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

Thursday, October 24, 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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10:00 AM
CONT... **Chapter**

ZoomGov meeting number: 161 938 8110

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- 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.
- Disconnect from the meeting by clicking "Leave" when you have

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CONT... **Chapter**

completed your appearance(s).

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Thursday, October 24, 2024 **Hearing Room 5B**

10:00 AM
8:10-26382 Fariborz Wosoughkia **Chapter 7**
Adv#: 8:19-01001 MAHDAVI v. Wosoughkia et al

#1.00 Application And Order For Appearance And Examination Of: Natasha Wosoughkia aka Natasha Kia
[In Person Hearing]

Docket 377

Tentative Ruling:

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

10:00 AM
8:19-12480 Guy S. Griffithe **Chapter 7**
Adv#: 8:19-01201 Bagot v. Griffithe

#2.00 STATUS CONFERENCE RE: Complaint Of NonDischargeability And Exception From Discharge Of Debts
(cont'd from 9-26-24 per court's own mtn)

Docket 1

Tentative Ruling:

Tentative for October 24, 2024
See #3. *Appearance required.*

Tentative for April 25, 2024
Status of Washington proceedings? Appearance required.

Tentative for December 7, 2023
Continue status conference to April 25, 2024 at 10:00 a.m. anticipating ruling in Washington matter. Appearance is optional.

Tentative for 6/8/23:
Continue as a status conference to December 7 @ 10 to accommodate conclusion of Washington State matter.

Appearance: optional

Tentative for 1/5/23:
In view of the stay recently issued regarding the Washington State Action as reported by plaintiff, and in view of the earlier abstention of this court in favor of those proceedings, it makes sense to continue the status conference

10:00 AM

CONT... Guy S. Griffithe **Chapter 7**

further to June 1, 2023 @ 10:00 a.m. If that date is unworkable please appear and propose alternatives.

Appearance: optional

Tentative for 8/25/22:
Continue status conference to December 1, 2022 @ 10:00AM in view of schedule state court trial in November.

Appearance: required

Tentative for 3/24/22:
Continue 6 months per request to allow resolution of state court matter.

Appearance: optional

Tentative for 8/5/21:
Extend temporary extension about 9 months.

Tentative for 9/3/20:
Continue status conference to August 5, 2021 @ 10:00. Can be advanced by any party on motion.

Tentative for 3/5/20:
See #17

10:00 AM
CONT... Guy S. Griffithe **Chapter 7**

Tentative for 1/16/20:
See #6. The status conference will travel together with any dismissal motions. Appearance not required.

Tentative for 12/19/19:
Status conference continued to January 16, 2020 at 10:00 a.m. to coincide with motion to dismiss.

Party Information

Debtor(s):

Guy S. Griffithe	Represented By Bert Briones

Defendant(s):

Guy S. Griffithe	Pro Se

Plaintiff(s):

Steven Bagot	Represented By Heidi Urness

Trustee(s):

Thomas H Casey (TR)	Pro Se

10:00 AM
8:19-12480 Guy S. Griffithe **Chapter 7**
Adv#: 8:19-01201 Bagot v. Griffithe

#3.00 STATUS CONFERENCE RE: Motion For Temporary Abstention
(set at hearing held on 3-5-2020)
(cont'd from 9-26-24 per court's own mtn)

Docket 29

Tentative Ruling:

Tentative for October 24, 2024
What is the status of the Washington action? Does plaintiff want continued abstention? *Appearance required.*

Tentative for April 25, 2024
See #2. Appearance required.

Tentative for December 7, 2023
See #1. Appearance is optional.

Tentative for 6/8/23:
See #3.

Tentative for 1/5/23:
See #1.

Tentative for 8/25/22:
See #2.

10:00 AM
CONT... Guy S. Griffithe **Chapter 7**

Tentative for 3/24/22:
See #1.

Tentative for 8/5/21:
Same as #1.

Tentative for 9/3/20:
See #4.

Tentative for 3/5/20:

This is the Plaintiff's motion for "Temporary Abstention" and for stay of the pending litigation in favor of a proceeding in Washington State Court. Oddly, the motion is not brought for permissive abstention under 28 U.S.C.§ 1334(c) but rather under the court's "inherent power to regulate their dockets and should use it to stay litigation pending resolution of another case or arbitration proceeding where it will dispose of or narrow the issues to be resolved in that litigation." *In re Barney's Inc*., 206 B.R. 336, 343-44 (Bankr. S.D.N.Y. 1997). As near as the court can determine, the standards are largely the same.

It is well established that a federal court has "broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706-707, 117 S. Ct. 1636 (1997); see also *Landis v. North American Co*., 299 U.S. 248, 254-255, 57 S. Ct. 163, 166 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls

for the exercise of judgment, which must weigh competing interests and maintain an even balance."); *O'Dean v. Tropicana Cruises International, Inc*., 1999 WL 335381, *4 (S.D.N.Y. 1999) (federal court suspended action pending disposition of arbitration proceeding); *Evergreen Marine Corp. v. Welgrow International, Inc.,* 954 F.Supp. 101, 103-105 (S.D.N.Y.1997) (authorized stay in federal proceedings pending disposition of related foreign action).

The Ninth Circuit has enumerated factors a bankruptcy court should weigh when it considers whether to permissively abstain from hearing a matter before it. See *Christiansen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.),* 912 F.2d 1162, 1167 (9th Cir. 1990). Those factors include: (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,(2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other non-bankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334,(6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted core proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of the bankruptcy court's docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of non-debtor parties.

Plaintiff cites a less exhaustive five factor analysis for suspending or staying a nondischargeability action as follows: (1) The burden of the proceeding on the defendant; (2)The interest of the plaintiff in expeditiously pursuing the action and prejudice resulting from any delay;(3) The convenience of the court in the management of its cases and the efficient use of judicial resources; (4) The interests of non-parties to the litigation; and (5)

10:00 AM

CONT... Guy S. Griffithe **Chapter 7**

The interest of the public in the pending civil and criminal litigation. *In re Government Securities Corp*., 81 B.R. 692, 694 (Bankr. S.D. Fla. 1987). See also, *Southwest Marine, Inc. v. Triple A Mach. Shop, Inc*., 720 F. Supp. 805, 809 (N.D. Cal. 1989).

Although the parties do not agree on which set of factors is correct, the parties do agree that not all of the above factors are applicable nor are they of equal weight. Plaintiff's most persuasive argument for abstention from this court, and one that Defendant does not dispute, is that Plaintiff and Defendant are already heavily engaged in an action in Washington state court. According to Plaintiff, the allegations in the state court action mirror those of the allegations made in this adversary proceeding. Defendant argues that this is a false assertion as there is no mention of anything in the Washington state court action that mirror Plaintiff's §727 claims, although Defendant does concede that Plaintiff's §523 claims are mirrored by the allegations in the Washington state court action. The Washington state court action was filed over a year ago and is reportedly set for trial in April of 2020. Consequently, it seems feasible for the Washington matter to proceed to trial and judgment on the issues underlying the §523(a) claims (and certain of the §727 theories involving pre-petition behavior). Provided that Plaintiff is careful in obtaining detailed and clear findings, Plaintiff can then resolve this adversary proceeding under collateral estoppel theories by Rule 56 motion. To the extent that Defendant is correct in his assertion that Plaintiff's §727 claims are not mirrored in the state court action, Plaintiff asserts that he will simply drop those claims as they will likely be unnecessary after the state court rules on the underlying claims. Plaintiff has already obtained relief from stay. Considering the resources that the parties have already expended in Washington, including pre-trial motions, discovery, etc., the parties should likely finish what they started up there. This approach would conserve resources here and would not likely result in duplication of effort.

Concerning the administrative law claims and SEC claims pending in Washington State against Defendant, Plaintiff argues that resolution of these

10:00 AM

CONT... Guy S. Griffithe **Chapter 7**

claims will help narrow the issues even further or could even provide additional probative details, which Plaintiff argues is a proper justification for abstention. Defendant argues that these other cases should not be considered for purposes of abstention because they do not directly involve Plaintiff, but this argument is less compelling because Defendant does not attempt to argue that such litigation would not serve to narrow the issues or provide useful additional background. Defendants other arguments against abstention, including the recent withdrawal of Defendant's counsel and a vague argument regarding the purported untimeliness of this motion, do not really move the needle in Defendant's favor. Related to the purported untimeliness of this motion is Defendant's argument that this motion is premature because if Defendant's dismissal motion is granted, then this motion becomes essentially moot. Plaintiff notes that Defendant cites no authority for the proposition that dismissal of the complaint would also end the Washington state court action. Defendant's argument also ignores that complaints after Rule 12 motions can be (and very likely would be) amended if they are found to be defective.

In sum, Plaintiff has made a persuasive case for staying proceedings in this court and allowing the parties to litigate what are largely matters of state law in Washington state court, especially since the parties are on the doorstep of trial. Thus, as Plaintiff urges, the court should use its power under §105(a) to temporarily abstain or stay this adversary proceeding pending resolution in Washington state court. Plaintiff is cautioned to obtain clear and dispositive findings on the operative issues such that collateral estoppel can govern in subsequent Rule 56 motion.

Grant abstention. This adversary proceeding is stayed until Plaintiff seeks to return for a Rule 56 motion. The court will schedule a status conference approximately 180 days out for evaluation.

Party Information

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

Thursday, October 24, 2024 **Hearing Room 5B**

10:00 AM
CONT... Guy S. Griffithe **Chapter 7**

Debtor(s):

Guy S. Griffithe	Represented By Bert Briones

Defendant(s):

Guy S. Griffithe	Pro Se

Movant(s):

Steven Bagot	Represented By Heidi Urness Richard H Golubow Peter W Lianides

Plaintiff(s):

Steven Bagot	Represented By Heidi Urness Richard H Golubow Peter W Lianides

Trustee(s):

Thomas H Casey (TR)	Pro Se

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

Thursday, October 24, 2024 **Hearing Room 5B**

10:00 AM

8:23-12386 Eric Pham **Chapter 7**

Adv#: 8:24-01028 American Express National Bank v. Pham

#4.00 STATUS CONFERENCE RE: Complaint Objecting To The Dischargeability Of Debt Under 11 USC Section 523(a)(2)(A)
(cont'd from 5-09-24 per court's own mtn)
(cont'd from 9-26-24 per court's own mtn)

Docket 1

Tentative Ruling:

Tentative for October 24, 2024
Discovery Deadline: November 1, 2024
Pre-Trial Conference: January 23, 2025 at 10:00 a.m.
Parties are reminded that LBRs required a joint pretrial stipulation.
Appearance required.

Tentative for May 30, 2024
It would appear that the parties are both desirous of settlement and there is reportedly a chance that administration of the estate will result in full payment of Plaintiff. Should the court set deadlines at this time which would be in approximately mid-autumn 2024? *Appearance required.*

Party Information

Debtor(s):

Eric Pham — Represented By Tina H Trinh

Defendant(s):

Eric Pham — Pro Se

Plaintiff(s):

American Express National Bank — Represented By Dennis C. Winters

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

Thursday, October 24, 2024 **Hearing Room 5B**

10:00 AM

CONT... Eric Pham **Chapter 7**

Trustee(s):

Richard A Marshack (TR) Pro Se

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

Thursday, October 24, 2024 **Hearing Room 5B**

10:00 AM

8:19-10526 LF Runoff 2, LLC **Chapter 7**

Adv#: 8:24-01054 Marshack v. PBC 200 Park Avenue, LLC et al

#5.00 STATUS CONFERENCE RE: Complaint To Avoid And Recover Voidable Transfers

(cont'd from 9-26-24 per court's own mtn)

Docket 1

***** VACATED *** REASON: CONTINUED TO 11-07-24 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE STATUS CONFERENCE ENTERED 10-10-24 - SEE DOC #23**

Tentative Ruling:

Tentative for August 1, 2024
Continue to September 26 at 10:00 a.m. per request. *Appearance is optional unless the proposed continued date is a problem.*

Tentative for June 27, 2024
Status of answer/default? *Appearance required.*

Party Information

Debtor(s):

LF Runoff 2, LLC	Represented By Marc C Forsythe

Defendant(s):

PBC 200 Park Avenue, LLC	Pro Se
PBC Foundry, LLC	Pro Se
Preferred Offices Properties, LLC	Pro Se
Preferred Offices Properties II, LLC	Pro Se

Plaintiff(s):

Richard A. Marshack	Represented By Lauren N Gans

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

Thursday, October 24, 2024 **Hearing Room 5B**

10:00 AM
CONT... LF Runoff 2, LLC **Chapter 7**

Trustee(s):

Richard A Marshack (TR) Represented By
David Wood
D Edward Hays
Thomas J Polis
Laila Masud
Roye Zur
Lauren N Gans

10:00 AM
8:19-10526 LF Runoff 2, LLC **Chapter 7**
Adv#: 8:24-01061 Marshack v. Waldorf=Astoria Management LLC

#6.00 STATUS CONFERENCE RE: Second Amended Complaint To Avoid And Recover Voidable Transfers
(another summons isssued on 8-05-24)

Docket 14
***** VACATED *** REASON: CONTINUED TO 11/21/2024 AT 10:00 A.M. PER ORDER APPROVING SECOND STIPULATION EXTENDING TIME TO ANSWER OR OTHERWISE RESPOND TO THE SECOND AMENDED COMPLAINT TO AVOID AND RECOVER VOIDABLE TRANSFERS ENTERED 10-08-24 - SEE DOC #21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

LF Runoff 2, LLC	Represented By Marc C Forsythe

Defendant(s):

Waldorf=Astoria Management LLC	Pro Se

Plaintiff(s):

Richard A. Marshack	Represented By Lauren N Gans

Trustee(s):

Richard A Marshack (TR)	Represented By David Wood D Edward Hays Thomas J Polis Laila Masud Roye Zur Lauren N Gans

United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
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Thursday, October 24, 2024 **Hearing Room 5B**

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CONT... LF Runoff 2, LLC **Chapter 7**

