

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

2:00-000000

Chapter

#0.00

**PROCEDURES FOR APPEARING FOR, OR ACCESSING,
COURT HEARINGS IN JUDGE KWAN'S CASES**

INSTRUCTIONS FOR THE GENERAL PUBLIC AND THE MEDIA: See Special Instructions Below.

INSTRUCTIONS FOR PARTIES OFFICIALLY APPEARING ON THEIR MATTERS AT HEARINGS BEFORE JUDGE KWAN AND THEIR COUNSEL: Judge Kwan conducts non-evidentiary hearings in hybrid format, that is, in person in the courtroom and remotely by video using Zoom for Government (ZoomGov) videoconferencing technology, but only in person in the courtroom for evidentiary hearings, trials and other matters specially set by Judge Kwan. Parties officially appearing on their matters at hearings before Judge Kwan and their counsel may choose to appear in person in the courtroom or remotely on ZoomGov at a hearing on their matters unless otherwise ordered by the court. Judge Kwan's courtroom is located in Courtroom 1675, 16th Floor, Roybal Federal Building, 255 East Temple Street, Los Angeles, California 90012. Parties are directed to review Judge Kwan's self-scheduling instructions for calendaring hearings, whether by in-person and/or ZoomGov.

For parties and their counsel officially appearing on their matters using ZoomGov to appear remotely at hearings, video and audio connection information for each hearing will be provided on Judge Kwan's publicly posted hearing calendar on the court's website, which may be viewed online at: <http://ecf-ciao.cacb.uscourts.gov/CiaoPosted/default.aspx>, and then selecting "Judge Kwan" from the tab on the left-hand side of the page.

Parties and their counsel officially appearing on their matters may view and/or listen to hearings before Judge Kwan using ZoomGov free of charge. Individual participants may appear at a hearing 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). Individual participants may also participate in a hearing by ZoomGov audio only using a telephone (standard telephone charges may apply). Neither a Zoom nor a ZoomGov account are necessary to

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM
CONT...

Chapter

participate in a hearing, and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the court and constitute its official record.

To implement the mandate of the Judicial Conference of the United States that the general public and the media may not access the video feed of a court hearing, only the audio feed (see Special Instructions to the General Public and the Media below), Judge Kwan or court personnel may inquire as to the status of a person accessing ZoomGov as either an official hearing participant or a member of the general public or the media, and the court may place persons attempting access to video feed of a court hearing in a Zoom waiting room for a status inquiry and otherwise restrict a member of the general public or the media to audio access only if accessing the hearing remotely.

SPECIAL INSTRUCTIONS FOR THE GENERAL PUBLIC AND THE MEDIA: The Judicial Conference of the United States has now clarified its policy on Cameras in the Courtroom and mandated that the members of the general public (or the Public) and the Media may not observe **by video** any court hearing proceedings unless they are actual parties or counsel with matters before the court in which they have an official interest. However, as an accommodation to the Public and the Media, the Judicial Conference of the United States has also clarified that many court hearing proceedings will still be accessible **by audio**, but that this audio accommodation for the Public and the Media is limited to (1) non-trial hearings; and (2) non-live witness evidentiary hearings.

To be clear, during hearings where no live testimony is being received by the court, the court may permit hearing accessibility remotely by audio, but not video, to the Public and the Media. No trials may ever be accessible remotely by audio to the Public and the Media. The court has the final control regarding remote audio accessibility and may choose to terminate remote audio accessibility at any time, regardless of the type of hearing. These remote audio services are accessible through ZoomGov, and the Public and the Media may utilize the telephone number login, but not the video login, presented by the court on its publicly posted hearing calendar, which may be viewed online at: <http://ecf-ciao.cacb.uscourts.gov/CiaoPosted/default.aspx>, and then selecting "Judge Kwan" from the tab on the left-hand side of the page.

Members of the Public and the Media may always personally attend hearings

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM
CONT...

Chapter

before the court in open court in-person in the courtroom. Judge Kwan's courtroom is located in Courtroom 1675, 16th Floor, Roybal Federal Building, 255 East Temple Street, Los Angeles, California 90012.

On hearing days, Judge Kwan's courtroom will remain open during hearings for in-person public and media attendance, so that the courtroom observers will have video and audio access to ZoomGov participants. The court will have video monitors on and viewable within the courtroom for viewing. The parties, including counsel, their clients, and self-represented individual parties, may virtually join the hearing and appear remotely or virtually on ZoomGov.

Members of the general public and the media, however, may only view the hearings in person from the courtroom, which will remain open, or by audio access, as noted above. To implement the mandate of the Judicial Conference of the United States that the general public and the media may not access the video feed of a court hearing, only the audio feed, Judge Kwan or court personnel may inquire as to the status of a person accessing ZoomGov as either an official hearing participant or a member of the general public or the media, and the court may place persons attempting access to video feed of a court hearing in a Zoom waiting room for a status inquiry and otherwise restrict a member of the general public or the media to audio access only if accessing the hearing remotely. Individual members of the public and the media may access a hearing by ZoomGov audio only using a telephone (standard telephone charges may apply). Neither a Zoom nor a ZoomGov account are necessary to access the live audio feed of a hearing, and no pre-registration is required.

RESTRICTIONS ON LIVE TESTIMONY AT HEARINGS: No live testimony, however, will be permitted at a hearing by ZoomGov unless specifically authorized by the court either prior to, or during, a hearing. If a party intends to call a witness to testify by remote transmission, the party calling the witness should state such intention in the joint pretrial stipulation filed before the final pretrial conference or file a written application for permission to call a witness by remote means at least 21 days before the evidentiary hearing or as soon as practicable if the evidentiary hearing is set on less than 21 days notice.

