

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA—LOS ANGELES DIVISION

In re: Jeremy Wyatt LeClair, Debtor.	Case No.: 2:18-bk-20111-ER
Alvaro Cortes,	Adv. No.: 2:18-ap-01425-ER
Plaintiff,	MEMORANDUM OF DECISION: (1) GRANTING SETTLEMENT ENFORCEMENT MOTION AND (2) DENYING STAY MOTION
v.	
Jeremy Wyatt LeClair,	[RELATES TO ADV. DOC. NOS. 106 AND 108]
Defendant.	
	[No hearing required pursuant to Federal Rule of Civil Procedure 78(b) and Local Bankruptcy Rule 9013-1(j)(3)]

Before the Court is the (1) *Motion to Enforce Settlement and Enter Judgment Thereon and for Sanctions Against Jeremy LeClair* [Adv. Doc. No. 108] (the “Settlement Enforcement Motion”) filed by Plaintiff and the (2) *Motion to Stay Proceedings Pending Outcome of State Court Collateral Attack Action* [Adv. Doc. No. 106] (the “Stay Motion”) filed by Defendant. Pursuant to Civil Rule 78(b) and LBR 9013-1(j)(3),¹ the Court finds the Settlement Enforcement Motion and the Stay Motion (collectively, the “Motions”) to be suitable for disposition without oral argument.² For the reasons set forth below, the Settlement Enforcement Motion is **GRANTED** and the Stay Motion is **DENIED**.

¹ 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.

² The Court reviewed the following pleadings in adjudicating these matters:

I. Background

On March 18, 2015, Alvaro Cortes (“Plaintiff”) commenced an action in the Los Angeles Superior Court (the “State Court”) against Jeremy LeClair (the “Defendant”) and other parties (the “State Court Action”). The State Court Action alleged that Defendant fraudulently offered and sold unqualified, non-exempt securities in the form of operating agreements, bridge loans, and promissory notes. On February 24, 2016, Plaintiff obtained authorization from the State Court to serve Defendant by publication. Plaintiff published the summons in the Los Angeles Daily Journal on March 17, 2016, March 24, 2016, March 31, 2016, and April 7, 2016. On June 21, 2016, Plaintiff obtained entry of default against the Defendant. On March 28, 2017, the State Court entered default judgment against the Defendant in the amount of \$590,908.50 (the “State Court Judgment”).

On June 12, 2018, Defendant filed a voluntary Chapter 7 petition in the Western District of North Carolina (the “North Carolina Bankruptcy Court”). On August 29, 2018, the North Carolina Bankruptcy Court found that the proper venue for Defendant’s case was the Central District of California, Los Angeles Division. The conclusion was based on a finding that the Defendant currently resides in Hacienda Heights, California. *See* Order on Motion to Dismiss and Motion to Transfer Case [Bankr. Doc. No. 1] at ¶¶ 6–7. Defendant’s bankruptcy case was transferred to this court on August 30, 2018.

On November 30, 2018, Plaintiff filed the instant *Complaint to Determine Dischargeability of Debt and for Money Judgment* [Adv. Doc. No. 1] (the “Complaint”). The Complaint alleges that the indebtedness established by the State Court Judgment is excepted from Defendant’s discharge pursuant to § 523(a)(2)(A) and (a)(6). The Complaint further alleges that Defendant’s discharge should be denied, pursuant to § 727(a)(2)(A), because Defendant transferred substantial assets to others for the purpose of hindering, delaying, and defrauding creditors within one year prior to the filing of the petition.

On February 28, 2019, the Court denied Defendant’s motion to dismiss the Complaint. *See* Adv. Doc. Nos. 17 and 19. The Court rejected Defendant’s assertion that the Complaint was not filed within the time period imposed by Bankruptcy Rule 4007. The Court also rejected Defendant’s contention that the Complaint’s allegations under § 523(a)(6) failed to state a claim upon which relief could be granted.

On May 31, 2019, the Court denied Defendant’s motion to set aside the default that had been entered against him in the State Court Action. *See* Adv. Doc. Nos. 39 and 42. The Court found

-
- 1) Settlement Enforcement Motion:
 - a) Motion to Enforce Settlement and Enter Judgment Thereon and For Sanctions Against Jeremy LeClair [Adv. Doc. No. 108];
 - i) Notice of Motion to Enforce Settlement [Adv. Doc. No. 109];
 - b) Defendant’s Opposition to Settlement Enforcement Motion [Adv. Doc. No. 116];
 - i) Proof of Service [Adv. Doc. No. 117];
 - c) Plaintiff’s Reply in Support of Motion to Enforce Settlement [Adv. Doc. No. 119];
 - 2) Stay Motion:
 - a) Motion to Stay Proceedings Pending Outcome of State Court Collateral Attack Action [Adv. Doc. No. 106];
 - b) Plaintiff’s Opposition to Defendant’s Motion for Stay [Adv. Doc. No. 107]; and
 - c) Defendant’s Reply in Support of Defendant’s Motion to Stay Proceedings [Adv. Doc. No. 115].

that under the *Rooker-Feldman* doctrine, it lacked the ability to set aside the State Court Judgment.