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

Thursday, October 24, 2024 **Hearing Room 5B**

10:00 AM

8:24-10717 Henry George Brennan **Chapter 11**

Adv#: 8:24-01069 Brennan et al v. Daily Aljian, LLP et al

#7.00 STATUS CONFERENCE RE: Complaint For Legal Malpractice
(cont'd from 8-01-24)

Docket 1

Tentative Ruling:

Tentative for October 24, 2024
Update on mediation? *Appearance required.*

Tentative for August 1, 2024
Continue status conference about 90 days. Order to mediation, one day of which is to be completed by October 15, 2024. *Appearance required.*

Party Information

Debtor(s):

Henry George Brennan	Represented By Michael R Totaro

Defendant(s):

Daily Aljian, LLP	Pro Se
Reed Aljian	Pro Se

Joint Debtor(s):

Lisa Anne Brennan	Represented By Michael R Totaro

Plaintiff(s):

Lisa Ann Brennan	Represented By M. Candice Bryner

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

Thursday, October 24, 2024 **Hearing Room 5B**

10:00 AM

CONT... Henry George Brennan **Chapter 11**

Henry George Brennan

Represented By
M. Candice Bryner

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

Thursday, October 24, 2024 **Hearing Room 5B**

10:00 AM
8:24-10671 Howard Park **Chapter 7**
Adv#: 8:24-01091 Dorsett v. Park et al

#8.00 STATUS CONFERENCE RE: Notice of Removal
(cont'd from 7-25-24 per court's own mtn)
(cont'd from 8-15-24 per court's own mtn)
(cont'd from 8-29-24)

Docket 1

Tentative Ruling:

Tentative for October 24, 2024

The majority of the factors enunciated in cases like In re Tucson Estates, Inc., 912 F2d 1162, 1167 (9th Cir. 1990) favor remand. This is particularly so when the court is advised that the matter can or will be set for trial in state court promptly upon remand. The case sounds primarily in fraudulent conveyance. But the Trustee has reportedly chosen not to pursue it, has filed a "no asset" report and so for practical purposes this bankruptcy is closed. There seems to be some argument as to whether the state court action should also serve in double capacity as an adversary proceeding to determine dischargeability of the state court judgment because the removal was one day before the nondischargeablility deadline of June 21. Whether there is any viability to such an argument should be the subject of a separate proceeding and, even if it were sustainable, is still not enough to persuade the court to keep this case.

Remand to state court. *Appearance required.*

Tentative for August 29, 2024
No response has been received to the OSC entered June 26, 2024. No status report has been filed either. Dismiss for failure to prosecute. *Appearance required.*

Party Information

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

Thursday, October 24, 2024 **Hearing Room 5B**

10:00 AM

CONT... Howard Park **Chapter 7**

Debtor(s):

Howard Park	Represented By Ji Yoon Kim

Defendant(s):

Howard Park	Pro Se
Becktel C.H. Development, Inc.	Pro Se
CJP Development, Inc.	Pro Se
JHL Development, Inc.	Pro Se
Chong Hoon Park	Pro Se
Grace G. Park	Pro Se

Plaintiff(s):

Dana M. Dorsett	Represented By Jeffrey Dorsett

Trustee(s):

Thomas H Casey (TR)	Pro Se

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

Thursday, October 24, 2024 **Hearing Room 5B**

10:00 AM

8:24-11004 Chantana Boontiam **Chapter 7**

Adv#: 8:24-01098 Ma v. Boontiam

#9.00 STATUS CONFERENCE RE: Complaint To Determine Non-Dischargeability Of Debt Pursuant To 11 U.S.C. § 523
(cont'd from 9-26-24 per court's own mtn)

Docket 1

Tentative Ruling:

Tentative for October 24, 2024
Has this case been abandoned? Dismiss. *Appearance required.*

Party Information

Debtor(s):

Chantana Boontiam	Represented By Kevin Tang

Defendant(s):

Chantana Boontiam	Pro Se

Plaintiff(s):

Danying Ma	Represented By Melissa J Fox

Trustee(s):

Karen S Naylor (TR)	Pro Se

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

Thursday, October 24, 2024 **Hearing Room 5B**

10:00 AM

8:23-12072 Anthony Nguyen **Chapter 7**

Adv#: 8:24-01103 Anderson v. Nguyen

#10.00 STATUS CONFERENCE RE: Complaint Objecting To Discharge Pursuant to 11 U.S.C Section 727(a)(4)(A)

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING STIPULATION FOR WAIVER OF DEFENDANT'S DISCHARGE ENTRY OF JUDGMENT AND CLOSING OF ADVERSARY PROCEEDING ENTERED 9-10-24 - SEE DOC #7**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anthony Nguyen	Pro Se

Defendant(s):

Anthony Nguyen	Pro Se

Plaintiff(s):

Peter C. Anderson	Represented By Kenneth Misken

Trustee(s):

Jeffrey I Golden (TR)	Pro Se

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

Thursday, October 24, 2024 **Hearing Room 5B**

10:00 AM

8:23-12060 Stewart Homes, Inc. **Chapter 7**

Adv#: 8:24-01019 Stewart Homes, Inc. v. Williams Family Manufactured Homes, Inc. et al

#11.00 PRE-TRIAL CONFERENCE RE: Complaint For: 1. Conversion; 2. Breach Of Implied Contract; 3. Restituion; 4. Violation of Business Professions Code §§ 17200, Et Seq.; 5. Declaratory Relief; 6. Violation Of Automatic Stay
(cont'd from s/c hrg held on 4-25-24)
(cont'd from 9-26-24 per court's own mtn)

Docket 1

***** VACATED *** REASON: CONTINUED TO 1-09-25 AT 10:00 A.M. PER ORDER APPROVING STIPULATION TO CONTINUE PRE-TRIAL CONFERENCE ENTERED 10-17-24 - SEE DOC #18**

Tentative Ruling:

Tentative for April 25, 2024
Deadline for completing discovery is August 31, 2024.
Last date for filing pre-trial motions is on September 13, 2024.
Pre-trial conference is on September 26, 2024 at 10:00 a.m.
Joint pre-trial stipulation and/or order due per local rules.
Appearance required.

Party Information

Debtor(s):

Stewart Homes, Inc.	Represented By Marc C Forsythe Charity J Manee

Defendant(s):

Williams Family Manufactured	Pro Se
Craig Williams	Pro Se

Plaintiff(s):

Stewart Homes, Inc.	Represented By Marc C Forsythe Mark D Hurwitz

United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
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Thursday, October 24, 2024 **Hearing Room 5B**

10:00 AM

CONT... Stewart Homes, Inc. **Chapter 7**

Charity J Manee
Leo D Plotkin

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 Diuschargeability 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 4-04-24 per order continuing pretrial conf entered 3-27-24)
(cont'd from 9-12-24)

Docket 1

Tentative Ruling:

Tentative for October 24, 2024
No pretrial stip? Dismiss for failure to prosecute. *Appearance required.*

Tentative for September 12, 2024
The 30 day stay mentioned last time should be expired. Status? *Appearance required.*

Tentative for August 1, 2024
A stipulation regarding staying the proceedings was expected. Status? *Appearance required.*

Tentative for April 25, 2024
A continuance was granted at Mr. Firman's request, but since nothing has been filed. Why shouldn't the court adopt the unilateral stipulation offered by plaintiff? Appearance required.

10:00 AM

CONT... Bret A Percival **Chapter 7**

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

Plaintiff(s):

Gregory Kelly — Pro Se

Trustee(s):

CASE REOP/CONV/OR CLOSED — Pro Se

10:00 AM
8:19-10814 M3Live Bar & Grill, Inc. **Chapter 7**
Adv#: 8:23-01094 The Grand Theater, Inc. v. Alimadadian et al

#13.00 STATUS CONFERENCE RE: Complaint For: 1. Declaratory Relief Bankruptcy P. 7001(9)
(**cont'd from 11-30-23 per another summons issued re: counterclaims and crossclaims on 11-09-23)**
(cont'd from 3-28-24)
(cont'd from 8-15-24 per court's own mtn)
(cont'd from 8-20-24)

Docket 1

Tentative Ruling:

Tentative for October 24, 2024
Uploaded form of judgment has numerous blanks. Prove up is needed. See #15. *Appearance required.*

Tentative for August 20, 2024
See #4. Assuming the court adopts its tentative, are there other portions of the proceeding which required further deadlines or hearing? *Appearance required.*

Tentative for March 28, 2024
See #9. Appearance required.

Tentative for March 27, 2024
Continue to coincide with the Motion for Judgment on the Pleadings scheduled March 28 at 11:00 a.m. Appearance required.

10:00 AM
CONT... M3Live Bar & Grill, Inc. **Chapter 7**

Tentative for January 25, 2024

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

Party Information

Debtor(s):

M3Live Bar & Grill, Inc.	Represented By Robert P Goe Ryan S Riddles Carl J Pentis

Defendant(s):

Cyrus Alimadadian	Pro Se
IRA Resources, Inc.	Pro Se

Plaintiff(s):

The Grand Theater, Inc.	Represented By Thomas S Gruenbeck

Trustee(s):

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

10:00 AM
8:19-10814 M3Live Bar & Grill, Inc. **Chapter 7**
Adv#: 8:23-01094 The Grand Theater, Inc. v. Alimadadian et al

#14.00 Rule 56 Motion Re:Counter Defendant And Cross Defendant's Motion For Judgment On The Pleadings Pursuant To FRCP 12(c) - **Rule 56 Motion**
(cont'd from 3-28-24)
(cont'd from 8-15-24 per court's own mtn)
(cont'd from 8-20-24)

Docket 54

Tentative Ruling:

Tentative for October 24, 2024
See #15. *Appearance required.*

Tentative for August 20, 2024
See #4. *Appearance required.*

Tentative for March 28, 2024

This is Counter Defendants The Grand Theater, Inc.'s ("TGT") and Cross Defendants Musa Madain ("Madain") and M3Live Bar & Grill, Inc. ("Debtor") (collectively, "Movants") motion for judgment on the pleadings on the fourth cause of action on Cyrus Alimadadian's ("Cyrus") Counterclaims and Cross Claims under FRCP 12(c), voiding the stipulation to release Cyrus's Judgment Lien against Debtor in the bankruptcy case.

On March 7, 2019, Debtor filed for chapter 7 bankruptcy. Trustee Karen Naylor ("Trustee") discovered that Cyrus had recorded a judgment lien against Debtor. Cyrus was listed as a creditor but there was no proof of claim filed in the bankruptcy. To resolve the pending lien, Trustee, Madain (principal of Debtor), and TGT signed a stipulation to release the judgment lien against Debtor's estate in exchange for an agreement that TGT replace Debtor as

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Judgment Debtor and keep Madain as Judgment Debtor in the Superior Court judgment. The order was entered approving the stipulation on March 3, 2020.

On November 9, 2023, Cyrus filed a Counterclaim and Cross Claim against TGT, Madain, and Debtor, seeking declaratory relief under the Fourth Claim for Relief. There appears to be a misunderstanding of what the Fourth Claim for Relief seeks. Movants' position is that Cyrus seeks to have the stipulation declared null and void. However, that is not what the Fourth Claim for Relief asserted. Cyrus seeks a declaration of the parties' rights under various order of the court in connection to the sale of the property in the underlying chapter 7 petition. One of the orders is the approval of the stipulation.

Rule 12(c) of the Federal Rules of Civil Procedure provides that "after the pleadings are closed, but within such time as not to delay the trial, any party may move for judgment on the pleadings." (Fed.R.Civ.P. 12(c).) Judgment on the pleadings is appropriate when, even if all material facts in the pleading under attack are true, the moving party is entitled to judgment as a matter of law. *Doleman v. Meiji Mutual Life Ins. Co*., 727 F.2d 1480, 1482 (9th Cir.1984). If matters outside the pleadings are considered, the motion shall be treated as one for summary judgment. (Fed. R. Civ. Pro. 12(c).)

Here, Cyrus argues that since the motion does not challenge the sufficiency of the pleadings, and instead "submits" to relief not actually sought, the motion should be denied. However, Movants respond arguing that they do not seek to challenge the sufficiency of the pleadings but rather seeks an adjudication of the adversary action. Movants further contend that if the allegations regarding whether TGT never purchased the property are true, then the actual remedy sought is to have the stipulation set aside and voided, as there is no other reason for making these arguments and claims. For whatever reason, Cyrus does not want to void the stipulation until the central question is answered: i.e. whether TGT successfully purchased the property listed in the sale agreement in the estate sale. As suggested in the opposition, perhaps continuance as a proper motion for summary judgment is most appropriate here in order to resolve this issue of fact prior to determining whether the stipulation should be null and void.

Continue as a motion under Rule 56.

Party Information

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

Thursday, October 24, 2024 **Hearing Room 5B**

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CONT... M3Live Bar & Grill, Inc. **Chapter 7**

Debtor(s):

M3Live Bar & Grill, Inc.	Represented By Robert P Goe Ryan S Riddles Carl J Pentis

Defendant(s):

Cyrus Alimadadian	Represented By Babak Hashemi Benjamin Martin
IRA Resources, Inc.	Represented By Kyle E Yaege

Plaintiff(s):

The Grand Theater, Inc.	Represented By Thomas S Gruenbeck

Trustee(s):

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

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8:19-10814 M3Live Bar & Grill, Inc. **Chapter 7**

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

#15.00 Cross-Claimant Cyrus Alimadadian's Motion For Summary Judgment Or Alternatively, Partial Summary Judgment Against Debtor And Cross-Defendant M3Live Bar & Grill, Inc., Cross-Defendant Musa Madain, And Counter-Defendant The Gran Theater, Inc. [FRBP 7056 & LBR 7056-1]
(cont'd from 8-15-24 per court's own mtn)
(cont'd from 8-20-24)

Docket 74

Tentative Ruling:

Tentative for October 24, 2024

At the August 20, 2024 hearing, where the court found in favor as to the liability, most of the discussion focused on the issue of damages. Defendant's counsel, Mr. Gruenbeck, emphasized that a judgment was already obtained in the Orange County Superior Court, and there was no need for another monetary judgment here. The court disagreed because this judgment included an extra element of fraud that makes it nondischargeable. The court struggled in determining what the appropriate calculation should be based on the judgment awarded by the Superior Court considering accrued interest. Mr. Martin, counsel for prevailing party Alimadadian, notified the court at the hearing that he already prepared a declaration with the calculation of damages. The court instructed the parties that for the purposes of due process, the most appropriate way to handle this would be to grant summary judgment solely as to liability. For damages, Mr. Martin would submit the calculation of damages with the supporting declaration and exhibits, and Mr. Gruenbeck would have an opportunity to review and raise objections. The court assured that there would be no duplication of the judgment, and there will only be one recovery on the debt would issue, and that should be included in the proposed judgment.