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

CONT...

Chapter

ZoomGov logon information for all matters on today's hearing calendar:

Video/audio web address: <https://cacb.zoomgov.com/j/1619688957>

ZoomGov meeting number: **161 968 8957**

Password: **918711**

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

Please connect at least 5 minutes before the start of your hearing, and wait with your microphone muted until your matter is called.

Zoomgov hearing etiquette: (a) wait until the judge calls on you, so everyone is not talking at once; (b) when you first speak, state your name and, if you are an attorney, whom you represent (do not make your argument until asked to do so); (c) when you make your argument, please pause from time to time so that, for example, the judge can ask a question or anyone else can make an objection; (d) if the judge does not see that you want to speak, or forgets to call on you, please say so when other parties have finished speaking (do not send a "chat" message, which the judge might not see); and (e) please let the judge know if he mispronounces your name or uses the wrong pronoun.

Docket 0

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

2:19-24787 Bradley Edward Barnes and Allison Platz Barnes

Chapter 7

#1.00 Application for Compensation for Fees and Reimbursement of Costs of Dumas & Kim, APC.
Counsel for Trustee; Period: 10/24/2020 to 12/22/2023,
Fee: \$96,743.00, Expenses: \$1,582.94.

Docket 245

***** VACATED *** REASON: Off Calendar - See Tentative posted**

Tentative Ruling:

Off calendar. In light of the lack of any timely written opposition to the final fee application of the attorney for the trustee, the court determines that oral argument on the final fee application is not necessary and dispenses with oral argument pursuant to Local Bankruptcy Rule 9013-1(j)(3). The court deems the lack of filing and service of a timely written opposition as consent to approval of the final fee application pursuant to Local Bankruptcy Rule 9013-1(f) and (h), rules on the final fee application on the papers, and approves the final fee application for the reasons stated in the final fee application and for lack of timely written opposition. No appearances are required on 3/26/24. Applicant or trustee to lodge a proposed order within 7 days of hearing.

Party Information

Debtor(s):

Bradley Edward Barnes

Represented By
Susan I Montgomery

Joint Debtor(s):

Allison Platz Barnes

Represented By
Susan I Montgomery

Movant(s):

Dumas & Kim, APC

Represented By
James A Dumas Jr

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

CONT... Bradley Edward Barnes and Allison Platz Barnes

Chapter 7

Trustee(s):

Carolyn A Dye (TR)

Represented By
James A Dumas Jr
Christian T Kim
Ann Chang

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

2:19-24787 Bradley Edward Barnes and Allison Platz Barnes

Chapter 7

#2.00 Trustee's Final Report, Application for Compensation
(Carolyn A. Dye)

Docket 246

***** VACATED *** REASON: Off Calendar - See Tentative posted**

Tentative Ruling:

Off calendar. In light of the lack of any timely written opposition to the trustee's final report and fee application for the trustee, the court determines that oral argument on the final report and fee application is not necessary and dispenses with oral argument pursuant to Local Bankruptcy Rule 9013-1(j)(3). The court deems the lack of filing and service of a timely written opposition as consent to approval of the final report and fee application pursuant to Local Bankruptcy Rule 9013-1(f) and (h), rules on the final report and fee application on the papers, and approves the final report and fee application for the reasons stated in the final report and fee application and for lack of timely written opposition. No appearances are required on 3/26/24. Trustee to lodge a proposed order within 7 days of hearing.

Party Information

Debtor(s):

Bradley Edward Barnes

Represented By
Susan I Montgomery

Joint Debtor(s):

Allison Platz Barnes

Represented By
Susan I Montgomery

Trustee(s):

Carolyn A Dye (TR)

Represented By
James A Dumas Jr
Christian T Kim
Ann Chang

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

2:16-24758 Swing House Rehearsal and Recording, Inc. and Philip

Chapter 11

#3.00 Order to Show Cause why document filed
under seal should be unsealed.

(re: Sealed documents docket no. 704 & 705)

Docket 704

Tentative Ruling:

Grant the court's own motion to unseal document(s) for the reasons stated in the order to show cause and for lack of timely written opposition. Appearances are optional on 3/26/24, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Swing House Rehearsal and

Represented By
Steven R Fox

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

2:13-14135 Art and Architecture Books of the 21st Century and 400 S.

Chapter 11

#4.00 Order to Show Cause why document filed
under seal should be unsealed.

(re: Sealed document docket no. 1310)

Docket 1310

Tentative Ruling:

Grant the court's own motion to unseal document(s) for the reasons stated in the order to show cause and for lack of timely written opposition. Appearances are optional on 3/26/24, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Art and Architecture Books of the

Represented By
Thomas M Geher
David W. Meadows
Jerome S Cohen
Carolyn A Dye
Alan I Nahmias

Movant(s):

Official Committee Of Unsecured

Represented By
Steven Werth
Asa S Hami
Victor A Sahn
David J Richardson
Daniel A Lev
Jessica Vogel
David S Kupetz

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

2:13-14135 Art and Architecture Books of the 21st Century and 400 S.

Chapter 11

#5.00 Order to Show Cause why document filed
under seal should be unsealed.

(re: Sealed document docket no. 1472)

Docket 1472

Tentative Ruling:

Grant the court's own motion to unseal document(s) for the reasons stated in the order to show cause and for lack of timely written opposition. Appearances are optional on 3/26/24, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Art and Architecture Books of the

Represented By
Thomas M Geher
David W. Meadows
Jerome S Cohen
Carolyn A Dye
Alan I Nahmias

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

2:16-18600 Jens Larsen

Chapter 7

Adv#: 2:16-01446 Perske v. Larsen

#6.00 Order to Show Cause why document filed
under seal should be unsealed.

