

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

Thursday, November 30, 2023

Hearing Room

5B

10:00 AM

8:00-00000

Chapter

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

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ZoomGov meeting number: 160 395 4862
Password: 445165
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- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
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- Say your name every time you speak.
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completed your appearance(s).

Docket 0

Tentative Ruling:

- NONE LISTED -

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8:21-12001 Joseph L Sanders

Chapter 7

Adv#: 8:21-01102 Shohat v. Sanders

#1.00 STATUS CONFERENCE Hearing RE: Complaint to Determine Dischargeability of Debt Pursuant to 11 U.S.C. Section 523(a)(2)(A) and 523(a)(6) (Complaint filed 11-18-21)
(cont'd from 6-29-22 Wallace Cal)
(set from s/c hrg held on 1-26-23)
(cont'd from 7-27-23)

FR: 2-9-22; 1-26-23

Docket 1

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING STIPULATION TO DISMISS ADVERSARY ACTION ENTERED 11-29-23**

Tentative Ruling:

Tentative for November 30, 2023
Why no status report? Appearance required.

Tentative for 7/27/23:
Status? What resulted from mediation?

Appearance: required

Tentative for 1/26/23:

It is disappointing that the parties have not submitted a joint pretrial stipulation as of yet. The recent changes of counsel are a partial explanation but not an entirely satisfactory one. The court has also reviewed the point made by both sides that this might be a surplus case with no consequent need to determine dischargeability or to incur the expense of this litigation. But that is a point that should be agreed between the parties and resolved by stipulation; but so long as this is an active adversary proceeding the court expects that parties will observe their respective obligations and the timetables set by the court. The court will continue this matter for about 60

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CONT... Joseph L Sanders Chapter 7

days with the expectation that in meantime: (1) a mediation will occur and (2) a joint pretrial stipulation will be filed. If this timetable is not observed there will be the OSC and/or other consequences mentioned in Plaintiff's report.

Tentative for 6/30/22:
Deadline for completing discovery: December 15, 2022
Last date for filing pre-trial motions:December 31, 2022
Pre-trial conference on:January 26, 2023 @ 10a.m.
Joint pre-trial order due per local rules.

Appearance: required

APPEARANCES REQUIRED.

Pursuant to the parties' request, the Court will send this adversary proceeding into mediation. The parties shall file a mediation stipulation and lodge an order thereon on or before March 9, 2022.

The status conference is continued to June 29, 2022. An updated status report is due June 15, 2022.

COURT TO PREPARE ORDER.

Party Information

Debtor(s):

Joseph L Sanders

Represented By
Todd J Cleary

Defendant(s):

Joseph L Sanders

Pro Se

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Chapter 7

Plaintiff(s):

Sandra Shohat

Represented By
Daniel C Sever

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

Chapter 7

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

#2.00 STATUS CONFERENCE RE: Complaint For: 1. Declaratory Relief Bankruptcy P. 7001(9)

Docket 1

***** VACATED *** REASON: CONTINUED TO 1-25-24 AT 10:00 A.M.
PER ANOTHER SUMMON ISSUED ON 11-09-23 RE: COUNTERCLAIM
AND CROSSCLAIM**

Tentative Ruling:

- NONE LISTED -

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

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8:20-10545 Katie Ki Sook Kim

Chapter 7

Adv#: 8:20-01141 East West Bank v. Kim et al

- #3.00** PRE-TRIAL CONFERENCE RE: Complaint to determine nondischargeability of debt, in objection to debtor's discharge pursuant to 11 U.S.C. Section 523(a)(2) (A) and (B), and 727(a)(2)(A; or alternatively for: (1) Avoidance and recovery of preferential transfers [11 U.S.C. Section 547(b), and 550]; (2) Avoidance and recovery of fraudulent transfers [11 U.S.C. Section 548, and 550]; (3) Preservation of avoided transfers [11 U.S.C. Section 551]; (4) Disallowance of any claims held by defendants [11 U.S.C. Section 502(d); and (5) California voidable transactions act [Civil Code Section 3439-3439.14]
(set from s/c hrg held on 12-17-20)
(cont'd from 7-6-23)
(cont'd from 10-12-23)

Docket 1

Tentative Ruling:

Tentative for November 30, 2023
See 3.1. Appearance required.