The parties have followed this court's instruction. Mr. Martin has provided his declaration showing the calculation of damages, which includes the base judgment amount of $276,015.51. It also includes enforcement

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costs, attorney's fees, and accrued interest, broken down in detail and result in an overall monetary judgment of $587,332.61. However, the Proposed Judgment does not include the last statement indicating that there is only one recovery on the debt, as requested by the court.

Defendants spend most of the opposition arguing as to why summary judgment should not be granted and why Alimadadian should be precluded from seeking a duplicate judgment. Defendants also argue that Alimadadian cannot seeks to leverage his Superior Court Judgment because the facts and law upon which that judgment rests do not pertain at all to this bankruptcy case and the sale at issue. The Superior Court Judgment is based on facts that all occurred before this bankruptcy case was filed. Claim preclusion and issue preclusion of the Judgment cannot be used as evidence in the Adversary Proceeding to prove any damages to the transaction because the Superior Court Judgment was entered before this Bankruptcy Case began and the sale date. See Allstate Ins. Co. v. Countrywide Fin. Corp. (C. D. Cal., 2011) 824 F. Supp. 2d 1164, 1169 (provides that federal claims are governed by federal law and must follow the Ninth Circuit's precedent, which holds that damages and their causation are questions of fact that require evidence to be proven in a summary judgment motion.). No arguments were made specifically as to the calculation of the damages.

As stated clearly by the court at the end of the August 20, 2024 hearing, there will not be a double recovery and Defendants owe the same obligation in the Superior Court and Bankruptcy Court (same recovery), but with the different characterization, as this debt is now tainted with fraud as to both TGT and Debtor M3Live, and Madain, although Madain is the only one able to obtain a discharge. Thus, so long as the proposed judgment is amended to emphasis that there will be only one recovery of the Judgment, then the calculation of damages should be approved. *Appearance required.*

Tentative for August 20, 2024

This is Cross-claimant Cyrus Alimadadian's ("Movant" or

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"Alimadadian") Motion for Summary Judgment, or alternatively, Partial Summary Judgment against Debtor/cross-defendant M3Live Bar & Grill, Inc. ("Debtor" or "M3Live"), counter-defendant The Grand Theater, Inc. ("GTI"), and cross-defendant Musa Madain ("Madain") (collectively, "Defendants"). This court held a hearing on a Motion for Judgment on the Pleadings on March 28, 2024. The matter was continued as a Motion for Summary Judgment to resolve an issue of fact prior to determination as to whether the subject stipulation should be null and void.

A. Undisputed Facts

Debtor M3Live and its owner Madain operated a ballroom-style restaurant, theater and concert hall located in Anaheim which hosts weddings, concerts, holiday parties, etc. Alimadadian agreed to invest in the operation in 2014 via three (3) investment agreements to M3Live and Madain. When M3Live and Madain defaulted on the applicable re-payment schedule, Alimadadian initiated an action in the Superior Court of California, County of Orange, on November 30, 2015 against M3Live and Madain. [Martin Dec. p. 2 at lines 17-21; Alimadadian Dec. p. 2 at lines 6-13].

In 2016, the parties settled Alimadadian's claims in mediation, which provided that the Superior Court would retain jurisdiction to enforce the settlement agreement. M3Live and Madain began making payments under the agreed-to schedule, and then defaulted. [Martin Dec. p.2 at lines 21-24; Alimadadian Dec. p.2 at lines 14-18]. On June 14, 2017, Alimadadian went back to Superior Court and filed a motion to enforce the settlement agreement, and a judgment was entered against Debtor and Madain for $276,015.51 ("Judgment"). The Judgment was recorded as a judgment lien on Debtor. [Martin Dec. p.3 at lines 3-6; Exhibit 4].

On March 7, 2019, M3Live filed its chapter 11 bankruptcy petition. M3Live filed its schedule identifying an unsecured debt to Alimadadian as a settlement in the amount of $205,951.10. [Docket No. 35 at p.2]. On December 19, 2019, Debtor filed a motion with this court to sell its theater business under Section 363(f)— consisting of a lease to the theater and personal property—to Madain's newly created entity The Grand Theater, Inc. for $1,000,000 cash, free and clear of all liens, claims, encumbrances, and

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other interests. However, the lease and the personal property were not actually included in the sale as explained below.

Regarding the lease, while the sale motion was pending, Madain caused Debtor to assign the lease of the theater to GTI outside of the bankruptcy through an "Assignment of Lease" on January 22, 2020. It could be argued that the unauthorized assignment was therefore void under 11 U.S.C. §549. Neither Trustee Karen Naylor ("Trustee") nor the court were parties to nor aware of this assignment. [Martin Dec. p. 3 at lines 10-13; Exhibit 6]. Unaware of this assignment of lease, Trustee continued to negotiate the sale of the estate assets with Debtor, Madain, and GTI, resulting in the Amended Agreement for Purchase and Sale of Assets ("Amended PSA"), executed on February 14, 2020. [No. 8:23-ap-01094-TA, dkt. 200 at pp. 23 – 40]. Regarding the personal property, Madain and Debtor represented to the Trustee that Debtor owned the personal property located onsite at the theater and Trustee included it in the assets of the sale to GTI. Madain stated in a declaration nearly three years later under penalty of perjury that GTI never purchased any of the personal property located onsite at the theater because Debtor did not own such property – rather, the landlord of the theater and other third parties owned the property. [Martin Dec. p. 3 at lines 14-19; Exhibits 7 and 8]. After the execution of the Amended PSA, the case was converted to Chapter 7 on February 20, 2020.

The Amended PSA distinguished the "Included Assets" and the "Excluded Assets". Trustee requested a complete inventory of the personal property included in the sale from Debtor in order to prepare the sales tax returns. [Naylor Dec., June 14, 2024, p. 3 at lines 21-26]. The inventory submitted to the Trustee consisted of an index of 147 items and consisted of an exhaustive list of "all of the furniture, fixtures, equipment, and other tangible assets of M3Live" that was supposed to be included in the sale but was not included in the Bill of Sale Agreement. [No. 8:23-ap-01094-TA, dkt. 264].

Because Alimadadian’s recorded judgment lien made it difficult to sell "free and clear of all liens", Trustee, Alimadadian, GTI, Debtor, and Madain, came to an agreement whereby Alimadadian agreed to release his judgment

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lien against Debtor based on Madain's representations that: (1) GTI had the financial resources to satisfy the judgment and would satisfy the judgment after sale; (2) Debtor owned expensive property used in the operation of the theater business located onsite; and (3) GTI would acquire all such property located at the theater onsite which Alimadadian could execute on if GTI failed to satisfy the judgment voluntarily. Madain executed a declaration on February 11, 2020 stating, "As the sole shareholder and officer of GTI, I have authority to and hereby do assume all liability under the Judgment entered in Superior Court for the County of Orange, Case No. 30-2015-00822570, and Recorded in the Official Records for the County of Orange as Instrument No. 2017000390630 on September 14, 2017 ("Judgment") … GTI has the financial resources to satisfy said Judgment." [Declaration of Musa Madain, February 11, 2020, p.1 at lines 6-23]. Relying on these representations, Alimadadian agreed to release his judgment lien against Debtor, and the parties memorialized this agreement in February 2020 ("Bankruptcy Stipulation"). The relevant provisions of this Bankruptcy Stipulation are as follows:

> Trustee is seeking to sell Debtor's business to GTI and does not have sufficient funds to pay Alimadadian's Judgment and other claims that need to be paid from the sale [No. 8:23-ap-01094-TA, dkt. 227, at ¶ 4 (emphasis added)]
>
> Madain and his new entity (of which Madain is 100% owner), GTI, agree to be responsible to satisfy the Judgment … [id., at ¶ 5 (emphasis added)]
>
> Alimadadian agreed to release his Judgment Lien against Debtor and Debtor's assets … this Stipulation should be null and void if GTI is not the successful purchaser of Debtor's assets" [id., ¶ 6 (emphasis added)] The Parties agree that the Judgment Lien will be released against Debtor and Debtor's assets only; however, this Stipulation should be null and void if GTI is not the successful purchaser of Debtor's assets. (Id., at ¶ 8 [emphasis added].)
>
> On May 11, 2020, Trustee filed her Trustees' Report, stating that the

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sale had closed on April 30, 2020 based on the Bill of Sale Agreement (as to the personal property) and the April 20, 2020 Assignment and Assumption of Real Estate Leases (as to the theater lease). However, this information was false as to both, and Movant clarifies that this is by no fault of the Trustee, as both were procured by alleged fraud on the Trustee.

On October 19, 2022, after the execution of the Amended PSA, and closing of the bankruptcy, Alimadadian filed a Motion for Turnover Order to attach and sell various personal property items allegedly located at GTI including furniture, equipment, plants, etc. Counsel for GTI filed an opposition which included a declaration by Madain stating that he did not purchase personal property as part of the sale. However, apparently Alimadadian filed a declaration stating that Madain's declaration was false. The court made its final ruling and ordered GTI to turnover listed property to the OC Sheriff's Department as requested within 10 days of the order.

GTI apparently attempted to deliver the property but it was not accepted by the OC Sheriff's Department. [Gruenbeck Dec at Exhibit 4]. These items included office equipment, chairs, and kitchen equipment. Counsel for Alimadadian never sought to amend the turnover order or to further enforce it. On November 10, 2023, Alimadadian filed an OSC against Madain for filing the alleged perjured declaration at issue in the bankruptcy case. [Gruenbeck Dec. at Exhibit 5]. In the OSC motion, Alimadadian stated that Madain lied in the declaration that GTI never purchased the personal property from the bankruptcy estate. The motion was granted and the case was set for hearing on the OSC re contempt. However, this was dismissed because Alimadadian's counsel failed to follow proper procedures. The issue was never corrected or requested again. It is unclear why Alimadadian pursued this given the adversary proceeding filing and this motion's arguments, but perhaps at the time Alimadadian still did not know that GTI did not purchase the personal property.

On November 9, 2023 Counsel for Alimadadian filed its counterclaim in this instant adversary proceeding alleging that Madain lied to the Trustee about the personal property. However, the undisputed facts show that Trustee was fully apprised of the personal property and valued it at $12,661.

B. Disputed Facts

The following facts are disputed:

(1) M3Live did not own personal property located onsite; Defendants argue that Debtor did own the personal property and cite to Trustee's declaration for support. [Naylor Declaration in support of MSJ, p.3, par.16].

(2) Misrepresentation to Trustee and Alimadadian that M3Live owned the personal property included in the inventory list submitted to Trustee. Defendants argue that Movant provides no evidence in support of this, other than hearsay statements by Alimadadian and his counsel Martin.

(3) GTI did not purchase any of the property. Defendants contend that GTI did purchase the personal property, as evidenced by Trustee's declaration stating that she valued the property based on what was received in the inventory in the amount of $12,661. [See Naylor Declaration p.4, at lines 14-27]. While these facts are disputed the court concludes they are not material to resolution of the Motion or are not supported in the evidence.

C. Legal Standard Under FRCP 56

A party seeking summary judgment bears the initial responsibility 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. A*dickes v. S.H. Kress & Co*, 398 U.S. 144, 157, 90 S. Ct. 1598, 1608 (1970).

D. Procedural Arguments

The opposition makes three main procedural arguments as to why the Motion for Summary Judgment should be denied. First, Defendants argue that the Movant failed to provide proper notice. A hearing on a motion for summary judgment requires 42 days of notice. See LBR 7056-1. The Motion for Summary Judgment was calendared for August 15, 2024. The motion was filed and served on July 5, 2024, which only provides 41 days of notice. However, as pointed out by Movant in the reply, July 4, 2024 is a legal holiday (Independence Day), so the due date become the day following, July 5, 2024. Fed. R. Bankr. P. 9006(a)(1)(C). In any event, the hearing was continued a week so this issue is moot.

Next, Defendants contend that Movant failed to provide a Statement of Uncontroverted Facts and Conclusions of Law in Compliance with LBR 7056-1(b)(2)(B). While a Statement was provided, it apparently failed to cite evidentiary support that aligns with the statement of facts. The court disagrees, as the Statement of Uncontroverted Facts and Conclusions of Law provides a detailed recital of the facts that are all mentioned in the statement

of facts section of the motion and cites to the record, declarations, exhibits, and other supporting evidence. The court also notes that this Motion for Summary Judgment was submitted with what Movant currently had as evidence as Debtor, GTI, and Madain reportedly refused to respond to further discovery requests.

Finally, Defendants argue that the court must review this motion based on its substance under FRCP 60(b), which usually involves remedies for a defect in the collateral review process. Defendants argue that the MSJ is an improper collateral attack under FRCP 60 on the court's sale order. However, Movant argues that Rule 60 is not the only means by which a court may set aside an order procured by fraud. Rule 60(d) states: "This rule does not limit a court's power to: (1) entertain an independent action to relieve a party from a judgment, order, or proceeding; … (3) set aside a judgment for fraud on the court." Here, this adversary proceeding constitutes an "independent action" and, quite clearly, this motion shows that defendants committed fraud on the Court in procuring the Order authorizing the Trustee's Sale. Further, this court instructed Alimadadian to bring this motion for summary judgment to uncover and explain the potential fraud here.