(re: Sealed document docket no. 75)

Docket 75

Tentative Ruling:

Grant the court's own motion to unseal document(s) for the reasons stated in the order to show cause and for lack of timely written opposition. Appearances are optional on 3/26/24, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Jens Larsen

Represented By
Matthew D. Resnik

Defendant(s):

Jens F Larsen

Pro Se

Plaintiff(s):

Jacquelynn Perske

Represented By
Damion Robinson

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Carmela Pagay
Diane C Weil

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

2:16-24931 Anthony Roy Martinez

Chapter 7

Adv#: 2:17-01158 Carter et al v. Martinez

#7.00 Status conference re: Complaint to except debt from discharge for willful and malicious injury and as money obtained under false pretenses; fraud
[11 U.S.C. § 523 (a)2)(A) & (6)]

fr. 3/22/22, 5/24/22, 8/9/22, 11/29/22, 3/28/23, 5/2/23,
8/15/23, 10/17/23, 11/14/23, 1/30/24

Docket 1

***** VACATED *** REASON: Per tentative - matter continued to 4/30/24
at 1:30 p.m.**

Tentative Ruling:

Updated tentative ruling as of 3/25/24. Off calendar. The court has reviewed the joint status report filed by the parties on 3/25/24, reporting that the trial in debtor's criminal case has concluded, but the jury has not finished its deliberations, and requesting a short continuance of the status conference since the jury verdict in the criminal case will have an impact on this proceeding. Therefore, the court on its own motion grants the parties' continuance request and continues the status conference to 4/30/24 at 1:30 p.m. Counsel for plaintiffs to notify counsel for defendant of the continuance of the status conference. No appearances are required on 3/26/24.

Prior tentative ruling as of 1/26/24. Off calendar. The court has reviewed the parties' joint status report filed on 1/25/24, stating that the trial in defendant's state court criminal case has commenced, but is not yet concluded, and requesting a continuance to a date in March 2024 after the expected conclusion of the criminal trial as the outcome may have an impact on this matter. The court on its own motion continues the status conference on 1/30/24 to 3/26/24 at 1:30 p.m. Counsel for plaintiffs to notify counsel for defendant of the continuance. No appearances are required on 1/30/24.

Prior Revised and updated tentative ruling as of 11/13/23. Off calendar. Having reviewed the joint status report on 11/11/23 reporting that defendant's

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

CONT... Anthony Roy Martinez

Chapter 7

criminal trial is now set for 12/4/23 and the outcome may affect this matter, the court on its own motion continues the status conference to 1/30/24 at 1:30 p.m. and will issue a written order. No appearances are required on 11/14/23.

Prior tentative ruling as of 10/15/23. Off calendar. Having read the parties' joint status update filed on 10/12/23, the court continues the status conference to 11/14/23 at 1:30 p.m. in light of the continuance of the criminal trial setting hearing to 10/25/23. The court will enter a written order for continuance. No appearances are required on 10/17/23.

Prior tentative ruling as of 8/9/23. Appearances are required on 8/15/23, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 5/1/23. Off calendar. Having reviewed the joint status report filed on 5/1/23, the court on its own motion continues the status conference to 8/15/23 at 1:30 p.m. No appearances are required on 5/2/23.

Prior tentative ruling as of 3/27/23. The court has reviewed the joint status report filed on 3/27/23, requesting that the status conference be continued after the preliminary hearing in defendant's state court criminal case scheduled for January 17, 2023, presumably meaning April 20, 2023 which was the date they stated was the new continued date of hth preliminary hearing. Otherwise, no tentative ruling on the merits. Appearances are required on 3/28/23, but counsel and self-represented parties must appear in person or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Anthony Roy Martinez

Represented By
Christian T Kim

Defendant(s):

Anthony Roy Martinez

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

CONT... Anthony Roy Martinez

Chapter 7

Plaintiff(s):

Lance Carter

Represented By
Dana M Douglas

Jean Holmes

Represented By
Dana M Douglas

Carriage Estates LLC

Represented By
Dana M Douglas

Adamantine Investments LLC

Represented By
Dana M Douglas

Sterling Holdings LLC

Represented By
Dana M Douglas

Lance Carter IRA 419990

Pro Se

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

2:15-25283 Arturo Gonzalez

Chapter 7

Adv#: 2:24-01010 Gonzalez, JR. v. Avery as Chapter 7 Trustee et al

#8.00 Status Conference re: Complaint by Arturo Gonzalez, JR. against Wesley H Avery as Chapter 7 Trustee . (\$350.00 Fee Not Required). Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)) ,(72 (Injunctive relief - other)) (SCX) Additional attachment(s) added on 1/18/2024 (JA).

Docket 1

***** VACATED *** REASON: Order for Recusal ent. 2/5/24 - Off Calendar**

Tentative Ruling:

Off calendar. Adversary proceeding transferred to Judge Zurzolo. No appearances are required before Judge Kwan.

