



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
March 15, 2021

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

<p>In re:</p> <p>CLARENCE MOSES WILLIS dba MAJOR ALARM CO dba FEDERAL NATIONAL MORTGAGE ASSOCIATION,</p> <p style="text-align: center;">Debtor.</p> <hr/> <p>FEDERAL NATIONAL MORTGAGE ASSOCIATION,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>CLARENCE MOSES WILLIS,</p> <p style="text-align: center;">Defendant.</p>	<p>) Case No. 19-11988-mkn</p> <p>) Chapter 7</p> <p>)</p> <p>) Adv. Proc. No. 19-01092-mkn</p> <p>)</p> <p>) Date: January 28, 2021</p> <p>) Time: 1:30 p.m.</p> <p>)</p>
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ORDER ON MOTION FOR LEAVE TO FILE COUNTERCLAIM¹

On January 28, 2021, the court heard the Motion for Leave to File Counterclaim

¹ In this Order, all references to “ECF No.” are to the number assigned to the documents filed in the above-captioned bankruptcy case as they appear on the docket maintained by the clerk of court. All references of “AECF No.” are to the documents filed in the above-captioned adversary proceeding. All references to “Section” or “§§ 101-1532” are to the provisions of the Bankruptcy Code. All references to “NRS” are to the Nevada Revised Statutes. All references to “Bankruptcy Rule” are to the Federal Rules of Bankruptcy Procedure. All references to “Civil Rule” are to the Federal Rules of Civil Procedure.

1 (“Counterclaim Motion”), brought on behalf of pro se defendant Clarence M. Willis
2 (“Defendant”). The appearances of counsel were noted on the record. After arguments were
3 presented, the matter was taken under submission.

4 **BACKGROUND²**

5 On April 2, 2019, pro se debtor Clarence Moses Willis (“Debtor” or “Defendant”) filed a
6 voluntary Chapter 13 petition. (ECF No. 1).³

7 On April 16, 2019, Debtor filed his schedules of assets and liabilities (“Schedules”) along
8 with his statement of financial affairs (“SOFA”). (ECF No. 15). Both the Schedules and the
9 SOFA are signed under penalty of perjury. In Part 1 of his property Schedule “A/B,” Debtor
10 attests that he owns or has a legal or equitable interest in a single-family home with a street
11 address of 330 Garden Lane, Fernley, NV, 89408 (“Garden Property”). He attests that the
12 Garden Property has a value of \$200,000 and the value of his portion also is \$200,000. In Part 4
13 of his property Schedule “A/B,” Debtor also attests that he owns or has a legal or equitable
14 interest in the “Trade Name – FEDERAL NATIONAL MORTGAGE ASSOCIATION” as well
15 as a license, franchise or general intangible interest in “FEDERAL NATIONAL MORTGAGE
16 ASSOCIATION-State License-NV20151296475.” In Part 4 of the same property Schedule
17 “A/B,” Debtor also attests that he has no claims against third parties, nor any contingent or
18 unliquidated claims of any nature, including counterclaims. In his Schedule “C,” Debtor did not
19 claim an exemption in any property not listed in his Schedule “A/B.” In Part 2 of his unsecured
20 creditor Schedule “E/F,” Debtor attests that Federal National Mortgage Association has a
21 disputed claim in the amount of \$103,000 that was incurred on 06/01/2018 based on a Final

22 ² Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the
23 docket in the above-captioned adversary proceeding and the above-captioned Bankruptcy Case
24 See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980); see also Bank of Am., N.A. v. CD-04,
25 Inc. (In re Owner Mgmt. Serv., LLC Trustee Corps.), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015)
26 (“The Court may consider the records in this case, the underlying bankruptcy case and public
records.”).

27 ³ On September 12, 2018, Debtor commenced a previous Chapter 7 proceeding,
28 denominated Case No. 18-15439-MKN (“2018 Case”). On April 1, 2019, an order was entered
dismissing the 2018 Case without prejudice. The next day, Debtor commenced the instant
bankruptcy proceeding.

1 Judgment. In Part 4 of his SOFA, Debtor attests that a legal action entitled Federal National M
2 v. Clarence M. Willis, Case No. 2:15-cv-02366, was commenced in USDC-Nevada, and is on
3 appeal.

4 On June 12, 2019, the Chapter 13 proceeding was converted to Chapter 7 at Debtor's
5 request. (ECF No. 36). The converted case was assigned to Lenard E. Schwartz, a panel
6 Chapter 7 trustee ("Chapter 7 Trustee"). (ECF No. 38).

