

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

Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

8: -

Chapter

#0.00 All hearings on this calendar will be conducted using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address:

<https://cacb.zoomgov.com/j/1613639823>

ZoomGov meeting number: 161 363 9823

Password: 986433

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Albert by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for

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

Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

CONT...

Chapter

Judge Theodor C. Albert's Cases" on the Court's website at:
<https://www.cacb.uscourts.gov/judges/honorable-theodor-c-albert> under the
"Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these
proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

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

Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

CONT...

Chapter

Tentative Ruling:

- NONE LISTED -

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

Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

8:09-22699 Cheri Fu

Chapter 7

Adv#: 8:13-01255 City National Bank, a national banking association v. Fu et al

- #1.00** STATUS CONFERENCE RE: Scope Of Discovery Re: [1] Adversary case 8:13-ap-01255. Complaint by City National Bank, a national banking association against Cheri Fu, Thomas Fu. false pretenses, false representation, actual fraud))
(cont'd from 10-01-20)

Docket 1

Tentative Ruling:

Tentative for 12/10/20:

The court will (or recently has) issued an OSC re dismissal for lack of prosecution.

Tentative for 10/1/20:

See #7

Tentative for 3/26/20:

Status?

Tentative for 3/12/20:

So what is status? At earlier conferences there was discussion about a Rule 56 motion, but nothing appears to be on file. Continue to coincide with pre-trial conference on March 26, 2020 at 10:00AM.

Tentative for 6/6/19:

While waiting for a Rule 56 motion a dispute has arisen re: real party in

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

Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

CONT... **Cheri Fu**
interest.

Chapter 7

Continue status conference 90 days with expectation that a substitution motion, and maybe Rule 56, will be filed in the meantime.

Tentative for 3/7/19:

It would seem that the areas still subject to reasonable dispute all go to whether the Fus committed fraud between the inception of the credit in May of 2008 and the onset of the admitted fraud commencing October of 2008. Another issue would be the usual predicates to fraud such as reasonable reliance by bank personnel or auditors on statements made and materials given during that period. On damages, it might also.

While the court can identify the window of time that is relevant, it has no inclination to limit the means of discovery which can include all of the normal tools: depositions, subpoenas, including to third parties, and interrogatories and/or requests for admission.

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):

Cheri Fu

Represented By
Mark Anchor Albert

Thomas Fu (Deceased)

Represented By
Mark Anchor Albert

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

Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

CONT... Cheri Fu

Chapter 7

Joint Debtor(s):

Thomas Fu (Deceased)

Pro Se

Plaintiff(s):

City National Bank, a national

Represented By
Evan C Borges
Kerri A Lyman
Jeffrey M. Reisner

Trustee(s):

James J Joseph (TR)

Represented By
James J Joseph (TR)
Paul R Shankman
Lisa Nelson

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

Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 7

Adv#: 8:17-01105 Naylor v. Gladstone

**#2.00 STATUS CONFERENCE RE: Trustee's Complaint For: (1) Breach of Fiduciary Duty; and (2) Negligence
(con't from 8-06-20 per order approving stip. to cont s/c entered 7-15-20)
(rescheduled from 11-12-2020 per court)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-11-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE AND ESTABLISHING CERTAIN DEADLINES
ENTERED 11-10-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By
David B Golubchik
Lindsey L Smith
Eve H Karasik
John-Patrick M Fritz
Todd M Arnold
Ian Landsberg
Juliet Y Oh
Jeffrey S Kwong
Daniel J Weintraub

Defendant(s):

Scott Gladstone

Pro Se

Plaintiff(s):

Karen Sue Naylor

Represented By
Melissa Davis Lowe

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

Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Represented By

Nanette D Sanders
Brian R Nelson
James C Bastian Jr
Melissa Davis Lowe
Steven T Gubner
Jason B Komorsky
Christopher Minier
Jerrold L Bregman

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

Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

8:17-10976 Zia Shlaimoun

Chapter 7

Adv#: 8:19-01045 Thomas H. Casey, Trustee of the Zia Shlaimoun Ch. v. Shlaimoun et al

- #3.00** STATUS CONFERENCE RE: Chapter 7 Trustee's Complaint Against Heyde Management, LLC For: 1) Avoidance of a Transfer of Property Pursuant to Section 547(b); 2) Avoidance of a Transfer of Property Pursuant to 11 U.S.C. Section 548; 3) Avoidance of a Transfer of Property Pursuant to 11 U.S.C. Section 549; 4) Recovery of Avoided Transfer Pursuant to 11 U.S.C. Section 550
(rescheduled from 11-12-20 per court)

Docket 1

Tentative Ruling:

Tentative for 12/10/20:
Continue to March 11, 2021 @ 10:00 a.m.

Tentative for 10/8/20:
Status on answers/defaults?

Tentative for 7/23/20:
Status?

Tentative for 3/5/20:
What is status of answer/default?

Tentative for 11/7/19:
Why no status report?

Party Information

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

Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

CONT... Zia Shlaimoun

Chapter 7

Debtor(s):

Zia Shlaimoun

Represented By
Charles Shamash

Defendant(s):

Zumaone LLC, a California limited Pro Se

New Era Valet LLC, a limited Pro Se

Jensen Investment Group LLC, a Pro Se

Goldstar Laboratories Missouri Pro Se

Goldstar Laboratories LLC, a Pro Se

Gold Star Health, LLC, a limited Pro Se

Gold Star Group, LLC, a Delaware Pro Se

40355 La Quinta Palmdale LLC, a Pro Se

328 Bruce LLC, a limited liability Pro Se

Aksel Ingolf Ostergard Jensen Pro Se

Oussha Shlaimoun Pro Se

Nico Aksel Leos Shlaimoun Pro Se

Helen Shlaimoun Pro Se

Go Gum, LLC, a Delaware limited Pro Se

Plaintiff(s):

Thomas H. Casey, Trustee of the Zia

Represented By
Michael J Lee

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey
Kathleen J McCarthy
Michael Jason Lee

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

Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

CONT...

Zia Shlaimoun

Sunjina Kaur Anand Ahuja

Chapter 7

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

Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:19-01131 Estate of William L. Seay v. Thomas H. Casey

#4.00 STATUS CONFERENCE RE: Complaint by Plaintiff: Estate of William L. Seay against Defendant: Thomas H. Casey, Chapter 7 Trustee (con't from 9-03-20 per order on application for cont. of initial s/c entered 9-02-20)(rescheduled from 11-12-20 per court)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER ON AMENDED STIPULATION RE: INITIAL STATUS CONFERENCE**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert A. Ferrante

Represented By

Richard M Moneymaker - INACTIVE -
Arash Shirdel
Ryan D O'Dea

Defendant(s):

Thomas H. Casey

Pro Se

Plaintiff(s):

Estate of William L. Seay

Represented By

Brian Lysaght

Trustee(s):

Thomas H Casey (TR)

Represented By

Thomas H Casey
Thomas A Vogele
Kathleen J McCarthy
Brendan Loper

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

Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

8:10-26382 Fariborz Wosoughkia

Chapter 7

Adv#: 8:20-01028 Marshack v. Rowshan et al

#5.00 STATUS CONFERENCE RE: Complaint for: 1) Avoidance of Unauthorized Post-Petition Transfer (11 USC Section 549); 2) Recovery of Avoided Transfers (11 USC Section 550); 3) Turnover of Property of the Estate; 4) Quiet Title to Real Property and 5) Injunctive Relief
**(cont'd from 9-10-20 per order to cont. s/c entered 9-02-20
(rescheduled from 11-12/2020 per court)**

Docket 1

Tentative Ruling:

Tentative for 12/10/20:
Status conference continued to: June 24, 2021 @ 10:00 a.m.
Deadline for completing discovery: June 1, 2021
Last date for filing pre-trial motions: June 11, 2021
Pre-trial conference on:
Joint pre-trial order due per local rules.