Party Information

Debtor(s):

Arturo Gonzalez	Pro Se
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Defendant(s):

Wesley H Avery as Chapter 7	Pro Se
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The Estate of Brett Curlee	Pro Se
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Trustee's CPA John Menchaca	Pro Se
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Discover	Pro Se
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Unify Federal Credit Union	Pro Se
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Does 1-20	Pro Se
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Plaintiff(s):

Arturo Gonzalez, JR.	Pro Se
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Trustee(s):

Wesley H Avery (TR)	Represented By Dennis E McGoldrick
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**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

2:17-15033 Shapphire Resources, LLC

Chapter 11

#9.00 Status conference re: Post confirmation of plan

fr. 7/14/22, 8/30/22, 9/20/22, 11/8/22, 1/24/23, 4/25/23,
6/27/23, 9/19/23, 1/30/24

Docket 1

Tentative Ruling:

Updated tentative ruling as of 3/22/24. No tentative ruling on the merits. Appearances are required on 3/26/24, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Shapphire Resources, LLC

Represented By
Raymond H. Aver

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

2:18-11525 Shahriar Joseph Zargar and Shabnam Mesachi

Chapter 7

#10.00 Application to Employ Coldwell Banker as
Real Estate Broker for the Estate's Real Property
(2656 S. Beverly Drive, Los Angeles, CA 90034)

Docket 503

Tentative Ruling:

Updated tentative ruling as of 3/22/24. The trustee's employment of a real estate broker for sale of estate real property requires a business justification as for a sale itself. The court is inclined to defer ruling on the motion because at this time the evidence that a sale would result in realization of equity to pay creditors is weak as shown by the evidence in opposition to debtors' motion to compel abandonment. The court is reluctant to approve the application which may trigger a marketing and sales process if it is not clear that a sale would realize any meaningful value for creditors. The court is not persuaded that just because a sale free and clear of lien may be held if there is a bona fide dispute over a lien under 11 U.S.C. 363(f) is enough to demonstrate business justification for a sale in a showing that there would be value realized for creditors. The court is inclined to continue the hearing for about 90 days to see how long it will take to determine the Dye v. Antebi adversary proceeding to avoid the lien that may result in a substantial realization of value for the estate through a sale. Appearances are required on 3/26/24, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Shahriar Joseph Zargar

Represented By
Raymond H. Aver

Joint Debtor(s):

Shabnam Mesachi

Represented By
Raymond H. Aver

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

CONT... Shahriar Joseph Zargar and Shabnam Mesachi

Chapter 7

Movant(s):

Carolyn A Dye (TR)

Represented By
Rosendo Gonzalez

Trustee(s):

Carolyn A Dye (TR)

Represented By
Rosendo Gonzalez

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

2:18-11525 Shahriar Joseph Zargar

Chapter 11

Adv#: 2:18-01144 Shadsirat v. Zargar et al

#11.00 Status conference re: Complaint
(1) objecting to dischargeability of debt pursuant to 11 U.S.C. §523(a)(2);
(2) objecting to dischargeability of debt pursuant to 11 U.S.C. §523(a)(4);
(3) objecting to dischargeability of debt pursuant to 11 U.S.C. §523(a)(6); and,
(4) for declaratory relief requesting adjudication of pending state court lawsuits

fr. 6/14/22, 9/13/22, 11/29/22, 3/14/23, 3/28/23, 4/11/23, 5/30/23, 8/22/23,
10/17/23, 10/24/23, 1/23/24, 1/30/24

Docket 1

***** VACATED *** REASON: Per ord. ent 2/9/24**

Tentative Ruling:

Off calendar. Summary judgment entered. No appearances are necessary.

Party Information

Debtor(s):

Shahriar Joseph Zargar

Represented By
Ashley M McDow

Defendant(s):

Shahriar Joseph Zargar

Pro Se

Shabnam Mesachi

Pro Se

Joint Debtor(s):

Shabnam Mesachi

Represented By
Ashley M McDow

Plaintiff(s):

Behrouz Shadsirat

Represented By
Rosendo Gonzalez

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

2:18-11525 Shahriar Joseph Zargar

Chapter 7

Adv#: 2:24-01021 Dye v. Antebi

#12.00 Status Conference re Complaint
(1) To avoid fraudulent transfer
pursuant to 11 U.S.C. 544 & 548;
(2) To recover avoided transfers
pursuant to 11 U.S.C. 550
(3) Automatic preservation of
avoided transfer pursuant to
11 U.S.C. 551

Docket 1

***** VACATED *** REASON: Order to continue to 4/30/24 @1:30 p.m.
ent. 3/18/24**

Tentative Ruling:

Off calendar. Continued to 4/30/24 at 1:30 p.m. No appearances are
required on 3/26/24.

Party Information

Debtor(s):

Shahriar Joseph Zargar

Represented By
Raymond H. Aver

Defendant(s):

Alon Antebi

Pro Se

Joint Debtor(s):

Shabnam Mesachi

Represented By
Raymond H. Aver

Plaintiff(s):

Carolyn A Dye

Represented By
Rosendo Gonzalez

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

CONT... Shahriar Joseph Zargar

Chapter 7

Trustee(s):

Carolyn A Dye (TR)

Represented By
Rosendo Gonzalez

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

2:20-21080 Orchid Child Productions, LLC

Chapter 7

Adv#: 2:21-01212 WHOSE DOG R U PRODUCTIONS, INC. v. Wolkowitz

#13.00 Status Conference re: Counterclaim

Docket 0

***** VACATED *** REASON: Per order ent. 3/6/24**

Tentative Ruling:

The status conference has been vacated pending outcome of plaintiff's motion to dismiss, and the status conference will be reset if necessary at the hearing on plaintiff's motion to dismiss. Appearances are required on 3/26/24 regarding scheduling of a further status conference, if necessary, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Orchid Child Productions, LLC

Represented By
Sanaz Sarah Bereliani
David B Lally

Defendant(s):

Edward M. Wolkowitz

Represented By
Carmela Pagay
Gary E Klausner
Inge De Bruyn

Plaintiff(s):

WHOSE DOG R U

Represented By
Leslie A Cohen
Michael J Plonsker

Trustee(s):

Edward M Wolkowitz (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

CONT... Orchid Child Productions, LLC

Chapter 7

Gary E Klausner
Carmela Pagay
Inge De Bruyn

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

2:20-21080 Orchid Child Productions, LLC

Chapter 7

Adv#: 2:21-01212 WHOSE DOG R U PRODUCTIONS, INC. v. Wolkowitz

#14.00 Motion to Compel Arbitration and
Motion Stay Proceedings

Docket 104

Tentative Ruling:

Updated tentative ruling as of 3/25/24.

