

UNITED STATES BANKRUPTCY COURT
DEPARTMENT 2
JUDGE LOUISE DeCARL ADLER, PRESIDING
TUESDAY, DECEMBER 20, 2016

02:00 PM

1 - 16-06773-LA Ch 13 CESAR A ACOSTA

MOTION FOR RELIEF FROM STAY, RS # MDE-1 .00 FILED BY MARK D. ESTLE ON BEHALF OF CIT BANK, N.A., FORMERLY KNOWN AS ONEWEST BANK N.A., FORMERLY KNOWN AS ONEWEST BANK, FSB

Tentative Ruling: If parties manage to agree on an APO in advance of this hearing, please notify the courtroom deputy and appearances will be excused.
In that event, debtor's counsel will be awarded the guideline fee for his/her services in this matter.

ATTORNEY: THOMAS B. GORRILL (CESAR A ACOSTA)

2 - 16-01439-LA Ch 13 ARTURO GONZALEZ-ROMERO

MOTION FOR RELIEF FROM STAY, RS # TSC-1 .00 FILED BY THERON S. COVEY III ON BEHALF OF STRUCTURED ASSET SECURITIES CORPORATION MORTGAGE PASS -THROUGH CERTIFICATES, SERIES 2004-19XS, U.S BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA NATIONAL ASSOCIATION,

Tentative Ruling: If parties manage to agree on an APO in advance of this hearing, please notify the courtroom deputy and appearances will be excused.
In that event, debtor's counsel will be awarded the guideline fee for his/her services in this matter.

As to debtor's unhappiness re: having an impound for taxes, that is an issue he needs to take up directly with the lender. As he states he is performing under a loan modification, the lender's request for an impound account would seem reasonable under the circumstances.

ATTORNEY: RICK G MELENDEZ (ARTURO GONZALEZ-ROMERO)

3 - 14-06455-LA Ch 7 PAUL MARK TABET

ADV: 15-90206

UNITED STATES TRUSTEE v. PAUL MARK TABET

PRE-TRIAL STATUS CONFERENCE

ATTORNEY: KRISTIN MIHELIC (UNITED STATES TRUSTEE)
ATTORNEY: JACKIE ROBERT GELLER (PAUL MARK TABET)

4 - 15-04687-LA Ch 7 FRANK E LUCATUORTO

ADV: 15-90190

KERA LEGLER v. FRANK E. LUCATUORTO

PRE-TRIAL STATUS CONFERENCE (Fr 12/1/16)

ATTORNEY: KEVIN C. YOUNG (KERA LEGLER)

02:00 PM

5 - 15-07217-LA Ch 7 ERIC GREGORY & DIANA CHICK

ADV: 16-90037

**JAN BEVERLEY & JB GAMING SOLUTIONS, INC. ET AL v. ERIC
GREGORY CHICK & DIANA CHICK**

PRE-TRIAL STATUS CONFERENCE

ATTORNEY: JESSICA L. MACKANESS (JAN BEVERLEY, JB GAMING
SOLUTIONS, INC. ET AL)

ATTORNEY: VINCENT RENDA (ERIC GREGORY CHICK, DIANA CHICK)

6 - 15-08140-LA Ch 7 JANET E. LONNEKER

ADV: 16-90054

RICHARD LAMBERTUS v. JANET E. LONNEKER

1) DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

Tentative Ruling: Motion for Judgment on the Pleadings of the First Amended Complaint
GRANTED as set forth below:

1. Claim #1: Claim #1 is a claim for relief under Sec. 727(a)(2) for making a fraudulent transfer. Plaintiff must plead that the debtor transferred or disposed of her assets with the requisite fraudulent intent within one year of her petition date. In the FAC, Claim #1 pleads that the debtor's former husband John Lonneker fraudulently transferred all of his assets **to** the debtor within one year of his bankruptcy filing. (FAC para. 30-32). There can be no plausible claim against the debtor under Sec. 727(a)(2) arising from these facts pled in the FAC, even if they are true. Judgment on pleadings on this claim is granted in favor of the defendant. However, Court grants this judgment with leave to amend. In the plaintiff's Opposition, he has identified various assets that he believes defendant once owned as a result of the MSA and that she did not schedule in her petition. To the extent plaintiff can identify specific assets that debtor owned and plausibly plead that debtor transferred or disposed of these assets with the requisite intent within one year of her bankruptcy petition, plaintiff is given leave to amend.

