

**United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 21, 2023

Hearing Room 1568

10:00 AM

2:17-18746 AAA American Construction, Inc.

Chapter 7

Adv#: 2:22-01198 Leslie, Chapter 7 Trustee v. Sung

#1.00 HearingRE: [24] Motion for Default Judgment Notice of Motion and Motion for Default Judgment Against Jason Sungyoung Sung; memorandum of points and authorities and declarations in support thereof with proof of service

Docket 24

Tentative Ruling:

3/20/2023

Note: Parties may appear at the hearing either in-person or by telephone. The use of face masks in the courtroom is optional. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.

For the reasons set forth below, the Motion is **GRANTED IN PART** and **DENIED IN PART**. The Court will enter judgment in favor of the Trustee requiring the turnover of the CSLB Warrant. The Trustee's request for attorneys' fees and treble damages under Cal. Penal Code § 496(c) is **DENIED**.

Pleadings Filed and Reviewed:

- 1) First Amended Complaint for (1) Turnover of Property of the Estate Pursuant to 11 U.S.C. § 542(a) and (2) Conversion of Property of the Estate [Adv. Doc. No. 8] (the "Complaint")
- 2) Notice that Clerk Has Entered Default Against Defendant Under Local Bankruptcy Rule 7055-1(a) [Adv. Doc. No. 19]
- 3) Motion for Default Judgment Against Jason Sungyoung Sung [Adv. Doc. No. 24]
- 4) Memorandum of Points and Authorities in Support of Defendant's Opposition to Plaintiff's Motion for Entry of Default Judgment [Adv. Doc. No. 28]
- 5) Plaintiff's Reply in Support of His Motion for Default Judgment Against Defendant, Jason Sungyoung Sung [Adv. Doc. No. 31]

I. Facts and Summary of Pleadings

On July 18, 2017 (the "Petition Date"), AAA American Construction, Inc. (the

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"Debtor") filed a voluntary Chapter 7 petition. On July 15, 2022, the Chapter 7 Trustee (the "Trustee") filed a Final Account, certifying that the estate had been fully administered. Bankr. Doc. No. 76. On July 18, 2022, the Debtor's case was closed. Bankr. Doc. No. 77.

On September 2, 2022, upon the motion of the United States Trustee (the "UST"), the case was reopened so that the Trustee could administer an undisclosed asset—approximately \$15,000 in cash on deposit with the California Contractors State Licensing Board (the "CSLB"). Prior to the Petition Date, the Debtor deposited the cash with the CSLB (the "CSLB Deposit") in lieu of a contractor's bond in order to obtain a contractor's license.

On November 7, 2022, the Trustee filed the operative *First Amended Complaint for (1) Turnover of Property of the Estate Pursuant to 11 U.S.C. § 542(a) and (2) Conversion of Property of the Estate* [Adv. Doc. No. 8] (the "Complaint") against Jason Sungyoung Sung (the "Defendant"). The Complaint alleges that on March 10, 2021, Defendant sent the CSLB correspondence requesting release of the CSLB Deposit; that Defendant subsequently received a warrant payable to Defendant from the CSLB in the amount of \$15,994.19, representing the amount of the CSLB Deposit plus interest (the "CSLB Warrant"); and that Defendant has failed to turnover the CSLB Warrant to the Trustee. The Complaint asserts claims for turnover under § 542 and conversion. Pursuant to Cal. Penal Code § 496, the Complaint seeks treble damages and costs of suit under the conversion claim.

On December 27, 2022, the Clerk of the Court (the "Clerk") entered Defendant's default. The Trustee now moves for the entry of default judgment against the Defendant. *See* Adv. Doc. No. 24 (the "Motion"). In addition to return of the CSLB Deposit, the Trustee seeks treble damages of \$45,000 pursuant to Cal. Penal Code § 496 and attorneys' fees and costs.

The Defendant filed a limited opposition to the Motion. The Defendant does not oppose the entry of a judgment requiring turnover of the CSLB Warrant to the Trustee. However, Defendant argues that he is not liable for treble damages under Cal. Penal Code § 496, because he did not know that the CSLB Warrant was estate property until he was so informed by his attorney on February 10, 2023. The Trustee argues that Defendant's opposition should be stricken because Defendant's default has been entered, cutting off his right to appear in the action.

II. Findings of Fact and Conclusions of Law

A. The Court Declines to Strike Defendant's Opposition

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Given that Defendant's default has been entered and has not been set aside, the Court must determine whether it is appropriate to consider Defendant's opposition before proceeding to the merits. The Court declines the Trustee's request to strike Defendant's opposition.