To conclude, the court finds the arguments raised by Defendants in the opposition regarding procedure to be non-issues.

E. Genuine Issue of Material Fact

Defendants dispute three facts alleged by Movant: (1) Debtor did not own personal property located onsite at the time of the Trustee's sale; (2) Defendants misrepresented to Trustee and Alimadadian that Debtor owned the personal property included in the inventory list submitted to Trustee; (3) GTI did not purchase any of the personal property. As all three are dependent on one another, the court views the main issue of fact to be whether Debtor owned the personal property at the time of the Trustee's sale; but as explained, Defendant's version of the facts is not supported by any evidence.

(1) Did Debtor Own the Personal Property?

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Movant asserts that Madain and Debtor misrepresented to the Trustee that Debtor owned the personal property located onsite at the theater. To support this contention, Movant cites to excerpts of Madain's deposition transcript and declaration where he admits under penalty of perjury that GTI never purchased any of the personal property located onsite at the theater because Debtor did not own such property -- rather, the landlord of the theater and other third parties owned the property. [Martin Dec. p. 3 at lines 14-19; Exhibits 7 and 8]. Defendants dispute this fact and argue that Debtor did own the personal property. Trustee specifically asked for an inventory of the personal property that would be included in the assets and was provided with an index of 147 items and consisted of an exhaustive list of "all of the furniture, fixtures, equipment, and other tangible assets of M3Live" that was supposed to be included in the sale but was not included in the Bill of Sale Agreement. [No. 8:23-ap-01094-TA, dkt. 264]. Further, GTI apparently attempted to deliver the property but it was not accepted by the OC Sheriff's Department. Defendants attached a certificate showing GTI's attempt to comply with the Turnover Order. [Gruenbeck Dec at Exhibit 4]. Counsel for Alimadadian never sought to amend the turnover order or further enforce it.

The issue of fact here then becomes whether Debtor owned the personal property at the time of the Trustee's sale. The declaration and deposition of Madain is quite unfavorable to Defendants here, as it displays a direct admission by Debtor and GTI's principal. It does not help that Madain did not provide a declaration in the opposition that refutes or explains why he made those statements. One is left curious as to why GTI would attempt to comply with the Turnover Order if it did not own any personal property. The answer to this question is significant, because if Debtor is found to not have owned the personal property at the time of the sale, then there was clear misrepresentation and fraud here. The court views the testimony of the owner of both M3Live and GTI as determinative. Unless further argument or evidence is provided by Defendants, there is no material issue of fact here that Debtor was not the owner of the personal property at the time of the Trustee's sale, or the assertion otherwise is completely unsupported.

(2) Judgment as a Matter of Law

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In resolving the issue of fact here, the court must also determine whether, as a matter of law, Defendants fraud has been established.

To establish fraud, Plaintiff must prove the following elements by a preponderance of evidence: (1) that the debtor made the representation(s); (2) that at the time he knew they were false; (3) that he made them with the intention and purpose of deceiving the creditor; (4) that the creditor relied on such representations; and (5) that the creditor sustained the alleged loss and damage as the proximate result of the representations having been made. *In re Eashai*, 87 F.3d 1082, 1086 (9th Cir. 1996).

The failure to disclose material facts constitutes a fraudulent omission if the speaker was under a duty to disclose and the omission was motivated by an intent to deceive. *In re Harmon*, 250 F.3d 1240, 1246 (9th Cir. 2001); *Eashai*, 87 F.3d 1082 at 1089–90. The intent to deceive requirement may be established by showing "either actual knowledge of the falsity of a statement, or reckless disregard for its truth ..." *In re Gertsch*, 237 B.R. 160, 167 (B.A.P. 9th Cir. 1999). "Because direct evidence of intent to deceive is rarely available, 'intent to deceive can be inferred from the totality of the circumstances, including reckless disregard for truth.'" *In re Kraemer,* BAP Nos. WW-10-1156-HJuMk, 2011 WL 3300360, at *5, 2011 Bankr. LEXIS 1783, at *12 (B.A.P. 9th Cir. Apr. 21, 2011), quoting *In re Gertsch*, 237 B.R. at 167-68. Intent to deceive can also be inferred from surrounding circumstances or inferences from a course of conduct. *In re Kennedy*, 108 F.3d 1015, 1018 (9th Cir. 1997).). "[A] person may justifiably rely on a misrepresentation even if the falsity of the representation[s] could have been ascertained upon investigation." *Eashai*, 87 F.3d at 1082, 1090. In other words, negligence in failing to discover an intentional misrepresentation" does not defeat justifiable reliance. *Eashai*, 87 F.3d at 1090.

(a) Misrepresentation Defendants Knew were False

Here, it is undisputed that Alimadadian's Judgment was required to be paid from the sale's proceeds, which was $1,000,000 and that unless Alimadadian agreed to release his judgment lien via the Bankruptcy Stipulation, the Trustee could not sell Debtor's business to GTI "free and clear of all liens" because there were insufficient funds to pay Alimadadian's

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judgment and other claims.

Debtor, Madain, and GTI misrepresented to Alimadadian that they have the financial resources to satisfy the judgment, that they would actually satisfy the judgment, and that GTI would actually acquire Debtor's assets which could be executed on to satisfy the judgment. Debtor, Madain and GTI misrepresented in the April 30, 2020 Bill of Sale Agreement that GTI actually purchased the property that was supposed to be owned by Debtor and could be sold. However, they omitted the fact that Debtor did not actually own any of the personal property, so GTI did not actually purchase personal property from Debtor. Notably, on March 13, 2023, in the California Superior Court case, Madain filed a declaration sating that GTI never purchased the theater's property and equipment that Trustee supposedly sold to GTI, which was confirmed during his deposition. [Martin Dec. p. 3 at lines 14-19; Exhibits 7 and 8]. Further, the Defendants concealed the Assignment of Lease to GTI that was conducted outside of the bankruptcy, and removed from the estate prior to the execution of the Amended PSA.

(b) Intent to Deceive

As stated above, the court looks to the circumstances to determine intent to deceive. The circumstances that create an inference of deception include: (1) creation of the shell entity GTI by Madain as owner of both Debtor and GTI; (2) assignment of the lease prior to the Trustee's sale outside of the bankruptcy and without the knowledge of Movant and Trustee; and (3) Madain's testimony admitting that Debtor did not own the personal property despite sending the Trustee an inventory list of items.

(c) Justifiable Reliance

This element is also met because Alimadadian justifiably relied on the misrepresentations made by the Defendants by agreeing to release his judgment lien pursuant to the Bankruptcy Stipulation. This certainly would not have occurred if Alimadadian knew that GTI did not actually purchase the personal property and the judgment lien would not be satisfied.

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(d) Damages

Movant explains how he was damaged in the reply and why he wants this declaratory relief prior to the Bankruptcy Stipulation being null and void. Through the Bankruptcy Stipulation, Movant agreed to allow GTI to assume a judgment lien obligation, instead of Alimadadian being paid directly from the sale proceeds as a secured creditor. From the $1,000,000 sale proceeds, Trustee paid $423,110.49 to secured creditors and "segregated" $130,088.10 for the benefit of secured claim holders. Voiding the Bankruptcy Stipulation would revert GTI and Debtor to respective pre-stipulation position and would result in Defendants going back to the Superior Court to substitute GTI for Debtor as judgment creditor. This would be prejudicial to Alimadadian because at this point, the Defendants have enjoyed the benefit of Trustee's sale without satisfying the Judgment, which rewards their fraud. The prejudice is in not having the Judgment satisfied "directly from the sale proceeds", and instead, having a judgment against Debtor – a defunct entity that has no assets and conducts no business and is listed as "suspended" and "inactive" by the California Secretary of State.

In the motion, Movant requests that the court reverse or void the sale of all estate assets to GTI, and order that Madain and Debtor, under the threat of contempt, return all funds received from the estate to the Trustee within thirty days from entry of the order. Thereafter, Movant requests that the court order that the Judgment be satisfied from the returned funds.

But the foregoing is easier said than done. The problem is that the sale has already closed years ago, and the proceeds have been distributed to secured creditors by Trustee. As far as we know, Debtor and Madain no longer have the net proceeds. To ask the Trustee to unwind this transaction and to somehow have all proceeds returned would be unreasonably difficult, likened to unscrambling not only the scrambled eggs but also unwinding the resulting omelet. This is a remedy that is not something that this court will even try to impose under these circumstances as it would embroil the court is a fruitless and impossible task of supervising the impossible, under the requested but futile threat of contempt... But there is an alternative of a money judgment against Defendants to prevent complication and injury to the

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other secured creditors. While 9th Circuit case law is thin on this issue, California contract law and bankruptcy courts in other jurisdictions provide insight and support the use of monetary damages as an alternative remedy. See *Runyan v. Pacific Air Industries, Inc*., 2 Cal. 3d 304 (1970) (the court emphasized that when rescission is impracticable or unavailable, damages can be awarded as an alternative remedy to compensate the injured party for losses and restore the parties to their former position as far as possible); *In re Fehrs*, 391 B.R. 53, 76 (Bkrtcy. D. Idaho 2008) (in the context of a fraudulent transfer, the court held that rather than ordering the return of property that was the subject of avoided transfer, a bankruptcy court can instead enter money judgment against transferees, if return of property would require the unwinding of real estate transaction and would injure innocent third parties). Although *Fehrs* discusses remedies in the context of a fraudulent transfer and §§ 548/550, the principle is the same and can be analogized to this case. The court can award money damages in an adversary where return of the property (or net proceeds) would not be feasible.

The exact amount in damages that might be appropriate under these circumstances is elusive and not well supported in the papers; rather, Alimadadian seeks an "all or nothing" approach which, as explained above, is just not realistically obtainable. Perhaps the amount of the judgment lien, $276,015.51 is the appropriate starting point.

F. Conclusion

As there is no genuine dispute of material fact and Movant succeeds as a matter of law, the motion for summary judgment should be granted. Monetary damages are the appropriate remedy as rescission, with full restitution as movant requests, is not feasible in these circumstances. The court will hear argument as to the appropriate number for the monetary judgment.

Appearance required.

Party Information

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

Thursday, October 24, 2024 **Hearing Room 5B**

10:00 AM

CONT... M3Live Bar & Grill, Inc. **Chapter 7**

Debtor(s):

M3Live Bar & Grill, Inc.	Represented By Robert P Goe Ryan S Riddles Carl J Pentis

Defendant(s):

Cyrus Alimadadian	Represented By Babak Hashemi Benjamin Martin
IRA Resources, Inc.	Represented By Kyle E Yaege

Plaintiff(s):

The Grand Theater, Inc.	Represented By Thomas S Gruenbeck

Trustee(s):

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

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

Thursday, October 24, 2024 **Hearing Room 5B**

11:00 AM

8:19-10526 LF Runoff 2, LLC **Chapter 7**

Adv#: 8:24-01063 Marshack v. Polish Airlines 'Lot'

#16.00 Motion Of Specially Appearing Defendant Polskie Linie Lotnicze Lot S.A. To Set Aside Entry Of Default

Docket 19

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF WITHDRAWAL OF MOTION TO SET ASIDE ENTRY OF DEFAULT OF SPECIALLY APPEARING DEFENDANT POLSKIE LINIE LOTNICZE LOT S.A. FILED 10-03-24 - SEE DOC #30**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

LF Runoff 2, LLC	Represented By Marc C Forsythe

Defendant(s):

Polish Airlines 'Lot'	Represented By Scott D Cunningham

Plaintiff(s):

Richard A. Marshack	Represented By Lauren N Gans Roye Zur

Trustee(s):

Richard A Marshack (TR)	Represented By David Wood D Edward Hays Thomas J Polis Laila Masud Roye Zur Lauren N Gans

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

Thursday, October 24, 2024 **Hearing Room 5B**

11:00 AM

CONT... LF Runoff 2, LLC **Chapter 7**

11:00 AM
8:22-11039 Craig Chang **Chapter 7**
Adv#: 8:22-01087 Fransen v. Chang

#17.00 Motion To Strike Portions Of Plaintiff's Third Amended Complaint And/Or For A More Definite Statement

Docket 112

Tentative Ruling:

Tentative for October 24, 2024

This is Defendant/Debtor Craig Chang's ("Defendant") Motion to Strike Portions of Plaintiff Arthur Fransen's ("Plaintiff") Third Amended Complaint and/or for a More Definite Statement ("3AC"). On August 21, 2024, Plaintiff filed his operative 3AC against Defendant, presenting four claims:

(1) A First Claim to "Determine The Nondischargeability of Debtor's Debt Pursuant to 11 U.S.C. §523 (a)(2)(A)";
(2) A Second claim for "Declaratory Relief Regarding The Nondischargeability Of The Debt Under 11 U.S.C. §523 (a)(4);
(3) A Third claim for "Declaratory Relief Regarding The Nondischargeability Of The Debt Under 11 U.S.C. §727(a)(3);
(4) A Fourth claim for "Declaratory Relief Regarding The Nondischargeability Of The Debt Under 11 U.S.C. §727(a)(5).

Defendant contends that certain provisions of this 3AC contain redundant, immaterial, impertinent, or scandalous matter that should be stricken pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, or alternatively, Plaintiff should be ordered to provide a more definite statement.

A. Legal Standard

A motion to strike may be brought under Federal Rule of Civil Procedure 12(f). Rule 12(f), which provides that a "court may strike from a pleadings an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." The function of a motion to strike is to avoid unnecessary expenditures that arise throughout litigation by dispensing of any

spurious issues prior to trial. *Sidney–Vinstein v. A.H. Robins Co. ,* 697 F.2d 880, 885 (9th Cir. 1983). "Immaterial" pleadings "ha[ve] no essential or important relationship to the claim for relief." *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993). An "impertinent" matter consists of statements that do not pertain and are unnecessary to the issues in question. *Fantasy*, 984 F.2d at 1527. A redundant pleading, as defined under Federal Rule of Civil Procedure 12(f), consists of allegations that constitute a needless repetition of other averments" SA Charles A. Wright Arthur R. Miller, Federal Practice and Procedure § 1382, at 704 (1990).

