

BACKGROUND

On November 17, 2023, Kevin Julian Rizzi, in pro se (“Debtor”), filed a “skeleton” voluntary Chapter 7 petition (“Petition”). (ECF No. 1). The case was assigned for administration to Chapter 7 panel trustee Lenard E. Schwartzer (“Trustee”). On the same date, a Notice of Incomplete and/or Deficient Filing (“Deficient Filing Notice”) was entered and served upon the Debtor. (ECF Nos. 6 and 9). The Deficient Filing Notice informed the Debtor of the numerous schedules, statements, and certifications that were missing from the Petition.

On December 1, 2023, Debtor filed a variety of materials, including his schedules of assets and liabilities (“Schedules”) and a “Request for Emergency Assistance” seeking a variety of relief against various parties. (ECF Nos. 19 and 20). Absent from the materials is the Statement of Financial Affairs for Individuals Filing for Bankruptcy (“SOFA”) required by FRBP 1007(b) and (c).

On December 6, 2023, Debtor’s proposed order granting his Request for Emergency Assistance was denied by the court inasmuch as the court lacks jurisdiction to provide or address the relief requested. (ECF No. 24).

On December 18, 2023, Debtor also commenced the above-captioned adversary proceeding by filing a “Complaint for Adversary Proceeding; Jury Trial Demand” (“Adversary Complaint”). It names as defendants Christopher Palms, LLC (“Christopher Palms”) as well as the Debtor’s mother, Karen Christopher.² Paragraph 1 of the Adversary Complaint identifies the purpose of the action as arising from “an investment agreement entered” between the Debtor and Christopher Palms with respect to certain real property located in Gilroy, California (“California Property”). The same paragraph alleges in pertinent part that “On October 16, 2022, Karen Christopher...requested the services of Rizzi’s company, Fairview Restorations Inc., for extensive renovation work on” the California Property. Paragraph 2 of the Adversary Complaint under the heading “First Cause of Action - Breach of Contract,” alleges that “On January 17, 2023,...Karen requested Rizzi not to file a public lien in exchange for covering all of Rizzi’s expenses” and “is in breach of contract.” Paragraph 4 under the heading “Second Cause of

² Hereafter, both defendants are referenced jointly as “Christopher Palms.”

1 Action - Validity or Priority of Liens” alleges in pertinent part that “On January 25, 2023,” the
2 California Property “was granted to the Plaintiff through a trust in which he is a beneficiary...”
3 Based on these two alleged causes of action, the prayer of the Adversary Complaint seeks
4 recovery of monetary damages, pre-judgment interest, exemplary damages, and losses of \$1.8
5 million.

6 On December 19, 2023, Christopher Palms filed a motion for relief from stay (“MRAS”)
7 seeking to terminate the automatic stay so that it could proceed against the California Property;
8 the motion was noticed to be heard on January 24, 2024. (ECF Nos. 29, 30, and 31).

9 On January 4, 2024, the Trustee’s Motion to Dismiss Case Pursuant to Bankruptcy Code
10 §§ 343 and 521 (“Case Dismissal Motion”) was filed, and noticed to be heard on February 8,
11 2024. (ECF Nos. 41 and 42).

12 On January 17, 2024, Debtor filed a Motion for Contempt (“Contempt Motion”) seeking
13 various sanctions against the Trustee and Christopher Palms, in addition to removal of the
14 Trustee from further administration of the Chapter 7 case. (ECF Nos. 56). The Contempt
15 Motion was noticed to be heard on February 14, 2024. (ECF Nos. 60).

16 On January 17, 2024, Christopher Palms filed the instant Adversary Dismissal Motion
17 under FRBP 7012(b)(6), seeking to dismiss the Adversary Complaint for failure to state a claim
18 for which relief may be granted. (AECF No. 7). The Adversary Dismissal Motion was noticed
19 to be heard on February 21, 2024. (AECF No. 8).

20 On January 18, 2024, a summons was issued, setting an initial scheduling conference to
21 be held in the Adversary Proceeding on April 25, 2024. (AECF No. 3).

22 On January 19, 2024, Debtor filed an opposition to the Case Dismissal Motion. (ECF
23 No. 66).

24 On February 1, 2024, the Trustee filed a response to the Contempt Motion as well as a
25 reply in support of the Case Dismissal Motion. (ECF Nos. 72 and 74). On the same date,
26 Christopher Palms filed a joinder in the Trustee’s response to the Contempt Motion. (ECF No.
27 76).

On February 8, 2024, Debtor filed a “Motion to Convert Chapter 7 to Chapter 13 Pursuant to 11 U.S. Code §706(A,” as well as another notice of change of address. (ECF Nos. 78 and 80). Debtor did not obtain a hearing date or notice a hearing on his motion to convert.

