

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

Tuesday, January 30, 2024

Hearing Room

5B

10:30 AM

8:00-000000

Chapter

#0.00 Hearings on this calendar will be conducted using ZoomGov video and audio.

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ZoomGov meeting number: 160 628 6290

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Password: 682343

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

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- Connect early so that you have time to check in.
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Docket 0

Tentative Ruling:

- NONE LISTED -

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8:23-12314 Richard Robert Elder and Charmaine Elder

Chapter 7

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

**BCI IV MONTE VISTA IC LP
Vs.
DEBTOR**

Docket 11

***** VACATED *** REASON: OFF CALENDAR - SETTLED BY
STIPULATION - ORDER GRANTING MOTION FOR RELIEF FROM
STAY UNDER 11 USC § 362 ENTERED 12-07-23**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Richard Robert Elder

Represented By
Robert P Goe

Joint Debtor(s):

Charmaine Elder

Represented By
Robert P Goe

Movant(s):

BCI IV MONTE VISTA IC LP

Represented By
Ronald K Brown

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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8:23-12566 Wesley Alan Plohr

Chapter 7

#2.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

LIJUN YU

Vs.

DEBTOR

Docket 13

Tentative Ruling:

Tentative for January 30, 2024
Grant. Appearance is optional.

Party Information

Debtor(s):

Wesley Alan Plohr

Represented By
A. Rita Kostopoulos

Movant(s):

Lijun Yu

Represented By
Kelvin J Lo

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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8:23-12227 Hugo Gonzalez

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

MERCEDES-BENZ VEHICLE TRUST

Vs.

DEBTOR

Docket 72

Tentative Ruling:

Tentative for January 30, 2024

Grant. Appearance is optional.

Party Information

Debtor(s):

Hugo Gonzalez

Represented By
Halli B Heston

Movant(s):

Mercedes-Benz Vehicle Trust

Represented By
Sheryl K Ith

Trustee(s):

Weneta M.A. Kosmala (TR)

Represented By
Ryan W Beall

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8:18-12933 Vickie Ann Valdez

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

**DEUTSCHE BANK TRUST COMPANY AMERICAS
Vs.
DEBTOR**

Docket 87

Tentative Ruling:

Tentative for January 30, 2024
Grant unless loan is current postpetition or other APO stipulation.
Appearance required.

Party Information

Debtor(s):

Vickie Ann Valdez

Represented By
Misty A Perry Isaacson

Movant(s):

DEUTSCHE BANK TRUST

Represented By
Joseph C Delmotte
Dane W Exnowski

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:22-11091 Martin Arnold Van Der Hoeven

Chapter 7

#5.00 Order To Show Cause Why Michael Kocourek Should Not Be Held In Civil Contempt Due To His:

a). Failing To Appear For His FRBP 2004 Examination On The Originally Scheduled Date Of July 13, 2023, On The Erroneous Basis That He Had Emergency Business For Debtor-Related Entity Fuzelo Inc;

b). Failing To Produce Ordered Documents Responsive To Any Of 30 Categories Of Sought By Troiano's Subpoena Prior To Or At Kocourek's Rescheduled August 24, 2023 FRBP 2004 Examination Without Objecting To The Requests, Moving To Quash The Subpoena, Or Moving For A Protective Order; and

c). Failing To Performj An Adequate Search For Such Documents.

Docket 0

Tentative Ruling:

Tentative for January 30, 2024

Troiano argues in his response that Kocourek allegedly never reviewed the documents produced by Debtor or asked him about which documents have been produced, so there is no way that he could know he did not have additional documents. During the meet and confer process after the examination, Kocourek allegedly agreed to perform a supplemental search for documents, but never did so. Finally, even if Kocourek only has documents that Debtor already produced, Troiano is still entitled to know what those documents are.

Like Troiano, the court also does not buy that Kocourek, as an officer of the five debtor-related entities, does not have access or ability to provide basic corporate formational documents, responsive emails, or other communications. Kocourek's only argument here is that he did not provide

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documents because he either did not have them in his possession or Debtor already provided them. Further, as argued by Troiano, even if Debtor already produced relevant documents, Kocourek was still required to comply with the 2004 Examination Order, even if it would be duplicative. Especially since it is unclear at this point whether it would have been the same documents as there appears to have been no communication between Debtor and Kocourek regarding what was to be produced. Accordingly, the court finds that Troiano has provided clear and convincing evidence that there was a violation of a court order, and Kocourek has not provided a persuasive argument as to why he should not be held in civil contempt. The court is more interested in seeing that discovery obligations are met than in determining what measures are needed to compel obedience. Therefore, the parties are to meet and confer and exchange a written punch list of all the categories of documents requested, with a specific listing of what has been produced and what is known to exist but not produced. If requested documents do not exist to the knowledge of the alleged contemnor, that must be stated, with specificity in writing under penalty of perjury. The court will continue the hearing about thirty days and will thereupon evaluate any levels of willful disobedience based on this exchange in assessing remedies.

Appearance required.

