

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

Monday, November 28, 2016

Hearing Room 1568

9:00 AM

2:10-56137 Electracash, Inc

Chapter 7

Adv#: 2:16-01169 MENCHACA v. My Payment Network, Inc.

#1.00 Trial Date Set

RE: [1] Adversary case 2:16-ap-01169. Complaint by JOHN J MENCHACA against My Payment Network, Inc.. (Charge To Estate). Nature of Suit: (14 (Recovery of money/property - other)) (Frazer, Helen)

Docket No: 1

*** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 8-30-16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Electracash, Inc

Represented By
Douglas M Neistat
Andria M Rodriguez

Defendant(s):

My Payment Network, Inc.

Pro Se

Plaintiff(s):

JOHN J MENCHACA

Represented By
Helen R Frazer

Trustee(s):

John J Menchaca (TR)

Represented By
Helen R Frazer

John J Menchaca (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

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

Monday, November 28, 2016

Hearing Room 1568

9:00 AM

2:14-10910 Matthew Messingham

Chapter 7

Adv#: 2:16-01017 Krasnoff v. Roberts

#2.00 **Trial**

RE: [16] **COUNTERCLAIM** by Julie Hein Roberts against all plaintiffs

Docket No: 16

*** VACATED *** REASON: DISMISSED 3-11-16

Tentative Ruling:

- NONE LISTED -

Party Information

Counter-Claimant(s):

Julie Hein Roberts

Represented By
Michael D Kwasigroch

Counter-Defendant(s):

Brad D. Krasnoff

Represented By
Diane C Weil

Debtor(s):

Matthew Messingham

Represented By
Michael D Kwasigroch

Defendant(s):

Julie Hein Roberts

Represented By
Michael D Kwasigroch

Joint Debtor(s):

Elise Messingham

Represented By
Michael D Kwasigroch

Plaintiff(s):

Brad D. Krasnoff

Represented By
Diane C Weil

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, November 28, 2016

Hearing Room 1568

9:00 AM

CONT... Matthew Messingham

Chapter 7

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

Brad D Krasnoff (TR)

Represented By
Diane C Weil

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Courtroom 1568 Calendar**

Monday, November 28, 2016

Hearing Room 1568

9:00 AM

2:14-15062 Perry Rubenstein Gallery, LLC

Chapter 7

Adv#: 2:16-01134 Krasnoff Ch 7 Trustee v. Fitzmaurice

#3.00 Trial Date Set

RE: [1] Adversary case 2:16-ap-01134. Complaint by Brad D Krasnoff Ch 7 Trustee against Sara Fitzmaurice. (Charge To Estate). Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Kim, Doah)

Docket No: 1

*** VACATED *** REASON: STATUS CONFERENCE 12-13-16 AT 10:00 AM.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Perry Rubenstein Gallery, LLC

Represented By
Victor A Sahn

Defendant(s):

Sara Fitzmaurice

Pro Se

Plaintiff(s):

Brad D Krasnoff Ch 7 Trustee

Represented By
Doah Kim

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

Brad D Krasnoff (TR)

Represented By
Doah Kim

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, November 28, 2016

Hearing Room 1568

9:00 AM

2:14-15062 Perry Rubenstein Gallery, LLC

Chapter 7

Adv#: 2:16-01135 Krasnoff Ch 7 Trustee v. Fitzmaurice

#4.00 Trial Date Set

RE: [1] Adversary case 2:16-ap-01135. Complaint by Brad D Krasnoff Ch 7 Trustee against Matthew Fitzmaurice. (Charge To Estate). Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Kim, Doah)

Docket No: 1

***** VACATED *** REASON: PER 9-13-16 STATUS CONFERENCE**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Perry Rubenstein Gallery, LLC

Represented By
Victor A Sahn

Defendant(s):

Matthew Fitzmaurice

Pro Se

Plaintiff(s):

Brad D Krasnoff Ch 7 Trustee

Represented By
Doah Kim

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

Brad D Krasnoff (TR)