Tentative for October 12, 2023
Order approving settlement is in process. Continue to November 20, 2023 at 10:00 a.m. as a holding date. Appearance is optional.

Tentative for 7/6/23:
Settled? Status?

Appearance: required

Tentative for 4/27/23:
Set a continued pretrial conference in view of ongoing settlement discussions?

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CONT... Katie Ki Sook Kim
Appearance: required

Chapter 7

Tentative for 1/12/23:
Status? Still no pre-trial stipulation but notes indicate parties were discussing settlement.

Appearance: required

Tentative for 10/27/22:
Set trial date approximately 90 days out. Week of March 20?

Appearance: required

Tentative for 12/17/20:
Deadline for completing discovery: November 23, 2021
Last date for filing pre-trial motions: December 2, 2021
Pre-trial conference on: December 16, 2021@ 10:00AM
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Katie Ki Sook Kim

Represented By
Joon M Khang

Defendant(s):

Katie Ki Sook Kim

Pro Se

Kiddo's E3, Inc.

Pro Se

Chrysanthemum by Eileen LLC

Pro Se

SMT Apparel, Inc.

Pro Se

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CONT... Katie Ki Sook Kim
Verna Fashion, Inc.

Pro Se

Chapter 7

Plaintiff(s):

East West Bank

Represented By
Clifford P Jung

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

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8:20-10545 Katie Ki Sook Kim

Chapter 7

#3.10 East West Bank's Motion For Order Approving Settlement And Compromise Of Disputes Regarding Chrysanthemum By Eileen LLC, SMT Apparel, Inc. and Verna Fashion, Inc.

Docket 93

Tentative Ruling:

Tentative for November 30, 2023

There are complications.

First, there is a glaring question of standing which is not answered in the papers. Avoidance actions under §§547 and 548 belong to the estate. In re United Energy Corp, 944 F.2d 589, 594 (9th Cir. 1999); see also In re Wolf & Vine, 825 F.2d 197, 199 (9th Cir. 1987) ("Section 547 of the Bankruptcy Code gives the bankruptcy trustee the power to avoid "preferential" transfers by the debtor to creditors when the transfers are made within a certain period of time before the filing of the bankruptcy petition.") Normally the estate's avoidance actions are prosecuted for the estate by its trustee. The court notes that trustee Marshack at one time had his own avoidance action adv. 22-01039 pending but then that was apparently dismissed and a "no asset" report was filed 12/05/2022. Although there is some authority suggesting a private party can prosecute an avoidance action for the estate by agreement normally that is accompanied by an approved arrangement whereby some of the proceeds are shared with the estate. In re Parmetex, Inc., 199 F.3d 1029, 1030 (9th Cir. 1999) (where the court found that where a trustee stipulated that the creditors could sue on his behalf and the bankruptcy court approved that stipulation, the creditors had standing to bring the suit.). No such understanding appears on the docket that the court can find. This raises a dilemma which the court needs answered. To be clear, there is nothing wrong with the proposed settlement and its terms seem eminently reasonable, but some kind of answer or arrangement resolving the standing question must be addressed. Even a modest sum might cure the problem. Or, it could be that East West Bank is only proceeding on select theories not involving the avoidance powers. But this record is unclear.

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CONT... Katie Ki Sook Kim

Chapter 7

In reviewing the docket the court also notes the possible discrepancy between the general discharge entered 3/17/23 and the judgment favoring East West Bank entered in its adversary proceeding 20-01141 TA on October 15, 2021, since that action involved allegations under §727(a)(2) and the judgment includes a pronouncement that "discharge is denied." Should an order issue correcting the docket that the discharge is in fact denied?

An appearance by the trustee Mr. Marshack would be useful and it might be that the case needs to be reopened and he reappointed.

Appearance required and the former trustee is strongly invited to appear.