Federal Arbitration Act – General Requirements

"The Federal Arbitration Act (FAA) requires courts to compel arbitration of claims covered by an enforceable arbitration agreement." Oberstein v. Live Nation Entertainment, Inc., 60 F.4th 505, 509-510 (9th Cir. 2023), citing 9 U.S.C. § 3. "The FAA limits the courts' role to 'determining whether a valid arbitration agreement exists and, if so, whether the agreement encompasses the dispute at issue.'" Id., citing and quoting, Lifescan, Inc. v. Premier Diabetic Servs., Inc., 363 F.3d 1010, 1012 (9th Cir. 2004). "In determining whether the parties have agreed to arbitrate a particular dispute, federal courts apply state-law principles of contract formation." Id. citing and quoting, Berman v. Freedom Fin. Network, LLC, 30 F.4th 849, 855 (9th Cir. 2022) (citing First Options of Chi., Inc. v. Kaplan, 514 U.S. 938, 944, 115 S.Ct. 1920, 131 L.Ed.2d 985 (1995)). "Upon being satisfied of the existence of a valid arbitration agreement, the court must order the parties to proceed to arbitration in accordance with the terms of the agreement." Id. citing, 9 U.S.C. § 4.

Federal Arbitration Act – Applicability

Section 2 of the FAA provides that:

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

CONT... Orchid Child Productions, LLC

Chapter 7

arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract or as otherwise provided in chapter 4.

9 U.S.C.A. § 2. "The FAA applies to any contract affecting interstate commerce." *Bernsley v. Barclay Bank Delaware*, 657 F.Supp.3d 1327, 1336 (C.D. Cal. 2023) (internal quotation marks omitted), citing and quoting, *Yahoo! Inc. v. Iversen*, 836 F.Supp.2d 1007, 1009 (N.D. Cal. 2011); see *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 119, 121 S.Ct. 1302, 149 L.Ed.2d 234 (2001). "The 'interstate commerce' provision has been interpreted broadly, embracing any agreement that in its operation directly or indirectly affects commerce between states in any fashion." *Id.* (internal quotation marks omitted), citing and quoting, *Krause v. Barclays Bank Delaware*, No. 2:13-CV-01734-MCE-AC, 2013 WL 6145261, at *2 (E.D. Cal. Nov. 21, 2013).

It appears that the FAA is applicable because the contract evidences a transaction involving interstate commerce for the making and distribution of the Franco documentary in interstate commerce.

Federal Arbitration Act - Legal Standard for a Motion to Compel Arbitration

"Congress enacted the Federal Arbitration Act ("FAA") 'to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible.'" *Bernsley v. Barclay Bank Delaware*, 657 F.Supp.3d at 1333, citing and quoting, *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 22–25, 103 S.Ct. 927, 74 L.Ed.2d 765 (1983). "The FAA reflects a 'national policy favoring arbitration,'" *id.*, citing and quoting, *Preston v. Ferrer*, 552 U.S. 346, 349, 128 S.Ct. 978, 169 L.Ed.2d 917 (2008) (citation omitted), and the principal purpose of the FAA is 'to ensur[e] that private arbitration agreements are enforced according to their terms,'" *id.*, citing and quoting, *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 344, 131 S.Ct. 1740, 179 L.Ed.2d 742 (2011) (citation omitted)).

"The FAA provides that contractual arbitration agreements 'shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.'" *Id.*, citing and quoting, 9 U.S.C. § 2. "Because the FAA mandates that 'district courts shall direct the parties to

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

CONT... Orchid Child Productions, LLC

Chapter 7

proceed to arbitration on issues as to which an arbitration agreement has been signed[,] the FAA limits courts' involvement to 'determining (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue.' " Id. (internal quotation marks omitted), citing and quoting, *Cox v. Ocean View Hotel Corp.*, 533 F.3d 1114, 1119 (9th Cir. 2008) (citation omitted)) (emphasis in original). "If these two requirements are met, courts generally must compel arbitration." Id., citing, *Farrow v. Fujitsu Am., Inc.*, 37 F. Supp. 3d 1115, 1119 (N.D. Cal. 2014). "However, arbitration clauses 'may be invalidated by generally applicable contract defenses, such as fraud, duress, or unconscionability.'" Id., citing and quoting, *Rent-A-Ctr., West, Inc. v. Jackson*, 561 U.S. 63, 68, 130 S.Ct. 2772, 177 L.Ed.2d 403 (2010) (citation omitted). "While the Court may not review the merits of the underlying case in deciding a motion to compel arbitration, it may consider the pleadings, documents of uncontested validity, and affidavits submitted by either party." Id., citing and quoting, *Weber v. Amazon.com, Inc.*, No. CV 17-8868-GW(EX), 2018 WL 6016975, at *5 (C.D. Cal. June 4, 2018) (cleaned up and citations omitted).