Represented By
Doah Kim

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, November 28, 2016

Hearing Room 1568

9:00 AM

2:14-19138 Robert Bruce Hunt

Chapter 7

Adv#: 2:14-01544 LANDMAN et al v. Hunt et al

#5.00 TRIAL

RE: [18] Amended Complaint (FIRST) by R Grace Rodriguez on behalf of Dehbra LANDMAN, Kent LANDMAN against DEDRA HUNT, Robert Bruce Hunt. (RE: related document(s)1 Adversary case 2:14-ap-01544. Complaint by Dehbra LANDMAN, Kent LANDMAN against Robert Bruce Hunt, Dedra M Chachere-Hunt, J-BRITT JONES, LLC, MARK-JARED, INC, RD HUNT, INC.. 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)) filed by Plaintiff Kent LANDMAN, Plaintiff Dehbra LANDMAN). (Rodriguez, R)

FR. 5-12-15; 9-15-15; 1-12-16; 4-12-16; 7-19-16

Docket No: 18

***** VACATED *** REASON: STIPULATION FOR JUDGMENT
ENTERED 11-8-16**

Tentative Ruling:

9/12/2016

This status conference is VACATED. If this matter is not resolved by mediation or motion, it will be tried on November 28, 2016 at 9:00 a.m. All witnesses must be present. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

Party Information

Debtor(s):

Robert Bruce Hunt Pro Se

Defendant(s):

DOES 1 through 25, inclusive Pro Se

18 Minute Wash Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, November 28, 2016

Hearing Room 1568

9:00 AM

CONT... Robert Bruce Hunt

Chapter 7

Robert Bruce Hunt

Represented By
Dennis E McGoldrick

DEDRA HUNT

Represented By
Dennis E McGoldrick

Joint Debtor(s):

Dedra M Chachere-Hunt

Pro Se

Plaintiff(s):

Kent LANDMAN

Represented By
R Grace Rodriguez

Dehbra LANDMAN

Represented By
R Grace Rodriguez

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

Howard M Ehrenberg (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

**United States Bankruptcy Court
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Monday, November 28, 2016

Hearing Room 1568

9:00 AM

2:15-17887 Edward Leon Guy, III

Chapter 7

Adv#: 2:16-01130 Guy, III v. Creditone Bank, NA et al

#6.00 Trial Date Set

RE: [1] Adversary case 2:16-ap-01130. Complaint by Edward Leon Guy III against Creditone Bank, NA , DOES 1 through 100, inclusive . (Fee Not Required). Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Jarquin, Jacqueline) Additional attachment(s) added on 3/15/2016 (Jarquin, Jacqueline).

Docket No: 1

***** VACATED *** REASON: ORDER GRANTING DEFENDANT'S
MOTION FOR JUDGMENT ON THE PLEADINGS ENTERED 7-22-16**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Edward Leon Guy III	Pro Se
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Defendant(s):

DOES 1 through 100, inclusive	Pro Se
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Creditone Bank, NA	Pro Se
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Plaintiff(s):

Edward Leon Guy III	Pro Se
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Trustee(s):

Jason M Rund (TR)	Pro Se
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Jason M Rund (TR)	Pro Se
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U.S. Trustee(s):

United States Trustee (LA)	Pro Se
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**United States Bankruptcy Court
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Monday, November 28, 2016

Hearing Room 1568

9:00 AM

2:15-21169 Bradford Thomas Romano

Chapter 7

Adv#: 2:16-01078 United States Trustee (LA) v. Romano et al

#7.00 Trial Date Set

RE: [1] Adversary case 2:16-ap-01078. Complaint by Peter C Anderson against Bradford Thomas Romano, Suzan Ibrocevic Romano. (Fee Not Required). (Attachments: # 1 Adversary Proceeding Cover Sheet # 2 summonsandnoticeofstatusconference) Nature of Suit: (41 (Objection / revocation of discharge - 727(c),(d),(e))) (Mar, Alvin)

Docket No: 1

***** VACATED *** REASON: JUDGMENT ENTERED 3-22-16**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bradford Thomas Romano	Pro Se
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Defendant(s):

Suzan Ibrocevic Romano	Pro Se
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Bradford Thomas Romano	Pro Se
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Joint Debtor(s):

Suzan Ibrocevic Romano	Pro Se
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Plaintiff(s):

United States Trustee (LA)	Represented By Alvin Mar
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Trustee(s):

Carolyn A Dye (TR)	Pro Se
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Carolyn A Dye (TR)	Represented By Leonard M Shulman Ryan D ODea
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**United States Bankruptcy Court
Central District of California
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Monday, November 28, 2016

Hearing Room 1568

9:00 AM

2:15-28261 Gaby J Korkis

Chapter 7

Adv#: 2:16-01111 Hutchinson v. Korkis et al

#8.00 Trial Date Set

RE: [1] Adversary case 2:16-ap-01111. Complaint by Patrick Hutchinson against Gaby J Korkis , Kaci Korkis , Does 1 through 50 inclusive . 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)) (Collins, Kim S.)

