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*Attorney for Defendants Alfonso Spindola
Valdovinos & Isabel Valdovinos*

FILED & ENTERED

APR 23 2018

CLERK U.S. BANKRUPTCY COURT
Central District of California
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NOT FOR PUBLICATION
UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re

ALFONSO SPINDOLA VALDOVINOS
& ISABEL VALDOVINOS,

Debtors.

DORY SARAFIN,

Plaintiff,

vs.

ALFONSO SPINDOLA VALDOVINOS
& ISABEL VALDOVINOS,

Defendants.

Case No. 2:17-bk-19557-RK

Adv. No. 2:18-ap-01032-RK

Before the Honorable Robert N. Kwan

Chapter 7

**ORDER GRANTING IN PART & DENYING IN
PART DEFENDANT'S MOTION TO DISMISS
COMPLAINT: 1. TO DETERMINE
NONDISCHARGEABILITY OF DEBT
PURSUANT TO 11 U.S.C. § 523(a)(2)(A); 2. FOR
DENIAL OF DISCHARGE PURSUANT TO 11
U.S.C. § 727(a)(2)(A); 3. FOR DENIAL OF
DISCHARGE PURSUANT TO 11 U.S.C. §
727(a)(4)(A); 4. FOR DENIAL OF DISCHARGE
PURSUANT TO 11 U.S.C. § 727(a)(5); AND 5. FOR
A FINDING OF ALTER EGO LIABILITY –
SCHEDULING ORDER**

[F.R.C.P. §§9(b), 12(b)(6); F.R.B.P. §§7009, 7012]

Date: 4/17/2018

Time: 2:30 PM

Courtroom 1675

255 E. Temple Street, Los Angeles, CA 90012

1 The hearing on Defendants Alfonso Spindola Valdovinos & Isabel Valdovinos' *Motion to*
2 *Dismiss Complaint: 1. To Determine Nondischargeability of Debt Pursuant to 11 U.S.C. §*
3 *523(a)(2)(A); 2. For Denial of Discharge Pursuant to 11 U.S.C. § 727(a)(2)(A); 3. For Denial of*
4 *Discharge Pursuant to 11 U.S.C. § 727(a)(4)(A); 4. For Denial of Discharge Pursuant to 11 U.S.C. §*
5 *727(a)(5); and 5. For a Finding of Alter Ego Liability* (the "Motion") came on for hearing at the
6 above-captioned date, time and place.

7
8 Appearances were noted on the record of the proceedings. After having considered the Motion
9 and all relevant documentation and argument in support of the Motion, both Plaintiff & Defendant
10 submitted on the Court's Tentative Ruling (posted online on the court's website before the hearing on
11 the motion), and for all the reasons stated in the record of the proceedings,

12 **IT IS HEREBY ORDERED** that:

13 The Motion is granted in part and denied in part, pursuant to this Court's Tentative Ruling, a
14 copy of which is attached, adopted, and now made part of the record.

15
16 Plaintiff's complaint is dismissed with leave to amend within 30 days from the date of entry of
17 this order, that is, Plaintiff must serve his First Amended Complaint by this deadline.

18 A further Status Conference is set for July 31, 2018 at 1:30 PM in Courtroom 1675, Roybal
19 Federal Building, 255 East Temple Street, Los Angeles, California. The Joint Status Report must be
20 filed by July 24, 2018. ###

21
22
23
24 Date: April 23, 2018



Robert Kwan
United States Bankruptcy Judge

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, April 17, 2018

Hearing Room 1675

2:30 PM

2:17-19557 Alfonso Spindola Valdovinos

Chapter 7

Adv#: 2:18-01032 Sarafin v. Valdovinos et al

#13.10 Hearing re: Motion to dismiss complaint: 1. to determine nondischargeability of debt pursuant to 11 U.S.C. section 523(a)(2)(A); 2. for denial of discharge pursuant to 11 U.S.C. section 727(a)(2)(A); 3. for denial of discharge pursuant to 11 U.S.C. section 727(a)(4)(A); 4. for denial of discharge pursuant to 11 U.S.C. section 727(a)(5); and 5. for a finding of alter ego liability

Docket 7

Tentative Ruling:

The court should rule upon defendants' motion to dismiss plaintiff's complaint for failure to state a claim upon which relief can be granted as follows:

Grant as 1st cause of action because the allegations therein are conclusory and do not allege specific facts relating to alleged fraudulent transfers which are the basis of its claim under 11 U.S.C. 523(a)(2)(A) based on the Supreme Court's decision in *Husky International Electronics, Inc. v. Ritz*, 136 S.Ct. 1581 (2016); accord, *DZ Bank AG Deutsche Zentral-Genossenschaft Bank v. Meyer*, 869 F.3d 839 (9th Cir. 2017). Leave to amend is granted to cure this defect.

Grant as to 2nd cause of action because the alleged transfers are beyond the one-year period before the petition date for which a claim under 11 U.S.C. 727(a)(2)(A) may be based. Leave to amend is granted to cure this defect.

Deny as to 3rd cause of action because the allegations assert a plausible claim for relief.

Deny as to 4th cause of action because the allegations assert a plausible claim for relief.

Grant as to 5th cause of action because plaintiff is essentially seeking relief to impose liability on nondebtor parties, the alleged alter ego parties, for the debts of debtors, which is to substantively consolidate debtors' bankruptcy

**United States Bankruptcy Court
Central District of California
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2:30 PM

CONT... Alfonso Spindola Valdovinos

Chapter 7

estates with the estates of these nondebtor parties for which plaintiffs lack standing as creditors as opposed to the trustee to seek such relief, for lack of notice to the alleged alter ego nondebtor parties and their creditors since these parties have not been served with the summons and complaint, and for failure to allege specific facts to support any substantive consolidation of debtors' estates with those of the nondebtor parties. See 2 Levin and Sommer, Collier on Bankruptcy, paragraph 105.09 at pages 105-92 - 105-112 (16th ed. 2017). Leave to amend is not granted because plaintiff lacks standing to seek such relief.

Leave to amend an original complaint is routinely granted pursuant to FRCP 15(a), and it would be an abuse of discretion not to grant leave to amend an initial complaint unless such amendment is futile. National Council of La Raza v. Chagavskis, 800 F.3d 1032, 1041 (9th Cir. 2015) ("It is black-letter law that a district court must give plaintiffs at least one chance to amend a deficient complaint, absent a clear showing that amendment would be futile.") (citations omitted).

Plaintiff to advise how much time she needs to serve and file an amended complaint. Appearances are required on 4/17/18, but counsel may appear by telephone.

Party Information

Debtor(s):

Alfonso Spindola Valdovinos

Represented By
William Radcliffe

Defendant(s):

Alfonso Spindola Valdovinos

Represented By
Baruch C Cohen

Isabel Valdovinos

Represented By
Baruch C Cohen

DOES 1 through 100, inclusive

Pro Se

Joint Debtor(s):

Isabel Valdovinos

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Tuesday, April 17, 2018

Hearing Room 1675

2:30 PM

CONT... Alfonso Spindola Valdovinos

Chapter 7

William Radcliffe

Movant(s):

Alfonso Spindola Valdovinos

Represented By
Baruch C Cohen

Isabel Valdovinos

Represented By
Baruch C Cohen

Plaintiff(s):

Dory Sarafin

Represented By
Robert P Goe

Trustee(s):

Jason M Rund (TR)

Pro Se