"The party seeking to enforce an arbitration agreement bears the burden of showing that the agreement exists and that its terms bind the other party." Id. (internal quotation marks omitted), citing and quoting, *Gelow v. Cent. Pac. Mortg. Corp.*, 560 F.Supp.2d 972, 978 (E.D. Cal. 2008); see also *Sanford v. MemberWorks, Inc.*, 483 F.3d 956, 963 n. 9 (9th Cir. 2007) ("The district court, when considering a motion to compel arbitration which is opposed on the ground that no agreement to arbitrate had been made between the parties, should give to the opposing party the benefit of all reasonable doubts and inferences that may arise.") (internal quotation marks omitted). "Once the moving party has met this initial burden, the party opposing arbitration bears the burden of establishing that the arbitration agreement does not apply." Id. citing, *Westinghouse Hanford Co. v. Hanford Atomic Metal Trades Council*, 940 F.2d 513, 518 (9th Cir. 1991). "[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability." Id., citing and quoting, *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 24–25, 103 S.Ct. at 941.

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

CONT... Orchid Child Productions, LLC

Chapter 7

It appears that Whose Dog as the party seeking to enforce an arbitration agreement has met its initial burden of showing that an arbitration agreement exists and its terms bind the other party, the trustee, as Debtor's successor in interest. That is, it appears that a valid agreement to arbitrate exists, and the agreement encompasses the disputes at issue, i.e., the contractual and quasi-contractual claims asserted by the trustee in his counterclaims fall within the terms of the arbitration agreement, stating: "Any action, controversy, claim, dispute, suit or proceeding arising out of or related to the subject matter of, or transactions contemplated by, this Agreement ('Action') is subject to binding arbitration in English in Los Angeles, California, pursuant to the Commercial Arbitration Rules of the American Arbitration Association ('AAA') as said rules may be amended from time to time with full rights of discovery as permitted in accordance with California law.") (Franco is not a party to the contractual agreement and therefore lacks standing to compel arbitration for an agreement of which he is not a party.)

It appears that the trustee as the party opposing arbitration has not shown that the arbitration agreement does not apply or otherwise should not be compelled as to noncore state law claims. The trustee's defense is that his counterclaims are excepted from arbitration based on the rulings of the court and the Bankruptcy Appellate Panel that the arbitration of the claims would conflict with the underlying purposes of the Bankruptcy Code. The trustee's contractual and quasi-contractual claims (3rd through 7th counterclaims) were not before the court and BAP on the stay relief motion and are noncore state law claims that do not present a conflict sufficient to override the presumption in favor of arbitration.

Bankruptcy Court discretion to deny a motion to compel arbitration

As stated in *In re Thorpe Insulation Co.*, 671 F.3d 1011, 1021 (9th Cir. 2012), in a core proceeding, "a bankruptcy court has discretion to decline to enforce an otherwise applicable arbitration provision only if arbitration would conflict with the underlying purposes of the Bankruptcy Code." However, "non-core proceedings 'are unlikely to present a conflict sufficient to override by implication the presumption in favor of arbitration, where as core proceedings 'implicate more pressing bankruptcy concerns.'" *Id.*

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

CONT... Orchid Child Productions, LLC

Chapter 7

The trustee's first, second, eighth and ninth counterclaims for declaratory relief regarding ownership of the film footage and related copyright as property of the estate, right to sell such property of the estate, and objecting to claims of Whose Dog and Franco are arbitable but core claims that the bankruptcy court has discretion to decline to enforce arbitration as it would conflict with the underlying purposes of the Bankruptcy Code. This is consistent with the rulings of the court and the BAP to deny stay relief.

The trustee's third through seventh counterclaims based on contractual and quasi-contractual claims are arbitable but noncore claims that the bankruptcy court lacks discretion to decline to enforce arbitration. These claims are different from the ones considered by the court and the BAP in their rulings on the stay relief motion.

Stay pending appeal – Legal Standard

The four factors a court considers in exercising its discretion to grant stay pending appeal are: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009) (citation omitted).

The court is inclined to grant stay pending appeal under the circumstances because Whose Dog and Franco have more than a negligible chance of succeeding on the merits of the partial denial of their motion to compel arbitration (25 to 49% probability of success), they may suffer irreparable injury in losing their contractual right to arbitration, the burden on the other party if stay pending appeal is grant means a short delay of administration of the estate as the issue of whether the court may decline to enforce arbitration is already on appeal to the Ninth Circuit on the stay relief matter and the fourth factor of public interest is neutral as the dispute is between private parties.

Conclusion:

Grant Whose Dog's motion to compel arbitration as to noncore claims

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

CONT... **Orchid Child Productions, LLC**
(trustee's 3rd through 7th counterclaims).

Chapter 7

Deny motion to compel arbitration as to core claims (trustee's 1st, 2nd, 8th and 9th counterclaims).

Grant Whose Dog's motion for stay pending appeal.

Decline trustee's request for the court to impose sanctions on its own motion under Local Bankruptcy Rule 9013-1(l) as the subject matters of this motion and the prior stay relief motion are different.