7 On July 1, 2019, Debtor, in pro se, commenced an adversary proceeding against an
8 attorney and the law firm that apparently had represented Federal National Mortgage
9 Association, denominated Adversary Proceeding No. 19-01069-MKN ("Willis Adversary").
10 Debtor alleged that defendants engaged in misconduct during the instant bankruptcy case from
11 April 8, 2019, through July 1, 2019, that would entitle him to various relief.

12 On August 20, 2019, Debtor filed an amended complaint in the Willis Adversary. The
13 amended complaint therein alleged that the same defendants engaged in misconduct in the
14 Debtor's 2018 Case on December 18, 2018, as well as in the Debtor's current bankruptcy case.
15 In other words, the misconduct allegedly occurred both before and after the current bankruptcy
16 case was commenced. Based on the alleged misconduct, the Willis Adversary sought to recover
17 \$250,000 in damages as well as other relief.

18 On August 30, 2019, the Chapter 7 Trustee reported that there are no assets available for
19 distribution to creditors in the case. (ECF No. 50).⁴

20 On September 13, 2019, Plaintiff filed a complaint against the Debtor commencing the
21 above-captioned adversary proceeding ("Adversary Complaint"). (AECF No. 1). Plaintiff seeks
22 to deny the Debtor a Chapter 7 discharge under Section 727(a)(4)(A) [false oath] and to
23 determine dischargeability of debt under Section 523(a)(2) [fraud and misrepresentation] and
24 under Section 523(a)(6) [willful and malicious injury].

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26
27 ⁴ Despite the "no asset" report filed by the Chapter 7 Trustee, the case remains open and
28 no property of the bankruptcy estate has been abandoned under Section 554(c). Similarly, no
property of the bankruptcy estate has been abandoned under Sections 554(a) or (b).

1 On October 21, 2019, Debtor filed an answer to the Adversary Complaint (“Answer”)
2 along with an affidavit in support thereof. (AECF No. 8 and 9).

3 On November 12, 2019, an order was entered dismissing the Willis Adversary for failure
4 to state a claim for which relief may be granted, without leave to amend.⁵ The order dismissing
5 the Willis Adversary was not appealed and is final.

6 On February 5, 2020, an order was entered approving the parties’ stipulation to stay this
7 adversary proceeding pending the outcome of the Debtor’s appeal to the Ninth Circuit Court of
8 Appeals (“Ninth Circuit”) of a judgment (“Final Judgment”) entered by the U.S. District Court
9 for the District of Nevada (“USDC”).⁶ (AECF No. 13). That Final Judgment awarded a variety
10 of relief in favor of the Plaintiff and against the Defendant, including an award of punitive
11 damages in the amount of \$103,300. No compensatory damages were awarded.

12 On September 15, 2020, an order was entered by this bankruptcy court vacating the stay
13 of this adversary proceeding because the Ninth Circuit had entered an order affirming the
14 USDC’s Final Judgment.⁷ (AECF No. 19). The order vacating the stay established a deadline of
15 January 7, 2021, for completion of discovery in this adversary proceeding. The order also
16 scheduled a conference to be held on January 28, 2021, for the purpose of setting a trial or other
17 proceedings in this matter.

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19 ⁵ Debtor’s original complaint and amended complaint in the Willis Adversary, as well as
20 the order dismissing the proceeding without leave to amend, appear on the docket for that
proceeding as document numbers 1, 12, and 31.

21 ⁶ A copy of the Final Judgment is attached as Exhibit “1” to the Adversary Complaint.
22 That Final Judgment was entered on April 26, 2018, in a civil proceeding entitled Federal
23 National Mortgage Association, plaintiff v. Ernest C. Aldridge; Clarence Moses Willis; et al.,
24 defendants, denominated Case No. 2:15-cv-02366-JCM-GWF (“USDC Action”). The complaint
25 in the USDC Action asserted 19 causes of action separately and jointly, against four individuals
26 and entities, including the Debtor. The causes of action against the Debtor included claims for
declaratory relief, quiet title, fraud, conspiracy to defraud, slander of title, fraudulent
conveyance, injunctive relief, trespass, federal racketeering, and violation of 12 U.S.C.
§1723a(e).

27 ⁷ The Ninth Circuit mandate affirming the district court’s Final Judgment apparently was
28 entered on July 1, 2020. No petition for rehearing, rehearing *en banc*, or for writ of certiorari
was filed.