Docket No: 1

*** VACATED *** REASON: DISMISSED 10-5-16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gaby J Korkis

Represented By
David S Hagen

Defendant(s):

Does 1 through 50 inclusive

Pro Se

Kaci Korkis

Pro Se

Gaby J Korkis

Pro Se

Joint Debtor(s):

Kaci Korkis

Represented By
David S Hagen

Plaintiff(s):

Patrick Hutchinson

Represented By
Eva Y Yang
Andrew Marton

**United States Bankruptcy Court
Central District of California
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Monday, November 28, 2016

Hearing Room 1568

9:00 AM

CONT... Gaby J Korkis

Chapter 7

Trustee(s):

Edward M Wolkowitz (TR) Pro Se

Edward M Wolkowitz (TR) Pro Se

U.S. Trustee(s):

United States Trustee (LA) Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, November 28, 2016

Hearing Room 1568

9:00 AM

2:15-28261 Gaby J Korkis

Chapter 7

Adv#: 2:16-01111 Hutchinson v. Korkis et al

#9.00 Trial

RE: [13] **Amended** Complaint by Andrew Marton on behalf of Patrick Hutchinson against all defendants. (RE: related document(s)1 Adversary case 2:16-ap-01111. Complaint by Patrick Hutchinson against Gaby J Korkis , Kaci Korkis , Does 1 through 50 inclusive . 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)) filed by Plaintiff Patrick Hutchinson).

Docket No: 13

*** VACATED *** REASON: DISMISSED 10-5-16

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gaby J Korkis

Represented By
David S Hagen

Defendant(s):

Does 1 through 50 inclusive

Pro Se

Kaci Korkis

Represented By
David S Hagen

Gaby J Korkis

Represented By
David S Hagen

Joint Debtor(s):

Kaci Korkis

Represented By
David S Hagen

Plaintiff(s):

Patrick Hutchinson

Represented By

**United States Bankruptcy Court
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9:00 AM

CONT... Gaby J Korkis

Chapter 7

Eva Y Yang
Andrew Marton

Trustee(s):

Edward M Wolkowitz (TR) Pro Se

Edward M Wolkowitz (TR) Pro Se

U.S. Trustee(s):

United States Trustee (LA) Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, November 28, 2016

Hearing Room 1568

9:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:16-01145 Liberty Asset Management Corporation v. Crystal Waterfalls, LLC et al

#10.00 Trial Date Set

RE: [1] Adversary case 2:16-ap-01145. Complaint by Liberty Asset Management Corporation against Crystal Waterfalls, LLC, Golden Bay Investments, LLC, Lucy Gao. (Charge To Estate). -[Complaint For (1) Declaratory Relief; And (2) Unjust Enrichment And Imposition Of Constructive Trust]- Nature of Suit: (91 (Declaratory judgment)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Kwong, Jeffrey)

Docket No: 1

*** VACATED *** REASON: CONTINUED 3-27-17 AT 9:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

Lucy Gao

Pro Se

Golden Bay Investments, LLC

Pro Se

Crystal Waterfalls, LLC

Pro Se

Plaintiff(s):

Liberty Asset Management Corporation

Represented By
Jeffrey S Kwong

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, November 28, 2016

Hearing Room 1568

10:00 AM

2:16-22077 Michael Patrick Kelley

Chapter 7

#100.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 144 Old Farm Drive Unit 1207, Allamuchy, New Jersey 07820 With Proof of Service. (Loftis, Erica)

Docket No: 10

Tentative Ruling:

11/23/2016

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. See, e.g., Martens v. Countrywide Home Loans (In re Martens), 331 B.R. 395, 398 (8th Cir. BAP 2005); Ramco Indus. v. Preuss (In re Preuss), 15 B.R. 896, 897 (9th Cir. BAP 1981).

The subject property has a value of \$130,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. The liens against the property and the expected costs of sale total \$180,717.24. The Court finds there is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors.

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Hearing Room 1568

10:00 AM

CONT... Michael Patrick Kelley

Chapter 7

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks 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, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Michael Patrick Kelley

Represented By
M Jonathan Hayes

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, November 28, 2016

Hearing Room 1568

10:00 AM

2:16-23693 Marilou Floresca Canto-Espiritu

Chapter 7

#101.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 246 Briar Creek Rd, Diamond Bar, CA 91765 .