On October 8, 2019, Defendant filed in the State Court a *Complaint for Independent Action in Equity to Set Aside and Vacate Default and Default Judgment for Lack of Personal Jurisdiction* in the State Court (the action commenced by the filing of such complaint, the “State Court Collateral Attack Action”).³ The State Court Collateral Attack Action sought to vacate the State Court Judgment for lack of personal jurisdiction, and alleged that service of the State Court Complaint was defective.

On November 15, 2019, the Court granted Defendant’s motion to stay this action pending resolution of the State Court Collateral Attack Action. *See Adv. Doc. No. 57*. On December 12, 2021, Defendant’s counsel in the State Court Collateral Attack Action was authorized to withdraw from representation. On March 1, 2022, upon Defendant’s request, the State Court Collateral Attack Action was dismissed without prejudice. On April 11, 2022, the Court lifted the stay of this action, set litigation deadlines, and ordered the matter to mediation. *See Adv. Doc. No. 80*.

In October 2022, the parties attended mediation, with attorney Zev Shechtman serving as the mediator. On October 20, 2022, both parties signed a *Binding Term Sheet Agreement Between Alvaro Cortes and Jeremy Wyatt LeClair* (the “Binding Term Sheet”).⁴ The Binding Term Sheet provides in its entirety:

This is a binding term sheet agreement between plaintiff Alvaro Cortes and defendant Jeremy Wyatt LeClair, achieved through mediation on October 20, 2022, to resolve adversary proceeding no. 18-01425 pending before Judge Robles of the US Bankruptcy Court Central District of California and a related state court judgment, with the following terms:

- 1) LeClair shall pay \$41,000 (“Settlement Amount”) on the following terms:
 - a) \$5,000 (“Deposit”) payable within 5 business days after approval by the bankruptcy court of the settlement; and
 - b) \$1,500 per month for 24 months, commencing on the first of the month following the payment of the Deposit, and by the first of each month thereafter, until the Settlement Amount is paid in full.
- 2) LeClair and Cortes shall enter into a stipulation for entry of LeClair’s discharge in bankruptcy case no. 18-20111, except for the obligation to pay the Settlement Amount hereunder.
- 3) Upon approval of the stipulation described in paragraph 2, the parties will stipulate to dismissal of the adversary proceeding.
- 4) After payment of the Settlement Amount in full, the default judgment will be set aside as against LeClair, and LeClair will be dismissed from such action.
- 5) LeClair admits no fault and enters into this settlement to avoid expense and achieve peace.
- 6) Any additional terms, such as confidentiality or court logistics, may be negotiated by the parties, including LeClair’s counsel, if and when he hires counsel. The parties

³ The State Court Collateral Attack Action bears Case No. 19STCV35952.

⁴ Adv. Doc. No. 108, Ex. 8.

agree to stay litigation for 30 days to afford time for LeClair to obtain and work with counsel on this matter.

Defendant refused to sign the stipulation contemplated by the Binding Term Sheet (the “Stipulation”), on the ground that the Stipulation allegedly failed to contain the terms pertaining to confidentiality that Defendant claims he had insisted upon at the mediation. Plaintiff moves to enforce the terms of the Binding Term Sheet. Plaintiff argues that Defendant acted in bad faith by refusing to sign the Stipulation, and that Defendant’s assertion that the Stipulation failed to contain suitable confidentiality provisions is an excuse draw attention away from Defendant’s alleged bad faith.

Defendant has filed in the State Court a renewed action to vacate the State Court Judgment that is substantially similar to the State Court Collateral Attack Action that was dismissed upon Defendant’s request (the “Renewed State Court Collateral Attack Action”). Defendant moves for an order re-imposing the stay of this adversary proceeding so that he can pursue the Renewed State Court Collateral Attack Action (the “Stay Motion”). Plaintiff opposes the Stay Motion, arguing that it is a further attempt by Defendant to delay the adjudication of this action.