2. Claim #2: Claim #2 is to bar defendant's discharge under Sec. 727(a)(4) for making a false oath. Specifically, the facts alleged in the complaint pertain to a diamond ring. To the extent plaintiff can plead that (a) defendant (Janet) made a false oath; (b) in connection with this bankruptcy case; (c) regarding this ring, or any other identifiable asset of material value, that Janet Lonneker owned (as opposed to John Lonneker), Court grants the motion for judgment on the pleadings with leave to amend.

Claim #2, as alleged, does not support a finding that a plausible claim can be plead. The ring is identified in the MSA as John Lonneker's separate property. He would continue to own it after their divorce. If this is factually correct, then Janet Lonneker's alleged false oaths regarding its sale would be a trivial matter (whether the ring was sold to Luan Jewelers or Bella Rose Jewelers, or whether he still owns it, is a trivial matter having little affect on Janet's bankruptcy estate). See *In re Fisher*, 4 B.R. 517, 18 (Bankr. S.D. Fla. 1980); *In re Irving*, 27 B.R. 943, 945 (Bankr. E.D.N.Y. 1983).

3. Claim #3 and #4: Plaintiff has withdrawn any opposition to judgment on the pleadings being made with prejudice as to these claims.

If Plaintiff intends to file a Second Amended Complaint as to any of the claims for which judgment on the pleadings has been granted with leave to amend, he must file said SAC no later than Jan. 10, 2017.

2) PRE-TRIAL STATUS CONFERENCE (Fr 9/22/16)

ATTORNEY: JOHN W. CUTCHIN (JANET E. LONNEKER)

02:00 PM

7 - 15-00905-LA Ch 7 JOHN M LONNEKER

ADV: 15-90111

RICHARD LAMBERTUS v. JOHN M LONNEKER

- 1) DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS FOR RELIEF, OR IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION FILED BY JOHN W. CUTCHIN ON BEHALF OF JOHN M LONNEKER JR. (Fr 11/17/16)

Tentative Ruling: This matter was continued to today's hearing date for Mr. Cutchin to notice Mr. Lambertus' deposition and for Mr. Lambertus to sit for that deposition and answer deposition questions regarding the basis of his complaint without asserting the Fifth Amendment privilege against self-incrimination. The Court's tentative ruling issued 8/15/16 on Defendant's Motion for Summary Judgment (ECF #66) was adopted at the hearing held 8/19/16 (ECF #68). First, Plaintiff was ordered to pay defendant's costs in bringing this motion [which he has] and second, to sit for deposition and answer questions as to the material allegations of his complaint without invoking his Fifth Amendment rights. The Court has no information whether that has, in fact, occurred.

- 2) PRE-TRIAL STATUS CONFERENCE (Fr 11/17/16)

ATTORNEY: JOHN W. CUTCHIN (JOHN M LONNEKER)

8 - 16-05917-LA Ch 7 AJA MARIE STEPTOE

- 1) REAFFIRMATION AGREEMENT BETWEEN DEBTOR AND GATEWAY ONE LENDING & FINANCE

Tentative Ruling: Motion to Reaffirm Debt to Gateway One Lending and Finance **DENIED**. Based on Schedules I and J originally filed in this bankruptcy, a presumption of undue hardship exists which the debtor(s) has not rebutted. Debtor(s) must explain the differences between Part II income/expenses and those on originally filed Schedules I and J. If debtor(s) still desires to reaffirm this debt, upon a request for a continuance made to the courtroom deputy **Karen Fearce [(619) 557-6594]**, the court will give debtor(s) a **ONE TIME CONTINUANCE** to file a declaration under penalty of perjury explaining the differences between Part II and the originally filed Schedules I and J and attaching to the declaration new Schedules I and J showing current income and expenses. Further, if debtor(s) is relying on contributions from her boyfriend, a separate declarations from him must be filed, stating: (1) he is financially able to contribute an amount sufficient to cover the payment to this creditor in the event debtor is unable to do so and (2) he is willing to make this contribution, if required, until the end of the contract with this creditor. If the continuance is requested, (1) Ms. Fearce will assign the hearing date/time; (2) the new Schedules and Declaration(s) must be filed no later than one (1) week in advance of the continued hearing date and (3) the debtor and/or her counsel are excused from attending today's hearing date.