Appearances are required on 3/26/24, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Orchid Child Productions, LLC

Represented By
Sanaz Sarah Bereliani
David B Lally

Defendant(s):

Edward M. Wolkowitz

Represented By
Carmela Pagay
Gary E Klausner
Inge De Bruyn

Movant(s):

WHOSE DOG R U

Represented By
Leslie A Cohen
Michael J Plonsker

WHOSE DOG R U

Pro Se

Plaintiff(s):

WHOSE DOG R U

Represented By
Leslie A Cohen

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

CONT... Orchid Child Productions, LLC

Chapter 7

Michael J Plonsker

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Gary E Klausner
Carmela Pagay
Inge De Bruyn

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

2:20-21080 Orchid Child Productions, LLC

Chapter 7

Adv#: 2:21-01212 WHOSE DOG R U PRODUCTIONS, INC. v. Wolkowitz

#15.00 Motion to Dismiss Adversary Proceeding
pursuant to FRCP 12(b)(6)

Docket 105

Tentative Ruling:

Updated tentative ruling as of 3/25/24.

Regarding the motion to dismiss, the court's tentative ruling is that the argument of Whose Dog and Franco that California procedural law does not apply here because of Federal Rule of Civil Procedure 15 lacks merit because the plain language of Rule 15(c)(1)(A) recognizes that "[a]n amendment to a pleading relates back to the date of the original pleading when: (A) the law that provides the applicable statute of limitations allows relation back" That is, since California law provides the applicable statute of limitations, applicable California law would allow relation back as set forth in the case law that recognizes that the filing of the original complaint, such as the original complaint filed by Whose Dog in this adversary proceeding, tolls the statute of limitations as to any cross-complaint or counterclaim against them arising out of the same "contract, transaction, matter, happening or accident" upon which action was brought by Whose Dog. *Trindade v. Superior Court*, 29 Cal.App.3d 857, 859-860 (1973) and *Paredes v. Credit Consulting Services, Inc.*, 82 Cal.App.5th 410, 428 (2022), *cited in*, Banke and Segal, *Rutter Group California Practice Guide: Civil Procedure Before Trial – Statutes of Limitations*, ¶8:240 (online edition February 2024 update); *see also*, *Blaser v. State Teachers' Retirement System*, 37 Cal.App.5th 349, 377 (2019), *citing inter alia*, *Jones v. Mortimer*, 20 Cal.2d 627, 633 (1946). Thus, as to Whose Dog, since it filed the original complaint in this matter, the statute of limitations as to any counterclaims against it was tolled when it filed its complaint in 2021. Presumably, the date on which the statute of limitations began to run was on May 31, 2018, the date of the alleged breach of contract asserted by the Debtor, and any four-year statute of limitations was tolled when the adversary complaint was filed in 2021. However, this rationale does not apply to Franco, who is a new party as he was not the party which filed the original

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

CONT... Orchid Child Productions, LLC

Chapter 7

complaint in this adversary proceeding, which was *Whose Dog. Boyer v. Jensen*, 129 Cal.App.4th 62, 70 (2005), *cited in*, Banke and Segal, *Rutter Group California Practice Guide: Civil Procedure Before Trial – Statutes of Limitations*, ¶8:255.

As to both *Whose Dog* and *Franco*, under Rule 15(c)(1)(A), California law of equitable tolling may apply to toll the statute of limitations on the trustee's counterclaims against them. *See, Law Finance Group, LLC v. Key*, 14 Cal.5th 932, 952 (2023); *Saint Francis Memorial Hospital v. State Department of Public Health*, 9 Cal.5th 710, 720 (2020) and *Addison v. State of California*, 21 Cal.3d 313, 320-321 (1978), *cited in*, Banke and Segal, *Rutter Group California Practice Guide: Civil Procedure Before Trial – Statutes of Limitations*, ¶¶6:6-6:7.1; *see also, McDonald v. Antelope Valley Community College District*, 45 Cal.4th 88, 99 (2008). That is, equitable tolling may apply to suspend the statute of limitations where a plaintiff has several alternative remedies, and makes a good faith, reasonable decision to pursue one remedy, and it later becomes necessary to pursue the other. *Elkins v. Derby*, 12 Cal.3d 410, 412-413 (1974); and *Saint Francis Memorial Hospital v. State Department of Public Health*, 9 Cal.5th at 725, *cited in*, Banke and Segal, *Rutter Group California Practice Guide: Civil Procedure Before Trial – Statutes of Limitations*, ¶¶6:26. Such equitable tolling may apply to arbitration proceedings. Banke and Segal, *Rutter Group California Practice Guide: Civil Procedure Before Trial – Statutes of Limitations*, ¶¶6:60-6:60.1, *citing inter alia, Rodriguez v. Southern California District Council of Laborers*, 160 Cal.App.3d 956, 961 (1984) and *Marcario v. County of Orange*, 155 Cal.App.4th 397, 408 (2007). The trustee apparently asserts that the equitable tolling applies to the entire time when the disputes between Debtor and *Whose Dog* and *Franco* were in arbitration as they were all parties to the arbitration. However, the court believes that there are factual issues as to whether equitable tolling saves the trustee's counterclaims for any applicable four year statute of limitations under California law as equitable tolling must apply only where a plaintiff, or the trustee and his predecessor, Debtor, pursue its alternative remedy of arbitration. Apparently, any cause of action from breach of contract accrued to Debtor in May 2018, and there was no equitable tolling until *Whose Dog* filed its arbitration demand on May 1, 2020. On or about May 20, 2020, Debtor filed its answering statement and

