

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

Wednesday, December 9, 2020

Hearing Room 1568

10:00 AM

2:18-11909 Raymond Express International,LLC

Chapter 7

#1.00 Hearing

RE: [145] Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f) Motion of Chapter 7 Trustee for An Order Approving the Sale of Certain Assets of the Debtor's Estate Free and Clear of Liens, Claims, Interests, and Encumbrances Pursuant to 11 U.S.C. §§ 105 and 363 and Related Relief

Docket 145

***** VACATED *** REASON: PER ORDER ENTERED 12-3-20**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Raymond Express International,LLC

Represented By
Jose-Manuel A DeCastro
Jonathan N Helfat

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Marsha A Houston
Steven Werth
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, December 9, 2020

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#2.00 Hearing

RE: [6144] Motion for Allowance of Administrative Expense Claim and Request for Payment under 11 U.S.C. § 503(b) (Reynolds, Michael)

Docket 6144

***** VACATED *** REASON: CONTINUED 12-16-20 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

Shirley Cho

Patrick Maxcy

Steven J Kahn

Nicholas A Koffroth

Kerry L Duffy

Brigette G McGrath

Gary D Underdahl

Nicholas C Brown

Anna Kordas

**United States Bankruptcy Court
Central District of California
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Wednesday, December 9, 2020

Hearing Room 1568

10:00 AM

2:20-11634 XLmedica, Inc.

Chapter 11

#3.00 HearingRE: [50] Application for Compensation First Interim Application by Resnik Hayes Moradi LLP, General Bankruptcy Counsel for the Debtor, for Allowance of Fees for the Period February 13, 2020 Through October 21, 2020; Declarations of Anna Stahl and Roksana D. Moradi-Brovia in Support Thereof, with Proof of Service for Roksana D. Moradi-Brovia, Debtor's Attorney, Period: 2/13/2020 to 10/21/2020, Fee: \$24,821.50, Expenses: \$0.00.

Docket 50

Tentative Ruling:

12/8/2020

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. 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. The cost for persons representing themselves has been waived.

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$24,821.50 [*see* Doc. No. 50] (the Applicant is authorized payment of the full amount, less the retainer received of \$21,171.00)

Expenses: \$0.00 [*see id.*]

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 Andrew Lockridge 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.

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CONT... XLmedica, Inc.

Chapter 11

The applicant shall submit a conforming order within seven days of the hearing.

Party Information

Debtor(s):

XLmedica, Inc.

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

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Hearing Room 1568

10:00 AM

2:20-11634 XLmedica, Inc.

Chapter 11

#4.00 HearingRE: [51] Application for Compensation First Interim Application by Callagy Law, P.C., Special Counsel for the Debtor, for Allowance of Fees and Reimbursement of Costs for the Period June 19, 2020 Through October 30, 2020; Declarations of Anna Stahl and Michael J. Smikun in Support Thereof, with Proof of Service for Roksana D. Moradi-Brovia, Special Counsel, Period: 6/19/2020 to 10/30/2020, Fee: \$70,107.00, Expenses: \$960.95.

Docket 51

Tentative Ruling:

12/8/2020

See calendar number 5, incorporated by reference in full.

Party Information

Debtor(s):

XLmedica, Inc.

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

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10:00 AM

2:20-11634 XLmedica, Inc.

Chapter 11

#5.00 HearingRE: [55] Application for Compensation First Interim Application by Callagy Law, P.C., Special Counsel for the Debtor, for Allowance of Fees and Reimbursement of Costs for the Period June 19, 2020 Through October 30, 2020; Declarations of Anna Stahl and Michael J. Smikun in Support Thereof, with Proof of Service (REUPLOADED WITH CORRECT PDF) for Roksana D. Moradi-Brovia, Special Counsel, Period: 6/19/2020 to 10/30/2020, Fee: \$70,107.00, Expenses: \$960.95.

Docket 55

Tentative Ruling:

12/8/2020

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. 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. The cost for persons representing themselves has been waived.

