

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 15, 2016

Hearing Room 1568

10:00 AM

2:16-14513 Edgar Daniel Morales

Chapter 7

Adv#: 2:16-01306 Scope, Inc. v. Morales

#1.00 Status Hearing

RE: [1] Adversary case 2:16-ap-01306. Complaint by Scope, Inc. against Edgar Daniel Morales. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Camhi, Howard)

fr: 9-13-16

Docket No: 1

Tentative Ruling:

11/14/2016

Local Bankruptcy Rule ("LBR") 9027-1(d) requires Defendant Morales to file with this Court a copy of the State Court docket of the Removed Action, as well as a copy of every document on the docket. Other than the Complaint, Morales has not filed any documents from the State Court Action. Plaintiff Scope demands that Morales file the documents in accordance with the Local Rules; Defendant Morales requests that he be excused from compliance on the grounds that filing the complete state court record would not be of assistance to this Court and would be unduly burdensome.

The complete State Court docket would not be of assistance to the Court. Accordingly, the Court will excuse Defendant from complying with LBR 9027-1(d). As the Court has previously explained, the liability of Morales and Orellana to Scope will ultimately depend upon whether Morales' and Orellana's alleged conduct falls within one of the exceptions to discharge. It is not necessary for this Court to be apprised of the complete State Court record in order to make that determination. The following dates will apply to each of these three consolidated matters:

Discovery cut-off (i.e., last date to complete discovery, including hearings on discovery motions; except as to experts): March 31, 2017

Pretrial: April 11, 2017 at 11:00 a.m.

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Trial: During the week of April 24, 2017. The Court's courtroom deputy will contact counsel 2-3 weeks prior and advise counsel which day of the week the matter.

These consolidated matters shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

No appearance is required if submitting on the court's tentative ruling. If submitting on the tentative, please contact Daniel Koontz or Nathan Reinhardt at 213-894-1522 by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Edgar Daniel Morales

Represented By
Michael Y Lo

Defendant(s):

Edgar Daniel Morales

Pro Se

Plaintiff(s):

Scope, Inc.

Represented By
Howard Camhi

Trustee(s):

Jason M Rund (TR)

Pro Se

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2:16-18203 Southland Solutions LLC

Chapter 7

■
#2.00 HearingRE: [37] Motion For Sanctions/Disgorgement and Notice Thereof

Docket No: 37

Tentative Ruling:

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Sanctions in the Form of Attorneys' Fees and Expenses Against the Debtor, its Manager, Ray Bazafkan, and its Attorney, Kevin Tang, Tang & Associates, Jointly and Severally, for Bad Faith Filing of Chapter 11 Petition [**Note 1**] ("Sanctions Motion") [Doc. No. 37]
- 2) Emergency Motion to Withdraw as Counsel for Southland Solutions LLC [filed by Tang & Associates] [Doc. No. 39]
 - a) Order Denying Application for an Emergency Hearing on Motion to Withdraw as Counsel [Doc. No. 40]
- 3) Debtor's Response to Summit County's Motion for Sanctions in the Form of Attorneys' Fees and Expenses Against the Debtor, its Manager, Ray Bazafkan, and its Attorney, Kevin Tang, Tang & Associates, Jointly and Severally, for Bad Faith Filing of Chapter 11 Petition ("Opposition") [Doc. No. 42]
- 4) Reply to the Opposition (Titled Response) of Southland Solutions LLC and Kevin Tang and Tang and Associates to the County of Summit's Motion for Sanctions ("Reply") [Doc. No. 43]

For the reasons set forth below, the Court will order Tang to pay Summit \$2,845.89, as he has agreed to do in the Opposition. The Court will order Southland and Bazafkan, jointly and severally, to pay Summit \$1,773.00, as they have agreed to do in the Opposition. The Court declines to impose additional sanctions.

I. Facts and Summary of Pleadings

Southland Solutions LLC ("Southland") commenced a voluntary Chapter 7 petition on June 20, 2016. On that same day, Southland recorded a mortgage for no consideration against an abandoned shopping mall located at 2400 Romig Road, Akron, OH 44320 (the "Property"). The Property has been the subject of three previous bankruptcy petitions filed by Premier Ventures, LLC ("Premier Ventures"), all of which were dismissed. Premier Ventures' third petition, filed in Delaware, was

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dismissed with a re-filing bar that did not expire until July 31, 2016. The owners of the Property circumvented the re-filing bar by causing Southland to record a mortgage against the Property for no consideration, after which Southland commenced its own bankruptcy petition.

The County of Summit, Ohio ("Summit") commenced a foreclosure action against the Property in August 2013. [Note 2] That foreclosure action, as well as several subsequent foreclosure attempts, were halted by the three bankruptcy petitions filed by Premier Ventures, and by Southland's instant petition.

On October 14, 2016, the Court granted motions for stay-relief as to the Property filed by Summit and the City of Akron, Ohio. The Court found that Southland's petition had been filed in bad faith as part of a scheme to delay, hinder, or defraud creditors, and granted stay-relief pursuant to §§362(d)(1) and (d)(4). The Court retroactively annulled the stay to the date of the filing of the petition.