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

CONT... Orchid Child Productions, LLC

Chapter 7

counterclaims in the arbitration proceeding, and on or about November 13, 2020, Franco filed his answer to Debtor's counterclaims in arbitration and his own counterclaims in arbitration. These circumstances indicate that Debtor was reasonably pursue its alternative remedy in arbitration during this time period, but on December 21, 2020, Debtor filed its bankruptcy petition, commencing this Chapter 7 bankruptcy case, which stayed the arbitration proceedings. On October 12, 2021, Whose Dog filed its complaint commencing this adversary proceeding for declaratory and injunctive relief as to ownership of the film footage, and on November 11, 2021, the trustee filed its answer without asserting any counterclaims. There are factual issues as the reasonableness of the pursuit by Debtor and the trustee as its successor in interest in the alternative remedy of arbitration as it appears that Debtor filed the bankruptcy to stay the arbitration and has opposed stay relief sought by Whose Dog to allow the arbitration to proceed, and when Whose Dog filed its adversary complaint for declaratory and injunctive relief, there was no impediment to the trustee to file counterclaims which he now seeks to bring as the arbitration was stayed from the bankruptcy. *See McDonald v. Antelope Valley Community College District*, 45 Cal.4th at 102. The issue is whether the trustee reasonably and in good faith pursued the alternative remedy as opposed to the counterclaims, and the court is not so sure that he did, so it appears that not all the time claimed should be equitably tolled, but this appears to be a factual issue as to whether the counterclaims are timely. The lack of equitable tolling as a practical matter would only affect the noncore state law counterclaims against Franco as it appears that the counterclaims as to Whose Dog are timely based on its filing of the original complaint within the statutes of limitations.

The trustee's first and second causes of action for declaratory relief that the estate owns the film footage and related copyright and may sell such property and his are federal declaratory relief claims and are not California state declaratory relief claims subject to some state statute of limitations. Accordingly, the motion to dismiss these claims under a four year state statute of limitations should be denied. Regarding the motion to dismiss for failure to state a claim, the trustee has stated plausible claims for declaratory relief that the estate owns the film footage and related copyright and may sell such property of the estate as there has been no judicial declaration that the estate

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

CONT... Orchid Child Productions, LLC

Chapter 7

owns and may sell such property, though as Whose Dog and Franco point out, the trustee could seek such relief by motion. That the trustee is proceeding by counterclaim rather than by motion does not necessarily preclude his proceeding by counterclaim.

Regarding the argument of Whose Dog and Franco that the trustee's first counterclaim for declaratory relief as to ownership of the film footage and related copyright should be dismissed as moot because Whose Dog has conceded ownership, it seems to the court that the trustee can seek declaratory relief since there has been no judicial declaration of its ownership, and if Whose Dog has conceded ownership, then the court inquires of Whose Dog and Franco whether it can proceed to enter judgment in favor of the trustee on that counterclaim.

Regarding the trustee's third counterclaim for unjust enrichment, the trustee has agreed in his opposition to the motion to dismiss to dismiss this counterclaim without prejudice, and therefore, the motion to dismiss should be granted as to this counterclaim, which should be dismissed without prejudice.

Regarding the trustee's fourth and fifth counterclaims for anticipatory breach of contract, sixth counterclaim for promissory estoppel and seventh counterclaim for breach of the covenant of good faith and fair dealing, the court agrees with the trustee that Federal Rule of Civil Procedure 8(d)(3) permits him to allege claims asserting inconsistent theories of relief and would deny the motion to dismiss on this ground.

Conclusion: Deny motion to dismiss, except as to the third counterclaim which the trustee agrees to dismiss without prejudice.

Appearances are required on 3/26/24, but counsel and self-represented parties must appear either in person in the courtroom or remotely through

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

1:30 PM

CONT... Orchid Child Productions, LLC

Chapter 7

Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Orchid Child Productions, LLC

Represented By
Sanaz Sarah Bereliani
David B Lally

Defendant(s):

Edward M. Wolkowitz

Represented By
Carmela Pagay
Gary E Klausner
Inge De Bruyn
Zachary Page

Movant(s):

WHOSE DOG R U

Represented By
Leslie A Cohen
Michael J Plonsker

WHOSE DOG R U

Pro Se

Plaintiff(s):

WHOSE DOG R U

Represented By
Leslie A Cohen
Michael J Plonsker

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Gary E Klausner
Carmela Pagay
Inge De Bruyn

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

2:00 PM

2:17-23722 Kody Branch of California, Inc.

Chapter 7

Adv#: 2:19-01466 Avery et al v. Gia Phu Fashion Garment Co.

#1.00 Pre Trial Conference re: Complaint for avoidance, recovery,
and preservation of fraudulent and unauthorized postpetition transfers

fr. 10/6/21, 12/8/21, 1/18/22, 11/15/22, 1/17/23, 3/21/23, 5/23/23,
6/27/23, 8/15/23, 9/12/23, 11/7/23, 12/12/23, 1/9/24, 1/30/24, 2/13/24

Docket 1

***** VACATED *** REASON: Order dismissing case ent. 2/21/24**

Tentative Ruling:

Off calendar. Adversary proceeding dismissed by stipulation and order. No
appearances are necessary.

Party Information

Debtor(s):

Kody Branch of California, Inc.

Represented By
John-Patrick M Fritz

Defendant(s):

Gia Phu Fashion Garment Co.

Represented By
Stella A Havkin

Plaintiff(s):

Wesley H. Avery

Represented By
David Wood
D Edward Hays

Second Generation, Inc.

Represented By
Ryan Coy

Trustee(s):

Wesley H Avery (TR)

Represented By
D Edward Hays
Richard A Marshack

**United States Bankruptcy Court
Central District of California
Los Angeles
Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, March 26, 2024

Hearing Room 1675

2:00 PM

CONT... Kody Branch of California, Inc.

Chapter 7

Kristofer R McDonald
Jeffrey L Sumpter
David Wood