

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

Thursday, January 25, 2024

Hearing Room

5B

10:00 AM

8:00-000000

Chapter

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Docket 0

Tentative Ruling:

- NONE LISTED -

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8:19-10526 LF Runoff 2, LLC

Chapter 7

Adv#: 8:23-01031 Marshack v. Plutos Sama Holdings, Inc.

#1.00 STATUS CONFERENCE RE: Chapter 7 Trustee's Complaint for: 1. Avoidance of Pre-Petition Fraudulent Conveyance Pursuant to 11 USC Section 544 and California Civil Code Sections 3439, Et Seq; 2. Avoidance of Pre-Petition Fraudulent Conveyance Pursuant to 11 USC Section 548; and 3. Recovery of Avoided Transfer Pursuant to 11 USC Section 550
(cont'd from 7-06-23 per another summons issued on 5-24-23)
(cont'd from 8-10-23 per another summons issued on 7-25-23)
(cont'd from 12-14-23)

Docket 1

Tentative Ruling:

Tentative for January 25, 2024
See #4. Default judgment? Appearance required.

Tentative for December 14, 2023
Continue to January 25, 2024 at 10: 00 a.m. to allow prove up after default.
Appearance is optional.

Tentative for October 12, 2023
In view of default entered August 30, 2023, when can the court expect prove up affidavits? Continue about 60 days as a holding date. Appearance required.

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| Party Information |
|--------------------------|

Debtor(s):

LF Runoff 2, LLC

Represented By
Marc C Forsythe

Defendant(s):

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CONT... LF Runoff 2, LLC
Plutos Sama Holdings, Inc.

Pro Se

Chapter 7

Plaintiff(s):

Richard A. Marshack

Represented By
Thomas J Polis

Trustee(s):

Richard A Marshack (TR)

Represented By
David Wood
D Edward Hays
Thomas J Polis
Laila Masud
Royce Zur

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8:19-10814 M3Live Bar & Grill, Inc.

Chapter 7

Adv#: 8:23-01094 The Grand Theater, Inc. v. Alimadadian et al

**#2.00 STATUS CONFERENCE RE: Complaint For: 1. Declaratory Relief Bankruptcy
P. 7001(9)
(cont'd from 11-30-23 per another summons issued re: counterclaims and
crossclaims on 11-09-23)**

Docket 1

Tentative Ruling:

Tentative for January 25, 2024

It is unclear to the court the status of this case. It appears the court has abstained by Order entered October 30, 2023. But perhaps that order did not specify adequately regarding crossclaims. Also, mention is made of a motion to reconsider abstention, or similar. Until all of this is clarified it would be premature to set dates. Please be prepared to explain where we are going and why any of this should be adjudicated in bankruptcy court. *Appearance required.*

| |
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| Party Information |
|--------------------------|

Debtor(s):

M3Live Bar & Grill, Inc.

Represented By
Robert P Goe
Ryan S Riddles
Carl J Pentis

Defendant(s):

Cyrus Alimadadian

Pro Se

IRA Resources, Inc.

Pro Se

Plaintiff(s):

The Grand Theater, Inc.

Represented By
Thomas S Gruenbeck

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CONT... M3Live Bar & Grill, Inc.

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Todd C. Ringstad
Karen S. Naylor

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8:24-10111 Victory Professional Products, Inc.

Chapter 11

#2.10 Debtor's Emergency Motion for Order Establishing Procedures for Providing Adequate Assurance of Payment to Utility Companies for Post-Petition Services and Prohibiting Alteration, Refusal or Discontinuance of Utility Services.

Docket 20

Tentative Ruling:

Tentative for January 25, 2024

Response, if any, due at hearing. Absent a timely response the proposed adequate protection for the utilities will be approved. *Appearance suggested.*

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| Party Information |
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Debtor(s):

Victory Professional Products, Inc.

Represented By

Misty A Perry Isaacson

Trustee(s):

Arturo Cisneros (TR)

Pro Se

Courtesy NEF

Pro Se

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8:24-10111 Victory Professional Products, Inc.

Chapter 11

**#2.20 Debtor's Emergency Motion For Order Authorizing Debtor To Pay Pre Petition
Non Insider Employee Wages and Benefits**

Docket 22

Tentative Ruling:

Tentative for January 25, 2024
Grant. Appearance suggested.

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| Party Information |
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Debtor(s):

Victory Professional Products, Inc.

Represented By

Misty A Perry Isaacson

Trustee(s):

Arturo Cisneros (TR)

Pro Se

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8:24-10111 Victory Professional Products, Inc.