Summit seeks sanctions jointly and severally against Southland, Southland's manager Ray Bazafkan, and Southland's attorney Kevin Tang, for prosecuting the instant petition in bad faith (the "Sanctions Motion"). Summit contends that sanctions are merited under 28 U.S.C. §1927 and the Court's inherent power pursuant to 11 U.S.C. §105(a). According to Summit, sanctions are justified for the following reasons:

- 1) Southland's counsel knew or should have known that the petition was filed in bad faith. Counsel substituted into this case on July 19, 2016. Even cursory due diligence would have revealed the prior bankruptcies, the skeletal petition, and Southland's recordation of the mortgage against the Property for no consideration. Counsel knew, or should have known, that the petition was a bad-faith attempt to further delay Summit's foreclosure action against the Property.
- 2) Counsel's bad faith is further illustrated by his failure to appear at both the first meeting of creditors and the second meeting of creditors. After failing to appear at the first meeting of creditors, counsel contacted the Trustee and said that he would move to vacate any dismissal. Counsel's subsequent failure to appear at the second meeting of creditors shows that his real purpose was to cause delay.

After Summit filed its motion for sanctions, Southland's counsel Tang filed a motion to withdraw as counsel (the "Motion to Withdraw"), and sought a hearing on shortened notice on the Motion to Withdraw. Tang argued that it was necessary for him to withdraw because Summit's Sanctions Motion created a conflict of interest between Tang and his client Southland. This conflict existed, Tang asserted, since

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Summit sought sanctions jointly and severally against Tang, Southland, and Southland's manager Bazafkan. The Court declined to scheduled a hearing on shortened time on Tang's Motion to Withdraw. Tang has not brought the Motion to Withdraw on regular notice.

Southland, Tang, and Southland's manager Bazafkan oppose the Sanctions Motion for the following reasons **[Note 3]**:

- 1) Tang did not advise Southland to file the instant petition. Tang substituted in only after the petition had been filed. Tang cannot be blamed for any misconduct by Southland prior to his retention. Tang did not advise Southland to record the mortgage against the Property; the mortgage had already been recorded when Tang substituted in. Attorneys' fees incurred by Summit resulted from the recordation of the mortgage, which Tang was not responsible for.
- 2) When Southland retained Tang, Tang believed that Summit had violated the automatic stay by completing the tax sale of the Property after Southland had filed its Chapter 7 petition. Tang believed that Southland was working to rescind the forfeiture of the Property. Tang did not believe that Southland's filing was in bad faith because Southland was in the process of securing a commitment from a buyer of the Property.
- 3) Tang's failure to appear at the two meetings of creditors did not cause Summit delay. Summit could have filed its stay-relief motion when the case was commenced on June 20, 2016, but instead waited until September 28, 2016. Tang is willing to reimburse Summit for the traveling costs it incurred to attend the meeting of creditors. Southland and Bazafkan are willing to pay Summit's attorneys' fees for filing the motion seeking stay-relief and retroactive annulment of the stay. **[Note 4]**

Summit makes the following arguments in Reply to the Opposition:

- 1) The Opposition should be disregarded since it was not timely filed. The Opposition was filed only seven days before the hearing date, rather than the fourteen days required by the Local Rules. Summit should be awarded the additional attorneys' fees it has incurred in responding to the untimely Opposition.
- 2) Tang's attempt to thrust the blame onto his client Southland is wholly improper. Had Tang conducted even a cursory investigation, he would have discovered that the Property had been subject to previous unsuccessful bankruptcy petitions, and would have realized that Southland's petition had not been filed for a legitimate purpose.

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- 3) Tang improperly seeks to limit the sanctions he must pay to Summit's travel expenses to attend the meeting of creditors, while requiring Southland and Bazafkan to pay remaining sanctions. Nothing in Tang's Opposition justifies bifurcating any potential award between Tang and Southland. The Court should compensate Summit from any and every available source.

II. Findings and Conclusions

As a preliminary matter, although the Opposition was not filed timely, the Court will nonetheless consider it.

Agreement of Tang, Southland, and Bazafkan to Partially Reimburse Summit

This matter has been partially resolved by the agreement of Tang, Southland, and Bazafkan to reimburse some of Summit's fees and expenses. Tang has agreed to reimburse Summit for its traveling costs to attend the first and second §341(a) meetings, at which Tang did not appear. Summit paid \$1,970.89 to send attorney Regina Van Vorous to the those meetings. Van Vorous Decl. at ¶14. Attorney Eric Bensamochan billed Summit \$875.00 for attending the second §341(a) meeting, at which Tang failed to appear. [Note 5]

Southland and Bazafkan have agreed to pay Summit's fees for filing the motion seeking stay-relief and annulment. Summit incurred fees and expenses of \$1,773.00 in filing the stay-relief motion (consisting of attorneys' fees of \$1,575.00 and expenses of \$198.00).