Party Information

Debtor(s):

Martin Arnold Van Der Hoeven

Represented By
Leonard M Shulman

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:23-10312 Lars Ake Morgan Gustavsson

Chapter 7

#6.00 Motion To Dismiss Paul Binun's Motion for Order Denying Debtor's Claim Of Homestead Exemption

Docket 42

Tentative Ruling:

Tentative for January 30, 2024

A. Background

This is Debtor Lars Ake Morgan Gustavsson's ("Debtor") motion to dismiss the Motion for Order Denying Debtor's Claim of Homestead Exemption filed by Paul Binun ("Binun") in Debtor's chapter 7 bankruptcy case.

On December 11, 2019, Binun filed a complaint against Debtor and others in the Orange County Superior Court. Binun amended his complaint, alleging causes of action against Debtor and others for (1) Intentional Misrepresentation; (2) Negligent Misrepresentation; (3) Breach of Contract; and (4) Breach of Covenant of Good Faith and Fair Dealing, and seeks \$925,000 in damages against Debtor and other relief. Debtor filed an answer and the parties engaged in discovery. On February 17, 2023, Debtor filed his bankruptcy petition. On Schedule F, Binun is listed as a creditor, and acknowledges the State Court Action in both Schedule F and in the Statement of Financial Affairs. On May 30, 2023, Binun filed an Adversary Complaint in this court against Debtor to determine dischargeability of Debtor's debt to Binun under Sections 523(a)(2), (a)(4), and (a)(6).

On June 9, 2023, Binun filed an objection to the Debtor's claim of homestead exemption on the grounds that Debtor may not claim an exemption because Debtor was not domiciled in California for 730 days prior to filing his bankruptcy petition. Instead, Debtor was allegedly domiciled outside of California, in the Mexico Real Property that Debtor allegedly tried to conceal. Binun also objected that because Debtor concealed his interest in the Mexico Real Property in the Schedules he initially filed and did not

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disclose his interest until extensive questioning at the First Meeting of Creditors, Section 522(g) disallows the claim of exemption. Debtor now brings this motion to dismiss Binun's motion to deny homestead exemption, largely on grounds of standing.

B. Legal Standards

FRBP 4003(b) authorizes a "party in interest" to object to a Debtor's list of property claimed as exempt. *In re Bernard*, 40 F.3d 1028, 1030-1032 (9th Cir. 1994) holds that only bankruptcy trustees and creditors are considered parties in interest with standing to object to debtor's schedule C exemptions. *In re Bernard*, 40 F.3d 1028, 1030-1032 (9th Cir. 1994). Section 101(10) of the Bankruptcy Code defines "creditor" as, among other things, an entity that has a "claim" against debtor. Section 101(5) defines "claim" as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured" (emphasis added). It is the burden of the objecting party to prove that the exemptions are not properly claimed. FRBP 4003(c).

C. Motion to Dismiss

The burden of proof is on Binun to show what Debtor cannot claim homestead exemption. In order to do so, Binun must be considered a "party in interest", or a creditor here. It is Debtor's contention that Binun has not established himself as a creditor because he failed to provide facts, witnesses, and documents that establish with evidence that he is a creditor of Debtor in his responses to Interrogatory Numbers 1 through 3. However, Binun argues that he is listed in Debtor's own schedules as a creditor, and the State Court Action in which Binun is seeking at least \$925,000 is also listed in Debtor's Schedules and Statement of Financial Affairs as well. Further, under the definition of Section 101(1) of the Bankruptcy code, Binun should be considered a "creditor" as he has a state court action against Debtor. Section 101(5) defines "claims" to include one like Binun's which is disputed, contingent, and unliquidated. The fact that Binun failed to adequately respond to the Debtor's propounded Interrogatories Numbers 1-3 stating establishing that Binun had a valid claim, may be problematic but it does not determine his

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standing as a creditor. This might be a proper subject of a motion to compel discovery in the adversary but this does not determine creditor status or standing to object to the homestead. The court is persuaded here that Binun has met his burden under FRBP 4003(c) in establishing that he has standing to object to the Homestead Exemption. Accordingly, the motion to dismiss is denied. *Appearance required.*

Party Information

Debtor(s):

Lars Ake Morgan Gustavsson

Represented By
Robert P Goe
Dixon Gardner

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:23-12650 Grace Thi Cam

Chapter 7

#7.00 STATUS CONFERENCE RE: Chapter 7 Involuntary Petition

Docket 1

Tentative Ruling:

Tentative for January 30, 2024

Status of default? Ten extra days were given upon alleged debtor's request. Also, the relief of stay was granted by order entered 1/17. *Appearance required.*

Party Information

Debtor(s):

Grace Thi Cam

Pro Se

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8:22-11585 AB Capital, LLC, a California limited liability co

Chapter 7

#8.00 Motion To Approve Compromise Of Controversy With Investors In Loan For The
1612 W 206Th Street, Los Angelesa, CA Property

Docket 668

Tentative Ruling:

Tentative for January 30, 2024
Grant as unopposed. *Appearance suggested.*

Party Information

Debtor(s):

AB Capital, LLC, a California

Represented By
Diana Torres-Brito

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Alan W Forsley
Ryan D O'Dea
Kristine A Thagard
James C Bastian Jr
Marc A Lieberman
Rika Kido