Docket No: 9

Tentative Ruling:

11/23/2016

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Movant has established a *prima facie* case that cause exists, and Debtor has not responded with evidence establishing that the property is not declining in value or that Movant is adequately protected.

The subject property has a value of \$550,000 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. Considering Movant's lien, all senior liens against the property, and the estimated costs of sale, there is an equity cushion of \$69,597.62. There is some, but very little equity and there is no evidence that the property is necessary to a reorganization or that the trustee can administer the property for the benefit of creditors. Movant is protected by a 12.7% equity cushion in the property. The Ninth Circuit has established that an equity cushion of 20%

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10:00 AM

CONT... Marilou Floresca Canto-Espiritu

Chapter 7

constitutes adequate protection for a secured creditor. Pistole v. Mellor (In re Mellor), 734 F.2d 1396, 1401 (9th Cir. 1984); *see* Downey Sav. & Loan Ass'n v. Helionetics, Inc. (In re Helionetics, Inc.), 70 B.R. 433, 440 (Bankr. C.D. Cal. 1987) (holding that a 20.4% equity cushion was sufficient to protect the creditor's interest in its collateral).

Because the equity cushion in this case is less than 20%, the Court concludes that Movant's interest in the collateral is not adequately protected. This is cause to terminate the stay under 11 U.S.C. § 362(d)(1).

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks 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, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Marilou Floresca Canto-Espiritu

Represented By
Raj T Wadhvani

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, November 28, 2016

Hearing Room 1568

10:00 AM

2:16-23230 Jose Salcido

Chapter 7

#102.00 HearingRE: [14] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2013 NISSAN SENTRA, VIN 3N1AB7AP9DL747465 . (Wang, Jennifer)

Docket No: 14

Tentative Ruling:

11/23/2016

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing

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10:00 AM

CONT... Jose Salcido

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks 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, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Jose Salcido

Pro Se

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, November 28, 2016

Hearing Room 1568

10:00 AM

2:16-23308 Lori Yayoi Murata

Chapter 7

#103.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 HONDA CIVIC, V.I.N.: 19XF B2F5 4FE2 62705 .

Docket No: 8

Tentative Ruling:

11/23/2016

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing

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10:00 AM

CONT... Lori Yayoi Murata

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks 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, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Lori Yayoi Murata

Represented By
Stewart H Lim

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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Central District of California
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Hearing Room 1568

10:00 AM

2:16-22583 Yolanda Lynette Jordan

Chapter 7

#104.00 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2006 HUMMER H3, VIN 5GTDN136968172152 . (Wang, Jennifer)

Docket No: 13

Tentative Ruling:

11/23/2016

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is also waived because Movant regained possession of the vehicle on April 28, 2016. See Doc. No. 19, Decl. of Janiscia Jackson, ¶ 4. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order

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CONT... Yolanda Lynette Jordan

Chapter 7

Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks 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, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Yolanda Lynette Jordan	Pro Se
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Trustee(s):

Edward M Wolkowitz (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 28, 2016

Hearing Room 1568

10:00 AM

2:16-23230 Jose Salcido

Chapter 7

#105.00 Hearing
RE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 15316 Glen Ridge Drive, Chino Hills, CA 91709 .

fr: 11-7-16

Docket No: 12

Tentative Ruling:

11/23/2016

Tentative Ruling:

This Motion for relief from the automatic stay was originally set on a shortened notice for November 7, 2016. However, pursuant to Judge Robles' procedures the matter was continued to November 28, 2016, as the Movant failed to properly serve the pro se Debtor by posting or personal service only. Subsequently, the Movant served the Debtor a Notice of the Motion, the Motion, and a continued hearing date on November 7, 2016, by personal service. *See* Doc. Nos 17, 20. As the original Motion was set on shortened notice, oppositions, if any, will be considered at the hearing.

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Debtor continues to occupy the property after the lease is in default. Debtor was delinquent in the monthly rent of \$5,000 on August 1, 2016, and subsequently continually failed pay rent, including after filing the Petition. Antonio Garcia Decl. ¶ 6; Motion, ¶ 5(b). The Movant filed an unlawful detainer action on

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CONT... **Jose Salcido**
August 15, 2016.