For the reasons set forth below, the Fee Application is **GRANTED** as follows:

1. The Applicants are awarded \$70,107.00 in fees and \$960.95 in costs, less the Retainer received of \$20,000.00.

Pleadings Filed and Reviewed

1. Emcyte Corp.'s Objection to Professional Fee Statement of Callagy Law, P.C. and to the Draw Down of Any Retainer [Doc. No. 42]
2. Notice to Professionals to File Fee Applications [Doc. No. 43]
3. Emcyte Corp.'s Amended Objection to Professional Fee Statement of Callagy Law, P.C. and to the Draw Down of Any Retainer (the "Objection") [Doc. No. 44]
4. Notice of Hearing on Professional Fee Statement for Callagy Law, P.C., Special Counsel for the Debtor [Doc. No. 47]
5. Notice of Hearing on: (a) First Interim Application by Resnik Hayes Moradi LLP, General Bankruptcy Counsel for the Debtor, for Allowance of Fees for the Period February 13, 2020 Through October 21, 2020; (b)

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XLmedica, Inc.

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- First Interim Application by Callagy Law, P.C., Special Counsel for the Debtor, for Allowance of Fees and Reimbursement of Costs for the Period June 19, 2020 Through October 30, 2020 ("Notice of Hearing") [Doc. No. 52]
6. First Interim Application by Callagy Law, P.C. Special Counsel for the Debtor, for Allowance of Fees and Reimbursement of Costs for the Period June 19, 2020 Through October 30, 2020; Declarations of Anna Stahl and Michael J. Smikun in Support Thereof (the "Fee Application") [Doc. No. 55]
 7. Debtor's Reply to EmCyte Corp.'s Amended Objection to Professional Fee Statement of Callagy Law, P.C. and to the Draw Down of Any Retainer; Declaration of Brian A. Williamson in Support Thereof (the "Reply") [Doc. No. 57]

I. Facts and Summary of Pleadings

Debtor and debtor-in-possession XLmedica, Inc. (the "Debtor") filed a voluntary chapter 11 petition on February 13, 2020. The Debtor is a medical supply distribution company specializing in regenerative medicine. On June 26, 2020, the Debtor filed an Application to Employ Michael J. Smikun and Callagy Law, P.C. as Special Counsel (the "Application;" the "Applicants") to represent the Debtor with certain breach of contract and trademark infringement cases pending in Florida. *See* Application [Doc. No. 34]. In the Application, the Applicants note that payment will be made pursuant to an "initial retainer agreement," and that the Applicants will comply with the US Trustee's *Guide to Application for Retainers and Professional and Insider Compensation* ("Compensation Guide"). *Id.* at 6; *see also* U.S. DEPARTMENT OF JUSTICE, United States Trustee: Central District of California, *Guide to Applications for Retainers, and Professional and Insider Compensation* (April 2008), https://www.justice.gov/sites/default/files/ust-regions/legacy/2011/07/13/ch11_guide_insider_compensation.pdf. The Applicants go on to state that the "fees and costs will be paid by the Debtor, once permitted by this Court. The source of funds will be the Debtor's income from its business operations" *Id.* at 8.

The retainer agreement signed between the Applicants and Debtor states: "[i]n consideration of Law Firm's performance of Services, Clients will pay Law Firm an Initial engagement fee in the amount of \$20,000.00 [the "Retainer"]. Services shall be billed against this retainer." *Id.* at 20 ¶ 4. Later on in the agreement it states:

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The entire [Retainer] will be placed into Law Firm's Clients trust account. In accordance with Section 4, Law Firm will draw down on the retainer as allowed by the Central District Local Bankruptcy Rules and the U.S. Trustee. This means that Law Firm will prepare and file a ["Professional Fee Statement"] at the end of each month and ask that your Chapter 11 or Chapter 13 counsel serve it as required. If no creditors object and you do not object, Law Firm will remove the amount of the fees for the month until the [Retainer] is gone."

Id. at 21 ¶ 8. There were no objections to the Application. On August 18, 2020, the Court approved the Application in its entirety. *See* Order Granting Application [Doc. No. 38].

The Applicants now request \$70,107.00 in fees and \$960.95 in costs, less the Retainer received of \$20,000.00.