Consistent with their agreement, the Court will order Southland and Bazafkan, jointly and severally, to pay Summit \$1,773.00. Consistent with his agreement, the Court will order Tang to pay Summit \$2,845.89 (consisting of \$1,970.89 to reimburse Summit for travel expenses to attend the two §341(a) meetings and which Tang failed to appear; and \$875.00 to reimburse Summit for Bensamochan's time attending the continued §341(a) meeting at which Tang failed to appear).

Sanctions Motion

Summit seeks sanctions under 28 U.S.C. §1927 and under the Court's inherent power, pursuant to 11 U.S.C. §105(a). The Court first addresses its ability to award sanctions under 28 U.S.C. §1927.

Sanctions Pursuant to 28 U.S.C. §1927

Title 28 U.S.C. §1927 provides in relevant part: "Any attorney or other person

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admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." In the Ninth Circuit, it has not been clearly determined whether a Bankruptcy Court is a "court of the United States," and therefore whether a Bankruptcy Court may impose sanctions pursuant to 28 U.S.C. §1927:

It is an open question in the Ninth Circuit, which has not squarely ruled on the question, whether a bankruptcy judge is authorized to impose § 1927 sanctions.

Our decisions regarding the use of § 1927 in bankruptcy are not consistent. We have said, in a decision that was affirmed by the Ninth Circuit without a square holding on the question, that § 1927 sanctions may be imposed by bankruptcy judges. *Mortgage Mart, Inc. v. Rechnitzer (In re Chisum)*, 68 B.R. 471, 473 (9th Cir. BAP 1986), *aff'd*, 847 F.2d 597 (9th Cir.1988); *accord*, *Norwood Fed. Sav. & Loan Ass'n v. Guiltinan (In re Guiltinan)*, 58 B.R. 542, 545 (Bankr.S.D.Cal.1986) (Adler, B.J.).

We have, however, assumed in other instances that § 1927 is not in the bankruptcy judge's arsenal in this circuit. *E.g.*, *Miller v. Cardinale (In re Deville)*, 280 B.R. 483, 494 (9th Cir. BAP 2002); *Determan v. Sandoval (In re Sandoval)*, 186 B.R. 490, 495-96 (9th Cir. BAP 1995).

Chase v. Kosmoala (In re Loyd), 304 B.R. 372, 376 (B.A.P. 9th Cir. 2003) (dissenting opinion of Judge Klein).

Absent clear authority to do so, this Court declines to impose sanctions pursuant to 28 U.S.C. §1927. While not directly on point, the Ninth Circuit has held that a Bankruptcy Court is not a "court of the United States" for purposes of 28 U.S.C. § 1915(a). *Perroton v. Gray (In re Perroton)*, 958 F.2d 889, 891 (9th Cir. 1992). *Perroton* strongly suggests that a Bankruptcy Court is not a "court of the United States" for purposes of 28 U.S.C. §1927.

Sanctions Pursuant to the Court's Inherent Power

A Bankruptcy Court has inherent power to award sanctions "against a party who willfully disobeys a court order or acts in bad faith, 'which includes a broad range of willful improper conduct.' To impose inherent power sanctions, a court must find that a party acted 'in bad faith, vexatiously, wantonly, or for oppressive reasons.'" *Miller v. Cardinale (In re Deville)*, 280 B.R. 483, 495-96 (B.A.P. 9th Cir. 2002) *aff'd sub*

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nom. In re DeVille, 361 F.3d 539 (9th Cir. 2004). [Note 6] A finding of bad faith is warranted where a litigant "knowingly or recklessly raises a frivolous argument." *Primus Auto. Fin. Servs., Inc. v. Batarse*, 115 F.3d 644, 648-49 (9th Cir. 1997).

Sanctions imposed pursuant to the Bankruptcy Court's inherent power must be compensatory, not punitive. *Id.* at 497-98. "[A] court may sanction pursuant to its inherent authority even when the same conduct may be punished under another sanctioning statute or rule." *Id.* at 496. The Bankruptcy Court's inherent sanctioning authority "is broader than Rule 9011 sanctions and 'extends to a full range of litigation abuses.'" *Id.*

Inherent authority sanctions have been imposed against a litigant who filed a series of bankruptcy petitions and notices of removal of a state court action to the bankruptcy court to delay a state court trial and to increase the opposing side's litigation costs, *In re Deville*, 280 B.R. at 494-96; against a litigant who engaged in several years of vexatious litigation tactics in an effort to thwart the court's jurisdiction, *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991); and against a litigant who filed objections to gain a tactical advantage in a case pending before a different court, *In re Intel Securities Litigation*, 791 F.2d 672, 675 (9th Cir. 1986).

The Court declines to award sanctions against Southland, Tang, or Bazafkan pursuant to its inherent authority. There is not sufficient evidence before the Court that any of these parties willfully engaged in the type of improper conduct sufficient to support the imposition of inherent authority sanctions. Although this is the fourth petition affecting the Property, it appears that Tang and Bazafkan believed, albeit unrealistically, that a potential purchaser could be found and that the Property's foreclosure could be avoided. Tang's failure to attend the two §341(a) meetings shows negligence, but does not demonstrate that the petition was filed "in bad faith, vexatiously, wantonly, or for oppressive reasons." *Miller*, 280 B.R. at 495-96.

