

Sovereign Immunity
In rem and *in personam* jurisdiction

Boone v. California et al., Adversary No. 09-6137-fra
Robert and Sandra Boone, Case No. 96-61799-fra13

1/20/2010 FRA

Unpublished

Debtors filed a complaint seeking damages against Alameda County for activities made to collect a child support debt which Debtors allege was paid in their chapter 13 case, and against the State of California, Arnold Schwarzenegger, and Jan Sturla, the latter two in their official capacities as Governor of California and Director of Child Support Services for California. Alameda County was alleged to have acted "while under the direction and control" of the State defendants.

The State defendants filed a motion to dismiss themselves as party defendants. The court granted the motion and allowed the Plaintiffs to replead.

While the Supreme Court in Central Virginia Community College v. Katz held that the states had acquiesced in a subordination of their sovereign immunity with respect to the *in rem* jurisdiction of the bankruptcy court, the bankruptcy court in this matter requires not *in rem*, but *in personam* jurisdiction for the remedies sought. In a replead complaint, Debtors must allege sufficient additional facts to allow the court to draw a reasonable inference that the Defendants are liable for the misconduct alleged.

1 themselves as party defendants. For the reasons that follow, Defendants'
2 motion will be granted, with Plaintiff given leave to replead.

3 FACTS

4 A. The Chapter 13 Bankruptcy

5 Plaintiff filed a chapter 13 bankruptcy on April 24, 1996
6 jointly with his wife Sandra Boone.² Creditor, and named defendant in
7 this adversary proceeding, County of Alameda Family Support Division
8 filed a proof of claim for an unsecured priority debt of \$20,964.62. The
9 debt was for unpaid child support payments calculated as of the
10 bankruptcy petition date.

11 Over the term of the chapter 13 plan, the Trustee paid a total
12 of \$20,964.62 to the Alameda Family Support Division, as well as payments
13 to another priority unsecured claimant (i.e. the IRS) and several secured
14 creditors. No interest was paid on the priority unsecured claims and
15 nonpriority unsecured claimants received no dividend. On October 12,
16 2000, an order was entered granting the Debtors a discharge of debts,
17 subject to certain exceptions as provided by the Bankruptcy Code.³ By the
18 terms of the order, creditors are prohibited from attempting to collect
19 any debt that has been discharged.

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23 ² The Court takes notice of its bankruptcy file which contains all
24 documents entered in Plaintiff's chapter 13 bankruptcy case, including
25 proofs of claim filed by creditors.

26 ³ Including those debts described under 11 U.S.C. § 523(a)(5) for
spousal or child support.

1 B. The Complaint

2 Plaintiff alleges that Defendant Alameda County, "while under
3 the direction and control of Sturla and Schwarzenegger," continues to
4 garnish Plaintiff's wages, tax refunds, and bank accounts and has
5 threatened him in other ways for a debt that was paid off by the chapter
6 13 bankruptcy. He seeks a declaration from this Court that the
7 Defendants violated the order confirming Debtors' chapter 13 plan,
8 compensatory civil contempt sanctions, punitive damages, compensatory
9 damages, costs and attorney fees, and an injunction on further collection
10 activities.

11 STANDARDS FOR MOTION TO DISMISS

12 Review of a complaint under Fed.R.Civ.P. 12(b)(6)⁴ is based on
13 the contents of the complaint, the allegations of which are accepted as
14 true and construed in the light most favorable to the plaintiff. North
15 Slope Borough v. Rogstad (In Re Rogstad), 126 F.3d 1224, 1228 (9th Cir.
16 1997) (citations omitted). "[O]nce a claim has been adequately stated, it
17 may be supported by showing any set of facts consistent with the
18 allegations in the complaint." Bell Atlantic Corp. v. Twombly, 127
19 S.Ct.1955, 1969 (2007) (internal citation omitted).⁵ This standard
20 requires "enough fact to raise a reasonable expectation that discovery
21 will reveal evidence [supporting the cause of action]. Id. at 1965. The

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23 ⁴Fed.R.Civ.P. 12(b)(6) is made applicable by Fed.R.Bankr.P. 7012(b).

