

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

Thursday, February 29, 2024

Hearing Room 5B

10:00 AM
8:00-00000

Chapter

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

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ZoomGov meeting number: 161 660 2129

Password: 317997

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.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
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- Say your name every time you speak.
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completed your appearance(s).

Docket 0

Tentative Ruling:

- NONE LISTED -

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10:00 AM

8:09-22699 Cheri Fu

Chapter 7

Adv#: 8:13-01255 BANK OF AMERICA, N.A. v. Fu et al

**#1.00 Application And Order For Appearance And Examination Of Cheri Fu
[Appearing In Person]**

Docket 0

***** VACATED *** REASON: CONTINUED TO 4-11-24 AT 10:00 A.M.
PER ORDER ON STIPULATION TO CONTINUE JUDGMENT DEBTOR
EXAM OF CHERI FU ENTERED 2-28-24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cheri Fu

Represented By
Evan D Smiley
John T. Madden
Beth Gaschen
Susann K Narholm - SUSPENDED -
Mark Anchor Albert

Defendant(s):

Cheri Fu

Represented By
Mark Anchor Albert

Thomas Fu (Deceased)

Represented By
Mark Anchor Albert

Joint Debtor(s):

Thomas Fu (Deceased)

Pro Se

Plaintiff(s):

BANK OF AMERICA, N.A.

Represented By
William S Brody

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CONT... Cheri Fu

Chapter 7

Trustee(s):

James J Joseph (TR)

Represented By

James J Joseph (TR)

Lisa Nelson

James Andrew Hinds Jr

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10:00 AM

8:10-26382 Fariborz Wosoughkia

Chapter 7

Adv#: 8:19-01001 MAHDAVI v. Wosoughkia et al

**#1.10 Application And Order For Appearance Of Fariborz Wosoughkia For Examination
[Appear By Zoom as of 2-27-24]**

Docket 290

Tentative Ruling:

Tentative for February 29, 2024
Continuance? Appearance required.

Party Information

Debtor(s):

Fariborz Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Defendant(s):

Fariborz Wosoughkia

Pro Se

Natasha Wosoughkia

Pro Se

Joint Debtor(s):

Natasha Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Plaintiff(s):

BIJAN JON MAHDAVI

Represented By
Craig J Beauchamp

Trustee(s):

Richard A Marshack (TR)

Represented By
Michael G Spector

**United States Bankruptcy Court
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10:00 AM

8:20-10477 Serenity Oak Farms, LLC

Chapter 7

Adv#: 8:22-01013 Golden v. PARTRIDGE et al

**#2.00 STATUS CONFERENCE RE: Complaint To Avoid Voidable Transactions
(cont'd from 5-5-22) (Another summons issued 4/8/22)
(cont'd from 12-7-23 per order approving stip. to cont. status conference
entered 12-01-23)**

FR: 5-5-22; 8-25-22; 10-12-23; 11-9-23

Docket 1

***** VACATED *** REASON: CONTINUED TO 6-27-24 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE STATUS
CONFERENCE ENTERED 2-09-24**

Tentative Ruling:

Tentative for 10/13/22:
See #5.

Tentative for 6/23/22:
Continue status conference to August 25 @ 10:00AM per request.

Appearance: required

Party Information

Debtor(s):

Serenity Oak Farms, LLC

Represented By
William J Wall

Defendant(s):

CASSONDRA LOUISE

Represented By
Laila Masud

CAMDEN JOHN PARTRIDGE

Represented By

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CONT... Serenity Oak Farms, LLC

Chapter 7

Laila Masud

CASSONDRA LOUISE

Pro Se

Plaintiff(s):

Jeffrey I. Golden

Represented By
Michael G D'Alba
Eric P Israel

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Eric P Israel
Michael G D'Alba

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10:00 AM

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

Chapter 7

Adv#: 8:22-01091 Marshack v. Pukini, individually and as trustee of The Joshua

- #3.00** STATUS CONFERENCE RE: Complaint For: 1. Breach Of Fiduciary Duty; 2. Conversion; 3. Money Had And Received; 4. Unjust Enrichment; 5. Turnover Of Property To The Estate (11 USC Section 542); 6. Turnover Of Property By A Custodian (11 USC Section 543); 7. Avoidance And Recovery Of Fraudulent Transfer (11 USC Section 548); 8. Avoidance And Recovery Of Fraudulent Transfer (Cal. Civil Code Section 3439(a)(1)); 9. Violation Of Cal. Penal Code Section 496(a)
(cont'd from 1-05-23)
(Moved from 11:00 am to 10:00 am on court's own motion)
(cont'd from 10-12-23)
(cont'd from 2-29-24 at 11:00 a.m. to 10:00 a.m. - per court's own motion)

Docket 1

Tentative Ruling:

Tentative for February 29, 2024
Response to the complaint is due no later than April 1, 2024.
Deadline for completing discovery is November 1, 2024.
Last date for filing pre-trial motions is November 15, 2024.
Pre-trial conference is on December 12, 2024 at 10:00 a.m.
Joint pre-trial stipulation and/or order due per local rules
Appearance required.

Tentative for October 12, 2023
See #24. Appearance required.

Tentative for August 22, 2023
Left unclear to the court is whether the parties anticipate ever reaching a trial in this matter while the liquidation of properties is ongoing. Both sides seem to

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CONT... AB Capital, LLC, a California limited liability co Chapter 7

favor a continuation of preliminary injunction and some oblique reference is made to having a trial mid-2024. Should discovery and law and motion deadlines be set now or await a continued status conference? Mediation?

Tentative for 6/6/23:

Per the order approving stipulation entered June 2, 2023 the injunction is extended to February 28, 2024.

Status conference continued to: August 22 @ 10:00AM to consider whether other deadlines should be set. A new status report should be filed before that date in accordance with LBRs.

Appearance: optional

Tentative for 4/12/23:

Other than the report filed on March 29, status? See ## 10 and 11.

Appearance: required

Tentative for 3/1/23:

Status? Is it time to set up deadlines?

Appearance: required

Tentative for 1/5/23:

Status of service/default?

Party Information

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CONT... AB Capital, LLC, a California limited liability co

Chapter 7

Debtor(s):

AB Capital, LLC, a California Pro Se

Defendant(s):

TABLEROCK ENTERPRISES, Pro Se

LUNA CONSTRUCTION Pro Se

LIVING ART WORKS LLC Pro Se

CALPAC MORTGAGE FUND, Pro Se

CALPAC MANAGEMENT, INC. Pro Se

CAL-PAC DISTRESSED REAL Pro Se

BDP DEVELOPMENT Pro Se

AB CAPITAL LFD, INC. Pro Se

ABC 2260 SAN YSIDRO LLC Pro Se

AB CAPITAL FUND B, LLC Pro Se

AB CAPITAL FUND A, LLC Pro Se

31831 SUNSET LLC Pro Se

1034 W BALBOA, LLC Pro Se

108 AVENIDA SERRA, LLC Pro Se

Edmund Valasquez, Jr. Pro Se

Ryan Young, individually and as Pro Se

Joshua R. Pukini, individually and as Pro Se

AB CAPITAL HOLDINGS I, LLC Pro Se

Plaintiff(s):

Richard A. Marshack

Represented By
James C Bastian Jr
Ryan D O'Dea

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CONT... AB Capital, LLC, a California limited liability co

Chapter 7

Trustee(s):

Diane C. Weil

Pro Se

Richard A Marshack (TR)

Represented By
D Edward Hays
Alan W Forsley
Ryan D O'Dea

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

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

Chapter 7

Adv#: 8:22-01091 Marshack v. Pukini, individually and as trustee of The Joshua

- #4.00 STATUS CONFERENCE RE: Preliminary Injunction
(set from order entered 11-30-22 - see document #32)
(Moved from 11:00 am to 10:00 am on court's own motion)
(cont'd from 10-12-23)
(cont'd from 2-29-24 at 11:00 a.m. to 10:00 a.m. per court's own mtn)**

Docket 44

Tentative Ruling:

Tentative for February 29, 2024
Continue to March 5 to coincide with other related matters. Appearance required.

Tentative for October 12, 2023
The court will hear from Trustee where we are and whether the injunction should persist and for how long. Appearance required.

Tentative for August 22, 2023
See #11.

Tentative for 6/6/23:
See #5.

Tentative for 4/12/23:
Should this be continued to April 27 to coincide with the motion to modify the terms of the preliminary injunction?