1 On November 24, 2020, Plaintiff filed a motion for summary judgment (“SJ Motion”)
2 along with a separate statement of undisputed facts. (AECF Nos. 36 and 37). The SJ Motion
3 was noticed to be heard on January 28, 2021. (AECF No. 38).

4 On December 9, 2020, a stipulation was submitted, and an order was entered granting
5 Debtor until December 28, 2020, to file a response to the SJ Motion and Plaintiff until January
6 12, 2021, to file a reply. (AECF Nos. 40 and 41).

7 On December 14, 2020, Debtor filed the instant Counterclaim Motion and noticed it to be
8 heard on January 20, 2021. (AECF Nos. 47 and 48).

9 On December 30, 2020, Debtor filed an opposition to the SJ Motion. (AECF No. 52).

10 On January 6, 2021, Plaintiff filed an opposition to the Counterclaim Motion. (AECF
11 No. 53).

12 On January 12, 2021, Plaintiff filed a reply in support of the SJ Motion. (AECF No. 54).

13 On January 19, 2021, Debtor filed a reply in support of the Counterclaim Motion.
14 (AECF No. 56).

15 On January 20, 2021, the hearing on the Counterclaim Motion was continued to January
16 28, 2021, so that it could be heard concurrently with the SJ Motion.⁸

17 DISCUSSION

18 The Adversary Complaint objects to entry of a Chapter 7 discharge under Section 727,
19 and also seeks a determination of dischargeability of debts under Section 523. As to the latter,
20 the debts are reflected by the Final Judgment entered in the USDC Action. See Adversary
21 Complaint at ¶¶ 1, 105-106. Inasmuch as the Ninth Circuit has affirmed the Final Judgment
22 entered by the USDC, Plaintiff filed the SJ Motion seeking an order denying Debtor a Chapter 7
23 discharge and also determining that the debts encompassed by the Final Judgment are
24 nondischargeable.

25 Although Debtor previously filed his Answer to the Adversary Complaint, he now seeks
26 leave to file counterclaims against the Plaintiff. Debtor now asserts counterclaims for intentional
27 and negligent misrepresentation, as well as for breach of contract. See Counterclaim Motion at ¶

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⁸ The SJ Motion is the subject of a separate order entered contemporaneously herewith.

1 6. Debtor specifically represents that each of the claims “relate to the same set of facts and
2 circumstances that give rise to the allegations raised in Plaintiffs’ Complaint.” Id.

3 In accordance with Civil Rule 15(a)(2), “a party may amend its pleading only with the
4 opposing party’s written consent or the court’s leave. The court should freely give leave when
5 justice so requires.” See also JPMorgan Chase Bank, N.A. v. KB Home, 740 F.Supp.2d 1192,
6 1197 (D. Nev. 2010) (‘Rule 15(a) declares that leave to amend “shall be freely given when
7 justice so requires”; this mandate is to be heeded.’) (external citation omitted). In this circuit,
8 five factors are considered when determining whether granting leave to amend is appropriate:
9 ‘(1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of amendment, and
10 (5) whether plaintiff has previously amended his complaint.’ KB Home, 740 F.Supp.2d at 1197
11 (external citations omitted). The fourth factor, futility of amendment, determines whether the
12 proposed amendment would survive a challenge of legal insufficiency under Civil Rule 12(b)(6).
13 Id.

14 Under the futility analysis, dismissal pursuant to Civil Rule 12(b)(6) is appropriate for
15 “failure to state a claim for which relief may be granted.” The standard for dismissing a claim
16 under this rule is whether the pleading alleges sufficient factual matter to state a claim for relief
17 that is plausible on its face. See Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009). In considering a
18 motion under Civil Rule 12(b)(6), the court accepts as true all factual allegations made by, and
19 draws all reasonable inferences in favor of, the plaintiff. See Barnes v. Belice (In re Belice), 461
20 B.R. 564, 573 (B.A.P. 9th Cir. 2011). Dismissal is appropriate if there is “a lack of a cognizable
21 legal theory or the absence of sufficient facts alleged under a cognizable legal theory.” Id. This
22 pleading standard applies to “all civil actions.” Ashcroft, 129 S.Ct. at 1953. This rule, which is
23 incorporated by Bankruptcy Rule 7012, applies in bankruptcy proceedings.

24 Having considered the allegations of the Counterclaim Motion, the materials submitted,
25 and the written and oral arguments of counsel, the court concludes that the Counterclaim Motion
26 must be denied, without leave to amend. Several reasons require this conclusion.

