

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Maureen Tighe, Presiding
Courtroom 302 Calendar**

Tuesday, April 8, 2025

Hearing Room 302

9:30 AM

1: -

Chapter

**#0.00 All hearings on this calendar will be conducted solely remotely. All parties in interest must attend remotely, unless ordered otherwise.
No in-person appearances will be permitted**

Additionally, (except with respect to evidentiary hearings, or as otherwise ordered by the Court) parties in interest (and their counsel) may connect by ZoomGov audio and video free of charge, using the connection information provided below. Members of the public and the press may only connect to the zoom audio feed, and only by telephone. Access to the video feed by these individuals is prohibited.

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Neither a Zoom nor a ZoomGov account is necessary to participate remotely and there are no fees for doing so. No pre-registration or prior approval is required. The audio portion of each hearing will be recorded electronically by the Court and that recording will constitute its official record. Recording, retransmitting, photographing or imaging Court proceedings by any means is strictly prohibited.

Video/audio web address: <https://cacb.zoomgov.com/j/1615202118>

Meeting ID: 161 520 2118

Password: 131462

Dial by your location: 1 -669-254-5252 OR 1-646-828-7666

Docket 0

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
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Tuesday, April 8, 2025

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9:30 AM

1:18-12855 PB-1, LLC

Chapter 11

#1.00 Status conference re:
EVID HRG - re: Motion for Order Allowing Omitted Administrative
Claim and Omitted General Unsecured Claims

fr. 3/17/25

Docket 342

***** VACATED *** REASON: Continued to 6/24/25 at 9:30 am on the
Court's own motion**

Tentative Ruling:

The court has reviewed the direct testimony in declaration form. The hearing will commence with cross-examination of movant's witnesses, followed by cross-examination of the Debtor's witnesses. any rebuttal witnesses can be called after that.

The court overrules the claimants' evidentiary objections. There has been a sufficient foundation laid for each of the statements objected to; the matters are relevant and not speculative. The issues claimants raise to the statements are all matters which are more properly explored on cross-examination.

The court will rule on the various motions after resolving the disputed factual matters.

Party Information

Debtor(s):

PB-1, LLC

Represented By
Jeffrey S Shinbrot

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Chapter 11

#2.00 Motion For An Order: (1) Allowing Claims Against The Debtor As Subordinated To Timely-Filed General Unsecured Claims And Senior To Equity Interests; And (2) Authorizing Payment On Claims With Surplus Funds Ahead Of Any Distributions To Equity Interest Holders

fr. 3/17/25

Docket 376

***** VACATED *** REASON: Continued to 6/24/25 at 9:30 am on the Court's own motion**

Tentative Ruling:

This will be move the the 1 pm calendar as it can't be ruled on until the late claim issue is decided after the evidentiary hearing. No need for anyone to appear at 9:30 am.

Party Information

Debtor(s):

PB-1, LLC

Represented By
Jeffrey S Shinbrot
Christopher E Ng
Thomas S Moring

Movant(s):

257, LLC, a California Limited

Represented By
Reed H Olmstead
Victor A Sahn

Lynda Kest, Trustee of Lynda Kest

Represented By
Reed H Olmstead
Victor A Sahn

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1:18-12855 PB-1, LLC

Chapter 11

**#3.00 Debtor's Motion for Final Decree & for
Closing of Debtor's Chapter 11 Case**

fr. 3/17/25

Docket 375

***** VACATED *** REASON: Continued to 6/24/25 at 9:30 am on the
Court's own motion**

Tentative Ruling:

This will be move the the 1 pm calendar as it can't be ruled on until the late claim issue is decided after the evidentiary hearing. No need for anyone to appear at 9:30 am.

Party Information

Debtor(s):

PB-1, LLC

Represented By
Jeffrey S Shinbrot
Christopher E Ng
Thomas S Moring

Movant(s):

PB-1, LLC

Represented By
Jeffrey S Shinbrot
Christopher E Ng
Thomas S Moring

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1:21-10251 Thomas John Shayman

Chapter 7

Adv#: 1:21-01025 Aquino v. Shayman

#4.00 Plaintiff's Motion For Summary Judgment

Docket 151

Tentative Ruling:

This is an outline of the issues to assist at argument. A written ruling will issue sometime after the argument. Specific areas to address at argument are highlighted below.

The procedural history of this case has been thoroughly detailed in the Bankruptcy Appellate Panel's unpublished memorandum dated April 8, 2024. (Adversary case docket # 124.) (hereafter "BAP Memorandum") The BAP ruling upheld the Court's earlier ruling granting summary judgment as to Plaintiff's 11 U.S.C. § 523(a)(2)(A) claim and reversed and remanded the judgment on the 11 U.S.C. § 523(a)(4) claim. The 11 U.S.C. § 523(a)(6) claim asserted in the complaint had been abandoned earlier in the case.