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CONT... AB Capital, LLC, a California limited liability co

Chapter 7

Appearance: required

Tentative for 3/1/23:
Status?

Appearance: required

Party Information

Debtor(s):

AB Capital, LLC, a California	Pro Se
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Defendant(s):

TABLEROCK ENTERPRISES,	Pro Se
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LUNA CONSTRUCTION	Pro Se
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LIVING ART WORKS LLC	Pro Se
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CALPAC MORTGAGE FUND,	Pro Se
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CALPAC MANAGEMENT, INC.	Pro Se
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CAL-PAC DISTRESSED REAL	Pro Se
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BDP DEVELOPMENT	Pro Se
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AB CAPITAL LFD, INC.	Pro Se
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ABC 2260 SAN YSIDRO LLC	Pro Se
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AB CAPITAL FUND B, LLC	Pro Se
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AB CAPITAL FUND A, LLC	Pro Se
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31831 SUNSET LLC	Pro Se
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1034 W BALBOA, LLC	Pro Se
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108 AVENIDA SERRA, LLC	Represented By Anerio V Altman
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CONT... AB Capital, LLC, a California limited liability co Chapter 7

Edmund Valasquez, Jr. Pro Se

Ryan Young, individually and as Pro Se

Joshua R. Pukini, individually and as Pro Se

AB CAPITAL HOLDINGS I, LLC Pro Se

Plaintiff(s):

Richard A. Marshack

Represented By
James C Bastian Jr
Ryan D O'Dea

Trustee(s):

Diane C. Weil

Pro Se

Richard A Marshack (TR)

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

Diane C Weil (TR)

Pro Se

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10:00 AM

8:23-10500 Nasser Ghodsifar

Chapter 7

Adv#: 8:23-01058 Javahery v. Ghodsifar

- #5.00** STATUS CONFERENCE RE: Second Amended Complaint To Determine Dischargeability Of Debt Pursuant To 11 USC §523(a)(2)(A) and 11 USC § 523(a)(4)]
(another summons issued on 8-25-23)
(cont'd from 11-09-23)
(cont'd from 1-11-24 per another summons issued on 12-11-23)

Docket 5

Tentative Ruling:

Tentative for February 29, 2024
Why no status report? Appearance required.

Tentative for November 9, 2023
See #23 at 11:00 a.m. Appearance required.

Party Information

Debtor(s):

Nasser Ghodsifar

Represented By
Richard G. Heston

Defendant(s):

Nasser Ghodsifar

Pro Se

Joint Debtor(s):

Farisa Tahan

Represented By
Richard G. Heston

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CONT... Nasser Ghodsifar

Chapter 7

Plaintiff(s):

Afsaneh Javahery

Represented By

Richard L. Sturdevant

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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10:00 AM

8:22-11556 Stonebridge Ventures, LLC

Chapter 7

Adv#: 8:23-01086 Jensen v. Stonebridge Ventures, LLC et al

#6.00 STATUS CONFERENCE RE: Monika Jensen's First Amended Complaint

Docket 36

Tentative Ruling:

Tentative for February 29, 2024

Since an order to participate in mediation is outstanding, some defaults need to be entered and given the dismissal motions brought by Brentwood and the Trustee, it seems premature to set deadlines at this time. Continue status conference to coincide with the dismissal motions 3/28/24 at 11:00 a.m. Appearance suggested.

Party Information

Debtor(s):

Stonebridge Ventures, LLC

Represented By
Summer M Shaw
Diana Torres-Brito

Defendant(s):

Stonebridge Ventures, LLC

Pro Se

Brentwood Finance Company, LLC

Represented By
David W. Meadows
Zi Chao Lin
Motunrayo D Akinmurele

Renewable Farms, Inc.

Represented By
Michael G Spector

AB Capital, LFD, Inc.

Pro Se

Arturo Cisneros

Represented By
Nathan F Smith

Joe Colangelo

Pro Se

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CONT... Stonebridge Ventures, LLC
Escrow Experts, Inc

Pro Se

Chapter 7

Plaintiff(s):

Monika Jensen

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

Trustee(s):

Arturo Cisneros (TR)

Represented By
Arturo Cisneros
Nathan F Smith
William Malcolm

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10:00 AM

8:23-10805 Babak Kazemi Shirazi

Chapter 7

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

**#7.00 STATUS CONFERENCE RE: Adversary Complaint for Objection to Discharge Pursuant to 11 USC Section 523(a)(2)(A)
(cont'd from 1-04-24 another summons issued on 11-30-23)**

Docket 1

Tentative Ruling:

Tentative for February 29, 2024
Deadline for completing discovery is September 1, 2024.
Last date for filing pre-trial motions is September 13, 2024.
Pre-trial conference is on October 3, 2024 at 10:00 a.m.
Joint pre-trial stipulation and/or order due per local rules.
Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days. One day of mediation to be completed by July 1, 2024.
Appearance required.

Party Information

Debtor(s):

Babak Kazemi Shirazi

Represented By
Charles Shamash
Joseph E. Caceres

Defendant(s):

Babak Kazemi Shirazi

Pro Se

Plaintiff(s):

Seyed Jafar Jafari

Represented By
Nicholas S Nassif

Trustee(s):

Weneta M.A. Kosmala (TR)

Pro Se

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8:23-11649 George Joseph Sano

Chapter 7

Adv#: 8:23-01130 Shockley v. Sano

#8.00 STATUS CONFERENCE RE: Amended Complaint By Judgment Creditor Devan Shockley To Demtermine That The Debt Owed By George Joseph Sano Is Nondischargeable Debt Pursuant To 11 USC §§ 523(a)(4) And (a)(6)
(Another summons issued 12-04-23)

Docket 3

Tentative Ruling:

Tentative for February 29, 2024

Deadline for completing discovery is September 24, 2024.

Last date for filing pre-trial motions is October 1, 2024.

Pre-trial conference is on November 7, 2024.

Joint pre-trial stipulation and/or order due per local rules.

Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days. One day of mediation to be completed by August 1, 2024.

Party Information

Debtor(s):

George Joseph Sano

Represented By
Christopher J Langley

Defendant(s):

George Joseph Sano

Pro Se

Plaintiff(s):

Devan Shockley

Represented By
Michael Creamer Jr

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

8:23-11708 Joseph Rodriguez

Chapter 7

Adv#: 8:23-01141 Accucredit Associates, L.L.C. v. Rodriguez

#9.00 STATUS CONFERENCE RE: Complaint For Determination Of
Nondischargeability Of Debt Pursuant To 11 U.S.C. §§523(a)(2)(A), 523(a)(2)(B)
And 523(a)(6) And Money Judgment

Docket 1

Tentative Ruling:

Tentative for February 29, 2024

The parties apparently believe that a four month continuance will give them needed time to evaluate a realistic timetable for discovery and other preparations. Appearance required.

Party Information

Debtor(s):

Joseph Rodriguez

Represented By
Arash Shirdel

Defendant(s):

Joseph Rodriguez

Pro Se

Plaintiff(s):

Accucredit Associates, L.L.C.

Represented By
Jacqueline L James

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:23-11708 Joseph Rodriguez

Chapter 7

Adv#: 8:23-01142 RAI Funding, L.L.C. v. Rodriguez

**#10.00 STATUS CONFERENCE RE: Complaint For Determination Of
Nondischargability Of Debt Pursuant To 11 U.S.C. §§ 523(a)(2)(B) And 523(a)
(6) And Money Judgment**

Docket 1

Tentative Ruling:

Tentative for February 29, 2024

This matter appears to be related to #9. Similarly, the parties request a four month continuance to evaluate a reasonable timetable for discovery and other preparations. Appearance required.

Party Information

Debtor(s):

Joseph Rodriguez

Represented By
Arash Shirdel

Defendant(s):

Joseph Rodriguez

Pro Se

Plaintiff(s):

RAI Funding, L.L.C.

Represented By
Jacqueline L James

Trustee(s):

Karen S Naylor (TR)

Pro Se

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10:00 AM

8:22-11989 Nesrine F Omari

Chapter 7

Adv#: 8:23-01009 Omari v. California Department of Tax and Fee Administratio

**#11.00 PRE-TRIAL CONFERENCE RE: Complaint To Determine Dischargeability Of Tax Liability
(another summons issued on 4-27-23)
(set from s/c hrg held on 7-27-23)**

Docket 1

***** VACATED *** REASON: OFF CALENDAR - JUDGMENT OF DISMISSAL AFTER GRANTING DEFENDANT CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION'S MOTION FOR SUMMARY JUDGMENT ENTERED 2-22-24**

Tentative Ruling:

Tentative for 7/27/23:
Why no status report?