Entry of a defendant's default cuts off the defendant's right to appear in the action or present evidence. *Horton v. Sierra Conservation Ctr.*, No. 1:09-CV-01441-AWI-SMS, 2010 WL 743849, at *1 (E.D. Cal. Mar. 1, 2010) *report and recommendation adopted*, No. 1:09-CV-01441AWISMS, 2010 WL 1267743 (E.D. Cal. Mar. 31, 2010); *Great Am. Ins. Co. v. M.J. Menefee Const., Inc.*, No. F06-0392 AWIDLB, 2006 WL 2522408, at *2 (E.D. Cal. Aug. 29, 2006); *see also* Hon. A. Wallace Tashima and James M. Wagstaffe, *California Practice Guide: Federal Civil Procedure Before Trial* at § 6:43 (if Defendant files an answer after default, the court should not accept the answer for filing; if the clerk accepts the answer, the court will order it stricken).

However, under Civil Rule 55(c), the "court may set aside an entry of default for good cause." "The 'good cause' standard that governs vacating an entry of default under Rule 55(c) is the same standard that governs vacating a default judgment under Rule 60(b)." *Franchise Holding II, LLC v. Huntington Restaurants Grp., Inc.*, 375 F.3d 922, 925 (9th Cir. 2004). The Court may deny a motion to vacate a default for any of the following reasons: "(1) the plaintiff would be prejudiced if the judgment is set aside, (2) defendant has no meritorious defense, or (3) the defendant's culpable conduct led to the default." *Am. Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1108 (9th Cir. 2000), *as amended on denial of reh'g* (Nov. 1, 2000). Because "[t]his tripartite test is disjunctive," the plaintiff is required to demonstrate only that one of the factors applies in order for the Court to deny a motion to vacate default. *Id.*

Although Defendant has not filed a motion to set aside the default, the Court will deem Defendant's opposition to constitute such a motion, and will set aside Defendant's default for the limited purpose of permitting Defendant to oppose the Trustee's request for treble damages. This approach is appropriate for two reasons. First, as further explained below, requiring Defendant to file a formal motion to set aside his default would needlessly increase costs and cause unnecessary delay. Under Bankruptcy Rule 1, it is the Court's obligation to construe the procedural rules in a manner that secures the "just, *speedy*, and *inexpensive* determination of every case and proceeding" (emphasis added). Second, upon entry of default, the well-pleaded allegations of the complaint are accepted as true, *except* for allegations relating to the

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amount of damages. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987). Here, Defendant’s opposition challenges damages sought by the Trustee. The Trustee is not prejudiced by being required to defend against such a challenge, since the entry of Defendant’s default would not entitle the Trustee to a presumption that the Complaint’s allegations with respect to damages are correct.

The Court finds that “good cause” exists to set aside Defendant’s default for the limited purpose of allowing Defendant to challenge the Trustee’s request for damages. First, as noted above, being required to litigate this issue is not prejudicial to the Trustee since entry of default does not relieve the Trustee of the burden of establishing the damages alleged in the Complaint. Further, for purposes of setting aside a default, merely being required to litigate the merits of an issue does not constitute prejudice. As explained in *TCI Grp. Life Ins. Plan v. Knoebber*, “[t]o be prejudicial, the setting aside of a [default] must result in greater harm than simply delaying resolution of the case. Rather, ‘the standard is whether [plaintiff’s] ability to pursue his claim will be hindered.’” 244 F.3d 691, 701 (9th Cir. 2001). The non-defaulting party’s ability to pursue its claim may be hindered if the delay has caused tangible harm such as “loss of evidence, increased difficulties of discovery, or greater opportunity for fraud or collusion.” *Id.*

Second, there is no evidence before the Court indicating that the default was the result of culpable conduct. “[A] defendant’s conduct [is] culpable for ... where there is no explanation of the default inconsistent with a devious, deliberate, willful, or bad faith failure to respond.” *Employee Painters’ Trust v. Ethan Enterprises, Inc.*, 480 F.3d 993, 1000 (9th Cir. 2007). Defendant testifies that he failed to respond to the Complaint because he “was out of town on business.” Sung Decl. [Adv. Doc. No. 28-2] at ¶ 6.

Third, having reviewed Defendant’s opposition, the Court finds that Defendant has a meritorious defense to the Trustee’s argument that Defendant is liable for treble damages.