Conclusion

The Court will order Tang to pay Summit \$2,845.89, per his agreement. The Court will order Southland and Bazafkan, jointly and severally, to pay Summit \$1,773.00, per their agreement. Summit shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Nathaniel Reinhardt or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The petition was commenced under Chapter 7, not Chapter 11.

Note 2

This was Summit's second foreclosure action against the Property. The first foreclosure action was commenced in 2009, but was dismissed after Premier Ventures purchased the Property for \$3 million.

Note 3

Although the Opposition purports to be filed on behalf of Southland, Tang, and Bazafkan, in reality the arguments presented therein speak only to why sanctions should not be awarded against Tang.

Note 4

The Opposition does not contain a declaration from Bazafkan corroborating his offer to pay Summit's attorneys' fees for filing the stay-relief motion. In addition, it is unclear whether the offer to pay Summit's fees is made by Southland only, or by Southland and Bazafkan. At one point, the Opposition states that Southland is willing to pay Summit's attorneys' fees; at another point, the Opposition implies that both Southland and Bazafkan are willing to pay Summit's attorneys' fees. Unless informed otherwise, the Court will assume that both Southland and Bazafkan are willing to pay Summit's fees for filing the stay-relief motion.

Note 5

The scope of Tang's promise to reimburse Summit is unclear. Tang states: "To the extent that Tang's failure to appear at the 341 meeting had caused Summit County to

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incur costs to attend the 341 meeting, Tang would be willing to reimburse Summit County for its traveling costs." Tang does not address whether he is also willing to reimburse Summit for the \$875.00 that Bensamochan billed to attend the §341(a) meeting on behalf of Summit. Since the \$875.00 was a cost that Summit incurred to attend the meeting, the Court will construe Tang's offer as encompassing Bensamochan's fees.

Note 6

In *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine, Inc.)*, 77 F.3d 278 (9th Cir. 1996), the Ninth Circuit concluded that "bankruptcy courts have the inherent power to sanction vexatious conduct presented before the court." *Id.* at 284. The Court explained that through §105, "Congress impliedly recognized that bankruptcy courts have the inherent power to sanction that *Chambers [v. Nasco, Inc.]*, 501 U.S. 32] recognized exists within Article III courts." *Id.*

Party Information

Debtor(s):

Southland Solutions LLC

Represented By
Kevin Tang

Trustee(s):

Richard K Diamond (TR)

Pro Se

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2:13-25539 Rajinder Kumar Jawa and Debra Lynn Jawa

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#100.00 APPLICANT: Trustee - Jason M Rund

Hearing re [357] Applications for chapter 7 fees and administrative expenses

Docket No: 0

Tentative Ruling:

11/14/2016: For the reasons set forth below, the opposition of the Debtors and Spice 4 Life to the Trustee's Final Report is overruled, and the fees and expenses requested by the Trustee and the Trustee's professionals are awarded.

Pleadings Filed and Reviewed:

- 1) Notice to Professionals to File Applications for Compensation [Doc. No. 350]
- 2) First and Final Application for Fees and Reimbursement of Expenses of the Law Office of Thomas H. Casey, Inc., Attorney for Chapter 7 Trustee [Doc. No. 353]
 - a) Comments of Chapter 7 Trustee to First and Final Application for Fees and Reimbursement of Expenses of the Law Office of Thomas H. Casey, Inc., Attorney for Chapter 7 Trustee [Doc. No. 356]
- 3) First and Final Fee Application of Hahn Fife & Company LLP for Allowance of Fees and Expenses from February 7, 2014 through July 29, 2016 [Doc. No. 354]
 - a) Declaration of Trustee in Support of First and Final Fee Application of Hahn Fife & Company LLP for Allowance of Fees and Expenses from February 7, 2014 through July 29, 2016 [Doc. No. 355]
- 4) Trustee's Final Report [Doc. No. 357]
 - a) Notice of Trustee's Final Report and Applications for Compensation and Deadline to Object [Doc. No. 358]
 - i) BNC Certificate of Notice [Doc. No. 361]
- 5) Objection to Final Report [filed by Debtors] [Doc. No. 362]
- 6) Objection to Final Report [filed by Spice 4 Life] [Doc. No. 363]
 - a) Signature of Raj Jawa to Declaration filed in Support of Objection to Final Report [Doc. No. 364]
- 7) Chapter 7 Trustee's Reply to the Objection of Debtors to Final Report [Doc. No. 365]

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- 8) Chapter 7 Trustee's Reply to Spice 4 Life's Objection to Final Report [Doc. No. 366]
- 9) Previous papers and orders in this case relevant to the Court's decision:
 - a) Chapter 7 Trustee's Motion to Revoke the Debtor's Trust and Amended Trust [Doc. No. 63]
 - b) Order Granting Chapter 7 Trustee's Motion to Revoke the Debtor's Trust and Amended Trust [Doc. No. 101]
 - c) Final Ruling Granting Sale Motion [Doc. No. 195]
 - d) Order Granting Sale Motion [Doc. No. 214]
 - e) Order Dismissing Appeals [Doc. No. 329]
 - f) Memorandum [Dismissing Appeal of Motion for Reconsideration of Revocation Order] [Doc. No. 336]

