

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

Wednesday, December 21, 2016

Hearing Room 1539

10:00 AM

2:13-10698 Raheleh Holly Soltani

Chapter 7

#1.00 Trustee's Motion For Order Disallowing Debtor's Claim Of Exemption

Docket No: 44

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

(NOTE: This tentative ruling was written before the debtor filed a belated response.)

Would trustee be arguing that it was too late for the debtor to amend her exemptions under Rule 1009(a) if her failure to disclose the asset earlier had been innocent? But for what appears to be a willful non-disclosure, there would be no problem with the debtor belatedly claiming an exemption in a newly-discovered asset. If the trustee had recovered the asset in an avoiding power action, the debtor might be precluded from asserting an exemption due to a willful failure to disclose, but the trustee did not bring an avoiding power action.

And if the trustee's argument concerning the timing requirements fails, how can the trustee make a laches argument? The case has now been reopened at the request of the trustee, not the debtor. Does the trustee have any authority for the proposition that a debtor cannot amend her exemptions after a case has been reopened?

If the judicial estoppel argument worked, a debtor would be precluded from asserting an exemption any time the trustee had acted to the detriment of the estate in reliance on the fact that the debtor had not asserted an exemption. Is there any post *Law v. Siegel* authority for this proposition?

It would seem that the problem here is that the debtor seems to have willfully failed to disclose the existence of a very valuable asset. Perhaps the appropriate remedy is for the trustee to seek to have the debtor's discharge vacated under section 727(a)(2) or (a)(4)?

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Chapter 7

In any event, the debtor cannot assert a wildcard exemption for more than \$25,340. Grant motion to the extent that it seeks to have any exemption for more than this amount disallowed.

Party Information

Debtor(s):

Raheleh Holly Soltani

Represented By

Charles W Brower - DISBARRED - II

Nancy Korompis

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

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2:16-19192 Frank Dan Sigala

Chapter 7

#2.00 Motion For Order Approving:

(A) Sale of Property of the Estate under Section 363(b) Real Property located at 610-620 Reservoir Street, Pomona, CA outside the ordinary course of business

(B) Free and Clear of Liens, Claims and Encumbrances;

(C) Subject to Overbid

(D) For Determination of Good Faith Purchaser under 11 USC Section 363(M)

Docket No: 85

***** VACATED *** REASON: CONT'D. TO 1/4/17 @ 10AM**

Courtroom Deputy:

12/14/16 - Trustee filed a notice of continued hearing for 1/4/17 @ 10am.

Tentative Ruling:

Debtor (or debtor's son) may overbid, if he so desires. Grant motion. Approve overbidding procedures. Approve sale to highest bidder.

12/20/16 -- Court approved stipulation continuing hearing to January 4, 2017 at 10:00 am. OFF CALENDAR FOR DECEMBER 21, 2016. NO APPEARANCE REQUIRED.

Party Information

Debtor(s):

Frank Dan Sigala

Represented By
William Radcliffe

Movant(s):

Wesley H Avery (TR)

Represented By
Chad V Haes
Richard A Marshack

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Chapter 7

Trustee(s):

Wesley H Avery (TR)

Represented By
Chad V Haes
Richard A Marshack

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2:10-38673 Peter Mark Getz and Jennifer Dawn Getz

Chapter 11

#3.00 Motion For Final Decree and Order Closing Case

Docket No: 94

***** VACATED *** REASON: GRANTED. NO APPEARANCE
REQUIRED**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Grant motion. Enter final decree. Court will prepare order. NO
APPEARANCE REQUIRED.

Party Information

Debtor(s):

Peter Mark Getz

Represented By
Louis J Esbin

Joint Debtor(s):

Jennifer Dawn Getz

Represented By
Louis J Esbin

Movant(s):

Jennifer Dawn Getz

Represented By
Louis J Esbin

Peter Mark Getz

Represented By
Louis J Esbin

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2:16-13852 East Coast Foods, Inc.

Chapter 11

#4.00 Application to Employ Greines, Martin, Stein & Richland, LLP as Special Appellate Counsel to the Chapter 11 Trustee

Docket No: 305

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Overrule objections. Grant application. Trustee is entitled to the benefit of counsel to assist him with this appeal. If Beasley believes that any services that may be rendered by proposed counsel were not actually and necessarily incurred, Beasley may object to counsel's fee application when the time comes. In the interim, neither trustee nor the court need accept the assurances of opposing counsel that the proposed appeal is frivolous.

Party Information

Debtor(s):

East Coast Foods, Inc.