Tentative for 6/3/20:
See #8 and 9 @11:00 a.m.

Party Information

Debtor(s):

Fariborz Wosoughkia

Represented By

Carlos F Negrete - INACTIVE -

Defendant(s):

Hamid Rowshan

Pro Se

Fariborz Wosoughkia

Pro Se

Natasha Wosoughkia

Pro Se

WELLS FARGO BANK

Pro Se

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

Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

CONT... Fariborz Wosoughkia

Chapter 7

Joint Debtor(s):

Natasha Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Plaintiff(s):

Richard A Marshack

Represented By
Michael G Spector

Trustee(s):

Richard A Marshack (TR)

Pro Se

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

Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

8:19-11521 Jee Hyuk Shin

Chapter 7

Adv#: 8:20-01045 Marshack v. Shin et al

#6.00 STATUS CONFERENCE RE: Complaint For: I. Turnover 11 U.S.C. Sec. 542 & 543; II. Avoidance 11 U.S.C. Sec. 544; III. Avoidance 11 U.S.C. Sec. 548; IV. Liability 11 U.S.C. Sec. 550; V. Avoidance 11 U.S.C. Sec. 549; VI. Sale Of Property 11 U.S.C. Sec 363(h); VII. Avoidance 11 U.S.C. Sec. 547
(con't from 9-03-20) (rescheduled from 11-12-2020 per court)

Docket 1

Tentative Ruling:

Tentative for 12/10/20:
Continue to February 25, 2021 @ 10:00 a.m.

Appearance: optional

Tentative for 9/3/20:
It appears that the case is not yet at issue with response of certain parties still awaited. Continue to Nov. 12 @ 10:00 a.m. Plaintiff to give notice to all parties who have or will respond.

Tentative for 6/25/20:
Continue approximately 60 days to allow service to be effected.

Please note: In light of concerns about COVID-19/Coronavirus and attempts to implement physical distancing, and pursuant to GO 20-02, telephonic appearances are mandatory on all matters. Telephonic appearances may be arranged with CourtCall by calling (866) 582-6878.

Please be advised that CourtCall has announced reduced fees for attorneys to use CourtCall and free access for parties who do not have an attorney – pro se or self-represented litigants through August 31, 2020.

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

Thursday, December 10, 2020

Hearing Room

5B

10:00 AM

CONT... Jee Hyuk Shin

Chapter 7

The Parties are reminded to have all relevant filings/information easily accessible during the hearing.

Party Information

Debtor(s):

Jee Hyuk Shin	Pro Se
---------------	--------

Defendant(s):

Jee Hyuk Shin	Pro Se
---------------	--------

GODDO SAVE	Pro Se
------------	--------

Jae Shin	Pro Se
----------	--------

Bang Shin	Pro Se
-----------	--------

Insook Shin	Pro Se
-------------	--------

Jeemin Shin	Pro Se
-------------	--------

Mini Million Corporation	Pro Se
--------------------------	--------

Theodore Ebel	Pro Se
---------------	--------

Mojerim, Inc.	Pro Se
---------------	--------

Seafresh Restaurant	Pro Se
---------------------	--------

Plaintiff(s):

Richard A Marshack	Represented By Anerio V Altman
--------------------	-----------------------------------

Trustee(s):

Richard A Marshack (TR)	Represented By Anerio V Altman
-------------------------	-----------------------------------

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

Thursday, December 10, 2020

Hearing Room

5B

10:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

Adv#: 8:20-01100 Peleus Insurance Company v. BP Fisher Law Group, LLP et al

**#7.00 STATUS CONFERENCE RE: Adversary Complaint for Declaratory Relief
(con't from 9-03-20)**

Docket 1

Tentative Ruling:

Tentative for 12/10/20:
Continue to April 22, 2021 @ 10:00 a.m.

Appearance: optional

Tentative for 9/3/20:
It would appear there are several preliminary questions concerning jurisdiction and proper venue. It makes sense to sort these out first before discovery commences and deadlines are imposed. Consequently, the status conference will be continued to December 10, 2020 @ 2020. In meantime, the parties are ordered to file such motions as are necessary and appropriate to resolve the questions about proper venue and /or withdrawal of reference. By the continued status conference the court expects those issues to be resolved.

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe
Michael S Myers

Defendant(s):

BP Fisher Law Group, LLP

Pro Se

LF Runoff 2, LLC

Pro Se

Matthew Browndorf

Pro Se

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

Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

Andrew Corcoran	Pro Se
Shannon Kreshtool	Pro Se
Ditech Financial, LLC	Pro Se
SELECT PORTFOLIO	Pro Se
BP Peterman Legal Group, LLC	Pro Se

Plaintiff(s):

Peleus Insurance Company

Represented By
Linda B Oliver
Andrew B Downs

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Marc C Forsythe
Charity J Manee

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

Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

8:20-11327 Heather Huong Ngoc Luu

Chapter 7

Adv#: 8:20-01117 E-Z Housing Group LLC v. Luu

#8.00 STATUS CONFERENCE RE: Complaint to Determine Dischargeability of Debt and Judgment for Fraud, Actual Fraud, False Pretenses, False Representation and Actual Fraud 11 USC Section 523(a)(2)(A) and Willful and Malicious Injury 11 USC Section 523(a)(6)
(cont'd from 10-29-20 per order approving mtn to cont. s/c entered 10-28-20)

Docket 1

Tentative Ruling:

Tentative for 12/10/20:
Continue to January 28, 2021 @ 10:00 a.m. to allow processing of default judgment.

Party Information

Debtor(s):

Heather Huong Ngoc Luu

Represented By
Joshua R Engle

Defendant(s):

Heather Huong Ngoc Luu

Pro Se

Plaintiff(s):

E-Z Housing Group LLC

Represented By
Fritz J Firman

Trustee(s):

Thomas H Casey (TR)

Pro Se

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

Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

8:09-22699 Cheri Fu

Chapter 7

Adv#: 8:13-01255 BANK OF AMERICA, N.A. v. Fu et al

#9.00 PRE-TRIAL CONFERENCE RE: Mandate Issued By The Ninth Circuit Court of Appeals On October 22, 2018, Its Judgment Entered August 16, 2018 Is Effective.
(set from s/c hrg held on 12-13-18)
(cont'd from 10-01-20)

Docket 0

Tentative Ruling:

Tentative for 12/10/20:
OSC is set for January 7, 2021, why case should not be dismissed for lack of prosecution.

Tentative for 10/1/20:
Why no status report?

Tentative for 3/26/20:
Status?

Tentative for 11/14/19:
See #5

Tentative for 10/3/19:
Should a trial be set in view of Mr. Albert's withdrawal?

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

Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

CONT... Cheri Fu

Chapter 7

Tentative for 12/13/18:
Deadline for completing discovery: September 4, 2019
Last date for filing pre-trial motions: September 23, 2019
Pre-trial conference on: October 3, 2019 at 10:00 a.m.
Joint pre-trial order due per local rules.

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):

Cheri Fu

Represented By
Mark Anchor Albert

Thomas Fu (Deceased)

Represented By
Mark Anchor Albert

Joint Debtor(s):

Thomas Fu (Deceased)

Pro Se

Plaintiff(s):

BANK OF AMERICA, N.A.