I. Facts and Summary of Pleadings

Case History

Rajinder Kumar Jawa and Debra Lynn Jawa (the "Debtors") commenced this voluntary Chapter 7 petition on June 13, 2013. On November 26, 2013, the Chapter 7 Trustee ("Trustee") filed a motion to revoke the Debtor's trust (the "Revocation Motion"). *See* Doc. No. 63. The Debtor's trust claimed an interest in commercial real property located at 3126 Los Feliz Boulevard, Los Angeles, CA 90039 (the "Property"). On February 19, 2014, the Court granted the Revocation Motion. *See* Doc. No. 101 ("Revocation Order"). The Revocation Order provides that the Property is property of the bankruptcy estate.

On August 27, 2014, the Trustee moved for approval of an order authorizing the sale of the Property (the "Sale Motion"). *See* Doc. No. 159. Spice 4 Life opposed the Sale Motion, arguing that the estate held only a 12% interest in the Property and that Spice 4 Life held the remaining 88%. The Court overruled Spice 4 Life's opposition, finding that by failing to timely contest the Revocation Order, Spice 4 Life had waived its right to assert that the Property was not property of the estate. *See* Final Ruling Granting Sale Motion [Doc. No. 195] at 10. The Court found that Spice 4 Life had no ownership interest in the Property and that the Property was property of the estate that the Trustee could administer for the benefit of creditors. *Id.* at 11. On September 30, 2014, the Court entered an order granting the Sale Motion. *See* Doc. No. 214 ("Sale Order").

Spice 4 Life, the Debtors, Raj Jawa (the Debtors' son), and Kamlesh Rani (the

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sister of Debtor Rajinder Jawa) appealed the Sale Order to the Bankruptcy Appellate Panel ("BAP"). On March 12, 2015, the BAP dismissed the appeal. The BAP found that the Debtors lacked standing to appeal the Sale Order because there was no indication that the Debtor's estate would generate a surplus. The BAP dismissed the appeal as moot as to the remaining appellants because the Sale Order had not been stayed pending appeal and the sale had been consummated and could not be undone.

On March 26, 2015, Spice 4 Life sought reconsideration of the BAP's dismissal of its appeal of the Sale Order. Spice 4 Life argued that even if the sale could not be set aside, the BAP could still fashion effective relief by determining that Spice 4 Life held an 88% interest in the funds generated by the sale. In opposition to Spice 4 Life's motion for reconsideration, the Trustee argued that that the issue as to whether Spice 4 Life had an interest in the sale proceeds was not properly before the BAP: "Unless and until the Trustee seeks to distribute the net sale proceeds of approximately \$1,094,352.02, the issue as to the right of Spice 4 Life to 88% of the sale proceeds ... is not a ripe issue even before the Bankruptcy Court, let alone this Court [the BAP]. Therefore, this Court [the BAP] has no 'case or controversy' before it and has no jurisdiction to allocate the net sale proceeds as suggested by the Movants." *See* Doc. No. 51 at 16–17, Case No. 14-1477.

On June 19, 2015, the BAP denied Spice 4 Life's motion for reconsideration. The BAP reasoned: "The relief appellants [Spice 4 Life] seek in this motion relates to the proceeds of the sale. As conceded by the chapter 7 trustee in his opposition, the disposition of the proceeds has not been finally decided by the bankruptcy court." *See* Order Denying Reconsideration [Doc. No. 52 at 1–2, Case No. 14-1477]. Spice 4 Life did not appeal the BAP's denial of its motion for reconsideration.

On February 18, 2015, approximately four months after the Bankruptcy Court entered the Sale Order, Spice 4 Life sought reconsideration of the Revocation Order, which provided that the Property that had been sold is property of the estate. Spice 4 Life asserted that it had not received sufficient notice of the relief sought in the Revocation Motion, and restated its argument that it held an 88% interest in the Property. Spice 4 Life moved for deletion of the provision in the Revocation Order stating that the Property is property of the bankruptcy estate, and requested that the Court order that 88% of the sale proceeds be distributed to Spice 4 Life. On February 23, 2015, the Court denied Spice 4 Life's Motion for Reconsideration. The Court found that Spice 4 Life had not sought reconsideration within a reasonable time, as required by Civil Rule 60(b). The Court further found that Spice 4 Life had received sufficient notice of the Revocation Motion:

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The Trustee served the Notice of Motion on at least three addresses for Spice 4 Life. The proof of service was far more thorough than typical and listed Spice 4 Life in the category of "Lienholders/Interested Parties[.]" Despite having received actual notice of the Revocation Motion, Spice4Life filed no opposition.... Spice 4 Life was informed of the Trustee's intentions with regard to the Property and did nothing until—at the latest—nearly a year after receiving this notice to protect its rights.

