UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: Christina Marie Uzeta, Debtor	Case No.: 2:18-bk-10408-ER Adv. No.: 2:18-ap-01103-ER
Basilio Torices and Roxanne Martinez, Plaintiffs v. Christina Marie Uzeta, Defendant	**MEMORANDUM OF DECISION DENYING PLAINTIFFS' MOTION TO CONSOLIDATE PROCEEDINGS** [No hearing required pursuant to Federal Rule of Civil Procedure 78(b) and Local Bankruptcy Rule 9013-1(j)(3)]

The Court has reviewed the motion seeking to consolidate two adversary proceedings (the "Motion") filed by Basilio Torices and Roxanne Martinez (the "Plaintiffs"), the opposition to the Motion filed by Christina M. Uzeta (the "Defendant"), and the reply in support of the Motion filed by the Plaintiffs.[1] The Court finds this matter appropriate for disposition without oral

[1] The Court has reviewed the following papers in connection with this matter:
1) Complaint to Vacate Debtor/Defendant's Discharge Pursuant to Rule 7001 (11 U.S.C. § 727(d)(1)) [Bankr. Doc. No. 26];
2) Order Requiring Plaintiffs to Obtain Order Reopening Debtor's Bankruptcy Case Prior to Filing Section 727(d)(1) Complaint [Bankr. Doc. No. 28];
3) Motion to Consolidate/Joint Administration of Cases per FRBP 1015 & LBR 1015-1 [Adv. Doc. No. 81] (the "Motion");
   a) Application for Order Setting Hearing on Shortened Notice [Adv. Doc. No. 81];
4) Defendant's Preliminary Opposition to Motion to Consolidate Adversary Proceeding [Adv. Doc. No. 83];

argument pursuant to Civil Rule 78(b) and LBR 9013-1(j)(3).[2] For the reasons set forth below, the Motion is DENIED.

I. Background

On January 12, 2018, Defendant filed a voluntary Chapter 7 petition. On April 16, 2018, Plaintiffs filed a *Complaint to Determine the Dischargeability of Debts Pursuant to 11 U.S.C. §§ 523(a)(2)(A), (a)(4) and/or (a)(6)* [Adv. Doc. No. 1] (the "Section 523 Complaint") against Defendant. On June 4, 2018, Defendant received a discharge,[3] and on July 5, 2018, Defendant's bankruptcy case was closed.[4] Trial on the Section 523 Complaint is set for April 8 and April 10, 2019.[5]

On February 12, 2019, the Court issued a ruling denying Plaintiffs' motion to revoke Defendant's discharge. The Court held:

> Bankruptcy Rule 7001(4) provides that a proceeding to revoke a discharge is an adversary proceeding. As explained by the leading treatise:
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> > Whether a discharge should be granted, or once granted whether it should be revoked, is likely to become the subject of contested litigation. Given the importance of the result to the participants, clause (4) of Rule 7001, with certain exceptions, requires that such litigation be brought in the form of an adversary proceeding subject to the rules of Part VII.
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> 10 Collier on Bankruptcy ¶ 7001.05 (16th ed. 2018).
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> Here, Plaintiffs seek revocation of Defendant's discharge by way of a motion brought within a separate § 523 action. Plaintiffs have failed to meet the procedural requirements of Bankruptcy Rule 7001(4). To seek revocation of Defendant's discharge, Plaintiffs are required to initiate a separate adversary complaint against Defendant. A motion filed within a pre-existing adversary proceeding is not adequate, because motions are litigated on an abbreviated timeframe without a meaningful opportunity to take discovery. The more formal procedures associated with a separate adversary proceeding are required to determine an issue of this significance. The Motion is DENIED. The denial is without prejudice to Plaintiffs' ability to file a § 727(d) complaint against the Defendant.

Final Ruling Denying Plaintiffs' Motion to Revoke Defendant's Discharge [Adv. Doc. No. 65-1] at 10–11.[6]

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5) Plaintiffs' Reply to Defendant's "Preliminary" Opposition to Motion for an Order for Consolidation Pursuant to Rule 7042 [Adv. Doc. No. 84].

[2] Unless otherwise indicated, all "Civil Rule" references are to the Federal Rules of Civil Procedure, Rules 1–86; all "Bankruptcy Rule" references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037; all "Evidence Rule" references are to the Federal Rules of Evidence, Rules 101–1103; all "LBR" references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California, Rules 1001-1–9075-1; and all statutory references are to the Bankruptcy Code, 11 U.S.C. §§101–1532.

[3] Bankr. Doc. No. 21.

[4] Bankr. Doc. No. 23.

[5] Adv. Doc. No. 62.

[6] An order memorializing the Court's ruling was entered on February 25, 2019, Adv. Doc. No. 72.

On March 18, 2019, Plaintiffs filed a *Complaint to Vacate Defendant's Discharge Pursuant to Rule 7001 (11 U.S.C. § 727(d)(1))* (the "Section 727 Complaint"). On March 21, 2019, the Court ordered Plaintiffs to comply with LBR 5010 and Court Manual § 2.8(c) by obtaining an order reopening Defendant's bankruptcy case prior to filing the Section 727 Complaint.

Summary of Papers Filed in Connection with Plaintiffs' Motion to Consolidate Trial of the Section 523 Complaint and Section 727 Complaint

Plaintiffs move to consolidate trial of the Section 523 Complaint and the Section 727 Complaint. Plaintiffs argue that a consolidated trial will be more efficient, because if Plaintiffs prevail on the Section 727 Complaint, it will not be necessary for Plaintiffs to prove damages in the Section 523 Complaint.