Represented By
Vahe Khojayan

Movant(s):

Bradley D. Sharp (TR)

Represented By
Zev Shechtman
Uzzi O Raanan ESQ
John N Tedford

Trustee(s):

Bradley D. Sharp (TR)

Represented By
Zev Shechtman
Uzzi O Raanan ESQ
John N Tedford

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2:16-13852 East Coast Foods, Inc.

Chapter 11

#5.00 Trustee's Motion for Order:

(1) Establishing Procedures for the Payment of Interim Compensation and Reimbursement of Expenses (11 U.S.C. §§ 105(A) and 331)

(2) Authorizing Payment of Expert Witness Fees and Costs on a Monthly Basis (11 U.S.C. § 328)

Docket No: 321

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Approve retroactively payments made to experts. Deny balance of relief requested in the motion. This is not an exceptionally large or complex case. Professionals should seek reimbursement promptly every 120 days. If professionals prefer, court will shorten permissible time between applications to 90 days and all professionals employed will be permitted to file these applications.

Party Information

Debtor(s):

East Coast Foods, Inc.

Represented By
Vahe Khojayan

Movant(s):

Bradley D. Sharp (TR)

Represented By
Zev Shechtman
Uzzi O Raanan ESQ
John N Tedford

Trustee(s):

Bradley D. Sharp (TR)

Represented By
Zev Shechtman

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Uzzi O Raanan ESQ
John N Tedford

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2:16-13852 East Coast Foods, Inc.

Chapter 11

#6.00 Motion to Assume Lease re property located at 1514 N. Gower Street, Los Angeles, CA 90027

fr. 7-20-16, 9-28-16, 10-19-16

Docket No: 99

***** VACATED *** REASON: CONT'D. TO 2/15/17 @ 10AM**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative Ruling for July 20, 2016:

Court cannot assess whether assumption is in the debtor's best interest because it cannot rely on the debtor's business judgment when the same individual is in charge of the debtor's business and the owner of the premises. Debtor is not in a position to cure the prepetition arrearages. Motion is unclear as to the treatment of the unpaid prepetition portion of the arrearages.

Issue OSC why trustee should not be appointed. Continue hearing on motion to assume lease to date of hearing on OSC.

Final Ruling for July 20, 2016:

Continue hearing to September 28, 2016 at 11:00 a.m. Debtor should lodge interim order extending time to assume or reject and authorizing debtor to pay post-petition rents under section 365(d)(3). Order should also include authority to use cash collateral to pay examiner's \$30,000 retainer.

Tentative Ruling for September 28, 2016:

No interim order was uploaded.

Based on the examiner's report, it would be imprudent for this Court to grant the foregoing motion unless and until a trustee in bankruptcy has had an

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Chapter 11

opportunity -----
Tentative Ruling for October 19, 2016:

Now that the trustee has been appointed, has the trustee had an opportunity to ascertain whether or not it would be in the best interest of the estate to assume or reject this lease? Hearing required to assess whether such relief would be in the best interests of the estate. Continue hearing to give a trustee an opportunity

10/18/16 -- Court approved stipulation continuing hearing to December 21, 2016 at 10:00 a.m. and extending deadline to assume or reject to December 27, 2016. OFF CALENDAR FOR OCTOBER 19, 2016. to exercise his business judgment with regard to this motion.

Tentative Ruling for December 21, 2016:

What is the trustee's position with regard to this motion? Does the trustee want to assume the lease? Hearing required.

12/20/16 -- Court approved stipulation continuing hearing to February 15, 2017 at 10:00 a.m. and extending deadline to assume or reject to February 27, 2017. OFF CALENDAR FOR DECEMBER 21, 2016.

Party Information

Debtor(s):

East Coast Foods, Inc.

Represented By
Vahe Khojayan

Movant(s):

East Coast Foods, Inc.

Represented By
Vahe Khojayan

Trustee(s):

Bradley D. Sharp (TR)

Represented By
Zev Shechtman

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Uzzi O Raanan ESQ
John N Tedford

Chapter 11

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2:16-13852 East Coast Foods, Inc.

Chapter 11

#7.00 Motion to Assume Lease or Executory Contract re: property located at 830 N. Lake Ave, Pasadena, CA 91104

fr 7-27-16, 9-28-16, 10-19-16

Docket No: 106

***** VACATED *** REASON: CONT'D. TO 2/15/17 @ 10AM**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative Ruling for July 27, 2016:

Lessors are not insiders and are being paid post-petition rent. Should consideration of these motions await results of investigation by examiner? If so, continue hearing and, in the interim, grant extension of time to assume or reject leases.