Party Information

Debtor(s):

Katie Ki Sook Kim

Represented By
Joon M Khang

Trustee(s):

Richard A Marshack (TR)

Represented By
Anerio V Altman

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8:21-11558 Parks Diversified, LP

Chapter 11

Adv#: 8:23-01030 Talon Diversified Holdings, Inc. et al v. Klein et al

#4.00 Defendants Michael S. LeBoff's and Klein & Wilson's Motion For Attorneys' Fees (CCP §425.16(c)(1))

Docket 285

***** VACATED *** REASON: CONTINUED TO 1-11-24 AT 10:00 A.M.
PER AMENDED NOTICE OF DEFENDANTS MICHAEL S. LEBOFF'S
AND KLEIN & WILSON'S MOTION FOR ATTORNEYS' FEES FILED 11-
09-23**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Parks Diversified, LP

Represented By
Marc C Forsythe
Charity J Manee

Defendant(s):

David Klein

Represented By
David A Berkley

Todd B. Becker

Represented By
Greg Emdee
James J Kjar

Linda Wong

Represented By
John J Immordino

Maxx Sharp

Represented By
Paul A. Grammatico

William London

Represented By
Paul A. Grammatico

Kimura London & White LLP

Represented By
Paul A. Grammatico

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CONT... Parks Diversified, LP

Chapter 11

Klein & Wilson

Represented By
James R Lance
Kyra E Andrassy
Timothy W Evanston
David A Berkley
Genevieve M. Sauter

Michael S. Leboff

Represented By
James R Lance
Kyra E Andrassy
Timothy W Evanston
Genevieve M. Sauter

Goe Forsythe & Hodges LLP

Represented By
Holly M. Carnes
Kathryn M.S. Catherwood

Marc Forsythe

Represented By
Holly M. Carnes
Kathryn M.S. Catherwood

David Klein

Represented By
David A Berkley

Darrell P. White

Represented By
Paul A. Grammatico

Plaintiff(s):

Richard Parks

Represented By
Michael G Dawe
Tom Roddy Normandin

North Valley Regional Center LLC

Represented By
Michael G Dawe
Tom Roddy Normandin

Talon Diversified Holdings, Inc.

Represented By
Tom Roddy Normandin
Michael G Dawe

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CONT... Parks Diversified, LP
North Valley Mall II, LLC

Chapter 11

Represented By
Michael G Dawe
Tom Roddy Normandin

Parks Diversified L.P.

Represented By
Michael G Dawe
Tom Roddy Normandin

Lucia Parks

Represented By
Michael G Dawe
Tom Roddy Normandin

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8:21-12506 Sarina Browndorf

Chapter 11

Adv#: 8:22-01020 Browndorf v. Browndorf et al

#5.00 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 8-04-22 per court's own mtn)

[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 10-12-23)**

Docket 1

Tentative Ruling:

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.

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CONT... Sarina Browndorf

Chapter 11

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

Tentative for 5/25/23:
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.

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CONT... Sarina Browndorf

Chapter 11

Appearance: optional

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

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8:21-12506 Sarina Browndorf

Chapter 7

Adv#: 8:22-01020 Browndorf v. Browndorf et al

#6.00 Motion To Dismiss Amended Cross-Complaint Without Leave To Amend

Docket 200

Tentative Ruling:

Tentative for November 30, 2023

Apparently the cross complainants have acknowledged the persisting standing issues and have agreed to dismiss. Consequently, the motion is granted without leave to amend. Appearance is optional.

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

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

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CONT... Sarina Browndorf
Elsbeth Bonnie Browndorf

Pro Se

Chapter 7

Movant(s):

Thomas H Casey (TR)

Represented By
Jessica L Bagdanov
Jessica Wellington

Plaintiff(s):

Sarina Browndorf

Represented By
Susan K Sefflin
Jessica L Bagdanov
Jessica Wellington

Trustee(s):

Thomas H Casey (TR)

Represented By
Jessica L Bagdanov

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11:00 AM

8:22-11776 Elaheh Yazdi

Chapter 7

Adv#: 8:23-01006 Verdugo Plaza Pharmacy, Inc. et al v. Yazdi

- #7.00** STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Debts (1) 11 USC Section 523(a)(4), (2) 11 USC Section 523(a)(6)
(cont'd from 5-04-23)
(cont'd from 8-10-23 per order approving stip. to cont. s/c entered 7-28-23)
(cont'd from 11-9-23 per order approving stip. to cont. s/c entered 10-27-23)

Docket 1

Tentative Ruling:

Tentative for November 30, 2023
See #8.

Tentative for 5/4/23:
See #6.