Represented By
William S Brody

Trustee(s):

James J Joseph (TR)

Represented By
James J Joseph (TR)
Paul R Shankman
Lisa Nelson
James Andrew Hinds Jr

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

Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

8:17-13482 Catherine M Haretakis

Chapter 11

Adv#: 8:17-01240 Pacific Western Bank v. Haretakis

- #10.00** PRE-TRIAL CONFERENCE RE: Complaint (1) Objecting to Discharge Pursuant to 11 U.S.C. Section 727(a)(2) and (2) to Determine Debt Non-Dischargeable Pursuant to 11 U.S.C. Section 523(a)(6)
(set from s/c hrg. held 3-12-20)
(con't from 11-05-20 per stip. to cont. pre-trial conference entered 8-28-20)

Docket 1

***** VACATED *** REASON: CONTINUED TO 2-11-21 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE PRETRIAL
CONFERENCE ENTERED 12-08-20**

Tentative Ruling:

Tentative for 3/12/20:

First, why the very late status report? Filing less than 2 days before the status conference not only violates the LBRs, it is an affront and imposition upon the court. Be prepared to discuss the suitable amount of sanctions.

Status conference continued to July 2, 2020 at 10:00AM.

Deadline for completing discovery: May 30, 2020

Last date for filing pre-trial motions: June 22, 2020

Pre-trial conference on:

Joint pre-trial order due per local rules.

Tentative for 2/27/20:

Is this resolved? Dismiss?

Tentative for 1/9/20:

See #3

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

Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

CONT... Catherine M Haretakis

Chapter 11

Tentative for 12/19/19:
See #2.1

Tentative for 11/21/19:
See #2.1

Tentative for 4/5/18:

1. Parties are to submit an order consolidating the contested matter regarding the homestead with this dischargeability/denial of discharge adversary proceeding;

2. Deadline for completing discovery: September 1, 2018
Last date for filing pre-trial motions: September 24, 2018
Pre-trial conference on: October 25, 2018 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Catherine M Haretakis

Represented By
Donald W Sieveke

Defendant(s):

Catherine M Haretakis

Pro Se

Plaintiff(s):

Pacific Western Bank

Represented By
Kenneth Hennesay

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

Thursday, December 10, 2020

Hearing Room 5B

10:00 AM

8:12-17406 Matthew Charles Crowley

Chapter 7

Adv#: 8:19-01073 Crowley v. Navient Solutions, LLC

#11.00 PRE-TRIAL CONFERENCE RE: Complaint for: Determination that Student Loan Debt is Dischargeable Pursuant to 11 U.S.C. Section 523(a)(8) (cont'd from 10-08-20 per order on stip. to continue pre-trial conf. entered 9-22-20) (rescheduled from 11-12-2020 at 10:00 a.m. per court)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - JUDGMENT
PURSUANT TO STIPULATION FOR ENTRY OF JUDGMENT ENTERED
11-17-20**

Tentative Ruling:

Tentative for 7/11/19:
Deadline for completing discovery: November 30, 2019
Last date for filing pre-trial motions: December 16, 2019
Pre-trial conference on: January 9, 2020 at 10:00AM
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Matthew Charles Crowley

Represented By
Christine A Kingston

Defendant(s):

Navient Solutions, LLC

Pro Se

Plaintiff(s):

Matthew C Crowley

Represented By
Christine A Kingston

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

Thursday, December 10, 2020

Hearing Room 5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

Adv#: 8:20-01100 Peleus Insurance Company v. BP Fisher Law Group, LLP et al

**#12.00 Andrew R. Corcoran's Motion To Dismiss Or In The Alternative Stay Or Transfer
(cont'd from 11-12-20 per court's mtn)**

Docket 38

Tentative Ruling:

Tentative for 12/10/20:

This is a Motion to Dismiss this adversary proceeding based on lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2), or in the alternative, to stay or transfer this adversary proceeding, of defendant Andrew Corcoran joined by Defendant Matthew Browndorf (collectively "Defendants"). The motion is opposed by plaintiff, Peleus Insurance Company ("Plaintiff").

**1. Defendants' Alternative Remedy of Staying This Adversary
Proceeding Is Warranted**

The parties report that there is a matter currently pending in Maryland District Court that involves the substantially the same parties and subject matter. Furthermore, that matter was initiated several months prior to this adversary proceeding. Plaintiff believes that this court is the proper venue as it argues that this court can exercise personal jurisdiction over all necessary parties. Plaintiff also reports that there is a motion to dismiss in the Maryland matter based on an alleged failure to join a necessary party under Rule 12(b) (7). Plaintiff believes that motion to dismiss will succeed. Defendants believe the Maryland motion to dismiss will fail and assert that this court cannot properly exercise personal jurisdiction.

According to the status report filed on 12/3, Plaintiff reports that the Maryland motion to dismiss is expected to be fully briefed by 12/14 (just after the hearing on this motion). The hearing date for the Maryland motion to dismiss is unknown, but likely not too long after the completion of the briefing. Plaintiff has also filed a motion with the District Court of the Central District of

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

Thursday, December 10, 2020

Hearing Room

5B

11:00 AM

CONT... **BP Fisher Law Group, LLP**

Chapter 7

California to withdraw the reference. That motion is set for hearing before Judge Kronstadt on March 29, 2021.

There is a lot going on in this case to say the least. The motion and subsequent papers indicate that the threshold issue of personal jurisdiction is likely to be complex and hotly contested. There are also two pending motions that could have a major impact on this adversary proceeding, but the outcome of those motions is obviously uncertain at present. Matters will clarify one way or another soon. Thus, for reasons of judicial economy, comity, deterrence of potential forum shopping, and the need to avoid parallel litigation and/or inconsistent rulings, this court will grant a stay of proceedings as an alternative form of relief as suggested in the motion. This relief can likely be justified under the "First to File" doctrine, a discretionary rule in which the court must consider whether a complaint containing the same issues and parties has already been filed in another district. *Alltrade, Inc. v. Uniweld Prods.*, 946 F.2d 622, 625 (1991). This rule is not to be applied mechanically or too rigidly and the policy underlying the rule should not be disregarded lightly. *Id.* at 625, 627-28. In other words, the rule does not require perfect identity of issues and parties. See *Audio Entertainment Network, Inc. v. AT&T*, 1999 U.S. App. LEXIS 34500 at *3. "[I]t is not an abuse of discretion, and therefore not reversible error, for a district court judge to weigh the facts and conclude that the rule should apply." *Alltrade*, 946 F.2d at 628.

The stay should likely remain in effect until after Judge Kronstadt has issued a ruling on the motion to withdraw the reference in late March or early April. By that time, the District Court in Maryland will likely have also ruled on the 12(b)(7) motion and we will have a much clearer picture of what is and needs to be happening to move this matter forward, including potentially revisiting this motion.

Grant a temporary stay of proceedings pending the outcome of both the Maryland motion to dismiss and the motion to withdraw the reference. A continued status conference is scheduled April 8, 2021 at which time the court requires a full update and, if then appropriate consistent with other rulings, will establish deadlines.