Final Ruling for July 27, 2016:

Authorize debtor to lodge interim order extending time to assume or reject. Continue hearing to September 28, 2016 at 11:00 a.m.

Tentative Ruling for September 28, 2016:

Where is interim order? Why wasn't it lodged? Continue hearing to give a trustee an opportunity to exercise his business judgment with regard to this motion.

Tentative Ruling for October 19, 2016:

Now that the trustee has been appointed, has the trustee had an opportunity to ascertain whether or not it would be in the best interest of the estate to assume or reject this lease? Hearing required.

10/18/16 -- Court approved stipulation continuing hearing to December 21,

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2016 at 10:00 a.m. and extending deadline to assume or reject to December 27, 2016. OFF CALENDAR FOR OCTOBER 19, 2016.

Tentative Ruling for December 21, 2016:

What is the trustee's position with regard to this motion? Does the trustee want to assume the lease? Hearing required.

12/20/16 -- Court approved stipulation continuing hearing to February 15, 2017 at 10:00 a.m. and extending deadline to assume or reject to February 27, 2017. OFF CALENDAR FOR DECEMBER 21, 2016.

Party Information

Debtor(s):

East Coast Foods, Inc.

Represented By
Vahe Khojayan

Movant(s):

East Coast Foods, Inc.

Represented By
Vahe Khojayan

Trustee(s):

Bradley D. Sharp (TR)

Represented By
Zev Shechtman
Uzzi O Raanan ESQ
John N Tedford

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2:16-13852 East Coast Foods, Inc.

Chapter 11

#8.00 Motion to Assume Lease re property located at 106 W. Manchester Ave, Los Angeles, CA 90028

fr. 7-20-16, 9-28-16, 10-19-16

Docket No: 102

***** VACATED *** REASON: CONT'D. TO 2/15/17 @ 10AM**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Tentative Ruling for July 20, 2016:

Court cannot assess whether assumption is in the debtor's best interest because it cannot rely on the debtor's business judgment when the same individual is in charge of the debtor's business and the owner of the premises. Debtor is not in a position to cure the prepetition arrearages. Motion is unclear as to the treatment of the unpaid prepetition portion of the arrearages.

Issue OSC why trustee should not be appointed. Continue hearing on motion to assume lease to date of hearing on OSC.

Final Ruling for July 20, 2016:

Continue hearing to September 28, 2016 at 11:00 a.m. Debtor should lodge interim order extending time to assume or reject and authorizing debtor to pay post-petition rents under section 365(d)(3). Order should also include authority to use cash collateral to pay examiner's \$30,000 retainer.

Tentative Ruling for September 28, 2016:

No interim order was uploaded.

Based on the examiner's report, it would be imprudent for this Court to grant the foregoing motion unless and until a trustee in bankruptcy has had an

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CONT... East Coast Foods, Inc. Chapter 11

opportunity to assess whether such relief would be in the best interests of the estate. Continue hearing to give a trustee an opportunity to exercise his business judgment with regard to this motion.

Tentative Ruling for October 19, 2016:

Now that the trustee has been appointed, has the trustee had an opportunity to ascertain whether or not it would be in the best interest of the estate to assume or reject this lease? Hearing required.

10/18/16 -- Court approved stipulation continuing hearing to December 21, 2016 at 10:00 a.m. and extending deadline to assume or reject to December 27, 2016. OFF CALENDAR FOR OCTOBER 19, 2016.

Tentative Ruling for December 21, 2016:

What is the trustee's position with regard to this motion? Does the trustee want to assume the lease? Hearing required.

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Party Information

Debtor(s):

East Coast Foods, Inc.

Represented By
Vahe Khojayan

Movant(s):

East Coast Foods, Inc.

Represented By
Vahe Khojayan

Trustee(s):

Bradley D. Sharp (TR)

Represented By
Zev Shechtman
Uzzi O Raanan ESQ

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John N Tedford

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2:16-13852 East Coast Foods, Inc.

Chapter 11

#9.00 Application to Employ Rostam Law as State Court Litigation Counsel
fr. 12-14-16

Docket No: 120

Courtroom Deputy:

12/20/16 - Carlos De La Paz, (858)263-4735, has been approved for telephonic appearance on 12/21/16 @ 10am

Tentative Ruling:

12/13/16 -- court approved stipulation continuing hearing to December 21, 2016 at 10:00 a.m. OFF CALENDAR FOR DECEMBER 14, 2016. NO APPEARANCE REQUIRED.

Tentative Ruling for December 21, 2016:

Overrule objections. Approve employment effective as of the petition date.

Party Information

Debtor(s):

East Coast Foods, Inc.

