

Represented By
Evan D Smiley
John T. Madden
Beth Gaschen
Susann K Narholm - SUSPENDED -
Mark Anchor Albert

Defendant(s):

Best Ascent Investments, Inc.,

Pro Se

Joint Debtor(s):

Thomas Fu (Deceased)

Pro Se

Plaintiff(s):

James J Joseph

Represented By
Paul R Shankman

Trustee(s):

James J Joseph (TR)

Represented By
James J Joseph (TR)
Paul R Shankman

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Cheri Fu

Lisa Nelson

Chapter 7

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8:16-13001 FireForge, Inc.

Chapter 7

Adv#: 8:16-01183 Campbell v. Min Productions PTE LTD

#5.00 STATUS CONFERENCE RE: Complaint for Declaratory Judgment and Injunctive Relief

Docket No: 1

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF VOLUNTARY DISMISSAL FILED 8-25-16**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

FireForge, Inc.

Represented By
Matthew J Olson

Defendant(s):

Min Productions PTE LTD

Pro Se

Plaintiff(s):

Timothy Campbell

Represented By
Eamon Jafari

Trustee(s):

Weneta M Kosmala (TR)

Pro Se

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8:16-11113 Hung N Mai

Chapter 7

Adv#: 8:16-01166 American Express Centurion Bank v. Mai

■
#6.00 Motion For Default Judgment Under LBR 7055-1

Docket No: 8

Tentative Ruling:

Grant motion for default judgment in favor of Plaintiff in the amount prayed.

Party Information

Debtor(s):

Hung N Mai Pro Se

Defendant(s):

Hung N Mai Pro Se

Plaintiff(s):

American Express Centurion Bank Represented By
Robert S Lampl

Trustee(s):

Weneta M Kosmala (TR) Pro Se

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8:14-11655 Zohra Murtaza

Chapter 7

Adv#: 8:14-01199 Slaten et al v. Murtaza

■

#7.00 Defendant Zohra Murtaza's Motion to Dismiss Pursuant To Rules 12(b)(1) & 12(b)(6) Of The Federal Rules of Civil Procedure Applicable Pursuant To Federal Rule Of Bankruptcy 7012 For Lack Of Standing

Docket No: 146

Tentative Ruling:

Slaten, et al v. Murtaza (In re Murtaza), #7 @ 11:00 a.m. Oct. 13, 2016

This is Defendant Zohra Murtaza's ("Defendant") Motion to Dismiss Plaintiffs Shelley Slaten, Joel Sigmund, and Leslie Sigmund's (collectively "Plaintiffs") adversary proceeding. Plaintiffs filed the adversary proceeding on June 27, 2014 seeking non-dischargeability of debts pursuant to 11 U.S.C. §§ 523(a)(19) & (a)(2)(A), and 11 U.S.C. §§727(a)(4) and (a)(4)(C).

Prior to Defendant's bankruptcy petition, Plaintiffs obtained judgments against Defendant in state court totaling approximately \$3,368,119.42. In December of 2015 (and after the filing of the adversary proceeding), Plaintiffs received a settlement payment of \$250,000 from the State Department of Real Estate ("BRE"). Plaintiffs and Defendant disagree as to the effect of this payment. According to Defendant, California Business and Professions Code § 10479 provides that if any party receives any payment from the BRE, the BRE is subrogated to all the rights of the judgment creditor. Moreover, the judgment creditor must assign rights to the judgment to the BRE. Based on this language, Defendant asserts that once Plaintiffs received the settlement payment from the BRE, they lost standing to bring the current action. Therefore, Defendant argues, the court should dismiss the action on Rule 12(b)(1) grounds for lack of subject matter jurisdiction. Defendant also makes a related argument that Plaintiff is violating Rule 17, because Plaintiff is no longer a party in interest once the rights to judgment were assigned to the BRE.

Plaintiffs argue that there was not a complete assignment of rights; rather,

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Plaintiffs agreed to assign the BRE the right to collect \$250,000, but that Plaintiffs would be entitled to any amount beyond this figure. Second, Plaintiffs contend that the timing of the BRE payment is important. According to Plaintiffs, case law dictates that when a party assigns rights after an action is already filed, the initial party may still pursue the action provided the opposing party is not unfairly prejudiced. Because the Plaintiffs received the BRE payment after this adversary proceeding was filed, and because Defendant has not demonstrated unfair prejudice, Plaintiffs still have standing to pursue the action.

Defendant replies by advancing three arguments. First, Plaintiffs have raised different arguments and should be judicially estopped from arguing inconsistent positions. Second, assuming the partial assignment is valid, the BRE should be joined as a required party. Third, the plain language of California Business and Professions Code § 10479 does not permit partial assignments. None of these arguments is persuasive for the following reasons.