Court notes that debtor(s) original schedules show debtor is unemployed. If debtor cannot show sufficient income at present to pay normal monthly living expenses plus this vehicle payment, Court strongly urges debtor NOT to request a continued hearing and instead discuss with their counsel accepting a *Moustafi* order denying this reaffirmation agreement. If counsel is recommending debtor accept a *Moustafi* order, counsel must appear at this hearing **or** file a declaration one week in advance (and notify the courtroom deputy) whether debtor meets the deadlines required to be eligible for the *Moustafi* order.

- 2) REAFFIRMATION AGREEMENT BETWEEN DEBTOR AND WELLS FARGO DEALER SERVICES

Tentative Ruling: Motion to Reaffirm Debt to Wells Fargo Dealer Services **DENIED**. Based on Schedules I and J originally filed in this bankruptcy, a presumption of undue hardship exists which the debtor(s) has not rebutted. Debtor(s) must explain the differences between Part II income/expenses and those on originally filed Schedules I and J. If debtor(s) still desires to reaffirm this debt, upon a request for a continuance made to the courtroom deputy **Karen Fearce [(619) 557-6594]**, the court will give debtor(s) a **ONE TIME CONTINUANCE** to file a declaration under penalty of perjury explaining the differences between Part II and the originally filed Schedules I and J and attaching to the declaration new Schedules I and J showing current income and expenses. Further, if debtor(s) is relying on contributions from her boyfriend, a separate declarations from him must be filed, stating: (1) he is financially able to contribute an amount sufficient to cover the payment to this creditor in the event debtor is unable to do so and (2) he is willing to make this contribution, if required, until the end of the contract with

this creditor. If the continuance is requested, (1) Ms. Fearce will assign the hearing date/time; (2) the new Schedules and Declaration(s) must be filed no later than one (1) week in advance of the continued hearing date and (3) the debtor and/or her counsel are excused from attending today's hearing date.

Court notes that debtor(s) original schedules show debtor is unemployed. If debtor cannot show sufficient income at present to pay normal monthly living expenses plus this vehicle payment, Court strongly urges debtor NOT to request a continued hearing and instead discuss with their counsel accepting a *Moustafi* order denying this reaffirmation agreement. If counsel is recommending debtor accept a *Moustafi* order, counsel must appear at this hearing **or** file a declaration one week in advance (and notify the courtroom deputy) whether debtor meets the deadlines required to be eligible for the *Moustafi* order.

ATTORNEY: STEVEN F. BLISS (AJA MARIE STEPTOE)

02:00 PM

9 - 16-05916-LA Ch 7 JAMIE L. FISCUS

REAFFIRMATION AGREEMENT BETWEEN DEBTOR AND CREDIT UNION
KNOWN AS FIRST TECH FEDERAL CREDIT UNION

Tentative Ruling: **MATTER OFF CALENDAR.** The creditor is a credit union and counsel, confirms s/he represented debtor in negotiating this agreement. As indicated in the "Instructions and Notice to Debtor" located at Part A.2. of the Reaffirmation Agreement, this reaffirmation agreement became effective upon filing with the Court. See § 524(k)(5)(B)(C) and § 524(m) (1)(2); see also 4 Resnick & Sommer, *Collier On Bankruptcy*, ¶ 524.04[2] at 524-47-48 (16th ed.) (explaining the presumption of hardship provisions do not apply if the creditor is a credit union and, in such cases, court review is required only if the debtor negotiated the agreement in *pro per*).

ATTORNEY: VIKRANT CHAUDHRY (JAMIE L. FISCUS)

10 - 16-04755-LA Ch 7 CHRISTINE NICHOLES & DORAH DEVAL

UNITED STATES TRUSTEE'S MOTION FOR EXTENSION OF TIME TO FILE A MOTION PURSUANT TO 11 U.S.C. 707(b)(3) AND OBJECT TO THE DISCHARGE FILED BY LESLIE ANNE SKORHEIM ON BEHALF OF UNITED STATES TRUSTEE

Tentative Ruling: Motion **GRANTED.** Cause shown for extension and unopposed. Extension to and including 3/13/17.

As this motion is unopposed, submit order. Appearances excused.