Represented By
Vahe Khojayan

Trustee(s):

Bradley D. Sharp (TR)

Represented By
Zev Shechtman
Uzzi O Raanan ESQ
John N Tedford

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10:00 AM

2:15-27833 BGM Pasadena, LLC

Chapter 11

Adv#: 2:16-01523 Pasadena Lots-70, LLC v. BGM Pasadena, LLC

■

#10.00 Motion for a Temporary Restraining Order and Order to Show Cause re:
Preliminary Injunction and Removal of Grandstands from Easement Area
fr. 12-15-16

Docket No: 5

Courtroom Deputy:

12/20/16 - James Tiemstra, (510)987-8000, has been approved for telephonic appearance on 12/21/16 @ 10am

Tentative Ruling:

What, if any, progress has been made since December 15, 2016? Hearing required.

Party Information

Debtor(s):

BGM Pasadena, LLC

Represented By
James A Tiemstra
Lisa Lenherr

Defendant(s):

BGM Pasadena, LLC

Pro Se

Plaintiff(s):

Pasadena Lots-70, LLC

Represented By
Valerie J Schratz

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2:14-25908 Sanoho Development, LLC

Chapter 7

Adv#: 2:15-01050 Avery v. Harris

■
#100.00 Trial re: 21 (Validity, priority or extent of lien or other interest in property)), (91 (Declaratory judgment)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) Complaint by Wesley H. Avery against Alona Harris

fr. 3-31-15, 4-14-15, 7-7-15, 8-11-15, 8-25-15, 11-10-15, 2-23-16, 3-8-16, 5-10-16, 8-16-16, 11-22-16, 11-23-16

Docket No: 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The issues for trial may be summarized as follows:

1. Was the loan documented in such a way as to be enforceable as against the debtor (rather than as against the debtor's principal) under state law?
2. Is some portion of amounts claimed by defendant unenforceable on the theory that the interest rate (11 percent) is usurious (and, if so, how much)?
3. Does the usury exception for loans arranged by a real estate broker apply here and can the broker be on the borrower's side? (What role did Ken Davis play in connection with procuring/arranging for the loan?)
4. How did defendant calculate the amount set forth in her proof of claim? How much was lent for each loan? How much has been repaid from each loan?
5. Can defendant's lien (or the obligation created for the debtor by the modification agreement correcting the name of the borrower) be avoided as an actual fraud, or constructively fraudulent, fraudulent transfer (on the theory that the money lent by defendant actually went to Metrow and not to the

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Chapter 7

debtor and/or on the theory that she never actually lent the face amount of the notes)?

6. Was the debtor's financial condition at the time of the modification agreement sufficiently bleak to meet one of the tests applicable in the context of a fraudulent transfer?

7. Assuming defendant's lien is not otherwise avoidable, can the trustee surcharge amounts due defendant based on the services rendered which include preventing loss of property through foreclosure, liquidating the defendant's collateral, arranging for invalid liens to be removed from the property and obtaining a reduction of senior lender's default interest claim?

Defendant's Evidentiary Objections

Metrow Declaration

1. Overrule incorporation objection.
2. Overrule.
3. Sustain (lack of foundation).
4. Overrule. (Testimony being offered on the issue of insolvency.)
5. Sustain.
6. Sustain as to language in parenthetical at line 20 for lack of foundation. Overrule balance.
7. Overrule.

Objections to Exhibit 1 to Metrow Declaration:

8. Overrule.
9. Overrule.
10. Overrule.
11. Overrule.
12. Sustain (lack of foundation; relevance).
13. Overrule.
14. Sustain as to statement, "This was also understood by Ms. Harris and Mr. Rohn" for lack of foundation. Overrule balance of objection.
15. Overrule.
16. Overrule. (The fact that testimony is inaccurate or contrary to other evidence is not a basis for an evidentiary objection.) Court notes, however,

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that the testimony makes no sense. If the funds were used as a repayment to Metrow of monies she had lent to the debtor, the only way for that to work is for the funds to be lent to the debtor and for the debtor to use the loan proceeds to repay its loan to Metrow. A loan to Metrow where she is the borrower and the debtor is not obligated to repay the amount borrowed doesn't result in repayment to Metrow.)

17. Overrule. (Plaintiff is making argument, not interposing evidentiary objections.)
18. Sustain.
19. Overrule.

Objections to Sumpter Declaration

20. Overrule.
21. Overrule.
22. Overrule narrative objections.

Objections to Avery Declaration

23. Overrule.
24. Overrule.
25. Overrule.
26. Overrule.
27. Overrule.
28. Overrule.
29. Overrule.

Plaintiff's Motion in Limine

Deny. In light of the inconsistencies in the loan documents, it is appropriate for the court to entertain parole evidence on the issue of who the borrower is -- i.e., to get at the meaning of the documents.

