

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

Tuesday, April 23, 2024

Hearing Room

5B

10:30 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: 160 732 1860

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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.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have

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completed your appearance(s).

Docket 0

Tentative Ruling:

- NONE LISTED -

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8:19-14972 Javier Del Rio

Chapter 13

**#1.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 3-12-24 per order approving stip. to cont hrg on mtn for rlfsty
entered 3-11-24)**

**NEWREZ LLC
Vs
DEBTOR**

Docket 71

Tentative Ruling:

Tentative for April 23, 2024

Authority to enter a loan modification was entered 4/11. How does this affect this motion? Status? Appearance required.

Tentative for January 23, 2024

This is a case where the creditor/movant appears to be adequately protected, for the time being, by around a \$600k cushion of equity. That does not excuse the considerable post-petition delinquency of almost 7 months. The trustee has filed a response suggesting his office will be involved in an attempt to modify and/or to cure the arrearage, on a conduit basis. Under these circumstances the court is inclined to give one opportunity to accomplish this by continuing the hearing. What would be a suitable period of continuance (not to exceed 45 days)?
Appearance required.

Party Information

Debtor(s):

Javier Del Rio

Represented By
Andy C Warshaw

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CONT... Javier Del Rio

Chapter 13

Movant(s):

NEWREZ, LLC DBA

Represented By
Joseph C Delmotte

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:24-10212 Alexandr Gerasimov

Chapter 7

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**TOYOTA LEASE TRUST AS SERVICE BY TOYOTA MOTOR CREDIT
CORPORATION
Vs.
DEBTOR**

Docket 14

Tentative Ruling:

Tentative for April 23, 2024
Grant as unopposed. Appearance is optional.

Party Information

Debtor(s):

Alexandr Gerasimov

Represented By
Kateryna Bilenka

Movant(s):

Toyota Lease Trust as service by

Represented By
Kirsten Martinez

Trustee(s):

Weneta M.A. Kosmala (TR)

Pro Se

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8:24-10514 Rudy Edgardo Bonilla

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

TOYOTA MOTOR CREDIT CORPORATION

Vs.

DEBTOR

Docket 7

Tentative Ruling:

Tentative for April 23, 2024
Grant as unopposed. Appearance is optional.

Party Information

Debtor(s):

Rudy Edgardo Bonilla

Represented By
George C Panagiotou

Movant(s):

Toyota Motor Credit Corporation

Represented By
Kirsten Martinez

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:22-11039 Craig Chang

Chapter 7

#4.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM

ARTHUR FRANSEN
Vs.
DEBTOR

Docket 107

Tentative Ruling:

Tentative for April 23, 2024

There was a reference in the papers to a starting date of April 8 in Superior Court. What is the current status of that proceeding? The usual question in motions like this one is where the matter can be most expeditiously resolved. Debtor also contends that it is unrealistic that the state court trial will actually commence on April 8, 2024, and will likely not take place for at least 18 to 24 months. Thus, there is maybe nothing expeditious or economical in waiting another 18 to 24 months. Debtor submits that the pending adversary proceeding can and will resolve all issues raised by Movant against Debtor (largely about dischargeability) much more economically and expeditiously than can be done in the state court action. A pretrial conference in the adversary proceeding is scheduled August 8. While debtor is implicated in all of the complicated theories and cross actions in state court, why this bankruptcy court needs to deal with any or all of those isn't made clear. Consequently, insofar as the main bankruptcy issue (dischargeability) seems more narrowly focused and a trial on that imminent, this motion lacks the usual compelling grounds for trial of bankruptcy-related issues elsewhere. The court will hear argument. No tentative. Appearance required.

Party Information

Debtor(s):

Craig Chang

Represented By

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Craig Chang

John M Boyko

Chapter 7

Trustee(s):

Jeffrey I Golden (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:
(cont'd from 4-02-24)**

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 April 23, 2024
See #6. Appearance required.

Tentative for April 2, 2024
Continued to April 23, 2024 at 11:00 a.m. Appearance excused.

Tentative for March 26, 2024
Status? Appearance required.

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Chapter 7

Tentative for March 5, 2024
Status? Appearance required.

