

**United States Bankruptcy Court
Central District of California
Riverside
Mark Houle, Presiding
Courtroom 301 Calendar**

Wednesday, July 17, 2024

Hearing Room 301

11:00 AM

6:24-11507 Emma Claire Harvey

Chapter 7

#1.00 Motion for fine and/or disgorgement of fees against bankruptcy petitioner
Notice of Motion and Motion of United States Trustee For an Order Requiring
Roberta E. Lahr-Dolgovin To Pay Fines, Damages, and To Forfeit Fees
Pursuant To 11 U.S.C. § 110; Memorandum of Points and Authorities,
Declarations of Debtor & Mary Avalos filed concurrently herewith with Proof of
Service
(Motion filed 6/12/24)

EH__

Docket 12

Tentative Ruling:

7/17/2024

BACKGROUND

On March 26, 2024, Emma Harvey ("Debtor") filed a Chapter 7 voluntary petition.

Prior to filing bankruptcy, Debtor sought the services of a bankruptcy petition preparer, Roberta Lahr-Dolgovin ("Lahr-Dolgovin"). Lahr-Dolgovin provided Debtor with several documents related to bankruptcy, including "bankruptcy worksheets, a document entitled bankruptcy requirements, an exemptions worksheet, and income guidelines." [Dkt. No. 12, pg. 4, lines 14-15].

On June 12, 2024, UST filed a motion for fines and disgorgement of fees against Lahr-Dolgovin, alleging that Lahr-Dolgovin engaged in the unauthorized practice of

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DISCUSSION

I. Bankruptcy Preparer

11 U.S.C. § 110 provides for penalties for persons who negligently or fraudulently prepare bankruptcy petitions. Section 110(a)(1) defines a "bankruptcy petition preparer" as "a person, other than an attorney for the debtor or an employee of such attorney under the direct supervision of such attorney, who prepares for compensation a document for filing." Included with the voluntary petition is the Disclosure of Compensation of Bankruptcy Petition Preparer form in which Lahr-Dolgovin discloses that he acted as a bankruptcy petition preparer in the instant case. Therefore, section 110 applies to Shoraka.

II. Fine for Unauthorized Legal Services

Section 110(e)(2)(A) provides: "A bankruptcy petition preparer may not offer a potential bankruptcy debtor any legal advice, including any legal advice described in subparagraph (B)."

Section 110(e)(2)(B) identifies a non-exclusive list of examples of legal advice. Specific examples of prohibited "legal advice" include:

- "whether the debtor will be able to retain the debtor's home, car, or other property after commencing a case under this title" (Section 110(e)(2)(B)(iii))

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-advising the debtor "concerning bankruptcy procedures and rights" (Section 110(e)(2)(B)(vii))

-"whether the debtor's debts will be discharged in a case under this title" (Section 110(e)(2)(B)(ii))

-advising the debtor "concerning how to characterize the nature of the debtor's interests in property or the debtor's debts" (Section 110(e)(2)(B)(vi))

Here, UST asserts, and the uncontroverted evidence establishes, that Lahr-Dolgovin provided a variety of legal advice, including opining on: (1) whether Debtor would be able to retain her car; (2) the effect of the automatic stay; (3) selecting Debtor's exemptions; and (4) categorizing Debtor's debts. Based on the record in front of the Court, Lahr-Dolgovin provided unauthorized legal advice.

III. *Fines and Disgorgement*

Section 110(l)(1) provides: "A bankruptcy petition preparer who fails to comply with any provision of subsection (b), (c), (d), (e), (f), (g), or (h) may be fined not more than \$500 for each such failure. UST alleges a violation of § 110(e)(2). UST having sufficiently demonstrated the violation, the Court finds that a fine of \$500 is appropriate.

Section 110(h)(3)(B) provides that: "[a]ll fees charged by a bankruptcy petition preparer may be forfeited in any case in which the bankruptcy petition preparer fails to comply with this subsection or subsection (b), (c), (d), (e), (f), or (g). UST having demonstrated that Lahr-Dolgovin provided material unauthorized legal advice, forfeiture of the \$200 paid by Debtor is appropriate.

