

1 Joseph Chora (SBN#284700)
2 Stephen F. Biegenzahn (SBN #60584)
3 CHORA | YOUNG LLP
4 650 Sierra Madre Villa Ave., Ste. 304
5 Pasadena, CA 91107
6 Tel.: (626) 744-1838
7 Fax.: (626) 744-3167
8 Email: Stephen@chorayoungllp.com

9 Attorneys for Plaintiff,
10 *WVJP 2017-1, LP*

FILED & ENTERED

DEC 04 2020

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

11
12 **UNITED STATES BANKRUPTCY COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA-LOS ANGELES DIVISION**
14

15 In re:

16 BRADLEY EDWARD BARNES and
17 ALLISON PLATZ BARNES,

) Case No.: 2:19-bk-24787-RK
)
) Chapter 7
)
) Adv. No.: 2:20-ap-01064-RK
)

18 **ORDER DENYING MOTION FOR RULE**
19 **9011 SANCTIONS**

20 *WVJP 2017-1, LP*, a California Limited
21 Partnership,

Plaintiff,

) **DATE:** December 1, 2020
) **TIME:** 2:30 p.m.
) **COURTROOM:** 1675
)

22 vs.

23 BRADLEY EDWARD BARNES, an
24 individual; ALLISON PLATZ BARNES an
25 individual,

26 Defendants.
27
28

///

///

1 A hearing was held on December 1, 2020 before the Honorable Robert Kwan, United
2 States Bankruptcy Judge (“Hearing”) to consider the Motion for Rule 9011 Sanctions Against
3 Chora Young LLP and Attorneys Paul P. Young, Esq. and Joseph Chora, Esq. (“Motion”).
4 Appearances at the Hearing are reflected in the official recorded transcript of the Hearing.
5 (“Transcript”).

6 For reasons reflected in the Transcript, the Court adopts its Tentative Ruling (a copy of
7 which is appended and incorporated by reference). The Tentative Ruling shall become the Court’s
8 final ruling.

9 The Motion is denied.

10
11 # # #
12
13
14
15
16
17
18
19
20
21
22

23
24 Date: December 4, 2020



25 Robert Kwan
26 United States Bankruptcy Judge
27
28

ATTACHMENT

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

Tuesday, December 1, 2020

Hearing Room 1675

2:30 PM

2:19-24787 Bradley Edward Barnes

Chapter 7

Adv#: 2:20-01064 WVJP 2017-1, LP v. Barnes et al

#35.00 Cont'd hearing re: Motion for Rule 9011 sanctions against Chora Young LLP and attorneys Paul P. Young, Esq. and Joseph Chora, Esq.
fr.10/27/20

Docket 17

Tentative Ruling:

Revised and updated tentative ruling as of 11/30/20.

Deny defendants' motion for sanctions under FRBP 9011 because the complaint was deemed withdrawn when plaintiff filed its first amended complaint on 9/30/20 based on the deadline of 9/30/20 apparently agreed by the parties based on the court's stay ruling set forth in the notice of stay filed on 5/22/20, staying proceedings in this adversary proceeding from 5/19/20 to 9/30/20. The first amended complaint is an amendment as of right pursuant to FRBP 7015 and FRCP 15(a)(1)(B) and supersedes the original pleading (timely because filed within 21 days of defendants' FRCP 12(b) motion served on 10/1/20), effectively withdrawing the original complaint.

The 21-day safe harbor period for withdrawal of the allegedly sanctionable pleading, the complaint, commenced on 5/15/20 when defendants served but not filed their motion for sanctions on plaintiff, and only 4 days on the 21 day period had run when the court ordered the stay of proceedings, and the 21-day period was stayed until 9/30/20. Arguably, the 21-day period was tolled during the period of stay. See *Upek, Inc. v. Authentec, Inc.*, No. C 10-00424 JF (PVT), 2010 WL 1980189 (N.D. Cal. May 17, 2010). If the 21 day safe harbor period was tolled, then the deadline for withdrawal based on the 17 days remaining in the period would have been 10/16/20 if tolling is applicable here. The amended complaint filed on 9/30/20, or 10/1/20, was thus timely.