Party Information

Debtor(s):

Elaheh Yazdi

Represented By
Ahren A Tiller

Defendant(s):

Elaheh Yazdi

Pro Se

Plaintiff(s):

Verdugo Plaza Pharmacy, Inc.

Represented By
Stella A Havkin

Lawrence T Wong

Represented By
Stella A Havkin

Trustee(s):

Richard A Marshack (TR)

Represented By
Melissa Davis Lowe

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8:22-11776 Elaheh Yazdi

Chapter 7

Adv#: 8:23-01006 Verdugo Plaza Pharmacy, Inc. et al v. Yazdi

#8.00 Defendant's Motion To Dismiss Third Amended Complaint For Failure To State A Claim Pursuant To Rule 12(b)(6)
(cont'd from 10-05-23 per court's own mtn)

Docket 49

Tentative Ruling:

Tentative for November 30, 2023

This is Debtor/Defendant Yazdi's ("Debtor") motion to dismiss Plaintiffs Verdugo Plaza Pharmacy, Inc., and Lawrence T. Wong's ("Plaintiffs") third amended complaint to determine dischargeability of debts ("TAC").

A. Background and Rule 12(b) Standards

On February 7, 2013, Octagon Pharmaceutical, Inc. ("Octagon") entered into an agreement to purchase certain (unidentified) pharmacy business assets of Plaintiffs. As part of the transaction, Octagon executed a promissory note for the principal amount of \$290,000, with interest at five percent (5%) per annum. Defendant's attorney Rob Cucher sent an email to Mr. Dous, affiliated with Octagon, concerning Defendant's decision to relinquish her Octagon shares and resign as the officer and director of Octagon on July 27, 2016. In October 2016, months after Defendant resigned as Pharmacist-in-charge, she relinquished her Octagon shares, and resigned as officer/director of Octagon, Octagon defaulted on the promissory note, with the principal balance of \$240,434.28, plus interest, due and payable. Octagon then submitted a Discontinuance of Business form to the California Board of Pharmacy.

On or about November 13, 2017, McKesson Corporation filed a complaint against Defendant and Octagon for breach of contract and breach of guaranty. Defendant filed her answer to the complaint on April 2, 2018, and on September 26, 2018, Defendant and McKesson entered a Stipulation to which Defendant agreed to pay McKesson the sum of \$30,000 by October

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CONT... Elaheh Yazdi

Chapter 7

26, 2018 and return an identified list of drugs to McKesson by October 12, 2018. On May 10, 2019, Plaintiffs filed an action in Los Angeles Superior Court against Octagon, Tadros, Dous, Defendant and others, Verdugo Pharmacy, Inc., et al v. Octagon. Thereafter, Defendant filed a preceding chapter 13 bankruptcy, which Plaintiffs characterize to solely delay the LASC Action and which was dismissed at plan confirmation. Plaintiffs filed this third amended complaint to determine dischargeability of debts, and Defendant now brings this motion to dismiss.

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

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

B. Analysis

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Elaheh Yazdi

Chapter 7

1. Statement in Writing as Required by §523(a)(2)(B)?

Defendant first contends that the first claim fails to state a claim for relief under Section 523(a)(2)(B) because the third amended complaint does not allege that Defendant ever made a statement in writing concerning Octagon's financial condition. The issue here is that the first claim is alleged under Section 523 (a)(2)(A), not 523(a)(2)(B). Plaintiffs assert that this argument is thus irrelevant because claims under the latter subsection were never alleged. However, Defendant emphasizes in its reply that this misses the point. The first claim should be dismissed because it cites an incorrect subsection of 523(a)(2).

It is undisputed that § 523(a)(2)(A) does not apply to statements respecting the debtor's or an insider's financial condition. See 11 U.S.C. § 523(a)(2)(A) (excepting from discharge debts "for money, property, services, or an extension ... of credit, to the extent obtained by-false pretenses, a false representation, or actual fraud, other than a statement respect the debtor's or an insider's financial condition").

