



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
May 13, 2019

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	Case No.: 19-12284-MKN
)	Chapter 7
EZEKIEL MICHAEL PEREZ aka)	
VICTORIA SUSAN PEREZ,)	
)	Date: May 7, 2019
Debtor.)	Time: 2:30 p.m.
)	

ORDER ON MOTION FOR CONTINUATION OF AUTOMATIC STAY¹

On May 7, 2019, an evidentiary hearing was held and completed on the Motion for Continuation of Automatic Stay (“Motion”), brought by Ezekiel Michael Perez (“Debtor”). The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

On August 29, 2018, Debtor filed a voluntary Chapter 7 petition, Case No. 18-15136-MKN (“2018 Petition”) as Victoria Susan Perez which disclosed that the Debtor also used the name Ezekiel Michael Perez within the last eight years. (2018 ECF No. 1). On the same date, a Notice of Chapter 7 Bankruptcy Case (“First Bankruptcy Notice”) was issued by the court clerk identifying the Debtor as Victoria Susan Perez, aka Ezekiel Michael Perez. (2018 ECF No. 6).²

On November 1, 2018, creditor Alice Fabrizius (“Fabrizius”) commenced Adversary

¹ In this Order, all references to “ECF No.” are to the number assigned to the documents filed in the relevant bankruptcy case, as they appear on the docket maintained by the clerk of court. All references to “Section” are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

² The First Bankruptcy Notice instructed creditors not to file proofs of claim in the case because there appeared to be no property available to pay creditors.

1 Proceeding No. 18-01120-MKN, seeking a determination under Section 523(a)(6) that a previous
2 claim against the Debtor for malicious prosecution is nondischargeable.

3 On November 16, 2018, an order was entered granting Debtor's ex parte motion to
4 voluntarily dismiss the Chapter 7 proceeding. (2018 ECF No. 28).

5 On April 15, 2019, Debtor filed the above-referenced voluntary Chapter 7 petition ("2019
6 Petition") as Ezekiel Michael Perez which disclosed that the Debtor also used the name Victoria
7 Susan Perez within the last eight years. (2019 ECF No. 1). On the same date, a Notice of
8 Chapter 7 Bankruptcy Case ("Second Bankruptcy Notice") was issued by the court clerk
9 identifying the Debtor as Ezekiel Michael Perez, aka Victoria Susan Perez. (2019 ECF No. 6).³
10 Among other things, the Second Bankruptcy Notice specified a deadline of July 15, 2019, for
11 creditors to object to discharge under Section 727(a), or to seek a determination of
12 dischargeability of debt under Section 523(a).

13 On April 29, 2019, creditor Fabrizius commenced Adversary Proceeding No. 19-01040-
14 MKN in the current Chapter 7 case, again seeking a determination of nondischargeability under
15 Section 523(a)(6) ("Dischargeability Action"). (2019 ECF No. 18).⁴

16 Under Section 362(c)(3)(A), the automatic stay arising from the filing of the 2019
17 Petition expires after thirty days because the Debtor's prior Chapter 7 proceeding was dismissed
18 within the previous year. Under Section 362(c)(3)(B), the Debtor may seek a continuation of the
19 automatic stay beyond thirty days if he files a motion seeking a continuation that is heard before
20 the thirty days expires. The hearing on the Debtor's request must be completed within the thirty-
21 day period and the Debtor must rebut, by clear and convincing evidence, a presumption that the
22 current Chapter 7 proceeding is not filed in good faith.

23 In this instance, the 2019 Petition was filed on April 15, 2019, and the thirty-day period
24 expires on May 15, 2019. Debtor filed the instant Motion under Section 362(c)(3)(B) on April
25

26 ³ The Bankruptcy Notice again instructed creditors not to file proofs of claim in the case
27 because there appears to be no property available to pay creditors.

28 ⁴ An initial scheduling conference in that adversary proceeding has been scheduled for
September 12, 2019, at 10:00 a.m.

1 23, 2019, (2019 ECF No. 12), and the hearing on the Motion was concluded on May 7, 2019.
2 Because the Motion is timely, the court determines only whether the Debtor has overcome by
3 clear and convincing evidence the presumption of a lack of good faith in the filing of the 2019
4 Petition.

5 “[C]lear and convincing evidence ‘indicat[es] that the thing to be proved is highly
6 probable or reasonably certain. This is a greater burden than preponderance of the evidence, ...
7 but less than evidence beyond a reasonable doubt.’” United States v. Jordan, 256 F.3d 922, 930
8 (9th Cir. 2001), quoting Black’s Law Dictionary 577 (7th ed. 1999).

9 Debtor’s schedules of assets and liabilities (“Schedules”) accompanying the 2018 Petition
10 listed one secured creditor and four unsecured creditors, including Fabrizious. Debtor’s Schedules
11 accompanying the 2019 Petition lists one secured creditor and only one unsecured creditor
12 (Fabrizius).

13 At the hearing, Debtor testified that his wages were being garnished as a result of the
14 prior judgment obtained by Fabrizious, and that the garnishment resumed after he voluntarily
15 dismissed the prior Chapter 7 proceeding. He also testified that he intends to defend the
16 Dischargeability Action rather than voluntarily dismissing the current Chapter 7 case.

17 A fundamental purpose of the automatic stay is to provide a debtor a respite from the
18 collection activities of creditors. Whether an obligation to a creditor ultimately is discharged
19 may depend on whether the creditor timely objects pursuant to Section 523(c). In this instance,
20 Fabrizious timely commenced the Dischargeability Action. Debtor apparently intends to dispute
21 the allegations set forth in the complaint. At the hearing, counsel for Fabrizious acknowledged
22 that the underlying California judgment for malicious prosecution was obtained on a default
23 basis, and the judgment would not have issue preclusive effect under California law. Assuming
24 that is correct, Fabrizious cannot rely on the California judgment to prove the merits of the
25 malicious prosecution claim or similar theory of willful and malicious injury under Section
26 523(a)(6). See Migra v. Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75, 81 (1984) (“[A]
27 federal court must give to a state-court judgment the same preclusive effect as would be given
28 that judgment under the law of the State in which the judgment was rendered.”). See also White

1 v. City of Pasadena, 671 F.3d 918, 926 (9th Cir. 2012).

2 Although Fabrizio elicited testimony from the Debtor relevant to the malicious
3 prosecution theory, that testimony is of little relevance as to whether the Debtor filed the 2019
4 Petition in good faith. Debtor apparently has only two creditors, but dismissal of the 2019
5 Petition is not requested. Instead, the court finds it highly probable that the Debtor commenced
6 the current proceeding to stop the wage garnishment and to defend any nondischargeability
7 action brought by Fabrizio. On that basis, the court concludes that the Debtor has overcome the
8 presumption of a lack of good faith solely with respect to a continuation of the automatic stay
9 under Section 362(c)(3)(B).⁵

10 **IT IS THEREFORE ORDERED** that the Motion for Continuation of Automatic Stay,
11 brought by Ezekiel Michael Perez, Docket No. 12, be, and the same hereby is, **GRANTED**.

12
13 Copies sent via CM/ECF ELECTRONIC FILING

14 Copies sent via BNC to:
15 EZEKIEL MICHAEL PEREZ
16 4800 E. TROPICANA AVENUE, #1114
LAS VEGAS, NV 89121

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27 ⁵ At the hearing, Fabrizio suggested that if the court grants the instant Motion, it should
28 still permit the wage garnishment to continue pending resolution of the Dischargeability Action.
That suggestion clearly is at odds with a fundamental purpose of the automatic stay and assumes
that Fabrizio will prevail. The suggestion is without merit.