Memorandum of Decision Denying Motion for Relief from Order Entered February 19, 2014 or to Modify Order [Doc. No. 268] at 8–9.

Finally, the Court found that Spice 4 Life's contention that it held an 88% interest in the Property had been considered and rejected by the Court in its adjudication of the Sale Motion. The Court restated the findings made in its Final Ruling Approving the Sale Motion:

Spice 4 Life and Raj Jawa received proper notice of the Revocation Motion, and their failure to file an opposition was deemed consent to the granting of the relief requested pursuant to LBR 9013-1(h). That order is now final. Consequently, the Court finds that Spice4Life and Raj Jawa waived their rights to contest the ownership of the Property....

The Court also finds that, even if Spice 4 Life did not waive its right to object to the ownership of the Property, Spice 4 Life's evidence is insufficient to prove that the Debtor transferred ownership interests in Spice 4 Life to his family members prior to the Transfer Date [the date the Property was transferred from Rajinder Jawa and Spice4Life to the Trust] or that Debtor [Rajinder Jawa] lacked authority to act on behalf of Spice 4 Life when transferring the Property to the Trust. The Court agrees with the Trustee that Spice 4 Life's Bylaws grant broad authority to its directors and Spice 4 Life's corporate filings contradict Spice 4 Life's current position. Moreover, the Trustee submitted a validly recorded deed of trust demonstrating that Spice 4 Life transferred the Property to the Trust and Spice 4 Life has not provided any evidence to invalidate that recording. Accordingly, the Court finds that as of the Transfer Date, Spice 4 Life no longer owned any interest in the Property and the Property is now property of the estate which the Trustee may administer for the benefit of Debtors' creditors.

Id. at 10.

On March 9, 2015, Spice 4 Life appealed the Court's denial of the Motion for Reconsideration to the BAP. On December 4, 2014, the BAP affirmed the Bankruptcy

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Court. The BAP found that even if it were to reverse the Bankruptcy Court's denial of the Motion for Reconsideration, it could not provide Spice 4 Life any meaningful relief. The BAP determined that the appeal was equitably moot because Spice 4 Life could not unwind the sale of the Property. As an independent and alternative basis for affirmance, the BAP found that Spice 4 Life had not sought reconsideration within a reasonable time and that Spice 4 Life had received adequate notice of the Revocation Motion. Regarding its finding that Spice 4 Life had received adequate notice of the Revocation Motion, the BAP explained:

Spice 4 Life argues that the notice it received—Rund's detailed notice of motion—did not adequately apprise Spice 4 Life of what was at stake. According to Spice 4 Life, Rund's written notice of motion was inadequate for due process purposes because the notice did not specifically state that Rund sought a determination that Spice 4 Life did not own the property. We disagree. In the notice of motion, Rund explicitly asserted that the Los Feliz property was owned by the debtor's living trust by virtue of the June 2012 trust transfer deed, which transferred title from Spice 4 Life to the trust. Rund also explicitly asserted that revocation of the trust was in the best interests of the debtors' bankruptcy estate because, upon revocation, the estate would obtain clear title to the Los Feliz property and then would be able to market the property for sale. Rund's assertions were fundamentally incompatible with Spice 4 Life's ownership claim, and Rund's stated intent to sell the Los Feliz property was patently adverse to Spice 4 Life's ownership claim. In light of these circumstances, we reject Spice 4 Life's argument that it received insufficient notice for due process purposes

Memorandum [Affirming Denial of Motion for Reconsideration] at 13 [Doc. No. 24, Case No. 15-1077].

Spice 4 Life did not appeal the BAP's affirmance of the Bankruptcy Court's denial of the Motion for Reconsideration.

Summary of Objections to the Trustee's Final Report, the Trustee's Response, and the Response of Creditor

Spice 4 Life filed an untimely objection to the Trustee's Final Report. Spice 4 Life claims an ownership interest in 88% of the proceeds from the sale of the Property, and objects to the Trustee's plan to distribute those proceeds to creditors. Spice 4 Life contends that the Court has never determined the issue of its entitlement to the proceeds. In support of this contention, Spice 4 Life cites a statement made by the

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Court at the hearing on the Sale Motion, in which the Court said that it would consider whether Spice 4 Life held an ownership interest in the sale proceeds if the issue were brought by motion. Spice 4 Life also points to the BAP's order denying its motion for reconsideration of the dismissal of Spice 4 Life's appeal of the Sale Order. In that order, the BAP observed that "the disposition of the [sale] proceeds has not been finally decided by the bankruptcy court."

In support of its claim that it is entitled to 88% of the sale proceeds, Spice 4 Life repeats arguments that were previously presented to and rejected by the Court in connection with the Sale Motion and Motion for Reconsideration of the Revocation Order. Spice 4 Life states that it intends to file an adversary proceeding for declaratory relief prior to the hearing. As of November 13, 2016, no adversary proceeding is on file.