A. EmCyte's Objection

On October 13, 2020, the Debtor served the Applicant's Professional Fee Statement on EmCyte Corporation ("EmCyte") via US Mail and without any detailed attachments. Objection at ¶¶ 6-7. EmCyte received the documents on October 20, but did not receive the attachments, including detailed fee documentation, until October 22. *Id.* at ¶ 7. The Professional Fee Statement purported to be for the month of October 2020 and read: "[f]ees and costs will be withdrawn from the trust account in the amount stated in item 7 above unless an objection is filed with the clerk of court and served on the professional named above within 10 days from the date of service of this statement." Ex. A to Objection. By EmCyte's calculations, they had just one day to review the Professional Fee Statement and lodge an objection. Objection at ¶ 7. EmCyte filed its Objection on October 23, 2020.

EmCyte's objections are fourfold. First, EmCyte argues that the Court never authorized the Retainer. While the Application mentions a Retainer, the order from this Court does not specifically mention as such. *See* Order Granting Application. Second, even if the Retainer was authorized, EmCyte claims that the monthly Professional Fee Statements as required by the US Trustee's Compensation Guide were never served upon the US Trustee or EmCyte. Objection at 6. In addition, EmCyte notes that although the Applicants did send a Professional Fee Statement for

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October 2020, that fee statement actually covered services from June 5 through August 31, 2020. *Id.* Third, EmCyte argues that "many of the specific time entries are duplicative and involve a large number of entries for attorney communications with paralegals, which are objectionable." *Id.* at 7. Fourth and finally, EmCyte "reserves the right to raise further objections to the Fee Statement, including that the services do not benefit the Estate, at a later date," because it had so little time to review the Professional Fee Statement. *Id.*

B. The Debtor's Reply

On December 2, 2020, the Debtor filed its Reply. The Debtor argues that the Applicants did in fact correctly request the Retainer in their Application as well as the engagement letter between the Debtor and the Applicants. The Debtor asserts that all federal and local rules were correctly followed. Furthermore, the Debtor states that, while the Court's order approving the Application did not specifically state that the Retainer was approved, the Court did approve the entire Application without reservation. *See Reply* at 3-4.

Next, the Debtor argues that the Professional Fee Statement was timely served. The Application was approved by this Court on August 18, 2020, and the Applicants received the \$20,000.00 post-petition Retainer on September 10, 2020. Therefore, the Applicants could not have submitted Professional Fee Statements for June, July, August, or September, because they had not yet received the Retainer. They argue that the first Professional Fee Statement they submitted on October 13, 2020 was timely. *Id.* at 5.

Finally, the Debtor requests that this Court sanction EmCyte because it claims that EmCyte filed its Objection "in bad faith to harass the debtor, improperly increase fees in the litigation and oppress Callagy." *Id.* The Debtor argues that this Objection was merely brought to "deplete its financial ability to defend itself in the litigation cases" that are currently pending in Florida state and federal court. *Id.* at 7. The Debtor then discusses a number of contentious matters that have taken place in the Middle District of Florida proceedings, arguing that "litigation is not cheap" and the extensive objections and voluminous discovery requests by EmCyte in these other cases is proof that EmCyte is harassing the Debtor and its principal. Finally, the Debtor makes the argument that it was EmCyte's obligation to set this hearing and yet it did not do so.

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II. Findings of Fact and Conclusions of Law

A. The Retainer Draw Down

The first issue presented is regarding the Retainer of \$20,000.00 and the draw down by the Applicants. The Application did in fact make reference to the \$20,000.00 Retainer. *See* Application at 6 & 21 ¶ 8. In fact, the Application specifically mentions that the Applicants will comply with the US Trustee requirements of monthly reporting. Application at 21 ¶ 8. That the order issued by this Court does not specifically mention that a Retainer existed is of no consequence because this Court approved of the Application explicitly. *See* Order Granting Application ("The Motion is **GRANTED**").

Furthermore, EmCyte's contention that Callagy failed to make its monthly reports lacks merit because Callagy did not receive the Retainer until September 10, 2020. Reply at 5. The Compensation Guide states:

Any professional who has received a pre-petition or post-petition retainer must submit to the United States Trustee a monthly Professional Fee Statement (Form USTLA-6) no later than the 20th day after the end of the month during which professional services were rendered, together with documentation supporting the charges for the professional expenses in the form required for professional fee applications by applicable law.