27 First, Debtor is attempting to assert a counterclaim that he never disclosed in his
28 Schedules. As previously mentioned, Debtor attested in his property Schedule “A/B” that he has

1 no claims against any third parties, nor any contingent or unliquidated claims of any nature,
2 including counterclaims. If any claims or counterclaims exist, they are property of his Chapter 7
3 bankruptcy estate under Section 541(a)(1). See Cusano v. Klein, 264 F.3d 936, 945-47 (9th Cir.
4 2001). Unless otherwise ordered, only the assigned Chapter 7 Trustee has standing to assert
5 claims belonging to the bankruptcy estate. See Meehan v. Ocwen Loan Servicing, LLC, 2014
6 WL 4801328, at *4-5 (B.A.P. 9th Cir. 2014). Debtor never sought to exempt any of the alleged
7 counterclaims and the estate's interest in such claims has never been abandoned. As a result, the
8 purported counterclaims, if any, remain property of the bankruptcy estate subject to control by
9 the Chapter 7 Trustee. Because Debtor never disclosed the alleged counterclaims, he has no
10 authority to raise them in this adversary proceeding. As a result, he has not alleged any
11 counterclaims for which relief may be granted.⁹

12 Second, Debtor acknowledges that the alleged counterclaims "relate to the same set of
13 facts and circumstances that give rise to the allegations raised in Plaintiffs' Complaint." Because
14 the facts and circumstances giving rise to the allegations of the Adversary Complaint were
15 encompassed by the USDC Action, Debtor concedes that the counterclaims should have been
16 raised as compulsory counterclaims in the USDC Action under Civil Rule 13(a).¹⁰ Under the
17

18 ⁹ By asserting counterclaims that were never disclosed in his property Schedule "A/B,"
19 Debtor apparently admits that the Schedules he filed under penalty of perjury are not accurate.
20 Similarly, the claims asserted in the amended complaint in the Willis Adversary were never
21 disclosed in his property Schedule "A/B." Other inaccuracies in the Debtor's statements made
under penalty of perjury are addressed in connection with the SJ Motion.

22 ¹⁰ This court previously observed that "[u]nder Civil Rule 13, an answer to a complaint
23 must state any counterclaim against the opposing party that (a) arises out of the transaction that is
24 the subject of the opposing party's claim, and (b) does not require adding another party over
25 whom the court cannot acquire jurisdiction." In re EB Holdings II, Inc., 591 B.R. 10, 18 (Bankr.
26 D. Nev. 2018) (external citation omitted). See also Pochiro v. Prudential Ins. Co. of America,
27 827 F.2d 1246, 1249 (9th Cir. 1987) (claims not asserted as compulsory counterclaims in a prior
28 USDC Action were dismissed in a subsequent federal action.). To determine if a counterclaim is
compulsory, the "logical relationship" test is applied. Id. The logical relationship test analyzes
whether the counterclaim arises out of the same transaction or occurrence as the subject of the
opposing party's claim by deciding whether the "essential facts of the various claims are so
logically connected that considerations of judicial economy and fairness dictate that all the issues
be involved in one lawsuit." Id. Debtor's proposed counterclaims arise out of the same facts and

1 doctrine of claim preclusion, parties or privies to a prior action are barred from asserting claims
2 and causes of action that could have been raised in the prior litigation. See Holcombe v. Houser,
3 477 F.3d 1094, 1097 (9th Cir. 2007)(applying Nevada rules of claim preclusion to prior Nevada
4 judgment); Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 322
5 F.3d 1064, 1077-78 (9th Cir. 2003)(applying federal rules of claim preclusion to prior federal
6 judgment). See also Citizens for Free Speech, LLC v. County of Alameda, 830 Fed.Appx. 551,
7 552 (9th Cir. 2020). Because Debtor concedes that the USDC Action involved facts having a
8 logical relationship to transactions between the same parties, claim preclusion arises and Debtor
9 cannot now assert the alleged counterclaims even if he had standing to do so. As a result, Debtor
10 has not alleged any counterclaims for which relief may be granted.