Following remand from the BAP, settlement efforts were unsuccessful, and Plaintiff decided to bring a summary judgment motion to resolve the one remaining claim under 11 U.S.C. § 523(a)(4). The court detailed a briefing schedule and advised Defendant of the importance of responding thereto at the status conference on February 10, 2025. The court ordered a longer response time than normally allowed for defendant's response papers because he was representing himself. (docket # 150.) Plaintiff's motion was filed on February 25, 2025; defendant's response was filed on March 25, 2025. Plaintiff filed no Reply.

On March 28, 2025, Defendant filed a "Motion to Vacate Judgment Pursuant To Federal Rule of Civil Procedure 60(b)(2),(3),(6) and 60(d)(3)." (doc.# 160) along with an "Application shortening time." (docket # 162.) Defendant has also filed a "Supplemental Statement And Update Of Non-Opposing to Motion To Vacate [FRCP 60(b)(3), 60(d)(3)] And Failure To Reply To Opposition To Motion For Summary Judgment Filed by Defendant Thomas John Shayman" (Docket # 164.) The statement is of no effect. Plaintiff is not required to oppose such a motion to vacate. Motions for reconsideration or to vacate are heard on the papers and without a required response unless the court orders one. Replies to other motions are optional

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and not required.

Chapter 7

A number of declarations and exhibits were also filed in support of these various motions, as reflected on the docket. All have been considered.

As Defendant raises most of the same issues in both his response to the summary judgment motion and his motion to vacate, some will be addressed as part of the summary judgment motion and the remainder subsequently.

Plaintiff's Motion for Summary Judgment

The remaining issue here is the § 523(a)(4) or "fiduciary fraud or defalcation" claim. Section 523(a)(4) accepts from discharge "any debt for fraud or defalcation while acting in a fiduciary capacity." To prevail on a nondischargeability claim under § 523(a)(4), a plaintiff must allege and demonstrate that (1) there was an express trust; (2) the debtor was acting as a fiduciary to the creditor at the time the debt arose; and (3) the debt arose from the debtor's defalcation. *Otto v. Niles* (*In re Niles*), 106 F. 3rd 1456, 1459 (9th Cir. 1997), *abrogated on other grounds by Bullock v. BankChampagne, N.A.*, 569 U.S. 267, 274 (2013).

As the Bankruptcy Appellate Panel explained:

"One of the necessary elements of a § 523(a)(4) claim is that the debt arose from the debtor's fraud or defalcation. Defalcation has two elements: a breach of a fiduciary duty and a culpable state of mind. *Maxwell v. Maxwell (In re Maxwell)*, 509 B.R. 286, 289 (Bankr. E.D. Cal. 2014). A breach of fiduciary duty entails "misappropriation of trust funds or money held in any fiduciary capacity; [or] the failure to properly account for such funds." *Lewis v. Scott (In re Lewis)*, 97 F. 3rd 1182, 1186 (9th Cir. 1996); ... *In re Pemstein*, 492 B.R. at 282-83. Breach of fiduciary duty includes "wrongfully taking trust property, engaging in self-dealing with trust property for . . . [the fiduciary's] own profit, and failing to provide a full accounting." (*citations omitted*)." (BAP Memorandum p. 25)

The Court cited the well-established culpable state of mind requirement of *Bullock*, emphasizing that it is "'involving knowledge of, or gross recklessness in respect to, the improper nature of the relevant fiduciary behavior.'" *Bullock*, 569 U.S. at 269 (2013). Conduct satisfying this state of mind requirement includes 'conduct that the fiduciary knows is improper' or when the fiduciary 'consciously disregards (or is willfully blind to) a substantial and unjustifiable risk that his conduct will ... violate a fiduciary duty.' *Id.* At 74. (internal quotation marks and citations omitted). Further, the risk 'must be of such a nature and degree that, considering the nature and purpose

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of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation." (BAP Memorandum, p. 26.)

The Bankruptcy Appellate Panel expressed concern about Plaintiff's original summary judgment motion mainly related to the mental state of the Defendant. As that Court explained: "[w]e disagree that the jury's finding establishes the element of defalcation as a matter of law. . . , there is nothing in the record provided that establishes... [t]he requisite mental state required by *Bullock*. . . . There is simply nothing in the record to suggest that the jury was required, or asked, to determine Shayman's mental state as part of Aquino's breach of fiduciary duty claim in the State Court Action." (BAP Memorandum, p. 27)

Plaintiff addresses these issues in his second motion for summary judgment by stressing that "where the underlying State Court Action is for fraud, it seems almost inevitable that the issues determined will be identical to those related under § 523(a)(4)." (citing *Bugner v. McArthur (In re Bugna)*, 33 F. 3d 1054 (9th Cir. (1994)). (Although *Bugna* was decided long before *Bullock* and did not analyze the element of defendant's state of mind in its reasoning.) Plaintiff relies on *Bullock*'s description of the requirements of "defalcation" that do not necessarily involve moral turpitude or other immoral conduct – but are still an intentional wrong. Plaintiff cites *Bullock*'s explanation that the required state of mind can be the reckless conduct of the kind set forth in the Model Penal Code definition of reckless conduct.