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IV. Statutory Damages

Section 110(i)(1) states:

(i)(1) If a bankruptcy petition prepared violates this section or commits any act that that the court finds to be fraudulent, unfair, or deceptive, on the motion of the debtor, trustee, United States trustee (or the bankruptcy administrator, if any), and after notice and a hearing, the court shall order the bankruptcy petition preparer to pay to the debtor-

(A) the debtor's actual damages;

(B) the greater of—

(i) \$2,000; or

(ii) twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer's services; and

(C) reasonable attorneys' fees and costs in moving for damages under this subsection.

Here, UST is requesting a \$2000 fine based on Lahr-Dolgovin's violation of § 110(e)(2). UST having adequately established the violation of § 110(e)(2), the \$2,000 fine is required by statute.

Moreover, Lahr-Dolgovin's failure to oppose the motion is deemed consent to the relief requested pursuant to Local Rule 9013-1(h).

TENTATIVE RULING

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The Court is inclined to GRANT the motion, ordering Lahr-Dolgovin to: (1) pay UST a \$1,000 fine; (2) disgorge \$200 to Debtor; and (3) pay Debtor \$2,000 in damages.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Emma Claire Harvey

Pro Se

Movant(s):

United States Trustee (RS)

Represented By
Everett L Green

Trustee(s):

Charles W Daff (TR)

Pro Se

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6:22-14752 Brandon Michael McDowell

Chapter 7

Adv#: 6:23-01041 Capelouto v. McDowell

#2.00 CONT. Motion For Summary Judgment and Request for Judicial Notice
(Motion filed 1/8/24)

From: 4/17/24

EH__

Docket 20

***** VACATED *** REASON: ADVANCED TO 5/1/24 BY ORDER
ENTERED 4/26/24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brandon Michael McDowell Pro Se

Defendant(s):

Brandon Michael McDowell Pro Se

Movant(s):

Matt & Christine Capelouto Represented By
Baruch C Cohen

Plaintiff(s):

Matt & Christine Capelouto Represented By
Baruch C Cohen

Trustee(s):

Robert Whitmore (TR) Pro Se

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6:22-14752 Brandon Michael McDowell

Chapter 7

Adv#: 6:23-01041 Capelouto v. McDowell

#3.00 CONT. Status Conference re: Adversary case 6:23-ap-01041. Complaint by Matt & Christine Capelouto against Brandon Michael McDowell. willful and malicious injury)),(41 (Objection / revocation of discharge - 727(c),(d),(e)))

From: 8/30/23, 12/6/23, 4/17/24

EH__

Docket 1

***** VACATED *** REASON: ADVANCED TO 5/1/24 BY ORDER
ENTERED 4/26/24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brandon Michael McDowell	Pro Se
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Defendant(s):

Brandon Michael McDowell	Pro Se
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Plaintiff(s):

Matt & Christine Capelouto	Represented By Baruch C Cohen
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Trustee(s):

Robert Whitmore (TR)	Pro Se
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6:23-11535 Okaysou Corporation

Chapter 7

Adv#: 6:23-01111 Okaysou Corporation v. Souxing Information Technology Company

#4.00 CONT. Status Conference re Adversary case 6:23-ap-01111. Complaint by Okaysou Corporation against Souxing Information Technology Company (Chongqing) Co., Ltd., Fudong Cao. (\$350.00 Fee Charge To Estate). to Avoid and Recover Preferential and Fraudulent Transfers, For Imposition of Constructive and resulting Trusts; Turnover and Unjust Enrichment (Attachments: # 1 Adversary Cover Sheet # 2 Summons) Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)),(12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer))

From: 1/10/24, 3/27/24, 5/15/24

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Okaysou Corporation

Represented By
Vahe Khojayan

Defendant(s):

Souxing Information Technology

Pro Se

Fudong Cao

Pro Se

Plaintiff(s):

Okaysou Corporation

Represented By
Vahe Khojayan

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CONT... Okaysou Corporation

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Trustee(s):

Robert Whitmore (TR)

Represented By
D Edward Hays
Tinho Mang

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6:23-14010 Aline Renee McNeal

Chapter 7

Adv#: 6:24-01019 Irving v. McNeal

#5.00 CONT. Motion to Dismiss Adversary Proceeding
(Motion filed 3/22/24)

Also #6

From: 5/8/24, 6/5/24

EH__

Docket 5

Tentative Ruling:

6/5/2024

BACKGROUND

On September 1, 2023, Aline McNeal ("Debtor" or "Defendant") filed a Chapter 7 voluntary petition. The deadline for filing an adversary proceeding pursuant to 11 U.S.C. § 523 was December 4, 2023. On Schedule F, Debtor listed "Odessa Irving" as holding a contingent, unliquidated, disputed unsecured claim and appeared to list a law office as the mailing address. On December 11, 2023, Debtor received a discharge. No adversary proceeding was filed.