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This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is also waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks 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, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Jose Salcido

Pro Se

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
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Monday, November 28, 2016

Hearing Room 1568

10:00 AM

2:16-22955 Peter Norales

Chapter 7

#106.00 HearingRE: [13] Notice of Motion and Motion in Individual Case for Order Confirming Termination of Stay under 11 U.S.C. 362(j) or That No Stay is in Effect under 11 U.S.C. 362(c)(4)(A)(ii) 234 & 234 W 111TH Pl, Los Angeles, CA 90061 . (Weifenbach, Diane)

Docket No: 13

Tentative Ruling:

11/23/2016

Tentative Ruling:

This Motion for order confirming the termination of the automatic stay has been set for hearing on the notice required by LBR 4001(e) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

As of the date of this tentative ruling, no opposition has been received.

11 U.S.C. § 362(c)(3) provides that the automatic stay under section 362(a) will cease thirty days after the filing of a bankruptcy petition, if the debtor had a previous bankruptcy case pending in the year before the filing of the instant petition, and that first case was dismissed. Here, the Debtor filed a previous voluntary chapter 7 case on August 26, 2016, with dismissal occurring on September 13, 2016, for failure to cure deficient case commencement documents. *See* Case No. 2:16-bk-21388-BR. Debtor filed the instant voluntary chapter 7 case on September 30, 2016. Case No. 2:16-bk-22955-ER. Therefore, the automatic stay terminated on October 30, 2016.

The Debtor may seek to continue the automatic stay, by demonstrating "that the filing of the later case is in good faith as to the creditors to be stayed." 11 U.S.C. § 362(c)(3)(B). Section 362(c)(3) further provides that:

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CONT...

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(C) . . . a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary) -

(i) as to all creditors, if -

- (I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period; [or]
- (II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to –

(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney)[.]

11 U.S.C. § 362(c)(3)(C).

The statute is written in the disjunctive, allowing the presumption to apply for any of the respective requirements. *Id.* Here, the presumption applies in two ways. First, the Debtor's previous case was dismissed merely seventeen days prior to the Debtor filing the instant case, well within the one-year period. Second, the Court dismissed the Debtor's previous case after the Debtor failed to file the required case commencement documents. Therefore, the presumption of section 363(c)(3)(C) applies. Further, the Court finds that the Debtor has failed to rebut the bad faith presumption as the Debtor has not responded to the Motion.

Additionally, the Court finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). Bankruptcy Code § 362(d)(4) requires the Court to grant in rem relief:

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if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors involving either:

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

11 U.S.C. § 362(d)(4).

In rem relief under § 362(d)(4) requires a showing (1) that the Debtor's instant bankruptcy case is part of a scheme, (2) the purpose of the scheme was to delay, hinder or defraud creditors, and (3) that the scheme involved either multiple bankruptcy filings affecting the property or a transfer of some interest in real property without approval from the secured creditor or the court. *In re Dorsey*, 476 N.R. 261 (2012), *see also In re Laconico*, 2014 WL 3687202 (Bankr. N.D. Cal. 2014).

First, the Court finds that the Movant has established the first element. A scheme is an intentional artful plot or plan. *In re Duncan & Forbes Development, Inc.*, 368 B.R. 27 (Bankr.C.D.Cal.2007). A court will generally infer the existence and contents of a scheme from circumstantial evidence. *Id.* Here, the Debtor filed a previous petition on August 26, 2016, that was subsequently dismissed for failing to file the requisite case commencement documents on September 13, 2016.

Next, the Court finds that the Movant has established the second element. "To hinder and delay has been defined as the debtor's actions that unlawfully forestall a creditor's efforts in collecting on its debt." *Laconico*, 2014 WL 3687202 (citing *Duncan*, 368 B.R.). Here, the Debtor's consecutive bankruptcy filings in light of their close proximity to the Movant's attempted foreclosure sales, originally scheduled for August 29, 2016, and subsequently continued to November 4, 2016, suggest a scheme to prevent the Movant from foreclosing on the Property. *See* Doc. No. 14, Decl. of Cory Finton, ¶ 7.

Finally, the Court finds that the Movant has established the third element. The Debtor filed a previous bankruptcy filing on August 26, 2016, and the Court

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dismissed the case on September 13, 2016. Case No. 2:16-bk-21388-BR.

Therefore, the Court grants relief under § 362(d)(4). The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording.

