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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re
ORANGE COAST REAL ESTATE
INVESTMENTS, INC.,
Debtor.
RICHARD K. DIAMOND, Trustee,
Plaintiff(s),
vs.
DORA LAND,
Defendant(s).

Case No. 2:13-bk-19479-RK
Chapter 7
Adv No. 2:14-ap-01113-RK

ORDER GRANTING IN PART
DEFENDANT'S MOTION (1) FOR A
MORE DEFINITE STATEMENT; (2) TO
STRIKE; AND (3) TO DISMISS,
VACATING HEARING, AND
CONTINUING STATUS CONFERENCE

DATE: May 6, 2014
TIME: 3:00 p.m.
PLACE: Courtroom 1675
255 East Temple Street
Los Angeles, CA 90012

Pending before the court is the motion of defendant Dora Land (1) for a more definite statement, (2) to strike, and (3) to dismiss the adversary complaint of the Chapter 7 trustee, which is now set for hearing on May 6, 2014. Having reviewed and considered the moving and opposing papers, pursuant to Local Bankruptcy Rule 9013-1(j)(3), the

1 court dispenses with oral argument, takes the motion under submission, vacates the
2 hearing on May 6, 2014 and rules on the motion as follows:

- 3 1. Pursuant to Fed. R. Civ. P. 12(e), the court determines that defendant's motion
4 for a more definite statement should be granted in order to enforce the
5 requirement of Fed. R. Civ. P. 8 and 10(b) that the pleadings should be "clear
6 and concise" and that each claim founded on a separate transaction should be
7 stated as a separate count. Trustee's complaint "mushes" (i.e., improperly
8 combines) the two alleged transactions or transfers together rather than
9 pleading separate causes of action, making it difficult for defendant to respond
10 to the complaint. Therefore, the motion for more definite statement is granted,
11 and leave is granted to Trustee to serve and file an amended complaint within
12 14 days of entry of this order. Defendant may respond to the amended
13 complaint within the time period permitted by Fed. R. Bankr. P. 7012(a) (i.e.,
14 within 14 days after service of a more definite statement).
- 15 2. Leave to amend the complaint will afford Trustee an opportunity to remedy his
16 violation of Local Bankruptcy Rule 7008-1 in the complaint, which requires that
17 Trustee as plaintiff plainly state in the first numbered paragraph of the
18 document the statements required by Fed. R. Bankr. P. 7008(a) and 7012(b).
19 Making this correction will obviate the need for defendant's motion to strike in
20 part. The court expects Trustee to comply with the Local Bankruptcy Rules,
21 including Rule 7008-1, and his continued failure to comply with Rule 7008-1
22 may result in granting a renewed motion to strike and/or imposition of
23 sanctions.
- 24 3. Because the court grants defendant's motion for more definite statement, the
25 court determines that it is unnecessary to rule upon the alternative motions to
26 strike and/or dismiss at this time.
- 27 4. Although the court does not reach the merits of defendant's motion to dismiss
28 at this time, the court makes preliminary comments regarding the issues raised

1 by such motion which may be renewed in response to the amended complaint.
2 The court notes that the case law is divided as to whether the running of the
3 state statute of limitations after the commencement of the case will or will not
4 deprive the trustee of a claim under 11 U.S.C. § 544(b) as long as the trustee
5 brings the claim within the period prescribed by 11 U.S.C. § 546(a). *Compare*
6 *In re McGoldrick*, 117 B.R. 554 (Bankr. C.D. Cal. 1990) *with Salven v. Mendez*,
7 2008 Bankr. LEXIS 653 (Bankr. E.D. Cal. 2008). The court is skeptical of
8 Trustee's assertion that he has standing to assert a cause of action for
9 conspiracy here. *In re Viola*, 469 B.R. 1, 7-9 (9th Cir. BAP 2012); *In re*
10 *Hamilton Taft & Co.*, 176 B.R. 895, 902 (Bankr. N.D. Cal. 1995). The court is
11 also skeptical that a conspiracy claim may be based on 11 U.S.C. § 105(a).
12 *See Law v. Siegal*, 134 S.Ct. 1188, 1194-1198 (2014). The court has no
13 comments at this time regarding the issues raised by Trustee's prayers for
14 punitive damages and provisional relief.

- 15 5. The court notes that plaintiff by counsel filed and served his opposition late in
16 violation of Local Bankruptcy Rule 9013-1(f), which requires that an opposition
17 to a motion be filed at least 14 days in advance of the date designated for the
18 hearing and that such late filing and service are without prior leave of court or
19 are not otherwise excused. While the late filing and service of papers may be
20 deemed by the court to be consent to the granting of the motion, the court
21 exercises its discretion not to impose such a drastic terminating sanction at this
22 time. Instead, the court admonishes Trustee and his counsel that their papers
23 must be served and filed on time and in compliance with the court's rules and
24 that further transgressions of this and other rules may subject them to the
25 imposition of sanctions.
- 26 6. The hearing on defendant's motion (1) for a more definite statement, (2) to
27 strike, and (3) to dismiss, and the continued status conference set for May 6,
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