Alternatively, Rule 12(e) provides in relevant part: "A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response."

B. **Motion to Strike Portions of the 3AC**

(1) On August 9, 2023, Wells Fargo Bank filed a Complaint against Plaintiff in a Riverside State Court Action titled *Wells Fargo Bank, National Association v. Paragon Tactical Inc.,* et al., Case No. CVRI2304293 (the "Wells Fargo Action"). The Wells Fargo Action is based on Paragon's default caused by Debtor CHANG on a Wells Fargo business line of credit. As a result, in order to defend the lawsuit filed by Wells Fargo, Plaintiff incurred attorneys' fees and costs. Defendants listed this portion as immaterial/impertinent but provides no explanation as to why. Plaintiff argues that this allegations is material because it shows a basis for a portion of the remedies that Plaintiff is recovering against Defendant. Absent further explanation why the allegation is impertinent/immaterial, the court finds that the allegation provides a possibly useful basis/background and should not be stricken.

(2) On November 30, 2023, another entity, Argonaut Insurance Company, filed a complaint against Plaintiff in the United States District Court, Central District titled *Argonaut Insurance Company v. Paragon Tactical Inc., et al.*, Case No. 8:23-cv-2258 ("Argonaut Action"). The Argonaut Action is based on numerous bond claims caused by Debtor CHANG.

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CONT... Craig Chang **Chapter 7**

As a result, in order to defend the lawsuit filed by Argonaut, Plaintiff CHANG incurred attorney fees and costs.

Defendants listed this portion as immaterial/impertinent, but provides no explanation as to why. Plaintiff argues that this allegations is material because it shows a basis for a portion of the remedies that Plaintiff is recovering against Defendant. Absent further explanation why the allegation is impertinent/immaterial, the court finds that the allegation provides a possibly useful basis/background and should not be stricken.

(3) On November 7, 2023, Plaintiff was served with the summons and complaint in *Hainan Guanghua Group USA v. Craig Chang, et al*., Case No. 30-2019-01114696-CU-BC-WJCat Orange County Superior Court (the "OC State Court Action").

Defendants listed this portion as immaterial/impertinent, but provides no explanation as to why. Plaintiff argues that this allegations is material because it shows a basis for a portion of the remedies that Plaintiff is recovering against Defendant. Absent further explanation why the allegation is impertinent/immaterial, the court finds that the allegation provides a possibly useful basis/background and should not be stricken.

(4) On November 7, 2023, Plaintiff was served with the summons and complaint in H*ainan Guanghua Group USA v. Craig Chang, et al.,* Case No. 30-2019-01114696-CU-BC-WJCat Orange County Superior Court (the "OC State Court Action").

Defendants listed this portion as immaterial/impertinent, but provides no explanation as to why. Plaintiff argues that this allegations is material because it shows a basis for a portion of the remedies that Plaintiff is recovering against Defendant. Absent further explanation why the allegation is impertinent/immaterial, the court finds that the allegation provides a possibly useful basis/background and should not be stricken.

(5) In the OC State Court action, HGG sued FRANSEN for $100,000.00 that CHANG used the names of PARAGON and Plaintiff FRANSEN to

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CONT... Craig Chang **Chapter 7**

defraud HGG. As a result, in order to defend the lawsuit filed by HGG, Plaintiff FRANSEN incurred attorneys' fees and costs.

Defendants listed this portion as immaterial/impertinent, but provides no explanation as to why. Plaintiff argues that this allegations is material because it shows a basis for a portion of the remedies that Plaintiff is recovering against Defendant. Absent further explanation why the allegation is impertinent/immaterial, the court finds that the allegation provides a possibly useful basis/background and should not be stricken.

(6) On December 4, 2023, Plaintiff filed a Cross-Complaint in the State Court Action. The Cross-Complaint in the State Court Action involves thirteen (13) cross-defendants and alleged thirty-five (35) causes of action, which like this adversary proceeding, mainly center around Plaintiff's entering into a certain Stock Purchase Agreement with Debtor for the sale of Paragon Tactical Inc. from Plaintiff to Debtor in reliance on Debtor's false representations. That Cross-Complaint also included the facts pertaining to the default caused by Debtor on the Wells Fargo business line of credit, and this fact was discovered after Plaintiff filed this adversary proceeding.

Defendant contends that these allegations are immaterial/impertinent, and while there does not appear to be any opposition to this particular allegation, the allegation may be material to providing background/context to this adversary proceeding. It centers around the same Stock Purchase Agreement with the Debtor for the sale of Paragon from Plaintiff Debtor in reliance of alleged false representations.

(7) On March 19, 2024, Plaintiff filed a Motion for Relief From the Automatic Stay ("MFRAS") in Debtor CHANG's Chapter 7 Bankruptcy petition for the OC State Court Action. (Dkt. #107 of the Ch. 7 Proceeding). That motion was granted under the condition that no levies of any process may be taken absent further consent from this Court. (Dkt. #122 of the Ch. 7 Proceeding).

Defendant argues that this allegation is immaterial/impertinent without any explanation as to why. Plaintiff asserts in the opposition that these

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CONT... Craig Chang **Chapter 7**

allegations are true and show that Plaintiff has incurred and will continue to incur attorneys' fees because of Defendant's fraudulent actions against Plaintiff. The court granted the motion for relief from automatic stay in the bankruptcy, resulting in attorneys' fees and other costs to obtain the relief and liquidate the claim in state court, as a result of Defendant's fraudulent actions that relate to the causes of action asserted. Accordingly, this allegation should not be stricken.

(8) On April 12, 2024, Plaintiff filed a MFRAS in Debtor CHANG's Chapter 7 Bankruptcy petition for the Argonaut Action (Dkt. #113 of the Ch. 7 Proceeding). That motion was granted for liquidation of claim only. (Dkt. #128)

Defendant argues that this allegation is immaterial/impertinent without any explanation as to why. Plaintiff asserts in the opposition that these allegations are true and show that Plaintiff has incurred and will continue to incur attorneys' fees because of Defendant's fraudulent actions against Plaintiff. The court granted the motion for relief from automatic stay in the bankruptcy, resulting in attorneys' fees and other costs to obtain the relief and liquidate the claim in state court, as a result of Defendant's fraudulent actions that relate to the causes of action asserted. Accordingly, this allegation should not be stricken.

(9) On April 12, 2024, Plaintiff filed a MFRAS in Debtor CHANG's Chapter 7 Bankruptcy petition for the Argonaut Action (Dkt. #113 of the Ch. 7 Proceeding). That motion was granted for liquidation of claim only. (Dkt. #128)

Defendant argues that this allegation is immaterial/impertinent without any explanation as to why. Plaintiff asserts in the opposition that these allegations are true and show that Plaintiff has incurred and will continue to incur attorneys' fees because of Defendant's fraudulent actions against Plaintiff. The court granted the motion for relief from automatic stay in the bankruptcy, resulting in attorneys' fees and other costs to obtain the relief and liquidate the claim in state court, as a result of Defendant's fraudulent actions that relate to the causes of action asserted. Accordingly, this allegation should not be stricken.

(10) On April 14, 2024, Plaintiff filed a MFRAS in Debtor CHANG's Chapter 7 Bankruptcy petition for the Wells Fargo Action. (Dkt. #116). That motion was also granted for liquidation of claim only. (Dkt. #129).

Defendant argues that this allegation is immaterial/impertinent without any explanation as to why. Plaintiff asserts in the opposition that these allegations are true and show that Plaintiff has incurred and will continue to incur attorneys' fees because of Defendant's fraudulent actions against Plaintiff. The court granted the motion for relief from automatic stay in the bankruptcy, resulting in attorneys' fees and other costs to obtain the relief and liquidate the claim in state court, as a result of Defendant's fraudulent actions that relate to the causes of action asserted. Accordingly, this allegation should not be stricken.

(11) Plaintiff seeks equitable and other relief pursuant to the Uniform Fraudulent Transfer Act §3439 et seq.

Defendant contends that this allegation is immaterial/impertinent, but again provides no explanation as to why. Plaintiff contends that the relief is brought under Uniform Fraudulent Transfer Action Section 3439, and this is material because it shows the basis of the remedy that Plaintiff is seeking. While it would have been well to explain exactly how this law connects to the specific allegations, the court finds no redundancy or other basis for striking.

(12) It is alleged Debtor CHANG also utilizes several corporate entities, PTI Holdings corp., Paragon Tactical, Inc., 1st Reliant Home Loans, Inc., Checkered Flags Inc., Reliant Property Development Corporation, and Pacifica Industrial Corporation, to defraud creditors including Plaintiff FANSEN and have, through a pattern of racketeering activity, directly and indirectly invested, maintained an interest, participated in operations, and conspired to do the fraudulent acts in an enterprise that affects interstate commerce that violate the mail and wire fraud provisions of the Federal Racketeer Influenced and Corrupt Organizations ("RICO") Sections of Title IX of the Organized Crime

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CONT... Craig Chang **Chapter 7**

Control Act of 1970 18 U. S. C. §§ 1961 et. Seq.

Defendant submits that this allegation is immaterial and impertinent. Plaintiff explains that this allegation describes how and to whom Defendant transferred his assets to hinder and delay from being discovered by creditors, including Plaintiff, which is material to the claims of the 3AC. The court agrees with Plaintiff that this allegations is material to the claims in the 3AC.

(13) In order to hinder and delay and shield assets from being discovered by creditors, including Plaintiff FRANSEN, Debtor CHANG transferred his assets to third parties including Jamilee Avitia aka Jamilee Avitia Chang, Nancy Chang aka Nancy Hsiao; Otto Chang aka Chang Ya-Chiao; Lucy Chang aka Lucy Hsiao; Carrollyn Chang; and Michael Mason, in violation of California's Uniform Voidable Transactions Act-Cal. Civil Code §§3439 et seq.("UVTA").

Defendant submits that this allegation is immaterial and impertinent. Plaintiff explains that this allegation describes how and to whom Defendant transferred his assets to hinder and delay from being discovered by creditors, including Plaintiff, which is material to the claims of the 3AC. The court agrees with Plaintiff that this allegations is material to the claims in the 3AC.

(14) While payment has been due and owing from Debtor to creditors, including this Plaintiff, Debtor transferred assets, including the monies that he allegedly embezzled from Paragon, to third parties including Jamilee Avitia aka Jamilee Avitia Chang, Nancy Chang aka Nancy Hsiao; Otto Chang aka Chang Ya-Chiao; Lucy Chang aka Lucy Hsiao; Carrollyn Chang; and Michael Mason.

Defendant submits that this allegation is immaterial and impertinent. Plaintiff explains that this allegation describes how and to whom Defendant transferred his assets to hinder and delay from being discovered by creditors, including Plaintiff, which is material to the claims of the 3AC. The court agrees with Plaintiff that this allegations is material to the claims in the 3AC.

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CONT... Craig Chang **Chapter 7**

(15) Debtor now claims that he has no assets to pay creditors, including this Plaintiff, because of the transfers that he made to third parties including Jamilee Avitia aka Jamilee Avitia Chang, Nancy Chang aka Nancy Hsiao; Otto Chang aka Chang Ya-Chiao; Lucy Chang aka Lucy Hsiao; Carrolyn Chang; and Michael Mason.

Defendant submits that this allegation is immaterial and impertinent. Plaintiff explains that this allegation describes how and to whom Defendant transferred his assets to hinder and delay from being discovered by creditors, including Plaintiff, which is material to the claims of the 3AC. The court agrees with Plaintiff that this allegations is material to the claims in the 3AC.

(16) As alleged above, Plaintiff asserts claims under §523(a)(2) relating to debts owed for money to the extent obtained by fraud, false pretenses, or false promises as follows: (1) the debtor knowingly made a false representation; (2) the debtor intended the representation to deceive the creditor; (3) the creditor actually and justifiably relied on the representation; and (4) the creditor sustained a loss as a proximate result of its reliance on the false representation.

Defendant argues that the allegation is immaterial/impertinent without explanation. Plaintiff contends that this statute ties directly to Plaintiff's claims and forms the legal foundation and are thus material. The court agrees, and as far as redundancy, the statute is not stated again in the cause of action, which mostly analyzes the elements.

(17) Moreover, 11 USC §523(a)(4), provides for non-dischargeability of a debt for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.

Defendant contends that the allegation is immaterial, impertinent, and redundant because it is already stated in a later paragraph of the complaint. Plaintiff contends that this statute ties directly to Plaintiff's claims and form the legal foundation and is thus material. Plaintiff already includes the statute when analyzing the elements to the cause of action under Section 523(a)(4) but the court does not find it immaterial or redundant. No striking is necessary.

(18) Furthermore, under §727(a)(3), a court may deny a debtor a discharge when the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case.

Defendant contends that the allegation is immaterial, impertinent, and redundant because it is already stated in a later paragraph of the complaint. Plaintiff contends that this statute ties directly to Plaintiff's claims and form the legal foundation and are thus material. The court does not find this portion to be redundant or immaterial, but instead central to analyzing the elements to the cause of action under Section 727(a)(3). Accordingly, this allegation should not be stricken for redundancy.

(19) Additionally, under §727 of the Bankruptcy Code, non-dischargeability under §727 differs markedly from non-dischargeability under §523 based on one critical distinction—namely, a finding of non-dischargeability under §727 results in a Debtor being denied discharge in total. To the contrary, a finding of non-dischargeability under §523 results in a debtor's failure to obtain a discharge with respect to that creditor plaintiff's debt only.

Defendant contends that the allegation is immaterial, impertinent, and redundant because it is already stated in a later paragraph of the complaint. Plaintiff contends that this statute ties directly to Plaintiff's claims and form the legal foundation and are thus material. The court does not find this portion to be redundant, as Plaintiff includes the statute when analyzing the elements to the cause of action under Section 727(a)(5). Accordingly, this allegation should not be stricken for redundancy.

