UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDREA JARREAU-GRIFFIN, et al.,

Plaintiffs,

v.

CITY OF VALLEJO, et al.,

Defendants.

No. 2:12-CV-02979-KJM-KJN

ORDER

Defendants City of Vallejo ("the City") and Kent Tribble move for judgment on the pleadings under Federal Rule of Civil Procedure 12(c). Defs.' Mot. for J. on the Pleadings ("Mot.") at 3–4, ECF No. 38. The court submitted the matter without argument and, for the reasons below, DENIES the motion without prejudice.

I. BACKGROUND

On December 11, 2010, defendant Tribble, a Vallejo police officer, shot and killed Guy J. Jarreau, Jr. ("the decedent"). First Am. Compl. ("FAC") ¶ 7, ECF No. 15. Thereafter, plaintiff Jarreau-Griffin ("plaintiff"),[1] the decedent's mother and successor in interest, submitted a claim-for-damages form, which was received and filed by the City on

[1] The plaintiffs in the case are the decedent's successor in interest and estate. For clarity and ease of reference, the court refers to the successor in interest as the only plaintiff but notes that she acts on behalf of both herself and the estate.

May 17, 2011. Faruqui Decl., Ex. A, ECF No. 24-1. Plaintiff eventually filed suit in this court on December 10, 2012, alleging several claims stemming from the shooting. FAC ¶¶ 25–39, ECF No. 1. When filing the claim-for-damages form, plaintiff was represented by John Burris, Faruqui Decl., Ex. A; however, the instant action was filed by new counsel, Corey Evans.

The shooting and subsequent claim for damages occurred during the pendency of the City's bankruptcy petition, filed on May 23, 2008. Req. for Judicial Notice ("RJN"), Ex. 1, ECF No. 39-1. However, despite receiving and filing the claim for damages, the City did not notify plaintiff of the bankruptcy proceedings, and plaintiff never filed a proof of claim. The bankruptcy court ultimately confirmed the City's plan for adjustment of debts on August 4, 2011, *id.*, Ex. 4, ECF No. 39-4, and fixed an effective date of November 1, 2011, *id.*, Ex. 5, ECF No. 39-5.

II. STANDARD

A motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) is "functionally identical" to a motion to dismiss under Rule 12(b)(6). *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). It is properly granted where "the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law." *George v. Pacific-C.S.C. Work Furlough*, 91 F.3d 1227, 1229 (9th Cir. 1996). In both instances, the inquiry focuses on the interplay between the factual allegations of the complaint and the dispositive issues of law in the action, *see Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984), and courts "must presume all factual allegations of the complaint to be true and draw all reasonable inferences in favor of the nonmoving party," *Usher v. City of L.A.*, 828 F.2d 556, 561 (9th Cir. 1987). This rule does not, however, apply to "a legal conclusion couched as a factual allegation," *Papasan v. Allain*, 478 U.S. 265, 286 (1986), *quoted in Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007), or to "allegations that contradict matters properly subject to judicial notice," *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

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"If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56." FED. R. CIV. P. 12(d). "The court may, however, consider certain materials without converting the motion for judgment on the pleadings into a motion for summary judgment. Such materials include . . . matters of judicial notice." *Tumlinson Group, Inc. v. Johannessen*, No. 2:09-cv-1089 JFM, 2010 WL 4366284, at *3 (E.D. Cal. Oct. 27, 2010) (citing *Lloyd v. Powell*, No. C09-5734 BHS/KLS, 2010 WL 2560652, at *1 (W.D. Wash. June 18, 2010); *Van Buskirk v. CNN*, 284 F.3d 977, 980 (9th Cir. 2000); *Baron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994)); *see also Lee v. City of L.A.*, 250 F.3d 668, 688–89 (9th Cir. 2001) (holding court may properly take judicial notice of "matters of public record" on 12(b)(6) motion without converting to summary judgment motion).

III. ANALYSIS

Defendants argue judgment on the pleadings is proper. Mot. at 4. They insist plaintiff's failure to file a claim in the bankruptcy proceedings precludes the instant action because any potential liability arose at the time of the shooting, well before the bankruptcy court confirmed the plan or fixed the effective date, and plaintiff had imputed notice of the proceedings through her then-counsel. *Id.* at 5–8. Thus, defendants conclude, even assuming a valid debt existed at one time, it was discharged as of the plan's effective date. *Id.* at 5–10.

Plaintiff responds that debtors owe a continuing obligation throughout bankruptcy proceedings to list all creditors and that it was thus incumbent upon the City to provide her with the required notice. Pl.'s Opp'n to Mot. ("Opp'n") at 5–6, ECF No. 29. Further, she continues, the instant circumstances do not constitute imputed notice because plaintiff's then-counsel did not simultaneously represent other parties involved in the bankruptcy proceedings. *Id.* at 10–13. She also argues that defendants improperly rely on extrinsic evidence in their motion and that the court should either disregard such evidence or convert the motion to one for summary judgment. *Id.* at 15.