ATTORNEY: FRANK D. WALKER (CHRISTINE NICHOLES, DORAH DEVAL)

02:00 PM

11 - 16-04771-LA Ch 7 GARY CLINT CROCKER

MOTION TO AVOID LIEN OF PORTFOLIO RECOVERY ASSOCIATES, LLC
FILED BY JEFFREY D. SCHREIBER

Tentative Ruling: Motion **CONTINUED to FEB. 9, 2017 at 2:00 p.m.** to remedy service defect.

FRBP 4003(d) provides that a motion to avoid a judicial lien is a contested matter governed by FRBP 9014. Therefore, the motion must be served in a manner that complies with FRBP 7004(b) governing the services of a summons and complaint. If the affected lien holder is a federally insured depository institution, FRBP 7004(h) imposes additional service requirements. Here, movant's proof of service states that he served the affected lien holder, a corporation, at various general business addresses without directing it to the attention of anyone that would be authorized under FRBP 7004(b)(3) to accept service of process and that he served the creditor's state court attorney without indicating that the attorney both (1) represents the creditor in this bankruptcy case and (2) the creditor has authorized this attorney to "receive service of process" under FRBP 7004 in this bankruptcy case. *In re Harnischfeger Ind.*, 288 B.R. 78 (Bankr. D. Del. 2003); *In re Boykin*, 246 B.R. 825 (Bankr. E.D. Va. 2000). Unless and until these service defects are corrected, this motion cannot be granted.

Appearances at today's hearing are excused.

ATTORNEY: JEFFREY D. SCHREIBER (GARY CLINT CROCKER)

12 - 16-02075-LA Ch 7 KENNETH KEOLA MOLINA

FIRST AND FINAL APPLICATION FOR COMPENSATION & REIMBURSEMENT OF EXPENSES FOR FINANCIAL LAW GROUP, TRUSTEE'S ATTORNEY, PERIOD: 6/17/2016 TO 11/1/2016, FEE: \$ 3,496.50, EXPENSES: \$46.48. FILED BY FINANCIAL LAW GROUP (PLUS RESERVE UP TO \$1,000 FEES & \$20.00 COST FOR CLOSING)

Tentative Ruling: **MATTER CONTINUED TO JAN. 12, 2017 at 2:00 p.m.** Applicant has failed to provide a cost/benefit analysis for services of the firm. Court is not required to dig through the docket to figure out how much firm's services resulted in net recovery to this estate. Submit supp. dec. at least one week in advance of continued hearing.

No appearance required at today's hearing.

ATTORNEY: RONALD E. STADTMUELLER (KENNETH KEOLA MOLINA)

02:00 PM

13 - 12-07812-LA Ch 7 JEROLD DENNIS BURKE

ADV: 12-90311 FIBER-TECH MANUFACTURING, INC. v. JEROLD DENNIS BURKE

- 1) STATUS CONFERENCE RE: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, FOR PARTIAL SUMMARY JUDGMENT OF ISSUES (Fr 6/16/16)

Tentative Ruling: **MATTER CONTINUED TO FEB. 23, 2017 at 2:00 p.m.** on joint request of parties; awaiting disposition of State Court appeal. Parties to file status memo one week in advance of continued hearing.

Appearances at today's hearing excused.

- 2) PRE-TRIAL STATUS CONFERENCE (Fr 6/16/16)6/16/16)

Tentative Ruling: **MATTER CONTINUED TO FEB. 23, 2017 at 2:00 p.m.** on joint request of parties; awaiting disposition of State Court appeal. Parties to file status memo one week in advance of continued hearing.

Appearances at today's hearing excused.

ATTORNEY: SCOTT A. MCMILLAN (FIBER-TECH MANUFACTURING, INC.)
ATTORNEY: MARTIN A. ELIOPULOS (JEROLD DENNIS BURKE)

14 - 14-02301-LA Ch 13 MICHELLE V PRYOR

MOTION FOR RELIEF FROM AUTOMATIC STAY RS # APN-1 FILED BY AUSTIN P. NAGEL ON BEHALF OF WELLS FARGO BANK

Tentative Ruling: Motion for Relief from Stay **GRANTED**. Debtor hasn't made payments on this grossly over-encumbered residence for almost 2 years. There is no basis to keep the stay in effect under these circumstances.

If counsel for the debtor is prepared to accept the tentative ruling, he should notify counsel for Wells Fargo and the courtroom deputy and appearances will be excused. In that event, counsel for WFB should prepare and lodge an order; no waiver of the 14 day stay. Debtor's counsel will be awarded guideline fee for his services.