B. The Trustee is Not Entitled to Treble Damages

Cal. Penal Code § 496(a) imposes criminal penalties upon individuals who knowingly buy or receive “any property that has been stolen or that has been obtained in any manner constituting theft or extortion.” Cal. Penal Code § 496(c) allows any person injured by a violation of § 496(a) to “bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney’s fees.” “[A] criminal conviction under section 496(a) is not a prerequisite to

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recovery of treble damages under section 496(c)," and the "phrase 'any manner constituting theft' under section 496(a) includes theft by false pretense." *Bell v. Feibush*, 212 Cal. App. 4th 1041, 1043, 151 Cal. Rptr. 3d 546, 547 (2013).

Defendant testifies that he was not aware that the CSLB Warrant was property of the estate for the following reasons:

On or about March 10, 2021, I sent a letter to the Contractors State License Board for the return of the contractor's license bonds T1550L1 and T1817L1 in the total amount of \$15,994.19 (the "Warrant") which I received. I was never advised by my former attorney, Young Chang, that the Warrant was part of the Debtor's estate and therefore I did not disclose the Warrant in the Debtor's schedules.

At the time the instant lawsuit was filed, I was not aware that the Warrant was property of the bankruptcy estate because I erroneously believed that the Debtor's bankruptcy case was finalized with the settlement of the adversarial proceeding against Slauson Oil, Inc., known as *Sam S. Leslie v. Slauson Oil, Inc.*, bearing case no. 2:19-ap-01225-ER, filed on July 17, 2019.

On or about June 5, 2020, I successfully settled that adversarial proceeding on behalf of Slauson Oil, Inc. which is owned by my wife, Woo Sim Lee, and I mistakenly assumed that the entire bankruptcy case was also finalized with the settlement of the Slauson Oil adversary proceeding.

On or about February 10, 2023, I met with attorney, Michael H. Yi, and I learned that the Debtor's bankruptcy case was still active and that the Chapter 7 trustee, Sam S. Leslie, initiated a lawsuit against me to obtain the Warrant

....

I now understand that I made a mistake by retaining the Warrant and that I do not have the right to receive the Warrant under bankruptcy law, and that the Warrant is property of the bankruptcy estate.

Accordingly, I will surrender the full value of the Warrant to Plaintiff but I dispute the Plaintiff's allegation that I stole the Warrant from Plaintiff because I was not aware that the Warrant did not belong to me and had I known that I was not entitled to the Warrant, I would have surrendered the Warrant to the Plaintiff.

Sung Decl. at ¶¶ 2–8.

Defendant's testimony is not controverted. Based upon such testimony, the Court

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finds that the Trustee has failed to establish that Defendant knowingly obtained the CSLB Warrant in a “manner constituting theft.” Consequently, the Trustee is *not* entitled to treble damages against the Defendant pursuant to Cal. Penal Code § 496.

The Trustee argues that he is entitled to treble damages because “[i]n California, conversion is a strict liability tort, where Defendant’s intent is not relevant.” Doc. No. 31 at p. 5. This argument is without merit. The Trustee’s request for treble damages is based upon the Defendant’s alleged violation of Cal. Penal Code § 496(c). The California Supreme Court has explained that intent *is* an element of § 496(c):

[T]he language of section 496(c) “is clear and unambiguous.” (*Switzer, supra*, 35 Cal.App.5th at p. 126, 247 Cal.Rptr.3d 114.) “All that is required for civil liability to attach under section 496(c), including entitlement to treble damages, is that a ‘violation’ of ... section 496[(a)] is found to have occurred. [Citation.] A violation may be found to have occurred if the person engaged in the conduct described in the statute.” (*Ibid.*) The *Switzer* court noted that although section 496(a) “covers a spectrum of impermissible activity relating to stolen property, the elements required to show a violation of [that section] are simply that (i) property was stolen or obtained in a manner constituting theft, (ii) the defendant *knew* the property was so stolen or obtained, and (iii) the defendant received or had possession of the stolen property.” (*Switzer, supra*, at p. 126, 247 Cal.Rptr.3d 114.)

We also find that section 496(c) applies concerning the conduct at issue in the present case. The unambiguous relevant language covers fraudulent diversion of partnership funds. Defendants’ conduct falls within the ambit of section 496(a): They “receive[d]” “property” (the diverted partnership funds) belonging to plaintiff, having “obtained” the diverted funds “in [a] manner constituting theft.” (Ibid.) Defendants also conceal[ed]” or “withh[e]ld[]” those funds (and/or aided in concealing or withholding them) from plaintiff. (Ibid.) They did all of this “*knowing*” the diverted funds were “so ... obtained.” (Ibid.).

Siry Inv., L.P. v. Farkhondehpour, 13 Cal. 5th 333, 354–55, 513 P.3d 166, 179 (2022) (emphasis added).