Here, Defendant argues that the first claim concerns statements respecting Octagon's financial condition (its ability to pay the promissory note), and Octagon is an insider of the Defendant. Plaintiffs should have, as Defendant contends, brought this claim under section 523(a)(2)(B). However, the court disagrees that the claim should be dismissed with prejudice. Plaintiffs did not allege that Defendant made a fraudulent representation in writing, as required by section 523(a)(2)(B), but this was perhaps under the wrong assumption that Plaintiffs were bringing a claim pursuant to section 523(a)(2)(A). So, the question arises, are there facts that can be alleged under the *Iqbal* and *Twombly* standard that will cure the requirement of a statement regarding the debtor's or an insider's financial condition in writing?

It is unclear on this record whether such facts exist or can be alleged. As leave to amend is generally favored, and this issue does not appear to be mentioned in the previous motions to dismiss, the court is inclined to allow (one more time) Plaintiffs the opportunity to amend the complaint with the correct subsection and supporting factual allegations.

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2. Failure to State a Claim Under § 523(a)(6)

Section 523(a)(6) excepts from discharge any "debt for willful and malicious injury by the debtor to another entity or to the property of another entity." 11 U.S.C. § 523(a)(6). The "willful" and "malicious" injury requirements are conjunctive and require separate analyses. *Carillo v. Su (In re Su)*, 290 F.3d 1140, 1146 (9th Cir. 2002). The "willful" injury requirement is "met only when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result as a result of his own conduct." *Id* at 1142. The "malicious" injury requirement is "(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse." *Petralia v. Jercich (In re Jercich)*, 238 F.3d 1202, 1209 (9th Cir. 2001).

Plaintiffs first allege under section 523(a)(6) that (1) Defendant transferred sale proceeds of a residence to her son, Ramtin, in 2018 and (2) Ramtin through the company Royal Serenity, Inc., purchased the business assets of Davies Home Health Care, LLC in 2019. However, Defendant argues that neither of these facts are sufficient to establish a claim for willful and malicious injury under section 523(a)(6) because Plaintiffs did not have an interest in the property transferred. Plaintiffs assert that Defendant's argument is defective because the willful and malicious conduct is based on her specific knowledge that the Promissory Note owed to Plaintiffs was not going to be paid, that she was going to be liable for that amount, and that she intentionally decided to liquidate and conceal assets to prevent Plaintiffs from collecting on the Note. Defendant rebuts in the reply, citing to *In re Saylor*, 108 F. 3d 219, 221 (9th Cir. 1997). The *Saylor* court found that to succeed on a claim under §523(a)(6) on the basis of a fraudulent transfer, the plaintiffs must have an interest in what was transferred, be it a security interest in the property or a judgment setting aside the fraudulent transfer. *Id*. In this case, Plaintiffs' fraudulent transfer allegations would not be sufficient to establish a section 523(a)(6) claims because the Plaintiffs have no interest in the property transferred and, under *Saylor*, cannot plausibly allege such an interest.

Plaintiffs also allege willful and malicious injury under section 523(a)(6)

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on the ground that Defendant engaged in discovery or other abuses by filing and voluntarily dismissing the previous chapter 13 case in 2022. Defendant contends that chapter 13 case is privileged under California and federal law. Further, Defendant argues that its chapter 13 cannot have caused a willful and malicious injury to Plaintiffs or their property because it was only open for 11 days, and this 11 day period could not have caused willful and malicious injury. Plaintiffs' opposition states that an exception to the litigation privilege is "malicious prosecution". Cal. Civ. Code § 47; *Silberg v. Anderson*, 50 Cal. 3d 205, 211(1990). Plaintiffs' assertion is essentially that Defendant filed the chapter 13 bankruptcy case for the sole purpose of delaying judgment against her in the state court lawsuit. While the timing is suspicious, this is not an uncommon practice, given the benefits of the automatic stay. Many debtors, perhaps even most, seek the haven of bankruptcy because of the threat of litigation. While imprudent and bad faith bankruptcy filings can under some extreme circumstances result in sanctions, that it should amount to a "willful and malicious injury" for §523(a)(6) purposes is extremely doubtful and would inject a wholesale change in bankruptcy jurisprudence. Absent some authority (which Plaintiff does not cite) the court holds that the filing of a petition in bankruptcy cannot suffice as a willful and malicious act for nondischargeability purposes.