Chapter 11

#2.30 Debtor's Emergency Motion For Order To Permit Payment To Critical Vendors

Docket 23

Tentative Ruling:

Tentative for January 25, 2024

It looks like everything unpaid was placed into this category. That is an exaggeration of the "critical vendor" doctrine. But, absent opposition, the court will defer to the DIP management's judgment on the question.

Appearance suggested.

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| Party Information |
|--------------------------|

Debtor(s):

Victory Professional Products, Inc.

Represented By

Misty A Perry Isaacson

Trustee(s):

Arturo Cisneros (TR)

Pro Se

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8:22-11556 Stonebridge Ventures, LLC

Chapter 7

Adv#: 8:23-01013 A. Cisneros v. Colangelo et al

#3.00 Plaintiff's Motion For Default Judgment

Docket 62

Tentative Ruling:

Tentative for January 25, 2024

Grant. Appearance is optional.

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| Party Information |
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Debtor(s):

Stonebridge Ventures, LLC

Represented By
Summer M Shaw
Diana Torres-Brito

Defendant(s):

Joe Colangelo

Represented By
Christopher Hewitt

Monika Jensen

Represented By
Nicholas W Gebelt
Robert M. Aronson
Robert M Aronson

Plaintiff(s):

A. Cisneros

Represented By
Nathan F Smith

Trustee(s):

Arturo Cisneros (TR)

Represented By
Arturo Cisneros
Nathan F Smith
William Malcolm

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8:19-10526 LF Runoff 2, LLC

Chapter 7

Adv#: 8:23-01031 Marshack v. Plutos Sama Holdings, Inc.

#4.00 Plaintiff's Motion For Default Judgment

Docket 35

Tentative Ruling:

Tentative for January 25, 2024

Grant as unopposed. A more detailed form of judgment with findings as appropriate may be submitted. *Appearance is optional.*

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| Party Information |
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Debtor(s):

LF Runoff 2, LLC

Represented By
Marc C Forsythe

Defendant(s):

Plutos Sama Holdings, Inc.

Pro Se

Plaintiff(s):

Richard A. Marshack

Represented By
Thomas J Polis

Trustee(s):

Richard A Marshack (TR)

Represented By
David Wood
D Edward Hays
Thomas J Polis
Laila Masud
Royce Zur
Lauren N Gans

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8:23-10805 Babak Kazemi Shirazi

Chapter 7

Adv#: 8:23-01109 Jafari v. Kazemi Shirazi

#5.00 Motion of Purported Defendant Babak Kazemi Shirazi to Dismiss Adversary Proceeding and Complaint for Insufficient Process and/or Insufficient Service of Process, Pursuant to **FRCP's 12(b)(4), and 12(b)(5) [As Incorporated by FRBP 7012(b)]**

Docket 7

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF TAKING
MOTION OFF CALENDAR FILED 1-18-24 - SEE DOCUMENT #18**

Tentative Ruling:

- NONE LISTED -

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| Party Information |
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Debtor(s):

Babak Kazemi Shirazi

Represented By
Charles Shamash
Joseph E. Caceres

Defendant(s):

Babak Kazemi Shirazi

Pro Se

Plaintiff(s):

Sayed Jafar Jafari

Represented By
Nicholas S Nassif

Trustee(s):

Weneta M.A. Kosmala (TR)

Pro Se

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8:23-10028 Young Yol Byeon

Chapter 13

Adv#: 8:23-01113 OH v. Bank of New York Mellon Corporation et al

#6.00 Defendant MTC Financial Inc. dba Trustee's Corp's Motion to Dismiss
Complaint Of Myong Suk Oh **[FRCP 12(b)(6); Fed. R. Bankr. P. 7012(b)]**

Docket 23

Tentative Ruling:

Tentative for January 25, 2024

This is Defendant MTC Financial Inc. dba Trustee Corps's ("Defendant") motion to dismiss the complaint of Plaintiff Myong Suk Oh ("Plaintiff") pursuant to FRCP 12(b)(6) on the grounds that Plaintiff's complaint fails to state any claim against Defendant. Plaintiff filed a consolidated opposition to this motion to dismiss and others filed by other defendants.

A. Facts

Plaintiff borrowed \$1,000,000 to purchase the real property located at 22 Lily Pool, Irvine, CA 92620 ("Property"), secured by a deed of trust recorded on January 21, 2005. The deed of trust named Mortgage Electronic Registration Systems, Inc. ("MERS") as beneficiary and nominee for the lender, and CTC Real Estate Services ("CTC") as trustee. The beneficial interest was allegedly assigned from MERS to The Bank of New York Mellon fka The Bank of New York ("BONY") as trustee for CWMBS 2005-3 trust, recorded on February 8, 2012. On May 2, 2016, a Substitution of Trustee was allegedly recorded, substituting Defendant as trustee under the deed of trust. On August 15, 2019, a second notice of default was recorded against the Property and several notices of trustee's sales were recorded thereafter. However, no foreclosure sale has taken place.