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

Thursday, December 10, 2020

Hearing Room

5B

11:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe
Michael S Myers

Defendant(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe

LF Runoff 2, LLC

Pro Se

Matthew Browndorf

Pro Se

Andrew Corcoran

Pro Se

Shannon Kreshtool

Represented By
Samuel G Brooks

Ditech Financial, LLC

Represented By
Christopher O Rivas

SELECT PORTFOLIO

Represented By
Lauren A Deeb

BP Peterman Legal Group, LLC

Pro Se

Plaintiff(s):

Peelus Insurance Company

Represented By
Linda B Oliver
Andrew B Downs

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Marc C Forsythe
Charity J Manee

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

Thursday, December 10, 2020

Hearing Room 5B

11:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

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

Thursday, December 10, 2020

Hearing Room

5B

11:00 AM

8:19-10158 BP Fisher Law Group, LLP

Chapter 7

Adv#: 8:20-01100 Peleus Insurance Company v. BP Fisher Law Group, LLP et al

#13.00 Matthew C. Browndorf's Motion To Dismiss Or In The Alternative Stay Or Transfer
(cont'd from 11-12-20 per court's own mtn)

Docket 43

Tentative Ruling:

Tentative for 12/10/20:
See #12.

Party Information

Debtor(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe
Michael S Myers

Defendant(s):

BP Fisher Law Group, LLP

Represented By
Marc C Forsythe

LF Runoff 2, LLC

Pro Se

Matthew Browndorf

Pro Se

Andrew Corcoran

Pro Se

Shannon Kreshtool

Represented By
Samuel G Brooks

Ditech Financial, LLC

Represented By
Christopher O Rivas

SELECT PORTFOLIO

Represented By
Lauren A Deeb

BP Peterman Legal Group, LLC

Pro Se

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

Thursday, December 10, 2020

Hearing Room 5B

11:00 AM

CONT... BP Fisher Law Group, LLP

Chapter 7

Plaintiff(s):

Peleus Insurance Company

Represented By
Linda B Oliver
Andrew B Downs

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
David Wood
Tinho Mang
Marc C Forsythe
Charity J Manee

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

Thursday, December 10, 2020

Hearing Room

5B

2:00 PM

8:19-14912 Igor Shabanets

Chapter 7

Adv#: 8:20-01002 Richard A Marshack in his capacity as Chapter 7 Tr v. Olga Shabanets, as

#14.00 Plaintiff's Notice of Motion and Motion for Summary Judgment Or, In the Alternative, Summary Adjudication of Issues

Docket 64

Tentative Ruling:

Tentative for 12/10/20:

Trustee, Richard Marshack ("Trustee") moves under FRCP 56 for summary judgment or in the alternative, summary adjudication against Defendants Olga Shabanets, as trustee of the 2012 Irrevocable Trust Agreement of Igor Shabanets u/a/d November 12, 2012, et al (collectively "Defendants"). The motion is not opposed by any named defendant, including debtor, Igor Shabanets ("Debtor"). The only opposition comes from a judgment creditor, Remares Global, LLC ("Remares").

1. Relief Requested

Summary judgment or adjudication is sought by Trustee on the following causes of action taken from the First Amended Complaint ("FAC"):

1. Fraudulent Conveyance (Cal. Civ. Code §3439.04(a)(1) – Securities Transfers
2. Fraudulent Conveyance (Cal. Civ. Code §3439.04(a)(1) – Cash

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

Thursday, December 10, 2020

Hearing Room

5B

2:00 PM

CONT...

**Igor Shabanets
Transfers**

Chapter 7

3. Fraudulent Conveyance (Cal. Civ. Code §3439.04(a)(2)(B) –
Securities Transfers

4. Fraudulent Conveyance (Cal. Civ. Code §3439.04(a)(2)(B) –
Cash Transfers

5. Fraudulent Conveyance (Cal. Civ. Code §3439.05 – Securities
Transfers

6. Fraudulent Conveyance (Cal. Civ. Code §3439.05 – Cash
Transfers

In addition to summary judgment in his favor on the causes of
action directly above, Trustee also seeks the following relief:

- On all Claims for Relief, for a judgment recovering the
Transfers for the benefit of the Estate in the total amount of
\$4,145,380.03;
- On all Claims for Relief, for preservation of the Transfers in
the total amount of \$4,145,380.03 pursuant to 11 U.S.C. § 551;
- For entry of a monetary judgment in the amount of
\$4,145,380.00 against Defendants;
- For entry of an order authorizing the Court to disburse the
balance of funds deposited with the court attributable to the avoided
transfers to the Trustee as property of the Estate pursuant to 11 U.S.C. §
541(a)(4).

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

Thursday, December 10, 2020

Hearing Room

5B

2:00 PM

CONT...

Igor Shabanets

Chapter 7

2. Facts

As recited by Trustee, the following facts are undisputed:

A. Pre-Bankruptcy

On October 8, 2012, Debtor executed a document entitled Revocable Trust Agreement of Igor Shabanets, with Debtor as the settlor of a series of trusts described in the revocable trust agreement and reserving the right to revoke the trust agreement at any time. Debtor and his wife, Olga Shabanets ("Olga") were designated as the co-trustees of the Revocable Trust. On November 12, 2012, Debtor executed a document creating a trust entitled the 2012 Irrevocable Trust Agreement of Igor Shabanets ("Irrevocable Trust"). Olga was designated as the trustee of the Irrevocable Trust. On September 28, 2016, Omeranio Investments filed a lawsuit in Florida State Court, initiating an action captioned *Remares Global LLC, as assignee of Omeranio Investments, Ltd. v. Vishmu & AI LLC, et al.*, case no. 50-2016-CA-011045 ("Florida Action"). On August 7, 2018, Debtor was joined into the Florida Action as Defendant.

On August 28, 2018, shortly after being named Defendant in the Florida Action, Debtor made or caused to be made multiple transfers of securities ("Securities"), with a value of \$3,385,713.12, from an account with Merrill Lynch in the name of the Revocable Trust, account number ending in -4643 ("Revocable Trust Account"), to another account with Merrill Lynch in the name of the Irrevocable Trust, account ending in -4561 ("Irrevocable Trust Account"). Also, on August 28, 2018, Debtor made or caused to be made a cash transfer in the amount of \$5,659.32 from the Revocable Trust Account to the Irrevocable Trust Account. On August 29, 2018, Debtor made or caused to be made a cash transfer in the amount of \$754,007.59 from the Revocable Trust Account

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

Thursday, December 10, 2020

Hearing Room

5B

2:00 PM

CONT...

Igor Shabanets

Chapter 7

to the Irrevocable Trust Account. The August 28, 2018 and August 29, 2018 cash transfers together total \$759,666.91 (collectively, the "Cash Transfers"). On September 27, 2018, Debtor transferred by grant deed his interest in property located at 9875 Rimmele Drive, Beverly Hills, California, with an estimated value between \$1.5 million to \$2.5 million, for no consideration, to IOS Properties, LLC, a Nevada limited liability company wholly owned by the Irrevocable Trust. On April 22, 2019, a money judgment in the amount of \$10,314,112.97 was entered against Debtor in the Florida Action.

On April 23, 2019, Debtor made or caused to be made a cash transfer in the amount of \$399,185.00 from a personal bank account with Bank of America to the Irrevocable Trust Account. Collectively, all transfers to the Irrevocable Trust Account described above from August 28, 2018 through April 23, 2019 will be referred as the "Transfers." The Transfers total \$4,544,565.03. On May 2, 2019, Remares recorded a Judgment Lien Certificate with the Florida Secretary of State which Remares asserts caused a lien to be placed on all of Debtor's personal property, which Remares contends included or should include the securities and cash transfers. On May 3, 2019, Remares filed a sister-state judgment in California in Orange County Superior Court and judgment was entered in favor of Remares against Debtor for \$10,324,378.84.17. On May 7, 2019, Remares caused the Florida court to issue a Writ of Garnishment, served upon Merrill Lynch, which Remares asserts placed another lien on the Debtor's property, including the securities and cash transfers. On August 15, 2019, Remares caused the California Court to issue a writ of execution ("California Writ").

