

**United States Bankruptcy Court
Central District of California
Los Angeles
Chief Judge Sheri Bluebond, Presiding
Courtroom 1539 Calendar**

Tuesday, March 14, 2017

Hearing Room 1539

11:00 AM

2:15-20351 CLARK WARREN BAKER

Chapter 7

Adv#: 2:15-01535 Murtagh v. BAKER et al

**#100.00 Defendant's Motion to Stay Case and Proceedings under 5th Amendment
Privilege against Self-Incrimination and for Protective Order**

Docket No: 208

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

There is no parallel criminal proceeding here. If and when a criminal action is be commenced, it is unlikely to be a parallel proceeding. Although much if not all of the conduct alleged in the complaint could arguably be criminal, the court's referral relates only to an instance of witness tampering and raises issues that are tangential to the issues in this case. There are many areas of discovery that will not under any circumstances relate to the subject matter of any such future criminal prosecution. Moreover, this action seeks, among other things, injunctive relief. A defendant have a civil proceeding halted in his tracks because, during the course of that litigation, he engaged in what may later be found to be criminal conduct, thereby preventing the plaintiff from seeking redress for other wrongful conduct by the debtor.

The court will not stay this action or issue any kind of blanket protective order on these facts. If and when there is an investigation pending and/or a criminal prosecution and the plaintiff asks a question that, if answered, could cause the defendant to incriminate himself, the defendant should invoke his fifth amendment privilege at that point and the court can analyze the availability of the defense at that time. At this point, any such assertion is speculative, premature and hypothetical.

However, on these facts, it may well be that defendant has waived any right to refuse to testify about the extent to which he did, or did not, engage in witness tampering. He has already offered testimony on that issue in this action and cannot testify on an issue when it suits his purpose and then refuse to offer testimony later on the same issue.

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Moreover, it is far from clear that there will be any discovery concerning the extent to which the defendant did or did not engage in witness tampering. The Court has already ordered that Bender's testimony be excluded. Is there even a need for more discovery on this issue?

Deny motion.

Party Information

Debtor(s):

CLARK WARREN BAKER

Represented By
Alan F Broidy
Baruch C Cohen

Defendant(s):

CLARK WARREN BAKER

Represented By
Baruch C Cohen

Plaintiff(s):

James Murtagh

Represented By
David P Bleistein
Lisa Hiraide

Trustee(s):

Sam S Leslie (TR)

Represented By
Carolyn A Dye

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#101.00 Plaintiff's Motion for Monetary Sanctions against Debtor Clark Baker and/or Baruch Cohen, Esq.

Docket No: 205

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

On January 10, 2017, the Court held a hearing on plaintiff's motion for relief concerning nonparty witness [REDACTED]. The Court granted the motion in part, denied the motion in part and set a continued hearing to consider (1) the amount of any monetary sanctions and (2) whether those sanctions should be imposed on the defendant only or on the defendant and his counsel Baruch Cohen. (Court ruled that plaintiff was entitled to monetary compensation for the cost of bringing this motion and the cost of attending a useless deposition.) The Court refused to strike defendant's answer to complaint or to enter directed findings, but did order that [REDACTED] testimony should be excluded and that it would make a criminal referral concerning defendant's witness-tampering.

The Court submitted its criminal referral, but no interim order has been entered. Plaintiff filed a proposed form of order along with a notice of lodgment, but was the order actually lodged? Filing a copy of the order is not lodging it. The order needs to be either lodged in hard copy or uploaded through LOU. The Court cannot locate any order within its LOU system. Therefore, it appears that no order was ever lodged.

The Court directed plaintiff to submit evidence not later than January 31, 2017 and ordered that any opposition be filed by February 21, 2017. Replies were due March 7.

The Court declines to accept defendant's invitation that it recuse itself. The Court has not done any inappropriate independent investigation and did not

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form an opinion about either the conduct of the defendant or his counsel other than through the manner in which they have conducted themselves in connection with this action. The fact that the Court has made a criminal referral for witness tampering based on findings that it made during the course of the adjudication of this matter does not constitute evidence of bias. Any opinion that a judge may form of a party's or his counsel's trustworthiness based on the conduct of that party or evidence that has been admitted during the proceeding in question does not constitute a disqualifying bias.

The court has already found that it cannot place any weight on testimony given by [REDACTED]. He has represented to the court and to the plaintiff that he committed perjury and the court has excluded his testimony in this matter. Absent his testimony, the Court does not have enough information on which it can conclude that Cohen knew about the witness tampering. There is also disputed evidence about what steps Cohen took, if any, to persuade [REDACTED] to stay long enough to complete his deposition. Absent a full blown evidentiary hearing, the court is not in a position to find that Cohen himself has engaged in wrongful conduct that merits the imposition of sanctions as against Cohen himself.