Tentative for 4/27/23:
Status of service/default?

Appearance: required

Party Information

Debtor(s):

Nesrine F Omari

Represented By
Bruce A Boice

Defendant(s):

California Department of Tax and

Pro Se

Plaintiff(s):

Nesrine F Omari

Represented By
Bruce A Boice

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CONT... Nesrine F Omari

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Trustee(s):

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

8:13-14887 Bret A Percival

Chapter 7

Adv#: 8:23-01027 Kelly v. Percival

**#12.00 PRE-TRIAL CONFERENCE RE: Complaint To Determine Dischargeability Of Debt Under 11 USC Section 523(a)(2)(A), 523(a)(2)(B), 523(a)(4), and 523 (a) (6), Pursuant To Section 523(a)(3)(B)
(set from s/c hrg held on 6-29-23)
(cont'd from 1-04-24 per order continuing pretrial conf date entered 12-28-23)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-04-24 AT 10:00 A.M.
PER ORDER GRANTING STIPULATION TO CONTINUE HEARING
DATE ENTERED 2-29-24**

Tentative Ruling:

Tentative for February 29, 2024
Status on outstanding discovery disputes? Appearance required.

Tentative for 6/29/23:
Deadline for completing discovery: Nov. 1, 2023
Last date for filing pre-trial motions: Nov. 20, 2023
Pre-trial conference on: Dec. 7, 2023
Joint pre-trial stipulation and/or order due per local rules.

Appearance: required

Party Information

Debtor(s):

Bret A Percival Pro Se

Defendant(s):

Bret A Percival Pro Se

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CONT... Bret A Percival

Chapter 7

Plaintiff(s):

Gregory Kelly

Pro Se

Trustee(s):

CASE REOP/CONV/OR CLOSED

Pro Se

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8:23-11167 Five Rivers Land Company LLC

Chapter 11

Adv#: 8:23-01044 Five Rivers Land Company LLC v. Brar et al

#13.00 Order To Show Cause Why Answer Of Cross-Defendant Coast To Coast Packing Group, LLC Should Not Be Stricken Because Is An Entity That Must Be Represented By Counsel

Docket 0

Tentative Ruling:

Tentative for February 29, 2024

Deficiency appears to have been cured. Absent other issues on this question, the matter will go off calendar. Appearance is optional.

Party Information

Debtor(s):

Five Rivers Land Company LLC

Represented By
Garrick A Hollander
Matthew J Stockl
Richard H Golubow

Defendant(s):

Harjinder Singh Brar

Represented By
William Lynn Cowin

Ramandip Singh Brar

Represented By
William Lynn Cowin

Pinder Kaur Brar

Represented By
William Lynn Cowin

Coast to Coast Packing Group, LLC

Pro Se

Plaintiff(s):

Five Rivers Land Company LLC

Represented By
Garrick A Hollander
Christopher Dale Beatty

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11:00 AM

8:10-26382 Fariborz Wosoughkia

Chapter 7

Adv#: 8:19-01001 MAHDAVI v. Wosoughkia et al

#14.00 Application And Order For Appearance Of Fariborz Wosoughkia For Examination
[Appear In Person]

Docket 290

***** VACATED *** REASON: ADVANCED TO 2-29-24 AT 10:00 A.M.
PER COURT ON 2-27-24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fariborz Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Defendant(s):

Fariborz Wosoughkia

Pro Se

Natasha Wosoughkia

Pro Se

Joint Debtor(s):

Natasha Wosoughkia

Represented By
Carlos F Negrete - INACTIVE -

Plaintiff(s):

BIJAN JON MAHDAVI

Represented By
Craig J Beauchamp

Trustee(s):

Richard A Marshack (TR)

Represented By
Michael G Spector

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

Thursday, February 29, 2024

Hearing Room 5B

11:00 AM

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

Chapter 7

Adv#: 8:22-01091 Marshack v. Pukini, individually and as trustee of The Joshua

- #15.00** STATUS CONFERENCE RE: Complaint For: 1. Breach Of Fiduciary Duty; 2. Conversion; 3. Money Had And Received; 4. Unjust Enrichment; 5. Turnover Of Property To The Estate (11 USC Section 542); 6. Turnover Of Property By A Custodian (11 USC Section 543); 7. Avoidance And Recovery Of Fraudulent Transfer (11 USC Section 548); 8. Avoidance And Recovery Of Fraudulent Transfer (Cal. Civil Code Section 3439(a)(1)); 9. Violation Of Cal. Penal Code Section 496(a)
(cont'd from 1-05-23)
(Moved from 11:00 am to 10:00 am on court's own motion)
(cont'd from 10-12-23)

Docket 1

***** VACATED *** REASON: CONTINUED TO 2-29-24 AT 10:00 A.M.
PER COURT'S OWN MOTION**

Tentative Ruling:

Tentative for October 12, 2023
See #24. Appearance required.

Tenatative for August 22, 2023
Left unclear to the court is whether the parties anticipate ever reaching a trial in this matter while the liquidation of properties is ongoing. Both sides seem to favor a continuation of preliminary injunction and some oblique reference is made to having a trial mid-2024. Should discovery and law and motion deadlines be set now or await a continued status conference? Mediation?

Tentative for 6/6/23:
Per the order approving stipulation entered June 2, 2023 the injunction is extended to February 28, 2024.

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CONT... AB Capital, LLC, a California limited liability co

Chapter 7

Status conference continued to: August 22 @ 10:00AM to consider whether other deadlines should be set. A new status report should be filed before that date in accordance with LBRs.

Appearance: optional

Tentative for 4/12/23:
Other than the report filed on March 29, status? See ## 10 and 11.

Appearance: required

Tentative for 3/1/23:
Status? Is it time to set up deadlines?

Appearance: required

Tentative for 1/5/23:
Status of service/default?

Party Information

Debtor(s):

AB Capital, LLC, a California	Pro Se
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Defendant(s):

TABLEROCK ENTERPRISES,	Pro Se
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LUNA CONSTRUCTION	Pro Se
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LIVING ART WORKS LLC	Pro Se
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CALPAC MORTGAGE FUND,	Pro Se
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CONT... AB Capital, LLC, a California limited liability co

Chapter 7

CALPAC MANAGEMENT, INC.	Pro Se
CAL-PAC DISTRESSED REAL	Pro Se
BDP DEVELOPMENT	Pro Se
AB CAPITAL LFD, INC.	Pro Se
ABC 2260 SAN YSIDRO LLC	Pro Se
AB CAPITAL FUND B, LLC	Pro Se
AB CAPITAL FUND A, LLC	Pro Se
31831 SUNSET LLC	Pro Se
1034 W BALBOA, LLC	Pro Se
108 AVENIDA SERRA, LLC	Pro Se
Edmund Valasquez, Jr.	Pro Se
Ryan Young, individually and as	Pro Se
Joshua R. Pukini, individually and as	Pro Se
AB CAPITAL HOLDINGS I, LLC	Pro Se

Plaintiff(s):

Richard A. Marshack	Represented By James C Bastian Jr Ryan D O'Dea
---------------------	--

Trustee(s):

Diane C. Weil	Pro Se
Richard A Marshack (TR)	Represented By D Edward Hays Alan W Forsley Ryan D O'Dea
Diane C Weil (TR)	Pro Se

**United States Bankruptcy Court
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11:00 AM

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

Chapter 7

Adv#: 8:22-01091 Marshack v. Pukini, individually and as trustee of The Joshua

**#16.00 STATUS CONFERENCE RE: Preliminary Injunction
(set from order entered 11-30-22 - see document #32)
(Moved from 11:00 am to 10:00 am on court's own motion)
(cont'd from 10-12-23)**

Docket 44

***** VACATED *** REASON: CONTINUED TO 2-29-24 AT 10:00 A.M.
PER COURT'S OWN MOTION**

Tentative Ruling:

Tentative for October 12, 2023

The court will hear from Trustee where we are and whether the injunction should persist and for how long. Appearance required.

Tentative for August 22, 2023
See #11.

Tentative for 6/6/23:
See #5.

Tentative for 4/12/23:
Should this be continued to April 27 to coincide with the motion to modify the terms of the preliminary injunction?

