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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

KENNETH R.J. PEARSALL and KAY
PEARSALL,

Debtors.

Case No. 90-55316

Chapter 7

WALTER M. O'CONNELL,

Plaintiff,

Adversary No. 92-05246

vs.

**MEMORANDUM DECISION RE
DETERMINATION OF RIGHT TO
JURY TRIAL**

KENNETH R.J. PEARSALL and KAY
PEARSALL,

Defendants.

This proceeding involves a claim to determine the dischargeability of a debt arising from the debtors' alleged fraudulent inducement compelling the plaintiff to execute a warranty deed for his life estate interest in his house. The complaint seeks a judgment for \$900,000. The plaintiff has filed a proof of claim.

To determine whether a party is entitled to a jury trial in bankruptcy, the court must first determine whether that party would be entitled to a jury trial under the Seventh Amendment. Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 41 (1989). To decide whether a party is entitled to the Seventh Amendment right to a jury trial, the court must apply a three-step test to make the following determinations: first, whether there would have been a right to a jury trial in 18th century

1 England; second, whether the matter is legal or equitable in nature; and third, whether the matter
2 involves private rights, as opposed to public rights. In re Marshland Development, Inc., 129 Bankr.
3 626, 628 (Bankr. N.D. Cal. 1991).

4 Plaintiff's complaint sounds in fraud, deceit and misrepresentation. There was a right to a jury
5 trial in 18th century England on the claims pled by plaintiff. 5 Moore's Federal Practice ¶ 38.11[5]
6 (2d ed. 1993). The matter is legal in nature because the plaintiff is seeking a monetary judgment.
7 Tull v. Unites States, 481 U.S. 412, 421 (1987). Lastly, the matter involves exclusively the private
8 rights of litigants and not the rights of the United States or some governmental agency. This analysis
9 leads to the conclusion that the Seventh Amendment right to jury trial exists in this case.

10 After the determination whether the Seventh Amendment right to jury trial exists, the Court
11 must then determine whether the request for a jury trial was timely made and whether the proceeding
12 is core or non-core. Bankruptcy courts have the constitutional right to conduct jury trials in core
13 proceedings. In re Interbank Mortgage Corp., 128 Bankr. 269 (N.D. Cal. 1991). An action to
14 determine the dischargeability of a debt is a core proceeding. 28 U.S.C § 157(b)(2)(I).

15 F.R.C.P. 38(b) provides that a jury demand must be made in writing and served on the other
16 party not later than 10 days after service of the last pleading directed to the issue for which jury
17 determination is sought. The complaint was filed on April 29, 1992, the civil cover sheet filed with
18 the complaint notes the jury demand, the answer was filed on June 3, 1992, and the plaintiff reiterated
19 its jury demand in its status conference statement filed on August 7, 1992. A notation on a civil
20 cover sheet is insufficient to constitute a timely jury demand. Wall v. National R.R. Passenger Corp.,
21 718 F.2d 906 (9th Cir. 1983). The plaintiff did not make a timely jury demand and is not entitled to a
22 jury trial in this proceeding.

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