If tolling is not applicable here, and the 21-days ran during the period of stay, the deadline for withdrawal would be 9/30/20 as the parties apparently agreed. Even so, the amendment of the complaint by the first amended

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

Tuesday, December 1, 2020

Hearing Room 1675

2:30 PM

CONT... Bradley Edward Barnes

Chapter 7

complaint was timely filed on 9/30/20, although the complaint was filed by mistake in the main bankruptcy case rather than the adversary proceeding as evidenced by the counsel declaration filed in opposition to the sanctions motion, ECF 35, filed on 11/17/20, and the first amended complaint itself which had the adversary proceeding caption, Main Bankruptcy Case ECF 75. As indicated by the case docket, plaintiff refiled the first amended complaint in the adversary proceeding on 10/1/20 after being notified by the clerk's office that it was incorrectly filed in the main case. There is no prejudice to defendants deeming the first amended complaint as filed on 9/30/20 because it was filed with the court on 9/30/20 and served on the parties on that date by electronic means, and service would not have been misleading because the caption of the pleading was the adversary proceeding caption. As indicated in counsel declaration in support of plaintiff's opposition and defendants' reply, counsel understood that plaintiff would be amending the complaint by the deadline by their telephone conversations and email correspondence before 9/30/20.

Defendants filed their sanctions motion in the adversary proceeding on 9/30/20 at 9:58 a.m. before plaintiff filed the first amended complaint in the main case on 9/30/20 at 4:03 p.m. Plaintiff had until 11:59 p.m. on 9/30/20 to withdraw the complaint for purposes of this FRBP 9011 motion based on the deadline of 9/30/20 that the parties apparently have agreed to since the court is deemed always open for purposes of filing a pleading pursuant to FRBP 5001(a). Both parties were precluded from filing pleadings during the stay period until 9/30/20, and thus, the 21-day safe harbor period did not expire until at least 11:59 p.m. on 9/30/20, and arguably, defendants' FRBP 9011 sanctions motion was filed too early because the 21-day safe harbor period as extended by the stay had not expired when defendants filed the motion.

The court construes FRBP 9011 conservatively as the Ninth Circuit stated in *Operating Engineers Pension Trust v. A-C Co.*, 859 F.2d 1336, 1345 (9th Cir. 1988) about its civil rule analogue in FRCP 11 that it is "an extraordinary remedy, one to be exercised with extreme caution." Plaintiff by its counsel informed defendants through counsel that it was amending the complaint and would do so by the FRBP 9011 deadline, and did so in spirit, if not in letter, and sanctions are not appropriate under these circumstances with an

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

Tuesday, December 1, 2020

Hearing Room 1675

2:30 PM

CONT...

Bradley Edward Barnes

Chapter 7

innocent mistake by counsel in uploading the first amended complaint for filing in the main bankruptcy case rather than the adversary proceeding within the main bankruptcy case should not prevent plaintiff from benefiting from its invocation of the FRBP 9011 safe harbor.

Appearances are required on 12/1/20, but counsel and self-represented parties must appear by telephone.

TO PARTIES WHO INTEND TO APPEAR AT THE HEARING ON THIS MATTER:

PLEASE TAKE NOTICE that the court hearing before Judge Robert Kwan of the United States Bankruptcy Court for the Central District of California will be conducted telephonically. However, instead of having to physically appear in court, you must appear by telephone because the court is not conducting in person hearings on that date in light of the public health conditions from the COVID-19 pandemic. The courtroom will be locked; parties must appear by telephone and will not be permitted to appear in the courtroom.

In order to appear for the court hearing by telephone, you will need to arrange to make the telephone call through CourtCall, the contract telephone appearance service, which arranges telephone appearances before this court. CourtCall's telephone number is: (866) 582-6878. Through March 31, 2021, CourtCall is offering discounted rates to attorneys and FREE access for parties who do not have an attorney (pro se or self-represented parties). You need make an advance reservation with CourtCall to appear by telephone before the hearing, preferably a week before the hearing, and no later than the day before the hearing. After you made your telephone appearance reservation with CourtCall, on the day of the court hearing, you will need to call CourtCall at its telephone number at least 5 minutes before the scheduled hearing, and identify the United States Bankruptcy Court in Los Angeles as the court and Judge Robert Kwan as the judge, and the CourtCall operator will put you into the telephonic court hearing. Given the large demand for telephone court appearances, there may be some delay in connecting to the hearing. If you are having problems connecting to the hearing, please call and advise Judge Kwan's courtroom deputy at (213) 894-3385.