Appearance: required

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CONT... AB Capital, LLC, a California limited liability co
Tentative for 3/1/23:
Status?

Chapter 7

Appearance: required

Party Information

Debtor(s):

AB Capital, LLC, a California Pro Se

Defendant(s):

TABLEROCK ENTERPRISES, Pro Se

LUNA CONSTRUCTION Pro Se

LIVING ART WORKS LLC Pro Se

CALPAC MORTGAGE FUND, Pro Se

CALPAC MANAGEMENT, INC. Pro Se

CAL-PAC DISTRESSED REAL Pro Se

BDP DEVELOPMENT Pro Se

AB CAPITAL LFD, INC. Pro Se

ABC 2260 SAN YSIDRO LLC Pro Se

AB CAPITAL FUND B, LLC Pro Se

AB CAPITAL FUND A, LLC Pro Se

31831 SUNSET LLC Pro Se

1034 W BALBOA, LLC Pro Se

108 AVENIDA SERRA, LLC Represented By
Anerio V Altman

Edmund Valasquez, Jr. Pro Se

Ryan Young, individually and as Pro Se

Joshua R. Pukini, individually and as Pro Se

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**CONT... AB Capital, LLC, a California limited liability co
AB CAPITAL HOLDINGS I, LLC Pro Se**

Chapter 7

Plaintiff(s):

Richard A. Marshack

Represented By
James C Bastian Jr
Ryan D O'Dea

Trustee(s):

Diane C. Weil

Pro Se

Richard A Marshack (TR)

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

Diane C Weil (TR)

Pro Se

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11:00 AM

8:18-10486 Ron S Arad

Chapter 7

Adv#: 8:18-01080 Arad v. DEPARTMENT OF THE TREASURY, INTERNAL REVENUE

#17.00 Motion For Order Authorizing The Joinder Of Citizens Financial Group As Defendant

Docket 301

***** VACATED *** REASON: RESCHEDULED TO 3-14-24 AT 11:00 A.M. PER COURT'S OWN MOTION**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ron S Arad

Represented By
G Bryan Brannan

Defendant(s):

DEPARTMENT OF THE

Represented By
Jolene Tanner
Angela Gill

UNITED STATES OF AMERICA

Represented By
Jolene Tanner
Angela Gill

Plaintiff(s):

Ron S Arad

Represented By
G Bryan Brannan

Trustee(s):

Weneta M.A. Kosmala (TR)

Represented By
Ryan W Beall
Jeffrey I Golden

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Hearing Room 5B

11:00 AM

8:22-11359 Massoud Hajnabi

Chapter 13

Adv#: 8:22-01095 Hajnabi v. Oye et al

#18.00 Plaintiff's Motion For Summary Judgment Or In The Alternative, Summary Adjudication, Against Rodger Oye; The Owens Trust #279, Rodger Oye As Trustee; Vecchio Real Estate Corporation; John Rampello; U.S. Bank Trust National Association, Not In Its Individual Capacity But Solely As Collateral Trust Trustee Of First Key Master Funding 2021-A Collateral Trust, Select Portfolio Servicing Inc.; And National Default Servicing Corporation, Regarding Amended Complaint For Violation Of The Automatic Stay 11 U.S.C. §362; Declaratory Relief; Injunctive Relief

Docket 98

***** VACATED *** REASON: CONTINUED TO 2-29-24 AT 2:00 P.M.
PER COURT'S OWN MOTION**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Massoud Hajnabi

Represented By
Norma Duenas

Defendant(s):

Rodger Oye

Represented By
John P. Ward
Brett Ramsaur

U.S. Bank Trust National

Represented By
Peter J Barrett

John Rampello

Represented By
Brett Ramsaur

National Default Servicing

Represented By
Brandon J. Mika
Chad L Butler

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CONT... Massoud Hajnabi Chapter 13

Select Portfolio Servicing Inc. Represented By
Peter J Barrett

Vecchio Real Estate Corporation Represented By
Brett Ramsaur

The Owens Trust #279, Rodger Oye Represented By
Brett Ramsaur

Plaintiff(s):

Massoud Hajnabi Represented By
Norma Duenas

Trustee(s):

Amrane (SA) Cohen (TR) Pro Se

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11:00 AM

8:23-11493 Gregory Wong

Chapter 7

#18.10 Evidentiary Hearing Re: Order To Show Cause Re: Contempt Against Ark International Business, LLC And Paul Kurtzhall
(cont'd from 12-21-23)

Docket 0

***** VACATED *** REASON: OFF CALENDAR - ORDER GRANTING
STIPULATION TO WITHDRAW ORDER TO SHOW CAUSE RE:
CONTEMPT ENTERED 2-28-24**

Tentative Ruling:

Tentative for December 21, 2023

This is Debtor 's requested Order to Show Cause re: contempt and for the imposition of damages and sanctions against creditor Ark International Business, LLC ("Ark") and its attorney, Paul J. Kurtzhall (collectively, "Ark Parties") for willful violation of the stay.

Ark was assigned a Judgment against Debtor in 2019 by U.S. World Direct, Inc. In 2021, Ark retained the services of Hallstrom, Klein & Ward, LLP ("HKW") to assist with the enforcement of the Judgment. There were several conversations between Debtor and HKW to resolve the Judgment informally without court intervention, but ultimately, Debtor was unable to provide a viable settlement offer and Ark commenced collection proceedings. Part of the enforcement process included moving to sell Debtor's dwelling in the Orange County Superior Court under a duly issued writ of execution to satisfy the Judgment.

On July 25, 2023, Debtor's bankruptcy counsel notified Ark's counsel that Debtor filed a chapter 7 petition. Upon receiving notice of the automatic stay, Art's counsel allegedly notified the OC Sheriff's Office to cease all collection activities including wage garnishment and sale of the dwelling. That was appropriate.

On July 28, 2023 both parties appeared at a previously scheduled debtor's examination to notify the OC Superior Court of Debtor's bankruptcy filing and to take the debtor examination off calendar. Again, that was

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appropriate. After notifying the clerk to take the matter off calendar, Ark's counsel allegedly asked Debtor what he was planning on doing about paying the Judgment and said, "you know once the bankruptcy is over we are still going to go after you and the house." Since that encounter, Debtor reportedly has been very worried that Ark was planning on pursuing collection and Debtor has reportedly not been able to sleep well or eat well. Ark's counsel contends that he never threatened Debtor as alleged in the motion or told him that he was "going to go after" Debtor and his house.

A. Legal Standard

"The standard for finding a party in civil contempt is well settled: The moving party has the burden of showing by clear and convincing evidence that the contemnors violated a specific and definite order of the court." *In re Dyer*, 322 F.3d 1178, 1190-91 (9th Cir. 2003). The automatic stay is a specific and definite order of the court as a matter of law. As stated in *Dyer*, "because the metes and bounds of the automatic stay are provided by statute and systematically applied to all cases, "there can be no doubt that the automatic stay qualifies as a specific and definite court order." *Id.* Under §362 of the Bankruptcy Code, a petition for bankruptcy relief "operates as a stay, applicable to all entities, of (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title; ... (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title.

B. Compliance with Local Rule

Pursuant to Local Rule 9020-1(c)(2), the "allegedly contemptuous conduct must be clearly identified and not just by reference to the content of the motion." Additionally, the "possible sanctions and grounds for sanctions must be clearly identified." LBR 9020-1(c)(2).

Ark asserts that the Order to Show Cause issues by the court does not clearly identify any allegedly contemptuous conduct, nor the amount of any possible sanctions. However, under *Dyer*, Debtor argues, and the court

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agrees, that violation of the automatic stay is a specific contemptuous conduct. Further, while the amount in sanctions may not have been listed, the Order does indicate unliquidated "emotional distress, punitive damages, and attorney's fees and costs." The court finds that the Order to Show Cause is sufficient to satisfy LBR 9020-1(c)(2). There remains a question as to whether the remark as attributed to Ark's counsel is of sufficient gravity under the circumstances to warrant monetary sanctions.