3. Sanctions?

Plaintiffs request that the court exercise its broad inherent power under 11 U.S.C § 105(a) to sanction the alleged bad faith conduct of Defendant. Specifically, Plaintiffs contend that Defendant has filed multiple motions to dismiss that have been denied only to harass Plaintiffs. But isn't Rule 12(b) precisely for the purpose of testing the viability of allegations at the pleading stage? Moreover, Defendants have shown a level of success. To exercise its inherent sanction power under 11 U.S.C § 105 (a), the court must "make and explicit finding of bad faith or willful misconduct," which entails a finding of "something more egregious than mere negligence or recklessness." *Id.* Furthermore, a finding of bad faith requires some kind of "improper purpose" or intent, and "even if the act consists of making a truthful statement or a non-frivolous argument or objection," the subject conduct may still be sanctionable for bad faith under 11 U.S.C. § 105(a). *Fink v. Gomez*, 239 F.3d 989,992 (9th

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Cir. 2001).

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There have been many amended complaints and motions to dismiss filed. However, even considering inherent power to sanction a certain level of willful misconduct must be shown. Nothing even approaching this level of bad faith or "improper purpose" as required is shown here. Sanctions are denied.

Grant the motion without leave to amend except as to the §523(a)(2) (B) theory, which may be amended one final time within thirty days provided it is supported by facts than can be truthfully alleged within the *Iqbal* and *Twombly* standard. Appearance required.

Party Information

Debtor(s):

Elaheh Yazdi

Represented By
Ahren A Tiller
Donald W Reid

Defendant(s):

Elaheh Yazdi

Represented By
Donald W Reid

Plaintiff(s):

Verdugo Plaza Pharmacy, Inc.

Represented By
Stella A Havkin

Lawrence T Wong

Represented By
Stella A Havkin

Trustee(s):

Richard A Marshack (TR)

Represented By
Melissa Davis Lowe

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Adv#: 8:23-01041 Binun v. Gustavsson

#9.00 STATUS CONFERENCE RE: Complaint To Determine Dischargeability Of Debt And/Or To Deny Debtor's Right To Receive A Discharge

**(cont'd from 8-24-23 per order approving stip. between defendant and plaintiff to cont. status conference entered 8-22-23)
(cont'd from 11-02-23 per court's own mtn)**

Docket 1

Tentative Ruling:

Tentative for November 30, 2023
The deadline for completing discovery is May 31, 2024.
The last date for filing pre-trial motions is June 10, 2024.
The pre-trial conference is on June 27, 2024 at 10:00 a.m.
Joint pre-trial order due per local rules.
Appearance required.

Party Information

Debtor(s):

Lars Ake Morgan Gustavsson	Represented By Robert P Goe
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Defendant(s):

Lars Ake Morgan Gustavsson	Pro Se
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Plaintiff(s):

Paul Binun	Represented By Kit J Gardner
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Trustee(s):

Karen S Naylor (TR)	Pro Se
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**#10.00 Motion for Order Denying Debtor's Claim of Homestead Exemption
(cont'd from 8-24-23 per order approving stip. to cont. hrg on mtn for order
denying debtor's claim of homestead exemption entered 8-22-23)
(cont'd from 11-02-23 per court's own mtn)**

Docket 26

Tentative Ruling:

Tentative for November 30, 2023

Schedule continued evidentiary hearing as needed. Appearance required.

Tentative for 7/11/23:

This is Motion for Order Denying Debtor, Lars Ake Morgan Gustavsson's ("Debtor") Claim of Homestead Exemption brought by creditor, Paul Binun ("Creditor"). Debtor opposes the motion.

The Debtor filed his voluntary Chapter 7 petition on February 17, 2023, listing his residence as being 2960 Champion Way, Unit 1908 in Tustin, California. However, Creditor asserts, that is not believed to be the Debtor's domicile. Rather, the residence in Tustin appears to be that of the Debtor's son, while the Debtor's domicile is and has been the Mexico Real Property in Mazatlan, Mexico, where the Debtor's wife also resides, and for which the Debtor has claimed a \$300,000.00 homestead exemption pursuant to California Code of Civil Procedure section 704.730. However, Creditor argues, because the Debtor was not domiciled in California for 730 days prior to filing his bankruptcy petition, as required by Bankruptcy Code section 522(b)(3)(A), the Debtor may not claim California's homestead exemption in the Mexico Real Property.