On February 14, 2024, hearings were held on the Case Dismissal Motion filed by the Trustee, the Contempt Motion filed by the Debtors, and the MRAS filed by Christopher Palms. After all parties were afforded opportunity to present oral argument, all three matters were taken under submission.

On February 14, 2024, Debtor filed a Response to Motion to Dismiss Filed Out of Time³ in opposition to the Adversary Dismissal Motion. (AECF No. 15).

On February 16, 2024, Christopher Palms filed a reply in support of the Adversary Dismissal Motion. (AECF No. 27).

On February 21, 2024, Debtor filed a Response to Defendant’s Response. (AECF No. 40).

DISCUSSION

Contemporaneously herewith, an order has been entered granting the Case Dismissal Motion brought by the Trustee. That order is incorporated by reference as if fully stated herein. Among the many reasons requiring dismissal of the Chapter 7 case is that the Debtor is attempting to assert claims and causes of action that arose before he commenced the bankruptcy case, and which claims and causes of action are property of the Chapter 7 estate. Because property of the Chapter 7 estate is controlled by the Trustee, Debtor has no authority to assert pre-bankruptcy claims and causes of action without consent of the Trustee or permission from the court. The two causes of action alleged by the Debtor in the Adversary Complaint are based on conduct occurring well before the November 17, 2023, bankruptcy commencement date, see

³ In responding to the Adversary Dismissal Motion, Debtor argues that the MRAS filed by Christopher Palms on December 19, 2023, was accompanied by a declaration containing perjured testimony. In support of that argument, Debtor cites the following as “legal authority: NCJ Number 74647 Journal American Criminal Law Review Volume: 18 Issue: 2 Dated: (Fall 1980) Pages 263-273 Author(s) T E Kehoe Date Published 1980”. That legal authority, however, has no bearing on whether the Adversary Complaint states a claim for which relief may be granted under FRBP 7012(b)(6).

discussion at 2-3, supra, and are property of the bankruptcy estate. Debtor has obtained neither consent from the Trustee nor court authorization to pursue such claims. Because he has no authority to pursue any such claims, Debtor fails to state claims for which relief may be granted. Absent such authorization, any amendment to the Adversary Complaint would be futile.

In addition to the Debtor's lack of authority in this bankruptcy proceeding to pursue the matters asserted in the Adversary Complaint, there is no question that the alleged transaction and occurrence took place in California rather than Nevada. There is no question that the factual allegations will be contested,⁴ that the dispute is based on real property located in California, that the named defendants reside in California, and that California law will apply to the claims that the Debtor attempts to assert in the Adversary Complaint.⁵ Thus, even if the Trustee decided to pursue the matters underlying the Adversary Complaint, it is unlikely that a breach of contract or declaratory relief action could or would be brought in Nevada, much less in a bankruptcy court.

In its Adversary Dismissal Motion, Christopher Palms requests that relief be granted "with prejudice." As discussed above, however, this court is not adjudicating the merits of any purported claims asserted by the Debtor. Instead, this court only concludes that the Debtor does not have standing to pursue the claims and that the Adversary Complaint therefore does not state a claim for which relief may be granted. If a party with standing later pursues the same claims, the proper tribunal can address the merits of the claims at that time.

IT IS THEREFORE ORDERED that the Motion to Dismiss Complaint for Adversary Proceeding With Prejudice, brought by defendants Christopher Palms, LLC, and Karen Christopher, Adversary Docket No. 7, be, and the same hereby is, **GRANTED WITHOUT LEAVE TO AMEND AS PROVIDED IN THIS ORDER.**

⁴ Debtor asserts that Christopher Palms has submitted perjured testimony. See discussion at note 3, supra. At the hearing on the Adversary Dismissal Motion, Debtor made the same suggestion. Whether the same assertion would be made by the defendants against the Debtor or his witnesses is unknown.

⁵ Under FRBP 7001(2), an adversary proceeding can be brought to "determine the validity, priority, or extent of a lien or other interest in property," but such determinations are based on the law applicable in the jurisdiction creating the asserted property interest. In the instant case, California law will apply.

1 **IT IS FURTHER ORDERED** that the subject motion is granted solely with respect to
2 the above-captioned adversary proceeding, and the court makes no determination as to the
3 substantive merits, if any, of the claims, if any, asserted in the above-captioned adversary
4 proceeding. Thus, dismissal of the adversary proceeding therefore is without prejudice as to the
5 substantive merits of the claims asserted in the above-captioned adversary proceeding.

6 **IT IS FURTHER ORDERED** that the initial scheduling conference set for April 25,
7 2024, in this adversary proceeding is **VACATED**.

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9 Copies sent via CM/ECF ELECTRONIC FILING

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