C. Hearsay Statement?

Under Federal Rule of Evid. 801(c), hearsay is defined as a statement that "(2) a party offers in evidence to prove the truth of the matter asserted in the statement." The statement in question is attributed to Ark's counsel Mr. Kurtzhall, stating, "you know once the bankruptcy is over we are still going to go after you and the house." Ark argues that this statement is hearsay because it is being offered for the truth of what is asserted. However, Debtor asserts that it is not being offered for the truth (e.g., that the Ark Parties are going to go after Debtor and the house), but to show that Ark's counsel violated the automatic stay by making this threat. This argument may be somewhat circular. The stay is violated by the making of a threat, whether true or not; this is akin to the transactional purpose of the statement, not for a hearsay purpose. Or perhaps what debtor is arguing is that "truth of the matter stated" is not the issue but it is offered for the question of mental impression *upon the debtor*, but normally mental state exception pertains to the declarant, not the victim. See Rule 803.3 of the Federal Rules of Evid. The court agrees that the statement is maybe not hearsay. Whether Ark actually proceeds with collection on the Judgment is irrelevant at this point (but could be very important later if followed through). What matters is whether Ark violated the stay by making the statement at all in a design to strike fear into the Debtor, whose mental state is also protected by the stay.

D. Evidentiary Hearing

Debtor emphasizes in his reply that the sole issue to be decided here is whether Mr. Kurtzhall's made the statement in question. If so, the court may be inclined to hold Ark in contempt for violation of the automatic stay for threatening to pursue collection action after the bankruptcy filing. Debtor

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suggests that the court use its discretion to conduct an evidentiary hearing on the issue in order to weigh the credibility of witnesses. While Arc's actions after the bankruptcy filing indicate general compliance with the stay (which weighs in its favor), the alleged statement in question is of concern to the court. But, as stated above, there is also the question of weight that should be attached and damages that should be imposed, if any, upon a mere threat. This reflects that threats are not to be condoned but they are of a different gravity than actually proceeding with collection actions in violation of the stay. Based on the conflicting testimony of Debtor and Ark as to what was said at the hearing on July 28, 2023, the court agrees that perhaps the most appropriate action moving forward is to set the matter for evidentiary hearing. Or, if efficiency is considered, the parties can discuss a more efficient resolution than the continued expense of litigation, etc.

Appearance required.

Party Information

Debtor(s):

Gregory Wong

Represented By
Michael G Spector

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:22-11359 Massoud Hajnabi

Chapter 13

Adv#: 8:22-01095 Hajnabi v. Oye et al

- #19.00** Plaintiff's Motion For Summary Judgment Or In The Alternative, Summary Adjudication, Against Rodger Oye; The Owens Trust #279, Rodger Oye As Trustee; Vecchio Real Estate Corporation; John Rampello; U.S. Bank Trust National Association, Not In Its Individual Capacity But Solely As Collateral Trust Trustee Of First Key Master Funding 2021-A Collateral Trust, Select Portfolio Servicing Inc.; And National Default Servicing Corporation, Regarding Amended Complaint For Violation Of The Automatic Stay 11 U.S.C. §362; Declaratory Relief; Injunctive Relief
(cont'd from 2-29-24 at 11:00 a.m. to 2:00 p.m. per court's own mtn)

Docket 98

Tentative Ruling:

This is the Rule 56 motion for summary judgment brought by Plaintiff/Debtor Massoud Hajnabi's ("Plaintiff" or "Debtor") against Rodger Oye, The Owners Trust #279, Rodger Oye as Trustee, Vecchio Real Estate Corporation, John Rampello, U.S. Bank Trust National Association ("U.S. Bank"), Select Portfolio Servicing Inc. ("Select Portfolio"), and National Default Servicing Corporation ("NDSC"). A motion to dismiss the first amended complaint was heard on February 8, 2024. The court ruled that it would abstain to hearing the matter as to U.S. Bank and Select Portfolio Servicing, Inc. ("Loan Defendants") and continue the hearing to coincide with this motion for summary judgment as to the remaining defendants ("Recording Defendants").

A. Background:

The real property that is the subject of the First Amended Complaint ("FAC") is located at 279 South Owens Drive, Anaheim, CA 92808 ("Property"). On October 17, 2005, a Deed of Trust was recorded reflecting a \$750,000 loan from Bank of America, N.A. to Debtor, secured by the Property ("First Deed of Trust"). On June 16, 2006, another Deed of Trust was recorded, reflecting a line of credit with Bank of America N.A. in the maximum

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amount of \$150,000 that was also secured by the Property ("HELOC Deed of Trust"). The HELOC Deed of Trust was later modified and recorded, and the credit limit was increased to \$252,504. SPS serviced the loan secured by the HELOC Deed of Trust.

On December 21, 2020, a Notice of Default was recorded due to default on the HELOC Deed of Trust. Notices of Trustee's Sale were recorded on September 14, 2021 and March 24, 2022. On June 28, 2022, a trustee's sale took place derived from default on the loan secured by the HELOC Deed of Trust. John Rampello allegedly submitted the bid, and the vesting information submitted indicated "The Owens Trust #279, Vecchio Real Estate Corp., as Trustee." Debtor states the next day someone from Vecchio Real Estate Corp. sent an email to trustee NDSC seeking to change the name of the bidder to Rodger Oye, as Trustee, and it submitted an Affidavit that Mr. Oye intended to be a prospective owner occupant ("POO"). Debtor states that on July 14, 2022, NDSC, the foreclosure trustee, sent a Trustee's Deed upon Sale to Rodger Oye, who returned it on July 18, 2022, and he attempted to rescind his Affidavit that he was to be an owner-occupant.

Debtor filed his chapter 13 bankruptcy petition on August 12, 2022 to gain the benefit of the automatic stay and stall the recording of the trustee's deed following the pre-petition trustee's sale. Rodger Oye recorded the Trustee's Deed Upon Sale on August 16, 2022 (four days after the petition) representing that the Property was sold to The Owens Trust #279, Rodger Oye, as Trustee. Debtor filed this adversary proceeding on November 4, 2022 against third party purchaser, Rodger Oye, the Owens Trust #279, Rodger Oye as Trustee ("Oye") for recording the trustee's deed in violation of the stay. Oye filed an answer on December 12, 2022. Debtor filed the FAC adding SPS and NDSC as Defendants. Debtor alleges in the FAC that the trustee's sale was not "final" when he filed his bankruptcy petition on August 12, 2022, and that the Loan Defendants improperly conducted the sale through the foreclosure trustee, NDSC.

Debtor's Chapter 13 Plan was confirmed on September 7, 2023. On October 12, 2023, this court denied Loan Defendants' motion to dismiss the

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FAC. The Loan Defendants answered the complaint on October 23, 2023. On December 20, 2023, this court entered an order dismissing Debtor's bankruptcy case because of Debtor's material default for failure to cure delinquent plan payments.

B. Legal Standard

A party seeking summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact and establishing that it is entitled to judgment as a matter of law as to those matters upon which it has the burden of proof. *Celotex Corporation v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553 (1986); *British Airways Board v. Boeing Co.*, 585 F.2d 946, 951 (9th Cir. 1978). The opposing party must make an affirmative showing on all matters placed in issue by the motion as to which it has the burden of proof at trial. *Celotex*, 477 U.S. at 324. The substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). A factual dispute is genuine where the evidence is such that a reasonable jury could return a verdict for the opposing party. *Id.* The court must view the evidence presented on the motion in the light most favorable to the opposing party. *Id.* If reasonable minds could differ on the inferences to be drawn from those facts, summary judgment should be denied. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 90 S. Ct. 1598, 1608 (1970).

C. Permissive Abstention

At the last hearing on the Rule 12 dismissal motion, the court abstained as to the Loan Defendants, and voiced its skepticism about whether it had any reason or basis for keeping *any part* of this case since the underlying bankruptcy has been dismissed. Perhaps more than he realized, Plaintiff in his Reply succinctly encapsulates the very dilemma the court confronts on the question:

"This case is important not only to Plaintiff, but to all homeowners in California as it affects when the rights to their property are cut off under the

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current California foreclosure laws. It is important to avoid reversible error." Reply Brief p. 7, lines 1-3.

The court agrees, and, as it has said before, the statute in question, Calif. Civil Code §2924(m), which became effective only about two years ago, creates a panoply of vexing issues that are far from settled under any caselaw; indeed, only one unpublished bankruptcy court case has ever even addressed it. The court has voiced its grave concern that the statute was not well considered in that it creates an unwieldy uncertainty about when title to foreclosed property actually passes which requires a factual analysis in almost every instance, just as we confront here. This inherent lack of precision is at war with the needs of the great bulk of established commercial law which looks for a unambiguous pinpoint in time regarding when title to collateral can be said to have passed after foreclosure.