Plaintiff's Evidentiary Objections:

Rohn Declaration

Overrule general objections. Format of specific objections made it extremely difficult for court to review and consider objections. Court has endeavored to glean from the "speaking" nature of the objections and the failure to repeat the challenged testimony what plaintiff was trying to communicate.

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1. Overrule; however, court does not understand the testimony as a legal conclusion that there was a partnership. Court understands this testimony as a nonlegal description of the manner in which Rohn did business with Rodeo Realty.
2. Overrule.
3. Overrule.
4. Sustain to the extent that the testimony is being offered in an attempt to prove that NSIS was in fact an existing creditor of the debtor. Overrule balance of objection.
5. Sustain to the extent that the testimony is being offered in an attempt to prove that the agreed-upon terms were in fact fair for all involved. Overrule balance of objection.
6. Sustain, based on a lack of foundation to the extent that declarant is attempting to testify as to anyone's intent or understanding other than his own. Overrule balance.
7. Sustain (based on lack of foundation) to the extent that declarant is attempting to testify as to anyone's intent or understanding other than his own. Overrule balance.
8. Sustain objection to the introduction of the documents attached as Exhibit D based on lack of foundation.
9. Sustain.
10. Overrule.
- 11 & 12. Sustain as to paragraphs 15 through 19, 21 and 22. Paragraphs are legal argument and no foundation is laid for Exhibits identified therein. Overrule as to paragraph 20.
13. Sustain.
14. Overrule.
15. Overrule as to the first sentence. Sustain as to balance of paragraph.
16. Overrule.
17. Sustain (based on lack of foundation) to the extent that declarant is attempting to testify as to anyone's intent or understanding other than his own. Overrule as to balance.
18. Sustain (best evidence rule) to the extent that he is testifying as to the contents of the Modification Agreement. Overrule as to balance.
19. Sustain as to first sentence of paragraph 30 based on best evidence rule. Sustain as to first clause of second sentence based on lack of foundation.

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Sustain as to balance to the extent that he is testifying as to Mr. Davis' opinions. Overrule as to balance of paragraph 30. Sustain as to first sentence of paragraph 31 based on best evidence rule. Sustain as to second sentence of paragraph 31 to the extent that he is testifying as to Mr. Davis' opinions. Overrule as to balance.

20. Overrule.

21. Sustain to the extent that he is purporting to testify as to who Hart has utilized as Trustee on other transactions and whether Hart had a lien against the property or anyone's state of mind or understanding other than his own. Overrule balance of objection.

22. Overrule.

Harris Declaration

1. Overrule.

2. Overrule.

3. Overrule.

4. Sustain to the extent that declarant is attempting to testify to anyone's intent other than her own. Overrule balance of objection.

5. Sustain as to second, third and fourth sentences (lack of personal knowledge). Overrule balance of objection. (Court understands testimony as description of declarant's understanding, not a legal conclusion.)

6. Sustain as to first sentence. Overrule as to balance.

7. Overrule.

8. Overrule.

9. Overrule.

10. Overrule.

11. Overrule. (Being inaccurate or inconsistent with other testimony is not a valid basis for objection.)

12. Overrule. (See ruling on objection 11.)

13. Overrule.

14. Overrule.

Walton Declaration

1. Overrule, but court understands this paragraph as legal argument, not evidence.

2. Overrule as to first sentence. Sustain as to balance of paragraph based on lack of personal knowledge/lack of foundation).

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3. Sustain (lack of personal knowledge).

Kandel Declaration

Sustain objections to paragraph 15 and 16 (best evidence rule) to the extent these paragraphs do anything other than authenticate the documents attached. Overrule balance of objections.

Moffat Declaration

Plaintiff's complaints about the Moffat Declaration are not evidentiary objections. They are arguments about errors in his reasoning. Overrule.

Overrule objections to reply declarations of Metrow and Sumpter.

Tentative Ruling for December 21, 2016:

On first day of trial, court held that broker may be on the borrower's side. Court previously completed cross-examination of Metrow and Harris. Other witnesses to be cross-examined: Sumpter, Avery and Moffat.

Party Information

Debtor(s):

Sanoho Development, LLC

Pro Se

Defendant(s):

Alona Harris

Represented By

Brian M Kandel

Lewis Richard Walton

Plaintiff(s):

Wesley H. Avery

Represented By

Robert M Aronson

Trustee(s):

Wesley H Avery (TR)

Represented By

Robert M Aronson