Compensation Guide at I. B. 1. According to the plain language of the Compensation Guide, the Debtor had until October 20, 2020 to submit the Applicants' Professional Fee Statement. The Debtor submitted its Professional Fee Statement on October 13, 2020. Although the Debtor may have not included certain required attachments, the Debtor remedied that problem and provided the requisite detailed entries. It would have been impossible for the Debtor to somehow submit the Applicants' Professional Fee Statements for months where its Application had not been approved or where it had not yet received the Retainer. Therefore, EmCyte's objection as to the Retainer and the Professional Fee Statements is overruled.

However, even if this Court had concluded that the retainer was not authorized or the Debtor failed to provide the requisite Professional Fee Statements, that issue would be mooted by the fact that this Court is now reviewing the Applicants' Fee Application. The \$20,000.00 retainer was meant to be used as a draw down without Court approval, subject to no objections. Given that there was an objection, it was

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appropriate for the Applicants to submit their Fee Application for approval by this court, rather than the alternative, which would have been to draw down on the Retainer.

Therefore, because no draw down occurred, the Court will now review the Applicants' Fee Application for payment pursuant to 11 U.S.C. § 327.

B. The Fee Application

EmCyte's next argument is that it objects to the Fee Application because: 1) the fee statement that it received on October 20/22, 2020 sought payment for services rendered starting June 5, 2020, rather than the effective date of employment, which is June 19, 2020; and 2) "many of the specific time entries are duplicative and involve a large number of entries for attorney communications with paralegals, which are objectionable." Objection at 7.

The Debtor properly noted that the Applicants' first Professional Fee Statement that they mailed to EmCyte included work done before the effective date of employment. Therefore, in their Fee Application, they subtracted the fees for all work done between June 5 and June 18, 2020. The amounts requested by the Applicants are correct.

11 U.S.C. § 330(a)(1) allows the Court to award "reasonable compensation for actual, necessary services rendered" by a professional. In determining the amount of compensation to award, the Court considers the:

nature, the extent, and the value of such services, taking into account all relevant factors, including—

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- (E) with respect to a professional person, whether the person is

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board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C. § 330(a)(3).

EmCyte's allegations of "duplicative" time entries and "communications with paralegals" are vague and conclusory. It points to no specific work or time entries that it objects to. It appears to this Court that the Applicants' work for the Debtor has been significant: 140 discovery demands to the Debtor and an equal number to its principal officer that have been "highly contentious and ha[ve] led to a multitude of email and phone conversations with opposing counsel in efforts to resolve those disagreements." Fee Application at 7-8. According to the Debtor and as is evident by the docket sheet in this case, "[n]early every action taken on behalf of the Debtor has been opposed by EmCyte, necessitating a considerable expenditure of time and resources." *Id.* at 8. It appears as though the work done for the Debtor and its principal executive has been necessary and beneficial to the estate.

Furthermore, EmCyte attempts to "reserve[]" the right to raise further objections to the Fee Statement, including that the services do not benefit the Estate, at a later date." Objection at 7. While the Court understands that EmCyte had very little time to review the Professional Fee Statement with regards to the Retainer, EmCyte appears to be conflating two issues. It timely made its Objection to the draw down in the Professional Fee Statement, as was required within ten days. However, its objection to the Fee Application was due 14 days before the hearing – November 25, 2020. This is made clear by Local Bankruptcy Rule 9013-1(f)(1), the Applicants' Fee Application ("Any response or opposition must be filed with the Court and served on the Debtor' counsel at least 14-days prior to the scheduled hearing date on the Application"), and the Notice of Hearing ("Any response or opposition must be filed with the Court and served on the Debtor' counsel at least 14-days prior to the scheduled hearing date on the Application"). An objecting party may not simply "reserve rights" to object for as long as it wishes when the local rules are clear.

C. The Sanctions

Finally, the Debtor contends that EmCyte's conduct amounts to harassment, its

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Objection is without merit, and the Objection was filed in bad faith. "[B]ankruptcy courts have the inherent power to sanction vexatious conduct presented before the court." *In re Rainbow Magazine, Inc.*, 77 F.3d 278, 284 (9th Cir. 1996).