II. Findings of Fact and Conclusions of Law

A. The Settlement Enforcement Motion is Granted

“The interpretation of a settlement agreement is governed by principles of state contract law. This is so even where a federal cause of action is ‘settled’ or ‘released.’” *Botefur v. City of Eagle Point, Or.*, 7 F.3d 152, 156 (9th Cir. 1993).

Defendant argues that the Binding Term Sheet did not completely resolve the dispute, but was instead merely an “agreement to agree.” Based upon this premise, Defendant maintains that his refusal to execute the Stipulation was permissible because he could not reach an agreement with Plaintiff upon terms pertaining to confidentiality.

The Court does not agree with Defendant’s characterization of the Binding Term Sheet as an amorphous agreement to agree. The document states that it “is a *binding term sheet agreement* between plaintiff Alvaro Cortes and defendant Jeremy Wyatt LeClair, achieved through mediation on October 20, 2022, to *resolve* adversary proceeding no. 18-01425 pending before Judge Robles of the US Bankruptcy Court Central District of California and a related state court judgment” (emphasis added). While the Binding Term Sheet does contemplate the negotiation of “[a]ny additional terms, such as confidentiality or court logistics,” nowhere does the Binding Term Sheet state that it is conditional upon the parties’ ability to reach an agreement with respect to such hypothetical additional terms.

Where an agreement contains all the “essential elements” of the promises made by the parties, the agreement is enforceable even if it leaves certain unessential elements open for future resolution. *City of Los Angeles v. Superior Ct. of Los Angeles Cnty.*, 51 Cal. 2d 423, 433, 333 P.2d 745 (1959). “Where the matters left for future agreement are unessential, each party will be forced to accept a reasonable determination of the unsettled point or if possible the unsettled point may be left unperformed and the remainder of the contract be enforced.” *Id.*

Here, the Binding Term Sheet contains all the essential elements necessary to resolve the instant dischargeability action. It specifies that Defendant will be required to pay Plaintiff \$41,000 to settle the matter. It contains a timetable for the payment of the \$41,000 settlement amount. It provides that the parties will stipulate that Defendant is entitled to receive a discharge, except that the \$41,000 settlement amount will remain non-dischargeable. It further provides that

the default entered against Defendant in the State Court Action will be set aside once Defendant pays the \$41,000 settlement amount in full.

The hypothetical additional terms regarding confidentiality and court logistics are unessential elements of the agreement. Because the Binding Term Sheet is subject to Court approval, ultimately it is this Court—not the parties—that is the ultimate arbiter of whether it is appropriate for the \$41,000 settlement amount to remain confidential. The fact that the confidentiality of the settlement amount is a matter for the Court to decide shows that any terms pertaining to confidentiality are not, and could not be, an essential element of the agreement.

The Binding Term Sheet contains all the essential elements of the parties' agreement and is therefore enforceable. The Settlement Enforcement Motion is **GRANTED**.

Because the adversary proceeding asserts claims under § 727, the United States Trustee (the "UST") and creditors have the opportunity to seek authorization to intervene in the action for the purpose of prosecuting the § 727 claims. *See* Bankruptcy Rule 7041. The Court will prepare and enter an order providing the UST and creditors notice of their opportunity to intervene. In the event that no parties timely seek to intervene, the Court will dismiss the § 727 claim and enter judgment in the adversary proceeding consistent with the terms of the Binding Term Sheet.

Plaintiff's request for sanctions against Defendant is **DENIED WITHOUT PREJUDICE** because the request was not made by way of a separately-noticed motion, as required by LBR 9020-1.

B. The Stay Motion is Denied

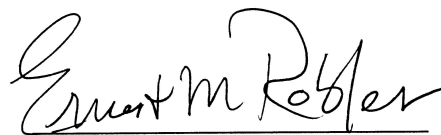
The Stay Motion is **DENIED AS MOOT** in view of the Court's ruling granting the Settlement Enforcement Motion. Even if the Stay Motion was not moot, the Court would not be inclined to grant the Stay Motion because Defendant has already been provided a full opportunity to prosecute the claims asserted in the State Court Collateral Attack Action. In fact, it was Defendant who was responsible for causing the State Court Collateral Attack Action to be dismissed. The Court finds that Defendant's dismissal of the State Court Collateral Attack Action, followed by his subsequent attempt to bring a new action seeking the same relief, was nothing more than a delay tactic.

III. Conclusion

Based upon the foregoing, the Settlement Enforcement Motion is **GRANTED** and the Stay Motion is **DENIED AS MOOT**. The Court will enter orders consistent with this Memorandum of Decision.

###

Date: May 8, 2023



Ernest M. Robles
United States Bankruptcy Judge