

UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF INDIANA
 HAMMOND DIVISION AT HAMMOND

IN RE: CASE NO. 04-60251)
 ELENO PEREZ)
)
 Debtor)
 *****)
 ELENO PEREZ)
)
 Plaintiff)
)
 BENEFICIAL, INDIANA, INC.)
)
 Defendant)

ADV. PROCEEDING NO. 09-2197

**ORDER DISMISSING ADVERSARY
 PROCEEDING WITHOUT PREJUDICE**

Status Conference held on January 20, 2010 on this Adversary Proceeding.

Plaintiff-Debtor appears by counsel

The Complaint by the Plaintiff-Debtor seeks relief solely in the nature of a declaratory judgment in that the Complaint requests that the Court enter a judgment declaring that the Defendant incorrectly misapplied the Chapter 13 Plan payments made by the Plaintiff-Debtor to the Chapter 13 Trustee and, in turn, paid by the Trustee to the Defendant between interest and principal, and a judgment further declaring what the current balance, if any, is presently due and owing by the Plaintiff-Debtor to the Defendant.

The Court takes judicial notice of the Plaintiff-Debtors Main Case No. 04-60251, and finds that the Plaintiff-Debtor's initial Plan filed on February 7, 2004 was confirmed on April 13, 2004; that the Defendant filed a Proof of Claim on February 2, 2004, asserting a Secured Claim of \$28,759.34 due at time the Plaintiff-Debtor's Petition was filed on January 22, 2004, and a prepetition arrearage of \$1,526.51; and, that the Chapter 13 trustee filed his Final Report and Account on August 24, 2009 pursuant to Fed. R. Bk. P. 5009, certifying that the Plaintiff-Debtor's estate had been fully administered,

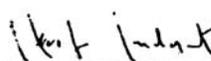
and that he had paid the Defendant the sum of \$1,526.51 on its prepetition arrears Claim and \$31,731.21 to the Defendant in postpetition Mortgage payments. No Objection was filed by the Plaintiff-Debtor to the Claim by the Defendant or to the Final Report and Account of the Chapter 13 Trustee.

The Court concludes that in that the Defendant's Claim has been fully paid, and the Plaintiff-Debtor's Chapter 13 estate has been fully administered, any dispute by and between the Plaintiff-Debtor and Defendant as to the present outstanding principal balance, if any, due and owing by the Plaintiff-Debtor arising out of any alleged incorrect or erroneous application by the Defendant of the Plan payments distributed by the Chapter 13 Trustee to the Defendant between principal and interest is a matter that should be decided by the appropriate nonbankruptcy forum, and not by this Court. If the Court would undertake to decide this Adversary Proceeding, this Court would be inextricably entangled in protracted disputes as to the balance presently due, and whether the Plaintiff-Debtor is in default, long after the case has been fully administered. This is not the function of this Court. The Court would also note that the State of Indiana has adopted the Uniform Declaratory Judgment Act. See I.C. 34-14-1-1 et seq. See also Indiana Trial Rule 57. Pursuant to I. C. 34-14-1-3 a contract may be construed either before or after there has been a breach of contract. Accordingly, the Plaintiff-Debtor is free to seek the relief he is requesting in the State Court.

The Court may dismiss or stay an action under the Wilton/Brillhart abstention doctrine when solely declaratory relief is sought. R. R. Street & Co., Inc., v. Vulcan Materials Company, 569 F.3d 711, 715 (7th Cir. 2009). It is therefore,

ORDERED, ADJUDGED, and DECREED, that this Adversary Proceeding should be and is hereby dismissed without prejudice.

Dated: January 21, 2010



JUDGE, U. S. BANKRUPTCY COURT

Distribution:
Attorney Casas
Trustee
U. S. Trustee