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 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

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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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8:22-11091 Martin Arnold Van Der Hoeven

Chapter 7

#6.00 Motion For Issuance Of Order Directing Debtor To Show Cause Why He Should Not Be Held In Civil Contempt (FRBP 9020; LBR 9020-1)

Docket 99

Tentative Ruling:

Tentative for April 23, 2024

This is Creditor Daniel Troiano's ("Creditor") motion for an Order to Show Cause why Debtor Martin Van Der Hoeven ("Debtor") should not be held in civil contempt for violation of the court's December 12, 2023 Order requiring Debtor to appear for an FRBP 2004 Examination and to produce responsive documents.

In July 2020, Creditor prevailed against Debtor in a pre-petition arbitration in Nevada in the amount of \$455,066, plus interest. The arbitration award was reduced to a judgment and Creditor instituted proceedings to enforce the judgment. Debtor allegedly began evading discovery and filed his bankruptcy petition before a hearing on Creditor's motion to compel. Debtor failed to attend the 2004 Examination on March 29, 2023 due to a bike accident and was unable to appear long after due to reinjury and recovery.

In violation of the court's 2004 Order, Debtor allegedly failed to produce a complete set of responsive documents and failed to provide clear statements under oath that specific documents do not exist to produce. Debtor appeared for his FRBP 2004 Examination on January 9, 2024 under the influence of prescriptions medications that apparently resulted in incoherent testimony before Debtor fell asleep during the examination. This was allegedly due to Debtor's high level of pain he was experiencing the night before the examination. Debtor sat against on January 22, 2024 but allegedly failed to produce all documents responsive to the court's 2004 Order.

A. Legal Standard

In a proceeding for civil contempt, the movant must establish "by clear

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Chapter 7

and convincing evidence that the contemnors violated a specific and definite order of the court. The burden then shifts to the contemnors to demonstrate why they were unable to comply." *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1239 (9th Cir.1999) (internal quotations omitted.). A contemnor in violation of a court order may avoid a finding of civil contempt only by showing it took all reasonable steps to comply with the order. *Kelly v. Wengler*, 822 F.3d 1085, 1096 (9th Cir. 2016).

B. Order to Show Cause

In this case, Creditor argues that this court's 2004 Examination Order specifically indicated that Debtor was "to produce for inspection, copying and audit, the documents responsive to the document requests contained in Schedule A within 14 days after service such Notice and submit to the Examination, under oath, and on the date and time, and the location or by the means, set forth herein." Debtor allegedly failed to comply with the order by failing to produce responsive documents, including all bank statements for accounts under his control or within the control of his wife. Those produced demonstrate hundreds of thousands of dollars being transferred between bank accounts which Debtor controls and which could not be explained. If documents exist to explain the purpose of the transfers, Creditor urges Debtor to produce them without further delay, or state that documents do not exist *under oath*. The parties have engaged in an email exchange in which Debtor's counsel has indicated that all items requested have been produced and have gone above and beyond what is expected in a 2004 exam. However, Creditor does not believe him and still argues that all documents have not been produced. Specifics are lacking.

Debtor argues in the opposition that he has complied with the order to appear for the Rule 2004 Examination and produced documents prior to same. Specifically, Debtor indicates in his declaration that he has examined paper documents in his home, and all digital files on his computers. He submits that there are no other places where responsive documents would be located in his possession or control. Next, Debtor contends that there is no contempt by him because he has continuously agreed to the demands seeking information about his personal finances and affairs. He states that he

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has continuously provided documents in the last two years and believes he has now produced everything in his possession. Further, Debtor has been examined for about four hours, and has offered to appear for a third session for further examination. He asserts that the delays in the examinations were due to his bicycle accident and injuries, but in the second examination he was in better condition. Debtor is willing to state under oath at a third examination regarding the status or the existence and production of documents.