ATTORNEY: ANDREW MOHER (MICHELLE V PRYOR)

1 - 16-02082-LA Ch 11 FOLUKE Y. JOSE

ORDER REGARDING CHAPTER 11 PETITION 1) SETTING STATUS CONFERENCE; 2) SETTING COMPLIANCE DEADLINES; AND 3) SETTING SANCTIONS, IF APPROPRIATE, INCLUDING DISMISSAL, CONVERSION OR APPOINTMENT OF A CHAPTER 11 TRUSTEE OR EXAMINER BECAUSE OF NONCOMPLIANCE WITH ABOVE-REFERENCE REQUIREMENTS

2 - 16-04508-LA Ch 11 PLE MANAGEMENT, LLC

- 1) ORDER REGARDING CHAPTER 11 PETITION 1) SETTING STATUS CONFERENCE; 2) SETTING COMPLIANCE DEADLINES; AND 3) SETTING SANCTIONS, IF APPROPRIATE, INCLUDING DISMISSAL, CONVERSION OR APPOINTMENT OF A CHAPTER 11 TRUSTEE OR EXAMINER BECAUSE OF NONCOMPLIANCE WITH ABOVE-REFERENCE REQUIREMENTS

Tentative Ruling: Court is dismissing this case under OSC (for failure of the debtor to attend the Sec. 341(a) hearing or file schedules) and pursuant to the UST's motion for dismissal. This OSC hearing is **OFF CALENDAR**.

- 2) 1) ORDER AUTHORIZING RECEIVER TO CONTINUE MANAGING PROPERTY AS CH. 11 TRUSTEE AND AUTHORIZING RECEIVER TO RETAIN COUNSEL
2) ORDER AUTHORIZING CREDITORS TO FILE SCHEDULES AND COMPETING PLANS (Fr 12/1/16)

Tentative Ruling: **MATTER OFF CALENDAR**. Case is being dismissed.

- 3) ACTING UNITED STATES TRUSTEE'S MOTION TO DISMISS OR CONVERT CASE FILED BY HAEJI HONG ON BEHALF OF UNITED STATES TRUSTEE

Tentative Ruling: UST's Motion to Dismiss or Convert **GRANTED**. Court is **dismissing** and not converting this case. Opponents (petitioning creditors in this involuntary case) concede that the only asset of this estate is commercial real estate having a fmv of \$3.3M and debt of \$10.7M. While petitioning creditors (who hold a second lien on the property) reference a potential sale contract entered into in 3/16, there is no evidence that this sale contract is still legally binding on the parties. Further, a Sec. 363(f) sale would not likely be permitted as the liens overencumber property and there is no benefit to unsecured creditors that could be realized if the property were sold. This property was in receivership pre-petition; petitioning creditors can return to state court, continue that receivership and move the state court judge to permit the sale if they think it is still viable.

If counsel for petitioning creditors/opponents are prepared to accept the tentative ruling, counsel should contact the UST and the courtroom deputy and appearances will be excused.

02:30 PM

3 - 16-04436-LA Ch 11 RSF 17872 VIA DE FORTUNA LLC

- 1) ORDER RE: CHAPTER 11 PETITION 1) SETTING STATUS CONFERENCE; 2) SETTING COMPLIANCE DEADLINES; AND 3) SETTING SANCTIONS, IF APPROPRIATE, INCLUDING DISMISSAL, CONVERSION OR APPOINTMENT OF A CHAPTER 11 TRUSTEE OR EXAMINER BECAUSE OF NONCOMPLIANCE WITH ABOVE-REFERENCE REQUIREMENTS (Fr 9/22/16)
- 2) FIRST MOTION TO EXTEND EXCLUSIVE PERIODS WITHIN WHICH TO FILE AND CONFIRM A PLAN OF REORGANIZATION FILED BY TODD RINGSTAD

Tentative Ruling: Motion to Extend Exclusive Periods **GRANTED**. Opposition is well-protected (if it believes otherwise, it can bring its motion for stay relief). Debtor is current on obligations it has to Union and has performed its duties as a DIP. Any information Union feels it is lacking can be developed in the FRBP 2004 exam it is planning to take.

If counsel for Union is prepared to accept the tentative ruling, counsel should inform debtor's counsel and the courtroom deputy and appearances at today's hearing will be excused.

ATTORNEY: TODD RINGSTAD (RSF 17872 VIA DE FORTUNA LLC)