24 ⁵The Bell Atlantic Corp. opinion supercedes that part of Conley v.
25 Gibson, 355 U.S. 41, 45-46 (1957), wherein the Supreme Court stated that
26 dismissal for failure to state a claim is improper unless it appears
beyond a doubt that the plaintiff can prove no set of facts to support
his claim or entitle him to relief.

1 court need not accept as true unreasonable inferences or conclusory legal
2 allegations cast in the form of factual allegations. Naert v. Daff, (*In*
3 *Re Washington Trust Deed Service Corp.*), 224 B.R. 109, 112 (BAP 9th Cir.
4 1998).

5 In considering the motion, the court may not consider any
6 material "beyond the pleadings." Hal Roach Studios. Inc. v. Richard
7 Feiner and Co. Inc., 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). However,
8 material which is properly submitted as part of the complaint may be
9 considered. Id. Exhibits submitted with the complaint may also be
10 considered. Durning v. The First Boston Corp., 815 F.2d 1265, 1267 (9th
11 Cir. 1987). Further, a document whose contents are alleged in the
12 complaint, or which is crucial to the complaint, and whose authenticity
13 no party questions, but which is not physically attached to the pleading,
14 may be considered. Branch v. Tunnell, 14 F.3d 449, 453-454 (9th Cir.
15 1994), cert. den. 119 S. Ct. 510(1998) (contents alleged in, but not
16 attached to, complaint); Parrino v. FHP, Inc., 146 F.3d 699, 705-706 (9th
17 Cir. 1998) (not specifically alleged and unattached, but integral to
18 plaintiffs claims). Finally, matters that may be judicially noticed may
19 be considered, Mack v. South Bay Beer Distributors, Inc., 798 F.2d 1279,
20 1282 (9th Cir. 1986), abrogated on other grounds, Astoria Federal Savings
21 and Loan Ass'n v. Solimino, 501 U.S. 104 (1991), including court records
22 in related or underlying cases. In re American Continental Corp./ Lincoln
23 Sav. & Loan Securities Litigation, 102 F.3d 1524, 1537 (9th Cir. 1996),
24 rev'd on other grounds sub nom., Lexecon Inc. v. Milberg Weiss Bershad
25 Hynes and Lerach, 523 U.S. 26 (1998).

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1 The Supreme Court in Central Virginia Community College v. Katz, 546 U.S.
2 356 (2006) held that the States acquiesced in a subordination of their
3 sovereign immunity with respect to the *in rem* jurisdiction of the
4 bankruptcy court when they ratified the U.S. Constitution containing the
5 Bankruptcy Clause. However, the damage claims asserted by Plaintiff
6 herein requires not *in rem* jurisdiction, but *in personam* jurisdiction of
7 the California State Defendants.

8 Counsel for Plaintiff has admitted that this Court lacks
9 jurisdiction over the California State Defendants in their official
10 capacities and that he intends to name Messrs. Sturla and Schwarzenegger
11 in their individual capacities. See Smith v. Wade, 461 U.S. 630, 632
12 (1983). In a repled complaint, Plaintiff has the burden to establish
13 that this court has *in personam* jurisdiction over the Defendants.
14 Failure to establish jurisdiction over these Defendants will result in
15 their dismissal.

16 CONCLUSION

17 For the reasons given, the motion to dismiss by Defendants
18 State of California, Arnold Schwarzenegger and Jan Sturla, in their
19 official capacities, will be granted. Plaintiff will be allowed to file
20 an amended complaint taking into account the Court's concerns addressed
21 herein. An order will be entered by the Court consistent with this
22 Memorandum Opinion.

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25 FRANK R. ALLEY, III
26 Bankruptcy Judge