Debtor cites to cases that suggest that the court has exclusive jurisdiction over violation of the automatic stay matters. For example, the Bankruptcy Appellate Panel of the Ninth Circuit has specifically stated that "where a bankruptcy court has jurisdiction but is not in a position to avail itself of statutory or nonstatutory abstention, it must exercise its jurisdiction. An automatic stay violation dispute is such an instance" *In re Johnson*, 346 B.R. 190 (B.A.P. 9th Cir. 2006). This might be so but as defendants have observed, violation of the stay here is entirely derivative of the question of when title passed under California law, and what Plaintiff really seeks is a declaration from this court that the purported foreclosure was ineffective. So, violation of the stay is merely a contrived label on the real issues, but since there is no longer a bankruptcy estate to be protected, the court's interest in protecting the integrity of the stay in the abstract can only have true meaning for other cases, not this one which is pursued solely for the debtor's own account and not for any estate or creditors.

Through permissive abstention, courts have stated clearly that the bankruptcy court has the power to exercise broad discretion in abstaining *sua sponte* from adversary proceedings under 28 USC § 1334(c)(1). See *In re Tucson Estates, Inc.*, 912 F.2d. 1162, 1166-68 (9th Cir. 1990) (bankruptcy courts have discretion to abstain in favor of state court adjudication when it is

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in the interest of justice or in the interest of comity). Under this statute, the court indicated in its last hearing on the motion to dismiss the FAC that it could effectively send the case to state court but was inclined to hear further argument in the pleadings on this motion for summary judgment. That analysis has solidified the court's initial impression that abstention is appropriate.

Plaintiff argues against the court's broad discretion to permissively abstain by citing Ninth Circuit cases that bar abstention *unless there is a pending state action*. See *Security Farms v. International Brotherhood of Teamsters*, 124 F.3d 999, 1009 (9th Cir. 1997) (abstention can exist only where there is a parallel proceeding in state court); *Schulman v. Cal. (In re Lazar)*, 237 F.3d 967, 981-82 (9th Cir. 2001). This is an overreading of the cited authorities, and not the law. Both cited cases are factually distinguishable from this one in two ways: (1) they concern cases that began in state court and were removed to bankruptcy courts and (2) the bankruptcy cases were not dismissed but persisted despite the proposed abstention. In fact, the court in *Security Farms* explains that the purpose of requiring a pending state action is to eliminate confusion with 28 U.S.C. § 1452(b), which provides district courts with authority to remand civil actions *properly removed to federal court*. *Security Farms*, 124 F. 3d at 1010. Additionally, it is clear in Ninth Circuit case law, including *Security Farms*, that permissive abstention is a balancing of twelve competing factors described in *Tucson Estates*. While one of those factors considers whether there is a related proceeding in state court, it is not a controlling factor against abstention only one of twelve. So, obviously the law cannot be as Plaintiff argues that this one factor dictates the result. Perhaps the closest case Plaintiff cites to is *Eastport Assocs. v. City of L.A. (In re Eastport Assocs.)*, 935 F.2d 1071, 1079 (9th Cir. 1991). While the *Eastport* court declined abstention in an adversary proceeding that did not have a pending state court proceeding and involved mainly state law issues, it is still distinguishable because the bankruptcy was not dismissed in that case. The *Eastport* court also used the *Tucson Estate* factors to make its determination, acknowledging that the decision to abstain is a balancing test, and that that court may have balanced the factors differently from the lower court. *Eastport*, 935 F.2d at 1079. Thus, it is evident that the controlling

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authority here is *Tucson* Estates with its multiple factors and that the court can abstain when it is in the interest of comity. Upon review of the parties' analysis of the twelve factors, the court is persuaded by the opposition and finds that the bulk of the factors weigh in favor of abstention, notably because (1) this adversary is irrelevant as the bankruptcy case was dismissed; and (2) the issues of finality of the foreclosure sale under Section 2924m are unsettled and better suited for the state court.

D. Genuine Dispute of Material Fact?

Although the court abstains from hearing this adversary proceeding, denial of the summary judgment would also have been appropriate here for the additional reasons stated below:

1. Notices of Intent to Bid Submission

The first, and probably the simplest issue of fact presented is whether notices of intent to bid were submitted to the foreclosure trustee. This is undisputed by the parties and NDSC even stated in their Response to the Statement of Uncontroverted Facts that notices of intent to bid were received by them. Since these notices came within 15 days of the Trustee's sale, this extends the finality of the sale to 45 days under Section 2924(m)(c)(4)(A). Accordingly, there is no genuine dispute of material fact as to the notices of intent to bid submitted to the foreclosure trustee.

2. Finality of the Sale/Last and Highest Bidder

The next, and most prominent issue here is whether there is a genuine dispute as to the finality of the sale and whether Oye was the last and highest bidder. Plaintiff asserts a cause of action against all defendants, but specifically the Recording Defendants for violation of the automatic stay. The alleged violation here is Oye's recording of Trustee's Deed Upon Sale it received from NDSC before the 45 day deadline of Section 2924m expired and after the bankruptcy was filed. This all hinges on whether there is a genuine dispute as to when the sale was deemed "final".

Under Section 2924m, if the highest bidder at the live auction foreclosure sale intends to occupy the real property and provides an affidavit

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attesting to the same under penalty of perjury by 5:00 p.m. on the next business day following the trustee's sale, then the foreclosure sale is deemed "final" as of the date of the live auction sale. Civ. Code §2924m(a)(1) and (c) (1). Absent the foregoing, a foreclosure sale is deemed "final" 15 days after the live auction but only to the extent that the foreclosure trustee has not received any notices of intention to bid from any "eligible bidders." Civ. Code §2924m(c)(2). In the event that a foreclosure trustee receives one or more notices of intention to bid from one or more eligible bidders, then the foreclosure sale is not deemed "final" until the expiration of the 15- day notice period *and a second 45-day period during which eligible bidders may submit bids*. Civ. Code §2924m(c)(4)(A).

Here, Plaintiff contends that there is no genuine dispute that Rampello and/or Vecchio were the last and highest bidders in the foreclosure sale, meaning that there is no genuine dispute that the finality of the sale was at the 45 day expiration. Specifically, Plaintiff asserts that it is undisputed that Rampello and Vecchio are not prospective owner occupants but are investors. This fact triggered the 15 days extension after the live auction before the sale is deemed final. Further, it is also undisputed that notices of intent to bid were submitted after the foreclosure sale, triggering the additional 45 day extension. Plaintiff provides evidence to support this contention through the winning bidder purchase receipt that shows that John Rampello is the high bidder and does not list Rodger Oye anywhere. This is also supported by Oye's response to the Request for Admission No. 1 admitting that Rampello submitted the last and highest bid at the trustee's sale. On the flipside, Recording Defendants contend that Oye was a prospective owner occupant and the winning bidder because they were assigned the interest in the Property and because there is nothing in the evidence to show that Rampello could not act as an agent to Oye.

There are two obstacles here. First, the parties, specifically Oye, have not persuasively provided evidence to show that Rampello was acting as an agent to Oye in this foreclosure sale. Second, the rights to the Property were apparently assigned to Oye one day after the foreclosure sale, when Vecchio changed the trustee listed to Oye. However, it is unclear whether the statute defines a POO to be solely the initial winning bidder to be deemed "final" or

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whether assignments to a prospective owner occupants are included in this definition. While the court does find evidence presented by Plaintiff to be persuasive that Rampello/Vecchio were the last and highest bidders, there are still many holes in the facts and in the statute (as the court feared). When viewing everything in the light most favorable to the Recording Defendants, and the other defendants, the court finds that there is still some dispute over who the last and highest bidder is based on the interpretation of the statute. If this case is renewed in state court further discovery and research regarding some communication or indication that Rampello was acting as agent to Oye would be very helpful. Further case law that sheds light on whether assignments are included in the definition of POO in Section 2924m would also be helpful here. However, as of this motion, the court concludes that there is a genuine issue of material fact as to who the last and highest bidder is and the finality of the sale.

D. Agent Liability

Plaintiff includes the Loan Defendants and NDSC as agents in the foreclosure sale who also violated the automatic stay because of their role in the sale and for failure to remedy the violations after the fact. Both Loan Defendants and NDSC's acts of conducting the sale, receiving the funds, and accepting the prospective owner occupancy declaration were pre-petition acts. The court agrees with this argument that Plaintiff has not provided any evidence to show that there was an affirmative act to violate the automatic stay, as both Loan Defendants and NDSC's roles in the transaction were completed prior to the bankruptcy filing. The recording of the Trustee's Deed Upon Sale was solely the act and responsibility of Oye.