Party Information

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

Tuesday, December 1, 2020

Hearing Room 1675

2:30 PM

CONT... Bradley Edward Barnes

Chapter 7

Debtor(s):

Bradley Edward Barnes

Represented By
Susan I Montgomery

Defendant(s):

Bradley Edward Barnes

Represented By
Susan I Montgomery

Allison Platz Barnes

Represented By
Susan I Montgomery

Joint Debtor(s):

Allison Platz Barnes

Represented By
Susan I Montgomery

Plaintiff(s):

WVJP 2017-1, LP

Represented By
Joseph Chora
Cameron H Totten

Trustee(s):

Carolyn A Dye (TR)

Pro Se

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

Tuesday, December 1, 2020

Hearing Room 1675

2:30 PM

2:19-24787 Bradley Edward Barnes

Chapter 7

Adv#: 2:20-01064 WVJP 2017-1, LP v. Barnes et al

#36.00 Cont'd status conference re: Complaint for 1. for false pretenses, a false representation or actual fraud pursuant to 11 U.S.C. §523(a)(6); in the alternative 2. for false pretenses, a false representation or actual fraud pursuant to 11 U.S.C. §523(a)(2)(A); 3. for false pretenses, a false representation or actual fraud pursuant to 11 U.S.C. §523(a)(2)(B); 4. for willful and malicious injury Y 11 U.S.C. §523(a)(6); 5. for determination that defendant's debts are not dischargeable pursuant to 11 U.S.C. §727(a)(2); 6. for a determination that defendant's debts are not dischargeable pursuant to 11 U.S.C. §727(a)(3); 7. for a determination that defendant's debts are not dischargeable pursuant to 11 U.S.C. §727(a)(4); and 8. for a determination that defendant's debts are not dischargeable pursuant to 11 U.S.C. §727(a)(5)
fr. 8/18/20, 10/6/20, 10/27/20

Docket 1

Tentative Ruling:

Updated tentative ruling as of 11/30/20 at 6:30 p.m. Since the parties filed their last joint status report on 10/15/20, there have developments that will affect the course of this adversary proceeding which the parties did not expect to occur before the status conference then scheduled for 10/27/20. First, as indicated by plaintiff on the case docket on 11/24/20, the state court appeal has been decided, which reversed the trial court's order setting aside the default judgment as to Mr. Barnes, the remaining defendant named in the second amended complaint. The appellate decision reinstates the default judgment against him liquidating the debt owed to plaintiff's predecessor-in-interest, Dove Street. Mr. Barnes could seek to move to set aside the default judgment on remand, which was determined to be voidable and not void. However, further stay relief would appear to be required since this court only granted limited stay relief for the state court appeal to proceed and did not grant stay relief for further proceedings in the state trial court. The court could permissively abstain under 28 U.S.C. 1334(c)(1) and grant stay relief to allow the state trial court to determine any further motion of Mr. Barnes to set aside the default judgment and stay this adversary proceeding until the state court determines the underlying debt, and then determine debt dischargeability

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

Tuesday, December 1, 2020

Hearing Room 1675

2:30 PM

CONT... Bradley Edward Barnes

Chapter 7

afterwards. See In re Oroojian, Adv. No. 2:20-ap-01020 RK, 2020 WL 2201939 (Bankr. C.D. Cal., May 5, 2020); see also, In re Eber, 687 F.3d 1123, 1128 and n. 5 (9th Cir. 2012) (bankruptcy court has exclusive jurisdiction over debt dischargeability claims under 11 U.S.C. 523(a)(2), (4) and (6), citing 11 U.S.C. 523(c)). That is, at this time, the default judgment stands unless Mr. Barnes brings a further motion to set it aside. If he brings such a motion and prevails, then it would be up to plaintiff to consider litigating the merits of the claims of its predecessor-in-interest to prove up such claims. If he brings such a motion and does not prevail, then presumably, the default judgment would be final and entitled to res judicata as to liquidation of the debt owed by Mr. Barnes to plaintiff. However, whether the state court judgment has collateral estoppel effect as to debt dischargeability under 11 U.S.C. 523(a)(6) remains to be litigated in this court in this adversary proceeding.