In reply to Spice 4 Life's objection, the Trustee states that the Court has in fact determined that Spice 4 Life has no entitlement to the sale proceeds, both in its ruling granting the Trustee's Sale Motion and in its Memorandum of Decision denying Spice 4 Life's Motion for Reconsideration of the Revocation Order.

The Debtors also object to the Trustee's Final Report. Debtors state that the case is not ready to be closed because they have not received a discharge, even though they have completed the post-petition financial management course and no non-dischargeability complaint has been filed. Debtors assert that the claim of KC Equities is suspect and has not been challenged. According to the Debtors, KC Equities' claim, which is based on a real property deficiency judgment, is invalid in light of California's anti-deficiency legislation.

In reply to the Debtors objection, the Trustee argues that the Debtors lack standing to object to the Trustee's Final Report because this is not a surplus case. The Trustee states that he has reviewed KC Equities' claim and that, upon his request, KC Equities filed an amended claim with additional supporting documentation. The Trustee states that KC Equities' claim is valid and that the Debtors have failed to present evidence as to the claims' invalidity. The Trustee asserts that the Debtors' objection to the KC Equities claim is barred by laches, given that the claims bar date expired on January 21, 2014, and that entertaining the objection will further delay the distribution to unsecured creditors. Finally, the Trustee argues that the fact that the Debtors have not received a discharge is an insufficient reason to delay review of the Trustee's Final Report.

KC Equities filed a reply to the Debtors' objection. According to KC Equities, California's anti-deficiency law does not apply to its claim because the loan upon

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which the claim is based is governed by Texas law, and Texas does not have an anti-deficiency statute. Therefore, KC Equities argues, the Debtors' objection to its claim lacks merit.

II. Findings and Conclusions

Spice 4 Life's Objection to the Trustee's Final Report is Overruled

Spice 4 Life's objection to the Trustee's Final Report is overruled. Contrary to Spice 4 Life's contention, the issue of whether it is entitled to 88% of the sale proceeds has already been determined by the Court. The issue was first determined when the Court entered the Revocation Order, which provides that the Property is property of the estate in its entirety. The Court reiterated this finding in its Final Ruling Approving the Sale Motion. That finding remained undisturbed on appeal as a result of the BAP's dismissal of the appeal of the Sale Order as moot. The Court revisited the issue once again when it denied Spice 4 Life's Motion for Reconsideration of the Revocation Order. In its Memorandum of Decision denying the Motion for Reconsideration, the Court once again found that the Property is property of the estate. *See* Memorandum of Decision Denying Motion for Relief from Order Entered February 19, 2014 or to Modify Order [Doc. No. 268] at 8–9. The Court's denial of the Motion for Reconsideration was affirmed by the BAP. Spice 4 Life's claim that the Revocation Order was invalid because Spice 4 Life had received inadequate notice was rejected by the BAP.

Since the Property is property of the estate in its entirety, the proceeds of the sale of that Property are necessarily property of the estate as well. In an attempt to escape this inevitable result, Spice 4 Life points to the BAP's statement that "the disposition of the [sale] proceeds has not been finally decided by the bankruptcy court." According to Spice 4 Life, this statement means that the Court has not yet determined whether it has an interest in the sale proceeds. Spice 4 Life is mistaken. The BAP correctly observed that the Court has not yet approved the Trustee's distribution of the sale proceeds to general unsecured creditors. That observation has no bearing upon the Court's determination—which was affirmed by the BAP—that the Property is property of the estate. Accordingly, Spice 4 Life has no interest in the sale proceeds.

Spice 4 Life's expressed intention to file an adversary proceeding for a declaration that it holds an interest in the sale proceeds is not well taken. Spice 4 Life has presented its arguments regarding its claimed interest in the sale proceeds in connection with the Sale Motion and the Motion for Reconsideration. As stated above, the Court rejected Spice 4 Life's arguments, and Spice 4 Life's arguments

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were also rejected on appeal. Any attempt by Spice 4 Life to reintroduce these arguments through an adversary proceeding would constitute an improper attempt to cause unnecessary delay and needlessly increase the costs of this litigation.

The Debtors' Objection to the Trustee's Final Report is Overruled

The Debtors' objection to the Trustee's Final Report is overruled. The Debtors lack standing to object to the Trustee's Final Report because this is not a surplus estate. In no way are the Debtors aggrieved by the manner in which the Trustee distributes estate funds to creditors. *See In re P.R.T.C., Inc.*, 177 F.3d 774, 778 (9th Cir. 1999) ("Ordinarily, a debtor cannot challenge a bankruptcy court's order unless there is likely to be a surplus after bankruptcy."). Even if the Debtors had standing, there is no merit to the objections they assert. The fact that the Debtors have not yet received a discharge is no reason to delay approval of the Trustee's Final Report and the distribution of funds to creditors. The Court will order that this case not be closed until the Debtor's discharge has been entered, if they are entitled to receive a discharge. Nor is there any merit to the Debtor's objection to KC Equities' claim. California's anti-deficiency statute does not apply to KC Equities' claim, which is based upon a loan governed by Texas law.