(20) Debtor allegedly liquidated all assets of Paragon and fraudulently conveyed the proceeds to several improper recipients including third parties including Jamilee Avitia aka Jamilee Avitia Chang, Nancy

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CONT... Craig Chang **Chapter 7**

Chang aka Nancy Hsiao; Otto Chang aka Chang Ya-Chiao; Lucy Chang aka Lucy Hsiao; Carrollyn Chang; and Michael Mason.

Defendant submits that this allegation is immaterial and impertinent. Plaintiff explains that this allegation describes how and to whom Defendant transferred his assets to hinder and delay from being discovered by creditors, including Plaintiff, which is material to the claims of the 3AC. The court agrees with Plaintiff that this allegations is material to the claims in the 3AC.

(21) After allegedly defrauding Plaintiff FRANSEN, on June 24, 2022, Debtor filed his Chapter 7 Bankruptcy petition, Case No. 8:22-bk-11039-TA.

Defendant submits that this allegation is immaterial and impertinent. Plaintiff explains that this allegation describes how and to whom Defendant transferred his assets to hinder and delay from being discovered by creditors, including Plaintiff, which is material to the claims of the 3AC. The court agrees with Plaintiff that this allegations is material to the claims in the 3AC.

(22) On March 17, 2023, Debtor CHANG and started a new corporate entity named Pacifica Industrial Corporation at the PTI's facility located at 1580 COMMERCE STREET CORONA, CA 92880 to defraud Plaintiff, other Creditors, and government agencies.

Defendant submits that this allegation is immaterial and impertinent. Plaintiff explains that this allegation describes how and to whom Defendant transferred his assets to hinder and delay from being discovered by creditors, including Plaintiff, which is material to the claims of the 3AC. The court agrees with Plaintiff that this allegations is material to the claims in the 3AC.

(23) The Statement of Information filed by Pacifica Industrial Corporation, Entity No. 5581488 on May 30, 2023 with the Secretary of State Principal Address, show that its corporate address is at 1580 COMMERCE STREET CORONA, CA 92880, JAMILEE AVITIA, listed as Chief Executive Officer, Secretary, Chief Financial Officer, and the sole Director, CRAIG CHANG is listed as the Agent for Service of Process Agent Address 1580 COMMERCE STREET CORONA, CA

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CONT... Craig Chang **Chapter 7**

92880.

Defendant submits that this allegation is immaterial and impertinent. Plaintiff explains that this allegation describes how and to whom Defendant transferred his assets to hinder and delay from being discovered by creditors, including Plaintiff, which is material to the claims of the 3AC. The court agrees with Plaintiff that this allegations is material to the claims in the 3AC.

(24) Furthermore, During Debtor CHANG's 341(a) examination in his Bankruptcy Proceeding ("BK"), he testified that after he filed the BK: (1) JAMILEE married CRAIG CHANG on April 8, 2023; (2) The wedding was held at Aliso Viejo Country Club; (3) Approximately seventy-five (75) guests attended the wedding; (4) The wedding costs were between 20,000 to 30,000 and JAMILEE paid the bill; (5) Honeymoon – yes to Europe for 2 ½ weeks – UK, Spain and Italy, cost about 6k-7k was a gift from Aunt and CRAIG CHANG' s mom for train, misc. expenses, food and spending money; (6) Hundreds of thousands of miles on CRAIG CHANG's Marriott and Delta used to pay for hotel and airline tickets; (7) CRAIG CHANG either borrowed from retirement or from trading to pay for any additional expenses that he may have paid for on honeymoon; (8) $600k was taken out of CRAIG CHANG's 401(k) over last 15-16 months. CRAIG CHANG used some of that money to pay off two Honda Pilots. The $600k was put into personal account. CRAIG CHANG used this money to pay day to day expenses to live, college tuition and expenses for daughters; and (9) CRAIG CHANG refused to answer on the grounds of the 5th amendment as to amount of college expenses. CRAIG CHANG yelled at Robert Goe, Esq. and said he took offense to the questions because FRANSEN is the grandfather of the daughters. CRAIG CHANG said he will subpoena that information and ask FRANSEN for that information. CRAIG CHANG said he pays $8k per month for child support for his 18-year-old daughters. CRAIG CHANG said he also pays $4k per month for child education expenses.

Defendant argues that this allegation is immaterial/impertinent to the causes of action. Plaintiff strongly disagrees, asserting that these are crucial statements made at the 341(a) meeting, and Defendant stated that his

relatives help him pay for his wedding. Plaintiff seems to believe that this statement is pertinent in showing how Defendant's relatives are hiding money for him. Based on the way this allegations is phrased, the court does not necessarily see how these statements show that Defendant's relatives are hiding money for him, but that might be subject to interpretation. This information may also be pertinent down the line in the discovery phase or trial phase, and the court finds it does directly relate to the causes of action asserted. Accordingly, this portion should not be stricken.

(25) First Claim: Plaintiff re-alleges and incorporates the paragraphs above as though fully set forth herein

Defendant states that this allegation is immaterial/impertinent. There is no opposition to this, but these types of statements are typically found in most complaint as a way to include all the above stated facts in describing/analyzing the elements of the causes of action. The court does not find it necessary or a prejudice to Defendant to leave these statements in the complaint.

(26) First Claim: Beginning in or around December 2021, Debtor represented to numerous persons and entities that he was the sole shareholder of Paragon including to Paragon's employees at that time.

Defendant contends that this allegation is immaterial/impertinent. The court disagrees as it provides context for the nondischargeability claim under Section 523(a)(2)(A), especially given that no explanation is provided for why the allegation is immaterial/impertinent.

(27) 2nd Claim: Plaintiff re-alleges and incorporates the paragraphs above as though fully set forth herein.

Defendant states that this allegation is immaterial/impertinent. There is no opposition to this, but these types of statements are typically found in most complaint as a way to include all the above stated facts in describing/analyzing the elements of the causes of action. The court does not find it necessary or a prejudice to Defendant to leave these statements in the complaint.

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CONT... Craig Chang **Chapter 7**

(28) Third Claim: Plaintiff re-alleges and incorporates the paragraphs above as though fully set forth herein.

Defendant states that this allegation is immaterial/impertinent. There is no opposition to this, but these types of statements are typically found in most complaint as a way to include all the above stated facts in describing/analyzing the elements of the causes of action. The court does not find it necessary or a prejudice to Defendant to leave these statements in the complaint.

(29) Fourth Claim: Plaintiff re-alleges and incorporates the paragraphs above as though fully set forth herein

Defendant states that this allegation is immaterial/impertinent. There is no opposition to this, but these types of statements are typically found in most complaint as a way to include all the above stated facts in describing/analyzing the elements of the causes of action. The court does not find it necessary or a prejudice to Defendant to leave these statements in the complaint.

Generally, Defendant has only provided a chart with listed allegations and labels for each as either "impertinent", "immaterial", or "redundant". However, more explanation or reasoning should have been given for why these allegations are immaterial or redundant, or otherwise constitute grounds to strike.

Deny. *Appearance required.*

Party Information

Debtor(s):

Craig Chang — Represented By John M Boyko

Defendant(s):

Craig Chang — Represented By John M Boyko

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

Thursday, October 24, 2024 **Hearing Room 5B**

11:00 AM

CONT... Craig Chang **Chapter 7**

Plaintiff(s):

Arthur Fransen — Represented By Mary Liu

Trustee(s):

Jeffrey I Golden (TR) — Pro Se

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8:19-12480 Guy S. Griffithe **Chapter 7**
Adv#: 8:19-01199 Samec v. Guy Griffithe Et.Al

#18.00 Defendant's Objection To The Order Lodged On June 12, 2024 And Request For The Court To Set A Hearing And Briefing Schedule Based On Post Trial Events
(advanced from 9-26-24 at 11:00 a.m. to 9-12-24 at 11:00 a.m. - see order entered 8-14-24 - see doc #256)
[Anerio Altman, Attorney for Debtor, Guy S. Griffithe - Will Be Appearing In Person]
(cont'd from 9-12-24)

Docket 248

Tentative Ruling:

Tentative for October 24, 2024
Plaintiffs argue that the total amount paid to Plaintiffs from RTSI and GAP as quarterly distributions from Plaintiffs initial investment is $25,495.59 [Exhibit 7, p.2 at para.4]. Plaintiffs received two quarterly distribution checks from RTSI: (1) January 25, 2017 for $8,752.99; (2) April 29, 2017 for $7,620.66. Plaintiffs also received two quarterly distribution checks form GAP: (1) July 31, 2017 in the amount of $5,299.64, and (2) November 2, 2017 for $3,832.30. Plaintiffs seem to assert that they did not obtain distribution checks of $11,029.71 from Bridgegate Management, a company unrelated to RTSI and GAP. Bridgegate was a separate investment which the court determined was a dischargeable breach of contract. Although Defendant attempts to obtain credit for this payment against the fraudulent cannabis investment (RTSI and GAP) damages total, no persuasive argument or evidence is offered for this conclusion.

The judgment interest rate is determined by the federal interest rate for the week prior to the filing of the claim, not the interest rate for the date the damage occurred. Plaintiffs filed their claim on October 1, 2019, so one week prior would be September 27, 2019, in which 1.79% would be the applicable rate of interest to apply to the proven damages. Plaintiffs provided calculations including the total amount of the investment and payments made by Defendant’s companies RTSI and GAP including interest is provided in the

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CONT... Guy S. Griffithe **Chapter 7**

declaration on page 5, and results in a total judgment amount of $140,671.24. The Plaintiff's Proposed Judgment is procedurally improper as it fails to attach the Proposed Order to the Notice of Lodgment. All that is provided is the notice and the proof of service which does not indicate serve to the Defendant or counsel. Service is provided through the declaration.

Defendant Griffithe also points out that a copy of the proposed order is not attached to the Notice of Lodgment, and Defendant is now deprived of his due process rights to review the proposed order and should not be entered until the issue is cured. Second, the court instructed Plaintiffs to file a proposed findings of fact and conclusions of law . No such filing appears on the docket and Defendant presumes Plaintiff might be relying on the court's Memorandum of Decision as findings, but since the Defendant has already announced an intent to appeal, this seems a hazardous course. Defendant intends to appeal the ruling, and requests guidance from the court how to proceed on the resolution of Docket #248.

Third, Defendant contends that Plaintiffs admitted that payments from Bridgegate Management were distributions on the RTSI obligation, but this is unsupported in the record as Bridgegate was a separate investment and so the court is not persuaded this should be deducted.

It seems that Defendant agrees that Federal Interest Rate should be used because the Judgment derives from federal law alone. There were no significant issues of state law decided or relied upon by this court in supporting the fraud cause of action. By calculating the Pre-Judgment Interest at the Federal T-Bill rate, the post-judgment Federal Interest would yield a result of $138,163.38 as defendant contends. [See Griffithe Dec, Exhibit 1]. Defendant urges the court to consider whether interest should be awarded since the court's memorandum of decision was entered. Plaintiffs gain a year of interest as a result of their indolence. This is not a persuasive argument since clearly the liability was established and even if some dispute over interest or credits or the like could be mentioned, Defendant has made no effort to pay anything on account.

To the court's reading it would seem $140,671.24 is the correct number to be inserted into a form of judgment, which Plaintiff is directed to submit forthwith.

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CONT... Guy S. Griffithe **Chapter 7**

Unless Plaintiff is abandoning his right to submit findings of fact consistent with the Memorandum of Decision, those should also be submitted as a separate document. Plaintiff is encouraged to prepare and submit findings of fact and conclusions of law. Otherwise, the court will adopt its Memorandum of Decision from last year as findings.

Appearance required.

Tentative for September 12, 2024

This is before the court on Defendant's Objection to the Order Lodged June 12, 2024. At issue is whether the Plaintiffs Joseph and Brenda Samec ("Plaintiffs") are entitled to a nondischargeable judgment for money based on the court's findings announced in its Memorandum of Decision After Trial entered on July 28, 2023 [Docket No. 216]. This case has become a tangled mess primarily because Plaintiffs first filed a deficient form of judgment after trial which was initially rejected (mostly going to interest issues) , but the remedy to fix the deficiency was not attempted, inexplicably, *for nearly one year later on June 12, 2024*. In the meantime, reportedly, events occurred in the Riverside Superior Court which Defendant argues have changed everything. Defendant now argues that under the doctrine of collateral estoppel there is no claim because the Riverside Court determined that damages were zero, so the Order lodged June 12, 2024 cannot be entered. How exactly the Riverside Court came to that astounding conclusion is never adequately explained (indeed, it looks like Plaintiff *requested dismissal* of Defendant perhaps at Defendant's behest), and alternative theories are offered.

A. Background

On July 10, 2019, Plaintiffs initiated a lawsuit in the California Superior Court, County of Riverside ("Riverside Court"), to which Defendant was one of the parties included in that action. Defendant contends that the facts at issue

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CONT... Guy S. Griffithe **Chapter 7**

in that matter were the same as the facts initially at issue in this adversary proceeding, although this is disputed by Plaintiffs. [Motion, Exhibit 5].

Plaintiffs requested relief from the automatic stay to litigate the matters in the Riverside Case on August 22, 2019, which was granted by this court September 27, 2019. [Motion, Exhibit 2]. Plaintiffs also initiated a parallel adversary proceeding against Debtor in this case, which led to trial conducted between June 22 through June 25th, 2023. This court's Memorandum of Decision After Trial held that the debt arising from RTSI/SMRB/GAP investment was nondischargeable under Sections 523(a)(2)(A) and (a)(19). However, the court did not make a finding as to the amount of this debt except to note that "Damages were obvious since the entire investment of $150,000 plus interest, costs, attorneys' fees was lost except what might have been received as bogus "dividends" of about $30,000"…."[MOD p.24 at lines 25-27]. The original form of judgment lodged August 25, 2023 was rejected, mostly over calculation of interest issues, and Plaintiffs were directed to lodge a new form of judgment. In the meantime, Plaintiffs' lawyers apparently left the case for reasons left unexplained. Plaintiffs attempted to lodge another order one year later on June 12, 2024 (the reasons for this extreme delay were not provided), but there was no notice of lodgment included. Instead, this motion followed. Defendant contends that Plaintiffs in their declaration attempt to calculate the judgment and enter monetary judgment now. However, Defendant argues that this court is collaterally estopped from entering a monetary judgment because of the outcome at the Riverside Court. Defendant argues the Riverside Court liquidated Plaintiffs' claims against Defendant by determining they had none, in other words zero, and dismissed Defendant from the 5th amended complaint with prejudice ("Riverside Case"). [Motion, Exhibit 1].