The Court cautions the Debtor against any further request for sanctions, as the Court looks with disfavor upon such requests. It is evident from the Debtor's extensive argument and exhibits that the issues at stake between the parties are highly contentious and have not been straightforward. However, in many respects, that is the nature of litigation. Requests for sanctions are seldom an appropriate means of advancing a party's position in the litigation. The Court will impose sanctions only if all procedural requirements have been fastidiously complied with, and then only if the party against whom sanctions are sought has engaged in *egregiously* improper conduct. Filing an objection to a retainer draw down does not come anywhere near this standard. Furthermore, EmCyte's conduct in litigation outside of this district bears little relevance to whether this Court will impose sanctions. In addition, it was the Applicants' and the Debtor's obligation, not EmCyte's, to set this matter for hearing. The Debtor's request for sanctions is denied.

III. Conclusion

For the reasons set forth above, the Fee Application is GRANTED and the request for sanctions is DENIED.

The Applicants shall submit a conforming order, incorporating this tentative ruling by reference, within seven 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 Andrew Lockridge 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.

Party Information

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Debtor(s):

XLmedica, Inc.

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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2:20-14485 Michael Stuart Brown

Chapter 11

#6.00 Hearing
RE: [78] Application for Compensation Notice of Motion and Motion for:
Application for Payment of Interim Fees and/or Expenses for Michael F Chekian,
Debtor's Attorney, Period: 7/1/2020 to 10/5/2020, Fee: \$8,581.25, Expenses:
\$2,196.00.

Docket 78

*** VACATED *** REASON: WITHDRAWAL FILED 12-3-20

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Stuart Brown

Represented By
Michael F Chekian

Trustee(s):

Gregory Kent Jones (TR)

Pro Se

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Hearing Room 1568

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2:20-19727 Titus Emil Iovita

Chapter 11

#100.00 Hearing
RE: [14] Motion to Use Cash Collateral

Docket 14

Tentative Ruling:

12/8/2020

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. 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. The cost for persons representing themselves has been waived.

For the reasons set forth below, the Motion is **GRANTED**.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral (the "Motion") [Doc. No. 14]
2. Statement Regarding Cash Collateral or Debtor in Possession Financing [Doc. No. 15]
3. Secured Creditor's Conditional Limited Opposition to Debtor's Notice of Motion and Motion for Order Authorizing Use of Cash Collateral Under LBR 9013-1(d) (the "Limited Opposition") [Doc. No. 18]
4. Opposition to Motion for Use of Cash Collateral (the "Opposition") [Doc. No. 21]
5. Reply by Debtor in Possession to Siboney Monge's Opposition to Motion for Use of Cash Collateral (the "Reply") [Doc. No. 22]

I. Facts and Summary of Pleadings

Debtor and debtor-in-possession Titus Emil Iovita (the "Debtor") filed his voluntary individual chapter 11 petition on October 28, 2020. On his Schedule A/B, the Debtor listed two properties:

1. 14919 S. Normandie Ave., Apt. 8, Gardena, CA 90247

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Chapter 11

2. 18604 Newman Ave., Riverside, CA 92508 (the "Newman Property")

The Newman Property is encumbered by at least one lien: that of Flagstar Bank ("Flagstar") in the amount of \$199,319.46 (the "Flagstar Lien"). The Debtor also lists a disputed lien held by Siboney A. Monge c/o Malibu Recontrust LLC in the amount of \$402,125.00 (the "Monge Lien"). The Debtor scheduled the Newman Property at a value of \$575,000.00. The Debtor also scheduled approximately \$121,402.00 in cash deposits at various banks, \$48,934.00 in brokerage accounts, and \$24,012.00 in retirement accounts.

A. The Debtor's Motion

On November 17, 2020, the Debtor filed his Motion seeking an order authorizing use of cash collateral consisting of the Newman Property. The Debtor's proposed monthly budget is as follows:

Income from the Newman Property:	\$2,350.00
Expenses:	
Flagstar Lien Payment:	(\$1,011.00)
Property Taxes:	(269.50)
Property Insurance:	(\$68.00)
Maintenance:	<u>(\$240.00)</u>
Net Income	\$760.00

The Debtor also requests to use the net income to pay quarterly fees to the US Trustee, to deviate from any line item expenses in the proposed budget by no more than 25% without further order of the court, and to use any unpaid expenses (such as insurance, which may not need to be paid every month) to pay subsequent months' budgets. The Debtor states that "[d]ue to the disputed nature of the [Monge Lien], Debtor does not offer any adequate protection payments to that creditor by this motion." Motion at 4.