In sum, the Court HEREBY GRANTS the Motion, confirming that the automatic stay in the instant bankruptcy case expired on October 30, 2016, and GRANTS relief under § 362(d)(4). All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks 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, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Peter Norales

Pro Se

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Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:16-23755 Silvia Lopez

Chapter 7

#107.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 13014 Airpoint Avenue, Downey, CA 90242. . (Castle, Caren)

Docket No: 12

Tentative Ruling:

11/23/2016

Tentative Ruling:

As a preliminary matter, the Court is inclined to grant the extra relief requested in the Motion on the condition that the Movant provide testamentary evidence at the hearing of proper service. The Movant filed and dated the Motion on November 3, 2016. Doc. No. 12. However, the proof of service attached to the Motion indicates that Keith Carter served the Motion on "11/013/2016," presumably November 13, 2016, which is insufficient for regular notice under LBR 4001(c)(1) and LBR 9013-1(d)(2). The date the Movant filed the Motion with the Court indicates this may have been a typographical error.

Regardless of proper service, the automatic stay does not apply to any action taken by Movant to evict the Debtor from the Property. Movant obtained an unlawful detainer judgment against the Debtor on June 10, 2016, and obtained a writ of possession for the Property on July 20, 2016. Debtor filed a voluntary Chapter 7 petition on October 18, 2016. "[U]nder California law, entry of judgment and a writ of possession following unlawful detainer proceedings extinguishes all other legal and equitable possessory interests in the real property at issue." *In re Perl*, 811 F.3d 1120, 1127–28 (9th Cir. 2016). Because the Debtor's interest in the Property was extinguished pre-petition, the Property is not property of the estate and the automatic stay does not apply. The unlawful detainer judgment divested the Debtor "of all legal and equitable possessory rights that would otherwise be protected by the automatic stay." *Id.* at 1130.

Movant may enforce its remedies to obtain possession of the property in

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accordance with applicable state law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. Further, if the Movant is able to provide testimonial evidence, as stated above, the Court will grant the requested extra relief because of the prior bankruptcy filing affecting the subject Property. *See* Case No. 2:16-bk-20416-DS. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

Party Information

Debtor(s):

Silvia Lopez

Pro Se

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:16-11563 Elma Fernandez

Chapter 7

#108.00 HearingRE: [14] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Garcia and Francisco v Justo, Cruz & Robles, Docket Number BC568313 .

Docket No: 14

Tentative Ruling:

11/23/2016

Pleadings Filed and Reviewed:

- 1) Order *Sua Sponte* Reopening Bankruptcy Case for the Sole Purpose of Adjudicating Motion for Relief from the Automatic Stay [Doc. No. 16]
- 2) Notice of Motion and Motion for Relief from the Automatic Stay ("Motion") [Doc. No. 14]
- 3) Opposition to Motion for Relief from Automatic Stay ("Opposition") [Doc. No. 18]
- 4) No reply is on file

For the reasons set forth below, the Court finds that neither the automatic stay or the discharge injunction bars Creditors from prosecuting the State Court Action.

I. Facts and Summary of Pleadings

Elma Fernandez ("Debtor") commenced a voluntary Chapter 7 petition on February 8, 2016. Doc. No. 1. Debtor received a discharge on May 23, 2016, Doc. No. 10, and Debtor's case was closed on July 8, 2016, Doc. No. 12.

Zeferino Garcia and Maria Francisco ("Creditors") timely commenced a complaint objecting to the dischargeability of certain debts pursuant to §523(a)(6) (the "Dischargeability Complaint"). Creditors' Dischargeability Complaint is predicated upon an action pending in the Los Angeles Superior Court against the Debtor and four other defendants (the "State Court Action"). The State Court Action alleges that Debtor was party of a conspiracy to destroy Creditors' reputations by publishing defamatory statements on Facebook.

The Court *sua sponte* reopened Debtor's bankruptcy case to provide clarity to the

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parties about whether Creditors' continued prosecution of the State Court Action violates the automatic stay. *See* Order *Sua Sponte* Reopening Bankruptcy Case for the Sole Purpose of Adjudicating Motion for Relief from the Automatic Stay [Doc. No. 16]. Creditors seek stay-relief pursuant to §362(d)(1) so that trial in the State Court Action, scheduled to commence on December 1, 2016, may go forward.

