

Judge Mosbarger – Law & Motion – Wednesday, May 24, 2023 @ 9:00 AM
TENTATIVE RULINGS

1. 20CV00070 DURHAM PUMP, INC V. SAMRA, STEVE ET AL

EVENT: Order of Examination (Research & Development Farming, LLC)

The Court has not received proof of service of the Order to Appear for Examination on the debtor. If the debtor appears, the Court will swear him in for examination.

2-5. 20CV01274 GILILLAND, GARRET, III ET AL V. SUNDAHL, PETER ET AL

*EVENTS: (1) Defendants' Motion to Enforce Court's April 28, 2023 Order and Compel Plaintiff Garret Gililland III's Production of Documents Claimed as Privileged
(2) Plaintiffs' Motion to Compel Butte County Fire Safe Council, Peter Sundahl, and Kieran O'Leary's Further Responses, Document Production and Privilege Log to Request for Production of Documents, Set Two
(3) Plaintiffs' Motion to Compel Sierra Timber Services PMK Deposition, or in the Alternative, Kieran O'Leary and Peter Sundahl's Deposition
(4) Defendants' Motion for Protective Order to Prevent Deposition of "Sierra Timber Services" and/or Second Deposition of Defendants Peter Sundahl and Kieran O'Leary*

Due to the voluminous briefing the Court requires additional time to review the pending motions and puts the matter over to June 7, 2023 at 9:00 a.m. The Court also advises counsel that the Mandatory Settlement Conference on May 24, 2023, will begin at 2:00 p.m. via Zoom with Judge Stephen Benson.

6. 21CV00277 MARSHALL, JAMES K ET AL V. ROSEVILLE FLOORING, INC ET AL

EVENT: Demurrer to Cross-Complaint Cross-Defendant's and Cross-Complainant's Requests for Judicial Notice are granted.

The Court finds merit in Cross-Complainant's arguments. Specifically, all of the cross-claims assert that Cross-Defendants obtained property and services through willful, fraudulent, and malicious conduct and thereby fall directly within the exceptions to discharge articulated in 11 USC §523(a)(2)(A), (a)(4), (a)(6). Additionally, to effectively discharge the cross-claims, Cross-Defendants were required to first give notice to Cross-Complainant of their bankruptcy petition and proposed Plan, which would then require Cross-Complainant to file a non-dischargeability complaint and notice a hearing with the bankruptcy court to determine whether Cross-Complainant's claims were exempted from discharge. See 11 USC § 523(c); *In re Santiago* (B.A.P. 9th Cir. 1994) 175 B.R. 48 [holding a creditor that does not receive notice of the bankruptcy until after the claims bar date may file a non-dischargeability complaint at any time]; *American Standard Ins. Co. of Wisconsin v. Bakehorn* (N.D. Ind. 1992) 147 B.R. 480, 484 ["In effect, a debtor who fails to list a creditor loses the jurisdictional and time limit protections of Section

523(c) and Rule 4007(c).”]; see also *In re Lochrie* (9th Cir. BAP 1987) 78 B.R. 257, 259–60 [same]. There has been no evidence presented that would establish that the Cross-Complainant was provided sufficient notice of the bankruptcy proceeding in time to file a proof of claim. Finally, 11 U.S.C. 114(d)(1) provides that debts are discharged “[e]xcept as otherwise provided in this subsection, in the plan, or in the order confirming the plan...” Therefore, the Court must look to the plan and subsequent order to see if this specific debt is excluded. The Debtors’ First Amended Plan of Reorganization Dated November 26, 2019 states in relevant part:

“ARTICLE 7

MEANS FOR IMPLEMENTATION OF THE PLAN

7.01 Funding Sources. To fund the disbursements contemplated by this Plan, Debtors shall utilize the following sources: ...

- i. Breach of Contract & Related Claims. The net recoveries, if any, resulting from prosecution of a breach of contract and related claims lawsuit to be filed by Debtors against Roseville Flooring, Inc. dba California Renovation and California Renovation Chico, and/or Roseville Carpet One, dba RCO Home Improvement California licensed contractors, and/or Earl W. Mann, Kelly Eugene Mann, and Nicholas James Rodgers who were engaged post-petition to perform certain clean-up and hauling services at Debtors’ destroyed primary residence at 4646 Pentz. Debtors anticipate such lawsuit will be filed post-confirmation in the Butte County Superior Court.”