B. The Limited Opposition

On November 23, 2020, Flagstar submitted a Limited Opposition. It does not object to the use of cash collateral to pay the Flagstar lien, utilities, or normal monthly expenses for the Newman Property. The only objection is that Flagstar requests that if the Debtor seeks to use the cash collateral for any large or unusual repairs, that the Debtor be required to notify Flagstar and provide proof of that repair. Flagstar would

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also agree to an excessive repair cap in the range of \$3,500.00.

C. The Opposition

On November 25, 2020, Siboney Monge ("Monge") filed an Opposition [Note 1]. Monge states that 1) neither the Debtor nor the estate have any equity in the Newman Property, and 2) the Debtor has tens of thousands of dollars in cash to service any debt. Monge's first argument is that the Monge Lien is undisputed and therefore the property is entirely underwater. Monge argues that the Debtor even admits as such because the Debtor filed as Exhibit 2 to his Motion a Deed of Trust and Assignment of Rents to Monge (the "Deed of Trust"), dated February 1, 2010. *See* Motion at 20. Therefore, Monge argues, the lien is valid and, together with the Flagstar Lien, the Debtor and the estate have no equity in the property.

Monge's second argument is that the Debtor has plenty of cash to service any of his debts and does not require the use of cash collateral. Monge notes that the Debtor has \$121,402.00 in cash deposits at various banks, and that Debtor's income, after expenses, exceeds \$2,100.00 per month.

D. The Debtor's Reply

On December 1, 2020, the Debtor filed his Reply. The Debtor argues that for a cash collateral motion, he is only required to show that the lienholders' interests are adequately protected. He argues that "adequate protection" includes the property not declining in value, and does not necessarily mean adequate protection payments. *See In re Johnson*, 90 B.R. 973, 978 (Bankr. D. Minn.) (finding that the bank was not entitled to adequate protection payments because the collateral was not declining in value). The Debtor argues that the payment of the Flagstar Lien, taxes, insurance, and repairs, will actually maintain and possibly increase the value of the property – all beneficial for Monge should her lien be valid. Furthermore, the Debtor clarifies that he still disputes the Monge Lien and any amounts owed to Monge, but only attached the Deed of Trust to his Motion because she does in fact have a recorded lien against the Newman Property.

The Debtor also makes a new argument that the costs and expenses of maintaining the cash collateral can be approved under 11 U.S.C. § 506(c), which states that a Debtor "may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property

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Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, December 9, 2020

Hearing Room 1568

11:00 AM

CONT... Titus Emil Iovita

Chapter 11

to the extent of any benefit to the holder of such claim, including the payment of all ad valorem property taxes with respect to the property."

II. Findings of Fact and Conclusions of Law

Section 363(c)(2) requires court authorization for use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of § 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Dev. Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368-69 (9th Cir. 1987). Absent affirmative express consent, the Debtor "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of § 363 – that is, that the secured creditor's interest in the cash collateral is adequately protected. 11 U.S.C. §§ 363(c)(2)(B), 363(e).

A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 382 (1988).

Monge's interest is adequately protected. Monge provides no evidence that the Newman Property is declining in value and makes no request for any sort of adequate protection payments. The argument that the Debtor has no equity in the Newman Property and therefore the Court should deny the Motion would amount to this Court making a determination of the validity of the lien, something that the Court declines to do at this time. At this juncture, there is not enough evidence on the record to determine the validity of the lien. To the extent that Monge's lien is valid, which the Court is not yet finding, the lien is adequately protected due to the fact that the Newman Property does not appear to be declining in value.

Monge's second argument that the Debtor does not *require* the use of cash collateral because he has cash in checking accounts has no merit. The issue with a cash collateral motion is not whether the debtor has other funds, but whether the lienholders' interests are adequately protected.