Based on the Riverside Court's order, Defendant now requests that, since this court has technically not issued a final judgment on its Memorandum of Decision, it must follow the Riverside Court's ruling under the theory of collateral estoppel and not award *any* damages.

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CONT... Guy S. Griffithe **Chapter 7**

B. Legal Standard

Application of issue preclusion (collateral estoppel) requires a prior determination that: (1) resolved an identical issue; (2) actually litigated the identical issue; (3) necessarily decided the identical issue; (4) is final and resolved the issue on its merits; and (5) occurred between parties in privity to one another, in the former proceeding. *Khaligh v. Hadaegh (In Re Khaligh)*, 338 B.R. 817, 824 (B.A.P. 9th Cir. 2006). But left unclear is exactly what the Riverside Court decided (if anything) and why. This goes to the "actually litigated" issue primarily.

C. Collateral Estoppel

Defendant argues that all elements of issue preclusion are met because the Riverside Court resolved the same or similar issues regarding the Plaintiffs' investment in RTSI/SMRB/GAP, and that this issue was actually litigated and necessarily decided by the Riverside Court. The privity between the parties is present as the case was between Plaintiffs and Defendant in both forums. There was also a final judgment issued by the Riverside Court. But what remains to be determined and is disputed by the parties is whether the issues were the same in both forums and, more importantly, whether they were actually litigated and decided by the Riverside Court. The causes of action are somewhat different, given the nature of the two different forums and the presence of third parties. What the court is looking for here is if there is a determination made by the Riverside Court that there was no fraud or securities fraud that would determine dischargeability under Section 523(a)(2)(A) and (a)(19). Plaintiff contends that the issues are not identical, that this court has already decided on these issues, and that the Riverside Court made determinations eight months after this adversary concluded and only opined as to other defendants. Plaintiff adds that the reason the Riverside Court did not find on the question of fraud etc. is because it believed that the bankruptcy court had already done so. But this was not established by any evidence save Plaintiff's report that the Riverside Court said to the effect that the bankruptcy court was a one-stop court and so there was no need or ability

to go further in Riverside since the bankruptcy court had already done so.

Defendant cites to Exhibit 1 of the Motion and its brief as support to his contention that collateral estoppel applies because the Riverside Court determined that Plaintiffs had no claim against Defendant and dismissed him from the complaint (at Plaintiff's request?) with prejudice. Upon the court's review of this Exhibit 1, unless the court is missing something, there is nothing that provides any, much less a detailed finding from the Riverside Court that Defendant is or is not liable for fraud and securities fraud and/or its reasoning for this determination. Plaintiffs assert that the Riverside Court apparently told Plaintiffs that since the bankruptcy court awarded a dischargeability judgment (which it had not done as of that date but it had issued findings) against Defendant, Plaintiffs could not obtain a second judgment against him in state court for similar causes of action. Thus, Defendant became a witness in the Riverside Case (this is unsupported by a declaration or any evidence). Plaintiffs also attach Defendant's trial brief in the Riverside Case, which summarily provides that *res judicata* should apply and Defendant should be dismissed from the case, *as the bankruptcy court has already issued a decision after trial and awarded Plaintiffs a judgment for the same facts or nucleus of events.* [emphasis added, Response, Exhibit 7]. Although the court agrees with Defendant that Plaintiffs have not explicitly shown how the trial brief was the factor that led to the dismissal of Plaintiffs' complaint against him with prejudice, Defendant has also not provided sufficient evidence to show that collateral estoppel applies here. Exhibit 1 attached to the motion demonstrates the Riverside Court's findings are bare to nonexistent pertaining to Plaintiffs, and simply dismisses Defendant from the case. [See Motion at Exhibit 1 p.2]. The dismissal may have been precipitated by either the Riverside Court or by Plaintiffs' (or maybe Defendant's) request that he be dismissed because of the bankruptcy court's findings. The findings attached as Exhibit 1 in Defendant's reply pertain only to another defendant Maartin Rossouw and indicates that Defendant Griffithe was dismissed with prejudice from the lawsuit. [See Reply, Exhibit 1 p.3-4, "Ruling After Court Trial" dated March 27, 2024]. Finally, Plaintiff's supplemental declaration (Docket No. 272) provides an email from Defendant

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CONT... Guy S. Griffithe **Chapter 7**

to Plaintiff acknowledging that he was only a witness and no longer a party due to Plaintiffs already having a judgment in the adversary trial. [Pl Supp Dec, Exhibit 5]. It is thus more likely that the Riverside Court simply declined to issue findings about the alleged fraud etc. as against Defendant largely because it was led to believe this court had already done so, in great detail. Had there been an intention to actually determine such issues, one would expect a much greater attention to detail, especially considering at that time this courts findings were already published. Based on the evidence and arguments presented by both parties, the court is not persuaded that collateral estoppel applies here and maintains its ruling in the Memorandum of Decision After Trial that the debt arising from RTSI/SMRB/GAP investment was nondischargeable under Sections 523(a)(2)(A) and (a)(19).

D. Issue of Damages

Defendant contends that the court has not addressed the amount of Plaintiffs damages, and thus, the Riverside Court's dismissal effectively liquidates the value of the claim at zero. It may be true that a formal finding on sums owed was not made, but as Plaintiffs state in their response, this court did state that "Damages were obvious since the entire investment of $150,000 plus interest, costs, attorneys' fees was lost except what might have been received as bogus "dividends" of *about* $30,000" [MOD p.24 at lines 25-27] (italics added), recognizing that monetary damages were owed to Plaintiffs but in an unliquidated sum. This alone is sufficient to preclude the zero conclusion offered by Defendant as its entry predates anything issued by the Riverside Court on the question, even assuming the Riverside Court actually intended to go into the question of quantum of damages. So, should the court adopt the principal and interest amounts included in Plaintiffs' submitted proposed Judgment? The answer to this question may need to be determined at a separate hearing, as there are several remaining issues. First, the interest question has not been vetted yet, and the numbers appear very different. It might be the difference between calculating under the federal rate vs. under Washington state law. Research on which is appropriate might be required. Additionally, the principal requests are different, but without

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CONT... Guy S. Griffithe **Chapter 7**

explanation. On this point, is it sufficient to merely subtract the $30,000 (approx.?) received as bogus "dividends" from the aggregate amount invested, as mentioned in the Memorandum of Decision? That would yield $120,000 (i.e. $150,000-130,000=120,000), but that differs from the amounts submitted in either of Plaintiff's forms of judgment without explanation. Further, and possibly related, the difference could be explained by interim interest accrued on a declining principal or some other theory of damage not yet explained. But it is just left frustratingly unclear. Determining the correct balance from which the interim payments ought to be deducted will be a challenge. Plaintiffs retain the burden of proving the amounts with admissible evidence and calculation of appropriate interest is likewise their burden and should be calculated in an easily understandable format .

For the purposes of this hearing, the court finds that the elements of collateral estoppel have not been met, and the Memorandum of Decision After Trial controls. Further hearing is required to determine the final amount of the form of Judgment. *Appearance required.*

Party Information

Debtor(s):

Guy S. Griffithe	Represented By Bert Briones

Defendant(s):

Guy Griffithe Et.Al	Represented By Anerio V Altman

Plaintiff(s):

Joseph Samec	Pro Se

Trustee(s):

Thomas H Casey (TR)	Pro Se

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

Thursday, October 24, 2024 **Hearing Room 5B**

11:00 AM

8:24-11996 Toolipis Creative, Inc **Chapter 11**

#18.10 Debtor's Emergency Motion For An Order Authorizing Interim Use Of Cash Collateral Pursuant To 11 U.S.C. § 363
(OST Signed 10-16-14)

Docket 24

Tentative Ruling:

Tentative for October 24, 2024
Opposition due at hearing. *Appearance required.*

Party Information

Debtor(s):

Toolipis Creative, Inc	Represented By Anerio V Altman

Trustee(s):

Mark M Sharf (TR)	Pro Se

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

Thursday, October 24, 2024 **Hearing Room 5B**

11:00 AM
8:21-12506 Sarina Browndorf **Chapter 11**
Adv#: 8:22-01020 Browndorf v. Browndorf et al

#19.00 STATUS CONFERENCE RE: Complaint For: 1) Turnover And/Or Control Of Property Of The Estate; 2) Accounting; 3) Appointment Of Chief Responsible Officer; 4) Preliminary Injunction; And 5) Turnover Of Possession Of Real Property Of The Estate
(cont'd from 5-02-24)
(cont'd from 5-30-24)

[Defendant Christiana Trust, A Division of Wilmington Savings Fund Society, FSB, Solely In Its Capacity As Owner Trust Of The RBSHD 2013-1 Trust has been dismissed from adversary - see order entered on 4-05-23 - document #161]

[Notice of Dismissal of Defendants Plutos Sama Holdings, Inc., Distressed Capital Management, LLC, DCM-P1, LLC, LNREPO 2021 LLC And DCM-P3, LLC Filed 5-18-23 - see document # 167]
(cont'd from s/c hrg held on 11-30-23)

(set from p/t conf on 4-04-24 per order approving stip. to vacate rule 16 deadlines & to set a cont. s/c entered 3-26-24)

(cont'd from 7-11-24 per order approving second stp to cont. mtn to correct deflt judgment & cont. s/c entered 6-28-24)
(cont'd from 8-29-24)

Docket 1

***** VACATED *** REASON: CONTINUED TO 12-05-24 AT 11:00 A.M. PER ORDER APPROVING FOURTH STIPULATION TO CONTINUE HEARING ON CH 7 TR'S MOTION TO CORRECT DEFAULT JUDGMENT AGAINST MATTHEW BROWNDORF & TO CONTINUE STATUS CONFERENCE ENTERED 10-08-24 - SEE DOC #261**

Tentative Ruling:

11:00 AM

CONT... Sarina Browndorf **Chapter 11**

Tentative for August 29, 2024
Continue to October 24, 2024 a 10:00 a.m. to coincide with related motions.
Appearance is optional.

Tentative for May 30, 2024
Continue to Juy 11, 2024 at 10:00 a.m. *Appearance required.*

Tentative for May 2, 2024
Continue to coincide with related matters May 30, 2024 at 11:00 a.m.
Appearance is optional.

Tentative for November 30, 2023
See #6. A status conference report is needed, but it might be more logical to continue the status conference so that only the complaint is considered (not the cross complaint). Appearance is optional.

Tentative for October 12, 2023
Continue to coincide with Motion to Dismiss cross complaint November 30, 2023 at 11:00 a.m. Appearance is suggested.

Tentative for 8/10/23:
See #11.

Tentative for 6/8/23:
See #17.

Tentative for 5/25/23:

11:00 AM

CONT... Sarina Browndorf **Chapter 11**

Status conference continued to: June 8, 2023 to coincide with hearing on motion for default judgment.

Appearance: optional

Tentative for 3/30/23:
Continued to May 25 @ 10:00AM per request.

Appearance: optional

Tentative for 1/12/23:
See #5. Continue for about 60 days.

Tentative for 12/8/22:
It appears this proceeding has been in default posture for several months now. Where is the prove up? Continue for about 90 days. Additional postponements should not be expected.

Appearance: required

Tentative for 8/25/22:
Status conference continued to: December 8, 2022 per request.

Appearance: optional

Tentative for 5/5/22:
Status on who is in default and who actively contests this proceeding would

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CONT... Sarina Browndorf **Chapter 11**

be helpful.

Status conference continued to: August 3 @ 10:00AM.

Party Information

Debtor(s):

Sarina Browndorf	Represented By Susan K Seflin Steven T Gubner

Defendant(s):

Matthew Browndorf	Pro Se
Plutos Sama Holdings, Inc.	Pro Se
Christiana Trust	Pro Se
Distressed Capital Management,	Pro Se
DCM-P1, LLC	Pro Se
LNREPO 2021 LLC	Pro Se
DCM-P3, LLC	Pro Se
Melvin Marc Browndorf	Pro Se
Elsbeth Bonnie Browndorf	Pro Se

Plaintiff(s):

Sarina Browndorf	Represented By Susan K Seflin Jessica L Bagdanov

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

Thursday, October 24, 2024 **Hearing Room 5B**

11:00 AM
8:21-12506 Sarina Browndorf **Chapter 7**
Adv#: 8:22-01020 Browndorf v. Browndorf et al

#20.00 Chapter 7 Trustee's Motion To Correct Default Judgment Against Matthew Browndorf Pursuant to FRCP 60(a) or Alternatively, Pursuant to FRCP 60(b)
(cont'd from 5-02-24 per order approving stip to cont hrg on ch 7 tr's mtn to correct default judgment against Matthew Browndorf entered 4-23-24)

(cont'd from 8-29-24 per order approving second stip. to cont. hrg on ch 7 tr's mtn to correct default judgment against Matthew Browndorf & cont. s/c entered 8-21-24 - see doc #255)

Docket 224
***** VACATED *** REASON: CONTINUED TO 12-05-24 AT 11:00 A.M. PER ORDER APPROVING FOURTH STIPULATION TO CONTINUE HEARING ON CH 7 TR'S MOTION TO CORRECT DEFAULT JUDGMENT AGAINST MATTHEW BROWNDORF & TO CONTINUE STATUS CONFERENCE ENTERED 10-08-24 - SEE DOC #261**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sarina Browndorf	Represented By Susan K Seflin Steven T Gubner Jessica L Bagdanov Jessica Wellington

Defendant(s):

Matthew Browndorf	Represented By William J Wall
Plutos Sama Holdings, Inc.	Pro Se
Christiana Trust	Represented By Leib M Lerner

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CONT... Sarina Browndorf **Chapter 7**

Distressed Capital Management,	Pro Se
DCM-P1, LLC	Pro Se
LNREPO 2021 LLC	Pro Se
DCM-P3, LLC	Pro Se
Melvin Marc Browndorf	Pro Se
Elsbeth Bonnie Browndorf	Pro Se

Plaintiff(s):

Sarina Browndorf	Represented By Susan K Seflin Jessica L Bagdanov Jessica Wellington

Trustee(s):

Thomas H Casey (TR)	Represented By Jessica L Bagdanov Susan K Seflin

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8:21-12506 Sarina Browndorf **Chapter 7**

Adv#: 8:23-01117 Casey v. 5pm Investments, Inc.