[Cross-Complainant’s RJN, Ex. 1, Pgs.11-12.]

Thus, the Plan language itself could be read to exclude the current litigation from the Bankruptcy proceeding.

For all of the above reasons, the Demurrer is overruled.

Next, in regard to whether the Cross-Complaint’s the First Cause of Action for Fraud and the Fourth Cause of Action for Unfair Competition fail to state a cause of action against Cross-Defendants, in its discretion, the Court has considered the substantive arguments of counsel, even though the meet and confer requirements in relation to these arguments may have been less than statutorily compliant.

The Court finds that the First Cause of Action for Fraud has been sufficiently plead [See Cross-Complaint at ¶¶27-33.]. Therefore, the Demurrer is overruled as the First Cause of Action.

Likewise, the Court finds that the Fourth Cause of Action for Unfair Competition has been sufficiently plead [See Cross-Complaint at ¶¶8-25, 54-59.] Therefore, the Demurrer is overruled as the Fourth Cause of Action.

In conclusion, the Demurrer is overruled in its entirety on all grounds stated. Cross-Defendant shall file and serve its Answer to the Cross-Complaint within 10 days’

notice of this ruling. Counsel for the Cross-Complainant shall submit a revised form of order consistent with this ruling within two weeks.

7. 21CV00888 DAUN, DOROTHY ET AL V. STRATUS TOOL TECHNOLOGIES, LLC ET AL

EVENT: Application for Admission Pro Hac Vice of Andrew T. Stoker

The application to be admitted pro hac vice is granted. Andrew T. Stoker is permitted to appear as counsel pro hac vice on behalf of Defendant Aircraft Spruce & Specialty Company in this matter. The Court will sign the form of order submitted by counsel.

8. 22CV00420 EAGLES, JULIA V. PLILER, JANET

EVENT: Motion to be Relieved as Counsel

Notice does not comply with California Rules of Court Rule 3.1362(d) [requiring service on the client and all other parties]. The proof of service filed on April 26, 2023 shows service by mail on the client with sufficient confirmation of the client's address; however, there is no evidence that the Motion was served on the Defendant as required by the Rules of Court. The matter is continued to June 21, 2023 at 9:00 a.m. and counsel shall file a proof of service evidencing proper service of the Motion on the Defendant.

9-10. 22CV01821 CHAMBERS, PATRICIA V. NEWBERN, MICHAEL ET AL

EVENTS: (1) Plaintiff's Motion to Compel Further Responses to Requests for Admissions Posed to Defendant Clayanna Newbern

(2) Plaintiff's Motion to Compel Further Responses to Form Interrogatories Posed to Defendant Clayanna Newbern

Plaintiff's Motion to Compel Further Responses to Requests for Admission Posed to Defendant Clayanna Newbern is moot, the Plaintiff having subsequently received Code compliant responses; however, sanctions are mandatory under CCP §2033.280(c), and the Court awards sanctions against Defendant Clayanna Newbern in the amount of \$750, which are to be paid within 30 days' notice of this ruling. Counsel for the Plaintiff shall submit a revised form of order consistent with this ruling within two weeks.

Plaintiff's Motion to Compel Further Responses to Form Interrogatories Posed to Defendant Clayanna Newbern is granted. The Court finds that in regard to Interrogatory No. 2.8, the information requested relating to prior felony convictions goes to Defendant's credibility, and is therefore relevant and discoverable. Evidence of prior felony convictions is admissible for "attacking the credibility of a witness."

Evidence Code §788. Thus, the Motion is granted as to Form Interrogatory No. 2.8. In regard to Interrogatory No. 17.1, the Court finds that Defendant has failed to provide sufficient responses to the Interrogatory as Defendant has provided only facts [subpart (b)], and failed to “state the names, addresses, and telephone numbers of all persons who have knowledge of those facts” [sub-party (c)], nor did Defendant “identify all documents and other tangible things that support your response and state the name, address, and telephone number of the person who has each document or thing” [sub-part (d)] as requested in the Interrogatory. Further responses shall be served within 14 days’ notice of this ruling. The parties’ requests for sanctions are denied. Counsel for the Plaintiff shall submit a revised form of order consistent with this ruling within two weeks.