The Court Awards the Fees and Expenses Requested by the Trustee

Having reviewed the Trustee's Final Report, the Court approves the fees and expenses, and payment, as requested by the Trustee, as follows (amounts previously paid on an interim basis, if any, are now deemed final):

Total Fees: \$120,830.82

Total Expenses: \$423.40

U.S. Bankruptcy Court charges: \$293.00

The Court Awards the Fees and Expenses Requested by the Trustee's Accountant

Having reviewed the First and Final Fee Application of Hahn Fife & Company LLP, the Trustee's accountant, the Court approves the application and awards the following fees and expenses on a final basis:

Total Fees: \$15,032.00

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Total Expenses: \$389.00

The Court Awards the Fees and Expenses Requested by the Trustee's Counsel

Having reviewed the First and Final Application for Fees and Reimbursement of Expenses of the Law Office of Thomas H. Casey, Inc., the Trustee's general bankruptcy counsel, the Court approves the application and awards the following fees and expenses on a final basis:

Total Fees: \$361,398.50

Total Expenses: \$19,623.76

Conclusion

Based upon the foregoing, the opposition of Spice 4 Life and the Debtors to the Trustee's Final Report is overruled. The fees and expenses requested by the Trustee and the Trustee's professionals are awarded on a final basis. The Trustee shall submit a conforming order within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Nathaniel Reinhardt, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Rajinder Kumar Jawa

Represented By

Dennis M Assuras - SUSPENDED -

Nina Z Javan

Joseph M Hoats

Dennis Winters

Joint Debtor(s):

Debra Lynn Jawa

Represented By

Dennis M Assuras - SUSPENDED -

Nina Z Javan

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Joseph M Hoats
Dennis Winters

Trustee(s):

Jason M Rund (TR)

Represented By
Thomas H Casey
Kathleen J McCarthy

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Chapter 7

#101.00 APPLICANT: CHARGES: United States Bankruptcy Court

Hearing re [357] Applications for chapter 7 fees and administrative expenses

Docket No: 0

Tentative Ruling:

See Cal. No. 100, above, incorporated in full by reference.

Party Information

Debtor(s):

Rajinder Kumar Jawa

Represented By

Dennis M Assuras - SUSPENDED -

Nina Z Javan

Joseph M Hoats

Dennis Winters

Joint Debtor(s):

Debra Lynn Jawa

Represented By

Dennis M Assuras - SUSPENDED -

Nina Z Javan

Joseph M Hoats

Dennis Winters

Trustee(s):

Jason M Rund (TR)

Represented By

Thomas H Casey

Kathleen J McCarthy

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Chapter 7

#102.00 APPLICANT: Accountant - Hahn, Fife & Company, LLP

Hearing re [357] Applications for chapter 7 fees and administrative expenses

Docket No: 0

Tentative Ruling:

See Cal. No. 100, above, incorporated in full by reference.

Party Information

Debtor(s):

Rajinder Kumar Jawa

Represented By

Dennis M Assuras - SUSPENDED -

Nina Z Javan

Joseph M Hoats

Dennis Winters

Joint Debtor(s):

Debra Lynn Jawa

Represented By

Dennis M Assuras - SUSPENDED -

Nina Z Javan

Joseph M Hoats

Dennis Winters

Trustee(s):

Jason M Rund (TR)

Represented By

Thomas H Casey

Kathleen J McCarthy

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#103.00 APPLICANT: Attorney - Thomas H Casey, Esq.

Hearing re [357] Applications for chapter 7 fees and administrative expenses

Docket No: 0

Tentative Ruling:

See Cal. No. 100, above, incorporated in full by reference.

Party Information

Debtor(s):

Rajinder Kumar Jawa

Represented By

Dennis M Assuras - SUSPENDED -

Nina Z Javan

Joseph M Hoats

Dennis Winters

Joint Debtor(s):

Debra Lynn Jawa

Represented By

Dennis M Assuras - SUSPENDED -

Nina Z Javan

Joseph M Hoats

Dennis Winters

Trustee(s):

Jason M Rund (TR)

Represented By

Thomas H Casey

Kathleen J McCarthy

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2:16-19418 TKLB, LLC

Chapter 7

#104.00 HearingRE: [33] Motion For Sale of Property of the Estate under Section 363(b) - No Fee Notice of Motion and Motion for Entry of an Order: (1) Authorizing the Sale of Estates Interest in Liquor License Free and Clear of All Liens, Interests, Claims, and Encumbrances Pursuant to 11 U.S.C. §§ 363(b) and (f); (2) Approving Overbid Procedures; and (3) Determining that Buyer is Entitled to a Good Faith Determination Pursuant to 11 U.S.C. §363(m); Memorandum of Points and Authorities; Declaration of Rosendo Gonzalez in Support Thereof (Bagdanov, Jessica)

Docket No: 33

Tentative Ruling:

11/14/2016

Hearing required.

Party Information

Debtor(s):

TKLB, LLC

Represented By
Michael I Gottfried

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
David Seror
Jessica L Bagdanov