Debtor opposes the Motion. First, Debtor argues that she would be prejudiced if stay-relief were granted:

Taking into account the underlying objectives of the automatic stay, the bankruptcy court should find that the potential prejudice to the debtor and the bankruptcy estate outweighs the potential hardships for Movant. The Debtor has already reorganized, evidenced by a discharge, and therefore, moving her case to the state court goes totally against the principals of "fresh start" as the Debtor must incur additional attorney's fees in fighting the case in state court. Should the stay be lifted immediately to allow Movants to proceed with the state court action, the Debtor would be distracted from her reorganization efforts.

Opposition at 3–4.

Second, Debtor argues that the stay-relief Motion is a bad faith attempt by Creditors to correct mistakes made in the Dischargeability Complaint. According to Debtor, in the Dischargeability Complaint, Creditors "are not seeking a determination that Debtor/Defendant committed defamation; rather, they allege that Debtor/Defendant committed willful and malicious injury under §523(a)(6). So basically, even if such determination is made, there is no money damages award that [Creditors] are seeking.... Apparently [Creditors] realized that and [are] attempting to move the case to state court to seek damages for defamation." *Id.* at 4.

Finally, Debtor asserts that Creditors' continued prosecution of the State Court Action would be "a possible violation of the discharge order." Opposition at 5. [Note 1]

II. Findings and Conclusions

The Automatic Stay Does Not Bar Continued Prosecution of the State Court Action

Creditors are not required to obtain stay-relief to continue prosecuting the State Court Action against the Debtor. The automatic stay has terminated as to the Debtor and as to property of the estate.

Section 362(c)(1) provides that the automatic stay terminates as to property of the estate once "such property is no longer property of the estate." When the Debtor's case

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was closed on July 8, 2016, estate property was abandoned to the Debtor by operation of law. *See* §554(c). Having been abandoned to the Debtor, such property is no longer property of the estate and is no longer protected by the automatic stay. *See* §362(c)(1).

As to all acts other than acts against property of the estate, the automatic stay terminated on May 23, 2016, the date the Debtor received her discharge. *See* §362(c)(2)(C) (providing that "the stay of any other act under subsection (a) of this section continues until the earliest of ... the time a discharge is granted or denied").

In sum, as of July 8, 2016—the date of the closing of Debtor's case—the automatic stay was terminated in all respects. Accordingly, the automatic stay does not bar Creditors from prosecuting the State Court Action.

The Discharge Injunction Does Not Bar Continued Prosecution of the State Court Action

Creditors do not seek declaratory judgment as to whether continued prosecution of the State Court Action violates the discharge injunction. Debtor briefly asserts that such continued prosecution might violate the discharge injunction, but does not explore the argument in any depth.

So that there will be no confusion as to whether the State Court Action may proceed, the Court finds that Creditors' continued prosecution of the State Court Action against the Debtor does not violate the discharge injunction. **[Note 2]** The Court makes this finding to aid in the efficient resolution of the Dischargeability Action. Before this Court can adjudicate the Dischargeability Action, it is necessary that the State Court Action proceed to final judgment. It would not be an efficient use of judicial resources for this Court to adjudicate Debtor's liability, if any, on the claims asserted in the State Court Action. The State Court Action involves defendants other than the Debtor and has already proceeded to the trial stage. The best use of judicial resources is for Creditors to obtain a final judgment against the Debtor in the State Court Action, and then return to this Court for a determination as to whether that judgment is excepted from discharge.

Creditors' prosecution of the State Court Action does not violate the discharge injunction. Section 524(a)(1) provides that a discharge "voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727" Section 524(a)(2) provides that the discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor"

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As one court has explained, where a creditor timely files a dischargeability complaint, the debt that is the subject of that complaint is not discharged until judgment is entered in the debtor's favor. Therefore, until such judgment is entered, the discharge injunction does not apply to the debt:

The permanent injunction provided by § 524(a)(2) enjoining creditor actions against debts discharged under § 727 must be read in conjunction with § 727(b), which provides: **Except as provided in section 523 of this title**, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter [.]" (Emphasis added). Thus, the discharge injunction does not enjoin actions of creditors who successfully invoke § 523, which provides a list of exceptions to discharge....

In other words, upon the timely filing of a complaint objecting to dischargeability of a debt under § 523, the discharge injunction does not apply with respect to that debt until the bankruptcy court makes a determination as to the dischargeability of that debt.

Section 523 compels this result. Section 523(a) provides, in pertinent part, that "[a] discharge under section 727 ... does not discharge an individual debtor from any debt," and then goes on to list the 19 exceptions, which includes paragraphs (2), (4) and (6). Section 523(c)(1) provides that, except in certain circumstances not relevant here, "the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a)."