11 Third, Debtor has failed to state a claim for intentional misrepresentation under Nevada
12 law. The elements of intentional misrepresentation are as follows: a false representation that is
13 made with either knowledge or belief it is false, an intent to induce another's reliance, and
14 damages resulting from this reliance. See Foster v. Dingwall, 126 Nev. 56, 69, 227 P.3d 1042,
15 1050 (2010); see also Hall CA-NV, LLC v. Ladera Dev. LLC, 2018 WL 4094858, at *3 (D. Nev.
16 Aug. 27, 2018) ("The elements of intentional misrepresentation (fraud) in Nevada are: (1) a false
17 representation by the defendant; (2) the defendant's knowledge or belief that the representation is
18 false (or insufficient basis for making the representation); (3) the defendant's intention to induce
19 the plaintiff to act or to refrain from acting in reliance upon the misrepresentation; (4) the
20 plaintiff's justifiable reliance upon the misrepresentation; and (5) resulting damage.") (external
21 citations omitted). Debtor makes conclusory statements regarding certain documents without
22 demonstrating or pleading the requisite knowledge or belief, or intent to induce Debtor's
23 conduct. Indeed, it is unclear how Plaintiff's request to lift the automatic stay, even if the
24 allegations of falsities in that request are taken to be true, was meant to induce Debtor to act or
25 refrain from acting in reliance upon the alleged misrepresentation. It is not enough to state that
26 Plaintiff made false representations in documents. These are conclusory statements, and more is

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28 circumstances as the prior USDC Action, as both concern the ownership and activities
surrounding the parcels of real property improperly conveyed by the Debtor.

1 required to survive a futility analysis which follows the guidelines for a Civil Rule 12(b)(6)
2 challenge. See Bell Atl. Corp. v. Twombly, 127 S.Ct. 1955, 1964–65 (2007) (“a plaintiff’s
3 obligation to provide the “grounds” of his “entitle[ment] to relief” requires more than labels and
4 conclusions, and a formulaic recitation of the elements of a cause of action will not do”).

5 Fourth, Debtor has failed to state a claim for negligent misrepresentation under Nevada
6 law. A plaintiff must show: “(1) a false representation by the defendant; (2) made in the course
7 of the defendant’s business or in any action in which he has a pecuniary interest; (3) for the
8 guidance of others in their business transactions; (4) the plaintiff’s justifiable reliance upon the
9 misrepresentation; (5) resulting damage; and (6) failure to exercise reasonable care or
10 competence in obtaining or communicating the information.” Hall CA-NV, LLC v. Ladera Dev.
11 LLC, 2018 WL 4094858, at *3, citing G.K. Las Vegas Ltd. P’ship v. Simon Prop. Grp., Inc., 460
12 F.Supp.2d 1246, 1262 (D. Nev. 2006). Debtor’s proposed claim for negligent misrepresentation
13 suffers pitfalls similar to his proposed claim for intentional misrepresentation. Debtor does not
14 plead any details showing these alleged false representations were made in the course of
15 Plaintiff’s business, or in any action in which Plaintiff has a pecuniary interest, for the guidance
16 of others in their business transactions, or any reliance upon the misrepresentation, or failure to
17 exercise reasonable care or competence in obtaining or communicating the information. Stating
18 that the documents allegedly contained false representations, and then the subsequent filing of
19 those documents resulted in Plaintiff being unjustly enriched, does not meet the requirements for
20 establishing negligent misrepresentation. See Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009)
21 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory
22 statements, do not suffice.”) (external citation omitted).

23 Fifth, Debtor has failed to state a claim for breach of contract. In Nevada, to establish a
24 claim for breach of contract, a plaintiff must allege: “(1) the existence of a valid contract; (2) a
25 breach by the defendant; and (3) damage as a result of the breach.” S. Fork Livestock P’ship v.
26 United States, 183 F.Supp.3d 1111, 1118 (D. Nev. 2016), citing Saini v. Int’l Game Tech., 434
27 F.Supp.2d 913, 919–20 (D. Nev. 2006). The Nevada Supreme Court has observed that a
28 “[b]reach of contract is the material failure to perform ‘a duty arising under or imposed by

1 agreement.” State Dep’t of Transp. v. Eighth Judicial Dist. Court in & for County of Clark, 133
2 Nev. 549, 554, 402 P.3d 677, 682 (2017), quoting Bernard v. Rockhill Dev. Co., 103 Nev. 132,
3 135, 734 P.2d 1238, 1240 (1987) (internal quotations omitted). The Nevada Supreme Court also
4 explained that “[e]ven if a defendant does not breach the express terms of a contract, a plaintiff
5 ‘may still be able to recover damages for breach of the implied covenant of good faith and fair
6 dealing.’” State Dep’t of Transp., 133 Nev. at 555, quoting Hilton Hotels Corp. v. Butch Lewis
7 Prods., Inc., 107 Nev. 226, 232, 808 P.2d 919, 922 (1991). This is because in Nevada all
8 contracts impose an implied covenant of good faith and fair dealings upon the parties involved.
9 Id.