"The Article III case or controversy requirement limits federal courts' subject matter jurisdiction by requiring, inter alia, that plaintiffs have standing... Standing addresses whether the plaintiff is the proper party to bring the matter to the court for adjudication... Because standing... pertain[s] to federal courts' subject matter jurisdiction, [standing is] properly raised in a Rule 12(b)(1) motion to dismiss." *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1121-22 (9th Cir. 2010). "Civil Rule 17(a)(1) provides, in relevant part, that '[a]n action must be prosecuted in the name of the real party in interest.' " This rule requires that the party who brings an action actually possess, under the substantive law, the right sought to be enforced. Such a requirement is in place 'to protect the defendant against a subsequent action by the party actually entitled to recover, and to insure generally that the judgment will have its proper effect as *res judicata*.' " *Caraway v. Klein*, No. NC-12-1263-JuPaD, 2013 Bankr. LEXIS 4674, at *13 (U.S. B.A.P. 9th Cir. Oct. 3, 2013). "In an action involving an assignment, a court must ensure that the plaintiff-[assignor] is the real party in interest with regard to the particular claim involved by determining: (1) what has been assigned; and (2) whether a valid assignment has been made." *Id.* at *14.

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"Furthermore, under federal law, assignees of claims generally have standing to prosecute objections to the dischargeability of particular debts." *Id.* at *14-15. Finally, "under California law, "[i]n determining what rights or interests pass under an assignment, the intention of the parties as manifested in the instrument is controlling." *Id.* at 15.

A brief timeline may be instructive here. In 2013, the Orange County Superior Court entered separate judgments in favor of Plaintiffs, totaling approximately \$3,368,119.42. On March 17, 2014, Defendant filed her chapter 7 petition. Plaintiffs filed this adversary proceeding on June 27, 2014. In December of 2015, during the pendency of this adversary proceeding, Plaintiffs assigned their rights and interests in the judgment to the BRE. Defendant then filed a motion to dismiss the adversary proceeding on August 16, 2016. Finally, on September 23, 2016, the BRE transferred all rights, title, and interests in the judgment back to Plaintiffs.

In short, the arguments raised by both Defendant and Plaintiffs all appear to focus on issues related to the initial assignment made to the BRE after this adversary proceeding was filed. It is clear that Plaintiffs had standing to bring the adversary proceeding when they first filed their complaint, as they had not yet transferred their interest and rights to the judgment to the BRE. While Defendant's argument may initially have had merit, the re-assignment back to Plaintiffs appears to have cured any standing issues that may have been present. Currently, none of the arguments raised by Defendant pertain to the re-assignment of the judgment interest to Plaintiffs. To the extent that there may be issues with the re-assignment back to Plaintiffs, Defendant failed to raise them in the Reply.

There may be issues here in the re-assignment back to the Plaintiff. First, while Plaintiff asserts that there has been a proper partial re-assignment, the text of the re-assignment itself is inconsistent; line 3 and the cover page of the re-assignment agreement both state that the assignment is partial, whereas at item 6, lines 21-22, the agreement states "Judgment Creditor transfers all title, rights, ownership, and interest in the Judgment" to Plaintiff (emphasis added). Additionally, this partial assignment seems to directly controvert the plain language of California Business and Professions

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Code § 10479 ("When, the commissioner has paid from the Consumer Recovery Account any sum to the judgment creditor, the commissioner shall be subrogated to all of the rights of the judgment creditor and the judgment creditor shall assign all of his or her right, title, and interest in the judgment to the commissioner."(emphasis added)). But Defendant does not advance any arguments that the re-assignment is not valid. Moreover, no arguments are raised (and the court sees none) that either the inconsistent language or the language straying from the statutory requirements renders the re-assignment void or are even of much consequence. Moreover, this may not be a winning argument given that California law provides that the intent of the parties controls the agreement. See *Caraway v. Klein, supra*, 2013 Bankr. LEXIS 4674, at * 15. Here, it appears clear that the parties intended that an assignment of some sort be made.

On a minor note, Plaintiffs have only attached the re-assignment agreements pertaining to Plaintiffs Shelly Slaten and Joel Sigmund. There is no re-assignment agreement as to Plaintiff Leslie Sigmund that the court has seen. However, this may not be of much consequence either, as Plaintiffs' attorney Sally Gersten filed a declaration in support of Plaintiff's Opposition stating that there was a reassignment to the "Sigmunds," (Gersten Declaration at item 8, line 20). Additionally, BRE did inadvertently file the abstract of judgment in violation of the automatic stay, but then filed a motion to withdraw, which was granted with order entered on 9/16/16. Defendant argues in his Reply that this is evidence that Rule 17 is being violated and that Rule 17 and rule 19 policy concerns are implicated. However, given that the BRE subsequently re-assigned the rights, and because the withdrawal was granted, Defendant's concerns about multiple actions no longer appear warranted and are certainly insufficient ground for a dismissal.

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Party Information

Debtor(s):

Zohra Murtaza

Represented By
Qais Zafari
Mogeeb Weiss

Defendant(s):

Zohra Murtaza

Represented By
Mogeeb Weiss

Plaintiff(s):

Leslie Sigmund

Represented By
Sally G Sopkin
James A Hayes Jr

Joel Sigmund

Represented By
Sally G Sopkin
James A Hayes Jr

Shelley Slaten

Represented By
Sally G Sopkin
James A Hayes Jr

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Kathleen J McCarthy