Defendant opposes the Motion. Defendant asserts that granting the Motion would be prejudicial because it would require the upcoming trial on the Section 523 Complaint to be delayed. Defendant further argues that consolidation is not appropriate because the Section 523 Complaint focuses upon a business transaction between Plaintiffs and Defendant, whereas the Section 727 Complaint focuses upon disclosures made by Defendant in her bankruptcy schedules. Defendant asserts that the Motion is frivolous and seeks a sanction of $1,250 for being required to defend the Motion.

In reply papers, Plaintiffs concede that consolidation appears to be moot in view of the Court's order requiring Plaintiffs to first obtain an order reopening Defendant's bankruptcy case prior to filing the Section 727 Complaint. Emphasizing the Court's broad discretion to consolidate proceedings in the interests of judicial efficiency, Plaintiffs contend that the Motion was meritorious at the time it was filed.

II. Findings and Conclusions

As of the issuance of this Memorandum of Decision, Plaintiffs have not obtained an order reopening Defendant's bankruptcy case. Since reopening Defendant's bankruptcy case is a prerequisite to the filing of the Section 727 Complaint, the Section 727 Complaint is not properly before the Court. That alone is sufficient cause to deny the Motion.

Because "reopening a case is typically ministerial and presents only a narrow range of issues," *Lopez v. Specialty Restaurants Corp. (In re Lopez)*, 283 B.R 22, 27 (B.A.P. 9th Cir. 2002), the Local Bankruptcy Rules provide that a party may obtain an order reopening a bankruptcy case without a hearing and without notice to the debtor. It is conceivable that Plaintiffs could obtain an order reopening Defendant's bankruptcy case in a short period of time, in which case the Section 727 Complaint would be properly before the Court. Further, whether the Section 523 and Section 727 Complaints are consolidated will have a material impact upon the upcoming trial in the Section 523 Complaint. Therefore, although Plaintiffs have not yet properly filed the Section 727 Complaint, the Court finds it appropriate to rule upon Plaintiffs' request for consolidation.

Civil Rule 42 authorizes the Court to consolidate actions involving "a common question of law or fact." In determining whether to consolidate proceedings, "a court weighs the interest of judicial convenience against the potential for delay, confusion, and prejudice caused by consolidation." *Sw. Marine, Inc. v. Triple A Mach. Shop, Inc.*, 720 F. Supp. 805, 806–07 (N.D. Cal. 1989). "The party seeking consolidation bears the burden of demonstrating that convenience and judicial economy would result from consolidation…. A court may deny consolidation where

two cases are at different stages of preparedness for trial." *Snyder v. Nationstar Mortgage LLC*, No. 15-CV-03049-JSC, 2016 WL 3519181, at *2 (N.D. Cal. June 28, 2016).

Multiple reasons support denial of the Motion. First, the Section 523 Complaint and the Section 727 Complaint do not involve common questions of law or fact. The gravamen of the Section 727 Complaint is that, subsequent to the filing of the petition, Defendant represented to the Chapter 7 Trustee that she was attempting to sell a liquor license (the "Liquor License") for $13,800, when in fact Defendant was attempting to sell the Liquor License for $80,000. The gravamen of the Section 523 Complaint is that prior to the petition, Defendant induced Plaintiffs to invest in a restaurant venture, by falsely promising Plaintiffs that she intended to transfer the Liquor License to the restaurant. Although both complaints involve the same Liquor License, the wrongdoing alleged in the complaints is very different. The Section 523 Complaint focuses upon Defendant's alleged wrongdoing with respect to the Plaintiffs in connection with a restaurant venture, whereas the Section 727 Complaint focuses upon Defendant's alleged failure to comply with her disclosure obligations under the Bankruptcy Code—that is, Defendant's alleged wrongdoing with respect to all creditors. *See Willms v. Sanderson*, 723 F.3d 1094, 1101 (9th Cir. 2013) ("A § 523 complaint focus[es] on the debtor's prior dealings with an objecting creditor, rather than on actions which necessarily affect the rights of all creditors").

Second, consolidating the complaints would not necessarily prove more efficient. Plaintiffs are correct that if they prevail upon the Section 727 Complaint, trial of the Section 523 Complaint would be rendered moot. The Court accords only minimal weight to this possibility, because it requires the Court to assume that Plaintiffs will in fact prevail in the Section 727 Complaint. If Plaintiffs do not succeed in revoking Defendant's discharge, trial in the Section 523 Complaint will still be required to go forward and nothing will have been gained from consolidation.

Third, even assuming that Plaintiffs would prevail in the Section 727 Complaint, consolidation would not be appropriate because the cases "are at different stages of preparedness for trial," *Snyder*, 2016 WL 3519181, at *2, and the delay that consolidation would impose upon Defendant would be highly prejudicial. The allegations set forth in the Section 727 Complaint are not yet at issue. The consolidation requested by Plaintiffs would require the Court to delay trial of the Section 523 Complaint by at least six months, and possibly by much longer. The Court finds that the prejudice to the Defendant from such delay outweighs whatever efficiency might (or might not) result from consolidation of the complaints.

Based upon the foregoing, the Motion is DENIED. Defendant's request for sanctions against Plaintiffs in the amount of $1,250 for being required to defend against the Motion is DENIED. The Court will enter an order consistent with this Memorandum of Decision.

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Date: March 27, 2019

Ernest M. Robles
United States Bankruptcy Judge