Plaintiff filed a first lawsuit in 2016 contending that her mortgage loan documents were fraudulently recorded and forged. Her 2016 action resulted in final judgment of dismissal, which was affirmed on appeal. However, Plaintiff filed another California state court action in 2019, based on the same allegations, which was dismissed with prejudice on the grounds that the

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claims were barred by *res judicata* and collateral estoppel. Plaintiff filed a third lawsuit in federal court, which also resulted in a judgment of dismissal on grounds of *res judicata*. Plaintiff's son -in-law Jaw Sun Chung, filed a lawsuit in 2022 seeking to relitigate the same claims again, but the court ultimately dismissed the lawsuit on the grounds that Chung's claims were barred by *res judicata* and collateral estoppel, without any opportunity to amend.

Plaintiff now brings another lawsuit against the same defendants in this bankruptcy court. Defendant contends that the claims are clearly barred by *res judicata* and collateral estoppel, and that any allegations against Defendant regarding the recordation of foreclosure-related notices are barred by the applicable trustee privilege. Moreover, Plaintiff's allegations are apparently insufficient to allege any violation by Defendant. Plaintiff requests that the complaint is dismissed with prejudice.

B. Legal Standards

When considering a motion under FRCP 12(b)(6), a court takes all the allegations of material fact as true and construes them in the light most favorable to the nonmoving party. *Parks School of Business v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). A complaint should not be dismissed unless a plaintiff could prove no set of facts in support of his claim that would entitle him to relief. *Id.* Motions to dismiss are viewed with disfavor in the federal courts because of the basic precept that the primary objective of the law is to obtain a determination of the merits of a claim. *Rennie & Laughlin, Inc. v. Chrysler Corporation*, 242 F.2d 208, 213 (9th Cir. 1957).

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 554-556 (2007) A complaint must contain sufficient factual matter to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) *citing Twombly*. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* The plausibility standard asks for more than a sheer possibility that a defendant has acted unlawfully. *Id.* The tenet that a

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court must accept as true all factual allegations is not applicable to legal conclusions. *Id.*

C. Barred by Res Judicata/Collateral Estoppel

Federal Courts must give "full faith and credit" to judgments of state courts. 28

U.S.C. § 1738; *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 84 (1984). "Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Kremer v. Chemical Const. Corp.*, 456 U.S. 461, 466, fn. 6 (1980) (emphasis added). Federal courts follow the state's rules of preclusion in determining the preclusive effect of a state court judgment. *White v. City of Pasadena*, 671 F. 3d 918, 926 (9th Cir. 2012) (citing *Dremer, supra*, 456 U.S. at 482). "In California, '[c]laim preclusion arises if a second suit involves: (1) the same causes of action (2) between the same parties [or parties in privity with them] (3) after a final judgment on the merits in the first suit." *Furnace v. Giurbino*, 838 F.3d 1019, 1023 (9th Cir. 2016) (quoting *DKN Holdings LLC v. Faerber*, 61 Cal.4th 813, 824 (Cal. 2015)). "The prerequisite elements for applying the doctrine to either an entire cause of action or one or more issues are the same." *People v. Barragan*, 32 Cal.4th 236, 253 (Cal. 2004) (quotations omitted).

Here, the first element is met as this instant lawsuit attempts to relitigate the same claims adjudicated in the 2016 lawsuit and those filed thereafter that were already determined and barred by *res judicata* and collateral estoppel. These claims are the forging of loan documents and foreclosure notices and that defendants lack beneficial interest in the loan and deed of trust. The second element is also met as Plaintiff has already brought litigation against Defendant, or in privity with Defendant regarding these claims without success. There has been a final judgment on the merits as required by the third element because the Orange County Supreme Court entered judgment with prejudice in favor of BONY and prior servicer, Bayview on December 13, 2017 which was affirmed on appeal. Judgment was also entered in Defendant's favor against the lawsuit filed by Plaintiff's son-in-law on the grounds that the claims were barred by res judicata and claim preclusion. As all elements have been met, and Plaintiff does not provide a persuasive rebuttal to these arguments in the opposition, the court finds that

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Plaintiff's complaint is precluded, as determined in the previous court proceedings.