On August 26, 2019, the California Writ and a Notice of Levy were served on Merrill Lynch, and subsequently, on August 28, 2019, the same were served on Debtor. Remares asserts this placed a third lien on

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

Thursday, December 10, 2020

Hearing Room 5B

2:00 PM

CONT...

Igor Shabanets

Chapter 7

the securities and cash transfers. On September 17, 2019, Remares caused Debtor to be served with a California Order to Appear for Examination ("ORAP"), which Remares asserts caused a fourth lien to be placed on the securities and cash transfers. On October 1, 2019, an abstract of judgment for \$4.5 million was entered against Debtor in favor of creditor Global Approach, Inc. ("Global"), in connection with case number 30-2019-01101713-CU-EN-CJC filed in the Superior Court of California, County of Orange. On October 30, 2019, Debtor transferred via grant deed his interest in real estate property located in Dana Point, CA, with an estimated value of \$6 million, to Rock Star Beverly Hills, LLC, a company of which Debtor is the principal.

B. The Bankruptcy and Adversary Proceedings

On August 22, 2019, Remares filed a complaint against Olga and Olga Shabanets as Trustee of 2012 Irrevocable Trust Agreement of Igor Shabanets, u/a/d November 12, 2012 ("Shabanets Trust"), Igor Shabanets, and Merrill Lynch, under California Code of Civil Procedure §§ 3439.04 and 3439.05 to avoid fraudulent conveyance, initiating case number 30-2019-01092348-CU-NP-CJC in the Superior Court for the County of Orange ("State Court Action"). On December 20, 2019, Remares filed the FAC in the State Court Action. On December 21, 2019, Debtor filed a voluntary petition for bankruptcy under Chapter 11 of Title 11 of the United States Code ("Petition Date").

Between January 6-7, 2020 Debtor filed his schedules and statements of financial affairs. Pursuant to Debtor's statements, Debtor claims only \$2,700 in assets, debt in excess of \$91 million, provides that Debtor was/is a party to ten (10) different lawsuits involving creditors within one (1) year of filing of the petition, asserts that the debts are

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

Thursday, December 10, 2020

Hearing Room 5B

2:00 PM

CONT...

Igor Shabanets

Chapter 7

primarily from judgment creditors regarding business loan guarantees, and asserts that any transfers into his family irrevocable trust were made "in the ordinary course of business" and therefore "not listed on the statement of financial affairs document." On January 7, 2020, Debtor filed amended schedules A/B and disclosing two accounts with Merrill Lynch, account numbers ending in -4643 and -4561.28 These accounts were previously defined as the Revocable Trust Account and Irrevocable Trust Account.

On January 9, 2020, Remares filed a notice of removal of the State Court Action ("Removal Action"), initiating this adversary proceeding. On January 21, 2020, as Adv. Dk. No. 10, Remares filed a motion to order Merrill Lynch to deposit certain funds in the Court's registry. On February 7, 2020, as Adv. Dk. No. 24, the Court entered an order instructing Merrill Lynch to deposit \$3,033,215.05 ("Funds") into the bankruptcy court register. The Funds consist of \$2,546,806.49 in securities and cash in the Irrevocable Trust Account and \$482,780.80 in funds Debtor had in 529 college savings accounts. On February 10, 2020, as Adv. Dk. No. 26, defendants, Olga and Olga Shabanets as Trustee of 2012 Irrevocable Trust Agreement of Igor Shabanets, u/a/d November 12, 2012 ("Shabanets Trust") filed a Notice of Consent to Removal. Also on February 10, 2020, the Court entered an order converting Debtor's bankruptcy case to Chapter 7. On February 11, 2020, Trustee was appointed as the Chapter 7 trustee. Also on February 11, 2020, as Adv. Dk. No. 27, defendants Olga, individually and in her capacity as the trustee of the Shabanets Trust, and Debtor filed an Answer to the FAC. Defendants admit to the transfer of securities and cash transfers from the Revocable Trust Account to the Irrevocable Trust Account, but deny that the transfers were fraudulent in nature.

On April 2, 2020, as Adv. Dk. No. 35, Trustee filed a notice of

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

Thursday, December 10, 2020

Hearing Room

5B

2:00 PM

CONT...

Igor Shabanets

Chapter 7

substitution of Trustee as party-in-interest for Remares. On April 24, 2020, as Adv. Dk. No. 37, Trustee filed a stipulation with Merrill Lynch to dismiss Merrill Lynch as defendant from this adversary. On June 1, 2020, as Dk. No. 51, the Court approved the stipulation, dismissing Merrill Lynch as a defendant. On May 8, 2020, Remares filed a complaint against the Trustee, Debtor, and Olga, seeking declaratory relief regarding the validity, priority, or extent of alleged lien(s) on certain funds deposited with the Court in this case, initiating adversary proceeding number 8:20-ap-01079- TA ("Declaratory Relief Adversary"). On July 20, 2020, Debtor filed a motion to compel trustee to abandon interest in several 529 college saving plans (later granted).

On August 27, 2020, Trustee served on Debtor, and Olga, individually and as Trustee of the 2012 Irrevocable Trust Agreement of Igor Shabanets u/a/d/ November 12, 2012, Plaintiff's First Set Requests for Admissions, Special Interrogatories, and Request for Production of Documents. Defendants failed to serve any responses on Trustee. In consequence pursuant to Federal Rule of Civil Procedure 36 all matters contained in Plaintiff's Requests for Admissions are deemed admitted due to Defendants' failure to respond within 30 days of service of the Requests for Admissions. Fed. R. Civ. P. 36(a)(3). An emergency motion filed by Defendant Shabanets on December 8, 2020 to shorten time for a hearing on withdrawal of the deemed admission was denied. Said Defendants' failure to file a timely response to the summary judgment motion was not addressed.

2. Summary Judgment Standards

FRBP 7056 makes FRCP 56 applicable in bankruptcy proceedings. FRCP 56(c) provides that judgment shall be rendered if the pleadings,

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

Thursday, December 10, 2020

Hearing Room 5B

2:00 PM

CONT...

Igor Shabanets

Chapter 7

depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. FRCP 56(e) provides that supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein, and that sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served forthwith. FRCP 56(e) further provides that when a motion is made and supported as required, an adverse party may not rest upon mere allegations or denials but must set forth specific facts showing that there is a genuine issue for trial. FRCP 56(f) provides that if the opposing party cannot present facts essential to justify its opposition, the court may refuse the application for judgment or continue the motion as is just.

A party seeking summary judgment bears the initial responsibility of demonstrating the absence of a genuine issue of material fact and establishing that it is entitled to judgment as a matter of law as to those matters upon which it has the burden of proof. *Celotex Corporation v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553 (1986); *British Airways Board v. Boeing Co.*, 585 F.2d 946, 951 (9th Cir. 1978). The opposing party must make an affirmative showing on all matters placed in issue by the motion as to which it has the burden of proof at trial. *Celotex* 477 U.S. at 324. The substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). A factual dispute is genuine where the evidence is such that a reasonable jury could return a verdict for the

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

Thursday, December 10, 2020

Hearing Room 5B

2:00 PM

CONT...

Igor Shabanets

Chapter 7

nonmoving party. *Id.* The court must view the evidence presented on the motion in the light most favorable to the opposing party. *Id.* If reasonable minds could differ on the inferences to be drawn from those facts, summary judgment should be denied. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 90 S. Ct. 1598, 1608 (1970).