As Court has previously stated, the amount of time and effort that plaintiff has put into bringing motions in this case and the manner in which his counsel has prepared papers has served to substantially increase the cost of litigating this matter. The plaintiff has repeatedly provided reams and reams of paper on issues that do not directly relate to the issues at hand and has persisted in providing the court with binders full of exhibits that are irrelevant to the issues. Had plaintiff's counsel performed only services that were actually necessary to represent the interests of his client, his fees for bringing this motion would not approach anywhere near the amounts sought in this motion.

Grant motion in part. Impose sanctions of \$35,000 on defendant for services that were actually and necessarily performed in connection with this motion and in attending an unnecessary deposition. At Wallace's hourly rate of \$525, this would equate to approximately 67 hours of service, or, at a blended rate of \$475, (as Hirade's rate is \$425), approximately 74 hours. This amount should have been more than sufficient for the bringing of this motion and the attendance at multiple hearings in this matter. Court has no objection to the

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hourly rates requested by plaintiff's counsel, but even the papers concerning this hearing reflect counsel's inability to prepare documents of an appropriate length limited to the issues at hand.

Court has not addressed the evidentiary objections as most if not all of the testimony offered in the declarations is not relevant to the narrow issues that the court wanted to examine at this hearing and the form of the objections is not helpful, further underscoring the court's point that the manner in which this motion has been lawyered has massively increased the expense of the litigation unnecessarily.

Deny balance of relief sought.

Party Information

Debtor(s):

CLARK WARREN BAKER

Represented By
Alan F Broidy
Baruch C Cohen

Defendant(s):

CLARK WARREN BAKER

Represented By
Baruch C Cohen

Movant(s):

James Murtagh

Represented By
David P Bleistein

James Murtagh

Represented By
David P Bleistein
Lisa Hiraide

Plaintiff(s):

James Murtagh

Represented By
David P Bleistein
Lisa Hiraide

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Trustee(s):

Sam S Leslie (TR)

Represented By
Carolyn A Dye

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Adv#: 2:15-01535 Murtagh v. BAKER et al

#102.00 Plaintiff's Motion for Relief concerning non-party witness [REDACTED] including without limitation:

- A). Striking Answer and entering default
- B). Excluding deposition testimony of [REDACTED]
- C). Monetary sanctions against Clark Baker and his Counsel
- D). Evidentiary Sanctions

fr. 11-15-16, 1-10-17

Docket No: 170

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative Ruling for November 15, 2016:

Court is not going to strike defendant's answer, and court will not summarily adjudicate disputed facts; however, it is undisputed that [REDACTED] did not make himself available for cross-examination at his deposition and that counsel for Baker was aware that this was [REDACTED] game plan several days before the June 6 deposition. (See Exhibit 514.) Court will not permit Baker to rely on testimony provided by Bender if Murtagh is not permitted to cross-examine him. Opposition contains a lengthy discussion of alleged discovery abuses by plaintiff that are not the issue here. [REDACTED] is not willing to submit to cross-examination. His testimony cannot be introduced.

Grant motion insofar as it requests that [REDACTED] testimony be excluded and that monetary sanctions be imposed to the extent necessary to compensate movant for the reasonable cost of bringing this motion and for the cost of

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preparing for and attending a useless deposition. Make a referral to the appropriate authorities to investigate whether criminal conduct has occurred with regard to witness. This inquiry would be better conducted by a trier of fact other than this court. Deny balance of relief requested in the motion.

Final Ruling for November 15, 2016:

Continue hearing to January 10, 2016 at 2:00 p.m. to see if [REDACTED] will attend examination. (Court spoke with [REDACTED] by phone who promised to attend examination on December 12, 2016 at 10:00 a.m. at Wallace's office.) Plaintiff should file status report accompanied by a declaration not later than December 27, 2016.

Tentative Ruling for January 10, 2017:

Witness called chambers and spoke with judge's law clerk, advising her that (in addition to some logistical issues and the contention that he didn't know when his examination was supposed to be, which is not accurate), he was afraid to testify because he was afraid that Baker would resume harrassing him as he had before he gave him perjurious testimony in the declaration. Bender asserts that the declaration previously provided is not accurate and was executed under duress. Neither a simple rescheduling of [REDACTED] deposition nor service of any amount of notice would change this result. Presumably, the Court could threaten to incarcerate [REDACTED] if he does not appear, but, under these circumstances, any testimony that might be given by [REDACTED] would completely lack credibility. Court will not compel the witness to appear under these circumstances (and would not, in any event, compel him to submit to a deposition more than 100 miles from his home).

Court will not permit Baker to rely on testimony provided by [REDACTED]. His testimony cannot be introduced.