Hence, a debt is not discharged if a timely complaint is filed objecting to discharge of that debt under § 523(a)(2) (fraud), or (4)(fraud or defalcation while acting in fiduciary capacity, larceny, or embezzlement) or (6) (willful and malicious injury) unless and until the bankruptcy court denies the objection.

Kvassay v. Kvassay (In re Kvassay), No. 2:12-BK-40267-DS, 2016 WL 5845672, at *8 (B.A.P. 9th Cir. Oct. 6, 2016); *see also In re Pitts*, 497 B.R. 73 (Bankr. C.D. Cal. 2013), *aff'd*, 515 B.R. 317 (C.D. Cal. 2014), *aff'd*, No. 14-56502, 2016 WL 4598591 (9th Cir. Sept. 2, 2016) ("[U]pon the timely filing of a complaint objecting to the dischargeability of a debt, the discharge injunction does not apply with respect to that

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debt until the Court makes a determination of the dischargeability of the debt").

Here, Creditors timely filed a complaint objecting to the dischargeability of debt arising in connection with the Debtor's alleged defamation. Accordingly, the discharge injunction does not bar Creditors from obtaining a final judgment on the Debtor's liability for defamation in the State Court Action. However, Creditors may not take any action to enforce any judgment they obtain unless and until the Court determines that such judgment is excepted from discharge.

There is no merit to any of the Debtor's arguments as to why the State Court Action should not proceed. With respect to the Debtor's contention that defending the State Court Action will interfere with her "fresh start," the Bankruptcy Code does not permit Debtors to avoid litigation pertaining to debts which may be non-dischargeable. The Creditors' request for permission to prosecute the State Court Action is not a bad faith attempt to correct an alleged defect in the Dischargeability Complaint. According to Debtor, in the Dischargeability Complaint, Creditors "are not seeking a determination that Debtor/Defendant committed defamation; rather, they allege that Debtor/Defendant committed willful and malicious injury under §523(a)(6). So basically, even if such determination is made, there is no money damages award that [Creditors] are seeking.... Apparently [Creditors] realized that and [are] attempting to move the case to state court to seek damages for defamation." *Id.* at 4. Debtor mischaracterizes the relief sought in the Dischargeability Complaint. Through the Dischargeability Complaint, Creditors seek a determination that any judgment they may obtain against the Debtor in the State Court Action is excepted from discharge pursuant to §523(a)(6). Creditors need not prove through the Dischargeability Complaint that Debtor committed defamation; whether the Debtor committed defamation will be determined by the State Court.

Status of the Dischargeability Complaint

A status conference in the Dischargeability Complaint is scheduled to take place on December 13, 2016. In view of the findings made herein, the December 13 status conference is unnecessary and will not take place. The Court stays the prosecution of the Dischargeability Complaint pending resolution of the State Court Action.

A continued status conference will be conducted on February 14, 2016, at 10:00 a.m. A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The Joint Status Report should inform the Court about the status of the State Court Action.

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Conclusion

Based upon the foregoing, the Court finds that Creditors may continue to prosecute the State Court Action against the Debtor without violating the automatic stay or the discharge injunction. Creditors may not enforce any judgment they obtain against the Debtor unless and until they obtain from this Court a judgment that the State Court Judgment is excepted from discharge.

The Court will enter an appropriate order.

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

Debtor does not set forth a detailed argument in support of her contention that continued prosecution of the State Court Action would violate the discharge injunction.

Note 2

Under Bankruptcy Rule 7001(9), determinations regarding the scope of the discharge injunction "require a declaratory judgment obtained in an adversary proceeding." *In re Munoz*, 287 B.R. 546, 551 (B.A.P. 9th Cir. 2002). The instant Motion is a contested matter, not an adversary proceeding. However, the record is sufficiently developed to allow the Court to make findings regarding the scope of the discharge injunction. Requiring Creditors to seek a declaratory judgment would not yield further information helpful to the Court, but would further delay the State Court Action. That, in turn, would delay this Court's resolution of the Dischargeability Complaint. Determining the scope of the discharge injunction in connection with this contested matter does not prejudice the substantial rights of the parties and is not inconsistent with substantial justice. *See* Civil Rule 61 ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.").

Party Information

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Chapter 7

Debtor(s):

Elma Fernandez

Represented By
Juan Castillo-Onofre
Alla Tenina

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se