3. The Transfers and Badges of Fraud

Trustee asserts that in claims for relief nos. 1-6, the Trustee may rely on state law to avoid, recover and preserve for the benefit of the Estate approximately \$2.546 million in fraudulent transfers of securities and cash made by Debtor to hinder creditors. Trustee's powers to recover fraudulent transfers on behalf of the Estate arise from 11 U.S.C. §§ 541 and 544, in that fraudulent transfer claims are property of the Estate under the exclusive control of the Trustee, cf. 11 U.S.C. § 323, and Trustee may exercise the rights of a hypothetical lien creditor under §544 as of the petition date to recover any transfer pursuant to applicable state law.

Under California law, including the Uniform Voidable Transfer Act ("UVTA") which is codified in Civil Code §§ 3439 et seq., a creditor may avoid a transfer of an interest in property where the transferor transferred the property with the intent to hinder, delay, or defraud one or more of his creditors or where the transferee failed to provide reasonably equivalent value to the debtor. Under relevant California state law:

"[f]raudulent transfers are subdivided into actually fraudulent transfers which are avoidable under California Civil Code § 3439.04(a)(1), or constructively fraudulent transfers applicable under California Civil Code §§ 3439.04(a)(2) or 3439.05." *In re*

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

Thursday, December 10, 2020

Hearing Room

5B

2:00 PM

CONT...

Igor Shabanets

Chapter 7

Juarez, 2008 Bankr. LEXIS 4501, at *7 (Bankr. S.D. Cal. 2008) (citing *In re Cohen*, 199 B.R. 709, 716 (9th Cir. BAP 1996)).

The trustee bears the burden of proof on each element of an alleged fraudulent transfer. *Raleigh v. Illinois Dept. of Revenue*, 530 U.S. 15, 20-21 (2000).

Here, Trustee asserts that the validity of the asserted causes of action is established by Defendants' failure to respond to Plaintiff's requests for admissions (discussed above), which Trustee correctly argues deems those requests for admissions as admitted and conclusively established pursuant to Fed. R. Civ. P. 36(b). Deemed admissions, and nothing more, are enough for entry of summary judgment in favor of the moving party. See, e.g., *Wright v. Paul Revere Life Insurance Co.*, 291 F.Supp.2d 1104, 1111-12 (C.D. Cal. 2003). But further, the Shabanets Defendants did not respond to the motion either and under LBR 7056-1(f), those facts are deemed admitted.

As to the First and Second causes of action under Cal. Civ. Code § 3934, Trustee asserts that sufficient undisputed facts exist to establish Defendants' liability. The California legislature has codified certain indicia of intent to defraud in §3439.04(b) as follows:

- (1) Whether the transfer or obligation was to an insider.
- (2) Whether the debtor retained possession or control of the property transferred after the transfer.
- (3) Whether the transfer or obligation was disclosed or concealed.
- (4) Whether before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.

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

Thursday, December 10, 2020

Hearing Room

5B

2:00 PM

CONT...

Igor Shabanets

Chapter 7

(5) Whether the transfer was of substantially all the debtor's assets.

(6) Whether the debtor absconded.

(7) Whether the debtor removed or concealed assets.

(8) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.

(9) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

(10) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred.

(11) Whether the debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.

Virtually all of the above indicia of fraudulent intent are present in the undisputed facts. Trustee asserts that Debtor's transfer of funds and securities to the Irrevocable Trust Account was a transfer to an insider. Cal. Civ. Code § 3439.04(b)(1). The settlor of the Irrevocable Trust was the Debtor himself, the trustee of the Irrevocable Trust was Debtor's wife, and the beneficiaries of the Irrevocable Trust are Debtor's children, all of whom, Trustee correctly argues, qualify as statutory insiders of the Debtor pursuant to 11 U.S.C. § 101(31). The answer to the Complaint denied that Olga is and was at all relevant times Debtor's wife, but Trustee argues that Debtor's own sworn schedules and statements do not identify Olga as Debtor's ex-wife. More specifically, Trustee asserts, paragraph 1 of Debtor's "Addendum to Statement of Financial Affairs" refers to Olga as Debtor's "wife." The court is aware, through other

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

Thursday, December 10, 2020

Hearing Room 5B

2:00 PM

CONT...

Igor Shabanets

Chapter 7

motions, that at some point, Olga left Debtor due to, at least in part, an instance or instances of domestic violence, and settled elsewhere. However, the court is not clear whether at all relevant times Olga was Debtor's wife or ex-wife. As noted above, there is apparently some conflicting evidence. But it may not matter as Trustee's motion illustrates several more badges of fraud and the appropriate time to consider insider status is when the transfers were made, which the court understands occurred all while Igor and Olga lived together.

For example, Trustee asserts that the transfers of securities and cash from the Revocable Trust Account to the Irrevocable Trust Account allowed Debtor to maintain control of those funds, as he could continue to direct Olga to withdraw or transfer funds. Cal. Civ. Code § 3439.04(b) (2). Notwithstanding the absence of Debtor's name from the Irrevocable Trust Account, Trustee argues, Defendants' deemed admissions establish Debtor's continued control over the funds in the Irrevocable Trust Account.

Next, Trustee argues that before the transfers of securities and cash were made on August 28, 2018 and August 29, 2018, Debtor was engaged in at least one lawsuit– the Debtor transferred the securities and cash from the Revocable Trust Account to the Irrevocable Trust Account within one month of being named Defendant in the Florida Action, in which a judgment in excess of \$10 million was ultimately entered. Additionally, Trustee asserts, Debtor was apparently being sued by Global as well, and a judgment was ultimately entered against him in the amount of around \$4.5 million in the lawsuit by Global. Cal. Civ. Code § 3439.04(b)(4). Finally, Trustee asserts, Debtor was also being sued by Vibe Micro, Inc., and a significant judgment was entered against Debtor in favor of Vibe Micro in late 2019.

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

Thursday, December 10, 2020

Hearing Room

5B

2:00 PM

CONT...

Igor Shabanets

Chapter 7

Trustee also asserts that the transfers of the securities and cash themselves were transfers of substantially all of Debtor's assets. The transfers at issue include over \$3 million in straight cash and securities assets. Trustee asserts that Debtor's other assets were real property holdings which may be substantially encumbered, and the equity in those properties does not exceed \$3 million. Trustee also asserts that two months after being named Defendant in the Florida Action, Debtor transferred by grant deed a parcel of vacant land in Beverly Hills worth between \$1.2 million to \$2.5 million for no consideration to a company owned by Debtor's Irrevocable Trust. Also, one month after an abstract of judgment for \$4.5 million was entered against Debtor in favor of another creditor, and two months prior filing for relief, Debtor transferred a second piece of real property, his residence in Dana Point, for no consideration to a company owned by the Irrevocable Trust.

Trustee argues that Debtor received no reasonably equivalent consideration for the transfers of the Funds from the Revocable Trust Account to his family's Irrevocable Trust Account. Reasonably equivalent value under the UVTA is measured objectively, from the perspective of the transferor's creditors. See *Decker v. Tramiel (In re JTS Corp.)*, 617 F.3d 1102, 1109 (9th Cir. 2010); *Maddox v. Robertson (In re Prejean)*, 994 F.2d 706, 708 (9th Cir. 1993). Here, from a creditor's objective perspective, Trustee argues, based on the surrounding circumstances, Debtor initiated the transfers while under threat of lawsuits to make the securities and cash inaccessible to creditors filing lawsuits against him.