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A. Consideration of Matters Outside the Pleadings

As an initial matter, the court must determine whether it may properly consider facts surrounding the City's bankruptcy proceedings in deciding the instant motion. As noted, the court may consider "matters of judicial notice," *Tumlinson Group*, 2010 WL 4366284, at *3, and "matters of public record," *Lee*, 250 F.3d at 688–89, without converting the motion to one for summary judgment. Matters properly subject to judicial notice include "fact[s] . . . not subject to reasonable dispute because . . . [they] can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." FED. R. EVID. 201(b).

Here, in arguing imputed notice, defendants rely on a number of facts not reflected in the parties' pleadings: (1) that Burris represented plaintiff in May 2011; (2) that Burris represented several claimants in the City's bankruptcy proceedings, beginning in August 2010; and (3) that Burris had notice of the City's bankruptcy proceedings in May 2011. Mot. at 3. The first fact can be "accurately and readily determined from sources whose accuracy cannot reasonably be questioned," namely the claim-for-damages form signed by Burris himself. Faruqui Decl., Ex. A. The court thus takes judicial notice of the fact that Burris represented plaintiff in May 2011.

Regarding the second and third facts, however, the court declines to take such notice. The only document defendants provide to verify the second fact — a claims register taken from the bankruptcy court docket — is insufficient to "accurately and readily" make the required determination. FED. R. EVID. 201(b). The document alternately lists "John L. Burris" and the "Law Offices of John L. Burris" as representing certain claimants as of August 2010, but it is neither prepared nor signed by counsel. RJN, Exs. 6-1, 6-2. Although a subsequent bankruptcy filing lists John L. Burris and his California state bar number in the caption on the cover sheet, that document was filed June 11, 2012. Claimants' Opp'n to Debtor's Objection to Claims, Bankruptcy Case No. 2008-26813, ECF No. 1333. Together, these documents show only that either John L. Burris or his firm was involved in the bankruptcy proceedings in August 2010 and John L. Burris was himself active in the bankruptcy case in June 2012.

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In light of the procedural posture of this case, the court must draw inferences in favor of the nonmoving party. Thus, defendants must show beyond "reasonable dispute," on the basis of "sources whose accuracy cannot reasonably be questioned," FED. R. EVID. 201(b), that Burris's personal involvement in the bankruptcy began in August 2010, such that he had notice of the personal bankruptcy when he filed plaintiff's claim with the City in 2011, *In re Perle*, 725 F.3d 1023, 1025 (9th Cir. 2013) (holding individual lawyer must represent party in bankruptcy proceedings while simultaneously representing client in other case for notice or knowledge of bankruptcy to be imputed to other client). Defendants have not done so. Because the court declines to take judicial notice of the second fact, it necessarily declines to take notice of the third as well.

B. Notice or Actual Knowledge

11 U.S.C. § 944 provides in pertinent part: "[T]he debtor [municipality] is discharged from all debts as of the time . . . the plan [for adjustment of debts] is confirmed," except "any debt . . . owed to an entity [a creditor] that, before confirmation of the plan, had neither notice nor actual knowledge of the case." 11 U.S.C. § 944(b)–(c).

Here, the City's plan for adjustment of debts was confirmed on August 4, 2011. RJN, Ex. 4. The shooting that killed Jarreau occurred on December 11, 2010, FAC ¶ 7, and was thus an extant debt "as of the time . . . the plan [was] confirmed." *O'Loghlin v. Cnty. of Orange*, 229 F.3d 871, 874 (9th Cir. 2000) ("[A] claim arises, for purposes of discharge in bankruptcy, at the time of the events giving rise to the claim . . . ."). Unless an exception applies, the City's debt to Jarreau's estate and heirs was discharged upon confirmation. *Id.* at 873 ("[T]he [municipal debtor]'s reorganization plan was confirmed in June 1996, [thereby] discharging its pre-confirmation debts.").

An exception does apply where a creditor had neither "notice nor actual knowledge of the" bankruptcy proceedings. 11 U.S.C. § 944(c). The City relies on its imputed notice argument here as well, and also argues "it is more than likely" plaintiff "had actual knowledge" of the bankruptcy proceedings. Mot. at 6–8. Plaintiff contends notice may

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not be imputed under these circumstances because Burris learned of the bankruptcy while representing other clients at a later time. Opp'n at 10–13.

For the same reasons set forth above, the City's argument fails.

On the instant record, the court is unable to find as a matter of law that plaintiff had either notice or actual knowledge of the City's bankruptcy proceedings.

IV. CONCLUSION

For the foregoing reasons, the court DENIES the motion without prejudice.

IT IS SO ORDERED.

DATED: April 14, 2014.

UNITED STATES DISTRICT JUDGE