#21.00 STATUS CONFERENCE RE: Chapter 7 Trustee's Complaint for (1) Declaratory Relief, and (2) Avoidance and Recovery of Fraudulent Transfers and (3) Marshalling

(cont'd from 5-02-24)

(cont'd from 8-29-24 per order approving second stip to cont. s/c entered 8-19-24 see doc. #22)

Docket 1

***** VACATED *** REASON: CONTINUED TO 12-05-24 AT 11:00 A.M. PER ORDER APPROVING THIRD STIPULATION TO CONTINUE STATUS CONFERENCE ENTERED 10-08-24 SEE DOC #27**

Tentative Ruling:

Tentative for May 30, 2024
It appears that a Rule 9019 motion, which may be pertinent to resolution, was originally scheduled for today but continued until 7/11. Status? Appearance required.

Tentative for May 2, 2024
Continue to coincide with 9019 motion on May 30, 2024 at 11:00 a.m.
Appearance is optional.

Tentative for April 11, 2024
Continued to May 2, 2024 at 11:00 a.m.
Appearance is optional.

Tentative for January 11, 2024
Continue to April 11, 2024 at 10:00 a.m. per request in the Status Conference

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CONT... Sarina Browndorf **Chapter 7**

report, to allow documentation of and authorization for settlement.
Appearance optional.

Party Information

Debtor(s):

Sarina Browndorf	Represented By Susan K Seflin Steven T Gubner Jessica L Bagdanov Jessica Wellington

Defendant(s):

5pm Investments, Inc.	Pro Se

Plaintiff(s):

Thomas H Casey	Represented By Jessica L Bagdanov

Trustee(s):

Thomas H Casey (TR)	Represented By Jessica L Bagdanov

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

Thursday, October 24, 2024 **Hearing Room 5B**

11:00 AM
8:21-12506 Sarina Browndorf **Chapter 7**
Adv#: 8:24-01014 Browndorf v. Casey et al

#22.00 Emergency Motion To Vacate Order Granting Motion To Dismiss
(OST Signed 6-21-24)
(con't d from 8-29-24 per order approving stip. to cont. hrg on emergency mtn to vacate order granting mtn to dsm entered 8-22-24 - see doc #35)

Docket 21
***** VACATED *** REASON: CONTINUED TO 12-05-24 AT 11:00 A.M. PER ORDER APPROVING THIRD STIPULATION TO CONTINUE HEARING ON EMERGENCY MOTION TO VACATE ORDER GRANTING MOTION TO DISMISS ENTERED 10-08-24 - SEE DOC #40**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sarina Browndorf	Represented By Susan K Seflin Steven T Gubner Jessica L Bagdanov Jessica Wellington

Defendant(s):

Thomas H Casey	Represented By Susan K Seflin Jessica L Bagdanov Jessica Wellington
5PM Investments Inc	Represented By Anerio V Altman
Elsbeth Browndorf	Pro Se
Matthew Browndorf	Pro Se
Melvin Browndorf	Pro Se

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

Thursday, October 24, 2024 **Hearing Room 5B**

11:00 AM

CONT... Sarina Browndorf **Chapter 7**

Plaintiff(s):

Elsbeth Browndorf — Represented By
Stephen D Weisskopf

Trustee(s):

Thomas H Casey (TR) — Represented By
Jessica L Bagdanov
Susan K Seflin
Jessica Wellington

11:00 AM

8:21-12506 Sarina Browndorf **Chapter 7**

#23.00 Motion To Approve Compromise Under Rule 9019
(cont'd from 5-02-24 per order apprvg stip to cont. hrg on ch 7 tr's amended mtn # [332] to approve compromise pursuant to FRBP 9019 entered 4-23-24)

(cont'd from 8-29-24 order approving 2nd stip. to cont. hrg on ch 7 tr. amended mtn [332] to approve compromise pursuant to FRBP 9019 entered 8-21-24 - see doc #361)

Docket 16

***** VACATED *** REASON: CONTINUED TO 12-05-24 AT 11:00 A.M. PER ORDER APPROVING FOURTH STIPULATION TO CONTINUE HEARING ON CH 7 TRUSTEE'S AMENDED MOTION TO APPROVE COMPROMISE PURSUANT TO FRBP 9019 - SEE DOC #366**

Tentative Ruling:

Tentative for March 26, 2024

This is Chapter 7 Trustee Thomas H. Casey's ("Trustee") motion to approve compromise of controversy pursuant to Rule 9019 of the FRBP. Trustee seeks approval of a Stipulation Resolving the Adversary Proceeding *Casey v. 5pm Investments, Inc.,* adv. No. 23-01117TA, providing for Entry of Judgment and Related Relief ("Settlement Stipulation"), entered into between the Trustee and 5pm Investments, Inc. ("5pm"), and Steven Brent Herrin ("Herrin", and collectively with 5pm, the "Herrin Parties"). If this compromise is approved, it might assist Trustee in administering for the estate real property known at 27 Kaxs Way, Chazy, New York 12921 ("Kaxs Way Property"). There is a second property referred to as "Lakeside Drive" which allegedly was also collateral for the loan described below, but how/whether it fits into the picture of settlement described in this motion is left unclear. Trustee argues that the Herrin Parties have effectively consented to judgment in the Trustee's favor in the adversary proceeding #22-01020 TA, and in exchange, Trustee has agreed to abandon Lakeshore. Trustee does not believe Lakeshore has significant value for the estate. But that conclusion is tenuous

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CONT... Sarina Browndorf **Chapter 7**

on this record.

As the opponents argue, the facts are complicated. Moreover, some of the conclusions may rest upon uncertain presumptions. The court applauds this motion as a good attempt to settle a series of contentious issues, but the predicate factual structure which might support that settlement may be rickety.

Debtor Sarina Browndorf's ("Debtor") estranged spouse Matthew Browndorf allegedly entered into a Note and Mortgage arrangement whereby 5pm purported to loan Mr. Browndorf (or to the Matthew Browndorf Living Trust) the sum of $345,000, secured by the Kaxs Way and Lakeshore properties. Trustee filed a complaint in adv. # 23-01117 TA against 5pm seeing declaratory relief as to the validity, extent, and priority of the Mortgage and the 5pm Lien, avoidance, and recovery of the Mortgage and 5pm Lien as a fraudulent transfer, and for marshalling. 5pm filed an answer to the complaint. Instead of lengthy discovery, the parties have wisely focused their efforts to resolution and have agreed to resolve the adversary proceeding through this Settlement Stipulation. If that were as far as it went this motion could be easily resolved. But now even 5p.m. is raising some doubts based on some ill-defined and perhaps unresolved issues as alleged in another proceeding filed January 31, 2024 *Browndorf v. Casey*, Adv.24-01014 TA by Elsbeth Browndorf (Matthew's mother).

A. Legal Standard

It is well-established by the Ninth Circuit that bankruptcy courts have wide discretion in approving compromises. *Martin v. Kane (in re A&C Properties)*, 784 F. 2d 1377 (9th Cir. 1986), cert denied, 479 U.S. 854 (1986). In approving the compromise, the court must find that the compromise is fair and equitable, and that the negotiations were conducted in good faith. In doing so, the court must consider: (1) probability of success in litigation; (2) difficulties in collection; (3) complexity and expense of litigation; (4) best interest of the creditors. Id. at 1380-81.

Trustee argues that Settlement Stipulation should be approved when

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CONT... Sarina Browndorf **Chapter 7**

reviewing all *A&C Properties* factors. First, Trustee is confident in his claims that the 5pm Lien and Mortgage are void as against the Kaxs Way Property, and the proposed settlement resolves the litigation in Trustee's favor. As to difficulties in collection, Trustee does not believe this to be an applicable factor here. Third, given the judgment being provided in Trustee's favor, the comparative complexity and expense of ongoing litigation is not in the estate's best interest. Further, Trustee does not believe that he would realize a meaningful recovery in administration of the other real property Lakeshore, given that the Debtor appears to hold a life estate through community property rights. Thus, abandoning the Lakeshore property through the Settlement Stipulation would be preferred here. Finally, this settlement is in the best interest of the creditors because it provides for prompt administration and sale of the Kaxs Way Property. All of that is fine and good: the problem arises because it presumes estate ownership of Kaxs Way. But the court is given an unconvincing factual basis for that conclusion.

Matthew Browndorf's parents Elsbeth and Melvin oppose the motion on the grounds that Kaxs Way Property was and is currently the property of Matthew's maternal family and is not his community property which might lead to it being considered property of the debtor's estate. The deed for the properties, which is central to establishing "property of the estate " conclusion was to "Matthew Browndorf Living Trust" [See Exhibit A to Browndorf Opposition] which is allegedly held for the benefit of Matthew's three children, further demonstrating (arguably) the family's intent to keep it as separate property. [But was/is that Trust revocable as indicated in the Trust instrument?] It was reportedly a gift from Matthew's parents, and there was allegedly and unsurprisingly no intent to give the property to debtor, Sarina Browndorf. The Lakeshore Property is still reportedly in the name of Elsbeth Browndorf and is only vested as her property and cannot be bargained for as consideration in the settlement agreement. The basis for that conclusion is unstated. But we are shown a deed from Barbara Boynton to Matthew (with designation of the Trust stricken) dated July 26, 2017 apparently regarding Lakeshore only. [Exhibit B to Opposition]. Elsbeth argues that the motion should be denied because Trustee is attempting to settle a dispute between non-party creditors on property that is not property of the estate.

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CONT... Sarina Browndorf **Chapter 7**

However, as Trustee argues, the default judgment in adv. Proceeding 22-01020 TA to which the Matthew, Elsbeth and Melvin were parties, could be read to mean that the two properties are *community property of Matthew* as there was no objection from the Browndorfs despite being represented by counsel. In fact, it appears the parties *chose* to stay silent on the point upon advice of counsel. This creates a formidable (but maybe not impossible) obstacle to their coming in now arguing about title or what could be construed as malpractice by their counsel. If that is in fact what happened (and it is somewhat unclear) then the argument is with counsel's malpractice insurance company and the objecting parties have little or no basis to argue for a "do over" on the complaint, default and resulting title issues, whether under Rule 60(b) or otherwise. But problems still abound. The actual language of the "Default Judgment Against Matthew Browndorf" entered August 2, 2023 in adversary #22-01020 TA is frustratingly silent about the all-important title issues, and purports only to address possession by Matthew and removal of belongings. It never explicitly provides that title was in his name, although one could infer that conclusion based upon the words of the complaint. It would seem that most likely record title was " Matthew Browndorf as Trustee"; but that raises the related question of whether we can just ignore the Trust altogether? Presumably, Trustee Casey will argue that the estate can simply revoke the Living Trust in favor of Matthew individually. But that conclusion is more easily reached *if Matthew were the debtor.* But we have to deal with the link between that and designation of community property since it is only through Sarina, the debtor, that property of the estate rights might attach. Sarina appears to have been designated as successor trustee in the Amended Trust Instrument, but will that work here? Not much is put on this record on that question except to argue the California Community Property law presumption. Can the presumption operate when title is not cleanly in the name of a spouse?

Trustee also argues Elsbeth and Melvin have no standing here as they are not parties to the adversary proceeding or the Settlement Stipulation, they are also not creditors of the estate, and their rights or liabilities are not affected by the Settlement Stipulation. The default judgment has long been final and the opportunity to object to the substantive aspects of it may have passed. But this argument is based on a res judicata/ collateral estoppel

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CONT... Sarina Browndorf **Chapter 7**

theory. The problem is that the default judgment is almost silent on the critical question of title, so heavy reliance on that point is problematic. Moreover, standing may also be found if a plausible case is made that some kind of residual interest of the senior Browndorfs or their family can be shown or the conclusion they were in privity with Matthew cannot be supported.

Moreover, as further complication, there appears now to be a concern raised by 5pm regarding its interest in both the Kaxs Way and the Lakeshore Drive properties in that it may be a result of some unarticulated fraud committed by Matthew Browndorf, as alleged in the newly filed adversary proceeding *Elsbeth Browndorf v. Casey,* Adv.#24-01014 TA seeking quiet title and declaratory relief, among other remedies. 5pm does not want an order approving the compromise without a hearing on the issue in the event the compromise includes underlying facts that are false.

While the court is inclined to approve the Settlement Stipulation if it can be shown to rest upon a firm factual/legal foundation as Trustee argues but will hear further argument regarding 5pm's issue with its interest in the Lakeshore Property, and whether that is a basis for unwinding the whole deal. The court will also hear argument as to whether the title issues raised by the objectors have already been determined under principles of *res judicata*, thus are now law of the case and cannot now be gainsaid, at least absent a successful Rule 60(b) motion. As described, that is very difficult on this mess of a record.

No tentative. Appearance required.

Party Information

Debtor(s):

Sarina Browndorf

Represented By
Susan K Seflin
Steven T Gubner
Jessica L Bagdanov
Jessica Wellington

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

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Trustee(s):

Thomas H Casey (TR)	Represented By Jessica L Bagdanov Susan K Seflin