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FILED & ENTERED

MAY 07 2018

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY bakchell DEPUTY CLERK

NOT FOR PUBLICATION

CHANGES MADE BY COURT

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

IN RE:

GRAND VIEW FINANCIAL, LLC,
Debtor and Debtor in Possession.

Case No.: 2:17-bk-20125-RK

Chapter 11

Adv. Case No.: 2:17-ap-01570-RK

GRAND VIEW FINANCIAL, LLC,
Plaintiff,

v.

JPMORGAN CHASE BANK, N.A. and
QUALITY LOAN SERVICE
CORPORATION,
Defendants.

Assigned For All Purposes To:
Hon. Robert N. Kwan

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT
JPMORGAN CHASE BANK, N.A.'S
MOTION TO DISMISS THE FIRST
AMENDED COMPLAINT**

CTRM: Courtroom 1675
DATE: May 1, 2018
TIME: 3:00 p.m.

ACTION FILED: December 12, 2017

On May 1, 2018, at 3:00 p.m., in courtroom 1675 of the above-entitled court, located at 255 E. Temple Street, Los Angeles, California 90012, the motion of defendant JPMorgan Chase Bank, N.A. ("Chase") to dismiss the adversary complaint of plaintiff Grand View Financial, LLC, pursuant to Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure ("Motion") came on regularly for hearing. All appearances were noted for the record.

Prior to the hearing, the Court issued a tentative ruling ("Tentative Ruling") granting in part and denying in part Chase's Motion. A true and correct copy of the Tentative Ruling is attached hereto as **Exhibit "1"** and is incorporated by this reference.

Based on the pleadings and papers on file with the Court, the arguments of counsel, and for the reasons stated in the attached Tentative Ruling, which the Court adopts as its final ruling, notice appearing proper, and good cause appearing therefor,

IT IS ORDERED THAT:

1. The Motion is GRANTED as to the first, second, fifth, and seventh causes of action, and these causes of action are dismissed with leave to amend within 30 days of entry of this Order;
2. The Motion is GRANTED as to the third and fourth causes of action, and these causes of action are dismissed without leave to amend;
3. The Motion is GRANTED as to the sixth cause of action, and this cause of action is dismissed without prejudice;
4. The Court sets a continued status conference hearing for July 10, 2018 at 1:30 p.m. A joint status report must be filed on or before July 3, 2018.

IT IS SO ORDERED.

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Date: May 7, 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, May 1, 2018

Hearing Room 1675

3:00 PM

2:17-20125 Grand View Financial LLC

Chapter 11

Adv#: 2:17-01570 GRAND VIEW FINANCIAL, LLC v. JPMORGAN CHASE BANK, N.A.

#19.00 Cont'd hearing re: Motion of defendant JPMorgan Chase Bank, N.A. to dismiss first amended complaint fr. 2/27/18, 3/20/18

Docket 13

Tentative Ruling:

Updated and revised tentative ruling as of 5/1/18.

Grant motion to dismiss 6th claim for relief for disallowance of claims because the claim is premature since the bank has not filed any proof of claim and dismiss without prejudice.

Grant motion to dismiss 1st and 2nd causes of action for failure to state a claim upon which relief can be granted because the claims do not allege sufficient facts to allege plausible claims. Like in *In re Mullin*, 2014 WL 5840364 (9th Cir. BAP 2014), plaintiff seeks declaratory relief that property was wrongfully foreclosed upon without sufficiently alleging claims of wrongful foreclosure which are state law claims. The first amended complaint alleges three theories of wrongful foreclosure: (1) mortgage insurance has paid off the underlying loan; (2) the foreclosure was not authorized by the securitization trust holding the beneficial interest in the note; (3) the assignment of the deed of trust to defendants was not signed by the original lender. There are no specific facts alleged to support any of these theories, only speculation on behalf of plaintiff under the guise of information and belief. However, the court will grant leave to amend within 30 days of entry of the order granting the motion to assert plausible wrongful foreclosure claims.

As to defendants' argument that the court lacks subject matter jurisdiction over these noncore state law claims, the court has "related to" jurisdiction over these claims which if the state law wrongful foreclosure claims are successful would result in recovery of estate property. However, the court as a non-Article III tribunal may not have constitutional authority to enter a final judgment on the noncore state law claims against defendants under *Stern v.*

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

Tuesday, May 1, 2018

Hearing Room 1675

3:00 PM

CONT... Grand View Financial LLC

Chapter 11

Marshall, 564 U.S. 462 (2011). Absent consent to bankruptcy court jurisdiction, this court may try the case and issue proposed findings of fact and conclusions of law on plaintiff's noncore claims to be reviewed de novo by the district court with Article III authority, except if any of the claims are to be tried before a jury, the claims would have to be tried in the district court. See Executive Benefits Insurance Agency v. Arkison, 134 S.Ct. 2165 (2014); Wellness International Network, Ltd. v. Sharif, 135 S.Ct. 1932 (2015).

As to defendants' request for mandatory or permissive abstention, the court cannot abstain from hearing the claims here without a parallel state court proceeding, either under mandatory or permissive abstention. Security Farms v. International Brotherhood of Teamsters, 124 F.3d 999, 1009-1010 (9th Cir. 1997). There are no parallel proceedings in state court at this time.

Grant motion to dismiss 5th and 7th causes of action for failure to state a claim upon which relief can be granted because the claims do not allege sufficient facts to allege plausible claims. Even though these claims are federal claims for turnover under the Bankruptcy Code and for damages under the Fair Debt Collection Practices Act (FDCPA), the theory for recovery is based on plaintiff's state law claims for wrongful foreclosure, and unless plaintiff recovers on a wrongful foreclosure theory, there is no recovery under these claims. However, the court will grant leave to amend within 30 days of entry of the order granting the motion to assert plausible wrongful foreclosure claims upon which to base these claims.

Grant motion to dismiss 3rd and 4th causes of action for failure to state a claim upon which relief can be granted because the claims do not allege sufficient facts to allege plausible claims based on theory that the foreclosure of the senior lien by defendants violated the automatic stay from bankruptcy cases of other debtors. Debtor in this bankruptcy lacks standing to assert the effect of the automatic stay from bankruptcy cases of other debtors to assert that the foreclosure of defendants' lien violated the automatic stay in those other cases. In re Cogar, 210 B.R. 803, 808 n. 7 (9th Cir. BAP 1997). Leave to amend will not be granted because amendment would be futile.

Appearances are required on 5/1/18, but counsel may appear by telephone.

Prior tentative ruling as of 3/19/18. Grant defendants' motions to dismiss as