On February 21, 2024, Debtor's aunt, Odessa Irving ("Plaintiff"), filed a non-dischargeability complaint against Defendant. The complaint contained two causes of action pursuant to § 523(a)(2)(A) and one cause of action pursuant to § 523(a)(6). Paragraph 32 of the complaint asserts that "knowing full well her aunt's mailing address, Defendant only scheduled in Schedule F the aunt's state court attorney in Los Gatos, California."

On March 22, 2024, Defendant filed a motion to dismiss the complaint (the "Motion") pursuant to F.R.C.P. 12(b)(6). Defendant filed a declaration and Defendant's attorney filed a declaration in support of the Motion. The beginning of the Motion states that the grounds for the motion are: (1) the complaint was untimely; (2) the complaint

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does not satisfy the FED. R. CIV. P. Rule 9 pleading requirements; and (3) the complaint was not personally served. The support analysis, however, is almost entirely limited to the Rule 9 pleading requirements, with a discussion of the untimeliness of the adversary complaint primarily contained in the introduction section.

On April 24, 2024, the day that an opposition was due, Plaintiff filed an amended complaint.

On May 2, 2024, Defendant filed a notice to continue the hearing from May 8, 2024, to June 5, 2024.

On May 15, 2024, Plaintiff filed a response in opposition to the Motion, arguing that the adversary complaint was not filed untimely because providing notice of a bankruptcy filing to her state court attorneys is insufficient to put Plaintiff on notice. On the same day, Plaintiff filed a motion to strike the two declarations filed in support of the Motion, arguing that both declarations constitute matters outside the pleadings, and must either be excluded by the Court, or the Motion must be treated as one for summary judgment under F.R.C.P. 56. *See F.R.C.P. 12(d)*. On May 29, 2024, Defendant filed a reply to Plaintiff's opposition.

DISCUSSION

First, the Court notes that the filing of the amended complaint is untimely. F.R.C.P. 15(a)(1), incorporated into bankruptcy proceedings by F.R.B.P. Rule 7015, provides that Plaintiff had twenty-one days after service of the Motion to amend the complaint "as a matter of course." Rule 15(b) provides that after that period expired, Plaintiff was required to obtain Debtor's written consent or the Court's leave to amend the complaint. Plaintiff did not do so and, as a result, the filing of the amended complaint was improper.

Turning to the Motion, the Court notes that the complaint purports to be timely pursuant to 11 U.S.C. § 523(a)(3)(B), which provides:

- a) A discharge under section 727, 1141, 1192, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt –
 - (3) neither listed nor scheduled under section 521(a)(1)

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of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit –

(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had actual notice or actual knowledge of the case in time for such timely filing and request.

Here, Plaintiff asserts in the complaint that Debtor was aware of her aunt's mailing address, which was omitted from the schedules.

In the Motion, however, Defendant asserts that notice was properly given to Plaintiff or that Plaintiff had actual notice or actual knowledge of the filing. Defendant has attached to the Motion evidence that Plaintiff's state court counsel, Robert Chandler, was aware of the bankruptcy filing before the deadline to file a non-dischargeability action.

Based on relevant 9th Circuit authority, it appears that Plaintiff would be considered to have actual or imputed knowledge of the bankruptcy filing through her state court counsel. *See In re Perle*, 725 F.3d 1023, 1027 (9th Cir. 2013) ("Ordinarily, a lawyer is a client's agent and, consistent with agency law, clients "are considered to have notice of all facts known to their lawyer-agent.") (quoting *Ringgold Corp. v. Worrall*, 880 F.2d 1138, 1141-42 (9th Cir. 1989); *see also* 4 COLLIER'S ON BANKRUPTCY ¶ 523.09[4][a] (16th ed. 2024) ("It is ordinarily considered sufficient if the attorney received knowledge of the case while representing the creditor in enforcing the creditor's claim against the debtor."). *See also In re Price*, 871 F.2d 97 (9th Cir. 1989) (holding that notice to the plaintiff's counsel constituted notice to the plaintiff because plaintiff's counsel, who was pursuing the same claim the plaintiff sought to have discharged in the state court action, was given actual notice of the bankruptcy filing in time to file either a complaint.). Because Defendant has provided clear, un rebutted evidence establishing that Plaintiff's state court counsel had actual knowledge of the bankruptcy in connection with the representation of Plaintiff