D. Barred by Trustee Privilege

Defendant also argues that Plaintiff's claims are barred by trustee privilege. Under California Civil Code section 2924(d), a trustee's actions in carrying out a nonjudicial foreclosure are privileged under California Civil Code section 47. Specifically, Civil Code section 2924(d) states that "[t]he mailing, publication, and delivery of notices as required by this section," and the "[p]erformance of all procedures set forth in this article" constitute privileged communications within Civil Code section 47. Cal. See Civ. Code § 2924(d); Cal. Civ. Code § 47. Therefore, under the plain language of section 2924(d), the entire foreclosure process through and including the sale, is privileged under section 47.

Civil Code section 47 designates certain actions and communications "privileged" and non-actionable. See Cal. Civ. Code § 47. Section 47 creates two types of privileges. First, it creates an absolute litigation privilege under subsection (b)(3). Cal. Civ. Code § 47(b)(3). Second, it creates a qualified privilege under subsection (c)(3) that applies to communications made without malice. Cal. Civ. Code § 47(c)(3); see *Kachlon v. Markowitz*, 168 Cal. App. 4th 316, 335–36 (Cal. App. 2d Dist. 2008).

Although not addressed by Plaintiff in the opposition, Defendant argues that determining whether absolute or qualified applies is unnecessary because Plaintiff has not demonstrated in the complaint "actual malice" on the part of Defendant. Thus, it is clear that both qualified and absolute privilege would apply, even though federal courts in California are apparently split on whether nonjudicial foreclosure trustees have an absolute or qualified privilege.

E. Failure to State a Claim

Aside from *res judicata*/collateral estoppel and trustee privilege, Defendant also alleges that the complaint should be dismissed for failure to allege any viable claim against them, as explained below.

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1. Declaratory Relief

Declaratory relief is known to be a remedy defendant on a separate, independent claim, and not a cause of action in and of itself. Defendant argues that Plaintiff's declaratory relief is based on the same allegations as the preceding causes of action, which have all been barred and fail as a matter of law. Further, Defendant contends that the complaint fails to allege any actual case or controversy demonstrating wrongdoing by Defendant. It is Defendant position that since its actions were justifiable and protected by the trustee privilege, then the derivative declaratory relief must also fail. Plaintiff argues that an actual controversy exists between Plaintiff and defendants as to the defendants' standing to commence foreclosure. However, it seems that this issue has already been decided by the state and federal court in the previous proceedings. Thus, the court finds in favor of Defendant that the claim for declaratory relief fails.

2. Claim to Vacate Orders

Plaintiff appears to request that the court vacate orders related to Young's bankruptcy petition due to "fraud on the court" under FRCP 60(d)(3). However, Defendant argues that this request is based on her conclusion that defendants lacked standing to record the foreclosure-related notices and commence foreclosure. These claims have been litigated on numerous occasions and rejected under the doctrines of *res judicata* and collateral estoppel. Further, Defendant argues that Plaintiff has failed to allege any facts demonstrating that she is entitled to the requested relief. Rule 60 allows the Court an opportunity, on *motion* or on its own, to relieve "a party or its legal representative from a final judgment, order, or proceeding" in certain situations, including instances of "fraud on the court." See FRCP 60(a)-(d). Here, Defendant contends that Plaintiff is not the debtor in this bankruptcy case, and the only real effect the orders would have on Plaintiff is to frustrate the recent efforts to wrongfully forestall foreclosure sale. The court agrees that Plaintiff has not complied with the procedural requirements of Rule 60 to demonstrate that she is a "party" and to file this request for relief through a noticed motion instead of a cause of action in this complaint.

To conclude, Plaintiff has not provided anything persuasive in opposition that even begins to defeat Defendant's motion to dismiss considering the preclusive nature of four prior adjudications (and appeals) on these claims.

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Plaintiff fails to allege facts new or different sufficient to state the claims for declaratory relief and/or for vacating orders under Rule 60. Nothing else alleged passes the plausibility standards of *Iqbal* and *Twombly*. There is also no showing that further amendment would not be futile.

Accordingly, the motion is granted without leave to amend. Appearance required.

| Party Information |
|-------------------|
|-------------------|

Debtor(s):

Young Yol Byeon

Represented By
Rex Tran

Defendant(s):

NewRez LLC

Represented By
Jonathan C Cahill

Dane Exnowski

Represented By
Dane W Exnowski

Bank of New York Mellon

Pro Se

BAYVIEW LOAN SERVICING,

Pro Se

MTC Financial, Inc

Represented By
John C Steele

Auction.Com, Inc.

Represented By
Meagan S Tom

McCalla Raymer Leibert Pierce,

Represented By
Dane W Exnowski

Wright, Finlay & Zak, LLP

Represented By
Jonathan C Cahill

Klinedinst, PC

Pro Se

Locke Lord LLP

Represented By
Meagan S Tom

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Plaintiff(s):

MYONG Suk OH

Represented By
Yi Y Oh

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se