However, Plaintiff argues that Loan Defendants did not take affirmative action to rescind the sale upon Debtor's bankruptcy filing and violated both Section 362(a)(3) and Section 362(a)(1). Loan Defendants persuasively refute this argument, stating that "affirmative action" in rescinding a foreclosure sale is not the standard. In *City of Chicago, Illinois v. Fulton*, 141 S. Ct. 585 (2021), the Supreme Court held that "the retention of estate property after filing of a bankruptcy petition does not violate Section 362(a)(3)

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of the Bankruptcy Code." *Fulton*, 132 S. Ct. at 592. Further, *In re Stuart*, 632 B.R. 531, 541 (B.A.P. 9th Cir. 2003) stands for the proposition that inaction does not violate the stay if there is nothing done to enhance one's position and the alleged violator only seeks to maintain the status quo. *Stuart*, 632 B.R. at 544. Similar argument is made for NDSC here, as the bankruptcy was filed one month after its role was completed. The court agrees that violation of the automatic stay against Loan Defendants and NDSC would be difficult to show given the timing of their role in the foreclosure and based on the foregoing case law.

E. Declaratory Relief/ Sale Void Under California Law

Plaintiff seeks declaratory relief in the First Amended Complaint that he is the "is the rightful owner of the Property," and an order declaring the "foreclosure sale void for violating the stay." Plaintiff, in the reply, has also asserted that the foreclosure sale is void under California state law because there are several irregularities in the sale of the property which include the winning bid receipt listing a different winning bidder, the request to have this bidder changed after the foreclosure sale, a POO affidavit that did not fully comply with the statutory requirements of section 2015.5 of California's Code of Civil Procedure, the acceptance of POO affidavit from a person who was not the winning bidder, the issuing of a TDUS prior to the sale being final, the rescission of the POO affidavit by Rodger Oye and the return of the Trustee's Deed Upon Sale to the Trustee. See *Nguyen v. Calhoun* (2003) 105 Cal.App.4th 428, 445 [129 Cal. Rptr. 2d 436] (under California law an irregularity in the foreclosure proceedings itself is reason to set aside a foreclosure sale). Both Recording Defendants and Loan Defendants argue their respective oppositions that declaratory relief would not be appropriate at this time because Plaintiff has not demonstrated undisputed evidence that declaratory relief should be granted. The court agrees.

F. Conclusion

As indicated above, there are still several issues in genuine dispute that will be better resolved through further discovery and research. But this court sees no compelling reason to be the tribunal to decide these unsettled questions which may well determine foreclosure law in California under a new

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statute which the court doubts was correctly considered in the first place. Unsettled nature of law and the extent to which state law issues predominate over federal questions are among the most compelling *Tucson Estate* factors at work here. *In re Tucson Estates, Inc.*, 912 F. 2d at 1167[factors (2) and (3)]. This should be especially so when virtually none of the other factors weigh in favor of keeping the case since there is no longer an estate to administer.

To conclude, the court permissively abstains from hearing this adversary proceeding for the reasons stated herein under 28 U.S.C. § 1334(c)(1).

Party Information

Debtor(s):

Massoud Hajnabi

Represented By
Norma Duenas

Defendant(s):

Rodger Oye

Represented By
John P. Ward
Brett Ramsaur

U.S. Bank Trust National

Represented By
Peter J Barrett

John Rampello

Represented By
Brett Ramsaur

National Default Servicing

Represented By
Brandon J. Mika
Chad L Butler

Select Portfolio Servicing Inc.

Represented By
Peter J Barrett

Vecchio Real Estate Corporation

Represented By
Brett Ramsaur

The Owens Trust #279, Rodger Oye

Represented By
Brett Ramsaur

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Plaintiff(s):

Massoud Hajnabi

Represented By
Norma Duenas

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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Adv#: 8:22-01095 Hajnabi v. Oye et al

#20.00 Motion To Dismiss First Amended Complaint For Violation Of The Automatic Stay 11 USC § 362; Declaratory Relief; Injunctive Relief
[Fed R. Bankr. Proc. 7012(b); Fed. R. Civ. Proc. 12(b)(6)]
(cont'd from 2-08-24)

Docket 104

Tentative Ruling:

Tentative for February 29, 2024

See #19. Appearance required.

Tentative for February 8, 2024

A. Background

This is Defendants U.S. Bank Trust National Association, as Collateral Trust Trustee of First Key Master Funding 2021 – A Collateral Trust and Select Portfolio Servicing, Inc.'s ("SPS") (collectively "Loan Defendants") Motion to Dismiss the First Amended Complaint ("FAC") filed by Debtor Massoud Hajnabi ("Debtor"). This Motion is brought under FRCP 12(b)(6). It is also joined by Rodger Oye, the Owens Trust #279, Vecchio Real Estate Corporation, John Rampello ("Joining Defendants") and National Default Servicing Corporation ("NDSC").

The real property that is the subject of the FAC is located at 279 South Owens Drive, Anaheim, CA 92808 ("Property"). On October 17, 2005, a Deed of Trust was recorded reflecting a \$750,000 loan from Bank of America, N.A. to Debtor, secured by the Property ("First Deed of Trust"). On June 16, 2006, another Deed of Trust was recorded, reflecting a line of credit with Bank of

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America N.A. in the maximum amount of \$150,000 that was also secured by the Property ("HELOC Deed of Trust"). The HELOC Deed of Trust was later modified and recorded, and the credit limit was increased to \$252,504. SPS serviced the loan secured by the HELOC Deed of Trust.

On December 21, 2020, a Notice of Default was recorded due to default on the HELOC Deed of Trust. Notices of Trustee's Sale were recorded on September 14, 2021 and March 24, 2022. On June 28, 2022, a trustee's sale took place because of default on the loan secured by the HELOC Deed of Trust. John Rampello allegedly submitted the bid, and the vesting information indicated "The Owens Trust #279, Vecchio Real Estate Corp., as Trustee." Debtor states the next day someone from Vecchio Real Estate Corp. sent an email to trustee NDSC seeking to change the name of the bidder to Rodger Oye, as Trustee, and it submitted an Affidavit that Mr. Oye intended to be an owner occupant. Debtor states that on July 14, 2022, NDSC sent a Trustee's Deed upon Sale to Rodger Oye, who returned it on July 18, 2022, and he attempted to rescind his Affidavit that he was to be an owner-occupant.

Debtor filed his chapter 13 bankruptcy petition on August 12, 2022 to gain the benefit of the automatic stay and stall the recording of the trustee's deed following the pre-petition trustee's sale. Rodger Oye recorded the Trustee's Deed Upon Sale on August 16, 2022 representing that the Property sold to The Owens Trust #279, Rodger Oye, as Trustee. Debtor filed this adversary proceeding on November 4, 2022 against third party purchaser, Rodger Oye, the Owens Trust #279, Rodger Oye as Trustee ("Oye") for recording the trustee's deed in violation of the stay. Oye filed an answer on December 12, 2022. Debtor filed a First Amended Complaint adding SPS and NDSC as Defendants. Debtor alleges in the FAC that the trustee's sale was not "final" when he filed his bankruptcy petition on August 12, 2022, and that the Loan Defendants improperly conducted the sale through the foreclosure trustee, NDSC. Debtor's Plan was confirmed on September 7, 2023. On October 12, 2023, this court denied Loan Defendants' motion to dismiss the FAC. The Loan Defendants answered the complaint on October 23, 2023.

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On December 20, 2023, this court entered an order dismissing Debtor's bankruptcy case because of Debtor's material default for failure to cure delinquent plan payments. The Loan Defendants now request that the motion to dismiss should be granted because the underlying bankruptcy case has been dismissed. Defendants Oye and Rampello echo the arguments of the Loan Defendants and also provide additional argument in their joinder that the FAC lacks sufficient factual allegations to support a claim for willful violation of the automatic stay.

B. Legal Standard of a 12(b)(6) Motion

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

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C. Procedural Issues of Loan Defendants

Debtor argues in his opposition that the Motion to Dismiss is untimely because the Loan Defendant have already answered the FAC. Procedurally, a 12(b)(6) motion is generally a mechanism brought before filing a responsive pleading, not after. However, Loan Defendants assert that this court may construe this motion as either one for judgment on the pleadings under Rule 12(c), or as one for summary judgment. Rule 12(c) provides, "after the pleadings are closed – but early enough not to delay trial – a party may move for judgment on the pleadings."