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regarding the debt at issue in this proceeding, actual knowledge of the bankruptcy is imputed to Plaintiff. The Plaintiff thus had actual knowledge of the bankruptcy filing in time to timely file a non-dischargeability action; the adversary complaint was not timely filed.

Plaintiff cites *In re Fauchier* to support her argument that service upon Defendant's state court counsel was insufficient, but her reliance on this case is misplaced. 71 B.R. 212 (B.A.P. 9th Cir. 1987). In *Fauchier*, the court found that the attorney who was served did not receive timely notice because the address used was incorrect. *Id.* at 215. The issue of actual notice was not addressed because the case was remanded to determine this issue. *Id.* at 215-16. Plaintiff next cites *In re Villar* for support, but this case is also distinguishable. 317 B.R. 88 (B.A.P. 9th Cir. 2004). *In re Villar* addresses whether serving a debtor's motion to avoid a judicial lien on the creditor's attorney, who represented the creditor in the state court action that led to the lien, satisfies Rule 7004(b). *See Ibid.* This is a fundamentally different issue from the one presented in the current case. Lastly, *In re Kash* can be distinguished because the attorney who was served represented the creditor in a lawsuit eight years prior. *See* 735 F.3d 942 (6th Cir. 2013). Here, the evidence presented establishes that Plaintiff's current state court counsel was served with notice of Defendant's notice of the bankruptcy filing and the automatic stay and had actual knowledge of the bankruptcy filing prior to the non-dischargeability complaint deadline.

The Court agrees with Plaintiff that the two declarations filed by Defendant should be excluded so that the Motion is not treated as one for summary judgment under F.R.C.P. 56 because information asserted in the declarations is not asserted or referred to in the motion itself. However, excluding the declarations is moot because the Court is inclined to dismiss the instant adversary case for the reasons stated above.

TENTATIVE RULING

The Court is inclined to GRANT the motion and DISMISS the adversary case.

APPEARANCES REQUIRED.

Party Information

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CONT... Aline Renee McNeal

Chapter 7

Debtor(s):

Aline Renee McNeal

Represented By
Dana Travis

Defendant(s):

Aline Renee McNeal

Represented By
Yolanda Flores-Burt

Movant(s):

Aline Renee McNeal

Represented By
Yolanda Flores-Burt

Plaintiff(s):

Odessa Irving

Represented By
Lazaro E Fernandez

Trustee(s):

Charles W Daff (TR)

Pro Se

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6:23-14010 Aline Renee McNeal

Chapter 7

Adv#: 6:24-01019 Irving v. McNeal

#6.00 CONT. Status Conference re Complaint by Odessa Irving against Aline Renee McNeal. false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury))

From: 5/1/24, 6/5/24

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Aline Renee McNeal

Represented By
Dana Travis

Defendant(s):

Aline Renee McNeal

Represented By
Yolanda Flores-Burt

Plaintiff(s):

Odessa Irving

Represented By
Lazaro E Fernandez

Trustee(s):

Charles W Daff (TR)

Pro Se

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6:23-15109 Juana Erika Velasquez

Chapter 7

Adv#: 6:24-01009 Velasquez v. UNITED STATES DEPARTMENT OF EDUCATION et al

#7.00 CONT. Status Conference re: Complaint by Juana Erika Velasquez against United States Department of Education

(Alias Summons issued 4/12/24)

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Juana Erika Velasquez

Represented By
Lauren M Foley

Defendant(s):

UNITED STATES DEPARTMENT

Pro Se

U.S. Department of Education

Represented By
Elan S Levey

Plaintiff(s):

Juana Erika Velasquez

Represented By
Lauren M Foley

Trustee(s):

Arturo Cisneros (TR)

Pro Se