Next, Trustee argues that Debtor transferred the securities and cash to keep them out of reach of his creditors, including and especially Remares. In California, Trustee asserts, all assets in a self-settled revocable trust are property of the settlor and may be levied upon by

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

Thursday, December 10, 2020

Hearing Room 5B

2:00 PM

CONT...

Igor Shabanets

Chapter 7

creditors. Cal. Prob. Code §18200. On the other hand, assets in an irrevocable trust for which the judgment debtor is not a beneficiary cannot be levied by judgment creditors. See *Laycock v. Hammer*, 141 Cal.App.4th 25, 31 (2006) (explaining the express terms of a trust determine whether it is irrevocable and trust property is subject to creditors of settlor only where settlor retains power to revoke as provided under Cal. Prob. Code §18200). Thus, Trustee concludes, Debtor's transfers to the Irrevocable Trust Account were clearly intended to keep those funds out of the reach of creditors and unavailable for levy. Cal. Civ. Code § 3439.05(b)(7).

Moreover, these transfers were made when Debtor was insolvent or caused him to become insolvent. In support of this argument, Trustee points to the numerous lawsuits against Debtor by creditors for defaults on loan guarantees filed within 1-2 years of the Petition Date and which contributed to his \$98 million debt, while Debtor's remaining assets totaling a mere \$2,700 reported on his schedules as of the Petition Date.

Finally, Trustee points out that within one year after Debtor made the transfers at issue, he had multimillion-dollar judgments entered against him by both Remares and Global. Cal. Civ. Code § 3439.05(b) (10). In total, as Trustee demonstrates, almost all of the eleven badges of fraud are satisfied in this case, in order to establish Debtor's actually fraudulent intent in making the transfers of cash and securities to the Irrevocable Trust Account. Thus, aided by the "badges of fraud" the court agrees that an intent to hinder, delay and defraud creditors is proven.

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

Thursday, December 10, 2020

Hearing Room 5B

2:00 PM

CONT...

Igor Shabanets

Chapter 7

4. Constructively Fraudulent Transfer

As to the Third through Sixth causes action brought pursuant to Cal. Civ. Code. §3439(a)(2)(B) and §3439.05, Trustee asserts that uncontroverted facts establish Defendants' liability.

"A transfer made or obligation incurred by a debtor is voidable as to a creditor... if the debtor made the transfer... [w]ithout receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor... [i]ntended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due." Cal. Civ. Code § 3439.04(a)(2)(B). "For a transfer to be avoided under §3439.04(a)(2)... a trustee must show that the 'debtor made the transfer ... without receiving reasonably equivalent value in exchange for the transfer.'" *AFI Holding, Inc. v. Mackenzie*, 525 F.3d 700, 707 (9th Cir. 2008).

Also, "[a] transfer made or obligation incurred by a debtor is voidable as to a creditor... if the debtor made the transfer... [w]ithout receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation." Cal. Civ. Code § 3439.05(a). "A debtor that is generally not paying the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent." Cal. Civ. Code § 3439.02(b). "For a successful claim under Cal. Civ. Code § 3439.05, the Trustee must prove essentially the same elements as those in section 548(a)(1)(B)." *Greenspan v. Orrick, Herrington & Sutcliffe LLP (In re Brobeck, Phleger & Harrison LLP)*, 408 B.R. 318, 347 (Bankr. N.D. Cal. 2009).

Here, Trustee argues that from August 28, 2018 through April 23, 2019, Debtor transferred millions of dollars' worth of securities and cash

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

Thursday, December 10, 2020

Hearing Room 5B

2:00 PM

CONT...

Igor Shabanets

Chapter 7

from the Revocable Trust Account to the Irrevocable Trust Account without receiving any value in exchange for the Transfers, let alone any reasonably equivalent value. Trustee asserts that no Defendant has ever identified any exchange of consideration for the transfers from the Revocable Trust Account to the Irrevocable Trust Account.

Based on the above, summary judgment on Claims 3-6 is also appropriate because there is no triable issue of fact as to whether the transfers of securities and cash were fraudulent, made without receipt of reasonably equivalent value (or any value) and at a time when Debtor believed or should have reasonably believed that he would incur debts beyond his ability to pay as they became due, pursuant to Cal. Civ. Code §§ 3439.04(a)(2)(B) and 3439.05, which have substantially the same elements and requirements of proof.

5. Defendants' Possible Defenses

Although Defendants have not opposed the motion, the court examine sthe affirmative defenses raised in Defendants' answer to the FAC. Those affirmative defenses were:

- Failure to Mitigate Damages
- Unclean Hands
- Estoppel
- Failure to State a Cause of Action
- Lack of Legal Notice
- Not a Party to Agreement

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

Thursday, December 10, 2020

Hearing Room 5B

2:00 PM

CONT...

Igor Shabanets

Chapter 7

- Statute of Limitations
- Good Faith

As Trustee points out, none of these defenses were presented with any significant level of analysis and Defendants have never sought dismissal or mitigation based on any potentially dispositive legal or equitable theory. Other defenses such as lack of legal notice are not convincing because, as Trustee points out, Defendants filed an answer responsive to the complaint. The closest Defendants have come to interposing a defense is their attempt on December 8, 2020 only one working day before the motion, to file an emergency motion for withdrawal of the deemed admissions which was unsupported by any sufficient showing, and in any event never went to the issue of why the motion itself which was also unopposed. Thus, for the reasons discussed above, Trustee is entitled to summary adjudication as to causes of action 1 through 6 of the FAC.

6. Remares' Opposition: Void vs. Voidable

Remares makes clear that its opposition is limited to the wording of an order granting summary judgment and does not dispute that the transfers in question were, in fact fraudulent. Specifically, in Remares' view, unless the transfers are considered void, the court cannot grant this motion because the Trustee has not included Remares' counterclaims, which seek declaratory relief as to whether the Transfers are "void" as opposed to "voidable", and whether the Court should impose a resulting trust on the Transfers because of Remares' liens (the "Counterclaims").

In support of its argument that the transfers are void as a matter of law, as opposed to voidable, Remares cites California Supreme Court

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

Thursday, December 10, 2020

Hearing Room

5B

2:00 PM

CONT...

Igor Shabanets

Chapter 7

cases reaching as far back as 1863. For example, in *Swinford v. Rogers*, 23 Cal. 233, 235-236 (1863), the court observed, "a conveyance made with intent to defraud creditors is void, though there may have been a full and valuable consideration paid therefor. The fraud taints and vitiates it." The California Supreme Court again expressed this opinion in the 1937 case *Everts v. Sunset Farms, Inc.*, 9 Cal. 2d 691, 698 (1937) where the court observed that transfers defrauding creditors are "void and not merely voidable." In more recent times, the California Supreme Court has reiterated this position as cited by Remares in *Yvanova v. New Century Mortg. Corp.*, 62 Cal.4th 919, 929 (2016) ("As we said of a fraudulent real property transfer in *First Nat. Bank of L.A. v. Maxwell* (1899) 123 Cal. 360, 371 [55 P. 980], [a] void thing is as no thing." (internal quotations omitted) Remares asserts that even though new statutory schemes such as the California Uniform Fraudulent Transfer Act and later the Uniform Voidable Transfer Act were adopted, they did not overrule or supplant common law remedies. Rather, as the court in *Daff v. Wallace (In re Cass)*, 476 B.R. 602, 617-18 (2012) explained, "in addressing the question of whether a fraudulent transfer is void or voidable under the CUFTA, the court observes that there is no indication in the CUFTA's language or in its legislative history that the California legislature intended to change the common law and establish fraudulent transfers in general as voidable instead of void. Following CUFTA's enactment in 1987, courts and other authorities continue to recognize that a creditor has cumulative remedies with respect to a fraudulent transfer as discussed herein." Again, this doctrine was seemingly reaffirmed as recently as last year in *Berger v. Varum*, 35 Cal.App.5th 1013, 1019 (2019), where the court observed that the remedies in UVTA are cumulative and not the exclusive remedy for fraudulent conveyances and does not supersede the common law of fraudulent transfer. Thus, it can likely be safely assumed that the doctrine that fraudulent conveyances are

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

Thursday, December 10, 2020

Hearing Room 5B

2:00 PM

CONT...