The issue here, as Debtor points out, is that this Motion to Dismiss was brought under Rule 12(b)(6), not 12(c), and Debtor is correct that a 12(b)(6) motion at this point is untimely since Loan Defendants and Joining Defendants have answered the FAC. This puts the court in a difficult position because on one hand, the court would be ruling on a motion brought under the wrong statute and one that is procedurally flawed. On the other hand, continuing the matter so that the parties can file the correct motion with oppositions and replies would waste resources and cause further delay. Further, the underlying bankruptcy case has already been dismissed.

D. Procedural Issues of Joining Defendants

The Joining Defendants have created similar procedural issues as they have joined the Motion to Dismiss pursuant to Rule 12(b)(6) and asserted dismissal under 12(b)(1). Debtor argues that this court cannot treat a Rule 12(b)(6) motion (which is already untimely) as a Rule 12(b)(1) motion when that is not how the motion was brought, because Debtor has a right to fair notice of the legal basis for dismissal which was not properly provided for in the initial motion to dismiss.

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E. Granting of Motion Due to Dismissal of Bankruptcy

Loan Defendants request dismissal of the FAC given that the related and underlying bankruptcy case has been dismissed. "[B]ankruptcy courts are not automatically divested of jurisdiction over related cases when the underlying bankruptcy case is dismissed." *In re Carraher*, 971 F.2d 327, 328 (9th Cir.1992). The court considers certain factors in determining whether to dismiss a related case, including judicial economy, convenience and fairness to the parties, and comity. *Carraher*, 971 F.2d at 328. The Ninth Circuit has also affirmed that where there has not been significant delay or significant expense, and the case involves intricate state law, an adversary proceeding was properly dismissed in the face of an underlying bankruptcy case dismissal. See *In re Casamont Investors, Ltd.*, 196 B.R. 517, 524-526 (9th Cir. BAP 1996).

Here, Debtor's underlying bankruptcy case was dismissed on December 20, 2023 and he is no longer seeking administration of his plan. Debtor claims that Oye violated the stay by recording the trustee's deed after the bankruptcy petition. There are no allegations that Loan Defendants had control over that, and their sale occurred pre-petition. The factors in *Carraher* also support dismissal of the FAC as this adversary has only been pending for one year, a dismissal would conserve costs and resources, and the state court is better suited for determination of some of the arcane issues of California presented. The parties can still litigate and have the issues heard in state court and a dismissal would respect comity as the state court is better positioned to determine issues of nonjudicial foreclosure law, specifically Civil Code §2924m, recently amended by the California Legislature. This court has been heard to publicly proclaim its grave concerns about the structure and intent behind Civil Code §2924m, and its wisdom at any level. The concept of injecting a "not final" label upon what otherwise would traditionally have governed the effect of trustee's sales injects a disturbing level of uncertainty and opens a door to assorted mischief, similar, perhaps to what may have occurred here. Traditionally, trustee sales have fixed a pinpoint in time where title has passed or it hasn't. And such certainty is in keeping with the purposes and functioning of Commercial Law generally. Now, apparently, we have a class of foreclosures in California where no one can quite tell,

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potentially for weeks, as to whether the title has passed and little or nothing can be determined based only upon the recorded documents.

Aside from the procedural issues concerning Loan Defendants, Debtor does not provide opposition specifically as to Loan Defendants' arguments. While the procedural issues cannot be overlooked, as this motion was brought under Rule 12(b)(6), and not 12(c), the reasons for construing the motion as one for judgment on the pleadings are strong and any countervailing purposes for this court in keeping the adversary proceeding are weak. *Elvig v. Calvin Presbyterian Church*, 375 F.3d 951, 954 (9th Cir. 2004) (holding that "where the Defendants filed their motion to dismiss after filing their answer ... the motion should have been treated as a motion for judgment on the pleadings, pursuant to [Civil] Rule 12(c) or 12(h)(2)" (citing *Aldabe v. Aldabe*, 616 F.2d 1089, 1093 (9th Cir. 1980))). This is particularly so when at the center is interpretation of a new California statute which this court regards as of dubious advisability. But the court believes in the end it there is a better remedy; it should simply abstain from hearing this case entirely, which preserves the party's opportunity to litigate the matter in state court where it belongs. See 28 USC §1334(c).

With respect to the Joining Defendants, they admit in their joinder that a claim for willful violation of the automatic stay may survive dismissal of the underlying bankruptcy case. *In re Davis*, 177 B.R. 908, 911 (B.A.P 9th Cir. 1995). Debtor opposes most of Joining Defendants' arguments, citing to *40235 Washington Street Corp. v. Lusardi*, 329 F.3d 1076 (9th Cir. 2003). In *Lusardi*, "Federal courts have jurisdiction over matters in which a federal question is presented on the face of the well-pleaded complaint". *Lusardi*, 329 F.3d at 1079-80. *Lusardi* makes clear that federal courts can retain jurisdiction to remedy violations of the automatic stay beyond willful violations. *Id.* The *Lusardi* court retained jurisdiction after dismissal of the bankruptcy, in a stay violation claim for quieting title and declaratory relief. *Id.* at 1080. There was no willful violation claim in that case. Additionally, Debtor argues that public policy concerns favor federal bankruptcy courts retaining jurisdiction in automatic stay violation claims because not retaining would allow creditors to avoid accountability for their actions.

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Although *Lusardi* is not as applicable to these facts as *Davis*, it does demonstrate that violation of the stay may not have to be "willful" in order for the court to consider its implications. Moreover, this court has previously ruled on this issue of whether Debtor had pled sufficient facts in the FAC to show that there was a willful violation. In fact, there has already been a denial of a motion to dismiss this case prior to the dismissal of the bankruptcy case, to which the court found generally that Debtor pled sufficient claims under the *Iqbal* and *Twombly* standard. But the court is also concerned that in the end vindicating Federal concerns over the integrity of the automatic stay post-bankruptcy case dismissal, while not a *di minimus* consideration, is perhaps insufficient to warrant the expense and inconvenience of continuing this litigation as separate and parallel from that which may be undertaken in state court. Moreover, in the court's view issues here about the propriety of the foreclosure sale and its compliance with Civil Code 2924(c), the Joining Defendants' role therein and consequently whether the stay was violated, are all coming back ultimately to that question of state law,.

The court exercises broad discretion to abstain from hearing adversary proceedings pursuant to 28 USC §1334(c)(1). *In re Pineda*, 2013 WL 1749554 (2013) (the lower court held that it was authorized to abstain *sua sponte* under 28 USC §1334 (c)(1)); See also *In re Tucson Estates, Inc.*, 912 F.2d. 1162, 1166-68 (9th Cir. 1990) (bankruptcy courts have discretion to abstain in favor of state court adjudication when it is in the interest of justice or in the interest of comity); *Gober v. Terra + Corp.*, 100 F.3d 1195, 1207 (5th Cir.1996) ("Permissive abstention may be raised by the court *sua sponte*"). The real question is whether, on balance, there is enough transcendent concern here regarding the stay for this court to retain jurisdiction. That is not at all clear. The court also observes that Debtor has brought a motion for summary judgment scheduled for February 29, 2024 on the question of stay violation. So, the better part of valor is to continue resolution of this motion to be combined with that hearing. The court requests that the parties augment their pleadings in response to that Rule 56 motion to also address the question of whether, even if there were a violation of the stay other concerns

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preponderate in favor of avoiding a ruling in favor of abstention.

Abstain under 28 USC §1334 (c)(1) as to Loan Defendants. Continue as to Joining Defendants to coincide with Rule 56 motion on calendar February 29, 2024. Appearance required.

Party Information

Debtor(s):

Massoud Hajnabi

Represented By
Norma Duenas

Defendant(s):

Rodger Oye

Represented By
John P. Ward
Brett Ramsaur

U.S. Bank Trust National

Represented By
Peter J Barrett

John Rampello

Represented By
Brett Ramsaur

National Default Servicing

Represented By
Brandon J. Mika
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Vecchio Real Estate Corporation

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The Owens Trust #279, Rodger Oye

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Plaintiff(s):

Massoud Hajnabi

Represented By
Norma Duenas

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se