Creditor asserts that the nowhere in the Debtor's Schedules or Statement of Financial Affairs did he disclose his interest in the Mexico Real Property. Even after he had been questioned extensively at a meeting of creditors held on March 29, 2023, concerning his potential ownership of real property in Mexico, Creditor asserts, the Debtor filed an amended set of Schedules and Statement of Financial Affairs on April 27, 2023, which still did

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not list any interest in real property.

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However, Debtor further amended his schedules on April 28, 2023 and listed the Mexico Real Property, but asserted that it was held in his wife's name. In fact, Creditor asserts, the Mexico Real Property was purchased by Debtor with his own separate property (an inheritance). Still, the Debtor also amended his Schedule C to claim an exemption in the Real Property in the amount of \$300,000.00 pursuant to California Code of Civil Procedure section 704.730. As noted above, Creditor argues that Debtor is not entitled to that homestead exemption under section 522(b)(3)(A), which states:

(3) Property listed in this paragraph is—
(A) subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition to the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's domicile has not been located in a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place;

A person is "domiciled" in a location where he or she has established a fixed habitation or abode in a particular place and intends to remain there permanently or indefinitely. *Lew v. Moss*, 797 F.2d 747, 749-50 (9th Cir. 1986).

Creditor argues that a timeline established in part by filings in this case show that Debtor was domiciled in Mexico within the 730 days preceding the petition date, rendering him, according to Creditor, ineligible for the California exemptions.

Further, Creditor argues that under 11 U.S.C. sec. 522(g), Debtor may not claim an exemption if the property was voluntarily transferred or if it was concealed. *See, e.g. In re McKinnon*, 495 B.R. 553, 555 (Bankr. M.D. Fla. 2013) ("If either the transfer was a voluntary transfer or if the transfer was not disclosed, then § 522(g) is unavailable to the Debtor"). As noted above,

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Creditor argues that Debtor likely transferred and concealed the Mexico Real Property, at least initially. Creditor asserts that discovery will be necessary to determine under what circumstances the Mexico Real Property was acquired and/or when the funds used to acquire it were given by the Debtor to his wife.

Debtor opposes the motion. Debtor asserts that Creditor is a former business partner and also a disputed creditor. Debtor maintains that he has always lived in California. Debtor points out that when Creditor sued Debtor in Orange County Superior Court in October of 2019, Debtor was listed in the complaint as "residing in Orange County, California..." Debtor maintains that he has always listed an address in Orange County in his bankruptcy filings because that is, in fact, where he lives, though notes that he does visit his wife in Mexico. Debtor disputes that he ever had any interest in the Mexico Real Property and maintains that it is his wife's property. Debtor asserts that his frequent trips to Mexico are a result of medical care and recovery from serious illness. However, Debtor argues that under the definition of "domicile" he should be considered domiciled in California because he has never intended to live and remain anywhere else, including Mexico. Debtor argues that his intent to live and remain in California is evidenced by his assets being located here, his sources of income located here, his work is here, he carries a California driver's license, owes and pays taxes in California. Debtor concedes that he was advised to say that he resided in Mexico, but maintains he never formed a subjective intent to live and remain there. Debtor also disputes that any the Mexico Real Property was transferred or concealed because, Debtor argues, he never had any ownership interest there, making sec. 522(g) inapplicable.

In reply, Creditor argues that Debtor has not rebutted the argument that he purchased the house in Mexico with money from an inheritance. Creditor also argues that Debtor at various times during this case made it clear that Mexico was his "home" and that he intended to live there indefinitely. Creditor argues that if his arguments are not sufficiently compelling at this time, he should be given leave to conduct discovery and get answers to questions such, what is exactly is his living arrangement with his son in California? What are his expenses in Mexico? Where is his car registered? What personal property assets are in Mexico?

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The court cannot tell where the truth is on this record. A contested proceeding in the nature of a trial to establish Debtor's domicile during the relevant period may be required. In the meantime, the court would value any comments the chapter 7 trustee, Karen Naylor or the U.S. Trustee might have.

Continue for evidentiary proceeding.

Appearance: required

Party Information

Debtor(s):

Lars Ake Morgan Gustavsson

Represented By
Robert P Goe

Trustee(s):

Karen S Naylor (TR)

Pro Se