10 Here, Debtor’s proposed counterclaims allege breach of contract as well as bad faith by
11 Plaintiff. See Counterclaim Motion at ¶¶ 42-57. None of the allegations, however, identify facts
12 establishing the existence of an express or implied agreement between the Debtor and the
13 Plaintiff that is essential to a breach of contract claim. As a further result, the allegations also do
14 not specify that damages that would have resulted from an agreement that did not exist. Whether
15 Plaintiff failed to comply with other obligations arising by statute,¹¹ or obtained a Final
16 Judgment that is prejudicial to the Debtor, is immaterial to the threshold question of whether a
17 contract or agreement ever existed. Debtor’s mere recitals of a breach and injury do not
18 adequately plead a claim for breach of contract. See Gale v. First Franklin Loan Services, 2013
19 WL 950042, at *2 (D. Nev. Mar. 11, 2013), aff’d, 599 Fed. Appx. 286 (9th Cir. 2015), citing
20 Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir.2001)(“The court, however, is not
21 required to accept as true allegations that are merely conclusory, unwarranted deductions of fact,
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23

24 ¹¹ It is noteworthy that under Nevada law, if proper notice of default is not provided prior
25 to a foreclosure sale of real property, the party that did not receive notice has a limited time to
26 challenge a subsequent sale. See NRS 107.080(6) (“If proper notice is not provided pursuant to
27 subsection 3 or paragraph (a) of subsection 4 to the grantor, to the person who holds the title of
28 record on the date the notice of default and election to sell is recorded, to each trustor or to any
other person entitled to such notice, the person who did not receive such proper notice may
commence an action pursuant to subsection 5 within 90 days after the date of the sale.”). A
timely action based on a violation of the statute is not predicated upon a breach of contract.

1 or unreasonable inferences.”).¹² Because Debtor has failed to plead sufficient facts to establish
2 the existence of a contract or agreement, his allegations of bad faith are immaterial to a breach
3 that would not exist.¹³

4 Finally, Debtor alleges that Plaintiff has generally interfered in the current Chapter 7
5 bankruptcy case. As a creditor holding a judgment against the Debtor, Plaintiff has standing to
6 protect its interests, including seeking relief from the automatic stay, objecting to the Debtor’s
7 discharge, and objecting to dischargeability of debts. Nothing prevents the Debtor from
8 objecting to any documents or materials offered into evidence by the Plaintiff or any other party
9 in interest. To the extent the Debtor now asserts claims based on Plaintiff’s conduct in the 2018
10 Case, any such claims could have been asserted in the Willis Adversary if the Debtor even had
11 standing to do so. Debtor failed to assert such claims and the Willis Adversary was dismissed
12 for failure to state claims for which relief may be granted. As a result, the doctrine of claim
13 preclusion also prevents the Debtor from asserting any counterclaims that he could have asserted
14 in the Willis Adversary. As a result, Debtor also has failed to state a claim, if any, for
15 interference in the current Chapter 7 case.

16 For the reasons explained, the purported counterclaims alleged in the Motion for Leave to
17 File Counterclaim are deficient and request for leave to file such claims must be denied.
18 Moreover, for the same reasons, the court concludes that an amendment of the purported
19 counterclaims would be futile.

20 **IT IS THEREFORE ORDERED** that the Motion for Leave to File Counterclaim,
21 brought on behalf of defendant Clarence M. Willis in the above-captioned adversary proceeding,
22 Adversary Docket No. 47, be, and the same hereby is, **DENIED**.

23 Copies sent via CM/ECF ELECTRONIC FILING
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26 ¹² Moreover, the statute of limitations for an action for breach of a written contract is six
27 years. See NRS 11.190(1)(b). Debtor’s allegations of breach of contract stem from conduct that
allegedly took place between 2009 and 2010. See Counterclaim Motion at ¶¶ 44-48.

28 ¹³ Debtor has not identified a substantive legal theory supporting an independent action
for bad faith between parties who do not otherwise have duties imposed by contract or statute.

1 Copies sent via BNC to:
2 CLARENCE MOSES WILLIS
3 C/O 2459 CHRISTIAN AVE.
4 REDDING, CA 96002

5 CLARENCE MOSES WILLIS
6 4912 CANADIAN DRIVE
7 LAS VEGAS, NV 89130

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