Grant motion insofar as it requests that [REDACTED] testimony be excluded and that monetary sanctions be imposed to the extent necessary to compensate movant for the reasonable cost of bringing this motion and for the cost of preparing for and attending a useless deposition. Make a referral to the appropriate authorities to investigate whether criminal conduct has occurred

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with regard to witness. This inquiry would be better conducted by a trier of fact other than this court. Deny balance of relief requested in the motion.

Tentative Ruling for March 14, 2017:

The continued hearing on this motion has been calendared separately (due to the form of the papers filed by plaintiff) as matter no. 101. See tentative ruling for matter no. 101.

Party Information

Debtor(s):

CLARK WARREN BAKER

Represented By
Alan F Broidy
Baruch C Cohen

Defendant(s):

CLARK WARREN BAKER

Represented By
Baruch C Cohen

Movant(s):

James Murtagh

Represented By
David P Bleistein

James Murtagh

Represented By
David P Bleistein
Lisa Hiraide

Plaintiff(s):

James Murtagh

Represented By
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Lisa Hiraide

Trustee(s):

Sam S Leslie (TR)

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Adv#: 2:15-01535 Murtagh v. BAKER et al

#103.00 Status Conference re: 67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny) (68 (Dischargeability - 523(a)(6), willful and malicious injury)) Complaint by James Murtagh against Clark Warren Baker

fr. 12-8-15, 2-9-16, 4-5-16, 5-10-16, 5-24-16, 5-31-16, 9-27-16, 11-15-16, 1-10-17

Docket No: 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Defendant's counsel should not handwrite documents to be filed with the Court. His writing is illegible.

Continue status conference to May 10, 2016 at 2:00 p.m. to be heard concurrently with related matters that will be on calendar for that date. OFF CALENDAR. NO APPEARANCE REQUIRED.

Tentative Ruling for May 31, 2016:

Revisit status of action after conclusion of related matters on calendar.

6/2/16 -- Court signed scheduling order setting following dates:

Cont'd status conference -- September 27, 2016 at 2:00 p.m.

L/D to file joint status report -- September 13, 2016

Discovery cutoff -- September 30, 2016

L/D to lodge order appointing mediator -- June 17, 2016

Deadline to complete mediation -- September 27, 2016

7/6/16 -- court approved order appointing mediators.

Tentative Ruling for September 27, 2016:

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Adv#: 2:15-01535 Murtagh v. BAKER et al

#103.00 Status Conference re: 67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny) (68 (Dischargeability - 523(a)(6), willful and malicious injury)) Complaint by James Murtagh against Clark Warren Baker

fr. 12-8-15, 2-9-16, 4-5-16, 5-10-16, 5-24-16, 5-31-16, 9-27-16, 11-15-16, 1-10-17

Docket No: 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Defendant's counsel should not handwrite documents to be filed with the Court. His writing is illegible.

Continue status conference to May 10, 2016 at 2:00 p.m. to be heard concurrently with related matters that will be on calendar for that date. OFF CALENDAR. NO APPEARANCE REQUIRED.

Tentative Ruling for May 31, 2016:

Revisit status of action after conclusion of related matters on calendar.

6/2/16 -- Court signed scheduling order setting following dates:

Cont'd status conference -- September 27, 2016 at 2:00 p.m.

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Plaintiff has filed a notice of inability to prepare joint status report. Where is the declaration required by LBR 7016-1(a)(3) that must be included whenever a party submits a unilateral status report? Why haven't the parties used the mandatory status report form required by LBR 7016-1(a)(2)? When counsel for plaintiff provided a draft status report that did not comply with the Local Bankruptcy Rules, why didn't counsel for the defendant file a unilateral report in compliance with LBR 7016-1(a)(3)?

Impose sanctions of \$150 on counsel for each of the parties. Counsel for the plaintiff is urged to download a current version of the Court's local rules, as he is apparently relying on an outdated version of the rules. He should refer to the Court's website.

As a result, although there is a great deal of alleged information contained in plaintiff's filing, none of it is evidence and it does not address the issues that are supposed to be included in the status report.

Set continued status conference in approximately 30 to 45 days. Parties are to file the required joint status report form not less than two weeks prior to the continued status conference.

Tentative Ruling for March 14, 2017:

Revisit status of action after conclusion of hearing on matter no.101.

Party Information

Debtor(s):

CLARK WARREN BAKER

Represented By
Alan F Broidy
Baruch C Cohen

Defendant(s):

CLARK WARREN BAKER

Represented By
Baruch C Cohen

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Plaintiff(s):

James Murtagh

Represented By
David P Bleistein
Lisa Hiraide

Trustee(s):

Sam S Leslie (TR)

Represented By
Carolyn A Dye