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As to the Limited Opposition, the Court finds that an "excessive repair cap" of \$3,500 is appropriate. Therefore, if the Debtor is required to perform any repairs in excess of this amount, he must first notify Flagstar's counsel and provide proof of the non-routine repair.

III. Conclusion

For the reasons set forth above, the Motion is **GRANTED**.

The Debtor shall submit a conforming order, incorporating this tentative ruling by reference, within seven 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 Andrew Lockridge 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: In her Opposition, Monge "objects to this Court's personal and subject matter jurisdiction and does not accede to this Honorable Court's ability to enter final judgments . . ." Opposition at 1. However, Monge has filed a proof of claim against the estate in the amount of \$404,644.67 (denominated as Claim 4 in the claims register on CM/ECF). By filing a proof of claim, Monge has consented to the Bankruptcy Court's resolution of all issues pertaining to her claim. In *Stern v. Marshall*, the Supreme Court found that a "preferential transfer claim can be heard in bankruptcy court when the allegedly favored creditor filed a claim, because *then* 'the ensuing preference action by the trustee become[s] integral to the restricting of the debtor-creditor relationship.'" 564 U.S. 462, 297 (2011). Likewise here, the use of cash collateral is "integral to the restructuring of the debtor-creditor relationship" because such a proceeding requires the Court to determine whether Monge's interest in the collateral securing her claim will be adequately protected if the Court permits the Debtor to use Monge's cash collateral.

Party Information

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Chapter 11

Debtor(s):

Titus Emil Iovita

Represented By
Vahe Khojayan

**United States Bankruptcy Court
Central District of California
Los Angeles
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2:17-18746 AAA American Construction, Inc. and Capital One Bank

Chapter 7

#101.00 Hearing re [44] Application for Allowance of Fees and Costs filed by: Law Offices of Larry D. Simons, General Bankruptcy Counsel

Docket 0

Tentative Ruling:

12/8/2020

See calendar number 101.10, incorporated by reference in full.

Party Information

Debtor(s):

AAA American Construction, Inc.

Represented By
Michael H Yi

Trustee(s):

Sam S Leslie (TR)

Represented By
Larry D Simons

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2:17-18746 AAA American Construction, Inc. and Capital One Bank

Chapter 7

#101.10 HearingRE: [46] Application for Compensation Notice of Application and First Interim Fee Application of Law Offices of Larry D. Simons, Attorney for Chapter 7 Trustee; declaration of Larry D. Simons and Sam S. Leslie in Support Thereof with proof of service for Larry D Simons, Trustee's Attorney, Period: 5/8/2018 to 9/30/2020, Fee: \$26137.50, Expenses: \$339.02.

Docket 46

Tentative Ruling:

12/8/2020

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. 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. The cost for persons representing themselves has been waived.

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$26,137.50 [*see* Doc. No. 46]

Expenses: \$339.02 [*see id.*]

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 Andrew Lockridge 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.

The applicant shall submit a conforming order within seven days of the hearing.

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CONT... AAA American Construction, Inc. and Capital One Bank Chapter 7

Party Information

Debtor(s):

AAA American Construction, Inc.

Represented By
Michael H Yi

Trustee(s):

Sam S Leslie (TR)

Represented By
Larry D Simons

**United States Bankruptcy Court
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2:17-18746 AAA American Construction, Inc. and Capital One Bank

Chapter 7

#101.20 HearingRE: [47] Application for Compensation of Interim Fees and/or Expenses for LEA Accountancy, LLP, Accountant, Period: 8/14/2017 to 10/23/2020, Fee: \$21,631.00, Expenses: \$493.95.

Docket 47

Tentative Ruling:

12/8/2020

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. 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. The cost for persons representing themselves has been waived.

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$21,631.00 [*see* Doc. No. 47]

Expenses: \$493.95[*see id.*]

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 Andrew Lockridge 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.

The applicant shall submit a conforming order within seven days of the hearing.

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CONT... AAA American Construction, Inc. and Capital One Bank

Chapter 7

Debtor(s):

AAA American Construction, Inc.

Represented By
Michael H Yi

Trustee(s):

Sam S Leslie (TR)

Represented By
Larry D Simons