Igor Shabanets

Chapter 7

void remains the law. But the court still has questions.

Why does this "void" vs. "voidable" question matter? Remares wants to argue that since the fraudulent conveyances were "void" it is as though they never happened, which would allow its judgment and ORAP liens to attach prepetition when the properties entered the bankruptcy. Remares wants treatment as a lien creditor as opposed to a general unsecured creditor.

As alternate grounds (or perhaps the same theory re-stated) for finding the transfer void, Remares argues that the transfers are "sham transfers" because the Debtor never intended the Irrevocable Trust to obtain true ownership in the Transfers and never intended the money to go to the Trust's beneficiaries. When a settlor transfers assets to a trust to shield them from creditors, while still maintaining control over the assets, the trust is a sham from the outset and the transfers are void, or so this argument goes.

Finally, as a last basis for finding the transfers void, Remares argues that the Trusts were only Debtor's nominees, holding only nominal legal title to the transfers, but not actual legal title, which in turn, makes the transfers void. *See Born v. Koop*, 200 Cal.App.2d 519, 527-528 (1962) ("The word 'nominee' in its commonly accepted meaning connotes the delegation of authority to the nominee in a representative or nominal capacity only, and does not connote the transfer or assignment of the nominee of any property in ownership of the rights of the person nominating him.") Remares argues that an analysis of factors identified as indicators of nominee status heavily favors a finding of nominee status. Those factors are:

(1) Whether inadequate or no consideration was paid by the

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

Thursday, December 10, 2020

Hearing Room

5B

2:00 PM

CONT...

Igor Shabanets
nominees;

Chapter 7

(2) Whether the properties were placed in the nominee's names in anticipation of a lawsuit or other liability while the transferor remains in control of the property;

(3) Whether there is a close relationship between the nominees and the transferor;

(4) Failure to record conveyances;

(5) Whether the transferor retained possession; and

(6) Whether the transferor continues to enjoy the benefits of the transferred property. *Leeds LP v. United States*, 807 F. Supp. 2d 946, 966 (2011).

Here, Remares asserts that every factor except the fourth factor is easily demonstrated on this record, and thus supports a finding that the transfers should be considered void.

But there are major holes in Remares' analysis. First, the authorities cited above, even Remares' authorities, acknowledge that the aggrieved party has a variety of remedies it can pursue to unwind a fraudulent conveyance; the remedies are cumulative not exclusive, and actions under the UVTA are supplemental to common law theories of relief. See *Berger v. Varum*, 35 Cal. App. 5th at 1019 citing *Macedo v. Bosio*, 86 Cal. App. 4th 1044, 1051(2001) and *Wisden v. Superior Court*, 124 Cal. App. 4th 750, 758 (2004). Indeed, the very Act of which Civil Code §§3439.04 and 3439.07 are a part is now helpfully called the "Uniform *Voidable* Transactions Act" formerly known as the Uniform Fraudulent Transfer Act (emphasis added). Section 3437.07 specifically includes "avoidance" as a remedy. This helps explain why many of

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

Thursday, December 10, 2020

Hearing Room

5B

2:00 PM

CONT...

Igor Shabanets

Chapter 7

Remares' cases using the "void" language are mostly older cases decided either under common law or earlier versions of the uniform law. The older law also seems to have been adopted by reference in §3439.12. But an issue the Trustee must contend with is found in *Daff v. Wallace (In re Cass)*, 476 B.R. 602, 617-18 (2012) where Judge Kwan held that a creditor's lien could attach post fraudulent transfer because under some California law (as observed above) the transfer is deemed void, or at least that it was an issue for trial, finding that "avoidable" was only intended to deal with contexts involving a good faith transferee. *Id.* at 617 But this court is not convinced that *Cass* is good law for another reason. It does not square with 11 U.S.C. §551, which provides that a transfer avoided under a variety of sections including 544 is automatically "preserved for benefit of the estate." If a transfer is preserved for benefit of the estate, it is antithetical to at the same time hold that subsequent liens diminishing the estate's interest can attach. As the Trustee argues, this court believes the better approach is a flexible one that discourages a race to the courthouse by creditors attempting to lien the conveyed property in diminution of a ratable distribution. See e.g. *In re Thu Thi Dao*, 616 B.R. 103, 116 (Bankr. E.D. Cal 2020) discussing *Rinard v. Positive Investments, Inc. (In re Rinard)*, 451 B.R. 12, 19 (Bankr. C.D. Cal. 2011); See also *Dye v. Rivera (In re Marino)*, 193 B.R. 907, 915 (9th Cir. BAP 1996).

But perhaps the best decision is to delay the question until another day, as did Judge Kwan in *Cass*. The matter of Remares' counter-claims can and should be left for another day and possibly another adversary proceeding, to satisfy Remares due process arguments.

As Trustee notes, Remares has been aggressive and tenacious in pursuing its rights before and throughout the pendency of this bankruptcy case. In June of this year, Remares succeeded on a motion to

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

Thursday, December 10, 2020

Hearing Room

5B

2:00 PM

CONT...

Igor Shabanets

Chapter 7

intervene in this adversary proceeding so that it could make sure it had a hand in fashioning any remedy. The court does not see what is inherently inequitable about Remares aggressively pursuing and protecting its interests. Given the amount of money at stake, especially for Remares, its determination is understandable. The court also notes that this appears to be purely a legal dispute, not a factual dispute. As far as the court can tell, despite this sharp disagreement, the underlying facts remain undisputed. The fraudulent nature of the conveyance seems in little doubt so the remaining issue might simply devolve to one of whether Remares should enjoy some enhanced recovery on account of its purported liens, either as a matter of law or settlement.

7. Conclusion

The court finds that the transfers in question are fraudulent conveyances pursuant to Civil Code §3439 and summary adjudication should be granted as to all six causes of action. The transfers are avoided under §550 and preserved for the estate under §551. The court will hold another hearing specifically on the narrow issue of *void ab initio* vs. *voidable*, and/or whether the liens should follow the properties, after Remares and the Trustee are allowed more extensive briefing.

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

Thursday, December 10, 2020

Hearing Room 5B

2:00 PM

CONT...

Igor Shabanets

Chapter 7

Party Information

Debtor(s):

Igor Shabanets

Represented By
Bruce A Boice

Defendant(s):

Olga Shabanets, as trustee of the

Represented By
Bruce A Boice

Olga Shabanets

Represented By
Bruce A Boice

Igor Shabanets

Represented By
Bruce A Boice

Merrill Lynch, Pierce, Fenner &

Represented By
Payam Khodadadi

Movant(s):

Richard A Marshack in his capacity

Represented By
D Edward Hays
Tinho Mang

Richard A Marshack in his capacity

Pro Se

Plaintiff(s):

Richard A Marshack in his capacity

Represented By
D Edward Hays
Tinho Mang

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Tinho Mang