Assuming that the court adopts its tentative ruling on defendant's motion to dismiss also on calendar on 12/1/20 and denies the motion, and the court does not abstain from determining the merits of the underlying alleged debts as discussed above, the court will set a discovery cutoff date of 5/31/20 and a postdiscovery status conference on 6/15/21 at 1:30 p.m. with a joint status report due on 6/8/21. No tentative ruling on whether this matter should be referred to mediation. Plaintiff to lodge a proposed scheduling order within 7 days of hearing.

Appearances are required on 12/1/20, but counsel and self-represented parties must appear by telephone.

TO PARTIES WHO INTEND TO APPEAR AT THE HEARING ON THIS MATTER:

PLEASE TAKE NOTICE that the court hearing before Judge Robert Kwan of the United States Bankruptcy Court for the Central District of California will be conducted telephonically. However, instead of having to physically appear in court, you must appear by telephone because the court is not conducting in person hearings on that date in light of the public health conditions from the COVID-19 pandemic. The courtroom will be locked; parties must appear by

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

Tuesday, December 1, 2020

Hearing Room 1675

2:30 PM

CONT... Bradley Edward Barnes

Chapter 7

telephone and will not be permitted to appear in the courtroom.

In order to appear for the court hearing by telephone, you will need to arrange to make the telephone call through CourtCall, the contract telephone appearance service, which arranges telephone appearances before this court. CourtCall's telephone number is: (866) 582-6878. Through March 31, 2021, CourtCall is offering discounted rates to attorneys and FREE access for parties who do not have an attorney (pro se or self-represented parties). You need make an advance reservation with CourtCall to appear by telephone before the hearing, preferably a week before the hearing, and no later than the day before the hearing. After you made your telephone appearance reservation with CourtCall, on the day of the court hearing, you will need to call CourtCall at its telephone number at least 5 minutes before the scheduled hearing, and identify the United States Bankruptcy Court in Los Angeles as the court and Judge Robert Kwan as the judge, and the CourtCall operator will put you into the telephonic court hearing. Given the large demand for telephone court appearances, there may be some delay in connecting to the hearing. If you are having problems connecting to the hearing, please call and advise Judge Kwan's courtroom deputy at (213) 894-3385.

Prior tentative ruling. The court on its own motion continues the status conference to 12/1/20 at 2:30 p.m. to be conducted with continued hearings on defendant's motion to dismiss and for sanctions as it appears that the parties contemplated that the status conference on the same day as the hearings on the motions which were continued would also be continued, although the status conference was not specifically referenced in the stipulation. No appearances are required on 10/27/20.

Party Information

Debtor(s):

Bradley Edward Barnes

Represented By
Susan I Montgomery

Defendant(s):

Bradley Edward Barnes

Pro Se

Allison Platz Barnes

Pro Se

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

Tuesday, December 1, 2020

Hearing Room 1675

2:30 PM

CONT... Bradley Edward Barnes

Chapter 7

Joint Debtor(s):

Allison Platz Barnes

Represented By
Susan I Montgomery

Plaintiff(s):

WVJP 2017-1, LP

Represented By
Joseph Chora

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 650 Sierra Madre Villa Ave., Ste. 304, Pasadena, CA 91107

True and correct copies of the foregoing documents entitled (specify **ORDER DENYING MOTION FOR RULE 9011 SANCTIONS**) will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

Susan I Montgomery: susan@simontgomerylaw.com, assistant@simontgomerylaw.com, simontgomerylawecf.com@gmail.com, montgomerysr71631@notify.bestcase.com;
United States Trustee (LA): ustpreion16.la.ecf@usdoj.gov; and
Edward M Wolkowitz (TR): emwtrustee@lnbyb.com, ewolkowitz@iq7technology.com.

II. SERVED BY U.S. MAIL: On 12/4/2020 I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

The Honorable Robert N. Kwan
United States Bankruptcy Court
255 E. Temple Street, Suite 1682
Los Angeles, CA 90012

III. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on 12/4/2020 I served the following person(s) and/or entity(ies) by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

12/4/2020 Dionne Harvey
Date Type Name

/s/ Dionne Harvey
Signature