III. Conclusion

Based upon the foregoing, the Motion is **GRANTED IN PART** and **DENIED IN**

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PART. The Court will enter judgment in favor of the Trustee requiring the turnover of the CSLB Warrant. The Trustee's request for attorney's fees and treble damages under Cal. Penal Code § 496(a) is **DENIED**.

Within seven days of the hearing, the Trustee shall submit (1) an order on the Motion and (2) a proposed judgment.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Evan Hacker or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

AAA American Construction, Inc.

Represented By
Michael H Yi

Defendant(s):

Jason Sungyoung Sung

Represented By
Michael H Yi

Plaintiff(s):

Sam S. Leslie, Chapter 7 Trustee

Represented By
Larry D Simons

Trustee(s):

Sam S Leslie (TR)

Represented By
Larry D Simons

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2:21-18006 Steve H. Chou

Chapter 7

#2.00 HearingRE: [58] Motion to Abandon Real Property (517 West Lime Street, Monrovia, CA 91016). Donald)

Docket 58

Tentative Ruling:

3/20/2023

Note: Parties may appear at the hearing either in-person or by telephone. The use of face masks in the courtroom is optional. Parties electing to appear by telephone should contact CourtCall at 888-882-6878 no later than one hour before the hearing.

For the reasons set forth below, the Motion is **GRANTED**.

Pleadings Filed and Reviewed

1. Motion to Abandon Real Property (517 West Lime Avenue, Monrovia, CA 91016) (the "Motion") [Doc. No. 58]
 - a. Notice of the Motion [Doc. No. 59]
2. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

On October 18, 2021 (the "Petition Date"), Steve H. Chou (the "Debtor") filed a voluntary Chapter 7 petition. The Debtor's principal residence is located at 517 West Lime Avenue, Monrovia, California 91016 (the "Property"). On April 7, 2022, the Chapter 7 Trustee, Carolyn A. Dye (the "Trustee") filed a Report of No Distribution. On February 22, 2023, the Court granted Ronald M. Sacco relief from stay with respect to the Property [Doc. No. 56].

On February 28, 2023, the Debtor filed the Motion compelling the Trustee to abandon the Property pursuant to § 554(b). Per the Motion, the Property has a fair market value of \$886,000.00. The Property is encumbered by two liens: (i) a first deed of trust held by East West Bank in the amount of \$455,526.87; and (ii) a second deed of trust held by Ronald M. Sacco in the amount of \$73,619.20. The total amount of the liens is approximately \$498,941.01. The Debtor claims a homestead exemption in

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the Property in the amount of \$600,000.00. As there is no equity in the Property for the Trustee to administer, the Debtor asserts that, pursuant to § 554(b), the Property is of inconsequential value to the estate. Additionally, the Debtor is attempting to refinance the Property before the foreclosure sale. The Debtor contends that the abandonment of the Property will facilitate the refinancing.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 554(b) provides: "On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate."

Per the Motion, the Property has a fair market value of \$886,000.00. The Property is encumbered by liens in the total amount of approximately \$498,941.01. The Debtor claims a homestead exemption in the Property in the amount of \$600,000.00. Therefore, there is no equity in the Property for the Trustee to administer for the benefit of creditors. In view of the absence of equity in the Property and the Trustee's Report of No Distribution, the Court finds that the Property is of inconsequential value and benefit to the estate.

Lastly, as of the preparation of this tentative ruling, no opposition to the Motion is on file. Therefore, the Court deems the failure of any interested party to lodge an objection against the Motion as consent to the relief requested by the Debtor.

III. Conclusion

Based upon the foregoing, the Motion is **GRANTED**. Within seven days of the hearing, the Debtor shall submit an order incorporating this tentative ruling by reference.

No appearance is required if submitting on the Court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Evan Hacker at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Debtor(s):

Steve H. Chou

Represented By
Stuart G Steingraber
Andrew Edward Smyth
Donald W Reid

Trustee(s):

Carolyn A Dye (TR)

Pro Se

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2:22-13613 Taylor Ronald Woods

Chapter 7

#3.00 Status Hearing

RE: [1] Chapter 7 Involuntary Petition Against an Individual. LLC, a Delaware Limited Liability Company as assignee of West Bay Capital, LLC, a California Limited Liability Company (attorney Roye Zur), Capital Lending Resources, Inc., a California Corporation (attorney Roye Zur), Craig Quinn, as Trustee of the Craig & Colleen Quinn Family Trust dated September 2000 (attorney Roye Zur). (Zur, Roye)

fr. 8-30-22; 10-4-22; 11-15-22; 12-20-22; 1-17-23

Docket 1

***** VACATED *** REASON: Dismissed on 2/23/2023**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Taylor Ronald Woods

Pro Se