The court has indicated its disdain for discovery disputes. Issues as these should be resolved by the parties through productive discussion and cooperation. Creditor contends that communication has essentially broken down, and now requests that the court step in. But what is the court to do? While Creditor has provided argument of a violation of the 2004 Examination Order, Debtor has also explained to the court the reasons for delay due to injury, and Debtor's consistent attempts to produce all documents in his possession or control. Debtor appears willing to cooperate, so the court is confused why we are here. Either Debtor is not being truthful about the documents in his possession/control, or Creditor is just not willing to accept the responses he has received to the effect nothing more exists. If Debtor is confident that he has conducted a diligent search of all requested documents and has made a full and final production, then the next step should be a completion of the 2004 Examination, where Debtor can testify under oath, specifically, that the remaining documents either do not exist or are not in his possession or control (and if the latter, why that is the case). Ultimately, the court is in no position to determine whether or not perjury has occurred, on this record, and that of course is a predicate to further contempt proceedings. It should not need stating that perjury, if discovered, will not be treated lightly.

The final examination shall occur by mutual agreement as to time and place, and the session shall not last longer than 8 hours absent further showing. Debtor will recertify under oath about all that is produced or can be produced. Absent compelling evidence of perjury, this dispute has run its course and citation for contempt is denied.

Appearance required.

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Debtor(s):

Martin Arnold Van Der Hoeven

Represented By
Leonard M Shulman

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:09-14651 John Earl Tomlinson and Julie Tomlinson

Chapter 7

#7.00 Motion To Reopen Chapter 7 Case

Docket 18

Tentative Ruling:

Tentative for April 23, 2024

This is Debtors' motion to reopen their chapter 7 bankruptcy case.

Debtors filed a chapter 7 bankruptcy petition on May 18, 2009. They appeared and were examined for their 341(a) examination on July 6, 2009, and the Chapter 7 Trustee filed a no asset report on September 18, 2009. The Order of Discharge was entered on December 11, 2009 and the case was closed. Debtors are now seeking to reopen their chapter 7 bankruptcy proceeding in order to file the necessary Amendment to Schedule "F" to include a creditor who was inadvertently omitted from the bankruptcy schedules. The creditor is Heather Hendrix of Heather Hendrix Law Office, PLLC ("Hendrix"). Hendrix has been collecting on Debtors for several years since the bankruptcy discharge was entered and in violation of the automatic stay under Section 362. In March 2024, Hendrix obtained a sister-state judgment against Debtors for a pre-petition debt in violation of Section 362.

Under 11 U.S.C. §350(b), a case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause. Here, there appears to be good cause demonstrated for a reopening. Hendrix has also not filed an opposition to the motion. Accordingly, the motion is granted. However, there is, of course, a next chapter. There may not have been an effective discharge of the Hendrix debt under 11 USC §523(a)(3) and, hence, no discharge injunction violation (these facts suggest the automatic stay is no longer the issue). The court has no record upon which to make such a determination. There is authority, however, requiring an adversary proceeding on that question. See *In re Menk*, 241 B.R. 896, 904 (9th Cir BAP 1999) (where the court states that Adversary proceeding by judgment creditors to determine dischargeability of

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CONT... John Earl Tomlinson and Julie Tomlinson

Chapter 7

judgment debt could be commenced after the bankruptcy case had been closed.). Appearance required.

Party Information

Debtor(s):

John Earl Tomlinson

Represented By
Gregory J Doan
Brian J Soo-Hoo

Joint Debtor(s):

Julie Tomlinson

Represented By
Gregory J Doan
Brian J Soo-Hoo

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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8:23-10702 Pro Crete Resources, Inc.

Chapter 7

#8.00 Chapter 7 Trustee's Motion For Order Authorizing Use of Property of Estate Out Of Ordinary Course Of Business Pursuant To 11 U.S.C. Section 363(b)(1) To: (1) Destroy Debtor Books and Records; (2) Pay for Destruction of Debtor Books and Records and Dispose of Personal Property

Docket 52

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING
STIPULATION TO WITHDRAW AND TAKE HEARING OFF
CALENDAR FOR TRUSTEE'S MOTION FOR ORDER AUTHORIZING
USE OF PROPERTY OF ESTATE ENTERED 4-01-24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pro Crete Resources, Inc.

Represented By
William J Wall

Trustee(s):

Thomas H Casey (TR)

Represented By
Karen S. Naylor
Todd C. Ringstad