Plaintiff needs to explain more clearly which specific citations show this state of mind. She starts to do so at the end of the brief, but her reasoning is not totally clear.

After completing its discussion of the element of defalcation, the BAP also stated that the other elements of 523(a)(4) should be clarified, stating in footnote 13 that it "need not determine whether the bankruptcy court erred in determining the remaining elements of the § 523(a)(4) claim were established as a matter of law. However, upon remand we urge the parties to be clear as to whether the parties were partners or joint venturers and whether agency or membership in a limited liability company is a basis for the nondischargeability claim under § 523(a)(4)." (BAP Memorandum, p. 28)

Plaintiff should explain more at oral argument how the record clarifies this question whether the parties were partners or joint venturers and whether agency or membership in a limited liability company is a basis for the

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nondischargeability claim under § 523(a)(4).

Rather than respond to Plaintiff's arguments. Defendant raises many new issues in his response. Despite a month to respond to a single issues, Defendant does not address the issues remanded by the BAP or raised by Plaintiff. Defendant raises a number of new issues he alleges support vacating the original judgment and disqualifying Plaintiff's Testimony. These issues include allegations about false testimony, immigration fraud, false identities, bigamy, disqualification from holding a liquor license, violation of community property laws and various "crimes of moral turpitude." None of these address the issues raised by the summary judgment motion even they are styled as a response. In any case, the court must independently look at the issues as part of any analysis. Perhaps Defendant will respond with more clarity at the oral argument.

Other Motions

Defendant has also filed a "Motion to Vacate Judgment Pursuant To Federal Rule of Civil Procedure 60(b)(2),(3),(6) and 60(d)(3)." (doc.# 160) along with an "Application shortening time." (docket # 162.) Defendant has also filed a "Supplemental Statement And Update Of Non-Opposing to Motion To Vacate [FRCP 60(b)(3), 60(d)(3)]." The Court will rule on the papers on these matters. The motion shortening time is denied as not necessary since it cannot be self-calendared and must await an order asking for a response. **Plaintiff should state at the hearing whether she wishes to file a response.**

Defendant also filed an "Errata Motion to Cure Service of Rule 26 Discovery Materials." (docket # 155). Plaintiff should state whether she has received all the materials received by the court and described by Defendant. It is not clear what Rule 26 discovery issues are outstanding.

Conclusion

Judgment has been entered for the claim under 11 U.S.C. § 523(a)(2)(A), including the pre-judgment interest and attorney fees related to the § 523(a)(2)(A) claim. (docket # 116.) That part of the judgment was affirmed.

The Court will issue a written opinion following the argument. Plaintiff has previously stated that she may not proceed to trial if summary judgment is not granted. Please clarify what additional dates and deadline should be set if the

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motion is not granted.

Chapter 7

Additionally, the parties should address which attorney fees are based on the nondischargeable debt, or how that should be calculated.

Party Information

Debtor(s):

Thomas John Shayman

Represented By
Michael F Chekian

Defendant(s):

Thomas John Shayman

Pro Se

Plaintiff(s):

Leila Aquino

Represented By
Moses S Bardavid

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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Chapter 7

Adv#: 1:21-01025 Aquino v. Shayman

#5.00 Status Conference

fr. 8/12/24; 9/9/24; 1/13/25; 2/10/25

Docket 1

Tentative Ruling:

Defendant has filed numerous motions. Any motion for reconsideration is decided on the papers, so it will be taken under advisement. The court will notify plaintiff if any response is required. As the subject matter of the late filed motions is the same as what defendant raised in his reply, the plaintiff can address all issues in the argument.

There is a pretrial scheduled for June 24. That will be moved to 1 pm. The ruling on the pending motions will be issued in May so that the parties will know how to prepare for the June pretrial.

Party Information

Debtor(s):

Thomas John Shayman

Represented By
Michael F Chekian

Defendant(s):

Thomas John Shayman

Represented By
Michael F Chekian

Plaintiff(s):

Leila Aquino

Represented By
Moses S Bardavid

Trustee(s):

David Keith Gottlieb (TR)

Pro Se